

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
KEVIN R. CAISSIE, Individually and)	
On behalf of all other persons similarly situated)	
)	
<i>Plaintiff,</i>)	
)	DOCKET NO. 08-CV-30220-MAP
v.)	
)	
BJ'S WHOLESALE CLUB, INC.)	
)	
<i>Defendant.</i>)	
_____)	

ORDER PRELIMINARILY APPROVING SETTLEMENT

WHEREAS, the Plaintiff and Defendant have entered into a Settlement Agreement intended to resolve, on a global basis, the litigation in this Court against Defendant arising out of its alleged misclassification of certain "mid-managers," as defined in the Settlement Agreement as the "Disputed Positions," for failure to pay overtime; and

WHEREAS, the Settlement Agreement, together with supporting materials, sets forth the terms and conditions for a proposed settlement and dismissal with prejudice of this action against the Defendant; and

WHEREAS, the Court has before it the parties' Motion for Preliminary Approval of Settlement and supporting papers in support thereof, together with the Settlement Agreement and supporting materials; and

WHEREAS, the Court is satisfied that the terms and conditions set forth in the Settlement Agreement were the result of good faith, arm's length settlement negotiations between competent and experienced counsel for both Plaintiff and Defendant.

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order have the meanings assigned to them in the Settlement Agreement and this Order.

2. The terms of the parties' Settlement Agreement are hereby conditionally approved, subject to further consideration thereof at the Final Approval Hearing provided for below. The Court finds that the Settlement is sufficiently within the range of reasonableness and that notice of the proposed settlement should be given as provided in this Order.

3. The Court conditionally certifies the following Settlement Classes for the following periods of time ("Class Periods"):

- (i) **FEDERAL CLASS** – individuals employed in the Disputed Positions for BJ's Wholesale Club, Inc., who file consents to join the Caissie action (including without limitation all individuals who timely return a Claim Form containing a consent to join the Action), within the three years prior to filing their consent to join the Action.
- (ii) **STATE LAW CLASS** – all individuals employed in the Disputed Positions for BJ's Wholesale Club, Inc., in the following states during the indicated periods:

Connecticut	January 24, 2008 through January 24, 2010
Delaware	January 24, 2009 through January 24, 2010
Florida	January 24, 2008 through January 24, 2010
Georgia	January 24, 2008 through January 24, 2010
Maine	January 24, 2004 through January 24, 2010
Maryland	January 24, 2007 through January 24, 2010
Massachusetts	November 18, 2005 through January 24, 2010
New Hampshire	January 24, 2008 through January 24, 2010
New Jersey	January 24, 2008 through January 24, 2010

New York	January 24, 2004 through January 24, 2010
North Carolina	January 24, 2008 through January 24, 2010
Pennsylvania	January 24, 2007 through January 24, 2010
Rhode Island	January 24, 2007 through January 24, 2010
South Carolina	January 24, 2007 through January 24, 2010
Virginia	January 24, 2007 through January 24, 2010

4. The Court further conditionally finds that Plaintiff Kevin R. Caissie and Opt-in Plaintiffs Greg Bryan and Lee Smith, who are also named plaintiffs in the Amended Complaint (the "Settlement Class Representatives") are adequate class representatives for the Settlement Classes.

5. The Court further conditionally finds that Plaintiff's Counsel are adequate to serve as Class Counsel and conditionally appoints the following as counsel for the class:

Seth R. Lesser, Esq.
 Fran L. Rudich, Esq.
 Klafter Olsen & Lesser LLP
 Two International Drive, Suite 350
 Rye Brook, NY 10573

6. Any person who does not elect to be excluded from the Settlement Classes may, but need not, enter an appearance through his or her own attorney. Settlement Class members who do not enter an appearance through their own attorneys will be represented by Class Counsel.

Notice to Settlement Class and Appointment of Settlement Administrator

7. The Court approves the form of Notice and Consent to Join and Claim Form, attached as Exhibits C and D to the parties' Settlement Agreement and the manner of notice set forth in Section 10 of the Settlement Agreement. Such Notices shall issue on or

before the date fourteen (14) days from the date the date of this Order.

8. The manner and forms of Notice set forth in Section 10 of the Settlement Agreement are hereby approved and the provisions thereof are hereby incorporated into this Order so that upon entry of this Order, the parties are directed to ensure that the notice is disseminated according to the terms of Section 10. Settlement Class members may request exclusion from the Settlement or object to the Settlement no later than 21 days prior to the Final Approval Hearing. Settlement Class members may file a claim form up to 30 days after the Final Approval Hearing, which must be postmarked by that date. Prior to the Final Approval Hearing, Plaintiffs and/or the Claims Administrator shall serve and file a sworn statement attesting to compliance with the provisions of this paragraph.

9. The Notices to be provided as set forth in the Settlement Agreement are hereby found to be the best practicable means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement and the Final Approval Hearing to all persons and entities affected by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of FED R. CIV. P. 23, due process, the Constitution of the United States, the laws of Massachusetts and all other applicable laws. The Notices are accurate, objective, informative and provide members of the Settlement Classes with all of the information necessary to make an informed decision regarding their participation in the Settlement and its fairness.

10. The parties and their respective counsel are authorized to retain The Garden City Group, Inc., to serve as the Claims Administrator in accordance with the terms of the Settlement Agreement and this Order.

Requests for Exclusion from the Settlement Class

11. Any member of the Settlement Classes who wishes to be excluded (“opt out”) must send a opt-out written request for exclusion to the Claims Administrator, so that it is received by the Claims Administrator at the address indicated in the Notice on or before the date 21 days (21) days prior to the Final Approval Hearing. In order to be effective, this Request for Exclusion must include the Settlement Class member’s name and address, and should state: (1) that the Settlement Class member is requesting to be excluded from the Parties’ settlement in the case *Caissie, et al v. BJ's Wholesale Club, Inc.*, Case. No. Case No. 08-CV-30220-MAP; and (2) that the Settlement Class member understands that by being excluded from the settlement, the Settlement Class member will receive no funds in conjunction with the case. If, however, the Settlement Class member submits a timely Claim Form, his or her opt out request will be void.

12. Members of the Settlement Classes may not exclude themselves by filing requests for exclusion as a group or class, but must in each instance individually and personally execute a request for exclusion and timely transmit it to the Claims Administrator.

13. Any member of the Settlement Classes who does not properly and timely request exclusion shall be bound by all the terms and provisions of the Settlement Agreement, whether or not such person objected to the Settlement and whether or not such person made a claim upon, or participated in, the settlement fund pursuant to the Settlement Agreement. All members of the Settlement Classes who do not personally and timely request to be excluded are enjoined from proceeding against the Defendant for the claims made in the Amended Complaint.

Objections to the Settlement

14. Any person who does not elect to be excluded from the Settlement may, but need not, submit comments or objections to the proposed Settlement, entry of Final Order and Judgment approving the settlement, or Settlement Class Counsel's application for fees and expenses by serving a written objection.

15. Any individual making the objection (an "Objector") must sign the objection personally. To object, Settlement Class members must file with the Court and serve on counsel for the Parties a written statement describing their reasons for objecting to the Settlement no later than twenty-one (21) days prior to the Final Approval Hearing. No person shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) or to object to the Settlement, and no written objections or briefs submitted by any person shall be received or considered by the Court at the Final Approval Hearing, unless such written statement of objections and supporting materials are timely filed and served as set forth herein and detailed in the Notice attached to the Settlement Agreement as Tab C.

16. An objection must also state the Objector's full name, address, and the dates and position of the objector's employment with Defendant.

17. If an objector intends to appear personally at the Final Approval Hearing, the Objector must include with the objection a notice of the Objector's intent to appear at the hearing. If counsel is appearing on behalf of more than one Settlement Class member, counsel must identify each such Settlement Class member, and each Settlement Class member must have complied with the requirements of this Order.

The Final Approval Hearing

18. A hearing on Final Approval of the Settlement (the "Final Approval Hearing") is hereby scheduled to be held before this Court on JUNE 21, 2010, to consider the fairness, reasonableness, and adequacy of the proposed Settlement, the dismissal with prejudice of the above-captioned action with respect to Defendant herein, and the entry of final judgment.

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19. Settlement Class Counsel's application for award of attorney's fees and costs and the Settlement Class Representatives' application for Incentive Awards shall be heard at the time of the Final Approval Hearing. Any application for an award of attorneys' fees and costs and any application for Incentive Awards shall be filed with the Court no later than ten (10) days prior to the Final Approval Hearing.

20. The date and time of the Final Approval Hearing shall be set forth in the Notice, but the Final Approval Hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Classes other than that which may be posted by the Court.

21. Only Settlement Class members who have filed and served valid and timely notices of objection shall be entitled to be heard at the Final Approval Hearing. Any Settlement Class member who does not timely file and serve an objection in writing to the Settlement, entry of Final Judgment, or to Settlement Class Counsel's application for fees, costs, and expenses or to the awards proposed for the Settlement Class Representatives, in accordance with the procedure set forth in the Notice and mandated in this Order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

Other Provisions

22. Each and every time period and provision of the Settlement Agreement shall be deemed incorporated herein as if expressly set forth and shall have the full force and effect of an Order of this Court.

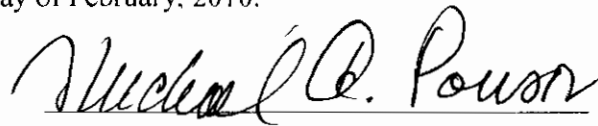
23. All reasonable costs incurred in notifying members of the Settlement Classes, as well as administering the Settlement Agreement, shall be paid as set forth in the Settlement Agreement.

24. If the Settlement Agreement is terminated or not consummated for any reason whatsoever, the conditional certification of the Settlement Classes shall be void and the Defendant, pursuant to the terms of the Settlement Agreement, shall have reserved all of its rights to oppose any and all class certification motions, to contest the adequacy of any plaintiff as representative of any putative class, and to contest the adequacy of Plaintiff's counsel as adequate Class Counsel. Additionally, Plaintiffs, pursuant to the terms of the Settlement Agreement, reserve all of their rights, including the right to continue with the litigation as set forth in the Settlement Agreement should the Settlement Agreement not be consummated.

25. For all the reasons stated in the Parties' Joint Motion for Preliminary Approval of Class and Collective Action Settlement, immediately following the entry of this Order, all members of the Settlement Classes shall be enjoined pursuant to 28 U.S.C. § 1651(a) from initiating or proceeding with any and all suits, actions, causes of action, claims, or demands in federal or state court based on putative violations of the FLSA or any state or local law (including statutory, regulatory, and common law) pertaining to hours of work or payment of wages, including without limitation all claims that were or could have been asserted in the above-captioned

case by or on behalf of mid-managers who worked for BJ's Wholesale Club, Inc. within the applicable proposed Class Periods. This injunction shall remain in effect through the dismissal of this case, as defined herein.

SO ORDERED, this 24th day of February, 2010.

A handwritten signature in black ink, reading "Michael A. Ponsor". The signature is written in a cursive style and is positioned above a horizontal line.

HON. MICHAEL A. PONSOR

UNITED STATES DISTRICT JUDGE