

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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| |) | |
| DOUGLAS CANAS and VANESSA |) | |
| MESCHINO, on behalf of themselves and all |) | |
| other plaintiffs similarly situated, |) | Case No.: 1:20-cv-04937 |
| |) | |
| Plaintiffs, |) | Hon. Judge John Robert Blakey |
| |) | |
| v. |) | Mag. Judge Sunil R. Harjani |
| |) | |
| SMITHFIELD PACKAGED MEATS |) | |
| CORP., SMITHFIELD FRESH MEATS |) | |
| CORP., AND KANSAS CITY SAUSAGE |) | |
| COMPANY, LLC. |) | |
| Defendants. | | |

**PLAINTIFFS’ UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF COLLECTIVE AND CLASS ACTION SETTLEMENT AND FOR
CERTIFICATION OF CLAIMS PURSUANT TO F. R.C.P.23 FOR SETTLEMENT**

Plaintiffs Douglas Canas and Vanessa Meschino (“Plaintiffs”), on behalf of themselves and all others similarly situated, for this Unopposed Motion for Preliminary Approval of Class Action Settlement and for Certification of Claims Pursuant to Fed. R. Civ. Pro. 23 for Settlement of their claims against Smithfield Packaged Meats Corp., Smithfield Fresh Meats Corp., and Kansas City Sausage Company, LLC (collectively, “Smithfield”) state as follows:

I. INTRODUCTION

Smithfield, one of the nations’ largest pork producers, wanted to increase its employees’ compensation during the Covid-19 Pandemic. To do this, Smithfield paid its employees a \$500 payment in May 2020 (a “Responsibility Bonus”). It also paid its workforce extra hourly compensation for the first 40 hours they worked per week for several months thereafter (referred to as “Responsibility Pay”).

Plaintiffs' lawsuit alleges that the Responsibility Pay and Responsibility Bonus should have been factored into its employees' overtime rates. Smithfield disagrees. Rather than fighting over these issues for many years during prolonged litigation, the Parties reached a resolution during a settlement conference that was held with Magistrate Judge Sunil R. Harjani on February 2, 2021.

By this Motion, Plaintiffs seek preliminary approval of a \$7.75 million settlement for over 30,000 Smithfield workers who were allegedly underpaid for their overtime when they worked during the COVID-19 Pandemic. This amount represents *more* than a full recovery (approximately 102%) of the base wages that the Fair Labor Standards Act (FLSA) putative class would have earned had they been properly paid according to the Plaintiffs' allegations. Those who worked in Illinois will also receive an allocation representing 100% of their alleged base damages because of additional damages available under the Illinois Minimum Wage Law ("IMWL"), so long as they do not exclude themselves from the IMWL Class.

For the reasons below, Plaintiffs request this Court enter an order, in the form attached hereto as Exhibit 1, that (1) grants preliminary approval of the Proposed Class Action Settlement (attached hereto as Exhibit 2) so that notice can be sent out to see if there are objections; (2) certifies the Class for settlement purposes only; (3) approves the proposed Notice; and (4) sets a hearing date for Final Approval of Settlement. In support of this motion, Plaintiffs state as follows:

II. OVERVIEW OF CLAIMS

Plaintiffs allege Smithfield did not properly calculate its employees' regular rate of pay for overtime purposes. Specifically, Plaintiffs claim Defendants failed to include the Responsibility Bonus and Responsibility Pay when computing employees' overtime rates of pay, resulting in

employees being paid an overtime rate that was too low and depriving them of earned wages in violation of the FLSA and the IMWL.

Smithfield denied Plaintiffs' allegations and, to the contrary, contends that the additional compensation were gifts and/or discretionary bonuses to recognize employees for working and overcoming difficult circumstances--and therefore did not qualify as compensation that factored into the overtime rate. Smithfield pointed out that it paid its Responsibility Bonus to thousands of workers who performed no work at all and therefore it was more akin to a discretionary payment or a gift. It also argued that, after examining Smithfield's Responsibility Bonus in one of its plants, a United States Department of Labor investigator opined that the bonus did not need to be included in the overtime rate.¹

While Plaintiffs were confident in their claims, there was some uncertainty because an adverse ruling on these or other issues could result in Plaintiffs receiving no damages whatsoever. *See* 29 U.S.C. § 207(e)(1) and 29 U.S.C. § 207(e)(3). And, with a DOL investigator's opinion supporting their position, along with the uncharted waters of operating in an unprecedented Pandemic, Smithfield would likely argue that it acted in good faith pursuant to 29 U.S.C. § 259.

What's more, Smithfield also would likely argue against certification because this case involved dozens of different plants, different Smithfield entities, different pay structures, and both union and non-union employees.

¹ The USDOL investigator found: "The firm paid a temporary bonus that was considered to be discretionary. . . . the bonus was not measured by or dependent upon hours worked and was provided during the challenging and stressful situation created by the pandemic. In addition, it was noted in the payroll records that employees received the bonus even when they reported no hours worked in a pay period." The redacted USDOL records are attached as Exhibit 3.

III. SUMMARY OF SETTLEMENT TERMS

A copy of the Parties' Settlement Agreement and Release (the "Settlement Agreement") is attached as Exhibit 2. For purposes of preliminary approval, the following paragraphs summarize the Settlement Agreement's key terms:

Putative Class Counsel reviewed Smithfield's payroll records and computed individual damage computations for each of the 30,000+ individuals impacted by the settlement. Defendants have agreed to pay a maximum of \$7,750,000 into a settlement fund (referred to as the Gross Settlement Fund in the Parties' Settlement Agreement). The Settlement Fund's allocations are compromised as follows:

1) **FLSA And Illinois Rule 23 Class Members Are Allocated Over 100% of Alleged Unpaid Overtime Wages.**

Alleged overtime damages² were calculated from Smithfield's payroll data from April 1, 2020 through October 31, 2020 (*i.e.* during the period the Responsibility Bonus and Pay was earned). As explained above, Plaintiffs allege that Smithfield miscalculated the overtime owed to the named Plaintiffs and each additional Class Member by failing to capture all compensation when calculating the regular rate of pay for overtime purposes during a portion of the COVID-19 Pandemic.

Class Counsel computed overtime damages, which includes a minimum gross floor of \$38.70 for each FLSA and Illinois Rule 23 Class Member.³ FLSA and Illinois Rule 23 Class Members will receive gross settlement awards above their computed overtime damages because

² For an explanation as to the computation of alleged overtime damages see Affidavit of John Kunze attached as Exhibit 4.

³ In other words, if a FLSA or IMWL Class Member's alleged damages were between \$.01 and \$38.70, that person will receive a gross payment of \$38.70.

the combined overtime damages of the FLSA and Illinois Rule 23 Class amounts to \$7,600,920.56 and Gross Settlement Fund is \$7,750,000.⁴ As explained further down below, the Illinois Rule 23 Class can receive twice their overtime damages because they can recover under the Rule 23 Illinois Class and also opt into the FLSA Collective.

The allocations are fair among the class members: they are based on (a) the amount of Responsibility Bonus/Responsibility Pay received and (b) the amount of overtime worked. In other words, the more the person worked, and the more compensation they received, the higher the payment--which is consistent with how Plaintiffs allege they should have been paid. Unlike the Rule 23 Illinois class described below, because the FLSA requires members to opt-in to a case, Class Members must opt into this case by submitting a claim to be bound by the settlement.

FLSA Class Members appear on Exhibit 1 of the Settlement Agreement along with an estimate of each Member's net payment, as described in the Settlement Agreement.⁵

2) **Illinois Employees Will Also Receive Settlement Awards Under the Rule 23 Class, in Addition to FLSA Awards.**

The Parties agreed to create a Rule 23 Class to settle the claims of approximately 2,412 Illinois-based Smithfield employees. The amount allocated to these individuals is approximately \$589,252.96 under the Illinois Rule 23 class and they will automatically receive payment so long as they do not opt out of the Illinois Rule 23 class. As described above, this amount represents

⁴ This results in FLSA and Illinois Rule 23 Class Members, on a whole, receiving gross awards of approximately 102% of their alleged overtime damages. ($\$7,750,000/\$7,600,920.56 = 101.96\%$) before accounting for Attorney Fees and Costs, Service Awards, Administrator Fees, the Reserve Fund, and taxes.

⁵ Exhibit 1 and 2 to the Settlement Agreements reflect estimated net settlement payments to the FLSA and IMWL class, respectively, for purposes of the Settlement Agreement and Notice. This is based on an estimated net recovery of 64.58% for each FLSA and IMWL Class Member. This percentage represents the estimated recovery after accounting for Attorney Fees and Costs, Service Awards, Administrator Fees, the Reserve Fund, and estimating \$100,000 in FICA taxes on 60% FLSA opt-in rate. The actual net payments will be calculated by the Settlement Administrator.

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