

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROXANNE ANDLER,
Individually and on behalf of others
Similarly situated and the Proposed
Wisconsin Rule 23 Class,

Plaintiff,

v.

ASSOCIATED BANC-CORP,

Defendant.

OPINION AND ORDER

11-cv-79-wmc

The above-entitled matter came before the Court on the parties' Joint Motion for Preliminary Approval of Proposed Class Action Settlement and Joint Stipulation for Class Certification ("Motion for Preliminary Approval").

I. Preliminary Settlement Approval

1. Based upon the Court's review of the parties' Memorandum in Support of Joint Motion for Preliminary Approval, and all corresponding exhibits and papers submitted in connection with the Motion, the Court grants preliminary approval of the settlement.

2. The Court concludes that at this preliminary stage, the proposed settlement "is within the range of possible approval." *Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998).

3. The Court finds that the proposed settlement appears to be the result of extensive, arm's-length negotiations by counsel well-versed in the prosecution and defense of wage-and-hour class action lawsuits.

4. The assistance of an experienced litigator and mediator, Robert Reinhart, reinforces the Court's finding that the proposed settlement is non-collusive.

5. While the court is satisfied that the settlement is facially reasonable, it intends to scrutinize Plaintiff Counsel's application for attorneys' fees when the time comes for final approval of the settlement. Plaintiff Counsel are put on notice that the court may use their hourly billing records and billing rates as a factor in determining an appropriate fee award.

II. Certification of the Rule 23 Class

6. For settlement purposes only, the Court certifies the following class under Fed. R. Civ. P. 23(e) (the "Rule 23 Class"): all persons who worked as Residential Loan Officers for Defendant within the State of Wisconsin at any time between January 28, 2009 and July 18, 2010 and who are not opt-in members of the conditionally certified FLSA class.

7. The Rule 23 Class meets all of the requirements for settlement class certification under Fed. R. Civ. P. 23(a) because:

(a) there are more than seventy putative class members and thus joinder is impracticable;

(b) the class members share common alleged issues of fact and law, including whether Defendant failed to pay Plaintiff and the class members proper overtime and minimum wages;

(c) the class members' claims arise from the same factual and legal circumstances; and

(d) Class Counsel are qualified, experienced, and able to conduct the litigation and because the named plaintiff's interests are not antagonistic to the class members' interests.

8. The Rule 23 Class satisfies Fed. R. Civ. P. 23(b)(3) for purposes of a settlement class because common factual allegations and a common legal theory predominate over any factual or legal variations among class members. Class adjudication of this case is superior to individual adjudication because it will conserve judicial resources and is more efficient for class members, particularly those who lack the resources to bring their claims individually.

III. Appointment of Plaintiff's Counsel as Class Counsel and the Named Plaintiff as Class Representative.

9. The Court appoints Nichols Kaster, PLLP ("Nichols Kaster") as Class Counsel because they meet all of the requirements of Fed. R. Civ. P. 23(g).

10. Nichols Kaster did substantial work identifying, investigating, prosecuting, and settling FLSA and the Rule 23 Class members' claims.

11. Nichols Kaster's attorneys have substantial experience prosecuting and settling employment class actions, including wage-and-hour class actions, and are well-versed in class action and wage-and-hour law. Other courts have repeatedly found Nichols Kaster to be adequate class counsel in employment law class actions.

12. The work that Nichols Kaster has performed in litigating and settling this case demonstrates their commitment to the class and to representing the class' interests.

IV. Class Notice and Settlement Procedure

13. The Court approves the Proposed Notices of Settlement (the "Notices") and directs their distribution to the FLSA or the Rule 23 Class, whichever is appropriate.

14. The content of the Notices, with one amendment provided below, fully complies with due process and Fed. R. Civ. P. 23.

15. Pursuant to Fed. R. Civ. P. 23(c)(2)(B), a notice must provide:

the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must concisely and clearly state in plain, easily understood language: the nature of the action; the definition of the class certified; the class claims, issues, or defenses; that a class member may enter an appearance through counsel if the member so desires; that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and the binding effect of a class judgment on class members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B).

16. The Notices satisfy each of these requirements and adequately put FLSA and Rule 23 Class members on notice of the proposed settlement, **provided that the Proposed Notice of Settlement for the Rule 23 Class is amended in the following way: The current text "NOTICE TO CLASS MEMBERS REGARDING PENDENCY OF A CLASS ACTION SETTLEMENT AND NOTICE OF HEARING ON SETTLEMENT. THIS NOTICE PROVIDES INSTRUCTIONS AS TO HOW YOU CAN RECOVER YOUR SETTLEMENT SHARE OF: \$INSERT" should be**

deleted, and replaced with, in size 16 font, the following headline: “AS A CURRENT OR FORMER EMPLOYEE OF ASSOCIATED BANK, YOU MAY BE OWED MONEY UNDER A RECENT CLASS-ACTION LEGAL SETTLEMENT. YOU MUST SUBMIT THE INCLUDED CLAIM FORM TO OBTAIN YOUR SHARE AND YOU HAVE LIMITED TIME TO DO SO. PLEASE READ BELOW FOR MORE INFORMATION ON HOW TO COLLECT YOUR SHARE OF THE SETTLEMENT.”

17. The Notice describes the terms of the settlement, informs the class about the allocation of attorneys’ fees, and provides specific information regarding the date, time, and place of the final approval hearing.

18. The Court approves the following settlement procedure and timeline:

- (1) No later than October 11, 2011, Class Counsel will mail the Notices of Settlement to the appropriate eligible employees.
- (2) FLSA and Settlement Class Members will have until November 10, 2011 to review the terms of the settlement and return the required documents.
- (3) After November 10, 2011 but not later than November 18, 2011, the parties will file a Motion for Final Settlement Approval and Class Counsel will file a Petition for Attorneys’ Fees and Costs.
- (4) The Court will hold a fairness hearing on November 30, 2011, at 8:30 a.m.
- (5) No later than fourteen days after entry of the Court’s Order granting final approval of the settlement and granting final approval of the stipulation, Defendant will deliver all Settlement Checks to Class Counsel.

Class Counsel will then promptly mail the settlement funds to the participating FLSA and Rule 23 Class members. In addition, Defendant will send Class Counsel's approved attorneys' fees and costs to Class Counsel.

- (6) Participating FLSA and Class Members will have ninety days to cash or deposit their Settlement Payment. Following that date, any unclaimed funds and any funds remaining in the contingency fund will be donated to a cy pres fund agreed upon by the Parties and approved by the Court as part of the final approval motion.

19. The Court approves the settlement and finds that it was reached as a result of vigorously contested litigation to resolve bona fide disputes. See *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353 n.8 (11th Cir. 1982).

IT IS ORDERED this 4th day of October, 2011.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge