IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JENNY SHIPTOSKI, on behalf of herself and similarly situated employees, Plaintiff, v. SMG GROUP, LLC, Defendant.	3:16-cv-01216-RDM

ORDER

AND NOW, this 16th day of January, 2020, upon consideration of Plaintiff Jenny Shiptoski's ("Plaintiff's") "Unopposed Motion for Certification of the Settlement Class/Collective, Final Approval of the Class/Collective Settlement, and Other Associated Relief" ("Motion") (Doc. 116), the accompanying "Class/Collective Action Settlement Agreement" ("Agreement") (Doc. 116-1), the accompanying declarations of Robert Hyte (Doc. 116-2) and Peter Winebrake (Doc. 116-3), the accompanying brief (Doc. 117), and all other papers and proceedings herein, it is hereby **ORDERED** that the Motion is **GRANTED** as follows:

1. The Court, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), **CERTIFIES A SETTLEMENT CLASS** of all individuals other than Brian Mokris and John Krissinger (both of whom have excluded themselves from the settlement) employed by Defendant SMG Group, LLC ("Defendant") in Pennsylvania as salaried Store Managers between June 20, 2013 and July 27,

2019.[1] This settlement class satisfies Civil Rule 23(a)'s four requirements (numerosity, commonality, typicality, and adequacy of representation) as well as Civil Rule 23(b)(3)'s additional requirements that common questions of law or fact "predominate over any questions affecting only individual members"[2] and that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

2. The Court **CERTIFIES A FAIR LABOR STANDARDS ACT ("FLSA") COLLECTIVE** comprised of Plaintiff and all other individuals who previously joined this action by filing Consent to Join forms with the Court.[3] Final certification of the collective is appropriate under 29 U.S.C. § 216(b) because these individuals are "similarly situated" based upon the factors described in *Zavala v. Wal-Mart Stores, Inc.*, 691 F.3d 527, 536-56 (3d Cir. 2012).

3. The settlement requires Defendant to make a total payment of $772,086.28 plus employer-side payroll taxes. The settlement fund will be

---

[1] This class includes: Plaintiff; all individuals (other than Mssrs. Mokris and Krissinger) identified in the Agreement as either "Non-Opt-In Class Members" or "PA Opt-Ins;" Stephanie Black; and Nancy Slutter.

[2] In particular, Defendant's assertion that all Store Managers were overtime-exempt "executives" is one example of a common, predominant question of law and fact that applies to the claim of every class member regardless of store location. *See, e.g., Craig v. Rite Aid Corp.*, 2013 U.S. Dist. LEXIS 2658, *26 (M.D. Pa. Jan. 7, 2013) (certifying settlement class in overtime rights lawsuit where "the core issue . . . is and has always been whether Rite Aid's' designation of ASMs as exempt from overtime compensation was proper").

[3] This collective includes: Plaintiff; the 29 individuals identified in the Agreement as "PA Opt-Ins;" and the 65 individuals identified in the Agreement as "Non-PA Opt-Ins."

distributed as follows: (i) $507,086.28 will be paid to 189 class/collective members; (ii) a $15,000.00 service award will be paid to Plaintiff; and (iii) $250,000.00 will be paid to class counsel to cover attorney's fees and expenses (including third-party settlement administration expenses). The Court finds the payments to the class members described in paragraph 1 above to be "fair, reasonable, and adequate" under the criteria described in Fed. R. Civ. P. 23(e)(2),[4] and finds the payments to the FLSA collective members described in paragraph 2 above to represent a "fair and reasonable resolution of a *bona fide* dispute under the FLSA."[5] *Trevorah v. Linde Corp.*, 2018 U.S. Dist. LEXIS

---

[4] Rule 23(e)(2) became effective on December 1, 2018 and provides:

> *Approval of the Proposal.* If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). As explained in Plaintiff's brief and during the fairness hearing, all of these requirements are satisfied.

[5] Under the Agreement, each class/collective member shares in the settlement proceeds based on the number of overtime hours worked during the covered period. *See* Agreement at pg. 3 (defining "Payment Amount" and "Payment Points"). The allocation formula provides that those individuals who previously joined the FLSA collective by returning Consent to Join forms after the Court conditionally certified the FLSA collective recover hourly settlement payments that are 25% greater than the hourly payments recovered by Rule 23 class members who did not join the FLSA collective. These enhanced payments to FLSA collective members reflect the fact that *only* collective members are eligible to assert FLSA claims and that, absent settlement,

65523, *1 (M.D. Pa. Apr. 13, 2018) (internal quotations omitted). Therefore, the Court **APPROVES** the $507,086.28 in payments to the above-described class and collective members and **APPROVES** the waiver of the collective members' FLSA claims.

4. The Court **APPROVES** the payment of a $15,000.00 service award to Plaintiff. *See Tavares v. S-L Distribution Co., Inc.*, 2016 U.S. Dist. LEXIS 57689, *35-38 (M.D. Pa. May 2, 2016) (approving $15,000.00 service award in wage and hour case); *Creed v. Benco Dental Supply Co.*, 2013 U.S. Dist. LEXIS 132911, *19-20 (M.D. Pa. Sept. 17, 2013) (same).

5. The Court **APPOINTS** the law firm of Winebrake & Santillo, LLC to serve as class counsel. The record establishes that the firm is qualified to serve as class counsel under the criteria described in Civil Rule 23(g)(1)(A). *See generally* Declaration of Peter Winebrake ("Winebrake Dcl") (Doc. 116-3).

6. The Court **APPROVES** the payment of $250,000.00 to class counsel. As evidenced by class counsel's declaration, this amount will reimburse class counsel for reasonable litigation and settlement administration expenses that currently total $15,786.74 and are anticipated to grow to $29,809.39 after all payments are made to the third-party administrator. *See* Winebrake Dcl. at ¶ 23. The Court finds these expenses to be reasonable. The remaining $220,190.61 is attributable to attorney's fees. This fee payment – which amounts to 28.52% of

---

collective members' right to recovery would not be entirely dependent on a favorable Rule 23 class certification ruling.

the total $772,086.28 settlement fund – falls well within the range of fee awards in other class action settlements. *See, e.g.*, *Creed*, 2013 U.S. Dist. LEXIS 132911, at *17 ("an award of one-third of the settlement is consistent with similar settlements throughout the Third Circuit"). This fee award also is supported by the factors described in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 193 n. 1 (3d Cir. 2000), and *In re Prudential Insurance Company America Sales Practice Litig.*, 148 F.3d 283 (3d Cir. 1998). Finally, this fee award falls slightly below class counsels' purported fee lodestar utilizing the attorney rates described in the fee schedule published by Philadelphia Community Legal Services ("CLS"). *See* Winebrake Dcl. at ¶¶ 18-22; *see also Kreamer v. Grant Production Testing Services, Inc.*, 2018 U.S. Dist. LEXIS 121417, *3 (M.D. Pa. July 17, 2018) (using CLS rates in performing lodestar crosscheck of fee requested by Winebrake & Santillo, LLC); *Crevatas v. Smith Management & Consulting, LLC*, 2017 U.S. Dist. LEXIS 40857, *14-15 (M.D. Pa. Mar. 22, 2017) (same).

7. This action is **DISMISSED WITH PREJUDICE**, although the Court will continue to maintain jurisdiction over the enforcement of the settlement.

Hon. Robert D. Mariani
United States District Judge