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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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ELLEN OGAIAN, Individually and on	:	
Behalf of All Other Persons Similarly Situated,	:	1:12-cv-1273-PAC
	:	
Plaintiffs,	:	
	:	
-against-	:	
	:	
CHRISTMAS TREE SHOPS, INC.,	:	
	:	
Defendant.	:	
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ORDER PRELIMINARILY APPROVING SETTLEMENT

WHEREAS, Plaintiff Ellen Ogaian and Defendant Christmas Tree Shops, Inc. (“Christmas Tree” or “Defendant”) have entered into a Settlement Agreement, Release and Waiver (“Settlement Agreement”) intended to resolve, on a global basis, the litigation in this Court against Defendant arising out of its alleged misclassification of certain “Department Managers” for failure to pay overtime; and

WHEREAS, the Settlement Agreement, together with supporting materials, set 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’ Joint Motion for Preliminary Approval of Settlement and 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 for settlement purposes only the following two classes:

- (a) A Federal Class consisting of all individuals who have filed consents to join the Action (including without limitation all individuals who timely return a valid Claim Form containing a consent to join the Action) and who worked for Defendant as a Department Manager, and who, as Department Managers were classified by Defendant as exempt, in any state in the United States within the three (3) years prior to filing their consent to join the Action through the date of this Order.
- (b) A State Class consisting of all individuals employed as Department Managers for Defendant during the time periods specified below and who, as Department Managers were classified by Defendant as exempt employees:
 - i. In Alabama, Connecticut, Delaware, Georgia, Indiana, Massachusetts, Michigan, New Hampshire, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, and Virginia, at any time from three (3) years prior to the filing of the Amended Complaint, through the date of this Order.
 - ii. In Maryland at any time from three years and two weeks (158 weeks) prior to the filing of the Amended Complaint, through the date of this Order.
 - iii. In Florida and Kentucky, at any time from five (5) years prior to the filing of the Amended Complaint, through the date of this Order.
 - iv. In Maine, at any time from six (6) years prior to the filing of the Amended Complaint, through the date of this Order.

v. In New York, at any time from six (6) years prior to February 21, 2012, through the date of this Order.

4. The Court further conditionally finds that named Plaintiff Ellen Ogaian is an adequate class representative for the Settlement Classes.

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

Seth R. Lesser, Esq.
Fran L. Rudich, Esq.
Michael J. Palitz, Esq.
Klafter Olsen & Lesser LLP
Two International Drive, Suite 350
Rye Brook, New York 10573

Marc S. Hepworth, Esq.
David A. Roth, Esq.
Charles Gershbaum, Esq.
Hepworth, Gershbaum & Roth PLLC
192 Lexington Avenue, Suite 802
New York, New York 10016

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 Classes and Appointment of Settlement Administrator

7. The Court approves the form of Notice and Consent to Join and Claim Form, attached as Exhibits E and F to the Declaration of Seth R. Lesser and the manner of notice set forth in Sections 9 and 10 of the Settlement Agreement. Within fourteen (14) days from the date of this Order, the Parties shall instruct the Settlement Administrator to compile and mail the Notices to members of the Settlement Classes.

8. The manner and forms of Notice set forth in Sections 9 and 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 Sections 9 and 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' counsel 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 New York 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 State Classes who wishes to be excluded ("opt out") must send an 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 prior to

the Final Approval Hearing. In order to be effective, this Request for Exclusion must include the State Class member's name and address, and should state: (1) that the State Class member is requesting to be excluded from the Parties' settlement in the case entitled, *Ellen Ogaian, Individually and on Behalf of All Other Persons Similarly Situated v. Christmas Tree Shops, Inc.*, Civil Action No. 12-1273; and (2) that the State Class member understands that by being excluded from the Settlement, the State Class member will receive no funds in conjunction with the case. If, however, the State Class member submits a timely Claim Form, his or her opt out request will be void.

12. Members of the State 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 State 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 State 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 or 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, State 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 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 Declaration of Seth R. Lesser as Exhibit E.

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 4, 2014 at 3 PM, to consider the fairness, *PK* 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.

19. Class Counsel's application for award of attorney's fees and costs and the Class Representative's and Opt-in Garrido's application for service payments 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 service payments shall be filed with the Court no later than ten (10) days

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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 State Classes other than that which may be posted by the Court.

21. Only State Class members who have filed and served timely notices of objection in accordance with the terms of this Order shall be entitled to be heard at the Final Approval Hearing. Any State Class member who does not timely file and serve an objection in writing to the Settlement, entry of Final Judgment, or to Class Counsel's application for fees, costs, and expenses or to service awards, 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 Federal and State Classes as well as administering the Settlement Agreement, shall be paid as set forth in the Settlement Agreement.

24. Certification of the Federal and State Classes is a conditional certification for settlement purposes only. If the Settlement Agreement is terminated or not consummated for any reason whatsoever, the conditional certification of the Federal and State 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 or collective action certification motions in this Action, or in any other wage and hour class or collective action, or any other class action under

Fed. R. Civ. P. 23 or any other applicable rule, statute, law or provision, on any grounds, including but not limited to contesting the adequacy of any plaintiff as representative of any putative class, and to contest the adequacy of Plaintiffs' counsel as adequate Class Counsel. Additionally, Plaintiff reserves all of her 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 State 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 Department Managers who worked for Defendant within the applicable proposed Class Periods. This injunction shall remain in effect through the dismissal of this case, as defined herein. *AM*~~

SO ORDERED, this 30th day of January, 2014.



Hon. Paul A. Crotty