

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF ALABAMA
 SOUTHERN DIVISION

MARION WATERS, et al.,]	
]	
Plaintiffs,]	
]	
vs.]	2:07-cv-00394-LSC
]	
COOK'S PEST CONTROL, INC.,]	
]	
Defendant.]	

ORDER PRELIMINARILY APPROVING SETTLEMENT
 AND PROVIDING FOR NOTICE

In this putative nationwide class action (“Action”), the parties have made application for an order preliminarily approving the Settlement of the Action (“Settlement”), in accordance with the Settlement Agreement submitted to the Court (the “Agreement”). The Agreement sets forth the terms and conditions for a proposed Settlement of the Action and for dismissal of the Action with prejudice based upon its terms and conditions.

On March 1, 2007, Plaintiff Marion Waters (“Named Plaintiff”) filed his initial Complaint against Cooks Pest Control, Inc. (“Cook’s”), on behalf of himself and other African-American applicants or individuals discouraged from applying for jobs with Cook’s. The Named Plaintiff alleged claims under Title VII, 42 U.S.C. §2000e,

et seq., and 42 U.S.C. § 1981. The initial Complaint alleged that the Named Plaintiff and other similarly-situated African-American applicants had not been hired despite being qualified due to intentional disparate treatment and/or application of facially neutral selection criteria which have an impermissible and unjustified impact on African-Americans. In its Answer to the Complaint, Cook's denied each and every claim asserted by the Named Plaintiff, both individually and on behalf of the class.

All parties recognized that there was substantial uncertainty regarding the outcome of this case, and if this case was litigated fully, it would be extremely expensive and time consuming. They have decided that prompt resolution of this case is in the best interests of all parties. After almost four years of protracted litigation, which has included the production of thousands of pages of documents, as well as databases and substantial written discovery, the parties have agreed upon a compromise settlement.

The Court heard argument on the parties' motion for preliminary approval on October 21, 2011. Since that time, the parties have revised the terms of the Agreement and made corrections suggested by the Court. Having read and considered the Agreement, it is now hereby ADJUDGED AND DECREED as follows:

1. Class Representatives. The Court conditionally appoints Marion Waters as Class Representative.

2. Class Counsel. Upon consideration of all factors under Federal Rule of Civil Procedure 23(g)(1), the Court conditionally appoints Samuel Fisher, Robert Childs, Jr., and Toni J. Braxton of Wiggins, Childs, Quinn & Pantazis, LLC, Thomas F. Campbell and Ray Bonner of Campbell Law, P.C., and Samuel Hill of the firm of Hill Turner, as Settlement Class Counsel for the sole purpose of seeking to achieve a settlement of this action on behalf of the Class.

3. Claims Administrator. The Court appoints Tommy Warren and Settlement Services, Inc., as the Claims Administrator, which shall consider Claims for Settlement Compensation in accordance with the terms and conditions of this Order and the Agreement.

4. Preliminary Certification. With respect to the Class, the Court preliminarily finds and concludes that because under *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997), “[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . , for the proposal is that there can be no trial,” all requirements pursuant to Fed. R. Civ. P. 23 are met for purposes of certification

of the Class for settlement purposes only. The Court therefore preliminarily certifies, for purposes of effectuating the Settlement only, a Class consisting of:

All African-Americans who applied for employment at any Cook's location from March 1, 2005, through the date of preliminary approval, and who were denied employment, excluding all judicial officers or employees of the Federal courts within the second degree of affinity; employees of Plaintiffs' counsel; and any other person whose presence in the class would cause mandatory recusal of any judge assigned to the case.

5. The Settlement. After a preliminary review, and subject to the Fairness Hearing described below, the Court preliminarily finds that the Settlement appears to be fair, reasonable, and adequate with respect to the Class. The Settlement also appears to be free of collusion to the detriment of Class Members, and its terms are within the range of apparent reasonableness, fairness and adequacy.

6. Fairness Hearing. The Fairness Hearing shall be held before this Court at 9:00 a.m. on Friday, May 25, 2012, in the second-floor District Courtroom of the new Federal Building and Courthouse in Tuscaloosa, Alabama, located at 2005 University Boulevard. The purpose of the hearing shall be: (a) to determine whether a Class shall be finally certified; (b) to determine whether the Settlement of the Action on the terms and conditions provided for in the Agreement is fair, reasonable, and adequate to the Settlement Class and should be approved by the Court; (c)

whether the Final Judgment and Order of Dismissal with Prejudice (“Final Judgment”) as provided in Section X. B. of the Agreement should be entered herein; (d) to entertain any objections of any affected persons as to the certification of the Class, the proposed Settlement, or any other matter related thereto; and (e) to rule on all other matters pertaining to the proposed Settlement and such other matters as the Court may deem appropriate. The Court reserves the right to adjourn the date of the Fairness Hearing without further notice to the Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by both Defendant's Counsel and Class Counsel, without further notice to the Class.

7. Approval of Notice. The Court approves, as to form and content, the Class Notice provided to the Court, and finds that the mailing and distribution of the Class Notice in the manner and form set forth in Section IX. C. of the Agreement meets the requirements of Federal Rule of Civil Procedure 23 and due process, and is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to the Class Members. The Court further finds that the Class Notice, included as Exhibit 2 hereto, complies with Rule 23 in that it:

clearly and concisely state[s] in plain, easily understood language:

(i) the nature of the action;

- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;
- (v) that the court will exclude from the class any member who request exclusion;
- (vi) the time and manner for requesting exclusion; and
- (vii) the binding effect of a class judgment on members under Rule 23(e)(3).

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

8. Notice Administration. Within thirty (30) days of this Order, the Claims Administrator shall mail the Class Notice attached hereto as Exhibit 2, by first class mail, postage prepaid, to those Class Members for whom Cook's has address information. With respect to any Class Notices that are returned as undelivered, the Claims Administrator shall attempt one trace and, if the trace establishes an alternate address, attempt one additional mailing of the Class Notice to the alternate address. The Claims Administrator shall not be obligated to undertake additional traces or additional mailing efforts. The Claims Administrator shall also place the Class Notice in online and print versions of a newspaper of general circulation in each county where Cook's has a district office.

9. Declaration of Notice Compliance. At least thirty (30) days prior to the Fairness Hearing, Defendant's counsel shall provide Class Counsel and the Court

with a declaration from a competent declarant stating that the Class Notice Date has occurred.

10. Exclusion from Class Membership. Any Class Member may request to be excluded from the Settlement Class. Such requests for exclusion must be submitted in time to be received by no later than forty-five (45) days after the Class Notice Date and otherwise comply with the requirements set forth in the Class Notice. If the Court grants final approval of the Agreement and enters the Final Judgment, all Class Members who have not submitted valid requests for exclusion shall be bound by the Final Judgment.

11. Binding Nature of Settlement. All Class Members who do not become excluded shall be bound by all determinations and judgments in the Action concerning the Settlement.

12. Objections of Class Members. Class Members may present written objections to the Settlement or appear at the Fairness Hearing in the manner set forth in the Agreement. Any objections must comply with the procedures outlined in the Agreement and Class Notice. Strict compliance with these procedures is required.

14. Appearances at Fairness Hearing. Any Settlement Class Member may appear at the Fairness Hearing, at their own expense, individually or through counsel of their own choice. If they do not enter an appearance, they will be represented by

Class Counsel. Any Settlement Class Member who wishes to appear individually at the Fairness Hearing must give notice of her or her intent to appear, in accordance with the procedures outlined in the Agreement and disclosed in the Class Notice. If the Court grants final approval of the Agreement and enters the Final Judgment, all Settlement Class Members who have not given notice of their intent to appear individually in accordance with the procedures outlined in the Agreement and disclosed in the Class Notice shall be deemed to have waived their right to participate at the Fairness Hearing and shall be foreclosed from individually participating at the Fairness Hearing unless otherwise ordered by the Court.

15. Attorneys' Fee Application. Class Counsel's attorneys' fee application shall be filed and served no later than April 2, 2012.

16. Objections and Briefs Regarding Settlement Approval. All papers including memoranda or briefs in support of or opposition to the Settlement shall be filed and served than forty-five (45) days after the Class Notice Date.

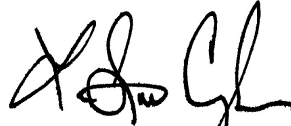
17. No Admission by the Parties. Neither the Settlement nor the Agreement constitutes an admission, concession, or indication by the Parties of the validity of any claims or defenses in the Action, or of any wrongdoing, liability, or violation of law by the Defendant. The Defendant vigorously denies all of the claims and allegations raised in the Action.

18. Additional Matters. This Preliminary Approval Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before the Parties entered into the Agreement, if: (1) the Settlement is not finally approved by the Court, or does not become Final, pursuant to the terms of the Agreement; or (2) the Settlement is terminated in accordance with the Agreement or does not become effective, as required by the terms of the Agreement or for any other reason. In either of such events, and except as provided therein, the Agreement shall become null and void and be of no further force and effect, and neither the Agreement, the documents submitted in connection with it, nor the Court's orders relating thereto, including this Preliminary Approval Order, shall be used or referred to for any purpose whatsoever.

This Preliminary Approval Order shall be of no force or effect if the Settlement does not become final, and nothing in this Preliminary Approval Order shall be construed or used as an admission, concession, or declaration by or against Defendant, of any fault, wrongdoing, breach, or liability. This Preliminary Approval Order shall not be construed by or against Plaintiff or the Class Members that their claims lack merit or that the relief requested in this Action is inappropriate, improper, or unavailable, or as a waiver by any Party of any defenses it may have. This Preliminary Approval Order shall not be construed or used to show that certification

of one or more classes would or would not be appropriate if this Action were to be litigated rather than settled.

Done this 27th day of January 2012.

A handwritten signature in black ink, appearing to read 'L. Scott Coogler', written over a horizontal line.

L. SCOTT COOGLER
UNITED STATES DISTRICT JUDGE

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