

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JACQUELINE A. COTE, on behalf of herself
and others similarly situated,

Plaintiff,

v.

WAL-MART STORES, INC.,

Defendant.

No. 15 Civ. 12945 (WGY)

~~PROPOSED~~ FINAL ORDER APPROVING SETTLEMENT

This matter came before the Court on Plaintiff's Motion for Final Approval of Settlement ("Final Approval Motion"), Plaintiff's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses ("Motion for Fees and Expenses"), and Plaintiff's Motion for a Service Payment for the Class Representative ("Motion for a Service Payment").

WHEREAS, a putative class action is pending before the Court entitled *Cote v. Wal-Mart Stores, Inc.*, No. 15-cv-12945-WGY (United States District Court for the District of Massachusetts) (the "Litigation"); and

WHEREAS, the Court has received and reviewed the Settlement Agreement, as amended on April 26, 2017, entered into between the Settlement Class Representative and the Settlement Class Members on the one hand, and the Defendant Wal-Mart Stores, Inc. ("Walmart") on the other hand (the "Agreement"), and has considered the terms of the proposed settlement set forth therein (the "Settlement"); and

WHEREAS, all terms used herein shall have the same meanings as set forth in the Agreement, unless otherwise defined herein; and

WHEREAS, on December 22, 2016, the Court entered its order preliminarily approving the Settlement, approving the form and method of notice, appointing a claims administrator, and setting a date and time for a final fairness hearing to consider whether the Settlement should be finally approved by the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure as fair, adequate, and reasonable (the “Preliminary Approval Order”); and

WHEREAS, the Preliminary Approval Order further directed that all Settlement Class Members be given notice of the Settlement and of the date for the final fairness hearing; and

WHEREAS, the Court has received declarations of Peter Romer-Friedman and Jenny Shawver attesting to the provision of notice in substantial accordance with the Preliminary Approval Order; and

WHEREAS, as part of the Preliminary Approval Order, the Court certified the Settlement Class for settlement purposes only in accordance with the terms of the Agreement and pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, appointed Jacqueline Cote as the Class Representative, and appointed GLBTQ Legal Advocates & Defenders (GLAD), Outten & Golden LLP, the Washington Lawyers’ Committee for Civil Rights & Urban Affairs, and Arnold & Porter Kaye Scholer LLP as Class Counsel, and appointed KCC Class Action Services, LLC as the Claims Administrator; and

WHEREAS, the Court having considered all timely filed objections to the Settlement [or, if applicable, no timely objections to the Settlement were filed]; and

WHEREAS, the Court having conducted a Final Fairness Hearing on May 11, 2017 (the “Settlement Approval Hearing”), and having considered the arguments presented, all papers filed, and all proceedings had therein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Court has jurisdiction over the subject matter of this action, this Settlement, the Settlement Class Members, and Defendant.

2. In accordance with Rule 23(c) and (e) of the Federal Rules of Civil Procedure and the requirements of due process, all members of the Settlement Class have been given proper and adequate notice of the Settlement. Based upon the evidence submitted by the parties, the Agreement, the arguments of counsel, and all the files, records, and proceedings in this case, the Court finds that the Notice and notice methodology implemented pursuant to the Agreement and the Court's Preliminary Approval Order: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Final Fairness Hearing; (c) were reasonable and constituted due, adequate and sufficient notice to all persons who are entitled to notice; and (d) met all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law.

3. The Settlement in this action warrants final approval pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, because it resulted from vigorously contested litigation, extensive discovery and motion practice, and extensive good-faith arm's length negotiations between the parties, and it is fair, adequate, and reasonable to those it affects, considering the following factors:

- (1) the complexity, expense, and likely duration of the litigation;
- (2) the reaction of the class to the settlement;
- (3) the stage of the proceedings and the amount of discovery completed;
- (4) the risks of establishing liability;
- (5) the risks of establishing damages;

- (6) the risks of maintaining the class action through the trial;
- (7) the ability of the defendants to withstand a greater judgment;
- (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and
- (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Bezdek v. Vibram USA Inc. 79 F. Supp. 3d 324, 343-44 (D. Mass. 2015), *aff'd*, 809 F.3d 78 (1st Cir. 2015) (internal citations and quotations omitted). Settlements that follow sufficient discovery and genuine arms-length negotiation are presumed to be fair and “within the range of reasonableness.” *Id.* at 343.

4. The Final Approval Motion is hereby GRANTED, and the Settlement as set forth in the Agreement is hereby APPROVED as fair, reasonable, adequate, and in the public interest, and the terms of the Agreement are hereby determined to be fair, reasonable and adequate, and for the exclusive benefit of the Settlement Class Members. The Parties are directed to consummate the Agreement in accordance with its terms.

5. The Court APPROVES payment of the Class Settlement Amount in accordance with the terms of the Agreement.

6. The Motion for a Service Payment is GRANTED, and the Court APPROVES payment of a Service Payment to the Settlement Class Representative, Jacqueline Cote, in the amount of \$25,000, to be paid from the Class Settlement Amount in accordance with the terms of the Agreement. The requested Service Payment, in recognition of the services she rendered on behalf of the Class Members, is reasonable.

7. The Motion for Fees and Expenses is GRANTED, and the Court APPROVES payment of Attorneys' Fees and Reimbursement of Litigation Expenses to Class Counsel in the amount of \$1.875 million for Attorney's Fees and \$25,285.04 in Litigation Expenses, to be paid from the Class Settlement Amount in accordance with the terms of the Agreement and to be divided by Class Counsel in accordance with the agreement of Class Counsel. The Attorneys' Fees requested by Class Counsel based on the percentage of the fund method are reasonable based upon the following factors:

- (1) the size of the fund and the number of persons benefitted;
- (2) the skill, experience, and efficiency of the attorneys involved;
- (3) the complexity and duration of the litigation;
- (4) the risks of the litigation;
- (5) the amount of time devoted to the case by counsel;
- (6) awards in similar cases; and
- (7) public policy considerations, if any.

Hill v. State St. Corp., No. 09 Civ. 12146, 2015 WL 127728, at *17 (D. Mass. Jan. 8, 2015). The Court further finds that no attorneys have asserted any attorney liens as to the Attorneys' Fees and Litigation Expenses awarded by the Court.

8. The planned distribution of the Class Settlement Amount is hereby APPROVED as fair, adequate, and reasonable. The Class Settlement Amount shall be distributed in accordance with the terms of the Agreement.

9. The Litigation is hereby DISMISSED WITH PREJUDICE and without costs to any Party, other than as specified in the Agreement and this Order, including in Section 12 of this Order below.

10. In consideration of the Programmatic Relief and Class Settlement Amount provided for under the Agreement, and for other good and valuable consideration, each of the Releasing Settlement Class Members and each of their Releasing Legal Same-Sex Spouses shall, by operation of this Order, have fully, finally, and forever released, relinquished, and discharged all Released Claims against the Releasees in accordance with Section 13 of the Agreement, the terms of which section are incorporated herein by reference, shall have covenanted not to sue the Releasees with respect to all such Released Claims, and shall be permanently barred and enjoined from instituting, commencing, prosecuting or asserting any such Released Claims against the Releasees.

11. This Order shall constitute the Final Judgment in the action as to all Settlement Class Members' Released Claims.

12. Without affecting the finality of this Order in any way, this Court retains jurisdiction over: (a) the interpretation, implementation, and enforcement of the Settlement and the terms of the Agreement; (b) the distribution of the Class Settlement Amount, the Service Payment to the Settlement Class Representative and, the Payment of the Attorneys' Fees and Litigation Expenses, and any *cy pres* distribution; and (c) all other proceedings related to the implementation, interpretation, administration, consummation, and enforcement of the terms of the Agreement and the Settlement, and the administration of Claims submitted by Settlement Class Members. This Court shall retain jurisdiction over this action (a) for a period of six months after the Settlement Effective Date, or (b) for a period of one month after all Settlement Class Members have received their final payments under the Settlement and any remaining funds from the Class Settlement Amount have been distributed as *cy pres*, whichever is greater.

12. The parties shall abide by all terms of the Settlement Agreement. In the event that the Settlement Effective Date does not occur, this Order shall be rendered null and void and shall be

vacated, nunc pro tunc, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the status quo ante rights of Plaintiff, the Settlement Class Members, and Walmart.

IT IS SO ORDERED.

Dated: May 16, 2017

William G. Young
The Honorable William G. Young
United States District Court
District of Massachusetts