UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

SHEILA HELMERT, WILMA BROWN and, LORI WEST, on behalf of themselves and others similarly situated,

Plaintiffs and Collective Action Representatives,

v.

BUTTERBALL, LLC,

Defendant.

Civil No. 4:08-CV-0342 JLH

ROXIE GARNER, ROY GARNER, MIGUEL ANGUIANO ARAUJO, CHRISTOPHER SMITH, JOHN SNARR, and JASON FOSTER on behalf of themselves and others similarly situated,

Plaintiffs and Class Action Representatives,

v.

BUTTERBALL, LLC, and GARY R. LENAGHAN,

Defendants.

Civil No. 4:10-cv-01025-JLH

JOINT MOTION (WITH INCORPORATED BRIEF) FOR PRELIMINARY APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT AND NOTICE TO THE SETTLEMENT CLASS

COME NOW Plaintiffs Sheila Helmert, Wilma Brown, Lori West, Roxie Garner, Roy Garner, Miguel Anguiano Araujo, Christopher Smith, John Snarr and Jason Foster, individually and on behalf of themselves and all others similarly situated ("Plaintiffs") and Defendants

Butterball, LLC ("Butterball") and Gary R. Lenaghan (collectively "Defendants") and jointly submit this Motion for Preliminary Approval of Class and Collective Action Settlement and Notice to the Settlement Class.

I. INTRODUCTION

Plaintiffs have reached an agreement to settle these cases with Defendants regarding Butterball's alleged class action violations of the Fair Labor Standards Act ("FLSA") and the Arkansas Minimum Wage Act ("AMWA"). The terms of the settlement are contained in the Settlement Agreement ("Agreement") attached as Exhibit 1.[1] Plaintiffs and Defendants now wish to begin the settlement approval process outlined in the *Manual for Complex Litigation (Fourth)* §§ 21.632-21.635 (2004). They seek entry of an order:

- Granting preliminary approval of the settlement;
- Approving the parties' proposed forms and methods of giving class members notice of the proposed settlement;
- Directing that notice be given to class members in the proposed forms and manners; and
- Setting a hearing on November 5, 2012 on whether the Court should grant final approval of the settlement, enter judgment, award attorneys' fees and costs to Plaintiffs' counsel, and approve incentive awards to the Plaintiffs and other employees who were deposed in these related cases.

The settlement provides substantial benefits via a Settlement Fund established for the benefit of the class members. A third-party Claims Administrator will administer the settlement

[1] Exhibit 1 also contains a proposed order of preliminary approval, the class notice and claim forms, and an opt-out form.

claims process, monitored by all counsel. Butterball will pay for the costs of the Administrator, which includes the cost of the notice by first class mail. Butterball will pay attorneys' fees and expenses and Plaintiffs' and deponents' incentive awards if approved by the Court.

The proposed settlement addresses Plaintiffs' litigation objectives and falls within the range of possible final approval. The settlement was negotiated by lawyers experienced in complex litigation who had the benefit of a mediation presided over by Joseph T. Dixon, Jr. of Henson & Efron, P.A., in St. Paul, Minnesota. For these reasons, the settlement enjoys a presumption of fairness and should be submitted to class members for their reaction.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. The Litigation

The *Helmert* case was filed on or about April 18, 2008, in the Eastern District of Arkansas. Following denial of Rule 23 certification of Plaintiffs' AMWA claims in the *Helmert* case because the named plaintiffs lacked standing to obtain injunctive relief on behalf of the putative class under the AMWA as former employees, the *Garner* case was filed on or about July 22, 2010. In both cases, Plaintiffs asserted claims against Butterball under the FLSA and AMWA. Plaintiffs allege that Butterball failed to sufficiently compensate production employees for their time spent engaged in donning, doffing, walking, sanitizing and other activities before and after their production shifts and during unpaid breaks.

B. Settlement Discussions

Plaintiffs' counsel and counsel for Butterball have engaged in extensive negotiations concerning the possible settlement of all claims, including numerous telephonic and in-person negotiation sessions. The parties agreed to a formal mediation process overseen by Joseph T. Dixon, Jr. On June 13-14, 2012, the representatives of the parties attended a settlement

conference with Mr. Dixon to discuss a possible resolution of this matter. The parties continued negotiations throughout the following month. On June 22, 2012, Mr. Dixon sent the parties a "Mediator's Proposal" with settlement terms. The parties ultimately accepted the Mediator's Proposal with some minor additional provisions and proceeded to work out the terms of a "Term Sheet" outlining the terms of the settlement agreement, including backpay to the class, attorneys' fees and costs and injunctive relief.

C. The Terms of the Proposed Settlement

1. Relief Available to Class Members

Under the terms of the proposed settlement, Butterball will provide significant benefits to the certified classes. The settlement class is comprised of all current and former non-exempt production employees who worked at Butterball, LLC's Huntsville and Ozark, Arkansas turkey processing facilities, including employees placed through temporary staffing agencies, at any time between October 1, 2006 and July 1, 2012. Butterball will create a reversionary settlement fund of $4,250,000. The fund will cover all payment obligations of Butterball under this settlement other than attorneys' fees, costs and claims administration.

Based on Plaintiffs' analysis in advance of the mediation, the settlement approximates 24 to 25 minutes per day of additional pay for pre- and post-shift and meal break work time for each Class Member. This approximation was subject to the *Klinghoffer*[2] rule, which will not be used in calculating the final awards to simplify the wage calculations for distribution. The final shares will be based upon the average hourly rate for each employee and their applicable dates of

[2] The *Klinghoffer* rule, derived from *United States v. Klinghoffer Bros. Realty Corp*., 285 F.2d 487 (2d Cir. 1960), generally stands for the proposition that an employee's unpaid wages must exceed 40 per workweek before he or she is entitled to make an overtime claim under the FLSA. This Court has interpreted the AMWA consistently with the *Klinghoffer* rule.

employment. The final calculation of each Class Member's settlement share has not yet been determined as the settlement agreement resolves claims through July 1, 2012 and the most recent wage data is being assembled by Butterball. The parties will agree and confirm all class members' precise shares prior to filing a Motion for Final Approval of this Settlement Agreement.

2. Class Notice and Settlement Administration

The parties agree to Notice to the Settlement Class by first-class mail, publication in the local newspaper and posting in the Ozark and Huntsville plants, each of which has previously been approved by the Court in these cases. Butterball has selected the Claims Administrator, Simpluris, Inc. Simpluris has administered similar cases both for defense counsel and for Butterball in the *Martinez-Hernandez* case in the Eastern District of North Carolina.

Butterball will pay the costs of the Claims Administrator, which includes the cost of class notice, accounting issues associated with the provision of W-2s and 1099s to claiming class members, cutting and distributing settlement checks to claiming class members, answering questions concerning administration of settlement and handling all settlement administration issues arising in the ordinary course of business.

Class members will have 60 days after the Notice is first mailed to submit their claim forms and 120 calendar days from the date of mailing to cash their settlement checks. Any funds that are not cashed will be void and a stop-payment will be placed. Butterball is entitled to any Settlement Fund residuals after all payments are made under the Agreement.

3. Opt-Out and Release Provisions

Class members will have 45 days from the date on the Notice to object the Settlement. Any objections to the settlement must be served ten (10) days before the final fairness hearing.

Except for those Settlement Class members who fail to timely submit a claim form, all Settlement Class members will be bound by the final approval order, the judgment, and the releases set forth in the Agreement. Settlement class members will grant Butterball a release on the back of checks as specified in the Agreement.

4. Incentive Awards

Class counsel will apply to the Court for (and Butterball will not oppose) service payments to named Plaintiffs in the amount of $6,000, respectively in recognition of their roles in this litigation, participation as lead named plaintiffs, bearing risks on behalf of the class, and most importantly, creating the benefit of a common fund for the class in the amount of $4,250,000 separate from legal fees and costs. These amounts shall be in addition to these Plaintiffs' shares from the Settlement Fund.

Class counsel will also apply to the Court for (and Butterball will not oppose) payments in the amount of $1,000 to each of the class members who was deposed in this case: Angela Mansfield, Betty Farmer, Brian Morgan, Charles Krause, Cindy Moore, Cruz Aleman, Domingo Melendez, Douglas DeWitt, Edward Dyson, Jeremy Lowe, Jess Ella Evans, Joseph Perez, Lawrence Hice, Peggy Hobby, Michael Yates, Nick Davis, Pedro Perez, Shirley Phillips and Steven Van Brunt. These amounts shall be in addition to these Plaintiffs' shares from the Settlement Fund.

5. Prospective Relief

The parties have agreed on extensive prospective relief for the class members. For an interim period of eighteen months or until the steps outlined below are completed, Butterball will pay three (3) additional minutes for donning and doffing to all employees holding positions within the certified class. Butterball will begin payment of the three (3) additional minutes

within 10 days of final approval of the settlement.

Within 120 days of final approval of the settlement, Butterball will implement the following changes at the Huntsville and Ozark plants to reduce the amount of uncompensated donning and doffing time. It is the express goal of this term to minimize the amount of unpaid time spent on the production floor. To implement this goal, Butterball management will take the necessary operational steps. All of the subsequent terms below relate exclusively to employees that are not involved in on-the-clock floor preparation.

a. Butterball will prohibit employees from going out on the floor until four minutes before the department's scheduled starting time (the time the meat hits the first line station) or four minutes before the end of breaks for the first spot on the department line.

b. Butterball will not allow any employees to arrive back on the plant floor until 30 minutes after the first employees left the line for break.

c. Butterball will inform the employees they are not required to be at their work stations until the product arrives at their line position at the beginning of their shifts and the end of breaks.

d. Butterball will inform the employees of the number of minutes it takes (on average) for the product to get to each position on the line from the first work station on the line.

e. Butterball will inform the employees they should not arrive onto the plant floor any earlier than four minutes before the first product's arrival at his/her line position. If it is practically impossible to be ready for work without arriving more than four minutes before the first product's arrival, Butterball will adjust any such employee's duties accordingly.

f. Butterball will inform the employees they do not have to arrive early on the production floor to potentially "cover" another position if someone is late or absent.

g. Butterball will inform the employees they do not have to arrive early to "check in" with a supervisory employee or prior to other line positions starting operations.

h. Butterball will make employees leave the floor promptly at the end of the shift or

beginning of unpaid breaks (if they doff and don during their breaks) unless they are assigned to stay and are being paid for staying.

i. Butterball will inform the employees that once the product stops arriving at their work station at break or at the end of a shift, they must exit the plant floor expeditiously.

j. All bonuses other than any recruitment bonuses will be included in employees' "regular rates" for purposes of determining overtime compensation.

k. Butterball will prohibit employees from swiping in more than ten minutes before the department's scheduled starting time, and will not allow employees to begin donning smocks or gear they are required to obtain at the plant or picking up equipment at the supply window before they swipe in.

l. Butterball management will take the necessary operational steps to aim at eliminating idle time after donning a smock.

At the expiration of the 120 day period, counsel for Butterball will file a factual, detailed affidavit with the Court explaining the changes that have been made in each production department to comply with the terms in this Agreement.

The parties have agreed that within twelve months after final approval, Butterball will prohibit employees from swiping in more than seven minutes before the department's scheduled starting time.

The parties have agreed that Butterball shall have eighteen (18) months after final approval of the settlement to explore implementation of further changes. After that time, Butterball will reasonably eliminate uncompensated work time for class members as defined by the Orders in this lawsuit during pre-shift, post-shift and unpaid breaks at the Huntsville and Ozark plant through operational changes of its choosing. Such operational changes may include the following:

a. Ensuring that all tools are handed out on the floor and dropped off on the floor before or after employees' shifts or at the end of their breaks. Employees using knives, etc. would no longer be required to pick up these tools or sharpen them

before their shifts or at the end of their breaks.

b. Not allowing employees to wash their knives and tools after the shift.

c. Steel mesh gloves, aprons and sleeves should be distributed by floor preparation people to the line.

d. Having the employees clock in and out for their breaks and programming Kronos to reject any swipes that are less than 30 minutes from the time the employees swipe out for their breaks.

e. Adding time clocks.

f. Assessing the practicality of switching to a punch-to-punch system, including consideration of whether it is possible to divide up some of the departments into groups that are small enough to be managed under a punch-to-punch system. Look closely to see which groups inherently must be larger because of continuous work lines, such as in Evisceration. Consider whether Debone can be divided up based on stopping points in the movement of product. Prohibiting employees from swiping in more than five minutes before the department's scheduled starting time.

At the expiration of the 18 month period, counsel for Butterball will file a factual, detailed affidavit with the Court certifying under oath explaining how Butterball has reasonably eliminated the uncompensated preparatory and concluding activities as defined by the court orders in this action before and after employees' shifts and unpaid breaks for each production department.

The parties agree that Butterball can adjust these injunctive measures to reflect any interim rulings by the Eighth Circuit Court of Appeals or United States Supreme Court on breaks or the definition of "actual work" time. If Butterball makes any such adjustments, it will inform the Court. In the event Plaintiffs believe Butterball's adjustments under this paragraph fail to comply with existing law, the parties agree that Plaintiffs and the class have reserved all rights under all causes of action relating to Butterball's legal interpretations and Butterball's future adjustments.

The parties further agree that this Court should retain jurisdiction over all of this agreed-upon injunctive relief.

6. Attorneys' Fees and Expenses

Class counsel will apply to the Court for payment of no more than $2,600,000 in attorneys' fees and $430,000 in litigation costs. Butterball will not oppose such a request. The total attorneys' fees and costs actually paid will be as approved by the Court in its Final Order, and will not affect any class members' recoveries.

III. PRELIMINARY APPROVAL OF THE PROPOSED SETTLEMENT IS APPROPRIATE

A. The Settlement of a Class Action Is Favored And Should Be Preliminarily Approved If It Falls Within The Range of Reasonableness.

The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigor of prolonged litigation. *See Cohn v. Nelson*, 375 F. Supp. 2d 844, 852 (E.D. Mo. 2005) ("The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation."). *See also Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1*, 921 F.2d 1371, 1383 (8th Cir. 1990) ("The law strongly favors settlements. Courts should hospitably receive them. This may be especially true in the present context -- a protracted, highly divisive, even bitter litigation, any lasting solution to which necessarily depends on the good faith and cooperation of all the parties."); *Schoenbaum v. E.I. Dupont De Nemours & Co.*, 2009 U.S. Dist. LEXIS 114080 (E.D. Mo. Dec. 8, 2009) ("Especially in the context of class actions, the federal judiciary has a strong policy of promoting and encouraging settlements between litigating parties."); *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 2004 U.S. Dist. LEXIS 23342 (W.D. Mo. Apr. 20, 2004) ("The policy in favor of

settlement is so strong that such agreements are presumptively valid."); *Newberg on Class Actions* § 11.41 (Fourth) (2002) ("The compromise of complex litigation is encouraged by the courts and favored by public policy.") "This policy is particularly appropriate in class actions: In the class action context in particular, 'there is an overriding public interest in favor of settlement" settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strains such litigation imposes upon already scarce judicial resources.'" *Id*. (citing *Armstrong v. Board of School Directors*, 616 F.2d 305, 313 (7th Cir. 1980)).

Where, as here, the parties propose to resolve class action litigation through a class-wide settlement, they must obtain the Court's approval. *See* Fed. R. Civ. P. 23(e). The typical process for approval of class action settlements is described in the *Manual*, §§ 21.632-.634. The steps are:

1. Preliminary approval of the proposed settlement at an informal hearing;
2. Dissemination of mailed and/or published notice of the settlement and fairness hearing to all affected class members; and
3. A "formal fairness hearing," or final approval hearing, at which Class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented.

This procedure, commonly employed by federal Courts, serves the dual function of safeguarding Class members' procedural due process rights and enabling the Court to fulfill its role as the guardian of the Class members' interests. *See Newberg*, § 11.25 (quoting *Manual for Complex Litigation* (Second) (1985).) "Under Federal Rule of Civil Procedure 23(e)(2), the Court may approve a Settlement Agreement only upon a 'finding that it is fair, reasonable and

adequate.'" *Kelly v. Phiten USA, Inc.*, 277 F.R.D. 564, 570 (S.D. Iowa 2011) (quoting Fed. R. Civ. P. 23(e)(2).) This determination is entrusted "to the sound discretion" of the district court. *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975). When making this determination, "the district court acts as a fiduciary, serving as a guardian of the rights of absent class members." *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 932 (8th Cir. 2005). "By definition, a fair settlement need not satisfy every concern of the plaintiff Class, but may fall anywhere within a broad range of upper and lower limits. The essence of settlement is compromise . . . a solution somewhere between the two extremes. *Alliance To End Repression v. City of Chicago*, 561 F. Supp. 537, 548 (N.D. Ill. 1982).

The parties ask that the Court take the first step in the settlement approval process and grant preliminary approval of the settlement.

B. The Proposed Settlement Negotiated By The Parties Enjoys A Presumption Of Fairness.

At the outset, the settlement should be accorded a presumption of fairness. "A presumption of correctness applies to a class settlement reached in arm's-length negotiations between experienced, capable counsel." *Austin v. Metro. Council*, 2012 U.S. Dist. LEXIS 41750, *18-19 (D. Minn. Mar. 27, 2012); see also 4 Newberg § 11.41 (noting that where the settlement is the product of arm's-length negotiations between capable counsel experienced in complex class action litigation, the court should begin its analysis with a presumption that the settlement is fair and should be approved). Courts give "great weight" to and may "rely on the judgment of experienced counsel in its evaluation of the merits of a class action settlement." *Welsch v. Gardebring*, 667 F. Supp. 1284, 1295 (D. Minn. 1987). Additionally, the court "does not have the responsibility of trying the case or ruling on the merits of the matters resolved by

the agreement . . . . Rather, the very purpose of compromise is to avoid the delay and expense of such a trial." *White v. National Football League*, 822 F. Supp. 1389, 1417 (D. Minn. 1993).

Here, the settlement if presumed fair and falls within the range of possible approval. The settlement was reached exclusively through arm's length bargaining over a period of years, through numerous written exchanges, telephone conferences and ultimately, a successful mediation presided over by Mr. Dixon. Attorneys for Plaintiffs and attorneys for Butterball were present during the settlement negotiations. The parties extensively discussed the merits of the claims and defenses and the relief available to the Class. After reaching a complete settlement agreement in principle, the parties turned their attention to documenting the settlement and exchanged draft settlement agreements, forms of Notice of the settlement, and claim forms.

In negotiating the settlement, Plaintiffs had the benefit of attorneys who are highly experienced in complex litigation and familiar with the legal and factual issues of the case. In Plaintiffs' counsel's view, the settlement provides substantial benefits to the Class, especially when considering, among other things, the attendant expense, risks, difficulties, delays, and uncertainties of litigation, trial, and post-trial proceedings. On preliminary evaluation, the settlement here is presumptively fair and worth of preliminary approval.

C. <u>The Settlement Benefits Fall Within The Range Of Possible Recovery.</u>

"The most important consideration in deciding whether a settlement is fair, reasonable, and adequate is 'the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.'" *Buckley v. Engle*, 2011 U.S. Dist. LEXIS 59022 (D. Neb. June 2, 2011) (quoting *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1150 (8th Cir. 1999)). The factors the courts are to consider are the following:

(1) the extent of discovery that has taken place; (2) the stage of the proceedings,

> including the complexity, expense, and likely duration of the litigation; (3) the absence of fraud or collusion in the settlement; (4) the experience of counsel who have represented the plaintiffs; (5) the opinions of class counsel and class members after receiving notice of the settlement whether expressed directly or through failure to object; and (6) the probability of plaintiffs' success on the merits and the amount of the settlement in relation to the potential recovery.

Moore v. Ackerman Investment Co., 2009 U.S. Dist. LEXIS 78725, 2009 WL 2848858 (N.D. Iowa Sept. 1, 2009). The preliminary approval determination is not an ultimate determination of whether the settlement is fair, reasonable and adequate, however. Rather, the Court must determine "whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing." *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982). This necessarily involves a preliminary determination of the settlement's fairness, reasonableness and adequacy. *See Manual*, § 21.632. If the Court finds the settlement "within the range of possible approval," it should then order that the Class be notified of the settlement and of a formal fairness hearing to be held on the question of settlement approval. *See id.* at § 40.42 (model preliminary approval order).

Here, the settlement provides the Class with substantial relief, without the delay and expenses of the trial and post-trial proceedings. The Agreement is also fair in that it permits ready access to the Settlement Fund for class members. Relief is presumptively available to all current and former non-exempt production employees who worked at Butterball's Huntsville and Ozark turkey processing facilities, including temporary workers, between October 1, 2006 and July 1, 2012, and who submit a timely, completed Claim and Release Form. The settlement also provides extensive injunctive relief, assisting current employees in obtaining pay for the alleged off-the-clock work time.

If the parties did not agree to settle these related cases, a trial would be lengthy and

expensive. The Class would face the risk of argument by Butterball that some or all of the Plaintiffs are not entitled to be paid for their time engaged in donning and doffing related activities either because they are not legally entitled to be paid for such time or because they have already been paid for such time. Even if the Class obtained a judgment in their favor, an appeal would inevitably follow. In light of those risks, the proposed settlement is a fair, reasonable and adequate compromise of the issues in dispute that provides meaningful relief to the Class.

In addition, the incentive awards to the Named Plaintiffs and the deponents are routine, appropriate and serve public policy by encouraging individuals to come forward to protect the rights of others, while at the same time compensating the Named Plaintiffs and deponents for their time, effort, and inconvenience – including responding to discovery and testifying at depositions – to represent the interests of absent class members. *See e.g., In re Linderboard Antitrust Litig.*, No. MDL 1261, 2004 WL 1221350, *19 (E.D. Pa. Jun. 2, 2004) (incentive awards of $25,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913 (S.D. Ohio 2001) ($50,000 incentive award); *see also Manual* § 30.42 at n.763. More importantly, because the named plaintiffs conferred a $4,250,000 benefit upon the absent class (exclusive of fees and costs), equity dictates that they receive an incentive award from the fund for the benefit they have conferred.

IV. THE COURT SHOULD APPROVE THE PROPOSED FORM AND METHOD OF CLASS NOTICE

A. Notice By First Class Mail is Sufficient When A Large Class is Present.

"Rule 23(e)(1)(B) requires the court to 'direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise,'

regardless of whether the class was certified under Rule 23(b)(1), (b)(2), or (b)(3)." See *Manual for Complex Litigation* at §§ 21.632, 21.633. In order to protect the rights of absent Class Members, the Court must provide the best notice practicable to class members. *See Phillips v. Petroleum Co. v. Shutts*, 472 U.S. 797, 811-812 (1985).

Notice by first class mail is practical when the names and addresses of most of the Class members are known. *See Manual for Complex Litigation* at § 30.211. Neither Rule 23 nor due process require receipt of actual notice by all class members, rather, notice should be mailed to the last known addresses of those who can be identified and publication used to notify others. Newberg, § 8.04 (citing *Manual for Complex Litigation* at § 30.211*; see also Kandice Simmons & Tamika v. Enter. Holdings,* 2012 U.S. Dist. LEXIS 29366, *12 (E.D. Mo. Mar. 6, 2012) (approving mailed notice to last known addresses of a Settlement Class). If notices are returned as undeliverable, the Claims Administrator will perform a standard skip trace to find a better address for subsequent mailing.

Because the identities of the individual Settlement Class members are known by Butterball, the parties propose Notice through first class mail. A proposed Notice and Claim Form are included in Exhibit 1. Under the circumstances of the present case, this Notice is consistent with applicable law and avoids unnecessary expense that would otherwise diminish the amount of the money available to class members. The Court should find that the Class Notice complies with the notice requirements imposed by Rule 23.

The parties have also agreed to other forms of notice previously ordered by this Court in its Orders granting Plaintiffs' motions for certification in the *Helmert* and *Garner* cases. These additional forms of notice include a plant posting and newspaper advertisement. A proposed posting and advertisements are included in Exhibit 1.

B. The Proposed Form Of Notice Adequately Informs Class Members Of Their Rights In This Litigation.

The proposed Notice included in Exhibit 1 clearly and accurately discloses the information material to a class member's decision whether to object to the settlement. The proposed Notice provides information on the proposed Settlement Class; the terms and provisions of the Agreement; the relief the settlement will provide; the date, time and place of the final approval hearing; and the procedures and deadlines for opting out of the settlement or submitting comments or objections. The proposed Notice advises class members that Class Counsel will apply to the Court for service awards for the Named Plaintiffs and deponents, and an award of attorneys' fees in an amount not to exceed $2,600,000 and costs in an amount not to exceed $430,000.

The proposed Notice is accurate and informs class members of the material terms of the settlement and their rights pertaining to it. The Court should approve the proposed form of Notice and direct that notice be given to the class as proposed by the parties.

V. CONCLUSION

For the foregoing reasons, the Court should grant preliminary approval of the proposed settlement and enter the accompanying Order of Preliminary Approval included in Exhibit 1.

Respectfully submitted this 30th day of July, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2012, I electronically filed the foregoing with the Clerk of the Court using ECF which will send notification of such filing to the following:

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Dated: July 30, 2012 By: */s/ T. Joseph Snodgrass*