

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Joy Eberline, et al.,

Plaintiffs,

v.

Douglas J. Holdings, Inc., et al.,

Defendants.

Case No. 14-10887

Judith E. Levy

United States District Judge

Mag. Judge Kimberly G. Altman

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**ORDER GRANTING PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF THE SETTLEMENT,
INCENTIVE AWARDS, AND ATTORNEY FEES [182]**

Before the Court is Plaintiffs' motion for final approval of the settlement, incentive awards, and attorney fees. (ECF No. 182.) On December 19, 2023, the Court held a hearing on the motion and heard oral argument. For the reasons set for on the record at the hearing and set forth below, Plaintiffs' motion is GRANTED.

1. On or about February 26, 2014, Plaintiffs Joy Eberline, Cindy Zimmerman, and Tracy Poxson initiated this lawsuit by filing their Complaint against Defendants Douglas J. Holdings, Inc., Douglas J. AIC,

Inc., Douglas J. Institute, Inc., Douglas J. Exchange, Inc., Scott A. Weaver, TJ Weaver, and Kristi E. Bernhardt, alleging violations of minimum wage requirements under federal and state law.¹

2. Defendants have denied all liability alleged in this lawsuit.

3. After extensive arms-length negotiations lasting from December 16, 2022 through the beginning of July, 2023, Plaintiffs and Defendants entered a hybrid class action Amended Settlement and Release Agreement (hereinafter the “Agreement”), which is which is subject to review under Fed. R. Civ. P. 23 and under 29 U.S.C. § 216(b).

4. This Order incorporates by reference the definitions in the Agreement, a copy of which is attached to as Exhibit 1 to Plaintiffs’ *Memorandum of Law in Support of Plaintiffs’ Motion For Final Approval Of Settlement, Incentive Awards & Attorney Fees* (“*Memorandum of Law*”). (See ECF No. 182-2.) All capitalized terms used in this Order will

¹ All claims against Defendant Kristi E. Bernhardt were dismissed with prejudice in a stipulated order on December 13, 2018. (ECF No. 96.) All claims against Defendants Douglas J. Exchange, Inc. and TJ Weaver were dismissed without prejudice in a stipulated order on March 25, 2022. (ECF No. 151.) All claims against Defendant Douglas J. AIC, Inc. were dismissed with prejudice in a stipulated order *nunc pro tunc* August 23, 2023. (ECF No. 184.)

have the same meaning as set forth in the Amended Settlement Agreement, unless otherwise defined in this Order.

5. On July 19, 2023, the Parties filed the Agreement, along with *Plaintiffs' Amended Unopposed Motion For Conditional Certification* (the "Preliminary Approval Motion") and their *Memorandum Of Law In Support*. (ECF No. 178.)

6. On August 9, 2023, upon consideration of Plaintiff's Preliminary Approval Motion and the record, the Court entered an *Order Granting Plaintiffs' Motion [178]; Conditionally Certifying Class For Settlement Purposes; Preliminarily Approving The Settlement; Approving The Form And Manner Of Class Notice And Distribution Of The Claim Form; Appointing The Named Plaintiffs As Class Representatives; Appointing Class Counsel; Appoint[ing] A Settlement Administrator; And Setting A Date For A Final Approval Hearing* ("Preliminary Approval Order"). (ECF No. 180.)

7. In the Preliminary Approval Order, the Court, among other actions, granted preliminarily approval the parties' proposed settlement and set the date and time of the Final Fairness and Approval Hearing for December 19, 2023 at 2:00 p.m.

8. On December 8, 2023 the Plaintiffs filed the pending *Motion For Final Approval Of Settlement, Incentive Awards & Attorney Fees* (Final Approval Motion).

9. The parties have also confirmed that written notices were sent to the United States Attorney General and the Attorney General for the State of Michigan containing the information required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715. (*See* ECF No. 182-6, PageID.7228, 7232–7237.)

10. On December 19, 2023, a Final Fairness and Approval Hearing was held to determine whether the proposed settlement is fundamentally fair, reasonable, adequate, in the best interest of the Class Members, and otherwise meets requirements of Fed. R. Civ. P. 23 (e) and 29 U.S.C. § 216(b) and should be approved by the Court.

11. The Court has read and considered the Agreement, Final Approval Motion, Memorandum of Law in Support, and the additional submissions of the parties; reviewed the record of these proceedings; and heard the oral statements of counsel at the Final Fairness and Approval Hearing.

12. The Court has jurisdiction over the settling parties and the subject matter of this lawsuit.

13. **CLASS MEMBERS.** Pursuant to Fed. R. Civ. P. 23(b)(3), this lawsuit is hereby certified as a class action on behalf of the following class of persons:

All students who attended Defendant Douglas J. Institute, Inc.'s cosmetology programs in Michigan and participated in the Alpha, Beta, Gamma, and/or Salon Life courses at any time between January 1, 2012, and December 31, 2022.

Members of the Class also meet the criteria for a collective action under 29 U.S.C. § 216(b).

14. **CLASS REPRESENTATIVES.** Plaintiffs Joy Eberline, Cindy Zimmermann, and Tracy Poxson have been appointed and are hereby certified as Class representatives. The named Plaintiffs have interests in common with each of the members of the Class; have actively prosecuted the interests of the Class for more than nine years during the pendency of this case and have demonstrated that they will vigorously prosecute the interests of the Class through qualified counsel.

15. **CLASS COUNSEL.** Counsel John Philo, Sugar Law Center for Economic & Social Justice, 4605 Cass Avenue, 2nd Floor, Detroit,

Michigan 48201, and Kathryn Bruner James, Goodman Hurwitz & James PC, 1394 E. Jefferson Avenue, Detroit, Michigan 48207 have been appointed and are hereby certified as Class Counsel. Each have done substantial work in identifying and investigating the claims in this action and are well-qualified and experienced in wage and hour and class action litigation.

16. **NOTICE TO THE CLASS.** In the Preliminary Approval Order, the Court approved the form and content of Email Notice, Postcard Notice, and Notice of Settlement posted to the Settlement Website. (*See* ECF No. 180.)

Following entry of the Preliminary Approval Order by this Court and within fourteen (14) days of receiving the Class Data, the Settlement Administrator sent Email Notice to the last known email address for each Class member. (*See* ECF No. 182-6, PageID.7229.) For all Class members whose Email Notice bounced back as undeliverable or which the Settlement Administrator's email distribution system did not show as having been opened within seven (7) days of being sent, the Settlement Administrator checked the Class Member's last-known address against the National Change of Address database and commercially available

databases to attempt to obtain updated mailing and possible email addresses. (*See id.* at PageID.7229–7230.) The Settlement Administrator then mailed Postcard Notice to the best-known address for the Class Member via First-Class United States mail. (*See id.*)

For any Class Member whose Postcard Notice was returned as undeliverable within twenty-eight (28) days of mailing, the Settlement Administrator then sent an additional Notice of Settlement to any additional email addresses identified during the search of commercially available databases. (*See id.* at PageID.7230.)

The form and method for notifying Class Members of the settlement conformed with this Court’s Preliminary Approval Order and satisfy the requirements of Fed. R. Civ. P. 23(c)(2)(B), 29 U.S.C. § 216(b), and due process. The form and method of notifying Class Members constituted the best notice practicable under the circumstances and the parties’ notice was clearly designed to advise Class Members of their rights.

17. **FINAL CLASS CERTIFICATION.** The Court finds that, for purposes of settlement, the lawsuit satisfies the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23. The Court specifically finds that:

- a. The Class Members are so numerous and dispersed that joinder of all of them in the lawsuit is impracticable;
- b. There are questions of law and fact common to the Class Members, which predominate over any individual questions;
- c. The claims of the Named Plaintiffs are typical of the claims of the Class Members;
- d. The Named Plaintiffs and Class Counsel have fairly and adequately represented and protected the interests of all the Class Members; and
- e. Class treatment of these claims will be efficient and manageable, thereby achieving an appreciable measure of judicial economy, and a class action is superior to other available methods for a fair and efficient adjudication of this controversy.

18. **SETTLEMENT TERMS**. The Agreement, which is deemed incorporated herein, is finally approved, and shall be consummated in accordance with the terms and provisions thereof, except as amended by any order issued by this Court. The material terms of the Agreement include, but are not limited to, the following:

- a. *Settlement Amount.*
The gross Settlement Amount is \$2.8 million. The Settlement Amount shall be funded by two equal installment payments into an Escrow Account established and maintained by the Settlement Administrator. The First Installment Payment in the amount of \$1.4 million shall be made on or before December 31, 2023. The Second Installment Payment

shall be made no later than October 15, 2024 (provided that the Effective Date occurs by September 30, 2024).

b. *Payments to Participating Class Members.*

Participating Class Members shall receive payments from the net Settlement Amount. The net Settlement Amount is the amount remaining after subtracting amounts: a) to be paid as a Service Award to each Named Plaintiff; b) the Settlement Administration Costs; and c) Class Counsel's Attorneys' Fees, Costs, and Expenses.

From the net Settlement Amount, each Participating Class Member shall receive an amount equal to the product of the Hourly Rate multiplied by the individual's Qualifying Time multiplied by two and then multiplied by one plus the interest rate.

If the total amount of payments to Participating Class Members exceeds the net Settlement Amount, payments to each Participating Class Member will be subject to pro rata reduction by the Settlement Administrator.

c. *Service Award to the Named Plaintiffs.*

In recognition of, and in consideration for, the assistance they rendered to Class Counsel in pursuing the rights of all Class Members, a service award of \$15,000 shall be paid to each of the Named Plaintiffs from the gross Settlement Amount.

d. *Class Counsel's Fees, Costs, and Expenses.*

From the gross settlement amount, Class Counsel shall receive payment of \$779,977.78 as compensation for their attorney fees and \$14,365.07 as compensation for their costs and expenses.

e. *Settlement Administration Costs.*

All administration costs shall be paid from the gross Settlement Amount, upon approval of Defendants' Counsel.

The Court finds that the settlement of the lawsuit, on the terms and conditions set forth in the Agreement, is fundamentally fair, reasonable, adequate, and in the best interest of the Class Members.

The Court further finds that the settlement is a fair and reasonable resolution of a bona fide dispute under 29 U.S.C. 216(b).

19. **ATTORNEY FEES, COSTS, AND EXPENSES.** The Court has reviewed Class Counsel's request for \$779,977.78 in attorney fees under the six *Ramey* factors and concludes that the requested fees are reasonable under the circumstances. *See In re Flint Water Cases*, 583 F. Supp. 3d 911, 930 (E.D. Mich. 2022), *aff'd*, 63 F.4th 486 (6th Cir. 2023). Additionally, the requested attorney fees are reasonable under the "percentage of the fund" method as they represent 28% of the Settlement Amount after Class Counsel's costs and expenses are deducted. The Court also performed a lodestar cross-check and confirmed that the requested award represents a multiplier of 1.346, which is well within range of acceptable multipliers in the Sixth Circuit.

Based on the detailed records provided by Class Counsel (*see* ECF Nos. 182-7, 182-8), the Court approves the request for \$14,365.07 in costs and expenses.

20. **SERVICE AWARDS.** The Court approves service awards of \$15,000.00 each for Named Plaintiffs Joy Eberline, Cindy Zimmermann, and Tracy Poxson. The service awards are reasonable in light of Named Plaintiffs' high level of involvement over the course of more than nine years of litigation, their participation in depositions, and the substantial benefits their actions conferred on Class Members.

21. **DISTRIBUTION OF THE SETTLEMENT PROCEEDS.**

Distribution of the gross Settlement Amount from the Escrow Account is hereby authorized as follows:²

- a. *Payments to Participating Class Members.*
Payments to each Participating Class Members shall be made as soon as is practicable after deposit of the Second Installment Payment into the Escrow Account.
- b. *Service Award to the Named Plaintiffs.*
Payments of the service award to Named Plaintiffs shall be made as follows:

² The Agreement states that distributions of the service awards and attorney fees, costs, and expenses will occur only after the Second Installment Payment. (*See* ECF No. 182-2, PageID.7171.) However, for the reasons set forth on the record at the December 19, 2023 hearing, the Court approves early distribution of these funds as described below.

- i. Fifty percent (50%) of the service award (\$7,500) shall be paid to Named Plaintiffs Joy Eberline and Cindy Zimmermann within thirty (30) days after the First Installment Payment is deposited into the Escrow Account. The remaining 50% shall be paid to Joy Eberline and Cindy Zimmerman as soon as practicable after deposit of the Second Installment Payment into the Escrow Account;
 - ii. \$15,000 shall be paid to Named Plaintiff Tracy Poxson within thirty (30) days after the First Installment Payment is deposited into the Escrow Account.
- c. *Class Counsel's Fees, Costs, and Expenses.*
Class Counsel shall receive payment of 50% of the total awarded attorney fees, costs, and expenses (\$397,171.42) within thirty (30) days after the First Installment Payment is deposited into the Escrow Account. The remaining 50% (\$397,171.43) shall be paid to Class Counsel as soon as practicable after deposit of the Second Installment Payment into the Escrow Account; and
- d. *Settlement Administration Costs.*
Administration costs shall be paid from the gross Settlement Amount, upon the approval of Defendants' Counsel.

22. **OBJECTIONS AND EXCLUSIONS.** Class Members were given an opportunity to object to the settlement. No Class Members objected to the settlement.

Class Members were provided an opportunity to opt-out and thereby exclude themselves from the terms of the settlement. No Class Member has opted-out of the settlement.

This Order and the Agreement are therefore binding on all Class Members.

23. **RELEASE OF CLAIMS AND DISMISSAL OF LAWSUIT.**

Pursuant to the releases contained in the Agreement, all Released Claims are compromised, settled, released, discharged, by virtue of these proceedings and this order.

The case and the remaining claims against Defendants Douglas J. Holdings, Inc., Douglas J. Institute, Inc., and Scott A. Weaver are DISMISSED WITH PREJUDICE, without further costs or attorney to any party (except as otherwise provided for in this Order).

This Order is not, and shall not be construed as, an admission by Defendants of any liability or wrongdoing in this or in any other proceeding.

The Court retains continuing and exclusive jurisdiction over the Parties and all matters relating to this lawsuit and the Agreement,

including the administration, interpretation, construction, effectuation, enforcement, and consummation of the settlement, and this Order.

IT IS SO ORDERED.

Dated: December 21, 2023
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or first-class U.S. mail addresses disclosed on the Notice of Electronic Filing on December 21, 2023.

s/William Barkholz
WILLIAM BARKHOLZ
Case Manager