

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS

MARCIA SMITH, individually and on behalf of all others similarly situated,)
)
)
Plaintiff,) Case No. 2019-L-248
)
)
v.)
)
)
THE TOP DIE CASTING CO., an Illinois corporation,)
)
)
Defendant.)

SECOND AMENDED PRELIMINARY APPROVAL ORDER

This matter having come before the Court on Plaintiff’s Unopposed Motion in Support of Preliminary Approval of Class Action Settlement (“Motion”) and Agreed Motion to Extend Deadlines, the Court having reviewed and considered the Motion and request to extend deadlines, the Class Action Settlement Agreement (“Settlement Agreement”) between Plaintiff Marcia Smith (“Plaintiff” or “Class Representative”) and Defendant The Top Die Casting Co. (“Defendant”) (together “the Parties”), and all other papers that have been filed with the Court related to the Settlement Agreement, including all exhibits and attachments to the Motion and Settlement Agreement, and the Court being fully advised in the premises, IT IS HEREBY ORDERED, as follows:

1. Capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them as in the Settlement Agreement.
2. The terms of the Settlement Agreement are preliminarily approved as fair, reasonable, and adequate and are fully incorporated and adopted herein. There is good cause to find that the Settlement Agreement was negotiated at arms-length between the Parties, who were represented by experienced counsel.

3. For settlement purposes only, the Court finds that the prerequisites to class action treatment under Section 2-801 of the Illinois Code of Civil Procedure — including numerosity, commonality and predominance, adequacy, and appropriateness of class treatment of these claims — have been preliminarily satisfied.

4. The Court hereby conditionally certifies, pursuant to Section 2-801 of the Illinois Code of Civil Procedure, and for the purposes of settlement only, the following Settlement Class consisting of: “all persons who worked at a Top Die facility in the state of Illinois on or after July 17, 2014 whose biometric identifiers or information (for example, fingerprints, finger scans, or hand scans) were allegedly collected, captured, or otherwise obtained by Top Die and whose name appears on the class list.” Excluded from the Settlement Class are all persons who properly elect and timely request to exclude themselves from the Settlement Class and their legal representatives, successors, or assigns, the Court and Court staff to whom this case is assigned, and any member of the Court’s or Court staff’s immediate family.

5. For settlement purposes only, Plaintiff Marcia Smith is hereby appointed as the Class Representative.

6. For settlement purposes only, David Fish and Mara Baltabols are hereby appointed as Class Counsel.

7. The Court recognizes that, pursuant to the Settlement Agreement, Defendant and Released Parties retain all rights to object to the propriety of class certification in the Action in all other contexts and for all other purposes should the Settlement not be finally approved. Therefore, as more fully set forth below, if the Settlement is not finally approved, and the Action resumes, this Court’s preliminary findings regarding the propriety of class certification shall be of no further force or effect whatsoever, and this Order will be vacated in its entirety.

8. The Court approves, in form and content, the Notice and Claim Form attached to the Settlement Agreement as Exhibit A and finds that they meet the requirements of Section 2-803 of the Illinois Code of Civil Procedure and satisfies Due Process requirements under the U.S. and Illinois Constitutions.

9. The Court finds that the planned Notice set forth in the Settlement Agreement meets the requirements of Section 2-803 of the Illinois Code of Civil Procedure and constitutes the best notice practicable under the circumstances, where Class Members are current or former employees of Defendant and may be readily ascertained by Defendant's records, and satisfies fully the requirements of Due Process, and any other applicable law, such that the Settlement Agreement and Final Approval Order will be binding on all Settlement Class Members. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this action. The Parties, by agreement, may revise the Class Notice in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

10. Analytics Consulting LLC is hereby appointed as Settlement Administrator to supervise and administer the notice process, as well as to oversee the administration of the Settlement, as more fully set forth in the Settlement Agreement.

11. The Settlement Administrator may proceed with the distribution of Class Notice and Claim Form as set forth in the Settlement Agreement.

12. Settlement Class Members who were employed through a staffing agency (i.e., temporary employees) must submit a valid claim form in order to receive a monetary payment from the Settlement Fund.

13. Settlement Class Members shall be bound by all determinations and orders pertaining to the Settlement, including the release of all claims to the extent set forth in the Settlement Agreement, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. Settlement Class Members who do not timely and validly request exclusion shall be so bound even if they have previously initiated or subsequently initiate litigation or other proceedings against Defendant or the Released Parties relating to the Released Claims under the terms of the Settlement Agreement.

14. Any person within the Settlement Class may request exclusion from the Settlement Class by expressly stating their request for exclusion in writing. To be considered timely, such written exclusion requests must be mailed to the Settlement Administrator by first class mail, postage prepaid, and postmarked no later than sixty (60) days from the Notice Date.

15. In order to exercise the right to be excluded, a person within the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing their name, address, telephone number, the case name and number of the Action, and a statement that they wish to be excluded from the Settlement Class, and must be personally signed by the person requesting exclusion. No person within the Settlement Class, or any person acting on behalf of, in concert with, or in participation with that person within the Settlement Class, may request exclusion from the Settlement Class on behalf of any other person within the Settlement Class.

16. Any person in the Settlement Class who elects to be excluded shall not: (i) be bound by any orders or the Final Approval Order; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement.

18. Class Counsel may file any motion seeking an award of attorneys' fees in the amount of 35% of the Settlement Fund plus their reasonable costs and expenses, as well as an incentive award of ten thousand dollars and no cents (\$10,000.00) for the Class Representative, no later than seven (7) days prior to Final Approval Hearing.

19. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including the amount of the attorneys' fees, costs, and expenses that Class Counsel intends to seek and the payment of the incentive award to the Class Representative, may do so, either personally or through an attorney, by filing a written objection, together with the supporting documentation set forth in this Order, with the Clerk of the Court, and served upon Class Counsel, Defendant's Counsel, and the Settlement Administrator no later than sixty (60) days from the Notice Date.

20. Any Settlement Class Member who has not requested exclusion and who intends to object to the Settlement must state, in writing, all objections and the basis for any such objection(s), and must also state in writing: (i) their full name, address, and telephone number; (ii) the case name and number of the Action; (iii) the date range during which they were employed by Defendant; (iv) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (v) the identification of any other objections they have filed, or have had filed on their behalf, in any other class action cases in the last five years; and (vi) the objector's signature. Objections not filed and served in accordance with this Order shall not be received or considered by the Court. Any Settlement Class Member who fails to timely file and serve a written objection in accordance with this Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness, or adequacy of the Settlement, to the payment of attorneys' fees, costs,

and expenses, to the payment of the incentive award, and to the Final Approval Order and the right to appeal same.

21. A Settlement Class Member who has not timely requested exclusion from the Settlement Class and who has properly submitted a written objection in compliance with the Settlement Agreement may appear at the Final Approval Hearing in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement and/or Plaintiff's Counsel's fee and expense application and/or the request for the incentive award to the Class Representative are required to indicate in their written objection their intention to appear at the Final Approval Hearing on their own behalf or through counsel. For any Settlement Class Member who files a timely written objection and who indicates their intention to appear at the Final Approval Hearing on their own behalf or through counsel, such Settlement Class Member must also include in their written objection the identity of any witnesses they may call to testify, and all exhibits they intend to introduce into evidence at the Final Approval Hearing, which shall be attached.

22. No Settlement Class Member shall be entitled to be heard, and no objection shall be considered, unless the requirements set forth in this Order and in the Settlement Agreement are fully satisfied. Any Settlement Class Member who does not make their objection to the Settlement in the manner provided herein, or who does not also timely provide copies to the designated counsel of record for the Parties at the addresses set forth in the Settlement Agreement, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Approval Order.

23. All papers in support of the Final Approval of the proposed settlement shall be filed no later than seven (7) days before the Final Approval Hearing.

24. A Final Approval Hearing shall be held before the Court on **February 14, 2024 at 11:00 a.m.** for the following purposes:

(a) to finally determine whether the applicable prerequisites for settlement class action treatment under 735 ILCS 5/2-801 have been met;

(b) to determine whether the Settlement is fair, reasonable and adequate, and should be approved by the Court;

(c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including an order prohibiting Settlement Class Members from further pursuing Released Claims that have been released in the Settlement Agreement;

(d) to consider the application for an award of attorneys' fees, costs and expenses of Class Counsel;

(e) to consider the application for the incentive award to the Class Representative;

(f) to consider the distribution of the Settlement Fund pursuant to the Settlement Agreement; and

(g) to rule upon such other matters as the Court may deem appropriate.

25. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. At or following the Final Approval Hearing, the Court may enter a judgment approving the Settlement Agreement and a Final Approval Order in accordance with the Settlement Agreement that adjudicates the rights of all Settlement Class Members.

26. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

27. For clarity, the extended deadlines set forth above and in the Agreement are as follows:

Class List Sent to Administrator by: 9/21/23

Notice to be completed by: 10/7/23

Fee and Expense Motion/Application: 1/17/24

Incentive Award Motion/Application: 1/17/24

Objection Deadline: 12/5/23

Deadline for Settlement Class Members to Submit Claim Forms: 1/6/24

Exclusion Request Deadline: 12/5/23

Final Approval Submissions: 1/17/23

Final Approval Hearing: February 14, 2024 at 11:00 a.m.

The 12/7/23 Court date is stricken.

28. Temporary staffing agencies who assigned Settlement Class Members to Defendant are ordered to disclose the names and last known addresses, including personal email addresses, of the Settlement Class Members to Defendant, Defendant's Counsel, and/or the Class Settlement administrator to the extent they have this information.

29. All discovery and other proceedings in the Action are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

30. The 12/17/23 Court date is stricken.

IT IS SO ORDERED.

ENTERED: 

Honorable Barch

8/2/2023

Date