

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CAROL HERRING, ANGELA BRYANT,
ALLISON F. TOTH, MELISSA FRYE,
CATHERINE CERDA, TAMMY WESLEY,
Individually and on Behalf of All Other Persons
Similarly Situated,

Plaintiffs,

v.

HEWITT ASSOCIATES, LLC,

Defendant.

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) Case No. 3:06-cv-267 (TJB)
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DEC 9 - 2008

AT 8:30
WILLIAM T. WALSH
CLERK

ORDER PRELIMINARILY APPROVING SETTLEMENT

WHEREAS, the Plaintiffs and Defendant have entered into a Settlement Agreement, Release & Waiver (the "Settlement Agreement") intended to resolve the litigation pending in this Court; and

WHEREAS, the Settlement Agreement, together with supporting materials, sets forth the terms and conditions for a proposed settlement and dismissal with prejudice of this action against the Defendant; and

WHEREAS, the Court has before it the parties' Motion for Preliminary Approval of Settlement and supporting papers in support thereof, together with the Settlement Agreement and supporting materials; and

WHEREAS, the Court is satisfied that the terms and conditions set forth in the Settlement Agreement were the result of good faith, arm's length settlement negotiations between competent and experienced counsel for both Plaintiffs and Defendant.

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order have the meanings assigned to them in the Settlement Agreement and this Order.

2. The terms of the parties' Settlement Agreement are hereby conditionally approved, subject to further consideration thereof at the Final Approval Hearing provided for below. The Court finds that said settlement ("Settlement") is sufficiently within the range of reasonableness and that notice of the proposed settlement should be given as provided in this Order.

3. Pursuant to Fed R. Civ. P. 23 the Court conditionally certifies the following settlement classes:

- (a) The Federal Subclass shall include all individuals who have filed consents to join the Action (including without limitation all individuals who timely return a Claim Form containing a consent to join the Action) and who worked for Hewitt as Benefits Analysts within the three (3) years prior to filing their consent to join the Action.
- (b) The State Subclass shall include all individuals employed as Benefits Analysts for Hewitt:
 - (i) In California at any time from April 11, 2004, through Preliminary Approval;
 - (ii) In Connecticut at any time from June 17, 2006, through Preliminary Approval;
 - (iii) In Illinois at any time from April 22, 2005, through Preliminary Approval;
 - (iv) In New Jersey at any time from April 15, 2006, through Preliminary Approval;
 - (v) In New York at any time from June 17, 2002, through Preliminary Approval;
 - (vi) In Pennsylvania at any time from June 17, 2005, through Preliminary Approval; and

(vii) In Wisconsin at any time from June 17, 2006, through Preliminary Approval.

4. The Court further conditionally finds that Plaintiffs Carol Herring, Angela Bryant, Allison F. Toth, Melissa Frye, Catherine Cerda and Tammy Wesley, are adequate class representatives for the settlement classes.

5. The Court further conditionally finds that Plaintiffs' Counsel are adequate to serve as Class Counsel and conditionally appoints the following as counsel for the class:

Seth Lesser, Esquire
Fran Rudich, Esquire
KLAFTER OLSEN LESSER LLP
1311 Mamaroneck Avenue, Suite 220
White Plains, NY 10605
&
132 Haddon Avenue
Haddonfield, NJ 08033

Jeffrey Gottlieb, Esq.
BERGER & GOTTLIEB
150 East 18th Street, Suite PHR
New York, NY 1003
Todd Schneider, Esq.
Joshua Konecky, Esq.
Camilla Roberson, Esq.
SCHNEIDER WALLACE
COTTRELL BRAYTON KONECKY LLP
180 Montgomery Street, Ste 2000
San Francisco, CA 94104

Peter Schneider, Esq.
Keith Grady, Esq.
William Jones, Esq.
Doron Levin, Esq.
GRADY, SCHNEIDER & NEWMAN, LLP
801 Congress Street, Suite 400
Houston, Texas 77002

6. Any person who does not elect to be excluded from the settlement subclasses may, but need not, enter an appearance through his or her own attorney. Settlement subclass members who do not enter an appearance through their own attorneys will be represented by Class Counsel.

Notice to Settlement Class and Appointment of Settlement Administrator

7. The Court approves the Notice of Settlement attached as Exhibit 3 to the parties' Settlement Agreement and the manner of notice set forth at pages 7 to 8 of the Settlement Agreement. Such notices shall issue on or before **December 19, 2008**. The manner and forms of notice set forth in Section 10 of the Settlement Agreement are hereby approved and the provisions thereof are hereby incorporated into this Order so that upon entry of this Order, the parties are directed to ensure that the notice is disseminated according to the terms of Section 10. Class Members may request exclusion from the settlement, object to the settlement, or file claim forms to participate in the settlement as described in the Settlement Agreement on or before **February 23, 2009**. Prior to the Final Approval Hearing, Plaintiffs and/or the Settlement Administrator shall serve and file a sworn statement attesting to compliance with the provisions of this paragraph.

8. The notice to be provided as set forth in the Settlement Agreement is hereby found to be the best practicable means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed settlement and the Final Approval Hearing to all persons and entities affected by and/or entitled to participate in the settlement, in full compliance with the notice requirements of Fed R. Civ. P. 23, due process, the Constitution of the United States, the laws of New Jersey and all other applicable laws. The notice is accurate, objective, informative and provides

members of the settlement subclasses with all of the information necessary to make an informed decision regarding their participation in the Settlement and its fairness.

9. The parties' or their respective counsel are authorized to retain Rust Consulting, Inc., to serve as the Settlement Administrator in accordance with the terms of the Settlement Agreement and this Order.

Requests for Exclusion from the Settlement Class

10. Any member of the settlement subclasses who wishes to be excluded ("opt out") must send a written Request for Exclusion to the Settlement Administrator, so that it is received by the Settlement Administrator at the address indicated in the Notice on or before the **February 23, 2009**. The Request for Exclusion shall fully comply with the requirements set forth in the Settlement Agreement. Members of the settlement subclasses may not exclude themselves by filing Requests for Exclusion as a group or class, but must in each instance individually and personally execute a Request for Exclusion and timely transmit it to the Settlement Administrator.

11. Any member of the settlement subclasses who does not properly and timely request exclusion shall be bound by all the terms and provisions of the Settlement Agreement, whether or not such person objected to the Settlement and whether or not such person made a claim upon, or participated in, the settlement fund pursuant to the Settlement Agreement. All members of the settlement subclasses who do not personally and timely request to be excluded are enjoined from proceeding against the Defendant for the claims made in the Complaint.

Objections to the Settlement

12. Any person who does not elect to be excluded from the Settlement may, but need not, submit comments or objections to the proposed Settlement, entry of Final Order and Judgment approving the settlement, or Class Counsel's application for fees and expenses by serving a written objection.

13. Any individual making the objection (an "objector") must sign the objection personally. An objection must state why the objector objects to the proposed Settlement and provide the basis to support such position. An objection must also state the objector's full name, address, and the dates and position of the objector's employment with Defendant.

14. If an objector intends to appear personally at the Final Approval Hearing, the objector must include with the objection a notice of the objector's intent to appear at the hearing. If counsel is appearing on behalf of more than one subclass member, counsel must identify each such subclass member and each subclass member must have complied with the requirements of this Order.

15. Objections, along with any notices of intent to appear, must be submitted to the Settlement Administrator at the address to be included in the Notice on or before **February 23, 2009**. The Settlement Administrator shall file all such objections with the Court as described in the Settlement Agreement.

The Final Approval Hearing

16. A hearing on final settlement approval (the "Final Approval Hearing") is hereby scheduled to be held before this Court on **March 19, 2009 at 3:00 pm**, to consider the fairness, the reasonableness, and adequacy of the proposed settlement, the dismissal

with prejudice of this class action with respect to Defendant herein, and the entry of final judgment in this class action.

17. Class Counsel's application for award of attorney's fees and costs and the Named Plaintiffs' application for service payments shall be heard at the time of the Final Approval Hearing. Any application for an award of attorneys' fees and costs and any application for an award of service payments shall be filed with the Court on or before **February 18, 2009**.

18. The date and time of the Final Approval Hearing shall be set forth in the Notice, but the Final Approval Hearing shall be subject to adjournment by the Court without further notice to the members of the settlement classes other than that which may be posted by the Court.

19. Only subclass members who have filed and served valid and timely notices of objection shall be entitled to be heard at the Final Approval Hearing. Any subclass member who does not timely file and serve an objection in writing to the Settlement, entry of Final Judgment, or to Class Counsel's application for fees, costs, and expenses or to the awards proposed for the Plaintiffs, in accordance with the procedure set forth in the Notice and mandated in this Order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

Other Provisions

20. Each and every time period and provision of the Settlement Agreement shall be deemed incorporated herein as if expressly set forth and shall have the full force and effect of an Order of this Court.


21. All reasonable costs incurred in notifying members of the settlement

subclass, as well as administering the Settlement Agreement, shall be paid as set forth in the Settlement Agreement.

22. If the Settlement Agreement is terminated or not consummated for any reason whatsoever, the conditional certification of the settlement classes shall be void, the Defendant, pursuant to the terms of the same, shall have reserved all of its rights to oppose any and all class certification motions, to contest the adequacy of any plaintiff as representative of any putative class, and to contest the adequacy of Plaintiffs' counsel as adequate Class Counsel. Additionally, Plaintiffs, pursuant to the terms of the same, reserve all of their rights, including the right to continue with the litigation pending at the time of the settlement should the Settlement Agreement not be consummated.

IT IS SO ORDERED.

Dated: December 8, 2008


Hon. Tonianne J. Bongiovanni
United States Magistrate Judge

[Docket Entry No 336 is Terminated]