

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

AUG 17 2001

EURLENE ROBINSON; RASHAD ATKINSON;
CARLA DROUGHN; DAVID FITZPATRICK;
KIRESTIN J. HARRIS; JANICE MEDLEY;
WILLIE L. TOOMBS, JR.; KAHLIL WATKINS;
and TAMERA L. WILLIAMS, on behalf of
themselves and all other persons similarly
situated,

Plaintiffs,

v.

SEARS, ROEBUCK AND CO.,

Defendant.

JAMES W. McCORMACK, CLERK
By: Margaret Boskin DEP. CLERK

4:98 CV 00739 SWW

ORDER APPROVING SETTLEMENT AGREEMENT

Pending before the Court for consideration is the Settlement Agreement reached by the Plaintiffs and the Defendant. The Court preliminarily approved the Settlement Agreement, directed that notices be sent to the class and published, and set a Fairness Hearing for August 17, 2001 to determine the adequacy, reasonableness, and fairness of the proposed settlement. After reviewing the record, the proposed Settlement Agreement, and considering the evidence and arguments presented at the Fairness Hearing, the Court finds:

1. Plaintiffs, Rashad Atkinson, Carla Droughn, David Fitzpatrick, Kirestin Harris, Janice Medley, Eurlene Robinson, Willie Toombs, Jr., Kahlil Watkins, and Tamera Williams (collectively "Plaintiffs") filed a complaint (the "Complaint") individually and on behalf of other similarly situated nonwhite persons against Sears pursuant to Title VII of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. §§ 2000e – 2000e-17), Section 1 of the Civil Rights Act of 1866 (codified as amended at 42 U.S.C. § 1981), and the Arkansas Civil Rights Act of 1993 (codified as amended at Ark. Code Ann. § 16-123-101 to 108). The Complaint alleged that Plaintiffs and similarly situated

nonwhite employees of the Sears store located at 600 South University Avenue in Little Rock, Arkansas ("University Store") had been discriminated against in placement, compensation, promotions, training, and other privileges and conditions of employment.

2. Sears, by its Answer and in other pleadings, denied and continues to deny all allegations that Plaintiffs and the class they sought to represent had suffered any discrimination at Sears.

3. From November, 1998 to May 3, 2001, the parties engaged in extensive communication with clients, document review, deposition testimony, expert statistical analysis, litigation, discovery, and trial preparation on class certification issues, the merits of Plaintiffs' and potential class members' claims, and Sears' defenses.

4. The Court granted Plaintiffs' motion for class certification on July 3, 2000. The Court certified a class of current and former nonwhite hourly non-commission employees of Sears University Store who alleged discrimination in the areas of pay, placement, promotion and evaluation. Class members ("Class" or "Class Members") includes all minority hourly employees at the University Store between November 4, 1995 and July 14, 2000.

5. Between August, 2000 and May 3, 2001, the parties engaged in settlement negotiations, corresponded, participated in face-to-face negotiation and arduous arms-length negotiations, including utilization of the services of a private independent mediator who assisted the parties in reaching the Settlement Agreement ("Agreement," "Settlement," or "Settlement Agreement") filed herein.

6. After extensive discussion between and among the parties and counsel, the parties determined that it was in their best interests to settle this case on the terms and provisions set forth in the Settlement Agreement, given the risks and uncertainties of protracted litigation.

7. If this case were not settled, further extensive court proceedings would be required. Regardless of the initial outcome of the case in the trial court, there almost certainly would be an

appeal by either or both sides to the United States Court of Appeals for the Eighth Circuit and possibly the United States Supreme Court. Thus, unless this case is resolved by settlement, it could be a number of years before this matter is finally resolved.

8. In order to avoid the uncertainty, delay, expense and risk associated with trial and appeal, counsel for the Plaintiffs and Defendant have agreed to resolve this case by the negotiated settlement.

9. The settlement reached by the parties provides for affirmative relief which will be of benefit to the class and to non-class minority employees or applicants.

10. The settlement provides that all class members will receive monetary compensation based on the number of months the class member was employed as an hourly employee at the Sears University Store between November 4, 1995 and July 14, 2000.

11. The Court approved Notice was mailed to each class member on June 19, 2001, informing them of the terms of their rights and responsibilities under the terms of the settlement. The Notices were sent by Rust Consulting, Inc., the Class Administrator retained by Class Counsel.

12. On June 22, 2001 and again on June 28, 2001, the Notice which the Court approved for publication was published in the *Arkansas Democrat-Gazette*.

13. Class Counsel received returned notices which were undeliverable or for which the forwarding order had expired. Class Counsel also received numerous telephone calls in response to the published notice from class members informing Class Counsel of address changes. The current addresses were forwarded to Rust Consulting, who re-sent the Notice. The names of the class members whose notices were returned were forwarded to Rust Consulting who searched for a new address via data bases used for that purpose. Notices were then re-sent to the new addresses.

14. The Court finds that class members have been sufficiently notified of the terms of the proposed settlement and the procedure for bringing objections to the attention of the Court.

15. The affirmative relief and monetary benefits of the settlement are fair when compared to the risks associated with a jury trial and the inevitable appeal.

16. The case involves complex issues of fact and law. The Court actively participated in this case, and is familiar with all the legal issues raised both in the class certification motion and Defendant's Motion for Summary Judgment which were fully briefed by the Parties and supported by voluminous evidentiary submissions, including expert reports.

17. Class response to the settlement has been positive. No class member has opted out of the Class. No class member has submitted a written objection on or before August 3, 2001, the deadline specified in the mailed Notices.

18. The attorneys' fees and costs set forth in the Settlement Agreement are not paid out of the settlement fund and are in addition to class damages. These attorneys' fees and costs which are to be paid by the Defendant are just and reasonable.

19. The Settlement Agreement presented to the Court is fair, reasonable and adequate.

THEREFORE, for the reasons stated above, the Settlement Agreement is approved and the Court simultaneously enters a separate Judgment and Order of Dismissal regarding the further disposition of this case.

IT IS SO ORDERED.


DISTRICT JUDGE

Date: August 17, 2001

THIS DOCUMENT ENTERED ON
DOCKET SHEET IN COMPLIANCE
WITH RULE 58 AND/OR 79(a) FRCP
ON 8-21-01 BY W

F I L E C O P Y

vjt

UNITED STATES DISTRICT COURT
Eastern District of Arkansas
U.S. Court House
600 West Capitol, Suite 402
Little Rock, Arkansas 72201-3325

August 21, 2001

* * MAILING CERTIFICATE OF CLERK * *

Re: 4:98-cv-00739.

True and correct copies of the attached were mailed by the clerk to the following:

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cc: press, post

James W. McCormack, Clerk

Date: 8/21/01 _____

V. Turner
BY: _____