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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Bobs Evans Strikes Deal To End Servers' Tip Credit Suit

By **Adam Lidgett**

Law360 (July 30, 2018, 5:34 PM EDT) -- An Ohio federal judge on Monday signed off on a \$3 million deal between restaurant chain Bob Evans and a group of its servers to settle the tip credit collective action they brought under the Fair Labor Standards Act, saying the deal's terms are fair.

U.S. District Judge James S. Gwin entered his judgment on Monday after issuing his opinion on Friday granting the settlement agreement in the suit, which was conditionally certified as an FLSA collective action in January. According to the judge, a majority of the deal's money will go into a fund for the two named plaintiffs and the more than 1,800 plaintiffs who opted in.

The judge said "the expense and duration of this litigation would have increased had the parties not settled at such an early stage," even though he expressed doubt over how complicated the suit was.

"There is also a public interest in encouraging settlement. This is especially true where the ultimate outcome of the litigation was unknown, as it was here," the judge said. "Before settling, defendants planned on filing motions for summary judgment and a motion to decertify the collective action. Plaintiffs stated that they would have appealed any adverse ruling on either motion. And had the case proceeded to trial, there would have been no guarantee that the plaintiffs would have prevailed."

The judge did lower the requested attorneys' fees amount to \$1 million, saying the requested amount — 40 percent of the whole settlement payment — was too much. The more than \$11,000 in attorneys' costs that plaintiffs' counsel asked for was approved, according to the judge.

The proposed class hit the country restaurant chain with its suit in September 2017, alleging the chain made tipped employees do nontipped work unrelated to their positions, in violation of the FLSA. Bob Evans Farms Inc., Bob Evans Holding Inc., Bob Evans Farms LLC and Bob Evans Restaurants LLC were all listed as defendants.

Lead plaintiffs Christopher Carr and Shureene Newsome accused Bob Evans of violating tip credit provisions — an option allowing employers to pay tipped workers below minimum wage if the difference is made up with tips — after it allegedly failed to inform them of their rights under the FLSA, according to the complaint.

The Ohio residents claimed the restaurant chain improperly applied their tip credit wage by forcing them to do a number of nontipped jobs unrelated to their occupations, such as cleaning, preparing salads and desserts, working cash registers and restocking soda and condiments, according to

court documents.

The companies **moved to toss the suit** in November, court records show. Bob Evans Restaurants asked the court to dismiss the complaint because the lead plaintiffs allegedly couldn't plausibly claim they were engaged in "dual jobs" while employed as servers simply because they spent more than 20 percent of their time performing nontipped food preparation and cleaning duties.

The judge certified a collective class of any servers who worked at an Ohio Bob Evans during a time period between January 2015 and January 2018, according to court records.

Counsel for the employees and Bob Evans declined to comment on Monday.

The employees are represented by Christopher J. Bendau and Clifford P. Bendau II of the Bendau Law Firm, and James L. Simon of the Law Office of Simon & Simon.

The Bob Evans defendants are represented by Adam J. Rocco, Jonathan R. Vaughn, Michael C. Griffaton, Mark A. Knueve, Marcel C. Duhamel and Michael J. Shoenfelt of Vorys Sater Seymour & Pease LLP.

The case is Carr et al. v. Bob Evans Farms Inc. et al., case number 1:17-cv-01875, in the U.S. District Court for the Northern District of Ohio.

--Additional reporting by Christopher Crosby and Joyce Hanson. Editing by Stephen Berg.

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