

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Brian Dempsey, on behalf of himself and all other similarly situated individuals v. Smith’s Food & Drug Centers, Inc., and Does 1 through 50, inclusive

Dempsey · No. 3:24-cv-00269-ART-CSD · Decided December 10, 2025

SUMMARY

The United States District Court for the District of Nevada grants preliminary approval of a proposed class and FLSA collective action settlement in an overtime wage case brought by Brian Dempsey against Smith’s Food & Drug Centers, Inc. The court conditionally certifies a settlement class of Nevada assistant store managers, approves the proposed notice plan and settlement administrator, and preliminarily approves representative payments, attorneys’ fees, and litigation costs. The court schedules a final fairness hearing for May 11, 2026.

CASE DETAILS

COURT	United States District Court for the District of Nevada
JURISDICTION	United States District Court for the District of Nevada
DECIDED	December 10, 2025
DOCKET	3:24-cv-00269-ART-CSD
DISPOSITION	other
PROCEDURAL POSTURE	The parties jointly moved for conditional certification of an FLSA collective and a Rule 23 class for settlement purposes, preliminary approval of their settlement agreement, approval of the proposed notice and distribution plan, and scheduling of a final fairness hearing.
STANDARD OF REVIEW	At the preliminary approval stage, the proposed class settlement must appear to fall within the range of possible approval and be fair, reasonable, and adequate; a full fairness analysis is reserved for the final approval hearing.
PRECEDENTIAL VALUE	unpublished
PARTIES	Brian Dempsey, on behalf of himself and all other similarly situated individuals, Toni Quinn v. Smith’s Food & Drug Centers, Inc., Does 1 through 50, inclusive

TOPICS

class actions wage and hour flsa civil procedure damages

PRACTICE AREAS

civil procedure employment law wage and hour class actions FLSA collective actions

QUESTIONS PRESENTED

1. Whether the proposed settlement class satisfied the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of Federal Rule of Civil Procedure 23 for settlement purposes.
2. Whether the proposed FLSA collective members were similarly situated and could be conditionally certified for settlement purposes.
3. Whether the proposed settlement fell within the range of possible approval and appeared fair, reasonable, and adequate at the preliminary approval stage.
4. Whether the proposed notice plan, settlement administrator, representative payments, attorney-fee request, and litigation-cost request should be preliminarily approved.

HOLDINGS

1. The proposed settlement class satisfies Rule 23(a) and Rule 23(b)(3) because it is sufficiently numerous, presents common questions, the representative claims are typical, the representatives and counsel are adequate, common issues predominate, and a class action is superior for settlement purposes.
2. The proposed FLSA collective may proceed for settlement purposes because its members share material factual and legal issues concerning wages and overtime pay.
3. The proposed \$450,000 settlement warrants preliminary approval because it appears fair, adequate, and reasonable and falls within the range of possible approval.
4. The proposed notice plan was constitutionally sound and sufficient to inform class members of the settlement, their rights, and the final approval hearing.

KEY QUOTATIONS

“At a fairness hearing, the court entertains class members’ objections to the treatment of this litigation as a class action and/or to the terms of the settlement.” (at 2)

“At the preliminary stage, courts typically determine whether the agreement “falls within the range of possible approval.”” (at 3)

“The proposed settlement will be preliminarily approved, as it appears to be fair, reasonable, and adequate.” (at 7)

“The Settlement falls within the range of possible approval as fair, adequate, and reasonable to all potential members of the Settlement Class when balanced against the probable outcome of further litigation, and

ultimately relating to liability and damages issues, and appears to be the product of arm's length and informed negotiations.” (at 8)

FACTUAL BACKGROUND

The action concerns approximately 160 current or former Smith’s Assistant Store Managers in Nevada who allegedly were misclassified as overtime-exempt and were not paid all overtime wages and wages due at termination. Dempsey and opt-in plaintiff Toni Quinn asserted claims arising from their employment and compensation under the FLSA and Nevada law. The parties negotiated a \$450,000 settlement before formal class certification, including proposed representative payments, attorney fees, litigation costs, and a notice and distribution process.

PROCEDURAL HISTORY

Dempsey filed an FLSA and state-law wage-and-hour action on behalf of himself and similarly situated employees. Before formal class certification, the parties reached a settlement and submitted a joint motion for conditional certification and preliminary settlement approval. The court granted the motion, conditionally certified the settlement class and FLSA collective, approved the notice plan and settlement preliminarily, appointed the settlement administrator and class counsel, and scheduled a final approval hearing.

DISPOSITION

other

CASES CITED

- *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 658 (E.D. Cal. 2008)
- *West v. Circle K Stores, Inc.*, No. 040438, 2006 WL 1652598, at *2, *9 (E.D. Cal. June 13, 2006)
- *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 227 F.R.D. 553, 556 (W.D. Wash. 2004)
- *Campbell v. City of Los Angeles*, 903 F.3d 1090, 1109, 1114, 1117 (9th Cir. 2018)
- *Diaz v. Trust Territory of Pacific Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989)
- *National Rural Telecommunications Cooperative v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004)
- *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998)
- *Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d 918, 947 (9th Cir. 2019)
- *Olean Wholesale Grocery Cooperative, Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651 (9th Cir. 2022)
- *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1035-37 (N.D. Cal. 2016)
- *In re Tableware Antitrust Litigation*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007)
- *In re National Football League Players’ Concussion Injury Litigation*, 961 F. Supp. 2d 708, 714 (E.D. Pa. 2014)
- *Churchill Village, L.L.C. v. General Electric*, 361 F.3d 566, 575 (9th Cir. 2004)
- *In re Bluetooth Headset Products Liability Litigation*, 654 F.3d 935, 942, 946 (9th Cir. 2011)
- *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 389 (C.D. Cal. 2007)

- Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968)
- Selk v. Pioneers Memorial Healthcare District, 159 F. Supp. 3d 1164, 1174 (S.D. Cal. 2016)
- Powers v. Eichen, 229 F.3d 1249, 1256-57 (9th Cir. 2000)
- Smothers v. NorthStar Alarm Services, LLC, No. 217CV00548KJMKJN, 2019 WL 280294, at *13 (E.D. Cal. Jan. 22, 2019)

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