

Shelton v. Rack Room Shoes, Inc. and Off Broadway Shoes, Inc.

United States District Court, Northern District of California

(Case No. 5:16-cv-967-NC)

PLEASE READ THIS NOTICE CAREFULLY.

THIS NOTICE may affect your legal right to money you may be entitled to in connection with the settlement of a lawsuit related to your employment with Defendants Rack Room Shoes, Inc. and/or Off Broadway Shoes, Inc. (collectively the “Defendants”). You are **not** being sued and this lawsuit is **not** against you. If you do not want to participate in the Settlement discussed below, you must complete and return an Opt-Out Letter (*see* Para. C, below) postmarked by not later than March 4, 2017, or else you will be bound by the Settlement.

Pursuant to the Order of the United States District Court, Northern District of California (the “Court”), entered on December 31, 2016, you are hereby notified as follows:

YOU HAVE BEEN IDENTIFIED AS SOMEONE WHO WORKED FOR DEFENDANTS AS A HOURLY, NON-EXEMPT EMPLOYEE AT A RETAIL STORE LOCATION IN THE STATE OF CALIFORNIA AT ANY TIME BETWEEN OCTOBER 30, 2011 THROUGH DECEMBER 31, 2016 .

A. DESCRIPTION OF THE CLASS ACTION:

On October 30, 2015, Plaintiff Keyonna Shelton (“Shelton” or “Plaintiff”) filed a class action lawsuit against Defendants alleging the Company violated California laws by failing to provide lawful meal breaks and rest periods. Plaintiff also alleged derivative claims for inaccurate wage statements and failure to receive all wages earned at the time of separation of employment. By way of the lawsuit, Plaintiff sought related damages and penalties. From the outset of the action, Defendants have denied, and continue to deny, all of Plaintiff’s claims. The Court has not ruled on the merits of the claims or defenses. In this class action lawsuit, Shelton sued Defendants on behalf of herself and other employees who may have similar claims. Plaintiff and these other employees are referred to herein as a “Class” or individually as “Class Members.”

Plaintiff and Defendants (collectively “the Parties”) both recognize, however, the risks, expenses and business disruption of continued litigation and therefore, the Parties and their counsel have agreed to resolve their differences by entering into a settlement of the lawsuit which the Court has now preliminarily approved (the “Settlement”). The Parties participated in settlement discussions, including a full day of mediation on August 29, 2016, before Michael J. Loeb, Esq., a highly respected neutral, third-party mediator. As a result of the mediation with the assistance of the mediator, the parties reached a settlement.

The parties have since entered into a Joint Stipulation and Settlement Agreement, to which the Court has given preliminary approval. The Court has made no ruling on the merits of Plaintiff’s claims or Defendants’ defenses, and this Notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the merits of any of the claims or defenses asserted by Plaintiff or Defendants. The Court has, however, preliminarily approved the Parties’ proposed Settlement Agreement as fair, reasonable, and adequate and is in the best interests of the Class Members. The Settlement applies to all current and former employees who worked for Defendants as an hourly non-exempt employee at a retail store location in the state of California at any time between October 30, 2011 through December 31, 2016, which is the date the Court gave preliminary approval to the Settlement. This time period is known as the “Settlement Class Period.”

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendants that the claims in the lawsuit have merit or that Defendants have any liability to Plaintiff or to the Class Members. Plaintiff and Defendants, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable and adequate, and is in the best interests of the Class Members and Defendants.

The Court has also appointed the lawyers for Shelton as “Class Counsel” to represent Class Members affected by, the Settlement. They are:

Alexander I. Dychter, Esq.
DYCHTER LAW OFFICES, APC
1010 Second Ave., Suite 1835
San Diego, California 92101
Telephone: (619) 487-0777

Walter L. Haines, Esq.
United Employees Law Group, PC
5500 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
Telephone: (562) 256-1047

Counsel for Defendants Rack Room Shoes, Inc. and Off Broadway Shoes, Inc. is: Sarah Hamilton, Esq., **HIRSCHFELD KRAEMER LLP**, 505 Montgomery St., 13th Fl., San Francisco, CA 94111; Tel: (415) 835-9000.

The Court-appointed Settlement Administrator is: Phoenix Settlement Administrator.

**Questions? Contact the Settlement Claims Administrator toll free at (800) 784-2174
Phoenix Settlement Administrator, P.O. Box 7208, Orange, CA 92863**

B. SUMMARY OF PROPOSED SETTLEMENT TERMS:

The Court must still grant final approval of the Settlement, which will take place after a fairness hearing (the “Final Approval Hearing”). Subject to the Court’s final approval, a summary of the terms of the Settlement include:

1. Class Settlement Amount:

Defendants will pay a maximum settlement amount of \$795,000 (the “Class Settlement Amount”) which is intended to be used to pay the following: (1) the share of the Settlement of each of the approximately 2027 Class Members who do not opt-out of the Settlement (*see* Para. C, below); (2) the settlement administration costs in an amount not expected to exceed \$20,000 (*if finally approved by the Court*), (3) the costs incurred by Class Counsel in an amount not to exceed \$20,000 (*if finally approved by the Court*), (4) a Service Enhancement to the named Plaintiff to compensate her for the time, work, and risks undertaken in bringing this lawsuit in an amount not to exceed \$5,000 (*if finally approved by the court*), (5) a payment to the State of California Labor and Workforce Development Agency (“LWDA”) pursuant to California’s Labor Code Private Attorney General Act (“PAGA”) in the amount of \$15,000, (6) Class Counsel’s reasonable attorneys’ fees in an amount not to exceed \$198,750 (*if finally approved by the Court*). The sum of funds remaining after items (2) through (6) referenced above are deducted from the Class Settlement Amount shall be referred to as the “Net Settlement Amount” or “NSA.”

2. Distribution Formula:

The Settlement Administrator will determine the number of Eligible Workweeks worked by each Class Member. An “Eligible Workweek” is a calendar week during which the Settlement Class Member worked one or more days for Defendants. Each Settlement Class Member shall be awarded a pro-rata share of the Net Settlement Amount based upon a percentage equal to the amount of each Settlement Class Members’ Eligible Workweeks during the Settlement Class Period divided by the total of all Settlement Class Members’ Eligible Workweeks during the Settlement Class Period. The resulting number shall be the amount that a particular Settlement Class Member is eligible to receive.

Each Settlement Class Member’s share will be allocated as 1/3 to W-2 income and 2/3 to 1099-income.

NOTE: Nothing in this Notice or the Settlement is intended to constitute tax advice. You should consult your tax advisor for any tax issues pertaining to this Settlement.

3. Your Estimated Share of the Net Settlement Amount:

According to the records maintained by Defendants, you were employed by Defendants in California during the applicable time period (*any time between October 30, 2011 and December 31, 2016, the “Settlement Class Period”*) and worked a total of ___ Eligible Workweeks. Your estimated share of the NSA is \$____. If there are no objections to the proposed Settlement, and if the Court grants the Settlement final approval, it is anticipated that your share of the Settlement will automatically be mailed to you on approximately April 10, 2017.

Only if you dispute the stated number of Eligible Workweeks above, you may submit a “dispute letter” directly to the Settlement Administrator. Your dispute letter along with your documentation should be mailed directly to the Settlement Administrator postmarked on or before **March 4, 2017**. You may also call Class Counsel (*see* Section “A” above for their contact information) to ask any questions regarding the Settlement.

PHOENIX SETTLEMENT ADMINISTRATOR
P.O. BOX 7208
ORANGE, CA 92863
Telephone: (800) 784-2174 Fax: (949)209-2503
www.phoenixclassaction.com

C. OPTIONS UNDER THE SETTLEMENT:

You have three (3) options under the Settlement: **1) DO NOTHING** and *automatically* receive money; **2) opt-out** from the Settlement; or, **3) object** to the Settlement.

• Option 1. Do Nothing and Receive Money:

If you do nothing you will *automatically* be entitled to your share of the NSA as detailed above in *Section B.3* and you will *automatically* receive a check in the mail from the Settlement Administrator.

• Option 2. Opt-Out From The Settlement:

If you **do not** wish to take part in the Settlement you must mail a letter to the Settlement Administrator. The letter must state your full name, home mailing address, telephone number, last 4 digits of your social security number (for identity verification purposes only), a statement that you wish to “opt-out” of the Settlement in this matter, your signature and the date (an “Opt-Out Letter”). You must mail the “Opt-Out” Letter directly to the Settlement Administrator at the address directly below, postmarked no later than **March 4, 2017**.

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If you timely mail a completed Opt-Out Letter, you will **not** receive any money, you will **not** be bound by the Settlement or by any judgment entered in this Lawsuit, you will **not** be precluded from prosecuting a timely individual claim against Defendants based on the conduct complained of in this Lawsuit, and you will **not** be allowed to object to the Settlement as explained below.

• **Option 3. Object To The Settlement:**

As long as you do not “opt-out” from the Settlement, you may ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger Class Settlement Amount; the Court can only approve or deny the Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Shelton v. Rack Room Shoes, Inc. and Off Broadway Shoes, Inc.*, Case No. 5:16-cv-967-NC), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California – San Jose Division, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before **March 4, 2017**.

The objection shall state: (a) your full legal name, home address, telephone number, last four digits of your social security number (for identity verification purposes only); (b) the words “Notice of Objection” (c) in clear and concise terms, the legal and factual arguments supporting the objection; and, (d) a list identifying the witness(es) the objector may call to testify at the Final Approval Hearing and true and correct copies of any exhibit(s) the objector intends to offer.

D. RELEASE OF LIABILITY:

If you are a member of the Class and do not exclude yourself from the Settlement, you will be deemed to have given a complete release of all claims related to the case and as described as follows:

Subject to final approval by the Court of the Settlement and upon the Settlement Effective Date, Shelton and Class Members, other than those who submit timely and valid Opt-Out Letters (collectively, “Releasing Settlement Class Members”), will be deemed to have, and by operation of the Order Granting Final Approval of Class Action Settlement will have, expressly and irrevocably released, acquitted, and forever discharged the Defendants, Rack Room Shoes, Inc. and Off Broadway Shoes, Inc., as well as their parents, subsidiaries, joint venturers, and Defendants’ affiliate Rack Room Shoes of Virginia, LLC, and each of their respective shareholders, officers, directors, agents, employees, partners, attorneys, insurers, predecessors, successors, and assigns (collectively referred to as the “Released Parties”) from any claims, causes of action, damages, wages, benefits, expenses, penalties, debts, liabilities, demands, obligations, attorney’s fees, costs, and any other form of relief or remedy in law or equity arising from: (1) the Action and any claims arising out of the actual claims asserted or factual allegations in the Action, including claims for failure to provide meal breaks; failure to authorize and permit rest breaks; failure to pay all wages owed upon separation, failure to provide accurate and itemized wage statements; violation of the Private Attorneys’ General Act (“PAGA”); and unfair competition or unfair business practices under Cal. Bus. & Prof. Code Sections 17200 *et seq.*) and any other claims made in the Action under the California Labor Code, Industrial Welfare Commission Wage Orders, and the California Business and Professions Code, claims made under PAGA, claims for restitution and other equitable relief, liquidated damages, waiting time penalties, penalties, other compensation or benefits; and (2) any wage and hour violations that were alleged or could have been alleged based on the factual allegations in the First Amended Class Action Complaint, whether premised on statute, contract, tort or other theory of liability under state or local law, by any Settlement Class Member against the Released Parties (collectively, the “Released Claims”). This Release and Released Claims also cover all claims for interest, attorneys’ fees and costs related to the Action. The Settlement Class Members will be deemed to have specifically acknowledged that this Release reflects a compromise of disputed claims.

Releasing Settlement Class Members’ Waiver of Rights under California Civil Code Section 1542: With respect to Released Claims only, each Releasing Settlement Class Members shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits they may have had pursuant to 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THIS RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Released Claims do not include claims for workers’ compensation benefits or any of the claims that may not be released by law.

E. ACCESS TO SETTLEMENT DOCUMENTS:

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement, which is available for review at www.phoenixclassaction.com/sheltonvrackroom, by contacting Class Counsel (*see* Section “A” above for their contact information), by accessing the Court docket in this case through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of Court for the United States District Court for the Northern District of California – San Jose Division (280 South 1st Street, San Jose, CA), between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

**Questions? Contact the Settlement Claims Administrator toll free at (800) 784-2174
Phoenix Settlement Administrator, P.O. Box 7208, Orange, CA 92863**

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

F. FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT:

The Final Approval Hearing on the fairness and adequacy of the proposed Settlement will be held on March 29, 2017 at 1:00 p.m., at the United States District Court, Northern District of California, 280 South 1st Street, San Jose, California in Courtroom 7 (4th Floor). The Final Approval Hearing may be continued without further notice to the class. Class members are advised to check the Settlement web-site at www.phoenixclassaction.com/sheltonvrackroom or the Court's PACER web-site (<https://ecf.cand.uscourts.gov>) to confirm that the date has not been changed. If you do not file an objection to the Settlement, it is not necessary for you to appear at this hearing. If you file an objection to the Settlement, you may appear at the Final Approval Hearing, either in person or through your own attorney, as explained in Paragraph C above.

**IF YOU HAVE QUESTIONS ABOUT THIS NOTICE,
PLEASE CALL THE SETTLEMENT ADMINISTRATOR AT (800) 784 - 2174**

DO NOT CALL THE COURT