

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

SHAWN DEWEESE

Plaintiff,

v.

BIG O TIRES, LLC, ET AL.,

Defendants.

* CASE NO. 3:09-CV-57
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* Judge Walter H. Rice
* Mag. Michael Merz
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**ORDER OF PRELIMINARY CLASS CERTIFICATION
AND APPROVAL OF SETTLEMENT AGREEMENT**

Plaintiff Shawn DeWeese (“DeWeese”) and Defendants BOTK, LLC (“BOTK”), Big O Tires, LLC (“Big O”), TBC Retail Group, Inc. (dba Tire Kingdom) (“Tire Kingdom”) and NTW, LLC (dba National Tire & Battery) (“NTB”) (collectively, “Defendants”) have filed a Joint Motion For Preliminary Approval of Settlement Agreement, Approving Notice and Setting a Fairness Hearing (the “Joint Motion”) as provided for in the Settlement Agreement between DeWeese and Defendants dated March 30, 2010 (“Settlement Agreement”) (all defined terms used herein shall have the same meaning as set forth in the Settlement Agreement). The Joint Motion also seeks to establish a schedule for this Court to determine whether the settlement should be approved. The Court having considered the papers filed before it, heard the argument of counsel, considered the Settlement Agreement and the exhibits attached thereto, and after due deliberation and being otherwise advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. The Court may, consistent with the requirements of due process, exercise personal jurisdiction over each member of the Settlement Class after notice to the Settlement Class.

Implementation of the terms of the Settlement Agreement – including, but not limited to, the terms concerning Class Notice, requests for exclusion from the Settlement Class and objections to the Settlement – will satisfy the due process rights and the requirements under federal law regarding absent members of the Settlement Class.

Solely for the purposes of this settlement, the Court hereby *conditionally* certifies the Settlement Class in accordance with the Class Action Fairness Act and Federal Rules of Civil Procedure and in doing so hereby incorporates by reference all of the terms of the Settlement Agreement, which is attached as Exhibit A to the Joint Motion for Preliminary Approval of Settlement Agreement, Approving Notice and Setting a Fairness Hearing.

2. This action will proceed as a class action under solely for the purpose of resolving the claims of the Settlement Class. The Settlement Class is defined as follows:

All consumers who purchased qualifying goods and services from Big O, BOTK, Tire Kingdom, or NTB, and qualified for Free Gas Redemption Certificates.

3. Subject to the conditions set forth in paragraph 2 above, and subject to section V of the Settlement Agreement, the Court finds, as to the Settlement Class defined in paragraph 2 above, that: (a) the Settlement Class is so numerous that joinder of all members is impracticable; (b) common questions of law and fact predominate over any questions affecting only individual members; (c) the claims and defenses of the Class Representatives are typical of the claims and defenses of the Settlement Class; (d) the Class Representative and Class Counsel will fairly and adequately protect the interests of the Settlement Class; (e) inconsistent adjudications with respect to individual members of the Settlement Class would establish incompatible standards of conduct for Defendants; (f) Defendants are alleged to have acted or refused to act on grounds generally applicable to the Settlement Class, thereby making relief appropriate with respect to

the Settlement Class as a whole; (g) the questions of law or fact common to the claims of the representatives and the claims of each member of the Settlement Class predominate over any questions of law or fact affecting only individual members of the Settlement Class; and (h) the settlement class procedure is superior to other available methods for the fair and efficient adjudication of the claims against Defendants.

4. The Court appoints Shawn DeWeese to serve as Class Representative.

5. The Court appoints Jeffrey Harris of Statman, Harris & Eyrich, LLC, 441 Vine Street, Suite 3700, Cincinnati, Ohio 45202 to serve as Class Counsel.

6. The Court preliminarily finds that the terms and conditions of the Settlement as provided for in the Settlement Agreement and the exhibits thereto and the acts taken to date pursuant to those terms and conditions are fair, reasonable, and adequate, and that the Settlement Agreement was entered in good faith after arms-length negotiations. The Court hereby preliminarily approves the terms and conditions of the Settlement Agreement (including the releases attached thereto).

7. The Court approves the proposed forms of Notice (attached as Exhibit B to the Settlement Agreement) as fair, adequate, reasonable, consistent with the requirements of the Class Action Fairness Act and the Federal Rules of Civil Procedure and due process and sufficient to protect the interests of the Settlement Class.

8. The process of notifying the Settlement Class of the Settlement as set forth in Section X of the Settlement Agreement shall begin following entry of this Preliminary Approval Order (the "Notice Date") and shall be completed within fifteen (15) days thereafter.

9. On the Notice Date, Defendants or the Claims Administrator shall implement a website and a toll free telephone number for Class Members to obtain a copy of the Class Notice

and Proof of Claim. A copy of the Class Notice and Proof of Claim will be posted on the settlement website.

10. The Settlement Class shall be notified of the Settlement via U.S. Mail (the “Class Notice”). The Class Notice contains all material information necessary to inform Class Members about the settlement and how to file a claim. In addition, the Class Notice refers Class Members to a website which shall contain the necessary details of the Settlement. A copy of the Class Notice is attached to the Settlement Agreement as Exhibit B.

11. Defendants shall identify a website, which shall contain relevant documentation relating to the Settlement for the Settlement Classes and a method for Settlement Class Members to obtain all necessary details about the settlement, including notices of hearing dates and deadlines and forms for filing a claim. Defendants shall also provide a toll-free telephone number that Class Members may call to obtain information regarding filing claims.

12. Beginning on the Notice Date, Class Members for whom Defendants have reliable contact information shall be notified of the Settlement via U.S. mail and electronic mail, if possible. Defendants believe they can reasonably identify or contact substantially all of the individual Settlement Class Members, making individual notice practical. A Copy of the Settlement Class Notice to be sent via U.S. mail is attached to the Settlement Agreement as Exhibit B.

13. Defendants shall, prior to the date of the Fairness Hearing, file with the Court before the Fairness Hearing an affidavit establishing that notice has been provided to the Settlement Class in compliance with the Preliminary Approval Order.

14. The Court approves the Proof of Claim form, which is attached as Exhibit F to the Settlement Agreement.

15. To participate in the Settlement, Class Members will be required to submit, within one hundred (100) days of the Notice Date of the Settlement, a Proof of Claim form to the designated Claims Administrator that contains certain information, including, but not limited to, the Class Member's name, address, and the certificate to participate in the Gas Redemption Program or a receipt that evidences the purchase of qualifying goods and services during the relevant Class Period or the Gas Voucher Form provided by Tidewater. All Settlement Class Members shall be subject to this deadline, including those Settlement Class Members who file objections or intervene. The filing of objections to the settlement shall not toll or otherwise extend this deadline.

16. Incomplete, inaccurate or otherwise insufficient Proof of Claim forms shall result in a denial of the claim. Proof of Claim forms shall be individually completed by each Settlement Class Member; mass produced, copied or multiple forms using the same names or addresses or seeking more Settlement Benefits than permitted under the terms of the Settlement may be considered fraudulent. Proof of Claim Forms that the Claims Administrator determines in its sole discretion to be falsified or fraudulent shall be denied.

17. All Settlement Class Members who wish to opt out of the Settlement Class, and thereby preserve their claims, if any, against Defendants, must elect not to accept the Settlement Benefits and must mail a request for exclusion to the Claims Administrator and the Clerk of the Court, post-marked not later than June 28, 2010 which is thirty (30) days before the Fairness Hearing on July 28, 2010. In order to be effective, the opt-out request must be timely mailed, must be clearly identified as a "Request for Exclusion from the Defendants Settlement Class," and must set forth the name, address, and a telephone number of the individual requesting

exclusion, as specified in the Class Notice. Requests for exclusion shall be deemed to have been made in each and every capacity in which the individual requesting exclusion is lawfully acting.

18. Any putative Settlement Class Member who has properly and timely requested exclusion from the Settlement Class shall retain the right to prosecute claims for damages, if any. Such excluded Settlement Class Member shall not be entitled to Settlement Benefits and shall not be entitled to appear in this case or object to the Settlement. Any Settlement Class Member who does not timely and properly file a written request for exclusion shall be bound by all terms of the Settlement, and all subsequent proceedings, court orders, and judgments in this case, and shall be eligible to receive Settlement Benefits.

19. Any Settlement Class Member who has not opted out pursuant to paragraph 18_ above may object to the Settlement. In order to exercise this right, a Settlement Class Member must file written objections with the Clerk of the Court and serve same upon Class Counsel and counsel for Defendants by June 28, 2010, which is thirty (30) days before the Fairness Hearing on July 28, 2010. Any such objection must include: (1) proof that the objector is a Settlement Class Member as defined in paragraph 2; (2) a statement of each objection being made; (3) a detailed description of the facts underlying each objection; (4) a detailed description of the legal authorities underlying each objection, if any; (5) a list of witnesses (including each witness' mailing address and daytime telephone number) who may be called to testify at the Fairness Hearing, either live or by deposition or by affidavit, if any; and (6) a list of exhibits, along with copies of the exhibits, that the objector may offer during the Fairness Hearing, if any. The failure to state the bases of any objection shall render such objection invalid, and all persons desiring to appear at the Fairness Hearing shall have filed written objection as provided herein as a condition of appearing and being heard.

20. This Court will hold a Fairness Hearing on July 28, 2010 at 1:30 p.m., to determine whether: (a) to certify the Settlement Class, for purposes of this settlement only; (b) to approve the settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class Members of the Settlement Class; (c) to enter an order finding that the Settlement Agreement was entered in good faith; (d) to enter an order of dismissal of the Complaint with prejudice and without costs as to Defendants effective on the Effective Date of the Settlement; (e) to approve the releases of claims to the extent specified in the Settlement Agreement and exhibits thereto; (f) to rule upon Class Counsel's application for an award of attorneys' fees and for separate fees for the Class Representative; and (g) to rule on such other matters as the Court may deem appropriate.

21. No person shall be entitled in any way to contest the approval of the terms and conditions of this Settlement Agreement or the judgment to be entered thereon, except by filing and serving written objections in accordance with the provisions of paragraph 18 above, and any Class Member who fails to opt out or object in the manner prescribed in paragraph 18 shall be deemed to have waived, and shall be foreclosed forever from raising any objections to the settlement or asserting claims arising out of, relating to, or based in whole or part on any of the facts or matters alleged, or which could have been alleged, or which were otherwise at issue in this case.

22. If the Court approves the settlement following the Fairness Hearing, it shall enter a Final Judgment and Order.

23. If the Court does not approve the settlement in all material respects by a final non-appealable order for any reason, the Settlement Agreement and any party to the Settlement elects

to terminate it in accordance with its terms, or the Settlement Agreement does not become effective for any reason whatsoever, then:

(a) the Settlement Agreement (except for those provisions relating to contingencies in the event that the settlement does not become effective) and any actions taken or to be taken in connection therewith are terminated, become void, and have no further force and effect; and

(b) all parties thereto shall be restored to their respective positions immediately prior to its execution, subject to the provisions of section XV of the Settlement Agreement.

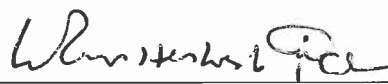
24. If the Settlement is terminated or otherwise does not become effective for any reason, then the Settlement Class certification shall automatically be vacated without the need for further order by the Court. The Settlement Agreement shall not be offered, received, or construed as an admission of any kind, Plaintiff may pursue all available claims and relief, and Defendants shall have the right to object to the maintenance of this action and to oppose any motion for class certification upon any grounds, and the right to interpose all other motions or defenses it may have.

25. Pending final approval of the Settlement by the Court and entry of the Final Judgment and Order, all proceedings in this lawsuit, including all discovery, are stayed, except to the extent such proceedings are required by the terms of the Settlement Agreement. Defendants are relieved of any obligation to respond to the Complaint in this action.

26. The parties shall maintain the confidentiality of the names and addresses of Defendants' customers and other confidential personal or business information used or disclosed

in the course of this Settlement or class administration pursuant to Section XVII of the Settlement Agreement.

DONE AND ORDERED, in the United States District Court, Southern District of Ohio, Western Division, this 28th day of April, 2010.

A handwritten signature in cursive script, appearing to read "William H. White", written over a horizontal line.

District Judge

Copies to:

All Counsel of Record