

**Dawson v Sterling Bancorp., Inc.**

2020 NY Slip Op 33715(U)

October 29, 2020

Supreme Court, Suffolk County

Docket Number: 623157/2019

Judge: Linda Kevins

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SHORT FORM ORDER

INDEX No. 623157/2019

CAL. No. \_\_\_\_\_

**SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 29 - SUFFOLK COUNTY**

***P R E S E N T:***

**HON. LINDA KEVINS**  
*Justice of the Supreme Court*

MOTION DATE 1/22/2020

ADJ. DATE 8/4/2020

Mot. Seq. # 001 - MG

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LOLA DAWSON and BERNYCE FALK, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

- against -

STERLING BANCORP., INC. as successor in  
interest to ASTORIA FINANCIAL CORP.

Defendant.

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Upon the following papers e-filed and read on this motion for preliminary approval of proposed class settlement, inter alia: Notice of Motion and supporting papers by plaintiffs, dated January 8, 2020; it is,

**ORDERED** that plaintiff’s unopposed motion for preliminary approval of the proposed class settlement, conditional certification of the settlement class, appointment of class counsel, and approval of the proposed notice of settlement is granted without opposition and with defendant’s consent; and it is further

**ORDERED** that the action may be maintained on behalf of a class comprised of “All individuals who worked for Defendant as Assistant Branch Managers at an Astoria Bank at any time from March 31, 2013 to December 17, 2017”; and it is further

**ORDERED** that the Court grants preliminary approval of the settlement, and conditionally certifies the class for purposes of settlement; and it is further

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**ORDERED** that the Court appoints plaintiffs' counsel, Kessler Matura P.C, as class counsel; and it is further

**ORDERED** that the notice of the class settlement is approved as in the form of the notice efiled as document number 19, and its proposed distribution is approved; and it is further

**ORDERED** that the schedule proposed by the parties for effectuating the other terms of the proposed settlement is approved, and the schedule is set forth at the end of this decision and order; and it is further

**ORDERED** that a Settlement Hearing (fairness hearing) shall be held to determine whether the proposed settlement of the lawsuit on the terms and conditions provided for in the Settlement Agreement are fair, just, reasonable, adequate, and in the best interest of the Class, and should be approved by the Court, and whether an Order and Final Judgment, as provided in the Settlement Agreement, should be entered; and it is further

**ORDERED** that the Settlement Hearing shall be held before this Court on **March 3, 2021 at 9:30 a.m.**, or if the Court is still operating remotely due to the COVID-19 health crisis, such appearance shall be held remotely. Counsel and any parties who are not represented by counsel shall, **with a copy to all parties, contact the Court by email at [Sufkevins@nycourts.gov](mailto:Sufkevins@nycourts.gov) at least one week prior to the date of the scheduled hearing** to obtain the time and manner of such hearing; and it is further

**ORDERED** that if this Order has not already been entered, plaintiffs are directed to promptly serve a certified copy of this Order, pursuant to CPLR §§ 8019(c) and 2105, upon the Suffolk County Clerk who is directed to hereby enter such order; and it is further

**ORDERED** that upon Entry of this Order, plaintiffs are directed to promptly serve a copy of this Order with Notice of Entry upon all parties and to promptly file the affidavits of service with the Clerk of the Court.

Plaintiffs commenced this action in November 2019 to recover unpaid overtime wages based on Astoria Financial Corporation's violation of the New York Labor Law (NYLL) and the Fair Labor Standards Act (FLSA). Plaintiffs allege that they and others similarly situated were wrongly exempt from overtime payments based upon Astoria's policy and misclassification of plaintiffs, who are assistant branch managers (hereinafter ABM). The complaint alleges that plaintiffs consistently worked over 40 hours per week without receiving premium overtime, as Astoria wrongfully classified them as exempt. In October 2017, Sterling Bancorp, Inc. acquired Astoria Financial Corp., and "continued to classify the ABMs as overtime exempt until approximately December 17, 2017, when Sterling reclassified all ABMs from exempt to non-exempt."

Dawson and Falk, as class representatives, bring this action pursuant to Article 9 of the New York Civil Practice Law and Rules on behalf of themselves and similarly situated ABMs

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who worked from March 31, 2013 to December 17, 2017. The complaint alleges that the class consists of approximately 100 individuals and is comprised of “[a]ll individuals who worked for defendant as Assistant Branch Managers at an Astoria Bank at any time from March 31, 2013 to December 17, 2017.” It alleges further that defendant violated the Fair Labor Standards Act (29 USC § 201 *et seq.*), and Articles 19 and 6 of the New York Labor Law (§§ 650 *et seq.*) and (§§ 195 and 198), respectively, by failing to pay plaintiffs overtime wages, wrongfully misclassifying them as exempt employees, and by failing to provide plaintiffs with proper wage statements.

Plaintiffs now move for an order granting preliminary approval of the settlement as set forth in the Settlement Agreement e-filed as document number 7 (Exhibit A); approving the proposed class action settlement notice e-filed as document number 19 (Exhibit B); conditionally certifying the class, for settlement purposes only, under Article 9 of the New York Civil Practice Law and Rules; appointing Kessler Matura P.C. as class counsel; appointing AB Data as the Settlement Administrator; and scheduling a fairness hearing for final approval of the settlement on or about the 120th day after the Court grants preliminary approval of the settlement. In support of the motion plaintiffs submit; the affirmation of plaintiff’s counsel, Troy L. Kessler; consent forms executed by plaintiffs Dawson and Falk; the settlement agreement and release; a memorandum of law; amended Notice of Proposed Class Action Settlement and Proposed Order; and an affirmation by counsel for defendant, Jackson Lewis, P.C. stating its “Non-Opposition to Plaintiffs’ Motion for Preliminary Approval of the Class Action Settlement and Unopposed Conditional Certification of the Settlement Class.”

Article 9 of the CPLR governs class action lawsuits and sets forth the criteria to be considered in granting class action certification. The determination as to whether to certify a class is within the Court’s discretion (*City of NY v Maul*, 14 NY3d 499, 907 NYS2d 304 [2010]), and the statute is to be liberally construed (*Nicholson v KeySpan Corp.*, 65 AD3d 1025, 885 NYS2d 106 [2d Dept 2009]; *Dank v Sears Holding Management Corp.*, 59 AD3d 584, 872 NYS2d 722 [2d Dept 2009]; *Liechtung v Tower Air*, 269 AD2d 363, 702 NYS2d 111 [2d Dept 2005]). The Court must consider the factors set forth in CPLR §§ 901 (a) and 902 when determining class certification. Pursuant to CPLR § 901(a), the following criteria must be met: (1) the class is so numerous that joinder of all members is impractical, (2) there are common questions of fact or law that predominate over questions affecting individual members, (3) the class representative’s claims or defenses are typical of that of the class, (4) the class will be adequately protected by the representative, and (5) the class action is superior to other available methods of adjudicating the controversy. If such factors are satisfied, CPLR § 902 requires that the Court consider: (1) whether class members have an individual interest in controlling the litigation, (2) the impracticality or inefficiency of prosecuting or defending separate actions, (3) the extent and nature of existing litigation, (4) the desirability or undesirability of concentrating the claim in a particular forum, and (5) difficulties likely to be encountered in managing the class.

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Here, the statutory criteria of the statute have been satisfied, defendant does not oppose the motion, and class certification, is therefore, warranted. There are approximately 100 class members, thus satisfying the numerosity requirement (CPLR § 901[a][1]). Plaintiffs have demonstrated a “predominance of common issues of law and fact over individual questions of damages” (CPLR § 901 [a] [2]; Dawson and Falk have demonstrated that their claims are typical of the claims of the putative class members, as they worked for Astoria as ABMs, and performed same or similar job duties pursuant to the company’s practice (CPLR § 901 [a][3]; plaintiffs adequately represent the class and plaintiffs’ counsel has established that the law firm has substantial experience and is well versed on the subject matter of the lawsuit. Furthermore, counsel has stated that he has several years of experience with class action lawsuits ( CPLR § 901 [a][4]); and, finally a class action will be the most efficient method for handling the subject claims (CPLR § 901 [a][5]). The Court has also considered the factors contained in CPLR § 902, and none of the factors require a denial of the motion for class certification.

Accordingly, pursuant to CPLR §§ 901 and 902, the Court certifies the class as: All individuals who worked for defendant as Assistant Branch Managers at Astoria Bank at any time from March 31, 2013 to December 17, 2017. The settlement class does not include any individuals who opt out of the settlement by effectively excluding themselves from the settlement pursuant to the terms set forth in the settlement agreement and notice.

**The settlement procedure is set forth as follows:**

1. No later than 15 days after the issuance of this Order, defendant will provide the Claims Administrator and Class Counsel with the class list, in accordance with Section 2.6 (A) of the Settlement Agreement.
2. Within 10 days after the Claims Administrator receives the class list, the Claims Administrator will mail the approved Notice and Claim Forms to all Class Members, via First Class Mail, in accordance with Section 2.6(B) of the Settlement Agreement.
3. Class Members will have 60 days from the date the Class Notice is mailed or 45 days after the last day the Claims Administrator makes a mailing to Class members to opt out or object to the settlement. This 60-day period will begin to run from the first mailing, except for those Class Members whose first mailing was returned as undeliverable, in which case the 60-day period for any such Class Member will run from the date of the second mailing to such Class Member (see Sections §§ 2.7(A), 2.8(A). of the settlement agreement).
4. No later than 10 days after the last class member’s time to return a claim form has expired, the Claims Administrator shall provide the parties with the final list of opt outs, objectors, and Authorized Claimants (see 2.7[C]) of the settlement agreement.
5. At least 14 days prior to the Fairness Hearing, plaintiff’s counsel, KM, is to file Plaintiffs’ motion for final judgment and approval in accordance with § 2.9 of the settlement agreement.

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6. The Court will hold a fairness hearing **on March 3, 2021 at 9:30 a.m.**, at IAS Part 29, as set forth in the ordered paragraph of this decision and order, to determine whether the proposed settlement of the lawsuit on the terms and conditions provided for in the Agreement are fair, just, reasonable, adequate, and in the best interest of the Class, and should be approved by the Court, and whether an Order and Final Judgment, as provided in the Agreement, should be entered .

Anything not specifically granted herein is hereby denied.

This constitutes the decision and Order of the Court.



LINDA KEVINS, JSC

Dated 10/29/2020

           FINAL DISPOSITION      X   NON-FINAL DISPOSITION