

BEFORE THE AMERICAN ARBITRATION ASSOCIATION
EMPLOYMENT AND CLASS ACTION TRIBUNAL

LARYSSA JOCK, CHRISTY	:	
MEIERDIERCKS, MARIA HOUSE,	:	
DENISE MADDOX, LISA McCONNELL,	:	
GLORIA PAGAN, JUDY REED, LINDA	:	
RHODES, NINA SHAHMIRZADI,	:	
LEIGHLA MURPHY, DAWN SOUTO-	:	AAA CASE NO. 11 20 0800 0655
COONS, and MARIE WOLF, individually	:	
and on behalf of all others similarly	:	
situated,	:	
	:	
Claimants,	:	Arbitrator: Kathleen A. Roberts
	:	
-against-	:	
	:	
STERLING JEWELERS INC.,	:	
	:	
Respondent.	:	

EQUAL PAY ACT COLLECTIVE ACTION CONDITIONAL CERTIFICATION AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreements entered into between the above-named parties, and having been duly sworn, do hereby find as follows:

Presently before the Arbitrator is Claimants’ Motion for Conditional Certification of Claimants’ Equal Pay Act Claims and Authorization of Notice (Claimants’ Motion).

Claimants allege that Respondent has systematically paid female employees less than their male counterparts who performed the same duties. The evidence with respect to Claimants’ Equal Pay Act (EPA) claims is set forth in detail in the Class Determination Award, dated February 2, 2015, certifying a Title VII class of pay and promotion claims under Claimants’ disparate impact theory, but denying certification of Claimants’ disparate treatment claims. This Conditional Certification Award assumes familiarity with the Class Determination Award, which is hereby incorporated by reference.

The Equal Pay Act (EPA) provides that:

No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility.¹

The EPA permits representative Claimants to bring claims on behalf of similarly-situated employees using the enforcement provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. 216(b). The Second Circuit has approved a two-stage approach commonly followed by district courts in FLSA collective actions. *Myer v. Hertz Corp.*, 624 F.3d 537, 555 (2d Cir. 2010). In the first stage, the court makes a preliminary determination of whether to send notice to potential plaintiffs who may be similarly situated to the named plaintiffs with respect to whether a FLSA violation has occurred. The notice advises potential plaintiffs of the pendency of the action and of their opportunity to opt-in as represented plaintiffs. The court may send this notice after the named plaintiffs make a "modest factual showing" that they and potential opt-in plaintiffs "together were victims of a common policy or plan that violated the law." This "Stage I" determination is known as "conditional certification." Plaintiffs cannot meet their Stage I burden by "unsupported assertions," but may satisfy the similarly-situated requirement by relying on their pleadings and affidavits or the affidavits of other potential class members. The required showing is considered a "low standard of proof" because the purpose of this first stage is merely to determine whether "similarly situated" plaintiffs do in fact exist. At the second stage, the court, on a fuller record, applies a "heightened" standard to determine whether a so-called "collective action" may go forward by determining whether the plaintiffs who have opted in are

¹ 29 U.S.C. Sec. 206(d).

in fact "similarly situated" to the named plaintiffs. The action may be "de-certified" if the record reveals that they are not, and the opt-in plaintiffs' claims may be dismissed without prejudice. *Id.*

Based upon the evidence set forth in the Class Determination Award, I find that Claimants' have more that satisfied the similarly-situated requirements for Stage I conditional certification and notice. See Claimants' Motion at 14-17. As Claimants point out, the arguments and evidence that supported certification of their disparate impact pay claim apply even more strongly to the certification of EPA claims. See Claimants' Reply in Support of Motion for Conditional Certification of Claimants' Equal Pay Act Claims and Authorization of Notice (Claimants' Reply) at 2-8.

Respondent further argues that Claimants' Motion should be denied because their EPA claim would not be manageable as a collective action, particularly because the EPA expressly limits its application to wages within a single "establishment," and Claimants' seek certification of a collective action encompassing numerous establishments. Sterling Jewelers Inc.'s Opposition to Claimants' Motion for Conditional Certification of Claimants' Equal Pay Act Claims and Authorization of Notice (Respondent's Opposition) at 27-39. This argument is rejected for substantially the reasons set forth in Claimants' Motion at 18-22, and Claimants' Reply at 10-13.²

² Respondent also argues that because there has been extensive class certification discovery, the heightened Stage II standard should be applied at this time. Respondent's Opposition at 13-16. This argument is rejected for substantially the reasons set forth in Claimants' Motion at 13, and Claimants' Reply at 8-9. Most importantly, the issue of manageability may be substantially affected by the number of opt-in claimants, their work locations, and their dates of employment.

CONCLUSION

The Arbitrator hereby conditionally certifies this case as a collective action for purposes of Claimants' EPA claims, and tolls the statute of limitations from October 16, 2003,³ to ninety days after notice is issued to putative class members.

NOTICE

Respondent is directed to provide Class Counsel with the names, last known address, and Social Security numbers of putative class members so that Class Counsel may provide notice to proposed class members of the EPA collective action and its opt-in requirements. Notice in substantially the form annexed as Exhibit 1 to this Award shall be mailed to putative EPA collective action members within 20 days of receipt of mailing data from Respondent. The Arbitrator further approves the mailing of a reminder post card 45 days after the initial mailing and the construction of a website to facilitate notice.

SO ORDERED.



Kathleen A. Roberts
Arbitrator

February 29, 2016

³ The selection of this date is explained in the Order Re Claimants' Motion for Tolling of EPA Limitations Period issued contemporaneously with this Award on February 29, 2016.

BEFORE THE AMERICAN ARBITRATION ASSOCIATION
EMPLOYMENT AND CLASS ACTION TRIBUNAL

INSERT CAPTION

IMPORTANT NOTICE AUTHORIZED BY THE ARBITRATOR

TO: ALL CURRENT AND FORMER FEMALE EMPLOYEES WHO HAVE WORKED IN STERLING JEWELERS INC.'S RETAIL STORES AS SALES ASSOCIATES, DEPARTMENT MANAGERS, ASSISTANT MANAGERS, OR STORE MANAGERS SINCE OCTOBER 16, 2003.

SUBJECT: NOTICE OF COLLECTIVE ACTION DETERMINATION FOR CLAIMS UNDER THE EQUAL PAY ACT AND YOUR RIGHTS CONCERNING THE ARBITRATION

1. INTRODUCTION

This Notice is being sent to you by Order of the Arbitrator in the case of *Jock et al. v. Sterling Jewelers Inc.* This Notice informs you of the existence of the arbitration alleging Sterling Jewelers Inc. ("Sterling") discriminated against women who worked in its retail stores as sales associates, department managers, assistant managers, or store managers in matters related to pay and promotion. This Notice will provide you objective, neutral information about the arbitration and the Arbitrator's decision to allow women with claims under the Equal Pay Act ("EPA") to pursue their claims together in what is known as a Collective Action. This Notice also informs you how to pursue a claim under the Equal Pay Act in the Collective Action.

If you wish to participate in the Equal Pay Act Collective Action, you must sign and return a Consent to Join Form, which is attached to this Notice.

**YOUR LEGAL RIGHTS AND OPTIONS TO PURSUE A CLAIM IN THE EPA
COLLECTIVE ACTION**

<p style="text-align: center;">SUBMIT A CONSENT TO JOIN FORM TO PARTICIPATE IN THE EQUAL PAY ACT COLLECTIVE ACTION</p>	<p>To participate in the Equal Pay Act Collective Action, you must complete and send the attached CONSENT TO JOIN FORM to Class Counsel.</p> <p><u>YOU MAY EITHER:</u></p> <p>(1) Submit the form by mail, email, or fax at the addresses provided below. It must be sent or postmarked no later than INSERT DATE,</p> <p style="text-align: center;">OR</p> <p>(2) You may submit the CONSENT TO JOIN FORM electronically by going to www.sterlingclassactionarbitration.com. It must be submitted no later than INSERT DATE.</p>
<p style="text-align: center;">DO NOTHING</p>	<p>If you do nothing, you may not participate in the Collective Action in this case. You may bring your own individual Equal Pay Act claim separately from this action.</p>

2. WHAT IS THE ARBITRATION ABOUT?

Laryssa Jock, Christy Meierdiercks, Maria House, Denise Maddox, Lisa McConnell, Gloria Huff (Pagan), Judy Reed, Linda Rhodes, Nina Shahmirzadi, Leighla Murphy (Smith), Dawn SoutoCoons, and Marie Wolf (“Claimants”), who are current and former female employees of Sterling, have alleged they were paid less than similarly-situated male employees and were denied promotional opportunities because of their gender. On March 24, 2008, this case was filed in arbitration before the American Arbitration Association, a private agency that manages arbitrations, rather than in court, because Sterling’s RESOLVE Program requires that employees bring these claims in arbitration.

Claimants on behalf of themselves and other current and former female employees of Sterling sued Sterling under federal civil rights laws alleging that Sterling paid them less than male employees performing the same work and denied them opportunities for promotion because of their gender. Specifically, Claimants brought this arbitration under Title VII of the Civil Rights Act of 1964 and the Equal Pay Act.

Sterling denies that it has discriminated against Claimants or any other current or former female employee. Sterling alleges that all of the pay and promotion decisions that it has made with regard to its female employees have been for non-discriminatory reasons.

This Notice only relates to the claims brought under the Equal Pay Act. You will receive another notice about your rights under Title VII of the Civil Rights Act of 1964.

On February 29, 2016, the Arbitrator ruled that current and former female employees of Sterling may pursue together their claims under the Equal Pay Act claiming that Sterling paid them less than males performing the same work in the same establishment (“EPA Claim”).

This ruling does not mean that the Arbitrator has determined whether Sterling has violated the Equal Pay Act. If Claimants are successful, the Arbitrator may award back wages and additional damages to those women who pursue their claims in this Collective Action.

The time period within which you can claim back wages for being paid less than similarly-situated men is from October 16, 2003, until the first day of the trial of these claims.

IF YOU WISH TO PURSUE A CLAIM UNDER THE EQUAL PAY ACT IN THIS COLLECTIVE ACTION, YOU MUST FOLLOW THE DIRECTIONS PROVIDED IN SECTION 4 BELOW.

3. WHY DID I RECEIVE THIS NOTICE?

You received this Notice because you have been identified by Sterling as a female employee who worked for Sterling in its retail stores as a sales associate, a department manager, an assistant manager, or a store manager at any time between October 16, 2003, and the present.

4. WHAT DO I NEED TO DO TO JOIN THE EQUAL PAY ACT COLLECTIVE ACTION?

If you want to pursue an EPA Claim in this Collective Action, you **must** sign and return a **Consent to Join Form no late than** INSERT DATE. There are several ways in which you can do this.

First, you can sign the attached Consent to Join Form and return it in the enclosed postage prepaid, preaddressed envelope. Or you may sign and fax the Consent to Join Form to _____, or email a scanned copy of the Consent to Join Form to _____.

Second, you may go to the website www.sterlingclassactionarbitration.com and submit the Consent to Join Form electronically by following the instructions on the website.

You must submit the signed Consent to Join Form no later than INSERT DATE.

If you have any questions or want to confirm your Consent to Join Form was received, you may call (800) xxx-xxxx.

If you submit a Consent to Join Form, you will be bound by any rulings and judgments issued by the Arbitrator and by the terms of any agreement to settle the claims covered by the Collective Action.

If your Consent to Join Form is received late, you will be ineligible to participate in this Collective Action and cannot receive any back wages or other remedies that members of the Collective Action may receive.

5. DO I NEED TO DO ANYTHING TO EXCLUDE MYSELF FROM THE EQUAL PAY ACT COLLECTIVE ACTION?

If you do not want to participate in this Collective Action, you do not need to do anything. If you do not submit a Consent to Join Form, you will not be participating in this Collective Action.

6. WHAT COMES NEXT?

The Arbitrator will schedule a trial to be held on the EPA Claim and Title VII Claim.

7. WHO ARE THE ATTORNEYS AND HOW WILL THEY BE PAID?

The Arbitrator has appointed the lawyers who have been representing the Claimants to serve as Class Counsel. If you choose to participate in the Collective Action and submitted a Consent to Join Form by INSERT DATE, Class Counsel will represent you and your interests in your EPA Claim. If you wish to retain a different lawyer, you may do so.

Class Counsel:

Joseph M. Sellers Kalpana Kotagal Shaylyn Cochran Cohen Milstein Sellers & Toll, PLLC 1100 New York Avenue, N.W. West Tower, Suite 500 Washington, D.C. 20005 Telephone: (202) 408-4600 Facsimile: (202) 408-4699	Sam J. Smith Loren B. Donnell Burr & Smith, LLP 111 2nd Ave. N.E., Suite 1100 St. Petersburg, FL 33701 Telephone: (813) 253-2010 Facsimile: (727) 823-2126
Thomas A. Warren Thomas A. Warren Law Offices, PL 2032-D Thomasville Road Tallahassee, FL 32308 Telephone: (866) 854-5152 (toll free) Facsimile: (850) 385-6008	Barry Goldstein, Esq. 300 Lakeside Drive, Suite 1000 Oakland, CA 94612 Phone: (510) 763-9800 Facsimile: (510) 835-1417

Class Counsel may be entitled to receive the payment of attorneys' fees and costs in this arbitration if there is a recovery or judgment in Claimants' or the Class' favor, including through settlement. Any payment of attorneys' fees to Class Counsel must be approved by the Arbitrator. If there is no recovery or judgment in Claimants' favor, Class Counsel will not receive any attorneys' fees, and you will not be responsible for paying any attorneys' fees.

8. CAN I BE FIRED OR PUNISHED BY STERLING BECAUSE I PARTICIPATE IN THIS ARBITRATION?

It is illegal for Sterling to retaliate against any person who participates in, or assists in the prosecution of, this arbitration. Sterling may not fire, demote, harass or otherwise adversely alter your conditions of employment for participating, or assisting, in this arbitration. The Arbitrator will not tolerate retaliation.

9. WHAT ABOUT THE THINGS I HEAR AT WORK?

Sterling has issued communications to its employees, including class members, about the arbitration which give Sterling's point of view and are not the view of Class Counsel. If you have questions about items in Sterling's communications or about the arbitration, you should call Class Counsel, listed in Section 7, in order to get the Class Counsel's position on those items.

10. ARE THERE MORE DETAILS AVAILABLE?

If you have additional questions about your rights, please contact Class Counsel, as listed in Section 7, or any attorney of your choice. If you submit a timely Consent to Join Form, you will have a right as a class member to attend the hearings held in the Arbitration. You may also review the Arbitrator's ruling permitting you and other women to pursue your Equal Pay Act claims together in a Collective Action by going to the AAA Class Arbitration Docket at www.adr.org.

11. THE ROLE OF THE ARBITRATOR

The contents of this Notice have been reviewed and authorized by Arbitrator Kathleen Roberts. The Arbitrator has not yet determined whether the Claimants can prove their claims. Please do not contact Arbitrator Roberts or other personnel with the American Arbitration Association. The Arbitrator must remain neutral and cannot make any comment about your rights other than as set forth in this Notice.

Dated: _____

Kathleen A. Roberts