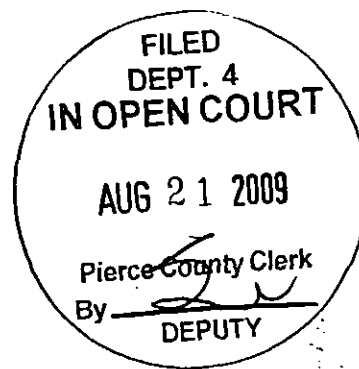


05-2-08756-6 32686036 ORRE 08-21-09



SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR PIERCE COUNTY

JASON CURRY, et al.,

Plaintiffs,

v.

FOX CO., INC., a Washington corporation,  
FRED FOX, JR. and JANE DOE FOX, a married  
couple; and MELODIE FOX, individually,

Defendants.

NO. 05-2-08756-6

ORDER GRANTING MOTION TO AMEND  
CLASS DEFINITION AND PRELIMINARY  
APPROVAL OF SETTLEMENT AND CLASS  
NOTICE

ASSIGNED TO THE HONORABLE BRYAN  
CHUSHCOFF

This Matter having come regularly before the above-entitled Court upon the party's Joint Motion and the Court having reviewed the pleadings and files herein, and having deemed itself fully apprised of the premises, now, therefore, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

Pursuant to the Court's ruling on June 19, 2009, the Court amends the class definition as follows:

All non-salaried employees of Fox Co. Inc., who worked for Fox Co, Inc. at any time between May 31, 2002 through December 31, 2005 and were compensated as a piece rate worker whether now employed by Fox Co. Inc., or not.

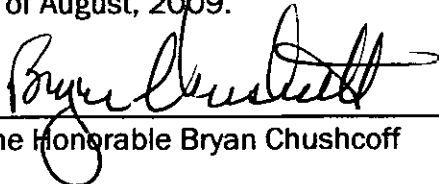
Moreover, the Court finds that the settlement described in the attached settlement agreement is fair, reasonable, and the parties have agreed thereto. The

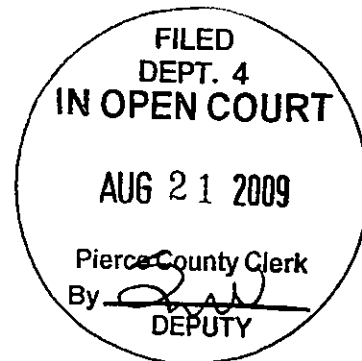
1 Court, therefore, grants preliminary approval of the class settlement as described in the  
2 attached settlement agreement.

3  
4 Furthermore, the Court orders the best notice practicable under the circumstances  
5 of this case such that, as described in the terms of the settlement agreement, class  
6 notice shall be made by publication in both The News Tribune and Sea Latino once a  
7 week for four weeks in a form substantially similar to that attached. Mailed notice shall  
8 be made to all class members whose address information is known and in a form  
9 substantially similar to that attached. The claim form for class members shall be made  
10 available and shall be in a form substantially similar to that attached.

11 On October 30<sup>th</sup> at 1:30 pm, this Court shall conduct a fairness  
12 hearing to determine whether to approve the settlement. Publication of the class notice  
13 shall be completed by October 2, 2009. Mailing of class notice shall be completed  
14 by September 11, 2009. Class members shall submit claim forms and any  
15 objection by by January 4, 2010. PSP  
203

16 DONE IN OPEN COURT this 21 day of August, 2009.

17  
18 By   
19 The Honorable Bryan Chushcoff

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26  


1 Presented By:

2 GORDON, THOMAS, HONEYWELL,  
3 MALANCA, PETERSON & DAHEIM, LLP

4 By

  
James W. Beck, WSBA No. 34208  
Attorneys for Plaintiffs

6 PFAU COCHRAN VERTETIS KOSNOFF PLLC

8 By

Darrell L. Cochran, WSBA No. 22851  
Attorneys for Plaintiffs

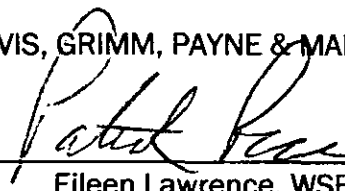
10 DECOSTA LAW FIRM

12 By

Virginia L. DeCosta, WSBA No. 19188  
Attorney for Plaintiffs

14 DAVIS, GRIMM, PAYNE & MARRA

16 By

  
Eileen Lawrence, WSBA No. 11885  
Patrick Pearce, WSBA No. 20857  
Attorney for Defendants

## **SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS**

I. This Settlement Agreement arises out of all events leading to the lawsuit filed by Jason Curry, personally and as class representative (hereinafter Class Representative), against Fox Company Inc. and its owner Fred Fox Jr. and Melodie Fox its bookkeeper. (hereinafter Fox Company Defendants) in the lawsuit entitled Curry v. Fox Company, et al, Pierce County Superior Court, Cause No. 05 -2-08756-6 ("the lawsuit"). This settlement is entered into between the Class Representative and the Fox Company Defendants and is intended to bind all class members who have not opted out of their participation in this proceeding, resolved their claims through prior settlement, or accepted offers of judgment. Eligible class members are identified in the order granting preliminary approval of settlement.

II. The parties agree as follows:

**A. Fox Company Defendants Agree:**

Fox Company will pay to class claimants who submit a claim within the time frames specified below a portion of a settlement fund, based on the following formula:

**The Payment Formula:**

1. A settlement fund not to exceed \$450,000 but not less than \$200,000 will be created once notice to the potential class members and the claims process has expired. This will be referred to as "the settlement fund".
2. Eligibility for payment from the settlement fund will be based on the number of paychecks the employee received between the dates of May 31, 2002 and December 31, 2005 (the "class period"). This is the time frame established in the second order modifying the class definition.
3. A value per pay period, which is every two weeks, has been calculated to determine a "unit value". Each pay period has a "unit value" of \$116.43, which was calculated by using the number of paychecks issued between May 31, 2002 and December 31, 2005 (approximately 3,865 paychecks were issued during this period) and the maximum value of the settlement fund, or \$450,000.
4. At the end of the claims filing period, the claimants will receive one "unit value" for each pay period they were employed by Fox Company, within the "class period" up to the maximum of \$450,000.

**Residual Funds:**

If the number of claimants who file claims and meet the claims verification criteria set forth in this agreement, results in claims payouts totaling less than \$200,000, each claimant will be entitled to receive a maximum of 2.5 times the value of the unit value described above.

If this claims are not sufficient to account for the minimum settlement amount of \$200,000, then 25% of the remaining amount will be distributed to the Legal Foundation of Washington as required by CR 23; and 75% to an agreed legal aid fund benefiting migrant workers.

**Claims Administration:**

Claims against the settlement funds will be made as follows:

Notice to the potential claimants will be provided in the following ways:

- 1) Notice will be printed in two newspapers of general circulation in Pierce County, including the Tacoma News Tribune and in the Spanish or Latino publication, Sea Latino. The notice shall be as set forth in **Exhibit A**, or any modified version of the notice approved by the court. This notice will be published once a week for a period of four weeks. A reference to the firm website referenced in paragraph 2 below will be included in the publication.
- 2) The claims process will be discussed on Class Counsel's website along with the Court's notice in both English and Spanish and a link to a claims form. The claims form will be identical to the one attached as **Exhibit B**.
- 3) A copy of the notice of settlement will be mailed to those claimants where an address is available.

Once the publication period ends, on August \_\_\_\_\_, 2009, each potential claimant will have 90 days in which to process a claim and must comply with the claims process identified below.

Jason Curry, as Class Representative, will receive the sum of \$10,000, payable to Mr. Curry and Class Counsel jointly, upon court approval of this agreement. This sum is in recognition of the work he performed in pursuing this claim.

Defendants will provide for the costs of settlement administration, to include the reasonable cost of the publication of the class notice in the newspapers listed above and mailed notice. Class Counsel is responsible for modifying their website.

**Claims Processing:**

Each claimant who has not previously accepted an offer of judgment, opted out or settled his or her claim must fill out the claim form (**Exhibit B**) and provide sufficient proof of identity to confirm they were employed at Fox Company. Proof of identity can include a Washington Driver's License, Social Security Card, Work Visa (either current or for the period of time they were employed at Fox Company). Other forms of identification may also be acceptable. An employee may also provide copies of payroll checks issued by Fox Company during the class period identified by the court. Any disputes about the eligibility of a potential claimant will be resolved pursuant to the dispute resolution procedure outlined below.

**Claims Eligibility Dispute Resolution Process:**

If a claimant was not employed within the class period, based on Fox Company records, or cannot provide sufficient proof of identity, the parties agree to work diligently to resolve the dispute regarding the claimant's eligibility. Absent an agreement with the claimant, within 30 days, the Court will appoint a special master to decide the issues of eligibility, proof of identity or any related dispute that may arise. The decisions of the Special Master shall be final and binding and shall not be subject to appeal.

Fox Company will assist with the claims administration process. To assist with the claims payment processing, defendants will create a spread sheet with all the relevant payroll data, along with the payment formula outlined above for use by Class Counsel and Fox Company in evaluating the amount of any given claim. Any withholding amount for tax purposes will be included in the spread sheet calculations. The defendants will prepare a settlement "distribution report" within 20 business days of the claim deadline. Class Counsel will have 20 days to approve the same and if approved, payments will be sent within 10 days of Class Counsel's approval of the distribution report. Any disputes, if not resolved within the 10-day period, will be given to the Special Master for a final and binding determination.

The cost of the Special Master will be as follows: 1. the first \$2,000 shall be born by Fox Company; 2. after the first \$2,000, the parties shall share these costs equally. Any and all disputed claims shall be presented to the Special Master for resolution at one time

Payment to claimants will result in appropriate deductions to the employee by treating the settlement amount as wages and subject to withholding. The withholding amounts will be promptly paid to the appropriate taxing entity. A federal 1099 miscellaneous income statement will be generated by Fox Company and sent to the IRS at year-end in the year payment was made.

**Attorney's Fees and Costs:**

Fox Company agrees to provide to Class Counsel the payment of \$500,000 which is due and owing at the time a final order is entered by the Court approving of the Class settlement and that order is no longer subject to appeal ("payment due date"). At the time this payment is due, any unpaid balance will accrue interest at a rate of 12% until fully paid. If full payment is not made by the payment due date, Fox Company will enter into a stipulated judgment in the amount of the unpaid balance, with an interest rate of 12%. The stipulated judgment will not be entered with any Court prior to the date of January 31, 2010.

**B. Plaintiffs' Release of Claims:**

1. The Class Representative in this action agrees that in consideration of the terms stated herein, defendant Melodie Fox, who has been personally joined in this action, is fully released from any liability under the initial claim, and released from any liability for the payment terms of this agreement, immediately upon Court Approval of the settlement agreement and the time frame for appeal expires.

2. Class representative agrees that upon approval of this Settlement Agreement by the Court, and payment of the settlement fund, all claims against the remaining defendants will be dismissed with prejudice. Dismissal with prejudice will be effective to dismiss all claims asserted or claims the class members could assert in this action as those claims relate to payment of wages, overtime, breaks or lunches and any related wage or compensation claim. A dismissal with prejudice, as set forth in **Exhibit C** will be entered upon payment of the settlement funds.

3. Once the attorney's fees and costs, as described above, are paid in full, Class Counsel will execute a satisfaction of judgment or related document acknowledging that all liability for the payment of attorney's fees and costs arising from this litigation is satisfied.

4. Class counsel will provide any interpretive services needed to assist claimants in processing their claims, explaining the terms and conditions of this agreement and the release of claims provisions of this agreement.

**Statement of Non-Liability:**

This agreement has been reached solely as a means of resolving the claims set forth in the lawsuit described above. Fox Company and the individual defendants agreed to the settlement terms as a means of resolving these and any related wage or compensation claims, but such settlement does not act as an admission as to any of the disputed claims; such as class counsel's assertion there are viable lunch and break claims.

**Contract Interpretation:**

For the purpose of construing or interpreting this agreement, the agreement is deemed to have been drafted equally by all parties hereto and shall not be construed strictly for or against any party if an ambiguity is identified. If any portion of this agreement is deemed unenforceable, it shall not affect the other provisions of this agreement. This agreement may be executed in a number of counterparts, which shall be deemed to constitute the equivalent of the original agreement. The execution of a counterpart identical to the original agreement shall have the same force and effect as if the party signed the original.

By: \_\_\_\_\_  
**JASON CURRY, individually and as  
CLASS REPRESENTATIVE**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
**Darrell L. Cochran, Class Counsel**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
**James W. Beck, Class Counsel**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
**Virginia L. DeCosta**  
Appearing on Behalf of the Class

Date: \_\_\_\_\_

By: \_\_\_\_\_  
**Fred Fox Jr., individually and  
on behalf of Fox Company, Inc.**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
**Melodie Fox, individually**

Date: \_\_\_\_\_

**EXHIBIT A** ~~///~~

## CLAIM FORM

Curry v. Fox Company, Inc. et. al., Pierce County  
Cause Number 05-2-08756-6

If you were or are and employee of Fox Company, Inc. located at 5710 161<sup>st</sup> East, Puyallup, WA 98375, between the dates of May 31, 2002 and December 31, 2005, you may be eligible to receive a portion of the settlement proceeds described in the attached Legal Notice.

To participate in the settlement you must not have elected to opt out of the class at any time since this claim was filed in 2005. You must not have accepted a prior offer of judgment. Also, you must have worked as a piece rate worker during the time frame listed above.

You must also:

1. Submit this completed claim form and submit it on or before \_\_\_\_\_, 2009. All timely claim forms will be evaluated to determine if the claimant meets the eligibility criteria outlined above. You may deliver or mail the form to Darrell Cochran, Pfau Cochran Vertetis Kosnoff, 911 Pacific Avenue, Suite 200 Tacoma, WA 98402. Only those forms post marked by \_\_\_\_\_, 2009 will be evaluated for eligibility.
2. You must provide proof of your identity. You can do so by providing a copy (front and back) of a Washington State Driver's License, other official governmental identification (preferably a picture identification) or a copy of your work visa in effect at the time you were an employee at Fox Company Inc.
3. If available, you may also submit copies of any payroll information in your possession, such as W-2 forms or pay check stubs to help establish your employment or the dates of your employment.
4. You must sign the certification in this claim form confirming the information about your dates of employment, work duties and the number of payroll checks you received is accurate.
5. You must sign the release portion of this form as well.
6. Failure to provide this claim form or failure to complete this form may result in a waiver of your claims or impact your rights.

**Certification of Employment:**

I hereby certify, under penalty of perjury under the laws of the State of Washington, that my full name and any names I have used or been known by is \_\_\_\_\_ and that my social security number is \_\_\_\_\_. I also certify I was a paid employee of Fox Company Inc. between the dates of May 31, 2002 and December 31, 2005. I further certify that I received \_\_\_\_\_ payroll checks during that period. I also certify that my job duties included \_\_\_\_\_.

I also acknowledge any portion of the settlement fund I receive is subject to withholding as wages and hereby authorize Fox Company Inc. to withhold the amount reflecting wage payments from the amount I receive. I understand a 1099 miscellaneous income statement will be forwarded to the IRS for the full amount of the payments I receive.

**Release of all Claims:**

In order to participate in any eligibility determination and potential payments from the settlement fund, regardless of whether my claim forms results in payment and regardless of the amount of that payment, I understand any claims I have or may have against Fox Company Inc. for wages, overtime compensation or payment for any unpaid but missed lunches or breaks that occurred during my employment will be forever waived and or released.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

---

# EXHIBIT B

[Redacted]

**LEGAL NOTICE****If You Were an Employee of Fox Co., Inc., on or after May 31, 2002  
A Class Action Lawsuit Could Affect Your Rights****PLEASE NOTE THAT IF YOU ARE A CLASS MEMBER, YOU MAY BE ENTITLED TO SHARE IN THE  
PROCEEDS OF THE SETTLEMENTS DESCRIBED IN THIS NOTICE.**

Your rights may be affected by a lawsuit pending in the Pierce County Superior Court, Cause No. 05-2-08756-6 and captioned *Curry v. Fox Co., Inc.*. The pleadings and other records in this litigation may be examined and copied during regular business hours at the Office of the Superior Court, 930 Tacoma Avenue South, Rm. 110, Tacoma, WA 98402. You may also obtain documents for your review from class counsel at the address listed below.

**AM I A MEMBER OF THE CLASS?**

The Court has recently amended the Class definition to include the following members: "All non-salaried employees of Fox Co., Inc., who worked for Fox Co., Inc., at anytime between May 31, 2002 through December 31, 2005 and were compensated as a piece rate worker whether now employed by Fox Co., Inc. or not." If you object to the change in the class definition, you should make this objection in the same manner described below for objections to the settlement agreement.

**WHAT IS THE LAWSUIT ABOUT?**

The Plaintiff alleges that Fox Co., Inc., and individually named individuals ("Defendants") violated Washington's Minimum Wage Act by not paying sufficient compensation for overtime wages and by not paying for time spent working through lunches and break periods. The parties have reached a proposed settlement, without admitting the accuracy of these allegations, but as a compromise to the remaining claims, which is described below.

**PROPOSED SETTLEMENT**

The proposed settlement includes the following: 1. Defendants will pay to the class claimants, pursuant to the claims process described below, a total amount not to exceed \$450,000 and not less than \$200,000 ("settlement fund"). Each paycheck issued is assigned a unit value of one (1). The total number of paychecks, for purposes of settlement administration, will be based on a verified spreadsheet of paychecks issued by Defendants during the class period. The total number of paychecks will then be divided by \$450,000 to arrive at a per unit monetary value. For example, assuming there are 3,865 paychecks, the per unit value is \$116.43. At the end of the claims filing period, the claimants will receive payment for each unit. If so few claimants file claims that the total payout would be less than \$200,000, then each claimant will receive up to 2.5 times the value of their units. In the event that the amount paid to the claimants even at 2.5 times the unit value still does not exceed \$200,000, then the residual will be distributed as follows: (1) 25% to the Legal Foundation of Washington as required by CR 23; and (2) 75% to an agreed legal aid fund benefiting migrant workers. 2. Class

representative Jason Curry shall receive a sum of \$10,000 in addition to the amount due under the formula above in recognition of the work he performed in prosecution this action.

Under additional provisions of the agreement, defendants and class counsel has agreed to a payment for fees and costs incurred in pursuing this action. Class members will not be expected to pay these fees and costs from their portion of the settlement fund, even if they signed fee agreements earlier in this proceeding indicating they had agreed to pay class counsel's fees and costs or had agreed to set aside a percentage of their recovery for this purpose.

**Rights and Obligations of Class Members**

A prior notice informed you that this action was certified as a class action. The Court has been asked to provide approval of the settlement described above. The Court will hold a hearing (the "fairness hearing") in the Courtroom of Judge Bryan Chushcoff, Superior Court of Pierce County, at 930 Tacoma Avenue South, County-City Building, Tacoma Washington at 9:00 am on August, \_\_\_\_\_ 2009, to determine whether as recommended by both Class Counsel and the class representatives, it should finally approve the proposed settlement. Even if the Court approves the settlement, no distribution of any funds will be made until a later date. To object to the proposed settlement, you must post mark your objection by August, \_\_\_\_\_ 2009 and send the written objection, explaining why you object to Class Counsel, Darrell Cochran at the address listed below. You are also permitted to personally appear at the date and time of the hearing and express your objections directly to the court. To share in the benefits of the proposed settlement, you must be a class member who was employed by Fox Company Inc. as a piece rate worker and received a paycheck, between the dates of May 31, 2002 and December 31, 2005. You must also complete a Proof of Claim Form that can be obtained by writing or calling: Darrell Cochran at the number and address listed below. You may also obtain a copy of the claims form on the firm's website, which is also listed below. A copy of this notice, in both English and Spanish is also posted on the website listed below. In order to receive a share of the cash benefits of the settlement, you must complete and post mark to Darrell Cochran, Pfau Cochran Vertetis Kosnoff, 911 Pacific Avenue, Suite 200 Tacoma, WA 98402, your completed proof of claim. All claims must be postmarked or delivered to the firm no later than November, \_\_\_\_\_ 2009. You may have received a claim form and a copy of this notice, in English and Spanish, by mail at your last known address. You can request a claim form by calling the number below or by accessing a claim form on the internet at: [www.pcvklaw.com](http://www.pcvklaw.com)

**GET MORE INFORMATION**

**WRITE OR CALL: DARRELL COCHRAN (253) 777-0799**

# EXHIBIT C

[EXHIBIT C]

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SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR PIERCE COUNTY

JASON CURRY, et al,

Plaintiffs,

v.

FOX CO., INC., a Washington corporation,  
FRED FOX, JR. and JANE DOE FOX, a  
married couple; and MELODIE FOX,  
individually,

Defendants.

NO. 05-2-08756-6

ORDER OF DISMISSAL

ASSIGNED TO THE HONORABLE  
BRYAN CHUSHCOFF

THIS MATTER having come regularly before the above-entitled Court upon Motion for Dismissal and the Court having reviewed the pleadings and files herein, and having deemed itself fully apprised of the premises, now, therefore, it is hereby ORDERED, ADJUDGED AND DECREED that all claims are dismissed against Defendants with prejudice.

DONE IN OPEN COURT this \_\_\_\_ day of \_\_\_\_\_, 2009.

HONORABLE BRYAN E. CHUSHCOFF

ORDER - 1 of 2  
(05-2-08756-6)  
{1441271 v02.doc}

LAW OFFICES  
DORDON, THOMAS, HONEYWELL, MALANCA,  
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TACOMA, WASHINGTON 98401-1000  
(253) 425-1000 • FACSIMILE (253) 425-1001

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Presented By:

GORDON, THOMAS, HONEYWELL,  
MALANCA, PETERSON & DAHEIM, LLP

By

James W. Beck, WSBA No. 34208  
Attorneys for Plaintiffs

PFAU COCHRAN VERTETIS KOSNOFF PLLC

By:

Darrell L. Cochran, WSBA No. 22851  
Attorneys for Plaintiffs

DEBOSTA LAW FIRM

By:

Virginia L. DeCosta, WSBA No. 19188  
Attorney for Plaintiffs

Approved as to Form; Notice of Presentation Waived:

DAVIS, GRIMM, PAYNE & MARRA

By

Eileen Lawrence, WSBA No. 11885  
Attorney for Defendants