

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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IN RE: Novartis Wage and Hour Litigation

This Document Relates to: All Actions

1:06-md-1794 (PAC)

**ORDER CERTIFYING FAIR
LABOR STANDARDS ACT
COLLECTIVE ACTION, RULE 23
CLASS ACTIONS AND
APPROVING NOTICE**

THIS MATTER comes before the Court on the joint motion of all parties, through their attorneys, in the consolidated action *In Re: Novartis Wage and Hour Litigation*, No. 1:06-md-1794 (PAC), for an order certifying a nationwide Fair Labor Standards Act (“FLSA”) collective action, certifying class actions in New York and California under applicable state law and Rule 23 of the Fed. R. Civ. Pro., approving the content and distribution of notices to be sent to present and former Novartis Pharmaceuticals Corporation (“NPC”) employees who are eligible to join the collective action and/or are putative members of one of the class actions and setting the mailing and return dates for such notices.

There are two wage and hour class action lawsuits against Novartis Pharmaceuticals Corporation, Novartis Corporation, Novartis Finance Corporation and Novartis Services, Inc (collectively, the “Novartis Defendants”) consolidated and pending in this Court. *Lopes, et al. v. Novartis Corporation, et al.*, No. 06 CV 2268 (PAC) (“*Lopes*”) was filed in this Court by Plaintiffs Simona M. Lopes and Carol L. Bollinger, two former NPC Sales Representatives, under FLSA Section 216 and New York Labor Law. Plaintiffs seek certification of a nationwide “representative” opt-in class under the FLSA and a New York statewide “opt-out” class under

Rule 23. Plaintiffs allege that the Novartis Defendants violated the FLSA and New York Labor Law by misclassifying NPC's Sales Representatives as salaried exempt employees and not paying them overtime for hours worked in excess of 40 hours per work week.

White, et al. v. Novartis Pharmaceuticals Corporation, et al., Case No. CV06-2764 AHM (FFMx) ("*White*"), was originally brought in California State court by Plaintiffs Catherine E. White and Minel A. Hider Tobertga, two former Sales Representatives, under California Labor Law and other California laws. The case was removed by the Novartis Defendants to the United States District Court for the Central District of California. Plaintiffs seek certification of a California statewide "opt-out" class under California law. Plaintiff's allege that Defendants violated California Labor Code, relevant Wage Orders and the California Business & Professions Code by: (1) misclassifying Sales Representatives as salaried exempt employees and not paying them overtime for hours worked in excess of 40 in a work week or 8 hours per day; (2) denying meal and rest breaks; (3) failing to provide accurate payroll records and itemized wage statements; and (4) failing to timely pay wages after termination of employment. Defendants deny the allegations in both cases and contend that NPC's sales representatives are exempt under state and federal law.

On October 30, 2006, the *Lopes* and *White* lawsuits were consolidated before this Court under the case name *In Re: Novartis Wage and Hour Litigation*, Case No. 1:06-md-1794 (PAC). On November 28, 2006, at the initial status hearing in this consolidated case, counsel for the Novartis Defendants apprised the Court that they would not challenge certification of the collective action and class action in *Lopes* or the class action in *White*.

The Parties' now move the Court to enter an Order to:

- (i) certify a FLSA collective action in *Lopes*, (ii) approve the proposed class definition, (iii) approve the "Notice of Court Approval of Class

Certification of Wage and Hour Lawsuit Against Novartis” and “Consent to Participate as a Party Plaintiff” form, and (iv) authorize the mailing of these documents to the potential collective action members;

- (i) certify a Rule 23 class action in *Lopes*, (ii) approve the proposed class definition, (iii) approve the “Notice of Class Action Lawsuit” and “Request for Exclusion from Class Action” form and (iv) authorize the mailing of these documents to the class members;
- (i) certify a Rule 23 class action in *White* with regard to all claims asserted in the Complaint, except for those claims brought under the California Business and Professions Code § 17200 *et seq.*, (ii) approve the proposed class definition, (iii) approve the “Notice of Class Action Lawsuit” and “Request for Exclusion from Class Action” form and (iv) authorize the mailing of these documents to the class members;
- set the cut-off date for the receipt of the “Consent to Participate as a Party Plaintiff” form in *Lopes* as July 6, 2007, which is 90 days from the date the Notice is mailed.
- set the cut-off date for the receipt of the “Request for Exclusion from Class Action” form as postmarked no later than July 6, 2007, which is 90 days from the date the Notice is mailed.

The Court, having been fully apprised, now Orders as follows:

The Court certifies a collective action in *Lopes* comprised of the following class of individuals who choose to opt-in to the lawsuit:

ALL PERSONS WHO WORKED FOR NOVARTIS PHARMACEUTICALS CORPORATION AS A SALES REPRESENTATIVE OR SALES CONSULTANT, INCLUDING ALL NON-MANAGER JOB PROGRESSIONS FROM, AND VARIATIONS IN, THE SALES REPRESENTATIVE AND SALES CONSULTANT TITLES IN ALL NPC SALES DIVISIONS OR BUSINESS UNITS, INCLUDING MASS MARKET, SPECIALTY AND SELECT FIELD FORCES FROM MARCH 23, 2003 TO APRIL 7, 2007.

The Court certifies a Rule 23 class action in *Lopes* comprised of the following class of individuals:

ALL PERSONS WHO WORKED FOR NOVARTIS PHARMACEUTICALS CORPORATION IN THE STATE OF NEW YORK AS A SALES REPRESENTATIVE OR SALES CONSULTANT, INCLUDING ALL NON-MANAGER JOB PROGRESSIONS FROM, AND VARIATIONS IN, THE

SALES REPRESENTATIVE AND SALES CONSULTANT TITLES IN ALL NPC SALES DIVISIONS OR BUSINESS UNITS, INCLUDING MASS MARKET, SPECIALTY AND SELECT FIELD FORCES FROM MARCH 23, 2000 TO APRIL 7, 2007.

The Court certifies a Rule 23 class action in *White* comprised of the following class of individuals, with regard to all claims asserted in the Complaint, except for those claims brought under the California Business and Professions Code § 17200:

ALL PERSONS WHO WORKED FOR NOVARTIS PHARMACEUTICALS CORPORATION IN THE STATE OF CALIFORNIA AS A SALES REPRESENTATIVE OR SALES CONSULTANT, INCLUDING ALL NON-MANAGER JOB PROGRESSIONS FROM, AND VARIATIONS IN, THE SALES REPRESENTATIVE AND SALES CONSULTANT TITLES IN ALL NPC SALES DIVISIONS OR BUSINESS UNITS, INCLUDING MASS MARKET, SPECIALTY AND SELECT FIELD FORCES FROM MARCH 23, 2002 TO APRIL 7, 2007.

The Court approves in *Lopes* the “Notice of Court Approval of Class Certification of Wage and Hour Lawsuit Against Novartis” and the “Consent to Participate as a Party Plaintiff” form, attached as Exhibits A and B to the Parties’ joint motion, to be mailed by first class mail, to the individuals who fit the class definition at their last known addresses on or before April 7, 2007.

The Court approves in *Lopes* the “Notice of Class Action Lawsuit” and “Request for Exclusion from Class Action” form, attached as Exhibits C and D to the motion, to be mailed by first class mail to the individuals who fit the class definition at their last known addresses on or before April 7, 2007.

The Court approves in *White* the “Notice of Class Action Lawsuit” and “Request for Exclusion from Class Action” form, attached as Exhibits E and F to the motion, to be mailed by first class mail to the individuals who fit the class definition at their last known addresses on or before April 7, 2007.

All executed "Consent to Participate as a Party Plaintiff" forms in *Lopes* must be filed with the Court by plaintiffs' counsel on or before July 31, 2007.

All "Request for Exclusion from Class Action" forms in *Lopes* and *White* are to be mailed to plaintiffs' counsel, with a postmark no later than July 6, 2007.

IT IS ORDERED.

Paul A. Crotty

United States District Judge

Dated: New York, New York

February 15, 2007

Paul A. Crotty