

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

LAURIE TARDIFF, individually and on
behalf of others similarly situated,

Plaintiffs

v.

Civil No. 02-251-P-C

KNOX COUNTY, DANIEL DAVEY, in his
individual capacity and in his official capacity
as Knox County Sheriff,

Defendants

Gene Carter, Senior District Judge

**ORDER VACATING PRIOR ORDER RE: BIFURCATION FOR TRIAL
AND DECERTIFYING CLASS ACTION ON ISSUES OF ELIGIBILITY
FOR CLASS MEMBERSHIP AND DETERMINATION OF
INDIVIDUAL DAMAGES**

Pursuant to the Court's Procedural Order and Order to Show Cause (Docket Item No. 300) entered on September 9, 2006, the Court now, having reviewed the written responses of the parties to the said Procedural Order and Order to Show Cause, *See*, Docket Item Nos. 311 and 313, and **FINDING** that:

- 1) The questions of law or fact common to the membership of the Class on the issues of liability do not predominate over the multitude of factual questions that affect potential, individual members of the Class for the purposes of determining membership in the Class and the amount of recoverable compensatory, nominal and punitive damages of individual class members, if any;
- 2) That a class action is not superior to other available methods for the fair and sufficient adjudication of existing controversies as to class membership and determination of individual amounts of recoverable compensatory and punitive damages;

- 3) Contrary to the Plaintiffs' assertion, Plaintiffs' Response at 2, the alleged "narrow" definition of the Class does not obviate the need for individualized fact-finding on behalf of each member of the Class on the subject issues in view of the presence of individual fact patterns for each class member. Further, there is no basis for the treatment of such fact-findings as "an administrative task" of "culling Plaintiffs' list of presumed class members," Plaintiff's Response at 3, and that to do so would violate Defendants' due process right to a jury finding on disputed facts bearing on individual class membership and damages computations;
- 4) Plaintiffs' assertion that common issues of fact predominate on issues of damages determination, Plaintiffs' Response at 4, are not supported on the existing record;
- 5) The cases of *Azimi v. Jordan's Meats, Inc.*, 456 F.3d 228 (1st Cir. 2006) and *Carey v. Phipus*, 435 U.S. 247 (1978) properly provide the rule for decision on certain aspects of the damages issues in this case;
- 6) The Plaintiffs' suggestion of alternative procedures of nonjury determination of the disputed fact and for court-imposed mediation of those issues are not supported by law in the face of the Defendants' strenuous insistence upon having resolution of these disputed facts by jury trial; and
- 7) Plaintiffs' objections are otherwise unfounded and unpersuasive.

WHEREFORE, it is hereby **ORDERED** that:

1. The case be, and it is hereby, **BIFURCATED** for trial into resolution by jury trial of the remaining issues as to the liability of Defendants on a class basis as now certified (without consideration of the identity of individual class members), that portion of the case to go forward as now scheduled on October 3, 2006, and subsequent individualized jury determinations of all issues of individual eligibility for class membership and assessment of the damages, if any, of individual class members on a non-class basis; and the case is **DECERTIFIED** as a class action on the said latter categories of issues; and

2. The non-class action portion of the proceedings shall proceed as the Court shall subsequently order after completion of the trial of the liability portion of the case. Such subsequent jury trials will be scheduled by separate order of the Court.

/s/Gene Carter
GENE CARTER
Senior U.S. District Court Judge

Dated at Portland, Maine this 19th day of September, 2006.

Plaintiff

LAURIE TARDIFF

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Defendant

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*In His Individual Capacity, and in
his Official Capacity as Sheriff of
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