

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE

MINUTE ORDER

DATE: 09/24/2020

TIME: 01:30:00 PM

DEPT: 53

JUDICIAL OFFICER PRESIDING: David Brown

CLERK: E. Brown

REPORTER/ERM:

BAILIFF/COURT ATTENDANT: R. Mays, Alvi, N.

CASE NO: **34-2020-00278767-CU-OE-GDS** CASE INIT.DATE: 05/15/2020

CASE TITLE: **Farfan vs. SSC Carmichael Operating Company LP**

CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Motion for Preliminary Injunction

APPEARANCES

Nature of Proceeding: Motion for Preliminary Injunction

TENTATIVE RULING

Effective June 16, 2020, hearings for Department 53 will be held at 1:30 p.m.

Until further notice, **NO IN-PERSON APPEARANCES WILL BE PERMITTED**. All Civil Law and Motion hearings will be conducted remotely via CourtCall or Zoom [which includes telephonic and teleconferencing options]. This will also apply to "Appearance Required" matters. The Department 53 Zoom ID is: 841 204 6267.

Consistent with Local Rule 1.06(B), any party requesting oral argument on any matter on this calendar must comply with the following procedure.

To request oral argument, you must call the Department 53 clerk at (916) 874-7858 and opposing party by 4:00 p.m. the court day before the hearing. At the time of requesting oral argument, the requesting party shall leave a voice message to advise the clerk that it has notified the opposing party of the following: a) its intention to appear and b) that opposing party may appear via Zoom using the Zoom ID indicated above or by CourtCall. If no request for oral argument is made, the tentative ruling becomes the final order of the Court.

The hearings will also be live-streamed on the Court's YouTube page for the benefit of the public. Although the hearings will be live-streamed on the Court's YouTube page, the broadcast will not be saved/preserved. Thus, if any party wishes to preserve the hearing for future use, a court reporter will be required. During the COVID-19 emergency, the Court will supply a court reporter upon request. Any party desiring a court reporter shall so advise the clerk upon request for oral argument. Unless a fee waiver has been granted, the reporter's fee must be paid to the Court prior to the hearing. Local Rule 1.12 and Government Code § 68086.

Plaintiffs Naomi Farfan and Lollie Webster's ("Plaintiffs") motion for preliminary approval of class action and Private Attorneys General Act of 2004 ("PAGA") settlement is UNOPPOSED and is GRANTED.

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This is a wage and hour action brought by Plaintiffs on behalf of a class of approximately 1,120 similarly situated individuals, who worked approximately 81,650 workweeks during the Class Period. (Wynne Decl. ¶ 24.) Plaintiffs' claims against Defendants SSC Carmichael Operating Company LP dba Mission Carmichael HealthCare Center; SSC Carmichael Operating GP, LLC; SSC Carmichael Management Company LP; SavaSeniorCare Administrative Services, LLC; SavaSeniorCare, LLC; SavaSeniorCare Consulting, LLC; SSC San Jose Operating Company LP dba Courtyard Care Center; SSC Pittsburg Operating Company LP dba Diamond Ridge Healthcare Center; SSC Oakland Excell Operating Company LP dba Excel Health Care Center; and SSC Tarzana Operating Company LP dba Tarzana Health & Rehabilitation Center (collectively, "Defendant"): (1) labor code §§ 510, 1194 (wages); (2) Labor Code §§ 226.7, 512 (meal periods); (3) Labor Code §§ 226.7, 512 (rest periods); (4) Business & Professions Code § 17200 (wages); (5) Business & Professions Code § 17200 (meal and rest breaks); (6) Labor Code § 203 (waiting time penalties); (7) Labor Code §§ 226 and 1174; (8) Labor Code § 2699 (PAGA penalties); and (9) 29 U.S.C. § 216(b) (FLSA wages).

Defendant does not admit liability but the parties have been able to reach a compromise. The parties attended mediation on January 22, 2020, wherein no settlement was reached by the parties continued to work to resolve the case and eventually worked out the terms of the Settlement Agreement. (Wynne Decl., ¶ 10, Exh. 1 (Settlement Agreement), ¶¶ 40, 43, 45.)

Settlement Class Definition

The Class is defined as individuals who were employed by Defendant as non-exempt hourly employees in the State of California in the following locations: (a) SSC Carmichael Operating Company LP dba Mission Carmichael HealthCare Center; (b) SSC San Jose Operating Company LP dba Courtyard Care Center; (c) SSC Pittsburg Operating Company LP dba Diamond Ridge Healthcare Center; (d) SSC Oakland Excell Operating Company LP dba Excel Health Care Center; and (e) SSC Tarzana Operating Company LP dba Tarzana Health & Rehabilitation Center. (Wynne Decl. ¶ 14; Settlement Agreement ¶¶ 6, 12.)

The Class Period is from February 25, 2017 through June 17, 2020. (*Id.* ¶ 15; Settlement Agreement ¶ 7.)

The parties have stipulated that all of the elements of class certification have been met. (Code Civ. Proc. § 382; Settlement Agreement ¶¶ 38, 51.) The Court preliminarily approves the proposed settlement class definition.

Class Representative

Plaintiffs Naomi Farfan and Lollie Webster are preliminarily approved as Class Representatives. (Settlement Agreement ¶¶ 9, 51.)

Class Counsel

Edward J. Wynne and Bryan J. McCormack are preliminarily approved as Class Counsel. (Settlement Agreement ¶¶ 3, 51.)

Class Counsel will seek an award not to exceed \$329,878, or 35% of the Gross Settlement Amount. (Wynne Decl. ¶ 21.) Class Counsel will seek reimbursement of costs in an amount not to exceed \$12,000. (Wynne Decl. ¶ 21.)

Settlement Administrator

Phoenix Class Action Administration Solutions will act as the Settlement Administrator and will provide Notice of the Settlement to the Class Members. (Settlement Agreement ¶ 35.) Phoenix has agreed to cap its administration expenses at \$12,000. (Wynne Decl. ¶ 23, Exh. 2.)

PAGA Allocation

The Settlement provides for \$100,000 allocation to the PAGA claim, of which \$75,000 will be paid to the LWDA and 25% will be distributed to the class. (Wynne Decl. ¶ 22.)

Fair, Adequate, and Reasonable Settlement

Before approving a class action settlement, the Court must find that the settlement is "fair, adequate, and reasonable." (*Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 244-245.) "[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1802.) The Court considers such factors as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of class members to the proposed settlement." (*Id.* at 1801.)

Here, the settlement provides, inter alia, that in order to settle the matter, Defendant will a Maximum Settlement Amount of \$942,500, which includes the Individual Settlement Payments, the Service Awards to the Class Representatives, the Class Counsel fees and costs, the PAGA penalties, and settlement administration costs. The Maximum Settlement Amount does not include the employer-share of payroll taxes. (Settlement Agreement ¶ 17.)

The Net Settlement Amount is the Maximum Settlement Amount minus the service awards, Class Counsel's attorney's fees and costs, the PAGA penalties, and settlement administration costs. (Settlement Agreement ¶ 18.)

Individual Settlement Payments ("ISP") shall be calculated using the total Qualified Workweeks for all Settlement Class Members. The respective Qualified Workweeks for each Settlement Class Member will be divided by the total Qualified Workweeks for all Settlement Class Members, resulting in the Payment Ratio for each individual Settlement Class Member. Each Settlement Class Member's payment ratio will then be multiplied by the Net Settlement Amount to calculate each Settlement Class Member's estimated ISP. The ISP will be provided only to the individual Settlement Class Member. Each ISP will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes). (Settlement Agreement ¶ 59(a).) The Net Settlement Amount is estimated to be \$503,622. (Wynne Decl. ¶ 19.)

Class Member's Settlement Shares will be allocated as follows: 10% as wages and 90% as statutory and civil damages and penalties. (Settlement Agreement ¶ 59(b).)

The Settlement Agreement provides that Phoenix Class Action Administration Solutions will act as the Settlement Administrator and will provide Notice of the Settlement to the Class Members. (Settlement Agreement ¶ 35.) The Notice of Settlement provides all of the information necessary to apprise Class Members of the terms of the Settlement Agreement and their rights and options with respect thereto. (Settlement Agreement, Exh. 1.)

The Court preliminarily finds, subject to the final fairness hearing, that the settlement, including the PAGA settlement, is entitled to a presumption of fairness and that all relevant factors support preliminary approval. The moving papers demonstrate that the settlement was the product of arm's-length bargaining between the parties, after a lengthy mediation session, and was reached after sufficient investigation and evaluation by Class Counsel, which allowed the parties and, therefore, this Court to act intelligently with respect to the settlement.

The Settlement Agreement provides that the proposed settlement will be submitted to the LWDA, but the briefing submitted does not provide evidence having done so, as required by Labor Code section 2699(l)(2). Evidence that the settlement agreement has been submitted to the LWDA should be submitted with the final approval briefing.

Class Counsel is experienced in this type of class action litigation, evaluated the strengths and weaknesses of the case, and views the settlement as favorable to the class. (Wynne Decl. ¶¶ 2-9, 28-30.) Class Counsel believes the proposed settlement is in the best interest of the putative class based on their discovery, investigation, negotiations, and a detailed knowledge of the issues in this case. (*Id.*) The settlement is entitled to a presumption of fairness. (*Dunk*, 48 Cal.App.4th at 1802.)

There is nothing before the Court which would overcome the presumption of fairness. Indeed, the settlement provides value to the Class Members as it provides them with monetary compensation in a manner approximately commensurate with the potential value of their individual claims in light of the risks of continued litigation.

The Court grants preliminary approval of the settlement.

Proposed Notice of Class Action Settlement

The Notice (Settlement Agreement, Ex. 1) is approved. The notice shall be disseminated to the Class Members as provided in the Settlement Agreement.

Claims Administrator

Phoenix Class Action Administration Solutions is appointed to act as the Settlement Administrator and will provide Notice of the Settlement to the Class Members.

Final Approval Hearing

The Court will again review and consider the terms of this settlement at the time of the final approval hearing.

The moving, opposing, and reply papers shall be filed in conformity with Code of Civil Procedure section 1005. Counsel should also provide evidence of submitting the settlement to the LWDA, as required by Labor Code section 2699(l)(2) with the final approval briefing.

Finding no objection thereto, the Court will sign the formal order submitted with the moving papers.

COURT RULING

There being no request for oral argument, the Court affirmed the tentative ruling.