

RULING/ORDERS

NOV 16 2020

Garcia v. SCH Whittier, Case No.: 19STCV03461

Sherri R. Carter, Executive Officer/Clerk
By , Deputy
Pedro Martinez

The Parties' Motion for Final Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable.

The terms of the settlement are as follows:

a. The Gross Settlement Amount ("GSA") is \$500,000, non-reversionary. (¶3) The Net Settlement Amount ("Net") (\$306,983.33) is the GSA minus the following:

Up to \$175,166.67 (1/3) for attorney fees;
Up to \$8,500 for litigation costs;
Up to \$5,000 for enhancement award to the class representative;
Estimated \$6,500 for claims administration costs;
Payment of \$3,750 (75% of \$5,000 PAGA Penalty) to the LWDA;
and

b. Plaintiff and the Class will release certain claims described herein.

By December 16, 2020, Class Counsel must lodge a:

a. [Proposed] Judgment consistent with this ruling containing among other things, the class definition, full release language, and names of the 1 class member who opted out; and

b. USB flash drive containing the [Proposed] Judgment in word format.

Court sets nonappearance case management review for January 4, 2021, 8:30 a.m., Dept. 9.

By September 16, 2021, Class Counsel must:

a. file a Final Report re: Distribution of the settlement funds;

b. lodge a [Proposed] Amended Judgment pursuant to Cal. Code of Civ. Pro. § 384 if there is unpaid residue or unclaimed or abandoned class member funds and/or interest thereon;

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c. lodge a USB flash drive containing the [Proposed] Amended Judgment in word format; and

d. Give notice to the Judicial Council of California, Ms. Donna Newman, Budget Services in Sacramento: donna.newman@jud.ca.gov upon entry of the Amended Judgment pursuant to Cal. Code of Civ. Pro. §384.5.

Court sets nonappearance case management review for September 23, 2021.

I.
INTRODUCTION

A. Background

This is a wage and hour class action. On February 5, 2019, Plaintiff filed a class action complaint against Defendants. On May 30, 2019, Plaintiff filed her First Amended Complaint alleging various wage and hour violations, including, failure to pay all wages, including overtime compensation; failure to provide meal and rest periods; failure to provide accurate wage statements; failure to pay owed wages at time of separation from employment as well as violations of unfair competition laws set forth in the California Business and Professions Code ("B&PC"); and violation of Private Attorneys General Act ("PAGA").

Defendant produced the entire personnel file for Plaintiff information regarding the class size, Defendant's written policies including, but not limited to meal, rest, and timekeeping policies, a randomized sampling of class members' time records and corresponding payroll records, and average rate of pay. Defendant also produced for attorney-review only, their financial records, including balance sheets, which demonstrate Defendant's limited ability to fund the proposed settlement and the need for an installment payment plan.

The Parties participated in mediation and settled. A copy of the settlement agreement was filed with the Court.

On January 21, 2020, at the initial hearing on this motion, the Court discussed issues of the settlement with the Parties and continued the hearing for further briefing. In response, on March 9, 2020, Class Counsel filed supplemental briefing, including an Amended Settlement Agreement, a fully executed copy of which is attached to the Supplemental Declaration of Kevin Mahoney as Exhibit B.

On August 14, 2020, the Court granted Preliminary Approval. Now before the Court is Plaintiff's Motion for Final Approval.

B. Settlement Class Definition

Settlement Class: All persons who are employed or have been employed by SCH at its California skilled nursing facilities as nonexempt employees at any time on or between February 5, 2015, to the date of preliminary approval of this settlement by the Court. (Settlement Agreement ¶1.)

Class Period: February 5, 2015, to the date of preliminary approval of this settlement by the Court (¶1)

SCH represented there were approximately 22,570 workweeks worked by Class Members through July 2019. If the actual total number of collective workweeks increases by more than 10% (i.e., increases by more than 2,257 workweeks), SCH will increase the Gross Settlement Fund in an amount equal to the settlement payments due to the additional Class Members under the formula established by this Settlement Agreement. (¶3.B)

SCH represented that there are approximately 205 nonexempt employees who worked for SCH from February 5, 2015, to July 2, 2019, who will be subject to this Settlement. If the total number of nonexempt Class Members who worked for SCH from February 5, 2015, to the present who SCH claims will recover under this Settlement increases by 10% or more than estimated at mediation (i.e., increases by more than 21 people), then SCH will increase the Gross Settlement Amount in a proportional amount equal to the settlement payments due to the additional nonexempt Class Members under the formula established by this Settlement Agreement. (¶3.B)

There are 213 Class Members. (Declaration of Kevin Lee ("Lee Decl."), ¶5.)

The Parties stipulate to class certification for settlement purposes only. (¶1)

C. Terms of Settlement Agreement

The essential terms are as follows:

- The Gross Settlement Amount ("GSA") is \$500,000, non-reversionary. (¶3)

- The Net Settlement Amount ("Net") (\$306,983.33) is the GSA minus the following:
 - o Up to \$175,166.67 (1/3) for attorney fees (§3.C.5);
 - o Up to \$8,500 for litigation costs (Ibid.);
 - o Up to \$5,000 for enhancement award to the class representative (§3.C.3);
 - o Estimated \$6,500 for claims administration costs (§3.C.2); and
 - o Payment of \$3,750 (75% of \$5,000 PAGA Penalty) to the LWDA. (§3.C.4)
- Defendant's share of employer payroll taxes will be paid in addition to the GSA. (§3.C.6)
- Funding of the GSA: The Gross Settlement Amount will be paid in 2 parts as follows: (1) 50% of the Gross Settlement Amount will be paid within 30 days following the Effective Date; and (2) 50% of the Gross Settlement Amount will be paid within 6 months after the date on which the first payment was made. (§3.A)
 - o Defendant has provided a declaration by its Administrator evidencing the need for an installment plan based on Defendant's financial hardship. (Mahoney Supp. Decl., ¶6, Exh. E, Laws Decl., ¶2.)
- There is no claim requirement. (§3.C)
- Response Deadline: Class Members will have 45 calendar days from the date of initial mailing to opt out of or object to the settlement, or dispute workweeks. (¶¶10.D-F) Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have 14 calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. (¶10.C)
 - o SCH has the right to revoke the settlement if Class Members 10% or more of the amount he distributed to the Settlement Class timely request exclusion from the settlement. (¶11)
- Settlement Payments: From the Net Settlement Fund, the Settlement Administrator will calculate the individual settlement payments for Class Members based on SCH's records and

the workweeks worked by each Class Member during the Class Period ("Eligible Workweek"). These payments will be calculated by assigning a certain dollar value so each Eligible Workweek that Class Members worked during the Class Period, the dollar value of each week will be calculated by dividing the aggregate value of the Net Settlement Fund by the total number of Eligible Workweeks worked by all participating Class Members. Partial weeks will be rounded to one decimal point. A participating Class Member's individual Settlement Payment will be determined by multiplying the number of weeks worked during the Class Period as a Class Member by the dollar value of Eligible Workweek. (§4.B)

o Tax Allocation: Individual Settlement Shares will be considered 25% wages and 75% penalties and interest. (§4.D)

- Uncashed Checks: Settlement payment checks issued to Settlement Class Members that remain uncashed 180 calendar days after such checks are mailed by the Settlement Administrator ("Check Expiration Date") shall become void, and the funds associated with such voided checks, plus any accrued interest that has not otherwise been distributed (together, "Unused Funds"), shall be submitted to the California State Controller as unclaimed property in the name of the Class Member who did not cash his or her check. (§4.E)

- The claims administrator will be Phoenix Settlement Administrators. (§4.A)

- The proposed Settlement Agreement was submitted to the LWDA on January 31, 2020. (Mahoney 2nd Supp. Decl. ISO Preliminary Approval, §3 and Exhibit A thereto.)

- Scope of Release: In exchange for the consideration set forth in this Settlement Agreement, each Settlement Class Member who does not validly opt-out, on behalf of him or herself, and on behalf of all those who claim by and through the Settlement Class Member or in his or her stead, including, but not limited to heirs, spouses, executors, administrators, attorneys, agents, representatives, predecessors, successors and assigns, does hereby and forever release, acquit, and discharge, and covenant not to sue SCH, including its past and present divisions, affiliates, affiliated entities, related entities, parents, subsidiaries, joint ventures, predecessors, successors, members, assigns, and their respective shareholders, owners, officers, managers, employees, consultants, directors, employees, agents, trustees, attorneys, insurers, representatives, administrators,

fiduciaries, beneficiaries, subrogees, executors, partners, and privies, including but not limited to Jay Laws (collectively the "Released Parties" and each a "Released Party") from liability for the following claims, which are being released for the time period February 5, 2015, to the date of preliminary approval of this settlement by the Court: All claims and causes of action alleged or that could have been alleged based on the facts set forth in the Lawsuit on file in this Action against SCH. These claims include, but are not limited to: (1) Any claims for unpaid wages or untimely payment of wages - including minimum wages, overtime wages, and claims for interest, penalties (including, but not limited to, waiting time penalties), or premiums in connection therewith, as well as any claims under the California Labor Code, California Wage Orders, alleged or which could have been alleged under the facts pleaded in the Lawsuit; (2) Any claims for failure to comply with the employee itemized wage statement provision under California Labor Code section 226; (3) Any claims for failure to keep accurate payroll records; (4) Any claims for failure to provide or make available rest periods as required under California Labor Code section 512 and applicable IWC Wage Orders; (5) Any claims for failure to provide or make available meal periods as required under California Labor Code section 512 and applicable [WC Wage Orders; (6) Any claims under California Business and Professions Code section 17200, et seq.; (7) Any claims for penalties under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698 et seq. ("PAGA"); and (8) Any and all other claims under California common law, the California Labor Code, California Wage Orders, the California Business and Professions Code, asserted in or that could have been asserted based on the facts set forth in the Lawsuit, as well as any and all damages, restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys' fee resulting therefrom ("Released Claims"). Released Claims by Settlement Class Members against Released Parties shall not take effect until the Gross Settlement Amount is fully funded.

o Settlement Class Members who choose to participate in this Settlement by endorsing/cashing their settlement check will be deemed to have opted into the action for purposes of the federal Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. as amended ("FLSA"), and their Released Claims will include a release of any FLSA claims that could be asserted based on the facts alleged in the Lawsuit and as consistent with the state-law wage and hour claims alleged in the Lawsuit.

o The Parties acknowledge that under this release, the right of the California Labor and Workforce Development Agency ("LWDA") to investigate the released PAGA claims is not

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released, but Released Claims do include any claims for penalties by a Class Member as a result of any such LWDA investigation for the statutes set forth in the Notice submitted by Plaintiff to the LWDA dated February 4, 2019. This release shall not apply to claims for workers' compensation benefits, unemployment insurance benefits, or any other claim or right that as a matter of law cannot be waived or released. (¶2.A)

o The Class Representative will also provide a general release and CC 1542 waiver. (¶¶2.C-D)

II.

ANALYSIS OF SETTLEMENT AGREEMENT

A. Does a presumption of fairness exist?

1. Was the settlement reached through arm's-length bargaining? Yes. The Parties participated in mediation on August 27, 2019 with Steven G. Pearl, Esq., and were ultimately able to come to a settlement agreement. (Mahoney Decl., ¶8.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represents that Defendant produced the entire personnel file for Plaintiff information regarding the class size, Defendant's written policies including, but not limited to meal, rest, and timekeeping policies, a randomized sampling of class members' time records and corresponding payroll records, and average rate of pay. Counsel further represents that Defendant also produced for attorney-review only, their financial records, including balance sheets, which demonstrate Defendant's limited ability to fund the proposed settlement and the need for an installment payment plan. (Motion, 1:18:25.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation. (Id. at ¶¶16-22.)

4. What percentage of the class has objected? Zero objectors. (Lee Decl., ¶9.)

The settlement is fair.

B. Is the settlement fair, adequate, and reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiff on the merits,

balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

Counsel has provided the following exposure analysis:

CLAIM	MAX EXPOSURE	REALISTIC EXPOSURE
Meal Periods	\$1,391,569.92	\$974,098.94
Rest Periods	\$1,391,569.92	\$556,627.97
Unpaid Wages	\$50,000	\$50,000
Wage Statement	\$820,000	\$820,000
Waiting Time Penalties	\$389,779.20	\$389,779.20
PAGA	\$206,400	\$206,400
TOTAL	\$4,249,319	\$2,996,906

(Mahoney Decl., ¶14.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial.

Even if a class is certified, there is always a risk of decertification. (Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.").)

4. Amount offered in settlement. Plaintiff's counsel obtained a \$500,000 non-reversionary settlement which is approximately 11.8% of the maximum estimated exposure in this matter and 16.7% of the realistic estimated exposure in this matter, which is within the "ballpark of reasonableness.

The \$500,000 settlement amount, after reduced by the requested deductions, leaves approximately \$301,083.33 be divided among 212 participating class members. Therefore, the resulting payments will average approximately \$1,420.20 per class member. [$\$301,083.33 / 212 = \$1,420.20$] (Lee Decl., ¶11.) The highest estimated payment is \$3,951.37. (Ibid.)

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement.

Number of class members: 213 (Lee Decl., ¶3.)

Number of notice packets mailed: 213 (Id. at ¶5.)

Number of undeliverable notices: 2 (Id. at ¶7.)

Number of opt-outs: 1 (Id. at ¶8.)

Number of objections: 0 (Id. at ¶9.)

Number of participating class members: 212 (Id. at ¶¶3, 8.)

Average individual payment: \$1,420.20 (Id. at ¶11.)

Highest estimated payment: \$3,951.37 (Ibid.)

Lowest estimated payment: [not provided]

The settlement is "fair, adequate, and reasonable."

C. Attorney Fees and Costs

Class Counsel, Mahoney Law Group, APC request an award of \$175,166.67 in fees and \$8,500 in costs. (Motion ISO Final Approval, 6:10-14.) The Settlement Agreement provides for fees up to \$175,116.67 (33%) and costs up to \$8,500 (Settlement Agreement ¶3.C.5); class members were provided notice of the requested awards and none objected. (Lee Decl., ¶9, and Exhibit A thereto.)

"Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254.) Here, class counsel request attorney fees using the percentage method, with a lodestar crosscheck. (Motion ISO Final Approval, pgs. 9-13.)

In common fund cases, the Court may employ a percentage of the benefit method, as cross-checked against the lodestar. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.)

The fee request represents 33% of the gross settlement amount, which is the average generally awarded in class actions. (See In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn. 13 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].)

Counsel has provided the following lodestar information:

Biller	Rate	Hours	Total
Mahoney	\$750	12.4	\$9,300.00
Singer	\$650	0.5	\$325.00
Odenbreit	\$750	26.3	\$19,725.00
A. Mahoney	\$650	1.5	\$1,090.00
Young	\$550	81.2	\$44,460.00
Perez	\$550	0.3	\$165.00
Dadashzadeh	\$450	0.5	\$225.00
Paralegals	\$175 - \$180	11	\$2,293.00
TOTAL		134.4	\$77,558.00

(Young Decl. ISO Final Approval, ¶29 and Exhibit D thereto.)

As for costs, Class Counsel is requesting \$8,500 in costs. (Id. at ¶31 and Exhibit E thereto.) This is equal to the 8,500 cap provided for in the Settlement Agreement (¶3.C.5); for which Class Members were given notice and deemed unobjectionable. (Lee Decl., ¶9 and Exhibit A thereto.) To date, Class Counsel have incurred a total of \$10,733.91 in costs. (Young Decl. ISO Final Approval, ¶31 and Exhibit E thereto.) The costs include, but are not limited to, mediation (\$6,250), filing fees (\$1,435), and litigation support costs (\$1,000). (Ibid.) The costs appear to be reasonable in amount and reasonably necessary to this litigation.

The court awards \$175,166.67 in attorney's fees and \$8,500 in costs.

D. Incentive Award to Class Representative

The Settlement Agreement provides for an enhancement awards of up to \$5,000 for to the Named Plaintiff Berlin Garcia. (Settlement Agreement, ¶3.C.3) Plaintiff Garcia's contributions to this litigation include, but are not limited to, spending at least 20 hours having numerous meeting and conversations with counsel, searching for and reviewing documents, and remaining available through mediation and the settlement approval process. (Garcia Decl., ¶7.)

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The court grants the enhancement payment in the amount of \$5,000 to Plaintiff Garcia.

E. Claims Administration Costs

The claims administrator, Phoenix Settlement Administrators requests \$4,500 for the costs of settlement administration. (Lee Decl., ¶12.) This is less than the estimated cost of \$5,000 provided for in the Settlement Agreement (¶3.C.2) and disclosed to class members in the Notice, to which there were no objections. (Lee Decl., ¶9 and Exhibit A thereto.) Based on the above, the court awards costs in the requested amount of \$4,500.

III.
CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Final Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable.

2) The terms of the settlement are as follows:

a. The Gross Settlement Amount ("GSA") is \$500,000, non-reversionary. (¶3) The Net Settlement Amount ("Net") (\$306,983.33) is the GSA minus the following:

Up to \$175,166.67 (1/3) for attorney fees;
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Payment of \$3,750 (75% of \$5,000 PAGA Penalty) to the LWDA;
and

b. Plaintiff and the Class will release certain claims described herein.

3) By December 16, 2020, Class Counsel must lodge a:

a. [Proposed] Judgment consistent with this ruling containing among other things, the class definition, full release language, and names of the 1 class member who opted out; and

b. USB flash drive containing the [Proposed] Judgment in word format.

4) Court sets nonappearance case management review for January 4, 2021, 8:30 a.m., Dept. 9.

5) By September 16, 2021, Class Counsel must:

a. file a Final Report re: Distribution of the settlement funds;

b. lodge a [Proposed] Amended Judgment pursuant to Cal. Code of Civ. Pro. § 384 if there is unpaid residue or unclaimed or abandoned class member funds and/or interest thereon;

c. lodge a USB flash drive containing the [Proposed] Amended Judgment in word format; and

d. Give notice to the Judicial Council of California, Ms. Donna Newman, Budget Services in Sacramento:
donna.newman@jud.ca.gov upon entry of the Amended Judgment pursuant to Cal. Code of Civ. Pro. §384.5.

6) Court sets nonappearance case management review for September 23, 2021.

CLERK TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.

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YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

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