


THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

 **Select Language** ▼

[Español](#) |

[Tiếng Việt](#) |

[ਪੰਜਾਬੀ](#) |

[简体中文](#) |

[繁體中文](#)

[Log In](#)

DomainWeb

your resource for case filing information

Buy Credits
0 Credit(s)



[Checkout \(0 item\(s\)\)](#)

[DomainWeb](#) [How This Site Works](#) [FAQ](#)

Case Details

Case Number: RG18890254

Title: Ponce VS AH 2005 Management, L.P.

Case Summary

Register of Action

Participants

Tentative Rulings

Future Hearings

Minutes

Date

Action

2/6/2020

This Tentative Ruling is made by Judge Winifred Y. Smith The motion of plaintiffs for preliminary approval of class action settlement and PAGA settlement is GRANTED.

The complaint alleges claims for failure to provide meal and rest breaks, to pay for all hours worked, failure to provide complete and accurate wage statements under Labor Code 226(a), waiting time penalties under Labor Code 203, and related claims. There are approximately 2,749 members of the class.

The case preliminarily settled for a total of \$1,925,000. The settlement agreement states there will be attorneys' fees of up to \$641,666 (33%), costs of up to \$30,000, a service award of \$10,000 for each class representative, and a net PAGA payment of \$15,000, and settlement administration costs of \$20,500. After these expenses of \$717,166, the class would get \$1,207,834. The average payout per class members would be \$440.

The settlement was mediated with the assistance of Carl West. The court gives "considerable weight to the competency and

Date	Action
	<p>integrity of counsel and the involvement of a neutral mediator in [concluding] that [the] settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129.) (See also In re Sutter Health Uninsured Pricing Cases (2009) 171 Cal.App.4th 495, 504.)</p> <p>The proposed class notice form and procedure are adequate.</p> <p>The proposed class is appropriate for class certification.</p> <p>The motion makes an adequate analysis as required by Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116. (MPA at 16-18.)</p> <p>The scope of the release for the class (para 4.01), for the LWDA under PAGA (para 4.02), and for the plaintiff individually (para 4.03) are appropriate. The scope of the class release must be limited to the claims arising out of the claims in the complaint. The release of claims by the class is limited by the "factual predicate rule." (Hesse v. Sprint Corp. (9th Cir. 2010) 598 F.3d 581, 590.) (See also Hendricks v. Starkist Co (N.D. Cal. 2016) 2016 WL 692739 at * 2-4 [Denying motion for final approval of class settlement because scope of release overbroad].)</p> <p>The court notes and approves of the plan to distribute the settlement funds with no claims process.</p> <p>Unclaimed funds escheat to the state. (Settle Agt para 3.07 (f).) (CCP 1300 et seq) Counsel for Plaintiff do not need to provide a declaration in support of the motion that provides the information required by CCP 382.4 regarding the absence or presence of a relationship between counsel and the residual beneficiary.</p> <p>The Court will not approve the amount of attorneys' fees and costs until final approval hearing. The Court cannot award attorneys' fees without reviewing information about counsel's hourly rate and the time spent on the case. This is the law even if the parties have agreed that Defendants will not oppose the motion for fees. (Robbins v. Alibrandi (2005) 127 Cal. App. 4th 438, 450-451.)</p> <p>"Because absent class members are not directly involved in the proceedings, oversight to ensure settlements are fair and untainted by conflict is the responsibility of both the class representative and the court." (Mark v. Spencer (2008) 166 Cal.App.4th 219, 227.)</p> <p>"In any class action there is always the temptation for the attorney for the class to recommend settlement on terms less favorable to his clients because a large fee is part of the bargain.</p>

Date	Action
	<p>... [T]horough judicial review of fee applications is required in all class action settlements and the fairness of the fees must be assessed independently of determining the fairness of the substantive settlement terms.' ... " 'The evil feared in some settlements-unscrupulous attorneys negotiating large attorney's fees at the expense of an inadequate settlement for the client-can best be met by a careful ... judge, sensitive to the problem, properly evaluating the adequacy of the settlement for the class and determining and setting a reasonable attorney's fee....' " (Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 555-556.)</p> <p>The court notes that counsel seeks fees of \$641,666, which is 30% of the total fund. The court sets out its standard analysis below. Counsel may address that analysis in the fee application.</p> <p>When using the percentage of recovery approach, the court's benchmark for fees is 30% of a total fund. (Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 495; Schulz v. Jeppesen Sanderson, Inc. (2018) 27 Cal.App.5th 1167, 1175; Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 557 fn 13; Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 fn 11.)</p> <p>When cross-checking with the lodestar/multiplier, the court will evaluate the lodestar based on reasonable fees that would have been charged at hourly rates and then apply a multiplier. The multiplier includes contingent fee risk and other factors.</p> <p>The Court will not decide the amount of any service award until final approval hearing. Plaintiff must provide evidence regarding the nature of his participation in the action, including a description of his specific actions and the amount to time he committed to the prosecution of the case. (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804-807.) The court's standard service award is \$5,000.</p> <p>The Court ORDERS that 10% of any fee award to be kept in the administrator's trust fund until the completion of the distribution process and Court approval of a final accounting.</p> <p>The Court will set a compliance hearing after the completion of the distribution process and the expiration of the time to cash checks for counsel for plaintiff and the Administrator to comply with CCP 384(b) and to submit a summary accounting how the funds have been distributed to the class members and the status of any unresolved issues. If the distribution is completed, the Court will at that time release any hold-back of attorney fees.</p> <p>The court will sign the proposed order. The court sets 6/19/20 for the final approval hearing. Plaintiff must reserve a hearing for the motion for final approval.</p>

Page: 1 of 1

[Back to Search Results](#)

