

Velasquez, et al. v. KDL Precision Molding Corp.
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date of Hearing: TBD
Department: 11 (Spring Street)
Case No.: 19STCV30884

FILED
Superior Court of California
County of Los Angeles

SEP 10 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By Dejane Wortham, Deputy
Dejane Wortham

The Court finds:

- (1) The settlement appears to be in the range of reasonableness of a settlement that could ultimately be granted final approval by the Court;
- (2) Grant conditional class certification;
- (3) Appoint the Lidman Law, PAC and Haines Law Group, APC, as Class Counsel;
- (4) Appoint Plaintiff Angelica Velasquez as the Class Representative;
- (5) Approve the notice, and
- (6) Set the scheduled matters as indicated below.

PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

As a “fiduciary” of the absent class members, the trial court’s duty is to have before it sufficient information to determine if the settlement is fair, adequate, and reasonable. (7-*Eleven Owners for Fair Franchising v. The Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, 1802 (“*Dunk*”)].)

California Rules of Court, rule 3.769 governs settlements of class actions. Any party to a settlement agreement may submit a written notice for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion. (Cal. Rules of Court, rule 3.769(c).)

In determining whether to approve a class settlement, the court’s responsibility is to “prevent fraud, collusion or unfairness to the class” through settlement and dismissal of the class action because the rights of the class members, and even named plaintiffs, “may not have been given due regard by the negotiating parties.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 60.)

FAIRNESS OF THE SETTLEMENT AGREEMENT

In an effort to aid the Court in the determination of the fairness of the settlement, *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245 (“*Wershba*”), discusses factors the Court should consider when testing the reasonableness of the settlement.

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. (*Wershba, supra* at p. 245 [citing *Dunk, supra* at p. 1802].) The test is not the maximum amount plaintiff might have obtained at trial on the complaint but, rather, whether the settlement is reasonable under all of the circumstances. (*Wershba, supra* at p. 250.)

In making this determination, the Court considers all relevant factors including “the strength of [the] 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 the class members to the proposed settlement.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 (“*Kullar*”) [citing *Dunk, supra* at p. 1801].)

“The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 [“[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.”].)

TERMS OF SETTLEMENT AGREEMENT

- **Settlement Class** means: All current and former non-exempt, hourly, employees of Defendant KDL Precision Molding Corp. who worked in California from August 30, 2015 through date of preliminary approval. (Settlement Agreement. ¶1)
- **“Class Period”** means: The time period of August 30, 2015 through the date of preliminary approval. (¶1)
- Defendant represents that there are an estimated 11,200 workweeks worked by the 89 Settlement Class members during the Class Period. If the number of workweeks during the Class Period is more than 15% greater than this figure (i.e., if there are 12,880 or more workweeks), the Parties agree that the close of the Class Period and Release Period shall be the date on which the sum of all workweeks worked by Settlement Class members is 12,880 workweeks instead of the Class Period and Release Period closing on the date the Court enters preliminary approval. (¶4.E)
- The parties agree to conditional certification for the purposes of settlement. (¶1)

The Gross Settlement Amount (“GSA”) is **\$375,000, non-reversionary.** (¶4)

The Net Settlement Amount (“NSA”) of **\$196,750.00** is the GSA minus:

- Up to **\$125,000** (1/3) for attorneys’ fees (¶6);
 - **Fee Split:** 46.5% to Haines Law Group, APC, 31% to Lidman Law, APC, and 22.5% to Michael Burgis & Associates, P.C. Michael Burgis & Associates, P.C. is the referring attorney. (Lidman Decl., ¶30.)
- Up to **\$30,000** for attorneys’ costs (¶6);
- Up to **\$5,000** for an incentive award to the class representative (¶4.C.3);
- Estimated **\$7,000** for costs of claim administration (¶4.C.2); and
- **\$11,250** (75% of \$15,000 PAGA penalty) payable to the LWDA. (¶4.C.5)

Defendant's share of payroll taxes shall be paid separately paid by Defendant separately from in addition to, the Gross Settlement Amount. (¶4.D)

Settlement Class members are not required to submit a claim form to receive a payment. (¶5)

Funding of the GSA: The Gross Settlement Amount shall be deposited with the Settlement Administrator within 30 calendar days of Final Approval. (¶4.B)

Payments to the Settlement Class: From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class Member's Settlement Award based on the following formula:

- 90% of the Net Settlement Amount shall be allocated to Settlement Class Members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked during the Class Period, the numerator of which is the Settlement Class Member's total workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all Settlement Class Members who worked during the Class Period. (¶5.B.1)
- 5% of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating Settlement Class member who was employed by Defendant at any time from August 30, 2018 until the date of preliminary approval, shall receive a portion of the Wage Statement Amount proportionate to the number of Workweeks worked during the period August 30, 2018 until the date of preliminary approval, the numerator of which is the Settlement Class Member's gross number of Workweeks worked during this period, and the denominator of which is the total number of Workweeks worked by all participating Settlement Class members during this period. (¶5.B.2)
- 5% of the Net Settlement Amount shall be designated as the "Waiting Time Penalty Amount." Each participating Settlement Class member who was separated from employment with KDL at any time between August 30, 2016 through preliminary approval shall receive a portion of the Waiting Time Penalty Amount. The Waiting Time Penalty amount shall be divided equally between all Settlement Class members who were separated from their employment between August 30, 2016 through preliminary approval. (¶5.B.3)
- PAGA Amount: \$3,750.00 of the Gross Settlement Amount has been designated as the "PAGA Amount." Each participating Settlement Class member who was employed by Defendant at any time from August 30, 2018 until the date of preliminary approval, shall receive a portion of the PAGA Amount proportionate to the number of Workweeks that he or she worked during the period of August 30, 2018 until the date of preliminary approval, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks worked during the time period from August 30, 2018 until the date of preliminary approval, and the denominator of which is the total number of Workweeks

worked by all Settlement Class members who do not opt out of the Settlement during the time period of August 30, 2018 until the date of preliminary approval. (¶5.C)

- **Tax Allocation:** 1/3 as wages and 2/3 as interest and penalties. (¶5.E)

“Response Deadline” means within 60 calendar days of the date of the initial mailing of the Notice. (¶11.C) Class Members have until the Response Deadline to submit Requests for Exclusion, Objections, or Disputes. (¶¶11.C-E) 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. (¶11.F)

- Defendant will have the option of voiding the agreement if more than 10% of the Settlement Class opts out of the settlement (¶14)

Uncashed Checks: Each member of the Settlement Class who receives a Settlement Award must cash that check within 120 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks were not cashed within 120 days after mailing will be delivered to the California State Controller’s Office- Unclaimed Property Fund in the name of the Settlement Class member. (¶5.F)

Notice of the Settlement was provided to the LWDA on June 30, 2020. (See Proof of Service.)

The claims administrator is Phoenix Settlement Administrators. (¶4.A)

All class members who do not opt out will release certain claims, discussed in detail below.

ANALYSIS OF SETTLEMENT AGREEMENT

A. Does a Presumption of Fairness Exist?

1. Was the Settlement reached through arm’s-length bargaining? Yes. On May 21, 2020, the parties participated in a full-day mediation with Steven Rottman. (Declaration of Scott Lidman (“Lidman Decl.”), ¶12.)

2. Were investigation and discovery sufficient to allow counsel and the Court to act intelligently? Yes. Counsel represents that after agreeing to participate in early mediation, KDL informally produced a sampling of time records and payroll data for the putative class, as well as its wage and hour policies and other relevant documents and information relevant to the claims alleged in advance of mediation. (*Id.* at ¶11.) Plaintiff retained an expert to conduct an analysis of the payroll data and time records produced by Defendant to calculate Defendant’s potential exposure for Plaintiff’s claims. (*Ibid.*)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in complex litigation, including wage and hour class action cases. (*Id.* at ¶¶2-8; Declaration of Paul Haines (“Haines Decl.”), ¶¶2-8; Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶¶2-8; Declaration of Milan Moore (“Moore Decl.”), ¶¶ 2-4.)

4. What percentage of class has objected? This cannot be determined until the fairness hearing. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2011) ¶ 14:139.18 [“Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing.”].)

B. Is the settlement fair, adequate and reasonable?

1. Strength of Plaintiffs’ case. “The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar* at 130.)

Class Counsel analyzed the data provided by Defendant and calculated Defendant’s exposure on each of the alleged claims as follows:

Violation	Maximum Exposure	Discounted Exposure
Unpaid Wages Claim	\$97,201.00	\$62,208.64
Meal Breaks	\$1,405,044.50	\$505,816.02
Rest Breaks	\$540,391.50	\$226,964.43
Wage Statement Violations	\$373,350.00	\$134,406.00
Waiting Time Penalties	\$136,857.60	\$67,060.22
PAGA Penalties	\$375,400.00	\$157,668.00
Total	\$2,928,245.00	\$1,154,123.31

(Lidman Decl., ¶¶16-28.)

2. Risk, expense, complexity and likely duration of further litigation. Further litigation carries the possibility of non-certification and unfavorable rulings on the merits of the above legal issues.

3. Risk of maintaining class action status through trial. It would have been Plaintiffs’ burden to maintain the class action status through trial.

4. Amount offered in settlement. Based on the calculations above, the Settlement amount of \$375,000 therefore represents approximately 12.8% of the maximum forecasted recovery and 32.5% of the discounted forecasted recovery in this matter. These percentages are within the “ballpark of reasonableness.”

5. Extent of discovery completed and the stage of the proceedings. As stated above, it appears that Plaintiffs have completed sufficient discovery in order to make an informed decision.

6. Experience and views of counsel. As indicated above, Class Counsel is experienced in class actions, including wage and hour class action cases. Class Counsel is of the opinion that the settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances.

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

8. Reaction of the class members to the proposed settlement. The class members’ reactions will not be known until they receive notice and are afforded an opportunity to object or opt-out. This factor becomes relevant during the fairness hearing.

SCOPE OF RELEASE

Plaintiff and every member of the Settlement Class (except those who opt out) will fully release and discharge Defendant, and all of its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, parent corporate entities, related companies, subsidiaries, affiliates, parents, insurers, divisions, concepts, related or affiliated companies, insurers, and attorneys (collectively the "Released Parties") as follows: Settlement Class members will release all claims, demands, rights, liabilities and causes of action that were pled in any of the Complaints in the Action, or which could have been pled in any of the Complaints in the Action based on the factual allegations therein, that arose during the Class Period, with respect to the following claims: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (e) failure to provide accurate, itemized wage statements; (f) failure to timely pay wages upon separation of employment; (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above; and (h) a claim under California Labor Code Private Attorneys General Act of 2004 that could have been premised on the facts, claims, causes of action or legal theories described above (collectively "Released Claims"). The release period for the Released Claims shall be the same time period as the Class Period. The res judicata effect of the judgment will be the same as that of the Release. (§3.A) The releases described herein shall be null and void if the Settlement is not fully funded. (§3.C)

The Class Representative will also provide a general release and CC 1542 waiver. (§3.B)

The release of claims by class members is acceptable as it is limited to claims that were or could have been alleged based on the facts alleged, and which arose during the relevant period. Plaintiff's broader release is acceptable as he was represented by counsel when this term was negotiated.

CONDITIONAL CLASS CERTIFICATION

A. Standards

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified. (*Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (*Dunk* at 1807, fn. 19.) Because a settlement eliminates the need for a trial, when considering whether to certify a settlement class, the court is not faced with the case management issues present in certification of a litigation class. (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) Finally, the Court is under no "ironclad requirement" to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (*Wershba, supra* at p. 240.)

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B. Analysis

1. Numerosity. This action involves a class of approximately 89 members. (Lidman Decl., ¶14.)

2. Ascertainability. This class definition “is precise, objective and presently ascertainable.” (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919.) Class Members are identifiable from Defendant’s records. (Lidman Decl., ¶14.)

3. Community of interest. “The community of interest requirement involves three factors: ‘(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.’” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

Here, counsel contends that commonality is met because here, Settlement Class members’ claims arise from KDL’s common, uniform policies and practices that applied to Settlement Class members during the class period. (Lidman Decl., ¶15.) Specifically, Plaintiff alleged that KDL’s common and uniform policies and practices resulted in the following violations: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure to provide all legally required meal periods; (4) failure to authorize and permit all legally required rest periods; (5) failure to provide accurate, itemized wage statements; (6) failure to timely pay all wages upon separation; (7) unlawful business practices; and (8) liability for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”). (*Ibid.*) Counsel contends that as a result of the common and uniform policies and practices that applied to all Settlement Class members, their claims involve common questions of law and fact, including but not limited to: (1) Whether KDL properly paid all minimum wages; (2) Whether KDL properly paid all overtime wages; (3) Whether KDL provided all legally compliant meal periods; (4) Whether KDL authorized and permitted all legally required rest periods; (5) Whether KDL failed to furnish accurate, itemized wage statements; (6) Whether KDL failed to timely pay all wages owed upon separation; and (7) Whether KDL’s conduct constituted unlawful and/or unfair business practices. (Motion, 5:14-22.)

Further, counsel contends that Plaintiff’s claims are typical of those held by the members the proposed Settlement Class, because, first, Plaintiff was employed by Defendant’s during the Class Period as a non-exempt employee and was subject to Defendant’s wage and hour policies at issue in this case; and second, Plaintiff was injured by the same challenged policies that allegedly injured the Settlement Class as a whole. (Motion, 6:3-15.)

Finally, counsel contends that Plaintiff is an adequate representative because, there are no conflicts between Plaintiff and the proposed Settlement Class, and Plaintiff is represented by competent counsel. (Motion, 19:20-27.)

4. Adequacy of class counsel. As indicated above, Class Counsel is experienced in class actions.

5. Superiority. Given the size of the potential individual recovery, it would be impracticable to bring each Class Member’s claim as an individual claim.

Because the elements of class certification have been met, the class may be conditionally certified at this time.

NOTICE TO CLASS

A. Standard

California Rules of Court, rule 3.769(e) provides: "If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing." Additionally, rule 3.769(f) states: "If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement."

B. Form of Notice

The proposed notices to class members are attached as Exhibit B to the Settlement Agreement. The information provided in the proposed notices includes a summary of the litigation, the nature and terms of the settlement, the procedures for participating in, opting out of, or objecting to the settlement, and the time, date, and location of the final approval hearing. The Court finds the notice acceptable.

C. Method of Notice

Notice will be by Direct Mail. Within 30 calendar days after entry of an order preliminarily approving this Settlement Agreement, Defendant will provide the Settlement Administrator with the Class Data. (¶11.A) Within 15 business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the NCOA database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing. (¶11.B) Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace" to obtain an updated mailing address within 5 business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within 3 business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. It will be conclusively presumed that, if an envelope so mailed has not been returned within 30 days of the mailing, the Settlement Class member received the Notice Packet. (¶11.F)

D. Cost of Notice

The settlement administration costs are estimated at **\$7,000**. This amount appears reasonable. However, prior to the time of the final fairness hearing, the Claims Administrator

must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

ATTORNEY FEES AND COSTS

California Rules of Court, rule 3.769(b) states: “Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action.”

Ultimately, the award of attorney fees is made by the Court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122, 1132-1136.) In common fund cases, the Court may utilize the percentage method, cross-checked by the lodestar. (*Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, “the court has an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable.” (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

The question of whether class counsel is entitled to **\$125,000** (1/3) in attorneys’ fees will be addressed at the fairness hearing when class counsel brings a noticed motion for attorney fees. Counsel should also be prepared to justify any costs sought (**capped at \$30,000**) by detailing how such costs were incurred.

SCHEDULE OF SETTLEMENT PROCEEDINGS

The following schedule is set by the Court:

Preliminary Approval Hearing – September 10, 2020

Deadline for Serving Notices to Class Members – November 3, 2020

Deadline for Objecting or Opting Out – January 4, 2021

Deadline for Class Counsel to File Motion for Final Approval of Settlement and Motion for Attorney Fees (and respond to any objections) – January 26, 2021
(16 court days prior to hearing)

Final Fairness Hearing and Final Approval – February 18, 2021 at 10:00 a.m. in Dept. 11 via CourtConnect.