



Superior Court of California, County of Sonoma

MINUTE ORDERS

COPY

SCV-267909 - HOWELL VS JONBEC CARE, INC., A CALIFORNIA CORPORATION

Date of Hearing: July 09, 2021
3:00 PM

Motion
Courtroom 16

Judicial Officer: Elliot Lee Daum
Court Reporter: None

Courtroom Clerk: Lauren Plazola

Parties Present:

There are no appearances.

Hearing:

Tentative Ruling announced (previously posted).

With no appearances and no request for oral argument, the Court adopts the previously published tentative ruling as follows:

Plaintiff Danielle Howell moves for an order granting conditional class certification of the class, and preliminary approval of, the class-wide settlement reached with Defendant JonBec Care, Inc. in the within action ("the Settlement"). **The motion is GRANTED. The Final Fairness Hearing is hereby set for November 10, 2021, at 3:00 p.m., in Department 16.**

A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing. (California Rules of Court, rule 3.769(a).) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. (Rule 3.769(c).) 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. (*Ibid.*) The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing. (Rule 3.769(d).) 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. (Rule 3.769(e).) The court must determine the settlement is fair, adequate, and reasonable. (Rule 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) Settlements preceding class certification are scrutinized more carefully to make sure that absent class members' rights are adequately protected. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 240.)

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* at 245, citing *Dunk* at 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*, at 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, citing *Dunk* at 1801.)

I. Factual allegations

Defendant owns and operates twenty-four-hour residential-care facilities in California for the developmentally disabled and the elderly. Plaintiff worked for defendant as a direct-care staff member from approximately March 2019 through July 2019. In her complaint, Plaintiff alleges that defendant failed to provide employees with proper rest periods and meal periods, that it failed to list its complete address on wage statements, and that it failed to provide all wages upon termination. Plaintiff also has a PAGA claim.

II. Terms of the Settlement Agreement

Class Members are defined as: All individuals who were employed by defendant in California as non-exempt employees at any time during the period of January 23, 2016, through September 16, 2020.

Under the Settlement, defendant will establish a nonreversionary \$1.0 million Gross Settlement Amount, from which all Settlement Class Members will automatically be paid their Individual Settlement Shares without any need to submit claim forms. Defendant will also pay all employer-side payroll taxes and contributions associated with the Settlement. The Gross Settlement Amount will result in an average Individual Settlement Share to each Settlement Class Member of approximately \$832.88. There are 726 Class Members.

The Settlement allows for up to \$333,333.33 in attorney fees which is equal to one-third of the Gross Settlement Amount, plus reimbursement of actual costs incurred, currently estimated to be \$15,000.00. The Settlement also allows for a Service Award of up to \$10,000.00, as well as a \$30,000 PAGA Payment, \$22,500.00 of which is to be paid to the LWDA. Class Counsel estimates that Administration Costs will not exceed \$12,000.00.

III. A. Presumption of fairness

A presumption of fairness exists as the Settlement was reached only after extensive negotiations, subsequent to extensive discovery by experienced counsel. The parties began negotiating Plaintiff’s claims in 2019. During that time, the parties agreed to toll all applicable statutes of limitations for the benefit of the class, and they engaged in substantial informal discovery and an all-day mediation so that they could evaluate their respective positions’ strength and weaknesses. Defendants produced thousands of pages of documents, including, defendant’s written scheduling, meal-break, and rest-break policies for the entirety of the relevant statutory period; computerized lists of all non-exempt employees who had worked for defendant at any time since January 23, 2016, along with each such employee’s job title, hiring date, and, if applicable, termination date; and a computerized random sampling of employees’ timekeeping and payroll data. In March 2020, the parties met with Todd Smith, Esq., a seasoned labor and employment mediator, to help facilitate their settlement discussions. The \$1.0 million Gross Settlement Amount was the

amount ultimately proposed by the mediator to settle this case, after the parties' mediation session failed to reach a settlement.

III. B. Settlement is fair, adequate, and reasonable

"The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." (*Kullor* at 130.) Class Counsel's investigation into the facts enabled them to come to conclusions regarding the value of the class claims. Based on evidence gleaned from informal discovery, Class Counsel estimates the following: Total rest-period damages under Plaintiff's on-site theory: \$3,239,979.60; Total meal-period damages under Plaintiff's on-site theory: \$946,704.00; Total meal-period and rest-period damages under Plaintiff's alternative understaffing theory: \$195,756.00; Total derivative wage-statement damages stemming from improper meal and rest breaks: \$1,496,000.00; Total derivative waiting-time damages stemming from improper meal and rest breaks: \$1,793,088.00; Total rest-period civil penalties: \$273,850.00; Total meal-period civil penalties: \$96,800.00; and, total standalone wage-statement damages attributable to the failure to list the employer's complete address: \$330,750.00. Thus, Total potential damages therefore range from \$195,756.00 to \$7,846,421.60.

However, all of Plaintiff's claims are arguably subject to dispositive defenses. For example, twenty-four-hour residential care facilities are permitted to require employees to remain on site during rest periods "if the employee is in sole charge of residents." (8 California Code of Regulations, section 11050 subsection 12(C).) And, while multiple employees may have been on duty during the daytime, according to Defendant any given day-shift employee at any given facility may have been in sole charge of a subset of the facility's residents, which arguably places all such employees within the wage order's rest-period exemption. A similar defense applies to Plaintiff's on-site-meal-period theory. (8 California Code of Regulations section 11050 subsection 11(E).) If Plaintiff's underlying meal-and rest-period claims fail, her derivative waiting-time and wage-statement claims also necessarily fail. Further litigation carries the possibility of unfavorable rulings on the merits. Additionally, defendant has corrected the address issue on wage statements.

It appears that Class Counsel have completed sufficient discovery in order to make an informed decision. They are experienced in class actions, including cases involving wage and hour violations. They endorse the Settlement as fair and reasonable because the Settlement benefits represent a significant percentage of the maximum damages that may have been awarded.

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 final fairness hearing.

IV. Conditional Class Certification

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. Winsor* (1997) 521 U.S. 620, 622-627.) This 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* at 240.)

- a. Numerosity: There are 726 class members. Thus, numerosity has been sufficiently established.
- b. Ascertainability: Class Members are defined as: All individuals who were employed by Defendant in California as non-exempt employees at any time during the period of January 23, 2016, through September 16, 2020. Class members are identifiable based on a review of Defendants' records.
- c. 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. (*Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal. 4th 1004, 1021.) Plaintiff alleges that Defendant had practices that violated the Labor Code, and that these were common practices as to all class members. Plaintiff maintains that her claims are typical of the class because they arise out of the same common policies applicable to all employees. Plaintiff argues that the alleged waiting-time claims are derivative of those violations and implicate the same overarching questions, which only need to be answered once for the class as a whole.
- d. Adequacy of Class Counsel: As indicated above, Class Counsel is experienced in class actions, including cases involving wage and hour violations.
- e. Superiority: Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

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

V. Notice

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, California Rules of Court, 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."

The proposed notice, attached as Exhibit 8 to the Declaration of David Zelenski, is sufficient.

Within 10 business days of the preliminary approval, Defendants will provide Class Data to the Settlement Administrator. (Settlement Agreement ¶34) Within 15 days of receiving the Class Data, the Settlement Administrator will send a notice in both English and Spanish to the Settlement Class Members by first-class mail and by e-mail. (*Id.* at ¶35.) The Settlement Administrator will use standard skip tracing devices as necessary to verify the accuracy of all addresses before the initial mailing. (*Id.* at ¶35.b.) The proposed means of providing notice appears to provide the best possible means for giving actual notice to the putative class members.

The cost of claims administration is not stated in the settlement agreement, but Class Counsel states that it may be up to \$12,000. This amount appears reasonable. However, prior to the time of the final fairness hearing, the Settlement 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.

VI. Attorney Fees

The question of whether class counsel is entitled to \$333,333.33 will be addressed at the final fairness hearing.

VII. Final Fairness Hearing

16. The Final Fairness Hearing is hereby set for November 10, 2021, at 3:00 p.m., in department

Hearing Events/Documents Filed:

- Court announces tentative decision
- The Court adopts its previously published tentative ruling

-End of Minute Order-

Next Hearing(s) - Information current as of July 09, 2021:

November 02, 2021 3:00 PM Case Management Conference
Courtroom 16
Broderick, Patrick

November 10, 2021 3:00 PM Other Hearing
Courtroom 16
Broderick, Patrick

*For more information please contact the Clerk's Office at (707) 521-6500 during official business hours.
www.sonoma.courts.ca.gov*