SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 05/14/2021 TIME: 09:30:00 AM DEPT: C16

JUDICIAL OFFICER PRESIDING: James J. Di Cesare
CLERK: Martha Diaz
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT: Jonathan M. Aguilar

CASE NO: **30-2017-00940239-CU-OE-CXC** CASE INIT.DATE: 08/25/2017
CASE TITLE: **Crandall vs. Maxim Healthcare Services, Inc.**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 73500864

EVENT TYPE: Motion for Approval of Class Settlement
MOVING PARTY: Dilcia Crandall
CAUSAL DOCUMENT/DATE FILED: Motion - Other FOr Preliminary Approval of Class and representative Action Settlement, 04/01/2021

APPEARANCES
Jessica Campbell, from Aegis Law Firm, PC, present for Plaintiff(s) telephonically.
Alex Grodan, from Morgan, Lewis & Bockius LLP, present for Defendant(s) telephonically.
Thomas D. Rutledge of Law Office of Thomas D. Rutledge present telephonically for plaintiff

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Tentative Ruling posted on the Internet .

The Court having fully considered the arguments of all parties, both written and oral, now rules as follows:

Motion for Approval of Class Settlement

This is a consolidated civil action for alleged wage/hour violations in the home healthcare and service industry. This is a hearing on plaintiffs' application for provisional certification of a class, preliminary approval of class settlement, and approval of a PAGA settlement.

This newly consolidated action has enjoyed a lengthy procedural history spanning nearly four years. It began in August of 2017 with a PAGA-only claim by plaintiff Crandall here in Orange County. Two months later, plaintiff Fuentes commenced a class action suit in federal district court, basically asserting the same types of claims. Plaintiff Johnson was added as a named representative in the federal action. All of the representative plaintiffs came together for a global settlement, and in so doing agreed that the most efficient way to resolve the litigation was to bring all the actions to this Court.

The resulting settlement was the product of serious effort. The gross settlement amount ("GSA") is $5,500,000.00, which is intended to cover approximately 43,380 non-exempt hourly employees suffering one of many wage/hour violations sometime between 10/24/13 and 04/30/20. This is a non-reversionary settlement meaning nothing goes back to the defendant. The proposed deductions/allocations from the GSA are as follows:
Attorney Fees: $1,833,333,33

Litigation Costs: $140,000.00
Administrator Costs: $100,000.00
Service Enhancement: $60,000.00 ($15,000 x 4)
LWDA share of PAGA: $187,500.00

Based on the proposed deductions/allocations, there should be an average payout per class member of right around $70.

Provisional Certification of the Class

After parties to a putative class action settle the dispute, they must present that settlement to the trial court for approval. If the class has not yet been certified, part of the motion will include a request for provisional certification for purposes of settlement only. See CRC 3.769. Although the provisional process is less demanding than a traditional motion for class certification, a trial court reviewing an application for preliminary approval of a settlement must still find that the normal class prerequisites have been met. See *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625-627 (1997); in accord, *Carter v. City of Los Angeles* (2014) 224 Cal.App.4th 808, 826.

The moving party must establish by admissible evidence: (1) the existence of an ascertainable and sufficiently numerous class; (2) a well-defined community of interest; and (3) substantial benefits from certification that render proceeding as a class superior to the alternatives. These elements are typically referred to as ascertainability, numerosity, commonality, typicality, adequacy, and superiority. A class is ascertainable when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible, and that is sufficient to allow a member of the class to identify himself or herself as having a right to recover. In other words, a class is ascertainable if it is relatively easy to see who is in the class, and who has viable claims. A community of interest exists there if predominant common question of law or fact which will impact all class members, if the proposed class representative has similar individual claims to the class, and if the proposed class representative and counsel will adequately represent the class. *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980-986; *Duran v. U.S. Bank Nat'l Ass'n* (2014) 59 Cal.4th 1, 28-29; *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

Here, plaintiffs propose certification of the following classes:
•Homecare Class: “All non-exempt external employees employed by Defendant in the Homecare division in California at any time between October 24, 2013 through April 30, 2020.”
•Wage Statement Class: “All non-exempt external employees employed by Defendant in the Homecare and/or Staffing divisions in California at any time between June 21, 2016 through April 30, 2020.”

The PAGA group and the Wage Statement Sub-Class cover the exact same individuals, except of course for any class members opting out of that portion of the settlement.

Initially this Court notes that use of the term “external” could cause confusion amongst the 44,000 workers. That term is ordinarily used to describe temporary, contract or freelance workers, but absent some evidence that the term is ubiquitous amongst class members, it is best to define the class in lay rather than technical terms. Just to be clear, is it correct that the settlement herein does not cover any employees on Maxim’s ordinary payroll.

In addition, this Court is concerned about the use of the term “non-exempt” in the definitions. For example, plaintiffs acknowledge that many of the Homecare Class Members were reportedly exempt from meal and rest periods requirements given their status as personal attendants. There is also a sub-set of employees who reportedly gave up their right to meal/rest periods by signing waivers which one might construe as no longer being “non-exempt” for that purpose. Given the broad definition of the class members being non-exempt, and yet including therein apparently exempt individuals, creates some

ambiguity and potential inequity when it comes time to split up the NSA.

The proposed classes are not yet eligible for provisional certification without some further explanation.

The PAGA Portion

On a proposed PAGA settlement, the trial court must review and approve the settlement, making sure it is fair to both the LWDA, as well as the employees subjected to one or more of the alleged Labor Code violations. Courts generally look to whether the settlement is genuine, meaningful and consistent with the underlying purpose of PAGA, to wit: protecting employees, augmenting the state's enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance. Some of the factors to consider, subject to a sliding scale, include (1) the LWDA's views, or lack thereof, on the settlement; (2) the likelihood of any discretionary reduction of PAGA penalties under §2699(e)(2); (3) the value of any nonmonetary relief (such as changes in company policies); and (4) whether the same employees entitled to PAGA penalties are already recovering monetary relief as part of a class settlement. See, *e.g.*, *Williams v. Superior Court* (2017) 3 Cal.5th 531, 548-549; *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 382; *Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742-744; *Julian v. Glenair, Inc.* (2017) 17 Cal.App.5th 853, 865-866; in accord, *Haralson v. U.S. Aviation Services Corp.*, 383 F.Supp.3d 959, 971-974 (N.D. Cal. 2019); *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F.Supp.3d 1074, 1075 (C.D. Cal. 2017); *O'Connor v. Uber Techs., Inc.*, 201 F.Supp.3d 1110, 1133 (N.D. Cal. 2016).

Here, plaintiffs set aside $250,000 for the PAGA claim. A little more detail regarding the deduction will be helpful. The PAGA group includes those in the employ of *both* Maxim Healthcare Services Inc. and Maxim Healthcare Staffing Services, Inc., even though the latter is not a named defendant in the action and is not included in the class definitions. The PAGA cause of action in the operative pleading does not include two distinct entities. The PAGA portion cannot be approved without this explanation.

In addition, the proposed PAGA release is broader than the claims contained in the operative pleading:
»In the Third Amended Complaint, plaintiffs assert violations of Labor Code §§ 201, 201.3, 202, 203, 204, 204b, 210, 216, 510, 558, 558.1, 1182.12, 1194, 1197, 1197.1, 1198, and 1454.
»In the Proposed Settlement Agreement, plaintiffs assert violations of Labor Code §§ 201, 201.3, 202, 203, 204, 204b, 210, 216, 226, 226.3, 226.7, 247, 247.5, 432, 510, 512, 558, 558.1, 1174, 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 1454, 2800, and 2802.

An explanation is required.

The Class Settlement

At the preliminary approval stage, the proponent of the settlement bears the burden of showing that the settlement is within the reasonable range such that a trial court will likely be able to approve it at a final hearing, taking into consideration these four factors: (1) have putative class members been adequately represented by experienced counsel and a vested representative; (2) was the settlement a result of a serious, informed, non-collusive, arm's length negotiation; (3) whether the relief obtained has any real value to class members when compared to what those claims might yield; and (4) are certain segments of the class entitled to preferential treatment. Because this is not the final approval hearing, the level of scrutiny at this stage is often described as something less than a "finding" of fairness and more of a "feeling" of fairness. See *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1166.

Despite what may appear to be a rather amorphous standard at this juncture, it is in the best interests of all involved to have some real scrutiny. Thus, even at the preliminary hearing stage, courts should still keep the fairness elements in mind, to wit (1) the strength of plaintiffs' case; (2) the risk, expense,

complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement when compared to the potential recovery; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) any evidence of collusion, fraud or overreaching by the negotiating parties; and (8) due regard to what is otherwise a private consensual agreement. See *Jones v. Farmers Insurance Exchange* (2013) 221 Cal.App.4th 986, 998; *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 581; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.

The GSA appears to be in the reasonable range.

The proposed attorney fee allocation appears to be in the reasonable range, but detailed time records permitting an adequate lodestar cross-checking will be required at the final hearing. In addition, the "split" between law firms must be disclosed and explained.

The proposed litigation fee allocation appears to be in the reasonable range, but detailed invoices and records permitting an adequate analysis akin to a CCP §1033.5 review will be required at the final hearing.

The proposed administrator fee allocation appears to be on the high side given there is no expectation of having to issue Notices in Spanish. Of course, given the sheer number of class members, proceeding in just English is risky.

The proposed representative enhancements are on the high side and at risk for reduction absent detailed declarations at the final hearing showing actual work performed for the benefit of the class.

In conclusion, the proposed settlement could be within the range of what would be approved at a final hearing, save for the above-referenced concerns and a few more set forth below.

Plaintiffs propose to release claims against Maxim Healthcare Staffing Services, Inc., even though this entity is not a named party in the action and is not subsumed within the definition of "defendant."

The Court does not approve the following: "The Settlement Administrator's determination of the eligibility for and amount of any Individual Settlement Payment or PAGA Group Payment will be binding upon the Settlement Class Members and the Parties. In the absence of circumstances indicating fraud, manipulation or destruction, Defendant's records will be given a rebuttable presumption of accuracy." There is no such presumption in the law absent additional findings, and a bona fide dispute with the Settlement Administrator's calculations cannot be resolved by the Settlement Administrator and must be submitted to this Court for final resolution.

Although "there is clearly no legal impediment whatsoever to making it harder to opt out than to stay in," *(Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 58-59), this Court follows the majority view that "CRC 3.766 contemplates an opt-out form" (*Los Angeles Gay & Lesbian Center v. Superior Court* (2011) 194 Cal.App.4th 288, 301) as part of the "procedure for the member to follow in requesting exclusion from the class." CRC 3.766(d)(3). The suggestion that class members create their own Exclusion request is not acceptable.

In addition, this Court prefers to see a proposed Objection Form also included in the Notice Packet. There is no indication that "defective" objections would be quashed in any way, and it seems that they will be forwarded to this Court regardless of formality. Counsel must be clear that this Court will receive copies of any and all communications which appear at all to object to the settlement. Objections are valid through the final hearing and are not waived if submitted after the opt-out period closes.

Hearing continued to 7/23/21 at 9:30 am. All filings responsive to this Court's concerns must be on file at

least 10 calendar days prior to the next hearing date.

Plaintiff makes an oral request for leave to amend to add Maxim Healthcare Services, Inc.
Request granted.

Moving party to give notice.

After the calendar call, no appearances, the Court continued the Status Conference currently scheduled on 7/20/21 to 7/23/21 to be heard on same date and time as the above motion.

Clerk to give notice to moving party and moving party to give notice to all other parties.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE Central Justice Center 700 W. Civic Center Drive Santa Ana, CA 92702	
SHORT TITLE: Crandall vs. Maxim Healthcare Services, Inc.	
CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	CASE NUMBER: **30-2017-00940239-CU-OE-CXC**

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 05/14/21, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on May 19, 2021, at 5:11:44 PM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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