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Deisi Carolina Sanchez, individually and on behalf of others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

DEISI CAROLINA SANCHEZ, and individual
and on behalf of others similarly situated,

Plaintiff,

v.

ATHERSTONE FOODS, INC., dba GLASS
ONION CATERING; and DOES 1 through 50,

Defendants.

CASE NO. C20-01999

CLASS ACTION

Assigned to Department 39 for all purposes
Hon. Edward G. Weil

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL**

FILED
OCT 20 2022
K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By A. Stewart Deputy Clerk

1 Plaintiff Deisi Carolina Sanchez's ("Plaintiff") Motion for Preliminary Approval of Class
2 Action Settlement came before this Court, the honorable Edward G. Weil, presiding, on September
3 8, 2022. The Court, having considered the papers submitted in support of Plaintiff's motion and
4 presentation made to the Court at the hearing, HEREBY ORDERS THE FOLLOWING:

5 **A. Background and Settlement Terms**

6 1. The original complaint was filed on September 28, 2020, raising claims under
7 PAGA and a class action on behalf of non-exempt employees, alleging that Defendant Atherstone
8 Foods, Inc., dba Glass Onion Catering ("Defendant") violated the Labor Code in various ways,
9 including unpaid overtime, unpaid minimum wage, non-compliant meal and rest periods (all
10 primarily based on off-the-clock work), and waiting time and wage statement claims.

11 2. The settlement would create a gross settlement fund of \$726,600. The class
12 representative payment to the plaintiff would be \$5,000. Counsel's attorney's fees would be
13 \$242,000 (one-third of the settlement). Litigation costs are estimated at \$16,000. The settlement
14 administrator (Phoenix) would receive an estimated \$12,500. PAGA penalties would be \$20,000,
15 resulting in a payment of \$15,000 to the LWDA. The net amount paid directly to the class members
16 would be about \$440,443.11. The fund is non-reversionary. There are an estimated 982 class
17 members Based on the estimated class size, the average net payment for each class member is
18 approximately \$448.

19 3. Defendant will fund the settlement within 14 days after final approval.

20 4. The proposed settlement would certify a class of all current and former non-exempt,
21 hourly paid employees of Defendant who worked in California from September 28, 2016 through
22 March 27, 2022. (Stipulation, Par. 4.) The PAGA period is the same.

23 5. The class members will not be required to file a claim. Class members may object
24 or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the
25 settlement.) Funds would be apportioned to class members based on the number of workweeks
26 worked by the individual employee during the relevant time period.
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1 6. Various prescribed follow-up steps will be taken with respect to mail that is returned
2 as undeliverable. Undelivered or uncashed checks will be voided, and if they exceed \$30,000, they
3 will be redistributed to class members who cashed their first check. Otherwise, such funds will be
4 paid to a cy pres beneficiary, Legal Aid at Work. Since the initial hearing, Plaintiff has provided a
5 declaration in compliance with Code of Civil Procedure section 382.4, attesting with respect to the
6 cy pres recipient, whether “the attorney has a connection to or a relationship with a nonparty
7 recipient of the distribution that could reasonably create the appearance of impropriety as between
8 the selection of the recipient of the money or thing of value and the interests of the class.”

9 7. The settlement contains release language covering all “class claims,” which are all
10 claims “arising out of the allegations set forth in the Action at any time during the Class Period”
11 including specified violations “and any and all claims that could have been alleged based on the
12 factual allegations of the Complaint.” (Stipulation Par. 5.) Under recent appellate authority, the
13 limitation to those claims with the “same factual predicate” as those alleged in the complaint is
14 critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 [“A court cannot
15 release claims that are outside the scope of the allegations of the complaint.” “Put another way, a
16 release of claims that’ go beyond the scope of the allegations in the operative complaint’ is
17 impermissible.” (*Id.*, quoting *Marshall v. Northrop Grumman Corp.* (C.D. Cal.2020) 469
18 F.Supp.3d 942, 949.)

19 8. Informal discovery was undertaken, resulting in the production of substantial
20 documents, including payroll records and written work policies, which were analyzed by counsel
21 and a retained consultant. The matter settled after arms-length negotiations, which included an all-
22 day session with an experienced mediator on January 26, 2022.

23 9. Counsel also has provided an analysis of the case, and how the settlement compares
24 to the potential value of the case, after allowing for various risks and contingencies. This included
25 an estimate of class claims at a maximum of about \$5.8 million for the “core claims”. Additional
26 derivative penalties, i.e., for wage statement violations and waiting time penalties could equal \$4.2
27 million. Maximum PAGA penalties are estimated at about \$3.5 million.
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10. Counsel analyzed the minimum wage claims, off-the-clock claims, meal period claims, rest period claims, business expense claims, reporting time claims, wage statement claims, and waiting time penalty claims. The potential liability needs to be adjusted for various evidence and risk based contingencies, including problems of proofs. Counsel also analyzed claims for PAGA penalties, but such penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include “stacking” of violations, the law may only allow application of the “initial violation” penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced where “based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory.”])

11. The parties have stipulated to amend the complaint, and have submitted the proposed First Amended Complaint. The amendments relate to two new claims: overtime wages and reimbursement claims, based on a recently discovered policy of requiring employees to purchase anti-slip shoes for work use only.

12. The original complaint alleges that the LWDA was notified of the claims, and counsel have filed proof of service of the settlement and motion on the LWDA.

B. Legal Standards

13. The primary determination to be made is whether the proposed settlement is “fair, reasonable, and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including “the strength of 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 state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction ... to the proposed settlement.” (See also *Amaro v. Anaheim Arena Mgmt., LLC*, *supra*, 69 Cal.App.5th 521.)

14. Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court

1 found that the “fair, reasonable, and adequate” standard applicable to class actions applies to PAGA
2 settlements. (*Id.*, at 64.) The Court also held that the trial court must assess “the fairness of the
3 settlement’s allocation of civil penalties between the affected aggrieved employees[.]” (*Id.*, at 64-
4 65.)

5 15. California law provides some general guidance concerning judicial approval of any
6 settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of*
7 *California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary
8 to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney*
9 *v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “[t]he court cannot surrender its duty to see
10 that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter.”
11 (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a
12 result, courts have specifically noted that *Neary* does not always apply, because “[w]here the rights
13 of the public are implicated, the additional safeguard of judicial review, though more cumbersome
14 to the settlement process, serves a salutatory purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu*
15 *Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

17 C. Attorney Fees

18 16. Plaintiff seeks one-third of the total settlement amount as fees, relying on the
19 “common fund” theory. Even a proper common fund-based fee award, however, should be
20 reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th
21 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine
22 whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means of
23 a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the
24 percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range,
25 but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.) Following
26 typical practice, however, the fee award will not be considered at this time, but only as part of final
27 approval.

1 17. Similarly, litigation costs and the requested representative payment of \$5,000 for
2 plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative payment
3 requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785,
4 804-807.

5 **D. Discussion and Conclusion**

6 18. The motion includes sufficient information concerning the estimated value of the
7 claims, including the recently added claims, including the “shoe claims.” The settlement appears to
8 be sufficiently fair, reasonable, and adequate to meet the standard for preliminary approval.

9 19. Since the time of the hearing, the parties have filed a stipulation for an order granting
10 leave to file the First Amended Complaint. The stipulation, however, provided that the FAC is
11 attached and is “deemed filed and served as of the date this order is entered.” The Court has
12 modified the order to provide that the parties shall file the FAC separately.

13 20. This Order incorporates by reference the definitions in the proposed Joint Stipulation
14 of Settlement and Release (“Settlement Agreement” or “Agreement”), and all terms defined therein
15 shall have the same meaning in this Order as set forth in the Settlement Agreement.

16 21. The Court determines that the proposed Settlement of \$726,600, is within the range
17 which may achieve final approval, so the Court grants preliminary approval of the Settlement.

18 22. The Court recognizes Plaintiff and Defendant have agreed to the conditional
19 certification for settlement of the proposed “Settlement Class” of approximately 982 Class
20 Members as consisting of all current and former non-exempt, hourly-paid employees of Defendant
21 who worked in California from September 28, 2016 through March 27, 2022 (“Class Period”). For
22 settlement purposes only, the Court conditionally certifies the proposed Settlement Class as agreed
23 by the parties.

24 23. Named Plaintiff Deisi Carolina Sanchez is hereby appointed and designated, for all
25 purposes, as the conditional representative of the Class.
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1 24. The Court preliminary approves the requested \$20,000 Private Attorney General Act
2 ("PAGA") allocation, \$15,000 of which shall be paid to the Labor and Workforce Development
3 Agency and the rest to be distributed to the Settlement Class.

4 25. Liberation Law Group, P.C. is hereby appointed and designated conditionally as
5 counsel for the Class ("Class Counsel"). Class Counsel is authorized to act on behalf of Class
6 Members with respect to all acts or consents required by, or which may be given pursuant to, the
7 Settlement, and such other acts reasonably necessary to consummate the Settlement. Any Class
8 Member may enter an appearance through counsel of such Class Member's own choosing and at
9 such Class Member's own expense. Any Class Member who does not enter an appearance or appear
10 on his or her own will be represented by Class Counsel.

11 26. The Settlement falls within the range of reasonableness and appears to be
12 presumptively valid, subject only to any objections that may be raised at the final fairness hearing
13 and final approval by this Court. The Court finds and concludes that the Settlement is the result of
14 arms-length negotiations between the parties conducted after Class Counsel had adequately
15 investigated Plaintiff's claims and become familiar with the strengths and weaknesses. The
16 assistance of an experienced mediator, Jeffrey A. Ross, in the settlement process further confirms
17 that the Settlement is non-collusive.

18 27. A hearing (the "Final Approval/Fairness Hearing") shall be held before this Court
19 on February 23, 2023, at 9:00 a.m. in Dept. 39 of the Superior Court of the State of California for
20 the County of Contra Costa located at 725 Court Street, Martinez, CA 94553 to determine all
21 necessary matters concerning the Settlement, including: whether the proposed settlement of the
22 Action on the terms and conditions provided for in the Settlement Agreement is fair, adequate, and
23 reasonable and should be finally approved by the Court; whether a Judgment, as provided in the
24 Settlement Agreement, should be entered herein; whether the plan of allocation contained in the
25 Settlement Agreement should be approved as fair, adequate, and reasonable to the Settlement Class
26 Members; and to finally approve Class Counsel's Fee and Expense Award, Class Representative's
27 Service Award, *Cy Pres* designation, LWDA Allocation and Settlement Administration Costs.
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1 28. The Court hereby approves, as to form and content, the Class Notice attached as
2 Exhibit B to Un Kei Wu's Declaration. The Court finds that the distribution of the Notice
3 substantially in the manner and form set forth in the Settlement Agreement and this Order meets
4 the requirements of due process, is the best notice practicable under the circumstances, and shall
5 constitute due and sufficient notice to all persons entitled thereto.

6 29. The Court hereby approves Phoenix Settlement Administration as the Claims
7 Administrator.

8 30. Any putative Class Member may choose to opt out of and be excluded from the
9 Class as provided in the Notice by following the instructions for requesting exclusion from the
10 Class that are set forth in the Notice. All requests for exclusion must be submitted as provided in
11 the Notice. Any such putative Class Member who chooses to opt out of and be excluded from the
12 Settlement Class will not be entitled to any recovery under the Settlement and will not be bound by
13 the Settlement or have any right to object, appeal, or comment thereon. Putative Class Members
14 who have not requested exclusion shall be bound by all determinations of the Court, the Settlement
15 Agreement and Judgment.

16 31. Any Class Member may appear at the Final Approval/Fairness Hearing and may
17 object or express the Class Member's views regarding the Settlement and may present evidence and
18 file briefs or other papers that may be proper and relevant to the issues to be heard and determined
19 by the Court as provided in the Notice.

20 32. The ultimate judgement must provide for a compliance hearing after the settlement
21 has been completely implemented. Plaintiff's counsel are to submit a compliance statement one
22 week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims
23 administrator pending satisfactory compliance as found by the Court.

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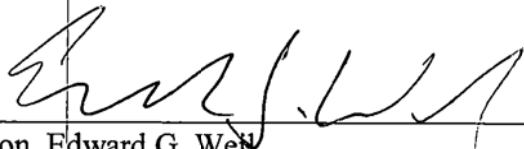
27 //

33. The Court hereby orders the following implementation schedule to be implemented:

Event	Date
Deadline for Defendant to Provide the Class List to the Claims Administrator	21 calendar days of the date of Preliminary Approval
Deadline for Claims Administrator to mail Notice to the Class	30 calendar days of Preliminary Approval
Deadline for Class Members to Postmark Objections to or Exclusion Requests from Settlement	60 calendar days from the date the Notice is mailed by Claims Administrator
Deadline for Class Counsel to file Motion for Final Approval	16 court days before the Final Approval Hearing and Motion for Attorney's Fees and Costs
Deadline for Class Counsel to file Motion for Attorney's Fees and Costs	16 court days before the Final Approval Hearing and Motion for Attorney's Fees and Costs
Final Approval Hearing and Motion for Attorney's Fees and Costs	February 23, 2023

IT IS SO ORDERED.


Dated: October 18, 2022


Hon. Edward G. Wei
Judge of the Superior Court

Approved as to Form:

Dated: 9/27/2022

BROWN, GEE & WENGER LLP


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dba Glass Onion Catering