

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE**

<p>Taylor, Joshua et al Plaintiff/Petitioner,</p> <p>vs.</p> <p>U.S. Dairy Systems, Inc. Defendant/Respondent.</p>	<p>Jud. Officer: Nathan Ide Clerk: Marcella Hernandez Bailiff: Anthony Gonzales CSR: Naomi Johnson Interpreter: Language:</p>
<p>Minutes: Motion Hearing Other</p> <p>Date: August 22, 2022</p>	<p>Case No. VCU286113 Department 02</p> <p>Related Cases:</p>

Appearances: No Appearances

Party: _____

Remote Appearance

Party: _____

Remote Appearance

Party: _____

Remote Appearance

Other: _____

Remote Appearance

Attorney: _____

Remote Appearance

Attorney: _____

Remote Appearance

Attorney: _____

Remote Appearance

Motion: Motion for Preliminary Approval of Class Action and PAGA Settlement

No requests for oral argument presented.

ORDER: The Court adopts the Tentative Ruling as the Order of the Court as follows:

TENTATIVE RULING: To deny, without prejudice, the Motion for Preliminary Approval of Class Action Settlement and PAGA Settlement. The court directs the parties to provide supplemental declarations to address the concerns noted in this ruling. The parties need not file for a second time the moving papers and declarations that are already on file with the court.

Accordingly, the motion to approve the settlement pursuant is preliminarily denied without prejudice. The hearing on this matter is continued to September 19, 2022 at 8:30 a.m.in Department 2 of this court.

1. Sufficiency of Amount of Settlement (Net Estimated: \$81,525.00)

The gross settlement amount is \$187,500. Plaintiffs estimate approximately 59 proposed Class Members with an average payment of approximately \$1,381.78. The Class Members consist of:

“All persons who worked for Defendant in California as an hourly-paid or non-exempt employee from February 26, 2017 through December 20, 2021.”

Plaintiffs bring claims in the First Amended Complaint for (1) failure to pay minimum and straight time wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Cal. Lab. Code §§ 1194 and 1198); (3) failure to provide meal periods (Cal. Lab, Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Cal. Lab. Code §§ 226.7); (5) failure to timely pay final wages at termination (Cal. Lab. Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Cal. Lab. Code § 226); (7) unfair business

practices (Cal. Bus. & Prof. Code §§ 17200, et seq); (8) failure to reimburse employees for required expenses (Cal. Lab. Code §§ 2800 and 2802); 11) enforcement under the Private Attorney Generals Act (“PAGA”) (Cal. Lab. Code § 2698.)

Plaintiffs provide estimates of the maximum recovery for each of the asserted wage and hour claims and penalties with information showing how the estimates were calculated including the damages models utilized. (Declaration of Justin Marquez ¶¶ 16 – 24.) The total realistic estimated maximum recovery in the event of an outright victory is \$258,637. Plaintiffs have provided detailed discussion of the absolute maximum value of the claims and penalties, including an evaluation of the various strengths and weaknesses of Plaintiffs’ case and Defendant’s defenses to Plaintiffs’ claims for each category to discount the claims reasonably and including the risk of being unsuccessful on the merits of each claim. (Declaration of Justin Marquez ¶¶ 16 – 24.) The gross settlement figure, therefore, represents 72.5% of the realistic maximum recovery. This matter settled after a one-day mediation.

Plaintiffs’ deductions from the gross settlement of \$187,500 are proposed as follows:

Court Approved Attorney Fees (33 1/3%):	\$ 62,500.00
Attorney Costs (up to):	\$ 15,000.00
Enhancement Payment to Plaintiff – Taylor:	\$ 7,500.00
Enhancement Payment to Plaintiff – Lomonaco:	\$ 5,000.00
Settlement Administrator Costs	\$ 5,975.00
<u>PAGA payment to the LWDA</u>	<u>\$ 10,000.00</u>
Net Settlement Amount	\$ 81,525.00

Although the Court finds the information provided sufficient to support the gross settlement amount, various issues with the class notice period, attorneys’ fees and costs, the proposed enhancement award and a lack of conflict of interest declaration from Defendant’s counsel, as detailed below, preclude preliminary approval at this time.

2. Class Notice

The settlement agreement provides no claim form will be required of class members to participate in distributions. Only those wishing to object or opt out must file notice with the settlement administrator. Objections or opt out notices are to be made within 45 days.

The Court regularly approves notice periods of 60 days or longer. The class notice period is not approved.

With respect to the content of the Notice, the Court finds the Class Notice to be reasonable. It clearly provides to the class member an estimate of the settlement share the employee is to receive and provides adequate instructions for any class member to opt out of the settlement or to submit an objection.

3. Enhancement Awards to Class Representatives

The court preliminarily approves Plaintiffs Joshua Taylor and Frank Lomonaco as the Class Representatives for settlement purposes. The proposed enhancement award to Plaintiff Taylor is \$7,500 and is \$5,000 to Plaintiff Lomonaco.

The Court has, in past cases, approved enhancement awards of \$5,000 routinely. In this case, neither Plaintiff Lomonaco’s award is approved.

However, without a declaration detailing Plaintiff Taylor’s involvement in this matter, the Court cannot approve an enhancement award higher than \$5,000.

The general references to Plaintiffs' involvement as set forth in the motion are insufficient to support the higher amount.

4. Attorneys' Fees and Costs

Attorneys' fees of 33.3% of the gross settlement fund of \$187,500 or \$62,500 and costs not to exceed \$15,000 are sought by Plaintiff's counsel.

Although the Court recognizes the utilization of the percentage of the common fund methodology to award attorneys' fees, the Court requires a declaration from counsel that provides an estimate as to what the lodestar would be in this case. The ultimate goal of the Court is to award reasonable attorneys' fees irrespective of the method of calculation. As such, the court needs to know the estimate of the approximate lodestar supported by declarations for preliminary approval. Counsel should submit information as to the time spent on this action and the hourly rates of all counsel working on the case. Without such information, the Court declines to preliminarily approve the fees.

The Court also cannot preliminarily approve costs up to \$15,000.00 without a declaration which states the costs currently expended.

The Court does find that Plaintiffs' counsel are experienced class action attorneys through the declarations of counsel.

5. Claims Administrator

The court preliminarily approves Phoenix Settlement Administrators as the claims administrator for this class action based on prior experience with this settlement administrator in other class actions litigated in this court. Estimated costs not to exceed \$5,975.00 are approved.

6. Unclaimed Settlement Proceeds

The court preliminarily approves the distribution of unclaimed settlement proceeds to Los Angeles Trial Lawyers' Charities, in accordance with Code of Civil Procedure section 384. The Court has reviewed the declaration of the president of Los Angeles Trial Lawyers' Charities as to its purpose and history. The Court notes a declaration from Plaintiffs' counsel indicating that neither counsel nor Plaintiffs have a conflict of interest as to the proposed cy pres recipient.

However, the Court requires a declaration from Defendant's counsel indicating the lack of a conflict of interest as to counsel and Defendant.

7. Release

The court finds the proposed release of claims reasonable under the circumstances.

8. LWDA Notice

The Court notes the declaration of counsel indicates proof of submission to the LWDA and receipt of the proposed settlement agreement under Lab. Code, § 2699, subd. (l)(2) (Declaration of Marquez ¶ 9.)

9. Class Certification

Code of Civil Procedure section 382 permits certification "when the question is of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." (Code Civ. Proc. § 382.) The plaintiff bears the burden of demonstrating that class certification under section 382 is proper. (See *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 460.) To do so, "[t]he party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)

Here, the Motion and accompanying declaration of Justin Marquez sufficiently sets forth the basis for finding the class is numerous and ascertainable as 59 employees have been identified through Defendant's employment records. Additionally, common questions of law and fact predominate within the individual causes of action based on class wide policies and procedures of Defendant. Further, Plaintiffs represent that the class representatives will adequately and fairly represent the Class Members and will not place their interests above any Class Member. The Class Representatives were employed by Defendant in California during the relevant time period and thus worked under the same policies and procedures as the Class Members.

Based on the above, the motion to approve the settlement pursuant to the Private Attorney General Act of 2004 is preliminarily denied without prejudice. Counsel is directed to provide a supplemental declaration which provides information relating to the notice period, lodestar information to determine attorneys' fees, the presently incurred costs, a declaration indicating a lack of conflict of interest by Defendant and Defendant's counsel, and proof of submission of the settlement to the LWDA. Counsel may provide a declaration of Plaintiff Taylor in support of the increased individual proposed enhancement award of \$7,500.00

The hearing on this matter is continued to September 19, 2022 at 8:30 a.m.in Department 2 of this court.

If no one requests oral argument, under Code of Civil Procedure section 1019.5(a) and California Rules of Court, rule 3.1312(a), no further written order is necessary. The minute order adopting this tentative ruling will become the order of the court and service by the clerk will constitute notice of the order.

Clerk to provide notice to parties by mail