

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 12/09/2022

TIME: 01:30:00 PM

DEPT: C-72

JUDICIAL OFFICER PRESIDING: Timothy Taylor

CLERK: Valerie Secaur

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: O. Godoy

CASE NO: **37-2022-00026848-CU-OE-CTL** CASE INIT.DATE: 07/08/2022

CASE TITLE: **NAKAGAKI vs PROVEN STAFFING CONSULTANTS LLC [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: Noelle Nakagaki

CAUSAL DOCUMENT/DATE FILED: Motion for Approval of Class Settlement, 09/06/2022

APPEARANCES

Tatiana Hernandez, counsel, present for Plaintiff(s) via remote video conference.

Nicole Roysdon, counsel, present for Defendant(s) via remote video conference.

MOTION FOR PRELIMINARY APPROVAL OF CLASS/PAGA SETTLEMENT

The Court hears oral argument and confirms the tentative ruling as follows:

Ruling on Motion for Preliminary Approval of Class/PAGA Settlement

Nakagaki v. Proven Staffing, Case No. 2022-26848

Dec. 9, 2022, 1:30 p.m., Dept. 72

1. Overview and Procedural Posture.

This is a class and representative action arising from plaintiff's employment with defendant. She alleges she was required to work from home during the COVID-19 pandemic, but was not reimbursed for "work-related home office expenses." The complaint was filed in July of 2022. Defendant answered (ROA 16), but even before it did so, plaintiff filed the moving papers seeking preliminary approval of the class action settlement and approval of the PAGA settlement. ROA 10-15, 21. By design, the motion is unopposed. The court has reviewed the papers – including the supplemental declaration filed earlier this week – and no further submissions are authorized in connection with this motion.

2. Applicable Standards.

A. CRC 3.769 sets forth the procedure to be followed when a class action is provisionally settled prior to

class certification. First the court preliminarily approves the settlement and the class members are notified as directed by the court. CRC 3.769(c)-(f). Second, the court conducts a final approval hearing to inquire into the fairness of the proposed settlement. CRC 3.769(g). The court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.

B. When evaluating the reasonableness of a class action settlement, the trial court should consider the following non-exhaustive list of factors:

- Strength of plaintiff's case. This is the most important factor.
- Expense associated with taking the case to trial, *i.e.*, the avoided cost of further litigation.
- Amount or value offered in settlement.
- Extent of discovery completed and state of proceedings.
- Experience and views of counsel.
- Presence of a governmental participant.
- Reaction of class members to proposed settlement.

Id. at 1801. Though the burden is on the proponents 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." *Id.* at 1802.

C. Like class actions, PAGA settlements are subject to trial court review and approval. Lab. Code § 2699(l)(2). "[A] trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Many of the same factors used to evaluate the fairness of a class action settlement – *i.e.*, the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount – can be "useful" in evaluating the fairness of a PAGA settlement. *Id.*

3. Discussion of Fairness of Settlement.

A. Strength of Case: According to plaintiff's counsel, defendant's "realistic, risk-adjusted exposure" was calculated to be \$90,576.60. (Ackermann Supp. Decl., ¶ 4.) Counsel, however, acknowledged that defendant had "strong defenses." (*Id.* at ¶ 28.) The very essence of a settlement is compromise, *i.e.*, the "yielding of absolutes and an abandoning of highest hopes." *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242.

B. Avoided Expenses and Other Avoided Risks: This is not monetized in the moving papers, but the court can well imagine at least \$100,000.00 being spent by plaintiff's counsel getting the case teed up for an opposed class certification motion, and potentially much more.

C. Amount Offered in Settlement/Settlement Fund:

The total amount offered in settlement is \$81,000.00, with no reversion. The parties intend to allocate the settlement funds as follows:

-Attorneys' fees: \$20,250.00 in fees to plaintiff's counsel

- Litigation costs: \$3000.00 in costs to plaintiff's counsel
- Costs of administration: \$7500.00 to Phoenix Settlement Administrators
- Class rep incentive payment: \$7500.00
- PAGA payment: \$7500 to LWDA and \$2500 to aggrieved employees

The foregoing deductions result in a net settlement of amount of approximately \$32,750.00 to be distributed among the 263 class members. This comes out to an average settlement share per class member of \$124.52. All of this the court will have another opportunity to review at the final approval/fairness hearing. Counsel should file declarations establishing their hours and hourly rate (so the court may calculate a lodestar), and justifying the requested costs.

D. Extent of Discovery: As recited in part 1 above, there was virtually no discovery or other pretrial activity. The parties did, however, engage in the informal exchange of information. (Ackermann Decl., ¶ 6.)

E. Experience and Views of Counsel: Counsel are experienced in cases of this type and recommend the settlement. (Ackermann Decl., ¶¶ 35, 38.)

F. Presence of a governmental participant: The moving papers do **not** indicate whether notice of the settlement was provided to the LWDA as required by Labor Code section 2699(1)(2). The parties are directed to submit evidence showing compliance with this express requirement. Absent such evidence, the court will not approve the settlement.

G. Reaction of class members to proposed settlement: This, of course, will not be fully known until notice of the proposed settlement has been given to the class.

H. Form of Notice. First class U.S. mail.

4. Ruling.

The court finds it is more likely than not that, if preliminary approval is granted, the settlement will meet with approbation of the class. The court further finds that the PAGA settlement is fair, adequate, and reasonable in light of PAGA's policies and purposes.

The fees sought by counsel will be the subject of additional scrutiny at the fairness hearing. As noted above, counsel should submit declarations establishing their hours and hourly rate (so the court may calculate a lodestar), and justifying the anticipated costs. Given the amount of the overall recovery and the fact that the average payment to each class member will be less than \$150, the court will say that the proposed class representative incentive payment of \$7,500 appears to be out of proportion. Plaintiff should anticipate a sizeable reduction, with the difference going back into the common fund for distribution to all class members.

Accordingly, the court grants the unopposed preliminary approval motion and signs the proposed order submitted with the moving papers (ROA 15) as modified. The CMC set for next week (ROA 5) is hereby ordered off calendar.

Attorney Hernandez informs the Court that the notice to the LWDA of settlement referenced by the Court in section 3(F) of the tentative ruling was not filed separately as a proof of service, but was attached to the Declaration of Craig J. Ackermann (ROA 13) as Exhibit C.

The Court sets the motion for final approval of class settlement as follows:

The Motion Hearing (Civil) is scheduled for 04/21/2023 at 01:30PM before Judge Timothy Taylor.

Moving papers are due by noon on 4/7/2023.

The Civil Case Management Conference set for 12/16/2022 at 9:15 am is vacated.

IT IS SO ORDERED.



Judge Timothy Taylor