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| SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO Civil Unlimited Department, Central Division | | Entered by: |
| TITLE OF CASE: Esteban Campos Soto v Amware Pallet Services, LLC/Complex/ Class Action | | |
| MINUTE ORDER | | Case Number: 20CECG00227 |

Date: January 4, 2023

Re: From Chambers: Motion Preliminary Approval of Class Settlement

Department: **501**

Judge/Temporary Judge: **D. Tyler Tharpe**

Court Clerk: **S. Nunez**

Reporter/Tape: **Not Reported**

Contested

Appearing Parties:

Plaintiff: No Appearances

appearing on behalf of Plaintiff

Defendant: No Appearances

appearing on behalf of Defendant

Off Calendar

Set for _____ at _____ Dept _____ for _____

The matter having been under advisement, the court now rules as follows: Please see attached Order After Hearing.

Service by the clerk will constitute notice of the order.

Order After Hearing

Re: **Soto v. Amware Pallet Services, LLC**
Superior Court Case No. 20CECG00227

Hearing Date: December 21, 2022 (Dept. 501)

Motion: by Plaintiff for Preliminary Approval of Class Settlement

Ruling:

The court grants the motion, preliminarily approving the class settlement.

Explanation:

Certification of Class for Settlement

Settlements preceding class certification are scrutinized more carefully to make sure that absent class members' rights are adequately protected, although there is less scrutiny of manageability issues. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 240; see *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1803, fn. 9, 19.a) The trial court has a "fiduciary responsibility" as the guardian of the absentee class members' rights to decide whether to approve a settlement of a class action. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 95.)

A precertification settlement may stipulate that a defined class be conditionally certified for settlement purposes. The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing. (Cal. Rules of Court, rule 3.769(d).) Before the court may approve the settlement, however, the settlement class must satisfy the normal prerequisites for a class action. (*Amchem Products, Inc. v. Windsor* (1997) 521 US 591, 625-627.)

"Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. In turn, the community of interest requirement embodies 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." (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 313.)

Plaintiff bears the burden of establishing the propriety of class treatment with admissible evidence. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470 [trial court's ruling on certification supported by substantial evidence generally not disturbed on appeal]; *Lockheed Martin Corp. v. Superior Court, supra*, 29 Cal.4th at pp. 1107-1108 [plaintiff's burden to produce substantial evidence].)

According to defendant's Human Resources Manager, there are 1,503 individuals in the class. (Cindea Decl., ¶ 4.) Previously no admissible evidence was submitted, but

the HR manager's declaration suffices. That is certainly a sizeable class; the numerosity requirement is met.

Under the third prong of the community of interest requirement, the class representative must be able to represent the class adequately. (*Caro v. Procter & Gamble* (1993) 18 Cal.App.4th 644, 669.) "[I]t has never been the law in California that the class representative must have identical interests with the class members . . . The focus of the typicality requirement entails inquiry as to whether the plaintiff's individual circumstances are markedly different or whether the legal theory upon which the claims are based differ from that upon which the claims of the other class members will be based." (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

Usually, in wage and hour class actions or PAGA class claims, the distinctive feature that permits class certification is that the employees have the same job title or perform similar jobs, and the employer treats all in that discrete group in the same allegedly unlawful fashion. In *Brinker Restaurant v. Superior Court* (2012) 53 Cal.4th 1004, 1017, "no evidence of common policies or means of proof was supplied, and the trial court therefore erred in certifying a subclass."

Plaintiff submitted a declaration attesting to the violations that he experienced, and the Cindea declaration shows that the same practices applied across the multiple locations and to the varying non-exempt positions applicable to the class claims. The evidence is sufficient to show that common practices or policies relating to the various claims made in this action. Counsel avers that plaintiff and the class members were subjected to the same policies regarding wage statements (Szilagyi Decl. ¶ 24), failure to pay for donning and doffing equipment (¶ 26) meal period policies (¶ 27).

The adequacy of representation component of the community of interest requirement for class certification comes into play when the party opposing certification brings forth evidence indicating widespread antagonism to the class suit. " 'The adequacy inquiry ... serves to uncover conflicts of interest between named parties and the class they seek to represent.' [Citation.] '... To assure "adequate" representation, the class representative's personal claim must not be inconsistent with the claims of other members of the class. [Citation.]' [Citation.]" (*J.P. Morgan & Co., Inc. v. Superior Court* (2003) 113 Cal.App.4th 195, 212.)

"[T]he adequacy inquiry should focus on the abilities of the class representative's counsel and the existence of conflicts between the representative and other class members." (*Caro v. Procter & Gamble Co.* (1993) 18 Cal. App. 4th 644, 669.) Counsel has substantial class action experience. (See Szilagyi Decl., ¶¶ 35-42.)

A relevant consideration is the incentive award. (See *Radcliffe v Experian Information Solutions, Inc.* (2013) 715 F.3d 1157, 1165; *In re Dry Max Pampers Litigation* (6th Cir. 2013) 724 F.3d 713, 722.) The settlement agreement in the instant case provides that named plaintiff gets up to \$10,000 as class representative. The court previously found that the incentive award may be approved preliminarily, but with the final approval motion plaintiff shall submit a more detailed declaration detailing plaintiff's actual work done in prosecuting this case, the number of hours expended, if his deposition was taken, and

the amount of his recovery under the class settlement as a class member without the incentive award.

Settlement Approval

"[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.) "[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished ... [therefore] the factual record must be before the ... court must be sufficiently developed." (*Id.* at p. 130.)

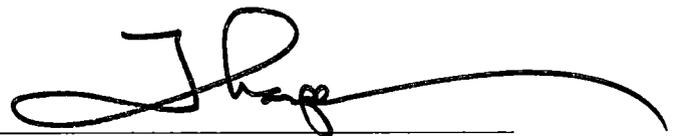
Clark v. America Residential Services (2009) 175 Cal.App.4th 785 vacated approval of a class settlement coupled with class certification, an award of \$25,000 each to two named plaintiffs, and more. The problem was that the plaintiffs presented "no evidence regarding the likelihood of success on any of the 10 causes of action, or the number of unpaid overtime hours estimated to have been worked by the class, or the average hourly rate of pay, or the number of meal periods and rest periods missed, or the value of minimum wage violations, and so on." (*Id.* at p. 793.)

The prior motion for preliminary approval was denied in large part because counsel's valuation lacked foundation and supporting evidence. The instant submission sufficiently cures those deficiencies.

The motion is granted.

IT IS SO ORDERED.

Dated: January 4, 2023

A handwritten signature in black ink, appearing to read 'J. Hagg', written over a horizontal line.

Judge of the Superior Court

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| <p style="text-align: center;">SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-2000</p> | <p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> |
| <p>TITLE OF CASE: Esteban Campos Soto vs. Amware Pallet Services, LLC / COMPLEX / CLASS ACTION</p> | |
| <p style="text-align: center;">CLERK'S CERTIFICATE OF MAILING</p> | <p>CASE NUMBER: 20CECG00227</p> |

I certify that I am not a party to this cause and that a true copy of the:

Minute order from chambers and Order after hearing

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: Fresno, California 93724-0002

On Date: 01/04/2023

Clerk, by S. Nunez, Deputy

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Clerk's Certificate of Mailing Additional Address Page Attached