

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

**RG21115325: Sandoval VS Marathon Packing Corporation
01/10/2023 Hearing on Motion - Other Motion for Preliminary Approval of Class Action
Settlement in Department 22**

Tentative Ruling

The Motion for Preliminary Approval of Settlement filed by Iria Jimenez Sandoval on 11/03/2022 is Granted.

Plaintiffs' Motion for Preliminary Approval of Class and Representative Action Settlement and Provisional Class Certification for Settlement Purposes Only is GRANTED.

The parties are ORDERED to submit a proposed order with implementation schedule consistent with this Order. The proposed order shall include all notices and provide sufficient information for the Claims Administrator to discharge its duties. The proposed order shall also include a completed implementation schedule. The parties may select any Tuesday or Thursday at 3:00pm in D22 for the Final Fairness Hearing.

BACKGROUND

Plaintiff Iria Jimenez Sandoval ("Plaintiff") initiated this action on October 8, 2021 and filed a first amended complaint (the "FAC") thereafter. The FAC asserts five causes of action for violation of California's Labor Code, a claim for violation of Bus. & Prof. Code § 17200, and a claim for civil penalties pursuant to California's Private Attorneys General Act of 2004 ("PAGA").

The FAC proposes six classes: (1) failure to provide meal breaks, (2) failure to provide rest breaks, (3) failure to pay all wages, (4) waiting time class, (5) failure to furnish accurate itemized wage statements, and (6) UCL class. (FAC, ¶ 26.) The FAC defines "Class Period" as four years prior to the filing of this action (i.e., October 8, 2017) through the trial date (i.e., preliminary approval of the settlement). (FAC, ¶ 3.)

On November 3, 2022, Plaintiff filed a Motion for Preliminary Approval of Class and Representative Action Settlement and for Provision Class Certification.

After a full day mediation with mediator Tripper Ortman on August 1, 2022, the parties reached a settlement. (Lo Decl., ¶ 15 & Ex. 1 [the "Settlement Agreement"] at § II, ¶ B.) The Gross Settlement Amount is \$415,000. Of the Gross Settlement Amount, \$30,000 is designated as PAGA penalties. (Settlement Agreement, § I, ¶ 9.)

A. The Class Settlement

The class settlement is conditioned upon the court's approval of class certification, to which the parties stipulate for purposes of settlement only. (Settlement Agreement, § IV, ¶¶ A, B.) The parties stipulate to a class defined as "all current and former hourly, non-exempt employees who worked for Defendants in California at any time from October 8, 2017 up to and including the

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date of preliminary approval of this Settlement (“Class Period”) in California (“Class Members”).” (Lo Decl., ¶ 4.)

The parties estimate that there are 144 putative class members who collectively worked up to 8,918 pay periods during the Class Period. (Settlement Agreement, § V, ¶ A.2.) The Settlement Agreement provides for an increased of the Gross Settlement Value if the actual number of work weeks increases by 10 percent or more. (Ibid.)

B. The PAGA Settlement

The PAGA settlement value (or PAGA Fund) is not to exceed \$30,000, with \$22,500 paid to the LWDA and the remaining \$7,5000 distributed to the PAGA Group Members. (Settlement Agreement, § V, ¶ D.)

C. Costs, Fees, and Awards

Plaintiffs request the court approve attorneys’ fees in the amount of one-third of the Gross Settlement Amount (\$138,333.00) and costs not to exceed \$20,000 upon proof. (Settlement Agreement, § V, ¶ B.1.) The court notes that the Lo Declaration reports costs not to exceed \$30,000. (Lo Decl., ¶ 50.)

Plaintiffs request an incentive award of \$10,000. (Lo Decl., ¶ 64.)

The estimated settlement administration costs are \$7,500. (Moore Decl., ¶17 & Ex. B.)

D. Releases

Class Members release “any and all claims that were plead or could have been plead, based on, or which arise out of the facts alleged in the complaint in the Action, arising during the Class Settlement Period.” (Settlement Agreement, § VI, ¶ A.1.)

The PAGA release provides that “each PAGA Group Member will release Defendant and Releasees of all claims under PAGA that were plead or could have been plead, based on, or which arise out of the facts alleged in the operative complaint and notice filed with the LWDA during the PAGA Settlement Period.... Every PAGA Group Member will fully release the Released PAGA Claims regardless of their decision to participate in the class settlement.” (Settlement Agreement, § VI, ¶ B.)

LEGAL FRAMEWORK

Representative litigants must submit any settlement of PAGA representative actions for court approval. (See Lab. Code, § 2699, subd. (1)(2).) Because the Labor & Workforce Development Agency (“LWDA”) is not present at the negotiating table, the court’s review of a PAGA

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settlement must make sure that the interests of the LWDA in civil enforcement are defended and that the settlement is fair, adequate, and reasonable under all the circumstances. (See *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133; see also Gov. Code, § 12652, subd. (e)(2)(B) [requiring False Claims Act qui tam settlements be “fair, adequate, and reasonable under all the circumstances”].)

The court therefore takes guidance from the context of class action settlements, which must also be found to be “fair, adequate, and reasonable.” (See, e.g., *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244.) In approving class action settlements, the court considers (1) the relative strength of the plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further litigation of this dispute; (3) the risk of maintaining class status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel that settlement is reasonable; and (7) the presence or lack of any objections to the proposed settlement. (See *id.* at pp. 244-245; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

At least two of these factors are not analogous in the PAGA settlement context: risk of maintaining class action status and reaction of other aggrieved employees. (Cf. *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.) Class action status is irrelevant because PAGA actions are not certified. The lack of objections is largely irrelevant because PAGA procedures provide no opportunity for absent aggrieved employees to offer their objections to the settlement. The parties must serve the LWDA with settlement papers, but the law provides no procedure or timeline for the LWDA to object. (Lab. Code, § 2699, subd. (l).)

Thus, courts consider (1) the apparent strength of Plaintiff’s case; (2) the high risk, high complexity, and long likely duration of the PAGA dispute; (3) the amount offered in settlement; (4) the extent of discovery and investigation; and (5) the favorable views of experienced counsel, reached after mediation before an experienced neutral.

DISCUSSION

The court previously continued the hearing on preliminary approval to permit the parties to address concerns regarding the inconsistency between the various class definitions. Plaintiffs submitted 12/16/22 Lo Declaration, which indicates that the definition of “Class” and “Class Members” in the Settlement Agreement controls over the other definitions (i.e., the definition in the “Stipulation of Settlement”). (12/16/22 Lo Decl., ¶ 3.)

The court preliminarily certifies the class and approves the settlement as fair, reasonable, and adequate, all factors considered. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.) The proposed class satisfies the requirements of Code of Civil Procedure § 382 and is certified for settlement purposes only. (Lo Decl., ¶¶ 65-78; see also *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The class settlement is within a reasonable range considering the claims. (Lo

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Decl., ¶¶ 20-38, 79.)

The court confirms Plaintiff Iria Jimenez Sandoval as Class Representatives and Justin Lo of Work Lawyers, PC as Class Counsel. The court confirms the appointment of Phoenix Settlement Administrator as the Claims Administrator.

Second, the 12/16/22 Lo Declaration submits amended opt out notices. (12/16/22 Lo Decl., ¶¶ 4 & 5, Exs. B & C.) The amended notice includes the contact information for Department 22 (dept22@alameda.courts.ca.gov). The proposed class notice form, procedure, and content are adequate.

Finally, the 12/16/22 Lo Declaration includes the Declaration of Gary F. Smith of Legal Services of Northern California, which satisfies Code of Civil Procedure § 382.4. (12/16/22 Lo Decl., Ex. D.)

As to the incentive award, attorneys' fees and costs, and settlement administration costs, the court does not approve such awards until final approval.

Service awards must be supported with evidence regarding the nature of the plaintiff's participation in the action, including specifics of actions taken, time committed, and risks faced, if any. (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804-807.) The court's standard service award is \$7,500.

Requests for attorneys' fees must similarly be supported by sufficient evidence for a lodestar analysis, including information about counsel's hourly rate and the time spent on the case, even if the parties have agreed to fees. (Robbins v. Alibrandi (2005) 127 Cal.App.4th 438, 450-451.)

HOW DO I CONTEST A TENTATIVE RULING?

THROUGH ECOURT

Notify the Court and all the other parties no later than 4:00 PM one court day before the scheduled hearing, and briefly identify the issues you wish to argue through the following steps:

1. Log into eCourt Public Portal
2. Case Search
3. Enter the Case Number and select "Search"
4. Select the Case Name
5. Select the Tentative Rulings Tab
6. Select "Click to Contest this Ruling"
7. Enter your Name and Reason for Contesting
8. Select "Proceed"

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BY EMAIL

Send an email to the DEPARTMENT CLERK and all the other parties no later than 4:00 PM one court day before the scheduled hearing. This will permit the department clerk to send invitations to counsel to appear remotely.

Notice via BOTH eCourt AND email is required.