

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp FILED Superior Court of California County of Los Angeles 03/10/2023 David W. Slayton, Executive Officer / Clerk of Court By: <u>B. McClendon</u> Deputy
COURTHOUSE ADDRESS: Compton Courthouse 200 West Compton Blvd, Rm 902, Compton, CA 90220		
PLAINTIFF/PETITIONER: ETHAN TROUPE, on behalf of himself and all "aggrieved employees" pursuant to Labor Code 2698 et seq		
DEFENDANT/RESPONDENT: AZURELITE, INC., a California corporation		
CERTIFICATE OF MAILING		CASE NUMBER: 21CMCV00282

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order (Order to Show Cause Re: Settlement of Dismissal; Hearing on M...) of 03/10/2023 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Compton, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Daniel J. Corbett
 Ballard Rosenberg Golper & Savitt, LLP
 15760 Ventura Boulevard
 Eighteenth Floor
 Encino, CA 91436

Alex Paul Katofsky
 Gaines & Gaines, APLC
 4550 E Thousand Oaks Blvd
 Ste 100
 Westlake Village, CA 91362



Dated: 03/10/2023

David W. Slayton, Executive Officer / Clerk of Court

By: B. McClendon
 Deputy Clerk

CERTIFICATE OF MAILING

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

South Central District, Compton Courthouse, Department B

21CMCV00282

March 10, 2023

8:30 AM

**ETHAN TROUPE, ON BEHALF OF HIMSELF AND ALL
"AGGRIEVED EMPLOYEES" PURSUANT TO LABOR
CODE 2698 ET SEQ vs AZURELITE, INC., A CALIFORNIA
CORPORATION**

Judge: Honorable George F. Bird
Judicial Assistant: Brian McClendon/ by Rie
Mejia
Courtroom Assistant: Deborah McKinney

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Order to Show Cause Re: Settlement of Dismissal; Hearing
on Motion for Preliminary Approval of Settlement

The matters are called for hearing.

The Clerk informs the Court that the Plaintiff called on March 8, 2023 to inform the Court that the Plaintiff and the Defendant submit on the Court's tentative ruling.

There are no appearances by or for the Plaintiff or the Defendant.

The Court hereby adopts the tentative ruling as follows:

**ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT AND SEEKING LEAVE TO FILE FIRST AMENDED COMPLAINT**

I. BACKGROUND

This is a class settlement and representative action to recover civil penalties pursuant to the Private Attorneys General Act ("PAGA") for alleged Labor Code Violations by Defendant Azurelite, Inc. ("Defendant"). Plaintiff Ethan Troupe ("Plaintiff") alleges that Defendant failed to do the following in violation of the Labor Code: to pay overtime wages, hazard pay, and minimum wages earned, to provide meal and rest breaks, to provide complete and accurate wage statements, to provide paid sick leave, and to reimburse business expenses.

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**II. MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND
SEEKING LEAVE TO FILE FIRST AMENDED COMPLAINT**

A. Motion filed on February 15, 2023.

On February 15, 2023, Plaintiff submitted a jointly prepared Class Action and PAGA Settlement Agreement and Addendum to Class Action and PAGA Settlement Agreement ("Settlement"). (Decl. of Daniel F. Gaines, counsel for Plaintiff, ¶ 7 and Exhibit B.) Plaintiff also filed this Motion for Preliminary Approval of Class Action Settlement and Seeking Leave to File First Amended Complaint ("Motion"). The Motion seeks (1) a preliminary finding that the settlement falls within the range of reasonableness, (2) conditional certification of a settlement class, (3) approval of Plaintiff as the Class Representative, (4) approval of Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC, currently counsel for Plaintiff, as Class Counsel, (5) approval of Phoenix Settlement Administrators as Settlement Administrator, (6) preliminary approval of the allocation of \$15,000.00 from the Gross Settlement Amount to settle Plaintiff's representative claims of which seventy-five percent (75%) will be paid to the Labor and Workforce Development Agency and twenty-five percent (25%) shall be paid to the Aggrieved Employees, (7) approval of the content and form of the notice and directing it be disseminated by the Settlement Administrator, (8) permission allowing Plaintiff to file a first amended complaint, and (9) setting a final fairness and approval hearing.

B. No oppositions filed.

This Motion is unopposed as of March 8, 2023.

III. LEGAL STANDARDS

The court must review and approve PAGA settlements. (Lab. Code, § 2699, subd. (1)(2).) Any settlement of class litigation must also be reviewed and approved by the court. (Cal. Rules of

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Court rule 3.769, subd. (a).) "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, subd. (d).)

"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.) The trial court has broad discretion in approving the settlement. (Id. at 78.)

The court should consider relevant factors, such as 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 stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement..." when evaluating the reasonableness and fairness of a settlement. (Id. at 76.) The list of factors is not exhaustive and should be tailored to each case. (Ibid.) The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (Nordstrom Com. Cases (2010) 186 Cal.App.4th 576, 581 [112 Cal.Rptr.3d 27, 31].)

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." (Ibid.)

IV. DISCUSSION

A. Notice to the Labor Workforce Development Agency.

The proposed settlement shall be submitted to the Labor and Workforce Development Agency ("LWDA"), at the same time that it is submitted to the court, through the LWDA's online

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system. (Lab. Code, § 2699 subds. (1)(2) and (1)(4).) Plaintiff submits a Declaration of Service demonstrating that this Motion and the Settlement were provided to LWDA via their online system. (Decl. of Jeremy Reyes, p. 2.)

B. Settlement amount and allocation.

Of the Gross Settlement Amount of \$150,000, the parties' allocation of funds is outlined below:

LWDA PAGA Payment

75% of \$15,000.00

\$11,250.00

Individual PAGA Payments

25% of \$15,000.00

3,750.00

Class Representative Service Payment

up to \$10,000.00

Administrator Expenses Payment

up to \$11,000.00

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Class Counsel Fee Payment

33.33% of Gross Settlement Amount

estimated \$50,000.00

Class Counsel Fee for Defending Anti-SLAPP Motion

\$15,070.00

Class Counsel Litigation Expenses Payment

up to \$15,000.00

TOTAL

\$116,070.00

(Decl. of Daniel F. Gaines, Exhibit B, pp. 5-7.) The Gross Settlement Amount is subject to an increase based on the escalation provisions in paragraph 9 of the Settlement. (Id. at p. 17.) Any remaining funds after the above payments will be distributed as Individual Settlement Payments. (Id. at p. 7 term 3.2.4.)

Payment to each Participating Class Member will be calculated by dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period (October 5, 2018 to November 5, 2022) and then multiplying the result by each

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Participating Class Member's Workweeks. (Decl. of Daniel F. Gaines, Exhibit B, p. 7 term 3.2.4.) PAGA Penalties will also be distributed among Aggrieved Employees' by dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$3,750) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and then multiplying the result by each Aggrieved Employee's PAGA Pay Periods. (Id. at p. 7 term 3.2.5.1.) Each Class Member is responsible for the taxes on any payments received. (Id. at p. 7 terms 3.2.4.1 and 3.2.5.1.)

The parties reached settlement after substantial settlement negotiations with the help of mediator Brandon McKelvy, Esq. (Decl. of Daniel F. Gaines, ¶ 10.) Settlement discussions included investigation of the facts and law including the exchange of informal discovery documents. (Id. at ¶ 14.) Plaintiff states that the Settlement takes into account that Defendant still denies that they violated any Labor Code provisions, that Defendant argues the class may not be certifiable, that Defendant believes Plaintiff's claims are not typical of those in the class, that Defendant has a limited ability to pay a substantial settlement without putting Defendant out of business, and Plaintiff recognizes some of the remedies sought are discretionary so Plaintiff may not be awarded the requested sums even if they were successful at trial. (Id. at ¶¶ 24, 25, 26, 27.)

Defendant estimates there are 218 Class Members who collectively worked a total of 11,000 Workweeks during the Class Period of October 5, 2018, to November 5, 2022. (Id. at p. 8 term 4.1.) Plaintiff's counsel estimates that the potential damage exposure to the Class Members based on a damage analysis would be \$2,713,140.00. (Decl. of Daniel F. Gaines, ¶¶ 19, 20, 21, 22, 23.) Plaintiff's counsel believes the Gross Settlement Amount of \$150,000 is reasonable. (Id. at ¶ 24.)

C. Investigation and discovery.

The parties have been engaged in this litigation since October 28, 2021. The parties have been actively litigating their claims as Defendant filed a demurrer to the Complaint and filed their own cross-complaint. After Plaintiff filed a demurrer to the cross-complaint, Defendant dismissed one of their two causes of action. (Decl. of Daniel F. Gaines, ¶ 14.) Plaintiff's counsel was provided statistical data and information which allowed Plaintiff's counsel to create a comprehensive

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damage analysis. (Id. at ¶¶ 14, 18.)

D. Counsel's experience in this litigation.

Plaintiff's counsel has extensive experience in complex employment litigation with an emphasis on wage and hour claims. (Id. at ¶¶ 4, 5.) Plaintiff's counsel provides a list of over 200 cases in which Plaintiff's counsel has been appointed as class counsel. (Decl. of Daniel F. Gaines, Exhibit A.) Given the experience of Plaintiff's counsel and the work involved, this Court finds that attorney's fees of 33 and 1/3% and a \$15,070 fee for defending against the cross-complaint are reasonable.

E. Objectors and opt-out.

Section 8.5 of the Settlement outlines the procedure if a Class Member wishes to opt-out of class membership. Those who opt-out will not receive an Individual Class Payment but all Aggrieved Employees are bound by the terms of the settlement for PAGA Payments and eligible for an Individual PAGA Payment irrespective of opting-out. (Decl. of Daniel F. Gaines, Exhibit B, p. 14 term 8.5.4.) Only participating class members may object to the settlement. (Id. at p. 15 term 8.7.1.)

F. Presumption of fairness.

Based on the foregoing, the Settlement is entitled to a presumption of fairness as the Settlement was reached through arm's-length bargaining, the investigation included substantial damage analysis based on information shared between the parties, counsel is highly experienced in this complex litigation, and currently no objections have been made to this Settlement. (Nordstrom Com. Cases, supra, 186 Cal.App.4th at p. 581.)

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This Court finds that the Settlement is fair and reasonable. The allocation of \$15,000.00 to make PAGA Payments, of which seventy-five percent (75%) will be paid to the Labor and Workforce Development Agency and twenty-five percent (25%) will be paid to the Aggrieved Employees, is reasonable and in compliance with the civil penalties allocation outlined in Labor Code section 2699, subdivision (i).

G. Conditional certification of settlement class.

“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, subd. (d).)

Plaintiff seeks a conditional certification of the settlement class. Though the trial court is given discretion when evaluating a class for settlement purposes only, the class definition must still be evaluated to ensure that it is not overly broad. (*Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 619 [117 S.Ct. 2231, 2248, 138 L.Ed.2d 689].) The Class is defined in the Settlement as “all persons employed by Defendant in California and classified as nonexempt employees who worked for Defendant during the Class Period.” (Decl. of Daniel F. Gaines, Exhibit B, p. 14 term 1.5.)

Typically, a class action is only certified “when the question is one 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.” (Internal quotations omitted.) (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 [17 Cal.Rptr.3d 906, 911, 96 P.3d 194, 199].)

Here, the class is ascertainable from Defendant’s employment and payroll records. (Motion, p. 9:4-5.) The estimated class size is 218 Class Members. This Court finds that 218 Class Members is a sufficiently large group to qualify as a numerous class.

Plaintiff’s counsel argues that there are questions of law or fact common to all Class Members because each Class Member was employed by Defendant and alleges that Defendant violated the Labor Code provisions pertaining to unpaid wages due, unpaid meal and rest period premiums, inaccurate or incomplete wage statements, failure to timely pay wages upon separation, and failure to reimburse expenses. (Motion, p. 9:9-16.) As this class is for settlement purposes only,

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this Court finds that the claims among the Class Members are sufficiently common. The question of fact related to Defendant's conduct as to wages, breaks, and reimbursements, and if such conduct is a violation of the Labor Code provisions at issue here, is common among the Class Members.

A class representative's claims are typical when they arise from the same event or course

of conduct that gives rise to the claims of the class and are based on the same legal theory. (Classen v. Weller (1983) 145 Cal. App. 3d 27, 46-47.) Plaintiff is the proposed Class Representative, and he qualifies as a member of the Class as Plaintiff was a non-exempt employee of Defendant during the Class Period. His claims against Defendant are based on failure to pay wages due, failure to provide meal and rest periods, failure to comply with itemized employee wage statement provisions, failure to reimburse expenses, and failure to timely pay wages at the separation of employment. (Motion, p. 9:23-26.) These are the same claims as the Class Members present. Plaintiff has also hired competent counsel with experience in these complex litigation matters. The Court finds that Plaintiff is a sufficient Class Representative as his claims arise from the same course of conduct by Defendant and relies on the same legal provisions as the claims of the Class Members.

Based on the foregoing, this Court will conditionally certify the settlement class.

H. Approval of representatives and administrators.

As discussed above, Plaintiff is a sufficient Class Representative because his claims stem from the same conduct of Defendant and are based on the same statutory violations as the Class Members claims. Plaintiff is approved as the Class Representative.

The parties request that counsel for Plaintiff, Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC, be approved as Class Counsel. As discussed above, Plaintiff's counsel has extensive experience in complex litigation matters including wage and hour violations. Plaintiff's counsel presents hundreds of other matters in which they were appointed class counsel. (Decl. of Daniel F. Gaines, Exhibit A.) Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines,

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APLC, are approved as Class Counsel.

The Settlement calls for administration by Phoenix Settlement Administrators and there are no objections to this Settlement Administrator. Phoenix Settlement Administrators is approved as the Settlement Administrator.

I. Notice to Class Members.

The parties present the Notice to Class Members ("Notice") for court approval. The Notice informs each Class Member of their predicted settlement amount including the Individual Class Payment and PAGA Payment, informs the Class Member the result of doing nothing or opting-out, states that the Class Member cannot opt-out of the PAGA Payment, presents the major settlement terms, demonstrates how payments will be calculated, clearly outlines the opt-out and objection procedures, and informs the Class Member that they may attend the final approval hearing. (Decl. of Daniel F. Gaines, Exhibit B, pp. 25-34.)

Based on the terms of the Settlement, the Settlement Administrator is required to send the Notice to the Class Members within 14 days of receiving the Class Data. The Class Members have 45 days from the date of mailing, with an additional 14 days for notices that are remailed based on forwarding addresses provided by USPS, to submit objections.

The Notice is approved. The Settlement Administrator is directed to mail the approved Notice, with a copy of the Notice translated into Spanish, by first-class mail to the Class Members at their last known address no later than 14 days after receipt of the Class Data.

J. Leave to file a first amended complaint.

"The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect." (Code Civ. Proc.,

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§ 473, subd. (a)(1).) California courts have a liberal policy of allowing amendment at any stage in the proceeding and "absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail." (Board of Trustees v. Superior Court (2007) 149 Cal.App.4th 1154, 1163 [57 Cal.Rptr.3d 755, 762].) Here, the parties have agreed to allow Plaintiff to amend the Complaint as part of the terms of the Settlement. Defendant does not present any prejudice as a result of amending the Complaint. The Court will GRANT leave to file a first amended complaint.

K. Final approval hearing.

The Final Approval hearing is set for June 8, 2023. Class Members may attend the hearing, either individually or through representation by an attorney, and voice oral objections to the Settlement.

V. CONCLUSION

Based on the foregoing, the Court preliminarily approves the Settlement, conditionally certifies the settlement class, approves the Class Representative, the Class Counsel, the Settlement Administrator, and approves the Notice. The Settlement Administrator is directed to mail the approved Notice, with a copy of the Notice translated into Spanish, by first-class mail to the Class Members at their last known address no later than 14 days after receipt of the Class Data. Leave to file a first amended complaint is GRANTED. The Motion re: Notice of Unopposed Motion and Unopposed Motion for Preliminary Approval of Class Action Settlement and Seeking Leave to File First Amended Complaint filed by ETHAN TROUPE, on behalf of himself and all "aggrieved employees" pursuant to Labor Code 2698 et seq on 02/15/2023 is Granted.

The Court signs and files the Plaintiff's Order (1) Granting Preliminary Approval of Class Action

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Settlement and (2) Granting Leave to File First Amended Complaint.

Hearing - Other re: Settlement Approval is scheduled for 09/12/2023 at 08:30 AM in Department B at Compton Courthouse.

The Clerk is directed to give notice.

Certificate of Mailing is attached.