

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

**RG21089219: Theodore VS Blommer Chocolate Company
05/16/2023 Hearing on Motion for Final Approval of Settlement filed by Jon Theodore
(Plaintiff) in Department 23**

Tentative Ruling - 05/11/2023 Brad Seligman

PARTIES TO APPEAR.

Subject to any objections raised at the hearing, the Court tentatively approves the Motion for Final Approval of Settlement.

The request for attorneys' fees and costs is GRANTED in part. The requests for Plaintiff's service award and settlement administration costs are GRANTED.

The proposed order includes a compliance hearing of 5/1/24, which the Court will change to 5/7/24 before signing.

BACKGROUND

Before this Court is Plaintiffs' Motion for Final Approval of Class Action Settlement.

A. Procedural Background

On February 13, 2021, Plaintiff filed a class action complaint against Defendant Blommer Chocolate Company, alleging violations of the Labor Code and Business & Professions Code § 17200. (Case No. RG21089219.) Defendant removed the class action to federal court.

On June 16, 2021, Plaintiff filed a PAGA complaint against Defendant (Case No. RG21104378), and the class action was remanded back to this Court.

On June 23, 2022, the Court ordered the class action and PAGA action consolidated for settlement purposes pursuant to the parties' stipulation.

On December 12, 2022, this Court preliminarily approved of the settlement. Now, the parties seek final approval.

B. Settlement and Notice

On March 7, 2022, the parties attended mediation with Jeffrey Ross and agreed to the mediator's proposal. (Campbell Decl., ¶ 9.)

The settlement provides for a gross settlement amount of \$1.4 million, which includes \$50,000 allocated to the PAGA claims, in exchange for a release by Plaintiff and the class. (Campbell Decl., Ex. 1, §§ 3.06 & 5.) On December 6, 2022, Plaintiff submitted notice of the settlement to the LWDA. (Campbell Decl., ¶ 10.)

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The class consists of approximately 348 individuals. (Campbell Decl., ¶ 11.) On January 4, 2023, the settlement administrator mailed notice to all class members. (Salinas Decl., ¶ 5.) Ten notices were ultimately undeliverable. (Salinas Decl., ¶¶ 6, 7.)

As of April 17, 2023, there have been no requests for exclusion, objections, or workweek disputes. (Salinas Decl., ¶¶ 8-10.)

Based upon an estimated net settlement amount of \$852,862.69, each class member will receive an average of \$2,450.75 and an average PAGA payment of \$61.27. (Salinas Decl., ¶¶ 12-14.)

LEGAL FRAMEWORK

Class action settlements must be approved by the court as “fair, adequate, and reasonable.” (CRC 3.769, subd. (g); *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244.) In approving class action settlements, courts consider (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.)

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 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”].)

DISCUSSION

In considering the relevant factors, the Court approves of the settlement as fair, reasonable, and adequate. (*Wershba, supra*, pp. 244-245.)

The settlement is entitled to a presumption of fairness. (*Dunk, supra*, p. 1802.) The settlement is an arms’ length agreement reached after mediation. (Campbell Decl., ¶ 9.) The investigation and discovery are sufficient to allow the Court and counsel to act intelligently. (Campbell Decl., ¶¶ 5-8, 15-27.) Plaintiffs’ counsel is experienced in similar litigation, and there are no objections. (Campbell Decl., ¶¶ 28-41; Salinas Decl., ¶ 9.)

The Court approves of the PAGA settlement as fair, reasonable, and adequate. The settlement

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agreement allocates \$50,000 of the gross settlement amount to PAGA penalties. (Campbell Decl., ¶ 25.)

A. Attorneys' Fees

Plaintiffs' counsel seeks a fee award of \$466,666.66, which represents one-third of the gross settlement amount, and reimbursement of litigation costs in the amount of \$16,970.75.

Under *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, Plaintiff asserts that a lodestar cross check yields a 1.89 multiplier. (Campbell Decl., ¶ 43 [lodestar of \$247,170] & Ex. 3.)

The Court approves a reduced fee award of \$420,000, which yields a 1.7 multiplier using a lodestar cross check. The Court finds this sufficient given the early stage of settlement with no unique risks and relatively high hourly rates for most timekeepers.

The Court requires that 10% of any fee award be kept in the administrator's trust fund until the completion of the distribution process and Court approval of a final accounting.

The Court finds the costs incurred are reasonable and necessary. (Campbell Decl., ¶ 46 & Ex. 4.) Therefore, the Court approves a costs award of \$16,970.75. The difference between the awarded amount and the allocated amount shall revert to the net settlement fund and be distributed to the class.

B. Service Award

Plaintiff requests a service award of \$5,000. Plaintiff declares that he has spent approximately 30 hours performing duties related to this action. (Theodore Decl., ¶ 11.)

Therefore, the Court approves a service award of \$5,000 to Plaintiff.

C. Settlement Administration Costs

The settlement administrator has incurred, and will incur in completing the settlement distribution, \$8,500 in costs. (Salinas Decl., ¶ 16.) This is consistent with the amount disclosed in the notice. (Campbell Decl., Ex. 1 at Ex. A, § 5.)

Therefore, the Court awards \$8,500 to the Phoenix Settlement Administrators for settlement administration costs.

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