

(03)

Tentative Ruling

Re: **Marlon Guillen v. Max's Artisan Breads, Inc.**
Superior Court Case No. 21CECG02164

Hearing Date: June 7, 2023 (Dept. 502)

Motion: Plaintiff's Motion for Preliminary Approval of Class Action and
PAGA Settlement

Tentative Ruling:

To grant the plaintiff's motion for preliminary approval of class action and PAGA settlement.

Explanation:

1. Class Certification

a. Standards

First, the court must determine whether the proposed class meets the requirements for certification before it can grant preliminary approval of the proposed settlement. An agreement of the parties is not sufficient to establish a class for settlement purposes. There must be an independent assessment by a neutral court of evidence showing that a class action is proper. (*Luckey v. Superior Court* (2014) 228 Cal. App. 4th 81 (rev. denied); see also Newberg, *Newberg on Class Actions* (T.R. Westlaw, 2017) Section 7:3: "The parties' representation of an uncontested motion for class certification does not relieve the Court of the duty of determining whether certification is appropriate.") "Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems for the proposal is that there will be no trial. But other specifications of the rule -- those designed to protect absentees by blocking unwarranted or overbroad class definitions - - demand undiluted, even heightened, attention in the settlement context." (*Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 620, internal citation omitted.)

"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.)

b. Numerosity and Ascertainability

"Ascertainability is achieved by defining the class in terms of objective characteristics and common transactional facts making the ultimate identification of

class members possible when that identification becomes necessary. While often it is said that class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records, that statement must be considered in light of the purpose of the ascertainability requirement. Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*." (*Nicodemus v. Saint Francis Memorial Hospital* (2016) 3 Cal.App.5th 1200, 1212, internal citations and quote marks omitted.)

Here, plaintiff seeks to certify a class for the purpose of approving the settlement consisting of all current and former employees of defendants from July 28, 2017 to May 22, 2022. The class appears to be ascertainable, as defendants' personnel records should be sufficient to allow the parties to identify the class members. The class is likely also sufficiently numerous to justify certification, as plaintiff's counsel claims that there are approximately 506 class members. Therefore, the court finds that the class is sufficiently numerous and ascertainable for certification.

c. Community of Interest

"[T]he '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.'" (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021, internal citations omitted.) "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.) "[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.)

Here, it does appear that there are common questions of law and fact, as all of the proposed class members worked for the same defendant and allegedly suffered the same type of Labor Code violations. Therefore, the proposed class involves common issues of law and fact.

With regard to the requirement of typicality of the representative's claims, it does appear that Mr. Guillen's claims are typical of the rest of the class and that he seeks the same relief as the other class members based on his allegations and prayer for relief in the complaint. There is no evidence that he has any conflicts between his interests and the interests of the other class members that would make him unsuitable to represent their interests. Therefore, plaintiffs have shown that Mr. Guillen has claims typical of the other class members.

In addition, the declaration of plaintiff's counsel establishes that class counsel are experienced and qualified to represent the class based on the declarations of counsel. (Davis decl., ¶¶ 2-12, 57.) Therefore, the court finds that the community of interest requirement has been met.

d. Superiority of Class Certification

It does appear that certifying the class would be superior to any other available means of resolving the disputes between the parties. Absent class certification, each employee of defendants would have to litigate their claims individually, which would result in wasted time and resources relitigating the same issues and presenting the same testimony and evidence. Class certification will allow the employees' claims to be resolved in a relatively efficient and fair manner. (*Sav-On Drugs Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340.) Therefore, it does appear that class certification is the superior means of resolving the plaintiffs' claims.

Conclusion: Plaintiff has met his burden of showing that the class should be certified for the purposes of settlement.

2. Settlement

a. Legal Standards

"When, as here, a class settlement is negotiated prior to formal class certification, there is an increased risk that the named plaintiffs and class counsel will breach the fiduciary obligations they owe to the absent class members. As a result, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair." (*Koby v. ARS National Services, Inc.* (9th Cir. 2017) 846 F. 3d 1071, 1079.)

"[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 . . . The courts are supposed to be the guardians of the class." (*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.) The court must be leery of a situation where "there was nothing before the court to establish the sufficiency of class counsel's investigation other than their assurance that they had seen what they needed to see." (*Id.* at p. 129.)

b. Fairness and Reasonableness of the Settlement

"In determining whether a class settlement is fair, adequate and reasonable, the trial 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.' The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245, internal citations omitted, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

Here, plaintiff's counsel has presented a sufficient discussion of the strength of the case if it went to trial, the risks, complexity, and duration of further litigation, and an explanation of why the settlement is fair and reasonable in light of the risks of taking the case to trial. (See Davis decl., ¶¶ 65-105.) Plaintiff's counsel has provided a detailed explanation of the claims and defenses raised by the parties, and the problems and risks inherent in plaintiff's case. Counsel's analysis supports a finding that the risks, costs and uncertainties of taking the case to trial weigh in favor of settling the action for \$499,000 as opposed to the potential maximum recovery of \$5,567,708.60. Plaintiff also offers evidence regarding the views and experience of counsel, who state that they believe that the settlement is fair and reasonable based on their experience with class litigation. (*Ibid.*) Plaintiff also points out that the settlement was reached after arm's length mediation, and that counsel conducted extensive discovery to investigate the claims and learn the strengths and weaknesses of the case. These factors also weigh in favor of finding that the settlement is fair, adequate, and reasonable.

c. Proposed Class Notice

The proposed notice appears to be adequate, as the settlement administrator will mail out notices to the class members. The notices will provide the class members with information regarding their time to opt out or object, the nature and amount of the settlement, the impact on class members if they do not opt out, the amount of attorney's fees and costs, and the service award to the named class representatives. Therefore, the court finds that the proposed class notice is adequate.

3. Attorney's Fees and Costs

Plaintiff's counsel seeks attorney's fees of 34% of the gross settlement, or \$169,660. They also seek court costs not to exceed \$30,000. Counsel has now provided a supplemental declaration that explains the basis for the fees request. (See Supplemental Davis decl.) Ms. Davis describes the education, skill, and experience of the attorneys who worked on the case, as well as the challenges presented in the litigation. The firm took the case on a contingent basis, so they assumed the risk that they would receive nothing if they were unsuccessful. Plaintiff's counsel bill at rates of \$350 per hour to \$800 per hour, depending on the experience of the attorney. Ms. Davis bills at \$800 per hour, Mr. Nayebdadash bills at \$700-725 per hour, Mr. Carlos Jimenez bills at \$700 per hour, Ms. Minne bills at \$650 per hour, Mr. Clapp bills at \$400-600 per hour, Mr. Jeffrey Jimenez bills at \$300 per hour, and Ms. Tan bills at \$350 per hour. Counsel claims that these rates are consistent with normal billing rates in class action litigation in California.

Counsel has billed 179.5 hours on the case so far, and they expect to bill approximately 30 more hours before the case is finished. Not including the additional 30 hours, to date their lodestar fees are \$97,280. Counsel also claims that it is appropriate

to use a multiplier of 1.75 in the case in order to take into account the risks, difficulty, complexity, and contingent nature of the litigation, as well as the excellent results for the class. Therefore, counsel requests that they be allowed to recover \$169,660 in fees.

Counsel also seeks \$30,000 in costs. So far, counsel has incurred about \$20,373.96 in costs. They will likely incur further costs in the future, so they request that the court approve a maximum of \$30,000 in costs. If total costs are less than \$30,000, then any remaining amounts will be included in the net settlement amount and redistributed to the class.

Counsel has now provided the court with sufficient information to show that the requested fees and costs are reasonable. While the billing rates of some of plaintiff's counsel are high when compared to Fresno attorneys' rates, they appear to be comparable to other attorneys in Southern California who specialize in class action litigation. Also, the request for a 1.75 multiplier appears to be reasonable in light of the risks of taking the case on a contingent basis, as well as the excellent results for the class. Therefore, the court will grant preliminary approval of the requested fees.

The request for \$30,000 in costs exceeds the actual costs incurred so far in the case, but counsel anticipates incurring further costs before the final approval hearing. Also, if counsel incurs less than \$30,000 in costs, then the remaining amount will be added back to the net settlement amount and given to the class. Therefore, the court will grant preliminary approval of the requested costs.

4. Payment to Class Representative

Plaintiff seeks preliminary approval of a \$5,000 "enhancement payment" to the named plaintiff/class representative, Mr. Guillen. Mr. Guillen has provided his own declaration explaining what work he did on the case and why the requested enhancement payment is reasonable. (Guillen decl., ¶¶ 11-23.) Plaintiff's counsel also states that Mr. Guillen assisted counsel with various tasks. (Davis decl., ¶¶ 106-108.) Therefore, the court finds that the \$5,000 enhancement payment to the named class representative is fair and reasonable.

5. Payment to Class Administrator

Plaintiff seeks approval of \$10,000 for the settlement administrator's fees. Plaintiff has presented the declaration of Jodey Lawrence from the settlement administrator, Phoenix Settlement Administrators, to support the requested payment. She explains the background of Phoenix and the tasks that it will perform in administering the settlement. (Lawrence decl., ¶¶ 5-17.) Therefore, plaintiff has shown that the \$10,000 payment to the settlement administrator is fair and reasonable.

6. PAGA Settlement

Plaintiff proposes to allocate \$50,000 of the settlement to the PAGA claims, with \$37,500 being paid to the LWDA as required by law and the other \$12,500 being paid out to the class members. Plaintiff's counsel has also sent notice of the settlement to the LWDA, and they have not objected to the settlement. (Davis decl., ¶ 126.) Plaintiff's

<p 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 align="center"><i>FOR COURT USE ONLY</i></p>
<p>TITLE OF CASE: Marlon Guillen vs. Max's Artisan Breads, Inc. / COMPLEX / CLASS ACTION</p>	
<p align="center">CLERK'S CERTIFICATE OF MAILING</p>	<p>CASE NUMBER: 21CECG02164</p>

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

[Minute Order & Tentative Ruling, dated 6/7/23]

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: 06/08/2023

Clerk, by _____,



E. Gonzalez

Deputy

Amir Nayebdadash
Protection Law Group, LLP
237 California St.
El Segundo, CA 90245

Mark D. Kruthers
Fennemore Dowling Aaron LLP
8080 N. Palm Avenue, Third Floor
Fresno, CA 93711

Timothy B. Nelson
Medina McKelvey LLP
925 Highland Pointe Drive, Suite 300
Roseville, CA 95678

Clerk's Certificate of Mailing Additional Address Page Attached