

(20)

Tentative Ruling

Re: **Guillen v. Partners Personnel – Management Services, LLC, et al.**
Superior Court Case No. 21CECG02941
Consolidated with
Guillen v. Selma Pallet, Inc., et al.
Superior Court Case No. 21CECG03614

Hearing Date: May 17, 2023 (Dept. 503)

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

Tentative Ruling:

To grant.

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.)

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].)

Plaintiff presents a declaration by Lynette Wilson, corporate Secretary for Selma Pallet. She states that Selma Pallet employed approximately 335 direct and temporary employees from 10/1/17 to **8/4/22**, who worked 15,404 workweeks at an average pay of \$16 per hour. (Wilson Decl., ¶¶ 3, 5.) The numerosity requirement is satisfied, and supported by competent evidence. (*Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2009) 670 F.Supp.2d 1114, 1121 ["Courts have routinely found the numerosity requirement satisfied when the class comprises 40 or more members"].)

The court notes that the class period is 10/1/17 to **10/2/22**. There is no explanation for why Wilson uses a shorter time period. While numerosity is established, the parties must ensure that the correct dates are used when defendants submit data to Phoenix for purposes of mailing out notices and paying out the settlement proceeds.

The proposed class is defined as: "All current and former non-exempt employees of Selma Pallet, Inc. and employees of Partners Personnel-Management Services, LLC, and Nexem Partners, LLC who worked on assignment at Selma Pallet, Inc. in the state of California at any time between October 1, 2017, and October 2, 2022." (Settlement Agreement ¶¶ 7-8.) The Wilson Declaration affirms that its employees, including temporary employees, were classified as non-exempt and paid on an hourly basis in California, subject to the same personnel, time and payroll records policies. (Wilson Decl., ¶¶ 2, 4.) While the moving papers do not specifically submit evidence on ascertainability, class members should be easily identifiable from defendants' personnel records.

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.)

This action involves claims that defendants failed to provide meal and rest breaks, failed to pay wages for all time worked including minimum wage and overtime, failed to provide accurate wage statements, failed to reimburse employees for necessary business expenses, and largely derivative claims for waiting time penalties, violation of the California Business & Professions Code, and PAGA. (Davis Decl., ¶ 49.) Plaintiff contends that all employees during the Class Period, whether directly employed by Selma Pallet or working at Selma Pallet through a temporary employer and were under Selma Pallet's direction and control and were subject to the same or similar employment policies, practices, and procedures. (Davis Decl., ¶ 50.)

The Wilson Declaration supports the contention that the class members were subject to the same policies, practices and procedures. She provides a copy of the Selma Pallet handbook, provided to all who work at Selma Pallet. (Wilson Decl., ¶ 7, Exh. 1.) She also describes Selma Pallet's applicable policies, including a clocking-in grace period, a bell system that notifies employees when to take meal and rest breaks, the time keeping rounding practice, and non-discretionary bonuses. (Wilson Decl., ¶¶ 10-13.)

Plaintiff Guillen also submits a declaration. Plaintiff was directly employed by Partners Personnel - Management Services, LLC and Nexem Partners, LLC, as a temporary employee, assigned to work at Selma Pallet. He states that he was subjected to the same policies practices and procedures applicable to all other non-exempt employees, including direct hires of Selma Pallet. (Guillen Decl., ¶¶ 2-4.) He describes is experiences with the various alleged Labor Code violations, including those related to unpaid compensation due to rounding, interrupted meal and rest periods, and failure to reimburse necessary expenses. (Guillen Decl., ¶¶ 5-9.)

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." This requirement is met here, through the declarations of Wilson and Guillen.

Another focus of the adequacy inquiry is "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.) Class counsel show that they have ample experience. There is no indication of conflicts between plaintiff and the class.

d. Superiority of Class Certification

Wage and hour Labor Code cases are particularly well-suited to class resolution because of the small amounts of each employee's claim, which makes it impractical to bring wage and hour cases on an individual basis. The large number of proposed class members (once established with admissible evidence) would also make it impractical to bring the claims separately. It would be far more efficient to bring all of the claims in one action, rather than forcing the employees to bring their own separate cases. Therefore, the court intends to find that class certification is the superior method of resolving the case, and it intends to grant the request to certify the case for the purpose of approving the 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., ¶¶ 64-101.) 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 determined that the total potential liability for PAGA and class claims combined is \$5,466,950.40. The realistic value of the claims, however, is estimated to be \$434,819.49. 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 approximately 8% of the potential maximum recovery, but in excess of the realistic potential recovery. 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. Plaintiff also points out that the settlement was reached after arm's length mediation, and that counsel conducted informal discovery and document exchange 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. The notification procedure is designed to provide the greatest likelihood that each class member will receive the settlement notification. The notices will provide the class members with information regarding their time to opt out, object, or challenge the number of workweeks, the nature and amount of the settlement, the amount to be received by the class member, 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 representative. (See Ex. A to Settlement Agreement.) Therefore, the court should find that the proposed class notice is adequate.

3. Attorney's Fees and Costs

Plaintiff's counsel seeks \$150,000 in attorney's fees, which is 1/3 of the total gross settlement, plus costs of up to \$20,000. This percentage is within the range of fees that have been approved by other courts in class actions, which frequently approve fees based on a percentage of the common fund. (*City & County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-11; *Quinn v. State* (1975) 15 Cal.3d 162, 168; see also *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26.)

While it is true that courts have found fee awards based on a percentage of the common fund are reasonable, the California Supreme Court has also found that the trial court has discretion to conduct a lodestar "cross-check" to double check the reasonableness of the requested fees. (*Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 503-504 [although class counsel may obtain fees based on a percentage of the class settlement, courts may also perform a lodestar cross-check to ensure that the fees are

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<p>TITLE OF CASE: Marlon Guillen vs. Partners Personnel -- Management Services, LLC / COMPLEX / CLASS ACTION / LEAD CASE</p>	
<p align="center">CLERK'S CERTIFICATE OF MAILING</p>	<p>CASE NUMBER: 21CECG02941</p>

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

05/17/2023 Minute Order and copy of Tentative Ruling

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: 05/17/2023

Clerk, by _____,



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