

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse, Department 21

JUDICIAL OFFICER: HONORABLE EVELIO GRILLO

Courtroom Clerk: Jhalisa Castaneda

CSR: None

JCCP004904

December 20, 2022

10:00 AM

DEL TACO WAGE AND HOUR CASES

MINUTES

APPEARANCES:

No Appearances

NATURE OF PROCEEDINGS: Case Management Conference; Hearing on Motion for Preliminary Approval of Settlement

The Motion for Preliminary Approval of Settlement filed by Karolina Torrez on 11/09/2022 in case number 21CV000111 is Granted.

The motion of plaintiffs for preliminary approval of class action settlement and PAGA settlement is GRANTED.

The order of 12/6/22 identified certain concerns arising from the law that when a plaintiff asserts claims on behalf of the LWDA under the PAGA, the claims that are released are the LWDA's claims. The filing on 12/13/22 addressed those concerns.

The complaint alleges various Labor Code claims. There are approximately 50,047 members of the class.

The case preliminarily settled for a total of \$50,000,000. The settlement agreement states there will be attorneys' fees of up to \$16,666,666.67, costs of up to \$325,000, a service award of \$20,000 to Torrez and \$10,000 to each other representatives, settlement administration costs of up to \$150,000, and a net PAGA payment of \$1,500,000. After these expenses, the amount available to be distributed to the Class would be \$30,788,333.33. Assuming that there are an estimated 50,047 Class Members, the average payment per Class Member would be \$615.

The proposed class notice form and procedure are adequate.

The proposed class is appropriate for class certification.

The scope of the class release is appropriate. (Agt para 78) The scope of the class release must be limited to the claims arising out of the claims in the complaint where the named plaintiff can be an adequate representative of the class. The release of claims by the class is limited by the "factual predicate rule." (Hesse v. Sprint Corp. (9th Cir. 2010) 598 F.3d 581, 590.) (See also Hendricks v. Starkist Co (N.D. Cal. 2016) 2016 WL 692739 at * 2-4 [Denying motion for final

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approval of class settlement because scope of release overbroad].)

The scope of the PAGA release is appropriate. (Agt para 47, 79) The agreement releases the claims of the LWDA.

The scope of the named plaintiff release is appropriate. The agreement for the named plaintiff may include a Civil Code 1542 waiver. (Agt para 78)

The Court notes and approves of the plan to distribute the settlement funds with no claims process.

The unclaimed funds will be distributed to Emotional Health Association d/b/a/ SHARE! and the California Association of Food Banks. This is consistent with CCP 384. Counsel has provided a declaration in support of the motion that provides the information required by CCP 382.4.

(Matern Dec., para 59.)

The Court will not approve the amount of attorneys' fees and costs until final approval hearing. The Court cannot award attorneys' fees without reviewing information about counsel's hourly rate and the time spent on the case. This is the law even if the parties have agreed that Defendants will not oppose the motion for fees. (Robbins v. Alibrandi (2005) 127 Cal. App. 4th 438, 450-451.)

"Because absent class members are not directly involved in the proceedings, oversight to ensure settlements are fair and untainted by conflict is the responsibility of both the class representative and the court." (Mark v. Spencer (2008) 166 Cal.App.4th 219, 227.)

"In any class action there is always the temptation for the attorney for the class to recommend settlement on terms less favorable to his clients because a large fee is part of the bargain. ... [T]horough judicial review of fee applications is required in all class action settlements and the fairness of the fees must be assessed independently of determining the fairness of the substantive settlement terms.' ... " 'The evil feared in some settlements-unscrupulous attorneys negotiating large attorney's fees at the expense of an inadequate settlement for the client-can best be met by a careful ... judge, sensitive to the problem, properly evaluating the adequacy of the settlement for the class and determining and setting a reasonable attorney's fee....' " (Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 555-556.)

The court sets out its standard analysis below. Counsel may address that analysis in the fee application.

The Ninth Circuit's benchmark is 25%. (Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 495.)

This court's benchmark for fees is 30% of a total fund. (Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 495; Schulz v. Jeppesen Sanderson, Inc. (2018) 27 Cal.App.5th 1167, 1175; Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 557 fn 13; Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 fn 11.)

When cross-checking with the lodestar/multiplier, the court will evaluate the lodestar based on reasonable fees that would have been charged at hourly rates and then apply a multiplier. The

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multiplier includes contingent fee risk and other factors.

When considering risk, the court considers there is less risk in a case with fee shifting statutes because counsel's potential fees are not limited by and coupled to the monetary recovery. "The law does not mandate ... that attorney fees bear a percentage relationship to the ultimate recovery of damages in a civil rights case." (Harman v. City and County of San Francisco (2007) 158 Cal.App.4th 407, 419.) (See also Heritage Pacific Financial, LLC v. Monroy (2013) 215 Cal.App.4th 972, 1006-1007.)

The Court will not decide the amount of any service award until final approval hearing. Plaintiff must provide evidence regarding the nature of his participation in the action, including a description of his specific actions and the amount of time he committed to the prosecution of the case. (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804-807.) The court's standard service award is \$7,500.

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

The Court will set a compliance hearing after the completion of the distribution process and the expiration of the time to cash checks for counsel for plaintiff and the Administrator to comply with CCP 384(b) and to submit a summary accounting how the funds have been distributed to the class members and the status of any unresolved issues. If the distribution is completed, the Court will at that time release any hold-back of attorney fees.

The court will sign the proposed order, which is modified by this order. Plaintiff must reserve a hearing for the motion for final approval.

FURTHER CONFERENCE

Case Management Conference is scheduled for 06/14/2023 at 10:00 AM in Department 21 at Rene C. Davidson Courthouse.

The parties should, if possible, schedule the motion for final approval of class settlement for the same date as the CMC.

The Court orders counsel to obtain a copy of this order from the eCourt portal.

A copy of this minute order will append to the following coordinated cases under JCCP004904: 19CV005228, 21CV000111, and 21CV005224.

The Hearing on Motion for Preliminary Approval of Settlement scheduled for 12/20/2022 is 'Held' for cases 19CV005228, 21CV000111, and 21CV005224.

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By:

J. Castaneda, Deputy Clerk

Minutes of: 12/20/2022

Entered on: 12/20/2022