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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

VICTOR CORONA; and ROSA ALCAUTE,

Plaintiffs,

v.

SAN FRANCISCO BREWING CO, LLC;
and DOES 1 through 10, inclusive,

Defendants.

Case No. CGC-20-583125

CLASS ACTION - COMPLEX

[ASSIGNED FOR ALL PURPOSES TO
THE HON. ANDREW Y.S. CHENG]

**PLAINTIFFS' SUPPLEMENTAL
BRIEFING IN SUPPORT OF
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, CONDITIONAL
CERTIFICATION OF SETTLEMENT
CLASS, AND APPROVAL OF NOTICE
PROCEDURES**

Hearing Date: March 21, 2024
Hearing Time: 2:00 p.m.
Dept.: 613
Action Filed: February 21, 2020

1 **I. INTRODUCTION**

2 Plaintiffs Victor Corona and Rosa Alcaute (“Plaintiffs”) provide supplemental briefing
3 to further support their position that they have reached a fair, adequate, and reasonable
4 settlement with Defendant San Francisco Brewing Co., LLC (“Defendant”). Firstly, Plaintiffs
5 offer further support for their settlement value analysis, including raising Defendant’s
6 problematic financial condition, which helps explain why Defendant requires a payment plan.
7 Secondly, Plaintiffs provide a list of comparator settlements. Lastly, Plaintiffs have addressed
8 and corrected all issues with the settlement agreement and notice form as detailed below.

9 **II. AMOUNT OF SETTLEMENT, SETTLEMENT DISCOUNT, & DEFENDANT’S**
10 **FINANCIAL CONDITION**

11 **A. Additional Information Regarding the Settlement Discount**

12 Plaintiffs presented a strengths and weaknesses analysis regarding their claims in their
13 initial moving papers (Section B(1)). They also presented a risk assessment and emphasized the
14 fact that the matter is pre-certification (Section B(2)). The aforementioned evaluations, only
15 briefly summarized herein, greatly contributed to Plaintiffs’ decision to accept the settlement.
16 However, there is another major consideration: Defendant’s precarious financial condition, a
17 reality that also helps explain why Defendant requires a payment plan to fund the settlement.

18 Plaintiffs asked Defendant to provide a declaration regarding its financial wherewithal.
19 [See, AGU Dec., Exhibit 7]. Defendant’s owner/brewmaster, Josh Leavy, declared the
20 following: (1) “...following the COVID-19 pandemic, the Company has struggled financially
21 due to a steep decline in sales and revenue and has had to obtain COVID-19 relief and
22 assistance loans from the government which it must pay back;” and (2) “The Company’s
23 financial situation was disclosed to Plaintiffs at mediation and during settlement negotiations
24 resulting in the agreed upon settlement amount under a payment plan over 15 months. The
25 settlement amount under the payment plan represents the maximum that the Company can
26 possibly pay and remain solvent to continue business operations.” [Leavy Dec. ¶¶ 4-5].

27 Defendant also provided its 2023 profit/loss statement for Plaintiff’s counsel review
28 only; it shows the company operated at a significant loss that year. [See, AGU Dec. ¶ 3].

1 Plaintiffs asked Defendant to file financial documents under seal for the Court’s review, but it
2 declined. [See, AGU Dec. ¶ 3]. Plaintiffs also asked Defendant why the company could not
3 attain a loan in order to fund the settlement in a single payment instead of under a payment plan;
4 it declined to provide any substantive information in this regard. *Id.*

5 Overall, especially considering Defendant’s financial limitations, Plaintiffs attempted to
6 attain the highest possible settlement amount with the assistance of an experienced and well
7 regarded mediator, the Honorable Ernest Goldsmith (Ret.). [See, AGU Dec. ¶ 4]. Had it been
8 possible to negotiate for more money, Plaintiffs would have. *Id.* Notably, if Defendant cannot
9 fund a greater settlement, it certainly cannot pay a maximum value judgment, approximately 3.1
10 million dollars, even if Plaintiffs can overcome all litigation obstacles. [See, AGU Dec. ¶ 5].
11 The Court expressed concern over what might happen if Defendant defaults on its obligation to
12 fund the settlement. If this occurred, Plaintiffs’ counsel would seek a judgment from the Court
13 and pursue judgment enforcement mechanisms in an attempt to collect any outstanding funds.
14 *Id.*

15 Moreover, Plaintiffs respectfully disagree with the Court’s assessment that they
16 “...rel[ied] on a *non sequitur* in arguing that their likelihood of success when measured as a
17 percentage is the percentage that should be applied to determine the discounted amount of the
18 gross settlement” [Tentative Ruling 2:10-12]. Settled case law emphasizes the importance of
19 evaluating a proposed settlement by measuring the strength of a plaintiff’s claims against the
20 amount offered in settlement. *See, Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116,
21 130 (“The proposed settlement cannot be judged without reference to the strength of plaintiffs’
22 claims. The most important factor is the strength of the case for plaintiffs on the merits,
23 balanced against the amount offered in settlement.”) (internal quotations omitted); *see also*,
24 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (*Hanlon* and the many cases that
25 follow its dictates identify “the strength of plaintiffs’ case” as the first factor that should be
26 balanced among others when a trial court is making its approval assessment).

27 Plaintiffs maintain they have done just what *Kullar* suggests: (1) they evaluated the
28 strength of Plaintiffs’ case on the merits by assigning a percentage of success using the

1 experience of their counsel; and (2) they balanced that percentage against the amount offered in
2 settlement in light of maximum settlement value. The Court’s statement that Plaintiffs relied on
3 a *non sequitur* or somehow lacked logic in their analysis is undeserved.

4 **B. Comparator Settlements**

5 The above notwithstanding, Plaintiffs have found the following comparator wage and
6 hour cases where a very similar settlement discount was accepted by various trial courts across
7 California:

8 (1) *Gonzalez v. Roto-Rooter Servs. Co.*, 2023 Cal. Super. LEXIS 94620, *14 – Los
9 Angeles Superior Court (preliminary approval was granted for a \$1,500,000 settlement with a
10 maximum exposure analysis of \$57,203,591.92; this equates to a 97.4 percent discount);

11 (2) *Flores Tesla,inc v. Tesla, Inc.*, 2021 Cal. Super. LEXIS 15843, *13 – Alameda
12 Superior Court (“Plaintiffs’ Counsel estimates a total possible recovery of approximately \$32.4
13 million and now provides an explanation why a settlement amounting to 12.4% of that amount
14 is reasonable in light of Defendant's defenses.”);

15 (3) *Hernandez v. Adco Drywall & Metal Framing*, 2023 Cal. Super. LEXIS 6199, *7, 11
16 – Sacramento Superior Court (\$1,274,500 settlement with a total maximum recovery of
17 \$16,335,891(92.2 percent discount) received preliminary approval);

18 (4) *Lopez v. Eurofins Sci., Inc.*, No. 21-cv-08652-LB, 2023 U.S. Dist. LEXIS 181361, at
19 *12 (N.D. Cal. Oct. 9, 2023) (“Counsel estimated the theoretical maximum damages to be
20 \$12,148,264.63.40 Alternatively, counsel applied a fifty-percent risk factor to the substantive
21 and derivative claims, to account for risks such as differences between employees' experiences
22 and limitations on derivative penalties. That equates to total damages of \$6,074,132.31, of
23 which \$2,584,677.02 is attributable to the substantive wage-and-hour claims. Thus, the
24 \$1,700,000.00 Gross Settlement Amount is about sixty-six percent of the substantive-claim
25 damages and twenty-eight percent of the risk-adjusted total damages. This result accords with
26 other settlements in similar cases.”);

27 (5) *Garcia v. Widdicombe Enters.*, 2023 Cal. Super. LEXIS 41182, *10-11 – Orange
28 County Superior Court (“The maximum exposure amount (excluding PAGA) was \$2,891,807,

1 and the maximum exposure for PAGA penalties was \$6,381,061. Therefore, the total maximum
2 exposure for damages, interest, and all penalties was \$9,272,868. Plaintiff estimates the realistic
3 amount of provable liability is \$3,961,044.40...GSA of \$1,200,000 represents 12.9% of total
4 maximum exposure, and approximately 30% of realistic amount of provable liability.”).

5 **III. ISSUES WITH THE AGREEMENT AND NOTICE FORM**

6 **A. Release of Liability**

7 The Court found that “the release of liability here is problematic because it is overbroad,
8 worded in a confusing manner, and contains a combination of seemingly duplicative phrases
9 and grammatical errors that compound the issue of its proper scope of application.” The Parties
10 have rectified this shortcoming by executing an amended settlement agreement. [See, AGU
11 Dec., Exhibit 5]. The updated release is found in paragraph A(34) and reads as follows:

12 “**Released Claims**” refers to any and all claims under state, federal, or local law,
13 whether statutory or common law, arising out of the claims expressly pleaded in
14 the Action and all other claims, such as those under the California Labor Code,
15 applicable Wage Orders, the Fair Labor Standards Act, regulations, and/or other
16 provisions of law, or that could have been pleaded based on the facts pleaded in
17 the Action for (1) failure to pay all wages, (2) failure to pay overtime
18 compensation, (3) failure to permit meal periods, (4) failure to permit rest periods,
19 (5) failure to furnish accurate wage statements, (6) waiting time penalties, (7)
20 conversion, (8) unfair competition in violation of Cal. Bus. & Prof. Code, and all
claims for damages and penalties, including all civil penalties under the Private
Attorneys General Act of 2004, interest, fees, and costs, and all other claims and
allegations made that could have been made in the Action during the Class Period
based on the facts and allegations in the operative Complaint and preceding
PAGA notice.

21 The new release is also reflected in section nine of the updated notice form. The
22 “Released Parties” definition has also been edited to remove the term “insurers” as required by
23 the Court. See, Amended Agreement ¶ A(36). Additionally, the “timing and effective date of the
24 release” problem identified has been rectified; ¶ F(1) now reads “[b]y operation of the entry of
25 the Final Approval Order and Judgment and upon receipt and disbursement of Defendant’s
26 Gross Settlement Amount payment...”

27 ///

28 ///

1 **B. Other Concerns**

2 The Court inquired about providing for an “extension of time to respond to the notice in
3 the event of remailing.” *See*, Tentative Ruling 4:7-8. The amended agreement now states, “[i]n
4 the event of any re-mailing of the Notice of Class Action Settlement, a Class Member’s
5 deadline to respond to the Notice of Class Action Settlement shall be extended by fourteen
6 days.” *See*, ¶ D(1)(a). The Parties have also provided a “framework for challenges to payment
7 calculations” in ¶ E(5)(b); the settlement administrator already contemplated the need to assess
8 these types of challenges in its initial bid. [*See*, Admin Dec ¶ 7 item (h) attached to AGU Dec.
9 as Exhibit 8].

10 The Court declined to accept any waiver language regarding class member objections as
11 previously stated in the original agreement ¶ D(4). This language has been entirely removed in
12 the amended agreement and in the updated notice form. Lastly, all edits to the notice form
13 required by the Court have been made. *See*, [*See*, AGU Dec., Exhibit 6]; Tentative Ruling 5:10-
14 7:26].

15 **C. Settlement Administration**

16 The Court identified numerous questions regarding what the settlement administrator,
17 CPT Group, Inc., was prepared to do when it issued its bid for administration and how it will
18 manage the issues associated with Defendant’s payment plan. Plaintiffs asked CPT Group, Inc.
19 to submit a declaration that would assuage the Court’s concerns. [*See*, AGU Dec., Exhibit 8].
20 CPT Group, Inc.’s Senior Vice President of Operations, Julie Green, provided a detailed list of
21 duties and responsibilities relevant to the settlement’s administration. *Id.* Plaintiffs have copied
22 the list here and have bolded the most relevant items:

23 In this capacity, CPT will complete the following tasks as part of its
24 administration duties: (a) prepare, print, mail and email to settlement class
25 members notification of the pending settlement in both English and Spanish; (b)
26 establish a dedicated toll-free number where settlement class members can speak
to a live, bilingual representative regarding case information; (c) establish a
dedicated static website (**www.cptgroupcaseinfo.com/SFBrewingSettlement**)¹,

27 ¹ The Court asked the Parties to provide a URL for the website and more details regarding what
28 would be placed on the website. The list of items to be displayed directly follows the URL
information. *See*, Tentative Ruling 6:5-9.

1 to provide comprehensive case details to class members about the settlement,
2 including but not limited to, the date, time, and venue of the Final Fairness
3 Hearing, and essential Court documents such as the Operative Complaint, the
4 Preliminary Approval Order, the Class Notice and Exclusion Form, all filings
5 related to the Final Fairness hearing motions, and any supplemental filings
6 required by the Court; **(d) process undeliverable mail, locate updated
7 addresses,² and receive address updates from Class Members then in turn
8 resend notices to the new addresses;** (e) receive objections submitted by
9 settlement class members; (f) receive and validate requests for exclusion
10 submitted by settlement class members; (g) notify the parties of any settlement
11 class members that file timely requests for exclusion or objections; **(h) manage
12 and resolve calculation disputes submitted by Class members;** (j) establish a
13 settlement fund for paying participating settlement class members; (k) calculate
14 the amounts due to each settlement class member pursuant to the settlement; (l)
15 make payments to settlement class members through the established fund; **(m)
16 process undeliverable checks, locate updated addresses, and receive address
17 updates from Class Members then in turn reissue and/or remail checks as
18 needed;³** (n) file all applicable tax returns including the issuance of applicable
19 IRS Forms W-2 and 1099 to the settlement class members; and (o) handle any
20 uncashed checks as directed by the court.

21 **IV. CONCLUSION**

22 The Court requires updated declarations from Plaintiffs, and they will be provided
23 before the rescheduled preliminary approval hearing. In light of the supplemental briefing
24 provided, Plaintiffs urge the Court to grant preliminary approval of this settlement.

25 Respectfully Submitted,



26 Dated: March 7, 2023,

27
28

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29 ² The administrator is prepared to process any necessary address changes despite the payment
30 plan (items (d) and (m)). *See*, Tentative Ruling 3:26-4:1.

31 ³ The administrator will update addresses as necessary before sending checks. *See*, Tentative
32 Ruling 4:1-3.