

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

DATE: 03/09/2022

TIME: 01:30:00 PM

DEPT: 53

JUDICIAL OFFICER PRESIDING: Richard K. Sueyoshi

CLERK: K. Madden

REPORTER/ERM: NONE

BAILIFF/COURT ATTENDANT: N. Alvi, J. Reilly

CASE NO: **34-2020-00286923-CU-OE-GDS** CASE INIT.DATE: 10/09/2020

CASE TITLE: **Nunez vs. California Custom Sunrooms & Patio Covers Inc**

CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Motion - Other - Civil Law and Motion

APPEARANCES

Elliot Siegel, counsel for Plaintiff, appearing remotely via Zoom

Shawn Joost, counsel for Defendant, appearing remotely via Zoom

Nature of Proceeding: Motion for Final Approval of Class Action Settlement

TENTATIVE RULING

Appearance Required.

Plaintiff Jose Nunez moves for final approval of class action settlement. The motion is UNOPPOSED and tentatively GRANTED pending the final fairness hearing to be held on this date. (Code Civ. Proc. § 382; Cal. R. Ct. 3.769.)

Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comments or objections. (Conte & Newberg, *Newberg on Class Actions* (Newberg) § 11.24 (4th Ed. 2002).) This procedure, which is commonly utilized by both federal and state courts, assures class members of the protection of procedural due process safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement class.

As required by the applicable Rule of Court, the Court shall conduct a final approval hearing to inquire into the fairness of the proposed settlement. (Cal. R. Ct. Rule 3.769, subd. (g).) The trial court has broad discretion to determine whether a proposed settlement in a class action is fair. (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138.) The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. (See Newberg, *supra*, 11:41 (and cases cited therein); *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950.) In approving a class action settlement, the Court must "satisfy itself that the class settlement is within the 'ballpark' of reasonableness." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making its fairness determination, the Court should consider the relevant factors, such as the strength of the Plaintiffs' case, the risk, expenses, 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, and the experience and views of

counsel. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 (*Dunk*).) While the Court's ruling indicates it will give its final approval to the class action settlement and approve class counsel's fee requests and the class representatives' service fees, the Court must still hold the final fairness hearing to allow potential class members the opportunity to be heard. (*Id.* at p. 1802.)

This is a wage and hour action brought by Plaintiff Jose Nunez ("Plaintiff") on behalf of a group of similarly situated current and former employees against Defendants California Sunrooms & Patio Covers, Inc., dba California Sunrooms ("Sunrooms"), and its managing agent Abe Avi ("Defendants"). According to Plaintiff's Complaint, Sunrooms failed to account for all hours employees worked, resulting in the denial of minimum and overtime wages due; failed to allow non-exempt employees to take bona fide rest breaks and meal periods and failed to pay wages in lieu thereof; failed to provide accurate wage statements; refused employee rights to inspect payroll records personnel files, and documents signed in the course of their employment; forced non-exempt employees to use their personal cell phone for business purposes without reimbursement for such use; and failed to provide employees all unpaid wages upon separation. (Complaint, ¶¶ 10-22.) On October 19, 2020, Plaintiff filed a class action complaint in this Court alleging ten causes of action: (1) failure to pay minimum wages; (2) unpaid overtime; (3) meal break violations; (4) rest break violations; (5) wage statement violations; (6) wages not timely paid upon termination; and (7) unpaid business-related expenses; (8) failure to maintain accurate payroll records; (9) PAGA penalties; and (10) unfair competition. Plaintiff's motion for preliminary approval of the class action settlement was approved by this Court on November 16, 2021. By this motion, Plaintiff now seeks final approval of the settlement. On February 23, 2022, Defendants filed a notice of non-opposition to this motion.

Simpluris, Inc. ("Simpluris"), the Settlement Administrator, mailed the Court-approved Notice of Proposed Class Action Settlement and the Share Form ("Notice Packet") to 37 Class Members. (Alcantara Decl., ¶ 8.) According to Simpluris, two Notice Packets sent to Class Members were undeliverable. (Alcantara Decl., ¶ 9.) Simpluris received two requests for exclusion from Class Members and did not receive any objections or workweek disputes. (*Id.*, ¶¶ 13-15.)

The proposed order submitted with Plaintiff's moving papers states that Class Members are "all non-exempt, hourly employees employed by Defendants who worked at least one shift in California from October 9, 2016 to November 10, 2021." However, Plaintiff's counsel's declaration uses a later end date for the class period, November 16, 2021. (Siegel Decl., ¶ 30.) The Court approves the earlier date in the proposed order as consistent with the Court's order granting preliminary approval of the proposed settlement (ROA 35) and the Notice Packet sent to Class Members (Alcantara Decl., Exh. A). The Court expects Class Counsel to confirm this date at the hearing for final approval if it believes that the November 10, 2021 date is incorrect.

Under the terms of the settlement, Defendants will pay a non-reversionary Maximum Settlement Amount ("MSA") of \$235,000. (Siegel Decl., ¶¶ 29, 31.) The following amounts will be paid from the MSA:

- 1) \$78,333.33 (one-third of the MSA) for attorney's fees.
- 2) \$7,961.72 for reimbursement of litigation costs.
- 3) \$11,250 to the Labor Workforce Development Agency.
- 4) \$10,000 to Plaintiff as a Class Representative Enhancement Payment. (Alcantara Decl., ¶¶ 11,16; Siegel Decl., ¶ 31.)

An additional deduction shall be made from the MSA for the payment of settlement administration costs. On this point, Plaintiff's papers submitted with this motion are inconsistent. The declaration from Simpluris indicates that the administration costs are \$15,000 while Plaintiff's counsel's declaration indicates that those costs are actually \$3,595.00. (Alcantara Decl., ¶ 16; Siegel Decl., ¶¶ 31, 55.) The Court tentatively approves administration costs in the

amount of \$3,595.00 as presented in the proposed Order. Counsel should alert the Court at the hearing if this is incorrect.

After making those deductions, the remaining amount - the Net Settlement Amount - will be distributed pro rata to the 35 Class Members. (Siegel Decl., ¶ 26.) Settlement checks that are uncashed after 120 days will escheat to the Controller of the State of California to be held pursuant to the Unclaimed Property Law. (*Id.*, ¶ 32.)

As required by this Court's preliminary approval of the Settlement, Plaintiff has provided evidence that the Labor Workforce and Development Agency has been served with a copy of the settlement pursuant to Labor Code § 2699(l)(2). (ROA 45; see also Siegel Decl., ¶¶ 56-57.)

The Court tentatively finds that the settlement, reached after investigation, exchange of informal discovery, and mediation, is entitled to final approval. (Siegel Decl., ¶¶ 16-22.) Class Counsel are experienced in this type of class action litigation, determined the realistic potential damage exposure for Defendants was approximately \$367,231.54, and believes the settlement, which constitutes 64% of those damages, is fair, reasonable, adequate, and in the best interests of the class. (*Id.*, ¶¶ 4-5, 10-12, 14, 27, 33.) Moreover, the class reaction is positive as there have only been 2 requests for exclusion (reflecting 1.02% of the class) and no objections. (*Id.*, ¶ 28; Alcantara Decl., ¶¶ 13-14.)

The settlement in this action provides value to the class members as it provides them monetary compensation in a manner approximately commensurate with the potential value of their individual claims in light of the risks of continued litigation. Based on Class Counsel's declaration, the average estimated payment is at least \$3,337.76 and the highest estimated payment is at least \$13,065.38. (Siegel Decl., ¶ 26.)

In sum, and subject to the final fairness hearing, the Court concludes that the class shall be certified for settlement purposes, that the settlement is entitled to final approval, and that the various fee requests are appropriate and also entitled to approval. Provided that no objection is asserted by any class member at the hearing on this matter, the Court anticipates signing the proposed order and judgment submitted with the moving papers.

The parties are directed to their assigned Complex Case Management Department for further Case Management Conferences and compliance hearings. The Complex Case Management Department shall monitor compliance with the settlement approval through and including the disbursement of any uncashed amount to the cy pres beneficiary or to the State Controller, and preparation of an amended judgment pursuant to CCP § 384.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

COURT RULING

The Court affirmed the tentative ruling.