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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

DON M. VASQUEZ, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

SAPUTO CHEESE USA INC., a Delaware
corporation; and DOES 1 through 25,
inclusive

Defendants.

Case No. VCU282978

Consolidated with Case No. VCU283853

ASSIGNED FOR ALL PURPOSES TO:

The Honorable John P. Bianco

Department 2

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF SETTLEMENT**

Hearing Information

Hearing: July 22, 2024

Time: 8:30 a.m.

Dept.: 2

Judge: Hon. John P. Bianco

Complaint filed: May 27, 2020

Trial date: Not set

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I. INTRODUCTION

Plaintiff seeks final approval of a \$2,400,000 wage and hour class and Private Attorneys General Act (“PAGA”) settlement on behalf of 2,306 Participating Class Members employed as non-exempt California employees by Saputo Cheese USA Inc. (“Saputo”), anytime from May 27, 2016 to March 30, 2023 (“Class Period”). Declaration of Jeff Geraci, (“Geraci Decl.”) ¶10.

With no objections and only two requests for exclusion, support for the Settlement is strong. Declaration of Kaylie O’Connor on behalf of CPT Group, Inc., (“CPT Decl.”), ¶¶9, 11. Participating Class Members will receive an average estimated payment of \$710, and highest payment of \$1,482 (rounded to nearest dollar). CPT Decl. ¶14; Geraci Decl. ¶11.

On January 8, 2024, the Court granted Preliminary Approval of the Settlement, noting the amounts requested and preliminarily approving the following amounts: (i) attorneys’ fees of \$586,397.50 (capped at 1.5x lodestar) (\$800,000 requested, one-third GSA); (ii) actual litigation costs of \$32,846.72 (approved up to \$35,000.00); (iii) Class Representative Service Payment of \$5,000 (\$10,000 requested); (iv) PAGA Payment of \$120,000, and (v) settlement administration expenses of \$15,500 (\$17,500 requested). Geraci Decl. ¶12.

II. THE PARTIES

A. Plaintiff

Plaintiff started with Saputo in 2006, became a Line Coordinator in 2016, and worked in Tulare until June 2019. Geraci Decl. ¶13.

B. Defendant

Saputo began in 1954 and became publicly traded in 1994. It produces, markets, and distributes dairy products at five plants in California. Geraci Decl. ¶14.

C. The Class and Aggrieved Employees

The Class is composed of, “All current and former nonexempt California employees of Saputo employed at any time from May 27, 2016 through and including March 30, 2023.” Geraci Decl. ¶15.

PAGA Group Members are Class Members who worked anytime May 12, 2019 to March 30, 2023 (“PAGA Period”). Geraci Decl. ¶16.

III. PROCEDURAL HISTORY

On May 27, 2020, Plaintiff filed a class action against Saputo. This case was removed July 24, 2020. On August 6, 2020, Plaintiff filed a PAGA action which was stayed pending resolution of the class action. (Case No. VCU283853). The Parties settled both actions, the class action was remanded, and the actions consolidated on November 6, 2023. Geraci Decl. ¶17.

IV. PLAINTIFF'S CONTENTIONS AND SAPUTO'S DEFENSES

Plaintiff argued Saputo did not provide compliant meal or rest periods and did not adopt fully compliant written meal and rest policies until June 2017. Plaintiff also argued employees were reluctant to report not being able to take rest and meal breaks because an employee could be disciplined for failing to take a break. Geraci Decl. ¶18.

Saputo contended its policies were compliant throughout the class period, and produced evidence it communicated compliant rest and meal policies to employees in each plant, including power point slides, testimony of a human resources employee, and attendance sign-in sheets, including several signed by Plaintiff. Saputo also contended it did not discourage employees from taking breaks and produced evidence employees, including Plaintiff, had reported, and been paid for, missed breaks. Saputo also correctly pointed out there were no records which could be used to establish rest period violations. Geraci Decl. ¶19.

Plaintiff contended rest periods were non-compliant because, for a limited period of time, a few positions may have carried radios while on rest breaks. Saputo produced a written policy explicitly stating radios were not to be carried during breaks. class member survey suggested few were required to carry a radio, or respond during breaks. Geraci Decl. ¶20.

Time records showed relatively low facial non-compliance for meal periods, under 20%. Saputo contended even that was overstated, and missed, late or short meals, were by employee choice, and these individual issues could not be certified. Review of pay data also showed a substantial amount of meal period premiums paid during the class period. Geraci Decl. ¶21.

Plaintiff contended on a several occasions he was told to clock out but continue working. Saputo denied this and produced evidence of policies explicitly prohibiting off the clock work. A mediation survey of class members did not support this claim. Geraci Decl. ¶22.

Saputo contended the estimated 17% of putative class members who worked at its Newman, California plant, are covered by a collective bargaining agreement (CBA), and any of the alleged claims required completing the grievance process, which Plaintiff could not have initiated, as he was not covered by the CBA. Plaintiff believed it may have been possible to assert some claims arguably not included in the CBA, but conceded this defense, if successful, would substantially limit the class and any potential recovery. Geraci Decl. ¶23.

V. DISCOVERY, INVESTIGATION, AND MEDIATION

The Parties conducted sufficient formal and informal discovery to evaluate strengths and weaknesses of the claims and defenses, including written discovery, the corporate deposition of Saputo on all relevant topics, and Plaintiff's deposition. Geraci Decl. ¶24.

The Parties mediated in May 2022, but did not settle. After re-commencing discovery, the Parties attended a second mediation on March 30, 2023, with Honorable Amy D. Hogue (Ret.), an experienced mediator of wage and hour class actions. Geraci Decl. ¶25.

By the second mediation, Saputo had produced all relevant rest and meal policies, all policies covering off the clock work, power point presentations, documents showing policies presented in person to employees, including attendance sheets, and 100% of time and pay data through February 26, 2023. Counsel conferred extensively about data, claims, defenses, and settlement issues, and Plaintiff's consultant calculated class wide damages. Geraci Decl. ¶26.

VI. SUMMARY OF PROPOSED SETTLEMENT

A. Settlement Terms

As preliminarily approved, Saputo will pay the maximum Gross Settlement Amount ("GSA") of \$2,400,000, including: (a) Settlement Administration costs to CPT Group not to exceed \$15,500; (b) a Class Representative service payment up to \$5,000 to compensate Plaintiff for services to, and risks taken on behalf of, the Class; (c) Class Counsel Fees up to \$586,397.50 (one-third GSA) (50/50 between Class Counsel with Plaintiff's consent. Geraci Decl. ¶28); (d) Class Counsel Costs actual costs of \$32,846.72; (e) \$120,000 PAGA penalties - \$90,000 (75%) Labor Workforce and Development Agency (LWDA) and \$30,000 (25%) PAGA Group Members. Saputo will pay employer's share of payroll taxes in addition to GSA. Geraci Decl. ¶¶27, 28.

After the preliminarily approved deductions, the estimated Net Class Settlement Fund (“NCSF”), \$1,640,256, would be distributed to Participating Class Members. Individual Gross Settlement Payments will be allocated as 20% wages (Form W-2), 80% penalties and interest (Form 1099), and calculated by dividing the total number of weeks all Class Members worked during the Class Period by the NCSF and multiplying that number by the number of weeks each Class Member worked during the Class Period. Geraci Decl. ¶29.

PAGA Group Members will divide 25% of the PAGA payment, \$30,000, based on number of Pay Periods worked during the PAGA Period. Geraci Decl. ¶30; CPT Decl. ¶15.

Participating Class Members (all of whom are also PAGA Group Members) can expect to receive an average estimated payment of \$710, with highest payments of \$1,482 (rounded to nearest dollar). This will change slightly if the Court finally approves increased deductions as requested below. Geraci Decl. ¶¶11, 31; CPT Decl. ¶14.

B. Preliminary Approval, Notice to the Class, and Class Response

1. Preliminary Approval and Class Notice

The Settlement was preliminarily approved on January 8, 2024. Geraci Decl. ¶32. On February 13, 2024, after receiving a data file from Defendant, and searching the National Change of Address database and updating Class Member addresses, the Settlement Administrator mailed the court-approved Notice of Class Action Settlement, Change of Address Form, Request for Exclusion Form, and Objection Form, (collectively, “Notice Packet”), to 2,308 Class Members, informing them of (1) the pendency of the Action; (2) proposed settlement terms; (3) automatic payment of Settlement shares if exclusion not requested; (4) released claims; (5) right to object or request exclusion, and (6) and the date, time and place of the final approval hearing. Geraci Decl. ¶33; CPT Decl. ¶¶3-6, Exh. A.

2. The Class Response to the Settlement

The Class response to the Settlement was extremely favorable. No Class Member objected and only two requested exclusion. CPT Decl. ¶¶9, 11; Geraci Decl. ¶¶11, 34.

The Court determined the first three *Dunk* factors were met when it granted preliminary approval: (1) the settlement was reached through arm’s-length bargaining; (2) investigation and

discovery allowed counsel and the court to act intelligently; and, (3) counsel was experienced in similar litigation. The fourth factor could not be known until the Class had notice and an opportunity to respond. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801-1802 (1996).

The fourth *Dunk* factor was established when the Class, after receiving notice and having an opportunity to respond, overwhelmingly approved the Settlement.

VII. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

The Preliminary Approval Motion analyzed the Settlement in light of *Dunk's* factors supporting a presumption of fairness, and the factors determining whether a settlement is in the Class' best interest, and is adequate and reasonable, under *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008). The Court carefully reviewed and ruled on these analyses and they are incorporated here by reference. See, Memorandum of Points and Authorities in support of Preliminary Approval Motion filed November 11, 2023 at 8:8 – 13:19.

Nothing has changed since Preliminary Approval to negate the presumption of fairness

On the same date this motion and supporting documents are filed with the Court, they will be provided to the LWDA. Geraci Decl. ¶43, Exh. 3.

VIII. ATTORNEYS' FEES ARE REASONABLE AND SHOULD BE AWARDED

At Preliminary Approval, Class Counsel sought attorneys' fees of \$800,000, one-third of the \$2,400,000 Gross Settlement Amount ("GSA"). In granting Preliminary Approval, the Court preliminarily approved \$586,397.50 in attorneys' fees, an amount equal to 1.5 times the lodestar at that time [\$390,905.00, based on 527.4 hours of attorney and para-professional time]. Geraci Decl. ¶35.

The Court permits submission of additional hours expended between preliminary approval and final approval and indicated it will consider an increase in the approved fee up to 1.5x the updated lodestar. Class Counsel expended 20.4 hours of attorney and paralegal time since Preliminary Approval for an additional lodestar of \$12,960.00. Geraci Decl. ¶36.

Through the present, Class Counsel expended 547.8 hours for a lodestar of \$403,865.00. Geraci Decl. ¶37, Exh. 1 – Consolidated Summary of Time & Costs; Declaration of Jonathan M. Lebe, ("Lebe Decl."), ¶¶11, 12, 13, 15.

1 The hours expended and to be expended to bring this matter to a favorable conclusion
2 are reasonable in light of the complexity and duration of the litigation. Counsel continues to
3 assert a percentage of the settlement amount may be awarded, but if lodestar is solely relied on,
4 the requested 1.99 multiplier is reasonable and in line with those used in other cases, which may
5 range “from 2 to 4 or even higher.” *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal. App. at
6 255; Class Counsel has been awarded far greater multiplier by courts throughout California.
7 Geraci Decl. ¶¶38, 39. (Multipliers of 2.41 to 7.99 awarded).

8 Though 25% of a common fund is considered the “benchmark” fee in the Ninth Circuit,
9 that was not adopted by the California Supreme Court *Laffitte v. Robert Half Internat., Inc.*,
10 1 Cal.5th 480, 495, 503-06. (2016). More important, even where a customary “benchmark”
11 exists, in “most common fund cases, the award exceeds that benchmark.” *Vasquez v. Coast*
12 *Valley Roofing, Inc.*, 266 F.R.D. 482, 491 (E.D. Cal. 2010); *In re Activision Sec. Litig.*, (N.D.
13 Cal. 1989) 723 F. Supp. 1373, 1377 (“[a] review of recent reported cases discloses that nearly
14 all common fund awards range around 30%”); “California courts routinely award attorneys’
15 fees of one-third of the common fund.” *Beaver v. Tarsadia Hotels*, 2017 U.S. Dist. LEXIS
16 160214, *28 (S.D. Cal. Sept. 28, 2017).

17 Despite a “benchmark,” or customary multiplier, courts can, and should enhance awards
18 to reflect excellent results achieved. Here, two separate, hotly contested lawsuits, were resolved,
19 ensuring a recovery for over 2,300 current and former lower wage employees. They were not
20 required to find an attorney, file a complaint, take any financial or reputational risk, or be
21 deposed. They do not need to do a thing except wait for a settlement check in the mail.

22 Applying the Court’s standard 1.5 multiplier, \$605,727.50 would be an awarded.
23 Geraci Decl. ¶40. A more reasonable award, and one much more typical of California courts
24 would be one-third of the Gross Settlement Amount, \$800,000. Geraci Decl. ¶41.

25 **IX. LITIGATION EXPENSES ARE REASONABLE**

26 The Settlement allows Class Counsel to recover up to \$35,000 in costs. Actual costs
27 incurred to date are \$32,846.72 These costs were reasonable and necessary to prosecute this
28 action on behalf of the Class. Geraci Decl. ¶42, Exh. 2 – Itemized Costs.

X. THE REQUESTED SERVICE PAYMENT IS REASONABLE

Service awards “compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action.” *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394.

“Modern society seems increasingly to expose men to . . . group injuries for which individually they are in a poor position to seek legal redress, either because they do not know enough or because such redress is disproportionately expensive. If each is left to assert his rights alone if and when he can, there will at best be a random and fragmentary enforcement, if there is any at all. This result is not only unfortunate in the particular case, but it will operate seriously to impair the deterrent effect of the sanctions which underlie much contemporary law. The problem of fashioning an effective and inclusive group remedy is thus a major one.” *Vasquez v. Superior Court*, 4 Cal. 3d 800, 807 (1971).

Enforcement of laws protecting California employees would be “random and fragmentary,” or non-existent, if no one came forward and spent time working on behalf of others and took risks those others are not willing to bear.

Class action plaintiffs, not class members, take the risk of a judgment for defense costs. “Those who choose to take the risks of litigation should be the ones who bear the cost when they are unsuccessful.” *Earley v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000). The *Early* court acknowledged placing the risk on plaintiffs for what would an enormous sum of money to an individual might appear unfair, but determined that risk was balanced by potential reward.

“While imposition of the entire cost burden on the named plaintiffs may have a chilling effect on the willingness of plaintiffs to bring class action suits, this effect easily may be outweighed by the potential recovery.” *Id.*

If “[t]hose who choose to take the risks of litigation should be the ones who bear the cost when they are unsuccessful,” how can that risk be offset? **An adequate Service Payment.**

The reputational risk class action plaintiffs must accept is greater now than ever. Each time they look for work it is likely, if not certain, prospective employers will take a few seconds to Google and see if they sued a previous employer for failing to pay its employees properly.

1 It is impossible to know, or intervene, each time a class action plaintiff loses an
2 employment opportunity, making it essential to compensate them at final approval, the only
3 time that the risk they took can be at least slightly offset and they can be adequately rewarded.

4 Accepting the risk of a cost judgment, potential loss of employment, and receiving
5 nothing unless the Class was compensated, are each sufficient to support an award of \$10,000.
6 Together, they are more than sufficient.

7 Plaintiff protected the interests of the Class and placed them above his own. He was
8 deposed for an entire day and spent time with counsel preparing for that deposition. He did not
9 pursue individual claims and filed the lawsuit only as a representative of other employees, but,
10 unlike those employees, Plaintiff was required to give a general release of all claims of any
11 kind, including a section 1542 waiver. If he had not spent that time, and taken those monetary
12 and reputational risks, 2,306 Class Members would not be receiving settlement payments.

13 The Class was notified Plaintiff requested, subject to Court approval, a \$10,000 service
14 payment. CPT Decl., Exh. A, ¶9. No Class Member questioned, or objected to, this amount.

15 **XI. THE REQUESTED SERVICE ADMINISTRATION COSTS ARE REASONABLE**

16 Court-appointed Settlement Administrator CPT submitted a heavily discounted flat rate
17 fee of \$17,500 at preliminary approval. CPT Decl. ¶¶16, 17, Exh. B. The Court preliminarily
18 awarded \$15,500 without explanation, and it is unclear if this was a typographical error. The cost
19 of settlement administration is reasonable and necessary and was provided competently, and at a
20 discount. Plaintiff requests the requested administration costs be awarded.

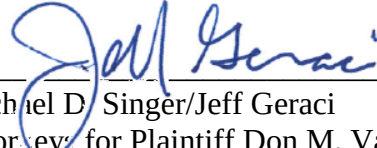
21 **XII. CONCLUSION**

22 Class Counsel respectfully requests the Court grant final approval of the Settlement,
23 approve the Service Award, attorneys' fees and costs, and administration expenses as requested

24 Respectfully submitted,

25 LEBE LAW, APLC
26 COHELAN KHOURY & SINGER

27 Dated: June 10, 2024

28 By: 
Michael D. Singer/Jeff Geraci
Attorney for Plaintiff Don M. Vasquez
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