

FILED
LOS ANGELES SUPERIOR COURT

AUG 18 2021

LOS ANGELES SUPERIOR COURT, COMPLEX CIVIL DEPARTMENT

SHERIFF CARTER, EXECUTIVE OFFICER/CLERK
BY Nancy Navarro Deputy
NANCY NAVARRO

Department SSC-17

RE: Sarah Armstrong, et al. v. Prometric LLC (Case No: 20STCV29967)

The Court has reviewed preliminarily the proposed settlement in this matter and continues the hearing on preliminary approval to January 5, 2022 at _____ for further briefing and/or an amended Settlement Agreement addressed to the following;

(1) *Dunk/Kullar* Analysis:

- a. Detail specifically what information was provided by Defendants in discovery that informed proposed Class counsel's valuation of the case, including the documents produced and depositions taken, if any. Plaintiffs' Counsel represents that Defendant provided Plaintiffs with samples of wage statements provided by Defendant. (Nordrehaug Decl. ¶10.) Brief whether this sampling was statistically significant and whether expert analysis supported the conclusion that the sampling was sufficient to provide useful data. Was there also a sample of payroll records? If so, was it statistically significant?

(2) Class Definition: The Class, Collective Members, and Aggrieved Employees definitions each make reference to the exclusion of individuals who released wage and hour claims as part of a general release of claims. Please provide explanation. Did Defendant engage in a *Pick-Up Stix* campaign prior to settlement? How many persons participated in same or are otherwise excluded?

(3) Scope of Release:

- a. The release sections for Participating Class Members and Collective Class Members each include language releasing all claims "whether known or unknown" and "arising from the factual allegations in *all complaints* filed in the Action that the Class Members and Participating Collective Members *do not know or suspect to exist in their favor, which if known by them, would have materially affected the Settlement and the release of the Released Parties*" (see ¶¶ III.F.1, III.F.2). Such language may have a similar effect to a Civil Code section 1542 waiver as to the class. Brief why it is appropriate to include.

- b. In addition, the release of claims should specify that Class Members will only release claims alleged in, or arising out of facts asserted in, the operative First Amended Complaint. (See above – “*all complaints* filed in the Action”)
- c. The release of PAGA claims should be limited to claims for penalties under PAGA as disclosed in Plaintiff’s LWDA letter and alleged in the operative FAC. See ¶ III.F.3. If Counsel disagree, please provide briefing. Provide a copy of the LWDA letter to the Court for review.
- d. The Settlement Agreement and Notice should include, in quotations, the proposed FLSA opt-in release language to be included on the settlement checks. See ¶ III.E.11.

(4) Payment Formula: Why is it proper not to have a separate calculation as to PAGA Penalties? How would it be appropriate for all Class Members to share in the PAGA penalty given the PAGA statute’s applicable statute of limitations? See ¶ VI.C.

(5) Notice and Notice Administration:

- a. Delete language indicating that class members must use specific language to request exclusion. See Notice pg. 6.
- b. How will notice of final judgment be given to the class? (Cal. Rules of Court, rule 3.771(b)) (e.g. Posted on administrator’s website.)

(6) Cy Pres Distribution

- a. Provide declarations by *all* counsel and parties disclosing any interest or involvement in the governance or work of the proposed cy pres recipients, Bet Tzedek and Legal Aid at Work.
- b. Why does such distribution fill the purposes of the lawsuit or is otherwise appropriate? (*State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 472; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 722; *Nachshin v. AOL, Inc.* (9th Cir. 2011) 663 F.3d 1034, 1038–1041; *Dennis v. Kellogg Co.* (9th Cir. 2012) 697 F.3d 858, 865; Code Civ. Proc., § 384.)
- c. How do the parties intend to allocate unclaimed funds between the two cy pres recipients?
- d. The identities of the cy pres recipients should be disclosed on the Notice.

- (7) Settlement Administrator: Provide a declaration from the settlement administrator that provides the qualifications and experience of the administrator, and affirms that the administrator has sufficient safeguards in place to protect the data and funds entrusted to it (e.g., insurance for the theft of money or data) and has no relationship to any counsel.
- (8) Community of Interest: Plaintiffs each should provide a declaration evidencing that he/she understands the obligations of being an adequate class representative, the details of what he/she has done or will do to demonstrate the adequacy of his/her representation, and the substantial burden he/she will undertake in order to represent the putative class in this case. (See *Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal.App.4th 133, 155-156; *Jones v. Farmers Ins. Exchange* (2013) 221 Cal.App.4th 986, 998-999).

All additional materials shall be filed and served on all parties and the LWDA sixteen (16) court days in advance of the hearing.

Counsel are urged to consult the Court's "Checklist" on the Court website regarding matters required to be addressed in motions for preliminary approval.

If the Settlement Agreement is modified, submit both a red-lined copy showing changes made as well as a final version signed by all parties. Do not submit an addendum in lieu of a full amended settlement agreement including all operative settlement terms. Modify notice to match any alterations to the Settlement Agreement.

Date: 8/17, 2021



Maren E. Nelson
Judge of the Superior Court