

Filed
February 10, 2025
Clerk of the Court
Superior Court of CA
County of Santa Clara
20CV367327
By: MJacobo

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

JAMES ABERNATHY, as an individual and on behalf of all others similarly situated,	)	Case No.: 20CV367327
	)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF'S
	)	MOTION FOR FINAL APPROVAL OF
v.	)	CLASS ACTION AND PAGA
	)	SETTLEMENT
	)	
DEACON CONSTRUCTION, LLC, et al.,	)	Dept. 7
	)	
Defendants.	)	

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff James Abernathy alleges that Defendant Deacon Construction, LLC ("Defendant") committed various wage and hour violations. Before the Court is Plaintiff's motion for final approval of settlement, which is unopposed. For the reasons discussed below, the Court GRANTS Plaintiff's motion.

I. Background

According to the allegations of the operative Complaint, Plaintiff was employed by Defendant as a construction worker from December 2019 to April 7, 2020, an hourly-paid, non-exempt position. (Complaint, ¶ 7.) He alleges that Defendant failed to: provide timely off-duty meal breaks (and premiums when such breaks were not provided); reimburse employees for

ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT

1 expenses incurred in the discharge of their duties; provide accurate, itemized wage statements;
2 and maintain accurate payroll records.

3 Based on the foregoing allegations, Plaintiff initiated this action with the filing of the
4 Complaint on June 17, 2020, asserting the following causes of action: (1) violation of Labor
5 Code § 226.7; (2) violation of Labor Code § 2802; (3) violation of Labor Code § 226; (4)
6 violation of Business & Professions Code § 17200; and (5) PAGA penalties.

7 The parties reached a settlement and Plaintiff moved for preliminary approval of the
8 settlement, which the Court granted and thereafter entered a formal order memorializing its
9 decision. Now before the Court is the unopposed motion for final approval of the settlement
10 agreement.

11 **II. Legal Standard**

12 Generally, “questions whether a settlement was fair and reasonable, whether notice to the
13 class was adequate, whether certification of the class was proper, and whether the attorney fee
14 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
15 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*
16 (1996) 48 Cal.App.4th 1794 (*Dunk*).)

17 “In determining whether a class settlement is fair, adequate and reasonable, the trial court
18 should consider relevant factors, such as “the strength of plaintiffs’ case, the risk, expense,
19 complexity and likely duration of further litigation, the risk of maintaining class action status
20 through trial, the amount offered in settlement, the extent of discovery completed and the stage
21 of the proceedings, the experience and views of counsel, the presence of a governmental
22 participant, and the reaction of the class members to the proposed settlement.” (*Wershba, supra*,
23 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for*
24 *Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

1 “The list of factors is not exclusive and the court is free to engage in a balancing and
2 weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91
3 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the extent
4 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
5 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
6 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48
7 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625 [internal quotation marks
8 omitted].)

9 “The burden is on the proponent of the settlement to show that it is fair and reasonable.
10 However “a presumption of fairness exists where: (1) the settlement is reached through arm’s-
11 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
12 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
13 objectors is small.” (*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48
14 Cal.App.4th at p. 1802.)

15 Similar to its review of class action settlements, the Court must “determine independently
16 whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the
17 LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72
18 Cal.App.5th 56, 76-77.) The Court must make this assessment “in view of PAGA’s purposes to
19 remediate present labor law violations, deter future ones, and to maximize enforcement of state
20 labor laws.” (*Id.* at p. 77.)

21 **III. Terms and Administration of Settlement**

22 The case has been settled on behalf of the following class:

23 [A]ll current and former non-exempt employees of Defendants who were employed in the
24 State of California at any time during the Class Period and who worked more than five hours in
25 any shift.

1 According to the terms of the settlement, Defendant will pay a non-reversionary gross
2 settlement of \$650,000. The gross settlement amount includes attorney fees of up to \$216,666.67
3 (one-third of the gross settlement), litigation costs not to exceed \$35,000 and administration
4 costs not to exceed \$8,250 will be paid from the gross settlement. \$60,000 will be allocated to
5 PAGA penalties, 75% of which (\$45,000) will be paid to the LWDA, with the remaining 25%
6 (\$15,000) distributed, on a pro rata basis, to “PAGA Members,” who are defined as all current
7 and former non-exempt employees of Defendants who were employed in the State of California
8 at any time during [during April 6, 2019 to December 18, 2023] and who worked more than five
9 hours in any shift” and “Exempt PAGA Members,” who are defined as “all current and former
10 exempt employees of Defendants who were employed in the State of California at any time
11 between April 6, 2019, through June 21, 2020.” Plaintiff will seek an incentive payment of up to
12 \$10,000.

13 The net settlement amount of approximately \$320,083.33 will be allocated (on a pro rata
14 basis based on the number of weeks worked during the relevant periods) 95% to members of the
15 “Class,” defined as “all current and former non-exempt employees of Defendants who were
16 employed in the State of California at any time during [April 6, 2016 to December 18, 2023]”
17 and 5% to members of the “Exempt Class,” which is defined as “all current and former exempt
18 employees of Defendants who were employed in the State of California at any time between
19 April 6, 2019, through June 21, 2020.” In exchange for the settlement, the Class members who
20 do not opt out will release:

21 [A]ll claims pled or which could have reasonably been pled based on the factual
22 allegations contained in the operative complaint or any amendments thereto, including claims
23 for: (i) violation of Labor Code §§ 226.7 and 512; (ii) violation of Labor Code §§ 201, 202, 203;
24 (iii) violation of Labor Code § 226; (iv) violation of Labor Code § 2802; and (vi) violation of
25

1 Business & Professions Code §§ 17200, which are premised on the violations described above,
2 that accrued during the Class Period.

3 Exempt Class members will release:

4 [A]ll claims pled or which could have reasonably been pled based on the factual
5 allegations contained in the operative complaint or any amendments thereto, including claims
6 for: (i) violation of Labor Code § 226, that accrued during the period of April 6, 2019, through
7 June 21, 2020.

8 PAGA Members, who consistent with the statute will not be able to opt out of the PAGA
9 portion of the settlement, will release:

10 [A]ll claims pled or which could have reasonably been pled based on the factual
11 allegations contained in the operative complaint or any amendments thereto, for civil penalties
12 under the PAGA including claims premised on alleged violations of Labor Code §§ 201, 202,
13 203, 226.7, 512, 1174, 1198, 1199, and 2802, that accrued during the PAGA Period.

14 Exempt PAGA Members, who consistent with the statute will not be able to opt out of
15 the PAGA portion of the settlement, will release:

16 [A]ll claims pled or which could have reasonably been pled based on the factual
17 allegations contained in the operative complaint or any amendments thereto, for civil penalties
18 under the PAGA including claims premised on alleged violations of Labor Code §§ 226, 226.3,
19 that accrued during the period of April 6, 2019, through June 21, 2020.

20 The foregoing releases are appropriately tailored to the allegations at issue.

21 (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)

22 In its order granting preliminary approval of the settlement, the Court approved Phoenix
23 Settlement Administrators (“Phoenix”) as the settlement administrator. On August 16, 2024,
24 Defense counsel provided Phoenix with the class data file, including names, social security
25 numbers, last known mailing addresses, employment dates, and the total number of relevant

workweeks worked by each Class member (“Class List”). (Declaration of Kevin Lee (“Lee Decl.”), ¶ 3.) On August 26, 2024, Phoenix sent the Class Notice to all 256 members on the Class List. (*Id.* at ¶ 5.) As of the date of Lee Declaration, January 9, 2025, zero Class Notices have been considered undeliverable. (*Id.* at ¶ 7.) As of the date of the same declaration, the settlement administrator has received no objections to the settlement and no disputes from Class Members. (*Id.* at ¶¶ 8-10.) According to the administrator’s calculations, the average Non-Exempt employee individual settlement will be approximately \$1,957.32 and the average Exempt employee individual settlement will be \$171.34. (*Id.* at ¶¶ 14-15.) The notice process has now been completed.

IV. Enhancement Awards, Attorney Fees, and Costs

The settlement Agreement provides for an enhancement award to Plaintiff in the amount of \$10,000.

“The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit. Criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. These “incentive awards” to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit.” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 [internal punctuation and citation].)

1 Plaintiff submitted a declaration describing his participation in the action and indicating
2 he spent between 60-65 hours in connection with the lawsuit. (James Abernathy Declaration
3 (“Abernathy Decl.”) ¶ 6.) Accordingly, the Court approves an enhancement award to Plaintiff in
4 the amount of \$10,000.

5 The Court has an independent right and responsibility to review the requested attorney
6 fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles*
7 *Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) “Courts recognize two methods
8 for calculating attorney fees in civil class actions: the lodestar/multiplier method and the
9 percentage of recovery method.” (*Wershba, supra*, 91 Cal.App.4th at p. 254.)

10 Class counsel seeks an attorney fee award in the amount of \$214,166.67, one-third of the
11 gross settlement amount. Counsel provides evidence of a lodestar of \$280,550, based on a total
12 of 371.9 hours + 10 anticipated hours at rates ranging from \$700 to \$900 per hour. The Court
13 does not award anticipated expenses. Accordingly, it will treat the lodestar as \$271,550. (Lee
14 Decl., ¶ 10; Gavron Decl., ¶ 15.) This results in an approximate multiplier of .79 and is below the
15 range of multipliers that courts typically approve. (*Wershba, supra*, 91 Cal.App.4th at p. 255
16 “[m]ultipliers can range from 2 to 4 or even higher”.) The benefits achieved by the settlement
17 justify an award of attorney fees to class counsel. The Court finds that the requested attorney fee
18 award is reasonable as a percentage of the common fund and approves an attorney fee award in
19 the requested amount of \$214,166.67.

20 Class counsel requests reimbursement of litigation costs in the amount of \$30,820.64.
21 (Gavron Decl., ¶ 19, Ex. B.) The Court approves an award of litigation costs in this amount. The
22 settlement administration costs are also approved in the requested amount of \$8,250. (Lee Decl.,
23 ¶ 18.)

1 **V. Conclusion**

2 The motion for final approval of class and representative action settlement is GRANTED.

3 The class as defined herein is certified for settlement purposes. Judgment shall be entered
4 through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Pursuant to Rule
5 3.769(h) of the California Rules of Court, the Court retains jurisdiction over the parties to
6 enforce the terms of the settlement agreement and the final order and judgment.

7 The Court sets a compliance hearing for **October 9, 2025 at 2:30 p.m.** in Department 7.
8 At least ten court days before the hearing, class counsel and the settlement administrator shall
9 submit a summary accounting of the net settlement fund identifying distributions made as
10 ordered herein; the number and value of any uncashed checks; amounts remitted to the *cy pres*
11 recipient; the status of any unresolved issues; and any other matters appropriate to bring to the
12 court's attention. Counsel shall also submit an amended judgment as described in Code of Civil
13 Procedure section 384, subdivision (b).

14
15 DATED: February 7, 2025


CHARLES F. ADAMS
Judge of the Superior Court