15. *Hutcherson, et al, v. Legacy Transportation, et al,* Case No. CIVSB2023380
Motion for Preliminary Approval of Class Action Settlement
12/20/24, 9:00 a.m., Dept. S-17

Tentative Ruling

The Court would **GRANT**. Please note footnotes for direction on information necessary prior to Final Approval.

Preliminary Approval of Class Action Settlements in General

Settlement of a class action requires court approval. (Cal. Rules of Court, rule 3.769.) The moving party must demonstrate that "the settlement is fair, adequate and reasonable." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 126; *Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337.) The court has "broad discretion in making this determination." (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.) Relevant factors the court may consider include "the strength of the plaintiffs' case, the risk, the expense, 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, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) This list of factors "is not exhaustive and should be tailored to each case." (*Ibid.*) The court may "engage in balancing and weighing of factors depending on the circumstances of each case." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245, overruled on other grounds in *Hernandez v. Restoration Hardware* (2018) 4 Cal.5th 260, 269.)

"Although the court gives regard to what is otherwise a private consensual agreement between the parties, the court must also evaluate the proposed settlement agreement with the purpose of protecting the rights of the absent class members who will be bound by the settlement." (*Wershba, supra*, 91 Cal.App.4th at p. 245, quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801.) "The court must therefore scrutinize the proposed settlement agreement to the extent necessary to "reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, quoting *Officers for Justice v. Civil Service Com'n* (9th Cir. 1982) 688 F.2d 615, 625.)

Nevertheless, the settlement is entitled to a "presumption of fairness . . . where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and 94) the percentage of objectors is small." (*Kullar, supra*, 168 Cal.App.4th at p. 128, quoting *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

Provisional Class Certification at Preliminary Approval

Although a lesser standard can be used to provisionally certify a settlement class, the court still needs to review and consider each element for certification. (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) But, as settlement eliminates the need for trial, "the case management issues inherent in ascertainable class determination need not be confronted." (*Ibid.*)

A class should be certified when "the question is one of a common or general interest, of many persons, or when parties are numerous and it is impracticable to bring them all before court." (Code Civ. Proc., § 382.) There must be both an ascertainable class and a well-defined community of interest, which includes predominate questions of law or fact, class representatives with claims typical of the class, and class representatives who can adequately represent the class. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

Settlement Notice

"If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (Rules of Court, rule 3.769(f); *Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 251.)

The manner of notice shall be by means reasonably calculated to apprise the class members of the settlement. (Rules of Court, rule 3.766(f).) The standard is "whether the notice has 'a reasonable chance of reaching a substantial percentage of the class members.'" (*Wershba, supra*, 91 Cal.App.4th at p. 251.) The court must consider the interest of the class, type of relief obtained, the state of the individual class members, the costs of notifying the class members, the resources of the parties, the possible prejudice to the class members who do not receive notice, and the *res judicata* effect on the class members. (Rules of Court, rule 3.766(e).)

The Proposed Settlement

Here, Plaintiff Hutcherson first submitted a notice letter to the Labor and Workforce Development Agency (LWDA) in anticipation of a Private Attorneys General Act (PAGA) cause of action on August 10, 2020. On October 27, 2020, he filed an amended notice with the LWDA, and then originally filed this instant matter as a PAGA-only cause of action on October 28, 2020. On December 21, 2022, Plaintiff Urbina first filed his case in Los Angeles County (22STCV39604), and on March 16, 2023, he filed a First Amended Complaint in that Los Angeles venue. Similarly, on April 13, 2023, Plaintiff Vaca first filed his case in Orange County (30-2023-01318691-CU-OE-CXC), and he filed *his* First Amended Complaint on July 10, 2023, to similarly allege his own wage-and-hour class and representative claims.

In furtherance of consolidating the matters for settlement, the Plaintiffs filed a First Amended Complaint (FAC) in *this* matter and added Plaintiffs Urbina and Vaca. The operative FAC, here, now alleges class violations as to (1) minimum wages; (2) overtime wages; (3) rest period and nonproductive time; (4) meal periods; (5) rest breaks; (6) reimbursements; (7) accurate wage statements; (8) final pay; as well as (9) violation of the unfair competition law (UCL) and (10) civil penalties pursuant to the Private Attorneys General Act (PAGA). The UCL and PAGA claims are underpinned by alleged violations relating to the same alleged wage-and-hour violations.

After commencing litigation and in anticipation of mediation, Plaintiffs sought and received extensive informal discovery, including a robust sampling of time and payroll records relating to all putative class members. (Jones Decl., ¶¶11 & 37.) Plaintiff also received handbooks and other policy documents. (*Ibid.*) Thereafter, on November 10, 2023, the parties engaged in a full-day, arms-length mediation with Steve Serratore, an experienced wage-and-hour neutral. (Jones Decl., ¶7.) The parties later accepted a mediator's proposal and eventually memorialized in a long form settlement by April of 2024. (Jones Decl., ¶40 & Exh 1 [Settlement].) Notice of the settlement was sent to the LWDA on September 25, 2024. (*Id.*, Exh. 2 [PAGA NTC].)

The class size is estimated at 547.[8] (Jones Decl., ¶17.) For purposes of settlement, the class period is divvied up as follows: December 21, 2018 through January 9, 2024, with the exception that non-driver class members who worked at the Jurupa and Ontario will be from April 30, 2022 through January 9, 2024. The PAGA period will be December 21, 2022 through January 9, 2024, with the exception that aggrieved employees at the Jurupa and Ontario locations will be from August 10, 2019 through January 9, 2024. These class and PAGA periods appear consistent with the various statutes of limitation based on the filing dates of the various suits at issue and appear appropriate.

In general, the requested settlement proposed the following terms: Defendants will pay a gross, non-reversionary settlement amount of $720,000.00, from which will be deducted (1) $240,000.00 for Class Counsel's attorneys' fees (1/3rd of the total); (2) costs not to exceed $28,000.00;[9] (3) Plaintiffs' enhancement fees of $20,000.00 ($10,000 for Hutcherson and $5,000 each for Urbina and Vaca); (4) claims administration fees not to exceed $13,000.00; and (5) PAGA penalties of $75,000.00 (of which 75%, or $56,250, will go to the LWDA and 25%, or $18,750, to the aggrieved employees).

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[8] Despite there being widely differing statutes of limitations between UCL claims (4-year) and PAGA claims (1-year), movant indicates that there are *exactly the same number* of PAGA Aggrieved Employees. (See Jones Decl., ¶547.) While it is possible there was no turnover, the estimate seems unlikely, especially given the variety in class and PAGA periods in this settlement. <u>Counsel will provide an exact number of PAGA Aggrieved Employees at the hearing for Final Approval.</u>

[9] At final approval, Counsel will provide a breakdown of costs. Notably, any attorney bills submitted in the guise of services of an expert will require explanation and clarification as to why such bills are not properly considered attorneys' fees.

The parties estimate this will leave a wage-and-hour only net settlement amount of a non-reversionary $344.000.00. This amount would be split by the class of approximately 547 employees in proportionate shares determined by number of workweeks within the Settlement Class Period. While the Court is apprised that various locations may inherently have fewer hours given the limitation on the class periods, the general average per employee would be $628.88. Ten percent (10%) of the net settlement payments would be considered wages with the remaining ninety percent (90%) considered representative of penalties and interest. (Settlement, 3.2(e)(i).)[10] Presuming for arguments sake that there are exactly the same number of PAGA aggrieved employees, the general average PAGA payout would be $34.28. Again, Final approval will be contingent on the provision of specific information regarding the PAGA aggrieved employees and the fairness of their payout.

The amount of the settlement is appropriate given the strength of Plaintiffs' case, especially in light of Plaintiffs' counsel's assessment of maximum exposure. (Jones Decl., ¶¶14-29.) However, the lower actual settlement appears fair and reasonable in light of Defendants' arguments; the likelihood of prevailing on all claims; and when calculated to include risks that the class would not be certified and the potential appeal of any judgment should Plaintiffs be successful in this venue. Given the presumption of fairness, the Court would find the figure sufficient to satisfy the *Kullar* requirement. Further, adequate discovery and investigation has occurred. There is no evidence of fraud or collusion. Class counsel are well qualified to represent the class. The settlement was reached through an arms-length negotiation with the assistance of an experienced and well-respected mediator. The deductions from the gross settlement fund (attorneys' fees,[11] costs,[12] administration fee, incentive award, PAGA penalties, and taxes) appear to be reasonable and appropriate and are, therefore, *preliminarily* approved in the "not to exceed" amounts in the motion.

Counsel and the representatives are appointed to represent the class. The motion is *granted*. The Court will schedule a hearing to consider final approval at the closest available date to the date recommended by counsel.

The Court (1) conditionally certifies the Settlement Class for purposes of this settlement; (2) appoints the Lavi & Ebrahimian, LLP; Kokozian Law Firm; and Majarian Law Group APC; as Settlement Class Counsel; (3) appoints Adrian Hutcherson, Jose Urbina, and Juan Manuel Vaca as Class Representatives; (4) approves ILYM Group, Inc. as Settlement Administrator;

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[10] No justification is given for this extremely limited assessment of wage exposure. At the hearing on Final Approval, Counsel must explain why it is appropriate that only 10% of the payout will be considered as wages.

[11] Counsel must provide a full lodestar analysis in the motion for final approval. *See also* FN 1.

[12] Costs must be documented. The court does not award costs for LEXIS or Westlaw usage (which are considered items of overhead), faxes (also overhead), or photocopying in excess of $0.06 per page.

(5) preliminarily finds the settlement fair, reasonable, and adequate; and (6) approves the form and content of the proposed Class Notice and directs the mailing of the same.

At final approval, Counsel must advise the court of any pending cases that will be affected by approval of the settlement. Counsel must provide proof that the LWDA was properly notified of the PAGA settlement and preliminary approval. Counsel must provide the *exact* number of class members and workweeks for the class settlement and the *exact* number of aggrieved employees and pay periods for the PAGA settlement.

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