

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Fnu Linaki

Plaintiff/Petitioner(s)

VS.

Genji Pacific, LLC

Defendant/Respondent(s)

No. RG20074795

Date: 10/12/2022

Time: 3:00 PM

Dept: 19

Judge: Stephen Kaus

ORDER re: Hearing on Motion to Confirm

Settlement; Case

Management Conference

The Motion for Preliminary Approval of Settlement filed by Fnu Linaki on 09/09/2022 is Granted.

Plaintiff Fnu Linaki, as an individual and on behalf of all others similarly situated, and as a private attorney general, ("Plaintiff") Motion for Preliminary Approval of Class Action Settlement is GRANTED.

The complaint alleges four causes of action on behalf of both exempt and non-exempt employees of Defendants Genji Pacific, LLC, also known as Hana Group Ops, LLC, ("Defendant") asserting Labor Code and Business and Professions Code violations. There are 647 estimated members of the class.

The case preliminarily settled for a total of \$750,000.00. The Joint Stipulation of Class Action and Representative Action Settlement ("Settlement Agreement") states there will be Attorney Fees of up to \$250,000 (33 1/3%), costs of up to \$15,000, a Class Representative Enhancement Payment in the amount of \$10,000, a gross PAGA payment of \$100,000.00 and settlement administration costs of up to \$13,500.

After these expenses, the class would receive \$361,500. The average payout per class member would be approximately \$558.73. Plaintiff estimates the average payout at \$597.37 (See Yang Decl. ¶ 5.) Although the discrepancy is slight, the Court requests clarification to be included in the motion for Final Approval.

The proposed class is appropriate for class certification.

The proposed class notice form and procedure are adequate.

The motion makes an adequate analysis as required by Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116. The court credits counsel for their willingness to utilize formal and informal discovery methods as a way to exchange meaningful information without undue burden or expense.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

SCOPE OF RELEASE

The scope of the release for the class is appropriate. (Joint Stipulation of Class Action and Representative Action Settlement ¶ 80.) The parties have separated the release of: (1) Plaintiff's claims and (2) Class claims by the Class Members.

Plaintiff's release is broader than those of the represented class members in that it requires Plaintiff to release any and all claims, known and unknown, under any local, state, or federal law, in tort, common law, or contract, whether pleaded in the First Amended Complaint or not, except ...any other claims that cannot be released as matter of law.

The Class release states in pertinent part:

[A]ll Participating Class Members and/or Aggrieved Employees will be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, any and all of the applicable Released Claims against any and all of the Released Parties

The scope of the class release is limited to the claims arising out the common facts that were alleged in the Complaint or reasonably could have been alleged in the Complaint where the Plaintiff can adequately represent the class. The release of claims by the class is limited by the "factual predicate rule" to those claims. (Hesse v. Sprint Corp. (9th Cir. 2010) 598 F.3d 581, 590.)

UNCASHED CHECKS

Class Members have 180 calendar days to cash or deposit checks. The settlement states that after 180 calendar days, the Settlement Administrator shall direct the principal for any expired checks be distributed to the State Controller Unclaimed Property Fund in the name of the Class Member.

ATTORNEY'S FEES

The Court will approve the amount of attorneys' fees and costs at a final approval hearing. The Court cannot award attorneys' fees without reviewing information about counsel's hourly rate and the time spent on the case. (Robbins v. Alibrandi (2005) 127 Cal. App. 4th 438, 450-451.)

"Because absent class members are not directly involved in the proceedings, oversight to ensure settlements are fair and untainted by conflict is the responsibility of both the class representative and the court." (Mark v. Spencer (2008) 166 Cal.App.4th 219, 227.)

"In any class action there is always the temptation for the attorney for the class to recommend settlement on terms less favorable to his clients because a large fee is part of the bargain. ... [T]horough judicial review of fee applications is required in all class action settlements and the fairness of the fees must be assessed independently of determining the fairness of the substantive settlement terms.' ... " 'The evil feared in some settlements-unscrupulous attorneys negotiating large attorney's fees at the expense of an inadequate settlement for the client-can best be met by a careful ... judge, sensitive to the problem, properly evaluating the adequacy of the settlement for the class and determining and setting a reasonable attorney's fee....' " (Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 555-556.)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

The court notes that counsel seeks fees not to exceed one-third (1/3) or \$250,000 of the GSA and a Cost Award not to exceed \$15,000 for all expenses incurred. The Court sets out its standard analysis below. Counsel may address that analysis in the fee application.

The Ninth Circuit's benchmark is 25%. (*Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 495.) This court's benchmark for fees is 30% of a total fund. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 495; *Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1175; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 fn 13; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11.)

When cross-checking with the lodestar/multiplier, the court will evaluate the lodestar based on reasonable fees that would have been charged at hourly rates and then apply a multiplier. The multiplier includes contingent fee risk and other factors.

When considering risk, the court considers there is less risk in a case with fee shifting statutes because counsel's potential fees are not limited by and coupled to the monetary recovery. "The law does not mandate ... that attorney fees bear a percentage relationship to the ultimate recovery of damages in a civil rights case." (*Harman v. City and County of San Francisco* (2007) 158 Cal.App.4th 407, 419.) (See also *Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1006-1007.)

CLASS REPRESENTATIVE ENHANCEMENT PAYMENT

Plaintiff seeks a Class Representative Incentive Award of \$10,000. The Court will not decide the amount of any service award until final approval hearing. Plaintiff must provide evidence regarding the nature of the participation of each class representative in the action, including a description of their specific actions and the amount of time each committed to the prosecution of the case. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.) The court's standard service award is \$5,000.

The Court ORDERS that 10% of any fee award to be kept in the administrator's trust fund until the completion of the distribution process and Court approval of a final accounting.

The Court will set a compliance hearing after the completion of the distribution process and the expiration of the time to cash checks for counsel, Plaintiff, and the Administrator to comply with CCP 384(b) and to submit a summary accounting how the funds have been distributed to the class members and the status of any unresolved issues. If the distribution is completed, the Court will at that time release any hold-back of attorney fees.

The Court will sign the proposed order, which is modified by this order. A hearing for FINAL APPROVAL is hereby SET for Wednesday, February 22, 2023 at 3:00PM in Department 19, Civil Law & Motion, Administration Building (Third Floor), 1221 Oak Street, Oakland.

Hearing on Motion for Final Approval of Settlement is scheduled for 02/22/2023 at 03:00 PM in

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Department 19 at Rene C. Davidson Courthouse.

Clerk is directed to serve endorsed-filed copies of this order, with proof of service, to counsel and to self-represented parties of record by mail.

Dated: 10/12/2022

A handwritten signature in black ink, appearing to read "S. Kaus".

Stephen Kaus / Judge

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 10/13/2022
PLAINTIFF/PETITIONER: Fnu Linaki	Chad Finke, Executive Officer / Clerk of the Court By: <u>Nicole Hall</u> Deputy N. Hall
DEFENDANT/RESPONDENT: Genji Pacific, LLC	
CERTIFICATE OF MAILING	CASE NUMBER: RG20074795

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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Dated: 10/13/2022

Chad Finke, Executive Officer / Clerk of the Court

By:

Nicole Hall

N. Hall, Deputy Clerk

CERTIFICATE OF MAILING