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20-CIV-04700 HUGO FUENTES HERNANDEZ, ON BEHALF OF HIMSELF AND ALL
OTHERS SIMILARLY SITUATED VS. WILLIAM KOCH

HUGO FUENTES HERNANDEZ, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED WILLIAM BRIAN KOCH	SARA EHSANI-NIA STEVEN M. BERKI
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MOTION FOR PRELIMINARY APPROVAL OF FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION
FOR SETTLEMENT PURPOSES ONLY BY PLAINTIFF

TENTATIVE RULING:

Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement is tentatively ruled upon as follows.

This Court GRANTS preliminary approval of the Settlement as set forth in the First Amended Joint Stipulation and Settlement Agreement attached as Exhibit 4 to the Declaration of David Bibiyan ("Bibiyan"). On February 3, 2022, this Court filed a written order denying preliminary approval without prejudice and identified issues that the Court wanted addressed. On March 7, 2022, Plaintiffs filed a renewed notice for preliminary approval along with the declarations of Bibiyan, plaintiff Hugo Fuentes Hernandez, and Jodey Lawrence on behalf of Phoenix Settlement Administrators. This renewed motion sufficiently resolves the Court's issues.

The Court finds the terms to be within the range of reasonableness of a settlement that ultimately could be granted approval by this Court at the final fairness hearing. Plaintiff's counsel is experienced in class litigation, the case was vigorously contested by Defendant and its experienced counsel, the settlement was reached after a mediation with an experienced mediator, and Plaintiff's counsel, Bibiyan has provided a detailed analysis of each claim, including the strengths and weaknesses, and the reason for the allocation between the class and PAGA claims. The Court finds the settlement is in the ballpark of reasonableness. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The Court finds that LDWA received notice of the settlement.

Conditional approval of the settlement is appropriate because the proposed class is ascertainable and sufficiently numerous. There are 162 class members identified by Defendant. The putative Class Members appear to share a well-defined community of interest based upon the explanation of counsel of the claims, Plaintiff's claims arising from the same employment practices as alleged to have been suffered by the other putative class members. Based upon Plaintiff's representation, Plaintiff is an adequate class representative as he understands his fiduciary duties and has participated in the litigation. Class certification would be a superior way to resolve these issues rather than joinder of all 162 members of the class.

1. Accordingly, for settlement purposes only, this Court grants conditional certification of the following settlement class (the "Class"):

All current and former non-exempt, hourly-paid employees who worked at any time during the Class Period from October 26, 2016 through October 26, 2021 ("Class Period") for Defendants in California.

2. For purposes of settlement, this Court designates named Plaintiff Hugo Fuentes Hernandez as Class Representative, and David D. Bibiyan, Sara Ehsani-Nia, and Diego Aviles, of Bibiyan Law Group, P.C. as Class Counsel.
 3. This Court confirms Phoenix Settlement Administrators as the Settlement Administrator for purposes of providing notice and administering the claims process, and the Court conditionally approves payment not to exceed \$ \$7,250 for its services. The declaration of Jodey Lawrence supports this approval of Phoenix.
 4. A final fairness hearing on the question of whether the Settlement should be finally approved as fair, reasonable, and adequate as to the members of the Class is scheduled in Department 4 of this Court, located at 800 North Humboldt, San Mateo California 94401 on **Tuesday, September 20, 2022 at 2:00 p.m.** The moving papers shall be filed by Friday, August 19, 2022, any opposition by Friday, August 26, 2022 and any reply by Tuesday, September 6, 2022. The notice shall be revised to include these dates. If this hearing date is inconvenient for the parties, they should contest the tentative and provide an alternative date.
 5. At the final fairness hearing, this Court will consider: (a) whether the Settlement should be approved as fair, reasonable, and adequate for the Class; (b) whether a judgment granting approval of the Settlement should be entered; and (c) whether Plaintiffs' application for an award of attorneys' fees, reimbursement of litigation expenses, and class representative enhancement award should be granted.
 6. Counsel for all parties shall file memoranda, declarations, or other statements and materials in support of their request for final approval by no later than 14 days following the deadline for Class Members to object to the Settlement or request exclusion from the Class.
 7. Class Counsel shall file a motion for an award of attorneys' fees, reimbursement of litigation expenses, and class representative service awards by no later than 14 days before the deadline for Class Members to object to the Settlement or request exclusion from the Class. The Court will not conditionally approve the proposed Class Representative Award or the proposed attorney fees and award. Plaintiff's counsel is to submit evidence supporting each of these requests. For the Class Representative Award, counsel shall submit evidence detailing the specific work that Plaintiff performed during the litigation, including whether he sat for a deposition or responded to written discovery, the number of hours he spent on the litigation. Some of this information has
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already been provided for the Class Representative, but the Court, for efficiency sake, requests that the information be provided again. For the attorneys' fees award, counsel shall provide sufficient evidence so that the Court can perform a lodestar cross-check, including either billing records or a comparable evidence, including which attorneys or support staff worked on each task, support for the hourly rate as reasonable in San Mateo County, and evidence supporting an award of a multiplier. For the costs, they shall be sufficiently identified so that the Court can determine its reasonableness.

8. This Court approves the form and content of the Notice of Class Action Settlement ("Notice"), which is attached as Exhibit A to the Settlement Agreement, with the following change: "Class Counsel and Defendants' Counsel may respond to any objection lodged with the Court up to **five (5) 10** court days before the Final Approval Hearing."
 9. The Court approves the procedures and deadlines selected for mailing and distribution of the Notice as set forth in Settlement Agreement § 9.
 10. This Court further approves the procedures and deadlines for Class Members to participate in, opt out of, or object to the Settlement, as set forth in the Settlement Agreement.
 11. The procedures and requirements for filing objections in connection with the fairness hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objection to the Settlement Agreement, in accordance with the due process rights of all Class Members.
 12. The Court approves the selection of Legal Aid Work as the cy pres recipient in case there are any unclaimed funds. The Court finds it an appropriate cy pres recipient for this type of case.
 13. Counsel for the parties are hereby authorized to use all reasonable procedures in connection with the administration of the Settlement that are not materially inconsistent with either this Order or the terms of the Settlement Agreement.
 14. The fairness hearing date and time and the related prior deadlines set forth above may, from time to time and without further notice to the Settlement Class (except those who have filed timely and valid objections), be continued or adjourned by Order of this Court.
 15. If the tentative is adopted, Plaintiff's counsel is to prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action and LDWA, as required by law and the California Rules of Court.
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