

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Jonathan Buckner
Plaintiff/Petitioner(s)
VS.
Xpress Global Systems, LLC
Defendant/Respondent(s)

No. RG20080657

Date: 08/01/2022

Time: 3:00 PM

Dept: 19

Judge: Stephen Kaus

ORDER re: Hearing on Motion for Final
Approval of Settlement

Matter was not contested and the tentative is affirmed.

The Motion for Final Approval of Settlement filed by Jonathan Buckner on 07/22/2022 is Granted.

Plaintiff's motion for Final Approval of Class Action settlement is GRANTED.

BACKGROUND

Plaintiff Jonathan Buckner, individually, and on behalf of other class members ("Plaintiff") moves for entry of an order granting final approval of the PAGA Class Action Settlement Agreement between Plaintiff and Defendant Xpress Global Systems, LLC. ("Defendant"). Plaintiff seeks to recover unpaid wages, civil penalties owed to the Labor and Workforce Development Agency ("LWDA") pursuant to the Labor Code Attorneys General Act of 2004 ("PAGA") (Labor Code §§ 2698 et seq.), restitution, and other related relief on behalf of himself and all others similarly situated employees.

The complaint alleges violations of the California Labor Code and Business and Professions Code for the following claims: unpaid full, regular, overtime and minimum wages (Labor Code §§ 204, 510, 558, 1194, 1197, 1182.12 226(a)), untimely wages (Labor Code § 204(d)), meal and rest break violations (Labor Code §§ 226.7, 512, 226.7, 516,) non-compliant wage statements (Labor Code § 226(a)), PAGA violations (Labor Code § 2698); violation of Bus & Prof Code §§ 17200 et seq. The Class is defined as all current and former non-exempt employees of Defendant, from November 9, 2017, through November 12, 2021. The Settlement Class includes 406 non-exempt employees employed by Defendant during the Class Period.

The Court granted preliminary approval on January 31, 2022. The case preliminarily settled for a total of \$500,000.00. The final settlement agreement states there will be attorneys' fees of 166,666.67 or 33%, costs \$15,184.45, a service award of \$7,500 for the named class representative, settlement administration costs of \$7,000, and a \$18,500 payment to LWDA. After these expenses and payments, the net settlement amount would be \$278,648.88. (See Declaration of Nicole Bench (Bench Decl. at ¶14).)

At the preliminary approval stage, the class members were estimated at 413 members with an

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

average payout per class member of \$678.16. At the final approval stage, there are 406 non-exempt Class Members with an average payout of \$701.72, and highest estimated payment of \$3,065.21. One third (33.33%) of each Individual Settlement Payment will be paid as wages subject to regular employee deductions and withholding (with W2 reporting) and two thirds (66.67%) percent will be paid as interest and penalties (1099 reporting).

The proposed class notice form and procedure are adequate. There were no objections to the Settlement and no requests for exclusion. (Declaration of Mehrdad Bokhour (Bokhour Decl. ¶11).)

DISCUSSION

The settlement was mediated with the assistance of an experienced mediator, Tripper Ortman, Esq. The court gives “considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in [concluding] that [the] settlement agreement represents an arm’s length transaction entered without self-dealing or other potential misconduct.” (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129; see also In re Sutter Health Uninsured Pricing Cases (2009) 171 Cal.App.4th 495, 504.)

The Court APPROVES the Settlement Agreement. The Court has considered (1) the relative strength of the Plaintiffs’ case; (2) the high risk, expense, complexity, and likely duration of further litigation of this dispute; (3) the high risk of maintaining class status through trial; (4) the relatively generous amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel that settlement is reasonable; and (7) the lack of any objections to the proposed settlement and the choice of twenty-six class members to opt out. (See Dunk v. Ford Motor Co. (1996) 48 Cal. App. 4th 1794, 1801.) Under the circumstances, a presumption of fairness exists because there are no objectors to this settlement agreement, which was reached through arm’s length bargaining by experienced counsel before an experienced neutral mediator (Tripper Ortman, Esq) with sufficient discovery proceedings to allow counsel and the Court to act intelligently. (See In re Microsoft I-V Cases (2006) 135 Cal. App. 4th 706, 723.)

The Court APPROVES ILYM Group, Inc. as the settlement administrator and settlement administration costs of \$7,000.00.

The court APPROVES a PAGA payment of \$25,000 with a net payment to the LWDA of \$18,500.

The court APPROVES litigation costs and expenses of \$15,184.45.

Plaintiff’s counsel requests an attorneys’ fee of \$166,666.67 representing one third of the gross settlement amount. The Ninth Circuit’s benchmark is 25%. (Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 495.) When using the percentage of recovery approach, the 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 fn 11.) The percentage approach suggests fees of \$150,000.00, which would reflect a multiplier of approximately 1.12 as opposed to the 1.24 multiplier requested.

The Court finds it appropriate to pay costs before percentages are calculated and therefore AWARDS \$159,271.85, which represents one third of the recovery after subtracting \$ 15,184.45

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

in costs and \$7,000 in administrative expenses. The lodestar calculation (\$550.00/hr x 137.5 hours) = (525/hr x 105hours) totals \$133,750.00 and the fee award of \$159,271.85 would reflect a multiplier of roughly 1.19, which is adequate compensation for the risks undertaken and appropriate in circumstances resulting in the efficient resolution of an action where less litigation was required. (See *Lealao v. Beneficial Cal. Inc.* (2000) 82 Cal. App. 4th 19, 52.)

The Court has reviewed and APPROVES a service payment of \$7,500 to Jonathan Buckner. The evidence shows that Buckner dedicated significant time to assisting counsel in this case. Given the risks undertaken, the effort devoted to this litigation, and agreeing to broader releases than those required of all other Class Members, a total incentive award of \$7,500 to Plaintiff is warranted under the circumstances.

The Court ORDERS that 10% of the fee award (\$159,271.85) shall be kept in the settlement administrator's trust fund until the completion of the distribution process and Court approval of a final accounting. The Administrator shall not release these funds to counsel until the Court determines that these conditions have been met.

A compliance hearing is SET for, April 25, 2023 at 3:00pm, in Department 19, Administration Building (Third Floor), 1221 Oak Street, Oakland, at which time the Court will consider evidence that the distribution process is complete and that a final accounting may be approved.

The Court will adopt the parties' proposed judgment and proposed order, with costs as modified above.

HOW DO I CONTEST A TENTATIVE RULING?

THROUGH ECOURT

Notify the Court and all the other parties no later than 4:00 PM one court day before the scheduled hearing, and briefly identify the issues you wish to argue through the following steps:

1. Log into eCourt Public Portal
2. Case Search
3. Enter the Case Number and select "Search"
4. Select the Case Name
5. Select the Tentative Rulings Tab
6. Select "Click to Contest this Ruling"
7. Enter your Name and Reason for Contesting
8. Select "Proceed"

BY EMAIL

Send an email to the DEPARTMENT CLERK and all the other parties no later than 4:00 PM one court day before the scheduled hearing. This will permit the department clerk to send invitations to counsel to appear remotely.

BOTH ECOURT AND EMAIL notices are required

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Dated: 08/01/2022

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

Stephen Kaus / Judge