

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

DATE: 01/06/2023

TIME: 09:00:00 AM

DEPT: 25

JUDICIAL OFFICER PRESIDING: Jill H. Talley

CLERK: T. Shaddix

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **34-2021-00299610-CU-OE-GDS** CASE INIT.DATE: 04/28/2021

CASE TITLE: **Alysia Ford, individually, and on behalf of all others similarly situated vs. Boavida Communities LLC**

CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Motion - Other - Civil Law and Motion

APPEARANCES

Ben Haber, counsel, present for Plaintiff(s) remotely via video.

Caroline Tahmassian, counsel, present for Plaintiff(s) remotely via video.

Kyle Owen, counsel, present for Defendant(s) remotely via video.

The above-entitled matter came before this Court for a motion for final approval of class action settlement with the above-named counsel present and appearing remotely via Zoom.

There being no objections from any parties the court affirms the tentative ruling.

TENTATIVE AFFIRMED

Plaintiffs Rene Lopez and Alysia Ford's motion for final approval of class action settlement is UNOPPOSED and TENTATIVELY GRANTED pending the final fairness hearing. (Code Civ. Proc., § 382, Rules of Court, Rule 3.769.)

Overview

On February 16, 2021, Plaintiff Lopez filed a Private Attorney Generals Act ("PAGA") complaint in Los Angeles County Superior Court. The PAGA action sought civil penalties premised on Defendants' (1) failure to pay all wages earned at the correct rates; (2) unlawful deductions; (3) failure to provide meal periods; (4) failure to authorize and permit paid rest breaks; (5) failure to reimburse for expenses; (6) failure to issue accurate and complete wage statements; and (7) untimely payment of wages during and at the end of employment. (Spivak Decl. Ex. 3.)

On April 28, 2021, Plaintiff Ford filed the instant putative wage and hour class action against Defendants in this Court. The original complaint alleged Defendants: (1) failed to pay minimum and straight time wages; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to timely pay final wages at termination; (6) failed to provide accurate itemized wage statements; (7) failed to indemnify employees for expenditures; and (8) engaged in unfair business practices. (ROA 1.)

On May 9, 2022, Plaintiffs filed an amended complaint, which added Plaintiff Lopez as an additional

Plaintiff/class representative, included a claim for civil penalties under PAGA, and added counsel for Plaintiff Lopez to the complaint. (ROA 42.)

The parties engaged in an informal, voluntary exchange of information in the context of privileged settlement discussions to facilitate an early mediation. Defendants produced Plaintiffs' entire personnel files (including policies and agreements they signed and acknowledged), copies of their relevant company written policies, time-keeping records, email messages, and paycheck data and records for the putative class, and more detailed time and payroll data for a random sample of putative class members specifically selected by Plaintiffs' counsel. (Spivak Decl. Ex. C, ¶ 7; Marquez Decl. ¶¶ 8-9.)

Defendants deny all of Plaintiffs' allegations and strongly contend that Defendants' wage and hour policies, practices and procedures were and are fully compliant with all applicable laws. (Spivak Decl. Ex. C, ¶ 6.) Notwithstanding Defendants' position, the parties were able to reach a compromise following a full day mediation with mediator Francis J. "Tripper" Ortman. During the mediation, each side, represented by their respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and all other matters covered by the Settlement. (Spivak Decl. Ex. C, ¶ 8; Marquez Decl. ¶¶ 9-10.) The parties thereafter entered into a written settlement agreement. (Spivak Decl. Ex. A ("SA").)

On September 9, 2022, the Court granted preliminary approval of this settlement. Plaintiffs now seek final settlement approval. This ruling incorporates by reference the definitions in the Settlement Agreement and all capitalized terms defined therein shall have the same meaning in this ruling as set forth in the Settlement Agreement.

Settlement Class Certification

The Court preliminarily approved the following class: All persons hourly paid or non-exempt employees in California who worked for Defendants anytime during the Class Period (July 1, 2019 through August 1, 2022).

On October 13, 2022, Notice Packets were mailed, in English and Spanish, to all 227 Class Members. (Mitzner Decl. ¶ 5.) Ultimately, 10 Notice Packets were undeliverable after the settlement administrator performed a skip trace to locate updated addresses. (Supplemental Mitzner Decl. at ¶ 4.) The deadline to submit objections, requests for exclusion, or workweek disputes was December 12, 2022; but as of December 19, 2022, no objections, requests for exclusion or workweek disputes were submitted. (*Id.* at ¶¶ 5-7.) Given that there has been no material change of events with respect to the Settlement Class since the Court's preliminary approval, the Court intends to grant final certification of the Settlement Class pending the final approval hearing.

Aggrieved Employees

Aggrieved Employees are defined as all current and former hourly-paid or non-exempt employees who worked for Defendants within the State of California from December 13, 2019 to August 1, 2022. Plaintiffs provided notice of the settlement to the Labor and Workforce Development Agency. (Spivak Decl. Ex. C, Exs -9-10.)

Class Representatives

The Court intends to appoint Rene Lopez and Alysia Ford as class representatives for settlement purposes only ("Class Representative(s)").

Class Counsel

The Court intends to appoint David Spivak of The Spivak Law Firm and Justin Marquez of Wilshire Law Firm, PLC as class counsel for settlement purposes only ("Class Counsel").

Fair, Adequate and Reasonable Settlement

The Court must find a settlement is "fair, adequate, and reasonable" before approving a class action settlement. (*Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 244-245.) The trial court has broad discretion to determine whether a proposed settlement in a class action is fair, adequate, and reasonable. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) "[A] presumption of fairness exists 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 (4) the percentage of objectors is small." (*Id.* at 1802.) In making its fairness determination, the Court considers the strength of the Plaintiff's case, the risk, expenses, 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 state of the proceedings, and the experience and views of counsel. (*Id.* at 1801.)

Here, the Settlement Agreement provides that Defendants will pay the maximum gross settlement amount of \$275,000. (SA § VII(A).) Defendants' employer share of taxes will be paid separately and in addition to the GSA. (*Ibid.*) The following items will be paid out of the GSA: (1) Settlement Administration Costs of up to \$9,000; (2) attorneys' fees to Class Counsel of \$91,667.67 (1/3 of GSA); (3) actual litigation costs and expenses of \$20,399.76; (4) enhancement awards of \$15,000 each to Plaintiffs Lopez and Ford; (5) a payment to the LWDA in the amount of \$3,000, representing 75% of the \$4,000 PAGA penalty; and (6) settlement class and PAGA penalty payments to Class and PAGA Group Members. (See Spivak Decl. ¶¶ 15-22; Marquez Decl. ¶¶ 14-23; and Mitzner Decl. ¶ 18.)

Each Settlement Class Member's Individual Settlement Payment will be determined as follows: (1) Defendants will calculate the total number of Workweeks of each Settlement Class Member during the Settlement Period; (2) The value of each Workweek shall be determined by the Settlement Administrator by dividing the Net Settlement Fund by the total number of Workweeks of all Settlement Class Members ("Workweek Point Value"); (3) Each Settlement Class Member's Workweeks will be multiplied by the Workweek Point Value. Individual Settlement Payments for each Settlement Class Member will be reduced and any required legal deductions for the employee's share of taxes and withholdings on the wages portion of the Individual Settlement Payments. (SA § XI.) For tax purposes, the Individual Settlement Payments to Settlement Class Members will be deemed 20% wages and 80% penalties and interest. (SA § XVI.) If a PAGA Group Member or Settlement Class Member does not cash their settlement check within 180 calendar days of issuance, the uncashed funds will be provided to the California Unclaimed Property Fund. (SA § II(C).)

Disposition

The Court tentatively finds that the settlement is fair, reasonable and adequate in light of all of the circumstances presented. Provided that no objection is asserted by any class member at the hearing on this matter, the Court anticipates signing the proposed order. The Court also intends to grant Plaintiff's request for attorney's fees in the amount of \$91,666.67, costs in the amount of \$20,399.76, and a service award to each Class Representative in the amount of \$15,000.

The Court will set a post-judgment hearing pursuant to Code of Civil Procedure section 384 for September 21, 2023 at 1:30 p.m. in this department. No later than September 5, 2023, Plaintiffs shall file a status report informing the Court of the status of payments to Class Members and the payment of any uncashed checks and interest accrued thereon to the Unclaimed Property Fund.

The matter shall be held via Zoom with the links below:

To join by Zoom link – <https://saccourt-ca-gov.zoomgov.com/my/sscdept25>

To join by Room: Dept25a

To join by phone dial (833) 568-8864 / ID: 16113421868

Parties requesting services of a court reporter will need to arrange for private court reporter services at their own expense, pursuant to Government code §68086 and California Rules of Court, Rule 2.956. Requirements for requesting a court reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf>. Parties may contact Court-Approved Official Reporters Pro Tempore by utilizing the list of Court Approved Official Reporters Pro Tempore available at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.Pdf>

A Stipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) is required to be signed by each party, the private court reporter, and the Judge prior to the hearing, if not using a reporter from the Court's Approved Official Reporter Pro Tempore list, Once the form is signed it must be filed with the clerk.

If a litigant has been granted a fee waiver and requests a court reporter, the party must submit a Request for Court Reporter by a Party with a Fee Waiver (CV/E-211) and it must be filed with the clerk at least 10 days prior to the hearing or at the time the proceeding is scheduled if less than 10 days away. Once approved, the clerk will be forward the form to the Court Reporter's Office and an official reporter will be provided.

Counsel for Plaintiffs is directed to notice all parties of this order.

The Status Conference - Civil Special Sets post judgment hearing is scheduled for 09/21/2023 at 01:30 PM in Department 25.