

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Hugh Behm-Steinberg et al
Plaintiff/Petitioner(s)
VS.
California College of The Arts
et al
Defendant/Respondent
(s)

No. RG20081590

Date: 12/17/2024

Time: 1:30 PM

Dept: 21

Judge: Noël Wise

ORDER re: Hearing on Motion -

Other Preliminary

Approval of Class Action

Settlement filed by Hugh

Behm-Steinberg

(Plaintiff); Arthur Kenzo

(Plaintiff) on 09/20/2024

The Motion for Preliminary Approval of Settlement filed by Hugh Behm-Steinberg, Arthur Kenzo on 09/20/2024 is Granted.

The motion of plaintiffs for preliminary approval of class action settlement is GRANTED.

The order of 10/15/24 identified certain concerns. The filing of 11/22/24 addressed the concerns.

The complaint alleges various Labor Code claims.

The case preliminarily settled for a total of \$1,250,000. The settlement agreement states there will be attorneys' fees of up to \$ 437,500 (35%), costs of up to \$40,000, Service Payments of \$10,000 to Plaintiff Behm-Steinberg and \$7,500 to Plaintiff Arthur Kenzo, settlement administration costs of up to \$15,000, and a PAGA payment of \$35,000 (\$26,250 to the LWDA). After these expenses, the amount available to be distributed to the Class would be \$283,333.

There are an estimated 1,700 Class Members. The average gross and net recoveries per Adjunct Class Member ("Adjunct CMs") of \$1,392.76 and \$785.52, respectively. The average gross and net recoveries per Reimbursement Class Member ("Reimbursement CMs") of \$204.58 and \$115.38, respectively.

The motion makes an adequate analysis as required by Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116.

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The proposed class notice form and procedure are adequate.

The proposed class is appropriate for class certification.

The scope of the named plaintiff release is appropriate. The agreement for the named plaintiff may include a Civil Code 1542 waiver.

The scope of the LWDA's release for claims asserted under the PAGA is appropriate. The PAGA release does not release claims by the aggrieved employees. The scope of the LWDA's release is limited to the scope of the PAGA notice letter. (*LaCour v. Marshalls of California, LLC* (2023) 94 Cal.App.5th 1172, 1192-1196.)

The scope of the class release is appropriate. The scope of the class release is limited to the claims arising out of the claims in the complaint where the named plaintiffs are typical and can adequately represent the class. (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537-538.) The release of claims by the class is limited by the "factual predicate rule." (*Hesse v. Sprint Corp.* (9th Cir. 2010) 598 F.3d 581, 590.) (See also *Hendricks v. Starkist Co* (N.D. Cal. 2016) 2016 WL 692739 at * 2-4 [Denying motion for final approval of class settlement because scope of release overbroad].) The scope of the class release does not include a release of the LWDA's claims.

The Court notes and approves of the plan to distribute the settlement funds with no claims process.

The unclaimed funds will be distributed to Justice Fund Gap. This is consistent with CCP 384. Counsel does not need to provide a declaration in support of the motion that provides the information required by CCP 382.4.

The Court will not approve the amount of attorneys' fees and costs until the final approval hearing. The Court cannot award attorneys' fees without reviewing information about counsel's hourly rate and the time spent on the case. This is the law even if the parties have agreed that Defendants will not oppose the motion for fees. (*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.)

"[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." (*Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 555-556.)

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 Internat. Inc.* (2016) 1 Cal.5th 480, 495.)

This court's benchmark for fees is 30% of the total fund. (*Laffitte v. Robert Half Internat. Inc.*

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(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 court recently reviewed and reaffirmed its use of a benchmark of 30%. (Hurtubise v. Sutter East Bay Hosp. (2021) 2021 WL 11134912.)

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.)

The Court will not decide the amount of any service award until the final approval hearing. Plaintiff must provide evidence regarding the nature of his participation in the action, including a description of his specific actions and the amount of time he 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 \$7,500.

The Court ORDERS that funds not be distributed to the cy pres beneficiary until after Court approval of a final accounting.

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 for 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 order distribution of the cy pres funds and release any hold-back of attorney fees.

The court ORDERS that at the time of the final accounting that counsel for plaintiff transmit a copy of this order and the final judgment and the final accounting to the Judicial Council. (CCP 384.5; Govt Code 68520.)

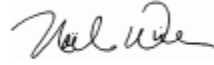
The court will sign the proposed order, which is modified by this order. Plaintiff must reserve a hearing for the motion for final approval.

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The Court orders counsel to obtain a copy of this order from the eCourt portal.

Dated : 12/17/2024

A handwritten signature in black ink, appearing to read "Noel Wise", is written over a light gray rectangular background.

Noel Wise / Judge