

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS

BONIFACIO ARZATE

STEPHEN H SMITH, et al.

vs.

Plaintiff(s)/Petitioner(s)

Defendant(s)/Respondent(s)

NATURE OF HEARING: Plaintiff's Motion for Approval of Private Attorneys General Act Representative Action Settlement

CASE NO.: CV-21-002057

JUDGE: SONNY S. SANDHU

Bailiff: Peagler

Date: 04/19/2022

Clerk: A. Segundo

Reporter: None

Modesto, California

APPEARANCES:

Plaintiff is present by Hengameh Safaei, Esq. (via VCourt).

Defendants are present by Faith Driscoll, Esq. (via VCourt).

Case is regularly called for hearing.

The Court clarifies with Counsel re: appearance requested or to argue the tentative ruling.

Plaintiff's Counsel presents oral arguments re: legal fees.

Defendants' Counsel submits on the tentative ruling.

There being a **HEARING REQUESTED by Plaintiff's Counsel** and upon conclusion of oral arguments the Court hereby confirms its tentative ruling as follows:

IT IS SO ORDERED:

Plaintiff's Motion for Approval of Private Attorneys General Act Representative Action Settlement - This is a representative wage/hour PAGA claim. Before the Court this day is the continued hearing on a motion to approve the settlement. Since the last hearing, counsel has confirmed payment of the \$75 filing fee per § 2699.3(a)(1)(B), submission of the actual proposed settlement to the LWDA per §2699(1)(3), and an oversight by office staff in failing to provide a conformed copy of the complaint to the LWDA within 10 days of filing per §2699(1)(1). This Court will forgive the error since no prejudice is shown.

MINUTE ORDER

Plaintiff has provided the requested information supporting the request for reimbursement of litigation costs, as well as a declaration from plaintiff supporting his request for an enhancement. Since plaintiff actually attended the mediation, his request for \$7,500.00 is approved. Plaintiff has also provided a declaration from the third-party administrator confirming the costs associated with administration and the fact that no 1099 will issue if the check is deemed uncashed. Finally, plaintiff confirms that the notice to aggrieved employees will be provided in both English and Spanish.

Regarding Para 50 in the settlement agreement, the issue this Court had was not with a general presumption as set forth in Evidence Code §641 that a letter correctly addressed is received, but rather counsel's use of the term "conclusive." The presumption is one only affecting the burden of proof, and as such is easily rebutted with a simple denial of receipt. See *Wolstoncroft v. County of Yolo* (2021) 68 Cal.App.5th 327, 350. The fact that other courts do not take issue with this language is of no import.

This Court will forgive the issue with Paraa 50 in the interests of justice, as another continuance and cure is not warranted. **The motion for approval is GRANTED; however, the requested legal fee of \$105,000.00 is not palatable given the number of hours actually invested in the case.** As noted, counsel has 156 hours in this case. Assuming a reasonable hourly rate in this community of \$450, that comes to \$70,000 (approx.). This Court finds that a legal fee of \$85,000 is more than reasonable. The \$20,000 balance shall be returned proportionately to the LWDA and the aggrieved employees.

In conclusion:

Attorney Fees:	\$ 85,000.00
Litigation Costs:	\$ 10,140.46
Admin Costs:	\$ 15,000.00
Plaintiff Enhancement:	\$ 7,500.00
LWDA:	\$ 136,769.65
Aggrieved Employees:	\$ 45,589.89

Plaintiff to give notice. **Post-approval compliance hearing scheduled for October 20, 2022 at 8:30 a.m. in Department 24.**

IT IS HEREBY FURTHER ORDERED:

Case Management Conference currently set on **June 13, 2022 is VACATED.**

Matter continued to **October 20 2022 at 8:30 a.m. in Department 24 for Court's Motion to Dismiss** hearing.