

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE**

Vasquez, Francisco
Plaintiff/Petitioner,

vs.

Scheenstra Dairy, an unknown entity
Defendant/Respondent.

Jud. Officer: **Nathan Ide**
Clerk: **Linnetta Ybarra**
Bailiff: **Elsa Mejia**
CSR: **Andrea Walter**
Interpreter:
Language:

Minutes: **Motion Hearing**
Other – Preliminary Approval of Class Action
and PAGA Settlement
Date: **July 18, 2022**

Case No. **VCU286451**
Department 02

Related Cases:

Appearances: ☒ No Appearances

- ☐ Party: _____
- ☐ Remote Appearance
- ☐ Party: _____
- ☐ Remote Appearance
- ☐ Party: _____
- ☐ Remote Appearance
- ☐ Other: _____
- ☐ Remote Appearance

- ☐ Attorney: _____
- ☐ Remote Appearance
- ☐ Attorney: _____
- ☐ Remote Appearance
- ☐ Attorney: _____
- ☐ Remote Appearance

Motion: Motion for Preliminary Approval of Class Action and PAGA Settlement

Case called.

No requests for oral argument presented.

ORDER: The Court adopts the Tentative Ruling as the Order of the Court as follows:

To grant the motion. Final approval hearing is set for January 23, 2023, 8:30 am in Department 2.

The Court previously approved the gross settlement amount, the settlement administrator and administration costs and the release. The Court, however, did not preliminarily approve the settlement due to an insufficient class notice period, issues with the additional enhancements to non-named Plaintiffs, a lack of information as to attorneys' fees and costs presently incurred, information regarding a lack of conflicts of interest as to the unclaimed proceeds recipient, lack of notice to the LWDA and issues as to certification for purposes of settlement.

Plaintiffs have submitted a supplemental declaration of Counsel Melmed which addresses these issues.

1. Class Notice

The class notice period has been increased to 60 days. It is preliminarily approved.

2. Enhancement Awards to Class Representatives

The proposed enhancement awards to Plaintiff Francisco Vasquez is \$7,500.00. The Court previously noted, in past cases, approved enhancement awards of \$5,000.00 routinely.

Here, Plaintiff has submitted a declaration that states he "provided invaluable assistance to Class Counsel and the Class in this case, including providing factual background for the mediation and Class Complaints; reviewing the relevant documents and Complaint; participating in phone calls with my lawyers to discuss litigation and settlement strategy; participating in a full-day mediation by telephone; and reviewing the settlement documents." Counsel's declaration further indicates that Plaintiff was more involved than the non-named members noted below. Counsel indicates:

"Plaintiff was involved in the prosecution of this case since its inception in March 2021 and participated in providing the factual background for the complaint and first amended complaint, participated in the discovery processing including the filing of a motion to compel Defendant's discovery responses, participated in provided the factual background for mediation, and participated in an all-day mediation by telephone. This included participating in numerous interviews, phone calls, and meetings with his attorneys throughout the last 15 months. Further, Plaintiff assumed the reputational risk on behalf of the Class by stepping forward as class representative and including his name on the lawsuit. This risk was not shared by the non-representative class members above."

This additional information, along with Plaintiff's initial declaration, appears sufficient to support an award of \$7,500.

The supplemental declaration further indicates that the unnamed class members who seek additional compensation signed general releases and when Defendant entered into a Pick-Up Stix campaign where it attempted to obtain individual releases from the class members, these individuals contacted counsel expressing their interest to provide further assistance in the case, making their participation vital to effectively prosecute the class case. "Without their assistance, Defendant's Pick-Up Stix campaign could potentially have devastated the Class' recovery." The supplemental declaration further cites to various federal court cases that have approved payments to non-representatives for such contributions to the litigation. The Court therefore approves enhancement payments to Alejandro Camarillo, Bulmaro Prado, Gustavo Lopez Garcia, Jhonatan Alfredo Perez Garcia, and Ramon Arellano in the amount of \$1,500 each.

3. Attorneys' Fees and Costs

Attorneys' fees of 33 1/3% of the gross settlement fund of \$250,000.00 or \$83,333.33 and costs not to exceed \$20,000.00 are sought by Plaintiff's counsel. Counsel has utilized the percentage of common fund methodology. Although the Court recognizes the utilization of the percentage of the common fund methodology to award attorneys' fees, the Court requires a declaration from counsel that provides an estimate as to what the lodestar would be in this case. The ultimate goal of the Court is to award reasonable attorneys' fees irrespective of the method of calculation. As such, the court needs to know the estimate of the approximate lodestar supported by declarations for preliminary approval. Counsel has submitted information as to the time spent on this action and the hourly rates of all counsel working on the case.

Counsel's supplemental declaration indicates 119.3 hours at rates ranging from \$676 through \$208, resulting in a lodestar of \$58,835.30. This would require a multiplier of 1.4. The Court preliminarily approves the fees based on this information.

Additionally, the supplemental declaration indicates the costs currently expended are \$10,712.06 and the Court preliminarily approves costs up to \$12,000.00.

4. Unclaimed Settlement Proceeds

Counsel for both parties has provided a declaration indicating a lack of a conflict of interest as to the designated *cy pres* recipient of unclaimed settlement proceeds, Reaching Higher of Tulare County. The recipient is preliminarily approved.

5. LWDA Notice

The supplemental declaration has provided evidence that confirmation from the LWDA of receipt of proof of submission of the proposed settlement agreement. (Lab. Code, § 2699, subd. (1)(2).)

8. Class Certification

Based on the discussion above, the Court's prior concerns as to typicality and adequate representation by the named Plaintiff are resolved. The class members receiving \$1,500 appear to be primarily entitled to the funds for their participation against the Pick-Up Stix campaign by Defendant and therefore, Plaintiff's claims and the class appear sufficiently typical.

Code of Civil Procedure section 382 permits certification "when the question is of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." (Code Civ. Proc. § 382.) The plaintiff bears the burden of demonstrating that class certification under

section 382 is proper. (See *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 460.) To do so, "[t]he party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th

Based on the above, the motion is granted. Final approval hearing is set for January 23, 2023, 8:30 am in Department 2.

If no one requests oral argument, under Code of Civil Procedure section 1019.5(a) and California Rules of Court, rule 3.1312(a), no further written order is necessary. The minute order adopting this tentative ruling will become the order of the court and service by the clerk will constitute notice of the order.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE

Visalia Division
221 S Mooney Blvd, Room 303
Visalia, CA 93291
559.730.5000

07/19/2022

STEPHANIE CAMERON, CLERK

Linnetta Ybarra, Deputy

Vasquez, Francisco
Plaintiff/Petitioner,

vs.

Scheenstra Dairy, an unknown entity
Defendant/Respondent.

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) Case No. VCU286451
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CLERK'S CERTIFICATE OF SERVICE

I certify that I am not a party to this cause.

I certify that I caused the copy of minute order titled Motion Hearing Other - Preliminary Approval of Class Action and PAGA Settlement dated July 18, 2022 to be served on the persons listed below in the following manner:

☒ BY MAIL: I placed the documents for collection and mailing on the date shown, so as to cause it to be mailed in a sealed envelope with postage fully prepaid on that date following standard court practices to the persons and addresses shown. The mailing and this certification occurred at Visalia, California on July 19, 2022.

STEPHANIE CAMERON,
CLERK OF THE SUPERIOR COURT
COUNTY OF TULARE

By


Linnetta Ybarra, Deputy Clerk

Names and Mailing/E-Mail Address of Person(s) Served:

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