SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Jose A. Lainez Plaintiff/Petitioner(s) vs. E. Turman and Company, Inc. Defendant/Respondent(s)	No. RG21091805 Date: 03/28/2023 Time: 3:00 PM Dept: 23 Judge: Brad Seligman ORDER re: Hearing on Motion for Final Approval of Settlement; Fairness Hearing

The Motion for Final Approval of Settlement filed by Jose A. Lainez on 03/01/2023 is Granted.

Plaintiff's Motion for Final Approval is GRANTED.

The parties should file a proposed order and judgment consistent with this tentative ruling and email a Word version to the Dept. 23 clerk. The proposed order and judgment shall comply with CR 3.769(h) and include the requisite "recital," "finding," "order," and "judgment" language in a manner that clarifies the distinction between these elements. The proposed order and judgment should also include a proposed compliance date, which can be any Tuesday at 3:00pm. At least five days before the compliance date, the parties should file a final report and a proposed amended judgment, with a Word version emailed to the department clerk, per Code of Civil Procedure § 384.

BACKGROUND

Plaintiff initiated this action on March 15, 2021, and filed the currently operative Second Amended Complaint ("SAC") on January 3, 2023. The SAC asserts causes of action for various Labor Code violations as well as causes of action under California's Unfair Competition Law and Private Attorneys' General Act.

The parties moved for preliminary approval of the settlement, which this Court granted on November 22, 2022. The parties now seek final approval.

In granting preliminary approval, the Court also granted Plaintiff leave to file a second amended complaint to redefine the proposed classes consistent with the Court's order granting preliminary approval. (See 1/3/2023 Suh Declaration.)

Plaintiffs have provided notice of this Court's preliminary approval to the LWDA. (3/1/2023 Suh Decl., Ex. B.)

The Settlement Administrator declares that the class list provided by Defendant contained 210 individual class members who worked 13,837 work weeks between March 16, 2017 and July 31, 2022. (Reyes Decl., ¶ 1.) The class list also identified 104 individuals as PAGA members who worked between March 13, 2020 and July 31, 2022. (Ibid.) The Settlement Administrator provided notice in English and Spanish. (Reyes Decl., ¶ 3 & Ex. A.) Ultimately, 3 notices were undeliverable. (Reyes Decl., ¶ 4.)

LEGAL FRAMEWORK

Representative litigants must submit any settlement of PAGA representative actions for court approval. (See Lab. Code, § 2699, subd. (l)(2).) Because the Labor & Workforce Development Agency ("LWDA") is not present at the negotiating table, the court's review of a PAGA settlement must make sure that the interests of the LWDA in civil enforcement are defended and that the settlement is fair, adequate, and reasonable under all the circumstances. (See O'Connor v. Uber Technologies, Inc. (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133; see also Gov. Code, § 12652, subd. (e)(2)(B) [requiring False Claims Act qui tam settlements be "fair, adequate, and reasonable under all the circumstances"].)

The court therefore takes guidance from the context of class action settlements, which must also be found to be "fair, adequate, and reasonable." (See, e.g., Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 244.) In approving class action settlements, the court considers (1) the relative strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation of this dispute; (3) the risk of maintaining class status through trial; (4) the 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 presence or lack of any objections to the proposed settlement. (See id. at pp. 244-245; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801.)

At least two of these factors are not analogous in the PAGA settlement context: risk of maintaining class action status and reaction of other aggrieved employees. (Cf. Hanlon v. Chrysler Corp. (9th Cir. 1998) 150 F.3d 1011, 1026.) Class action status is irrelevant because PAGA actions are not certified. The lack of objections is largely irrelevant because PAGA procedures provide no opportunity for absent aggrieved employees to offer their objections to the settlement. The parties must serve the LWDA with settlement papers, but the law provides no procedure or timeline for the LWDA to object. (Lab. Code, § 2699, subd. (l).)

Thus, courts consider (1) the apparent strength of Plaintiff's case; (2) the high risk, high complexity, and long likely duration of the PAGA dispute; (3) the amount offered in settlement; (4) the extent of discovery and investigation; and (5) the favorable views of experienced counsel, reached after mediation before an experienced neutral.

DISCUSSION

The Court approves the settlement as fair, reasonable, and adequate. The settlement amount—$285,000.00—represents 16.73% of Defendant's estimated damages, reimbursement, and/or restitution exposure (excluding interest, statutory and civil penalties). (Suh Decl., ¶ 12.)

Further the settlement results in the 210 class members receiving approximately $733.72 each and the 104 PAGA members receiving an average for $24.04. (Reyes Decl., ¶ 9.)

Moreover, the Settlement Administrator has not received any requests for exclusion or written objections. (Reyes Decl., ¶ 7 & Ex. B.) This supports a finding that the settlement is fair, reasonable, and adequate.

The Court also approves of the PAGA settlement—$10,000 to be split between the LWDA and PAGA members—fair, reasonable, and adequate. The Court notes that the Suh Declaration seems to indicate that the "aggregate" PAGA payment to PAGA members is $6,250. (Suh Decl., ¶ 12.4.) However, Suh comes to the correct per member payment of $24.04, which is supported by the Reyes Declaration at paragraph 9. The Court approves the $10,000 as fair, reasonable, and adequate and presumes the $6k figure is an inadvertent mistake.

A. Attorneys' Fees & Costs

Counsel requests an award of $95,000.00 in attorneys' fees, which represents one-third of the gross settlement value. The parties assert a lodestar cross check would result in a 1.42 multiplier. (Suh Decl., ¶ 13.5.) Counsel seeks $14,523.06 in costs. (Suh Decl., ¶ 13.5 & Ex. C.)

The Court finds the request reasonable and approves of the requested 1.42 multiplier. Counsel represented Plaintiff on a contingency basis and obtained a result that justifies enhancement. (Suh Decl., ¶¶ 13.7.1-13.7.5.) Additionally, the Court finds the costs reasonable and necessary. (Suh Decl., Ex. C.)

Therefore, the Court approves counsel's requested award of $95,000.00 in attorneys' fees and $14,523.06 in costs.

B. Service Awards

Plaintiff seeks a service award of $5,000.

Plaintiff declares that he spent about 20 hours communicating with his attorneys prior to filing the complaint. (Lainez Decl., ¶ 6.) Since filing the complaint, Plaintiff declares that he spent an additional 21 hours to advance the case. (Lainez Decl., ¶ 7.)

The Court approves of a service award of $5,000 to Plaintiff.

C. Administration Costs

The Settlement Administrators costs—incurred and anticipated for completion of the administration—are $6,395.00. (Reyes Decl., ¶ 10 & Ex. B.)

The Court approves of settlement administration costs in the amount of $6,395.00.

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

Dated: 03/28/2023

Brad Seligman / Judge