

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Tonya Halfhill
Plaintiff/Petitioner(s)
VS.
Kaiser Permanente Insurance
Company et al
Defendant/Respondent
(s)

No. RG21096610

Date: 09/24/2024

Time: 1:30 PM

Dept: 21

Judge: Noël Wise

ORDER re: Hearing on Motion -

Other Final Approval filed

by Tonya Halfhill (Plaintiff)

on 08/30/2024

The Motion for Final Approval of Settlement filed by Tonya Halfhill on 08/30/2024 is Granted in Part.

The motion of plaintiffs for final approval of class action settlement is GRANTED IN PART.

APPROVAL OF THE SETTLEMENT

The complaint alleges various Labor Code claims.

The case preliminarily settled for a total of \$10,000,000.

The settlement agreement states there will be attorneys' fees of up to \$3,333,333 (33%), costs of up to \$150,000, service award of \$7,500 to each plaintiff (\$30,000 total), settlement administration costs of up to \$170,000, and a PAGA payment of \$300,000 (\$225,000 to the LWDA). After these expenses, the amount available to be distributed to the Class would be \$ 6,166,667. Assuming that there are an estimated 101,631 Class Members, the average payment per Class Member would be \$59.95.

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

The proposed class notice form and procedure are adequate. There were 128 requests for exclusion from the Settlement (which is .12% of the Settlement Class) and 5 objections to the Settlement from Brigitte Brown, Galen M. Wanberg, Lorraine S. Macnaughton, Melannie Erasquin, and Willard John Doucette. (Bench Dec para 13.) The court has reviewed the objections. (Bench Dec Exh C.)

Brigitte Brown states that her portion of the settlement should be larger and that the attorneys'

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fees are too high.

Galen M. Wanberg states that the settlement amount is “laughably less” than the liability.

Lorraine S. Macnaughton states that the settlement should have required corrective action.

Melannie Erasquin does not state an objection clearly.

Willard John Doucette states that the settlement amount is “highly insufficient.”

The court has taken these into account and finds that the gross settlement value is adequate. The objectors who thought the settlement to be inadequate had the opportunity to opt out and to pursue their claims individually.

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 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.) (Act I.EE and XII.2.)

The scope of the class release is appropriate. (Agt I. DD.) The scope of the class release must be 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 cannot 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 California Rural Legal Assistance. (Agt page 24, para IX.2) This is consistent with CCP 384. Counsel has provided a declaration in support of the motion that provides the information required by CCP 382.4.

APPROVAL OF FEES, COSTS, AND SERVICE AWARD

“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

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settlement terms. (Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 555-556.)

The court starts with its benchmark, then cross-checks with the lodestar, and makes adjustments if the benchmark is significantly different from the lodestar. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 505 [“If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted”].)

The Ninth Circuit’s benchmark is 25%. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 495.)

When using the percentage of recovery approach, this court's benchmark for fees is 30% of a total fund. Courts have benchmarks ranging from 25% to 33%. *Laffitte v. Robert Half Internat. Inc.* (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; *Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1175.)

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

The benchmark of 30% of \$10,000,000 suggests fees of \$3,000,000.

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.

Counsel assert they spent 1,196.85 hours on the case. The court finds that this is reasonable.

The court finds that a blended rate of \$600 is appropriate for the case. (*Meridian Financial Services, Inc. v. Phan* (2021) 67 Cal.App.5th 657, 708-709 [blended rate of \$550]; *Espejo v. Copley Press, Inc.* (2017) 13 Cal.App.5th 329, 337 [blended rate of \$500/hour]; *569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 438-440 fn 14, fn 16 [blended rate of \$275].) Regarding the amount of the blended rate, the court considers the evidence and its own knowledge and familiarity with the legal market. (*Meridian Financial Services, Inc. v. Phan* (2021) 67 Cal.App.5th 657, 709.) The court takes judicial notice of the rates for counsel in the USAO Fitzpatrick Matrix on “Hourly Rates (\$) for Legal Fees for Complex Federal Litigation in the District of Columbia.” The court takes judicial notice of the Laffey matrix. (<http://www.laffeymatrix.com/>) The court gives little weight to the anecdotal fee awards of other trial judges. Counsel can selectively present fee awards that indicate the highest hourly billing rates.

The court recently reviewed and reaffirmed its use of a blended rate of \$550. (*Harris v. Southern New Hampshire University* (2023) 2023 WL 3605289.)

The court will use a blended rate of \$600 per hour.

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This results in a lodestar of \$718,110.

The court applies a 1.2 multiplier for risk. 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. With a fee shifting statute, counsel has the risk of proving liability but if counsel proves liability, then the fees shift to the defendant with little to no consideration of the amount of the client's monetary recovery. (*Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1174.) For example, a nominal damage recovery will result in counsel recovering "reasonable attorneys' fees" that could far exceed the award of damages. (*Harman v. City and County of San Francisco* (2007) 158 Cal.App.4th 407, 419 [jury awarded plaintiff \$30,300, counsel recovered \$1,113,905.40 in fee-shifted fees]; *Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1006-1007 [client recovered \$1, counsel recovered \$87,525 in fee-shifted fees].) There was a fee shifting provision. (E.g. Labor Code 2802) This results in a multiplier adjusted lodestar of \$861,732.

Considering the percentage analysis fees of \$3,000,000 and the multiplier adjusted lodestar fees of \$861,732, the court will award fees of \$2,500,000.

The court follows *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 505, and its instruction that "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted." In this case the court's benchmark percentage should be adjusted.

Looking the percentage analysis, an award of \$2,500,000 in fees is the Ninth Circuit's benchmark of 25%.

Looking the lodestar multiplier analysis, the award of \$2,500,000 in fees for 1,196.85 hours suggests an average multiplier adjusted hourly rate of \$2,088. This is a generous hourly rate. This is a multiplier of 3.48 on counsel's court calculated lodestar of 718,110. This is a multiplier of 2.58 on counsel's court asserted lodestar of \$966,138. Plaintiffs' counsel assert that "California courts generally approve multipliers between 2 and 4." (Memoranda at 16-19.)

The award of fees is appropriate to compensate counsel in this case, to incentivize the prosecution of meritorious cases, and does not result in an unreasonable windfall to counsel at the expense of their clients. Although pre-settlement the interest of client and counsel are aligned in seeking a greater recovery, that post-settlement the interest diverge. The award of \$2,500,000 in fees rather than the requested \$3,333,333 means that the members of the class who have the actual claims and who suffered the actual losses will recover an additional \$833,333.

The court approves costs of \$71,663.88.

The court approves actual settlement administration costs of \$ 170,000.

The court approves a service award of \$7,500 for each Plaintiff. Plaintiffs provided evidence regarding the nature of participation in the action, including a description of specific actions and

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the amount to time committed to the prosecution of the case. (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804-807.)

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. When the distribution is completed, the Court will at that time order distribution of residual funds to the cy pres beneficiary and the release the 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.)

Plaintiff may submit a proposed order if necessary. The court will sign any proposed order, which is modified by this order.

Compliance Hearing RE: Final Distribution is scheduled for 04/15/2025 at 01:30 PM in Department 21 at Rene C. Davidson Courthouse.

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

Dated : 09/24/2024



Noël Wise / Judge

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