

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 48

21STCV19591

NATALIE SANDOVAL vs RX RELIEF, et al.

August 15, 2023

8:30 AM

Judge: Honorable Thomas D. Long

Judicial Assistant: A. Gonzalez

Courtroom Assistant: S. Brown

CSR: None

ERM: None

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Vincent Granberry for Joseph Lavi via LA CourtConnect

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Hearing on Motion for Preliminary Approval of Settlement

The Court's tentative ruling is provided to all sides via the Court's website.

The matter is called for hearing.

The Court's tentative ruling is adopted and becomes the Order of the Court, which is incorporated herein as follows:

On May 24, 2021, Plaintiff Natalie Sandoval filed this action against Defendants RX Relief and Pridestaff Inc.

On December 9, 2022, Plaintiff filed a first amended complaint ("FAC") against Defendants, alleging (1) failure to pay minimum wages under the Labor Code; (2) failure to pay minimum wages under the Fair Labor Standards Act; (3) failure to pay daily overtime under the Labor Code; (4) failure to pay daily overtime under the Fair Labor Standards Act; (5) failure to permit meal periods; (6) failure to permit rest periods; (7) failure to indemnify losses/expenditures; (8) unlawful deductions; (9) failure to timely pay wages; (10) failure to provide wage statements; (11) failure to timely pay wages at separation of employment; (12) unfair business practices; and (13) civil penalties under the Private Attorney General Act ("PAGA"). Plaintiff brings the action as a class and representative action on behalf of current, former, and/or future employees of Defendants who work as hourly nonexempt employees. (FAC ¶ 3.)

On April 26, 2023, Plaintiff filed a motion for preliminary approval of a class action settlement.

A. Class Certification Is Appropriate.

A class action is proper "when the question is one 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

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court.” (Code Civ. Proc., § 382.) The party seeking certification bears the burden of establishing the existence of an ascertainable class and a well-defined community of interest among class members. (Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1806 (Dunk).)

The proposed class consists of approximately 1,400 Class Members (approximately 436 former employees and 963 current employees) over the course of approximately 38,650 workweeks with an average rate of pay of \$16.00/hour. (Huether Decl. ¶ 11.) These class members share common questions that predominate this action, including the same violations of failure to pay wages for all hours worked at minimum wage; failure to pay proper overtime wages for daily overtime worked; failure to authorize or permit meal periods; failure to authorize or permit rest periods; failure to pay meal period premium wages for missed meal periods; failure to pay rest period premium wages for missed rest periods; failure to indemnify for employment-related losses/expenditures; unlawful deductions; failure to timely pay earned wages during employment; failure to provide complete and accurate wage statements; failure to pay all wages due upon separation of employment; and unfair business practices. (Motion at p. 18.) Based on the commonality of issues and numerosity of class members, class resolution is a superior method of adjudication.

Plaintiff’s claims, as alleged in the FAC, are typical of the class and arise from the same common questions, and Plaintiff is an adequate representative whose interests align with the class. Plaintiff “searched for an attorney, collected and gathered the requested documents and information, wage statements and/or pay stubs, met with [counsel], made herself available each and every single time that [counsel] called her in order to answer questions about Defendants’ policies and procedures produced in informal discovery or discussed during conversations with opposing counsel or raised in pleadings filed in this matter. The named Plaintiff provided Class Counsel with factual information needed to prepare the complaints[,] . . . collected relevant documents and provided those documents to Class Counsel[,] . . . [and] continued to be engaged in continued settlement negotiations that were ultimately required to reach a settlement in this case.” (Huether Decl. ¶ 27.)

Additionally, the proposed class counsel is adequate and qualified to represent the class. Lead counsel has over 20 years of legal experience, almost exclusively practicing labor and employment law, and has worked on more than 50 similar actions. (Huether Decl. ¶ 23.)

Accordingly, class certification is appropriate.

B. The PAGA Penalties Are Appropriate.

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A court must review and approve any PAGA penalties sought as part of a proposed settlement agreement. (Lab. Code § 2699, subd. (l).) “[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.” (Lab. Code, § 2699, subd. (i).) The PAGA penalties here comply with this requirement. (See Huether Decl. ¶ 22.) Additionally, a proposed PAGA settlement must be submitted to LWDA at the same time that it is submitted to the court for review and approval. (Lab. Code § 2699, subd. (l)(2).) Plaintiff’s counsel declares that a copy of the settlement was sent to LWDA when filing this motion. (Huether Decl. ¶ 30 & Ex. 2.)

Accordingly, the PAGA penalties are appropriate, subject to a finding that the settlement is fair.

C. The Terms of Settlement Are Fair.

Settlement of a class action requires court approval to prevent fraud, collusion, or unfairness to the class. (Dunk, supra, 48 Cal.App.4th at pp. 1800-1801.) In making the fairness determination, “a presumption of fairness exists where (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (Id. at p. 1802.)

The proposed settlement was reached through a mediation session with Jeff Krivis, Esq., “an experience and well-regarded mediator.” (Huether Decl. ¶ 6.) “As a critical part of settlement negotiations,” the parties engaged in substantial discovery, including a 20% sampling of time cards during the Class Period and information regarding number of current and former hourly non-exempt employees, number of workweeks, number of pay periods, average rate of pay, Plaintiff’s counsel’s analysis of both the aforementioned sample data and documentation, copies of Defendants’ employee handbook, and other relevant policy documents. (Huether Decl. ¶ 8.) The settlement was therefore reached through arm’s-length bargaining with sufficient investigation to allow counsel and the Court to act intelligently.

Defendants will pay a gross settlement amount of \$500,000.00. (Huether Decl., Ex. 1 at p. 6, ¶ 3.1.) Of this amount, \$7,500.00 will be paid to Plaintiff as a class representative service award, no more than \$166,666.67 (one-third) will be paid as attorney fees, \$17,000.00 will be paid towards costs, \$16,000.00 will be paid for settlement administration, and \$20,000.00 will be paid for PAGA penalties. (Huether Decl., Ex. 1 at pp. 6-8, ¶ 3.2.) Of the PAGA payment, \$15,000.00

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(75%) will be paid to the LWDA and \$5,000.00 (25%) will be paid to class members. Class members' individual payments will be based on their number of workweeks during the class period. (Huether Decl., Ex. 1 at p. 7, ¶ 3.2.4.)

Incentive payments are based on the expense and risk undertaken by named plaintiffs for the benefit of other class members. (Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles (2010) 186 Cal.App.4th 399, 412.) Based on Plaintiff's involvement in this action (Huether Decl. ¶ 27), a \$7,500.00 payment to Plaintiff is reasonable.

The requested \$166,666.67 in attorney fees is reasonable and consistent with fee awards in class actions. (See Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66, fn. 11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery," internal quotation marks omitted].) Additionally, the requested \$17,000.00 in costs is reasonable.

The parties agreed to recommend Phoenix Settlement Administrators ("Phoenix") as the settlement administrator. (Huether Decl., Ex. 1 at p. 13, ¶ 7.1.) Based on the Court's experience, the \$16,000.00 fee is reasonable.

As discussed above, Plaintiff's counsel has extensive experience in labor and employment law, including class and representative actions. (Huether Decl ¶ 23.)

There are no objectors to the settlement at this time, so at the preliminary approval stage, the proposed settlement is entitled to a presumption of fairness.

D. The Notice Procedure Is Appropriate.

The settlement administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes before mailing the notice packet to class members. (Huether Decl., Ex. 1 at p. 14, ¶ 7.4.2.) Packets returned as non-delivered will be remailed to a forwarding address, or if no forwarding address is provided, the settlement administrator will otherwise attempt to determine a correct address. Remaild packets will also contain an extended response deadline.

The content of the notice contains a brief explanation of the case, a statement regarding exclusion from the class, a procedure for exclusion, a statement that judgment will bind all non-excluded members, and a statement that any member who does not request exclusion may appear through counsel, in compliance with California Rules of Court, rule 3.766(d). If a class member

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wants to be excluded, he or she must return the provided exclusion form. (See Huether Decl., Ex. 1 at Ex. A.) Class members do not need to take any action to submit a claim if they do wish to remain in the class.

Accordingly, the proposed notice procedure is appropriate.

E. Conclusion

The PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT filed by Natalie Sandoval on 04/26/2023 is Granted.

Hearing on Motion - Other Final Approval of Settlement is scheduled for 01/26/2024 at 08:30 AM in Department 48 at Stanley Mosk Courthouse.

Plaintiff is to provide notice.