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ENDORSED
FILED
San Francisco County Superior Court

MAY 22 2023

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CLERK OF THE COURT
BY: WILLIAM TRUPEK
Deputy Clerk

BIANCA CURRY,

Plaintiff,

vs.

UNITED HEALTH CARE STAFFING, et al.

Defendants.

Case No. CGC 21-597339

CLASS ACTION

ORDER DENYING WITHOUT
PREJUDICE MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT

The motion is denied without prejudice. All future motions regarding settlement or dismissal must be noticed in Department 611 before Judge Karnow (contact the Dept. 611 clerk for a date and time).

Support for Settlement.

The motion does not provide the court with any information regarding the facts of the case, so as to allow an evaluation of the merits or the odds of certification under *Kullar*, 168 CA4th 116. The memorandum of points and authorities, which tracks the declaration of Nordrehaug (referred to as the Declaration), consists of generic conclusory text that could have been used in any wage and hour settlement.

The parties contend they have done a thorough investigation of the facts in this specific case, (Declaration at 12:13, 12:29 [independent investigation]; see also settlement agreement § 2.7) but there is little to no presentation of facts or investigation which led plaintiffs' counsel to

1 their evaluation of their odds of success on any given claim, nor what those odds were. There are
2 no facts which explain the reason for counsel's evaluation of the odds of success on certification,
3 nor what those odds were. The calculation of maximum value (Memo at 10:3-16) is helpful, but
4 conclusory; it refers to the declaration which just repeats the same numbers, and there are no
5 facts or explanation of how these values were determined. Apparently, there is an expert report
6 from Berger Consulting which might explain this, but that was not supplied to the court. There is
7 no explanation why a settlement in the range of 19% of the Gross settlement or about 8% of the
8 Net settlement, reflects a reasonable evaluation of the odds of success. For example, while the
9 Memo at note 4 recognizes some defenses, and other possible defenses and defense allegations
10 and uncertainties are discussed at e.g., Memo at 11, Declaration at ¶24-25 (defendants assert or
11 argue or contend various positions), these sorts of contentions are found in all wage and hour
12 cases; there are no facts explaining whether the defenses allegations, or uncertainties would have
13 any merit *in this case*. There is no explanation why there is a "significant risk" of not securing
14 certification. Memo at 12:2. There is no discussion of the specific "appellate issues"
15 (Declaration at 12:25) that worried counsel in this case.

18 **Other issues**

19
20 Counsel need not respond to these issues now but they should be addressed in any
21 renewed motion.

22 --If the Administrator does not obtain 100% of the funds until at least 6 months after the
23 first payment (see Declaration ¶16, Settlement Agreement at section 4.3) what is the expected
24 schedule of payment to class members, class counsel, etc.? When is that 'first' payment, and
25 why must we wait 6 months before any sums can be distributed? Counsel fees and class
26
27

1 representative incentive fees should not distributed before the last class members payment. I am
2 unclear when any of those payments are scheduled.

3
4 -The Declaration's designations of other PAGA cases is not helpful unless there is a
5 representation that these other cases are actually typical (which may be difficult for counsel to
6 aver) - they could be cherry-picked cases showing very low allocation to the PAGA claims. The
7 same comments apply to incentive awards in other cases (id. at 21-22). It remains unclear why
8 counsel allocated the sum they did to the PAGA claims.

9
10 -The court's final review for attorney fees will require a cross check with a lodestar
11 analysis, presented on task by task basis showing the billing rate of the lawyers involved.

12
13 -There is no explanation of the 20-80 allocation noted at e.g. Settlement Agreement at 9;
14 Notice at 7 "Tax Matters" (tax allocation). It may be that this depends on counsels' views of the
15 relative merits of the claims and to the reasonable allocation of the settlement proceeds, but there
16 is nothing in the papers concerning the relative merits of the claims.

17 **The Settlement agreement**

18 Section 1.38 states that "Except a expressly set forth in this Agreement...." Does the
19 Agreement in fact have any such exceptions? There is a typo here- the word "on" should be
20 inserted before "facts stated in the Operative".

21 The schedule of events after the preliminary approval hearing is unclear. See comments
22 below under "Proposed Order" which requires a list of these events.

23 **Proposed Order**

24 An electronic copy of the proposed order in Word-editable format must be transmitted to
25 Department 611, as the court is likely to modify its wording.
26
27

1 The order must instruct the Administrator to set up a web site (see Settlement Agreement
2 at 8.8(a)) not later than a week before the first notices issue and which must stay live past the
3 date of the final approval. The web site address must be prominently stated in the Notice and
4 must include at least the operative complaint and *every* filing in connection with the preliminary
5 and final approval hearings including the current motion and this order. Moving papers in
6 connection with the final approval must be posted on the web site at least 16 court days before
7 the final approval hearing, and class members must be allowed to raise oral objections to those
8 papers at the final approval hearing.
9

10 The order must include towards the end a list of all events and dates, with the mechanism
11 of calculating the date (e.g. "X days after ___") next to a blank for the date itself (the specific date
12 to be filled in after preliminary approval is ordered), e.g. (only a few pertinent dates are set forth
13 below, by way of illustration):
14

15 13. The Court establishes the following deadlines :
16

17 [X days after ___] [Blank for date] Deadline for Claims Administrator to
18 distribute Class Notice and to make all
19 required documents publicly available
20 via the Settlement Website.

21 [Y day after ___] -[blank for date] Deadline for Class Members to
22 postmark or send via email or fax,
23 objections to the Settlement to the
24 Claims Administrator. If the Class
25 Notice is re-mailed, the deadline will
26 be extended 10 days after the date of
27 re-mailing, or until the response
deadline has expired, whichever is
later.

(etc.) Deadline for Class Members to
postmark or send via email or fax,
disputes to Defendant's records to the
Claims Administrator. If the Class
Notice is re-mailed, the deadline will
be extended 10 days after the date of
re-mailing, or until the response

1 deadline has expired, whichever is
2 later.

3 Deadline for Class Members to
4 postmark or send via email or fax,
5 request for exclusion from the
6 Settlement to the Claims Administrator.
7 If the Class Notice is re-mailed, the
8 deadline will be extended 10 days after
9 the date of re-mailing, or until the
10 response deadline has expired,
11 whichever is later.

8 Deadline for Class Counsel to file and
9 serve motion for final approval of
10 Settlement and Class Representative
11 service payment.

10 Deadline for Class Counsel to file and
11 serve motion for attorney's fees and
12 costs.

12 ____ at 9:00 a.m.

Final Approval Hearing

14 Final Report

15 All hearings will be in Department 611 before Judge Karnow.

16 Paper courtesy copies of all papers filed in this case which relate to settlement or
17 dismissal must, on the date of filing, be provided to Department 611.

18 **Notice.**

- 19 • It is unclear how the notice will be distributed—email, US mail, etc.? If the defendant
20 has both mail and US mail addresses, both should be used (a summary notice could be
21 sent via email with a link to the long form notice); if not, the moving papers should
22 explain why.
 - 24 • The Administrator's website should be in bold on the first page as a place to go to see all
25 filings relating to this settlement (the web address should also be in other locations, as
26 noted below).
- 27

- The place of the final hearing is Dept. 611 before Judge Karnow. (p.3) (see also §9)
- The word “verbally” should be “orally” (p.3)
- The nominated cy pres recipient should be named (p.7)
- An examination of page 10, together with my admonition that the Administrator’s website have all papers relating to the settlement, creates some confusion because we will then have three different web sites in play. This may not be a serious problem, but there should be a prominent note here that all filings relating to the settlement, including the operative complaint, the settlement agreement, and all motions and orders relating to it, are found at a specified http: address maintained by the administrator.
- Section 9 : class members can also attend in person, e.g., “ “welcome to attend the hearing in person or using the procedure”
- The Administrator’s website should be called out in section 10.

Dated: May 22, 2023



Curtis E.A. Karnow
Judge Of The Superior Court

CGC-21-597339 BIANCA CURRY, ON BEHALF OF HERSELF AND ON BEHALF VS. UNITED
HEALTH CARE STAFFING, INC., A CALIFORNIA ET AL

I, the undersigned, certify that I am an employee of the Superior Court of California, County Of San Francisco and not a party to the above-entitled cause and that on May 22, 2023 I served the foregoing **ORDER DENYING WITHOUT PREJUDICE MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT** on each counsel of record or party appearing in propria persona by causing a copy thereof to be enclosed in a postage paid sealed envelope and deposited in the United States Postal Service mail box located at 400 McAllister Street, San Francisco CA 94102-4514 pursuant to standard court practice.

Date: May 22, 2023

By: WILLIAM TRUPEK

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