FINAL RULING RE: MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Department SSC-9
Hon. Elaine Lu

Marisela Meza v. Argus Management Company, LLC, et al.
Case No.: 21STCV31612
Hearing Date: May 7, 2024

FINAL RULING

The Parties' Motion for Final Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The Court hereby **GRANTS** final approval and awards/approves the following essential terms:

A. The Gross Settlement Amount ("GSA") is **$1,750,000**, non-reversionary. (¶3.1)

B. The Net Settlement Amount is the GSA minus the following:

$583,333.33 for attorney fees to Class Counsel, Wilshire Law Firm, PLC (¶3.2.2);

$20,593.64 for attorney costs to Class Counsel (*Ibid.*);

$7,500 incentive award to the named plaintiff/class representative (¶3.2.1);

$20,000 for settlement administration costs (¶3.2.3); and

$37,500 (75% of $50,000 PAGA penalty) to the LWDA. (¶3.2.5)

C. Employer's share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant. (¶3.1)

D. Plaintiffs' release of Defendants from claims described herein.

By **July 2, 2024**, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1)(3).

Plaintiff's counsel shall file a [Proposed] Order and Judgment, consistent with this ruling containing all requisite terms, including the class definition, release language, and a statement that no class members requested exclusion.

By **May 6, 2025**, Class Counsel must file a Final Report Re: Distribution of the Settlement Funds.

The Court hereby sets a **Non-Appearance Case Review for May 13, 2025, 8:30 a.m., Department 9**.

BACKGROUND

Plaintiff Marisela Meza sues her former employer, Defendants Argus Management Company, LLC and ProHealth Partners, a Medical Group, Inc. (collectively, "Defendant" or "Defendants"), for alleged wage and hour violations. Defendant Argus Management Company LLC is based in Long Beach, California and provides physician practice management solutions to solo practitioners, groups, and hospitals. Defendant ProHealth Partners, a Medical Group, Inc. is a medical group consisting of physicians practicing in Los Angeles County and Orange County. Plaintiff seeks to represent a class of Defendants' current and former non-exempt employees.

On August 26, 2021, Plaintiff filed a putative wage-and-hour class action complaint against Defendants for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194, and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code §§ 226.7 and 512); (5) failure to provide accurate itemized wage statements (Labor Code § 226); (6) failure to timely pay final wages at termination (Labor Code §§ 201-203); (7) failure to indemnify employees for expenditures (Labor Code § 2802); and (8) unfair business practices (Business and Professions Code 17200 et seq.).

On October 4, 2023, Plaintiff filed a First Amended Complaint against Defendants adding claims for civil penalties under Private Attorneys General Act ("PAGA") (Labor Code § 2698 et seq.).

On March 23, 2023, the Parties attended mediation before Lisa Klerman, Esq., which resulted in settlement. The terms of settlement were finalized in the long-form *Class Action and PAGA Settlement Agreement* ("Settlement Agreement"), a copy of which was filed with the Court on September 25, 2023.

On October 4, 2023, Plaintiff filed a First Amended Complaint against Defendants adding claims for civil penalties under Private Attorneys General Act ("PAGA") (Labor Code § 2698 et seq.).

On December 12, 2023, after the parties filed a revised draft of the notice form to address concerns raised by the Court, the Court granted preliminary approval of the settlement. Notice was given to the Class Members as ordered (see Declaration of Madely Nava "Nava Decl.")).

Now before the Court is the Motion for Final Approval of the settlement. No objectors appeared at the May 2, 2024 hearing on the Parties' motion for final approval of the settlement. The Court, on its own motion, continued the hearing for final approval to May 7, 2024.

SETTLEMENT CLASS DEFINITION

- "Class" means all persons employed by Defendant in California and classified as a non-exempt or hourly-paid employee who worked for Defendant during the Class Period. (¶1.5)
- "Class Period" means the period from August 26, 2017 to March 23, 2023. (¶1.12)

- “Aggrieved Employee” means a person employed by Defendant in California and classified as a non-exempt or hourly-paid employee who worked for Defendant during the PAGA Period. (¶1.4)
- “PAGA Period” means the period from August 26, 2021 to March 23, 2023. (¶1.31)
- “Defendant” means named Argus Management Company, LLC, a California limited liability company and ProHealth Partners, a Medical Group, Inc., a California corporation. (¶1.16)
- “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. (¶1.35)
- The Parties agree that class certification and representative treatment is for purposes of this Settlement only. (¶12.1)

TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- The Gross Settlement Amount (“GSA”) is **$1,750,000**, non-reversionary. (¶3.1)
    - Escalator Clause: Based on its records, Defendant estimates that there are approximately 1,956 Class Members and 203,649 Total Workweeks during the Class period. (¶8.1) The Gross Settlement Amount was agreed upon based on Defendant’s records produced at the time of mediation. If the number of number of Workweeks during the Class Period exceeds 203,649 by more than ten percent (10%), the Gross Settlement Amount shall be increased on a pro rata basis per Workweek exceeding the 10% increase (i.e., if the number increases by 11%, the Gross Settlement Amount shall be increased by 1%). (¶8.2)
    - At final approval, the settlement administrator represents that the total number of workweeks worked by Participating Class Members during the Class Period is 111,205. (Nava Decl. ¶16.) Accordingly, the escalator clause was not triggered.
- The Net Settlement Amount (“Net”) (**$1,061,666.67**) is the GSA minus the following:
    - Up to **$583,333.33** (33 1/3%) for attorney fees (¶3.2.2);
    - Up to **$25,000** for litigation costs (*Ibid.*);
    - Up to **$10,000** for a Service Payment to the Named Plaintiff (¶3.2.1);
    - Up to **$20,000** for settlement administration costs (¶3.2.3); and
    - Payment of **$50,000** PAGA Penalty (75% or $37,500 to the LWDA, 25% or $12,500 to Aggrieved Employees). (¶3.2.5)
- Defendants will separately pay any and all employer-side payroll taxes owed on the Wage Portions of the Individual Class Payments. (¶3.1)
- There is no claim form requirement. (¶3.1)
- Individual Settlement Payment Calculation: Each Participating Class Member will receive an Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member’s Workweeks. (¶3.2.4) Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. (¶3.2.4.2)

- PAGA Payments: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($12,500) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. (¶3.2.5.1)
- Tax Allocation**:** Participating Class Member's Individual Class Payments will be allocated as follows: 1/4 as wages, 3/4 as interest and penalties. (¶3.2.4.1) The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. (¶3.2.5.2)

- Response Deadline**:** "Response Deadline" means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired. (¶1.43) The same deadlines apply to the submission of challenges to workweeks. (¶7.6)
  - If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. (¶9)
- Funding of Settlement**:** Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date. (¶4.3)
- Disbursement: Within 14 days after Defendant fully funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. (¶4.4)
- Uncashed Settlement Checks: The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. (¶4.4.1) For any Participating Class Member and/or Aggrieved Employee whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (¶4.4.3)
- The settlement administrator will be Apex Class Action. (¶1.2)
- Notice of Final Judgment will be posted on the Settlement Administrator's website. (¶7.8.1)
- The proposed Settlement Agreement was submitted to the LWDA on September 25, 2023. (Proof of Service attached to Decl. of Marquez ISO Prelim.)
- <u>Releases of Claims</u>. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of

the Individual Class Payments, Plaintiff, and Participating Class Members will release claims against all Released Parties as follows: (¶5)

- Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, including any and all claims involving any recovery of unpaid minimum wages and unpaid overtime (Cal. Lab. Code §§ 204, 1194, 1194.2, 1197, 1198), failure to provide meal and rest periods (Cal. Lab. Code §§ 226.7, 512), failure to provide accurate wage statements (Cal. Lab. Code § 226), failure to pay all wages due at separation (Cal. Lab. Code §§ 201-203), failure to reimburse business expenses (Cal. Lab. Code § 2802), and violation of Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, et seq.). Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (¶5.2)
- Release by Participating and Non-Participating Class Members who are Aggrieved Employees: All Participating and Non-Participating Class Members who are Aggrieved Employees, the State of California, and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including any and all claims involving any alleged failure to pay minimum wages or overtime, failure to provide meal and rest periods, failure to provide accurate wage statements, failure to pay all wages due at separation, and failure to reimburse business expenses, including Labor Code sections 201, 202, 203, 210, 216, 223, 225.5, 226, 226.3, 226.7, 245-248.5, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 during the PAGA Period. Aggrieved Employees only release these claims for the duration of the PAGA Period. (¶5.3)
    - "PAGA Notice" means Plaintiff's August 26, 2021 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a). (¶1.33)
    - Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Section 6.4 of this Agreement and are eligible for an Individual PAGA Payment. (¶7.5.4)
- "Released Parties" means: Argus Management Company, LLC, and ProHealth Partners, a Medical Group, and each of its former and present directors, managers, officers, shareholders, members, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates. (¶1.41)

- Named Plaintiff will also provide a general release and CC § 1542 waiver. (¶5.1)

ANALYSIS OF SETTLEMENT AGREEMENT

A. Does a presumption of fairness exist?

The Court preliminarily found in its Order of December 12, 2023 that the presumption of fairness should be applied. No facts have come to the Court's attention that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a presumption of fairness as set forth in the preliminary approval order.

B. Is the settlement fair, adequate, and reasonable?

The settlement was preliminarily found to be fair, adequate and reasonable. Notice has now been given to the Class.

Reaction of the class members to the proposed settlement.

Number of class members: 1,467 (Nava Decl. ¶¶5, 8.)
Number of notice packets mailed: 1,467 (*Id.* at ¶¶7, 9.)
Number of undeliverable notices: 41 (*Id.* at ¶12.)
Number of opt-outs: 0 (*Id.* at ¶13.)
Number of objections: 0 (*Id.* at ¶14.)
Number of participating class members: 1,467 (*Id.* at ¶15.)
Average individual payment: $723.70 (*Id.* at ¶17.)
Highest individual payment: $2,778.16 (*Ibid.*)

The Court finds that the notice was given as directed and conforms to due process requirements. Given the reactions of the Class Members to the proposed settlement and for the reasons set for in the Preliminary Approval order, the settlement is found to be fair, adequate, and reasonable.

C. Attorney Fees and Costs

Class Counsel requests an award of **$583,333.33** in fees and **$20,893.64** in costs. (MFA at 11:3-6, 18:2-5.) The Settlement Agreement provides for up to $583,333.33 (33 1/3%) for attorney fees and $25,000 in costs (¶3.2.2).

"Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254.) Here, class counsel request attorney fees using the percentage method, as crosschecked by lodestar. (MFA at pp. 11-17.)

In common fund cases, the Court may employ a percentage of the benefit method, as cross-checked against the lodestar. (*Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503.) The fee request represents approximately one-third of the gross settlement amount, which is the average generally awarded in class actions. (See *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13 ["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."].)

Class Counsel has provided information, summarized below, from which the lodestar may be calculated:

Attorney	Rates	Hours	Totals

Justin F. Marquez	$1,500	78	$117,000
Benjamin H. Haber	$800	115	$92,000
Arrash Fattahi	$600	69	$41,400
Maxim Gorbunov	$550	34	$18,700
Bradford Smith	$500	15	$7,500
Min Jee Kim	$200	26	$5,200
Rebecca Padilla	$150	29	$4,350
Totals		**366**	**$286,150**

(Decl. of Justin F. Marquez ISO Final ¶18.)

Counsel's percentage-based fee request is higher than the unadjusted lodestar, and would represent application of a multiplier of approximately 2.04x.

Here, the **$583,333.33** fee request represents a reasonable percentage of the total funds paid by Defendant. Notice of the fee request was provided to class members in the notice packet, and no one objected. (Nava Decl. ¶14, Exhibit A thereto.)

As for costs, Class Counsel is requesting a cost amount of **$20,893.64**. This is less than the $25,000 cap estimated at preliminary approval, which was disclosed to Class Members in the Notice and not objected to. (Nava Decl. ¶14, Exhibit A thereto.) Counsel's actual costs incurred at the time of filing total $20,593.64 and include, but are not limited to: Mediation ($10,000), Process Service Fees ($4,415.04), and Expert ($2,525). (Marquez ISO Final ¶26, Exhibit 2.) These costs appear to be reasonable in amount and reasonably necessary to this litigation.

Based on the above, the Court hereby awards **$583,333.33** in fees and **$20,593.64** in costs.

D. <u>Incentive Award</u>

The class representative, Marisela Meza, seeks an enhancement payment of **$10,000** for her contributions to the action. (MFA at 19:3-4.)

In connection with the final fairness hearing, named Plaintiffs must submit declarations attesting to why they should be entitled to an enhancement award in the proposed amount. The named Plaintiffs must explain why they "should be compensated for the expense or risk he has incurred in conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than *pro forma* claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit . . . .'" (*Id*. at 806-807, italics and ellipsis in original.)

Plaintiff represents that her contributions to this litigation include: providing her counsel with information and documentation from her employment with Defendants, regularly communicating with her counsel, being available during mediation, and reviewing case documents including the settlement. She estimates spending 60 hours on the case. (Declaration of Marisela Meza ISO Final ¶¶9-15.)

Based on the above, as well as the benefits obtained on behalf of the class, the Court hereby grants an enhancement payment in the reduced amount of **$7,500** to Plaintiff, which the Court finds adequately compensates Plaintiff for her contributions.

E. <u>Settlement Administration Costs</u>

The settlement administrator, Apex Class Action, LLC, is requesting **$20,000** for the costs of settlement administration. (Nava Decl. ¶20.) This equals the cost of $20,000 estimated at preliminary approval (¶3.2.3) and disclosed to the Class on the Notice form, to which there were no objections. (Nava Decl. ¶14, Exhibit A thereto.) Based on the above, the Court hereby awards administration costs in the requested amount of **$20,000.**

CONCLUSION

The Parties' Motion for Final Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The Court hereby **GRANTS** final approval and awards/approves the following essential terms:

A. The Gross Settlement Amount ("GSA") is **$1,750,000**, non-reversionary. (¶3.1)

B. The Net Settlement Amount is the GSA minus the following:

$583,333.33 for attorney fees to Class Counsel, Wilshire Law Firm, PLC (¶3.2.2);

$20,593.64 for attorney costs to Class Counsel (*Ibid.*);

$7,500 incentive award to the named plaintiff/class representative (¶3.2.1);

$20,000 for settlement administration costs (¶3.2.3); and

$37,500 (75% of $50,000 PAGA penalty) to the LWDA. (¶3.2.5)

C. Employer's share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant. (¶3.1)

D. Plaintiffs' release of Defendants from claims described herein.

By **<u>July 2, 2024</u>**, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1)(3).

Plaintiff's counsel shall file a [Proposed] Order and Judgment, consistent with this ruling containing all requisite terms, including the class definition, release language, and a statement that no class members requested exclusion.

By **<u>May 6, 2025</u>**, Class Counsel must file a Final Report Re: Distribution of the Settlement Funds.

The Court hereby sets a **Non-Appearance Case Review for May 13, 2025, 8:30 a.m., Department 9**.

Plaintiff is to give notice.

DATED: May 7, 2024

Elaine Lu
Judge of the Superior Court