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Superior Court of CA
County of Santa Clara
21CV387173
By: afloresca



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

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FELIS A. PEREZ, on behalf of himself, all others
similarly situated, and the general public,

Plaintiff,

vs.

NXEDGE MH, LLC, a Delaware limited liability
company; and DOES 1-50, inclusive,

Defendants.

Case No. 21CV387173

**ORDER RE: MOTION FOR FINAL
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

The above-entitled matter came on for hearing on January 17, 2024, at 1:30 p.m. in Department 19, the Honorable Theodore C. Zayner presiding. Having reviewed and considered the written submissions filed by the parties, and having listened carefully to arguments of counsel, the court rules as follows:

I. INTRODUCTION

This is a putative class and Private Attorneys General Act (“PAGA”) action arising out various alleged wage and hour violations. The operative Second Amended Complaint, filed on May 23, 2022, sets forth the following causes of action: (1) Failure to provide rest breaks and meal periods (Lab. Code §§ 226.7, 512, and 1198); (2) Failure to pay all wages earned for all hours worked (Lab. Code §§ 510, 1194, 1197, and 1198); (3) Failure to provide accurate wage statements (Lab. Code § 226); (4) Waiting time penalties (Lab. Code §§ 201-203); (5) Unfair Competition (Bus. & Prof. Code § 17200, et seq.); and (6) Civil Penalties/PAGA (Labor Code § 2698, et seq).

1 The parties reached a settlement. Plaintiff Felis A. Perez (“Plaintiff”) moved for
2 preliminary approval of the settlement and conditional class certification for settlement purposes.
3 Defendants NXEdge MH, LLC, NXEdge San Carlos, LLC and NXEdge CSL, LLC (collectively,
4 “Defendants”) did not oppose the motion.

5 On February 8, 2023, the court continued the motion for preliminary approval of
6 settlement to April 5, 2023. In its minute order, the court directed Plaintiff to provide an
7 estimate of the net settlement amount that will be available for payments to class members as
8 well as the average individual settlement award amount. The court further instructed the parties
9 to identify a new *cy pres* recipient in compliance with Code of Civil Procedure section 384. The
10 court also requested further information regarding the calculation of Defendants’ maximum
11 exposure. Additionally, the court asked the class representative to file a supplemental
12 declaration specifically detailing the time he spent in connection with this action. Finally, the
13 court requested the parties make several changes to the class notice and submit an amended
14 notice for its approval.

15 Plaintiff filed supplemental declarations in support of the motion for preliminary
16 approval of settlement on March 17, 2023.

17 On April 5, 2023, the court granted the motion for preliminary approval of settlement
18 subject to approval of the amended class notice. Later that day, Plaintiff filed an amended class
19 notice, which made the changes requested by the court.¹

20 On September 5, 2023, the parties filed a Stipulation to Continue Hearing on Final
21 Approval of Class Action Settlement, advising the court that Defendants recently identified a
22 small number of additional class members who needed to receive notice of the settlement. The
23 parties requested that the hearing of the motion for final approval of settlement be continued for
24 90 days in order to allow for proper settlement notification and administration.

25 On September 7, 2023, the court entered an order continuing the motion for final
26 approval of settlement to January 17, 2024.

27
28 ¹ Upon review of the record, it does not appear that Plaintiff obtained the court’s approval of the amended class
notice filed on April 5, 2023. Nonetheless, as the amended notice made all of the changes requested by the court,
the court will overlook this procedural defect.

1 Plaintiff now moves for final approval of the settlement. The motion is unopposed.

2 **II. LEGAL STANDARD**

3 Generally, “questions whether a settlement was fair and reasonable, whether notice to the
4 class was adequate, whether certification of the class was proper, and whether the attorney fee
5 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
6 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*
7 (1996) 48 Cal.App.4th 1794 (*Dunk*).)

8 In determining whether a class settlement is fair, adequate and reasonable, the
9 trial court should consider relevant factors, such as “the strength of plaintiffs’
10 case, the risk, expense, complexity and likely duration of further litigation, the
11 risk of maintaining class action status through trial, the amount offered in
12 settlement, the extent of discovery completed and the stage of the proceedings, the
13 experience and views of counsel, the presence of a governmental participant, and
14 the reaction of the class members to the proposed settlement.”
(*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801
and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624
(*Officers*).)

15 “The list of factors is not exclusive and the court is free to engage in a balancing and
16 weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91
17 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the
18 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
19 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
20 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48
21 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

22 The burden is on the proponent of the settlement to show that it is fair and
23 reasonable. However “a presumption of fairness exists where: (1) the settlement
24 is reached through arm’s-length bargaining; (2) investigation and discovery are
25 sufficient to allow counsel and the court to act intelligently; (3) counsel is
26 experienced in similar litigation; and (4) the percentage of objectors is small.”
(*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

26 **III. DISCUSSION**

27 The case has been settled on behalf of the following class:

28 all persons Defendants employed in California as regular full-time or part-time
hourly, non-exempt employees (current and former) who have not executed

1 releases of claims under the California Labor Code and/or applicable Wage
2 Orders/regulations during the Class Period from September 29, 2017 through the
3 earlier of the date of the court's preliminary approval order and the latest date
4 before the Class exceeds 22,604 pay periods worked.

5 The class includes a subset of PAGA Members, who are defined as all individuals Defendants
6 employed in California as hourly, non-exempt employees during the PAGA Period of September
7 10, 2020 through the earlier of the date of the court's preliminary approval order and the latest
8 date before the Class exceeds 22,604 pay periods worked.

9 As discussed in connection with preliminary approval, Defendants will pay a total non-
10 reversionary amount of \$1,242,000. The total settlement payment includes attorney fees not to
11 exceed \$413,999 (one third of the settlement amount), litigation costs up to \$25,000, an incentive
12 award of \$50,000 for the class representative, settlement administration costs up to \$15,000, and
13 a PAGA allocation of \$20,000 of which \$15,000 (75 percent) will be paid to the LWDA and
14 \$5,000 will be available for PAGA Members. Defendants will pay their share of any payroll
15 taxes separately, without reducing the settlement fund.

16 Class members are not required to opt in to obtain their portions of the settlement
17 amount; rather they may opt out if desired. In exchange for the settlement, class members who
18 do not opt out will release

19 [A]ll claims, rights, demands, liabilities and causes of action that are alleged, or
20 reasonably could have been alleged based on the facts and claims during the
21 period of September 29, 2017 through the earlier of the date of the Court's
22 preliminary approval order and the latest date before the Class exceeds 22,604
23 pay periods asserted in the Operative Complaint and/or in the letter(s) sent by
24 Plaintiff to the LWDA concerning Defendants and the other Released Parties,
25 whether sounding in law or equity, tort, contract, statute, or other applicable
26 federal, state or local law or regulation, including but not limited to the following
27 claims: failure to pay all wages for all hours worked, unauthorized and unlawful
28 wage deductions, failure to provide meal periods, failure to authorize and permit
rest periods, failure to compensate employees at one hour's pay at employees
regular rate of pay for each day on which employees did not receive one or more
meal or rest periods, failure to issue proper wage statements, failure to timely pay
wages, failure to maintain required payroll records, unfair business practices that
could have been premised on the claims, causes of action or legal theories of
relief described above or any of the claims, causes of action or legal theories of
relief pleaded in the Action, all claims under PAGA or for civil penalties that
could have been premised on the claims, causes of action or legal theories
described above or any of the claims, causes of action or legal theories of relief
pleaded in the Action or Plaintiff's letter(s) to the LWDA, including but not
limited to the California Code of Regulations and to Labor Code sections 201,
202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 510, 512, 558, 1174,
1174.5, 1175, 1182.12, 1194, 1197, 1197.1, 1198, 2698, 2699, all applicable IWC
Wage Orders and order provisions, and any and all damages, restitution,
disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys fees
or costs resulting therefrom.

1
2 With respect to how settlement shares are calculated, the settlement administrator will
3 assign to each class member a settlement ratio, a fractional number comprised of (a) that class
4 member's individual pay periods worked as the numerator, and (b) the aggregate total of all class
5 members' individual pay periods worked as the denominator. The settlement administrator will
6 assign to each class member the settlement share which will be calculated by multiplying that
7 class member's settlement ratio by amount allocated to class members from the net settlement
8 amount.

9 PAGA shares will be calculated similarly: the settlement administrator will assign to each
10 class member a settlement ratio, a fractional number comprised of (a) that PAGA member's
11 individual pay periods worked during the PAGA period as the numerator, and (b) the aggregate
12 total of all PAGA members individual pay periods worked during the PAGA period as the
13 denominator. The settlement administrator shall assign to each PAGA member the settlement
14 share which shall be calculated by multiplying that PAGA member's settlement ratio by amount
15 allocated to PAGA members from the net settlement amount. All PAGA members, regardless of
16 whether they submit timely and valid requests for exclusion from the settlement, will release all
17 released claims under PAGA against Defendants.

18 The parties designated Legal Aid at Work as a *cy pres* recipient in compliance with Code
19 of Civil Procedure section 384.

20 On June 15, 2023, the settlement administrator mailed notice packets to 334 class
21 members. (Declaration of Lindsay Romo Regarding Notice and Settlement Administration
22 ("Romo Dec."), ¶ 8.) After the initial mailing, Defendants informed the settlement administrator
23 that nine class members were inadvertently omitted from the class list. (*Id.* at ¶ 11.) On
24 September 14, 2023, the settlement administrator mailed notice packets to the additional nine
25 class members. (Romo Dec., ¶ 12.) As of December 21, 2023, there were no objections and no
26 requests for exclusion. (*Id.* at ¶¶ 15-16.)

27 The average estimated settlement payment is \$2,142.11, the highest estimated settlement
28 payment is \$4,010.08, and the lowest estimated settlement payment is \$32.08. (Romo Dec.,

¶ 20.) The court previously found the proposed settlement is fair and the court continues to make that finding for purposes of final approval.

Plaintiff requests a service award in the amount of \$50,000. Plaintiff submitted a declaration in support of his request, detailing his participation in the action. Plaintiff declares that he spent over 90 hours in connection with the litigation, including obtaining legal counsel, gathering information and documents for class counsel, discussing the case with class counsel, contacting class members about the lawsuit, participating in mediation, and reviewing the settlement agreement. (Declaration of Felis A. Perez in Support of Plaintiff's Motion for Final Approval of Class Action Settlement, ¶ 7 & Ex. A.)

Moreover, Plaintiff undertook risk by putting his name on the case because it might impact his future employment. (See *Covillo v. Specialty's Café* (N.D.Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].)

However, as the court noted in its prior orders, the requested service award in the amount still appears to the court to be excessive. Each class member will receive approximately \$2,142.11. Consequently, the sought-after service award would amount to more than 20 times the estimated average payout. In light of the foregoing, considering all of the evidence presenting and the remarks of counsel during the hearing, the court finds that a service award in the amount of \$25,000 is reasonable under all the circumstances presented, and the court approves an award in this lesser amount.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel seek attorney fees in the amount of \$414,000. Plaintiff's counsel provide evidence demonstrating a total combined lodestar of \$122,015. (Declaration of David Spivak in Support of Plaintiff's Motion for Final Approval of Class Action Settlement ("Spivak Dec."), ¶ 22 & Ex. O; Declaration of Walter Haines in Support of Plaintiff Felis A Perez's Motion for Final Approval of Class Action Settlement ("Haines Dec."), ¶¶ 5-10.) This results in multiplier of 3.39, which is

1 at the high end of the range courts typically award. (*Laffitte v. Robert Half Intern, Inc.* (2016) 1
2 Cal.5th 480, 503-504 [the trial court did not abuse its discretion in approving a fee award of 1/3
3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13];
4 *Wershba, supra*, 91 Cal.App.4th at p. 255 [“[m]ultipliers can range from 2 to 4 or even higher”].)
5 Here, the settlement agreement provides for an award attorney fees in an amount of not more
6 than \$413,999 (1/3 of the gross settlement amount). The court finds that attorney fees in the
7 amount of \$413,999 are reasonable as a percentage of the common fund and are approved.

8 Plaintiff’s counsel also requests \$12,257.64 in litigation costs. However, Plaintiff’s
9 counsel only provides evidence of incurred costs in the amount of \$12,172.96. (Spivak Dec.,
10 ¶ 23 & Ex. P; Haines Dec., ¶ 11.) Anticipated expenses are not recoverable. Thus, the costs in
11 the lesser amount of \$12,172.96 appear to be reasonable and are approved. The administrative
12 costs in the amount of \$11,000 are also approved. (Romo Dec., ¶ 22.)

13 Accordingly, the motion for final approval of the class action settlement is GRANTED.
14

15 The court will set a compliance hearing for September 11, 2024, at 2:30 p.m. in
16 Department 19. At least ten court days before the hearing, class counsel and the settlement
17 administrator shall submit a summary accounting of the net settlement fund identifying
18 distributions made as ordered herein, the number and value of any uncashed checks, amounts
19 remitted to Defendants, the status of any unresolved issues, and any other matters appropriate to
20 bring to the court’s attention. Counsel may appear at the compliance hearing remotely.
21

22
23 Dated: February 9, 2024

24 

Hon. Theodore C. Zayner
Judge of the Superior Court