

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Cuitlahuac Nino
Plaintiff/Petitioner(s)
VS.
J.W. Peterson Painting, Inc.
Defendant/Respondent
(s)

No. RG21111509

Date: 10/15/2024

Time: 10:00 AM

Dept: 23

Judge: Michael Markman

ORDER re: Hearing on Motion -

Other Motion for

Preliminary Approval; filed

by Cuitlahuac Nino

(Plaintiff); Case

Management Conference

filed by Cuitlahuac Nino

(Plaintiff) on 07/24/2024

The Motion for Preliminary Approval of Settlement filed by Cuitlahuac Nino on 07/24/2024 is Granted.

BACKGROUND FACTS

This is a wage-and-hour class action and PAGA representative action. Plaintiff Cuitlahuac Nino and Defendant J.W. Peterson Painting, Inc. have agreed to settle the class claims for \$325,000.00, which includes up to \$108,333.33 in attorney's fees; up to \$20,000.00 in litigation costs and expenses incurred by counsel; a service of \$7,500.00 for the representative plaintiff; settlement administration costs of up to \$15,000.00, and \$25,000.00 in PAGA civil penalties (75% of penalties go to California Labor and Workforce Development Agency (LWDA) and 25% to aggrieved employees). The remaining amount is to be distributed among participating class members and aggrieved employees on a pro rata basis.

LEGAL STANDARD

To prevent "fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.) The Court "must determine the settlement is fair, adequate, and reasonable." (*Id.* at p. 1801.) "The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of plaintiffs' case, the

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risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 [quoting *Dunk, supra*, at p. 1801].)

Similarly, a “trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77 [noting overlap of factors in class action analysis, “including the strength of the plaintiff’s case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount”].)

PRELIMINARY APPROVAL

Plaintiffs’ counsel investigated, obtained information from defendant, and analyzed defendants’ wage and hour policies, as well as a randomized sample of time and payroll records. (Marquez Decl., ¶¶ 5, 6.) The parties then participated in an arm’s length mediation with a professional mediator and settled. (See *id.*, ¶¶ 7, 8.) Plaintiff provides an adequate *Kullar* analysis, including a reasonable estimate of the number of class members, the total estimated possible recovery, and an explanation why the settlement was reasonable in light thereof. (See *id.*, ¶¶ 16–27.) The court gives “considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm’s length transaction entered without self-dealing or other potential misconduct.” (*Kullar, supra*, 168 Cal.App.4th at p. 129.) The terms of the settlement and notice procedures appear generally fair, reasonable and adequate. The parties revised the scope of the PAGA release and the notice, as requested by the court. (See Supp. Marquez Decl., filed Oct. 3, 2024.)

SERVICE AWARD, FEES, & COSTS

The court will not rule on the service award for the representative plaintiff, fees, or costs until final approval but provides the following preliminary guidance:

Any incentive, enhancement, or service award must be supported with “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.” (*Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 807.) This court is unlikely to approve an award of more than \$7,500.00 absent special circumstances.

This court’s benchmark for attorney’s fees is 30%. (See *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.) A “court approving a settlement that includes a negotiated

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fee [] is required to decide if the fee negotiated by the parties closely approximates the value of the attorneys' work." (*Robbins v. Alibrandi*, 127 Cal.App.4th 438, 452.) Counsel must address the value of the attorneys' work, as well as the justification for any deviation from this court's benchmark. Ten percent of the attorney's fee award must be held by the settlement administrator until completion of the distribution process and court approval of a final accounting.

The settlement agreement authorizes reimbursement of litigation costs. Counsel must provide evidentiary support for the actual costs incurred at the time of final approval.

The court's preference is for Plaintiffs to move for final approval, including approval of attorneys' fees, costs, and Plaintiff's enhancement award, in a single motion.

ORDER

Plaintiffs' motion for preliminary approval of class action settlement is GRANTED. The court will sign the proposed order filed on October 3, 2024. A final approval hearing is set for February 27, 2025 at 10:00 am in Department 23. The reservation number for the final approval hearing is A-21111509-001.

The Case Management Conference scheduled for 10/15/2024 is continued to 02/27/2025 at 10:00 AM in Department 23 at Rene C. Davidson Courthouse .

Continued to coincide with final approval hearing.

Dated : 10/15/2024



Michael Markman / Judge

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