

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Brian Williams

Plaintiff/Petitioner(s)

VS.

Hodo, Inc.

Defendant/Respondent(s)

No. 21CV000132

Date: 08/23/2023

Time: 2:30 PM

Dept: 16

Judge: Tara Desautels

ORDER re: Hearing on Motion for Final
Approval of Settlement

The Motion for Final Approval of Settlement filed by Brian Williams on 08/01/2023 is Granted in Part.

Plaintiff's motion for final approval of class action settlement is GRANTED IN PART.

BACKGROUND FACTS

This is a wage-and-hour class action and PAGA representative action. Plaintiff Brian L. Williams seeks to represent a class of non-exempt employees of Defendant Hodo, Inc. during the period between October 12, 2017 and September 30, 2022. Plaintiff alleges various violations of the California Labor Code.

Plaintiff's counsel conducted an investigation, and the parties exchanged information through both formal and informal discovery. The parties then participated in private mediation with a professional mediator, reaching a settlement agreement for a total of \$550,000.00. On June 1, 2023, the Court granted Plaintiff's motion for preliminary approval of that settlement.

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 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].)

DISCUSSION

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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.” (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 128 [quoting Dunk, supra, at p. 1801].)

Here, the parties participated in mediation. 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, at p. 129.) The investigation and discovery were sufficient to allow counsel and the court to act intelligently, and Plaintiff’s counsel cites significant experience in similar litigation. (Moon Decl. ¶¶ 7, 8, 19–26, 37–55.) No class members opted out, and no class members objected to the proposed settlement. (Butler Decl. ¶¶ 10–14.) This motion is unopposed.

The designation of \$30,000.00 of the settlement fund as PAGA civil penalties is approved. Settlement administration costs in the amount of \$14,500.00 to Simpluris, Inc. are approved. The class representative payment of \$7,500.00 is approved. Plaintiffs provided evidence regarding the nature of participation in the action, including a description of specific actions and the amount of time committed to the prosecution of the case. (Williams Decl. ¶¶ 21, 22, 26.) Counsel’s reasonably incurred costs and expenses are approved in the amount of \$12,136.57. (See Moon Decl. ¶ 67.)

The Court grants in part class counsel’s request for attorneys’ fees, awarding \$165,000.00.

Class counsel requests \$183,333.33 in fees, or one-third of the common fund. Because absent class members are not directly involved in the proceedings, a court has the responsibility to ensure settlement are fair. (Mark v. Spencer (2008) 166 Cal.App.4th 219, 227.) “[T]horough judicial review of fee applications is required in all class action settlements and the fairness of the fees must be assessed independently of determining the fairness of the substantive settlement terms.” (Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 555–556.)

As noted in connection with preliminary approval order, this Court’s benchmark for fees is 30% of the common fund. Although the Court of Appeals found no abuse of discretion in a 33% award, it also noted that the Ninth Circuit has approved a 25% benchmark and that the Eleventh Circuit approved a 20–30% range. (Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal. 5th 480, 495; see also Schulz v. Jeppesen Sanderson, Inc. (2018) 27 Cal.App.5th 1167, 1175 [“Although the trial court would be acting within its discretion to award less than 31 percent, we note that 31 percent is not out of line with awards in class actions, which, like this case, involve attorney fees to be paid by a protected class and that require court approval.”].) Plaintiff has not persuaded the Court that a deviation from its benchmark is warranted in this case.

The 30% benchmark results in a \$165,000.00 a fee award. In cross-checking using the lodestar/multiplier approach, counsel calculated fees of \$150,097.50. (Moon Decl. ¶ 60.) Counsel’s estimate of 282.6 hours is reasonable. (See id. ¶¶ 60–61.) A blended billing rate of \$550 is reasonable in light of the difficulty of the matter and a client’s reasonable expectation that its counsel would allocate work efficiently among low and high billers. The resulting

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lodestar is \$155,430.00—representing a multiplier of approximately 1.02 of the 30% benchmark. “When considering risk, the court considers there is less risk in a case with fee shifting statutes because counsel’s potential fees are not limited by and coupled to the monetary recovery.” (Harman v. City and County of San Francisco (2007) 158 Cal.App.4th 407, 419.) Thus, the Court finds fees of \$165,000.00 to be reasonable.

ORDER

Plaintiff’s motion is GRANTED IN PART.

The Court ORDERS that 10% of the attorneys’ fee award to be kept in the administrator’s trust fund until the completion of the distribution process and Court approval of a final accounting. The Court sets a compliance hearing for December 15, 2023 at 9:00 am, at which time the Court will consider evidence that the distribution process is complete and that a final accounting may be approved. Counsel is ordered to file a final report and declaration by the Settlement Administration regarding distribution no later December 1, 2023. No appearances will be required if the report and declaration establish that the distributions are complete.

Within five (5) days of notice of entry of this order, Plaintiff’s counsel must submit a revised Proposed Order and Judgment that is consistent with this order.

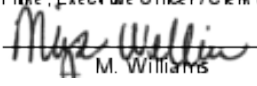
Clerk is directed to serve copies of this order, with proof of service, to counsel and to self-represented parties of record.

The Court orders counsel to obtain a copy of this order from the eCourt portal.

Dated: 08/23/2023



Tara Desautels / Judge

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 08/24/2023
PLAINTIFF/PETITIONER: Brian Williams	Chad Finke, Executive Officer / Clerk of the Court By:  Deputy M. Williams
DEFENDANT/RESPONDENT: Hodo, Inc.	
CERTIFICATE OF MAILING	CASE NUMBER: 21CV000132

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the attached document upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

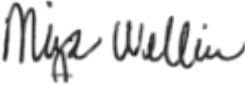
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Dated: 08/24/2023

Chad Finke, Executive Officer / Clerk of the Court

By:



M. Williams, Deputy Clerk

CERTIFICATE OF MAILING