SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 36

21STCV44381
KANIA PATON, ON BEHALF OF THE STATE OF CALIFORNIA AND OTHER AGGRIEVED PERSONS vs RUGGABLE, LLC, A DELAWARE LIMITED LIABILITY CORPORATION

January 30, 2025
8:30 AM

Judge: Honorable Wendy Chang
Judicial Assistant: A. Rodriguez
Courtroom Assistant: A. Aguilar

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The Court, having taken the matter under submission on 01/16/2025 for Hearing on Motion for Final Approval of Settlement, now rules as follows: .

I. Background

This is a wage and hour class action. Defendant Ruggable, Inc. (Defendant) is an Internet-based retailer of machine-washable rugs, mats, and similar products. Defendant employed each of the nine plaintiffs at some point during the time period relevant to the suit and the settlement.

Plaintiff Kania Paton filed the initial complaint against Defendant on December 6, 2021, on behalf of herself and other aggrieved employees, under California's Private Attorneys-General Act, Labor Code § 2698 et seq. The other eight named plaintiffs joined Paton's suit, in some cases joining her PAGA complaint to the LWDA or filing their own.

The operative complaint was filed by stipulation with the Court's approval on October 31, 2023. That first amended complaint (FAC) names as plaintiffs Paton, Graciela Jimenez Gonzalez, Sim Astronomo, Gerardo Sandoval, Melissa Sandoval, Kevin Sandoval, Eulalia Carvente, Olegario Encarnacion, and Silvia Hernandez. Plaintiffs bring a class action on behalf of themselves and others similarly situated, alleging causes of action for (1) failure to pay minimum and straight time wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to authorize and permit rest periods, (5) failure to timely pay final wages at termination, (6) failure to provide accurate itemized wage statements, (7) failure to indemnify employees for expenditures, (8) unfair business practices, and (9) enforcement of Labor Code § 2698, et seq.

Counsel represents that Defendant produced informal discovery, including sample time and pay records, documents of wage and hour policies and practices during the class period, and information regarding the total number of current and former employees. (Marquez Decl., ¶ 5.)

On June 8, 2022, and again on January 19, 2023, the parties attended mediation sessions with Lisa Klerman, Esq., an experienced class action mediator. (Id., ¶ 7.) Across the course of the two sessions, the parties reached a mutual resolution. (Ibid.)

On March 26, 2024, the Court granted Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement.

On September 10, 2024, Plaintiffs filed the current motion for Final Approval of Class Action and PAGA Settlement.

On October 24, 2024, this Court vacated the October 3, 2024 judgment and vacated the October 3, 2024 order granting the motion to approve the settlement. The Court set a new hearing on a Motion for Final Approval of Class Action Settlement for January 16, 2025. After an extended hearing on January 16, 2025, the Court took the matter under submission. The Court now issues its ruling.

II. Analysis

A. Settlement Terms

1. <u>Claimants</u>

The settlement settles both class and PAGA claims against Defendant.

The settlement defines a "class member" or "settlement class member" as a member of the Class, either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee (Agreement, ¶ 1.9.) (Paragraph citations to the Agreement unless otherwise designated.) The "Class" includes all hourly employees who worked in California for Defendant during the Class Period. (¶ 1.5.) The "Class Period" means the period from June 8, 2018 to June 8, 2022. (¶ 1.12.)

A "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. (¶ 1.34.) A "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion. (¶ 1.29.)

For PAGA purposes, the settlement defines "Aggrieved Employees" as all hourly employees who worked in California for Defendant during the PAGA Period. (¶1.4) "PAGA Period" means the period from April 6, 2020 to June 8, 2022. (¶ 1.30.)

The parties agreed to class certification for the purposes of settlement only (¶ 2.5) and stipulated that all PAGA Notices were timely given for the purposes of settlement only. (¶ 2.2.)

2. <u>Settlement Terms</u>

The parties estimate there are approximately 605 class members. (¶ 4.1 and 8.) Defendant has agreed to pay $910,000 as the Gross Settlement Amount, plus any additional amount owed under Paragraph 8. (¶¶3.1 and 8.)

The essential terms of the settlement are as follows:

The Maximum Settlement Amount is $910,000, non-reversionary. (¶ 3.1, 3.2) The Net Settlement Amount ($514,166.67) is the Gross Settlement Amount minus the following:

Up to $303,333.33 (1/3) for attorney fees (¶ 3.2.2);
Up to $30,000 for litigation costs (¶ 3.2.2);
Up to $5,000 in service awards to each class representative (¶ 3.2.1);
Up to $15,000 for claims administration (¶ 3.2.3); and
$22,500 (75% of $30,000 PAGA penalty) to the LWDA (¶ 3.2.4).

Tax Treatment: "Each Participating Class Member's Individual Class Payment will be allocated in its entirety to settlement of claims for interest and penalties. The Individual Class Payments are not subject to wage withholdings and will be reported on IRS 1099 Forms." "Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payments." (¶¶ 3.2.1, 3.3.2.)

3. <u>Funding and Administration</u>

No later than thirty (30) days after the Effective Date, Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator. (¶ 4.3.) The parties may extend the deadline by agreement. (Ibid.)

Class Members shall not be required to submit a claim in order to receive a share of the Net Settlement Amount. (¶ 3.1.) Each Participating Class Member's Individual Settlement Payment shall be calculated solely by the Settlement Administrator according to a formula based on Class Data that Defendant provides to the Administrator, which will contain sufficient information for the Administrator to determine Class Members' and Aggrieved Employees' pro rata recoveries on the basis of pay periods worked during the relevant periods. (¶¶ 4.2, 7.4.1, 3.2.4.1.)

The Agreement sets out a process for class members to opt-out and a right for Defendant to void the Settlement if more than 10% of the members do so. (¶¶ 1.42, 7.5.1, 9.)
Apex Class Action LLC will administer the settlement for an anticipated cost of $11,500, but for no more than $15,000.00 without Court approval. (¶ 3.2.3.) To the extent the Administration Expenses are less than $15,000, the Administrator will retain the remainder in the Net Settlement Agreement. (*Ibid*.)

The Agreement provides for several good-faith efforts to locate Class Members and Aggrieved Employees, after which payments to both will be forwarded to the Unclaimed Property Fund. (¶¶ 4.4.1-4.4.3.)

B. Fair, Adequate, and Reasonable Terms; Class Certification; Incentive Awards

The Court ordered on March 26, 2024 in response to the preliminary settlement agreement that the agreement was fair, adequate, and reasonable. The Court conditionally certified the class.

Because the final settlement agreement is substantially similar to the preliminary settlement in these respects, the Court find that the final settlement agreement is fair, adequate, and reasonable and certifies the class.

The Settlement Agreement provides for an enhancement award of up to $5,000 to class representatives, totaling $25,000; Kevin Sandoval, Gerardo Sandoval, Melissa Sandoval, Sim Astronomo, and Kania Paton have all submitted declarations in support of their awards attesting that they spent in excess of 30 hours working with their attorneys on the case. Accepting the representatives' uncontradicted testimony as true, they will be receiving due compensation for their time and efforts and any expense or risk they have incurred. (*See Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.)

Awards of $5,000.00 to each of the five declarants are approved.

C. Attorney's Fees and Costs

California Rules of Court rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

Class counsel again requests an award of fees based on the "common fund" method. Counsel request one-third of the settlement based on industry standard, in an amount of up to 33 and 1/3% of the Gross Settlement Amount ($303,333.33). (*Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43, 66, n.11.) Counsel offers a lodestar estimate as a cross-check for its request, declaring $221,229.27 in fees and costs, and an enhancement due to the risk they took in pursuing this action on contingency.

As is reflected in the transcript of the hearing on January 16, 2025, and the minute order of October 24, 2024, the Court has expressed concern about the accuracy of the representations made to it in Wilshire Law Firm and Garay's original filings to obtain their attorney fees in this matter and to block Salusky from bringing the dispute to the Court's attention.

Subsequent to the January 16, 2025 hearing, on January 21, 2025, further papers were filed by Garay, pointing to inaccuracies by Salusky's own presentation to the Court. As of the date of this order, no response has been filed by Salusky, refuting Garay's presentation.

The Court finds that Marquez, Garay and Salusky each bear some responsibility for the candor mistakes before this Court. They have all, in some way, and at times, either directly made inaccurate presentations and/or ratified inaccuracies made by others to this Court. These inaccuracies were caused, in part, by multiple factors. One was the lack of care in the preparation of the papers by Garay and Marquez before this Court ruled on October 24, 2024, after their frustration from Salusky's refusal to provide a breakdown of her hours even when asked more than once. The lack of care was itself likely caused, in part, by animosity and significant incivility by Marquez, Garay and Grigoryan, which exists in their real time communication during the dispute, and as observed by this Court in the various hearings relating to the approval process. That same animosity likely also caused Salusky's own inaccurate representations, as highlighted by Garay's January 21, 2025 filing. Deeply embroiled by their relational issues, many mistakes were made by all three attorneys, illustrating the threat that incivility poses. Incivility can generate strong emotions, and those emotions, in turn, lowers the normal and objective care with which attorneys usually act, which in this case, grew to candor mistakes in representations to the Court.

The reasonableness of an attorneys fee includes skill and competence, but also includes acting with ethical compliance as required by the California Rules of Professional Conduct. Attorneys that act within their ethical obligations are entitled to a higher rate. Marquez, Garay and Salusky have failed in their duty of candor to the Court in the course of these proceedings. As a result, the Court finds that the requested rate by each of them is not reasonable within the meaning of the law and reduces the requested rate.

The Court does not cut any of the actual time spent leading up to the settlement, as there is no credible challenge that the time claimed was not actually spent. While Salusky challenges Garay's participation in mediation, the written evidence in support of that claim has proven to be incorrect. Ruggable's attorney corroborated Marquez's assertion that Garay was involved in mediation. The Court finds Garay participated in mediation.

In light of the Court's findings on the ethical lapses, the Court declines a multiplier.

The Court partially reduces Salusky's request for time in her efforts to enforce her fee. The delta of the original request and the amount awarded is being reallocated back to the Net Settlement Amount, which benefits the plaintiffs. However, as discussed above, she has not been wholly candid to the Court in her assertion. The Court awards only half of the fees relating to the fee request, 32.7 hours. (Decl Salusky in Support of Final Approval of Class Action and Paga Settlement ¶39.)

Attorney Bradford Smith was not involved in any of the circumstances addressed in this hearing, and the Court does not adjust his requested award.

42.5 hrs	Request: $1,500/hr senior partner Reduced to: $500/hr	$21,250	Justin Marquez, Wilshire Law Firm
12.5 hrs	Request: $450/hr settlement attorney No reduction made	$5,625	Bradford Smith, Wilshire Law Firm
102 hrs	Request: $975/hr principal owner of law firm REDUCED: $500hr	$51,000	Jose Garay, Garay Law Firm
77.3 hours (9.8 hours + 34.8 + 32.7 hours = 77.3 hours.)	Request: $750-$850/hr Reduced to: $500	$38,650	Anna Salusky
		$116,525.00	

Costs are awarded in the amount requested, $26,518.90

Plaintiffs requested up to $303,333.33. The Court has awarded $116,525.00. The difference is $186,808.33. The Court deducts $26,880.00 to be held aside pending disposition of Grigoryan's fee after she returns for medical leave. The balance, $159,928.33, shall be reallocated back to the Net Settlement Amount for the benefit of the Plaintiffs.

Attorney Arsine Grigoryan is on medical leave and was unable to take part in these proceedings. Thus, the Court does not address a fee award to Ms. Grigoryan at this time and instead, continues the hearing as to Ms. Grigoryan only to March 17, 2025 at 8:30 a.m. The sum total of her fee request is $26,880, for 33.6 hours at $800/hour. That amount is to be segregated and held aside from distribution pending further order of this Court.

The Court has significantly reduced Garay, Marquez and Salusky's fee request. The Court is persuaded that each attorney fully understands the mistakes that have been made in this matter, and that they will take proper care in the future to avoid repeating these errors. Accordingly, the Court declines to also issue sanctions under the OSC also set for hearing.

III. Conclusion

The court **GRANTS** the motion to approve the final settlement agreement as indicated above.

The Court discharges the OSC re Sanctions.

On the Court's own motion, the Order to Show Cause Re: Sanctions Re: Compliance with California Rule of Professional Conduct 3.3(a)(1) as to attorney Arsine Grigoryan scheduled for 03/17/2025 is vacated.

Order to Show Cause Re: Dismissal (Settlement) is scheduled for 04/30/2025 at 08:30 AM in Department 36 at Stanley Mosk Courthouse.

Certificate of Mailing is attached.