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July 19, 2024
Clerk of the Court
Superior Court of CA
County of Santa Clara

21CV387958
By: rwalker

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

THOMAS BELTRAN, individually and on behalf of all others similarly situated, Plaintiff, vs. GEORGE CHIALA FARMS, INC.; and DOES 1 through 20, inclusive,; and DOES 1 through 20, inclusive, Defendants.	Case No. 21CV387958 Assigned for all purposes to Hon. Theodore C. Zayner Dept. 19 **~~[PROPOSED~~] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT** Date: July 17, 2024 Time: 1:30 p.m. Dept: 19

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on July 17, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This putative class and representative action by plaintiff Thomas Beltran ("Plaintiff") arises out of various alleged wage and hour violations. The operative First Amended Complaint ("FAC"), filed on January 6, 2022, sets forth the following causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Permit Rest Breaks; (5) Failure to Reimburse Business Expenses; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Failure to Pay All Wages Due Upon Separation of Employment; (8) Violation of Business and Professions Code §§ 17200, *et seq*.; and (9) Enforcement of Labor Code §§ 2698 et seq. ("PAGA").

The parties reached a settlement, and Plaintiff moved for preliminary approval of the settlement. The court initially continued the hearing on the motion, explaining that it had several concerns regarding the settlement. Thereafter Plaintiff's counsel filed a supplemental declaration in support of the motion for preliminary approval. On September 6, 2023, the court determined that Plaintiff's supplemental filing adequately addressed its concerns and granted the motion for preliminary approval of settlement. On September 21, 2023, the court entered a formal order memorializing its decision.

Now before the court is the unopposed motion for final approval of settlement. On June 12, 2024, the court continued the hearing on the motion for final approval. In its minute order, the court explained its concern regarding whether all class members had received notice packets as required by the settlement agreement. More specifically, the settlement administrator's initial declaration indicated that 17 individuals requested to be included in the class, and that they were then added to the class by agreement of the parties. However, the declaration did not indicate whether these additional 17 class members were ever provided with notice packets.

On July 1, 2024, the settlement administrator filed a supplemental declaration as instructed by the court indicating that the 17 additional class members were mailed notice packets.

II. Legal Standard

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

> In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as "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 the 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."

(*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*).)

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

> The burden is on the proponent of the settlement to show that it is fair and reasonable. However "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."

(*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

Similar to its review of class action settlements, the Court must "determine independently whether a PAGA settlement is fair and reasonable," to protect "the interests of the public and the LWDA in the enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76-77.) It must make this assessment "in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Id*. at p. 77.)

III. Discussion

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

> [A]ll current and former non-exempt employees who worked for Defendant [George Chiala Farms, Inc. ("Defendant")] in California any time or times between April 13, 2017 through December 31, 2022 (the "Class Period"), and excluding any persons who: (1) opt out of the class; and/or (2) signed an arbitration agreement with Defendant that includes a class and/or representative action waiver on or before April 25, 2023.

The amended settlement agreement also includes PAGA Group Members, who are defined as "all current or former non-exempt employees who worked for Defendant in the State of California from April 13, 2020 through December 31, 2022."

Defendant will pay a maximum, non-reversionary settlement amount of $656,970 (increased from $610,000 by the settlement's escalator clause as the final number of workweeks totaled 40,553). The gross settlement amount includes attorney fees up to $218,990 (1/3 of the escalated gross settlement amount), litigation costs not to exceed $25,000, a PAGA allocation of $20,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be distributed to PAGA Group Members), an incentive award up to $2,500 for the class representative, and settlement administration costs up to $12,500. The net settlement amount will be distributed to participating class members pro rata basis. Checks that remain uncashed 180 days from the date the checks are dated will be void and the funds from those checks will be distributed to Legal Aid at Work.

In exchange for the settlement, the class members agree to release Defendant "each of Defendant's respective current and former, direct and indirect owners, parents, subsidiaries, brother-sister companies, and their current and former partners, officers, directors, employees, attorneys, agents, shareholders, insurers, reinsurers, assigns, transferees, executors, administrators, predecessors, successors" ("Released Parties") from:

> all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, known or unknown, suspected or unsuspected, that each participating class member had, now has, or may hereafter claim to have against Released Parties and that were asserted in the Action, or that arise from or could have been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in Plaintiff's Complaint, regardless of whether such

> claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law.

The amended settlement agreement further provides that PAGA Group Members agree to release the Released Parties from:

> all claims for civil penalties under Labor Code §§ 2698 et seq. exhausted in Plaintiff's notice(s) sent to the LWDA and alleged in the Action, and any and all PAGA claims which arose during the PAGA Period, that could have been asserted by the Labor Commissioner against Released Parties based on the factual allegations of Plaintiff's First Amended Complaint and Plaintiff's notice(s) sent to the LWDA, including claims for Labor Code sections §§ 201, 202, 203, 204, 205, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802 and the related IWC Wage Order(s). […] This settlement is also conditioned on the covenant that PAGA Group members will not participate in or receive recovery or monies in connection with any further proceeding seeking penalties under Section 2699, which arose during the PAGA Period for claims based on the allegations Plaintiff alleged in the Action.

In addition, Plaintiff agrees to a comprehensive general release.

On October 20, 2023, the settlement administrator mailed notice packets to 802 class members. (Declaration of Chantal Soto-Najera on Behalf of CPT Group, Inc. Regarding Settlement Administration ("Soto-Najera Dec."), ¶¶ 4-6.) Ultimately, 22 notice packets were deemed undeliverable. (*Id*. at ¶ 7.) The highest settlement amount is estimated to be $2,756.77, the lowest settlement amount is estimated to be $9.79, and the average settlement amount is estimated to be $465.88. (*Id*. at ¶ 16.)

During the administration, the settlement administrator received requests from 17 individuals to be included in the class. (Supplemental Declaration of Chantal Soto-Najera on behalf of CPT Group, Inc. Regarding Settlement Administration ("Supplemental Soto-Najera Dec.") ¶ 2.) Defendant confirmed that those additional individuals should be included in the class such that the class is now comprised of 819 members. (*Ibid*.) Notice packets were mailed to each of these additional 17 individuals, with a 60-day response deadline. (*Ibid*.)

The settlement administrator declares that as of June 28, 2024, there were no objections, disputes class members to the information stated in the notice packets, or requests for exclusion. (Supplemental Soto-Najera Dec., ¶¶ 3-4.) Also as of that date, the settlement administrator reports a total of 819 settlement class members, representing 100 percent of the class. (*Id*. at ¶ 6.) The court finds that the settlement administrator's supplemental declaration adequately addresses the issue expressed by the court at the prior hearing on this motion for final approval of the class and representative action.

Plaintiff requests an incentive award in the amount of $2,500. The class representative filed a declaration detailing his participation in the action. Specifically, Plaintiff declares that he spent approximately 40 hours in connection with this action, including discussing the case with class counsel, gathering and reviewing documents, providing documents to class counsel, preparing for mediation, and reviewing settlement documents. (Declaration of Plaintiff Thomas Beltran in Support of Motion for Approval of Class and Representative PAGA Action Settlement, ¶¶ 5-12.)

The class representative's efforts in the case resulted in a benefit to the class. 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].) Accordingly, the court finds the incentive award is warranted and it is approved.

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 seeks attorney fees of $218,990 (1/3 of the escalated gross settlement amount). Plaintiff's counsel provides evidence demonstrating a lodestar of $129,060. (Declaration of Jamie M. Loos in Support of Motion for Final Approval of Class and Representative PAGA Action Settlement ("Loos Dec."), ¶¶ 40-42.) This results in a multiplier of 1.7. The court finds the attorney fees are reasonable as a percentage of the common fund and they are approved.

Plaintiff's counsel also requests costs in the amount of $21,426.40. Plaintiff's counsel provides evidence of incurred costs in that amount and the costs are approved. (Loos Dec., ¶ 45.) The settlement administration costs are also approved in the amount of $12,500. (Soto-Najera Dec., ¶ 19.)

IV. Conclusion

Accordingly, the motion for final approval of the class and representative action is GRANTED.

DATED: July 19, 2024

Honorable Theodore C. Zayner
JUDGE OF THE SUPERIOR COURT