

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA**

Tentative Ruling

202100561570CUOE: Pamela Louise Hernandez vs. AB Staffing Solutions LLC

02/25/2025 in Department 41

Motion for Final Approval of Class Action and PAGA Settlement

Motion: Plaintiff Pamela Louise Hernandez’s Motion for Final Approval of Class Action and Representative PAGA Action Settlement (Unopposed)

Tentative Ruling: The Court is inclined to rule as follows:

1. Grant Plaintiff Louise Hernandez’s request for final approval of approval of her class action and representative PAGA action settlement (“Settlement Agreement”) with Defendant Defendant AB Staffing Solutions, LLC.
2. Approve the proposed awards of attorney’s fees and costs to Class Counsel, the Settlement Administrator’s costs, the proposed service award to Plaintiff Hernandez, and the proposed distribution of PAGA penalties (75% to the Labor & Workforce Development Agency (“LWDA”) and 25% to Aggrieved Employees, which is the default distribution set forth in Labor Code §2699(i) at the time the Settlement Agreement was entered into), and execute the proposed order.
3. Enter judgment in conformity with the order granting the motion.

I. Grounds:

Plaintiff moves for an order (1) certifying a class for settlement purposes only; (2) approving the Class Action and PAGA Settlement Agreement entered into between Plaintiff and Defendant AB Staffing Solutions, LLC (“AB Staffing”); (3) finding that the Class Members were given adequate notice; (4) appointing Plaintiff Hernandez as Class Representative for settlement purposes, and approving a service payment of \$5,000 to her; (5) appointing Moon Law Group, PC as Class Counsel for settlement purposes, and approving a payment of \$70,000 in fees and \$18,640.94 in costs to Class Counsel; (6) appointing Simpluris, Inc. (“Simpluris”) as Settlement Administrator, and approving a payment of \$8,421 to Simpluris; (7) approving payment of \$7,500 to the LWDA and \$2,500 to the Aggrieved Employees, and barring any other claims for the Released PAGA claims; (8) entering judgment; and (9) retaining jurisdiction to enforce the Settlement and Judgment and address related matters. No opposition was filed.

II. Background and Settlement Terms

Plaintiff’s Second Amended Class Action and Representative Action Complaint alleges, eight claims on behalf of the class and her ninth cause of action for civil penalties under PAGA.

Defendant AB Staffing is an Arizona LLC with its principal place of business in Ventura County. Plaintiff worked for AB Staffing as a sterile processing technician until September 2021. During the statutory period, AB Staffing classified Plaintiff as non-exempt and paid her

an hourly wage. The original complaint was filed on December 23, 2021, the first amended complaint was filed on April 8, 2024, and the operative second amended complaint was filed on October 16, 2024.

The proposed settlement will create a non-reversionary Gross Settlement Amount (“GSA”) of \$210,000.¹ Of this \$210,000 (a) \$5,000 will go to Plaintiff as a service payment; (b) \$70,000 (or one-third of the GSA) will go attorney’s fees and up to \$18,640.94 will go to out-of-pocket litigation costs; (c) \$8,421 will go to settlement administration costs; (d) \$10,000 will be allocated to PAGA penalties, of which \$7,500 will be distributed to the LWDA and \$2,500 will be distributed to the Aggrieved Employees on a pro rata basis (i.e., based on workweeks worked during the PAGA period); and (e) the remainder, the Net Settlement Amount (“NSA”) of approximately \$97,938 will be distributed to approximately 40 Class Members based on workweeks during the class period, for an average recovery of approximately \$2,448 for each Class Member.

The Settlement’s key terms include:

1. “Class” means all persons employed by AB Staffing in California, and classified as a non-exempt hourly employee who worked for AB Staffing and was assigned to Ventura County Medical Center (“VCMC”) for at least one day during the Class Period. “Class Period” means the period commencing on December 23, 2017, to July 10, 2023.
2. “Aggrieved Employees” is defined as: all persons who worked for AB Staffing as a non-exempt, hourly employee in California and was assigned to VCMC for at least one day at any time during the PAGA Period. (The “PAGA Period” is December 19, 2020, to July 10, 2023.)
3. Funding: AB Staffing shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than thirty (30) days after the Effective Date.
4. Net Settlement Amount: The “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment. The remainder is to be paid to Participating Class Members as “Individual Class Payments.”

¹ There is an “escalator clause” in Section 8 of the Settlement Agreement on page 21 which might potentially increase (but not decrease), and provides that:

“Defendant represents the Class consists of 40 persons as of July 10, 2023, who worked 806 Workweeks throughout the class period. If the total number of Workweeks worked by Class Members during the same Class Period exceeds 806 by ten percent (10%) (i.e., if the actual number of Workweeks worked by Class Members exceeds 806 by more than an additional 81 Workweeks), then the Gross Settlement Amount shall increase, such that if the actual Workweeks worked by Class Members exceeds 887 (806 + 81) Workweeks, then the Gross Settlement Amount shall increase by one percent (1 %) for every one percent (1 %) increase in Workweeks exceeding the 887 workweek threshold.”

5. Individual Class Payment: Each Participating Class Member will be entitled to receive an Individual Settlement Payment, which will be paid out of the Net Settlement Amount.
6. Tax Treatment: One third of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. Two thirds of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms.
7. Released Parties: AB Staffing, including each of its past, present, and future parent companies, subsidiaries, affiliated and related companies, successors, and predecessors, as well as their respective past, present, and future owners, officers, directors, shareholders, employees, managers, agents, principals, representatives, administrators, accountants, auditors, consultants, fiduciaries, insurers and reinsurers, company-sponsored employee benefit plans, and attorneys, both individually and in their official capacities.
8. Release: Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been alleged based on the facts contained in the Operative Complaint, and (b) all PAGA claims that were, or reasonably could have been alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any of Section 1542 of the California Civil Code.
9. Uncashed Settlement Checks: For any Class Member whose Individual Class Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California State Controller's Office pursuant to California's Unclaimed Property Law. (Id. at ¶ 4.3.3)
10. Class Notice: The Class Notice—which was translated, mailed, and sent to all 40 Class Members—set forth, in plain terms, a statement of case, the terms of the Settlement, the approximate amounts of attorneys' fees, costs, penalties, and service payment being sought, and an explanation of how the settlement allocations are calculated. (Settlement Agreement, Ex. A) The Notice explained the procedure for disputing Workweeks and/or PAGA Pay Periods, opting out, or objecting. The Administrator undertook its best efforts to ensure the Notice was provided to the current address of each Class Member, including conducting a national change of address search and re-mailing the notice to updated addresses. Of the 40 Notices mailed, 2 have been returned, 1 were remailed, and 1 is currently undeliverable. The Response Deadline has passed, and the Administrator has not received any Requests for Exclusion, objections, or disputes.

On June 15, 2023, the parties participated in private mediation with professional neutral mediator Rottman. The negotiations were at arm's length and, although conducted in a professional manner, were adversarial.

Class Counsel conducted a thorough investigation into the facts of this case. Based on the foregoing document and information exchange and on their own independent investigation and evaluation, Class Counsel are of the opinion that the proposed settlement is fair, reasonable, and adequate. Furthermore, Class Counsel believes, in light of all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, and the defenses that AB Staffing may assert both to certification and on the merits, that the settlement is in the best interests of Class Members. Indeed, the \$210,000.00 Gross Settlement Amount represents an estimate of approximately 89% of AB Staffing's maximum potential overall liability of \$234,719.48.

The Court notes that in preparation for mediation, Class Counsel reviewed and analyzed the information and documents that AB Staffing had produced, including documents regarding its wage-and-hour policies and practices as well as the sample time and pay records. Class Counsel retained a statistics expert to analyze the records produced and prepare a damage analysis prior to mediation. The sample size of time and pay records (representing approximately 20% of total shifts worked in the Class Period) allowed the expert to prepare an analysis with a high degree of certainty. In conjunction with their extensive factual investigation, Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. Accordingly, Class Counsel were able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. Thus, Plaintiff's and Class Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement Agreement.

III. Legal Standards

The primary issue to address is whether the proposed settlement is "fair, reasonable, and adequate," as outlined in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. This involves considering 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 state 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." (*Id.* at 1801; *see also Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 534-535.)

Since this case involves the settlement of PAGA claims, the Court must also consider the relevant criteria under that statute. The Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, *disapproved on another ground in Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, 684-692, provides guidance on this matter. In *Moniz*, the court ruled that the "fair, reasonable, and adequate" standard used for class action settlements also applies to PAGA settlements (*Id.*, at 64). The court further held that the trial court must evaluate "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees" (*Id.*, at 64-65).

California law generally favors settlement (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273). However, the court cannot approve a settlement that goes against the law or public policy (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127). The court must ensure the judgment is fair and just, and cannot merely approve a settlement without proper review (*California State Auto. Assn. InterIns. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664). Thus, in cases involving public rights, a more thorough judicial review is required, even if it complicates the settlement process (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63).

IV. Discussion

Fairness, adequacy, and reasonableness are presumed, as here, when: “(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.” (*Dunk, supra*, 48 Cal.App.4th at p. 1802.)

Here, the Settlement Agreement is the result of vigorous, adversarial, non-collusive, and arm’s-length negotiations between the Parties. (Moon Decl., ¶ 13.) Plaintiff’s Counsel performed an extensive investigation into the facts, claims, and defenses at issue, including by reviewing the governing law, analyzing Defendant’s written policies, financial records, and a sampling of time/pay data for the Class, and retaining a statistics expert to prepare a damage analysis regarding Defendant’s potential liability. (*Id.* at ¶¶ 11–12.) Plaintiff’s Counsel used the foregoing in settlement negotiations with Defendant’s counsel and discussions regarding the strengths and weaknesses of the claims and defenses, which resulted in the proposed Settlement. (*Id.* at ¶ 13.)

The Court further notes in addition Plaintiff’s counsel Kane Moon’s declaration at ¶¶22-29 explains, in some detail, how Plaintiff’s counsel reached an estimate of \$234,719.48 for AB Staffing’s maximum potential liability, and in ¶¶31-34 explains why the GSA of \$210,000 is reasonable. This explanation appears to provide further support for the *Dunk* presumption of reasonableness.

Based upon what is before the Court, the proposed Settlement of \$210,000.00 therefore represents a substantial recovery when compared to Plaintiff’s reasonably forecasted recovery. (Moon Decl., ¶ 35.) When considering the risks of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to establish liability, and the probability of appeal, it is clear the Settlement amount of \$210,000.00 is within the “ballpark” of reasonableness, and that preliminary settlement approval is appropriate. (*Id.*)

The Class Members’ response to the Settlement is overwhelmingly positive. The Response Deadline for the majority of Class Members to opt-out, or object was January 31, 2025. To date, the Administrator has not received any Requests for Exclusion, Objections, or Disputes. Overall, therefore, there is strong support from the Class for final settlement approval.

For those reasons, the Court finds the terms of the Settlement Agreement to be fair, reasonable and adequate.

V. Attorney Fees and Other Costs

The amount of attorney's fees sought by Plaintiff's counsel (\$70,000, or one-third of the \$210,000 GSA) appears reasonable, and within the range of fees routinely approved in similar employee class actions. Class Counsel's declarations indicate that using a lodestar method based on hours spent and their hourly rates results in a lodestar amount of \$101,480 (*see* Moon Decl., ¶¶57), or an amount over \$31,000 greater than the actual fees requested by Class Counsel. Accordingly, the Court finds the attorney's fees are reasonable and are approved.

The payment of a \$5,000 service award to Plaintiff Hernandez for her participation as class representative in this action does not appear unreasonable. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff's declaration indicates she has spent approximately 35 to 40 hours assisting class counsel (*see* Hernandez Decl., ¶22), and these efforts, when combined with the risks inherent to acting as a representative plaintiff in a class action (*id.* at ¶21), appear sufficient to make the requested service award appropriate. The service fee is approved.

Class counsel's claimed litigation costs of \$18,640.94 are itemized by Class Counsel (*see* Moon Decl., Exh. 4 [costs sheet]) and none of the costs claimed appear unreasonable on their face. The litigation costs are therefore approved.

The requested \$8,421.00 payment to Settlement Administrator Simpluris is supported by ¶16 of Simpluris Case Manager Mary Butler's declaration. This payment appears reasonable and therefore is approved.

VI. Conclusion

The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and adequate to justify final approval. The allocation of PAGA penalties among the aggrieved employees (based on pay periods) is reasonable.

The motion is granted. The Court will sign the proposed order.

The court sets a Final Report Hearing for **September 12, 2025 at 8:35 a.m.**, to confirm that distribution efforts are fully completed, including the distribution of uncashed aggrieved employee checks after 180 days, that the Administrator's work is complete, and that the court's file thus may be closed. The parties must report to the court the total amount that was actually paid to the aggrieved employees. All supporting papers must be filed at least 10 days before the Final Report Hearing date.

Plaintiff is ordered to give notice of the ruling to the LWDA and to defendant.