SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court, Department 22

JUDICIAL OFFICER: HONORABLE LAURI A. DAMRELL

Courtroom Clerk: V. Aleman
Court Attendant: J. Flores

CSR: NONE

34-2021-00312027-CU-OE-GDS

May 3, 2024
9:00 AM

Oscar Aguilar vs. American Pasteurization Company, LLC, a limited liability company

MINUTES

APPEARANCES:

Plaintiff Oscar Aguilar represented by Justin F Marquez Special Appearing Benjamin H. Haber via virtual conference.
Plaintiff On behalf of all others similarly situated represented by Justin F Marquez Special Appearing Benjamin H. Haber via virtual conference.

Other Appearance Notes: Counsel Christopher L. Nickels (Pro Hac Vice) and Tyler J. Roth (Pro Hac Vice) for Defendant (Via Virtual Appearance).

NATURE OF PROCEEDINGS: Case Management Conference; Hearing on Motion for Preliminary Approval of Settlement

The above referenced Counsel appeared on behalf of the Parties. Having met and conferred, the Parties agreed to revise the Agreement's releases consistent with the Court's recommendation. Counsel also brought to the Court's attention that the Parties amended the Agreement to increase Counsel's reimbursement of costs to $22,000. (Marquez Supp. Decl., ¶ 2.) The Court preliminarily approves this amount.

The Court otherwise adopts its Tentative Ruling. In advance of the May 24, 2024 Compliance Hearing, Plaintiff shall file a revised Notice and redline copy for the Court's review no later than **May 17, 2024**. In addition, Plaintiff shall also file a revised Proposed Order for the Court's review no later than **May 17, 2024.** If Plaintiff adequately addresses the Court's concerns, no appearance will be required and the Court will sign the Proposed Order, attaching the revised Notice.

TENTATIVE RULING:

APPEARANCE REQUIRED.

Parties requesting services of a court reporter will need to arrange for private court reporter services at their own expense, pursuant to Government code §68086 and California Rules of Court, Rule 2.956.

Requirements for requesting a court reporter are listed in the ***Policy for Official Reporter Pro Tempore*** *available on the Sacramento Superior Court website at https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf. Parties may contact Court-Approved Official Reporters Pro Tempore by utilizing the list of Court Approved Official Reporters Pro Tempore available at https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.Pdf*

A ***Stipulation and Appointment of Official Reporter Pro Tempore*** *(CV/E-206) is required to be signed by each party, the private court reporter, and the Judge prior to the hearing, if not using a reporter from the Court's Approved Official Reporter Pro Tempore list, Once the form is signed it must be filed with the clerk.*

If a litigant has been granted a fee waiver and requests a court reporter, the party must submit a ***Request for Court Reporter by a Party with a Fee Waiver*** *(CV/E-211) and it must be filed with the clerk at least 10 days prior to the hearing or at the time the proceeding is scheduled if less than 10 days away. Once approved, the clerk will be forward the form to the Court Reporter's Office and an official reporter will be provided.*

The parties are encouraged to attend via Zoom with the links below:
To join by Zoom link - https://saccourt-ca-gov.zoomgov.com/my/sscdept22
To join by phone dial (833) 568-8864 ID 16184738886

Please note that the Complex Civil Case Department now provides information to assist you in managing your complex case on the Court website at https://www.saccourt.ca.gov/civil/complex-civil-cases.aspx. The Court strongly encourages parties to review this website regularly to stay abreast of the most recent complex civil case procedures. Please refer to the website before directly contacting the Court Clerk for information.

TENTATIVE RULING:

Plaintiff Oscar Aguilar's ("Plaintiff") motion for preliminary approval is UNOPPOSED and tentatively GRANTED, subject to the clarification requested below regarding the releases. Accordingly, the Parties' **APPEARANCE IS REQUIRED**.

Hearing on Motion for Final Approval of Settlement is scheduled for 08/30/2024 at 9:00 AM in Department 22 at Gordon D. Schaber Superior Court.

Status Conference (Compliance Hearing) is scheduled for 05/24/2024 at 10:30 AM in Department 22 at Gordon D. Schaber Superior Court.

Moving counsel's Notice of Motion does not provide notice of the Court's tentative ruling system, as required by Local Rule 1.06. Moving counsel is directed to contact opposing counsel and advise them of Local Rule 1.06, the Court's tentative ruling procedure, and the manner to request a hearing.

The Court has provided specific direction on the information and argument the Court requires to grant a motion for preliminary approval of a class action settlement. The Parties are urged to carefully review the Checklist for Approval of Class Action Settlements and fully comply with each applicable item to ensure a prompt ruling from the Court.

Background

On November 30, 2021, Plaintiff filed a putative wage-and-hour class action complaint against Defendant American Pasteurization Company, LLC ("Defendant") 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; and (7) unfair business practices. On December 2, 2021, Plaintiff sent notice to Defendant and the California Labor & Workforce Development Agency ("LWDA") alleging similar wage-and-hour violations pursuant to the Private Attorneys General Act ("PAGA"). (Marquez Decl., ¶ 4.) On February 25, 2022, Plaintiff separately filed a PAGA-only action against Defendant. (*Ibid.*, Exh. 1.) On November 18, 2022, Plaintiff amended his class action complaint to add the PAGA cause of action (the "Complaint") and later dismissed the separately filed PAGA action. (*Ibid.*)

Plaintiff now moves for preliminary approval of the Parties' Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement" and "Agreement"). (Marquez Decl., ¶ 8, Exh. 2 ("SA").) Concurrent with the filing of this motion, Plaintiff provided a copy of the moving papers to the LWDA. (*Id.*, ¶ 10; 4-11-24 Proof of Service.)

Legal Standard

The law favors the settlement of lawsuits, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. (See *Neary v. Regents of Univ. of Cal* (1992) 3 Cal.4th 273, 277-281; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 52.) However, a class action may not be dismissed, compromised, or settled without approval of the court, and the decision to approve or reject a proposed settlement is committed to the court's sound discretion. (See Cal. Rules of Court, Rule 3.769; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 (*Wershba*).)

In determining whether to approve a class settlement, the court's responsibility is to "prevent fraud, collusion or unfairness to the class" through settlement because the rights of the class members, including the named plaintiffs, "may not have been given due regard by the negotiating parties." (*Consumer Advocacy Group, Inc. v. Kintetsu Enters. of Am.* (2006) 141 Cal.App.4th 46, 60.) The court must independently determine "whether the settlement is in the best interests of those whose claims will be extinguished" and "make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133.) The burden of establishing the fairness and reasonableness of the settlement is on the proponent. (*Wershba, supra,* 91 Cal.App.4th at p. 245; see also *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135 1165-66.)

The Court does not rubber stamp these motions, but rather serves as a guardian of absent class members' rights to ensure the settlement is fair. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 95.) "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice." (*7-Eleven, supra*, 85 Cal.App.4th at p. 1145.) "A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, even if 'the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,' this is no bar to a class settlement because 'the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.'" (*Wershba, supra*, 91 Cal.App.4th at p. 250, citations omitted.) The court's primary objective for preliminary approval is to establish whether to direct notice of the proposed settlement to the class, invite the class's reaction, and schedule a final fairness hearing. (Rubenstein et al., Newberg on Class Actions (6th ed. 2023) § 13:10.)

Provisional Class Certification

If the class has not yet been certified, part of the motion for preliminary approval will include a request for provisional certification for purposes of settlement only. (See Cal. Rule of Court, Rule 3.769.) Although the provisional process is less demanding than a traditional motion for class certification, a trial court reviewing an application for preliminary approval of a settlement must still find that the normal class prerequisites have been met. (See *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625-627 (1997); in accord, *Carter v. City of Los Angeles* (2014) 224 Cal.App.4th 808, 826.)

Here, Plaintiffs seek provisional certification of the following class: "all persons employed by APC, whether directly or indirectly, in California, or employed by the staffing agency IMKO and assigned to work at [Defendant]'s Sacramento Plant in California, and classified as hourly paid or non-exempt employees during the Class Period." (SA, ¶ 1.5.) The Class Period is "the period from June 5, 2017 to November 23, 2022." (*Id.*, ¶ 1.12.)

Plaintiff argues that provisional certification is appropriate because (1) the class of approximately 1,460 individuals is sufficiently numerous and ascertainable from Defendant's business records; (2) common issues of law and fact concerning Defendant's employment policies and practices predominate; (3) Plaintiff's claims are typical of the class because Plaintiff was subject to the same policies and practices as other similarly situated employees; (4) Plaintiff is an adequate representative because Plaintiff has no conflicts and has retained qualified and experienced counsel; and (5) and a class action is superior to a multiplicity of individual actions. (Mot., pp. 17:1-19:13.) The Court finds Plaintiff's arguments persuasive and provisionally certifies the Class for settlement purposes for the reasons specified in Plaintiff's moving papers.

Class Representative and Class Counsel

Plaintiff is preliminarily appointed as Class Representative. (SA, ¶ 1.13.) Justin F. Marquez, Benjamin H. Haber, and Maxim Gorbunov of Wilshire Law Firm, PLC, are appointed as Class Counsel ("Counsel"). (*Id.*, ¶ 1.6.)

Fair, Adequate, and Reasonable Settlement

Before approving a class action settlement, the Court must find that the settlement is "fair, adequate, and reasonable." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) The Court considers such factors 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 class members to the proposed settlement." (*Id.*) "[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." (*Id.* at p. 1802.)

Under the terms of the Agreement, Defendant denies liability, but agrees to pay a Gross Settlement Amount ("GSA") of $505,000. (SA, ¶¶ 1.22, 2.2, 3.1.) Defendant will separately pay any and all employer payroll taxes owed on the wage portions of the Individual Class Payments. (*Id.*, ¶ 3.1.) The following amounts will be paid from the GSA:

- A Class Representative Service Payment to Plaintiff of not more than $10,000 (*id.*, ¶ 3.2.1);
- A Class Counsel Fees Payment of not more than 33 1/3%, which is currently estimated to be $168,333.33 and a Class Counsel Litigation Expenses Payment of not more than $15,000 (*id.*, ¶ 3.2.2);
- An Administrator Expenses Payment not to exceed $18,000 except for a showing of good cause and as approved by the Court (*id.*, ¶ 3.2.3);
- PAGA Penalties in the amount of $10,000, with 75% ($7,500) allocated to the LWDA PAGA Payment and 25% ($2,500) allocated to the Individual PAGA Payments (*id.*, ¶ 3.2.5).

The remaining amount – the Net Settlement Amount ("NSA") – is approximately $283,666.67. (SA, ¶ 1.28.) The NSA will be distributed to Participating Class Members on a pro-rata basis, calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (*Id.*, ¶¶ 1.23, 3.2.4.) Similarly, the Aggrieved Employees' 25% portion of the PAGA Payment will be allocated on a pro-rata basis, calculated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. (*Id.*, ¶¶ 1.24, 3.2.5.1.)

For tax purposes, 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims and will be reported on an IRS W-2 Form. (SA, ¶ 3.2.4.1.) 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties and will be reported on IRS 1099 Forms. (*Ibid.*) The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. (*Id.*, ¶ 3.2.5.2.) The Administrator will issue checks for the Individual Class Payments and Individual

PAGA Payments, which will remain valid for at least 180 days. (*Id.*, ¶ 4.4.1.) For any Participating Class Member and/or Aggrieved Employee whose individual settlement check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member and/or Aggrieved Employee. (*Id.*, ¶ 4.4.3.)

No later than 15 days after the Court grants preliminary approval, Defendant will deliver the Class Data to the Administrator. (SA, ¶ 4.2.) Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation. (*Id.*, ¶ 7.4.2.) Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. (*Id.*, ¶ 7.4.3.) If no forwarding address is provided, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. (*Ibid.*) Class Members will have 45 days after the Administrator mails Notice to request exclusion, challenge the calculation of workweeks, and/or object to the settlement. (*Id.*, ¶¶ 1.43, 7.4.4., 7.5.1, 7.6, 7.7.2.) The deadline will be extended an additional 14 calendar days beyond the Response Deadline for all Class Members whose notice is re-mailed. (*Id.*, ¶¶ 1.43, 7.4.4.)

Effective on the date when Defendant fully funds the GSA and all employer payroll taxes, Plaintiff and Class Members will release claims against all Released Parties as follows:

- Plaintiff is subject to a general release. (SA, ¶¶ 5, 5.1.)
- For Participating Class Members Who Are Not Aggrieved Employees: "All class members who do not opt-out will release Defendant from any and all claims asserted in the Operative Complaint, and any future amendments to the Operative Complaint, including, but not limited to, state wage and hour claims for any and all violations of California's Labor Code and Unfair Competition Law based on Defendant's failure to pay for all hours worked (including minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to furnish accurate itemized wage statements, failure to indemnify employees for expenditures, civil penalties under PAGA based on the alleged Labor Code violations, and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including, but not limited to, the California Labor Code and the applicable Wage Orders." (*Id.*, ¶¶ 5, 5.2.)
- For Non-Participating Class Members Who Are Aggrieved Employees: "All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice." (*Id.*, ¶¶ 5, 5.3.)

Generally, in cases involving both class and PAGA claims, the settlement should include separate releases for the Class Members and the Aggrieved Employees. The class release must be fairly tailored to the claims that were or ***reasonably*** could be asserted in the lawsuit ***based on the facts alleged in the complaint***. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538-539 ["Releases must be appropriately tethered to the complaint's factual allegations;" "[A] court cannot release claims that are outside the scope of the allegations of the complaint."].) The PAGA release must be tethered to the PAGA claims that were or reasonably could have been alleged based on the facts alleged in the LWDA Notice. (See *Id.*, at p. 541, fn. 5; *Uribe v. Crown Building Maintenance Co.* (2021) 70 Cap.App.5th 986, 1005.)

<u>The Parties' structure of these releases is somewhat confusing. The heading describes the apparent Class release as applying to "Participating Class Members Who Are Not Aggrieved Employees" but then purports to release any PAGA claims asserted in the Operative Complaint. As drafted, none of these release provisions appear to apply to Participating Class Members who are also Aggrieved Employees. The Agreement indicates that "[t]he descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement." (SA, ¶ 12.15.) Accordingly, the Court could construe this section as actually representing a release by Participating Class Members, even if they are also an Aggrieved Employee. However, the Court believes the cleaner approach would be to: (1) revise paragraph 5.2 to remove the "Who Are Not Aggrieved Employees" language from the heading and the "civil penalties under PAGA based on the alleged Labor Code violations" language; and (2) revise paragraph 5.3 to remove the "Non-Participating Class Members Who Are" language from both the heading and the paragraph. This would create separate class and PAGA releases, consistent with the governing case law, and ensure that all Participating Class Members and all Aggrieved Employees are covered by a release. The Court also notes that this is already how the PAGA release is described in the Notice. (SA, Exh. A, pp. 27-28.) The Parties shall be prepared to discuss the Court's concerns, including whether they agree to the Court's proposed revisions.</u>

Before mediation, the Parties informally exchanged documents and information. (Marquez Decl., ¶ 5.) Defendant produced a sample of time and pay records for class members, the total number of current and former employees, and documents reflecting its wage and hour policies and practices during the class period. (*Ibid.*) After reviewing documents regarding Defendant's wage and hour policies and practices, and analyzing Defendant's timekeeping and payroll records, Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. (*Id.*, ¶ 6.) On November 23, 2022, the Parties participated in private mediation with experienced class action mediator, Steve Cerveris, Esq. (*Id.*, ¶ 7.) Counsel attests that the settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Ibid.*) The Parties did not reach a settlement at the mediation, however, the Parties engaged in additional private settlement negotiations that ultimately led to the settlement of the action. (*Ibid.*)

Based on an analysis of the facts and legal contentions in this case, as well as documents and information from Defendant, Counsel evaluated Defendant's maximum exposure. (Marquez Decl., ¶ 17.) With the assistance of a statistics expert, Counsel created a damages model to evaluate the realistic range of potential recovery for the class. (*Ibid.*) The class contains 102 employees of Defendant and 1,358 employees of the staffing agency IMKO Workforce Solutions

("IMKO") who worked at Defendant's Sacramento plant. (*Ibid.*) The damages model is based on the following benchmarks: 1,460 total class members; approximately 686 terminated class members during the 3-year statutory period; approximately 13,736 total workweeks; approximately 69,261 total shifts worked by the class; approximately 7,776 PAGA pay periods; and an average hourly rate of $20.61. (*Ibid.*)

For Plaintiff's unpaid wages allegation, Counsel estimated Defendant's maximum exposure to be $424,660.81 (13,736 weeks * $20.61 hourly rate * 1.5 overtime rate * 1 hour of unpaid work per week), but Counsel discounted this figure by 80% to account for the difficulty of prevailing on a motion for class certification and a trial on the merits because liability depends on whether Defendant knew or should have known that class members were working off-the-clock, yielding a realistic damage estimate of $84,932.16. (Marquez Decl., ¶ 19.) Counsel's calculation for unpaid wages appears to be incorrect based on the stated assumptions, but the error is de minimis. For Plaintiff's meal period claim, Counsel estimated Defendant's maximum exposure to be $770,833.37 (assuming 54% of all meal breaks had violations); however, Counsel discounted this figure by 80% to account for the difficulty of certifying and proving meal period claims, as well as Defendant's contention that the claim lacks merit, yielding a realistic damage estimate of $154,166.67. (*Id.*, ¶ 20.) For Plaintiff's rest period claim, Counsel estimated Defendant's maximum exposure to be $713,734.61 (69,229 shifts * 0.50 * $20.61); however, Counsel discounted this figure by 80% to account for the difficulty of certifying and proving rest period claims, particularly because rest periods do not have to be recorded, and to account for the possibility of class members voluntarily choosing to forego a rest period, yielding a realistic damage estimate of $142,746.92. (*Id.*, ¶ 21.) In sum, Counsel estimated that Plaintiff's maximum recovery for the off-the-clock claim, meal period violations, and rest period violations is $1,909,228.78, but, after factoring in the risk and uncertainty of prevailing at certification and trial, Counsel estimated that Plaintiff's realistic estimated recovery for the non-penalty claims is $381,845.76. (*Id.*, ¶ 22.)

With respect to Plaintiff's derivative claims for statutory and civil penalties, Plaintiff estimated that Defendant's maximum potential liability is $4,612,015.40, including waiting time penalties of $3,393,230.40 (686 * 20.61 * 8 hours * 30 days); inaccurate wage statements of $441,185 based on approximately 3,734 pay periods within the 1-year statute, and $777,600 for PAGA violations based on the Court assessing a $100 penalty for initial violations for all 7,776 pay periods within the 1-year statute. (Marquez Decl., ¶ 23.) However, Counsel believed that it would be unrealistic to expect the Court to award the full penalties given Defendant's defenses, the contested nature of Plaintiff's claims, and the discretionary nature of penalties. (*Ibid.*) Considering that the underlying claims are realistically estimated to be $381,845.76, such a disproportionate award would also raise due process concerns. Weighing these factors and applying a discount of 90% to account for the risk and uncertainty of prevailing at trial, Counsel arrived at $461,201.54 for statutory and civil penalties. (*Ibid.*) Accordingly, Defendant's total realistic exposure is $843,047.30. The $505,000 GSA represents approximately 60% of this realistic exposure. (*Id.*, ¶ 24.)

Counsel attests to their extensive experience in similar cases. (Marquez Decl., ¶¶ 39-46, 49-51.) Counsel attests to their belief that the settlement is fair, reasonable, and adequate. (*Id.*, ¶ 16.) Based on the foregoing, the Court preliminarily finds, subject to the final fairness hearing, that the Settlement is within the ballpark of reasonableness and is entitled to a presumption of fairness and that all relevant factors support preliminary approval.

PAGA Payment

The Agreement provides for a PAGA Penalties in the amount of $10,000, with 75% ($7,500) allocated to the LWDA PAGA Payment and 25% ($2,500) allocated to the Individual PAGA Payments to the Aggrieved Employees. (SA, ¶ 3.2.5.) The Aggrieved Employees are "all persons employed by [Defendant], whether directly or indirectly, in California, or employed by the staffing agency IMKO Workforce Solutions ('IMKO') and assigned to work at [Defendant]'s Sacramento Plant in California, and classified as hourly paid or non-exempt employees during the PAGA period." (*Id.*, ¶ 1.4.) The PAGA Period means the period from December 2, 2020 to November 23, 2022. (*Id.*, ¶ 1.31.)

Counsel estimated Defendant's maximum exposure for PAGA penalties is $777,600 based on the Court assessing a $100 penalty for initial violations for all 7,776 pay periods within the 1-year statutory period. (Marquez Decl., ¶ 23.) However, Counsel believed that it would be unrealistic to expect the Court to award the full penalties given Defendant's defenses, the contested nature of Plaintiff's claims, and the discretionary nature of penalties. (*Ibid.*) Weighing these factors and applying a discount of 90% to account for the risk and uncertainty of prevailing at trial, Counsel arrived at a realistic exposure of $77,760. (*Ibid.*) The $10,000 PAGA allocation represents approximately 12.9% of Defendant's realistic exposure. The Court finds the PAGA allocation reasonable under the circumstances and it is preliminarily approved.

Proposed Class Notice

The notice to Class Members must fairly apprise the prospective members of the terms of the settlement without expressing an opinion on the merits of the settlement. (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1164; see also Cal. Rule of Court, Rule 3.769.) "Whether a claimant would want to accept or reject the proposed settlement is a decision to be made by him independently and without influence or pressure from those competing parties who either favor or oppose the settlement." (*Phila. Hous. Auth. v. Am. Radiator & Std. Sanitary Corp.* (E.D. Pa. 1970) 323 F.Supp. 364, 378.)

Here, the Court finds Plaintiffs' proposed Notice fairly apprises the Class of the terms of the proposed settlement and their rights as prospective Class Members. (SA, Exh. A ("Notice").) However, the following issues must be addressed:

- The Notice includes the following language: "Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) APC has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees." (Notice, p. 25.) The Court finds this language is unnecessary and may improperly discourage class members from objecting to the settlement. Accordingly, it must be removed.
- If the Parties accept the Court's proposed revisions to the releases, the Notice must be revised accordingly. (Notice, p. 27-28.)

- Finally, the Notice should also notify Class Members that if they desire to appear remotely, they can join via the Department's Zoom link or phone number and provide that information. (Notice, p. 30.)

With these modifications, the Notice is approved.

Class Counsel Fees and Costs

The Settlement provides for attorney's fees payable to Class Counsel in an amount up to one-third of the GSA, for a maximum fees award of $168,333.33, plus actual costs and expenses not to exceed $15,000. (SA, ¶ 3.2.2.) Plaintiff argues that the requested award is reasonable as a percentage of the common fund and is in line with typical cases. (Mot., pp. 11:26-13:19.) Plaintiff further argues that this award is consistent with the fee-shifting provision of the Labor Code and supported by Counsel's experience, reputation, and ability. (*Id.*, pp. 13:20-14:18.)

The Court preliminarily approves the requested award. In moving for final approval, the Court expects Counsel to support their arguments with respect to this amount, including by providing information necessary to perform a lodestar analysis. (See *In re Activision Sec. Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1379; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 & fn. 13.; *Martin v. Ameripride Servs.* (S.D. Cal. June 9, 2011), 2011 WL 2313604 at *22 (collecting cases); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal 2010) 266 F.R.D. 482, 491 (same); see also *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 & n.11.)

The Court also preliminarily approves the Agreement's allocation for costs and expenses with the expectation that Counsel will provide a declaration, in moving for final approval, that shows actual costs. Counsel is advised that the Court views legal research fees for Lexis or Westlaw as an item of overhead, not as reimbursable costs.

Settlement Administrator

The Agreement provides for an Administrator Expenses Payment not to exceed $18,000 except for a showing of good cause and as approved by the Court. (SA, ¶ 3.2.3.). Counsel attests that the Parties selected Apex Class Action ("Apex") as the Settlement Administrator. (Marquez Decl., ¶ 11.) Apex estimates its costs will total $17,500. (*Id.*, ¶ 11, Exh 3.)

Apex is appointed as Settlement Administrator and the allocation is reasonable and preliminarily approved.

Class Representative Service Payment

The Agreement provides for a Class Representative Service Payment to Plaintiff of not more than $10,000. (SA, ¶ 3.2.1.) Plaintiff describes his efforts and estimates that he spent approximately 55 hours prosecuting this case. (Aguilar Decl., ¶¶ 6-9.) This service payment is preliminarily approved.

Final Approval Hearing

The Court will again review and consider the terms of this settlement at the time of the final approval hearing. The Court sets a Final Approval Hearing for **August 30, 2024, at 9:00 a.m**. If either party is unavailable on that date, the parties shall meet and confer to identify three other Fridays at 9:00 a.m. that work for the parties to schedule the hearing. They shall then submit those dates to the Court via email at Dept22@saccourt.ca.gov, and the Court will reschedule the hearing accordingly.

The briefing shall be filed in conformity with Code of Civil Procedure section 1005.

The Court sets a Compliance Hearing for **May 24, 2024**. Plaintiffs shall file a revised Notice and redline copy for the Court's review no later than **May 17, 2024**. In addition, if the Parties ultimately decide to revise the releases as discussed above, Plaintiff shall also file a revised Proposed Order evidencing that revision for the Court's review no later than **May 17, 2024.** If Plaintiff adequately addresses the Court's concerns, no appearance will be required and the Court will sign the Proposed Order, referencing the revised Notice.

The Court has ordered the Parties' appearance. The Parties are encouraged to appear via Zoom with the links below:

> *To join by Zoom link - https://saccourt-ca-gov.zoomgov.com/my/sscdept22*
> *To join by phone dial (833) 568-8864 ID 16184738886*

Parties requesting services of a court reporter may arrange for private court reporter services at their own expense, pursuant to Government code §68086 and California Rules of Court, Rule 2.956. Requirements for requesting a court reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf. The list of Court Approved Official Reporters Pro Tempore is available at https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.Pdf.

If you are not using a reporter from the Court's Approved Official Reporter Pro Tempore list, a Stipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) must be signed by each party, the private court reporter, and the Judge. The signed form must be filed with the clerk prior to the hearing.

If a litigant has been granted a fee waiver and requests a court reporter, the party must submit a Request for Court Reporter by a Party with a Fee Waiver (CV/E-211). The form must be filed with the clerk at least 10 days prior to the hearing or at the time the hearing is scheduled if less than 10 days away. Once approved, the clerk will forward the form to the Court Reporter's Office and an official reporter will be provided.

Counsel for Plaintiff is directed to notice all parties of this order.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Please note that the Complex Civil Case Department now provides information to assist you in managing your complex case on the Court website at https://www.saccourt.ca.gov/civil/complex-civil-cases.aspx. The Court strongly encourages parties to review this website regularly to stay abreast of the most recent complex civil case procedures. Please refer to the website before directly contacting the Court Clerk for information.

Certificate of Mailing is attached.

/s/ V. Aleman

By: V. Aleman, Deputy Clerk

Minutes of: 05/03/2024
Entered on: 05/07/2024

SUPERIOR COURT OF CALIFORNIA COUNTY OF SACRAMENTO	Reserved for Clerk's File Stamp **FILED** Superior Court of California County of Sacramento 05/03/2024 V. Aleman, Deputy
COURTHOUSE ADDRESS: Gordon D. Schaber Superior Court 720 Ninth Street, Sacramento, CA 95814	
PLAINTIFF/PETITIONER: Oscar Aguilar et al	
DEFENDANT/RESPONDENT: American Pasteurization Company, LLC, a limited liability company et al	
CERTIFICATE OF MAILING	CASE NUMBER: 34-2021-00312027-CU-OE-GDS

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 Minute Order (Case Management Conference; Hearing on Motion for Preliminary...) 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 Sacramento, 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.

Aaron A Buckley
Quarles & Brady LLP
101 W Broadway
9th Floor
San Diego, CA 92101-8285

Justin F Marquez
Wilshire Law Firm
3055 Wilshire BOULEVARD
FL 12
Los Angeles, CA 90010

Christopher L. Nickels
Quarles & Brady LLP
411 E Winsconsin Avenue, Suite 2350
Milwaukee, WI 53202

Dated: 05/08/2024

By: /s/ V. Aleman

V. Aleman, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO
720 9th Street, Room 101
Sacramento, CA 95814-1302
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Justin F. Marquez
Wilshire Law Firm
3055 Wilshire Boulevard, Floor 12
Los Angles, CA 90010

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