

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Sopheap Prak et al
Plaintiff/Petitioner(s)
VS.
Enovix Corporation et al
Defendant/Respondent
(s)

No. 22CV005846

Date: 06/06/2024

Time: 4:45 PM

Dept: 23

Judge: Michael Markman

ORDER re: Ruling on Submitted

Matter filed by Sopheap

Prak (Plaintiff) on

02/23/2024

The Court, having taken the matter under submission on 05/30/2024, now rules as follows:
CASE NAME and NO: Sopheap Prak, et al. v. Enovix Corp., et al.

22CV005846

MOTION: Motion for Final Approval of Class Action

ORDER:

The court approves the settlement as fair, reasonable, and adequate.

The requests for litigation costs and settlement administration fees are GRANTED. The requests for attorneys' fees and service award are GRANTED IN PART. The court approves attorneys' fees of 30% of the gross settlement amount and service awards of \$7,500 to each Plaintiff.

The parties should file a revised proposed order and judgment consistent with this tentative ruling and email a Word version to the Dept. 23 clerk. The proposed order and judgment shall comply with CRC 3.769(h) and include the requisite "recital," "finding," "order," and "judgment" language in a manner that clarifies the distinction between these elements. The proposed order and judgment should also include a proposed compliance hearing date, which can be any Thursday at 10:00am.

BACKGROUND

Plaintiffs Prak and Pimentel initiated this action on January 21, 2022, and filed the operative first amended complaint on July 11, 2022. The FAC alleges wage and hour violations under the Labor Code as well as claims for unfair competition and PAGA penalties.

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On November 9, 2022, Defendant Enovix Corporation filed a cross complaint against Defendant Legendary Staffing, Inc. Legendary Staffing answered the cross complaint on December 7, 2022, and its counsel successfully moved to be relieved thereafter. There is a related action between Enovix and Legendary Staffing: Legendary Staffing, Inc v. Enovix Corp., Case No. 23CV025233. (4/28/23 Order.)

Plaintiffs moved for preliminary approval of the settlement on October 6, 2023, and this Court (Judge Seligman) preliminarily approved the settlement on November 21, 2023.

A. Settlement

The settlement provides that Defendant Enovix Corporation will pay \$600,000 for resolution of the class and representative claims against it and Legendary Staffing. (Bokhour Decl., Ex. B at ¶¶ 33, 46, 52.)

Plaintiffs request awards of \$200,000 in attorneys' fees (1/3 of the gross settlement amount) and \$10,905.20 in litigation costs, service awards of \$10,000 to each Plaintiff, and settlement administration costs of \$7,500. (Fowler Decl., ¶ 18.) If approved, the resulting net settlement amount would be \$356,594.75. (Ibid.)

B. Notice

On January 12, 2024, the court-approved notice was provided to 156 putative class members. (Fowler Decl., ¶ 7 & Ex A.) One (1) notice has been deemed undeliverable. (Fowler Decl., ¶ 11.) After sending notice, four individuals requested to be included in the class. (Fowler Decl., ¶¶ 12, 13.) Three of the four individuals were permitted to join the class. (Ibid.)

The court (Judge Desautels) requested additional information regarding the fourth individual. (3/19/24 Order.) In response, the settlement administrator submitted a supplemental declaration, stating that the fourth individual was included in the settlement. (5/9/24 Cava Decl., ¶ 5.) Accordingly, the putative class is comprised of 160 individuals. (5/9/24 Cava Decl., ¶ 6.)

As of February 22, 2024, the settlement administrator has not received any requests for exclusion, objections, or disputes. (Hernandez Decl., ¶¶ 14-16; see also 5/9/24 Cava Decl., ¶ 6 [100% participation rate as of 5/9/2024].)

Thus, the average individual payment will be approximately \$2,228.72, and the average PAGA payment will be approximately \$7.91. (5/9/24 Cava Decl., ¶¶ 7, 8.)

LEGAL FRAMEWORK

Class action settlements must be approved by the court as "fair, adequate, and reasonable." (CRC 3.769, subd. (g); *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244.) In approving class action settlements, the court considers (1) the relative strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation of this dispute; (3) the risk of maintaining class status through trial; (4) the amount offered in settlement; (5) the

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extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel that settlement is reasonable; and (7) the presence or lack of any objections to the proposed settlement. (Id. at pp. 244-245; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

Representative litigants must submit any settlement of PAGA representative actions for court approval. (See Lab. Code, § 2699, subd. (1)(2).) Because the Labor & Workforce Development Agency (“LWDA”) is not present at the negotiating table, the court’s review of a PAGA settlement must make sure that the interests of the LWDA in civil enforcement are defended and that the settlement is fair, adequate, and reasonable under all the circumstances. (See *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133; see also Gov. Code, § 12652, subd. (e)(2)(B) [requiring False Claims Act qui tam settlements be “fair, adequate, and reasonable under all the circumstances”].)

The court therefore takes guidance from the context of class action settlements, which must also be found to be “fair, adequate, and reasonable.” (See, e.g., *Wershba*, supra, 91 Cal.App.4th at p. 244.) However, at least two factors are not analogous in the PAGA settlement context: risk of maintaining class action status and reaction of other aggrieved employees. (Cf. *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.) Class

action status is irrelevant because PAGA actions are not certified. The lack of objections is largely irrelevant because PAGA procedures provide no opportunity for absent aggrieved employees to offer their objections to the settlement. The parties must serve the LWDA with settlement papers, but the law provides no procedure or timeline for the LWDA to object. (Lab. Code, § 2699, subd. (1).)

DISCUSSION

The Court approves the settlement as fair, reasonable, and adequate. The settlement is entitled to a presumption of fairness. (*Dunk*, supra, 48 Cal.App.4th at p. 1802.) The settlement was reached through arm’s-length negotiations. (Bokhour Decl., ¶ 30.) The investigation and discovery are sufficient to allow counsel and the Court to act intelligently. (Bokhour Decl., ¶ 33; see also 11/14/23 Bokhour Decl., ¶¶ 4-6.) Counsel is experienced in similar litigation, and there are no objectors. (Fowler Decl., ¶ 16; see also 5/9/24 Cava Decl., ¶ 6.)

The Court approves the PAGA settlement—\$5,000 to be split between the LWDA and Aggrieved Employees—as fair, reasonable, and adequate. The notice provided to the LWDA is attached as Exhibit A to 11/20/23 Bokhour Declaration. (See *Accurso v. In-N-Out Burgers* (2023) 94 Cal.App.5th 1128; *LaCour v. Marshalls of California, LLC* (2023) 94 Cal.App.5th 1172.)

A. Attorneys’ Fees & Costs

Plaintiffs’ counsel requests an award of \$200,000 in attorneys’ fees, which represents 1/3 of the gross settlement amount, and \$10,905.25 in costs. (Bokhour Decl., ¶ 20.) The class noticed disclosed up to \$200,000 in fees and costs of up to \$15,000. (Fowler Decl., Ex. A at p. 3.)

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As to fees, counsel declares that the lodestar is \$201,037.50 based upon approximately 307.5 hours, which includes “an estimated 15 hours of [additional] work.” (Bokhour Decl., ¶ 21 & fn. 1.)

The Court approves a slightly reduced fee award of 30%. Here, Plaintiffs filed this action in January 2022 and reached a settlement by September 2022. (Settlement Agreement, ¶ 44.) While there was a subsequent dispute among the Defendants, there was no motion practice by Plaintiffs aside from preliminary approval, which had to be continued in order for Plaintiffs to provide additional information regarding discovery and certification. (10/31/23 Order.) Notably, the Court’s 10/31/23 Order identified “inconsistencies,” one of which included the fact that the settlement agreement provided that Plaintiffs’ service award would not exceed \$7,500, but the notice indicated that the award would be \$10,000. (Id., p. 2.) As discussed below, that inconsistency is repeated here.

The Court approves an award of \$10,905.25 in costs as reasonable and necessary. (Bokhour Decl., ¶ 25.)

The Court requires that 10% of the attorney fee award be kept in the settlement administrator’s trust fund until the completion of the distribution process and Court approval of a final accounting.

B. Service Award

Plaintiffs seek representative service awards of \$10,000 each. (MPA, p. 2 at #9.) The settlement agreement, however, provides for service awards of \$7,500 per Plaintiff. (Bakhour Decl., Ex. B at ¶ 52(f).) This is consistent with the notice, which also disclosed a service award of \$7,500. (Fowler Decl., Ex. A at p. 3.)

Plaintiffs submitted declarations in support of preliminary approval, which sought \$10,000 as a service award. (10/6/23 Prak & Pimental Declarations.) Prak declares to being an “invaluable assistance to Counsel” and providing “invaluable information,” including being available telephonically during mediation and providing “relevant factual background information.” (Prak Decl., ¶¶ 9-11.) Pimental declares to being an “invaluable assistance to Counsel” and providing “invaluable information,” including being available telephonically during mediation and providing relevant factual background information. (Pimental Decl., ¶¶ 9-11.)

Without minimizing Plaintiff’s efforts, it does not appear that the work performed in connection with this case is unusual, and there is no indication that Plaintiff was deposed or otherwise undertook unique efforts/risks in this action. Further, this action settled relatively soon after being filed.

Therefore, the Court approves an incentive award of \$7,500 to each Plaintiff.

C. Administration Costs

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The Settlement Administrator's costs—incurred and anticipated for completion of the administration—are \$7,500, which is consistent with the notice. (Fowler Decl., ¶ 21.)

Therefore, the Court approves an award of settlement administration costs in the amount of \$7,500.

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

Dated : 06/06/2024

A handwritten signature in black ink, appearing to read "Michael Markman".

Michael Markman / Judge