

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court, Department 23

JUDICIAL OFFICER: HONORABLE JILL H. TALLEY

Courtroom Clerk: D. Johnson-Mellado
Court Attendant: C. Carrillo

CSR: None

34-2022-00320725-CU-OE-GDS

August 23, 2024
9:00 AM

Perrin Lee vs. Horne LLP

MINUTES

APPEARANCES:

No Appearances

NATURE OF PROCEEDINGS: Hearing on Motion for Preliminary Approval of Settlement

There being no request for oral argument, the Court affirmed the tentative ruling.

COURT RULING:

Plaintiff Perrin Lee's ("Plaintiff") motion for preliminary approval of class and Private Attorneys General Act ("PAGA") settlement is UNOPPOSED and GRANTED as follows.

Overview

This is a consolidated wage and hour class and representative action brought by Plaintiff against Defendant Horne, LLP ("Defendant"). Plaintiff's class action complaint alleges the following causes of action: (1) unpaid overtime, (2) unpaid meal period premiums, (3) unpaid rest period premiums, (4) unpaid minimum wages, (5) final wages not timely paid, (6) wages not timely paid during employment, (7) non-compliant wage statements, (8) failure to keep requisite payroll records, (9) unreimbursed business expenses, and (10) unfair business practices. Plaintiff's representative action compliant (Case No. 34-2022-00320699) alleges a single cause of action for violation of PAGA based on the same Labor Code violations alleged in the class action complaint.

The Parties engaged in formal and informal discovery. (Cottrell Decl. ¶¶ 13-14.) The Parties thereafter agreed to participate in private mediation. (*Id.* at ¶ 14.) In advance of the mediation, Defendant produced time and pay records for a random sample of Class members. (*Ibid.*)

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Plaintiff's counsel also conducted interviews with Class Members. (*Id.* at ¶ 16.) On May 11, 2023, the Parties participated in a private mediation with Hon. David Buckley (Ret.). (*Id.* at ¶ 13.) The case did not settle at the mediation and the Parties continued with litigation and settlement discussions. (*Id.* at ¶ 17.) In October of 2023, the Parties resumed settlement discussions with the mediator's assistance. (*Id.* at ¶ 18.) On January 3, 2024, the Parties' counsel held a conference call with the mediator wherein the mediator made a proposal and both Parties accepted. (*Id.* at ¶ 19.) Subsequently, the Parties entered into a written settlement agreement. (Cottrell Decl. Ex. 1 ("Agreement").) Plaintiff seeks preliminary approval of this class and representative action settlement. This ruling incorporates by reference the definitions in the Agreement and all capitalized terms defined therein shall have the same meaning in this ruling as set forth in the Agreement.

Settlement Class Certification

Plaintiff seeks to certify the following settlement class: all persons employed by Defendant in California and classified as hourly, non-exempt employees to whom Defendant issued wage statements (but excluding any persons hired by a third party and assigned to work on an assignment for Defendant in California) during the period from May 27, 2018, to the date of preliminary approval. (Agreement ¶¶ 1.5 & 1.12.) There are approximately 249 Class Members. (Cottrell Decl. ¶ 21.) The Parties stipulate to certification of the settlement class. (Agreement ¶ 12.1.) The Court finds the requisites for establishing class certification have been met and preliminarily certifies the proposed settlement class.

Aggrieved Employees

Aggrieved Employees are defined in the Agreement as all persons employed by Defendant in California and classified as hourly, non-exempt employees to whom Defendant issued wage statements (but excluding any persons hired by a third party and assigned to work on an assignment for Defendant in California) during the period from March 22, 2021, to the date of preliminary approval. (Agreement ¶¶ 1.4 & 1.31.) Aggrieved Employees will receive their share of the PAGA penalty regardless of whether they opt out of the Class portion of the settlement. (*Id.* at ¶ 7.5.4 & Ex. A ("Class Notice").) Counsel submitted notice of the settlement to the Labor and Workforce Development Agency ("LWDA"). (Cottrell Decl. ¶ 30.)

Class Representative

The Court preliminarily appoints Plaintiff as Class Representative for settlement purposes only.

Class Counsel

The Court preliminarily appoints Schneider Wallace Cottrell Konecky LLP and Lawyers *for* Justice, PC as Class Counsel for settlement purposes only.

Settlement Administrator

The Court appoints Apex Class Action LLC to act as the settlement administrator.

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Fair, Adequate and Reasonable Settlement

The Court must find a settlement is “fair, adequate, and reasonable” before approving a class action settlement. (*Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 244-245.) The trial court has broad discretion to determine whether a proposed settlement in a class action is fair, adequate, and reasonable. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) “[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 1802.) In making its fairness determination, the Court considers the strength of the Plaintiffs’ case, the risk, expenses, 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, and the experience and views of counsel. (*Id.* at 1801.) In approving a class action settlement, the Court must “satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.)

This is a non-reversionary, opt-out settlement. Defendant will pay the Gross Settlement Amount (“GSA”) of \$950,000 and will separately pay employer-side payroll taxes. (Agreement ¶ 3.1.) The following will be paid out of the GSA: (1) a service payment of not more than \$15,000 to the Class Representative; (2) attorney’s fees of not more than 33% (\$313,500) and litigation costs, currently estimated at approximately \$18,000 to Class Counsel; (3) administration costs not to exceed \$7,450; (4) individual Class member payments; and (5) a PAGA Penalty in the amount of \$20,000 (75% of which will be paid to the LWDA and 25% of which will be paid to Aggrieved Employees). (*Id.* at ¶¶ 3.2.1-3.2.5.)

For tax purposes, individual settlement payments will be allocated as follows: 20% will be treated as wages and 80% will be treated as penalties and interest. (Agreement ¶ 3.2.4.1.) PAGA Payments will be treated entirely as penalties. (*Id.* at ¶ 3.2.5.2) Class Members have 60 days to request exclusion, submit an objection, or submit a workweek dispute. (*Id.* at ¶ 1.43.) Any funds from checks that are uncashed after 180 days will be sent to the California Unclaimed Property Fund in the name of the payee. (*Id.* at ¶¶ 4.3.1 & 4.3.3.) The average net recovery is \$2,429.49 per Class Member. (Cottrell Decl. ¶ 28.)

Disposition

The Court preliminarily finds that the class and representative settlement is entitled to a presumption of fairness and that all relevant factors support preliminary approval. (*Dunk*, supra, 48 Cal.App.4th at 1802.) The moving and supplemental papers demonstrate the settlement was reached after arms-length bargaining between the parties and was reached after sufficient discovery and negotiations, which allowed the parties, and therefore, this Court, to act intelligently with respect to the settlement. Class Counsel conducted a thorough investigation into the facts and law and issue in this case, including the exchange of discovery and the review of extensive information. Therefore, the motion is granted. The Court also approves the Proposed Class Notice. It shall be disseminated as provided in the Agreement. The Court will sign the

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proposed order submitted with the moving papers.

The Final Approval Hearing will take place on January 17, 2025, at 9:00 a.m. in this Department. The Court will fill-in the hearing date in paragraph 12 of the proposed order.

To request oral argument on this matter, you must call Department 23 at 916-874-5754 by 4:00 p.m., the court day before this hearing and notification of oral argument must be made to the opposing party/counsel. If no call is made, the tentative ruling becomes the order of the court. (Local Rule 1.06.)

Please check your tentative ruling prior to the next Court date at www.saccourt.ca.gov prior to the above referenced hearing date.

Hearing on Motion for Final Approval of Settlement is scheduled for 01/17/2025 at 9:00 AM in Department 23 at Gordon D. Schaber Superior Court.

By: */s/ D. Johnson-Mellado*
D. Johnson-Mellado, Deputy Clerk
Minutes of: 08/23/2024
Entered on: 08/23/2024