

Arellano v. Electronic Document Processing, Inc., dba One Touch Legal Services

MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Date of Hearing: September 12, 2017

Department: 308

Case No.: BC540315

TENTATIVE:

The motion for final approval is granted, contingent on the following:

- Demonstrate proof of compliance with Labor Code § 2699(1)(2)
- (1) The Court certifies the class for purposes of settlement;
 - (2) The Court finds that the settlement is fair, adequate, and reasonable;
 - (3) Class counsel, Setareh Law Group, is awarded \$30,000 in attorney fees and \$7,339.65 in costs;
 - (4) Class representative, Luis Arellanes, is awarded an enhancement payment of \$5,000;
 - (5) The claims administrator, CPT Group, Inc., is awarded \$8,000 in costs;
 - (6) Payment of \$3,000 (75% of \$4,000 PAGA penalty) to the LWDA is approved; and
 - (7) Class Counsel is ordered to provide an order consistent with this ruling and a judgment containing the class definition and release language by _____.

FINAL APPROVAL OF CLASS ACTION SETTLEMENT

California Rules of Court, rule 3.769(g), provides for an inquiry into the fairness of the proposed settlement prior to the final approval hearing. After this, the court must make and enter judgment, including a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. (See California Rules of Court, rule 3.769(h).) The class action may not be dismissed once judgment is entered. (See California Rules of Court, rule 3.770.) All class settlements are subject to a settlement hearing and court approval before entry of judgment or final order.

The trial court has broad powers to determine whether a proposed settlement is fair. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) The California standard for approval of class settlements is similar to the federal requirement that the settlement be fair, reasonable, and adequate for class members overall. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801.)

CLASS NOTICE AND CLASS RESPONSE

1. How was notice given? CPT Group, Inc. ("CPT") is acting as claims administrator for this settlement. (Declaration of Carole Thompson, ¶1.) On May

9, 2017, CPT received the class list containing 80 class members. (*Id.* at ¶5.) The mailing addresses were updated through the NCOA. (*Id.* at ¶6.) On May 26, 2017, the notice packets were mailed to the class members via first class mail. (*Id.* at ¶7.) CPT used skip tracing to locate updated addresses for notice packets that were returned by USPS. (*Id.* at ¶8.) As of August 14, 2017, 1 notice packet remained undeliverable. (*Ibid.*)

2. How many opted-out? One. (*Id.* at ¶10.)
3. How many objected? Zero. (*Id.* at ¶9.)
4. How many submitted a claim form? n/a
5. Estimate of recovery to each class member? The average settlement payment is \$464.06 per participating class member [\$36,660.35 net / 79 participating class members = \$464.06]. The highest settlement payment is \$1,424.54. (*Id.* at ¶11.)

EVALUATION OF THE SETTLEMENT

The Court must determine if the settlement is fair, adequate, and reasonable. The settlement is entitled to a presumption of fairness 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.” (*Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1802 (“*Dunk*”).) As *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 250, further notes:

A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. (See *Rebney v. Wells Fargo Bank*, *supra*, 220 Cal. App. 3d at p. 1139 [settlements found to be fair and reasonable even though monetary relief provided was “relatively paltry”]; *City of Detroit v. Grinnell Corp.*, *supra*, 495 F.2d at p. 455 [settlement amounted to only “a fraction of the potential recovery”].) 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.” (*Air Line Stewards, etc., Loc. 550 v. American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109.)

The Court finds that the settlement is fair, adequate, and reasonable based on the following:

- Settlement was reached through arms'-length negotiations. Yes. The parties mediated with Robert Kaplan on August 4, 2015. (Declaration of Shaun Setareh ISO Preliminary Approval, ¶7.) Although the parties negotiated extensively, they were not able to reach a settlement. (*Id.* at ¶9.) The parties were ordered to a mandatory settlement conference with Judge Helen Bendix

on August 25, 2015, and ultimately agreed to her settlement proposal. (*Id.* at ¶10.) Settlement is the result of arms'-length negotiations between experienced counsel, assisted by Judge Bendix. (*Id.* at ¶24.)

- Investigation and discovery were sufficient to allow counsel and the court to act intelligently. Yes. Through informal discovery, Defendant produced its policies, Plaintiff's personnel records, tax returns, and data pertaining to class members, including a sample of time and pay records. (*Id.* at ¶7.)
- Counsel is experienced in similar litigation. Yes. Class Counsel has significant class action experience. (*Id.* at ¶¶20-22.)
- The percentage of objectors is small. There were no objectors. (Thompson Decl., ¶9.)

As noted in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408:

...a trial court's approval of a class action settlement will be vacated if the court "is not provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Kullar*, supra, 168 Cal.App.4th at p. 130.) In short, the trial court may not determine the adequacy of a class action settlement "without independently satisfying itself that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Id.* at p. 129.)

Here, based on Class Counsel's damage modeling, the meal period claim, rest period claim, and unpaid time due to piece rate were each valued at \$174,300.50, for a total of \$522,901.50. (Setareh Declaration ISO Preliminary Approval, ¶24.) Weighed against the strength of the claims are the risks of litigation and the potential that Defendant could prevail on some of its defenses. For example, Defendant may be able to show that its policies are legal, or that it did in fact provide meal and rest periods, or that any violations were in good faith. (*Id.* at ¶¶ 26-29.) There was also the risk that Plaintiff and the class would not be able to collect on any judgment. (*Id.* at ¶31.) The \$90,000 non-reversionary settlement represents recovery of approximately 17% of the maximum value of the claims.

The moving papers, declarations and exhibits attached thereto, have provided this Court with "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise" such that this Court is satisfied "that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular

litigation.” (See *Dunk*, *supra* at p. 1802 [“So long as the record is adequate to reach ‘an intelligent and objective opinion of the probabilities of success should the claim be litigated’ and ‘form’ an educated estimate of the complexity, expense and likely duration of such litigation...it is sufficient.”].)

COSTS AND FEES

1. How much is requested for fees? The lodestar is the primary method of establishing the amount of reasonable attorney fees in California. (*Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556.) In common fund cases, courts may award fees pursuant to the percentage method, as cross-checked against the lodestar. (*Laffitte v. Robert Half Intern., Inc.* (2016) 1 Cal.5th 480, 503.)

Here, Class Counsel is requesting **\$30,000** for attorneys’ fees, pursuant to the percentage method. (Declaration of Shaun Setareh ISO Final Approval, ¶20.) The fee request constitutes approximately 1/3 of the settlement amount, which is within the average range for class action litigation. (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13 [“Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee award in class actions average around one-third of the recovery.”].) The class members were provided with notice of this fee request and none objected.

Class Counsel has also presented evidence, summarized below, from which the lodestar may be calculated.

Attorney	Billing Rate	Total Hours Billed	Total
Shaun Setareh	\$650	40.2	\$26,130
Thomas Segal	\$625	10	\$6,250
Tuvia Korobkin	\$550	16.1	\$8,855
Neil Larson	\$450	7.1	\$3,195
Farrah Grant	\$400	34.4	\$13,760
Alice Kim	\$400	5	\$2,000
Stacey Shim	\$300	1.7	\$510
Total		114.5	\$60,700

(Setareh Decl., ISO Final Approval, ¶23.)

The attorneys of Setareh Law Group spent a total of 114.5 hours working on this case. The resulting total lodestar amount is \$60,700.00. (*Ibid.*) This exceeds the \$30,000 fee that is requested, pursuant to the percentage method.

Because the fee request represents a reasonable percentage of the settlement fund and is well-supported by the lodestar, the Court awards fees in the amount requested.

2. What are the costs claimed? Class Counsel is requesting **\$7,339.65** for litigation costs. (Setareh Decl. ISO Final Approval, Exhibit B.) This is less than the \$10,000 settlement cap that was made known to the class and not objected to. Costs include

mediation (\$5,195), filing fees (\$540.50), Westlaw (\$406). (*Ibid.*) All the costs appear to be reasonable in amount and all appear to have been necessary to the litigation. The Court therefore awards costs of \$7,339.65.

3. Incentive payment to class representative? An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 [“[C]riteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. [Citations.]’,”] [citing *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294, 299.]

Plaintiff, Luis Arellano requests an enhancement award of **\$5,000**. In its motion, Class Counsel cites to a declaration, filed by Plaintiff, in support of final approval; however, no such declaration has been filed. (See Motion ISO Final Approval at 24:6.)

Class Counsel has provided the following information regarding Plaintiff’s contribution to this litigation: Plaintiff spent a considerable amount of time on this case. Among other things, Mt. Arellano spent this time providing counsel with information about the case, assisting counsel in preparing for the mediation, traveling to, attending, and participating in the full-day mediation and mandatory settlement conference, and being actively involved in the settlement process. (Motion ISO Final Approval at 24:4-22.)

The Court finds that \$5,000 is a reasonable incentive award under these circumstances.

4. Claims Administration Costs? The claims administrator, CPT, requests **\$8,000**. (Thompson Decl., ¶17.) At the time of preliminary approval, costs for settlement administration were estimated to be approximately \$5,000. (Settlement Agreement, ¶3.4.) This amount was disclosed to class members and deemed unobjectionable. The increase from the estimate in the Settlement Agreement is due to the costs of the escheatment process of the uncashed checks to the California Unclaimed Property Fund, which were not accounted for in the initial bid.

The Court approves claims administration costs in the amount of \$8,000.

FINAL REPORT:

The Court may order class counsel to file a final report summarizing all distributions made pursuant to the approved settlement, supported by declaration.

The Court will set a non-appearance date for submission of a final report.