

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Christopher Brandmeir, individually
and on behalf of all others similarly
situated

Plaintiff/Petitioner(s)

vs.

Columbia Southern University,
Inc., an Alabama Corporation

Defendant/Respondent(s)

No. 22CV013638

Date: 08/25/2023

Time: 9:30 AM

Dept: 23

Judge: Brad Seligman

ORDER re: Hearing on Motion for Final
Approval of Settlement filed
by Christopher Brandmeir,
individually and on behalf of
all others similarly situated
(Plaintiff); Hearing on Motion -
Other for Fees; filed by
Christopher Brandmeir,
individually and on behalf of
all others similarly situated
(Plaintiff)

The motion for final approval and for attorney's fees and service award is granted as follows. The requests for attorneys' fees, litigation costs, and administration costs are GRANTED. The request for service award is GRANTED IN PART.

The parties should file a 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.

BACKGROUND

On June 30, 2022, Plaintiff Brandmeir filed a putative class action complaint against Columbia Southern University, Inc. ("Defendant"), asserting six causes of action for failure to pay wages and other Labor Code violations as well as a claim under California's Unfair Competition Law. On September 12, 2022, Plaintiff filed a first amended complaint, which deleted a claim for

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PAGA penalties. On February 2, 2023, Plaintiff filed the operative second amended complaint, which added claims for non-instructional employees.

This Court granted preliminary approval of the proposed settlement on May 22, 2023. The parties now seek final approval.

A. The Settlement

The parties seek final approval of a non-revisionary \$320,000 settlement on behalf of 51 full and part-time faculty members and instructors employed by Defendant from June 30, 2018 through April 25, 2023. (Settlement Agreement, ¶ 3.1.)

Plaintiff is seeking an attorneys' fee award of one third (1/3) of the settlement amount (or \$106,666.67); an award of litigation costs in the amount of \$5,828.61; a representative service award of \$7,500 to Plaintiff; and settlement administration costs of \$4,950.

Based upon 51 participating class members, the average individual payment will be approximately \$3,628.52. (8/3/23 Mitzner Decl., ¶ 15.) Based upon 39 aggrieved employees, the average individual PAGA payment will be approximately \$64.10. (Metzner Decl., ¶ 16.)

B. Notice

The Settlement Administrator mailed 51 court-approved notice packets. (8/3/23 Mitzner Decl., ¶ 6 & Exs. A & B.) No notices (0) were deemed undeliverable. (*Id.*, ¶ 7; *see also* 8/14/23 Supp. Metzner Decl., ¶ 3.)

The Settlement Administrator did not receive any requests for exclusion or objections. (8/14/23 Supp. Mitzner Decl., ¶¶ 4-6 [as of 8/14/23].) This represents a 100% participation rate.

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 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

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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 v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 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. (l).)

Thus, courts consider (1) the apparent strength of plaintiff’s case; (2) the high risk, high complexity, and long likely duration of the PAGA dispute; (3) the amount offered in settlement; (4) the extent of discovery and investigation; and (5) the favorable views of experienced counsel, reached after mediation before an experienced neutral.

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 an arm’s-length negotiation. (5/1/23 Hammond Decl., ¶ 28.) The investigation and discovery are sufficient to allow counsel and the Court to act intelligently. (5/1/23 Hammond Decl., ¶¶ 18-27; *see also id.*, ¶¶ 33-68.) Counsel is experienced in similar litigation, and there are no objectors. (8/3/23 Hammond Decl., ¶13; *see also* 8/14/23 Supp. Mitzner Decl., ¶¶ 4-6.)

The Court also approves of the PAGA settlement—\$10,000 to be split between the LWDA and Aggrieved Employees—as fair, reasonable, and adequate. On August 3, 2023, Plaintiff filed a proof of service of this Motion on the LWDA.

A. Attorneys’ Fees & Costs

Counsel requests an award of \$106,666.67 in attorneys’ fees, which represents one-third (1/3) of the gross settlement amount. Counsel also seeks \$5,828.61 in costs, which is less than the \$20,000 max stated in the notice.

As to fees, Plaintiff’s counsel represents that the lodestar amount is \$109,150, which is based upon approximately 146.3 hours of attorney time. (8/3/23 Hammond Decl., ¶¶ 20, 22.) Thus, the requested award includes a negative multiplier of 0.98. (*Ibid.*)

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Based upon a lodestar crosscheck, the Court approves an attorneys' fee award of \$106,666.67 (or 1/3 of the settlement amount). The Court approves \$5,828.61 in costs as reasonable and necessary.

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

Plaintiff seeks a representative service award of \$7,500. Plaintiff declares that he spent at least 10 to 11 hours working on this case. (Brandmeir Decl., ¶ 15.) Plaintiff's individual payment will be approximately \$3,517.61. (Mitzner Decl., ¶ 17.)

Without minimizing Plaintiff's efforts, it does not appear that the time spent on this case is unusual, and there is no indication that Plaintiff was deposed or otherwise undertook unique efforts/risks in this action.

Therefore, the Court approves a reduced service award of \$5,000 to Plaintiff.

C. Administration Costs

The Settlement Administrators costs—incurred and anticipated for completion of the administration—are \$4,950. (8/3/23 Mitzner Decl., ¶ 19 & Ex. C.)

The Court approves the award of settlement administration costs in the amount of \$4,950.

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

Dated: 08/25/2023



Brad Seligman / Judge