

ORDER ON SUBMITTED MATTER

Filed
May 6, 2025
Clerk of the Court
Superior Court of CA
County of Santa Clara
22CV403171
By: MJacobo

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

BRIAN KEITZ, an individual on behalf of himself and all others similarly situated,	)	Case No.: 22CV403171
	)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF'S MOTION
	)	FOR FINAL APPROVAL OF CLASS
v.	)	ACTION AND PAGA SETTLEMENT
	)	
APEX SECURITY GROUP, INC., et al.,	)	
	)	
Defendants.	)	

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Brian Keitz ("Plaintiff") alleges that Defendant Apex Security Group, Inc. ("Apex" or "Defendant") committed various wage and hour violations. Before the Court is Plaintiff's motion for final approval of settlement, which is unopposed. For the reasons discussed below, the Court GRANTS Plaintiff's motion.

I. BACKGROUND

According to the allegations of the operative First Amended Class Action Complaint ("FAC"), Plaintiff was employed by Apex from August 2013 through April 15, 2022 as a security guard, a non-exempt, hourly-paid position. (FAC, ¶ 7.) Plaintiff alleges that he and other employees were not paid for all hours worked as a result of Defendant: deducting time for

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AND PAGA SETTLEMENT

1 meal periods even when the meal period was not taken, the meal period was less than 30
2 minutes, or the meal period was on duty; defining “workday” in manner that single work shift
3 was split across two separate workdays; failing to pay shift differentials; using unauthorized
4 alternative workweek schedules without proper payment of overtime; failing to calculate the
5 regular rate of pay; and modifying timesheets when employees worked overtime. (*Id.*, ¶ 10.) He
6 further alleges that Defendant additionally failed to: provide compliant meal or rest periods or
7 compensation in lieu thereof; reimburse employees for all necessary business expenses incurred
8 by them, including those incurred for cleaning their work-issued uniforms; and provide accurate
9 wage statements.

10 Based on the foregoing, Plaintiff initiated this action in September 2022, and filed the
11 operative FAC on February 14, 2023, asserting the following causes of action: (1) underpayment
12 of hourly wages; (2) underpayment of overtime wages; (3) meal period violations; (4) rest period
13 violations; (5) failure to reimburse necessary expenditures; (6) non-compliant wage statements;
14 (7) failure to pay all wages owed upon termination; (8) violation of Business & Professions Code
15 § 17200; and (9) penalties under PAGA.

16 The parties reached a settlement and Plaintiff moved for preliminary approval of the
17 settlement, which the Court granted and thereafter entered a formal order memorializing its
18 decision. Now before the Court is the unopposed motion for final approval of the settlement
19 agreement.

20 **II. LEGAL STANDARD**

21 Generally, “questions whether a settlement was fair and reasonable, whether notice to the
22 class was adequate, whether certification of the class was proper, and whether the attorney fee
23 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
24 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*
25 (1996) 48 Cal.App.4th 1794 (*Dunk*).)

1 “In determining whether a class settlement is fair, adequate and reasonable, the trial court
2 should consider relevant factors, such as “the strength of plaintiffs’ case, the risk, expense,
3 complexity and likely duration of further litigation, the risk of maintaining class action status
4 through trial, the amount offered in settlement, the extent of discovery completed and the stage
5 of the proceedings, the experience and views of counsel, the presence of a governmental
6 participant, and the reaction of the class members to the proposed settlement.” (*Wershba, supra*,
7 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for*
8 *Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

9 “The list of factors is not exclusive and the court is free to engage in a balancing and
10 weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91
11 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the extent
12 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
13 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
14 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48
15 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625 [internal quotation marks
16 omitted].)

17 The burden is on the proponent of the settlement to show that it is fair and reasonable.
18 However “a presumption of fairness exists where: (1) the settlement is reached through arm’s-
19 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
20 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
21 objectors is small.” (*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48
22 Cal.App.4th at p. 1802.)

23 Similar to its review of class action settlements, the Court must “determine independently
24 whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the
25 LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72

1 Cal.App.5th 56, 76-77.) The Court must make this assessment “in view of PAGA’s purposes to
2 remediate present labor law violations, deter future ones, and to maximize enforcement of state
3 labor laws.” (*Id.* at p. 77.)

4 **III. TERMS AND ADMINISTRATION OF SETTLEMENT**

5 The case has been settled on behalf of the following class:

6 [A]ll current and former non-exempt employees who were employed by Defendant in
7 California during the Class Period [from September 15, 2018 to Preliminary Approval].

8 According to the terms of the settlement, Defendant will pay a non-reversionary gross settlement
9 of \$850,000. The gross settlement amount includes attorney fees of up to \$283,333.33 (one-third
10 of the gross settlement), litigation costs not to exceed \$25,000 and administration costs not to
11 exceed \$15,750 will be paid from the gross settlement. \$20,000 will be allocated to PAGA
12 penalties, 75% of which (\$15,000) will be paid to the LWDA, with the remaining 25% (\$5,000)
13 distributed, on a pro rata basis, to “Aggrieved Employees,” who are defined as individuals
14 “employed by Defendant in California and classified as a non-exempt employee[s] who worked
15 for Defendant during [September 15, 2021 to the date of preliminary approval].” Plaintiff will
16 seek a service award of \$7,500.

17 The net settlement amount (approximately \$478,047.33) will be allocated (on a pro rata
18 basis based on the number of weeks worked during the relevant periods) “Class Members”
19 defined as “all current and former non-exempt employees who were employed by Defendant in
20 California during [September 15, 2018 to preliminary approval],” on a pro rata basis based on
21 the number of weeks worked during the foregoing period. For tax purposes, settlement payments
22 will be allocated 20% to wages and 80% to penalties and interest. The employer-side payroll
23 taxes will be paid by Apex separate from, and in addition to, the gross settlement amount. 100%
24 of the payment to Aggrieved Employees will be allocated to penalties. Funds associated with
25

1 checks uncashed after 180 days will be transmitted to Controller of the State of California to be
2 held in trust for such class members pursuant to California unclaimed property law.

3 In exchange for the settlement, the Class Members who do not opt out will release:

4 [All] causes of action related to the allegations and all claims that were alleged, or
5 reasonably could have been alleged, based on the Class Period facts stated in the Operative
6 Complaint, including, but not limited to, and all claims involving any alleged: (1) failure to pay
7 all wages; (2) failure to pay overtime wages; (3) failure to provide compliant meal periods; (4)
8 failure to provide compliant rest periods; (5) failure to reimburse business expenses; (6) failure to
9 provide compliant wage statements; (7) failure to pay all wages owed upon termination or
10 resignation of employment; (8) failure to pay, appropriately accrue, and forfeiture of paid time
11 off (vacation/PTO wages); and (9) violations of Business and Professions Code § 17200 and
12 claims for restitution and other equitable relief, liquidated damages, or penalties; and any other
13 benefit claimed on account of the allegations asserted in Operative Complaint.

14 Aggrieved Employees, who consistent with the statute will not be able to opt out of the PAGA
15 portion of the settlement, will release:

16 [A]ll claims for PAGA penalties that were alleged, or reasonably could have been
17 alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA
18 Notice, and ascertained in the course of the Action, including: (1) underpayment of minimum
19 wages and hourly wages in violation of California Labor Code §§ 204, 1194, 1194.2, 1197, IWC
20 Wage Order, California Minimum Wage Order; (2) underpayment of overtime wages in
21 violation of California Labor Code §§ 510, 1194, and IWC Wage Order; (3) failure to provide
22 compliant meal periods in violation of California Labor Code §§ 226.7 and 512 and IWC Wage
23 Order; (4) failure to provide compliant rest periods in violation of California Labor Code §§
24 226.7 and 512 and IWC Wage Order; (5) failure to reimburse business expenses in violation of
25 California Labor Code 2802 and IWC Wage Order; (6) non-compliant wage statements in

violation of California Labor Code § 226(a); (7) failure to pay all wages upon resignation or termination in violation of California Labor Code §§ 201-203 due to the underpayment of wages and/or overtime; (8) violations of Labor Code § 227.3 for failure to pay, appropriately accrue, and forfeiture of paid time off (vacation/PTO wages); (9) failure to keep payroll records showing total hours worked and wages paid in violation of California Labor Code §§1174-1174.5 and IWC Wage Order; (10) collection of wages previously paid to employees and (11) violations of Labor Code 2698 et seq. (“PAGA”) predicated on the foregoing violations.

The foregoing releases are appropriately tailored to the allegations at issue. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)

In its order granting preliminary approval of the settlement, the Court approved Phoenix Class Action Administration Solutions (“Phoenix”) as the settlement administrator. On November 25, 2024, Defense counsel provided Phoenix with the class data file, including names, social security numbers, last known mailing addresses, employment dates, and the total number of relevant workweeks worked by each Class member (“Class List”). (Declaration of Taylor Mitzner (“Mitzner Decl.”), ¶ 3.) On December 9, 2024, Phoenix sent the Class Notice, in both English and Spanish, to 1,264 Class Members. (*Id.* at ¶ 6.) As of the date of Mitzner Declaration, March 12, 2025, 0 Notices have been considered undeliverable. (*Id.* at ¶ 8.) As of the date of the declaration, Phoenix received one (1) request for exclusion from Class Members. (*Id.* at ¶ 9.) As of the date of the same declaration, the settlement administrator has received no objections to the settlement and no disputes from Class Members. (*Id.* at ¶¶ 10-11.) According to the administrator’s calculations, the average individual settlement payment will be approximately \$465.48. (*Id.* at ¶ 15.) The notice process has now been completed.

IV. ENHANCEMENT AWARDS, ATTORNEY FEES, AND COSTS

The settlement Agreement provides for an enhancement award to Plaintiff in the amount of \$7,500

1 The rationale for making enhancement or incentive awards to named plaintiffs is that
2 they should be compensated for the expense or risk they have incurred in conferring a benefit on
3 other members of the class. An incentive award is appropriate if it is necessary to induce an
4 individual to participate in the suit. Criteria courts may consider in determining whether to make
5 an incentive award include: 1) the risk to the class representative in commencing suit, both
6 financial and otherwise; 2) the notoriety and personal difficulties encountered by the class
7 representative; 3) the amount of time and effort spent by the class representative; 4) the duration
8 of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative
9 as a result of the litigation. These “incentive awards” to class representatives must not be
10 disproportionate to the amount of time and energy expended in pursuit of the lawsuit.
11 (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 [internal
12 punctuation and citation].)

13 In support of the motion for final approval of settlement, Plaintiff submitted a declaration
14 describing his participation in the action. Plaintiff indicates he spent over 36 hours in connection
15 with the lawsuit. (Declaration of Brian Keitz, ¶¶ 14, 20.) Based on the number of hours spent on
16 this lawsuit, the Court approves an enhancement award of \$7,500 to Plaintiff.

17 The Court has an independent right and responsibility to review the requested attorney
18 fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles*
19 *Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) “Courts recognize two methods
20 for calculating attorney fees in civil class actions: the lodestar/multiplier method and the
21 percentage of recovery method.” (*Wershba, supra*, 91 Cal.App.4th at p. 254.)

22 Class counsel seeks an attorney fee award in the amount of \$283,333.33, one-third of the
23 gross settlement amount. Counsel provides evidence of a lodestar of \$280,720, based on a total
24 of 379.6 hours at rates ranging from \$675 to 750 per hour. The number of hours includes 4.5
25 anticipated hours at a rate of \$750 an hour. The Court does not award anticipated expenses. This

1 results in an approximate multiplier of 1.34 and is within the range of multipliers that courts
2 typically approve. (*Wershba, supra*, 91 Cal.App.4th at p. 255 [“[m]ultipliers can range from 2 to
3 4 or even higher”].) The benefits achieved by the settlement justify an award of attorney fees to
4 class counsel. The Court finds that the requested attorney fee award is reasonable as a percentage
5 of the common fund and approves an attorney fee award in the requested amount of \$283,333.33.
6 Class counsel requests reimbursement of litigation costs in the amount of \$19,769.55. (Azadian
7 Decl., ¶ 10.) The Court approves an award of litigation costs in this amount. The settlement
8 administration costs are also approved in the requested amount of \$15,750. (Mitzner Decl., ¶ 18.)

9 V. CONCLUSION

10 The motion for final approval of class and representative action settlement is GRANTED.
11 The class as defined herein is certified for settlement purposes. Judgment shall be entered
12 through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Pursuant to Rule
13 3.769(h) of the California Rules of Court, the Court retains jurisdiction over the parties to
14 enforce the terms of the settlement agreement and the final order and judgment.

15 The Court sets a compliance hearing for **December 11, 2025 at 2:30 p.m.** in Department
16 7. At least ten court days before the hearing, class counsel and the settlement administrator shall
17 submit a summary accounting of the net settlement fund identifying distributions made as
18 ordered herein; the number and value of any uncashed checks; amounts remitted to the *cy pres*
19 recipient; the status of any unresolved issues; and any other matters appropriate to bring to the
20 court’s attention. Counsel shall also submit an amended judgment as described in Code of Civil
21 Procedure section 384, subdivision (b).

22 Dated: May 6, 2025

23 
24 CHARLES F. ADAMS
25 Judge of the Superior Court