SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

23CV033362: HARRINGTON vs A BETTER WAY, INC.,
09/11/2025 Hearing on Motion to Confirm Settlement filed by Pamela Harrington (Plaintiff) CRS# 027700717478 in Department 23

Tentative Ruling - 09/09/2025 Michael Markman

The Hearing on Motion to Confirm Settlement filed by Pamela Harrington (Plaintiff) CRS# 027700717478 scheduled for 09/11/2025 is continued to 10/09/2025 at 10:00 AM in Department 23 at Rene C. Davidson Courthouse .

BACKGROUND

This is a wage-and-hour class action and PAGA representative action. Plaintiff Pamela Harrington and Defendant A Better Way, Inc. have agreed to settle the claims for $300,000.00, which includes an attorney's fee award of up to $100,00.00; reimbursement of Plaintiffs' litigation costs up to $25,000.00; an enhancement award of up to $10,000.00 for the representative plaintff; settlement administration costs of up to $5,450.00; and $20,000.00 in PAGA civil penalties, 75% of which go to California's Labor and Workforce Development Agency (LWDA) and 25% to aggrieved employees. The remaining settlement funds are to be distributed among participating class members on a pro rata basis. Plaintiff estimates that 115 class members will receive an average class payment of $1,200.00.

LEGAL STANDARD

To prevent "fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.) The Court "must determine the settlement is fair, adequate, and reasonable." (*Id.* at p. 1801.) "The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, 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 stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.'" (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 [quoting *Dunk*, *supra*, at p. 1801].)

Similarly, a "trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77 [noting overlap of factors in class action analysis, "including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount"].)

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PRELIMINARY APPROVAL

Plaintiff's counsel investigated and obtained informal discovery from Defendant, including policy documents and timekeeping and pay records. (Valle Decl., ¶ 5.) The parties participated in an arm's length mediation with a professional mediator before settling. (*Id.*, ¶ 6.) Plaintiff includes an adequate *Kullar* analysis, providing a reasonable estimate of the number of class members, the total estimated possible recovery, and an explanation why the settlement was reasonable in light thereof. (See *id.*, ¶¶ 8–21.) The court gives "considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct." (*Kullar*, supra, 168 Cal.App.4th at p. 129.) The terms of the settlement and notice procedures appear generally fair, reasonable, and adequate.

The scope of the PAGA release, however, must be revised. A PAGA representative is "acting as a proxy or agent" of the LWDA, and many appellate decisions have clarified that a PAGA claim is brought on behalf of the state, rather than individuals. (*Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, 692 fn. 12 [a PAGA plaintiff "represents a single principal — the LWDA"]; see also, e.g., *Adolph v. Uber Techs., Inc.* (2023) 14 Cal. 5th 1104, 1113; *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 81.) As currently drafted, the Settlement Agreement purports to release claims on behalf of "Aggrieved Employees." (See Valle Decl., Ex. 1, Settlement Agreement, ¶ 5.3 & Notice, pp. 26–27.) This error is unlikely to have practical consequences in the context of settlement, but the court does not want to perpetuate any confusion by approving a settlement that inaccurately implies that PAGA claims are released by anyone other the LWDA through its authorized agents, i.e., the named plaintiff(s).

Furthermore, the scope of the LWDA's release must be limited to the scope of PAGA notice letter. (*LaCour v. Marshalls of California, LLC* (2023) 94 Cal.App.5th 1172, 1192–97 [notice letter is "objective source of proof for the scope" of PAGA plaintiff's "authorized enforcement interest"]; *Accurso v. In-N-Out Burgers* (2023) 94 Cal.App.5th 1128, 1141–1142 ["The delegation of enforcement power from the LWDA to the aggrieved employee is not open-ended. It gives the proxy control of the penalty claims identified in his written notice to the LWDA, but is limited in scope to the specific facts and theories stated in the notice."].) The Settlement Agreement suggests that the PAGA release extends to cover claims that "could have been alleged" based on the facts alleged in "the Operative Complaint" and PAGA Notice. (See Valle Decl., Ex. 1, Settlement Agreement, ¶ 5.3 & Notice, p. 26.) This release is overbroad.

SERVICE AWARD, FEES, & COSTS

The court will not rule on the incentive award for the representative plaintiff, attorney's fees, or costs until final approval but provides the following preliminary guidance:

Any incentive, enhancement, or service award must be supported with "quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs." (*Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 807.) This court is unlikely to approve an award of more than $7,500.00 absent special circumstances.

This court's benchmark for attorney's fees is 30%. (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 495; *Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1175; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 fn 13; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn. 11.) A "court approving a settlement that includes a negotiated fee [] is required to decide if the fee negotiated by the parties closely approximates the value of the attorneys' work." (*Robbins v. Alibrandi*, 127 Cal.App.4th 438, 452.) Counsel must address the value of the attorneys' work, as well as the justification for any deviation from this court's benchmark. Ten percent of the attorney's fee award must be held by the settlement administrator until completion of the distribution process and court approval of a final accounting.

The settlement agreement authorizes reimbursement of litigation costs. Counsel must provide evidentiary support for the actual costs incurred at the time of final approval.

The court's preference is for Plaintiffs to move for final approval, including approval of attorneys' fees, costs, and Plaintiff's enhancement award, in a single motion.

ORDER

Plaintiff's motion for preliminary approval of class action settlement is CONTINUED to October 9, 2025 at 10:00 am in Department 23. At least five (5) court days before the continued hearing, Plaintiff must submit a revised proposed order and declaration addressing the issues noted above and suggesting a date, a Thursday at 10:00 am, for the final approval hearing. Any revised documents should be submitted, in a searchable format, as both fully executed versions and in redline.

HOW DO I CONTEST A TENTATIVE RULING?

THROUGH eCOURT

Notify the Court and all the other parties no later than 4:00 PM one court day before the scheduled hearing, and briefly identify the issues you wish to argue through the following steps:

1. Log into eCourt Public Portal
2. Case Search

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3. Enter the Case Number and select “Search”
4. Select the Case Name
5. Select the Tentative Rulings Tab
6. Select “Click to Contest this Ruling”
7. Enter your Name and Reason for Contesting
8. Select “Proceed”

BY EMAIL

Send an email to the DEPARTMENT CLERK (dept23@alameda.courts.ca.gov) and all the other parties no later than 4:00 PM one court day before the scheduled hearing. This will permit the department clerk to send invitations to counsel to appear remotely.

Notice via **BOTH** eCourt **AND** email is required. The tentative ruling will become the ruling of the court if no party contests the tentative ruling.