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individually and on behalf of similarly situated employees

FILED
Superior Court of California
County of Sacramento
11/07/2024
T. Shaddix, Deputy

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

JOHN WILLIS, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

GFP ENTERPRISES, LLC, an Oregon
Limited Liability Company; DONALD
POLLARD, an individual; RAY KEENER, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. 23CV006533

*Assigned for All Purposes to Hon. Jill H. Talley,
Department 23*

CLASS ACTION

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: ~~October 25, 2024~~ Nov. 1, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill H. Talley

Filed: August 10, 2023

FAC Filed: December 13, 2023

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement (“Motion”) in the above
3 referenced case came before this Court, on ~~October 25, 2024~~ Nov. 1, 2024, at 9:00 a.m., in Department 23 before
4 the Honorable Jill H. Talley, presiding. Plaintiff John Willis (“Plaintiff”) filed this putative class
5 action on August 10, 2023. The operative Complaint alleges that Defendants GFP Enterprises, LLC,
6 Donald Pollard, and Ray Keener (“Defendants”) violated California law by 1) failing to pay overtime
7 wages, 2) failing to pay minimum wages, 3) failing to provide accurate wage statements, 4) failing to
8 timely pay all final wages, and 5) engaging in unfair competition. Plaintiff has also alleged
9 Defendants are liable for civil penalties under the Private Attorney’s General Act (“PAGA”) based on
10 these violations. Plaintiff sought attorneys’ fees and costs as part of this Action. Defendants denied
11 all of Plaintiff’s claims and denied that this case was appropriate for class treatment. No class has
12 been certified. The class settlement was preliminarily approved by this Court on June 20, 2024.

13 The parties have agreed to settle the class and PAGA claims. Defendants will provide
14 monetary consideration in exchange for a release of claims consistent with the terms of the proposed
15 settlement as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and
16 Release (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning as
17 set forth in the Agreement. The Court, having received and considered Plaintiff’s Motion for Final
18 Approval of Class Action and PAGA Settlement, the declarations in support, the Agreement, the
19 proposed Notice of Settlement, and other evidence, HEREBY ORDERS AND MAKES
20 DETERMINATIONS AS FOLLOWS:

21 **I. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
22 **REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

23 The Court finds that certification of the following class for settlement purposes only is
24 appropriate under the California Code of Civil Procedure and related case law:

25 All non-exempt employees who worked for Defendants in California at
26 any time between August 10, 2019, up to April 23, 2024.

27 The Court recognizes that the foregoing definition is for Class Member identification purposes
28 only and is not intended to capture the claims at issue or limit or alter the released claims under the

1 Agreement. The settlement class shall not include the one individual who timely opted out of the class
2 settlement, Michael Fleek. This individual shall not be bound by the Agreement or any of the releases
3 or obligations therein except for the releases and covenants regarding to the PAGA claims as set forth in
4 section 1.31 and 6.2 as they are still an Aggrieved Employee under the Agreement and there is no ability
5 to opt out of a PAGA settlement.

6 For settlement purposes only, the Court finds that Class Members meet the ascertainability and
7 numerosity requirements since the parties can identify with a matter of certainty, based on payroll
8 records, individuals who fall within the definition and the number of Class Members would make
9 joinder impractical. The commonality and predominance requirements are met for settlement purposes
10 since there are questions of law and fact common to Class Members. The common questions of law or
11 fact in this case all stem from Plaintiff's contentions that Defendants caused the violations outlined
12 above by 1) failing to incorporate the value of non-discretionary remuneration (*e.g.* bonuses, additional
13 hourly rates/differentials) in addition to the basic hourly rate when calculating the regular rate of pay for
14 overtime and sick leave wage premiums, 2) failing to pay any overtime and/or correctly calculate the
15 regular rate of pay for overtime and sick leave when Plaintiff earned daily rates and/or provided lodging
16 in addition to their base hourly and/or daily rates of pay, 3) failing to keep accurate time records and
17 utilizing rounding when calculating Plaintiff's and similarly situated employees' hours worked because
18 a crew chief, instead of employees, recorded times for all employees without input and verification from
19 employees, 4) maintaining policies and procedures that prevented Plaintiff and similarly situated
20 employees from clocking in and out leading to Plaintiff and similarly situated employees worked off-
21 the-clock since Defendants did not keep track of their start and stop times, 5) failing to timely pay
22 Plaintiff and similarly situated employees' wages, including final wages. The PAGA, waiting time
23 penalty, wage statement violation, and unfair competition claims also derive from these violations.
24 Additionally, Class Members seek the same remedies under state law. The typicality requirement for
25 settlement purposes is also satisfied since the claims of the Class Representative is based on the same
26 facts and legal theories as those applicable to the class members.

1 The Court also finds that certifying the settlement class is required to avoid each Class Member
2 from litigating similar claims individually. This Settlement will achieve economies of scale for Class
3 Members with relatively small individual claims and conserve the resources of the judicial system.

4 The Court finds that Plaintiff John Willis and Plaintiff's counsel, Galen T. Shimoda,
5 Justin P. Rodriguez, and Renald Konini of Shimoda & Rodriguez Law, PC, to be adequate
6 representatives of the settlement class. The Court appoints them as Class Representative and Class
7 Counsel, respectively.

8 **II. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

9 The Court has again reviewed the preliminary approved Agreement, which was submitted with
10 Plaintiff's Motion as Exhibit A. The Court finds that final approval is warranted as the Agreement falls
11 within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court also
12 finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length
13 negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to
14 weigh the potential value of the disputed claims against the risks of continued litigation. Class Members
15 were able to object to the Agreement and its terms through the administration process and at a fairness
16 hearing or opt-out of being bound by the preliminarily approved Agreement.

17 No objections were made by Class Members and only one Class Member opted out of the
18 settlement. Because the Court finds the Parties' settlement to have been agreed upon only after an
19 extensive investigation and arms-length negotiations, and in an attempt to avoid further delays and costs,
20 the Court gives final approval to the Agreement and all terms therein as if stated here in full, including
21 the \$135,000 Gross Settlement Amount.

22 The Court approves of the Ten Thousand Dollars (\$10,000) PAGA Payment, which shall be paid
23 from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
24 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
25 Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved
26 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
27 provides a recovery that creates an effective, substantial deterrent to any potential future non-
28 compliance, furthering the purpose of the Labor Code and LWDA.

1 The Court approves of the identified *cy pres* beneficiaries and distribution plan wherein any
2 checks issued to Participating Class Members and/or Aggrieved Employees that are not cashed by the
3 deadline to do so shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for
4 Workers' Rights. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718 (2006). No portion of the
5 Gross Settlement Amount will revert to Defendants for any reason.

6 The releases and waivers for Class Members who do not opt out of being bound by the
7 Agreement (*i.e.* Participating Class Members), Aggrieved Employees, and the Class Representative are
8 also approved by the Court as set forth in the Agreement.

9 Class Counsel sought an award of attorney's fees of \$47,250, attorney's costs of \$12,610.41, an
10 Enhancement Payment to the Class Representative in the amount of \$10,000, and for Settlement
11 Administrator Costs in the amount of \$7,650. Defendant does not oppose these requests. The Notice of
12 Settlement sent to Class Members included information regarding these amounts and that they would be
13 requested in connection with final approval of the Agreement. Class Members have been given the
14 opportunity to object to these amounts and no objections have been submitted in any respect whatsoever.
15 The Court has reviewed the evidence submitted by Class Counsel regarding their hourly rates, including
16 prior fee awards in Sacramento County Superior Court at the requested rates, and the amount of time
17 expended in litigation for the benefit of Class Members. The Court finds that the rates requested and
18 hours expended are reasonable. The Court has also reviewed the updated itemized costs submitted by
19 Class Counsel, the information provided by the Class Representative regarding the efforts and burdens
20 undertaken for the benefit of the class, and the cost information provided by the Settlement
21 Administrator. The Court finds that these amounts are fair, reasonable, and supported by the evidence
22 submitted by Class Counsel. The requested amounts are approved and awarded as requested, which will
23 be deducted from the Gross Settlement Amount. This finding is further supported by the lack of
24 objections by Class Members to these amounts. The difference between the actual attorneys' costs and
25 originally allocated costs of \$14,000, as well as the difference between the Settlement Administrator
26 Costs awarded and the originally allocated of \$10,000, will be added to the Net Settlement Amount
27 pursuant to the terms of the Agreement.

1 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**
2 **INCLUDING THE NOTICE OF SETTLEMENT**

3 The Court finds that the Notice of Settlement, which was submitted with Plaintiff's Motion as
4 Exhibit A to the Declaration of Nathalie Hernandez, fairly and adequately advised Class Members of the
5 terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number
6 of workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how
7 to participate in the settlement, how to file documentation in opposition to the proposed settlement, and
8 when to appear at the fairness hearing. The Court further finds that the Notice of Settlement and
9 distribution of such notice by first class mail to each identified Class Member at his or her most recent
10 address based on a National Change of Address database search from the Class Members' last known
11 address and a skip trace on any Class Members who have the Notice of Settlement returned as
12 "undeliverable" or "not at this address" comported with all constitutional requirements, including those
13 of due process.

14 **IV. IMPLEMENTATION SCHEDULE**

15 Accordingly, with good cause shown, the Court hereby approves and orders that the following
16 implementation schedule be adhered to:

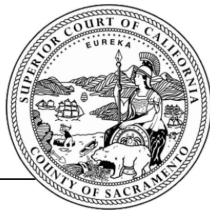
17 Last day for Settlement Administrator to calculate 18 the final Net Settlement Amount, the final 19 Individual Settlement Amounts to Participating 20 Class Members and/or Aggrieved Employees, any 21 applicable taxes thereon, and report the results of 22 these calculations to Class Counsel and 23 Defendants' Counsel	Within 7 calendar days after the Effective Date
24 Last day for Defendants to fund settlement	Within 21 calendar days after the Effective Date
25 Last day for Settlement Administrator to deliver 26 payment of Class Counsel's attorney's fees and 27 costs, Enhancement Payments, PAGA Payment, 28 Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendants have funded the settlement

Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved Agreement. The Court sets a further Compliance Hearing for June 27, 2025, at 10:30 a.m. At least 15 calendar days prior to the hearing, Class Counsel shall file a declaration from the Settlement Administrator regarding the status of the distribution of the settlement funds. If the Court is satisfied that the settlement funds have been fully distributed, no appearance will be required.

IT IS SO ORDERED.

Date: 11/07/2024



By: _____

Judge of the Superior Court

Jill Talley