



Superior Court of California, County of Sonoma

MINUTE ORDERS

SCV-270591

WOLFE VS AHS STAFFING, LLC

Date of Hearing: June 14, 2023

Motion

Time: 3:00 PM

Courtroom 16

Judicial Officer: Patrick Broderick
Court Reporter: None

Courtroom Clerk: Marcus McMahon

Parties Present:

None

Hearing:

There being no opposition or request to be heard, Court ADOPTS its previously published tentative ruling as follows:

Plaintiff Todd Wolfe (“Plaintiff”) moves pursuant to California Rules of Court, rule 3.769 for an order: 1) preliminarily approving the proposed settlement of this class and Private Attorneys’ General Act (“PAGA”) representative action with Defendant AHS Staffing, LLC (“Defendant”); 2) approving the form and method for providing class-wide notice; 3) directing that notice of the proposed settlement be given to the class; and 4) scheduling a final approval hearing date to consider Plaintiff’s motion for final approval of the settlement and entry of the judgment, and Plaintiff’s motion for approval of attorneys’ fees, litigation expenses, and service payments.

Preliminary approval is GRANTED. The Final Fairness Hearing is hereby set for October 25, 2023, at 3:00 p.m., in Department 16.

1. Legal Standards

A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing. (Cal. Rules of Court, Rule 3.769(a).) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. (Rule 3.769(c).) The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion. (*Ibid.*) The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing. (Rule 3.769(d).) If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing. (Rule 3.769(e).) The court must determine the settlement is fair, adequate, and reasonable. (Rule 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

A presumption of fairness exists 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. (*Wershba* at 245, citing *Dunk* at 1802.) The test is not the maximum amount plaintiff might have obtained at trial on the complaint but, rather, whether the settlement is reasonable under all of the circumstances. (*Wershba*, at 250.)

In making this determination, the court considers all relevant factors including “the strength of [the] 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 the 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, citing *Dunk* at 1801.)

2. Factual Allegations

Defendant AHS Staffing, LLC (“Defendant”) hired, paid, and assigned Plaintiff Todd Wolf (“Plaintiff”) to work at Healdsburg District Hospital Center as a non-exempt, hourly-paid travel nurse in 2019. Plaintiff claims that during the time he was employed by Defendant, he followed the same timekeeping, scheduling and payroll policies and practices of other employees of Defendant whom he observed and interacted with during his employment. Plaintiff alleges that he was not paid all overtime wages and work-related expense reimbursements owed to him, and that he did not receive proper meal and rest breaks under California law.

Plaintiff’s complaint alleges causes of action for (1) failure to pay overtime; (2) failure to authorize or permit meal breaks; (3) failure to authorize or permit rest breaks; (4) failure to reimburse for necessary business expenses; (5) failure to furnish accurate wage statements; (6) waiting time penalties; and (7) unfair business practices. Plaintiff’s claim for alleged unpaid overtime was based on the allegations that Defendant unlawfully failed to include housing and meals and incidentals stipends (“travel stipends”) in Class Members’ regular rates of pay to determine their overtime and double-time rates of pay.

3. Class Members

Plaintiff and Defendant (collectively, “the Parties”) have reached a full settlement of this action as specified in the Class Action and PAGA Settlement Agreement (“Settlement” or “Settlement Agreement”). Class members consist of: “All of Defendant’s non-exempt employees who were assigned to work at any healthcare facility inside California during the Class Period.” The Class Period means the period from April 13, 2018 to 60 days from the date the Settlement Agreement is signed, or the date of preliminary approval, whichever occurs earlier. (Settlement Agreement at ¶¶1.5, 1.12). (Decl. Shakouri at ¶17)

4. Settlement

As consideration for the Settlement, the total amount to be paid by Defendant is Nine Hundred, Fifty Thousand Dollars, and No Cents (\$950,000.00) (the “Gross Settlement Amount”). The Gross Settlement Amount will settle all claims and issues pending in this litigation between Plaintiff and the Class, on the one hand, and the Defendant and the Released Parties, on the other hand, including: payment of Individual Class Payments to Participating Class Members; Individual PAGA Payments to the Aggrieved Employees; the LWDA PAGA Payment; Class Representative Service Payment to Named Plaintiff; Class Counsel Fees and Class Counsel Litigation Expenses Payment to Class Counsel; and the Administration Expenses Payment to

the Administrator. The Settlement is all-in with no reversion to Defendant and no need to submit a claim form. (Decl. Shakouri at ¶3). The Gross Settlement Amount does not include Defendant's share of employer-side payroll taxes, which Defendant shall pay to the Administrator separately. The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Decl. Shakouri at ¶5). Based on Defendant's latest estimate there are approximately 245 Class Members, which means that, if the Court approves the Settlement, on average each Class Member will be entitled to about \$2,159. (Decl. Shakouri at ¶37).

The Settlement Agreement also provides that within thirty (30) calendar days of the Effective Date, Defendant shall pay the Gross Settlement Amount to the Administrator. Within ten (10) calendar days after Defendant funds the Gross Settlement Amount, the Administrator shall issue payments to (1) the Participating Class Members; (2) Aggrieved Employees; (3) the LWDA; (4) Named Plaintiff; (5) Class Counsel; and (6) the Administrator, all in the amounts approved by the Court. (Decl. Shakouri at ¶6).

The Net Settlement Amount shall equal the net amount available for Individual Class Payments to Participating Class Members from the Gross Settlement Amount after deducting the Court-approved amounts for Named Plaintiff's Class Representative Service Payment; Class Counsel Fees Payment; Class Counsel Litigation Expenses Payment; PAGA Penalties; and the Administration Expenses Payment. The Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member and an Individual PAGA Payment from the 25% share of PAGA Penalties to each Aggrieved Employee. The submission of a claim form is not required in order for the Class Member to be paid his or her Individual Class Payment and Individual PAGA Payment, if any. Distribution of the Net Settlement Amount to Participating Class Members will be calculated by dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and then multiplying the result by each Participating Class Member's Workweeks. Distribution of the portion of the PAGA Penalties allocable to the Aggrieved Employees will be calculated by dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and then multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. (Decl. Shakouri at ¶7).

Class Members will have forty-five (45) days after the mailing of the Class Notice ("Response Deadline") to exclude themselves, submit written objections and/or submit disputes as to their estimated payments. Class Members may choose to opt-out of the Settlement by following the directions in the Class Notice. The procedure for dissemination of the Class Notice, as well as the procedure Class Members must follow to dispute their estimated payments, submit objections to the Settlement and/or requests for exclusion from the Class, is specifically articulated in Exhibit A of the Settlement Agreement. The Class Notice shall provide that Class Members who wish to exclude themselves from the Class must submit a written Request for Exclusion by the Response Deadline. The Class Notice shall also provide that Class Members who wish to object to the Settlement may submit a written objection to the Administrator (or through any other method through which the Court will accept objections, if any). The Class Notice also informs Class Members of their right to appear at the fairness or final approval hearing ("Final Approval Hearing") and to orally object to the Settlement at the Final Approval Hearing, regardless of whether they have submitted written objections. (Decl. Shakouri at ¶8).

If a Class Member's Individual Class Payment check or Individual PAGA Payment check is not cashed within one hundred and eighty (180) calendar days from the date the settlement checks are issued, the funds from such uncashed checks will be distributed to the California

Controller's Unclaimed Property Fund in the name of the Class Member and the Class Member will remain bound by the Settlement. A Class Member who opts out of the Settlement will not release his or her claims pursuant to the Settlement, except for Released PAGA Claims, as defined in the Settlement, which will be released whether or not the Class Member opts out of the Settlement. (Decl. Shakouri at ¶9).

5. Administrator

The Parties have agreed to use Phoenix Settlement Administrators as the Administrator for the Settlement. Payment of the expenses of the Administrator from the Gross Settlement Amount shall be made for the expenses of effectuating and administering the Settlement. The Administrator shall receive payment for its services in an amount not to exceed Eight Thousand, Five Hundred Dollars, and Zero Cents (\$8,500.00). (Decl. Shakouri at ¶10).

6. Attorney fees

The Settlement Agreement provides for Class Counsel to be awarded as their attorney fees in a sum not to exceed 35% of the Gross Settlement Amount (i.e., up to Three Hundred, Thirty-Two Thousand, Five Hundred Dollars, and Zero Cents (\$332,500.00)). Class Counsel will also be allowed to apply separately for reimbursement of reasonable litigation costs and expenses in an amount not to exceed Twenty Thousand Dollars, and Zero Cents (\$20,000.00). In support of these requests, Class Counsel will provide evidentiary support, including lodestar method calculations. Class counsel is sufficiently experienced to represent the class. (Decl. Shakouri at ¶¶43-44).

Defendant will not oppose a motion for approval of attorneys' fees, litigation expenses, and service payment consistent with the Settlement Agreement. (Decl. Shakouri at ¶11).

7. LWDA

Subject to Court approval, Fifty Thousand Dollars, and Zero Cents (\$50,000.00) will be allocated to the PAGA Penalties for settlement of Plaintiff's PAGA claims under Labor Code Section 2698 et seq. Pursuant to the requirements of Labor Code §2699(i), the PAGA Penalties shall be allocated Thirty-Seven Thousand, Five Hundred Dollars, and Zero Cents (\$37,500.00) (75%) to the LWDA as the LWDA's share of the settlement of civil penalties, and Twelve Thousand, Five Hundred Dollars, and Zero Cents (\$12,500.00) (25%) will be distributed to the Aggrieved Employees. (Decl. Shakouri at ¶12).

8. Class Representative Service Payment

Subject to Court approval, the Settlement Agreement provides for a Class Representative Service Payment of no more than Ten Thousand Dollars, and Zero Cents (\$10,000.00) to the Named Plaintiff, or such lesser amount as may be approved by the Court at final approval.

9. Net Settlement Amount

Based upon the above figures, the Net Settlement Amount is estimated to be \$529,000. Based on Defendant's latest estimate there are approximately 245 Class Members, which means that on average each Class Member will be entitled to about \$2,159. (Decl. Shakouri at ¶37)

10. Proposed Class and Commonality of Interest

The proposed class is sufficiently numerous and ascertainable as it consists of approximately 243 individuals who can be identified based upon Defendant's records. In addition, common issues of law and fact predominate. Common questions consist of whether Defendant's practices were lawful, whether Defendant failed to properly provide and/or pay for meal and rest periods, whether Defendant failed to properly pay overtime, whether Defendant failed to pay all wages, whether Defendant failed to provide accurate wage statements, and whether the Class is entitled to compensation and related penalties. Plaintiff's claims are typical of the class claims as Plaintiff was employed by Defendant, like all other class members.

11. Fair, adequate, and reasonable

"The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." (*Kullor* at 130.) Class Counsel's investigation into the facts enabled them to come to conclusions regarding the value of the class claims. The amounts to compensate the Class Members for the alleged violations at the time this Settlement was negotiated were calculated by Berger Consulting Group ("Berger"), Plaintiff's damage expert. (Decl. Shakouriat ¶¶23, 41.) Plaintiff used Berger to analyze the data and determine the potential damages for the Class Members. (*Ibid.*) For the Class, Plaintiff estimates that Defendant is subject to a maximum liability in the amount of \$2,833,473, consisting of \$639,239 for alleged unpaid overtime; \$1,070,252 for alleged meal break premiums; \$1,070,252 for alleged rest break premiums; and \$53,730 for alleged unreimbursed expenses. (*Ibid.*) Consequently, the Gross Settlement Amount of \$950,000 represents 33.5% of the value of the maximum actual damages at issue here. (*Ibid.*) Plaintiff further calculated that Defendant could be liable for \$1,546,190 for alleged waiting time penalties, and \$202,450 for alleged wage statement penalties. (*Ibid.*) Finally, Plaintiff's expert calculated that Defendant could be liable for PAGA penalties in an amount of \$208,100. Thus, the maximum combination of damages and penalties to the Class amounts to \$4,790,213, assuming all of these amounts could be proven at trial. (*Ibid.*) Consequently, the Settlement represents approximately 19.8% of the maximum combination of damages and penalties at issue here. (*Ibid.*) Class counsel opines that given the amount of the Settlement as compared to the potential value of claims in this case, the Settlement is fair and reasonable. (*Ibid.*)

Of course, Defendant denies liability, has presented various arguments in opposition to liability, and there is significant risk in litigating the issues. (See Decl. Shakouri at ¶¶24-27.) Counsel has completed sufficient discovery to make an informed decision in this case. Plaintiff received Defendant's relevant policies and handbook; records related to Defendant's relationship with Plaintiff, including records of shifts worked by Plaintiff and payments received; and a representative sample of payroll and reimbursement records for the class members.

The class members' reactions will not be known until they receive notice and are afforded an opportunity to object or opt-out. This factor becomes relevant during the final fairness hearing.

12. Notice

California Rules of Court, rule 3.769(e) provides: "If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement

hearing.” Additionally, rule 3.769(f) states: “If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.” The proposed notice, attached as Exhibit 1 to the declaration of Ashkan Shakouri appears thorough and sufficient to adequately notify class members pursuant to Rule 3.769.

13. Order and Final Fairness Hearing

Preliminary certification of the class, the Settlement Agreement, and class notice is GRANTED. Plaintiff is appointed as the Class Representative. Ashkan Shakouri of Shakouri Law Firm is appointed as Class Counsel. The Final Fairness Hearing is hereby set for **October 25, 2023, at 3:00 p.m., in Department 16**. The court will sign the proposed order

Hearing Events/Documents Filed:

- Court announces tentative decision
- The Court adopts its previously published tentative ruling

-End of Minute Order-

Next Hearing(s) - Information current as of June 15, 2023:

October 25, 2023 3:00 PM
Final Fairness Hearing
Courtroom 16
Broderick, Patrick

*For more information please contact the Clerk's Office at (707) 521-6500 during official business hours.
www.sonoma.courts.ca.gov*