

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**34-2022-00314707-CU-OE-GDS: Spencer Norman vs. B&H Global Marketing LLC, a
California limited liability company
07/07/2023 Motion motion for preliminary approval of class action settlement (plaintiff) in
Department 27**

Tentative Ruling

NO APPEARANCE REQUIRED

Plaintiff Spencer Norman’s motion for preliminary approval of class action settlement is UNOPPOSED and GRANTED as follows.

Overview

On January 26, 2022, Plaintiff filed a Complaint against Defendants B & H Global Marketing, LLC and Golden State Crushing (collectively “Defendants”). The Complaint alleges class and representative claims for: (1) failing to provide compliant off-duty meal periods, or pay meal period premium in lieu thereof; (2) failing to provide compliant off-duty rest periods, or pay rest period premium compensation in lieu thereof; (3) failure to provide accurate itemized wage statements; (4) unfair competition; and (5) recovery of penalties pursuant to the Private Attorneys General Act (“PAGA”).

After filing the Complaint, Plaintiff served an initial round of written discovery. Thereafter, the parties agreed to participate in private mediation. (Tulyathan Decl. ¶ 7.) In preparation for mediation, Defendants informally provided data and produced documents to Plaintiff, including the number of putative class members, the number of weeks worked and pay periods at issue, time and payroll records, the number of wage statements at issue, as well as information pertaining to Defendants’ policies, practices, and procedures relating to meal and rest periods, timekeeping, and wage statement practices. (*Id.* at ¶ 8.) The information provided allowed Plaintiff’s counsel to assess the claims and liability, as well as conduct an exposure analysis. (*Ibid.*)

On December 19, 2022, the Parties participated in a full-day mediation with Daniel J. Turner, Esq. (Tulyathan Decl. ¶ 9.) The Parties were able to reach a settlement in principle at the mediation and negotiated the terms of the settlement over subsequent weeks and entered into the Joint Stipulation and Settlement Agreement. (*Id.* at ¶ 9 & Ex. A (“Agreement”).) Plaintiff now seeks preliminary approval of their class and representative action settlement. This ruling incorporates by reference the definitions in the Agreement and all capitalized terms defined therein shall have the same meaning in this ruling as set forth in the Agreement.

Settlement Class Certification

Plaintiff seeks to certify the following proposed class: All non-exempt employees who worked for Defendant B&H Global Marketing, LLC dba Golden Crushing in the State of California from **January 26, 2018 to February 17, 2023**. (Agreement ¶ I.E.) Further, the Class also includes: All

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exempt employees who received allegedly defective wage statements during the Class Period. (*Ibid.*) There are an estimated 58 non-exempt and five exempt employees that comprise the Class. (Tulyathan Decl. ¶ 23.) The Parties have stipulated to certification of the proposed class for settlement purposes. (Agreement ¶ III.C.) The Court preliminarily certifies the class for settlement purposes only.

Aggrieved Employees

Aggrieved Employees are defined in the Agreement as: All non-exempt employees who worked for Defendant B&H Global Marketing, LLC dba Golden State Crushing in the State of California from October 18, 2020 to February 17, 2023. Further, the Aggrieved Employees include all exempt employees who received allegedly defective wage statements during the PAGA Timeframe. (Agreement ¶ I.R.) Aggrieved Employees will receive their share of the PAGA settlement regardless of whether they opt out of the Class Settlement. (*Id.* at I.S.) Plaintiff’s counsel submitted a copy of this motion and the Agreement to the Labor and Workforce Development Agency (“LWDA”). (Tulyathan Decl. ¶ 40 & Ex. C.)

Class Representative

Plaintiff Spencer Norman is preliminarily appointed as Class Representative for settlement purposes only.

Class Counsel

Larry W. Lee, Max W. Gavron, and Mai Tulyathan of Diversity Law Group, P.C. and Kelsey A. Webber of Webber Law Group are preliminarily appointed as Class Counsel for settlement purposes only.

Settlement Administrator

Phoenix Settlement Administrators is appointed as the Settlement Administrator.

Fair, Adequate and Reasonable Settlement

The Court must find a settlement is “fair, adequate, and reasonable” before approving a class action settlement. (*Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 244-245.) The trial court has broad discretion to determine whether a proposed settlement in a class action is fair, adequate, and reasonable. (*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

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intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Id.* at 1802.) In making its fairness determination, the Court considers the strength of the Plaintiffs’ case, the risk, expenses, 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 state of the proceedings, and the experience and views of counsel. (*Id.* at 1801.) In approving a class action settlement, the Court must “satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.)

This is a non-reversionary, opt-out settlement. Defendant will pay the Gross Settlement Amount (“GSA”) of \$160,000, exclusive of Defendant’s share of payroll taxes, which will be paid in addition to the GSA. (Agreement ¶ I.U.) The following will be paid from the GSA: (1) individual settlement payments to the class representative and class members; (2) attorney’s fees of up to one-third of the GSA (\$53,333.33) and litigation costs of up to \$15,000; (3) an enhancement payment to the Class Representative in an amount up to \$10,000; (4) PAGA Penalties totaling \$10,000 (75% of which will be paid to the LWDA and 25% of which will be paid to Aggrieved Employees); (5) settlement administration costs of up to \$8,000; and (6) a payment of \$1,000 allocated to the Participating Exempt Class Members on a pro rata basis. (*Id.* at ¶¶ I.U; I.K; I.C.; III.H.2; III.H.4; I.AA; and III.H.5.)

Plaintiff estimates that the average individual settlement amount for non-exempt Class Members will be \$1,086.46. The average individual settlement amount for exempt Class Members will be \$200.00. (Tulyathan Decl. ¶¶ 24-25.) Each Participating Non-Exempt Class Member’s Individual Settlement Share will be apportioned as follows: 30% wages and 70% penalties and interest. Each Participating Exempt Class Member’s Individual Settlement Share will be allocated as 100% penalties and interest. Each Eligible Aggrieved Employee’s portion of the PAGA Payment will be allocated as 100% interest. (Agreement ¶ III.G.2.) Class Members have 45 days to submit a written objection, request exclusion, or submit a workweek dispute. (*Id.* at ¶ I.II.) The funds from any checks that are not cashed within 180 days will be paid to the California State Controller’s Unclaimed Property Fund in the name of the individual who failed to cash their check. (*Id.* at ¶ III.J.10.)

Proposed Notice

The Court approves the Proposed Class Notice. It shall be disseminated as provided in the Agreement.

Disposition

The Court preliminarily finds that the settlement is entitled to a presumption of fairness and that

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all relevant factors support preliminary approval. (*Dunk, supra*, 48 Cal.App.4th at 1802.) The moving papers demonstrate the settlement was reached after arms-length bargaining between the parties and was reached after sufficient discovery and negotiations, which allowed the parties, and therefore, this Court, to act intelligently with respect to the settlement. Class Counsel conducted a thorough investigation into the facts and law and issue in this case, including the exchange of discovery and the review of extensive information. Therefore, the motion is granted. The Court will sign the proposed order submitted with the moving papers. The Court will again review the terms of the settlement at the final approval hearing.

Hearing on Motion for Final Approval of Settlement is scheduled for 12/01/2023 at 9:00 AM in Department 27 at Gordon D. Schaber Superior Court.

To request oral argument on this matter, you must call Department 27 at (916) 874-6697 by 4:00 p.m., the court day before this hearing and notification of oral argument must be made to the opposing party/counsel. If no call is made, the tentative ruling becomes the order of the court. (Local Rule 1.06.)

Please check your tentative ruling prior to the next Court date at www.saccourt.ca.gov prior to the above referenced hearing date.

If oral argument is requested, the parties may and are encouraged to appear by Zoom with the links below:

To join by Zoom link – <https://saccourt-ca-gov.zoomgov.com/my/sscdept27>
To join by Room: Dept27a
To join by phone dial (833) 568-8864 / ID: 16120204632

Parties requesting services of a court reporter will need to arrange for private court reporter services at their own expense, pursuant to Government code section 68086 and California Rules of Court, Rule 2.956. Requirements for requesting a court reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf>. Parties may contact Court-Approved Official Reporters Pro Tempore by utilizing the list of Court Approved Official Reporters Pro Tempore available at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.Pdf>

A Stipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) is required to be signed by each party, the private court reporter, and the Judge prior to the hearing, if not using a

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reporter from the Court's Approved Official Reporter Pro Tempore list. Once the form is signed it must be filed with the clerk.

If a litigant has been granted a fee waiver and requests a court reporter, the party must submit a Request for Court Reporter by a Party with a Fee Waiver (CV/E-211) and it must be filed with the clerk at least 10 days prior to the hearing or at the time the proceeding is scheduled if less than 10 days away. Once approved, the clerk will be forward the form to the Court Reporter's Office and an official reporter will be provided.

Counsel for Plaintiff is directed to notice all parties of this order.