

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court, Department 27

JUDICIAL OFFICER: HONORABLE JILL H. TALLEY

Courtroom Clerk: T. Shaddix
Court Attendant: C. Carrillo

CSR: None

34-2020-00286791-CU-OE-GDS

July 14, 2023
9:00 AM

**Griselda Orellana vs. Advanced Building Maintenance,
Inc., a California Corporation**

MINUTES

APPEARANCES:

No Appearances

NATURE OF PROCEEDINGS: Motion motion for preliminary approval (plaintiff)

NO APPEARANCE REQUIRED

Plaintiffs Griselda Orellana, Israel Herrera, Isaac Herrera, Cameron Nielson, and Olga Hernandez's motion for preliminary approval of class and representative action settlement is UNOPPOSED and GRANTED as follows.

Overview

On October 7, 2022, Plaintiff Orellana filed a putative wage and hour class and representative action against Defendant Advanced Building Maintenance, Inc. ("Defendant"). On March 30, 2023, Plaintiff filed a First Amended Complaint that added Plaintiffs Isaac Herrera, Cameron Nielson, and Olga Hernandez to the action. The operative complaint alleges the following causes of action: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) wage statement violations; (7) failure to timely pay wages; (8) failure to indemnify; (9) unfair competition; and (10) civil penalties under the Private Attorneys General Act ("PAGA").

After Plaintiff Orellana filed her original complaint, the Parties agreed to attend an early mediation to resolve the Action and exchange informal discovery. (Patel Decl. ¶ 4.) Defendant informally produced: (1) time and payroll records for 387 of 1,257 putative class members (31%); (2) data points, including the total number of workweeks worked by putative class members, total number of former employees eligible for waiting time penalties, hire and termination date for putative class members, and the average rate of pay; (3) the total number of putative class members eligible for PAGA penalties, workweeks, and pay periods during the relevant time period for PAGA penalties; (4) Plaintiff Orellana's personnel file and payroll

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

records; (5) all policy documents, including Defendant's August 2019 Employee Handbook; and (6) class contact information for all Class Members who did not opt-out after administration of a Belaire-West opt-out notice. (*Ibid.*)

On April 28, 2022, the Parties participated in a full-day mediation before Jeff A. Ross, Esq. (Patel Decl. ¶ 5.) The mediation was unsuccessful, but the Parties continued to negotiate with the aid of the mediator and were able to reach a settlement. (*Ibid.*) The Parties thereafter entered into a written settlement agreement. (Supplemental Patel Decl. Ex. 1 ("Agreement").) Plaintiffs now seek 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

Plaintiffs seek to certify the following proposed settlement class: All current and former non-exempt employees who worked in California for Defendant at any time during the Class Period. (Agreement ¶ 1(JJ).) The Class Period is defined as October 7, 2016 through September 1, 2022. (*Id.* at ¶ 1(C).) There are approximately 1,257 Class Members. (Patel Decl. ¶ 15.) The Parties have stipulated to certification of the proposed class for settlement purposes. (Agreement ¶ 4.) The Court preliminarily certifies the class for settlement purposes only.

Aggrieved Employees

Aggrieved Employees are defined in the Agreement as: All current and former non-exempt employees employed by Defendant in California at any time during the PAGA Period. (Agreement ¶ 1(B).) The PAGA Period is defined as the period from July 27, 2019 through the end of the Class Period. (*Id.* at ¶ 1(W).) Aggrieved Employees will receive their share of the PAGA settlement regardless of whether they opt out of the Class Settlement. (*Id.* at ¶¶ 9(B) and (C).) Plaintiff's counsel submitted a copy of this motion and the Agreement to the Labor and Workforce Development Agency ("LWDA"). (Patel Decl. ¶ 13 & Ex. 3.)

Class Representatives

Plaintiffs Griselda Orellana, Israel Herrera, Isaac Herrera, Cameron Nielson, and Olga Hernandez are preliminarily appointed as Class Representatives for settlement purposes only. However, the Court notes that Plaintiffs failed to submit any declarations in support of the motion. Each Plaintiff must file a declaration with the final approval motion that **details** the nature of their participation in the action, including specifics of actions taken, time committed, and risks faced. (See *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 804-807.) These declarations must be filed if the Plaintiffs wish to be appointed as Class Representatives at the final approval stage and receive an enhancement award.

Class Counsel

David D. Bibiyan and Jeffrey D. Klein of Bibiyan Law Group, P.C. are preliminarily appointed as Class Counsel for settlement purposes only.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

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 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 \$3,500,000.00, exclusive of Defendant’s Employer taxes. The following will be paid out of the GSA: (1) individual settlement payments to the class members; (2) attorney’s fees of \$1,225,000.00 (35% of GSA) and costs not to exceed \$40,000.00 to Class Counsel; (3) an enhancement award in the amount of \$7,500.00 to Plaintiff Orellana and in the amount of \$5,000.00 each to Plaintiffs Israel Herrera, Isaac Herrera, Nelson, and Hernandez; (4) PAGA Penalties of \$100,000 (75% of which will be paid to the LWDA and 25% of which will be distributed to Aggrieved Employees); and (5) administration costs not to exceed \$18,500. (Agreement ¶¶ 1(N), (S), (V), (GG), (HH); 12; 13.)

Each Participating Member’s Individual Settlement Share will be apportioned as follows: 20% wages and 80% penalties and interest. Each Eligible Aggrieved Employee’s portion of the PAGA Payment will be allocated as 100% penalties. (Agreement ¶¶ 14 and 15.) Class Members have 45 days to submit a written objection, request exclusion, or submit a workweek dispute. (*Id.* at ¶ 1(EE).) The funds from any checks that are not cashed within 180 days will be paid to Legal Services of Northern California as the *cy pres* recipient. (*Id.* at ¶ 11(A).)

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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

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.

Final Approval Hearing

Hearing on Motion for Final Approval of Settlement is scheduled for 12/15/2023 at 09:00 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 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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

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 Plaintiffs is directed to notice all parties of this order.

By: */s/ T. Shaddix*
T. Shaddix, Deputy Clerk

Minutes of: 07/14/2023
Entered on: 07/14/2023