SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

Superior Court of California, County of Ventura, Hall of Justice, Department 41

202200563241CUOE
Joseph D Aguilar vs. Tastes & Tales LLC

July 12, 2023
8:20 AM

Judge: Honorable Ronda McKaig
Judicial Assistant: Kim Goodman
CSR: None

APPEARANCES:

NATURE OF PROCEEDINGS: Hearing on Preliminary Approval of Class Action Settlement

8:46 a.m. Court convenes in this matter with no appearance by any party.

Parties submitted on the court's tentative ruling prior to the hearing.

The Court finds/orders:

The Court's tentative is adopted as the Court's ruling as follows:

Plaintiffs' motion for preliminary approval of class action settlement:

Court approves the motion.

Plaintiffs seek an order:

1) preliminarily certifying the settlement class;

2) preliminarily appointing plaintiffs as class representatives;

3) preliminarily appointing Jonathan Melmed, Kyle Smith, and Joanne Kim of Melmed Law Group P.C. as class counsel;

4) preliminarily approving the settlement as fair, adequate, and reasonable;

5) preliminarily approving payment of reasonable attorneys' fees in an amount not to exceed one-third of the Gross Settlement Amount (i.e., up to $116,666.67), plus necessary litigation costs not to exceed $15,000;

6) preliminarily approving class representative service payments in an amount of up to $10,000 for Joseph Aguilar and $10,000 for Christian Beller;

7) preliminarily approving the allocation of $50,000 for PAGA penalties, of which 75% (i.e.,

$37,500) shall be paid to the California Labor and Workforce Development Agency ("LWDA"), with the remaining 25% (i.e., $12,500) payable to the aggrieved employees;

8) appointing Phoenix Settlement Administrators (the "Settlement Administrator") as the

settlement administrator and preliminarily approving settlement administration costs estimated to be $8,500;

9) dismissing, without prejudice, Defendant Orestis Simos and Defendant Water's Edge

Restaurant and Bar from the action;

10) approving the proposed class notice;

11) directing the Settlement Administrator to mail the class notice to the proposed class;

12) approving the proposed deadlines for the notice and administration process;

13) setting a date for a final fairness hearing; and

14) granting Plaintiffs leave to file the overlength brief included with this motion.

Discussion: To prevent fraud, collusion or unfairness to the class, settlement or dismissal of a class action, or a cause of action in a class action, or a party requires court approval. (Cal. Rules of Court, rule 3.769(a)). Settlements preceding class certification are scrutinized more carefully to make sure that absent class members' rights are adequately protected. (*Wershba v Apple Computer, Inc.* (2001) 91 Cal.App.4th 224).

This action was filed on March 1, 2022 by Joseph Aguilar; plaintiff Christian Beller was added by first amended complaint. The operative pleading is the second amended complaint filed on May 31, 2022.

Plaintiffs conducted "significant" informal discovery and, from the information obtained, had their expert "carefully craft a damages model." (Melmed dec., ¶¶ 22, 23). The parties participated in a full-day mediation on November 29, 2022, and on January 3, 2023 they accepted the mediator's proposal "concerning the broad terms of a settlement agreement." (Melmed dec., ¶ 24). The parties then spent the next few months negotiating the details, ultimately executing the settlement agreement on May 24, 2023. (Melmed dec., ¶ 25).

A copy of the settlement agreement and proposed class notice are attached to Mr. Melmed's declaration at Exhibit 1. It is based on the Los Angeles Superior Court's [Model] Class Action and PAGA Settlement Agreement. A redlined version of the agreement showing changes to the model agreement is attached as Exhibit 2.

Defendants have agreed to pay $350,000 in a non-reversionary settlement. Plaintiffs "applied appropriate discounts on the maximum settlement value as calculated to come to Defendants' realistic exposure of $458,979.96." (Melmed dec., ¶ 68.)

There are approximately 431 class members defined as "All current and former non-exempt employees who were employed by Defendants in California during the Class Period and who were paid wages by Waterside, LLC or Ventura Harbor Restaurant Associates, Inc. (or if any such person is incompetent, deceased, or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification)." The class period is the period from March 1, 2018, through January 29, 2023.

There are approximately 125 aggrieved employees for PAGA purposes, defined in the same manner. The PAGA period is the period from March 1, 2021, through January 29, 2023.

Class members are not required to submit a claim. Anyone who does not request exclusion will receive settlement funds. Each members' share will be calculated by: (a) dividing the Net Settlement Amount by the total number of workweeks worked by all participating Class Members during the Class Period, and (b) multiplying the result by each participating Class Member's workweeks.

Plaintiffs obtained bids from several settlement administrators and Phoenix Settlement Administrators presented the lowest qualified bid. (Melmed dec., ¶ 92).

The class notice is attached to the Settlement Agreement Exhibit A. It provides that within 15 days of the court granting preliminary approval, defendants shall provide the Settlement Administrator with the class data. The administrator will update the addresses using the National Change of Address database. Within 14 days of receiving the class data, the Settlement Administrator shall send the class notice by bulk first class mail, forwarding requested. The class notice will inform each member of his or her estimated share of the settlement.

Any member who wishes to object to the settlement may submit a written objection to the Settlement Administrator no later than 45 days following the date on which the notice was first mailed (plus 14 days if the notice is re-mailed). To request exclusion from the Settlement Agreement, a member must submit a signed written request by fax, email, or mail no later than 45 days after the notice is mailed (plus 14 days if the notice is re-mailed). Members may also object to the workweek calculation within this time frame. The administrator's ultimate calculations will be final.

Defendants will deposit the Gross Settlement Amount in a lump sum payment, plus the

employer-side payroll taxes, with the Settlement Administrator within 14 days of the "Effective Date." "Effective Date" is defined as " the date by when both of the following have occurred:

(a)-the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b)-the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a)-if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b)-if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is

filed, the day after the appellate court affirms the Judgment and issues a remittitur."

Members will have 180 days to cash their settlement checks. Uncashed checks will be distributed

to the California State Controller for deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed.

Plaintiffs' counsel submitted the proposed settlement agreement and the motion to the LWDA on 6/20/23 as required by Lab. Code, § 2699, subd. (l)(2). (Melmed dec. ¶ 91, Ex. 3).

Plaintiff requests dismissal of defendants Orestis Simos and Water's Edge Restaurant and Bar on the grounds they are not an employer and are a dba, respectively.

The statutory requirements have been satisfied and the Court grants the motion.

Order is signed this date and submitted electronically to the clerks office.

Hearing on Motion for Final Approval of Settlement is scheduled for 11/22/23 at 08:20 AM in Department 41 at Hall of Justice.

Notice to be given by clerk.

Certificate of Mailing is attached.

SUPERIOR COURT OF CALIFORNIA COUNTY OF VENTURA	FOR COURT USE ONLY
COURTHOUSE ADDRESS: Hall of Justice 800 South Victoria Avenue Ventura, CA 93009	
PLAINTIFF/PETITIONER: Joseph D Aguilar	
DEFENDANT/RESPONDENT: Tastes & Tales LLC	
CASE TITLE: Joseph D Aguilar vs. Tastes & Tales LLC	
CERTIFICATE OF MAILING	CASE NUMBER: 202200563241CUOE

I certify that I am not a party to this cause. I certify that a true copy of the Minute Order (Hearing on Preliminary Approval of Class Action Settlement) of 07/12/2023 was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Ventura, California, on 07/14/2023.

Matthew C Sgnilek
4695 MacArthur COURT 210
Newport Beach, CA 92660

Kyle D Smith
1801 Century Park East Ste 850
Los Angeles, CA 90067

Brenda L. McCormick, Executive Officer/Clerk

Dated: 07/14/2023

By: Kim Goodman
Kim Goodman, Deputy Clerk

CERTIFICATE OF MAILING