

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**34-2021-00313350-CU-OE-GDS: Vincent Ramsey vs. Packaging Corporation of America, a
Delaware corporation
07/21/2023 Motion for Preliminary Approval of Class Action Settlement - Complex Motion
for Preliminary Approval of Class Action & PAGA Settlement (PLTF/Diversity Law
Group) in Department 28**

Tentative Ruling

Plaintiff Vincent Ramsey Jr.'s ("Plaintiff") motion for preliminary approval is UNOPPOSED and GRANTED as follows.

Background

On December 21, 2021, Plaintiff submitted written notice to the California Labor and Workforce Development Agency ("LWDA"), alleging violations of Labor Code § 226, pursuant to the Private Attorneys General Act ("PAGA"), Labor Code § 2699. (Gavron Decl., ¶ 2.) On December 28, 2021, Plaintiff filed a class action complaint Sacramento County Superior Court on behalf of himself and all similarly situated employees, asserting claims for violation of Labor Code § 226. (*Id.*, ¶ 3.) On March 3, 2022, Plaintiff filed a related action in Sacramento County Superior Court, alleging a single cause of action for violation of the PAGA. (*Id.*, ¶ 4.) On July 1, 2022, Plaintiff filed a first amended complaint ("First Amended Complaint"), consolidating the claims of the class action and the related PAGA action. (*Id.*, ¶ 5.) Plaintiff contends that Defendants Packaging Corporation of America and PCA Central California Corrugated, LLC ("Defendants") operated as a single entity despite their separate corporate forms and issued noncompliant wage statements to employees whenever overtime and/or shift differential wages were paid. (*Id.*, ¶ 6.)

Plaintiff now seeks preliminary approval of the Parties' Stipulation RE: Settlement of Class and PAGA Action ("Settlement Agreement" or "Agreement"). (Gavron Decl., Exh. A ("SA").) The Court, on its own motion, continued the hearing in this matter to today's date for further briefing. (5-26-23 Minute Order.) Plaintiff has addressed the Court's concerns in supplemental briefing and declarations. Concurrent with the filing of this motion, Plaintiff provided a copy of the proposed settlement to the LWDA. (Gavron Supp. Decl., Exh. C.)

Legal Standard

The law favors the settlement of lawsuits, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. (See *Neary v. Regents of Univ. of Cal* (1992) 3 Cal.4th 273, 277-281; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 52.) However, a class action may not be dismissed, compromised, or settled without approval of the court, and the decision to approve or reject a proposed settlement is committed to the court's sound discretion. (See Cal. Rules of Court, Rule 3.769; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 (*Wershba*).)

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In determining whether to approve a class settlement, the court's responsibility is to "prevent fraud, collusion or unfairness to the class" through settlement because the rights of the class members, including the named plaintiffs, "may not have been given due regard by the negotiating parties." (*Consumer Advocacy Group, Inc. v. Kintetsu Enters. of Am.* (2006) 141 Cal.App.4th 46, 60.) The court must independently determine "whether the settlement is in the best interests of those whose claims will be extinguished" and "make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133.) The burden of establishing the fairness and reasonableness of the settlement is on the proponent. (*Wershba, supra*, 91 Cal.App.4th at p. 245; see also *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135 1165-66.)

The Court does not rubber stamp these motions, but rather serves as a guardian of absent class members' rights to ensure the settlement is fair. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 95.) "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice.'" (*7-Eleven, supra*, 85 Cal.App.4th at p. 1145.) "A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, even if 'the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,' this is no bar to a class settlement because 'the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.'" (*Wershba, supra*, 91 Cal.App.4th at p. 250, citations omitted.) The court's primary objective for preliminary approval is to establish whether to direct notice of the proposed settlement to the class, invite the class's reaction, and schedule a final fairness hearing. (Rubenstein et al., *Newberg on Class Actions* (6th ed. 2022) § 13:10.)

Provisional Class Certification

If the class has not yet been certified, part of the motion for preliminary approval will include a request for provisional certification for purposes of settlement only. (See Cal. Rule of Court, Rule 3.769.) Although the provisional process is less demanding than a traditional motion for class certification, a trial court reviewing an application for preliminary approval of a settlement must still find that the normal class prerequisites have been met. (See *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625-627 (1997); in accord, *Carter v. City of Los Angeles* (2014) 224 Cal.App.4th 808, 826.) These requirements are generally expressed as follows: (1) numerosity of class members, (2) typicality of claims, (3) adequacy of representation by the named plaintiffs, and (4) the superiority and predominance of common questions of law and fact. (*Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800, 820.)

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Here, Plaintiff seeks provisional certification of the following class: “non-exempt employees who worked for Defendant in California and who were paid overtime and/or shift differential wages during the Class Period.” (SA, ¶ 1.7.) The Class Period is defined as “the period from December 21, 2020, through February 18, 2022.” (*Id.*, ¶ 1.10.) There are approximately 682 individuals that comprise the Class. (*Id.*, ¶ 1.7.)

Plaintiff argues that provisional class certification is appropriate because the Parties have stipulated to the Court’s provisional certification of the Class for settlement purposes. (Mot., p. 10:14-17.) Plaintiff also argues that the typicality and adequacy requirements are satisfied because “Plaintiff alleges that Defendants, as a matter of its corporate policy, practice, or procedure, violated the Labor Code by failing to provide accurate itemized wage statements;” Plaintiff does not have any interests adverse to the Class; Plaintiff has taken all necessary steps to represent the interests of the Class; and by retaining experienced counsel who have adequately represented the class. (*Id.*, pp. 17:7-18:1.) While not addressed by Plaintiff, the Court notes that the class of approximately 682 individuals is sufficiently numerous and ascertainable. Accordingly, the Court certifies the class for settlement purposes.

Class Representatives & Class Counsel

Plaintiff is preliminarily approved as Class Representative. (SA, ¶ 1.11.) Class Counsel is Larry W. Lee, Max W. Gavron, Kwanporn “Mai” Tulyathan of Diversity Law Group and Kelsey A. Webber and Shaelyn A. Stewart of Webber Law Group. (*Id.*, ¶ 1.8.) Diversity Law Group and Webber Law Group have a fee sharing agreement that Plaintiff has agreed to in writing. Specifically, Diversity Law Group will receive two-thirds (2/3) of the attorneys’ fees and Webber Law Group will receive the remaining one-third (1/3) of the legal fees recovered. (Gavron Supp. Decl., ¶ 5; Ramsey Supp. Decl., ¶ 2.) The Court notes that while Plaintiff’s Supplemental Briefing refers to a supplemental declaration filed by Kelsey Webber, no such document appears in the Court’s files.

Fair, Adequate, and Reasonable Settlement

Before approving a class action settlement, the Court must find that the settlement is “fair, adequate, and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) The Court considers such factors as “the strength of 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 class members to the proposed settlement.” (*Id.*) “[A] presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are

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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 p. 1802.)

Under the terms of the Settlement Agreement, Defendants deny liability but agree to pay a non-reversionary Gross Settlement Amount (“GSA”) of \$975,000. (SA, ¶¶ 1.16, 2.1.1.)

The following amounts will be paid from the GSA:

- Class Counsel’s attorneys’ fees of up to \$325,000, or one third of the GSA (*id.*, ¶¶ 1.6, 2.10.1);
- Class Counsel’s litigation costs of up to \$25,000 (*id.*, ¶¶ 1.5, 2.10.1);
- Class Representative Enhancement Award payment to Plaintiff of not more than \$10,000 (*id.*, ¶¶ 1.12, 2.10.2)
- Settlement administration costs estimated at \$11,000 (*id.*, ¶¶ 2.11.1); and
- PAGA Payment of \$80,000, of which 75% or \$60,000 will be paid to the LWDA and 25% or \$20,000 will be paid to PAGA Members (*id.*, ¶¶ 1.28, 2.3.1.).

The remaining amount – the Net Settlement Amount (“NSA”) – is approximately \$524,000. The Parties agree that the NSA will be distributed to all Participating Settlement Class Members. (*Id.*, ¶ 1.21.) Pursuant to the Agreement, the Individual Settlement Sum, meaning the total amount due to each Participating Class Member, will be determined by dividing the number of wage statements received by a Participating Class Member during the Class Period with overtime and/or a shift differential reflected on the wage statement by the total number of wage statements with overtime and/or a shift differential reflected on the wage statement received during the Class Period by all Participating Class Members, then multiplying that figure by the NSA. (SA, ¶¶ 1.38, 2.2.1.) The same pro rata method is used to calculate each PAGA Member’s share of the PAGA Payment. (*Id.*, ¶ 2.3.2.)

For tax purposes, 100% of each Individual Settlement Sum and PAGA Payments will be treated as penalties. (*Id.*, ¶ 2.4.1.) This allocation is reasonable in light Plaintiff’s claims. The Settlement Administrator will report the payments on an IRS Form 1099. (*Id.*, ¶ 2.4.2.) Any checks that remain uncashed after 180 days from mailing will be voided and the total amount of any uncashed settlement checks will be distributed to Center for Employment Opportunities, as a cy pres recipient. (*Id.*, ¶ 2.8.2.) In his supplemental briefing, Plaintiff asserts that none of the moving parties has any affiliation with the cy pres recipient. (Supp. Brief, pp. 3:22-4:20; Gavron Supp. Decl., ¶¶ 6-7; Ramsey Supp. Decl., ¶ 3.) Again, while Plaintiff also cites to the declaration of Mr. Webber, no such evidence is before the Court. The cy pres recipient is preliminarily approved. However, in moving for final approval, Mr. Webber is expected to clearly attest whether he has any involvement or interest in Center for Employment Opportunities.

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In continuing this hearing, the Court raised several concerns regarding the scope of the releases contained in the Agreement. (5-26-23 Minute Order, Issue 2.) In response, the Parties made several revisions to the proposed language in the releases. First, the Parties simplified and revised the definition of “Settled Claims.” The Parties included language limiting the scope of claims to be released as those “arising out of or reasonably related to the factual allegations pled in the First Amended Complaint.” (Gavron Supp. Decl., Exh. A, ¶ 6.1.1.35, as amended.) Second, the Parties also limited the release to the Class Period. (*Id.*, ¶ 6.1.2.9.1 as amended.) The Parties similarly revised the definition of “Settled PAGA Claims” to be limited to the PAGA Period and to those claims which “reasonably arise out of or are reasonably related to the factual allegations pled in the First Amended Complaint or the December 21, 2021 written notice to the California Labor and Workforce Development Agency (“LWDA”).” (*Id.*, ¶¶ 6.1.1.36, 6.1.2.9.2, as amended.) The releases are effective upon the full funding of the GSA. The Court is satisfied that these amendments adequately address the Court’s concerns and finds the releases appropriately limited in scope and duration.

The moving papers demonstrate that the Settlement was reached after sufficient investigation and arms-length negotiations by the Parties. The Parties engaged in both formal and informal discovery. (Gavron Decl., ¶ 7.) As a part of this process, Defendants provided documents and data pertaining to the number of putative class members and applicable wage statements. (*Ibid.*) On September 28, 2022, the Parties participated in a full-day mediation with neutral Michael J. Loeb, Esq. (*Id.*, ¶ 8.) In advance of the mediation, Defendants provided Plaintiff’s counsel with informal data and information pertaining to the putative class size and number of applicable wage statements, as well as sample corrective wage statements. (*Id.*, ¶ 9.) This information allowed Plaintiff to conduct a damages analysis. (*Ibid.*) The mediation did not result in settlement, however. Thereafter, the Parties continued settlement discussions over the course of several months and ultimately reached an agreement to resolve the Action. (*Ibid.*)

Class Counsel conducted a thorough investigation into the facts of this action and diligently evaluated Plaintiff’s and the Class Members’ claims against Defendant. Relying on the evidence provided, Plaintiff estimates that Defendants are subject to a potential liability of up to approximately \$2,894,600.00 for Plaintiff’s class claim if Plaintiff succeeded at trial. (Gavron Decl., ¶ 13.) Plaintiff was able to estimate the potential class penalties based on class data provided by Defendants, which identified 682 putative class members, approximately 29,287 wage statements reflecting incorrect total hours worked and/or shift differential wages. (*Id.*, ¶ 13.) From this, Plaintiff estimated the penalties at approximately \$2,894,600.00, which was based on 29,287 alleged wage statements [(\$100 x 29,287) - (\$50 x 682 class members)]. (*Id.*, ¶ 13.) Plaintiff acknowledged that he could have argued at trial to award separate penalties for distinct violations of Labor Code section 226, as opposed to a single penalty for a wage statement that violated the law in any way. Such an approach would have brought Defendants’

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exposure closer to \$5 million; however, Plaintiff concluded that it was unlikely a Court would interpret the statute in that way. (Mot., p. 12:1-5.) The settlement represents approximately one third of the maximum estimated exposure on the class claims.

Plaintiff also acknowledged that Defendants have many defenses, including that the violations were not knowing and intentional, Defendants are entitled to a good faith defense on this claim, and any liability that Plaintiff could seek was limited because Defendants revised their wage statements. (Mot., p. 12:6-18.)

Class Counsel have extensive litigation experience in wage and hour class actions. (Gavron Decl., ¶¶ 28-34; Lee Decl., ¶¶ 6-8; Tulyathan Decl., ¶¶ 6-11; Webber Decl., ¶¶ 3-8.) Each side has apprised the other of their respective factual contentions, legal theories, and defenses, resulting in negotiations taking place between the Parties. (Gavron Decl., ¶ 12.) Class Counsel attests that the settlement is fair, reasonable, and adequate and is in the best interests of the Class. (*Id.*, ¶ 11; Lee Decl., ¶ 2; Tulyathan Decl., ¶ 4; Webber Decl., ¶ 9.) Based on the foregoing, the Court preliminarily finds, subject to the final fairness hearing, that the Settlement is within the ballpark of reasonableness and is entitled to a presumption to fairness and that all relevant factors presently support preliminary approval.

PAGA Payment

The Settlement Agreement provides for a PAGA Payment of \$80,000, of which 75% or \$60,000 will be paid to the LWDA and 25% or \$20,000 will be paid to PAGA Members. (SA, ¶¶ 1.28, 2.3.1.) A “PAGA Member” is “any Class Member who was employed or has been employed by [Defendant] at any time during the PAGA Period.” (*Id.*, ¶ 1.26.) The PAGA Period is defined as the period from December 21, 2020 through February 18, 2022. (*Id.*, ¶ 1.29.) The Agreement and the Class Notice make clear that PAGA Members cannot opt out of the Settlement. (*Id.*, ¶ 2.7.3; Class Notice, pp. 4, 5.)

With respect to potential liability of Plaintiff's PAGA claims, Plaintiff estimated that Defendants could face civil penalties of up to \$2,928,700.00. (Gavron Decl., ¶ 15.) This amount is calculated based on the PAGA's initial \$100 penalty for each aggrieved employee per pay period. However, Plaintiff acknowledges that the Court has the discretion to reduce any PAGA penalties even if Plaintiff ultimately prevailed on his PAGA claims. (Mot., p. 13:4-12.) Here, the PAGA allocation of \$80,000 represents approximately 2.73% of the maximum potential exposure. This allocation is reasonable and preliminarily approved.

Proposed Class Notice

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The notice to Class Members must fairly apprise the prospective members of the terms of the settlement without expressing an opinion on the merits of the settlement. (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1164; see also Cal. Rule of Court, Rule 3.769.) “Whether a claimant would want to accept or reject the proposed settlement is a decision to be made by him independently and without influence or pressure from those competing parties who either favor or oppose the settlement.” (*Phila. Hous. Auth. v. Am. Radiator & Std. Sanitary Corp.* (E.D. Pa. 1970) 323 F.Supp. 364, 378.)

In his supplemental briefing, Plaintiff clarified that the Class Notice will be translated into Spanish. (Mot., p. 5:16-20; SA, ¶ 2.11.3; Gavron Supp. Decl., ¶ 8, Exh. E.)

The Court finds that the Class Notice fairly apprises the Class Members of the terms of the proposed settlement and their rights.

Class Counsel Fees and Costs

Class Counsel requests an award of attorney’s fees up to \$325,000, or one third of the GSA. (SA, ¶¶ 1.6, 2.10.1.) Plaintiff argues that the award is reasonable and appropriate under the common fund percentage method. (Mot., p. 18:4-19.) Plaintiff also argues that the requested award should be presumed fair as the Parties have agreed to the payment. (*Id.*, p: 18:22-23.) Although these arguments are cursory, the proposed attorney’s fee award is preliminarily approved with the expectation that Class Counsel provide sufficient information for the Court to perform a lodestar cross-check.

In addition, the Settlement Agreement provides for reimbursement of Class Counsel’s litigation costs of up to \$25,000. (SA, ¶ 1.5.) The Court also preliminarily approves this allocation for litigation costs, with the expectation that Class Counsel will provide a declaration, in moving for final approval, that shows actual costs.

Settlement Administrator

Phoenix Settlement Administrators is appointed by the Court to act as the Settlement Administrator. (SA, ¶¶ 1.3.) Regarding the settlement administration costs, the Agreement allocates up to \$11,000 (*id.*, 1.4), and Phoenix’s current estimate is \$11,000. (Mot., p. 19:14-18; Gavron Supp. Decl., ¶ 8, Exh. E.) The maximum allocation of \$11,000 for the cost of administration is reasonable and preliminarily approved.

Class Representative Service Award

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Plaintiff seeks a service award in an amount not to exceed \$10,000 for his role as Class Representative. (SA, ¶ 1.12.) Plaintiff's supplemental declaration adequately sets forth the nature of his individual participation and estimates that he spent approximately 20-25 hours working on this case. (Ramsey Supp. Decl., ¶¶ 4-6.) The Court preliminarily approves the maximum \$10,000 service payment to Plaintiff.

Final Approval Hearing

The Court will again review and consider the terms of this settlement at the time of the final approval hearing.

Hearing on Motion for Final Approval of Settlement is scheduled for 11/17/2023 at 09:00 AM in Department 28 at Gordon D. Schaber Superior Court.

If either party is unavailable on **November 17, 2023 at 9:00 a.m.**, the parties shall meet and confer to identify three other Fridays at 9:00 a.m. that work for the parties to schedule the hearing. They shall then submit those dates to the Court via email at Dept28@saccourt.ca.gov, and the Court will reschedule the hearing accordingly.

The briefing shall be filed in conformity with Code of Civil Procedure section 1005.

The Court will sign the proposed order submitted with Plaintiff's moving papers.

To request oral argument on this matter, you must call Department 28 at (916) 874-6695 by 4:00 p.m. the court day before this hearing and notify the opposing party/counsel of oral argument. If no call is made, the tentative ruling becomes the order of the court. (Local Rule 1.06.)

Parties requesting services of a court reporter will need to arrange for private court reporter services at their own expense, pursuant to Government Code §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>

If you are not using a reporter from the Court's Approved Official Reporter Pro Tempore list, a Stipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) must be signed by

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*each party, the private court reporter, and the Judge. **The signed form must be filed with the clerk prior to the hearing.***

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). The form must be filed with the clerk at least 10 days prior to the hearing or at the time the hearing is scheduled if less than 10 days away. Once approved, the clerk will forward the form to the Court Reporter's Office and an official reporter will be provided.

If oral argument is requested, the Parties are encouraged to appear via Zoom with the links below:

*To join by Zoom link - <https://saccourt-ca-gov.zoomgov.com/my/sscdept28>
To join by phone dial (833) 568-8864 ID 16039062174*

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

Please note that the Complex Civil Case Department now provides information to assist you in managing your complex case on the Court website at <https://www.saccourt.ca.gov/civil/complex-civil-cases.aspx>. The Court strongly encourages parties to review this website regularly to stay abreast of the most recent complex civil case procedures. Please refer to the website before directly contacting the Court Clerk for information.