

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF TULARE**

**Hernandez, Eddie**  
Plaintiff/Petitioner,

vs.

**New Image Pool Interiors, Inc.**  
Defendant/Respondent.

Jud. Officer: **Bret Hillman**  
Clerk: **Nicole Renteria**  
Bailiff: **R Nash**  
CSR: **Tamara Sumpter**  
Interpreter:  
Language:

Minutes: **Motion for Preliminary Approval of Class  
Action and PAGA Settlement**

Case No. **VCU293400**

**Department 07**

Date: **November 21, 2023**

Related Cases:

Appearances: ☐ No Appearances

☐ Party: \_\_\_\_\_

☐ Remote Appearance

☐ Party: \_\_\_\_\_

☐ Remote Appearance

☒ Attorney: S Emi Minne for Plaintiff present via  
Zoom

☒ Remote Appearance

☒ Attorney: Paul Bauer for Defendant present  
via Court Call

☒ Remote Appearance

☐ Court makes interpreter findings on the record pursuant to GC 68561(g)/GC 68561(f)

☐ The Court noted that no court reporter was available for today's proceedings.

**Motion for Preliminary Approval of Class Action and PAGA Settlement**

☒ Oral argument requested by Plaintiff

☒ Comments heard from Counsel regarding deadline to file the Supplemental Declaration and Time Sheets.

**ORDER: The Court adopts the Tentative Ruling as the Order of the Court as follows:**

To continue this matter to **December 12, 2023 at 8:30 a.m. in Dept. 7** to permit Plaintiff to file supplemental declarations addressing the calculation of attorneys' fees and presently incurred costs, as detailed below.

**1. Sufficiency of Amount of Settlement (Net Estimated: \$312,750)**

The gross settlement amount is \$585,000. Plaintiff estimates approximately 157 proposed Class Members, providing an estimated average payout of \$1,992.04 per member.

The Class Members consist of:

"All current and former hourly-paid, non-exempt employees of Defendant who were employed by Defendant in the State of California at any time during the period from September 16, 2018, to October 21, 2023.

The operative complaint alleges causes of action for (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201, 202

and 203 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 226(a) (Failure to Provide Accurate Wage Statements); (7) Violation of California Labor Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business Expenses); (8) Violation of California Business and Professions Code §§ 17200, et seq. and (9) PAGA.

After agreeing to participate in mediation, Defendant informally produced all time and pay records for Settlement Class members, key class data points, and other documents and information relevant to the claims alleged in advance of mediation. The parties reached the settlement after a full day mediation and submission of a mediator's proposal.

Plaintiff's deductions from the gross settlement of \$585,000 are proposed as follows:

Court Approved Attorney Fees (35%):	\$204,750
Attorney Costs (up to):	\$20,000
Enhancement Payment to Plaintiff :	\$7,500
Settlement Administrator Costs	\$12,500
PAGA Penalties	\$35,000
	<hr/>
	<b>\$312,750</b>

#### **Net Settlement Amount**

Plaintiff provides a detailed analysis as to the strength and weaknesses for each of the asserted wage and hour claims and penalties. (Declaration of Counsel Minne ¶¶ 31 – 55) Plaintiff has provided estimates of the maximum recovery for each of the asserted wage and hour claims and penalties with information showing how the estimates were calculated including the damages models utilized, resulting in a maximum potential liability of \$2,523,295.16. (Declaration of Counsel Minne ¶31.) Applying various discount rates based on the strength of the claim and/or the strength of the defense to the claim, Plaintiff estimates a realistic recovery of \$563,232.28 as to the class claims and \$440,037.50 as to PAGA penalties. (Declaration of Counsel Minne ¶¶46, 52.)

The Court finds the information provided in support of the gross settlement amount sufficient for the Court to preliminarily approve the gross settlement amount, as the settlement amount appears to be within the recognized range of reasonableness given the claims and defenses asserted in this case.

#### **2. Class Notice**

The settlement agreement provides no claim form will be required of class members to participate in distributions. Only those wishing to object or opt out must file notice with the settlement administrator. Objections or opt out notices are to be made within 60 days. The Court regularly approves notice periods of 60 days or longer. The class notice period is approved.

With respect to the content of the Notice, the Court finds the Class Notice to be reasonable. It clearly provides to the class member an estimate of the settlement share the employee is to receive and provides adequate instructions for any class member to opt out of the settlement or to submit an objection.

#### **3. Enhancement Awards to Class Representatives**

The Court preliminarily approves Plaintiff Eddie Hernandez, as Class Representative for settlement purposes. The proposed enhancement award to Plaintiff is \$7,500.00.

The Court has, in past cases, approved enhancement awards of \$5,000.00 routinely.

Enhancement payments "are fairly typical in class action cases." (*Cellphone Termination Fee Cases* (2010) 180 Cal.App.4th 1110, 1393.) Enhancement payments "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." (*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958-959.) "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that he or she should be compensated for the expense or risk he has incurred in conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.)

The Court's review of the declaration of Plaintiff indicates justification for the \$5,000 award, but no amount higher.

The Court, therefore, will approve the enhancement award of \$5,000.

#### **4. Attorneys' Fees and Costs**

Attorneys' fees of 35% of the gross settlement fund of \$585,000 or \$204,750 and costs not to exceed \$20,000 are sought by Plaintiff's counsel.

Although the Court recognizes the utilization of the percentage of the common fund methodology to award attorneys' fees, the Court requires a declaration from counsel that provides an estimate as to what the lodestar would be in this case. The ultimate goal of the Court is to award reasonable attorneys' fees irrespective of the method of calculation. As such, the court needs to know the estimate of the approximate lodestar supported by declarations for preliminary approval. Counsel should submit information as to the time spent on this action and the hourly rates of all counsel working on the case. Without such information, the Court declines to preliminarily approve the fees.

The Court also cannot preliminarily approve costs up to \$20,000.00 without a declaration which states the costs currently expended.

The Court, however, finds that Plaintiff's counsel are experienced class action attorneys through the declarations of counsel.

#### **5. Claims Administrator**

The Court preliminarily approves ILYM Group, Inc as the claims administrator for this class action based both on prior experience with this settlement administrator in other class actions litigated in this Court and the declaration of Sutherland submitted in support of this motion. The Court preliminarily approves administration costs not to exceed \$5,000.

#### **6. Unclaimed Settlement Proceeds**

The Court preliminarily approves the distribution of unclaimed settlement proceeds to California Controller's Office Unclaimed Property Division, with an identification of the Participating Class Member to whom the funds belong, in accordance with Code of Civil Procedure section 384.

#### **7. Release**

The Court finds the proposed release of claims reasonable under the circumstances.

#### **8. LWDA Notice**

Counsel's declaration indicates confirmation from the LWDA of receipt of proof of submission of the proposed settlement agreement. (Lab. Code, § 2699, subd. (1)(2).) (Declaration of Minne ¶68 – Ex. 6.)

#### **9. Class Certification**

Code of Civil Procedure section 382 permits certification "when the question is of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." (Code Civ. Proc. § 382.) The plaintiff bears the burden of demonstrating that class certification under section 382 is proper. (See *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 460.) To do so, "[t]he party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)

Here, the Motion and accompanying declaration of Counsel Minne sufficiently sets forth the basis for finding the class is numerous and ascertainable as 157 employees have been identified through Defendant's employment records. Additionally, common questions of law and fact predominate within the individual causes of action based on class wide policies and procedures of Defendant. Further, the class representative, through the declaration, indicates the representative will adequately and fairly represent the Class Members and will not place their interests above any Class Member. The Class Representative was employed by Defendant during the relevant time period and thus worked under the same policies and procedures as the Class Members.

Based on the above, the motion to approve the settlement is continued. Counsel is directed to provide a supplemental declaration which provides information as to attorney rate and hours information to calculate the lodestar and the presently incurred costs.

The hearing on this matter is continued to **December 12, 2023 at 8:30 a.m. in Dept. 7.**

If no one requests oral argument, under Code of Civil Procedure section 1019.5(a) and California Rules of Court, rule 3.1312(a), no further written order is necessary. The minute order adopting this tentative ruling will become the order of the court and service by the clerk will constitute notice of the order.

☒ Clerk to provide notice to parties by mail.

☒ Supplemental Declaration and Time Sheets to be filed by December 1, 2023.

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF TULARE**

Visalia Division  
221 S Mooney Blvd, Room 201  
Visalia, CA 93291  
559.730.5000

**Hernandez, Eddie**  
Plaintiff/Petitioner,

vs.

**New Image Pool Interiors, Inc.**  
Defendant/Respondent.

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**CLERK'S CERTIFICATE OF SERVICE**

I certify that I am not a party to this cause.

I certify that I caused the Minute Order dated November 21, 2023 to be served on the persons listed below in the following manner:

☒ BY MAIL: I placed the documents for collection and mailing on the date shown, so as to cause it to be mailed in a sealed envelope with postage fully prepaid on that date following standard court practices to the persons and addresses shown. The mailing and this certification occurred at Visalia, California on November 21, 2023.

STEPHANIE CAMERON,  
CLERK OF THE SUPERIOR COURT  
COUNTY OF TULARE

By   
Nicole Renteria, Deputy Clerk

Names and Mailing/E-Mail Address of Person(s) Served:

PAUL BAUER  
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