

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 56

22STCV13034

**JONATHAN CHEUNG vs SIGNATURE COMMERCIAL
SOLUTIONS, LLC**

July 31, 2023

8:30 AM

Judge: Honorable Holly J. Fujie
Judicial Assistant: O.Chavez
Courtroom Assistant: B. Chavez

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Sydney Castillo-Johnson by LACC for Shani Zakay

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Hearing on Motion - Other Preliminary Approval of Class Action and PAGA Settlement

The matter is held.

The court issue its tentative ruling .

Counsel appearing submits to the court's tentative ruling which becomes the order of the court.

The Motion for Preliminary Approval of Settlement filed by Jonathan Cheung on 07/06/2023 is Granted.

MOVING PARTY: Plaintiff

The Court has considered the moving papers. No opposition papers were filed. Any opposition papers were required to have been filed and served at least nine court days before the hearing pursuant to California Code of Civil Procedure ("CCP") section 1005, subdivision (b).

BACKGROUND

The currently operative third amended complaint (the "TAC") alleges nine causes of action arising out of an employment relationship.

On July 6, 2023, Plaintiff filed a motion for preliminary approval of Private Attorneys General Act ("PAGA") and class action settlement (the "Motion") on the grounds that Plaintiff has reached a settlement agreement (the "Settlement Agreement") with Defendant. The Motion requests that the Court preliminarily approve the Settlement Agreement and: (1) conditionally certify the settlement class; (2) approve distribution of the proposed Notice of Class Action

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Settlement; (3) appoint Plaintiff as the class representative; (4) appoint the JCL Law Firm, APC and Zakay Law Group, APLC as class counsel; and (5) set a hearing date for final approval of the Settlement Agreement.

DISCUSSION

Approval of class action settlements occurs in two steps. First, the court preliminarily approves the settlement, and the class members are notified as directed by the court. (Cal. Rules of Court (“CRC”), r. 3.769(c), (f); Cellphone Termination Fee Cases (2009) 180 Cal.App.4th 1110, 1118.) Second, the court conducts a final approval hearing to inquire into the fairness of the proposed settlement. (CRC, r. 3.769(e); Cellphone Termination Fee Cases, supra, 180 Cal.App.4th at 1118.) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. (CRC, r. 3.769(c).) The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion. (Id.)

The trial court has broad discretion to determine whether the settlement is fair. (Cellphone Termination Fee Cases, supra, 180 Cal.App.4th at 1117.) In determining whether to approve a class settlement, the court’s responsibility is to “prevent fraud, collusion or unfairness to the class” through settlement and dismissal of the class action because the rights of the class members, and even named plaintiffs, “may not have been given due regard by the negotiating parties.” (Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America (2006) 141 Cal.App.4th 46, 60.)

Terms of the Settlement

The proposed Settlement Agreement was entered into by Plaintiff and Defendant (the “Parties”) after they participated in private mediation. (See Declaration of Jean-Claude Lapuyade (“Lapuyade Decl.”) ¶¶ 12-13 Exhibit 1.) The Settlement Agreement provides for a gross settlement amount (the “GSA”) of \$750,000 to be allocated among approximately 846 class members. (Lapuyade Decl., Exhibit 1.)

The Parties have agreed to a disbursement of the GSA as follows: (1) attorney’s fees in the approximate amount of \$250,000 and litigation expenses not to exceed \$25,000; (2) an incentive award to Plaintiff in the amount of up to \$10,000; (3) fees and expenses of administration of the Settlement Agreement to the settlement administrator in an amount not to exceed \$12,000; (4) PAGA penalties (the “Penalties”) in the amount of \$60,000, with 25 percent of the Penalties to

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be part of the remaining net settlement amount (the “NSA”) that will be distributed to PAGA class members in the amount of \$15,000; and 75 percent paid to the California Labor and Workforce Development Agency (“LWDA”). (See Lapuyade Decl., Exhibit 1.) The NSA is approximately \$393,000 and will be allocated to participating class members on a pro-rata basis according to the number of weeks each class member worked during the relevant class period. The average payment to participating class members who do not opt out is approximately \$464.53. (Lapuyade Decl. ¶ 6.)

Class Certification

Before the court may approve the settlement, the settlement class must satisfy the normal prerequisites for class action. (*Amchem. Products, Inc. v. Windsor* (1997) 521 U.S. 591, 625-27.) The party advocating class treatment must demonstrate the: (1) existence of an ascertainable and sufficiently numerous class; (2) well-defined community of interest; and (3) 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.)

1. Ascertainability and Numerosity

In determining the existence of an ascertainable and sufficiently numerous class, courts examine the class definition, the size of the class, and the means of identifying class members. (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Class members are ascertainable when they can be readily identified without unreasonable expense or time by reference to official or business records. (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919.) The ascertainability requirement is satisfied if the potential class members may be identified without unreasonable expense or time and given notice of the litigation, and the proposed class definition offers an objective means of identifying those persons who will be bound by the results of the litigation. (*Id.* at 919.)

Plaintiff contends that the proposed class is ascertainable because class members can be readily identified in Defendants’ records. The proposed settlement class consists of approximately 846 current and former employees who were identified from Defendant’s business records. (Lapuyade Decl. ¶ 48.) The Court finds that Plaintiff has sufficiently established the existence of an ascertainable and sufficiently numerous class.

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2. Community of Interest

The community of interest component embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. (Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319, 326.) The “ultimate question” for predominance is whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants. (Duran v. U.S. Bank Nat’l Assn. (2014) 59 Cal.4th 1, 28.)

As a general rule, if the defendant’s liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages. (Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1021-22.) Class treatment is not, however, appropriate if every member of the alleged class would be required to litigate numerous and substantial questions determining his individual right to recover following the class judgment determining issues common to the purported class. (City of San Jose v. Superior Court (1974) 12 Cal.3d 447, 459.)

The class members here were all employed by Defendants during the relevant time period and were subjected to the same policies and practices. (See Lapuyade Decl. ¶¶ 49-51.) The Court finds that this is sufficient to show a community of interest.

3. Substantial Benefit from Certification

Given the number of individuals with potential claims against Defendant involving common questions of fact and law, the Court finds there are substantial benefits from class certification that render proceeding as a class superior to the alternatives.

The Court finds that Plaintiff has satisfied the prerequisites for class certification and preliminarily approves the class.

Fairness of Settlement

In determining whether a settlement is fair, the Court considers all relevant factors, including the strength of the 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

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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 the class members to the proposed settlement. (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 128.) The recovery should represent a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation. (Id. at 129.) Nevertheless, the strength of the case on the merits for the plaintiffs is the most important factor, balanced against the amount offered in the settlement. (Id. at 130.)

The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved. (City of Detroit v. Grinnell Corporation (2d Cir. 1974) 495 F.2d 448, 455.) The test is not the maximum amount plaintiff might have obtained at trial on the complaint but, rather, whether the settlement is reasonable under all of the circumstances. (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 250.)

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. (Cellphone Termination Fee Cases (2009) 180 Cal.App.4th 1110, 1118.)

Plaintiff's counsel has analyzed evidence from class members and evidence produced by USS. (See Lapuyade Decl. ¶¶ 14-20.) The Parties agreed on the terms of the Settlement Agreement after they participated in mediation, where they discussed and examined the proposed class members and the Parties' positions on Plaintiff's claims. (Lapuyade Decl. ¶¶ 21-22.) Plaintiff's counsel believes that the Settlement Agreement is fair based on the risks in proceeding to trial that became apparent after evaluating Plaintiff's claims and Defendants' defenses, the potential difficulties in having the class certified, and the time and resources that would potentially be expended in prolonged litigation involving many individuals. (See Lapuyade Decl. ¶¶ 22-23, 38-40.)

The Court finds that it appears a presumption of fairness of the Settlement Agreement exists. The Court notes that because the percentage of objectors cannot be determined until the fairness hearing and final approval, the Court's finding of a presumption of fairness is provisional.

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Notice

If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. (CRC, r. 3.769(f).) The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement. (Id.)

CRC, rule 3.766(d) requires that the notice include:

- (1) A brief explanation of the case, including the basic contentions or denials of the parties;
- (2) A statement that the court will exclude the member from the class if the member so requests by a specific date;
- (3) A procedure for the member to follow in requesting exclusion from the class;
- (4) A statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and
- (5) A statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel. (CRC, r. 3.766(d).)

Plaintiff's proposed Notice complies with each of the requirements set forth by CRC rule 3.766(d). (See Lapuyade Decl., Exhibit 1 at Exhibit A.)

PAGA Settlement

Labor Code section 2699, subdivision (l)(2) provides that the superior court shall review and approve any settlement of any civil action filed pursuant to PAGA. (Lab. Code § 2699, subd. (l)(2).) Section 2699, subdivision (l)(2) requires submission of the proposed settlement to the Labor Workforce and Development Agency (the "LWDA") at the same time it is submitted to the court. (Id.) Any settlement of any civil action filed under PAGA must be "fair and adequate in view of the purposes and policies of the statute." (Flores v. Starwood Hotels & Resorts Worldwide, Inc. (C.D. Cal. 2017) 253 F.Supp.3d 1074, 1077.) Seventy five percent of all PAGA

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penalties must be paid to the LWDA and the remaining 25 percent must be paid to the aggrieved employees. (Lab. Code, § 2699, subd. (i).)

Based on the terms of the Settlement Agreement and allocation of the GSA to the LDWA as described above, the Court finds that the Settlement Agreement complies with Labor Code section 2699, subdivision (i).

Class Representative/Incentive Award

In order to be deemed an adequate class representative, the class action proponent must show it has claims or defenses that are typical of the class, and it can adequately represent the class. (J.P. Morgan & Co. v. Superior Court (2003) 113 Cal.App.4th 195, 212.) Where there is a conflict that goes to the very subject matter of the litigation, it will defeat a party's claim of class representative status. (Id.) Thus, a finding of adequate representation will not be appropriate if the proposed class representative's interests are antagonistic to the remainder of the class. (Id.)

Plaintiff worked for Moving Defendants during the relevant time period and spent time working with counsel on the case. (See Lapuyade Decl. ¶ 43; Declaration of Jonathan Cheung ¶¶ 2-7.) There is no indication that Plaintiff has interests adverse to other class members. The Court approves the request and approves Plaintiff as the class representative.

The Motion also seeks preliminary approval of an incentive award of \$10,000 to Plaintiff for acting as class representative in this action. The Court preliminarily approves this amount.

Class Counsel

The Court finds that Plaintiff's counsel is sufficiently experienced in litigating wage and hour and employment class actions and approves their appointment as class counsel. (See Lapuyade Decl. ¶¶ 52-59; Declaration of Shani O. Zakay ¶ 3.)

Attorney's Fees and Costs

Any agreement, express or implied, that has been entered into with respect to the payment of attorney's fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action. (CRC, r. 3.769(b).)

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Ultimately, the award of attorney's fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-96.) In common fund cases, the court may utilize the percentage method, cross-checked by the lodestar. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, the court has an independent right and responsibility to review the attorney fees provision of the settlement agreement and award only so much as it determined reasonable. (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

Plaintiff seeks preliminary approval of attorney's fees of up to one-third of the GSA in the amount of \$250,000 plus litigation costs of up to \$20,000. The Court preliminarily approves these amounts, pending a determination of the evidence supporting the fees presented by Plaintiff at the final approval hearing. Counsel should submit evidence justifying the requested attorney's fees and litigation costs with the motion for final approval of the settlement.

CONCLUSION

Based on the foregoing, the Court GRANTS the Motion. The Court sets a hearing for the final approval of the Settlement Agreement on December 19, 2023 at 8:30 a.m. in this department.

Moving party is ordered to give notice of this ruling.

Dated this 31st day of July 2023

/s/ Holly J. Fujie

Hon. Holly J. Fujie
Judge of the Superior Court