

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 71

23STCV00615

**ANITA GAMARRO vs WALGREEN PHARMACY SERVICES
MIDWEST, LLC, AN ILLINOIS LIMITED LIABILITY
COMPANY, et al.**

April 21, 2025

8:30 AM

Judge: Honorable Daniel M. Crowley
Judicial Assistant: Jontae Marquez
Courtroom Assistant: Debra Major

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Brandon Chang via LACC for Jeffrey D. Klein

For Defendant(s): Daria Carlson via LACC for Allison C. Eckstrom

NATURE OF PROCEEDINGS: Hearing on Motion - Other Preliminary Approval of Class and Representative Action Settlement_24132; Order to Show Cause Re: Dismissal (Settlement)

The Court issues a tentative ruling and its posted on the Court's website for the parties to review.

The matters are called for hearing.

The Court and counsel confer regarding the tentative ruling.

Both counsel submit on the tentative ruling.

The Court has read and considered all documents filed hereto regarding the above-captioned Motion. Counsel is given the opportunity to argue. After conferring with counsel, the Court adopts its Tentative Ruling as the Final Ruling as follows:

Plaintiff Anita Gamarro's *unopposed* motion for an order granting preliminary approval of the Settlement Agreement is granted.

Plaintiff Anita Gamarro ("Gamarro") ("Plaintiff") move *unopposed* for an order granting preliminary approval of the Settlement Agreement. (Notice Motion, pg. 3.)

Background

On August 10, 2022, Plaintiff filed a wage and hour class action complaint, captioned *Anita Gamarro v. Walgreen Pharmacy Services Midwest, LLC, et al.*, in the Riverside County Superior Court, Case No. CVRI2203349, alleging causes of action against Walgreen Pharmacy Services Midwest, LLC, and Walgreen Co. (collectively, "Defendants") for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal

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periods or compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) failure to pay all wages due upon separation from employment; (6) failure to provide accurate wage statements; (7) failure to timely pay wages during employment; (8) failure to indemnify for business expenses; and (9) engaging in unfair competition (“Class Action”).

On August 10, 2022, Plaintiff also filed with the LWDA and served on Defendants a notice under Labor Code §2699.3, stating Plaintiff intended to serve as a proxy of the LWDA to recover civil penalties on behalf of aggrieved employees for alleged Labor Code violations (“PAGA Notice”). (Decl. of Chang ¶3, Exh. 2.)

Defendants timely removed the Class Action to federal court, which was assigned Case No. 5:22-cv-01811-MEMF-SP (C.D. Cal.). Plaintiff alleged her claims individually and on behalf of all current and former hourly-paid, non-exempt employees who worked for Defendants during the 4-year period preceding the filing of the complaint. The Parties thereafter agreed to (1) limit the putative class to current and former employees of Defendants who held the same position as Plaintiff (i.e., pharmacy technician) and (2) limit the class period start date to April 15, 2020, accounting for a prior class action settlement (*Epstein*) that involved the same putative class and the same alleged class action claims as the Class Action.

On January 11, 2023, after sixty-five (65) days had passed without any communication from the LWDA with respect to the alleged Labor Code violations, Plaintiff filed the instant action for the alleged Labor Code violations set out in the PAGA Notice (“PAGA Action”).

Thereafter, Plaintiff and Defendants (collectively, “Parties”) agreed to exchange informal discovery and attend mediation.

Prior to mediation, Plaintiff obtained, through informal discovery: (1) sampling of time and payroll records for putative Class Members; (2) class data points, including the number of putative Class Members, Workweeks, Pay Periods, and shifts during the Class Period, the number of Pay Periods during the PAGA Period, the number of employees separated from employment during the relevant statutory period, the average hourly rate of pay, and the average regular hourly rate of pay; (3) all relevant policy documents of Defendants, including time policies, meal and rest periods policies, COVID-19 self-screening procedures, and purported meal period waivers; and (4) all documents pertaining to Plaintiff available to Defendant. The Parties also engaged in a *Belaire-West* opt-out process which provided Plaintiff’s counsel with contact information for hundreds of Class Members. Plaintiff’s counsel conducted dozens of interviews with putative Class Members, obtained responses to multiple pointed questionnaires, and distilled the information received.

On January 23, 2024, the Parties attended private mediation with an experienced mediator, Lynn Frank. The Parties did not resolve the matter at mediation, but continued settlement discussions, with the aid of the mediator during the following months, ultimately

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reaching the settlement as provided in the Settlement Agreement to settle Plaintiff's claims on a class and representative basis.

The Parties agreed, for settlement purposes only, to remand the Class Action to the state court, with the understanding that, if the settlement is not approved for any reason, the Parties agree that the Class Action shall proceed in federal court. The Parties also agreed that Plaintiff would amend the pleading in the PAGA Action to include the claims alleged in the Class Action, as well as the additional theories of liability raised at mediation, and, to the extent necessary, amend her notice to the LWDA to effectuate a full and complete release of the PAGA claims. On August 15, 2024, Plaintiff filed the operative pleading in LASC in accordance with the Parties' agreement.

Plaintiff filed the instant motion on December 24, 2024. As of the date of this hearing no opposition has been filed.

Legal Standard

Any settlement of class litigation must be reviewed and approved by the Court. (*See* CRC, Rule 3.769(a).) This is done in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review after notice has been distributed to the class members for their comment or objections. (*See* CRC, Rule 3.769(c)-(e).) The court has a "fiduciary responsibility" as guardian of absent class members' rights to ensure the settlement is fair. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 95.)

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, 240, *disapproved on other grounds by Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 269-270; *see Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1803, ns. 9 & 19.)

California public policy strongly favors settlements. (*See Osumi v. Sutton* (2007) 151 Cal.App.4th 1355, 1359 ["It is, of course, the strong public policy of this state to encourage the voluntary settlement of litigation."]; *Hamilton v. Oakland School District* (1933) 2019 24 Cal. 322, 329 ["It is the policy of the law to discourage litigation and to favor compromises."].)

Under California law, a presumption of fairness attaches to a settlement 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 objections is small." (*Dunk*, 48 Cal.App.4th at pg. 1802.) A court may also consider other relevant factors, "such 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

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stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction . . . to the proposed settlement.” (*Id.* at pg. 1801.)

Discussion

The Settlement Agreement was reached through many months of arm’s-length negotiations among experienced counsel fully versed in the in relevant facts and law, meeting the first three factors that support preliminary approval of the settlement. (*Dunk*, 48 Cal.App.4th at pg. 1802.)

The Settlement was reached after extensive factual and legal investigation and research; a *Belaire-West* opt-out process for Class Members; requesting responses to questionnaires from dozens of Class Members working for Defendants at their various locations and distilling the information received; substantial negotiation regarding the scope of informal discovery; the exchange of informal discovery; the exchange of documents and information that included review of time and pay records and analysis thereof with the aid of Plaintiff and expert consultant; analysis of shifts and Workweeks worked by Class Members in the Class Period; analysis of the number of pay periods and number of PAGA Employees in the PAGA Period for calculating PAGA penalties, and the number of Class Members eligible for wage statement penalties and waiting time penalties; an analysis of Plaintiff’s employment records; extensive correspondence and communication between counsel; a review of pleadings, evidence and rulings in similar actions litigated elsewhere in the state; a review of similar cases in the same industry elsewhere in the country; and preparation for and attendance at a full-day mediation, followed by further discussions and coordination to finalize the terms and conditions of the general settlement parameters agreed to by the Parties.

The settlement amount reached in this case provides significant recovery to Class Members and PAGA Employees and falls within the range of reasonableness. When including derivative penalties, such as waiting time penalties, wage statement violations, and discretionary PAGA penalties, Class Counsel theorized Defendants’ maximum exposure to be approximately \$67,536,039. Class Counsel obtained a Gross Settlement Amount of \$6,800,000.00. Particularly in light of the risks involving obstacles to class certification, all issues and risks related to liability, the issues with manageability at trial, the discretionary nature of PAGA penalties, and considering the case law regarding fair, reasonable and adequate settlements, the settlement reached is fair, reasonable and adequate, and in the best interest of Class Members.

Moreover, \$200,000.00 of the Gross Settlement Amount was attributed to PAGA penalties. This allocation was decided mutually by the Parties and the mutual decision was based on: (1) the fact that damages are available for the failure to pay wage claims while only penalties are available for the PAGA claims; (2) the risk that the Court may exercise its discretion to

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decline to stack PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the full amount of PAGA penalties available; and (4) the risk that this Court may decline to award any PAGA penalties at all in light of the fact that damages are available for Class Members and it may find any further liability against Defendants unnecessarily punitive.

Accordingly, the Court grants the requested preliminary approval of the Settlement Agreement.

Attorneys' Fees

Class Counsel seek an attorneys' fees award of up to thirty-three and one third percent (33.333%) of the Gross Settlement Amount, which, unless escalated pursuant to this Agreement, would amount to \$2,266,666.67. Class Counsel also seek reimbursement of costs not to exceed \$40,000.00. The requested fees fall well within the historical range of attorney's fees awards under the common fund theory, which is generally from 25% to 50%. The requested fee is fair compensation for undertaking complex, risky, expensive and time-consuming litigation on a contingent fee basis. The Court preliminarily approves the requested attorneys' fees and costs, which are justified by the results achieved, the complexity of the issues, the difficulty of the case and the great risks undertaken by Class Counsel.

Enhancement Award to Named Plaintiff

Plaintiff is entitled to an enhanced award for her service as class representative, for answering extensive questions by Class Counsel, for being subjected to intrusive questioning during her deposition, for being available and answering questions during mediation, for the risks in being the named plaintiff and for providing Defendants with a more expansive release of claims, including a waiver based upon Civil Code §1542, in exchange for the enhancement award.

Defendants do not oppose the requested enhancement to Plaintiff. Plaintiff risked intrusive discovery and the payment of employer costs. In the experience of Class Counsel, the typical enhancement award in wage and hour class actions ranges from approximately \$10,000.00 to \$25,000.00, although some awards are higher. In contrast, Class Counsel seeks a limited enhancement of \$10,000.00 to Plaintiff for her service.

Therefore, the Court preliminarily approves the named Plaintiff's enhancement award.

Conditional Class Certification

In California, there are two certification prerequisites: (1) the existence of an "ascertainable class;" and (2) "a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." (*Sotelo v. MediaNews Group, Inc.* (2012)

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207 Cal.App.4th 639, 647.) To certify a class, the party advocating class treatment must demonstrate: (1) a numerous class; (2) predominant common questions of law or fact; (3) class representatives with claims or defenses typical of the class; and (4) class representatives who can adequately represent the class.” (*Williams v. Superior Court* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)

First, the Class Members definition (i.e., all individuals employed by Defendants in California as non-exempt pharmacy technicians during the Class Period) here is derived from the operative complaint, which complains of alleged violations of Labor Code sections that are chiefly and, in some instances, solely applicable to non-exempt employees. There is no difficulty ascertaining who is a Class Member based on the above-described definition as it is readily apparent to all involved who is a non-exempt pharmacy technician who worked in California for Defendant during the Class Period based solely from Defendant’s payroll records, which amounts to approximately 6,108 persons.

Second, the class is sufficiently numerous. Defendants provided Class Counsel with documents that identified at least 6,108 Class Members.

Third, there is sufficient commonality among Class Members. The instant case is brought to resolve common issues that include whether Defendants failed to pay for all hours worked; whether Defendants provided full, timely and un-interrupted meal and rest periods; whether Class Members are entitled to premium pay for incomplete, untimely or interrupted meal or rest periods, among other claims.

Fourth, the named plaintiff’s interests in this action are significantly similar to those of other class members for the purposes of typicality. Here, Plaintiff (1) is a non-exempt pharmacy technician like other Class Members; (2) complains of not being paid for all time under Defendant’s control or suffered and/or permitted to work for Defendants; (3) did not receive full premium pay for meal periods that were not compliant with the Labor Code; and (4) did not receive premium pay for rest periods that were not provided, among others as set forth above.

Fifth, the representative Plaintiff adequately protects the interest of Class Members. No conflicts, disabling or otherwise, exists between Plaintiff and Class Members because Plaintiff alleges to have been damaged by the same alleged conduct of Defendants (i.e., Plaintiff classified as non-exempt pharmacy technician, not paid premium pay, etc.) and thus have the incentive to fairly represent all Class Members’ claims to achieve the maximum possible recovery. Class Counsel in this matter is an experienced class action attorney, has been appointed as class counsel in other class actions and has a successful “track record” in litigating class actions.

Finally, a class action is the superior method of adjudication in this matter. Here, there exist common issues that are most efficiently adjudicated together; with at least 6,108 Class

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Members, presentation of all of them before this Court may be problematic, impractical, and burdensome. A class action allows claims of many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation and affords small claimants with a method of obtaining redress for claims which otherwise would be too insufficient to warrant individual litigation.

Accordingly, the Class Members are conditionally certified.

Notice

A notice of settlement of a class action “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.” (CRC, Rule 3.769(f).)

Plaintiff attaches a proposed Class Notice to be distributed to Class Members in English and Spanish. (Decl. of Chang ¶13, Exh. A.) The notice contains an explanation of the proposed settlement and procedures for class members to file written objections, arranging, if they desire, to appear at the hearing to state their objections, and for opt-outs to provide their requests for exclusion. (CRC, Rule 3.769(f); *Litwin v. iRenew Bio Energy Solutions, LLC* (2014) 226 Cal.App.4th 877, 883-884 [stating notice may *not require* objectors to attend final approval hearing in order to have their objections considered].) Accordingly, the proposed Notice is meets the requirements of CRC, Rule 3.769(f) and is approved.

The Court directs the mailing of the Class Notice by first-class regular U.S. mail to the Class Members in accordance with the procedures set forth in the Settlement Agreement. The Court finds that dissemination of the Class Notice set forth in the Settlement Agreement complies with the requirements of law and appears to be the best notice practicable under the circumstances.

The Court also approves the Parties’ selection of ILYM Group, Inc. (“ILYM”) to administer the settlement. The Class Data provided to ILYM shall be confidential. The Settlement Administrator shall not provide the Class Data to Plaintiff’s Counsel, Plaintiff, or any third party, or use the Class Data or any information contained therein for any purpose other than to administer this Settlement.

Schedule of Events

The Court approves Defendants’ proposed schedule. No later than ten (10) business days after the Preliminary Approval Date, Defendants shall provide the Settlement Administrator with the Class Data for purposes of preparing and mailing Notice Packets to Class Members and PAGA Employees. “Class Data” means information regarding Class Members that Defendants

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will, in good faith, compile from their records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include the following information for each Class Member: (1) employee identification number; (2) full name; (3) last known address; (4) Social Security number; (5) the dates of employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)); and (6) Workweeks during the Class and PAGA Periods. Defendant will simultaneously file with the Court a declaration, under penalty of perjury, attesting to: (1) the number of Workweeks worked by each Class Member and PAGA Employee during the Class and PAGA Periods; (2) the number of Workweeks in total for all Class Members and PAGA Employees during the Class and PAGA Periods; and (3) the method Defendant used to determine the number of Workweeks.

Upon receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address Database and/or similar database(s) to update and correct any known or identifiable address changes. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member and PAGA Employee.

Within seven (7) calendar days or soon thereafter of receiving the Class Data from Defendants, the Settlement Administrator shall mail the Class Notice in English and Spanish to the Class Members and PAGA Employees via first-class regular U.S. Mail using the most current mailing address information available.

“Response Deadline” means the date forty-five (45) days after the Settlement Administrator mails Notice Packets to Class Members in English and Spanish and the last date on which Class Members may submit Requests for Exclusion or Objections to the Settlement. Class Members who received a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15) days from the original Response Deadline pursuant to the Settlement Agreement.

The Settlement Administrator shall submit a declaration in support of Plaintiff’s Motion for an Order Granting Final Approval and Entering Judgment detailing: (a) the number of Notice Packets mailed and re-mailed to Class Members; (b) the number of undeliverable Notice Packets; (c) the number of timely Requests for Exclusion; (d) the number of timely objections received; (e) the amount of the average and highest Individual Settlement Payment; (f) the Settlement Administration Costs; and (g) any other information as the Parties mutually agree or the Court orders the Settlement Administrator to provide.

Conclusion

Plaintiff’s *unopposed* motion for preliminary approval of the Settlement Agreement is granted.

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The Motion for Preliminary Approval of Settlement filed by Anita Gamarro on 12/24/2024 is Granted.

On the Court's own motion, the Order to Show Cause Re: Dismissal (Settlement) scheduled for 04/21/2025 is continued to 08/26/2025 at 08:30 AM in Department 71 at Stanley Mosk Courthouse.

The Court grants Plaintiff's counsel request to have the Motion for an Order Granting Final Approval and Entering Judgment to be heard on August 26, 2025.

Notice is waived.

LATER THE SAME DATE:

Plaintiff's counsel is advised to reserve a motion for an order granting final approval and once the motion is reserve, counsel is to contact the department to advance the motion to August 26, 2025 at 8:30 a.m.

The clerk is to give notice.

Certificate of Mailing is attached.