

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Susana Gomez Rivas
Plaintiff/Petitioner(s)
VS.
Bank of America, N.A.
Defendant/Respondent
(s)

No. HG21110153

Date: 01/05/2024

Time: 9:00 AM

Dept: 21

Judge: Evelio Grillo

ORDER re: Hearing on Motion -

Other Motion for

Preliminary Approval of

Class Action Settlement;

filed by Susana Gomez

Rivas (Plaintiff) filed by

Susana Gomez Rivas

(Plaintiff) on 10/23/2023

The Motion for Preliminary Approval of Settlement filed by Susana Gomez Rivas on 10/23/2023 is Granted.

The motion of plaintiffs for preliminary approval of class action settlement is GRANTED.

The order of 11/17/23 identified concerns with the settlement. The filings on 12/28/23 have mostly addressed the court's concerns. The court addresses ascertainability before turning to the order generally.

ISSUE #6. ASCERTAINABLE CLASS

The class must be ascertainable and defined so that the defendant and the members of the class know who is bound by the release. Ascertainability requires a class that is defined "in terms of objective characteristics and common transactional facts" that make "the ultimate identification of class members possible when that identification becomes necessary." (Noel v. Thrifty Payless, Inc. (2019) 7 Cal.5th 955, 961, 967, 974.)

The agreement as amended states that the class is defined as: "All current or former employees of Bank of America, National Association and/or Bank of America Corporation who worked in California in a job title that was asked to work from home during the COVID-19 pandemic and

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(Plaintiff) filed by Susana Gomez Rivas (Plaintiff) on
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therefore allegedly incurred business expenses as a result of their performance of duties for Defendant at any time from July 29, 2017, through the date of Preliminary Approval of the Settlement.” (Agt para 11.)

The agreement then states, “The individuals who worked from home during the Class Period shall be identified by BofA.” (Agt para 12.)

The agreement then states, “BofA shall provide to the Claims Administrator, in electronic form, a spreadsheet that contains the name, social security number, dates of active employment in a class-qualifying capacity.” (Agt para 18.) The Agreement does not define a “class-qualifying capacity.”

The court ORDERS that in the event of dispute, the class is defined as the persons identified on the spreadsheet that Bank of America will create and that is referenced in Agt paras 12 and 18. The court ORDERS that plaintiff must file that spreadsheet with the court, stating the relevant names but redacting private information.

There are an estimated 24,297 Class Members. If the spreadsheet contains materially greater or fewer persons, then the parties are to cooperate to resolve any issues (Agt para 63) and may seek court assistance in the event of a dispute (Agt para 69 and CCP 664.6).

ORDER

The motion of plaintiffs for preliminary approval of class action settlement and PAGA settlement is GRANTED.

The complaint alleges a Labor Code 2802 claim regarding reimbursement for work-from-expenses from 7/29/17 through 11/17/23. (Agt para 11.)

The case preliminarily settled for a total of \$4,250,000.00.

The settlement agreement states there will be attorneys' fees of up to \$1,416,525.00 (33%), costs of up to \$10,000, service award of \$35,000 to each plaintiff, settlement administration costs of up to \$ 121,485.00. After these expenses, the net amount available to be distributed to the Class would be \$1,583,010. Assuming that there are an estimated 24,297 Class Members, the average payment per Class Member would be \$65.

The motion makes an adequate analysis as required by Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116.

The proposed class notice form and procedure are adequate.

The proposed class is appropriate for class certification.

The scope of the named plaintiff release is appropriate. The agreement for the named plaintiff

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may include a Civil Code 1542 waiver and a release of "individual PAGA claims." (Agt para 54-55)

The scope of the class release is appropriate. The scope of the class release must be limited to the claims arising out of the claims in the complaint where the named plaintiffs are typical and can adequately represent the class. (Amaro v. Anaheim Arena Management, LLC (2021) 69 Cal.App.5th 521, 537-538.) The release of claims by the class is limited by the "factual predicate rule." (Hesse v. Sprint Corp. (9th Cir. 2010) 598 F.3d 581, 590.) (See also Hendricks v. Starkist Co (N.D. Cal. 2016) 2016 WL 692739 at * 2-4 [Denying motion for final approval of class settlement because scope of release overbroad].) (Agt para 53, 55, 56.)

The Court notes and approves of the plan to distribute the settlement funds with no claims process.

The unclaimed funds will be distributed to Legal Aid at Work. (Agt, para 43(e).) This is consistent with CCP 384. Counsel has provided a declaration in support of the motion that provides the information required by CCP 382.4.

The Court will not approve the amount of attorneys' fees and costs until the final approval hearing. The Court cannot award attorneys' fees without reviewing information about counsel's hourly rate and the time spent on the case. This is the law even if the parties have agreed that Defendants will not oppose the motion for fees. (Robbins v. Alibrandi (2005) 127 Cal. App. 4th 438, 450-451.)

"Because absent class members are not directly involved in the proceedings, oversight to ensure settlements are fair and untainted by conflict is the responsibility of both the class representative and the court." (Mark v. Spencer (2008) 166 Cal.App.4th 219, 227.)

"In any class action there is always the temptation for the attorney for the class to recommend settlement on terms less favorable to his clients because a large fee is part of the bargain. ... " 'The evil feared in some settlements-unscrupulous attorneys negotiating large attorney's fees at the expense of an inadequate settlement for the client-can best be met by a careful ... judge, sensitive to the problem, properly evaluating the adequacy of the settlement for the class and determining and setting a reasonable attorney's fee....' " (Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 555-556.)

The court sets out its standard analysis below. Counsel may address that analysis in the fee application.

The Ninth Circuit's benchmark is 25%. (Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 495.)

This court's benchmark for fees is 30% of the total fund. (Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 495; Schulz v. Jeppesen Sanderson, Inc. (2018) 27 Cal.App.5th 1167, 1175; Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 557 fn 13; Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 fn 11.)

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When cross-checking with the lodestar/multiplier, the court will evaluate the lodestar based on reasonable fees that would have been charged at hourly rates and then apply a multiplier. The multiplier includes contingent fee risk and other factors.

When considering risk, the court considers there is less risk in a case with fee shifting statutes because counsel's potential fees are not limited by and coupled to the monetary recovery. "The law does not mandate ... that attorney fees bear a percentage relationship to the ultimate recovery of damages in a civil rights case." (Harman v. City and County of San Francisco (2007) 158 Cal.App.4th 407, 419.) (See also Heritage Pacific Financial, LLC v. Monroy (2013) 215 Cal.App.4th 972, 1006-1007.)

The Court will not decide the amount of any service award until the final approval hearing. Plaintiff must provide evidence regarding the nature of his participation in the action, including a description of their specific actions and the amount of time they committed to the prosecution of the case. (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804-807.) The court's standard service award is \$7,500.

The Court ORDERS that 10% of any fee award to be kept in the administrator's trust fund until the completion of the distribution process and Court approval of a final accounting.

The Court will set a compliance hearing after the completion of the distribution process and the expiration of the time to cash checks for counsel for plaintiff and the Administrator to comply with CCP 384(b) and to submit a summary accounting how the funds have been distributed to the class members and the status of any unresolved issues. If the distribution is completed, the Court will at that time release any hold-back of attorney fees.

The court will sign the proposed order, which is modified by this order. Plaintiff must reserve a hearing for the motion for final approval.

Clerk is directed to serve copies of this order, with proof of service, to counsel and to self-represented parties of record.

Dated : 01/05/2024



Evelio Grillo / Judge

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