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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Williams

Plaintiff/Petitioner(s)

VS.

Kaiser Foundation Health Plan, Inc

Defendant/Respondent(s)

(Abbreviated Title)

No. RG18917898

Order

Motion for Preliminary Approval of Class
Settlement
Granted

The Motion for Preliminary Approval of Class Settlement was set for hearing on 01/27/2020 at 03:00 PM in Department 19 before the Honorable Stephen Kaus. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The motion of Plaintiff Adonia Williams ("Plaintiff") for Preliminary Approval of Class Action Settlement and Approving Proposed Notice to Class is **GRANTED**.

Plaintiff's First Amended Complaint alleges claims for unpaid wages, failure to provide meal and rest periods and related claims.

The case preliminarily settled for \$1,250,000. The estimated size of the class is 19,000. The Settlement Agreement states that attorneys' fees will be up to 33% of the settlement amount, or \$416,666, plus costs of suit in an amount not to exceed \$20,000. The Settlement Agreement calls for a \$12,500 class service award to Plaintiff, a net PAGA payment of \$30,000, and administration costs of up to \$75,000. Thus, after expenses of approximately \$554,166, the class would receive approximately \$695,834. The average payout to class members would be \$36.62.

Settlement negotiations involved one full day of mediation before mediator Jeff Ross, which resulted in settlement. The court gives "considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in [concluding] that [the] settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129.) (See also In re Sutter Health Uninsured Pricing Cases (2009) 171 Cal.App.4th 495, 504.)

The proposed class notice form and procedure are adequate.

The proposed class at § I.F of the Settlement Agreement ("all non-exempt persons employed by Defendant in the State of California during the Class Period") is appropriate for class certification for settlement purposes

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

The scope of the release contained in the Class Notice is appropriately limited to the claims arising out of the claims in the complaint. 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].)

The Court notes that the release contained at § I.T of the Settlement Agreement is considerably broader than the release contained in the Class Notice. However, it appears that the parties' intent is to limit the § I.T release to named plaintiff Adonia Williams. Therefore, the Court ORDERS that the release at § I.T of the Settlement Agreement applies solely to plaintiff Adonia Williams in connection with her receipt of a Class Representative Enhancement Payment and has no force or effect with respect to any of the other Class Members, who shall be bound solely by the release contained in the Class Notice. The court notes and approves of the plan to distribute the settlement funds with no claims process.

The Settlement Agreement at § VII.2 identifies an appropriate Cy Pres beneficiary (California Rural Legal Assistance) with respect to any unclaimed settlement funds. (CCP § 384.)

The Court will not approve the amount of attorneys' fees and costs until 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.)

The court notes that counsel seeks fees of \$416,666, which is 33.33% of the total fund. The court sets out its standard analysis below. Counsel may address that analysis in the fee application.

When using the percentage of recovery approach, the court's benchmark for fees is 30% of a 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.)

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.

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

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 does not accord deference to the allocation of a portion of the settlement funds to the claims asserted under PAGA on account of the parties' arm's-length negotiations. PAGA actions are in the nature of a qui tam proceeding in that plaintiffs seek civil penalties that would otherwise be recoverable by the LWDA. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 382.) Any monetary penalties assessed against the defendant are split between the LWDA and aggrieved employees, with 75% going to the LWDA. (Labor Code § 2699(i).) Representative litigants must submit any settlement of a PAGA representative action for Court approval. (Labor Code § 2699(l)(2).) Unlike government entities represented in False Claims Act qui tam actions, the LWDA does not have a statutory right to intervene or object to settlement. (Compare Gov. Code § 12652(c)(1), (e)(2)(b), (f)(2)(B), with Labor Code § 2699(l).) Because the parties have an incentive to minimize the portion of a settlement deemed to be made pursuant to PAGA and because the LWDA is not present at the negotiating table to assert its interests, the Court's review of a PAGA settlement must make sure that the interests of the LWDA in civil enforcement are defended and that the settlement is fair, adequate, and reasonable under all the circumstances. (Accord *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133; see also Gov. Code § 12652(e)(2)(B) [requiring False Claims Act qui tam settlements be "fair, adequate, and reasonable under all the circumstances"].) The presence of a private mediator is not a reason to presume that the parties have allocated a fair share of funds to LWDA.

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 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 sets Wednesday July 8, 2020 at 3:00 p.m. for the final approval hearing. Plaintiffs must reserve a hearing for the motion for final approval.

If the parties have questions or concerns regarding the contents of this Tentative Ruling, they are instructed to contest the Tentative Ruling and appear for hearing on January 27, 2020 at 3:00 p.m.

Dated: 01/27/2020

 Facsimile

Judge Stephen Kaus