Dept. 1
Civil Law and Motion Tentative Rulings for Friday, August 8, 2025, at 8:30 a.m.

If you wish to appear for oral argument, you must so notify the Court at (209) 533-6633 and (209) 588-2316, and all other parties by 4:00 p.m. on the court day preceding the hearing, consistent with CRC 3.1308. The tentative ruling will become the ruling of the Court if notice for oral argument has not been provided.

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1. CV65934 Leonhardt v. Dodge Ridge Mountain Resort LLC
Hearing on: Approval of Class Action (w/PAGA) Settlement
Moving Party: Plaintiffs
Tentative Ruling: See Below

This is a wage/hour dispute. Before the Court this day is a petition for preliminary approval of a class action settlement (with provisional certification only), and provisional approval of the PAGA portion contained therein. Although it is technically not necessary to address the PAGA portion just yet, each will be addressed in turn in the hopes of streamlining the effort once the petition for final approval is ready to proceed.

Provisional Certification of the Class - Approved

After parties to a putative class action settle the dispute, they must present that settlement to the trial court for approval. If the class has not yet been certified, part of the motion will include a request for provisional certification for purposes of settlement only. See CRC 3.769. Although the provisional process is less demanding than a traditional motion for class certification, a trial court reviewing an application for preliminary approval of a settlement must still find that the normal class prerequisites have been met. See *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625-627 (1997); in accord, *Carter v. City of Los Angeles* (2014) 224 Cal.App.4th 808, 826.

The moving party must establish by admissible evidence: (1) the existence of an ascertainable and sufficiently numerous class; (2) a well-defined community of interest; and (3) substantial benefits from certification that render proceeding as a class superior to the alternatives. These elements are typically referred to as ascertainability, numerosity, commonality, typicality, adequacy, and superiority. A class is ascertainable when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible, and that is sufficient to allow a member of the class to identify himself or herself as having a right to recover. In other words, a class is ascertainable if it is relatively easy to see who is in the class, and who has viable claims. A community of interest exists there if predominant common question of law or fact which will impact all class members, if the proposed class representative has similar individual claims to the class, and if the proposed class representative and counsel will adequately represent the class. *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980-986; *Duran v. U.S. Bank Nat'l Ass'n* (2014) 59 Cal.4th 1, 28-29; *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

Here, the proposed class of "all persons who are or were employed by Defendant as hourly paid, non-exempt employees in the State of California at any time between February 29, 2020,

through August 8, 2025" is amenable to class certification. The class is ascertainable, numerous, common and typical. There is certainly value in the class process here.

The Class Settlement – Approved in Part

At the preliminary approval stage, the proponent of the settlement bears the burden of showing that the settlement is within the reasonable range such that a trial court will likely be able to approve it at a final hearing, taking into consideration these four factors: (1) have putative class members been adequately represented by experienced counsel and a vested representative; (2) was the settlement a result of a serious, informed, non-collusive, arm's length negotiation; (3) whether the relief obtained has any real value to class members when compared to what those claims might yield; and (4) are certain segments of the class entitled to preferential treatment. Because this is not the final approval hearing, the level of scrutiny at this stage is often described as something less than a "finding" of fairness and more of a "feeling" of fairness. See *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1166. Despite what may appear to be a rather amorphous standard at this juncture, it is in the best interests of all involved to have some real scrutiny. Thus, even at the preliminary hearing stage, courts should still keep the fairness elements in mind, to wit (1) the strength of plaintiffs' case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement when compared to the potential recovery; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) any evidence of collusion, fraud or overreaching by the negotiating parties; and (8) due regard to what is otherwise a private consensual agreement. See *Jones v. Farmers Insurance Exchange* (2013) 221 Cal.App.4th 986, 998; *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 581; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.

The GSA of $450,000 to cover 790 individuals subjected to virtually every wage/hour violation under the sun for more than five years appears to be quite de minimus. Just the PAGA exposure alone is nearly $3.5 million. According to plaintiff, the timecard deficits alone exceed $1 million. Although plaintiff unilaterally applies an 80% discount based on "difficulty" of proof, plaintiff's counsel is not willing to accept the same discount for its own legal fees – which this Court finds most telling. The meal and rest period violations could carry their own favorable award exceeding several million dollars, leaving this Court to wonder whether the attorneys and class representatives actually put any real effort into this settlement or if the result was simply phoned in.

Based on the lackluster results in this case, there is little if any chance this Court will ultimately approve 33.33% for the lawyers. The proposed attorney fee allocation is higher than normal (this Court generally approved 25-28%), and so counsel is expected to provide detailed

records for a proper lodestar cross-check at the final approval hearing. Counsel is approved to proceed as class counsel, but should be prepared for a serious haircut at the final hearing. Also, since the settlement is not expected to paid in a single payment, the lawyers will not receive any portion of their fee until the final installment has been satisfied in full.

The proposed litigation costs of $30,000 are obviously high if the only cost to date is a mediation session, but again detailed invoices and records permitting an adequate analysis akin to a CCP §1033.5 review will be required at the final hearing.

The proposed administrator fee allocation appears to be reasonable. The appointment hereof is approved.

The proposed representative enhancement is entirely discretionary, and with a result of this nature (de minimus award to each employee) and no showing of serious effort beyond one mediation session, this Court is unlikely to carve out anything higher than $2,500 per representative. Each plaintiff will be required to support any request with a detailed declaration of the time and effort expended on this case, more than just generic unsupported "risks" associated with being a plaintiff, at the final approval hearing. They are, however, approved to proceed as the class representatives.

In conclusion, the proposed settlement is unlikely to be within the range of what would be approved at a final hearing, but this Court will permit the settlement to be presented to the members and see if objections are received. In this interim, this Court expects the administrator to lodge with this Court any communication received from any member that might arguably constitute an objection. The parties must confirm whether all members are fluent in English if electing to provide notices in only English. Likewise, there is no "conclusive presumption" of proper notice when mail is not returned. In the event of non-deliverable notices, the administrator is expected to exhaust reasonable effort locating the individual by looking for changes of address and online "skip tracing." Finally, since objections are permissible up to the final hearing, any imposed deadline for objections is not acceptable. Moreover, to avoid questions regarding the effectiveness of an objection, this Court prefers to see Objection Forms included in the notice packet.

The PAGA Portion – Approved Contingent Upon Proof of Notice

A PAGA claim is a type of qui tam action in which a private plaintiff pursues a dispute between an employer and the state Labor and Workforce Development Agency on behalf of the state. Because the aggrieved employee stands in the shoes of the LWDA when prosecuting and resolving a PAGA claim, the trial court must review and approve any settlement thereof. Before the Court this day is plaintiff's motion to approve the settlement recently brokered.

Procedurally, the trial court must confirm that plaintiff satisfied all of the pre- and post-filing requirements. For example, before the lawsuit was filed, plaintiff was required to give the LWDA pre-filing notice via its online portal, within one year of the offense, "of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation." The notice must contain at least some evidentiary facts (rather than mere conclusions), and must make reference to other employees (not just plaintiff). Plaintiff was also required to tender to the LWDA the required $75 filing fee, and wait the minimum 65 calendar days for LWDA to respond. Plaintiff must also give the employer the same pre-filing notice via certified mail, and wait at least 33 calendar days for the employer to cure.

After the lawsuit is filed, plaintiff has two additional procedural requirements. First, plaintiff must give LWDA, via its online portal, a file-stamped copy of the complaint "within 10 days following commencement of" the civil action. Second, plaintiff must give LWDA, via its online portal, a copy of the proposed settlement for court approval "at the same time that it is submitted to the court." Labor Code §§ 2699, 2699.3. See *Esparza v. Safeway, Inc.* (2019) 36 Cal.App.4th 42, 60-61; *Brown v. Ralphs Grocery Co.* (2018) 28 Cal.App.5th 824, 834-835; *Kahn v. Dunn-Edwards Corp.* (2018) 19 Cal.App.5th 804, 809.

A review of the attached declarations and court filings reveals the possibility that the LWDA has not yet been provided with a copy of the settlement agreement, or the pending motion for approval thereof. The Proof of Service only shows defense counsel. This issue needs to be cleared up.

Substantively, the trial court must review and approve the settlement, making sure it is fair to both the LWDA, as well as the employees (all of them, not just the named plaintiff) subjected to one or more of the alleged Labor Code violations. Although the litmus for fairness is not well-defined, courts generally look to whether the settlement is genuine, meaningful and consistent with the underlying purpose of PAGA, to wit: protecting employees, augmenting the state's enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance. Some of the factors to consider, subject to a sliding scale, include (1) the LWDA's views, or lack thereof, on the settlement; (2) the likelihood of any discretionary reduction of PAGA penalties under §2699(e)(2); (3) the value of any nonmonetary relief (such as changes in company policies); and (4) whether the same employees entitled to PAGA penalties are already recovering monetary relief as part of a class settlement. See, *e.g.*, *Williams v. Superior Court* (2017) 3 Cal.5th 531, 548-549; *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 382; *Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742-744; *Julian v. Glenair, Inc.* (2017) 17 Cal.App.5th 853, 865-866; in accord, *Haralson v. U.S. Aviation Services Corp.*, 383 F.Supp.3d

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959, 971-974 (N.D. Cal. 2019); *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F.Supp.3d 1074, 1075 (C.D. Cal. 2017); *O'Connor v. Uber Techs., Inc.*, 201 F.Supp.3d 1110, 1133 (N.D. Cal. 2016).

The PAGA penalties are as follows:

- Potential Exposure: $3,429,300.00
- Net Settlement Amount: $ 40,000.00
  - LWDA Portion: $ 30,000.00
  - Employee Portion: $ 10,000.00
- Attorney Fee: $ zero
- Litigation Costs: $ zero
- Number of Employees: 601
- Number of Pay Periods: 7,647
- Average Period Penalty: $5.23

Based on these numbers, if plaintiffs secured a judgment for the full exposure, the PPP (per period penalty) would be $448.45. The settlement yields less than 1.5% of the full exposure, which in any world is a remarkably low PPP. But for the fact that there is a class action settlement joining this, and that amount can be adjusted to benefit the employees, this Court would have serious reservations about the settlement. For now, the PAGA portion will be approved pending proof of proper notice to the LWDA.