

TENTATIVE RULINGS

7. **Duarte v. PTG Logistics, LLC**
CIVSB2126799
Motion for Preliminary Approval of Class Action Settlement
Tentative Ruling:

Granted.

Preliminary Approval of Class Action Settlements

Settlement of a class action requires court approval. (Cal. Rules of Court, rule 3.769.) The moving party must demonstrate that “the settlement is fair, adequate and reasonable.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 126; *Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337.) The court has “broad discretion in making this determination.” (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.) Relevant factors the court may consider include “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 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.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) This list of factors “is not exhaustive and should be tailored to each case.” (*Ibid.*) The court may “engage in a balancing and weighing of factors depending on the circumstances of each case.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245, overruled on other grounds in *Hernandez v. Restoration Hardware* (2018) 4 Cal.5th 260, 269.)

“Although the court gives regard to what is otherwise a private consensual agreement between the parties, the court must also evaluate the proposed settlement agreement with the purpose of protecting the rights of the absent class members who will be bound by the settlement.” (*Wershba, supra*, 91 Cal.App.4th at p. 245, quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801.) “The court must therefore scrutinize the proposed settlement agreement to the extent necessary to “reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Officers for Justice v. Civil Service Com’n* (9th Cir. 1982) 688 F.2d 615, 625.)

Nevertheless, the settlement is entitled to “a presumption of fairness ... 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.” (*Kullar, supra*, 168 Cal.App.4th at p. 128, quoting *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

Provisional Class Certification at Preliminary Approval

Although a lesser standard can be used to provisionally certify a settlement class, the court still needs to review and consider each element for certification. (*Global Minerals & Metals Corp. v. Superior Court (National Metals, Inc.)* (2003) 113 Cal.App.4th 836, 859.) But

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as the settlement eliminates the need for trial, “the case management issues inherent in the ascertainable class determination need not be confronted.” (*Ibid.*)

A class should be certified when “the question is one of a common or general interest, of many persons, or when parties are numerous and it is impracticable to bring them all before the court.” (Code Civ. Proc., §382.) There must be both an ascertainable class and a well-defined community of interest, which includes predominate question of law or fact, class representatives with claims typical of the class, and class representatives who can adequately represent the class. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

Settlement 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. 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.” (Rules of Court, rule 3.769(f); *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 251.)

“The purpose of the class notice in the context of a settlement is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. As a general rule, class notice must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members. Here again the trial court has broad discretion.” (*Wershba, supra*, 91 Cal.App.4th at p. 252.)

The manner of notice shall be by means reasonably calculated to apprise the class members of the settlement. (Rules of Court, rule 3.766(f).) The standard is “whether the notice has ‘a reasonable chance of reaching a substantial percentage of the class members.’” (*Wershba, supra*, 91 Cal.App.4th at p. 251.) The court must consider the interest of the class, type of relief obtained, the stake of the individual class members, the costs of notifying the class members, the resources of the parties, the possible prejudice to class members who do not receive notice, and the res judicata effect on class members. (California Rules of Court, rule 3.766(e).)

PAGA

Settlements under the Labor Code Private Attorney General Act, Labor Code section 2698 *et seq.* (PAGA) do not require *preliminarily* approval. When a class action settlement includes a PAGA component, the court considers the PAGA allocation at preliminary approval only insofar as it affects the overall fairness of the settlement for the class. At final approval, however, the court must find that the PAGA portion of the settlement is “fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.) The court must find that the plaintiff “has adequately represented the

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state's interests, and hence the public interest.” (*Id.* at p. 89.) The LWDA must be notified of the settlement and has an opportunity to object.

The Proposed Settlement

Gross Settlement Amount:	\$400,000.00
Attorney Fee:	\$133,333.33 (33.33% of the gross)
Costs:	\$25,000.00
Incentive Award:	\$10,000.00
Administration Fee:	\$7,500.00
PAGA Penalties:	<u>\$25,000.00</u>
Net Class Settlement:	\$199,166.57

Estimated class members:	94
<u>Estimated work-weeks:</u>	?
Estimated average class receipt:	\$2,118.79
<u>Estimated receipt per work-week:</u>	?

PAGA Penalties:	\$25,000.00
LWDA Receipt:	\$18,750.00 (75%)
Aggrieved Employees' Receipt:	\$6,250.00 (25%)
<u>Estimated Aggrieved Employees:</u>	?
<u>Estimated Pay-Periods:</u>	?
<u>Estimated Average Receipt:</u>	?
<u>Estimated Receipt per Pay-Period:</u>	?

Counsel should provide the missing information in the table above.

Notwithstanding the missing information, the court finds *preliminarily* that the class settlement is fair, reasonable, and adequate.⁸ The amount of the settlement is appropriate given the strength of plaintiff's case and the risks of litigation. The class is ascertainable and sufficiently numerous for class certification. The plaintiff's claims are typical of class claims. Common questions of law and fact predominate. Adequate discovery and investigation has occurred. There is no evidence of fraud or collusion. Class counsel are well-qualified to represent the class. The representative is *presumably* qualified to represent the class.⁹ The

⁸ The gross settlement amount includes a portion designated for a PAGA settlement, of which seventy-five percent is paid to the State Labor and Workforce Development Agency (LWDA) and twenty-five percent is paid to the aggrieved employees. But class members whose employment terminated before commencement of the PAGA period do not participate in the PAGA portion of the settlement, while individuals who opt-out of the class settlement still participate in the PAGA settlement if they worked during the PAGA period. The PAGA portion of the settlement does not require preliminary approval, and is relevant at this stage only insofar as it affects the overall fairness of the settlement.

⁹ Counsel should provide a declaration of the plaintiff, demonstrating an understanding of his fiduciary obligations to the class and attesting to an absence of any disqualifying conflicts of interest.

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settlement was reached through arms-length negotiations with the assistance of an experienced mediator, Lynn Frank. The deductions from gross settlement fund (attorney fee,¹⁰ costs,¹¹ administration fee, incentive award, and PAGA penalties) appear to be reasonable and appropriate and are *preliminarily* approved in the “not to exceed” amounts listed above. The proposed notice to be sent to the class is sufficient.

The motion is granted. The class is provisionally certified. Counsel and the representative are appointed to represent the class. Apex Class Action LLC is appointed as the administrator. Counsel should advise the court of the requested date for a final approval hearing.

At the final approval hearing, counsel must advise the court of any pending cases that will be affected by approval of the motion. Counsel must provide proof that the LWDA was properly notified of the PAGA settlement. Counsel must provide the exact number of class members and aggregate number of work weeks for the class settlement and the exact number of aggrieved employees and aggregate number of pay periods for the PAGA settlement.

¹⁰ Counsel must provide a full lodestar analysis in the motion for final approval.

¹¹ Costs must be documented, with meaningful descriptions. Charges for consultants or experts must be supplemented by a detailed description of the nature of work performed by the consultant or expert. The court does not award costs for LEXIS or Westlaw (which are considered items of overhead), faxes (also overhead), or photocopying in excess of \$0.06 per page. Costs should be summarized in a single location within the motion, readily accessible for the court.