

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
Hayward Hall of Justice

<p>Carlos Miramontes, on behalf of himself and others similarly situated Plaintiff/Petitioner(s) vs. Green Wall Tech, Inc., a California corporation Defendant/Respondent (s)</p>	<p>No. 23CV032508 Date: 05/17/2024 Time: 2:00 PM Dept: 520 Judge: Julia Spain</p> <p style="text-align: center;">ORDER re: Hearing on Motion for Preliminary Approval of Settlement filed by Carlos Miramontes, on behalf of himself and others similarly situated (Plaintiff) on 04/25/2024</p>
---	--

The Motion for Preliminary Approval of Settlement filed by Carlos Miramontes, on behalf of himself and others similarly situated on 04/25/2024 is Granted.

Plaintiff Carlos Miramontes' Motion for Preliminary Approval of Class Action and PAGA Settlement is GRANTED.

To protect the interests of absent class members, class action settlements must be reviewed and approved by the Court. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.) California follows a two-stage procedure for court approval: first, the Court reviews the form of the terms of the settlement and form of settlement notice to the class and provides or denies preliminary approval; later, the Court considers objections by class members and grants or denies final approval. (C.R.C. 3.769.)

The First Amended Complaint of Plaintiff Carlos Miramontes, on behalf of himself and others similarly situated, alleges claims on behalf of current and former non-exempt employees of Defendant Green Wall Tech, Inc. ("Defendant") and asserts Labor Code violations. (Yeremian Dec. Exh. 1 ("Proposed Settlement Agreement") ¶ 2.1.)

At mediation with Hon. Brian C. Walsh (Ret.) in January 2024, the parties agreed to settle this action. (*Id.* ¶ 2.3). The Court gives considerable weight to the competency and integrity of

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Hayward Hall of Justice

counsel in concluding that the proposed Settlement Agreement is reasonable and represents an arm's length transaction entered into without self-dealing or other potential misconduct. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.)

The case preliminary settled for a total amount of \$1,500,000.00. (Proposed Settlement Agreement ¶ 3.1.) The Proposed Settlement Agreement states that there will be Class Counsel fees of up to \$499,999.00, costs up to \$35,000.00, Class Representative Enhancement Payment to Plaintiff of up to \$7,500.00, a gross PAGA payment of \$56,250.00, and settlement administration costs of up to \$13,490.00. (*Id.* ¶¶ 3.2.1 – 3.2.3.)

After these expenses, the class would receive \$18,750.00. The average payout per class member would be \$1,042.35 if no class member opts out. (*Id.* ¶¶ 3.2.4-3.2.5.) There are approximately 878 members of the class. (*Id.* ¶ 8.)

The Court therefore preliminarily approves the Settlement Agreement. This is based on the Court's determination that the proposed settlement is within the range of possible final approval.

The Court also approves the proposed Notice of Class Action Settlement ("Notice of Settlement"). (See Settlement Agreement, pp. 21-27.) The Notice of Settlement shall be provided to class members in the manner set forth in the Settlement Agreement. The proposed class notice form and procedure are adequate. The proposed class is appropriate for class certification.

The Court approves the appointment of Plaintiff's counsel as class counsel, and conditionally certifies the class as set forth in the moving papers, Settlement Agreement, and Notice of Settlement.

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

The scope of the release for the class is appropriate. (*Id.* ¶ 5.) The scope of the class release is limited to the claims arising out of the claims alleged in the operative complaint where the Plaintiff can adequately represent the class. The release of claims by the class is limited by the "factual predicate rule" to those claims. (*Hesse v. Sprint Corp.* (9th Cir. 2010) 598 F.3d 581, 590.)

Unclaimed funds are to be paid Legal Aid at Work. The Court approves this on this motion.

The Court will not approve the amount of attorneys' fees and costs until the final approval hearing. The Court is inclined to approve the attorney' fees to be requested by Plaintiff's counsel in the amount of \$499,999.00, which represents one third of the global settlement amount. The Court has an independent responsibility to consider the reasonableness of fee awards. (*Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 555.) "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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Hayward Hall of Justice

Cal.App.4th 219, 227.) The Court finds that the proposed percentage is reasonable in light of the nature and scope of this case.

The Court will not decide the amount of any service award until the final approval hearing. Plaintiff must provide evidence regarding the nature of the participation of the class representative in the action, including a description of his specific actions and the amount of 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 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 C.C.P. 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, with the insertion of December 6, 2024 at 2:00 PM in Dept. 520 in Paragraph 7(f) as the date for the hearing for Final Approval of Settlement. Plaintiffs must obtain a reservation for a hearing on this date and file moving papers. At that hearing, the Court will hear and decide the question of whether the proposed settlement should be finally approved as fair, reasonable, and adequate as to the class. At that time, the Court will also consider Plaintiff's application for attorney fees, costs, settlement administration expenses, and service payments to the class representative. Should the parties need additional time before the Court hears the motion for final approval, they are ordered to request a continuance at least 30 days before the scheduled hearing.

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

Dated : 05/17/2024



Julia Spain / Judge

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
Hayward Hall of Justice

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Hayward Hall of Justice 24405 Amador Street, Hayward, CA 94544	FILED Superior Court of California County of Alameda 05/17/2024 Chad Finke, Executive Officer / Clerk of the Court
PLAINTIFF/PETITIONER: Carlos Miramontes, on behalf of himself and others similarly situated	By: <u><i>Daniell Labrecque</i></u> Deputy D. Labrecque
DEFENDANT/RESPONDENT: Green Wall Tech, Inc., a California corporation	
CERTIFICATE OF MAILING	CASE NUMBER: 23CV032508

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the attached document upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Hayward, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Alexander Miles Medina
Medina McKelvey LLP
925 Highland Pointe Drive, Suite 300
Roseville, CA 95678

EMIL DAVTYAN
D.Law, Inc.
880 E Broadway
GLENDALE, CA 91205

Roman Shkodnik
David Yeremian & Associates, Inc.
2540 Foothill Blvd., Suite 201
La Crescenta, CA 91214

Chad Finke, Executive Officer / Clerk of the Court

Dated: 05/17/2024

By:

Daniell Labrecque

D. Labrecque, Deputy Clerk

CERTIFICATE OF MAILING