

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**34-2022-00332108-CU-OE-GDS: Danielle Ervin vs. Welcome Sacramento, LLC, a
California Limited Liability Company
10/18/2024 Hearing on Motion for Preliminary Approval of Settlement in Department 23**

Tentative Ruling

NO APPEARANCE REQUIRED

Plaintiff Danielle Ervin's ("Plaintiff") motion for preliminary approval of class and Private Attorneys General Act ("PAGA") settlement is UNOPPOSED and GRANTED as follows.

Preliminary Matter

Moving Counsel's declaration fails to attest that they have reviewed the Court's checklist and their briefing complies with the checklist, as required by Local Rule 2.99.05. The Court, in its discretion, has nonetheless considered Plaintiff's motion. Counsel is admonished that any future failure to do so may result in the denial of the motion without prejudice. (Local Rule 2.99.05(C).) Failure to comply with the checklist may lead to an order to show cause regarding sanctions and/or a reduction in the requested attorneys' fee award. (*Id.* at 2.99.05(D).)

Overview

On December 28, 2022, Plaintiff filed this putative class action against Defendants Welcome Sacramento LLC, Welcome Group Management, LLC, and Welcome Group, Inc. ("Defendants"). Plaintiff's class action complaint alleges the following causes of action: (1) failure to pay wages including overtime; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to pay timely; (5) failure to timely pay wages during employment; (6) failure to provide accurate wage statements; (7) failure to reimburse necessary business expenses; (8) issuing payment of wages in the form of non-Labor Code-compliant instrument; (9) failure to pay reporting time pay; (10) improper use of consumer credit report; (11) unfair business practices; (12) violation of Fair Credit Reporting Act for failure to make proper disclosures; (13) violation of Fair Credit Reporting Act for failure to obtain proper authorization; (14) failure to make proper disclosure and obtain proper authorization in violation of Investigative Consumer Reporting Agencies Act; and (15) failure to make proper disclosure in violation of Consumer Credit Reporting Agencies Act.

On March 6, 2023, Plaintiff filed a separate representative action pursuant to PAGA. (Case No. 34-2023-00335704.) In that action, Plaintiff alleges a single cause of action for PAGA penalties against Defendants based on the following underlying alleged Labor Code violations: (1) failure to provide rest periods; (2) failure to provide meal periods; (3) failure to pay overtime and minimum wages; (4) failure to reimburse necessary business expenses; (5) failure to timely pay wages during employment; (6) failure to pay timely wages upon separation from employment; (7) failure to maintain accurate itemized wage statements; (8) failure to pay reporting time pay; (9) issuing wages through non-Labor Code-compliant instruments; (10) improper use of consumer credit reports; and (11) failure to provide suitable seating.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**34-2022-00332108-CU-OE-GDS: Danielle Ervin vs. Welcome Sacramento, LLC, a
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10/18/2024 Hearing on Motion for Preliminary Approval of Settlement in Department 23**

The Parties engaged in informal discovery prior to mediation. (Hawkins Decl. ¶ 6.) Defendants provided hire and term dates for all employees, time and payroll records and relevant policies for Class Members during the Class Period. (*Ibid.*) On February 6, 2024, the Parties participated in a mediation with Louis Marlin and reached a settlement of both the class and the PAGA action. (*Ibid.*) The Parties thereafter entered into a written settlement agreement. (*Id.* at Ex. A (“Agreement”). Plaintiff now seeks preliminary approval of the class and PAGA settlement. This ruling incorporates by reference the definitions in the Agreement and all capitalized terms defined therein shall have the same meaning in this ruling as set forth in the Agreement.

Settlement Class Certification

Plaintiff seeks to certify the following settlement class: all persons who have been employed by Defendants as non-exempt employees or equivalent positions however titled in the state of California from December 28, 2018 through the date of Preliminary Approval. (Agreement ¶¶ 6 & 8.) There are approximately 344 Class Members as of the February 7, 2024. (*Id.* at ¶ 6.) The Parties have stipulated to certification of the settlement class. (*Id.* at ¶ 45.) The Court finds, based on the moving papers, the requisites for establishing class certification have been met and preliminarily certifies the proposed settlement class.

Aggrieved Employees

Aggrieved Employees are defined in the Agreement as: all individuals who are or were previously employed by Defendants as non-exempt California employees from December 28, 2021, through the date of Preliminary Approval. (Agreement ¶¶ 2 & 25.) There are approximately 214 Aggrieved Employees. (*Id.* at ¶ 2.) Aggrieved Employees will receive their share of the PAGA penalty regardless of whether they opt out of the Class portion of the settlement. (*Id.* at ¶ 57.) Plaintiff’s counsel submitted a copy of the settlement to the Labor and Workforce Development Agency (“LWDA”) and gave notice of the continued hearing date. (Supplemental Hawkins Decl. ¶ 4 & Ex. 1; Notice of Continued Hearing on Motion for Preliminary Approval.)

Class Representative

Plaintiff is preliminarily appointed as Class Representative for settlement purposes only.

Class Counsel

James Hawkins, APLC is preliminarily appointed as Class Counsel for settlement purposes only.

Settlement Administrator

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**34-2022-00332108-CU-OE-GDS: Danielle Ervin vs. Welcome Sacramento, LLC, a
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10/18/2024 Hearing on Motion for Preliminary Approval of Settlement in Department 23**

The Court appoints Apex Class Administrators to serve as settlement administrator.

Fair, Adequate and Reasonable Settlement

The Court must find a settlement is “fair, adequate, and reasonable” before approving a class action settlement. (*Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 244-245.) The trial court has broad discretion to determine whether a proposed settlement in a class action is fair, adequate, and reasonable. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) “[A] presumption of fairness exists 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.” (*Id.* at 1802.) In making its fairness determination, the Court considers the strength of the Plaintiffs’ case, the risk, expenses, 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 state of the proceedings, and the experience and views of counsel. (*Id.* at 1801.) In approving a class action settlement, the Court must “satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.)

This is a non-reversionary, opt-out settlement. Defendants will pay the Gross Settlement Amount (“GSA”) of \$850,000. (Agreement ¶ 50.) Defendants will separately pay the employer’s share of applicable taxes. (*Ibid.*) The following will be paid out of the GSA: (1) a \$50,000 PAGA Penalty (75% of which will be paid to the LWDA and 25% of which will be paid to Aggrieved Employees); (2) attorneys’ fees not to exceed \$283,305 (one-third of GSA) and litigation costs not to exceed \$25,000; (3) up to \$10,000 for an enhancement award to Class Representative; (4) settlement administration costs not to exceed \$9,200; and (5) individual class member payments. (*Id.* at ¶¶ 50, 52(a)-(g).)

For tax purposes, Class Member payments will be reported as: 20% as wages and 80% as interest and penalties. (Agreement ¶ 54(a).) The PAGA Payments will be treated entirely as penalties. (*Ibid.*) Class Members have 60 days to opt-out, submit an objection, or submit a workweek dispute. (*Id.* at ¶ 21.) The funds from settlement checks that are uncashed after 180 days will be transferred to the California Unclaimed Property Fund in the name of the payee. (*Id.* at ¶ 59(e).) The average individual class member payment is approximately \$1,373.53. (Hawkins Decl. ¶ 26.) The average PAGA payment is \$58. (*Id.* at ¶ 27.)

Disposition

The Court preliminarily finds that the class is entitled to a presumption of fairness and that all relevant factors support preliminary approval. (*Dunk*, *supra*, 48 Cal.App.4th at 1802.) The

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**34-2022-00332108-CU-OE-GDS: Danielle Ervin vs. Welcome Sacramento, LLC, a
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moving papers demonstrate the settlement was reached after arms-length bargaining between the parties and was reached after sufficient discovery and negotiations, which allowed the parties, and therefore, this Court, to act intelligently with respect to the settlement. Class Counsel conducted a thorough investigation into the facts and law and issue in this case, including the exchange of informal discovery and the review of extensive information. Therefore, the motion is granted. The Court also approves the proposed Class Notice. The Notice shall be disseminated as provided in the Agreement. The Court will sign the proposed order submitted with the moving papers.

The Final Approval Hearing will take place on March 21, 2025, at 9:00 a.m. in this Department. The Court will write-in the hearing date in the proposed order.

To request oral argument on this matter, you must call Department 23 at 916-874-5754 by 4:00 p.m., the court day before this hearing and notification of oral argument must be made to the opposing party/counsel. If no call is made, the tentative ruling becomes the order of the court. (Local Rule 1.06.)

Please check your tentative ruling prior to the next Court date at www.saccourt.ca.gov prior to the above referenced hearing date.

If oral argument is requested, the parties may and are encouraged to appear by Zoom with the links below:

To join by Zoom Link - <https://saccourt-ca-gov.zoomgov.com/my/sscdept23>
To join by phone dial (833) 568-8864 ID 16108301121

Parties requesting services of a court reporter will need to arrange for private court reporter services at their own expense, pursuant to Government code section 68086 and California Rules of Court, Rule 2.956. Requirements for requesting a court reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf>. Parties may contact Court-Approved Official Reporters Pro Tempore by utilizing the list of Court Approved Official Reporters Pro Tempore available at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.Pdf>

A Stipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) is required to be signed by each party, the private court reporter, and the Judge prior to the hearing, if not using a reporter from the Court's Approved Official Reporter Pro Tempore list. Once the form is signed it must be filed with the clerk.

If a litigant has been granted a fee waiver and requests a court reporter, the party must submit

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**34-2022-00332108-CU-OE-GDS: Danielle Ervin vs. Welcome Sacramento, LLC, a
California Limited Liability Company
10/18/2024 Hearing on Motion for Preliminary Approval of Settlement in Department 23**

a Request for Court Reporter by a Party with a Fee Waiver (CV/E-211) and it must be filed with the clerk at least 10 days prior to the hearing or at the time the proceeding is scheduled if less than 10 days away. Once approved, the clerk will be forward the form to the Court Reporter's Office and an official reporter will be provided.

Counsel for Plaintiff is directed to notice all parties of this order.

Hearing on Motion for Final Approval of Settlement is scheduled for 03/21/2025 at 9:00 AM in Department 23 at Gordon D. Schaber Superior Court.