

Preliminary Approval of Class Action Settlement
Department SSC-7
Hon. Samantha Jessner

Amber Lynn Bock v. Bartz-Altadonna Community Health Center

Case No.: 24STCV05513

Hearing: March 25, 2025

TENTATIVE RULING

Preliminary Approval of the Class Action Settlement is GRANTED.

BACKGROUND

Plaintiff Amber Lynn Bock sues her former employer, Defendant Bartz-Altadonna Community Health Center, for alleged wage and hour violations. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

On March 5, 2024, Plaintiff filed a class action complaint alleging causes of action for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Violation of Labor Code § 203; (7) Violation of Labor Code § 204; (8) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5; (9) Failure to Reimburse Necessary Business Expenses § 2802; (10) Failure to pay Vacation Wages; and (11) Violation of Business & Professions Code § 17200 et seq. On May 9, 2024, Plaintiff filed a First Amended Complaint adding a cause of action for Penalties under PAGA, Labor Code § 2698.

On October 15, 2024, the parties attended mediation before mediator Brandon McKelvey, which ultimately resulted in settlement. The terms of settlement were finalized in the long-form *Class Action and PAGA Settlement Agreement* ("Settlement Agreement"), a copy of which is attached to the Declaration of Natalie Haritoonian ("Haritoonian Decl.") as Exhibit 1.

Now before the Court is the Motion for Preliminary Approval of the Settlement Agreement.

SETTLEMENT CLASS DEFINITION

- "Class" means all persons employed by Defendant in California and classified as a non-exempt, hourly employee who worked for Defendant during the Class Period except those employees who negotiated a signed release of claims with Defendant at any time during the Class Period. (¶1.5)
- "Class Period" means the period from March 5, 2020 to December 16, 2024. (¶1.12)
- "Aggrieved Employee" means a person employed by Defendant in California and classified as a non-exempt, hourly employee who worked for Defendant during the PAGA Period. (¶1.4)
- "PAGA Period" means the period from March 5, 2023 to December 16, 2024. (¶1.31)

- “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. (¶1.35)

TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- The Gross Settlement Amount (“GSA”) is **\$599,500**, non-reversionary. (¶3.1)
 - Escalator Clause: Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 361 Class Members and 25,082 Total Workweeks during the Class period and (2) there were 218 Aggrieved Employees who worked 4,915 Pay Periods during the PAGA Period. If the Total Workweeks increases by more than 10%, then the GSA will be increased proportionally by the number of workweeks worked in excess of 10%. For example, if the Total Workweeks increases by 11%, then the GSA will increase by 1%. (¶8)
- The Net Settlement Amount (“Net”) (**\$323,166.67**) is the GSA minus the following:
 - Up to **\$199,833.33** (33 1/3%) for attorney fees (¶3.2.2);
 - Up to **\$25,000** for litigation costs (*Ibid.*);
 - Up to **\$5,000** for a Service Payment to the Named Plaintiff (¶3.2.1);
 - Up to **\$6,500** for settlement administration costs (¶3.2.3); and
 - Payment of **\$40,000** PAGA penalty (75% or \$30,000 to the LWDA). (¶3.2.5)
- Defendant will pay employer payroll taxes separately from the Gross Settlement Amount. (¶3.1)
- There is no claim form requirement. (¶3.1)
- Individual Settlement Payment Calculation: Each Participating Class Member will receive an Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member’s Workweeks. (¶3.2.4) Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. (¶3.2.4.2)
 - PAGA Payments: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties \$10,000.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods. (¶3.2.5.1)
 - Tax Allocation: Participating Class Member’s Individual Class Payments will be allocated as follows: 20% as wages, 80% as interest and penalties. (¶3.2.4.1) The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. (¶3.2.5.2)
- Response Deadline: “Response Deadline” means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement,

or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

(¶1.43) The same deadline applies to the submission of workweek disputes. (¶7.6)

- If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendant will have sole and absolute discretion to rescind/void this Settlement. (¶9)
- Funding of Settlement: Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date. (¶4.3)
- Disbursement: Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. (¶4.4)
- Uncashed Settlement Checks: The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. (¶4.4.1) For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b). (¶4.4.3)
- The settlement administrator will be Apex Class Action. (¶1.2)
- Notice of Final Judgment will be posted on the Settlement Administrator's website. (¶7.8.1)
- The proposed Settlement Agreement was submitted to the LWDA on January 14, 2025. (Haritounian Decl., Exhibit 3.)
- Participating class members and the named Plaintiff will release certain claims against Defendant. (See further discussion below)

ANALYSIS OF SETTLEMENT AGREEMENT

1. Does a presumption of fairness exist?

Was the settlement reached through arm's-length bargaining? On July 12, 2024, the parties attended mediation before mediator Steve Rottman, which ultimately resulted in settlement. (Haritounian Decl. ¶16.)

1. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Class Counsel represents that after filing the lawsuit, they conducted an investigation of the facts and claims giving rise to the action, including: (1) conducting informal

discovery and meeting and conferring with defense counsel about same; (2) reviewing and analyzing a sampling of time and pay records as well as employment handbooks, Plaintiff's personnel files, relevant policies and other documentation; (3) researching the applicable law and potential defenses; (4) constructing damage models based on interpretations of California law; and (5) reviewing information provided by Defendant at the mediation. (*Id.* at ¶14.)

2. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (*Id.* at ¶8.)

3. What percentage of the class has objected? This cannot be determined until the fairness hearing. See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 14:139.18, ("Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing.").

CONCLUSION: The settlement is reflects fairness.

2. Is the settlement fair, adequate, and reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) Here, Class Counsel has provided information, summarized below, regarding the estimated values of the class claims alleged:

Violation	Maximum Exposure
Unpaid Wages	\$232,661.00
Meal Period Violations	\$267,123.00
Rest Period Violations	\$267,123.00
Wage Statement Violations	\$531,200.00
Waiting Time Penalties	\$797,487.00
Unreimbursed Business Expenses	\$18,050.00
PAGA Penalties	\$542,100.00
Total	\$2,655,744.00

(Haritounian Decl. ¶¶27-56.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.").)

4. Amount offered in settlement. Plaintiff's counsel estimated Defendant's maximum damages at \$2,655,744. Plaintiff's counsel obtained a \$599,500 non-reversionary settlement.

This is approximately 22.6% of Plaintiff's potential maximum recovery which, given the uncertain outcomes, is within the "ballpark" of reasonableness.

The settlement amount, after reduced by the requested deductions, leaves approximately \$323,166.67 to be divided among approximately 361 class members. Assuming full participation, the resulting payments will average approximately \$895.19 per class member.

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object, opt-out and/or submit claim forms. This factor becomes relevant during the fairness hearing.

CONCLUSION: The settlement is preliminarily deemed "fair, adequate, and reasonable."

3. Scope of the release

Releases of Claims. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows: (¶15)

- Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint (as well as Class Period facts ascertained in the course of the Action) including, but not limited to, any and all claims involving any violation of the Labor Code and the Wage Order for Failure to Pay Minimum Wages, violation of the Labor Code and the Wage Order for Failure to Pay Wages and Overtime Wages, violation of the Labor Code and the Wage Order for Failure to Provide Meal Periods or Compensation in Lieu Thereof, violation of the Labor Code and the Wage Order for Failure to Provide Rest Periods or Compensation in Lieu Thereof, violation of the Labor Code and the Wage Order for Failure to Comply with Itemized Employee Wage Statement Requirements, violation of the Labor Code and the Wage Order for Failure to Pay All Wages Upon Termination, violation of the Labor Code and the Wage Order for Failure to Comply With Employee Record Keeping Requirements, violation of the Labor Code for Failure to Reimburse Business Expenses, violation of the Labor Code for Failure to Pay Vacation Wages, violation of California Business and Professions Code section 17200, et. seq. and violation of Labor Code section 2698, et. seq. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security,

workers' compensation, or claims based on facts occurring outside the Class Period. (¶5.2)

- Release by Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice and ascertained in the course of the Action including, but not limited to any and all claims involving any violation of the Labor Code and the Wage Order for Failure to Pay Minimum Wages, violation of the Labor Code and the Wage Order for Failure to Pay Wages and Overtime Wages, violation of the Labor Code and the Wage Order for Failure to Provide Meal Periods or Compensation in Lieu Thereof, violation of the Labor Code and the Wage Order for Failure to Provide Rest Periods or Compensation in Lieu Thereof, violation of the Labor Code and the Wage Order for Failure to Comply with Itemized Employee Wage Statement Requirements, violation of the Labor Code and the Wage Order for Failure to Pay All Wages Upon Termination, violation of the Labor Code and the Wage Order for Failure to Comply With Employee Record Keeping Requirements, violation of the Labor Code for Failure to Reimburse Business Expenses, violation of the Labor Code for Failure to Pay Vacation Wages, violation of California Business and Professions Code section 17200, et. seq., and violation of Labor Code section 2698, et. seq. (¶5.3)
 - “PAGA Notice” means Plaintiff’s March 5, 2024 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a). (¶1.33)
 - Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment. (¶7.5.4)
- “Released Parties” means: Defendant and each of its former and present directors, officers, employees, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates. (¶1.41)
- Named Plaintiff will also provide a general release and CC § 1542 waiver. (¶5.1)

4. May conditional class certification be granted?

1. Standards

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified (*Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (*Dunk* at 1807, fn 19.) Finally, the Court is under no “ironclad requirement” to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (*Wershba* at 240.)

2. Analysis

a. Numerosity. There are approximately 361 class members. (Haritoonian Decl. ¶73.a.) This element is met.

b. Ascertainability. The proposed class is defined above. The class definition is “precise, objective and presently ascertainable.” (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919.) The class members are identifiable from Defendant’s records. (Haritoonian Decl. ¶73.b.)

c. Community of interest. “The community of interest requirement involves three factors: ‘(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.’” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

As to commonality, Plaintiff contends that Defendant’s practices, including an alleged practice of failing to provide complete meal periods, related meal period policies applicable to the class, and the alleged failure to provide corresponding premium payments, that affected class members in the same way. All class members were employed during the Class Period. Therefore, the operative complaint delineates a common course of conduct applicable to all Class Members. (Haritoonian Decl. ¶73.e.)

As to typicality, Plaintiff contends that her claims are typical of Class Members’ claims because they arose from the same factual basis and are based on the same legal theories. Plaintiff was employed by Defendant during the Class Period subject to the allegedly unlawful meal and rest break policies and pay practices at issue in this litigation. The central issues of this litigation (whether Defendant failed to pay all wages, whether Defendant failed to provide meal and rest periods, etc.), which would arise if this were an individual action brought by Plaintiff, apply to the other Class Members as well, and the answer to these questions would determine Defendant’s liability to the entire putative class. (*Id* at ¶73.c.)

As to adequacy, Plaintiff represents that she is aware of the duties of serving as class representative and has participated in the litigation. (Declaration of Amber Lynn Bock ¶¶6-9.)

d. Adequacy of class counsel. As indicated above, Class Counsel has shown experience in class action litigation, including wage and hour class actions.

e. Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

CONCLUSION: The class is conditionally certified based on the fact that the prerequisites of class certification appear to have been satisfied.

5. Is the notice proper?

1. Content of class notice. The proposed notice is attached to the Settlement Agreement. Its content appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; the proposed deductions from the gross settlement amount (attorney fees and costs, enhancement awards, and administration costs); the procedures and deadlines for participating in, opting out of, or objecting to, the settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing.

Notice will be given in English and Spanish. (¶1.11)

2. Method of class notice.

Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (¶4.2) Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database. (¶7.4.2)

Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time. (¶7.4.3)

The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. (¶7.4.4)

3. Cost of class notice. As indicated above, settlement administration costs are estimated not to exceed **\$6,500**. Prior to the time of the final fairness hearing, the administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

6. Attorney fees and costs

CRC rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to **\$199,833.33** (33 1/3%) in attorney fees will be addressed at the fairness hearing when class counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can properly apply the lodestar method and must indicate what multiplier (if applicable) is being sought as to each counsel.

Class Counsel should also be prepared to justify the costs sought (capped at **\$25,000**) by detailing how they were incurred.

7. Incentive Award

The Settlement Agreement provides for an enhancement award of up to **\$5,000** to the named Plaintiff. In connection with the final fairness hearing, named Plaintiffs each must submit a declaration attesting to why they should be entitled to an enhancement award in the proposed amount. The named Plaintiff must explain why they “should be compensated for the expense or risk [they have] incurred in conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiff, is required in order for the trial court to conclude that an enhancement was ‘necessary to induce [the named plaintiff] to participate in the suit’” (*Id.* at 806-807, italics and ellipsis in original.) The Court will decide the issue of the enhancement awards at the time of final approval.