Superior Court of California, Contra Costa County

Department 39
925-608-1000
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K. Bieker
Court Executive Officer

MINUTE ORDER

DINO DE SANCTIS VS. HENKEL US OPERATIONS CORPORATION **C23-02468**

HEARING DATE: 02/20/2025

PROCEEDINGS: *HEARING ON MOTION IN RE: PRELIMINARY APPROVAL

DEPARTMENT 39
JUDICIAL OFFICER: EDWARD G WEIL

CLERK: ANTIGONE MONTGOMERY
COURT REPORTER: NOT REPORTED
BAILIFF: KIAN LAVASSANI
INTERPRETER: NOT REQUIRED

JOURNAL ENTRIES:

The Court issued the below tentative ruling:

Hearing required.

Plaintiff Dino De Sanctis moves for preliminary approval of his class action and PAGA settlement with defendants Henkel U.S. Operations Corporation, Henkel of America, Inc., and Henkel Corporation. Dresser-Rand Company. Henckel makes home products.

A. **Background and Settlement Terms**

The original complaint was filed on July 24, 2023, raising class action claims on behalf of non-exempt employees, alleging that defendant violated the Labor Code in various ways, including failure to pay minimum and overtime wages, failure to provide meal breaks, failure to provide proper wage statements, failure to reimburse necessary business expenses, and failure to pay all wages due on separation. A PAGA-only action was filed on September 29, 2023. On September 17, 2024, the PAGA-only complaint was amended to include class claims for the purpose of effectuating the settlement.

The settlement would create a gross settlement fund of $880,000. The class representative payment to the plaintiff would be $10,000. Attorney's fees would be $293,333.33 (one-third of the settlement). Litigation costs would not exceed $25,000. The settlement administrator's costs (Apex Class Action) would not exceed $9,000. PAGA penalties would be $40,000, resulting in a payment of $30,000 to the LWDA and $10,000 to plaintiffs. The net amount paid directly to the class members would be about $502,666.67. The fund is non-reversionary. Based on the estimated class size of 513, the average net payment for each class member is approximately $979.86.

The proposed settlement would certify a class of all current and former non-exempt employees employed by Defendants in California from November 30, 2021 to the date of preliminary approval.

The agreement contains an escalator clause (Par. III(A)(5) under which if the number of workweeks is more than 10% of the projected amount (48,400), defendants shall have the option to either (i) increase the Gross Settlement Amount by $20 for each additional week above 48,400 or (ii) have the class Period and the PAGA Period end on the date the workweeks exceeded 44,000. The Court is concerned that this has the potential, if exercised under option (ii), to exclude some members of the class from participation in the recovery. Accordingly, if option (ii) remains in the agreement, the parties must request advance approval from the Court before exercising it.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds would be apportioned to class members based on the number of workweeks worked during the class

period.

Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Checks undelivered or uncashed 180 days after mailing will be voided, and will be paid to tendered to the Interdisciplinary Cener for Health Workplaces at the University of California, Berkeley.

The settlement contains release language covering all claims alleged, or reasonably could have been alleged based on the facts alleged, in the operative complaint. Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id.*, quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Informal written discovery was undertaken, and counsel had the information evaluated by outside experts. The matter settled after arms-length negotiations, which included a session with an experienced mediator in May of 2024.

Counsel also has provided an analysis of the case, and how the settlement compares to the potential value of the case, estimating that the recovery on the class claims is between 18.5% and 26% of the total exposure, breaking down the analysis claim-by-claim.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory."])

Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion.

A. **Legal Standards**

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801, including "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 state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (See also *Amaro v. Anaheim Arena Mgmt., LLC, supra,* 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees[.]" (*Id*., at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is

a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

B. **Attorney fees**

Plaintiff seeks one-third of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id*., at 505.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

Similarly, litigation costs and the requested representative payment of $10,000 for plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

C. **Conclusion**

Hearing required.

The Court has some concern about the portion of the escalator clause that would allow the parties to shorten the class period. As noted above, this has the potential, if exercised under option (ii), to exclude some members of the class from participation in the recovery. Accordingly, if option (ii) remains in the agreement, the parties must request advance approval from the Court before exercising it.

Counsel have provided the Court with no material meeting the requirements for a cy pres distribution to a non-profit entity, in this instance the Interdisciplinary Center for Healthy Workplaces at the University of California, Berkeley. Counsel must provide a declaration concerning the cy pres recipient that meets the requirements of Code of Civil Procedure section 382.4. In addition, the cy pres recipient must be qualified under Code of Civil Procedure section 384(b), which requires that cy pres funds be provided "to nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent[.]" Counsel also must attest that they do not have any pecuniary interest in the cy pres recipient, and must "notify the court if the attorney has a connection to or a relationship with a nonparty recipient of the distribution that could reasonably create the appearance of impropriety as between the selection of the recipient of the money or thing of value and the interests of the class." (CCP § 382.4.)

In all other respects, the court finds that the settlement is sufficiently fair, reasonable, and adequate to justify preliminary approval.

If the motion is granted, counsel will be directed to prepare an order reflecting this tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance

hearing after the settlement has been completely implemented. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court. If the cy pres recipient is included in the final settlement, counsel must, once the distribution is made, submit an amended judgment so reflecting payment of the funds to the cy pres recipient.

Counsel Jennifer Gerstenzang appears via Zoom
Counsel Jaclyn Joyce appears via Zoom
Counsel Galen Sallomi appears via Zoom

The Court, having considered the pleadings and oral arguments of counsel, continues this hearing to allow supplemental briefing on the issues discussed.

DATED: 2/20/2025

BY:_____

A. MONTGOMERY, DEPUTY CLERK