

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court, Department 22

JUDICIAL OFFICER: HONORABLE LAURI A. DAMRELL

Courtroom Clerk: V. Aleman

CSR: None

Court Attendant: J. Flores

23CV012773

May 2, 2025

9:00 AM

MALAPIT, et al.

vs

ED DAVID CARE HOMES, INC., A CORPORATION, et al.

MINUTES

APPEARANCES:

No Appearances

NATURE OF PROCEEDINGS: Hearing on Motion for Preliminary Approval of Settlement Class Action Settlement

COURT RULING:

There being no request for oral argument the Court affirmed the tentative ruling.

TENTATIVE RULING:

Plaintiffs Leah Malapit, Infinity Price, Laura Macias, and Liawanag Linang's motion for preliminary approval of the Parties' class and Private Attorneys General Act ("PAGA") settlement is UNOPPOSED and GRANTED, as follows.

Hearing on Motion for Final Approval of Settlement is scheduled for 10/03/2025 at 9:00 AM in Department 22 at Gordon D. Schaber Superior Court.

The Court has provided specific direction on the information and argument the Court requires to grant a motion for preliminary and final approval of a class action settlement. The Parties shall carefully review the Checklist for Approval of Class Action Settlements and fully comply with each applicable item to ensure a prompt ruling from the Court.

Background

On September 12, 2023, Plaintiffs Malapit, Price, and Macias filed with the Labor and Workforce Development Agency ("LWDA") and served on Defendants Ed David Care Homes, Inc. and Aim Higher Incorporated ("Defendants") a notice under Labor Code section 2699.3 identifying the alleged Labor Code violations to recover civil penalties on

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

behalf of Aggrieved Employees for various Labor Code violations. (Nordrehaug Decl., ¶ B.7, Exh. 3.) The PAGA Notice specifically alleged violations of Labor Code §§ 201, 202, 203, 204 et seq., 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and violation of the applicable Wage Order(s). (*Ibid.*)

On November 27, 2023, Plaintiffs Malapit, Price, and Macias commenced this Action by filing a class action complaint against Defendants asserting class claims for: (1) unfair competition in violation of Cal. Bus & Prof. Code §§ 17200, et seq.; (2) failure to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (3) failure to pay overtime wages in violation of California Labor Code §§ 510, 1194 & 1198; (4) failure to provide required meal periods in violation of Cal. Labor Code §§ 226.7 and 512; (5) failure to provide required rest periods in violation of Cal. Labor Code §§ 226.7 and 512; (6) failure to reimburse employees for required expenses in violation of California Labor Code § 2802; (7) failure to provide accurate itemized wage statements in violation of California Labor Code § 226; (8) failure to provide wages when due in violation of California Labor Code §§ 201, 202 and 203; and, (9) failure to pay sick pay wages in violation of California Labor Code §§ 201-204, 233, 246. (Nordrehaug Decl., ¶ 8.) On November 14, 2024, Plaintiffs Malapit, Price, and Macias filed a First Amended Complaint adding a cause of action for violation of the PAGA based on the PAGA Notice. (*Ibid.*) On March 14, 2025, Plaintiff filed a Second Amended Complaint in this Action which added Plaintiff Liawanag Linang as a class representative. (*Id.*, ¶ 9.)

Plaintiffs now move for preliminary approval of Plaintiffs' and Defendant Ed David Care Homes, Inc.'s ("Defendant") Class Action and PAGA Settlement Agreement ("Agreement"). (Nordrehaug Decl., ¶ 2, Exh. 1 ("SA").) Concurrent with the filing of the instant motion, Plaintiffs submitted the Agreement and the moving papers to the LWDA. (*Id.*, ¶ B.38, Exh. 4; 4-8-25 Proof of Service.)

Legal Standard

The law favors the settlement of lawsuits, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. (See *Neary v. Regents of Univ. of Cal* (1992) 3 Cal.4th 273, 277-281; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 52.) However, a class action may not be dismissed, compromised, or settled without approval of the court, and the decision to approve or reject a proposed settlement is committed to the court's sound discretion. (See Cal. Rules of Court, Rule 3.769; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 (*Wershba*).)

In determining whether to approve a class settlement, the court's responsibility is to "prevent fraud, collusion or unfairness to the class" through settlement because the rights of the class members, including the named plaintiffs, "may not have been given due regard by the negotiating parties." (*Consumer Advocacy Group, Inc. v. Kintetsu*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Enters. of Am. (2006) 141 Cal.App.4th 46, 60.) The court must independently determine “whether the settlement is in the best interests of those whose claims will be extinguished” and “make an independent assessment of the reasonableness of the terms to which the parties have agreed.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133.) The burden of establishing the fairness and reasonableness of the settlement is on the proponent. (*Wershba, supra*, 91 Cal.App.4th at p. 245; see also *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1165-66.)

The Court does not rubber stamp these motions, but rather serves as a guardian of absent class members’ rights to ensure the settlement is fair. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 95.) “Ultimately, the [trial] court’s determination is nothing more than ‘an amalgam of delicate balancing, gross approximations and rough justice.’” (*7-Eleven, supra*, 85 Cal.App.4th at p. 1145.) “A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, even if ‘the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,’ this is no bar to a class settlement because ‘the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.’” (*Wershba, supra*, 91 Cal.App.4th at p. 250, citations omitted.) The court’s primary objective for preliminary approval is to establish whether to direct notice of the proposed settlement to the class, invite the class’s reaction, and schedule a final fairness hearing. (Rubenstein et al., *Newberg on Class Actions* (6th ed. 2024) § 13:10.)

Provisional Class Certification

If the class has not yet been certified, part of the motion for preliminary approval will include a request for provisional certification for purposes of settlement only. (See Cal. Rule of Court, Rule 3.769.) Although the provisional process is less demanding than a traditional motion for class certification, a trial court reviewing an application for preliminary approval of a settlement must still find that the normal class prerequisites have been met. (See *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625-627 (1997); in accord, *Carter v. City of Los Angeles* (2014) 224 Cal.App.4th 808, 826.)

Here, Plaintiffs seek provisional certification of the following class: “all non-exempt employees who are or previously were employed by Defendant in California at any time during the Class Period.” (SA, ¶ 1.5.) The Class Period is from December 6, 2019 to March 11, 2025. (*Id.*, ¶ 1.13.)

Plaintiffs argue that provisional certification is appropriate because (1) the proposed class of approximately 79 current and former employees is sufficiently numerous and ascertainable from Defendant’s records; (2) common questions of law and fact are present because Plaintiffs contend Defendant allegedly engaged in uniform practices with respect to Class Members; (3) Plaintiffs’ claims are typical of the class claims because Plaintiffs were employed by Defendant as non-exempt employees and were

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

subject to the same employment practices; (4) Plaintiffs are adequate representatives because they are well-aware of their duties, have actively participated in the prosecution of this case, retained competent counsel, and there is no antagonism between Plaintiffs and the Class; (5) a class action is the superior mechanism for resolution of the claims pled. (Mot., pp. 13:22-17:6.) The Court finds Plaintiffs' arguments persuasive and provisionally certifies the Class for settlement purposes for the reasons specified in Plaintiffs' moving papers.

Class Representative and Class Counsel

Plaintiffs are appointed as Class Representatives. (SA, ¶ 1.14.) Blumenthal Nordrehaug Bhowmik De Blouw LLP is appointed as Class Counsel. (*Id.*, ¶ 1.6.)

Fair, Adequate, and Reasonable Settlement

Before approving a class action settlement, the Court must find that the settlement is "fair, adequate, and reasonable." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) The Court considers such factors as "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 class members to the proposed settlement." (*Ibid.*) "[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 p. 1802.)

Under the terms of the Agreement, Defendant denies liability, but agrees to pay a Gross Settlement Amount ("GSA") of \$475,000 to resolve Plaintiffs' claims. (SA, ¶¶ 1.22, 2.6, 3.1.) Defendant will separately pay any applicable employer payroll taxes. (*Id.*, ¶ 1.22.) The Administrator will disburse the entire GSA without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment, and none of the GSA will revert to Defendant. (*Id.*, ¶ 3.1.) Defendant shall fully fund the GSA, as well as the amount necessary to fully pay Defendant's share of payroll taxes, by transmitting the funds to the Administrator no later than 30 days after the Effective Date, which is essentially the date the Court enters judgment on its order granting final approval, if no Participating Class Members object. (*Id.*, ¶¶ 1.19, 4.3.)

The following amounts will be paid from the GSA:

- Class Representative service awards of not more than \$10,000 each, totaling \$40,000. (SA, ¶ 3.2(a).)
- A Class Counsel fees payment of not more than one-third of the GSA (estimated to be \$158,333) and a Class Counsel litigation expenses payment of not more than \$28,000. (*Id.*, ¶ 3.2(b).)
- An administration expenses payment not to exceed \$8,000, except for a

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

showing of good cause and as approved by the Court. (*Id.*, ¶ 3.2(c).)

- PAGA penalties in the amount of \$10,000, with 75% allocated to the LWDA and 25% allocated to the Aggrieved Employees as Individual PAGA Payments. (*Id.*, ¶ 3.2(d).)

The remaining amount – the Net Settlement Amount (“NSA”) is approximately \$230,667 and will be distributed to Participating Class Members on a pro rata basis as Individual Class Payments. (SA, ¶¶ 1.23, 1.28.) The Individual Class Payments will be calculated by dividing the NSA by the total number of Workweeks worked by all Participating Class Members during the Class Period, and then multiplying the result by the number of Workweeks worked by each Participating Class Member. (*Id.*, ¶ 3.2(e).) Similarly, the Administrator will calculate each Individual PAGA Payment by dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$2,500) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period, and then multiplying the result by the number of PAGA Pay periods worked by each Aggrieved Employee. (*Id.*, ¶ 3.2(d)(i).) For tax purposes, 10% of each Participating Class Member’s Individual Class Payment will be allocated to settlement of wage claims and reported on an IRS W-2 Form. (*Id.*, ¶ 3.2(e)(i).) The remaining 90% will be allocated to the settlement of non-wage claims and reported on IRS 1099 Forms. (*Ibid.*) The Administrator will also report the Individual PAGA Payments on IRS 1099 Forms. (*Id.*, ¶ 3.2(d)(ii).) The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members and/or Aggrieved Employees via First Class U.S. Mail, postage prepaid. (*Id.*, ¶ 5.2.) The face of each check shall prominently state the “void date,” which is 180 days after the date of mailing, when the check will be voided. (*Ibid.*) 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 and/or Aggrieved Employee. (*Id.*, ¶ 5.4.)

Not later than 15 business days after the Court grants preliminary approval, Defendant will deliver the Class Data to the Administrator. (SA, ¶ 4.2.) Using best efforts to perform as soon as possible, and in no event later than 14 business days after receiving the Class Data, the Administrator will send to all Class Members, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation. (*Id.*, ¶ 8.4(b).) Not later than 7 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. (*Id.*, ¶ 8.4(c).) 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. (*Ibid.*) Class Members will have 60 calendar days after the Administrator mails the Class Notice Packet to Class Members and Aggrieved Employees to submit requests for exclusion, submit objections, and/or dispute their workweeks and/or pay periods. (*Id.*, ¶¶ 1.42, 8.5(a), 8.6, 8.7(b).) The Response Deadline will be extended an additional 14 days for all Class Members whose Notice is re-mailed. (*Id.*, ¶¶ 1.42, 8.4(d).)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Effective on the date when Defendant fully funds the entire GSA and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Participating Class Members, Aggrieved Employees, and LWDA will release claims against all Released Parties as follows:

- Plaintiffs are subject to a general release. (SA, ¶¶ 6, 6.1, 6.2.)
- The Participating Class Members release the Released Parties from the Released Class Claims, which means “all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint which occurred during the Class Period during employment in a non-exempt position in California. Except as expressly set forth in 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 wholly on facts occurring outside the Class Period.” (*Id.*, ¶¶ 1.38, 6, 6.3.)
- The Aggrieved Employees and LWDA are deemed to release the Released Parties from the Released PAGA Claims, which means “all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, which occurred during the PAGA Period during employment in a non-exempt position in California. The Released PAGA Claims do not include other PAGA claims, underlying wage and hour claims, claims for wrongful termination, discrimination, unemployment insurance, disability, and worker’s compensation, and claims wholly outside of the PAGA Period.” (*Id.*, ¶¶ 1.39, 6, 6.4.)

On December 11, 2024, the Parties participated in an all-day mediation session presided over by Steve Mehti, Esq., a respected and experienced mediator of wage and hour class actions. (Nordrehaug Decl., ¶ B.5.) In preparation for the mediation, the Parties engaged in informal discovery, with Defendant providing Class Counsel with timekeeping and employment data and other information regarding the Class Members, various internal documents, and other compensation and employment-related materials. (*Id.*, ¶¶ B.5, B.10. B.11.) Class Counsel analyzed the data with the assistance of a damages expert and prepared and submitted a mediation brief to the mediator. (*Id.*, ¶ 5.) Following the mediation, each side, represented by its respective counsel, were able to agree to settle the Action based upon a mediator’s proposal. (*Id.*, ¶ 12.)

Plaintiffs estimated Defendant’s exposure as follows:

Claim	Maximum Valuation	Discounts	Discounted Valuation
Off-the-Clock	\$115,730	30% for certification risks 30% liability risks	\$10,415
Double Time Wages	\$3,581	N/A	\$3,581
Meal Period Damages	\$343,471	50% for certification	\$85,868

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

		risks 50% liability risks	
Rest Period Damages	\$343,471	30% for certification risks 30% liability risks	\$30,912
Unreimbursed Business Expenses	\$6,150	75% for certification risks 50% liability risks	\$2,306
Waiting Time Penalties	\$234,159	Approximately 12.5% discount	\$29,270
Wage Statement Penalties	\$101,250	Approximately 12.5% discount	\$12,656
Total:	\$1,147,812		\$175,008

(Nordrehaug Decl., ¶ B.6.) Counsel provides sufficient information regarding the underlying assumptions and methodologies used to calculate these valuations, as well as the risks and discounts applied for settlement purposes. (*Id.*, ¶¶ B.6, B.23-26.) The GSA represents approximately 41.38% of Defendant's maximum valuation and is approximately 2.71 times Defendant's discounted valuation.

Counsel attests to their extensive experience in similar cases. (Nordrehaug Decl., ¶¶ B.11, B.31, Exh. 2.) Counsel attests to their belief that the settlement is fair, reasonable, and adequate. (*Id.*, ¶¶ B.5, B.14, B.29.) Based on the foregoing, the Court preliminarily finds, subject to the final fairness hearing, that the Settlement is within the ballpark of reasonableness and is entitled to a presumption of fairness and that all relevant factors support preliminary approval.

PAGA Payment

The Agreement provides for PAGA penalties in the amount of \$10,000, with 75% allocated to the LWDA and 25% allocated to the Aggrieved Employees as Individual PAGA Payments. (SA, ¶ 3.2(d).) The Aggrieved Employees are "all non-exempt employees who are or previously were employed by Defendant in California at any time during the PAGA Period." (SA, ¶ 1.4.) The PAGA Period is September 12, 2022 to March 11, 2025. (*Id.*, ¶ 1.31.) As discussed above, the Aggrieved Employees will receive a pro rata share of their portion of the PAGA penalties and are subject to a separate release. (*Id.*, ¶¶ 1.39, 3.2(d)(i), 6.4.) The Agreement makes clear that Aggrieved Employees cannot opt out of the PAGA portion of the settlement. (*Id.*, ¶ 8.5(d).)

Plaintiffs calculated the maximum value of their PAGA claim to be between \$56,600 and \$113,200, for a single violation in every one of the 1,132 pay periods, depending on whether the violation is \$50 or \$100. (Nordrehaug Decl., ¶ B.33(b).) Counsel attests that the Agreement's allocation is justified because (1) the PAGA claim was subject to the same risks as the underlying claims; (2) Defendant asserted additional defenses specific to PAGA liability and the amount of penalties; (3) precedent demonstrates that

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

any PAGA penalties awarded could be significantly reduced; and (4) the interests of PAGA are also served by the Class recovery. (*Ibid.*) Here, the PAGA allocation represents between 17.67% and 8.83% of Defendant's maximum exposure. The Court finds the PAGA allocation reasonable under the circumstances and it is preliminarily approved.

Proposed Class Notice

The notice to Class Members must fairly apprise the prospective members of the terms of the settlement without expressing an opinion on the merits of the settlement. (7-*Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1164; see also Cal. Rules of Court, Rule 3.769.) "Whether a claimant would want to accept or reject the proposed settlement is a decision to be made by him independently and without influence or pressure from those competing parties who either favor or oppose the settlement." (*Phila. Hous. Auth. v. Am. Radiator & Std. Sanitary Corp.* (E.D. Pa. 1970) 323 F.Supp. 364, 378.)

Here, the proposed Class Notice fairly describes the settlement. (SA, Exh. A.) Accordingly, the Notice is approved.

Class Counsel Fees and Costs

The Agreement provides for a Class Counsel fees payment of not more than one-third of the GSA (estimated to be \$158,333) and a Class Counsel litigation expenses payment of not more than \$28,000. (SA, ¶ 3.2(b).) Plaintiffs' motion does not address the reasonableness of the requested fee award; however, Counsel attests that the requested award is reasonable as a percentage of the common fund and consistent with fees that have been awarded in other similar cases. (Nordrehaug Decl., ¶ B.34.)

Plaintiffs are admonished for failing to address the fee award in their motion. However, the requested award is preliminarily approved. In moving for final approval, the Court expects Counsel to support their arguments with respect to this amount, including by providing information necessary to perform a lodestar analysis. (See *In re Activision Sec. Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1379; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 & fn. 13.; *Martin v. Ameripride Servs.* (S.D. Cal. June 9, 2011), 2011 WL 2313604 at *22 (collecting cases); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal 2010) 266 F.R.D. 482, 491 (same); see also *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 & n.11.)

The Court also preliminarily approves the Agreement's expenses allocation with the expectation that Counsel will provide a declaration, in moving for final approval, that shows actual costs.

Settlement Administrator

The Agreement designates Apex Class Action LLC ("Apex") to serve as Settlement

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Administrator and allocates an amount not to exceed \$8,000 for settlement administration expenses. (SA, ¶¶ 3.2(c), 8.1.) Apex attests that its expected administration costs will not exceed \$6,500. (Sutherland Decl., ¶ 7, Exh. B.)

Apex is appointed as Settlement Administrator and the allocation is reasonable and preliminarily approved.

Class Representative Service Awards

The Agreement provides for Class Representative service awards of not more than \$10,000 each, totaling \$40,000. (SA, ¶ 3.2(a).) Plaintiffs describe their efforts and estimate the amount of time they spent assisting in the prosecution of this case. (Malapit Decl., ¶¶ 6, 10-12 [30-40 hours]; Price Decl., ¶¶ 6, 10-12 [35-45 hours]; Macias Decl., ¶¶ 6, 10-12 [30 hours]; Linang Decl., 6, 10-12 [20-30 hours].)

The requested service awards are preliminarily approved.

Final Approval Hearing

The Court will again review and consider the terms of this settlement at the time of the final approval hearing. The Court sets a Final Approval Hearing for **October 3, 2025 at 9:00 a.m.** If either party is unavailable on that date, the parties shall meet and confer to identify three other Fridays at 9:00 a.m. that work for the parties to schedule the hearing. They shall then submit those dates to the Court via email at Dept22@saccourt.ca.gov, and the Court will reschedule the hearing accordingly.

The briefing shall be filed in conformity with Code of Civil Procedure section 1005.

The Court will sign the Proposed Order submitted with Plaintiffs' moving papers, correcting the Final Approval Hearing at paragraph 14.

/s/ V. Aleman

V. Aleman, Deputy Clerk

By:

Minutes of: 05/02/2025

Entered on: 05/02/2025