DCH Auto Wage and Hour Cases

MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Date of Hearing: May 18, 2017
Department: 308
JCCP No.: 4833

RULING:

(1) The Court certifies the class for purposes of settlement;
(2) The Court finds that the settlement is fair, adequate, and reasonable;
(3) Class counsel are awarded $1,345,200 in attorney fees and $75,000 for costs.
(4) The twelve class representatives are awarded an enhancement of $10,000 each;
(5) The claims administrator is awarded $10,228 in costs;
(6) Payment of $15,000 to the LWDA is approved; and
(7) Class Counsel is ordered to provide a judgment containing each case number in the right side of the caption under the JCCP number, the class definition, release language, and a list of all class members who opted out by May 19, 2017.

FINAL APPROVAL OF CLASS ACTION SETTLEMENT

California Rules of Court, rule 3.769(g), provides for an inquiry into the fairness of the proposed settlement prior to the final approval hearing. After this, the court must make and enter judgment, including a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. See California Rules of Court, rule 3.769(h). The class action may not be dismissed once judgment is entered. See California Rules of Court, rule 3.770. All class settlements are subject to a settlement hearing and court approval before entry of judgment or final order.

The trial court has broad powers to determine whether a proposed settlement is fair. Mallick v. Superior Court (1979) 89 Cal. App. 3d 434, 438. The California standard for approval of class settlements is similar to the federal requirement that the settlement be fair, reasonable, and adequate for class members overall. Dunk v. Ford Motor Co. (1996) 48 Cal. App. 4th 1794, 1801.

CLASS NOTICE AND CLASS RESPONSE

1. How was notice given? Simpluris, Inc. ("Simpluris") is acting as claims administrator for this settlement. (Declaration of Jarrod Salinas, ¶3.) On March 2, 2017, Defendant's Counsel provided Simpluris with the class list containing 435 class members of which 128 included email addresses. (Id. at ¶3.) The class list was processed and updated utilizing the NCOA. (Id. at ¶6.) On March 14, 2017, notice packets were mailed to 435 class members and 128 class members were also sent notice packets via e-mail. (Id. at ¶7.) If a notice packet was returned without forwarding address, Simpluris performed a

skip-trace. (Id. at ¶8.) Through skip tracing, Simpluris was able to locate 13 updated addresses. (Ibid.) Ultimately, 3 notice packets were undeliverable. (Ibid.)

On March 13, 2017, Simpluris established and is maintaining a website dedicated to this settlement to provide information to class members. (Id. at ¶9.)

2. How many opted-out? 1. (Id. at ¶10.)
3. How many objected? None. (Id. at ¶11.)
4. How many submitted a claim form? N/A.
5. How many disputes regarding workweeks? N/A.
6. Estimate of recovery to each class member? There are 434 participating class members who will be paid their portion of the Net, estimated to be $2,034,572. Any prior payment received by any class member was offset against his/her pro rata share of the combined Net and Prior Payments. As of April 27, 2017, the average settlement share to be paid is $4,687.95 and the highest is $12,336.98. (Id. at ¶12.)

EVALUATION OF THE SETTLEMENT

The Court must determine if the settlement is fair, adequate, and reasonable. The settlement is entitled to a presumption of fairness 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." (*Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1802 ("*Dunk*".) As *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 250, further notes:

> A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. (See Rebney v. Wells Fargo Bank, supra, 220 Cal. App. 3d at p. 1139 [settlements found to be fair and reasonable even though monetary relief provided was "relatively paltry"]; City of Detroit v. Grinnell Corp., supra, 495 F.2d at p. 455 [settlement amounted to only "a fraction of the potential recovery"].) 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." (Air Line Stewards, etc., Loc. 550 v. American Airlines, Inc. (7th Cir. 1972) 455 F.2d 101, 109.)

The Court finds that the settlement is fair, adequate, and reasonable based on the following:

- Settlement was reached through arms'-length negotiations. Yes. Yes. The parties participated in three full days of mediation with the Hon. Louis Meisinger (Ret.) on February 24 and 25 and April 8, 2016 which resulted in the *Settlement Agreement and Release*. (Settlement Agreement, ¶C.3)
- Investigation and discovery were sufficient to allow counsel and the court to act intelligently. Yes. Discovery and investigation were conducted in the Actions both formally and informally. (Declaration of Kirk Hanson ISO Preliminary Approval, ¶9).

In *Robles*, the earliest filed case, plaintiffs conducted extensive written discovery, document productions, and two PMK depositions of DCH personnel, including deposing the head of payroll for DCH's West Coast dealerships and a service manager for the Automobile Technicians. (Ibid.) In *Keables*, plaintiffs obtained a list of employees from the Simi Valley dealership and interviewed dozens of employees regarding the claims at issue in these lawsuits. (Ibid.) Prior to mediation, Plaintiffs informally requested information from DCH concerning the Automobile Technicians, including payroll data, rates of pay, periods of employment, and other data. (Ibid.) DCH provided the data to plaintiffs in Excel spreadsheets, which was passed on the Plaintiffs' retained consultants for detailed analysis and damage modeling. (Ibid.)

- Counsel is experienced in similar litigation. Yes. (Id. at ¶¶2-6; Declaration of Nicholas Carlin, ¶¶6-7)
- The percentage of objectors is small. In fact, there are none. (Salinas Decl., ¶11)

As noted in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408:

> ...a trial court's approval of a class action settlement will be vacated if the court "is not provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (Kullar, supra, 168 Cal.App.4th at pp. 130, 133, 85 Cal.Rptr.3d 20.) In short, the trial court may not determine the adequacy of a class action settlement "without independently satisfying itself that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (Id. at p. 129, 85 Cal.Rptr.3d 20.)

The estimated maximum class damages for unpaid wage violations is approximately $1,479,066. (Carlin Decl., ¶11). The estimated maximum class damages for meal period premium violations is approximately $1,575,441. (Id. at ¶12). The estimated maximum class damages for rest period premium violations is approximately $2,625,735. (Id. at ¶13). The estimated maximum class damages for wage statement violations is approximately $1,668,000. (Id. at ¶14). The estimated maximum damages for the toolbox claim is approximately $12,348. (Id. at ¶15). The maximum waiting time penalties is approximately $901,680. (Id. at ¶16). There was no significant or systemic violations of the overtime/vacation pay claims. (Id. at ¶17). DCH's maximum potential class damages (not including PAGA) are $8,262,265. (Id. at ¶18). Thus, the Settlement Amount of $4,035,600 represents 49% of the total potential recovery for the wage component of the claims. (Hanson Decl., ¶18). This is within the ballpark of reasonableness for the settlement.

The moving papers, declarations and exhibits attached thereto, have provided this Court with "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise" such that this Court is satisfied "that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and

weaknesses of the claims and the risks of the particular litigation." *Dunk* at 1802: "So long as the record is adequate to reach 'an intelligent and objective opinion of the probabilities of success should the claim be litigated' and 'form' an educated estimate of the complexity, expense and likely duration of such litigation...it is sufficient."

COSTS AND FEES

1. How much is requested for fees? The lodestar is the primary method of establishing the amount of reasonable attorney fees in California. (*Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556.) In common fund cases, courts may award fees pursuant to the percentage method, as cross-checked against the lodestar. (*Laffitte v. Robert Half Intern., Inc.* (2016) 1 Cal.5th 480, 503.)
   Here, Class Counsel is requesting $1,345,200. Fees are sought pursuant to the percentage method. The fee request constitutes approximately 1/3 of the settlement amount, which is within the range of what is average in class action litigation. (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, FN 13: "Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee award in class actions average around one-third of the recovery.").
   Class Counsel has also presented evidence from which the lodestar may be calculated. (Declaration of Nicholas Carlin, ¶¶31-46 and Exhibits 3-5 thereto; Declaration of Kirk Hanson, ¶¶9-16 and Exhibit 1 thereto; Declaration of Alexander Wheeler, ¶¶1-9 and Exhibit A thereto; Declaration of Michael Morrison, ¶¶7-26 and Exhibits 2-3 thereto; Declaration of Jason Wucetic, ¶¶4-15 and Exhibit A-B thereto; Declaration of Brian Mankin, ¶¶ 2-13, 16-23 and Exhibit A-C thereto; Declaration of Matthew Matern, ¶¶3-26, 28-31 and Exhibit 1 thereto.)

Timekeeper	Hours	Blended Hourly Rate	Total Lodestar
Phillips, Erlewine, Given & Carlin LLP	789.65	$519	$410,216
Law Offices of Kirk D. Hanson	360.10	$700	$252,070
Parris Law Firm	354.76	$531	$188,410
Alexander Krakow & Glick LLP	124.76	$700	$87,335
Wucetich & Korovilas LLP	133.2	$700	$93,240
Fernandez & Lauby LLP	283.2	$535	$151,380
Matern Law Group	217.7	$630	$137,090
TOTAL	**2,263.37**	**$583**	**$1,319,740**

The resulting total lodestar amount is $1,319,740 which is just slightly lower than the requested $1,345,200. Because the fee request represents a reasonable percentage of the settlement fund and is well-supported by the lodestar, the Court awards fees in the amount requested.

The Addendum to Settlement Agreement and Release (signed by all named Plaintiffs) contemplates the following fee split among counsel:
30% to Phillips, Erlewine, Given & Carlin LLP;
27% to Law Offices of Kirk D. Hanson and Parris Law Firm;
23% to Alexander Krakow & Glick LLP and Wucetich & Korovilas LLP;
10% to Fernandez & Lauby LLP;
10% to Matern Law Group. (Addendum to Settlement Agreement and Release, ¶II.4)

2. What are the costs claimed? Costs are sought in the combined amount of $75,000, which is the settlement cap. Class Counsel has incurred a total of $84,859.18 in expenses. (Motion for Final Approval and Attorneys' Fees and Costs, 25:7-16.) The costs appear to be reasonable, and the cap of $75,000 was made known to class members and not objected to. Accordingly, the Court awards costs of $75,000.
Since the total combined costs for all the firms are $84,859.18, Class Counsel has reduced each firms' claimed costs *pro rata* by the ratio of $75,000/$84,859.19. (Carlin Decl., ISO Final Approval, ¶48.)
3. Incentive payment to class representative? An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807.; *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395: "'[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. [Citations.]'," citing *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 195) 901 F.Supp. 294, 299.
Plaintiffs Ryan Dale, Francisco Robles, Rafael Laredo, Gabrielle Scott, Mark Acevedo, Phillip Keables, Ryan Huddleston, Raul Bravo, Jose Macias Ferrer, Oscar Reyes, Doug McIntosh, and Robert M. Salazar each seek an incentive of $10,000. The amount of theses service award was made known to the class and none objected. All twelve named plaintiffs filed declarations in support of the Motion for Final Approval. All twelve were employed or are currently employed as an automobile technician for Defendant. All twelve spent at least 15 hours assisting in the prosecution of this case. All twelve provided CC§1542 waivers. (Appendix of Class Representative Declarations ISO Motion for Final Approval, Exhibits 1-12 thereto.
4. Claims Administration Costs? The claims administrator requests $10,228. (Salinas Decl., ¶13.) At the time of the preliminary approval, settlement administration costs were capped at $10,228. The class was given notice that the cost of settlement administration would be deducted from the settlement fund and none objected. Based upon the work performed and yet to be performed, $10,228 appears to be reasonable and is awarded in full.

FINAL REPORT:

The Court orders class counsel to file a final report summarizing all distributions made pursuant to the approved settlement, supported by declaration by no later than November 1, 2017.

The Court sets a non-appearance date for submission of a final report on November 1, 2017 at 8:30 a.m.