

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

<p>MARIA GUADALUPE HERNANDEZ Plaintiff/Petitioner(s) VS. YZER, LLC, a Florida limited liability company et al Defendant/Respondent (s)</p>	<p>No. 23CV025345 Date: 10/08/2024 Time: 10:00 AM Dept: 23 Judge: Michael Markman</p> <p>ORDER re: Hearing on Motion for Order Motion for Preliminary Approval of Class Action Settlement; filed by MARIA GUADALUPE HERNANDEZ (Plaintiff); Initial Case Management Conference</p>
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The Motion for Order NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT filed by MARIA GUADALUPE HERNANDEZ on 07/16/2024 is Granted.

BACKGROUND FACTS

This is a wage-and-hour class action and PAGA representative action. The parties have agreed to settle the claims for a gross settlement amount of \$1,000,000.00, which includes up to \$333,333.33 in attorney’s fees; up to \$20,000.00 in litigation costs incurred by counsel; a service payment of up to \$10,000.00 for plaintiff; settlement administration fees of up to \$15,000.00, and \$35,000.00 in PAGA civil penalties (75% of penalties go to California Labor and Workforce Development Agency (LWDA) and 25% to aggrieved employees). (Jones Decl., Ex. 1 [Settlement Agreement], § 3.) The remaining amount is to be distributed among participating class members in proportion to the number of weeks worked by each. (*Ibid.*)

LEGAL STANDARD

To prevent “fraud, collusion or unfairness to the class, the settlement or dismissal of a

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class action requires court approval.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.) The Court “must determine the settlement is fair, adequate, and reasonable.” (*Id.* at p. 1801.) “The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include ‘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 stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.’” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 [quoting *Dunk, supra*, at p. 1801].)

Similarly, a “trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77 [noting overlap of factors in class action analysis, “including the strength of the plaintiff’s case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount”].)

PRELIMINARY APPROVAL

Plaintiff’s counsel investigated, obtained information from defendant, and analyzed defendants’ wage and hour policies, as well as their time and payroll records. (See Jones Decl., ¶¶ 8, 25.) The parties then participated in an arm’s length mediation and eventually settled. (See *id.*, ¶ 9.) Plaintiff includes an adequate *Kullar* analysis, providing a reasonable estimate of the number of class members, the total estimated possible recovery, and an explanation why the settlement was reasonable in light thereof. (See *id.*, ¶¶ 25–34.) The court gives “considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm’s length transaction entered without self-dealing or other potential misconduct.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.) The terms of the settlement and notice procedures appear generally fair, reasonable and adequate. The parties revised the scope of the PAGA release and added additional information to the notice, as requested by the court. (See Trenner Decl., dated Oct. 1, 2024.)

SERVICE AWARD, FEES, & COSTS

The court will not rule on a service award for the representative plaintiff, fees, or costs until final approval but provides the following preliminary guidance:

Any incentive award for a representative plaintiff must be supported with “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 plaintiffs.” (*Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 807.)

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This court's benchmark for the percentage of recovery approach on attorney's fee is 30% of the total fund. (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 495; *Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1175; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 fn 13; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn 11.) A "court approving a settlement that includes a negotiated fee [] is required to decide if the fee negotiated by the parties closely approximates the value of the attorneys' work." (*Robbins v. Alibrandi*, 127 Cal.App.4th 438, 452.) Counsel must address the value of the attorneys' work, as well as the justification for any deviation from this court's benchmark, in the fee application. Ten percent of the attorney's fee award be held by the settlement administrator until completion of the distribution process and court approval of a final accounting.

Counsel must provide evidentiary support for the actual litigation costs and expenses incurred at the time of final approval.

The court's preference is for Plaintiffs to move for final approval, for attorneys' fees and costs, and for plaintiff's enhancement payment in a single motion.

ORDER

Plaintiffs' motion for preliminary approval of class action settlement is GRANTED.

Although the parties revised the notice to class members to reflect Department 23's location in the Administration Building on Oak Street on page 2, section 1.B. still lists the Fallon Street address on page 3. **Plaintiff must submit a proposed order, attaching the final versions of the settlement agreement and notice, for the court's signature.**

A final approval hearing is set for February 20, 2025 at 10:00 am in Department 23. **The reservation no. is A-25345-001.**

The Initial Case Management Conference scheduled for 10/08/2024 is continued to 02/20/2025 at 10:00 AM in Department 23 at Rene C. Davidson Courthouse .

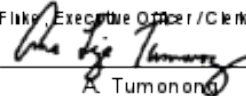
Continued to coincide with hearing on final approval.

Dated : 10/08/2024



Michael Markman / Judge

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SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 10/09/2024
PLAINTIFF/PETITIONER: MARIA GUADALUPE HERNANDEZ	Chad Finke, Executive Officer / Clerk of the Court By:  Deputy A. Tumonong
DEFENDANT/RESPONDENT: YZER, LLC, a Florida limited liability company et al	
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: 23CV025345

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order re: Hearing on Motion for Order Motion for Preliminary Approval of Class Action Settlement; filed by MARIA GUADALUPE HERNANDEZ (Plaintiff); Initial Case Management Conference entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

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Dated: 10/09/2024

Chad Finke, Executive Officer / Clerk of the Court

By:



A. Tumonong, Deputy Clerk