SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

JACKSON STOVALL,

Plaintiff,

vs.

GOLFLAND ENTERTAINMENT CENTERS, INC., et al.,

Defendants.

Case No.: 16-CV-299913

ORDER AFTER HEARING ON OCTOBER 20, 2017

Plaintiff's Motion for Preliminary Approval

The above-entitled matter came on regularly for hearing on Friday, October 20, 2017 at 9:00 a.m. in Department 1 (Complex Civil Litigation), the Honorable Brian C. Walsh presiding. A tentative ruling was issued on October 18, which directed plaintiff to file a supplemental declaration addressing certain issues. The supplemental declaration was filed on October 19. The Court, having reviewed and considered all written submissions and being fully advised, orders as follows:

This is a putative wage and hour class action by employees of defendant Golfland Entertainment Centers, Inc. Before the Court is plaintiff's unopposed motion for preliminary approval of a class settlement.

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I. Factual and Procedural Background

Golfland provides entertainment services to the public at multiple California locations offering go-carts, miniature golf, laser tag, bumper boats, water parks, and arcades. (Complaint, ¶ 17.) Plaintiff was employed as a lifeguard at defendant's Roseville location in Placer County, California. (*Id.* at ¶ 6.) He alleges that Golfland required employees to purchase uniforms affixed with its logo and/or color scheme to wear while carrying out their job duties. (*Id.* at ¶ 19.) The purchase price of the uniform was deducted from employees' compensation. (*Id.* at ¶ 20.) In addition, defendant required lifeguards like plaintiff to pay for and attend lifeguard certification training administered by Ellis & Associates. (*Id.* at ¶ 22.) Lifeguards were not compensated for their training time, and were not permitted to train with a company other than the one designated by defendant or to use a previously attained certification. (*Ibid.*)

Plaintiff filed this action on September 14, 2016, asserting claims for (1) failure to pay minimum wages for all hours worked (on behalf of the Lifeguard Training Class), (2) failure to pay wages at the agreed rate (on behalf of the Lifeguard Training Class), (3) improper deductions from wages (on behalf of the Uniform Class), (4) failure to reimburse required business expenses incurred and illegal uniform policy (on behalf of the Uniform and Lifeguard Training Classes), (5) failure to pay compensation at the time of termination (on behalf of the Former Employee Sub-Class), (6) failure to provide accurate itemized wage statements (on behalf of the Uniform and Lifeguard Training Classes), and (7) failure to comply with California unfair competition law (on behalf of the Uniform and Lifeguard Training Classes). On February 16, 2017, plaintiff filed his First Amended Complaint ("FAC"), adding an eighth cause of action under the Private Attorneys General Act ("PAGA").

The parties have reached a settlement. Plaintiff now moves for an order preliminarily approving the settlement, provisionally certifying the settlement class, approving the form and method for providing notice to the class, and scheduling a final fairness hearing.

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II. Legal Standard for Approving a Class Action Settlement

Generally, "questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794.)

> In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such 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 the class members to the proposed settlement.

(*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at pp. 244-245, internal citations and quotations omitted.)

The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case. (*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, quoting *Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at p. 1801, internal quotation marks omitted.)

> The burden is on the proponent of the settlement to show that it is fair and reasonable. However "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."

(*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245, citing *Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at p. 1802.) The presumption does not permit the Court to "give rubber-stamp approval" to a settlement; in all cases, it must "independently and objectively

analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished," based on a sufficiently developed factual record. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.)

III. Settlement Process

According to a declaration by plaintiff's counsel, the parties completed a comprehensive document exchange and review and agreed to negotiate the claims of the Lifeguard Class only. On May 5, 2017, they participated in an all-day mediation before Hon. Jeff Winikow, an employment law mediator and former Los Angeles Superior Court judge. The mediation was successful and the parties executed a memorandum of understanding that same day, providing for a settlement of $450,000.

IV. Provisions of the Settlement

The non-reversionary settlement includes a $7,500 payment to the California Labor and Workforce Development Agency associated with plaintiff's PAGA claim (seventy-five percent of the $10,000 allocated to PAGA penalties). Attorney fees of up to $149,850 (one-third of the gross settlement), litigation costs estimated at $25,000, and administration costs capped at $25,000 will also be paid from the gross settlement, along with defendant's share of payroll taxes. The named plaintiff will seek an enhancement award of $2,500.

The remaining net settlement will be distributed to class members pro rata, with 20% allocated to W-2 wages and 80% to interest and penalties. Class members will not be required to submit a claim to receive their payments. Funds associated with checks uncashed after 90 days will be tendered to the California Unclaimed Property Fund in the name of the class member.

Class members who do not opt out of the settlement will release claims that accrued during the class period and "reasonably relate to or reasonably arise out of the causes of action alleged and prosecuted in Plaintiff's Complaint," including specified wage and hour claims.

The parties have stipulated to the filing of a Second Amended Complaint ("SAC") that redefines the class to include lifeguards only.

V. Fairness of the Settlement

Counsel declares that the net settlement, estimated at $245,150, will result in an average recovery of $261 per class member, which will exceed the out-of-pocket costs of uniforms and training incurred by the class. (Training costs were approximately $60 and uniforms and equipment were approximately $65, for a total of $125 in out-of-pocket expenses.) In addition, counsel values training at 24 hours of time at the minimum wage. Counsel estimates that the recovery at trial would range from $125 to $351.24 per class member.

Counsel believes that the settlement is fair and reasonable to the class, and the Court agrees. In a supplemental declaration, plaintiff's counsel clarified that non-lifeguards were not included in the settlement because it was determined that they were not required to purchase uniforms or attend training. All lifeguards incurred both training and uniform costs, as well as unpaid training time, and these costs and unpaid time were approximately the same for every class member. The settlement is thus fairly limited to lifeguards and will be fairly apportioned.

In addition, prior to final approval of the settlement, plaintiff must submit a declaration specifically detailing his participation in the case supporting the stipulated incentive payment. The Court also has an independent right and responsibility to review the requested attorney fees and award only so much as it determines to be reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) While 1/3 of the common fund for attorney fees is generally considered reasonable, counsel should submit lodestar information prior to the final approval hearing in this matter so the Court can compare the lodestar information with the requested fees. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to double-check the reasonableness of a percentage fee through a lodestar calculation].)

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VI. Proposed Settlement Class

Plaintiff requests that the following settlement class be provisionally certified:

> All persons employed in lifeguard positions who underwent lifeguard certification at Ellis & Associates, Inc. or some other training facility designated by Defendant, and were required to purchase uniforms and equipment, at any time from September 14, 2012 to May 1, 2017.

A. Legal Standard for Certifying a Class for Settlement Purposes

Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court …." As interpreted by the California Supreme Court, Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence (1) an ascertainable class and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 326, 332.)

The "community-of-interest" requirement encompasses three factors: (1) predominant 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. (*Ibid.*) "Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court (Botney)* (1976) 18 Cal.3d 381, 385.)

In the settlement context, "the court's evaluation of the certification issues is somewhat different from its consideration of certification issues when the class action has not yet settled." (*Luckey v. Superior Court (Cotton On USA, Inc.)* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the settlement-only context, the case management issues inherent in the

ascertainable class determination need not be confronted, and the court's review is more lenient in this respect. (*Id.* at pp. 93-94.) However, considerations designed to protect absentees by blocking unwarranted or overbroad class definitions require heightened scrutiny in the settlement-only class context, since the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

B. Ascertainable Class

"The trial court must determine whether the class is ascertainable by examining (1) the class definition, (2) the size of the class and (3) the means of identifying class members." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) "Class members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records." (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932.)

Here, the estimated 939 class members are easily identified based on defendant's records, and the class definition is clear. The Court consequently finds that the class is numerous and ascertainable.

C. Community of Interest

With respect to the first community of interest factor, "[i]n order to determine whether common questions of fact predominate the trial court must examine the issues framed by the pleadings and the law applicable to the causes of action alleged." (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916.) The court must also give due weight to any evidence of a conflict of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants. (*Lockheed Martin Corp. v. Superior Court, supra,* 29 Cal.4th at pp. 1104-1105.) "As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (*Hicks v. Kaufman & Broad Home Corp., supra,* 89 Cal.App.4th at p. 916.)

Here, common legal and factual issues predominate. Plaintiff's claims all arise from defendant's wage and hour practices applied to the similarly-situated class members.

As to the second factor,

> The typicality requirement is meant to ensure that the class representative is able to adequately represent the class and focus on common issues. It is only when a defense unique to the class representative will be a major focus of the litigation, or when the class representative's interests are antagonistic to or in conflict with the objectives of those she purports to represent that denial of class certification is appropriate. But even then, the court should determine if it would be feasible to divide the class into subclasses to eliminate the conflict and allow the class action to be maintained.

(*Medrazo v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations, brackets, and quotation marks omitted.)

Like other members of the class, plaintiff was employed by defendant as a lifeguard and alleges that he was required to pay for his uniform and training. The anticipated defenses are not unique to plaintiff, and there is no indication that plaintiff's interests are otherwise in conflict with those of the class.

Finally, adequacy of representation "depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class representative does not necessarily have to incur all of the damages suffered by each different class member in order to provide adequate representation to the class. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 238.) "Differences in individual class members' proof of damages [are] not fatal to class certification. Only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." (*Ibid.*, internal citations and quotation marks omitted.)

Plaintiff has the same interest in maintaining this action as any class member would have. Further, he has hired experienced counsel. Plaintiff has sufficiently demonstrated adequacy of representation.

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D. Substantial Benefits of Class Certification

"[A] class action should not be certified unless substantial benefits accrue both to litigants and the courts. . . ." (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120, internal quotation marks omitted.) The question is whether a class action would be superior to individual lawsuits. (*Ibid.*) "Thus, even if questions of law or fact predominate, the lack of superiority provides an alternative ground to deny class certification." (*Ibid.*) Generally, "a class action is proper where it provides small claimants with a method of obtaining redress and when numerous parties suffer injury of insufficient size to warrant individual action." (*Id.* at pp. 120-121, internal quotation marks omitted.)

Here, there are an estimated 939 members of the proposed class. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class member. Further, it would be cost prohibitive for each class member to file suit individually, as each member would have the potential for little to no monetary recovery. It is clear that a class action provides substantial benefits both to the litigants and the Court in this case.

In sum, plaintiff has demonstrated that this action is appropriate for class treatment.

VI. Notice

The content of a class notice is subject to court approval. (Cal. Rules of Court, rule 3.769(f).) "The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (*Ibid.*) In determining the manner of the notice, the court must consider: "(1) The interests of the class; (2) The type of relief requested; (3) The stake of the individual class members; (4) The cost of notifying class members; (5) The resources of the parties; (6) The possible prejudice to class members who do not receive notice; and (7) The res judicata effect on class members." (Cal. Rules of Court, rule 3.766(e).)

Here, the notice describes the lawsuit, explains the settlement, and instructs class members that they may opt out of the settlement or object. The gross settlement amount and

estimated deductions are provided, along with the estimated payment per class member. Class members are given 30 days to request exclusion from the class or submit a written objection.

The notice is generally adequate, but must be modified to indicate that class members may appear at the hearing to make an oral objection without submitting a written objection. In addition, the notice includes an outdated definition of the settlement class at page 3, which must be corrected.

Turning to the notice procedure, the parties have selected ILYM Group as the settlement administrator. The administrator will mail the notice packet within 30 days of preliminary approval, after using the National Change of Address Database to locate updated addresses for class members who are not active employees. Any notice packets returned as undeliverable will be re-mailed to any forwarding address provided or new address located through skip tracing. Class members whose notices are returned will have an additional 14 days to opt out or object, up to 45 days from the date of initial mailing of the notices. These notice procedures are appropriate and are approved.

Prior to final approval, but after the last date to opt out or object, plaintiff shall file a declaration by the administrator addressing the notice process and administrative costs.

VII. Conclusion and Order

Plaintiff's motion for preliminary approval is GRANTED subject to the modifications above. The final approval hearing shall take place on **February 7, 2018** at 9:00 a.m. in Dept. 1.

The following class will be provisionally certified for settlement purposes:

> All persons employed in lifeguard positions who underwent lifeguard certification at Ellis & Associates, Inc. or some other training facility designated by Defendant, and were required to purchase uniforms and equipment, at any time from September 14, 2012 to May 1, 2017.

The SAC is deemed filed.

Dated: Oct. 20, 2017

Honorable Brian C. Walsh
Judge of the Superior Court