

1. BUGAISKI v. SONNEY’S BARBEQUE SHACK, ET AL., SC20190161**Motion for Final Approval of Class Action Settlement**

Pending is plaintiffs’ unopposed motion for final approval of class settlement. The court preliminarily approved the agreement on May 12, 2023. Having reviewed and considered plaintiffs’ moving papers, given defendants’ non-opposition, and there being no objections, the motion is granted.

1. Class Certification

The court already granted the motion for preliminary approval and found that the class is sufficiently numerous and ascertainable to warrant certification for the purposes of approving settlement. There is no reason for the court to reconsider its decision.

Therefore, the court intends to certify the class for the purpose of final approval of settlement.

2. Settlement Agreement**2.1. LEGAL PRINCIPLES**

“When, as here, a class settlement is negotiated prior to formal class certification, there is an increased risk that the named plaintiffs and class counsel will breach the fiduciary obligations they owe to the absent class members. As a result, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required ... before securing the court’s approval as fair.” (*Koby v. ARS Nat’l Services, Inc.* (9th Cir. 2017) 846 F.3d 1071, 1079.) “[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement The courts are supposed to be the guardians of the class.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.)

“ ‘[T]o protect the interests of absent class members, the court 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.’ [Citations.] “To make this determination, the factual record before the ... court must be sufficiently developed.’ [Citation.]” (*Id.* at p. 130.) The court must be leery of a situation where “there was nothing before the court to establish the sufficiency of class counsel’s investigation other than their assurance that they had seen what they needed to see.” (*Id.* at p. 129.)

2.2. THE SETTLEMENT IS FAIR AND REASONABLE

Previously, the court found that the settlement was fair and reasonable based on the evidence plaintiffs submitted in support of the motion for preliminary approval. It does not appear that there is any reason for the court to reconsider its decision in this regard.

The settlement class covers all current and former non-exempt employees of On a Friday, Inc., dba Sonney’s BBQ Shack, employed in California between September 11, 2015, and June 30, 2021. There are approximately 223 employees in the settlement class. The gross settlement amount is \$230,000. The net settlement fund will be \$83,022.14 after the class representative service awards, class counsel fees and costs, PAGA/LWDA allocation, and settlement administration costs.

The settlement administrator sent out the notice packets on July 10, 2023, after the court granted preliminary approval of the settlement. Forty-nine (49) notice packets were returned to the Claims Administrator by the U.S. Postal Service, only one of which had a forwarding address. Subsequently, the Claims Administrator performed a skip trace and obtained updated addresses for 44 of the returned notice packets, which were re-mailed. As of the date of her declaration, the Claims Administrator reports a total of 9 undeliverable notices. Additionally, the Claims Administrator received 2 individual requests to be included in the Class. Defense Counsel reviewed and approved these additional Class Members. As of the date of filing of the motion for final approval, no

objections or exclusions have been received. The lack of any objections or exclusions supports plaintiffs' contention that the settlement is fair, adequate, and reasonable.

Plaintiffs estimate that the Settlement will result in an average payment to Class Members of approximately \$383.51; the highest payment will be \$2,687.12, and the lowest payment will be \$8.68. (Soto-Najera Decl., ¶ 18.) Again, the lack of any objections or exclusions shows that the Class Members believe that the settlement is fair and reasonable.

Also, the settlement was reached after investigation and discovery, and was the product of arms' length negotiations between the parties. Furthermore, class counsel is experienced in similar types of class action litigation. These factors also weigh in favor of finding that the settlement is fair and reasonable.

2.3 ATTORNEY FEES AND COSTS

Plaintiffs' counsel seeks a total award of \$82,977.86, which is comprised of \$76,666.67 in attorney fees and \$6,311.19 in reimbursement for costs and expenses. The requested attorney fees represent one-third of the gross settlement. The California Supreme Court in *Lafitte v. Robert Half Intern, Inc.* (2016) 1 Cal.5th 480, held that a court has discretion to grant attorney fees in class actions based on a percentage of the total recovery. (*Id.* at pp. 503–504.) However, the trial court may also use a lodestar calculation to double check the reasonableness of the fee award. (*Id.* at pp. 504–506.)

In the present case, counsel's request for an award equal to one-third of the gross settlement appears to be reasonable, especially in light of counsel's experience and the considerable work involved in litigating the case, the risks and potential value of the claims, as well as the results achieved for the class. Plaintiffs' counsel has also provided a lodestar calculations of fees, which indicates that a traditional lodestar calculation, to date, is \$308,328.00. (Ottinger Decl., ¶ 15.)

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2.4 Payment to Class Representatives

Plaintiffs also seek court approval of \$20,000 payments to Amy Bugaiski and Kimberly Gardner, respectively, as the named class representatives. The amount is based on the work done by Ms. Bugaiski and Ms. Gardner, as well as the risks they took in being named as class representatives, which could have resulted in an award of attorney fees and costs against them if they lost at trial, as well as the danger of being blacklisted by other employers for suing a former employer.

The amount of the payment does not appear to be unusually great in comparison to the awards approved in other cases. Therefore, it appears that the requested \$20,000 payments to Ms. Bugaiski and Ms. Gardner are reasonable and the court intends to approve them.

3. Payment to Class Administrator

Plaintiffs also request court approval of a \$14,000 payment to CPT Group for the costs of administering the settlement. The administrative cost payment appears to be reasonable given the amount of work to be performed in sending out class notices, tracking down missing class members, handling questions from class members and parties, sending out payments to class members, and providing declarations in support of the motions for class settlement approval. Therefore, plaintiffs have shown that the payment of \$14,000 to the class administrator is reasonable and the court will approve the payment.

4. Payment to the LWDA Under PAGA

Finally, plaintiffs seek approval of \$10,000 for settlement of civil penalties under PAGA, Labor Code § 2698, et seq., 75 percent (or \$7,500) of which will be paid to the LWDA pursuant to Labor Code section 2699, subdivision (i) and \$2,500 to the Net Settlement Amount for distribution to the Participating Class Members. The amount to be paid for settlement of civil penalties under PAGA appears to be reasonable.

TENTATIVE RULING # 1: MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT IS GRANTED AS REQUESTED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS V. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

2. SINGH v. TOWNSEND, SC20210071

OSC Re: Dismissal for Failure to Prosecute Case and Failure to Appear

TENTATIVE RULING # 2: PLAINTIFF'S APPEARANCE IS REQUIRED AT 1:30 P.M., FRIDAY, SEPTEMBER 15, 2023, IN DEPARTMENT FOUR TO SHOW CAUSE WHY HIS COMPLAINT SHOULD NOT BE DISMISSED FOR FAILURE TO PROSECUTE AND FOR FAILURE TO APPEAR FOR COURT PROCEEDINGS.

3. DE LOIA, ET AL. v. JARS LINEN, INC., 23CV0839

Petition for Writ of Mandate to Compel Inspection and Copying of Corporate Books and Records

On the court's own motion, matter is continued to September 29, 2023. The court apologizes for any inconvenience to the parties.

TENTATIVE RULING # 3: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, SEPTEMBER 29, 2023, IN DEPARTMENT FOUR.

4. DUBEY, ET AL. v. LAKEFRONT PROF. BLDG., SC20180201**Motion for Attorney Fees Re: Appeal**

On May 10, 2022, Judgment After Court Trial was entered in favor of defendants/cross-complainants (collectively, "Lakefront") in the amount of \$47,074.91. Subsequently, Lakefront was awarded attorney fees in the amount of \$90,517.56. Thus, the total amount of damages and fees awarded to Lakefront was \$137,592.47.

On February 10, 2023, the court awarded Lakefront \$5,525.00 in supplemental fees that Lakefront incurred to enforce the judgment. Pending is Lakefront's motion for attorney fees in the amount of \$7,962.50, which Lakefront allegedly incurred in connection with the appeal and the filing of the instant motion.

The Enforcement of Judgments Law, Code of Civil Procedure sections 680.10–724.260, provides that "[t]he judgment creditor is entitled to the reasonable and necessary costs of enforcing a judgment.... Attorney's fees incurred in enforcing a judgment are included as costs collectible under this title if the underlying judgment includes an award of attorney's fees to the judgment creditor" pursuant to a contract authorizing attorney fees, such as in this case. (Code Civ. Proc., §§ 685.040, 1033.5, subd. (a)(10)(A).)

A court assessing attorney fees begins with a lodestar figure, based on the "careful compilation of the time spent and reasonable hourly compensation of each attorney ... involved in the presentation of the case." (*Serrano v. Priest (Serrano III)* (1977) 20 Cal.3d 25, 48; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.) The California Supreme Court has noted that anchoring the calculation of attorney fees to the lodestar adjustment method " 'is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.' " (*Serrano III, supra*, 20 Cal.3d at p. 48, fn. 23.)

The party seeking attorney fees has the burden of establishing entitlement to an award. To that end, competent evidence as to the nature and value of the attorney's

services must be presented. (*City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 784 [evidence furnished should allow the judge to consider whether the case was overstaffed, how much time the attorney spent on particular claims, and whether the hours were reasonably expended].)

Here, Lakefront moves for an order awarding attorney fees under the lodestar method in the amount of \$7,962.50. In support thereof, Lakefront submitted a declaration from its attorney, Michael K. Johnson, which includes his firm's relevant billing invoices as Exhibit A. Mr. Johnson's current hourly rate is \$325.00. All entries were billed at a minimum increment of 0.25 hours. Mr. Johnson declares that his firm has devoted at least 23 attorney hours in connection with the appeal, and approximately two hours in connection with the filing of the instant motion.

Plaintiffs are opposed to the requested attorney fees on the grounds that the amount of \$7,962.50 appears to be "unreasonable and inflated as the appeal didn't even reach the level of briefing." (Opp. at 2:5–6.)

Lakefront's motion is granted in part. Having reviewed and considered Lakefront's moving papers, including counsel's declaration and the billing logs, Plaintiffs' opposition, and Lakefront's reply, the court finds that \$7,393.75 in attorney fees were reasonably and necessarily incurred to defend the matter on appeal and file the instant motion.

TENTATIVE RULING # 4: LAKEFRONT'S MOTION FOR ATTORNEY FEES RE: APPEAL IS GRANTED IN PART. LAKEFRONT IS AWARDED \$7,393.75 IN ATTORNEY FEES. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS V. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE

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PRIOR TO OR AT THE HEARING. PARTIES MAY APPEAR IN PERSON AT THE HEARING.**

5. KUMAR v. KOHS, ET AL., SC20180225

(1) Plaintiff's Motion for Summary Judgment

(2) Case Management Conference

On the court's own motion, the matters are continued to October 13, 2023. The court apologizes for any inconvenience to the parties.

TENTATIVE RULING # 5: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, OCTOBER 13, 2023, IN DEPARTMENT FOUR.