1. BUGAISKI, ET AL. v. ON A FRIDAY, INC., ET AL., SC20190161

Motion for Preliminary Approval of Class Action Settlement

This is a wage and hour class action. Plaintiffs Amy Bugaiski and Kimberly Gardner ("Class Representatives"), as individuals and on behalf of all similarly situated non-exempt employees ("Class Members") who worked for Defendants On a Friday, Inc., dba Sonney's BBQ Shack and Sonney Bruning move for preliminary approval of a Class Action Settlement Agreement.

A. SUMMARY OF CLAIMS

The claims of the operative complaint allege that Defendants failed to: pay overtime wages; provide meal and rest breaks; provide accurate wage statements; timely pay earned wages upon discharge; reimburse business expenses; engaged in unfair competition; and committed violations of the Private Attorneys General Act ("PAGA"), Labor Code section 2698, et seq.

B. LEGAL STANDARDS

To protect the interests of absent class members, class action settlements must be reviewed and approved by the court. " 'The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement.' [Citations.] 'The courts are supposed to be the guardians of the class.' [Citation.]" (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129.)

California follows a two-step procedure for court approval: (1) the court reviews the terms of the settlement and form of settlement notice to the class and provides or denies preliminary approval; and later, (2) the court considers objections by class members and grants or denies final approval. (Cal. Rules of Ct., rule 3.769.)

When no class has been certified, as is the case here, the court must determine whether the case meets requirements for certification. (Amchem Prods., Inc. v. Windsor (1997) 521 U.S. 591, 625–627.) The concerns of manageability and due process for absent class members, which counsel against certification in a trial context, are eliminated or

mitigated in the context of a settlement. (Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1807, fn. 19.)

Class certification in California courts is governed by Code of Civil Procedure section 382. The court has discretion to certify a class if it meets three criteria: "[1] [T]he existence of an ascertainable and sufficiently numerous class, [2] a well-defined community of interest, and [3] substantial benefits from certification that render proceeding as a class superior to the alternatives. [Citations.] 'In turn, the "community of interest requirement embodies three factors: (1) predominant common 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." ' [Citations.]" (Brinker Rest. Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1021.)

Because this matter also proposes to settle claims under the PAGA, the court also must consider the criteria that apply under that statute. (Lab. Code, § 2699, subd. (*l*)(2).) There is a lack of guidance in the statute and case law concerning the basis upon which a settlement may be approved. Although not binding authority, in O'Connor v. Uber Technologies, Inc. (N.D. Cal. 2016) 201 F.Supp.3d 1110, the court denied approval of class action settlements that included PAGA claims in part because the plaintiffs' claims added up to as much as $1 billion in PAGA penalties but the parties settled those claims for $1 million, or 0.1% of their alleged maximum value. As the federal district court stated, "where plaintiffs bring a PAGA representative claim, they take on a special responsibility to their fellow aggrieved workers who are effectively bound by any judgment. [Citation.] Such a plaintiff also owes responsibility to the public at large; they act, as the statute's name suggests, as a private attorney general, and 75% of the penalties go to the LWDA 'for enforcement of labor laws … and for education of employers and employees about their rights and responsibilities under this code.' " (Id. at p. 1134.)

In O'Connor, the LWDA itself filed a brief stating that "[i]t is thus important that when a PAGA claim is settled, the relief provided for under the PAGA be genuine and

meaningful, consistent with the underlying purpose of the statute to benefit the public and, in the context of a class action, the court evaluate whether the settlement meets the standards of being 'fundamentally fair, reasonable, and adequate' with reference to the public policies underlying the PAGA." (Id. at p. 1133.)

C. SETTLEMENT TERMS

1. Proposed Class; Class Representatives and Class Counsel

The court finds that the proposed Class of approximately 313 members is sufficiently numerous and its members are readily ascertainable from Defendants' records. The court finds that the Class has sufficient common questions of law and fact to support a community interest, given their allegations of common employment policies and practices and the lessened manageability concerns in a settlement context. The Class Representatives' claims are sufficiently typical of those of the Class, given the lessened manageability concerns in a settlement context, because the Class Representatives and absent Class Members have suffered similar injuries.

The court finds that the Class Representatives and their counsel ("Class Counsel") will be adequate representatives of the Class.

The court further finds that class treatment for settlement purposes will provide substantial benefits that render it a superior alternative to individual actions. The court also notes that Defendants have stipulated to class certification for purposes of settlement only.

Accordingly, the court provisionally certifies the following settlement Class, as defined by the parties: "[A]ll individuals who are or previously were employed by Defendants in California as non-exempt employees at any time during the Class Period," with the "Class Period" defined as September 11, 2015, through June 30, 2021. (Mot., Ottinger Decl., Ex. 1 ("Settlement"), ¶¶ I.3, I.8.)

2. Settlement Fund

The Settlement Agreement provides for a Gross Settlement Amount ("GSA") of $230,000. (Settlement, ¶ I.18.) The GSA covers settlement payments to the Class Members, service payments to the Class Representatives, Class Counsel fees and costs, the Settlement Administrator's fees and costs, and all amounts to be paid to the LWDA. (Ibid.) Defendants will fund the GSA in three installments, with the first installment of $125,000 due within 30 days after the Effective Date, the second installment of $52,500 being due four months later, and the third installment due four months after payment of the second installment. (Id., ¶ IV.48(c).)

The Settlement Agreement provides that payments to each Class Member will be calculated on a pro-rata basis by dividing the Net Settlement Amount by the total number of workweeks included in the dates of employment to determine a dollar amount per week, which is then multiplied by the number of weeks worked by each Class Member. (Id., ¶ IV.48.)

3. Settlement Procedure

There is no claims process. Class Members do not need to take any action to participate and they will automatically receive a settlement check, unless they timely opt-out. Settlement checks will remain negotiable for 180 days, and the Settlement Administrator will send a reminder notice to any Class Member who has not cashed their check 120 days after issuance. (Id., ¶ IV.58.)

The Class Notice Packet will include an opt-out form. Class Members also have the right to submit objections to the Settlement Agreement, and they may dispute their workweeks if they believe they were employed for more or less workweeks during the Class Period than Defendants' records indicate. (Id., ¶ IV.52.) Class members will have 45 days to submit objections to the Settlement Agreement or opt-out. (Id., ¶ I.29.)

All Class Members who do not timely opt-out will be bound by the "Release of Claims," which includes, inter alia, any and all claims, debts, liabilities, demands,

obligations, entitlements, damages, expenses, and attorney fees and costs, resulting from all causes of action or factual or legal theories that were or could have been alleged based on the operative complaint. (Id., ¶ IV.60.) Additionally, the Class Representatives are agreeing to a broader release of claims than other Class Members. (Mot., Ottinger Decl., ¶ 21.)

4. Unclaimed Funds

Any unclaimed funds will be transmitted to the State Controller's Office Unclaimed Property Fund in the name of each Participating Class Member whose check is voided. (Settlement, ¶ IV.58.)

5. PAGA and LWDA Allocations

The Settlement allocates $10,000 to the PAGA claims, which represents 4.3 percent of the GSA. (Id., ¶ IV.49.) Of that amount, $7,500 will be paid to the LWDA. (Ibid.) A copy of the Settlement Agreement, this motion, and all supporting documents were submitted to the LWDA on April 10, 2023. (Mot., Ottinger Decl., ¶ 26; see also Lab. Code § 2699, subd. (i).)

The court does not accord deference to the allocation of a portion of the settlement funds to the claims asserted under the PAGA on account of the parties' arm's-length negotiations or the presence of a neutral mediator. Under the PAGA, plaintiffs seek civil penalties that would otherwise be recoverable by the LWDA. (Iskanian v. CLS Transp. Los Angeles, LLC (2014) 59 Cal.4th 348, 382.) Since the LWDA does not have a statutory right to intervene or object to the settlement, the court's review of a settlement which includes the PAGA claims must ensure that the interests of the LWDA in civil enforcement are defended and that the settlement is fair, adequate, and reasonable under all the circumstances. (O'Connor, supra, 201 F.Supp.3d at p. 1133; Iskanian, supra, 59 Cal.4th at p. 62.)

Thus, the court will not approve the final apportionment of funds to PAGA and the LWDA until the final approval hearing. However, the court does preliminarily approve of

the proposed payment allocation as consideration for settling Plaintiffs' claims, which includes the PAGA penalties.

6. Attorney Fees and Costs; Service Awards; Settlement Administration Fees

Class Counsel will apply for up to one-third of the GSA (up to $76,666.67) for attorney fees. (Settlement, ¶ IV.47(b).) Additionally, they will also seek reimbursement from the GSA of their reasonable and actual litigation costs and expenses, which is estimated to amount to $6,311.19. (Ibid.)

Further, counsel will also move for court approval of service awards of $20,000 each to the two Class Representatives. (Id., ¶ IV.47(a).)

The fees for the Settlement Administrator, CPT Group, are $10,000. (Id., ¶ IV.47(c).)

The court will not approve the amount of requested attorney fees, costs, or service awards until the final approval hearing. (See Robbins v. Alibrandi (2005) 127 Cal.App.4th 438, 450–451; Clark v. American Residential Servs., LLC (2009) 175 Cal.App.4th 785, 804–807.)

The court reviewed and considered the moving papers, the supporting documents, and most particularly the Settlement Agreement. The court considered (1) the relative strength of Plaintiffs' case; (2) the high risk, expense, complexity, and likely duration of further litigation of this dispute; (3) the high risk of maintaining class status through trial; (4) the amount offered in settlement; (5) the extent of investigation, discovery produced and completed, and the stage of the proceedings; (6) the experience and views of counsel that settlement is reasonable; and (7) the reaction to the proposed settlement. (See Dunk, supra, 48 Cal.App.4th at p. 1801.)

Counsel's declaration provides sufficient information to enable the court to assess the application of the Dunk factors to this action. Based on counsel's representations, which the court finds to be reasonable and credible, the court preliminarily finds the Settlement Agreement to be fair, reasonable, and adequate.

Accordingly, the motion for preliminary approval of the Class Action Settlement Agreement is granted as requested.

CPT Group is appointed to serve as Settlement Administrator.

The court finds that the proposed Class Notice form and procedures are adequate.

The court finds that the scope of the release for the Class is appropriate.

TENTATIVE RULING # 1: THE MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT IS GRANTED. 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. REMOTE APPEARANCES ARE APPROVED.

2. WHITAKER v. LAKEVIEW WEDDINGS, INC., 22CV1759

Early Evaluation Conference

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, MAY 12, 2023, IN DEPARTMENT FOUR.

3. COSTANZA-MAJOR v. UPTON, 22CV0544

(1) OSC Re: Plaintiff's Failure to Appear at Multiple Hearings

(2) Defendants' Motion for Discovery Sanctions

Defendants' Motion for Discovery Sanctions

Defendant John Upton, Trustee, Revocable Trust Agreement of John E. Upton and Roxana Upton, moves for an imposition of sanctions pursuant to Code of Civil Procedure sections 2023.030, 2030.290, subdivision (c), and 2031.300, subdivision (c) against Plaintiff Loreen Costanza-Major for misuse of the discovery process and failure to comply with the court's March 2, 2023, order directing Plaintiff to respond to discovery requests and to pay $690 in sanctions to defense counsel. Defendant requests evidentiary sanctions and a terminating sanction to dismiss Plaintiff's action.

1. Legal Principles

Code of Civil Procedure § 2023.010 sets forth the type of conduct evidencing misuse of the discovery process, including … [¶] … [¶] "[f]ailing to respond or to submit to an authorized method of discovery[,]" "[d]isobeying a court order to provide discovery[,]" and "[f]ailing to confer in person, by telephone, or by letter with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery …." (Id., subds. (d), (g), (i).)

"To the extent authorized by the chapter governing any particular discovery method or any other provision of this title, the court, after notice to any affected party, person, or attorney, and after opportunity for hearing, may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process:

> (a) The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct. The court may also impose this sanction on

one unsuccessfully asserting that another has engaged in the misuse of the discovery process, or on any attorney who advised that assertion, or on both. If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(b) The court may impose an issue sanction ordering that designated facts shall be taken as established in the action in accordance with the claim of the party adversely affected by the misuse of the discovery process. The court may also impose an issue sanction by an order prohibiting any party engaging in the misuse of the discovery process from supporting or opposing designated claims or defenses.

(c) The court may impose an evidence sanction by an order prohibiting any party engaging in the misuse of the discovery process from introducing designated matters in evidence.

(d) The court may impose a terminating sanction by one of the following orders:

(1) An order striking out the pleadings or parts of the pleadings of any party engaging in the misuse of the discovery process.

(2) An order staying further proceedings by that party until an order for discovery is obeyed.

(3) An order dismissing the action, or any part of the action, of that party.

(4) An order rendering a judgment by default against that party.

(e) The court may impose a contempt sanction by an order treating the misuse of the discovery process as a contempt of court.

(Code Civ. Proc., § 2023.030, subds. (a)–(e).)

2. Discussion

This action, commenced in April 2022, arises from injuries sustained by Plaintiff as a result of alleged health and safety issues with the premises she rented from Defendant. Plaintiff's complaint asserts causes of action for negligence, premises liability, and breach of contract.

On July 14, 2022, Defendant electronically served Plaintiff with the first set of Form and Special Interrogatories, Requests for Admission, and Requests for Production of Documents. (Mot., Herman Decl., ¶ 3 & Exs. 1–4.) A Case Management Conference ("CMC") was held on August 16, 2022, which Plaintiff did not attend. (Id., ¶ 4.) Defense counsel emailed Plaintiff after the CMC to remind her that her responses were due by August 17, 2022. (Id., ¶ 4 & Ex. 5.) Defense counsel then sent a follow-up letter on August 23, 2022. (Id., ¶ 4 & Ex. 6.) Plaintiff did not respond to counsel's email or follow-up letter. (Id., ¶ 4.) Defendant then moved to compel Plaintiff's responses.

On February 24, 2023, the court granted Defendant's motion to compel responses and request for monetary sanction. (Id., ¶ 5 & Ex. 7.) Further, the court ordered Plaintiff to serve verified responses, without objection, no later than March 30, 2023. (Id., Ex. 7.) Plaintiff did not appear at the February 24 hearing and did not file a response or opposition to the motion.

Plaintiff did not serve any responses or pay the monetary sanction by the March 30 deadline. (Id., ¶ 6.) On March 31, 2023, defense counsel mailed and emailed Plaintiff a letter giving her until April 7, 2023, to serve her discovery responses and pay the monetary sanction or else defense counsel would move for more severe discovery sanctions, including terminating sanctions. (Id., ¶ 6 & Ex. 8.) As of the date of defense counsel's

declaration, April 11, 2023, Plaintiff had neither served discovery responses nor paid the monetary sanction. (Id., ¶ 6.)

Defense counsel asserts that Defendant has been grossly prejudiced because counsel is deprived of the most basic foundational information concerning Plaintiff's claims. (Id., ¶ 7.) Indeed, more than a year after this action was commenced and nearly 10 months after the discovery requests were served, Plaintiff has not provided any responses to the first set of discovery requests.

This motion was filed on April 11, 2023. The proof of service to the motion declares that plaintiff was served electronically at two different email addresses and by regular mail at two different residences on April 11. To date, Plaintiff has not filed an opposition to the motion, which was due no later than 9 court days prior to the hearing. (Code Civ. Proc., § 1005, subd. (b).)

Further, the court notes that Plaintiff did not appear at court proceedings on October 28, 2022, November 8, 2022, January 20, 2023, January 31, 2023, February 24, 2023, and March 28, 2023. Plaintiff has not filed any documents in this action since November 16, 2022.

After considering the procedural history and both parties' conduct during the course of this litigation, the court finds there does not appear to be a reasonable possibility that further monetary sanctions, or other less drastic sanctions, would be effective in compelling Plaintiff's compliance with her discovery obligations. In the meantime, Defendant is prejudiced because it has been unable to seek basic, foundational information concerning Plaintiff's claims through discovery in order to defend against this action.

Given the foregoing, the court finds that the most drastic sanctions are warranted in this case given the totality of the circumstances. Accordingly, the court imposes the following discovery sanctions against Plaintiff: (1) an evidentiary sanction prohibiting Plaintiff from introducing any testimonial or documentary evidence regarding her claimed

injuries; (2) an evidentiary sanction prohibiting Plaintiff from introducing any testimonial or documentary evidence regarding her claimed damages, whether special medical damages, special economic damages, including loss of earnings or earning capacity, or general damages; (3) an evidentiary sanction prohibiting Plaintiff from introducing any testimonial or documentary evidence rebutting Defendant's affirmative defenses; and (4) Plaintiff's action is dismissed without prejudice.

OSC Re: Plaintiff's Failure to Appear

Plaintiff's appearance is required at **1:30 p.m., Friday, May 12, 2023, in Department Four** to show cause why she should not be further sanctioned for failing to appear for court hearings when she had been ordered to do so.

TENTATIVE RULING # 3: DEFENDANTS' MOTION FOR DISCOVERY SANCTIONS IS GRANTED AS SET FORTH IN THE FULL TEXT OF THE TENTATIVE RULING. PLAINTIFF'S ACTION IS DISMISSED WITHOUT PREJUDICE. PLAINTIFF'S APPEARANCE IS REQUIRED AT 1:30 P.M., FRIDAY, MAY 12, 2023, IN DEPARTMENT FOUR TO SHOW CAUSE WHY SHE SHOULD NOT BE FURTHER SANCTIONED FOR FAILING TO APPEAR FOR COURT PROCEEDINGS WHEN SHE HAD BEEN ORDERED TO DO SO.