

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: 8:19-cv-02500-SB (DFMx)

Date: March 12, 2021

Title: *Carlos Moreno v. Pretium Packaging L.L.C.*

Present: The Honorable **STANLEY BLUMENFELD, JR., U.S. District Judge**

Victor Cruz  
Deputy Clerk

Katie Thibodeaux  
Court Reporter

Attorney(s) Present for Plaintiff(s):

Justin F. Marquez  
Benjamin Hickson Haber

Attorney(s) Present for Defendant(s):

Jeremy M. Brenner  
Russell I. Glazer

**Proceedings: ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT [DKT. NO. 53]**

On November 26, 2019, Plaintiff Carlos Moreno filed this putative class action in the Orange County Superior Court of California against Defendant Pretium Packaging, L.L.C. asserting various violations of California's wage and hour laws. Compl., Dkt. No. 1-2. On April 10, 2020, Plaintiff filed a Second Amended Complaint to modify portions of the allegations and to add an additional cause of action under the Private Attorneys General Act (PAGA). Second Am. Compl. (SAC), Dkt. No. 35-1. The parties participated in private mediation on December 16, 2020. On February 12, 2021, Plaintiffs filed a Notice of Settlement and now ask the Court to, among other things, preliminarily approve the settlement. Mot., Dkt. No. 53-1. The motion is unopposed.

For the reasons below, the Court GRANTS Plaintiff's motion for preliminary approval of class action settlement. The Court ORDERS that the final approval hearing be set on August 6, 2021 at 8:30 AM.

## **BACKGROUND**

### **A. The Parties**

Defendant Pretium Packaging L.L.C. is a limited liability corporation organized under Delaware law; the company maintains its principal place of business in Chesterfield, Missouri. SAC ¶ 10(a). Defendant conducts business in numerous counties throughout the State of California, including Orange County. *Id.* ¶ 10(b). Plaintiff is a former employee of Defendant. *Id.* ¶ 8. Plaintiff brings this action on behalf of himself and a proposed class of: “All persons who worked for any Defendant in California as an hourly-paid or non-exempt employee at any time during the period beginning four years before the filing of the initial complaint in this action and ending when notice to the Class is sent.” *Id.* ¶ 23.

### **B. Complaint Allegations**

Defendant paid Plaintiff an hourly wage and classified him as nonexempt from overtime. *Id.* ¶ 14. Plaintiff typically worked 40 hours over a five-day work week. *Id.* However, Plaintiff often exceeded that number, sometimes even working in excess of 12 hours a day. *Id.* Plaintiff’s experience was “typical and illustrative” of experiences of the class. *Id.* ¶ 15.

Additionally, Defendant did not provide Plaintiff with authorized meal periods and rest periods, failed to pay overtime wages, and failed to provide accurate wage statements. *Id.* ¶ 16. In doing so, Defendant’s failures violated numerous Labor Code provisions resulting in injury to the Plaintiff and the class. *Id.* ¶ 20.

Plaintiff’s operative SAC alleges six causes of actions against Defendants: (1) Failure to Pay Overtime Wages; (2) Failure to Provide Meal Periods; (3) Failure to Authorize and Permit Rest Periods; (4) Failure to Provide and Maintain Accurate and Compliant Wage Records; (5) Violation of California Business & Professions Code §§ 17200 *et seq.*; (6) Civil Penalties Under the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* *Id.* ¶¶ 29-69.

### **C. Settlement Overview**

Under the terms of the settlement agreement, Defendant agrees to pay \$1.6 million (Gross Settlement Amount) to a qualified, non-reversionary settlement

fund. Settlement ¶ 6.4.1, Dkt. No. 53-3. The following will be deducted from the Gross Settlement Amount: (1) payment of \$37,500 to the Labor Workforce Development Agency for PAGA penalties; (2) the Settlement Administrator's fees and costs, estimated at approximately \$15,000; (3) Plaintiff's attorneys' fees (not exceeding \$533,333.33 (33.33%)) and costs (not exceeding \$20,000.00); and (4) Service Award of \$10,000.00 to the class representative. *Id.* ¶ 5.2. The remainder following those deductions (approximately \$1,501,666.67) constitutes the "Net Settlement Amount" from which individual class members will be paid (Class Settlement Payments). *Id.* Defendant's estimated share of applicable payroll taxes will remain Defendant's responsibility. *Id.* ¶ 2.17.

## DISCUSSION

### **A. Conditional Certification of the Class**

Class actions must meet the following requirements for certification: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed R. Civ. P. 23(a).

First, the class must be so numerous that joinder of all members would be "impracticable." *See* Fed. R. Civ. P. 23(a)(1). Here, the putative class size is approximately 749 persons. Mot. at 9. The Court is thus satisfied that the class satisfies the numerosity requirement. Second, the commonality and typicality requirements are satisfied because Plaintiff's individual claims regarding the Defendant's policies and procedures are identical to those asserted on behalf of the class. Mot. at 10. *See Bellinghausen v. Tractor Supply Co.*, 303 F.R.D. 611, 617 (N.D. Cal. 2014) (finding commonality requirement satisfied where class members were subject to the same challenged policies and procedures).

Similarly, these and other facts establish that Plaintiff and his attorneys adequately represent the class. There are no apparent conflicts of interest between the Plaintiff, Plaintiff's attorneys and the class. Finally, Plaintiff's counsel are experienced wage and hour class action litigators. *See* Mot. at 11; *Bellinghausen*, 303 F.R.D. at 617 (noting that "class counsel must be qualified, experienced, and generally able to conduct the class action litigation") (internal quotation marks and citation omitted). Accordingly, the Court finds that all four elements of Rule 23(a) are satisfied.

The proposed settlement class also satisfies one of Rule 23(b)'s three subsections: the Rule 23(b)(3) predominance and superiority standard. Rule 23(b)(3) requires establishing the predominance of common questions of law or fact and the superiority of a class action relative to other available methods for the fair and efficient adjudication of the controversy.

The Court is satisfied that the core common questions in this case—the lawfulness of Defendant's policies and practices related to rest breaks and overtime—predominate over any differences regarding the individual implementation of those policies. These common questions are a "significant aspect of the case and . . . can be resolved for all members of the class in a single adjudication." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998) (internal quotation marks and citations omitted). Therefore, individual litigation would likely not be of interest to class members and would result in increased cost, judicial inefficiency, and limited recovery. Lastly, concerns over manageability of the class action in this case would not weigh in favor of individual litigation given that Defendant's liability to "class members depends on common proof." *See Bowerman v. Field Asset Servs., Inc.*, 242 F. Supp. 3d 910, 936 (N.D. Cal. 2017). While the court recognizes there may be questions affecting only individual members, class action appears to be the best way to resolve this dispute.

Accordingly, the Court concludes that conditional class certification for settlement purposes is proper.

## **B. Preliminary Approval**

The Court may approve a settlement agreement only "after a hearing and on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Preliminary approval is appropriate if "the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (internal quotation marks and citation omitted). In making such a determination, courts generally consider the following factors: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a

governmental participant; and (8) the reaction of the class members of the proposed settlement. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (quoting *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).

The Court has considered various factors in assessing this class settlement and finds at this stage that the settlement appears fair, reasonable, and appropriate. The parties reached the settlement after significant arm's length negotiations with a third-party mediator where the "strengths and weaknesses of Plaintiff's claims and Defendant's defenses were discussed." See Mot. at 13; *In re First Capital Holdings Corp. Financial Prods.*, No. MDL 901, 1992 WL 226321, at \*2 (C.D. Cal. June 10, 1992) ("[T]here is typically an initial presumption of fairness where the settlement was negotiated at arm's length").

Further, the proposed release of claims appears fair and reasonable. The scope of released claims is limited to "all claims...that were or could have been pled based on the allegations in the Second Amended Complaint." Settlement ¶ 2.29.

Next, the proposed maximum attorney fee award of \$533,33.33 (one-third of the Gross Settlement Amount) appears reasonable. The requested amount is consistent with fee awards made by federal courts in the Ninth Circuit. See, e.g., *In re Pac. Enter. Sec. Litig.*, 47 F.3d at 378-79 (affirming fee award of one-third of settlement); *Singer v. Becton Dickinson & Co.*, No. 08-821 IEG, 2010 WL 2196104, at \*8-9 (S.D. Cal. Jun. 1, 2010) (33.33% of wage and hour settlement "falls within the typical range ... in similar cases"; citing awards of 33.33%-40%). However, Plaintiff's requested attorney fees will be reviewed further at the final approval stage when Plaintiff's counsel provides more information regarding the hours spent litigating this case.

Additionally, the Settlement Agreement provides that Plaintiff's counsel may obtain up to \$20,000 in costs. Settlement ¶¶ 5.4.1, 5.2.2. "There is no doubt that an attorney who has created a common fund for the benefit of the class is entitled to reimbursement of reasonable litigation expenses from that fund." *Ontiveros v. Zamora*, 303 F.R.D. 356, 375 (E.D. Cal. 2014) (internal quotation marks and citation omitted). To that end, district courts in this circuit regularly award litigation costs and expenses in wage-and-hour class actions. See, e.g., *id.*; *Nwabueze v. AT & T Inc.*, No. C 09-01529 SI, 2014 WL 324262, at \*2 (N.D. Cal. Jan. 29, 2014). Plaintiff's counsel is instructed to submit an itemized sheet summarizing costs with its motion for attorneys' fees so that the Court can

determine whether these costs are reasonable litigation expenses incurred for the benefit of the class.

Similarly, the Settlement Agreement also provides for \$15,000 for the Settlement Administrator. “Courts regularly award administrative costs associated with providing notice to the class.” *Bellinghausen*, 306 F.R.D. at 266. Accordingly, the Court concludes that the reimbursement of the Settlement Administrator’s fees and costs is fair and reasonable.

Finally, the total amount of proposed incentive awards (\$10,000) represents 0.6 percent of the Gross Settlement Amount, which is within the range that courts have found acceptable. *See, e.g., Hightower v. JP Morgan Chase Bank, NA*, No. CV 11-1802 PSG, 2015 WL 9664959, at \*12 (C.D. Cal. Aug. 4, 2015) (approving \$10,000 incentive awards to each of seven lead plaintiffs in \$12 million wage and hour settlement); *LaFleur v. Med. Mgmt. Int’l, Inc.*, No. EDCV 13–00398–VAP (OPx), 2014 WL 2967475, at \*8 (C.D. Cal. June 5, 2014) (approving incentive awards of \$15,000 each to two class representatives from \$535,000 wage and hour class action settlement). Plaintiff will provide a declaration in support of final approval detailing his active participation and the services he provided to the class.

The Court GRANTS preliminary approval of the class settlement.

### C. Notice

For any class certified under Rule 23(b)(3), class members must be afforded “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). Such notice must clearly state the following:

- (1) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;
- (v) that the court will exclude from the class any member who requests exclusion;
- (vi) the time and manner for requesting exclusion;
- and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B).

Finally, “Notice is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.” *Churchill*, 361 F.3d at 575 (internal quotation marks and citation omitted). Here, the notice requirements under Rule 23(c)(2)(B) are met. The parties agree that a Third Party Settlement Administrator will send class members a notice packet via first class mail. Settlement ¶ 6.2.5. Class members have 60 days from the mailing of the Notice to either opt out of the Settlement Agreement or file a notice of objection. *Id.* The notice appropriately describes this case, the terms of the settlement, and what happens next. Further, the Settlement Administrator will establish a Settlement website and provide Counsel with a weekly status report. *Id.* ¶ 6.2.12

The Notice, however, does not adequately advise the Class of how it can review Class Counsel’s written request for attorneys’ fees and costs. Accordingly, at the end of Section 6.2 of the Notice, the following paragraph shall be added:

Class counsel will apply in writing to the Court on or before **July 16, 2021** for their requested attorneys’ fees and costs. Their request shall be made available on the Settlement website within one day of its filing and upon request made to Class Counsel. You may object to the attorneys’ fees and costs sought no later than **[60 days after Notice is mailed]** in accordance with Section 22 of this Notice.

#### **D. Final Approval Hearing**

The Court will hold a Final Approval Hearing on the fairness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel’s request for attorneys’ fees and costs, the settlement administration costs, and the service payments to the Class Representative on August 6, 2021 at 8:30 AM. The hearing will be held remotely by Zoom in light of the COVID-19 pandemic. The webinar information to attend the hearing is posted on the Court’s website at: <https://www.cacd.uscourts.gov/honorable-stanley-blumenfeld-jr>. The Court may require the physical attendance of counsel only. To determine if their physical appearance is required, counsel should inquire with the Courtroom Deputy Clerk 45 days in advance of the hearing. The Final Approval Hearing may be continued without further notice to Class Members. Class Members are not required to attend the Final Approval Hearing to receive a share of the Settlement.

## CONCLUSION

For the foregoing reasons, the Court GRANTS Plaintiff's motion for preliminary approval of the class action settlement as follows:

1. Wilshire Law Firm, PLC is appointed as Class Counsel for the Settlement Class.
2. Plaintiff Carlos Moreno is appointed as Class Representative.
3. Notice shall be provided in accordance with the notice plan and this Order.
4. On or before July 16, 2021, Class Counsel shall file a motion seeking approval of attorneys' fees and costs.
5. Reply briefs must be filed on or before July 23, 2021.
6. The parties shall appear before this Court for a final approval hearing on August 6, 2021 at 8:30 a.m. The hearing will be held remotely by Zoom in light of the COVID-19 pandemic. Counsel should inquire with the Courtroom Deputy Clerk 45 days in advance to determine if their physical appearance at the hearing is required.
7. Class Counsel shall file a noticed motion for final approval of settlement no later than 28 days before the final approval hearing. The motion shall include a copy of the Notice sent to the class along with the other information, as available, suggested by the Central District of California Procedural Guidance for Class Action Settlements.