

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA**

Tentative Ruling

2023CUOE010578: ZIYAH BLACKSTONE vs THE BOATYARD INC

11/06/2024 in Department 41

Motion for Preliminary Approval of Clas Action Settlement

Motion: Plaintiff Ziyah Blackstone’s Motion for Preliminary Approval of Class Action Settlement

Tentative Ruling:

Plaintiff Ziyah Blackstone’s Motion for Preliminary Approval of Class Action Settlement is GRANTED, with modifications.

The Court GRANTS preliminary approval of the Settlement with a modification to the payment to the class representative, which the Court reduces to \$8,000. The Court approves the procedures set forth in the Settlement Agreement with respect to notice to the Class and objecting. Further, the Court preliminarily approves the attorney’s fees, a reduced \$8,000 enhancement, and the expenses sought, subject to final approval at a final approval hearing.

A final approval hearing is set for March 6, 2025 at 8:20AM

Plaintiff’s counsel to give notice of this ruling.

Background: The Complaint alleges 8 causes of action on behalf of Plaintiff and putative class against Defendant, including: 1. Recovery of Unpaid Minimum Wages; 2. Recovery of Unpaid Overtime Wages; 3. Failure to Provide Meal Periods; 4. Failure to Provide Rest Periods; 5. Failure to Provide Accurate Wage Statements; 6. Failure to Indemnify for Expenses and Losses; 7. Waiting Time Penalties; and 8. Unfair Competition.

The Class Definition: [A]ll persons employed by The Boatyard, Inc. and paid on an hourly basis at any location in California at any time between June 22, 2019 and June 7, 2024.

The Parties conducted a private mediation with experienced mediator Henry Bongiovi on June 7, 2024. A settlement in principle was eventually reached and the Parties thereafter negotiated the details of a long form settlement agreement. As a result, the Parties eventually negotiated the details of the settlement agreement which cut-off the settlement class at a specific date to not increase the negotiated class size and which Plaintiff now seeks the Court’s approval thereof.

Analysis:

A. The Merits of Plaintiff’s Request for Preliminary Approval of the Proposed Class Action Settlement

California Rule of Court rule 3.769 sets forth the general procedures for settlement of a class action, and provides as follows:

“(a) **Court approval** after hearing A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing.

(b) **Attorney’s fees** Any agreement, express or implied, that has been entered into with respect to the payment of attorney's fees or the submission of an application for the approval of attorney's fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action.

(c) **Preliminary approval of settlement** Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

(d) **Order certifying provisional settlement class** The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing.

(e) **Order for final approval hearing** If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing.

(f) **Notice to class of final approval hearing** If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. 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.

(g) **Conduct of final approval hearing** Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.

(h) **Judgment and retention of jurisdiction to enforce** If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.”

In the present motion for preliminary approval, subdivisions (a) through (f) above are implicated.

1. The Terms of the Proposed Settlement

The proposed settlement (“Settlement”) provides that Defendant will pay a Settlement Amount in the sum of \$500,000.00. Of the Settlement Amount (i) class members will be paid pursuant to an allocation formula; (ii) Plaintiff’s counsel seeks \$175,000 in attorney’s fees (35% of the total Settlement Amount); (iii) up to \$18,000.00 will be paid to Plaintiff’s counsel for litigation costs; (iv) approximately \$11,000.00 will go to the Settlement Administrator; (v) Plaintiff will receive a \$20,000.00 payment for services as class representative; and (vi) the PAGA Penalty amount of \$10,000 of which \$2,500 is allocated to the class.

2. Certification of a Provisional Settlement Class

The general requirements for certification of a class action are (1) existence of an ascertainable class, and (2) a well-defined community of interest in the questions of law and fact involved. In determining whether there is well-defined community of interest, the Court must consider three main factors: whether there are (a) predominant common questions of law or fact (“commonality” requirement); (b) class representatives with claims or defenses typical of the class (“typicality” requirement); and (c) class representatives who can adequately represent the class (“adequate representation” requirement). The party seeking certification has the burden of establishing the factual prerequisites for a class action treatment. Moreover, the party seeking certification bears the burden of establish the existence of both an ascertainable class and a well-defined community of interest among class members. (*Sav-On Drug Stores, Inc. v. Sup. Ct.* (2004) 34 Cal.4th 319, 326.)

The case law suggests that class certification requirements are substantially relaxed for settlement-only classes. (See, e.g., *Global Minerals & Metals Corp. v. Sup. Ct.* (2003) 113 Cal.App.4th 836, 859; *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1807, fn. 19.) Stated differently, as long as there is an ascertainable class and some reasonable basis for class treatment, the Court should not enforce the class requirements too strictly with respect to a settlement class.

The definition of the Settlement Class is as follows:

“[A]ll persons employed by The Boatyard, Inc. and paid on an hourly basis at any location in California at any time between June 22, 2019 and June 7, 2024.”

Given the proposed Settlement Class definition, the members of the Settlement Class are readily ascertainable, and the parties have already ascertained that there are at least 119 members of the Settlement Class. (*See* Bass Decl., ¶ 12.)

Moreover, given the Settlement Class definition, and given that the claims in Plaintiff’s Complaint, there is a reasonable presumption of commonality among Settlement Class Members’ claims.

The size of the Settlement Class (i.e., 119 potential members) is sufficiently large to justify the use of class action procedures and, in fact, to make the class action approach superior to resolving Settlement Class Members’ claims in individual lawsuits.

Moreover, Plaintiff is a member of the Settlement Class and her claims are typical of the other Members of the Settlement Class. Only the amount of damages would appear to differ among the Settlement Class Members. Accordingly, the “typicality” requirement is satisfied.

There appears to be no evidence before the Court which might cause it to question the adequacy of Plaintiff as Class Representative, or the adequacy of Plaintiff’s counsel to serve as class counsel.

Finally, these kind of overtime/wage statement/meal period classes are routinely certified for settlement purposes because, *inter alia*, they are typically based on general practices by an employer applicable to all employees falling within a certain job classification and therefore are generally suitable for class treatment due to substantial common issues with respect to the employer’s practices, there is usually a modest amount of wages/damages as stake for each employee, and the availability of employer payroll records often provides a basis for calculating the damages/payments due to each member of the class. Moreover, the amount at issue for each employee is often insufficient to justify the expense of bringing an individual lawsuit, thereby making the class action procedure the only practical remedy for the alleged violations.

Based on the above, and given the relaxed standards for certification apparently applicable to settlement classes, the Court provisionally certifies the Settlement Class as defined in the Stipulation of Settlement.

3. The Proposed Procedure for Notice to Settlement Class Members, Opting Out, and Objecting

The settlement is a “checks cashed” non-reversionary settlement. Class members are not required to submit a claim for in order to receive their settlement share. There are no procedural reasons for denying preliminary approval of the proposed settlement.

4. The Settlement Appears Within the Range of Possible Approval, with One Minor Modification

California Rule of Court rule 3.769, subdivision (c) does not set forth specific standards for granting preliminary approval of a class action settlement, but the Court considers issues of equity and fairness in exercising its discretion in determining whether a proposed settlement is fair and reasonable:

“ “ “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval.”” [Citations.] The court must determine the settlement is fair, adequate, and reasonable. [Citations.] The purpose of the requirement is ‘the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.’ [Citation.]

“The trial court has broad discretion to determine whether the settlement is fair. [Citation.] It 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. [Citation.] The list of factors is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry ‘must be limited 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.’ [Citation.] ‘Ultimately, the [trial] court’s determination is nothing more than “an amalgam of delicate balancing, gross approximations and rough justice.” [Citation.]’ [Citation.]

“[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. [Citations.]”
(*Dunk v. Ford Motor Co.*, supra, 48 Cal.App.4th at pp. 1800-1802.)

Here, the settlement was reached at arms-length. (*See* Bass Decl., ¶ 33.) Accordingly, the first *Dunk* factor is satisfied.

Plaintiff’s counsel engaged in mediation, investigation and discovery. Accordingly, the evidence indicates that Plaintiff’s counsel engaged in sufficient investigation and discovery to intelligently evaluate the claims of the Settlement Class Members. (*See* Bass Decl., ¶¶ 7-10.) Accordingly, the second *Dunk* factor is satisfied.

Plaintiff’s counsel has significant prior experience in acting as class counsel in wage and hour litigation. (*See* Bass Decl., ¶¶ 52-58.) Accordingly, the third *Dunk* factor is satisfied.

The final *Dunk* factor is not yet clear, and will need to be evaluated by the Court at the final approval hearing.

Based on the above, there is a presumption under *Dunk* as to the reasonableness of the Settlement.

The amount of attorney’s fees sought by Plaintiff’s counsel (\$175,000, or 35% of the gross settlement amount) appears on the high side although arguably still reasonable on a preliminary basis, and within the range of fees routinely approved in these kinds of case. Further justification should be provided in connection with the final approval.

The payment of an up to \$20,000.00 enhancement to Plaintiff as class representative is unreasonably high, particularly in light of the time spent in this case. The Court reduces the enhancement to \$8,000.