Martin Estrada, et al., v. MB Coatings, Inc., et al.,
C.D. Cal. Case No. 8:22-cv-01427-JDE

Hearing re Plaintiffs' Motion for Preliminary Approval of Class Settlement
April 26, 2024

In furtherance of the parties' and the Court's respective obligations under Rule 23(e) of the Federal Rules of Civil Procedure and to prepare for a preliminary assessment by the Court of the propriety of a preliminary or conditional certification of a class under Rule 23(a), a preliminary fairness evaluation to assess, among other things, whether the proposed settlement falls within the range of reasonableness, and an assessment of the adequacy of the proposed class and/or collective notice, the Court raises the following issues for counsel for the parties to be prepared to discuss at the Preliminary Approval hearing. This list of issues is non-exhaustive and does not constitute a finding of any kind.

1. The FLSA Collective Claims and the Rule 23 Class Claims

Plaintiffs indicate they are seeking preliminary approval of "this $1,150,000 Fair Labor Standards Act ("FLSA") collective and Class settlement" made on behalf of "approximately 650 laborers who are hourly, non-exempt employees of Defendants MB Coatings, Inc., who performed construction related services in the state of California during the period commencing August 1, 2018, to January 22, 2024 ("Class") and an FLSA collective period commencing August 1, 2019, to January 22, 2024." Dkt. 66-1 ("Memorandum") at 6. "When a state law wage and hour class action is pending in federal court, the requirements of Rule 23 are controlling. In contrast, the provisions of Rule 23 do not apply to FLSA actions. Rather, the FLSA only allows an employee to bring a 'collective action' on behalf of other 'similarly situated employees.'" Jones v. Agilysys, Inc., 2013 WL 4426504, at *1 (N.D. Cal. Aug. 15, 2013) (internal citations omitted). In a class action brought under Rule 23, "all members of a certified class are bound by the judgment unless they opt-*out* of the suit." Id. "In a collective action under the FLSA, 29 U.S.C. § 216(b), only those claimants who affirmatively opt-*in* by providing a written consent are bound by the results of the action." Id.

Here, the settlement proposed by Plaintiffs would appear to be an FLSA/Rule 23 class action hybrid settlement. While a Rule 23 class action

and an FLSA collective action may be brought together, there are different standards to conditionally certify an FLSA collective and a Rule 23 Class, different standards for the appropriateness of the notice, and different standards to evaluate the fairness of the settlement. Thompson v. Costco Wholesale Corp., 2017 WL697865, at *3-6 (S.D. Cal. Feb. 22, 2017) (citation omitted). Settlements of "hybrid" FLSA collective actions and state law class actions may require separate considerations. See, e.g., Millan v. Cascade Water Servs., Inc., 310 F.R.D. 593, 613 (E.D. Cal. Oct. 8, 2015) (requiring that the settlement "create separate funds for the payment of the Rule 23 claims and the FLSA claims"); Thompson, 2017 WL 697865, at *8 ("A release of FLSA claims in exchange for no consideration is not a 'fair and reasonable resolution of a bona fide dispute over FLSA provisions.' As a result, courts that have approved settlements releasing both FLSA and Rule 23 claims generally do so only when the parties expressly allocate settlement payments to FLSA claims.") (internal quotation and citations omitted).

Further, in an FLSA action, "the court must provide potential plaintiffs 'accurate and timely notice concerning the pendency of the collective action, so that they can make informed decisions about whether or not to participate.'" Id. (internal quotation omitted). Because of the "inherent differences between Rule 23 class actions and FLSA collective actions, courts considering approval of settlements in these hybrid actions consistently require class notice forms to explain: '(1) the hybrid nature of th[e] action; and (2) the claims involved in th[e] action; (3) the options that are available to California Class members in connection with the settlement, including how to participate or not participate in the Rule 23 class action and the FLSA collection action aspects of the settlement; and (4) the consequences of opting-in to the FLSA collective action, opting-out of the Rule 23 class action, or doing nothing.'" Thompson, 2017 WL 697895, at *8 (citing Pierce v. Rosetta Stone, Ltd., 2013 WL 1878918, at *4 (N.D. Cal. May 3, 2013); Sharobiem v. CVS Pharmacy, Inc., 2015 WL 10791914, at *4 (C.D. Cal. Sept. 2, 2015) (noting that because the proposed claim form did not distinguish between a Rule 23 class action and FLSA class action, it was "not clear and easy to follow")).

Here, the proposed notice does not appear to alert potential plaintiffs to the pending FLSA collective action or provide a mechanism to "opt-in," much less describe the hybrid nature of this FLSA and Rule 23 action. Further, while the Settlement Agreement indicates Participating Class Members are "deemed to have released Defendants based on claims in the operative Complaint" (Dkt. 66-3 "Settlement Agreement" at 16), the proposed notice does not refer to any release of the FLSA claim. Moreover, as discussed above, any such a

release of the FLSA claim, even if the notice informed potential plaintiffs of the specific released claim and the hybrid nature of the action, could be problematic considering the possible lack of any separately stated consideration for such a release. See Thompson, 2017 WL 697895, at *10 ("the complete lack of consideration that counsel and [the plaintiff] agreed to accept in exchange for a release of FLSA claims, indicates that the FLSA claim is actually worth nothing . . . Thus, counsel's inclusion of the FLSA claim . . . after having reached the conclusion that it was worth nothing violates Rule 11(b)(2).").

Accordingly, if the parties intend to settle the FLSA collective action and release the FLSA claim, as indicated in the Settlement Agreement, at the hearing, counsel should be prepared to explain how an FLSA collective action, including as a hybrid action, could properly be preliminarily approved based on the existing Settlement Agreement and using the existing proposed notice.

As the "Release of Claims" section of the class notice does not purport to contain a release of FLSA claims, it may be that they parties intended to limit their settlement to the state law class action claims under Rule 23 only, excluding the FLSA claim from the settlement. Thompson, 2017 WL 697865, at *8. If that is the parties' intention, they should be prepared to so specify and discuss how to clarify such intention in the notice and proffered settlement terms.

2. **Is there an estimate of the full value of the claims assuming complete success at trial?**

As noted, the Court does not now make a final reasonableness assessment or finding. However, at this stage, the Court must make an initial assessment of whether the settlement falls within a range of reasonableness.

Other than generalized assertions, Plaintiffs also do not appear to provide specific evidence or information to evaluate whether the settlement falls within the range of reasonableness. Plaintiffs do not provide an estimate of the total potential recovery and explain how the parties arrived at the settlement amount. While counsel avers that they conducted a damages assessment and damages model based on statistical analysis of Class Members pay and timekeeping records, they do not set forth the analysis, even in summary form. Absent at least a supportable estimate of the "full value" of the

claims at trial, the Court cannot compare the proposed settlement amount against the estimated value of the claims upon successful litigation. See Millan, 310 F.R.D. at 611 ("To determine whether that settlement amount is reasonable, the Court must consider the amount obtained in recovery against the estimated value of the class claims if successfully litigated.").

3. Additional Requested Clarifications

The Memorandum provides: "[t]he Settlement provides for: payment to the Class Representative (subject to court approval) of up to $20,000 as compensation for his role as Class Representative, which Defendants do not oppose up to $10,000[.]" Mallison Decl. at 11. The Settlement Agreement indicates "Defendants will not oppose Class Representative Payments of up to $10,000." Settlement Agreement at 3. It is not clear whether Plaintiffs will seek a total of up to $20,000 combined for the two proposed class representatives, with Defendant not opposing that combined figure, or whether Defendants intend to oppose any combined figure greater than $10,000. The Court will inquire at the hearing.

Further, Plaintiffs include a chart that specifies an estimated Settlement Administration fee of $8,000 (Memorandum at 5), but at other places specify the fee as "estimated at $11,000" (Memorandum at 2) and Dkt. 66-4 ("Notice") at 2. The Court will inquire about the discrepancy at the hearing.

In addition, Plaintiffs in the Memorandum write "as the class claims for unpaid wages and meal/rest break violations formed the primary basis for liability, as opposed to the PAGA claim, the parties have agreed that a penalty payment to the Labor and Workforce Development Agency [LWDA] of up to $22,500 (i.e. 75% of 30,000) is reasonable under the circumstances. Further, Plaintiff submitted the Settlement Agreement to the LWDA on April 1, 2022." Memorandum at 12. Presumably Plaintiffs meant 2024, not 2022. Neither the Settlement Agreement nor the Notice appears to address the LWDA payment, so it is unclear where the parties "agreed" to that payment. Nor is it apparent whether the amount is deducted from the Gross Settlement Amount. If there are any other agreements between the parties other than the Settlement Agreement, the parties are directed to advise the Court and further advise whether the LWDA payment is to be deducted from the Gross Settlement Amount.

Lastly, the Notice states that the final approval hearing will take place at "350 West 1st Street, Los Angeles, California." Notice at 5. That address is incorrect. The correct address is "the Ronald Reagan Federal Building and U.S. Courthouse, 411 West Fourth Street, Santa Ana, California, 92701." The Notice also does not contain a time for the hearing. The time is 10:00 a.m. The proposed Notice must be corrected to reflect the correct location and the time of the final approval hearing. In addition, the Notice also refers in several places to "Defendant" when it should refer to "Defendants" and "Plaintiff" when it should refer to "Plaintiffs." See, e.g., Notice at 1, 2, 4.