UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL JS-6

Case No.	EDCV 19-482 PSG (SHKx)	Date	January 19, 2021
Title	Corey Goddard v. City of Cathedral City		

Present: The Honorable	Philip S. Gutierrez, United States District Judge

Wendy Hernandez	Not Reported
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): **The Court GRANTS the parties' motion for approval of the collective action settlement and attorneys' fees**

Before the Court is a joint motion for approval of a collective action settlement and attorneys' fees filed by Plaintiff Corey Goddard ("Plaintiff") and Defendant the City of Cathedral City ("Defendant). *See generally* Dkt. # 35 ("*Mot.*"). The Court finds the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15. Having considered the moving papers, the Court **GRANTS** the parties' motion.

I. Background

In this putative collective action, Plaintiff alleges that Defendant violated the overtime payment provisions of the Fair Labor Standards Act ("FLSA"). *See Mot.* 3:16–26; *see generally Complaint*, Dkt. # 1 ("*Compl.*").

Plaintiff is a member of the Cathedral City Professional Firefighters Association ("CCPFA"), which is the exclusive bargaining representative of employees in Defendant's firefighter bargaining unit. *Compl.* ¶¶ 13–14. The terms and conditions of Plaintiff's employment, as a CCPFA member, are governed by a Memorandum of Understanding ("MOU") between the CCPFA and Defendant. *Id.* ¶ 15. The MOU entitled Plaintiff to certain monetary compensation, such as Holiday Pay, Education Incentives, Acting Pay, and Bilingual Pay. *Id.* ¶¶ 17–18.

The Complaint alleges that Defendant violated the FLSA by "impermissibly exclud[ing] certain remuneration from Plaintiff's 'regular rate' of pay, including but not limited to Holiday Pay, Education Pay, Acting Pay, and Bilingual Pay, thereby resulting in the systematic underpayment of overtime compensation to Plaintiff." *Id.* ¶ 24. Further, by impermissibly excluding such remuneration from Plaintiff's regular rate of pay, "Defendant failed to pay

Plaintiff and other similarly situated individuals for cashed out compensatory time off ('CTO') at the 'regular rate' of pay as required by 29 U.S.C. section 207(o)(3)-(4)." *Id.* ¶ 25.

As a result, Plaintiff filed the Complaint in this Court on behalf of himself and others similarly situated. The Complaint asserts a single cause of action:

> First Cause of Action: violation of the FLSA for failure to pay all overtime compensation earned. *Id.* ¶¶ 26–33.

The Complaint seeks back wages for three years, liquidated damages, and attorneys' fees and costs. *Id.* 6:10–24.

On October 27, 2020, the parties filed a notice of settlement. *See generally* Dkt. # 31. The parties now move for approval of the collective settlement and for an award of attorneys' fees. *See generally Mot.* For the reasons provided below, the Court **GRANTS** the motion.

II. Approval of the Collective Settlement

A. Overview of the Settlement

The parties agreed to settle this matter for a total of $150,000. *See Declaration of David E. Mastagni*, Dkt. # 35-1 ("*Mastagni Decl.*"), ¶ 12. Of this amount, $112,500 is allocated to Collective Members and $37,500 is allocated to Counsel for attorneys' fees. *Id.* Each Collective Member will receive the "Back Overtime Pay Amount" owed to him for the period between November 26, 2015, through the execution of the Settlement Agreement, along with the appropriate liquidated damages for his individual claim, *see* Dkt. # 35-1, Ex. A ("*Settlement Agreement*"), in an amount equal to roughly forty-two percent of the total possible award that could be obtained if the Collective prevailed on every disputed issue at trial, *see Mastagni Decl.* ¶ 16.

In exchange, Collective Members agreed to dismiss the instant action and a pending internal grievance with prejudice. *Settlement Agreement* ¶¶ 5.a–b. Collective Members released "all grievances, disputes or claims of every nature and kind, known or unknown, suspected or unsuspected, arising from or attributable to PLAINTIFFS' claims relating to the ACTION and Grievance that the City violated the FLSA and the MOUs between the CITY and the CCPFA and/or CCFMA up to and including the Effective Date of this AGREEMENT." *Id.* ¶ 6. However, the release "does not include claims relating to conduct or activity which does not

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arise from or is not attributable to Plaintiffs' FLSA and MOU overtime claims or to any conduct or activity which occurs after the Effective Date of this AGREEMENT." *Id.*

B. Legal Standard

"[C]laims for unpaid wages under the FLSA may only be waived or otherwise settled if settlement is supervised by the Secretary of Labor or approved by a district court." *Selk v. Pioneers Mem'l Healthcare Dist.*, 159 F. Supp. 3d 1164, 1172 (S.D. Cal. 2016). In reviewing a FLSA settlement, courts first determine whether a bona fide dispute exists. *Id.* If so, they then determine whether the settlement is fair and reasonable. *Id.*

C. Discussion

i. Bona Fide Dispute

The Court first considers whether a bona fide dispute exists. *Id.*

"A bona fide dispute exists when there are legitimate questions about 'the existence and extent of Defendant's FLSA liability.'" *Id.* (quoting *Ambrosino v. Home Depot U.S.A., Inc.*, No. 11cv1319 L(MDD), 2014 WL 1671489, at *1 (S.D. Cal. Apr. 28, 2014)). In other words, there must be "some doubt" that the plaintiff would succeed on the merits, *see id.* (quoting *Collins v. Sanderson Farms*, 568 F. Supp. 2d 714, 719–20 (E.D. La. 2008); the Court will not approve a settlement "[i]f there is no question that the FLSA entitles plaintiffs to the compensation they seek," *see id.*

Here, the parties argue that a bona fide dispute exists for three reasons. *See Mot.* 6:18–8:21.

First, Plaintiffs' assertion that "holiday-in-lieu payments must be included in the regular rate of pay" is supported by some district court opinions, but Defendants' assertion that holiday-in-lieu payments are excludable is seemingly supported by the example Department of Labor's ("DOL") amended regulation. *See id.* 6:20–7:16. A similar dispute over this issue is currently pending in the Northern District of California. *See id.* 7:17–23. Therefore, the Court agrees that (1) the potential conflict between district court opinions and the DOL's amended regulation and (2) the existence of a similar dispute pending in the Northern District indicate doubt as to the merits of the FLSA claims at issue and support a finding of a bona fide dispute. *See Selk*, 159 F. Supp. 3d at 1172.

Second, "[t]he Parties further disagree over whether Defendant is properly calculating the regular rate of pay for scheduled overtime hours and the method used to calculate FLSA liability." *Mot.* 7:24–27. Specifically, "Plaintiffs assert that damages should be calculated pursuant to 29 C.F.R. 778.113, which uses the regularly scheduled hours as the divisor to determine the regular rate before making the time and one-half calculation," while "Defendant maintains that Plaintiffs are only entitled to the calculation . . . in 29 C.F.R. sections 778.109 and 778.110(b), which use all hours worked (including overtime hours) to calculate the regular rate, and only apply the regular rate to the premium (i.e., 0.5) portion of overtime hours." *Mot.* 7:27–8:7. The Court finds that this disagreement supports the existence of a bona fide dispute as well. *See Selk*, 159 F. Supp. 3d at 1172.

Third, "the Parties also dispute whether Plaintiffs are entitled to liquidated damages," *Mot.* 8:9–10, and the applicable statute of limitations, *id.* 8:15. Defendant argues that it has a good faith defense that holiday pay is excludable as a matter of law, but even if they lose on that ground, "Defendant argues that the unclear state of the law and its reliance on the DOL regulation are a defense to liquidated damages." *Id.* 8:10–14. On the other hand, "Plaintiffs assert that Defendant's violations were willful," which, additionally, would "extend the statute of limitations from two to three years." *Id.* 8:16–18. The Court finds that this disagreement also supports the existence of a bona fide dispute. *See Selk*, 159 F. Supp. 3d at 1172.

Accordingly, because "the existence and extent of Defendant's FLSA liability" is unclear, *see id.* (quoting *Ambrosino*, 2014 WL 1671489 at *1), the Court agrees with the parties that a bona fide dispute exists.

ii. Fairness and Reasonableness

Because the Court is satisfied that a bona fide dispute exists, it now must determine whether the proposed settlement is fair and reasonable. *See id.* The Court considers

> (1) the plaintiff's range of possible recovery; (2) the stage of proceedings and amount of discovery completed; (3) the seriousness of the litigation risks faced by the parties; (4) the scope of any release provision in the settlement agreement; (5) the experience and views of counsel and the opinion of participating plaintiffs; and (6) the possibility of fraud or collusion.

Id. at 1173.

The Court addresses each factor in turn.

a. Plaintiff's Range of Possible Recovery

The Court first evaluates whether the settlement amount "bears some reasonable relationship" to the true value of the claims. *See id.* at 1174. Although "[t]he settlement amount need not represent a specific percentage of the maximum possible recovery," when "comparing the amount proposed in the settlement with the amount that plaintiffs could have obtained at trial, the court must be satisfied that the amount left on the table is fair and reasonable under the circumstances presented." *Id.*

Here, Collective Members' net recovery represents approximately forty-two percent of the amount that could be obtained at trial if the Collective prevailed on every disputed issue. *See Mastagni Decl.* ¶ 16. This is well within the range of reasonableness for wage and hour actions. *See Selk*, 159 F. Supp. 3d at 1175 (collecting cases that have approved settlements that ranged from nine to sixty percent of possible damages). Accordingly, this factor favors approval of the Settlement Agreement.

b. Stage of Proceedings

The Court next considers "the stage of proceedings and the amount of discovery completed to ensure the parties ha[d] an adequate appreciation of the merits of the case before reaching a settlement." *See id.* at 1177. "So long as the parties have 'sufficient information to make an informed decision about settlement,' this factor [] weigh[s] in favor of approval." *Id.* (quoting *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir. 1998)).

Here, "[t]he Parties engaged in formal discovery and had numerous discussions regarding how any alleged damages should be calculated." *Mot.* 9:24–25. They "exchanged significant amounts of payroll and timekeeping data and presented each other with relevant legal authority in support of their respective positions in order to evaluate [Plaintiff's] possible range of recovery." *Mastagni Decl.* ¶ 8. Additionally, they participated in a full-day mediation on July 6, 2020. *Id.* ¶ 10. The Court is thus satisfied that the parties had "sufficient information to make an informed decision about settlement." *See Linney*, 151 F.3d at 1239. Accordingly, this factor favors approval of the Settlement Agreement. *See Selk*, 159 F. Supp. 3d at 1177.

c. Litigation Risks

The Court next considers whether "there is a significant risk that litigation might result in a lesser recover[y] for the class or no recovery at all." *Id.* at 1175–76 (quoting *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 255 (N.D. Cal. 2015)).

Here, the parties argue that "Plaintiffs risk losing all, or some, recovery if disputed issues are adjudicated in Defendant's favor." *Mot.* 10:12–13. Specifically, (1) "if Plaintiffs lost on their holiday-in-lieu claims, they would not be entitled to damages, including damages of scheduled overtime;" (2) "if Defendant were to prevail on its methodology for calculating FLSA wages, damages would be reduced by over 66%;" and (3) "if liquidated damages were denied, Plaintiffs' range of recovery would be reduced by 50%." *Id.* 10:13–19. As discussed above, the Court agrees that these issues are genuinely disputed. Accordingly, this factor favors approval of the Settlement Agreement. *See Selk*, 159 F. Supp. 3d at 1175–76.

d. The Scope of the Release

The Court next considers the scope of the Settlement Agreement's release provision "to ensure that class members are not pressured into forfeiting claims, or waiving rights, unrelated to the litigation." *Id.* at 1178. "[W]hen a FLSA settlement provides that opt-in members will receive unpaid wages and related damages, but nothing more, a release provision should be limited to the wage and hour claims at issue." *Id.* "Only when opt-in plaintiffs receive independent compensation, or provide specific evidence that they fully understand the breadth of the release, will a broad release of claims survive a presumption of unfairness." *Id.* Otherwise, the overbreadth of a release provision "militate[s] against finding the settlement fair and reasonable." *Id.*

Here, "Plaintiffs agree to resolve, release, waive, and discharge any claims they may have under the FLSA and MOU arising prior to the effective date of the agreement." *Mot.* 10:28–11:2; *Settlement Agreement* ¶¶ 5.a–b, 6. Therefore, the parties argue that, "[b]ecause the Settlement Agreement is limited in scope to the relevant wage and hour claims at issue, the Settlement Agreement should be approved." *Mot.* 11:2–4. The Court agrees, and, therefore, this factor favors approval. *See Selk*, 159 F. Supp. 3d at 1178.

e. Experience and Views of Counsel and Participating Plaintiffs' Opinions

The Court next considers the experience and views of counsel and the opinions of participating Plaintiffs. *See id.* at 1172.

"The opinions of counsel should be given considerable weight both because of counsel's familiarity with th[e] litigation and previous experience with [similar] cases." *See Larsen v. Trader Joe's Co.*, No. 11–cv–05188–WHO, 2014 WL 3404531, at *5 (N.D. Cal. July 11, 2014); *Selk*, 159 F. Supp. 3d at 1176. "Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 967 (9th Cir. 2009). Additionally, "[i]t is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that [its] terms . . . are favorable to the class members," *see Nat'l Rural Telecomm's Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004), and this applies with equal force to collective settlement agreements, *see Selk*, 159 F. Supp. 3d at 1176–77.

Here, the lead litigators for both parties have more than thirty years of experience working on employment disputes between them, *see Mastagni Decl.* ¶ 4; *Declaration of T. Oliver Yee*, Dkt. # 35-2 ("*Yee Decl.*"), ¶ 2, and they believe that the Settlement Agreement is fair and reasonable, *see Mastagni Decl.* ¶¶ 15–16; *Yee Decl.* ¶¶ 10–11. Counsel's extensive experience and their endorsement of the agreement supports its approval. *See Rodriguez*, 563 F.3d at 967; *Selk*, 159 F. Supp. 3d at 1176; *Larsen*, 2014 WL 3404531 at *5. However, the parties did not provide any information regarding Collective Members' opinions of the Settlement Agreement. Accordingly, on balance, this factor is neutral.

f. Possibility of Fraud or Collusion

The Court next considers whether the proposed settlement "resulted from, or was influenced by, fraud or collusion." *See Selk*, 159 F. Supp. 3d at 1179. The Court analyzes whether the basis for determining individual settlement shares seems arbitrary, whether class counsel is disproportionately rewarded, and whether negotiations were adversarial. *See id.* at 1179–80.

Here, the parties argue that "[t]he settlement negotiations were at all times adversarial and [the] agreement was reached only after both Parties compromised on certain positions, including

the type and number of hours counted as overtime and liquidated damages." *Mot.* 11:21–24. Further, "the individual settlement amounts were not arbitrary but calculated based on objective documentation, including time records and wage statements exchanged both informally and through written discovery." *Id.* 11:24–27.

The Court agrees that this factor favors approval. As discussed above, the Settlement Agreement was reached after substantial negotiations, including a full-day mediation, and the individual amounts are rationally and directly correlated to each Collective Member's claims. *See Settlement Agreement* ¶ 1.b; *id.* Ex. A; *Mastagni Decl.* ¶¶ 8, 10, 16. As such, the Court is satisfied that the Settlement Agreement is neither fraudulent nor collusive. *See Selk*, 159 F. Supp. 3d at 1179.

D. Conclusion

Because (1) there is a bona fide dispute between the parties, and (2) no factor weighs against finding that the Settlement is fair and reasonable, the Court **GRANTS** the parties' motion for approval of the Settlement Agreement.

III. Approval of Attorneys' Fees

The Court now turns to the requested attorneys' fees.

A. Legal Standard

"Where a proposed settlement of FLSA claims includes the payment of attorney[s'] fees, the court must also assess the reasonableness of the fee award." *See Selk*, 159 F. Supp. 3d at 1180 (quoting *Wolinsky v. Scholastic, Inc.*, 900 F. Supp. 2d 332, 336 (S.D.N.Y. 2012)). "Where a settlement produces a common fund for the benefit of the entire class, courts may employ either the lodestar method or percentage-of-recovery method to determine a reasonable [] fee." *See id.*

B. Discussion

The Court briefly discusses the percentage of the common fund method and then cross-checks the award with the lodestar method.

i. Percentage of the Common Fund Method

Under the percentage-of-recovery method, courts typically use 25 percent of the fund as a benchmark for a reasonable fee award. *See id.* at 942. The percentage can vary, however, and courts have awarded more or less than 25 percent of the fund in attorneys' fees as they deemed appropriate. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (noting that courts generally award between 20 and 30 percent of the common fund in attorneys' fees). "The mere fact that the defendant agrees to pay the fees 'does not detract from the need to carefully scrutinize the fee award.'" *Zubia v. Shamrock Foods Co.*, No. CV 16-3128 AB (AGRx), 2017 WL 10541431, at *5 (C.D. Cal. Dec. 21, 2017) (quoting *Staton*, 327 F.3d at 964).

Here, Plaintiff requests that the Court approve a benchmark award of 25 percent of the fund—i.e., $37,500. *Mastagni Decl.* ¶ 18. Because Plaintiff requests the benchmark award, the Court will forego a full analysis under the percentage of the common fund method and cross-check the reasonableness of the benchmark using the lodestar method. *See Selk*, 159 F. Supp. 3d at 1180–81.

ii. Lodestar Method

"The lodestar figure is calculated by multiplying the number of hours [counsel] reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer." *See id.* at 1180 n.5 (quoting *In re Bluetooth Headset Prods. Liab. Litig*, 654 F.3d 935, 941 (9th Cir. 2011)).

Here, Plaintiff's counsel billed a total of 349.56 hours. *See Mastagni Decl.* ¶¶ 19.A–E. Even if counsel billed these hours at $250 per hour for partners, associates, and paralegals alike, which would represent considerably lower rates than ordinarily charged, and even if the Court discards fifty percent of the billed hours, the lodestar would still exceed the requested award by more than $6,000. *See id.* Accordingly, the lodestar method strongly supports the reasonableness of the requested award, and the Court therefore **GRANTS** the parties' motion for attorneys' fees in the amount of $37,500.

IV. Conclusion

For the foregoing reasons, the Court **GRANTS** the parties' motion for approval of the Settlement Agreement and attorneys' fees.

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- The Court approves settlement of the action between Plaintiff and Defendant, as set forth in the Settlement Agreement, as fair and reasonable. The parties are directed to perform their settlement in accordance with the terms set forth in the Settlement Agreement.

- Plaintiff's counsel is awarded $37,500 in attorneys' fees. This amount is warranted and reasonable for the reasons stated in this Order.

- Without affecting the finality of this judgment in any way, this Court hereby retains exclusive jurisdiction over Defendant and the Collective Members for all matters relating to the litigation, including the administration, interpretation, effectuation, or enforcement of the Settlement Agreement and this Order.

This Order closes the case.

IT IS SO ORDERED.