UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 15-01597 AG (KESx)	Date	February 6, 2017
Title	CANDICE WILLIAMS v. BANK OF AMERICA, N.A.		

Present: The Honorable	ANDREW J. GUILFORD	
Ivette Gomez	Not Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	

Proceedings: **[IN CHAMBERS] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT, GRANTING ATTORNEY FEES AND COSTS, AND GRANTING CLASS REPRESENTATIVE AWARD**

This case is ripe for resolution. Candice Williams filed a putative class action, in state court, against her former employer, Bank of America, N.A. According to the complaint, Williams and other similarly situated customer service representatives (called "Dedicated Service Directors" in this litigation) didn't receive required overtime pay. *See* 29 U.S.C. § 207(a)(1); Cal. Lab. Code § 1194(a).

Bank of America removed the case to federal court, and the parties settled soon after. Williams then moved the Court to conditionally certify a settlement class, approve the proposed settlement, and authorize notice to the proposed class, among other things. After closely scrutinizing the parties' agreement, *see Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998), the Court granted preliminarily approval. Now, Williams moves for final approval of the class action settlement, for attorney fees and costs, and for a class representative award. The Court GRANTS both pending motions. (Dkt. Nos. 22, 23.)

1. FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Federal Rule of Civil Procedure 23(e) says that "[t]he claims, issues, or defenses of a certified

class may be settled . . . only with the court's approval." And what's more, "[i]f the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

A district court must balance several factors to determine, in its discretion, whether a settlement is fundamentally fair, reasonable, and adequate. *See Churchill Village v. General Electric*, 361 F.3d 566, 575 (9th Cir. 2004). Those factors include: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of litigation; (3) the risk of maintaining class action status; (4) the amount offered in settlement; (5) the extent of discovery completed; (6) the experience and views of counsel; (7) the presence of a government participant; (8) the reaction of the class members; (9) whether the settlement was the product of collusion; and (10) the adequacy of notice to the class. *Id.* at 575–76.

This settlement received preliminary approval in September 2016. Now, at the final approval stage, the Court revisits each *Churchill* factor.

Strength of the plaintiff's case. While the merits of this case don't quite favor either party, the Court has noted "some potential legal obstacles [Williams] could face." (Order, Dkt. No. 19, PageID 229.) For example, under California law, certain exempt "administrative employees" aren't entitled to overtime compensation. *See* Cal. Code Regs. tit. 8, § 11040(A)(2); *Harris v. Superior Court*, 266 P.3d 953, 956 (Cal. 2011). And here, Williams concedes that, given the administrative nature of her work, her workplace discretion, and her freedom to exercise independent business judgment, "a jury might easily find on the merits" that Bank of America correctly classified her as an exempt employee. (Mot. for Approval, Dkt. No. 22, PageID 243–44.) In short, it's possible that Williams and the class could be left out in the cold. *See Churchill*, 361 F.3d at 576. This factor weights in favor of approving the settlement.

Risk, expense, complexity, and likely duration of further litigation. Williams originally filed her state-court complaint in August 2015. (Compl., Dkt. No. 1-1, PageID 9.) Bank of America then removed the case to federal court—an event that triggered the application of rigorous federal rules, the prospect of a bitter trial governed by federal practice, and the possibility of a drawn out federal appeal with a deep-pocketed company. (Mot. for Approval, Dkt. No. 22, PageID 245.) Indeed, as just described, there's a real chance that Bank of America's defense would

have proved successful. What's more, the wage-and-hour claims here are complex on multiple levels: First, resolution of the overtime issue requires analysis of federal law, state law, and associated administrative regulations. Second, those legal principles must be applied to a fact-intensive "administrative exemption" standard. Third, the ultimate calculation of overtime premiums would require a degree of economic prowess. While the Court has no doubt the parties could educate a jury on these subjects at trial, the complexity of this case unavoidably enhances the plaintiff's risk of losing at trial. Therefore, this factor weighs in favor of approving the settlement.

Risk of maintaining class action status. To facilitate class notice and class settlement, the Court conditionally certified a class and subclass of Dedicated Service Directors. *See* Fed. R. Civ. P. 23(a), (b)(3). But if the settlement fails, Williams worries that Bank of America might attempt to decertify the class based on an asserted lack of commonality and predominance. For instance, Williams concedes that minor variations in the class members' individual duties and tasks could cause major differences in the application of the "administrative exemption" test. *See Nguyen v. BDO Seidman, LLP*, No. SACV 07-01352 JVS, 2009 WL 7742532, at *5 (C.D. Cal. July 6, 2009) (denying class certification). Therefore, the risk of decertification in this fact-intensive wage-and-hour case weighs in favor of settlement approval.

Amount of the settlement. The settlement requires Bank of America to pay $1.9 million. That amount will be allocated to class members who opt in, class counsel for attorney fees and costs, the claims administrator, Williams as class representative, and the LWDA as follows:

Recipient	Amount	Percentage of Total
Class Members	$1,369,000	72%
Class Counsel Fees	$475,000	25%
Claims Administrator	$16,000	0.8%
LWDA Penalties	$15,000	0.8%
Class Representative	$15,000	0.8%

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Class Counsel Costs	$10,000	0.5%

Williams previously estimated a potentially verdict value of $5 to 6 million in total, so the proposed settlement amount represents about 30 to 40 percent recovery. And based on the current number of claims, each class member will receive around $17,000. (Mot. for Approval, Dkt. No. 22, PageID 246.) Given the significant risks of class-action litigation just described, this sizable settlement weighs in favor of approval. *See Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

Extent of discovery completed. The parties have completed extensive discovery in similar litigation regarding a different facility. *See Brawner v. Bank of America*, No. 3:14-CV-02702-LB, 2016 WL 161295 (N.D. Cal. Jan. 14, 2016). In the apparent spirit of good faith, Bank of America has provided Williams with all pertinent information requested, the contact information for all class members, and critical information regarding the class members' weekly hours. Because the parties were able to make an informed settlement decision, this factor weighs in favor of approving the settlement.

Experience and views of counsel. As just described, the parties' counsel have previously settled a similar wage-and-hour matter. Counsel have decided that a similar settlement would be beneficial here. For instance, based on his 35-year experience in employment matters, class counsel "whole-heartedly" recommends approval and declares that this settlement serves the "best interests of the class members." (Mot. for Approval, Dkt. No. 22, PageID 247; Clapp Decl., Dkt. No. 22-1, PageID 252–53.) This factor accordingly weighs in favor of approving the settlement.

Presence of a government participant. There aren't any government participants in this case, but some of the claims were brought under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code § 2698 *et seq*. It's worth noting that the parties have allocated $15,000 in total civil penalties to the LWDA. *See* Cal. Lab. Code § 2699(i). The LWDA received notice of the settlement agreement, and hasn't objected. *See* Cal. Lab. Code § 2699(l)(2).

Reaction of class members to the proposed settlement. The class has responded well to the proposed settlement. The class administrator reports that no member of the class has filed an opposition to the agreement, no member of the class has opted out, and 81 of the 108 class members have submitted claim forms. (Mot. for Approval, Dkt. No. 22, PageID 239, 247; Osterlund Decl., Dkt. No. 23-2, PageID 289–91.) This factor weighs in favor of approving the settlement.

Possibility of collusion. There aren't any signs of collusion in this case. The settlement agreement was reached through arms-length negotiations, and the parties hired a well-respected private mediator, Mark Rudy, to facilitate that process. (Mot. for Final Approval, Dkt. No. 22, PageID 243, 246–47; Clapp Decl., Dkt. No. 22-1, PageID 252.) So this factor favors approval of the settlement as well.

Adequacy of notice to the class. Adequate notice is critical. *See* Fed. R. Civ. P. 23(c)(2). Upon reviewing the proposed notice, the Court initially expressed concerns about omissions, typos, and readability. But Williams corrected those errors, along with a few other nits, and the Court then approved class notice. In October 2016, the claims administrator sent notice to each class member by first-class mail to their most recent address, established a class action website, and set up a toll-free telephone class action response service. (Osterlund Decl., Dkt. No. 23-2, PageID 289–91.) To date, 75 percent of the class members claims have filed claims. (*Id.*) These efforts have ensured that all class members received adequate notice.

"[I]n light of the strong judicial policy that favors settlements," *see Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992), and considering all of the *Churchill* factors, the Court is convinced that this agreement is fundamentally fair, reasonable, and adequate.

2. ATTORNEY FEES AND COSTS & CLASS REPRESENTATIVE AWARD

It's well established that those who "create, discover, increase or preserve a fund to which others also have a claim [are] entitled to recover the costs of [their] litigation." *See Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). Indeed, Federal Rule of Civil Procedure 23(h) says that "[i]n a certified class action, the court may award reasonable attorney[] fees and nontaxable costs that are authorized by law or by the parties' agreement."

And class representative incentive awards are also "fairly typical" in such cases. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009).

Much like evaluating the adequacy of a settlement, district courts consider several factors to determine whether fee-and-cost awards are reasonable. These factors include: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; (5) awards made in similar cases; and (6) a comparison of the percentage and lodestar methods. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002); *see also In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008).

Here, class counsel seeks $475,000 in fees and $10,000 in costs, while Williams seeks costs and a class representative award of $15,000 in total. (Mot. for Fees, Dkt. No. 23, PageID 262.) The Court considers each *Vizcaino* factor in turn.

Results achieved. Class counsel negotiated a sizable settlement fund, despite the complex legal doctrine and uncertain factual issues at play. The total settlement came to $1.9 million, and each class member will receive around $17,000. That's a 30 to 40 percent recovery of the estimated verdict value. Class counsel was able to achieve these results within a years' time, through efficient lawyering. This factor weighs in favor of granting attorney fees and costs.

Risk of litigation. Settlements circumvent risk. *See Linney*, 151 F.3d at 1242 ("[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." (internal quotation marks omitted)). And as discussed, the resolution of these overtime claims and the administrate exemption defense are far from certain. Moreover, Bank of America ostensibly removed this case for it's own advantage, and to impose the rigor of federal practice. Continued litigation presents the class members with a risk of decertification and loss on the merits, so this factor weighs in favor of granting fees and costs.

Skill required and the quality of work. The prosecution and management of a complex wage-and-hour class action requires unique legal skills and abilities. This case was no exception. Class counsel has marshaled his legal ability and negotiation skills to efficiently get a large award

for each class member. This factor weighs in favor of granting fees and costs.

Contingent nature of the fee. Contingent-fee arraignments assure "adequate representation for plaintiffs who could not otherwise afford competent attorneys," *see Omnivision*, 559 F. Supp. 2d at 1047, but present acute litigation risks. Here, class counsel worked entirely on a contingent basis, advancing about $285,000 in hourly fees and $13,000 in costs. (Clapp Decl., Dkt. No. 23-1, PageID 277.) This factor weighs in favor of granting fees and costs.

Similar awards. Fee awards are ordinarily equal to 25 percent of the settlement fund, *see Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000), and class counsel seek that precise figure. Given the all of the circumstances of the case, just described, class counsel's reasonable request weights in favor of granting fees and costs.

Percentage of recovery versus lodestar. A district court has discretion in common fund cases to apply either the "percentage-of-the-fund" or "lodestar" method. *Vizcaino*, 290 F.3d at 1047. Where the "primary basis" of the fee award is the percentage method, the lodestar is a useful "cross-check" on the reasonableness of a given fee request. *Id.* at 1050. Here, class counsel seeks a "benchmark" fee-award of $475,000. (Mot. for Fees, Dkt. No. 23, PageID 263.) The lodestar amount in this case is around $284,000. (*Id.* at 266.) The difference between those two figures is a modest multiplier of 1.6x. (*Id.* at 267.) Given class counsel's efficient prosecution of this case on a contingent-fee basis, the Court finds that the benchmark fee-request is not unreasonable.

Award for class representative. Williams, the sole named plaintiff, seeks $15,000 in total costs and as an incentive award. (*Id.* at 267–68.) Class counsel represents that Williams devoted countless hours to the prosecution of this case—from providing evidence, to assisting with litigation strategy, to communicating with putative class members, to engaging in mediation, to assisting in preparation of motions, and assuming financial risk. (*Id.*; Clapp. Decl., Dkt. No. 23-1, PageID 277-78.) No claimants have objected. The Court therefore approves the request costs and an incentive award.

3. DISPOSITION

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This shall be the final order of the Court. If the parties require additional release language, then they may submit a short and plain proposal, along with a simple proposed judgment.

Consistent with the foregoing, the Court **GRANTS** the motions for final approval of the class action settlement, for attorney fees and costs, and for a class representative award. (Dkt. Nos. 22, 23.)

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