

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Kabasele v. Ulta Salon, Cosmetics & Fragrance, Inc.

Kabasele · No. 2:21-cv-01639 WBS CKD · Decided March 14, 2023

OPINION

Kabasele v. Ulta Salon, Cosmetics & Fragrance, Inc.

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

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12 DORCAS-COTHY KABASELE, No. 2:21-cv-01639 WBS CKD

an individual,1 13 Plaintiff,

14 ORDER

v. 15

ULTA SALON, COSMETICS &

16 FRAGRANCE, INC.; and DOES 1-100, inclusive, 17 Defendant. 18 19 ----oo0oo---- 20 A

hearing on this unopposed motion for preliminary 21 approval of class settlement was held on

March 6, 2023. During 22 oral argument, plaintiff’s counsel identified an error in the 23 briefing,

which indicated that there were approximately 118,000 24 putative class members. In actuality,

there are approximately 25 26 1 Although the caption on the operative complaint refers 27 to

plaintiff only as “an individual,” plaintiff asserts claims both individually and on behalf of

similarly situated Ulta 28 employees. 1 18,000 putative class members. Because the court had

based its 2 initial review of the motion on the incorrect assumption of 3 118,000 class members,

the court declined to hear further oral 4 argument at that time. The court now explains its concerns

based 5 on the corrected number of class members and the briefing 6 provided thus far. 7

Plaintiff’s counsel’s estimate of the maximum possible 8 value of the class claims is \$26,379,927.

(See Decl. of Robert 9 J. Wasserman (“Wassmerman Decl.”) (Docket No. 34-2) ¶ 13.) 10 Counsel

estimates an additional \$8,950,000 in PAGA penalties. 11 (Id. ¶ 41.) The combined estimated

value of the wage and hour 12 and PAGA claims is \$35,329,927. Although counsel explains some

13 of the assumptions used in certain calculations, the figures 14 provided are largely conclusory.

15 Plaintiff’s counsel next discusses defendant’s 16 potential arguments and defenses. (See id. ¶¶

30-38.) Based on 17 the weaknesses of the case, plaintiff’s counsel provides a 18 discounted,

“realistic” value of the claims. Counsel discounts 19 the minimum wage, overtime, and business

reimbursement claims by 20 50%; and the unpaid meal and rest break premium, wage statement,

21 and waiting time claims by 75%. (Id. ¶ 27.) Counsel's 22 discounted calculations result in a total of \$7,474,362 in 23 "realistic" recovery, or 28% of the maximum possible recovery. 24 (See id.) Counsel then makes the leap from \$7,474,362 in 25 "realistic" recovery to the gross settlement amount of 26 \$1,500,000. Counsel relies on the same explanations, such as 27 they are, relating to defendant's potential defenses and 28 arguments and the risks of litigation, but otherwise does not 1 explain what calculations or reasoning were used to arrive at 2 this figure. (See id. ¶¶ 28, 39.) 3 The gross settlement amount of \$1,500,000 constitutes 4 only 4.2% of the estimated maximum recovery.² Even looking 5 solely at the non-PAGA portion of the settlement, the gross 6 settlement amount constitutes 5.5% of the estimated maximum 7 damages for the wage and hour claims.³ Both percentages are 8 lower than is typically approved, and therefore give the court 9 pause, particularly in light of the conclusory explanations 10 offered by counsel. See *Cavazos v. Salas Concrete, Inc.*, No. 11 1:19-cv-00062 DAD EPG, 2022 WL 2918361, at *6 (E.D. Cal. July 25, 12 2022) (collecting cases) (noting that settlement constituting 13 5.8% of maximum exposure was "below the general range of 14 percentage recoveries that California courts-- including this one- 15 -have found to be reasonable," but granting preliminary approval 16 because "a larger recovery . . . would likely not be possible due 17 to defendant's financial condition"); *Almanzar v. Home Depot 18 U.S.A., Inc.*, No. 2:20-cv-0699 KJN, 2022 WL 2817435, at *12 (E.D. 19 Cal. July 19, 2022) (denying preliminary approval because 20 proposed settlement including 8% of projected value of non-PAGA 21 wage and hour claims was below the range typically approved and 22 plaintiff needed to "better explain the reasonableness" of the 23 proposed recovery); *Hunt v. VEP Healthcare, Inc.*, No. 16-cv-04790 24 VC, 2017 WL 3608297, at *1 (N.D. Cal. Aug. 22, 2017) (denying 25 26 2 This figure results from \$1,500,000 divided by \$35,329,927. 27 3 This figure results from \$1,450,000 divided by 28 \$26,379,927. 1 preliminary approval of settlement constituting 4.3% of maximum 2 possible exposure, noting that "[i]f a defendant is to receive a 3 discount of this magnitude, there must be good reasons why," 4 which "must be explained thoroughly at the preliminary approval 5 stage . . . to allow the district court to carefully evaluate the 6 strength of the claims, the risks of litigating those claims all 7 the way through, and the value of the relief each class member 8 will receive from the settlement"); *O'Connor v. Uber Techs., 9 Inc.*, 201 F. Supp. 3d 1110, 1129, 1132, 1132 n.18, 1135 (N.D. 10 Cal. 2016) (collecting cases) (denying preliminary approval of 11 settlement constituting 5% of the value of all claims and 10% of 12 the value of non-PAGA wage and hour claims, which was on "the low 13 end of reasonable recovery"); *Balderas v. Massage Envy 14 Franchising, LLC*, No. 12-cv-06327 NC, 2014 WL 3610945, at *5 15 (N.D. Cal. July 21, 2014) (collecting cases) (because gross 16 settlement amount constituting 8% of the maximum possible 17 recovery was "especially low," the court stated that counsel 18 needed to provide additional explanation for the settlement 19 amount at final approval). 20 As counsel has not provided any meaningful explanation 21 or supporting data for his calculation of defendant's maximum 22 possible exposure, the court has no means of evaluating that 23 estimate for

purposes of approval. While counsel attempts to 24 explain the reasoning behind counsel's two discounted 25 calculations, counsel does not sufficiently "evaluate the 26 strength or weakness of defendants' positions." See *Eddings v. 27 DS Servs. of Am., Inc.*, No. 15-cv-02576 VC, 2016 WL 3390477, at 28 *1 (N.D. Cal. May 20, 2016); see also *Hunt*, 2017 WL 3608297, at ene IE OR IEE ERD ISDE RENEE OSE EEO

1 *]1 (to receive preliminary approval, counsel must provide 2 "careful analysis of the claims and the strength or weakness of 3 any potential defenses"). As such, the court is unable to 4 evaluate whether the steep discounts applied to the claims are 5 reasonable. 6 "Balancing the class's potential recovery against the 7 amount offered in settlement is perhaps the most important factor 8 to consider in preliminary approval, not a hollow exercise in 9 | which the Court blindly accepts the parties' unsupported 10 assertions.'" *Beltran v. Olam Spices & Vegetables, Inc.*, No. 11 1:18-cv-01676 SAB, 2020 WL 2850211, at *8 (E.D. Cal. June 2, 12 2020) (quoting *Haralson v. U.S. Aviation Servs. Corp.*, 383 F.

13 Supp. 3d 959, 970 (N.D. Cal. 2019)). Accordingly, the court 14 requires more information to assess whether the proposed 15 settlement is fair, reasonable, and adequate for purposes of 16 | preliminary approval. 17 IT IS THEREFORE ORDERED that counsel on both sides 18 shall simultaneously submit supplemental briefing addressing the 19 above concerns on or before April 7, 2023. A further hearing 20 | will be held on April 17, 2023 at 1:30 p.m. in Courtroom 5. 21 Dated: March 14, 2023 tet, . ak 4 / /

22 WILLIAM B. SHUBB

53 UNITED STATES DISTRICT JUDGE

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