UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

FELIX PEREZ, an individual, on his own behalf and on behalf of all others similarly situated,

Plaintiff,

v.

CVS HEALTH CORPORATION, et al.,

Defendants.

No. 1:19-cv-00449-DAD-BAM

ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND AWARDING ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARD

(Doc. Nos. 71, 72, 73)

This matter came before the court on June 7, 2021 for a hearing on the unopposed motions for final approval of a class action settlement, for an award of attorneys' fees and costs, and for an incentive award for plaintiff, filed on behalf of plaintiff Felix Perez on May 10, 2021. (Doc. Nos. 71, 72, 73.) Attorney Michael Bradley appeared on behalf of plaintiff and the settlement class. Attorney Jennifer Zargarof appeared on behalf of defendants CVS Health Corporation and CVS Pharmacy Inc. (collectively, "CVS" or "defendants"). For the reasons set forth below, the court will grant the final approval of the class action settlement and will award attorneys' fees, costs, and incentive payments.

BACKGROUND

The court previously granted preliminary approval of the settlement in this action on December 23, 2020, when it adopted the findings and recommendations of the assigned

magistrate judge. (Doc. No. 70.) Pertinent factual details may be found in those findings and recommendations and will not be repeated here. (*See* Doc. No. 66.)

Plaintiff filed this putative class action in Stanislaus County Superior Court on January 16, 2019, alleging that his employer CVS violated several provisions of the California Labor Code by not compensating him and other distribution center employees for the time they spent waiting to undergo security checks of their personal bags at the beginning and end of their shifts and when they left and returned from meal and rest breaks. (Doc. No. 1-3 at 10–12, 14.) On April 5, 2019, defendants removed this case to this federal court. (Doc. No. 1.)

On March 12, 2020, defendants filed a notice of settlement (Doc. No. 27) and on May 14, 2020, plaintiff filed a motion for preliminary approval of the parties' class action settlement (Doc. No. 41). However, due to concerns that plaintiff had not sufficiently established the basis for the court's subject matter jurisdiction over this action in his second amended complaint or his proposed third amended complaint, the court ordered plaintiff to show cause why this case should not be dismissed for lack of subject matter jurisdiction. (Doc. No. 52.) The court also denied plaintiff's motion for preliminary approval without prejudice to its refiling. (*Id.* at 7.) Thereafter, the parties each filed a response addressing the court's concerns (Doc. Nos. 53, 54), and on June 19, 2020, the court discharged the order to show cause and directed plaintiff to file a third amended complaint with corrected jurisdictional allegations. (Doc. No. 55.) On June 24, 2020, plaintiff filed the operative third amended complaint, in which plaintiff added a claim under the Private Attorney General Act ("PAGA"), California Labor Code §§ 2698 *et seq*. (Doc. No. 56 at 1, 29.)

On May 10, 2021, plaintiff filed the pending renewed motion for final approval of the parties' class action settlement (Doc. No. 71), motion for attorneys' fees and costs (Doc. No. 72), and motion for an incentive award for plaintiff (Doc. No. 73). As of the filing of plaintiff's pending motions, no class members have requested exclusion from the settlement or objected to the settlement. (Doc. No. 71-1 at 11–12.) As of the final approval hearing on June 7, 2021, no objections to the settlement have been received or filed with the court. Moreover, no class members appeared at the final approval hearing.

FINAL CERTIFICATION OF SETTLEMENT CLASS

In adopting the findings and recommendations recommending preliminary approval of the parties' class action settlement, the court concluded that the magistrate judge properly analyzed the class certification factors and found certification warranted. (Doc. No. 70.) Because no additional issues concerning class certification have been raised, the court finds no basis to revisit any of that analysis. The court finds that final class certification in this case is appropriate.

The following class of an estimated 3,515 employees (the "Class Members") is therefore certified for settlement purposes:

> All CVS non-exempt employees who worked in California distribution centers between January 16, 2015 and August 15, 2020 inclusive (the "Class Period").

(Doc. Nos. 58-1 at 2–3; 66 at 2–3; 70 at 2.)

In addition, and for the reasons stated in the findings and recommendations (Doc. No. 66 at 4), plaintiff Felix Perez is confirmed as the class representative, attorneys Marcus J. Bradley and Kiley Grombacher of the law firm Bradley Grombacher, LLP are confirmed as class counsel, and ILYM Group, Inc. ("ILYM") is confirmed as the settlement administrator.

FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Class actions require the approval of the district court prior to settlement. Fed. R. Civ. P. 23(e). Federal Rule 23 requires the district court to determine whether a proposed settlement is fundamentally fair, adequate, and reasonable. *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1026 (9th Cir. 1998), *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011) (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)). The settlement as a whole, rather than the individual component parts, is examined for overall fairness. *Hanlon*, 150 F.3d at 1026.

To approve a settlement, a district court must: (i) ensure notice is sent to all class members; (ii) hold a hearing and make a finding that the settlement is fair, reasonable, and adequate; (iii) the parties seeking approval file a statement identifying the settlement agreement; and (iv) class members be given an opportunity to object. Fed. R. Civ. P. 23(e)(1)–(5). The amended settlement agreement in this action was previously filed on the court's docket (*see* Doc.

No. 74, Ex. 1), and class members have been given an opportunity to object thereto but, as noted, none have done so. The court now turns to the adequacy of notice and its review of the settlement following the final fairness hearing.

A. Notice

"Adequate notice is critical to court approval of a class settlement under Rule 23(e)." *Hanlon*, 150 F.3d at 1025; *see also Silber v. Mabon*, 18 F.3d 1449, 1453–54 (9th Cir. 1994) (noting that the court need not ensure all class members receive actual notice, only that "best practicable notice" is given); *Winans v. Emeritus Corp.*, No. 13-cv-03962-HSG, 2016 WL 107574, at *3 (N.D. Cal. Jan. 11, 2016) ("While Rule 23 requires that 'reasonable effort' be made to reach all class members, it does not require that each individual actually receive notice."). "Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980)). Any notice of the settlement sent to the class should alert class members of "the opportunity to opt-out and individually pursue any state law remedies that might provide a better opportunity for recovery." *Hanlon*, 150 F.3d at 1025. It is important for class notice to include information concerning the attorneys' fees to be awarded from the settlement because it serves as "adequate notice of class counsel's interest in the settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 963 n.15 (9th Cir. 2003) (quoting *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993)) (noting that where the notice references attorneys' fees only indirectly, "the courts must be all the more vigilant in protecting the interests of class members with regard to the fee award").

Here, the court reviewed the class notice that was proposed when the parties sought preliminary approval of the settlement and found it to be inadequate because it lacked meaningful information about the terms of the settlement, such as the amount plaintiff would seek from the court for an award of attorneys' fees and costs, and because there were inconsistent references to a settlement website. (Doc. No. 68.) Thus, the court directed the parties to file supplemental briefing to address the court's concerns, and the parties did so on December 21, 2020. (Doc. No.

69.) Plaintiff attached a revised class notice as an exhibit to class counsel's declaration in support of the parties' supplemental brief. (Doc. No. 69-1 at 6–14.) Thereafter, the court reviewed that revised class notice and found it to be adequate. (Doc. No. 70.)

Following the grant of preliminary approval, counsel for defendants provided the settlement administrator ILYM with the last known mailing addresses for each of the 3,515 proposed class members. (Doc. Nos. 71-1 at ¶ 5.) ILYM then conducted a National Change of Address search to update the list of proposed class members with current addresses and mailed the court-approved notice packet to each of the 3,515 proposed class members. (*Id.* at ¶¶ 6–7.) Of the 3,515 initial mailings, 139 were returned as undeliverable. (*Id.* at ¶ 8.) Of those 139 returned notice packets, 2 were returned with a forwarding address and ILYM states that they promptly re-mailed the notice packet to those forwarding addresses. (*Id.*) ILYM performed a computerized skip trace on the 137 notice packets returned without a forwarding address to locate an updated address for each, and they were able to do so for 104 of them and re-mailed notice packets to those updated addresses. (*Id.*) As of May 10, 2021, a total of 33 notice packets have been deemed undeliverable because the administrator was unable to find a deliverable address. (*Id.* at ¶ 10.) Thus, of the 3,515 total class members, 3,482 proposed class members, or 99%, are estimated to have received actual notice of the settlement.

Given the above, the court concludes that adequate notice was provided to the class here. *See Silber v. Mabon*, 18 F.3d 1449, 1453–54 (9th Cir. 1994) (courts need not ensure all class members receive actual notice, only that "best practicable notice" is given); *Winans v. Emeritus Corp.*, No. 13-cv-03962-HSG, 2016 WL 107574, at *3 (N.D. Cal. Jan. 11, 2016) ("While Rule 23 requires that 'reasonable effort' be made to reach all class members, it does not require that each individual actually receive notice."). The court accepts the reports of the settlement administrator and finds that sufficient notice has been provided satisfying Rule 23(e)(1).

B. Final Fairness Determination

On June 7, 2021, the court held a final fairness hearing, at which class counsel and defense counsel appeared by video conferencing. No class members, objectors, or counsel representing the same appeared at that hearing. For the reasons explained below, the court now

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