

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FEDERICO VILCHIZ VASQUEZ, et al.,
Plaintiffs,
v.
USM INC, et al.,
Defendants.

Case No. 13-cv-05449-JD

**ORDER GRANTING PRELIMINARY
APPROVAL OF SETTLEMENT**

Re: Dkt. No. 121

This putative class action alleges that Ross and its janitorial contractor, USM, violated California Labor Code section 2810 and other California laws, primarily by entering into inadequately-funded subcontracts with the janitorial subcontractors who employed the putative class members to provide “daily maintenance” janitorial services at Ross Dress for Less and “dd’s DISCOUNTS” stores in California. The parties have reached a proposed settlement, and ask the Court to preliminarily approve it. After holding a hearing and requesting certain changes to the settlement -- which the parties have made -- the Court grants preliminary approval and certifies the class for purposes of preliminary approval.

BACKGROUND

This case was removed to this Court from California state court on November 22, 2013. See Dkt. No. 1. Several months of discovery followed, during which defendants produced over 116,000 pages of documents, presented six witnesses for deposition under Federal Rule of Civil Procedure 30(b)(6), deposed named plaintiffs, and propounded and responded to requests for document production and interrogatories. See Ho Decl. ¶ 10, Dkt. No. 121-1. On October 24, 2014, the plaintiffs filed a motion for class certification. See Dkt. No. 84-1. After the motion was fully briefed (including the submission of a number of expert reports from both sides), and one

1 day before it was set for hearing, the parties informed the Court that they had agreed to a
2 settlement. *See* Dkt. No. 117.

3 The basic terms of the proposed settlement are straightforward. Defendants have agreed to
4 pay \$1,000,000 into a non-reversionary settlement fund, which will be the source for settlement
5 administration costs (up to a maximum of \$125,000), a \$5,000 payment under California's Private
6 Attorney General Act, and monetary relief for the class -- including any service payments to the
7 named plaintiffs, to the extent the Court later approves them. *See* Consent Decree § VII.A, Ho
8 Decl. Ex. A, Dkt. No. 121-1. Importantly, attorney's fees will *not* come out of the settlement
9 fund; they will be paid by defendants separately.

10 The amount of monetary relief each class member gets will depend on the amount of
11 information he or she provides to the settlement administrator, but even those who take no action
12 at all will receive some money. All members of the class will receive at least an "Automatic
13 Payment" of \$50-\$250. *See id.* § VII.C. Those who submit claim forms listing their contact
14 information and information about the stores where they provided daily maintenance, the dates
15 they provided service, and the subcontractors who employed them will instead receive "Minimum
16 Claimed Payments" up to \$575. *See id.* Finally, those who submit claim forms that additionally
17 include tax information will get an "Additional Claimed Payment" of up to \$16,500, determined
18 by taking the portion of the settlement fund available for monetary relief for class members,
19 subtracting the Automatic Payments and Minimum Claimed Payments, and dividing it up pro rata
20 based on the number of store months worked. *See id.* Any amount associated with uncashed
21 checks will be paid half to Centro Legal de la Raza, one quarter to the Employee Rights Center,
22 and one quarter to California Rural Legal Assistance, Inc. *See id.* § VII.F.

23 The settlement also provides for injunctive relief, which is described in section VIII of the
24 consent decree. Among other things, the injunctive relief provision requires USM to randomly
25 review a portion of its subcontractors to determine whether they have paid their employees the
26 minimum wage and overtime, and to either ensure that the subcontractor has paid the shortfall or
27 to pay the shortfall itself. *See id.* § VIII.A. Moreover, USM is to ensure that its subcontractors
28 sent their employees a "Notice of Rights," and must report the results of its reviews to class

1 counsel at the end of each quarter. *See id.*

2 The scope of the released claims is as follows:

3 All Eligible Claimants shall be deemed to have released Defendants
4 from any and all claims arising out of the facts as alleged in the
5 Second Amended Complaint regarding the provision of Daily
6 Maintenance Services at a Ross store in California in connection
7 with the performance of a contract or agreement between USM and
8 Ross for the provision of Daily Maintenance Services at a Ross store
9 in California at any time from September 5, 2009 until February 10,
2015, including, but not limited to, any claim under any federal,
state or local statute including, but not limited to the Fair Labor
Standards Act, the California Business and Professions Code §
17200 et seq.; any provision of the California Labor Code including,
but not limited to, Labor Code § 2810, and any other federal, state or
local law or ordinance relating to the payment of wages.

10 *Id.* § VI.B.

11 Notice will be sent by mail to all known addresses of class members, as well as to current
12 employees. *See id.* § VIII.A ¶ 14. The settlement also provides for publication notice via radio,
13 print media, and a website. *See id.* VII.B.2. Class members will have 120 days to opt out or
14 object. *See* Addendum to Consent Decree ¶ 1, Dkt. No. 133-1.

15 **DISCUSSION**

16 Although the Ninth Circuit has not set forth a test for granting preliminary approval of a
17 settlement, some prior decisions from this district have looked to whether the settlement “falls
18 within the range of possible approval” or “within the range of reasonableness.” *See In re High*
19 *Tech Employee Antitrust Litig.*, No. 11-cv-02509-LHK, 2014 WL 3917126, at *3 (N.D. Cal. Aug.
20 8, 2014) (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007));
21 *see also* Alba Conte et al., *Newberg on Class Actions* § 11.25, at 11-91 (4th ed. 2002). The Court
22 finds that the proposed settlement meets that standard. It provides for a non-trivial recovery for all
23 class members, including those who do not affirmatively mail in a claim form. Moreover, the
24 briefing and expert reports the parties submitted in connection with plaintiffs’ motion for class
25 certification suggests that plaintiffs’ case faced significant risks, including the ascertainability of
26 the class, the reliability of the janitorial subcontractors’ time sheets in measuring the number of
27 hours their employees worked per day, and the number of violations subject to the statutory
28 damages provision in California Labor Code section 2810(g). For example, with respect to the

1 last issue, if defendants were to prevail in their claim that § 2810(g) only entitles plaintiffs at most
 2 to statutory damages for two violations per class member (one with respect to Ross-USM
 3 agreement and one with respect to the agreement between USM and the relevant class member's
 4 subcontractor), rather than additional violations each month, then damages would be
 5 approximately \$1,200,000 -- \$250 in statutory damages per contract × 2,400 class members × 2
 6 contracts -- not much higher than the \$1,000,000 settlement. It would be reasonable for class
 7 members to accept the settlement amount and the specified injunctive relief in light of these risks.
 8 The Court therefore preliminary approves the consent decree as fair, adequate, and reasonable.

9 Pursuant to Federal Rule of Civil Procedure 23(b)(2), the Court certifies an injunctive
 10 relief class for purposes of implementing the consent decree consisting of:

11 All persons currently providing Daily Maintenance Service at a Ross
 12 store in California in connection with the performance of a contract
 13 or agreement between USM and Ross for the provision of janitorial
 14 services.

15 Furthermore, pursuant to Federal Rule of Civil Procedure 23(b)(3), the Court certifies a monetary
 16 relief class for purposes of implementing the consent decree consisting of:

17 All persons who have provided Daily Maintenance Service at a Ross
 18 store in California in connection with the performance of a contract
 19 or agreement between USM and Ross for the provision of janitorial
 20 services from September 5, 2009 until February 10, 2015, except
 21 those who file a timely request to opt out of and be excluded from
 22 the monetary relief provisions of the Consent Decree.

23 In both cases, "Daily Maintenance Service" is defined as provided in the consent decree. *See*
 24 Consent Decree § III. The Court appoints Federico Vilchiz Vasquez, Jesus Vilchez Vasquez, Ada
 25 Cañez, Emigdio Mendez, Candelaria Hurtado, and Evelia Martinez as class representatives, and,
 26 pursuant to Federal Rule of Civil Procedure 23(g), appoints Goldstein, Borgen, Dardarian & Ho,
 27 Chavez & Gertler LLP, Legal Aid of Marin, and the Stanford Community Law Clinic, as class
 28 counsel for purposes of implementing the consent decree.


Finally, the Court approves the parties' proposed notice pursuant to Federal Rule of Civil
 Procedure 23(c)(2), as revised by the parties following the preliminary approval hearing. *See*
 Addendum to Proposed Consent Decree Exs. A, B, Dkt. No. 133-1.

The Court sets a final approval hearing pursuant to Federal Rule of Civil Procedure

1 23(e)(2) for September 23, 2015, at 10:30 a.m. Plaintiffs' motion for final approval and any
2 memorandum in support by defendants should be filed by September 9, 2015. Plaintiffs'
3 counsel's motion for attorney's fees and costs, and any motion for service awards to the class
4 representatives should be filed no later than 14 days before the deadline for class members to
5 object or opt out of the settlement.

6 **IT IS SO ORDERED.**

7 Dated: April 13, 2015

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12 JAMES DONATO
13 United States District Judge
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