

FILED
KERN COUNTY SUPERIOR COURT
3/16/2021
BY Taylor, Geena
DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

NATHAN PREISS and CAROLINE
VILLASANTI, on behalf of themselves, and
on behalf of other members of the general
public similarly situated;

Plaintiff,

v.

FIORE MANAGEMENT LLC a/k/a
CANDESCENT, LLC, a California limited
liability company; and DOES 1 through 100,
inclusive;

Defendants

Case No.: BCV-20-100930-DRL

Honorable David R. Lampe
Department 11

CLASS ACTION

**~~[PROPOSED]~~ ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: March 16, 2021
Hearing Time: 8:30 a.m.
Hearing Place: Department 11

Complaint Filed: April 8, 2020
FAC Filed: August 27, 2020
Jury Trial: None Set

1 The Court, having read the papers filed with regard to Plaintiffs’ Nathan Preiss and Caroline
2 Villasanti (“Plaintiffs,” “Plaintiff Preiss,” and “Plaintiff Villasanti”) motion for final approval of a
3 class action settlement and award of Class Counsel’s attorneys’ fees and litigation costs and Class and
4 PAGA Representative Enhancement Awards, and after hearing argument regarding the motion on
5 March 16, 2021, hereby FINDS AND ORDERS as follows:

6 This is a putative class action. Plaintiffs are former employees of Fiore Management, LLC
7 a/k/a Canndescent, LLC (“Defendant”). The operative complaint in the action asserts eight (8) causes
8 of action for wage and hour violations. Plaintiffs have brought this action on behalf of all non-exempt,
9 hourly employees who were employed by Defendant in the State of California, at any time, from April
10 8, 2016, through November 30, 2020 (“Class” and “Class Period”). There are four hundred twenty-
11 seven (427) Class Members.

12 On November 30, 2020, the Court preliminary approved the Proposed Order Granting
13 Preliminary Approval of Class Action Settlement (“Preliminary Approval”). Plaintiffs now moves for
14 Final Approval and Judgment.

15 Generally, “questions whether a settlement was fair and reasonable, whether notice to the class
16 was adequate, whether certification of the class was proper, and whether the attorney fee award was
17 proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple Computer, Inc.*
18 (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794.)

19 In determining whether a class settlement is fair, adequate and reasonable, the
20 trial court should consider relevant factors, such as “the strength of plaintiffs’
21 case, the risk, expense, complexity and likely duration of further litigation, the
22 risk of maintaining class action status through trial, the amount offered in
23 settlement, the extent of discovery completed and the stage of the proceedings,
the experience and views of counsel, the presence of a governmental
participant, and the reaction of the class members to the proposed settlement.

24 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk*, *supra*, 48
25 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d
26 615, 624.)

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1 “The list of factors is not exclusive and the court is free to engage in a balancing and weighing
2 of factors depending on the circumstances of each case.” (*Wershba v. Apple Computer, Inc., supra*, 91
3 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the extent
4 necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching
5 by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
6 reasonable and adequate to all concerned.” (*Ibid., quoting Dunk, supra*, 48 Cal.App.4th at p. 1801 and
7 *Officers for Justice v. Civil Service Com’n, etc., supra*, 688 F.2d at p. 625, internal quotation marks
8 omitted.)

9 The burden is on the proponent of the settlement to show that it is fair and
10 reasonable. However “a presumption of fairness exists where: (1) the
11 settlement is reached through arm’s-length bargaining; (2) investigation and
12 discovery are sufficient to allow counsel and the court to act intelligently; (3)
13 counsel is experienced in similar litigation; and (4) the percentage of objectors
14 is small.” (*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245, *citing Dunk, supra*, 48
15 Cal.App.4th at p. 1802.)

16 Although [t]here is usually an initial presumption of fairness when a proposed
17 class settlement ... was negotiated at arm’s length by counsel for the class, ...
18 it is clear that the court should not give rubber-stamp approval. Rather, to
19 protect the interests of absent class members, the court must independently and
20 objectively analyze the evidence and circumstances before it in order to
21 determine whether the settlement is in the best interests of those whose claims
22 will be extinguished. To make this determination, the factual record before the
23 ... court must be sufficiently developed... . The proposed settlement cannot be
24 judged without reference to the strength of plaintiffs’ claims. The most
25 important factor is the strength of the case for plaintiffs on the merits, balanced
26 against the amount offered in settlement. The court must stop short of the
27 detailed and thorough investigation that it would undertake if it were actually
28 trying the case, but nonetheless it must eschew any rubber stamp approval in
favor of an independent evaluation.

(*Kullar, supra*, 168 Cal.App.4th at p. 130, internal citations and quotation marks omitted.)

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1 Under the terms of the settlement, Defendant will pay a Maximum Settlement Amount up to
2 \$600,000, which includes (1) Class Counsel’s attorneys’ fees in the amount of \$200,000, which is
3 thirty-three and one-third percent (33 1/3%) of the Maximum Settlement Amount; (2) reimbursement
4 of Class Counsel’s litigation costs in the amount of \$13,134.30; (3) Class and PAGA Representative
5 Enhancement Awards in the amount of \$10,000 to each Plaintiff; (4) payment in the amount of \$7,200
6 to Simpluris, Inc. (“Simpluris”) for claims administration costs; and (5) the amount of \$7,500 to the
7 California Labor and Workforce Development Agency (“LWDA”) for its portion of the Private
8 Attorney General Act (“PAGA”) penalties.

9 As noted in the Preliminary Approval, the Settlement Agreement is entitled to a presumption
10 of fairness. In their moving papers, Plaintiffs contend that the proposed Settlement Agreement was the
11 product of arms-length negotiations following extensive litigation and following extensive discovery
12 and exchange of documentation relating to the claims made by Plaintiffs. Moreover, the negotiations
13 were facilitated with the assistance of a skilled and experienced mediator, Steve Rottman.

14 With respect to the benefit to the Class Members, Plaintiffs’ moving papers indicate that the
15 average Settlement Award will be approximately \$1,017.46 under the proposed allocation, which is
16 based on the number of weeks worked by all Class Members during the Class Period. Settlement
17 Award checks shall remain valid and negotiable for one hundred eighty (180) calendar days from the
18 date of their issuance; upon the deadline to cash the Settlement Award checks, the checks will
19 automatically be cancelled by the Claims Administrator if not cashed by the Class Member within that
20 time, at which point the Class Member’s claim will be deemed void and of no further force or effect,
21 and the Class Member’s claims will remain released by the Settlement. Any residue from uncashed
22 Settlement Award checks after the expiration date will be paid out pursuant to Code of Civil Procedure
23 section 384(b)(3) to Koreatown Immigrant Workers Alliance, with it being allocated this unpaid cash
24 residue under the doctrine of *cy pres*.

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1 The Plaintiffs have explained the risks and costs associated with continuing with the litigation
2 and the benefits conferred upon Class Members in the form of immediate compensation. Plaintiffs'
3 have satisfactorily assessed the maximum value of the claims and of the reasonableness of the
4 discount accepted in the settlement in light of these risks. Finally, the Declaration of the Claims
5 Administrator, Norman Alcantara, states that the Notice of Pendency of Class Action Settlement and
6 Hearing Date for Final Court Approval ("Class Notice") and Claim Form (collectively, they are
7 known as "Notice Packets") were sent to four hundred twenty-seven (427) Class Members, and there
8 were no objections to the Settlement Agreement. This is further proof of the fairness of the Settlement
9 Agreement. The Declaration of Class Counsel provides sufficient information about counsel's
10 experience in litigating class action lawsuits.

11 The Court also has an independent right and responsibility to review the requested attorneys'
12 fees and only award so much as it determines reasonable. (*See Garabedian v. Los Angeles Cellular*
13 *Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) The amount of attorney's fees requested by
14 Class Counsel is in the sum of \$200,000 is thirty-three and one-third percent (33 1/3%) of the
15 Maximum Settlement Amount created for the benefit of the Class Members and are supported by use
16 of the percentage-fee method and the lodestar method. According to the Declaration of Douglas Han,
17 Class Counsel collectively expended 441.3 hours with a total lodestar figure of \$264,307.50. Even
18 under the lodestar cross-check the requested fee is less than the lodestar. Considering the contingent
19 nature of the representation and the ongoing monitoring of the settlement administration, the requested
20 fee and hourly rates requested is justified. The Court finds that the fee request is reasonable, and it is
21 therefore approved.

22 The Court has also reviewed Class Counsel's declarations regarding the costs expended in the
23 prosecution of this litigation. Under the terms of the settlement, Plaintiffs may seek reimbursement of
24 up to \$15,000 in costs. The Court finds that Plaintiffs has expended \$13,134.30 in costs, and that such
25 costs were reasonable. Therefore, the Court approves the payment of \$13,134.30 in costs from the
26 Maximum Settlement Amount for the reimbursement of Class Counsel's litigation expenses.

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1 The rationale for making enhancement awards to named Plaintiffs is that they should be
2 compensated for the expense or risk they have incurred in conferring a benefit on other members of
3 the class. Such enhancement awards are appropriate if they are necessary to induce an individual to
4 participate in the suit. Criteria courts may consider in determining whether to make an incentive award
5 include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the
6 notoriety and personal difficulties encountered by the class representative; 3) the amount of time and
7 effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or
8 lack thereof) enjoyed by the class representative as a result of the litigation.

9 The Court has reviewed the Declarations of Plaintiff Preiss and Plaintiff Villasanti, which
10 outlines their involvement in the lawsuit. Given the risks inherent in service as class representatives,
11 the duration of the case and time involved, and the benefits created for the class, the Court approves
12 the Class and PAGA Representative Enhancement Awards in the amount of \$10,000 to each Plaintiff.

13 The Court has reviewed the Declaration of Norman Alcantara, the Claims Administrator from
14 Simpluris, the Court-approved Claims Administrator. The Court finds that notice was provided to the
15 Class pursuant to the preliminary approval order, and that notice was sufficient and that it satisfies due
16 process. Simpluris has discharged its duties to provide notice to the Class and approves a payment of
17 \$7,200 for its services in administering this settlement, including the mailing and remailing of
18 Settlement Awards according to the terms of the Settlement Agreement.

19 For the reasons set forth above, the Motion for Final Approval of Class Action Settlement and
20 Approval of Class Counsel's attorneys' fees and litigation costs and Class and PAGA Representative
21 PAGA Awards are GRANTED. The Claims Administrator is directed to carry out the terms of the
22 settlement agreement forthwith.

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1 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF THE
2 SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT 3.769, THE
3 COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS ORDER
4 AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE FINALITY OF THIS
5 MATTER, RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO ENFORCE THIS
6 ORDER, THE SETTLEMENT AGREEMENT, AND THE JUDGMENT THEREON.

7 IT IS SO ORDERED.

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10 DATED: _____

Signed: 3/16/2021 11:07 AM



HONORABLE DAVID R. LAMPE
SUPERIOR COURT JUDGE

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is arivera@justicelawcorp.com

On March 19, 21, I served the foregoing document described as

FINAL APPROVAL ORDER

for the following case: **Preiss v. Fiore Management LLC a/k/a Candescent, LLC**
LWDA/Court Case No.: **LWDA-CM-767764-20**
BCV-20-100930-DRL
Kern County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

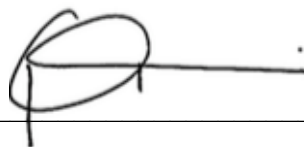
[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 19, 2021, at Pasadena, California.



Allana Rivera