

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AMERICAN ARBITRATION ASSOCIATION

CHRIS GARNER and ANDREW LINDEN,
on behalf of themselves, and on behalf of
other members of the general public similarly
situated;

Claimants,

vs.

INTER-STATE OIL COMPANY, a
California Corporation; and DOES 1 through
100, inclusive;

Respondents.

Case No.: 01-21-0003-6413

Arbitrator: Kenneth H. Yoon

CLASS ACTION

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

Hearing Date: December 17, 2021

Hearing Time: 10:00 a.m.

Hearing Place: AAA Teleconference

Complaint Filed: June 13, 2018

Arb Filed: April 28, 2021

Trial Date: None Set

1 Arbitrator Kenneth H. Yoon, having read the papers filed regarding Claimants Chris Garner
2 and Andrew Linden's ("Claimants") motion for final approval of a class action settlement and
3 receiving the Attorney Fee Award, the Cost Award, and Class Representative Enhancement Payments,
4 and after considering the papers submitted in support of the motion, including the Joint Stipulation and
5 Settlement Agreement ("Settlement Agreement," "Settlement," or "Agreement"), hereby FINDS AND
6 ORDERS as follows:

7 This is a putative class action. Claimants are former employees of Respondent Inter-State Oil
8 Co. ("Respondent"). The operative class action demand asserts nine (9) causes of action. Claimants
9 have brought this action on behalf of all hourly-paid or non-exempt employees who worked or have
10 worked for Respondent in California at any time during the Class Period ("Class"). The Class Period
11 is the time period from June 14, 2014 through June 30, 2021 ("Class Period"). There are three hundred
12 fifty-one (351) Class Members.

13 On September 20, 2021, the Arbitrator granted Preliminary Approval of the Settlement.
14 Claimants now move for Final Approval of Settlement.

15 The terms used in this Order of Final Approval and Judgment shall have the same meaning as
16 defined in the Settlement Agreement except as may otherwise be ordered.

17 The following Class is certified for purposes of settlement only: all hourly-paid or non-exempt
18 employees who worked or have worked for Respondent in California at any time during the period
19 from June 14, 2014 to June 30, 2021.

20 Generally, "questions whether a settlement was fair and reasonable, whether notice to the class
21 was adequate, whether certification of the class was proper, and whether the attorney fee award was
22 proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.*
23 (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794.)

24
25 In determining whether a class settlement is fair, adequate and reasonable, the
26 trial court should consider relevant factors, such as "the strength of Claimants'
27 case, the risk, expense, complexity and likely duration of further litigation, the
28 risk of maintaining class action status through trial, the amount offered in
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.

1 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, *citing Dunk*, *supra*, 48
2 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d
3 615, 624.)

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

12 The burden is on the proponent of the settlement to show that it is fair and
13 reasonable. However "a presumption of fairness exists where: (1) the
14 settlement is reached through arm's-length bargaining; (2) investigation and
15 discovery are sufficient to allow counsel and the court to act intelligently; (3)
counsel is experienced in similar litigation; and (4) the percentage of objectors
is small."

16 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245, *citing Dunk*, *supra*, 48
17 Cal.App.4th at p. 1802.)

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

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

28 ///

1 Under the terms of the Settlement, Respondent will pay \$3,000,000, which includes: (1) the
2 Administration Costs in the amount of \$6,950; (2) the Private Attorneys General Act 2004 ("PAGA")
3 Payment in the amount of \$100,000, seventy-five percent (75%) of which (\$75,000) shall be paid to
4 the California Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%)
5 of which (\$25,000) shall be part of the Net Settlement Amount distributed to the aggrieved employees
6 eligible to recover the PAGA Payment that consist of all hourly-paid or non-exempt employees who
7 worked or have worked for Respondent in California at any time during the Class Period between
8 February 13, 2019 through June 30, 2021 ("Eligible Aggrieved Employees," PAGA Timeframe," and
9 "PAGA Payment"), on a pro rata basis; (3) the Class Representative Enhancement Payments in the
10 sum of \$10,000 to each Claimant; (4) the Attorney Fee Award in the sum of \$1,200,000, which is forty
11 percent (40%) of the Gross Settlement Amount; (5) the Cost Award in the amount of \$26,613.56; (6)
12 Individual Settlement Shares payable to all Class Members who do not submit a valid and timely
13 request to exclude themselves from the Settlement ("Participating Class Members"); and (7)
14 Respondent's portion of payroll taxes on the wage portion of the Class Members' Individual
15 Settlement Shares in the amount of \$80,499.47. Class Members are not required to submit a claim
16 form to receive their Individual Settlement Shares. There is no reversion.

17 Funding of the Class Settlement will be made as follows:

18 No later than twenty-one (21) calendar days after the Effective Final Settlement Date,
19 Respondent shall deposit the Gross Settlement Amount of \$3,000,000 needed to pay the entire Gross
20 Settlement Amount by wiring the funds to the Settlement Administrator. ~~If there are objectors to the~~
21 ~~Settlement Agreement, payment shall be made within twenty-one (21) calendar days after the time to~~
22 ~~appeal has run or all appeals have been exhausted, whichever occurs later.~~ Respondent shall also at
23 this time provide any tax information that the Settlement Administrator may need to calculate each
24 Participating Class Members' Individual Settlement Share. Within fourteen (14) calendar days after
25 the Funding of the Settlement, the Settlement Administrator shall calculate and pay all payments due
26 under the Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award,
27 the Cost Award, the Class Representative Enhancement Payments, the PAGA Payment, and the
28

1 Administration Costs. The Settlement Administrator will forward a check for seventy-five percent
2 (75%) of the PAGA Payment to the LWDA for settlement of the PAGA claim.

3 As noted in the Preliminary Approval Order, the Proposed Settlement is entitled to a
4 presumption of fairness. In their moving papers, Claimants contend that the proposed Settlement was
5 the product of arms-length negotiations following extensive litigation, discovery, and exchange of
6 documentation relating to the claims made by Claimants. Moreover, the negotiations were facilitated
7 with the assistance of a skilled and experienced mediator, Jeffrey A. Ross.

8 With respect to the benefit to the Class Members, Claimants' moving papers indicate that the
9 *average* Individual Settlement Share will be approximately \$4,545.53 under the proposed allocation,
10 which is based on the number of days Class Members worked during the Class Period.

11 Participating Class Members must cash or deposit their Individual Settlement Share checks
12 within one hundred twenty (120) calendar days after the checks are mailed to them. If any checks are
13 not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement
14 Administrator will send a reminder postcard. If any checks remain uncashed or not deposited by the
15 expiration of the 30-day period after mailing the reminder notice, the Settlement Administrator will,
16 within one hundred fifty (150) calendar days after the checks are mailed, pay the amount of the
17 Individual Settlement Share to Legal Aid At Work.

18 The Claimants have explained the risks and costs associated with continuing with the litigation
19 and the benefits conferred upon Class Members in the form of immediate compensation. Claimants
20 have satisfactorily assessed the maximum value of the claims and of the reasonableness of the
21 discount accepted in the settlement considering these risks. Finally, the Declaration of the Settlement
22 Administrator, Taylor Mitzner, states that Notice of Class Action Settlement ("Class Notices") and the
23 Election Not To Participate or Opt-out Form ("Exclusion Form") (collectively, known as the "Notice
24 Packet") were mailed to three hundred fifty-one (351) Class Members. Phoenix Settlement
25 Administrators ("Phoenix") has not received any objections to or requests for exclusion from the
26 Settlement. This is further proof of the fairness of the Settlement. The Declaration of Douglas Han
27 provides sufficient information about Class Counsel's experience in litigating class action lawsuits.

28 ///

1 The Arbitrator also has an independent right and responsibility to review the requested
2 attorneys' fees and only award so much as it determines reasonable. (*See Garabedian v. Los Angeles*
3 *Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) The amount of the Attorney Fee
4 Award requested by Class Counsel in the sum of \$1,200,000 is forty percent (40%) of the common
5 fund created for the benefit of the Class Members and is supported by use of the percentage-fee
6 method. (*See Laffitte v. Robert Half International, Inc.* (2016) 1 Cal. 5th 480, 504.) According to the
7 Declaration of Douglas Han, Class Counsel collectively expended 1,958.7 hours with a total lodestar
8 figure of \$1,226,842.50. Even under the lodestar cross-check, the requested fee is below the lodestar,
9 resulting in a negative multiplier. Considering the contingent nature of the representation and the
10 ongoing monitoring of the settlement administration, the requested hourly rates and the fee is justified.
11 The Arbitrator finds that the fee request is reasonable, and it is, therefore, approved.

12 The Arbitrator has also reviewed Class Counsel's declarations regarding the costs expended in
13 the prosecution of this litigation. Under the terms of the Settlement Agreement, Claimants may seek
14 reimbursement of up to \$30,000 in litigation costs. The Arbitrator finds that Claimants have expended
15 \$26,613.56 in litigation costs and that such costs were reasonable. Thus, the Arbitrator approves the
16 payment of \$26,613.56 as the Cost Award from the Gross Settlement Amount for the reimbursement
17 of Class Counsel's litigation costs.

18 The rationale for making Class Representative Enhancement Payments is that the Class
19 Representatives should be compensated for the expenses or risks they have incurred in conferring a
20 benefit on other Class Members. Such enhancement payments are appropriate if it is necessary to
21 induce an individual to participate in the suit. Criteria arbitrators may consider in determining whether
22 to make enhancement payments include: (1) the risk to the class representatives in commencing suit,
23 both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class
24 representatives; (3) the amount of time and effort spent by the class representatives; (4) the duration of
25 the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representatives
26 because of the litigation.

27 ///

28 ///

Specifically, only 2 notice packets were ultimately undeliverable.

The Arbitrator has reviewed the Declaration of Chris Garners and the Declaration of Andrew Linden, which outlines their involvement in the lawsuit. Given the risks inherent in service as the Class Representatives, the duration of the case and time involved, and the benefits created for the Class, the Arbitrator approves the Class Representative Enhancement Payments in the amount of \$10,000 to each ~~Claimant~~.

and Supplemental Decl.

The Arbitrator has reviewed the Declaration of Taylor Mitzner, the Case Manager for Phoenix, the Settlement Administrator. The Arbitrator finds that notice was provided to the Class pursuant to the Preliminary Approval Order, and that notice was sufficient and that it satisfies due process. Phoenix has discharged its duties to provide notice to the Class and approves a payment of \$6,950 for its services in administering this settlement, including the mailing of Individual Settlement Shares according to the terms of the Settlement Agreement.

As of the Effective Final Settlement Date, claims to be released by the Class Members include any and all claims under state, or local law, whether statutory or common law arising out of the claims expressly pleaded in the Demand and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts pleaded in the Demand for: (1) failure to pay regular and overtime wages under state and federal law; (2) failing to maintain and provide accurate time records and wage statements; (3) failure to pay minimum wage; (4) failure to timely pay final wages; (5) waiting time penalties; (6) failure to provide or pay for meal breaks; (7) failure to provide or pay for rest periods; (8) failure to pay sick pay at the regular rate of pay; (9) failure to provide or pay for split shift and reporting time pay; (10) failure to reimburse business expenses; (11) statutory penalties under PAGA; and (12) violation of California's unfair competition law. The release only applies to periods of time when Class Members were members of the Class (*i.e.*, excluding periods of time in an exempt position) ("Released Claims"). The Released Parties include Respondent and its affiliated companies, parents, members, subsidiaries, related companies, and business concerns, past and present, and each of them, as well as each of their insurers, partners, trustees, directors, shareholders, officers, agents, attorneys, servants and employees, past and present, and each of them and all working with or in concert with them or connected with them ("Released Parties").

Whereas there have been no objections regarding the Settlement.

Whereas there have been 7 exclusion requests from the Settlement, specifically the following persons are excluded from the Class based on their opting out or agreement of the parties that they are excluded: Frank Enkle, David Garrick, Forrest Landano, Wendy Zenter, David Keller, Cecilia Saldana and Thomas Burrows.

The ~~Final Approval Motion is~~ Settlement Agreement is hereby APPROVED as fair, reasonable, adequate and in the public interest, and the terms of the Settlement Agreement are hereby determined to be fair, reasonable & adequate.

1 The Agreement will be binding upon, and inure to the benefit of, the successors and assigns of
2 the Parties.

3 ~~Respondent makes no admission of liability or wrongdoing by virtue of entering into the~~
4 ~~Agreement. Respondent reserves the right to contest any issues relating to class certification and~~
5 ~~liability if the Settlement is not approved. Respondent denies that it has engaged in any unlawful~~
6 ~~activity, has failed to comply with the law in any respect, has any liability to anyone under the claims~~
7 ~~asserted in the Class Action, or that but for the Settlement, a Class should be certified in the Class~~
8 ~~Action. The Agreement is entered into solely for the purpose of compromising highly disputed claims.~~
9 ~~Nothing in the Agreement is intended or will be construed as an admission by Respondent of liability~~
10 ~~or wrongdoing. The Settlement and Claimants' and Respondent's willingness to settle the Class~~
11 ~~Action will have no bearing on, and will not be admissible in connection with, any litigation (other~~
12 ~~than solely in connection with the Settlement).~~

13 For the reasons set forth above, the Motion for Final Approval of Class Action Settlement,
14 Attorney Fee Award, Cost Award, and Class Representative Enhancement Payments is GRANTED.
15 The Settlement Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

16 The Arbitrator sets a final accounting and compliance date for 9/2/2022 at 10
17 a.m./p.m. No later than five (5) court days before the final accounting and compliance date, Claimants
18 shall file a declaration regarding compliance.

19 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF THE
20 SETTLEMENT AGREEMENT. ~~PURSUANT TO CALIFORNIA RULES OF COURT 3.769, THE~~
21 ~~ARBITRATOR HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS~~
22 ~~ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE FINALITY OF~~
23 ~~THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO ENFORCE~~
24 ~~THIS ORDER, THE SETTLEMENT AGREEMENT, AND THE JUDGMENT THEREON.~~

25 IT IS SO ORDERED.

26
27 DATED: 12/17/2021

28 Kenneth H. Yoon
KENNETH H. YOON

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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 Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is mking@justicelawcorp.com

On December 17, 2021, I served the foregoing document described as

for the following case:	Garner v. Inter-State Oil Co.
LWDA/Court Case No.:	LWDA Case No.: CM-772677-20
	Arbitration Case No.: 01-21-0003-6413
	American Arbitration Association

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 December 17, 2021, at Pasadena, California.


Madeline King