

FILED
LOS ANGELES SUPERIOR COURT

JUL 19 2021

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK
BY N. Navarro Deputy
NANCY NAVARRO

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

GEVORK KEGEYAN, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

TOTAL EDUCATION SOLUTIONS, INC.,
a California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 20STCV05460


~~PROPOSED~~ ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT

Date: July 19, 2021
Time: 9:00 a.m.
Dept.: SSC-17

I. BACKGROUND

On February 11, 2020, Plaintiff Gevork Kegeyan filed this action against Defendant Total Education Solutions, Inc., alleging the following causes of action: (1) Failure to Pay Minimum Wage and Straight Time Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194

1 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4)
2 Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to
3 Indemnify Business Expenses [Cal. Lab. Code §2802] (6) Failure to Timely Pay Final
4 Wages at Termination [Cal. Lab. Code §§ 201-203]; (7) Failure to Provide Accurate
5 Itemized Wage Statements [Cal. Lab. Code § 226]; and (8) Unfair Business Practices
6 [Cal. Bus. & Prof. Code §§ 17200, *et seq.*]. Defendant is a for-profit C-Corporation,
7 engaged in the provision of tutoring, special education assistance, and other services
8 related to education and therapy. The services are provided onsite at the client's school,
9 in the client's home, at an offsite learning center, or more recently, via remote session.
10 (Declaration of Piero Stillitano ISO Prelim ¶3.) The Settlement Class Members are
11 those non-exempt employees that traveled to multiple locations in a day to provide
12 tutoring and similar services to students. Plaintiff alleges that the time spent between
13 stops was paid as an unusual piece rate based on miles traveled.

14 On April 20, 2020, Plaintiff filed a First Amended Complaint ("FAC") adding a
15 cause of action for civil penalties under the Private Attorneys General Act ("PAGA")
16 [Cal. Lab. Code § 2699, *et seq.*].

17 On September 14, 2020, the Parties mediated before Todd Smith, Esq. and
18 agreed to the terms of proposed settlement, ultimately finalized in the *Joint Stipulation*
19 *for Class Action and PAGA Settlement* ("Settlement Agreement"), a copy of which was
20 filed with the Court.

21 In response to the Court's "Checklist" of items in need of further briefing,
22 Plaintiffs' Counsel filed supplemental briefing on February 2, 2021, including the First
23 Amended Settlement Agreement.

24 The settlement was preliminarily approved on February 26, 2021. Notice was
25 given to the Class Members as ordered (see Declaration of Kevin Lee with Respect to

1 Settlement Notice Administration). Now before the Court is Plaintiff's motion for final
2 approval of the Settlement Agreement, including for payment of fees, costs, and a
3 service award to the named plaintiff. For the reasons set forth below, the Court grants
4 final approval of the settlement on the terms set forth herein..
5

6 **II. THE TERMS OF THE SETTLEMENT**

7

8 **A. SETTLEMENT CLASS DEFINITION**

9 The Settlement Class is defined as: All current and former non-exempt
10 individuals employed by Defendants within the State of California, who worked at
11 more than one jobsite in a given day during the Class Period (for purposes of the
12 Settlement Class definition, jobsites exclude Defendant's office and include field work
13 locations away from Defendant's office locations, including educational facilities
14 serviced by Defendant and private residences). (§I.X)

15 "Class Period" means the period from February 11, 2016 through December 1,
16 2020. (§I.D)

17 "Participating Settlement Class Members" are those Settlement Class members
18 that do not request exclusion from the Settlement Class. (§I.Z)

19 "PAGA Employee" refers to those members of the Settlement Class employed
20 at any time during the period of February 11, 2019 through December 1, 2020. The
21 period of February 11, 2019 through December 1, 2020 is the "PAGA Period." (§I.Y)
22

23 **B. THE MONETARY TERMS OF SETTLEMENT**

24 The essential monetary terms are as follows:

- 25 • The Settlement Amount is **\$350,000** (§I.W), to be paid in three installments:

- December 14, 2021: \$116,500.00 (“Initial Settlement Installment”)
- January 14, 2022: \$116,500.00 (“Second Settlement Installment”)
- February 14, 2022: \$117,000.00 (“Final Settlement Installment”) (§XII.B)
- The Settlement Amount includes payment of a PAGA penalty of **\$30,000** to be paid 75% to the LWDA (\$22,500) and 25% to PAGA Employees (\$7,500) (§XVII);
The Net Settlement Amount (“Net”) (**\$160,833.33**) is the GSA less:
 - Up to **\$116,666.67** (33 1/3%) for attorney fees (§XIV.A);
 - Up to **\$15,000** for attorney costs (*Ibid.*);
 - Up to **\$7,500** for a service award to the proposed class representative (§XV); and
 - Up to **\$20,000** for settlement administration costs (§VIII).
- Employer-side payroll taxes will be paid separately by Defendant in addition to and at the same time as the Settlement Amount. (§I.M)
- Assuming the Court approves all maximum requested deductions, approximately \$165,774.83 will be available for automatic distribution to participating class members. The average settlement share will be approximately \$235.14. (\$165,774.83 Net ÷ 705 participating class members = \$235.14. In addition, each PAGA Employee will receive a portion of the PAGA penalty (\$22,500, or 25% of \$30,000 PAGA penalty).
- There is no Claim Requirement (§X).
- The settlement is not reversionary (§I.W).
- Individual Settlement Share Calculation: The Settlement Administrator shall compute the number of Eligible Workweeks to be used in computing the Settlement Class member’s pro rata share of the Net Settlement Amount (less

1 \$7,500 to be distributed exclusively to PAGA Employees): a Participating
2 Settlement Class member's pro rata share of the Net Settlement Amount (less
3 \$7,500 to be distributed to PAGA Employees) = the Net Settlement Amount
4 (less \$7,500) x the Participating Settlement Class member's Eligible Workweeks
5 / sum of all Eligible Workweeks worked by all Participating Settlement Class
6 Members. (§X)

- 7 • Tax withholdings: 20% as wages; 40% as penalties; and 40% as interest. The
8 \$7,500 allocated to PAGA Employees shall be deemed and allocated as 100%
9 penalties. (§XVI)
- 10 • Uncashed Settlement Payment Checks: Settlement checks shall remain
11 negotiable for one hundred and eighty (180) days from the date of mailing. If
12 settlement check remains uncashed after one 180 days from issuance, the
13 Settlement Administrator shall transfer the value of the uncashed checks, plus
14 any interest that has accrued thereon, to the State Controller's Office-
15 Uncollected Funds, in the name of the Settlement Class member. (§XII.C)
- 16 • Funding of Settlement: Defendant will deposit the Net Settlement Payments,
17 Court approved enhancement to Named Plaintiff, Court approved attorney's fees
18 and Litigation costs, Claims Administration Costs and the PAGA Settlement into
19 an interest-bearing trust account for the benefit of Settlement Class members and
20 Class Counsel, through the Settlement Administrator. At no time prior to the
21 date on which the Settlement becomes Final shall Defendant be required to
22 escrow any portion of the Settlement Amount. (§XII.B)
- 23 • Distribution of Settlement: Within fifteen (15) calendar days following receipt
24 of the Final Settlement Installment of Settlement funds from Defendant, the
25

1 Settlement Administrator shall mail the Net Settlement Payments to the class.
2 (¶XII.C)

3
4 **C. TERMS OF RELEASES**

- 5 • Class members will release: All claims, demands, rights, liabilities and causes of
6 action that were pled in the operative First Amended Complaint in the litigation,
7 or which could have been therein based on the factual allegations therein, that
8 arose during the Class Period with respect to the following claims: (a) failure to
9 pay all minimum wages and regular wages owed (including without limitation
10 Labor Code §§ 204, 1194, 1194.2, and 1197, et seq.); (b) failure to pay all
11 overtime and double-time wages owed (including without limitation Labor Code
12 §§ 204, 510, 558, 1194, 1197.1, and 1198); (c) failure to provide meal periods,
13 or premium pay for non-compliant meal periods (including without limitation
14 Labor Code §§ 226.7, 512(a) & 1198 et seq.); (d) failure to authorize and permit
15 rest periods, or provide premium pay for non-complaint rest periods (including
16 without limitation Labor Code §§ 226.7, 512, & 1198 et seq.); (e) failure to
17 provide accurate, itemized wage statements (including without limitation Labor
18 Code §§ 226 and 226.3); (f) failure to timely pay wages upon separation of
19 employment (including without limitation Labor Code §§ 201, 202, and 203 et
20 seq.); (g) failure to maintain employment records (including without limitation
21 Labor Code §§ 226, 432, 1198.5); (h) failure to reimburse all reasonable and
22 necessary business expenses (including without limitation Labor Code §§ 2802
23 et seq.; (i) all damages, penalties, interest and other amounts recoverable under
24 said causes of action under California and federal law, to the extent permissible,
25 including but not limited to the California Labor Code as to the facts alleged in

1 the Action, the applicable Wage Orders as to the facts alleged in the complaint;
2 and (j) all claims for unfair business practices that could have been premised on
3 the facts, claims, causes of action or legal theories described above (including
4 without limitation Business & Professions Code §§ 17200, et seq.). (¶VII.A)

- 5 ○ The released parties are listed as: Defendant, its past and present officers,
6 directors, shareholders, unit holders, managers, employees, agents,
7 principals, heirs, representatives, accountants, auditors, consultants, and
8 its respective successors and predecessors in interest, subsidiaries,
9 affiliates, related entities, parents, agents, assigns, insurers, re-insurers,
10 and attorneys. (¶VII.A)

- 11 • As to the PAGA claim only, Named Plaintiff and PAGA Employees will release:
12 all claims under PAGA that were stated in Plaintiff's correspondence entitled
13 Notice of Labor Code Violations and PAGA Penalties sent to the to the
14 California Labor Workforce Development Agency ("LWDA") on or about
15 February 10, 2020 (the "LWDA Notice Letter") [attached as Exhibit B to the
16 First Amended Settlement Agreement], whether stated expressly or implicitly,
17 based upon the allegations contained in the LWDA Notice Letter. PAGA
18 Employees cannot exclude themselves from the release of the PAGA claims.
19 (¶VII.B)

- 20 • The named Plaintiff will also provide a general release and a waiver of the
21 protections of Cal. Civ. Code §1542. (¶VII.D)
- 22 • The releases are effective following Final Approval and once Defendant makes
23 all of the installment payments on the schedule set forth in the Settlement
24 Agreement [see ¶XII.B]. (¶VII.A)

- The terms “Date of Final Approval” or “Final Approval” mean the final formal judgment entered by the Court at the Final Fairness and Approval Hearing, approving the Agreement. (¶I.K)
- When Releases Become Final: In the event that Defendant fails to make all of the installment payments on the schedule set forth herein, no Release will be conferred by the Settlement Class Members. Once Defendant makes all of the installment payments (the Initial, Second and Final Installments) on the schedule set forth herein, the Release shall become final. (¶VII.C)

III. ANALYSIS OF SETTLEMENT AGREEMENT

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.” Cal. Rules of Court, rule 3.769(h).

As discussed more fully in the Order conditionally approving the settlement, “[i]n a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks

omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware* (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal quotation marks omitted].

“The burden is on the proponent of the settlement to show that it is fair and reasonable. However ‘a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and 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.’” See *Wershba, supra*, 91 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. Notwithstanding an initial presumption of fairness, “the court should not give rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. “Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In that determination, the court should consider factors such as “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and 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.” *Id.* at 128. This “list of factors is not exclusive and

1 the court is free to engage in a balancing and weighing of factors depending on the
2 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.)

3 **A. A PRESUMPTION OF FAIRNESS EXISTS**

4 The Court preliminarily found in its Order of February 26, 2021 that the
5 presumption of fairness should be applied. No facts have come to the Court’s attention
6 that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a
7 presumption of fairness as set forth in the preliminary approval order.

8 **B. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

9 The settlement was preliminarily found to be fair, adequate and reasonable.
10 Notice has now been given to the Class and the LWDA. The notice process resulted in
11 the following:

12 Number of class members: 709

13 Number of notices mailed: 709

14 Number of undeliverable notices: 6

15 Number of opt-outs: 4

16 Number of objections: 0

17 Number of participating class members: **705**

18 (Declaration of Kevin Lee (“Lee Decl.”) ¶¶ 3-9.)

19 The Court finds that the notice was given as directed and conforms to due process
20 requirements. Given the reactions of the Class Members and the LWDA to the proposed
21 settlement and for the reasons set for in the Preliminary Approval order, the settlement is
22 found to be fair, adequate, and reasonable.

23 **C. CLASS CERTIFICATION IS PROPER**

24 For the reasons set forth in the preliminary approval order, certification of the
25 Class for purposes of settlement is appropriate.

1 **D. ATTORNEY FEES AND COSTS**

2 Class Counsel requests **\$116,666.67** (33 1/3%) for attorney fees and **\$10,058.50**
3 for costs. (Motion for Final Approval at 21:4-16.)

4 Courts have an independent responsibility to review an attorney fee provision and
5 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*
6 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is
7 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
8 503.

9 In the instant case, fees are sought pursuant to the percentage method. (Motion for
10 Final Approval at pgs. 15-17.) The \$116,666.67 fee request is one-third of the Settlement
11 Amount.

12 Here, the **\$116,666.67** fee request represents a reasonable percentage of the total
13 funds paid by Defendant. Further, the notice expressly advised class members of the fee
14 request, and no one objected. (Lee Decl. ¶9, Exhibit A thereto.) Accordingly, the Court
15 awards fees in the amount of **\$116,666.67**.

16 Class Counsel requests **\$10,058.50** in costs. This is less than the \$15,000 cap
17 provided in the settlement agreement (¶XIV.A). The amount was disclosed to Class
18 Members in the Notice, and no objections were received. (Lee Decl. ¶9, Exhibit A
19 thereto.) Costs include: Mediation Fee (\$5,000), Berger Consulting – Data Analysis
20 (\$1,856.25), and Complaint Filing Fee (\$1,435). (Declaration of H. Scott Leviant
21 (“Leviant Decl.”) ISO Final ¶31, Exhibit 2.)

22 The costs appear to be reasonable and necessary to the litigation, are reasonable
23 in amount, and were not objected to by the class.

24 For all of the foregoing reasons, costs of **\$10,058.50** are approved.

25 //

1 **E. SERVICE AWARD TO CLASS REPRESENTATIVE**

2 A service (or incentive) fee award to a named class representative must be
3 supported by evidence that quantifies the time and effort expended by the individual and
4 a reasoned explanation of financial or other risks undertaken by the class representative.
5 See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807;
6 see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395
7 [“Criteria courts may consider in determining whether to make an incentive award
8 include: (1) the risk to the class representative in commencing suit, both financial and
9 otherwise; (2) the notoriety and personal difficulties encountered by the class
10 representative; (3) the amount of time and effort spent by the class representative; (4) the
11 duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the
12 class representative as a result of the litigation. (Citations.)”].

13 Here, the Class Representative, Gevork Kegeyan, requests an enhancement award
14 totaling **\$7,500**. (Leviant Decl. ISO Final ¶32.) He urges that an award is appropriate
15 for the following reasons: Plaintiff’s contributions to the action include ongoing
16 communication and participation with his counsel during the course of the case,
17 reviewing and providing documents to his counsel, identifying potential witnesses, and
18 reviewing the Settlement Agreement. He estimates spending approximately 35 to 40
19 hours of his time on the litigation. (First Supplemental Declaration of Gevork Kegeyan
20 ISO Prelim ¶¶ 10-15.) In addition, he asserts that he undertook risk in bringing this
21 action, including the risk that future employers will not hire him due to his participation
22 in this action. Id. ¶9. This latter factor is given little weight as there is no factual
23 showing that Plaintiff has suffered such a consequence after leaving Defendant’s
24 employ. In light of the above-described contributions to this action, and in
25

1 acknowledgment of the benefits obtained on behalf of the class, a reduced service award
2 in the amount of **\$5,000** is reasonable and approved.

3 **F. SETTLEMENT ADMINISTRATION COSTS**

4 The Settlement Administrator, Phoenix Settlement Administrators, requests
5 **\$10,000** in compensation for its work in administering this case. (Lee Decl. ¶12.) At
6 the time of preliminary approval, costs of settlement administration were estimated at
7 \$10,000, and not to exceed \$20,000. (¶VIII.) Class Members were provided with notice
8 of this amount and did not object. (Lee Decl. ¶9, Exhibit A thereto.)

9 Accordingly, settlement administration costs are approved in the amount of
10 **\$10,000.**

11
12 **IV. CONCLUSION AND ORDER**

13 The Court hereby:

- 14 (1) Grants class certification for purposes of settlement;
15 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
16 (3) Awards **\$116,666.67** in attorney fees to Class Counsel, Moon & Yang, APC;
17 (4) Awards **\$10,058.50** in litigation costs to Class Counsel;
18 (5) Approves payment of **\$22,500** (75% of \$30,000 PAGA penalty) to the LWDA;
19 (6) Awards **\$5,000** as a Class Representative Service Award to Gevork Kegeyan;
20 (7) Awards **\$10,000** in settlement administration costs to Phoenix Settlement
21 Administrators;
22 (8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling
23 and containing the class definition, full release language, and the names of the
24 class members who opted out by 7/22, 2021;

- 1 (9) Orders class counsel to provide notice to the class members pursuant to
2 California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor
3 Code §2699 (1)(3); and
4 (10) Sets a Non-Appearence Case Review re: Final Report re: Distribution of
5 Settlement Funds for

6 _____, at 8:30 am
7

8 Final Report is to be filed by
9 _____
10

11 Dated:

8/19/2022

Maren E. Nelson

MAREN E. NELSON

Judge of the Superior Court