

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

FRANKLIN AMOG, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

EL CAMINO HOSPITAL, a California nonprofit
public benefit corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. 20CV363828

**ORDER RE: MOTION FOR FINAL
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT: JUDGMENT**

The above-entitled matter came on for hearing on Wednesday, October 13, 2021, at 1:30 p.m. in Department 3, the Honorable Patricia M. Lucas presiding. The court reviewed and considered the written submissions filed by the parties and issued a tentative ruling on Tuesday, October 12, 2021. No party contested the tentative ruling; therefore, the court orders that the tentative ruling be adopted as the order of the court, and the court hereby orders, adjudges, and decrees as follows:

I. INTRODUCTION

This is a putative class and representative action arising out of an alleged failure to provide accurate itemized wage statements. The Complaint, filed on February 20, 2020, sets

1 forth the following causes of action: (1) Violation of Cal. Labor Code, § 226(a); and
2 (2) Violation of Cal. Labor Code § 2698, et seq. (“PAGA”).

3 The parties have reached a settlement. On June 23, 2021, the court granted preliminary
4 approval of the settlement, subject to modification of the class notice. The court approved the
5 amended class notice on June 29, 2021. Plaintiff Franklin Amog (“Plaintiff”) now moves for
6 final approval of the settlement.

7 **II. LEGAL STANDARD**

8 Generally, “questions whether a settlement was fair and reasonable, whether notice to the
9 class was adequate, whether certification of the class was proper, and whether the attorney fee
10 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
11 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*
12 (1996) 48 Cal.App.4th 1794 (*Dunk*).)

13 In determining whether a class settlement is fair, adequate and reasonable, the
14 trial court should consider relevant factors, such as “the strength of plaintiffs’
15 case, the risk, expense, complexity and likely duration of further litigation, the
16 risk of maintaining class action status through trial, the amount offered in
17 settlement, the extent of discovery completed and the stage of the proceedings, the
18 experience and views of counsel, the presence of a governmental participant, and
19 the reaction of the class members to the proposed settlement.”
(*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801
20 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624
(*Officers*).)

21 “The list of factors is not exclusive and the court is free to engage in a balancing and
22 weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91
23 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the
24 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
25 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
26 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48
27 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

28 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

1 sufficient to allow counsel and the court to act intelligently; (3) counsel is
2 experienced in similar litigation; and (4) the percentage of objectors is small.”

3 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

4 **III. DISCUSSION**

5 The case has been settled on behalf of the following class:

6 [A]ll current and former employees of Defendant in the State of California who
7 were paid shift differential and/or per diem wages at any time during the Class
8 Period

9 The class period is February 10, 2019 through September 21, 2019.

10 As discussed in connection with the motion for preliminary approval, defendant El
11 Camino Hospital (“Defendant”) will pay a total non-reversionary amount of \$1,000,000. The
12 total settlement payment includes attorney fees of \$333,333.33, costs up to \$20,000, an incentive
13 award of \$10,000 for the class representative, settlement administration costs up to \$18,500, and
14 a PAGA allocation of \$40,000 (\$30,000 of which will be paid to the Labor Workforce
15 Development Agency and \$10,000 to the aggrieved employees). Funds from checks not cashed
16 after 120 days from the date of issuance will be paid to El Camino Health Foundation pursuant to
17 Code of Civil Procedure section 384.

18 On July 7, 2021, notices were mailed to 2,469 class members. (Declaration of Elizabeth
19 Kruckenberg Regarding Notice and Settlement Administration, ¶ 5.) Ultimately, 11 notice
20 packets have remained undeliverable. (*Id.* at ¶ 7.) The estimated highest gross payment is
21 \$392.06 and the estimated average gross payment is \$242.20. (*Id.* at ¶ 11.) There have been no
22 objections. (*Id.* at ¶ 9.) There were 4 requests for exclusions (*id.* at ¶ 8): Michael Barba, Tonic
23 Barba, Curt Patten, and Erika Taylor. (Supplemental Declaration of Elizabeth Kruckenberg
24 Regarding Notice and Settlement Administration, at ¶ 2.)

25 The court previously found that the proposed settlement is fair and the court continues to
26 make that finding for purposes of final approval.

27 Plaintiff requests an incentive award of \$10,000.

28 The rationale for making enhancement or incentive awards to named plaintiffs is
that they should be compensated for the expense or risk they have incurred in
conferring a benefit on other members of the class. An incentive award is
appropriate if it is necessary to induce an individual to participate in the suit.
Criteria courts may consider in determining whether to make an incentive award

1 include: 1) the risk to the class representative in commencing suit, both financial
2 and otherwise; 2) the notoriety and personal difficulties encountered by the class
3 representative; 3) the amount of time and effort spent by the class representative;
4 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
5 enjoyed by the class representative as a result of the litigation. These “incentive
6 awards” to class representatives must not be disproportionate to the amount of
7 time and energy expended in pursuit of the lawsuit.
8 (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks,
9 brackets, ellipses, and citations omitted.)

10 In connection with the motion for preliminary approval, the class representative
11 submitted a declaration generally discussing his participation in the case. The court ordered
12 Plaintiff to file a further declaration more specifically detailing how he participated in the action
13 and “an estimate of the time spent.” The class representative now provides a supplemental
14 declaration stating that he participated in numerous telephonic meetings with his counsel and
15 their staff, provided information and documents regarding his employment to his counsel,
16 prepared for and made himself available for mediation, reviewed and executed the memorandum
17 of understanding and settlement agreement, and reviewed and signed declarations submitted to
18 the court in support of the settlement. (Declaration of Franklin Amog in Support of Plaintiff’s
19 Motion for Final Approval of Class and Representative Action Settlement, ¶ 4.) Plaintiff did not
20 provide an estimate of the time spent on these activities, as directed in the order.

21 The court finds that Plaintiff’s efforts in the case resulted in a benefit to the class, and he
22 undertook risk by putting his name on the case because he may have been responsible for costs if
23 he lost the case and because it might impact his future employment. (See *Covillo v. Specialtys*
24 *Cafe* (N.D. Cal. 2014) 2014 WL 954516, at *8 [incentive awards are particularly appropriate
25 where a plaintiff undertakes a significant “reputational risk” in bringing an action against an
26 employer].) However, based on the other terms of the settlement and the information provided,
27 the requested amount is too high. Accordingly, the court approves a service award in the amount
28 of \$6,000.

29 The court also has an independent right and responsibility to review the requested
30 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
31 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff’s counsel
32 requests attorney fees in the amount of \$333,333.33 (1/3 of the total settlement fund). This

percentage is typical for wage and hour cases. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503-504 (*Laffitte*)). Plaintiff's counsel provides evidence demonstrating a total lodestar of \$171,765 (based on fees actually incurred). (Declaration of Nicholas Rosenthal in Support of Plaintiff's Motion for Final Approval of Class and Representative Action Settlement, ¶¶ 6-7 & Ex. A; Declaration of Larry W. Lee in Support of Plaintiff's Motion for Preliminary Approval of Class and Representative Action Settlement ("Lee Dec."), ¶¶ 6 & 7, & Ex. A; Declaration of William L. Marder in Support of Plaintiff's Motion for Final Approval of Class and Representative Action Settlement, ¶¶ 11-12 & Ex. A; Declaration of Kristen M. Agnew in Support of Plaintiff's Motion for Final Approval of Class and Representative Action Settlement, ¶¶ 11-12 & Ex. A.) This results in a multiplier of 1.95. The attorney fees requested are reasonable as a percentage of the common fund and are approved. (See *Laffitte, supra*, 1 Cal.5th at pp. 488, 503-504 [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

Plaintiff's counsel provides evidence of incurred costs in the amount of \$11,155.35. (Lee Dec., ¶ 9 & Ex. B.) These costs are approved. The settlement administration costs of \$18,500 are also approved. (Kruckenberg Dec., ¶ 12 & Ex. B.)

Accordingly, the motion for final approval of the class and representative action settlement is GRANTED subject to the modification stated above concerning the service award.

Pursuant to Rule 3.769, subdivision (h), of the California Rules of Court, the court retains jurisdiction over the parties to enforce the terms of the Settlement Agreement, and the final Order and Judgment.

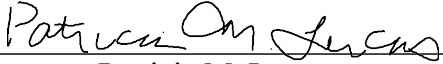
The court sets a compliance hearing for April 13, 2022, at 2:30 p.m. in Department 3. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein, the number and value of any uncashed checks, amounts remitted to Defendant,

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1 the status of any unresolved issues, and any other matters appropriate to bring to the court's
2 attention. Counsel may appear at the compliance hearing remotely.

3
4 Dated: October 13, 2021


Patricia M. Lucas
Judge of the Superior Court