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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

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

Plaintiffs,

vs.

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

Defendants.

Case No. 20CV363828

(Assigned to the Honorable Patricia M. Lucas,
Dept. 3)

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND FINAL JUDGMENT**

Date: October 13, 2021

Time: 1:30 p.m.

Dept.: 3

1 This matter is on calendar for the motion of Plaintiff Franklin Amog (“Plaintiff”) for an
2 order (1) granting final approval of the Joint Stipulation of Class and Representative Action
3 Settlement (“Settlement Agreement” or “Settlement”); (2) approving distribution of the
4 settlement funds to the Settlement Class Members pursuant to the terms of the Settlement
5 Agreement; (3) approving Plaintiff’s request for an Enhancement Payment of \$10,000.00; (4)
6 approving Class Counsel’s request for an award of attorneys’ fees in the amount of \$333,333.33,
7 and reimbursement of litigation costs of \$11,155.35; (5) approving Plaintiffs request for payment
8 of the settlement administration costs to Phoenix Settlement Administrators in the amount of
9 \$18,500.00; (6) approving Plaintiffs request for payment to the LWDA in the amount of
10 \$30,000.00; and (7) entering final judgment as to all members of the Settlement Class in this
11 action. The motion is GRANTED.

12 After preliminary approval, the Court determines whether the settlement is fair, adequate
13 and reasonable in a final hearing. Cal. Rules of Court, rule 3.769(g); *Dunk v. Ford Motor Co.*
14 (1996) 48 Cal.App.4th 1794, 1801; *see also, Officers for Justice v. Civil Service Com.* (9th Cir.
15 1982) 688 F.2d 615, 625; Fed. Rule of Civ. Proc., Rule 23(e). The trial court has broad powers to
16 determine whether the settlement is fair. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
17 1801; *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434. The purpose of this requirement is
18 “the protection of those class members, including the named plaintiffs, whose rights may not
19 have been given due regard by the negotiating parties.” *Officers for Justice v. Civil Service Com.*,
20 *supra*, 688 F.2d at 624.

21 The court should, according to *Dunk, supra*, 48 Cal.App.4th 1801, consider relevant
22 factors, such as the strength of the plaintiff’s case, the risk, expense, complexity and likely
23 duration of further litigation, the risk of maintaining class action status through trial, the amount
24 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
25 experience and views of counsel, the presence of a governmental participant, and the reaction of
26 the class members to the proposed settlement. However, the list is not fixed and the factors
27 which the court considers must be tailored to each case. *Dunk*, 48 Cal.App.4th 1801.

28 Ultimately, “the inquiry ‘must be limited to the extent necessary to reach a reasoned

1 judgment that the agreement is not the product of fraud or overreaching by, or collusion between,
2 the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate
3 to all concerned.’ [Citation.]” *Dunk*, 48 Cal.App.4th 1801. The determination is in the end ““an
4 amalgam of delicate balancing, gross approximations and rough justice.” *Officers for Justice v.*
5 *Civil Service Com.*, 688 F.2d 615, 625 (9th Cir.1982); *see also*, *Dunk*, 48 Cal.App.4th 1801,
6 quoting *Officers for Justice*, *supra*.

7 The party seeking settlement approval has the burden of showing the settlement is “fair
8 and reasonable” but that nevertheless “there is a presumption of fairness when: (1) the settlement
9 is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to
10 allow counsel and the trial court to act intelligently; (3) counsel is experienced in similar
11 litigation; and (4) the percentage of objectors is small.” *Reed v. United Teachers Los Angeles*
12 208 Cal.App.4th 322, 336-337 (2012); *see also*, *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43
13 (2008); *Dunk*, 48 Cal.App.4th at 1801.

14 **Objections/Challenges**

15 Notices were sent to all Class Members. (Kruckenberg Decl. ¶¶ 3-5.) Fifty-seven Notice
16 Packets were returned. (*Id.* at ¶ 6.) None were returned with a forwarding address. (*Id.*) After
17 skip tracing efforts, forty-six updated addresses were obtained and Notice Packets were mailed to
18 those addresses. (*Id.*) Eleven Notices remain undeliverable because an updated address could not
19 be located despite skip tracing efforts. (*Id.* at ¶ 7.) Four requests for exclusion have been
20 received, and there have been no objections filed. (*Id.* at ¶¶ 8, 9.)

21 **The Maximum Settlement Amount**

22 The Maximum Settlement Amount is \$1,000,000.00. The Settlement covers all current
23 and former employees of Defendant in the State of California who were paid shift differential
24 and/or per diem wages at any time during the Class Period [February 10, 2019 through
25 September 21, 2019]. There are 2,469 Class Members. The Settlement allocates \$40,000.00 in
26 PAGA penalties and 75% of this amount, or \$30,000, will be paid to the LWDA with the
27 remainder distributed to the Settlement Class Members.

1 **Distribution of the Net Settlement Amount**

2 The Net Settlement Amount is approximately \$597,011.32, after deducting fees, costs,
3 and penalties. (Kruckenberg Decl. ¶ 11.) The Net Settlement Amount will be paid to all
4 Settlement Class Members in proportion to the number of wage statements wherein the
5 employee was paid shift differential and/or per diem wages during the Class Period. The highest
6 individual settlement payment will be approximately \$392.06, and the lowest individual
7 settlement payment will be approximately \$23.36, with the average individual settlement
8 payment to be paid being approximately \$242.20. (*Id.*)

9 **Attorney's Fees and Costs**

10 The Settlement provides that Class Counsel's fees and costs shall be paid from the
11 Maximum Settlement Amount, in an amount of \$333,333.33 in fees and \$11,155.35 in costs.
12 (Kruckenberg Decl. ¶11; Lee Decl., ¶ 9, Ex. B.) The fee award equals 33.33% of the Maximum
13 Settlement Amount and appears fair and reasonable. *See generally, Laffitte v. Robert Half Int'l*
14 *Inc.*, 1 Cal.5th 480 (2016). Class Counsel are experienced in employment law and class actions.
15 (Agnew Decl. ¶¶ 4-10, 12; Lee Decl. ¶¶ 4, 5, 8; Rosenthal Decl. ¶¶ 4, 5, 7; Marder Decl. ¶¶ 3-10,
16 12.

17 **Enhancement Payment**

18 Plaintiff seeks \$10,000 as a Class Representative Enhancement Payment. Plaintiff has
19 provided evidence that he participated in the case, helping facilitate the settlement and justifying
20 a service award. (Amog Decl. ¶¶ 4-6.) The Settlement provides that the Enhancement Payment
21 shall be paid from the Maximum Settlement Amount.

22 **Settlement Administration Costs**

23 The settlement administration costs total \$18,500.00. (Kruckenberg Decl. ¶ 12.) The
24 Settlement provides that the settlement administration costs shall be paid from the Maximum
25 Settlement Amount.

26 **Conclusion**

27 In this case, there is a presumption of fairness. The parties participated in extensive
28 negotiations and the exchange of information through informal discovery. The settlement amount

1 is substantial in total and a significant percentage of what Plaintiff could obtain if prevailing at
2 trial. The Court finds that the settlement, payment of fees and costs, and distribution of funds is
3 fair, reasonable, and adequate, and is in the best interests of the Class Members. The entire
4 settlement amount is available to the class, attorney fees are the same as what was preliminarily
5 approved, and costs are less. Accordingly, the motion is GRANTED. This Final Order shall
6 constitute a final judgment.

7
8
9 DATED: _____

HON. PATRICIA M. LUCAS
SUPERIOR COURT OF CALIFORNIA