

Filed
November 17, 2022
Clerk of the Court
Superior Court of CA
County of Santa Clara
20CV365247
By: afloresca

Signed: 11/17/2022 09:37 AM


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

OSMAR OLEA, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

RESPONSE TEAM 1 HOLDINGS, LLC.; and
DOES 1 through 20, inclusive,

Defendants.

Case No. 20CV365247

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

The above-entitled matter came on for hearing on Wednesday, November 16, 2022, 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, November 15, 2022. No party contested the tentative ruling; therefore, the court orders that the tentative ruling be adopted as the order of the court, and hereby orders, adjudges, and decrees as follows:

I. INTRODUCTION

This is a putative class and representative action arising out of various alleged wage and hour violations. The operative Second Amended Complaint ("SAC"), filed on January 20, 2022, sets forth the following causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay

1 Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Permit Rest Breaks;
2 (5) Failure to Reimburse Necessary Business Related Expenses; (6) Failure to Provide Accurate
3 Itemized Wage Statements; (7) Failure to Pay All Wages Due Upon Separation of Employment;
4 (8) Violation of Business and Professions Code §§ 17200, et seq.); and (9) Enforcement of Labor
5 Code §§ 2698, et seq. (“PAGA”).

6 The parties have reached a settlement. On May 25, 2022, the court granted preliminary
7 approval of the settlement, subject to approval of the amended class notice. The court approved
8 the amended notice on June 21, 2022. Plaintiffs Osmar Olea (“Olea”) and Paul Garcia
9 (“Garcia”) (collectively, “Plaintiffs”) now move for final approval of the settlement.

10 **II. LEGAL STANDARD**

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

16 In determining whether a class settlement is fair, adequate and reasonable, the
17 trial court should consider relevant factors, such as “the strength of plaintiffs’
18 case, the risk, expense, complexity and likely duration of further litigation, the
19 risk of maintaining class action status through trial, the amount offered in
20 settlement, the extent of discovery completed and the stage of the proceedings, the
21 experience and views of counsel, the presence of a governmental participant, and
22 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
and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624
(*Officers*).)

23 “The list of factors is not exclusive and the court is free to engage in a balancing and
24 weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91
25 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the
26 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
27 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
28

whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, 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.”

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

III. DISCUSSION

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

[A]ll current and former non-exempt employees who are or were employed by Defendants [Response Team 1 Holdings, LLC d.b.a. Jetside Holdings LLC (“Jetside”), Isosceles Holdings, LLC d.b.a. Venturi Restoration (“Venturi”), and Mark San Fratello (collectively, “Defendants”)] in California at any time during the Class Period.

The Class Period is March 18, 2016 through July 17, 2021. The class includes a subset of PAGA Group Members which means all class members employed by Defendants at any time between March 18, 2019 and July 17, 2021.

As discussed in connection with the motion for preliminary approval, Defendants will pay a total non-reversionary amount of \$650,000. Specifically, Jetside will pay \$250,000 of the gross settlement amount and Venturi will pay the remainder. The total settlement payment includes attorney fees up to \$216,666.67 (1/3 of the gross settlement fund), costs not to exceed \$20,000, incentive awards in the total amount of \$12,500 (\$10,000 for Olea and \$2,500 for Garcia), settlement administration costs not to exceed \$5,500, and a PAGA allocation of \$20,000 (75 percent of which will be paid to the Labor & Workforce Development Agency and 25 percent of which will be distributed to the PAGA Group Members). The net settlement will be distributed to class members pro rata based on their weeks worked during the applicable period.

The settlement agreement originally provided that checks remaining uncashed more than 180 days after mailing would be void and the funds from those checks would be distributed to the State Controller Unclaimed Property Fund to be held in the name of the class members who did not cash their settlement checks. In connection with the motion for preliminary approval, the court ordered Plaintiffs to designate a *cy pres* recipient in compliance with Code of Civil

1 Procedure section 384 prior to the final approval hearing. The parties have now agreed to select
2 Legal Aid at Work as the *cy pres* recipient, which the court approves.

3 In exchange for the settlement, the class members will release the Released Parties from
4 any and all class claims alleged in the SAC, or which could have been alleged based on the facts
5 pleaded in the SAC, during the Class Period. As is relevant here, the term “Released Parties” is
6 defined as Defendants and their related entities and persons. Plaintiffs also agree to a
7 comprehensive general release of any and all claims against the Released Parties.

8 On July 8, 2022, notices were mailed to 285 class members. (Amended Declaration of
9 Stephen Gomez Regarding Notice and Settlement Administration (“Gomez Dec.”), ¶ 8.)
10 Ultimately, one notice packet was undeliverable. (*Id.* at ¶ 9.) As of October 21, 2022, there
11 were no requests for exclusion and no objections. (*Id.* at ¶¶ 12 & 14.)

12 The estimated average payment is \$1,317.66 and the estimated highest payment is
13 \$10,207.67. (Gomez Dec., ¶ 10.) The court previously found that the proposed settlement is fair
14 and the court continues to make that finding for purposes of final approval.

15 Plaintiffs request incentive awards in the total amount of \$12,500 (\$10,000 for Olea and
16 \$2,500 for Garcia). The court approved the incentive award for Olea in connection with
17 preliminary approval of the settlement and continues to do so for purposes of final approval.

18 Garcia has now submitted a declaration detailing his participation in the action. Garcia
19 states that he spent approximately 17.5 hours on the case, including speaking with class counsel,
20 providing documents to class counsel, preparing and being available for mediation, and
21 reviewing the settlement agreement. (Declaration of Paul Garcia in Support of Motion for Final
22 Approval of Class Action Settlement, ¶¶ 4-11.) Based on Garcia’s efforts, as well as the
23 potential impact on his future employment due to his participation, the court finds the incentive
24 award of \$2,500 is warranted and it is approved. (See *Covillo v. Specialty’s Café* (N.D.Cal.
25 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a
26 plaintiff undertakes a significant “reputational risk” in bringing an action against an employer].)

27 The court also has an independent right and responsibility to review the requested
28 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*

1 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel
2 requests attorney fees of \$216,666.67 (1/3 of the total settlement fund). Plaintiff's counsel
3 provides evidence demonstrating a total lodestar of \$233,512. (Declaration of Alexander G.L.
4 Davies in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement ("Davies
5 Dec."), ¶ 58 & Ex. 4.) This results in a small negative multiplier. The court finds that the
6 attorney fees are reasonable and they are approved.

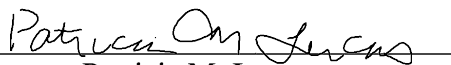
7 Plaintiffs' counsel requests costs in the amount of \$16,830. This amount includes
8 anticipated costs, as to which no declaration shows that the costs have actually been incurred.
9 Plaintiff's counsel provides evidence of incurred costs in the amount of \$16,770 and those costs
10 are approved. (Davies Dec., ¶ 61 & Ex. 5.) Settlement administration costs in the amount of
11 \$4,995 are also approved. (Gomez Dec., ¶ 16.)

12 Accordingly, the motion for final approval of the class and representative action
13 settlement GRANTED.

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

17 The court sets a compliance hearing for July 19, 2023, at 2:30 p.m. in Department 3. At
18 least ten court days before the hearing, class counsel and the settlement administrator shall
19 submit a summary accounting of the net settlement fund identifying distributions made as
20 ordered herein, the number and value of any uncashed checks, amounts remitted to Defendants,
21 the status of any unresolved issues, and any other matters appropriate to bring to the court's
22 attention. Counsel may appear at the compliance hearing remotely.

23
24 Dated: November 16, 2022


Patricia M. Lucas
Judge of the Superior Court