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all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

BENIYAM KEBEDE, ALAIN TSAI, and
MONICA I. PAZMINO, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

WRIKE, INC.; and DOES 1 through 25,
inclusive

Defendants.

Case No. 20CV366599

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Patricia M. Lucas
Department 3

CLASS ACTION

**NOTICE OF ENTRY OF ORDER RE:
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
ENTERING JUDGMENT**

Complaint filed: May 13, 2020

Trial date: Not set

1 TO: THE LABOR AND WORKFORCE DEVELOPMENT AGENCY, AND TO ALL
2 PARTIES AND THEIR COUNSEL OF RECORD:

3 NOTICE IS GIVEN that on May 4, 2022, the Court issued an Order Regarding Plaintiffs'
4 Motion for Final Approval of Class Settlement and Entering Judgment ("Order"), in the above-
5 captioned matter. A true and correct copy of this Order is attached as Exhibit 1.

6 Respectfully submitted,

7 LEBE LAW, APLC
8 COHELAN KHOURY & SINGER

9
10 Dated: May 6, 2022

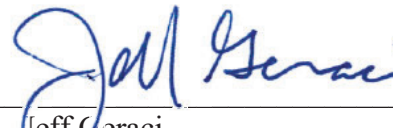
11 By: 
12 Jeff Geraci
13 Attorneys for Plaintiff BENIYAM KEBEDE,
14 ALAIN TSAI, and MONICA I. PAZMINO
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EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

JORDAN OLSON, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

WRIKE, INC.; and DOES 1 through 25.
inclusive,

Defendants.

Case No. 20CV366599

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

The above-entitled matter came on for hearing on Wednesday, May 4, 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 or before Tuesday, May 3, 2022. No party contested the tentative ruling; therefore, the tentative ruling is 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 various alleged wage and hour violations. The original complaint was filed on May 13, 2020, on behalf of Jordan Olson. The operative Third Amended Complaint, filed on October 26, 2020, on behalf of Beni Yam Kebeda, Alain Tsai, and Monica I. Pazmino (collectively, "Plaintiffs"), sets forth the following

causes of action: (1) Failure to Pay Minimum Wages (Lab. Code §§ 1194, 1197.1 and IWC Order 4-2001, § 4); (2) Failure to Pay Overtime Wages (Lab. Code § 510 and IWC Wage Order 4-2001, § 3); (3) Failure to Provide Meal Periods (Lab. Code § 512 and IWC Wage Order 4-2001, § 11); (4) Failure to Provide Rest Breaks (Lab. Code § 226.7 and IWC Wage Order 4-2001, § 12); (5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226 and IWC Wage Order 4-2001, § 7); (6) Failure to Reimburse Business Expenses (Lab. Code § 2802 and IWC Wage Order 4-2001, § 9); (7) Failure to Timely Pay Wages Due During Employment (Lab. Code § 204 and IWC Wage Order 4-2001, § 4); (8) Failure to Timely Pay Wages Due Upon Separation of Employment (Lab. Code §§ 201, 202, 203); (9) Violation of the Unfair Competition Law (Bus. & Prof. Code §§ 17200-17208); and (10) Civil Penalties Pursuant to the Private Attorney General Act (“PAGA”) (Labor Code §§ 2698, et seq.)

The parties have reached a settlement. On December 6, 2021, the court granted preliminary approval of the settlement. Plaintiffs now move for final approval of the settlement.

II. LEGAL STANDARD

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

In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant 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 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.” (*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*).)

“The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91

1 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the
2 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
3 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
4 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk*, *supra*, 48
5 Cal.App.4th at p. 1801 and *Officers*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

6 The burden is on the proponent of the settlement to show that it is fair and
7 reasonable. However “a presumption of fairness exists where: (1) the settlement
8 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.”

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

10 **III. DISCUSSION**

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

12 All current and former commissioned employees who worked for Defendant
13 within the State of California during the Class Period.

14 The Class Period is from April 6, 2016, to March 31, 2021, and the PAGA period is from April
15 6, 2019 to March 31, 2021.

16 As discussed in connection with the motion for preliminary approval, defendant Wrike,
17 Inc. (“Defendant”) will pay a total non-reversionary amount of \$2,000,000 (including \$204,000
18 already paid), plus the employer’s portion of payroll taxes. The total settlement payment
19 includes attorney fees up to \$666,666 (i.e., 1/3 of the total settlement amount), costs up to
20 \$12,500, an incentive award of \$10,000 for each class representative for a total of \$30,000, and
21 settlement administration costs up to \$5,500. A PAGA allocation of \$50,000 will be distributed
22 \$37,500 to the Labor and Workforce Development Agency and \$12,500 will be paid to
23 Aggrieved Employees who worked for Defendant any time during the PAGA period, based on
24 pay periods and regardless of whether an Aggrieved Employee has opted out of the class
25 settlement.

26 The net settlement will be distributed to class members as follows. Because some class
27 members have already received a \$2,000 distribution, the individual payments will be calculated
28 by first allocating \$2,000 each to the approximately 120 class members who did not already
receive the \$2,000 payment. Then the settlement administrator will divide total number of weeks

1 worked by all class members during the Class Period by the remainder of the net settlement
2 amount to determine “workweek dollar value” and then multiply the number of weeks by 1.0 for
3 each class member who previously received \$2,000 and by 1.1 for each class member who did
4 not receive the earlier payment. This provides a greater payment to class members who did not
5 risk exclusion from the class by accepting the earlier payment.

6 Without distinguishing between PAGA payments and non-PAGA payments, the parties
7 proposed that “[p]roceeds from checks uncashed 180 days after issuance will be sent to the State
8 Controller, Unclaimed Property Division, on behalf of class members.” In its order granting
9 preliminary approval, the court determined that this disposition was suitable with respect to
10 PAGA payments. However, the court held that the designation of the State of California as a *cy*
11 *pres* beneficiary did not comply with Code of Civil Procedure section 384. Plaintiff’s counsel
12 now advises that uncashed non-PAGA payments will be sent to Legal Aid at Work. (Declaration
13 of Jeff Geraci in Support of Motion for Order Granting Final Approval of Class Action
14 Settlement and Entering Judgment (“Geraci Dec.”), ¶ 28.) The court approves Legal Aid at
15 Work as the *cy pres* recipient.

16 On January 19, 2021, notice packets were mailed to 222 class members. (Declaration of
17 Evelin Reyes Regarding Notice and Settlement Administration (“Reyes Dec.”), ¶ 8.) Ultimately,
18 there were three notice packets that were undeliverable. (*Id.* at ¶ 9.) The settlement
19 administrator received no requests for exclusions or objections. (*Id.* at ¶¶ 13-14.)

20 The average estimated non-PAGA payment is \$4,653.94 and the highest estimated non-
21 PAGA payment is \$13,897.96. (Reyes Dec., ¶ 12.) The average PAGA payment is \$56.31 and
22 the highest PAGA payment is \$167.10. (*Ibid.*) The court previously found that the proposed
23 settlement is fair and the court continues to make that finding for purposes of final approval.

24 Plaintiffs requested an incentive award of \$30,000, in the amount of \$10,000 to each of
25 three individuals. In connection with preliminary approval, the court stated it would approve a
26 service award in the amount of \$7,500 for each Plaintiff for a total of \$22,500. The service
27 awards in the amount of \$7,500 for each Plaintiff for a total of \$22,500 continue to be approved
28 for final approval of the settlement.

1 The court also has an independent right and responsibility to review the requested
2 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
3 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel
4 requests attorney fees in the amount of \$666,666 (1/3 of the total settlement fund). This
5 percentage is typical for wage and hour cases. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1
6 Cal.5th 480, 488, 503-504 (*Laffitte*)). Plaintiffs' counsel provides evidence demonstrating a total
7 lodestar of \$266,826 (based on fees actually incurred), at generous hourly rates reflecting the
8 work of two different law firms. (Geraci Dec., ¶¶ 33 & 38, & Exs. 1-2; Declaration of Jonathan
9 M. Lebe in Support of Motion for an Order Granting Final Approval of Class Action Settlement
10 ("Lebe Dec."), ¶¶ 9-10 & 13, & Ex. A.) The lodestar cross-check results in a multiplier of 2.49,
11 which is definitely at the high end of what the court would consider reasonable in this case.
12 However, given other case-specific factors including the difficulty of the case, the risk of non-
13 recovery, and the benefit to the class and aggrieved employees, the fees requested are approved.
14 (See *Laffitte, supra*, 1 Cal.5th at pp. 488, 503-504 [trial court did not abuse its discretion in
15 approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a
16 multiplier of 2.03 to 2.13].)

17 Plaintiffs' counsel provides evidence of incurred costs in the amount of \$10,657.85.
18 (Geraci Dec., ¶¶ 33 & 42, & Exs. 1 & 3; Lebe Dec., ¶ 10 & Ex. B.) Those costs are approved.
19 The settlement administration costs of \$5,500 are also approved. (Reyes Dec., ¶ 18.)

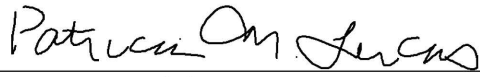
20 Accordingly, the motion for final approval of the class action settlement is GRANTED.

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

24 The court sets a compliance hearing for January 11, 2023, at 2:30 p.m. in Department 3.
25 At least ten court days before the hearing, class counsel and the settlement administrator shall
26 submit a summary accounting of the net settlement fund identifying distributions made as
27 ordered herein, the number and value of any uncashed checks, amounts remitted to Defendant,
28

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: May 4, 2022



Patricia M. Lucas
Judge of the Superior Court