

FILED
Superior Court of California
County of Los Angeles

01/18/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: P. Martinez Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

BRENDAN KRICK, individually, and on behalf
of other members of the general public similarly
situated;

Plaintiff,

v.

SAG-AFTRA FEDERAL CREDIT UNION, an
unknown business entity; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 20STCV34772

Assigned for All Purposes to:
Honorable Elihu M. Berle
Department 6

CLASS ACTION

**[PROPOSED] ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: January 18, 2022
Hearing Time: 10:00 a.m.
Hearing Place: Department 6

Complaint Filed: September 10, 2020
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Brendan Krick’s (“Plaintiff”)
2 Motion for Final Approval of a Class Action Settlement, Attorney Fee Award, Cost Award, and
3 Class Representative Enhancement Payment, and after considering the papers submitted in
4 support of the motion, including the Amended Joint Stipulation and Settlement Agreement
5 (“Settlement Agreement,” “Settlement,” or “Agreement”), **HEREBY FINDS AND ORDERS**
6 **AS FOLLOWS:**

7 This is a putative class action. Plaintiff is a former employee of Defendant SAG-AFTRA
8 Federal Credit Union (“Defendant”). The operative complaint in the action asserts nine (9)
9 causes of action for alleged violations of the Labor Code and Business and Professions Code.
10 Plaintiff has brought this action on behalf of all hourly-paid or non-exempt employees employed
11 by Defendant within the State of California during the Class Period (“Class”). The Class Period
12 is the time period from September 10, 2016, through June 1, 2021 (“Class Period”).

13 On September 27, 2021, the Court granted Preliminary Approval of the Settlement.
14 Plaintiff now moves for Final Approval of the Settlement.

15 The terms used in this Order of Final Approval and Judgment shall have the same
16 meaning as defined in the Settlement Agreement except as may otherwise be ordered.

17 The following Class is certified for purposes of settlement only: all hourly-paid or non-
18 exempt employees employed by Defendant within the State of California during the time period
19 from September 10, 2016, through June 1, 2021.

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

25 ///

26 ///

27 ///

1 In determining whether a class settlement is fair, adequate and reasonable,
2 the trial court should consider relevant factors, such as “the strength of
3 plaintiffs’ case, the risk, expense, complexity and likely duration of further
4 litigation, the risk of maintaining class action status through trial, the amount
5 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.

6 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, *citing Dunk*, *supra*, 48
7 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688
8 F.2d 615, 624.)

9 “The list of factors is not exclusive and the court is free to engage in a balancing and
10 weighing of factors depending on the circumstances of each case.” (*Wershba v. Apple Computer,*
11 *Inc.*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the “proposed settlement
12 agreement to the extent necessary to reach a reasoned judgment that the agreement is not the
13 product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
14 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, *quoting*
15 *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.*,
16 *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

17 The burden is on the proponent of the settlement to show that it is fair and
18 reasonable. However “a presumption of fairness exists where: (1) the
19 settlement is reached through arm’s-length bargaining; (2) investigation and
20 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.”

21 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245, *citing Dunk*, *supra*, 48
22 Cal.App.4th at p. 1802.)

23 Although [t]here is usually an initial presumption of fairness when a
24 proposed class settlement ... was negotiated at arm’s length by counsel for
25 the class, ... it is clear that the court should not give rubber-stamp approval.
26 Rather, to protect the interests of absent class members, the court must
27 independently and objectively analyze the evidence and circumstances before
28 it in order to determine whether the settlement is in the best interests of those
whose claims will be extinguished. To make this determination, the factual
record before the ... court must be sufficiently developed... . The proposed

1 settlement cannot be judged without reference to the strength of plaintiffs'
2 claims. The most important factor is the strength of the case for plaintiffs on
3 the merits, balanced against the amount offered in settlement. The court must
4 stop short of the detailed and thorough investigation that it would undertake
if it were actually trying the case, but nonetheless it must eschew any rubber
stamp approval in favor of an independent evaluation.

5 (*Kullar, supra*, 168 Cal.App.4th at p. 130, internal citations and quotation marks omitted.)

6 Defendant will pay a Gross Settlement Amount of \$300,000 which includes: (1) the
7 Administration Costs in the sum of \$4,000 to Phoenix Class Action Settlement Administrators
8 (“Phoenix”), the Settlement Administrator; (2) the Private Attorneys General Act of 2004
9 (“PAGA”) Payment in the sum of \$20,000, seventy-five percent (75%) of which (\$15,000) shall
10 be paid to the California Labor and Workforce Development Agency (“LWDA”) and twenty-five
11 percent (25%) of which (\$5,000) shall be distributed to the aggrieved employees eligible to
12 recover the PAGA Payment that consist of all hourly-paid or non-exempt employees who
13 worked for Defendant within the State of California during the period from April 6, 2019
14 through June 1, 2021 (“Eligible Aggrieved Employees,” “PAGA Period,” “PAGA Payment,”
15 and “Individual PAGA Payment”), on a pro rata basis; (3) a Class Representative Enhancement
Payment in the amount ~~\$7,500~~ ^{\$5,000} to Plaintiff; (4) the Attorney Fee Award ~~\$105,000~~ ^{\$100,000}, which is
16 thirty-five percent ~~(35%)~~ ^{33 1/3%} of the Gross Settlement Amount to Class Counsel; and (5) the Cost
17 Award in the sum of \$10,590.03 to Class Counsel. Defendant’s portion of payroll taxes as the
18 Class Members’ current or former employer is not included in the Gross Settlement Amount and
19 will be a separate obligation of Defendant. No portion of the Gross Settlement Amount will
20 revert to Defendant for any reason. Class Members and Eligible Aggrieved Employees are not
21 required to submit a claim form to receive their shares of the Net Settlement Amount.
22

23 Funding of the Settlement will be made as follows:

24 No later than twenty-one (21) calendar days after the date the Final Approval of the
25 Settlement can no longer be appealed or, if there are no objectors and no Plaintiff in intervention
26 at the time the Court grants Final Approval of the Settlement, the date the court enters judgment
27 granting Final Approval of the Settlement, Defendant shall deposit the Gross Settlement Amount
28

1 of \$300,000 needed to pay the entire Gross Settlement Amount by wiring the funds to the
2 Settlement Administrator. Furthermore, within fourteen (14) calendar days after the deadline to
3 fund the Settlement, the Settlement Administrator shall calculate and disburse all payments due
4 under the Settlement Agreement, including all Individual Settlement Shares, Individual PAGA
5 Payments, the Attorney Fee Award, the Cost Award, the Class Representative Enhancements, the
6 PAGA Payment, and the Administration Costs. The Settlement Administrator will also forward a
7 check for seventy-five percent (75%) of the PAGA Payment to the LWDA.

8 As noted in the Preliminary Approval Order, the Proposed Settlement is entitled to a
9 presumption of fairness. In his moving papers, Plaintiff contends that the proposed Settlement
10 was the product of arm's-length negotiations following extensive litigation and following
11 extensive discovery and exchange of documentation relating to Plaintiff's claims. The
12 negotiations were facilitated by Steve Pearl, an experienced and respected class action mediator.

13 With respect to the benefit to the Class Members, Plaintiff's moving papers indicate that
14 the *average* Individual Settlement Share will be approximately \$2,466.09 under the proposed
15 allocation, which is based on the number of weeks individual Class Members worked during the
16 Class Period.

17 All Class Members who do not submit a valid and timely request to exclude themselves
18 from the class action Settlement ("Participating Class Members") and Eligible Aggrieved
19 Employees must cash or deposit their Individual Settlement Share and Individual PAGA
20 Payment checks within one hundred eighty (180) calendar days after the checks are mailed to
21 them. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing,
22 the Settlement Administrator will send a reminder postcard. If any checks remain uncashed or
23 not deposited by the expiration of the 90-day period after mailing the reminder notice, the
24 Settlement Administrator will, within two hundred (200) calendar days after the checks are
25 mailed, pay the amount of the Individual Settlement Share or Individual PAGA Payment (as
26 applicable) to the California State Controller's Unclaimed Property Division in accordance with
27 California Unclaimed Property Law so that the Participating Class Member and/or Eligible
28

1 Aggrieved Employee will have his or her Individual Settlement Share and/or Individual PAGA
2 Payment available to him or her per the applicable claim procedure to request that money from
3 the State of California.

4 Plaintiff has explained the risks and costs associated with continuing with the litigation
5 and the benefits conferred upon Class Members in the form of immediate compensation. Plaintiff
6 has satisfactorily assessed the maximum value of the claims and of the reasonableness of the
7 discount accepted in the settlement considering these risks. Finally, the Declaration of the
8 Settlement Administrator, Kevin Lee, states that Amended Notice of Class Action Settlement
9 (“Class Notices”) and the Amended Election Not To Participate or Opt-out Form (“Exclusion
10 Form”) (collectively, known as the “Notice Packets”) were mailed to sixty-two (62) Class
11 Members, and there were no objections and no requests for exclusion. This is further proof of the
12 fairness of the Settlement. Finally, the Declaration of Douglas Han provides sufficient
13 information about Class Counsel’s experience in litigating class action lawsuits.

14 The Court also has an independent right and responsibility to review the requested
15 attorneys’ fees and only award so much as it determines reasonable. (*See Garabedian v. Los*
16 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) The amount of
17 attorney’s fees requested by Class Counsel in the sum of ^{\$100,000} ~~\$105,000~~ is ^{33 1/3%} ~~thirty-five percent (35%)~~ of
18 the common fund created for the benefit of the Class Members and is supported by use of the
19 percentage-fee method. (*See Laffitte v. Robert Half International, Inc.* (2016) 1 Cal. 5th 480,
20 504.) According to the Declaration of Douglas Han, Class Counsel collectively expended 482.8
21 hours with a total lodestar figure of \$303,180. Under the lodestar cross-check, the requested fee
22 is below the lodestar, resulting in a negative multiplier of 0.35. Considering the contingent nature
23 of the representation and the ongoing monitoring of the settlement administration, the requested
24 hourly rates and the fee is justified. Thus, the Court finds that the fee request is reasonable, and it
25 is, therefore, approved.

26 ///

27 ///

1 The Court has also reviewed Class Counsel's declarations regarding the costs expended
2 in the prosecution of this litigation. Under the terms of the settlement, Plaintiff may seek
3 reimbursement of up to \$20,000 in litigation costs. The Court finds that Plaintiff has expended
4 \$10,590.03 in litigation costs and that such costs were reasonable. Therefore, the Court approves
5 the payment of the Cost Award to Class Counsel in the amount of \$10,590.03 from the Gross
6 Settlement Amount for the reimbursement of Class Counsel's litigation costs.

7 The rationale for making the Class Representative Enhancement Payment is that the
8 Class Representative should be compensated for the expense or risk he has incurred in conferring
9 a benefit to the Class. Such an enhancement payment is appropriate if it is necessary to induce an
10 individual to participate in the suit. Criteria courts may consider in determining whether to make
11 an enhancement payment include: 1) the risk to the class representative in commencing suit, both
12 financial and otherwise; 2) the notoriety and personal difficulties encountered by the class
13 representative; 3) the amount of time and effort spent by the class representative; 4) the duration
14 of the litigation; and 5) the personal benefit (or lack thereof) enjoyed by the class representative
15 because of the litigation.

16 The Court has reviewed the Declaration of Plaintiff, which outlines his involvement in
17 the lawsuit. Given the risks inherent in service as the Class Representative, the duration of the
18 case and time involved, and the benefits created for the Class, the Court approves a Class
19 Representative Enhancement Payment in the amount of ~~\$7,500~~^{\$5,000} to Plaintiff.

20 The Court has reviewed the Declaration of Kevin Lee, the Case Manager for Phoenix.
21 The Court finds that notice was provided to the Class pursuant to the Preliminary Approval
22 Order and that notice was sufficient and satisfies due process. Phoenix has discharged its duties
23 to provide notice to the Class and approves a payment of Administration Costs in an amount of
24 \$4,000 for its services in administering this settlement, including the mailing of settlement
25 awards according to the terms of the Settlement Agreement.

26 ///

27 ///

1 The Released Claims means all causes of action and factual or legal theories that were
2 alleged in the Complaint or reasonably could have been alleged based on the facts and legal
3 theories contained in the operative Complaint, including all of the following causes of action: (a)
4 violation of Labor Code sections 510 and 1198 (Unpaid Overtime); (b) violation of Labor Code
5 sections 226.7 and 512(a) (Unpaid Meal Period Premiums); (c) violation of Labor Code section
6 226.7 (Unpaid Rest Period Premiums); (d) violation of Labor Code sections 1194 and 1197
7 (Unpaid Minimum Wages); (e) violation of Labor Code sections 201 and 202 (Final Wages Not
8 Timely Paid); (f) violation of Labor Code section 226(a) (Non-Compliant Wage Statements); (g)
9 violation of Labor Code sections 2800 and 2802 (Unreimbursed Business Expenses); (h)
10 violations of Business & Professions Code sections 17200, *et seq.* and (i) civil penalties under
11 PAGA (Labor Code sections 2698, *et seq.*) (collectively, the “Released Claims”). The period of
12 the Release shall extend to the limits of the Covered Period.

13 The PAGA Released Claims means all allegations and claims for civil penalties pursuant
14 to PAGA based on any and all underlying Labor Code violations alleged in the Complaints or in
15 the PAGA Notice that arose during the PAGA Period, which includes alleged violations of Labor
16 Code sections 201, 202, 203, 204, 218.5, 221, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1194,
17 1197, 1197.1, 1198 and 2802 (“PAGA Released Claims”).

18 The Released Parties include Defendant and their past or present officers, directors,
19 shareholders, employees, agents, principals, heirs, representatives, accountants, auditors,
20 consultants, insurers and reinsurers, and their respective successors and predecessors in interest,
21 subsidiaries, affiliates, parents, attorneys, and any entities that may be considered joint
22 employers (“Released Parties”).

23 Defendant makes no admission of liability or wrongdoing by virtue of entering into this
24 Agreement. Additionally, Defendant reserve the right to contest any issues relating to class
25 certification and liability if the Settlement is not approved. Defendant denies that it has engaged
26 in any unlawful activity, has failed to comply with the law in any respect, has any liability to
27 anyone under the claims asserted in the Class Action, or that but for the Settlement, a Class
28

1 should not be certified in the Class Action and should not proceed on a representative basis. This
2 Agreement is entered into solely for the purpose of compromising highly disputed claims.
3 Nothing in this Agreement is intended or will be construed as an admission by Defendant of
4 liability or wrongdoing. This Settlement and Plaintiff's and Defendant's willingness to settle the
5 Class Action will have no bearing on, and will not be admissible in connection with, any
6 litigation, administrative proceeding, or other special proceeding (other than solely in connection
7 with this Settlement).

8 The Agreement will be binding upon, and inure to the benefit of, the successors and
9 assigns of the Parties.

10 For the reasons set forth above, the Motion for Final Approval of Class Action
11 Settlement, the Attorney Fee Award, the Cost Award, and the Class Representative Enhancement
12 Payment is GRANTED. The Settlement Administrator is directed to carry out the terms of the
13 Settlement Agreement forthwith.

14 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
15 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
16 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
17 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
18 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
19 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
20 THE JUDGMENT THEREON.

21 IT IS SO ORDERED.

22 OSC re Compliance with settlement is set for 9/6/22 at 8:30 am. Report is due 8/30/22.

23 DATED: 1/18/22



Elihu M. Berle

HONORABLE ELIHU M. BERLE
SUPERIOR COURT JUDGE
Elihu M. Berle / Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is mking@justicelawcorp.com

On January 20, 2022, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGEMENT

for the following case: **Krick v. SAG-AFTRA Federal Credit Union**
LWDA/Court Case No.: **LWDA-CM-781853-20**
20STCV34772
Los Angeles County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 20, 2022, at Pasadena, California.



Madeline King