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VALARIE MURRAY on behalf of herself and all similarly situated employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NEVADA

VALARIE MURRAY on behalf of herself
and all similarly situated employees,

Plaintiff,

v.

GRANITE WELLNESS CENTERS;
COMMUNITY RECOVERY RESOURCE
CENTER; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CU20-084680

**~~PROPOSED~~ ORDER AFTER HEARING
ON PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: November 18, 2022
Time: 10:00 a.m.
Dept.: 5

1 On November 17, 2022, the Court issued a tentative order granting Plaintiff's Motion
2 for Preliminary Approval of Class Action Settlement (the "Motion"), including a requirement
3 for all parties to appear on the matter the following day. On November 18, 2022, at 10:00
4 a.m., the Parties appeared before the Honorable S. Robert Tice-Raskin on the uncontested
5 Motion, at which time the Court adopted its tentative ruling and set the hearing on Plaintiff's
6 anticipated motion for final approval of the Class Action Settlement for March 3, 2023, at 9:00
7 a.m. The Court hereby affirms its adoption of the tentative ruling, as follows:

8 The Court is satisfied of all of the following: (1) that the class should be provisionally
9 certified; (2) that Class Counsel and the Class representative are appropriate for appointment;
10 (3) that the proposed settlement agreement is fair and reasonable; (4) that the proposed class
11 notice is adequate; (5) that the proposed *cy pres* recipients are appropriate under *Code of Civil*
12 *Procedure* section 384; (6) that the class administrator is appropriate and the proposed costs
13 for such administration as reasonable; and (7) that the requested attorneys' fees and costs and
14 class incentive payment are reasonable. The motion is thus granted as prayed.

15 ***Factual Background:***

16 On or about June 22, 2020, Plaintiff commenced the present action alleging wage and
17 hour claims against Defendant as both a class action and a representative action under the
18 Private Attorney General Act ("PAGA"). Thereafter, Plaintiff filed its first amended
19 complaint (the "FAC") on November 10, 2022, which added new causes of action related to
20 Plaintiff's termination from employment with Defendant.

21 The FAC alleges all of the following causes of action for alleged violations of all of the
22 following: (1) *Labor Code* sections 226.7, 1198 re: meal periods and premiums; (2) *Labor*
23 *Code* sections 226.7, 1198 re: rest periods and premiums; (3) *Labor Code* sections 1194, 1198
24 re: overtime wages; (4) *Labor Code* sections 1194, 1197, and 1199 re: minimum wages;
25 (5) *Labor Code* sections 226, 1174, and 1175 re: itemized wage statements and records;
26 (6) *Labor Code* sections 201, 202, 204, 216, 218, 221, 223, 1194, and 1198 re: payment of
27 agreed upon wages; (7) *Labor Code* sections 201-203 re: timely payment of final wages;
28 (8) *Labor Code* section 204 re: timely payment of all wages; (9) *Labor Code* §§ 2802 re:

1 reimbursement of work-related expenses; (10) *Labor Code* section 2698; (11) *Business &*
2 *Professions Code* section 17200 for unfair business practices; and (12) various individual
3 causes of action by Plaintiff for her alleged wrong termination. (*See Franklin Declaration*, ¶
4 2.)

5 The above described claims are predicated on Defendant’s alleged failure to pay
6 Plaintiff and other similarly-situated, non-exempt employees all hourly and overtime wages,
7 provide compliant meal/rest periods, and to reimburse employees for their required use of their
8 personal cell phones for work purposes. (*See id.* at ¶¶ 3-8.)

9 Plaintiffs now seek provisional approval of their proposed settlement agreement in the
10 amount of One Million Ninety-Two Thousand Five Hundred Seventy Dollars (\$1,092,570.00)
11 as the total settlement amount, which will be subject to deductions for attorneys’ fees and
12 costs, class incentive payment, payment to the Labor and Workforce Development Agency
13 (“LWDA”), and payment to the settlement administrator.

14 ***Analysis:***

15 *Ca. Rules of Court*, Rule 3.769(a) mandates court approval for the dismissal,
16 compromise, or settlement of a state class action case. The approval procedure has three
17 distinct steps: (1) preliminary settlement; (2) dissemination of notice to class members; and (3)
18 the final settlement approval hearing. The present motion concerns the first step.

19 ***(1) Settlement Class Certification***

20 *Ca. Code of Civil Procedure* § 382 has two minimum requirements to sustain a class
21 action: (1) an “ascertainable” class; and (2) a well-defined “community of interest” in
22 questions of law and fact. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1806; *see*
23 *also Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.)

24 As to the first element, for a class to be “ascertainable,” it must be sufficiently
25 numerous such that it would be impractical to bring them all before the Court. (*Richmond v.*
26 *Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470 [class action suits are authorized “when the
27 parties are [so] numerous ... it is impracticable to bring them all before the court”].) . It also
28 requires class members to be readily and easily identifiable. (*Archer v. United Rentals,*

1 *Inc.* (2011) 195 Cal.App.4th 807, 828 [class definition must be precise such that it is possible
2 “to give adequate notice to class members”].)

3 The second element – the existence of a well-defined “community of interest” –
4 embodies three separate factors: (1) predominant common questions of law or fact; (2) the
5 class representative has claims or defenses typical of class members; and (3) the class
6 representative can adequately represent the class. (*Richmond, supra*, 29 Cal.3d at 470.) The
7 standards for satisfying this standard vary based on whether the class being certified is a
8 settlement class or a litigation class. A settlement class, which is at issue here, is held to a
9 lower standard of scrutiny. (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113
10 Cal.App.4th 836, 859; *Dunk, supra*, 48 Cal.App.4th at 1807.)

11 The class is comprised of three hundred and fifty-five (355) individuals defined as “all
12 persons who worked for Community Recovery Resource Center as non-exempt, hourly
13 employees in California at any time from June 12, 2016, through April 30, 2021.” Plaintiff
14 argues that these individuals satisfy the “commonality requirement” because there are
15 common questions of law and fact. (*See Hanlon v. Chrysler Corp.* (1998) 150 F.3d 1011,
16 1019; *see also Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 473.) The Court
17 agrees. As argued by Plaintiff, the proposed class members have common claims related to
18 the “failure to track and pay for all hours worked; failure to provide compliant meal and rest
19 periods or pay premiums in lieu thereof; failure to reimburse for required work-related
20 expenses; and failure to provide accurate wage statements.”

21 Given the foregoing, the Court finds the proposed class is ascertainable, sufficiently
22 numerous, and readily identifiable. The Court also finds there is a well-defined “community
23 of interest.” Therefore, the Court finds that the proposed class is suitable for certification.

24 **(2) The Proposed Settlement**

25 **a. The Legal Standard**

26 With respect to the settlement, it is “the Court that bears the responsibility to ensure
27 that the recovery represents a reasonable compromise, given the magnitude and apparent merit
28 of the claims being released, discounted by the risks and expenses of attempting to establish

1 and collect on those claims by pursuing litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008)
2 168 Cal.App.4th 116, 129.) The Court is effectively a “guardian of the class” and has “a
3 fiduciary responsibility ... [to safeguard] the rights of the absentee class members when
4 deciding whether to approve a settlement agreement.” (*Id.*) The Court may not give rubber-
5 stamp approval, but must instead “independently and objectively analyze the evidence and
6 circumstances before it in order to determine whether the settlement is in the best interests of
7 those whose claims will be extinguished.” (*Id.* at 130 [this determination requires a
8 “sufficiently developed” factual record].)

9 *b. Fairness and Reasonableness of the Proposed Settlement*

10 As part of the Court’s preliminary approval process, the moving party must
11 demonstrate that the settlement is “fair, reasonable and adequate.” (*Dunk, supra*, 48
12 Cal.App.4th at 1801.) This determination of settlement fairness is ultimately left to the “broad
13 discretion” of the reviewing trial court. (*Id.* at 1801-1802 [“the [trial] court’s determination
14 [of fairness] is nothing more than ‘an amalgam of delicate balancing, gross approximations
15 and rough justice’”]; *see also Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
16 234.)

17 In making its assessment, the Court considers the factors outlined in *Dunk v. Ford*
18 *Motor Co.* (1996) 48 Cal.App.4th 1794, including, but not limited to: (1) the strength of
19 plaintiffs’ case; (2) the risk, expense, complexity, and the likely duration of further litigation;
20 (3) the risk of maintaining class action status through trial; (4) the amount offered in
21 settlement; (5) the extent of discovery completed and the stage of the proceedings; and (6) the
22 experience and views of counsel; (7) the presence (or lack thereof) of a governmental
23 participant; and (8) the reaction of the class members to the proposed settlement. (*Id.* at 1803.)

24 Here, Plaintiffs claim that, in connection with mediation, the “Parties engaged in
25 discovery to allow Plaintiff to assess the claims and liability, as well as analyze the maximum
26 exposure of damages and penalties. (*Franklin Declaration*, ¶ 11.) Defendants produced more
27 than 128,000 pages of records, including time and pay records and relevant policy
28 documents. (*Id.* at ¶ 12.) Prior to mediation, Defendant provided Plaintiff with information

1 regarding putative class members, number of former employees at issue, number of shifts, pay
2 periods, and wage statements at issue. (*Id.*) The Parties engaged in a full-day of mediation
3 with an experience mediator on June 1, 2022, and ultimately reached the current settlement
4 agreement. (*Id.*)

5 As to risks, expenses, complexity, liability, and further duration, Plaintiffs indicates a
6 belief that the maximum possible amount of class and PAGA penalties would amount to \$6.3
7 million, “without discounting for potentially losing on any of the causes of action.” The total
8 proposed settlement amount is \$1,092,570, which is approximately 17.3% of the maximum
9 amount discussed above. (*Id.* at ¶ 19.) Plaintiffs acknowledge Defendant may have several
10 viable affirmative defenses to its claims and notes Defendant’s argument that Plaintiff’s core
11 claims are refuted by Defendant’s compliant written policies. (*Id.* at ¶ 21.) Defendant also
12 argues and Plaintiff acknowledges possible issues related to possible class certification. (*Id.* at
13 ¶¶ 22-24.)

14 As to experience, Class Counsel has submitted a number of declarations detailing their
15 respective experience and including a listing of all prior cases in which named counsel has
16 acted as lead of co-counsel in related matters. (*See Dunk, supra*, 48 Cal.App.4th at 1802.) A
17 review of the same reveals class counsel to be suitably experienced. (*See e.g., Lee*
18 *Declaration*, ¶¶ 8-9; *Franklin Declaration*, ¶¶ 31-33; *Fitpatrick Declaration*, ¶ 6.)

19 For all the foregoing reasons, the Court finds that the proposed settlement is “fair,
20 reasonable, and adequate” within the meaning of *Dunk* and *Kullar*.

21 *c. Proposed Class Notice*

22 The purpose of the class notice is to “fairly apprise the class members of the terms of
23 the proposed compromise and of the options open to dissenting class members.” (*Wershba,*
24 *supra*, 91 Cal.App.4th at 251.) It should “give class members sufficient information to decide
25 whether they should accept the benefits offered, opt out and pursue their own remedies, or
26 object to the settlement. (*Id.* at 252.) The goal is to “strike a balance between thoroughness
27 and the need to avoid unduly complicating the content of the notice and confusing class
28 members.” In making its assessment of the adequacy of the particulars of the proposed notice

1 the Court is granted “virtually complete discretion.” (*7-Eleven Owners for Fair Franchising*
2 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1164.)

3 The proposed class notice appears to be adequate on its face. The notice will provide
4 the class members with information regarding the benefits, their time to opt out, and how to
5 object to the settlement. It also details the proposed incentive payment, proposed fees and
6 costs, and attorney’s fees and costs. Given the foregoing, the Court finds that the proposed
7 class notice is adequate and reasonable.

8 **(3) Attorney’s Fees and Costs**

9 There are two primary methods for determining whether attorneys’ fees are “fair and
10 reasonable” in the context of class action litigation: (1) the percentage method; or (2) the
11 lodestar method. (*Laffitte v. Robert Half Internat. Inc.* (1 Cal.5th 480, 506.) The former
12 method is most appropriate when the settlement amount is clearly defined. (*Id.* at 503-
13 504; *see also Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 49.) As is this Court’s
14 typical practice, the court can also provide a “lodestar cross-check” to further confirm
15 reasonableness. (*Laffitte, supra*, 1 Cal.5th at 503.) Ultimately, however, it is left to the trial
16 court’s sound discretion as to which method to employ in assessing reasonableness. (*Id.* at
17 506.)

18 Plaintiffs’ class counsel seeks preliminary approval of attorneys’ fees in the maximum
19 amount of \$364,190.00 and for litigation costs in an amount not to exceed \$10,000.00. As to
20 the attorney fees, this is an amount not to exceed one third of the total recovery. (*See e.g.,*
21 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 67, fn. 11 [“empirical studies show that ...
22 fee awards in class actions average around one-third of the recovery”].)

23 The Court notes that both the attorneys’ fees and costs appear to be facially
24 reasonable. They are provisionally approved in an amount not to exceed the amounts listed in
25 the motion. That being said, Counsel has not provided the Court with sufficient evidence
26 regarding the number of hours worked by counsel or their respective hourly rates. The Court
27 is therefore unable at this time to perform the above-described lodestar cross-check to confirm
28 its reasonableness determination. Counsel has similarly not provided an adequate breakdown

1 of the costs expended during the litigation of this matter.

2 Counsel is directed to provide a full lodestar analysis in its motion for final
3 approval. And Counsel is further directed to provide full documentation of its costs in
4 connection with the same.

5 ***(4) Payment to Class Representative***

6 “[I]t is established that named plaintiffs are eligible for reasonable incentive payments
7 to compensate them for the expense or risk they have incurred in conferring a benefit on other
8 members of the class.” (*Munoz v. BCI Coca-Cola Bottle Co. of Los Angeles* (2010) 186
9 Cal.App.4th 399, 412; *see also Clark v. American Residential Services LLC* (2009) 175
10 Cal.App.4th 785, 806-807.) Those incentive payments, however, may not be summarily
11 granted without due regard to the provided evidence; the propriety of such payments is to be
12 assessed on the evidence presented in the competent declarations in support thereof. (*See*
13 *Clark, supra*, 175 Cal.App.4th at 806-807 [appellate court refused to sanction trial court’s
14 incentive awards which were based on “nothing more than *pro forma* claims”].)

15 Here, proposed class representative, Valarie Murray, has provided a declaration
16 attesting to, in general terms, the work she has performed on the case. The \$5,000.00 payment
17 requested is reasonable on its face given the provided evidence.

18 ***(5) Class Administrator***

19 The Parties have agreed to an estimated payment of no more than \$8,250 to the
20 proposed settlement administrator, Phoenix Settlement Administrators (“Phoenix”). Phoenix
21 is tasked with sending class notices and generally administering this settlement.

22 The Court is in receipt of a supplemental declaration from Phoenix’s president of
23 business development Jodey Lawrence. These supplemental materials include a description of
24 Phoenix’s services, experience, procedures, safeguards, and proof of insurance. They also
25 include a detailed breakdown of costs associated with their administration. Further, there is a
26 statement from Phoenix disclaiming any financial interest with any counsel in this matter.

27 The Court is now satisfied for the purposes of preliminary approval that Phoenix is an
28 appropriate administer and that the proposed payment to Phoenix is reasonable and appropriate

1 at this time.

2 **(6) *Cy Pres Distribution***

3 The proposed settlement does not contemplate any reversion of unpaid sums to the
4 Defendant, but instead the funds “represented by settlement checks returned as undeliverable”
5 and the corresponding funds that are not negotiated within one hundred eighty (180) days after
6 mailing shall be paid to two different *cy pres* recipients in equal proportion, to wit: (1)
7 Watsonville Law Center (non-profit, free-service provider); and (2) Legal Service of Northern
8 California (non-profit providing fee civil legal assistance to low-income and “other vulnerable
9 populations”).

10 Counsel has now submitted multiple declarations attesting to the propriety of the
11 proposed *cy pres* recipients, including the supplemental declaration of Ms. Franklin filed on or
12 about November 1, 2022. The collective declarations reveal that the involved law firms are
13 not involved with or directly associated with either *cy pres* recipient. They also reveal, as is
14 required, that distribution to both Watson and Legal Service of Northern California fulfill the
15 purpose of the lawsuit within the meaning of *Code of Civil Procedure* section 384. (See *State*
16 *of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 472; see also *In re Microsoft I-V*
17 *Cases* (2006) 135 Cal.App.4th 706, 722 [the court must consider “whether the proposed *cy*
18 *pres* distribution is useful in fulfilling the purposes of the underlying cause of action”].)

19 **(7) *PAGA Settlement***

20 Settlements under the PAGA, as described in *Labor Code* sections 2698 *et seq.*, do not
21 require preliminary approval. As such, the Court does not conduct such an analysis for
22 purposes of this motion. At the time of final approval, however, the Court will assess whether
23 the PAGA portion of the settlement is “fair, reasonable, and adequate in view of PAGA’s
24 purposes to remediate present labor law violations, deter future ones, and to maximize
25 enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.)

26 **IT IS SO ORDERED.**

27 Dated: **12/23/2022**

28 

Judge of the Superior Court
Nevada County Superior Court
-9- Judge S. Robert Tice-Raskin

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PROOF OF SERVICE

I am employed in the County of Monterey, State of California. I am over the age of 18 and not a party to the within action; my business address is FITZPATRICK & SWANSTON, 555 S. Main Street, Salinas, California 93901.

On the date written below, I served the foregoing document(s), described as
[PROPOSED] ORDER AFTER HEARING ON PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
on the interested parties in this action as indicated below and by the following means:

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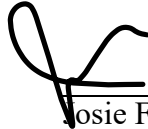
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(BY ELECTRONIC SERVICE) Pursuant to CCP § 1010.6 and Cal. Rules of Court, Rule 2.251, I caused the document(s) to be served at the e-mail address(es) listed above. I did not receive within a reasonable time after e-service, any electronic message or other indication that e-service was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 13, 2022, at Salinas, California.



Josie Favila