

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

EDGAR HERNANDEZ, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

JOSEPH J. ALBANESE, INC., a California
Corporation; and DOES 1-50, inclusive,

Defendants.

Case No. 20CV366581

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

The above-entitled matter came on for hearing on Wednesday, January 11, 2023, 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, January 10, 2023. 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 class and representative action arising out of various alleged wage and hour violations. The operative First Amended Complaint ("FAC"), filed on November 25, 2020, sets forth the following causes of action against defendant Joseph J. Albanese, Inc. ("Defendant"):

(1) Minimum Wage Violations; (2) Rest Period Violations; (3) Meal Period Violations; (4) Failure to Indemnify All Necessary Business Expenditures; (5) Waiting Time Penalties; (6) Wage Statement Violations; (7) Unfair Competition; and (8) Civil Penalties Under the Private Attorneys General Act.¹

The parties have reached a settlement. On April 7, 2022, the court granted preliminary approval of the settlement and approved the amended class notice.

Plaintiff David Jimenez (“Plaintiff”) subsequently moved for final approval of the settlement.

On December 8, 2022, the court entered an order continuing the motion for final approval to January 11, 2023. The court explained that while it generally remained of the view that the settlement is fair, the request for exclusion submitted by Felix Baez highlighted a problem with the structure of the payment calculations. The court instructed the parties to modify the settlement agreement in order to separately calculate PAGA payments to be made to aggrieved employees and payments from the settlement of the class action to be made to class members. The court otherwise approved the requested incentive award, attorney fees, litigation costs, and settlement administration costs.

On January 3, 2023, Plaintiff submitted a supplemental memorandum, a supplemental declaration from his counsel, and a copy of the parties’ revised settlement agreement.

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

¹ The FAC also substituted David Jimenez and Karen Embry (“Embry”) for Edgar Hernandez as plaintiffs. On December 30, 2020, at Embry’s request the court dismissed her as well as the second and third causes of action.

1 settlement, the extent of discovery completed and the stage of the proceedings, the
2 experience and views of counsel, the presence of a governmental participant, and
the reaction of the class members to the proposed settlement.”

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

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

13 The burden is on the proponent of the settlement to show that it is fair and
14 reasonable. However “a presumption of fairness exists where: (1) the settlement
15 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.”
16 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

17 **III. DISCUSSION**

18 The court has now reviewed the revised settlement agreement attached to the
19 supplemental declaration from Plaintiff’s counsel and finds that it adequately addresses the
20 payment calculation problem discussed in the prior court order. (Supplemental Declaration of
21 Marcus J. Bradley in Support of Motion for Final Approval of Class Action Settlement, ¶ 4 & Ex
22 A, ¶¶ I.C, I.Q, I.R, I.S, I.T, I.Z, I.AA, III.A, III.B, III.D, & III.E.)

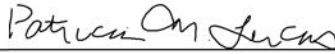
23 Accordingly, the motion for final approval of the class action settlement is GRANTED.

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

27 The court sets a compliance hearing for September 6, 2023 at 2:30 p.m. in Department
28 19. At least ten court days before the hearing, class counsel and the settlement administrator

1 shall submit a summary accounting of the net settlement fund identifying distributions made as
2 ordered herein, the number and value of any uncashed checks, amounts remitted to Defendant,
3 the status of any unresolved issues, and any other matters appropriate to bring to the court's
4 attention. Counsel may appear at the compliance hearing remotely.

5
6 Dated: January 11, 2023



Patricia M. Lucas
Judge of the Superior Court