

FILED
Superior Court of California
County of Los Angeles
01/13/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: J. Ahn Deputy

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

GINA MASSENZO, individually, on behalf of
other members of the general public similarly
situated, and on behalf of aggrieved employees
pursuant to the Private Attorneys General Act
("PAGA");

Plaintiff,

v.

BACHEM AMERICAS, INC., a California
corporation; and DOES 1 through 100, inclusive;

Defendants.

Case No.: 20TRCV00591

Honorable Gary Y. Tanaka
Department B

CLASS ACTION

**~~PROPOSED~~ ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: January 13, 2022

Hearing Time: 8:30 a.m.

Hearing Place: Department B

Complaint Filed: August 20, 2020

FAC Filed: June 29, 2021

Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Gina Massenzo's ("Plaintiff")
2 Motion for Final Approval of a Class Action Settlement and receiving the Attorney Fee Award, the
3 Cost Award, and the Class Representative Enhancement Payment, and after considering the papers
4 submitted in support of the motion, including the Joint Stipulation and Settlement Agreement
5 ("Settlement Agreement," "Settlement," or "Agreement"), hereby FINDS AND ORDERS as follows:

6 This is a putative class action. Plaintiff is a former employee of Defendant Bachem Americas,
7 Inc. ("Defendant"). The operative complaint in the case asserts nine (9) causes of action for wage-and-
8 hour violations. Plaintiff has brought this case on behalf of all non-exempt employees employed by
9 Defendant within the State of California during the Class Period ("Class" and "Class Members"). The
10 Class Period is time period from June 9, 2017, to September 6, 2021 ("Class Period"). There are four
11 hundred thirty-four (434) Class Members who did not submit a valid and timely request to exclude
12 themselves from the class action Settlement ("Participating Class Members").¹

13 On September 15, 2021, the Court granted Preliminary Approval of the Settlement. Plaintiff
14 now moves for Final Approval of the Settlement.

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

17 The following Class is certified for purposes of settlement only: all non-exempt employees
18 employed by Defendant within the State of California during the time period from June 9, 2017, to
19 September 6, 2021.

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

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28 ¹ Simpluris mailed Notice Packets to four hundred thirty-seven (437) Class Members and
received three (3) requests for exclusion. Consequently, there are four hundred thirty-four (434)
Participating Class Members.

1 In determining whether a class settlement is fair, adequate and reasonable, the
2 trial court should consider relevant factors, such as “the strength of plaintiffs’
3 case, the risk, expense, complexity and likely duration of further litigation, the
4 risk of maintaining class action status through trial, the amount offered in
5 settlement, the extent of discovery completed and the stage of the proceedings,
6 the experience and views of counsel, the presence of a governmental
7 participant, and the reaction of the class members to the proposed settlement.

8 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, *citing Dunk*, *supra*, 48
9 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d
10 615, 624.)

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

19 The burden is on the proponent of the settlement to show that it is fair and
20 reasonable. However “a presumption of fairness exists where: (1) the
21 settlement is reached through arm’s-length bargaining; (2) investigation and
22 discovery are sufficient to allow counsel and the court to act intelligently; (3)
23 counsel is experienced in similar litigation; and (4) the percentage of objectors
24 is small.”

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

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1 Although [t]here is usually an initial presumption of fairness when a proposed
2 class settlement ... was negotiated at arm's length by counsel for the class, ...
3 it is clear that the court should not give rubber-stamp approval. Rather, to
4 protect the interests of absent class members, the court must independently and
5 objectively analyze the evidence and circumstances before it in order to
6 determine whether the settlement is in the best interests of those whose claims
7 will be extinguished. To make this determination, the factual record before the
8 ... court must be sufficiently developed... . The proposed settlement cannot be
9 judged without reference to the strength of plaintiffs' claims. The most
10 important factor is the strength of the case for plaintiffs on the merits, balanced
11 against the amount offered in settlement. The court must stop short of the
12 detailed and thorough investigation that it would undertake if it were actually
13 trying the case, but nonetheless it must eschew any rubber stamp approval in
14 favor of an independent evaluation.

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

16 Defendant will pay \$800,000, which includes: (1) the Administration Costs in an amount of
17 \$6,550; (2) the Private Attorney General Act ("PAGA") Payment in the amount of \$50,000, seventy-
18 five percent (75%) of which (\$37,500) shall be paid to the California Labor and Workforce
19 Development Agency ("LWDA") and twenty-five percent (25%) of which (\$12,500) shall be
20 distributed to the aggrieved employees eligible to recover the PAGA Payment that consist of all non-
21 exempt employees who worked for Defendant within the State of California during the June 9, 2019
22 through September 6, 2021 ("Eligible Aggrieved Employees," "PAGA Period," "Individual PAGA
23 Payments," and "PAGA Payment"), on a pro rata basis; (3) the Class Representative Enhancement
24 Payment in the sum of \$10,000 to Plaintiff; (4) the Attorney Fee Award in the sum \$280,000, which is
25 thirty-five percent (35%) of the Gross Settlement Amount, (5) the Cost Award in the amount of
26 \$12,641.97; and (6) Individual Settlement Shares payable to all Participating Class Members. Class
27 Members and Eligible Aggrieved Employees are not required to submit a claim form to receive their
28 Individual Settlement Shares and Individual PAGA Payments. No portion of the Gross Settlement
Amount will revert to Defendant for any reason.

Funding of the Settlement will be as follows:

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1 No later than ten (10) calendar days after the Effective Final Settlement Date, Defendant shall
2 deposit the Gross Settlement Amount of \$800,000 needed to pay the entire Gross Settlement Amount
3 and the employer's share of pay roll taxes by wiring the funds to the Settlement Administrator.
4 Defendant shall also at this time provide any tax information that the Settlement Administrator may
5 need to calculate each Participating Class Members' Individual Settlement Shares. Afterwards, after
6 sixty-one (61) calendar days after the deadline to Fund of the Settlement, the Settlement Administrator
7 shall calculate and disburse all payments due under the Settlement Agreement, including all Individual
8 Settlement Shares, Individual PAGA Payments, the Attorney Fee Award, the Cost Award, the Class
9 Representative Enhancement Payment, the PAGA Payment, and the Administration Costs. The
10 Settlement Administrator will also forward a check for seventy-five percent (75%) of the PAGA
11 Payment to the LWDA for settlement of the PAGA claim.

12 As noted in the Preliminary Approval Order, the Settlement is entitled to a presumption of
13 fairness. In her moving papers, Plaintiff contends that the Settlement was the product of arms-length
14 negotiations following extensive litigation and following extensive discovery and exchange of
15 documentation relating to the claims made by Plaintiff. Moreover, the negotiations were facilitated
16 with the assistance of a skilled and experienced mediator, Jeffrey Krivis, an experienced and well-
17 respected class action mediator.

18 With respect to the benefit to the Class Members, Plaintiff's moving papers indicate that the
19 *average* Individual Settlement Share will be approximately \$1,015.69 under the proposed allocation,
20 which is based on the number of weeks worked during the Class Period.

21 Participating Class Members and Eligible Aggrieved Employees must cash or deposit their
22 Individual Settlement Share and Individual PAGA Payment checks within one hundred eighty (180)
23 calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within
24 ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard. If
25 any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the
26 reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the
27 checks are mailed, pay the amount of the Individual Settlement Share or Individual PAGA Payment
28 (as applicable) to the California State Controller's Unclaimed Property Division.

1 The Plaintiff has explained the risks and costs associated with continuing with the litigation
2 and the benefits conferred upon Class Members in the form of immediate compensation. Plaintiff has
3 satisfactorily assessed the maximum value of the claims and of the reasonableness of the discount
4 accepted in the settlement considering these risks. Finally, the Declaration of the Settlement
5 Administrator, Cassandra Polites, states that the Notice of Class Action Settlement (“Class Notices”)
6 and the Election Not To Participate or Opt-out Form (“Exclusion Form”) (collectively, known as the
7 “Notice Packet”) were mailed to four hundred thirty-seven (437) Class Members, there were only
8 three (3) requests for exclusion from the Settlement, and there were no objections to the Settlement.
9 This is further proof of the fairness of the Settlement. The Declaration of Douglas Han provides
10 sufficient information about Class Counsel’s experience in litigating class action lawsuits.

11 The Court also has an independent right and responsibility to review the requested attorneys’
12 fees and only award so much as it determines reasonable. (*See Garabedian v. Los Angeles Cellular*
13 *Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) The amount of attorney’s fees requested by
14 Class Counsel in the sum of \$280,000 is thirty-five percent (35%) of the common fund created for the
15 benefit of the Class Members and are supported by use of the percentage-fee method. (*See Laffitte v.*
16 *Robert Half International, Inc.* (2016) 1 Cal. 5th 480, 504.) According to the Declaration of Douglas
17 Han, Class Counsel collectively expended 421.9 hours with a total lodestar figure of \$293,032.50.
18 Even under the lodestar cross-check, the requested fee is below the lodestar, resulting in a negative
19 multiplier. Considering the contingent nature of the representation and the ongoing monitoring of the
20 settlement administration, the requested hourly rates and the fee is justified. Accordingly, the Court
21 finds that the fee request is reasonable, and it is therefore approved.

22 The Court has also reviewed the Declaration of Douglas Han regarding the costs expended in
23 the prosecution of this litigation. Under the terms of the settlement, Plaintiff may seek reimbursement
24 of up to \$20,000 in actual litigation costs. The Court finds that Plaintiff has expended \$12,641.97 in
25 actual litigation costs that were reasonable. Thus, the Court approves the payment of \$12,641.97 in
26 costs from the settlement fund for the reimbursement of Class Counsel’s actual litigation costs.

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

10 The Court has reviewed the Declaration of Gina Massenzo, which outline her involvement in
11 the lawsuit. Given the risks inherent in service as the Class Representative, the duration of the case
12 and time involved, and the benefits created for the Class, the Court approves the Class Representative
13 Enhancement Payment in the amount of \$10,000 to Plaintiff.

14 The Court has reviewed the Declaration of Cassandra Polites, the Case Manager for Simpluris,
15 Inc. ("Simpluris"), the Court-approved Settlement Administrator. The Court finds that notice was
16 provided to the Class pursuant to the preliminary approval order and that notice was sufficient and that
17 it satisfies due process. Thus, Simpluris has discharged its duties to provide notice to the Class and
18 approves a payment of \$6,550 for its services in administering this settlement, including the mailing of
19 settlement awards according to the terms of the Settlement Agreement.

20 The released claims means all claims that were or could have been asserted based on the facts
21 alleged in the First Amended Complaint by Plaintiff and Class Members, including, but not limited to,
22 claims based on Defendant's alleged: (1) failure to provide employees with meal and rest periods; (2)
23 failure to pay minimum wages and overtime; (3) failure to provide accurate wage statements; (4)
24 failure to pay wages during employment at termination; (5) failure to reimburse business expenses; (6)
25 civil penalties under PAGA; (7) unfair competition; and (8) violation of Labor Code sections 201, 202,
26 203, 204, 218.5, 221, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800 and
27 2802 ("Released Claims").

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1 The PAGA Released Claims mean all allegations and claims for civil penalties pursuant to
2 PAGA based on any and all underlying Labor Code violations alleged or reasonably could have been
3 alleged based on the facts and legal theories contained in the operative complaints and the PAGA
4 Notice served on the LWDA that arose during the PAGA Period, which includes Defendant's alleged
5 failure to pay overtime, failure to provide employees with meal periods, failure to provide employees
6 with rest periods, failure to pay minimum wage, failure to pay wages timely at termination, failure to
7 provide compliant wage statements, failure to reimburse employees for business expenses, and alleged
8 violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.7, 510, 512,
9 558, 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802 ("PAGA Released Claims").

10 The Released Parties include Defendant and its past or present officers, directors, shareholders,
11 employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and
12 reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents,
13 attorneys, and any entities that may be considered joint employers ("Released Parties").

14 Defendant makes no admission of liability or wrongdoing by virtue of entering the Agreement.
15 Additionally, Defendant reserves the right to contest any issues relating to class certification and
16 liability if the Settlement is not approved. Defendant denies it has engaged in any unlawful activity,
17 has failed to comply with the law in any respect, has any liability to anyone under the claims asserted
18 in the Class Action, or that but for the Settlement, a Class should be certified in the Class Action, or
19 that the PAGA claim could proceed on a representative basis. The Agreement is entered solely for the
20 purpose of compromising highly disputed claims. Nothing in the Agreement is intended or will be
21 construed as an admission by Defendant of liability or wrongdoing. The Settlement and Plaintiff's and
22 Defendant's willingness to settle the Class Action will have no bearing on and will not be admissible
23 in connection with, any litigation, administrative proceeding, or other special proceeding (other than
24 solely in connection with the Settlement).

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

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

4 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF THE
5 SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT 3.769, THE
6 COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS ORDER
7 AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE FINALITY OF THIS
8 MATTER, RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO ENFORCE THIS
9 ORDER, THE SETTLEMENT AGREEMENT, AND THE JUDGMENT THEREON.

10 IT IS SO ORDERED.



Gary Y. Tanaka

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12 DATED: 01/13/2022

Gary Y. Tanaka / Judge

HONORABLE GARY Y. TANAKA
SUPERIOR COURT JUDGE

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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 Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is mking@justicelawcorp.com

On January 18, 2022, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGEMENT

for the following case: **Massenzo v. Bachem Americas, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-792886-20**
Court Case No.: 20TRCV00591
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 18, 2022, at Pasadena, California.



Madeline King