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Case #20CV367058
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

PAMELA SILVA, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

CANON BUSINESS PROCESS SERVICES,
INC., a California corporation; and DOES 1
through 10, inclusive,

Defendants.

Lead Case No. 20CV367058

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

JAMICHA HORACE, as an aggrieved employee
pursuant to the Private Attorneys General Act
("PAGA"), on behalf of the State of California
and other aggrieved employees,

Plaintiff,

vs.

CANON BUSINESS PROCESS SERVICES,
INC., a Delaware corporation; CANON U.S.A.,
INC., a New York corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No. 21CV391418

The above-entitled matter came on for hearing on Wednesday, July 6, 2022, at 1:30 p.m.
in Department 3, the Honorable Patricia M. Lucas presiding. The court reviewed and considered

1 the written submissions filed by the parties and issued a tentative ruling on Tuesday, July 5,
2 2022. No party contested the tentative ruling; therefore, the court adopts the tentative ruling and
3 hereby orders, adjudges, and decrees as follows:

4 **I. INTRODUCTION**

5 Plaintiff Pamela Silva (“Silva”) filed a putative class action Complaint against defendant
6 Canon Business Process Services, Inc. (“Defendant”) on June 11, 2020, alleging causes of action
7 for: (1) Failure to Pay Minimum and Regular Rate Wages (Cal. Lab. Code §§ 204, 1194, 1194.2,
8 and 1197); (2) Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 1194 and 1198);
9 (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7 and 512); (4) Failure to Authorize
10 and Permit Rest Breaks (Cal. Lab. Code § 226.7); (5) Failure to Timely Pay Final Wages at
11 Termination (Cal. Lab. Code §§ 201-203); (6) Failure to Provide Accurate Itemized Wage
12 Statements (Cal. Lab. Code § 226); and (7) Unfair Business Practices (Cal. Bus. & Prof. Code
13 §§ 17200, et seq.).

14 On July 31, 2020, plaintiff Jamicha Horace (“Horace”) filed a complaint against
15 Defendant and Canon U.S.A., Inc. in Los Angeles County Superior Court, alleging a single cause
16 of action for civil penalties under the Private Attorneys General Act (“PAGA”) for failure to pay
17 minimum and overtime wages, failure to provide meal periods and rest periods, failure to timely
18 pay final wages, and failure to provide accurate itemized wage statements.

19 On August 10, 2020, Silva filed a First Amended Complaint adding an eighth cause of
20 action for civil penalties under PAGA.

21 On September 16, 2020, Horace’s request for dismissal without prejudice of defendant
22 Canon U.S.A., Inc. was granted.

23 On August 25, 2021, the Los Angeles County Superior Court entered an order
24 transferring venue in Horace’s lawsuit to the Santa Clara County Superior Court to facilitate
25 consolidation of the cases.

26 On December 7, 2021, this court approved a joint stipulation consolidating the cases for
27 all purposes.

1 The parties have reached a settlement. On January 5, 2022, the court granted preliminary
2 approval of the settlement, subject to modification of the class notice.

3 Silva and Horace (collectively, “Plaintiffs”) now move for final approval of the
4 settlement.

5 **II. LEGAL STANDARD**

6 Generally, “questions whether a settlement was fair and reasonable, whether notice to the
7 class was adequate, whether certification of the class was proper, and whether the attorney fee
8 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
9 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*
10 (1996) 48 Cal.App.4th 1794 (*Dunk*).)

11 In determining whether a class settlement is fair, adequate and reasonable, the
12 trial court should consider relevant factors, such as “the strength of plaintiffs’
13 case, the risk, expense, complexity and likely duration of further litigation, the
14 risk of maintaining class action status through trial, the amount offered in
15 settlement, the extent of discovery completed and the stage of the proceedings, the
16 experience and views of counsel, the presence of a governmental participant, and
17 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*).)

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

25 The burden is on the proponent of the settlement to show that it is fair and
26 reasonable. However “a presumption of fairness exists where: (1) the settlement
27 is reached through arm’s-length bargaining; (2) investigation and discovery are
28 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.”
(*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

1 **III. DISCUSSION**

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

3 Any employees of Defendant who worked for Defendant in California at any time
4 during the Class Period as hourly paid, non-exempt employees.

5 The Class Period is May 20, 2016 through the date of preliminary approval of the settlement
6 (i.e., January 5, 2022).

7 As discussed in connection with the motion for preliminary approval, Defendant will pay
8 a total non-reversionary amount of \$750,000. The total settlement payment includes attorney
9 fees of \$250,000 (1/3 of the gross settlement fund), costs up to \$17,500, an incentive award of up
10 to \$10,000 for each class representative, settlement administration costs up to \$20,000, and a
11 PAGA allocation of \$80,000 (from which \$60,000 will be paid to the LWDA).

12 Checks remaining uncashed more than 180 days after mailing will be void. The parties
13 proposed that the funds from those checks be distributed to the Controller of the State of
14 California to be held pursuant to the Unclaimed Property Law for the benefit of the class
15 members who did not cash their checks. In its order granting preliminary approval, the court
16 held that the designation of the State of California as a *cy pres* beneficiary did not comply with
17 Code of Civil Procedure section 384. Plaintiffs' counsel now advises that uncashed payments
18 will be sent to the California State Bar's Justice Gap Fund. (Declaration of H. Scott Leviant in
19 Support of Plaintiffs' Motion for Final Approval of Class Action Settlement ("Leviant Dec."),
20 ¶ 11(w).) The court approves the California State Bar's Justice Gap Fund as the *cy pres*
21 recipient.

22 On February 8, 2022, the settlement administrator mailed a class notice to 1,287 class
23 members. ([Corrected] Declaration of Jarrod Salinas on Behalf of Settlement Administrator with
24 Respect to Opt Outs and Objections Received ("Salinas Dec."), ¶ 6 & Ex. A.)

25 It appears that this notice was not approved by the court before it was mailed to the class,
26 as required by the order granting preliminary approval. The court has now reviewed the notice
27 and finds that it contains the required modifications. Thus, the court will not deny the motion
28 due to failure to obtain the court's approval prior to mailing the amended class notice.

1 As of May 11, 2022, 8 notices were returned by the United States Postal Service.
2 (Salinas Dec., ¶ 7.) The settlement administrator mailed 7 notices to updated addresses and,
3 ultimately, only 1 notice remained undeliverable. (*Id.* at ¶¶ 7 & 8.)

4 The settlement administrator received 5 requests for exclusion from the following
5 individuals: Tosha Thomas; Eduardo Piney; Neal Ashley; Estrella Zamodio; and Yolanda
6 Rosales. (Salinas Dec., ¶ 9.) The settlement administrator has not received any objections as of
7 May 11, 2022. (*Id.* at ¶ 10.) The estimated highest individual settlement payment will be
8 approximately \$1,012.90, the estimated lowest individual settlement payment will be
9 approximately \$0.48, and the estimated average individual settlement payment will be
10 approximately \$309.28. (*Id.* at ¶ 13; Supplemental Declaration of H. Scott Leviant in Support of
11 Plaintiffs’ Motion for Final Approval of Class Action Settlement, ¶ 4.)

12 The court previously found that the proposed settlement is fair and the court continues to
13 make that finding for purposes of final approval.

14 In connection with preliminary approval, Plaintiffs requested an incentive award of
15 \$10,000 for each of the two class representatives. In its order granting preliminary approval, the
16 court stated it would approve a total service award of \$15,000 (\$7,500 for each class
17 representative), and that award continues to be approved for final approval of settlement.

18 The court also has an independent right and responsibility to review the requested
19 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
20 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs’ counsel seek
21 attorney fees of \$250,000 (1/3 of the total settlement fund). Plaintiffs’ counsel provide evidence
22 demonstrating a total combined lodestar of \$248,343.50. (Leviant Dec., ¶ 32; Declaration of
23 Raul Perez in Support of Motion for Final Approval of Class Action Settlement and Motion for
24 Attorneys’ Fees, Costs, and Class Representative Enhancement Payments (“Perez Dec.”), ¶ 8.)
25 This results in a multiplier of 1.01. The attorney fees in the amount of \$250,000 are reasonable
26 as a percentage of the common fund and are approved. (*Laffitte v. Robert Half Intern. Inc.*
27 (2016) 1 Cal.5th 480, 503-504 [trial court did not abuse its discretion in approving fee award of
28

1 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to
2 2.13].)

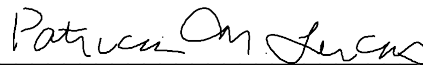
3 Plaintiffs' counsel also provide evidence of incurred costs in the amount of \$21,950.49.
4 (Leviant Dec., ¶ 32 & Ex. 2; Perez Dec., ¶ 11.) Plaintiffs' counsel only seek to recover \$17,500
5 in costs in accordance with the terms of the settlement and those costs are approved. The
6 settlement administration costs of \$11,000 are also approved. (Salinas Dec., ¶ 14 & Ex. B.)

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

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

11 The court sets a compliance hearing for March 1, 2023, at 2:30 p.m. in Department 3. At
12 least ten court days before the hearing, class counsel and the settlement administrator shall
13 submit a summary accounting of the net settlement fund identifying distributions made as
14 ordered herein, the number and value of any uncashed checks, amounts remitted to Defendant,
15 the status of any unresolved issues, and any other matters appropriate to bring to the court's
16 attention. Counsel may appear at the compliance hearing remotely.

17
18 Dated: July 6, 2022



Patricia M. Lucas
Judge of the Superior Court