

ORDER ON SUBMITTED MATTER

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

CRAIG RUSSELL, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

NUTANIX, INC.; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 20CV366943

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

The above-entitled matter came on for hearing on Wednesday, September 14, 2022, 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, September 13, 2022. 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 against defendant Nutanix, Inc. ("Defendant") arising out of various alleged wage and hour violations. The operative Second Amended Complaint, filed on November 1, 2021, sets forth the following causes of action: (1) Failure to

1 Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Timely Pay All Earned
2 Wages; (4) Failure to Provide Meal Periods; (5) Failure to Permit Rest Breaks; (6) Failure to
3 Provide Accurate Itemized Wage Statements; (7) Failure to Pay All Wages Due Upon Separation
4 of Employment; (8) Failure to Reimburse Necessary Business Expenses; (9) Violation of
5 Business and Professions Code §§ 17200, et seq.; and (10) Enforcement of Labor Code § 2698 et
6 seq. (“PAGA”).

7 The parties have reached a settlement. On April 13, 2022, the court granted preliminary
8 approval of the settlement.

9 Plaintiff Craig Russell (“Plaintiff”) now moves for final approval of the settlement.

10 **II. LEGAL STANDARD**

11 Generally, “questions whether a settlement was fair and reasonable, whether notice to the
12 class was adequate, whether certification of the class was proper, and whether the attorney fee
13 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
14 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*
15 (1996) 48 Cal.App.4th 1794 (*Dunk*).)

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

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

23 “The list of factors is not exclusive and the court is free to engage in a balancing and
24 weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91
25 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the
26 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
27 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
28

1 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48
2 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

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

8 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

9 **III. DISCUSSION**

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

11 Defendant’s employees that occupied a position within the In Scope Job
12 Categories in California from April 6, 2016 to September 20, 2021 (“Class
13 Period”).

14 “In Scope Job Categories” are defined as “the following job categories: (i) inside account
15 executives, (ii) sales development representatives, (iii) commercial account executives,
16 (iv) enterprise account executives, (v) global account executives, and (vi) channel account
17 executives.” The job titles held by Defendant’s sales employees during the Class Period are set
18 forth in Exhibit A to the Settlement Agreement. The class contains a subset of PAGA Members
19 who are defined as class members “who occupied a position within the In Scope Job Categories
20 in California from April 6, 2019 to September 20, 2021.”

21 As discussed in connection with the motion for preliminary approval, Defendant will pay
22 a total non-reversionary amount of \$2,375,000. The total settlement payment includes attorney
23 fees up to 35 percent of the gross settlement amount, litigation costs up to \$17,000, an incentive
24 award of \$7,500 for the class representative, settlement administration costs up to \$7,750, and a
25 PAGA allocation of \$250,000 (from which \$187,500 will be paid to the LWDA and \$62,500 will
26 be paid to the aggrieved employees).

27 Class members in the inside account executives and sales development representatives
28 job categories will collectively receive 60 percent of the net settlement amount. Class members
in the following job categories will collectively receive 40 percent of the net settlement amount:
commercial account executives, enterprise account executives, global account executives, and
channel account executives. The amount of each class member’s individual settlement payment

1 will be calculated on a pro rata basis based on the number of workweeks worked during the
2 Class Period. PAGA Members will receive a pro rata share of the 25 percent portion of the
3 PAGA payment allocated to aggrieved employees based on the number of workweeks worked
4 during the PAGA Period.

5 The funds from checks remaining uncashed more than 180 days after mailing will be
6 distributed to Child Advocates of Silicon Valley as the *cy pres* recipient.

7 On May 18, 2022, the settlement administrator mailed the class notice packet to 202 class
8 members. (Declaration of Taylor Mitzner on Behalf of Settlement Administrators regarding
9 Settlement Notice Administration (“Mitzner Dec.”), ¶ 5 & Ex. A.) Ultimately, all notice packets
10 were deliverable. (*Id.* at ¶¶ 6-7.)

11 As of August 17, 2022, there have been no requests for exclusion and no objections to the
12 settlement. (Mitzner Dec., ¶¶ 9-10.) The highest individual settlement payment is
13 approximately \$20,418.17, the lowest individual settlement payment is approximately \$82.34,
14 and the average individual settlement payment is approximately \$6,245.05. (*Id.* at ¶¶ 12-13.)
15 The court previously found the proposed settlement is fair and the court continues to make that
16 finding for purposes of final approval.

17 Plaintiff requests an incentive award of \$7,500 for the class representative. The court
18 approved the incentive award in connection with preliminary approval of the settlement and
19 continues to do so for purposes of final approval.

20 The court also has an independent right and responsibility to review the requested
21 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
22 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff’s counsel
23 request attorney fees in the amount of \$831,250 (35 percent of the total settlement fund).
24 Plaintiff’s counsel provide evidence demonstrating a total combined lodestar of \$279,260.
25 (Declaration of Joseph M. Szilagyi in Support of Plaintiff’s Motion for Final Approval of Class
26 Action Settlement (“Szilagyi Dec.”), ¶¶ 22-24 & Ex. E; Declaration of Jonathan M. Lebe in
27 Support of Plaintiff’s Motion for Final Approval of Class Action Settlement (“Lebe Dec.”), ¶¶ 9
28 & 12, & Exs. A & B.) This results in a multiplier of 2.98. This multiplier is higher than the

1 court would usually approve but it is arguably within a broad range which courts typically
2 approve, and the court agrees with counsel that it is justified here as the settlement achieves a
3 very good result for the class. (See *Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 1 Cal.5th 480,
4 488, 503–504 [trial court did not abuse its discretion in approving fee award of 1/3 of the
5 common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13];
6 *Wershba, supra*, 91 Cal.App.4th at p. 255 [“[m]ultipliers can range from 2 to 4 or even higher”];
7 *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers
8 ranging from one to four are typical in common fund cases and citing the court’s own survey of
9 large settlements finding “a range of 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a
10 bare majority (13 of 24, or 54%) in the 1.5–3.0 range”].) Consequently, the attorney fees are
11 approved.

12 Plaintiff’s counsel also provide evidence of incurred costs in the amount of \$11,460.35.
13 (Szilagyi Dec., ¶ 26 & Ex. F; Lebe Dec., ¶ 9 & Ex. C.) These costs are approved. The
14 settlement administration costs of \$7,750 are also approved. (Mitzner Dec., ¶ 16 & Ex. B.)

15 Pursuant to the Settlement, the Class Representative shall release, relinquish and
16 discharge, and each of the Participating Class Members who did not opt out shall be deemed to
17 have, and by operation of the Order shall have, fully, finally, and forever released, relinquished
18 and discharged all Released Claims as defined by the Settlement Agreement. The Settlement
19 resolves and extinguishes the claims for civil penalties brought pursuant to California Labor
20 Code Section 2698 et seq., that were asserted through this Action or otherwise meeting the
21 definition of Released Claims.

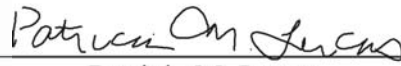
22 The motion for final approval of the class action settlement is GRANTED.

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

26 The court sets a compliance hearing for May 17, 2023, at 2:30 p.m. in Department 3. At
27 least ten court days before the hearing, class counsel and the settlement administrator shall
28 submit a summary accounting of the net settlement fund identifying distributions made as

1 ordered herein, the number and value of any uncashed checks, amounts remitted to Defendant,
2 the status of any unresolved issues, and any other matters appropriate to bring to the court's
3 attention. Counsel may appear at the compliance hearing remotely.

4
5 Dated: September 14, 2022



Patricia M. Lucas
Judge of the Superior Court