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12 Attorneys for Plaintiffs, Settlement Class
13 Members, and Aggrieved Employees

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

GEORGE TORRES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

ARCH TELECOM, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No. C20-01679

*[Assigned for all purposes to the Hon. Edward
Weil, Dept. 39]*

**~~AMENDED PROPOSED~~ ORDER
GRANTING PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, CLASS
REPRESENTATIVE INCENTIVE
AWARDS, AND ATTORNEYS' FEES
AND COSTS**

Date: July 7, 2022
Time: 9:00 a.m.
Dept.: 39

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1 4. Notice was provided to Settlement Class members as set forth in the Settlement,
2 which was approved by the Court on June 29, 2021, and the notice process has been completed
3 in conformity with the Settlement. The Court finds that said notice was the best notice practicable
4 under the circumstances. The Class Notice provided due and adequate notice of the proceedings
5 and matters set forth therein, informed Settlement Class members of their rights, and fully
6 satisfied the requirements of California Code of Civil Procedure § 1781(e), California Rule of
7 Court 3.769, and due process.

8 5. The Court finds that no Settlement Class member objected to the Settlement, that
9 no Settlement Class member opted out of the Settlement, and that the 100% participation rate in
10 the Settlement supports final approval.

11 6. The Court hereby approves the settlement as set forth in the Settlement as fair,
12 reasonable, and adequate, and directs the parties to effectuate the Settlement according to its
13 terms.

14 7. For purposes of settlement only, the Court finds that: (a) the members of the
15 Settlement Class are ascertainable and so numerous that joinder of all members is impracticable;
16 (b) there are questions of law or fact common to the Settlement Class, and there is a well-defined
17 community of interest among members of the Settlement Class with respect to the subject matter
18 of the litigation; (c) the claims of the Class Representatives are typical of the claims of the
19 members of the Settlement Class; (d) the Class Representatives have fairly and adequately
20 protected the interests of the Settlement Class members; (e) a class action is superior to other
21 available methods for an efficient adjudication of this controversy; and (f) Class Counsel are
22 qualified to serve as counsel for the Class Representatives and the Settlement Class.

23 8. The Court finds that the individual Settlement Awards, as provided for in the
24 Settlement, are fair, reasonable, and adequate, and orders the Settlement Administrator to
25 distribute the individual Settlement Awards in conformity with the terms of the Settlement.

26 9. The Court finds that the incentive award in the amount of \$5,000 to each of the
27 Plaintiffs (\$15,000 total) is appropriate for their risks undertaken and their service to the
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1 Settlement Class. The Court finds these awards are fair, reasonable, and adequate, and orders that
2 the Settlement Administrator make these payments in conformity with the terms of the Settlement.

3 10. The Court finds that attorneys' fees in the amount of \$316,875.00 for Class
4 Counsel, and litigation costs of \$30,785.61, are fair, reasonable, and adequate in light of the
5 common fund created by this litigation (including the Gross Settlement Amount as well as the
6 funds paid to Release Sub-Class members in exchange for individual releases), and orders that the
7 Settlement Administrator distribute these payments in conformity with the terms of the
8 Settlement. However, 5% of the attorneys' fee award shall be withheld by the Settlement
9 Administrator pending satisfactory compliance as found by the Court.

10 11. The Court orders that the Settlement Administrator shall be paid \$11,950.00 from
11 the Gross Settlement Amount for all of its work done and to be done until the completion of this
12 matter, and finds that sum appropriate.

13 12. The Court finds that the payment to the California Labor & Workforce
14 Development Agency ("LWDA") in the amount of \$37,500.00 for its share of the settlement of
15 Plaintiffs' representative claims under the California Labor Code Private Attorneys General Act
16 ("PAGA") is fair, reasonable, and adequate, and orders the Settlement Administrator to distribute
17 this payment to the LWDA in conformity with the terms of the Settlement.

18 13. The Court hereby sets a compliance hearing for June 8, 2023 at 9:00 a.m. in
19 Department 39. Class Counsel shall submit a compliance statement no later than one week prior
20 to the compliance hearing. Class Counsel shall also submit a proposed amended judgment
21 pursuant to Code of Civil Procedure section 384 prior to the compliance hearing.

22 **IT IS SO ORDERED.**

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24 Dated: JUL 28 2022

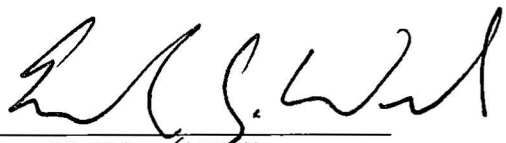
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26 Honorable Edward Weil
27 Judge of the Superior Court
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EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 39
HEARING DATE: 07/07/2022

7. 9:00 AM CASE NUMBER: MSC20-01679
CASE NAME: TORRES VS ARCH TELECOM INC.
MOTION FINAL APPROVAL OF CLASS ACTION SETTLEMENT+0001+
TENTATIVE RULING:

Plaintiffs Ryan Molale, George Torres, and Tran Le move for final approval of their class action settlement with defendant Arch Telecom Inc., along with approval of attorney's fees and costs, and representative incentive payments. Preliminary approval of the settlement was granted after a hearing on June 3, 2021 (although the order after hearing was not entered until Jun 30, 2021). Submission of a motion for final approval was further delayed by compliance issues, which culminated in a motion to enforce settlement by the plaintiffs, which was granted on February 3, 2022.

A. Background and Settlement Terms

The complaint was filed August 26, 2020, with only Torres as plaintiff. It is a class action complaint alleging that defendant violated the Labor Code by failing to include all discretionary incentive pay in the regular rate of pay for purposes of calculating overtime, failing to provide proper expense reimbursements, failing to pay wages for time spent at mandatory meetings, failing to provide meal and rest breaks, waiting time penalties, and non-compliant wage statements. Previously, on February 8, 2019, Molale had filed a complaint in this county making similar allegations. Previous to that, on January 3, 2019, Le filed a PAGA complaint in Los Angeles Superior Court, having previously served a PAGA notice on the LWDA. Nothing in the agreement indicates that these three cases will be combined in any formal way. Based on the approval of this settlement and the written release, the *Le* case and the *Molale* case will be dismissed. The parties should clarify this issue.

The settlement would create a gross settlement fund of \$909,675, in addition to \$40,950 that was paid to class members in previous individual *Pick Up Stix* settlements, totaling \$950,625. The class representative payment to each of the three plaintiffs would be \$5,000. Counsel's attorney's fees would be one-third of the total settlement, i.e. \$316,875. Litigation costs would not exceed \$35,000. The settlement administrator (Phoenix Settlement Administrators) estimates its costs at \$14,000. PAGA penalties would be \$50,000, resulting in a payment of \$37,500 to the LWDA and \$12,500 to the class. Thus, the net settlement amount available to the class would be \$384,850. The fund is non-reversionary.

The settlement amount would be paid to the Settlement Administrator in eighteen equal monthly instalments, from November 1, 2020 to April 1, 2022. The settlement amount (which initially had been \$750,000, plus the additional \$40,950) was subject to an "escalator" clause that increased the amount to be paid if the number of class members turned out to be more than 5% greater than expected. When this occurred, defendant initially did not make the additional payments, resulting in a motion to enforce the settlement provision. The motion was granted on February 14, 2022.

The proposed settlement would certify two subclasses. The "Non-release Sub-Class" consists

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of current and former non-exempt employees during the class period who did not sign an individual settlement. The "Release" sub-class would cover those who previously signed a *Pick Up Stix* settlement. Combined, the two sub-classes initially were estimated to total about 1,085 members. When the proper information was provided, however, the number increased to 1,312 members (triggering the escalator clause). 179 employees are in the "release" sub class, having signed settlements ranging from \$100 to \$350. 906 employees are in the "non-release" sub-class.

The settlement will essentially equalize the payments to the sub-classes, by providing that the Non-release subclass, i.e., those who did not previously settle, will receive a payment of \$100 to \$350, as if they had accepted the previous offer. The remaining funds would then be distributed among both classes based on work periods worked during the class period.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. They may dispute their number of work weeks. Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Uncashed checks would be cancelled and the amounts would be tendered to a cy pres beneficiary, Legal Aid at Work. (Agreement, Par. 4.E.)

Since preliminary approval, the notice process has been executed. 1,312 notice packets were mailed, with 4 more added later. 256 packets were returned as undeliverable. A new address was obtained for 255 of those, and the notices were remailed. The net was that 28 packets were left undelivered. There were no requests for exclusion and no objections. The average payment will be about \$400.

Defendant has been making its installment payments, and has three more to make, with the last due in September 2022.

Substantial informal and formal discovery was undertaken, and the matter settled after meeting with an experienced mediator.

Counsel has provided a summary of a qualitative and quantitative analysis of the case, and how the settlement compares to the potential value of the case, after allowing for various risks and contingencies. The primary issue in the case is the use of incentive pay to calculate the rate of pay for overtime purposes. There are also meal period issues, particularly concerning whether "the nature of the work prevents an employee from being relieved of all duty." As to rest periods, much of the controversy concerns whether additional breaks were "authorized and permitted" on shifts of more than six or ten hours. Reimbursement of expenses, particularly directed at cell phone usage, raises a number of issues, including whether it is amenable to class treatment. Penalties for waiting time and incorrect wage statements rely on the other underlying claims, and also raise other issues arising from their derivative status. PAGA penalties are subject to reduction in the discretion of the Court.

B. Legal Standards

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including "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 settlement,

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the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction ... to the proposed settlement.” (See also *Amaro v. Anaheim Arena Mgmt., LLC*, *supra*, 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the “fair, reasonable, and adequate” standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess “the fairness of the settlement’s allocation of civil penalties between the affected aggrieved employees[.]” (*Id.*, at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because “[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

C. Attorney fees and Representative Payment

Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common fund” theory. They also seek one-third of the additional \$40,950 that was paid in connection with defendant’s *Pick Up Stix* settlements, based on the “catalyst” theory. Given that the basis for the separate settlements was to obtain releases from employees that would remove them from this action, a catalyst fee appears to be appropriate.

Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

Accordingly, plaintiffs have now provided the Court with documentation concerning their lodestar fee. They estimate a total of lodestar of \$216,605. The hourly rates applied range from \$675 to \$425, and the relative number of hours for different attorneys at different rates indicates that an effort was made to have work done by lower-compensated attorneys where possible.

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Given the \$316,875 requested, this results in an implied multiplier of 1.46. No adjustment to the proposed one-third fee is necessary. The attorney's fee request is approved.

The litigation costs of \$30,785.61, and administrator's costs of \$11,950 are reasonable and are approved.

The requested representative payment of \$5,000 for each of the three plaintiffs was deferred until this final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

Tran Le has provided a declaration, attesting that he spent approximately 15-20 hours on the case. Ryan Molale has provided a declaration, attesting that he spent approximately 20-25 hours on the case. George Torres has provided a declaration, attesting that he spent approximately 15-20 hours on the case. Each faced potential liability, and possible stigma within the industry, but none have documented any special concern. Each released individual claims, but none have indicated that they had any individual claims of particular value. All things considered, the request for \$5,000 each is granted.

D. Discussion

The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and adequate to justify final approval.

The Court notes that in the preliminary approval, the parties and the Court overlooked the need to comply with Code of Civil Procedure section 382.4, which provides that where a class action settlement is approved, and will distribute funds to a cy pres recipient, "in connection with the hearing for preliminary approval" counsel shall "notify the court if the attorney has a connection to or a relationship with a nonparty recipient of the distribution that could reasonably create the appearance of impropriety as between the selection of the recipient of the money or thing of value and the interests of the class." Counsel are directed to provide a declaration attesting that they have no relationship with Legal Aid at Work that would raise any appearance of impropriety.

E. Conclusion

Counsel are directed to file a supplemental declaration as indicated above no later than July 14, 2022. If the declaration is sufficient, the court will grant the motion.

After preparing and submitting the supplemental declaration, counsel are directed to prepare an order reflecting this ruling and the other provisions reflected in the proposed order submitted with the motion. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented, including an amended judgment filed after the cy pres payment is made, complying with the requirements of Code of Civil Procedure section 384(b). Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court. Counsel are directed to contact the Department clerk in order to obtain a date

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and time for the compliance hearing.