

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

MARTIN ALCARAZ, JESUS CEDILLO, JESUS  
CERVANTES, and JOSE MIRELES, on behalf  
of themselves and all others similarly situated,  
and on behalf of the general public,

Plaintiffs,

vs.

RBLI INC., a California corporation; KELLY J.  
RYAN, an individual; and DOES 1 through 50,  
inclusive,

Defendants.

Case No. 20CV367471

**ORDER RE: MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

The above-entitled action came on for hearing on Wednesday, July 7, 2021, 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, July 6, 2021. No party contested the tentative ruling; therefore, the court orders that the tentative ruling be adopted as the order of the court, as follows:

**I. INTRODUCTION**

This is a putative class action arising out of alleged wage and hour violations. The Complaint, filed on June 23, 2020, sets forth the following causes of action: (1) Failure to Provide Meal Periods or Pay Meal Period Premiums; (2) Failure to Authorize and Permit Rest

1 Breaks or Pay Rest Break Premiums; (3) Failure to Pay Overtime Wages; (4) Failure to Provide  
2 Accurate Itemized Wage Statements; (5) For Waiting Time Penalties; (6) Recovery Under the  
3 Private Attorneys General Act; and (7) Unfair Competition.

4 The parties have reached a settlement. Plaintiffs Martin Alcaraz, Jose Cedillo, Jesus  
5 Cervantes, and Jose Mireles (collectively, “Plaintiffs”) move for preliminary approval of the  
6 settlement.

## 7 **II. LEGAL STANDARD**

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

13 In determining whether a class settlement is fair, adequate and reasonable, the  
14 trial court should consider relevant factors, such as “the strength of plaintiffs’  
15 case, the risk, expense, complexity and likely duration of further litigation, the  
16 risk of maintaining class action status through trial, the amount offered in  
17 settlement, the extent of discovery completed and the stage of the proceedings, the  
18 experience and views of counsel, the presence of a governmental participant, and  
19 the reaction of the class members to the proposed settlement.”  
(*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk*, *supra*, 48  
20 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688  
21 F.2d 615, 624.)

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

The burden is on the proponent of the settlement to show that it is fair and  
reasonable. However “a presumption of fairness exists where: (1) the settlement

1 is reached through arm's-length bargaining; (2) investigation and discovery are  
2 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."

3  
4 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48  
5 Cal.App.4th at p. 1802.)

### 6 **III. DISCUSSION**

#### 7 **A. Provisions of the Settlement**

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

9 [A]ll individuals who were employed as non-exempt or hourly warehouse  
10 workers for J.T.R. Area Distributors, Inc. ("JTR") out of Defendant's San Jose,  
California warehouse between June 23, 2016 and March 18, 2021, inclusive,  
11 including the following classifications: Order Puller, Order Checker, Receiver,  
Custodian, Shipping Worker, Stocker, Order Puller Trainer, Loader, nonexempt  
warehouse supervisor, nonexempt warehouse manager, and Loading Dock  
Workers. Class Members does not include, and Released Claims do not  
12 extinguish, any claims arising from work performed solely as an employee or  
independent contractor of Imperial Dade.

13 (Declaration of Kevin R. Allen in Support of Plaintiffs' Motion for Preliminary Approval of  
14 Class Action Settlement ("Allen Decl."), Ex. 1 ("Settlement Agreement"), ¶ I(H).)

15 According to the terms of settlement, defendants RBLI Inc. and Kelly J. Ryan  
16 (collectively, "Defendants") will pay a maximum non-reversionary amount of \$200,000.  
17 (Settlement Agreement, ¶ I(CC).) The settlement payment includes attorney fees of \$66,000,  
18 costs up to \$20,000, service awards of \$5,000 to each class representative (\$20,000 total),  
19 settlement administration costs of \$5,750, and a PAGA allocation of \$9,000 (75% of which will  
20 be paid to the Labor Workforce Development Agency). (Settlement Agreement, ¶¶ I(C), (J), (T),  
21 (X), and (DD).) Checks not cashed for 180 days from the date of mailing are proposed to be sent  
22 to Goodwill of Silicon Valley. (Settlement Agreement, ¶ 26.)

#### 23 **B. Fairness of the Settlement**

24 Plaintiffs assert that the settlement is fair and was reached through arm's-length  
25 negotiations. Plaintiffs state that a reasonable recovery in this case would range from  
26 approximately \$1 million to \$1.5 million. (Allen Decl., ¶ 35.)

27 Overall, the court finds the settlement is fair. The settlement provides for some recovery  
28 for each class member and eliminates the risk and expense of further litigation.

1           **C.       Incentive Award, Fees, and Costs**

2           Plaintiffs request incentive awards of \$5,000 each (\$20,000 total).

3           The rationale for making enhancement or incentive awards to named plaintiffs is  
4           that they should be compensated for the expense or risk they have incurred in  
5           conferring a benefit on other members of the class. An incentive award is  
6           appropriate if it is necessary to induce an individual to participate in the suit.

7           Criteria courts may consider in determining whether to make an incentive award  
8           include: 1) the risk to the class representative in commencing suit, both financial  
9           and otherwise; 2) the notoriety and personal difficulties encountered by the class  
10          representative; 3) the amount of time and effort spent by the class representative;  
11          4) the duration of the litigation and; 5) the personal benefit (or lack thereof)  
12          enjoyed by the class representative as a result of the litigation. These “incentive  
13          awards” to class representatives must not be disproportionate to the amount of  
14          time and energy expended in pursuit of the lawsuit.

15          (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks,  
16          brackets, ellipses, and citations omitted.)

17          Prior to the final approval hearing, the class representatives shall submit declaration  
18          detailing their participation in the action. The court will make a determination at that time.

19          The court also has an independent right and responsibility to review the requested  
20          attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*  
21          *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs’ counsel will  
22          seek attorney fees of \$66,000 (33% of the total settlement fund). Plaintiffs’ counsel shall submit  
23          lodestar information (including hourly rates and hours worked) prior to the final approval  
24          hearing in this matter so the court can compare the lodestar information with the requested fees.  
25          Plaintiffs’ counsel shall also submit evidence of actual costs incurred up to the date of the final  
26          approval hearing.

27           **D.       Conditional Certification of Class**

28          Plaintiffs request that the putative class be conditionally certified for purposes of the  
29          settlement. Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an  
30          order approving or denying certification of a provisional settlement class after [a] preliminary  
31          settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a  
32          class “when the question is one of a common or general interest, of many persons, or when the  
33          parties are numerous, and it is impracticable to bring them all before the court . . . .” As

1 interpreted by the California Supreme Court, Section 382 requires: (1) an ascertainable class; and  
2 (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v.*  
3 *Superior Court* (2004) 34 Cal.4th 319, 326.)

4 The “community-of-interest” requirement encompasses three factors: (1) predominant  
5 questions of law or fact; (2) class representatives with claims or defenses typical of the class;  
6 and, (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc.*  
7 *v. Superior Court, supra*, 34 Cal.4th at p. 326.) “Other relevant considerations include the  
8 probability that each class member will come forward ultimately to prove his or her separate  
9 claim to a portion of the total recovery and whether the class approach would actually serve to  
10 deter and redress alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)  
11 The plaintiff has the burden of establishing that class treatment will yield “substantial benefits”  
12 to both “the litigants and to the court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d  
13 381, 385.)

14 As explained by the California Supreme Court,

15 The certification question is essentially a procedural one that does not ask whether  
16 an action is legally or factually meritorious. A trial court ruling on a certification  
17 motion determines whether the issues which may be jointly tried, when compared  
18 with those requiring separate adjudication, are so numerous or substantial that the  
maintenance of a class action would be advantageous to the judicial process and  
to the litigants.

19 (*Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326, internal quotation  
20 marks, ellipses, and citations omitted.)

21 Plaintiffs state that there are approximately 104 class members. Class members can be  
22 ascertained from Defendants’ records. There are common questions regarding whether class  
23 members were subjected to uniform practices that violated wage and hour laws. No issue has  
24 been raised regarding the typicality or adequacy of Plaintiffs as class representatives. In sum, the  
25 court finds that the proposed class should be conditionally certified.

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1           **E.      Class Notice**

2           The content of a class notice is subject to court approval. “If the court has certified the  
3 action as a class action, notice of the final approval hearing must be given to the class members  
4 in the manner specified by the court.” (Cal. Rules of Court, rule 3.769(f).)

5           The notice generally complies with the requirements for class notice. (See Settlement  
6 Agreement, Ex. A.) It provides basic information about the settlement, including the settlement  
7 terms, and procedures to object or request exclusion.

8           However, although the notice states that class members can attend the final approval  
9 hearing, the notice requires class members to notify the court of their intent to appear. The  
10 notice shall be amended to make clear that any class member may appear and make an oral  
11 objection at the final approval hearing without providing any advance notice.

12           Additionally, the following language shall be added to the notice:

13           Due to the COVID-19 pandemic, hearings are currently being conducted remotely  
14 with the assistance of a third-party service provider, CourtCall. Class members  
15 who wish to appear at the final fairness hearing should contact class counsel to  
16 arrange a telephonic appearance through CourtCall, at least three days before the  
hearing if possible. Any CourtCall fees for an appearance by an objecting class  
member will be paid by class counsel.

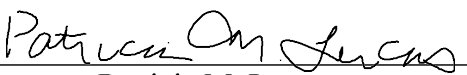
17           The amended notice shall be provided to the court for approval prior to mailing.

18           **IV.      CONCLUSION**

19           The motion for preliminary approval of the class action settlement is GRANTED, subject  
20 to the modifications to the notice. The final approval hearing is set for November 10, 2021, at  
21 1:30 p.m.

22           The case management conference set for July 7, 2021, is vacated.

23  
24 Dated: July 7, 2021

  
Patricia M. Lucas  
Judge of the Superior Court