

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 FINAL
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT; JUDGMENT**

The above-entitled matter came on for hearing on Wednesday, November 10, 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, November 9, 2021. 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 putative class and representative 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 Breaks or Pay Rest Break Premiums; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Accurate Itemized Wage Statements; (5) For Waiting Time Penalties; (6) Recovery Under the Private Attorneys General Act; and (7) Unfair Competition.

The parties have reached a settlement. On July 7, 2021, the court granted preliminary approval of the settlement, subject to modification of the class notice. Subsequently, the court approved the amended class notice. (Declaration of Kevin R. Allen in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Motion for Fees, Costs and Service Awards ("Allen Dec."), ¶ 10.) Plaintiffs Martin Alcaraz, Jose Cedillo, Jesus Cervantes, and Jose Mireles (collectively, "Plaintiffs") now move for final approval of the settlement.

II. LEGAL STANDARD

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

In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as "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, 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."

(*Wershba v. Apple Computer, Inc.*, *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.)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and

1 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*,
2 quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n*,
3 *etc.*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

4 The burden is on the proponent of the settlement to show that it is fair and
5 reasonable. However “a presumption of fairness exists where: (1) the settlement
6 is reached through arm’s-length bargaining; (2) investigation and discovery are
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.”

7
8 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48
9 Cal.App.4th at p. 1802.)

10 **III. DISCUSSION**

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

12 [A]ll individuals who were employed as non-exempt or hourly warehouse
13 workers for J.T.R. Area Distributors (“JTR”) out of Defendant’s San Jose,
California warehouse between June 23, 2016 and March 18, 2021, inclusive,
14 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
15 extinguish, any claims arising from work performed solely as an employee or
independent contractor of Imperial Dade.

16
17 As discussed in connection with the motion for preliminary approval, defendants RBLI
18 Inc. and Kelly J. Ryan (collectively, “Defendants”) will pay a maximum non-reversionary
19 amount of \$200,000. The settlement payment includes attorney fees of \$66,000, costs up to
20 \$20,000, service awards of \$5,000 to each class representative (\$20,000 total), settlement
21 administration costs of \$5,750, and a PAGA allocation of \$9,000 (75 percent of which will be
22 paid to the Labor Workforce Development Agency). Checks not cashed for 180 days from the
23 date of mailing are proposed to be sent to Goodwill of Silicon Valley.

24 On August 6, 2021, notices were mailed to 103 class members. (Allen Dec., Ex. 2,
25 Declaration of Kevin Lee on Behalf of Administrator With Respect to Settlement Notice
26 Administration (“Lee Dec.”), ¶ 5.) No notice packets were returned to the settlement
27 administrator. (Lee Dec., at ¶ 6.) There have been no objections or requests for exclusion. (*Id.*
28 at ¶¶ 8-9.) The estimated highest individual payment is \$3,155.61, the estimated lowest

1 individual payment is \$12.78, and the estimated average individual payment is \$879.67. (*Id.* at
2 ¶ 13.)

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

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

6 The rationale for making enhancement or incentive awards to named plaintiffs is
7 that they should be compensated for the expense or risk they have incurred in
8 conferring a benefit on other members of the class. An incentive award is
9 appropriate if it is necessary to induce an individual to participate in the suit.
10 Criteria courts may consider in determining whether to make an incentive award
11 include: 1) the risk to the class representative in commencing suit, both financial
12 and otherwise; 2) the notoriety and personal difficulties encountered by the class
13 representative; 3) the amount of time and effort spent by the class representative;
14 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
15 enjoyed by the class representative as a result of the litigation. These “incentive
16 awards” to class representatives must not be disproportionate to the amount of
17 time and energy expended in pursuit of the lawsuit.

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

20 The class representatives have submitted declarations stating that they spent numerous
21 hours communicating with class counsel regarding the case, searching for and providing
22 documents to class counsel, responding to requests for information, and reviewing and
23 discussing court filings and the settlement agreement with class counsel. (Declaration of Martin
24 Alcaraz in Support of Motion for Final Approval of Class Action Settlement and Motion for
25 Fees, Costs, and Service Awards, ¶¶ 9-13; Declaration of Jose Angel Mireles in Support of
26 Motion for Final Approval of Class Action Settlement and Motion for Fees, Costs, and Service
27 Awards, ¶¶ 9-13; Declaration of Jose Cedillo in Support of Motion for Final Approval of Class
28 Action Settlement and Motion for Fees, Costs, and Service Awards, ¶¶ 9-13; Declaration of
Jesus Cervantes in Support of Motion for Final Approval of Class Action Settlement and Motion
for Fees, Costs, and Service Awards, ¶¶ 9-13.) The court finds that Plaintiffs’ efforts in the case
resulted in a benefit to the class. Moreover, Plaintiffs undertook risk by putting their names on
the case because Plaintiffs may have been responsible for costs if they lost the case and because
it might impact their future employment. (See *Covillo v. Specialtys Cafe* (N.D. Cal. 2014) 2014

1 WL 954516, at *8 [incentive awards are particularly appropriate where a plaintiff undertakes a
2 significant “reputational risk” in bringing an action against an employer].) Therefore, the court
3 finds the service awards are warranted and they are approved.

4 The court also has an independent right and responsibility to review the requested
5 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
6 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs’ counsel
7 seeks attorney fees of \$66,000 (33 percent of the total settlement fund). This percentage is
8 typical for wage and hour cases. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480,
9 488, 503-504 (*Laffitte*)). Plaintiff’s counsel provides evidence demonstrating a total lodestar of
10 \$95,255. (Allen Dec., ¶ 16 & Ex. 3; Declaration of Daniel A. Menendez in Support of Motion
11 for Final Approval of Class Action Settlement and Motion for Fees, Costs, and Service Awards
12 (“Menendez Dec.”), ¶¶ 15-16 & Ex. A.) This results in a negative multiplier. The attorney fees
13 requested are reasonable as a percentage of the common fund and are approved. (See *Laffitte*,
14 *supra*, 1 Cal.5th at pp. 488, 503-504 [trial court did not abuse its discretion in approving fee
15 award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of
16 2.03 to 2.13].)

17 Plaintiffs’ counsel also provides evidence of costs in the amount of \$8,644.37. (Allen
18 Dec., ¶ 17 & Ex. 4; Menendez Dec., ¶ 18 & Ex. C.) These costs are approved. The settlement
19 administration costs of \$5,750 are also approved. (Lee Dec., ¶ 16 & Ex. B.)

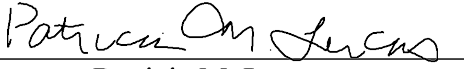
20 Accordingly, the motion for final approval of the class and representative action
21 settlement is GRANTED.

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

25 The court sets a compliance hearing for July 6, 2022, at 2:30 p.m. in Department 3. At
26 least ten court days before the hearing, class counsel and the settlement administrator shall
27 submit a summary accounting of the net settlement fund identifying distributions made as
28 ordered herein, the number and value of any uncashed checks, amounts remitted to Defendants,

1 the status of any unresolved issues, and any other matters appropriate to bring to the court's
2 attention. Counsel may appear at the compliance hearing remotely.

3
4 Dated: November 11, 2021


Patricia M. Lucas
Judge of the Superior Court