

FILED

KERN COUNTY SUPERIOR COURT
9/15/2021

BY Adams, Jessica
DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KERN**

ELIZABETH STACY, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

BRANDED GROUP, INC., a California
Company; and DOES 1 through 100, inclusive;

Defendants.

Case No.: BCV-21-100443-BCB

Assigned for All Purposes to:
Honorable Bernard C. Barmann
Department 10

CLASS ACTION

**[PROPOSED] ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: September 14, 2021
Hearing Time: 8:30 a.m.
Hearing Place: Department 10

Complaint Filed: March 1, 2021
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Elizabeth Stacy's ("Plaintiff")
2 motion for final approval of a class action settlement and receiving Class Counsel Fees and Costs
3 Payment, and Class Representative Payment, and after considering the papers submitted in support of
4 the motion, including the Settlement Agreement ("Settlement Agreement," "Settlement," or
5 "Agreement"), hereby FINDS AND ORDERS as follows:

6 This is a putative class action. Plaintiff is former employee of Defendant Branded Group, Inc.
7 ("Defendant"). The operative complaint in the action asserts nine (9) causes of action for wage and
8 hour violations. Plaintiff has brought this action on behalf of all current and former hourly-paid
9 Defendant's employees who have worked in California at any time between July 16, 2016, and May
10 17, 2021 ("Class" and "Class Period") There are seventy-two (72) members in the Class.

11 On May 20, 2021, the Court granted Preliminary Approval of the Settlement. Plaintiff now
12 move for Final Approval of Settlement.

13 The terms used in this Order of Final Approval and Judgment shall have the same meaning as
14 defined in the Settlement Agreement except as may otherwise be ordered.

15 The following Class is certified for purposes of settlement only: all current and former hourly-
16 paid Defendant's employees who have worked in California at any time between July 16, 2016, and
17 May 17, 2021.

18 Generally, "questions whether a settlement was fair and reasonable, whether notice to the class
19 was adequate, whether certification of the class was proper, and whether the attorney fee award was
20 proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.*
21 (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794.)

22
23 In determining whether a class settlement is fair, adequate and reasonable, the
24 trial court should consider relevant factors, such as "the strength of plaintiffs'
25 case, the risk, expense, complexity and likely duration of further litigation, the
26 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.

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1 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk*, *supra*, 48
2 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d
3 615, 624.)

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

12 The burden is on the proponent of the settlement to show that it is fair and
13 reasonable. However “a presumption of fairness exists where: (1) the
14 settlement is reached through arm’s-length bargaining; (2) investigation and
15 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.”

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

18 Although [t]here is usually an initial presumption of fairness when a proposed
19 class settlement ... was negotiated at arm’s length by counsel for the class, ...
20 it is clear that the court should not give rubber-stamp approval. Rather, to
21 protect the interests of absent class members, the court must independently and
22 objectively analyze the evidence and circumstances before it in order to
23 determine whether the settlement is in the best interests of those whose claims
24 will be extinguished. To make this determination, the factual record before the
25 ... court must be sufficiently developed... . The proposed settlement cannot be
26 judged without reference to the strength of plaintiffs’ claims. The most
important factor is the strength of the case for plaintiffs on the merits, balanced
against the amount offered in settlement. The court must stop short of the
detailed and thorough investigation that it would undertake if it were actually
trying the case, but nonetheless it must eschew any rubber stamp approval in
favor of an independent evaluation.

27 (*Kullar*, *supra*, 168 Cal.App.4th at p. 130, internal citations and quotation marks omitted.)

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1 Defendant will pay \$450,000, which includes: (1) the Settlement Administrator Payment in the
2 amount of \$7,500; (2) the Private Attorney General Act (“PAGA”) Payment in the amount of \$50,000,
3 seventy-five percent (75%) of which (\$37,500) shall be paid to the California Labor and Workforce
4 Development Agency (“LWDA”) and twenty-five percent (25%) of which (\$12,500) will be paid to
5 the Class Members who do not submit a valid and timely Request Not to Participate in Settlement
6 (“Participating Class Members”); (3) the Class Representative Payment in the amount of \$10,000 to
7 Plaintiff; (4) the Class Counsel fees in the amount of \$171,000, which is thirty-eight percent (38%) of
8 the Gross Settlement Amount; (5) the Class Counsel costs in the amount of \$12,546.46; and (6)
9 Settlement Shares payable to Participating Class Members under the terms of this Settlement
10 Agreement. Class Members are not required to submit a claim form to receive their Settlement Shares.
11 There is no reversion. Funding of the Class Settlement will be made as follows:

12 Within twenty-one (21) calendar days after the Order by the Court granting final approval of
13 the Settlement without material change, Defendant will provide the Settlement Administrator with the
14 Gross Settlement Amount. If the twenty-first (21st) calendar day is a weekend or holiday, the deposit
15 shall be made by the next business day thereafter. Those funds shall be deposited into a Qualified
16 Settlement Fund to be managed by the Settlement Administrator. Within seven (7) business days after
17 the funding of the Settlement, the Settlement Administrator will pay the Settlement Shares to
18 Participating Class Members, the Class Representative Payment to Plaintiff, the PAGA Payment, and
19 the Class Counsel Fees and Costs Payment to Class Counsel, minus whatever holdback provision the
20 Court orders.

21 As noted in the Preliminary Approval Order, the Proposed Settlement is entitled to a
22 presumption of fairness. In their moving papers, Plaintiff contend that the proposed Settlement was the
23 product of arms-length negotiations following extensive litigation and following extensive discovery
24 and exchange of documentation relating to the claims made by Plaintiff. Moreover, the negotiations
25 were facilitated with the assistance of a skilled and experienced mediator, Deborah Saxe.

26 With respect to the benefit to the Class Members, Plaintiff’s moving papers indicate that the
27 average Settlement Share will be approximately \$2,936.85 under the proposed allocation, which is
28 based on the number of work days individual Class Members worked.

1 A Participating Class Member must cash his or her Settlement Share check within one hundred
2 righty (180) days after it is mailed to him or her. If a Participating Class Member's Settlement Share
3 check is not cashed within one hundred fifty (150) days after its last mailing to the Participating Class
4 Member, the Settlement Administrator will send the Participating Class Member a reminder postcard.
5 If any settlement checks are not cashed within one hundred eighty (180) days after mailing, the
6 remaining residual shall thereafter be paid to the State Controllers' Office in accordance with
7 California Unclaimed Property Law so that the Participating Class Member will have his or her
8 individual Settlement Share available to him or her per the applicable claim procedure to request that
9 money from the State of California.

10 The Plaintiff has explained the risks and costs associated with continuing with the litigation
11 and the benefits conferred upon Class Members in the form of immediate compensation. Plaintiff has
12 satisfactorily assessed the maximum value of the claims and of the reasonableness of the discount
13 accepted in the settlement considering these risks. Finally, the Declaration of the Settlement
14 Administrator, Daniel La, states that Notices of Class Action Settlement ("Class Notices") were
15 mailed to seventy-two (72) Class Members, CPT Group, Inc. ("CPT Group") has not received any
16 objections to the Settlement and no Requests Not to Participate in Settlement. This is further proof of
17 the fairness of the Settlement. The Declaration of Class Counsel provides sufficient information about
18 counsel's experience in litigating class action lawsuits.

19 The Court also has an independent right and responsibility to review the requested attorneys'
20 fees and only award so much as it determines reasonable. (*See Garabedian v. Los Angeles Cellular*
21 *Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) The amount of attorney's fees requested by
22 Class Counsel in the sum of \$171,000 is thirty-eight percent (38%) of the common fund created for the
23 benefit of the Class Members and are supported by use of the percentage-fee method. (*See Laffitte v.*
24 *Robert Half International, Inc.* (2016) 1 Cal. 5th 480, 504.) According to the Declaration of Douglas
25 Han, Class Counsel collectively expended 274.2 hours with a total lodestar figure of \$177,007.50.
26 Even under the lodestar cross-check the requested fee is below the lodestar. Considering the
27 contingent nature of the representation and the ongoing monitoring of the settlement administration,
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1 the requested hourly rates and the fee is justified. The Court finds that the fee request is reasonable,
2 and it is therefore approved.

3 The Court has also reviewed Class Counsel's declarations regarding the costs expended in the
4 prosecution of this litigation. Under the terms of the settlement, Plaintiff may seek reimbursement of
5 up to \$15,000 in litigation costs. The Court finds that Plaintiff has expended \$12,546.46 in litigation
6 costs, and that such costs were reasonable. Therefore, the Court approves the payment of \$12,546.46
7 in costs from the Gross Settlement Amount for the reimbursement of Class Counsel's litigation costs.

8 The rationale for making Class Representative Payment is that the Class Representative should
9 be compensated for the expense or risk she has incurred in conferring a benefit on other members of
10 the class. Such an incentive payment is appropriate if it is necessary to induce an individual to
11 participate in the suit. Criteria courts may consider in determining whether to make an incentive
12 payment include: 1) the risk to the class representative in commencing suit, both financial and
13 otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the
14 amount of time and effort spent by the class representative; 4) the duration of the litigation; and 5) the
15 personal benefit (or lack thereof) enjoyed by the class representative because of the litigation.

16 The Court has reviewed the Declaration of Plaintiff, which outlines her involvement in the
17 lawsuit. Given the risks inherent in service as the Class Representative, the duration of the case and
18 time involved, and the benefits created for the class, the Court approves a Class Representative
19 Payment in the amount of \$10,000 for Plaintiff.

20 The Court has reviewed the Declaration of Daniel La, the Case Manager for CPT Group, the
21 Court-approved Settlement Administrator. The Court finds that notice was provided to the Class
22 pursuant to the preliminary approval order, and that notice was sufficient and that it satisfies due
23 process. CPT Group has discharged its duties to provide notice to the Class and approves a payment of
24 \$10,000 for its services in administering this settlement, including the mailing of Settlement Share
25 according to the terms of the Settlement Agreement.

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1 Upon final approval of the Settlement by the Court, and except as to such rights as may be
2 created by the Agreement, Plaintiff and each Participating Class Member fully release and discharge
3 Defendant and its past or present officers, directors, shareholders, employees, agents, principals, heirs,
4 representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective
5 successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (“Released
6 Parties”) from all claims that were pled in the Action, together with all claims demands, rights,
7 liabilities, statutory and/or civil penalties, and causes of action that were asserted in the Action, or in
8 the Notice of Labor Code Violations sent to the Department of Industrial Relations, based on and/or
9 that could have been asserted based on the factual allegations in the Action. This release covers the
10 Class Period.

11 The Agreement will be binding upon, and inure to the benefit of, the successors of each of the
12 Parties and Participating Class Members.

13 Defendant denies that it has engaged in any unlawful activity, has failed to comply with the
14 law in any respect, has any liability to anyone under the claims asserted in the Action, or that but for
15 the Settlement a class should be certified in the Action. The Agreement is entered into solely for the
16 purpose of compromising disputed claims. Nothing in the Agreement is intended or will be construed
17 as an admission of liability or wrongdoing by Defendant. Since this is a settlement of bona fide
18 disputed claims, Labor Code Section 206.5 is not applicable. Whether or not the Judgment becomes
19 Final, neither the Settlement, the Agreement, any document, statement, proceeding or conduct related
20 to the Settlement or the Agreement, nor any reports or accounting of those matters, will be:
21 (i) construed as, offered or admitted in evidence for any purpose adverse to Defendant or any of the
22 Released Parties, including but not limited to evidence of a presumption, concession, indication or
23 admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or
24 damage; or (ii) disclosed, referred to or offered in evidence in any civil, criminal or administrative
25 action or proceeding, except for purposes of effectuating the Settlement pursuant to the Agreement.

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1 For the reasons set forth above, the Motion for Final Approval of Class Action Settlement,
2 Class Counsel Fees and Costs Payment, and Class Representative Payment is GRANTED. The
3 Settlement Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

4 The Court sets a final accounting and compliance date for June 30, 2022 at ^{8:30 a.m.}~~10:30 a.m.~~ in
5 Department 10. No later than five (5) court days before the final accounting and compliance date
6 Plaintiff shall file a declaration regarding compliance.

7 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF THE
8 SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT 3.769, THE
9 COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS ORDER
10 AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE FINALITY OF THIS
11 MATTER, RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO ENFORCE THIS
12 ORDER, THE SETTLEMENT AGREEMENT, AND THE JUDGMENT THEREON.

13 IT IS SO ORDERED.

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16 DATED: Signed: 9/15/2021 10:07 AM



HONORABLE BERNARD C. BARMANN, JR
SUPERIOR COURT JUDGE

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is aokada@justicelawcorp.com

On September 17, 2021, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Stacy v. Branded Group, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-797075-20**
Court Case No.: BCV-21-100443
Kern County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 17, 2021, at Pasadena, California.



Anna Okada