

FILED
KERN COUNTY SUPERIOR COURT
09/08/2021

BY Delgado, Erika
DEPUTY

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

DIEGO AYALA and JUAN GONZALEZ
individually, and on Behalf of other members
of the general public similarly situated and
aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA");

Plaintiffs,

v.

J. C. FORD COMPANY, a California
corporation; and DOES 1 through 100,
inclusive;

Defendant.

Case No.: BCV-20-102948-DRL

Assigned for All Purposes to:
Honorable David R. Lampe
Department 11

CLASS ACTION

**~~PROPOSED~~ ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: September 8, 2021
Hearing Time: 8:30 a.m.
Hearing Place: Department 11

Complaint Filed: December 17, 2020
Jury Trial: None Set

1 The Court, having read the papers filed regarding Plaintiff Diego Ayala's and Plaintiff Juan
2 Gonzalez's ("Plaintiffs") motion for final approval of a class action settlement and award of
3 Attorneys' Fee and Costs, and Class Representative Enhancement Payments, and after hearing
4 argument regarding the motion on September 8, 2021, hereby FINDS AND ORDERS as follows:

5 This is a putative class action. Plaintiffs are former employees of J.C. Ford Company
6 ("Defendant"). The operative complaint in the action asserts nine (9) causes of action for wage and
7 hour violations. Plaintiffs have brought this action on behalf of all persons employed in California by
8 Defendant as current or former hourly-paid or non-exempt employees, at any time during the period
9 between January 1, 2017, through February 23, 2021 ("Class" and "Class Period"). There are three
10 hundred (300) members in the Class and one hundred twenty (120) Class Members who submitted
11 timely and valid Claim Forms ("Claimants"). The one hundred twenty (120) Claimants represent
12 approximately forty percent (40%) of the three hundred (300) Class Members identified, which equals
13 approximately fifty-nine percent (59.06%) of the Net Settlement Amount or \$126,675.46.

14 On May 3, 2021, the Court preliminary approved the proposed class action settlement.
15 Plaintiffs now move for final approval of class action settlement.

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

20 In determining whether a class settlement is fair, adequate and reasonable, the
21 trial court should consider relevant factors, such as "the strength of plaintiffs'
22 case, the risk, expense, complexity and likely duration of further litigation, the
23 risk of maintaining class action status through trial, the amount offered in
24 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.

25 (*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48
26 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d
27 615, 624.)

28 ///

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

9 The burden is on the proponent of the settlement to show that it is fair and
10 reasonable. However, “a presumption of fairness exists where: (1) the
11 settlement is reached through arm’s-length bargaining; (2) investigation and
12 discovery are sufficient to allow counsel and the court to act intelligently; (3)
13 counsel is experienced in similar litigation; and (4) the percentage of objectors
14 is small.” (*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245, *citing Dunk, supra*, 48
15 Cal.App.4th at p. 1802.)

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

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

Under the terms of the settlement, Defendant will pay up to \$410,000, which includes (1)
attorneys’ fees in the amount of \$143,500; (2) attorneys’ costs in the amount of \$15,624.07 to
reimburse Class Counsel for litigation costs and expenses (3) Class Representative Enhancement
Payments in the amount of \$7,500 to each Plaintiff; (4) payment in the amount of \$6,399 to Simpluris,

1 Inc. (“Claims Administrator” or “Simpluris”) as Claims Administration Costs; and (5) a Private
2 Attorneys General Act of 2004 (“PAGA”) Payment in the amount of \$20,000, seventy-five percent
3 (75%) of which (\$15,000) will be paid to the California Labor and Workforce Development Agency
4 (“LWDA”) and twenty-five percent (25%) of which (\$5,000) will be part of Net Settlement Amount.

5 As noted in the Preliminary Approval Order, the Proposed Settlement is entitled to a
6 presumption of fairness. In their moving papers, Plaintiffs contend that the proposed Settlement was
7 the product of arm’s-length negotiations following extensive litigation and following extensive
8 discovery and exchange of documentation relating to the claims made by Plaintiffs. On November 4,
9 2020, the Parties participated in a private mediation conducted by Steven J. Serratore, a well-respected
10 mediator. With the aid of the mediator, the Parties were able to reach the proposed Settlement via a
11 mediator’s proposal described herein to resolve all the claims alleged in this lawsuit.

12 With respect to the benefit to the Class Members, Plaintiffs’ moving papers indicate that the
13 total *average* Individual Settlement Payment under the settlement is approximately \$1,055.63 under
14 the proposed allocation, which is based on the number of weeks individual Class Members worked.
15 Any checks issued by the Claims Administrator to Claimants will be negotiable for one hundred
16 twenty (120) calendar days. Those funds represented by settlement checks returned as undeliverable
17 and those settlement checks remaining un-cashed for more than one hundred twenty (120) calendar
18 days after issuance will be sent to the California State Controller’s Unclaimed Property Fund.

19 The Plaintiffs have explained the risks and costs associated with continuing with the litigation
20 and the benefits conferred upon Class Members in the form of immediate compensation. Plaintiffs’
21 have satisfactorily assessed the maximum value of the claims and of the reasonableness of the
22 discount accepted in the settlement considering these risks. Finally, the Declaration of the Claims
23 Administrator, Zach Cooley, states that Claim Forms and Notices of Class Action Settlement
24 (collectively, known as the “Notice Packet”) were sent to three hundred (300) Class Members and
25 there were no objections to the Settlement. This is further proof of the fairness of the Settlement. The
26 Declaration of Class Counsel provide sufficient information about counsel’s experience in litigating
27 class action lawsuits.

28 ///

1 The Court also has an independent right and responsibility to review the requested attorneys'
2 fees and only award so much as it determines reasonable. (*See Garabedian v. Los Angeles Cellular*
3 *Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) The amount of attorney's fees requested by
4 Class Counsel is in the sum of \$143,500 is thirty-five percent (35%) of the Maximum Settlement
5 Amount created for the benefit of the Class Members and are supported by use of the percentage-fee
6 method and the lodestar method. Considering the contingent nature of the representation and the
7 ongoing monitoring of the claims administration, the requested fee and the hourly rates requested are
8 justified. The Court finds that the fee request is reasonable, and it is therefore approved.

9 The Court has also reviewed Class Counsel's declarations regarding the costs expended in the
10 prosecution of this litigation. Under the terms of the settlement, Plaintiffs may seek reimbursement of
11 up to \$20,000 in costs. The Court finds that Plaintiffs has expended \$15,624.07 in costs, and that such
12 costs were reasonable. Therefore, the Court approves the payment of \$15,624.07 in costs from the
13 Maximum Settlement Amount for the reimbursement of Class Counsel's litigation costs and expenses.

14 The rationale for making enhancement to named Plaintiffs is that they should be compensated
15 for the expense or risk they have incurred in conferring a benefit on other members of the class. Such
16 enhancement payments are appropriate if they are necessary to induce an individual to participate in
17 the suit. Criteria courts may consider in determining whether to make an incentive award include: 1)
18 the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety
19 and personal difficulties encountered by the class representative; 3) the amount of time and effort
20 spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack
21 thereof) enjoyed by the class representative because of the litigation.

22 The Court has reviewed the Plaintiffs' declarations, which outlines their involvement in the
23 lawsuit. Given the risks inherent in service as Class Representatives, the duration of the case and time
24 involved, and the benefits created for the class, the Court approves the Class Representative
25 Enhancement Payments in the amount of \$7,500 to each Plaintiff.

26 ///

27 ///

28 ///

1 The Court has reviewed the Declaration of Zach Cooley, the Claims Administrator from
2 Simpluris, the Court-approved Claims Administrator. The Court finds that notice was provided to the
3 Class pursuant to the preliminary approval order, and that notice was sufficient and that it satisfies due
4 process. Simpluris has discharged its duties to provide notice to the Class and approves the payment of
5 the Claims Administration Costs in the amount of \$6,399 for its services in administering this
6 settlement, including the mailing and remailing of settlement awards according to the terms of the
7 Settlement Agreement.

8 For the reasons set forth above, the Motion for Final Approval of Class Action Settlement and
9 Approval of Attorneys' Fees and Costs and Class Representative Enhancement Payments are
10 GRANTED. The Claims Administrator is directed to carry out the terms of the settlement agreement
11 forthwith.

12 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF THE
13 SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT 3.769, THE
14 COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS ORDER
15 AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE FINALITY OF THIS
16 MATTER, RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO ENFORCE THIS
17 ORDER, THE SETTLEMENT AGREEMENT, AND THE JUDGMENT THEREON.

18 IT IS SO ORDERED.

19
20
21 DATED: _____

Signed: 9/8/2021 08:44 AM



HONORABLE DAVID R. LAMPE
SUPERIOR COURT JUDGE

**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, California 91103 and my electronic service address is aokada@justicelawcorp.com.

On September 14, 2021, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

For the following case:	Ayala, et al. v. J.C. Ford Company
LWDA/ Court Case No.:	LWDA Case No.: CM-806753-20
	Court Case No.: BCV-20-102948
	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 14, 2021, at Pasadena, California.



Anna Okada