

FILED
Shumell
2021 OCT 13 PM 4:35
CLERK OF COURT
DEPT. 54

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 **Shimoda Law Corp.**
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff JUAN RUIZ
10 individually and on behalf of similarly situated employees

11 **SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE COUNTY OF SACRAMENTO**

13 JUAN RUIZ, individually and on behalf of all
14 other similarly situated employees,

15 Plaintiff,

16 vs.

17 CTE CAL, INC., a California Corporation; and
18 DOES 1 to 100, inclusive,

19 Defendant.

Case No. 34-2020-00289168

Ref. No.: 2590013

CLASS ACTION

20 **PROPOSED ORDER GRANTING**
21 **PLAINTIFF'S MOTION FOR**
22 **PRELIMINARY APPROVAL OF CLASS**
23 **ACTION AND PAGA SETTLEMENT**

24 Date: October 13, 2021

25 Time: 9:00 a.m.

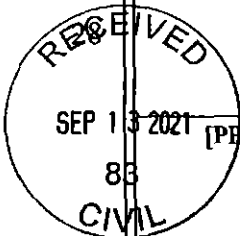
26 Dept.: 54

27 Judge: Hon. Christopher E. Krueger

Filed: November 18, 2020

FAC Filed: March 29, 2021

Trial Date: None Set



1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion") in the
3 above referenced case came before this Court, on October 13, 2021 at 9:00 a.m., in Department 54
4 before Hon. Christopher E. Krueger, presiding. Named Plaintiff Juan Ruiz ("Plaintiff") filed this
5 putative class action on November 18, 2020. The operative Complaint alleges that Defendant CTE
6 Cal, Inc., ("Defendant") violated California law by failing to pay overtime, failing to pay minimum
7 wages, failing to provide meal periods, failing to provide rest periods, failing to provide accurate wage
8 statements, failing to pay final wages, failing to pay reimbursements for expenses, and engaging in
9 unfair competition. Plaintiff has also alleged Defendant is liable for a civil penalties under the Private
10 Attorneys General Act ("PAGA") based on these violations as well as failing to provide paid sick
11 leave, untimely payment of wages, violation of Labor Code section 558, failing to pay prevailing
12 wages, and failing to maintain accurate records. Plaintiff sought attorneys' fees and costs as part of
13 this Action. Defendant denied all of Plaintiff's claims and denied that this case was appropriate for
14 class treatment. No class has been certified.

15 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
16 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
17 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
18 ("Agreement"). Any capitalized terms herein shall have the same meaning as set forth in the
19 Agreement. The Court, having received and considered Plaintiff's Motion for Preliminary Approval of
20 Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed Notice
21 of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS
22 FOLLOWS:

23 **1. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
24 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

25 The Court finds that certification of the following class for settlement purposes only is
26 appropriate under the California Code of Civil Procedure and related case law:

27 All individuals who have, or continue to, perform work for Defendant in
28 California as hourly, non-exempt employees from to November 18, 2016
up to August 29, 2021.

1
2 The Court recognizes that the foregoing definition is for Class Member identification purposes
3 only and is not intended to capture the claims at issue or limit or alter the released claims under the
4 Agreement.

5 The Court finds that Class Members meet the ascertainability and numerosity requirements since
6 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
7 the definition and the number of Class Members would make joinder impractical. The commonality and
8 predominance requirements are met for settlement purposes since there are questions of law and fact
9 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
10 contentions that Defendant caused the violations outlined above by 1) failing to pay putative class
11 members for all compensable drive time between its lab/office and job sites; 2) failing to correctly
12 calculate putative class members' regular rates of pay due to its failure to incorporate the value of all
13 remuneration paid to putative class members under its drive time policy; 3) failing to authorize and
14 permit putative class members to take all meal and rest periods; 4) failing to pay putative class members
15 all prevailing wages owed for work on public works jobs; 5) failing to pay putative class members all
16 overtime wages owed on public works jobs; 6) failing to incorporate the value of prevailing wage rates
17 into putative class members' regular rates of pay for the purpose of calculating overtime wages on non-
18 public works jobs where putative class members worked on public works and non-public works jobs in
19 the same workweek; and 7) failing to reimburse putative class members for gas, mileage, and the use of
20 their personal cellphones for work. The PAGA, waiting time penalty, wage statement violation, and
21 unfair competition claims also derive from these violations. Additionally, Class Members seek the
22 same remedies under state law. The typicality requirement for settlement purposes is also satisfied since
23 the claims of the Class Representative is based on the same facts and legal theories as those applicable to
24 the class members.

25 The Court also finds that preliminarily and conditionally certifying the settlement class is
26 required to avoid each Class Member from litigating similar claims individually. This settlement will
27 achieve economies of scale for Class Members with relatively small individual claims and conserve the
28 resources of the judicial system.

1 The Court finds that Plaintiff Juan Ruiz and Plaintiff's counsel, Galen T. Shimoda
2 and Justin P. Rodriguez of the Shimoda Law Corp., to be adequate representatives of the settlement
3 class. The Court appoints them as class representative and class counsel, respectively.

4 **2. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

5 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
6 A. The Court finds on a preliminary basis that the Agreement falls within the range of reasonableness of
7 a settlement, which could ultimately be given final approval by this Court. The Court also
8 acknowledges that Class Members may object to the settlement at a fairness hearing approved by this
9 Court or opt-out of being bound by the preliminarily approved Agreement.

10 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
11 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
12 preliminarily approves the Agreement and all terms therein as if stated here in full, including the
13 \$450,000 Gross Settlement Amount.

14 The Court orders that Plaintiff Juan Ruiz will receive \$15,000 as a Class Representative
15 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro
16 rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

17 The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case.
18 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to exceed
19 \$10,000. Any difference between the actual cost of the Claims Administrator and the approved payment
20 will be redistributed to Qualified Claimants on a pro-rata basis.

21 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
22 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be
23 accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on
24 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
25 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
26 *v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
27 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of
28 Thirty-five percent (35%) of the Gross Settlement Amount, *i.e.*, \$157,500, to be appropriate

1 compensation for Class Counsel. The attorneys' fees request is within the range that has been approved
2 by other Courts in similar cases and is reasonable in light of the circumstances of this case, the
3 substantial and beneficial results obtained on behalf of Class Members, and the contingent nature of the
4 recovery over the course of this case, which included potential loss at summary judgment, certification,
5 and/or trial proceedings. Additionally, the Court orders that up to \$12,500 of the settlement proceeds
6 will be paid to Class Counsel for reasonable costs incurred in this case. Any difference between the
7 actual costs incurred and the \$12,500 shall be paid to the Qualified Claimants on a pro-rata basis.

8 The Court approves of the Five Thousand Dollars and No Cents (\$5,000) PAGA Payment, which
9 shall be paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to
10 resolve the alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the
11 Labor and Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to
12 PAGA Claimants on a pro rata basis as described in the Agreement. The Court also finds that the
13 Agreement provides a recovery that creates an effective substantial deterrent to any potential future non-
14 compliance, furthering the purpose of the Labor Code and LWDA.

15 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
16 Qualified Claimants and/or PAGA Claimants that are not cashed by the deadline to do so shall be paid
17 out 50/50 to Capital Pro Bono, Inc. and the Center For Workers' Rights Employment Law Clinic.

18 The releases and waivers for Class Members who do not opt out of being bound by the
19 Agreement (*i.e.*, Qualified Claimants), PAGA Claimants, and the Class Representative are also
20 approved by the Court as set forth in the Agreement.

21 **3. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,**
22 **OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

23 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiff's
24 Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the
25 rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during
26 the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement,
27 how to file documentation in opposition to the proposed settlement, and when to appear at the fairness
28 hearing to be conducted on the date set forth below. The Court further finds that the Notice of

1 Settlement and proposed distribution of such notice by first class mail to each identified Class Member
2 at his or her most recent address based on a National Change of Address database search from the Class
3 Members' last known address and a skip trace on any Class Members who have the Notice of Settlement
4 returned as "undeliverable" or "not at this address" comports with all constitutional requirements,
5 including those of due process.

6 The Court also finds that because there is a strong interest in providing Class Members the
7 opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to
8 privacy rights, the sharing of employment information, including social security numbers, is not a
9 serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide first and last
10 name, last known mailing address, social security number, hire and termination dates, total number of
11 workweeks during which the Class Member performed any actual work to the Claims Administrator
12 only, and not to Plaintiff or Class Counsel, in order to process this settlement as contemplated within the
13 Agreement and approved by this Order. The Claims Administrator shall only use this information for
14 settlement purposes identified herein, and this information shall be kept confidential, not be shared with
15 any third-party, and used only to administer the settlement.

16 4. IMPLEMENTATION SCHEDULE

17 Accordingly, with good cause shown, the Court hereby approves and orders that the following
18 implementation schedule be adhered to:

19 Last day for Defendant to provide Claims 20 Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
21 Last day for Claims Administrator to complete 22 NCOA search, update Class Member mailing 23 information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendant
24 Last day for Class Members to opt-out, submit 25 disputes, submit objections, and submit data 26 requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later

1	Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period
2		
3		
4	Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or PAGA Claimants, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendant's Counsel	Within 7 days after the Final Approval Date
5		
6		
7		
8	Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to PAGA Claimants	Within 14 days after the settlement has been funded
9		
10		
11		
12	Last day for Qualified Members and PAGA Claimants to cash settlement checks	120 days after issuance of checks to Qualified Members and PAGA Claimants
13		
14	Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 days after settlement check cashing deadline
15		
16		
17	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline
18		
19	Last day for Defendant to provide Claims Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
20		

FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiff's Motion and sets final approval hearing on the proposed date of February 16, 2022 at 9:00 a.m., with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. Class Members who object in a timely manner, and in the manner set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel.

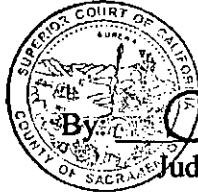
//

//

1 If for any reason the Court does not grant final approval of the Agreement, all evidence and
2 proceedings held in connection therewith shall be without prejudice to the status quo and rights of the
3 parties to the litigation, including all challenges to personal jurisdiction and to class certification for any
4 purpose other than approving a settlement class. The parties will revert to their respective positions as if
5 no settlement had been reached at all.

6 **IT IS SO ORDERED.**

7
8 Date: OCT 13 2021



By: Christopher E. Krueger
Judge of the Superior Court

CHRISTOPHER E. KRUEGER