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16 *Attorneys for Plaintiff, the proposed Settlement Class, the LWDA, and all other Aggrieved Employees*

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **COUNTY OF CONTRA COSTA**

19 ROWENA KLAR, an individual, on behalf
20 of the State of California, as a private
21 attorney general, and on behalf of all others
22 similarly situated,

23 **PLAINTIFF,**

24 **v.**

25 KPMG LLP, a Delaware Limited Liability
26 Company, and DOES 1 to 50, inclusive,

27 **DEFENDANTS.**

CASE NO. MSC21-00303

~~PROPOSED~~ 239

**ORDER GRANTING FINAL APPROVAL
OF CLASS ACTION SETTLEMENT AND
ATTORNEYS' FEES AND COSTS**

Date: April 28, 2022

Time: 9:30 a.m.

Dept: 39

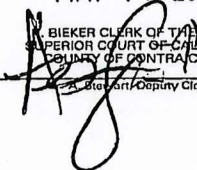
Judge: Hon. Edward G. Weil

Complaint Filed: February 18, 2021

First Amended Complaint Filed: June 28, 2021

Trial Date: None

FILED
MAY 17 2022

By: 
CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

1 Plaintiff moved for final approval of the proposed settlement and the final approval motion was
2 unopposed. On April 27, 2022, the Court issued its tentative ruling finally approving the settlement, which
3 stated (with minor revisions) as follows:

4 Rowena Klar moves for final approval of her class action settlement with defendant KPMG LLP.

5 **A. Background and Settlement Terms**

6 The original complaint was filed February 18, 2021, raising claims under PAGA that defendant had failed
7 to properly reimburse employees for work-related expenses incurred while working at home during the
8 COVID pandemic. It did not allege the variety of other claims often found in PAGA cases. On June 28,
9 2021, a First Amended Complaint was filed, alleging a class action raising similar claims. (During the time
in question, reimbursements were made, but issues remain concerning the amount and interest on delayed
payments.)

10 The settlement would create a gross settlement fund of \$900,000. The class representative payment to
11 plaintiff would be \$10,000. Counsel's attorney's fees would be \$225,000 (25% of the settlement). Litigation
12 costs would not exceed \$12,000. The settlement administrator (CPT Group) would cap its costs at \$27,000.
13 PAGA penalties would be \$90,000, resulting in a payment of \$67,500 to the LWDA. Thus, the net
settlement amount available to the class would be \$553,500, resulting in an average share of about \$113.
The fund is non-reversionary.

14 The proposed settlement would certify a class of all employees employed by defendant in California for at
15 least one pay period during the time period from March 15, 2020 to July 12, 2021, which was estimated to
16 consist of 5,625 people.

17 The class members will not be required to file a claim. Class members may object or opt out of the
settlement. The distribution would be based on pay periods worked during the class period. (The employees'
18 share of the PAGA penalty would be based on pay periods worked during the PAGA period.)

19 Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable.
20 Uncashed checks would be cancelled and the amounts would be would be cancelled, and paid to a cy pres
21 recipient, Legal Aid at Work. Neither class counsel nor plaintiffs have any connection to Legal Aid at
Work.

22 Since preliminary approval, the notice process has been executed. Based on the class list, 5,625 notice
23 packets were mailed. 210 packets were returned as undeliverable. A new address was obtained for 171 of
those, and the notices were remailed. The net was that 47 packets were left undelivered. There were seven
24 requests for exclusion (identified by name in the Dancy declaration), and no objections. The average
payment will be about \$98.52.

25 The settlement contains release language covering any claims "that have been asserted or that could have
26 been asserted in the Complaint, the first Amended Complaint, and any amendments thereto, based on the
27 facts, claims and/or allegations pled therein including for failure to provide timely and/or complete
reimbursement for necessary business-related expenditures, and includes all such claims for recovery of
28 expenses under California Labor Code section 2802 and California's Wage orders." (Settlement Agreement,

1 Par. 42.) Thus, it does not purport to release claims for more "typically" alleged violations, such as
2 overtime, meal breaks, or rest breaks.

3 Informal discovery was undertaken, including time and pay records, as well as review of policies and
4 practices with respect to the alleged violations. The matter settled after a session with an experienced
5 mediator.

6 Plaintiff cites to a number of federal district court cases that have held that where employees use their own
7 equipment, e.g., cell phones, computers, for work, they are entitled to reimbursement of a reasonable
8 percentage of the cost of the equipment, even if they did not have any additional out of-pocket expenses,
9 due to use of fixed-rate, "unlimited data" plans. Defendant, however, did make a \$1,000 "work from home"
10 payment in November 2020, intended to cover March 15, 2020 to March 14, 2021. While the payment was
11 "late" as to some of the expenses, it was "early" for others.

12 Counsel also has provided some analysis of the value of the case, calculating the number of employee-pay
13 periods at issue, and claiming that the amount of reimbursement should have been \$100 per month (not
14 \$83.33). This leads to an estimated under-reimbursement of just under \$1 million, and a risk-adjusted
15 estimate of just under \$400,000.

16 Claims for PAGA penalties are estimated by counsel, but are difficult to evaluate for a number of reasons:
17 they derive from other violations, they include "stacking" of violations, the law may only allow application
18 of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court.
19 Thus, counsel made a risk-adjusted estimate of about \$700,000. This led to a total risk-adjusted value of
20 the case of \$1.1 million.

21 The documentation submitted with the motion attests that LWDA was notified of the settlement.

22 **B. Legal Standards**

23 The primary determination to be made is whether the proposed settlement is "fair, reasonable, and
24 adequate," under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including "the strength of
25 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining
26 class action status through trial, the amount offered in settlement, the extent of discovery completed and
27 the state of the proceedings, the experience and views of counsel, the presence of a governmental
28 participant, and the reaction ... to the proposed settlement."

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that
apply under that statute. Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72
Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and
adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also
held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the
affected aggrieved employees[.]" (*Id.*, at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public
policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.)
Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v.*
Superior Court (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.)
Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is

1 the court to act as a mere puppet in the matter." (California State Auto. Assn. Inter-Ins. Bureau v. Superior
2 Court (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that Neary does not always
3 apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review,
4 though more cumbersome to the settlement process, serves a salutatory purpose." (Consumer Advocacy
5 Group, Inc. v. Kintetsu Enterprises of America (2006) 141 Cal.App.4th 48, 63.)

6 **C. Attorney fees**

7 Plaintiffs seek 25% of the total settlement amount (\$225,000) as fees, relying on the "common fund" theory.
8 Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check.
9 In Lafitte v. Robert Half International (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a
lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the
multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should
consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a
justifiable range, but the court is not necessarily required to make such an adjustment." (Id., at 505.)

10 Accordingly, plaintiffs have now provided the Court with documentation concerning their lodestar fee.
11 They estimate a total of lodestar of \$212,982.70 (\$147,179.80 for the Ackerman firm, \$65,802.90 for the
12 Bodien firm). Given the \$225,000 requested, this results in an implied multiplier of 1.05 (ignoring that by
the time counsel actually finishes the case, the lodestar will exceed the percentage-based fee).

13 The hourly rates applied were \$919 for Mr. Ackerman, \$764 for Mr. Kreitenberg, \$676 for Ms. Bodien,
14 and \$468 for Mr. Wheatley. They also include law clerk and legal assistant hours in the lodestar, which is
not typical, but is permissible.

15 No adjustment to the proposed 25% fee is necessary. The attorney's fee request is approved.

16 The litigation costs of \$12,000, and administrator's costs of \$27,000 are reasonable and are approved.

17 The requested representative payment of \$10,000 for plaintiff was deferred until this final approval motion.
18 Criteria for evaluation of such requests are discussed in Clark v. American Residential Services LLC (2009)
19 175 Cal.App.4th 785, 804-807.

20 Rowena Klar has provided a declaration, attesting to the hours she spent attending to the matter (90 to 100
21 hours), the risk that the suit would make it more difficult to find employment, and that she released all
22 claims (although there is no indication that she had any other claims of value). The number of hours spent
23 is on the high side for this type of case. The Court also considers the requested payment amount relative to
the average class member's share, and finds it is relatively high. Based on these factors, payment of \$7,500
is approved.

24 **D. Discussion**

25 The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and adequate. The
26 proposed recovery is within the parameters of the potential results at trial. Given that the law appears to
27 require only "reasonable" estimates of expenses, rather than individualized reimbursement, class-wide
28 treatment appears to be appropriate.

1 **E. Conclusion**

2 The motion is granted, subject to the reduction of the representative payment to \$7,500. Counsel are
3 directed to prepare an order reflecting this tentative ruling, and the other findings in the previously
4 submitted proposed order. Pursuant to Code of Civil Procedure section 384(b), the ultimate judgment must
5 provide for a compliance hearing after the settlement has been completely implemented, and amendment
6 of the judgment to reflect the amount paid to the cy pres recipient. Plaintiff's counsel are to submit a
compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be
withheld by the claims administrator pending satisfactory compliance as found by the Court. The judgment
should identify the seven people who requested exclusion and exclude them from coverage.

7 Since the tentative ruling was not challenged by the Parties, and was not opposed, the tentative
8 ruling became the order of the Court on April 28, 2022. In the Court's adopted tentative ruling, the
9 following settlement terms were approved:

10 1. All terms used in this Order Granting Final Approval of Class Action Settlement and
11 Attorneys' Fees and Costs (the "Order") shall have the same meanings given as those terms are used and/or
12 defined in the parties' Stipulation and Settlement Agreement (the "Settlement Agreement"). A copy of the
13 Settlement Agreement is attached as Exhibit A to the Declaration of Craig J. Ackermann in Support of the
14 Motion for Preliminary Approval of Class Settlement and is made a part of this Order.

15 2. The Court has personal jurisdiction over the Parties to this litigation and subject matter
16 jurisdiction to approve this Settlement and all exhibits thereto.

17 3. For settlement purposes only, the Court finally certifies the Class, as defined in the
18 Agreement as follows:

19 *Plaintiff and other California employees who are or were employed by Defendant, or at least one*
20 *pay period during the time period from March 15, 2020 to July 12, 2021 (the "Class" or "Class*
21 *Members").*

22 4. The Court deems this definition sufficient for the purpose of California Rule of Court
23 3.765(a), and solely for the purpose of effectuating the Settlement.

24 5. The Court finds that an ascertainable class of 5,618 Class Members exists and a well-
25 defined community of interest exists on the questions of law and fact involved because in the context of
26 the Settlement: (i) all related matters, predominate over any individual questions; (ii) the claims of Plaintiff
27 are typical of claims of the Class Members; and (iii) in negotiating, entering into and implementing the
28 Settlement, Plaintiff and Class Counsel have fairly and adequately represented and protected the interest

1 of the Class Members.

2 6. The Court is satisfied that CPT Group, Inc., which functioned as the Settlement
3 Administrator, completed the distribution of Class Notice and Share Form to the Class in a manner that
4 comports with California Rule of Court 3.766. The Class Notice informed 5,625 Class Members of the
5 Settlement terms, their rights to do nothing and receive their settlement share, their rights to submit a
6 request for exclusion, their rights to comment on or object to the Settlement, and their rights to appear at
7 the Final Approval Hearing, and be heard regarding approval of the Settlement.¹ Adequate periods of time
8 to respond and to act were provided by each of these procedures. No Class Members filed a written
9 objection to the Settlement as part of this notice process, and seven (7) Class Members requested exclusion
10 from the Settlement.²

11 7. The Court hereby approves the terms set forth in the Settlement Agreement and finds that
12 the Settlement Agreement is, in all respects, fair, adequate, and reasonable, consistent and compliant with
13 all applicable requirements of the California Code of Civil Procedure, the California and United States
14 Constitutions, including the Due Process clauses, the California Rule of Court, and any other applicable
15 law, and in the best interest of each of the Parties and Class Members.

16 8. The Court directs the Parties to effectuate the Settlement Agreement according to its terms
17 and declares the Settlement Agreement to be binding on all Class Members.

18 9. The Court finds that the Settlement Agreement has been reached as a result of informed
19 and non-collusive arm's-length negotiations. The Court further finds that the Parties have conducted
20 extensive investigation and research, and their attorneys were able to reasonably evaluate their respective
21 positions.

22 10. The Court appoints Plaintiff Rowena Klar as Class Representative and finds her to be
23 adequate.

24 11. The court appoints Craig J. Ackermann and Avi Kreitenberg of Ackermann & Tilajef, P.C.
25 and India Lin Bodien of Indian Lin Bodien, Attorney at Law as Class Counsel, and finds each of them to
26

27 ¹ Notice was sent to all 5,625 Class Members, but the administrator reports that after skip-tracing, a National Change of Address
28 Search, and re-mailing, only forty-seven (47) notice packets remained undeliverable.

² The Class Members who requested exclusion from the Settlement are Benny A. Okiyama, Derek William Kominars, Kathleen
A. Hamer, Samantha Nicole Dang Vu, Lynn Scott Marlow, Haunani H. Nakabara, and Cherie D. Cheshier.

1 be adequate, experienced, and well-versed in similar class action litigation.

2 12. The terms of the Agreement, including the Gross/Maximum settlement amount of
3 \$900,000.00 and the individual Settlement Shares, are fair, adequate, and reasonable to the Class and to
4 each Class Member, and the Courts grants final approval of the Settlement set forth in the Agreement,
5 subject to this Order. The Court approves the following allocations, which fall within the ranges stipulated
6 by and through the Settlement Agreement:

- 7 a) The \$27,000.00 designated for payment to CPT Group, Inc., the Settlement Administrator, is
8 fair and reasonable. The Court grants final approval of, and orders the Parties to make the
9 payment to the Settlement Administrator in accordance with the Agreement.
- 10 b) The \$225,000.00 amount requested by Plaintiff and Class Counsel for the Class Counsel's
11 attorneys' fees is fair and reasonable in light of the benefit obtained for the Class. The Court
12 grants final approval of, awards, and orders the Class Counsel Fees Payment to be made in
13 accordance with the Agreement provided that 5% of the attorneys' fees are to be withheld by
14 the Settlement Administrator pending satisfactory compliance as found by the Court.
- 15 c) The \$12,000.00 amount requested by Plaintiff and Class Counsel for the Class Counsel's
16 reimbursement of expenses is fair and reasonable. The Court grants final approval of, and
17 orders the Class Counsel Litigation Expenses Payment to be made in accordance with the
18 Agreement.³
- 19 d) The \$10,000.00 requested by Plaintiff for the Class Representative Payment is reduced to
20 \$7,500.00, which is fair and reasonable. The Court grants final approval of, and orders the
21 Class Representative Payment of \$7,500.00 to be made in accordance with this Order.
- 22 e) The Court approves of the \$90,000.00 allocation assigned for claims under the Private Attorney
23 General Act (PAGA), and orders 75% thereof (i.e., \$67,500.00) to be paid to the California
24 Labor and Workforce Development Agency (LWDA) in accordance with the terms of the
25 Settlement Agreement.

26 13. The Court orders the Parties to comply with and carry out all terms and provisions of the

27
28 ³ Class Counsel actually incurred litigation costs greater than the amount contemplated in the Settlement Agreement, but Class Counsel is only requesting reimbursement of litigation costs in the amount of \$12,000.00, the amount preliminarily approved by this Court and noticed to the Class.

1 Settlement, to the extent that the terms thereunder do not contradict with this Order, in which case the
2 provisions of this Order shall take precedence and supersede the Settlement.

3 14. Nothing in the Settlement or this Order purports to extinguish or waive Defendant's rights
4 to continue to oppose the merits of the claims in this Action or class treatment of these claims in this case
5 if the Settlement fails to become Final or effective, or in any other case without limitation. The Settlement
6 is not an admission by Defendant, nor is this Order or the subsequent Judgment that Plaintiff has asked
7 the Court to enter based on this Order a finding of the validity of any allegations against Defendant in the
8 Court proceeding or any wrongdoing by Defendant. Neither the Settlement nor this Order or the
9 subsequent Court Judgment is a finding that certification of the Class is proper for any purpose or
10 proceeding other than for settlement purposes.

11 15. All Participating Class Members shall be bound by the Settlement and this Order, including
12 the release of claims in favor of Defendant and the other Released Parties as set forth in the Agreement,
13 and are permanently barred from prosecuting against Defendant and the other Released Parties any and
14 all of Class Members' Released Claims as defined in the Agreement.

15 16. Class Representative Rowena Klar is bound to the general release of claims against
16 Defendant and the other Released Parties as set forth in the Agreement, and is permanently barred from
17 prosecuting against Defendant and the other Released Parties any and all of Plaintiff's released Claims as
18 defined in the Agreement.

19 17. The Parties shall bear their own respective attorneys' fees and costs except as otherwise
20 provided in the Settlement Agreement.

21 18. The Court approves the one hundred and twenty (120) day period for cashing of checks.
22 Any funds associated with stale checks that have not been cashed within one hundred and twenty (120)
23 days will be deemed void and shall be distributed to CCP Section 384. The portion allocated under Section
24 384(b)(3)(C) shall go to the Office of the Controller Unclaimed Property Fund as unclaimed property
25 with, if possible, an identification of the Class Member who failed to the cash the check.

26 19. Pursuant to California Rule of Court 3.769(h), the Court retains jurisdiction solely for
27 purposes of enforcing the Settlement Agreement, addressing settlement administration matters, and
28 addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

20. Plaintiff or the Settlement Administrator shall file with the Court a report regarding the status of distribution within one-hundred eighty (180) days after the Effective Date.

21. The Court hereby sets a hearing date of October 6, 2022 at 9 pm/am for a compliance hearing. Plaintiff's counsel are to submit a compliance statement one week before the compliance hearing date.

IT IS SO ORDERED.

DATED: MAY 05 2022



HON. EDWARD G. WEIL
JUDGE OF CONTRA COSTA COUNTY SUPERIOR COURT