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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

LOS ANGELES
SUPERIOR COURT

DEPARTMENT 53

CRYSTAL MARTINEZ RAMIREZ,

Plaintiff,

vs.

SP PLUS CORPORATION, et al.,

Defendants.

Case No.: BC614253

Hearing Date: April 16, 2019

Time: 8:30 a.m.

~~TENTATIVE~~ ORDER RE:

PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS SETTLEMENT;

PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF ATTORNEYS' FEES AND
COSTS

MOVING PARTY: Plaintiff Crystal Martinez Ramirez

RESPONDING PARTY: Sarah Huda

Plaintiff's Motion for Final Approval of Class Settlement;

Plaintiff's Motion for Final Approval of Attorneys' Fees and Costs

The court considered the moving papers, the objection filed by Sarah Huda, and Plaintiff's response to the objection. The court notes that both plaintiff's moving papers and the objection exceed the 15-page limit for moving and opposing memoranda filed in connection with a motion set forth in California Rules of Court, rule 3.1113, subdivision (d). The motion for final approval is 21 pages and the objection is 23 pages. Neither party requested leave to file a memorandum longer than 15 pages, and the issues do not appear to be so complex as to require such excessive length. The court further notes that Plaintiff's response to the objection, which was not filed until April 12, 2019, is 13 pages, which also exceeds the maximum page limit for a

1 reply or closing memorandum. In light of the nature of the relief requested and the issues
2 addressed, the court will consider the litigants' papers, but the court admonishes the litigants and
3 their counsel that the court expects them to comply with all Rules of Court with respect to future
4 proceedings.

5 **BACKGROUND**

6 Plaintiff Crystal Martinez Ramirez ("Plaintiff") filed a representative action complaint on
7 March 18, 2016, against defendant SP Plus Corporation ("SP Plus") asserting a cause of action
8 for penalties pursuant to Labor Code section 2699 *et seq.* ("PAGA") for violations of Labor
9 Code sections 226(a) (failure to provide complete wage statements) and 2802 (failure to
10 reimburse expenses). The parties engaged in mediation on August 22, 2017. (Szamet Decl., ¶
11 13.) The parties conducted further mediation on October 18, 2017. (Szamet Decl., ¶ 13.) The
12 parties subsequently reached a settlement of the claims, memorialized by a Memorandum of
13 Understanding effective December 19, 2017. (Szamet Decl., ¶ 14.)

14 On November 19, 2018, Plaintiff filed the First Amended Complaint ("FAC"). (Szamet
15 Decl., ¶ 16.) On November 26, 2018, the court issued an order granting Plaintiff's motion for
16 preliminary approval of the settlement. After preliminary approval was granted, the parties
17 carried out the notice process set forth in the settlement agreement. (Szamet Decl., ¶ 24.) On
18 February 5, 2019, Sarah Huda ("Huda") submitted a request for exclusion (opt-out) and a notice
19 of objection to the class settlement. (Szamet Decl., ¶ 25.)

20 Plaintiff now moves for final approval of class action settlement after notice to class
21 members. Plaintiff also moves for an award of attorney's fees. Huda objects to the settlement.

22 **MOTION FOR FINAL APPROVAL**

23 California Rules of Court, rule 3.769, subdivision (g) provides that the court must
24 conduct an inquiry into the fairness of a proposed class action settlement prior to final approval.
25 The trial court has broad powers to determine whether a proposed settlement is fair. (*Mallick v.*
26 *Superior Court* (1979) 89 Cal. App. 3d 434, 438.) The standard for approval of class settlements
27 in California is that the settlement be fair, reasonable, and adequate for class members overall.
28 (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801.)

1 To determine the fairness of a settlement, the court must consider certain factors, as set
2 forth in *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-45 (*Wershba*),
3 disapproved on other grounds as stated in *Hernandez v. Restoration Hardware, Inc.* (2018) 4
4 Cal.5th 260, 270). “[A] presumption of fairness exists where: (1) the settlement is reached
5 through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel
6 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
7 percentage of objectors is small.” (*Id.* at p. 245.) “[T]he test is not the maximum amount
8 plaintiffs might have obtained at trial on the complaint but, rather, whether the settlement is
9 reasonable under all of the circumstances.” (*Id.* at p. 250; *see also City of Detroit v. Grinnell*
10 *Corp.* (2d Cir. 1974) 495 F.2d 448, 455 (*City of Detroit*) [stating that a proposed settlement that
11 amounts to a fraction of the potential recovery does not in itself render the proposed settlement
12 grossly inadequate].)

13 In making this determination, the court considers all relevant factors, including “the
14 strength of [the] plaintiffs’ case, the risk, expense, complexity and likely duration of further
15 litigation, the risk of maintaining class action status through trial, the amount offered in
16 settlement, the extent of discovery completed and the stage of the proceedings, the experience
17 and views of counsel, the presence of a governmental participant, and the reaction of the class
18 members to the proposed settlement.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
19 Cal.App.4th 116, 128 (*Kullar*)). The recovery should represent a “reasonable compromise, given
20 the magnitude and apparent merit of the claims being released, discounted by the risks and
21 expenses of attempting to establish and collect on those claims by pursuing the litigation.” (*Id.* at
22 p. 129.) Nevertheless, the strength of the case on the merits for the plaintiff is the most
23 important factor, balanced against the amount offered in settlement. (*Id.* at p. 130.)

24 The court already determined on Plaintiff’s motion for preliminary approval of class
25 settlement that many of the factors established that the settlement is fair. The parties engaged in
26 arms-length settlement negotiations, attended two separate days of mediation, and were
27 represented by experienced counsel. (Szamet Decl., ¶ 43.) The parties also engaged in formal
28 and informal discovery. (Szamet Decl., ¶ 44.) During discovery, the parties exchanged

1 information concerning Plaintiff's claims, information concerning the wage violations at issue,
2 and information concerning the employees affected by the alleged wage violations. (Szamet
3 Decl., ¶ 45.) Wage statements, time records, personnel files, payroll records, and other
4 documents were also produced. (Szamet Decl., ¶ 46.) There are approximately 5,040 affected
5 employees (class members) and 134,255 itemized wage statements at issue. (Szamet Decl., ¶
6 48.) With this information, counsel evaluated the viability of the claims and defenses and
7 weighed the risks of further litigation. (Szamet Decl., ¶¶ 50, 52-124.) The parties agreed to a
8 settlement wherein SP Plus would pay a non-reversionary Gross Settlement Amount of
9 \$1,180,000. (Szamet Decl., ¶ 31; Settlement Agreement, § III, B.) Of that amount, \$5,000 is
10 allocated to the Class Representative Enhancement, \$393,333.33 is allocated to Plaintiff's
11 attorney's fees, \$11,000 is allocated to Plaintiff's costs, \$18,750 is allocated to the PAGA
12 payment, and \$27,500 is allocated to settlement administration costs. (Szamet Decl., ¶ 32;
13 Settlement Agreement, § III, J(2-5).) The amount of each class member's individual settlement
14 payment is an individualized amount based on the number of compensable pay periods worked
15 during the class period. (Settlement Agreement, § III, J(1).)

16 After notice of the settlement was given to the class members, the class administrator
17 received five opt-outs and one objection. (Schwartz Decl., ¶¶ 17-18.) The small number of
18 objectors further supports the presumption of fairness.

19 Plaintiff contends that Huda, the lone objector, lacks standing to object to the settlement
20 because she has opted out. (Schwartz Decl., ¶ 18; Szamet Decl., ¶¶ 39, 51.) (*See Roos v.*
21 *Honeywell Internat., Inc.* (2014) 241 Cal.App.4th 1472, 1485, disapproved on other grounds as
22 stated in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 269 ["To be sure, class
23 membership is an essential prerequisite for standing to object. Objectors to a class settlement
24 who are not members of the class typically cannot demonstrate standing—under either the
25 federal case-or-controversy standard or under the state personal-interest standard—because they
26 will not be affected by the settlement."]; *San Francisco NAACP v. San Francisco Unified School*
27 *Dist.* (1999) 59 F.Supp.2d 1021, 1032 ["nonclass members have no standing to object to the
28 settlement of a class action"].)

1 Huda contends that she does have standing to object notwithstanding that she has opted
2 out of the class. Huda attempts to distinguish the cases cited by Plaintiff regarding the standing
3 issue, but the court finds Huda's arguments to be without merit. Huda contends that she has a
4 personal interest in the outcome of this action, but as noted in *Roos*, the "personal-interest
5 standard" encompasses the question of whether an objector is a member of the class. (*Roos v.*
6 *Honeywell Internat., Inc.* 241 Cal.App.4th at p. 1485.) Huda also argues that she has standing to
7 object on behalf of the aggrieved employees who are putative class members in both the instant
8 case and in Huda's pending action against SP Plus (*Huda v. Standard Parking Corporation IL*,
9 Case No. BC 652218 ("*Huda*"). But Huda must "properly represent" those employees who are
10 class members in the instant case and in *Huda*. There is no evidence that Huda "properly"
11 represents these individuals. Indeed, these individuals presumably received notice of the class
12 settlement in the instant case and did not object. Thus, the court finds that Huda does not have
13 standing to object to the proposed settlement.

14 Nevertheless, Huda raises certain points that the court finds are appropriate to consider in
15 determining whether to approve the settlement. First, Huda argues that the release contained in
16 the settlement agreement at issue in this case is broad enough to include the claims in *Huda* that
17 are not pled in the instant case. The release in the settlement agreement releases "all claims . . .
18 whether known or unknown . . . that are alleged, or that could have been alleged against
19 Defendant arising out of the facts, circumstances, and primary rights in the Complaint, including
20 but not limited to, all wage and hour, and wage and hour related claims under California state
21 law for violation of Labor Code §§ 226(a) and 2802 and all derivative PAGA penalties. The
22 Release shall include, without limitation, claims that were raised, or that could have been raised,
23 under the applicable Wage Orders and California Labor Code provisions, including Labor Code
24 §§ 226, 2802, and/or 2698 et seq., based on the facts alleged, or that could have been alleged
25 against Defendant arising out of the facts, circumstances, and primary rights in the Complaint."
26 (Szamet Decl., ¶ 40; Settlement Agreement, § I (page 2:12-22).) In *Huda*, the operative
27 complaint asserts causes of action for violations of PAGA based on violations of the California
28 Worker Adjustment and Retraining Notification Act ("WARN Act") (Labor Code §§ 1400 et

1 seq.), violations of Labor Code sections 201 and 203 for failure to pay all wages due on
2 termination, and violations of Labor Code section 226 for failure to provide accurate itemized
3 wage statements. Plaintiff does not assert violations of Labor Code sections 201 and 203 in the
4 instant case, and so Huda contends that the settlement agreement undervalues those particular
5 claims and releases SP Plus from any liability for those unpled claims without valuable
6 consideration. Despite Plaintiff's assertion to the contrary, the court agrees that the language of
7 the release is susceptible to the interpretation that claims not pleaded in the FAC in the instant
8 action, like Huda's claims for violation of Labor Code sections 201 and 203, are included in the
9 release. Further, Plaintiff does not present any evidence that the parties engaged in an analysis of
10 such unpled claims in reaching agreement on the ultimate settlement amount. In light of this
11 point, the court finds that there is insufficient information and evidence to conclude that the
12 settlement is fair, adequate, and reasonable as to the class members.

13 Second, Huda argues that the settlement amount for the claims that are actually pleaded
14 in the FAC (the claims for failure to provide accurate itemized wage statements and failure to
15 reimburse for expenses) is not reasonable in light of the maximum exposure amount as
16 calculated by Plaintiff. Huda argues that the maximum exposure for these claims is between \$28
17 and \$41 million, exclusive of attorney's fees, costs, and interest. However, Plaintiff has agreed
18 to settle for \$1,180,000, which ultimately means that each class member can expect to be paid
19 only \$5.40 per pay period. In response, Plaintiff argues that her counsel perceived "substantial
20 risk" in proving the Labor Code section 226 claim (wage statements) because it was unclear
21 whether Plaintiff could prove that such a violation was "knowing and intentional" in the face of
22 SP Plus's vehement argument that the violation was the result of a clerical or inadvertent error.
23 Plaintiff argues that the "all or nothing" nature of this risk warranted a substantial discount.
24 (Szamet Suppl. Decl., ¶ 23.) With respect to the Labor Code section 2802 claim (reimbursement
25 expenses), Huda contends that the valuation of the reimbursement expenses was unreasonable.
26 Plaintiff valued the reimbursement at \$10 per month, and Huda contends that a more reasonable
27 valuation is \$50 per month. Plaintiff responds by pointing out that the reimbursement expenses
28 claim was based on the allegation that employees were required to clock in and out using a cell

1 phone, which would not have taken much time. The court finds that, considering all of the
2 circumstances, Plaintiff has demonstrated with sufficient evidence that the settlement is fair,
3 adequate, and reasonable as to all class members with respect to the Labor Code section 226
4 claim and the Labor Code section 2802 claim alleged in the FAC in this action.

5 Third, Huda argues that Plaintiff underestimated the likelihood that the class would be
6 certified. Plaintiff asserts that the strongest risk concerning certification relates to the Labor
7 Code section 2802 claim for expense reimbursement, based on the fact that only a limited group
8 of employees used their personal cell phones to clock in and out. Huda argues that Plaintiff fails
9 to provide evidence that only a limited group of employees were entitled to expense
10 reimbursement. Huda argues that Plaintiff does not explain whether any evidence was reviewed
11 and whether any discovery was conducted to assess the class certification issue. Huda contends
12 that this is problematic because the complaint was amended to include class claims several
13 months after the settlement was reached. Plaintiff counters that class certification was not a
14 guaranteed outcome because there was no written policy requiring the use of cell phones to clock
15 in and out. Therefore, there was the risk that individual issues would predominate, defeating
16 class certification. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327.)
17 The court finds that the factors here weigh in favor of a finding that the settlement was fair,
18 adequate, and reasonable.

19 Finally, Huda argues that Plaintiff failed to comply with the court's order preliminarily
20 approving the class settlement. First, Huda contends that she did not receive notice of the class
21 settlement until February 5, 2019 (the deadline was December 7, 2018), and only upon her
22 counsel's request. (*Vigil-Gallenberg Decl.*, ¶¶ 20-21.) Second, Huda contends that the class was
23 described as containing approximately 5,040 members, but only 5,027 members were mailed the
24 notice of settlement by the claims administrator. Third, Huda argues that the claims
25 administrator approved by the court was CPT Group, Inc., but the actual claims administrator
26 who handled the claims process was Rust Consulting, Inc. Plaintiff acknowledges that the
27 mistake relating to the claims administrator was due to an oversight by counsel. (*Szamet Suppl.*
28 *Decl.*, ¶ 34.) However, Plaintiff contends that this oversight did not cause harm to the settlement

1 class. Plaintiff argues that the notice sent to class members has the same formatting and content
2 as the notice approved by the court. Plaintiff also notes that Rust Consulting, Inc. met all
3 deadlines in the implementation schedule. Plaintiff also argues that the discrepancy in the
4 number of class members was due to the use of an estimate (of approximately 5,040 members)
5 for damage calculation purposes. However, as set forth in the claims administrator's declaration,
6 5,027 individuals were sent notices and five individuals opted out. (Schwartz Decl., ¶¶ 8, 17.)
7 Therefore, there are 5,022 participating settlement class members. (Schwartz Decl., ¶ 17.)
8 Finally, Plaintiff argues that Huda's late receipt of the notice packet did not affect her ability to
9 opt out or object in a timely manner. The court finds that none of these three alleged failures to
10 comply with the court's order preliminarily approving the class settlement renders the settlement
11 not fair, adequate, or reasonable.

12 Although many of the factors discussed above weigh in favor of final approval of the
13 class settlement, the court finds that the release of unpled claims is an impediment to final
14 approval. The fact that the language of the release is broad and includes, without limitation,
15 claims that "could have" been brought and the fact that Huda has, in fact, brought other claims,
16 suggests that the merits and value of those claims were not fully considered by the parties in
17 reaching their settlement. The parties in this action may consider whether to modify the scope of
18 the release in the settlement agreement to exclude the claims asserted in *Huda* that are not
19 alleged in the FAC in this action or, alternatively, to file a new motion for final approval of the
20 class settlement that demonstrates how the claims asserted in *Huda* have been considered in
21 entering into the settlement agreement in this action and that demonstrates the settlement of those
22 claims is fair, adequate, and reasonable to the putative class members. For the reasons set forth
23 above, the court finds that, considering all of the relevant factors, Plaintiff has not established
24 that the settlement is fair, adequate, and reasonable.

25 CONCLUSION

26 For the reasons set forth above, Plaintiff's Motion for Final Approval of Class Settlement
27 is denied without prejudice. Because final approval has not been granted for the settlement,
28 Plaintiff's Motion for Attorneys' Fees and Costs is similarly denied without prejudice.

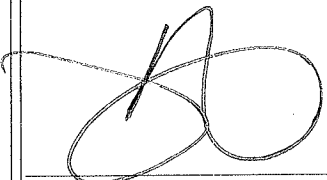
1 The Court orders that a case management conference in this action is set on

2 June 17, 2019, at 8:30 a.m., in Department 53.

3 The court orders Plaintiff to give notice of this order.

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5 IT IS SO ORDERED.

6 DATED: April 16, 2019

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10 Robert B. Broadbelt III
11 Judge of the Superior Court
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