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12 others similarly situated

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SAN FRANCISCO
14

15 KALIVA MORGAN, on behalf of herself and
16 others similarly situated,

17 Plaintiff,

18 vs.

19 CANDID CARE CO., a Delaware corporation;
20 and DOES 1 through 50, inclusive

21 Defendants.
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FILED
San Francisco County Superior Court

NOV 14 2022

CLERK OF THE COURT

BY: Jaqueline Alameda
Deputy Clerk

Case No. CGC-20-588430

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL FOR CLASS
SETTLEMENT**

Date: November 14, 2022
Time: 9:30 a.m.
Dept.: 302

[PROPOSED] ORDER GRANTING FINAL APPROVAL FOR CLASS SETTLEMENT

1 On October 19, 2022, Plaintiff's Motion for Final Approval of Class Action Settlement,
2 Attorneys' Fees and Expenses, and Incentive Award came before the Court, in Department 302, for
3 hearing pursuant to the Order of this Court, dated June 28, 2022 ("Preliminary Approval Order"), on
4 the application of Plaintiff Kaliva Morgan ("Plaintiff") and the Certified Class for approval of the
5 Settlement set forth in the Joint Stipulation of Class Action and PAGA Settlement (the
6 "Stipulation"). Full and adequate notice having been given to the Class as required in the Court's
7 Preliminary Approval Order, and the Court having considered all papers filed and proceedings held
8 herein and otherwise being fully informed in the premises and good cause appearing therefor,

9 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

10 1. This Order incorporates by reference the definitions in the Stipulation, and all
11 capitalized terms used, but not defined herein, shall have the same meanings as in the Stipulation.

12 2. This Court has jurisdiction over the subject matter of the Action and over all parties
13 to the Action, including all Class Members.

14 3. The Motion for final approval is granted. The Court approves the settlement as fair,
15 reasonable and adequate. The Court makes the following awards and approves the following
16 payments:

17 a. \$45,000.00 (forty-five thousand dollars) in attorneys' fees and \$12,342.83 (twelve
18 thousand three hundred and forty-two dollars and eighty-three cents) in costs to
19 Class Counsel;

20 b. \$5,000.00 (five thousand dollars) as an Enhancement Award to Plaintiff Kaliva
21 Morgan as the Class Representative; and,

22 c. \$3,000.00 (three thousand dollars) in Settlement Administrator's Fees to the
23 claim's administrator Simpluris.

24 4. In accordance with the Settlement and the terms set forth in this order, this Order
25 shall not be deemed a judgment in favor of Class Members or any them and shall not constitute an
26 obligation for direct compensation of any one or any number of the Class Members, but rather it
27 simply approves and undertakes to monitor the execution of the settlement between the Parties.
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1 Except for the payment due under the Stipulation, the parties are each to bear their own costs and
2 attorneys' fees. The Court approves the Stipulation and Defendant Candid Care Co. ("Defendant"),
3 and the Released Parties are discharged from all Released Claims in accordance with the terms of the
4 Stipulation.

5 5. In this wage and hour class action lawsuit, Plaintiff sued Defendant for a variety of
6 Labor Code violations. The operative complaint alleges that Defendant failed to pay minimum
7 wages and overtime, failure to provide meal and rest breaks, failed to keep required payroll records,
8 failed to provide accurate wage statements, failed to pay final wages when due, committed unfair
9 business practices under California's Unfair Competition Law ("UCL"), and violated the Private
10 Attorneys General Act of 2004 ("PAGA"), all in violation of California law. The operative
11 complaint seeks recovery of unpaid minimum wages and overtime, premium pay for improper meal
12 breaks and rest breaks, for penalties for improper wage statements, waiting time penalties, restitution
13 under the UCL, penalties under Labor Code § 2699 *et seq.*, prejudgment interest, post-judgment
14 interest, and attorneys' fees and costs. Defendant answered the Complaint and denied all of
15 Plaintiff's claims and maintained that it complied with all applicable laws.

16 6. The parties settled this matter at mediation and thereafter sought and obtained
17 preliminary approval of the class action settlement on June 28, 2022. Defendant made and makes no
18 admission of liability and none shall be inferred from the Stipulation or entry of judgment. Neither
19 this order nor the Stipulation shall be used or submitted into evidence in any proceeding or action,
20 except for the sole purpose of enforcing the terms hereof.

21 7. In California, the notice to class members must have "a reasonable chance of reaching
22 a substantial percentage of the class members." *Wershba v. Apple Computer, Inc.* (2001) 91
23 Cal.App.4th 224, 251. Importantly, however, the plaintiff need not demonstrate that each member of
24 the class received notice. As long as the notice had a "reasonable chance" of reaching a substantial
25 percentage of class members, it should be found effective.

26 8. Simpluris is providing settlement administration services for this settlement.
27 (Declaration of Evelin Reyes with Respect to Notification with the Final Approval Motion, ¶ 3.) On
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1 July 18, 2022, Simpluris received the class information from Defendant; the list contained 53
2 individual Class Members. (*Id.* at ¶ 6.) Simpluris conducted a search of the NCOA to update
3 addresses and, on July 29, 2022, mailed the Notice Packet to all Class Members. (*Id.* at ¶¶ 7, 8.)
4 Simpluris forwarded Notice Packets returned with forwarding addresses and performed skip
5 searches on all other returned mail. (*Id.* at ¶ 9.) Ultimately, zero Notice Packets were undeliverable.
6 (*Id.* at ¶ 9.) Simpluris received no objections, no request for exclusion, and no disputes. (*Id.* at ¶¶ 13,
7 -14.) Based on the foregoing, the Court finds that the notice provided to Class Members conforms to
8 due process requirements.

9 9. It is the duty of the Court, before finally approving the settlement, to conduct an
10 inquiry in the fairness of the proposed settlement. California Practice Guide, Civil Procedure Before
11 Trial, The Rutter Group, ¶14:139.12 (2012). The trial court has broad discretion in determining
12 whether the settlement is fair. In exercising that discretion, it normally considers the following
13 factors: strength of the plaintiff's case; the risk, expense, complexity and likely duration of further
14 litigation; the risk of maintaining class action status through trial; amount offered in settlement;
15 extent of discovery completed and stage of the proceedings; experience and views of counsel;
16 presence of a governmental participant; and reaction of the class members to the proposed class
17 settlement. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *In Re Microsoft I-V Cases*
18 (2006) 135 Cal.App.4th 706, 723. This list is not exclusive, and the Court is free to balance and
19 weigh the factors depending on the circumstances of the case. *Wershba v. Apple Computer, Inc.*
20 (2001) 91 Cal.App.4th 224, 244-245. Similar, to its review of class action settlements, the Court
21 must "determine independently whether a PAGA settlement is fair and reasonable," to protect "the
22 interests of the public and the LWDA in the enforcement of state labor laws." *Moniz v. Adecco*, 72
23 Cal.App.5th 56, 77.

24 10. The proponent bears the burden of proof to show the settlement is fair, adequate and
25 reasonable. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
26 1165-1166; *Wershba, supra*, 91 Cal.App.4th at 245. There is a presumption that a proposed
27 settlement is fair and reasonable when it is the result of arms'-length negotiations. 2 Herbert
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1 Newburg & Albert Conte, Newburg on Class Actions §11.41 at 11-88 (3d ed. 1992); Manual for
2 Complex Litigation (Third) §30.42.

3 11. At the time of preliminary approval, Class Counsel's claim that Defendant failed to
4 pay minimum wage/overtime claim were valued in terms of maximum exposure at \$5,069 and Class
5 Counsel's expert valued the regular rate claim at \$8,431 (Yeremian Declaration re: Preliminary
6 Approval, at ¶ 27.) The meal and rest break violations were each valued at \$138,622. (*Id.* at ¶ 31,
7 33.) The paystub violations were valued at \$94,800. (*Id.* at ¶ 36.) The claim for failure to pay final
8 wages was valued at \$99,412. (*Id.* at ¶ 40.) The claim under Labor Code § 2699 *et seq.* was valued at
9 \$96,400. (*Id.* at ¶ 44.)

10 12. Had this case not settled, there would have been additional risks and expenses
11 associated with continuing to litigate. Procedural hurdles (e.g., motion practice and appeals) are also
12 likely to prolong the litigation as well as any recovery by the Class Members.

13 13. There is always a risk of decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180
14 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain some
15 flexibility in conducting class actions, which means, under suitable circumstances, entertaining
16 successive motions on certification if the court subsequently discovers that the propriety of a class
17 action is not appropriate.")

18 14. As part of the Court's analysis of this factor, the Court should take into consideration
19 the admonition in *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. In *Kullar*,
20 objectors to a class settlement argued the trial court erred in finding the terms of the settlement to be
21 fair, reasonable, and adequate without any evidence of the amount to which class members would be
22 entitled if they prevailed in the litigation, and without any basis to evaluate the reasonableness of the
23 agreed recovery. The Court of Appeal agreed with the objectors that the trial court bore the ultimate
24 responsibility to ensure the reasonableness of the settlement terms. Although many factors had to be
25 considered in making that determination, and a trial court was not required to decide the ultimate
26 merits of class members' claims before approving a proposed settlement, an informed evaluation
27 could not be made without an understanding of the amount in controversy and the realistic range of
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1 outcomes of the litigation.

2 15. Defendant has agreed to settle for the non-reversionary amount of \$135,000.00 all in,
3 with no additional sums being due from Defendant for damages, costs, attorneys' fees, contributions,
4 reimbursements or for any other reason). According to the claims administrator's calculations, the
5 average settlement payment will be approximately \$1,476.42 per Class Member (Reyes Declaration,
6 ¶ 12.)

7 16. Class Counsel conducted an investigation that included formal and informal
8 discovery, reviewed time records, reviewed Plaintiff's documents, and formed damage models based
9 on all of these. (Yeremian Declaration re: Preliminary Approval, ¶ 12.) The parties also mediated
10 this case with Michael Young, Esq., a respected and highly experienced mediator in wage and hour
11 class actions. In connection with mediation and through discussions with counsel for Defendant,
12 Class Counsel also discussed all aspects of the case, including the risks of litigation and the risks to
13 both parties of proceeding with a motion for class certification as well as the law relating to unpaid
14 wages. (Yeremian Declaration re: Preliminary Approval, ¶ 14.)

15 17. Class Counsel has experience with wage and hour class litigation. (Yeremian
16 Declaration re: Preliminary Approval, ¶¶ 3-9.) He is of the opinion that this settlement is in the best
17 interest of the class (Yeremian Declaration re: Final Approval, ¶ 6.) and provides substantial benefit
18 to Class Members. (Id. at ¶ 8.)

19 18. The class reacted very positively with 100% participation rate. (Yeremian Declaration
20 re: Final Approval, ¶ 11)

21 19. On balance, this is a fair settlement that satisfies the *Dunk* factors, such that final
22 approval is warranted.

23 20. Class Counsel requested attorneys' fees of \$45,000.00. The Court employs the
24 lodestar method in awarding fees, as opposed to a "percentage of the common fund" method. This
25 amount would reflect the actual work performed, plus a multiplier (if applicable) to recognize
26 counsel's efforts. In common fund cases, the Court may employ a percentage of the benefit method,
27 as cross-checked against the lodestar. *Laffitte v. Robert Half Int'l., Inc.* (2016) 1 Cal.5th 480, 503.

1 21. Here, fees are sought pursuant to the percentage method. The determination of what
2 constitutes an appropriate percentage "is somewhat elastic and depends largely on the facts of a
3 given case, but certain factors are commonly considered. Specifically, the court may address the
4 percentage likely to have been negotiated between private parties in a similar case, percentages
5 applied in other class actions, the quality of class counsel, and the size of the award." *In re Ikon*
6 *Office Solutions, Inc., Securities Litigation* (E.D. Pa. 2000) 194 F.R.D. 166, 193.

7 22. These factors favor the \$45,000.00 award. As for the first factor, private contingency
8 fee agreements are routinely 30% to 40% of the recovery. (*Id.* at 194.) As for the second factor,
9 although the median percentage of attorney fees in class action is 25%, "most fees appear to fall in
10 the range of nineteen to forty-five percent." (*Id.*) As for the third factor, Class Counsel has
11 experience in class actions, including wage and hour cases. Most importantly, Class Counsel
12 achieved good results for the class as evidenced by the Class Members' reaction to the settlement.
13 As for the fourth factor, Class Counsel negotiated a \$135,00.00 Gross Settlement Amount. Applying
14 the lodestar cross-check, The lodestar amount for Class Counsel is \$122,175 (\$93,912.50 for David
15 Yeremian and Roman Shkodnik + \$28,262.50 for Emil Davtyan) (Yeremian FA Decl. ¶ 15; Emil
16 Davtyan FA Decl. ¶ 13.) The hourly rates appear to be reasonable for attorneys with their respective
17 years of experience. (Yeremian Declaration re: Final Approval, ¶ 15), and the hours spent is
18 reasonable for this case, which has been pending for two years. It appears that Class Counsel utilized
19 skill in litigating this case, and by all accounts, have good reputations in the legal community; at the
20 very least, there is no evidence before the Court to indicate that the attorneys have negative
21 reputations in the legal community. It also appears that Class Counsel spent appreciable time on the
22 case, which time could have been spent on other meritorious fee-generating cases. Based on the
23 \$122,175 lodestar, the fee request of \$45,000 translates into a multiplier of 0.36. Because the fee
24 request is based on a reasonable percentage of the settlement fund and is supported by the lodestar
25 calculation, and because the class was provided with notice of the fee request and did not object, the
26 Court awards fees in the amount requested.

27 23. Class Counsel requests costs in the amount of \$12,342.83. (Yeremian Declaration re:
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1 Final Approval, ¶ 28, and Exhibit 3 thereto.) Class Counsel's actual costs, totaling \$12,342.83,
2 consist of filing fees, mediation fees, court appearances, copying, filing and service. The Settlement
3 provides for reimbursement to Counsel of up to \$15,000.00 (fifteen thousand dollars) and Counsel
4 hereby requests \$12,342.83 which were all reasonably incurred in the litigation of this action. These
5 costs appear reasonable and necessary to the conduct of the litigation. For these reasons, the cost
6 request is granted in the amount of \$12,342.83.

7 24. Claims administrator Simpluris requests administration costs of \$3,000.00. Based
8 upon the work performed and yet to be performed, the request for administration costs of
9 \$4,599.00 is granted.

10 25. The Court also approves the payment to the Labor and Workforce Development
11 Agency ("LWDA") in the amount of \$3,750.00 (out of \$5,000.00 as allocated to the claim under the
12 California Private Attorneys General Act).

13 26. Finally, Class Counsel seeks an Enhancement Award of \$5,000.00 to Plaintiff as the
14 class representative. The Court considers the following factors, among others, in determining
15 whether to pay an incentive or enhancement award to a class representative: whether an incentive
16 was necessary to induce the class representative to participate in the case; actions, if any, taken by
17 the class representative to protect the interests of the class; the degree to which the class benefited
18 from those actions; the amount of time and effort the class representative expended in pursuing the
19 litigation; the risk to the class representative in commencing suit, both financial and otherwise; the
20 notoriety and personal difficulties encountered by the class representative; the duration of the
21 litigation; and the personal benefit (or lack thereof) enjoyed by the class representative as a result of
22 the litigation. California Practice Guide, Civil Procedure Before Trial, ¶14:146.10 (The Rutter Group
23 2012) (citing *Clark v American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 804; *Bell v.*
24 *Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726; *In re Cellphone Fee Termination Cases* (2010)
25 186 Cal.App.4th 1380, 1394; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
26 Cal.App.4th 399, 412. Plaintiff devoted numerous hours to this litigation. (Kaliva Morgan
27 Declaration "Morgan Decl." ¶5.) He assisted his attorneys by having multiple conferences with them
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1 and by providing documents. (*Id.*) Plaintiff also helped Class Counsel prepare for mediation. (*Id.*)
2 Plaintiff freely chose to champion the rights of the class and accepted the risks associated with acting
3 as a class representative. (Morgan Decl. ¶ 7.) The Court grants an enhancement award of \$5,000.00
4 to Plaintiff for the following reasons: Plaintiff spent significant time on this litigation; Plaintiff's
5 actions benefitted the Class; and Plaintiff accepted the risks and notoriety that are associated with
6 acting as a class representative.

7 27. All Parties, including each and all Class Members, are bound by this Final Approval
8 Order and by the Stipulation. All Class Members shall be deemed to have entered into the
9 Stipulation and the releases provided therein. Defendant shall have no obligation to pay any sums in
10 excess of the \$135,000.00 settlement payment set forth in the Stipulation (save and except for the
11 additional employer payroll taxes associated therewith). Other than as provided in the Stipulation,
12 Defendant shall have no obligation after entry of judgment to pay any sum to any person, whether
13 for costs, attorneys' fees, Class Member reimbursement or contribution, as a result of entry of
14 judgment.

15 28. The Court previously certified the Action as a class action under California Code of
16 Civil Procedure section 382. The Class is defined as follows:

- 17 a. "Participating Class Members:" all non-exempt employees who were employed
18 by Defendant in California during the Class Period.
19 b. "Class Period:" is defined as of December 10, 2016 through June 28, 2022.

20 29. Excluded from the Class would have been those persons who validly requested
21 exclusion in accordance with the requirements set forth in the Preliminary Approval Order.

22 30. The certified Class continues to meet all the requirements of California Code of Civil
23 Procedure section 382, as already found, and for the reasons set forth, in the Court's Preliminary
24 Approval Order.

25 31. Plaintiff Kaliva Morgan is the Court-appointed Class Representative for the Claims
26 Class.

27 32. David Yeremian of the law firm David Yeremian & Associates, Inc. and Emil
28

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1 Davtyan of Davtyan Law Firm, Inc. are the Court-appointed Class Counsel.

2 33. As set forth in the Stipulation any checks issued to Class Members will expire one
3 hundred and eighty (180) days from the date they are issued by the Claims Administrator. Any
4 check not cashed within one hundred eighty (180) days will become void. Any checks that, after an
5 appropriate skip trace, are undeliverable, shall become void. Any settlement shares for which checks
6 remain un-cashed and become void shall be forwarded to the California State Controller's
7 Unclaimed Property division to be held pursuant to the Unclaimed Property Law, California Civil
8 Code § 1500 *et seq.*

9 34. Upon the Effective Date (as defined in the Stipulation), all Released Claims of each
10 and every member of the Classes, save and except for those who timely requested exclusion, are and
11 shall be deemed to be conclusively released as against the Releasees. All persons and entities who
12 are in the Classes are hereby forever barred and enjoined from commencing, prosecuting or
13 continuing, either directly or indirectly, against the Releasees, in this or any other jurisdiction or
14 forum, any and all Released Claims (as defined in the Stipulation).

15 35. Without affecting the finality of this Order in any way, this Court hereby retains
16 continuing jurisdiction over: (a) implementation of the Stipulation and any award or distribution of
17 the Gross Settlement Amount, including interest earned thereon; (b) disposition of the Gross
18 Settlement Amount; (c) hearing and determining applications for attorney fees and expenses in the
19 Action; (d) all parties hereto for the purpose of construing, enforcing, and administering the
20 Stipulation and the Settlement therein; and (e) Class Members who seek to pursue Released Claims,
21 including any dispute as to whether such claims were released as against the Releasees.

22 36. There is no just reason for delay in the entry of judgment approving the Class
23 Settlement and immediate entry by the Clerk of the Court is expressly directed.

24 **IT IS SO ORDERED.**

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26 DATED: 11/14/22

27
28 **HON. RICHARD B. ULMER JR.**
JUDGE OF THE SUPERIOR COURT

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