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BY SUPERIOR COURT OF CALIFORNIA,
COUNTY OF NEVADA

1/24/23

JASON B. GALKIN, CLERK OF THE COURT
TONYA CLARK, DEPUTY

Howard L. Magee (State Bar No. 185199)
Larry W. Lee (State Bar No. 228175)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder (State Bar No. 170131)
Polaris Law Group
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

Attorneys for Plaintiff, the Class, and Aggrieved Employees

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

JEANETTE OSMAN-BRAVARD, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

PLACER TITLE COMPANY, a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. CU21-085315

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: January 6, 2023

Time: 10:00 a.m.

Dept.: 6

Complaint Filed: March 19, 2021

FAC Filed: March 26, 2021

1 The Court is tentatively satisfied of all of the following: (1) that the class should be provisionally
2 certified; (2) that Class Counsel and the Class representative are appropriate for appointment; (3) that
3 the proposed settlement agreement is fair and reasonable; (4) that the proposed class notice is adequate;
4 (5) that the proposed cy pres recipient is appropriate under Code of Civil Procedure section 384; (6) that
5 the class administrator is appropriate and the proposed costs for such administration as reasonable; and
6 (7) that the requested attorneys' fees and costs and class incentive payment are reasonable. The motion
7 is thus granted as prayed.

8 The Motion for Final Approval is set to be heard on May 19, 2023 at 10:00 a.m. before this
9 Department.

10 Factual Background:

11 On or about March 19, 2021, Plaintiffs commenced the present action alleging various claims
12 against Defendant both as an individual and as a class action and a representative action under the
13 Private Attorney General Act ("PAGA"). Thereafter, Plaintiff filed its first amended complaint ("FAC")
14 on March 26, 2021, which added a new cause of action under Labor Code sections 2698 et seq. for
15 violation of PAGA.

16 The FAC alleges causes of action for all of the following: (1) age discrimination under the Fair
17 Employment and Housing Act ("FEHA"); (2) wrongful termination in violation of public policy; (3)
18 intentional infliction of emotional distress; (4) violation of Labor Code sections 510, 558, and 1194
19 (overtime pay violation); (5) violation of Labor Code section 226(a) (itemized wage statements); (6)
20 violation of Business & Professions Code sections 17200 et seq.; and (7) violation of PAGA under
21 Labor Code sections 2698 et seq.

22 The above-described claims are predicated on Defendant's alleged failure to pay Plaintiff and
23 other similarly-situated employees overtime wages at the correct rate of pay (failing to factor "non-
24 discretionary remuneration, including commission wages") and for failure to provide itemized wage
25 statements. Plaintiff brings individual claims for age discrimination, wrongful termination, and
26 intentional infliction of emotional distress.

27 Plaintiffs now seek provisional approval of their proposed settlement agreement in the amount of
28 Four Hundred Seventeen Thousand Five Hundred Dollars (\$417,500.00) as the total settlement amount,

1 which will be subject to deductions for attorneys' fees and costs, class incentive payment, payment to
2 the Labor and Workforce Development Agency ("LWDA"), and payment to the settlement
3 administrator.

4 Analysis:

5 Rules of Court, Rule 3.769(a) mandates court approval for the dismissal, compromise, or
6 settlement of a state class action case. The approval procedure has three distinct steps: (1) preliminary
7 settlement; (2) dissemination of notice to class members; and (3) the final settlement approval hearing.
8 The present motion concerns the first step.

9 (1) Settlement Class Certification

10 Ca. Code of Civil Procedure section 382 has two minimum requirements to sustain a class
11 action: (1) an "ascertainable" class; and (2) a well-defined "community of interest" in questions of law
12 and fact. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1806; see also *Sav-On Drug Stores,*
13 *Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.)

14 As to the first element, for a class to be "ascertainable," it must be sufficiently numerous such
15 that it would be impractical to bring them all before the Court. (*Richmond v. Dart Industries, Inc.*
16 (1981) 29 Cal.3d 462, 470 [class action suits are authorized "when the parties are [so] numerous ... it is
17 impracticable to bring them all before the court"].) . It also requires class members to be readily and
18 easily identifiable. (*Archer v. United Rentals, Inc.* (2011) 195 Cal.App.4th 807, 828 [class definition
19 must be precise such that it is possible "to give adequate notice to class members"].)

20 The second element – the existence of a well-defined "community of interest" – embodies three
21 separate factors: (1) predominant common questions of law or fact; (2) the class representative has
22 claims or defenses typical of class members; and (3) the class representative can adequately represent
23 the class. (*Richmond, supra*, 29 Cal.3d at 470.) The standards for satisfying this standard vary based on
24 whether the class being certified is a settlement class or a litigation class. A settlement class, which is at
25 issue here, is held to a lower standard of scrutiny. (*Global Minerals & Metals Corp. v. Superior Court*
26 (2003) 113 Cal.App.4th 836, 859; *Dunk, supra*, 48 Cal.App.4th at 1807.)

27 The class is comprised of two hundred sixty (260) individuals defined as "all current and former
28 non-exempt employees of Defendant in the State of California who received overtime pay and notary

1 fees from Defendant in the same pay period at any time during the Class Period.” (Plaintiffs’ Motion,
2 Pg. 12, Lines 10-17.) “The Class Period means the time period from September 22, 2016, through July
3 1, 2022.” (Id; see also Joint Stipulation, ¶¶ 2, 6.) Plaintiff argues that these individuals satisfy the
4 “commonality requirement” because there are common questions of law and fact. (See Hanlon v.
5 Chrysler Corp. (1998) 150 F.3d 1011, 1019; see also Richmond v. Dart Industries, Inc. (1981) 29 Cal.3d
6 462, 473.) The Court agrees. As argued by Plaintiff, the proposed class members have common claims
7 related to the “failure to pay overtime wages at the correct regular rate of pay in violation of Labor Code
8 §§ 510, 558, and 1194, and ... failure to provide accurate itemized wage statements to its employees in
9 violation of Labor Code § 226.(a).” (Plaintiffs Motion, Pg. 19-20.)

10 Given the foregoing, the Court finds the proposed class is ascertainable, sufficiently numerous,
11 and readily identifiable. The Court also finds there is a well-defined “community of interest.”
12 Therefore, the Court finds that the proposed class is suitable for certification.

13 (2) The Proposed Settlement

14 a. The Legal Standard

15 With respect to the settlement, it is “the Court that bears the responsibility to ensure that the
16 recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims
17 being released, discounted by the risks and expenses of attempting to establish and collect on those
18 claims by pursuing litigation.” (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129.)
19 The Court is effectively a “guardian of the class” and has “a fiduciary responsibility ... [to safeguard]
20 the rights of the absentee class members when deciding whether to approve a settlement agreement.”
21 (Id.) The Court may not give rubber-stamp approval, but must instead “independently and objectively
22 analyze the evidence and circumstances before it in order to determine whether the settlement is in the
23 best interests of those whose claims will be extinguished.” (Id. at 130 [this determination requires a
24 “sufficiently developed” factual record].)

25 b. Fairness and Reasonableness of the Proposed Settlement

26 As part of the Court’s preliminary approval process, the moving party must demonstrate that the
27 settlement is “fair, reasonable and adequate.” (Dunk, supra, 48 Cal.App.4th at 1801.) This
28 determination of settlement fairness is ultimately left to the “broad discretion” of the reviewing trial

1 court. (Id. at 1801-1802 [“the [trial] court’s determination [of fairness] is nothing more than ‘an
2 amalgam of delicate balancing, gross approximations and rough justice’”]; see also Wershba v. Apple
3 Computer, Inc. (2001) 91 Cal.App.4th 224, 234.)

4 In making its assessment, the Court considers the factors outlined in Dunk v. Ford Motor Co.
5 (1996) 48 Cal.App.4th 1794, including, but not limited to: (1) the strength of plaintiffs’ case; (2) the
6 risk, expense, complexity, and the likely duration of further litigation; (3) the risk of maintaining class
7 action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed
8 and the stage of the proceedings; and (6) the experience and views of counsel; (7) the presence (or lack
9 thereof) of a governmental participant; and (8) the reaction of the class members to the proposed
10 settlement. (Id. at 1803.)

11 Plaintiffs claim that prior to arriving at the proposed settlement the parties thoroughly
12 investigated the facts relating to the class and PAGA claims and engaged in a review of the related legal
13 principles. (Plaintiffs’ Motion for Preliminary Approval, Pg. 7, Lines 14-23.) Plaintiffs contends that an
14 exchange of both formal and informal discovery occurred in connection with mediation and that
15 Defendant provided data pertaining to the putative class members, hourly rates of pay, number of
16 workweeks, payroll data, sample wage statements, timekeeping records, and pertinent policies re:
17 overtime and commission payments. (Id.; see also Tulyathan Declaration, ¶¶ 7-8.) Plaintiffs’ individual
18 claims were resolved separately from the class claims in a confidential settlement agreement. (Id. at ¶
19 9.)

20 Based on the class data provided by Defendant, Plaintiffs estimate that Defendant would face
21 potential liability of up to ~\$1,300,000.00 for the class claims if Plaintiff were to prevail at trial. (Id. at
22 ¶ 12.) As pertains to the overtime rate claim, Plaintiff calculated the amount of unpaid wages at
23 ~\$10,000 based on 260 employees who were underpaid. An additional \$600,000 was calculated based
24 on “waiting time penalties” based on 100 employees, and Plaintiff also calculated an additional
25 \$699,600 based on 7,202 deficient wage statements with payment of overtime during the class period.

26 The Parties engaged in a full-day of mediation on April 13, 2022, with mediator Russell
27 Wunderli. Settlement was not reached on that date but the parties continued negotiations with the
28 assistance of Mr. Wunderli after which they ultimately reached the current settlement agreement. (Id. at

¶ 8.)

As to risks, expenses, complexity, liability, and further duration, Plaintiffs indicates a belief that the maximum possible amount of class and PAGA penalties would amount to \$3.82 million, “without discounting for potentially losing on any of the causes of action.” The total proposed settlement amount is \$417,500.00, which is approximately 10.9% of the maximum amount discussed above. (Id. at ¶ 14.) Plaintiffs acknowledge Defendant may have viable affirmative defenses to its claims and notes that the proposed settlement amount was arrived at with such considerations in mind. (Id. at ¶ 15.) Plaintiff also acknowledges possible issues related to possible class certification. (Id. at ¶ 16.)

For all the foregoing reasons, the Court finds that the proposed settlement is “fair, reasonable, and adequate” within the meaning of Dunk and Kullar.

c. Proposed Class Notice

The purpose of the class notice is to “fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.” (Wershba, supra, 91 Cal.App.4th at 251.) It should “give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. (Id. at 252.) The goal is to “strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members.” In making its assessment of the adequacy of the particulars of the proposed notice the Court is granted “virtually complete discretion.” (7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1164.)

The proposed class notice appears to be adequate on its face. The notice will provide the class members with information regarding the benefits, their time to opt out, and how to object to the settlement. It also details the proposed incentive payment, proposed fees and costs, and attorney’s fees and costs. Given the foregoing, the Court finds that the proposed class notice is adequate and reasonable.

(3) Attorney’s Fees and Costs

There are two primary methods for determining whether attorneys’ fees are “fair and reasonable” in the context of class action litigation: (1) the percentage method; or (2) the lodestar method. (Laffitte v. Robert Half Internat. Inc. (1 Cal.5th 480, 506.) The former method is most appropriate when the

1 settlement amount is clearly defined. (Id. at 503-504; see also *Lealao v. Beneficial Cal., Inc.* (2000) 82
2 Cal.App.4th 19, 49.) As is this Court's typical practice, the court can also provide a "lodestar cross-
3 check" to further confirm reasonableness. (Laffitte, supra, 1 Cal.5th at 503.) Ultimately, however, it is
4 left to the trial court's sound discretion as to which method to employ in assessing reasonableness. (Id.
5 at 506.)

6 Plaintiffs' class counsel seeks preliminary approval of attorneys' fees in the maximum amount of
7 \$139,166.67 and for litigation costs in an amount not to exceed \$15,000.00. As to the attorney fees, this
8 is an amount not to exceed one third of the total recovery. (See e.g., *Chavez v. Netflix, Inc.* (2008) 162
9 Cal.App.4th 43, 67, fn. 11 ["empirical studies show that ... fee awards in class actions average around
10 one-third of the recovery"].)

11 The Court notes that both the attorneys' fees and costs appear to be facially reasonable. They are
12 provisionally approved in an amount not to exceed the amounts listed in the motion. That being said,
13 Counsel has not provided the Court with sufficient evidence regarding the number of hours worked by
14 counsel or their respective hourly rates. The Court is therefore unable at this time to perform the above-
15 described lodestar cross-check to confirm its reasonableness determination. Counsel has similarly not
16 provided an adequate breakdown of the costs expended during the litigation of this matter.

17 Counsel is directed to provide a full lodestar analysis in its motion for final approval. And
18 Counsel is further directed to provide full documentation of its costs in connection with the same.

19 (4) Payment to Class Representative

20 "[I]t is established that named plaintiffs are eligible for reasonable incentive payments to
21 compensate them for the expense or risk they have incurred in conferring a benefit on other members of
22 the class." (*Munoz v. BCI Coca-Cola Bottle Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412; see
23 also *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807.) Those
24 incentive payments, however, may not be summarily granted without due regard to the provided
25 evidence; the propriety of such payments is to be assessed on the evidence presented in the competent
26 declarations in support thereof. (See *Clark*, supra, 175 Cal.App.4th at 806-807 [appellate court refused
27 to sanction trial court's incentive awards which were based on "nothing more than pro forma claims"].)

28 Here, proposed class representative, Jeanette Osman-Bravard, has provided a declaration

1 attesting to, in general terms, her involvement and the work she has performed on the case. The
2 \$7,500.00 payment requested is reasonable on its face given the provided evidence.

3 (5) Class Administrator

4 The Parties have agreed to an estimated payment of no more than \$7,000 to the proposed
5 settlement administrator, Phoenix Settlement Administrators (“Phoenix”). Phoenix is tasked with
6 sending class notices and generally administering this settlement.

7 The Court is in receipt of a supplemental declaration from Phoenix’s president of business
8 development, Jodey Lawrence, as well as the supplemental declaration of Attorney Lee. These
9 supplemental materials include a description of Phoenix’s services, experience, procedures, safeguards,
10 and available insurance. They also include a detailed breakdown of costs associated with their
11 administration. Further, there is a statement from Phoenix disclaiming any financial interest with any
12 counsel in this matter.

13 The Court is now satisfied for the purposes of preliminary approval that Phoenix is an
14 appropriate administrator and that the proposed payment to Phoenix is reasonable and appropriate at this
15 time.

16 (6) Cy Pres Distribution

17 The proposed settlement does not contemplate any reversion of unpaid sums to the Defendant,
18 but instead the funds represented by settlement checks returned as undeliverable and the corresponding
19 funds that are not negotiated within one hundred eighty (180) days after mailing shall be paid to cy pres
20 recipient Loaves and Fishes.

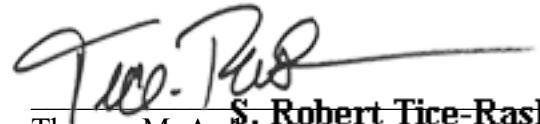
21 Counsel’s declaration reveals that the involved law firms are not involved with or directly
22 associated with Loaves and Fishes. It also reveals, as is required, that distribution to Loaves and Fishes
23 might fulfil the purpose of the lawsuit. (See State of California v. Levi Strauss & Co. (1986) 41 Cal.3d
24 460, 472; see also In re Microsoft I-V Cases (2006) 135 Cal.App.4th 706, 722 [the court must consider
25 “whether the proposed cy pres distribution is useful in fulfilling the purposes of the underlying cause of
26 action”].)

27 Plaintiffs’ supplemental materials adequately address the propriety of this proposed recipient.
28 (See Lee Supplemental Declaration, ¶¶ 5-6.)

1 (7) PAGA Settlement

2 Settlements under the PAGA, as described in Labor Code sections 2698 et seq., do not require
3 preliminary approval. As such, the Court does not conduct such an analysis for purposes of this motion.
4 At the time of final approval, however, the Court will assess whether the PAGA portion of the
5 settlement is “fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law
6 violations, deter future ones, and to maximize enforcement of state labor laws.” (Moniz v. Adecco
7 USA, Inc. (2021) 72 Cal.App.5th 56, 77.)

8
9 Dated: 01/24/2023


10 ~~Thomas M. Anderson~~ **S. Robert Tice-Raskin**
11 Judge of the Superior Court
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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

On January 9, 2023, I served the following document(s) described as: **[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on the interested parties in this action as follows:

 X BY ELECTRONIC MAIL: by personally sending a true and correct copy of the above-described document(s) to the party(ies) listed above or on the attached mailing list from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s) indicated above or on the attached mailing list. I certify that said electronic transmission was completed and that all pages were received by the party(ies) identified herein or on the attached mailing list.

Alvin R.

PROOF OF SERVICE