

Envelope: 15295357

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
mgavron@diversitylaw.com

Attorneys for Plaintiff and the Class

FILED
May 10, 2024
Clerk of the Court
Superior Court of CA
County of Santa Clara

21CV376845
By: rwalker

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

MARIE REBELO SHOWALTER, as an
individual and on behalf of all others
similarly situated,

Plaintiff,

vs.

NORTHERN CALIFORNIA CHAIR
CORPORATION, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 21CV376845

[Assigned for all purposes to the Honorable
Theodore C. Zayner, Department 19]

**~~[AMENDED PROPOSED]~~ ORDER
GRANTING FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND JUDGMENT**

Date: May 8, 2024
Time: 1:30 P.M.
Dept.: 19

Complaint Filed: March 2, 2021
Jury Trial Date: None set

1 Plaintiff Marie Rebelo Showalter and Defendant Northern California Chair Corporation
2 (“Defendant”) (collectively, the “Settling Parties”) have entered into the Class and PAGA Action
3 Settlement Agreement (“Agreement”) to settle the above-captioned class action subject to the
4 Court’s approval (the “Settlement”).

5 This matter is now before the Court on Plaintiff’s Motion for Final Approval of Class
6 Action Settlement. The Court has read, heard, and considered all the pleadings and documents
7 submitted, and issued a tentative ruling, attached hereto as **Exhibit A**, which became the order of
8 the Court.

9 **I. BACKGROUND**

10 On March 2, 2021, Plaintiff initiated this action in the Superior Court of California, County
11 of Santa Clara, alleging the following class and PAGA claims: (1) violation of Labor Code §§ 510,
12 558, and 1194; (2) violation of Labor Code §§ 226.7 and 512; (3) violation of Labor Code § 2802;
13 (4) violation of Labor Code § 226; (5) violation of Business and Professions Code § 17200, *et seq.*;
14 and (6) violation of Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”).

15 **A. Class Members**

16 The “Class” or “Class Member” are defined as “all current and former non-exempt sales
17 employees who worked for Defendant in California any time between May 1, 2019 and July 11,
18 2023, inclusive.”

19 **B. Operation of the Settlement**

20 Pursuant to the Preliminary Approval Order, this Court conditionally certified the Class and
21 granted preliminary approval of the Settlement. The Preliminary Approval Order also approved of
22 the proposed form of class notice and notice plan. The Court entered the Preliminary Approval
23 Order after review and consideration of the pleadings filed in connection herewith, and the oral
24 presentations made by counsel at the hearing.

25 In compliance with the Preliminary Approval Order, the Notice of Proposed Class Action
26 Settlement (“Notice of Settlement”) was sent to all Class Members via first class mail. The notice
27 dissemination process was timely completed.

1 This Court finds that the Settlement appears to be the product of serious, informed, non-
2 collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential
3 treatment to any individuals. The Court finds that the Settlement was entered into in good faith
4 pursuant to California Code of Civil Procedure § 877.6. The Court further finds that the Settlement
5 is fair, reasonable, and adequate and that Plaintiff has satisfied the standards for final approval of a
6 class action settlement under California law. Under the provisions of California Code of Civil
7 Procedure § 382 and Federal Rule of Civil Procedure 23, as approved for use by the California state
8 court in *Vasquez v. Superior Court*, 4 Cal. 3d 800, 821 (1971), the trial court has discretion to
9 certify a class where:

10 [Q]uestions of law or fact common to the members of the class
11 predominate over any questions affecting only individual members,
12 and that a class action is superior to the available methods for the fair
 and efficient adjudication of the controversy...Fed. R. Civ. Proc. 23.

13 Certification of a settlement class is the appropriate judicial device under these circumstances.

14 Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS
15 FOLLOWS:

16 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the
17 Agreement filed in this case.

18 2. The Court has jurisdiction over the subject matter of the litigation, the Class
19 Representative, the other Settlement Class Members, and Defendant.

20 3. The Court finds that the dissemination of the Notice of Settlement disseminated to
21 the Class Members, constituted the best notice practicable under the circumstances to all Persons
22 within the definition of the Class, and fully met the requirements of California law and due process
23 under the United States Constitution. No objections were received by the Parties or the Court
24 through the date of this Order. The Court finds that no Class Member submitted a request for
25 exclusion from the Settlement as determined by the Settlement Administrator.

26 4. The Court approves the settlement of the above-captioned action, as set forth in the
27 Agreement, as fair, just, reasonable, and adequate as to the Settling Parties. The Settling Parties are
28

1 directed to perform in accordance with the terms set forth in the Agreement.

2 5. Except as otherwise provided in the Agreement, the Settling Parties are to bear their
3 own costs and attorneys' fees.

4 6. The Court hereby certifies the following Class for settlement purposes only: all
5 current and former non-exempt sales employees who worked for Defendant in California any time
6 between May 1, 2019 and July 11, 2023, inclusive.

7 7. With respect to the Settlement Class and for purposes of approving the Settlement
8 only and for no other purpose, this Court finds and concludes that: (a) the members of the
9 Settlement Class are ascertainable and so numerous that joinder of all members is impracticable; (b)
10 there are questions of law or fact common to the Settlement Class, and there is a well-defined
11 community of interest among Members of the Settlement Class with respect to the subject matter of
12 the claims in the Litigation; (c) the claims of Class Representative are typical of the claims of the
13 members of the Settlement Class; (d) the Class Representative has fairly and adequately protected
14 the interests of the members of the Settlement Class; (e) a class action is superior to other available
15 methods for an efficient adjudication of this controversy; and (f) the counsel of record for the Class
16 Representative, *i.e.*, Class Counsel, are qualified to serve as counsel for the Plaintiff in her
17 individual and representative capacity and for the Settlement Class.

18 8. Defendant shall fund \$530,300.00 of the total Gross Settlement Amount, which
19 includes the amount contemplated by virtue of the escalator provision, pursuant to the terms of the
20 Agreement.

21 9. The Court approves the individual settlement payment amounts, which shall be
22 distributed pursuant to the terms of the Agreement.

23 10. The \$530,300.00 Gross Settlement Amount shall be used to pay (a) Class Counsel
24 attorneys' fees in the amount of \$176,765.99 and reimbursement of costs in the amount of
25 \$8,390.98; (b) a service award to the Class Representative Marie Rebelo Showalter to reimburse her
26 for her unique services in the following amount: \$4,500.00; (c) the sum of \$37,500.00 to be paid to
27 the Labor and Workforce Development Agency for PAGA penalties; (d) PAGA penalties of

1 \$12,500.00 to be distributed to Aggrieved Employees; and (3) \$8,250.00 to the administrator
2 Phoenix Settlement Administrators (the "Settlement Administrator") for its fees and costs relating
3 to the settlement administration process. The Court finds that these amounts are fair and reasonable.
4 Defendant is directed to make such payments in accordance with the terms of the Agreement. The
5 allocation and distribution of these amounts shall be performed by Settlement Administrator.

6 11. As of the date of this Order, all Settlement Class Members are hereby deemed to
7 have waived and released all Released Class Claims and are forever barred and enjoined from
8 prosecuting the Released Class Claims against the Released Parties as fully set forth in the
9 Settlement. In addition, all Aggrieved Employees are enjoined from prosecuting the Released
10 PAGA Claims against the Released Parties as set forth in the Settlement. The Settlement is not an
11 admission of liability or wrongdoing by Defendant, nor is this Order a finding of the validity of any
12 claims in the Action or of any fault, omission, or wrongdoing by Defendant.

13 12. The Court hereby enters final judgment in this case in accordance with the terms of
14 the Settlement, Preliminary Approval Order, and this Order. Without affecting the finality of the
15 Settlement or Judgment entered, this Court shall retain exclusive and continuing jurisdiction over
16 the action and the Parties, including all Settlement Class Members, for purposes of enforcing and
17 interpreting this Order and the Settlement.

18 IT IS SO ORDERED AND ADJUDGED.

19
20 DATED: May 10, 2024



HON. THEODORE C. ZAYNER
SUPERIOR COURT OF CALIFORNIA

EXHIBIT A

Calendar Line 3

Case Name: Showalter v. Northern California Chair Corporation (Class Action/PAGA)
Case No.: 21CV376845

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on May 8, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

IV. INTRODUCTION

This is a putative class and representative action arising out of various alleged wage and hour violations. The operative Class Action Complaint (“Complaint”), filed on March 2, 2021, sets forth causes of action for: (1) Violation of Labor Code §§ 510, 558, and 1194; (2) Violation of Labor Code §§ 226.7 and 512; (3) Violation of Labor Code § 2802; (4) Violation of Labor Code § 226; (5) Violation of Business and Professions Code §§ 17200, et seq.; and (6) Violation of Labor Code §§ 2698, et seq. (“PAGA”).

The parties reached a settlement. Plaintiff Marie Rebelo Showalter (“Plaintiff”) moved for preliminary approval of the settlement. The motion was unopposed.

On November 1, 2023, the court granted preliminary approval of the settlement subject to approval of an amended class notice. Plaintiff’s counsel submitted an amended class notice on November 9, 2023. On November 30, 2023, the court approved the amended class notice and entered a formal order granting preliminary approval of the settlement.

Now before the court is Plaintiff’s motion for final approval of settlement. The motion is unopposed.

V. LEGAL STANDARD

Generally, “questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings,

the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.”

(*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

“The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

The burden is on the proponent of the settlement to show that it is fair and reasonable. However “a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.”

(*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

VI. DISCUSSION

The case has been settled on behalf of the following class:
[A]ll current and former non-exempt sales employees who worked for Defendant [Northern California Chair Corporation (“Defendant”)] in California any time between May 1, 2019 and July 11, 2023, inclusive.

The class also contains a subset of aggrieved employees that are defined as “all current and former non-exempt sales employees who worked for Defendant in California during the PAGA Period.” The PAGA Period is defined as the period from February 12, 2020 through July 11, 2023.

As discussed in connection with preliminary approval, at the time of the original settlement, Defendant represented there were approximately 240 putative class members who worked a total of 6,172 pay periods. Based on this understanding, the settlement agreement provided that Defendant would pay a gross, non-reversionary amount of \$500,000. The gross

settlement amount included attorney fees of \$166,667 (1/3 of the gross settlement amount), litigation costs not to exceed \$25,000, a service award for the class representative not to exceed \$10,000, settlement administration costs not to exceed \$8,250, and a PAGA allocation of \$50,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to the aggrieved employees).

The total settlement amount and some of the included amounts have increased since the time of preliminary approval. Plaintiff explains that after preliminary approval, information for 240 class members was provided to the settlement administrator and it was determined that the class members worked a total of 6,546 pay periods. (Declaration of Yami Burns With Respect to Notice and Settlement Administration (“Burns Dec.”), ¶¶ 3, 11-12.) This triggered the escalator clause of the settlement agreement, which provides that if the number of total pay periods worked by class members exceeds 6,172, then the gross settlement amount shall be increased proportionally based on the percentage amount over 6,172. (Declaration of Max W. Gavron in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, Ex. A, ¶ 1.22; Burns Dec., ¶¶ 11-12.)

In light of the foregoing, the total amount of the settlement is now \$530,300. (Burns Dec., ¶ 12.) This amount includes attorney fees of \$176,765.99 (1/3 of the gross settlement amount), litigation costs not to exceed \$25,000, a service award for the class representative not to exceed \$10,000, settlement administration costs not to exceed \$8,250, and a PAGA allocation of \$50,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to the aggrieved employees).

The net settlement amount will be distributed to the class members on a pro rata basis based on the number of workweeks worked during the Class Period. Similarly, aggrieved employees will receive a pro rata share of the 25 percent portion of the PAGA payment allocated to them based on the number of workweeks worked during the PAGA Period.

Checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to Legal Aid at Work.

In exchange for the settlement, class members agree to release Defendant, and related persons and entities, from all claims that were or could have been asserted in this action

reasonably based on the facts alleged in this action. The aggrieved employees agree to release Defendant, and related persons and entities, from claims for civil penalties sought under PAGA reasonably based on the facts alleged in the Complaint. Plaintiff further agrees to a general release.

On January 30, 2024, the settlement administrator mailed notice packets to 240 class members. (Burns Dec., ¶ 5.) Ultimately, all of the notice packets were deliverable. (*Id.* at ¶ 7.) As of April 15, 2024, there were no objections or requests for exclusion. (*Id.* at ¶¶ 8-9.)

The highest individual settlement payment to be paid is approximately \$4,652.95, the lowest individual settlement payment to be paid is approximately \$42.30, and the average individual settlement payment to be paid is approximately \$1,158.55. (Burns Dec., ¶ 14.) The court previously found the proposed settlement is fair and the court continues to make that finding for purposes of final approval.

Plaintiff requests an incentive award of \$10,000 for the class representative. The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit. Criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. These “incentive awards” to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit.

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks, brackets, ellipses, and citations omitted.)

Plaintiff submitted a declaration in support of the request, detailing her participation in the action. Plaintiff declares that she spent approximately 25-30 hours in connection with this lawsuit, including meeting with class counsel, providing documents and information to class counsel, reviewing pleadings, and reviewing the settlement agreement. (Declaration of Marie Rebelo Showalter in Support of Plaintiff’s Motion for Final Approval of Class Action Settlement, ¶ 7.)

Moreover, Plaintiff undertook risk by putting her name on the case because it might impact her future employment. (See *Covillo v. Specialty's Café* (N.D.Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant “reputational risk” in bringing an action against an employer].)

However, the requested incentive award in the amount of \$10,000 is excessive. The amount requested is substantially higher than the court typically awards for the amount of Plaintiff time spent in connection with this action (i.e., approximately 25-30 hours). In light of the foregoing, the court finds that a service award in the amount of \$4,500 is reasonable and it approves the award in that lesser amount.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel seeks attorney fees of \$176,765.99 (1/3 of the gross settlement fund). Plaintiff's counsel provides evidence demonstrating a total combined lodestar of \$121,515 (based on fees actually incurred). (Declaration of Max W. Gavron in Support of Plaintiff's Motion for Final Approval of Class Action Settlement (“Gavron Dec.”), ¶¶ 16-19 & Ex. A; Declaration of Larry W. Lee in Support of Plaintiff's Motion for Final Approval of Class Action Settlement, ¶¶ 10-14 & Ex. A.) This results in a multiplier of 1.46. The court finds the attorney fees are reasonable as a percentage of the common fund and are approved.

Plaintiff's counsel also requests litigation costs in the amount of \$8,390.98, and provides evidence of incurred costs in that amount. (Gavron Dec., ¶ 20 & Ex. B.) Consequently, the litigation costs are reasonable and approved. The settlement administration costs of \$8,250 are also approved. (Burns Dec., ¶ 17 & Ex. B.)

Accordingly, the motion for final approval of the class and representative action settlement is GRANTED.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

The court will set a compliance hearing for December 11, 2024, at 2:30 p.m. in Department 19. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein, the number and value of any uncashed checks, amounts remitted to Defendant, the status of any unresolved issues, and any other matters appropriate to bring to the court's attention. Counsel may appear at the compliance hearing remotely.

- oo0oo -

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On May 10, 2024, I served the following document(s) described as: **[AMENDED
11 PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION
12 SETTLEMENT AND JUDGMENT** on the interested parties in this action as follows:

13 Sara A. Moore
14 smoore@grsm.com
15 Ryan J. Greenspan
16 rgreenspan@grsm.com
17 GORDON REES SCULLY MANSUKHANI LLP
18 315 Pacific Avenue
19 San Francisco, California 94111
20 *Attorneys for Defendant Northern California Chair Corporation*

21 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-
22 entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website
23 www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for
24 the above-entitled case. The service transmission was reported as complete and a copy of the
25 filing receipt/confirmation will be filed, deposited, or maintained with the original document(s)
26 in this office.

27 I declare under penalty of perjury under the laws of the State of California that the
28 above is true and correct. Executed on May 10, 2024, at Los Angeles, California.

24 
25 Erika Mejia