

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 15 2022

BY 
JESSICA MORALES, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

ELISALA TELA, individually, and on behalf of
other members of the general public similarly
situated and on behalf of aggrieved employees
pursuant to the Private Attorneys General Act
("PAGA");

Plaintiff,

v.

METROCELL CONSTRUCTION, INC., a
California Corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: CIVDS1918537

Honorable David Cohn
Department S26

CLASS ACTION

~~PROPOSED~~ ORDER OF FINAL
APPROVAL AND JUDGMENT

Hearing Date: February 2, 2022
Hearing Time: 10:00 a.m.
Hearing Place: Department S-26

Complaint Filed: June 24, 2019
FAC Filed: June 28, 2019
SAC Filed: May 10, 2021
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Elisala Tela's ("Plaintiff") motion
2 for final approval of a class action settlement and receiving the Attorney Fee Award, the Cost Award,
3 and the Class Representative Enhancement Payment, and after considering the papers submitted in
4 support of the motion, including the Joint Stipulation and Settlement Agreement ("Settlement
5 Agreement," "Settlement," or "Agreement"), hereby FINDS AND ORDERS as follows:

6 This is a putative class action. Plaintiff is former employee of Defendant Metrocell
7 Construction, Inc. ("Defendant"). The operative complaint in the case asserts nine (9) causes of action
8 for wage-and-hour violations. Plaintiff has brought this case on behalf of all current or former non-
9 exempt employees directly employed by Defendant within California during the Class Period ("Class"
10 "Class Members"). The Class Period is the time period from June 25, 2015 through March 31, 2021
11 ("Class Period"). There are ninety-six (96) Class Members who did not submit complete and timely
12 requests to exclude themselves from the class action Settlement ("Participating Class Members").

13 On September 8, 2021, the Court granted Preliminary Approval of the Settlement. Plaintiff
14 now moves for Final Approval of the Settlement.

15 The terms used in this Order of Final Approval and Judgment shall have the same meaning as
16 defined in the Settlement Agreement except as may otherwise be ordered.

17 The following Class is certified for purposes of settlement only: all current or former non-
18 exempt employees directly employed by Defendant within California during the time period from June
19 25, 2015 through March 31, 2021.

20 Generally, "questions whether a settlement was fair and reasonable, whether notice to the class
21 was adequate, whether certification of the class was proper, and whether the attorney fee award was
22 proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.*
23 (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794.)

24 In determining whether a class settlement is fair, adequate and reasonable, the
25 trial court should consider relevant factors, such as "the strength of plaintiffs'
26 case, the risk, expense, complexity and likely duration of further litigation, the
27 risk of maintaining class action status through trial, the amount offered in
28 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.

1 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, *citing Dunk*, *supra*, 48
2 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d
3 615, 624.)

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

12 The burden is on the proponent of the settlement to show that it is fair and
13 reasonable. However “a presumption of fairness exists where: (1) the
14 settlement is reached through arm’s-length bargaining; (2) investigation and
15 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.”

16 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245, *citing Dunk*, *supra*, 48
17 Cal.App.4th at p. 1802.)

18 Although [t]here is usually an initial presumption of fairness when a proposed
19 class settlement ... was negotiated at arm’s length by counsel for the class, ...
20 it is clear that the court should not give rubber-stamp approval. Rather, to
21 protect the interests of absent class members, the court must independently and
22 objectively analyze the evidence and circumstances before it in order to
23 determine whether the settlement is in the best interests of those whose claims
24 will be extinguished. To make this determination, the factual record before the
25 ... court must be sufficiently developed... . The proposed settlement cannot be
26 judged without reference to the strength of plaintiffs’ claims. The most
important factor is the strength of the case for plaintiffs on the merits, balanced
against the amount offered in settlement. The court must stop short of the
detailed and thorough investigation that it would undertake if it were actually
trying the case, but nonetheless it must eschew any rubber stamp approval in
favor of an independent evaluation.

27 (*Kullar*, *supra*, 168 Cal.App.4th at p. 130, internal citations and quotation marks omitted.)

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1 Defendant will pay \$175,000, which includes: (1) the Administration Costs in an amount of
2 \$4,500 to the Settlement Administrator; (2) the Private Attorney General Act ("PAGA") Payment in
3 the amount of \$10,000, seventy-five percent (75%) of which (\$7,500) shall be paid to the California
4 Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%) of which
5 (\$2,500) shall be distributed to the aggrieved employees eligible to recover the PAGA Payment that
6 consist of all current or former non-exempt employees directly employed by Defendant in California
7 during the period between March 17, 2020 and March 31, 2021 ("Eligible Aggrieved Employees,"
8 "PAGA Period," "Individual PAGA Payments," and "PAGA Payment"), on a pro rata basis; (3) the
9 Class Representative Enhancement Payment in the sum of \$10,000 to Plaintiff; (4) the Attorney Fee
10 Award in the sum \$61,250, which is thirty-five percent (35%) of the Gross Settlement Amount to
11 Class Counsel; (5) the Cost Award in the amount of \$13,067.09 to Class Counsel; and (6) Individual
12 Settlement Shares payable to all Participating Class Members. Class Members and Eligible Aggrieved
13 Employees are not required to submit a claim form to receive their Individual Settlement Shares and
14 Individual PAGA Payments respectively. No portion of the Gross Settlement Amount will revert to
15 Defendant for any reason.

16 Funding of the Settlement will be as follows:

17 No later than ten (10) calendar days after the date the Final Approval of the Settlement can no
18 longer be appealed or, if there are no objectors and no Plaintiff in intervention at the time the Court
19 grants Final Approval of the Settlement, the date the Court enters Judgment granting Final Approval
20 of the Settlement, Defendant shall deposit one-half of the Gross Settlement Amount of \$175,000 by
21 wiring the funds to the Settlement Administrator. No later than two hundred seventy (270) calendar
22 days after the funding date of the first one-half of the Gross Settlement Amount, Defendant shall fund
23 the remainder of the Gross Settlement Amount. Within fourteen (14) calendar days after the
24 Settlement is fully funded, the Settlement Administrator shall calculate and disburse all payments due
25 under the Settlement, including all Individual Settlement Shares, Individual PAGA Payments, the
26 Attorney Fee Award, the Cost Award, the Class Representative Enhancements, the PAGA Payment,
27 and the Administration Costs. The Settlement Administrator will forward a check for seventy-five
28 percent (75%) of the PAGA Payment to the LWDA for settlement of the PAGA Released Claims.

1 As noted in the Preliminary Approval Order, the proposed Settlement is entitled to a
2 presumption of fairness. In her moving papers, Plaintiff contends that the proposed Settlement was the
3 product of arms-length negotiations following extensive litigation and following extensive discovery
4 and exchange of documentation relating to the claims made by Plaintiff. The negotiations were
5 facilitated with the assistance of a skilled and experienced mediator, Jeffrey Krivis, an experienced
6 and well-respected class action mediator.

7 With respect to the benefit to the Class Members, Plaintiff's moving papers indicate that the
8 *average* Individual Settlement Share will be approximately \$793.57 under the proposed allocation,
9 which is based on the number of weeks individual Class Members worked.

10 Participating Class Members and Eligible Aggrieved Employees must cash or deposit their
11 Individual Settlement Share and Individual PAGA Payment checks within one hundred eighty (180)
12 calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within
13 ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard. If
14 any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the
15 reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the
16 checks are mailed, pay the amount of the Individual Settlement Share or Individual PAGA Payment
17 (as applicable) to the California State Controller's Unclaimed Property Division in accordance with
18 California Unclaimed Property Law.

19 The Plaintiff has explained the risks and costs associated with continuing with the litigation
20 and the benefits conferred upon Class Members in the form of immediate compensation. Plaintiff has
21 satisfactorily assessed the maximum value of the claims and of the reasonableness of the discount
22 accepted in the settlement considering these risks. Finally, the Declaration of the Settlement
23 Administrator, Mary Butler, states that the Notice of Class Action Settlement ("Class Notices") and
24 the Election Not To Participate or Opt-out Form ("Exclusion Form") (collectively, known as the
25 "Notice Packet") were mailed to ninety-six (96) Class Members, there were no requests for exclusion
26 from the Settlement, and there were no objections to the Settlement. This is further proof of the
27 fairness of the Settlement. The Declaration of Douglas Han provides sufficient information about
28 Class Counsel's experience in litigating class action lawsuits.

1 The Court also has an independent right and responsibility to review the requested attorneys'
2 fees and only award so much as it determines reasonable. (*See Garabedian v. Los Angeles Cellular*
3 *Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) The amount of attorney's fees requested by
4 Class Counsel in the sum of \$61,250 is thirty-five percent (35%) of the common fund created for the
5 benefit of the Class Members and are supported by use of the percentage-fee method. (*See Laffitte v.*
6 *Robert Half International, Inc.* (2016) 1 Cal. 5th 480, 504.) According to the Declaration of Douglas
7 Han, Class Counsel collectively expended 395 hours with a total lodestar figure of \$239,980. Even
8 under the lodestar cross-check, the requested fee is below the lodestar. Considering the contingent
9 nature of the representation and the ongoing monitoring of the settlement administration, the requested
10 hourly rates and the fee is justified. The Court finds that the fee request is reasonable, and it is,
11 therefore, approved.

12 The Court has also reviewed the Declaration of Douglas Han regarding the costs expended in
13 the prosecution of this litigation. Under the terms of the Settlement, Plaintiff may seek reimbursement
14 of up to \$20,000 in actual litigation costs. The Court finds that Plaintiff has expended \$13,067.09 in
15 actual litigation costs and that such costs were reasonable. Thus, the Court approves the payment of
16 \$13,067.09 in costs from the settlement fund for the reimbursement of Class Counsel's litigation costs.

17 The rationale for making Class Representative Enhancement Payment is that the Class
18 Representative should be compensated for the expense or risk she has incurred in conferring a benefit
19 on other members of the Class. Such an enhancement payment is appropriate if it is necessary to
20 induce an individual to participate in the suit. Criteria courts may consider in determining whether to
21 make an enhancement payment include: 1) the risk to the class representative in commencing suit,
22 both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class
23 representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the
24 litigation; and 5) the personal benefit (or lack thereof) enjoyed by the class representative.

25 The Court has reviewed the Declaration of Elisala Tela, which outlines her involvement in the
26 lawsuit. Given the risks inherent in service as the Class Representative, the duration of the case and
27 time involved, and the benefits created for the Class, the Court approves a Class Representative
28 Enhancement Payment in the amount of \$10,000 to Plaintiff.

1 The Court has reviewed the Declaration of Mary Butler, the Case Manager for Simpluris, Inc.
2 (“Simpluris”) the Court-approved Settlement Administrator. The Court finds that notice was provided
3 to the Class pursuant to the preliminary approval order, that the notice was sufficient, and that the
4 notice satisfies due process. Simpluris has discharged its duties to provide notice to the Class and
5 approves a payment of \$4,500 for its services in administering this settlement, including the mailing of
6 settlement awards according to the terms of the Settlement Agreement.

7 The Released Claims means all claims that were or could have been raised based on the factual
8 allegations made in the Class Action and that arose during the Class Period, including, but not limited
9 to, any and all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees,
10 costs, expenses, attorneys’ fees, damages, actions, or causes of action of whatever kind or nature,
11 whether known or unknown, contingent or accrued, under any legal theory under state law for any
12 alleged: (1) failure to pay overtime and minimum wages, including those relating to travel time; (2)
13 failure to provide meal and rest periods, short or late meal and rest periods, and failure to relieve of all
14 duties during meal and rest periods; (3) failure to provide accurate, itemized wage statements; (4)
15 failure to reimburse business expenses, including those relating to travel time; and (5) failure to pay all
16 wages due to discharged or quitting employees at separation or upon termination. The Released
17 Claims also means all claims and theories arising under the applicable regulations, Wage Orders, and
18 provisions of the Labor Code, including, but not limited to, Labor Code sections 201, 202, 203, 218,
19 226, 226.7, 500, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, as
20 well as claims brought under Business & Professions Code section 17200 *et seq.*, and/or Labor Code
21 sections 2698 *et seq.*, based on alleged violations of the above Labor Code provisions as alleged in the
22 Class Action (“Released Claims”).

23 Moreover, the PAGA Released Claims means all allegations and claims for civil penalties
24 pursuant to PAGA based on any and all underlying Labor Code violations alleged in the Complaints or
25 in the PAGA Notice that arose during the PAGA Period, which includes alleged violations of Labor
26 Code sections 201, 202, 203, 204, 226, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, and 1198 (“PAGA
27 Released Claims”).

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1 The Released Parties include: (i) Defendant; (ii) each of Defendant's past, present and future
2 parents, subsidiaries, affiliates, and associated entities, including, without limitation, any corporation,
3 limited liability company, partnership, joint ventures, trust, foundation, and non-profit entity which
4 controls, is controlled by, or is under common control with Defendant; (iii) the respective past, present
5 and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners,
6 managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans,
7 transferees, predecessors, successors, and assigns of any of the foregoing, and any other persons or
8 entities acting by, through, under, or in concert with any of them; and (iv) any individual or entity
9 which could be jointly liable with any of the foregoing ("Released Parties").

10 The Agreement will be binding upon, and inure to the benefit of, the successors and assigns of
11 the Parties.

12 Defendant makes no admission of liability or wrongdoing by virtue of entering the Agreement.
13 Additionally, Defendant reserves the right to contest any issues relating to class certification and
14 liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful
15 activity, has failed to comply with the law in any respect, has any liability to anyone under the claims
16 asserted in the Class Action, and that but for the Settlement, a Class should be certified in the Class
17 Action or could proceed on a representative basis. The Agreement is entered into solely for the
18 purpose of compromising highly disputed claims. Nothing in the Agreement is intended or will be
19 construed as an admission by Defendant of liability or wrongdoing. The Settlement and Plaintiff's and
20 Defendant's willingness to settle the Class Action will have no bearing on, and will not be admissible
21 in connection with, any litigation, administrative proceeding, or other special proceeding (other than
22 solely in connection with the Settlement).

23 For the reasons set forth above, the Motion for Final Approval of Class Action Settlement,
24 Attorney Fee Award, Cost Award, and Class Representative Enhancement Payment is GRANTED.
25 The Settlement Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

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1 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF THE
2 SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT 3.769, THE
3 COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS ORDER
4 AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE FINALITY OF THIS
5 MATTER, RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO ENFORCE THIS
6 ORDER, THE SETTLEMENT AGREEMENT, AND THE JUDGMENT THEREON.

7 IT IS SO ORDERED.

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9 DATED: 2-15-22

David P. Cohn
Fiv HONORABLE DAVID COHN
SUPERIOR COURT JUDGE

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PROOF OF SERVICE
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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, California 91103.

On February 17, 2022, I served the foregoing document described as

NOTICE OF ENTRY OF ORDER

on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Kamran Shahabi
ks@valiantlaw.com
Tammy Louie Thai
tlt@valiantlaw.com
VALIANT LAW
800 Ferrari Lane, Suite 100
Ontario, CA 91764

Attorney(s) for Defendant Metrocell Construction, Inc.

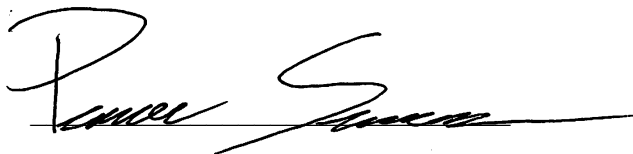
[X] BY E-MAIL

The above-referenced document was transmitted to the addressee(s) at the e-mail addresses listed herein, which are their most recently known e-mail addresses or e-mail addresses of record in this action. I did not receive, within reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 17, 2022, at Pasadena, California.



Parker Swanson

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I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is manderson@justicelawcorp.com

On February 17, 2022, I served the foregoing document described as

for the following case:	Tela v. Metrocell Construction, Inc.
LWDA/Court Case No.:	LWDA-CM-826519-21
	CIVDS1918537
	San Bernardino County Superior Court

on interested parties in this action by electronically submitting as follows:

**State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814**

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 17, 2022, at Pasadena, California.

Maith Andanson

Mariah Anderson