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Case #20CV372311
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

VICTOR MANUEL MONROY CHAVEZ,
individually, and on behalf of other members of
the general public similarly situated,

Plaintiff,

vs.

CAM-BAS, INC., a California corporation;
ORSA CORPORATION, a California
corporation; WILLCO MANAGEMENT, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No. 20CV372311
(consolidated with Case No. 21CV378215)

**ORDER AND JUDGMENT
FOLLOWING MOTION FOR FINAL
APPROVAL OF CLASS AND
REPRESENTATIVE
ACTION SETTLEMENT; MOTION
FOR ATTORNEYS' FEES AND COSTS**

MONICA MELENDEZ, an individual, on behalf
of herself and others similarly situated, and as
private attorney general on behalf of the State of
California,

Plaintiff,

vs.

CAM-BAS, INC., a California corporation;
WILLCO MANAGEMENT, INC., a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

1 The Court hereby orders, adjudges, and decrees as follows:

2
3 **I. INTRODUCTION**

4 This is a consolidated putative class and Private Attorneys General Act (“PAGA”) action
5 against defendants CAM-BAS, Inc., Willco Management, Inc., and Orsa Corporation
6 (collectively, “Defendants”), which operate number of McDonald’s franchises. The plaintiffs
7 allege that Defendants failed to pay employees for off-the-clock work, failed to provide
8 compliant meal and rest breaks, and committed other wage and hour violations.

9 As alleged in the operative complaint in the lead action *Victor Manuel Monroy Chavez v.*
10 *CAM-BAS, Inc., et al.* (Santa Clara County Superior Court, Case No. 20CV372311) (*Chavez*),
11 Defendants own and operate at least 15 McDonald’s franchise restaurants throughout Northern
12 California. (First Amended Complaint (“FAC”), ¶ 19.) They employed plaintiff Victor Manuel
13 Monroy Chavez (“Chavez”) as an hourly paid, non-exempt cashier at their McDonald’s
14 restaurants located in Rohnert Park from March 2009 to June 2019. (*Id.*, ¶ 4.) Chavez was then
15 employed by Defendants as a shift manager until July 23, 2020. (*Ibid.*) During his employment,
16 Chavez typically worked eight hours or more per day and five days per week, with his primary
17 job duties including operating the cash register, taking customer orders, and monitoring and
18 recording restaurant costs. (*Ibid.*)

19 Chavez alleges that he and other employees were not paid for all hours they worked
20 because all hours worked were not recorded. (FAC, ¶ 24.) In addition, employees did not
21 receive overtime and minimum wages that they were entitled to. (*Id.*, ¶¶ 25–26.) Employees
22 were not provided with compliant meal and rest periods or associated premium pay, and did not
23 receive complete and accurate wage statements. (*Id.*, ¶¶ 27–29.) Chavez further alleges that
24 Defendants willfully failed to maintain complete and accurate payroll records as required by law.
25 (*Id.*, ¶ 30.) He and other employees did not receive all wages earned upon termination of their
26 employment and did not receive timely payment of certain wages during their employment,
27 including overtime wages, minimum wages, and/or meal and rest period premiums. (*Id.*, ¶¶ 31–
28

32.) Defendants required employees to execute a release of claims to receive their wages. (*Id.*, ¶¶ 33, 135.) And they did not fully reimburse employees for business expenses. (*Id.*, ¶ 34.)

Based on these allegations, Chavez asserts putative class claims under the Labor Code for (1) unpaid overtime, (2) unpaid minimum wages, (3) meal period violations, (4) rest period violations, (5) non-compliant wage statements and failure to maintain accurate payroll records, (6) wages not timely paid upon termination, (7) failure to timely pay wages during employment, and (8) unpaid business-related expenses. Chavez also brings (9) a representative claim under PAGA and (10)–(11) claims for violation of Business & Professions Code section 17200 et seq. (the “UCL”) based on the same underlying violations.

On May 27, 2021, the court entered a stipulated order consolidating *Chavez* with a related action, *Monica Melendez vs. CAM-BAS, Inc.* (Santa Clara County Superior Court, Case No. 21CV378215) (*Melendez*). In *Melendez*, plaintiff Monica Melendez (“Melendez”) similarly alleges that Defendants failed to reimburse employees for the use of their personal cell phones for work, failed to pay them for off-the-clock work including cell phone use and COVID-related temperature checks, and committed meal and rest break violations. Melendez also asserts derivative claims for wage statement violations, failure to timely pay wages during employment and upon separation, and failure to keep accurate payroll records. Like Chavez, Melendez asserts claims under the Labor Code, PAGA, and UCL.

The parties mediated both actions together and were able to reach a global settlement.

On November 30, 2022, the court granted preliminary approval of the settlement.

Chavez and Melendez (collectively, “Plaintiffs”) now move for final approval of the settlement, attorney fees, and costs.

II. 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*).)

1
2 In determining whether a class settlement is fair, adequate and reasonable, the
3 trial court should consider relevant factors, such as “the strength of plaintiffs’
4 case, the risk, expense, complexity and likely duration of further litigation, the
5 risk of maintaining class action status through trial, the amount offered in
6 settlement, the extent of discovery completed and the stage of the proceedings, the
7 experience and views of counsel, the presence of a governmental participant, and
8 the reaction of the class members to the proposed settlement.”

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

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

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

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

25 **III. DISCUSSION**

26 The Amended Joint Stipulation of Class Action Settlement and Release of Claims
27 provides that this consolidated action has been settled on behalf of the following class:

28 [A]ll persons who worked for Defendants as non-exempt, hourly paid employees
in the State of California at any time from August 31, 2016, through the earlier of
August 31, 2022, or the date of Preliminary Approval of this Settlement.

The class includes PAGA Group Members, who are defined as “all persons who worked for
Defendants as non-exempt, hourly paid employees in the State of California at any time from
August 31, 2019 through the earlier of August 31, 2022 or the date of Preliminary Approval of
this Settlement.”

1 According to the terms of the settlement, Defendants shall pay a non-reversionary gross
2 settlement amount of \$3,000,000. The gross settlement amount includes attorney fees of up to
3 \$1,000,000 (one-third of the gross settlement), litigation costs of up to \$30,000, \$28,000 in
4 administration costs, PAGA penalties in the amount of \$200,000 (75 percent of which will be
5 paid to the LWDA and 25 percent of which will be paid to PAGA Group Members), and
6 incentive awards in the total amount of \$20,000 (\$10,000 for each named plaintiff). The net
7 settlement will be allocated to settlement class members proportionally based on their weeks
8 worked during the class period/pay periods worked during the PAGA period.

9 On January 24, 2023, notices were mailed to 4,709 class members. (Declaration of
10 Jeremy Romero on Behalf of CPT Group, Inc., the Settlement Administrator (“Romero Dec.”),
11 ¶ 4.) Ultimately, 288 notice packets were undeliverable. (*Id.* at ¶ 5.) As of March 20, 2023,
12 there were no requests for exclusion and no objections. (*Id.* at ¶¶ 6-7.)

13 The estimated average payment is \$366.11 and the estimated highest payment is
14 \$2,730.93. (Romero Dec., ¶ 8.)

15 The court previously found the proposed settlement is fair and the court continues to
16 make that finding for purposes of final approval.

17 Plaintiffs request incentive awards of \$10,000 each. In connection with their motion for
18 preliminary approval, Plaintiffs submitted declarations detailing their participation in the action
19 and stating that they each spent approximately 25-35 hours in connection with the litigation. The
20 court approved the incentive awards in connection with preliminary approval of the settlement
21 and continues to do so for purposes of final approval.

22 The court also has an independent right and responsibility to review the requested
23 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
24 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs’ counsel
25 requests attorney fees in the amount of \$1,000,000 (1/3 of the total settlement fund). Plaintiffs’
26 counsel provides evidence demonstrating a total combined lodestar of \$389,337.50. (Declaration
27 of Raul Perez in Support of Motion for Final Approval of Class Action Settlement and Motion
28 for Attorneys’ Fees, Costs and Expenses, and Class Representative Enhancement Payments

1 (“Perez Dec.”), ¶ 12; Declaration of David S. Winston in Support of Motion for Final Approval
2 and for Attorneys’ Fees and Costs (“Winston Dec.”), ¶ 39.) This results in a multiplier of 2.57.
3 This multiplier is somewhat high, but the court finds the attorney fees are reasonable as a
4 percentage of the common fund and they are approved.

5 Plaintiffs request litigation costs in the amount of \$14,953.21. Plaintiffs’ counsel
6 provides evidence of incurred costs in that amount and the costs are approved. (Perez Dec., ¶ 16;
7 Winston Dec, ¶ 42.) The settlement administration costs of \$26,000 are also approved. (Romero
8 Dec., ¶ 10.)

9 Accordingly, the motion for final approval of the class and representative action
10 settlement is GRANTED and Judgment is entered accordingly.

11 Pursuant to Rule 3.769, subdivision (h), of the California Rules of Court, the court retains
12 jurisdiction over the parties to enforce the terms of the Settlement Agreement, and the final
13 Order and Judgment.

14 The court has set a compliance hearing for December 13, 2023, at 2:30 p.m. in
15 Department 19. At least ten court days before the hearing, class counsel and the settlement
16 administrator shall submit a summary accounting of the net settlement fund identifying
17 distributions made as ordered herein, the number and value of any uncashed checks, amounts
18 remitted to Defendants, the status of any unresolved issues, and any other matters appropriate to
19 bring to the court’s attention. Counsel may appear at the compliance hearing remotely.

20
21 Dated: April 13, 2013



Hon. Theodore C. Zayner
Judge of the Superior Court