

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

SHEENA EDWARDS, in her representative
capacity,

Plaintiff,

vs.

ABSOLUTE SENIOR SOLUTIONS, a limited
liability company authorized to do business in the
state of California; ELSOUSOU LLC, a limited
liability company authorized to do business in the
state of California; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 21CV383232

**ORDER RE: MOTION FOR
PRELIMINARY APPROVAL OF
CLASS AND PAGA
REPRESENTATIVE
ACTION SETTLEMENT**

The above-entitled matter came on for hearing on Wednesday, May 25, 2022, at 1:30 p.m. in Department 3, the Honorable Patricia M. Lucas presiding. The court reviewed and considered the written submissions filed by the parties and issued a tentative ruling on Tuesday, May 24, 2022. No party contested the tentative ruling; therefore, the court orders that the tentative ruling be adopted as the order of the court, as follows:

I. INTRODUCTION

This is a putative class and representative action arising out various alleged wage and hour violations. Plaintiff Sheena Edwards ("Plaintiff") filed her original complaint against

1 defendants Absolute Senior Solutions and Elsousou LLC (collectively, “Defendants”) on June
2 18, 2021. The original complaint alleged a single cause of action for civil penalties under the
3 Private Attorneys General Act (“PAGA”).

4 On May 4, 2022, the court approved a stipulation entered into between Plaintiff and
5 Defendants, which allowed Plaintiff to file a First Amended Complaint (“FAC”).

6 The same day, Plaintiff filed the operative FAC, asserting both class and representative
7 claims as follows: (1) Failure to Timely Pay Minimum, Regular, and/or Overtime Wages (Labor
8 Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199); (2) Failure to Provide
9 Legally Compliant Meal Periods and/or Timely Pay Premium Wages (Labor Code §§ 204, 210,
10 226.7, 512, and 558); (3) Failure to Provide Legally Compliant Rest Periods and/or Timely Pay
11 Premium Wages (Labor Code §§ 204, 210, and 226.7); (4) Failure to Timely Pay All Wages Due
12 and Owing Upon Separation of Employment and/or Pay Waiting Time Penalties (Labor Code
13 §§ 201-203 and 210); (5) Failure to Reimburse for Necessary Business Expenses (Labor Code
14 § 2802); (6) Failure to Furnish Accurate Itemized Wage Statements (Labor Code §§ 226 and
15 226.3); (7) Failure to Maintain Accurate Records (Labor Code §§ 226, 1174, and 1174.5);
16 (8) Violation of California’s Unfair Competition Law (Bus. & Prof. Code §§ 17200 et seq.); and
17 (9) Penalties Pursuant to the Private Attorneys General Act (Labor Code §§ 2698 et seq.).

18 Plaintiff states that the parties have reached a settlement, and she now moves for an order
19 preliminarily approving the settlement.

20 **II. LEGAL STANDARD**

21 Generally, “questions whether a settlement was fair and reasonable, whether notice to the
22 class was adequate, whether certification of the class was proper, and whether the attorney fee
23 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
24 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*
25 (1996) 48 Cal.App.4th 1794 (*Dunk*).)

26 In determining whether a class settlement is fair, adequate and reasonable, the
27 trial court should consider relevant factors, such as “the strength of plaintiffs’
28 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

1 experience and views of counsel, the presence of a governmental participant, and
2 the reaction of the class members to the proposed settlement.”
3 (*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801
4 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624
5 (*Officers*).)

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

13 The burden is on the proponent of the settlement to show that it is fair and
14 reasonable. However “a presumption of fairness exists where: (1) the settlement
15 is reached through arm’s-length bargaining; (2) investigation and discovery are
16 sufficient to allow counsel and the court to act intelligently; (3) counsel is
17 experienced in similar litigation; and (4) the percentage of objectors is small.”
18 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

19 **III. DISCUSSION**

20 **A. Provisions of the Settlement**

21 The Stipulation of Class and PAGA Representative Action Settlement and Release
22 (“Settlement Agreement”) is entered into between Plaintiff, individually and on behalf of all
23 other similarly situated class members and “PAGA Class Members” on the one hand, and on the
24 other hand “El Sousou LLC dba Absolute Senior Solutions and its subsidiaries and related
25 business entities, Absolute HomeAid, Absolute Transportations, Inc., and Absolute Placement,
26 Inc.,” who are defined collectively as “Defendants.” (Declaration of Graham S.P. Hollis in
27 Support of Plaintiff Sheena Edwards’s Unopposed Motion for Preliminary Approval of Class and
28 Representative Action Settlement, (“Hollis Dec.”), Ex. 1 (“Settlement Agreement”), p. 1 &
¶¶ 1.5 & 1.14.)

The Settlement Agreement provides that case has been settled on behalf of the following
class:

1 [A]ll current or former non-exempt employees who worked for Defendants in the
2 State of California at anytime during the Class Period.

3 (Settlement Agreement, ¶ 1.2.) The Class Period is from January 1, 2019 through May 7, 2022.

4 (Settlement Agreement, ¶ 1.3.) The class includes “PAGA Class Members,” who are defined as
5 “all current and former non-exempt employees who worked for Defendants in the State of
6 California at any time during the PAGA Period.” (Settlement Agreement, ¶ 1.20.) The PAGA
7 Period is from April 6, 2020 through May 7, 2022. (Settlement Agreement, ¶ 1.22.)

8 According to the terms of Settlement Agreement, El Sousou LLC dba Absolute Senior
9 Solutions, Absolute HomeAid, Absolute Transportations, Inc., and Absolute Placement, Inc. will
10 pay a total amount of \$200,000. (Settlement Agreement, ¶ 1.12.) The total settlement payment
11 includes attorney fees up to \$66,666.67 (i.e., 1/3 of the total settlement amount), costs up to
12 \$13,000, an incentive award of \$7,500 for the class representative, and a PAGA allocation of
13 \$10,000 (75 percent of which will be paid to the Labor and Workforce Development Agency and
14 25 percent of which will be paid to “PAGA Class Members”). (Settlement Agreement, ¶¶ 1.12,
15 1.21, 1.26, 1.28, & 1.35.)

16 The net settlement will be distributed to class members pro rata based on the percentage
17 of the total W-2 income that each class member earned during the Class Period. (Settlement
18 Agreement, ¶ 5.2(c)(ii).) The PAGA payment will be distributed to “PAGA Class Members” on
19 a per capita basis. (Settlement Agreement, ¶ 5.2(d).)

20 If after 180 days from the date of mailing, checks cashed by the class members total less
21 than 100 percent of the net settlement fund, the remaining amount will be redistributed among
22 those class members who cashed the checks sent to them on a pro rata basis in proportion to their
23 original settlement payment. (Settlement Agreement, ¶ 5.2(e).) However, if the costs of
24 redistribution are more than the amount to be redistributed or any unclaimed amounts remain 60
25 days after the redistribution occurs, the unclaimed balance will be sent to Bay Area Legal Aid as
26 a *cy pres* recipient. (Settlement Agreement, ¶ 5.2(e).)

27 In exchange for the settlement, class members agree to release El Sousou LLC dba
28 Absolute Senior Solutions, Absolute HomeAid, Absolute Transportations, Inc., Absolute

1 Placement, Inc., “any of [their] successors, present and former parents, subsidiaries and affiliated
2 companies or entities, their respective officers, directors, employees, partners, shareholders, and
3 agents, as well as any other successors, assigns and legal representatives and their related persons
4 and entities, and any individual or entity that could be liable for any of the Released Claims”
5 from the “Released Claims.” (Settlement Agreement, ¶¶ 1.5, 1.31, 1.32, & 6.1.) The “Released
6 Claims” are defined as “all known and unknown claims, ... rights, demands, liabilities, penalties
7 ..., damages, restitution, losses, disgorgement ..., interest, attorneys’ fees, fines, debts,
8 obligations, costs, expenses, ... actions and/or causes of action ... arising from and/or related to
9 the claims” alleged, or that could have been alleged, in the FAC based on the factual allegations
10 pleaded in the FAC. (Settlement Agreement, ¶ 1.31.) Plaintiff also agrees to a comprehensive
11 general release of any and all claims against El Sousou LLC dba Absolute Senior Solutions,
12 Absolute HomeAid, Absolute Transportations, Inc., and Absolute Placement, Inc. (Settlement
13 Agreement, ¶ 5.2(f)(iii)-(v).)

14 **B. Fairness of the Settlement**

15 Plaintiff asserts that the settlement is fair, reasonable, and adequate. Plaintiff states that
16 there are approximately 102 class members and, based on the total settlement amount, the
17 average anticipated award will be \$1,032.68 to each class member. (Hollis Dec., ¶ 101.)
18 Plaintiff states that Defendants’ maximum potential exposure was “upwards of \$7,000,000,
19 assuming the appropriate violation rates for each claim, and 100% violation rate for the PAGA
20 penalties.” (Hollis Dec., ¶ 56.) Plaintiff explains that the claims were discounted given
21 substantial risks relative to class certification and the merits of the claims, the risk that the court
22 would reduce the PAGA penalties, the costs of pursuing litigation, and Defendants’ financial
23 stability. (*Id.* at ¶¶ 48-59.) Plaintiff further states that she conducted substantial discovery and
24 investigation. Plaintiff also presents evidence that her counsel is experienced in similar
25 litigation. Lastly, Plaintiff states that the settlement is the result of extensive arm’s-length
26 negotiations between the parties and their counsel and was facilitated by mediator Jeffrey Krivis.
27 The court finds that the settlement is fair and reasonable. It provides for a good recovery
28 and eliminates the risk and expense of continued litigation.

1 **C. Incentive Award, Fees, and Costs**

2 Plaintiff requests an incentive award of \$7,500.

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

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

17 Plaintiff submits a declaration detailing her participation in the action. Plaintiff states
18 that she spent approximately 25 hours performing various tasks such as discussing the case with
19 class counsel, searching for and providing relevant documents and information to class counsel,
20 identifying witnesses, and reviewing documents. (Declaration of Plaintiff Sheena Edwards in
21 Support of Plaintiff’s Motion for Preliminary Approval of Settlement, ¶¶ 12-23.)

22 Plaintiff acted as representative for the class and agreed to a broader general release.
23 Furthermore, Plaintiff undertook risk by putting her name on the case because it might impact
24 her future employment. (See *Covillo v. Specialty’s Café* (N.D.Cal. 2014) 2014 U.S.Dist.LEXIS
25 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a
26 significant “reputational risk” in bringing an action against an employer].) The court, therefore,
27 finds that the service award is merited and approved.

28 The court also has an independent right and responsibility to review the requested
29 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
30 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff’s counsel will
31 seek attorney fees of \$66,666.67 (1/3 of the total settlement fund). While 1/3 of the common
32 fund for attorney fees is generally considered reasonable, Plaintiff’s counsel shall submit lodestar
33 information (including hourly rates and hours worked) prior to the final approval hearing in this

1 matter so the court can compare the lodestar information with the requested fees. (See *Laffitte v.*
2 *Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to double-check
3 the reasonableness of a percentage fee through a lodestar calculation].) Plaintiff's counsel shall
4 also submit evidence of actual costs incurred.

5 **D. Conditional Certification of Class**

6 Plaintiff requests that the putative class be conditionally certified for purposes of the
7 settlement. Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an
8 order approving or denying certification of a provisional settlement class after [a] preliminary
9 settlement hearing." Code of Civil Procedure Section 382 authorizes certification of a class
10 "when the question is one of a common or general interest, of many persons, or when the parties
11 are numerous, and it is impracticable to bring them all before the court. . . ." As interpreted by
12 the California Supreme Court, that statute requires: (1) an ascertainable class; and (2) a well-
13 defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior*
14 *Court* (2004) 34 Cal.4th 319, 326 (*Sav-On*).)

15 The "community-of-interest" requirement encompasses three factors: (1) predominant
16 questions of law or fact; (2) class representatives with claims or defenses typical of the class;
17 and, (3) class representatives who can adequately represent the class. (*Sav-On, supra*, 34 Cal.4th
18 at p. 326.) "Other relevant considerations include the probability that each class member will
19 come forward ultimately to prove his or her separate claim to a portion of the total recovery and
20 whether the class approach would actually serve to deter and redress alleged wrongdoing."
21 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of
22 establishing that class treatment will yield "substantial benefits" to both "the litigants and to the
23 court." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

24 As explained by the California Supreme Court,

25 The certification question is essentially a procedural one that does not ask whether
26 an action is legally or factually meritorious. A trial court ruling on a certification
27 motion determines whether the issues which may be jointly tried, when compared
28 with those requiring separate adjudication, are so numerous or substantial that the
maintenance of a class action would be advantageous to the judicial process and
to the litigants.

1 (*Sav-On, supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

2 Plaintiff states that there are approximately 102 class members, who can be ascertained
3 from Defendants' records. There are common issues regarding whether Defendants violated
4 wage and hour laws regarding payment of wages, the provision of meal and rest breaks, and
5 other alleged issues. No concern has been raised regarding the typicality or adequacy of
6 Plaintiffs as class representatives. In sum, the court finds that the proposed class should be
7 conditionally certified.

8 **E. Class Notice**

9 The content of a class notice is subject to court approval. "If the court has certified the
10 action as a class action, notice of the final approval hearing must be given to the class members
11 in the manner specified by the court." (Cal. Rules of Court, rule 3.769(f).)

12 The notice generally complies with the requirements for class notice. (See *Hollis Dec.*,
13 Ex. 2.) It provides basic information about the settlement, including the settlement terms, and
14 procedures to object or request exclusion.

15 The form of notice is generally adequate, but it must be updated to instruct class members
16 that they may opt out of the settlement in writing by simply providing their name to the
17 settlement administrator, without the need to provide their address or other identifying
18 information. It must also be amended to make clear that any class member may appear and make
19 an oral objection at the final approval hearing without submitting a written objection or
20 providing any advance notice.

21 Additionally, the following language shall be added to the notice:

22 Class members may appear at the final approval hearing either in person in the
23 courtroom or by telephone via CourtCall. Class members who wish to appear by
24 CourtCall should contact class counsel at least three days before the hearing if
possible, to arrange a telephonic appearance. Any CourtCall fees for an
appearance by an objecting class member will be paid by class counsel.

25 The amended notice shall be provided to the court for approval prior to mailing.

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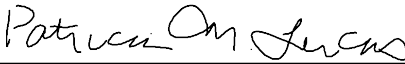
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1 **IV. CONCLUSION**

2 The motion for preliminary approval of the class and representative action settlement is
3 GRANTED, subject to the modification to the notice. The final approval hearing is set for
4 November 16, 2022, at 1:30 p.m.

5 The Case Management Conference set for May 25, 2022, is vacated.

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7 Dated: May 25, 2022



8 Patricia M. Lucas
9 Judge of the Superior Court
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