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Case #21CV382467
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

ANH DUONG and CHAU NGOC BAO PHAN,
as individuals and on behalf of all others similarly
situated,

Plaintiffs,

vs.

LOAN FACTORY, INC., a California
corporation; THUAN NGUYEN, an individual;
and DOES 1-50, inclusive,

Defendants.

Case No. 21CV382467

**ORDER RE: [CONTINUED] MOTION
FOR FINAL APPROVAL OF CLASS
[AND REPRESENTATIVE] ACTION
SETTLEMENT; JUDGMENT**

On Wednesday, September 28, 2022, the court issued an Order Re: Motion for Final Approval of Class [and Representative] Action Settlement, expressing certain concerns about the settlement agreement, continuing the hearing to October 26, 2022, to allow the parties to address the court's concerns, and granting leave to file, no later than October 17, 2022, a revised settlement agreement and memorandum explaining how the revised agreement addresses the payment calculation problem explained in the order.

On October 11, 2022, the Second Supplemental Declaration of Zachary M. Crosner in Support of Motion for Final Approval of Class Action Settlement was filed, attaching a revised settlement agreement which materially revised the method for calculating settlement payments

1 but which was signed only by counsel and not by the parties. The same day, the complex
2 coordinator sent an email to all counsel advising that the court had reviewed the supplemental
3 declaration and had suggested that, because the revision of the method of calculating settlement
4 payments was a material change, counsel should obtain the signature of the parties on the
5 Addendum and then file that document with the court.

6 Late in the day on October 24, 2022, the Third Supplemental Declaration of Zachary M.
7 Crosner in Support of Motion for Final Approval of Class Action Settlement was filed, attaching
8 a revised settlement agreement signed by the parties. To ensure that the court had ample time to
9 review the filing before the impending deadline for posting of tentative rulings, the court
10 continued the hearing to November 2, 2022. The parties subsequently agreed that the court
11 decide the matter without a hearing, and therefore the November 2, 2022 hearing is vacated.

12 Based on all the information provided by the parties, the court orders, adjudges and
13 decrees as follows:

14 **I. INTRODUCTION**

15 This is a putative class and representative action arising out of various alleged wage and
16 hour violations. The operative First Amended Class Action Complaint, filed on August 19,
17 2021, sets forth the following causes of action: (1) Recovery of Unpaid Minimum Wages and
18 Liquidated Damages; (2) Recovery of Unpaid Overtime; (3) Failure to Provide Meal Periods or
19 Compensation in Lieu Thereof; (4) Failure to Provide Rest Periods of Compensation in Lieu
20 Thereof; (5) Failure to Compensate for Nonproductive Time in Violation of Labor Code Section
21 226.2; (6) Failure to Furnish Accurate Itemized Wage Statements; (7) Failure to Pay All Wages
22 Due and Owing Upon Separation of Employment; (8) Failure to Reimburse Business Expenses;
23 (9) Unfair Competition; and (10) Violation of Private Attorneys General Act of 2004 Labor Code
24 §§ 2698, et seq. (“PAGA”).

25 The parties have reached a settlement. On February 2, 2022, the court granted
26 preliminary approval of the settlement subject to modification of the class notice. The court
27 subsequently approved the amended class notice.

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1 Plaintiffs Anh Duong and Chau Ngoc Bao Phan (collectively, “Plaintiffs”) have moved
2 for final approval of the settlement and for an order awarding attorney’s fees and costs.

3 **II. LEGAL STANDARD**

4 Generally, “questions whether a settlement was fair and reasonable, whether notice to the
5 class was adequate, whether certification of the class was proper, and whether the attorney fee
6 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
7 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*
8 (1996) 48 Cal.App.4th 1794 (*Dunk*).)

9 In determining whether a class settlement is fair, adequate and reasonable, the
10 trial court should consider relevant factors, such as “the strength of plaintiffs’
11 case, the risk, expense, complexity and likely duration of further litigation, the
12 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.”
13 (*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801
14 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624
15 (*Officers*).)

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

23 The burden is on the proponent of the settlement to show that it is fair and
24 reasonable. However “a presumption of fairness exists where: (1) the settlement
25 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.”
26 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

27 **III. DISCUSSION**

28 The case has been settled on behalf of the following class:

1 [A]ll individuals employed by Defendant Loan Factory, Inc. as a Loan Advisor,
2 Client Advisor, Escrow Officer Assistant, Client Manager, Insurance Agent,
3 Branch Manager, Team Lead, Loan Originator, Customer Service Manager,
4 Underwriter, Admin, Front Desk, Business Development, Loan Officer Assistant,
Loan Processor, Administration Assistant, accountant, and/or Chief Credit Officer
in California at any time from May 26, 2017 through the date of the Court's
Preliminary Approval of Settlement, or December 1, 2021, whichever is earlier.

5 As discussed in connection with the motion for preliminary approval, defendants Loan
6 Factory, Inc. and Thuan Nguyen (collectively, "Defendants") will pay a total non-reversionary
7 amount of \$1,000,000. The total settlement payment includes attorney fees up to \$333,333.33
8 (1/3 of the gross settlement fund), costs not to exceed \$20,000, an incentive award of \$10,000 for
9 each class representative, settlement administration costs up to \$12,000, and a PAGA allocation
10 of \$10,000 (75 percent of which will be paid to the LWDA and the remaining 25 percent will be
11 distributed to the class members). The net settlement will be distributed to class members pro
12 rata based on their weeks worked during the applicable class period.

13 With respect to uncashed checks, the parties have agreed that the funds from any checks
14 remaining uncashed more than 180 days after mailing will be distributed to California Court
15 Appointed Special Advocate Association as a *cy pres* recipient. (Supplemental Declaration of
16 Zachary M. Crosner in Support of Motion for Final Approval of Class Action Settlement, ¶ 2 &
17 Ex. 1.) This provision is approved.

18 In exchange for the settlement, the class members will release Defendants, and related
19 entities and persons, from all claims that were, or could have been, pleaded based on the factual
20 allegations in the operative complaint.

21 On March 31, 2022, the settlement administrator mailed notice packets to 142 class
22 members. (Declaration of Nicole Bench of ILYM Group, Inc. in Support of Motion for Final
23 Approval of Class Action Settlement ("Bench Dec."), ¶ 7.) Ultimately, two notice packets
24 remained undeliverable. (*Id.* at ¶ 10.)

25 As of September 2, 2022, the settlement administrator received no objections to the
26 settlement. (Bench Dec., ¶ 13.) The settlement administrator received one request for exclusion
27 from Than Thi Nguyen. (*Id.* at ¶ 12.) The highest individual settlement payment is estimated to
28

1 be \$24,119.56, and the average individual settlement payment is estimated to be \$4,430.56. (*Id.*
2 at ¶ 15.)

3 The court previously expressed concerns about the structure of the payment calculations.
4 Those concerns have now been addressed, as reflected in the Second Addendum to Stipulation of
5 Class Action and PAGA Representative Action Settlement and Release. The court finds that the
6 settlement as modified is fair and reasonable to all parties affected.

7 Plaintiffs request an incentive award of \$10,000 for each class representative (\$20,000
8 total). The court approved the incentive awards in connection with preliminary approval of the
9 settlement and continues to do so for purposes of final approval.

10 The court also has an independent right and responsibility to review the requested
11 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
12 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel
13 requests attorney fees of \$333,333.33 (1/3 of the total settlement fund). Plaintiffs' counsel
14 provides evidence demonstrating a total lodestar of \$280,925. (Declaration of Zachary Mr.
15 Crosner in Support of Motion for Attorney's Fees and Costs ("Crosner Dec."), ¶¶ 7 & 18-19, &
16 Ex. 1.) This results in a multiplier of 1.19. The court finds the attorney fees are reasonable as a
17 percentage of the common fund and they are approved.

18 Plaintiffs' counsel also provides evidence of incurred costs in the amount of \$7,123.11.
19 (Crosner Dec., ¶ 22.) Those costs are approved. Plaintiffs' request for settlement administration
20 costs in the amount of \$7,335 is also approved. (Crosner Dec., ¶ 27; Bench Dec., ¶ 16.)

21 Accordingly, the motion for final approval is GRANTED.

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

25 The court sets a compliance hearing for August 30, 2023, at 2:30 p.m. in Department 3.
26 At least ten court days before the hearing, class counsel and the settlement administrator shall
27 submit a summary accounting of the net settlement fund identifying distributions made as
28 ordered herein, the number and value of any uncashed checks, amounts remitted to Defendants,

1 the status of any unresolved issues, and any other matters appropriate to bring to the court's
2 attention. Counsel may appear at the compliance hearing remotely.

3
4 Dated: October 27, 2022


Patricia M. Lucas
Judge of the Superior Court