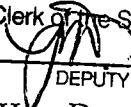


SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

FILED
SAN MATEO COUNTY

NOV 15 2022

Clerk of the Superior Court

By  DEPUTY CLERK

DAMONT RICHARDSON and RAOOF ABDUL
SAYAD, on behalf of themselves and others
similarly situated,

Plaintiffs,

v.

PEGASUS AVIATION SERVICES, LLC; and
DOES 1 thru 50, inclusive,

Defendants.

Case No.: 21-CIV-00292

Assigned For All Purposes to Hon. Danny Y.
Chou

**ORDER GRANTING MOTION FOR FINAL
APPROVAL OF CLASS SETTLEMENT AND
GRANTING IN PART AND DENYING IN
PART MOTION FOR APPROVAL OF
ATTORNEYS' FEES AND COSTS**

The unopposed Motion for Final Approval of Class Settlement (Final Approval Motion) and the unopposed Motion for Approval of Attorneys' Fees and Costs (Fee Motion) came for hearing before this Court on September 29, 2022 at 9:00 a.m. All parties appeared through their counsel. Following the hearing, the Court allowed the parties to submit supplemental filings addressing the issues raised in the Court's tentative ruling and at the hearing. Plaintiffs filed supplemental declarations on November 4, 2022. Having considered all papers filed in support of and in opposition to the Final Approval and Fee Motions, oral arguments of the parties, any testimony and evidence presented at the hearing, and all other pleadings and papers on file herein, the Court:

1. GRANTS the Final Approval Motion; and
2. GRANTS IN PART and DENIES IN PART the Fee Motion.

DISCUSSION

A. Certification

The Court finds that the class of "All hourly, non-exempt employees of Defendant Pegasus Aviation Services, LLC, who worked for Defendant in California at any time between January 21, 2017 and January 2022" is properly certified for settlement purposes only pursuant to Code of Civil Procedure section 382.

1 **B. Notice**

2 The Court finds that the distribution of the Notice of Pending Class Action and Representative
3 Settlement (Notice) has been completed in conformity with the Stipulation of Settlement and Release of
4 Class and Representative Action (Settlement Agreement) and the Court's May 13, 2022 Order Granting
5 Motion for Preliminary Approval of Class Action Settlement (Preliminary Approval Order). (See Aug.
6 31, 2022 Islas Decl., ¶¶ 6-9; Nov. 4, 2022 Islas Decl., ¶ 7.) The Court further finds that the Notice
7 provided adequate notice of the proceedings and the case, including the proposed settlement terms set
8 forth in the Settlement Agreement. Finally, the Court finds that, as executed, the Notice was the best
9 notice practicable under the circumstances.

10 **C. Class Action Settlement**

11 The Court finds that the parties' settlement of the class action is fair, adequate, and reasonable.

12 Trial courts have broad discretion when determining whether a settlement agreement in a class
13 action is fair, adequate, and reasonable. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801
14 (*Dunk*), called into doubt on other grounds by *Laffitte v. Robert Half Intl. Inc.* (2016) 1 Cal.5th 480,
15 503.) "The well-recognized factors that the trial court should consider in evaluating the reasonableness
16 of a class action settlement agreement include 'the strength of plaintiffs' case, the risk, expense,
17 complexity and likely duration of further litigation, the risk of maintaining class action status through
18 trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings,
19 the experience and views of counsel, the presence of a governmental participant, and the reaction of the
20 class members to the proposed settlement.' " (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
21 116, 128 (*Kullar*), quoting *Dunk*, at p. 1801.) This list " 'is not exhaustive and should be tailored to each
22 case.' " (*Ibid.*) Although "a presumption of fairness exists 'where: (1) the settlement is reached through
23 arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
24 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
25 small,' " the trial court must still independently satisfy itself " 'that the consideration being received for
26 the release of the class members' claims is reasonable in light of the strengths and weaknesses of the
27 claims and the risks of the particular litigation.' " (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*
28 (2010) 186 Cal.App.4th 399, 408.)

1 Here, there is a presumption of fairness because: (1) the parties reached an arms-length
2 settlement with the assistance of a neutral and experienced mediator (Szamet Decl., ¶¶ 11, 12); (2)
3 Plaintiff's counsel conducted a sufficient investigation before filing suit, and the parties voluntarily
4 exchanged sufficient information to allow counsel and the Court to act intelligently (*id.*, ¶¶ 15-19, 31-
5 32); (3) counsel is experienced in this type of litigation (*id.*, ¶¶ 123-127); and (4) no class members
6 objected or asked to be excluded (*id.*, ¶ 176; Aug. 31, 2022 Islas Decl., ¶¶ 10, 12). The Court further
7 finds that the consideration received for the release of the class members' claims (\$381,357.14)—which
8 represents approximately 24% of their maximum potential recovery as estimated by counsel (Szamet
9 Decl., ¶¶ 120-121) and will result in an estimated average gross payment of \$1,712.74 (Aug. 31, 2022
10 Islas Decl., p 14)—is reasonable in light of the strengths and weaknesses of the class claims and the
11 risks of litigation (see Szamet Decl., ¶¶ 35-122, 125-127). The Court therefore finds that the class action
12 settlement is fair, adequate, and reasonable.

13 **D. PAGA Settlement**

14 Under the parties' settlement agreement, \$20,000 is allocated to the PAGA claim. The Court
15 finds that this is "fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor
16 law violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz v. Adecco*
17 (2021) 72 Cal.App.4th 56, 77.) In making this finding, the Court notes that Plaintiffs provided an
18 explanation for the allocation of \$20,000 to the PAGA claim (see Szamet Decl., ¶¶ 82-85; MPA, at p.
19 18, fn. 3), no putative class member objected or requested to be excluded (*id.*, ¶¶ 174, 176), and the
20 Labor Workforce Development Agency did not object.

21 **E. Class Representative Service Award**

22 The Court finds that the requested service award of \$5,000 is appropriate to compensate Plaintiff
23 Damont Richardson for bringing and participating as the class representative in this action.

24 For the reasons stated in the Court's tentative ruling of September 29, 2022 and based on
25 discussions at the hearing, the Court finds that a service award of \$1,500 is appropriate to compensate
26 Plaintiff Raoof Abdul Sayad for bringing and participating as the class representative in this action
27
28

1 **F. Administrator Costs**

2 Based on the Nov. 4, 2022 Declaration of Lluvia Islas of ILYM Group, Inc., the Court approves
3 the settlement administrator fees of \$8,000—which is consistent with the estimate in Plaintiffs’
4 preliminary approval motion.

5 **G. Attorney Fees**

6 Based on its experience in class action and other common fund cases as an attorney and judge,
7 the Court concludes that a fee of \$114,407.14 or 30% of the gross settlement amount is the proper award
8 of attorney fees in this case. (See *Reynolds v. Ford Motor Co.* (2020) 47 Cal.App.5th 1105, 1113-1114.)
9 Plaintiff did not have to conduct any discovery or engage in any motion practice in order to resolve this
10 case. Moreover, a cross-check of the lodestar amount confirms the reasonableness of a \$114,407.14 fee
11 award. In his Fee Motion, Plaintiffs’ counsel stated that the lodestar amount if \$128,472.40. But at least
12 some of that lodestar amount is based on hourly rates that exceed the reasonable hourly rates of counsel
13 in similar wage and hour cases that have settled under similar circumstances in San Mateo County. After
14 adjusting the lodestar amount based on the hourly rates that are reasonable for this County, the Court
15 finds that a fee of \$114,407.14 is roughly commensurate with the lodestar amount. In any event, the
16 Court finds, based on the lodestar amount provided by Plaintiffs’ counsel and the Court’s review of the
17 evidentiary submissions in support of that lodestar amount, that an attorney fee award of \$114,407.14—
18 which represents approximately 90% of the lodestar amount claimed by Plaintiffs—is reasonable and
19 appropriate. The fact that Plaintiffs’ counsel had to incur additional fees responding to the deficiencies
20 identified by the Court at the September 29, 2022 hearing does not support a higher fee award. Those
21 additional fees would not have been incurred if counsel had provided the Court with all of the
22 information that it needed to grant final approval at the outset.

23 Finally, the Court notes that “[t]he Ninth Circuit uses 25 percent of the fund ‘benchmark’ for
24 awarding fees.” (*Dixon v. Cushman & Wakefield Western, Inc.* (N.D.Cal. Apr. 21, 2022) 2022 WL
25 1189883, *10.) Applying this benchmark, federal district courts in the bay area and southern California
26 regularly award class counsel 30% of the settlement fund or less under similar circumstances. (See, e.g.,
27 *id.* at p. *11 [30%]; *Madrid v. teleNetwork Partners, Ltd.* (N.D.Cal. July 23, 2019) 2019 WL 3302812,
28

*6 [30%]; *Selk v. Pioneers Memorial Healthcare Dist.* (S.D.Cal. 2016) 159 F.Supp.3d 1164, 1180 [24%.)

H. Costs

Based on the supplemental declaration of Kelsey M. Szamet, the Court finds that the payment of \$18,623.56 for costs is appropriate.

I. Unpaid Settlement Funds

The Court approves the State Controller's Office Unclaimed Property Fund as the recipient of any unpaid settlement funds because it will not create any unclaimed or abandoned settlement funds. (See Code Civ. Proc., § 384.)

ORDER

Based on the foregoing, IT IS HEREBY ORDERED THAT:

1. The Final Approval Motion is GRANTED. Both the class action and PAGA settlements are APPROVED.
2. The Court's Preliminary Approval Order and the Settlement Agreement are incorporated herein, and the Settlement Agreement has the full force and effect of an Order of the Court.
3. The Fee Motion is GRANTED IN PART and DENIED IN PART. Payment of class counsel's attorney fees in the amount of \$114,407.14 and costs in the amount of \$18,623.56 is APPROVED. Payment of a class representative enhancement award of \$5,000 to Plaintiff Richardson and \$1,500 to Plaintiff Raoof Abdul Sayad is APPROVED. Payment of administrator costs in the amount of \$8,000 to ILYM Group, Inc. is APPROVED.
4. The parties are ORDERED to follow the procedures for settlement administration outlined in the Settlement Agreement.
5. A Final Compliance Hearing is scheduled for **April 20, 2022 at 9:00 a.m.** Zoom appearances are permitted but not required. The parties are ORDERED to file a Status Report on or by **April 10, 2022.**
6. The parties are ORDERED to prepare and efile a proposed judgment consistent with this Order on or by **December 2, 2022.** The proposed judgment shall attach this Order and the Settlement

1 Agreement and shall specify how notice of the judgment is to be given to class members in
2 accordance with rule 3.771, subdivision (b) of the California Rules of Court.

3
4 Dated: Nov. 16, 2022



Danny Y. Chou
Judge of the Superior Court