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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SISKIYOU

MARIA GLORIA F GUINTO, an individual,
on behalf of herself and others similarly
situated,

PLAINTIFF,

v.

C & K MARKET, INC.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. SCCV-CVCV-2021-0964

**REPLY IN SUPPORT OF MOTION FOR
SUPPLEMENTAL ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

*[Filed concurrently with Declaration of Kelsey
M. Szamet]*

Date: October 12, 2023
Time: 9:30 a.m.
Dept.: 2

Complaint Filed: September 1, 2021
Trial Date: None Set

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The hearing on the Motion for Supplemental Amended Order Granting Preliminary
4 Approval of Class Action Settlement (“Motion”) originally set for October 12, 2023 was continued
5 to November 9, 2023 at 9:30 am to permit this response to the documents filed by Plaintiff MARIA
6 GLORIA F GUINTO.

7 Counsel will not repeat the arguments set forth in the Motion (or the Motion for Preliminary
8 Approval filed on January 31, 2023) to conserve the Court’s time and resources. The response is
9 limited to the issues raised by Plaintiff in her filing of (1) attorneys’ fees; and (2) the enhancement
10 request. Third and finally, Counsel will address the Court’s question raised at the hearing of
11 whether it is fair to end the attorney-client relationship at this point.

12 **II. JUDICIAL DISCRETION IN APPROVING CLASS ACTION SETTLEMENTS**

13 California has “a public policy which encourages the use of the class action device.” *Sav-*
14 *On Drug Stores v. Superior Court*, 34 Cal. 4th 319, 340 (2004). To effectuate that public policy,
15 trial courts have “an obligation to consider the use of. . . innovative procedural tools proposed by
16 a party to certify a manageable class” and are urged to be “procedurally innovative.” *Id.* at 339.

17 To address the needs of a complex case, judges are vested with a high degree of discretion
18 especially when assigned the task of approving or disapproving a class settlement. Indeed,
19 settlement approvals rest within the broad discretion of the trial court, which sits in the role of
20 fiduciary representing the interests of absent class members. *Kullar v. Foot Locker Retail, Inc.*,
21 168 Cal. App. 4th 116, 128–29 (2008). Settlements are to be regarded as fair, and “[d]ue regard
22 should be given to what is otherwise a private consensual agreement between the parties. The
23 inquiry ‘must be limited to the extent necessary to reach a reasoned judgment that the agreement
24 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and
25 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.’” *Dunk v.*
26 *Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996)(citing *Officers for Justice v. Civil Service*
27 *Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982)) A presumption of fairness exists where (1) the
28 settlement is reached through arm’s-length bargaining, (2) investigation and discovery are

1 sufficient to allow counsel and the court to act intelligently, (3) counsel is experienced in similar
2 litigation, and (4) the percentage of objectors is small. *Id.* An appellate court reviewing a challenge
3 to a class action settlement does not make an independent determination whether the settlement
4 terms are ‘fair, adequate and reasonable,’ but only determines whether the trial court acted within
5 its discretion. *Kullar, supra*, 168 Cal. App. 4th at 127–28.

6 A. Attorneys’ Fees Request

7 While not strictly an issue of class action law, the issue of attorneys’ fees often has
8 significant ramifications in class action cases. In at least two respects, the California Supreme
9 Court has explicitly rejected federal precedent in favor of a more plaintiff-friendly interpretation
10 of attorneys’ fees law. In *Graham v. Daimler/Chrysler Corp.*, 34 Cal. 4th 553, 567 (2004), the
11 California high court reaffirmed that a party may be entitled to attorneys’ fees where the lawsuit
12 has been a “catalyst motivating the defendants to provide the . . . relief sought,” even if the
13 prevailing party has not yet obtained any affirmative relief in the litigation. California has also
14 taken a different approach to the calculation of statutory attorneys’ fees based upon the lodestar
15 method, permitting enhancements for risk. *Compare Ketchum v. Moses*, 24 Cal. 4th 1122 (2001)
16 with *City of Burlington v. Dague*, 505 U.S. 557, 567 (1992).

17 Class Counsel believe that the fee request is fair, reasonable, and well-within the range of
18 fee requests in California.¹ Nonetheless, this is not an issue for final determination at this stage of
19

20 ¹ On August 11, 2016, the California Supreme Court decided *Laffitte v. Robert Half International*, which
21 addressed the correct methodology for awarding fees in a class action settlement. (*Laffitte v. Robert Half Intern. Inc.*
22 (Cal. 2016) 205 Cal.Rptr.3d 555, 573.) The *Laffitte* Court approved awarding fees as a percentage of the settlement
23 fund in cases like the present one, where a settlement results in the creation of a common fund on behalf of a class:

24 We join the overwhelming majority of federal and state courts in holding that when class action
25 litigation establishes a monetary fund for the benefit of the class members, and the trial court in its
26 equitable powers awards Class Counsel a fee out of that fund, the court may determine the amount
27 of a reasonable fee by choosing an appropriate percentage of the fund created.
28 (*Id.* at p. 573.)

The Court then set out several reasons why the percentage-of-the-fund method is preferred over the
alternative lodestar-multiplier approach in California courts:

The recognized advantages of the percentage method—including relative ease of calculation,
alignment of incentives between counsel and the class, a better approximation of market conditions
in a contingency case, and the encouragement it provides counsel to seek an early settlement and
avoid unnecessarily prolonging the litigation [citations]—convince us the percentage method is a
valuable tool that should not be denied our trial courts.

1 the proceedings. At the preliminary approval stage, the Court is charged with reviewing the overall
2 reasonableness of the proposed settlement and the issue of attorneys' fees will be fully briefed and
3 presented to the Court at the final approval stage by way of a formal Motion for Approval of
4 Attorneys' fees and Costs.

5 B. Plaintiff's Enhancement Request

6 The Court preliminarily-approved a Class Representative Service Payment of \$20,000 to
7 Plaintiff Guinto for her contribution to the case. Plaintiff has certainly performed work on behalf
8 of the Settlement Class and to benefit the Class. (See Declaration of Guinto ¶3-9.) The Class has
9 benefited from Plaintiff Guinto's action in stepping forward on their behalf to bring this lawsuit.
10 Plaintiff was also at risk of for paying Defendant's legal fees and costs in the event that Defendant
11 prevailed at trial. Under the circumstances, a representative service payment is justified and it is
12 well-within the discretion of the Court to determine the appropriate amount.

13 C. Ending the Attorney-Client Relationship

14 Counsel is prepared to continue to represent Ms. Guinto, if appropriate, but notes for the
15 Court that Ms. Guinto elected to terminate the relationship. (See Motion at pg. 5, lines 2-4).
16 Further discussion can be had at the hearing to address any concerns the Court may have.

17 Counsel maintain, in conjunction with the expert opinion of Diane Karpman, that the Court
18 has found that they are Class Counsel and they represent the Settlement Class certified for
19 Settlement Purposes. (See Motion at pg. 5, lines 8-9 and 13-15.)

20 **III. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY**

21 As indicated on the Proof of Service, this filing will be concurrently uploaded to the Labor
22 and Workforce Development Agency's ("LWDA") website on the date this Reply is filed as
23 required by statute. Proof of submission of this Reply, all related documents, and copy of the

24

(Id. at p. 573.)

25 An award of 1/3 of the common fund is appropriate under the "substantial benefit" theory. (*Dunk,*
26 *supra*, at 1810; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254.) That theory permits a
27 litigant who has sued in a representative capacity to recover fees when the litigant's efforts have created a
28 substantial, actual, and concrete benefit for members of an ascertainable class and the court's jurisdiction
over the subject matter makes possible an award which spreads the cost proportionately among the members
of the benefitted class. (See *Ciani v. San Diego Trust & Sav. Bank* (1994) 25 Cal.App.4th 563, 578.)

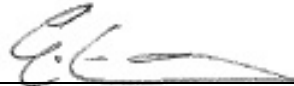
1 email from the LWDA confirming receipt is attached hereto as Exhibit “1.”

2 **IV. CONCLUSION**

3 Class Counsel respectfully requests that (1) the Court enter the Supplemental Amended
4 Order Granting Preliminary Approval of Class Action Settlement to confirm that it has been made
5 aware of the change in circumstances; finds that the Settlement Agreement remains fair, adequate,
6 reasonable, and in the best interest of the Class members; and the Class Notice should be
7 disseminated without delay; and (2) reschedule the hearing on final approval of the Settlement
8 Agreement and Class Counsel’s application for an award of attorney’s fees and litigation costs for
9 February 22, 2024 or a date thereafter that is convenient for this Court.

10
11 DATED: October 30, 2023

KINGSLEY & KINGSLEY, APC

12 By: 

13 Eric B. Kingsley

14 Attorneys for Plaintiff and the proposed class
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EXHIBIT "1"

(Proof of Submission to LWDA)

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
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 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On October 30, 2023, I served all interested parties in this action the following documents described as: **REPLY IN SUPPORT OF MOTION FOR SUPPLEMENTAL ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Grace Y. Horoupian
ghoroupian@fisherphillips.com
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614
Via electronic mail transmission

Gregory L. Blueford
gblueford@fisherphillips.com
FISHER & PHILLIPS LLP
621 Capitol Mall, Suite 1400
Sacramento, California 95814
Via electronic mail transmission

Maria Gloria F Guinto
508 Evergreen Lane, Unit 11
Yreka, CA 96097
mguinto8668@gmail.com
Via electronic mail transmission and U.S. mail

[XX] (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[XX] (BY ELECTRONIC SERVICE): I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] BY ELECTRONIC MAIL TRANSMISSION: I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 30, 2023, at Woodland Hills, California.



Michelle Tanzer