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6
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and on behalf of all others similarly situated

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SANTA CLARA**

11
12 RYAN CLAY, individually and on behalf of all
others similarly situated,

13 Plaintiff,

14 vs.

15 CONSERVICE, LLC; and DOES 1 through 20,
16 inclusive,

17 Defendant.

Case No. 21CV387223

Consolidated with Case No.: 21CV391470

Assigned for all purposes to:

Hon. Theodore C. Zayner

Dept. 19

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28 **NOTICE OF ENTRY OF FINAL ORDER
AND JUDGMENT**

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TO THE PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 7, 2023, the Court granted final approval of the class action settlement in this action and entered Judgment. Attached hereto as **Exhibit A** is a true and correct copy of the Final Order.

Dated: November 13, 2023

AEGIS LAW FIRM, PC

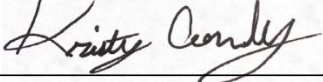
By: 
Kristy R. Connolly
Attorneys for Plaintiffs

EXHIBIT A

Envelope #13493406

FILED
November 7, 2023
Clerk of the Court
Superior Court of CA
County of Santa Clara

21CV387223

By: rwalker

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

RYAN CLAY, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

CONSERVICE, LLC; and DOES 1
through 20, inclusive,

Defendants.

Case No. 21CV387223
Consolidated with Case No.: 21CV391470

Assigned for All Purposes to:
Hon. Theodore C. Zayner
Dept. 19

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND ENTERING JUDGMENT**

1 The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner
2 on November 1, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as
3 follows:

4 I. INTRODUCTION

5 This is a consolidated putative class and Private Attorneys General Act (“PAGA”) action
6 arising out of various alleged wage and hour violations. The operative Consolidated Class Action
7 Complaint, filed on January 12, 2023, sets forth the following causes of action: (1) Failure to Pay
8 Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4)
9 Failure to Permit Rest Breaks; (5) Failure to Provide Accurate Itemized Wage Statements; (6)
10 Failure to Pay All Wages Due Upon Separation of Employment; (7) Failure to Reimburse
11 Necessary Business Expenses; (8) Violation of Business and Professions Code §§ 17200, et seq.;
12 and (9) Enforcement of Labor Code § 2698, et seq. (PAGA).

13 The parties have reached a settlement. Plaintiffs Ryan Clay (“Clay”) and Jeffrey Raquel
14 (“Raquel”) (“Plaintiffs”) moved for preliminary approval of the settlement.

15 On April 12, 2023, the court granted preliminary approval of the settlement subject to
16 approval of the amended class notice. The court subsequently approved the amended class notice
17 on April 18, 2023.

18 Plaintiffs now move for final approval of the settlement. The motion is unopposed.

19 II. LEGAL STANDARD

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

25 In determining whether a class settlement is fair, adequate and reasonable, the trial
26 court should consider relevant factors, such as “the strength of plaintiffs’ case, the risk,
27 expense, complexity and likely duration of further litigation, the risk of maintaining
28 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.”

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

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

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

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

17 III. DISCUSSION

18 The consolidated action has been settled on behalf of the following class:

19 [A]ll non-exempt employees who have worked, or continue to work, for
20 Defendant [Conservice, LLC (“Defendant”)] in California from April 3,
21 2017 through and including the date a signed order preliminarily approving
22 the Settlement is filed.

23 The class includes a subset of Aggrieved Employees, who are defined as “all non-exempt
24 employees who have worked or continue to work [] for Defendant in California from April 3, 2020
25 through and including the date a signed order preliminarily approving the Settlement is filed.”

26 The total settlement payment and included amounts have increased since the time of
27 preliminary approval. Plaintiffs do not assert that there are 185 class members, which triggered
28 the escalator clause of the settlement agreement.

The total amount of the settlement is now \$1,253,228.55. (Declaration of Taylor Mitzner
with Respect to Notice and Settlement Administration (“Mitzner Dec.”), ¶¶ 11-13.) This amount
includes attorney fees not to exceed \$438,629.99 (35 percent of the gross settlement amount),
litigation costs up to \$30,000, service awards in the total amount of \$20,000 (\$10,000 for each

1 class representative), settlement administration costs up to \$6,950, and a PAGA Payment of
2 \$50,000 (75 percent of which will be paid to the LWDA and 25 percent of which will become
3 part of the net settlement amount to be distributed to Aggrieved Employees).

4 The net settlement amount that is not attributable to the PAGA Payment will be distributed
5 to class members pro rata based on the number of workweeks worked during the class period.

6 Funds from checks that remained uncashed 180 days after issuance will be sent to Legal
7 Aid at Work as a cy pres recipient in accordance with Code of Civil Procedure section 384.

8 On May 18, 2023, the settlement administrator mailed notice packets to 185 class
9 members. (Mitzner Dec., ¶ 5.) Ultimately, all notice packets were deliverable. (Id. at ¶ 7.) As of
10 September 14, 2023, there were no requests for exclusion and no objections. (Id. at ¶¶ 8-9.)

11 The highest individual settlement share to be paid is approximately \$18,058.19, the lowest
12 individual settlement share to be paid is approximately \$58.99, and the average individual
13 settlement share to be paid is approximately \$3,825.13. (Mitzner Dec., ¶ 14.) The court previously
14 found the proposed settlement is fair and the court continues to make that finding for purposes of
15 final approval.

16 Plaintiffs request service awards in the total amount of \$20,000 (\$10,000 for each class
17 representative). The representatives have submitted declarations detailing their participation in
18 the case. Clay states that he spent approximately 50 hours on the case, including searching for
19 documents, communicating with counsel, and reviewing the settlement documents. (Declaration
20 of Ryan Clay in Support of Motion for Final Approval of Class Action Settlement, ¶¶ 4-6 & 11.)
21 Raquel states that he spent approximately 35 hours on the case, including searching for
22 documents, communicating with counsel, and reviewing the settlement documents. (Declaration
23 of Jeff Raquel in Support of Motion for Final Approval of Class Action Settlement, ¶¶ 4-6 & 11.)

24 Moreover, Plaintiffs undertook risk by putting their names on the case because it might
25 impact their future employment. (*See Covillo v. Specialty's Café* (N.D.Cal. 2014) 2014
26 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff
27 undertakes a significant “reputational risk” in bringing an action against an employer].)
28 Accordingly, the court finds the service awards are warranted and they are approved.

1 The court also has an independent right and responsibility to review the requested attorney
2 fees and only award so much as it determines reasonable. (*See Garabedian v. Los Angeles*
3 *Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel seeks attorney
4 fees of \$438,629.99 (35 percent of the gross settlement fund). Plaintiffs' counsel provides
5 evidence demonstrating a lodestar of \$167,337.50, based on 238.2 hours spent on the case by
6 counsel billing between \$500 to \$875 per hour. (Declaration of Kristy R. Connolly in Support of
7 Motion for Final Approval of Class Action Settlement ("Connolly Dec."), ¶¶ 27-29.) This results
8 in a multiplier of 2.62.

9 Here, the percentage of the common fund sought by counsel is higher than the 33.33
10 percent typically awarded in wage and hour cases. While the lodestar is above the requested fee
11 award, the court finds no reason to award counsel in this matter more than the typical one-third
12 of the common fund considering the relevant factors. (*See Ketchum v. Moses* (2001) 24 Cal.4th
13 1122, 1132 [in order to reflect the fair market value of attorney services, lodestar may be adjusted
14 with a multiplier based on factors including the extent to which the nature of the litigation
15 precluded other employment by the attorneys and the contingent nature of the fee award].)
16 Consequently, the court approves attorney fees in the amount of \$417,742.85 (1/3 of the gross
17 settlement amount). The unapproved portion of the fee request shall become part of the net
18 settlement to be distributed to the class members.

19 Plaintiffs' counsel also requests \$22,858.80 in litigation costs and provides evidence of
20 costs incurred in that amount. (Connolly Dec., ¶ 31 & Ex. 4.) The costs appear to be reasonable
21 and are approved. The administrative costs in the amount of \$6,950 are also approved. (Mitzner
22 Dec., ¶ 17.)

23 Accordingly, the motion for final approval of the class and representative action
24 settlement is GRANTED, subject to the reductions noted above.

25 The prevailing party shall prepare the order in accordance with California Rules of Court,
26 rule 3.1312.

27 The court will set a compliance hearing for July 10, 2024, at 2:30 p.m. in Department 19.
28 At least ten court days before the hearing, class counsel and the settlement administrator shall

1 submit a summary accounting of the net settlement fund identifying distributions made as ordered
2 herein, the number and value of any uncashed checks, amounts remitted to Defendant, the status
3 of any unresolved issues, and any other matters appropriate to bring to the court's attention.
4 Counsel may appear at the compliance hearing remotely.

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8 DATED: November 7, 2023



Honorable Theodore C. Zayner
JUDGE OF THE SUPERIOR COURT