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FILED

February 23, 2024

Clerk of the Court

Superior Court of CA

County of Santa Clara

22CV393451

By: rwalker

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF SANTA CLARA**

12 EDGAR EFREN GUILLEN, an individual, on
13 behalf of himself, other persons similarly-
14 situated, the State of California, and other
current and former employees,

15 Plaintiff,

16 vs.

17 DMD CONSTRUCTION, INC., a California
18 Corporation, KYSTIAN KONEFAL, an
19 individual, MACIEJ WNOROWSKI, an
individual, and DOES 1-10, inclusive,

20 Defendants.

Case No. 22CV393451

**[PROPOSED] ORDER & JUDGMENT OF
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT, SERVICE AWARDS TO
CLASS REPRESENTATIVES,
ATTORNEYS' FEES, AND
REIMBURSEMENT OF LITIGATION
COSTS**

Date: February 21, 2024

Time: 1:30 p.m.

Department 19

Before the Honorable Theodore C Zayner

1 The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner
2 on February 21, 2024, at 1:30 p.m. in Department 19

3 **I. INTRODUCTION**

4 This is a class and representative action arising out of alleged wage and hour violations.
5 The operative Second Amended Class Action Complaint (“SAC”), filed on August 4, 2022, sets
6 forth the following causes of action: (1) Failure to Pay Wages for All Hours Worked, Labor Code
7 sections 204(b), 223, 1194, 1194.2 Wage Orders; (2) Failure to Pay Overtime Wages, Labor Code
8 sections 510, 1194, 1198, Wage Orders; (3) Failure to Provide Meal Periods, or Pay Premium
9 Wages in Lieu Thereof; (4) Failure to Provide Rest Breaks, or Pay Premium Wages in Lieu
10 Thereof; (5) Failure to Provide Accurate Itemized Wage Statements, Labor Code section 226;
11 (6) Failure to Timely Pay Final Wages at Termination, Labor Code sections 201-203; (7) Failure
12 to Reimburse Necessary Business Expenses, Labor Code section 2802; (8) Violation of
13 California’s Unfair Competition Law, Business & Professions Code sections 17200, et seq.]; and
14 (9) Violation of Private Attorneys General Act, Labor Code §§ 2698, et seq. (“PAGA”).

15 The parties have reached a settlement. Plaintiff Edgar Efren Guillen (“Plaintiff”) moved
16 for preliminary approval of the settlement. The motion was unopposed.

17 On March 29, 2023, the court granted the motion for preliminary approval of settlement
18 subject to approval of the modified class notice. Specifically, the court directed the parties to
19 modify section J of the class notice to clarify that class members could object in writing, but
20 could also object to the settlement by appearing at the final approval hearing without submitting
21 any written objection and with no prior notice. The court also instructed the parties to include
22 specific language regarding the final approval hearing and class members’ ability to appear
remotely via Microsoft Teams.

23 Subsequently, Plaintiff moved for final approval of the settlement. The motion was
24 unopposed. However, based upon a review of the record, it did not appear that the parties
25 submitted an amended class notice to the court for approval.

26 On September 27, 2023, the court continued the motion for final approval of settlement to
27 February 21, 2024. The court explained that the notice mailed to the class on May 3, 2023, was
28

1 inadequate. The court directed the parties to amend the class notice and submit the amended
2 notice to the court for its approval.

3 On October 6, 2023, the court approved the amended class notice.

4 On January 25, 2024, Plaintiff submitted supplemental declarations in support of the
5 motion for final approval of settlement.

6 Now before the court is Plaintiff's motion for final approval of settlement.

7 **II. LEGAL STANDARD**

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

12 In determining whether a class settlement is fair, adequate and reasonable, the trial
13 court should consider relevant factors, such as "the strength of plaintiffs' case, the
14 risk, expense, complexity and likely duration of further litigation, the risk of
15 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."

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

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

25 The burden is on the proponent of the settlement to show that it is fair and
26 reasonable. However "a presumption of fairness exists where: (1) the settlement
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."

27 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)
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1 **III. DISCUSSION**

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

3 [A]ll individuals who were employed by the Company Defendants in California as
4 non-exempt and/or hourly-paid employees at any time(s) between January 19,
5 2018 through the Date of Preliminary Approval of the Parties' settlement

6 The class includes a subset of aggrieved employees, who are defined as "all individuals who were
7 employed by the Company Defendants in California as non-exempt and/or hourly-paid employees
8 at any time(s) during the applicable PAGA Period." The PAGA Period means the period from
9 October 18, 2020 through the date of preliminary approval.

10 As discussed in connection with preliminary approval, defendants DMD General
11 Construction, Inc., Krystian Konefal, and Maciej Wnorowski (collectively, "Defendants") will
12 pay a gross, non-reversionary settlement amount of \$150,000. The gross settlement amount
13 includes attorney fees not to exceed \$50,000 (1/3 of the gross settlement fund), attorney costs not
14 to exceed \$10,000, a PAGA allocation of \$7,500 (75 percent to be paid to the LWDA and 25
15 percent to be paid to aggrieved employees), a service payment for the class representative not to
16 exceed \$7,500, and settlement administration costs not to exceed \$5,250. The net settlement
17 amount will be distributed to class members pro rata basis. If the aggregate funds from checks
18 remaining uncashed more than 180 days after mailing total \$10,000 or more, the will be
19 distributed to each participating class member on a pro rata basis. If the aggregate funds total less
20 than \$10,000, the checks will be void and the funds from those checks will be sent to the George
21 & Katherine Alexander Community Law Center.

22 In exchange for the settlement, the class members agree to release Defendants, and related
23 entities and persons, from any and all claims based on, or that could have been alleged, based on
24 the facts alleged in the SAC. In addition, Plaintiff agrees to a comprehensive general release,
25 which excludes claims for discrimination filed with the DFEH.

26 On October 24, 2023, the settlement administrator mailed notice packets to 39 class
27 members. (Supplemental Declaration of Jarrod Salinas With Respect to Notice and Settlement
28 Administration ("Supp. Salinas Dec."), ¶ 3.) All of the notices were deliverable. (*Id.* at ¶ 4.) As
of January 23, 2024, there were no objections and no requests for exclusion. (*Id.* at ¶¶ 5-6.)

1 The highest individual settlement share to be paid is approximately \$7,446.81, the lowest
2 individual settlement share to be paid is approximately \$55.16, and the average individual
3 settlement share to be paid is approximately \$1,891.05. (Supp. Salinas Dec., ¶ 10.) The court
4 previously found the proposed settlement is fair and the court continues to make that finding for
5 purposes of final approval.

6 Plaintiff requests an incentive award of \$7,500. In connection with its prior order granting
7 preliminary approval of the settlement, the court directed the class representative to file a
8 declaration specifically detailing his participation in the action and an estimate of the time spent.
9 The court finds the incentive award requested to be reasonable and is approved.

10 The court also has an independent right and responsibility to review the requested attorney
11 fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles*
12 *Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel seeks attorney
13 fees of \$50,000 (1/3 of the gross settlement fund). Plaintiff's counsel provides evidence
14 demonstrating a total lodestar of \$106,035. (Declaration of Class Counsel in [Support] of Motion
15 for Final Approval of Class Action & PAGA Settlement ("Class Counsel Dec."), ¶¶ 13-14.) This
16 results in a negative multiplier. The court finds the attorney fees are reasonable as a percentage of
17 the common fund and are approved.

18 Plaintiff's counsel also requests litigation costs in the amount of \$6,078.98, and provides
19 evidence of incurred costs in that amount. (Class Counsel Dec., ¶ 19.) Consequently, the
20 litigation costs are reasonable and approved. The settlement administration costs of \$5,250 are
21 also approved. (Supp. Salinas Dec., ¶ 13.)

22 ~~Accordingly, the motion for final approval is GRANTED with the exception of the request~~
23 ~~for an incentive award.~~

24 ~~The prevailing party shall prepare the order and judgment in accordance with California~~
25 ~~Rules of Court, rule 3.1312.~~

26 The court will set a compliance hearing for October 23, 2024, at 2:30 p.m. in Department
27 19. At least ten court days before the hearing, class counsel and the settlement administrator shall
28 submit a summary accounting of the net settlement fund identifying distributions made as ordered
herein, the number and value of any uncashed checks, amounts remitted to Defendants, the status

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

3 This Judgment and Final Order Approving Settlement of Class Action is hereby granted
4 and the Court directs that this judgment is hereby entered.

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6 Dated February 23, 2024

7 
8 The Honorable Theodore C. Zayner
9 Judge of the Superior Court
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