

Electronically Received 10/17/2022 05:07 PM

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Attorneys for Plaintiff Janine Nelson,
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE

JANINE NELSON, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

CAPTEK SOFTGEL INTERNATIONAL,
INC., a California corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 20STCV21184

CLASS ACTION

Assigned for All Purposes To:

Hon. Elihu M. Berle

Dept.: SS-06

**[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL OF
THE CLASS ACTION SETTLEMENT**

Date: December 15, 2022

Time: 10:00 a.m.

Place: Department 6

Complaint Filed: May 29, 2020

First Amended: March 28, 2022

Trial Date: None Set

FILED

Superior Court of California

County of Los Angeles

12/15/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: M. Fregoso Deputy

1 On December 15, 2022 Plaintiff Janine Nelson's ("Plaintiff") Motion for Final Approval
2 of Class Action Settlement, Attorneys' Fees and Expenses, and Incentive Award came before the
3 Court, in Department SS-06, for hearing pursuant to the Order of this Court, dated August 19,
4 2022 ("Preliminary Approval Order"), on the application of Plaintiff and the Certified Class for
5 approval of the Settlement set forth in the Joint Stipulation of Class Action Settlement (the
6 "Stipulation"). Full and adequate notice having been given to the Class as required in the Court's
7 Preliminary Approval Order, and the Court having considered all papers filed and proceedings
8 held herein and otherwise being fully informed in the premises and good cause appearing
9 therefore,

10 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

11 1. This Order incorporates by reference the definitions in the Stipulation, and all
12 capitalized terms used, but not defined herein, shall have the same meanings as in the
13 Stipulation.

14 2. This Court has jurisdiction over the subject matter of the Action and over all
15 parties to the Action, including all Class Members.

16 3. The Motion for final approval is granted. The Court approves the settlement as
17 fair, reasonable and adequate. The Court makes the following awards and approves the following
18 payments:

19 a. \$283,333.33 in attorneys' fees and \$16,584.56 in costs to Class Counsel,
20 Justice Law Corporation;

21 b. \$10,000.00 to the Class Representative Janine Nelson;

22 c. \$16,000.00 in costs to the claims administrator CPT Group, Inc.;

23 d. \$25,000.00 for the PAGA claim (\$6,250.00 to be paid to the participating
24 Class Members and \$18,750.00 to be paid to the Labor and Workforce Development Agency);
25 and

26 4. In accordance with the Settlement and the terms set forth in this order, this Order
27 shall not be deemed a judgment in favor of class members or any them and shall not constitute an
28

obligation for direct compensation of any one or any number of the Class Members, but rather it simply approves and undertakes to monitor the execution of the settlement between the Parties. Except for the payment due under the Stipulation, the parties are each to bear their own costs and attorneys' fees. The Court approves the Stipulation and Defendant Captek Softgel International, Inc. ("Defendant") and the Released Parties are discharged from all Released Claims in accordance with the terms of the Stipulation.

5. In this wage and hour class action lawsuit, Plaintiff sued Defendant for a variety of Labor Code violations. The operative complaint alleges that Defendant failed to pay minimum wages and overtime, failed to provide meal periods and rest breaks, failed to provide accurate wage statements, failed to pay final wages when due, failure to reimburse all necessary business expenditures, committed unfair business practices under California's Unfair Competition Law ("UCL"), and violated the Private Attorneys General Act of 2004 ("PAGA"), all in violation of California law.

6. Defendant made and makes no admission of liability and none shall be inferred from the Stipulation or entry of judgment. Neither this order nor the Stipulation shall be used or submitted into evidence in any proceeding or action, except for the sole purpose of enforcing the terms hereof.

7. In California, the notice to class members must have "a reasonable chance of reaching a substantial percentage of the class members." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251. Importantly, however, the plaintiff need not demonstrate that each member of the class received notice. As long as the notice had a "reasonable chance" of reaching a substantial percentage of class members, it should be found effective.

8. CPT Group, Inc. is providing settlement administration services for this settlement. (Declaration of Irvin Garcia In Support of Final Approval Motion, ¶¶ 1-15.) On September 1, 2022, CPT received the class information from Defendant. (*Id.* at ¶ 4.) The list contained 1,264 individual class/PAGA members. (*Id.* at ¶ 4.) On September 15, 2022, CPT conducted a search of the NCOA to update addresses, and, on September 16, 2022, mailed

1 notices to all class members. (*Id.* at ¶¶ 5-7.) CPT forwarded notice packets returned with
2 forwarding addresses and performed skip searches on all other returned mail. (*Id.* at ¶¶ 8-9.)
3 Ultimately, twenty (20) notice packets were undeliverable. (*Id.* at ¶ 9.) CPT received no
4 objections and only one request for exclusions from Triang T Vu. (*Id.* at ¶¶ 11-13, Exhibit B.)
5 Based on the foregoing, the Court finds that the notice provided to class members conforms to
6 due process requirements.

7 9. It is the duty of the Court, before finally approving the settlement, to conduct an
8 inquiry in the fairness of the proposed settlement. California Practice Guide, Civil Procedure
9 Before Trial, The Rutter Group, ¶14:139.12 (2012). The trial court has broad discretion in
10 determining whether the settlement is fair. In exercising that discretion, it normally considers the
11 following factors: strength of the plaintiff's case; the risk, expense, complexity and likely
12 duration of further litigation; the risk of maintaining class action status through trial; amount
13 offered in settlement; extent of discovery completed and stage of the proceedings; experience
14 and views of counsel; presence of a governmental participant; and reaction of the class members
15 to the proposed class settlement. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *In*
16 *Re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. This list is not exclusive and the Court
17 is free to balance and weigh the factors depending on the circumstances of the case. *Wershba v.*
18 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245.

19 10. The proponent bears the burden of proof to show the settlement is fair, adequate
20 and reasonable. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th
21 1135, 1165-1166; *Wershba, supra*, 91 Cal.App.4th at 245. There is a presumption that a proposed
22 settlement is fair and reasonable when it is the result of arms'-length negotiations. 2 Herbert
23 Newburg & Albert Conte, *Newburg on Class Actions* §11.41 at 11-88 (3d ed. 1992); *Manual for*
24 *Complex Litigation* (Third) §30.42.

25 11. At the time of preliminary approval, Class Counsel's claim that Defendant failed
26 to pay minimum wage/overtime claim were valued in terms of maximum exposure at
27 \$3,329,392.00 (Han Declaration re: Preliminary Approval, at ¶ 33.) Meal break violations were
28

valued, in terms of a maximum exposure, at \$1,809,536.00, and rest breaks respectively at \$3,415,500.00 when assuming a 50% violation rate. (Id. at ¶¶ 39-40.) The paystub violations were valued at \$782,050.00. (Id. at ¶ 43.) The claim for failure to pay final wages valued at \$1,927,613.00. (Id. at ¶ 46.) The claim under Labor Code § 2699 *et seq.* was valued at \$800,500.00 (Id. at ¶ 50.)

12. Had this case not settled, there would have been additional risks and expenses associated with continuing to litigate. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

13. There is always a risk of decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”)

14. As part of the Court’s analysis of this factor, the Court should take into consideration the admonition in *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. In *Kullar*, objectors to a class settlement argued the trial court erred in finding the terms of the settlement to be fair, reasonable, and adequate without any evidence of the amount to which class members would be entitled if they prevailed in the litigation, and without any basis to evaluate the reasonableness of the agreed recovery. The Court of Appeal agreed with the objectors that the trial court bore the ultimate responsibility to ensure the reasonableness of the settlement terms. Although many factors had to be considered in making that determination, and a trial court was not required to decide the ultimate merits of class members’ claims before approving a proposed settlement, an informed evaluation could not be made without an understanding of the amount in controversy and the realistic range of outcomes of the litigation.

15. Defendant has agreed to settle for the non-reversionary amount of \$850,000.00 all in, with no additional sums being due from Defendant for damages, costs, attorneys’ fees, contributions, reimbursements or for any other reason. According to the claims administrator’s

calculations, the average settlement payment will be \$397.09 per Class Member, with the highest Settlement Share estimated to be \$1,044.94 (Garcia Declaration, ¶ 14.)

16. Class Counsel conducted an investigation that included informal discovery, reviewed time records, reviewed Plaintiff's documents, and formed damage models based on all of these. (Han Declaration re: Preliminary Approval, ("Han PA Decl.") ¶¶ 13-18.) The parties also mediated this case with Jeffrey Ross, a respected and highly experienced mediator in wage and hour class actions. (*Id.* at ¶ 17.) In connection with mediation and through discussions with counsel for Defendant, Class Counsel also discussed all aspects of the case, including the risks of litigation and the risks to both parties of proceeding with a motion for class certification as well as the law relating to meal periods. (Han PA Decl., ¶ 18.)

17. Class Counsel has experience with wage and hour class litigation. (Han PA Decl., ¶¶ 3-10.) He is of the opinion that this settlement is in the best interest of the class (Han Declaration re: Final Approval ("Han FA Decl."), ¶¶ 17-18.) and provides substantial benefit to class members. (*Id.*)

18. ~~The class reacted positively so far with a 100% participation rate¹. (Garcia Decl., ¶ 18.)~~ Three class members have opted out: Trang T. Vu, Felipe Betancur, and Syed Husain.

19. On balance, this is a fair settlement that satisfies the *Dunk* factors, such that final approval is warranted.

20. Class Counsel requested attorneys' fees of \$283,333.33. The Court employs the lodestar method in awarding fees, as opposed to a "percentage of the common fund" method. This amount would reflect the actual work performed, plus a multiplier (if applicable) to recognize counsel's efforts. In common fund cases, the Court may employ a percentage of the benefit method, as cross-checked against the lodestar. *Laffitte v. Robert Half Int'l., Inc.* (2016) 1 Cal.5th 480, 503.

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¹ Plaintiff will submit an updated proposed order alongside the updated declaration from the claim administrator, CPT Group.

21. Here, fees are sought pursuant to the percentage method. The determination of what constitutes an appropriate percentage “is somewhat elastic and depends largely on the facts of a given case, but certain factors are commonly considered. Specifically, the court may address the percentage likely to have been negotiated between private parties in a similar case, percentages applied in other class actions, the quality of class counsel, and the size of the award.” *In re Ikon Office Solutions, Inc., Securities Litigation* (E.D. Pa. 2000) 194 F.R.D. 166, 193.

22. These factors favor the \$283,333.33 award. As for the first factor, private contingency fee agreements are routinely 30% to 40% of the recovery. (*Id.* at 194.) As for the second factor, although the median percentage of attorney fees in class action is 25%, “most fees appear to fall in the range of nineteen to forty-five percent.” (*Id.*) As for the third factor, Class Counsel has experience in class actions, including wage and hour cases. Most importantly, Class Counsel achieved good results for the class as evidenced by the class members’ reaction to the settlement. As for the fourth factor, Class Counsel negotiated a \$850,000.00 Maximum Settlement Amount. Applying the lodestar cross-check, Class Counsel states that members of his firm have spent at least 589.7 hours on this case, with additional hours to come. (Han FA Decl., ¶ 22.) The lodestar is calculated at \$411,160.00. (*Id.*) The hourly rates appear to be reasonable for attorneys with their respective years of experience. (*Id.* at ¶ 22), and the hours spent is reasonable for this case, which has been pending for over two years. It appears that Class Counsel utilized skill in litigating this case, and by all accounts, have good reputations in the legal community; at the very least, there is no evidence before the Court to indicate that the attorneys have negative reputations in the legal community. It also appears that Class Counsel spent appreciable time on the case, which time could have been spent on other meritorious fee-generating cases. Based on the \$411,160.00 lodestar, the fee request of \$283,333.33 does not require a lodestar multiplier as Class Counsel has exceed the fees that they seek to recover. Because the fee request is based on a reasonable percentage of the settlement fund and is supported by the lodestar calculation, and because the class was provided with notice of the fee request and did not object, the Court

awards fees in the amount requested.

23. Class Counsel requested costs up to \$20,000.00. (Han FA Decl., ¶ 33.) Class Counsel's actual costs, totaling \$16,584.56, consist of filing fees, mediation fees, court appearances, copying, filing and service. (*Id.*, Exhibit H thereto.) These costs appear reasonable and necessary to the conduct of the litigation. Further, as with the fee requests, the maximum cost request was disclosed to class members and deemed unobjectionable. For these reasons, the cost request is granted in the amount of \$16,584.56.

24. Claims administrator CPT requests administration costs of \$16,000.00. (Garcia Declaration, ¶ 15.) Based upon the work performed and yet to be performed, including the additions of the status webpage and the additional class members, the request for administration costs of \$16,000.00 is granted.

25. The Court also approves the payment to the Labor and Workforce Development Agency ("LWDA") in the amount of \$18,750.00 (out of \$25,000.00 as allocated to the claim under the California Private Attorneys General Act).

26. Finally, Class Counsel seeks an incentive payment of \$10,000.00 to Janine Nelson. The Court considers the following factors, among others, in determining whether to pay an incentive or enhancement award to a class representative: whether an incentive was necessary to induce the class representative to participate in the case; actions, if any, taken by the class representative to protect the interests of the class; the degree to which the class benefited from those actions; the amount of time and effort the class representative expended in pursuing the litigation; the risk to the class representative in commencing suit, both financial and otherwise; the notoriety and personal difficulties encountered by the class representative; the duration of the litigation; and the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. California Practice Guide, Civil Procedure Before Trial, ¶14:146.10 (The Rutter Group 2012) (citing *Clark v American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 804; *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726; *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1394; *Munoz v. BCI Coca-Cola Bottling Co. of*

1 *Los Angeles* (2010) 186 Cal.App.4th 399, 412. Plaintiff devoted a number of hours to this
2 litigation. (Janine Nelson (“Nelson Decl.”) ¶ 6. She has assisted her attorneys by having multiple
3 conferences with them and by providing documents. (*Ibid.*) Plaintiff also helped Class Counsel
4 prepare for mediation. (*Ibid.*) Plaintiff freely chose to champion the rights of the class and
5 accepted the risks associated with acting as class representative. (Nelson Decl. ¶ 7-8.)

6 27. The Court grants the class representatives an enhancement award of \$10,000.00 to
7 Janine Nelson, for the following reasons: Plaintiff spent significant time on this litigation;
8 Plaintiff’s actions benefitted the class; and Plaintiff accepted the risks and notoriety that are
9 associated with acting as a class representative.

10 28. All Parties, including each and all class members, are bound by this Final
11 Approval Order and by the Stipulation. All Class Members shall be deemed to have entered into
12 the Stipulation and the releases provided therein and all PAGA Members shall be deemed to
13 have released the PAGA Released Claims to the fullest extent provided by law. Defendant shall
14 have no obligation to pay any sums in excess of the \$850,000.00 settlement payment set forth in
15 the Stipulation (save and except for the additional employer payroll taxes associated therewith).
16 Other than as provided in the Stipulation, Defendant shall have no obligation after entry of
17 judgment to pay any sum to any person, whether for costs, attorneys’ fees, class member
18 reimbursement or contribution, as a result of entry of judgment.

19 29. The Court previously certified the Action as a class action under California Code
20 of Civil Procedure section 382 for settlement purposes only. The Class is defined as follows:

21 a. “Settlement Class Members:” all current and former individuals who are
22 or who have been employed by Defendant in California during the Class Period as a non-exempt
23 employee (or if any such person is incompetent, deceased, or unavailable due to military service,
24 the person’s legal representative or successor in interest evidenced by reasonable verification).

25 b. “Class Period:” means the period from May 29, 2016, through December
26 31, 2021.

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30. Excluded from the Class are those persons who validly requested exclusion in accordance with the requirements set forth in the Preliminary Approval Order.² (Garcia Decl. ¶ 11-13, Exhibit B.)

31. The certified Class continues to meet all the requirements of California Code of Civil Procedure section 382, as already found, and for the reasons set forth, in the Court's Preliminary Approval Order.

32. Plaintiff Janine Nelson is the Court-appointed Class Representatives.

33. Douglas Han of the law firm JUSTICE LAW CORPORATION, is the Court-appointed Class Counsel.

34. As set forth in the Stipulation any checks issued to Class Members will expire one hundred and eighty (180) days from the date they are issued by the Claims Administrator and any uncashed checks will be paid to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code §1500, *et. seq.* for the benefit of those Class Members who did not cash their checks until such time as, under the law, those funds escheat to the State of California.

35. Upon the Effective Date, Plaintiff and Class Members, save and except for those who timely requested exclusion, will be deemed to have released the Released Parties of and from all of the Released Claims during the Class Period. These claims include without limitation: (1) failure to pay minimum wages, (2) failure to pay wages and overtime, (3) meal period liability under Labor Code § 226.7, (4) rest period liability under Labor Code § 226.7, (5) failure to provide itemized statements, (6) failure to reimburse expenses, (7) violation of Labor Code § 226(a), (8) violation of Labor Code § 203, (9) violation of Labor Code § 227.3, (10) violation of California Business and Professions Code §§ 17200, *et seq.*, and (11) violations of PAGA and all related claims for penalties. This release covers all claims pled, or that could have been pled, based on the factual allegations in the complaint or any amendments thereto. All Class Members

² This will be updated alongside the revised [Proposed] Order filed alongside the updated claim administrator declaration once the response deadline to the Class Notice has closed.

are hereby forever barred and enjoined from commencing, prosecuting or continuing, either directly or indirectly, against the Releasees, in this or any other jurisdiction or forum, any and all Released Claims. “Released Claims” means all causes of action and factual or legal theories that were alleged in the operative complaints or that could have been alleged against Defendant based on the facts contained in the operative complaints, including all of the following claims for relief: (a) failure to pay all regular wages, minimum wages and overtime wages due; (b) failure to provide proper meal and rest periods, and to properly provide premium pay in lieu thereof; (c) failure to provide complete, accurate or properly formatted wage statements; (d) waiting time penalties; (e) failure to reimburse business expenditures, (f) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint; (g) any other claims or penalties under the California Labor Code or other wage and hour laws pleaded in the Action, including but not limited to California Labor Code Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, 203, 204, 205.5, 218.5, 221, 226, 226(a), 226(g), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1021.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802; (h) all damages, penalties, interest and other amounts recoverable under said claims, causes of action or legal theories of relief, and, exclusively to PAGA Members, (i) all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories described above or any of the claims, the letter to the LWDA dated September 4, 2020, and causes of action or legal theories of relief pleaded in the operative complaint.

36. Without affecting the finality of this Order in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of the Stipulation and any award or distribution of the Maximum Settlement Amount, including interest earned thereon; (b) disposition of the Maximum Settlement Amount; (c) hearing and determining applications for attorney fees and expenses in the Action; and (d) all parties hereto for the purpose of construing, enforcing, and administering the Stipulation and the Settlement therein.

37. There is no just reason for delay in the entry of judgment approving the Class Settlement and immediate entry by the Clerk of the Court is expressly directed.

IT IS SO ORDERED.

38. Order to Show Cause Re Compliance with Settlement is set for 10-26-23 at 8:30 a.m. Joint Report is due on 10-16-23.

DATED: 12-15-22



Elihu M. Berle

HONORABLE ELIHU M. BERLE
JUDGE OF THE SUPERIOR COURT

Elihu M. Berle / Judge

**PROOF OF SERVICE
1013A(3) CCP**

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 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is manderson@justicelawcorp.com

On December 15, 2022, I served the foregoing document described as

ORDER GRANTING MOTION FOR FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT

for the following case: **Nelson v. Captek Softgel International, Inc.**
LWDA/Court Case No.: **LWDA-CM-857073-21**
20STCV21184
Los Angeles County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 15, 2022, at Pasadena, California.



Mariah Anderson