

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JAN 06 2023

L. Howell *JA*

JP
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JP

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

DOUGLAS NGUYEN, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

BRENNER-FIEDLER & ASSOCIATES,
INC., a California corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: CVRI2100690

Assigned for All Purposes to:
Honorable Craig Riemer
Department 1

CLASS ACTION

**[PROPOSED] ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: January 6, 2023
Hearing Time: 8:30 a.m.
Hearing Place: Department 1

Complaint Filed: February 11, 2021
FAC Filed: May 6, 2022
Trial Date: None Set

1 On January 6, 2023, at 8:30 a.m., Plaintiff Douglas Nguyen ("Plaintiff") Motion for
2 Final Approval of Class Action Settlement, Attorneys' Fees and Costs, and Class
3 Representative Enhancement Payment came before the Court in Department 1 for a hearing
4 pursuant to the Order Granting Preliminary Approval of the Class Action Settlement dated
5 August 10, 2022 ("Preliminary Approval Order"). Plaintiff's Motion for Final Approval of
6 Class Action Settlement, Attorneys' Fees and Costs, and Class Representative Enhancement
7 Payment is based on the Parties' Amended Joint Stipulation of Class Action Settlement
8 ("Settlement Agreement," "Settlement," or "Agreement") attached as **Exhibit 5** to the
9 Supplemental Declaration of Douglas Han in Support of Plaintiff's Motion for Preliminary
10 Approval of Class Action Settlement that was filed on July 28, 2022. Since full and adequate
11 notice was given to the Class as required in the Court's Preliminary Approval Order, and the
12 Court considered all the papers filed and proceedings held herein, it is ORDERED,
13 ADJUDGED AND DECREED THAT:

14 1. This Court has jurisdiction over the subject matter of this lawsuit and over all
15 Parties to this lawsuit, including all Class Members.

16 2. The Court preliminarily certified this case as a class action under Code of Civil
17 Procedure section 382 pursuant to Plaintiff's motion for preliminary approval of the class action
18 settlement. The Class is defined as all individuals who have previously been or currently are
19 employed by Defendant Brenner- Fiedler & Associates, Inc. ("Defendant") as hourly-paid or
20 non-exempt employees in the State of California at any time from August 16, 2016, through
21 April 13, 2022 ("Class," "Class Members," and "Class Period"). ~~The "Class Members" shall not~~
22 ~~include any person who submits a timely and valid request for exclusion.~~

23 3. The certified Class continues to meet all the requirements of Code of Civil
24 Procedure section 382 and for the reasons set forth in the Court's Preliminary Approval Order.

25 4. Plaintiff is the Court-appointed class representative.

26 5. Justice Law Corporation is the Court-appointed Class Counsel.

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1 6. Plaintiff sued Defendant for a variety of Labor Code violations. The operative
2 complaints allege Defendant: (a) failed to pay overtime wages; (b) failed to pay meal period
3 premiums; (c) failed to pay rest period premiums; (d) failed to pay minimum wages; (e) failed
4 to pay final wages in a timely manner; (f) failed to provide compliant wage statements; (g)
5 failed to reimburse business expenses; (h) violated Labor Code sections 2698, *et seq.* (PAGA);
6 and (i) violated Business & Professions Code sections 17200, *et seq.*

7 7. The Motion for final approval is granted. The Court approves the settlement as
8 fair, reasonable, and adequate. Pursuant to this, the Court makes the following awards and
9 approves the following payments:

- 10 a. \$50,000 to Class Counsel as the attorneys' fees;
- 11 b. \$11,704.37 to Class Counsel as the attorneys' costs;
- 12 c. ~~\$10,000~~ ^{\$2,500.00} to Plaintiff as the Class Representative Enhancement Payment;
- 13 d. \$6,000 to Phoenix Class Action Administration Solutions, the Settlement
- 14 Administrator, as the Settlement Administration Costs; and
- 15 e. \$15,000 to the California Labor and Workforce Development Agency
- 16 ("LWDA") and Eligible Aggrieved Employees as the Private Attorneys
- 17 General Act of 2004 ("PAGA") Payment.

18 8. Except for the payment due under the Agreement, the Parties are each to bear
19 their own costs and attorneys' fees.

20 9. The Court approves the Agreement. By extension, Defendant and the Released
21 Parties are discharged from all Released Claims in accordance with the terms of the Agreement.

22 10. The Settlement Administrator is providing settlement administration services
23 for this settlement. On August 12, 2022, the Settlement Administrator received the Court-
24 approved Notice Packet. On August 29, 2022, Defendant delivered to the Settlement
25 Administrator the Class List that contained data for one hundred sixteen (116) Class Members.
26 On September 14, 2022, the Settlement Administrator mailed Notice Packets to one hundred
27 sixteen (116) Class Members via regular First-Class U.S. Mail and indicated the Response
28 Deadline was October 29, 2022. The Settlement Administrator remailed returned Notice

1 Packets using forwarding addresses affixed thereto or using an Accurint search/skip-trace to
2 locate updated addresses. Ultimately, there was only one (1) undelivered Notice Packet. The
3 Settlement Administrator received no disputes, no objections, and no requests for exclusion.
4 Class reacted positively with participation rate of one hundred percent (100%). Thus, the Court
5 finds the notice provided to Class Members conforms to due process requirements.

6 11. If the case had not settled, there would have been additional risks and expenses
7 associated with continuing to litigate. Procedural hurdles (*i.e.*, motion practice and appeals) are
8 also likely to prolong the litigation as well as any recovery by the Class Members.

9 12. Defendant agreed to settle for the non-reversionary sum of \$150,000. Defendant
10 will have no obligation to pay any amount in connection with the Settlement apart from the
11 Maximum Settlement Amount and the employer's share of payroll taxes due on the portion of
12 Individual Settlement Payments allocated to wages. Furthermore, none of the Maximum
13 Settlement Amount will revert to Defendant. According to the Settlement Administrator's
14 calculations, the gross *average* Individual Settlement Payment will be approximately \$493.93,
15 the gross *highest* Individual Settlement Payment will be about \$2,628.71, and the gross *lowest*
16 Individual Settlement Payment will be around \$0.62.

17 13. Class Counsel's investigation included discovery, reviewing personnel records,
18 policy records, and sampling of time and pay records, and forming a damage model based on all
19 of these. The Parties mediated this case with Jeffrey Krivis, a respected and highly experienced
20 mediator in wage-and-hour class actions. In connection with mediation and through discussions
21 with counsel for Defendant, Class Counsel also discussed all aspects of the case, including the
22 risks of litigation and the risks to both Parties of proceeding with a motion for class certification
23 as well as the law relating to meal and rest breaks.

24 14. Class Counsel have extensive experience with wage-and-hour class litigation.
25 Class Counsel are of the opinion the Settlement is in the best interest of the Class and provides
26 substantial benefit to Class Members.

27 15. On balance, this is a fair settlement that satisfies the *Dunk v. Ford Motor Co.*
28 (1996) 48 Cal.App.4th 1794, 1801 factors such that final approval is warranted.

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

7 17. These factors favor awarding the attorneys’ fees. As for the first factor, private
8 contingency fee agreements are routinely thirty percent (30%) to forty percent (40%) of the
9 recovery. (*In re Ikon, Office Solutions, Inc., Securities Litigation, supra*, 194 F.R.D. at p. 194.)
10 As for the second factor, although the median percentage of attorney fees in class action is
11 twenty-five percent (25%), “most fees appear to fall in the range of nineteen to forty-five
12 percent.” (*Ibid.*) As for the third factor, Class Counsel have experience in class actions,
13 including wage-and-hour cases. Most importantly, Class Counsel achieved reasonable results
14 for the Class as evidenced by the Class Members’ reaction to the Settlement. As for the fourth
15 factor, Class Counsel negotiated a \$150,000 Maximum Settlement Amount. Applying the
16 lodestar cross-check, Class Counsel indicate they invested 191.6 hours on this matter.
17 Consequently, the base lodestar fees calculation for Class Counsel is \$122,500, resulting in a
18 negative multiplier of 0.41. Moreover, Class Counsel’s hourly rates appear to be reasonable for
19 attorneys with their years of experience, and the hours spent are reasonable for this case. It
20 appears Class Counsel utilized skill in litigating this case and have good reputations in the legal
21 community. It also appears Class Counsel spent an appreciable time on the case, which could
22 have been spent on other meritorious cases. Because the attorneys’ fees is based on a reasonable
23 percentage of the settlement fund, is supported by the lodestar calculation, and did not receive
24 objections from the Class, the Court grants final approval of the attorneys’ fees of \$50,000.

25 18. Class Counsel seek attorneys’ costs of up to \$20,000. Class Counsel’s actual
26 costs and expenses incurred total \$11,704.37 and consist of filing fees, mediation fees, court
27 appearances, copying, filing, and service. These costs appear reasonable and necessary to the
28 conduct of the litigation. Furthermore, the maximum attorneys’ costs sought was disclosed to

1 Class Members, and no objection were received. For these reasons, the Court grants final
2 approval of the attorneys' costs of \$11,704.37.

3 19. Class Counsel seek Class Representative Enhancement Payment of \$10,000 to
4 Plaintiff. The Court considers the following factors in determining whether to pay an incentive
5 or enhancement payment to a class representative: (a) whether an incentive was necessary to
6 induce participation; (b) actions taken by the class representative to protect the interests of the
7 class; (c) degree to which the class benefited from the class representative's actions; (d) amount
8 of time and effort the class representative expended; (e) risk to the class representative in
9 commencing the lawsuit; (f) notoriety and personal difficulties encountered by the class
10 representative; (g) duration of the litigation; and (h) personal benefit (or lack thereof) enjoyed
11 by the class representative. (California Practice Guide, Civil Procedure Before Trial, ¶
12 14:146.10 (The Rutter Group 2012) (citing *Clark v American Residential Services, LLC* (2009)
13 175 Cal.App.4th 785, 804; *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726; *In re*
14 *Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1394; *Munoz v. BCI Coca-*
15 *Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412.) Plaintiff devoted several
16 hours to this litigation, which played an integral role in allowing this matter to eventually settle.
17 Specifically, Plaintiff assisted Class Counsel by participating in multiple conferences with Class
18 Counsel, gathering and reviewing documents produced by Defendant with Class Counsel, and
19 providing pertinent documents and information to Class Counsel. Plaintiff also helped Class
20 Counsel prepare for mediation and made himself available via Zoom and telephone during
21 mediation. Furthermore, Plaintiff took the time to review and approve the Settlement
22 Agreement, including its amendments, before signing it. Plaintiff freely chose to champion the
23 rights of the Class, accepted the risks and sacrifices associated with being a class representative,
24 and does not have interests averse to the Class. Finally, none of the Class Members have
25 objected to the Class Representative Enhancement Payment. Therefore, the Court grants final
26 approval of the Class Representative Enhancement Payment of ~~\$10,000~~ 3500.00

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1 20. The Settlement Administrator requests Settlement Administration Costs of
2 \$6,000. Based upon the work performed and yet to be performed, including the fact the Class
3 was provided notice of the Settlement Administration Costs and none objected, the Court grants
4 final approval of the Settlement Administration Costs of \$6,000.

5 21. Finally, the Court grants final approval of the PAGA Payment of \$15,000,
6 seventy-five percent (75%) of which (\$11,250) will be paid to the LWDA and twenty-five
7 percent (25%) of which (\$3,750) will be paid to the Eligible Aggrieved Employees.

8 22. The Settlement Administrator is directed to mail the Individual Settlement
9 Payments in envelopes bearing the notation, "YOUR CLASS ACTION SETTLEMENT
10 CHECK IS ENCLOSED" and take all actions in furtherance of the settlement administration.

11 23. Class Members will receive checks for their Individual Settlement Payments
12 and Individual PAGA Payments. Checks will remain negotiable for one hundred twenty (120)
13 calendar days. Any check not cashed within this time will be voided. The funds from the
14 uncashed checks shall be distributed by the Settlement Administrator to the State Controller's
15 Unclaimed Property Fund. ~~Any costs associated with administering the remaining funds under~~
16 ~~described herein (e.g., bank stop-payment charges, settlement administration costs associated~~
17 ~~with any reserve amount) or payments to the State Controller's Unclaimed Property Fund will~~
18 ~~be deducted before their deposit to the State Controller's Unclaimed Property Fund. The~~
19 ~~uncashed checks shall remain in the Settlement Administrator's Qualified Settlement Fund and~~
20 ~~not be distributed to the State Controller's Unclaimed Property Fund until the court enters an~~
21 ~~amended judgment pursuant to Code of Civil Procedure section 384(a).~~

22 24. The Settlement Administrator will mail reminder postcards to Class Members
23 whose settlement checks have not been negotiated within sixty (60) days after their mailing.

24 25. If any of the Class Members are current employees of Defendant, the
25 distribution mailed to those employees is returned to the Settlement Administrator as being
26 undeliverable, and the Settlement Administrator is unable to locate a valid mailing address, the
27 Settlement Administrator shall arrange with Defendant to have those distributions delivered to
28 the employees at their place of employment.

1 26. Once the Court grants this Order of Final Approval and Judgment, the
2 Settlement Administrator will mail a notice of entry of judgment to Class Members alongside
3 their settlement checks via regular First-Class U.S. Mail. The notice of entry of judgment will
4 state, "The Superior Court of California, County of Riverside, granted final approval of the
5 *Douglas Nguyen v. Brenner-Fiedler & Associates, Inc.* matter, Case Number CVRI2100690, on
6 January 6, 2023. As a result, the Settlement Administrator has enclosed your settlement check
7 alongside this notice of entry of judgment."

8 27. All Parties, including each and all Class Members, are bound by this Order of
9 Final Approval and Judgment and by the Settlement Agreement. All Class Members shall be
10 deemed to have entered the Settlement Agreement.

11 28. Without affecting the finality of this Order of Final Approval and Judgment in
12 any way, this Court retains continuing jurisdiction over: (a) implementation of the Agreement
13 and any award or distribution of the Maximum Settlement Amount, including interest earned
14 thereon; (b) disposition of the Maximum Settlement Amount; (c) hearing and determining
15 applications for the Attorneys' Fees and Costs; and (d) all Parties hereto for the purpose of
16 construing, enforcing, and administering the Agreement.

17 29. Without affecting the finality of this Order of Final Approval and Judgment, the
18 Court shall retain continuing jurisdiction over this lawsuit and the Parties, including all Class
19 Members and all matters pertaining to the implementation and enforcement of the terms of the
20 Settlement. Except as provided to the contrary herein, any disputes or controversies arising with
21 respect to interpretation, enforcement, or implementation of the Settlement shall be presented by
22 motion to the Court for resolution.

23 30. A Final Report (Nonappearance) Hearing is scheduled on June 30, 2023 before
24 this same court and department. Within five (5) court days before this hearing, Plaintiff shall
25 file a report (declaration) concerning the amount of money distributed along with a proposed
26 amended judgment.

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1 31. This Order of Final Approval and Judgment is intended to be a final disposition
2 of the above-captioned action in its entirety and is intended to be immediately appealable.
3 Subject to the Court's continuing jurisdiction as set forth above, the Court directs the Clerk of
4 the Court to enter Order of Final Approval and Judgment.

5 32. There is no just reason for any delay in the entry of this Order of Final Approval
6 and Judgment approving the Settlement. Pursuant to this, immediate entry by the Clerk of the
7 Court is expressly directed.

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9 **IT IS SO ORDERED.**

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11 DATED: January 6, 2023



HONORABLE CRAIG RIEMER
SUPERIOR COURT JUDGE

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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 Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com.

On January 9, 2023, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Nguyen v. Brenner-Fiedler & Associates, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-873416-22**
Court Case No.: CVRI2100690
Riverside 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 January 9, 2023, at Pasadena, California.



Mariah Anderson