

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SOUTHEAST DISTRICT/NORWALK COURT

PETER OUN

Plaintiff,

vs.

DUNCAN INDUSTRIES, INC., A CALIFORNIA
CORPORATION

Defendant

) Case No.: 23NWCV00280

) ORDER/RULING

FILED

Superior Court of California
County of Los Angeles

PETER OUN V. DUNCAN INDUSTRIES, INC.

JUN 26 2024

CASE NO.: 23NWCV00280

David W. Slayton, Executive Officer/Clerk of Court

HEARING: 6/26/24 @ 9:30 AM

By: K. Caudill, Deputy

#2

RULING

Plaintiff Peter Oun's motion for final approval of class and representative action settlement is
GRANTED.

Moving Party to give NOTICE.

The motion is unopposed as of June 21, 2024.

Background

Plaintiff Peter Oun ("Plaintiff" or "Named Plaintiff") moves for an order granting final approval of
the proposed settlement with Defendants Duncan Industries, Inc. ("Defendant") on the terms and

1 conditions set forth in the Parties' Settlement Agreement and Release of Claims ("Settlement
2 Agreement" or "Settlement") between Plaintiff and Defendant. (Decl. Gaines, ¶ 17, Ex. B.)
3

4 On March 13, 2024, the Court granted Plaintiff's motion for preliminary approval of class action
5 settlement. The parties had agreed to a proposed distribution of the \$300,000.00 settlement as
6 follows: (1) attorney's fees up to \$105,000.00; (2) litigation costs up to \$15,000.00; (3) class
7 representative incentive award up to \$10,000.00; (4) settlement administration costs up to
8 \$9,000.00; (5) PAGA penalties in the amount of \$20,000.00 (75% to be paid to the Labor and
9 Workforce Development Agency and 25% to be paid to aggrieved employees/class members); and
10 (6) the net settlement—i.e., the amount remaining from the gross settlement after deducting
11 attorney's fees, litigation costs, settlement administration costs, the class representative incentive
12 award, and PAGA penalties—to be distributed to class members. (Min. Order, 3/13/24.) The Court
13 also found a presumption of fairness. (Min. Order, 3/13/24.) In addition, the Court approved the
14 proposed notice to class members. (Min. Order, 3/13/24.)
15

16 Now, the parties propose to distribute the \$300,000.00 as follows: (1) attorney's fees of \$105,000.00;
17 (2) litigation costs of \$12,835.55; (3) class representative incentive of \$10,000.00; (4) settlement
18 administration costs of \$5,950.00; (5) PAGA penalties in the amount of \$20,000.00 (75% to be paid
19 to the Labor and Workforce Development Agency and 25% to be paid to aggrieved employees/class
20 members); and (6) the net settlement of \$146,214.45 to be distributed to class members.
21

22 Discussion

23

24 As a "fiduciary" of the absent class members, the trial court's duty is to have sufficient
25 information to determine if the settlement is fair, adequate, and reasonable. (7-Eleven Owners for
26 Fair Franchising v. The Southland Corp. (2000) 85 Cal.App.4th 1135, 1151.)
27
28

1 In determining whether to approve a class settlement, the court's responsibility is to
2 "prevent fraud, collusion or unfairness to the class" through settlement and dismissal of the class
3 action because the rights of the class members, and even named plaintiffs, "may not have been
4 given due regard by the negotiating parties." (Consumer Advocacy Group, Inc. v. Kintetsu
5 Enterprises of America (2006) 141 Cal.App.4th 46, 60.)

6
7 To aid the Court in the determination of the fairness of the settlement, Wershba v. Apple
8 Computer, Inc. (2001) 91 Cal.App.4th 224, 244-45 discusses factors that the Court should consider
9 when testing the reasonableness of the settlement.

10
11 A presumption of fairness exists where: (1) the settlement is reached through arm's length
12 bargaining; (2) investigation and discovery are sufficient to allow counsel and the Court to act
13 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
14 small. (Wershba v. Apple Computer, Inc., supra, 91 Cal.App.4th at p. 245.) The test is not the
15 maximum amount plaintiff might have obtained at trial on the complaint but, rather, whether the
16 settlement is reasonable under all the circumstances. (Id. at 250.)

17
18 In making this determination, the Court considers all relevant factors including "the
19 strength of [the] plaintiffs' case, the risk, expense, complexity and likely duration of further
20 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
21 the extent of discovery completed and the stage of the proceedings, the experience and views of
22 counsel, the presence of a governmental participant, and the reaction of the class members to the
23 proposed settlement.'" (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 128.)

24
25 **A. Analysis of Settlement Agreement**

26
27 **1. Presumption of Fairness**

1 The Court incorporates by reference its discussion of the factors and evidence it considered
2 in determining the settlement is entitled to a presumption of fairness. (3/13/24 Ruling, pgs. 5-6.)
3

4 The only factor the Court did not reach in its ruling on the motion for preliminary approval
5 was the percentage of the class that has objected, which could not be determined until the instant
6 hearing. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter
7 Group 2011) ¶14:139.18.) Plaintiff submitted evidence the Administrator has not received any
8 Requests for Exclusion from Class Members and has received no objections to the Settlement.
9 (Decl. Salinas, ¶¶9, 13.)
10

11 Based on the foregoing, the Settlement is entitled to a presumption of fairness.
12

13 2. Is the settlement fair, adequate, and reasonable?
14

15 The proposed settlement does not change the total amount offered in the settlement and nearly all
16 factors contributing to the Court's determination of whether the settlement is fair, adequate, and
17 reasonable remain unchanged. Thus, the Court incorporates by reference its discussion of the
18 factors contributing to whether the settlement is fair, adequate, and reasonable. (3/13/24 Ruling,
19 pgs. 5-6.) The Court can now consider the factor of reaction of class members to the settlement,
20 given that the notice requirements have been fulfilled.
21

22 Reaction of the class members to the proposed settlement.
23

24 As of May 29, 2024, there are no outstanding disputes, given that Phoenix Settlement
25 Administrators has received no requests for exclusion, no objections, and no disputes of work
26 weeks from the class members. (Decl. Salinas, ¶¶ 9-11, 13.) Given the non-opposition from the class
27 members, the proposed settlement appears to be well-received.
28

B. Attorney Fees and Costs

Class Counsel requests an award of \$105,000 (35% of the gross Maximum Settlement Amount) in fees and \$12,835.55 in costs. (Decl. Gaines, ¶¶ 76, 77.)

“Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method.” (Wershba v. Apple Computer, Inc., supra, 91 Cal.App.4th at p. 254.) Here, class counsel requests attorney fees using the percentage method but also provides sufficient information for the Court to assess whether the requested fees are reasonable pursuant to the lodestar method. (Decl. Gaines, ¶¶ 62-72.)

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.) The fee request represents 35 percent of the gross settlement amount, which is the average generally awarded in class actions. (See In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn. 13 [“Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].)

The lodestar amount for Class Counsel is \$53,120.00, based on 37 hours of work at a rate of \$750.00 per hour for Alex Katofsky; 24.7 hours of work at a rate of \$700.00 per hour for Daniel Gaines; 9.6 hours of work at a rate of \$625.00 per hour for Evan Gaines; and 10.40 hours of work at \$200.00 per hour for Amelia Booth. (Decl. Gaines, ¶ 65, Ex. E.) Class Counsel requests a multiplier of 1.98 given the contingent nature of the case; the experience, reputation, ability of counsel, skill displayed in litigation; results achieved; and preclusion of other employment. (Decl. Gaines, ¶¶ 62, 64, 66, 67, 68, 69, 71, 72.) The Court grants the multiplier figure.

Class Counsel requests \$12,835.55 in costs, which is less than the \$15,000 cap preliminarily approved for which Class Members were given notice and deemed unobjectionable. (Decl. Gaines, ¶

1 77, Ex. F.) The costs include court fees, mediation fees, research fees, postage, service of process,
2 expenses associated with mediation, travel expenses, and photocopy charges. (Decl. Gaines, ¶ 77,
3 Ex. F.) The costs appear to be reasonable in amount and reasonably necessary to this litigation.

4
5 Based on the foregoing, the Court awards \$105,000 in attorneys' fees and \$12,835.55 in attorneys'
6 costs.

7
8 **C. Incentive Award to Class Representative**

9
10 Plaintiff requests a class representative payment of \$10,000. (Motion, pg. 16; Decl. Gaines, ¶ 58.)

11
12 When determining whether incentive awards are appropriate, courts consider a variety of factors,
13 which include the actions the plaintiff has taken to protect the interests of the class, the degree to
14 which the class has benefitted from those actions, and the amount of time and effort the plaintiff
15 expended in pursuing the litigation. (Clark v. Am. Residential Servs. LLC (2009) 175 Cal. App. 4th
16 785, 804.)

17
18 Plaintiff's contributions to this litigation included the following: (1) assisted Counsel in
19 investigating and substantiating the claims alleged in this action, including multiple interviews with
20 counsel to review facts, documents, and Defendant's policies; (2) assisted in the preparation of the
21 complaint; (3) produced evidentiary documents to Counsel; and (4) assisted in the settlement of this
22 litigation. (Decl. Gaines, ¶¶ 58-61.)

23
24 Based on the above, as well as the benefits obtained on behalf of the class, the Court grants the
25 Class Representative Payment in the requested amounts of \$10,000.

26
27 **D. Claims Administration Costs**

1 The claims administrator, Phoenix Claims Administrator, requests \$5,950 for the costs of
2 settlement administration. (Decl. Salinas, ¶18.) This is less than the \$9,000 requested in the
3 preliminary approval.

4
5 Based on the above, the Court awards settlement administration costs in the requested amount of
6 \$5,950.

7
8 **Conclusion**

9
10 Based on the foregoing, the Court grants final approval of the class action settlement as follows:

- 11
- 12 (1) The Court grants final approval of the Settlement;
 - 13
 - 14 (2) The Court certifies the class for purposes of settlement;
 - 15
 - 16 (3) The Court appoints Plaintiff as Class representative for settlement purposes;
 - 17
 - 18 (4) The Court appoints Class Counsel as class counsel for settlement purposes;
 - 19
 - 20 (5) The Court finds that the settlement is fair, adequate, and reasonable;
 - 21
 - 22 (6) Class Counsel is awarded \$105,000 in attorneys' fees and \$12,835.55 in attorneys' costs;
 - 23
 - 24 (7) Class Representative Plaintiff is awarded an enhancement payment of \$10,000;
 - 25
 - 26 (8) The claims administrator, Phoenix, is awarded \$5,950 in costs.
 - 27
 - 28

IT IS SO ORDERED.

Dated: 6/26/24


JULIAN C. RECANA
JUDGE OF THE SUPERIOR COURT