

ON 11/08/2024

By /s/ Nelson, Ashlee

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10/28/2024

CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO**

**CHRISTOPHER FOX, THOMAS SIMS,
and KYREE WASHINGTON**, individually
and on behalf of all others similarly situated,

Plaintiffs,

vs.

VERKADA, INC., a Delaware Corporation,
Defendants.

CASE NO. 23-CIV-00193

SG
**SECOND REVISED ~~[PROPOSED]~~ ORDER
AND JUDGMENT GRANTING MOTION FOR
FINAL APPROVAL OF CLASS,
COLLECTIVE, AND PAGA ACTION
SETTLEMENT**

1 The Court rules on Plaintiffs Christopher Fox, Thomas Sims, and Kyree Washington's
2 ("Plaintiffs") unopposed motion for final approval of class, collective, and representative action
3 settlement and motion for approval of attorneys' fees and costs, and class representative
4 payments as follows:

5 **Background**

6 This is a consolidated wage and hour class, FLSA collective and PAGA representative
7 action.

8 On March 5, 2024, this Court granted preliminary approval of the Settlement Agreement
9 between Plaintiffs and Defendant Verkada, Inc. ("Defendant"). On March 21, 2024, the Court
10 modified its preliminary approval order, *sua sponte*, ordering that the Response Deadline be
11 extended by an additional 60 days for all persons whose notice was re-mailed, and requesting
12 additional briefing on whether the opt-in procedure for the FLSA claim is violative of California
13 law.

14 After reviewing the briefing in the motion for final approval, the Court finds that the
15 Consent to Join form, which was previously approved by this court as to form, is an appropriate
16 procedure for the FLSA portion of the Settlement.

17 As set forth in the Declaration of Cassandra Polites on behalf of the settlement
18 administrator, ILYM Group, in accordance with the preliminary approval order, ILYM mailed
19 out the approved class notices on May 2, 2024 to 1,355 putative class members via U.S. first class
20 mail. (ILYM Decl., ¶ 8.) Polites declares that 43 of the notices were deemed undeliverable. (Id.,
21 ¶ 12.) Further, Polites received no objections, one workweek dispute which was overruled based
22 on Defendant's records, and two requests for exclusion. (Id., ¶¶ 14-15, 17.) In the end, there were
23 689 Settlement Class Members, representing a 99.7% participation rate. (MPA Final Approval,
24 p. 1:17-20.)

25 As for the Settlement Collective Group, as set forth in the Supplemental Declaration of
26 Cassandra Polites (Supp. ILYM Decl.) 313 valid Consent to Join forms were received from Collective
27 Members, representing a 23.45% opt-in rate. (Id. ¶ 5.)

28 Based upon the foregoing information, the Court finds the notice adequate.

1 **The Court Grants Approval of the Settlement**

2 In reviewing the evidence presented for this motion, the Court finds that all the
3 conditions for final approval have been met and the Court gives final approval to the
4 settlement. (Code of Civ. Proc., § 382; *Richmond v. Dart Industries* (1981) 29 Cal.3d 462, 470.)
5 The class members were provided proper notice as set forth in the ILYM Declaration. The class
6 is ascertainable in that the Class Members have already been identified by Defendant and they
7 received notice of the class settlement.

8 The settlement amount is fair and reasonable and was negotiated at arms' length. As
9 Plaintiffs explain, the Gross Settlement Amount was 16.9% of the maximum potential recovery on
10 all claims and approximately 59% of the class's realistic recovery. (MPA Final App. at pp. 7:26-
11 8:18.) The parties engaged in discovery and class counsel is experienced. (Id. at p. 9:1-23.)

12 There is a community of interest in that common questions of law and fact predominate
13 involving whether Defendant misclassified Class and Collective Members as exempt. For
14 settlement purposes, this community of interest is sufficient. Plaintiffs' claims are typical of the
15 class claims because Plaintiffs are alleged to have suffered the same injury as other Class and
16 Collective Members. Plaintiffs Kyree Washington, Thomas Sims, and Christopher Fox adequately
17 represent the class and collective, as set forth in their declarations and in having experienced
18 class counsel. The settlement avoids the risk of the uncertainty of litigation. The settlement is fair
19 adequate and reasonable. The law favors settlement and the fact that the class and collective
20 might be able to obtain more from a trial must be balanced against the risk of not having a class
21 certified, receiving less than the settlement, including a defense verdict, the time and money that
22 it would take to take the case to trial and through a potential appeal, and the potential for a change
23 in law. Defendant raised numerous defenses. The fact that no Class Member out of 691 objected
24 to the settlement also strongly supports approval of the settlement.

25 **The Court Grants Attorneys' Fees, Costs and Service Representative Awards**

26 The Gross Settlement Amount is 5,907,342.70. Based on the information provided in the
27 motion and counsel's declarations, the court awards 28% of this settlement or \$1,654,055.96 in
28 attorneys' fees. While a common fund fee is appropriate here, even a proper common fund-based

1 fee award should be reviewed through a lodestar cross-check. In *Laffitte v. Robert Half*
2 *International* (2016) 1 Cal.5th 480, 503 (*Laffitte*), the Supreme Court endorsed the use of a
3 lodestar cross-check as a way to determine whether the percentage allocated is reasonable. The
4 Supreme Court stated: “If the multiplier calculated by means of a lodestar cross-check is
5 extraordinarily high or low, the trial court should consider whether the percentage used should
6 be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not
7 necessarily required to make such an adjustment.” (*Id.*, at p. 505.)

8 In this case, the Court believes that a fee of 28% is the proper award of attorneys’ fees.
9 (See, e.g., *Laffitte, supra*, 1 Cal.5th at p. 506 [“33 1/3 percent of the common fund is consistent
10 with, and in the range of, awards in other class action lawsuits”]; *Chavez v. Netflix* (2008) 162
11 Cal.App. 4th 43, 66 fn. 11 [final fee award was 27.9% of the benefits].) This Court may use its own
12 experience to determine the value of attorneys’ fees. (*Spencer v. Collins* (1909) 156 Cal. 298,
13 306 [“The value of attorney’s services is a matter with which a judge must necessarily be familiar.
14 When the court is informed of the extent and nature of such services, its own experience furnishes
15 it with every element necessary to fix their value.”]; *Reynolds v. Ford Motor Company* (2020) 47
16 Cal.App.5th 1105, 1113-14 [“The trial court acted well within its discretion in using ‘the prevailing
17 market value in the community for similar legal services’ relying on its personal knowledge and
18 familiarity with the area legal services, as the ‘touchstone’ for determination” of the reasonable
19 hourly rates.” (citations omitted)]). While Plaintiffs’ counsel has requested one-third of the
20 common fund, or 33.33%, the Court has decreased that amount to 28%. The Court reaches this
21 amount after reviewing the facts of this case and other case law, including the citations provided
22 in Plaintiffs’ motion. This Court decided no motions, only held one regularly scheduled case
23 management conference, and there was limited discovery (no depositions are identified as being
24 taken).

25 The Court performs a lodestar cross-check. The Hammond Decl. describes the attorneys
26 who worked on the case, their experience, the work that they performed and their hourly rate.
27 Based upon the court’s knowledge and experience in San Mateo County, the court finds the
28 hourly rates reasonable for San Mateo County.

Hammond states that the lodestar is \$504,992 based on 609.2 hours and has requested hourly rates of \$575 to \$1,025. The declarations only provide summaries of tasks rather than billing records. While billing records are not required, there needs to be sufficient information for the court to review the work performed. The Court finds that it appears that there was work done by Counsel or a Principal that should have been delegated to associates, but in general, the work performed was in line with what was is reasonable for this type of case.

The Court recognizes that declining to award percentage-of-the-fund awards that are multiples of lodestars may have the effect of punishing counsel for being efficient and that counsel are entitled to compensation for their efforts.

Plaintiffs' counsel's attorney fee request amounts to a multiplier of 3.9, which the court awards in part. The lodestar amount “ ‘may be adjusted by the court based on factors including ... (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award.’ [Citations]” (*Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 899.) “ ‘[T]he purpose of a fee enhancement is primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of nonpayment in contingency cases as a class.’ [Citation] ‘[T]he unadorned lodestar reflects the general local hourly rate for a fee-bearing case; it does not include any compensation for contingent risk, extraordinary skill, or any other factors a trial court may consider. . . . The adjustment to the lodestar figure, *e.g.*, to provide a fee enhancement reflecting the risk that the attorney will not receive payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather, it is intended to approximate market-level compensation for such services, which typically includes a premium for the risk of nonpayment or delay in payment of attorney fees.’ [Citation] In cases involving the enforcement of constitutional or statutory rights, ‘such fee enhancements may make such cases economically feasible to competent private attorneys. [Citation.] “[M]ost lawyers of this quality do seem to consider the prospects of success and the fee recoverable before adding to their crowded calendars a case in which payment is contingent.” ’ [Citation]” (*Ibid.*) The trial court can

1 consider contingent risk and delay in determining the reasonable hourly rates of the attorneys
2 and not consider it when considering a multiplier. (*California DUI Lawyers Assn. v. Department of*
3 *Motor Vehicles* (2022) 77 Cal.App.5th 517, 537.)

4 The Court acknowledges the result obtained, the issues presented in this case and the
5 contingent nature of this case. Although counsel has had to wait for payment, they started
6 mediating rather than litigating the case early and the case was settled in September of 2023.
7 Plaintiffs' counsel therefore knew that the risk of no payment was slight. The court believes that
8 a 28% fee and the resultant multiplier of 3.2 is the appropriate amount, which fully compensates
9 counsel for the work performed and the risk.

10 The fee awarded by the Court is within the range of class action awards. (*Laffitte, supra*,
11 1 Cal.5th at p. 506 ["33 1/3 percent of the common fund is consistent with, and in the range of,
12 awards in other class action lawsuits"]; *Chavez v. Netflix, supra*, 162 App. 4th 43, 66 fn. 11 [final fee
13 award was 27.9% of the benefits].) A 25% recovery is the benchmark in the Ninth Circuit (*Six (6)*
14 *Mexican Workers v. Arizona Citrus Growers* (9th Cir. 1990) 904 F.2d 1301, 1311; *Lealao v. Beneficial*
15 *California, Inc.* (2000) 82 Cal.App.4th 19, 24, fn. 1.)

16 The Court awards the requested costs of \$29,770.64 and the costs of ILYM of \$26,000, and
17 finds these costs all reasonable and necessary.

18 The Court awards \$10,000 each to Kyree Washington, Thomas Sims, and Christopher Fox.
19 The court has reviewed their declarations and recognizes the work that they have performed and
20 the risks involved in serving as class representatives, and they have provided a general release.

21 A compliance hearing is set for October 23, 2025 at 9:00 a.m. in Department 3. Plaintiffs'
22 Counsel shall file and serve a compliance report at least five court days before the hearing.

23 The Court retains exclusive and continuing jurisdiction over the litigation for purposes of
24 supervising, implementing, interpreting, and enforcing this Final Approval Order and the Settlement
25 Agreement, and, if necessary, to conduct a further hearing on distribution of settlement amount.

26 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

27
28 Dated: 11/05/2024, 2024

Electronically

SIGNED

By /s/ Greenberg, Susan

Hon. Susan L. Greenberg

Judge of the Superior Court

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