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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

ISABEL RODRIGUEZ and DANIEL TOVAR,
on behalf of themselves all employees similarly
situated,
Plaintiffs,
v.
ROY MILLER PAINTING, INC., a California
Corporation; and DOES 1 through 50, inclusive,
Defendants.

Case No.: 30-2023-01314830-CU-OE-CXC

[Assigned for all purposes to Hon. Melissa R.
McCormick, Dept. CX104]

**CLASS AND PAGA REPRESENTATIVE
ACTION**

**PLAINTIFFS' RESPONSE TO CLASS
MEMBER JOHNNY CARLOS MORALES'
OBJECTION TO SETTLEMENT**

Date: February 20, 2025
Time: 2 p.m.
Courtroom: Dept. CX104
Judge: Hon. Melissa R. McCormick

Action Filed: March 20, 2023
Trial: Not Set

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1 **I. INTRODUCTION**

2 Class Member Johnny Carlos Morales (“Mr. Morales”) submitted an objection to this class and
3 PAGA action settlement (“Objection”). See Declaration of Nick Castro [“Castro Decl.”], ¶12, Exhibit B.
4 It is the only objection received from the Class Members, and the remaining 147 Class Members did not
5 submit any objections, workweek disputes or opt out notices. Plaintiffs ISABEL RODRIGUEZ and
6 DANIEL TOVAR (“Plaintiffs”) respectfully request that this Court overrule the Objection and finally
7 approve the JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION
8 SETTLEMENT and FIRST AMENDMENT TO JOINT STIPULATION OF CLASS AND PAGA
9 REPRESENTATIVE ACTION SETTLEMENT (“Settlement” or “Agreement”) with Defendant ROY
10 MILLER PAINTING, INC. (“Defendant”) based on the following grounds.

11 1. The Objection is not a genuine objection since class members in class actions are supposed to
12 object to the specific terms of settlement. Mr. Morales does not disagree with the Settlement terms as his
13 Objection contains several general sentences denying seven causes of action in the original complaint. In
14 fact, this is not a genuine objection to the Settlement but a generic response to Plaintiffs’ initial
15 complaint. This one ground is enough for overruling the Objection.

16 2. Mr. Morales cannot assess claims alleged in this action as a lay person, and it is not clear if he
17 had a chance to review his records.

18 3. Plaintiffs did not have a chance to review Mr. Morales’ individual records or depose Mr.
19 Morales.

20 4. Mr. Morales’ personal experience cannot affect the Settlement for the entire class and PAGA
21 group. If Mr. Morales’ personal experience does not comport to the claims alleged in this action, Mr.
22 Morales should have submitted an opt out notice, not an objection.

23 5. The Settlement is fair, adequate and reasonable and the result of arms’ length negotiations and
24 reviewed records and documents, as discussed in detail below.

25 **II. THE OBJECTION SHOULD BE OVERRULED AS THE OBJECTION IS NOT**
26 **GENUINE AND DOES NOT CONTEST THE TERMS OF SETTLEMENT**

27 The Objection is not a genuine objection since class members in class actions are supposed to
28 object to settlement by addressing the specific terms of the proposed settlement, in particular contesting

1 the fairness, adequacy or reasonableness of settlement by disagreeing, for example, with the gross
2 settlement or individual settlement amounts, class representatives' service payments, attorneys' fees and
3 costs and other settlement terms. However, Mr. Morales submitted the Objection containing several
4 general sentences denying seven causes of action in the original complaint. In fact, this is a response to
5 Plaintiffs' original complaint, not a genuine objection to the Settlement.

6 Instead of disagreeing with the terms of the Settlement for the benefit of himself and other Class
7 Members arguing that class members should receive more settlement funds or deserve better settlement
8 terms, Mr. Morales seems to step into the shoes of Defendant to deny all wrongdoing by Defendant, to
9 generally respond to claims in this action instead of objecting to the settlement terms and to defend
10 interests of Defendant and not class members. Plaintiffs believe this is a confusion from Mr. Morales'
11 side as to the purpose of the objection that class members can submit. Most importantly, it is unclear
12 from the Objection if by denying claims in this action, it is implied that that no other Class Members are
13 owed any unpaid wages or other damages by Defendant. For the reasons described in this section only,
14 the Objection did not serve its real purpose, is meritless and not genuine and should be disregarded or
15 overruled.

16 **III. THE OBJECTION SHOULD BE OVERRULED AS MR. MORALES CANNOT** 17 **ASSESS CLAIMS ALLEGED IN THIS ACTION AS A LAY PERSON**

18 The Objection contains several general sentences denying causes of action in the original
19 complaint. In particular, Mr. Morales stated in the Objection that: 1. Defendant paid all wages due
20 (denying the first cause of action), 2. Defendant always encouraged and enforced meal periods and rest
21 periods complying with OSHA's regulations while employed (denying the second and third causes of
22 action); 3. From time of his termination Defendant was paid in full and promptly (denying the fifth cause
23 of action); 4. All his wage statements were accurate (denying fourth cause of action); 5. Business travel
24 expenses were always compensated (denying the sixth cause of action); 6. As long as he worked,
25 Defendant was not unfair not misleading, nothing was withheld from him, and Defendant treated him
26 with fairness and in full compliance with law (denying the seventh cause of action). See Castro Decl.,
27 ¶12, Exhibit B.

28 First of all, it is not clear if Mr. Morales even had a chance to review his personal employment

1 records prior to submitting the Objection denying in general claims brought by Plaintiffs.

2 Second, even if Mr. Morales reviewed his records, the Objection is groundless as Mr. Morales
3 cannot assess all the claims alleged by Plaintiffs in this action as a lay person without the assistance of an
4 expert or attorney. For example, one of the theories of liability for unpaid wage claims is time rounding
5 which harmed class members and resulted in unpaid wages. Mr. Morales could not have assessed
6 rounding claim without the help of an expert. Mr. Morales could not have also assessed whether his
7 wage statements were accurate since it is improbable that he is aware of California law requirements
8 regarding the wage statements or whether the wage statements are accurate as to whether they included
9 payment for actual time worked by Mr. Morales. Additionally, Mr. Morales stated in his Objection that
10 he was reimbursed for all travel expenses while the unreimbursed business expense claim in this action
11 was based on a totally different theory of liability. The Objection does not deny all actual allegations or
12 claims in this action. Instead, the Objection states general unsubstantiated allegations denying claims in a
13 general form.

14 Therefore, the Objection is groundless as Mr. Morales did not address all potential theories of
15 liability and concrete allegations in this action which are basis for Defendant's liability and settlement
16 and only provides general denial of causes of action without addressing specific allegations or claims
17 without an opportunity to assess the claims and all theories of liability and specific allegations with the
18 help of an expert and/or attorney.

19 **IV. THE OBJECTION SHOULD BE OVERRULED AS PLAINTIFFS DID NOT HAVE**
20 **A CHANCE TO REVIEW MR. MORALES' INDIVIDUAL RECORDS OR DEPOSE MR.**
21 **MORALES**

22 The Objection should also be overruled as while Class Counsel had a chance to conduct an
23 informal discovery and review significant amount of pay and time records for evaluation of claims which
24 led to reaching a settlement after arms' length negotiations, Class Counsel is unaware if Mr. Morales'
25 records were included in the redacted informal sample data. Therefore, Plaintiffs did not have a chance to
26 review and evaluate Mr. Morales' personal records and depose Mr. Morales to evaluate his personal
27 claims to be able to substantively respond to the Objection.

28 Additionally, Mr. Morales was employed only during certain period of time during the Class

1 Period, i.e. from October 7, 2019 to April 13, 2022, while the Class Period in the Settlement is defined as
2 from March 20, 2019 through May 1, 2023.

3 While Plaintiffs believe the Settlement is fair, adequate and reasonable for the Class and PAGA
4 group in light of the adequate evaluation of claims, review of class members' sample records, potential
5 liability and arms' length negotiations, as described in detail in Chapter VI of this response and the
6 concurrently filed Plaintiffs' motion for final approval of the Settlement, Plaintiffs do not believe they are
7 placed in a fair position to reply to the Objection addressing Mr. Morales' individual claims without
8 having an opportunity to conduct discovery as to Mr. Morales' individual claims.

9 **V. THE OBJECTION SHOULD BE OVERRULED AS MR. MORALES' PERSONAL**
10 **EXPERIENCE CANNOT AFFECT SETTLEMENT FOR ALL CLASS MEMBERS**

11 Even if Mr. Morales' personal experience does not comport to the claims alleged in this action,
12 his personal experience as one of 148 class members cannot affect the Settlement. The Settlement is fair,
13 adequate and reasonable in light of the adequate evaluation of claims, review of class members' sample
14 records, potential liability and arms' length negotiations, as described in detail in Chapter VI of this
15 response and the concurrently filed Plaintiffs' motion for final approval of the Settlement. No other Class
16 Member objected to the Settlement.

17 Most importantly, even if Mr. Morales had a chance to review his personal records and believed
18 Defendant was in compliance with the law with regard to his individual claims, Mr. Morales did not have
19 a chance to review other Class Members' records or Defendant's policies and procedures to be able to
20 assess class and PAGA claims alleged in this action. Mr. Morales is not in a position to provide any
21 opinion and make contentions regarding the viability of class claims alleged in this action. In contrast,
22 the parties reached the Settlement after thorough review of the policies and sample records and
23 investigation of claims with the help of an expert and a highly respected mediator, as described in detail
24 in Chapter VI.

25 If Mr. Morales does not believe he is owed any settlement funds from Defendant, Mr. Morales
26 should have submitted an opt out notice, not a groundless objection as by submitting the Objection he is
27 still bound by release in the Settlement and will remain a Class Member.
28

1 **VI. THE OBJECTION SHOULD BE OVERRULED AS THE SETTLEMENT IS FAIR,**
2 **ADEQUATE, REASONABLE AND A RESULT OF ARMS' LENGTH NEGOTIATIONS IN**
3 **VIEW OF DEFENDANT'S POTENTIAL LIABILITY EXPOSURE AND RISKS OF**
4 **CONTINUED LITIGATION**

5 The Objection should be overruled as the Settlement is reached after the Parties have conducted
6 informal discovery and investigation of the facts and law. Such discovery and investigation have
7 included, inter alia, the exchange of the sample pay and time records of class members and discoverable
8 information in preparation for the mediation session. The Parties have analyzed payroll and time data
9 pertaining to Plaintiffs and the Class during the relevant Class Period, including but not limited to the
10 numbers of former and current members of the Class, average workweeks, average rate of hourly pay,
11 sample pay and time records. In addition, Defendant also provided documents reflecting their wage and
12 hour practices during the Class Period as well as confidential financial data for evaluation of Defendant's
13 financial condition.

14 While Mr. Morales denied all seven causes of action in the original complaint, Plaintiffs' counsel
15 reviewed Defendant's records, documents and data with the help of an expert prior to mediation and
16 engaging in settlement negotiations. Despite Mr. Morales' contentions in the Objection that Defendant
17 complied to California Labor Code requirements, the review of the informally produced Defendant's
18 records and data and investigation of claims, as discussed above, confirmed violations of California
19 Labor Code by Defendant during the Class Period. Class Counsel were able to evaluate the probability of
20 class certification, success on the merits, and the reasonably obtainable maximum monetary exposure for
21 all claims. Class Counsel also investigated the applicable law regarding the claims and defenses asserted
22 in the litigation. On November 18, 2023, the Parties mediated before a mediator, Eve H. Wagner, Esq.,
23 who is a highly experienced and well-regarded mediator for wage and hour class action litigation. At the
24 mediation, the Parties discussed at length the burdens and risks of continuing with the litigation as well
25 as the merits of the claims and defenses and Defendant's financial condition. The Parties have been able
26 to reach a settlement at the mediation.

27 Based on the foregoing, Plaintiffs and Class Counsel have determined that the Settlement set
28 forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the

1 Class.

2 A settlement is presumptively fair where it is reached through arms' length bargaining, based on
3 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
4 experienced in similar litigation, and the percentage of objectors is small. *Dunk v. Ford Motor Co.*, 48
5 Cal.App.4th at 1802; *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for*
6 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to
7 approve a settlement, a trial court has broad powers to determine whether it is fair under the
8 circumstances of the case. *See, e.g., Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In
9 exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair, adequate,
10 and reasonable." *Dunk*, at 1801, quoting *Officers for Justice v. Civil Serv. Comm'n of San Francisco*, 688
11 F.2d 615, 625 (9th Cir. 1982).

12 Relevant factors in making this determination, include, but are not limited to:

13 [T]he complexity and likely duration of further litigation, the risk of maintaining class
14 action status through trial, the amount offered in settlement, the extent of discovery
15 completed and the state 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 *Id.* These factors require balancing, are non-exhaustive, and, as such, trial courts should tailor the factors
17 considered to each case and give due regard to "what is otherwise a private consensual agreement
18 between the parties." *Id.*

19 Here, the Settlement resulted from thorough, arms' length negotiations between experienced
20 counsel with the assistance of highly regarded mediator. (Tunyan Decl., ¶¶ 8-9,16.) Based on the totality
21 of that review, Plaintiffs estimated the potential exposure and then estimated risk factors to adjust the
22 reasonable expected outcome. The investigation and discovery that Plaintiffs' counsel conducted were
23 sufficient to provide them with enough information to intelligently evaluate the estimated exposure in
24 this action for purposes of negotiating the Settlement in view of the risks discussed below and are also
25 sufficient to allow this Court to do the same. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App.
26 4th 224, 245 (2001).

27 A settlement is not judged against what might have been recovered had Plaintiffs prevailed at
28 trial and does not have to provide 100% of damages sought to be fair and reasonable. "In the context of a

1 settlement agreement, the test is not the maximum amount Plaintiffs might have obtained at trial on the
2 complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba*, 91
3 Cal.App.4th at 250. Accordingly, because settlements involve compromise, even one that provides for
4 substantially narrower relief than would likely be obtained if the suit were successfully litigated can be
5 reasonable given that “the public interest may indeed be served by a voluntary settlement in which each
6 side gives ground in the interest of avoiding litigation.” *Id.*, quoting *Air Line Stewards & Stewardesses*
7 *Ass’n, Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972).

8 With respect to the claims asserted on behalf of the Class in this case, there are serious risks that
9 support the reduced compromise amount as described in the Motion for final approval of the Settlement
10 and Class Counsel declaration in support of final approval motion. (Tunyan Decl., ¶ 15.) In light of the
11 uncertainties of protracted litigation, the settlement amount reflects a fair and reasonable recovery for the
12 Class Members. (Tunyan Decl. ¶¶ 12-19.) The settlement amount is, of course, a compromise figure.
13 (Tunyan Decl. ¶ 16.) By necessity it took into account risks related to liability, damages, and the
14 defenses asserted by Defendant and Defendant’s financial condition. (*Id.*) Moreover, each Class
15 Member was given the opportunity to opt-out of the Settlement, allowing those who feel they have
16 claims that are greater than the benefits they can receive under this Settlement to pursue their own
17 claims. (*Id.*) For the **148** members of the Class, the average **gross** recovery including PAGA individual
18 payment is at least **\$1,222.97** per class member, and the estimated average **net** recovery for each Class
19 Member including PAGA individual payment is approximately **\$497.21**. (*Id.*) Given that Defendant
20 could challenge certification and liability, this is a significant sum to have achieved in settlement.
21 Moreover, a Class Member who worked a greater number of weeks for Defendant will receive a larger
22 share of the Settlement than a Class Member who worked for a shorter amount of time during the class
23 period. (*Id.*) After analyzing the claims in this matter, Plaintiffs have concluded that the value of this
24 Settlement is fair, adequate, and reasonable. (Tunyan Decl., ¶ 17.) The Proposed Method for Allocating
25 Settlement Funds Is Fair, Adequate, and Reasonable. As noted, the parties agreed to allocate the
26 Settlement Fund between all Class Members based on time worked by the Class Member during the
27 Class Period, in relation to the total amount of time worked by all participating Class Members
28 collectively during the class period. This proposed method is fair and reasonable because each Class

1 Member's actual potential damages vary based on the number of workweeks he or she actually worked
2 (e.g., Lab. Code § 226.7 provides for an extra hour of pay at the employee's regular rate of pay for each
3 violation, resulting in a higher potential damage when a higher number of incidents occur). A Class
4 Member who worked a greater number of weeks for Defendant will receive a larger payment under the
5 Settlement than a Class Member who worked for a shorter amount of time during the relevant period.
6 (Tunyan Decl., ¶¶ 10, 16.)

7 The proposed enhancement payments to Plaintiffs, the attorneys' fees and costs to Class counsel
8 and administration fees to the Settlement Administrator and PAGA allocation are also reasonable and
9 fair as discussed in detail in the concurrently filed Plaintiffs' motion for final approval of the Settlement.

10 **VII. CONCLUSION**

11 For all the foregoing reasons, because the Class meets the requirements for certification, because
12 the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the
13 proposed notice procedure and forms comport with Rule 3.766 and due process, and because the
14 Objections is not genuine and groundless, this Court should overrule the Objection and grant Plaintiffs'
15 motion for final approval of the Settlement.

16 Respectfully submitted,

17 Dated: January 22, 2025

TUNYAN LAW, APC

19 By: _____

Lilit Tunyan
Artur Tunyan

21 Attorneys for Plaintiffs Isabel Rodriguez and Daniel Tovar

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of
6 18 and not a party to the within action; my business address is 535 N. Brand Blvd., Suite 285,
7 Glendale, California 91203.

8 On the date indicated below, I served the document described as: **PLAINTIFFS' RESPONSE TO**
9 **CLASS MEMBER JOHNNY CARLOS MORALES' OBJECTION TO SETTLEMENT** on the
10 interested parties in this action by sending a true copy thereof to interested parties as follows and
11 as stated on the attached service list:

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25 *Attorneys for Defendant Roy Miller Painting, Inc.*

26 [✓] **BY E-MAIL:** I hereby certify that this document was served from Glendale,
27 California, by e-mail delivery on the parties listed herein at their most recent known e-
28 mail address or e-mail of record in this action.

[✓] **BY ELECTRONIC SERVICE:** Based on an agreement of the parties to accept electronic
service, I caused the documents to be sent to the persons at the electronic service addresses
listed above via electronic mail. I did not receive an error message.

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

Executed on January 22, 2025 at Glendale, California.

Lilit Tunyan

Name



Signature