

Electronically Filed  
by Superior Court of CA,  
County of Santa Clara,  
on 8/11/2021 4:22 PM  
Reviewed By: R. Walker  
Case #18CV336058  
Envelope: 7044073

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8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SANTA CLARA**  
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11  
12 VIOLETA BARAJAS, on behalf of herself, all  
13 others similarly situated,

14 Plaintiff,

15 vs.

16 IMAGE PROPERTY SERVICES, LLC, an  
17 Arizona limited liability company;  
18 COMMERCIAL SERVICE SOLUTIONS, LLC,  
19 an Arizona limited liability company; and DOES  
20 1 through 50, inclusive,

21 Defendants.

Case No. 18CV336058

**ORDER RE: MOTION FOR FINAL  
APPROVAL OF CLASS  
ACTION/PAGA SETTLEMENT;  
JUDGMENT**

22 The above-entitled matter came on for hearing on Wednesday, August 11, 2021, at 1:30  
23 p.m. in Department 3, the Honorable Patricia M. Lucas presiding. The court reviewed and  
24 considered the written submissions filed by the parties and issued a tentative ruling on Tuesday,  
25 August 10, 2021. No party contested the tentative ruling; therefore, the court orders that the  
26 tentative ruling be adopted as the order of the court, and hereby orders adjudges, and decrees as  
27 follows:

28 **I. INTRODUCTION**

This is a putative class and representative action arising out of various alleged wage and  
hour violations. The First Amended Complaint, filed November 13, 2020, sets forth the

1 following causes of action: (1) Failure to Provide Meal Periods; (2) Failure to Provide Rest  
2 Periods; (3) Failure to Pay Hourly Wages; (4) Failure to Indemnify; (5) Failure to Provide  
3 Accurate Written Wage Statements; (6) Failure to Timely Pay All Final Wages; (7) Unfair  
4 Competition; and (8) Civil Penalties.

5 The parties have reached a settlement. On February 10, 2021, the court granted  
6 preliminary approval of the settlement. Plaintiff Violeta Barajas (“Plaintiff”) now moves for  
7 final approval of the settlement.

## 8 **II. LEGAL STANDARD**

9 Generally, “questions whether a settlement was fair and reasonable, whether notice to the  
10 class was adequate, whether certification of the class was proper, and whether the attorney fee  
11 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*  
12 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48  
13 Cal.App.4th 1794.)

14 In determining whether a class settlement is fair, adequate and reasonable, the  
15 trial court should consider relevant factors, such as “the strength of plaintiffs’  
16 case, the risk, expense, complexity and likely duration of further litigation, the  
17 risk of maintaining class action status through trial, the amount offered in  
18 settlement, the extent of discovery completed and the stage of the proceedings, the  
19 experience and views of counsel, the presence of a governmental participant, and  
20 the reaction of the class members to the proposed settlement.”  
(*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48  
21 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688  
22 F.2d 615, 624.)

23 “The list of factors is not exclusive and the court is free to engage in a balancing and  
24 weighing of factors depending on the circumstances of each case.” (*Wershba v. Apple*  
25 *Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the “proposed  
26 settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is  
27 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and  
28 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*,  
quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n,*  
*etc.*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

1 The burden is on the proponent of the settlement to show that it is fair and  
2 reasonable. However “a presumption of fairness exists where: (1) the settlement  
3 is reached through arm’s-length bargaining; (2) investigation and discovery are  
sufficient to allow counsel and the court to act intelligently; (3) counsel is  
experienced in similar litigation; and (4) the percentage of objectors is small.”

4 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48  
5 Cal.App.4th at p. 1802.)

### 6 **III. DISCUSSION**

#### 7 **A. Provisions of the Settlement**

8 The case has been settled on behalf of the following class:

9 [A]ll non-exempt current and former employees of Defendants in California who  
10 worked for Defendants between October 10, 2014 and the date of preliminary  
approval....

11 The class period is October 10, 2014 through February 10, 2021, the date of preliminary  
12 approval. The PAGA period is October 10, 2017 through February 10, 2021.

13 According to the terms of settlement, defendants Image Property Services, LLC and  
14 Commercial Service Solutions, LLC (collectively, “Defendants”) will pay a total non-  
15 reversionary amount of \$322,000. (Declaration of Shaun Setareh in Support of Motion for  
16 Preliminary Approval of Class Action Settlement and Certification of Settlement Class, at  
17 Exhibit 1, Settlement Agreement, § D(2).) The total settlement payment includes attorney fees  
18 of \$107,333.33, costs up to \$25,000, a service award of \$5,000, settlement administration costs  
19 up to \$8,750, and a PAGA allocation of \$30,000 (\$22,500 of which will be paid to the Labor  
20 Workforce Development Agency). (*Id.*, at §§(D)(4)-(6).)

21 On April 20, 2021, the settlement administrator mailed notice packets to 666 class  
22 members. (Declaration of Taylor Mitzner Re: Status of Class Notice and Settlement  
23 Administration (“Mitzner Decl.”), ¶ 5. Ultimately, 3 notice packets have remained  
24 undeliverable. (*Id.* at ¶ 8.)

25 The settlement administrator received no objections to the settlement, no requests for  
26 exclusion, and no notice from class members of any disputes. (Mitzner Decl., ¶¶ 9-11.) Counsel  
27 confirmed at the hearing that they have no knowledge of objections by any class members.  
28

1 The highest payment is \$1,874.10, the lowest payment is \$5.29, and the estimated  
2 average payment is approximately \$246.01, without applicable taxes, withholdings, and  
3 employee garnishments. (*Id.* at ¶ 13.) The court previously found that the proposed settlement is  
4 fair, and the court continues to make that finding for purposes of final approval.

5 Plaintiff requests an incentive award in the amount of \$5,000. Plaintiff has submitted a  
6 declaration detailing her participation in the case, in which she states that she spent over 30 hours  
7 assisting counsel and participating in a mediation. (Declaration of Violeta Barajas, ¶ 9.)

8 The class representative’s efforts in the case resulted in a benefit to the class. Moreover,  
9 Plaintiff undertook risk by putting her name on the case because it might impact her future  
10 employment. (See *Covillo v. Specialtys Cafe* (N.D. Cal. 2014) 2014 WL 954516, at \*8  
11 [incentive awards are particularly appropriate where a plaintiff undertakes a significant  
12 “reputational risk” in bringing an action against an employer].) Accordingly, the court finds the  
13 incentive award is warranted and it is approved.

14 The court also has an independent right and responsibility to review the requested  
15 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*  
16 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff’s counsel  
17 requests attorney fees in the amount of \$107,333.33 (1/3 of the total settlement). Plaintiff’s  
18 counsel provides evidence demonstrating a total lodestar of \$97,337.50. (Declaration of Shaun  
19 Setareh in Support of Motion for Final Approval of Class Action Settlement, Award of  
20 Attorneys’ Fees, Reimbursement of Litigation Costs, and Enhancement Award (“Setareh Decl.”),  
21 ¶ 32.) This results in a multiplier of 1.10. The fees requested are reasonable as a percentage of  
22 the common fund and are approved.

23 Plaintiff’s counsel requests costs of \$14,170.95. (Setareh Decl., ¶ 28.) The costs are  
24 approved. As noted above, the Settlement Agreement provided for settlement administration  
25 costs up to \$8,750. The settlement administrator states that an estimated total for costs is \$9,150,  
26 which includes an unspecified estimated amount for costs not yet incurred. (Mitzner Decl.,  
27 ¶ 14.) The court approves settlement administration costs in the agreed-upon amount of \$8,750.  
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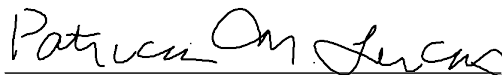
1 In the Order Re: Motion for Preliminary Approval, the court found that the designation of  
2 state agencies to receive payments of undistributed funds did not address the intent of Code of  
3 Civil Procedure section 384 that such payments be made to a nonprofit organization or  
4 foundation to support projects that will benefit the class or that promote the law consistent with  
5 the objectives and purposes of the underlying cause of action. Pursuant to the court's direction,  
6 the parties have agreed that such payments be made to the Employment Rights Program of Bet  
7 Tzedek. The court approves this agreement.

8 The motion for final approval of class action settlement is GRANTED, subject to the  
9 reduction in settlement administration costs.

10 Pursuant to Rule 3.769, subdivision (h), of the California Rules of Court, the court retains  
11 jurisdiction over the parties to enforce the terms of the Settlement Agreement, and the final  
12 Order and Judgment.

13 The court sets a compliance hearing for April 27, 2022, at 2:30 p.m. in Department 3. At  
14 least ten court days before the hearing, class counsel and the settlement administrator shall  
15 submit a summary accounting of the net settlement fund identifying distributions made as  
16 ordered herein, the number and value of any uncashed checks, amounts remitted to Defendant,  
17 the status of any unresolved issues, and any other matters appropriate to bring to the court's  
18 attention. Counsel may appear at the compliance hearing remotely.

19  
20 Dated: August 11, 2021



Patricia M. Lucas  
Judge of the Superior Court