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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
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11
12 SYLVIA BERNABE, as an individual and on
behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 899 CHARLESTON, a California corporation;
16 and DOES 1 through 50, inclusive,

17 Defendants.
18

Case No. 20CV366465

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

19 The above-entitled matter came on for hearing on Wednesday, December 8, 2021, at 1:30
20 p.m. in Department 3, the Honorable Patricia M. Lucas presiding. The court reviewed and
21 considered the written submissions filed by the parties and issued a tentative ruling on Tuesday,
22 December 7, 2021. No party contested the tentative ruling; therefore, the court orders that the
23 tentative ruling be adopted as the order of the court, and the court hereby orders, adjudges and
24 decrees as follows:

25 **I. INTRODUCTION**

26 This is a putative class and representative action arising out various alleged wage and
27 hour violations. The First Amended Class and Representative Action Complaint, filed on July
28 16, 2021, sets forth the following causes of action: (1) Violation of Labor Code §§ 10, 558, and

1 1194; (2) Violation of Labor Code § 226, subd. (a); (3) Violation of Labor Code §§ 201-203;
2 (4) Violation of Business and Professions Code 17200, et seq.; and (5) Violation of the Private
3 Attorney General Act (“PAGA”), Labor Code § 2698, et seq.

4 The parties have reached settlement. On August 19, 2021, the court granted preliminary
5 approval of the settlement. Plaintiff Sylvia Bernabe (“Plaintiff”) now moves for final approval
6 of the settlement.

7 **II. LEGAL STANDARD**

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

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

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

The burden is on the proponent of the settlement to show that it is fair and
reasonable. However “a presumption of fairness exists where: (1) the settlement
is reached through arm’s-length bargaining; (2) investigation and discovery are

1 sufficient to allow counsel and the court to act intelligently; (3) counsel is
2 experienced in similar litigation; and (4) the percentage of objectors is small.”

3 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

4 **III. DISCUSSION**

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

6 All current and former non-exempt employees of Defendant in the State of
7 California who were paid shift differential wages, bonuses, and commissions at
8 any time from April 6, 2018, through October 31, 2020.

9 As discussed in connection with the motion for preliminary approval, defendant 899
10 Charleston (“Defendant”) will pay total non-reversionary amount of \$250,000. The total
11 settlement payment includes attorney fees of \$83,333.33, costs up to \$25,000, an incentive award
12 of \$10,000 for the class representative, settlement administration costs up to \$4,950, and a
13 PAGA allocation of \$20,000 (\$15,000 of which will be paid to the Labor and Workforce
14 Development Agency).

15 Checks remaining uncashed more than 180 days after issuance will be void and the funds
16 from those checks will be sent to Asian Americans Advancing Justice – Los Angeles as a *cy pres*
17 recipient. In its order granting preliminary approval, the court directed Plaintiff to provide
18 additional information regarding how Asian American Advancing Justice – Los Angeles
19 qualifies under Code of Civil Procedure section 384. Plaintiff’s counsel now presents a
20 declaration establishing that Asian American Advancing Justice – Los Angeles is a nonprofit
21 organization providing civil legal services to the indigent. (Declaration of Mai Tulyathan in
22 Support of Plaintiff’s Motion for Final Approval of Class Action Settlement (“Tulyathan Dec.”),
23 ¶ 8 & Ex. B.) The court approves Asian Americans Advancing Justice – Los Angeles as the *cy*
24 *pres* recipient.

25 On September 13, 2021, notice packets were mailed to 120 class members. (Declaration
26 of Elizabeth Kruckenberg Regarding Notice and Settlement Administration (“Kruckenberg
27 Dec.”), ¶ 5.) There were no undeliverable packets. (*Id.* at ¶ 6.) The settlement administrator
28 received no requests for exclusions or objections. (*Id.* at ¶¶ 7-8.)

The estimated highest individual settlement payment is approximately \$15,688.65; the
estimated lowest individual settlement payment is \$133.03; and the estimated average individual

1 settlement payment is approximately \$1,013.74. (Kruckenberg Dec., ¶ 11.) The court
2 previously found that the proposed settlement is fair and the court continues to make that finding
3 for purposes of final approval.

4 Plaintiff requests an incentive award of \$10,000.

5 The rationale for making enhancement or incentive awards to named plaintiffs is
6 that they should be compensated for the expense or risk they have incurred in
7 conferring a benefit on other members of the class. An incentive award is
8 appropriate if it is necessary to induce an individual to participate in the suit.
9 Criteria courts may consider in determining whether to make an incentive award
10 include: 1) the risk to the class representative in commencing suit, both financial
11 and otherwise; 2) the notoriety and personal difficulties encountered by the class
12 representative; 3) the amount of time and effort spent by the class representative;
13 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
14 enjoyed by the class representative as a result of the litigation. These “incentive
15 awards” to class representatives must not be disproportionate to the amount of
16 time and energy expended in pursuit of the lawsuit.

17 (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks,
18 brackets, ellipses, and citations omitted.)

19 The class representative submitted a declaration detailing her participation in the case.
20 Plaintiff states that she spent approximately 20 hours in connection with the lawsuit.

21 (Declaration of Sylvia Bernabe in Support of Plaintiff’s Motion for Final Approval of Class
22 Action Settlement, ¶ 6.) Plaintiff declares that she engaged in numerous telephonic discussions
23 with counsel regarding the case, searched for and provided documents relating to her claims, and
24 reviewed various filings and pleadings in the case. (*Ibid.*)

25 The class representative’s efforts in the case resulted in a benefit to the class. Moreover,
26 Plaintiff undertook risk by putting her name on the case because she may have been responsible
27 for costs if she lost the case and because it might impact her future employment. (See *Covillo v.*
28 *Specialty’s Cafe* (N.D. Cal. 2014) 2014 WL 954516, at *8 [incentive awards are particularly
appropriate where a plaintiff undertakes a significant “reputational risk” in bringing an action
against an employer].) However, based on the parameters of this settlement, the court finds a
service award in the amount of \$7,500 would be appropriate and such an award is approved.

The court also has an independent right and responsibility to review the requested
attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
Angeles Cellular Telephone Co. (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff’s counsel

1 requests attorney fees in the amount of \$83,333.33 (1/3 of the total settlement fund). This
2 percentage is typical for wage and hour cases. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1
3 Cal.5th 480, 488, 503-504 (*Laffitte*.) Plaintiff's counsel provides evidence demonstrating a total
4 lodestar of \$90,475 (based on fees actually incurred). (Tulyathan Dec., ¶¶ 13-15 & Ex. C;
5 Declaration of Larry W. Lee in Support of Plaintiff's Motion for Final Approval of Class Action
6 Settlement, ¶¶ 9-12 & Ex. A.) This results in a small negative multiplier. The attorney fees
7 requested are reasonable as a percentage of the common fund and are approved. (See *Laffitte*,
8 *supra*, 1 Cal.5th at pp. 488, 503-504 [trial court did not abuse its discretion in approving fee
9 award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of
10 2.03 to 2.13].)

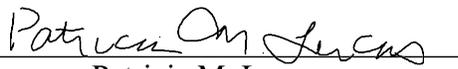
11 Plaintiff's counsel provides evidence of incurred costs in the amount of \$15,067.68.
12 (Tulyathan Dec., ¶ 16 & Ex. D.) Those costs are approved. The settlement administration costs
13 of \$4,950 are also approved. (Kruckenberg Dec., ¶ 12 & Ex. B.)

14 Accordingly, the motion for final approval of the class action settlement is GRANTED.

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

18 The court sets a compliance hearing for August 10, 2022, at 2:30 p.m. in Department 3.
19 At least ten court days before the hearing, class counsel and the settlement administrator shall
20 submit a summary accounting of the net settlement fund identifying distributions made as
21 ordered herein, the number and value of any uncashed checks, amounts remitted to Defendant,
22 the status of any unresolved issues, and any other matters appropriate to bring to the court's
23 attention. Counsel may appear at the compliance hearing remotely.

24
25 Dated: December 8, 2021


Patricia M. Lucas
Judge of the Superior Court