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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
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12 TINA TALMOUD, individually, and on behalf of
13 other members of the general public similarly
14 situated and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act,

15 Plaintiff,

16 vs.

17 RETAIL GROUP OF AMERICA LLC, an
18 unknown business entity; and DOES 1 through
100, inclusive,

19 Defendants.
20

Case No. 20CV362101

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

21 The above-entitled matter came on for hearing on Wednesday, April 20, 2022, at 1:30
22 p.m. in Department 3, the Honorable Patricia M. Lucas presiding. The court reviewed and
23 considered the written submissions filed by the parties and issued a tentative ruling on Tuesday,
24 April 19, 2022. No party contested the tentative ruling; therefore, the tentative ruling is adopted
25 as the order of the court, and the court hereby orders, adjudges, and decrees as follows:

26 **I. INTRODUCTION**

27 This is a putative class and representative action arising out various alleged wage and
28 hour violations. The First Amended Class Action Complaint, filed by plaintiff Tina Talmoud

1 (“Plaintiff”) on May 22, 2020, sets forth the following causes of action: (1) Violation of
2 California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor
3 Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor
4 Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194,
5 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and
6 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not
7 Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-
8 Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure To
9 Keep Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802
10 (Unreimbursed Business Expenses); (10) Violation of California Business & Professions Code
11 §§ 17200, et seq.); and (11) Violation of California Labor Code § 2698, et seq. (California
12 Labor Code Private Attorneys General Act of 2004).

13 The parties have reached a settlement. On September 29, 2021, the court granted
14 preliminary approval of the settlement, subject to modification of the class notice.

15 The court approved the amended class notice on October 13, 2021.

16 On December 23, 2021, Plaintiff’s counsel filed a declaration advising the court that
17 following preliminary approval of the settlement, defendant Retail Group of America LLC
18 (“Defendant”) submitted the class list to the settlement administrator and now believes that there
19 are approximately 11,296 workweeks at issue during the class period (an increase of
20 approximately 18.91 percent). (Supplemental Declaration of Heather Davis in Support of
21 Motion for Preliminary Approval of Class Action Settlement, ¶ 4.) In light of the increased
22 number of workweeks and pursuant to the terms of the settlement, the parties agreed to increase
23 the total settlement amount by 8.91 percent (i.e., from \$350,000 to \$381,168.42) and executed a
24 Joint Stipulation Re Amendment of Order Granting Plaintiff’s Motion for Preliminary Approval
25 and Increasing Total Settlement Amount (“Joint Stipulation”). (*Ibid.*) The parties further agreed
26 that Plaintiff’s counsel’s attorney fees would be based on the increased amount. (*Ibid.*)

27 On December 27, 2021, the court entered an Amendment to the Court’s September 29,
28 2021 Order Granting Preliminary Approval of Class Action Settlement, which approved an

1 updated class notice and ordered the parties to implement the settlement according to the terms
2 of the settlement agreement and the Joint Stipulation.

3 Plaintiff now moves for final approval of the settlement.

4 **II. LEGAL STANDARD**

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

10 In determining whether a class settlement is fair, adequate and reasonable, the
11 trial court should consider relevant factors, such as “the strength of plaintiffs’
12 case, the risk, expense, complexity and likely duration of further litigation, the
13 risk of maintaining class action status through trial, the amount offered in
settlement, the extent of discovery completed and the stage 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.”

14 (*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801
15 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624
16 (*Officers*).

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

24 The burden is on the proponent of the settlement to show that it is fair and
25 reasonable. However “a presumption of fairness exists where: (1) the settlement
26 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.”

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

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1 **III. DISCUSSION**

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

3 [A]ll current and former hourly-paid or non-exempt individuals employed by
4 Defendant within the State of California at any time during the Class Period.

5 The term “Class Period” means the period from January 22, 2016 to June 8, 2021.

6 As discussed in connection with the motion for preliminary approval, Defendant
7 originally agreed to pay a total non-reversionary amount of \$350,000 in settlement of all claims
8 in the action. The total settlement payment includes attorney fees, costs up to \$20,000, an
9 incentive award of \$6,500 for Plaintiff, settlement administration costs up to \$10,000, and a
10 PAGA allocation of \$50,000 (\$37,500 of which will be paid to the Labor and Workforce
11 Development Agency). The net settlement will be distributed to class members pro rata based on
12 their weeks worked during the applicable class period. Additionally, class members who were
13 employed by Defendant during the PAGA period, February 25, 2019 to June 8, 2021, will
14 receive a pro-rata share of the funds from the PAGA payment allocated for distribution to
15 aggrieved employees.

16 Defendant agreed to fund the total settlement amount in 13 separate payments as follows:
17 within 3 business days after preliminary approval of the settlement or December 10, 2021
18 (whichever occurs later), Defendant will deposit an initial payment of \$200,000 into a Qualified
19 Settlement Fund to be established by the settlement administrator; Defendant will deposit the
20 remaining \$150,000 in 12 monthly installments with the first payment being made within one
21 month after the initial funding date. Within 14 days of the complete funding of the settlement,
22 the settlement administrator will issue the payments provided for under the terms of the
23 settlement. Checks not cashed for 180 days from the date of mailing will be sent to Legal Aid At
24 Work as a *cy pres* recipient.

25 Under the terms of the Joint Stipulation, Defendant now agrees to pay a total non-
26 reversionary amount of \$381,168.42 in settlement of all claims in the action. (Declaration of
27 Heather Davis in Support of Motion for Final Approval of Class Action and PAGA Settlement
28 (“Davis Dec.”), ¶ 21 & Ex. 2, p. 2.) In light of the increased total settlement amount and the fact
that Defendant already funded the initial payment of \$200,000, the parties further agree that the

1 remaining \$181,168.42 shall be funded within the same 12 monthly installment plan that was
2 previously approved by the court (i.e., \$15,097.37 per month for 12 months). (*Ibid.*) The parties
3 also agree that Plaintiff’s counsel’s attorney fees will be based off of the increased total
4 settlement amount. (*Ibid.*)

5 On January 4, 2022, the settlement administrator mailed the class notice to 381 class
6 members. (Declaration of Taylor Mitzner on Behalf of Settlement Administrator Regarding
7 Settlement Notice Administration (“Mitzner Dec.”), ¶ 6 & Ex. A.) As of March 23, 2022, five
8 notices remained undeliverable. (*Id.* at ¶ 8.)

9 The settlement administrator has not received any objections or requests for exclusion as
10 of March 23, 2022. (*Id.* at ¶¶ 10-11.)

11 The court previously found that the proposed settlement is fair and the court continues to
12 make that finding for purposes of final approval.

13 Plaintiff requests an incentive award of \$6,500. The court approved the incentive award
14 in connection with preliminary approval of the settlement and continues to do so for purposes of
15 final approval.

16 The court also has an independent right and responsibility to review the requested
17 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
18 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff’s counsel seek
19 attorney fees of \$133,408.95 (35 percent of the total settlement fund), which is slightly above the
20 typical 1/3 contingency fee allocation in a wage and hour class action. Plaintiff’s counsel
21 provide evidence demonstrating a combined lodestar of \$221,755. (Davis Dec., ¶¶ 54-60 & Ex.
22 3; Declaration of Edwin Aiwazian in Support of Motion for Final Approval of Class Action
23 Settlement (“Aiwazian Dec.”), ¶¶ 7-9 & Ex. A.) This results in a negative multiplier. The
24 attorney fees in the amount of \$133,408.95 are reasonable under the “common fund” doctrine
25 and are therefore approved.

26 Plaintiff’s counsel also request costs in the amount of \$17,926.63, but only provide
27 evidence of incurred costs in the amount of \$17,534.67. (Davis Dec., ¶ 63 & Ex. 4; Aiwazian
28

1 Dec., ¶ 16 & Ex. B.) Anticipated costs are not recoverable. Thus, costs in the amount of
2 \$17,534.67 are approved.

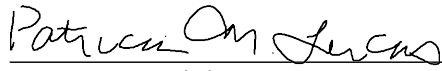
3 The settlement administration costs of \$9,500 are also approved. (Mitzner Dec., ¶ 17 &
4 Ex. B.)

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

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

9 The court will sets a compliance hearing for September 13, 2023, at 2:30 p.m. in
10 Department 3. At least ten court days before the hearing, class counsel and the settlement
11 administrator shall submit a summary accounting of the net settlement fund identifying
12 distributions made as ordered herein, the number and value of any uncashed checks, amounts
13 remitted to Defendant, the status of any unresolved issues, and any other matters appropriate to
14 bring to the court's attention. Counsel may appear at the compliance hearing remotely.

15
16 Dated: April 20, 2022



Patricia M. Lucas
Judge of the Superior Court