

FILED
Superior Court of California
County of Los Angeles
08/24/2022

Sherri R. Carter, Executive Officer / Clerk of Court
By: N. Navarro Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JAIME OLIVARES, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

v.

SARKO CONSTRUCTION, INC., a
California Corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 20STCV19958

**ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: August 23, 2022
Time: 9:00 a.m.
Dept.: SSC-17

I. BACKGROUND

Plaintiff Jaime Olivares sues his former employer, Defendant Sarko
Construction, Inc., for alleged wage and hour violations. Defendant is a construction

1 company based in Glendale, California. Plaintiff seeks to represent a class of
2 Defendant's current and former non-exempt employees.

3 On May 22, 2020, Plaintiff filed his class action complaint alleging the
4 following causes of action: (1) Unpaid Overtime (Labor Code §§ 510, 1198); (2)
5 Unpaid Meal Period Premiums (Labor Code §§ 226.7, 512(a)); (3) Unpaid Rest Period
6 Premiums (Labor Code § 226.7); (4) Unpaid Minimum Wages (Labor Code §§ 194,
7 1197, 1197.1); (5) Final Wages Not Timely Paid (Labor Code §§ 201, 202, 203); (6)
8 Wages Not Timely Paid During Employment (Labor Code § 204); (7) Non-Compliant
9 Wage Statements (Labor Code § 226(a)); (8) Failure to Keep Requisite Payroll Records
10 (Labor Code § 1174(d)); (9) Failure to Reimburse Business Expenses (Labor Code §§
11 2800, 2802); and (10) Violation of California Business and Professions Code § 17200,
12 et seq.

13 On April 6, 2021, the parties attended mediation before Kim Deck, Esq., and
14 subsequently reached an agreement to resolve the matter. The terms of settlement are
15 finalized in the *Joint Stipulation of Class Action Settlement* ("Settlement Agreement"),
16 a copy of which was filed with the Court.

17 On December 8, 2021, the Court issued a "checklist" to the parties pertaining to
18 deficiencies in Plaintiff's motion for preliminary approval of the settlement. In
19 response, the parties filed further briefing, including the revised Settlement Agreement.

20 The settlement was preliminarily approved on April 14, 2022. Notice was given
21 to the Class Members as ordered (see Declaration of Jarrod Salinas). Now before the
22 Court is Plaintiff's motion for final approval of the Settlement Agreement, including for
23 payment of fees, costs, and a service award to the named plaintiff. For the reasons set
24 forth below, the Court grants final approval of the settlement.

1 **II. THE TERMS OF THE SETTLEMENT**

2
3 **A. SETTLEMENT CLASS DEFINITION**

4 “Class” or “Class Members” means all current and former hourly-paid, non-
5 exempt employees who worked for Defendant in the State of California at any time
6 during the Class Period. (¶6)

7 “Class Period” means the period from May 22, 2016 through the earlier of the
8 date of preliminary approval of the settlement by the Court or the date on which the
9 total number of Workweeks worked by Class Members during the Class Period exceeds
10 1,900. Plaintiff is entering into this Settlement based on Defendant’s representation that
11 the Class Members have worked a total of approximately 1,900 Workweeks within the
12 Class Period. If it is determined that the actual number of Workweeks worked by Class
13 Members during the Class Period exceeds the number represented by Defendant, then
14 the Class Period shall end at the time when the Workweeks exceeded the 1,900 number.
15 (¶7)

16 “Participating Class Members” means all Class Members who do not submit a
17 valid and timely Request for Exclusion. (¶19)

18
19 **B. THE MONETARY TERMS OF SETTLEMENT**

20 The essential monetary terms are as follows:

- 21 • The Gross Settlement Amount (“GSA”) is **\$100,000** (¶14).
- 22 • The Net Settlement Amount (“Net”) (**\$51,250**) is the GSA less:
 - 23 ○ Up to **\$33,000** (33%) for attorney fees (¶4);
 - 24 ○ Up to **\$6,000** for attorney costs (*Ibid.*);

- Up to **\$5,000** for a service award to the proposed class representative (¶35); and
- Estimated **\$4,750** for settlement administration costs (¶29).

- Employer-side payroll taxes will be paid by Defendant separately from and in addition to the Gross Settlement Amount (¶31).

Assuming the Court approves all maximum requested deductions, approximately \$51,250 will be available for distribution to participating class members. The average settlement share will be approximately \$1,507.35. ($\$51,250 \text{ Net} \div 34 \text{ participating class members} = \$1,507.35$). The Settlement Administrator reports that based upon the calculations stipulated in the Settlement, the highest individual settlement payment to be paid will be approximately \$4,353.95 and the lowest individual settlement payment to be paid will be approximately \$25.76, with the average individual settlement payment to be paid being approximately \$1,507.35, without applicable taxes, withholdings, and employee garnishments. Salinas Dec. ¶11.

- There is no Claim Requirement (Notice pg. 3).
- The settlement is not reversionary (¶14).
- Individual Settlement Share Calculation: The Settlement Administrator will calculate the total Workweeks for all Participating Class Members by adding the number of Workweeks worked by each Participating Class Member during the Class Period. The amount that each Participating Class Member will be eligible to receive will be calculated by dividing each participating Class Member's individual Workweeks by the total Workweeks of all Participating Class Members, and multiplying the resulting fraction by the Net Settlement Amount. (¶38.a)
- Tax Withholdings: 20% as wages, 40% as interest, and 40% as penalties (¶38.b).

- 1 • **Uncashed Settlement Payment Checks:** Any checks issued by the Settlement
2 Administrator to Participating Class Members will be negotiable for at least one
3 hundred eighty (180) calendar days. (§61) If a Participating Class Member does
4 not cash his or her settlement check within 180 days, the uncashed funds, subject
5 to Court approval, shall be distributed to the Controller of the State of California
6 to be held pursuant to the Unclaimed Property Law, California Civil Code
7 §1500, et. seq. for the benefit of those Participating Class Members who did not
8 cash their checks until such time that they claim their property. (§62)
- 9 • **Funding and Distribution of GSA:** Within fourteen (14) calendar days of the
10 Effective Date of the Settlement, Defendant will deposit the Gross Settlement
11 Amount and all applicable employer-side payroll taxes into a Qualified
12 Settlement Fund (“QSF”) to be established by the Settlement Administrator.
13 (§32) Within fourteen (14) calendar days of the funding of the Settlement, the
14 Settlement Administrator will issue payments for: (a) Individual Settlement
15 Payments to all Participating Class Members; (b) the Class Representative
16 Incentive Payment; (c) Class Counsel’s Fees and Costs; and (d) Settlement
17 Administration Costs. (§33)

18
19 **C. TERMS OF RELEASES**

- 20 • Release by Participating Class Members. Upon the funding of the Gross
21 Settlement Amount in its entirety and all applicable employer-side payroll taxes
22 by Defendant, in exchange for the consideration set forth in this Agreement,
23 Participating Class Members shall fully release and discharge the Released
24 Parties from any and all Released Claims for the Class Period. This release shall
25 be binding on all Participating Class Members, including each of their respective

1 attorneys, agents, executors, representatives, guardians ad litem, heirs,
2 successors, and assigns, and shall inure to the benefit of the Released Parties,
3 who shall have no further or other liability or obligation to any Class Member
4 with respect to the Released Claims, except as expressly provided in the
5 agreement. (¶67)

- 6 • Class members will release: Any and all claims, rights, demands, liabilities and
7 causes of actions arising from the facts and claims asserted in the operative
8 complaint and/or that could have been asserted based on the same facts alleged
9 in the operative complaint against Defendant, including the following claims: (i)
10 unpaid overtime; (ii) unpaid meal period premiums; (iii) unpaid rest period
11 premiums; (iv) unpaid minimum wages; (v) final wages not timely paid; (vi)
12 wages not timely paid during employment; (vii) noncompliant wage statements;
13 (viii) failure to keep requisite records; (ix) failure to reimburse business
14 expenses; (x) unfair business practices that could have been premised on the
15 claims, causes of action or legal theories of relief described above or any of the
16 claims, causes of action or legal theories of relief pled in the operative
17 complaint; or for civil penalties that could have been premised on the claims,
18 causes of action or legal theories pled in the operative complaint, including but
19 not limited to California Labor Code sections 201-204, 226, 226.3, 226.7, 510,
20 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802 and California
21 Business & Professions Code sections 17200, et seq. (collectively, the "Released
22 Claims"). (¶23)
- 23 • "Released Parties" means Defendant Sarko Construction, Inc. as named by
24 Plaintiff in the operative complaint, and any of its past, present and/or future,
25 direct and/or indirect, officers, directors, members, managers, employees, agents,

1 representatives, attorneys, insurers, partners, investors, shareholders,
2 administrators, owners, parent companies, subsidiaries, affiliates, divisions,
3 predecessors, successors, assigns, and joint venturers. (¶24)

- 4 • The named Plaintiff will also provide a general release and a waiver of the
5 protections of Cal. Civ. Code §1542. (¶68)
- 6 • The releases are effective upon the funding of the Gross Settlement Amount in
7 its entirety and all applicable employer-side payroll taxes by Defendant, which is
8 to occur within fourteen (14) calendar days of the Effective Date of the
9 Settlement (¶32)

11 **III. ANALYSIS OF SETTLEMENT AGREEMENT**

12 “Before final approval, the court must conduct an inquiry into the fairness of the
13 proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the
14 settlement agreement after the final approval hearing, the court must make and enter
15 judgment. The judgment must include a provision for the retention of the court's
16 jurisdiction over the parties to enforce the terms of the judgment. The court may not
17 enter an order dismissing the action at the same time as, or after, entry of judgment.”
18 Cal. Rules of Court, rule 3.769(h).

19 As discussed more fully in the Order conditionally approving the settlement, “[i]n
20 a class action lawsuit, the court undertakes the responsibility to assess fairness in order to
21 prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
22 action. The purpose of the requirement [of court review] is the protection of those class
23 members, including the named plaintiffs, whose rights may not have been given due
24 regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu*
25 *Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks

1 omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245
2 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*
3 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the
4 extent necessary to reach a reasoned judgment that the agreement is not the product of
5 fraud or overreaching by, or collusion between, the negotiating parties, and that the
6 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal
7 quotation marks omitted].

8 “The burden is on the proponent of the settlement to show that it is fair and
9 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is
10 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to
11 allow counsel and the court to act intelligently; (3) counsel is experienced in similar
12 litigation; and (4) the percentage of objectors is small.’” See *Wershba, supra*, 91
13 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
14 1802. Notwithstanding an initial presumption of fairness, “the court should not give
15 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
16 116, 130. “Rather, to protect the interests of absent class members, the court must
17 independently and objectively analyze the evidence and circumstances before it in order
18 to determine whether the settlement is in the best interests of those whose claims will be
19 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In
20 that determination, the court should consider factors such as “the strength of plaintiffs’
21 case, the risk, expense, complexity and likely duration of further litigation, the risk of
22 maintaining class action status through trial, the amount offered in settlement, the extent
23 of discovery completed and stage of the proceedings, the experience and views of
24 counsel, the presence of a governmental participant, and the reaction of the class
25 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and

1 the court is free to engage in a balancing and weighing of factors depending on the
2 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.)

3 **A. A PRESUMPTION OF FAIRNESS EXISTS**

4 The Court preliminarily found in its Order of April 14, 2022 that the presumption
5 of fairness should be applied. No facts have come to the Court’s attention that would
6 alter that preliminary conclusion. Accordingly, the settlement is entitled to a presumption
7 of fairness as set forth in the preliminary approval order.

8 **B. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

9 The settlement was preliminarily found to be fair, adequate and reasonable.
10 Notice has now been given to the Class. The notice process resulted in the following:

- 11 Number of class members: 34
- 12 Number of notices mailed: 34
- 13 Number of undeliverable notices: 3
- 14 Number of opt-outs: 0
- 15 Number of objections: 0
- 16 Number of participating class members: **34**

17 The Declaration of Jarrod Salinas (“Salinas Decl.”) ¶¶ 3-9 indicates 4 undeliverable
18 notices but at hearing counsel indicated one had been delivered.

19 The Court finds that the notice was given as directed and conforms to due process
20 requirements. At hearing one proposed class member appeared but advised the Judicial
21 Assistant that he did not object to the settlement. Given the reactions of the Class
22 Members to the proposed settlement and for the reasons set for in the Preliminary
23 Approval order, the settlement is found to be fair, adequate, and reasonable.

24 //

25 //

1 **C. CLASS CERTIFICATION IS PROPER**

2 For the reasons set forth in the preliminary approval order, certification of the
3 Class for purposes of settlement is appropriate.

4 **D. ATTORNEY FEES AND COSTS**

5 Class Counsel requests **\$33,000** (33%) for attorney fees and **\$6,000** for costs.
6 (MFA at 12:10-17.)

7 Courts have an independent responsibility to review an attorney fee provision and
8 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*
9 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is
10 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
11 503.

12 In the instant case, fees are sought pursuant to the percentage method. (MFA at
13 pp. 6-10.) A lodestar cross check is requested. The \$33,000 fee request is 33% of the
14 Gross Settlement Amount.

15 A lodestar is calculated by multiplying the number of hours reasonably expended
16 by the reasonably hourly rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,
17 1095-1096 (*PLCM*). “Generally, ‘[t]he lodestar is calculated using the reasonable rate
18 for comparable legal services in *the local community* for noncontingent litigation of the
19 same type, multiplied by the reasonable number of hours spent on the case.’ ”
20 *Environmental Protection Information Center v. Dept. of Forestry & Fire Protection*
21 (2010) 190 Cal.App.4th 217, 248, quoting *Nichols v. City of Taft* (2007) 155
22 Cal.App.4th 1233, 1242-1243 (emphasis in original).

23 As to the reasonableness of the rate and hours charged, trial courts consider
24 factors such as “the nature of the litigation, its difficulty, the amount involved, the skill
25 required in its handling, the skill employed, the attention given, the success or failure,

1 and other circumstances.” *PLCM, supra*, 22 Cal.4th at p. 1096. “The evidence should
2 allow the court to consider whether the case was overstaffed, how much time the
3 attorneys spent on particular claims, and whether the hours were reasonably expended.”
4 *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1320.

5 The Court declines to do a lodestar cross check as the information provided is
6 insufficient to do so. Mr. Payne provides a breakdown by tasks (Ex. 1 to Dec. of Payne,
7 but it does not indicate which timekeepers worked on the matter and there is no
8 information as to the skill and experience of any timekeeper other than Mr. Payne.

9 Nonetheless, the **\$33,000** fee request represents a reasonable percentage of the
10 total funds paid by Defendant. Further, the notice expressly advised class members of
11 the fee request, and no one objected. (Salinas Decl. ¶9, Exhibit A.) Accordingly, the
12 Court awards fees in the amount of **\$33,000**.

13 Class Counsel requests **\$6,000** in costs. This is equal to the \$6,000 cap provided
14 in the settlement agreement (¶4). The amount was disclosed to Class Members in the
15 Notice, and no objections were received. (Salinas Decl. ¶9, Exhibit A.) Counsel
16 represents that they incurred \$6,032.04 in actual costs. Costs include: Mediation
17 (\$2,540), Filing Fees (\$2,405.83), and Case Anywhere (\$916.80). (Payne Decl. ISO
18 Final, Exhibit 3.)

19 The costs appear to be reasonable and necessary to the litigation, are reasonable
20 in amount, and were not objected to by the class.

21 For all of the foregoing reasons, costs of **\$6,000** are approved.

22 **E. SERVICE AWARD TO CLASS REPRESENTATIVE**

23 A service (or incentive) fee award to a named class representative must be
24 supported by evidence that quantifies the time and effort expended by the individual and
25 a reasoned explanation of financial or other risks undertaken by the class representative.

1 See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807;
2 see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395
3 [“Criteria courts may consider in determining whether to make an incentive award
4 include: (1) the risk to the class representative in commencing suit, both financial and
5 otherwise; (2) the notoriety and personal difficulties encountered by the class
6 representative; (3) the amount of time and effort spent by the class representative; (4) the
7 duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the
8 class representative as a result of the litigation. (Citations.)”].

9 Here, the Class Representative Jaime Olivares requests an enhancement award
10 totaling **\$5,000**. (MFA at 13:5-7.) He represents that his contributions to this action
11 include: staying in contact with his attorneys, discussing issues regarding Defendant’s
12 policies, practices and procedures, providing guidance regarding the duties of other non-
13 exempt employees, and generally his employment with Defendant, searching for case-
14 related documents for his attorneys, and reviewing the settlement. (Declaration of Jaime
15 Olivares ISO Prelim ¶¶ 4-10.) He asserts that he was concerned that his status as the
16 class representative could affect his future employment opportunities, though he has not
17 shown that this has occurred. (*Id.* at ¶14.)

18 In light of the above-described contributions to this action, and in
19 acknowledgment of the benefits obtained on behalf of the class, a **\$5,000** service award
20 is reasonable and approved.

21 **F. SETTLEMENT ADMINISTRATION COSTS**

22 The Settlement Administrator, Phoenix Settlement Administrators, requests
23 **\$4,750** in compensation for its work in administrating this case. (Salinas Decl. ¶12.) At
24 the time of preliminary approval, costs of settlement administration were estimated at
25

1 \$4,750 (¶29). Class Members were provided with notice of this amount and did not
2 object. (Salinas Decl. ¶9, Exhibit A.)

3 Accordingly, settlement administration costs are approved in the amount of
4 **\$4,750.**

5 **IV. CONCLUSION AND ORDER**

6 The Court hereby:

- 7 (1) Grants class certification for purposes of settlement;
- 8 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 9 (3) Awards **\$33,000** in attorney fees to Class Counsel, Payne Nguyen, LLP;
- 10 (4) Awards **\$6,000** in litigation costs to Class Counsel;
- 11 (5) Awards **\$5,000** as a Class Representative Service Award to Jaime Olivares;
- 12 (6) Awards **\$4,750** in settlement administration costs to Phoenix Settlement
13 Administrators;
- 14 (7) Orders class counsel to lodge a proposed Judgment, consistent with this ruling
15 and containing the class definition, full release language, and a statement that no
16 class members opted out by September 7, 2022;
- 17 (8) Orders class counsel to provide notice to the class members pursuant to
18 California Rules of Court, rule 3.771(b); and
- 19 (9) Sets a Non-Appearance Case Review re: Final Report re: Distribution of
20 Settlement Funds for April 17, 2023 at 8:30 a.m. Final Report is to be filed by
21 April 10, 2023.

22
23 Dated: 8/23/2022



24 MAREN E. NELSON

25 Judge of the Superior Court