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Case #18CV323955
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7 **SUPERIOR COURT OF CALIFORNIA**
8 **COUNTY OF SANTA CLARA**
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10
11 DARYL JIMENEZ, JEREMY JIMENEZ, and
12 ABEL ARRIOLA, as individuals, on behalf of
themselves, and all persons similarly situated,

13 Plaintiffs,

14 vs.

15 CALIFORNIA WIRELESS SOLUTIONS, INC.,
16 d.b.a. SPRINT, a California corporation
authorized to do business in the state of
California; ZAID HAMED, an individual; ALEA
17 FERGUSON, an individual; SPRINT
18 SOLUTIONS, INC., a Virginia corporation
authorized to do business in the state of
California; SPRINT COMMUNICATIONS
19 COMPANY L.P. a Virginia limited partnership;
and DOES 1 to 10 inclusive,

20 Defendants.
21

Case No. 2018-1-CV-323955

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

22 The above-entitled matter came on regularly for hearing on Friday, June 14, 2019, at 9:00
23 a.m. in Department 5 (Complex Civil Litigation), the Honorable Thomas E. Kuhnle presiding.
24 Having reviewed and considered the written submissions of the parties, and having listened
25 carefully to arguments of counsel, the Court hereby orders, adjudges, and decrees:

26 **I. INTRODUCTION**

27 This is a putative class action arising out of various alleged wage and hour violations.
28 The Complaint, filed on February 27, 2018, sets forth the following causes of action: (1) Failure

1 to Pay Minimum Wages and Overtime Compensation; (2) Failure to Provide Written
2 Commission Agreements; (3) Unlawful Deduction of Wages; (4) Secretly Underpaid Wages;
3 (5) Failure to Provide Legally Compliant Meal Periods or Compensation in Lieu Thereof;
4 (6) Failure to Provide Legally Compliant Rest Periods or Compensation in Lieu Thereof;
5 (7) Failure to Reimburse for Necessary Work Expenses; (8) Failure to Pay Wages Owed;
6 (9) Failure to Furnish Accurate Wage Statements; (10) Failure to Maintain Accurate Records;
7 (11) Unfair Business Practices; and (12) Private Attorneys General Act of 2004.

8 The parties have reached a settlement. On February 8, 2019, the Court granted
9 preliminary approval of the settlement. Plaintiffs Daryl Jimenez, Jeremy Jimenez, and Abel
10 Arriola (collectively, "Plaintiffs") now move for final approval of the settlement.

11 II. LEGAL STANDARD

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

17 In determining whether a class settlement is fair, adequate and reasonable, the
18 trial court should consider relevant factors, such as "the strength of plaintiffs'
19 case, the risk, expense, complexity and likely duration of further litigation, the
20 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."

21 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk*, *supra*, 48
22 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688
23 F.2d 615, 624.)

24 "The list of factors is not exclusive and the court is free to engage in a balancing and
25 weighing of factors depending on the circumstances of each case." (*Wershba v. Apple*
26 *Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed
27 settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is
28 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and

1 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*,
2 quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n*,
3 *etc., supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

4 The burden is on the proponent of the settlement to show that it is fair and
5 reasonable. However “a presumption of fairness exists where: (1) the settlement
6 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.”

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

9 III. DISCUSSION

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

11 [A]ll current or former non-exempt retail employees employed by Defendant
12 California Wireless Solutions, Inc., who held titles including but not limited to
13 sales representative, sales lead, and store manager in the state of California at any
time during the period of February 27, 2014 through February 8, 2019.

14 As discussed in connection with the motion for preliminary approval, defendants
15 California Wireless Solutions, Inc., Zaid Hamed, and Alea Ferguson (collectively, “Defendants”)
16 will pay a non-reversionary total of \$900,000. The settlement payment includes up to \$300,000
17 in attorneys’ fees, up to \$11,000 in costs¹, \$7,500 as an incentive award for each of the named
18 class representatives, and \$17,275 for settlement administrator costs. The parties have agreed to
19 allocate \$25,000 to PAGA, with \$18,750 of that amount to be paid to the California Labor and
20 Workforce Development Agency. The class settlement will be funded on three dates – an initial
21 payment of \$250,000, a payment of \$325,000 approximately one year later, and a payment of
22 \$325,000 approximately one year after that.

23 On March 11, 2019, the settlement administrator mailed class notices to the 1,077 class
24 members on the class list. (Declaration of Elizabeth Kruckenberg on Behalf of Settlement
25 Administrator with Respect to Opt Outs, and Objections Received, ¶ 5.) Ultimately, 20 notice
26 packets have remained undeliverable. (*Id.* at ¶ 7.) There have been no objections and no
27 requests for exclusion. (*Id.* at ¶¶ 8-9.)

28 _____
¹ Plaintiffs now seek actual costs in the amount of \$9,355.18.

1 The Court previously found that the proposed settlement is fair and the Court continues to
2 make that finding for purposes of final approval.

3 Plaintiffs request service awards of \$7,500 for each class representative – Daryl Jimenez,
4 Jeremy Jimenez, and Abel Arriola.

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 representatives have submitted declarations in which they state they expended a
20 lot of time communicating with Plaintiffs’ counsel, searching for and providing documents to
21 counsel, and answering counsel’s questions and providing factual information. (Declaration of
22 Daryl Jimenez in Support of Plaintiffs’ Motion for Final Approval of Class Action Settlement
23 and Application for Attorneys’ Fees, Costs and Class Representative Enhancement Payments
24 (“Daryl Jimenez Decl.”), ¶ 12; Declaration of Jeremy Jimenez in Support of Plaintiffs’ Motion
25 for Final Approval of Class Action Settlement and Application for Attorneys’ Fees, Costs and
26 Class Representative Enhancement Payments (“Jeremy Jimenez Decl.”), ¶ 10; Declaration of
27 Abel Arriola in Support of Plaintiffs’ Motion for Final Approval of Class Action Settlement and
28 Application for Attorneys’ Fees, Costs and Class Representative Enhancement Payments
29 (“Arriola Decl.”), ¶ 10.) The class representatives have spent in the range of 35 to 44 hours on
30 the case. (Daryl Jimenez Decl., ¶ 12; Jeremy Jimenez Decl., ¶ 17; Arriola Decl., ¶ 17.) The
31 Court finds the incentive awards are warranted.

32 The Court also has an independent right and responsibility to review the requested
33 attorneys’ fees and only award so much as it determines reasonable. (See *Garabedian v. Los*

1 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel
2 requests attorneys' fees in the amount of \$300,000 (one-third of the total settlement amount).
3 Plaintiffs' counsel provides evidence demonstrating a lodestar of \$367,206.40, which results in a
4 negative multiplier. The Court will approve the fees.


5 Plaintiffs request \$9,355.18 for actual incurred costs. The Court will approve the
6 requested cost amount.

7
8 The motion for final approval of class action settlement is GRANTED.

9
10 Pursuant to Rule 3.769(h) of the California Rules of Court, this Court retains jurisdiction
11 over the parties to enforce the terms of the Settlement Agreement, and the final Order and
12 Judgment.

13
14 The Court will set an interim compliance hearing for **December 20, 2019 at 10:00 a.m.**
15 in Department 5. At least ten court days before the hearing, class counsel and the settlement
16 administrator shall submit a summary accounting of the net settlement fund identifying
17 distributions made as ordered herein, the number and value of any uncashed checks, amounts
18 remitted to Defendant, the status of any unresolved issues, and any other matters appropriate to
19 bring to the court's attention. Counsel may appear at the compliance hearing telephonically.
20 The Court will set additional compliance hearings at a later date in connection with the second
21 and third settlement distributions.

22
23 Dated: June 14, 2019


24 Thomas E. Kunnle
25 Judge of the Superior Court
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