

Chilel v. Sushi California, Inc., et al.
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Date of Hearing: July 1, 2021, at 11:30 a.m.

Department: 11 (Spring Street)

Case No.: 19STCV05196

FILED
Superior Court of California
County of Los Angeles

JUL 01 2021

RULING:

Grant Final Approval.

Sherri R. Carter, Executive Officer/Clerk of Court
By Dejane Wortham, Deputy
Dejane Wortham

- (1) The Court certifies the class for purposes of settlement;
- (2) The Court finds that the settlement is fair, adequate, and reasonable;
- (3) Class counsel, Bibiyan Law Group, P.C., as Class Counsel are awarded **\$210,876.70** in attorney fees and **\$15,142.49** in costs;
- (4) Class representative Isai Chilel is awarded an enhancement payment of **\$7,500**, and
- (5) The claims administrator, Phoenix Settlement Administrators is awarded **\$12,950** in costs.

FINAL APPROVAL OF CLASS ACTION SETTLEMENT

California Rules of Court, rule 3.769(g), provides for an inquiry into the fairness of the proposed settlement prior to the final approval hearing. After this, the court must make and enter judgment, including a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. (See California Rules of Court, rule 3.769(h).) The class action may not be dismissed once judgment is entered. (See California Rules of Court, rule 3.770.) All class settlements are subject to a settlement hearing and court approval before entry of judgment or final order.

The trial court has broad powers to determine whether a proposed settlement is fair. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) The California standard for approval of class settlements is similar to the federal requirement that the settlement be fair, reasonable, and adequate for class members overall. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

CLASS NOTICE AND CLASS RESPONSE

1. How was notice given? Phoenix Settlement Administrators ("Phoenix") is acting as claims administrator for this settlement. (Declaration of Elizabeth Kruckenberg ("Kruckenberg Decl."), ¶12.) On March 15, 2021, Phoenix received the Class List from Counsel for Defendant, which contained 1,173 individuals. (*Id.* at ¶13.) There was an increase in workweeks from 46,989 (maximum number of workweeks before the escalator clause triggers) to 50,049.56, therefore, PSA determined that the escalator clause was triggered. (*Ibid.*) Pursuant to the Parties' agreement, and the Court's approval, Defendant agreed to pay an additional \$92,693.36 resulting in an increase in the Gross Settlement Amount to \$632,693.36. (*Ibid.*) On March 23, 2021, PSA conducted a National Change of Address (NCOA) search in an attempt to update the class list of addresses as accurately as possible. (*Id.* at ¶15.) On March 23, 2021, the Class Notices

were mailed, via U.S First Class Mail in English and Spanish to all 1,173 individuals contained in the Class List. (*Id.* at ¶6.) 168 Class Notices were returned without a forwarding. (*Id.* at ¶7.) Phoenix attempted to locate a current mailing address using TransUnion TLOxp for skip tracing. (*Ibid.*) Of the 168 Notice Packets that were skip traced, 110 updated addresses were obtained, and the Notice Packet was promptly re-mailed to those Class Members via first class mail. (*Ibid.*) Ultimately, as of June 3, 2021, 58 Class Notices remain undeliverable. (*Id.* at ¶8.) Class Members had until May 7, 2021 to submit objections, disputes and/or requests for exclusion. (*Id.* at ¶¶9-10.)

2. How many opted-out? 2. (*Id.* at ¶9.)
3. How many objected? 0. (*Id.* at ¶10.)
4. How many submitted a claim form? n/a
5. Estimate of recovery to each class member? The highest individual settlement payment to be paid will be approximately \$2,213.46, and the lowest individual settlement payment to be paid will be approximately \$1.04, with the average individual settlement payment to be paid being approximately \$317.01. (*Id.* at ¶12.)

EVALUATION OF THE SETTLEMENT

The Court must determine if the settlement is fair, adequate, and reasonable. The settlement is entitled to a presumption of fairness where: "(1) the settlement 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." (*Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1802 ("*Dunk*").) As *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 250, further notes:

A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. (See *Rebney v. Wells Fargo Bank, supra*, 220 Cal.App.3d at p. 1139 [settlements found to be fair and reasonable even though monetary relief provided was "relatively paltry"]; *City of Detroit v. Grinnell Corp., supra*, 495 F.2d at p. 455 [settlement amounted to only "a fraction of the potential recovery"].) Compromise is inherent and necessary in the settlement process. Thus, even if "the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated," this is no bar to a class settlement because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." (*Air Line Stewards, etc., Loc. 550 v. American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109.)

The Court finds that the settlement is fair, adequate, and reasonable based on the following:

- Settlement was reached through arms'-length negotiations. Yes. Yes. The parties attended a mediation on October 6, 2020 before mediator Lynn Frank, Esq. With the

aid of the mediator's evaluation, the parties reached the Settlement Agreement. (Bibiyan Decl. ISO Prelim., ¶11.)

- Investigation and discovery were sufficient to allow counsel and the court to act intelligently. Yes. Counsel represents that in the leadup to mediation, counsel engaged in extensive discovery, investigation, and discussions about the strengths and weaknesses of the claims and defenses, including Plaintiffs discovery that several of the restaurants owned by Kawashima with the same or similar policies or practices experienced by Plaintiff and similarly situated employees were actually incorporated under two different names: Kisho, Inc. ("Kisho") and Cho Cho San, Inc. ("Cho Cho San"). Additionally, counsel requested, was provided, and analyzed, as it pertained to Kawashima, Sushi California, Kisho and Cho Cho San (collectively, "Defendants"), the following: sufficient information to determine the number of employees who worked during the relevant time period for Defendants, including separated employees within the waiting time penalty period and non-exempt employees within the wage statement violation period; a sampling of thousands of time and payroll records for non-exempt employees of Defendants; the policies and procedures in effect during the relevant time period for non-exempt employees of Defendants; the average hourly rate for each of the non-exempt employees working for Defendants; a review of purported arbitration agreements and written meal waivers signed by non-exempt employees; an analysis of timekeeping policies, practices and procedures, and detrimental effects thereof on the payment of all wage to non-exempt employees of Defendants; and the number of late, short, or unprovided meal periods as it pertains to the non-exempt employees of Defendants. (*Id.* at ¶¶9-10.)
- Counsel is experienced in similar litigation. Yes. Class Counsel is experienced in complex litigation, including wage and hour class action cases. (*Id.* at ¶¶78-84.)
- The percentage of objectors is small. There were no objectors. (Kruckenberg Decl., ¶10.)

As noted in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408:

...a trial court's approval of a class action settlement will be vacated if the court "is not provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Kullar*, supra, 168 Cal.App.4th at p. 130.) In short, the trial court may not determine the adequacy of a class action settlement "without independently satisfying itself that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Id.* at p. 129.)

Counsel provided the following exposure analysis in this matter:

CLAIM	MAX EXPOSURE
Unpaid Wages (off the clock)	\$334,441
Unpaid Wages (split shift premiums)	\$69,758
Meal Breaks Claim	\$781,521
Rest Breaks Claim	\$2,026,271
Reimbursement Claim	\$0
Wage Statement Penalties	\$1,354,000
Waiting Time Penalties	\$3,503,760
PAGA	\$1,071,300
TOTAL	\$9,141,051

(Bibiyan Decl. ISO Prelim., ¶¶26-48; Bibyan Supp. Decl., ¶7.)

The moving papers, declarations and exhibits attached thereto, have provided this Court with “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise” such that this Court is satisfied “that the consideration being received for the release of the class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation.” (See *Dunk, supra* at p. 1802 [“So long as the record is adequate to reach ‘an intelligent and objective opinion of the probabilities of success should the claim be litigated’ and ‘form’ an educated estimate of the complexity, expense and likely duration of such litigation...it is sufficient.”].)

COSTS AND FEES

1. How much is requested for fees? The lodestar is the primary method of establishing the amount of reasonable attorney fees in California. (*Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556.) In common fund cases, courts may award fees pursuant to the percentage method, as cross-checked against the lodestar. (*Laffitte v. Robert Half Intern., Inc.* (2016) 1 Cal.5th 480, 503.)

Here, Class Counsel is requesting **\$210,876.70**, pursuant to the percentage method, as crosschecked by lodestar. (Motion ISO Final Approval, pgs. 21-34.) The fee request constitutes approximately 33% of the settlement amount (with the escalator clause invoked), which is within the average range for class action litigation. (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13 [“Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee award in class actions average around one-third of the recovery.”].) The class members were provided with notice of a fee request of a maximum of \$210,876.70 (1/3 of the Class Settlement Amount) and none objected. (Kruckenberg Decl., ¶10, Exh. A.)

Class Counsel has also provided the following lodestar information:			
Attorney	Hours	Rate	Totals
Bibiyan	412.7	\$625	\$257,937.50
Aviles	164.4	\$400	\$65,760
Paralegals	3.4	\$125	\$425
Legal Assistants	3.8	\$75	285
Totals	584.30		\$324,407.50

(Bibiyan Decl. ISO Final Approval, ¶¶73-74.)

In total, Class Counsel represents that they have devoted 584.30 hours to this case, for a total lodestar of \$324,407.50, which requires a negative multiplier to yield Counsel's percentage-based fee request. (*Ibid.*)

Because the fee request represents a reasonable percentage of the settlement fund and is well-supported by the lodestar, the Court awards fees in the amount of **\$210,876.70**.

2. What are the costs claimed? Class Counsel is requesting **\$15,142.49** for litigation costs. (Motion ISO Final Approval, 25:23-25.) The settlement agreement provided for reimbursement of actual costs, which was made known to the class, and not objected to. (Settlement Agreement, ¶11; Kruckenberg Decl., ¶10, Exh. A.) Actual costs were incurred in the amount of **\$15,142.49**. (Bibiyan Decl. ISO Final Approval, ¶96.) The costs include, but are not limited to, Mediation Costs (\$7,000), Consultation Fees (\$3,439.60), and Filing Fees (\$1,674.25). (*Ibid.*)

All the costs appear to be reasonable in amount and all appear to have been necessary to the litigation. The Court therefore awards costs of **\$15,142.49**.

3. Incentive payment to class representative? An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 [“[C]riteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. [Citations.]’,”] [citing *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294, 299.]

Plaintiff, Isai Chilel, requests an enhancement award of **\$7,500**. (Motion ISO Final Approval, 19:12-15.) Plaintiff's contributions to this litigation, include, but are not limited to, spending at least 40 hours in connection with this matter, which included time spent doing an in-person intake with counsel; time spent searching for documents relating to his employment; time spent reading the purported arbitration agreement and providing answers to the circumstances around the arbitration agreement; reading and executing a declaration in support of the opposition to Defendants' Motion to Compel Arbitration; time spent discussing his potential involvement in an evidentiary hearing with respect to Defendants' Motion to Compel Arbitration; time spent reading and understanding the settlement agreements; time spent answering calls to discuss Defendants' timekeeping, pay, meal and rest period policies, to review time and payroll records; time spent discussing with counsel Defendants' policies and practices; time spent finding other employees for counsel to speak with; time spent on-call at the full-day mediation; and time spent checking in on the status of the case, among other things. (Declaration of Isai Chilel ("Chilel Decl."), ¶20.)

The Court finds that a Class Representative award of **\$7,500** is reasonable under these circumstances.

4. Claims Administration Costs? The claims administrator, Phoenix requests **\$12,950** for the cost of settlement administration. (Kruckenberg Decl., ¶13.) At the time of preliminary approval, costs for settlement administration were estimated at \$12,950 (Settlement Agreement, ¶8.) This amount was disclosed to class members and deemed unobjectionable. (Kruckenberg Decl., ¶10, Exh. A.) Accordingly, the Court approves claims administration costs in the amount of **\$12,950**.

FINAL REPORT:

The Court orders class counsel to file a final report summarizing all distributions made pursuant to the approved settlement, supported by a competent declaration from the administrator.

The Court will set a non-appearance date for submission of a final report for April 29, 2022 at 8:30 a.m.