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Clerk of the Court
Superior Court of CA
County of Santa Clara
19CV352173
By: rwalker

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

DARLENE CABUAG, individually, and
on behalf of other members of the general
public similarly situated;

Plaintiff,

v.

WESTGATE PREMIER HEALTHCARE
SERVICES, INC., a California
corporation; AMBERWOOD GARDENS,
an unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 19CV352173

Honorable Theodore C. Zayner
Department 19

CLASS ACTION

**[REVISED PROPOSED] ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: April 19, 2023
Time: 1:30 p.m.
Department: 19

Complaint Filed: August 1, 2019
Trial Date: None Set

1 This matter came before the Honorable Theodore C. Zayner in Department 19 of the
2 Superior Court of the State of California, for the County of Santa Clara, on April 19, 2023, at 1:30
3 p.m. for Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

4 By way of the motion, Plaintiff Darlene Cabuag ("Plaintiff") sought preliminary approval of
5 her putative class action settlement with Defendant Westgate Premier Healthcare Services, Inc. dba
6 Amberwood Gardens Healthcare Center ("Defendant").

7 Having carefully considered the papers, argument of counsel, and all matters presented to
8 the Court, and good cause appearing,

9 **THE COURT RULES AS FOLLOWS:**

10 This is a putative class action in which Plaintiff alleges that Defendant committed various
11 wage and hour violations.

12 Currently before the court is Plaintiff's motion for preliminary approval of a settlement,
13 which is unopposed. As discussed below the court grants preliminary approval of the settlement
14 agreement.

15 **I. Background**

16 Plaintiff Cabuag worked for Defendant as an hourly-paid, non-exempt employee from
17 March 2016 to May 2018. (See Complaint at ¶ 19.)

18 The original and still operative Complaint filed on August 1, 2019 states claims for: (1)
19 Violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (2) Violation of California
20 Labor Code §§ 226.7 and 512(a) (failure to provide meal periods); (3) Violation of California Labor
21 Code § 226.7 (failure to provide rest periods); (4) Violation of California Labor Code §§ 1194,
22 1197 and 1197.1 (unpaid minimum wages); (5) Violation of California Labor Code §§ 201 and 202
23 (failure to timely pay final wages); (6) Violation of California Labor Code § 204 (failure to timely
24 pay wages); (7) Violation of California Labor Code § 226(d) (failure to provide accurate wage
25 statements); (8) Violation of California Labor Code § 1174(d) (failure to maintain accurate payroll
26 records); (9) Violation of California Labor Code §§ 2800 and 2802 (failure to reimburse expenses),
27 and; (10) Violation of California Business and Professions Code §§ 17200, et seq. (unfair business
28 practices).

1 Now, Plaintiff moves for an order preliminarily approving the settlement of the class claims,
2 provisionally certifying the settlement class, approving the form and method for providing notice
3 to the class, and scheduling a final fairness hearing.

4 II. Legal Standards

5 A. Class Action Settlement Approval

6 Generally, “questions whether a [class action] settlement was fair and reasonable, whether
7 notice to the class was adequate, whether certification of the class was proper, and whether the
8 attorney fee award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba*
9 *v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*), disapproved of on other
10 grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

11 In determining whether a class settlement is fair, adequate and reasonable, the trial
12 court should consider relevant factors, such as the strength of plaintiffs’ case, the
13 risk, expense, complexity and likely duration of further litigation, the risk of
14 maintaining class action status through trial, the amount offered in settlement, the
15 extent of discovery completed and the stage of the proceedings, the experience and
16 views of counsel, the presence of a governmental participant, and the reaction of the
17 class members to the proposed settlement.

18 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations
19 omitted.)

20 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
21 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
22 168 Cal.App.4th 116, 130 (*Kullar*.) But the trial court is free to engage in a balancing and
23 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
24 Cal.App.4th at p. 245.) The trial 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.*, citation and internal quotation
28 marks omitted.) The trial court also must independently confirm 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.” (*Kullar, supra*, 168 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be “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.” (*Id.* at pp. 130, 133.)

III. Settlement Process

As noted the original Complaint in this action was filed on August 1, 2019. According to Plaintiff, thereafter the parties engaged in discovery and participated in a full day mediation session with Steven Serratore, Esq. on June 25, 2021. A settlement was reached with the aid of the mediator's evaluation and a notice of settlement was filed on November 29, 2021. The current motion was filed almost a year later on November 23, 2022. It was originally set for hearing on March 15, 2023 and was rescheduled to the current hearing date on January 26, 2023. The motion primarily seeks: class certification for settlement purposes only; the appointment of Plaintiff Cabuag as class representative; the appointment of Plaintiff's Counsel Lawyers for Justice, PC, as class counsel; preliminary approval of the settlement and release; approval of the proposed notice procedure and notice form and; scheduling of a final approval hearing. (See Notice of Motion and Motion at pp. ii:8-iii:4.)

IV. Discussion of the Settlement

A. Settlement Terms

A copy of the proposed settlement (“Settlement Agreement”) is attached as Exhibit 1 to the declaration of Plaintiff's Counsel Ovsanna Takvoryan. The settlement class is defined as “all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during **the Class Period,**” which is defined as **“the period from August 1, 2015, thorough October 7, 2019.”** (Settlement Agreement at I. D & E.)

According to the terms of the Settlement, Defendant will pay a gross settlement amount of **\$700,000.00**. (See Settlement Agreement at I. L. and VIII.) Among other things this amount will include **attorneys' fees of up to \$245,000.00 (35% of the gross settlement)** and costs of up to

1 **\$30,000.00 to be paid to class counsel.** (See Takvoryan Decl. at ¶ 19; Settlement Agreement at
2 XIV.) It will also include an **enhancement payment for Plaintiff Cabuag of \$7,500.00.** (Settlement
3 Agreement at XV.) **The net settlement amount (estimated at \$407,500.00,** see Takvoryan Decl. at
4 ¶ 14) will be distributed to class members based primarily on the number of workweeks worked
5 during the class period. (Settlement Agreement at XII. A.) **Any uncashed payment checks will be**
6 **cancelled 180 days after issuance. The unclaimed funds will be sent by the settlement administrator**
7 **to the California State Controller** designated as unclaimed funds in the name of the class member.
8 (Settlement Agreement at XII. B.)

9 In exchange for the settlement, class members who do not opt out will release Defendant
10 and related persons and entities (see Settlement Agreement at I. Q.) from all claims alleged or that
11 could have been alleged based “on the facts pleaded in the Operative Complaint.” (Settlement
12 Agreement at VII. A.) Plaintiff Cabuag will also agree to an additional general release. (Settlement
13 Agreement at VII. B.)

14 Plaintiff’s Counsel asserts that the settlement is fair and reasonable given the inherent risks
15 and costs of litigation; that it is the product of arms’ length negotiations conducted after extensive
16 discovery and the full day mediation session with Steven Serratore, Esq. on June 25, 2021. (See
17 Takvoryan Decl. at ¶¶ 11-18.) Plaintiff’s Counsel states that there are 539 class members
18 ascertainable from Defendant’s records, who would each receive a share of the \$407,500.00
19 estimated net settlement amount. (See Takvoryan Decl. at ¶ 9.) For purposes of preliminary
20 approval the court finds the settlement is fair and reasonable to the class.

21 **B. Representative Award and Attorney Fees and Costs**

22 As noted above the settlement includes a payment of up **to \$7,500 to Plaintiff Cabuag as**
23 **class representative.** “An incentive award may be appropriate to induce someone to serve as a class
24 representative. In determining whether to make an incentive award, the court may consider (1) the
25 risk, both financial and otherwise, the class representative faced in bringing the suit; (2) the
26 notoriety and personal difficulties encountered by the class representative; (3) the amount of time
27 and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal
28 benefit received by the class representative as a result of the litigation. Incentive awards to class

representatives are discretionary, and there is no presumption of fairness in reviewing them.”
(*Golba v. Dick’s Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272.)

The declaration submitted by Plaintiff Cabuag states in pertinent part that she brought this case to Plaintiff’s counsel based on her experiences working for Defendant; that she spent approximately seven hours researching wage and hour class actions and then consulted with counsel for six hours about what it would mean to be the named plaintiff and class representative. Thereafter, she spent over 16 hours meeting with attorneys, gathering documents concerning her employment, reviewing documents with counsel and answering questions; spent at least 12 additional hours speaking with counsel identifying potential witnesses, providing documents and describing Defendant’s policies; spent approximately 5 hours reviewing the potential settlement and spent 4 more hours discussing it with counsel before signing it. The court finds that this declaration adequately states the basis for the proposed representative award.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines to be reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127–128.) As noted above Plaintiff’s counsel will seek attorney’s fees of up to \$245,000.00 (35% of the gross settlement amount) as well as up to \$30,000 in litigation costs. Plaintiff’s counsel shall submit lodestar information (including hourly rates and hours worked) prior to the final approval hearing in this matter so the Court can compare the lodestar information with the requested fees. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to double-check the reasonableness of a percentage fee through a lodestar calculation].) Plaintiff’s counsel shall also submit evidence of actual costs incurred.

C. Conditional Class Certification

Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a class “when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court” Section 382 requires the

1 plaintiff to demonstrate by a preponderance of the evidence: (1) an ascertainable class and (2) a
2 well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v.*
3 *Superior Court* (2004) 34 Cal.4th 319, 326, 332 (*Sav-On Drug Stores*)). “Other relevant
4 considerations include the probability that each class member will come forward ultimately to
5 prove his or her separate claim to a portion of the total recovery and whether the class approach
6 would actually serve to deter and redress alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000)
7 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield
8 “substantial benefits” to both “the litigants and to the court.” (*Blue Chip Stamps v. Superior Court*
9 (1976) 18 Cal.3d 381, 385.)

10 In the settlement context, “the court’s evaluation of the certification issues is somewhat
11 different from its consideration of certification issues when the class action has not yet settled.”
12 (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the
13 settlement-only context, the case management issues inherent in the ascertainable class
14 determination need not be confronted, and the court’s review is more lenient in this respect. (*Id.* at
15 pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or
16 overbroad class definitions require heightened scrutiny in the settlement-only class context, since
17 the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

18 As noted above Plaintiff’s Counsel states that there are 539 class members ascertainable
19 from records. (See Takvoryan Decl. at ¶ 9.) Plaintiff contends that there are common questions in
20 that all class members performed similar job duties and were subjected to the same employment
21 practices and procedures during the class period of failing to properly pay overtime and minimum
22 wages, failing to provide required meal and rest periods, and failing to reimburse necessary business
23 expenses. As no issues has been raised regarding these common questions or the adequacy of
24 Plaintiff Cabuag as class representative, the court finds that the proposed class should be
25 conditionally certified for settlement purposes.

26 **D. Class Notice**

27 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule 3.769(f).)
28 “The notice must contain an explanation of the proposed settlement and procedures for class

1 members to follow in filing written objections to it and in arranging to appear at the settlement
2 hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining the manner of
3 the notice, the court must consider: “(1) The interests of the class; (2) The type of relief requested;
4 (3) The stake of the individual class members; (4) The cost of notifying class members; (5) The
5 resources of the parties; (6) The possible prejudice to class members who do not receive notice;
6 and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule 3.766(e).)

7 The proposed class notice is submitted as “Exhibit A” to the Settlement Agreement. The
8 court finds that it generally complies with the requirements for class notice as it provides basic
9 information about the settlement, the settlement terms, and the procedure to object or request
10 exclusion.

11 The court requests that the parties revise the notice to identify the correct court department
12 (Department 19) and include the following language regarding the final approval hearing:

13 “Class members may appear at the final approval hearing remotely using the Microsoft
14 Teams link for Department 19 (Afternoon Session). Instructions for appearing remotely are
15 provided at https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml and
16 should be reviewed in advance. Class members who wish to appear remotely are encouraged to
17 contact class counsel at least three days before the hearing if possible, so that potential technology
18 or audibility issues can be avoided or minimized.” The amended notice shall be provided to the
19 court for approval prior to mailing.

20 **THE COURT HEREBY ORDERS AS FOLLOWS:**

21 The motion for preliminary approval of the class action settlement is GRANTED,
22 specifically:

23 1. The Court preliminarily approves the Joint Stipulation of Class Action Settlement
24 (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the
25 Declaration of Ovsanna Takvoryan in Support of Plaintiff’s Motion for Preliminary Approval of
26 Class Action Settlement, with the exception of the Notice of Class Action Settlement attached to
27 Ms. Takvoryan’s declaration, which the parties have since amended and resubmitted for approval
28

per the Court's instructions. This is based on the Court's determination that the Settlement falls within the range of possible approval as fair, adequate, and reasonable.

2. This Order incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms defined therein shall have the same meaning in this Order as set forth in the Settlement Agreement.

3. It appears to the Court on a preliminary basis that the Settlement is fair, adequate and reasonable. It appears to the Court that extensive investigation and research have been conducted such that counsel for the parties at this time are able to reasonably evaluate their respective positions. It further appears to the Court that the Settlement, at this time, will avoid substantial additional costs by all parties, as well as avoid the delay and risks that would be presented by the further prosecution of the case. It further appears that the Settlement has been reached as the result of intensive, serious and non-collusive, arms-length negotiations, and was entered into in good faith.

4. The Court preliminarily finds that the Settlement, including the allocations for the Attorneys' Fees and Litigation Costs, Enhancement Payment, Administration Costs, and payments to the Settlement Class Members provided thereby, appear to be within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. Indeed, the Court has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily finds that the monetary settlement awards made available to the Class Members are fair, adequate, and reasonable when balanced against the probable outcome of further litigation relating to certification, liability, and damages issues.

5. The Court concludes that, for settlement purposes only, the proposed Class meets the requirements for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class is ascertainable and so numerous that joinder of all members of the Class is impracticable; (b) common questions of law and fact predominate, and there is a well-defined community of interest amongst the members of the Class with respect to the subject matter of the litigation; (c) Plaintiff's claims are typical of the claims of the members of the Class; (d) Plaintiff will fairly and adequately protect the interests of the members of the Class; (e) a class action is

1 superior to other available methods for the efficient adjudication of the controversy; and (f) Class
2 Counsel is qualified to act as counsel for Plaintiff in her individual capacity and as the representative
3 of the Class.

4 6. The Court conditionally certifies, for settlement purposes only, the Class, defined
5 as follows:

6 All current and former hourly-paid or non-exempt employees who worked for
7 Defendant within the State of California at any time during the period from August
8 1, 2015, through October 7, 2019.

8 7. The Court provisionally appoints Lawyers *for* Justice, PC as counsel for the Class
9 (“Class Counsel”).

10 8. The Court provisionally appoints Plaintiff Darlene Cabuag as the representative of
11 the Class (“Class Representative”).

12 9. The Court provisionally appoints Phoenix Class Action Administration Solutions
13 (“Phoenix”) to handle the administration of the Settlement (“Settlement Administrator”).

14 10. Within fourteen (14) calendar days of the date of this Order, Defendant shall
15 provide the Settlement Administrator with the following information for each Class Member: full
16 name, last known address, Social Security number, and number of Workweeks worked during the
17 Class Period (collectively referred to as the “Class List”) in conformity with the Settlement
18 Agreement.

19 11. The Court approves, both as to form and content, the proposed Notice of Class
20 Action Settlement (“Class Notice”), which has been revised as discussed above and is attached to
21 the Stipulation to Amend Class Notice (filed concurrently herewith) as “**EXHIBIT B.**” The Class
22 Notice shall be provided to Class Members in the manner set forth in the Settlement Agreement.
23 The Court finds that the Class Notice appears to fully and accurately inform the Class Members of
24 all material elements of the Settlement, of Class Members’ right to be excluded from the Settlement
25 by submitting an opt out request, of Class Members’ right to dispute the Workweeks credited to
26 each of them, and of each Settlement Class Member’s right and opportunity to object to the
27 Settlement by sending a written objecting to the Settlement Administrator or appearing at the Final
28 Approval Hearing without submitting a written objection to the Settlement. The Court further finds

1 that distribution of the Class Notice substantially in the manner and form set forth in the Settlement
2 Agreement and this Order, and that all other dates set forth in the Settlement Agreement and this
3 Order, meet the requirements of due process and shall constitute due and sufficient notice to all
4 persons entitled thereto. The Court further orders the Settlement Administrator to mail the Class
5 Notice by First-Class U.S. mail to all Class Members within ten (10) calendar days of receipt of the
6 Class List, pursuant to the terms set forth in the Settlement Agreement.

7 12. The Court hereby preliminarily approves the proposed procedure, set forth in the
8 Settlement Agreement, for seeking exclusion from the Settlement. Any Class Member may choose
9 to be excluded from the Settlement by submitting a timely written request for exclusion (“Request
10 for Exclusion”) in conformity with the requirements set forth in the Class Notice, to the Settlement
11 Administrator, postmarked no later than the date which is sixty (60) calendar days from the initial
12 mailing of the Class Notice to Class Members (“Response Deadline”) or fifteen (15) calendar days
13 from the original Response Deadline if the Class Notice was re-mailed. Any such person who timely
14 and validly chooses to opt out of, and be excluded from, the Settlement will not be entitled to any
15 recovery under the Settlement and will not be bound by the Settlement or have any right to object,
16 appeal, or comment thereon. Class Members who have not submitted a timely and valid request to
17 be excluded from the Settlement (i.e., Settlement Class Member) shall be bound by the Settlement
18 Agreement and any final judgment based thereon.

19 13. A Final Approval Hearing shall be held before this Court on October 18, 2023, at
20 1:30 p.m. in Department 19 of the Santa Clara County Superior Court, located at 191 North First
21 Street, San Jose, California 95113, to determine all necessary matters concerning the Settlement,
22 including: whether the proposed settlement of the action on the terms and conditions provided for
23 in the Settlement is fair, adequate, and reasonable and should be finally approved by the Court;
24 whether a judgment, as provided in the Settlement, should be entered herein; whether the plan of
25 allocation contained in the Settlement should be approved as fair, adequate, and reasonable to the
26 Class Members; and determine whether to finally approve the requests for the Attorneys’ Fees and
27 Litigation Costs, Enhancement Payment, and Administration Costs.

28 14. Class Counsel shall file a motion for final approval of the Settlement and for

Attorneys' Fees and Litigation Costs, Enhancement Payment, and Administration Costs, along with the appropriate declarations and supporting evidence, including the Settlement Administrator's declaration, in advance of the Final Approval Hearing date, per California Code of Civil Procedure section 1005, to be heard at the Final Approval Hearing.

15. To object to the Settlement, a Class Member may send a written objection to the Settlement Administrator or appear at the Final Approval Hearing without submitting a written objection to the Settlement. The Settlement Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval Hearing to present his or her objection directly to the Court. An attorney who will represent an objector must file a notice of appearance with the Court and serve Class Counsel and Defense Counsel no later than the Response Deadline. A written objection must be signed and must contain the information that is required, as set forth in the Class Notice, including and not limited to the grounds for the objection.

16. The Settlement is not a concession or admission, and shall not be used against Defendant as an admission or indication with respect to any claim of any fault or omission by Defendant. Whether or not the Settlement is finally approved, neither the Settlement, nor any document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted into evidence as, received as or deemed to be in evidence for any purpose adverse to the Defendant, including, but not limited to, evidence of a presumption, concession, indication or admission by Defendant of any liability, fault, wrongdoing, omission, concession, or damage, except for legal proceedings concerning the implementation, interpretation, or enforcement of the Settlement.

17. In the event the Settlement does not become effective in accordance with the terms of the Settlement Agreement, or the Settlement is not finally approved, or is terminated, cancelled or fails to become effective for any reason, this Order shall be rendered null and void, shall be vacated, and the Parties shall revert back to their respective positions as of before entering into the Settlement Agreement.


18. The Court reserves the right to adjourn or continue the date of the Final Approval Hearing and any dates provided for in the Settlement Agreement without further notice to the Class

Members, and retains jurisdiction to consider all further applications arising out of or connected with the Settlement.

IT IS SO ORDERED.

Dated: May 18, 2023

By:



The Honorable Theodore C. Zayner
Judge of the Superior Court