

07/25/2023

David W. Slayton, Executive Officer / Clerk of Court

E. Araiga Deputy

FINAL RULINGS/ORDERS RE: MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Ali Bararsani v. Cal Mutual, Inc., et al., Case No.: 20STCV33697

The Parties' Motion for Final Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms are:

- A. The Gross Settlement Amount ("GSA") is \$45,000.
- B. The Net Settlement Amount is the GSA minus the following:
 - \$6,750 (15%) for attorney fees to Class Counsel, Kesselman, Brantly & Stockinger LLP (50%) and Hyun Legal, APC (50%) (§26);
 - \$2,400 for litigation costs to Class Counsel (Ibid.);
 - \$3,000 for a service award to the named Plaintiff, Ali Bararsani (§27);
 - \$4,550 for settlement administration costs to Phoenix Settlement Administrators (§31.c).
- C. No part of Member Payments shall be classified as wages. (§33.a)
- D. Plaintiffs release of Defendants from claims described herein.

By **August 25, 2023**, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1) (3).

By **April 25, 2024**, Class Counsel must:

- a. file a Final Report re: Distribution of the settlement funds;
- b. lodge a [Proposed] Amended Judgment pursuant to Cal. Code of Civ. Pro. § 384 that also includes the amount of unpaid residue or unclaimed or abandoned class member funds and interest thereon to be distributed to the *cy pres*;
- c. email the [Proposed] Amended Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

Counsel must give notice to the Judicial Council of California, Ms. Donna Newman, Budget Services in Sacramento: donna.newman@jud.ca.gov upon entry of the Amended Judgment pursuant to Cal. Code of Civ. Pro. §384.5.

Court sets a **Non-Appearance Case Review for May 2, 2024, 8:30 AM, Department 9.**

I.
INTRODUCTION

A. Background

Plaintiff Ali Bararsani sues his former employer, Defendants Cal Mutual Inc. ("Cal Mutual") and Californian Estates Inc. ("Californian") (collectively, the "Defendants"), for alleged wage and hour violations. Defendants operate real estate and lending firms. The lawsuit generally alleges that Defendants misclassified its real estate agents as independent contractors. Plaintiff seeks to represent a class of Defendants' real estate agents and sales associates.

On September 2, 2020, Plaintiff filed a Class Action Complaint against Defendant alleging causes of action for: (1) violation of Labor Code § 2802 for failure to reimburse business expenses; and (2) violation of Business and Professions Code § 17200, et seq., based on said violations of Labor Code § 2802. After the action was filed, Defendants attempted to engage in a Pick-Up Stix campaign with prospective class members. Upon discovering Defendants' settlement campaign, Plaintiff filed a motion to invalidate the releases and send a corrective notice. This Court granted in part Plaintiff's motion to invalidate and ordered that corrective notice be sent to putative class members. During this litigation, the parties' counsel began engaging in settlement negotiations.

On December 15, 2021, the parties reached a preliminary agreement to settle. The terms were later finalized in the Joint Stipulation of Class Action Settlement and Release ("Settlement Agreement"), a copy of which was filed with the Court.

On September 21, 2022, the Court issued a "checklist" to the parties pertaining to deficiencies in the proposed settlement. In response, the parties filed further briefing, including the Amended Settlement Agreement attached to

Plaintiff's Notice of Amended Stipulation of Class and Representative Action Settlement.

The settlement was preliminarily approved on March 9, 2023.

Now before the Court is the motion for final approval of the settlement agreement.

B. Settlement Class Definition

The "Settlement Class": All individuals who were classified by Defendants as real estate agents and/or signed Defendants' independent contractor agreements and worked in the State of California as sales associates for and/or on behalf of Defendants from April 6, 2016, to the date of preliminary approval of class action settlement (the "Class Period"), and who have not signed an agreement to arbitrate the claims in this matter on an individual basis and have not signed class waivers applicable to this matter; excluding putative members who file a valid and timely Request for Exclusion with the Claims Administrator. (¶10)

"Class Period": April 6, 2016, to the date of preliminary approval of settlement. (¶10)

The Parties stipulate to class certification for settlement purposes only. (¶10)

C. Terms of Settlement Agreement

The essential terms are:

- The Gross Settlement Value ("GSV") is \$45,000, non-reversionary. (¶7)
- The Net Settlement Amount ("Net") (\$28,300) is the GSA minus the following:
 - Up to \$6,750 (15%) for attorney fees (¶26);
 - Up to \$2,400 for litigation costs (Ibid.);
 - Up to \$3,000 for a service award to the named Plaintiff (¶27); and
 - Up to \$4,550 for settlement administration costs (¶31.c).
- No Claim Form. Class Members will not have to submit a claim form in order to receive their settlement payment. (Notice pg. 3)
- Response Deadline. The "Response Deadline" is defined as 45 calendar days from the date of mailing of the Class Notice and applies the submission of opt-outs and written objections (¶39).

- Individual Settlement Payment Calculation. The Claims Administrator will allocate the NSV to the Settlement Class and divide said amount by the total number of Days of Association (as defined by Paragraph 17) of all Settlement Class members during the Class Period in order to calculate the "Daily Settlement Value." (¶35) The value of the disbursement to each member of the Settlement Class ("Disbursement Value") Settlement Class shall be the number which results from multiplying the Settlement Class members' Days of Association by the Daily Settlement Value. (¶36) Any portion of the NSV not paid out, whether due to the filing of Requests for Exclusion or any other reason, shall be divided pro-rata among Settlement Class members. (¶46)
 - o Tax Allocation. Each settlement payment shall be classified as follows: (1) one-third to interest and (2) two-thirds to penalties. No part of Member Payments shall be classified as wages. (¶33.a)
- Funding and Distribution of Settlement. Defendants shall pay the GSV to the Claims Administrator not later than fifteen (15) calendar days after the Effective Date ("Monetary Settlement Fund"). (¶44) Within ten (10) calendar days of its receipt of the Monetary Settlement, the Claims Administrator shall make the payments stated in Section IX and shall pay out the Monetary Settlement Fund to Settlement Class members who did not submit valid and timely Requests for Exclusion. (¶45)
- Uncashed Checks. Settlement Class Members will receive their share of the NSV in the form of checks mailed to them by the Claims Administrator. Settlement Class Members shall have one hundred and eighty (180) calendar days to cash the check that was mailed to them. After one hundred and eighty (180) calendar days from the date of mailing, the checks shall become null and void, and any monies remaining in the distribution account shall be distributed to CASA of Los Angeles. (¶37)
 - o All parties and counsel represent that they have no interest or involvement with CASA of Los Angeles. (Decl. of Dennis S. Hyun ISO Prelim ¶11; Decl. of Ali Bararsani Decl. ISO Prelim ¶5; Decl. of Shane Dailey ISO Prelim ¶4; Decl. of Rinat Klier-Erlich ISO Prelim ¶3; Decl. of Curtis Gole ISO Prelim ¶3; Decl. of Bethany Woolf ISO Prelim ¶4.)
- Phoenix Settlement Administrators will perform notice and settlement administration. (¶13)
- Notice of Entry of Judgment will be posted on the administrator's website. (¶22)
- Releases. In exchange for the consideration, undertakings, and covenants agreed to by Defendants in this Agreement, and to the extent permitted by applicable law, the Settlement Class

(including, without limitation, the Named Plaintiff) hereby releases, discharges Defendants, and all of their respective past and present directors, officers, representatives, insurers, parents, and all of their respective past and present directors, officers, representatives, insurers, parents, and subsidiaries (individually and collectively "the Defendants' Releasees") with respect to all actions, causes of action, suits, liabilities, claims, and demands whatsoever, and each of them, that were asserted in the Complaint arising from Defendants' alleged violation of Labor Code § 2802 for failure to reimburse business expenses and violation of Business & Professions Code § 17200, et seq., based on said violations of Labor Code § 2802 (the "Settlement Class Released Claims"), that arose during the Class Period. The release contained in this paragraph becomes effective on the date which Defendants fully funds the settlement per the terms of this Agreement. (¶47)

II. DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On December 15, 2021, the parties reached a preliminary agreement to settle. The terms were later finalized in the Settlement Agreement. (Declaration of Dennis S. Hyun ISO Prelim ¶7.) Counsel represents that the parties were not assisted by a mediator in settlement efforts, but spent five months on negotiations. (Supp. Decl. of Dennis S. Hyun ISO Prelim ¶7).

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class Counsel represents that over the course of the Lawsuit, Plaintiff conducted informal and formal discovery and investigation, including propounding formal discovery and obtaining responses thereto. Plaintiff also obtained workweek data for the entire class. As part of settlement negotiations, Defendants produced the class list and dates of association for each agent. (Hyun Decl. ISO Prelim ¶7.) Counsel represents that Plaintiff obtained data for all 70 estimated class members. For each class member, Plaintiff obtained information such as all putative class members' dates of association with Defendants in order to derive weeks worked per employee. (Supp. Hyun Decl. ISO Prelim ¶9).

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation,

including wage and hour class action cases. (Hyun Decl. ISO Prelim ¶¶5-6; Declaration of Majed Dakak ISO Prelim ¶¶5-6.)

4. What percentage of the class has objected? None. (Declaration of Taylor Mitzner ("Mitzner Decl.") ¶10.)

The Court concludes that the settlement is entitled to a presumption of fairness.

B. Is the Settlement Fair, Adequate, and Reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

Counsel provided exposure analysis. Plaintiff's counsel represents that they calculated Defendant's realistic exposure based on hard damages at approximately \$106,500. (Hyun Decl. ISO Prelim ¶7.) Based on the information received from Plaintiff and other putative class members, Plaintiff's counsel estimated out of pocket expenses equaled approximately \$75 per week per employee, which was based on Plaintiff's estimation of the costs he paid for monthly cell phone bills, licensing fees, vehicle costs, and insurance. After calculating all weeks worked by all 70 estimated class members, Plaintiff estimated damages of \$106,500. Defendant also had defenses that Plaintiff would have to overcome if this case were litigated. The key defense included arbitration and class waiver agreements that putative class members signed. (Supp. Hyun Decl. ISO Prelim ¶9.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate."))

4. Amount offered in settlement. Plaintiff's counsel estimated Defendant's exposure at \$106,500. The \$45,000 settlement amount represents approximately 42.2% of Defendant's exposure which, given the uncertain outcomes, is within the "ballpark of reasonableness."

The settlement amount, after the requested deductions, leaves approximately \$28,300 to be divided among approximately 63 participating class members. The resulting payments will average approximately \$449.21 per class member.

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement.

Number of class members: 64 (Mitzner Decl. ¶3.)
Number of notice packets mailed: 64 (Id. at ¶6.)
Number of undeliverable notices: 0 (Id. at ¶8.)
Number of opt-outs: 1 (Id. at ¶9.)
Number of objections: 0 (Id. at ¶10.)
Number of Participating Class Members: 63 (Id. at ¶12.)
Average individual payment: \$449.21 (Id. at ¶14.)
Highest estimated payment: \$1,150.11 (Ibid.)

The Court concludes that the settlement is fair, adequate, and reasonable.

C. Attorney Fees and Costs

Class Counsel requests an award of \$6,750 in fees and \$2,400 in costs. (MFA at 13:16-17, 15:26.) The Settlement Agreement provides for fees up to \$6,750 (15%) and costs up to \$2,400 (¶26).

"Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.) Here, class counsel requests attorney fees using the common fund method as cross-checked against the lodestar. (MFA at pp. 11-15.) In common fund cases, the Court may employ a percentage of the benefit method, as cross-checked against the lodestar. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) The fee request represents 15% of the gross settlement amount which is below the average generally awarded in class actions. See In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn. 13 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.").

Counsel provided the following lodestar information:

Attorney/Firm	Rates	Hours	Totals
Hyun Legal APC	\$650	75.8	\$56,850.00
Kesselman Brantly Stockinger LLP	\$200- 700	130.60	\$76,520.00
Totals		206.4	\$133,370.00

(Hyun Decl. ISO Final ¶13; Dakak Decl. ISO Final ¶13.)

Counsel's percentage-based fee request is lower than the unadjusted lodestar, which would require the application of an approximate 0.05x multiplier to reach the requested fees.

There is a fee split. Plaintiff authorized the attorneys' fee division of 50% to Kesselman, Brantly & Stockinger and 50% to Hyun Legal, APC pursuant to the retainer agreement he signed. (Hyun Decl. ISO Prelim ¶12.)

Here, the \$6,750 fee request represents a reasonable percentage of the total funds paid by Defendant. Notice of the fee request was provided to class members in the notice packet and no one objected. (Mitzner Decl. ¶10, Exhibit A thereto.)

As for costs, Class Counsel is requesting \$2,400. This is equal to the \$2,400 cap provided in the Settlement Agreement, for which Class Members were given notice and did not object. (Mitzner Decl. ¶10, Exhibit A thereto.) Counsel incurred \$4,297.06 in actual costs, which include: Case Anywhere and filing fees. (Hyun Decl. ISO Final ¶14; Dakak Decl. ISO Final

¶14, Exhibit B.) The costs appear to be reasonable in amount and reasonably necessary to this litigation.

Based on the above, the court awards \$6,750 for attorneys' fees and \$2,400 for attorneys' costs.

D. Claims Administration Costs

The settlement administrator, Phoenix Settlement Administrators, requests administration costs of \$4,550 (Mitzner Decl. ¶15). This is equal to the estimated cost of \$4,550 provided for in the Settlement Agreement (¶31.c) and disclosed to Class Members in the Notice, to which no one objected. (Mitzner Decl. ¶10, Exhibit A thereto).

The court awards administration costs in the requested amount.

E. Incentive Award to Class Representative

Plaintiff Ali Bararsani seeks an enhancement award of \$3,000 for his contributions to the action. (MFA at 10:17.)

In connection with the final fairness hearing, named Plaintiffs must submit declarations attesting to why they should be entitled to an enhancement award in the proposed amount. The named Plaintiffs must explain why they "should be compensated for the expense or risk he has incurred in conferring a benefit on other members of the class." (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than pro forma claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit" (Id. at 806-807, italics and ellipsis in original.)

Plaintiff represents that his contributions to this action include: participating in phone meetings with his attorneys, providing information documents about his employment, reviewing the complaint and other papers, participating in the mediation, and reviewing the settlement. He estimates spending 30 hours on the case. (Decl. of Ali Bararsani ISO Final ¶3.)

Based on the above, the court grants the enhancement award in the amount of \$3,000 to Named Plaintiff Ali Bararsani.

IV.
CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Final Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable.

2) The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$45,000.

B. The Net Settlement Amount is the GSA minus the following:

\$6,750 (15%) for attorney fees to Class Counsel, Kesselman, Brantly & Stockinger LLP (50%) and Hyun Legal, APC (50%) (¶26);

\$2,400 for litigation costs to Class Counsel (Ibid.);

\$3,000 for a service award to the named Plaintiff, Ali Bararsani (¶27);

\$4,550 for settlement administration costs to Phoenix Settlement Administrators (¶31.c).

C. No part of Member Payments shall be classified as wages. (¶33.a)

D. Plaintiffs release of Defendants from claims described herein.

3) By August 25, 2023, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1)(3).

4) By April 25, 2024, Class Counsel must:

a. file a Final Report re: Distribution of the settlement funds;

b. lodge a [Proposed] Amended Judgment pursuant to Cal. Code of Civ. Pro. § 384 that also includes the amount of unpaid residue or unclaimed or abandoned class member funds and interest thereon to be distributed to the cy pres;

c. email the [Proposed] Amended Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

5) Counsel must give notice to the Judicial Council of California, Ms. Donna Newman, Budget Services in Sacramento: donna.newman@jud.ca.gov upon entry of the Amended Judgment pursuant to Cal. Code of Civ. Pro. §384.5.

6) Court sets a Non-Appearance Case Review for May 2, 2024, 8:30 AM, Department 9.

CLERK TO GIVE NOTICE TO MOVING PARTY. THE MOVING PARTY TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: July 25, 2023



YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT
Yvette M. Palazuelos / Judge