

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 08/17/22      TIME: 1:30 P.M.      DEPT: B      CASE NO: CV2200451

PRESIDING: HON. JAMES T. CHOU

REPORTER:

CLERK: JOEY DALE

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PLAINTIFF:      EKATERINA  
NETSVETAYEVA, ET AL

vs.

DEFENDANT:      AUTODESK, INC.

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NATURE OF PROCEEDINGS: MOTION – FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; APPROVE OF NOTICE CLASS MEMBERS; APPROVAL OF SETTLEMENT ADMINISTRATOR [PLTF] VALERIE BUTLER [PLTF] EKATERINA NETSVETAYEVA

**RULING**

The unopposed motion for preliminary approval of class action settlement is granted. The Court finds based on the nature of the case, the information provided, and the status of the litigation, that the settlement appears fair, reasonable, and adequate.

This is an employment related class action in which Plaintiffs (Ekaterina Netsvetayeva, Valerie Butler, and the putative class) allege that Defendant Autodesk failed to: provide automatic reimbursements for home office expenses incurred during the class period when work-from-home orders, shelter-in-place orders, and Defendant’s office closures went into effect due to COVID-19; pay all minimum wages; provide compliant meal and rest periods; provide compliant wage statements; timely pay all wages; and pay all final wages.

California Rule of Court 3.769(a) provides that settlement of an entire class action or a cause of action in a class action, or as to a party, requires court approval after hearing. This section applies even before a class has been certified, and in such cases, “are scrutinized more carefully to make sure absent class members’ rights are adequately protected.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4<sup>th</sup> 224, 236.) The settlement agreement and the proposed notice to class members must be filed with the motion, and a proposed order must be lodged. (Cal. Rules of Court, rule 3.769(c).)

The Court may approve or deny certification of a provisional settlement class which enables a defendant to get the benefit of a final judgment binding all class members without conceding certification should the Court disapprove the settlement. However, the settlement class must satisfy the normal prerequisites for a class action (*See Amchem Products, Inc. v.*

*Windsor* (1997) 521 U.S. 591, 625-627 [asbestos settlement class decertified because it could not meet requirements of adequate representation and predominant common questions].)

Additionally, before finally approving the settlement, the Court must inquire into the fairness of the settlement, and may consider the following factors:

- strength of plaintiff's case;
- risk, expense, complexity and likely duration of further litigation;
- risk of maintaining class action status through trial;
- amount offered in settlement;
- extent of discovery completed and state of the proceedings;
- experience and views of counsel;
- presence of a governmental participant; and,
- reaction of the class members to the proposed settlement.

(*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4<sup>th</sup> 1794, 1801.)

The burden is on the proponent of the settlement to show that it is fair and reasonable. However "a presumption of fairness exists 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." (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4<sup>th</sup> at 245.)

### **Preliminary Approval**

In this case, Plaintiffs seek approval for the following, including, but not limited to:

- 1) a gross settlement amount of \$475,000 (GSA) less attorney fees of up to \$158,333.33 (One third of the GSA) (Exh. A of Ackerman Decl. Settlement Agreement pp.8 & 9.);
- 2) administration costs not to exceed \$18,500<sup>1</sup> (Exh. A of Ackerman Decl. Settlement Agreement p. 11.);
- 3) litigation costs not to exceed \$10,000 (Exh. A of Ackerman Decl. Settlement Agreement p. 9.);
- 4) class representative enhancement payments to the named class representatives in a sum not to exceed \$7,500.00 for Valerie Butler and not to exceed \$5000 for Ekaterina Netsvetayeva (Exh. A of Ackerman Decl. Settlement Agreement p. 3.);
- 5) a California Labor Code Private Attorneys General Act of 2004 (Cal Lab. Code §2698 *et seq.*) (PAGA) payment in the amount of \$47,500, with 75% of the PAGA payment to be paid to the LWDA in the amount of \$35,625 and the remaining 25% in the amount of \$11,875 of the PAGA payment to be part of the net settlement amount distributed to all PAGA Aggrieved Employees on a pro rata basis as set forth in the settlement agreement (Exh. A of Ackerman Decl. Settlement Agreement pp. 10-11.);

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<sup>1</sup> This amount differs from the \$20,000 amount noted in the Declaration of Craig J. Ackerman at page 19 as well as Exhibit B to the Declaration of Craig J. Ackerman. The Court finds that the actual terms of the signed settlement agreement control and that Class Counsel shall bear the financial burden of resolving this discrepancy by deducting any difference from its attorneys' fees.

- 6) after all anticipated Court-approved deductions from the GSA, it is estimated the net settlement amount will be \$238,541.67 (NSA), and will be distributed to no more than the 2,401 total class members with an average settlement share estimated at \$99.35 (Ackerman Decl. p.11 fn 6.);
- 7) Under no circumstances will any portion of the GSA revert to Defendant.

Additionally, Plaintiffs provided this Court with the proposed Notice of Class Action Settlement to be given by the agreed upon Settlement Administrator [CPT Group, Inc.] which contains the requirements set forth in Cal. Rules of Court, rule 3.766. (Cal. Rules of Court, rule 3.766(d).) Moreover, the Settlement Agreement and Notice of Class Action Settlement sets forth an explicit procedure of how each potential class member may exercise his/her options; namely to opt out of the settlement, or to file a claim within the prescribed period of time on the notice entitling class members to collect their calculated settlement claims.

In totality, the proposed Settlement Agreement appears to be fair. The Settlement Agreement was reached after thorough investigation, discovery and negotiations over more than a year providing consideration for the strengths and weaknesses of the claims and potential defenses. Plaintiffs assert that their case contains substantial risks as to potential legal theories, and risks of litigation. Plaintiffs also assert the proposed settlement seeks to avoid highly expensive, complex, and protracted litigation, and provides substantial benefits to class members.

#### **Class Certification**

The class is certified for settlement purposes only as to all individuals who worked for Defendant and constituted approximately 2,401 current and former employees in California from March 17, 2020 through March 5, 2022 (Settlement Class Period) who were subject to stay-at-home orders and/or whose offices were closed due to COVID-19 for at least one pay period during the Settlement Class Period and did not receive a fully paid wireless internet device for work purposes.. (Ackerman Decl. p. 8, Exh. A of Ackerman Decl. Settlement Agreement p.4 )

The court concludes that for settlement purposes only, the class meets the requirements for certification pursuant to California Code of Civil Procedure section 382. Section 382 authorizes class actions “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....” The party seeking certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4<sup>th</sup> 319,326.)

#### **Class Counsel**

The Court provisionally appoints Craig Ackermann, Avi Kreitenberg, and India Lin Bodien as Class Counsel.

#### **Class Representatives**

The Court provisionally appoints Ekaterina Netsvetayeva and Valerie Butler as Class Representatives.

**Proposed Notice**

The content of a class notice is subject to court approval.

“If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.”

(Cal. Rules of Court, Rule 3.769(f).)

The notice appears to comply with the requirements for class notice. In this case, it will be mailed to all identified Class Members by first class mail and includes: information regarding the nature of the lawsuit; a summary of the substance of the settlement terms; the class definition; the procedure and period in which to obtain a payment, opt-out, or object; the date for the final approval hearing (as calendared by this order); and the formula used to calculate settlement payments. The proposed form of class notice and claim form are approved.

**Settlement Administrator**

The parties agree that CPT Group Inc. will be the Settlement Administrator.

**Attorneys' Fees**

The Court has an independent right and responsibility to review the requested attorneys' fees and only award so much as it determines reasonable. (*See Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Ca.App.4<sup>th</sup> 123, 127-128.) Class Counsel will seek attorneys' fees of up to one-third of the GSA plus costs. The Court generally considers one-third of the gross settlement amount for attorneys' fees to be reasonable. Class Counsel should 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. In their submittal, Class Counsel should also provide a description of their work and explain why the Court should approve the attorneys' fees requested.

**Fairness Hearing**

The Court now sets final fairness hearing on January 11, 2023 at 1:30 p.m. in Department B.

***All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are strongly encouraged to appear remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.***

***The Zoom appearance information for August 17, 2022 is as follows:***

**Meeting ID: 161 827 0831**

**Passcode: 591912**

**<https://www.zoomgov.com/j/1618270831?pwd=NlhEVXN1ZFoyd0Yvei9HaSsxQnFlZz09>**

*If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: <https://www.marincourt.org/>*