

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

MICHAEL SCHMITZ, MIN DUONG, and
RYAN WINTERS, individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

HEALTHIQ RE, INC., a California corporation;
HI.Q, INC. which will do Business in California
as Health IQ, a California corporation; and DOES
1 through 25,

Defendants.

Case No. 2018-1-CV-337951

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

The above-entitled matter came on for hearing on Friday, October 4, 2019, at 9:00 a.m. in Department 5 (Complex Civil Litigation), the Honorable Thomas E. Kuhnle presiding. The Court reviewed and considered the written submissions filed by the parties and issued a tentative ruling on Thursday, October 3, 2019. No party contested the tentative ruling; therefore, the Court orders the tentative ruling be adopted as the Order of the Court, and hereby orders, adjudges, and decrees as follows:

I. INTRODUCTION

This is a putative class action arising out of various alleged wage and hour violations. The Complaint, filed on November 13, 2018, sets forth the following causes of action:
(1) Violation of Labor Code section 510; (2) Violation of Labor Code sections 226.7(b) and

1 512(a) and the Applicable Wage Order; (3) Violation of Labor Code section 226; (4) Violation
2 of Labor Code sections 201 and 202; (5) Violation of Labor Code section 2802; and
3 (6) Violation of Business and Professions Code section 17200, et seq.

4 The parties have reached a settlement. On June 28, 2019, the Court signed an order
5 granting preliminary approval of the settlement. Plaintiffs Michael Schmitz, Min Duong, and
6 Ryan Winters (collectively, “Plaintiffs”) now move for final approval of the settlement.

7 **II. LEGAL STANDARD**

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

13 In determining whether a class settlement is fair, adequate and reasonable, the
14 trial court should consider relevant factors, such as “the strength of plaintiffs’
15 case, the risk, expense, complexity and likely duration of further litigation, the
16 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.”
17 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48
18 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688
19 F.2d 615, 624.)

20 “The list of factors is not exclusive and the court is free to engage in a balancing and
21 weighing of factors depending on the circumstances of each case.” (*Wershba v. Apple*
22 *Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the “proposed
23 settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is
24 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and
25 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*,
26 quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n,*
27 *etc.*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

28 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

1 is reached through arm's-length bargaining; (2) investigation and discovery are
2 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."

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

5 **III. DISCUSSION**

6 The non-PAGA portion of the case has been settled on behalf of the following class:

7 [A]ll employees of Defendants who worked as a Sales and/or Operations Person
8 . . . in California at any time during the Non-PAGA Class Period and who have
not previously settled and released all wage and hour claims against Defendants.

9 As discussed in connection with the motion for preliminary approval, defendants
10 HealthIQ Re, Inc. and Hi.Q, Inc. (collectively, "Defendants") will pay a total amount of
11 \$1,000,100.02, plus the employer's share of payroll taxes. The settlement is split into a PAGA
12 portion and non-PAGA portion. For the non-PAGA portion, Defendants will pay \$831,674.54.
13 For the PAGA portion, Defendants will pay \$168,425.48. The settlement funds will be paid in
14 two installments, the first 21 days after the "Effective Date" and the second six months later.

15 Out of the non-PAGA portion of the settlement, disbursements will be made of \$5,250
16 for settlement administration costs, \$277,224.85 for attorneys' fees, up to \$5,000 for costs, and
17 \$3,500 for each class representative (\$10,500 total). Out of the PAGA portion of the settlement,
18 disbursements will be made of \$5,250 for settlement administration costs, \$56,141.83 for
19 attorneys' fees, up to \$5,000 for costs, and \$76,525.24 to the Labor and Workforce Development
20 Agency ("LWDA").

21 For checks that are not cashed within 60 days of disbursement, the settlement
22 administrator will attempt to contact each individual to advise them to cash their checks and
23 offer to replace any checks reported as lost or stolen. Checks not cashed within 180 days will be
24 void and the funds represented by the uncashed checks will be disbursed one-half each to Bet
25 Tzedek and the American Diabetes Association as *cy pres* beneficiaries.

26 On July 22, 2019, the settlement administrator mailed notice packets to 39 non-PAGA
27 settlement class members. (Declaration of Bryan Valdez on Behalf of CPT Group, Inc. The
28 Settlement Administrator, ¶ 6.) As of September 9, 2019, no notice packets remain undelivered.

1 (*Id.* at ¶ 7.) There have been no requests for exclusion, objections, or disputes. (*Id.* at ¶ 8.) The
2 average recovery for non-PAGA settlement class members is \$13,684.61 and the highest
3 recovery is \$50,003.76. (*Id.* at ¶ 9.)

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

6 Plaintiffs request service awards of \$3,500 for each class representative.¹ Based on
7 declarations submitted in connection with the motion for preliminary approval, the Court found
8 incentive awards are warranted. The Court continues to make that finding for final approval.

9 The Court also has an independent right and responsibility to review the requested
10 attorneys' fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
11 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel
12 requests attorneys' fees in the amount of \$333,366.68² (one-third of the total settlement) and
13 costs of \$2,324.50.³ Plaintiffs' counsel provides evidence demonstrating a lodestar of
14 \$103,394.97, based on an hourly rate of \$550/hour. (Declaration of Jon M. Lebe in Support of
15 Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement, ¶ 18.) This results
16 in a multiplier of 3.22. This is a higher multiplier than this Court generally sees. Nevertheless,
17 Plaintiffs' counsel achieved a very good result for the class and the fees requested comport with
18 the widely accepted common fund approach. The Court approves the fees. The Court approves
19 the incurred costs, which are reasonable.

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

21 Pursuant to Rule 3.769, subdivision (h), of the California Rules of Court, this Court
22 retains jurisdiction over the parties to enforce the terms of the Settlement Agreement, and the
23 final Order and Judgment.

24 The Court now sets a compliance hearing for April 24, 2020 at 10:00 a.m. in
25 Department 5. At least ten court days before the hearing, class counsel and the settlement

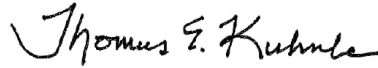
26
27 ¹ The final approval papers state Plaintiffs seek \$2,500 for each class representative, but this appears to be an error.
28 Plaintiffs' counsel confirmed at the hearing on preliminary approval that Plaintiffs are seeking \$3,500 for each class
representative, as stated in the settlement agreement.

² The moving papers erroneously state Plaintiffs seek \$333,336.68 in fees.

³ The amount requested for fees covers both the non-PAGA and PAGA portions of the settlement.

1 administrator shall submit a summary accounting of the net settlement fund identifying
2 distributions made as ordered herein, the number and value of any uncashed checks, amounts
3 remitted to Defendants, the status of any unresolved issues, and any other matters appropriate to
4 bring to the Court's attention. Counsel may appear at the compliance hearing telephonically.

5
6 Dated: October 7, 2019



Thomas E. Kuhnle
Judge of the Superior Court