

Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 8/18/2022 9:48 AM
Reviewed By: R. Walker
Case #21CV383516
Envelope: 9743835

1
2
3
4
5
6
7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
10

11 ANTHONY SANCHEZ, individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 JSR MICRO, INC.; JSR NORTH AMERICA
16 HOLDINGS, INC.; JSR LIFE SCIENCES, LLC;
17 and DOES 1 through 20, inclusive,

18 Defendants.

Lead Case No. 21CV383516
Consolidated with Case No. 21CV386334

**ORDER RE: MOTION FOR
PRELIMINARY APPROVAL OF
CLASS [AND REPRESENTATIVE]
ACTION SETTLEMENT**

19 ANTHONY SANCHEZ, individually and on
20 behalf of all others similarly situated,

21 Plaintiff,

22 vs.

23 JSR MICRO, INC.; JSR NORTH AMERICA
24 HOLDINGS, INC.; JSR LIFE SCIENCES, LLC;
25 and DOES 1 through 20, inclusive,

Defendants.

26 The above-entitled matter came on for hearing on Wednesday, August 17, 2022, at 1:30
27 p.m. in Department 3, the Honorable Patricia M. Lucas presiding. The court reviewed and
28 considered the written submissions filed by the parties and issued a tentative ruling on Tuesday,

1 August 16, 2022. No party contested the tentative ruling; therefore, the court orders that the
2 tentative ruling be adopted as the order of the court, as follows:

3 **I. INTRODUCTION**

4 On June 23, 2021, plaintiff Anthony Sanchez (“Plaintiff”) filed a putative class action
5 complaint in Case No. 21CV383516 against defendants JSR Micro, Inc., JSR North America
6 Holdings, Inc., and JSR Life Sciences, LLC (collectively, “Defendants”) alleging causes of
7 action for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure
8 to Provide Meal Periods; (4) Failure to Permit Rest Breaks; (5) Failure to Reimburse Business
9 Expenses; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Failure to Pay All
10 Wages Due Upon Separation of Employment; and (8) Violation of Business and Professions
11 Code §§ 17200, et seq.

12 On August 30, 2021, Plaintiff filed another complaint against Defendants in
13 21CV386334, alleging a single cause of action for Enforcement of Labor Code §§ 2698, et seq.
14 (“PAGA”) for failure to pay minimum and overtime wages, failure to provide meal periods,
15 failure to permit rest breaks, failure to timely pay final wages, failure to provide accurate
16 itemized wage statements, and failure to reimburse for business expenses.

17 The parties attended mediation on April 22, 2022, and agreed to settle both cases.

18 Plaintiff now moves for preliminary approval of the settlement. At the time the motion
19 was filed on July 22, 2022, the cases were not consolidated and the motion was filed only in
20 Case No. 21CV383516. The motion erroneously stated that a PAGA claim was pled in Case No.
21 21CV383516. After the court advised the parties of this procedural irregularity, on August 11,
22 2022 the court approved the parties’ Joint Stipulation to Consolidate Class and PAGA Actions,
23 which consolidated the two cases for all purposes.

24 **II. LEGAL STANDARD**

25 Generally, “questions whether a settlement was fair and reasonable, whether notice to the
26 class was adequate, whether certification of the class was proper, and whether the attorney fee
27 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
28

1 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*
2 (1996) 48 Cal.App.4th 1794 (*Dunk*).

3 In determining whether a class settlement is fair, adequate and reasonable, the
4 trial court should consider relevant factors, such as “the strength of plaintiffs’
5 case, the risk, expense, complexity and likely duration of further litigation, the
6 risk of maintaining class action status through trial, the amount offered in
7 settlement, the extent of discovery completed and the stage of the proceedings, the
8 experience and views of counsel, the presence of a governmental participant, and
9 the reaction of the class members to the proposed settlement.”

10 (*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801
11 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624
12 (*Officers*).

13 “The list of factors is not exclusive and the court is free to engage in a balancing and
14 weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91
15 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the
16 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
17 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
18 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48
19 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

20 The burden is on the proponent of the settlement to show that it is fair and
21 reasonable. However “a presumption of fairness exists where: (1) the settlement
22 is reached through arm’s-length bargaining; (2) investigation and discovery are
23 sufficient to allow counsel and the court to act intelligently; (3) counsel is
24 experienced in similar litigation; and (4) the percentage of objectors is small.”

25 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

26 **III. DISCUSSION**

27 **A. Provisions of the Settlement**

28 The consolidated case has been settled on behalf of the following class:

[A]ll current and former non-exempt employees who are or were employed by
Defendants in California at any time during the Class Period.

(Declaration of Kristy R. Connolly in Support of Motion for Preliminary Approval of Class
Action Settlement (“Connolly Dec.”), Ex. 1 (“Settlement Agreement”), ¶ 1(c).) The Class Period
is December 18, 2016 to April 22, 2022. (*Id.* at ¶ 1(g).) The class contains a subset of PAGA

1 Group Members that are defined as all class members employed by Defendants at any time
2 during the PAGA Period of June 23, 2020 through April 22, 2022. (*Id.* at ¶¶ 1(aa)-(bb).)

3 According to the terms of settlement, Defendants will pay a total non-reversionary
4 amount of \$1,000,000. (Settlement Agreement, ¶ 1(n).) The total settlement payment includes
5 attorney fees up to \$333,333.33 (1/3 of the gross settlement amount), costs not to exceed
6 \$30,000, an incentive award of \$10,000 for the class representative, settlement administration
7 costs not to exceed \$10,000, and a PAGA allocation of \$50,000 (75 percent of which will be paid
8 to the LWDA and 25 percent of which will be paid to PAGA Group Members). (*Id.* at ¶¶ 1(n)-
9 (o), 1(r), 1(z), 1(ii), & 3.06(b)-(c).)

10 The net settlement amount will be distributed to the class members on a pro rata basis
11 based on the number of workweeks worked during the Class Period. (Settlement Agreement,
12 ¶¶ 1(p), 1(v), 1(ff), & 3.06(f).) Similarly, PAGA Group Members will receive a pro rata share of
13 the 25 percent portion of the PAGA payment allocated to aggrieved employees based on the
14 number of workweeks worked during the PAGA Period. (*Id.* at ¶ 3.06(f).)

15 Checks remaining uncashed more than 180 days after the date the individual settlement
16 payment checks are dated will be void and the funds from those checks will be distributed to the
17 State Controller Unclaimed Property Fund in the name of the class member for whom the funds
18 are designated. (Settlement Agreement, ¶ 3.06(f).) The parties' proposal to send funds from
19 uncashed checks to the Unclaimed Property Fund does not comply with Code of Civil Procedure
20 section 384, which mandates that unclaimed or abandoned class member funds be given to
21 "nonprofit organizations or foundations to support projects that will benefit the class or similarly
22 situated persons, or that promote the law consistent with the objectives and purposes of the
23 underlying cause of action, to child advocacy programs, or to nonprofit organizations providing
24 civil legal services to the indigent." Plaintiff is directed to provide a new *cy pres* in compliance
25 with Code of Civil Procedure section 384 in connection with the final approval hearing.

26 **B. Fairness of the Settlement**

27 Plaintiff asserts that the settlement is fair, reasonable, and adequate, given the strength of
28 his claims, the inherent risks of litigation, including substantial risks relative to class certification

1 and the merits of the claims, and the costs of pursuing litigation. Plaintiff states that after
2 conducting substantial formal discovery, the parties attended a full-day mediation session with
3 Eve Wagner and were eventually able to resolve the dispute. Plaintiff estimates that Defendants
4 faced a maximum potential liability of \$2,413,000 for all class claims. (Connolly Dec., ¶¶ 15-
5 20.) Plaintiff provides a detailed breakdown of this amount by claim. (*Ibid.*) Plaintiff also
6 estimates that the maximum potential liability for PAGA penalties is approximately \$164,900.
7 (*Id.* at ¶ 21.) Plaintiff discounted the potential value of the claims given the risks inherent in
8 continued litigation, the strength of Defendants’ defenses, the difficulties involved in obtaining
9 class certification, and the court’s ability to reduce PAGA penalties. (*Id.* at ¶¶ 15-21.) Plaintiff
10 asserts that for the approximately 135 class members, the average net recovery is \$4,567 per
11 class member.

12 Overall, the court finds the settlement is fair. The settlement provides for some recovery
13 for each class member and eliminates the risk and expense of further litigation.

14 **C. Incentive Award, Fees, and Costs**

15 Plaintiff requests an incentive award of \$10,000 for the class representative.

16 The rationale for making enhancement or incentive awards to named plaintiffs is
17 that they should be compensated for the expense or risk they have incurred in
18 conferring a benefit on other members of the class. An incentive award is
19 appropriate if it is necessary to induce an individual to participate in the suit.
20 Criteria courts may consider in determining whether to make an incentive award
21 include: 1) the risk to the class representative in commencing suit, both financial
22 and otherwise; 2) the notoriety and personal difficulties encountered by the class
23 representative; 3) the amount of time and effort spent by the class representative;
24 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
25 enjoyed by the class representative as a result of the litigation. These “incentive
26 awards” to class representatives must not be disproportionate to the amount of
27 time and energy expended in pursuit of the lawsuit.

28 (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks,
brackets, ellipses, and citations omitted.)

Plaintiff submitted a declaration detailing his participation in the action. Plaintiff states
that he participated in many conversations with class counsel via email and phone, provided
class counsel with information related to his working conditions and Defendants’ corporate
structure and operations, spent considerable time searching for and providing documents to class
counsel, assisted class counsel in preparing for mediation, and reviewed the settlement

1 agreement. (Declaration of Anthony Sanchez in Support of Motion for Preliminary Approval of
2 Class Action Settlement, ¶¶ 4-7.) Based on Plaintiff’s efforts, as well as the potential impact on
3 his future employment due to his participation, the court finds the incentive award is warranted
4 and it is approved. (See *Covillo v. Specialty’s Café* (N.D.Cal. 2014) 2014 U.S. Dist. LEXIS
5 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a
6 significant “reputational risk” in bringing an action against an employer].)

7 The court also has an independent right and responsibility to review the requested
8 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
9 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff’s counsel will
10 seek attorney fees in the amount of \$333,333.33 (1/3 of the gross settlement amount). Plaintiff’s
11 counsel shall submit lodestar information (including hourly rates and hours worked) prior to the
12 final approval hearing in this matter so the court can compare the lodestar information with the
13 requested fees. Plaintiff’s counsel shall also submit evidence of actual costs incurred.

14 **D. Conditional Certification of Class**

15 Plaintiff requests that the putative class be conditionally certified for purposes of the
16 settlement. Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an
17 order approving or denying certification of a provisional settlement class after [a] preliminary
18 settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a
19 class “when the question is one of a common or general interest, of many persons, or when the
20 parties are numerous, and it is impracticable to bring them all before the court” As
21 interpreted by the California Supreme Court, Section 382 requires: (1) an ascertainable class; and
22 (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v.*
23 *Superior Court* (2004) 34 Cal.4th 319, 326.)

24 The “community-of-interest” requirement encompasses three factors: (1) predominant
25 questions of law or fact; (2) class representatives with claims or defenses typical of the class;
26 and, (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc.*
27 *v. Superior Court, supra*, 34 Cal.4th at p. 326.) “Other relevant considerations include the
28 probability that each class member will come forward ultimately to prove his or her separate

1 claim to a portion of the total recovery and whether the class approach would actually serve to
2 deter and redress alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)
3 The plaintiff has the burden of establishing that class treatment will yield “substantial benefits”
4 to both “the litigants and to the court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d
5 381, 385.)

6 As explained by the California Supreme Court,

7 The certification question is essentially a procedural one that does not ask whether
8 an action is legally or factually meritorious. A trial court ruling on a certification
9 motion determines whether the issues which may be jointly tried, when compared
10 with those requiring separate adjudication, are so numerous or substantial that the
11 maintenance of a class action would be advantageous to the judicial process and
12 to the litigants.

13 (*Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326, internal quotation
14 marks, ellipses, and citations omitted.)

15 Plaintiff states that there are approximately 135 class members. Class members can be
16 ascertained from Defendants’ records. There are common issues regarding whether Defendants
17 violated wage and hour laws regarding payment of wages, the provision of meal and rest breaks,
18 the issuance of wage statements, and reimbursement of business expenses. No issue has been
19 raised regarding the typicality or adequacy of Plaintiff as class representative. In sum, the court
20 finds that the proposed class should be conditionally certified.

21 **E. Class Notice**

22 The content of a class notice is subject to court approval. “If the court has certified the
23 action as a class action, notice of the final approval hearing must be given to the class members
24 in the manner specified by the court.” (Cal. Rules of Court, rule 3.769(f).)

25 The notice generally complies with the requirements for class notice. (See Supplemental
26 Declaration of Kristy R. Connolly in Support of Motion for Preliminary Approval of Class
27 Action Settlement, Ex. A.) It provides basic information about the settlement, including the
28 settlement terms, and procedures to object or request exclusion.

However, the instructions in the notice regarding how to submit an objection to the court
must be modified to state that objectors may contact the court by email (complex@scscourt.org)
or phone, or send in a written notice. The class notice shall also be amended to clarify that any

1 class member may appear at the final approval hearing to make an oral objection whether or not
2 any notice of appearance has been provided.

3 Additionally, the notice must be amended with respect to the type of appearances that
4 may be made at the final approval hearing. The notice shall include the following language
5 regarding appearances at the final approval hearing:

6 Class members may appear at the final approval hearing remotely using the
7 Microsoft Teams link for Department 3 (Afternoon Session). Instructions for
8 appearing remotely are provided at https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml and
9 should be reviewed in advance. Class members who wish to appear remotely are
encouraged to contact class counsel at least three days before the hearing if
possible, so that potential technology or audibility issues can be avoided or
minimized.

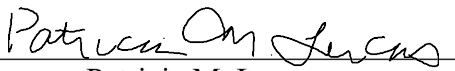
10 The amended notice shall be provided to the court for approval prior to mailing.

11 **IV. CONCLUSION**

12 The motion for preliminary approval of the class action settlement is GRANTED, subject
13 to approval of the amended class notice. The final approval hearing is set for January 18, 2023,
14 at 1:30 p.m. in Department 3.

15 The Case Management Conference scheduled for October 5, 2022 is vacated.

16 Dated: August 17, 2022

17 
18 Patricia M. Lucas
19 Judge of the Superior Court
20
21
22
23
24
25
26
27
28