

FILED
Superior Court of California
County of Los Angeles

NOV 09 2021

Sherri R. Caron, Officer/Clerk
By Alfredo Morales deputy
ALFREDO MORALES

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

PORSHA IRVING, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

CULINARY SERVICES OF AMERICA,
INC., doing business as CULINARY
STAFFING SERVICE, a California
Corporation, and DOES 1 through 50,
inclusive,

Defendants.

Case No.: BC722131

**ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT ON
CONDITION**

Date: November 9, 2021
Time: 11:00 a.m.
Dept.: SSC-7

I. BACKGROUND

Plaintiff Porsha Irving sues her former employer, Defendant Culinary Services of America, dba Culinary Staffing Service (“CSS” or “Defendant”) for alleged wage and hour violations. Defendant provides staffing services for the food and hospitality

1 industries. Plaintiff seeks to represent a class of Defendant's current and former non-
2 exempt employees.

3 On September 20, 2018, Plaintiff filed a Class Action Complaint, on behalf of
4 herself and others similarly situated, against CSS alleging claims for violations of: (1)
5 Labor Code §§ 510, 1194 and 1198 and IWC Wage Order 5-2001 (unpaid overtime
6 wages); (2) Labor Code §§ 1194, 1194.2, 1197, and 1197.1 and IWC Wage Order 5-
7 2001 (unpaid minimum wages); (3) Labor Code §§ 204 and 210 (unpaid straight time
8 wages); (4) Labor Code §§ 226.7 and 512(a) and IWC Wage Order 5-2001 (failure to
9 provide meal periods); (5) Labor Code § 226.7 and IWC Wage Order 5-2001 (failure to
10 provide rest periods); (6) Labor Code §§ 201 and 203 (failure to pay earned wages due
11 to discharged and quitting employees); (7) Labor Code § 226(a) (failure to provide
12 accurate itemized wage statements); and (8) California's Unfair Competition Law, Bus.
13 & Prof. Code § 17200, et seq. (unlawful and unfair business practices).

14 On February 7, 2020, counsel for the Parties participated an initial status
15 conference, and on February 11, 2020, the Court issued a Notice of Ruling Re: Initial
16 Status Conference directing the Parties to complete a mandatory settlement conference
17 within 120 days. The Parties scheduled a mandatory settlement conference for April
18 16, 2020 before the Honorable Ramona G. See. However, on March 19, 2020, the
19 conference was cancelled, without rescheduling, due to COVID issues.

20 Subsequently, Plaintiff served class discovery requests in April 2020 and the
21 Parties continued settlement negotiations. After months of settlement negotiations, the
22 Parties reached a class resolution as to claims which arise from the allegation of paying
23 straight time for hours submitted by Class Members to CSS that should have been paid
24 as overtime based upon the records of CSS. The terms of settlement are finalized in the
25

1 *Class Action Settlement Agreement* (“Settlement Agreement”), a copy of which was
2 filed with the Court.

3 On December 22, 2020, the Court reviewed Plaintiff’s motion for preliminary
4 approval and issued a “checklist” to the parties as to deficiencies in the Settlement
5 Agreement. In response, Plaintiff filed supplemental briefing, including the revised
6 Settlement Agreement. On June 14, 2021, Plaintiff filed further briefing in response to
7 additional concerns raised by the Court, including the revised Settlement Agreement
8 attached to the Second Supplemental Declaration of Jason T. Brown (“Brown Decl.”)
9 ISO Prelim as Exhibit 3. All references below are to the revised Settlement Agreement
10 filed June 14, 2021.

11 The settlement was preliminarily approved on July 7, 2021. Notice was given to
12 the Class Members as ordered (see Declaration of Laura Singh). Now before the Court
13 is Plaintiff’s motion for final approval of the Settlement Agreement, including for
14 payment of fees, costs, and a service award to the named plaintiff. For the reasons set
15 forth below, the Court grants final approval of the settlement conditioned on the
16 following:

- 17 1. The Motion for Final Approval and Declaration of Jason T. Brown are not
18 signed by Mr. Brown. Executed versions of each document must be filed with
19 the Court.

21 **II. THE TERMS OF THE SETTLEMENT**

23 **A. SETTLEMENT CLASS DEFINITION**

24 “Settlement Class Members” means all current and former non-exempt food
25 service workers employed by Defendant in California during the Class Period. (¶24)

1 “Class Period” means the period from September 20, 2014 through the date of
2 entry of the order granting preliminary approval of this Settlement. (¶5)

3
4 **B. THE MONETARY TERMS OF SETTLEMENT**

5 The essential monetary terms are as follows:

6 The Gross Settlement Amount (“GSA”) is **\$135,000** (¶11).

7 The Net Settlement Amount (“Net”) (**\$62,000**) is the GSA less:

- 8 ○ Up to **\$45,000** (33 1/3%) for attorney fees (¶34.d);
- 9 ○ Up to **\$10,000** for attorney costs (*Ibid.*);
- 10 ○ Up to **\$3,000** for a service award to the proposed class representative
11 (¶34.c); and
- 12 ○ Estimated **\$15,000** for settlement administration costs (¶34.e).
- 13 ● Defendant’s employer-taxes on the wage portion of any Individual Settlement
14 Payments will be paid separate and in addition to the Gross Settlement Amount
15 by Defendant. (¶34)
- 16 ● Assuming the Court approves all maximum requested deductions, approximately
17 \$62,791.26 will be available for automatic distribution to participating class
18 members. The average settlement share will be approximately \$72.51.
19 (\$62,791.26 Net ÷ 866 participating class members = \$72.51).
- 20 ● There is no Claim Requirement (¶33.b).
- 21 ● The settlement is not reversionary (¶34.b).
- 22 ● Individual Settlement Share Calculation: Defendant will calculate the Total
23 Overtime Hours Worked by each Settlement Class Member. The Settlement
24 Administrator will divide the respective Total Overtime Hours Worked for each
25 Settlement Class Member by the Total Overtime Hours Worked for all

1 Settlement Class Members, resulting in the Payment Ratio for each Settlement
2 Class Member. The Settlement Administrator will multiply each Settlement
3 Class Member's Payment Ratio by the Net Settlement Amount to determine his
4 or her Individual Settlement Payment. (§34.a.i)

5 ○ Settlement Class Members who submit valid and timely requests for
6 exclusion will not be entitled to receive Individual Settlement Payments.
7 The estimated Individual Settlement Payments allocated to those
8 individuals will be redistributed to other Settlement Class Members, as
9 calculated by the Settlement Administrator to reflect proportionally
10 increases to the payments for Settlement Class Member who do not
11 request exclusion such that the aggregate of settlement payout to
12 Settlement Class Members equals 100% of the NSA. (Notice pg. 4)

- 13 ● Tax Withholdings: 50% as wages, 25% as penalties, 25% as interest (§34.a).
- 14 ● Uncashed Settlement Payment Checks: Any checks issued to Settlement Class
15 Members shall remain valid and negotiable for one hundred and eighty (180)
16 days from the date of their issuance. (§34.a) In accordance with California Rule
17 of Civil Procedure section 384, any unpaid cash residue or unclaimed or
18 abandoned class member funds, plus any accrued interest that has not otherwise
19 been distributed pursuant to order of this Court, shall be sent to Legal Aid at
20 Work. (§34.b)

21 ○ All parties and their counsel represent that they have no interest or
22 involvement with the cy pres recipient, Legal Aid at Work. (Second Supp.
23 Brown Decl. ISO Prelim, Exhibit 6; Declaration of Randy Hopp ISO
24 Prelim ¶3; Declaration of Howard Z. Rosen ISO Prelim ¶4.)

- Funding of Settlement: Within seven (7) calendar days after the Effective Date, Defendant shall provide the Gross Settlement Amount to the Settlement Administrator. (¶34)

C. TERMS OF RELEASES

- Release As To All Class Members. Effective upon the payment of the Gross Settlement Amount by Defendant to the Settlement Administrator, Plaintiff and the Settlement Class Members who are not excluded from this Settlement, on behalf of themselves and each of their heirs, representatives, successors, assigns and attorneys, hereby release Defendant and Released Parties from the Released Claims for overtime pay during the Class Period as consideration for Defendant's payment of the Gross Settlement Amount. (¶28)
- "Released Claims" means any and all known and unknown claims, losses, damages, liquidated damages, penalties, interest, liabilities, causes of action, civil complaints, arbitration demands or suits which arise from the allegation of paying straight time for hours submitted by Class Members to Defendant during the Class Period that should have been paid as overtime based upon the records of Defendant as asserted in the Action under the California Labor Code and California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, et seq.) or for other remuneration overtime pay whether sought under statute, tort, contract, as an unfair business practice, or otherwise. (¶18)
- "Released Parties" means Defendant and any parent, subsidiary, affiliate, predecessor or successor, and all agents, employees (current and former), officers, directors, insurers, and attorneys of Defendant, but excludes any joint

1 employers who employed the Settlement Class Members through Defendant.
2 (§19)

- 3 • The named Plaintiff will also provide a general release and a waiver of the
4 protections of Cal. Civ. Code §1542. (§29)
- 5 • The releases are effective upon the payment of the Gross Settlement Amount by
6 Defendant to the Settlement Administrator. (§28) The settlement will be funded
7 within seven (7) calendar days after the Effective Date. (§34)

8 9 **III. ANALYSIS OF SETTLEMENT AGREEMENT**

10 “Before final approval, the court must conduct an inquiry into the fairness of the
11 proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the
12 settlement agreement after the final approval hearing, the court must make and enter
13 judgment. The judgment must include a provision for the retention of the court's
14 jurisdiction over the parties to enforce the terms of the judgment. The court may not
15 enter an order dismissing the action at the same time as, or after, entry of judgment.”
16 Cal. Rules of Court, rule 3.769(h).

17 As discussed more fully in the Order conditionally approving the settlement, “[i]n
18 a class action lawsuit, the court undertakes the responsibility to assess fairness in order to
19 prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
20 action. The purpose of the requirement [of court review] is the protection of those class
21 members, including the named plaintiffs, whose rights may not have been given due
22 regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu*
23 *Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks
24 omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245
25 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*

1 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the
2 extent necessary to reach a reasoned judgment that the agreement is not the product of
3 fraud or overreaching by, or collusion between, the negotiating parties, and that the
4 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal
5 quotation marks omitted].

6 “The burden is on the proponent of the settlement to show that it is fair and
7 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is
8 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to
9 allow counsel and the court to act intelligently; (3) counsel is experienced in similar
10 litigation; and (4) the percentage of objectors is small.’” See *Wershba, supra*, 91
11 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
12 1802. Notwithstanding an initial presumption of fairness, “the court should not give
13 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
14 116, 130. “Rather, to protect the interests of absent class members, the court must
15 independently and objectively analyze the evidence and circumstances before it in order
16 to determine whether the settlement is in the best interests of those whose claims will be
17 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In
18 that determination, the court should consider factors such as “the strength of plaintiffs'
19 case, the risk, expense, complexity and likely duration of further litigation, the risk of
20 maintaining class action status through trial, the amount offered in settlement, the extent
21 of discovery completed and stage of the proceedings, the experience and views of
22 counsel, the presence of a governmental participant, and the reaction of the class
23 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and
24 the court is free to engage in a balancing and weighing of factors depending on the
25 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.)

1 **A. A PRESUMPTION OF FAIRNESS EXISTS**

2 The Court preliminarily found in its Order of July 7, 2021 that the presumption of
3 fairness should be applied. No facts have come to the Court’s attention that would alter
4 that preliminary conclusion. Accordingly, the settlement is entitled to a presumption of
5 fairness as set forth in the preliminary approval order.

6 **B. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

7 The settlement was preliminarily found to be fair, adequate and reasonable.
8 Notice has now been given to the Class. The notice process resulted in the following:

- 9 Number of class members: 867
- 10 Number of notices mailed: 867
- 11 Number of undeliverable notices: 32
- 12 Number of opt-outs: 1
- 13 Number of objections: 0
- 14 Number of participating class members: **866**

15 (Declaration of Laura Singh (“Singh Decl.”) ¶¶ 5-13.)

16 The Court finds that the notice was given as directed and conforms to due process
17 requirements. Given the reactions of the Class Members to the proposed settlement and
18 for the reasons set for in the Preliminary Approval order, the settlement is found to be
19 fair, adequate, and reasonable.

20 **C. CLASS CERTIFICATION IS PROPER**

21 For the reasons set forth in the preliminary approval order, certification of the
22 Class for purposes of settlement is appropriate.

23 **D. ATTORNEY FEES AND COSTS**

24 Class Counsel requests **\$45,000** (33 1/3%) for attorney fees and **\$9,208.74** for
25 costs. (Brown Decl. ISO Final ¶¶ 11, 23.)

1 Courts have an independent responsibility to review an attorney fee provision and
2 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*
3 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is
4 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
5 503.

6 In the instant case, fees are sought pursuant to the percentage method. (Motion for
7 Final Approval at pgs. 7-9.) The \$45,000 fee request is one-third of the Gross Settlement
8 Amount.

9 Here, the **\$45,000** fee request represents a reasonable percentage of the total funds
10 paid by Defendant. Further, the notice expressly advised class members of the fee
11 request, and no one objected. (Singh Decl. ¶12, Exhibit A thereto.) Accordingly, the
12 Court awards fees in the amount of **\$45,000**.

13 Fee Split: The total attorneys' fees and costs awarded or obtained shall be
14 allocated between the law firms as follows: 45% to Brown, LLC; 45% to Sommers
15 Schwartz, P.C.; and 10% to David Yeremian & Associates, Inc. Class Counsel
16 represents that Plaintiff consented to the agreement in writing. (Second Supp. Brown
17 Decl. ISO Prelim ¶5.)

18 Class Counsel requests **\$9,208.74** in costs. This is less than the \$10,000 cap
19 provided in the settlement agreement (¶34.d). The amount was disclosed to Class
20 Members in the Notice, and no objections were received. (Singh Decl. ¶12, Exhibit A
21 thereto.) Costs include: Case Anywhere (\$1,899.60), Summons & Complaint Filing Fee
22 (\$1,506.75), and Airfare (\$994.40). (Brown Decl. ISO Final, Exhibits 2 and 3;
23 Yeremian Decl. ISO Final, Exhibit 1.)

24 The costs appear to be reasonable and necessary to the litigation, are reasonable
25 in amount, and were not objected to by the class.

1 For all of the foregoing reasons, costs of **\$9,208.74** are approved.

2 **E. SERVICE AWARD TO CLASS REPRESENTATIVE**

3 A service (or incentive) fee award to a named class representative must be
4 supported by evidence that quantifies the time and effort expended by the individual and
5 a reasoned explanation of financial or other risks undertaken by the class representative.
6 See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807;
7 see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395
8 [“Criteria courts may consider in determining whether to make an incentive award
9 include: (1) the risk to the class representative in commencing suit, both financial and
10 otherwise; (2) the notoriety and personal difficulties encountered by the class
11 representative; (3) the amount of time and effort spent by the class representative; (4) the
12 duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the
13 class representative as a result of the litigation. (Citations.)”].

14 Here, the Class Representative Porsha Irving requests an enhancement award
15 totaling \$3,000. She represents that her contributions to the action are as follows:
16 providing information and employment documents to her Class Counsel, conferring with
17 her counsel, identifying witnesses, answering Class Counsel’s questions, discussing
18 mediation and discovery requests, discussing concerns about CSS’s solvency, discussing
19 settlement negotiations and terms, and reviewing and signing the Settlement Agreement.
20 (Declaration of Porsha Irving ISO Prelim ¶¶ 4-6.)

21 In light of the above-described contributions to this action, and in
22 acknowledgment of the benefits obtained on behalf of the class, a **\$3,000** service award
23 to Plaintiff is reasonable and approved.

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1 **F. SETTLEMENT ADMINISTRATION COSTS**

2 The Settlement Administrator, CPT Group, Inc., requests **\$15,000** in
3 compensation for its work in administrating this case. At the time of preliminary
4 approval, costs of settlement administration were estimated at \$15,000 (¶34.e). Class
5 Members were provided with notice of this amount and did not object. (Singh Decl.
6 ¶12, Exhibit A thereto.)

7 Accordingly, settlement administration costs are approved in the amount of
8 **\$15,000.**

9
10 **IV. CONCLUSION AND ORDER**

11 Contingent on counsel addressing the above-noted issue, the Court hereby:

- 12 (1) Grants class certification for purposes of settlement;
- 13 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 14 (3) Awards **\$45,000** in attorney fees to Class Counsel, Brown LLC, David Yeremian
15 & Associates, Inc., and Sommers Schwartz, P.C.;
- 16 (4) Awards **\$9,208.74** in litigation costs to Class Counsel;
- 17 (5) Awards **\$3,000** as a Class Representative Service Award to Plaintiff Porsha
18 Irving;
- 19 (6) Awards **\$15,000** in settlement administration costs to CPT Group, Inc.;
- 20 (7) Orders class counsel to provide notice to the class members pursuant to
21 California Rules of Court, rule 3.771(b); and
- 22 (8) Sets a Non-Appearance Case Review re: Final Report re: Distribution of
23 Settlement Funds for August 25, 2022 at 10:00 a.m. Final Report is to be filed
24 by August 18, 2022 . If there is unpaid residue or unclaimed or abandoned class
25 member funds and/or interest thereon to be distributed to Legal Aid at Work,

1 Plaintiff's counsel shall also submit an Amended Judgment pursuant to Cal.
2 Code of Civ. Pro. § 384 and give notice of the Judicial Council of California
3 upon entry of the Amended Judgment, when entered, pursuant to Cal. Code of
4 Civ. Pro. §384.5.

5
6 Dated: NOV 09 2021



7 **AMY D. HOGUE**

Hon. Amy D. Hogue

8 Judge of the Superior Court
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