

JUN 15 2022

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Clerk of the Superior Court
By Edward Jari
DEPUTY CLERK

ALMIDIA ESTEBAN MELENDEZ, as an individual and on behalf of others similarly situated;

Plaintiff,

v.

GENESIS BUILDING SERVICES, INC.; EAT MY DUST, INC., and DOES 1 through 10,

Defendants.

Case No.: 20CIV00453

Assigned For All Purposes to Hon. Danny Y. Chou

ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS, AND APPROVAL OF NOTICE PROCEDURES

Plaintiff's Motion for Preliminary Approval of Class Action Settlement, Conditional Certification of Settlement Class, and Approval of Notice Procedures (Motion) came for hearing before this Court on May 19, 2022 at 9:00 a.m. Counsel for both parties appeared. At the hearing, the Court requested that the parties submit a supplemental declaration addressing the allocation of the settlement funds between the putative class members who worked for Defendant before and after Defendant updated and improved its timekeeping system. On June 3, 2022, Plaintiff filed a supplemental declaration explaining that the parties had agreed to modify "the formula to be used by the Settlement Administrator to calculate individual payments to Settlement Class Members" (SCM). (2d Supp. Decl., ¶ 2.) Under the modification, "eighty percent (80%) of the Net Settlement Amount [(NSA)] will be allocated to SCM who worked for Defendants in a covered position from January 24, 2016 through June 30, 2019. Twenty percent (20%) of the NSA will be allocated to SCM who worked for Defendants in a covered position from July 1, 2019 through November 12, 2021." (*Id.*, ¶ 3.) At the Court's request, Plaintiff filed a second supplemental declaration on June 9, 2022, explaining the rationale for the new allocation. In that declaration, Plaintiff explained that "there are many more potential class violations in the initial period, January 2016 through June 2019, than in the subsequent period, July 2019 through November 2021" because "Defendants elected to update and improve their timekeeping system" in the

1 spring of 2019. (*Id.*, ¶¶ 4-5.) Unlike the old system—which relied on handwritten timesheets, the new
2 system involved the use of a punch clock (*id.*, ¶ 5)—which “gave SCM more flexibility to report and be
3 paid for work outside of scheduled shifts” (*id.*, ¶ 7).

4 Having considered all papers filed in support of and in opposition to the Motion, oral arguments
5 of the parties, all testimony and evidence presented at the hearing, and all other pleadings and papers on
6 file herein, the Court GRANTS the Motion pursuant to rule 3.769, subdivision (c) of the California
7 Rules of Court.

8 In granting the Motion, the Court finds that the terms of the class action settlement as set forth in
9 the Joint Stipulation of Class Action Settlement (Settlement Agreement) attached as Attachment A to the
10 Declaration of Arlo Uriarte (Uriarte Declaration) to be within the range of reasonableness of a
11 settlement that ultimately could be approved by the Court at the final fairness hearing. (See *North*
12 *County Contractors Assn. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089-1090.)
13 Plaintiff’s counsel is experienced in wage and hour class action litigation, and the settlement was
14 reached after arms-length negotiations with the assistance of an experienced mediator. Plaintiff’s
15 counsel has conducted sufficient investigation to evaluate Plaintiff’s class claims and has provided an
16 analysis of the strengths and weaknesses of the case. The Court finds that analysis persuasive, including
17 counsel’s assessment of the uncertainty of class certification, and therefore finds that “the class
18 settlement is within the ‘ballpark’ of reasonableness.” (*Kullar v. Goot Locker Retail, Inc.* (2008) 168
19 Cal.App.4th 116, 133.) Finally, the Court finds no obvious deficiencies in the class action settlement.

20 The Court also finds that preliminary approval of the settlement class is appropriate. For
21 settlement purposes, the settlement class sufficiently meets the requirements for class certification,
22 including ascertainability, numerosity, predominance of common questions of law and fact, typicality,
23 and adequacy. Defendant has preliminarily identified 412 class members, and those putative class
24 members appear to share a well-defined community of interest. Plaintiff appears to be an adequate class
25 representative who understands her fiduciary duties and has participated in the litigation. Class
26 certification therefore appears to be a superior way to resolve the issues raised in this case rather than
27 joinder of the 412 members of the putative class.

1 In granting preliminary approval of the class action settlement, however, the Court does not
2 conditionally approve the proposed Class Representative Enhancement Payment or the proposed
3 payment of an attorney fee and costs award. Instead, the Court will consider an enhanced payment of up
4 to \$1,500 to Plaintiff for her participation in this action, attorney fees up to \$221,664.50, and costs up to
5 \$25,000 at the final fairness hearing.

6 The Court also expresses no opinion as to whether the settlement of Plaintiff's claim under the
7 Private Attorneys General Act (PAGA), Labor Code section 2698, et seq. (PAGA settlement) should be
8 approved pursuant to Labor Code section 2699, subdivision (1)(2).¹ Approval of the PAGA settlement
9 will be addressed at the final fairness hearing. As part of the motion for final approval, Plaintiff must
10 include confirmation that the Settlement Agreement has been filed with the California Labor Workforce
11 Development Agency. Plaintiff should also address the proposed allocation of the settlement amount
12 between the class action and PAGA claims and any other issues that may be relevant to the Court's
13 approval of the PAGA settlement.

14 Based on the foregoing, IT IS HEREBY ORDERED THAT:

- 15 1. The Motion is GRANTED.
- 16 2. For settlement purposes only, the following Settlement Class is CONDITIONALLY
17 CERTIFIED:
18 "All hourly, non-exempt, non-collectively bargained employees employed by Defendants at
19 any point from January 24, 2016 through November 12, 2021."
20 3. For purposes of settlement, Almidia Esteban Melendez is DESIGNATED as the Class
21 Representative.
- 22 4. For purposes of settlement, Arlo Uriarte of Liberation Law Group, P.C. is DESIGNATED as
23 Class Counsel.
- 24 5. CPT Group, Inc. (CPT) is CONFIRMED as the Settlement Administrator. Payment to CPT
25 of fees up to \$15,000 is CONDITIONALLY APPROVED.

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¹ The class action and PAGA settlements are collectively referred to as the Settlement.

- 1 6. A final fairness hearing on the question of whether the Settlement, including both the class
2 action and the PAGA settlements, should be approved as fair, reasonable, and adequate is
3 scheduled in Department 22 for **December 15, 2022 at 9:00 a.m.** The hearing will be
4 conducted via Zoom video conference unless otherwise ordered by the Court. The Zoom log-
5 in information for Department 22 can be found at:
6 <http://www.sanmateocourt.org/court_divisions/civil/dept22.php> [as of June 15, 2022].
7 Video appearances are REQUIRED. If anybody wishes to appear in person, they must notify
8 the Court at least three days before the hearing, and the Court will provide the location of the
9 hearing and any other relevant information. If this hearing date is inconvenient for the
10 parties, they should meet and confer about alternative dates and provide the Court with those
11 dates as soon as possible.
- 12 7. At the final fairness hearing, the Court will consider: (1) whether the Settlement should be
13 approved as fair, reasonable, and adequate for the Settlement Class; (2) whether the
14 Settlement should be approved under PAGA; (3) whether judgment granting approval of the
15 Settlement should be granted; and (4) whether Plaintiff's motion for attorney fees and costs
16 and class representative enhancement award should be granted.
- 17 8. The parties MUST file all memoranda, declarations, or other statements and materials in
18 support of their motion for final approval **no later than 14 days after the deadline for the**
19 **last class member to object to the Settlement or request exclusion from the Settlement**
20 **Class.**
- 21 9. Class Counsel MUST file a motion for attorney fees and costs and class representative
22 service award **no later than 14 days after the deadline for the last class member to object**
23 **to the Settlement or request exclusion from the Settlement Class.** In the Motion, class
24 counsel MUST provide enough evidence, such as billing records or comparable evidence, for
25 the Court to perform a lodestar cross-check. The evidence should identify which attorneys or
26 staff worked on each task, and provide support for the hourly rate sought and a multiplier, if
27 warranted. Costs must also be sufficiently identified so the Court can determine their
28 reasonableness. Finally, evidence detailing the specific work that Plaintiff performed during

1 the litigation, including a declaration from Plaintiff herself, MUST be provided in support of
2 any class representative enhancement award.

3 10. The Amended Notice of Class Action Settlement (Amended Notice)—attached as Exhibit B
4 to the Supplemental Uriarte Declaration is APPROVED as to form and content with the
5 following modifications:

- 6 a. Paragraph 16 must be amended to reflect the Court's new address at the Central Brnach
7 located at 800 N. Humboldt St., San Mateo, California 94401 (Courtroom I); and
8 b. Plaintiff must correctly fill in all of the bracketed information in the Amended Notice.

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10 11. The procedure for class members to object to or opt out of the Settlement and to dispute the
11 number of credited workweeks as set forth in the Settlement Agreement and Amended
12 Notice is APPROVED.

13 12. With the modifications noted in paragraph 10, the Court FINDS that mailing the Notice and
14 Form in accordance with the implementation schedule set forth in the Settlement Agreement
15 meets the requirements of due process and provides the best notice practicable under the
16 circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

17 13. Pending the final fairness hearing, all proceedings in this action, other than proceedings
18 necessary to carry out or enforce the terms and conditions of the Settlement Agreement and
19 this Order, are STAYED.

20 14. Counsel for the parties are AUTHORIZED to use all reasonable procedures in connection
21 with the administration of the Settlement that are not materially inconsistent with this Order
22 or the terms of the Settlement Agreement.

23 15. The date and time of the final fairness hearing and the related deadlines set forth above, from
24 time to time and without further notice to the Settlement Class (except those who have filed
25 timely and valid objections), may be continued or adjourned by order of this Court.

26 Dated: June 15, 2022



27 Danny Y. Chou
28 Judge of the Superior Court