

FILED
Superior Court of California
County of Los Angeles

JUL 02 2021

Sherri R. Carter, Executive Officer/Clerk
By Pedro Martínez, Deputy

RULINGS/ORDERS

Christie v. Trademango Solutions, U.S. Inc., Case No. 18STCV07426

The Parties' Motion for Final Approval of Class Action Settlement is GRANTED as the settlement is fair, adequate, and reasonable.

The essential terms are, among other things:

A. The Gross Settlement Amount ("GSA") is \$130,000 (¶I.W) with an escalator amount of \$42,835, bringing the GSA from \$130,000 to \$172,835. (Russa Decl., ¶13.);

B. The Net Settlement Amount ("Net") (\$77,598.33) is the GSA minus the following:

\$57,611.67 (33%) for attorney fees to Class Counsel, the Burrows Law Firm, APC;

\$14,775 for litigation costs to Class Counsel;

\$5,000 for a service award to Kenneth Christie, the class representative;

\$10,000 for settlement administration costs to CPT Group, Inc.;

\$5,625 (75% of \$7,500 PAGA penalty) to the LWDA; and

C. Plaintiffs release of Defendants from claims described herein.

By July 23, 2021, Class Counsel must:

a. lodge a [Proposed] Judgment consistent with this ruling containing among other things, the class definition, full release language, and names of the any class members who opted out; and

b. email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

Court sets nonappearance case management review for July 30, 2021, 8:30 a.m., Dept. 9.

By June 13, 2022, Class Counsel must:

a. file a Final Report re: Distribution of the settlement funds;

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b. lodge a [Proposed] Amended Judgment pursuant to Cal. Code of Civ. Pro. § 384 that also includes the amount of unpaid residue or unclaimed or abandoned class member funds and interest thereon to be distributed to the cy pres;

c. email the [Proposed] Amended Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

Give notice to the Judicial Council of California, Ms. Donna Newman, Budget Services in Sacramento: donna.newman@jud.ca.gov upon entry of the Amended Judgment pursuant to Cal. Code of Civ. Pro. §384.5.

Court sets nonappearance case management review for June 20, 2022, 8:30 AM, Department 9.

I.
INTRODUCTION

A. Background

This is a wage and hour class action. Trademango Solutions, U.S., LLC, manufactures, sells, and leases office and residential furniture. On December 6, 2018, Plaintiff Kenneth Christie filed the instant action in this Court alleging class claims for failure to pay overtime wages, minimum wage violations, meal and rest period violations, waiting time penalties, wage statement penalties, unfair competition and for penalties under PAGA.

Counsel represents that in preparation for mediation, the parties engaged in informal discovery, including production of Trademango's relevant written wage and hour policies, electronic and hard copy time and payroll data for the class and documents reflecting Trademango's relevant wage and hour policies and practices in effect during the relevant time period. It is further represented that Plaintiff hired a labor economist with a Ph.D. in economics to conduct a comprehensive analysis of the data produced by Defendant.

The parties attended a full-day mediation on February 13, 2020, with Marc J. Feder, at the conclusion of mediation, the parties were able to come to a class-wide resolution with a mediator's proposal. Thereafter, the parties came to a long form Settlement Agreement, a fully executed copy of which is attached as Exhibit 1 to the Declaration of Christopher Burrows ("Burrows Decl.").

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On August 27, 2020, the Court issued a checklist of items for counsel to address. In response, on October 1, 2020, counsel filed an Amended Settlement Agreement attached to the Supplemental Declaration of Christopher L. Burrows ("Burrows Supp. Decl.") as Exhibit 2.

On January 11, 2021, the Court granted Preliminary Approval.

On June 24, 2021, Christopher L. Burrows filed a supplemental declaration attorneys' fees and costs in support of the Motion for Final Approval.

B. Settlement Class Definition

Settlement Class: All current and former hourly-paid or non-exempt individuals employed by Defendant within the State of California at any time during the Class Period. (Settlement Agreement, ¶I.W)

Class Period: December 6, 2014 to the date that the Court signs the Preliminary Approval Order. (¶I.D)

There are approximately 124 putative class members. (Declaration of Erin La Russa ("Russa Decl."), ¶¶5, 8.)

The parties agree to certification for purposes of settlement. (¶IV)

C. Terms of Settlement Agreement

The essential terms are as follows:

- The Settlement Amount is \$130,000, non-reversionary. (¶I.W)
 - o Per Settlement Administrator's calculations, and in consultation with Counsel, (based on an increase in workweeks), the escalator amount was \$42,835.00, bringing the Settlement Amount from \$130,000 to \$172,835. (Russa Decl., ¶13.)
- The Net Settlement Amount (\$77,598.33) is the Settlement Amount minus the following:
 - o Up to \$57,611.67 (33%) for attorney fees (¶XIV);
 - o Up to \$15,000 for litigation costs (Ibid.);
 - o Up to \$5,000 for a service award (¶XV);
 - o Up to \$12,000 for claims administration (¶VIII); and
 - o \$5,625 (75% of \$7,500 PAGA penalty) to the LWDA (¶XVII).

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- The Employer Taxes will be paid separately by Defendant in addition to and at the same time as the Settlement Amount. (¶I.M)

- Funding of the Settlement: Within 14 calendar days after the agreement becomes Final, Defendant will deposit the Net Settlement Payments, Court approved enhancement to Named Plaintiff, Court approved attorney's fees and Litigation costs, Claims Administration Costs and the PAGA Settlement into an interest-bearing trust account for the benefit of Settlement Class members and Class Counsel, through the Settlement Administrator. (¶XII.B)

- There is no claims process. (¶X)

- Distribution Formula: The lump sum payment to each member of the Settlement Class not excluding him/herself will be determined by dividing the Net Settlement Amount by the total number of Eligible Workweeks calculated for all members of the Settlement Class during the Class Period (the "Workweek Amount") and then multiplying the Workweek Amount by the number of Eligible Workweeks by the individual Class Member as determined by the Settlement Administrator, less any applicable withholding taxes. (¶XII.A)

- o Tax Allocation: 20% as wages; 40% as penalties; and 40% as interest. (¶XVI)

- Objections/ Requests for Exclusion/Disputes: Class Members have 45 Days after the Notice of Proposed Class Action Settlement was initially mailed to the Settlement Class members, to submit Objections, Requests for Exclusion, and/or Workweek Disputes. (¶¶IX.B-C, X)

- o If 5% or more members of the Settlement Class members exercise their rights to exclude themselves and opt out of the Settlement, Defendant may, in its sole discretion, unilaterally withdraw from and terminate the Settlement. (¶XIX.K)

- Uncashed Checks: Settlement checks shall remain negotiable for 180 days from the date of mailing. If settlement check remains uncashed after 180 days from issuance, the Settlement Administrator shall distribute the value of the uncashed checks plus any interest that has accrued thereon, to Justice Gap Fund. The Settlement Administrator shall void any tax documents issued to Settlement Class members who did not cash their checks within 180 days of issuance. In such event, such Settlement Class member shall nevertheless remain bound by the Settlement. Prior to the Final Approval hearing, the Parties shall provide the Court the total amount that will be payable to the Settlement Class members. The Parties also shall request that the Court set a date for the Parties to report to the Court the total amount that was actually paid to Settlement Class members. (¶XII.C)

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- The claims administrator will be CPT Group, Inc. (¶I.U)
- The Settlement was submitted to the LWDA on October 1, 2020. (Burrows Supp. Decl. ISO Preliminary Approval, ¶14, Exh. 4.)
- Scope of the Release: Upon the Date of Final Approval, and only after the Settlement has been fully funded by Defendant, Named Plaintiff and all members of the Settlement Class, except those that make a valid and timely request to be excluded from the Settlement Class and Settlement, waive, release, discharge, and promise never to assert in any forum the following claims against Defendant, its past and present officers, directors, shareholders, unit holders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys from all claims, demands, rights, liabilities and causes of action that were pled in any of the complaints in the Litigation, or which could have been pled in any of the complaints in the Litigation based on the factual allegations therein, that arose during the Class Period with respect to the following claims:
 - (a) failure to pay all minimum wages and regular wages owed (including without limitation Labor Code §§1182.12, 1 194, 1194.2, 1197 & 1198, et seq.);
 - (b) failure to pay all overtime and double-time wages owed (including without limitation Labor Code §§204, 510, 558, 1194, 1197.1, and 1198);
 - (c) failure to provide meal periods, or premium pay for non-compliant meal periods (including without limitation Labor Code §§ 226.7, 512(a) & 1198 et seq.);
 - (d) failure to authorize and permit rest periods, or provide premium pay for non-complaint rest periods (including without limitation Labor Code §§ 226.7, 512, & 1198 et seq.);
 - (e) failure to provide accurate, itemized wage statements (including without limitation Labor Code §§226 and 226.3);
 - (f) failure to timely pay wages upon separation of employment (including without limitation Labor Code §§ 201 & 202, et seq.);
 - (g) all damages, penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code as to the facts alleged in the Action, the applicable Wage Orders as to the facts alleged in the complaint;
 - (h) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above (including without limitation Business & Professions Code §§ 17200, et seq.);
 - (i) all claims under California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. thereafter "PAGA") that could have been premised on the facts, claims,

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causes of action or legal theories described in the Litigation and above. (¶VII.A)

o Plaintiff is also providing a general release and CC 1542 waiver as to Defendant. (¶VII.B)

II. DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. The parties attended a full-day mediation on February 13, 2020, with Marc J. Feder, at the conclusion of mediation, the parties were able to come to a class-wide resolution with a mediator's proposal. (Burrows Decl., ¶29.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represents that in preparation for mediation, the parties engaged in informal discovery, including production of Trademango's relevant written wage and hour policies, electronic and hard copy time and payroll data for the class and documents reflecting Trademango's relevant wage and hour policies and practices in effect during the relevant time period. (Id. at ¶28.) It is further represented that Plaintiff hired a labor economist with a Ph.D. in economics to conduct a comprehensive analysis of the data produced by Defendant. (Ibid.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation. (Id. at ¶¶6-12.)

4. What percentage of the class has objected? None. (Russa Decl., ¶11.)

The Court concludes that the settlement is entitled to a presumption of fairness.

B. Is the Settlement Fair, Adequate, and Reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

Counsel has provided the following exposure analysis:

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CLAIM	RECOVERY
Rest Breaks	\$22,681.00
Unpaid Wages- Miscalculation	\$5,500.00
Meal Breaks	\$34,378.50
Minimum Wage	\$0
Wage Statements	\$57,121.00
Waiting Time Penalties	\$37,500.00
PAGA Penalties	\$10,746.00
TOTAL	\$167,926.00

(Burrows Decl., ¶¶16-27.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.").)

4. Amount offered in settlement. Plaintiff's counsel obtained a \$130,000 non-reversionary settlement. This is approximately 77% of Plaintiff's estimated recovery, which is within the "ballpark" of reasonableness. The \$130,000 settlement amount, after reduced by the requested deductions, leaves approximately \$79,598.33 to be divided among the participating class members. Therefore, the resulting payments will average approximately \$641.92 per class member. [$\$79,598.33 / 124 = \641.92] The highest estimated settlement payment is approximately \$1,974.63. (Russa Decl., ¶14.)

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

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7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement.

Number of class members: 124 (Russa Decl., ¶¶5, 8.)
Number of notice packets mailed: 124 (Id. at ¶¶7-8.)
Number of undeliverable notices: 0 (Id. at ¶10.)
Number of opt-outs: 0 (Id. at 11.)
Number of objections: 0 (Ibid.)
Number of participating class members: 124 (Id. at ¶12.)
Average individual payment: \$641.92 (Id. at ¶14.)
Highest individual payment: \$1,974.63. (Ibid.)
Lowest individual payment: [not provided]

The Court concludes that the settlement is "fair, adequate, and reasonable."

C. Attorney Fees and Costs

Class Counsel, the Burrows Law Firm, APC, request \$57,611.67 (33%) in fees and litigation costs and expenses in the amount of \$14,775 to Class Counsel. (Burrows Decl. ISO Final Approval, ¶¶24-25.) The Settlement provides for attorney's fees up to \$57,611.67 and costs of \$15,000 (Settlement Agreement, ¶XIV; Russa Decl., ¶13); the class was provided notice of the requested awards, and none objected. (Russa Decl., ¶11 and Exhibit A thereto.)

"Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (Wershba at 254.) Here, class counsel requests attorney fees using the percentage method. (Motion ISO Final Approval, pgs. 12-14.) The fee request represents 33% of the gross settlement amount which is the average generally awarded in class actions. See In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn. 13 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.").

Class Counsel has provided information in a supplemental declaration filed on June 24, 2021, from which the lodestar may be calculated.

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Counsel's unadjusted lodestar is lower than the percentage-based fee request and would require the application of a multiplier. Counsel did not request a multiplier.

Here, the fee request represents a reasonable percentage of the total funds paid by Defendant and is well-supported by the lodestar. Notice of the fee request was provided to class members in the notice packet and no one objected.

As for costs, class counsel has incurred costs of \$14,775. (Burrows Decl. ISO Final Approval, ¶25 and Exhibit C thereto.) Class Counsel is requesting \$14,775 in costs which is less than the settlement cap of \$15,000. (Ibid.) The costs in this case include, but are not limited to, filing/ service costs (\$1,435), mediation (\$5,000), and expert costs (\$6,550). (Ibid.) The costs seem reasonable and necessary to litigation.

The court awards \$57,611.67 for fees and \$14,775 for litigation costs.

D. Claims Administration Costs

The claims administrator, CPT Group, Inc., requests \$10,000 for the costs of administering the settlement. (Russa Decl., ¶16.) This is less than the \$12,000 maximum amount estimated in the Settlement Agreement; (Settlement Agreement, ¶VIII); and disclosed in the notice to class members, to which there were no objections. (Russa Decl., ¶11 and Exhibit A thereto.)

The court awards administration costs in the requested amount.

E. Incentive Award to Class Representative

The Settlement Agreement provides for an enhancement awards of up to \$5,000 for the class representative. Plaintiff Christie's contributions to this litigation include, and are not limited to, spending at least 50 hours on the following: retaining counsel, gathering documents, and having numerous conversations and meetings with counsel, assisting with discovery, preparing for mediation, and assisting with reviewing and approving the settlement. (Christie Decl., ¶¶4-7.)

The court grants an enhancement award in the requested amount of \$5,000 to Plaintiff Christie.

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IV.
CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Final Approval of Class Action Settlement is GRANTED as the settlement is fair, adequate, and reasonable.

2) The essential terms are, among other things:

A. The Gross Settlement Amount ("GSA") is \$130,000 (¶I.W) with an escalator amount of \$42,835, bringing the GSA from \$130,000 to \$172,835. (Russa Decl., ¶13.);

B. The Net Settlement Amount ("Net") (\$77,598.33) is the GSA minus the following:

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\$14,775 for litigation costs to Class Counsel;

\$5,000 for a service award to Kenneth Christie, the class representative;

\$10,000 for settlement administration costs to CPT Group, Inc.;

\$5,625 (75% of \$7,500 PAGA penalty) to the LWDA; and

C. Plaintiffs release of Defendants from claims described herein.

3) By July 23, 2021, Class Counsel must:

a. lodge a [Proposed] Judgment consistent with this ruling containing among other things, the class definition, full release language, and names of the any class members who opted out; and

b. email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

4) Court sets nonappearance case management review for July 30, 2021, 8:30 a.m., Dept. 9.

5) By June 13, 2022, Class Counsel must:

a. file a Final Report re: Distribution of the settlement funds;

b. lodge a [Proposed] Amended Judgment pursuant to Cal. Code of Civ. Pro. § 384 that also includes the amount of unpaid

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residue or unclaimed or abandoned class member funds and interest thereon to be distributed to the cy pres;

c. email the [Proposed] Amended Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.


6) Counsel give notice to the Judicial Council of California, Ms. Donna Newman, Budget Services in Sacramento: donna.newman@jud.ca.gov upon entry of the Amended Judgment pursuant to Cal. Code of Civ. Pro. §384.5.

7) Court sets nonappearance case management review for June 20, 2022, 8:30 AM, Department 9.

CLERK TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.

DATED: July 2, 2021



YVETTE M. PALAZUELOS

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

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