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Clerk of the Court
Superior Court of CA
County of Santa Clara
22CV398168
By: afloresca

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

RAQUEL LEDESMA and ANESSA
GONZALEZ, individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

OBSTETRIX MEDICAL GROUP OF
CALIFORNIA, APC, a California corporation;
and DOES 1 to 100, inclusive,

Defendants.

Case No. 22CV398168

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

The above-entitled matter came on for hearing on Wednesday, November 9, 2022, at 1:30 p.m. in Department 3, the Honorable Patricia M. Lucas presiding. The court reviewed and considered the written submissions filed by the parties and issued a tentative ruling on Tuesday, November 8, 2022. No party contested the tentative ruling; therefore, the court orders that the tentative ruling be adopted as the order of the court, as follows:

I. INTRODUCTION

This is a class and representative action arising out of various alleged wage and hour violations. The Class Action and Representative Action Complaint, filed on May 16, 2022, sets forth the following causes of action: (1) Failure to Provide Timely, Duty-Free Meal Periods

1 and/or Pay Meal Period Premiums for Late Meal Breaks (Labor Code §§ 226.7, 512; IWC Wage
2 Order 4-2001); (2) Failure to Provide Timely, Duty-Free Rest Periods and/or Pay Rest Period
3 Premiums (Labor Code § 226.7; IWC Wage Order 4-2001); (3) Failure to Provide Accurate
4 Itemized Wage Statements (Labor Code § 226); (4) Waiting Time Penalties (Labor Code §§ 201-
5 203); (5) Failure to Pay Timely Wages (Labor Code §§ 204, 210); (6) Failure to Reimburse
6 Business Expenses (Labor Code § 2802); (7) UCL Violations (Bus. & Prof. Code §§ 17200-
7 17204); and (8) PAGA and Other Penalties (Labor Code §§ 2698-2699.5).

8 The parties have reached a settlement. Plaintiffs Raquel Ledesma (“Ledesma”) and
9 Anessa Gonzalez (“Gonzalez”) (collectively, “Plaintiffs”) now move for preliminary approval of
10 the settlement.

11 **II. LEGAL STANDARD**

12 Generally, “questions whether a settlement was fair and reasonable, whether notice to the
13 class was adequate, whether certification of the class was proper, and whether the attorney fee
14 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
15 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*
16 (1996) 48 Cal.App.4th 1794 (*Dunk*).)

17 In determining whether a class settlement is fair, adequate and reasonable, the
18 trial court should consider relevant factors, such as “the strength of plaintiffs’
19 case, the risk, expense, complexity and likely duration of further litigation, the
20 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.”
21 (*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801
22 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624
23 (*Officers*).)

24 “The list of factors is not exclusive and the court is free to engage in a balancing and
25 weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91
26 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the
27 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
28 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a

1 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48
2 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

3 The burden is on the proponent of the settlement to show that it is fair and
4 reasonable. However “a presumption of fairness exists where: (1) the settlement
5 is reached through arm’s-length bargaining; (2) investigation and discovery are
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.”

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

7 **III. DISCUSSION**

8 **A. Provisions of the Settlement**

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

10 [Plaintiffs] and all other California residents who are or were employed by
11 Defendant Obstetrix Medical Group of California, APC (“Defendant”) as non-
12 exempt employees or in a similar position, who worked at least one shift in
California from May 16, 2018 through November 9, 2022 (the “Class Period”).

13 (Declaration of Amir H. Seyedfarshi in Support of Plaintiffs’ Motion for Preliminary Approval
14 of Class Action Settlement (“Seyedfarshi Dec.”), Ex. A (“Settlement Agreement”), ¶ 1.8.) The
15 class also includes a subset of Aggrieved Employees who are defined “a person employed by
16 [Defendant] in California and classified as a non-exempt employee who worked for [Defendant]
17 during the PAGA Period” of March 7, 2021 to November 9, 2022. (Settlement Agreement,
18 ¶¶ 1.4 & 1.30.)

19 According to the terms of settlement, Defendant will pay a gross settlement amount of
20 \$450,000. (Settlement Agreement, ¶¶ 1.21 & 3.1.) The total settlement payment includes
21 attorney fees of not more than \$150,000 (1/3 of the gross settlement fund), litigation expenses
22 not to exceed \$14,000, service awards in the total amount of \$20,000 (\$10,000 for each class
23 representative), settlement administration costs not to exceed \$7,500, and a PAGA allocation of
24 \$25,000 (75 percent will be paid to the LWDA and 25 percent will be paid to Aggrieved
25 Employees). (Settlement Agreement, ¶¶ 1.3, 1.6, 1.13, 1.21-1.23, 1.26, 1.33, & 3.2.) The net
26 settlement will be distributed to class members pro rata based on the number of weeks worked
27 during the Class Period. (Settlement Agreement, ¶¶ 1.27 & 3.2.) Checks remaining uncashed
28 more than 180 days after mailing will be void and the funds from those checks will be sent to the
California Controller’s Unclaimed Property Fund. (Settlement Agreement, ¶ 4.4.)

1 The parties' proposal to send funds from uncashed checks to the Unclaimed Property
2 Fund does not comply with Code of Civil Procedure section 384, which mandates that unclaimed
3 or abandoned class member funds be given to "nonprofit organizations or foundations to support
4 projects that will benefit the class or similarly situated persons, or that promote the law
5 consistent with the objectives and purposes of the underlying cause of action, to child advocacy
6 programs, or to nonprofit organizations providing civil legal services to the indigent." Plaintiffs
7 are directed to provide a new *cypres* in compliance with Code of Civil Procedure section 384
8 prior to the final approval hearing.

9 In exchange for the settlement, the class members will release Defendant, and related
10 entities and persons, from all claims that were alleged, or reasonably could have been alleged,
11 based on the facts stated in the complaint and ascertained in the course of the action. (Settlement
12 Agreement, ¶¶ 1.40 & 6.2.) Aggrieved Employees will release Defendant, and related entities
13 and persons, from all claims for PAGA penalties that were alleged, or reasonably could have
14 been alleged, based on the facts stated in the complaint, stated in the PAGA Notice, and
15 ascertained in the course of the action. (Settlement Agreement, ¶¶ 1.40 & 6.3.) Plaintiff also
16 agreed to a comprehensive general release. (Settlement Agreement, ¶ 6.1.)

17 **B. Fairness of the Settlement**

18 Plaintiffs state that the settlement was reached through arm's-length negotiations after
19 extensive investigation and discovery, and a full day of mediation with Steve Pearl, Esq.
20 Plaintiffs estimate that Defendant's maximum realistic exposure for all claims is \$497,365.93.
21 (Seyedfarshi Dec., ¶¶ 43-44.) Plaintiffs provide a detailed of breakdown of the potential
22 exposure amount by claim. (*Ibid.*) Plaintiffs discounted the potential value of the claims given
23 the risks inherent in continued litigation, the strength of Defendant's defenses, the difficulties
24 involved in obtaining class certification, and the court's ability to reduce PAGA penalties. (*Id.* at
25 ¶¶ 31-37, 42-44, & 46.) Plaintiffs estimate that the net settlement amount will be approximately
26 \$239,750, which results in an average individual settlement payment of approximately \$965.82
27 (based on 265 class members). (*Id.* at ¶ 47.)
28

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

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

4 Plaintiffs request service awards in the total amount of \$20,000 (\$10,000 for each class
5 representative).

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

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

20 Plaintiffs submitted declarations describing their participation in the action. Ledesma
21 declares that she spent approximately 30-40 hours working on the case, including providing
22 factual background for the mediation brief, speaking with other potential class members about
23 their experiences working for Defendant, reviewing documents, providing documents to class
24 counsel, and participating in phone calls and mediation. (Declaration of Plaintiff Raquel
25 Ledesma in Support of Plaintiffs’ Motion for Preliminary Approval of the Settlement, ¶ 6.)
26 Gonzalez declares that she spent approximately 30-40 hours working on the case, including
27 providing factual background for the mediation brief, speaking with other potential class
28 members about their experiences working for Defendant, reviewing documents, providing
documents to class counsel, and participating in phone calls and mediation. (Declaration of
Plaintiff Anessa Gonzalez in Support of Plaintiffs’ Motion for Preliminary Approval of the
Settlement, ¶ 6.)

The class representatives’ efforts in the case resulted in a benefit to the class. Moreover,
Plaintiffs undertook risk by putting their names on the case because they may have been
responsible for costs if they lost the case and because it might impact their future employment.

(See *Covillo v. Specialtys Cafe* (N.D. Cal. 2014) 2014 WL 954516, at *8 [incentive awards are particularly appropriate where a plaintiff undertakes a significant “reputational risk” in bringing an action against an employer].) Accordingly, the court finds the service awards are warranted and they are approved.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs’ counsel will seek attorney fees up to \$150,000 (1/3 of the gross settlement fund). Plaintiffs’ counsel shall submit lodestar information (including hourly rates and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiffs’ counsel shall also submit evidence of actual costs incurred.

D. Conditional Certification of Class

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

The “community-of-interest” requirement encompasses three factors: (1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and, (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326.) “Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

1 The plaintiff has the burden of establishing that class treatment will yield “substantial benefits”
2 to both “the litigants and to the court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d
3 381, 385.)

4 As explained by the California Supreme Court:

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

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

13 Plaintiffs state that there are approximately 265 class members. Class members can be
14 ascertained from Defendant’s records. There are common issues regarding whether Defendant
15 violated wage and hour laws regarding payment of wages, the provision of meal and rest breaks,
16 and the reimbursement of business expenses. No issue has been raised regarding the typicality or
17 adequacy of Plaintiffs as class representatives. In sum, the court finds that the proposed class
18 should be conditionally certified.

19 **E. Class Notice**

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

23 Here, the notice generally complies with the requirements for class notice. (See
24 Settlement Agreement, Ex. 1.) It provides basic information about the settlement, including the
25 settlement terms, and procedures to object or request exclusion. However, some minor
26 modifications should be made.

27 First, the first paragraph on page 2 of the notice that sets forth class members’ “two basic
28 options under the Settlement” must be amended to include a “third option” describing class
members’ rights to object to the settlement.

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1 Second, the notice shall be updated to instruct class members that they may object or
2 request exclusion by simply providing their full name to the settlement administrator without the
3 need to provide their social security number, their address, or other identifying information.

4 Third, the notice must be amended to make clear that any class member may appear and
5 make an oral objection at the final approval hearing without providing any advance notice of
6 their intent to appear.

7 Fourth, the notice must be modified with respect to the type of appearances that may be
8 made at the final approval hearing. The notice shall include the following language regarding
9 appearances at the final approval hearing:

10 Class members may appear at the final approval hearing remotely using the
11 Microsoft Teams link for Department 3 (Afternoon Session). Instructions for
12 appearing remotely are provided at https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml and
13 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.

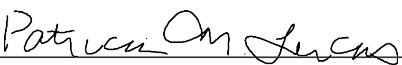
14 The amended notice shall be provided to the court for approval prior to mailing.

15 **IV. CONCLUSION**

16 The motion for preliminary approval of the class action settlement is GRANTED, subject
17 to approval of the amended class notice. The final approval hearing is set for June 28, 2023, at
18 1:30 p.m. in Department 3.

19 The Case Management Conference set for November 9, 2022 is vacated.

20 Dated: November 9, 2022

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22 Patricia M. Lucas
23 Judge of the Superior Court
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