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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA — FRESNO DIVISION

ROBERT MARTINEZ, an individual, on behalf of himself, all others similarly situated,

Plaintiff,

v.

KNIGHT TRANSPORTATION, INC. d/b/a ARIZONA KNIGHT TRANSPORTATION, INC.; and DOES 1 thru 50, inclusive,

Defendants.

Case No. 1:16-CV-01730-DAD-SKO
[Class Action]

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

Date: September 20, 2023
Time: 9:30 a.m.
Courtroom: 7, 6th Floor
Judge: Hon. Sheila Oberto

Removal Filed: November 14, 2016

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that, on September 20, 2023 at 9:30 a.m., or as soon thereafter as the matter may be heard, in Courtroom 7 of the United States District Court for the Eastern District of California, pursuant to Fed. R. Civ. P. 23(e), (h) and 54(d)(2), Plaintiff ROBERT MARTINEZ ("Plaintiff") individually and the proposed Settlement Class, will move this Court for entry of an Order and judgment of dismissal:

(a) Approving the Parties' Stipulation of Class and PAGA Representative Action Settlement and Release ("Settlement")[1], adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

(b) Approving the payment of amounts to Participating Class Members under the terms of the Settlement;

(c) Approving the payment of $15,000 to the LWDA for the PAGA portion of the Settlement, and $5,000 to the PAGA Claim Members for the PAGA portion of the Settlement;

(d) Approving the payment of the Settlement Administrator's costs in the amount of $29,558;

(e) Approving the Class Representative Service Payment of $10,000 to the Plaintiff;

(f) Approving Class Counsel's application for an award of attorneys' fees ($100,000) and reimbursement of costs ($13,289.31) (based on the previously-filed Motion for Attorneys' Fees and Costs); and,

(g) Dismissing this action on the merits and with prejudice.

This Motion is based on this Notice; the supporting Memorandum of Points and Authorities; the Declaration of Craig Ackermann, Esq.; the Declaration of Bryn Bridley on Settlement Notice and Administration; all other papers and records on file in this action, including, without limitation, Plaintiff's Motion for Attorneys' Fees and Costs and all supporting papers, Plaintiff's Renewed Motion for Preliminary Approval of Class Action Settlement and all supporting papers, the Court's Order Granting Preliminary Approval of Class Action Settlement and Conditional Certification of Settlement Class (Dkt # 80); and, on such oral and documentary evidence as may be presented at the hearing on this Motion.

[1] All capitalized terms not otherwise defined herein shall have the same definitions as set out in the Settlement Agreement. (Dkt. 80-2.)

Dated: August 16, 2023

Respectfully submitted,

ACKERMANN & TILAJEF, P.C.
HAMMONDLAW, P.C.

By: /s/ Craig J. Ackermann
Craig J. Ackermann, Esq.
Attorneys for Plaintiff and the Settlement Class

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I. INTRODUCTION

Plaintiff Robert Martinez ("Plaintiff") on behalf of himself and all others similarly situated, respectfully moves this Court for an Order granting final approval of the proposed Settlement of the above-captioned class and representative action against Knight Transportation, Inc. ("Defendant"), which will dispose of the instant Action in its entirety. The proposed Settlement[2] – achieved after prolonged litigation, a contested motion for class certification, and mediation with a respected mediator – was preliminarily approved by the Court on March 24, 2023. (Dkt. 84). The Settlement created a $400,000 benefit to the Class, (also referred to as the "Gross Settlement Amount" or "GSA"), from which Class Counsel's attorneys' fees and costs, a service award to Plaintiff, administration costs, and $20,000 in association with the release of claims under California Labor Code § 2698, *et seq*., will be deducted in order to arrive at a Net Settlement Amount of $227,152.69.[3] Class Members who filed valid claims will be paid out of the Net Settlement Amount,[4] with the Settlement providing for a minimum fifty (50) percent of the Net Settlement Amount being paid out to Class Members (hereinafter "Settlement Floor"). The following chart sets forth the allocation of the GSA under the Settlement:

	Total Amount
Gross Settlement Amount	**$400,000.00**
Attorneys' Fees (25% of the GSA)	($100,000.00)
Litigation Costs	($13,289.31)
Service Award to Plaintiff	($10,000.00)
Claims Administration Costs	($29,558.00)
PAGA Allocation	($20,000.00)
Net Settlement Amount	**$227,152.69**
Minimum Payout (50% of the Net Settlement Amount)	**$113,576.34**

In deciding whether to grant final approval of the proposed Settlement, the primary issue to be

[2] The Parties' Stipulation of Class and PAGA Representative Action Settlement and Release is referred to herein as the "Settlement," "Settlement Agreement," or "S.A."

[3] $400,000 - $100,000 (requested attorneys' fees) - $13,289.31 (requested litigation costs) - $10,000 (requested service award) - $29,558 (administration costs) - $20,000 (PAGA allocation) = $227,152.69.

[4] Class Counsel negotiated with Defendant to also accept late claims up to the earlier of the time at which 50% of the NSA had been claimed or one week before the date of the final approval hearing. *See* Declaration of Craig Ackermann in Support of Plaintiff's Motion for Final Approval ("Ackermann Final Decl."), filed herewith, at ¶ 3.

decided is whether the Settlement is fair, adequate, and reasonable. As demonstrated herein, the proposed Settlement embodies all of the features of a settlement that is fair, reasonable, adequate, and in the best interests of the members of the Class, as it is the product of (1) arm's length negotiations, (2) negotiated by experienced class action attorneys, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the Class's claims, and (4) reflects a reasoned compromise based directly on the relative strength and value of the Class's claims, as well as the risks, expense, complexity and likely duration of further litigation.

Importantly, the class member reaction to the Notice was positive. Significantly, there were zero objections and zero requests for exclusion. Decl. of Bryn Bridley on Settlement Notice and Administration (filed concurrently herewith), ¶ 12 ("Bridley Decl."). In total, 890 class members have submitted valid claims equating to $42,538.15, or 19.15% of the NSA of $227,152.69. *Id*. ¶ 17. Because the Parties agreed to a 50% floor for distribution of the NSA, Participating Class Members will receive an average award of $127.61[5] resulting in a near trebling of the average award being received by Participating Class Members. *Id.* ¶ 17. For these reasons, as set forth more fully herein and in the accompanying papers, Plaintiff respectfully requests that this Court enter the proposed Final Approval Order submitted herewith.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

Knight is a national full truckload carrier based in Phoenix, Arizona. In late 2017, Defendant merged with Swift Transportation Company, forming a new entity entitled Knight-Swift Transportation Holdings Inc. *See* Declaration of Craig J. Ackermann in support of Renewed Motion for Preliminary Approval (Dkt. 80-1), ¶ 5 ("Ackermann RPAM Decl."). Plaintiff Robert Martinez is a Nevada resident who was employed by Defendant from September 2015 through March 2016 as an over-the-road truck driver. Plaintiff was assigned to Defendant's service center in Las Vegas, Nevada. Less than a quarter of Plaintiff's runs (18.64%) were entirely within the state of California. *Id*. ¶ 6.

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[5] $113,576.34 (representing 50% of the NSA) / 890 Participating Class Members = $127.61. This average award may be reduced slightly because Class Counsel negotiated with Defendant to accept late claims up to the earlier of the point at which 50% of the NSA had been claimed or one week before the date of the final approval hearing. *See* Ackermann Final Decl., ¶ 3.

B. The Proposed Settlement Class

The proposed Settlement will dispose of the entire Action as to the following proposed class of individuals:

> "All current and former truck drivers employed by defendant Knight Transportation, Inc., who advised defendant that they resided in Oregon, Nevada, Arizona, Utah, and/or Colorado, who were paid in whole or in part on a piece-rate basis, and who drove one or more routes of five hours or more entirely within the State of California for defendant during the "Class Period" from September 30, 2012 through [March 24, 2023]." [6]

The Settlement Class is co-extensive with the Class previously certified in this case following cross-briefing by the parties on a contested class certification motion filed by Plaintiff. *See* Order Granting Plaintiff's Motion for Class Certification ("Class Cert. Order") (Dkt. 35.)

C. The Class Action Complaint

On September 27, 2016, Plaintiff submitted his Private Attorney General Act ("PAGA") notice to Defendant and the LWDA. On September 30, 2016, Plaintiff filed this Class and PAGA action in Tulare Superior Court, alleging causes of action for Defendant's (1) failure to provide duty-free meal breaks and pay missed meal break premiums in violation of Labor Code §§ 512 and 226.7 and Wage Order No. 9-2001, § 11; (2) failure to pay separately and hourly for time spent on rest breaks, inspections, and other nondriving tasks in violation of Labor Code §§ 1194 and 226.2; (3) failure to provide paid rest breaks and/or pay missed rest break premiums for unpaid rest breaks in violation of Labor Code § 226.7 and Wage Order No. 9-2001, § 12(A)-(B); (4) failure to pay all wages owed upon termination of employment in violation of Labor Code § 203; (5) failure to issue complete and accurate wage statements in violation of Labor Code §§ 226(a) and 226.2; (6) unfair, unlawful, and fraudulent business practices, in violation of Business and Professions Code §§ 17200 et seq., and (7) PAGA Penalties pursuant to Labor Code § 2698, et seq. Ackermann RPAM Decl. ¶ 7.

D. Procedural History

On November 14, 2016, Defendant removed the action to the Eastern District of California based on diversity jurisdiction. On March 21, 2017, Defendant filed a motion to change venue seeking transfer of the action to the District of Arizona pursuant to 28 U.S.C. § 1404(a). The motion was denied. Ackermann RPAM Decl. ¶ 8.

[6] *See* S.A. ¶ 11.

After exchanges of formal written discovery, Plaintiff took the deposition of Knight's Rule 30(B)(6) designee on January 30, 2018. Defendant produced documents including its written meal and rest period policies as well as other policies applicable to its truck drivers, such as sample trip sheets, Movement display data from the trucks' onboard computer systems, a sample "trip dispatch report" and a Class list. According to Defendant's data, the Class at that time consisted of 3,989 employees. Ackermann RPAM Decl. ¶ 9.

Plaintiff subsequently filed a Motion for Class Certification, which was strongly contested by Defendant, who submitted numerous driver witness statements in opposition. Plaintiff narrowed the scope of the Class to a class of non-resident drivers for days worked *entirely* within California. Plaintiff also agreed not to pursue wage statement penalties under Labor Code § 226. On December 3, 2018, the Court certified a class of current and former non-California resident drivers "who were paid in whole or in part on a piece-rate basis, and who drove one or more routes of five hours or more entirely within the State of California for defendant during the "Class Period" from September 30, 2012 through [December 3, 2018]." Class Cert. Order (Dkt. 35). The Class was certified as to the four causes of action: (1) the first and third causes of action were for violation of California's meal and rest break laws, while the drivers were driving full days in California; (2) the second cause of action was for violation of California's piece-rate minimum wage laws, while the drivers were driving in California; and (3) the UCL based on the first three causes of action. Knight petitioned the Ninth Circuit to appeal the court's certification decision, which was denied. Ackermann RPAM Decl. ¶¶ 10-11.

On December 21, 2018, the Federal Motor Carrier Safety Administration ("FMCSA") issued its Determination that California's meal and rest break laws are preempted for drivers subject to the federal Hours of Service Regulations ("Preemption Order"). Four petitions for review challenging the FMCSA Preemption Order were subsequently filed with the Ninth Circuit. Anticipating that the Ninth Circuit's decision could impact the claims in this case, the parties stipulated to stay this matter pending the Ninth Circuit's decision. On January 15, 2021, the Ninth Circuit panel affirmed the FMCSA's determination that 49 U.S.C. 31141 preempted California's meal and rest break rules. *See Int'l Bhd. of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Admin.*, 986 F. 3d 841, 845 (9th Cir. 2021). However, the Ninth Circuit left open the issue of whether the FMCSA's Preemption Order applied retroactively. Ackermann RPAM Decl. ¶ 12. If the Preemption Order was not retroactive, Plaintiff would still have over eight years of potential

meal and rest break liability (from September 30, 2012 to January 15, 2021). *Id*.

The parties subsequently agreed to participate in private mediation and to exchange additional informal discovery. Among other data, Defendant provided the number of Class members (4,873 drivers) who spent at least one full day driving in California, and the number of workweeks during the Class period. On June 10, 2021, the parties attended an all-day mediation facilitated by well-respected mediator, Mark S. Rudy. During the mediation, the Ninth Circuit heard oral argument in the appeal of *Ayala v. U.S. Xpress Enterprises, Inc.*, 851 Fed. Appx. 53 (9th Cir. 2021), which concerned whether the California Supreme Court's decision in *Oman v. Delta Air Lines*, 9 Cal. 5th 762 (2020), essentially eliminated minimum wage claims regarding piece-rate in the trucking industry. Plaintiff was aware that if the Ninth Circuit ruled in the defendant's favor, then Defendant would have a strong argument that its compensation policy complied with California minimum-wage law. Because of the significance of the case, the parties took a break from the mediation to watch the live-streamed Ninth Circuit oral argument. The parties were still unable to settle after they came back to the mediation. The Ninth Circuit decided *Ayala* in favor of the trucking company on June 22, 2021, thus all but eliminating Plaintiff's minimum wage/piece rate claim. Mr. Rudy continued to facilitate settlement discussions over the following months, which eventually culminated in a settlement in late September 2021. Ackermann RPAM Decl. ¶ 13.

On November 10, 2021, Plaintiff filed his motion for preliminary approval of the Settlement. (Dkt. 70). On October 25, 2022, the Court denied Plaintiff's motion without prejudice. (Dkt. 79).

Prior to settlement, the Ninth Circuit had not decided whether the Preemption Order was retroactive. As noted above, if the Preemption Order was only prospective, Plaintiff would still have more than eight years of liability of a potential nine-year meal and rest break claim. Although the retroactivity issue was before the Ninth Circuit in *Valiente v. Swift Transportation,* oral argument had not taken place prior to Plaintiff filing the motion for preliminary approval on November 10, 2021. Consequently, when drafting the motion for preliminary approval, Plaintiff assigned considerable value to these claims in calculating both the theoretical maximum value of Defendant's exposure and the realistic expected value of Plaintiff's claims. (Dkt. 70, pp. 19-20). Defendant, however, based its valuation of the case on *Valiente* being decided in its favor, and it was willing to hold out until it was decided. Both sides compromised, with Defendant settling before *Valiente* was decided, and Plaintiff compromising his meal and rest break claims.

Ackermann RPAM Decl. ¶ 15.

This Court denied Plaintiff's motion for preliminary approval on October 25, 2022. Approximately two weeks after this Court denied the motion for preliminary approval, the Ninth Circuit held the Preemption Order was retroactive. *See Valiente,* 54 F.4th 581 (9th Cir. 2022). The *Valiente* decision completely eviscerated Plaintiff's second and third causes of action for violations of California's meal and rest break laws and, with it, nine years of potential liability. This fundamentally changed the status of the action, as Plaintiff was left with only a claim for Defendant's alleged failure to pay separately for inspection time and detention time, which was subject to strong defenses based on the *Ayala* case; and UCL and PAGA claims that were entirely based on the viability of the other three causes of action. Ackermann RPAM Decl. ¶ 16.

Plaintiff subsequently filed a Renewed Motion for Preliminary Approval of the Settlement on January 30, 2023. (Dkt. 80). In this renewed motion, Plaintiff addressed a number of issues which the Court had identified in its Order Denying Preliminary Approval. Having reviewed Plaintiff's Renewed Motion for Preliminary Approval, the Court identified a potential ambiguity in the release language contained in the Settlement Agreement. (Dkt. 81). Plaintiff submitted a supplemental brief and revised the Settlement Agreement in order to address the Court's concern. (Dkt. 82). Subsequently, on March 27, 2023, the Court entered an order preliminarily approving the Settlement (the "PA Order") (Dkt. 84).

Subsequently, Defendant timely served the CAFA notice pursuant to 28 U.S.C. § 1715. Ackermann Final Decl. ¶ 6.

E. Plaintiff's Investigation

Subsequent to Plaintiff filing his Original Complaint, counsel for Plaintiff engaged in formal discovery, aimed specifically at preparing for the filing and briefing of Plaintiff's motion for class certification, as well as the substantive merits of Plaintiff's claims. *See* Ackermann RPAM Decl. ¶¶ 9, 10.

Through formal and informal discovery, Plaintiff's counsel have diligently pursued an investigation of the putative Class Members' claims, including: (1) review of thousands of pages of relevant documents produced by Defendant, including but not limited to documents constituting Defendant's written meal and rest period policies as well as other policies applicable to its truck drivers, sample trip sheets, Movement display data from the trucks' onboard computer systems, and a sample "trip dispatch report;" (2) review of

relevant data regarding the size of the putative class (including a Class list); (3) taking the deposition of Defendant's corporate representative, pursuant to Rule 30(B)(6) on various topics relevant to Plaintiff's claims; (4) research with respect to the applicable law regarding Plaintiff's claims and the potential defenses thereto; and (5) damages discovery prior to and in connection with the mediation of this matter before Mark S. Rudy. *See* Ackermann RPAM Decl. ¶¶ 9, 10, 13.

Prior to mediation and settlement, Plaintiff's counsel was able to ascertain sufficient information in order to evaluate the strength and weaknesses of Plaintiff's claims. *See id*. Among other things, Plaintiff's counsel obtained information about (a) the number of class members, i.e., the number of drivers, resident in one of the states listed in the Class definition, who spent at least one full day driving in California; and (b) the number of workweeks worked by Class Members during the Class Period. Ackermann RPAM Decl. ¶ 13. As described above, Plaintiff's counsel were also extremely familiar with the complex legal issues regarding Plaintiff's claims and the potential for further developments that might, and ultimately did, reduce Defendant's exposure on those claims.

Based on the foregoing, Plaintiff's counsel was able to conclude, at the time of negotiations, that Knight's total exposure on Plaintiff's claims was $2,258,956 with a further potential maximum of $1,807,470 in PAGA penalties. Ackermann RPAM Decl. ¶¶ 18-21. Thus, Defendant's maximum possible exposure on Plaintiff's claims, albeit highly unrealistic, was estimated at $4,066,452.92. *Id.*[7] Applying discounts for the risks of losing on the merits, the risk of retroactive preemption, the risk of the Court making a finding that California law does not apply to Class Members, and the risk of decertification, and, on the PAGA claim only, a discount for the likelihood of the Court using its discretion to reduce PAGA penalties, Plaintiff determined that Defendant's realistic risk adjusted exposure was $382,185.00.

As explained in Plaintiff's Renewed Motion for Preliminary Approval, after reaching settlement, but prior to the Court granting preliminary approval, the Ninth Circuit issued its decision in *Valiente v. Swift Transp. Co. of Ariz., LLC*, 54 F.4th 581 (9th Cir. Nov. 23, 2022), which further reduced the value of two of Plaintiff's three main claims to zero. Plaintiff's previous unrealistic estimate of Defendant's maximum exposure of $4,066,426 has now been reduced by 44% to $2,259,520. Ackermann RPAM Decl.

[7] As previously noted in Plaintiff's Motion for Preliminary Approval of the Settlement, the maximum exposure assumed Plaintiff would recover 100% of all damages, restitution and penalties available. This was an optimistic figure.

¶ 23. Applying appropriate discounts, Defendant's realistic risk adjusted exposure, as of the time preliminary approval of the settlement was granted, was reduced to $135,578.50. Ackermann RPAM Decl. ¶¶ 24-30a. Thus, the Gross Settlement Amount of $400,000 is almost three times Defendant's realistic exposure. *Id.* Further, even with the maximum reversion to Defendant, the minimum payment to be paid by Defendant is more than twice the expected value of Plaintiff's claims. *Id.*

F. Settlement Negotiations

As noted, on June 10, 2021, the parties attended an all-day mediation with respected mediator Mark S. Rudy. Ackermann RPAM Decl. ¶ 13. The case did not settle at mediation. However, the parties continued settlement discussions over the following months with continued input from mediator Rudy. *Id.*

In late September 2021, the parties were able to reach the Settlement in principle and proceeded to negotiate and finalize a long-form agreement. The parties agreed to settle for $400,000 with a claims process and a 50% floor on distribution of the net settlement amount.[8] Ackermann RPAM Decl. ¶ 3; Settlement Agreement, at ¶¶ 17-18. Unclaimed funds from the $400,000 settlement amount, if any, would be re-allocated to the Participating Class Members to the extent that the percentage of the NSA claimed fell below 50%. Settlement Agreement, at ¶ 18. Thus, as has transpired, a Participating Class Member's actual settlement award likely exceeds their estimated payment.

G. The Preliminarily Approved Settlement

The Settlement Agreement, attached to the [Proposed] Order Granting Final Approval of Settlement as **Exhibit 1** and previously submitted with the motion for preliminary approval, sets forth the central terms of the Settlement reached by the Parties. On March 24, 2023, the Court preliminarily approved the Settlement Agreement. *See* PA Order, Dkt. 84 (filed Mar. 27, 2023). Under the terms of the preliminarily approved Settlement, Defendant is discharged of all claims asserted in the Action ("Released Claims") in exchange for paying the Gross Settlement Amount of $400,000. *See* Settlement Agreement ¶¶ 17, 54-55.

Under the preliminarily approved Settlement and as subsequently agreed to by the Parties during the claims process, the members of the Settlement Class who submit a claim form (the "Participating Class Members") would be entitled to claim a portion of the Net Settlement Amount (i.e., the amount remaining

[8] The parties continued to negotiate until their finalized Settlement Agreement was fully executed in late September. Ackermann RPAM Decl. ¶ 13.

after deductions for claims administration costs, the incentive award, the PAGA payment, and attorneys' fees and costs). Settlement Agreement, at ¶ 18. Each Participating Class Member will receive an Individual Settlement Payment calculated as follows: The NSA shall be divided by the total number of calendar weeks worked by all Settlement Class Members during the Class Period, and this value (the "Calendar Week Value") will be multiplied by the number of calendar weeks worked by the Participating Class Member during the Class Period. *Id.* at ¶ 19. Class Members who are also PAGA Claim Members will also receive their Individual PAGA Claim Payment which is an equal share of the 25% of the $20,000 PAGA allocation. *Id.* at ¶ 22.

Under the Settlement Agreement, the amount actually distributed to the Participating Class Members depends on the number of Class Members who submit claims, but shall equal at least 50% of the Net Settlement Amount. If the aggregate total of Individual Settlement Payments equals more than 50% of the Net Settlement Amount, that amount will be paid. If the aggregate total of Settlement Payments equal less than 50% of the Net Settlement Amount, the Claims Administrator shall proportionately increase the Individual Settlement Payment for each Participating Class Member to ensure that the total of all Settlement Payments equals 50% of the Net Settlement Amount. Any unclaimed amounts shall remain the exclusive property of Defendant, except that the Defendant must pay the employer portion of payroll taxes on the portions of the Individual Settlement Payments designated as wages. *Id.* at ¶ 18.

The cost of claims administration, which is to be paid from the Gross Settlement Amount, is $29,558, *see* Declaration of Bryn Bridley, at ¶ 17. *See* Settlement Agreement, at ¶ 30. This is the amount for claims administration costs presented to the Court in Plaintiff's Renewed Motion for Preliminary Approval. The Court noted that this estimate "is consistent with, and in some cases lower than, other settlements submitted to this court," and approved Atticus as the Settlement Administrator. PA Order, Dkt. 84, 28:6-21. Class Counsel will also seek to recover actual costs incurred in prosecuting this Action in the amount of $13,289.31, which is less than the amount authorized by the Settlement Agreement, preliminarily approved by this Court, and noticed to the Class. *See* Plaintiff's Notice of Motion and Motion for Attorneys' fees and Costs, Dkt. 88, at p. 15 (filed July 12, 2023) (hereinafter "Fees Motion"); Settlement Agreement, ¶ 27.

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H. Preliminary Approval & Facilitation of Notice

On March 24, 2023, subsequent to review of Plaintiff's Renewed Motion for Preliminary Approval and the supporting declarations thereto, this Court entered an Order granting preliminary approval of the proposed Settlement, which among other things, (1) preliminarily approved the settlement as fair, reasonable and adequate; (2) appointed Atticus Administration, LLC (the "Claims Administrator") as claims administrator for the Settlement; (3) approved the content of the Notice; (4) approved the method of disseminating the Notice; and (5) set the schedule for which Notice was to be sent, and for Class Members to participate in, opt out of, or object to the Settlement. *See* PA Order, at pp. 29–30. On April 26, 2023, the Court granted Defendant's unopposed application to continue the notice mail date and related deadlines the Preliminary Approval Order. (Dkt. 86) ("Order Continuing Dates").

On May 1, 2023, the Claims Administrator received data files from Defense Counsel containing the name, telephone number, social security number, dates of employment, and last-known address for each class member. Bridley Decl. ¶ 4. The final mailing list contained 5,648. Class Members. *Id.* ¶¶ 4-5. The Claims Administrator then ran a National Change of Address (NCOA) search in attempt to update the addresses on the class list and ensure it was as accurate as possible. *Id.* ¶ 6. A search of this database provided updated addresses for any individual who had moved in the previous four years and notified the U.S. Postal Service of their change of address. *Id.* On May 26, 2023, the Claims Administrator provided Notice to the Class using first class mail pursuant to the Order of this Court. *See id.* ¶ 7. A true and correct copy of the Notice and Claim Form which was provided are attached as Exhibit A to the Bridley Declaration. On June 1, 2023, the Claims Administrator discovered that the Notice Packets contained response deadlines calculated according to what the mail date would have been prior to the Court's entry of the Order Continuing Dates. The Parties were notified immediately and a corrective Notice in the form of a postcard was promptly prepared for mailing to inform Class Members of the error and the actual deadline by which claims, exclusion requests, and objections had to be submitted. *Id.* at ¶ 9. A true and correct copy of the corrective postcard Notice is attached as Exhibit B to the Bridley Declaration. Of the 5,648 packets sent, only 405 were ultimately deemed by the Claims Administrator to be "ultimately

undeliverable" after curative efforts were undertaken.[9] *Id.* at ¶ 10. Thus, there was a 92.83% success rate for delivery of the Notice to the Class. *Id*.

I. Reaction of the Class

Although the majority of Class Members did not respond to the Class Notice, the overall reaction of the Class has been positive. In all, 890 class members have, thus far, validly claimed $43,538.15 of the $227,152.69 Net Settlement Amount. *See* Bridley Decl. ¶ 17. That is a 15.76% claims rate, with 19.15% of the NSA claimed. Moreover, because of the class-favorable terms of the Settlement Agreement,[10] a total of $113,576.35 (equivalent to 50% of the Net Settlement Amount) will be distributed to the 890 Participating Class Members. *See id*. Of the 5,243 total class members provided Notice, there were no objections to the Settlement, and no requests for exclusion were filed. See *id*. ¶¶ 10, 12.[11]

III. STATEMENT OF THE CASE

A. Standards for Final Approval of a Class Settlement

Pursuant to FRCP, Rule 23, "[t]he claims … of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval." *See* Fed. R. Civ. P. 23(e)(1)(A). "Approval under this rule entails a two-step process: (1) preliminary approval of the settlement; and (2) final approval of the settlement at a fairness hearing following notice to the class." *See In re TD Ameritrade Account Holder Litig.*, Case No. C 07-2852 SBA, C 07-4903 SBA, 2011 WL 4079226, at *10 (N.D. Cal. Sept. 13, 2011); David F. Herr, *Manual for Complex Litigation* (Fourth) § 21.632 (West 2004).

In evaluating a proposed settlement for final approval, the Court's inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *See Rodriguez v. West Publ'g Corp*., 563 F.3d 948, 965 (9th Cir. 2009). "To determine if a settlement satisfies these criteria, the trial court examines: (1) the strength

[9] Under the rules governing class actions, reasonable efforts must be made to reach all class members with the Class Notice and the notice plan, but each individual Class Member need not actually receive the Class Notice. *See Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994); *see also Rannis v. Recchia*, 380 Fed.Appx. 646, 650 (9th Cir. 2010).

[10] *See* Settlement Agreement, at ¶ 18 (providing that no less than 50% of the Net Settlement Amount will be distributed to Participating Class Members, regardless of the claim rate).

[11] Insofar as there were no objectors submitted to the proposed Settlement, there were also no objections submitted to the requested attorneys' fees or costs. Bridley Decl. ¶ 12.

of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of class members to the proposed settlement." *See Wren v. RGIS Inventory Specialists*, Case No. C-06-05778 JCS, 2011 WL 1230826, at *19 (N.D. Cal. Apr. 1, 2011) (citing *Churchill Village v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). "Not all of these factors will apply to every class action settlement" and "[u]nder certain circumstances, one factor alone may prove determinative in finding sufficient grounds for court approval." *See Nat'l Rural Telcomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525-526 (C.D. Cal. 2004). In evaluating these factors, the Court's analysis should be guided by the following general principles:

First, due regard should be given to what is otherwise a private consensual agreement between the parties. *See Rodriguez*, 563 F.3d at 965 ("This circuit has long deferred to the private consensual decision of the parties."). "Settlement is a compromise, which balances the possible recovery against the risks inherent in litigating further." *See In re TD Ameritrade Account Holder Litig.*, 2011 WL 4079226 at *9. Indeed, "it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." *See Officers for Justice v. Civil Serv. Comm'n.*, 688 F.2d 615, 625 (9th Cir. 1982). As such, "the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits" or "judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *See id.*

Second, "[w]hile balancing all of these interests, the court's inquiry is ultimately limited 'to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties.'" *Knight v. Red Door Salons, Inc.*, Case No. 08-01520 SC, 2009 WL 248367, at *3 (N.D. Cal. Feb. 2, 2009); *see also Wren*, 2011 WL 1230826 at *6 ("An initial presumption of fairness is usually involved if the settlement is recommended by class counsel after arm's-length bargaining.").

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B. The Settlement Meets All the Criteria for Final Approval

Applying the above factors, the proposed Settlement embodies all of the key features of a settlement that is fair, reasonable, adequate, and in the best interests of the members of the class, and as such, meets all the criteria necessary for final approval.

1. The Factors Giving Rise to a Presumption of Fairness Exist

A presumption of fairness exists here, as the proposed Settlement is the product of extensive arm's-length negotiations among attorneys with significant experience in employment class litigation; which occurred following certification of the Class on a contested class certification motion and a subsequent all-day private mediation conducted after counsel had conducted sufficient investigation to evaluate the strength and potential value of the class' substantive claims, as well as the likelihood of maintaining class certification of such claims through trial. Ackermann RPAM Decl. ¶¶ 13, 31-33. Based thereon, the Court should give considerable weight to the competency and integrity of counsel in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct. *See Rodriguez*, 563 F.3d at 965.

2. The Relative Strength of Plaintiff's Case Balances in Favor of Approval of the Settlement

The relative strength of the claims brought on behalf of the Class weigh in favor of the Court finding that the settlement is fair, adequate, and reasonable, as various issues existed which had the potential to completely eliminate recovery by Class Members on their claims. Indeed, as of the time the Court granted preliminary approval, the Ninth Circuit's decision in *Valiente*, had completely eviscerated Plaintiff's second and third causes of action for violations of California's meal and rest break laws and, with it, nine years of potential liability. Ackermann RPAM Decl. ¶ 16. This had fundamentally changed the status of the action, as Plaintiff was left with only a claim for Defendant's alleged failure to pay separately for inspection time and detention time, which was subject to strong defenses based on the *Ayala* case; and UCL and PAGA claims that were entirely based on the viability of the three causes of action. *Id*.

As noted above, the parties conducted extensive investigation and exchange of information through informal discovery. Counsel for the parties further invested extensive time researching the applicable law as applied to the facts regarding the alleged claims of Plaintiff and the potential defenses thereto, and the

damages claimed by Plaintiff and the putative class. Plaintiff's Counsel is aware of the defenses and legal positions of Defendant and Plaintiff believes strongly that he would not have been able to achieve the preliminarily-approved Settlement had *Valiente* been decided before settlement was reached. Ackermann RPAM Decl. ¶¶ 16-17.

In sum, the foregoing issues had the potential to completely eliminate recovery by Class members on the alleged claims, as well as impact the ability to maintain certification of such claims through trial. As such, this factor weighs heavily in favor of resolution by way of the compromise set forth in the Settlement.

3. The Risk, Expense, and Complexity of Further Litigation Balances in Favor of Approval of the Settlement

Approval of the proposed Settlement is especially appropriate in light of the risk, expense, and complexity of further litigation. As discussed above, there is a considerable risk that if the Parties had not reached a settlement, the Class would have been decertified or, if it had proceeded to trial, it would have recovered significantly less than the value of the Settlement. These risks, when balanced with the fact that the settlement achieved significant recovery for Class Members, weigh strongly in favor of approval of the Settlement.

4. The Benefits Conferred by the Settlement Balance in Favor of Approval

As discussed above, the Settlement provided class members an opportunity to claim a significant monetary benefit that is substantially greater than they could realistically have expected to receive had they proceeded to trial. As held by the Ninth Circuit, a settlement may be fair and reasonable even where the settlement only provides a fraction of what could have been obtained at trial:

> The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d at 625 (emphasis in original). Thus, "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Id*. at 624 (citations omitted). As the Second Circuit has pointed out: "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455, 455 n.2 (2nd Cir. 1974)

Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1242 (9th Cir. 1998).

Here, based on near-final data, the average settlement award that will be paid to participating class members is $127.61.[12] This amount constitutes a significant recovery considering the disputed issues detailed above. Thus, notwithstanding the existence of issues having the potential to eliminate recovery on each of the Class claims, the Settlement nonetheless achieved a significant recovery on behalf of the Class. As such, this factor balances in favor of a finding that the terms of the Settlement are fair, adequate, and reasonable.

5. The Extent of Discovery Completed and the Stage of The Proceedings Favor Approval of the Settlement

In evaluating this element, the Court should be mindful that the relevant consideration is whether the parties have "sufficient information to make an informed decision about settlement." Newberg on Class Actions § 13.50 (5th ed.) (quoting *Barani v. Wells Fargo*, Case No. 12CV2999-GPC (KSC), 2014 U.S. Dist. LEXIS 49838, at * 13 (S.D. Cal. Apr. 9, 2014). *See also Lewis v. Starbucks Corp.*, Case No. 2:07-cv-00490-MCE, 2008 U.S. Dist. LEXIS 83192, at *17 (E.D. Cal. Sept. 11, 2008) ("[A]pproval of a class action settlement is proper as long as discovery allowed the parties to form a clear view of the strengths and weaknesses of their cases.")

Here, the extent of discovery conducted was sufficient to enable Class Counsel to evaluate the strength and value of the Class' claims for purposes of settlement. Ackermann RPAM Decl. ¶¶ 9, 13. Class Counsel scrutinized and analyzed the information, documents and testimony obtained during discovery and class certification, to determine Defendant's liability and amount of damages owed. Ackerman RPAM Decl. ¶¶ 18-30a. Counsel took the deposition of Knight's Rule 30(B)(6) designee on January 30, 2018, reviewed Defendant's written meal and rest period policies as well as other policies applicable to its truck drivers, sample trip sheets, movement display data from the trucks' onboard computer systems, a sample "trip dispatch report" and a Class list. Ackermann RPAM Decl. ¶ 9.

Based on Class Counsel's experience obtaining certification and litigating wage and hour claims, such investigation was sufficient to expose and evaluate the strengths and weaknesses of the substantive merit of the Class' claims, as well as the likelihood of maintaining certification of such claims through trial. Ackermann RPAM Decl. ¶¶ 18-30a.

[12] ($227,152.69 (NSA) * 0.5)/890 = $127.61.

6. The Experience and Views of Plaintiff's Counsel Favor Approval

The experience and views of counsel warrant a finding by the Court that the settlement is fair, adequate, and reasonable. Class Counsel are qualified and experienced in class action employment litigation, including wage and hour class actions in the trucking industry. *See* Declaration of Craig Ackermann in Support of Motion for Attorneys' Fees and Costs ¶¶ 6, 8-11 (Dkt. 88-1); Declaration of Julian Hammond in Support of Motion for Attorneys' Fees and Costs, at ¶¶ 10-11 (Dkt. 88-4.). In the view of Class Counsel, the benefit conferred by the proposed Settlement is fair, reasonable, and adequate to the proposed Class under the circumstances, as it reflects a reasoned compromise which not only takes into consideration the inherent risks in all employment class litigation, but also the various issues in this particular case which had the potential to completely eliminate recovery by Class members on their claims. *See* Ackermann RPAM Decl. ¶¶ 31-35.

7. The Reaction of the Class Favors Approval of the Settlement

In evaluating this element, "[i]t is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *See Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 529. At preliminary approval, the Court found that the proposed notice to be sent to the class members was the best practicable under the circumstances. *See* Fed. R. Civ. P. 23(c)(2)(B). The Court further found that the notice adequately apprised class members of their rights under the settlement. Following preliminary approval, the Claims Administrator provided Notice to the Class in accordance with the Settlement Agreement. Bridley Decl. ¶¶ 4-7. On June 1, 2023, the Claims Administrator discovered that the Notice Packets contained deadlines calculated according to what the mail date would have been prior to the Court's entry of the Order Continuing Dates. The Parties were notified immediately and a corrective Notice in the form of a postcard was promptly prepared for mailing to inform Class Members of the error and the actual deadline by which claims, exclusion requests, and objections had to be submitted. *Id.* at ¶ 9. Of the 5,648 packets sent, only 405 were ultimately deemed by the Claims Administrator to be "ultimately undeliverable" after curative efforts were undertaken. *Id.* at ¶ 10.

The reaction of the class has been positive, as there were **no objections**, and **zero** exclusion requests. Bridley Decl. ¶¶ 10, 12. Moreover, 890 class members submitted claim forms claiming 19.15%

of the Net Settlement Amount, or $43,538.51. However, due to the class favorable provisions of the Settlement that include a minimum distribution to Participating Class Members of 50% of the Net Settlement Amount, there will be a distribution of $113,576.35 to participating Class Members.

8. Additional Factors Weigh in Favor of Finding the Terms of the Proposed Settlement to Be Fair, Adequate, and Reasonable

In addition to the factors presented above, the proposed Settlement does not possess any obvious deficiencies, such as unduly preferential treatment to members of the Settlement Class or Class Representative. Settlement proceeds are to be equitably divided among Settlement Class members, and will be distributed by applying the same claim procedures to the entire Class.

Moreover, with regard to administration costs, Class Counsel has undertaken efforts to ensure that the interests of the settlement class were protected by submitting administration to competitive bid. Atticus was selected after submitting the lowest bid. The amount of Atticus's final bill is $29,558.00. Bridley Decl. ¶ 18. The litigation costs of $13,289.31, are also reasonable and well below the amount of up to $20,000 permitted under the Settlement Agreement, which was preliminarily approved by this Court. Settlement Agreement, at ¶ 27.

In its Order preliminary approving the Settlement, the Court preliminarily approved a $10,000 incentive award to Plaintiff Robert Martinez. PA Order, pp. 20-21. In preliminarily approving this amount, the Court considered that Plaintiff had expended approximately 82 hours in connection with this case, including: participating in several lengthy interviews and phone conferences over a period lasting several months; searching for and producing a significant amount of relevant documents; reviewing pleadings in the case; consulting with counsel on factual issues; reviewing documents and data provided by Defendant; communicating about the case with Class Members; providing multiple declarations; reviewing and approving the mediation brief and settlement agreement; and participating in an all-day mediation. PA Order, pp. 22. Moreover, this enhancement payment also recognizes the considerable monetary risk Plaintiff undertook on behalf of Class Members to be personally liable for all costs incurred regardless of the success of the litigation or class certification, as well as the personal risk he took of facing intrusive discovery and potential disclosure to future employers that he sued a former employer. The Court's preliminarily approved enhancement award is reasonable and, as previously established in Plaintiff's

Renewed Motion for Preliminary Approval, is well within a range deemed reasonable by the court. *Id.*

Finally, as demonstrated in Plaintiff's Motion For Attorneys' Fees and Costs (filed on July 14, 2023), Class Counsel's request for $100,000 in attorneys' fees (i.e., 25% of the Gross Settlement Amount), is reasonable and consistent with, or lower than. awards typically approved in similar litigation. In addition, it is important to underscore that, as reasoned by the U.S. Supreme Court in *Boeing v. Van Gemert*, 444 U.S. 472, 480-81 (1980), the "right [of absent class members] to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel." While the Court has clear discretion to apply upward and downward adjustment to Plaintiff's requested fees, *see Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050–51 (9th Cir. 2002), it is nevertheless improper to point to the amount claimed by Class Members and distributed as a reason for such adjustment. *See Williams v. MGM-Pathe Comms. Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) (holding that a "court abuse[s] its discretion by basing the fee on the class members' claims against the fund rather than on a percentage of the entire fund or on the lodestar"). While Class Counsel wishes that more Class Members had submitted claims, there is no denying that they all had the opportunity to do so, which was a significant benefit conferred by the Settlement resulting from Class Counsel's work.[13]

In sum, under the applicable standards for approval of class action settlement under Rule 23(e), the settlement in this case meets the standards for final approval.

IV. CONCLUSION

Because the Settlement provides benefits that are demonstrably fair in relation to the potential risks and benefits of continued litigation, is supported by a robust evidentiary record, and is endorsed by experienced and qualified wage-and-hour Class Counsel as well as the Class, Plaintiff respectfully requests that the Court grant the Settlement final approval and that the Court enter the proposed Order filed concurrently herewith.

Respectfully submitted,
ACKERMANN & TILAJEF, P.C.
HAMMONDLAW, P.C.

[13] As the old proverb goes, you can lead a horse to water, but you can't make it drink. Class Counsel brought the proverbial horse to water, but, so far, only 890 Knight drivers have elected to drink. Nevertheless, the water was there for all 5,648.

Dated: August 16, 2023

By: /s/Craig J. Ackermann
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