

JAN 06 2017

Sherri R. Carter, Executive Officer/Clerk
By: Nancy Navarro, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

PAUL OSUNA, an individual California
resident, on behalf of himself and all others
similarly situated,

Plaintiff,

v.

J&A RENTS & SELLS, INC., dba A RENTAL
CONNECTION, *et al.*,

Defendants.

Case No.: BC536586

ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT
AND GRANTING FEES AND COSTS

Dept.: 307
Date: December 5, 2016
Time: 10:00 a.m.

I. BACKGROUND

Plaintiff Paul Osuna commenced this litigation against Defendants J & A Rents & Sells, Inc., dba A Rental Connection, in February, 2014. Osuna was substituted out and was replaced with Plaintiff Enrique Armas. The operative First Amended Complaint contains the following causes of action: (1) Failure to Pay Wages at Overtime Rate; (2) Failure to Provide Meal Periods

1 or Compensation in Lieu Thereof; (3) Failure to Provide Rest Breaks or Compensation in Lieu
2 Thereof; (4) Failure to Pay Wages Due at Termination; (5) Violations of Unfair Competition
3 Law; (6) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement
4 Provisions; and (7) Violation of Labor Code §2699 (PAGA).

5 Following mediation, the parties settled this matter and entered into a written settlement
6 agreement. Preliminary approval of the settlement was granted July 19, 2016 by Hon. Lisa Hart
7 Cole. Plaintiff's motions for final approval of the settlement, attorneys' fees, and costs, were
8 fully briefed and argued on December 5, 2016. The Court now rules as follows.

9 **II. DISCUSSION**

10 **A. SETTLEMENT CLASS DEFINITION**

11 The proposed settlement class (called, "Plaintiff Class") is defined as, "all current and all
12 former non-unionized, hourly employees employed by J&A Rents at any time in California
13 between February 14, 2010 and the Date of Preliminary Approval of the Settlement (the 'Class
14 Members')." (§5)

15 "Settlement Class" is defined as, "all members of the Plaintiff Class who fail to timely,
16 properly, and validly opt out of the settlement provided for in this Settlement Agreement with
17 respect to all claims under state law as well as all members of the Plaintiff Class who submit
18 valid Claim Forms with respect to all claims." (§6)

19 For settlement purposes, the parties agree that the Settlement Class shall be certified as
20 defined in §6. (§23)

21 **B. TERMS OF SETTLEMENT AGREEMENT**

22 The essential terms of the Settlement Agreement are as follows:

- 23 • The Gross Fund Value is \$450,000, reversionary after 55% floor of Net. (§§ 21, 35)

- 1 • The Net Fund Value (\$267,125) is the Gross less the following:
 - 2 ○ \$148,500 (33% of the gross fund value) for attorney fees;
 - 3 ○ Up to \$20,00 for attorney costs;
 - 4 ○ Up to \$2,500 for an enhancement payment;
 - 5 ○ Administration costs, estimated at \$10,000;
 - 6 ○ \$1,875 (75% of \$2,500 PAGA penalty) to the LWDA (Ibid.); and
 - 7 ○ Defendant's share of taxes. (¶¶22, 36)
- 8 • The time for submitting a claim, opting out, or objecting is 45 days. (¶¶ 48-50)
- 9 • Settlement payments will be calculated on a pro rata basis, calculated using each class
- 10 member's number of workweeks compared to the total number of workweeks. (¶38)
- 11 10% of the Net will be distributed on a pro rata basis to class members whose
- 12 employment terminated between February 14, 2010 and Preliminary Approval.
- 13 • Settlement payments will be considered 33% to wages, 33% to interest, and 33% to
- 14 penalties. [¶42] For the portion attributed to wages, payroll taxes will be withheld.
- 15 • The amount of the Net Settlement Fund not claimed will revert back to Defendant, as will
- 16 funds from any checks not cashed within 180 days. (¶¶ 22, 54)
- 17 • Settlement Class Members who do not opt out will release Defendant and the Released
- 18 Parties from the Released Claims. Those Class Members who opt-in by submitting a
- 19 claim will also release FLSA claims. (¶59) Plaintiff Class Members who do not opt out
- 20 and do not submit claims will release Defendant and the Released Parties from the
- 21 Released Claims. (¶60)
- 22 ○ Released Claims means, "all claims of any nature arising from or related to this
- 23 case, and all claims, actions, demands, causes of action, suits, debts, obligations,
- 24
- 25

1 damages, rights or liabilities, of any nature and description whatsoever, that are
2 based on or reasonable related to the wage and hour claims that were or could
3 have been asserted in the Complaint (and any amended Complaints) filed in this
4 action, and specifically the following claims: claims for unpaid wages (including
5 claims for overtime wages, and meal and rest period premiums), interest,
6 penalties (including waiting time penalties pursuant to Labor Code section 203,
7 wage statement penalties pursuant to Labor Code section 226, and civil penalties
8 pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code
9 section 2698, et seq.)('PAGA'), claims pursuant to Labor Code sections 200-204,
10 206.5, 210-214, 216, 218, 218.5, 226, 226.3, 226.7, 227.3, 510, 512, 551-552,
11 558, 1182.12, 1174, 1194, 1194.2, 1198, 2802 and 2699, et seq., Code of Civil
12 Procedure section 1021.5, California Code of Regulations, Title 8, sections
13 11010 and 11040, the Industrial Welfare Commission Wage Orders, and claims
14 under Business and Professions Code section 17200, et seq., claims for attorneys'
15 fees and costs, and unfair business practices." (§14)

17 **C. ANALYSIS OF SETTLEMENT AGREEMENT**

18 **1. Standards for Final Fairness Determination**

19 "Before final approval, the court must conduct an inquiry into the fairness of the
20 proposed settlement." CRC 3.769(g). "If the court approves the settlement agreement after the
21 final approval hearing, the court must make and enter judgment. The judgment must include a
22 provision for the retention of the court's jurisdiction over the parties to enforce the terms of the
23 judgment. The court may not enter an order dismissing the action at the same time as, or after,
24 entry of judgment." CRC 3.769(h).

1 “In a class action lawsuit, the court undertakes the responsibility to assess fairness in
2 order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
3 action. The purpose of the requirement [of court review] is the protection of those class
4 members, including the named plaintiffs, whose rights may not have been given due regard by
5 the negotiating parties.” See Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of
6 America (2006) 141 Cal. App.4th 46, 60 (internal quotation marks omitted); see also Wershba v.
7 Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 245 (Court needs to “scrutinize the proposed
8 settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is
9 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and
10 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned”) (internal
11 quotation marks omitted).

12 “The burden is on the proponent of the settlement to show that it is fair and reasonable.
13 However ‘a presumption of fairness exists where: (1) the settlement is reached through arm's-
14 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
15 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
16 objectors is small.’” See Wershba at 245 (citing Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th
17 1794, 1802. Notwithstanding an initial presumption of fairness, “the court should not give
18 rubber-stamp approval.” See Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116,
19 130. “Rather, to protect the interests of absent class members, the court must independently and
20 objectively analyze the evidence and circumstances before it in order to determine whether the
21 settlement is in the best interests of those whose claims will be extinguished.” *Id.* In that
22 determination, the court should consider factors such as “the strength of plaintiffs' case, the risk,
23 expense, complexity and likely duration of further litigation, the risk of maintaining class action
24
25

1 status through trial, the amount offered in settlement, the extent of discovery completed and
2 stage of the proceedings, the experience and views of counsel, the presence of a governmental
3 participant, and the reaction of the class members to the proposed settlement.” Id. at 128.

4 “Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing
5 of factors depending on the circumstances of each case.” Wershba at 245.

6 Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order
7 to be fair and reasonable. Compromise is inherent and necessary in the settlement process.
8 Thus, even if ‘the relief afforded by the proposed settlement is substantially narrower than it
9 would be if the suits were to be successfully litigated,’ this is no bar to a class settlement
10 because ‘the public interest may indeed be served by a voluntary settlement in which each side
11 gives ground in the interest of avoiding litigation.’” Id. at 250.

12
13 **2. Does a presumption of fairness exist?**

- 14 a. Was the settlement reached through arm’s-length bargaining? Yes. The parties
15 settled this matter during an all- day mediation with Mark S. Rudy on September
16 18, 2014. (Declaration of Jose Garay, ¶12.)
- 17 b. Were investigation and discovery sufficient to allow counsel and the court to act
18 intelligently? Yes. Class Counsel performed certain pre-litigation investigation
19 into the facts, which included an interview of Plaintiff regarding work conditions,
20 hours, meal periods, and so forth. (Id. at ¶9.) Class Counsel also conducted
21 interviews with other class members for whom Plaintiff provided contact
22 information. (Id. at ¶10.) In advance of mediation, Defendant produced data
23 regarding class size and average pay rates, as well as time records. (Id. at ¶11.)
- 24 c. Is counsel experienced in similar litigation? Yes. (Id. at ¶¶ 2-4.)
25

1 d. What percentage of the class objected? There were no objections received by the
2 claims administrator. (Declaration of Melissa Meade, ¶11.)

3 CONCLUSION: The settlement is entitled to a presumption of fairness.

4 **3. Is the settlement fair, adequate, and reasonable?**

5 (a) Strength of Plaintiffs' case. "The most important factor is the strength of the case for
6 plaintiffs on the merits, balanced against the amount offered in settlement." See Kullar v.
7 Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130. Here, Class Counsel estimated
8 that the class claims were worth a maximum of \$2,043,412.15, based on a 100% violation
9 rate and no applicable defenses. (Supplemental Declaration of Jose Garay re: Preliminary
10 Approval, ¶¶ 4, 46.) Discounting to realistically recoverable amounts, he estimates that the
11 claims are worth \$763,467.51. (Ibid.) Class Counsel estimated that the overtime claim could
12 be valued at \$644,713.47, but acknowledged that the evidence (showing Defendant paid
13 overtime 85% of the time) favored Defendant on this claim. (Id. at ¶¶ 5, 7, 8.) Rest breaks
14 were not assigned a value because of perceived problems of proof. (Id. at ¶¶ 9, 10.) Penalties
15 based on Labor Code §§ 203 and 226 were valued at \$266,304 and \$240,000 respectively,
16 but were revised down for settlement purposes. (Id. at ¶ 12.) The \$450,000 settlement
17 represents recovery of approximately 59% of the realistic value of the claims, which is
18 within the ballpark of reasonableness.

19
20 (b) Risk, expense, complexity and likely duration of further litigation. Given the nature of
21 the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles
22 (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any
23 recovery by the class members.
24
25

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

7 (d) Amount offered in settlement. As indicated above, Defendant has agreed to settle for
8 the maximum amount of \$450,000, which is reversionary after 55% of the net is satisfied.
9 The response rate of class members to the settlement was 11.45%. Based on paying 55% of
10 the Net Fund Value (\$146,918 if deductions are taken in the requested amounts), the average
11 settlement payment will be \$2,422.52. [$\$146,918 \div 59$ claimants = \$2,490; taxes will reduce
12 this amount].

13 (e) Extent of discovery completed and stage of the proceedings. As discussed above, at the
14 time of the settlement, the parties had conducted extensive discovery.

15 (f) Experience and views of counsel. The settlement was negotiated and endorsed by Class
16 Counsel who, as indicated above, is experienced in class action litigation, including wage
17 and hour cases.

18 (g). Presence of a governmental participant. This factor is not applicable here.

19 h. Reaction of the class members to the proposed settlement.

20	Number of class members:	515
21	Number of notices mailed:	515
22	Number of undeliverable notices:	6
23	Number of opt-outs:	2
24	Number of objections:	0
25	Number of participating class members:	59 (11.45%)

1 CONCLUSION: The settlement is “fair, adequate, and reasonable.”

2 **D. ATTORNEY FEES AND COSTS**

3 Class Counsel requests \$148,500 for attorney fees and \$20,000 for costs.

4 In its order preliminarily approving the class dated July 20, 2016, the Court reserved on
5 the propriety of this request.

6 The settling parties' agreement providing for fees is not binding on the court. Garabedian
7 v. Los Angeles Cellular Telephone Co. (2004) 118 Cal.App.4th 123, 127-128; Dunk v. Ford
8 Motor Co., (1996) 48 Cal.App.4th 1794, 1808. Careful examination of a fee award is necessary
9 in all cases and particularly where, as here, the settlement agreement contains a “clear sailing”
10 agreement. Cf. Consumer Privacy Cases (2009) 175 Cal. App. 4th 545 (“Clear sailing”
11 agreements approved in class actions where court will scrutinize fee requests).

12 Our Supreme Court has recently reviewed the applicable standards to be applied in
13 awarding fees where the efforts of counsel in a class action establishes a monetary fund for the
14 benefit of the class members, concluding the court may determine the amount of a reasonable fee
15 by choosing an appropriate percentage of the fund created. Laffitte v. Robert Half Internat., Inc.
16 (2016) 1 Cal. 5th 480, 503. The Court, however, also noted that it was not determining what fee
17 method is appropriate with respect to reversionary settlements. Id.

18 The \$148,500 fee request is 33% of the potential \$450,000 settlement amount. As such it
19 is in the range of amounts typically negotiated in contingent fee cases. See Chavez v. Netflix,
20 Inc. (2008) 162 Cal. App. 4th 43, 65. This, however, is not a true common fund settlement.
21 Although very few class notices were returned, relatively few class members elected to
22 participate in the settlement. The actual amount that will be paid to the class is \$142,898 (Meade
23 Dec. at Para. 13). Thus, the amount of fees requested is in excess of what will be paid to the
24 class.

1 Commentators have noted reversionary settlements of this type pose particular problems:
2 is the fee to be calculated on (1) the amount claimed by the class or (2) the amount made
3 available to the class? Justice O'Connor expressed concern that allowing counsel to recover
4 against the full value of the fund may create an incentive for counsel to accept settlements
5 unlikely to yield high claims rates. See International Precious Metals Corp. v. Waters (2000)
6 530 U.S. 1223. However, limiting counsel to a percentage of the class's actual recovery provides
7 defendants with a possible windfall, although one that was recognized as a potentiality when the
8 case was conditionally approved.

9 The California courts have not spoken on this issue. The Ninth Circuit indicated that a
10 percentage of the funds made available to the class is appropriate. Williams v. MGM Pathe
11 Communs. Co. (1997) 129 F. 3d 1026.

12 In other contexts courts often determine the appropriate amount of a fee award courts
13 using the lodestar method, applying a multiplier where appropriate. "The lodestar method, or
14 more accurately the lodestar-multiplier method, calculates the fee "by multiplying the number of
15 hours reasonably expended by counsel by a reasonable hourly rate. Once the court has fixed the
16 lodestar, it may increase or decrease that amount by applying a positive or negative 'multiplier'
17 to take into account a variety of other factors, including the quality of the representation, the
18 novelty and complexity of the issues, the results obtained, and the contingent risk presented."
19 Laffitte, 1 Cal. 5th at 489, citing Lealao v. Beneficial California, Inc. (2000) 82 Cal.App.4th 19
20 at p. 26. The goal is to reach a fee award that would be within the range of fees freely negotiated
21 in the legal marketplace in comparable litigation. Lealao, 82 Cal. App. 4th at 47-48.

22 Class Counsel has presented evidence from which the lodestar may be calculated:

Timekeeper	Hours	Hourly Rate	Total Lodestar
Jose Garay	153.89	\$575	\$ 88,486.75
Daniel Hyun	21.97	\$343	\$ 7,535.71
TOTAL			\$ 96,022.46

1 Based on a review of Class Counsel's timekeeping records, the hours spent on the tasks
2 performed appear to be reasonable for this case. The hourly rates charged also appear to be
3 reasonable and in line with prevailing rates in the community. Accordingly, class counsel's
4 actual attorney fees of \$96,022.46 acts as the lodestar.

5 Class counsel's declaration establishes that the case before the court is one of hundreds
6 he has litigated involving the same or similar issues as this action (Garay Dec. at ¶ 4). No novel
7 or complex issues are shown. Counsel conducted pre-filing diligence; filed the case on February
8 14, 2014; engaged in informal discovery including reviewing payroll records, other employment
9 records, and the employee handbook; and settled the matter in mediation on September 18, 2014.
10 The named plaintiff then sought to withdraw and a new plaintiff was required. However, no
11 contested class certification motion was filed nor are any discovery disputes described. Actual
12 costs exceeded the settlement cap by \$2,142.98 and were paid by plaintiffs' counsel.

13 In short, in some respects this is a matter in which the fees requested should be measured
14 strictly by the lodestar amount, without any multiplier. However, it also must be recognized that
15 although the case settled relatively early, and with little in the way of disputes, this could not be
16 predicted at the outset. Moreover, it does not appear that there was any activity by either
17 plaintiffs or defendants that resulted in the modest number of claims asserted. On balance, and
18 considering the work done and the likely range of fees in the marketplace that could have been
19 agreed to at the outset of the litigation, counsel's fee request in the amount of \$148,500 is
20 approved.

21 As for costs, Class Counsel request \$20,000, which is the settlement cap. The actual
22 costs to date are \$22,142.98. (Garay Declaration, ¶22 and Exhibit D thereto.) Costs include
23 filing fees, service fees, mediation (\$7,000), "Class Economics Fee" (\$11,000), Case Anywhere,
24 and other miscellaneous items. The costs appear to be reasonable and necessary to the litigation,
25 are reasonable in amount, and were not objected to by the class. The cost requests are approved.

1
2 **E. INCENTIVE AWARD TO CLASS REPRESENTATIVE**

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

13 Here, the named Plaintiff requests an incentive award of \$2,500. Plaintiff had multiple
14 meetings with his attorneys and was asked to provide documents and his personal knowledge in
15 order to assist his attorneys, including specific information about Defendant’s policies and
16 Plaintiff’s own experiences with unpaid overtime and with missed meal and rest periods.
17 (Declaration of Enrique Armas, ¶¶ 3, 8, 9, 10.) Plaintiff was informed about the duties and
18 obligations of class representatives and agreed to undertake them. (Id. at ¶¶ 3 -7, 11.) Plaintiff
19 estimates that he has spent approximately 30 hours assisting his attorneys. (Id. at ¶15.)

20 In light of the above as well as the benefits obtained on behalf of the class, \$2,500
21 appears to be a reasonable inducement for Plaintiff’s participation in this case. The requested
22 incentive award is approved.

23 **F. CLAIMS ADMINISTRATION COSTS**

24 Claims administrator Phoenix Settlement Administrators requests \$10,000. (Meade
25 Declaration, ¶14.) This is the amount estimated at the time of preliminary approval. Given the

1 tasks performed (and still to be performed), this amount appears to be reasonable. This amount
2 was also disclosed to class members and deemed unobjectionable.

3 **III. CONCLUSION AND ORDER**

4 The Court hereby:

- 5 (1) Grants class certification for purposes of settlement;
- 6 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 7 (3) Awards \$148,500 in attorney fees and \$20,000 in costs to class counsel Jose Garay;
- 8 (4) Awards \$2,500 as an incentive award to the class representative Enrique Armas;
- 9 (5) Awards \$10,000 in claims administration costs to Phoenix Settlement Administrators;
- 10 (6) Approves \$1,875 PAGA penalty payment to the LWDA;
- 11 (7) Executes the judgment lodged December 22, 2016;
- 12 (8) Orders class counsel to provide notice to the class members pursuant to California Rules
13 of Court, rule 3.771(b); and
- 14 (9) Sets a Non-Appearance Case Review re: Final Report re: Distribution of Settlement
15 Funds for July 1, 2017 at 8:30 a.m. The Final Report is to be filed by June 15, 2017.
16

17
18
19 Dated:

4/6/17


MAREN E. NELSON

Judge of the Superior Court