



**ORTEGA, et al. v. GLOBAL TEL\*LINK CORPORATION, et al.**

**MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

**UNFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles**

**MAR 12 2018**

**Sherri R. Carter, Executive Officer/Clerk  
By: V. Jaime, Deputy**

Date of Hearing: March 12, 2018  
Department: 308  
Case No.: BC636438

**RULING:**

- (1) The settlement appears to be in the range of reasonableness of a settlement that could ultimately be granted final approval by the Court;
- (2) Grant conditional class certification;
- (3) Appoint The Graves Law Firm, as Class Counsel;
- (4) Appoint Plaintiffs Antonio Ortega and Ken Hagans as Class Representatives;
- (5) Approve the notice (as modified to show new courtroom address as of April 15, 2018) and
- (6) Set the scheduled matters as indicated below.

**PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

As a “fiduciary” of the absent class members, the trial court’s duty is to have before it sufficient information to determine if the settlement is fair, adequate, and reasonable. (*7-Eleven Owners for Fair Franchising v. The Southland Corp.* (2000) 85 Cal.App.4<sup>th</sup> 1135, 1151 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4<sup>th</sup> 1794, 1801, 1802 (“*Dunk*”).])

California Rules of Court, rule 3.769 governs settlements of class actions. Any party to a settlement agreement may submit a written notice for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion. (Cal. Rules of Court, rule 3.769(c).)

In determining whether to approve a class settlement, the court’s responsibility is to “prevent fraud, collusion or unfairness to the class” through settlement and dismissal of the class action because the rights of the class members, and even named plaintiffs, “may not have been given due regard by the negotiating parties.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4<sup>th</sup> 46, 60.)

**FAIRNESS OF THE SETTLEMENT AGREEMENT**

In an effort to aid the Court in the determination of the fairness of the settlement, *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4<sup>th</sup> 224, 244-245 (“*Wershba*”), discusses factors the Court should consider when testing the reasonableness of the settlement.

A presumption of fairness exists where: (1) the settlement 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. (*Wershba, supra* at p. 245 [citing *Dunk, supra* at p. 1802].) The test is not the maximum amount plaintiff might have obtained at trial on the complaint but, rather, whether the settlement is reasonable under all of the circumstances. (*Wershba, supra* at p. 250.)

In making this determination, the Court considers all relevant factors including “the strength of [the] plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the 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.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 (“*Kullar*”) [citing *Dunk, supra* at p. 1801].)

“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 Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 [“[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.”].)

#### TERMS OF SETTLEMENT AGREEMENT

The Settlement Class includes all individuals employed by either Defendant [Global Tel\*Link Corporation (“GTL”) or Cooper Communications Group, Inc. (“Cooper”)] in California during the Class Membership Timeframe. The Class includes seven individuals who performed work for GTL through subcontracting entities (“Subcontractor Employees”). In August 2017, GTL acquired a company called Telmate LLC. Telmate employees were added to the GTL payroll on or around the beginning of 2018. Telmate employees are excluded from the settlement, except to the extent they were separately employed by a Defendant during the Class Membership Timeframe. Individuals who were employed by a Defendant during the Release Timeframe but were not employed by any Defendant during the Class Membership Timeframe are not members of the Settlement Class. (¶1.10)

The Parties stipulate to class certification for settlement purposes only. (¶12.13)

The Settlement Class Includes three subclasses:

- Field Technician Subclass: All persons employed in California as a Field Technician or equivalent position (including “Service Technicians” and “Site Administrative Technicians”) by any Defendant at any point during the Class Membership Timeframe, including the Subcontractor Employees. (*Ibid.*)
  - *Further investigation by Class Counsel has indicated that all Class Members are also members of the Field Technician subclass. The parties have conferred with regard to this new disclosure and agreed there is no need to rewrite the settlement to eliminate the subclasses, as the existing subclass structure will result in all Class Members being appropriately compensated as Field Technicians.* (Supp. Graves Decl., ¶¶6-8.)

- **GTL Payroll Subclass:** All individuals who were paid as hourly employees in California under the GTL payroll system during the Class Membership Timeframe. (*Ibid.*)
- **Time Tracking Subclass:** All individuals who were paid as hourly employees in California by any Defendant at any point during the Class Membership Timeframe. (*Ibid.*)

The “Class Membership Timeline” is from October 6, 2012 through December 31, 2017. (¶1.6)

The “Release Timeframe” is from October 6, 2012 through December 31, 2017. (¶1.7, as amended.)

There are approximately 79 Class Members. (Supplemental Declaration of Allen Graves, ¶7.)

The Total Settlement Amount (“TSA”) is **\$725,000, non-reversionary**. (¶3.1; Supplemental Brief at 13:16-23.)

The Net Distribution Amount (“NDA”) of **\$337,500** is the TSA minus:

- Up to **\$290,000 (40%)** for attorneys’ fees (¶3.7, as amended);
- Up to **\$25,000** for attorneys’ costs (*Ibid.*);
- Up to **\$20,000** for incentive awards to the two class representatives (\$15k for Mr. Ortega and \$5k for Mr. Hagans) (¶3.6);
- Estimated **\$15,000** for costs of claim administration (¶5.1); and
- **\$37,500 (75% of \$50,000 PAGA penalty)** to the LWDA (¶3.5).

Defendant will pay the employer’s share of taxes in addition to the gross settlement amount. (¶3.1)

This is a claims made settlement. Only class members who submit timely and valid claim forms will receive a settlement share. (¶1.12)

- “Class Members” means all members of the Settlement Class. (¶1.11)
- “Claimants” means Class Members who submit valid and timely Claim Forms. (¶1.12)

Class Members will have 45 calendar days from the date on which the Claim Forms were initially mailed to submit claims, requests for exclusion, and/or objections. (¶¶ 5.8, 5.10, as amended.) Each Class Member who receives a re-mailed notice shall have an additional 10 days from the date the Claim Forms were initially mailed to submit a Claim or a request for exclusion. (¶5.8, as amended)

- Deficient opt-out requests and Claim Forms, submitted on or before the deadline, will be deemed valid if the class member cures the deficiency within 7 days prior to the date of the Final Approval Hearing. (¶5.12)
- Claim Forms and Requests for Exclusion may both be submitted via the settlement website. (¶5.11, as amended)

Each Claimant's Individual Settlement Amount will be based on the number of weeks that the Claimant worked during the Release Timeframe as follows: Each Claimant in the Time Tracking

Subclass shall receive *one credit per week* that he or she worked during the Release Timeframe. (¶3.4.) Each Claimant in the GTL Payroll Subclass shall receive *two credits per week* that he or she worked during the Release Timeframe. Each Claimant in the Field Technician Subclass will receive *ten credits per week* that he or she worked during the Release Timeframe. A Claimant who is a member of multiple Subclasses will be treated as a *member of the most advantageous Subclass* for the purposes of calculating the Individual Settlement Amounts. (¶3.4)

- The value of a credit shall be determined by dividing the Net Distribution Amount by the total number of credits awarded to all Claimants. Each Claimant shall receive a gross payment equal to the number of his or her credits multiplied by the value of a credit. (¶3.3)

Individual Settlement Payments will be allocated as follows: 20% as wages and 80% as interest and penalties. (¶3.4)

- Tax forms issued to tax members in connection with uncashed checks will be withdrawn and voided. (¶6.4, as amended.)

If a Claimant does not cash or deposit his or her check within 180 days from the date of issuance, or if a settlement check is returned for a second time, pursuant to California Code of Civil Procedure §384(b)(3), the Settlement Administrator shall cause that Claimant's payment to be donated as follows: 25% to the Trial Court Improvement and Modernization Fund; 25% to the Equal Access Fund of the Judicial Branch; and 50% to Kids First America, a nonprofit child advocacy program. (¶6.4)

The claims administrator is Phoenix Settlement Administrators. (¶5.1)

All class members who do not opt out will release certain claims, discussed in detail below.

## ANALYSIS OF SETTLEMENT AGREEMENT

### A. Does a Presumption of Fairness Exist?

1. Was the Settlement reached through arm's-length bargaining? Yes. The first mediation occurred on August 7, 2017 with mediator Joel Grossman. The mediation did not resolve the matter. (Graves Decl., ¶18.) On October 20, 2017, the Parties participated in a second mediation in this matter with Mr. Grossman. After hours of negotiations, Mr. Grossman concluded that the mediation could not succeed without a mediator's proposal. Mr. Grossman made a mediation proposal based on his own valuation of the case. On November 15, 2017, Mr. Grossman informed all Parties that the proposal was unanimously approved. (*Id.* at ¶22.)

2. Were investigation and discovery sufficient to allow counsel and the Court to act intelligently? Yes. Prior to Plaintiffs filing the instant case, Class Counsel interviewed multiple employees and reviewed documents that related to the policies and practices at issue in this case. (*Id.* at ¶18.) The parties exchanged initial document disclosures on June 29, 2017. Documents included: (1) employee handbooks and policies; (2) attendance records and timesheets of individual employees; (3) paystubs; and (4) detailed weekly work logs. After the initial production, Class Counsel continued to follow up with Defendants, ensuring that some

records initially overlooked were produced and obtaining further information to allow a detailed assessment of the case. (*Id.* at ¶9.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class action cases. (*Id.* at ¶¶2-7.)

4. What percentage of class has objected? This cannot be determined until the fairness hearing. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2011) ¶ 14:139.18 [“Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing.”].)

B. Is the settlement fair, adequate and reasonable?

1. Strength of Plaintiffs’ case. “The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar* at 130.) Class Counsel has provided a detailed analysis, summarized in the table below, of its valuation of the central class claims. (Graves Decl., ¶¶26-31.)

<b>Cause of Action</b>	<b>Maximum Exposure</b>
Unpaid Overtime	\$1,022,524.78
Meal Break Violations	\$280,458.56
Interest on Unpaid Wages	\$311,959.61
<b>Total</b>	<b>\$1,614,942.95</b>

(*Id.* at ¶30.)

2. Risk, expense, complexity and likely duration of further litigation. Further litigation carries the possibility of non-certification and unfavorable rulings on the merits of the above legal issues.

3. Risk of maintaining class action status through trial. It would have been Plaintiffs’ burden to maintain the class action status through trial.

4. Amount offered in settlement. Plaintiffs calculated Defendants’ maximum exposure for the alleged Labor Code violations to be approximately \$1,614,942.95. (*Ibid.*) The Gross Settlement Value of \$725,000 represents approximately 44.9% of Defendant’s maximum exposure, which is within the ballpark of reasonableness. If all requested deductions are taken in full, approximately \$337,500 will remain to be distributed to Class Members who submit valid Claim Forms. Assuming all Class Members submit claims, individual payments will average \$4,440.79 [ $\$337,500 \text{ net} / 79 \text{ class members} = \$4,440.79$ ].

5. Extent of discovery completed and the stage of the proceedings. As stated above, it appears that Plaintiffs have completed sufficient discovery in order to make an informed decision.

6. Experience and views of counsel. As indicated above, Class Counsel is experienced in class actions, including wage and hour class action cases. Class Counsel is of the opinion that the settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances. (Settlement Agreement, ¶3.8.)

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

8. Reaction of the class members to the proposed settlement. The class members’ reactions will not be known until they receive notice and are afforded an opportunity to object or opt-out. This factor becomes relevant during the fairness hearing.

## SCOPE OF RELEASE

Upon the Effective Date, and except as to such rights or claims as may be created by this Agreement, each member of the Settlement Class (other than those who timely request to be excluded), regardless of whether he or she has timely submitted a Claim Form, will fully release and discharge all Released Parties from all Released Claims. (§4.3, as amended)

The "Released Claims" are all claims, causes of action, demands, rights and liabilities of every nature and description that are asserted in, arise from, or relate to the factual allegations and/or legal assertions made in the Action during the Release Timeframe. The release extends to all remedies that could be claimed for any Released Claim, including but not limited to statutory, constitutional, contractual, and common law claims for wages, damages, liquidated damages, expense reimbursement, interest, attorney fees and costs (other than as awarded to Class Counsel by the Court as part of the instant settlement), injunctive relief, punitive damages, liquidated damages, restitution, disgorgement, and civil and/or statutory penalties pursuant to the Fair Labor Standards Act and/or the California Wage Orders and Labor Code, including, without limitation, Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1198, 2699 et seq. and 2802. (§4.1, as amended.)

The entities against whom claims are released include and are limited to Defendants and their past, present, and future parent entities, subsidiaries, divisions, affiliates, legal successors, predecessors (including companies they have acquired, purchased, or absorbed), and each and all of their respective owners, management, officers, partners, and directors (collectively, the "Released Parties"). Telemate LLC is not a Released Party. The release does not apply to claims based on employment at Telmate. (§4.2)

Named Plaintiffs will additionally provide a general release and §1542 waiver. (§4.4)

The release of claims by class members is acceptable as it is limited to claims that were or could have been alleged based on the facts alleged, and which arose during the relevant period.

## CONDITIONAL CLASS CERTIFICATION

### A. Standards

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified. (*Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (*Dunk* at 1807, fn. 19.) Because a settlement eliminates the need for a trial, when considering whether to certify a settlement class, the court is not faced with the case management issues present in certification of a litigation class. (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4<sup>th</sup> 836, 859.) Finally, the Court is under no "ironclad requirement" to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (*Wershba, supra* at p. 240.)

## B. Analysis

1. Numerosity. Defendants provided a Class Member list of 79 former and current employees. (Graves Supp. Decl., ¶17.)

2. Ascertainability. This class definition “is precise, objective and presently ascertainable.” (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919.) All class members have worked for Defendant and have been identified through Defendant’s employee and payroll records. (Graves Decl., ¶23.)

3. Community of interest. “The community of interest requirement involves three factors: ‘(1) predominant common 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.’” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

Defendants' liability in this case was established via Defendants' handbook and the actual time records that are common to every single Class Member. Because all of the Class Members have been subject to the same policies, Plaintiffs maintain that commonality and typicality would be easily established in a contested motion. (Supplemental Motion at 7:11-14.)

The fact that all Class Members have the exact same claims means that the class representatives necessarily have claims and defenses typical of the class. As Field Technicians, both class representatives have experienced the claims applicable to the other Class Members in this case. Nor is there anything about either Plaintiff that would render their claims non-typical. The policies at issue in this case are uniform and companywide. (*Id.* at 7:15-20.)

The Class Representatives are able to adequately represent the class. They have taken an active role in the litigation (Declarations of Ken Hagans and Antonio Ortega, ¶¶6-7.)

4. Adequacy of class counsel. As indicated above, Class Counsel is experienced in class actions.

5. Superiority. Given the size of the potential individual recovery, it would be impracticable to bring each Class Member's claim as an individual claim. (Motion at 17:25-26.)

Since the elements of class certification have been met, the class may be conditionally certified at this time.

## NOTICE TO CLASS

### A. Standard

California Rules of Court, rule 3.769(e) provides: “If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing.” Additionally, rule 3.769(f) states: “If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.”

### B. Form of Notice

A copy of the revised proposed notice to class members is attached to the Revised Joint Stipulation as Exhibit 1. The information provided in the proposed notice includes a summary of the litigation, the nature and terms of the settlement, the procedures for participating in,

opting out of, or objecting to the settlement, and the time, date, and location of the final approval hearing.

A copy of the proposed Claim Form is attached to the Settlement Agreement as Exhibit 2.

The Court finds the notice acceptable.

C. Method of Notice

No later than 14 days after Preliminary Approval, Defendants shall provide the Settlement Administrator with information regarding each Class Member. With regard to the seven Subcontractor Employees, Defendant will use its best efforts to obtain the required information. If Defendant is unable to obtain complete information for any Subcontractor Employee, Defendant will provide the address of the company that provided the Subcontractor Employee and notice will be sent to that subcontractor with instructions to forward the notice to the employee. (§15.2.)

No later than 20 days after the Court grants Preliminary Approval, the Settlement Administrator will mail the Notice and Claim Form to class members. Based on the known English proficiency of the Class Members, the Parties agree that the Notice and Claim Form may be distributed in English. (§15.3.) Prior to mailing the Settlement Administrator shall search the NCOA to confirm the current address for each Class Member. (§15.4.)

If any envelopes are returned, the Settlement Administrator may use appropriate methods, including but not limited to, skip-trace and telephone follow-up to obtain the current address of each Class Member. The Settlement Administrator will re-mail all notices that were returned by the postal service, and for which additional addresses are known or obtainable, within 5 days. (§15.4)

21 days after the initial mailing of the Notice and Claim Form, the Settlement Administrator will mail to each Class Member who has not responded with the return of a Claim Form or a request for exclusion, a postcard to remind each such Class Member to submit a Claim Form before the deadline. (§15.9)

The Settlement Administrator shall maintain a website that Class Members can use to obtain copies of the complaint in the Action, this Agreement, the Preliminary Approval Order, and the Claim Form, and to contact the Settlement Administrator if they have questions. The website will also allow Class Members to file a Request for Exclusion or a Claim Form. (§15.6, as amended.)

D. Cost of Notice

The settlement administration costs are estimated at **\$15,000**. (§15.1.) This amount appears reasonable. However, prior to the time of the final fairness hearing, the Claims Administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

ATTORNEY FEES AND COSTS

California Rules of Court, rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."



Ultimately, the award of attorney fees is made by the Court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4<sup>th</sup> 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4<sup>th</sup> 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4<sup>th</sup> 1122, 1132-1136.) In common fund cases, the Court may utilize the percentage method, cross-checked by the lodestar. (*Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5<sup>th</sup> 480, 503.) Despite any agreement by the parties to the contrary, "the court has an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4<sup>th</sup> 123, 128.)

The question of whether class counsel is entitled to **\$290,000 (40%)** in attorneys' fees will be addressed at the fairness hearing when class counsel brings a noticed motion for attorney fees.

Counsel should also be prepared to justify any costs sought by detailing how such costs were incurred.

#### SCHEDULE OF SETTLEMENT PROCEEDINGS

The following schedule is set by the Court:

Preliminary Approval Hearing – March 12, 2018

Deadline for Serving Notices to Class Members – April 2, 2018.

Deadline for Objecting or Opting Out – May 28, 2018 (45 days from the date the Notice Packets are mailed to class member

Deadline for submitting a Claim Form – May 28, 2018, 2018 (45 days from the date the Notice Packets are mailed to class members)

Deadline for Class Counsel to File Motion for Final Approval of Settlement and Motion for Attorney Fees (and respond to any objections) – June 22, 2018

Final Fairness Hearing and Final Approval – July 20, 2018 at 10:00 a.m.