

05/31/2023

David W. Slayton, Executive Officer / Clerk of Court

FINAL RULINGS/ORDERS RE: MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Deputy

Macedo v. Claud Townsley, Inc., et al., Case No. 21STCV02998

The Parties' Motion for Final Approval of class action settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$275,000 [Escalator: Based on its records, CTI estimates that, as of the date of the Settlement Agreement, (1) there are 32 Class Members and 6,525 Total Workweeks during the Class Period. If the actual number of Class Members through the end of the Class Period exceeds 32 by more than 25% (i.e., more than 8 Class Members) as of the end of the Class Period, there will be a pro rata adjustment to the Gross Settlement Amount equal to \$8,593.75 per additional Class Member in excess of 40 Class Members. (§19)]

B. The Net Settlement Amount is the GSA minus the following:

\$91,666.67 for attorney fees to Class Counsel, Jose Garay, APLC;

\$8,545.20 for attorney costs to Class Counsel;

\$5,000 for enhancement award to the class representative, Jose Alfonso Macedo;

\$4,500 for settlement administration costs to Phoenix Settlement Administrators.

C. The employer's share of payroll taxes will be paid separately by Defendant in addition to the GSA.

D. Plaintiffs release of Defendants from claims described herein.

By **June 30, 2023**, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1) (3).

By **May 31, 2024**, Class Counsel must file a Final Report re: Distribution of the settlement funds.

Court sets **Non-Appearance Case Review for June 7, 2024, 8:30 AM, Department 9.**

I.
INTRODUCTION

A. Background

This is a wage and hour class action. On January 25, 2021, Plaintiff Jose Alfonso Macedo filed this putative class action against Defendant Claud Townsley, Inc. ("Defendant" or "CTI") in the Los Angeles County Superior Court, and alleged that Defendant (1) failed to pay all wages; (2) failed to provide meal periods; (3) failed to provide rest periods; (4) failed to provide accurate itemized wage statements; (5) failed to timely pay all wages due upon separation of employment; and (6) violated Business and Professions Code §§ 17200, et seq.

On August 11, 2021, the Parties attended mediation with the Hon. Thierry Colaw (Ret.) and reached a settlement in principle, and spent the next few months drafting, negotiating, and finalizing the Class Action Settlement Agreement ("Settlement Agreement"), a copy of which was filed with the Court.

On June 23, 2022, the Court issued a checklist of items for counsel to address. In response, counsel filed further briefing and the First Amended Settlement Agreement. On November 4, 2022, the Court continued the matter of preliminary approval and ordered the parties to address remaining issues with the agreement and notice form. In response, the parties filed the Second Amended Settlement Agreement.

The settlement was preliminarily approved on December 27, 2022, subject to certain conditions with which there was compliance.

The Parties now move for final approval of the proposed class action settlement.

B. Definitions

"Class": all persons currently or formerly employed by CTI in California and classified as non-exempt, non-supervisory roofers who worked for CTI during the Class Period. (§1.4)

"Class Period": January 25, 2017, and continuing until date of Preliminary Approval. (¶1.11)

"Class Member" or "Settlement Class Member": member of the Class, as either a Participating Class Member or Non-Participating Class Member. (¶1.8)

"Participating Class Member": Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. (¶1.26)

The parties stipulate to class certification for the purposes of settlement. (Garey Decl. ISO Prelim ¶25.)

C. Terms of Settlement Agreement

The essential terms are:

- The Gross Settlement Amount ("GSA") is \$275,000, non-reversionary. (¶1.21)
 - o Escalator: Based on its records, CTI estimates that, as of the date of the Settlement Agreement, (1) there are 32 Class Members and 6,525 Total Workweeks during the Class Period. If the actual number of Class Members through the end of the Class Period exceeds 32 by more than 25% (i.e., more than 8 Class Members) as of the end of the Class Period, there will be a pro rata adjustment to the Gross Settlement Amount equal to \$8,593.75 per additional Class Member in excess of 40 Class Members. (¶9)
 - o At final approval, the settlement administrator represents that there are 33 total Class Members. (Declaration of Taylor Mitzner ("Mitzner Decl.") ¶¶11-12.) Accordingly, the escalator clause was not triggered.
- The Net Settlement Amount (\$161,333.33) is the GSA minus the following:
 - o Up to \$91,666.67 (33 1/3%) for attorney fees (¶3.2.2);
 - o Up to \$10,000 for litigation costs (Ibid.)
 - o Up to \$7,500 for a service award to the named Plaintiff (¶3.2.1); and
 - o Up to \$4,500 for settlement administration (¶3.2.3).
- Employer payroll taxes shall be paid by Defendants separately from the GSA. (¶3.1)
- There is no claims process. (¶3.1)
- Response Deadline: "Response Deadline" means 60 days after the Administrator mails Notice to Class Members, and shall be the last date on which Class Members may: (a) fax, email, or

mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 15 calendar days beyond the Response Deadline has expired. (¶1.33) It also applies to the submission of workweek disputes. (¶8.6)

- o The deadlines for Class Members' written objections, Challenges to Workweeks, and Requests for Exclusion will be extended an additional 14 days beyond the [60] days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. (¶8.4.4)

- o If the number of valid Requests for Exclusion identified in the Exclusion List exceeds twenty-five percent (25%) of the total of all Class Members, CTI may, but is not obligated, elect to withdraw from the Settlement. (¶10)

- Individual Settlement Payments: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (¶3.2.4)

- o Effect of Non-Participating Class Members on Calculation of Individual Class Payments: Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. (¶3.2.4.2)

- o Tax Allocation: 50% wages and 50% as interest and penalties. (¶3.2.4.1)

- Funding of GSA: CTI shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay CTI's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date. (¶4.3)

- Distribution: Within 14 days after CTI funds the Gross Settlement Amount, the Administrator will mail checks for the initial round of all Individual Class Payments, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments. (¶4.4)

- Uncashed Checks: The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. (¶4.4.1) For any

Class Member whose Individual Class Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).] (§4.4.3)

- The settlement administrator will be Phoenix Class Action Administration Solutions. (§1.2)
- Notice of final judgment will be posted on the administrator's website. (§8.8.1)
- Release of Claims. Effective on the date when CTI fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows: (§6)
 - o Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action, including, under state law and the Wage Orders of the California Industrial Welfare Commission, that were alleged or which could have been alleged based on the factual allegations in the Class Action Complaint in the Action, including claims for unpaid wages, including but not limited to failure to pay minimum wages, straight time compensation, overtime compensation, double time compensation, and interest; failure to timely pay regular and final wages; wages related to time rounding and timekeeping; missed meal period and rest period wages and premiums; meal period waivers and on duty meal period waivers; payment for all hours worked, including off-the-clock work and uncompensated work time; wage statements and paystubs, including wage statements and paystubs furnished or available in physical, electronic, or other forms; failure to keep accurate records; deductions; declaratory relief; unfair business practices; penalties, including recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; statutory penalties and civil penalties; and attorneys' fees and costs. Without limiting the foregoing, the Released Claims include those claims arising under California Labor Code Sections 201, 202, 203, 204, 206, 218.6, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198 and/or those arising under the Industrial Welfare Commission Wage Orders; California Business and Professions Code section 17200 et seq.; California

Code of Regulations, title 8, Section 11160; the California Civil Code sections 3287, 3289, and 3294; California Code of Civil Procedure section 1021; and any claims under the Fair Labor Standards Act ("FLSA") [29 U.S.C. §§ 201, et seq.] arising during the Class Period and based on the factual allegations alleged or which could have been alleged in the Complaint.

(¶6.2)

o Participating Class Members acknowledge and understand that their respective claims for unpaid wages are the subject of a bona fide dispute, that this Settlement amounts to a good faith resolution of that dispute, and that any failure to pay wages when due was not willful. (¶6.2)

o Upon payment of the Individual Class Payment, Participating Class Members, and each of them, acknowledge compensation in full for all hours worked during their employment with CTI. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

(¶6.2)

o "Released Parties" means: CTI and each of its former and present directors, officers, shareholders, owners, [members], attorneys, insurers, predecessors, successors, assigns [subsidiaries] [affiliates]. (¶1.31)

o Named Plaintiff will also provide a general release and a Civil Code § 1542 waiver. (¶¶ 6.1, 6.1.1)

II.

DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On August 11, 2021, the Parties attended mediation with mediator Hon. Thierry Colaw (Ret.) and reached a settlement in principle and spent the next few months drafting, negotiating, and finalizing a memorandum of understanding, which was finalized in January 2022. (Garay Decl. ISO Prelim ¶6).

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class Counsel represents that prior to mediation, Defendant substantially produced all evidence required to evaluate the merits and damages alleged in this Action. For example, Defendant provided Plaintiff with a significant amount of informal discovery, including the total number of putative Class Members, job

titles, dates of employment, and a representative sampling of employment records for the Class. (Id. at ¶4.)

Specifically, Defendant produced its payroll data for 31.25% of the class members. Defendant produced in Excel spreadsheets data for 10 randomly selected exemplar putative class members, and the number of putative class members during the putative class period (32) with their job titles and dates of employment, and documents pertaining to the class such as anonymized payroll records, showing check dates, straight time and overtime hours paid on a weekly basis during the putative class period of January 25, 2017, through May 31, 2021, plus time sheets compiled by Defendant and earnings statements for the 10 sample putative class members, amounting to 724 pages of evidence for the 10 sample putative class members. Counsel contends that the sample of 10 of 32 putative class members is reliable because Defendant had a stable, reliable workforce with very little turnover; only five (5) of the 32 putative class members (including the lead Plaintiff) are no longer employed with Defendant. Defendant's employees largely traveled and worked together in cohesive teams based on weather, and therefore largely worked under similar conditions on the same dates for the same number of hours. Counsel contends that the payroll for one employee would be largely interchangeable with the other employees who worked the same days on the same projects. Plaintiff's counsel formulated a damages analysis based on the records provided by Defendant and records in Plaintiff's possession. (Id. at ¶25.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Id. at ¶53).

4. What percentage of the class has objected? No objectors. (Mitzner Decl. ¶9.)

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

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

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

the factual basis for, and estimated maximum exposure for each of the claims alleged.

CLAIM	MAXIMUM EXPOSURE	REALISTIC EXPOSURE
Unpaid Wages	\$1,601,089.88	\$914,908.50
Meal Periods	\$914,908.50	\$640,435.95
Rest Periods	\$914,908.50	\$91,490.85
Waiting Time Penalties	\$32,400.00	\$18,468.00
Wage Statement Penalties	\$128,000.00	\$72,960.00
TOTAL	\$3,591,306.88	\$1,738,263.30

(Garay Decl. ISO Prelim, ¶¶28-34.)

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

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

4. Amount offered in settlement. Plaintiff's counsel obtained a \$275,000 non-reversionary settlement, which is approximately 7.7% of Defendant's maximum estimated exposure and approximately 15.8% of the estimated realistic exposure in this matter, which given the uncertain outcomes, is within the "ballpark of reasonableness."

The settlement amount, after the requested deductions, leaves approximately \$161,333.33 to be divided among approximately 33 participating class members. The resulting payments will average approximately \$4,888.89 per class member.

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

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

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

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

Number of class members: 33 (Mitzner Decl. ¶3.)
Number of notice packets mailed: 33 (Id. at ¶6.)
Number of undeliverable notices: 0 (Id. at ¶7.)
Number of opt-outs: 0 (Id. at ¶8.)
Number of objections: 0 (Id. at ¶9.)
Number of Participating Class Members: 33 (Id. at ¶11.)
Average individual payment: \$4,888.89 (Id. at ¶14.)
Highest estimated payment: \$6,350.81 (Ibid.)

The Court concludes that the settlement can be deemed fair, adequate, and reasonable.

C. Attorney Fees and Costs

Class Counsel requests an award of \$91,666.67 in fees and \$8,545.20 in costs. (MFA at 1:21-22.) The Settlement Agreement provides for fees up to 91,666.67 (33 1/3%) of the settlement amount and costs up to \$10,000 (¶3.2.2).

"Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.) Here, class counsel requests attorney fees as a percentage of the common fund. (MFA at pp. 8-12.) In common fund cases, the Court may employ a percentage of the benefit method, as cross-checked against the lodestar. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) The fee request represents 1/3 of the gross settlement amount, which is the average generally awarded in class actions. (See In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn. 13 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].)

Class Counsel has provided information, summarized below, from which the lodestar may be calculated.

Attorney	Hours	Rates	Totals
Jose R. Garay	163.4	\$850	\$138,890.00
Daniel J. Hyun	56	\$600	\$33,600.00
Totals	219.4		\$172,490.00

(Garay Decl. ISO Final ¶¶39-41.)

Counsel's percentage-based fee request is higher than the unadjusted lodestar, which would require the application of an approximate 0.53x multiplier to reach the requested fees.

Here, the \$91,666.67 fee request represents a reasonable percentage of the total funds paid by Defendant. Notice of the fee request was provided to class members in the notice packet and no one objected. (Mitzner Decl. ¶9, Exhibit A thereto.)

As for costs, Class Counsel is requesting \$8,545.20. This is less than the \$10,000 cap provided in the Settlement Agreement, for which Class Members were given notice and did not object. (Mitzner Decl. ¶9, Exhibit A thereto.) Costs include: Mediation (\$3,750), Complaint Filing Fees (\$1604.86), and Case Anywhere (\$801.60). (Garay Decl. ISO Final, Exhibit 5.) The costs appear to be reasonable in amount and reasonably necessary for this litigation.

Based on the above, the court awards \$91,666.67 for attorneys' fees and \$8,545.20 for attorneys' costs.

D. Claims Administration Costs

The settlement administrator, Phoenix Settlement Administrators, requests administration costs of \$4,500. (Mitzner Decl. ¶16.) This equals the estimated cost of \$4,500 provided for in the Settlement Agreement (¶3.2.3) and disclosed to Class Members in the Notice, to which no one objected. (Mitzner Decl. ¶9, Exhibit A thereto).

The court awards costs in the requested amount of \$4,500.

E. Incentive Award to Class Representative

Plaintiff Jose Alfonso Macedo seeks an enhancement award of \$7,500 for his contributions to the action. (MFA at 1:23-24.)

In connection with the final fairness hearing, the named Plaintiffs must submit declarations attesting to why they should be entitled to an enhancement award in the proposed amount. The named Plaintiffs must explain why they "should be compensated for the expense or risk he has incurred in conferring a benefit on other members of the class." (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than pro forma claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit" (Id. at 806-807, italics and ellipsis in original.)

Plaintiff represents that his contributions to this action include: providing his attorneys with information about Defendant's working conditions, gathering documents, reviewing information and documents produced by Defendant, communicating with his attorneys, helping them prepare for being available during the mediation, and reviewing the settlement. He estimates spending 55-60 hours on the case. (Decl. of Jose Alfonso Macedo ISO Final ¶¶6-7.)

Based on the above, the court grants the enhancement award in the reduced amount of \$5,000 to Plaintiff Jose Alfonso Macedo.

III. CONCLUSION

Based upon the foregoing, the Court orders that:

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

2) The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$275,000 [Escalator: Based on its records, CTI estimates that, as of the date of the Settlement Agreement, (1) there are 32 Class Members and 6,525 Total Workweeks during the Class Period. If the actual number of Class Members through the end of the Class Period

exceeds 32 by more than 25% (i.e., more than 8 Class Members) as of the end of the Class Period, there will be a pro rata adjustment to the Gross Settlement Amount equal to \$8,593.75 per additional Class Member in excess of 40 Class Members. (¶9)]

B. The Net Settlement Amount is the GSA minus the following:

\$91,666.67 for attorney fees to Class Counsel, Jose Garay, APLC;
\$8,545.20 for attorney costs to Class Counsel;
\$5,000 for enhancement award to the class representative, Jose Alfonso Macedo;
\$4,500 for settlement administration costs to Phoenix Settlement Administrators.

C. The employer's share of payroll taxes will be paid separately by Defendant in addition to the GSA.

D. Plaintiffs release of Defendants from claims described herein.

3) By June 30, 2023, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1)(3).

4) By May 31, 2024, Class Counsel must file a Final Report re: Distribution of the settlement funds.

5) Court sets Non-Appearance Case Review for June 7, 2024, 8:30 AM, Department 9.

CLERK TO GIVE NOTICE TO MOVING PARTY. THE MOVING PARTY TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: May 31, 2023



Yvette M. Palazuelos
YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT
Yvette M. Palazuelos / Judge