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Superior Court of California
County of Los Angeles

APR 26 2017

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

LAUREN RUBIO, on behalf of herself and all
others similarly situated and the general public,

Plaintiff,

v.

INLAND VALLEY PARTNERS, LLC, a
California Limited Liability Company; THE
CHASE GROUP, LLC, a California Limited
Liability Company; INLAND VALLEY CARE
& REHABILITATION CENTER, a business
form unknown; and DOES 1 to 100, inclusive,

Defendants.

Case No.: BC581000

ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT

Date: April 26, 2017

Time: 9:00 a.m.

Dept.: 307

I. BACKGROUND

This is a wage and hour class action filed by Plaintiff Lauren Rubio, on behalf of herself and similarly situated employees of Defendant Inland Valley Care & Rehabilitation Center, LLC, The Chase Group, LLC, and Inland Valley Care & Rehabilitation Center; Plaintiff was employed by Defendant Inland Valley as a licensed vocational nurse. The operative First Amended Complaint alleges the following causes of action: Unfair Business Practice, Failure to Pay All Wages, for Waiting Time Penalties, Failure to Provide Meal Breaks, Inaccurate Wage

Statements, Failure to Provide Rest Periods, Unpaid Wages Due to Off-the-Clock Work, and for
PAGA penalties.

Following mediation, the parties entered into a written settlement agreement and sought
preliminary approval. The Court granted preliminary approval of the settlement on December
15, 2016. Now before the Court is Plaintiffs' motion for final approval.

II. DISCUSSION

A. SETTLEMENT CLASS DEFINITION

The term Settlement Class means two separate classes.

Class 1 consists of, "all current and former non-exempt employees employed during the
Settlement Class Period who worked at least one 12-hour shift at either of the facilities known
as Inland Valley Care & Rehabilitation and/or Knott Care Center."

Class 2 consists of, "all current and former non-exempt employees employed during the
Settlement Class Period who worked at least one 8-hour shift at Inland Valley Care &
Rehabilitation Center." (§2.21)

The Settlement Class Period is May 5, 2011 through September 30, 2016. (§2.23)

The parties stipulate to certification of the class for settlement purposes. (§4)

B. TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- The Total Settlement Amount is \$1,108,200, non-reversionary, exclusive of employer
taxes, and paid in two installments: 50% ten days after final approval and the other 50%
12 months after entry of judgment. (§5.1)
- The Net Settlement Amount is the Total minus the following:
 - Up to \$332,460 (30%) for attorney fees (§5.1.3);

- Up to \$25,000 for attorney costs (§5.1.3);
- Up to \$15,000 (\$10,000 for an incentive + \$5,000 for the general release) (§5.1.2)
- Up to \$25,000 for claims administration costs (§5.1.7, as amended)
- \$22,500 (75% of \$30,000 PAGA penalty) to the LWDA (§5.1.6).
- Any amounts not awarded for attorney fees and costs, incentive award, administrative costs, and the proposed LWDA payment, will be added to the Net. (§5.1.8)
- There is no claims process. (§5.1.1)
 - Class 1 class members will be awarded 2.75 credits for each workweek and Class 2 class members will be awarded 1 credit for each workweek. (§5.1.1.1)
 - Settlement amounts will be calculated by multiplying the Net by a fraction, the numerator of which is the class member's total workweeks and the denominator of which is the total of all workweeks. If the calculation results in a payment of less than \$50, that class member's share will be increased to \$50, so long as such payment does not increase the overall Net. (§5.1.1.2)
 - Payments to class members, class counsel, the class representative, and the LWDA will be made in two equal installments within 10 days of the settlement administrator's receipt of each 50% portion of the settlement amount. (§7.6)
- The Response Deadline (to opt out or object) is 45 days. (§2.18)
 - If more than 5% opt out, Defendant may withdraw from the settlement. (§14.3)
- For tax purposes, payments to participating class members will be allocated 1/3 to wages, 1/3 to interest, and 1/3 to penalties. (§5.1.9)

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- Checks will be valid for 180 days from the date of mailing. (§5.1.10) Thereafter the funds will be deposited for the benefit of the class members with the state's Unclaimed Property Fund. (Ibid.)
- The settlement administrator is ILYM Group, Inc. (§2.4)
- The named Plaintiff and participating class members will release certain claims against Defendant. (See further discussion below)

C. ANALYSIS OF SETTLEMENT AGREEMENT

1. Standards for Final Fairness Determination

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

“In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” See Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America (2006) 141 Cal. App.4th 46, 60 (internal quotation marks omitted); see also Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 245 (Court needs to “scrutinize the proposed settlement agreement 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

1 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned”) (internal
2 quotation marks omitted).

3 “The burden is on the proponent of the settlement to show that it is fair and reasonable.
4 However ‘a presumption of fairness exists where: (1) the settlement is reached through arm's-
5 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
6 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
7 objectors is small.” See Wershba at 245 (citing Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th
8 1794, 1802. Notwithstanding an initial presumption of fairness, “the court should not give
9 rubber-stamp approval.” See Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116,
10 130. “Rather, to protect the interests of absent class members, the court must independently and
11 objectively analyze the evidence and circumstances before it in order to determine whether the
12 settlement is in the best interests of those whose claims will be extinguished.” *Id.* In that
13 determination, the court should consider factors such as “the strength of plaintiffs' case, the risk,
14 expense, complexity and likely duration of further litigation, the risk of maintaining class action
15 status through trial, the amount offered in settlement, the extent of discovery completed and
16 stage of the proceedings, the experience and views of counsel, the presence of a governmental
17 participant, and the reaction of the class members to the proposed settlement.” *Id.* at 128.
18 “Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing
19 of factors depending on the circumstances of each case.” Wershba at 245.

21 Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order
22 to be fair and reasonable. Compromise is inherent and necessary in the settlement process.
23 Thus, even if ‘the relief afforded by the proposed settlement is substantially narrower than it
24 would be if the suits were to be successfully litigated,’ this is no bar to a class settlement
25

1 because ‘the public interest may indeed be served by a voluntary settlement in which each side
2 gives ground in the interest of avoiding litigation.’” Id. at 250..

3 **2. Does a presumption of fairness exist?**

- 4 a. Was the settlement reached through arm’s-length bargaining? Yes. The parties
5 mediated with Hon. Carl J. West (Ret.) on March 24, 2016. (Declaration of
6 Joseph Antonelli ISO Final Approval, ¶5.) While settlement was not achieved that
7 day, the parties continued to negotiate, with Judge West’s assistance, and
8 eventually were able to agree to settlement terms. (Ibid.)
- 9 b. Were investigation and discovery sufficient to allow counsel and the court to act
10 intelligently? Yes. The proposed Settlement was reached following discovery,
11 probative factual evaluation of Defendants’ relevant policies and procedures, job
12 descriptions, actual payroll records, time records, and personnel files for the
13 putative class, as well as Plaintiffs damage analysis and research as to the
14 applicability of state wage and hour laws to California workers. (Id. at ¶7)
- 15 c. Is counsel experienced in similar litigation? Yes. Class counsel is experienced in
16 class action litigation, including wage and hour class actions. (Declaration of
17 Joseph Antonelli ISO Preliminary Approval, ¶¶4-5.)
- 18 d. What percentage of the class has objected? Zero. (Declaration of Nicole Bench,
19 ¶9)
20

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

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

- 23 a) Strength of Plaintiffs’ case. “The most important factor is the strength of the case for
24 plaintiffs on the merits, balanced against the amount offered in settlement.” See Kullar
25

v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130. Class Counsel and Plaintiff

believe that certification would be achieved as to the 12-hour claim, and were confident they would prevail on the issues. (Antonelli Declaration ISO Preliminary Approval at ¶12.A.) Plaintiff realized there could be potential problems with the off-the-clock claim as there is no objective evidence. (Ibid.) Plaintiff also believed she had viable derivative claims, but Defendant raised viable defenses. (Ibid.) Defendant believed it could defeat certification and believed it had a good faith defense on the short shift premium as evidence showed employees voluntarily left their 12 hour shifts early. Defendant believed if there were a claim for failure to pay all wages it resulted in little or no damage, and that there was no injury with regard to the pay stub claim. Defendant raised a “good faith” defense to the waiting time claim. (Ibid.)

Class Counsel calculated Defendant’s potential maximum exposure to be \$1,560,845. (Ibid.) After taking into consideration the risks of certification and proof, and Defendant’s potential defenses, Counsel calculated the realistic value of the claims at \$1,108,200: \$290,000 (wages) + \$338,200 (meal breaks) + \$250,000 (rest periods) + \$155,000 (pay stub penalty) + \$75,000 (waiting time penalty). (Ibid.) The \$1,108,200 Total Settlement Amount and \$1,108,200 Net Settlement Amount represent 71% and 100%, respectively, of that exposure, and thus, are well within the ballpark of reasonableness. (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; settlement amounted to 12% of the plaintiffs’ potential recovery.)

- b. 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.

- c. 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.”).
- d. Amount offered in settlement. As indicated above, the Total Settlement Amount is \$1,108,200. Assuming that the Court approves all of the maximum requested deductions, approximately \$692,017.40 will be available for automatic distribution to participating class members. Assuming full participation, the average settlement share will be approximately **\$733.07**. [$\$692,017.40 \text{ Net} \div 944 \text{ class member} = \733.07]. According to the claims administrator, the estimated average gross payment to the Participating Settlement 12 -Hour Class Member is \$1,576.30 and the estimated average gross payment to the Participating Settlement 8-Hour Class Member is \$374.09.
- e. Extent of discovery completed and stage of the proceedings. As discussed above, at the time of the settlement, the parties had conducted extensive discovery.
- f. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, are experienced in class action litigation, including wage and hour cases.
- g. Presence of a governmental participant. This factor is not applicable here.

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

Number of class members: 944

Number of notices mailed: 944

Number of undeliverable notices: 61

Number of claim forms: n/a

Number of opt-outs: 0

Number of objections: 0

Number of participating class members: 944

(Bench Decl., ¶¶ 7-16)

CONCLUSION: The settlement can be deemed “fair, adequate, and reasonable.”

D. ATTORNEY FEES AND COSTS

Class Counsel requests \$332,460 for attorney fees and \$20,000 for costs.

In determining the appropriate amount of a fee award courts use the lodestar method, applying a multiplier where appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096.) A percentage calculation with lodestar cross-check is permitted in common fund cases. (*Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, courts have an independent responsibility to review an attorney fee provision and award only what it determines is reasonable. (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

Here, Class Counsel seeks fees pursuant to the percentage method. The fee request constitutes 30% of the settlement amount, which is average. (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, FN13: “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.”)

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

2 Timekeeper	Hours	Hourly Rate	Total Lodestar
3 Joseph Antonelli	321.50	\$800	\$257,200
Janelle Carney	93.3	\$650	\$60,645
4 TOTAL	414.8		\$317,845

5 (Antonelli Decl. ISO Final Approval, ¶6)

6 Based on a review of Class Counsel's timekeeping records, the hours spent on the tasks
7 performed appear to be reasonable for this case. The hourly rates charged also appear to be
8 reasonable and in line with prevailing rates in the community. Accordingly, class counsel's
9 actual attorney fees of \$317,845 acts as the lodestar.

10 The \$332,460 fee request is slightly higher than the actual attorney fees of \$317,845 and
11 would require a multiplier of 1.04 if fees were being calculated under the lodestar.

12 Here, the \$332,460 fee request represents a reasonable percentage of the total funds paid
13 by Defendant, and is supported by the lodestar analysis. Further, the notice expressly advised
14 class members of the fee request, and not a single class member objected to it. Accordingly, the
15 Court awards fees in the amount requested.

16 As for costs, Class Counsel requests \$20,000, which is lower than the \$25,000 litigation
17 cost cap. Class Counsel's actual costs are \$18,098.59. (Ibid.) Class Counsel anticipates that
18 Plaintiff will incur an additional \$1,500 to conclude the settlement process. (Ibid.) The costs to
19 date include expert fees (\$5,700), mediation costs (\$3,525), outside contractor (\$3,193.75),
20 messenger fees (\$1,584.60), filing fees (\$1,435) and other miscellaneous items. (Declaration of
21 Joseph Antonelli ISO Motion for Attorney's Fees, ¶10 and Exhibit 1 thereto.) The costs appear
22 to be reasonable, necessary to the litigation, and reasonable in amount, and were not objected to
23 by the class. The \$25,000 litigation cost cap was not objected to by the class.
24
25

For all of the foregoing reasons, costs of \$19,598.59 are approved.

E. INCENTIVE AWARD TO CLASS REPRESENTATIVE

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

Here, the named Plaintiff, Lauren Rubio, requests a \$15,000 enhancement award. The enhancement is broken down as \$10,000 for an incentive and the \$5,000 as consideration for the general release provided by Plaintiff. (Antonelli Decl. ISO Motion for Attorneys’ Fees at ¶12.) She began working for Defendant at the Inland Valley Care and Rehabilitation Center in June 2011. (Declaration of Lauren Rubio ISO Preliminary Approval, ¶2.) She provided Class Counsel documents including performance reviews, policies, time records, paystubs and e-mails which indicated that Defendant was not properly paying her or its other hourly employees. (Id. at ¶3.) She provided contact names and numbers for other Inland employees as potential witnesses. (Ibid.) She attended the full day mediation session on March 24, 2016 before the Honorable Carl J. West. (Id. at ¶4.) Ms. Rubio estimates she spent between 100 and 115 hours on this case. (Declaration of Lauren Rubio ISO Final Approval, ¶4)

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1 In light of the above as well as the benefits obtained on behalf of the class, \$10,000
2 appears to be a reasonable inducement for Plaintiff's participation in this case. The incentive
3 award is approved.

4 **F. CLAIMS ADMINISTRATION COSTS**

5 Claims administrator ILYM Group, Inc. requests \$21,222.60 for costs. (Bench Decl. at
6 ¶20.) \$25,000 was agreed to be the cap at the time of preliminary approval. Given the tasks
7 performed (and still to be performed), this amount appears to be reasonable. This amount was
8 also disclosed to class members and deemed unobjectionable.

9 **III. CONCLUSION AND ORDER**

10 **A. TENTATIVE RULING**

The Court

- 11 (1) Grant ~~class~~ certification for purposes of settlement;
12 (2) Grant ~~final~~ approval of the settlement as fair, adequate, and reasonable;
13 (3) Award ~~\$~~332,460 in attorney fees and \$19,598.59 in costs to Law Office of Joseph
14 Antonelli;
15 (4) Award ~~\$~~10,000 in service awards to Lauren Rubio;
16 (5) Award ~~\$~~21,222.60 in claims administration costs to ILYM Group, Inc.;
17 (6) Approve ~~\$~~22,500 PAGA penalty payment to the LWDA;
18 (7) Order ~~class~~ counsel to lodge a proposed Judgment, consistent with this ruling by
19 _____, 2017;
20
21 (8) Order ~~class~~ counsel to provide notice to the class members pursuant to California Rules
22 of Court, rule 3.771(b); and

23 // (9) Class counsel to file a declaration
24 // within forty-five days regarding
25 // additional efforts to locate class
members whose names were returned

1 (9) A Non-Appearence Case Review re: Final Report re: Distribution of Settlement Funds is

2 set for 12/21/18, at 8:30.

3 Final Report is to be filed by 12/14/18.

4
5 Dated:

6 4/26/17

7 Maren E. Nelson

8 MAREN E. NELSON

9 Judge of the Superior Court
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