

DEC 08 2015

Sherri R. Carter, Executive Officer/Clerk

By: Nancy Navarro, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

MIRTA WILLIAMS, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

SUCCESS HEALTHCARE, LLC., and DOES 1
through 10, inclusive,

Defendants.

Case No.: BC533821

ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT

Date: December 8, 2015
Time: 10:00 a.m.
Dept.: 307

I. BACKGROUND

This is a wage and hour class action filed by Plaintiff Mirta Williams (“Plaintiff”), on behalf of herself and similarly situated employees of Defendants Success Healthcare 1, LLC, dba Silver Lake Medical Center (referred to in the pleading as “Success Healthcare 1,” hereinafter referred to as “Defendant”). The complaint primarily alleges wage and hour claims. Following mediation, the parties entered into a Joint Stipulation of Class Action Settlement and Release (“Settlement Agreement”).

Plaintiff indicates that Defendant Success Healthcare I operates two hospitals (the Downtown Campus and the Inglewood Campus), and Defendant Cope is the CEO of Success

1 Healthcare I. (Declaration of Matthew J. Matern, ¶4.) Defendants have provided information
2 showing that Success Healthcare and Success Healthcare 2 were not the employers of the
3 putative class, and that a request for dismissal of these parties was filed but has not yet been
4 entered by the Court. (Ibid.) The Settlement Agreement identifies all named defendants as
5 settling parties, but specifically notes that Success Healthcare 1, LLC means the defendant in the
6 litigation and employer of the present and former employees who comprise the class.
7 (Settlement Agreement, §VI, ¶1.38)

8 On July 24, 2015, this Court granted preliminary approval of the settlement. Now before
9 the Court is Plaintiff's motion for final approval.

11 **II. DISCUSSION**

12 **A. SETTLEMENT CLASS DEFINITION**

13 The proposed settlement class is defined as, "any and all employees of Success
14 Healthcare 1, LLC in California from January 21, 2010 through the Preliminary Approval Date.
15 (Settlement Agreement, §VI, ¶1.2)

16 **B. TERMS OF SETTLEMENT AGREEMENT**

17 A fully executed copy of the settlement agreement is attached to the Matern Declaration.
18 Its essential terms are as follows:

- 19 • The Gross Settlement Amount is \$2,650,000, non-reversionary. (§VI, ¶1.10)
- 20 • The Net Settlement Amount (\$1,670,625) is the Gross Settlement Amount minus the
21 following:
 - 22 ○ Up to \$874,500 (33%) for attorney fees;
 - 23 ○ Up to \$35,000 for attorney costs;
 - 24 ○ Up to \$15,000 for a service award to Class Representative;
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- Up to \$35,000 for settlement administration costs; and
- \$19,875 (of the total \$26,500 PAGA penalty) to LWDA. (§VI, ¶1.4)

- There is no claims process.
- Individual Settlement Amounts will be calculated by multiplying the payout fund by a fraction, the numerator of which is the total number of workweeks the Class Member worked during the Class Period by the denominator which is the total number of workweeks in the Class Period worked by all Participating Class Members. (§VI, ¶1.11)
- For tax purposes, payments to participating class members will be allocated 20% to wages and 80% to interest and penalties. (§VI, ¶2.15)
- Payroll taxes are not included in the Gross Settlement sum but will be paid by Defendant separately. (§VI, ¶1.10)
- Funds attributable to uncashed checks or Class Members who cannot be located will escheat to the State of California's Unclaimed Property Fund in the name of the Class Member. (§VI, ¶2.1.8) How long checks will remain valid is not stated.
- The Settlement Administrator will be Kurtzman Carson Consultants. (§VI, ¶1.33)
- The named Plaintiff and participating class members will release all claims, including without limitation Unknown Claims . . . and causes of action of every nature . . whether known or unknown, whether or not concealed or hidden, against the Defendants Releasees . . for any type of relief and penalties, that accrued from January 21, 2010 through the Preliminary Approval Date, and as a result of Class Members' employment at Success Healthcare 1, LLC, which related to or arise under any state or local law or state administrative order that was or could have been pled based on the facts alleged in the operative complaint relating to claims of [list of causes of action alleged]."

1 Excluded are claims for workers' compensation, personal injuries, unemployment
2 insurance, state disability compensation, ERISA claims, wrongful termination,
3 discrimination, retaliation, and harassment. (§VI, ¶1.32)

4 **C. ANALYSIS OF SETTLEMENT AGREEMENT**

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

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

12 “In a class action lawsuit, the court undertakes the responsibility to assess fairness in
13 order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
14 action. The purpose of the requirement [of court review] is the protection of those class
15 members, including the named plaintiffs, whose rights may not have been given due regard by
16 the negotiating parties.” See Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of
17 America (2006) 141 Cal. App.4th 46, 60 (internal quotation marks omitted); see also Wershba v.
18 Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 245 (Court needs to “scrutinize the proposed
19 settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is
20 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and
21 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned”) (internal
22 quotation marks omitted).
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1 “The burden is on the proponent of the settlement to show that it is fair and reasonable.
2 However ‘a presumption of fairness exists where: (1) the settlement is reached through arm's-
3 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
4 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
5 objectors is small.’” See Wershba at 245 (citing Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th
6 1794, 1802. Notwithstanding an initial presumption of fairness, “the court should not give
7 rubber-stamp approval.” See Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116,
8 130. “Rather, to protect the interests of absent class members, the court must independently and
9 objectively analyze the evidence and circumstances before it in order to determine whether the
10 settlement is in the best interests of those whose claims will be extinguished.” *Id.* In that
11 determination, the court should consider factors such as “the strength of plaintiffs' case, the risk,
12 expense, complexity and likely duration of further litigation, the risk of maintaining class action
13 status through trial, the amount offered in settlement, the extent of discovery completed and
14 stage of the proceedings, the experience and views of counsel, the presence of a governmental
15 participant, and the reaction of the class members to the proposed settlement.” *Id.* at 128.
16 “Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing
17 of factors depending on the circumstances of each case.” Wershba at 245.
18 Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order to be
19 fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus,
20 even if ‘the relief afforded by the proposed settlement is substantially narrower than it would be
21 if the suits were to be successfully litigated,’ this is no bar to a class settlement because ‘the
22 public interest may indeed be served by a voluntary settlement in which each side gives ground
23 in the interest of avoiding litigation.’” *Id.* at 250.
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2. Does a presumption of fairness exist?

- a. Was the settlement reached through arm's-length bargaining? Yes. The parties participated in private mediation with Mark Rudy on December 17, 2014. (Matern Declaration, ¶13.)
- b. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class Counsel conducted extensive legal research and investigated Plaintiff's claims. The parties engaged in formal and informal discovery. Plaintiff appeared for deposition on November 19, 2014 and Defendant's person most knowledgeable appeared for deposition on March 2, 2015. Defendant produced a representative sampling of punch and payroll data for thirteen payroll periods, which Plaintiff's experts analyzed. The parties engaged CPT Group to perform a *Belaire-West* opt-out notice, and interviews were conducted of various putative class members. (Id. at ¶¶ 7-10.)
- c. Is counsel experienced in similar litigation? Yes. Class counsel is experienced in class action litigation, including wage and hour class actions. (Id. at ¶¶ 31-36.)
- d. What percentage of the class has objected?

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

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2. Is the settlement fair, adequate, and reasonable?

- a. 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." See Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130. Here, class counsel calculated Defendant's potential maximum exposure to be \$4,627,743. (Matern Declaration, ¶¶17-21.) This amount was calculated after

1 totaling up all unpaid wages (\$18,510,937.50), reducing that amount by the 50%
2 likelihood of obtaining class certification on all claims, and the 50% chance of
3 success on all claims. (Id. at ¶23.) The \$2,650,000 Gross Settlement Amount
4 and \$1,670,625 Net Settlement Amount represent approximately 57% and 36%,
5 respectively, of that exposure, and thus, are well within the ballpark of
6 reasonableness. (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d
7 448, 455; settlement amounted to 12% of the plaintiffs' potential recovery.)

8 Class Counsel took into consideration Defendant's defenses, including the
9 possibility that the class would not be certified as well as Defendant's contention
10 that Class Members received meal and rest periods and were paid for all hours.
11 Additionally, the risks and expense of continued litigation were considered.

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

16 c. Risk of maintaining class action status through trial. Even if a class is certified,
17 there is always a risk of decertification. See Weinstat v. Dentsply Intern., Inc.
18 (2010) 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that
19 trial courts should retain some flexibility in conducting class actions, which
20 means, under suitable circumstances, entertaining successive motions on
21 certification if the court subsequently discovers that the propriety of a class action
22 is not appropriate.").

1 d. Amount offered in settlement. As indicated above, the gross settlement amount
2 is \$2,650,000. Assuming that the Court approves all of the requested deductions,
3 approximately \$1,670,625 will be available for automatic distribution to
4 participating class members. Based on 1,851 participating class members, the
5 average settlement share if the net amount were evenly distributed would be \$902
6 (\$1,670,625 ÷ 1,851). According to the Claims Administrator, the average
7 settlement is \$1,059.76. (Declaration of Jenny Shawver, ¶20.)

8 e. Extent of discovery completed and stage of the proceedings. As discussed above,
9 at the time of the settlement, Plaintiffs had conducted extensive discovery.

10 f. Experience and views of counsel. The settlement was negotiated and endorsed
11 by class counsel who, as indicated above, is experienced in class action litigation,
12 including wage and hour cases.

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

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

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16 Number of class members: 1,858 (up from 1,593)

17 Number of notices mailed: 1,858

18 Number of undeliverable notices: 51

19 Number of opt-outs: 7

20 Number of objections: 0

21 Number of participating class members: **1,851**

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

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1 **D. ATTORNEY FEES AND COSTS**

2 Class Counsel, Matern Law Group, requests \$874,500 for attorney fees and \$31,007.73
3 for costs. (Matern Declaration, ¶44.)

4 The lodestar calculation is as follows:

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Timekeeper	Hours	Hourly Rate	Total Lodestar
6 Matthew J. Matern	218	\$775	\$168,950
7 Launa Adolph	36.2	\$625	\$ 22,620
8 Janette C. Lee	276.7	\$400	\$110,680
9 Deanna Leifer	9.6	\$375	\$3,600
TOTAL			\$305,850

10 Based on a review of class counsel’s attached invoices (Matern Declaration, Exhibit 4),
11 the hours spent on the tasks performed appear to be reasonable for this case. The hourly rates
12 charged also appear to be reasonable and in line with prevailing rates in the community.
13 Accordingly, class counsel’s actual attorney fees of \$305,850 acts as the lodestar.

14 The \$874,500 fee request requires application of a 2.86 multiplier. Weighing in favor of
15 a multiplier are the fact that this case was taken on a contingent basis, and the skill of the
16 attorneys in bringing the case to a quick resolution. The fee request represents 33% of the gross
17 settlement amount and is within the ballpark of the average 33.33% generally awarded in class
18 actions. See In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, FN13

19 (“Empirical studies show that, regardless whether the percentage method or the lodestar method
20 is used, fee awards in class actions average around one-third of the recovery.”) Although the
21 notice expressly advised class members of the fee request, and no class member objected to it,

22 the Court finds that the multiplier is excessive and reduces the fees to ~~\$611,700~~ ^{662,500} representing a
23 multiplier of ~~2.0~~ ^{25% of the total settlement.} rather than 2.68.

1 As for costs, class counsel requests a total of \$31,007.73. (Matern Declaration, ¶28, and
2 Exhibit 3.) The costs appear to be reasonable and necessary to the litigation, and are less than
3 the \$35,000 cap.

4 For all of the foregoing reasons, the Court approves fees in the amount of ~~\$611,700~~^{662,500} and
5 costs in the amount of \$31,007.73.

6 **E. INCENTIVE AWARD TO CLASS REPRESENTATIVE**

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

17 Here, the named Plaintiff requests an incentive award of \$15,000. Mirta Williams spent
18 approximately 50 hours on this case, performing such tasks as meeting with her attorneys,
19 searching for relevant documents, preparing for and responding to written discovery, preparing
20 for and testifying at her deposition, and participating in settlement negotiations. (Willilams
21 Declaration, ¶4.) Williams also took on the risks associated with being a class representative,
22 released her individual claims, and provided a general release. (Id. at ¶¶ 6, 8.)

23 In light of the above as well as the benefits obtained on behalf of the class, \$7,500
24 appears to be a reasonable inducement for her participation in this case. The requested incentive
25 award is therefore approved in that amount.

1 **F. CLAIMS ADMINISTRATION COSTS**

2 The claims administrator requests \$35,000 which is the cap set forth in the Settlement
3 Agreement. The claims administrator has costs of \$17,000 to date, but anticipates that its
4 ultimate costs will exceed the \$35,000 cap; it will nevertheless only bill the agreed upon
5 \$35,000. Given the tasks performed (and still to be performed), this amount appears to be
6 reasonable. This amount was also disclosed to class members and deemed unobjectionable.

7 **III. CONCLUSION AND ORDER**

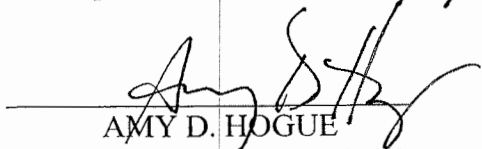
8 **A. TENTATIVE RULING**

9 Provided that Counsel confirms to the Court the period of time for which the uncashed
10 checks remain valid an payable, *confirmed to be 180 days* the Court:
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- 12 (1) Grants class certification for purposes of settlement;
- 13 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 14 (3) Awards ~~\$611,700~~ ^{662,500} in attorney fees and \$31,007.73 in costs to class counsel;
- 15 (4) Awards \$7,500 as an incentive award to the class representative;
- 16 (5) Awards \$35,000 in claims administration costs to Kurtzman Carson Consultants, LLC;
- 17 (6) Orders class counsel to lodge a proposed Judgment, consistent with this ruling by
18 12/14/15 *2015*
- 19 (7) Orders class counsel to provide notice pursuant to California Rules of Court 3.771(b); and
- 20 (8) Sets a Non-Appearance Case Review re: Final Report re: Distribution of Settlement

21 Funds for 6/10/16, at 8:30 *a.m.* Final Report is to be filed by 6/3/16

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23 Dated: 12/8/15

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25 AMY D. HOGUE
Judge of the Superior Court