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FILED
ALAMEDA COUNTY

SEP 30 2020

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

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7
8 SUPERIOR COURT OF CALIFORNIA
9 IN AND FOR THE COUNTY OF ALAMEDA
10

11 KIMBERLY NOLLER and EMILY LOPEZ,
on behalf of themselves and all persons
12 similarly situated,

Case No. RG18900137

13 Plaintiff,

~~[PROPOSED]~~

14 v.

JUDGMENT

15 CALPHIN AQUATIC CLUB, DOES 1
16 through 10, inclusive,
Defendant.

Complaint Filed: April 6, 2018
Reservation no. R-2191178

17
18 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT

19 Judgment is entered in *Noller, et al v. Calphin Aquatic Club*, Alameda Superior Court
20 Case no. RG18900137 on the terms set forth in the Court's Minute Order granting final approval
21 of the class action settlement, dated August 31, 2020.

22 Dated this 30 day of September, 2020.

23
24 *[Signature]*
25 Judge of the Superior Court of Alameda County
26

27
28 ~~[PROPOSED]~~ JUDGMENT

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Noller Plaintiff/Petitioner(s)
VS.
Calphin Aquatic Club Defendant/Respondent(s) (Abbreviated Title)

No. **RG18900137**

Minutes

Department 21

Honorable Winifred Y. Smith, Judge

Cause called for Motion: August 28, 2020.

The motion of plaintiffs for final approval of class action settlement is GRANTED.

MERITS OF SETTLEMENT

The complaint alleges claims for failure to provide meal and rest breaks, to pay for all hours worked, failure to provide complete and accurate wage statements under Labor Code 226(a), and related claims. There are approximately 250 members of the class.

The case preliminarily settled for a total of \$156,711.04. The settlement agreement states there will be attorneys' fees of up to \$47,313.31 (30%), costs of up to \$8,012.25, a service award of \$5,000 for the class representative, and settlement administration costs of \$14,000. After these expenses, the class would get \$78,101. The average payout per class members would be \$189.

The settlement was mediated with the assistance of Tripper Ortman. The court gives "considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in [concluding] that [the] settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129.) (See also In re Sutter Health Uninsured Pricing Cases (2009) 171 Cal.App.4th 495, 504.)

The proposed class notice form and procedure are adequate. There was one opt-out and no objections. (Bracy Dec., para 11-12.)

The proposed class is appropriate for class certification.

The motion makes an adequate analysis as required by Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116.

The scope of the release for the class (para 1.30) is appropriate. The scope of the class release must be limited to the claims arising out of the claims in the complaint. The release of claims by the class is limited by the "factual predicate rule." (Hesse v. Sprint Corp. (9th Cir. 2010) 598 F.3d 581, 590.) (See also Hendricks v. Starkist Co (N.D. Cal. 2016) 2016 WL 692739 at * 2-4 [Denying motion for final approval of class settlement because scope of release overbroad].)

The court notes and approves of the plan to distribute the settlement funds with no claims process.

Unclaimed funds escheat to the state. (Settle Agt para 5.6.) (CCP 1300 et seq) Counsel for Plaintiff do not need to provide a declaration in support of the motion that provides the information required by CCP 382.4 regarding the absence or presence of a relationship between counsel and the residual beneficiary.

FEES, COSTS, AND SERVICE AWARD

The court reviews class settlements and requests for fees because the court has a fiduciary responsibility to protect the interests of absent class members. (Cellphone Termination Fee Cases (2009) 180 Cal.App.4th 1110, 1117.) "Because absent class members are not directly involved in the proceedings, oversight to ensure settlements are fair and untainted by conflict is the responsibility of both the class representative and the court." (Mark v. Spencer (2008) 166 Cal.App.4th 219, 227.)

"[T]horough judicial review of fee applications is required in all class action settlements and the fairness of the fees must be assessed independently of determining the fairness of the substantive settlement terms.' ... " 'The evil feared in some settlements-unscrupulous attorneys negotiating large attorney's fees at the expense of an inadequate settlement for the client-can best be met by a careful ... judge, sensitive to the problem, properly evaluating the adequacy of the settlement for the class and determining and setting a reasonable attorney's fee....' " (Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 555-556.)

Careful judicial review in any particular case does suggest that the court suspects that counsel is unscrupulous. The law requires judicial review because, although the interests of counsel and client are aligned in seeking the best settlement possible for the class, the interests of counsel and the class diverge and are in opposition when counsel seeks to recover fees and costs from a common fund.

The court approves attorneys' fees of \$47,313.31.

The court starts with the percentage of recovery approach and uses the lodestar multiplier as a cross-check. "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 505.)

"The Ninth Circuit has approved a 25 percent benchmark." (Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 495.) California has no generally accepted benchmark.

This court's benchmark for fees has historically been 30% of a total fund. There is ample California authority for a 30% benchmark. Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 495, approved an award of 33% and noted that the federal courts have a benchmark of 25%. Schulz v. Jeppesen Sanderson, Inc. (2018) 27 Cal.App.5th 1167, 1175, states, "we note that 31 percent is not out of line with awards in class actions." Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 557 fn 13, states "A fee award of 25 percent [i]s the "benchmark" award that should be given in common fund cases." Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 fn 11, states, "Using the percentage of the benefits to class claimants as a benchmark, class counsel's initial award was 30.3 percent of the benefits, and the final fee award was 27.9 percent of the benefits. This is not out of line with class action fee awards calculated using the percentage-of-the-benefit method". Lealao v. Beneficial California, Inc. (2000) 82 Cal.App.4th 19, 24 fn 1, states "Studies show that this benchmark [of 25%] is within the range followed by most courts."

The percentage of recovery approach suggests fees of \$47,313.31.

When cross-checking with the lodestar/multiplier, the court will evaluate the lodestar based on reasonable fees that would have been charged at hourly rates and then apply a multiplier. The multiplier includes contingent fee risk and other factors.

The reasonable number of hours spent and the reasonable fees are interrelated. There should be an inverse ratio between experience (and thus billing rate) and time required to perform a task. (Ursic v. Bethlehem Mines (3d Cir. 1983) 719 F.2d 670, 677; Boston & Me. Corp. v. Moore (1st Cir. 1985) 776 F.2d 2, 9; Blizzard v. Astrue (SDNY 2007) 496 F.Supp.2d 320, 323.)

Regarding the hours worked, counsel for plaintiffs assert that counsel spent 170 hours on this case. (Lazear, para 11.) The case was not particularly complicated. Plaintiffs filed the case, served discovery, reviewed discovery, attended mediation, and then resolved the case.

The court finds that the reasonable time on the case was 170 hours.

Regarding the hourly rates, counsel for plaintiffs assert rates ranging from \$545/hr to \$605/hr. (Lazear Dec.) These are reasonable for time expended by experienced counsel working within their field of expertise and on matters that draw on their expertise. (Syers Properties III, Inc. v. Rankin (2014) 226 Cal.App.4th 691, 702.) Counsel seek lower rates for paralegals.

"[California] cases have ... implicitly approved use of a blended rate." (569 East County Boulevard LLC v. Backcountry Against the Dump, Inc. (2016) 6 Cal.App.5th 426, 438-440 fn 16.) A blended rate should reflect that higher priced counsel perform higher skill work and lower skill work is done by lower skill counsel. A high skill lawyer cannot charge high rates when performing routine work. In the colorful words of a federal judge, "Michelangelo should not charge Sistine Chapel rates for painting a farmer's barn." (Cobell v. Jewell (2017) 234 F.Supp.3d 126, 173.) In Espejo v. Copley Press, Inc. (2017) 13 Cal.App.5th 329, 337, counsel prosecuted a class action through trial and the court awarded a blended rate of \$500/hour. The reasonable blended rate is \$500.

The reasonable time of 170 hours and the blended rate of \$500 results in a lodestar of \$85,000. Notably, this is above the asserted lodestar of \$74,051, which reflects that counsel reasonably efficiently allocated work to paralegals that other firms might have allocated to lawyers. The court commends counsel for their efficiency.

The court would award a multiplier of 1.2 for contingent risk. When considering risk, the court considers there is less risk in a case with fee shifting statutes because counsel's potential fees are not limited by and coupled to the amount of monetary recovery. "The law does not mandate ... that attorney fees bear a percentage relationship to the ultimate recovery of damages in a civil rights case." (Harman v. City and County of San Francisco (2007) 158 Cal.App.4th 407, 419.) (See also Heritage Pacific Financial, LLC v. Monroy (2013) 215 Cal.App.4th 972, 1006-1007.) The claims in this case had statutory fee shifting provisions. (Labor Code 1194; Labor Code 2802(c); Labor Code 26999g)(1).) (See also Complaint prayer for relief, para o.)

The lodestar of \$85,000 and multiplier of 1.2 results in multiplier adjusted fees of \$102,000.

The court considers both the suggested percentage of recovery fees of \$47,313.31 and the suggested multiplier adjusted fees of \$102,000. "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 505.)

The court approves attorneys' fees of 47,313.31. This is the amount sought. It reflects counsel's reasonable decision to seek an amount that is appropriate in light of the net recovery for the class.

The court approves litigation costs of \$8,012.25.

The court approves settlement administration costs of \$14,000.

The court awards service payment of \$5,000 for class representative Emily Lopez. Plaintiff provided evidence regarding the nature of his participation in the action, including a description of his specific actions and the amount to time he committed to the prosecution of the case. (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804-807.)

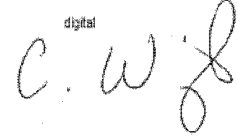
The Court ORDERS that 10% of any fee award to be kept in the administrator's trust fund until the completion of the distribution process and Court approval of a final accounting.

The Court will set a compliance hearing after the completion of the distribution process and the expiration of the time to cash checks for counsel for plaintiff and the Administrator to comply with CCP 384(b) and to submit a summary accounting how the funds have been distributed to the class members and the status of any unresolved issues. If the distribution is completed, the Court will at that time release any hold-back of attorney fees.

The court will sign the proposed order, which is amended by this order. The court directs counsel for plaintiff to submit a proposed judgment.

Minutes of 08/28/2020
Entered on 08/31/2020

Chad Finke Executive Officer / Clerk of the Superior Court

By ^{digital} 

Deputy Clerk