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FILED
JAN 05 2021

K. BEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By _____
Deanna Johnson, Deputy Clerk

6 Attorneys for Plaintiff and the Proposed Class

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF CONTRA COSTA**

9 HECTOR SALAZAR an individual, on
behalf of himself and others similarly
10 situated,

11 **PLAINTIFF,**

12 v.

13 CREATIVE CEILINGS, INC. and DOES 1
thru 50, inclusive,

14 **DEFENDANTS.**

CASE NO. MSC19-02678

[Case Assigned for All Purposes to Hon. E.
Weil in Dept. 39]

15 **REVISED ORDER GRANTING**
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

Date: TBD
Time: TBD
Dept.: 39

16 Complaint Filed: December 24, 2019
17 Trial Date: None Set

1 The Motion for Preliminary Approval of the Class Settlement came before this Court, the
2 Honorable E. Weil, presiding.

3 Plaintiff Hector Salazar moves for preliminary approval of his class action settlement with
4 defendant Creative Ceilings, Inc.

5 **A. Background and Settlement Terms**

6 The original complaint was filed December 24, 2019. It is a class action complaint alleging that
7 defendant violated Labor Code section 226(a)(6) by providing wage statements that did not
8 identify “the inclusive dates of the period for which the employee is paid.” It does not allege that
9 defendant failed to pay any wages that were due. The case does not include a claim under PAGA.

10 The settlement would create a gross settlement fund of \$275,000. The class representative
11 payment would be \$5,000. Counsel’s attorney’s fees would be \$91,666.67. Litigation costs would
12 be \$5,000. The settlement administrator’s costs would be \$12,000. Thus, the net settlement amount
13 available to the class would be \$161,333.33. The fund is nonreversionary.

14 Notice to the class would be provided, which would include the number of paychecks for
15 each member (up to 41), which is the basis for determining each class member’s share. The class
16 members will not be required to file a claim. Class members may object or opt out of the settlement.
17 They may dispute their number of paychecks. Various prescribed follow-up steps will be taken
18 with respect to mail that is returned as undeliverable. Uncashed checks would be sent to the State
19 Unclaimed Property Fund. ILYM Group would be the settlement administrator.

20 Based on the estimated class size (about 412), the average net settlement share is about
21 \$391.

22 **B. Legal Standards**

23 The primary determination to be made is whether the proposed settlement is “fair,
24 reasonable, and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801,
25 including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
26 further litigation, the risk of maintaining class action status through trial, the amount offered in
27 settlement, the extent of discovery completed and the state of the proceedings, the experience and
28 views of counsel, the presence of a governmental participant, and the reaction ... to the proposed

1 settlement.”

2 California law provides some general guidance concerning judicial approval of any
3 settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of*
4 *California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary
5 to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney*
6 *v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “[t]he court cannot surrender its duty to see
7 that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter.”
8 (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As
9 a result, courts have specifically noted that *Neary* does not always apply, because “[w]here the
10 rights of the public are implicated, the additional safeguard of judicial review, though more
11 cumbersome to the settlement process, serves a salutary purpose.” (*Consumer Advocacy Group,*
12 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

13 **C. Attorney’s Fees, Costs, and Representative Payment**

14 Plaintiffs seek 33% of the total settlement amount as fees, relying on the “common fund”
15 theory. Even a proper common fund-based fee award, however, should be reviewed through a
16 lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal. 5th 480, 503, the
17 Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the
18 percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar
19 cross-check is extraordinarily high or low, the trial court should consider whether the percentage
20 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the
21 court is not necessarily required to make such an adjustment.” (*Id.*, at 505.) Following typical
22 practice, however, the fee award will not be considered at this time, but only as part of final
23 approval.

24 Similarly, litigation costs and the requested representative payment of \$5,000 would be
25 reviewed at time of final approval. Criteria for evaluation of such requests are discussed in *Clark*
26 *v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

27 **D. Discussion**

28 Counsel estimate the maximum theoretical recovery at \$958,000. This is based on the

1 maximum number of violations and the maximum for each violation, including counting each
2 violation after the first period at the higher “subsequent” violation rate. The violation should not
3 itself be difficult to prove, since it can be determined simply by reviewing the face of the wage
4 statements. Penalties, however, may be available only for a “knowing and intentional” violation,
5 which would be more difficult to prove here. Because there is no allegation of failure to pay wages,
6 the penalties are the sole basis for recovery. The Gross Settlement Amount is about 28% of the
7 maximum theoretical recovery.

8 **E. Conclusion**

9 Given the relatively narrow nature of the alleged violation, and the absence of any claim
10 of actual failure to provide wages, the overall settlement appears to be fair, reasonable, and
11 adequate.

12 The motion is granted.

13 The Court, having considered the papers submitted in support of the motion of the parties,

14 **HEREBY ORDERS THE FOLLOWING:**

15 1. The Court grants preliminary approval of the Settlement and the Settlement Class
16 based upon the terms set forth in the Settlement Agreement. The Settlement is fair, adequate, and
17 reasonable to the Class. The Court finds that: (a) the Agreement resulted from extensive arm’s
18 length negotiations; and (b) the Agreement is sufficient to warrant notice of the Settlement to
19 persons in the Settlement Class and a full hearing on the final approval of the Settlement.

20 2. Settlement “Class Member(s)” means all individuals who fall into following class:

21 A. “All persons who are employed are or have been employed by
22 Defendant in the State of California who worked one or more pay
23 periods between December 20, 2018 and January 17, 2020 (the date
of cure of the paystubs).

24 3. The Covered Period is December 20, 2018 and January 17, 2020.

25 4. Settlement falls within the range of reasonableness and appears to be presumptively
26 valid, subject only to any objections that may be raised at the final fairness hearing and final
27 approval by this Court.

28 5. The Court makes the following preliminary findings for settlement purposes only:

- 1 A. The Class Members, which consists of approximately 412 persons, is so
2 numerous that joinder of all members is impracticable.
- 3 B. There appear to be questions of law or fact common to the Class Members
4 for purposes of determining whether this Settlement should be approved;
- 5 C. Plaintiff's claims appear to be typical of the claims being resolved through
6 the proposed settlement;
- 7 D. Plaintiff appears to be capable of fairly and adequately protecting the
8 interests of the Class Members in connection with the proposed settlement;
- 9 E. Common questions of law and fact appear to predominate over questions
10 affecting only individual persons in the Class Members. Accordingly, the
11 Class Members appear to be sufficiently cohesive to warrant settlement by
12 representation; and
- 13 F. Certification of the Class Members appears to be superior to other available
14 methods for the fair and efficient resolution of the claims of the Class
15 Members.

16 6. The Court approves, as to form and content, the Notice Packet to Class Members
17 in substantially the form attached to the Settlement Agreement as Exhibit "A".

18 7. The Court approves the procedure for Class Members to object to the Settlement as
19 set forth in the Class Notice to Class Members.

20 8. The Court approves the procedure for Class Members to become Participating Class
21 Members as set forth in the Claims Form to Class Members.

22 9. The Court directs the mailing of the Notice Packet to Class Members by first class
23 mail to the Class Members in accordance with the Implementation Schedule set forth below. The
24 Court finds that the dates selected for the mailing and distribution of the Notice, as set forth in the
25 Implementation Schedule, meet the requirements of due process and provide the best notice
26 practicable under the circumstances and shall constitute due and sufficient notice to all persons
27 entitled thereto.

28 10. The Court confirms Eric B. Kingsley and Kelsey M. Szamet of Kingsley &
Kingsley, APC as Class Counsel.

11. The Court confirms HECTOR SALAZAR as Class Representative.

12. The Court approves ILYM Group, Inc. as the Settlement Administrator.

1 13. The Court orders that pursuant to the California Private Attorneys General Act,
2 Labor Code §§ 2698, et seq. (“PAGA”), statutory notice of this Settlement has been and will
3 continue to be given to the Labor & Workforce Development Agency.

4 14. A final fairness hearing on the question of whether the proposed Settlement,
5 attorneys’ fees and costs to Class Counsel, the PAGA payment, and the claims administration costs
6 should be finally approved as fair, adequate, and reasonable as to the members of the Settlement
7 Classes is scheduled for April 22, 2021 at 9:00 am (Pacific Time), in Department 39.

8 15. The Court orders the following Implementation Schedule for further proceedings:
9

10	a. Preliminary Approval	December 10, 2020
11	b. Deadline for Defendant to Provide Class Data to Settlement Administrator	20 calendar days from Entry of Preliminary Approval
12		
13	c. Mail Notice to Class Members	15 calendar days from receipt of the Class List from Defendant
14		
15	d. Deadline for Class Members to Postmark Any Request for Exclusion	30 Days from Mailing of Notices
16		
17	e. Deadline for Class Members to Postmark Any Objection	30 Days from Mailing of Notices
18		
19	f. Deadline for Class Counsel to file Motion for Final Approval of Class Settlement	March 30, 2021
20	g. Deadline for Class Counsel to file Motion for Class Counsel Award	March 30, 2021
21		
22	h. Final Approval Hearing	April 22, 2021 at 9:00 am
23	i. Compliance Hearing After Final Approval	To Be Determined At Final Approval Hearing
24		

25 16. IT IS FURTHER ORDERED that if the Court does not execute and file an Order
26 of Final Approval and Judgment, or if the Effective Date of Settlement, as defined in the
27 Settlement, does not occur for any reason, the Settlement Agreement and the proposed Settlement
28 that is the subject of this Order, and all evidence and proceedings had in connection therewith,

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shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Settlement Agreement.

17. IT IS FURTHER ORDERED that, pending further Order of this Court, all proceedings in this matter except those contemplated herein and in the Settlement Agreement are hereby stayed.

18. The Court expressly reserves the right to adjourn or continue the Final Fairness Hearing from time to time without further notice to the Class Members.

DATED: JAN 05 2021

Edward G. Weil
JUDGE OF THE SUPERIOR COURT