

ORIGINAL

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10 Attorneys for Plaintiff  
11 THOMAS SALE, individually and on  
12 behalf of all other persons similarly situated  
13 and the general public

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF LOS ANGELES

16 THOMAS SALE, individually and on behalf  
17 of all other persons similarly situated, and on  
18 behalf of the general public,

19 Plaintiff,

20 vs.

21 FRISCO BAKING COMPANY, INC., a  
22 California corporation; and DOES 1 through  
23 50, inclusive,

24 Defendant.

FILED  
Superior Court of California  
County of Los Angeles

OCT 03 2016

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK  
BY: *[Signature]* Deputy  
BENIGNO DEL BARRIO

RECEIVED  
Central Civil West  
SEP 28 2016  
By: I. Arellanes

Case No.: BC529131

Assigned to: Hon. Ann Jones  
Dept. 308

~~PROPOSED~~ JUDGMENT

Complaint Filed: November 27, 2013

00062016

1 This Court, having granted final approval of the Joint Stipulation of Class Action  
2 Settlement between Plaintiff THOMAS SALE and Defendants FRISCO BAKING  
3 COMPANY, INC., DAMON PERATA, and ALDO PRICCO (collectively "Parties") in the  
4 above-entitled action, as set forth in the Court's Order Granting Final Approval of Class Action  
5 Settlement ("Final Approval Order") attached hereto as "Exhibit A";

6 The Classes in this class action settlement are defined as: (a) all current and former  
7 employees of Defendants who worked in the State of California as a delivery driver from  
8 November 27, 2009 through December 31, 2015 ("Driver Class Members"); and, (b) all current  
9 and former non-exempt employees of Defendants who worked in the State of California from  
10 November 27, 2013 through December 31, 2015 ("Wage Statement Class Members");

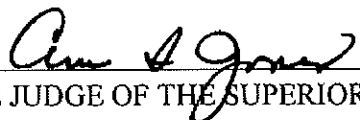
11 The Driver Class Members have settled and released any and all claims, rights,  
12 demands, charges, causes of action, lawsuits, complaints, obligations, penalties, fines,  
13 promises, agreements, controversies and liabilities, known and unknown, (collectively,  
14 "Claims") for any relief whatsoever, including monetary, injunctive, or declaratory, whether  
15 direct or indirect, whether suspected or unsuspected, whether contingent or vested which were  
16 pled or could have been pled based on the facts alleged in the operative complaint, from the  
17 time period of November 27, 2009 through December 31, 2015, which includes, but is not  
18 limited to, that Defendants or any Released Party: (i) failed to pay minimum wages; (ii) failed  
19 to pay overtime wages; (iii) failed to provide rest periods; (iv) failed to provide meal periods;  
20 (v) failed to reimburse business expenses; (vi) failed to maintain payroll records and provide  
21 itemized wage statements; (vii) violated California Unfair Competition Law; and (viii) owe  
22 penalties pursuant to PAGA. Upon the final approval by the Court of this Settlement  
23 Agreement, and except as to such rights or claims as may be created by this Settlement  
24 Agreement, each member of the Driver Class fully releases and discharges Defendant and all of  
25 its past, present, and future parent companies, subsidiaries, affiliates, divisions, agents,  
26 management companies, and all of their respective employees, members, officers, directors,  
27 partners, legal representatives, accountants, trustees, executors, administrators, real or alleged  
28 alter egos, predecessors, successors, transferees, assigns and insurers (collectively "Released  
Parties"), from liability for the claims that were asserted in the Class Action, and any claims

1 relating to the payment of wages, minimum wages, overtime, meal breaks, rest breaks,  
2 expenses, paystubs, record keeping, PAGA, penalties, waiting time penalties, interest,  
3 attorney's fees, or any other alleged known or unknown wage and hour violations arising out of  
4 the acts, facts, transactions, occurrences, representations, or omissions that were or could have  
5 been pled in the First Amended Complaint;

6 The Wage Statement Class Members have settled and released any and all Claims for  
7 any relief whatsoever, including monetary, injunctive, or declaratory, whether direct or indirect,  
8 whether suspected or unsuspected, whether contingent or vested, arising from or related to any  
9 of the allegations in the Action from the period of November 27, 2012 through December 31,  
10 2015, including that Defendants and Released Parties failed to maintain payroll records and  
11 provide itemized wage statements. The Released Claims include all claims pled or which could  
12 have been pled in the Action on behalf of the Wage Statement Class Members arising from any  
13 of the facts alleged therein, including but not limited to claims of any and every nature based on  
14 any of the statutory provisions identified therein, and all penalty claims, no matter how pled;

15 This Court HEREBY ORDERS, ADJUDGES AND DECREES that Judgment in this  
16 matter is entered in accordance with the Court's Final Approval Order and the Parties' Joint  
17 Stipulation of Class Action Settlement.

18 Dated: 10-3-16

  
HONORABLE JUDGE OF THE SUPERIOR COURT

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**EXHIBIT A**

SEP 16 2016

SALE v. FRISCO BAKING COMPANY, INC.

MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT Sherri R. Carter, Executive Officer/Clerk  
By: Jan Josef Manrique, Deputy

Date of Hearing: September 16, 2016, C/F August 31, 2016  
Department: 308  
Case No.: BC529131

Ruling:

- (1) The Court certifies the class for purposes of settlement;
- (2) The Court finds that the settlement is fair, adequate, and reasonable;
- (3) Class Counsel, Archibald & Berenji, is awarded \$250,000 in fees, and \$6,422.67 in costs, having agreed to submit the information supporting fees as part of this application.
- (4) Plaintiff Thomas Sale is awarded \$10,000 as an enhancement award;
- (5) Simpluris is awarded \$10,000 in settlement administration costs;
- (6) \$10,000 for a PAGA payment payable to the LWDA is approved;
- (7) Class Counsel is to lodge a proposed Order consistent with this ruling, by September 28, 2016;
- (8) Class Counsel is to lodge a proposed Judgment consistent with this ruling, which includes a class definition and the release language, by September 28, 2016.

FINAL APPROVAL OF CLASS ACTION SETTLEMENT

California Rules of Court, rule 3.769(g), provides for an inquiry into the fairness of the proposed settlement prior to the final approval hearing. After this, the court must make and enter judgment, including a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. See California Rules of Court, rule 3.769(h). The class action may not be dismissed once judgment is entered. See California Rules of Court, rule 3.770. All class settlements are subject to a settlement hearing and court approval before entry of judgment or final order.

The trial court has broad powers to determine whether a proposed settlement is fair. Mallick v. Superior Court (1979) 89 Cal. App. 3d 434, 438. The California standard for approval of class settlements is similar to the federal requirement that the settlement be fair, reasonable, and adequate for class members overall. Dunk v. Ford Motor Co. (1996) 48 Cal. App. 4th 1794, 1801.

CLASS NOTICE AND CLASS RESPONSE

1. How was notice given? On April 12, 2016, Defendant provided Simpluris, Inc. with the class information. (Kincannon Declaration, ¶4.) Simpluris processed the class list through the NCOA database to update addresses. (Ibid.) On April 18, 2016, notice was mailed to the 193 class members identified in the class list. (Id. at ¶5.) Of the notice packets that were mailed and re-mailed (following address searches), the total number of notice packets deemed undeliverable is 2. (Id. at ¶6.)
2. How many opted-out? Zero. (Id. at ¶7.)
3. How many objected? Zero. (Id. at ¶8.)

4. How many submitted a claim form? n/a
5. Estimate of recovery to each class member? The average estimated settlement payment to Driver Class Members is \$17,728, with the highest estimated payment \$33,433.09. (Id. at ¶ 10.) All Wage Statement Class Members will receive \$100. (Ibid.) [According to Class Counsel, there are 25 current and former Driver Class Members and 168 current and former Wage Statement Class Members. (Berenji Declaration, ¶16.)

EVALUATION OF THE SETTLEMENT

The Court must determine if the settlement is fair, adequate, and reasonable. The settlement is entitled to a presumption of fairness where: “ (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Dunk v. Ford Motor Company* (1996) 48 Cal.App.4<sup>th</sup> 1794, 1802 (“*Dunk*”).) As *Wershba v. Apple Computer* (2001) 91 Cal.App.4<sup>th</sup> 224, 250, further notes:

A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. (See *Rebney v. Wells Fargo Bank*, supra, 220 Cal. App. 3d at p. 1139 [settlements found to be fair and reasonable even though monetary relief provided was "relatively paltry"]; *City of Detroit v. Grinnell Corp.*, supra, 495 F.2d at p. 455 [settlement amounted to only "a fraction of the potential recovery"].) Compromise is inherent and necessary in the settlement process. Thus, even if "the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated," this is no bar to a class settlement because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." (*Air Line Stewards, etc., Loc. 550 v. American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109.)

The Court finds that the settlement is fair, adequate, and reasonable based on the following:

- The parties participated in an all-day mediation session on August 26, 2015 with Steve Serratore, Esq. Following mediation, the parties rejected the mediator’s proposal but continued to negotiate with Mr. Serratore’s assistance, eventually reaching a settlement on November 30, 2015. (Berenji Decl., ¶27.)
- The parties agreed that production of Defendants’ payroll records of all Driver Class Members for one quarter of a year would provide an adequate sample. (Id. at ¶24. Defendants also produced their policies and procedures, and provided Class Counsel with the total number of Wage Statement Class Members. (Ibid.) Class Counsel interviewed two Driver Class Members and obtained detailed declarations from them. (Id. at ¶25.)
- Class Counsel is experienced in class actions, including cases involving wage and hour violations. (Id. at ¶¶ 1-10.)
- The response of the class has been overwhelmingly positive with no opt-outs or objections.

As noted in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408:

... a trial court's approval of a class action settlement will be vacated if the court "is not provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (Kullar, supra, 168 Cal.App.4th at pp. 130, 133, 85 Cal.Rptr.3d 20.) In short, the trial court may not determine the adequacy of a class action settlement "without independently satisfying itself that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (Id. at p. 129, 85 Cal.Rptr.3d 20.)

Class Counsel, after conducting thorough investigation and analysis, calculated that the overtime claim by the Driver Class has a maximum potential value of \$850,000. (Berenji Declaration, ¶30.) Weighed against that is Defendant's argument that members of the Driver Class are covered by a collective bargaining agreement which pays them not less than 30% more than the minimum wage, and that they are exempt from overtime. (Ibid.) The failure to reimburse claim was valued at \$5,888. (Id. at ¶33.) Defendant argued that it provided meal and rest breaks and that the mere existence of a missed break does not indicate class wide failure to provide same; based on statistical sampling and taking into consideration Defendant's policy on meal and rest breaks, Class Counsel valued these claims at \$338,000 each. (Id. at ¶¶ 31, 32.) The failure to reimburse claim was valued at \$5,888, and the wage statement claim at \$409,000. (Id. at ¶¶ 33, 34.) All together, these class claims have a maximum potential value of \$1,946,776.

The non-reversionary \$750,000 Gross Settlement Amount constitutes approximately 39% of the maximum exposure and is above the ballpark of reasonableness, especially given Defendants' financial condition. (Berenji Declaration, ¶21.) See City of Detroit v. Grinnell Corporation (2d Cir. 1974) 495 F.2d 448, 455 (settlement amounting to 12% of the plaintiffs' potential recovery deemed reasonable).

The moving papers, declarations and exhibits attached thereto, have provided this Court with "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise" such that this Court is satisfied "that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." *Dunk* at 1802: "So long as the record is adequate to reach 'an intelligent and objective opinion of the probabilities of success should the claim be litigated' and 'form' an educated estimate of the complexity, expense and likely duration of such litigation...it is sufficient."

#### COSTS AND FEES

1. What is the lodestar calculation? The lodestar is the primary method of establishing the amount of reasonable attorney fees in California. (*Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556.) Courts may also use a percentage of the benefit method to calculate fees in a common fund case and may supplement the analysis with information obtained from counsel regarding the case, as well as the on the contingency, novelty, skill shown, and the number of hours and hourly rates. (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.4th 480, 573.)

Here, Class Counsel, Archibald & Berenji, request attorney's fees of \$250,000, which is 1/3 of the \$750,000 gross settlement amount. The following is breakdown of attorney time spent in this action and hourly rate:<sup>1</sup>

<u>Timekeeper</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Total Lodestar</u>
Shadie L. Berenji (Partner)	137.7	\$670	\$92,259
Christopher J. Archibald (Partner)	323.6	\$640	\$207,104
<b>TOTAL</b>	<b>461.3</b>		<b>\$299,363</b>

Class counsel anticipates spending 30 more hours at an average hourly rate of \$670 (\$26,600). (Berenji Decl., ¶69.) The Court finds that the billing rates are reasonable based on the experience of each attorney. The number of hours is also reasonable. Accordingly, \$299,363 constitutes the lodestar. Copies of the billing records, which were submitted for *in camera* review have been returned to class counsel and were not considered by the court. Records showing support for the costs claimed, however, have been added to the record and were considered by the court.

2. Is a multiplier sought? No. The lodestar exceeds the fee request.

Applying the cross-check, the fee request is 1/3 of the gross settlement amount, which is average for these cases. Utilizing the percentage method, supplemented by the information contained in the Berenji Declaration, the Court awards the requested \$250,000 for fees.

3. What are the costs claimed? Class Counsel seek \$6,422.67 in costs (Berenji Declaration, ¶71, a summary of costs is attached as Exhibit D), which is less than the \$10,000 settlement cap.
4. Incentive payment 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. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807.; *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.]” citing *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 195) 901 F.Supp. 294, 299.

Class Counsel requests a \$10,000 enhancement award for Plaintiff. Class Counsel notes that when this litigation began, Plaintiff was an employee. (Berenji Declaration, ¶46.) She also notes that the risks to employees who agree to act as class representative are real, especially in this computer age where background checks are easily obtained. (*Ibid.*)

<sup>1</sup> These figures are taken from the Berenji Declaration, ¶62.



Plaintiff understood the risks of pursuing the class action, such as his current and future employers retaliating against him and being liable for Defendant's cost and attorney's fees. (Sale Declaration, ¶3.) Plaintiff has devoted time to this case by meeting with his attorneys, providing insight into Defendant's employment practices, helping to locate witnesses, assisting with responding to discovery, reviewing documents produced by Defendants, participating in mediation, and reviewing settlement documents. (Berenji Declaration, ¶47.) For all of the above reasons, and in light of the average size of the settlement payments to Driver Class members (\$17,728), the Court finds that \$10,000 is a reasonable inducement for Plaintiff's participation in this litigation.

5. Settlement Administration Costs? Simpluris will charge \$10,000 for the work it has and will perform. (Kincannon Decl., ¶11.) This appears reasonable given the size of the class and the work performed. Additionally, this amount was made known to class members and none objected. The Court awards \$10,000 in settlement administration costs.

FINAL REPORT:

The Court orders class counsel to file a final report summarizing all distributions made pursuant to the approved settlement, supported by declaration on or before December 17, 2016.

The Court sets a non-appearance date for submission of a final report.

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# EXHIBIT D

Sale v. Frisco Costs				
Date	Case	Reason	Amount	Total
11/25/2013	Frisco	Copies of Complaint and drafts thereof (130 pages).	\$13.00	<u>\$6,422.67</u>
11/27/2013	Frisco	Court filing fee for Complaint.	\$435.00	
11/27/2013	Frisco	Attorney service fee to file Complaint.	\$58.45	
12/5/2013	Frisco	Service of process of Summons and Complaint on Defendant.	\$55.35	
7/9/2014	Frisco	Copies for initial discovery requests (196 pages)	\$19.60	
7/21/2014	Frisco	Copies for responses to Defendant's initial discovery requests (360 pages)	\$ 36.00	
7/21/2014	Frisco	Copies for Notice of Lodging Remand Order (39 pages)	\$3.90	
9/29/2014	Frisco	Filing Fee	\$ 1,000.00	
12/15/2014	Frisco	Copies for Plaintiff's further discovery responses (80 pages)	\$ 8.00	
4/6/2015	Frisco	Mailing to class members.	\$ 350.92	
4/13/2015	Frisco	Court call for motion to file FAC	\$ 116.00	
4/26/2015	Frisco	Case Anywhere Fee	\$ 160.00	
5/22/2015	Frisco	Fee for Stipulation to continue class certification date	\$ 28.25	
7/26/2015	Frisco	Case Anywhere Fee	\$ 225.00	
8/17/2015	Frisco	Mediation fee	\$ 3,000.00	
8/26/2015	Frisco	Mediation parking	\$ 40.00	
8/26/2015	Frisco	Mediation parking	\$ 40.00	
10/27/2015	Frisco	Filing of Joint Status Conference Statement.	\$ 15.75	
12/17/2015	Frisco	Copies for Motion for Preliminary Approval, confidential documents, and drafts thereof (684 pages)	\$ 68.40	
12/18/2015	Frisco	Filing fee for motion for preliminary approval.	\$ 60.00	
12/18/2015	Frisco	DDS fee for filing motion for preliminary approval.		
3/22/2016	Frisco	Parking Fee at CCW for Preliminary Approval Hearing	\$15	
3/8/2016	Frisco	Filing Fee	\$36.90	
4/1/2016	Frisco	Filing Fee	\$12.00	
4/4/2016	Frisco	Filing Fee	\$9.00	
4/12/2016	Frisco	Filing Fee	\$7.50	
3/25/2016	Frisco	Filing Fee	\$36.90	
4/17/2016	Frisco	Case Anywhere	\$130.00	
7/28/2016	Frisco	Copies of Motion for Final Approval and accompanying documents and drafts thereof (574 pages).	\$57.40	
7/29/2016	Frisco	Court filing fee for motion for final approval.	\$60.00	
7/29/2016	Frisco	Court filing fee for motion for attorneys' fees and class representative enhancement fees.	\$60.00	
7/29/2016	Frisco	Attorney service filing fee for motion for final approval (estimated).	\$134.35	
8/1/2016	Frisco	Case Anywhere Fee (estimated)	\$ 130.00	

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