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ORIGINAL FILED
Superior Court of California
County of Los Angeles**

OCT 30 2018

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

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

CARLOS TORRES, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

JJ MOTORCARS, INC., d/b/a ROAD BEAR
RV, a California Corporation; TOURISM
HOLDINGS USA, INC., a Delaware
Corporation; and DOES 1 through 100,
inclusive

Defendants.

Case No.: BC655446

ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT

Date: October 30, 2018
Time: 9:00 a.m.
Dept.: SSC-17

I. BACKGROUND

Plaintiff Carlos Torres sues his current employer, Defendants JJ Motorcars, Inc. dba Road Bear RV, et al., for alleged wage and hour violations. Defendant is in the business of renting and selling recreational vehicles ("RVs"). Plaintiff seeks to represent a class of Defendant's current and former employees.

1 Plaintiff's operative First Amended Complaint ("FAC"), filed on June 2, 2017, asserts
2 causes of action for the following violations: (1) Failure to Pay for All Hours Worked; (2)
3 Failure to Pay Overtime Compensation; (3) Failure to Provide Meal Periods; (4) Failure to
4 Provide Accurate Itemized Wage Statements; (5) Unfair Business Practices; and (6) Penalties
5 Under PAGA.

6 Following the exchange of informal discovery, the Parties attended mediation on
7 December 14, 2017 before Hon. Carl J. West (Ret.). At the conclusion of the mediation the
8 parties reached agreement regarding the terms of a proposed settlement. The Parties
9 subsequently executed a long-form *Stipulation for Settlement of Class Action and Proposal for*
10 *Distribution of Settlement Proceeds* ("Settlement Agreement"), a copy of which was filed with
11 the Court.

12 Following supplemental briefing and revisions to the Settlement Agreement, the Court
13 granted preliminary approval on June 26, 2018. Now before the Court is Plaintiff's motion for
14 final approval of the settlement.

15 All citations to the Settlement Agreement below are to the amended version filed on June
16 11, 2018.

17 **II. DISCUSSION**

18 **A. SETTLEMENT CLASS DEFINITION**

19 Under the terms of the Settlement Agreement "Class Members" is defined as: "all
20 persons employed by Defendants in the Nonexempt Subclass and the Exempt Subclass."
21 (Settlement Agreement ¶5)

- 22 • "Exempt Subclass" means all current and former exempt employees employed in
23 the position of Shop Manager, Rental Agent Manager, Rental Manager, Branch
24 Manager or similar management position by Defendants in California during the
25 Class Period. (¶16)

- 1 • "Non-exempt Subclass" means all current and former non-exempt employees
2 employed by Defendants in California during the Class Period. (¶23)
- 3 • Class Members shall not include any person who previously settled or released
4 the claims covered by this Settlement, any person who previously was paid or
5 received awards through civil or administrative actions for the claims covered by
6 this Settlement, and/or any persons who gave Defendants a general release for any
7 and all claims related to his or her employment with Defendants. (*Ibid.*)

8 The Parties stipulate to class certification for settlement purposes only. (¶46.)

9 The "Class Period" is from March 27, 2013 through the date of preliminary approval
10 [June 26, 2018]. (¶7)

11 There are 139 putative Class Members. (Declaration of Mary Butler ¶¶6, 9.)

12 **B. TERMS OF SETTLEMENT AGREEMENT**

13 The essential terms are as follows:

- 14 • The Maximum Settlement Amount is **\$475,000**, non-reversionary. (¶¶21, 52.a)
- 15 • The Net Settlement Amount (**\$276,382.50**) is the Maximum Settlement Amount less:
- 16 ○ Up to **\$158,317.50** (33-1/3%) for attorney fees (¶52.c);
- 17 ○ Up to **\$11,000** for litigation costs (*Ibid.*);
- 18 ○ Up to **\$5,000** for a service award to the class representative (¶52.b);
- 19 ○ Estimated **\$5,550** for claims administration costs (¶52.e); and
- 20 ○ Payment of **\$18,750** (75% of \$25,000 PAGA penalty) to the LWDA. (¶52.d)
- 21 • There is no claims process. (¶52.a)
- 22 • Calculation of Individual Settlement Payments: Each Participating Class Member's
23 Individual Settlement Amount shall be calculated solely by the Settlement Administrator
24 based upon a value for each week worked by a Participating Class Members during the
25 Class Period ("Workweek Value"). Workweek Value shall be calculated by the

1 Settlement Administrator by dividing the Net Settlement Amount by the Total
2 Workweeks during the Class Period (to be provided by Defendants as part of Class
3 Information). The Settlement Administrator shall multiply the Workweek Value by the
4 number of Compensable Workweeks for each Participating Class Member to reach each
5 Class Members' Individual Settlement Amount. To the extent any Class Member validly
6 requests exclusion, the portion of the Net Settlement Fund that would have been paid to
7 the excluded Class Members(s) shall be distributed on a pro rata basis among all
8 Participating Class Members as part of their Individual Settlement Payment. (§52.a.i)

- 9 ○ For tax purposes, payments will be allocated 20% as wages, 40% as interest and
10 40% penalties. (§52.a.iii.)
- 11 ● **Equitable Relief:** Without admitting or conceding any liability or damages whatsoever,
12 Defendants agree to the following injunctive relief: (1) provide training to managers
13 regarding wage and hour compliance issues, (2) issue proper wage statements, (3)
14 establish a policy for payment of a one hour meal and rest period payment for missed
15 meal and rest breaks, and (4) calculate the correct regular rate for payment of overtime.
16 Defendants further acknowledge that they have implemented an electronic time punch
17 system since the inception of this action. (§56)
- 18 ● Defendants are responsible for paying the employer's share of payroll taxes separately
19 from and in addition to the Maximum Settlement Amount, and shall submit such amounts
20 to the Settlement Administrator. (§15)
- 21 ● The response deadline for class members to submit requests for exclusions or objections
22 is 45 calendar days from the date of initial mailing of the notice packet. (§35)
 - 23 ○ If more than 15% of class members opt-out, Defendants have the right to revoke
24 the settlement. (§51.j.)

1 ○ In the case of a re-mailed Notice Packet, this deadline shall be extended an
2 additional 15 calendar days after the re-mailing of the Notice Packet or the
3 Response Deadline, whichever is later. (¶35.)

- 4 ● Checks must be cashed within 180 days of issuance. (¶2.18) The Settlement
5 Administrator shall deposit the amount of the uncashed checks, without the need to
6 include interest, with the California Department of Industrial Relations Unclaimed Wages
7 Fund. (¶52.a.iv.). The Court finds this provision complies with Cal. Code of Civ. Pro.
8 Section 384 as presently written and under case law interpreting that provision.
- 9 ● The settlement administrator is Simpluris, Inc. (¶38)
- 10 ● A copy of the proposed settlement was provided to the LWDA. (Supplemental
11 Declaration of Raymond Boucher ISO Motion for Preliminary Approval, ¶8 and Exhibit
12 7 thereto.)
- 13 ● Upon the Effective Date, Plaintiff and all Participating Class Members will be deemed to
14 have fully, finally and forever released, settled, compromised, relinquished, and
15 discharged any and all Released Claims against the Released Parties which arose during
16 the Class Period. (¶50.a.)
 - 17 ○ "Released Claims" with respect to the Participating Class Members (including
18 Plaintiff) means any and all claims arising during the Class Period for damages
19 or any other remedies, including but not limited to any and all claims challenging
20 the validity or enforceability of class action release agreements, claims for
21 liquidated damages, restitution, disgorgement, conversion, unjust enrichment,
22 penalties, interest, and attorneys' fees and costs, contingent or accrued, against
23 the Released Parties, under state, federal, and local law arising out of the
24 allegations made in the Class Action or that could have been pled, or were pled,
25 based on the factual allegations in the Complaint, and any amendments thereto,

1 including but not limited to failure to pay for all hours worked including
2 minimum wage payments, failure to pay wages during employment, failure to
3 pay overtime, failure to provide required meal and rest periods or pay one hour's
4 wages in lieu thereof, derivative claims for failure to provide accurate itemized
5 wage statements, as well as claims based upon alleged violations of Labor Code
6 Sections 201, 202, 204, 223, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d),
7 1194, 1197, 1198, 1199, Business and Professions Code section 17200, and the
8 PAGA. For the sake of clarity, the Parties agree that the Released Claims include
9 only those claims that meet the definition of Released Claims. As such, for
10 example, Released Claims do not include claims for wrongful termination,
11 unlawful discrimination or harassment, or Worker's Compensation." (§32)

12 These release terms are tied to the pleadings and are appropriate.

- 13 • Plaintiff will provide a general release as well as a CC§1542 waiver. (§50.b)

14 Since plaintiff is represented by counsel this broader term is appropriate.

15 **C. ANALYSIS OF SETTLEMENT AGREEMENT**

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

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

23 “In a class action lawsuit, the court undertakes the responsibility to assess fairness in
24 order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
25 action. The purpose of the requirement [of court review] is the protection of those class

1 members, including the named plaintiffs, whose rights may not have been given due regard by
2 the negotiating parties.” (See *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of*
3 *America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks omitted]; see also *Wershba v.*
4 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (“*Wershba*”), disapproved on another
5 ground in *Hernandez v. Restoration Hardware* (2018) 4 Cal.5th 260 [Court needs to “scrutinize
6 the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the
7 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
8 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
9 concerned”] [internal quotation marks omitted].)

10 “The burden is on the proponent of the settlement to show that it is fair and reasonable.
11 However ‘a presumption of fairness exists where: (1) the settlement is reached through arm's-
12 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
13 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
14 objectors is small.’” (See *Wershba, supra*, 91 Cal.App.4th at pg. 245 [citing *Dunk v. Ford Motor*
15 *Co.* (1996) 48 Cal.App.4th 1794, 1802. (“*Dunk*”).) Notwithstanding an initial presumption of
16 fairness, “the court should not give rubber-stamp approval.” (See *Kullar v. Foot Locker Retail,*
17 *Inc.* (2008) 168 Cal.App.4th 116, 130 (“*Kullar*”).) “Rather, to protect the interests of absent
18 class members, the court must independently and objectively analyze the evidence and
19 circumstances before it in order to determine whether the settlement is in the best interests of
20 those whose claims will be extinguished.” (*Ibid.*) In that determination, the court should
21 consider factors such as “the strength of plaintiffs' case, the risk, expense, complexity and likely
22 duration of further litigation, the risk of maintaining class action status through trial, the amount
23 offered in settlement, the extent of discovery completed and stage of the proceedings, the
24 experience and views of counsel, the presence of a governmental participant, and the reaction of
25 the class members to the proposed settlement.” (*Id.* at 128.) “Th[is] list of factors is not

1 exclusive and the court is free to engage in a balancing and weighing of factors depending on the
2 circumstances of each case.” (*Wershba supra*, 91 Cal.App.4th at pg. 245.)

3 Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order
4 to be fair and reasonable. Compromise is inherent and necessary in the settlement process.
5 Thus, even if ‘the relief afforded by the proposed settlement is substantially narrower than it
6 would be if the suits were to be successfully litigated,’ this is no bar to a class settlement
7 because ‘the public interest may indeed be served by a voluntary settlement in which each side
8 gives ground in the interest of avoiding litigation.’” (*Wershba, supra*, 91 Cal.App.4th at pg.
9 250.)

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

- 11 a. Was the settlement reached through arm’s-length bargaining? Yes. On December
12 14, 2017, Plaintiff and Defendants participated in a private, all-day mediation
13 before Hon. Carl J. West (Ret.) in Los Angeles, California. Pursuant to the
14 mediation the parties were able to reach agreement concerning the proposed
15 terms for this settlement. (Declaration of Raymond Boucher ISO Prelim
16 Approval ¶11.)
- 17 b. Were investigation and discovery sufficient to allow counsel and the court to act
18 intelligently? Yes. Class Counsel represents that, in advance of the mediation,
19 the Parties agreed to an informal exchange of discovery, including Defendants'
20 production of all relevant written wage and hour policies and procedures
21 necessary to evaluate Defendants' employment practices, as well as Class
22 Member payroll and time records, necessary for Plaintiff's to analyze the
23 potential scope of liability and damages regarding the alleged claims. (*Id.* at ¶9.)
- 24 c. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced
25 in class action litigation, including wage and hour class actions. (*Id.* at ¶¶ 24-25.)

1 d. What percentage of the class has objected? Zero objectors. (Butler Decl., ¶15.)

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

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

4 a. Strength of Plaintiff's case. "The most important factor is the strength of the
5 case for plaintiff on the merits, balanced against the amount offered in
6 settlement." (*Kullar, supra*, 168 Cal.App.4th at pg. 130.)

7 Class Counsel has provided information, summarized in the table below,
8 regarding Defendant's estimated exposure on the asserted class claims.

9 Violation	Maximum Exposure	Realistic Exposure
10 Failure to Pay Minimum and Overtime Wages	\$630,011.00	\$403,207.00
11 Failure to Provide Meal Periods	\$244,679.00	\$137,631.00
12 Failure to Furnish Accurate Itemized Wage Statements	\$244,000.00	\$137,250.00
13 PAGA	\$1,704,950.00	\$0.00
14 Total	\$2,823,640.00	\$678,088.00

15 (Boucher Decl. ISO Prelim Approval ¶21.)

16 Class Counsel obtained a gross settlement valued at \$475,000. This is
17 17% of Defendant's maximum potential exposure and 70% of Defendant's
18 realistic exposure. Given the uncertain outcomes, these percentages are within the
19 "ballpark of reasonableness." In addition, Defendant altered certain employment
20 practices after the litigation was filed and agreed to injunctive relief.

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

25 b. Risk of maintaining class action status through trial. Even if a class is certified,
there is always a risk of decertification. (*Weinstat v. Dentsply Intern., Inc.*

1 (2010) 180 Cal.App.4th 1213, 1226 ["Our Supreme Court has recognized that
2 trial courts should retain some flexibility in conducting class actions, which
3 means, under suitable circumstances, entertaining successive motions on
4 certification if the court subsequently discovers that the propriety of a class
5 action is not appropriate."].)

6 c. Amount offered in settlement. As indicated above, Class Counsel negotiated a
7 \$475,000, non-reversionary settlement. Assuming the Court approves all of the
8 requested deductions, approximately \$276,382.50 will be available for automatic
9 distribution to participating class members. The average settlement share to the
10 139 participating class members will be approximately \$1,988.36. [$\$276,382.50$
11 $\text{net} \div 139 \text{ participating class members} = \$1,988.36$]

12 d. Extent of discovery completed and stage of the proceedings. As discussed
13 above, at the time of the settlement, the parties had conducted discovery
14 sufficient to value the case for settlement purposes.

15 e. Experience and views of counsel. The settlement was negotiated and endorsed
16 by Class Counsel who, as indicated above, is experienced in class action
17 litigation, including wage and hour cases. Class Counsel believes that the
18 settlement is fair, reasonable and adequate for each participating Class Member.
19 (Declaration of Raymond Boucher ISO Final Approval ¶15.)

20 f. Presence of a governmental participant. This factor is not applicable here.

21 g. Reaction of the class members to the proposed settlement.

22 Number of class members: 139

23 Number of notices mailed: 139

24 Number of undeliverable notices: 4

25 Number of opt-outs: 0

1 As for costs, Class Counsel requests **\$11,000**. (Boucher Decl. ISO Final Approval ¶40.)
2 This is equal to the \$11,000.00 cap provided in the settlement agreement (¶52.c). This amount
3 was disclosed to Class Members in the Notice, and no objections were received. (Butler Decl.
4 ¶15 and Exhibs. A.) Class Counsel incurred actual costs in the amount of \$11,246.23. (Boucher
5 Decl. ISO Final Approval at Exhib. 6.) The costs include Mediation (JAMS) (\$4,450), Berger
6 Consulting Group (\$1,186), and First Legal Network (\$4,335.97). (*Id.* at Ex. 6.)

7 The costs appear to be reasonable and necessary to the litigation, are reasonable in
8 amount, and were not objected to by the class.

9 For all of the foregoing reasons, costs of **\$11,000** are approved.

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

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

21 Here, the Class Representative requests an enhancement award of **\$5,000** (Boucher Decl.
22 ISO Final Approval ¶36.)

23 Plaintiff Carlos Torres has worked for Defendant from approximately August 2004 to
24 the present. (Declaration of Carlos Torres ¶4.) Mr. Torres estimates that he has devoted
25 approximately 30 hours to the performance of his duties as class representative. (*Id.* at ¶10.)

1 Plaintiff describes his participation in this action as follows: regularly communicating with
2 Class Counsel and staying up to date on the status of the case, searching for and providing
3 relevant documents, responding to requests for information regarding his work experience,
4 preparing for and attending mediation, and reviewing and discussing all court filings, and
5 reviewing the terms of the Settlement Agreement. (*Id.* at ¶9.)

6 In light of the above, as well as the benefits obtained on behalf of the class, a **\$5,000**
7 award for Mr. Torres appears to be reasonable inducement for Plaintiff's participation in the
8 case. Accordingly, an enhancement in the amount requested is approved.

9 **F. CLAIMS ADMINISTRATION COSTS**

10 Claims administrator, Simpluris, Inc., requests **\$5,550** in compensation for its work in
11 administering this case. (Butler Decl. ¶16.) At the time of preliminary approval, costs of
12 settlement administration were estimated at \$5,550. (Settlement Agreement ¶52.e.) Class
13 Members were provided with notice of this amount and did not object. (Butler Decl. ¶15 and
14 Exhib. A.)

15 Accordingly, claims administration costs are approved in the amount of **5,550**.

16 **III. CONCLUSION AND ORDER**

17 The Court hereby:

- 18 (1) Grants class certification for purposes of settlement;
- 19 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 20 (3) Awards **\$158,317.50** in attorney fees to Class Counsel, Boucher, LLP;
- 21 (4) Awards **\$11,000** in litigation costs to Class Counsel;
- 22 (5) Approves payment of **\$18,750** (75% of \$25,000 PAGA penalty) to the LWDA;
- 23 (6) Awards **\$5,000** as a Class Representative Service Award to Plaintiff Carlos Torres;
- 24 (7) Awards **\$5,550** in claims administration costs to Simpluris, Inc.;

1 (8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling and
2 containing the class definition, the full release language, and all injunctive terms, by

3 _____ 11/13 _____, 2018;

4 (9) Orders class counsel to provide notice to the class members pursuant to California
5 Rules of Court, rule 3.771(b); and

6 (10) Sets a Non-Appearance Case Review re: Final Report re: Distribution of Settlement

7 Funds for _____ 8/2/2019 _____, at

8 8:30 am. Final Report is to be filed by

9 _____ 7/26/19 _____.

10
11
12 MAREN E. NELSON

13 Dated: 10/30/18

14 _____
15 MAREN E. NELSON

16 Judge of the Superior Court
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