

FILED
LOS ANGELES SUPERIOR COURT
DEC 19 2018
CLERK
BY NANCY NAVARRO Deputy

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

BETTY JOHNSON, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

TELEDYNE REYNOLDS, INC., a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: BC648743

ORDER GRANTING
MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: December 19, 2018
Time: 9:00 a.m.
Dept.: SSC-17

I. BACKGROUND

Teledyne is a defense and aerospace manufacturer located in Los Angeles, California.

On January 31, 2017, Plaintiff filed this putative wage and hour class. The Complaint alleges causes of action for (1) failure to provide meal periods; (2) failure to authorize and permit rest periods; (3) failure to pay minimum wages; (4) failure to pay overtime wages; (5) failure to

1 furnish accurate itemized wage statements; (6) failure to indemnify employees for necessary
2 expenditures incurred in discharge of duties; and (7) unfair and unlawful business practices.

3 Following the filing of this action, Defendant obtained Agreements and Releases of
4 Disputed Claims ("Releases") from 414 of the 493 Class Members. These Releases purportedly
5 released all claims against Defendant, including any and all claims asserted in this Action.
6 Defendant paid a total of \$97,875.00 to Class Members in exchange for executing the Releases
7 ("Release Payments").

8 On October 11, 2017, the Parties participated in a private mediation session with
9 mediator, Hon. Louis M. Meisinger (Ret.). At the conclusion of the mediation, Judge Meisinger
10 made a mediator's proposal. The Parties did not accept the proposal but continued to engage in
11 settlement discussions with the assistance of Judge Meisinger.

12 On October 25, 2017, the Parties reached an agreement in principle regarding the
13 material terms of a proposed class action settlement that would fully resolve the Action, subject
14 to the Parties entering into a more comprehensive written settlement agreement. The Stipulation
15 was fully executed on January 9, 2018.

16 After the Stipulation was initially filed with the Court as part of the Motion for
17 Preliminary Approval, the parties filed two amendments to the Stipulation based on the Court's
18 guidance. On April 17, 2018, the Parties executed an Amendment to Stipulation of Class Action
19 Settlement ("First Amendment"), attached to the Declaration of Launa Adolph ("Adolph Decl.")
20 as Exhibit A. On May 11, 2018, the Parties executed a Second Amendment to Stipulation of
21 Class Action Settlement ("Second Amendment"), attached to the Supplemental Declaration of
22 Launa Adolph ("Adolph Supp. Decl.") as Exhibit 1.
23
24
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1 On June 5, 2018, the Court entered an Order Granting Plaintiff's Motion for Preliminary
2 Approval of Class Action Settlement.

3 On August 29, 2018, the Parties executed a Third Amendment to Stipulation of Class
4 Action Settlement ("Third Amendment") which modified the class period. Pursuant to the
5 stipulation of the Parties, on September 27, 2018, the Court entered an Order Modifying Order
6 Granting Preliminary Approval of Class Action Settlement on September 27, 2018.

7 Based on amendment to the Code of Civil Procedure § 384 the parties filed a Fourth
8 Amendment to Stipulation of Class Action Settlement on December 14, 2018.

9 Now before the Court is Plaintiff's motion for final approval of the settlement.

10
11 **II. DISCUSSION**

12 **A. SETTLEMENT CLASS DEFINITION**

13 "Class Members" is defined as, "all persons employed by Defendant as non-exempt
14 employees in the State of California at any time during the Class Period." (§5)

15 "Class Period" is from January 31, 2013 through March 31, 2018. (§7, as amended by
16 Third Amendment, §1.)

17
18 There are 533 Class Members and 529 Participating Class Members. (Declaration of
19 Christina Francisco, §§6, 11-12 and as represented by counsel at oral argument.)

20 In the event the number of Class Members increases by ten percent (10%) or more,
21 Defendant shall have the option to increase the Maximum Settlement Amount proportionately or,
22 if it declines to do so, Plaintiff shall then have the right to revoke the Stipulation and withdraw
23 from the Settlement. (§50)

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25 //

1 **B. TERMS OF SETTLEMENT AGREEMENT**

2 The essential terms are as follows:

- 3 • The Maximum Settlement Amount is **\$450,000**, non-reversionary. (¶18)
- 4 ○ The Maximum Settlement Amount is in addition to the Release Payments that
- 5 Defendant has already made. "Release Payments" means payments that Defendant
- 6 previously has made to Class Members in consideration for executing Agreements
- 7 and Releases of Disputed Claims ("Releases"). (¶28.) Following the filing of this
- 8 Action, Defendant obtained Releases from 414 of the 493 class members.
- 9 (Declaration of Matthew Matern ISO Preliminary Approval, ¶9.) These Releases
- 10 purportedly released all claims against Defendant, including any and all claims
- 11 asserted in this Action. The total amount of Release Payments is \$97,875.
- 12
- 13 • The Net Settlement Amount (**\$229,375**) is the Settlement Amount less:
- 14 ○ Up to \$185,625 (1/3 of the MSA and the Release Payments) for attorney fees
- 15 (¶48.c);
- 16 ○ Up to \$20,000 for attorney costs (¶48.c);
- 17 ○ Up to \$5,000 for a service award (¶48.b);
- 18 ○ Estimated \$10,000 for claims administration costs (*Ibid.*); and
- 19
- 20 • There is no claims process. (¶48.a)
- 21
- 22 • Each Participating Class Member's Individual Settlement Award shall be calculated
- 23 solely by the Settlement Administrator according to the following formula: The
- 24 Settlement Administrator shall add the Net Settlement Amount and the total amount of
- 25 Release Payments and then divide the sum by the total number of Compensable
- Workweeks for all Participating Class Members resulting in a value for each week

1 worked by the Participating Class Members during the Class Period ("Workweek
2 Value"). The Settlement Administrator shall then take the number of Compensable
3 Workweeks for each Participating Class Member and multiply it by the Workweek
4 Value. For any Class Member who executed an Agreement and Release of Disputed
5 Claims, the Settlement Administrator shall then subtract the amount of the Class
6 Member's respective Release Payment. (¶48.a.i)

- 7 • Defendant' share of payroll taxes shall be submitted by Defendant to the claims
8 administration in addition to the Maximum Settlement Amount. (¶13)
- 9 • The response deadline for class members to submit requests for exclusions or objections
10 is 45 calendar days from the date of initial mailing of the notice packet. (¶32)
 - 11 ○ If 10% or more of class members opt-out, Defendant has the right to revoke the
12 settlement. (¶47.b.)
- 13 • For tax purposes, payments will be allocated 1/3 as wages, 1/3 as interest, and 1/3 as
14 penalties. (¶48.a.iii.)
- 15 • Checks must be cashed within 180 days of issuance. (¶48.a.iv)

16 If an Individual Settlement Award check remains uncashed after 180 days from
17 issuance, the amount of any uncashed checks plus any interest accrued thereon
18 shall be distributed to Legal Aid at Work. (*Ibid.*) (Fourth Amended Stipulation of
19 Settlement). Counsel represent that they do not have any interest in or
20 involvement with Legal Aid at Work. (Declaration of Matthew Matern ISO
21 Preliminary Approval, ¶35.)

- 22 • The settlement administrator is Simpluris, Inc. (¶35)
- 23 • Scope of the Release: Upon the Effective Date, Plaintiff and all Participating Class
24 Members will be deemed to have fully, finally and forever released, settled,
25 compromised, relinquished, and discharged their respective Released Claims against the

1 Released Parties which arose during the Class Period. (¶45.) Participating Class Members
2 refers to Class Members who do not opt-out. (¶22)

- 3 • "Participating Class Members' Released Claims" means any and all claims, demands,
4 rights, liabilities, and/or causes, of any form whatsoever, known and unknown, asserted
5 and unasserted, which Participating Class Members have or may have against the
6 Released Parties under state and local law arising out of the allegations made in the
7 Action and that reasonably arise or could have arisen out of the facts alleged in the
8 Action during the Class Period, including claims for (1) failure to provide required meal
9 periods; (2) failure to provide required rest periods; (3) failure to pay overtime wages; (4)
10 failure to pay minimum wages; (5) failure to furnish accurate itemized wage statements;
11 (6) failure to indemnify employees for necessary expenditures incurred in discharge of
12 duties; and (7) unfair and unlawful business practices. The Released Claims include any
13 claims for interest, attorneys' fees and costs, and civil or other penalties predicated on the
14 facts alleged in the Action. (¶23, as amended by Second Amendment, ¶1.)
- 15 • As part of a final judgment, Class Members, who have actually received the Notice
16 Packet, shall be enjoined from filing or prosecuting any claims, suits, or administrative
17 proceedings, including claims before the California Division of Labor Standards
18 Enforcement, regarding the Released Claims, unless and until such Class Members have
19 filed valid Requests for Exclusion with the Settlement Administrator and the Response
20 Deadline has passed. (¶46, as amended by Second Amendment, ¶2.)
- 21 • Plaintiff will provide a general release as well as a CC§1542 waiver. (¶26.) Plaintiff's
22 release and section 1542 waiver specifically excludes the claims asserted in the action
23 entitled *Johnson v. Teledyne Reynolds, Inc.*, Los Angeles Superior Court Case No.
24 BC658972, and neither the release nor the section 1542 waiver shall have any impact on
25 the legal claims or rights asserted in that action. (*Ibid.*)

1 At the preliminary approval hearing on April 27, 2018, the Court questioned
2 whether Plaintiff Betty Johnson’s individual discrimination case against Defendant
3 Teledyne Reynolds, Inc. created a conflict of interest rendering Plaintiff an inadequate
4 representative.

5 Plaintiff was employed by Teledyne and its sister company Teledyne Relays as
6 a customer service representative and administrative employee for over 30 years.
7 (Declaration of Betty Johnson (“Johnson Decl.”) ISO Preliminary Approval, ¶3.) In
8 2014, Plaintiff began a medical leave of absence and thereafter sought various
9 accommodations from Teledyne to assist her to return to work. (*Id.* at ¶4.) After she
10 was not able to return to work, she filed a Complaint of Employment Discrimination
11 before the State of California Department of Fair Employment and Housing on
12 October 17, 2016, alleging that Teledyne failed to accommodate her disability, failed
13 to engage in an interactive process, and otherwise discriminated against her based
14 upon a disability. (*Id.* at ¶5.)

15 On January 31, 2017, Plaintiff filed this putative wage and hour class action
16 against Teledyne. (Adolph Supp. Decl. ISO Preliminary Approval, ¶4.) On April 21,
17 2017, plaintiff filed an individual action against Teledyne, alleging claims for
18 disability discrimination, failure to accommodate disability, failure to engage in the
19 interactive process, failure to take steps necessary to prevent disability discrimination,
20 and retaliation for opposing disability discrimination. (Declaration of Dalia Khalili
21 ISO Preliminary Approval, ¶5.)

22 As described, *supra*, on October 11, 2017, the parties conducted a daylong
23 mediation with the Honorable Louis M. Meisinger (Ret.), in the class action matter.
24 (Adolph Supp. Decl. ISO Preliminary Approval, ¶6.) At the end of the day, Judge
25 Meisinger made a mediator’s proposal. (*Ibid.*) The parties did not accept that proposal

1 but, with Judge Meisinger's assistance, continued to engage in further settlement
2 negotiations. (*Id.* at ¶¶ 6-7.) The parties reached an agreement regarding the material
3 terms of a class action settlement on October 25, 2017. (*Id.* at ¶8.)

4 Thereafter, on November 7, 2017, the parties conducted a daylong mediation of
5 Plaintiff's individual disability case with Judge Meisinger. (Khalili Decl. ISO
6 Preliminary Approval, ¶6.) The parties did not reach a settlement at the mediation. (*Id.*
7 at ¶7.) However, following the mediation, the parties continued to engage in settlement
8 negotiations regarding the individual claims, with Judge Meisinger's assistance. (*Ibid.*)
9 On December 7, 2017, the parties agreed to the terms of a settlement of the individual
10 action. (*Ibid.*)

11 According to Plaintiff, she was advised by her attorneys regarding her duties as
12 class representative prior to filing the class action, signed a document agreeing to
13 consider the interests of the class just as she would consider her own interests and
14 acknowledging that in some cases she must put the interests of the class before her
15 own interests, and remained aware of her responsibilities to the class members
16 throughout this case. (Johnson Decl. ISO Preliminary Approval, ¶7.) Plaintiff
17 represents that she communicated with her attorneys regarding the settlement
18 negotiations and, with the assistance and advice of counsel, negotiated the best deal
19 she could for the class, without regard to her individual claims. (*Id.* at ¶¶9-11.) At no
20 point during the class settlement negotiations did the parties or their counsel discuss or
21 negotiate Plaintiff's individual claims. (*Id.* at ¶9; Adolph Supp. Decl. ISO Preliminary
22 Approval, ¶10.) Furthermore, the parties reached a settlement in the class case prior to
23 engaging in any negotiations regarding the settlement of Plaintiff's individual claims.
24 (Adolph Supp. Decl. ISO Preliminary Approval, ¶8; Khalili Decl. ISO Preliminary
25 Approval, ¶6.) Nor was there any discussion of the class action case during the

1 mediation of Ms. Johnson’s individual action, or during the subsequent negotiations
2 regarding that action. (Khalili Decl. ISO Preliminary Approval, ¶8.)

3 Furthermore, Plaintiff engaged in discovery prior to mediation, including
4 interviewing Class Members, analyzing time and payroll data, and preparing a
5 damages model. (Declaration of Matthew Matern ISO Preliminary Approval, ¶¶10-11,
6 15-16.) The fact that the class settlement was reached with the assistance of an
7 experienced mediator, following significant discovery, a full-day mediation, a
8 mediator's proposal, and two-weeks of subsequent negotiations, and without any
9 discussion of Plaintiff's individual claims is an indication that the settlement is fair and
10 non-collusive. The Court is satisfied that Plaintiff’s individual discrimination case
11 against Defendant Teledyne Reynolds, Inc. did not create a conflict of interest and
12 finds the Plaintiff an adequate representative.

13 The releases appear to be proper. The class release is appropriately tethered to
14 the pleading and limited to the relevant time period. Plaintiff’s broader release is
15 acceptable as she was represented by counsel when these terms were negotiated.

16 **C. ANALYSIS OF SETTLEMENT AGREEMENT**

17 **i. Standards for Final Fairness Determination**

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

24 “In a class action lawsuit, the court undertakes the responsibility to assess fairness in
25 order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class

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

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

1 the class members to the proposed settlement.” (*Id.* at 128.) “Th[is] list of factors is not
2 exclusive and the court is free to engage in a balancing and weighing of factors depending on the
3 circumstances of each case.” (*Wershba supra*, 91 Cal.App.4th at pg. 245.)

4 Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order
5 to be fair and reasonable. Compromise is inherent and necessary in the settlement process.
6 Thus, even if ‘the relief afforded by the proposed settlement is substantially narrower than it
7 would be if the suits were to be successfully litigated,’ this is no bar to a class settlement
8 because ‘the public interest may indeed be served by a voluntary settlement in which each side
9 gives ground in the interest of avoiding litigation.’” (*Wershba, supra*, 91 Cal.App.4th at pg.
10 250.)

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

- 12 a. Was the settlement reached through arm’s-length bargaining? Yes. On October
13 11, 2017, the Parties participated in a private mediation session with mediator,
14 Hon. Louis M. Meisinger (Ret.). At the conclusion of the mediation, Judge
15 Meisinger made a mediator's proposal. The Parties did not accept the mediator's
16 proposal but continued to engage in settlement discussions with the assistance of
17 Judge Melsinger. On October 25, 2017, the Parties reached an agreement in
18 principle regarding the material terms of a proposed class action settlement that
19 would fully resolve the Action, subject to the Parties entering into a more
20 comprehensive written settlement agreement. On January 9, 2018, the Parties
21 fully executed the Stipulation of Class Action Settlement (Declaration of
22 Matthew Matern ISO Preliminary Approval, ¶¶12-13.)
- 23 b. Were investigation and discovery sufficient to allow counsel and the court to act
24 intelligently? Yes. Prior to reaching the Settlement, Plaintiff and her counsel
25 conducted an investigation into the claims alleged, performed legal research, and

1 interviewed Class Members. Defendant produced various policy documents,
2 sample time and payroll data for the Class Members, and information regarding
3 Releases signed by Class Members. Plaintiff's expert analyzed the sample time
4 and payroll data, which assisted Plaintiff's counsel in preparing a damages model
5 prior to mediation. (*Id.* at ¶¶10-11.)

6 c. Is counsel experienced in similar litigation? Yes. Class Counsel represents that
7 he is experienced in employment litigation, almost exclusively representing
8 employees in both individual and class actions in both state and federal courts
9 throughout California. (*Id.* at ¶¶24-33.)

10 d. What percentage of the class has objected? Zero objectors. (Francisco Decl.,
11 ¶13.)

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

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

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

17 Plaintiff's Counsel calculates the maximum potential damages, exclusive
18 of penalties and interest, to be approximately \$4,296,270.40. This amount
19 constitutes the maximum potential damages in the event that: (1) Plaintiff's meal
20 period, rest period, and minimum/overtime wage claims are certified; (2)
21 Plaintiff is able to establish liability at trial; and (3) the Releases signed by Class
22 Members are determined to be invalid. This maximum potential damages
23 estimate is based on analysis of the sample time and payroll data produced by
24 Defendant, as well as information obtained from Plaintiff and other Class
25 Members. (Matern Decl. ISO Preliminary Approval, ¶15.)

<u>Claims</u>	<u>Maximum Recovery</u>
Meal Period Violations	\$698,822.10
Rest Period Violations	\$3,264,419.88
Off-the-Clock-Work	\$430,903.42
Total	\$4,393,145.40

4,393,145.40 – 97,875.00 (Release Payment) = \$4,296,270.40

(Ibid.)

If the Court upheld the Releases, the value of Plaintiff's and the Class Members' claims would be significantly reduced. 414 of the 493 Class Members, or approximately 84%, executed Releases. Accordingly, in the event the Releases were determined to be valid, Plaintiff calculates the maximum potential damages, exclusive of penalties and interest, as follows: 4,394,145.40 total potential damages x 0.16 (percentage of class members who did not sign Released) = \$703,063.26. (*Id.* at ¶¶15-16.)

In total, Class Counsel estimated Defendant's maximum exposure to be approximately \$4,939,145 and \$703,063.26 at a minimum. Class Counsel obtained a gross settlement valued at \$450,000.00. This is between 10.3% of Defendant's maximum potential exposure and 64% of Defendant's minimum exposure, which is within the "ballpark of reasonableness."

- b. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.
- c. 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 d. Amount offered in settlement. As indicated above, Defendant has agreed to settle
7 for \$450,000. Assuming the Court approves all of the maximum requested
8 deductions, approximately **\$231,488.04** will be available for automatic
9 distribution to participating class members. Assuming full participation, and
10 adding the Release Payment of \$97,875, the average settlement share will be
11 approximately **\$621.44**. $[(\$231,488.04 \text{ Net} + \$97,875 \text{ Release Payment}) \div 530$
12 class members = \$621.44] The highest recovery is approximately \$954.62.

13 (Francisco Decl., ¶11)

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

17 f. Experience and views of counsel. The settlement was negotiated and endorsed
18 by Class Counsel who, as indicated above, is experienced in class action
19 litigation, including wage and hour cases. Class Counsel believes that the
20 settlement is fair, reasonable and adequate for each participating Class Member.

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

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

23 Number of class members: 533

24 Number of notices mailed: 533

25 Number of undeliverable notices: 1

1 Number of opt-outs: 4
2 Number of objections: 0
3 Number of participating class members: 530
4 (Francisco Decl., ¶¶6-13.)

5 The Settlement Administrator's Declaration dated November 28, 2018,
6 indicated there were 3 opt-outs at that time. At oral argument counsel indicated
7 one additional opt-out had been timely received.

8 CONCLUSION: The settlement can be deemed "fair, adequate, and reasonable." The
9 Court finds that the notice was adequate and conforms to due process requirements.

10 **D. ATTORNEY FEES AND COSTS**

11 Class Counsel, the Matern Law Group, PC requests **\$185,408.33** (33 1/3% of the MSA
12 and release payments) for attorney fees and **\$18,103.63** for costs. (Motion ISO Final Approval,
13 20:23-25.)

14 In determining the appropriate amount of a fee award, a percentage calculation is
15 permitted in common fund cases. (*Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503.)
16 Despite any agreement by the parties to the contrary, courts have an independent responsibility
17 to review an attorney fee provision and award only what it determines is reasonable.
18 (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

19 In the instant case, fees are sought pursuant to the percentage method. (Motion ISO Final
20 Approval, 20:25-26.) However, class counsel seek a percentage of both the amounts to be paid
21 to the class members and a percentage of the amounts that were paid to the employees who
22 settled their claims prior to the mediation.

23 The \$185,408.33 fee request is in excess of the lodestar amount which counsel calculated.
24 (see Declaration of Mathew Matern at ¶31) and results in a positive lodestar of 1.09.
25

1 Counsel cites no authority for the proposition that in seeking attorneys' fees based on a
2 "common fund" settlement it is appropriate to consider as part of the "common fund" monies
3 that were not paid to the proposed settlement class but were paid to persons who previously
4 released their claims. While the argument is advanced that the filing of the action prompted the
5 offers to employees there is little evidence of same. Moreover, plaintiffs' counsel cites no
6 authority for the proposition that the "catalyst theory" of recovery of fees under Cal. Code of
7 Civ. Pro. §1021.5 applies where a common fund is created by way of settlement of class action
8 litigation. Further, while the class includes those who executed settlement agreements and
9 requires a reduction in the amount they will receive in settlement of this action to be reduced by
10 the amount they received for signing the releases, and depending on the number of work weeks
11 attributable to each employee, the net financial effect of the settlement may be to unequally
12 distribute the responsibility for fees between the class members. Accordingly, the Court orders
13 fees in the amount of \$149,850 (33 1/3% of \$450,000).

14 As for costs, Class Counsel requests **\$18,103.63**. (Motion ISO Final Approval, 29:22-
15 23.) This is less than the \$20,000 cap provided in the settlement agreement (¶48.c). This
16 amount was disclosed to Class Members in the Notice, and no objections were received.
17 (Francisco Decl. ¶13 and Exhibit A thereto.) Class Counsel incurred actual costs in the amount
18 of **\$18,103.63**. (Matern Decl. ISO Final Approval ¶49 and Exhibit I thereto.)

19 The costs include, but are not limited to, Court Reporter Fees (\$1,384.75), Mediation
20 (\$7,695), Filing Fees (\$1,495), Document Service Fees (\$2,018), Investigation Fees
21 (\$4,168.10), and Expert Fees (\$950). (*Ibid.*)

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

24 For all of the foregoing reasons, costs of **\$18,103.63** are approved.

25 //

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

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

12 Here, the Class Representative requests an enhancement award of **\$5,000**. (Matern Decl.
13 ISO Final Approval ¶50.)

14 Ms. Johnson’s contributions to this litigation included in-person and telephonic meetings
15 with counsel, responding to questions from counsel in preparation for mediation, participating in
16 settlement negotiations, and reviewing the settlement agreement. (Johnson Decl. ISO Final
17 Approval, ¶4.) Ms. Johnson estimates spending at least 30 hours in connection with this
18 litigation. (*Ibid.*) Ms. Johnson also executed a general release as to Defendant, however that
19 release excluded her individual claims.

20 In light of the above, as well as the benefits obtained on behalf of the class, a **\$ 3,000**
21 award for Ms. Johnson appears to be a reasonable inducement for Plaintiff’s participation in the
22 case given that she also participated in a matter as an individual with separate claims.

23 Accordingly, the enhancement in the amount requested is approved.

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1 **F. CLAIMS ADMINISTRATION COSTS**

2 Claims administrator, Simpluris Inc., requests **\$10,000** in compensation for its work in
3 administering this case. (Francisco Decl. ¶15.) At the time of preliminary approval, costs of
4 settlement administration were estimated at \$10,000. (Settlement Agreement ¶48.b.) Class
5 Members were provided with notice of this amount and did not object. (Francisco Decl. ¶13 and
6 Exhibit A thereto.)

7 Accordingly, claims administration costs are approved in the amount of **\$10,000**.

8 **III. CONCLUSION AND ORDER**

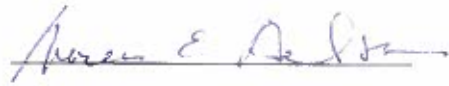
9 Contingent upon the Claims Administrator providing a Declaration indicating the total
10 number of opt-outs received, the Court hereby:

- 11 (1) Grants class certification for purposes of settlement;
- 12 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 13 (3) Awards **\$149,850** in attorney fees to Class Counsel, Matern Law Group, PC;
- 14 (4) Awards **\$18,103.63** in litigation costs to Class Counsel;
- 15 (5) Awards **\$3,000** as a Class Representative Service Award to Betty Johnson;
- 16 (6) Awards **\$10,000** in claims administration costs to Simpluris, Inc.;
- 17 (7) Orders class counsel to lodge the Claims Administrators' declaration regarding the opt-
18 outs and a proposed Judgment, consistent with this ruling and containing the class
19 definition, the full release language, and names of individuals who opted-out by
20 December 21, 2018;
- 21 (8) Orders class counsel to provide notice to the class members pursuant to California
22 Rules of Court, rule 3.771(b); and
- 23 (9) A Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds
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1 is set for August 23, 2019. A Final Report is to be filed by August 16, 2019.

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5 Dated:

12/19/18



6 MAREN E. NELSON

7 Judge of the Superior Court
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