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Superior Court of California
County of Los Angeles

SEP 14 2017

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

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

ZENAIDA MARTINEZ, an individual, and
ROES 1 through 50, on behalf of herself and a
class of others similarly situated,

Plaintiffs,

v.

PHAROS & SHRINE, INC., a California
Corporation, dba PARISS CAFÉ dba GRAND
SPA; DUKE BAY, an individual, SOOJUNG
LIM, an individual, and DOES 1 through 25,
inclusive,

Defendants.

Case No.: BC514381

ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT

Dept.: 307
Date: September 14, 2017
Time: 10:00 a.m.

I. BACKGROUND

This is a wage and hour class action filed by Plaintiff Zenaida Martinez, on behalf of herself and similarly situated employees of Defendants. Plaintiff alleges that she was employed by Defendant Pharos & Shrine, Inc. as a kitchen helper/dishwasher and food deliverer from January, 2011 through March 1, 2013. (Complaint, ¶18.) The complaint also names Duke Bay and Soojung Lim as individuals who are liable as principals and agents of Defendant.

1 Plaintiff alleges that she was not paid overtime, was not provided with all proper meal
2 and rest breaks, and was not provided with accurate itemized wage statements. (*Id.* at ¶¶ 20-22.)
3 Martinez alleges that Defendant reduced her hours after she complained about being assaulted by
4 a manager, with Defendant informing her that it wanted only Korean employees. (*Id.* at ¶¶ 23-
5 25.) After her attorney sought unpaid overtime on her behalf, Plaintiff alleges that her
6 employment was terminated. (*Id.* at ¶¶ 26, 27.) Plaintiff later amended her pleading to add Sergio
7 Villada as a plaintiff, and VNJ Grand, Inc., dba Grand Spa, and Duke Bae and Grace Bae as
8 individual defendants, on the basis that they are officers and presidents of Pharos & Shrine and
9 VNJ. (First Amended Complaint, ¶¶2, 5-8.)

10 The operative First Amended Complaint contains the following mix of class and
11 individual causes of action: (1) Failure to Pay Overtime Wages; (2) Failure to Provide Meal
12 Periods of Compensation in Lieu Thereof; (3) Failure to Provide Rest Periods or Compensation
13 in Lieu Thereof; (4) Failure to Provide Accurate Wage Statements; (5) Conversion of Gratuities;
14 (6) Failure to Pay Waiting Time Penalties; (7) Unfair Competition; (8) Failure to Produce
15 Records (**Individual**); (9) Race and National Origin Discrimination in Violation of FEHA
16 (**Individual**); (10) Retaliation and Wrongful Termination in Violation of FEHA (**Individual**);
17 (11) Retaliation and Wrongful Termination in Violation of Public Policy (**Individual**); (12) For
18 PAGA Penalties.

19 Following mediation, the parties entered into a written settlement agreement. The Court
20 granted preliminary approval of the Settlement Agreement on March 29, 2017.

21 Now before the Court is Plaintiffs' motion for final approval of the Settlement.

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23 \\\

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25 \\\ .

1 **II. DISCUSSION**

2 **A. SETTLEMENT CLASS DEFINITION**

3 Settlement Class Members is defined as, “Plaintiffs and all persons who were employed
4 by Defendants in the State of California in the Covered Positions during the Class Claims
5 Period.” (Settlement Agreement, ¶I.S)

6 Covered Positions means any present and former non-exempt, hourly-paid employees of
7 Defendants Pharos and Shrine, Inc., VNJ Grand, Inc. in California during the Claims Period.
8 (¶I.J)

9 Claims Period means the limitations period applicable to the putative Class Claims in the
10 Class Action, which is July 3, 2009 (four years prior to the date the Class Action was filed)
11 through the date this Settlement Agreement and Settlement are preliminarily approved by the
12 Court [March 29, 2017]. (¶I.D)

13 **B. TERMS OF SETTLEMENT AGREEMENT**

14 The essential terms are as follows:

- 15 • The Maximum Extent of Liability is \$200,000, non-reversionary, plus employer taxes.
16 (¶I.M)
- 17 • The Settlement Class Member Distribution Amount (\$110,250) is the Maximum minus:
- 18 ○ Up to \$66,000 (33%) for attorney fees;
 - 19 ○ Up to \$6,000 for attorney costs;
 - 20 ○ Up to \$5,000 for two \$2,500 service awards;
 - 21 ○ Estimated \$12,000 for claims administration costs; and
 - 22 ○ \$750 [75% of \$1,000 PAGA penalty] to the LWDA. (¶IV.C.2)
- 23 • There is no claim requirement. Defendant agrees to compensate those class members
24 who do not opt out. (¶IV.C.1)
- 25 • The deadline for opting out or objecting is 60 days. (¶V.D, ¶VII.A)

- To opt out, class members must mail a signed written statement that includes the name, current address, and birth date to confirm the class member’s identity, and must state, “I wish to opt-out of the settlement of this case, Martinez, et al. v. Pharos and Shrine, Inc. et al.)” (§V.D)
- If more than 10 class members opt out, Defendant may void the agreement. (§XXVI)

- Settlement payments will be calculated according to workweeks and employment status. A flat \$100 will be paid to all class members (who do not opt out) whose employment was terminated between July 3, 2012 and the date of preliminary approval [March 29, 2017]. Payments will be calculated by summing the total number of workweeks for all class members who did not opt out, dividing that number by the individual number of workweeks of each class member who do not opt out, and multiplying that class member’s proportional share by the Distribution Amount. (§IV.C.3)
- For tax purposes, payments will be considered 20% wages and 80% penalties. (§IV.D) Defendants will pay Defendants’ share of payroll taxes and withholding.
- Checks will be valid for 180 days from the date of mailing and thereafter, funds will be sent to the state’s unclaimed property fund. (§IV.E.2)
- The claims administrator will be ILYM Group. (§I.B)
- The named Plaintiffs and class members who do not opt out will release certain claims against Defendants. (§VIII)

C. ANALYSIS OF SETTLEMENT AGREEMENT

1. Standards for Final Fairness Determination

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” (Cal. Rules of Court, rule 3.769(g).) “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The

1 judgment must include a provision for the retention of the court's jurisdiction over the parties to
2 enforce the terms of the judgment. The court may not enter an order dismissing the action at the
3 same time as, or after, entry of judgment.” (Cal. Rules of Court, rule 3.769(h).)

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

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

1 consider factors such as “the strength of plaintiffs’ case, the risk, expense, complexity and likely
2 duration of further litigation, the risk of maintaining class action status through trial, the amount
3 offered in settlement, the extent of discovery completed and stage of the proceedings, the
4 experience and views of counsel, the presence of a governmental participant, and the reaction of
5 the class members to the proposed settlement.” (*Id.* at 128.) “Th[is] list of factors is not
6 exclusive and the court is free to engage in a balancing and weighing of factors depending on the
7 circumstances of each case.” (*Wershba supra*, 91 Cal.App.4th at pg. 245.)

8 Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order
9 to be fair and reasonable. Compromise is inherent and necessary in the settlement process.
10 Thus, even if ‘the relief afforded by the proposed settlement is substantially narrower than it
11 would be if the suits were to be successfully litigated,’ this is no bar to a class settlement
12 because ‘the public interest may indeed be served by a voluntary settlement in which each side
13 gives ground in the interest of avoiding litigation.’” (*Wershba, supra*, 91 Cal.App.4th at pg.
14 250.)

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

- 16 a. Was the settlement reached through arm’s-length bargaining? Yes. The parties
17 engaged in mediation before Steve Cerveris on June 25, 2014. While the case did
18 not settle that day, the parties continued to negotiate for a year thereafter,
19 ultimately agreeing to accept the mediator’s proposal. (Declaration of Morris
20 Nazarian ISO Preliminary Approval, ¶7.)
- 21 b. Were investigation and discovery sufficient to allow counsel and the court to act
22 intelligently? Yes. Class Counsel investigated the class claims by, among other
23 things, reviewing timesheets, paystubs, payroll records, financial statements,
24 bank statements and accounting records. (*Id.* at ¶6.) Discovery was sufficient to
25 permit Class Counsel to evaluate the strength of the class claims and of

1 Defendant's potential defenses, as well as Defendant's ability to pay. (*Id.* at ¶¶4-
2 6.)

- 3 c. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in
4 class action litigation, including wage and hour class actions. (*Id.* at ¶12.)
- 5 d. What percentage of the class has objected? Zero. (Declaration of Stephanie
6 Molina, ¶11.)

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

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

- 9 a. Strength of Plaintiff's case. "The most important factor is the strength of the case
10 for plaintiff on the merits, balanced against the amount offered in settlement."
11 (*Kullar, supra*, 168 Cal.App.4th at pg. 130.) Here, Class Counsel determined that
12 \$200,000 is a reasonable settlement given the complex nature of the case and the
13 potential likelihood of success. (Nazarian Decl. ISO Preliminary Approval, ¶14.)
14 Class Counsel analyzed payroll journals produced by Defendants and obtained
15 documents pertaining to Defendants' financial condition, all of which was taken
16 into consideration. (Further Briefing at 6:23-18.) In light of all known facts, and
17 taking into consideration the inherent risks of litigation and potential appeal, and
18 the risks associated with Defendants' financial condition, Class Counsel believes
19 that the settlement is in the best interest of the class. (Further Briefing at 7:18-
20 21.) Plaintiff's expert has calculated the potential value of class damages as
21 follows: \$346,854.24 for overtime, \$513,264.63 for meal and rest breaks,
22 \$331,128 for waiting time penalties and \$84,600 for wage statements. (Second
23 Further Briefing at 2:22- 3:12.) The maximum damage estimate is therefore
24 \$1,275,846.87. The \$200,000 non-reversionary settlement provides recovery of
25

1 approximately 15.67% of the estimated maximum value of the claims, which is
2 within the ballpark of reasonableness.

- 3 b. Risk, expense, complexity and likely duration of further litigation. Given the
4 nature of the class claims, the case is likely to be expensive and lengthy to try.
5 Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong
6 the litigation as well as any recovery by the class members.
- 7 c. Risk of maintaining class action status through trial. Even if a class is certified,
8 there is always a risk of decertification. (*Weinstat v. Dentsply Intern., Inc.*
9 (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that
10 trial courts should retain some flexibility in conducting class actions, which
11 means, under suitable circumstances, entertaining successive motions on
12 certification if the court subsequently discovers that the propriety of a class action
13 is not appropriate.”].)
- 14 d. Amount offered in settlement. As indicated above, the gross settlement is
15 \$200,000. Assuming that the Court approves all of the maximum requested
16 deductions, approximately \$110,250 will be available distribution to class
17 members who submit claims. Assuming full participation, the average settlement
18 share will be approximately \$408. [$\$110,250 \div 270 \text{ class member} = \408.33].
- 19 e. Extent of discovery completed and stage of the proceedings. As discussed above,
20 at the time of the settlement, the parties had conducted extensive discovery.
- 21 f. Experience and views of counsel. The settlement was negotiated and endorsed
22 by Class Counsel who, as indicated above, is experienced in class action
23 litigation, including wage and hour cases.
- 24 g. Presence of a governmental participant. This factor is not applicable here.
- 25 h. Reaction of the class members to the proposed settlement.

| | | |
|---|--|------------|
| 1 | Number of class members: | 259 |
| 2 | Number of notices mailed: | 259 |
| 3 | Number of undeliverable notices: | 11 |
| 4 | Number of opt-outs: | 3 |
| 5 | Number of objections: | 0 |
| 6 | Number of participating class members: | 256 |

7 (Molina Decl., ¶¶4-11.)

8 CONCLUSION: The settlement can be deemed “fair, adequate, and reasonable.”

9 **D. ATTORNEY FEES AND COSTS**

10 Class Counsel requests **\$66,000** for attorney fees and **\$6,000** for costs.

11 In determining the appropriate amount of a fee award, courts may use the lodestar
 12 method, applying a multiplier where appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22
 13 Cal.4th 1084, 1095-96.) A percentage calculation is permitted in common fund cases. (*Laffitte v.*
 14 *Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the
 15 contrary, courts have an independent responsibility to review an attorney fee provision and
 16 award only what it determines is reasonable. (*Garabedian v. Los Angeles Cellular Telephone*
 17 *Company* (2004) 118 Cal.App.4th 123, 128.)

18 In the instant case, fees are sought pursuant to the percentage method. (Declaration of
 19 Morris Nazarian ISO Final Approval, ¶22.) The \$66,000 fee request is 1/3 of the \$200,000 gross
 20 settlement amount, which is average. (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th
 21 545, 558, fn. 13 [“Empirical studies show that, regardless whether the percentage method or the
 22 lodestar method is used, fee awards in class actions average around one-third of the recovery.”].)

23 Here, the \$66,000 fee request represents a reasonable percentage of the total funds paid
 24 by Defendant. Further, the notice expressly advised class members of the fee request, and no one
 25 objected. Accordingly, the Court awards fees in the amount requested.

1 As for costs, Class Counsel requests \$6,000, which is equal to the \$6,000 maximum
2 provided for in the Settlement Agreement. (¶C.2.) To date, Class Counsel has incurred actual
3 costs in the amount of \$7,360.57. (Nazarian Decl. ISO Final Approval, ¶32.) The costs to date
4 include mediation (\$2,500), expert fee (\$2,500), complex fee (\$1,000), and Case Anywhere
5 (\$836.60). (*Id.* at Exhibit C.)

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

8 For all of the foregoing reasons, costs of \$6,000 are approved.

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

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

20 Here, the named plaintiffs, Zenaida Martinez and Sergio Villada, each request a \$2,500
21 service award (\$5,000 total). Both have filed declarations describing their contributions to this
22 litigation.

23 Plaintiff Zenaida Martinez is a former employee of Defendant. (Declaration of Zenaida
24 Martinez, ¶2.) She estimates that she devoted approximately 80 hours to activities relating to
25 this litigation. (*Id.* at ¶15.) These activities included communicating with Class Counsel and

1 with her fellow class members, locating and organizing documents for the case, reviewing
2 documents sent to her by Class Counsel, and preparing for and attending the mediation. (*Ibid.*)

3 Plaintiff Sergio Villada is a former employee of Defendant. (Declaration of Sergio
4 Villada, ¶2.) He estimates that he devoted approximately 60 hours to activities relating to this
5 litigation. (*Id.* at ¶15.) These activities included communicating with Class Counsel and with his
6 fellow class members, locating and organizing documents for the case, reviewing documents
7 sent to him by Class Counsel, and assisting in mediation preparation. (*Ibid.*)

8 In light of the above, as well as the benefits obtained on behalf of the class, \$2,500 per
9 Class Representative (\$5,000 total) appears to be a reasonable inducement for Plaintiffs'
10 participation in this case. Incentive awards in the amount of \$2,500 for each of the two class
11 representatives are approved.

12 **F. CLAIMS ADMINISTRATION COSTS**

13 Claims administrator, ILYM Group, Inc., requests **\$12,000** in compensation for its work
14 in administering this case. (Molina Decl., ¶15.) At the time of preliminary approval, costs for
15 settlement administration were estimated to be \$12,000. (Settlement Agreement, ¶C.2.) This
16 amount was also disclosed to class members and deemed unobjectionable.

17 Accordingly, claims administration costs are approved in the amount of \$12,000.

18 **III. CONCLUSION AND ORDER**

19 **A. RULING**

20 ~~Conditioned upon the submission of evidence of compliance with Labor Code §2699(7)(2)~~
21 ~~(submission of the settlement agreement to the LWDA), the following will be the Court's~~
22 ~~ruling.~~

23 The Court hereby:

- 24 (1) Grants class certification for purposes of settlement;
25 (2) Grants final approval of the settlement as fair, adequate, and reasonable;

- 1 (3) Awards \$66,000 in attorney fees to Law Offices of Morris Nazarian;
2 (4) Awards \$6,000 in litigation costs to Law Offices of Morris Nazarian;
3 (5) Awards \$5,000 as Class Representative Service Awards to Zenaida Martinez (\$2,500)
4 and Sergio Villada (\$2,500);
5 (6) Awards \$12,000 in claims administration costs to ILYM Group, Inc.;
6 (7) Approves payment of \$750 (75% of \$1,000 PAGA penalty) to the LWDA;
7 (8) Finds good cause is shown for payment of residual funds to the Unclaimed Wage Fund
8 as it provides the best opportunity for class members to recover the wages alleged to be
9 due to them;
10 (9) Orders class counsel to lodge a proposed Judgment, consistent with this ruling and
11 containing the class definition, release language, and the names of all class members
12 who opted out, by _____ 9/18 _____
13 2017;
14 (10) Orders class counsel to provide notice to the class members pursuant to California
15 Rules of Court, rule 3.771(b); and
16 (11) A Non-Appeal Case Review re: Final Report re: Distribution of Settlement Funds
17 is set for _____ 9/31/18 _____, at 8:30 am
18 Final Report is to be filed by _____ 5/24/18 _____.

19
20 Dated:

9/14/17

Maren E. Nelson

MAREN E. NELSON

Judge of the Superior Court