UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 11-01479-JVS (RNBx)	Date	January 7, 2013
Title	Tamara Micciche v. Schneider Electric, et al.		

Present: The Honorable	James V. Selna

Karla J. Tunis	Not Present
Deputy Clerk	Court Reporter

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: (IN CHAMBERS) Order Granting Plaintiffs' Motion for Final Approval of Class Settlement

The Court, having been informed by the parties that they submit on the Court's tentative ruling, previously issued, hereby GRANTS the plaintiffs' motion and rules in accordance with the tentative ruling as follows:

Plaintiff Tamara Micciche ("Micciche"), on behalf of herself and others similarly situated (collectively, "Plaintiffs"), and defendants Schneider Electric USA, Inc. ("Schneider Electric") and American Power Conversion ("APC") (collectively "Defendants") jointly move for final approval of a proposed class action settlement. (Mot., Docket No 30.) For the following reasons, the motion is GRANTED.

I. Background

Defendants APC and Schneider Electric are subsidiaries of holding company Schneider Electric Holdings, Inc. (Mot. Br. 3.) Micciche worked as an Inside Service Sales Representative from June 12, 2007 to April 2011. (Id.) The current putative class complaint alleges causes of action for **(**1) failure to pay overtime under the Fair Labor and Standards Act; (2) failure to pay overtime compensation; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to provide itemized statements; (6) failure to pay wages twice monthly; (7) failure to pay wages for hours worked; (8) failure to reimburse business expenses; (9) penalties under California's Private Attorneys General Act of 2004 ("PAGA"); and (10) unlawful competition and unfair business practices. (First Amended Complaint ("FAC"), Docket No. 27.)

The parties engaged in extensive investigation, discovery, comprehensive settlement negotiations, and a mediation session with an experienced mediator. (Hart Decl. ¶¶ 5–16, Docket No. 30-2; Quintilone Decl. ¶¶ 7–10, Docket No. 30-3.) This resulted in a Stipulation of Settlement ("Settlement") that would resolve all above mentioned claims.[1] (Hart Decl. ¶ 16; Quintilone Decl ¶ 10.) The Settlement includes a total payment of $1,085,000 from APC. (Settlement ¶ 17, Docket No. 20-1.) From this amount, deductions include: (a) up to $325,000 for payment of attorneys' fees, which is approximately 30 percent of the total Settlement fund; (b) up to $20,000 in attorneys' costs; (c) $10,000 for Micciche as Class Representative; (d) up to $15,000 for claims administration expenses; and (e) $5,000 to the California Labor & Workforce Development Agency to resolve claims under PAGA. (Id. ¶ 18(a)–(e).)

The estimated remaining balance of $709,500 ("Net Settlement Amount" or "NSA") will be allocated to claimants. (Id.) To determine the amount due each claimant, the administrator will take the NSA value and divide it by the total number of worker-weeks expended by the class during the class period—estimated as 65,579 worker-weeks—to obtain the weekly rate. (Id. ¶ 19(a)–(b).) This value is then multiplied by the number of weeks a claimant worked during the class period, subject to a threshold requiring that 50 percent of the NSA be allocated for distribution to claimants. (Id. ¶ 19(b), (e).) Given the number of returned claim forms, the 50 percent threshold has been met. (Mot. Br. 6.)

The parties jointly seek an order granting final approval of the Settlement, dismissal of the case with prejudice, and payment of attorneys' fees and costs and incentive compensation to Micciche. The Court now addresses the merits of the motion.

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[1] The parties have attached their initial Stipulation of Settlement to the present motion. (See Hart Decl. ¶ 16 Ex. A.) However, after a hearing on the parties' motion for preliminary approval, the parties noticed an Amended Joint Motion for Preliminary Approval of Class Action Settlement. (Amend. Mot., Docket No. 20.) In light of the Court's discussion, the parties also restructured the Stipulation of Settlement. (See id., Hart Decl. Ex. A ("Settlement"), Docket No. 20-1.) Therefore, the Court will examine the terms of the Second Stipulation of Settlement in its determination of final approval. (See Settlement, Docket No. 20-1; [Proposed] Order Granting Final Approval Ex. A, Docket No. 31.)

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II. Class Certification for Purposes of Settlement

The parties jointly request that the Court finally certify the following proposed Settlement Class:

> [A]ll persons currently or formerly employed by American Power Corporation in the state of California who worked as non-exempt employees at any time from June 12, 2007 until the date the Court grants preliminary approval or July 31, 2012, whichever is earlier.

(Hart Decl. Ex. A ("Stipulation of Settlement") ¶ 10.) The Court provisionally certified this Settlement Class on August 20, 2012. (Order Granting Class Cert. 3–8, Docket No. 26.) Nothing has changed in the interim that would warrant a deviation from the Court's prior ruling. Accordingly, for the reasons specified in the August 20, 2012 Order, the Court certifies the Settlement Class for final approval of the Settlement.

III. Approval of Class Settlement

A final class settlement will be approved only if the parties show (1) that reasonable notice was given to all class members who would be bound by the settlement; (2) that members were provided the opportunity to object to the settlement; and (3) that the settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e). The Court finds that Class Members were given reasonable notice and a sufficient opportunity to object to the Settlement, and that the Settlement is fair, reasonable, and adequate.

A. Notice Requirement

"Adequate notice is critical to court approval of a class [action] settlement." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1025 (9th Cir. 1998); Fed. R. Civ. P. 23(e)(1). In this case, the Settlement Administrator mailed class notice packets to 361 Class Members via first class mail on September 26, 2012. (Bui Decl. ¶ 7, Docket No. 30-6.) As of January 2, 2013, thirty-one notice packets were returned as undeliverable. (Bui Suppl. Decl. ¶ 9, Docket No. 32.) Of those returned, the Settlement Administrator successfully delivered all but four notice packets after efforts to locate more current addresses. (Id.) As of January 2, 2013, the Settlement Administrator received 242 claim forms. (Id. ¶ 10.) Of those claim forms, two are invalid because of duplicate submission

and three are untimely. (Id.) Excluding these claim forms, the 237 claim forms represent 65.65 percent of all class members and 70.19 percent of all work weeks at issue. (Id.)

The Court finds that the Class Members have been provided with adequate notice. The notice clearly and accurately informs Class Members of their right to submit claims under the Settlement or opt out of the Class, and the processes for doing either. Per the Court's order, the notice was corrected to inform the Class of Federal Rule of Civil Procedure 23(c)(2)(B)(iv). Furthermore, the Court previously found that individual notice sent by mail is the best practical notice in light of there being both current and former employees in the class. The number of returned claim forms indicate that notice has been effective, and the Settlement Administrator has made considerable efforts to notify Class Members. Accordingly, the Court finds that notice has been adequate to support final approval of the Settlement.

B. Fair, Reasonable, and Adequate Settlement Terms

"In evaluating a class action settlement under Rule 23(e), the district court determines whether the settlement is fundamentally fair, reasonable, and adequate." In re Syncor ERISA Litig., 516 F.3d 1095, 1100 (9th Cir. 2008) (citing Fed. R. Civ. P. 23(e)). "The purpose of Rule 23(e) is to protect the unnamed members of the class from unjust or unfair settlements affecting their rights." Id. To determine whether a class action settlement "is fair, reasonable, and adequate," the Court must analyze the terms of the agreement. Fed. R. Civ. P. 23(e)(2). However, "there is a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." In re Syncor, 516 F.3d at 1101. "[A] district court has both the duty and the broad authority to exercise control over a class action and to enter appropriate orders governing the conduct of counsel and parties." Hanlon 150 F.3d at 1025 (9th Cir. 1998) (quoting Gulf Oil Co. v. Bernard, 452 U.S. 89, 100 (1981)). Nevertheless, the district court does not have the "ability to delete, modify or substitute certain provisions." Id. at 1026 (internal quotation marks and citation omitted). "The settlement must stand or fall in its entirety." Id. In reviewing the settlement as a whole, Hanlon further instructs that:

> [a]ssessing a settlement proposal requires the district court to balance a number of factors: the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount

> offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Id.; see also Staton v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003).

The Court previously analyzed the majority of these factors when it preliminarily approved the Settlement. As noted in the previous order, the Court finds no evidence that the Settlement was the product of fraud or collusion; all negotiations seem to have occurred at arms length. The parties describe significant discovery efforts and thorough analyses of the claims. (Hart Decl. ¶¶ 6–14; Quintilone Decl. ¶¶ 7–9.) All negotiations seem to have occurred at arms length, and the parties have engaged in an effective mediation session. (Hart Decl. ¶ 11; Quintilone Decl. ¶ 10.) For the reasons articulated in the previous order and the additional reasons set forth below, the Court finds that the Settlement is fair, adequate, and reasonable.

Class Members have reacted positively to the Settlement. The deadline for submitting a claim was November 26, 2012, and the settlement administrator received 237 proper claim forms. (Bui Suppl. Decl. ¶ 10.) Moreover, the deadline for objecting to the Settlement was December 5, 2012, and as of January 2, 2013, no Class Member has objected or opted out of the Settlement. (Id. ¶¶ 11–12.) The 237 claim forms represent 65.65 percent of all class members and 70.19 percent of all work weeks at issue. (Id.) The total payout to Class Members is estimated at $498,020.47. (Id.) The average settlement is approximately $2,101.35 and the highest settlement share is approximately $2,812.31. (Id.) The fact that a high percentage of claims were submitted, and the lack of objections and opt-outs suggest that the Settlement is fair and reasonable.

Furthermore, per the Court's order, Micciche provided an estimate of the likely amount of recovery if she prevails at trial. Based on detailed calculations, Micciche estimates that the potential maximum recovery is $10,097,019. (Quintilone Decl. ¶ 13.) The Settlement amount of $1,085,000 is approximately 10 percent of the full trial verdict on all causes of action. (Id.) The Court finds that the Settlement amount compares favorably to the uncertainties associated with

continued litigation. Nat'l Rural Telecomm. Coop. v. Hughes Commc'ns Galaxy, Inc., 221 F.R.D. 523, 526 (C.D. Cal. 2004); see also Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1242 (9th Cir. 1998) (finding that a proposed settlement may be acceptable even though it amounts to only a full fraction of the potential recovery that might be available to class members at trial). Micciche contends that the putative class action claims have merit and are supported by substantial evidence (Settlement ¶ 6), while Defendants deny each and every allegation of wrongdoing asserted by and maintain that they would be able to defeat a class certification motion or claims on the merits (Settlement ¶ 6; Hart Decl. ¶ 12). However, both parties recognize the risks associated with further litigation. Specifically, Micciche recognizes the risks of further delay, open issues pending in the California Supreme Court, issues related to certification, and the Defendants' affirmative defenses. (Quintilone Decl. ¶ 16.) Therefore, along with experienced counsel, she has determined that the Settlement is in their best interests. (Micciche Decl. ¶ 4, Docket No. 30-7; Quintilone Decl. ¶ 16.) Defendants have concluded that the Settlement is in its best interests because of the risks associated with further litigation, including delay, expense, and potential appellate issues. (Hart Decl. ¶ 15.) Accordingly, the risks of continued litigation are high and recovery uncertain, absent settlement. "In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." Nat'l Rural Telecomm., 221 F.R.D. at 526. Thus, settlement will likely serve the interests of the class members better than litigation.

In sum, given the positive reaction to the Settlement and the risks involved with further litigation, the Court finds that the Settlement terms are fair, reasonable, and adequate.

IV. Class Representative Incentive Award

Courts have discretion to issue incentive awards to class representatives. Rodriguez v. West Publ'g Corp., 563 F.3d 948, 958–59 (9th Cir. 2009). The awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and sometimes, to recognize their willingness to act as a private attorney general." Id.

Here, the amended Settlement awards $10,000 to Micciche. (Settlement ¶ 18(b).) The Court previously found that the award is appropriate given the overall settlement value. (Order Granting Preliminary Approval 13, Docket No. 26.) The Court also finds that Micciche has been actively involved in this case. She has corresponded extensively with class counsel, assisted in the discovery process, and prepared and attended her deposition. (Micciche Decl. ¶ 12.) Micciche estimates that she has spent over 40 hours assisting with this case. (Id. ¶ 14.) The Court finds that Micciche's devotion of time and the possible repercussions of the case on her future employment prospects warrants incentive compensation. The modest award is fair, adequate, and reasonable in light of her involvement.

V. Attorneys' Fees and Costs

The Court may award reasonable attorneys' fees and costs in certified class actions where they are authorized by law or by the parties' agreement. Fed. R. Civ. P. 23(h). Even when parties have agreed to a fee award, courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable. In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 941 (9th Cir. 2011). Here, class counsel seeks an award of $325,500 of attorneys fees and $20,000 in costs, which is approximately 30 percent of the $1,085,000 Settlement. (Mot. for Att'y Fees, Docket No. 30-8.)

When a settlement creates a common fund for the benefit of the entire class, as it does in this case, the Court has discretion to evaluate the reasonableness of the award under the percentage-of-recovery ("POR") method or the lodestar calculation method. Id. at 942. "Because the benefit to the class is easily quantified in common-fund settlements, we have allowed courts to award attorneys a percentage of the common fund in lieu of the often more time-consuming task of calculating the lodestar." Id. However, courts routinely cross-check the POR calculation with the lodestar method. See Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1050 (9th Cir. 2002). The primary, if not singular, purpose of the cross-check is to ensure counsel is not overcompensated. See, e.g., In re Bluetooth, 654 F.3d at 944–45 (explaining how a cross-check guards against unreasonably high fee awards). Here, the Court first analyzes the reasonableness of the fee award under the POR method, then performs a cross-check using the lodestar method.

The benchmark POR for attorneys' fees in a common fund settlement is 25 percent of the total settlement fund. In re Bluetooth, 654 F.3d at 942; see Boeing Co. v. Van Gemert, 444 U.S. 472, 478-80 (1980). The percentage can be adjusted from the benchmark after taking into account several factors, such as the results achieved, the risk involved in undertaking the litigation, the generation of benefits beyond the cash settlement fund, the market rate for services, the contingent nature of the fee, the financial burden to counsel, the skill required, the quality of the work, and the awards in similar cases. Vizcaino, 290 F.3d at 1048; Six Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990).

In this case, the Settlement provides for an attorneys' fee award that exceeds the 25 percent benchmark used in the Ninth Circuit. However, the Court is convinced that a 30 percent award is a reasonable departure from the benchmark given the typical contingency fee in this type of case. (Quintilone Decl. ¶¶ 18–19.) Furthermore, as discussed further below, awarding the benchmark 25 percent would result in awarding an amount lower than the class counsel's lodestar calculation. Accordingly, under the POR method, the award is reasonable.

Performing a lodestar cross-check confirms that the fees award will not overcompensate class counsel. "The lodestar calculation begins with the multiplication of the number of hours reasonably expended by a reasonable hourly rate." Hanlon, 150 F.3d at 1029. The Court has reviewed the proposed request for attorneys' fees. (See Quintilone Decl. Ex. A; Cooper Decl. Ex. B, Docket No. 30-5; Carter Decl. Ex. A, Docket No. 30-4.)

Law Firm	Attorney/Staff	Hours	Rate	Total

Quintilone & Associates[2]	Richard Quintilone	384.9	$600	$230,940
	Associate	90.3	$250	$22,575
	Paralegal	54.8	$90	$4,932
The Carter Law Firm	Roger Carter	77.10	$700	$53,970
	Bianca Sofonio	35	$450	$15,750
The Cooper Law Firm	Scott Cooper	51.2	$650	$33,280
	TOTAL	693.3[3]		$361,447

Mr. Quintilone has been practicing since 1999 and has had many years of experience in prosecuting wage and hour class actions. (Quintilone Decl. ¶ 15.) The Court finds that compared with other California law firms (Quintilone Decl. ¶ 26 & Ex. B), his hourly rate is within the range of reasonableness.[4] Mr. Carter has been practicing since 1989 and has handled over one hundred wage and hour class actions. (Carter Decl. ¶ 2.) The Court finds his hourly rate reasonable as well. Furthermore, Ms. Sofonio, an associate at Mr. Carter's firm, has been practicing

[2] Quintilone & Associates did not provide a specific breakdown of hours expended by partner, associate, and paralegal, but merely stated that the firm billed 530.7 hours for a total of $258.447. (See Quintilone Decl. ¶ 23 & Ex. A.) However, it did provide the billable rate and the total amount owed for each of the positions. (Id. ¶ 23.) Based on these figures, the Court calculated the hours expended by taking the total amount owed and dividing by the billable rate.

[3] Class counsel's motion notes that the collective hours expended totals 638.5 hours. However, based on the figures in the exhibits and declarations, the Court calculates this total as 693.3 hours.

[4] Quintilone & Associates does not provide information about the experience of its associate, who billed at a rate of $250 per hour. However, the Court finds that this rate is reasonable for junior associates when compared to the rates of other California law firms. (See Quintilone Decl. Ex. B.)

since 1995and appears to have the requisite experience to justify the request for attorneys' fees. (Id. ¶ 11.) Lastly, Mr. Cooper has been practicing law for over seventeen years and his practice has focused almost exclusively on wage and hour class actions since early 2007. (Cooper Decl. ¶¶ 6, 11.) Similarly, based on Mr. Cooper's experience and the rates of other California law firms, the Court finds his hourly rate reasonable.

Each firm has submitted detailed time records. (See Quintilone Decl. Ex. A.; Carter Decl. Ex. B; Cooper Decl. Ex. A.) The Court finds that the time expended by each firm was reasonable.

Class counsel does not request a multiplier as the lodestar exceeds the total fee requested of $325,500.

Furthermore, class counsel also seeks reimbursement of litigation costs in the total amount of $8,358.48. (Mot. for Att'y Fees Br. 12.) Based on the Court's review, the costs are reasonable. (See Quintilone Decl. Ex. C; Carter Decl. Ex. A; Cooper Decl. Ex. B.)

In sum, based on a corresponding lodestar check, the Court finds that a fee award of $325,500, amounting to 30 percent of the gross settlement, is appropriate in this case. Moreover, the request for litigation costs in the amount of $8,358.48 is reasonable.

VI. Conclusion

For the foregoing reasons, the Court GRANTS final approval of the class action Settlement. The Court finds that Settlement is fair, adequate, and reasonable; notice accords with due process; no class members have objected; and there has been a requisite showing for the award of reasonable attorneys' fees and costs and an incentive award to Micciche.

IT IS SO ORDERED.

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