

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GABE WRIGHT and PAUL CROWLEY,
individually and on behalf of
all persons similarly situated,

 Plaintiffs,

 v.

LINKUS ENTERPRISES, INC., RFG
CORPORATION, RIDGELINE SERVICES,
INC., and PREMIER PERSONNEL and
DOES 1 to 10, inclusive,

 Defendants.

No. 2:07-cv-01347-MCE-CMK

**ORDER ON MOTION FOR FINAL
APPROVAL OF THE JOINT
STIPULATION OF SETTLEMENT**

 Presently before the Court is Plaintiffs' Motion for Final Approval of the Joint Stipulation of Settlement, filed on December 15, 2009 after the Court preliminarily approved the parties' Settlement on July 29, 2009 and thereafter directed that notice be provided to class members concerning the proposed Settlement.

 Pursuant to the July 29, 2009 Preliminary Approval Order, Notice was given to the Class by mailing a Notice and Claim Form on or about September 16, 2009. The Notice advised Class Members of

1 the opportunity to object to the Joint Stipulation of Settlement
2 and/or Class Counsel's request for an award of attorneys' fees and
3 costs and Class Representative enhancements, and of the opportunity
4 for Class Members to exclude themselves from the Class. The Notice
5 further provided, in accordance with the provisions of the Court's
6 preliminary approval, that any objection to the Settlement had to
7 be submitted not later than November 2, 2009. The Notice went on
8 to unequivocally state that failure to comply with the deadline for
9 objection would constitute a waiver of any objection, and that such
10 failure would foreclose "any objection or appealing from any order
11 or judgment entered on the Settlement." No objections were
12 received by the Court, Counsel, or Claims Administrator within the
13 relevant time period. Consequently, on December 15, 2009, Class
14 Counsel filed the instant Motion for Final Approval of Class Action
15 Settlement and supporting papers, as well as a request for an award
16 of attorneys' fees and costs. Defendants have not opposed the
17 motion.

18 Nonetheless, on January 21, 2009, nearly two months after the
19 time period for registering any objection expired, and just one
20 week before the scheduled hearing on Plaintiffs' Motion for final
21 approval, counsel for a Nevada class member, Joe Valdez, filed
22 objections to the Settlement. That objection is clearly tardy.
23 While Valdez' counsel urges the Court to overlook the timeliness
24 issue on grounds that neither he nor his client knew about the
25 proposed Settlement until December 29, 2009, Valdez himself
26 presented no sworn declaration that he had not received the Notice
27 and Claim Form in September of 2009.

28 ///

1 Moreover, and even more importantly, Valdez' counsel admit that at
2 the very least he and his client knew about the pending Settlement
3 more than three weeks before the scheduled hearing, but failed to
4 file anything with the court until the very eve of final approval
5 despite that knowledge. That omission alone is enough to disregard
6 Valdez' objection.

7 Irrespective of whether or not the Valdez objection is
8 considered, however, it is uncontroverted that the proposed
9 Settlement has been resoundingly supported by the remainder of the
10 Class. Nearly 50 percent of the Class of some 3,404 individuals
11 (1,563) have submitted claims forms and have expressed their desire
12 to participate in the Settlement if approved by the Court. Only
13 two potential class members have opted out of the Settlement and
14 Mr. Valdez is the only person to have raised any objection.

15 As pertinent case law has confirmed, "the absence of a large
16 number of objections to a proposed class action settlement raises a
17 strong presumption that the terms of the proposed settlement are
18 favorable to the class members." In re Omnivision Technologies,
19 Inc., 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008). "While the
20 presence of objecting members is a relevant factor, it is not
21 dispositive even when many class members object." League of Martin
22 v. City of Milwaukee, 588 F. Supp. 1004, 1022 (E.D. Wis. 1984),
23 citing Armstrong v. Board of School Directors, 616 F.2d 305, 326
24 (7th Cir. 1980). Indeed, courts have approved settlements despite
25 objections from significant numbers of class members. Id., see
26 also Reed v. General Motors Corp., 703 F.2d 170 (5th Cir. 1983) (no
27 error where lower court approved settlement despite objection from
28 some 41 percent of class members).

1 Here, after having read and fully considered the terms of the
2 Joint Stipulation of Settlement, the Motion for Final Approval of
3 the Joint Stipulation of Settlement, the request for the Class
4 Representative enhancements, and the request for an award of
5 attorneys' fees and costs and all other documents on file in this
6 matter, the Court finds that the Settlement is fair, reasonable,
7 and adequate.

8 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

9 1. The Court, for purposes of this Order, adopts the
10 definitions of "Class" and "Class Members" as follows"

11 "All individuals who did not opt out and who
12 from July 6, 2003 through July 29, 2009: (1) were
13 employed as satellite technicians in California,
14 Nevada or Oregon by LINKUS; or (2) were categorized
15 by LINKUS as PEO employees and who performed work
16 as a satellite technician through Premier
17 Personnel, RFG, or Ridgeline (and all fictitious
18 business names of those entities) for LINKUS.
19 Class Members are part of one or more Subclasses
20 which are defined below:

21 Subclass One: All individuals who, as of the
22 date of the Final Approval Hearing on the
23 Settlement have filed with the Court a claim form
24 consenting to join this action as a plaintiff
25 pursuant to 29 U.S.C. section 261(b) of the Fair
26 Labor Standards Act, and who, between July 6, 2003
27 and July 29, 2009 were:

28 ///

1 (1) directly employed as satellite technicians in
2 California, Nevada or Oregon by LINKUS; or (2) were
3 categorized by LINKUS as PEO employees and who
4 performed work as a satellite technician LINKUS
5 through Premier Personnel, RFG, or Ridgeline (and
6 all fictitious business names of those entities).

7 Subclass Two: All individuals who, between
8 July 6, 2003 and July 29, 2009 were: (1) employed
9 as satellite technicians in California, Nevada or
10 Oregon by LINKUS; or (2) categorized by LINKUS as
11 PEO employees and who performed work for LINKUS as
12 a satellite technician through Premier Personnel,
13 RFG, or Ridgeline (and all fictitious business
14 names of those entities."

15 2. The Court has personal jurisdiction over all Class
16 Members, except for those who have timely opted out of the Class,
17 and has subject matter jurisdiction over this action, including,
18 without limitation, jurisdiction to (1) approve the Settlement,
19 (2) issue an award of attorneys' fees and costs to Class Counsel and
20 enhancement awards to the Class Representatives; and (3) entering
21 final judgment that dismisses the action with prejudice after all
22 sums due and owing under the Settlement are paid and which will
23 permanently bar all claims released by the Settlement except for
24 claims under the Fair Labor Standards Act of those persons who did
25 not submit a request to join the Class.

26 3. The Class is certified.

27 ///

28 ///

1 4. The Settlement is, after hearing, determined to be fair,
2 reasonable, and in the best interests of the Class. It is,
3 therefore, approved. With respect to the determination that the
4 Joint Stipulation of Settlement is fair, reasonable and adequate,
5 the Court specifically notes that the outcome of a trial on the
6 merits was by no means certain, the litigation involved highly
7 complex factual and legal issues, the Joint Stipulation of
8 Settlement was reached with the participation of a respected
9 mediator, and the monetary terms of the Settlement reflect
10 substantial benefits to the Class. Pursuant to the Final Judgment,
11 to be entered pursuant to this Order, this action will be dismissed
12 with prejudice, each side to bear its own costs, except as set
13 forth herein. It is further ordered that each and every term,
14 provision, condition, and agreement of the Joint Stipulation of
15 Settlement are adopted, incorporated and made part of this Order
16 and Judgment, and shall be effective, implemented, and enforced as
17 provided in the Joint Stipulation of Settlement.

18 5. Based on the Motion for Final Approval and documents
19 submitted therewith, the Court finds that the distribution of the
20 Notice and Claim Form were materially implemented to all Class
21 Members in accordance with Federal Rule of Civil Procedure
22 23(c)(2)(B), with the terms of the Joint Stipulation of Settlement
23 and the Preliminary Approval Order.

24 6. Based on the Motion for Final Approval and request for
25 enhancement payments to the Class Representatives, which is
26 unopposed by Defendants, each Class Representative is awarded
27 \$5,000.00.

28 ///

1 7. Based on the materials submitted by Class Counsel in
2 support of the request for an award of attorneys' fees and costs,
3 which is unopposed by Defendants, Class Counsel is awarded
4 \$625,000.00 as compensation and reimbursement for expenses.

5 8. The Settlement monies shall be distributed as set forth
6 in the Joint Stipulation of Settlement.

7 9. This Order and the Final Judgment permanently bars all
8 Claims released by the Joint Stipulation of Settlement, including,
9 without limitation, all Subclass One Released Claims for those
10 persons who are Subclass One Members and all Subclass Two Released
11 Claims for all Class Members except for the two individuals who
12 opted out of the Settlement.

13 10. This Order and the Final Judgment incorporates herein the
14 releases in the Joint Stipulation of Settlement, including, without
15 limitation, in Section 18 of the Joint Stipulation of Settlement.

16 11. The Court retains jurisdiction over the Settlement of
17 this case and may enter additional orders to effectuate the fair
18 and orderly administration of the Settlement as may from time to
19 time be appropriate. The retention of jurisdiction includes,
20 without limitation, enforcement of the releases in Section 18 of
21 the Joint Stipulation of Settlement and/or other provisions of the
22 Joint Stipulation of Settlement.

23 ///

24 ///

25 ///

26 ///

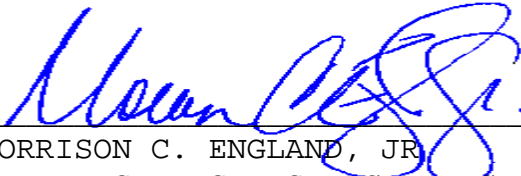
27 ///

28 ///

1 12. The Court dismisses the action on the merits and with
2 prejudice and the Subclass One Released Claims and Subclass Two
3 Released Claims as defined in the Joint Stipulation of Settlement.
4 The two persons who opted out of the Joint Stipulation of
5 Settlement have not released any claims pursuant to this Order.

6 IT IS SO ORDERED.

7
8 DATED: February 3, 2010

9 
10 MORRISON C. ENGLAND, JR.
11 UNITED STATES DISTRICT JUDGE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28