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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARY LOU AYALA, et al.,
Plaintiffs,
v.
COACH, INC., et al.,
Defendants.

Case No. [14-cv-02031-JD](#)

**ORDER RE MOTIONS FOR FINAL
SETTLEMENT APPROVAL AND
ATTORNEYS' FEES, COSTS AND
ENHANCEMENT AWARD**

Re: Dkt. Nos. 85, 86

This order resolves plaintiff Mary Lou Ayala's unopposed motions for final approval of class action settlement, attorneys' fees and costs, and class representative "enhancement" award. Dkt. Nos. 85, 86. The Court granted preliminary approval of the proposed settlement on October 17, 2016. Dkt. No. 84. At oral argument, the Court granted the motion for final approval of class action settlement. Dkt. No. 89-1. The Court now grants in part the motion for attorneys' fees, costs, and an enhancement award.

BACKGROUND

The material facts are discussed in the Court's preliminary approval order. Dkt. No. 84. In summary, this lawsuit arose from two separate actions against defendants Coach, Inc. and Coach Services, Inc. ("Coach"): *Miranda v. Coach, Inc.*, filed on March 20, 2014, and *Ayala v. Coach, Inc.*, filed on April 18, 2014. The Court consolidated the cases and dismissed plaintiff Eve Miranda after the parties settled her claims, leaving Ayala as the only named plaintiff. Dkt. Nos. 18, 56. Ayala alleges under California state law that her former employer, Coach, owes wages and statutory penalties because it conducted off-the-clock security checks, and she also claims that Coach did not properly calculate overtime pay. Dkt. No. 86 at 1-2. Ayala sues on behalf of a class of Coach's California sales associates during the class period of March 20, 2010, through May 3, 2016. *Id.* at 2.

1 After two motions to dismiss and Coach moved for summary judgment, the parties went to
2 mediation and reached a settlement. Dkt. No. 86-1 (Kingsley Decl.) ¶¶ 5, 11-12. The Court
3 denied preliminary approval over concerns about the parties’ failure to adequately state the full
4 potential recovery value if the case were tried successfully, the absence of a second round of
5 disbursement of unclaimed funds to class members, and generally insufficient notice and follow-
6 up measures. Dkt. No. 79. The parties revised the terms and signed an Addendum to the
7 Settlement Agreement. Dkt. No. 82. The Court granted preliminary approval for the revised
8 agreement. Dkt. No. 84.

9 Under the Settlement Agreement, Coach will pay \$1.75 million into a non-reversionary
10 settlement fund to cover disbursements to class members, notice and administration costs,
11 attorneys’ fees and costs, a Private Attorney General Act (“PAGA”) payment to the State of
12 California, and an enhancement award to the named plaintiff. Dkt. No. 86-2 (Settlement
13 Agreement) ¶¶ 8, 28-31. Class members will receive distributions based on the total number of
14 workweeks worked by each class member during the class period. *Id.* ¶ 27. The average payout
15 will be approximately \$260.82 per claimant. *See* Dkt. No. 85-1 (Kingsley Decl.) ¶ 31. In
16 exchange for this consideration, the class members agree to release Coach from:

17 any and all claims (i) asserted in the Action, including in the First Amended
18 Consolidated Class Action Complaint filed on February 25, 2015, or (ii) arising
19 from, or derivative of, the claims or factual allegations asserted in the Action
20 regarding security checks or the calculation of overtime pay (“Released Claims”).
21 The Released Claims include, but are not limited to, any claims, rights, demands,
22 liabilities, and causes of action of any kind or nature in law or in equity, under any
23 theory, whether contract, common law, constitutional, statutory or otherwise, of
24 any jurisdiction, foreign or domestic, whether known or unknown, anticipated or
25 unanticipated, for failure to pay wages for all hours worked, failure to pay
26 overtime wages, failure to timely pay wages, failure to provide accurate wage
27 statements, failure to provide meal or rest breaks, failure to keep proper payroll
28 records, violations of the California Labor Code and Business and Professions
Code Section 17200 that flow from the claims above, and for damages,
restitution, penalties, interest, costs, attorneys’ fees, expenses, equitable relief,
injunctive relief and any other relief.

Dkt. No. 86-3 (Addendum) ¶ 25. The release applies only to class members who cash their
settlement checks. *Id.*

1 Ayala reports that notice has been provided consistent with the proposed settlement
2 agreement and with the requirements of Rule 23(e)(1). Notice was mailed to 4,598 class
3 members, out of which 504 were initially returned as undeliverable. Dkt. No. 86-7 (Schwartz
4 Decl.) ¶¶ 11, 13. The settlement administrator was able to find updated addresses for 400 class
5 members, of which 41 were ultimately returned. *Id.* ¶ 13. In total, approximately 3% of the total
6 mailed notices were undeliverable. Dkt. No. 86 at 6. Email notice was also sent to 1,957 class
7 members, of which the settlement administrator received bounce-back emails for three members,
8 representing less than 1% of email notices. Dkt. No. 86-7 ¶ 12.

9 DISCUSSION

10 I. FINAL APPROVAL OF CLASS ACTION SETTLEMENT

11 In the order granting preliminary approval, the Court found that the proposed settlement
12 class satisfied the requirements of Federal Rules of Civil Procedure 23(a) and (b)(3). Dkt. No. 84
13 at 6-7. The Court also found that the proposed agreement was “fair, reasonable, and adequate” in
14 light of the risks faced by plaintiff in further litigation. *Id.* at 3-4. This case has been vigorously
15 defended by Coach, and there was significant risk related to the claims for unpaid wages and labor
16 violations. *See* Dkt. No. 86 at 7-11. The full value of all the claims was estimated to be just under
17 \$22 million. Dkt. No. 86-1 ¶ 53. But after taking risk into account for each potential claim
18 independently (regular rate claim, security check claims for unpaid wages, meal period and
19 security check violations, and derivative claims), the discounted value of the claims totaled
20 \$1,784,016.53. *Id.* Given these estimates, the Court found that plaintiff had made a reasonable
21 choice in settling for the proposed settlement amount of \$1,750,000.00. Dkt. No. 84 at 5.

22 These conclusions hold here at the final approval stage. The proposed settlement provides
23 meaningful monetary relief to the settlement class. Each class member will receive an average of
24 slightly more than \$260. No objections were received, and no member has asked to opt-out from
25 the class. Dkt. No. 86-7 ¶¶ 15-16. Class counsel says it received telephone calls from class
26 members supporting the settlement. Dkt. No. 86-1 ¶ 62. Lack of objection from the class
27 members is a substantial factor in favor of final approval. *See Nat’l Rural Telecomms. Coop. v.*
28 *DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (“the absence of a large number of

1 objections to a proposed class action settlement raises a strong presumption that the terms of a
2 proposed class settlement action are favorable to the class members”); *see also Churchill Vill.,*
3 *LLC v. Gen. Elec.*, 361 F.3d 566, 575-76 n.7 (9th Cir. 2004) (listing “the reaction of the class
4 members to the proposed settlement” among the “non-exclusive” settlement evaluation factors
5 courts are to consider before granting approval). In addition to the lack of objections during the
6 notice period, no objections were raised at the hearing on the present motions.

7 Consequently, the Court grants final approval of the proposed settlement.

8 **II. FINAL APPROVAL OF ATTORNEYS’ FEES AND COSTS**

9 The Court finds that the requested attorneys’ fee award, which is 25% of the settlement
10 fund and a multiplier of approximately 1.15 of the class counsel’s reported lodestar, is reasonable
11 under both the percentage-of-the-fund method and a lodestar cross-check. Notice of the requested
12 award of attorneys’ fees and reimbursement of costs and expenses was directed to class members
13 in a reasonable manner and complied with Federal Rule of Civil Procedure 23(h)(1). Class
14 counsel filed their motion for attorneys’ fees and costs on February 9, 2017. Dkt. No. 85. Class
15 members and any party from whom payment is sought have been given the opportunity to object
16 pursuant to Federal Rule of Civil Procedure 23(h)(2), and no class member has objected to the
17 requested fees or expenses. Class counsel has engaged in this litigation for approximately three
18 years and expended more than 800 hours on the case, involving substantial discovery, depositions,
19 discovery disputes and oppositions to motions to dismiss. Dkt. No. 85-1 (Kingsley Decl.) ¶¶ 26,
20 28; Dkt. No. 85-6 (Christofferson Decl.) ¶¶ 26-27.

21 Class counsel’s fee request is justified by the percentage-of-the-fund method of evaluating
22 attorneys’ fee requests. Class counsel’s fees should be paid from the common fund because all
23 class members should contribute their fair share of the costs of the litigation from which they
24 benefitted. The requested \$437,500.00 fee award represents 25% of the \$1.75 million gross
25 settlement fund. While that is not an insubstantial cut, it is within acceptable Ninth Circuit
26 parameters for common fund fee awards, and is warranted by the events in this case. *See In re*
27 *Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015).

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1 The fee request is also supported by a lodestar cross-check. Class counsel’s reported
2 lodestar is \$380,246.00. Dkt. No. 85 at 10; Dkt. No. 85-1 ¶ 26; Dkt. No. 85-6 ¶ 26. The Court has
3 reviewed the supporting declarations of class counsel and finds that the hours and rates used to
4 calculate class counsel’s lodestar are reasonable. The requested fee award represents a multiplier
5 of 1.15 of the class counsel’s lodestar, which is within the range of reasonable multipliers
6 approved by courts when considering counsel’s risk of non-payment in common fund cases.
7 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002).

8 Class counsel also seeks \$50,175.24 in costs. Dkt. No. 85 at 10-11; Dkt. No. 85-1 ¶ 31,
9 Exh. D; Dkt. No. 85-6 ¶ 31, Exh. A. While the request is unopposed, the Court has reviewed the
10 supporting declarations of class counsel and finds that some expenses are for personal meals rather
11 than expenses reasonably necessary to the prosecution of this litigation. Consequently, the Court
12 reduces the costs awarded to \$49,936.44.

13 **III. SERVICE AWARD**

14 Plaintiff Ayala has requested a service award of \$7,500.00. Dkt. No. 85 at 11-13. The
15 Court, following the Ninth Circuit, has often expressed skepticism of settlements in which named
16 plaintiffs do appreciably better than rank-and-file class members. *See Myles v. AlliedBarton Sec.*
17 *Servs., LLC*, No. 12-cv-05761-JD, 2014 WL 6065602, at *6 (N.D. Cal. Nov. 12, 2014) (“Absent a
18 particularized showing of expenses incurred or injury suffered by [the named plaintiff] (above and
19 beyond those of the other proposed class members), an enhancement award is inappropriate.”);
20 *Stokes v. Interline Brands, Inc.*, No. 12-cv-05527-JD, 2014 WL 5826335, at *6 (N.D. Cal. Nov.
21 10, 2014). But this is not a hard-and-fast rule, and courts in our Circuit may consider additional
22 factors, including the amount of time and effort that plaintiffs have expended in pursuing the
23 litigation, in determining whether a service award is appropriate. *Staton v. Boeing Co.*, 327 F.3d
24 938, 977 (9th Cir. 2003). In light of Ayala’s sworn representation about the effort she spent on the
25 case, particularly when the other initial representative reached a private settlement, the Court
26 grants her a \$1,500.00 enhancement award. *See* Dkt. No. 86-6 (Ayala Decl.).

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1 **CONCLUSION**

2 The Court finally approves the class settlement, the requests for attorneys' fees and costs,
3 and the additional payment to the named plaintiff as provided herein. This action is dismissed
4 with prejudice, each side to bear its own costs and attorneys' fees except as provided by the
5 Settlement Agreement and this Order. The Clerk is requested to close the case and terminate any
6 pending matters.

7 **IT IS SO ORDERED.**

8 Dated: May 22, 2017

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12 JAMES DONATO
13 United States District Judge
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