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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SCARLET KESHISHZADEH and LISA ARCHER, as individuals, on behalf of themselves, and on behalf of all persons similarly situated,

Plaintiffs,

vs.

ARTHUR J. GALLAGHER SERVICE CO., a Delaware corporation,

Defendant.

JAMES CAREY, on behalf of himself and all others similarly situated,

Plaintiffs,

vs.

ARTHUR J. GALLAGHER AND COMPANY, a Delaware Corporation, and GALLAGHER BASSETT SERVICES, INC., a Delaware Corporation, inclusive,

Defendants.

CASE NO. 3:09-CV-0168 LAB (RBB)

(Consolidated with Case No. 3:09-CV-1273 LAB (RBB))

**ORDER:**

- (1) **GRANTING CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS AND PRELIMINARY APPROVAL OF SETTLEMENT;**
- (2) **APPROVING CLASS NOTICE AND RELATED MATERIALS;**
- (3) **APPOINTING SETTLEMENT ADMINISTRATOR; AND**
- (4) **SCHEDULING FINAL APPROVAL HEARING**

1           The parties have submitted a joint motion for conditional certification of a class  
2 settlement in this action, preliminary approval of the parties' proposed settlement, approval of the  
3 notice to be sent to the class about the settlement and the forms of class member settlement  
4 information and election not to participate in the settlement, approval of the claim form, and the  
5 setting of a date for the hearing on final approval of the settlement.

6           The Court finds the following:

7           1.     The Court has jurisdiction over this action and the parties' proposed settlement  
8 pursuant to 28 U.S.C. sections 1132(a) and 1332(d).

9           2.     The proposed class satisfies the requirements of a settlement class because the  
10 class members are readily ascertainable and a well-defined community of interest exists in the  
11 questions of law and fact affecting the parties.

12           3.     The parties' Settlement Agreement (the "Settlement") (Declaration of Norman B.  
13 Blumenthal ["Blumenthal Decl."], Ex. 1) is granted preliminary approval as it meets the criteria  
14 for preliminary settlement approval. The Settlement falls within the range of possible approval as  
15 fair, adequate and reasonable, and appears to be the product of arm's-length and informed  
16 negotiations and to treat all Class Members fairly.

17           4.     Under Rule 23(e), the Court may approve a class settlement only upon finding that  
18 it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). To determine whether a proposed  
19 settlement meets these standards, the Court must evaluate a number of factors, including:

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22           (1) the strength of the plaintiffs' case;  
23           (2) the risk, expense, complexity, and likely duration of further litigation;  
24           (3) the risk of maintaining class action status throughout the trial;  
25           (4) the amount offered in settlement;  
26           (5) the extent of discovery completed and the stage of the proceedings;  
27           (6) the experience and views of counsel;  
28           (7) the presence of a governmental participant; and  
            (8) the reaction of the class members to the proposed settlement.

1 *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (citations omitted); see also *Officers for*  
2 *Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). These factors are not exclusive,  
3 and in some circumstances, one factor may deserve more weight than others or alone may even  
4 prove to be determinative. *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir.  
5 1982); *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525-26 (C.D. Cal.  
6 2004). In addition, the settlement may not be the product of collusion among the negotiating  
7 parties. *Ficalora v. Lockheed California Co.*, 751 F.2d 995, 997 (9th Cir. 1985); *In re Mego Fin.*  
8 *Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000). Given that some of these factors cannot be  
9 fully assessed until the Court conducts the Final Approval Hearing, a full fairness analysis is  
10 unnecessary at this stage. *Singer v. Becton Dickinson and Co.*, 2009 WL 4809646, at \*7 (S.D.  
11 Cal. 2009) (citation and quotations omitted). “Rather, at the preliminary approval stage, the Court  
12 need only review the parties’ proposed settlement to determine whether it is within the  
13 permissible range of possible judicial approval and thus, whether the notice to the class and the  
14 scheduling of the formal fairness hearing is appropriate.” *Id.* (citations and quotations omitted).  
15 All of the factors considered for class settlement approval support the preliminary approval of the  
16 Settlement:

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18 a. **The Strength of the Plaintiffs’ Case.** Both the California Labor Code and  
19 the FLSA contains various exemptions from their requirements that employers pay their  
20 employees time and a half for work in excess of forty (40) hours per week, including the  
21 “administrative exemption.” Cal. Labor Code §§ 510, 515; *In re Farmers Ins. Exch.,*  
22 *Claims Representatives’ Overtime Pay Litig.*, 481 F.3d 1119, 1127 (9th Cir. 2007) (citing  
23 29 U.S.C. § 213(a)(1)). Here, one of the defenses to the claims alleged was that class  
24 members were barred from recovery by this exemption. Plaintiffs characterize this as a  
25 “serious threat[]” to their claims, and note that other courts have found claims adjuster  
26 employees exempt from overtime pay. *In re Framers Ins.*, 466 F.3d 853, 855 (9th Cir.  
27 2006). In fact, the Code of Federal Regulations provides that the administrative  
28 exemption generally applies to insurance claims adjustors. 29 C.F.R. § 541.203(a). Given

1 the above uncertainties, this factor weighs in favor of granting preliminary approval of the  
2 settlement.

3           b.       **The Risk, Expense, Complexity, and Likely Duration of Further**  
4 **Litigation.** “In most situations, unless the settlement is clearly inadequate, its acceptance  
5 and approval are preferable to lengthy and expensive litigation with uncertain results.”  
6 *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. at 526. Here, the parties have indicated a clear  
7 intention and desire to resolve this matter and clearly, continued litigation would have  
8 proved expensive for both sides. The parties acknowledge that litigating and trying this  
9 action may have led to possible appeals. This factor weighs in favor of preliminary  
10 approval.

11           c.       **The Risk of Maintaining Class Action Status.** Plaintiffs also argue that  
12 there was a “significant risk” that they would not have been able to maintain class  
13 certification through trial. Class certification in this action was hotly disputed and  
14 continues to be disputed by Defendants. This factor weighs in favor of preliminary  
15 approval of the settlement.

16           d.       **The Amount Offered in Settlement.** When analyzing the amount offered  
17 in settlement, the Court should examine “the complete package taken as a whole, rather  
18 than the individual component parts” to determine whether the proposal is fair. *Officers*  
19 *for Justice*, 688 F.2d at 628. “[I]t is well-settled law that a proposed settlement may be  
20 acceptable even though it amounts to only a fraction of the potential recovery that might  
21 be available to class members at trial.” *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. at 527  
22 (citing *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998)). “[T]he  
23 very essence of a settlement is compromise.” *Linney*, 151 F.3d at 1242 (citation omitted).  
24 Here, Plaintiffs’ damage expert, DM&A, reviewed payroll and time recording data and  
25 calculated the total maximum potential class damages as \$15,205, 859.17. The settlement  
26 of \$3.9 million therefore represents 25.64% of the subject damage claim as calculated by  
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1 Plaintiff's expert. The settlement amount is non-reversionary. A settlement of this  
2 amount falls within the range of similar settlements in the Ninth Circuit. Accordingly, the  
3 Court finds the amount offered in settlement weighs in favor of granting preliminary  
4 approval of the settlement.

5 e. **The Extent of Discovery Completed and the Stage of the Proceedings.**

6 The proposed settlement in this case was reached at a relatively advanced stage in the  
7 proceedings, after nearly all discovery was completed. Class Counsel has successfully  
8 moved for class certification and was actively engaged in expert discovery and final  
9 preparation for trial at the time the settlement was reached. Plaintiffs have adequately  
10 demonstrated that the agreement to settle did not occur until Class Counsel possessed  
11 sufficient information to evaluate the case and make an informed decision about  
12 settlement. Accordingly, the Court finds that this factor supports preliminary approval of  
13 the settlement.

14 f. **The Experience and Views of Counsel.**

15 Both Class Counsel and  
16 Defendants' counsel are of the opinion that the settlement is fair, reasonable, and adequate  
17 and is in the best interests of the class. The settlement was negotiated and approved by  
18 experienced counsel on both sides of the litigation. Accordingly, this factor weighs in  
19 final of preliminary approval.

20 g. **The Presence of a Governmental Participant.**

21 This factor does not  
22 weigh in the Court's analysis as there is no governmental participant in this action.

23 h. **The Reaction of the Class Members to the Proposed Settlement.**

24 The  
25 reaction of the class members to the proposed settlement cannot be evaluated at this time.  
26 This factor will be appropriate for consideration at the hearing for final approval of the  
27 settlement.

28 5. The parties' proposed notice plan is constitutionally sound because individual

1 notices will be mailed to all class members whose identities are known to the parties, and such  
2 notice is the best notice practicable. The parties' proposed Notice of Proposed Settlement of  
3 Class Action, Conditional Certification of Settlement Class, Preliminary Approval of Settlement,  
4 and Hearing Date for Final Court Approval ("Class Notice") (Settlement Agreement, Exh. A),  
5 and proposed forms of Claim Form and Election Not to Participate in Settlement (*id.*, Exhs. B and  
6 C)) (collectively the "Class Notice Packet") are sufficient to inform Class Members of the terms  
7 of the Settlement, their rights under the Settlement, their rights to object to the settlement, their  
8 right to receive a Settlement Share or elect not to participate in the Settlement, and the processes  
9 for doing so, and the date and location of the final approval hearing, and therefore are all  
10 approved.

11 6. The following class of persons are certified as the Class in this action solely for the  
12 purposes of the Settlement:

13 All persons who work or worked for Gallagher Bassett Services, Inc. in  
14 California, at any time from January 28, 2005 through the date of preliminary  
15 court approval of the Settlement, as a Claim Representative, Senior Claim  
Representative, Claims Adjustor, Claims Adjustor Senior, and/or Claims  
Specialist.

16 For purposes of settlement only, the Court conditionally certifies the above Class and finds that  
17 the prerequisites to certification under Rule 23 of the Federal Rules of Civil Procedure as satisfied  
18 as follows:

19 a. **Numerosity.** According to the Parties, the Class is comprised of  
20 approximately 575 Settlement Class Members. This number is sufficient to make joinder  
21 impracticable. The Court finds that the number of Settlement Class Members satisfies the  
22 numerosity requirement for settlement purposes only.

23 b. **Commonality.** The Court finds for settlement purposes only that  
24 commonality exists for the Settlement Class because the Settlement Class Members are all  
25 classified as "exempt" employees and share common claims.  
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1           c.       **Typicality.** The court finds for settlement purposes only that typicality  
2 exists for the Settlement Class because Plaintiffs and Settlement Class Members are all  
3 classified as “exempt” employees and share common claims.

4           d.       **Adequate Representation.** The Court finds for settlement purposes only  
5 that the named plaintiffs, Scarlet Keshishzadeh, Lisa Archer, and James Carey, have and  
6 will fairly and adequately protect the interests of the class, as required under Rule  
7 23(a)(4), and do not have any conflicts of interest with the absent class members, and  
8 accordingly finds that they are suitable class representatives. Additionally, after  
9 reviewing the qualifications of the applicants for appointment of class counsel,  
10 Blumenthal, Nordrehaug & Bhowmik and James Hawkins APLC, the Court finds that  
11 counsel satisfy the adequacy requirements of Rule 23(g)(1) and (4).

12           e.       **Predominance.** The court finds for settlement purposes only that common  
13 questions predominate for the Settlement Class because the Settlement Class Members are  
14 all classified as “exempt” employees and share common claims.

15           f.       **Superiority.** The court also finds for settlement purposes only that the  
16 Settlement Class satisfies the superiority requirement of Rule 23(b)(3) because a class  
17 settlement would enable Settlement Class Members’ collectively to resolve their common  
18 claims.  
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20           7.       Any Class Member who submits a timely and valid Claim Form within 60 days  
21 after the date the Settlement Administrator mails the Class Notice Packet will receive a  
22 Settlement Share.  
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24           8.       Any Class Member who wishes to comment on or object to the Settlement or Class  
25 Counsel’s Fees and Expenses Payment, or who elects not to participate in the Settlement has until  
26 45 days after the mailing of the Class Notice Packet to submit his or her comment, objection, or  
27 Election Not to Participate in Settlement pursuant to the procedures set forth in the Class Notice.  
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1 Class Counsel must file their application for the Class Counsel Fees Payment and Class Counsel  
2 Litigation Expenses Payment prior to the mailing of the Class Notice Packet, and the application  
3 will be heard at the Final Approval Hearing

4 9. Gilardi & Co. is appointed to act as the Settlement Administrator, pursuant to the  
5 terms set forth in the Settlement.

6 10. The Class Notice Packet will be disseminated according to the notice plan  
7 described in the Settlement Agreement and substantially in the form submitted by the parties.  
8 Proof of distribution of notice will be filed by the parties at or prior to the final approval hearing.

9 11. Gallagher is directed to provide the Settlement Administrator the Class Data as  
10 specified by the Settlement Agreement no later than 14 days after the date of this order.

11 12. The Settlement Administrator is directed to mail the approved Class Notice Packet  
12 by first-class mail to the Class Members no later than 7 days after receipt of the Class Data from  
13 Gallagher.

14 13. Pursuant to the Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.* (“CAFA”), not  
15 later than ten days after the Parties’ joint motion seeking preliminary approval of the Settlement  
16 was filed in court, Gallagher served upon the Attorney General of the United States and the  
17 appropriate state official of each state in which a Class Member resides a notice of the Settlement  
18 consisting of: a copy of the pleadings in this action; a notice of the scheduled judicial hearings in  
19 this action; copies of the Settlement and Class Notice Packet; and the names of Class Members  
20 who reside in each state and the estimated proportionate share of the Class Members in each state  
21 compared to the entire Settlement. The notice of Settlement also invited comment on the  
22 Settlement. Accordingly, the Court finds that Gallagher has discharged its obligations under  
23 CAFA to provide notice to the appropriate federal and state officials.

24 14. A final hearing will be held on March 28, 2011, at 11:45 a.m., to determine  
25 whether the Settlement should be granted final approval as fair, reasonable, and adequate as to the  
26 Class Members. The Court will hear all evidence and argument necessary to evaluate the  
27 Settlement, and will consider the Class Representatives’ request for Class Representative  
28 Payment and Class Counsel’s request for the Class Counsel Fees Payment and the Class Counsel

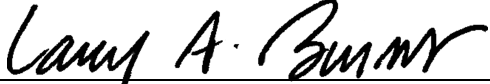


1 Litigation Expenses Payment. Class Members and their counsel may support or oppose the  
2 Settlement and the motion for awards of the Class Representative Payment and the Class Counsel  
3 Fees Payment and Class Counsel Litigation Expenses Payment, if they so desire, as set forth in  
4 the Class Notice.

5 15. Any Class Member may appear at the final approval hearing in person or by his or  
6 her own attorney, and show cause why the Court should not approve the Settlement, or object to  
7 the motion for awards of the Class Representative Payment and the Class Counsel Fees Payment  
8 and Class Counsel Litigation Expenses Payment. For any comments or objections to be  
9 considered at the hearing, the Class Member must file comments with the Clerk of Court  
10 indicating briefly the nature of the Class Member's comments, support or objection. Comments  
11 or objections to the Settlement or to the Class Counsel Fees Payment and Class Counsel  
12 Litigation Expenses Payment must be filed with the Court, and mailed to Class Counsel, not later  
13 than 45 days after mailing of the Class Notice Packet.

14 16. The Court reserves the right to continue the date of the final approval hearing  
15 without further notice to Class Members. The Court retains jurisdiction to consider all further  
16 applications arising out of or in connection with the Settlement.

17 DATED: October 29, 2010

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21 HON. LARRY ALAN BURNS  
22 UNITED STATES DISTRICT JUDGE  
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