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Superior Court of CA
County of Santa Clara
18CV337830
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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

R. ROSS, et al.,

Plaintiffs,

v.

HEWLETT PACKARD ENTERPRISE
COMPANY,

Defendant.

Case No.: 18CV337830

**JUDGMENT AND ORDER
CONCERNING PLAINTIFF'S
MOTIONS (1) FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT;
AND (2) FOR ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND PAYMENT OF SERVICE
AWARDS**

This is a putative class action alleging gender-based pay discrimination under the Equal Pay Act ("EPA") and related claims. The parties reached a settlement, which the Court preliminarily approved in an order filed on November 3, 2022. The factual and procedural background of the action and the Court's analysis of the settlement and settlement class are set forth in that order.

Before the Court are Plaintiffs' motions for final approval of the settlement and for approval of their attorney fees, costs, and service awards. Plaintiffs' motions are unopposed. One individual filed an objection to the settlement, which the Court has reviewed and considered. The Court issued a tentative ruling on April 26, 2023, which no one challenged at the hearing on April 27. The Court now issues its final order, which GRANTS final approval.

1 **I. LEGAL STANDARD FOR SETTLEMENT APPROVAL**

2 Generally, “questions whether a [class action] settlement was fair and reasonable,
3 whether notice to the class was adequate, whether certification of the class was proper, and
4 whether the attorney fee award was proper are matters addressed to the trial court’s broad
5 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
6 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
7 260.)

8 In determining whether a class settlement is fair, adequate and reasonable, the
9 trial court should consider relevant factors, such as the strength of plaintiffs’ case,
10 the risk, expense, complexity and likely duration of further litigation, the risk of
11 maintaining class action status through trial, the amount offered in settlement, the
12 extent of discovery completed and the stage of the proceedings, the experience
13 and views of counsel, the presence of a governmental participant, and the reaction
14 of the class members to the proposed settlement.

15 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

16 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
17 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
18 168 Cal.App.4th 116, 130 (*Kullar*.) But the trial court is free to engage in a balancing and
19 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
20 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
21 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
22 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
23 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
24 marks omitted.) The trial court also must independently confirm that “the consideration being
25 received for the release of the class members’ claims is reasonable in light of the strengths and
26 weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168
27 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be
28 “provided with basic information about the nature and magnitude of the claims in question and

1 the basis for concluding that the consideration being paid for the release of those claims
2 represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

3 **II. TERMS AND ADMINISTRATION OF SETTLEMENT**

4 The non-reversionary gross settlement amount is \$8,500,000. Approximately
5 \$2,833,333.33 in attorney fees, actual litigation costs, and up to \$35,000 in administration costs
6 will be paid from the gross settlement. The named plaintiffs will seek incentive awards of
7 \$15,000 each and “General Release Payments” of \$5,000 each, for a total of \$40,000.

8 The net settlement, approximately \$5,591,666.67 minus counsel’s costs and HPE’s share
9 of payroll taxes, will be distributed to class members based on their share of the total
10 compensation (i.e., base pay, bonuses, and equity) earned by the class during the class period.
11 Class members who worked less than twelve months will receive a minimum payment of \$500,
12 while class members who worked more than that will receive a minimum payment of \$1,000.
13 Plaintiffs estimate that these base settlement payments will range from \$500 to \$17,000.

14 The gross settlement includes a Settlement Dispute Fund of \$400,000 from which class
15 members could seek to supplement their individual payments by presenting documentary
16 evidence of individual circumstances warranting an enhancement. This process was monitored
17 and coordinated by the settlement administrator and jointly approved by counsel for the parties.
18 Any request for enhancement was to be evaluated pursuant to the criteria set forth in the EPA.
19 Any unused, residual amounts in in the fund will be distributed on a pro rata basis to the class
20 members in the same manner as their individual payments.

21 Class members will not be required to submit a claim to receive their payments. For tax
22 purposes, settlement payments will be allocated as Form W-2 income. The employer’s share of
23 taxes will also be paid from the gross settlement. Funds associated with checks uncashed after
24 120 days will be redistributed to participating class members.

25 In exchange for the settlement, class members who do not opt out will release all claims,
26 debts, etc. “that were or reasonably could have been pled based on the same facts alleged in the
27 Action, including, but not limited to” specified relevant causes of action. A separate, specific
28 release of claims under the federal Equal Pay Act, 29 U.S.C § 206 (d) *et seq.* follows.

1 The notice process has now been completed. There was one objection to the settlement¹
2 and only 8 requests for exclusion from the class. Of the 1,735 total notices mailed by the
3 administrator, 143 were re-mailed to updated addresses and only 14 were ultimately
4 undeliverable. Eight individuals submitted monetary enhancement requests. As detailed in the
5 Supplemental Declaration of Caleb Marker filed on April 25, 2023, the parties have agreed
6 concerning the disposition of all of these requests, approving a total of \$59,934.37 in individual
7 payments from the Settlement Dispute Fund. The remaining \$340,065.63 from that fund will be
8 distributed among all of the participating class members as previously described.

9 At preliminary approval, the Court found that the settlement is a fair and reasonable
10 compromise of the class claims. It finds no reason to deviate from this finding now, and
11 accordingly finds that the settlement is fair and reasonable for purposes of final approval.

12 **III. ATTORNEY FEES, COSTS, AND INCENTIVE AWARD**

13 Plaintiffs seek a fee award of \$2,833,333.33, one-third of the gross settlement, which is
14 not an uncommon contingency fee allocation in a wage and hour class action. This award is
15 facially reasonable under the “common fund” doctrine, which allows a party recovering a fund
16 for the benefit of others to recover attorney fees from the fund itself. Plaintiffs also provide a
17 lodestar figure of \$5,412,376.50, based on 7,659.26 hours spent on the case by counsel billing at
18 hourly rates of \$505–1,050 per hour and paralegals billing at \$275–350 per hour. Plaintiffs’
19 request results in a negative multiplier. The lodestar cross-check supports the percentage fee
20 requested, particularly given the lack of objections to the attorney fee request.² (See *Laffitte v.*
21 *Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 [trial court did not abuse its
22 discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar
23 resulting in a multiplier of 2.03 to 2.13].) Counsel confirms that Plaintiffs have signed and
24 approved the fee sharing agreement between the two firms serving as class counsel.

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26
27 ¹ The Court has read and considered this objection, which ultimately does not change its
28 conclusion that the settlement is fair and reasonable to the class.

² The one objection that was submitted did not mention the attorney fee request.

1 Plaintiffs' counsel also request \$416,326.96 in litigation costs (mostly for fees paid to
2 experts and mediators). Plaintiffs' costs appear reasonable based on the summaries provided and
3 are approved. The \$28,952.51 in administrative costs are also approved.

4 Finally, the named plaintiffs each seek a combined incentive/general release award of
5 \$20,000. To support their requests, they submit declarations describing their efforts on the case.
6 The Court finds that the class representatives are entitled to an enhancement award and the
7 amount requested is reasonable.

8 **IV. ORDER AND JUDGMENT**

9 In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND
10 DECREED THAT:

11 The motions for final approval and for approval of fees and expenses are GRANTED.
12 The following class is certified for settlement purposes:

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14 Women (as identified in Defendant's Human Resources Information System,
15 Workday) actively employed in California by Defendant at any point from
16 November 1, 2015 through the date of Preliminary Approval, and who were
17 employed in one of the job codes set forth on Exhibit A to the [Settlement
18 Agreement].

19
20 The Class does not include any individual who: (1) executed a waiver and release;
21 (2) executed an arbitration agreement with respect to their employment upon hire
22 or otherwise; or (3) [was] a college hire as defined by being hired within two (2)
23 years of internship, age at hire is 23 or below with a Bachelor's degree, age at hire
24 is 27 [or] below with a Master's degree, or age at hire is 30 or below with a Ph.D.
25 degree.


26
27 Excluded from the class are the eight individuals who submitted timely requests for
28 exclusion.

1 Judgment shall be entered through the filing of this order and judgment. (Code Civ.
2 Proc., § 668.5.) Plaintiffs and the members of the class shall take from their complaint only the
3 relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule
4 3.769(h) of the California Rules of Court, the Court retains jurisdiction over the parties to
5 enforce the terms of the settlement agreement and the final order and judgment.

6 The Court sets a compliance hearing for **September 28, 2023 at 2:30 P.M.** in
7 Department 1. At least ten court days before the hearing, class counsel and the settlement
8 administrator shall submit a summary accounting of the net settlement fund identifying
9 distributions made as ordered herein; the number and value of any uncashed checks; associated
10 amounts remitted to the participating class members; the status of any unresolved issues; and any
11 other matters appropriate to bring to the Court's attention. Counsel shall also submit an amended
12 judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may
13 appear at the compliance hearing remotely.

14 **IT IS SO ORDERED.**

15 Date: April 28, 2023

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18 The Honorable Sunil R. Kulkarni
19 Judge of the Superior Court
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