

EMBOSED
FILED
ALAMEDA COUNTY

NOV 18 2016

CLERK OF THE SUPERIOR COURT

^{BY}
CHRISTOPHER WRIGHT JR

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

MARTIN MARINE, on behalf of himself and
all others similarly situated,

Plaintiffs,

vs.

INTERSTATE DISTRIBUTOR CO., a
Washington corporation doing business in
California, and DOES 1 through 100, inclusive.

Defendants.

Case No. RG07358277

~~proposed~~ ORDER OF FINAL APPROVAL
AND JUDGMENT

Date: November 18, 2016

Time: 11:00 a.m.

Dept.: 21

Judge: Hon. Winifred Y. Smith

Reservation No. R-1778157

1 PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
2 and MOTION FOR SERVICE AWARDS came on for hearing on November 18, 2016 at
3 11:00 a.m., in Department 21 of the Superior Court of California, County of Alameda.

4 Having considered the proposed class Settlement Agreement, the Parties' Motions for
5 Attorneys' Fees, Costs and Expenses, Plaintiffs' Motion for Final Approval of Class Action
6 Settlement and Plaintiffs' Motion for Service Awards, and the Memoranda of Points and
7 Authorities in support of those Motions, the Declaration of Guy B. Wallace in Support of
8 Plaintiffs' Motion for Preliminary Approval, the Declaration of David Breshears in Support of
9 Plaintiffs' Motion for Preliminary Approval and the Declaration of Martin Marine in Support of
10 Plaintiffs' Motion for Service Awards, as well as the Declaration of Derek Smith Regarding Notice
11 Procedures, the Court-approved notice, and the argument of counsel at the hearing thereon, the
12 Court hereby FINDS, ORDERS, ADJUDGES as follows:¹

13 **I. FINAL CERTIFICATION OF THE CLASS**

14 The Court granted class certification in this matter on August 13, 2012 of the following
15 class:

16 [A]ll persons employed by defendant Interstate Distributor Company as local
17 hourly drivers in the State of California from November 28, 2003, through the
18 date of mailing the notice of certification and opportunity to opt out.

19 The parties have presented no new facts or changed circumstances that would disturb the
20 Court's findings on class certification. Moreover, IDC does not oppose class certification for
21 purposes of settlement. Accordingly, the Court finds that, consistent with its prior Order, the
22 requirements of Code of Civil Procedure § 382 are satisfied. The Court hereby FINALLY
23 CERTIFIES the following class:

24
25 ¹ The Court, for purposes of this Order of Final Approval and Judgment, adopts and incorporates
26 the terms and definitions set forth on pages 6-21 of the Amended Joint Stipulation of Settlement
27 and Release Agreement (the "Settlement Agreement"). A true and correct copy of the Settlement
28 Agreement may be found as Exhibit A to the Declaration of Guy B. Wallace in Support of
Amended Joint Stipulation of Class Action Settlement which was filed with this Court on July 14,
2016.

1 Those individuals who are identified by IDC as having been employed by IDC as
2 a "Local Hourly Driver" in the State of California at any time commencing from
3 November 28, 2003 through the date the preliminary approval of the proposed
4 settlement is ordered [July 6, 2016].

5 **II. APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL**

6 On August 13, 2012, the Court certified this matter as a class action, and appointed Named
7 Plaintiff Martin Marine to represent the litigation class of California Local Hourly Drivers. The
8 parties have presented no new facts or changed circumstances that would disturb the Court's
9 previous findings with respect to Mr. Marine's adequacy, and therefore APPOINTS Mr. Marine as
10 Class Representative of the above-referenced Class.

11 The Court previously appointed Schneider Wallace Cottrell Konecky Wotkyns LLP
12 ("Schneider Wallace"), Keegan & Baker, LLP ("Keegan & Baker") and Advantage Law Group as
13 Class Counsel due to their extensive experience in prosecuting wage and hour class actions. The
14 Court APPOINTS them as Class Counsel.

15 **III. FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

16 Pursuant to this Court's Preliminary Approval Order, the Claims Administrator, KCC,
17 distributed the approved Class Notice to the Class. Based on review of the Declaration of Derek
18 Smith re: Notice Procedures ("Smith Decl."), the Court is satisfied that compliance with the
19 Court's preliminary approval Order was accomplished in all material respects. The form and
20 manner of notice constituted the best practicable notice under the circumstances, and fully met the
21 requirements of procedural due process and California Rule of Court 3.769(f).

22 The Court has carefully reviewed the terms of the proposed Settlement, as well as the
23 Declaration of Guy B. Wallace in Support of Preliminary Approval of Settlement describing
24 Plaintiffs' investigation into the claims and defenses in this matter, the discovery conducted by the
25 parties, and the settlement process. The Court finds that the Settlement is the product of informed,
26 non-collusive, and arm's-length negotiations. The Court further finds that the Settlement confers a
27 monetary benefit of approximately \$1,467,500 on the Class in exchange for their release of claims,
28 which is properly limited to any claims alleged in this matter, or could have been alleged based on

1 the facts contained in the pleadings. This is a good result for the Class in light of the significant
2 risks of legislative preemption and the risks and delay of further litigation. Based on the papers
3 submitted by the parties, the Court's familiarity with this matter, and the favorable response of the
4 Class, the Court finds that the proposed Settlement is fair, reasonable, and adequate.

5 **A. Response of the Settling Class**

6 The response of the Class has been overwhelmingly positive. Notice was mailed to all 710
7 Class Members. KCC received zero requests for exclusion and zero objections from the Class
8 Members. Smith Decl. ¶¶ 7-8. The lack of requests for exclusion and objections supports the
9 Court's conclusion that the Settlement is fair, reasonable, and adequate.

10 Accordingly, the Court FINALLY APPROVES the proposed Settlement. In accordance
11 with the terms of the Amended Joint Stipulation of Class Action Settlement and Release
12 Agreement, except as to such rights or claims as may be created by the Settlement Agreement,
13 Plaintiff Marine and the Marine Class Members and their successors in interest (the "Marine
14 Releasers"), fully release and discharge Defendant and any and all parent, subsidiary and affiliated
15 entities including any of their current and former directors, officers and employees (the
16 "Releasees") from any and all claims, whether known or unknown, that were or could have been
17 alleged or asserted in the Marine Action based on the facts alleged in the Marine Complaint for
18 failure to provide and/or record meal or rest periods, as set forth in the Release of Claims in the
19 Amended Joint Stipulation of Class Action Settlement and Release Agreement at Section II.6.

20 **IV. DISTRIBUTION OF THE SETTLEMENT FUND**

21 **A. Appointment of the Claims Administrator**

22 The Court APPROVES the appointment of KCC as the settlement Claims Administrator,
23 and directs payment of \$25,000 for services rendered by KCC as Claims Administrator. The Court
24 finds this amount to be fair and reasonable.

25 **B. Service Award to the Class Representatives**

26 Plaintiffs seek a service award in the amount of \$7,500 for Named Plaintiff and Class
27 Representative Marine. Plaintiff Marine has submitted a Declaration detailing the time and effort
28 he expended in furtherance of the class claims, and the risks he assumed in vindicating the rights

1 of the Class. Specifically, Plaintiff Marine expended considerable time and effort reviewing
2 pleadings, responding to written discovery, appearing for deposition, advising Class Counsel
3 regarding IDC's policies and practices, and reviewing the Settlement Agreement herein. *See*
4 Declaration of Martin Marine in Support of Motion for Service Awards ¶¶ 5-33. The requested
5 service award is also supported by the risks associated with bringing this lawsuit, the protracted
6 nature of this litigation, and the important public policies underlying the Plaintiffs' claims.

7 The service award of \$7,500 for Plaintiff Marine is hereby APPROVED.

8 **C. Attorneys' Fees, Cost and Litigation Expenses**

9 Having considered the Motions of Schneider Wallace, Advantage Law Group and Keegan
10 & Baker for an Award of Reasonable Attorneys' Fees, Costs and Expenses; the Parties' proposed
11 Settlement Agreement; Schneider Wallace's Combined Opposition to Advantage Law Group and
12 Keegan & Baker's Motions for an Award of Reasonable Attorneys' Fees, Costs and Expenses;
13 Advantage Law Group and Keegan & Baker's Replies to same; Schneider Wallace's Sur-Reply to
14 same; the Memoranda of Points and Authorities in support of those Motions; the Declarations of
15 Guy B. Wallace, Barry Goldstein, Daniel B. Edelman, Marc Kroop and Patrick Keegan submitted
16 in support thereof; relevant legal authority; the record in this case; and the argument of Counsel at
17 the hearing thereon; the Court hereby FINDS, ORDERS, and ADJUDGES as follows:

18 The settlement in this case represents the resolution of nine years of litigation in multiple
19 different forums alleging violations of California Labor Code §§ 226, 226.7, and 512, Wage Order
20 9-2001, and Business and Professions Code §§ 17200-17208. .

21 Class Counsel seek an award of \$1,150,000 in attorneys' fees, costs and litigation expenses.
22 The Court grants Class Counsel's request for reasonable attorneys' fees, costs and expenses, to be
23 apportioned among the Class Counsel firms as follows. Following mediation before the Hon.
24 Edward A. Panelli (Ret.) at the Judicial Arbitration and Mediation Service ("JAMS") on
25 November 17, 2016, the parties were able to come to an agreement regarding the allocation of the
26 award of attorneys' fees, costs and litigation expenses. The sum of \$650,000 shall be allocated to
27 the firms of Schneider Wallace, Daniel B. Edelman, Esq., and Barry Goldstein, Esq. in full
28 satisfaction for their attorneys' fees, costs and expenses incurred in the above captioned matter.

1 The sum of \$500,000 shall be allocated to the firms of Advantage Law Group and Keegan & Baker
2 in full satisfaction for their attorneys' fees, costs and expenses in the above-captioned matter.

3 "In California, the fee setting inquiry ordinarily begins with the 'lodestar,' i.e., the number
4 of hours reasonable expended multiplied by the reasonable hourly rate." *Building a Better*
5 *Redondo, Inc. v. City of Redondo Beach*, 203 Cal. App. 4th 852, 870 (2012). As an initial matter,
6 the Court finds the hourly rates claimed by Class Counsel are reasonable. Given their knowledge,
7 skill and expertise in complex class action cases such as this one, Class Counsel's partner and
8 associate rates fall within the range of rates charged by similarly experienced and qualified
9 attorneys practicing in this area. Further, Class Counsel have shown that their hourly rates are
10 comparable to and in-line with the hourly rates charged by numerous firms practicing in the San
11 Francisco Bay Area on a non-contingency basis and which do similar work.

12 The Court has reviewed the Declarations of Guy B. Wallace, Marc Kroop, Patrick N.
13 Keegan, Daniel B. Edelman, and Barry Goldstein describing the work performed by Class Counsel
14 on this case, as well as the time records submitted in support of the application for an award of
15 fees. The Court concludes that Class Counsel's fees are justified under the statutory fee
16 methodology. As discussed above, Class Counsel's hourly rates fall within the range of hourly
17 rates charged by attorneys of comparable experience, qualifications, and ability who do complex
18 class action litigation in the Bay Area. Moreover, considering the amount of discovery, motion
19 practice, and appellate litigation that occurred in this matter, the difficulty and risks associated with
20 the legal and factual claims that were litigated herein, and the aggressive defense mounted by
21 Interstate Distributor Co., the total maximum lodestar and costs t of \$1,150,000.00 claimed by
22 Class Counsel is reasonable.

23
24 Accordingly, the Court APPROVES Class Counsel's requested attorneys' fees, costs and
25 expenses in the amount of \$1,150,000, to be split amongst Class Counsel with the sum of \$650,000
26 allocated to the firms of Schneider Wallace, Daniel B. Edelman, Esq., and Barry Goldstein and the
27 sum of \$500,000 to the firms of Advantage Law Group and Keegan & Baker in full satisfaction for
28 all attorneys' fees, costs and litigation expenses in the above-captioned matter. Consistent with

1 this Court's practice, 10% of this fee award shall be held by the Claims Administrator in an
2 interest-bearing account pending submission and approval of a final compliance status report after
3 completion of the distribution process.

4 A compliance hearing shall be scheduled for June 29, 2017. A
5 compliance status report must be filed with this Court at least 5 court days prior to the compliance
6 hearing.

7 **V. JUDGMENT & CONTINUING JURISDICTION**

8 The parties are otherwise directed to comply with the terms and definitions set forth on
9 pages 6-21 of the Settlement Agreement, a true and correct copy of which may be found as Exhibit
10 A to the Declaration of Guy B. Wallace in Support of Amended Joint Stipulation of Class Action
11 Settlement which was filed with this Court on July 14, 2016. Pursuant to California Rule of Court
12 3.769(h), the Court HEREBY MAKES AND ENTERS JUDGMENT, and shall retain jurisdiction
13 and oversight of the settlement proceedings.

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16 Dated: November 18, 2016


WINIFRED Y. SMITH
JUDGE OF THE SUPERIOR COURT

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21 Approved as to form:

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24 _____
David R. Ongaro
Attorneys for Defendant IDC
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