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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 IA BROWN, an individual, on behalf of
16 herself, all others similarly situated, and
17 the general public,

18 Plaintiff,

19 v.

20 AUDIOLOGY DISTRIBUTION, LLC, a
21 Delaware limited liability company;
22 CRAIG CAMERON, an individual;
23 HEARX WEST, INC., A California
24 corporation; STEVE MAHON, an
25 individual; TINO SCHWEIGHOEFER, an
26 individual; HEARX WEST LLC, a
27 Delaware limited liability company; WS
AUDIOLOGY (CALIFORNIA), PC, A
California professional corporation;
SIVANTOS, INC., a Delaware
corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 2:22-cv-04271-DMG-MRW

**NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL
OF CLASS AND COLLECTIVE
ACTION SETTLEMENT**

DATE: December 6, 2024
TIME: 10:00 AM
LOCATION: Courtroom 8C, 8th Floor

Case Filed: June 22, 2022
Trial Date: January 7, 2025

NOTICE

TO DEFENDANTS, AND THEIR COUNSEL OF RECORD,

PLEASE TAKE NOTICE: on December 6, 2024 at 10:00 AM, in Courtroom 8C, 8th Floor of the United States Courthouse for the United States District Court for the Central District of California, located at 350 W. 1st St., Los Angeles, CA 90012, Plaintiff and proposed Class Representative, Ia Brown, on behalf of herself and all others similarly situated, will and hereby does move the Court to: finally approve the Settlement Agreement between the Plaintiff and Defendants settling the class, collective, and representative claims under California law and the federal Fair Labor Standards Act in this matter, and to grant a service award to the named plaintiff, Ia Brown. This Motion is noticed to be heard with Plaintiff’s previously filed motion for attorneys’ fees and costs and settlement administration costs (ECF No. 44). The Court preliminary approved the Settlement Agreement on July 19, 2024 (ECF No. 43). Since then, Notice was provided to the Settlement Class and Collective Members and Opt-in Eligible Plaintiffs. In the California Class, which is an opt out class, only three (3) of the California class members opted out, representing a 99.26% participation rate within California, and no one has objected. (*See* Decl. of Jennifer Forst, filed concurrently herewith, ECF 46-2 at 5:15-18.)

This motion is based on this notice of motion, the memorandum of points and authorities below, the declarations of Paul T. Cullen, Plaintiff Ia Brown, and Jennifer Forst of CPT Group, Inc filed concurrently herewith, the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument that may be presented at the time of hearing.

Dated: October 31, 2024

THE CULLEN LAW FIRM, APC


By: 
Paul T. Cullen, Class Counsel

TABLE OF CONTENTS

1

2

3

4 MEMORANDUM OF POINTS AND AUTHORITIES..... 1

5 I. INTRODUCTION..... 1

6 II. THIS SETTLEMENT MEETS THE STANDARDS FINAL

7 APPROVAL 2

8 A. The Amount of the Settlement in Light of the Potential

9 Recovery..... 2

10 B. The Extent of Discovery Conducted..... 3

11 C. The Complexity and Potential Costs of Trial 3

12 D. The Number and Content of Objections 4

13 E. Experienced Counsel Recommends the Settlement..... 4

14 F. The Capacity for the Defendant to Withstand a Larger

15 Judgment 4

16 III. CLASS COUNSEL RECOMMENDS LATE CLAIMS BE

17 ALLOWED 4

18 IV. IA BROWN’S INCENTIVE AWARD IS APPROPRIATE 5

19 V. CONCLUSION 5

20

21

22

23

24

25

26

27

TABLE OF AUTHORITIES

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

Cases

Chun-Hoon v. McKee Foods Corp.,
(N.D. Cal. 2010) 716 F.Supp.2d 8483

Statutes

29 U.S.C. § 201..... 1

Other Authorities

4 Newberg and Rubenstein on Class Actions § 13:48 (6th ed.).....2

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This case focuses on claims of regular rate violations and related penalties for
4 Plaintiff Ia Brown and her former, similarly situated co-workers throughout the United
5 States. Named Plaintiff Ia Brown’s motion seeks final approval of a nationwide wage
6 and hour class and collective action of overtime and related claims premised on
7 violations of the federal Fair Labor Standards Act (“FLSA,” 29 U.S.C. § 201 et seq.),
8 the California Labor Code, and the California Unfair Competition Law, on behalf of a
9 class of approximately 1,386 persons, including 995 who worked outside of the State
10 of California and 391 who worked in the State of California. The proposed settlement
11 is for \$1.8 million, plus the employer’s matching obligations for standard payroll
12 deductions for the portion of the settlement payments allocated to wages. The
13 Settlement Agreement provides for payment of a \$20,000 service award to the named
14 plaintiff, costs of administration in the amount of no more than \$25,000, and attorneys
15 fees on a percentage basis of one third of the settlement agreement, i.e. \$600,000, plus
reimbursement of costs incurred in the amount of \$6,319.95.

16 The Court granted preliminary approval of the proposed settlement on July 19,
17 2024. Since then, the Settlement Administrator has distributed notice to the California
18 Class Members and non-California Collective Members who had already opted in to
19 the FLSA claim prior to the settlement. No one has submitted an objection to the
20 settlement.

21 The positive reaction from the California Class and lack of any objection to the
22 settlement reflects the satisfaction of the Settlement Class (*i.e.* all California Class
23 Members and non-California Collective Members who have opted in to the FLSA
24 claim) with the significant monetary relief provided by the Settlement as well as the
25 employment practices changes that came about after the filing of the case. “Prior to
26 the deduction of employee-side state and federal taxes, the average Individual

1 Settlement Payment is estimated to be \$2,129.18. The highest payment is estimated to
2 be \$18,313.79 and the lowest estimated payment is \$28.91. The estimated average,
3 highest and lowest payment for Participating FLSA Collective Class Members is
4 \$517.43, \$4,573.71, and \$28.91, respectively. The estimated average, highest and
5 lowest payment for Participating California Class Members is \$2,666.49, \$18,313.79,
6 and \$28.91, respectively.” (See Decl. Jennifer Forst, ECF 46-2, at 6:2-7, ¶ 16.)

7 When the benefits of a significant, timely, certain settlement payment are
8 weighed against the risks of continued, protracted litigation, including potential defeat
9 at class certification or on the merits, the fairness, adequacy, and reasonableness of the
10 proposed settlement are apparent. For these reasons, and as outlined in Plaintiff’s
11 preliminary approval and attorneys’ fees motions, Plaintiff respectfully requests the
12 Court to grant final approval of the Settlement and award the requested attorneys’ fees
13 and costs to Class Counsel, settlement administration costs to CPT Group, Inc., and
14 the \$20,000 service award to Named Plaintiff Ia Brown.

14 **II. THIS SETTLEMENT MEETS THE STANDARDS FINAL APPROVAL**

15 4 Newberg and Rubenstein on Class Actions § 13:48 (6th ed.) identifies the
16 factors a district court should assess in determining whether to grant final approval.
17 They include (1) the amount of the settlement in light of the potential recovery
18 discounted by the likelihood of Plaintiff’s prevailing at trial; (2) the extent to which
19 the parties have engaged in sufficient coverage to evaluate the merits of the case; (3)
20 complexity and potential costs of trial; (4) the number and content of objections; (5)
21 recommendations of experienced counsel that settlement is appropriate; and, in some
22 instances, (6) the capacity for the defendant to withstand a larger judgment. Plaintiff
23 addresses each of these factors below.

23 **A. The Amount of the Settlement in Light of the Potential Recovery**

24 As set forth in both the motion for preliminary approval and the motion for
25 approval of Class Counsel’s fees, this settlement represents more than 100% of the
26

1 projected liability, exclusive of attorney’s fees and costs. The settlement represents an
2 outstanding result.

3 **B. The Extent of Discovery Conducted**

4 Due to the nature of the case and cooperative, professional relationship between
5 opposing counsel, who sought to promptly resolve this regular rate claim, formal
6 discovery was relatively minimal. There were a couple of sets of targeted special
7 interrogatories. However, though few in number, interrogatories undoubtedly required
8 a tremendous amount of effort on part of Defendants to properly answer. Moreover,
9 Plaintiff also propounded two sets of requests for production to the Defendants, and
10 Defendants’ responses were sufficient to enable Class Counsel to adequately evaluate
11 the propriety of settlement. Because this was a regular rate case, the analysis is
12 basically mathematical, and the Defendants shared substantial amounts of verified
13 payroll information that facilitated an accurate computation of damages exposure.
14 This informal informational exchange of detailed payroll data was the most important
15 aspect of Class Counsel’s investigation.

16 **C. The Complexity and Potential Costs of Trial**

17 Plaintiff assumed that a trial in this case would have lasted two to three weeks,
18 and would have been predominately a battle of experts explaining their methodology
19 for computing damages on what are bright line violations of law. While the trial may
20 not have been particularly complex, it would have been costly, as qualified experts in
21 this area are not cheap. The trial would have been moderately complicated, as are all
22 trials, but it is not clear that the results at trial, even assuming success, would have
23 been materially better than this settlement. It is entirely conceivable they would have
24 been less favorable. What is more, a favorable verdict could have been appealed, and
25 statutory fees would have been run up, complicating matters for future settlement
26 negotiations. Thus, it was in Plaintiff’s interests to resolve this case early, with
27 certainty, and to obtain a relatively quick recovery for the class members, even if it
meant the standard discounts for fees and costs would come out of the gross amount.

1 **D. The Number and Content of Objections**

2 Here, there have been no objections and no disputes. There have only been
3 three opt outs to the California class. *Chun-Hoon v. McKee Foods Corp.* (N.D. Cal.
4 2010) 716 F.Supp.2d 848, 852 (concluding, in a case where “[a] total of zero
5 objections and sixteen opt-outs (comprising 4.86% of the class) were made from the
6 class of roughly three hundred and twenty-nine (329) members,” that the reaction of
7 the class “strongly supports settlement”). As for FLSA opt-ins, 138 valid claims were
8 made, which includes 3 late claims, and that represents a 13.41% participation rate.
(ECF 46-2 at 4:5-11.)

9 **E. Experienced Counsel Recommends the Settlement**

10 Class Counsel, who has been litigating wage and hour class actions for 26
11 years, strongly supports the settlement and has confirmed its propriety. It is a rare
12 settlement that provides payment equivalent to more than 100% of the value of the
13 claims before deductions for fees and costs. The settlement was obtained in mediation
14 with a nationally recognized mediator, Hunter Hughes.

15 **F. The Capacity for the Defendant to Withstand a Larger Judgment**

16 This is not a factor in the settlement. First, a larger judgment would only
17 comprise additional monies for statutory attorney’s fees, which likely would have
18 been deemed unreasonable had Defendants made an offer of judgment that Plaintiff
19 refused. Plaintiff had initially been concerned that the multiple, interrelated
20 organizations that had employed Plaintiff were shells organizations with little money,
21 those notions were dispelled relatively early in the litigation, and Plaintiff voluntarily,
22 but conditionally dismissed a number of individual defendants without prejudice to
allow the solvent entity defendants to defend the case, which they did.

23 **III. CLASS COUNSEL RECOMMENDS LATE CLAIMS BE ALLOWED**

24 There were only three (3) late claims, and the impact of allowing their inclusion
25 is negligible on the participating class and collective class members. Class Counsel
26 recommends that these claims, as it is common for people who have moved to only

1 receive notice of these settlements by word-of-mouth, which is not necessarily timely
2 or predictable. So long as the late claimant is a collective class member and not just a
3 random opportunist, it would be in the spirit of the settlement to have the claims
4 honored. Moreover, Defense counsel has indicated no objection to honoring these late
5 claims. As noted above, the California class has a 99.51% participation rate, and the
6 FLSA opt in collective class has 13.12% participation rate, i.e, 135 timely opt ins in a
7 collective class of 995 persons. (See ECF 85 at 4:5-8 and ECF 37-1 at 1:18-20.)

8 **IV. IA BROWN’S INCENTIVE AWARD IS APPROPRIATE**

9 This issue was briefed both in the motion for preliminary approval. (See ECF
10 37-2 and 37 at 20:12-21:13.) Accordingly, it will not be repeated here. The proposed
11 settlement provides \$20,000 to be paid to Ia Brown. In addition to the collective and
12 class claims advanced in the case, Ms. Brown had individual claims that she
13 advanced, e.g., meal period violation claims, which were individually advanced by
14 Plaintiff, but not on behalf of the class. In addition to compensating her for her work
15 as a class Representative, which he detailed in her declaration in support of
16 preliminary approval (ECF 37-2), the \$20,000 award compensates her for those
17 claims. The proposed Final Approval Order contains a paragraph addressing this
18 issue, citing cases that support the conclusion that the award is appropriate.

19 **V. CONCLUSION**

20 Considering the foregoing, Plaintiff requests that the Court enter the proposed
21 **[PROPOSED] ORDER AND JUDGMENT ON MOTION FOR FINAL**
22 **APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT**
23 lodged/filed concurrently herewith.

24 Dated: November 1, 2024

PAUL T. CULLEN
THE CULLEN LAW FIRM, APC

25 By: /s/ Paul T. Cullen
Paul T. Cullen, Class Counsel

CERTIFICATE OF SERVICE

I, Paul T. Cullen, certify and declare as follow:

1. I am over the age of 18 and not a party to this action.

2. My business address is 9800 Topanga Canyon Boulevard; Suite D, PMB 325; Chatsworth, CA 91311-4057.

3. On November 1, 2024, I caused a copy of **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT** to be served upon the following counsel via the Court’s CM/ECF system:

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Attorneys for DEFENDANTS AUDIOLOGY DISTRIBUTION, LLC;
HEARX WEST, INC.; and HEARX WEST LLC

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct. Executed on November 1, 2024, at Los Angeles, California.

/s/ Paul T. Cullen
Attorneys for Plaintiff IA BROWN