

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

LAURA LEE PETERSON, Individually and
on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

ALASKA COMMUNICATIONS SYSTEMS
GROUP, INC. AND ALASKA
COMMUNICATIONS SYSTEMS
HOLDINGS, INC., d/b/a ALASKA
COMMUNICATIONS,

Defendants.

Case No. 3:12-cv-00090-TMB-MMS

**ORDER ON PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF THE
CLASS SETTLEMENT (DKT. 493) and
MOTION FOR ATTORNEY'S FEES
AND COSTS (DKT. 484)**

I. INTRODUCTION

This matter is before the Court on Plaintiff Laura Lee Peterson's, Individually and on Behalf of All Others Similarly Situated, Motion for Final Approval of the Class Settlement (the "Final Approval Motion")¹ and Motion for Attorney's Fees and Costs ("Attorney's Fees Motion").² Defendants Alaska Communications Systems Group, Inc. and Alaska Communications Systems Holdings, Inc. (collectively the "Defendants" or "ACS") do not oppose the Attorney's Fees Motion.³ The Final Approval Hearing was held on January 12, 2022.⁴

¹ Dkt. 493 (Final Approval Motion).

² Dkt. 484 (Attorney's Fees Motion).

³ Dkt. 487 (Non-Opposition to Attorney's Fees Motion).

⁴ Dkt. 499 (Minute Entry). This hearing is often also referred to as a fairness hearing. *In re Bluetooth Headset Products Liability Litigation*, 654 F.3d 935, 946 (9th Cir. 2011).

Plaintiffs seek to recover unpaid overtime wages.⁵ The stipulated settlement agreement (“Settlement Agreement” or “Agreement”) approved in this class action provides class members with more than \$1 million in *cy pres* awards while also setting aside \$45,000 for class representative service awards, \$688,875 for class counsel’s attorney’s fees, \$300,000 for out-of-pocket expenses, and \$15,000 for settlement administrator costs. No one has objected to the terms of the stipulated settlement and only one class member has requested exclusion from the class. But even so, the Court recognizes that it “should not greenlight [the settlement] . . . just because the parties profess that their . . . deal is ‘all right, all right, all right.’”⁶

For the reasons discussed below, the Final Approval Motion at Docket 493 and Attorney’s Fees Motion at Docket 484 are **GRANTED**.

II. BACKGROUND

In 2012, Plaintiff Peterson filed a class action lawsuit against Defendants on behalf of herself and a class of similarly situated plaintiffs.⁷ The Complaint was later amended in March 2014.⁸ The Plaintiffs, who worked for ACS as client account managers (“CAMs”), allege that ACS violated the federal Fair Labor Standards Act (“FLSA”) and its state counterpart, the Alaska Wage and Hour Act (“AWHA”), by improperly classifying CAMs as overtime-exempt salaried employees.⁹ As a result, Plaintiffs assert ACS failed to pay the appropriate overtime wages.¹⁰ The

⁵ Dkt. 52 (First Amended Complaint)

⁶ *Briseño v. Henderson*, 998 F.3d 1014, 1018 (9th Cir. 2021).

⁷ Dkt. 1 (Complaint).

⁸ Dkt. 52.

⁹ Dkt. 300 (Order Certifying Class); *see also* Dkt. 52.

¹⁰ *See* Dkt. 52.

Court conditionally certified the FLSA collective action in 2014¹¹ and certified the Rule 23 class in 2018.¹² The class currently contains 74 members.¹³

A. Settlement

In May 2021, the parties reached a stipulated settlement agreement, which was fully executed on August 20, 2021.¹⁴ The Agreement resolves all of class Plaintiffs' claims against Defendants in exchange for a \$2,087,500 non-reversionary payment.¹⁵ The Agreement provides that each class member will receive a share of the net settlement available to class members based on a system of "Salary Points" and "Commission Points" calculated from their individual employment records.¹⁶ Class members are expected to receive an average pre-tax award of \$14,000.¹⁷ The largest individual payment will exceed \$60,000.¹⁸ The named plaintiff and class representatives will also receive a service/incentive award—Peterson will receive \$30,000 and Shephard will receive \$15,000.¹⁹

¹¹ Dkt. 100 (Order Conditionally Certifying the Class).

¹² Dkt. 300.

¹³ Dkt. 493. Of the 74 current class members, 73 are part of the Rule 23 class and 16 are part of the FLSA opt-in collective action class. Dkt. 494 at 7–8, 25 (Palmer Declaration).

¹⁴ Dkt. 477 (Motion for Preliminary Approval); Dkt. 494-1 (Settlement Agreement).

¹⁵ Dkt. 494-1 at 10 (Any settlement checks that are not cashed within six months will be redistributed to other class members who timely cashed their checks. After all checks are cashed, any residual settlement money will be distributed to a *cy pres* beneficiary, Alaska Legal Services Corporation, for the "provision of legal services on behalf of Alaskan employees.").

¹⁶ *Id.* at 12–14; *see also* Dkt. 495 at ¶ 20 (Cofinco Declaration).

¹⁷ Dkt. 493 at 14; Dkt. 495 at ¶ 20.

¹⁸ Dkt. 493 at 14; Dkt. 495 at ¶ 20.

¹⁹ Dkt. 494-1 at 19–20.

B. Preliminary Approval

The Court preliminarily approved the Agreement on September 28, 2021.²⁰ In doing so, the Court approved the parties' class settlement notice and the distribution schedule for the notices and appointed CPT Group, Inc. ("CPT") as the settlement administrator.²¹ CPT mailed the class settlement notices to the class members on November 3, 2021.²²

C. Exclusion Request

CPT received one untimely request for exclusion and no objections from the class members.²³ Class member Andra Brown initially submitted an exclusion request via email on November 23, 2021, which CPT deemed invalid because the Settlement Agreement requires requests for exclusion to be "personally signed."²⁴ On December 6, CPT notified Brown that her request was improper. Brown mailed a signed request on December 21, after the deadline.²⁵ CPT deemed the request invalid because it had not been postmarked by the December 18 deadline.²⁶ But after conferring, the parties agreed that Brown's request should be deemed valid.²⁷

²⁰ Dkt. 480.

²¹ *Id.*

²² Dkt. 495 at 3. Seven of the 74 notices were initially returned. CPT re-mailed the seven notices, and none of those were returned to the sender. *Id.* at 4.

²³ Dkt. 495-2 (Brown Email).

²⁴ *Id.*

²⁵ Dkt. 495-3 (Brown Letter) (the request was late because Brown was travelling).

²⁶ *Id.* Brown's request for exclusion was otherwise valid.

²⁷ Dkt. 493 at 7; Dkt. 494 at ¶ 60.

D. Attorney's Fees and Costs

Class counsel, Sanford Heisler Sharp, LLP, seeks \$688,875 in attorney's fees, one third of the total settlement payment.²⁸ Class counsel reports to have spent over 11,000 hours litigating this case.²⁹ Over the last nine years, class counsel has spent time and money:

investigating the legal and factual allegations of overtime violations affecting the Class Members; drafting the pleadings; engaging in extensive fact and expert discovery, which included reviewing and analyzing voluminous amounts of documents and data, taking and defending dozens of depositions, propounding written discovery and responding to Defendants' extensive discovery requests (which required Class Counsel to spend substantial time gathering information from the Class Representatives and numerous Class Members), conducting meet and confer sessions with ACS's counsel, litigating a number of discovery motions, and working with a damages expert to formulate an analysis of each Class Member's damages and evaluate Defendants' expert's report; participating in multiple mediations; briefing successful motions for conditional certification of the FLSA collective action and Rule 23 certification of the class action; successfully opposing Defendants' Rule 23(f) petition; opposing Defendants' motion for summary judgment and the many other motions filed during this lengthy litigation; negotiating the terms of the Settlement Agreement; and seeking and obtaining preliminary approval.³⁰

In addition, class counsel seeks reimbursement for \$272,654.49 of out-of-pocket costs³¹ and \$12,500 for CPT's settlement administration costs.³²

²⁸ Dkt. 484 at 6; Dkt. 493 at 10–11.

²⁹ See Dkt. 485-1 (Time Summary); Dkt. 484 at 4; Dkt. 494 at 11.

³⁰ Dkt. 484 at 4–5.

³¹ See Dkt. 485-2 (Itemized Case Expenses). Class counsel do not anticipate any further costs. Dkt. 484 at 11.

³² Dkt. 493 at 12 (Class counsel seeks \$12,500 of the \$15,000 agreed upon maximum amount for reimbursement of CPT's costs under the Settlement Agreement).

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