

ENDORSED
FILED

JAN 08 2020

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

1 Bryan Schwartz (SBN 209903)
2 BRYAN SCHWARTZ LAW
3 180 Grand Ave., Suite 1380
4 Oakland, California 94612
5 Tel. (510) 444-9300
6 Fax (510) 444-9301
7 Email: Bryan@BryanSchwartzLaw.com

8 *Attorneys for Plaintiff on behalf of herself*
9 *and all others similarly situated.*

10 IN SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SONOMA

12 CASE NO.: SCV-262841

13 REBECCA CALL on behalf of herself and
14 all others similarly situated,

15 Plaintiff,

16 v.

17 SHUTTERSTOCK, INC., and DOES 1
18 through 10 inclusive,

19 Defendants.

**[proposed] ORDER GRANTING PLAINTIFF'S
UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

20 **TO EACH PARTY AND THE COUNSEL OF RECORD FOR EACH PARTY:**

21 This matter is on calendar for the motion by representative plaintiff Rebecca Call ("Plaintiff") for
22 final approval of a class action settlement, for an award of attorneys' fees and costs, and an award of an
23 enhancement payment. Counsel provided the court with proof of service on Class Members of the Court
24 Authorized Notice of Class Action Settlement ("Notice"), which contains the hearing date, in an amended
25 Declaration of Jennifer M. Keough attaching the Class Notice. For the reasons discussed below, the motion
26 is GRANTED.
27
28

1 The Complaint

2 The First Amended Complaint (“FAC”) alleges that Defendant misclassified its Image Reviewers,
3 Vector and Illustration Reviewers, Footage Reviewers, and similar content reviewers (collectively
4 “Content Reviewers”) as independent contractors and, as a result, failed to pay them appropriate
5 compensation as required by the California Labor Code (“LC”) and applicable wage orders. The FAC
6 contains causes of action for: 1) failure to pay overtime, LC §§ 510, 558, 1194 et seq., 1198 and wage
7 orders; 2) failure to provide minimum wage in violation of LC §§ 1194, 1194.2, 1197, 1197.1 and wage
8 orders; 3) failure to reimburse business expenses in violation of LC § 2802; 4) failure to provide and/or
9 authorize meal and rest periods and unpaid wages in violation of §§ 226.7, 512, 558 and wage orders;
10 5) failure to provide timely, accurate itemized wage statements in violation of LC §§ 226, 226.3, 1174 and
11 wage orders; 6) failure to pay earned wages upon discharge, waiting time penalties in violation of
12 LC §§ 201-204; 7) unlawful and/or unfair business practices in violation of Cal. Bus. & Prof. Code
13 § 17200 et seq.; and 8) civil penalties pursuant to the Labor Code Private Attorneys General Act
14 (“PAGA”), LC § 2698. Plaintiff therefore seeks to collect on a representative basis PAGA civil penalties
15 for herself and other Content Reviewers and collect on a class-wide basis unpaid minimum wage and
16 overtime wages, missed break wages, waiting time penalties, and wage statement damages during the
17 period from July 20, 2014, through the final disposition of the action.
18

21 The Settlement

22 The Settlement defines the class as “All individuals who performed content review work
23 (Shutterstock Image and/or Bigstock Image Reviewers, Vector and Illustration Reviewers, and Footage
24 Reviewers; collectively, the “Class Positions”), for Defendant in the State of California between
25 July 20, 2014, and the date of preliminary approval of this Settlement Agreement, inclusive, who
26 Defendant classified as independent contractors.” (Settlement Agreement at ¶ 1.2.)
27
28

1
2 The Settlement calls for: a non-reversionary Gross Settlement Fund, worth \$285,000, equal to an
3 average gross distribution of \$7,702.70 per person, and an average net distribution of \$4,465.71 per person
4 to be distributed among 37 identified Class Members; attorney fees, not to exceed \$95,000, i.e., one-third
5 of the Gross Settlement Fund; actual litigation costs, not to exceed \$15,000, currently estimated at
6 \$7,906.64; administrative costs, estimated at \$3,823, to be paid to the settlement administrator, JND Legal
7 Administration; representative service award and payment for general release for Plaintiff Rebecca Call,
8 not to exceed \$5,000; and a \$10,000 allocation to PAGA claims, with 75% (\$7,500) paid to the Labor &
9 Workforce Development Agency (“LWDA”) under Labor Code § 2699(i). Additionally, Defendant will
10 pay separately the employer’s share of payroll taxes on amounts allocated to wages, Defendant no longer
11 employs Content Reviewers as independent contractors in California, and Defendant will cover
12 employer’s portion of payroll taxes for the portion of each individual settlement payment allocated as
13 wages.
14
15

16 Standard for Final Approval

17
18 After preliminary approval, the Court determines whether a class action settlement is fair, adequate
19 and reasonable in a final hearing, often referred to as a “fairness hearing.” Cal. R. Ct. 3.769(g); *see*
20 *also Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The purpose of this requirement is “the
21 protection of those class members, including the named plaintiffs, whose rights may not have been given
22 due regard by the negotiating parties” and to “prevent fraud, collusion or unfairness to the
23 class...” *Dunk*, 48 Cal.App.4th at 1800-01, citing *Malibu Outrigger Bd. of Governors v. Superior*
24 *Court* (1980) 103 Cal.App.3d 573, 578-79; *see also Marcarelli v. Cabell* (1976) 58 Cal.App.3d 51, 55.
25
26
27
28

1 "The trial court has broad discretion to determine whether a class action settlement is fair and
2 reasonable." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52. "Due regard should be given to what
3 is otherwise a private consensual agreement between the parties" and "the court's inquiry must be limited
4 to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
5 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole,
6 is fair, reasonable and adequate to all concerned." *Dunk*, 48 Cal.App.4th at 1801 (internal citations
7 omitted). "When the following facts are established in the record, a class action settlement is presumed to
8 be fair: '(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are
9 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
10 and (4) the percentage of objectors is small.'" *Chavez*, 162 Cal.App.4th at 52 (*quoting Dunk*, 48
11 Cal.App.4th at 1802).

12
13
14 Conclusion

15 The Settlement Agreement, reached with the assistance of a respected mediator, is the result of an
16 arm's-length negotiation between experienced attorneys who are familiar with wage and hour class action
17 litigation in general and with the legal and factual issues of this case. (*See* Schwartz Decl. at ¶ 9.) The
18 parties exchanged informal discovery of key documents and class-wide work data (including data for
19 certain Content Reviewers that reflected hour-by-hour breakdowns of content review work performed).
20 (*Id.* at ¶ 10.) Under the circumstances, the proposed settlement is presumptively fair. After the complete
21 proof of service of the Notice, including the date of the hearing, ^{having been filed} ~~has been filed~~, ^{and no objections filed} ~~absent objection~~, the court
22 will approve the settlement agreement, finding that the terms and conditions constitute a fair, adequate,
23 and reasonable settlement as to all Class Members.

24 //

25 //

