

07/01/2025

David W. Slayton, Executive Officer / Clerk of Court

By: R. Arraiga Deputy

RULING RE: MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Jonathan Martin v. Atlas Digital, LLC

Case No.: 23STCV30498

Department SSC-9

Hon. Elaine Lu

Hearing: July 1, 2025 (continued from April 30, 2025)

The Parties' Motion for Preliminary Approval of Class Action Settlement is GRANTED as the settlement is fair, adequate, and reasonable.

The essential terms of the Settlement Agreement are:

- The Gross Settlement Amount ("GSA") is **\$100,000**, non-reversionary. (¶6.o)
- The Net Settlement Amount is the GSA minus the following:
 - Up to **\$33,333.33** (33 1/3%) for attorney fees (¶9);
 - Up to **\$17,000** for litigation costs (*ibid.*);
 - Up to **\$5,000** for a Service Payment to the Named Plaintiff (¶10); and
 - Up to **\$5,000** for settlement administration costs (¶11).
- Defendants will pay their share of taxes separate from the GSA. (¶6.o)
- Plaintiffs shall release Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **September 19, 2025**, and will be heard on **October 23, 2025, 10:00 a.m., in Department 9**. *Failure to file the Parties' Motion for Final Approval of Class Action Settlement by this deadline will result in a continuance of the final approval hearing to the Court's first available hearing date, which could be months after the hearing date noted here.* Prior to filing the moving papers, Plaintiff must contact the court staff for Department 9 to obtain a briefing schedule, which must be included in the caption of the moving papers.

The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged **single document** that constitutes a [Proposed] Order and Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out.

Non-Appearance Case Review Re: Filing and Serving of Motion for Final Approval of Class Action Settlement is set for September 25, 2025, 8:30 a.m., Department 9.

BACKGROUND

This is a wage and hour class action. Defendant is in the industry of television post-production services that provide, inter alia, post-production editing equipment rental and sales, transcription services, and short-term production space rentals. Plaintiff was employed by Defendant as an hourly-paid, non-exempt Driver and Junior Tech Work from approximately April 2016 to approximately July 2021.

On December 13, 2023, Plaintiff filed this Class Action against Defendant alleging nine (9) causes of action for violations of the California Labor Code for failure to pay minimum wages, failure to pay overtime wages, failure to provide compliant meal periods and premium payments in lieu thereof, failure to provide compliant rest periods and premium payments in lieu thereof, failure to timely pay wages during employment, failure to provide accurate wage statements, failure to timely pay wages upon termination, and failure to reimburse necessary business expenses, and for violations of California Business & Professions Code Section 17200, et seq. based on the aforementioned California Labor Code violations.

On June 20, 2024, Plaintiff and Defendant (together, the “Parties”) participated in a formal mediation conducted by Todd A. Smith, Esq., which did not result in a settlement at that time. On November 13, 2024, the Parties were able to reach an agreement to resolve this dispute on a class basis. A fully executed copy of the Settlement Agreement was filed with the Court on March 6, 2025, attached to the Declaration of Jonathan M. Genish (“Genish Decl.”), as Exhibit 2.

On April 30, 2024, the Court continued Preliminary Approval for Counsel to either revise the settlement agreement or explain how the original settlement agreement was fair to the Class Members regarding the calculation of the attorneys’ fees.

On June 3, 2025, Counsel filed a fully executed copy of the Amended Settlement Agreement attached as Exhibit 2 to the Declaration of Alexandra Rose (“Rose Decl.”).

Now before the Court is Plaintiff’s Motion for Preliminary Approval of the Amended Settlement Agreement filed on June 3, 2025.

SETTLEMENT CLASS DEFINITION

- “Class” or “Class Member(s)” means all current and former hourly-paid and/or non-exempt employees who worked for Defendant within the State of California at any time during the Class Period, but excluding those who signed a settlement agreement and/or arbitration agreement with Defendant. (¶16.b)

- “Class Period” means the period from December 13, 2019 through July 13, 2024. (¶6.f)
- Workweeks. Defendant has represented that there are a total of 41 Class Members who worked a total of 2,319 Workweeks. (¶12)
- The parties stipulate to class certification for settlement purposes only. (¶7.)

TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- The Gross Settlement Amount (“GSA”) is **\$100,000**, non-reversionary. (¶6.o)
- The Net Settlement Amount (“Net”) (**\$39,666.67**) is the GSA minus the following:
 - Up to **\$33,333.33** (33 1/3%) for attorney fees (¶9);
 - Up to **\$17,000** for litigation costs (*ibid.*);
 - Up to **\$5,000** for a Service Payment to the Named Plaintiff (¶10); and
 - Up to **\$5,000** for settlement administration costs (¶11).
- Defendants will pay their share of taxes separate from the GSA. (¶6.o)
- Funding of Settlement: No later than thirty (30) calendar days after the Effective Date, Defendant will deposit the Gross Settlement Amount into a Qualified Settlement Fund (“QSF”) within the meaning of Treasury Regulation Section 1.468B-1, et seq., to be established by the Settlement Administrator. (¶29)
- There is no claim form requirement. (Notice, pg. 1)
- Individual Settlement Payment Calculation: Individual Settlement Shares will be calculated and apportioned from the Net Settlement Amount based on the Class Members’ number of Workweeks, as follows: (a.) After Preliminary Approval, the Settlement Administrator will divide the Net Settlement Amount by the Workweeks of all Class Members to yield the “Estimated Workweek Value,” and multiply each Class Member’s individual Workweeks by the Estimated Workweek Value to yield each Class Member’s estimated Individual Settlement Share that each Class Member may be entitled to receive. (b.) After Final Approval, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the “Final Workweek Value,” and multiply each Settlement Class Member’s individual Workweeks by the Final Workweek Value to yield each Settlement Class Member’s final Individual Settlement Share. (¶13)
 - Tax Allocation: 20% as wages and 80% as interest and penalties. (¶14)
- “Response Deadline” means the deadline by which Class Members must submit a Request for Exclusion, Notice of Objection, and/or Workweeks Dispute, which shall be the date that is forty-five (45) calendar days from the initial mailing of the Class Notice by the Settlement Administrator to Class Members, unless the 45th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the United States Postal Service is open. The Response Deadline may also be extended by express agreement between Class Counsel and Defendant’s Counsel. Under no circumstances, however, will the Settlement Administrator have the authority to extend the Response Deadline. In the event that a Class Notice is re-mailed

to a Class Member, the Response Deadline for that Class Member shall be extended fifteen (15) calendar days from the original Response Deadline. (¶6.z)

- If more than ten percent (10%) or more of the Class Members submit timely and valid Requests for Exclusion, Defendant may elect to rescind the Settlement Agreement. (¶126)
- Uncashed Settlement Checks: Each Individual Settlement Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. Any funds associated with such canceled checks shall be distributed by the Settlement Administrator to the State of California's Unclaimed Property Division in the name of the Settlement Class Member. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Settlement Class Members, whether or not they cash their settlement checks. Therefore, Defendant will not be required to pay any interest on such amounts. (¶31)
- The settlement administrator will be Apex Class Action LLC. (¶6.aa)
- Notice of Final Judgment will be posted on the Settlement Administrator's website. (¶34)
- Participating class members and the named Plaintiff will release certain claims against Defendants. (See further discussion below)

ANALYSIS OF SETTLEMENT AGREEMENT

A. Does a presumption of fairness exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On May 12, 2022, the Parties participated in an unsuccessful full-day mediation with Louis Marlin, after which they continued to negotiate, and with the mediator's assistance reached agreement and executed a Memorandum of Understanding. (Genish Decl., ¶10.) On November 13, 2024, the Parties were able to reach an agreement to resolve this dispute on a class basis. (*Id.* at ¶12.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represents that on July 26, 2024, Plaintiff propounded written formal discovery onto Defendant (specifically, Form Interrogatories – General (Set One), Form Interrogatories – Employment Law (Set One), Special Interrogatories (Set One), Requests for Admission (Set One), and Requests for Production of Documents (Set One)), noticed the deposition of Defendant's Person Most Knowledgeable, and served a proposed Belaire-West notice. (*Id.* at ¶11.) Prior to mediation, Defendant produced a random sampling of thirty-three percent (33%) of putative class members' time and pay records as well as Defendant's relevant wage and hour policies, exemplar individual settlement agreements and arbitration agreements, and information regarding the total number of putative class members, the number of current versus former employees, the total workweeks worked by the putative class members, and the average rate of pay for the putative class members. (*Id.* at ¶21.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel represents that they are experienced in class action litigation, including wage and hour class actions. (*Id.* at ¶¶2-8 and Exhibit 1 thereto.)

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The

Rutter Group 2014) ¶ 14:139.18, [“Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing.”].)

CONCLUSION: The settlement is entitled to a presumption of fairness.

B. Is the settlement fair, adequate, and reasonable?

1. Strength of Plaintiff’s case. “The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) Here, Class Counsel has provided detailed analysis, summarized below, of the estimated values of the claims asserted:

Violation	Maximum Exposure	Discounted Exposure
Meal Break Violations	\$1,197,117.00	Defendant obtained arbitration agreements with a class action waiver and settlement agreements with a general release of claims from approximately 49% of the putative class who were then excluded from the agreed upon settled Class. Taking this into account, Class Counsel discounted Defendant’s estimated liability by 49% to \$1,560,968. Additionally, taking into account how each of the above risks potentially effected Plaintiff’s ability to first obtain class certification, and then prove the underlying violations, plus the cost and delay in recovering the alleged potential damages, Class Counsel discounted Defendant’s estimated liability based on the challenges facing his ability to succeed on class certification by 60% to \$624,387. The merits-based risk factors further reduced Defendant’s estimated liability by an additional 60%. This resulted in an adjusted estimated liability of \$249,755
Rest Break Violations	\$1,200,648.00	
Unpaid Off-the-Clock Wages	\$223,500.00	
Unpaid Overtime Wages	\$4,934.00	
Unpaid Meal Break Premiums	\$3,208.00	
Waiting Time Penalties	\$265,879.00	
Wage Statement Violations	\$113,600.00	
Business Expense Reimbursement	\$51,836.00	
TOTAL	\$3,060,722.00	\$249,755.00

(Genish Decl. ¶¶24-35.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”].)

4. Amount offered in settlement. Plaintiff’s counsel obtained a \$100,000 non-reversionary settlement. The \$100,000 settlement amount constitutes approximately 3.27% to 40.04% of

Defendant's maximum exposure. Given the uncertain outcomes, the settlement appears to be within the "ballpark of reasonableness."

The \$100,000 settlement amount, if reduced by the requested deductions, will leave \$39,666.67 to be divided among approximately 41 class members. The resulting payments will average \$967.48 per class member. [$\$39,666.67 / 41 = \967.48].

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object, opt-out and/or submit claim forms. This factor becomes relevant during the final fairness hearing.

CONCLUSION: The settlement can be preliminarily deemed "fair, adequate, and reasonable."

C. Scope of the release

Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released the Released Parties of all Released Claims. (¶32)

- "Released Claims" means any and all claims which were alleged or which could have been reasonably alleged based on the factual allegations in the Operative Complaint, arising during the Class Period, and shall specifically include claims for Defendant's alleged failure to: (1) pay minimum and overtime wages, (2) provide compliant meal and rest periods and associated premium payments, (3) timely pay wages during employment and upon termination, (4) provide compliant wage statements, and (5) reimburse necessary business-related expenses; in violation of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order, and California Business & Professions Code Section 17200, et seq. based on the aforementioned California Labor Code violations. The Released Claims do not include claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (¶6.w)
- "Released Parties" means Defendant and its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates. (¶6.x)
- Named Plaintiff will also provide a general release and CC § 1542 waiver. (¶33)

D. May conditional class certification be granted?

1. Standards

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified (*Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19.) Finally, the Court is under no “ironclad requirement” to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 240.)

2. Analysis

a. Numerosity. There are approximately 41 class members. (MPA at 12:17-18.) This element is met.

b. Ascertainability. A class is ascertainable, as would support certification under statute governing class actions generally, when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary.” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 961.) The proposed class is defined above. The class members are ascertainable from Defendant’s employment records. (MPA at 12:21-23.)

c. Community of interest. “The community of interest requirement involves three factors: ‘(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.’” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

Here, regarding commonality, Plaintiff contends that common questions of law and fact predominate because Plaintiff alleges that Defendant denied compliant meal and rest periods to employees, required employees to perform work off-the-clock, and failed to fully compensate employees for all time actually worked. These policies and practices meant that Defendant allegedly failed to pay minimum and overtime wages, and other related claims. Plaintiff alleges that Defendant’s policies and practices were uniform as to all Class Members. (MPA at 13:10-14.)

As to typicality, Plaintiff contends that her claims are typical of the Class Members’ claims because Plaintiff alleges that his claims are similar to that of the other Class Members and that Plaintiff’s claims arise out of the same alleged course of conduct giving rise to the claims of the other Class Members. (*Id.* at 13:22-24.)

As to adequacy, Plaintiff represents that he was informed of the risks of serving as class representative, participated in the litigation, and does not have conflicts of interest with the class. (14:2-5; Declaration of Jonathan Martin, *passim*.)

d. Adequacy of class counsel. As indicated above, Class Counsel has shown experience in class action litigation, including wage and hour class actions.

e. Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

CONCLUSION: The class may be conditionally certified since the prerequisites of class certification have been satisfied.

E. Is the notice proper?

a. Content of class notice. The proposed notice is attached to the Settlement Agreement. Its content appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; attorney fees and costs; enhancement awards; the procedures and deadlines for participating in, opting out of, or objecting to, the settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing.

b. Method of class notice. Within fourteen (14) calendar days of Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator. (¶20.) Within seven (7) calendar days after receiving the Class List from Defendant, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and will mail a Class Notice in English (in the form attached as Exhibit A to this Settlement Agreement) to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator. (¶21.) Any Class Notice returned to the Settlement Administrator as undeliverable on or before the Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other search, using the name, address, and/or Social Security number of the Class Member, and perform a single re-mailing within five (5) calendar days. (¶21.b)

c. Cost of class notice. As indicated above, settlement administration costs are estimated to be **\$5,000**. Prior to the time of the final fairness hearing, the claims administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

F. Attorney fees and costs

California Rule of Court, rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to **\$33,333.33** (33 1/3%) in attorney fees and up to **\$17,000** in costs will be addressed at the final fairness hearing when class

counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can properly apply the lodestar method, and must indicate what multiplier (if applicable) is being sought as to each counsel.

Class Counsel should also be prepared to justify the costs sought by detailing how they were incurred.

G. Incentive Award to Class Representative

The named Plaintiff will request a service award of **\$5,000**. (¶10) In connection with the final fairness hearing, the named Plaintiff must submit a declaration attesting to why he should be entitled to an enhancement award in the proposed amount. The named Plaintiff must explain why he “should be compensated for the expense or risk she has incurred in conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with “nothing more than pro forma claims as to ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was ‘necessary to induce [the named plaintiff] to participate in the suit . . .’” (*Id.* at 806-807, italics and ellipsis in original.)

The Court will decide the issue of the enhancement award at the time of final approval.

CONCLUSION AND ORDER

The Parties’ Motion for Preliminary Approval of Class Action Settlement is GRANTED as the settlement is fair, adequate, and reasonable.

The essential terms of the Settlement Agreement are:

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- The Net Settlement Amount is the GSA minus the following:
 - Up to **\$33,333.33** (33 1/3%) for attorney fees (¶9);
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- Defendants will pay their share of taxes separate from the GSA. (¶6.o)
- Plaintiffs shall release Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **September 19, 2025**, and will be heard on **October 23, 2025, 10:00 a.m., in Department 9**. *Failure to file the Parties' Motion for Final Approval of Class Action Settlement by this deadline will result in a continuance of the final approval hearing to the Court's first available hearing date, which could be months after the hearing date noted here.* Prior to filing the moving papers, Plaintiff must contact the court staff for Department 9 to obtain a briefing schedule, which must be included in the caption of the moving papers.

The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged **single document** that constitutes a [Proposed] Order and Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out.

Non-Appearance Case Review Re: Filing and Serving of Motion for Final Approval of Class Action Settlement is set for September 25, 2025, 8:30 a.m., Department 9.

Plaintiff is ordered to download (1) the instant **signed** ruling from the Court's website and (2) the minute order for today (07/01/2025), to give formal notice of each of these to all other parties, and to file proof of service of such within five (5) days.

IT IS SO ORDERED.

DATED: July 1, 2025



A handwritten signature in cursive script that reads "Elaine Lu".

ELAINE LU

Judge of the Superior Court

Elaine Lu / Judge