

THE HONORABLE MATTHEW SEGAL
Department 3
Noted for Hearing: December 4, 2023 at 9:00 a.m.
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

JULIO RODRIGUEZ and TAYLOR
MANDEEN, individually and on behalf of all
those similarly situated,

Plaintiff,

vs.

AVVO, INC., a Washington Corporation,

Defendant.

No. 22-2-13159-4 SEA

**PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

I. INTRODUCTION

On August 24, 2023, this Court granted preliminary approval of a class action settlement (“Settlement Agreement” or “Agreement”) entered into by Plaintiffs Julio Rodriguez and Taylor Mandeem (“Plaintiffs”) on behalf of themselves and a Settlement Class of Washington State commissions-paid employees of Defendant Avvo who were not paid a portion of their commissions after their employment with Defendant was terminated. *See* Dkt. Sub. No. 18 (“Preliminary Approval Order”). Plaintiffs alleged that they and the Settlement Class members are entitled to such unpaid commissions under Washington and Seattle wage laws. Defendant has denied Plaintiffs’ claims. After a hearing and reviewing the Settlement Agreement, this Court preliminarily found it and its terms to be “fair, reasonable and adequate.” *Id.* ¶ 3.

1 The Agreement – which requires Defendants to pay \$78,750 for the benefit of the
2 Settlement Class –is fair, adequate, and reasonable, and in their best interest. The Agreement is
3 an excellent result, with Participating Settlement Class Members receiving over 100% of their
4 alleged unpaid wages. Settlement Administrator ILYM Group, Inc. (“ILYM”) has successfully
5 implemented the notice program approved by this Court, and along with Settlement Class
6 Counsel, has provided notice to every member of the Settlement Class. No Settlement Class
7 Members have objected to or opted out of the Agreement.
8

9 For the reasons set forth below and previously submitted in support of preliminary
10 settlement approval, the Agreement is fair, adequate, reasonable, and in the best interests of the
11 Settlement Class. Thus, Plaintiffs respectfully request the Court grant final approval of the
12 Agreement by: (1) finding the Agreement to be fair, adequate, and reasonable; (2) determining
13 that adequate notice was provided to Settlement Class members; and (3) approving the requested
14 Class Representative service awards and attorneys’ fees and costs.
15

16 II. STATEMENT OF FACTS

17 A. Factual and Procedural Background.

18 Defendant Avvo employed Plaintiffs and other salespersons who sold advertising and
19 services to Avvo’s customers from December 1, 2020 to August 28, 2022 (“Settlement Class
20 Period”). *See* Dkt. Sub. No. 1 ¶ 1.1. Avvo offered and agreed to pay Plaintiffs and these other
21 employees commissions providing that 25% of earned commissions would be paid out after the
22 fourth month of billing so long as the customers’ accounts remained active (““25% After 4
23 Months” Term”). *Id.* After Plaintiffs’ employment with Avvo was terminated, Avvo did not pay
24 the 25% commissions to Plaintiffs and the other affected employees during the Settlement Class
25 Period. *Id.* Plaintiffs allege Defendant’s refusal to pay such commissions violated Washington
26
27

1 and Seattle wage laws. *Id.* ¶¶ 6.1-9.3. *Id.* Defendant denies Plaintiffs’ claims. *See* Agreement ¶
2 1.

3 After Plaintiffs served their complaint and discovery requests on Defendant, the Parties
4 discussed possible early settlement, with Defendant agreeing to provide Plaintiffs with
5 information necessary to investigate the claims and defenses and calculate potential damages to
6 the proposed class based on Plaintiffs’ allegations. Declaration of Gregory Wolk in support of
7 Plaintiffs’ Motion for Final Approval (“Wolk Decl.”) ¶ 2. Defendant provided the requested
8 information to Counsel who then spent five months analyzing and investigating the claims,
9 defenses, and potential damages by reviewing information from Defendant, requesting and
10 analyzing additional follow up information from Defendant, analyzing all the information based
11 on input from Plaintiffs and proposed class members, and finally engaging in settlement
12 discussions in March 2023. *Id.* The parties then engaged in several rounds of settlement
13 discussions lasting nearly two months, during which Defendant articulated numerous defenses.
14 *Id.* At the end of these discussions, the parties agreed to the essential terms of a class action
15 settlement on May 1, 2023. *Id.*

16 Prior to the May 1st agreement, Settlement Class Counsel spent over 55 hours reviewing
17 and analyzing the class member and commissions data, contacting and interviewing proposed
18 class members, and reviewing other relevant documents. Wolk Decl. ¶ 3. Throughout May 2023,
19 the parties drafted, negotiated, finalized, and executed the long-form settlement agreement in
20 early June 2023, attached to the Wolk Declaration as Exhibit 1. *Id.*, Ex. 1. (“Agreement”).

21 All of the Parties’ settlement negotiations have been non-collusive and at arm’s length.
22 Wolk Decl. ¶ 4; *see also* Agreement p. 3 (Recitals). The parties have reached a class action
23
24
25
26
27

1 settlement in this case that Plaintiffs and Settlement Class Counsel believe is fair, adequate,
2 reasonable, and in the best interests of the proposed Settlement Class. *Id.*

3 On August 24, 2023, the Court heard Plaintiffs’ motion for preliminary approval of the
4 Settlement Agreement and granted the motion that same day. *See* Preliminary Approval Order.
5 The Settlement requires Defendants to pay a total of \$78,750 for the benefit of the Settlement
6 Class. Agreement. Definition S and ¶ 7. Subject to Court approval, these settlement proceeds will
7 be used to pay settlement administration expenses, service awards to Plaintiffs, attorneys’ fees
8 and costs, and awards to Participating Settlement Class Members (the “Net Settlement Class
9 Fund”). *Id.* ¶ 7. After deducting the proposed settlement administration expenses, service awards,
10 and fees and costs, the Participating Settlement Class will be entitled to recover \$45,552.01,
11 which is more than the unpaid commissions Plaintiffs alleged they are owed. *Id.* ¶ 7(D); Wolk
12 Decl. ¶ 5.
13

14
15 **B. Notice Process.**

16 The notice campaign was successful. ILYM, the Court-appointed Settlement
17 Administrator, mailed notices to the 47 Settlement Class Members identified by Defendant.
18 Declaration of Cassandra Polites of ILYM Group, Inc. in support of Motion for Final Approval
19 of Class Action Settlement (“Polites Decl.”) ¶ 7. Only 2 notices were undeliverable. *Id.* ¶¶ 8-9.
20 Settlement Class Counsel obtained the names of the two undeliverable Settlement Class
21 Members, located, and contacted them, and provided them with notice. Wolk Decl. ¶ 14. Notices
22 were therefore sent to 100% of the Settlement Class with no members objecting or opting out.
23 Polites Decl. ¶¶ 7-11.
24
25
26
27

Given the excellent recovery, reflecting 100% of the alleged unpaid wages as calculated by Class Counsel, Plaintiffs and Settlement Class Counsel maintain the Settlement is fair, adequate, reasonable, and in the best interest of the Settlement Class. *See* Wolk Decl. ¶ 3.

III. STATEMENT OF ISSUES

Whether the Court should: 1) grant final approval of the Settlement Agreement; 2) find the notice process was constitutionally sound; 3) approve the requested service awards to Class Representatives; 4) approve the requested settlement administration expenses, and 5) approve the requested fee and costs awards to Class Counsel.

IV. EVIDENCE RELIED UPON

Plaintiffs rely on the Declaration of Gregory Wolk in support of this motion and the attached exhibit, the Declaration of Cassandra Polites and the attached exhibit, as well as the pleadings and records on file with the Court.

V. AUTHORITY AND ARGUMENT

The approval process for a class action settlement takes place in three stages: (1) preliminary approval of the settlement; (2) dissemination of notice to class members; and (3) a “fairness hearing” or final approval hearing, at which class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented. *Manual for Complex Litigation* (Fourth (“*MCL 4th*”) §§ 21.632-.634 (2016)). This procedure, which is used by Washington state courts and endorsed by class action commentator Professor Newberg, safeguards class members’ due process rights and enables the Court to fulfill its role as the guardian of class interests. *See* 4 William B. Rubenstein, *Newberg on Class Actions* §§ 13:10, 13:39 (5th ed. 2019).

1 Here, the first two steps in this procedure have already occurred. The Court granted
2 preliminary approval of the Settlement on August 24, 2023. *See* Preliminary Approval Order, On
3 September 11, 2023, ILYM sent out notice by direct mail to the members of the Settlement Class.
4 Polites Decl. ¶ 7. As mentioned above, the notice program was successful, resulting in every
5 Settlement Class Member receiving notice. *Id.* ¶ 9; Wolk Decl. ¶ 14. By this motion, Plaintiffs
6 ask the Court to take the final step in this process.
7

8 When considering final approval of a class action settlement, a court determines whether
9 the settlement is “fair, adequate, and reasonable.” *Pickett v. Holland Am. Line-Westours, Inc.*,
10 145 Wn.2d 178, 188, 35 P.3d 351 (2001) (quoting *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d
11 1370, 1375 (9th Cir. 1993)). This is a “largely unintrusive inquiry.” *Id.* at 189. Although the
12 Court possesses some discretion whether to approve a settlement,
13

14 [T]he court’s intrusion upon what is otherwise a private consensual agreement
15 negotiated between the parties to a lawsuit must be limited to the extent
16 necessary to reach a reasoned judgment that the agreement is not the product of
fraud or overreaching by, or collusion between, the negotiating parties, and that
the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

17 *Id.* (quoting *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982)).
18 Indeed, “it must not be overlooked that voluntary conciliation and settlement are the preferred
19 means of dispute resolution.” *Id.* at 190 (quoting *Officers for Justice*, 688 F.2d at 625).
20

21 **A. The Settlement is fair, adequate, and reasonable.**

22 To decide whether a class action settlement is fair, adequate, and reasonable such that
23 final approval is appropriate, courts consider several factors, including the strength of the
24 plaintiff’s case; the risk, expense, complexity, and likely duration of further litigation; the risk of
25 maintaining class action status throughout the trial; the amount offered in settlement; the extent
26 of discovery completed and the state of the proceedings; the experience and views of counsel;
27

1 the presence of a governmental participant; the reaction of the class members to the proposed
2 settlement; and the absence of collusion. *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575
3 (9th Cir. 2004); *see also Pickett*, 145 Wn.2d at 188-89. This list is “not exhaustive, nor will each
4 factor be relevant in every case.” *Pickett*, 145 Wn.2d at 189 (*quoting Officers for Justice*, 688
5 F.2d at 625). An analysis of these factors supports final approval of the Settlement Agreement.
6

7 1. The strength of Plaintiffs’ case.

8 Plaintiffs and Settlement Class Counsel continue to believe they have a strong case but
9 are also pragmatic in their awareness of the risks inherent in litigation and the various defenses
10 available to Defendant. The reality that members of the Settlement Class could end up recovering
11 only a fraction of their claimed damages or even be excluded from any class that might be
12 certified was significant enough to convince Plaintiffs and Settlement Class Counsel that the
13 Settlement reached with Defendant outweighs the gamble and expense of further litigation. Wolk
14 Decl. ¶ 6.
15

16 First, Defendant had affirmed that more than half of the Settlement Class Members had
17 signed arbitration agreements with enforceable class action waivers. Wolk Decl. ¶ 6. These
18 agreements would present a significant hurdle to achieve certification under CR 23(a) as
19 Defendant would have been able to challenge numerosity on this basis alone, assuming the
20 agreements and waivers were valid and enforceable. *Id.* ¶ 7. Second, even assuming the Court
21 granted certification, those employees who had signed arbitration agreements would not have
22 obtained relief unless they timely filed their individual claims in arbitration. *Id.* Finally, and
23 regardless of these issues, Plaintiffs would still be required to prove their claims at trial, and
24 Defendant asserted defenses covering the merits of the claims and each component of the
25 potential damages. *Id.* ¶ 6.
26
27

1 2. The risk, expense, complexity, and likely duration of further litigation.

2 Additional litigation would be lengthy and expensive if this action were to proceed.
3 Plaintiffs had many hurdles to clear before a potential successful resolution. As mentioned above,
4 Plaintiffs would need to certify the class in the face of the arbitration agreement with class action
5 waivers. Even if successful, Defendant could have moved to decertify the Class. Wolk Decl. ¶ 6.
6 In addition, trial is always risky and even if Plaintiffs prevailed, they would likely face an appeal.
7 *Id.* This Settlement avoids these risks and provides immediate and certain benefits. *Id.*

9 3. The amount offered in settlement.

10 The Settlement requires Defendant to pay \$78,750. This amount will be used to pay
11 Participating Settlement Class Members after deducting the settlement administration expenses,
12 Settlement Class Representative Awards, and attorneys' fees and costs as approved by the Court.
13 Agreement ¶ 7. If the Court approves, ILYM will receive \$3,500 for its expenses as settlement
14 administrator, Plaintiffs will each receive a service award of \$1,500, and Settlement Class
15 Counsel will be awarded \$26,250 for attorneys' fees and \$447.99 in costs. *Id.* ¶ 7(A)-(C); Wolk
16 Decl. ¶ 9.

18 If approved, the remaining amount of \$45,552.01 shall be distributed to Participating
19 Settlement Class Members. Agreement ¶ 7(D). The amount of each Member's award is based on
20 the Member's aggregate proportional share of the Net Settlement Class Fund based on their
21 alleged unpaid commissions using the data provided by Defendants. *Id.* Given that the potential
22 unpaid commissions at issue amounts to \$40,215, each Participating Settlement Class Member
23 will recover over 100% of their alleged unpaid commissions. Wolk Decl. ¶ 5.

25 This is an excellent recovery and compares favorably with settlements approved by other
26 courts. *See, e.g., Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (approving
27

1 settlement amounting to 30 percent of damages estimated by expert and noting even if plaintiffs
2 were entitled to treble damages, settlement would be approximately 10 percent of estimated
3 damages); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (approving
4 settlement estimated to be worth between 1/6 and 1/2 of plaintiffs' estimated loss).

5 4. The extent of discovery completed and the state of the proceedings.
6

7 “A key inquiry is whether the parties had enough information to make an informed
8 decision about the strength of their cases and the wisdom of settlement.” *Rinky Dink, Inc. v.*
9 *World Business Lenders*, Case No. C14-0268-JCC, 2016 WL 3087073, at *3 (W.D. Wash. May
10 31, 2016). Here, the Parties were well informed about the strengths and weaknesses of their cases.
11 See Wolk Decl. ¶¶ 2-7. Settlement Class Counsel interviewed numerous Settlement Class
12 Members and thoroughly analyzed their commissions data over a period of five months before
13 engaging in substantial settlement discussions that ultimately allowed them to reach the
14 Settlement Agreement. Wolk Decl. ¶¶ 2-4. Settlement Class Counsel spent over 55 hours
15 interviewing employees and analyzing the commissions data, and other information provided by
16 Defendant to determine and assess the risks associated with class certification and a trial on the
17 merits of the claims. *Id.* Based on the damages analysis and information obtained in discovery
18 and directly from Plaintiffs and proposed class members, Settlement Class Counsel was well
19 prepared to engage in settlement discussions and finalize the Agreement. *Id.*, Ex. 1
20
21

22 5. The experience and views of counsel.

23 Where class counsel is qualified and well informed, their opinion that a settlement is fair,
24 reasonable, and adequate is entitled to significant weight. See *Pelletz v. Weyerhaeuser Co.*, 255
25 F.R.D. 537, 543 (W.D. Wash. 2009). Settlement Class Counsel are experienced in litigating wage
26 and hour class actions and have a keen understanding of the legal and factual issues in this case
27

1 on behalf of the Settlement Class. Wolk Decl. ¶¶ 11-13. Settlement Class Counsel believe the
2 Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class. *Id.* ¶¶ 3,
3 10.

4 6. The reaction of members of the Settlement Class.

5 A positive response to a settlement by the class—as evidenced by a small percentage of
6 opt-outs and objections—will further support final approval. *See Pelletz*, 255 F.R.D. at 543;
7 *Tadepalli v. Uber Techs., Inc.*, No. 15-CV-04348-MEJ, 2016 WL 1622881, at *8 (N.D. Cal. Apr.
8 25, 2016) (quoting *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1043) (observing “the
9 absence of a large number of objections to a proposed class action settlement raises a strong
10 presumption that the terms of a proposed class settlement action are favorable to the class
11 members”). The deadline for opting out and objecting was October 11, 2023. Polites Decl. ¶¶ 10-
12 11. No members have objected or opted out of the Agreement. *Id.* This factor weighs in favor of
13 approval.
14

15 **B. Members of the Settlement Class received the best notice practicable.**

16 This Court has determined that the notice program meets the requirements of due process
17 and applicable law, provides the best notice practicable under the circumstances, and constitutes
18 due and sufficient notice to all individuals entitled thereto. Preliminary Approval Order, ¶ 9.
19 ILYM has fully implemented the program. *See* Polites Decl. ¶¶ 3-13.
20

21 Specifically, on September 11, 2023, ILYM sent the Court approved notice by U.S. mail
22 to the Settlement Class. *Id.* ¶ 7. Settlement Class Counsel’s contact information was on the
23 notices. *Id.*, Ex. A. Settlement Class Members could also contact ILYM for information. *Id.*, Ex.
24 A.
25
26
27

1 The notice program was successful. Of the 47 Settlement Class Members, all 47 received
2 notice. *Id.* ¶ 9; Wolk Decl. ¶ 14. Thus, ILYM provided adequate notice to the Settlement Class.

3 **C. The requested service awards for the named Plaintiffs are reasonable.**

4 Service payments “are intended to compensate class representatives for work undertaken
5 on behalf of a class” and “are fairly typical in class action cases.” *In re Online DVD-Rental*
6 *Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (citation omitted). Such awards are generally
7 approved so long as the awards are reasonable and do not undermine the adequacy of the class
8 representatives. *See Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1164 (9th Cir.
9 2013). These awards promote the public policy of encouraging individuals to undertake the
10 responsibility of representative lawsuits. *See Rodriguez*, 563 F.3d at 958–59.

11 The requested awards of \$1,500 for the named Plaintiffs are reasonable given their efforts
12 during the litigation and settlement and are well in line with awards approved by other courts.
13 *See, e.g., Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1329-30 & n.9 (W.D. Wash. 2009)
14 (approving \$7,500 service awards and citing decisions approving awards in other cases).
15 Plaintiffs assisted Settlement Class Counsel with investigating and settling this case and took the
16 risk of stepping forward as representatives of the potential class. Wolk Decl. ¶ 8. Plaintiffs’
17 support of the settlement is independent of any award and not conditioned on the Court awarding
18 an award at all. *Id.* Thus, Plaintiffs’ adequacy is unaffected by the proposed awards and the
19 awards should be approved.

20 **D. The award of attorneys’ fees and costs is fair and reasonable.**

21 A plaintiff may recover his or her attorneys’ fees when the plaintiff obtains a “common
22 fund” for the benefit of others. *Bowles v. Dept. of Retirement*, 121 Wn.2d 52, 70, 847 P.2d 440
23 (1993). Under Washington law, the percentage-of-recovery approach is used in calculating fees
24

1 in common fund cases. *Bowles*, 121 Wn.2d at 72. Plaintiffs’ efforts obtained a common fund for
2 the benefit of the Settlement Class. *See* Agreement ¶ 7.

3 Here, Settlement Class Counsel seeks a fee award of one-third of the recovery obtained.
4 Wolk Decl. ¶ 9. Settlement Class Counsel has worked on this case without compensation for over
5 a year and one-half, accruing over \$38,000 in fees. *Id.* In addition, Class Counsel anticipates
6 additional work with ILYM to ensure the Settlement is fairly implemented and additional work
7 to obtain dismissal of this action. *Id.*

9 Settlement Class Counsel also seeks to be reimbursed for their out-of-pocket litigation
10 costs that they have and will continue to incur until dismissal of this lawsuit. Wolk Decl. ¶ 9.
11 “Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund
12 are reimbursed proportionately by those class members who benefit from the settlement.” *In re*
13 *Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996); *see also In re Immune*
14 *Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177–1178 (S.D. Cal. 2007) (finding costs such as
15 filing fees, messenger fees, and online legal research fees, are relevant and necessary expenses
16 in class action litigation). Class Counsel requests reimbursement of \$447.99 for their filing,
17 research, and service fees and costs which were reasonable and necessary to secure the successful
18 resolution of this litigation. *Id.* ¶ 9.

20 The fee request is particularly reasonable in light of the risks inherent in this class action.
21 Indeed, there was a real possibility that Settlement Class Counsel would recover nothing for their
22 work. But Settlement Class Counsel thoroughly investigated these claims, applied their
23 investigation to the claims and defenses, engaged in settlement discussions, and ultimately
24 achieved a favorable settlement for the Settlement Class. *Id.* ¶¶ 2-7. Plaintiffs and Settlement
25 Class Counsel maintain the Settlement is in the best interests of the Settlement Class. *Id.* ¶¶ 3,
26
27

1 10. Indeed, this is an excellent result, given the risks and delays posed with continued litigation,
2 arbitration, and possible appeals. *Id.* ¶¶ 2-7. Settlement Class Counsel's request for fees and costs
3 of \$26,697.99, is therefore reasonable.

4 Finally, Settlement Class Members were explicitly advised of the requested fee award as
5 set forth in the Notice of Settlement. See Polites Decl., Ex. A. None of the Settlement Class
6 Members objected to the award. Again, this supports granting the requested fee award.
7

8 VI. CONCLUSION

9 For the reasons stated above, Plaintiffs respectfully request that the Court grant final
10 approval of the Settlement Agreement, including the awards to Plaintiffs and Class Counsel, and
11 enter the Proposed Order Granting Final Approval.

12 VII. LCR CERTIFICATION

13 I certify that this memorandum contains not more than 4,200 words, in compliance with
14 the Local Civil Rules.
15

16
17 RESPECTFULLY SUBMITTED AND DATED this 30th day of October, 2023.

18 REKHI & WOLK, P.S.

19 By: /s/ Gregory A. Wolk, WSBA #28946

20 Gregory A. Wolk, WSBA #28946

21 Hardeep S. Rekhi, WSBA #34579

22 529 Warren Ave North, Suite 201

23 Seattle, Washington 98109

24 Telephone: (206) 388-5887

25 Facsimile: (206) 577-3924

26 E-mail: hardeep@rekhiwolk.com

27 greg@rekhiwolk.com

Attorneys for Plaintiffs