

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

AARON KUDATSKY, on behalf of himself,  
and on behalf of those similarly-situated,

No. C 19-07647 WHA

Plaintiffs,

v.

TYLER TECHNOLOGIES,  
Defendant.

**ORDER RE PRELIMINARY  
SETTLEMENT APPROVAL**

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**INTRODUCTION**

In this class action under the Federal Labor Standards Act and California wage and hour law, parties seek preliminary approval of a class and collective action settlement worth \$3.15 million, to benefit a total of 295 individual employees. The suit concerns overtime and other compensation related to employees’ purported misclassification as exempt from overtime and itemized wage statement requirements. Because the proposal would award adequate relief, preliminary approval is **GRANTED**.

**STATEMENT**

A prior order summarized the facts of this case (Dkt. No. 98).

In brief, defendant Tyler Technologies sells business and public sector operations software. Tyler utilizes Enterprise Resource Planning (ERP) Implementation Consultants

1 (ICs) to customize software and train clients to use its products. The ERP division’s “flagship”  
2 product, Munis, offers finance, payroll, utility billing, tax billing, and community development  
3 services. The division also sells other products. Tyler employs a team, including ICs, “senior  
4 ICs,” and “project managers” to customize the software and train clients to use it. ICs and  
5 senior ICs in this putative class largely implemented Munis, not other Tyler products. Senior  
6 ICs’ responsibilities differed substantially from those of standard ICs (Webster Dep. at 68–69).

7 Plaintiff Aaron Kudatsky worked for Tyler as an IC from July 2016 to March 2019. He  
8 worked in California often, and while there, frequently worked more than eight hours per day.  
9 He contends that Tyler considered him exempt and therefore did not pay overtime.

10 In May 2020, parties stipulated to a conditional class of 60 opt-in FLSA plaintiffs. In  
11 November 2020, plaintiff moved for class certification on the California law claims and a  
12 February 2021 order herein certified a class of Munis ERP ICs (excluding senior ICs). The  
13 class was certified on the sole issue for trial of whether, or not, Tyler appropriately classified  
14 ERP ICs as exempt from overtime and other California labor laws. *See* 29 U.S.C. § 201, *et*  
15 *seq.*; Cal. Lab. Code §§ 510, 1194, and 1198, and IWC Wage Order(s); and Cal. Lab. Code §§  
16 201–203. The class certification order held (Dkt. No. 39; 98):

17 For now, certification applies solely to this issue: whether Tyler  
18 properly classified ERP ICs as administratively exempt from  
19 overtime and other California labor laws (or not). We will revisit  
20 possible certification of the other claims after we hold a trial on the  
21 certified issue. At that point, the Court will be better-informed to  
process the multitudinous and bone-crushing details of how plaintiff  
might establish class-wide overtime liability

22 The parties resumed settlement discussions before Magistrate Judge Donna M. Ryu. Plaintiff  
23 moved for summary judgment almost simultaneously with Tyler, which moved for partial  
24 summary judgment and decertification of the FLSA class. No responses have been filed.  
25 Following three mediation sessions in March and April the parties now present their proposed  
26 settlement for preliminary approval. Both sides have withdrawn their motions for summary  
27 judgment and Tyler has withdrawn its decertification motion. Parties have requested, and  
28 received, a stay of pre-trial and trial dates (Dkt. Nos. 120, 121, 122).

1 Parties agreed on a total settlement of \$3.15 million. The proposed settlement uses the  
2 “damages model” and relies on Tyler’s payroll records to calculate the claims’ maximum value  
3 at \$7,653,620.09. It assumed that all ICs worked ten hours per day prior to March 12, 2020,  
4 and nine hours per day thereafter. This change accounts for travel restrictions and reduced  
5 work due to the pandemic. Class Counsel estimates the total wage loss at \$3,857,415.50. The  
6 settlement amount, however, is based on Class Counsel’s estimate of the “realistic” value of  
7 the claims, \$2,940,736.01.

8 The settlement would allocate the \$2.9 million on a *pro-rata* basis after deducting  
9 administrative costs of up to \$20,000 and attorneys’ fees of 25%. Therefore, the settlement  
10 would distribute \$2,342,500 among 295 individuals. Individual settlement payments would  
11 average \$7,844.07 and range from \$200 (for 35 individuals who worked an average of ten days  
12 in California during the class period), to \$61,442.50. Moreover, 151 individuals would receive  
13 between \$1,000 and \$10,000; 69 would receive over \$10,000 (Dkt. No. 123 at 13, quoting  
14 Brome Decl. ¶ 9).

15 All in all, this rates as an estimated 41 to 80% of the value of class claims, Class Counsel  
16 estimated. Class Counsel arrived at the \$2.9 million figure by assuming a “60% chance of  
17 success on FLSA liability, FLSA third-year claims; FLSA liquidated damages; California class  
18 liability; California penalty claims; and FLSA Opt-ins Plaintiffs’ claims while working as  
19 senior ICs or outside the ERP division” and adding the resulting products (*ibid.*, quoting  
20 Brome Decl. ¶¶ 5, 6). Class Counsel also assumes a 60% likelihood of success on the task of  
21 establishing that Tyler willfully violated, and therefore a three-year statute of limitations; a  
22 favorable finding there would entitle the class to redress for a third year (*ibid.* at 15). Finally,  
23 the same 60% chance factors into the likelihood of defeating Tyler’s good faith defense, which  
24 would entitle a district court to reduce or eliminate liquidated damages.

25 This order follows briefing, a hearing, telephonic due to COVID-19, and supplemental  
26 briefing.

### 27 ANALYSIS

1           “The class action device, while capable of the fair and efficient adjudication of a large  
2 number of claims, is also susceptible to abuse and carries with it certain inherent structural  
3 risks.” *Officers for Just. v. Civ. Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615,  
4 623 (9th Cir. 1982). A settlement purporting to bind absent class members must be fair,  
5 reasonable, and adequate. *See* FRCP 23(e). A district court may consider and weigh a variety  
6 of factors as the particular facts of the case demand, including: the amount offered in  
7 settlement; the strength of plaintiff’s case; the stage of the proceedings; the expense and  
8 complexity of further litigation; and other relevant considerations. Above all, the “primary  
9 concern” must be the “protection of those class members . . . whose rights may not have been  
10 given due regard by the negotiating parties.” *Officers for Just.*, 688 F.2d at 624–25.

11           This proposed settlement measures up.

12           *First*, the total settlement figure, \$3.15 million, with \$2.9 million going to the class of  
13 295, appears adequate.

14           *Second*, the settlement agreement does not reclassify employees. While not required,  
15 reclassification would be an important remedy not captured by the common fund. Parties  
16 address this problem by explicitly *not* releasing any claims that accrued after April 19, 2021.

17           *Third*, attorney’s fees are slated for 27%, despite a 25% benchmark in our circuit. *See*  
18 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998), *overruled on other grounds*  
19 *by Wal-Mart v. Dukes*, 564 U.S. 338 (2011). This must be warranted if, in fact, the settlement  
20 represents 40 to 80% of the realistic value of the claims as Class Counsel estimates (after  
21 accounting for administration costs and fees). Since attorneys earn extraordinary fees by  
22 accomplishing extraordinary work for a class, a 27% return for 40 to 80% of claim value might  
23 be fair (Dkt. No. 123 at 7). *See Monplaisir v. Integrated Tech Grp., LLC*, No. C 19-01484  
24 WHA, 2020 WL 8642155, at \*2 (N.D. Cal. Nov. 7, 2020).

25           *Fourth*, the agreement contemplates extra advantages for named plaintiff and deponents.  
26 Under the agreement, plaintiffs can request a \$5,000 “enhancement award” to named plaintiff,  
27 to be paid out of the settlement award *and* \$500 to each plaintiff who was deposed. These are  
28 red flags.



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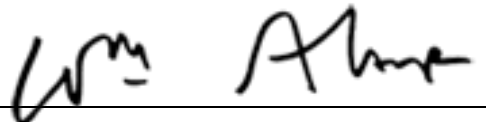
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The proposed settlement adequate at this stage, preliminary approval is **GRANTED** subject to final approval. In the interim:

1. Class counsel will send the approved class notice via email (for class members whose email address are known) and via first-class mail (for all) to the class by **AUGUST 10, 2021**. Both Tyler and Class Counsel shall also post such notice to their websites by this date.
2. Class members' objections to the proposed settlement shall be due **SEPTEMBER 23, 2021**.
3. The parties' replies to the objections shall be due **OCTOBER 7, 2021**.
4. The parties shall move for final approval by **OCTOBER 19, 2021**.
5. The parties' declarations attesting to the provision of class service is due **NOVEMBER 1, 2021**.
6. The final approval fairness hearing shall take place at **8:00 A.M.** on **NOVEMBER 4, 2021**.

**IT IS SO ORDERED.**

Dated: July 26, 2021.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE