

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

CLARENCE SMITH,

Plaintiff,

vs.

WATLOW ELECTRIC MANUFACTURING
COMPANY, et al.,

Defendants.

Lead Case No.: 20CV365250

(consolidated with Case No.
20CV362069)

**ORDER CONCERNING
PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF
CLASS/PAGA SETTLEMENT AND
JUDGMENT**

PHUOC TRUONG,

Plaintiff,

vs.

WATLOW ELECTRIC MANUFACTURING
COMPANY, et al.,

Defendants.

This consolidated, putative class and Private Attorneys General Act ("PAGA") action is brought on behalf of employees of Defendant Watlow Electric Manufacturing Company.

1 Plaintiffs allege that Defendant failed to provide proper meal and rest breaks, failed to pay wages
2 in the proper form, and failed to provide accurate itemized wage statements.

3 The parties reached a settlement, which the Court preliminarily approved in an order filed
4 on January 25, 2022. The factual and procedural background of the action and the Court's
5 analysis of the settlement and settlement class are set forth in that order.

6 Before the Court is Plaintiffs' unopposed motion for final approval of the settlement and
7 for approval of their attorney fees, costs, and service awards. The Court issued a tentative ruling
8 on May 24, 2022, and no one contested it at the hearing on May 26. The Court now issues its
9 final order, which GRANTS final approval, albeit with a reduced attorney fee award.

10 **I. LEGAL STANDARDS FOR SETTLEMENT APPROVAL**

11 **A. Class Action**

12 Generally, "questions whether a [class action] settlement was fair and reasonable,
13 whether notice to the class was adequate, whether certification of the class was proper, and
14 whether the attorney fee award was proper are matters addressed to the trial court's broad
15 discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
16 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
17 260.)

18 In determining whether a class settlement is fair, adequate and reasonable, the
19 trial court should consider relevant factors, such as the strength of plaintiffs' case,
20 the risk, expense, complexity and likely duration of further litigation, the risk of
21 maintaining class action status through trial, the amount offered in settlement, the
22 extent of discovery completed and the stage of the proceedings, the experience
23 and views of counsel, the presence of a governmental participant, and the reaction
24 of the class members to the proposed settlement.

25 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

26 In general, the most important factor is the strength of the plaintiffs' case on the merits,
27 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
28 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and

weighing of factors depending on the circumstances of each case. (*Wershba, supra*, 91 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the extent 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.” (*Ibid.*, citation and internal quotation marks omitted.)

The burden is on the proponent of the settlement to show that it is fair and reasonable. However “a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Wershba, supra*, 91 Cal.App.4th at p. 245, citation omitted.) The presumption does not permit the Court to “give rubber-stamp approval” to a settlement; in all cases, it must “independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished,” based on a sufficiently developed factual record. (*Kullar, supra*, 168 Cal.App.4th at p. 130.)

B. PAGA

Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380.)

Similar to its review of class action settlements, the Court must “determine independently whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76–77.) It must make this assessment “in view of PAGA’s purposes to

1 remediate present labor law violations, deter future ones, and to maximize enforcement of state
2 labor laws.” (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383
3 F. Supp. 3d 959, 971 [“when a PAGA claim is settled, the relief provided for under the PAGA
4 [should] be genuine and meaningful, consistent with the underlying purpose of the statute to
5 benefit the public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies,*
6 *Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

7 The settlement must be reasonable in light of the potential verdict value. (See *O’Connor,*
8 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential
9 verdict].) But a permissible settlement may be substantially discounted, given that courts often
10 exercise their discretion to award PAGA penalties below the statutory maximum even where a
11 claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-
12 CV-02198-EMC) 2016 WL 5907869, at *8–9.)

13 **II. TERMS AND ADMINISTRATION OF SETTLEMENT**

14 The non-reversionary gross settlement amount is \$500,000. Attorney fees of up to
15 \$175,000 (thirty-five percent of the gross settlement) were originally requested to come from the
16 gross settlement. (More on this later.) Litigation costs not to exceed \$25,000 and administration
17 costs of up to \$6,500 also will be paid from the gross settlement. \$80,000 will be allocated to
18 PAGA penalties, 75 percent of which will be paid to the LWDA. The named plaintiffs will also
19 seek enhancement awards of \$10,000 each.

20 The net settlement will be allocated to settlement class members pro rata based on their
21 weeks worked during the class period. Class members will not be required to submit a claim to
22 receive their payments. Settlement payments will be allocated one-quarter to wages and three-
23 quarters to penalties, interest, and non-wage damages for tax purposes. The employer’s share of
24 taxes on the wage portion will be paid separately and in addition to the gross settlement. Funds
25 associated with checks uncashed after 180 days will be distributed to Legal Aid at Work.

26 In exchange for the settlement, class members will release all claims “arising out of or
27 assertable based upon the allegations set forth in the Operative Complaint. These claims include,
28 but are not limited to: claims for rest period violations, meal period violations, unpaid wages,

1 failure to keep proper records, itemized wage statement violations, waiting time penalties, unfair
2 competition, declaratory relief, claims for violation of [PAGA], penalties of any nature premised
3 on Labor Code §§ 201-203, 212, 225.5, 226, 226.3, 226.7, 512, and 558, interest, fees, costs, and
4 all other claims and allegations made or which could have been made in the Actions arising
5 during the Class Period.”

6 The notice process has now been completed. There were no objections to the settlement
7 and only one request for exclusion from the class. Of the 79 notices mailed by the administrator,
8 none were ultimately undeliverable. The administrator estimates that the average payment to
9 class members will be \$2,850.59, with a low payment of \$57.68 and a high payment of
10 \$5,610.04.

11 At preliminary approval, it was estimated that there were 130 class members who would
12 receive an average payment of \$1,642.31. Apparently, this estimate included employees who
13 were classified as exempt and thus were not actually part of the class. The administrator
14 explains that notice did erroneously issue to 42 such individuals, who were subsequently
15 “removed” from the class list. But these individuals were not notified of the error. After the
16 Court raised this issue with the parties, the parties stipulated, and the Court ordered, that
17 corrective notice would issue to these individuals. (See 5/23/22 Order.)

18 Otherwise, the Court found at preliminary approval that the settlement is a fair a
19 reasonable compromise of the class claims and that the PAGA allocation is genuine, meaningful,
20 and reasonable in light of the statute’s purposes. It finds no reason to deviate from these findings
21 now, especially considering that there are no objections. The Court is thus prepared to find that
22 the settlement is fair and reasonable for purposes of final approval.

23 **III. ATTORNEY FEES, COSTS, AND INCENTIVE AWARD**

24 Plaintiffs seek a fee award of \$175,000, or 35 percent of the gross settlement. This is
25 somewhat higher than 33 percent typically awarded. Plaintiffs provide a lodestar figure of
26 \$150,260, based on 251.3 hours spent on the case by counsel billing at \$500–750 per hour.
27 Plaintiffs’ request thus results in a multiplier of 1.16.
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1 While the requested multiplier is not particularly high, the Court finds no reason to award
2 counsel in this matter more than the typical one-third of the common fund considering the
3 relevant factors. (See *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 [in order to reflect the
4 fair market value of attorney services, lodestar may be adjusted with a multiplier based on factors
5 including the extent to which the nature of the litigation precluded other employment by the
6 attorneys and the contingent nature of the fee award].) Viewed in light of this cross-check, the
7 Court will approve a one-third percentage fee, which is \$166,666.67. (See *Laffitte v. Robert Half*
8 *Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 [trial court did not abuse its discretion in
9 approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a
10 multiplier of 2.03 to 2.13].) Under paragraph 10 of the Amended Joint Stipulation, the
11 unapproved “portion of the Attorneys’ Fees ... not awarded to Class Counsel shall be a part of
12 the Net Settlement Amount for the benefit of Settlement Class Members.” This means that
13 \$8,333.33 (\$175,000 - \$166,666.67) will be added to the net settlement amount for the benefit of
14 class members.

15 Plaintiffs’ counsel also request \$13,303.65 in litigation costs, below the amount estimated
16 in the class notice. Plaintiffs’ costs appear reasonable based on the summaries provided and are
17 approved. The \$6,500 in administrative costs are also approved.

18 Finally, Plaintiffs request service awards of \$10,000 each. To support their requests, they
19 submit a declaration describing their efforts on the case. The Court finds that the class
20 representatives are entitled to enhancement awards and the amount requested is reasonable.

21 **IV. ORDER AND JUDGMENT**

22 In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND
23 DECREED THAT:

24 The motion for final approval is GRANTED. The following class is certified for
25 settlement purposes:

26 all current and former hourly-paid or non-exempt employees, who worked for
27 Defendant in California at any time during the Class Period [(November 15, 2018,
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1 through the date of Preliminary Approval)], and who received at least one
2 paycheck during the Class Period from Defendant.

3 No one who is otherwise eligible to be part of the class is excluded from the class.

4 Judgment shall be entered through the filing of this order and judgment. (Code Civ.
5 Proc., § 668.5.) Plaintiff and the members of the class shall take from their complaint only the
6 relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule
7 3.769(h) of the California Rules of Court, the Court retains jurisdiction over the parties to
8 enforce the terms of the settlement agreement and the final order and judgment.

9 The Court sets a compliance hearing for **January 5, 2023 at 2:30 P.M.** in Department 1.
10 At least ten court days before the hearing, class counsel and the settlement administrator shall
11 submit a summary accounting of the net settlement fund identifying distributions made as
12 ordered herein; the number and value of any uncashed checks; amounts remitted to Legal Aid at
13 Work; the status of any unresolved issues; and any other matters appropriate to bring to the
14 Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil
15 Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

16 **IT IS SO ORDERED.**

17 Date: May 31, 2022

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The Honorable Sunil R. Kulkarni
20 Judge of the Superior Court
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