

Larry W. Lee (State Bar No. 228175)  
Max W. Gavron (State Bar No. 291697)  
**DIVERSITY LAW GROUP, P.C.**  
515 S. Figueroa Street, Suite 1250  
Los Angeles, CA 90071  
(213) 488-6555  
(213) 488-6554 facsimile  
lwlee@diversitylaw.com  
mgavron@diversitylaw.com

William L. Marder (State Bar No. 170131)  
**Polaris Law Group**  
501 San Benito Street, Suite 200  
Hollister, CA 95023  
(831) 531-4214  
(831) 634-0333 facsimile  
bill@polarislawgroup.com

Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SANTA BARBARA**

VICTORIA TICE, as an individual and on  
behalf of all others similarly situated,

Plaintiff,

vs.

TRADER JOE'S COMPANY, a California  
corporation; and DOES 1 through 50,  
inclusive,

Defendants.

Case No. 20CV00892

[Assigned to the Honorable Thomas P. Anderle,  
Department 3]

**[PROPOSED] ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Date: April 12, 2023

Time: 10:00 A.M.

Dept.: 3

Complaint Filed: February 14, 2020

Plaintiff Victoria Tice’s (“Plaintiff”) application for an Order Granting Preliminary Approval of Class Action Settlement was filed with the Court on March 10, 2023, and a hearing was held before this Court on April 12, 2023. Appearances for Plaintiff and Defendant Trader Joe’s Company (“Defendant”) were noted on the record.

**A. BACKGROUND AND SETTLEMENT TERMS**

The original complaint was filed on February 14, 2020, raising claims under PAGA and a class action on behalf of non-exempt employees, alleging that Defendant violated the Labor Code by issuing payment of final wages to employees in the form of a paycard without authorization in violation of Labor Code §§ 201-203, 212, and 213. The settlement would create a settlement fund of \$340,000.00. The Parties agreed to a Class Representative Incentive Payment to the Plaintiff of \$10,000.00. Class Counsel’s attorneys’ fees would be \$113,333.33 (one-third of the Gross Settlement Amount). Litigation costs are estimated at \$55,000.00. The Settlement Administrator, Phoenix Settlement Administrators, would receive an estimated \$11,000.00. PAGA penalties would be \$25,000.00, resulting in a payment of \$18,750.00 to the Labor and Workforce Development Agency (“LWDA”) and \$6,250.00 to be equally distributed to aggrieved employees known as PAGA Members. The net amount paid directly to Class Members is estimated to be \$125,666.67. The fund is non-reversionary. There are an estimated 948 Class Members. Based on the estimated class size, the average payment for each Class Member is approximately \$132.56.

Defendant will place the Gross Settlement Amount into an escrow account within 14 business days after final approval of the settlement.

The proposed settlement would certify a Class of “all former employees of Defendants who were employed in the State of California at any time during the Class Period who received their final wages on a paycard, but for whom Defendants do not currently have a written authorization for payment of final wages via pay card.”

The Class Members will not be required to file a claim. Class Members may object or opt out of the settlement. (PAGA Members may not opt out of the PAGA portion of the settlement.) Funds would be equally apportioned to Class Members.

Various prescribed follow-up steps will be taken with respect to mail that is returned as

undeliverable. Undelivered or uncashed checks will be voided, and will be paid to a *cy pres* beneficiary, State Bar Justice Gap Fund.

The settlement contains release language covering “all claims, rights, demands, liabilities and causes of action that are alleged or could have been alleged based on the facts, allegations and/or claims asserted in the operative complaint in this action including the following claims: (i) failure to pay wages timely at time of termination or resignation (Labor Code §§ 201-203, 212, 213).” Under recent appellate authority, the limitation to those claims with the “same factual predicate” as those alleged in the complaint is critical. *Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal. App. 5th 521, 537 (“A court cannot release claims that are outside the scope of the allegations of the complaint.”) “Put another way, a release of claims that ‘go beyond the scope of the allegations in the operative complaint’ is impermissible.” *Id.*, quoting *Marshall v. Northrop Grumman Corp.* (C.D. Cal. 2020) 469 F. Supp. 3d 942, 949.

Both formal and informal discovery were undertaken, resulting in the production of substantial documents. The matter settled after arm’s-length negotiations, which included a mediation with an experienced mediator on November 17, 2020 and substantial follow up discussions.

Counsel also has provided an analysis of the case, and how the settlement compares to the potential value of the case, after allowing for various risks and contingencies. This included an estimate of class claims at a maximum of about \$3,879,216.00. Maximum PAGA penalties are estimated at about \$94,800.00.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include “stacking” of violations, the law may only allow application of the “initial violation” penalty amount, and the total amount may be reduced in the discretion of the court. *See* Labor Code § 2699(e)(2) (PAGA penalties may be reduced where “based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory.”).

Notice to the Labor and Workforce Development Agency of this Settlement was provided

1 concurrently with the filing of this Motion.

2 **B. LEGAL STANDARDS**

3 The primary determination to be made is whether the proposed settlement is “fair,  
4 reasonable, and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801,  
5 including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of  
6 further litigation, the risk of maintaining class action status through trial, the amount offered in  
7 settlement, the extent of discovery completed and the state of the proceedings, the experience and  
8 views of counsel, the presence of a governmental participant, and the reaction...to the proposed  
9 settlement.” *See also Amaro v. Anaheim Arena Mgmt., LLC, supra*, 69 Cal. App. 5th 521.

10 Because this matter also proposes to settle PAGA claims, the Court also must consider the  
11 criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v. Adecco*  
12 *USA, Inc.* (2021) 72 Cal. App. 5th 56, provided guidance on this issue. In *Moniz*, the court found  
13 that the “fair, reasonable, and adequate” standard applicable to class actions applies to PAGA  
14 settlements. *Id.* at 64. The Court also held that the trial court must assess “the fairness of the  
15 settlement’s allocation of civil penalties between the affected aggrieved employees[.]” *Id.* at 64-  
16 65. California law provides some general guidance concerning judicial approval of any settlement.  
17 First, public policy generally favors settlement. *Neary v. Regents of University of California* (1992)  
18 3 Cal. 4th 273. Nonetheless, the court should not approve an agreement contrary to law or public  
19 policy. *Bechtel Corp. v. Superior Court* (1973) 33 Cal. App. 3d 405, 412; *Timney v. Lin* (2003)  
20 106 Cal. App. 4th 1121, 1127. Moreover, “[t]he court cannot surrender its duty to see that the  
21 judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter.”  
22 *California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal. 3d 658, 664. As a  
23 result, courts have specifically noted that *Neary* does not always apply, because “[w]here the rights  
24 of the public are implicated, the additional safeguard of judicial review, though more cumbersome  
25 to the settlement process, serves a salutatory purpose.” *Consumer Advocacy Group, Inc. v. Kintetsu*  
26 *Enterprises of America* (2006) 141 Cal. App. 4th 48, 63.

27 **C. ATTORNEYS’ FEES**

28 Plaintiff seeks one-third of the total settlement amount as fees, relying on the “common

fund” theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal. 5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment.” *Id.* at 505. Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

Similarly, litigation costs and the requested representative incentive payment of \$10,000.00 for plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal. App. 4th 785, 804-807.

**D. DISCUSSION AND CONCLUSION**

The proposed settlement is sufficiently fair, reasonable, and adequate to justify preliminary approval.

Having considered the Joint Stipulation of Class Action Settlement (“Stipulation” or “Settlement Agreement”) and all other papers filed in this action, the Court HEREBY FINDS AND ORDERS as follows:

1. This Court grants preliminary approval of the Settlement Agreement between Plaintiff and Defendant filed herewith. The Settlement Agreement appears to be fair, adequate, and reasonable to the Class.

2. The Class Representative and Defendant (together, the “Settling Parties”), through their counsel of record, have reached an agreement to settle the class and PAGA claims in the case as set forth in the Settlement Agreement, on behalf of the Class (as defined below and in the Settlement Agreement):

all former employees of Defendants who were employed in the State of California at any time during the Class Period who received their final wages on a paycard, but for whom Defendants do not currently

1 have a written authorization for payment of final wages via pay card  
2 (the “Class”).

3 3. Should for whatever reason the Settlement Agreement not become Final, the fact  
4 that the Parties were willing to stipulate to certification of a class as part of the Settlement  
5 Agreement shall have no bearing on, or be admissible in connection with, the case or the issue of  
6 whether a class should be certified in a non-settlement context.

7 4. The Court appoints and designates: (a) Plaintiff Victoria Tice as the Class  
8 Representative and (b) Larry W. Lee and Max W. Gavron of Diversity Law Group, P.C. and  
9 William L. Marder of Polaris Law Group as Class Counsel for the Class. Class Counsel is  
10 authorized to act on behalf of the Class with respect to all acts or consents required by, or which  
11 may be given, pursuant to the Settlement Agreement, and such other acts reasonably necessary to  
12 finalize the Settlement Agreement and its terms. Any Class Member may enter an appearance  
13 through his or her own counsel at such Class Member’s own expense. Any Class Member who  
14 does not enter an appearance or appear on his or her own behalf will be represented by Class  
15 Counsel.

16 5. The Court hereby approves the terms and conditions provided for in the Settlement  
17 Agreement. The Court finds that on a preliminary basis the Settlement Agreement falls within the  
18 range of reasonableness of a settlement and appears to be presumptively valid, subject only to any  
19 objections that may be raised at the final fairness hearing and final approval by the Court. It appears  
20 to the Court on a preliminary basis that the settlement is fair, adequate, and reasonable as to all  
21 potential Class Members when balanced against the probable outcome of further litigation relating  
22 to liability, class certification, and damages issues. It also appears that investigation and research  
23 into the claims, liability, and damages have been conducted so that counsel for the Settling Parties  
24 are able to reasonably evaluate their respective positions. It appears to the Court that settlement at  
25 this time will avoid substantial additional costs by all Settling Parties, as well as avoid the delay  
26 and risks that would be presented by the further prosecution of the Litigation. It also appears that  
27 settlement has been reached as a result of intensive, serious, and non-collusive arm’s length  
28 negotiations.

6. The Court hereby approves the following dates:

| Description                                                | Date                                                         |
|------------------------------------------------------------|--------------------------------------------------------------|
| Class List to Settlement Administrator                     | 15 business days after the Court grants preliminary approval |
| Class Notice Distribution                                  | 10 calendar days after receiving Class List                  |
| Opt Out/Written Objection Deadline                         | 45 calendar days after initial Class Notice distribution     |
| Opt Out/Written Objection Deadline (for re-mailed notices) | 15 calendar days extension for re-mailed notices             |
| Final Approval Filing Deadline                             | 16 court days before the Final Approval Hearing              |

A final fairness hearing on the question of whether the proposed Settlement Agreement, the allocation of payments to Class Members, attorneys' fees and costs to Class Counsel, the payment to the Settlement Administrator, the payment of PAGA penalties to the Labor Workforce & Development Agency and PAGA Members, and the incentive payment to the Class Representative should be finally approved as fair, reasonable, and adequate as to the members of the Class is hereby set for \_\_\_\_\_, 2023, at \_\_\_\_ a.m. in this Court. The Motion for Final Approval shall be filed by the Class Representative no later than sixteen (16) court days before the final fairness hearing.

7. The Court hereby approves, as to form and content, the Notice of Class Action Settlement ("Class Notice") to be sent to Class Members, which is attached to the Settlement Agreement as **Exhibit A**. The Court finds that distribution of the Class Notice to Class Members substantially in the manner and form set forth in the Settlement Agreement and this Order meets the requirements of due process and shall constitute due and sufficient notice to all parties entitled thereto.

8. The Court appoints and designates Phoenix Settlement Administrators as the Settlement Administrator. The Court hereby directs the Settlement Administrator to provide the approved Class Notice to Class Members using the procedures set forth in the Settlement Agreement.

9. Any Class Member may choose to opt out of and be excluded from the Class Action

1 Settlement as provided in the Settlement Agreement and Class Notice, and by following the  
2 instructions for requesting exclusion. Any person who timely and properly opts out of the Class  
3 Action Settlement will not be bound by the Settlement Agreement or have any right to object,  
4 appeal, or comment thereon (however, if the Class Member is also a PAGA Member as defined in  
5 this Stipulation, he/she will still be bound by the PAGA Released Claims and will still receive  
6 his/her portion of the PAGA Payment). Any requests for exclusion must be in writing and signed  
7 by each such Class Member opting out and must otherwise comply with the requirements  
8 delineated in the Class Notice. Class Members who have not requested exclusion by submitting a  
9 valid and timely request by the deadline shall be bound by all determinations of the Court, the  
10 Settlement Agreement, and Judgment.

11 10. Any Class Member may object to the Settlement Agreement or express his or her  
12 views regarding the Settlement Agreement, and may present evidence and file briefs or other  
13 papers that may be proper and relevant to the issues to be heard and determined by the Court as  
14 provided in the Class Notice.

15 11. The Court reserves the right to adjourn or continue the date of the Settlement  
16 Fairness Hearing and all dates provided for in the Settlement Agreement without further notice to  
17 the Class, and retains jurisdiction to consider all further applications arising out of or connected  
18 with the Class Settlement Agreement.

19 IT IS SO ORDERED.

20  
21 DATED: \_\_\_\_\_

\_\_\_\_\_  
HON. THOMAS P. ANDERLE  
SUPERIOR COURT OF CALIFORNIA

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