

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

ORALIA GONZALEZ TALAMANTES et al.,

Plaintiff,

v.

MI RANCHO SUPERMARKET (SAN JOSE),
INC. et al.,

Defendants.

Case No.: 20CV365957

**ORDER CONCERNING PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF
THE SETTLEMENT AND FOR
APPROVAL OF THEIR ATTORNEY
FEES, COSTS, AND SERVICE
AWARDS**

This is a putative class and Private Attorneys General Act ("PAGA") action by employees of supermarkets allegedly operated by a group of corporate entity and individual defendants. Plaintiffs allege that Defendants failed to provide compliant meal and rest periods or premium pay, failed to compensate employees for off-the-clock work and to properly compensate them for double shifts, failed to reimburse them for business expenses, and committed other wage and hour violations.

1 The parties reached a settlement, which the Court preliminarily approved in an order filed
2 on June 3, 2022.¹ The factual and procedural background of the action and the Court’s analysis
3 of the settlement and settlement class are set forth in that order.

4 Before the Court is Plaintiffs’ motion for final approval of the settlement and for approval
5 of their attorney fees, costs, and service awards. The Court issued a tentative ruling on
6 September 7, 2022, and no one contested it at the September 8 hearing.

7 As discussed below, the Court GRANTS final approval, but with a reduced attorney fee
8 award.

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

10 **A. Class Action**

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

17
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
26 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

27
28 ¹ The Court has also reviewed the individual settlement agreement lodged by Ms. Talamantes
and Ms. Magaña, and finds no reason to conclude that it should prevent approval of the class
settlement.

1 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
2 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
3 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
4 weighing of factors depending on the circumstances of each case. (*Wershba, supra*, 91
5 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
6 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
7 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
8 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
9 marks omitted.)

10
11 The burden is on the proponent of the settlement to show that it is fair and
12 reasonable. However “a presumption of fairness exists where: (1) the settlement
13 is reached through arm’s-length bargaining; (2) investigation and discovery are
14 sufficient to allow counsel and the court to act intelligently; (3) counsel is
15 experienced in similar litigation; and (4) the percentage of objectors is small.”
16
17 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citation omitted.) The presumption does not permit
18 the Court to “give rubber-stamp approval” to a settlement; in all cases, it must “independently
19 and objectively analyze the evidence and circumstances before it in order to determine whether
20 the settlement is in the best interests of those whose claims will be extinguished,” based on a
21 sufficiently developed factual record. (*Kullar, supra*, 168 Cal.App.4th at p. 130.)

22 **B. PAGA**

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

(2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940.)

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

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

II. TERMS AND ADMINISTRATION OF SETTLEMENT

The non-reversionary gross settlement amount is \$2,000,000. Attorney fees of up to \$700,000 (thirty-five percent of the gross settlement), litigation costs not to exceed \$20,000, and administration costs of up to \$12,000 were proposed and would be paid from the gross settlement. \$100,000 will be allocated to PAGA penalties, 75 percent of which will be paid to the LWDA. The named plaintiffs will seek incentive awards of \$10,000 each, for a total of \$30,000.

The net settlement will be allocated to settlement class members proportionally based on their weeks worked during the class period. Class members will not be required to submit a claim to receive their payments. For tax purposes, settlement payments will be allocated 20

1 percent to wages and 80 percent to penalties and interest. The employer’s share of taxes
2 (estimated at \$44,623.33) will be paid from the net settlement. Funds associated with checks
3 uncashed after 180 days will be sent to the Katharine & George Alexander Community Law
4 Center as the *cy pres* recipient.

5 In exchange for the settlement, class members who do not opt out will release “all claims
6 against Defendants as alleged in the Second Amended Complaint, or [which] could have been
7 alleged, based upon the same factual predicate as the claims raised in the Second Amended
8 Complaint, including, but not limited to,” specified wage and hour claims.

9 The notice process has now been completed. There were no objections to the settlement
10 and only one request for exclusion from the class. Of the 1,348 notices mailed by the
11 administrator, 108 were re-mailed to updated addresses and 178 were ultimately undeliverable.
12 The administrator estimates that the average payment to class members will be \$840.88,² with a
13 high payment of \$6,943.44.

14 At preliminary approval, the Court found that the settlement is a fair a reasonable
15 compromise of the class claims and that the PAGA allocation is genuine, meaningful, and
16 reasonable in light of the statute’s purposes. It finds no reason to deviate from these findings
17 now, especially considering that there are no objections. The Court thus finds that the settlement
18 is fair and reasonable for purposes of final approval.

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

20 Plaintiffs seek a fee award of \$700,000, thirty-five percent of the gross settlement. This
21 is somewhat higher than the thirty-three percent typically awarded. Plaintiffs provide a lodestar
22 figure of \$486,288.10, based on 662.2 hours spent on the case—and 100 estimated future hours
23 yet to be incurred—by counsel billing at \$381–764 per hour. Plaintiffs’ request results in a
24 multiplier of 1.44.

28 ² This will increase given the reduced attorney fee award discussed below.

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].) Moreover, the Court does not expect that
7 anywhere near 100 additional attorney hours will be spent on this matter, so the true lodestar is
8 closer to the \$423,888.10 counsel have expended to date. Viewed in light of this cross-check,
9 the Court will approve a one-third percentage fee, which is **\$666,666.67**. (See *Laffitte v. Robert*
10 *Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 [trial court did not abuse its discretion in
11 approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a
12 multiplier of 2.03 to 2.13].) This still represents a significant multiplier of 1.57. Per the
13 settlement agreement, the unapproved portion of the attorney fee request will be distributed to
14 the class.

15 Plaintiffs' counsel also request \$11,033.73 in litigation costs, below the amount estimated
16 at preliminary approval. Plaintiffs' costs appear reasonable based on the summary provided and
17 are approved. The \$12,000 in administrative costs are also approved.

18 Finally, the named plaintiffs seek incentive awards of \$10,000 each. To support their
19 request, they submitted declarations describing their efforts on the case at preliminary approval.
20 The Court finds that the class representatives are entitled to enhancement awards and the amount
21 requested is reasonable.

22 **IV. ORDER AND JUDGMENT**

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

25 The motion for final approval is GRANTED, with a reduced attorney fee award of
26 \$666,666.67. The following class is certified for settlement purposes:
27
28

1 All persons who are currently employed, or formerly have been employed, as
2 non-exempt hourly employees by Defendants in California, at any time from
3 April 3, 2016, through the date of the Court's preliminary approval of this Action
4 [(June 3, 2022)].

5 Excluded from the class is the one individual who submitted a timely request for
6 exclusion.

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

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

20 **IT IS SO ORDERED.**

21 Date: September 12, 2022



The Honorable Sunil R. Kulkarni
Judge of the Superior Court