

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

SAMUEL ABREGO, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

STERICYCLE, INC.; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 20CV365248

**ORDER RE: MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT; JUDGMENT**

The above-entitled matter came on for hearing on Wednesday, December 8, 2021, at 1:30 p.m. in Department 3, the Honorable Patricia M. Lucas presiding. Sophia Behnia appeared for defendant Stericycle, Inc. ("Stericycle" or "Defendant"); Brandon Brouillette appeared for intervenors Johnny White and Raul Pichardo (collectively, "Intervenors"); and there was no appearance on behalf of plaintiff Samuel Abrego ("Abrego").

On behalf of Intervenors, Mr. Brouillette requested leave to contest the tentative ruling, timely posted on December 7, 2021. Ms. Behnia stated that she had not received notice from Intervenors that they would contest the tentative ruling. Mr. Brouillette stated that he had not notified the other parties of Intervenor's intent to contest the tentative ruling, as required by California Rule of Court 3.1308(a)(1) and Civil Local Rule 8.E., which provides: "If the Court

1 has not directed oral argument, a party contesting a tentative ruling must give notice of its
2 intention to appear to the other side and the Court no later than 4:00 p.m. on the court day
3 preceding the scheduled hearing.”

4 On account of this failure to comply with the Rules and Plaintiff’s nonappearance
5 consistent with Rule 8.E., the court declined to allow oral argument. Having reviewed and
6 considered the written submissions filed by the parties, the court adopts the tentative ruling and
7 hereby orders, adjudges and decrees as follows:

8 **I. INTRODUCTION**

9 This is a putative class and representative action originally brought by Abrego against
10 Defendant arising out of alleged wage and hour violations.

11 On November 30, 2020, the court issued an amended order granting a motion for leave to
12 intervene by Intervenors, who filed a similar Private Attorneys General Act (“PAGA”) case
13 against Defendant in Contra Costa County Superior Court in 2019.

14 Subsequently, Abrego moved for preliminary approval of a proposed class action
15 settlement among him, Miguel Pichardo (“Pichardo”), and Defendant. Pichardo filed his own
16 PAGA action in Los Angeles County Superior Court (*Pichardo v. Stericycle, Inc.*, Los Angeles
17 County Superior Court Case No. 20STCV01257) (“*Pichardo*”), but as part of the settlement
18 Abrego sought approval of a Second Amended Complaint (“SAC”) that adds Pichardo as a
19 plaintiff and several additional causes of action.

20 Intervenors opposed the motion, arguing that the settlement should not be approved
21 because it: (1) enlarges the PAGA period from a start date of March 18, 2019 back to a start date
22 of September 24, 2018, to encompass the PAGA period in Intervenors’ lawsuit; and (2) includes
23 claims from Intervenors’ case that were not originally in this action. Intervenors contended that
24 Abrego and Pichardo lacked standing to settle claims reaching back to the beginning of
25 Intervenors’ earlier PAGA period, because they were never authorized by the Labor and
26 Workforce Development Agency (“LWDA”) to seek civil penalties for the extended time period
27 and Pichardo was never deputized to pursue the claims from Intervenors’ lawsuit. Intervenors
28

1 further asserted that the settlement requires class members to release claims that were not
2 litigated and for hardly any value.

3 On May 4, 2021, the court granted preliminary approval of the settlement, subject to
4 modification of the class notice. As is relevant here, the court explained that Intervenor's
5 arguments in opposition to the motion were not well taken and Intervenor's did not provide a
6 sufficient basis to find that the settlement was unfair or could not be approved in its current form.
7 The court granted Abrego and Pichardo ten days' leave to file the SAC. The court also directed
8 Pichardo to file proof that *Pichardo* was dismissed within ten days of final approval.

9 Abrego and Pichardo (collectively, "Plaintiffs") filed the operative SAC on May 10,
10 2021. The SAC sets forth the following causes of action: (1) Failure to Pay Minimum Wages;
11 (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Permit
12 Rest Breaks; (5) Failure to Provide Accurate Itemized Wage Statements; (6) Failure to Pay All
13 Wages Due Upon Separation of Employment; (7) Failure to Provide Business Expense
14 Reimbursements; (8) Failure to Pay For The Cost of Drug Testing and Physical Examinations;
15 (9) Unlawful Non-Solicitation Agreements; (10) Violation of Business and Professions Code
16 §§ 17200, *et seq.*; and (11) Enforcement of Labor Code §§ 2698 *et seq.*

17 The court approved the amended class notice on May 13, 2021.

18 On August 3, 2021, Intervenor's filed an objection to the settlement. Plaintiffs filed a
19 response to the objection on November 9, 2021.

20 Plaintiffs now move for final approval of the settlement. The motion is opposed by
21 Intervenor's.

22 **II. LEGAL STANDARD**

23 Generally, "questions whether a settlement was fair and reasonable, whether notice to the
24 class was adequate, whether certification of the class was proper, and whether the attorney fee
25 award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple*
26 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*
27 (1996) 48 Cal.App.4th 1794 (*Dunk*).)

28 In determining whether a class settlement is fair, adequate and reasonable, the
trial court should consider relevant factors, such as "the strength of plaintiffs'

1 case, the risk, expense, complexity and likely duration of further litigation, the
2 risk of maintaining class action status through trial, the amount offered in
3 settlement, the extent of discovery completed and the stage of the proceedings, the
experience and views of counsel, the presence of a governmental participant, and
the reaction of the class members to the proposed settlement.”

4 (*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801
5 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624
6 (*Officers*).)

7 “The list of factors is not exclusive and the court is free to engage in a balancing and
8 weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91
9 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the
10 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
11 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
12 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48
13 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

14 The burden is on the proponent of the settlement to show that it is fair and
15 reasonable. However “a presumption of fairness exists where: (1) the settlement
16 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.”

17 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

18 **III. REQUEST FOR JUDICIAL NOTICE**

19 In connection with their objection to the settlement, Intervenor request judicial notice of:
20 (1) the Representative Complaint for Violation of Private Attorneys General Act, Cal. Labor
21 Code section 2698, et seq., filed in *Pichardo* on January 10, 2020; and (2) Plaintiff’s Notice of
22 Settlement and Case Status filed in *Pichardo* on February 1, 2021.

23 The complaint and notice of settlement are subject to judicial notice as court records.
24 (See Evid. Code, § 452, subd. (d) [permitting judicial notice of court records].)

25 Next, in connection with their opposition to this motion, Intervenor request judicial
26 notice of Abrego’s LWDA notice dated September 23, 2020.

27 Plaintiffs do not object to the request and, therefore, the court will take judicial notice of
28 the LWDA notice under Evidence Code section 452, subdivision (h). (See Evid. Code, § 452,

1 subd. (h) [permitting judicial notice of facts and propositions that are not reasonably subject to
2 dispute and are capable of immediate and accurate determination by resort to sources of
3 reasonably indisputable accuracy].)

4 Accordingly, Intervenor's requests for judicial notice are GRANTED.

5 **IV. DISCUSSION**

6 The case has been settled on behalf a class of all persons employed by defendants
7 Stericycle, Stericycle Environmental Solutions, Inc., Stericycle Waste Solutions, Inc., and Shred-
8 it USA, LLC (collectively, "Defendants") in California in a non-exempt hourly paid position
9 from March 18, 2016 through November 27, 2020, but excluding any individuals who performed
10 work prior to April 1, 2017 and who were terminated or resigned prior to September 18, 2017.¹
11 For purposes of the PAGA claims, the settlement includes aggrieved employees employed by
12 Defendants as non-exempt employees in California during PAGA period of September 24, 2018
13 through November 27, 2020.

14 As discussed in connection with the motion for preliminary approval, Defendants will
15 pay a total non-reversionary amount of \$2,000,000, which includes attorney fees of \$666,666.67,
16 costs up to \$30,000, an incentive award of \$7,000 for Abrego, an incentive award of \$5,000 for
17 Pichardo, settlement administration costs not to exceed \$20,000, and a PAGA allocation of
18 \$513,900 (of which 75 percent (\$385,425) will be paid to the LWDA and 25 percent (\$128,475)
19 will be paid to the aggrieved employees). Checks not cashed after 180 days will be sent to Legal
20 Aid at Work as the *cy pres* recipient.

21 On June 4, 2021, notice packets were mailed to 2,084 class members. (Declaration of
22 Zach Cooley Regarding Notice and Settlement Administration ("Cooley Dec."), ¶ 7.)
23 Ultimately, 19 notices were returned as undeliverable. (*Id.* at ¶ 8.) The settlement administrator
24 received one request for exclusion from Francisco Olvera Jr. (*Id.* at ¶ 9.) The settlement
25 administrator received two objections from Intervenor's. (*Id.* at ¶ 10.)

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¹ The exclusion is based on a prior settlement in *Sergio Gutierrez v. Stericycle, Inc.*

1 In their objections and opposition to this motion, Intervenor's reiterate the arguments
2 raised in opposition to Plaintiffs' motion for preliminary approval. Those arguments lack merit
3 for the reasons explained in the court's order granting the motion for preliminary approval.

4 Intervenor's cite the recent case of *Uribe v. Crown Building Maintenance Co.* (2021) 70
5 Cal.App.5th 986 (*Uribe*) in support of their arguments. In *Uribe*, the appellant argued that the
6 PAGA notice to the LWDA failed to reference unreimbursed cell phone expenses in any manner,
7 thereby precluding litigation on that basis. (*Uribe, supra*, 70 Cal.App.5th at p. 990.) The
8 reviewing court held that because the "plain meaning" of the stated "facts and theories" disclosed
9 in the PAGA notice did not encompass a claim for unreimbursed cell phone expenses, the notice
10 was inadequate to support the PAGA cause of action on that theory in the lawsuit. (*Id.* at p.
11 991.) This case is distinguishable from *Uribe*. It is undisputed that Abrego's amended notice to
12 the LWDA encompasses the claims alleged in the SAC. Intervenor's contend the amended notice
13 is defective because it was sent to the LWDA after settlement was reached. However, *Uribe*
14 does not support Intervenor's position as it did not address the timing of the notice sent to the
15 LWDA or whether an amended notice encompassing the claims pleaded in the lawsuit was
16 sufficient.

17 Intervenor's also argue that the court cannot certify Plaintiffs' claims for settlement
18 because Plaintiffs do not believe those claims could be certified for the purposes of litigation.
19 Intervenor's point to statements in class counsel's declaration that Plaintiffs assigned a small
20 percentage chance of class certification to many of the claims. However, Intervenor's do not cite
21 any legal authority, and the court is aware of none, providing that the claims cannot be certified
22 for settlement because Plaintiffs believed that the chance of obtaining certification was low.
23 (See *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 ["When [a party] fails to
24 raise a point, or asserts it but fails to support it with reasoned argument and citations to authority,
25 we treat the point as waived."]; see also *Schaeffer Land Trust v. San Jose City Council* (1989)
26 215 Cal.App.3d 612, 619, fn. 2 ["[A] point which is merely suggested by a party's counsel, with
27 no supporting argument or authority, is deemed to be without foundation and requires no
28 discussion."].)

1 Intervenor further argue that Plaintiffs undervalued the claims because Plaintiffs stated
2 the total value of the class claims was approximately \$25.8 million, but tallying Plaintiffs’
3 estimates for each claim reveals that the total value is approximately \$26.8 million. This
4 argument is unpersuasive. As Plaintiffs point out, the reference to \$25.8 million was a
5 typographical error. Plaintiffs’ evidence demonstrated that they thoroughly investigated and
6 evaluated the class claims, and estimated the total value of the claims to be approximately \$26.8
7 million.

8 Lastly, Intervenor argue that the release is overbroad under *Amaro v. Anaheim Arena*
9 *Management, LLC* (2021) 69 Cal.App.5th 521 (*Amaro*) because: (1) it is not limited to those
10 claims that reasonably arise out of or relate to the facts alleged in the pleadings; and (2) it
11 includes claims that arise out of or relate to the claims and theories alleged in the pleadings
12 rather than just the facts alleged. In *Amaro*, the reviewing court held that a release was overbroad
13 because it covered “potential claims ... in any way relating to the” facts pled in the complaint.
14 (*Amaro, supra*, 69 Cal.App.5th at p. 528.) The court determined that the phrase “in any way
15 relating” unreasonably extended the release to claims beyond the scope of the allegations in the
16 complaint. (*Id.* at pp. 537-538.) The court further held that the release was overbroad because it
17 released “potential claims ... relating in any way to the ... theories pled” in the complaint. (*Id.*
18 at p. 538.) The release at issue here does not suffer from the same deficiencies as the release in
19 *Amaro*. First, the release does not contain the problematic phrase “in any way relating.” Second,
20 the release does not extend to claims beyond the scope of the allegations of the pleadings. The
21 release is limited to claims “that were or could be asserted based on the facts alleged” in the
22 pleadings, including claims “arising out of or related to the facts, theories, allegations *and*
23 claims” alleged in the pleadings. (Settlement Agreement, ¶ 27, italics added.)

24 For the foregoing reasons, Intervenor’s objections to the settlement are **OVERRULED**.

25 The estimated highest payment for the class is \$1,079.74 and the estimated average
26 payment for the class is \$425.58. (Cooley Dec., ¶ 12.) The court previously found that the
27 proposed settlement is fair and the court continues to make that finding for purposes of final
28 approval.

1 Plaintiffs request an incentive award of \$7,000 for Abrego and \$5,000 for Pichardo.

2 The rationale for making enhancement or incentive awards to named plaintiffs is
3 that they should be compensated for the expense or risk they have incurred in
4 conferring a benefit on other members of the class. An incentive award is
5 appropriate if it is necessary to induce an individual to participate in the suit.

6 Criteria courts may consider in determining whether to make an incentive award
7 include: 1) the risk to the class representative in commencing suit, both financial
8 and otherwise; 2) the notoriety and personal difficulties encountered by the class
9 representative; 3) the amount of time and effort spent by the class representative;
10 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
11 enjoyed by the class representative as a result of the litigation. These “incentive
12 awards” to class representatives must not be disproportionate to the amount of
13 time and energy expended in pursuit of the lawsuit.

14 (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks,
15 brackets, ellipses, and citations omitted.)

16 In connection with the motion for preliminary approval, the court examined the
17 declarations submitted by Plaintiffs and found the incentive awards should be approved. The
18 court continues to make that finding now. Accordingly, the court approves the service awards in
19 the amount of \$7,500 for Abrego and \$5,000 for Pichardo.

20 The court also has an independent right and responsibility to review the requested
21 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
22 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs’ counsel seek
23 a fee of \$666,666.67 (1/3 of the total settlement fund) for attorney fees. Plaintiffs’ counsel
24 provides evidence demonstrating a total lodestar of \$297,405.25, based on 482.80 hours spent on
25 the case by counsel with billing rates of \$500-\$785 per hour. (Declaration of Carolyn M. Bell in
26 Support of Plaintiffs’ Motion for Final Approval of Class Action (“Bell Dec.”), ¶¶ 66-67.) This
27 results in a multiplier of 2.25. While the multiplier is somewhat high, the fees requested are
28 reasonable as a percentage of the common fund and are approved.

29 Plaintiffs’ counsel states that \$15,515.43 was spent on litigation costs (Bell Dec., ¶ 69),
30 but the supporting evidence only demonstrates incurred costs in the amount of \$15,317.61 (Bell
31 Dec., Ex. C). Thus, the costs are approved in the amount of \$15,317.61. The settlement
32 administration costs of \$19,000 are also approved. (Cooley Dec., ¶ 13.)

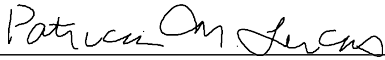
33 Accordingly, the motion for final approval of the class action settlement is GRANTED.

1 Pursuant to Rule 3.769, subdivision (h), of the California Rules of Court, the court retains
2 jurisdiction over the parties to enforce the terms of the Settlement Agreement, and the final
3 Order and Judgment.

4 The court sets a compliance hearing for August 10, 2022, at 2:30 p.m. in Department 3.
5 At least ten court days before the hearing, class counsel and the settlement administrator shall
6 submit a summary accounting of the net settlement fund identifying distributions made as
7 ordered herein, the number and value of any uncashed checks, amounts remitted to Defendants,
8 the status of any unresolved issues, and any other matters appropriate to bring to the court's
9 attention. Counsel may appear at the compliance hearing remotely.

10 The Case Management Conference scheduled for December 8, 2021 is vacated.

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12 Dated: December 8, 2021



Patricia M. Lucas
Judge of the Superior Court