

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

PHILLIP BATISTA,

Plaintiff,

v.

RAILSERVE, INC., et al.,

Defendants.

Case No.: 20CV366688

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

This putative class and Private Attorneys General Act ("PAGA") action is brought on behalf of employees of Defendant Railserve, Inc. Plaintiff alleges that Defendant unlawfully rounded employees' time, failed to provide meal and rest periods, and committed other wage and hour violations.

The parties reached a settlement, which the Court preliminarily approved in an order filed on October 29, 2021. The factual and procedural background of the action and the Court's analysis of the settlement and settlement class are set forth in that order.

Before the Court is Plaintiff's unopposed motion for final approval of the settlement and for approval of his attorney fees, costs, and service award. The Court issued a tentative ruling on May 24, 2022 and no one contested it at the hearing on May 26. The Court now issues its final order, which GRANTS final approval.

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

2 **A. Class Action**

3 Generally, “questions whether a [class action] settlement was fair and reasonable,  
4 whether notice to the class was adequate, whether certification of the class was proper, and  
5 whether the attorney fee award was proper are matters addressed to the trial court’s broad  
6 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),  
7 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th  
8 260.)

9 In determining whether a class settlement is fair, adequate and reasonable, the  
10 trial court should consider relevant factors, such as the strength of plaintiffs’ case,  
11 the risk, expense, complexity and likely duration of further litigation, the risk of  
12 maintaining class action status through trial, the amount offered in settlement, the  
13 extent of discovery completed and the stage of the proceedings, the experience  
14 and views of counsel, the presence of a governmental participant, and the reaction  
15 of the class members to the proposed settlement.  
16 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

17 In general, the most important factor is the strength of the plaintiffs’ case on the merits,  
18 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)  
19 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and  
20 weighing of factors depending on the circumstances of each case. (*Wershba, supra*, 91  
21 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the  
22 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or  
23 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a  
24 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation  
25 marks omitted.)

26 The burden is on the proponent of the settlement to show that it is fair and  
27 reasonable. However “a presumption of fairness exists where: (1) the settlement  
28 is reached through arm’s-length bargaining; (2) investigation and discovery are

1 sufficient to allow counsel and the court to act intelligently; (3) counsel is  
2 experienced in similar litigation; and (4) the percentage of objectors is small.”  
3 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citation omitted.) The presumption does not permit  
4 the Court to “give rubber-stamp approval” to a settlement; in all cases, it must “independently  
5 and objectively analyze the evidence and circumstances before it in order to determine whether  
6 the settlement is in the best interests of those whose claims will be extinguished,” based on a  
7 sufficiently developed factual record. (*Kullar, supra*, 168 Cal.App.4th at p. 130.)

## 8 **B. PAGA**

9 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall  
10 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s  
11 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*  
12 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA  
13 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-  
14 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*  
15 (2014) 59 Cal.4th 348, 380.)

16 Similar to its review of class action settlements, the Court must “determine independently  
17 whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the  
18 LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72  
19 Cal.App.5th 56, 76–77 (*Moniz*)). It must make this assessment “in view of PAGA’s purposes to  
20 remediate present labor law violations, deter future ones, and to maximize enforcement of state  
21 labor laws.” (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383  
22 F. Supp. 3d 959, 971 [“when a PAGA claim is settled, the relief provided for under the PAGA  
23 [should] be genuine and meaningful, consistent with the underlying purpose of the statute to  
24 benefit the public ....”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies,*  
25 *Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*)).

26 The settlement must be reasonable in light of the potential verdict value. (See *O’Connor,*  
27 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential  
28 verdict].) But a permissible settlement may be substantially discounted, given that courts often

1 exercise their discretion to award PAGA penalties below the statutory maximum even where a  
2 claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-  
3 CV-02198-EMC) 2016 WL 5907869, at \*8–9.)

## 4 **II. TERMS AND ADMINISTRATION OF SETTLEMENT**

5 At preliminary approval, the non-reversionary gross settlement amount was anticipated to  
6 be \$304,623. But due to the larger than estimated class size, an escalator clause in the settlement  
7 agreement was triggered, increasing the gross settlement to \$338,057.23. Attorney fees of up to  
8 \$112,685.74 (one-third of the gross settlement), litigation costs not to exceed \$10,000, and  
9 administration costs of up to \$4,200 will be paid from the gross settlement. \$24,000 will be  
10 allocated to PAGA penalties, 75 percent of which will be paid to the LWDA. The named  
11 plaintiff will also seek an enhancement award of \$7,500.

12 The net settlement will be allocated to settlement class members pro rata based on their  
13 weeks worked during the class period. Class members will not be required to submit a claim to  
14 receive their payments. Settlement payments will be allocated 30 percent to wages and 70  
15 percent to interest and penalties for tax purposes. The employer’s share of payroll taxes will be  
16 paid separately from the gross settlement. Funds associated with checks uncashed after 180 days  
17 will be paid to the State Controller Unclaimed Property Fund, in the name of the class member  
18 for whom the funds are designated.

19 In exchange for the settlement, class members will release “all claims, demands, rights,  
20 liabilities, and causes of action alleged or that could have been alleged in Named Plaintiff’s  
21 Operative Complaint based on the facts alleged, which arose during the Class Period, including  
22 but not limited to (1) failure to pay minimum wages (2) failure to pay overtime and/or double  
23 time wages (3) failure to provide meal periods (4) failure to authorize or permit rest periods  
24 (5) failure to provide accurate itemized wage statements (6) failure to pay wages upon separation  
25 of employment and within the required time (7) violation of California Business and Professions  
26 Code §§17200, et seq. and (8) any claims asserted under the Private Attorney General Act, based  
27 on the preceding claims.”  
28

1 The notice process has now been completed. There were no objections to the settlement  
2 and only one request for exclusion from the class. Of the 91 notice packets mailed by the  
3 administrator, 11 were re-mailed after initially being returned, and none were ultimately  
4 undeliverable. The administrator estimates that the average settlement payment will be  
5 \$2,040.07, with a low payment of \$13.31 and a high payment of \$7,776.28.

6 At preliminary approval, the Court found that the proposed settlement provides a fair and  
7 reasonable compromise to Plaintiff's claims, and that the PAGA allocation is genuine,  
8 meaningful, and fair to those impacted considering the purposes of the statute. It finds no reason  
9 to deviate from these findings now, especially since there are no objections. The Court thus  
10 finds that the settlement warrants final approval.

### 11 **III. ATTORNEY FEES, COSTS, AND INCENTIVE AWARD**

12 Plaintiff seeks a fee award of \$112,710.51, or one-third of the gross settlement, which is  
13 not an uncommon contingency fee allocation in a wage and hour class action. This award is  
14 facially reasonable under the "common fund" doctrine, which allows a party recovering a fund  
15 for the benefit of others to recover attorney fees from the fund itself. Plaintiff also provides a  
16 lodestar figure of \$124,072.50, based on 208.9 hours spent on the case by counsel billing at  
17 \$300–825 per hour. Plaintiff's request results in a negative multiplier. The lodestar cross-check  
18 supports the percentage fee requested, particularly given the lack of objections to the attorney fee  
19 request. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 [trial court  
20 did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked  
21 against a lodestar resulting in a multiplier of 2.03 to 2.13].)

22 Plaintiff's counsel also requests \$9,601.43 in litigation costs, below the amount estimated  
23 at preliminary approval. Plaintiff's costs appear reasonable based on the summary provided and  
24 are approved. The \$4,200 in administrative costs are also approved.

25 Finally, Plaintiff requests a service award of \$7,500. To support his request, he submits  
26 a declaration describing his efforts on the case. The Court finds that the class representative is  
27 entitled to an enhancement award and the amount requested is reasonable.  
28

1 **IV. ORDER AND JUDGMENT**

2 In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND  
3 DECREED THAT:

4 The motion for final approval is GRANTED. The following class is certified for  
5 settlement purposes:

6 all current and former non-exempt employees who are or were employed by  
7 Defendant in California at any time from April 8, 2016, through April 14, 2021.

8 Excluded from the class is the one individual who submitted a timely request for  
9 exclusion.

10 Judgment shall be entered through the filing of this order and judgment. (Code Civ.  
11 Proc., § 668.5.) Plaintiff and the members of the class shall take from their complaint only the  
12 relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule  
13 3.769(h) of the California Rules of Court, the Court retains jurisdiction over the parties to  
14 enforce the terms of the settlement agreement and the final order and judgment.

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

22 **IT IS SO ORDERED.**

23  
24 Date: May 31, 2022

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The Honorable Sunil R. Kulkarni  
Judge of the Superior Court