

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

HIROMI MEGURO,

Plaintiff,

v.

SILICON VALLEY BANK, et al.,

Defendants.

Case No.: 20CV369854

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

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Hiromi Meguro alleges that Defendant Silicon Valley Bank failed to properly calculate the regular rate of pay used to pay overtime, and issued wage statements that failed to correctly identify the overtime rate and the total hours worked in pay periods that included overtime.

The parties reached a settlement, which the Court preliminarily approved in an order filed on October 3, 2022. 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 motion for final approval of the settlement and for approval of her attorney fees, costs, and service award. Plaintiff's motion is unopposed. The Court issued a tentative ruling on January 11, 2023, which no one contested at the hearing on January 12. 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 relevant 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.) The trial court also must independently confirm that “the consideration being
26 received for the release of the class members’ claims is reasonable in light of the strengths and
27 weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168
28 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be

1 “provided with basic information about the nature and magnitude of the claims in question and
2 the basis for concluding that the consideration being paid for the release of those claims
3 represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

4 **B. PAGA**

5 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall
6 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
7 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
8 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
9 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
10 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
11 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*
12 *Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940.)

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

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

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

2 The non-reversionary gross settlement amount is \$500,000. Attorney fees of up to
3 \$166,666.67 (one-third of the gross settlement), litigation costs of up to \$10,000, and up to
4 \$9,000 in administration costs will be paid from the gross settlement. \$25,000 will be allocated
5 to PAGA penalties, 75 percent of which (\$18,750) will be paid to the LWDA. The named
6 plaintiff will seek an incentive award of \$10,000.

7 The net settlement will be allocated to settlement class members proportionally based on
8 their relevant pay periods during the class period. Class members will not be required to submit
9 a claim to receive their payments. For tax purposes, settlement payments will be allocated 5
10 percent to wages and 95 percent to penalties and interest. The employer's share of taxes will be
11 paid separately from the gross settlement. Funds associated with checks uncashed after 180 days
12 will be transmitted to the State of California's Unclaimed Property Fund in the name of the
13 relevant individual.

14 In exchange for the settlement, class members who do not opt out will release "any and
15 all claims during the Class Period ... arising out of the claims expressly pleaded in the Action
16 and all other claims, such as those under the California Labor Code, applicable Wage Orders, the
17 Fair Labor Standards Act, regulations, or other provisions of law, or [*sic*] that could have been
18 pleaded based on the facts pleaded in the Action for (1) failure to pay overtime wages, (2) failure
19 to provide accurate itemized wage statements, (3) failure to timely pay wages during
20 employment or upon termination, (4) unfair business practices based on these violations, and
21 (5) all claims for injunctive relief, liquidated damages, and penalties." The PAGA release
22 encompasses "any and all claims during the PAGA Period for civil penalties, fees, and costs
23 pleaded in the Action or that could have been pleaded based on the facts alleged in the Action
24 and preceding PAGA notices to the LWDA."

25 The notice process has now been completed. There were no objections to the settlement
26 and only one request for exclusion from the class. Of the 344 notices mailed by the
27 administrator, 20 were re-mailed to updated addresses and three were ultimately undeliverable.
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1 The administrator estimates that the average payment to class members will be \$815.80, with a
2 high payment of \$3,080.15.

3 At preliminary approval, the Court found that the settlement is a fair and reasonable
4 compromise of the class claims and that the PAGA allocation is genuine, meaningful, and
5 reasonable in light of the statute's purposes. It finds no reason to deviate from these findings
6 now, especially considering that there are no objections. The Court thus finds that the settlement
7 is fair and reasonable for purposes of final approval.

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

9 Plaintiff seeks a fee award of \$166,666.67, one-third of the gross settlement, which is not
10 an uncommon contingency fee allocation in a wage and hour class action. This award is facially
11 reasonable under the "common fund" doctrine, which allows a party recovering a fund for the
12 benefit of others to recover attorney fees from the fund itself. Plaintiff also provides a lodestar
13 figure of \$153,497.50, based on 202 hours spent on the case by counsel billing at \$725–800 per
14 hour. Plaintiff's request results in a modest multiplier of 1.09. The lodestar cross-check
15 supports the percentage fee requested, particularly given the lack of objections to the attorney fee
16 request. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 [trial court
17 did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked
18 against a lodestar resulting in a multiplier of 2.03 to 2.13].)¹

19 Plaintiff's counsel also request \$10,015.29 in litigation costs. Plaintiff's costs appear
20 reasonable based on the summary provided and are approved. The \$8,500 in administrative costs
21 are also approved.

22 Finally, the named plaintiff seeks an incentive award of \$10,000. To support her
23 request, she submits a declaration describing her efforts on the case. The Court finds that the
24 class representative is entitled to an enhancement award and the amount requested is reasonable.

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28 ¹ Plaintiff has agreed to a fee-sharing arrangement, with Diversity Law Group, P.C. receiving
65% of the fee awarded and Polaris Law Group receiving 35%.

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2 **IV. ORDER AND JUDGMENT**

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

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

7 all hourly, non-exempt employees who are currently or have been employed by
8 Defendant, Silicon Valley Bank, in the State of California and either (i) earned
9 overtime wages and non-discretionary compensation, including incentives,
10 bonuses, and non-cash awards, at any time from April 6, 2016, through January 7,
11 2022 (the “Class Period”) or (ii) earned overtime wages at any time from April 6,
12 2019, through January 7, 2022 (the “PAGA Period”).

13 Excluded from the class is the one individual who submitted a timely request for
14 exclusion.

15 Judgment shall be entered through the filing of this order and judgment. (Code Civ.
16 Proc., § 668.5.) Plaintiff and the members of the class shall take from their complaint only the
17 relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule
18 3.769(h) of the California Rules of Court, the Court retains jurisdiction over the parties to
19 enforce the terms of the settlement agreement and the final order and judgment.

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

3 **IT IS SO ORDERED.**

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5 Date: January 13, 2023


6 The Honorable Sunil R. Kulkarni
7 Judge of the Superior Court
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