

ORDER ON SUBMITTED MATTER

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

JACOB BLEA,

Plaintiff,

v.

PACIFIC GROSERVICE INC., et al.,

Defendants.

Case No.: 20CV375150

**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 alleges that Defendants Pacific Groservice, Inc. and Pittsburg Wholesale Grocers, Inc. d/b/a Pitco Foods failed to provide meal and rest breaks, required employees to work off-the-clock, and committed other wage and hour violations.

The parties reached a settlement, which the Court preliminarily approved in an order filed on December 9, 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, attorney fees, costs, and incentive award. Plaintiff's motion is unopposed. The Court issued a tentative ruling on June 7, 2023, which no one contested at the hearing on June 8, 2023. 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. [Citation.]” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235
7 (*Wershba*), disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4
8 Cal.5th 260.)

9 In determining whether a class settlement is fair, adequate and
10 reasonable, the trial court should consider relevant factors, such as
11 the strength of plaintiffs’ case, the risk, expense, complexity and
12 likely duration of further litigation, the risk of maintaining class
13 action status through trial, the amount offered in settlement, the
14 extent of discovery completed and the stage of the proceedings, the
15 experience and views of counsel, the presence of a governmental
16 participant, and the reaction of the class members to the proposed
17 settlement.

18 (*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, internal citations and quotation marks omitted.)

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

1 weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168
2 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be
3 “provided with basic information about the nature and magnitude of the claims in question and
4 the basis for concluding that the consideration being paid for the release of those claims
5 represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

6 **B. PAGA**

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

15 Similar to its review of class action settlements, the Court must “determine independently
16 whether a PAGA settlement is fair and reasonable” to protect “the interests of the public and the
17 LWDA in the enforcement of state labor laws[.]” (*Moniz v. Adecco USA, Inc.* (2021) 72
18 Cal.App.5th 56, 76-77.) It must make this assessment “in view of PAGA’s purposes to
19 remediate present labor law violations, deter future ones, and to maximize enforcement of state
20 labor laws. [Citations.]” (*Id.* at p. 77; see also *Haralson, supra*, 383 F.Supp.3d at p. 971
21 “[W]hen a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine
22 and meaningful, consistent with the underlying purpose of the statute to benefit the public[.]”,
23 quoting LWDA guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016)
24 201 F.Supp.3d 1110, 1133 (*O’Connor*).

25 The settlement must be reasonable in light of the potential verdict value. (See *O’Connor*,
26 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential
27 verdict].) But a permissible settlement may be substantially discounted, given that courts often
28 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 \$2,500,000. Attorney fees of up to \$833,333.33 (one-third of the gross settlement), litigation costs of \$15,467.55, and \$18,000 in administration costs will be paid from the gross settlement. \$100,000 will be allocated to PAGA penalties, 75 percent of which (\$75,000) will be paid to the LWDA. The named plaintiff seeks an incentive award of \$10,000.

The net settlement will be allocated to settlement class members proportionally based on their weeks worked during the class/PAGA periods. Class members will not be required to submit a claim to receive their payments. For tax purposes, settlement payments will be allocated 20 percent to wages and 80 percent to penalties and interest, with 100 percent of PAGA payments deemed penalties. The employer's share of taxes will be paid separately from the gross settlement. Funds associated with checks uncashed after 180 days will be paid to the California State Controller for deposit in the Unclaimed Property Fund in the name of the appropriate employee.

In exchange for the settlement, class members who do not opt out will release "all claims alleged or [that] could have been alleged based on the facts alleged in the operative complaint," including specified wage and hour claims. Similarly, the PAGA release includes "all allegations and claims for civil penalties pursuant to PAGA based on any and all underlying Labor Code violations alleged in the operative complaint or in the PAGA Notice that arose during the PAGA Period," including violations of specific Labor Code provisions at issue in this case. Consistent with the statute, aggrieved employees will not be able to opt out of the PAGA portion of the settlement.

The notice process has now been completed. There were no objections to the settlement and five requests for exclusion from the class. Of the 1,136 total notices mailed by the administrator, 66 were re-mailed to updated addresses and only 19 were ultimately

undeliverable. The administrator estimates that the average payment to class members will be \$1,346.77, with a high payment of \$5,143.14.

At preliminary approval, the Court found that the settlement is a fair and reasonable compromise of the class claims. It finds no reason to deviate from this finding now, especially considering that there are no objections. The Court thus finds that the settlement is fair and reasonable for purposes of final approval.

III. ATTORNEY FEES, COSTS, AND INCENTIVE AWARD

Plaintiff seeks a fee award of \$833,333.33, one-third of the gross settlement, which is not an uncommon contingency fee allocation in a wage and hour class action. This award is facially reasonable under the “common fund” doctrine, which allows a party recovering a fund for the benefit of others to recover attorney fees from the fund itself. Plaintiff also provides a lodestar figure of \$622,315 based on 859.1 hours spent on the case by counsel billing at hourly rates of \$650-850 per hour. Plaintiff’s request results in a modest multiplier of 1.34. The lodestar cross-check supports the percentage fee requested, particularly given the lack of objections to the attorney fee request. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

Plaintiff’s counsel also requests \$15,467.55 in litigation costs, below the amount estimated at preliminary approval. Plaintiff’s costs appear reasonable based on the summary provided and are approved. The \$18,000 in administrative costs are also approved.

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

IV. ORDER AND JUDGMENT

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

The motion for final approval of the settlement, attorney fees, costs, and incentive award is GRANTED. The following class is certified for settlement purposes:

1 all current and former hourly paid non-exempt persons employed
2 by Defendants Pacific Groservice Inc. and Pittsburg Wholesale
3 Grocers, Inc. d/b/a Pitco Foods (“Defendants”) in California at any
4 time beginning December 28, 2016, through and including July 27,
5 2022.

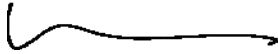
6 Excluded from the class are the five individuals who submitted timely requests for
7 exclusion as identified in paragraph 8 of the May 25, 2023 Supplemental Declaration of
8 Veronica Olivares Regarding Notice and Settlement Administration.

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

14 The Court sets a compliance hearing for **2:30 pm on February 8, 2024** in Department 1.
15 At least ten court days before the hearing, class counsel and the settlement administrator shall
16 submit a summary accounting of the net settlement fund identifying distributions made as
17 ordered herein; the number and value of any uncashed checks; amounts remitted to the
18 Controller; the status of any unresolved issues; and any other matters appropriate to bring to the
19 Court’s attention. Counsel shall also submit an amended judgment as described in Code of Civil
20 Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

21 **IT IS SO ORDERED.**

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23 Date: 6/15/2023

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The Honorable Sunil R. Kulkarni
Judge of the Superior Court

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PROOF OF SERVICE