

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

CARLOS HUMBERTO CARRILLO DIAZ,

Plaintiff,

v.

RECON360, LLC, et al.,

Defendants.

Case No.: 20CV370603

**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 Defendant failed to provide compliant meal and rest breaks, failed to reimburse employees for their work-related use of personal cellphones and mileage, and consequently failed to pay all wages due at separation.

The parties reached a settlement, which the Court preliminarily approved in an order filed on February 14, 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 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 June 8, 2022, and no one contested it at the hearing on June 9. 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.) 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 The non-reversionary gross settlement amount is \$700,000. Attorney fees of up to
6 \$233,333.33 (thirty-three percent of the gross settlement), litigation costs not to exceed \$10,000,
7 and administration costs of approximately \$15,000 will be paid from the gross settlement.
8 \$25,000 will be allocated to PAGA penalties, 75 percent of which will be paid to the LWDA.
9 The named plaintiff will seek an incentive award of \$5,000.

10 The net settlement will be allocated to settlement class members proportionally based on
11 their compensable workweeks during the class period. Class members will not be required to
12 submit a claim to receive their payments. For tax purposes, settlement payments will be
13 allocated one-third to wages, one-third to penalties, and one-third to interest. The employer's
14 share of taxes will be paid separately from the gross settlement. Funds associated with checks
15 uncashed after 180 days will be transmitted to the Office of the Controller Unclaimed Property
16 Fund.

17 In exchange for the settlement, class members who do not opt out will release all claims,
18 debts, etc. “whether known or unknown, contingent or accrued, that are alleged, or that
19 reasonably could have arisen out of the same facts alleged in the Action, including, but not
20 limited to: (1) Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512; (2)
21 Failure to Provide Rest Breaks Pursuant to Labor Code §§ 226.7; (3) Failure to Reimburse
22 Expenses Pursuant to Labor Code § 2802; (4) Penalties Pursuant to Labor Code § 203; (5)
23 Violation of Business & Professions Code § 17200; (6) Penalties Pursuant to [PAGA].”

24 The notice process has now been completed. There were no objections to the settlement
25 and only one request for exclusion from the class. Of the 277 notices mailed by the
26 administrator, 26 were re-mailed to updated addresses and 39 were ultimately undeliverable.

27 The administrator estimates that the average payment to class members will be \$1,519.20, with a
28 high payment of \$7,396.66.

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

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

7 Plaintiff seeks a fee award of \$233,333.33, or one-third of the gross settlement, which is
8 not an uncommon contingency fee allocation in a wage and hour class action. This award is
9 facially reasonable under the “common fund” doctrine, which allows a party recovering a fund
10 for the benefit of others to recover attorney fees from the fund itself. Plaintiff also provides
11 a lodestar figure of \$114,702.50, based on 168.70 hours spent on the case by counsel billing at
12 \$400–900 per hour. Plaintiff’s request results in a reasonable multiplier of 2.03.

13 The lodestar cross-check supports the percentage fee requested, particularly given the lack of
14 objections to the attorney fee request. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th
15 480, 488, 503–504 [trial court did not abuse its discretion in approving fee award of 1/3 of the
16 common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

17 Plaintiff’s counsel also request \$8,617.27 in litigation costs, below the amount estimated
18 at preliminary approval. Plaintiff’s costs appear reasonable based on the summary provided and
19 are approved. The \$15,000 in administrative costs are also approved.

20 Finally, Plaintiff requests a service award of \$5,000. To support his request, he submits
21 a declaration describing his efforts on the case. The Court finds that the class representative is
22 entitled to an enhancement award and the amount requested is reasonable.

23 **IV. ORDER AND JUDGMENT**

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

26 The motion for final approval is GRANTED. Consistent with the stipulated order
27 amending the settlement period that was filed on March 14, 2022, the following class is certified
28 for settlement purposes:

1 all persons who are employed or have been employed as hourly, non-exempt
2 employees by RECON360, LLC, in the State of California during the Covered
3 Period [(September 22, 2016 to May 31, 2021)].
4

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.) Plaintiff and the members of the class shall take from their complaint only the
9 relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule
10 3.769(h) of the California Rules of Court, the Court retains jurisdiction over the parties to
11 enforce the terms of the settlement agreement and the final order and judgment.

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

19 **IT IS SO ORDERED.**

20 Date: June 13, 2022

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23 The Honorable Sunil R. Kulkarni
24 Judge of the Superior Court
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