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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

DENISE RIVAS,

Plaintiff,

v.

8X8, INC., et al.,

Defendants.

Case No.: 20CV370842

(consolidated with Case No. 20CV374192)

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

This is a consolidated putative class and Private Attorneys General Act ("PAGA") action. Plaintiff alleges that Defendant 8X8, Inc. failed to pay employees for off-the-clock work, including during meal and rest breaks; rounded time to employees' detriment; failed to include all non-discretionary pay in the pay rates used to calculate overtime; failed to provide legally compliant disclosures in connection with background checks; and committed other wage and hour violations.

The parties reached a settlement, which the Court preliminarily approved in an order filed on June 13, 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. The motion is unopposed. The Court issued

1 tentative rulings on October 28 and November 2, 2022, which no one contested at the hearing on
2 November 3. The Court now issues its final order, which GRANTS final approval.

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

4 **A. Class Action**

5 Generally, “questions whether a [class action] settlement was fair and reasonable,
6 whether notice to the class was adequate, whether certification of the class was proper, and
7 whether the attorney fee award was proper are matters addressed to the trial court’s broad
8 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
9 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
10 260.)

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

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

19 In general, the most important factor is the strength of the plaintiffs’ 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.” (*Williams v. Superior*
10 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
11 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
12 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
13 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*
14 *Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940 (*Viking River*).)

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.” (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383
21 F. Supp. 3d 959, 971 [“when a PAGA claim is settled, the relief provided for under the PAGA
22 [should] be genuine and meaningful, consistent with the underlying purpose of the statute to
23 benefit the public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies,*
24 *Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*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

1 claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-
2 CV-02198-EMC) 2016 WL 5907869, at *8–9.)

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

4 The non-reversionary gross settlement amount is \$1,000,000, plus an additional
5 \$132,848.90 triggered by an escalator clause in the settlement agreement. Attorney fees of up to
6 \$333,333.33 (one-third of the original gross settlement), litigation costs not to exceed \$30,000,
7 and administration costs of up to \$8,999 will be paid from the gross settlement. \$50,000 will be
8 allocated to PAGA penalties, 75 percent of which will be paid to the LWDA. The named
9 plaintiff will seek an incentive award of \$10,000.

10 The net settlement will be allocated to settlement class members proportionally based on
11 their weeks worked during the settlement period. Class members will not be required to submit a
12 claim to receive their payments. For tax purposes, settlement payments will be allocated 25
13 percent to wages and 75 percent to penalties and interest. The employer's share of taxes will be
14 paid separately from the settlement. Funds associated with checks uncashed after 180 days will
15 be paid to the California State Controller's Unclaimed Property division to be held pursuant to
16 the Unclaimed Property Law.

17 As provided by the amended agreement filed on July 19, class members who do not opt
18 out of the settlement will release all claims, rights, etc. "arising from September 25, 2016,
19 through the date on which the Court grants preliminary approval of the Settlement, ... that arise
20 out of or are reasonably related to the factual allegations that were alleged in Plaintiffs
21 Complaints herein," including specified wage and hour claims. The PAGA release encompasses
22 "all claims for PAGA that arise out of or relate to" the applicable statutes and wage orders, "as
23 pled in the PAGA Notice and Complaint in the PAGA Action, from September 16, 2019,
24 through the date of preliminary approval of this Agreement." Consistent with the statute,
25 aggrieved employees cannot opt out of the PAGA component of the settlement.

26 The notice process has now been completed. There were no objections to the settlement
27 and only one request for exclusion from the class, which was subsequently rescinded as
28 explained in supplemental declarations filed by plaintiff's counsel and the administrator. Of the

1 541 notices mailed by the administrator, 17 were re-mailed to updated addresses and only four
2 were ultimately undeliverable. The administrator estimates that the average payment to class
3 members will be \$1,316.11, with a high payment of \$3,083.47.

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

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

10 Plaintiff seeks a fee award of \$333,333.33, one-third of the original gross settlement,
11 which is not an uncommon contingency fee allocation in a wage and hour class action. This
12 award is facially reasonable under the “common fund” doctrine, which allows a party recovering
13 a fund for the benefit of others to recover attorney fees from the fund itself. Plaintiff also
14 provides a lodestar figure of \$192,755, based on 291.5 hours spent on the case by counsel billing
15 at \$595–800 per hour. Plaintiff’s request results in a reasonable multiplier of 1.72. The lodestar
16 cross-check supports the percentage fee requested, particularly given the lack of objections to the
17 attorney fee request. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504
18 [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-
19 checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

20 As requested by the Court, counsel has disclosed their fee-splitting arrangement to the
21 Court. (10/28/22 D. Yearmian Supp. Decl., ¶ 5; Rules of Court, Rule 3.769(b).) The
22 arrangement, particularly since the named Plaintiff expressly agreed in writing to it, does not
23 raise any concerns.

24 Plaintiff’s counsel also request \$14,102.02 in litigation costs, below the amount estimated
25 at preliminary approval. Plaintiff’s costs appear reasonable based on the summaries provided
26 and are approved. The \$9,999 in administrative costs are also approved, although these costs are
27 somewhat higher than estimated at preliminary approval due to the larger number of class
28 members that the parties discovered.

1 Finally, the named plaintiff seeks an incentive award of \$10,000. To support her
2 request, she submitted a declaration describing her efforts on the case at preliminary approval.
3 The Court finds that the class representative is entitled to an enhancement award and the amount
4 requested is reasonable.

5 **IV. ORDER AND JUDGMENT**

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

8 The motion for final approval is GRANTED. The following class is certified for
9 settlement purposes:

10 all current and former non-exempt employees of Defendant in the state of
11 California employed during the Class Period [(from September 25, 2016, through
12 June 13, 2022)].

13 No one otherwise included in this definition is excluded from the class.

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

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

26 **IT IS SO ORDERED.**

27 Date: November 4, 2022

28 

The Honorable Sunil R. Kulkarni
Judge of the Superior Court