

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

JESUS FERREYRA,

Plaintiff,

vs.

POINT DIGITAL FINANCE, INC., et al.,

Defendants.

Case No.: 20CV373776

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

This putative class and Private Attorneys General Act ("PAGA") action is brought on behalf of employees of Defendant Point Digital Finance, Inc.¹ Plaintiffs allege that Defendant failed to provide proper meal and rest breaks, failed to pay overtime and other premium pay at the correct rates, and required employees to work off-the-clock while waiting to clock in. The parties reached a settlement, which the Court preliminarily approved in an order filed on September 9, 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.

¹ Former defendant Edward Lim was dismissed from the action without prejudice pending approval of the parties' settlement, pursuant to a stipulated order entered in August 2021.

1 Before the Court is Plaintiff’s motion for final approval of the settlement and for approval
2 of his attorney fees, costs, and service award. The motion is unopposed. As discussed below,
3 the Court GRANTS the motion, now that the parties have amended the PAGA release to
4 conform with *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521 (*Amaro*).

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

6 **A. Class Action**

7 Generally, “questions whether a [class action] settlement was fair and reasonable,
8 whether notice to the class was adequate, whether certification of the class was proper, and
9 whether the attorney fee award was proper are matters addressed to the trial court’s broad
10 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
11 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
12 260.)

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

21 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
22 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
23 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
24 weighing of factors depending on the circumstances of each case. (*Wershba, supra*, 91
25 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
26 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
27 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
28

1 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
2 marks omitted.)

3 The burden is on the proponent of the settlement to show that it is fair and
4 reasonable. However “a presumption of fairness exists where: (1) the settlement
5 is reached through arm’s-length bargaining; (2) investigation and discovery are
6 sufficient to allow counsel and the court to act intelligently; (3) counsel is
7 experienced in similar litigation; and (4) the percentage of objectors is small.”
8 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citation omitted.) The presumption does not permit
9 the Court to “give rubber-stamp approval” to a settlement; in all cases, it must “independently
10 and objectively analyze the evidence and circumstances before it in order to determine whether
11 the settlement is in the best interests of those whose claims will be extinguished,” based on a
12 sufficiently developed factual record. (*Kullar, supra*, 168 Cal.App.4th at p. 130.)

13 **B. PAGA**

14 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall
15 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
16 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
17 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
18 go to the Labor and Workforce Development Agency (“LWDA”), leaving the remaining twenty-
19 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
20 (2014) 59 Cal.4th 348, 380.)

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

benefit the public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).) The settlement must be reasonable in light of the potential verdict value. (See *O’Connor, supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often 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 \$215,000. Attorney fees of up to \$71,666.67 (one-third of the gross settlement), litigation costs not to exceed \$15,000, and administration costs estimated at \$3,000 will be paid from the gross settlement. \$10,000 will be allocated to PAGA penalties, 75 percent of which will be paid to the LWDA. The named plaintiff will also seek an enhancement award of \$7,500.

The net settlement will be allocated to settlement class members pro rata based on their weeks worked during the class period. Class members will not be required to submit a claim to receive their payments. Settlement payments will be allocated one-third to wages and two-thirds to interest and penalties for tax purposes, and individual PAGA payments will be allocated 100 percent to penalties. The employer’s share of taxes will be paid separately from and in addition to the gross settlement. Funds associated with checks uncashed after 120 days will be distributed half to Capital Pro Bono, Inc. and half to the Center for Workers Rights Clinic (“CWR”).²

The Court found the original proposed release to be too vague and broad under *Amaro*, and informed the parties of its view. The parties now release “any and all claims that were brought or could have been brought under the Private Attorneys General Act, Labor Code § 2698 et seq., based on the facts alleged in the Complaint or Plaintiff’s letter to the LWDA during the PAGA Claim Period.” The Court approves this release as conforming with *Amaro* and *Moniz*.

² A declaration by CWR’s Executive Director clarifies that CWR is a 501(c)(3) nonprofit that partners with Legal Aid at Work to offer legal consultations for low-wage workers.

1 (See *Amaro, supra*, 69 Cal.App.5th at p. 538; *Moniz, supra*, 72 Cal.App.5th at pp. 82–83 [trial
2 court appropriately approved release of PAGA claims “that were or could have been pled based
3 on the allegations of the Complaint”].)

4 The notice process has now been completed. There were no objections to the settlement
5 or requests for exclusion from the class. Of 59 notice packets, one was re-mailed to a forwarding
6 address and none were ultimately undeliverable. The administrator estimates that the average
7 payment to class members will be \$1,913.34, with a maximum payment of \$2,959.55.

8 At preliminary approval, the Court found that the proposed settlement provides a fair and
9 reasonable compromise to Plaintiff’s claims, and that the PAGA settlement is genuine,
10 meaningful, and fair to those affected. It finds no reason to deviate from these findings now,
11 especially considering that there are no objections. The Court is thus prepared to find that the
12 settlement is fair and reasonable for purposes of final approval, especially since the parties now
13 have amended the PAGA release to conform to *Amaro*.

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

15 Plaintiff seeks a fee award of \$71,666.67, or one-third of the gross settlement, which is
16 not an uncommon contingency fee allocation in a wage and hour class action. This award is
17 facially reasonable under the “common fund” doctrine, which allows a party recovering a fund
18 for the benefit of others to recover attorney fees from the fund itself. Plaintiff also provides a
19 lodestar figure of \$76,758, based on 223.1 hours spent on the case by counsel billing at \$270–
20 675 per hour. Plaintiff’s request results in a negative multiplier. The lodestar cross-check
21 supports the percentage fee requested, particularly given the lack of objections to the attorney fee
22 request. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 [trial court
23 did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked
24 against a lodestar resulting in a multiplier of 2.03 to 2.13].)

25 Plaintiff’s counsel also requests \$10,696.03 in costs, below the estimate provided at
26 preliminary approval. Plaintiff’s costs appear reasonable based on the summary provided and
27 are approved. The \$4,750 in administrative costs are also approved, although these costs are
28 somewhat higher than estimated.

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

4 **IV. CONCLUSION**

5 Now that the parties have amended the PAGA release to conform with *Amaro*, the Court
6 GRANTS final approval. The Court will set a compliance hearing for **August 25, 2022 at 2:30**
7 **P.M.** in Department 1.

8 The Court will prepare the order and judgment.

9 **IT IS SO ORDERED.**

10
11 Date: February 22, 2022

12 

The Honorable Sunil R. Kulkarni
Judge of the Superior Court