

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

RICHARD AMATO,

Plaintiff,

v.

LAYTON CONSTRUCTION COMPANY,
LLC, et al.,

Defendants.

Case No.: 20CV371023

**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 Richard Amato alleges that Defendant Layton Construction Company, LLC failed to pay employees for all hours worked and committed other wage and hour violations.

The parties reached a settlement, which the Court preliminarily approved in an order filed on January 28, 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 May 24, 2022 and no one contested it at the hearing on May 26. The Court now issues its final order, which GRANTS final approval.

1
2 **I. LEGAL STANDARDS FOR SETTLEMENT APPROVAL**

3 **A. Class Action**

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

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

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

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

27 The burden is on the proponent of the settlement to show that it is fair and
28 reasonable. However “a presumption of fairness exists where: (1) the settlement

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

9 **B. PAGA**

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

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

27 The settlement must be reasonable in light of the potential verdict value. (See *O’Connor,*
28 *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 \$225,000. Attorney fees of up to \$75,000 (thirty-three percent of the gross settlement), litigation costs not to exceed \$12,000, and administration costs of up to \$10,000 will be paid from the gross settlement. \$22,500 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 \$5,000.

The net settlement will be allocated to settlement class members proportionally based on their weeks worked during the class and PAGA periods. Class members will not be required to submit a claim to receive their payments. For tax purposes, settlement payments will be allocated five percent to reimbursement of expenses, ten percent to wages, and the rest to penalties and interest. The employer's share of taxes will be paid separately from the gross settlement. Funds associated with checks uncashed after 180 days will be distributed to the California Unclaimed Property Fund in the name of the class member.

In exchange for the settlement, class members will release all claims, debts, etc. "that were or could have been brought based on the allegations in any version of the complaints filed in the Action and in Plaintiff's PAGA Notice Letter to the LWDA arising during the period from September 30, 2016 to the date on which the Court grants final approval of the settlement."

The notice process has now been completed. There were no objections to the settlement or requests for exclusion from the class. Of the 60 notice packets mailed by the administrator, 4 were re-mailed after initially being returned, and 2 were ultimately undeliverable. The administrator estimates that the average payment to the 60 class members will be \$1,641.75, with a minimum payment of \$41.04 and a maximum payment of \$5,724.41. The average payment to the 37 PAGA aggrieved employees will be \$152.03, with \$11.19 as the lowest payment and \$341.25 as the highest payment.

1 At preliminary approval, the Court found that the proposed settlement provides a fair and
2 reasonable compromise to Plaintiff's claims, and that the PAGA allocation is genuine,
3 meaningful, and fair to those impacted considering the purposes of the statute. It finds no reason
4 to deviate from these findings now, especially since there are no objections. The Court thus
5 finds that the settlement warrants final approval.

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

7 Plaintiff seeks a fee award of \$75,000, or one-third of the gross settlement, which is not
8 an uncommon contingency fee allocation in a wage and hour class action. This award is facially
9 reasonable under the "common fund" doctrine, which allows a party recovering a fund for the
10 benefit of others to recover attorney fees from the fund itself. Plaintiff also provides a lodestar
11 figure of \$97,375, based on 152.5 hours spent on the case by counsel billing at \$450–750 per
12 hour. Plaintiff's request results in a negative multiplier. The lodestar cross-check supports the
13 percentage fee requested, particularly given the lack of objections to the attorney fee request.

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

17 Plaintiff's counsel also requests \$7,687.53 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 \$10,000 in administrative costs are also approved.

20 Finally, Plaintiff requests a service award of \$5,000. At preliminary approval, he
21 submitted a declaration describing his efforts on the case. The Court finds that the class
22 representative is 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. The following class is certified for
27 settlement purposes:
28

1 all individuals employed by Defendant during the Settlement Period [(September
2 30, 2016 through the date of preliminary approval, January 28, 2022)] as non-
3 exempt, hourly field employees within the State of California.

4 No one is excluded from the class.

5 Judgment shall be entered through the filing of this order and judgment. (Code Civ.
6 Proc., § 668.5.) Plaintiff and the members of the class shall take from their complaint only the
7 relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule
8 3.769(h) of the California Rules of Court, the Court retains jurisdiction over the parties to
9 enforce the terms of the settlement agreement and the final order and judgment.

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

17 **IT IS SO ORDERED.**

18
19 Date: May 31, 2022

18 
19 _____
20 The Honorable Sunil R. Kulkarni
21 Judge of the Superior Court
22
23
24
25
26
27
28