

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

JOSE HERNANDEZ,

Plaintiff,

v.

EUROMARKET DESIGNS, INC., et al.,

Defendants.

Case No.: 20CV370922

**ORDER CONCERNING PLAINTIFF'S
MOTIONS (1) FOR FINAL APPROVAL
OF CLASS/PAGA SETTLEMENT AND
(2) FOR APPROVAL OF ATTORNEYS'
FEES, COSTS AND EXPENSES, AND A
CLASS REPRESENTATIVE
ENHANCEMENT PAYMENT, AND
JUDGMENT**

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Jose Hernandez alleges that Defendant Euromarket Designs, Inc. (doing business as Crate & Barrel) failed to pay minimum and overtime wages for off-the-clock work, failed to provide required meal and rest breaks or associated premiums, committed reporting time violations, failed to reimburse employees for business expenses, and committed other wage and hour violations.

The parties reached a settlement, which the Court preliminarily approved in an order filed on September 6, 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 are Plaintiff's motions: (1) for final approval of the settlement; and (2) for approval of his attorney fees, costs, and service award. Plaintiff's motions are unopposed.

1 The Court issued tentative rulings on January 3 and January 11, 2023, which no one contested at
2 the hearing on January 12. The Court now issues its final order, which GRANTS final
3 approval.

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

5 **A. Class Action**

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

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

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

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

7 **B. PAGA**

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

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 \$1,100,000. Attorney fees of up to
6 \$366,667 (one-third of the gross settlement), litigation costs of up to \$30,000, and administration
7 costs of approximately \$15,000 will be paid from the gross settlement. \$100,000 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 class and PAGA periods. Class members will not be required to
12 submit a claim to receive their payments. For tax purposes, settlement payments will be
13 allocated 25 percent to wages, and 75 percent to non-wages. The employer’s share of taxes will
14 be paid separately from the gross settlement. Funds associated with checks uncashed after 180
15 days will be tendered to California Rural Legal Assistance.

16 As provided by the Amendment filed on August 22, 2022, in exchange for the settlement,
17 class members who do not opt out will release all claims, rights, etc. “arising from, or reasonably
18 related to, the same set of operative facts as those set forth in the First Amended Complaint
19 during the Class Period, including: (i) all claims for unpaid overtime; (ii) all claims for meal and
20 rest break violations; (iii) all claims for unpaid minimum wages; (iv) all claims for the failure to
21 timely pay wages upon termination based on the preceding claims; (v) all claims for the failure to
22 timely pay wages during employment based on the preceding claims; (vi) all claims for the
23 failure to provide reporting time pay; (vii) all claims for the failure to reimburse for necessary
24 business expenses; (viii) all claims for wage statement violations based on the preceding claims;
25 and (ix) all claims asserted through California Business & Professions Code §§ 17200, et seq.,
26 and including all claims, both potential and actual, that could reasonably have been alleged in the
27 Action based on the facts alleged in the First Amended Complaint.”
28

1 Aggrieved employees will release “[a]ll claims for civil penalties under [PAGA],
2 including under California Labor Code, sections 558 and/or 2698, et seq., predicated on any
3 Labor Code violations alleged or could reasonably have been alleged in the Action based on the
4 same set of operative facts as those set forth in the First Amended Complaint during the PAGA
5 Period, the October 7, 2020 PAGA Notice submitted on behalf of Plaintiff Hernandez (LWDA-
6 CM-808930-20).” Consistent with the statute, aggrieved employees will not be able to opt out of
7 the PAGA component of the settlement.

8 The notice process has now been completed. There were no objections to the settlement
9 or requests for exclusion from the class. Of the 1,218 notices mailed by the administrator, 3
10 were re-mailed to updated addresses and only one was ultimately undeliverable. The
11 administrator estimates that the average payment to class members will be \$476.05, with a high
12 payment of \$1,950.53 (not including PAGA payments).

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

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

19 Plaintiff seeks a fee award of \$366,666.67, one-third of the gross settlement, which is not
20 an uncommon contingency fee allocation in a wage and hour class action. This award is facially
21 reasonable under the “common fund” doctrine, which allows a party recovering a fund for the
22 benefit of others to recover attorney fees from the fund itself. Plaintiff also provides a lodestar
23 figure of \$254,760, based on 390 hours spent on the case by counsel billing at \$450–950 per
24 hour and paraprofessionals billing at \$200 per hour. Plaintiff’s request results in a reasonable
25 multiplier of 1.44. The lodestar cross-check supports the percentage fee requested, particularly
26 given the lack of objections to the attorney fee request. (See *Laffitte v. Robert Half Intern.*
27 *Inc.* (2016) 1 Cal.5th 480, 488, 503–504 [trial court did not abuse its discretion in approving fee
28

award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)¹

Plaintiff's counsel also request \$30,000 in litigation costs, below their actual costs incurred. Plaintiff's costs appear reasonable based on the summaries provided and are approved. The \$13,500 in administrative costs are also approved.

Finally, the named plaintiff seeks an incentive award of \$10,000. To support his request, he submitted a declaration describing his efforts on the case at preliminary approval. The Court finds that the class representative is entitled to an enhancement 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 is GRANTED. The following class is certified for settlement purposes:

All persons who worked for Defendant as non-exempt, hourly paid employees at one of Defendant's distribution centers in California (to include housewares and furniture buildings located in Tracy (Locations #491 & 499) and an LA cross-dock located in Santa Fe Springs (Location # 591)) at any time from September 28, 2016 to December 31, 2021, inclusive.

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

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

¹ In a supplemental declaration filed on January 3, 2023, Plaintiff's counsel confirms that the attorney fee award will be tendered 90 percent to Capstone Law APC and 10 percent to James Hawkins, APLC, as disclosed by the settlement agreement.

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

8 **IT IS SO ORDERED.**

9
10 Date: January 13, 2023



The Honorable Sunil R. Kulkarni
Judge of the Superior Court