

FILED
February 18, 2022
Clerk of The Court
Superior Court of CA
County of Santa Clara
21CV376407
By: rwalker

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

DEBBIE FELIX, et al.,

Plaintiffs,

vs.

TVI, INC. d.b.a. SAVERS, et al.,

Defendants.

Case No.: 21CV376407

**ORDER CONCERNING
MOTIONS FOR FINAL APPROVAL
OF CLASS/PAGA SETTLEMENT AND
FOR AWARD OF ATTORNEYS' FEES,
COSTS AND SERVICE AWARDS, AND
JUDGMENT**

This putative class and Private Attorneys General Act ("PAGA") action is brought on behalf of employees of Defendant TVI, Inc., doing business as SAVERS. Plaintiffs allege that Defendant required employees to work off-the-clock during meal and rest periods and during loss prevention inspections, among other wage and hour violations.¹ The parties reached a settlement, which the Court preliminarily approved in an order filed on October 22, 2021. The

¹ Plaintiff Melead sued Defendant for violations of the Labor Code and unfair competition on May 26, 2020 in Orange County. (*Melead v. TVI Savers, Inc.*, Super. Ct. Orange County, No. 30-2020-01140887-CU-OE-CXC (the "*Melead Class Action*").) Defendant removed that case to federal court, but it was remanded in September 2020. Meanwhile, Mr. Melead filed a second, PAGA-only action in Orange County. (*Melead v. TVI Savers, Inc.*, Super. Ct. Orange County, No. 30-2020-01152545-CU-OE-NJC (the "*Melead PAGA Action*").) Plaintiff Felix initiated this case as a PAGA-only action on February 24, 2021. Per a stipulated order, Plaintiffs filed the operative First Amended Complaint on August 17, consolidating their claims.

1 factual and procedural background of the action and the Court’s analysis of the settlement and
2 settlement class are set forth in that order.

3 Before the Court are Plaintiffs’ motions for final approval of the settlement and for
4 approval of their attorney fees, costs, and service awards. The motions are unopposed. The
5 Court issued a tentative ruling on February 15, 2022, and no one contested it at the hearing on
6 February 17. The Court now issues its final order.

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

8 **A. Class Action**

9 Generally, “questions whether a [class action] settlement was fair and reasonable,
10 whether notice to the class was adequate, whether certification of the class was proper, and
11 whether the attorney fee award was proper are matters addressed to the trial court’s broad
12 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
13 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
14 260.)

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

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

1 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
2 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
3 marks omitted.)

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

14 **B. PAGA**

15 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall
16 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
17 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
18 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
19 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
20 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
21 (2014) 59 Cal.4th 348, 380.)

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

[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 \$1,500,000. Attorney fees of up to \$500,000 (one-third of the gross settlement), litigation costs not to exceed \$25,000, and administration costs of up to \$22,500 will be paid from the gross settlement. \$50,000 will be allocated to PAGA penalties, 75 percent of which will be paid to the LWDA. The named plaintiffs will each seek an enhancement award of \$7,500.

The net settlement will be allocated to settlement class members pro rata based on their workweeks performed during the class period. Former employees will be assigned four additional workweeks. The PAGA portion of the settlement will be separately distributed to aggrieved employees based on their workweeks during the PAGA period. Class members will not be required to submit a claim to receive their payments. Settlement payments will be allocated 75 percent to penalties and interest and 25 percent to wages for tax purposes, and Defendant will separately pay its share of payroll taxes. Funds associated with checks uncashed after 180 days will be paid to The Children’s Advocacy Institute.

In exchange for the settlement, class members will release “all class action claims ... arising out of the claims expressly plead in the *Felix* Action, *Melead* Class Action and *Melead* Federal Class Action and all other claims that could have been pled based on the facts pled in the *Felix* Action, *Melead* Class Action and *Melead* Federal Class Action including: failure to pay minimum and overtime wages; failure to pay for or provide meal and rest periods, failure to pay

1 all wages due to discharged or quitting employees; failure to provide accurate wage statements;
2 alleged violation of Business and Professions Code Section 17200, based on the alleged labor
3 code violations ..., and expressly excluding all other claims, including claims for vested benefits,
4 wrongful termination, unemployment insurance, disability, social security, workers'
5 compensation, and class claims outside of the Class Period.”

6 Consistent with the statute, aggrieved employees will not be able to opt-out from the
7 PAGA portion of the settlement, which releases claims “arising under PAGA expressly alleged,
8 or that could have been alleged based on the facts alleged in the *Felix* Action and *Melead* PAGA
9 Action and Plaintiffs’ notice letters to the LWDA”

10 The notice process has now been completed. There were no objections to the settlement
11 or requests for exclusion from the class. Of 3,385 notice packets, 122 were re-mailed to an
12 updated address and 108 were ultimately undeliverable. The administrator estimates that the
13 average payment to class members will be \$262.19, with a maximum payment of \$1,286.37, plus
14 PAGA payments.

15 At preliminary approval, the Court found that the proposed settlement provides a fair and
16 reasonable compromise to Plaintiffs’ claims, and that the PAGA settlement is genuine,
17 meaningful, and fair to those affected considering the statute’s purposes. It finds no reason to
18 deviate from these findings now, especially considering that there are no objections. The Court
19 thus finds that the settlement is fair and reasonable for purposes of final approval.

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

21 Plaintiffs seek a fee award of \$500,000, or one-third of the gross settlement, which is not
22 an uncommon contingency fee allocation in a wage and hour class action. This award is facially
23 reasonable under the “common fund” doctrine, which allows a party recovering a fund for the
24 benefit of others to recover attorney fees from the fund itself. Plaintiffs also provide a lodestar
25 figure of \$302,542.50, based on 603 hours spent on the case by counsel billing at \$350–550 per
26 hour and a paralegal billing at \$150 per hour. Plaintiffs’ request results in a reasonable
27 multiplier of 1.65. The lodestar cross-check supports the percentage fee requested, particularly
28 given the lack of objections to the attorney fee request. (See *Laffitte v. Robert Half Intern.*

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

4 Plaintiffs’ counsel also requests \$25,000 in costs, but they have only incurred a total of
5 \$20,888.21 in costs so far. Plaintiffs’ actual costs appear reasonable based on the summary
6 provided and are approved, but the Court will not award additional “anticipated costs” as
7 requested. The \$22,500 in administrative costs are also approved.

8 Finally, Plaintiffs request service awards of \$7,500 each. To support their requests, they
9 submit declarations describing their efforts on the case. The Court finds that the class
10 representatives are entitled to an enhancement award and the amount requested is reasonable.

11 **IV. ORDER AND JUDGMENT**

12 In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND
13 DECREED THAT:

14 The motions for final approval and for approval of attorney fees and other items are
15 GRANTED, but the Court approves a reduced award of litigation costs in the amount of
16 \$20,888.21. The following class is certified for settlement purposes:

17 All of Defendant’s current and former non-exempt employees employed in
18 California between April 18, 2017 and July 27, 2021.

19 No one is excluded from the class.

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

25 The Court sets a compliance hearing for **September 29, 2022 at 2:30 P.M.** in
26 Department 1. At least ten court days before the hearing, class counsel and the settlement
27 administrator shall submit a summary accounting of the net settlement fund identifying
28 distributions made as ordered herein; the number and value of any uncashed checks; amounts

1 remitted to the *cy pres* beneficiary; the status of any unresolved issues; and any other matters
2 appropriate to bring to the Court's attention. Counsel shall also submit an amended judgment as
3 described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the
4 compliance hearing remotely.

5 **IT IS SO ORDERED.**

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7 Date: February 18, 2022

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10 The Honorable Sunil R. Kulkarni
11 Judge of the Superior Court
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