

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

TERESA ZAPATA,

Plaintiff,

v.

KEYPOINT CREDIT UNION, et al.,

Defendants.

Case No.: 21CV375646

**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 alleges that Defendant Keypoint Credit Union failed to pay employees for off-the-clock work, failed to provide meal and rest breaks, and committed other wage and hour violations.

The parties reached a settlement, which the Court preliminarily approved in an order filed on December 9, 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 for final approval of the settlement and for approval of her attorney fees, costs, and service award. Plaintiff's motions are unopposed. The Court issued a tentative ruling on April 12, 2023, which no one contested at the hearing on April 13. The Court now issues its final order, which GRANTS final approval.

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

2 **A. Class Action**

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

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

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

17 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
18 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
19 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
20 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
21 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
22 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
23 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
24 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
25 marks omitted.) The trial court also must independently confirm that “the consideration being
26 received for the release of the class members’ claims is reasonable in light of the strengths and
27 weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168
28 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be

1 “provided with basic information about the nature and magnitude of the claims in question and
2 the basis for concluding that the consideration being paid for the release of those claims
3 represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

4 **B. PAGA**

5 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall
6 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
7 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
8 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
9 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
10 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
11 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*
12 *Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940.)

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

23 The settlement must be reasonable in light of the potential verdict value. (See *O’Connor,*
24 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential
25 verdict].) But a permissible settlement may be substantially discounted, given that courts often
26 exercise their discretion to award PAGA penalties below the statutory maximum even where a
27 claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-
28 CV-02198-EMC) 2016 WL 5907869, at *8–9.)

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

2 The non-reversionary gross settlement amount is \$500,000. Attorney fees of up to
3 \$166,667 (one-third of the gross settlement), litigation costs of up to \$20,000, and \$10,000 in
4 administration costs will be paid from the gross settlement. \$20,000 will be allocated to PAGA
5 penalties, 75 percent of which (\$15,000) will be paid to the LWDA. The named plaintiff will
6 seek an incentive award of \$5,000, plus a payment of \$5,000 in exchange for her provision of a
7 general release.

8 The net settlement will be allocated to settlement class members proportionally based on
9 their weeks worked during the class/PAGA periods. Class members will not be required to
10 submit a claim to receive their payments. For tax purposes, settlement payments will be
11 allocated 20 percent to wages and 80 percent to penalties and interest. The employer's share of
12 taxes will be paid separately from the gross settlement. Funds associated with checks uncashed
13 after 180 days will be paid to the California State Controller for deposit in the Unclaimed
14 Property Fund in the name of the appropriate employee.

15 In exchange for the settlement, class members who do not opt out will release all claims,
16 rights, etc. "reasonably arising from, or related to, the same set of operative facts as those set
17 forth in the operative complaint during the Class Period, including" specified wage and hour
18 claims. Similarly, the PAGA release encompasses all claims for PAGA penalties "that were
19 brought or could reasonably have been brought based on the facts alleged in Plaintiff's LWDA
20 letter during the PAGA Period." Consistent with the statute, aggrieved employees will not be
21 able to opt out of the PAGA portion of the settlement.

22 The notice process has now been completed. There were no objections to the settlement
23 or requests for exclusion from the class. Of the 217 total notices mailed by the administrator, 5
24 were re-mailed to updated addresses and only two were ultimately undeliverable. The
25 administrator estimates that the average payment to class members will be \$1,267.66, with a high
26 payment of \$5,894.48.

27 At preliminary approval, the Court found that the settlement is a fair and reasonable
28 compromise of the class claims. It finds no reason to deviate from this finding now, especially

1 considering that there are no objections. The Court thus finds that the settlement is fair and
2 reasonable for purposes of final approval.

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

4 Plaintiff seeks a fee award of \$166,667, one-third of the gross settlement, which is not an
5 uncommon contingency fee allocation in a wage and hour class action. This award is facially
6 reasonable under the “common fund” doctrine, which allows a party recovering a fund for the
7 benefit of others to recover attorney fees from the fund itself. Plaintiff also provides a lodestar
8 figure of \$141,025, based on 198.2 hours spent on the case by counsel billing at hourly rates of
9 \$475–950 per hour. Plaintiff’s request results in a modest multiplier of 1.18. The lodestar cross-
10 check supports the percentage fee requested, particularly given the lack of objections to the
11 attorney fee request. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504
12 [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-
13 checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

14 Plaintiff’s counsel also requests \$16,399.89 in litigation costs, below the amount
15 estimated at preliminary approval. Plaintiff’s costs appear reasonable based on the summary
16 provided and are approved. The \$8,250 in administrative costs are also approved.

17 Finally, the named plaintiff seeks a combined incentive/general release award of
18 \$10,000. To support her request, she submits a declaration describing her efforts on the case.
19 The Court finds that the class representative is entitled to an enhancement award and the amount
20 requested is reasonable.

21 **IV. ORDER AND JUDGMENT**

22 In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND
23 DECREED THAT:

24 The motions for final approval and for approval of fees and expenses are GRANTED.
25 The following class is certified for settlement purposes:

26 All persons who worked for Defendant as non-exempt, hourly employees in
27 California at any time from January 27, 2017 through October 4, 2022.

28 No one otherwise included in this 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.

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

IT IS SO ORDERED.

Date: April 14, 2023



The Honorable Sunil R. Kulkarni
Judge of the Superior Court