

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

JAVIER DIAZ, et al.,

Plaintiffs,

vs.

BGIS GLOBAL INTEGRATED SOLUTIONS,
US, LLC, et al.,

Defendants.

Case No.: 21CV383425

**ORDER CONCERNING PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF
CLASS/PAGA SETTLEMENT AND
JUDGMENT**

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiffs allege that Defendant BGIS Global Integrated Solutions US, LLC failed to provide compliant meal and rest breaks, failed to pay employees for all hours worked due to rounding and on-call practices, failed to properly pay overtime under a valid Alternative Workweek Schedule ("AWS"), and committed other wage and hour violations.

The parties reached a settlement, which the Court preliminarily approved in an order filed on March 14, 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 Plaintiffs' motion for final approval of the settlement and for approval of their attorney fees, costs, and service award. The motion is unopposed. The Court issued a

1 tentative ruling on June 21, 2022, and no one contested it at the hearing on June 23. The Court
2 now issues its final order, which GRANTS final approval.

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

4 **A. Class Action**

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

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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.

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

3
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
10 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citation omitted.) The presumption does not permit
11 the Court to “give rubber-stamp approval” to a settlement; in all cases, it must “independently
12 and objectively analyze the evidence and circumstances before it in order to determine whether
13 the settlement is in the best interests of those whose claims will be extinguished,” based on a
14 sufficiently developed factual record. (*Kullar, supra*, 168 Cal.App.4th at p. 130.)

15 **B. PAGA**

16 Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall
17 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
18 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
19 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
20 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
21 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
22 (2014) 59 Cal.4th 348, 380.)

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

1 F. Supp. 3d 959, 971 [“when a PAGA claim is settled, the relief provided for under the PAGA
2 [should] be genuine and meaningful, consistent with the underlying purpose of the statute to
3 benefit the public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies,*
4 *Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

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

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

12 The non-reversionary gross settlement amount is \$1,275,000. Attorney fees of up to
13 \$425,000 (thirty-three percent of the gross settlement), litigation costs not to exceed \$20,000,
14 and administration costs of approximately \$6,000 will be paid from the gross settlement.
15 \$50,000 will be allocated to PAGA penalties, 75 percent of which will be paid to the LWDA.
16 The named plaintiffs will seek incentive award of \$10,000 each.

17 The net settlement will be allocated to settlement class members proportionally based on
18 their qualifying workweeks during the class period. A 2/3 weighted ratio factor will be applied
19 to the workweeks of “AWS Subclass” members due to the greater value of their claims. Class
20 members will not be required to submit a claim to receive their payments. For tax purposes,
21 settlement payments will be allocated 1/3 to wages, 1/3 to penalties, and 1/3 to interest. The
22 employer’s share of taxes will be paid separately from the gross settlement. Funds associated
23 with checks uncashed after 180 days will be transmitted to the State Controller’s Office
24 Unclaimed Property Fund, in the name of the class member for whom they are designated.

25 In exchange for the settlement, class members who do not opt out will release “any and
26 all claims alleged or which could have been in alleged based on facts pleaded in Named
27 Plaintiffs’ operative complaints in the State Action and Federal Action, during the Class Period,
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1 including but not limited to” specified relevant wage and hour claims. Consistent with the
2 statute, PAGA employees will not be able to opt out of that portion of the settlement.

3 The notice process has now been completed. There were no objections to the settlement
4 and only one request for exclusion from the class. Of the 108 notices mailed by the
5 administrator, 4 were re-mailed to updated addresses and 2 were ultimately undeliverable. The
6 administrator estimates that the average payment to class members will be \$7,179.92, with a high
7 payment of \$47,099.19 and a low payment of \$50.44.

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

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

14 Plaintiffs seek a fee award of \$425,000, or one-third of the gross settlement, which is not
15 an uncommon contingency fee allocation in a wage and hour class action. This award is facially
16 reasonable under the “common fund” doctrine, which allows a party recovering a fund for the
17 benefit of others to recover attorney fees from the fund itself. Plaintiffs also provide
18 a lodestar figure of \$203,402, based on 316.8 hours spent on the case by counsel billing at \$550–
19 825 per hour. Plaintiffs’ request results in a reasonable multiplier of 2.2. The lodestar cross-
20 check supports the percentage fee requested, particularly given the lack of objections to the
21 attorney fee request. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504
22 [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-
23 checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

24 Plaintiffs’ counsel also request \$11,068.40 in litigation costs, below the amount estimated
25 at preliminary approval. Plaintiffs’ costs appear reasonable based on the summary provided and
26 are approved. The \$6,000 in administrative costs are also approved.

27 Finally, the named plaintiffs seek incentive awards of \$10,000 each. To support their
28 requests, they submit declarations describing their efforts on the case. The Court finds that the

1 class representatives are entitled to enhancement awards and the amounts requested are
2 reasonable.

3 **IV. ORDER AND JUDGMENT**

4 In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND
5 DECREED THAT:

6 The motion for final approval is GRANTED. The following class is certified for
7 settlement purposes:

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9 All current and former non-exempt employees who are or were employed by
10 Defendant in California at any time from August 17, 2016, through November 12,
11 2021.

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13 The Court also certifies the “AWS Subclass” of class members who “worked a 4 days,
14 10-hours or a 3 days, 12-hours alternative workweek schedule, except for those non-exempt
15 employees who worked a 3 days, 12-hours alternative workweek schedule and who were paid
16 daily overtime for all hours over eight (8) in a day.”

17 Excluded from the class is the one individual who submitted a timely request for
18 exclusion.

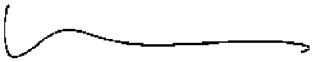
19 Judgment shall be entered through the filing of this order and judgment. (Code Civ.
20 Proc., § 668.5.) Plaintiffs and the members of the class shall take from their complaint only the
21 relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule
22 3.769(h) of the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

24 The Court sets a compliance hearing for **January 26, 2023 at 2:30 P.M.** in Department
25 1. At least ten court days before the hearing, class counsel and the settlement administrator shall
26 submit a summary accounting of the net settlement fund identifying distributions made as
27 ordered herein; the number and value of any uncashed checks; amounts remitted to the
28 Controller; the status of any unresolved issues; and any other matters appropriate to bring to the

1 Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil
2 Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

3 **IT IS SO ORDERED.**

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5 Date: June 27, 2022

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8 The Honorable Sunil R. Kulkarni
9 Judge of the Superior Court
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