

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

THOMAS HEFNER,

Plaintiff,

v.

SOLARAY, LLC, et al.,

Defendants.

Case No.: 21CV384796

**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 Solaray, LLC¹ assigned its route employees delivery schedules that were often not possible to complete in the expected time, failed to maintain procedures to ensure they took meal and rest periods or could report missed breaks, failed to pay wages for all hours worked and to pay overtime at the appropriate rate, and committed other wage and hour violations.

¹ Solaray Sunglass, LLC was also named as a defendant in the complaint, but was dismissed without prejudice after it provided a declaration showing that it did not employ anyone in California and is not related to Solaray, LLC's business here.

1 The parties reached a settlement, which the Court preliminarily approved in an order filed
2 on August 29, 2022. The factual and procedural background of the action and the Court's
3 analysis of the settlement and settlement class are set forth in that order.

4 Before the Court is Plaintiff's motion for final approval of the settlement and for approval
5 of his attorney fees, costs, and service award. Plaintiff's motion is unopposed. The Court issued
6 a tentative ruling on January 11, 2023, and no one contested it at the hearing on January 12. The
7 Court now issues its final order, which GRANTS final approval.

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

9 **A. Class Action**

10 Generally, "questions whether a [class action] settlement was fair and reasonable,
11 whether notice to the class was adequate, whether certification of the class was proper, and
12 whether the attorney fee award was proper are matters addressed to the trial court's broad
13 discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
14 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
15 260.)

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

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

24 In general, the most important factor is the strength of the plaintiffs' case on the merits,
25 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
26 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
27 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
28 Cal.App.4th at p. 245.) The trial court must examine the "proposed settlement agreement to the

1 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
2 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
3 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
4 marks omitted.) The trial court also must independently confirm that “the consideration being
5 received for the release of the class members’ claims is reasonable in light of the strengths and
6 weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168
7 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be
8 “provided with basic information about the nature and magnitude of the claims in question and
9 the basis for concluding that the consideration being paid for the release of those claims
10 represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

11 **B. PAGA**

12 Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall
13 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
14 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
15 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
16 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
17 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
18 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*
19 *Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940.)

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

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 \$750,000. Attorney fees of up to \$250,000 (one-third of the gross settlement), litigation costs not to exceed \$16,500, and administration costs of approximately \$5,995 will be paid from the gross settlement. \$75,000 will be allocated to PAGA penalties, 75 percent of which will be paid to the LWDA. The named plaintiff will seek an incentive award of \$7,500.

The net settlement will be allocated to settlement class members proportionally based on their weeks worked during the class period, with members of the waiting time subclass receiving credit for an additional six workweeks and PAGA employees receiving a pro rata share of the PAGA portion of the settlement in addition to the class portion. Class members will not be required to submit a claim to receive their payments. For tax purposes, settlement payments will be allocated 1/3 to wages and 2/3 to penalties and interest, while payments to PAGA employees and payments associated with the additional six workweeks allocated to waiting time subclass members will be deemed 100 percent penalties. The employer’s share of taxes will be paid separately from the gross settlement. Funds associated with checks uncashed after 180 days will be issued to the California State Controller in the name of the relevant employee.

At the Court’s direction, the parties agreed to amend the releases to conform with *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521. Per the addendum to the settlement filed on August 16, 2022, class members who do not opt out will release all claims, actions, etc. “reasonably related to or arising from the same set of facts asserted in the operative

complaint in the Action or the facts alleged in the related LWDA notice,” including the causes of action alleged in the complaint. PAGA employees will release all such PAGA claims.

Consistent with the statute, PAGA employees will not be able to opt out 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 67 notices mailed by the administrator, 2 were re-mailed to updated addresses and only one was ultimately undeliverable. The administrator estimates that the average payment to class members will be \$5,927.38, with a low payment of \$457.75 and a high payment of \$16,740.74 (not including PAGA payments).

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

III. ATTORNEY FEES, COSTS, AND INCENTIVE AWARD

Plaintiff seeks a fee award of \$250,000, one-third of the gross settlement, which is not an uncommon contingency fee allocation in a wage and hour class action. This award is facially reasonable under the “common fund” doctrine, which allows a party recovering a fund for the benefit of others to recover attorney fees from the fund itself. Plaintiff also provides a lodestar figure of \$251,581, based on 480.6 hours spent on the case by counsel billing at \$400–1,000 per hour and other professionals billing at \$185–270 per hour. Plaintiff’s request results in a negative multiplier. The lodestar cross-check supports the percentage fee requested, particularly given the lack of objections to the attorney fee request. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

Plaintiff’s counsel also request \$14,370.22 in litigation costs, below the amount estimated at preliminary approval. Plaintiff’s costs appear reasonable based on the summary provided and are approved. The \$5,995 in administrative costs are also approved.

1 Finally, the named plaintiff seeks an incentive award of \$7,500. To support his request,
2 he submitted a declaration describing his efforts on the case at preliminary approval. The Court
3 finds that the class representative is entitled to an enhancement award and the amount requested
4 is reasonable.

5 **IV. ORDER AND JUDGMENT**

6 In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND
7 DECREED THAT:

8 The motion for final approval is GRANTED. The following class is certified for
9 settlement purposes:

10 All non-exempt Route Sales Representatives, Route Service Representatives, and
11 Route Relief Representatives who are employed or have been employed by
12 Defendant and who worked in California at any time from July 27, 2017, through
13 and including August 8, 2022.

14 No one otherwise included in that definition is excluded from the class. The Court also
15 certifies a waiting time penalty subclass of “[a]ll former employees of Defendant who worked
16 for Defendant in the State of California in the position of Route Sales Representative, Route
17 Service Representative, and/or Route Relief Representative at any time from July 27, 2017,
18 through and including August 8, 2022.”

19 Judgment shall be entered through the filing of this order and judgment. (Code Civ.
20 Proc., § 668.5.) Plaintiff 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 **October 19, 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: January 13, 2023



6 The Honorable Sunil R. Kulkarni
7 Judge of the Superior Court
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