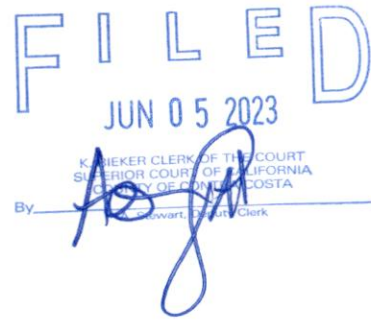


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8 Attorneys for Plaintiffs Liliam Urrutia and Vanessa Dorantez Galicia

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF CONTRA COSTA

11 LILIAM URRUTIA and VANESSA
12 DORANTEZ GALICIA, as aggrieved employees
pursuant to the Private Attorneys General Act
13 ("PAGA"), on behalf of the State of California
and other aggrieved employees,

14 Plaintiffs,

15 vs.

16 SHAHS OF SHIRAZ, INC., a California
corporation; BUNCH OF BULL, INC., a
17 California corporation; CENTRAL VALLEY
FAST FOODS, INC., a California corporation;
18 EUREKA FAST FOODS CORP., a California
corporation; EUREKA FORTUNE, INC., a
19 California corporation; QSR WEST, INC., a
California corporation; QSR WEST BUILDING,
20 INC., a California corporation; QSR WEST
BUILDING, LLC, a California limited liability
21 company; QSR WEST DEVELOPMENT ONE,
INC., a California corporation; QSR WEST
22 DEVELOPMENT, LLC, a California limited
liability company; and DOES 1 through 10,
23 inclusive,

24 Defendants.

Case No. MSC21-01804

Assigned to the Hon. Charles S. Treat

**ORDER GRANTING MOTION FOR COURT
APPROVAL OF PAGA SETTLEMENT**

Date: May 25, 2023

Time: 9:00 a.m.

Place: Department 12

Complaint Filed: August 30, 2021

1 Plaintiffs Liliam Urrutia, Vanessa Dorantez Galicia, and Amalia Reyes (collectively,
2 "Plaintiffs") move for approval of the settlement of their PAGA suits against Defendants Shahs of
3 Shiraz, et al. (collectively, "Defendants"). Defendants are a collection of related corporate entities
4 operating Burger King restaurants throughout the state. Plaintiffs were employed by some of the
5 Defendants during the relevant time period.

6 This order incorporates the Court's tentative ruling on the motion, attached as Exhibit A.

7 **A. Background of the Case and Terms of Settlement**

8 This a PAGA case (not a class action), alleging a variety of violations of the Labor Code
9 concerning failure to provide rest and meal breaks, failure to pay minimum wages and overtime, and
10 cascading derivative violations. In particular, Plaintiffs assert alleged violations for off-the-clock work,
11 meal and rest breaks, reporting time violations, and related penalty theories.

12 This case was first filed on August 30, 2021 by Plaintiffs Urrutia and Dorantez Galicia. Plaintiff
13 Reyes filed an overlapping action in Alameda County, where it is still pending. This settlement is
14 intended to cover all three Plaintiffs' individual and representative claims; upon approval here, Reyes
15 will file appropriate paperwork to seek dismissal of her separate Alameda case.

16 The total settlement payment is \$439,460, which will be broken into several quarterly payments.
17 Out of this is to come attorney's fees of \$146,533.33 (one-third of the recovery); \$14,641.57 in litigation
18 costs, and up to \$8,000 in costs to the Settlement Administrator. The Plaintiffs will be paid service
19 payments of \$10,000 each for their efforts in this litigation.

20 The remaining amount, \$240,285.10, is allocated as PAGA penalties. Those penalties are
21 apportioned 75% to the LWDA and 25% to the aggrieved employees.

22 Counsel's motion indicates that there are an estimated 1,600 covered employees. The payments
23 from the employee share of the penalty (\$60,071.27) will be distributed among the employees based on
24 the number of pay periods each individual worked during the released period. The average employee
25 share will be about \$37.50, though this will vary from employee to employee based on the pay-period
26 allocation formula.

27 Plaintiffs' counsel attests that informal discovery was undertaken, and the settlement was
28 reached after a session with an experienced mediator.

1 Plaintiffs provided required notices to the LWDA of the initial claims and of the proposed
2 settlement.

3 The settlement provides a process for mailing the notices to the aggrieved employees, who will
4 not have to submit a claim, along with a process for following up on returned mail. Information for
5 mailing will be provided within 21 days after Final Approval. The settlement amount will be paid to the
6 administrator in four quarterly payments, starting 30 days after the effective date. Promptly thereafter, the
7 administrator will seek to obtain current mailing addresses, and will remit all settlement funds to the
8 appropriate recipients, including the LWDA and the aggrieved employees.

9 The settlement provides that the value of checks uncashed after 180 days shall be remitted to the
10 State Controller's Office, Unpaid Property Division.

11 Specified PAGA claims, and any claims which could have been pleaded under the PAGA based
12 on the factual allegations in PAGA Complaint and the LWDA Letter, would be released. It also provides
13 that the parties intend to fully resolve all PAGA claims for the full "PAGA Period" going back to June
14 25, 2020.

15 **B. Standards for Review of a PAGA Settlement**

16 Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th
17 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate"
18 standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the
19 trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected
20 aggrieved employees". (*Id.*, at 64-65.)

21 California law provides some general guidance concerning judicial approval of any settlement.
22 First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3
23 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy.
24 (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th
25 1121, 1127.) Moreover, "The court cannot surrender its duty to see that the judgment to be entered is a
26 just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins.*
27 *Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that
28 *Neary* does not always apply, because "Where the rights of the public are implicated, the additional

1 safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory
2 purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th
3 46, 63.)

4 C. Application to This Settlement

5 Plaintiffs indicate that the settlement is fair, and was evaluated by counsel based on adequate
6 information and arms-length negotiation. In response to Plaintiffs’ allegations, Defendants asserted they
7 paid employees for all recorded time; that off-the-clock time was undocumented and unknown to
8 Defendants; and that employees were paid meal time premiums or signed waivers. In response to the
9 Court’s inquiry in its previous tentative ruling, Plaintiffs’ counsel has provided a detailed declaration
10 analyzing the potential strengths and weaknesses of Plaintiffs’ claims and Defendants’ potential
11 defenses. The Court is satisfied with the analysis.

12 Of course, some reduction must be made for the strength of the case, and the time and expense
13 of obtaining recovery. Even assuming success on the merits of each claim, PAGA gives the court
14 discretion to reduce penalties for a variety of reasons, including where “based on the facts and
15 circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and
16 oppressive, or confiscatory.” (Labor Code § 2699(e)(2).) Moreover, recent decisions may make it
17 difficult for PAGA plaintiffs to recover statutory penalties, as opposed to actual missed wages. (See, c.g.,
18 *Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 937; but see *Gola v. University of*
19 *San Francisco* (2023) 90 Cal.App.5th 548, 566-67.) These factors make the result hard to predict.

20 Labor Code § 2699(g)(1) provides that a prevailing employee in a PAGA action may recover
21 attorney’s fees. Plaintiffs’ Counsel seeks one-third of the total settlement amount as fees, relying on the
22 “common fund” theory. Even a proper common fund-based fee award, however, should be reviewed
23 through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the
24 Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage
25 allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is
26 extraordinarily high or low, the trial court should consider whether the percentage used should be
27 adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily
28 required to make such an adjustment.” (*Id.*, at 505.) Although *Lafitte* concerns a class action, not a

1 PAGA-only case, this Court views the use of a lodestar cross-check as appropriate here. Plaintiffs'
2 Counsel do not provide a precise lodestar figure, and their declarations are incomplete in that one of the
3 two firms involved presents only its total hours, not its total hourly rates. However, the declaration of the
4 other firm establishes that the lodestar figure even for that firm is slightly in excess of the fee requested,
5 so that the lodestar multiplier is "negative" (actually "below 1"). This appears appropriate in light of the
6 risks of the case and the results achieved.

7 The statute does not expressly address how the 25% plaintiff's share of the penalties is to be
8 allocated among all of the aggrieved employees. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59
9 Cal.4th 348, 382.) One court has held, however, that the entire 25% share of penalties could not be
10 awarded to the named plaintiff. (*Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742-43.)
11 In *Moorer*, the plaintiff had claim worth about \$9,500, yet was collecting penalties of \$148,000, and
12 keeping the entire employee share, causing the court to be concerned that the plaintiff had lost sight of
13 the fact that the purpose of the action is to benefit the public, not private parties. Allocation based on pay
14 periods is reasonable here.

15 **D. Conclusion**

16 Plaintiffs shall file and serve a report/declaration summarizing all distributions made pursuant to
17 the approved PAGA Settlement Agreement on or before December 12, 2024. The Court sets a
18 Compliance Hearing for December 19, 2024 at 9:00 a.m. Ten percent of the attorney's fees shall be
19 withheld by the Administrator pending the compliance hearing. Counsel will also be expected to update
20 and document the actual litigation costs to be reimbursed.

21
22 **IT IS SO ORDERED.**

23 Dated: June 2, 2023

24 
25 Hon. Charles S. Treat
26 Contra Costa County Superior Court Judge
27
28

Exhibit A

11. 9:00 AM CASE NUMBER: MSC21-01804

CASE NAME: LILIAM URRUTIA VS. QSR WEST DEVELOPMENT ONE, INC. A CALIFORNIA CORPORATION *HEARING ON MOTION IN RE: COURT APPROVAL OF PARTIES' PAGA SETTLEMENT FILED BY:

TENTATIVE RULING:

Plaintiffs Liliam Urrutia, Vanessa Dorantez Galicia, and Amalia Reyes move for approval of the settlement of their PAGA suits against defendants Shahs of Shiraz et al. Defendants are a collection of related corporate entities operating Burger King restaurants throughout the state. Plaintiffs were employed by some of the defendants during the relevant time period.

A. Background of the Case and Terms of Settlement

This a PAGA case (not a class action), alleging a variety of violations of the Labor Code concerning failure to provide rest and meal breaks, failure to pay minimum wages and overtime, and cascading derivative violations. In particular, plaintiffs assert alleged violations for off-the-clock work, meal and rest breaks, reporting time violations, and related penalty theories.

This case was first filed on August 30, 2021 by plaintiffs Urrutia and Dorantez Galicia. Plaintiff Reyes filed an overlapping action in Alameda County, where it is still pending. This settlement is intended to cover all three plaintiffs' individual and representative claims; upon approval here, Reyes will file appropriate paperwork to seek dismissal of her separate Alameda case.

The total settlement payment is \$439,460, which will be broken into several quarterly payments. Out of this is to come attorney's fees of \$146,533.33 (one-third of the recovery); \$14,641.57 in litigation costs, and up to \$8,000 in costs to the settlement Administrator. The plaintiffs will be paid service payments of \$10,000 each for their efforts in this litigation.

The remaining amount, \$240,285.10, is allocated as PAGA penalties. Those penalties are apportioned 75% to the LWDA and 25% to the aggrieved employees.

Counsel's motion indicates that there are an estimated 1,600 covered employees. The payments from the employee share of the penalty (\$60,071.27) will be distributed among the employees based on the number of pay periods each individual worked during the released period. The average employee share will be about \$37.50, though this will vary from employee to employee based on the pay-period allocation formula.

Plaintiff's counsel attests that informal discovery was undertaken, and the settlement was reached after a session with an experienced mediator.

Plaintiff provided required notices to the LWDA of the initial claims and of the proposed settlement.

The settlement provides a process for mailing the notices to the aggrieved employees, who will

not have to submit a claim, along with a process for following up on returned mail. Information for mailing will be provided within 21 days after Final Approval. The settlement amount will be paid to the administrator in four quarterly payments, starting 30 days after the effective date. Promptly thereafter, the administrator will seek to obtain current mailing addresses, and will remit all settlement funds to the appropriate recipients, including the LWDA and the aggrieved employees.

The settlement provides that the value of checks uncashed after 180 days shall be remitted to the State Controller's Office, Unpaid Property Division.

Specified PAGA claims, and any claims which could have been pleaded under the PAGA based on the factual allegations in PAGA Complaint and the LWDA Letter, would be released. It also provides that the parties intend to fully resolve all PAGA claims for the full "PAGA Period" going back to June 25, 2020.

B. Standards for Review of a PAGA Settlement

Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees". (*Id.*, at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "The court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "Where the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutary purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63.)

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Plaintiff indicates that the settlement is fair, and was evaluated by counsel based on adequate information and arms-length negotiation. In response to plaintiff's allegations, defendant asserted that it paid employees for all recorded time; that off-the-clock time was undocumented and unknown to defendant; and that employees were paid meal time premiums or signed waivers. In response to the Court's inquiry in its previous tentative ruling, plaintiffs' counsel has provided a detailed declaration analyzing the potential strengths and weaknesses of plaintiffs' claims and defendants' potential defenses. The Court is satisfied with the analysis.

Of course, some reduction must be made for the strength of the case, and the time and expense of obtaining recovery. Even assuming success on the merits of each claim, PAGA gives the court discretion

to reduce penalties for a variety of reasons, including where “based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory.” (Labor Code § 2699(e)(2).) Moreover, recent decisions may make it difficult for PAGA plaintiffs to recover statutory penalties, as opposed to actual missed wages. (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 937; but see *Gola v. University of San Francisco* (2023) 90 Cal.App.5th 548, 566-67.) These factors make the result hard to predict.

Labor Code § 2699(g)(1) provides that a prevailing employee in a PAGA action may recover attorney’s fees. Plaintiff seeks one-third of the total settlement amount as fees, relying on the “common fund” theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.) Although *Lafitte* concerns a class action, not a PAGA-only case, this Court views the use of a lodestar cross-check as appropriate here. Plaintiffs’ counsel do not provide a precise lodestar figure, and their declarations are incomplete in that one of the two firms involved presents only its total hours, not its total hourly rates. However, the declaration of the other firm establishes that the lodestar figure even for that firm is slightly in excess of the fee requested, so that the lodestar multiplier is “negative” (actually “below 1”). This appears appropriate in light of the risks of the case and the results achieved.

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D. Conclusion

The proposed settlement is approved. Counsel are directed to prepare an order including the entire Court’s ultimate order, the other provisions submitted in the proposed order, and a separate corresponding judgment. The order would include a compliance hearing for a suitable date chosen in consultation with the Department’s clerk by phone. One week before the compliance hearing, counsel shall file a compliance statement. Ten percent of the attorney’s fees shall be withheld by the Administrator pending the compliance hearing. Counsel will also be expected to update and document the actual litigation costs to be reimbursed.