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8 Attorneys for Plaintiff Vanessa Dorantez Galicia

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF CONTRA COSTA

11 VANESSA DORANTEZ GALICIA,
12 individually, and on behalf of other members of
the general public similarly situated,

13 Plaintiff,

14 vs.

15 M. SAN RAMON, INC., a California
corporation; BAY AREA RESTAURANT
16 MANAGEMENT CORP., a California
corporation; M PLEASANT HILL II, INC., a
17 California corporation; M. ALCOSTA, INC., a
California corporation; M. ASHLAND, INC., a
18 California corporation; M. BERNAL, INC., a
California corporation; M. CENTRAL INC., a
19 California corporation; M. CONTRA COSTA,
INC., a California corporation; M. DANVILLE,
20 INC., a California corporation; M.
DISCOVERY BAY, INC., a California
21 corporation; M. GREENHOUSE, INC., a
California corporation; M. HESPERIAN, INC.,
22 a California corporation; M. LONETREE, INC.,
a California corporation; M. MARTINEZ, INC.,
23 a California corporation; M. MISSION, INC., a
California corporation; M. MONUMENT, INC.,
24 a California corporation; M. OAKLEY, INC., a
California corporation; M. PLEASANTON,
25 INC., a California corporation; M. SAN
LEANDRO, INC., a California Corporation; M.
26 SHORELINE INC., a California corporation; M.
STONERIDGE MALL, INC., a California
27 corporation; M. TENNYSON, INC., a
California corporation; M. WATKINS INC., a
28 California corporation; M. DEER VALLEY,

Case No. MSC21-01638

Assigned to the Hon. Charles S. Treat

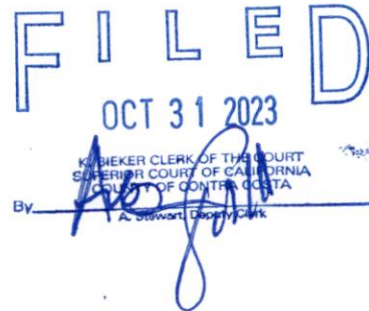
**ORDER GRANTING MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT AND MOTION FOR
ATTORNEYS' FEES, COSTS AND
EXPENSES, AND A CLASS
REPRESENTATIVE ENHANCEMENT
PAYMENT**

Date: October 19, 2023

Time: 9:00 a.m.

Place: Department 12

Complaint Filed: July 30, 2021



1 INC., a California corporation; M.SUN
2 VALLEY, INC., a California corporation;
3 MAC-D DUBLIN, a California corporation;
4 MACD-ANTIOCH, INC., a California
5 corporation; MACDCONCORD, a California
6 corporation; MACD-CORDELLIA JCT., INC.,
7 a California corporation; MACDPITTSBURG,
8 a California corporation; and DOES 1 through
9 10, inclusive,
10 Defendants.

1 Plaintiff Vanessa Galicia moves for final approval of her class action and PAGA settlement with
2 defendant Bay Area Restaurant Management Corp. and related defendants. She also moves for approval
3 of her attorney's fees, litigation costs, administration costs, and representative payment. The motions are
4 **granted**. The tentative ruling is attached as Exhibit A.

5 Since preliminary approval was granted, the administrator has mailed notices to 7,126 class
6 members. 625 packets were returned by the post office. Follow up resulted in 367 new addresses, leaving
7 270 non-deliverable. No objections have been received, and only one class member requested exclusion.

8 **A. Background and Settlement Terms**

9 Defendant and its affiliates, also sued as defendants here, are in the business of operating
10 McDonalds restaurants throughout the area. Plaintiff worked in one such restaurant as a crew member in
11 2020.

12 The original complaint was filed on July 30, 2021. PAGA claims were added by amendment in
13 February 2022.

14 The settlement will create a gross settlement fund of \$3.5 million. The class representative
15 payment to the plaintiff, and a payment for a broader release, will total \$10,000. Attorney's fees will be
16 \$1,166,667 (one-third of the settlement). Litigation costs will not exceed \$15,000. The settlement
17 administrator's costs are \$37,500, a little below the preliminary-approval cap. PAGA penalties will be
18 \$50,000, resulting in a payment of \$37,500 to the LWDA. The net amount paid directly to the class
19 members will be about \$2,218,333. The fund is non-reversionary. There are 7,126 class members,
20 significantly fewer than assumed at preliminary approval. Based on the class size, the average net
21 payment for each class member is approximately \$311. The individual payments will vary considerably,
22 however, because of the allocation formula prorating payments according to the number of weeks
23 worked during the relevant time. The number of aggrieved employees for PAGA purposes is smaller,
24 because the starting date of the relevant period is later.

25 The entire settlement amount will be deposited with the settlement administrator within 30 days
26 after the effective date of the settlement.

27 The proposed settlement will certify a class of all current and former non-exempt employed at
28 Defendants' California facilities between July 30, 2017 and December 26, 2022. For PAGA purposes,

1 the period covered by the settlement is August 6, 2020 through December 26, 2022.

2 The class members will not be required to file a claim. Funds will be apportioned to class
3 members based on the number of workweeks worked during the class period.

4 Settlement checks not cashed within 180 days will be cancelled, and the funds will be directed to
5 California Rural Legal Assistance as a cy pres beneficiary.

6 The settlement contains release language covering all claims and causes of action, alleged or
7 which could have reasonably been alleged based on the allegations in the operative pleading, including a
8 number of specified claims. Under recent appellate authority, the limitation to those claims with the
9 “same factual predicate” as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt.,*
10 *LLC* (2021) 69 Cal.App.5th 521, 537 (“A court cannot release claims that are outside the scope of the
11 allegations of the complaint.”) “Put another way, a release of claims that goes beyond the scope of the
12 allegations in the operative complaint’ is impermissible.” (*Id.*, quoting *Marshall v. Northrop Grumman*
13 *Corp.* (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

14 Formal discovery was undertaken, resulting in the production of substantial documents. The
15 matter settled after arms-length negotiations, which included a session with an experienced mediator.

16 Counsel also has provided an analysis of the case, and how the settlement compares to the
17 potential value of the case, after allowing for various risks and contingencies. Plaintiff’s substantive
18 claims center largely on allegations of required off-the-clock work, and violations concerning meal and
19 rest breaks. Defendant, however, has asserted that it has valid standard policies addressing these points.
20 That could present serious problems of proof, requiring individualized hearings, and calls into serious
21 question whether these claims are suitable for class certification and determination. It also presents issues
22 as to whether the employer was aware of any violations that occurred. Possibly less problems of proof
23 might arise from plaintiff’s allegations of violations concerning reporting-time violations; but defendants
24 assert that any such violations are anomalous. Plaintiff also asserts allegations as to uncompensated
25 uniform cleaning, but the record presents little reason to suspect that issues of compensable cleaning
26 expense arose often.

27 The potential liability needs to be adjusted for various evidence and risk-based contingencies,
28 including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they

1 derive from other violations, they include “stacking” of violations, the law may only allow application of
2 the “initial violation” penalty amount, and the total amount may be reduced in the discretion of the court.
3 (See Labor Code § 2699(e)(2) (PAGA penalties may be reduced where “based on the facts and
4 circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and
5 oppressive, or confiscatory.”)) Moreover, recent decisions may make it difficult for PAGA plaintiffs to
6 recover statutory penalties, as opposed to actual missed wages. (See, e.g., *Naranjo v. Spectrum Security*
7 *Services, Inc.* (2023) 88 Cal.App.5th 937.)

8 Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently
9 with the filing of the motion.

10 **B. Legal Standards**

11 The primary determination to be made is whether the proposed settlement is “fair, reasonable,
12 and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including “the
13 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk
14 of maintaining class action status through trial, the amount offered in settlement, the extent of discovery
15 completed and the state of the proceedings, the experience and views of counsel, the presence of a
16 governmental participant, and the reaction ... to the proposed settlement.” (See also *Amaro v. Anaheim*
17 *Arena Mgmt., LLC*, 69 Cal.App.5th 521.)

18 Because this matter also proposes to settle PAGA claims, the Court also must consider the
19 criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v. Adecco USA,*
20 *Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the “fair,
21 reasonable, and adequate” standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.)
22 The Court also held that the trial court must assess “the fairness of the settlement’s allocation of civil
23 penalties between the affected aggrieved employees.” (*Id.*, at 64-65.)

24 California law provides some general guidance concerning judicial approval of any settlement.
25 First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3
26 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy.
27 (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th
28 1121, 1127.) Moreover, “the court cannot surrender its duty to see that the judgment to be entered is a

1 just one, nor is the court to act as a mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins.*
2 *Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that
3 Neary does not always apply, because “where the rights of the public are implicated, the additional
4 safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory
5 purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th
6 48, 63.)

7 C. Attorney Fees and Other Costs

8 Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common fund”
9 theory, or \$1,166,667. Even a proper common fund-based fee award, however, should be reviewed
10 through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the
11 Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage
12 allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is
13 extraordinarily high or low, the trial court should consider whether the percentage used should be
14 adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily
15 required to make such an adjustment.” (*Id.*, at 505.)

16 Accordingly, plaintiffs have provided information concerning the lodestar fee amount. They
17 estimate the lodestar at \$397,168, representing an implied multiplier of just under 3. They based this
18 amount on a total of 539 hours, at hourly rates ranging from \$425 to \$950. No adjustment from the one-
19 third fee is necessary. The attorney’s fees are reasonable and are approved.

20 The requested representative payment of \$10,000 for the named plaintiff was deferred until this
21 final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American*
22 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff has provided a declaration in
23 support of her request. She points out that she executed a broader release than the class as a whole, but
24 does not identify any particular claims of value that she may have. She also risks damage to her
25 reputation and more difficulty in obtaining employment. The representative payment is approved.

26 Plaintiff reports incurring litigation costs in excess of \$27,000, the largest items of which are
27 consulting costs and mediation fees. Consistent with the settlement and preliminary approval, however,
28 plaintiff seeks to recover only \$15,000. This figure is reasonable and is approved.

1 The settlement administrator's costs of \$37,500 are reasonable and are approved.

2 **D. Discussion and Conclusion**

3 The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and
4 adequate to justify final approval. The allocation of PAGA penalties among the aggrieved employees
5 (based on pay periods) is reasonable.

6 The motions are granted.

7 The ultimate judgment must provide for a compliance hearing after the settlement has been
8 completely implemented, to be determined in consultation with the Department's clerk by phone.
9 Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date.
10 Five percent of the attorney's fees are to be withheld by the claims administrator pending satisfactory
11 compliance as found by the Court. Pursuant to Code of Civil Procedure § 384(b), after the settlement is
12 completely implemented, the judgment must be amended to reflect the amount paid to the cy pres
13 recipient.

14
15 **IT IS SO ORDERED.**

16
17 Dated: OCT 30 2023

18 
19 _____
20 Hon. Charles S. Treat
21 Contra Costa County Superior Court Judge
22
23
24
25
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27
28

EXHIBIT A

CASE NUMBER: MSC21-01638
CASE NAME: GALICIA VS SAN RAMON, INC.
*HEARING ON MOTION IN RE: FINAL APPROVAL OF CLASS ACTION
SETTLEMENT, ATTORNEY FEES, COSTS AND CLASS REP. ENHANCEMENT PAYMENT
FILED BY:
TENTATIVE RULING:

Plaintiff Vanessa Galicia moves for final approval of her class action and PAGA settlement with defendant Bay Area Restaurant Management Corp. and related defendants. She also moves for approval of her attorney's fees, litigation costs, administration costs, and representative payment. The motions are **granted**.

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Plaintiff reports incurring litigation costs in excess of \$27,000, the largest items of which are consulting costs and mediation fees. Consistent with the settlement and preliminary approval, however, plaintiff seeks to recover only \$15,000. This figure is reasonable and is approved.

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D. Discussion and Conclusion

The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and adequate to justify final approval. The allocation of PAGA penalties among the aggrieved employees (based on pay periods) is reasonable.

The motions are granted.

Counsel are directed to prepare an order reflecting this entire tentative ruling and the other findings in the previously submitted proposed order and a separate judgment.

The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented, to be determined in consultation with the Department's clerk by phone. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. Five percent of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court. Pursuant to Code of Civil Procedure § 384(b), after the settlement is completely implemented, the judgment must be amended to reflect the amount paid to the cy pres recipient.