

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

MIRIAM MARROQUIN, et al.,

Plaintiffs,

v.

TELEFERIC BARCELONA PA, LLC, et al.,

Defendants.

Case No.: 21CV388821

**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 Teleferic Barcelona PA, LLC (“Teleféric”) failed to provide compliant meal and rest breaks, failed to pay employees for off-the-clock work, and failed to maintain compliant tip pooling policies and practices.

The parties reached a settlement, which the Court preliminarily approved in an order filed on October 13, 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 awards. Plaintiffs’ motion is unopposed. On April 3, 2023, the Court issued a tentative ruling indicating it was inclined to grant final approval subject

1 to its review of some additional information. Plaintiffs’ counsel filed a supplemental declaration
2 providing that information on April 10, and the Court has reviewed it.

3 The Court issued a second tentative ruling on April 12, 2023, and no one challenged it at
4 the hearing on April 13. The Court now issues its final order, which GRANTS final approval,
5 but with a reduced fee award of \$50,000.

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

7 **A. Class Action**

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

14 In determining whether a class settlement is fair, adequate and reasonable, the
15 trial court should consider relevant factors, such as the strength of plaintiffs’ case,
16 the risk, expense, complexity and likely duration of further litigation, the risk of
17 maintaining class action status through trial, the amount offered in settlement, the
18 extent of discovery completed and the stage of the proceedings, the experience
19 and views of counsel, the presence of a governmental participant, and the reaction
20 of the class members to the proposed settlement.
21 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

22 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
23 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
24 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
25 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
26 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
27 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
28 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a

1 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
2 marks omitted.) The trial court also must independently confirm that “the consideration being
3 received for the release of the class members’ claims is reasonable in light of the strengths and
4 weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168
5 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be
6 “provided with basic information about the nature and magnitude of the claims in question and
7 the basis for concluding that the consideration being paid for the release of those claims
8 represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

9 **B. PAGA**

10 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall
11 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
12 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
13 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
14 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
15 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
16 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*
17 *Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940.)

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

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

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

8 The non-reversionary gross settlement amount is \$150,000. Attorney fees of up to
9 \$52,500 (thirty-five percent of the gross settlement), litigation costs of up to \$5,000, and \$9,250
10 in administration costs will be paid from the gross settlement. \$15,000 will be allocated to
11 PAGA penalties, 75 percent of which (\$11,250) will be paid to the LWDA. The named plaintiffs
12 will seek incentive awards of \$5,000 each, for a total of \$10,000.

13 The net settlement will be allocated to settlement class members proportionally based on
14 their workweeks during the class period. Class members will not be required to submit a claim
15 to receive their payments. For tax purposes, settlement payments will be allocated 15 percent to
16 wages and 85 percent to penalties and interest, with PAGA payments allocated 100 percent to
17 penalties. The employer's share of taxes will be paid separately from the gross settlement.
18 Funds associated with checks uncashed after 180 days will be transmitted to Legal Aid at Work.

19 In exchange for the settlement, class members who do not opt out will release all claims,
20 demands, etc. "that have been, or could have been, asserted against the Released Party based on
21 the facts alleged at any point in time in this Action during the Class Period." The release
22 includes "all claims for violations of the California Labor Code related to unpaid wages,
23 including overtime wages, off-the-clock claims, minimum wage claims; claims for failure to
24 provide meal periods; claims for failure to provide rest breaks; claims for failure to provide
25 accurate and complete wage statements; claims for failure to timely pay wages, whether during
26 or following employment; and alleged violations of the UCL or any other law related to
27 Defendant's policies and practices of collecting and distributing tips and/or gratuities to Class
28 Members." Aggrieved employees will release "any and all PAGA claims that were, or could

1 have been, asserted against the Released Party based on the facts alleged at any point in time in
2 this Action during the PAGA Period,” including “all claims for penalties recoverable pursuant to
3 PAGA that relate to or arise out of the Released Class Claims.” Consistent with the statute,
4 aggrieved employees will not be able to opt out of the PAGA portion of the settlement.

5 The notice process has now been completed. There were no objections to the settlement
6 and only one request for exclusion from the class. Of the 430 total notices mailed by the
7 administrator, 48 were re-mailed to updated addresses and 61 were ultimately undeliverable.
8 The administrator estimates that the average payment to class members will be \$136.71, with a
9 high payment of \$607.63.

10 At preliminary approval, the Court found that the settlement is a fair and reasonable
11 compromise of the class claims, pending its review of the estimated maximum PAGA penalties.
12 Based on the estimate provided in counsel’s supplemental declaration and its prior analysis, the
13 Court now finds that the PAGA allocation is genuine, meaningful, and reasonable in light of the
14 statute’s purposes. The Court thus finds that the entire settlement is fair and reasonable for
15 purposes of final approval.

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

17 Plaintiffs seek a fee award of \$52,500, slightly over one-third of the gross settlement,
18 which is not an uncommon contingency fee allocation in a wage and hour class action. Such an
19 award is justified under the “common fund” doctrine, which allows a party recovering a fund for
20 the benefit of others to recover attorney fees from the fund itself. However, the Court does not
21 believe an award of more than the usual one-third of the common fund is appropriate here. It
22 will accordingly reduce the award to **\$50,000**. As provided by section III(M)(3) of the
23 Stipulation of Settlement, the unapproved portion of the attorney fee award will be distributed to
24 the class.

25 In his supplemental declaration, Plaintiffs’ counsel provides a lodestar figure of
26 \$108,667.50, based on 142.8 hours spent on the case by counsel billing at hourly rates of \$550–
27 850 per hour and administrators billing at \$100–225 per hour. Plaintiffs’ request results in a
28 negative multiplier, with or without the reduction imposed by the Court (which Plaintiffs’

counsel does not oppose in his supplemental declaration). The lodestar cross-check supports the percentage award, 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].)

Plaintiffs’ counsel also requests \$8,350 in litigation costs, which is more than estimated at preliminary approval but is supported by counsel’s supplemental declaration. The \$9,250 in administrative costs is also approved.

Finally, the named plaintiffs each seek an incentive award of \$5,000, for a total of \$10,000. At preliminary approval, they submitted declarations describing their efforts on the case. The Court finds that the class representatives are entitled to enhancement awards and the amount requested is reasonable.

IV. ORDER AND JUDGMENT

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

The motion for final approval is GRANTED, but with a reduced fee award of **\$50,000**. The following class is certified for settlement purposes:

all of Defendant’s current and former non-exempt employees employed in California during the Class Period [(October 21, 2017 through the date of preliminary approval)].

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

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiffs 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.

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

9 **IT IS SO ORDERED.**

10
11 Date: April 14, 2023



The Honorable Sunil R. Kulkarni
Judge of the Superior Court