

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

ALEXIS LAKEY,

Plaintiff,

v.

POSHMARK, INC., et al.,

Defendants.

Case No.: 22CV395084

**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 Alexis Lakey alleges that Defendant Poshmark, Inc. failed to pay overtime wages due to its rounding policy, failed to provide compliant meal periods or pay associated premiums, and improperly listed a biweekly pay rate on wage statements.

The parties reached a settlement, which the Court preliminarily approved in an order filed on March 24, 2023. 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 Plaintiff's motion for final approval of the settlement and for approval of their attorney fees, costs, and incentive award for the named plaintiff. Plaintiff's motion is unopposed. The Court issued a tentative ruling on August 2, 2023, which no one contested at the

1 hearing on August 3, 2023. The Court now issues its final order, which GRANTS final approval  
2 but reduces the requested enhancement award to \$5,000.

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. [Citation.]” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235  
9 (*Wershba*), disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4  
10 Cal.5th 260.)

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

20 (*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, internal citations and quotation marks omitted.)

21 In general, the most important factor is the strength of the plaintiff’s 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 relevant 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  
28 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation

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

## **B. PAGA**

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

Similar to its review of class action settlements, the Court must “determine independently whether a PAGA settlement is fair and reasonable” to protect “the interests of the public and the LWDA in the enforcement of state labor laws[.]” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76-77.) It must make this assessment “in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws. [Citations.]” (*Id.* at p. 77; see also *Haralson, supra*, 383 F.Supp.3d at p. 971 [“[W]hen a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public[.]”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133 (*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 \$450,000. Attorney fees of \$150,000 (one-third of the gross settlement), litigation costs of \$10,631.42,<sup>1</sup> and \$9,500 in administration costs will be paid from the gross settlement. \$25,000 will be allocated to PAGA penalties, 75 percent of which (\$18,750) will be paid to the LWDA. The named plaintiff seeks an incentive award of \$10,000.

The net settlement of \$249,868.58<sup>2</sup> will be allocated to class members proportionally based on their pay periods during the class and PAGA periods. Class members will not be required to submit a claim to receive their payments. For tax purposes, settlement payments will be allocated 10 percent to wages and 90 percent to penalties and interest. The employer's share of payroll taxes and other required withholdings will be paid separately from and in addition to the gross settlement. Funds associated with checks uncashed after 180 days will be paid to Legal Aid at Work.

Under the amended settlement agreement, class members who do not opt out will release all claims "based on facts alleged in the Action, or reasonably could have been alleged based on the facts alleged in the Action based on the allegations of the original and amended Complaints and the PAGA Notice Letters," including specified wage and hour claims. The PAGA release is

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<sup>1</sup> This is based on \$10,017.79 in costs spent by the Law Offices of Choi & Associates, APLC and \$613.63 in costs spent by Diversity Law Group, APC.

<sup>2</sup> The \$244,868.58 reflected in paragraph 13 of the settlement administrator's declaration (Declaration of Taylor Mitzner []) includes the proposed \$10,000 enhancement award to the named plaintiff. Since the Court awards a \$5,000 enhancement award instead, the net settlement amount increases to \$249,868.58, as required under section III.11 of the amended settlement agreement. (Supplemental Declaration of Edward W. Choi in Support of Motion for Preliminary Approval of Class Action Settlement, Ex. 1 at p. 15.)

1 limited to all claims for PAGA penalties “that were alleged or that could have been alleged based  
2 on the facts asserted in the Action as well as in the PAGA Notice Letters[.]” Consistent with the  
3 statute, aggrieved employees will not be able to opt out of the PAGA portion of the settlement.

4 The notice process has now been completed. There were no objections to the settlement  
5 and no requests for exclusion from the class. Of the 429 total notices mailed by the  
6 administrator, 9 notices were returned, 9 notices were re-mailed to updated addresses, and no  
7 notices were ultimately undeliverable. The administrator estimates that the average payment to  
8 Participating Class Members will be \$570.79, with a high payment of \$1,595.66 and a low  
9 payment of \$0.86. For the 310 PAGA class members, the highest individual PAGA payment  
10 was approximately \$32.36 and the average payment was \$20.16.

11 Pursuant to the order granting preliminary approval, Plaintiff lodged her confidential  
12 individual settlement agreement with Defendant settling her claims in case number  
13 22CV397843, which the Court has reviewed. Plaintiff’s individual claims are distinct from the  
14 class claims and the individual settlement agreement appears to cover alleged conduct by  
15 Defendant that is specific to Plaintiff. There are no indications of collusion or threats of conflict  
16 since the individual settlement agreement does not predicate the release of the individual claims  
17 on approval of the class settlement. At preliminary approval, the Court found that the settlement  
18 is a fair and reasonable compromise of the class claims. It finds no reason to deviate from this  
19 finding now, especially considering that there are no objections. The Court thus finds that the  
20 settlement is fair and reasonable for purposes of final approval.

### 21 **III. ATTORNEY FEES, COSTS, AND ENHANCEMENT AWARD**

22 Plaintiff’s counsel seeks a fee award of \$150,000, or one-third of the gross settlement,  
23 which is not an uncommon contingency fee allocation in a wage and hour class action.<sup>3</sup> This  
24 award is facially reasonable under the “common fund” doctrine, which allows a party recovering  
25 a fund for the benefit of others to recover attorney fees from the fund itself. Plaintiff also  
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27 <sup>3</sup> The fee award will be distributed 45 percent to the Law Offices of Choi & Associates; 35  
28 percent to the Diversity Law Group; 10 percent to Brandon Banks Law, APC; and 10 percent to  
David Lee Law, APC. (Declaration of David J. Lee [] at ¶ 12.)

1 provides a combined lodestar figure of \$200,635, based on 265.8 total hours spent or expected to  
2 be spent on the case by counsel billing at hourly rates of \$450 to 850 per hour.<sup>4</sup> Plaintiff's  
3 request results in a negative multiplier of 0.748. The lodestar cross-check supports the  
4 percentage fee requested, particularly given the lack of objections to the attorney fee request.  
5 (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503-504 [trial court did not  
6 abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a  
7 lodestar resulting in a multiplier of 2.03 to 2.13].)

8 Plaintiff's counsel also requests \$10,631.42 in litigation costs, below the amount  
9 estimated at preliminary approval. Plaintiff's costs appear reasonable based on the summary  
10 provided and are approved. The \$9,500 in administrative costs are also approved.

11 Finally, the named plaintiff seeks an enhancement award of \$10,000. To support this  
12 request, she submits a declaration describing her efforts on the case. (See Declaration of Alexis  
13 Lakey (Lakey Declaration).) The rationale for such awards in class actions is that named  
14 plaintiffs "should be compensated for the expense or risk they have incurred in conferring a  
15 benefit on other members of the class[.]" considering "1) the risk to the class representative in  
16 commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties  
17 encountered by the class representative; 3) the amount of time and effort spent by the class  
18 representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)  
19 enjoyed by the class representative as a result of the litigation." (*Cellphone Termination Fee*  
20 *Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 (*Cellphone*), internal citations and quotation  
21 marks omitted.)

22 Here, the Lakey Declaration does not state that the named plaintiff experienced notoriety  
23 and personal difficulties as a result of their participation in this case, nor does it contain any  
24 information about the risks undertaken by the named plaintiff in commencing suit. (*Cellphone*,

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26 <sup>4</sup> The breakdown for individual attorneys is as follows: Edward W. Choi (116.7 hours spent, 5  
27 hours expected to be spent; \$850/hour; \$103,445 expected total); Larry W. Lee (72.3 hours  
28 spent, 5 hours expected to be spent; \$850/hour; \$65,705 expected total); Brandon M. Banks (38.3  
hours spent; \$450/hour; \$17,235 total); David J. Lee (28.5 hours spent; \$500/hour; \$14,250  
total).

1 *supra*, 186 Cal.App.4th at p. 1394.) The duration of this litigation was not long and there is no  
2 indication that the named plaintiff was subject to depositions or interrogatories. (*Id.* at pp. 1394-  
3 1395.) While the Court considers the benefit to the LWDA and the public generally as well as  
4 the benefit to the class members, a \$10,000 enhancement award constitutes 2.2 percent of the  
5 total settlement amount in this case. In *Clark v. American Residential Services LLC* (2009) 175  
6 Cal.App.4th 785, the proposed total enhancement award was too high even though it comprised  
7 only 2.5 percent of the total settlement amount. (175 Cal.App.4th at p. 789.)

8 Applying the relevant factors, the Court finds that the proposed enhancement award of  
9 \$10,000 is not warranted. Instead, it believes that an enhancement award of \$5,000 is adequate.

#### 10 **IV. ORDER AND JUDGMENT**

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

13 The motion for final approval of the settlement, attorney fees, costs, and incentive award  
14 is GRANTED as provided above. The following class is certified for settlement purposes:

15  
16 all current and former non-exempt employees of Defendant who  
17 worked more than five hours in any work shift during the Class  
18 Settlement Period [(March 8, 2018, through March 1, 2023)].  
19

20 No one otherwise included in this definition is excluded from the class.

21 Judgment shall be entered through the filing of this order and judgment. (Code Civ.  
22 Proc., § 668.5.) Plaintiff and the members of the class shall take from their operative complaint  
23 only the relief set forth in the named Plaintiff's individual settlement agreement, amended class  
24 settlement agreement, and this order and judgment. Under Rule 3.769(h) of the California Rules  
25 of Court, the Court retains jurisdiction over the parties to enforce the terms of the settlement  
26 agreement and the final order and judgment.

27 The Court sets a compliance hearing for **February 8, 2024 at 2:30 p.m.** in Department 1.  
28 At least ten court days before the hearing, class counsel, and the settlement administrator shall

1 submit a summary accounting of the net settlement fund identifying distributions made as  
2 ordered herein; the number and value of any uncashed checks; amounts remitted to Legal Aid at  
3 Work; the status of any unresolved issues; and any other matters appropriate to bring to the  
4 Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil  
5 Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

6 **IT IS SO ORDERED.**

7  
8 Date: 8/7/2023

  
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The Honorable Sunil R. Kulkarni  
Judge of the Superior Court