

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

ANNA ZHOU,

Plaintiff,

v.

CISCO SYSTEMS, INC.,

Defendant.

Case No.: 22CV396821

**ORDER CONCERNING PLAINTIFF’S
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

This is a putative class and Private Attorneys General Act (“PAGA”) action. Plaintiff Anna Zhou alleges that Defendant Cisco Systems, Inc. failed to provide employees with compliant meal and rest breaks, failed to pay minimum and overtime wages, issued noncompliant wage statements, and committed other wage and hour violations.

Before the Court is Plaintiff’s motion for final approval of the parties’ settlement, which is unopposed. In addition, no one appeared at the January 11, 2024 to contest the Court’s January 10 tentative ruling. The Court now issues its final order, which, as discussed below, the GRANTS the motion.

1 **I. BACKGROUND**

2 Plaintiff was employed by Defendant as an hourly, non-exempt employee. (First
3 Amended Class Action Complaint (“FAC”), ¶¶ 8, 14.) According to Plaintiff, Defendant failed
4 to pay employees for all hours worked and failed to provide them with meal periods and permit
5 rest breaks. (*Id.*, ¶ 15.) Employees worked for Defendant more than eight hours per day or 40
6 hours per week but Defendant failed to pay overtime wages or even pay employees for all hours
7 worked. (*Id.*, ¶ 16.) Defendant failed to provide accurate, itemized wage statements. (*Id.*, ¶ 21.)
8 Defendant also did not reimburse employees for required business expenses, including use of
9 personal cell phones for business purposes and purchase of face masks. (*Id.*, ¶¶ 16, 19.)

10 Based on these allegations, Plaintiff asserts, in the operative First Amended Complaint,
11 putative class claims for: (1) failure to pay minimum wages, in violation of Labor Code sections
12 204, 1194, 1194.2, and 1197; (2) failure to pay overtime wages, in violation of Labor Code
13 sections 1194 and 1198; (3) failure to provide meal periods, in violation of Labor Code sections
14 226.7 and 512, subdivision (a); (4) failure to permit rest breaks, in violation of Labor Code
15 section 226.7; (5) failure to reimburse employees for required expenses under Labor Code
16 sections 2800 and 2802; (6) failure to timely provide final wages under Labor Code sections 201
17 through 203; (7) violation of Labor Code section 226 by failing to provide accurate itemized
18 wage statements; (8) violation of Business and Professions Code section 17200, et seq.; and (9) a
19 representative claim for PAGA penalties (Lab. Code, § 2698, et seq.).

20 **II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL**

21 **A. Class Action**

22 Generally, “questions whether a [class action] settlement was fair and reasonable,
23 whether notice to the class was adequate, whether certification of the class was proper, and
24 whether the attorney fee award was proper are matters addressed to the trial court’s broad
25 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
26 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
27 260.)

1 In determining whether a class settlement is fair, adequate and reasonable, the trial
2 court should consider relevant factors, such as the strength of plaintiffs’ case, the
3 risk, expense, complexity and likely duration of further litigation, the risk of
4 maintaining class action status through trial, the amount offered in settlement, the
5 extent of discovery completed and the stage of the proceedings, the experience and
6 views of counsel, the presence of a governmental participant, and the reaction of
7 the class members to the proposed settlement.

8
9 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

10 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
11 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
12 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
13 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
14 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
15 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
16 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
17 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
18 marks omitted.) The trial court also must independently confirm that “the consideration being
19 received for the release of the class members’ claims is reasonable in light of the strengths and
20 weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168
21 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be
22 “provided with basic information about the nature and magnitude of the claims in question and
23 the basis for concluding that the consideration being paid for the release of those claims
24 represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

25 **B. PAGA**

26 Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall
27 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
28 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*

1 Court (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
2 go to the Labor and Workforce Development Agency (“LWDA”), leaving the remaining twenty-
3 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
4 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*
5 *Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940.)

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

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

22 **III. SETTLEMENT CLASS**

23 For settlement purposes only, Plaintiff requests the following class be certified:

24
25 All current and former employees who worked for Cisco in a non-exempt position
26 in California at any time from April 5, 2018 through February 15, 2023.
27
28

1 Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an order
2 approving or denying certification of a provisional settlement class after [a] preliminary
3 settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a
4 class “when the question is one of a common or general interest, of many persons, or when the
5 parties are numerous, and it is impracticable to bring them all before the court”

6 Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence:
7 (1) an ascertainable class and (2) a well-defined community of interest among the class
8 members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332 (*Sav-On*
9 *Drug Stores*).) “Other relevant considerations include the probability that each class member
10 will come forward ultimately to prove his or her separate claim to a portion of the total recovery
11 and whether the class approach would actually serve to deter and redress alleged
12 wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the
13 burden of establishing that class treatment will yield “substantial benefits” to both “the litigants
14 and to the court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

15 In the settlement context, “the court’s evaluation of the certification issues is somewhat
16 different from its consideration of certification issues when the class action has not yet
17 settled.” (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in
18 the settlement-only context, the case management issues inherent in the ascertainable class
19 determination need not be confronted, and the court’s review is more lenient in this respect. (*Id.*
20 at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or
21 overbroad class definitions require heightened scrutiny in the settlement-only class context, since
22 the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

23 At preliminary approval, the Court provisionally certified the above-described class,
24 determining that Plaintiff had demonstrated by a preponderance of the evidence: (1) an
25 ascertainable class; (2) a well-defined community of interest among the class members; and (3)
26 that a class action provides substantial benefits to both litigants and the Court. Nothing has
27 changed between now and then. Consequently, the Court will certify the class for settlement
28 purposes as requested.

1 **IV. TERMS AND ADMINISTRATION OF SETTLEMENT**

2 The non-reversionary gross settlement amount is \$1,925,000. Attorney fees of up to
3 \$641,666.67, or one-third of the gross settlement, whichever is greater, litigation costs of up to
4 \$25,000, and up to \$35,000 in administration costs will be paid from the gross settlement. One-
5 hundred thousand dollars of the gross settlement amount will be allocated to PAGA penalties,
6 75% of which (\$75,000) will be paid to the LWDA. The named Plaintiff seeks an incentive
7 award of \$10,000.

8 The net settlement of approximately \$1,140,333.33 will be allocated to 5,840
9 participating class members (reduced from the proposed settlement class of 5,852 accounting for
10 opt-outs) based on the number of workweeks worked by each member in a position covered by
11 the settlement from April 5, 2018 through August 11, 2023, the date preliminary approval of the
12 settlement was granted by this Court. The PAGA payment will be allocated to 2,687 “aggrieved
13 employees” (i.e., the “PAGA Group”), which is defined as “[a]ll Class Members who worked for
14 Cisco in a non-exempt position in California at any time from March 29, 2021 through February
15 15, 2023,” on a pro rata basis based on the number of workweeks worked from March 29, 2021
16 through August 11, 2023. For tax purposes, settlement payments will be allocated one-third to
17 wages and two-thirds to penalties and interest. PAGA settlement payments will be allocated 100
18 percent to penalties. The employer’s share of payroll taxes will be paid in addition to the gross
19 settlement. Funds associated with checks uncashed after 180 days will be paid to the California
20 Controller’s Unclaimed Property Fund in the name of the class member, leaving no unpaid
21 residue subject to the requirements of Code of Civil Procedure Section 384, subdivision (b).

22 In exchange for settlement, class members who do not opt out will release:

23
24 [A]ny and all known and unknown claims against Cisco and the Released Parties
25 that are asserted in the First Amended Complaint or arise out of or reasonably relate
26 to the facts alleged in the First Amended Complaint that, from April 5, 2018
27 through the date on which the Superior Court grants preliminary approval of the
28 Settlement . . . (that) Cisco failed to pay all wages due, including minimum wages

1 and overtime; provide meal and rest periods; pay meal and rest period premiums at
2 the regular rate of pay; maintain accurate records; furnish accurate itemized wage
3 statements; reimburse necessary business expenses; timely pay all wages due
4 during employment; or pay all wages due to discharged and quitting employees.

5
6 As the Court determined in its order preliminarily approving the settlement, the release
7 is appropriately tailored to the factual allegations at issue. (See *Amaro v. Anaheim Arena*
8 *Management, LLC* (2021) 69 Cal.App.5th 521, 537.) Further, the PAGA release is appropriately
9 limited to:

10
11 [A]ny and all claims under PAGA for civil penalties against Cisco and the other
12 Released Parties that arise out of or reasonably relate to the allegations in the notice
13 submitted by Plaintiff to the LWDA pursuant to PAGA that, from March 29, 2021
14 through the date on which the Superior Court grants preliminary approval of the
15 Settlement . . . [that] Cisco failed to pay all wages due, including minimum wages
16 and overtime; provide meal and rest periods; pay meal and rest period premiums at
17 the regular rate of pay; maintain accurate records; furnish accurate itemized wage
18 statements; reimburse for necessary business expenses; timely pay all wages due
19 during employment; or pay all wages due to discharged and quitting employees[.]

20
21 Consistent with the statute, aggrieved employees will not be able to opt out of the PAGA portion
22 of the settlement.

23 The notice period has now been completed. According to the declaration of a case
24 manager with settlement administrator ILYM Group (“ILYM”), on September 11, 2023, ILYM
25 received from counsel for Cisco the names and identifying information (including last known
26 mailing address) for each settlement class member and subsequently processed these items
27 against the National Change of Address database to confirm and update the relevant information.
28

1 On September 25, Notice Packets were mailed via first class mail to all 5,852 individuals
2 contained in the list provided to ILYM.

3 As of the date of the settlement administrator’s declaration (December 13, 2023), 171
4 Notice Packets have been returned to ILYM as undeliverable, with none including a forwarding
5 address. ILYM performed a skip trace on these returned packets, and obtained 122 updated
6 addresses, to which a Notice Packet was promptly re-mailed. At present, 49 Notice Packets have
7 been deemed undeliverable. ILYM has received 12 requests for exclusion and no objections.
8 November 9, 2023 was the deadline for either of the foregoing. The administrator estimates that
9 participating class members will receive an average gross payment of \$191.11, with a maximum
10 payment of \$717.29 and a minimum payment of \$5.12.

11 At preliminary approval, the Court found that the proposed settlement provides a fair and
12 reasonable compromise to Plaintiffs’ claims, and that the PAGA settlement is genuine,
13 meaningful, and fair to those affected. It finds no reason to depart from these findings now,
14 especially considering that there are no objections. Therefore, the Court finds that the settlement
15 is fair and reasonable for the purposes of final approval.

16 **V. ATTORNEYS FEES, COSTS, AND INCENTIVE AWARD**

17 As mentioned above, Plaintiff’s counsel seeks a fee award of \$641,666.67, or one-third of
18 the gross settlement, which is not an uncommon contingency fee allocation in a wage and hour
19 class action. This award is facially reasonable under the “common fund” doctrine, which allows a
20 party recovering a fund for the benefit of others to recover attorney fees from the fund itself.
21 Plaintiff also provides a lodestar figure of \$199,742.50, based on 299.8 hours at billing rates of
22 \$375 to \$725 per hour, resulting in a multiplier of 3.2. This is within the range of multipliers that
23 courts typically approve. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488,
24 503–504 (*Laffitte*) [trial court did not abuse its discretion in approving fee award of 1/3 of the
25 common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to
26 2.13]; *Wershba, supra*, 91 Cal.App.4th at p. 255 “[m]ultipliers can range from 2 to 4 or even
27 higher”]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that
28 multipliers ranging from one to four are typical in common fund cases and citing the court’s own

1 survey of large settlements finding “a range of 0.6–19.6, with most (20 of 24, or 83%) from 1.0–
2 4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range”].)

3 “While the percentage method has been generally approved in common fund cases,
4 courts have sought to ensure the percentage fee is reasonable by refining the choice of a
5 percentage or by checking the percentage result against a lodestar- multiplier calculation.”
6 (*Laffitte, supra*, 1 Cal.5th at pp. 494-495.) Applying this latter approach,

7
8 [T]he percentage-based fee will typically be larger than the lodestar based fee.
9 Assuming that one expects rough parity between the results of the percentage
10 method and the lodestar method, the difference between the two computed fees will
11 be attributable solely to a multiplier that has yet to be applied. Stated another way,
12 the ratio of the percentage-based fee to the lodestar-based fee implies a multiplier,
13 and that implied multiplier can be evaluated for reasonableness. If the implied
14 multiplier is reasonable, then the cross-check confirms the reasonableness of the
15 percentage-based fee; if the implied multiplier is unreasonable, the court should
16 revisit its assumptions.

17
18 (*Laffitte, supra*, 1 Cal.5th at p. 496, quoting Walker & Horwich, *The Ethical Imperative of a*
19 *Lodestar Cross-check: Judicial Misgivings About “Reasonable Percentage” Fees in*
20 *Common Fund Cases* (2005) 18 Geo. J. Legal Ethics 1453, 1463.) As described by the
21 California Supreme Court, “[i]f the multiplier calculated by means of a lodestar crosscheck is
22 extraordinarily high or low, the trial court should consider whether the percentage used should be
23 adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not
24 necessarily required to make such an adjustment.” (*Laffitte, supra*, 1 Cal.5th at p. 505.)

25 Here, while the multiplier sought by Plaintiff’s counsel is on the higher end of what
26 California courts typically award, it is still well within the acceptable range and is supported by
27 the percentage cross-check. As such, the Court finds counsel’s requested fee award is
28 reasonable.

1 Plaintiff's counsel also seeks \$22,263.18 in litigation costs, which is below the \$25,000
2 limit provided by the Settlement and appears reasonable. The \$35,000 in administrative costs are
3 also approved.

4 Finally, Plaintiff requests an incentive award of \$10,000. To support her request, she
5 submits a declaration describing her efforts on the case. The Court finds that the class
6 representative is entitled to an enhancement award and the amount requested is reasonable.

7 **VI. CONCLUSION**

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff's motion for
9 final approval is GRANTED. The following class is certified for settlement purposes only:

10
11 All current and former employees who worked for Cisco in a non-exempt position
12 in California at any time from April 5, 2018 through February 15, 2023.

13
14 Excluded from the class are the 12 individuals who submitted timely requests for exclusion.

15 Judgment will be entered through the filing of this order and judgment. (Code Civ. Proc.,
16 § 668.5.) Plaintiff and the members of the class will take from their complaint only the relief set
17 forth in the settlement agreement and this order and judgment. Under Rule 3.769(h) of the
18 California Rules of Court, the Court will retain jurisdiction over the parties to enforce the terms
19 of the settlement agreement and the final order and judgment.

7 The Court sets a compliance hearing for August 22, 2024 at 2:30 P.M. in Department
1 At least ten court days before the hearing, class counsel and the settlement administrator shall
submit a summary accounting of the net settlement fund identifying distributions made as
ordered herein; the number and value of any uncashed checks; amounts remitted pursuant to
Code of Civil Procedure section 384, subdivision (b); the status of any unresolved issues; and
any other matters appropriate to bring to the Court's attention. Counsel shall also submit an
amended judgment as described in Code of Civil Procedure section 384, subdivision
(b). Counsel may appear at the compliance hearing remotely.

IT IS SO ORDERED.

Date: 1/12/2024

The Honorable Sunil R. Kulkarni
Judge of the Superior Court