

ORDER ON SUBMITTED MATTER

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

CESAR GARCIA, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

SAN JOSE WATER COMPANY, a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. 22CV396328

**ORDER RE: MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT**

The above-entitled matter came on for hearing on May 8, 2024, at 1:30 p.m. in
Department 19, the Honorable Theodore C. Zayner presiding. Having reviewed and considered
the written submissions filed by the parties, and having listened carefully to arguments of
counsel, the court rules as follows:

I. INTRODUCTION

This is a putative class and representative action arising out of various alleged wage and
hour violations. The operative First Amended Complaint (“FAC”), filed on May 18, 2022, sets
forth causes of action for: (1) Failure to Pay Minimum Wages [Cal. Lab. Code §§ 204, 1194,
1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and
1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to

1 Authorize and Permit Rest Breaks [Cal. Lab. Code § 226.7]; (5) Failure to Indemnify Necessary
2 Business Expenses [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay Final Wages at
3 Termination [Cal. Lab. Code §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage
4 Statements [Cal. Lab. Code § 226]; (8) Unfair Business Practices [Cal. Bus. & Prof. Code
5 §§ 17200, et seq.]; and (9) Civil Penalties Under PAGA [Cal. Lab. Code §§ 2699, et seq.].

6 The parties reached a settlement. Plaintiff Cesar Garcia (“Plaintiff”) moved for
7 preliminary approval of the settlement.

8 On August 30, 2023, the court continued the motion for preliminary approval of
9 settlement to November 1, 2023. As an initial matter, the court noted that the settlement
10 agreement did not appear to provide for what happens to amounts not approved or actually spent
11 for settlement administration costs and encouraged the parties to meet and confer on this issue.
12 Next, the court opined that the release might be too broad as it encompassed at least one set of
13 facts and theory not alleged in the FAC but included in the Labor and Workforce Development
14 Agency (“LWDA”) Letter relating to the failure to pay all accrued vacation wages at termination
15 in violation of Labor Code section 227.3. The court directed the parties to provide supplemental
16 briefing explaining why including the LWDA Letter in the release is fair and reasonable. The
17 court otherwise found the settlement to be fair and reasonable. Finally, the court requested the
18 parties modify language in the class notice regarding the final approval hearing and submit an
19 amended notice to the court for its approval.

20 On October 18, 2023, Plaintiff’s counsel filed a supplemental declaration, which included
21 an amended settlement agreement and amended class notice.

22 On November 1, 2023, the court granted preliminary approval of the settlement and
23 approved the amended class notice. The court entered a formal order memorializing its prior
24 order on November 20, 2023.

25 Now before the court is the motion by Plaintiff for final approval of the settlement. The
26 motion is unopposed.

1 **II. LEGAL STANDARD**

2 Generally, “questions whether a settlement was fair and reasonable, whether notice to the
3 class was adequate, whether certification of the class was proper, and whether the attorney fee
4 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
5 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*
6 (1996) 48 Cal.App.4th 1794 (*Dunk*).)

7 In determining whether a class settlement is fair, adequate and reasonable, the
8 trial court should consider relevant factors, such as “the strength of plaintiffs’
9 case, the risk, expense, complexity and likely duration of further litigation, the
10 risk of maintaining class action status through trial, the amount offered in
settlement, the extent of discovery completed and the stage of the proceedings, the
experience and views of counsel, the presence of a governmental participant, and
the reaction of the class members to the proposed settlement.”
11 (*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801
12 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624
13 (*Officers*).)

14 “The list of factors is not exclusive and the court is free to engage in a balancing and
15 weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91
16 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the
17 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
18 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
19 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48
20 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

21 The burden is on the proponent of the settlement to show that it is fair and
22 reasonable. However “a presumption of fairness exists where: (1) the settlement
23 is reached through arm’s-length bargaining; (2) investigation and discovery are
sufficient to allow counsel and the court to act intelligently; (3) counsel is
experienced in similar litigation; and (4) the percentage of objectors is small.”
24 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

25 **III. DISCUSSION**

26 The case has been settled on behalf of the following class:

27 [A]ll current and former California non-exempt employees of Defendant [San
28 Jose Water Company (“Defendant”)] during the Class Settlement Period [from
March 22, 2018, through the Preliminary Approval Date, subject to section
3.2.2.].

1
2 The class also includes a subset of PAGA Members, who are defined as all current and former
3 California non-exempt employees of Defendant during the PAGA Settlement Period from March
4 12, 2021, through the preliminary approval date.

5 As discussed in connection with preliminary approval, the settlement agreement provides
6 that Defendant will pay a gross, non-reversionary amount of \$1,200,000. The gross settlement
7 amount includes attorney fees not to exceed \$400,000 (1/3 of the gross settlement amount),
8 litigation costs up to \$20,000, an incentive award up to \$10,000 for the class representative,
9 reasonable costs of settlement administration up to \$10,000, and a PAGA allocation of \$100,000
10 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA
11 Members).

12 The net settlement amount will be distributed pro rata to Participating Class Members
13 based on the eligible workweeks each Participating Class Member worked during the Class
14 Settlement Period and to PAGA Members based on the number of eligible pay periods each
15 PAGA Member worked during the PAGA Settlement Period.

16 The settlement agreement states that funds from checks that remained uncashed 180 days
17 after issuance will be sent to the California State Controller's Office's Unclaimed Property
18 Division to be held as unclaimed funds in the name of the Participating Class Member or PAGA
19 Member.

20 The parties' proposal to send funds from uncashed checks issued to class members to the
21 California State Controller's Office's Unclaimed Property Division does not comply with Code
22 of Civil Procedure section 384, which mandates that unclaimed or abandoned class member
23 funds be given to "nonprofit organizations or foundations to support projects that will benefit the
24 class or similarly situated persons, or that promote the law consistent with the objectives and
25 purposes of the underlying cause of action, to child advocacy programs, or to nonprofit
26 organizations providing civil legal services to the indigent." Within 20 days of this order, the
27 parties shall meet and confer regarding this issue and, thereafter, Plaintiff shall file a
28

1 supplemental declaration identifying a new *cy pres* recipient in compliance with Code of Civil
2 Procedure section 384.

3 In exchange for the settlement, class members who do not opt out will release all federal,
4 state and local law claims, rights, demands, liabilities, and causes of action, asserted in any of the
5 complaints filed in the action, and all claims that could have been asserted in the action arising
6 from the same alleged facts. PAGA Members will release all claims for civil penalties under
7 PAGA asserted in any of the complaints filed in the action, and all claims that could have been
8 asserted in the Action based on the same alleged facts. Plaintiff also agrees to a general release
9 of claims.

10 On January 3, 2024, the settlement administrator mailed notice packets to the confirmed
11 final class, consisting of 489 class members. (Declaration of Lluvia Islas on Behalf of Phoenix
12 Settlement Administrators Regarding Notice and Administration (“Islas Dec.”), ¶ 5.) Ultimately,
13 all of the notice packets were deliverable. (*Id.* at ¶ 7.) As of April 3, 2024, there were no
14 objections or requests for exclusion. (*Id.* at ¶¶ 8-9.)

15 The highest individual settlement payment to be paid is approximately \$2,712.17, the
16 lowest individual settlement payment to be paid is approximately \$1.31, and the average
17 individual settlement payment to be paid is approximately \$1,351.53. (Islas Dec., ¶ 13.) The
18 court previously found the proposed settlement is fair and the court continues to make that
19 finding for purposes of final approval.

20 Plaintiff requests an incentive award of \$10,000 for the class representative. The court
21 previously approved this award in connection with preliminary approval, and it remains
22 approved.

23 The court also has an independent right and responsibility to review the requested
24 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
25 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff’s counsel
26 seeks attorney fees in the amount of \$400,000 (1/3 of the gross settlement amount). Plaintiff’s
27 counsel provides evidence demonstrating a total lodestar of \$101,842.50, based on 167.1 hours
28 worked by counsel billing at hourly rates between \$375 and \$725. (Declaration of Kane Moon

1 in Support of Motion for Final Approval of Class and PAGA Representative Action Settlement
2 (“Moon Dec.”), ¶¶ 53-58.) This results in a multiplier of 3.93. While this multiplier is on the
3 high side, the attorney fees requested are reasonable as a percentage of the common fund. Thus,
4 the attorney fees are approved.

5 Plaintiff’s counsel requests litigation costs in the amount of \$19,099.68 and provides
6 evidence of incurred costs in that amount. (Moon Dec., ¶ 16 & Ex. 4.) Therefore, the litigation
7 costs are approved.

8 The settlement administration costs of \$10,000 are also approved. (Islas Dec., ¶ 15.)

9 Accordingly, the motion for final approval of the class and representative action
10 settlement is GRANTED, subject to the filing of a supplemental declaration identifying an
11 appropriate *cy pres* recipient which complies with Code of Civil Procedure section 384.
12

13 The court will set a compliance hearing for March 5, 2025, at 2:30 p.m. in Department
14 19. At least ten court days before the hearing, class counsel and the settlement administrator
15 shall submit a summary accounting of the net settlement fund identifying distributions made as
16 ordered herein, the number and value of any uncashed checks, amounts remitted to Defendant,
17 the status of any unresolved issues, and any other matters appropriate to bring to the court’s
18 attention. Counsel may appear at the compliance hearing remotely.

19
20 Dated: May 9, 2024



Hon. Theodore C. Zayner
Judge of the Superior Court