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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

MAGDALENA TORRES, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

vs.

JAN MARINI SKIN RESEARCH, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO. 22CV401294

*Assigned for All Purposes to:
Hon. Charles F. Adams, Dept. 7*

CLASS ACTION

**NOTICE OF ENTRY OF ORDER
GRANTING PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on July 24, 2024, the Honorable Charles F. Adams, in
3 Department 7 of the Santa Clara County Superior Court, located at 191 North First Street San Jose,
4 California 95113, executed the Order Granting Plaintiff's Motion for Final Approval of Class
5 Action and Paga Settlement.

6 Attached hereto as **Exhibit A** is a true and correct copy of the Order Granting Plaintiff's
7 Motion for Final Approval of Class Action and Paga Settlement which was executed July 24, 2024.

8
9 DATED: July 25, 2024

PROTECTION LAW GROUP, LLP

10 By: 
11 Heather Davis

12 Amir Nayebdadash
13 D. Luke Clapp
14 Attorneys for Plaintiffs

Exhibit A

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

MAGDALENA TORRES, individually, and on behalf of other members of the general public similarly situated,	)	Case No.: 22CV401294
	)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF’S
	)	MOTION FOR FINAL APPROVAL OF
v.	)	CLASS ACTION AND PAGA
	)	SETTLEMENT
	)	
	)	Dept. 7
JAN MARINI SKIN RESEARCH, INC., et	)	
al.,	)	
	)	
Defendants.	)	

This is a putative class and Private Attorneys General Act (“PAGA”) action. Plaintiff Magdalena Torres alleges that Defendant Jan Marini Skin Research, Inc., a manufacturer and wholesaler of skincare products, failed to pay overtime and minimum wages, failed to provide meal and rest periods or pay associated premiums, and failed to provide code-complaint wage statements, among other Labor Code violations.

Before the Court is Plaintiff’s motion for final approval of a settlement, which is unopposed. As discussed below, the Court GRANTS Plaintiff’s motion.

1 **I. BACKGROUND**

2 On July 27, 2022, Plaintiff filed a class action complaint accusing Defendant of failing to:
3 properly pay overtime, provide meal periods, authorize and permit rest breaks, properly pay meal
4 and rest break premiums, pay minimum wages, pay timely pay wages during employment and
5 upon termination, provide accurate wage statements, keep accurate payroll records and
6 reimburse necessary business expenses. Plaintiff also alleged that Defendant’s actions violated
7 California Business and Professions Code § 17200. That same day, Plaintiff also filed a separate
8 PAGA representative complaint asserting a single claim under PAGA seeking penalties for the
9 same violations alleged in the class action complaint.

10 On December 8, 2022, the Court granted Defendant’s unopposed motion to consolidate
11 the class action with the PAGA action; the Consolidated Class Action and Representative Action
12 Complaint was filed the following day, asserting the following causes of action: (1) unpaid
13 overtime; (2) unpaid meal period premiums; (3) unpaid rest period premiums; (4) unpaid
14 minimum wages; (5) final wages not timely paid; (6) wages not timely paid during employment;
15 (7) non-compliant wage statements; (8) failure to keep requisite payroll records; (9)
16 unreimbursed business expenses; (10) violation of Bus. & Prof. Code § 17200; and (11) violation
17 of PAGA.

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

19 **A. Class Action**

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

1 “In determining whether a class settlement is fair, adequate and reasonable, the trial court
2 should consider relevant factors, such as the strength of plaintiffs’ case, the risk, expense,
3 complexity and likely duration of further litigation, the risk of maintaining class action status
4 through trial, the amount offered in settlement, the extent of discovery completed and the stage
5 of the proceedings, the experience and views of counsel, the presence of a governmental
6 participant, and the reaction of the class members to the proposed settlement.” (*Wershba, supra*,
7 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

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

23 **B. PAGA**

24 Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall
25 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s

1 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
2 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
3 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
4 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
5 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*
6 *Moriana* (2022) 596 U.S. 639.)

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

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

23 **III. SETTLEMENT CLASS**

24 For settlement purposes only, Plaintiff requests the following Class be certified:
25

1 All current and former hourly-paid, non-exempt employees of Defendant or employees of
2 a temporary employment agency who were assigned to work for Defendant in California, at any
3 time between July 27, 2018, and July 23, 2023.

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

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

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

1
2 At preliminary approval, the Court provisionally certified the above-described class, determining
3 that Plaintiff had demonstrated by a preponderance of the evidence (1) an ascertainable class, (2)
4 a well-defined community of interest among the class members and (3) that a class action
5 provides substantial benefits to both litigants and the Court. Consequently, the Court will certify
6 the class for settlement purposes as requested.

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

8 The non-reversionary gross settlement is \$625,000. Attorney fees of up to \$208,333.33
9 (one-third of the gross settlement), litigation costs of \$12,302.10 and \$7,500 in administration
10 costs will be paid from the gross settlement. \$50,000 will be allocated to PAGA penalties, 75%
11 of which (\$37,500) will be paid to the LWDA. Plaintiff seeks an enhancement payment in the
12 amount of \$5,000.

13 The net settlement of approximately \$341,864.57 will be allocated to class members on a
14 pro-rata basis based on the number of weeks worked during the class period. The remaining
15 25% of the PAGA settlement amount will be distributed to Aggrieved Employees on a pro-rata
16 basis. Class members will not be required to submit a claim to receive their payment. For tax
17 purposes, settlement payments will be allocated 20% to wages subject to withholding, 40% to
18 interest and 40% to penalties. 100% of the PAGA payment to Aggrieved Employees will be
19 allocated as penalties. Participating class members will receive an average payment of
20 approximately \$1,762 and the highest payment received will be approximately \$9,652.74. On
21 average, Aggrieved Employees will receive \$105.04, with a maximum payment of \$335.68.
22 Funds associated with checks uncashed after 180 days will be transmitted to the Controller of the
23 State of California to be held in trust for such class members pursuant to California unclaimed
24 property law.

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

1 [C]laims, rights, demands, liabilities and causes of actions that are alleged, or that
2 reasonably could have been alleged, based on the facts asserted in the operative complaint in the
3 Action including the following claims: (i) failure to pay all regular wages, minimum wages and
4 overtime wages due; (ii) failure to provide meal periods or compensation in lieu thereof; (iii)
5 failure to provide rest periods or compensation in lieu thereof; (iv) failure to reimburse necessary
6 business expenses; (v) failure to provide complete, accurate wage statements; (vi) failure to pay
7 wages timely at time of termination or resignation; (vii) failure to provide timely pay wages
8 during employment ; (viii) unfair business practices that could have been premised on the facts
9 pled in the operative complaint; and (ix) failure to maintain required payroll records.

10 Aggrieved Employees will also release “all claims for civil penalties under [PAGA] that
11 could have been premised on the facts alleged both in the PAGA Notice provided to the LWDA
12 and in the operative complaint including but not limited to penalties that could have been
13 awarded pursuant to Labor Code sections 210, 226.3, 1197.1, 558 and 2699.” Consistent with
14 the statute, Aggrieved Employees will not be able to opt out of the PAGA portion of the
15 settlement.

16 As the Court determined in its order preliminarily approving the settlement, the release is
17 appropriately tailored to the factual claims at issue. (See *Amara v. Anaheim Arena Management,*
18 *LLC* (2021) 69 Cal.App.5th 521, 537.) Consistent with the statute, Aggrieved Employees will
19 not be able to opt out of the PAGA portion of the settlement.

20 The notice period has now been completed. According to the declaration of case
21 manager Madely Nava with settlement administrator Apex Class Action, LLC (“Apex”)
22 submitted in support of the instant motion, from January 4 to February 26, 2024, Apex received
23 from counsel several class data files containing the names, social security numbers, last known
24 mailing addresses, and the total number of relevant workweeks worked for each of the 194
25 settlement class members. Apex processed the addresses it had against the National Change of

1 Address database to confirm and update this information and then mailed the notice packet to
2 Class members, in both English and Spanish, on March 11, 2024 via first class mail. As of the
3 date of Ms. Nava's declaration, June 19, 2024, Apex has received 16 returned notice packets as
4 undeliverable; four contained forwarding addresses to which packets were promptly re-mailed.
5 For the remaining 12, Apex conducted a skip trace and located one updated address, to which a
6 notice packet was re-mailed. At present, 11 Notice packets have been deemed undeliverable as
7 no updated addresses have been located.

8 The deadline to submit a request for exclusion, a challenge to the amount of work weeks
9 listed, or an objection to the settlement was May 10, 2024. As of the date of Ms. Nava's
10 declaration, none of the foregoing had been received. Consequently, there are 194 participating
11 settlement class members.

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

17 **V. ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS**

18 As set forth above, Plaintiff's counsel seeks a fee award of \$208,333.33, or one-third of
19 the gross settlement amount, which is not an uncommon contingency fee allocation in a wage
20 and hour class action. Plaintiff also provides a lodestar figure of \$189,552.50, which is based on
21 252.70 hours of work at a billing rate of \$825 per hour, resulting in a modest multiplier of 1.1.
22 This is well within the range of multipliers that courts typically approve. (See *Laffitte v. Robert*
23 *Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its
24 discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar
25 resulting in a multiplier of 2.03 to 2.13]; *Wershba, supra*, 91 Cal.App.4th at p. 255

1 “[m]ultipliers can range from 2 to 4 or even higher”]; *Vizcaino v. Microsoft Corp.* (9th Cir.
2 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in
3 common fund cases and citing the court’s own survey of large settlements finding “a range of
4 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in
5 the 1.5–3.0 range”].)

6 “While the percentage method has been generally approved in common fund cases,
7 courts have sought to ensure the percentage fee is reasonable by refining the choice of a
8 percentage or by checking the percentage result against a lodestar- multiplier calculation.”
9 (*Laffitte, supra*, 1 Cal.5th 480, 494-495.) Applying this latter approach, “[t]he percentage-based
10 fee will typically be larger than the lodestar based fee. Assuming that one expects rough parity
11 between the results of the percentage method and the lodestar method, the difference between the
12 two computed fees will be attributable solely to a multiplier that has yet to be applied. Stated
13 another way, the ratio of the percentage-based fee to the lodestar-based fee implies a multiplier,
14 and that implied multiplier can be evaluated for reasonableness. If the implied multiplier is
15 reasonable, then the cross-check confirms the reasonableness of the percentage-based fee; if the
16 implied multiplier is unreasonable, the court should revisit its assumptions.” (*Laffitte, supra*, 1
17 Cal.5th at p. 496, quoting Walker & Horwich, *The Ethical Imperative of a Lodestar Cross-check:
18 Judicial Misgivings About “Reasonable Percentage” Fees in Common Fund Cases* (2005) 18
19 Geo. J. Legal Ethics 1453, 1463.) As described by the California Supreme Court, “[i]f the
20 multiplier calculated by means of a lodestar crosscheck is extraordinarily high or low, the trial
21 court should consider whether the percentage used should be adjusted so as to bring the imputed
22 multiplier within a justifiable range, but the court is not necessarily required to make such an
23 adjustment.” (*Laffitte, supra*, 1 Cal.5th at 505.)

1 Here, as the multiplier sought by Plaintiff's counsel is relatively modest, well within the
2 range of modifiers typically approved by courts and is supported by the percentage cross-check,
3 the Court finds counsel's requested fee award is reasonable.

4 Plaintiff's counsel also seeks \$12,302.10 in litigation costs, which is well short of the
5 maximum amount (\$25,000) permitted under the settlement agreement. Based on the
6 information contained in the declaration of Plaintiff's counsel, this amount is reasonable and is
7 therefore approved. The \$7,500 in administrative costs are also approved.

8 Finally, Plaintiff requests an incentive awards of \$5,000. To support this request, Ms.
9 Torres submits a declaration describing her efforts in this action. The Courts finds that she is
10 entitled to an incentive award and the amount requested is reasonable and therefore is approved.

11 VI. CONCLUSION

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

14 Plaintiff's motion for final approval is GRANTED. The following class is certified for
15 settlement purposes only:

16 All current and former hourly-paid, non-exempt employees of Defendant or employees of
17 a temporary employment agency who were assigned to work for Defendant in California, at any
18 time between July 27, 2018, and July 23, 2023.

19 Judgment will be entered through the filing of this order and judgment. (Code Civ. Proc.,
20 § 668.5.) Plaintiff and the members of the class will take from their complaint only the relief set
21 forth in the settlement agreement and this order and judgment. Pursuant to Rule 3.769(h) of the
22 California Rules of Court, the Court will retain jurisdiction over the parties to enforce the terms
23 of the settlement agreement and the final order and judgment.

24 The Court sets a compliance hearing for **March 13, 2025 at 2:30 P.M.** in Department 7.
25 At least ten court days before the hearing, class counsel and the settlement administrator shall

ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT

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 pursuant to
3 Code of Civil Procedure section 384, subdivision (b); the status of any unresolved issues; and
4 any other matters appropriate to bring to the Court's attention. Counsel shall also submit an
5 amended judgment as described in Code of Civil Procedure section 384, subdivision (b).

6 Counsel may appear at the compliance hearing remotely.

7
8 DATED: July 24, 2024


CHARLES F. ADAMS
Judge of the Superior Court