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March 5, 2025
Clerk of the Court
Superior Court of CA
County of Santa Clara
22CV400968
By: MJacobo

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Attorneys for Plaintiff Gabriela Bustamante
and Proposed Class Counsel

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

GABRIELA BUSTAMANTE, on behalf of
herself and all “aggrieved employees”
pursuant to Labor Code § 2698 et seq.,

Plaintiff,

v.

MARRIOTT HOTEL SERVICES, INC., a
Delaware corporation; and DOES 1
through 10 inclusive,

Defendants.

Case No. 22CV400968

*Assigned to the Hon. Theodore C. Zayner, Dept.
D19*

CLASS ACTION

**[PROPOSED] ORDER AND JUDGMENT
GRANTING FINAL APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT**

Date: February 26, 2025

Time: 1:30 p.m.

Dept.: D19

Complaint Filed: July 21, 2022

1 The Court issued a tentative ruling on Plaintiff's Motion for an Order Granting Final
2 Approval of Class and Representative Action Settlement. A true and correct copy of the Court's
3 tentative ruling is attached hereto as **Exhibit A**.

4 The above-captioned Action is a class action and Private Attorney General Act ("PAGA")
5 lawsuit brought by Plaintiff Gabriela Bustamante ("Plaintiff") against Defendant Marriott Hotel
6 Services, Inc. (*now known* as Marriott Hotel Services, LLC) ("Defendant") (collectively, the
7 "Parties"). Plaintiff alleges, on behalf of a class of certain of Defendant's current and former
8 employees, that Defendant failed to pay all wages, failed to provide meal and rest periods or
9 compensation in lieu thereof, failed to pay wages due timely upon separation of employment, and
10 failed to comply with itemized wage statement provisions. Defendant denies any and all alleged
11 wrongdoing and denies any liability to Plaintiff or to members of the Class or PAGA Members.
12 Defendant contends that it has complied at all times with California law, including the California
13 Labor Code, the Industrial Commission Wage Orders, and the California Business and Professions
14 Code.

15 On September 5, 2024, this Court entered an Order Granting Preliminary Approval of
16 Settlement, resulting in certification of the following provisional Class for settlement purposes
17 only: all individuals who are or who have been directly employed by Defendant in California at the
18 Monterey Marriott as a non-exempt employee during any portion of the Class Period (defined as
19 the time from July 21, 2018 through November 24, 2023). The PAGA Members are defined as all
20 individuals who are or who have been employed by Defendant in California at the Monterey
21 Marriott as a non-exempt employee during any portion of the PAGA Period (defined as the time
22 from July 21, 2021 through November 24, 2023).

23 The Preliminary Approval Order further directed the Parties to provide Notice to the Class,
24 which informs absent Class Members of: (a) the proposed Settlement, and the Settlement's key
25 terms; (b) the date, time and location of the Final Approval Hearing; (c) the right of any Class
26 Member to object to the proposed Settlement, and an explanation of the procedures to exercise that
27 right; (d) the right of any Class Member to exclude themselves from the proposed Settlement, and
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1 an explanation of the procedures to exercise that right; and (e) an explanation of the procedures for
2 Class Members to participate in the proposed Settlement.

3 The Court, upon Notice having been given as required in the Preliminary Approval Order,
4 and having considered the Amended and Restated Settlement Agreement (the “Settlement”), as
5 well as all papers filed, hereby **ORDERS, ADJUDGES AND DECREES AS FOLLOWS:**

6 1. This Court has jurisdiction over the subject matter of the Action and over all Parties
7 to the Action, including all members of the Class and all PAGA Members.

8 2. The Court finds that the Class is properly certified for settlement purposes only.

9 3. The Notice provided to the Class conforms with the requirements of California Code
10 of Civil Procedure § 382, California Civil Code § 1781, California Rules of Court 3.766 and 3.769,
11 the California and United States Constitutions, and any other applicable law, and constitutes the
12 best notice practicable under the circumstances, by providing individual notice to all Class
13 Members who could be identified through reasonable effort, and by providing due and adequate
14 notice of the proceedings and of the matters set forth therein to the Class Members. The Notice
15 fully satisfied the requirements of due process.

16 4. The Court finds the Settlement was entered into in good faith, that the Settlement is
17 fair, reasonable and adequate, and that the Settlement satisfies the standards and applicable
18 requirements for final approval of this class action settlement under California law, including the
19 provisions of California Code of Civil Procedure § 382 and California Rules of Court, Rule 3.769.

20 5. The Court approves the Settlement Amount of Two Hundred Ninety Thousand
21 Dollars (\$290,000).

22 6. Zero (0) Class Members have objected to the terms of the Settlement.

23 7. Zero (0) Class Members have requested exclusion from the Settlement.

24 8. Upon entry of this Order, compensation to the Class Members and all PAGA
25 Members shall be affected pursuant to the terms of the Settlement.

26 9. In addition to any recovery that Plaintiff may receive from the Net Settlement
27 Amount, and in recognition of the Plaintiff’s efforts on behalf of the Settlement Class, the Court
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1 hereby approves the payment of the Service Award to Plaintiff Gabriela Bustamante in the amount
2 of Four Thousand Five Hundred Dollars (\$4,500). This shall be paid from the Settlement Amount.

3 10. The Court approves the payment of attorneys' fees to Class Counsel in the sum of
4 Ninety-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$96,666.67), and the
5 reimbursement of litigation expenses in the sum of Thirteen Thousand Four Hundred Twenty-Four
6 Dollars and Forty-Two Cents (\$13,424.42). This shall be paid from the Settlement Amount.

7 11. The Court approves and orders payment in the amount of Nine Thousand Four
8 Hundred Ninety-Five Dollars (\$9,495) to ILYM Group, Inc. for performance of its settlement
9 administration services. This shall be paid from the Settlement Amount.

10 12. The Court approves and orders payment in the amount of Eighteen Thousand Seven
11 Hundred Fifty Dollars (\$18,750) to the California Labor and Workforce Development Agency for
12 its 75% share of PAGA penalties, and Six Thousand Two Hundred Fifty Dollars (\$6,250) to the
13 PAGA Members. This shall be paid from the Settlement Amount.

14 13. Upon the entry of this Order and Judgment, Plaintiff and all Class Members who
15 did not exclude themselves from the Settlement and all PAGA Members shall be bound by the
16 releases of claims as set forth in the Settlement.

17 14. Individual settlement payment checks remaining uncashed more than 180 days after
18 mailing will be void and the funds from those checks will be distributed to UNICEF USA as the *cy*
19 *pres* recipient. The Court approves the designated *cy pres* recipient.

20 15. This "Judgment" is intended to be a final disposition of the above captioned action
21 in its entirety and is intended to be immediately appealable.

22 16. This Court shall retain jurisdiction with respect to all matters related to the
23 administration and consummation of the Settlement, and any and all claims asserted in, arising out
24 of, or related to the subject matter of the lawsuit, including but not limited to all matters related to
25 the settlement and the determination of all controversies relating thereto.

26 17. The Court sets a compliance hearing for November 12, 2025 at 2:30 p.m. in
27 Department 19. At least ten court days before the hearing, class counsel and the settlement
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1 administrator shall submit a summary accounting of the net settlement fund identifying
2 distributions made as ordered herein; the number and value of any uncashed checks; amounts
3 remitted to the *cy pres* recipient; the status of any unresolved issues; and any other matters
4 appropriate to bring to the court's attention. Counsel shall also submit an amended judgment as
5 described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the
6 compliance hearing remotely.

7 **IT IS SO ORDERED.**

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9 Dated: March 3, 2025



JUDGE OF THE SUPERIOR COURT

10
11 Dated: March 3, 2025

Respectfully submitted,

12 GAINES & GAINES, APLC

13 By: /s/ Daniel F. Gaines

14 Daniel F. Gaines

Attorneys for Plaintiff

15
16 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

17 By: /s/ Eric Angel (as authorized 3/3/2025)

18 Greg S. Labate

Eric Angel

19 Attorneys for Defendant

EXHIBIT A

Calendar Line 6

Case Name: Bustamante v. Marriott Hotel Services, Inc. (PAGA)
Case No.: 22CV400968

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on February 26, 2025, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

This is a putative class and representative action arising from alleged wage-and-hour violations. Plaintiff Gabriela Bustamante (“Plaintiff”) filed her original complaint against defendant Marriott Hotel Services, Inc. (“Defendant”) on July 21, 2022, setting forth a single cause of action under the Private Attorneys General Act of 2004 (“PAGA”). On November 17, 2022, Plaintiff filed a first amended complaint, and on December 16, 2022, Defendant removed the action to federal court.

On September 14, 2023, the federal court remanded the case to this court, and Plaintiff filed the operative second amended complaint (“SAC”), setting forth the following causes of action: (1) Failure to Pay All Wages Due (Labor Code §§ 226.7, 510, 512, and 1194; IWC Wage Order 5-2001); (2) Failure to Provide Rest Periods or Compensation in Lieu Thereof (Labor Code §§ 226.7; IWC Wage Order 5-2001); (3) Failure to Provide Meal Periods or Compensation in Lieu Thereof (Labor Code §§ 226.7, 510, 512, and 1194; IWC Wage Order 5-2001); (4) Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement Provisions (Labor Code §§ 226(a), (e)); (5) Failure to Pay Wages Due at Separation of Employment (Labor Code §§ 201-203); (6) Violation of Business and Professions Code § 17200; and (7) Penalties Pursuant to Labor Code §§ 2699(f) for Violations of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512, and 1194 and Pursuant to Labor Code § 2699(a) for Violations of Labor Code §§ 226.3 and 558.

The parties have reached a settlement, and Plaintiff moved for preliminary approval. The motion was unopposed, and on September 5, 2024, the court issued an order granting Plaintiff’s motion for preliminary approval and setting a final approval hearing for February

26, 2025. On January 31, 2025, Plaintiff filed a motion for final approval of the settlement, and the motion is unopposed.

II. LEGAL STANDARD FOR SETTLEMENT AGREEMENTS

A. Class Action

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

In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the 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.

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

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

The burden is on the proponent of the settlement to show that it is fair and reasonable. However “a presumption of fairness exists where: (1) the settlement 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.”

(*Wershba*, *supra*, 91 Cal.App.4th at p. 245, citation omitted.)

B. PAGA

Labor Code section 2699, subdivision (s)(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.” (*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) 596 U.S.____, 2022 U.S. LEXIS 2940.)

Like 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.” (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 [“when 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 (*O’Connor*).)

The settlement must be reasonable considering 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, 2016 U.S. Dist. LEXIS 140759, at *20-24.)

III. TERMS AND ADMINISTRATION OF SETTLEMENT

This case has been settled on behalf of the following Class and Class Members:

[A]ll individuals who are who have been directly employed by Defendant in California at the Monterey Marriot as a non-exempt employee during any portion of the Class Period.

The settlement as amended defines the term “Class Period” as “the time from July 21, 2018 through November 24, 2023, the date when the number of workweeks worked by Class Members since July 21, 2018 reached 37,891.” The settlement also includes a subset PAGA class of PAGA Members defined as “all individuals who are or who have been employed by Defendant in California at the Monterey Marriott as a non-exempt employee during any portion of the PAGA Period [July 21, 2021 through November 24, 2023].”

Defendant will pay a gross settlement amount of \$290,000. This includes attorney fees of up to one third of the gross settlement amount (\$96,666.67), litigation costs not to exceed \$20,000, a PAGA allocation of \$25,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Employees as individual PAGA payments), a service award of \$4,500; and settlement administration expenses not to exceed \$10,000. Net proceeds will be distributed to class members on pro rata basis according to the number of workweeks they were employed by Defendant. Individual settlement payment checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to UNICEF USA as the *cy pres* recipient. The court approves the designated *cy pres* recipient.⁹

In exchange for the settlement, the class members agree to release Defendant and related entities and persons from all claims that were or reasonably could have been alleged based on the facts pleaded in the SAC occurring during the Class Period. PAGA Members agree to release Defendant and related entities and persons from all claims for PAGA civil penalties that were or could have been alleged based on facts pleaded in the SAC and the

⁹ Code of Civil Procedure section 384 requires that the unpaid residue or abandoned class member funds be paid to “nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent.”

LWDA notice. The releases are appropriately tailored to the facts alleged. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538.)

In its order granting preliminary approval of the settlement, the court approved ILYM Group, Inc. (“ILYM”) as the settlement administrator. On September 26, 2024, ILYM received the class data file from Defendant’s counsel, including the class list containing 384 individuals. (Declaration of Nick Castro (“Castro Decl.”), ¶ 5.) On October 17, 2024, ILYM caused the notice packet to be mailed to all 384 individuals on the class list. (*Id.* at ¶ 7.) As of the date of Mr. Castro’s declaration, January 17, 2025, a total of nine notice packets have been deemed undeliverable. (*Id.* at ¶¶ 8-10.) The deadline to request exclusion or submit a written objection was December 2, 2024. As of January 17, 2025, ILYM has received zero requests for exclusion and zero written objections to the settlement. (*Id.* at ¶¶ 11-12.) ILYM estimates that participating class members will receive an average payment of approximately \$366.96. (*Id.* at ¶¶ 13-14.) The notice process has now been completed.

At preliminary approval, the court found the settlement to be fair and reasonable. Given that there are no objections, it finds no reason to deviate from that finding now. Accordingly, the court finds that the settlement is fair and reasonable for purposes of final approval.

IV. ENHANCEMENT AWARDS, ATTORNEY FEES AND COSTS

Plaintiff requests an enhancement award of \$4,500.

The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit. Criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. These “incentive awards” to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit.

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, internal punctuation and citations omitted.)

Plaintiff has filed a declaration describing her participation in this litigation. Finding that an incentive award is justified and that the amount requested is reasonable, the court approves the incentive award in the amount requested.

The court has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) “Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method.” (*Wershba, supra*, 91 Cal.App.4th at p. 254.)

Plaintiff’s counsel seeks an attorney fee award of \$96,666.67 (one-third of the gross settlement amount). (Application for Approval of Attorneys’ Fees [] (“Motion”), p. 1; Declaration of Daniel F. Gains [filed on January 31, 2025] (“Gaines Decl.”), ¶ 53.) Counsel asserts that the requested fee award is within the range of reasonableness and that a percentage award is supported by the circumstances of the case and the contingency basis of the representation. (Motion, ¶¶ 42-57.) Counsel also contends a lodestar cross-check confirms the reasonableness of the requested fee award. (*Ibid.*) Plaintiff’s counsel assert that their total lodestar in this action is \$92,167.50, based on a total of 141.4 hours billed at rates ranging from \$200 per hour to \$700 per hour. (*Id.* at ¶¶ 44-50 and Ex. E.) This results in a multiplier of approximately 1.05. This is within the range of multipliers that courts typically approve. (See *Wershba, supra*, 91 Cal.App.4th at p. 255 “[m]ultipliers can range from 2 to 4 or even higher”; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases].)

The benefits achieved by the settlement justify an award of attorney fees to class counsel. The court finds that the requested attorney fee award is reasonable as a percentage of the common fund and approves an attorney fee award in the requested amount of \$96,666.67.

Plaintiff’s counsel also requests reimbursement of litigation costs in the amount of \$13,424.42 and presents an itemized list supporting that figure. (Gaines Decl., ¶ 58 and Ex. F.) This is less than the \$20,000 provided for in the settlement. Accordingly, the court finds the requested litigation costs to be reasonable and approves an award of litigation costs in the requested amount of \$13,424.42. The settlement administration costs are also approved in the

requested amount of \$9,495, which is less than the \$10,000 maximum set by the agreement. (Castro Decl., ¶ 16.)

V. CONCLUSION

The motion for final approval of class and representative action settlement is GRANTED. The class as defined herein is certified for settlement purposes. Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) 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.

The Court sets a compliance hearing for **November 12, 2025 at 2:30 p.m.** in Department 19. 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 to the *cy pres* recipient; 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.

Plaintiffs' counsel shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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_____ (For messenger) my business address is:

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____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on March 3, 2025, at Westlake Village, California.