

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

TAMI MARIE BOYER, individually and on behalf of all others similarly situated,	)	Case No.: 22CV399734
	)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF’S
	)	MOTION FOR FINAL APPROVAL OF
v.	)	CLASS ACTION AND PAGA
	)	SETTLEMENT
	)	
SERRANO ELECTRIC INC., et al.,	)	Dept. 7
	)	
Defendants.	)	

This is a putative class and Private Attorneys General Act (“PAGA”) action. Plaintiff Tami Marie Boyer alleges that Defendant Serrano Electric Inc. 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 settlement, which is unopposed. As discussed below, the Court GRANTS the motion.

I. BACKGROUND

On November 17, 2022, Plaintiff filed a class action and PAGA complaint accusing Defendant of failing to: properly pay overtime wages, provide meal periods, authorize and permit rest breaks, properly pay meal and rest break premiums, pay minimum wages, pay timely

1 pay wages during employment and upon termination, provide accurate wage statements, keep
2 accurate payroll records and reimburse necessary business expenses. Plaintiff also alleged that
3 Defendant's actions violated California Business and Professions Code § 17200.

4 In the operative complaint, Plaintiff asserts the following causes of action: (1) failure to
5 pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal breaks; (4)
6 failure to permit rest breaks; (5) failure to reimburse business expenses; (6) failure to provide
7 accurate itemized wage statements; (7) failure to pay wages timely during employment; (8)
8 failure to pay all wages due upon separation of employment; (9) violation of Business &
9 Professions Code § 17200; and (10) enforcement of Labor Code § 2698 et seq. ("PAGA").

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

11 **A. Class Action**

12 Generally, "questions whether a [class action] settlement was fair and reasonable,
13 whether notice to the class was adequate, whether certification of the class was proper, and
14 whether the attorney fee award was proper are matters addressed to the trial court's broad
15 discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
16 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
17 260.)

18 "In determining whether a class settlement is fair, adequate and reasonable, the trial court
19 should consider relevant factors, such as the strength of plaintiffs' case, the risk, expense,
20 complexity and likely duration of further litigation, the risk of maintaining class action status
21 through trial, the amount offered in settlement, the extent of discovery completed and the stage
22 of the proceedings, the experience and views of counsel, the presence of a governmental
23 participant, and the reaction of the class members to the proposed settlement." (*Wershba, supra*,
24 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

1 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
2 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
3 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
4 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
5 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
6 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
7 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
8 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
9 marks omitted.) The trial court also must independently confirm that “the consideration being
10 received for the release of the class members’ claims is reasonable in light of the strengths and
11 weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168
12 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be
13 “provided with basic information about the nature and magnitude of the claims in question and
14 the basis for concluding that the consideration being paid for the release of those claims
15 represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

16 **B. PAGA**

17 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall
18 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
19 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
20 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
21 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
22 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
23 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*
24 *Moriana* (2022) 596 U.S. 639.)

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

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

17 **III. SETTLEMENT CLASS**

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

19 [A]ll non-exempt employees employed by Defendant in the State of California at any
20 time during January 2, 2018 to June 30, 2023.

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

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

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

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

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

24 The non-reversionary gross settlement is \$695,000. Attorney fees of up to one-third of
25 the gross settlement, i.e., \$231,666.67, litigation costs not to exceed \$25,000, and \$6,750 in

1 administration costs will be paid from the gross settlement. \$20,000 will be allocated to PAGA
2 penalties, 75% of which (\$15,000) will be paid to the LWDA. Plaintiff seeks an enhancement
3 award of \$10,000.

4 The net settlement will be allocated to class members on a pro rata basis based on the
5 number of weeks worked during the class period. With a participating class size of 183
6 individuals, class members will, on average, receive \$2,232. The highest award is estimated to
7 be approximately \$5,241.35, and the lowest \$18.26. The average PAGA award is estimated to
8 be approximately \$36.23, the highest approximately \$57.46 and the lowest \$0.44. Class
9 members were not required to submit a claim to receive their payment. For tax purposes,
10 settlement payments will be allocated 33% to wages and 66.67% to penalties and interest. The
11 employer-side payroll taxes on the portion allocated to wages will be paid by Defendant
12 separately from, and in addition to, the gross settlement amount. 100% of the PAGA payment to
13 “Aggrieved Employees” will be allocated to penalties. Funds associated with checks uncashed
14 after 180 days will be transmitted to the State Controller Unclaimed Property Fund in the name
15 of the class member for whom the funds are designated.

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

17 [A]ll claims that were alleged, or reasonably could have been alleged, based on the facts
18 alleged in the Operative Complaint, which arose during the Class Period. Except as set forth in
19 Section 5.3 of [the Agreement], Participating Class Members do not release any other claims,
20 including claims for vested benefits, wrongful termination, violation of the Fair Employment and
21 Housing Act, unemployment insurance, disability, social security, workers’ compensation, or
22 claims based on facts occurring outside the Class Period.

23 “Aggrieved Employees” will also release “all claims for PAGA penalties that were
24 alleged, or reasonably could have been alleged, based on the facts stated in the Operative
25 Complaint and the PAGA Notice, which arose during the PAGA Period.” As the Court

1 determined in its order preliminarily approving the settlement, these releases
2 are appropriately tailored to the factual allegations at issue. (See *Amaro v. Anaheim Arena*
3 *Management, LLC* (2021) 69 Cal.App.5th 521, 537.) Consistent with the statute, Aggrieved
4 Employees will not be able to opt out of the PAGA portion of the settlement.

5 The notice period has now been completed. According to the declaration of a project
6 manager with settlement administrator Rust Consulting, Inc. (“Rust”), Chris Pikus, submitted in
7 support of the instant motion, on January 29, 2024, Rust received from Defendant’s counsel the
8 names and identifying information (including last known mailing address) for each of 184
9 settlement class members and subsequently processed these items against the National Change of
10 Address database to confirm and update the relevant information. On February 12, 2024, notice
11 packets were sent via first class mail to all 184 individuals contained in the list provided to Rust.
12 As of the date of Mr. Pikus’ declaration, July 25, 2024, five notices remain undeliverable of the
13 eight initially returned to Rust. Also, as of the foregoing date, one request for exclusion has been
14 received. However, the exclusion was received postmarked after the April 12, 2024 deadline
15 and, according to Rust, is therefore considered late and invalid such that there are 184
16 participating class members. No objections have been received.

17 At preliminary approval, the Court found that the proposed settlement provides a fair and
18 reasonable compromise to Plaintiff’s claims, and that the PAGA settlement is genuine,
19 meaningful, and fair to those affected. It finds no reason to depart from these findings now,
20 especially considering that there are no objections. Therefore, the Court finds that the settlement
21 is fair and reasonable for the purposes of final approval.

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

23 As articulated above, Plaintiff’s counsel seeks a fee award of \$231,666.67, or one-third of
24 the gross settlement, which is not an uncommon contingency fee allocation in a wage and hour
25 class action. This award is facially reasonable under the “common fund” doctrine, which allows a

1 party recovering a fund for the benefit of others to recover attorney fees from the fund itself.
2 Plaintiff also provides a lodestar figure of \$143,035, which is based on 196.5 hours at billing
3 rates of \$450 to \$950 per hour, resulting in a multiplier of 1.62. This is well within the range of
4 multipliers that courts typically approve in actions of this type. (See *Laffitte v. Robert Half*
5 *Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion
6 in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in
7 a multiplier of 2.03 to 2.13]; *Wershba, supra*, 91 Cal.App.4th at p. 255 “[m]ultipliers can range
8 from 2 to 4 or even higher”]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051,
9 fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and
10 citing the court’s own survey of large settlements finding “a range of 0.6–19.6, with most (20 of
11 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range”].)

12 “While the percentage method has been generally approved in common fund cases,
13 courts have sought to ensure the percentage fee is reasonable by refining the choice of a
14 percentage or by checking the percentage result against a lodestar- multiplier calculation.”
15 (*Laffitte, supra*, 1 Cal.5th 480, 494-495.) Applying this latter approach,

16 “[T]he percentage-based fee will typically be larger than the lodestar-based fee.
17 Assuming that one expects rough parity between the results of the percentage method and the
18 lodestar method, the difference between the two computed fees will be attributable solely to a
19 multiplier that has yet to be applied. Stated another way, the ratio of the percentage-based fee to
20 the lodestar-based fee implies a multiplier, and that implied multiplier can be evaluated for
21 reasonableness. If the implied multiplier is reasonable, then the cross-check confirms the
22 reasonableness of the percentage-based fee; if the implied multiplier is unreasonable, the court
23 should revisit its assumptions.” (*Laffitte, supra*, 1 Cal.5th at p. 496, quoting Walker &
24 Horwich, *The Ethical Imperative of a Lodestar Cross-check: Judicial Misgivings About*
25 “Reasonable Percentage” Fees in Common Fund Cases (2005) 18 Geo. J. Legal Ethics 1453,

1 1463.) As described by the California Supreme Court, “[i]f the multiplier calculated by means of
2 a lodestar crosscheck is extraordinarily high or low, the trial court should consider whether the
3 percentage used should be adjusted so as to bring the imputed multiplier within a justifiable
4 range, but the court is not necessarily required to make such an adjustment.” (*Laffitte, supra*, 1
5 Cal.5th at 505.)

6 Here, as the multiplier is well within the acceptable range and is supported by the
7 percentage cross-check, the Court finds counsel’s requested fee award is reasonable. Plaintiff’s
8 counsel also seeks \$14,945.20 in litigation costs, which is below the \$25,000 limit provided by
9 the settlement and appears reasonable. The \$6,750 in administrative costs are also approved.

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

13 VI. CONCLUSION

14 In accordance with the above, assuming satisfactory clarification is provided as to the
15 number of participating class members, IT IS HEREBY ORDERED, ADJUDGED, AND
16 DECREED THAT:

17 Plaintiff’s motion for final approval is GRANTED. The following class is certified for
18 settlement purposes only:

19 [A]ll non-exempt employees employed by Defendant in the State of California at any
20 time during January 2, 2018 to June 30, 2023.

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

ORDER GRANTING PLAINTIFFS’ MOTION FOR PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT

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

9
10 DATED: August 21, 2024


CHARLES F. ADAMS
Judge of the Superior Court