

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Hayward Hall of Justice

Marisol Magana  
Plaintiff/Petitioner(s)  
VS.  
Peets Coffee, Inc  
Defendant/Respondent  
(s)

No. 23CV026139

Date: 01/31/2025

Time: 2:00 PM

Dept: 520

Judge: Julia Spain

ORDER re: Hearing on Motion for  
Final Approval of  
Settlement filed by Marisol  
Magana (Plaintiff) filed by  
Marisol Magana (Plaintiff)  
on 12/17/2024

After further briefing, the unopposed Motion of Plaintiffs Marisol Magana (“Plaintiff”) for Preliminary Approval of Settlement is GRANTED. (Kuchinsky Suppl. Decl. ¶ 8)

## BACKGROUND

Plaintiff filed her Complaint on January 23, 2023 as a Private Attorneys General Act (“PAGA”) enforcement action. (Register of Actions (“ROA”).) On May 14, 2024, the parties participated in a full-day mediation with Lisa Klerman that resulted several days later in settlement of Plaintiff’s claims. (Kuchinsky Decl. ¶ 11.)

## OVERVIEW

The Court has a “fiduciary responsibility as [guardian] of the rights of the absentee class members when deciding whether to approve a settlement agreement.” (Duran v. Obesity Research Institute, LLC (2016) 1 Cal.App.5th 635, 646.) Although “there is a strong public policy favoring the settlement of litigation, this policy does not excuse a contractual clause that is otherwise illegal or unjust.” (Timney v. Lin (2003) 106 Cal.App.4th 1121, 1127.) The Court must ensure the settlement is not “contrary to law or to public policy.” (Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America (2006) 141 Cal.App.4th 46, 61.)

Further, the Court is obligated to ensure 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.” (Cellphone Termination Fee Cases (2010) 186 Cal.App.4th 1380, 1389.) The Court “must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best

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interests of those whose claims will be extinguished.” (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

## Reasonableness

The trial court has broad discretion to determine whether the settlement is fair. (Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801.) Relevant factors to be considered include:

- 1) the strength of plaintiffs' case,
  - 2) the risk, expense, complexity,
  - 3) the likely duration of further litigation,
  - 4) the risk of maintaining class action status through trial,
  - 5) the amount offered in settlement,
  - 6) the extent of discovery completed and the stage of the proceedings,
  - 7) the experience and views of counsel,
  - 8) the presence of a governmental participant, and
  - 9) the reaction of the class members to the proposed settlement.
- (Dunk, supra, 48 Cal.App.4th at p. 1801.)

The parties' Settlement Agreement generally satisfies these requirements.

## Proposed Settlement Agreement

Pursuant to the Settlement, Defendant has agreed to pay the Gross Settlement Amount (“GSA”) of \$800,000.00 to be distributed as follows:

- o Class Counsel Attorney's Fees of up to \$266,666.66
- o Class Counsel Litigation Costs of up to \$15,000
- o Service Award for Class Action Representative: \$10,000
- o PAGA Penalty Fund Payment of \$45,000.00 split as follows:
  - \$33,750.00 to Labor Workforce Development Agency (“LWDA”)
  - \$11,250.00 to PAGA-eligible aggrieved employees
- o Settlement Administrator Fees of up to \$7,500.00

All remaining GSA funds will be available to split between participating class members.

## The Class

The proposed Settlement Class consists of “all current and former non-exempt employees who worked at the [Defendant's] Roasting Plant . . . from January 23, 2019 through August 18, 2024.” (Settlement Agreement ¶ 5; Motion for Preliminary Approval p. 10: 8-10.) There are approximately 462 Class Members. (MPA p.10:10.) The number of participating class members will be finalized after the class notice has been sent out and all opt-out notices and objections have been received.

The class as defined appears to be an “ascertainable and sufficiently numerous class” with a “well-defined community of interest.” (Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1021; Code Civ. Proc., § 382.) The court certifies this class for purposes of

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settlement.

## Scope of Release

1. Plaintiff's and Participating class members' release: after amendment, the release by Participating Class Members, including Plaintiff is limited to claims alleged in Plaintiff's Complaint. (Kuchinsky Suppl. Decl., ¶ 5, Ex. 4.)

2. State of California's release: the release by the state of California, as amended, is appropriately limited to claims alleged in the Notice. (Ibid.)

## Uncashed Settlement Checks

The proposed Settlement Agreement indicates all settlement checks that remain uncashed for more than 180 days after issuance will be tendered to the State of California Unclaimed Property Fund. (Code Civ. Proc., § 1500 et seq.)

## Class Counsel, Attorney Fees & Costs

Alex Kuchinsky and their law firm Kuchinsky Law Office, P.C. are approved as class counsel for purposes of this Settlement Agreement.

This Court's benchmark for fees is 30% of the total fund. (Laffitte v. Robert Half International, Inc. (2016) 1 Cal.5th 480, 495.)

Here, 30% of GSA of \$800,000 is \$225,000; however, Plaintiffs seek \$266,666.66 or 33% of the GSA. As no reason is provided for why Plaintiff seeks more than a third of the GSA besides referencing a lodestar cross-check, the Court is inclined to decrease the amount sought, but will reserve its determination of final attorney fees for the final approval hearing.

## Class Representative Service Payment

The Court will not decide the amount of any service payment until the final approval hearing. The named Plaintiff for whom a service payment is sought must provide evidence regarding the nature of their participation in the action, including a description of his specific actions and the amount of time he committed to the prosecution of the case. (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804-807.) This may be provided in connection with the hearing on final approval of this Settlement.

## Claims Administrator & Fee

Simpluris Settlement Administrators is approved as the Settlement Administrator for this class action and PAGA settlement. Settlement Administrator fees of up to \$7,500.00 appear to be reasonable.

The Court will determine at the final approval hearing the actual amount of fees to be awarded based on a declaration from the Settlement Administrator and an itemization of costs and fees incurred in its settlement administration.

## Notice & Distribution

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The Court approves the proposed Class Action Notice (“Notice”) that provides a detailed summary of the litigation and reasonably informs potential class members of how to object to the settlement, both in writing and in person.

## **Final Approval Hearing**

A final approval hearing is set for Friday, AUGUST 1, 2025 at 2:00 p.m.

Prior to this date, class members must be provided with the Notice and given at least forty-five (45) days to object, opt-out or exclude themselves from the class in writing.

The deadline for written objections, exclusions or opt-out requests shall be July 17, 2025, but the Court will hear any oral requests for exclusion, opt-out or objections at the time of the final approval hearing.

Clerk is directed to serve copies of this order, with proof of service, to counsel and to self-represented parties of record.

Dated : 01/31/2025



**Julia Spain / Judge**

|                                                                                                   |                                                                                                                           |
|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| <p align="center"><b>SUPERIOR COURT OF CALIFORNIA<br/>COUNTY OF ALAMEDA</b></p>                   | <p align="center">Reserved for Clerk's File Stamp</p>                                                                     |
| <p>COURTHOUSE ADDRESS:<br/>Hayward Hall of Justice<br/>24405 Amador Street, Hayward, CA 94544</p> | <p align="center"><b>FILED</b><br/>Superior Court of California<br/>County of Alameda<br/>01/31/2025</p>                  |
| <p>PLAINTIFF/PETITIONER:<br/>Marisol Magana</p>                                                   | <p>Chad Finke, Executive Officer / Clerk of the Court<br/>By: <u><i>Daniell Labrecque</i></u> Deputy<br/>D. Labrecque</p> |
| <p>DEFENDANT/RESPONDENT:<br/>Peets Coffee, Inc</p>                                                |                                                                                                                           |
| <p align="center"><b>CERTIFICATE OF MAILING</b></p>                                               | <p>CASE NUMBER:<br/>23CV026139</p>                                                                                        |

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the attached document upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Hayward, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Alexander M. Chemers  
OGLETREE, DEAKINS, NASH, SMOAK & STEWART,  
P.C.  
400 South Hope Street, Suite 1200  
Los Angeles, CA 90071

Alexei Kuchinsky  
Alexei Kuchinsky  
220 Montgomery St., Ste 2100  
San Francisco, CA 94104

Dated: 01/31/2025

Chad Finke, Executive Officer / Clerk of the Court

By:

*Daniell Labrecque*

D. Labrecque, Deputy Clerk

**CERTIFICATE OF MAILING**