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 County of Santa Clara
 23CV413379
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 ERIKA SANCHEZ CRUZ &
 ESPERANZA GOMEZ

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

COMPLEX DIVISION

ERIKA SANCHEZ CRUZ, ESPERANZA
 GOMEZ, and on behalf of all other
 similarly situated persons,

Plaintiffs,

v.

TOTAL QUALITY MAINTENANCE,
 INC.; And DOES 1-20, inclusive,

Defendants.

Case No. 23CV413379

**[~~PROPOSED~~] ORDER GRANTING
 PLAINTIFFS' MOTION FOR FINAL
 APPROVAL OF CLASS AND
 REPRESENTATIVE ACTION
 SETTLEMENT**

Date: January 22, 2025

Time: 1:30 p.m.

Department: 19

Judge: Hon. Theodore C. Zayner

Complaint Filed: April 3, 2023

Trial Date: Not Set

1 Plaintiffs Erika Sanchez Cruz and Esperanza Gomez (“Plaintiffs”) move for final approval
2 of class and representative action settlement. The motion is unopposed by Defendant Total Quality
3 Maintenance, Inc. (“Defendant”). **Plaintiffs’ motion for final approval of class and**
4 **representative action settlement is GRANTED.**

5 The Court’s ruling is as follows:

6 **I. Introduction**

7 This is a class and representative action arising out of alleged wage and hour violations. On
8 April 3, 2023, Plaintiffs Erika Sanchez Cruz and Esperanza Gomez (collectively, Plaintiffs) filed
9 their still operative Class Action Complaint against Defendant Total Quality Maintenance, Inc.
10 (Defendant), setting forth the following causes of action:

- 11 (1) failure to pay straight wages;
- 12 (2) failure to pay all overtime earned for hours worked in violation of Labor Code, §§ 510
13 and 1194, and [Industrial Welfare Commission (IWC)] Wage Orders;
- 14 (3) failure to provide meal periods in violation of Labor Code, §§ 226.7 and 512, and IWC
15 Wage Orders;
- 16 (4) failure to provide rest breaks;
- 17 (5) failure to provide an accurate itemized wage statement in violation of Labor Code §
18 226;
- 19 (6) waiting time penalties for failure to pay wages for all hours worked in violation of
20 Labor Code, §§ 201, 202 and 203;
- 21 (7) violation of Labor Code, §§ 204 and 210;
- 22 (8) unfair business practices;
- 23 (9) Private Attorney General Act [Labor Code, § 2698, et seq.] (PAGA); and
- 24 (10) civil penalties under Labor Code, § 558.

25 The parties reached a settlement, and Plaintiffs moved for preliminary approval of the
26 settlement. On October 3, 2024, the Court granted the motion for preliminary approval of
settlement and thereafter entered a formal order memorializing its decision.

1 Now before the Court is the unopposed motion for final approval of the settlement
2 agreement.

3 **II. Legal Standard**

4 Generally, “questions whether a settlement was fair and reasonable, whether notice to the
5 class was adequate, whether certification of the class was proper, and whether the attorney fee
6 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
7 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*
8 (1996) 48 Cal.App.4th 1794 (*Dunk*).)

9 In determining whether a class settlement is fair, adequate and reasonable, the trial court
10 should consider relevant factors, such as “the strength of plaintiffs’ case, the risk, expense,
11 complexity and likely duration of further litigation, the risk of maintaining class action
12 status through trial, the amount offered in settlement, the extent of discovery completed
13 and the stage of the proceedings, the experience and views of counsel, the presence of a
14 governmental participant, and the reaction of the class members to the proposed
15 settlement.”

16 (*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801
17 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

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

25 The burden is on the proponent of the settlement to show that it is fair and reasonable.

26 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

1 the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
2 percentage of objectors is small.”

3 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

4 Similar to its review of class action settlements, the Court must “determine independently
5 whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the
6 LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th
7 56, 76-77.) The Court must make this assessment “in view of PAGA’s purposes to remediate
8 present labor law violations, deter future ones, and to maximize enforcement of state labor laws.”
9 (*Id.* at p. 77.)

10 **III. Terms and Administration of Settlement**

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

12 [A]ll current and former non-exempt employees of [Defendant] employed in California
13 during the Class Period.

14 (Declaration of Daniel Bronstein in Support of Motion for Final Approval of Class Settlement
15 (“Bronstein Decl.”), Ex. 1 (“Agreement”), ¶ 6.) The settlement also includes a subset of “PAGA
16 Members,” defined as “all current and former non-exempt employees of [Defendant] employed in
17 the State of California during the PAGA during the PAGA Period.” (Agreement, ¶ 24.) The PAGA
18 Period means the period from January 28, 2022 through the date of the Preliminary Approval
19 Order. (Agreement, ¶ 25.)

20 Defendant will pay a maximum, non-reversionary amount of \$124,500. (Agreement, ¶ 18.)
21 The gross settlement amount includes attorney fees up to \$41,085 (1/3 of the gross settlement
22 amount), litigation costs not to exceed \$5,000, settlement administration costs not to exceed
23 \$8,000, a PAGA allocation of \$20,000 (75 percent of which will be paid to the LWDA and 25
24 percent which will be paid to PAGA Members. (Agreement, ¶¶ 18, 50(a)-(e).) Plaintiffs request a
25 total of \$5,000 in incentive awards (i.e., \$2,500 each). (Bronstein Decl., ¶ 49.)

26 The net settlement amount will be distributed to participating class members on a pro rata
basis according to their number of applicable workweeks. (Agreement, ¶ 50(f).) Checks that

1 remain uncashed after 180 days will be cancelled, and the associated funds will be transmitted to
2 the Katherine and George Alexander Community Law Center (Alexander Law Center).
3 (Agreement, ¶ 61) The Alexander Law Center is a qualified cy pres designee because it is a
4 nonprofit organization providing civil legal services to the indigent and promotes the rights of
5 workers to be paid their wages. The court approves the cy pres designation.¹

6 In exchange for the settlement, the class members agree to release Defendant, and related
7 entities and persons, from all claims that were or reasonably could have been alleged based on the
8 facts pleaded in the Complaint occurring during the Class Period. (Agreement, ¶¶ 29, 35, 48.)
9 PAGA Members agree to release Defendant, and related entities and persons, from any and all
10 claims for civil penalties under PAGA arising from any of the factual allegations in Plaintiffs’
11 PAGA Notice letter arising during the PAGA Period. (Agreement, ¶¶ 29, 36, 49.)

12 The Court approves ILYM Group, Inc. (“ILYM”) as the settlement administrator. On
13 October 21, 2024, Defense counsel provided ILYM with the class data file (“Class List”),
14 consisting of 1,663 individuals. (Declaration of Cassandra Polites (“Polites Decl.”), ¶ 5.) On
15 November 4, 2024, ILYM sent the Class Notice to all 639 members on the Class List. (*Id.* at ¶ 7.)
16 The deadline to request exclusion, submit a written objection, or submit a workweek dispute was
17 December 19, 2024. As of the date of the Polites Declaration, December 26, 2024, 49 Class Notice
18 Packets have been considered undeliverable, despite conducting skip tracing. (*Id.* at ¶ 10.) As of
19 the date of the same declaration, the settlement administrator has received no objections to the
20 settlement and no disputes from Class Members. (*Id.* at ¶¶ 12-13.) The settlement administrator
21 has received 1 request for exclusion from a class member, resulting in 638 Class Members. (*Id.* ¶¶
22 11, 15.) According to the administrator’s calculations, the average individual settlement will be
approximately \$71.18. (*Id.* at ¶ 16.) The notice process has now been completed.

23 At preliminary approval, the Court found the settlement to be fair and reasonable. Given
24 that there are no objections, it finds no reason to deviate from that finding now.

25 ¹ Code of Civil Procedure section 384 requires that the unpaid residue or abandoned class member funds be paid to
26 “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.”

1 Accordingly, the Court finds that the settlement is fair and reasonable for purposes of final
2 approval.

3 **IV. Enhancement Award, Attorney Fees, and Costs**

4 The Settlement Agreement provides for an enhancement award to Plaintiffs in the amount
5 of \$2,500 each.

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

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

19 Each of the Plaintiffs submitted a declaration describing their participation in the action
20 and stating that they each spent approximately 20 hours in connection with this litigation. As the
21 Court explained in its preliminary approval, it finds the requested amount of \$2,500 to each
22 Plaintiff (a total of \$5,000) to be reasonable. (Court’s Preliminary Order, p. 7.) Accordingly, the
23 Court approves an enhancement award to Plaintiffs in the amount of \$2,500 each, for a total of
24 \$5,000. The Court has an independent right and responsibility to review the requested attorney fees
25 and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular*
26 *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

1 recovery method.” (*Wershba, supra*, 91 Cal.App.4th at p. 254.)

2 Class counsel submitted a separate request for attorney fees, seeking an award in the
3 amount of \$41,500. (Declaration of Daniel Bronstein in Support of Plaintiffs’ Motion for
4 Attorneys’ Fees and Costs and Class Representative Service Payments, ¶ 13.) However, while
5 counsel requests fees in the amount \$41,500, the Agreement states that attorney fees shall not
6 exceed \$41,085. (Agreement, ¶¶ 3, 50(a).) Plaintiff provides evidence of a lodestar of \$48,124.07
7 based on 85.2 hours of work at hourly rates ranging from \$149.23 to \$850. (*Id.* at ¶ 15.) This
8 results in a negative multiplier. Furthermore, the benefits achieved by the settlement justify an
9 award of attorney fees to class counsel. Therefore, the court finds the \$41,085 amount stated in the
10 Agreement to be reasonable as percentage of the common fund without the use of a multiplier.
11 Accordingly, the Court approves an attorney fee award in the maximum amount as stated in the
12 Agreement, \$41,085.

13 Class counsel requests reimbursement of litigation costs in the amount of \$4,698.16, and
14 they provide an itemized list of costs incurred in that amount. (Bronstein Decl. for Attorney Fees, ¶
15 34, Ex. 2.) This is less than the \$5,000 provided for in the settlement agreement. Accordingly, the
16 Court finds the requested amount to be reasonable and approves an award of litigation costs in the
17 amount of \$4,698.16. The settlement administration costs are also approved in the requested
18 amount of \$8,000. (Polites Dec., ¶ 19, Ex. B.)

19 **V. Conclusion**

20 The motion for final approval of class and representative action settlement is GRANTED.
21 The class as defined herein is certified for settlement purposes. Judgment shall be entered through
22 the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Pursuant to Rule 3.769(h) of the
23 California Rules of Court, the Court retains jurisdiction over the parties to enforce the terms of the
24 settlement agreement and the final order and judgment.

25 The Court sets a compliance hearing for September 3, 2025 at 2:30 p.m. in Department 19.
26 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

1 herein; the number and value of any uncashed checks; amounts remitted to the cy pres
2 recipient; the status of any unresolved issues; and any other matters appropriate to bring to the
3 court's attention. Counsel shall also submit an amended judgment as described in Code of Civil
4 Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

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

6 IT IS SO ORDERED.
7

8 Dated: January 30, 2025

9
10 By: 

Honorable Theodore C. Zayner
Judge of the California Superior Court