

ORDER ON SUBMITTED MATTER

Filed
May 6, 2025
Clerk of the Court
Superior Court of CA
County of Santa Clara
23CV415661
By: MJacobo

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

CRYSTAL LOMBERA, individually, and on)	Case No.: 23CV415661
behalf of aggrieved employees pursuant to the)	
Private Attorneys General Act ("PAGA"),)	
Plaintiff,)	ORDER GRANTING PLAINTIFF'S MOTION
v.)	FOR FINAL APPROVAL OF CLASS
CREEKSIDE AUTO GROUP, et al.,)	ACTION AND PAGA SETTLEMENT
Defendants.)	

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiffs Cristal Lombera and Jesus Cabrera (collectively, "Plaintiffs") allege that Defendant Creekside Auto Group ("Defendant") committed various wage and hour violations. Before the Court is Plaintiffs' motion for final approval of settlement, which is unopposed. For the reasons discussed below, the Court GRANTS the motion.

I. Background

According to the allegations of the operative First Amended and Consolidated Class and Representative Action Complaint ("FAC"), Plaintiffs were formerly employed by Defendant as non-exempt, hourly-paid employees. (FAC, ¶ 17.) They allege that Defendant failed to: pay employees for all hours worked, including overtime and minimum wages; properly calculate and

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1 pay sick leave; provide uninterrupted and timely meal and rest periods or compensation in lieu
2 thereof; pay employees all wages owed upon termination; provide accurate, itemized wage
3 statements; and failed to reimburse employees for all necessary business expenses incurred by
4 them. (*Id.*, ¶¶ 24-42.)

5 Based on the foregoing, the operative FAC was filed on April 2, 2024, and asserts the
6 following causes of action: (1) unpaid overtime; (2) unpaid meal period premiums; (3) unpaid
7 rest period premiums; (4) unpaid minimum wages; (5) wages not timely paid during employment
8 and at termination; (6) non-compliant wage statements; (7) unreimbursed business expenses; (8)
9 PAGA penalties; and (9) violation of Business & Professions Code § 17200, *et seq.*

10 The parties reached a settlement and Plaintiffs moved for preliminary approval of the settlement,
11 which the Court granted and thereafter entered a formal order memorializing its decision. Now
12 before the Court is the unopposed motion for final approval of the settlement agreement.

13 II. Legal Standard

14 Generally, “questions whether a settlement was fair and reasonable, whether notice to the
15 class was adequate, whether certification of the class was proper, and whether the attorney fee
16 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
17 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*
18 (1996) 48 Cal.App.4th 1794 (*Dunk*).)

19 “In determining whether a class settlement is fair, adequate and reasonable, the trial court
20 should consider relevant factors, such as “the strength of plaintiffs’ case, the risk, expense,
21 complexity and likely duration of further litigation, the risk of maintaining class action status
22 through trial, the amount offered in settlement, the extent of discovery completed and the stage
23 of the proceedings, the experience and views of counsel, the presence of a governmental
24 participant, and the reaction of the class members to the proposed settlement.” (*Wershba, supra*,

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

“The list of factors is not exclusive and the 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 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.*, quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625 [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, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

Similar to 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.) The Court 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.)

III. Terms and Administration of Settlement

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

1 [A]ll current and former employees employed by Defendant as hourly-paid or non-
2 exempt employees in the State of California during the Class Period [of May 10, 2019 through
3 June 12, 2024].

4 According to the terms of the settlement, Defendant will pay a non-reversionary gross
5 settlement of \$2,500,000. The gross settlement amount includes attorney fees of up to
6 \$833,333.33 (one-third of the gross settlement), litigation costs not to exceed \$35,000 and
7 administration costs not to exceed \$15,000 will be paid from the gross settlement. \$150,000 will
8 be allocated to PAGA penalties, 75% of which (\$112,500) will be paid to the LWDA, with the
9 remaining 25% (\$37,500) distributed, on a pro rata basis, to “Aggrieved Employees,” who are
10 defined as “all current and former employees employed by Defendant as hourly-paid or non-
11 exempt employees in the State of California during [February 16, 2022 through June 12, 2024].”
12 Plaintiffs will each seek an incentive payment of \$10,000 (totaling \$20,000).

13 The net settlement amount (approximately \$1,446,666.67) will be allocated (on a pro rata
14 basis based on the number of weeks worked during the relevant periods) “Class Members”
15 defined as “all current and former employees employed by Defendant as hourly-paid or non-
16 exempt employees in the State of California during [May 10, 2019 through June 12, 2024].” For
17 tax purposes, settlement payments will be allocated 20% to wages and 80% to penalties and
18 interest. The employer-side payroll taxes will be paid by Defendant separate from, and in
19 addition to, the gross settlement amount. 100% of the payment to Aggrieved Employees will be
20 allocated to penalties. Funds associated with checks uncashed after 180 days will be transmitted
21 to Controller of the State of California to be held in trust for such class members pursuant to
22 California unclaimed property law.

23 In exchange for the settlement, the Class Members who do not opt out will release:
24 [A]ll claims that were asserted, related, or could have been asserted based on the allegations in
25 the Operative Complaint arising at any time during the Class Period, whether known or

1 unknown, contingent, or vested, of any kind whatsoever, in law or in equity. This includes, but is
2 not limited to, claims for: (a) failure to pay overtime and minimum wages; (b) failure to pay all
3 regular rate wages due (including sick leave pay); (c) failure provide meal and rest periods and
4 associated premium payments; (d) untimely pay of wages during employment and upon
5 termination; (e) inaccurate wage statements; (f) failure to maintain complete and accurate payroll
6 records; (g) failure to provide one day of rest; (h) failure to keep payroll records in a central
7 location; (i) failure to reimburse for necessary business expense; and (j) unfair business practices
8 stemming from these alleged Labor Code violations.

9 Aggrieved Employees, who consistent with the statute will not be able to opt out of the
10 PAGA portion of the settlement, will release:

11 [A]ll claims identified, pleaded, related, or otherwise set out in or that could have been
12 brought based on the facts alleged in Plaintiffs' letters to the LWDA and/or the Operative
13 Complaint that occurred the PAGA Period. This includes, but is not limited to, claims for: (a)
14 unpaid overtime; (b) unpaid meal and rest break premiums; (c) unpaid minimum wages; (d)
15 penalties for non-compliant wage statements; (e) waiting time penalties; (f) failure to pay final
16 wages in a timely manner; (g) unreimbursed business expenses; (h) failure to provide and
17 properly pay sick leave; (i) failure to provide one day of rest; (j) failure to keep payroll records in
18 a central location; (k); failure to timely pay wages during employment; and (l) penalties under
19 PAGA.

20 The foregoing releases are appropriately tailored to the allegations at issue. (See *Amaro v.*
21 *Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)

22 In its order granting preliminary approval of the settlement, the Court approved ILYM as
23 the settlement administrator. On December 9, 2024, Defense counsel provided ILYM with the
24 class data file, including names, social security numbers, last known mailing addresses,
25 employment dates, and the total number of relevant workweeks worked by each Class member

1 (“Class List”). (Declaration of Nick Castro (“Castro Decl.”), ¶ 6.) On January 3, 2025, ILYM
2 sent the Class Notice to 445 Settlement Class Members. (*Id.* at ¶ 7.) The final class size is 444.
3 (*Ibid.*) As of the date of Castro Declaration, March 25, 2025, 12 class Notices have been
4 considered undeliverable. (*Id.* at ¶ 9.) As of the date of the same declaration, the settlement
5 administrator has received no objections to the settlement and no disputes from Class Members.
6 (*Id.* at ¶¶ 10-12.) According to the administrator’s calculations, the average individual settlement
7 payment will be approximately \$3,296.77. (*Id.* at ¶ 15.) The notice process has now been
8 completed.

9 **IV. Enhancement Awards, Attorney Fees, and Costs**

10 The settlement Agreement provides for an enhancement award to Plaintiffs in the amount
11 of \$10,000 each (total of \$20,000).

12 The rationale for making enhancement or incentive awards to named plaintiffs is that
13 they should be compensated for the expense or risk they have incurred in conferring a benefit on
14 other members of the class. An incentive award is appropriate if it is necessary to induce an
15 individual to participate in the suit. Criteria courts may consider in determining whether to make
16 an incentive award include: 1) the risk to the class representative in commencing suit, both
17 financial and otherwise; 2) the notoriety and personal difficulties encountered by the class
18 representative; 3) the amount of time and effort spent by the class representative; 4) the duration
19 of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative
20 as a result of the litigation. These “incentive awards” to class representatives must not be
21 disproportionate to the amount of time and energy expended in pursuit of the lawsuit.
22 (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 [internal
23 punctuation and citation].)

24 In support of their motion for preliminary approval of the settlement, each Plaintiff
25 submitted a declaration describing his or her participation in the action. Plaintiff Lombera

1 indicates she spent over 40 hours in connection with the lawsuit. (Lombera Decl., ¶ 6.) Plaintiff
2 Cabrera indicates he spent an estimated 45 hours in connection with the lawsuit. (Cabrera Decl.,
3 ¶ 7.) Based on the number of hours spent on this lawsuit, the Court approves an enhancement
4 award of \$10,000 to Lombera, and \$10,000 to Cabrera.

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

10 Class counsels seeks an attorney fee award in the amount of \$833,333.33, one-third of the gross
11 settlement amount. On March 7, 2024 Class Counsels entered a fee and cost sharing agreement
12 where class counsel fees payment will be divided 55% to Justice Law Corporation and 45% to
13 Wilshire Law Firm. (Douglas Han Declaration, ¶ 16.)

14 Justice Law Corporation indicates a total of 525.8 hours worked at hourly rates ranging
15 from \$500 to \$900 per hour. This results in a lodestar of \$401,330. Wilshire Law Firm states a
16 total of 222.9 hours worked at rates ranging from \$500 to \$1,500 and resulting in a lodestar of
17 \$207,145. Combined, this results in a multiplier of 1.36. This is within the range of multipliers
18 that courts typically approve. (*Wershba, supra*, 91 Cal.App.4th at p. 255 “[m]ultipliers can
19 range from 2 to 4 or even higher”].) The benefits achieved by the settlement justify an award of
20 attorney fees to class counsel. The Court finds that the requested attorney fee award is reasonable
21 as a percentage of the common fund and approves an attorney fee award in the requested amount
22 of \$833,333.33.

23 Class counsel requests reimbursement of litigation costs in the amount of \$23,051.35.
24 The Court approves an award of litigation costs in this amount. The settlement administration
25 costs are also approved in the requested amount of \$9,850. (Castro Decl., ¶ 17.)

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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.

Dated: May 6, 2025


CHARLES F. ADAMS
Judge of the Superior Court

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is mluna@justicelawcorp.com

On May 6, 2025, I served the foregoing document described as

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

for the following case: **Lombera v. Creekside Auto Group**
LWDA/Court Case No.: **LWDA Case No.: CM- 936776-23**
Court Case No.: 23CV415661
Santa Clara County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 6, 2025, at Pasadena, California.



Madison Luna