ORDER ON SUBMITTED MATTER

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

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

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

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

II. Legal Standard

Generally, "questions whether a 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*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

"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, 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:

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

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

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

In exchange for the settlement, the Class Members who do not opt out will release:

[A]ll claims that were asserted, related, or could have been asserted based on the allegations in the Operative Complaint arising at any time during the Class Period, whether known or unknown, contingent, or vested, of any kind whatsoever, in law or in equity. This includes, but is not limited to, claims for: (a) failure to pay overtime and minimum wages; (b) failure to pay all regular rate wages due (including sick leave pay); (c) failure provide meal and rest periods and associated premium payments; (d) untimely pay of wages during employment and upon termination; (e) inaccurate wage statements; (f) failure to maintain complete and accurate payroll records; (g) failure to provide one day of rest; (h) failure to keep payroll records in a central location; (i) failure to reimburse for necessary business expense; and (j) unfair business practices stemming from these alleged Labor Code violations.

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

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

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

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

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

IV. Enhancement Awards, Attorney Fees, and Costs

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

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 citation].)

In support of their motion for preliminary approval of the settlement, each Plaintiff submitted a declaration describing his or her participation in the action. Plaintiff Lombera indicates she spent over 40 hours in connection with the lawsuit. (Lombera Decl., ¶ 6.) Plaintiff Cabrera indicates he spent an estimated 45 hours in connection with the lawsuit. (Cabrera Decl., ¶ 7.) Based on the number of hours spent on this lawsuit, the Court approves an enhancement award of $10,000 to Lombera, and $10,000 to Cabrera.

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.)

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

Justice Law Corporation indicates a total of 525.8 hours worked at hourly rates ranging from $500 to $900 per hour. This results in a lodestar of $401,330. Wilshire Law Firm states a total of 222.9 hours worked at rates ranging from $500 to $1,500 and resulting in a lodestar of $207,145. Combined, this results in a multiplier of 1.36. This is within the range of multipliers that courts typically approve. (*Wershba*, *supra,* 91 Cal.App.4th at p. 255 ["[m]ultipliers can range from 2 to 4 or even higher"].) 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 $833,333.33.

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

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 **December 11, 2025 at 2:30 p.m.** in Department 7. 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).

Dated: May 6, 2025

Charles F. Adams

CHARLES F. ADAMS
Judge of the Superior Court