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County of Santa Clara
23CV421189
By: fbryant

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

ROGELIO GARCIA and ABSHIR FARAH, individually, and on behalf of other members of the general public similarly situated, and as aggrieved employees pursuant to the Private Attorneys General Act ("PAGA")., Plaintiff, v. PROACTIVE BUSINESS SOLUTIONS, INC., a California corporation; and DOES 1 through 10, inclusive, Defendant.	Case No. 23CV421189 **ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS AND PAGA SETTLEMENT**

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiffs Rogelio Garcia and Abshir Farah (collectively, "Plaintiffs") allege that defendant Proactive Business Solutions, Inc. committed various wage and hour violations.

Before the Court is Plaintiffs' motion for final approval of class action and PAGA settlement, which is unopposed. As discussed below, the Court GRANTS the motion.

I. BACKGROUND

According to the allegations of the operative second amended complaint ("SAC"), Plaintiffs were employed by Defendant as non-exempt, hourly-paid employees from May 2022 to February 2023 (Garcia) and November 2021 to March 2023 (Farah). (SAC, ¶ 4.)

Plaintiff Garcia initiated this action on August 18, 2023, with the filing of the complaint and on October 31, 2023, he filed his first amended complaint, which asserted the following causes of action: (1) violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (2) violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (unpaid minimum wages); (3) violation of California Labor Code §§226.7, 512, subd. (a), 1198 (failure to provide meal periods); (4) violation of California Labor Code §§ 226.7, 516, 1198 (failure to authorize and permit rest periods); (5) violation of California Labor Code §§ 226, subd. (a), 1174, subd. (d), and 1198 (non-compliant wage statement and failure to maintain payroll records); (6) violation of California Labor Code §§ 201 and 202 (wage not timely paid upon termination); (7) violation of California Labor Code § 204 (failure to timely pay wage during employment); (8) violation of California Labor Code § 2802 (unreimbursed business expenses); (9) PAGA penalties; (10) violation of California Business & Professions Code §§ 17200, *et seq.* (unlawful business practices); and (11) violation of California Business & Professions Code §§ 17200, *et seq.* (unfair business practices). On March 28, 2025, Plaintiffs filed the operative SAC, which asserts the same claims and adds Plaintiff Farah to this action.

Plaintiffs now seek an order: certifying the class ("Class") for settlement purposes; confirming Plaintiffs as Class representatives; appointing Raul Perez, Orlando Villalba, and Helga Hakimi of Capstone Law APC, and Paul K. Haines, Sean M. Blakely, and Joel M. Gordon of Haines Law Group, APC as Class counsel; approving attorneys' fees and costs; approving costs to settlement administrator CPT Group, Inc. ("CPT"); approving payment to the Labor & Workforce Development Agency ("LWDA"); approving Class representative payments to Plaintiffs; and entering final judgment.

II. MOTION FOR FINAL APPROVAL

A. Legal Standard

i. Class Action

Generally, "questions whether a [class action] 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*), disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

> 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, internal citations and quotations omitted.)

In general, the most important factor is the strength of the plaintiffs' case on the merits, balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91 Cal.App.4th at p. 245.) The trial 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.*, citation and internal quotation marks omitted.) The trial court also must independently confirm that "the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Kullar, supra*, 168 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be "provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Id.* at pp. 130, 133.)

B. PAGA

Labor Code section 2699, subdivision (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639 , 2022 U.S. LEXIS 2940.)

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.) It 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; see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 ["when a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public ...."], quoting LWDA guidance discussed in *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O'Connor*).)

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

C. Settlement Class

Plaintiffs request that the following Class be certified for settlement purposes.

All current and former non-exempt employees who have been employed by Defendant Proactive during the Class Period [August 18, 2019, to August 16, 2024].

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

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

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

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

D. Terms and Administration of Settlement

The non-reversionary gross settlement amount is $720,000. Attorneys' fees of up to $252,000 (or 35% of the gross settlement), litigation costs of up to $30,000, and administrative costs of up to $10,000. $50,000 will be allocated to PAGA penalties, 75% of which ($37,500) will be paid to the LWDA, and the remaining 25% ($12,500) will be dispensed to "PAGA Settlement Group Members" who are defined as "all current and former non-exempt employees who have been employed by Proactive in California during the PAGA Period [August 23, 2022 to August 16, 2024]."

The net settlement amount—estimated to be $376,570.84—will be allocated to members of the "Class" who are defined as "all current and former non-exempt employees who have been employed by Defendant Proactive during the Class Period [August 18, 2019 to August 16, 2024]." For tax purposes, the settlement payments will be allocated 30% to wages and 70% to interest and penalties. Defendant will bear the cost of all payroll taxes owed by Defendant and will be paid separately and apart from the total settlement amount. Funds associated with checks uncashed after 180 days will be transmitted to the Controller of the State of California to be held in trust for such Class Members, pursuant to California's unclaimed property law. Plaintiffs will seek Class representative awards of $10,000 each—totaling $20,000.

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

> Any and all known and unknown local, state and federal claims against Defendants and the Released Parties that were pled or could have been pled based on the factual allegations contained in the operative complaint in the Actions or any amendments thereto or notices submitted by Plaintiffs to the LWDA pursuant to PAGA that occurred during the Class Period, including claims that Defendants failed to pay all wages due, including minimum wages and overtime wages; provide meal and rest periods; furnish accurate itemized wage statements; pay timely wages; pay all wages due to discharged and quitting employees; and

> reimburse all business expenses. The released claims include claims brought under California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 et seq., and 2802, California Business and Professions Code sections 17200- 17208 based on the preceding claims, and the Industrial Welfare Commission Wage Order based on the preceding claims. Such claims include claims for wages, statutory penalties, civil penalties, or other relief under the California Labor Code, PAGA, relief from unfair competition under California Business and Professions Code section 17200 et seq., similar claims under federal or local laws, including the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; attorneys' fees and costs; and interest.

PAGA Settlement Group Members, who consistent with the statute will not be able to opt out of the PAGA portion of the settlement, will release:

> Any and all claims under PAGA for civil penalties against Defendants and the Released Parties that were pled or could have been pled based on the factual allegations contained in the operative complaints in the Actions or any amendments thereto or notices submitted by Plaintiffs to the LWDA pursuant to PAGA that occurred during the PAGA Period (the "Released PAGA Claims"). The released claims include claims for PAGA penalties for alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 et seq., and 2802, and the Industrial Welfare Commission Wage Order based on the preceding claims.

The notice period has now been completed. Regina Cutler ("Cutler"), a senior case manager for CPT, submitted a declaration in support of the instant motion. Cutler states that on August 4, 2025, CPT received the notice packet from Class Counsel and the addresses contained therein were processed and updated utilizing the National Change of Address Database. On September 17, 2025, the notice packets were sent to 267 Class Members. As of the date of

Cutler's declaration, 9 notice packets have been returned. CPT was able to locate new addresses for 5 of them, which were re-mailed, thus, 4 notice packets were undeliverable.

The deadline to response was November 3, 2025. As of the date of Cutler's declaration, CPT had not received any request for exclusion, objections, or workweek disputes. Consequently, there will be 267 participating Class Members, representing 100% of the Class. The average individual payment is $1,410.38, with the highest being $4,376.59. The average payment from the PAGA fund is $109.65 with the highest being $160.26.

The settlement provides for administration costs for up to $10,000. Cutler's declaration supports costs to CPT in the amount of $9,000. This amount is reasonable and therefore, it is approved.

At the preliminary approval, the Court found that the proposed settlement provides a fair and reasonable compromise to Plaintiffs' claims. It finds no reason to depart from these findings now, especially considering that there are no objections. Therefore, the Court finds that the settlement is fair and reasonable for the purposes of final approval.

E. Attorneys' Fees, Litigation Costs, and Plaintiffs' Service Award

Class Counsel seeks a fee award of $252,000, or 35% of the gross settlement amount, which is not an uncommon contingency fee in a wage and hour class action. Class Counsel provide a lodestar figure of $276,237.50 based on 301.2 hours of work at billing rates ranging from $175 to $1,050, resulting in a negative multiplier of 0.9. This is well below the range of multipliers that courts typically approve. (See *Wershba, supra*, 91 Cal.App.4th at p. 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements funding a range of 0.6-19.6, with most (20 to 24, or 83%) from 1.0-4.0 and a bare majority (13 of 24, or 54%) in the 1.5-3.0 range"].)

"While the percentage method has been generally approved in common fund cases, courts have sought to ensure the percentage fee is reasonable by refining the choice of a percentage or by checking the percentage result against the lodestar-multiplier calculation."

(*Laffitte v. Robert Half Intern, Inc.* (2016) 1 Cal.5th 480, 495 (*Laffitte*).) Applying the latter approach,

> [T]he percentage-based fee will typically be larger than the lodestar based fee. Assuming that one expects rough parity between the results of the percentage method and the lodestar method, the difference between the two computed fees will be attributable solely to a multiplier that has yet to be applied. Stated another way, the ratio of the percentage-based fee to the lodestar-based fee implies a multiplier, and that implied multiplier can be evaluated for reasonableness. If the implied multiplier is reasonable, then the cross-check confirms the reasonableness of the percentage-based fee; if the implied multiplier is unreasonable, the court should revisit its assumptions.

(*Laffitte, supra,* 1 Cal.5th at p. 496, quoting Walker & Horwich, *The Ethical Imperative of a Lodestar Cross-check: Judicial Misgivings About "Reasonable Percentage" Fees in Common Fund Cases* (2005) 18 Geo. J. Legal Ethics 1453, 1463.) As described by the California Supreme Court, "[i]f the multiplier calculated by means of a lodestar crosscheck is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Laffitte, supra,* 1 Cal.5th at 505.)

Here, the multiplier sought by Class Counsel is below the range of modifiers typically approved by courts, is supported by the percentage cross-check as well as declarations submitted by Class Counsel Raul Perez and Sean Blakely. Thus, the Court finds Class Counsel's requested fee award is reasonable.

Class Counsel also seeks $12,429.16 in litigation costs, which is lower than the $30,000 allowed for in the Settlement. The request is supported by Class Counsel's declarations. This amount is reasonable and thus, it is approved.

Plaintiffs request a service payment award of $10,000 each-totaling $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 citations omitted.) Incentive awards are particularly appropriate where a plaintiff undertakes a significant reputational risk in bringing an action against an employer. (*Covillo v. Specialty's Café* (N.D. Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29.)

Plaintiffs submitted declarations in support of their request. Plaintiff Garcia estimates he spent between 25 and 35 hours assisting Class Counsel in this matter. (Declaration of Rogelio Garcia ("Garcia Decl."), ¶ 11.) This including communication with Class Counsel, providing information regarding his claims, reviewing the pleadings, and reviewing the proposed settlement. (Garcia Decl., ¶¶ 6-10.) He further states that he has not sought individual benefits from the lawsuit. (Garcia Decl., ¶ 12.)

Plaintiff Farah estimates he spend 35-40 hours assisting Class Counsel in this matter. (Declaration of Abshir Farah ("Farah Decl."), ¶ 4.) This includes communication with Class Counsel, assisting in mediation and negotiation, reviewing the proposed settlement, and providing and reviewing records. (*Ibid.*) He further states that he considered the personal risk in pursuing this case. (Farah Decl., ¶ 5.)

The Court finds Plaintiffs are entitled to service awards, however, the amount requested is higher than the Court usually awards for similar efforts. Therefore, the Court will award Plaintiffs service awards in the amount of $7,500 each—totaling $15,000.

III. CONCLUSION

In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

Plaintiffs' motion for final approval is GRANTED. The following Class is certified for settlement purposes only:

> All current and former non-exempt employees who have been employed by Defendant Proactive during the Class Period.

Judgment will be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiffs and the members of the Class will take from the SAC only the relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule 3.769(h) of the California Rules of Court, the Court will retain jurisdiction over the parties to enforce the terms of the settlement agreement and the final order and judgment. BM

The Court sets a compliance hearing for **1-13-2028 at 2:30 P.M**. in Department 22. 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 pursuant to Code of Civil Procedure section 384, subdivision (b); 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). Counsel may appear at the compliance hearing remotely.

IT IS SO ORDERED.

Date: 2/19/26

BETH MCGOWEN
Judge of the Superior Court