

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

JAMES E. AGUILAR, et al.,

Plaintiff,

v.

T&K, L.P., et al.,

Defendants.

Case No.: 21CV384674

**ORDER CONCERNING PLAINTIFFS'
MOTION FOR FINAL APPROVAL**

This is a putative class action and Private Attorneys General Act ("PAGA") action. Plaintiffs James E. Aguilar and Pamela Cazares allege that Defendant T&K, L.P., which operates a chain of franchised Taco Bell restaurants in California, failed to provide employees with compliant meal and rest breaks, failed to pay minimum and overtime wages, issued noncompliant wage statements, and committed other wage and hour violations.

Before the Court is Plaintiffs' motion for final approval of a settlement and motion for attorney fees, both of which are unopposed. As discussed below, the Court GRANTS the motions.

1 **I. BACKGROUND**

2 Mr. Aguilar began employment with Defendant in August 2020 and Ms. Cazares began
3 employment with Defendant November 2020. (First Amended Class Action Complaint
4 ("FAC"), ¶ 3.) They were both employed by Defendant until March 2021 as non-exempt
5 employees. (*Ibid.*)

6 According to Plaintiffs, their wages were paid late. (FAC, ¶ 8.) And, while employees
7 routinely earned non-discretionary incentive wages but overtime, double time, and sick pay was
8 paid at their base pay rate rather than the regular rate of pay. (*Id.*, ¶ 11.) Further, Defendant did
9 not have an immutable time keeping system to record all hours worked and utilized an unlawful
10 rounding policy resulting in employees not being paid for all hours worked. (*Id.*, ¶ 12.)

11 Employees frequently had to work through their meal and rest periods. (*Id.*, ¶¶ 14-15.) Plaintiffs
12 also allege that Defendant failed to provide them with paper wage statements or the option to
13 receive paper wage statements. (*Id.*, ¶ 20.) Defendant also required employees to use their
14 personal vehicles and cellular phones for work purposes without compensation. (*Id.*, ¶ 22.)

15 Based on these allegations, Plaintiff asserts putative class claims for: (1) violation of
16 Business and Professions Code section 17200, et seq.; (2) failure to pay minimum wages, in
17 violation of Labor Code sections 1194, 1197, and 1197.1; (3) failure to pay overtime wages, in
18 violation of Labor Code section 510, et seq.; (4) failure to provide rest breaks violation of Labor
19 Code sections 226.7 and 512 by and the relevant Industrial Wage Commission order; (5) failure
20 to provide rest breaks violation of Labor Code sections 226.7 and 512 by and the relevant wage
21 order; (6) violation of Labor Code section 226 by failing to provide accurate itemized wage
22 statements; (7) failure to provide wage when due under Labor Code sections 201 through 203;
23 (8) failure to reimburse employees for required expenses under Labor Code section 2802; and (9)
24 a representative claim for PAGA penalties (Lab. Code, § 2698, et seq.).

25 In March 2023, Plaintiffs moved for an order preliminarily approving the settlement of
26 the class and PAGA claims, provisionally certifying the settlement class, approving the form and
27 method for providing notice to the class, and scheduling a final fairness hearing. On May 30, the
28

1 Court granted Plaintiffs’ motion. Plaintiff now moves for an order granting final approval of the
2 Class Action and PAGA Settlement and entering judgment based on the order.

3 **II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL**

4 **A. Class Action**

5 Generally, “questions whether a [class action] settlement was fair and reasonable,
6 whether notice to the class was adequate, whether certification of the class was proper, and
7 whether the attorney fee award was proper are matters addressed to the trial court’s broad
8 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
9 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
10 260.)

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

19
20 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

21 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
22 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
23 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
24 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
25 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
26 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
27 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
28 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) ___ U.S. ___, 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*).)

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

7 **III. SETTLEMENT CLASS**

8 For settlement purposes, the class is defined as “all individuals who are or previously
9 were employed by Defendant in California and classified as a non-exempt employee at any time
10 during the Class Period,” and the “Class Period,” in turn, is defined as the period commencing
11 July 23, 2017 up to and including October 29, 2022.

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

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

26 In the settlement context, “the court’s evaluation of the certification issues is somewhat
27 different from its consideration of certification issues when the class action has not yet
28 settled.” (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in

1 the settlement-only context, the case management issues inherent in the ascertainable class
2 determination need not be confronted, and the court's review is more lenient in this respect. (*Id.*
3 at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or
4 overbroad class definitions require heightened scrutiny in the settlement-only class context, since
5 the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

6 At preliminary approval, the Court provisionally certified the above-described class,
7 determining that Plaintiff had demonstrated by a preponderance of the evidence: (1) an
8 ascertainable class, (2) a well-defined community of interest among the class members and (3)
9 that a class action provides substantial benefits to both litigants and the Court. Nothing has
10 changed materially since that determination. Consequently, the Court now will certify the class
11 for settlement purposes.

12 **IV. TERMS AND ADMINISTRATION OF SETTLEMENT**

13 The non-reversionary gross settlement amount is \$2,000,000. Attorney fees of up to
14 \$666,666.66 (one-third of the gross settlement), litigation costs of up to \$25,000, and
15 administration costs of \$25,000 will be paid from the gross settlement. \$100,000 of the gross
16 settlement will be allocated to PAGA penalties, 75% of which (\$75,000) will be paid to the
17 LWDA. The named Plaintiffs will seek incentive awards of \$10,000 each.

18 The net settlement amount of approximately \$1,163,333.34 will be allocated to class
19 members proportionally based on their pay periods worked during the Class Period. The PAGA
20 payment will be allocated to aggrieved employees on a pro rata basis based on their number of
21 pay periods worked during the PAGA period of May 19, 2020 up to and including October 29,
22 2022. The average payment received by class members, who number 1,904, will be \$613.57.
23 Class members will not be required to submit a claim to receive their payments. For tax
24 purposes, settlement payments will be allocated 10 percent to wages and 90 percent to penalties
25 and interest, with PAGA payments treated 100 percent as penalties. The employer's share of
26 payroll taxes will be paid in addition to the gross settlement. Funds associated with checks
27 uncashed after 180 days will be paid to Child Advocates of Silicon Valley, an IRS 401(c)
28 nonprofit organization.

1 In exchange for settlement, class members who do not opt out will release “all claims that
2 were alleged or reasonable could have been alleged in the Complaint based on the facts
3 contained therein, arising during the Class Period,” including specified wage and hour and
4 expense reimbursement claims. As the Court determined in its order preliminarily approving the
5 settlement, the release is appropriately tailored to the factual allegations at issue. (See *Amaro v.*
6 *Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) Further, the PAGA release
7 is appropriately limited to “all claims for PAGA penalties that were alleged, or reasonably could
8 have been alleged, based on the facts stated in the complaint, first amended complaint, and
9 PAGA notice provided to the LWDA pursuant to Labor Code section 2699.3, subd. (a),
10 including but not limited to,” specified Labor Code violations. Consistent with the statute,
11 aggrieved employees will not be able to opt out of the PAGA portion of the settlement.

12 The notice period has now been completed. There were no objections to the settlement
13 and eight requests for exclusion from the class. Of the 1,904 notice packets sent, 359 were
14 returned to the administrator, 342 of which did not have a forwarding address. A skip trace
15 performed on the returned notices produced 113 updated addresses, to which the notices were re-
16 mailed. Ultimately, 229 notices remain undeliverable. The administrator estimates that the
17 average payment will be \$613.57, with a maximum payment of \$3,881.73 and a minimum
18 payment of \$1.98.

19 At preliminary approval, the Court found that the proposed settlement provides a fair and
20 reasonable compromise to Plaintiffs’ claims, and that the PAGA settlement is genuine,
21 meaningful, and fair to those affected. It finds no reason to depart from these findings now,
22 especially considering that there are no objections. The Court finds that the settlement is fair and
23 reasonable for the purposes of final approval.¹

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28 ¹ This includes the \$25,000 in administrative costs, which is sought as part of the motion for final approval rather than the motion for attorney fees and costs.

1 **V. MOTION FOR ATTORNEY FEES, COSTS AND INCENTIVE AWARD**

2 Plaintiffs seek a fee award of \$666,666.66, or one-third of the gross settlement, which is
3 not an uncommon contingency fee allocation in a wage and hour class action. This award is
4 facially reasonable under the “common fund” doctrine, which allows a party recovering a fund
5 for the benefit of others to recover attorney fees from the fund itself. Plaintiffs also provide a
6 lodestar figure of \$346,650.50, based on 712.8 hours spent on the case by counsel with billing
7 rates of \$375-575 per hour, resulting in a modest multiplier of 1.92. As a cross-check, the
8 lodestar supports the percentage fee requested, particularly given the lack of objections to the
9 attorney fee request. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503-504
10 [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-
11 checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

12 Plaintiffs also request up to \$25,000 in litigation costs, which appear to be reasonable
13 based on the billing records provided and are approved.

14 Finally, Plaintiffs request service awards of \$10,000 each. To support their requests, they
15 submit declarations describing their efforts on the case. The Court finds that the class
16 representatives are entitled to enhancement awards and the amount requested is reasonable.

17 **VI. ORDER AND JUDGMENT**

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

20 Plaintiffs’ motion for final approval and motion for attorney fees and costs are
21 GRANTED. The following class is certified for settlement purposes:

22
23 All individuals who are or previously were employed by Defendant in California
24 and classified as a non-exempt employee at any time during the Class Period,” and
25 the “Class Period,” in turn, is defined as the period commencing July 23, 2017 up
26 to and including October 29, 2022.
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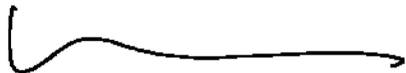
1 Excluded from the class are the eight individuals who submitted timely requests for
2 exclusion.

3 Judgment shall be entered through the filing of this order and judgment. (Code Civ.
4 Proc., § 668.5.) Plaintiffs and the members of the class shall take from their complaint only the
5 relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule
6 3.769(h) of the California Rules of Court, the Court retains jurisdiction over the parties to
7 enforce the terms of the settlement agreement and the final order and judgment.

8 The Court sets a compliance hearing for **June 27, 2024 at 2:30 P.M.** in Department
9 1. At least ten court days before the hearing, class counsel and the settlement administrator shall
10 submit a summary accounting of the net settlement fund identifying distributions made as
11 ordered herein; the number and value of any uncashed checks; amounts remitted pursuant to
12 Code of Civil Procedure section 384, subdivision (b); the status of any unresolved issues; and
13 any other matters appropriate to bring to the Court's attention. Counsel shall also submit an
14 amended judgment as described in Code of Civil Procedure section 384, subdivision
15 (b). Counsel may appear at the compliance hearing remotely.

16 **IT IS SO ORDERED.**

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18 Date: 10/26/2023



The Honorable Sunil R. Kulkarni
Judge of the Superior Court