

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 39
JUDICIAL OFFICER: EDWARD G WEIL
HEARING DATE: 01/30/2025

Granted. For good cause, appearance of petitioner, plaintiff, and counsel are waived.

8. 9:00 AM CASE NUMBER: C23-01770
CASE NAME: JOSE DE LA CRUZ VS. GALPAO GAUCHO TWO, LLC
***HEARING ON MOTION IN RE: PRELIMINARY APPROVAL OF CLASS AND PAGA SETTLEMENT**
FILED BY: DE LA CRUZ, JOSE RAMON
TENTATIVE RULING:

Plaintiff Jose Ramon De La Cruz moves for preliminary approval of his class action and PAGA settlement with defendant Dresser-Rand Company. Defendants operate Brazilian steakhouse restaurants.

Background and Settlement Terms

The original complaint was filed on July 12, 2022, raising class action claims on behalf of non-exempt employees, alleging that defendants violated the Labor Code in various ways, including failure to pay minimum and overtime wages, failure to provide meal breaks, failure to provide proper wage statements, failure to reimburse necessary business expenses, and failure to pay all wages due on separation.

The settlement would create a gross settlement fund of \$750,000. The class representative payment to the plaintiff would be \$10,000. Attorney's fees would be \$241,666.67 (one-third of the settlement). Litigation costs would not exceed \$30,000. The settlement administrator's costs (Apex ClassAction Administration) were bid at \$13,950. PAGA penalties would be \$30,000, resulting in a payment of \$19,500 to the LWDA and \$10,500 to plaintiffs. (These percentages assume that the recent statutory amendments modifying the previous 75/25 split applies to this case.) The net amount paid directly to the class members would be about \$399,333.33. The fund is non-reversionary. There are an estimated 1,350 class members. Based on the estimated class size, the average net payment for each class member is approximately \$295.

The proposed settlement would certify a class of all current and former non-exempt employees employed by Defendants in California from July 20, 2019 through July 1, 2024.

CHECKAn escalator clause provides that if the number of work weeks increases by more than 10% above the current estimate, the gross settlement amount will be increased proportionately.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds would be apportioned to class members based on the number of workweeks worked during the class period.

Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Checks undelivered or uncashed 180 days after mailing will be voided, and will be paid

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 39
JUDICIAL OFFICER: EDWARD G WEIL
HEARING DATE: 01/30/2025

to tendered to the California Controller's Unclaimed Property Fund in the name of the Class Members who did not cash their checks.

The settlement contains release language covering "all class claims alleged, or reasonable could have been alleged based on the facts alleged, in the operative complaint." Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id.*, quoting *Marshall v. Northrop Grumman Corp.* (C.D. Cal.2020) 469 F.Supp.3d 942, 949.) PAGA claims are released to the extent they were "alleged in the operative complaint in the Action and Plaintiff's PAGA notice to the LWDA[.]"

Informal written discovery was undertaken, some of which was reviewed by retained statisticians and economists. The matter settled after arms-length negotiations, which included a session with an experienced mediator, in July of 2024.

Counsel also has provided an analysis of the case, and how the settlement compares to the potential value of the case, after allowing for various risks and contingencies. This included an estimate of defendant's exposure for the class claims of about \$3,499,826.10.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory."])

Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion.

A. Legal Standards

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including "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 state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction ... to the proposed settlement." (See also *Amaro v. Anaheim Arena Mgmt., LLC, supra*, 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements.

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 39
JUDICIAL OFFICER: EDWARD G WEIL
HEARING DATE: 01/30/2025

(*Id.*, at 64.) The Court also held that the trial court must assess “the fairness of the settlement’s allocation of civil penalties between the affected aggrieved employees[.]” (*Id.*, at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because “[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutary purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

B. Attorney fees

Plaintiff seeks one-third of the total settlement amount as fees, relying on the “common fund” theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check 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.” (*Id.*, at 505.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

Similarly, litigation costs and the requested representative payment of \$10,000 for plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

C. Conclusion

The Court finds only one minor flaw blocking approval: the change in the PAGA penalty split from 75/25 to 65/35 applies only to actions filed after June 19, 2024. (See Labor Code § 2699(m), (v).) Accordingly, the provision of the settlement using the 65/35 split must be amended.

Counsel are directed to prepare an order reflecting this tentative ruling with the single change, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. Plaintiffs’ counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney’s fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.