





# SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA

## MINUTE ORDER

wages; (3) failure to authorize and permit rest periods; (4) non-compliant wage statements and failure to maintain payroll records; (5) wages not timely paid upon termination; (6) failure to timely pay wages during employment; (7) unreimbursed business expenses; (8) civil penalties pursuant to PAGA; (9) unlawful business practices; (10) unfair business practices; (11) failure to pay sick pay wages; and (12) failure to provide required meal periods.

The parties have reached a settlement, and Plaintiffs now move for preliminary approval. The motion is unopposed.

### II. Legal Standard for Settlement Agreements

#### A. 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 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 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, citation omitted.)

#### 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.)

Like 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."



# SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA

## MINUTE ORDER

(*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 considering 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, 2016 U.S. Dist. LEXIS 140759, at \*20-24.)

### II. Discussion

#### A. Provisions of the Settlement

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

[A]ll individuals who are or were directly employment by Defendants in California and classified as a non-exempt employee at any time during the Class Period [October 8, 2020 through the earlier of preliminary approval of the Parties' settlement of May 13, 2025].

(Declaration of Kyle Nordrehaug ("Nordrehaug Decl."), Ex. 1 ("Agreement"), 1.5, 1.12.)

The settlement includes a subset PAGA class of Aggrieved Employees, defined as: "all individuals who are or were directly employed by Defendants in California and classified as a non-exempt employee at any time during the PAGA Period [August 23, 2022 through the earlier of preliminary approval of the Parties' settlement or May 13, 2025.]" (Id. at 1.4, 1.30.)

Defendant will pay a gross settlement amount of \$1,550,000, subject to an escalator clause. (Agreement, 3.1, 9.) The gross settlement amount includes attorney fees of up to one-third of the gross settlement amount (currently estimated to be \$516,666); litigation costs not to exceed \$45,000; a PAGA allocation of \$50,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Employees as individual PAGA payments); service payments of \$10,000 to each named Plaintiff (\$20,000 total); and settlement administration costs up to \$11,000. (Id. at 3.) The net settlement amount will be distributed to participating class members on a pro-rata basis according to the number of workweeks they were employed by Defendant. Individual PAGA payments will be distributed according to the number of pay periods worked. The Agreement provides that Apex Class Action, LLC, ("Apex") will serve as the neutral entity appointed to administer the settlement. (Id. at 8.1.) The court approves and appoints Apex as the settlement administrator.

The parties proposed that any funds from settlement checks remaining uncashed after the void date be transmitted to Legal Aid at Work as the cy pres recipient, in accordance with Code of Civil Procedure section 384, which mandates that unclaimed or abandoned class members' funds be given to "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent." (See Agreement at 5.4.) The court approves Legal Aid at Work as designated cy pres recipient.

In exchange for the settlement, the class members agree to release Defendants and related entities and persons



## SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA

### MINUTE ORDER

"from any and all causes of action, claims, rights, damages, and penalties arising at any time during the Class Period that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint... ." (Agreement, 1.39, 6.3.) Aggrieved Employees are deemed to release Defendant and related entities and persons "from any and all rights and claims for civil penalties pursuant to PAGA during the PAGA Period that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notices... ." (Id. at 1.39, 6.4.) The release provisions are appropriately tailored to the factual allegations of the operative pleading. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538.)

#### B. Fairness of the Settlement

Plaintiffs contend that the Agreement meets the standards for preliminary approval. (Motion, pp. 5-15.) Plaintiffs' counsel explains that the parties participated in mediation with Marc Feder in January 2025. (Nordrehaug Decl., 12.) Prior to mediation, Plaintiffs conducted informal discovery and obtained information including data concerning the composition of the class, a sampling payroll data and wage statements, and Defendants' wage and hour policies . (Id. at 10.) Plaintiffs' counsel asserts that the proposed settlement is fair, reasonable, and adequate, based on counsel's thorough investigation and experience.

Plaintiffs' counsel explains that their expert, Berger Consulting, performed the damages calculations used in reaching the settlement amount. (Motion, pp. 9:15-11:2, Nordrehaug Decl., 6, 33.) According to Plaintiffs' analysis, Defendants' estimated total maximum exposure for all claims is approximately \$10,782,944, based on a total of \$4,718,382 in damages, \$3,327,912 in waiting time penalties, \$932,750 in wage statement penalties, and \$1,803,900 in PAGA civil penalties. Thus, the gross settlement amount of \$1,550,000 represents approximately 14.4 percent of Defendants' estimated total maximum exposure. Therefore, the proposed settlement amount is within the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S. Dist. LEXIS 30201, at \*41-42 [citing cases approving settlements in the range of 5 to 35 percent of the maximum potential exposure].)

The court has reviewed Plaintiff's written submissions in support of the proposed settlement. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation. Based on the circumstances of the case, including the strength of Plaintiffs' case and potential defenses, the court finds the terms of the settlement to be fair.

#### C. Service Award, Fees and Costs

Plaintiffs request service awards of \$10,000 each, for a total of \$20,000 in service awards.

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 Caf* (N.D. Cal. 2014) 2014 U.S. Dist. LEXIS 29837, at



# SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA

## MINUTE ORDER

\*29.)

Plaintiffs have each provided declarations generally describing their participation in this action, which has included gathering and reviewing documents in addition to communication with counsel. Plaintiff Jones estimates that she has spent between 25 and 35 hours working on this litigation, and Plaintiff Salazar estimates that he has spent approximately 30 to 40 hours working on this litigation. The court will issue its ruling regarding the approved service award amounts in connection with the final approval hearing.

The court also 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.) Plaintiffs' counsel will seek attorney fees of up to one-third of the gross settlement amount (currently estimated to be \$516,666.) Prior to the final approval hearing, Plaintiffs' counsel shall submit lodestar information (including hourly rate and hours worked) as well as evidence of actual litigation costs incurred and settlement administration costs.

### D. Conditional Certification of Class

Plaintiff requests that the class be conditionally certified for purposes of the settlement. 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 . . ." As interpreted by the California Supreme Court, section 382 requires: (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 (*Sav-On*).

The "community-of-interest" requirement encompasses three factors: (1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and, (3) class representatives who can adequately represent the class. (*Sav-On, supra*, 34 Cal.4th at p. 326.) "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.) As explained by the California Supreme Court, The certification question is essentially a procedural one that does not ask whether an action is legally or factually meritorious. A trial court ruling on a certification motion determines whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants. (*Sav-On, supra*, 34 Cal.4th at p. 326, internal punctuation and citations omitted.)

Plaintiffs state there are approximately 725 class members, who can be identified from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

### E. Class Notice

The content of a class notice is subject to court approval. "If the court has certified the action as a class action,



# SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA

## MINUTE ORDER

notice of the final approval hearing must be given to the class members in the manner specified by the court." (Cal. Rules of Court, rule 3.769(f).) "The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (Ibid.) In determining the manner of the notice, the court must consider: "(1) The interests of the class; (2) The type of relief requested; (3) The stake of the individual class members; (4) The cost of notifying class members; (5) The resources of the parties; (6) The possible prejudice to class members who do not receive notice; and (7) The res judicata effect on class members." (Cal. Rules of Court, rule 3.766(e).)

Here, the form of the notice is adequate. It describes the lawsuit, explains the settlement, and states the settlement amounts, including attorney fees and payment to the named Plaintiffs. The notice informs class members that they may appear at the final fairness hearing to make an oral objection without filing a written objection. The notice also provides instructions for attending the final approval hearing remotely.

Accordingly, the notice is approved.

#### IV. Conclusion

The motion for preliminary approval of settlement is GRANTED. **The court sets a final approval hearing for November 12, 2025.**

**Case Management Conference is CONTINUED to November 12, 2025.**

Plaintiff shall prepare the order in accordance with California Rules of Court, rule 3.1312.