SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

MINUTE ORDER

Cramer v. MGE Underground, Inc. (Class Action)		Hearing Start Time:	1:30 PM
22CV403855		Hearing Type:	Motion: Preliminary Approval
Date of Hearing: 10/08/2025			

Heard By:	Zayner, Theodore C	Location:	Department 19
Court Reporter:		Courtroom Clerk:	Thomas Duarte
		Court Interpreter:	
		Court Investigator:	

Parties Present: Future Hearings:

- No appearance.

No one has contested the Tentative Ruling.

The Tentative Ruling is adopted. See below for ruling.

Calendar Line 1
Case Name: Cramer v. MGE Underground, Inc. (Class Action)
Case No.: 22CV403855
The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on October 8, 2025, at 1:30 p.m. in Department 19. The Court now issues its tentative ruling as follows:
I. Introduction
This is a putative class and representative action arising from alleged wage and hour violations. On September 29, 2022, plaintiff Cody Lee Cramer began this action by filing a Complaint against MGE Underground, Inc. ("Defendant"). On July 20, 2023, the Court issued an order on the parties' Joint Stipulation to allow an amended pleading that would replace Mr. Cramer with two other plaintiffs. On July 24, 2023, plaintiffs Anthone Reinke and Jarret Chow filed the First Amended Complaint against Defendant, asserting causes of action for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify employees for expenditures; (8) unfair business practices.
On May 9, 2023, plaintiff Daniel Enriquez Ulloa filed a separate action in this court against Deference (Case No. 23CV416209), asserting various wage and hour causes of action.
On December 18, 2024, the Court issued an order dismissing plaintiff Anthone Reinke from this action, leaving the claims of plaintiff Jarret Chow unaffected.
The parties have reached a settlement, and Plaintiff now moves for preliminary approval of the settlement. 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),

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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'slength 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

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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." (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 current and former non-exempt, hourly individuals that worked for
Defendant MGE Underground in the State of California during the Class Period
[April 4, 2018 through January 22, 2025].
(Declaration of John G. Yslas ("Yslas Decl."), Ex. 1 ("Agreement"), 1.5, 1.13.) The settlement includes a subset PAGA class of Aggrieved Employees, defined as: "all current and former non-exempt, hourly individuals that worked for Defendant MGE Underground, Inc. in the State of California during the PAGA Period [May 9, 2022 through January 22, 2025]." (Id. at 1.4, 1.34.)
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Defendant will pay a gross settlement amount of $2,000,000, and this amount includes: attorney fees of up to 35 percent of the gross settlement amount (i.e., $700,000); litigation costs not to exceed $40,000; a PAGA allocation of $100,000 (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); a service payment of up to $10,000 to each Plaintiff; and settlement administration costs up to $14,790. (Motion, pp. 6-7; Agreement, 3.1-3.2) 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, and individual PAGA payments will be distributed according to the number of pay periods worked. (Agreement, 3.2.) The Agreement provides that Apex Class Action Administration ("Apex") will serve as settlement administrator. (Id. at 1.2.) The Court approves and appoints Apex as settlement administrator. The Agreement provides that any funds from uncashed settlement checks will be transmitted to Legal Aid at Work. (Id. at 4.4.3) The Court approves the cy pres designation.
In exchange for the settlement, the class members agree to release Defendant and related entities and persons from "all claims that were asserted in the Actions, or that arise from or could have been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in Plaintiffs' Complaints, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law (the 'Released Class Claims')." (Agreement, 5.2.) Aggrieved Employees will be deemed to release Defendant and related entities and persons "from all claims for PAGA civil penalties that are alleged or reasonably could have been alleged based on the facts alleged against Defendant in the operative Complaint in the Actions and Plaintiffs' PAGA Letters... ." (Id. at 5.3.) 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 the Agreement meets the standards for preliminary approval. (Motion, pp. 12-16; Yslas Decl., 9-18) Plaintiffs' counsel states that the parties participated
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in mediation with Jason Marsili on September 23, 2024, and continued to negotiate the terms

of the settlement over the next several months. (Yslas Decl., 6.) Prior to mediation, Defendant produced data and documents through informal discovery, including a ten percent sampling of timekeeping and payroll records. (Id. at 9) According to Plaintiffs' analysis, Defendant's estimated total maximum exposure for all claims is approximately $61,856,875.45, and Defendant's estimated realistic exposure for all claims is approximately $5,364,297.18.

The gross settlement amount of $2,000,000 represents approximately 3.23 percent of Defendant's estimated total maximum exposure. Therefore, the proposed settlement amount is low based on 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].) Nevertheless, the Court finds that Plaintiffs' counsel has adequately explained the reasoning behind the settlement amount, including that it represents approximately 37.3 percent of Defendant's estimated realistic exposure.

The Court has reviewed Plaintiff's written submissions and is satisfied that the settlement is fair and may be approved.

C. Service Award, Fees and Costs

Plaintiffs request service award of $10,000 each. (Motion, p. 16; Agreement, 3.2.1.)

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

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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 *29.)

Plaintiffs Chow and Ulloa have each provided declarations generally describing their qualifications to serve as class representatives. However, neither has provided an estimate of the number of hours they have spent working on this litigation nor a description of their work in support of this litigation. Accordingly, prior to the final approval hearing, Plaintiffs Chow and Ulloa shall each submit a supplemental declaration providing an estimate of the number of hours each has spent working on this action, a description of what that work has entailed, and any other facts they would like the Court to consider.

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 35 percent of the gross settlement amount (i.e., $700,000). 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

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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 1,580 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, 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).)

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Here, the form of the notice is generally adequate. It describes the lawsuit, explains the settlement, and states the settlement amounts, including attorney fees and payment to the named plaintiff. 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 following language regarding the final approval hearing shall be added to the notice:

Class members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session), and should review the remote appearance instructions beforehand: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

Class members who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing, if possible, so that potential technology or audibility issues can be avoided or minimized.

On the condition that the parties make the above addition to the notice prior to its mailing, the notice is approved.

IV. Conclusion

The motion for preliminary approval of the settlement is GRANTED.

A final approval hearing is set for April 22, 2026 at 2:30 p.m. in Department 19.

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

Case Management Conference at 2:30 p.m. is VACATED