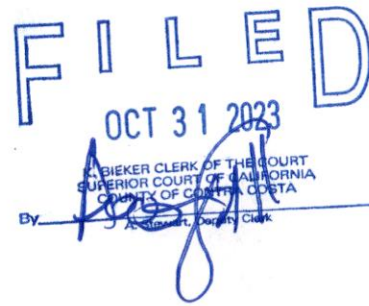


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14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF CONTRA COSTA COUNTY

17 Robert Anthony Gonzalez, Maurice Frank
18 and Ethan Collins, individuals, appearing
19 on behalf of themselves and on behalf of
20 all others similarly situated,

21 Plaintiffs,

22 v.

23 Golden Gate Bell, LLC and
24 DOES 1 to 100,

25 Defendants.
26
27
28

Case No. MSC21-00956

**~~REVISED [PROPOSED]~~ ORDER
GRANTING FINAL APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT, AND CLASS
REPRESENTATIVE SERVICE
PAYMENTS, ATTORNEY FEES, AND
COSTS**

Date: October 19, 2023
Time: 9:00 a.m.
Dept.: 12
Judge: Hon. Charles Treat

~~REVISED [PROPOSED]~~ ORDER GRANTING FINAL APPROVAL OF SETTLEMENT

1 Plaintiffs' Motion for Final Approval of Class Action and PAGA Settlement, and
2 for Approval of Class Representative Service Payments, Attorney Fees, and was set for
3 hearing for October 19, 2023 at 9:00 a.m. in Department 12 of the above-entitled Court.

4 Due and adequate notice of the instant proceedings having been given, and the
5 Court having considered all papers, and otherwise being fully informed, good cause
6 appearing therefor, and there being no opposition to the tentative ruling of the Court, the
7 Court orders as follows:

8 **THIS COURT HEREBY ORDERS THAT:**

9 1. The Court has adopted its tentative ruling, which is attached hereto and
10 becomes part of this Order.

11 2. The provisions of the parties' Class Action and PAGA Settlement
12 Agreement ("Settlement") are hereby approved and incorporated in this Order.

13 3. The Court has jurisdiction over the subject matter of this action, and over
14 those persons and entities undertaking affirmative obligations in the Settlement.

15 4. In this Order, the term "Class Period" means the period from July 18, 2014
16 to November 1, 2022.

17 5. The Settlement Class includes and is limited to all individuals employed by
18 Defendant Golden Gate Bell, LLC ("Defendant") in California as non-exempt employees
19 during the Class Period.

20 6. The settlement is in all respects fair, reasonable, and adequate. There was
21 no collusion in connection with the Settlement. The Settlement was the product of
22 informed and arms'-length negotiations among competent counsel, and the record is
23 sufficiently developed to have enabled Plaintiffs and Defendant to adequately evaluate
24 and consider their respective positions. Accordingly, the Court hereby finally and
25 unconditionally approves the Settlement, and directs the parties to consummate its terms.

26 7. The Court finds that the Settlement is reasonable as it provides substantial
27 payment for Class Members from a non-reversionary common fund. The Settlement
28 avoids the risk, expense, complexity, and delay of further litigation.

1 8. Pursuant to California Code of Civil Procedure §382 and Rule of
2 Court 3.769, the Court hereby certifies, for settlement purposes only, the Settlement Class.

3 9. Two (2) opt-out requests from the Settlement Class have been received.
4 The Court grants these requests to opt out, and Jacqueline Regalado and Pamela
5 McDonald are accordingly excluded from the settlement.

6 10. As used in this Order, "Participating Class Member" means all Class
7 Members with the exception of the two individuals whose opt-out requests have been
8 granted by the Court.

9 11. In this Order, the term "Aggrieved Employees" shall mean any individuals
10 employed by Defendant as non-exempt employees in California during the period from
11 June 25, 2017 to November 1, 2022. An individual's status as an Aggrieved Employee
12 will not be affected by any opt-out.

13 12. The Court finds that the Settlement Class satisfies the requirements for class
14 certification under California Code of Civil Procedure §382 and California Rule of
15 Court 3.769, for settlement purposes only, because: 1) the Class Members are so
16 numerous that joinder of all members is impracticable; 2) the Class is ascertainable;
17 3) there are questions of law and fact common to the Class Members; 4) the named Class
18 Representatives' claims are typical of the claims of the Class Members; 5) the named
19 Class Representatives and Class Counsel have adequately represented and will continue to
20 adequately represent and protect the interests of the Class for purposes of the Settlement;
21 and 6) class-wide treatment of the disputes raised in this action is superior to other
22 available methods for adjudicating the controversy before the Court at this time.

23 13. The Court finds that the individual direct Notice provided to Class Members
24 through First Class U.S. Mail, as described in the Declaration of the Settlement
25 Administrator: 1) fairly and accurately described the litigation and the proposed
26 Settlement; 2) provided sufficient information to allow the Class Members to decide
27 whether to accept the benefits offered by the Settlement, exclude themselves from the
28 Settlement, or object to the proposed Settlement, or object and/or appear at the Final

1 Approval Hearing; 4) provided the scheduled date, time, and place of the Final Approval
2 Hearing; 5) was the best notice practicable under the circumstances; 6) was reasonable
3 and constituted due, adequate, and sufficient notice to all persons entitled to receive
4 notice; and 7) complied fully with California Code of Civil Procedure §382, due process,
5 and all other applicable laws.

6 14. The Court further finds that a full and fair opportunity has been afforded the
7 Class Members to opt out of or to object to the Settlement, and to participate in the
8 hearing convened to determine whether the Settlement should be given Final Approval.

9 15. There are no objections to the Settlement or the request for Class
10 Representative Service Payments, Attorney Fees, or Costs.

11 16. As used in this Order, "Action" means and includes the above-captioned
12 matter, case MSC21-00956, as well as the matter entitled *Frank, et al. v. Golden Gate*
13 *Bell, LLC*, Case No. RG18913275, pending in the Alameda County Superior Court and
14 consolidated with cases RG19037980 and HG18919698, and includes cases RG19037980
15 and HG18919698.

16 17. As used in this Order, "PAGA Notices" means and includes the following
17 notices sent pursuant to Labor Code section 2699.3, subd. (a): (a) Plaintiff Collins' June
18 25, 2018 letter to Defendant Golden Gate Bell, LLC and the LWDA; (b) Plaintiff Frank's
19 July 2, 2018 letter to Defendant Golden Gate Bell, LLC and the LWDA; and (c) Plaintiff
20 Gonzalez's October 10, 2020 letter to Defendant Golden Gate Bell, LLC and the LWDA,
21 as amended on May 13, 2021.

22 18. As used in this Order, "Released Parties" means Defendant Golden Gate
23 Bell, LLC and its parents and affiliates (including but not limited to Diversified
24 Restaurant Group, LLC, but excluding any successor owner of a restaurant), and its
25 franchisor (Taco Bell Franchisor, LLC).

26 19. As used in this Order, "Released Class Claims" is defined as follows: any
27 and all causes of action, claims, rights, damages, punitive or statutory damages, penalties,
28 liabilities, expenses, and losses alleged in the Operative Complaints in Case Nos.

1 RG18913275, RG19037980, MSC21-00956 and HG18919698, or alleged in Plaintiffs'
2 PAGA Notices, or that could have been alleged based upon the facts alleged in the Action
3 or PAGA Notices. The release shall include all of the following to the extent that they
4 were alleged or could have been alleged based upon the facts stated in Action or PAGA
5 Notices: (a) any alleged failure by Defendant (1) to pay wages, reporting time pay,
6 minimum wages, or overtime; (2) to provide meal or rest periods or compensation in lieu
7 thereof; (3) to provide compliant wage statements; (4) to timely pay wages during or at
8 the end of alleged employment; (5) to reimburse for all necessary business expenses or
9 other losses/expenditures; (6) to accurately record work hours and meal break periods;
10 (b) any right or claim for damages, unpaid wages, statutory penalties, or civil penalties
11 pursuant to the Private Attorneys General Act of 2004, California Labor Code sections
12 2698, *et seq.*, arising under the California Labor Code or Wage Orders based on the
13 alleged failures set forth in (a)(1) through (a)(6) above; (c) any right or claim for unfair
14 business practices in violation of California Business & Professions Code sections 17200,
15 *et seq.*, based on the alleged failures set forth in (a)(1) through (a)(6) above; and (d) any
16 violation of the California Labor Code arising from or related to the conduct alleged in
17 (a)(1) through (a)(6) above, including, without limitation, violation of California Labor
18 Code §§201–204, 216, 226, 226.7, 226.8, 510, 512, 516, 558, 1182.11, 1182.12, 1174,
19 1194, 1194.2, 1197, 1197.1, 1198, 2802, or any other state or federal statute, rule and/or
20 regulation (Wage Order), or similar causes of action which any Participating Class
21 Member has or might have that was alleged or by reason of or in connection with any
22 matter or fact set forth or referred to in the Action or PAGA Notices during the Class
23 Period. Nothing in the Settlement shall release any claims that were not alleged in the
24 Action or PAGA Notices or could not have been alleged based on the facts alleged in the
25 Action or PAGA Notices. Nothing in the release shall release or limit any obligation
26 created by the Settlement.

27 20. As used in this Order, “Released PAGA Claims” is defined as: all and any
28 PAGA claims, rights, demands, liabilities, penalties, fines, debts and causes of action,

1 arising from the PAGA claims pled in the Action or Plaintiffs' PAGA Notices; or that
2 could have been pled in the Action based on the allegations therein.

3 21. Upon Defendant's payment in full of: 1) the Gross Settlement Amount
4 required by Section 4.2 of the Settlement and this Order and 2) all employer payroll taxes
5 owed on the Wage Portion of Individual Class Payments, and excepting only the rights
6 and conditions created by the Settlement, this Order, and the Judgment in this matter, each
7 Participating Class Member, regardless of whether he or she has received actual notice of
8 the proposed Settlement, shall compromise, settle, discharge, and release the Released
9 Class Claims against each of the Released Parties.

10 22. Upon Defendant's payment in full of: 1) the Gross Settlement Amount
11 required by Section 4.2 of the Settlement and this Order and 2) all employer payroll taxes
12 owed on the Wage Portion of Individual Class Payments, and excepting only the rights
13 and conditions created by the Settlement, this Order, and the Judgment in this matter,
14 The State of California and each Aggrieved Employee shall compromise, settle, discharge,
15 and release the Released PAGA Claims against each of the Released Parties.

16 23. The Court hereby confirms its appointment of ILYM Group, Inc. ("ILYM")
17 as the Settlement Administrator. ILYM shall act as the Settlement Administrator to
18 perform those duties and responsibilities under this Order and consistent with the terms of
19 the Settlement Agreement. The Court finds that the Settlement Administrator has thus far
20 fulfilled its duties as required by the Settlement.

21 24. The Court confirms its appointment of Plaintiffs Robert Anthony Gonzalez,
22 Maurice Frank, and Ethan Collins as the Class Representatives for the Class. The Court
23 finds that the Class Representatives have adequately represented the Settlement Class for
24 the purposes of entering into and implementing the Settlement.

1 25. The Court confirms its appointment of the following attorneys as Class
2 Counsel:

- 3 a. Allen Graves and The Graves Firm, 122 N. Baldwin Ave., Main Floor,
4 Sierra Madre, California 91024;
5 b. James R. Hawkins and James Hawkins APLC, 9880 Research Dr.,
6 Suite 200, Irvine, CA 92618; and
7 c. Adam Rose and Frontier Law Center, 23901 Calabasas Road, #2074,
8 Calabasas, CA 91302.

9 26. Within five (5) days after this Order, the Settlement Administrator shall post
10 notice of the entry of Judgment in this matter on the website that the Settlement
11 Administrator has established in association with this settlement. The Court finds this
12 notice fulfills the requirement of California Rule of Court Rule 3.771(b).

13 27. Defendant shall transmit the Gross Settlement Amount to the Settlement
14 Administrator within 14 days of this Order.

15 28. Defendant shall be responsible for paying the employer's share of all payroll
16 taxes on the portion of the Gross Settlement Amount treated as wages, and that payment
17 shall be in addition to the Joint Settlement Amount. Defendant shall transmit all required
18 payroll taxes to the Settlement Administrator within 14 days of this Order

19 29. The Court approves payment, from the Gross Settlement Amount, of
20 amounts billed not to exceed \$63,900 to the Settlement Administrator, in payment of the
21 fees and costs for all services necessary to complete its duties in connection with the
22 administration of the Settlement.

23 30. The Court approves payment, from the Gross Settlement Amount, of Three
24 Hundred Thousand Dollars (\$300,000) to the California Labor and Workforce
25 Development Agency. This is seventy-five percent (75%) of the Four Hundred Thousand
26 Dollars (\$400,000) allotted for settlement of all allegations arising under California's
27 Private Attorneys General Act ("PAGA"). The remaining twenty-five percent (25%)
28 allocated to the PAGA will be distributed to Aggrieved Employees as described below.

1 31. The Court finds that Class Counsel are entitled to a fee, having expended
2 efforts to secure a settlement for the benefit of Class Members. The Court approves the
3 application of Class Counsel for payment of fees, from the Gross Settlement Amount, in
4 the amount of One Million Eight Hundred Thousand Dollars (\$1,800,000). Viewed as a
5 percentage of the fund, the fee is equivalent to 40% of the common fund established in
6 this case, and the Court finds that it is a reasonable percentage under the circumstances
7 and in light of the excellent settlement results achieved in this case. Per agreement of
8 counsel, this award of fees shall be allocated among counsel as follows:

- 9 • \$900,000 to The Graves Firm;
- 10 • \$774,000 to James Hawkins, APLC; and
- 11 • \$126,000 to Frontier Law Center.

12 Applying lodestar analysis as a cross-check, the Court finds that the total fee award
13 is supported by a lodestar multiplier of 0.90 for The Graves Firm, 1.74 for James
14 Hawkins, APLC, and 0.93 for Frontier Law Center.

15 32. The Court approves payment, from the Gross Settlement Amount, for
16 litigation expenses incurred in relation to this matter allocated among counsel as follows:

- 17 • \$30,423.41 to The Graves Firm;
- 18 • \$29,166.81 to James Hawkins, APLC; and
- 19 • \$4,777.17 to Frontier Law Center.

20 33. These amounts are consistent with the Settlement Agreement and are
21 supported by the documentation submitted by Class Counsel.

22 34. The Court hereby approves payment, from the Gross Settlement Amount, of
23 Service Payments to the Plaintiffs and Class Representatives as follows:

- 24 • Fifteen Thousand Dollars (\$15,000) each for Class Representatives
25 Maurice Frank and Ethan Collins; and
- 26 • Ten Thousand Dollars (\$10,000) for Class Representative Robert
27 Anthony Gonzalez.

1 35. The remainder of the Gross Settlement Amount, less all the payments
2 authorized by this Order, shall be distributed to the Participating Class Members
3 (“Net Settlement Amount”).

4 36. Pursuant to California Code of Civil Procedure §384(b), the Court finds that
5 the total amount that will be payable to all Participating Class Members, if all
6 Participating Class Members are paid the amount to which they are entitled pursuant to
7 this Order, is estimated to be \$2,131,732.61, exclusive of the Individual PAGA payments
8 to Aggrieved Employees. Including the Individual PAGA payments to Aggrieved
9 Employees, the total amount that will be payable to all Participating Class Members and
10 Aggrieved Employees, if all Participating Class Members and Aggrieved Employees are
11 paid the amount to which they are entitled pursuant to this Order, is estimated to be
12 \$2,231,732.61.

13 37. The Individual Class Payment for each Participating Class Member shall be
14 calculated by (a) dividing the Net Settlement Amount by the total number of pay periods
15 during the Class Period worked by all Participating Class Members, and (b) multiplying
16 the result by the number of pay periods worked by the individual Participating Class
17 Member during the Class Period.

18 38. The Individual PAGA Payment for each Aggrieved Employee shall be
19 calculated by (a) dividing the \$100,000 available for Individual PAGA Payments by the
20 total number of pay periods during the PAGA Period worked by the Aggrieved
21 Employees; and (b) multiplying the result by the number of pay periods worked by the
22 individual Aggrieved Employee during the PAGA Period.

23 39. Each Individual Class Payment will be apportioned as Eighty percent (80%)
24 non-wage payments and Twenty percent (20%) wage payments. The Individual PAGA
25 Payment made to each Aggrieved Employee shall be apportioned as One Hundred percent
26 (100%) non-wage payment. The Settlement Administrator shall issue an IRS Form 1099
27 for all non-wage payments to each Participating Class Member or Aggrieved Employee
28 receiving the payment that exceeds the statutory threshold for issuance of an IRS Form

1 1099. The Settlement Administrator shall issue an IRS Form W-2 to each Participating
2 Class Member for the wage payment portion of his or her Individual Settlement Payment.

3 40. The Settlement Administrator shall distribute payments from the Gross
4 Settlement Amount as follows:

- 5 • Within 14 days after Defendant provides the Gross Settlement Amount
6 to the Settlement Administrator, the Settlement Administrator will mail
7 checks for all Individual Class Payments, all Individual PAGA
8 Payments, the LWDA PAGA Payment, and the Administration Expenses
9 Payment.
- 10 • One business day after the Settlement Administrator begins mailing
11 Individual Class Payments and Individual PAGA Payments, the
12 Administrator shall transmit, via wire transfer, the Class Counsel Fee
13 Payment and the Class Counsel Litigation Expenses Payment to each
14 counsel receiving such an award, and mail a check for each Class
15 Representative Service Payments to the counsel representing each
16 respective Class Representative.

17 41. The Settlement Administrator shall disburse the Individual Class Payments
18 and Individual PAGA Payments by check sent via First Class U.S. Mail, postage prepaid.
19 Before mailing any checks, the Settlement Administrator shall update the recipients'
20 mailing addresses using the National Change of Address Database. All checks shall be
21 void one hundred eight (180) calendar days after issuance.

22 42. Within 10 days after the Void Date for the last check issued from the
23 Settlement Fund, the Settlement Administrator will provide counsel for all parties with:
24 1) a final report detailing its disbursements by employee identification number only of all
25 payments made under this Agreement; and 2) a signed declaration suitable for filing in
26 Court attesting to the disbursement of all payments required under the Settlement. Class
27 Counsel shall file the Administrator's declaration with the Court as well as a compliance
28 statement one week before the date of the compliance hearing.

1 43. Following receipt of the final report and declaration from the Settlement
2 Administrator, in addition to filing the declaration, and compliance statement, Plaintiffs
3 will lodge a Proposed Amended Judgment addressing disposition of any remaining funds
4 consistent with California Code of Civil Procedure §384(b).

5 44. Five percent (5%) of the attorney fees are to be withheld by the claims
6 administrator pending satisfactory compliance with the settlement administration process,
7 as found by the Court. The withheld fees shall be released to Plaintiffs' counsel after the
8 compliance hearing and entry of the Amended Judgment.

9 45. The compliance hearing is set for June 6, 2024 at 9:00 a.m.

10 46. Without impacting the finality of this Order, the Court hereby retains
11 continuing jurisdiction over the enforcement, implementation, construction,
12 administration, and interpretation of the Settlement.

13
14 **IT IS SO ORDERED.**

15
16
17 DATED: _____

OCT 30 2023



Hon. Charles S. Treat
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 10/19/2023

10. 9:00 AM CASE NUMBER: MSC21-00956

CASE NAME: GONZALEZ VS GOLDEN GATE BELL

*HEARING ON MOTION IN RE: FINAL APPROVAL OF CLASS ACTION & PAGA SETTLEMENT

FILED BY:

TENTATIVE RULING:

Plaintiffs Robert Gonzalez, Maurice Frank, and Ethan Collins move for final approval of their class action and PAGA settlement with defendant Golden Gate Bell, LLC. They also move separately for approval of their attorney's fees, litigation costs, settlement administration costs, and representative payments. The motions are **granted**.

Since preliminary approval was granted, the administrator has mailed notices to 19,854 class members. 1,086 packets were returned by the post office. Follow up resulted in 605 new addresses, leaving 464 non-deliverable. No objections have been received, and only two class members have requested to opt out.

A. Background and Settlement Terms

Defendant operates a number of Taco Bell restaurants throughout the area. Plaintiffs were employed at various times at some of those restaurants.

The present Gonzalez complaint was filed on January 5, 2021, and subsequently amended. This settlement also covers two other cases asserting similar claims. Plaintiff Frank filed his complaint in Alameda County in 2018; plaintiff Collins, in Santa Clara County in 2018. Those actions were both removed to federal court but then remanded. They were then consolidated in Alameda County. An umbrella settlement was reached among all parties, and Frank and Collins have been amended in as plaintiffs in the Contra Costa action. Once final approval is granted in this action, the consolidated Alameda action will be dismissed.

The settlement will create a gross settlement fund of \$4.5 million. The class representative payment to the plaintiffs will be \$15,000 each to Frank and Collins, and \$10,000 to Gonzalez, for a total of \$40,000. Attorney's fees will be \$1.8 million (40% of the settlement). Litigation costs are \$64,367, significantly below the \$80,000 allocated in the preliminary approval. The settlement administrator's costs are \$63,900, also below the preliminary approval estimate. PAGA penalties will be \$400,000, resulting in a payment of \$300,000 to the LWDA. The net amount paid directly to the class members will be about \$2,231,762, not including distribution of PAGA penalties to employees. The fund is non-reversionary. There are an estimated 21,000 class members. Based on the estimated class size, the average net payment for each class member is approximately \$112, not including PAGA penalty distribution. The individual payments will vary considerably, however, because of the allocation formula prorating payments according to the number of weeks worked during the relevant time. The number of aggrieved employees for PAGA purposes is smaller, because the starting date of the relevant period is later.

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The entire settlement amount will be deposited with the settlement administrator within 14 days after the effective date of the settlement.

The proposed settlement will certify a class of all current and former non-exempt employed at Defendants' California facilities between July 18, 2014 and November 1, 2022. For PAGA purposes, the period covered by the settlement is June 25, 2017 to November 1, 2022.

The class members will not be required to file a claim. Funds will 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. Settlement checks not cashed within 180 days will be cancelled, and the funds will be directed equally to two *cy pres* beneficiaries, Public Counsel and the Boys & Girls Club of Sonoma County.

The settlement contains release language covering all claims and causes of action, alleged or which could have reasonably been alleged based on the allegations in the operative pleading, including a number of specified claims. 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.)

Formal discovery was undertaken, resulting in the production of substantial documents. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

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. As is typical, the complaints assert violations for off-clock work from early reporting or staying late; rest and meal breaks; reporting-time violations; and uncompensated use of personal vehicles and cell phones. Defendant contends that its written policies are fully compliant, and any hours or breaks violations would be both sporadic and hard to identify, resulting in difficulties in class treatment. Defendant also states that mileage reimbursement was available and denies that there were any other violations.

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.")) Moreover, recent decisions may make it difficult for PAGA plaintiffs to recover statutory penalties, as opposed to actual missed wages. (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 937; but see *Gola v. University of San Francisco* (2023) 90 Cal.App.5th 548, 566-67.)

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

B. 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*, 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. (*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, “the 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 “where 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.)

C. Attorney Fees and Other Costs

Plaintiffs seek 40% of the total settlement amount as fees, relying on the “common fund” theory, or \$1,800,000. 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.)

Accordingly, plaintiffs have provided information concerning the lodestar fee amount. They estimate the lodestar at \$1,574,331, representing an implied multiplier of 1.14. They based this amount on a

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total of 2,367 hours. No adjustment from the 40% fee is necessary. The attorney's fees are reasonable and are approved.

The requested representative payments of \$15,000 each for two named plaintiffs and \$10,000 for the third were deferred until this final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiffs have provided a declaration in support of their request. They point out that they executed a broader release than the class as a whole, but does not identify any particular claims of value that they may have. They also risk damage to their reputation and more difficulty in obtaining employment. The representative payments are approved.

Litigation costs of \$64,367 (mostly mediation, filing, and deposition fees, and expert data analysis) are reasonable and are approved.

The settlement administrator's costs of \$63,900 are reasonable and are approved.

D. Discussion and Conclusion

The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and adequate to justify final approval. The allocation of PAGA penalties among the aggrieved employees (based on pay periods) is reasonable.

The motions are granted.

Counsel are directed to prepare an order reflecting this entire tentative ruling and the other findings in the previously submitted proposed order and a separate judgment.

The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented, to be determined in consultation with the Department's clerk by phone. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. Five percent of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court. Pursuant to Code of Civil Procedure § 384(b), after the settlement is completely implemented, the judgment must be amended to reflect the amount paid to the *cy pres* recipient.

PROOF OF SERVICE

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES) ss:

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is 122 N. Baldwin Ave., Main Floor, Sierra Madre, CA 91024.

On October 23, 2023, I served the following document(s) described as:

REVISED [PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT, AND CLASS REPRESENTATIVE SERVICE PAYMENTS, ATTORNEY FEES, AND COSTS

on the interested parties by transmitting a true and correct copy thereof addressed as follows:

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Michael Calvo

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☒ **VIA EMAIL:** I personally sent such document(s) via email to the known email address of the person(s) on whom it is to be served.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on October 23, 2023 at Sierra Madre, California.

Justine Gray
Type or Print Name

Signature