

Envelope: 16773650

Filed  
October 4, 2024  
Clerk of the Court  
Superior Court of CA  
County of Santa Clara  
23CV413379  
By: afloresca

Cary Kletter (SBN 210230)  
Rachel Hallam (SBN 306844)  
Daniel Bronstein (SBN 335080)  
**KLETTER.LAW**  
111 S Claremont Street, Suite A  
San Mateo, California 94401  
(415) 434-3400  
cary@kletter.law  
rachel@kletter.law

10/4/2024 9:30:24 AM



Attorneys for PLAINTIFFS  
ERIKA SANCHEZ CRUZ &  
ESPERANZA GOMEZ

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SANTA CLARA**

**COMPLEX DIVISION**

ERIKA SANCHEZ CRUZ, ESPERANZA  
GOMEZ, and on behalf of all other  
similarly situated persons,

Plaintiffs,

v.

TOTAL QUALITY MAINTENANCE,  
INC.; And DOES 1-20, inclusive,

Defendants.

Case No. 23CV413379

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS AND REPRESENTATIVE  
ACTION SETTLEMENT**

**Date:** August 28, 2024

**Time:** 1:30 p.m.

**Department:** 19

**Judge:** Hon. Theodore C. Zayner

Complaint Filed: April 3, 2023

Trial Date: Not Set

ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS AND  
REPRESENTATIVE ACTION SETTLEMENT

1           Plaintiffs Erika Sanchez Cruz and Esperanza Gomez (“Plaintiffs”) move for preliminary  
2 approval of class and representative action settlement. The motion is unopposed by Defendant  
3 Total Quality Maintenance, Inc. (“Defendant”). **Plaintiffs’ motion to approve class and**  
4 **representative action settlement is GRANTED.**

5 The Court’s ruling is as follows:

6           I. Introduction

7           This is a class and representative action arising out of alleged wage and hour violations. On  
8 April 3, 2023, Plaintiffs filed their still operative Class Action Complaint against Defendant,  
9 setting forth the following causes of action: (1) failure to pay straight wages; (2) failure to pay all  
10 overtime earned for hours worked in violation of Labor Code, 510 and 1194, and [Industrial  
11 Welfare Commission (IWC)] Wage Orders; (3) failure to provide meal periods in violation of  
12 Labor Code, 226.7 and 512, and IWC Wage Orders; (4) failure to provide rest breaks; (5) failure to  
13 provide an accurate itemized wage statement in violation of Labor Code, 226; (6) waiting time  
14 penalties for failure to pay wages for all hours worked in violation of Labor Code, 201, 202 and  
15 203; (7) violation of Labor Code, 204 and 210; (8) unfair business practices; (9) Private Attorney  
16 General Act [Labor Code, 2698, et seq.] (PAGA); and (10) civil penalties under Labor Code, 558.

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

19           Plaintiffs initial moving papers did not include the settlement agreement. They submitted  
20 proposed settlement terms to the court on July 9, 2024. At the initial hearing on July 10, 2024, the  
21 court continued the motion to August 28, 2024. The court generally expressed approval of the  
22 settlement terms but noted that the amount of the requested incentive awards was higher than the  
23 court normally awards in similar situations. On August 8, 2024, Plaintiffs counsel filed a  
24 supplemental declaration stating that Plaintiffs had reduced the amount of the incentive awards and  
25 modified the class notice accordingly.

26           As discussed below, the court has reviewed Plaintiffs written submissions and GRANTS  
the motion for preliminary approval.

ORDER GRANTING PLAINTIFFS’ MOTION FOR PRELIMINARY APPROVAL OF CLASS AND  
REPRESENTATIVE ACTION SETTLEMENT

## 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

1 small. (*Wershba, supra*, 91 Cal.App.4th at p. 245, citation omitted.)

2 B. PAGA

3 Labor Code section 2699, subdivision (1)(2) provides that [t]he superior court shall review  
4 and approve any settlement of any civil action filed pursuant to PAGA. The court's review  
5 ensur[es] that any negotiated resolution is fair to those affected. (*Williams v. Superior Court*  
6 (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the  
7 Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent  
8 for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th  
9 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596  
10 U.S. \_\_\_, 2022 U.S. LEXIS 2940.)

11 Similar to its review of class action settlements, the Court must determine independently  
12 whether a PAGA settlement is fair and reasonable, to protect the interests of the public and the  
13 LWDA in the enforcement of state labor laws. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th  
14 56, 76-77.) It must make this assessment in view of PAGA's purposes to remediate present labor  
15 law violations, deter future ones, and to maximize enforcement of state labor laws. (*Id.* at p. 77;  
16 see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 [when  
17 a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and  
18 meaningful, consistent with the underlying purpose of the statute to benefit the public.], quoting  
19 LWDA guidance discussed in *O Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201  
20 F.Supp.3d 1110 (*O Connor*).)

21 The settlement must be reasonable in light of the potential verdict value. (*See O Connor,*  
22 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential  
23 verdict].) But a permissible settlement may be substantially discounted, given that courts often  
24 exercise their discretion to award PAGA penalties below the statutory maximum even where a  
25 claim succeeds at trial. (*See Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-cv-  
26 02198-EMC) 2016 WL 5907869, 2016 U.S. Dist. LEXIS 140759, at \*20-24.)

1           III. Discussion

2           A. Provisions of the Settlement

3           This case has been settled on behalf of: [A]ll current and former non-exempt employees of  
4 [Defendant] employed in California during the Class Period. (Declaration of Cary Kletter []  
5 (Kletter Dec.), Ex. 1 (Agreement), 6.) The Class Period is April 3, 2019 to the date of the  
6 Preliminary Approval Order. (Agreement, 8.)

7           The settlement also includes a subset of PAGA Members, defined as all current and former  
8 non-exempt employees of [Defendant] employed in the State of California during the PAGA  
9 during the PAGA Period. (Agreement, 24.) The PAGA Period means the period from January 28,  
10 2022 through the date of the Preliminary Approval Order. (Agreement, 25.)

11           Defendant will pay a maximum, non-reversionary amount of \$124,500. (Agreement, 18.)  
12 The gross settlement amount includes attorney fees up to \$41,085 (1/3 of the gross settlement  
13 amount), litigation costs not to exceed \$5,000, settlement administration costs not to exceed  
14 \$8,000, a PAGA allocation of \$20,000 (75 percent of which will be paid to the LWDA and 25  
15 percent which will be paid to PAGA Members. (Agreement, 18, 50(a)-(e).) Under the Agreement  
16 as modified, Plaintiffs request a total of \$5,000 in incentive awards (i.e., \$2,500 each).  
(Supplemental Declaration of Daniel Bronstein [], 4.)

17           The net settlement amount will be distributed to participating class members on a pro rata  
18 basis according to their number of applicable workweeks. (Agreement, 50(f).) Checks that remain  
19 uncashed after 180 days will be cancelled, and the associated funds will be transmitted to the  
20 Katherine and George Alexander Community Law Center (Alexander Law Center). (Agreement,  
21 61) The Alexander Law Center is a qualified cy pres designee because it is a nonprofit  
22 organization providing civil legal services to the indigent and promotes the rights of workers to be  
23 paid their wages. (See Declaration of Deborah Moss-West [], 3-6.) The court approves the cy pres  
24 designation. In exchange for the settlement, the class members agree to release Defendant, and  
25 related entities and persons, from any and all claims which were alleged or could have been  
26 alleged based on the factual allegations in the Complaint arising during the Class Period.

1 (Agreement, 29, 35, 48.) PAGA Members agree to release Defendant, and related entities and  
2 persons, from any and all claims for civil penalties under PAGA arising from any of the factual  
3 allegations in Plaintiffs PAGA Notice letter arising during the PAGA Period. (Agreement, 29, 36,  
4 49.)

5 B. Fairness of the Settlement

6 Plaintiffs state that the settlement was reached through discovery, analysis, and mediation  
7 with David Sarnoff of Sarnoff Mediations. (Kletter Dec., 14-17, 36.) Plaintiffs assert that the  
8 settlement is fair, reasonable, and in the best interests of the members of the class. (Id. at 37.)  
9 According to the figures provided by Plaintiffs, Defendant's estimated total maximum exposure is  
10 \$7,294,133.13. (Id. at 18-35.) Plaintiffs provide a breakdown of this amount by claim. (Ibid.) The  
11 average payment to the 577 class members will be approximately \$61.38. (Id. at 47.) The court has  
12 reviewed Plaintiffs written submissions in support of the proposed settlement, and as expressed at  
13 the prior hearing, finds the settlement to be fair. Although the settlement amount is low with  
14 respect to Defendant's potential maximum exposure on the causes of action themselves, in light of  
15 the facts presented, Defendant's realistic exposure is also comparatively low. This settlement  
16 provides for some recovery for each class member and eliminates the risk and expense of further  
17 litigation. Therefore, based on the circumstances of the case, including the strength of Plaintiffs  
18 case and the likelihood of obtaining recovery from Defendant, the court finds the terms of the  
19 settlement to be fair.

20 C. Incentive Award, Fees and Costs

21 Plaintiffs request enhancement awards in the total amount of \$5,000 (i.e., \$2,500 each).  
22 The rationale for making enhancement or incentive awards to named plaintiffs is that they should  
23 be compensated for the expense or risk they have incurred in conferring a benefit on other  
24 members of the class. An incentive award is appropriate if it is necessary to induce an individual to  
25 participate in the suit. Criteria courts may consider in determining whether to make an incentive  
26 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

1 amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5)  
2 the personal benefit (or lack thereof) enjoyed by the class representative as a result of the  
3 litigation. These incentive awards to class representatives must not be disproportionate to the  
4 amount of time and energy expended in pursuit of the lawsuit. (*Cellphone Termination Fee Cases*  
5 (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks, brackets, ellipses, and citations  
6 omitted.)

7 Plaintiffs Cruz and Gomez have each submitted declarations describing their participation  
8 in this litigation, and both estimate that they have spent approximately 20 hours (each) on such  
9 efforts. The court finds the requested amounts to be reasonable and approves incentive awards of  
10 \$2,500 each to Plaintiffs Cruz and Gomez. The court also has an independent right and  
11 responsibility to review the requested attorney fees and only award so much as it determines  
12 reasonable. (*See Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123,  
13 127-128.) Plaintiffs counsel will seek attorney fees of up to \$41,085 (one-third of the maximum  
14 settlement amount) and litigation costs not to exceed \$5,000. Plaintiffs counsel shall submit  
15 lodestar information (including hourly rate and hours worked) prior to the final approval hearing in  
16 this matter so the court can compare the lodestar information with the requested fees. Plaintiffs  
17 counsel shall also submit evidence of actual costs incurred as well as evidence of any settlement  
18 administration costs.

#### 18 D. Conditional Certification of Class

19 Plaintiff requests that the class be conditionally certified for purposes of the settlement.  
20 Rule 3.769(d) of the California Rules of Court states that [t]he court may make an order approving  
21 or denying certification of a provisional settlement class after [a] preliminary settlement hearing.  
22 California Code of Civil Procedure Section 382 authorizes certification of a class when the  
23 question is one of a common or general interest, of many persons, or when the parties are  
24 numerous, and it is impracticable to bring them all before the court . . . . As interpreted by the  
25 California Supreme Court, section 382 requires: (1) an ascertainable class; and (2) a well-defined  
26 community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court*

1 (2004) 34 Cal.4th 319, 326 (*Sav-On*.) The community-of-interest requirement encompasses three  
2 factors: (1) predominant questions of law or fact; (2) class representatives with claims or defenses  
3 typical of the class; and, (3) class representatives who can adequately represent the class. (*Sav-On*,  
4 *supra*, 34 Cal.4th at p. 326.) Other relevant considerations include the probability that each class  
5 member will come forward ultimately to prove his or her separate claim to a portion of the total  
6 recovery and whether the class approach would actually serve to deter and redress alleged  
7 wrongdoing. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of  
8 establishing that class treatment will yield substantial benefits to both the litigants and to the court.  
9 (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

10 As explained by the California Supreme Court, the certification question is essentially a  
11 procedural one that does not ask whether an action is legally or factually meritorious. A trial court  
12 ruling on a certification motion determines whether the issues which may be jointly tried, when  
13 compared with those requiring separate adjudication, are so numerous or substantial that the  
14 maintenance of a class action would be advantageous to the judicial process and to the litigants.  
15 (*Sav-On, supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)  
16 Plaintiff states there are approximately 577 class members, who can be identified from a review of  
17 Defendant s records. There are common questions regarding whether class members were  
18 subjected to common practices that violated wage and hour laws. No issue has been raised  
19 regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds  
20 that the proposed class should be conditionally certified for settlement purposes.

#### 21 E. Class Notice

22 The content of a class notice is subject to court approval. If the court has certified the  
23 action as a class action, notice of the final approval hearing must be given to the class members in  
24 the manner specified by the court. (Cal. Rules of Court, rule 3.769(f).) Here, the notice generally  
25 complies with the requirements for class notice. (Agreement, Ex. A.) It provides basic information  
26 about the settlement, including the settlement terms, and procedures to object or request exclusion.  
It also states that prospective class members may opt out of the settlement or object to it, and it



1 provides instruction for appearing remotely at the final fairness hearing. However, the class notice  
2 (at page 3 and Section 17) incorrectly states that class members must object in writing. These  
3 portions of the notice must be modified to indicate that recipients may object verbally at the final  
4 fairness hearing. Accordingly, provided that the parties amend the class notice as indicated prior to  
5 mailing, the class notice is approved.


6 IV. Conclusion

7 Plaintiffs' motion to for preliminary approval of class and representative action settlement  
8 is GRANTED. The final approval hearing is scheduled for January 22, 2025 at 1:30 p.m. in  
9 Department 19. Prior to the final approval hearing, Plaintiffs counsel shall submit lodestar  
10 information (including hourly rate and hours worked), evidence of actual costs incurred, and  
11 evidence of any settlement administration costs.

12 The prevailing party shall prepare the order in accordance with California Rules of Court,  
13 Rule 3.1312.

14  
15 IT IS SO ORDERED.

16 Dated: October 3, 2024

17  
18 By:   
19 Honorable Theodore C. Zayner  
20 Judge of the California Superior Court  
21  
22  
23  
24  
25  
26