SUPERIOR COURT, STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

SONYA OCANAS, individually and on behalf of all others similarly situated, Plaintiff, v. CATHOLIC CHARITIES OF SANTA CLARA COUNTY, et al., Defendants.	Case No.: 22CV399353 ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT Dept. 7

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Sonya Ocanas alleges that Defendant Catholic Charities of Santa Clara County failed to provide employees with required meal and rest periods and committed other wage and hour violations.

Before the Court is Plaintiff's motion for final approval of settlement, which is unopposed. Neither party contested the court's tentative ruling nor appeared at the hearing on March 7, 2024. Accordingly, as discussed below, the Court GRANTS the motion, with litigation costs limited to $10,000.

I. BACKGROUND

Defendant employed Plaintiff and other non-exempt employees in California, and continues to do so. (First Amended Consolidated Class Action Complaint ("FAC"), ¶¶ 26-27.)

Plaintiff alleges that Defendant failed to pay minimum and overtime wages for all hours worked at the correct rate and within the required time. (*Id*., ¶ 29.) Plaintiff and other employees did not receive all required meal and rest periods or premiums. (*Id*., ¶¶ 30-31.) They were not reimbursed for business expenses and were not provided with accurate itemized wage statements. (*Id.*, ¶¶ 32-33.) Employees were not timely paid all wages due upon separation of employment. (*Id*., ¶ 34.)

Based on these allegations, Plaintiff asserts the following putative class claims: (1) failure to pay minimum wages; (2) failure to pay overtime; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to reimburse business expenses; (6) failure to provide accurate itemized wage statements; (7) failure to timely pay wages during employment; (8) failure to pay all wages due upon separation of employment; and (9) violation of Business & Professions Code section 17200 et seq. Plaintiff also brings (10) a representative claim for PAGA penalties.

Plaintiff now moves for an order: granting final approval of the settlement; awarding class counsel's attorney's fees of up to one-third of the gross settlement amount and reimbursement of their litigation costs; awarding Plaintiff an incentive award of up to $10,000; approving $37,500 to the LWDA for its share of penalties under PAGA; and awarding up to $11,150 to ILYM Group, Inc. for administration costs.

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

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 relevant 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 trial court also must independently confirm that "the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Kullar, supra,* 168 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be "provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Id.* at pp. 130, 133.)

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, 644.)

Similar to 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 in light of 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, at *8–9.)

III. SETTLEMENT CLASS

For settlement purposes only, Plaintiff requests the following class be certified:

All current and former non-exempt employees who are and/or were employed by Defendant in California at any time from June 20, 2018 through September 29, 2023.

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 …."

Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence: (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, 332 (*Sav-On Drug Stores*).) "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.)

In the settlement context, "the court's evaluation of the certification issues is somewhat different from its consideration of certification issues when the class action has not yet settled." (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the settlement-only context, the case management issues inherent in the ascertainable class determination need not be confronted, and the court's review is more lenient in this respect. (*Id.* at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or

overbroad class definitions require heightened scrutiny in the settlement-only class context, since the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

At preliminary approval, the Court provisionally certified the above-described class, determining that Plaintiff had demonstrated by a preponderance of the evidence (1) an ascertainable class, (2) a well-defined community of interest among the class members and (3) that a class action provides substantial benefits to both litigants and the Court. Consequently, the Court will certify the class for settlement purposes as requested.

IV. TERMS AND ADMINISTATION OF SETTLEMENT

The non-reversionary gross settlement amount is $1,205,436.14. Attorney fees of $401,812.05 (one-third of the gross settlement), litigation costs of $11,187, and $11,150 in administration costs will be paid from the gross settlement. $50,000 will be allocated to PAGA penalties, 75 percent of which ($37,500) will be paid to the LWDA. Ms. Ocanas seeks an incentive award of $10,000.

The net settlement, approximately $722,514.28, will be distributed to 990 class members (accounting for opt-outs) proportionally based on their pay periods during the class and PAGA periods. The estimated average recovery for class members is $725.42, and the estimated highest payment is $2,046.02. For tax purposes, settlement payments will be allocated 33.33 percent to wages and 66.67 percent to penalties and interest. The employer's share of payroll taxes will be paid in addition to the gross settlement. Funds associated with checks uncashed after 180 days will be paid to the Katherine & George Alexander Community Law Center.

In exchange for the settlement, class members who do not opt out will release all claims, charges, etc. "whether known or unknown, that were alleged, or reasonably could have been alleged, during the Class Period based on facts stated in the Operative Complaint ...," including the wage and hour claims asserted in the FAC and some that are not ("failure to pay reporting time pay" and "failure to provide required days of rest in violation of Labor Code sections 551

and/or 552"). Similarly, the PAGA release is limited to "claims for civil penalties that were alleged, or reasonably could have been alleged during the PAGA Period, based on the facts stated in the Operative Complaint, and the PAGA Notice," including the same causes of action. Consistent with the statute, aggrieved employees will not be able to opt out of the PAGA portion of the settlement.

As the Court determined in its order preliminarily approving the settlement, the releases are appropriately tailored to the factual allegations at issue. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)

The notice period has now been completed. According to the declaration of the case manager with settlement administrator ILYM Group, Inc. ("ILYM") submitted in support of the instant motion, Tracy Dantema, ILYM received from Defendant's counsel the names and identifying information (including last known mailing address) for each settlement class member and subsequently processed these items against the National Change of Address database to confirm and update the relevant information. On August 4, 2023, the Notice Packets were mailed via first class mail to all 997 individuals contained in the list provided to ILYM. As of the date of Ms. Dantema's declaration, October 24, 2023, 27 packets have been returned to ILYM as undeliverable, with 1 including a forwarding address. ILYM performed a skip trace on these returned packets, and obtained 12 updated addresses, to which Notice Packets were promptly re-mailed. At present, 14 Notice Packets have been deemed undeliverable. ILYM has received seven requests for exclusion and no objections. The deadline to request exclusion from the settlement or to object to its terms was October 3, 2023.

At preliminary approval, the Court found that the proposed settlement provides a fair and reasonable compromise to Plaintiff's claims, and that the PAGA settlement is genuine, meaningful, and fair to those affected. It finds no reason to depart from these findings now,

especially considering that there are no objections. Therefore, the Court finds that the settlement is fair and reasonable for the purposes of final approval.

V. ATTORNEYS FEES, COSTS AND INCENTIVE AWARD

As articulated above, Plaintiff's counsel seeks a fee award of $401,812.05, or one-third of the gross settlement, which is not an uncommon contingency fee in a wage and hour class action. This award is facially reasonable under the "common fund" doctrine, which allows a party recovering a fund for the benefit of others to recover attorney fees from the fund itself. Plaintiff also provides a lodestar figure of $230,285, based on 304.60 hours, which works out to an average billing rate of $756 per hour, resulting in a multiplier of 1.74.[1] This is within range of multiplier's that courts typically approved. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; *Wershba, supra,* 91 Cal.App.4th at p. 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements finding "a range of 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range"].)

"While the percentage method has been generally approved in common fund cases, courts have sought to ensure the percentage fee is reasonable by refining the choice of a percentage or by checking the percentage result against a lodestar- multiplier calculation." (*Laffitte, supra,* 1 Cal.5th 480, 494-495.) Applying this latter approach, "the percentage-based fee will typically be larger than the lodestar based fee. Assuming that one expects rough parity between the results of the percentage method and the lodestar method, the difference between the

[1] Counsel does not identify the specific billing rates of the four attorneys who are identified as class counsel.

two computed fees will be attributable solely to a multiplier that has yet to be applied. Stated another way, the ratio of the percentage-based fee to the lodestar-based fee implies a multiplier, and that implied multiplier can be evaluated for reasonableness. If the implied multiplier is reasonable, then the cross-check confirms the reasonableness of the percentage-based fee; if the implied multiplier is unreasonable, the court should revisit its assumptions." (*Laffitte, supra,* 1 Cal.5th at p. 496, quoting Walker & Horwich, *The Ethical Imperative of a Lodestar Cross-check: Judicial Misgivings About "Reasonable Percentage" Fees in Common Fund Cases* (2005) 18 Geo. J. Legal Ethics 1453, 1463.) As described by the California Supreme Court, "[i]f the multiplier calculated by means of a lodestar crosscheck 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." (*Laffitte, supra,* 1 Cal.5th at 505.)

Here, the requested multiplier sought by Plaintiff's counsel is well within the range of multipliers regularly approved by California courts in similar actions, and in fact is on the lower end of this range and is supported by the percentage cross-check. As such, the Court finds counsel's requested fee award is reasonable.

Plaintiff's counsel also seeks $11,187 in litigation costs, which is beyond the $10,000 provided by the settlement agreement. Given that the agreement *expressly* limits the amount of litigation expenses Plaintiff's counsel is entitled to recover to $10,000 (see settlement agreement at § 3.2.2), the Court will only approve recovery of this amount. The $11,150 in administrative costs are approved.

Finally, Plaintiff requests an incentive award of $10,000. To support her request, she submits a declaration describing her efforts on the case. The Court finds that the class representative is entitled to an enhancement award and the amount requested is reasonable.

VI. CONCLUSION

In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

Plaintiff's motion for final approval is GRANTED, with litigations costs limited to $10,000. The following class is certified for settlement purposes only:

All current and former non-exempt employees who are and/or were employed by Defendant in California at any time from June 20, 2018 through September 29, 2023.

Excluded from the class are the seven individuals who submitted timely requests for exclusion.

Judgment will be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiff and the members of the class will take from their complaint only the relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule 3.769(h) of the California Rules of Court, the Court will retain jurisdiction over the parties to enforce the terms of the settlement agreement and the final order and judgment.

The Court sets a compliance hearing for **October 17, 2024 at 2:30 P.M.** in Department 7. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted pursuant to Code of Civil Procedure section 384, subdivision (b); the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention.

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Counsel shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

DATED: March 15, 2024

CHARLES F. ADAMS
Judge of the Superior Court