SUPERIOR COURT, STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

ROSA ESMERALDA ESTEBAN MARTINEZ, et al., as aggrieved employees pursuant to the Private Attorneys General Act ("PAGA"), on behalf of the State of California and other aggrieved employees, Plaintiffs, v. PACIFIC CATCH, INC., et al., Defendants.	Case No.: 22CV393580 ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PAGA SETTLEMENT Dept. 7

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiffs Rosa Esmeralda Esteban Martinez, Mirian Gonzalez Orellano and Kelly Stover allege that Defendant Pacific Catch, Inc., who operates five seafood restaurants in the San Francisco Bay Area, failed to pay overtime and minimum wages, failed to provide compliant meal and rest periods or pay associated premiums, and failed to provide code-complaint wage statements, among other Labor Code violations.

Now before the Court are Plaintiffs' motion for final approval of a settlement and motion for attorneys' fees, costs and enhancement awards, which are unopposed. As discussed below, the Court GRANTS the motions.

I. BACKGROUND

On January 24, 2022, Ms. Martinez and Ms. Orellano filed a PAGA Complaint against Defendant in this Court in the action captioned *Martinez, et al. v. Pacific Catch, Inc.*, Case No. 22CV393580, alleging various wage and hour law violations and seeking civil penalties for those violations. On July 25, 2022, Ms. Stover filed class action complaint in Marin County Superior Court in the action captioned *Stover v. Pacific Catch, Inc.*, Case No. CIV2202328, alleging that Defendant violated numerous wage and hour laws.

On September 13, 2022, Ms. Martinez and Ms. Orellano filed a First Amended Class and PAGA Complaint. Two weeks later, on September 27, 2022, Ms. Stover filed a PAGA complaint against Defendant in Marin County Superior Court, Case No. CIV2203099, which alleged the same wage and hour violations as those raised in her class action complaint. Ms. Martinez and Ms. Orellano filed a Second Amended Class and PAGA Complaint ("SAC"), adding a claim for Defendant's alleged failure to properly pay tips.

On March 7, 2023, the Marin County Superior Court entered an order consolidating the *Stover* Class Action and the *Stover* PAGA Action, with the former serving as the lead case. On March 13, 2022, the Marin County Superior Court entered an order transferring the *Stover* actions to this Court (assigned Case No. 23CV420141). On August 18, 2023, the *Stover* Actions were consolidated with the *Martinez* Action, with the latter serving as the lead case.

According to the SAC, Ms. Martinez was employed by Defendant as an hourly, non-exempt employee as, at different times, a Dishwasher, Butcher, Prep Cook and Line Cook from approximately May 2019 to May 2021. (SAC, ¶ 6.) Ms. Orellano was employed as an hourly, non-exempt Line Cook from approximately September 2020 to June 2021. (*Id.*, ¶ 7.) Both allege that they and other employees were not paid for all hours worked because Defendant failed to record all of those hours. This included overtime hours, as well as off-the-clock work for which they were entitled to minimum wages. (*Id.*, ¶¶ 20-23.) They further allege that

Defendant failed to provide them with the meal and rest periods to which they were entitled, and premiums for the same, and implemented an unlawful tipping policy which required them and other employees to turn over portions of the gratuities they received to Defendant. (*Id*., ¶¶ 29-30.) Defendant also allegedly required Plaintiffs and other employees to work more than six consecutive days without a day of rest in violation of relevant provisions of the Labor Code, and failed to reimburse them for business-related costs and expenses incurred during the course and scope of their employment.

Based on the foregoing, Ms. Martinez and Ms. Orellano assert the following causes of action: (1) for Civil Penalties under PAGA; (2) Failure to Pay Overtime (Violation of Labor Code §§ 510, 1194, 1197 and 1198); (3) Failure to Pay Minimum Wages (Violation of Labor Code §§ 204, 210, 216, 558, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198); (4) Failure to Provide and Record Meal Periods (Violation of Labor Code §§ 218.6, 226.7, 512 and 1198); (5) Failure to Authorize and Permit Rest Periods (Violation of Labor Code §§ 218.6, 226.7, 516 and 1198); (6) Failure to Provide and Maintain Compliant Wage Statements (Violation of Labor Code §§ 226(a), 1174 and 1198); (7) Failure to Pay Wages Upon Termination (Violation of Labor Code §§ 201, 202 and 203); (8) Failure to Timely Pay Wages During Employment (Violation of Labor Code §§ 204, 218.5, 218.6, 226.7, 510, 1194, 1197.1 and 1197.5); (9) Failure to Reimburse Necessary Business Expenses (Violation of Labor Code § 2802); (10) Unlawful Business Practices (Violation of Business & Professions Code §§ 17200, et seq.); and (11) Unfair Business Practices (Violation of Business & Professions Code §§ 17200, et seq.).

According to the *Stover* Class Action Complaint, Ms. Stover was employed by Defendant as an hourly, non-exempt server from approximately March 3, 2017 through July 25, 2021. Ms. Stover makes similar allegations to those pleaded in the *Martinez* SAC and asserts the following claims in the Class Action Complaint: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Owed; (3) Failure to Provide Lawful Meal Periods; (4) Failure to Authorize and Permit

Rest Periods; (5) Failure to Timely Pay Wages Owed During Employment; (6) Failure to Timely Pay Wages Owed Upon Separation from Employment; (7) Failure to Furnish Accurate Itemized Wage Statements; and (8) Violation of Unfair Competition Law. In her PAGA Complaint, Ms. Stover asserts a single cause of action for penalties under PAGA for the same wage and hour violations alleged in her Class Action Complaint.

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, 2022 U.S. LEXIS 2940.)

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 non-exempt, hourly-paid employees of Defendant deployed in California at a restaurant at any time during the Class Period of January 24, 2018 through February 28, 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 Plaintiffs 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 $1,926,308.31.[1] Attorney fees of up to $600,000 (one-third of the gross settlement), litigation costs and expenses of up to $25,000, and $25,000 costs will be paid from the gross settlement. $100,000 will be allocated to PAGA penalties, 75% of which ($75,000) will be paid to the LWDA. The named plaintiffs seek enhancement awards of $5,000 and General Release Payments of $5,000 each.

[1] At preliminary approval, this amount was $1,800,000 but has been increased due to the triggering of the escalator clause of the parties' agreement.

The net settlement will be allocated to class members on a pro-rata basis according to the number of weeks each member worked during the class period. The remaining 25% of the PAGA settlement amount will be distributed to aggrieved employees in the same manner except it will be based on the number of weeks worked during the PAGA period of November 18, 2020 through February 28, 2023. Class members will not be required to submit a claim to receive their payments. For tax purposes, settlement payments will be allocated 20% to wages, 40% interest on the unpaid wages, and 40% to penalties, and the required withholdings and taxes (including all payroll taxes) will be withheld by the administrator prior to remitting payment to class members. Funds associated with the checks uncashed after 180 days will be transferred to the State of California's Unclaimed Property Fund in the name of the participating class member/aggrieved employee.

In exchange for the settlement, class members who do not opt out will release any and all claims that "arise from the facts, matters, transactions or occurrences alleged in the [*Martinez* and *Stover* actions] or that could have been alleged in [these] Actions based on such facts," including specified wage and hour claims. The PAGA release provides that in exchange for the PAGA amount received, Plaintiffs "forever and completely release and discharge Defendant and each of the Released Parties from the PAGA Claims that arose during the PAGA Period." "PAGA Claims" means claims for penalties under PAGA that (a) "arise from the facts, matters, transactions or occurrences alleged in the [*Martinez* and *Stover* actions] or that could have been alleged in those actions based on such facts," and/or (b) "arise from the facts, matters, transaction or occurrences alleged, or that could have been alleged, in the PAGA Notice Letters sent by … Plaintiffs to the [LWDA] …." 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 a case manager with settlement administrator CPT Group, Inc. ("CPT"), Kaylie O'Connor, submitted in support of the instant motions, on November 9 and 13, 2023 and January 2 and 10, 2024, CPT received from Defendant 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 January 17, 2024, Notice Packets were mailed via first class mail to the 3,192 class members identified in the list provided to CPT. As of the date of Ms. O'Connor's declaration, March 25, 2024, 238 Notice Packets have been returned without a forwarding address. CPT performed a skip trace on these returned packets and obtained 180 updated addressed, to which packets were promptly re-mailed. At present, 109 Notice Packets have been deemed undeliverable. CPT has received 1 request for exclusion and no objections to the settlement. The administrator estimates that the average payment to be received by the 3,191 participating class members is $359.23, with a high payment of $2,237.22. The average PAGA payment to be received by the 2,071 PAGA members is estimated to be $12.07, which a high payment of $40.07.

At preliminary approval, the Court found that the proposed settlement provides a fair and reasonable compromise to Plaintiffs' 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. MOTION FOR ATTORNEYS FEES, COSTS AND INCENTIVE AWARD

As articulated above, Plaintiffs' counsel seeks a fee award of $600,000, or one-third of the gross settlement, which is not an uncommon contingency fee allocation 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. Plaintiffs also provide a lodestar figure of $426,022.50, based on 613.9 hours at billing rates of $475 to $950, resulting in a modest multiplier of 1.4. This is well within the range of multipliers that courts typically approve. (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 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, as the multiplier sought by Plaintiffs' counsel is relatively modest, well within the range of modifiers typically approved by courts and is supported by the percentage cross-check the Court finds counsel's requested fee award is reasonable.

Plaintiffs' counsel also seeks $22,263.18 in litigation costs, which is below the $25,000 limit provided by the Settlement and appears reasonable. The $25,000 in administrative costs are also approved.

Finally, Plaintiffs request incentive awards of $5,000 each and general release payments in the same amount, each. To support their requests, they submit declarations describing their efforts in the case. The Court finds that the class representatives are entitled to such payments and that the amounts requested are reasonable.

VI. CONCLUSION

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

Plaintiffs' motion for final approval and motion for attorneys' fees, costs and enhancement awards are GRANTED. The following class is certified for settlement purposes only:

All non-exempt, hourly-paid employees of Defendant deployed in California at a restaurant at any time during the Class Period" of January 24, 2018 through February 28, 2023.

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 **December 19, 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. 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: April 18, 2024

CHARLES F. ADAMS
Judge of the Superior Court