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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

GERARDO CASTELLANOS, et al.,  
  
Plaintiffs,  
  
vs.  
  
SERVICE BY MEDALLION, et al.,  
  
Defendants.

Case No.: 2015-1-CV-288369

**ORDER AFTER HEARING ON  
APRIL 26, 2019 AND JUDGMENT**

- (1) Plaintiffs' Motion for Final Approval of Class Settlement and**
- (2) Plaintiffs' Motion for Approval of Attorney Fees, Costs, and Service Awards**

The above-entitled matter came on for hearing on Friday, April 26, 2019 at 9:00 a.m. in Department 1 (Complex Civil Litigation), the Honorable Brian C. Walsh presiding. A tentative ruling was issued prior to the hearing. The appearances are as stated in the record. Having reviewed and considered the written submissions of all parties and being fully advised, the Court the Court rules as follows:

This is a putative wage and hour class action by employees of defendant Service by Medallion. The parties have reached a settlement, which the Court preliminarily approved in an order filed on December 18, 2018. The factual and procedural background of the action and the Court's analysis of the settlement and settlement class are set forth in that order.

1 Before the Court are plaintiffs' motions for final approval of the settlement and for  
2 approval of their attorney fees, costs, and service awards. Plaintiffs' motions are unopposed.

3  
4 I. Legal Standards for Approving a Class Action/PAGA Settlement

5 Generally, "questions whether a settlement was fair and reasonable, whether notice to  
6 the class was adequate, whether certification of the class was proper, and whether the attorney  
7 fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v.*  
8 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.*  
9 (1996) 48 Cal.App.4th 1794, disapproved of on other grounds by *Hernandez v. Restoration*  
10 *Hardware, Inc.* (2018) 4 Cal.5th 260.)

11 In determining whether a class settlement is fair, adequate and reasonable, the  
12 trial court should consider relevant factors, such as the strength of plaintiffs' case,  
13 the risk, expense, complexity and likely duration of further litigation, the risk of  
14 maintaining class action status through trial, the amount offered in settlement, the  
15 extent of discovery completed and the stage of the proceedings, the experience  
16 and views of counsel, the presence of a governmental participant, and the reaction  
17 of the class members to the proposed settlement.  
(*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, internal citations and  
18 quotations omitted.)

19 The list of factors is not exclusive and the court is free to engage in a balancing and  
20 weighing of factors depending on the circumstances of each case. (*Wershba v. Apple*  
21 *Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed  
22 settlement agreement to the extent necessary to reach a reasoned judgment that the agreement  
23 is not the product of fraud or overreaching by, or collusion between, the negotiating parties,  
24 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned."  
25 (*Ibid.*, quoting *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801, internal quotation  
marks omitted.)

26 The burden is on the proponent of the settlement to show that it is fair and  
27 reasonable. However "a presumption of fairness exists where: (1) the settlement  
28 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

1 experienced in similar litigation; and (4) the percentage of objectors is small.”  
2 (*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245, citing *Dunk v. Ford Motor*  
3 *Co., supra*, 48 Cal.App.4th at p. 1802.) The presumption does not permit the Court to “give  
4 rubber-stamp approval” to a settlement; in all cases, it must “independently and objectively  
5 analyze the evidence and circumstances before it in order to determine whether the settlement  
6 is in the best interests of those whose claims will be extinguished,” based on a sufficiently  
7 developed factual record. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,  
8 130.)

9 Finally, Labor Code section 2699, subdivision (l) provides that “[t]he superior court  
10 shall review and approve any penalties sought as part of a proposed settlement agreement  
11 pursuant to” PAGA. 75 percent of any penalties recovered under PAGA go to the Labor and  
12 Workforce Development Agency (“LWDA”), leaving the remaining 25 percent for the  
13 aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th  
14 348, 380.) “[T]here is no requirement that the Court certify a PAGA claim for representative  
15 treatment” as in a class action. (*Villalobos v. Calandri Sunrise Farm LP* (C.D. Cal., July 22,  
16 2015, No. CV122615PSGJEMX) 2015 WL 12732709, at \*5.) “[W]hen a PAGA claim is  
17 settled, the relief provided ... [should] be genuine and meaningful, consistent with the  
18 underlying purpose of the statute to benefit the public ....” (*Id.* at \*13.) The settlement must  
19 be reasonable in light of the potential verdict value (see *O’Connor v. Uber Technologies, Inc.*  
20 (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135 [rejecting settlement of less than one percent of  
21 the potential verdict]); however, it may be substantially discounted given that courts often  
22 exercise their discretion to award PAGA penalties below the statutory maximum even where a  
23 claim succeeds at trial (see *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-  
24 CV-02198-EMC) 2016 WL 5907869, at \*8-9).

## 25 26 II. Terms and Administration of the Settlement

27 The \$1,350,000 non-reversionary settlement includes a \$5,000 payment to the  
28 California Labor and Workforce Development Agency associated with plaintiffs’ PAGA claim

1 (seventy-five percent of the \$6,667 allocated to PAGA penalties). Attorney fees of up to  
2 \$472,500 (thirty-five percent of the gross settlement), litigation costs not to exceed \$20,000,  
3 and administration costs not to exceed \$23,500 will also be paid from the gross settlement.

4 The named plaintiffs—both Castellanos and, following the amendment of this action,  
5 Gamarra—will seek enhancement awards of \$7,500 each. Class member payments will be  
6 allocated 35 percent as wages and otherwise as penalties and interest. Defendant will pay its  
7 share of any payroll taxes separately, without reducing the settlement fund.

8 Due to defendant's financial condition, the settlement will be funded in two payments,  
9 with the first installment of \$850,000 due within three weeks of final approval and the second  
10 installment of \$500,000 due a year later. The class representative service awards and LWDA  
11 payment will be satisfied in full from the first installment, while the class member payments  
12 and other fees and costs will be satisfied 62.4 percent from the first installment and the  
13 remainder from the second installment.

14 The net settlement will be distributed to class members pro rata based on the number  
15 of weeks worked by each class member during the class period. Class members will not be  
16 required to submit a claim to receive their payments. Checks uncashed after 180 days will be  
17 voided and the associated funds will be paid to Building Skills Partnership, a non-profit  
18 organization that provides education to Bay area union employees. At preliminary approval,  
19 the average class member payment was estimated to be \$197.76 to each of the 4,116 class  
20 members.

21 Class members who do not opt out of the settlement will release all claims "that could  
22 have been asserted against the Released Parties based upon the facts alleged in the Class  
23 Action Complaint filed in [this] Action, or in [the related *Gamarra* action] ... from November  
24 23, 2011 to February 23, 2018," including specified wage and hour claims.

25 The notice process has now been completed. There were no objections and only 11  
26 requests for exclusion from the class, 5 of which were verbally rescinded when the  
27 administrator called class members to confirm their intent. Of 3,852 notice packets, 278 were  
28 re-mailed to updated addresses and 38 were ultimately undeliverable. The administrator

1 estimates that the average class member payment will be \$213.01, with a maximum payment  
2 of \$2,530.43.

3 At preliminary approval, the Court found that the proposed settlement provides a fair  
4 and reasonable compromise to plaintiffs' claims. It finds no reason to deviate from this finding  
5 now, especially considering that there are no objections. The Court consequently finds that the  
6 settlement is fair and reasonable for purposes of final approval.

### 7 8 III. Attorney Fees, Costs, and Incentive Award

9 Plaintiffs seek a fee award of \$472,500, or 35 percent of the gross settlement, which is  
10 higher than the 33 percent award typically requested in wage and hour cases in this Court. An  
11 award in this range is allowable under the "common fund" doctrine, which allows a party  
12 recovering a fund for the benefit of others to recover attorney fees from the fund itself. At  
13 preliminary approval, the Court indicated that it was disinclined to award more than the typical  
14 33 percent of the common fund in this case, and it is unpersuaded by plaintiffs' argument that  
15 it should do so. While the Court appreciates the challenges that plaintiffs' counsel encountered  
16 in achieving a settlement in this case, it does not believe that these challenges were appreciably  
17 more difficult than those typically present in wage and hour class actions. Further, the  
18 relatively large class size in this case results in a generous fee award to plaintiffs' counsel even  
19 when the award is limited to 33 percent of the common fund.

20 Plaintiffs provide a lodestar figure of \$383,000, based on 585 hours spent on the case  
21 by attorneys with billing rates of \$450 to \$810 per hour. The fee request results in a reasonable  
22 multiplier of 1.23; however, it includes substantial time expended in connection with the  
23 parties' amendment of their original settlement agreement after the Court denied their first  
24 motion for preliminary approval. As a cross-check, the lodestar supports a 1/3 percentage fee,  
25 particularly given the lack of objections to the attorney fee request. (See *Laffitte v. Robert Half*  
26 *Intern. Inc.* (Cal. 2016) 1 Cal.5th 480, 488, 503-504 [trial court did not abuse its discretion in  
27 approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a  
28 multiplier of 2.03 to 2.13].) However, the lodestar does not support a higher award. Plaintiffs'

1 attorney fee request is accordingly approved in the amount of \$450,000, with the unapproved  
2 \$22,500 to be distributed to the class.

3 Plaintiffs also request \$14,756.47 in costs, below the estimate provided at preliminary  
4 approval. The costs are reasonable based on the summaries provided and are approved. The  
5 \$23,500 in settlement administration costs are also approved.

6 Finally, the named plaintiffs request service awards of \$7,500 each. The Court finds  
7 that the class representatives are entitled to an enhancement award and the amounts requested  
8 are reasonable.

9  
10 IV. Order and Judgment

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

13 Plaintiffs' motion for final approval is GRANTED. Plaintiffs' motion for attorney fees,  
14 costs, and service awards is GRANTED IN PART as to attorney fees and is otherwise  
15 GRANTED in full. Plaintiffs' counsel shall receive \$450,000 in attorney fees, and the  
16 unapproved \$22,500 in requested fees shall be distributed to the class.

17 The following class is certified for settlement purposes:

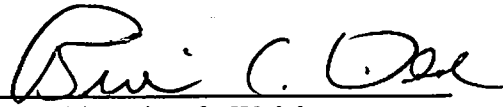
18 All current and former non-exempt employees employed by Defendant in  
19 California at any time between November 23, 2011 and February 23, 2018,  
20 excluding any officers or directors of Defendant and any person who has already  
released the Released Claims through a prior action or settlement.

21 Excluded from the class are the six individuals who submitted and did not rescind  
22 timely requests for exclusion.

23 Judgment shall be entered through the filing of this order and judgment. (Code Civ.  
24 Proc., § 668.5.) Plaintiffs and the members of the settlement class shall take from their  
25 complaint only the relief set forth in the settlement agreement and this order and judgment.  
26 Pursuant to Rule 3.769(h) of the California Rules of Court, the Court retains jurisdiction over  
27 the parties to enforce the terms of the settlement agreement and the final order and judgment.  
28

1 The Court sets a compliance hearing for October 30, 2020 at 10:00 A.M. in  
2 Department 1. At least ten court days before the hearing, class counsel and the settlement  
3 administrator shall submit a summary accounting of the net settlement fund identifying  
4 distributions made as ordered herein, the number and value of any uncashed checks, amounts  
5 remitted to the *cy pres* beneficiary, the status of any unresolved issues, and any other matters  
6 appropriate to bring to the Court's attention. Counsel shall also submit an amended judgment  
7 as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at  
8 the compliance hearing telephonically.

9  
10 Dated: 5-2-19

  
11 Honorable Brian C. Walsh  
12 Judge of the Superior Court  
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