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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
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11 JASON VEHAWN, et al.,

12 Plaintiffs,

13 v.

14 SUREFOX NORTH AMERICA CORP., et al.,

15 Defendants.
16

Case No.: 19CV347966

**ORDER CONCERNING PLAINTIFFS’
MOTION FOR FINAL APPROVAL OF
CLASS/PAGA SETTLEMENT AND
JUDGMENT**

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18 This is a consolidated putative class and Private Attorneys General Act (“PAGA”) action.
19 Plaintiffs allege that Defendants Surefox North America and Surefox Consulting LLC
20 (collectively “Surefox”) committed various wage and hour violations, including failing to
21 provide timely off-duty meal and rest breaks, not paying wages on time and not reimbursing
22 business expenses, and requiring employees to sign invalid non-compete agreements.

23 The parties reached a settlement, which the Court preliminarily approved in an order filed
24 on April 22, 2022. The factual and procedural background of the action and the Court’s analysis
25 of the settlement and settlement class are set forth in that order.

26 Before the Court is Plaintiffs’ motion for final approval of the settlement and for approval
27 of their attorney fees, costs, and service awards. The motion is unopposed. The Court issued a
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1 tentative ruling on November 29, 2022, and no one challenged it at the hearing on December 1.
2 The Court now issues its final order, which GRANTS final approval.

3 **I. LEGAL STANDARDS FOR SETTLEMENT APPROVAL**

4 **A. Class Action**

5 Generally, “questions whether a [class action] settlement was fair and reasonable,
6 whether notice to the class was adequate, whether certification of the class was proper, and
7 whether the attorney fee award was proper are matters addressed to the trial court’s broad
8 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
9 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
10 260.)

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.

18 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

19 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
20 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
21 168 Cal.App.4th 116, 130 (*Kullar*.) But the trial court is free to engage in a balancing and
22 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
23 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
24 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
25 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
26 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
27 marks omitted.) The trial court also must independently confirm that “the consideration being
28 received for the release of the class members’ claims is reasonable in light of the strengths and

1 weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168
2 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be
3 “provided with basic information about the nature and magnitude of the claims in question and
4 the basis for concluding that the consideration being paid for the release of those claims
5 represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

6 **B. PAGA**

7 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall
8 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
9 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
10 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
11 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
12 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
13 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*
14 *Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940.)

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

25 The settlement must be reasonable in light of the potential verdict value. (See *O’Connor,*
26 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential
27 verdict].) But a permissible settlement may be substantially discounted, given that courts often
28 exercise their discretion to award PAGA penalties below the statutory maximum even where a

1 claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-
2 CV-02198-EMC) 2016 WL 5907869, at *8–9.)

3 **II. TERMS AND ADMINISTRATION OF SETTLEMENT**

4 The gross settlement amount is \$835,000. Attorney fees of up to \$400,000 (almost half
5 of the gross monetary settlement) were originally requested, but counsel has reduced their
6 request to the standard one-third of the gross settlement, or \$278,333.33.¹ These fees, along with
7 litigation costs not to exceed \$15,000 and administration costs of up to \$18,000, will be paid
8 from the gross settlement. \$140,000 will be allocated to PAGA penalties, 75 percent of which
9 will be paid to the LWDA. The named plaintiffs will seek incentive awards of \$7,500 each.

10 The net settlement will be allocated to settlement class members proportionally based on
11 their eligible workweeks. Class members will not be required to submit a claim to receive their
12 payments. For tax purposes, settlement payments will be allocated 20 percent to wages and 80
13 percent to interest and penalties. The employer’s share of taxes will be paid separately from the
14 gross settlement.

15 In addition to the monetary portion of the settlement, Surefox has agreed to non-monetary
16 remedial measures: (1) it will provide written notice of its clock-in/clock-out policies to the
17 specific effect that all time spent performing work duties will be compensated and compensable
18 work time begins when employees arrive at the worksite at their scheduled time and begin
19 working; and (2) it will provide written notice to California guards that they may work for any
20 other entity that is disclosed to Surefox and has been deemed not to create a conflict of interest
21 with their Surefox employment.

22 With regard to uncashed checks, the settlement agreement states: “The Parties agree that
23 Code of Civil Procedure section 384 does not apply to the settlement. To the extent that
24 Individual Settlement Payment checks are uncashed 120 days after the date listed on the check,
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27 ¹ The settlement provides that any portion of the requested attorney fees and costs that is not
28 approved by the Court will be added to the net settlement fund to be paid to class members.

1 the Settlement Administrator will deem the checks to be void and return the amount of uncashed
2 checks to Surefox.”²

3 Under the amended settlement agreement filed on May 9, 2022, the parties agreed to
4 modify the release of claims to encompass “any and all actual or potential claims arising from
5 the factual allegations pled in the Third Amended Complaint in the Consolidated Action, during
6 the Class Period,” including specified wage and hour claims.

7 The notice process has now been completed. There were no objections to the settlement
8 and 10 requests for exclusion from the class. Of the 734 notices mailed by the administrator, 74
9 were re-mailed to updated addresses and 5 were ultimately undeliverable. Plaintiffs estimate that
10 the average payment to class members will be \$606.12, with a high payment of over \$1,300.

11 At preliminary approval, the Court found that the settlement is a fair a reasonable
12 compromise of the class claims and that the PAGA allocation is genuine, meaningful, and
13 reasonable in light of the statute’s purposes. It finds no reason to deviate from these findings
14 now, especially considering that there are no objections. The Court thus finds that the settlement
15 is fair and reasonable for purposes of final approval.

16 **III. ATTORNEY FEES, COSTS, AND INCENTIVE AWARD**

17 Plaintiffs seek a fee award of \$278,333, one-third of the gross settlement, which is not an
18 uncommon contingency fee allocation in a wage and hour class action. This award is facially
19 reasonable under the “common fund” doctrine, which allows a party recovering a fund for the
20 benefit of others to recover attorney fees from the fund itself. Plaintiffs also provide a lodestar
21 figure of \$296,750, based on 522.9 hours spent on the case by counsel billing at \$450–725 per
22 hour. Plaintiffs’ request results in a negative multiplier. The lodestar cross-check supports the
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24 ² While the Court generally disapproves of reversionary settlements, here, class members are not
25 required to submit a claim to receive their settlement payments, which will revert to Defendants
26 only in the event that a class member fails to cash his or her settlement check within 120 days.
27 Under these circumstances, the Court expects that the reversion will involve only a small portion
28 of the settlement funds, which would be unlikely to reach nonresponsive class members in any
event. The Court considers this reversion as part of its analysis of the settlement’s overall
fairness. (See *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 718–722 [a court-
approved settlement may properly include a reversion of unpaid funds to the defendant
notwithstanding Code of Civil Procedure section 384].)

1 percentage fee requested, particularly given the lack of objections to the attorney fee request.
2 (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 [trial court did not
3 abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a
4 lodestar resulting in a multiplier of 2.03 to 2.13].)³

5 Plaintiffs’ counsel also request \$15,000 in litigation costs. However, the Declaration of
6 James Treglio filed in support of their motion indicates that counsel has incurred only \$5,292 in
7 costs, including “anticipated costs” associated with finalizing the settlement. The Court will
8 award only \$5,292 in documented costs to counsel. The \$11,000 in administrative costs actually
9 incurred are also approved.

10 Finally, the named plaintiffs seek incentive awards of \$7,500 each. To support their
11 requests, they submit declarations describing their efforts on the case. The Court finds that the
12 class representatives are entitled to enhancement awards and the amounts requested are
13 reasonable. It therefore approves a total of \$22,500 in incentive awards.

14 **IV. ORDER AND JUDGMENT**

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

17 The motion for final approval is GRANTED. The following class is certified for
18 settlement purposes:⁴

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20 All individuals who were hired by Surefox North America and/or Surefox
21 Consulting LLC between May 1, 2018 and August 1, 2021 and employed in
22 California as non-exempt employees providing security-related services for one or
23 more pay periods at any time from May 1, 2018 through April 22, 2022 (“PAGA
24 Settlement Class” or “PAGA Class Members”); and

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26 ³ Plaintiffs report that Law Office of Sam Karimzadeh and Potter Handy LLP have agreed to
27 share equally their respective portion of any attorney fee award.

28 ⁴ On May 9, 2022, the Court entered a stipulated order amending the definitions of the settlement
class and PAGA aggrieved employees to include only those employees hired through August 1,
2021.

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2 All individuals who were hired by Surefox North America and/or Surefox
3 Consulting LLC between January 1, 2018 and August 1, 2021 and employed in
4 California as non-exempt employees providing security-related services for one or
5 more pay periods at any time from January 1, 2018 through April 22, 2022
6 (collectively, the “Settlement Class” or “Class Members”).
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8 Excluded from the class are the 10 individuals who submitted timely requests for
9 exclusion.

10 The Court approves the deduction of the following fees and costs from the gross
11 settlement: \$278,333 in attorney fees, \$5,292 in litigation costs, \$11,000 in administrative costs,
12 and \$22,500 in incentive awards.

13 Judgment shall be entered through the filing of this order and judgment. (Code Civ.
14 Proc., § 668.5.) Plaintiffs and the members of the class shall take from their complaint only the
15 relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule
16 3.769(h) of the California Rules of Court, the Court retains jurisdiction over the parties to
17 enforce the terms of the settlement agreement and the final order and judgment.

18 The Court sets a compliance hearing for **June 1, 2023 at 2:30 P.M.** in Department 1. At
19 least ten court days before the hearing, class counsel and the settlement administrator shall
20 submit a summary accounting of the net settlement fund identifying distributions made as
21 ordered herein; the number and value of any uncashed checks; amounts remitted back to
22 Surefox; the status of any unresolved issues; and any other matters appropriate to bring to the
23 Court’s attention. Counsel shall also submit an amended judgment similar to the one described
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1 in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance
2 hearing remotely.

3 **IT IS SO ORDERED.**

4 Date: December 2, 2022



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6 The Honorable Sunil R. Kulkarni
7 Judge of the Superior Court
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