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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

OSCAR CANCINO and MARCOS MENDIOLA, individually, and on behalf of other members of the general public similarly situated, and as aggrieved employees pursuant to the Private Attorneys General Act ("PAGA"),

Plaintiff,

vs.

COTTON ON USA INC., a Delaware corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. 22CV405002

Assigned to the Hon. Theodore C. Zayner

~~[PROPOSED]~~ ORDER AND JUDGMENT GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

Date: August 6, 2025
Time: 1:30 p.m.
Place: Department 19

Complaint Filed: October 20, 2022
Trial Date: None Set

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on August 6, 2025, at 1:30 p.m. in Department 19. The Court now issues its tentative ruling as follows:

I. Introduction

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiffs Oscar Cancino and Marcos Mendiola (collectively, "Plaintiffs") allege that Defendant Cotton on USA, Inc. ("Defendant") committed various wage and hour violations.

According to the allegations of the operative Second Amended Complaint ("SAC"), Plaintiffs were formerly employed in hourly paid, non-exempt positions by Defendant, an Australian fast fashion retail company that operates retail clothing stores in numerous countries, including a number in California. (SAC, ¶ 12.) Mr. Cancino was employed as a Sales Associate at the Oxnard, California store from September 2021 through September 2022, and Mr. Mendiola was employed as a Key Holder from August 2023 through December 2023. (*Id*., ¶¶ 4-5.)

Plaintiffs allege that Defendants failed to: pay all wages owed (including minimum and overtime wages); permit employees to take uninterrupted meal breaks or provide compensation in lieu of a compliant meal break; provide the rest periods to which employees were entitled, or provide compensation in lieu thereof; provide complete and accurate wage statements; maintain accurate and complete payroll records; pay all sick wages owed; timely pay wages owed; provide suitable seating for employees; and reimburse employees for necessary business expenses incurred by them.

Mr. Cancino initiated this action on October 20, 2022 and filed a first amended complaint in February 2023. Plaintiffs filed the operative SAC on January 16, 2025, pursuant to a stipulation and order so as to conform the pleadings with the scope of the settlement reached between the parties. The SAC asserts claims for: (1) unpaid overtime; (2) unpaid minimum wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) non compliant wage statements and failure to maintain payroll records; (6) wages not timely paid upon termination; (7) failure to timely pay wages during employment; (8) unreimbursed business expenses; (9) civil penalties under PAGA; (10) unlawful business practices; and (11) unfair business practices.

The parties have reached a settlement. On February 10, 2025, the Court issued an order granting Plaintiffs' motion for preliminary approval of the settlement. Now before the court is Plaintiffs' unopposed motion for final approval of the settlement.

II. Legal Standard

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 ex tent 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 o f 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; (counsel is experienced in similar litigation; and (4) the percentage of objectors is small."

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

B. PAGA

Labor Code section 2699, subdivision (s)(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.)

Like 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 considering 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 WL5907869, 2016 U.S. Dist. LEXIS 140759, at *20-24.)

III. Terms and Administration of Settlement

The non-reversionary gross settlement is $2,150,000. Attorney's fees of up to $716,667 (or one-third of the gross settlement), litigation costs of up to $40,000 and administrative costs not to exceed $35,000 will be paid from the gross settlement. $25,000 will be allocated to PAGA penalties, 75% of which ($18,500) will be paid to the LWDA, with the remaining 25% ($6,250) dispensed, on a pro rata basis, to "PAGA Members," who are defined as "all persons who worked for Defendant as non-exempt, hourly paid retail employees, excluding Store Managers, in California at any time during the period from November 23, 2021 to August 26, 2024." Plaintiffs will seek class representative service payments of not more than $10,000 each.

The net settlement amount-estimated to be $1,313,333-will be allocated to members of the "Class," who are defined as "all persons who worked for Defendant as non-exempt, hourly paid retail employees, excluding Store Managers, in California at any time during the period from October 20, 2018 to August 26, 2024," on a pro rata basis based on the number of weeks worked during the aforementioned period. For tax purposes, settlement payments will be allocated 25% to wages and 75% to non-wages (i.e., interest and penalties). The employer-side payroll taxes will be paid by Defendant separate from, and in addition to, the gross settlement amount. Funds associated with checks uncashed after 180 days will be transmitted pursuant to Code of Civil Procedure section 384 to the Justice Gap Fund maintained by the State Bar of California.

In exchange for settlement, Class members who do not opt out will release:

> [A]ll claims, rights, demands, liabilities, and causes of action alleged or which could reasonably have been alleged in the Action based on the same set of operative facts alleged in the operative Complaint and Plaintiffs' letters to the LWDA. The Released Class Claims are those that accrued during the C lass Period.

PAGA Members, who consistent with the statute will not be able to opt out of the PAGA portion of the settlement, will release:

> [A]ll claims, rights, demands, liabilities, and causes of action for PAGA civil penalties under California Labor Cod e §§ 2698, *et seq.*, alleged or which could reasonably have been alleged in the Action based on the same set of operative facts alleged in Plaintiffs' letters to the LWDA and the operative Complaint during the PAGA Period.

The foregoing releases are appropriately tailored to the allegations at issue.

(See *Amaro v. Anaheim Arena Management, LLC*(2021) 69 Cal.App.5th 521, 537.)

In its order granting preliminary approval, the Court approved CPT as settlement administrator. On March 13, 2025, Defendant delivered class data to CPT. (Declaration of Regina Cutler ("Cutler Decl."), ¶ 3.) On March 24, 2025, CPT mailed class notices to the 5,275 class members. (*Id.* at ¶ 4.) As of the date of date of Ms. Cutler's declaration, July 14, 2025, CPT has deemed 19 notice packets undeliverable, and CPT has received no requests for exclusion or objections to the settlement. (*Id.* at ¶¶ 5-7.) CPT estimates the average settlement share will be approximately $248.97. (*Id.* at ¶ 8.) The notice process has now been completed.

At preliminary approval, the court found the settlement to be fair and reasonable. Given that there are no objections, it finds no reason to deviate from that finding now. Accordingly, the court finds that the settlement is fair and reasonable for purposes of final approval.

IV. Enhancement Awards, Attorney Fees and Costs

Plaintiffs request enhancement awards of $10,000 each.

> The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit. Criteria courts may consider in determining whether to make an incentive 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 amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. These "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit.

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, internal punctuation and citations omitted.)

Plaintiffs have submitted declarations describing their participation in this case. The court finds that service awards are justified, and the amounts requested are reasonable. Therefore, the service awards are approved in the amounts requested.

Plaintiffs' counsel seeks an attorney fee award of $716,667(one third of the gross settlement amount). (Motion, pp.22:13 –30:18; Declaration of Raul Perez, ¶ 20.) Plaintiffs' counsel submits that the lodestar of fees incurred in this action is $381,452.50 based on a total of 468.1 hours billed at reasonable rates ranging from $550-$1,050 per hour. (*Ibid.*) This results in a multiplier of 1.88, which is within the range of multipliers that courts typically approve. (See *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].)

The benefits achieved by the settlement justify an award of attorney fees to class counsel. The court finds that the requested attorney fee award is reasonable as a percentage of the common fund and approves an attorney fee award in the requested amount.

Plaintiffs' counsel requests reimbursement of litigation costs in the amount of 29,343.31 and presents an itemized list supporting that figure. (Perez Decl., ¶ 25.) This is well under the $40,000 maximum provided for in the settlement. The court finds the cost reimbursement request to be reasonable and therefore approves an award of litigation costs in the requested amount. The settlement administration costs are also approved in the requested amount of $35,000. (See Cutler Decl., ¶ 10.)

V. Conclusion

The motion for final approval of the settlement is GRANTED. Compliance hearing is set for April 1, 2026 at 2:30 p.m. in Department 19. Plaintiffs shall file a declaration from the Settlement Administrator regarding the completion of settlement administration activities no later than 5 court days prior to the hearing, as well as an amended judgment regarding the distribution of unclaimed residuals to The Justice Gap Fund maintained by The State Bar of California.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Date September 2, 2025

Hon. Theodore C. Zayner
Santa Clara County Superior Court Judge

Filed
September 2, 2025
Clerk of the Court
Superior Court of CA
County of Santa Clara
22CV405002
By: afloresca

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **August 7, 2025,** I served the document described as: **[PROPOSED] ORDER AND JUDGMENT GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** on the interested parties in this action by sending [ ] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [ ] as stated on the attached service list:

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[ ] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

[✓] **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

[ ] **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **August 7, 2025,** at Los Angeles, California.

Sophia Flores
Type/Print Name

Signature