



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

MINUTE ORDER

Line 1	Hearing Start Time: 1:30 PM
Rosales v. Loomis Armored US, LLC	
18CV326826	Hearing Type: Motion: Final Fairness Hearing
Date of Hearing: 08/05/2021	Comments:

Heard By: Kulkarni, Sunil R  
Courtroom Reporter: - No Court Reporter

Location: Department 1  
Courtroom Clerk: Ann Vizconde  
Court Interpreter:  
Court Investigator:

**Parties Present:**

**Future Hearings:**

Brooks, JoAnna Leigh Attorney

**Exhibits:**

Appearance by above listed Counsel via CourtCall.

No one called to contest the Tentative Ruling.

Tentative Ruling is not contested.

**THE COURT ADOPTS THE TENTATIVE RULING; see below:**

This is a putative class and Private Attorneys General Act (PAGA) action on behalf of employees of Defendant Loomis Armored US, LLC. The parties reached a settlement, which the Court preliminarily approved in an order filed on February 26, 2021. 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.

Before the Court is Plaintiff's motion for final approval of the settlement and for approval of her attorney fees, costs, and service award. Plaintiff's motion is unopposed. As discussed below, the Court GRANTS final approval.

**I. 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.



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**(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 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 of 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; (3) 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.)** The presumption does not permit the Court to give rubber-stamp approval to a settlement; in all cases, it must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished, based on a sufficiently developed factual record. (Kullar, supra, 168 Cal.App.4th at p. 130.)

**B. PAGA**

Labor Code section 2699, subdivision (l) provides that [t]he superior court shall review and approve any penalties sought as part of a proposed settlement agreement 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.)

**[W]hen a PAGA claim is settled, the relief provided [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public . (*Villalobos v. Calandri Sunrise Farm LP* (C.D.**



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Cal., July 22, 2015, No. CV122615PSGJEMX) 2015 WL 12732709, at \*13.) The settlement must be reasonable in light of the potential verdict value. (See *O Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 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.)

**II. TERMS AND ADMINISTRATION OF SETTLEMENT**

The non-reversionary gross settlement amount is \$1,850,000. Attorney fees of up to \$616,666.66 (one-third of the gross settlement), litigation costs not to exceed \$10,000, and administration costs of up to \$120,000 will be paid from the gross settlement. \$25,000 will be allocated to PAGA penalties, 75 percent of which will be paid to the LWDA. The named plaintiff will also seek a service award of \$10,000.

The settlement will be allocated 74.3 percent to the FCRA Class and 25.7 percent to the Wage and Hour Class. The net settlement will be distributed to FCRA Class members pro rata, and to Wage and Hour Class members proportionally based on their weeks worked during the class period. Class members will not be required to submit a claim to receive their payments. Settlement awards will be allocated 1/3 to wages and 2/3 to interest and penalties for tax purposes for Wage and Hour Class members, while awards to FCRA Class members will not be subject to payroll tax withholdings. The employer's share of any payroll taxes will be paid separately from the settlement fund. Funds associated with checks uncashed after 180 days will be tendered to Bay Area Legal Aid.

FCRA Class members who do not opt out of the settlement will release all claims, causes of action, etc. that were either asserted in the Action or that could reasonably arise from facts alleged in the Action, relating in any way to, or arising out of, background checks, motor vehicle reports, reference checks, investigations, and/or consumer reports or investigative consumer reports ( reports ) of any kind, including but not limited to claims arising under the Fair Credit Reporting Act, the California Consumer Reporting Agencies Act, the California Investigative Consumer Reporting Agencies Act, California Business and Professions Code section 17200, et seq., and like federal, state and local laws. . . , arising from or related to reports ordered through and including July 9, 2019.

Wage and Hour Class members will release claims that were or could have been pled based on the factual allegations in the Complaint or First Amended Complaint which occurred or arose during the Wage and Hour Class Period (as applicable under each Subclass), including without limitation specified wage and hour violations and any other claims derived from or based upon or related to or arising out of the factual predicate of the Complaint.

The notice process has now been completed. There were no objections to the settlement or requests for exclusion from the class. Of 35,415 notice packets, 4,185 were returned by the USPS with undeliverable addresses and of those 4,185, 251 were re-mailed to updated addresses. The administrator estimates that the average payment to Wage and Hour Class will be \$153.44, with the highest payment estimated to be \$552. The administrator estimates that the average pro rata payment to the FCRA Class is \$23.17 per person.



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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 deviate from these findings now, especially considering that there are no objections. The Court thus finds that the settlement is fair and reasonable for purposes of final approval.

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

Plaintiff seeks a fee award of \$616,666.66, or one-third of the gross settlement, which is not an uncommon contingency fee allocation in a wage and hour class action. Plaintiff also provides a lodestar figure of \$258,756.25, based on 384.75 hours spent on the case by counsel billing between \$325-900 per hour. Plaintiff's request is based on a 2.38 multiplier.

The Court routinely awards one-third of the common fund in wage and hour actions where class sizes are relatively small and individual recoveries are relatively large. However, as explained by *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43 (*Chavez*):

[F]ees based on a percentage of the benefits are in fact appropriate in large class actions when the benefit per class member is relatively low, except that the percentage should generally decrease as the number of class members and the size of the fund increases. This is based on a recognition that beyond a certain point a larger number of identical claims does not typically require greater efforts by counsel.

(*Chavez, supra*, 162 Cal.App.4th at p. 63, citations omitted [approving award of 21.8 percent of the common fund in a consumer class action], discussing *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19 (*Lealao*.)

However, here, as a cross-check, the lodestar supports the percentage fee requested, particularly given the lack of objections to the attorney fee request. (See *Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 1 Cal.5th 480, 488, 503-504 [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 [multipliers 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].) Per *Laffitte* at 505, [i]f the multiplier calculated by means of a lodestar cross-check 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. Here, the multiplier used by Plaintiff's counsel is not extraordinarily high or low.

Therefore, the Court will approve the fee award.

Plaintiff's counsel also requests \$10,000 in litigation costs, below the \$15,899.99 in costs actually incurred. Plaintiff's costs appear reasonable based on the summary provided and are approved. The \$120,000 in



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administrative costs are also approved.

Finally, Plaintiff requests a service 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.

**IV. ORDER AND JUDGMENT**

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

Plaintiff's motion for final approval is GRANTED. The following class is certified for settlement purposes:

**The Wage and Hour Class of all individuals who worked for Defendant in California as a non-exempt route service employee (all Defendant's employees who work or worked in armored vehicles to perform their job duties) at any time from April 19, 2014 through August 8, 2019, which includes both the Off-the-Clock Subclass and Meal and Rest Period Subclass as defined herein.**

**The Meal and Rest Period Subclass of all individuals who worked for Defendant in California as a non-exempt route service employee (all Defendant's employees who work or worked in armored vehicles to perform their job duties) at any time during the period from January 30, 2018 through August 8, 2019 (the Meal and Rest Class Period).**

**The Off-the-Clock Subclass of all individuals who worked for Defendant in California as a non-exempt route service employee (all Defendant's employees who work or worked in armored vehicles to perform their job duties) from April 19, 2014 through August 8, 2019 (the Off-the-Clock Class Period).**

**The FCRA Settlement Class of all applicants for employment in the United States for whom Defendant procured a background check report from April 19, 2013 to and including July 9, 2019 (FCRA Class Period).**

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., 668.5.) Plaintiff and the members of the class shall 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 retains 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 March 3, 2022 at 2:30 P.M. in Department 1. 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 to the cy pres beneficiary; the status of any unresolved issues; and any



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**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.**

**The Court will prepare the order and judgment.**

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**LAW AND MOTION HEARING PROCEDURES**

In light of the significant progress combatting the COVID-19 pandemic and favorable rates of vaccination in the State of California and Santa Clara County, the Court rescinded, effective June 21, 2021, all prior general orders restricting courthouse access. Remote appearances for complex civil matters are still permitted, but are no longer mandatory. (See General Order Rescinding Portion of May 6, 2020 General Order Concerning Complex Civil Actions, available at [https://www.scscourt.org/general\\_info/](https://www.scscourt.org/general_info/)

[news\\_media/newspdfs/2021/GeneralOrderRescindingPortionof050621GeneralOrder](https://www.scscourt.org/news_media/newspdfs/2021/GeneralOrderRescindingPortionof050621GeneralOrder)

[ConcerningComplexCivilActions.pdf](https://www.scscourt.org/news_media/newspdfs/2021/GeneralOrderRescindingPortionof050621GeneralOrder).) If a party gives notice that a tentative ruling will be contested, any party seeking to participate in the hearing remotely should contact CourtCall.

Public access to hearings is available on a listen-only line by calling 888-808-6929 (access code 2752612).

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating in a hearing remotely or listening in on a public access line. No court order has been issued which would allow recording of any portion of this motion calendar.

The court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters. The court reporter may participate remotely and need not be present in the courtroom.