

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA**

|                    |                  |          |           |
|--------------------|------------------|----------|-----------|
| Dated and Entered: | 07/12/2023       | Time:    | 10:00 AM  |
| Judicial Officer:  | Thomas P Anderle |          |           |
| Deputy Clerk:      | Jazmin Rostami   | Dept:    | SB Dept 3 |
| Deputy Sheriff:    | Anthony Deleo    |          |           |
| Court Reporter:    | Elizabeth Mooy   | Case No: | 21CV03118 |

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**Carmen Martinez vs SYR Service Company LLC et al**

Parties Present:

Wilcox, Paul K                      Attorney for Defendant

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**NATURE OF PROCEEDINGS: Motion: Approval**

The parties submitted to the Court's tentative ruling. The Tentative ruling was adopted as follows:

**RULING**

**The motion is granted as follows:**

**The court has reviewed the proposed order submitted with the motion and intends on signing the same, as modified, to include Case No. 21CV04034. The relevant terms include:**

- (1) Preliminary approval of the settlement set forth in the Class Action and PAGA Settlement Agreement is granted;**
- (2) The proposed settlement class is conditionally certified;**
- (3) Carmen Martinez is appointed as the representative of the settlement class;**
- (4) Boyamian Law Inc. and Capstone Law APC are appointed as class counsel;**
- (5) Distribution of the proposed notice of class action settlement to the settlement class is approved;**
- (6) Phoenix Settlement Administrators is appointed as the third-party settlement administrator;**
- (7) A hearing on Final Approval of Class Action Settlement shall take place on November 15, 2023, at 10:00 a.m.**
- (8) Case Nos. 21CV03118 and 21CV04034 are consolidated for purposes of settlement.**

Background

Plaintiff Carmen Martinez filed her complaint on August 4, 2021. The complaint alleges causes of action for (1) failure to pay compensation for all hours worked, (2) failure to pay minimum wages, (3) failure to pay overtime compensation, (4) failure to furnish accurate wage and hour statements, (5) failure to provide meal and rest periods, (6) unreimbursed business expenses, (7) Violation of Labor Code section 2810.5, and (8) unfair competition.

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On October 8, 2021, plaintiff also filed a complaint for civil penalties under the Private Attorneys General Act of 2004 (“PAGA”), in case number 21CV04034, against the same defendants, based on the same operative facts. The court ordered the cases related on December 7, 2021 but did not consolidate them.

As the result of a mediation, with Henry Bongiovi, on March 14, 2023, the parties entered into a settlement of the actions, and now seek preliminary court approval of that settlement, an order provisionally certifying the proposed class for settlement purposes, an order appointing plaintiff as class representative for the class, an order appointing plaintiffs’ attorneys as class counsel for the class, an order appointing Phoenix Settlement Administrators as the third-party settlement claims administrator, an order approving the Notice being sent to the class, and an order scheduling the hearing for final approval of the settlement, including approval of incentive awards to the representative plaintiffs, settlement administration costs, fees and costs to class counsel, and payment of PAGA penalties to the Labor and Workforce Development Agency (LWDA). The motion is supported by the declarations of class counsel Michael H. Boyamian and Raul Perez.

The motion establishes that plaintiffs’ counsel has extensively investigated their claims, including propounding and responding to written discovery, production of documents, detailed information and payroll data relevant to plaintiffs’ claims, and the analysis by the parties of the class-wide data to investigate the merits of plaintiffs’ claims and the potential liability. In addition, there have been numerous conferences between counsel, review of payroll, time records, and other records produced by defendants to plaintiffs’ counsel for purposes of litigation and mediation, and extensive discussions between counsel regarding strengths and weaknesses of claims and defenses.

Under the terms of the settlement, defendants have agreed to pay \$350,000.00, on a non-reversionary basis, to settle and release all claims asserted by plaintiffs in the class action and PAGA actions on behalf of the class. The settlement defines the class as “all persons employed by Defendant SYR Service Company, LLC within California and classified as nonexempt at any point during the Class Period.” The settlement class period “means the period from August 4, 2017, through the earlier of the date of preliminary approval of the settlement or June 14, 2023, inclusive.” The “Net Settlement Amount” available for distribution to the class is the Gross Settlement Amount, less the Attorneys’ Fees and Costs (not more than \$116,667.00 in fees, and not more than \$30,000.00 in costs), the Class Representatives Incentive Award (\$10,000.00 to plaintiff), Settlement Administration Fees (flat rate of \$11,500.00), and 75% of the LWDA payment (a total of \$15,000.00, which is 75% of the total PAGA settlement of \$20,000.00).

The “Individual Settlement Payment”, *i.e.*, each class member’s share of the net settlement amount, will be calculated and apportioned from the Net Settlement Amount based upon the number of workweeks the member worked during the class period as a non-exempt employee in California. Defendants will pay their payroll tax obligations on the wage portions of the individual class payments.

Counsel’s declaration sets forth defendants’ estimated exposure on the various types of claims, including the PAGA and unfair business practices claims, and notes the evidentiary difficulties of each of the types of claims, the difficulty in certifying a class for the various claims and maintaining certification through trial, and taking into account defendants’ defenses, that the total amount of damages the class could reasonably expect to be awarded would be significantly less than the maximum exposure.

The settlement amount was a compromise figure. However, after considering the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and class counsel's experience, counsel concluded that the recovery for each class member is fair and reasonable, taking into consideration the amounts received in other wage and hour class actions, the inherent risks, and the reasonable tailoring of each member's claim to the settlement award the member will receive.

The motion seeks certification of the class for settlement purposes only, asserting that the class is easily ascertainable from defendants' records, and that there is a well-defined community of interest in the questions of law and fact involving the parties to be represented. Defendants do not dispute these facts, for settlement purposes only. Plaintiffs further contend, and defendants do not dispute for settlement purposes, that the named plaintiffs' claims are typical of the class claims, because they arose from the same factual basis and are based upon the same legal theories, and plaintiffs were employed by defendants during the class period and subject to the allegedly unlawful policies and practices at issue in the litigation.

The declaration of Michael H. Boyamian attaches the Notice of Proposed Class Action Settlement which will be provided to the class members, which explains the settlement and provides class members with the opportunity to dispute the calculation of their share and produce evidence to support their contention that the information contained in their packet is inaccurate. Defendants' records will be presumed determinative, in the absence of evidence to rebut their records, but the Settlement Administrator will evaluate the evidence and determine the validity of the evidence. The Notice also explains the manner in which class members may either opt-out from the settlement agreement, or object to the settlement agreement.

The settlement will be administered by Phoenix Class Action Administration Services. The details of the manner in which it will mail the notice, process exclusions and objections, and distribute the settlement funds to class members, is detailed in the settlement agreement. If any settlement checks sent to class members are left uncashed and cancelled after issuance, the amount of that check will escheat to the State Controller to be deposited in the Unclaimed Property Fund.

### **Analysis**

As the release lists both the class action and the PAGA actions, and the parties intend to settle both actions, they will be consolidated for settlement purposes.

The purpose of the preliminary approval hearing is to determine whether the settlement is within the range of reasonableness for preliminary approval and to approve or deny certification of a provisional settlement class. A full inquiry into the fairness of the proposed settlement occurs at the final approval hearing. (Rules of Court, rule 3.769, subd. (g).)

“The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.) The court has broad discretion to determine whether the settlement is fair. (*Dunk v. Ford Motor Co.*) (1996) 48 Cal.App.4th 1794, 1801.) “The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include ‘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 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.’ [Citations.] This list ‘is not exhaustive and should be tailored to each case.’ [Citation.]” (*Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 128.)

A PAGA action is a type of *qui tam* action, in which a private party is authorized to bring an action to recover a penalty on behalf of the government and receive part of the recovery as compensation. (*Huff v. Securitas Sec. Servs. USA, Inc.* (2018) 23 Cal.App.5th 745, 753.) In doing so, the employee acts as proxy for the state labor law enforcement agency; the proceeding is designed to protect the public, not to benefit private parties. (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003.) The dispute is between the employer and the state. (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 81.) The purpose of PAGA is not to recover damages, restitution, or redress the employees’ injuries, but to recover civil penalties to remediate present violations and deter future ones. (*Id.* at p. 86.) While a PAGA case is representative in nature, it is not a class action, and may be brought without the procedural requirements involved in class actions.

Labor Code section 2699(k) mandates that PAGA civil penalties be allocated 75% to the LWDA, for enforcement of labor laws and education of employers and employees about their rights and responsibilities under the code, and 25% to the aggrieved employees. Section 2699(1)(2) requires that the superior court review and approve any penalties sought as part of a proposed settlement agreement, pursuant to that part of the code.

The Court has carefully analyzed the terms of the settlement, including the nature and scope of the release it requires of absent class members and the representative plaintiffs. The Court finds that it is within the range of acceptable settlements. The class totals approximately 560 members who will share in the approximately \$161,833.00 in Net Settlement Amount, according to the formula set forth in the settlement, which is dependent upon the number of pay periods worked by the class member within the class period. The Net Settlement Amount is the amount which will remain after deducting from the \$350,000.00 Gross Settlement Amount attorneys’ fees of up to \$116,667.00, costs of up to \$30,000.00, administration costs of \$11,500.00, a Class Representative Incentive Award of \$10,000, and \$15,000.00 to be paid to the Labor and Workforce Development Agency under the \$20,000 settlement of any PAGA claims.

Substantial investigation and discovery were conducted, giving rise to an informed settlement, in light of the risks of further litigating the action through trial. The case involves experienced class counsel, who believe the settlement is fair, reasonable, and in the best interests of the class members. The settlement was achieved through extensive arms’-length negotiations and was not collusive.

The motion asks the Court for an order certifying the settlement class. As noted above, the class is comprised of “all persons employed by Defendant SYR Service Company, LLC within California and classified as nonexempt at any point during the Class Period.” The settlement class period “means the period from August 4, 2017, through the earlier of the date of preliminary approval of the settlement or June 14, 2023, inclusive.” The Court finds that certification of the class for settlement purposes is appropriate and will grant the motion to provisionally certify the proposed class for settlement purposes. The class is ascertainable from defendants’ records and is so numerous that joinder of all members is

impracticable. There are questions of law or fact common to the proposed class, and there is a well-defined community of interest among its members with respect to the subject matter of the litigation.

It appears to the Court that the claims of the Class Representative are typical of the claims of the members of the proposed class, and that they fairly and adequately protect the interests of the class members. It also appears to the Court that proposed class counsel is experienced and qualified in wage and hour class litigation and will properly and adequately represent the interests of the absent class. The court will appoint Carmen Martinez as the class representative for the class, will appoint Boyamian Law Inc. and Capstone Law APC as class counsel for the class, and will approve Phoenix Settlement Administrators as the third-party settlement claims administrator.

The Court further approves the PAGA claim class and approves the PAGA Settlement Payment, finding that the terms of the PAGA settlement are fair and reasonable.

The motion further seeks approval of the proposed Notice of Proposed Class Action Settlement to be provided to the absent class members. The Notice is attached to the settlement agreement which is exhibit 1 to the declaration of Michael H. Boyamian. Under *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152, the notice provided to a class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members. The Court has analyzed the contents of the Notice and finds that it meets the standard for approval in clearly outlining what the recipient must do in order to object to the settlement, or to opt out of the settlement, and the time within which each must be accomplished. The Notice of Proposed Class Action Settlement is therefore approved.

The motion seeks a hearing date for the court's consideration of final approval of the settlement, as well as counsel's application for an award of attorneys' fees and reimbursement of costs, and the incentive awards to the representative plaintiffs. Plaintiffs propose that the hearing date for final approval occur on November 15, 2023, at 10:00 a.m. The court agrees and will set the hearing for that date and time. All documents related to the final approval, fees, costs, and enhancement award, shall be filed no later than 16 court days prior to the final approval hearing date which will be set by the Court.

November 15, 2023 10:00 AM Motion: **Final Approval of Class Action Settlement**

Anderle, Thomas P

SB Dept 3

DARREL E. PARKER, EXECUTIVE OFFICER

Minutes Prepared by:

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Jazmin Rostami, Deputy