

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 12 2022

Sherri R. Carls, Executive Officer/Clerk of Court
By: Roxanne Arraiga, Deputy

FINAL RULINGS/ORDERS RE: MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Santos Orellana v. Smarte Carte, Inc., Case No.: 20STCV08890

The Parties' Motion for Final Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$1,375,000 [Escalator Clause: Defendant represented that there were approximately 490 Settlement Class members as of the date of mediation. If, as of the close of the Class Period, the number of Class Members has increased by fifteen percent (15%) or more (i.e., if there are 564 or more putative class members), then Defendant shall increase the Total Settlement Amount on a proportional basis (e.g., if the actual number of putative class members is 20% greater than 490, Defendant would increase the Total Settlement Amount by 20%).

B. The Net Settlement Amount ("Net") (\$830,841.67) is the GSA minus the following:

- \$458,333.33 (33 1/3%) for attorney fees to Class Counsel, Haines Law Group, APC;
- \$20,884.82 for litigation costs to Class Counsel;
- \$5,000 for a service award to the Named Plaintiff Santos Orellana;
- \$13,325 for settlement administration costs to Phoenix Settlement Administrators;
- \$37,500 (75% of \$50,000 PAGA penalty) to the LWDA.

C. Plaintiffs release of Defendants from claims described herein.

By July 27, 2022, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor Code §2699 (1)(3).

By April 13, 2023, Class Counsel must file a Final Report re: Distribution of the settlement funds.

Court sets a **Non-Appearance Case Review for April 20, 2023, 8:30 AM, Department 9.**

I.
INTRODUCTION

A. Background

Plaintiff Santos Orellana sues his employer, Defendant Smarte Carte, Inc., for alleged wage and hour violations. Defendant provides travel-related rentals, such as luggage carts and electronic lockers, and related guest services within various travel hubs and retail locations throughout California. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

On March 5, 2020, Plaintiff filed the initial Complaint in this action, alleging Defendant failed to: (i) pay all overtime wages owed; (ii) pay all minimum wages owed; (iii) provide all lawful meal periods; (iv) authorize and permit all lawful rest periods; (v) issue accurate and itemized wage statements; and (vi) comply with California's Unfair Competition laws. On May 11, 2020, Plaintiff filed his First Amended Complaint, adding a cause of action for civil penalties under PAGA, premised on the underlying Labor Code violations. On June 9, 2021, Plaintiff filed the operative Second Amended Complaint, adding a cause of action for waiting time penalties under Labor Code sections 201-203.

On March 18, 2021, the Parties participated in a mediation session with Jeffrey Krivis, Esq. At the conclusion of the mediation, Mr. Krivis made a mediator's proposal for a settlement of all claims at issue on a class-wide basis, which the Parties ultimately accepted. Over the following weeks, the Parties negotiated and formalized the remaining terms of the Settlement, and executed the Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement Agreement"), a copy of which was filed with the Court.

On September 14, 2021, the Court issued a "checklist" to the parties pertaining to deficiencies in the Settlement Agreement. In response, the parties filed further briefing, including the Amended Settlement Agreement.

The Court granted preliminary approval on December 15, 2021.

The Parties now move for final approval of the proposed class action settlement.

B. Definitions

Class Members or Settlement Class: all current and former non-exempt employees who worked for Defendant in California at any time during the Class Period.

Class Period: March 5, 2016 to the date of the order granting Preliminary Approval of the Settlement or July 16, 2021, whichever is first.

PAGA Employees: those Class Members who worked as non-exempt employees for Defendant in California during the PAGA Period.

PAGA Period: March 5, 2019 through the date of Preliminary Approval of the Settlement or July 16, 2021, whichever is first.

The parties stipulate to class certification for settlement purposes only. (¶43)

C. Terms of Settlement Agreement

The essential terms are:

- The Maximum Settlement Amount ("MSA") is \$1,375,000, non-reversionary. (¶18)
 - Escalator Clause. Defendant represented that there were approximately 490 Settlement Class members as of the date of mediation. If, as of the close of the Class Period, the number of Class Members has increased by fifteen percent (15%) or more (i.e., if there are 564 or more putative class members), then Defendant shall increase the Total Settlement Amount on a proportional basis (e.g., if the actual number of putative class members is 20% greater than 490, Defendant would increase the Total Settlement Amount by 20%). (¶51.a)
- The Net Settlement Amount ("Net") (\$830,841.67) estimated at preliminary approval is the MSA minus the following:
 - Up to \$458,333.33 (33 1/3%) for attorney fees (¶52.c);
 - Up to \$30,000 for litigation costs (Ibid.);
 - Up to \$5,000 for a service award to the Named Plaintiff (¶52.b);
 - Up to \$13,325 for settlement administration costs (¶52.e);
 - and
 - Payment of \$37,500 (75% of \$50,000 PAGA penalty) to the LWDA (¶52.d).

- Defendant's share of payroll taxes will be paid in addition to the Maximum Settlement Amount. (§53)
- No Claim Form. Class Members will not have to submit a claim form in order to receive their settlement payment. (§52.a)
- Response Deadline. "Response Deadline" means the deadline by which Class Members must postmark or fax to the Settlement Administrator a valid Request for Exclusion, objection, or Workweek Dispute. The Response Deadline will be sixty (60) calendar days from the initial mailing of the Settlement Notices by the Settlement Administrator unless the 60" day falls on a Sunday, state or federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. (§32)
 - o If ten percent (10%) or more of the total Class Members timely exclude themselves and/or if the combined Workweeks worked by Class Members who timely exclude themselves amounts to ten percent (10%) or more of the total Workweeks worked by all Class Members, Defendant may, at their election and in their sole discretion, rescind the Settlement and all actions taken in furtherance of it will thereby be null and void. (§56)
- Individual Settlement Payment Calculation. Each Participating Class Member's Individual Settlement Award shall be calculated solely by the Settlement Administrator as follows: (§52.a.i)
 - o Ten percent of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each Participating Class Member who worked for Defendant at any time from March 5, 2019 to the date of the order granting Preliminary Approval of the Settlement or July 16, 2021, whichever is first, shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period. (§52.a.i.1)
 - o Ten percent of the Net Settlement Amount shall be designated as the "Waiting Time Amount." The Waiting Time Amount shall be distributed in equal, pro-rata shares to each Participating Class Member who separated their employment from Defendant at any time from March 5, 2017 to the date of the order granting Preliminary Approval of the Settlement or July 16, 2021, whichever is first. (§52.a.i.2)
 - o The Settlement Administrator will then calculate the Workweek Value by dividing the remainder of the Net Settlement Amount by the total number of Workweeks for the entire Settlement Class during the Class Period; (§52.a.i.3)
 - o To determine each Class Member's estimated Individual Settlement Award, the Settlement Administrator will multiply the Workweek Value by the number of Workweeks worked by each Class Member, and add it to any entitlement from the Wage Statement

Amount and/or Waiting Time Amount. All Class Members will be entitled to payment for at least one Workweek. (§52.a.i.4)

o The Settlement Administrator will use the following formula to calculate the Individual PAGA Awards for the PAGA Employees: Individual PAGA Award = [total value of PAGA Payment to be distributed to PAGA Employees, i.e., \$12,500.00] x [pay periods worked by the individual PAGA Employee during the PAGA Period / total pay periods worked by all PAGA Employees during the PAGA Period]. (§52.d)

o Tax Allocation. Individual Settlement Awards shall be allocated as follows: 1/3 as wages, 1/3 as interest, and 1/3 as penalties. (§52.a.iii)

• Funding of Settlement. The Maximum Settlement Amount shall be paid by Defendant in one lump sum payment within fifteen (15) calendar days after the Effective Date. Defendant shall provide the Maximum Settlement Amount to the Settlement Administrator in any feasible manner, including, but not limited to, by way of a wire transfer. (§51)

• Uncashed Checks. Any Individual Settlement Payment check issued by the Settlement Administrator to Participating Class Members will be valid and negotiable for one hundred eighty (180) calendar days from the date it is issued. After the expiration of the 180-day period, the Settlement Administrator will distribute the total amount of any unpaid residue or unclaimed funds to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500, et seq., in the name of the Participating Class Member to whom the check was issued, until such time that such Participating Class Members claim their property. (§52.a.iv)

• Phoenix Settlement Administrators will perform notice and settlement administration. (§34)

• The Amended Settlement Agreement was submitted to the LWDA on November 30, 2021. (Declaration of Matthew K. Moen ("Moen Decl.") ISO Prelim, Exhibit C)

• Notice of Entry of Judgment will be posted on the Settlement Administrator's website. (§54)

• Release by All Participating Class Members. All Participating Class Members, including Plaintiff, shall be deemed to have released their respective Released Claims against the Released Parties upon the date on which the payment of the Maximum Settlement Amount is made by Defendant. Plaintiff and Class Members who do not Request Exclusion will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged with respect to all of the Released Parties for any and all Released Claims. The Settlement Class

and each Class Member who has not submitted a valid Request for Exclusion, fully releases and discharges the Released Parties for the Released Claims. (§49.a)

o "Released Claims" includes all claims under state or local law, whether statutory, common law or administrative law, arising out of or related to allegations set forth in the operative Complaint, including but not limited to claims for minimum wage violations, failure to pay overtime wages, meal period violations, rest period violations, wage statement violations, waiting time penalties, unfair competition and all other alleged violations of the California Business and Professions Code section 17200, et seq., and alleged violations of PAGA, including, but not limited to, injunctive relief, punitive damages, liquidated damages, penalties of any nature, including civil penalties under PAGA, interest, fees, including fees under California Code of Civil Procedure section 1021.5; costs; and all other claims and allegations made or which could have been made in the Action based on the facts and allegations pled in the operative Complaint during the Class Period. (§29)

o Additional Release by All PAGA Employees. In addition to the release of Released Claims against the Released Parties made by all Participating Class Members, upon the date on which the payment of the Maximum Settlement Amount is made by Defendant, all PAGA Employees shall be deemed to have released their respective PAGA claims against the Released Parties, which include any and all claims under the PAGA against the Released Parties that were asserted in Plaintiff's Notice Letter to the California Labor and Workforce Development Agency and alleged in the operative Complaint, including claims seeking civil penalties for minimum wage violations, failure to pay overtime wages, meal period violations, rest period violations, wage statement violations, and waiting time penalties. This includes PAGA claims for violation of California Labor Code sections 201-204, 226, et seq., 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, 2698, et seq. The Parties agree that there is no statutory right for any PAGA Employee to opt out or otherwise exclude himself or herself from the PAGA Payment and the associated release of claims and rights under PAGA. (§49.b)

o "Released Parties" means Defendant and all its present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be liable for any of the Released Claims, and Defendant's counsel of record in the Action. (§30)

o Named Plaintiff will additionally provide a general release and §1542 waiver. (§49.c)

II.
DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On March 18, 2021, the Parties participated in a mediation session with Jeffrey Krivis, Esq. At the conclusion of the mediation, Mr. Krivis made a mediator's proposal for a settlement of all claims at issue on a class-wide basis, which the Parties ultimately accepted. Over the following weeks, the Parties negotiated and formalized the remaining terms of the Settlement, and executed the Settlement Agreement. (Schmidt Decl. ISO Prelim ¶17.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class Counsel represents that in connection with mediation, Defendant provided Plaintiff with electronic timekeeping and payroll records for a sample of approximately 15% of the Class Members spanning the entirety of the putative class period. Defendant also produced data points and relevant policies in effect during the Class Period. Plaintiff retained an expert with a Ph.D. in economics to conduct an analysis of the produced data to create a class-wide exposure model for the claims at issue. (Id. at ¶17.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Id. at ¶4.)

4. What percentage of the class has objected? No objectors. (Declaration of Jarrod Salinas ("Salinas Decl." ¶9.)

The Court concludes that the settlement is entitled to a presumption of fairness.

B. Is the Settlement Fair, Adequate, and Reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.) Class Counsel has provided information, summarized below, regarding the factual basis for, and estimated maximum exposure for each of the claims alleged.

Violation	Maximum Exposure	Realistic Exposure
Unpaid Wage Claim	\$46,921	\$21,114
Meal Period Claim	\$1,275,494	\$669,634
Rest Period Claim	\$3,410,356	\$537,131
Wage Statement Violations	\$876,000	\$315,360
Waiting Time Penalties	\$877,920	\$193,142
PAGA Penalties	\$1,614,400	\$221,980
Total	\$8,101,091	\$1,958,361

(Schmidt Decl. ISO Prelim ¶¶ 24-29.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 ["Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate."].)

4. Amount offered in settlement. Plaintiff calculated Defendant's maximum exposure at \$8,101,091 and realistic exposure at \$1,958,361. The \$1,375,000 settlement amount represents approximately 17% of Defendant's maximum potential damages and 70% of Defendant's maximum potential damages which, given the uncertain outcomes, and Defendant's financial condition, is within the "ballpark of reasonableness."

The settlement amount, after the requested deductions, leaves approximately \$839,956.85 to be divided among approximately 493 participating class members. The resulting payments will average approximately \$1,703.77 per class member.

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement.

Number of class members: 493 (Salinas Decl. ¶3.)
Number of notice packets mailed: 493 (Id. at ¶5.)
Number of undeliverable notices: 8 (Id. at ¶7.)
Number of opt-outs: 0 (Id. at ¶8.)
Number of objections: 0 (Id. at ¶9.)
Number of Participating Class Members: 493
Average individual payment: \$1,703.77 (Id. at ¶11.)
Highest estimated payment: \$4,965.81 (Ibid.)

The Court concludes that the settlement can be deemed fair, adequate, and reasonable.

C. Attorney Fees and Costs

Class Counsel requests an award of \$458,333.33 in fees and \$20,884.82 in costs. (Moen Decl. ISO Final ¶¶ 20, 23.) The Settlement Agreement provides for fees up to \$458,333.33 (33 1/3%) and costs up to \$30,000 (¶52.c).

"Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.) Here, class counsel request attorney fees using the percentage method. (MFA at pp. 11-14.)

In common fund cases, the Court may employ a percentage of the benefit method, as cross-checked against the lodestar. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) The fee request represents 1/3 of the gross settlement amount, which is the average generally awarded in class actions. (See In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn. 13 ["Empirical studies show that, regardless whether the

percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].)

Class Counsel has provided information, summarized below, from which the lodestar may be calculated.

Attorney	Hours	Rate	Totals
Paul K. Haines	35.7	\$675	\$24,097.50
Fletcher W. Schmidt	170.5	\$650	\$110,825.00
Matthew K. Moen	183.8	\$475	\$87,305.00
Susan J. Perez	41.3	\$350	\$14,455.00
Paralegals	20.0	\$175	\$3,500.00
Totals			\$240,182.50

(Moen Decl. ISO Final ¶21.)

Counsel's percentage-based fee request is higher than the unadjusted lodestar, which would require the application of an approximate 1.9x multiplier to reach the requested fees. Here, the \$458,333.33 fee request represents a reasonable percentage of the total funds paid by Defendant. Notice of the fee request was provided to class members in the notice packet and no one objected. (Salinas Decl. ¶9, Exhibit A thereto.)

As for costs, Class Counsel is requesting \$20,884.82 for its actual costs. (Moen Decl. ISO Final ¶23.) This is lower than the \$30,000 cap provided in the Settlement Agreement, for which Class Members were given notice and did not object. (Salinas Decl. ¶9, Exhibit A thereto.) The costs listed include: Expert (\$10,282), Mediation (\$8,000), and Complaint Filing Fee (\$1,507.40). (Moen Decl. ISO Final, Exhibit 4.) The costs appear to be reasonable in amount and reasonably necessary to this litigation.

Based on the above, the court awards \$458,333.33 for attorneys' fees and \$20,884.82 for attorneys' costs.

D. Claims Administration Costs

The settlement administrator, Phoenix Settlement Administrators, is asking for \$13,325 for costs of administering the settlement. (Salinas Decl. ¶12.) This is equal to the estimated cost of \$13,325 provided for in the Settlement Agreement (¶52.e) and disclosed to Class Members in the Notice (Salinas Decl., Exhibit A).

The court awards costs in the requested amount of \$13,325.

E. Incentive Award to Class Representative

Plaintiff Santos Orellana seeks an enhancement award of \$5,000 for his contributions to the action. (Moen Decl. ISO Final ¶25.)

In connection with the final fairness hearing, the named Plaintiffs must submit declarations attesting to why they should be entitled to an enhancement award in the proposed amount. The named Plaintiffs must explain why they "should be compensated for the expense or risk he has incurred in conferring a benefit on other members of the class." (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than pro forma claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit'" (Id. at 806-807, italics and ellipsis in original.)

Plaintiff represents that his contributions to this action include: gathering relevant documents, providing information to his attorneys, having phone calls with his attorneys, and helping them prepare for mediation. He estimates spending 10-15 hours on the case. (Declaration of Santos Orellana ¶5.)

Based on the above, the court grants the enhancement award in the requested amount of \$5,000 to Plaintiff Santos Orellana.

III.
CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Final Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable.

2) The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$1,375,000 [Escalator Clause: Defendant represented that there were approximately 490 Settlement Class members as of the date of

mediation. If, as of the close of the Class Period, the number of Class Members has increased by fifteen percent (15%) or more (i.e., if there are 564 or more putative class members), then Defendant shall increase the Total Settlement Amount on a proportional basis (e.g., if the actual number of putative class members is 20% greater than 490, Defendant would increase the Total Settlement Amount by 20%).

B. The Net Settlement Amount ("Net") (\$830,841.67) is the GSA minus the following:

\$458,333.33 (33 1/3%) for attorney fees to Class Counsel, Haines Law Group, APC;
\$20,884.82 for litigation costs to Class Counsel;
\$5,000 for a service award to the Named Plaintiff Santos Orellana;
\$13,325 for settlement administration costs to Phoenix Settlement Administrators;
\$37,500 (75% of \$50,000 PAGA penalty) to the LWDA.

C. Plaintiffs release of Defendants from claims described herein.

3) By July 27, 2022, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor Code §2699 (1)(3).

4) By April 13, 2023, Class Counsel must file a Final Report re: Distribution of the settlement funds.

5) Court sets a Non-Appearance Case Review for April 20, 2023, 8:30 AM, Department 9.

CLERK TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.

DATED: July 12, 2022

YVETTE M. PALAZUELOS

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT