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8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SANTA CLARA**  
10

11 COURTNEY REESE,

12 Plaintiff,

13 v.

14 ASIAN BOX PALO ALTO LLC, et al.,

15 Defendants.  
16  
17

Case No.: 19CV346589

**ORDER CONCERNING PLAINTIFF'S  
MOTION FOR FINAL APPROVAL OF  
CLASS/PAGA SETTLEMENT AND  
JUDGMENT**

18 This is a putative class and Private Attorneys General Act (“PAGA”) action. Plaintiff  
19 Courtney Reese alleges that Defendant Asian Box Palo Alto LLC<sup>1</sup> failed to provide compliant  
20 meal and rest periods, required employees to work off-the-clock, failed to reimburse employees’  
21 business expenses, and committed other wage and hour violations.

22 The parties reached a settlement, which the Court preliminarily approved in an order filed  
23 on August 15, 2022. The factual and procedural background of the action and the Court’s  
24 analysis of the settlement and settlement class are set forth in that order.  
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28 <sup>1</sup> The operative complaint also names “Asian Box, an unknown business entity” as a defendant. The Court assumes this entity—which is not a party to the settlement—is one and the same as Asian Box Palo Alto LLC.

1 Before the Court is Plaintiff’s motion for final approval of the settlement and for approval  
2 of her attorney fees, costs, and service award. Plaintiff’s motion is unopposed. The Court issued  
3 a tentative ruling on January 18, 2023, and no one contested it at the hearing on January 19. The  
4 Court now issues its final order, which GRANTS final approval.

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

6 **A. Class Action**

7 Generally, “questions whether a [class action] settlement was fair and reasonable,  
8 whether notice to the class was adequate, whether certification of the class was proper, and  
9 whether the attorney fee award was proper are matters addressed to the trial court’s broad  
10 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),  
11 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th  
12 260.)

13 In determining whether a class settlement is fair, adequate and reasonable, the  
14 trial court should consider relevant factors, such as the strength of plaintiffs’ case,  
15 the risk, expense, complexity and likely duration of further litigation, the risk of  
16 maintaining class action status through trial, the amount offered in settlement, the  
17 extent of discovery completed and the stage of the proceedings, the experience  
18 and views of counsel, the presence of a governmental participant, and the reaction  
19 of the class members to the proposed settlement.

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

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

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

## 8 **B. PAGA**

9 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall  
10 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s  
11 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*  
12 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA  
13 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-  
14 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*  
15 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*  
16 *Moriana* (2022) \_\_\_ U.S. \_\_\_, 2022 U.S. LEXIS 2940.)

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

27 The settlement must be reasonable in light of the potential verdict value. (See *O’Connor,*  
28 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential

1 verdict].) But a permissible settlement may be substantially discounted, given that courts often  
2 exercise their discretion to award PAGA penalties below the statutory maximum even where a  
3 claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-  
4 CV-02198-EMC) 2016 WL 5907869, at \*8–9.)

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

6 The non-reversionary gross settlement amount is \$300,000. Attorney fees of up to  
7 \$100,000 (one-third of the gross settlement), litigation costs not to exceed \$25,000, and  
8 administration costs of approximately \$8,000 will be paid from the gross settlement. \$50,000  
9 will be allocated to PAGA penalties, 75 percent of which will be paid to the LWDA. The named  
10 plaintiff will seek an incentive award of \$8,000.

11 The net settlement will be allocated to settlement class members proportionally based on  
12 their workweeks during the class period. Class members will not be required to submit a claim  
13 to receive their payments. For tax purposes, settlement payments will be allocated one-third to  
14 wages and two-thirds to penalties, interest, and other non-wage damages. The employer’s share  
15 of taxes will be paid separately from the gross settlement. Funds associated with checks  
16 uncashed after 180 days will be tendered to Legal Services of Northern California.

17 Class members will release all claims, charges, etc. “arising from work at Defendant’s  
18 restaurant location in Mountain View, California, during the Class Period, that were alleged or  
19 could have been alleged based on the factual allegations in the Operative Complaint.”

20 Due to its financial condition, Defendant will fund the settlement in two installments,  
21 with the first half to be paid within 30 days of the effective date of the settlement and the second  
22 half to be paid within 6 months of the first. No later than 10 calendar days after Defendant funds  
23 the first payment, the following distributions will be made in the following order of priority from  
24 the First Payment: (i) full payment of individual payments to settlement class members; (ii) full  
25 payment of the incentive payment to the class representative; (iii) partial payment of one-half of  
26 the settlement administration costs to the settlement administrator; and (iv) partial payment of  
27 attorney fees and costs to class counsel, to the extent possible.

1 The notice process has now been completed. There were no objections to the settlement  
2 or requests for exclusion from the class. Of the 120 notices mailed by the administrator, 21 were  
3 re-mailed to updated addresses and 12 were ultimately undeliverable. The administrator  
4 estimates that the average payment to class members will be \$1,029.17, with a low payment of  
5 \$26.59 and a high payment of \$7,258.45.

6 At preliminary approval, the Court found that the settlement is a fair and reasonable  
7 compromise of the class claims and that the PAGA allocation is genuine, meaningful, and  
8 reasonable in light of the statute's purposes. It finds no reason to deviate from these findings  
9 now, especially considering that there are no objections. The Court thus finds that the settlement  
10 is fair and reasonable for purposes of final approval.

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

12 Plaintiff seeks a fee award of \$100,000, one-third of the gross settlement, which is not an  
13 uncommon contingency fee allocation in a wage and hour class action. This award is facially  
14 reasonable under the "common fund" doctrine, which allows a party recovering a fund for the  
15 benefit of others to recover attorney fees from the fund itself. Plaintiff also provides a lodestar  
16 figure of \$264,225, based on 406.5 hours spent on the case by counsel billing at a blended hourly  
17 rate of \$650 per hour. Plaintiff's request results in a negative multiplier. The lodestar cross-  
18 check supports the percentage fee requested, particularly given the lack of objections to the  
19 attorney fee request. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504  
20 [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-  
21 checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

22 Plaintiff's counsel also request \$20,658.23 in litigation costs, below the amount estimated  
23 at preliminary approval. Plaintiff's costs appear reasonable based on the summary provided and  
24 are approved. The \$6,000 in administrative costs are also approved.

25 Finally, the named plaintiff seeks an incentive award of \$8,000. To support her request,  
26 she submits a declaration describing her efforts on the case. The Court finds that the class  
27 representative is entitled to an enhancement award and the amount requested is reasonable.  
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1 **IV. ORDER AND JUDGMENT**

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

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

6 All current and former hourly-paid or non-exempt employees who worked for  
7 Defendant’s restaurant location in Mountain View, California, at any time during  
8 the Class Period [(April 18, 2015, through February 2, 2021.)].


9 No one otherwise included in that definition is excluded from the class.

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

15 The Court sets a compliance hearing for **October 5, 2023 at 2:30 P.M.** in Department 1.  
16 At least ten court days before the hearing, class counsel and the settlement administrator shall  
17 submit a summary accounting of the net settlement fund identifying distributions made as  
18 ordered herein; the number and value of any uncashed checks; amounts remitted to the *cy pres*  
19 recipient; the status of any unresolved issues; and any other matters appropriate to bring to the  
20 Court’s attention. Counsel shall also submit an amended judgment as described in Code of Civil  
21 Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

22 **IT IS SO ORDERED.**

23 Date: January 22, 2023

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26 The Honorable Sunil R. Kulkarni  
27 Judge of the Superior Court  
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