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County of Santa Clara
19CV347173
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

LILLIAN AUDYCKI, et al. Plaintiffs, v. STANFORD HEALTH CARE, et al., Defendants.	Case No.: 19CV347173 (consolidated with Case Nos. 19CV360010 and 20CV365879) **~~[PROPOSED]~~ AMENDED ORDER CONCERNING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS/PAGA SETTLEMENT**

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiffs allege that Defendant Stanford Health Care filed to provide employees with compliant meal and rest breaks, failed to include non-discretionary wages in their pay rates used to calculate sick pay, issued noncompliant wage statements, and committed other wage and hour violations.

Plaintiff Lillian Audycki initiated this class action against Defendant in May 2019 for violation of Labor Code section 226 (Case No. 19CV347173). In December 2019, Plaintiff Tawnya Coogan filed a class action complaint against Defendant for various wage and hour violations, as well as a representative action under PAGA (Case No. 19CV360010). And in March 2020, Plaintiff Joseph Ferlatte filed a class action complaint against Defendant for various Labor Code violations and subsequently filed an amended complaint to add a PAGA claim (Case No. 20CV365879).

In August 2020, the Court entered an order pursuant to a stipulation filed by the parties to consolidate the cases. Plaintiffs filed a Consolidated Complaint on August 27, 2020, followed by the operative First Amended Consolidated Class and Representative Action Complaint for Damages ("FAC") on January 25, 2021. After mediation in December 2022, the parties reached a settlement agreement.

On October 19, 2023, before the Court came Plaintiffs' motion for final approval of settlement, which was unopposed. Based on the reasons discussed below, the Court GRANTED the motion on October 24, 2023.

I. BACKGROUND

Plaintiff Lillian Audycki began employment with Defendant in September 2014 and continues to work as its non-exempt employee. (FAC, ¶7.) Plaintiff Tawnya Coogan worked for Defendant as an hourly, non-union sales associate from approximately June 6, 2016 through March 6, 2019, at the main hospital building in Palo Alto. *(Ibid.)* On September 9, 2019, Joseph Ferlatte began working for Defendant as a kidney transplant social worker in Palo Alto. *(Ibid.)* He was terminated on March 20, 2020. *(Ibid.)*

According to Plaintiffs, they did not receive off-duty 30-minute meal periods for shifts over 5 hours within the first 5 hours of work, or off-duty 10-minute rest periods for every 3.5 hours worked. (FAC, ¶ 22.) Rather, they allege they had to work through their meal and rest periods. *(Ibid.)* In addition, while employees routinely earned non-discretionary incentive wages such as shift differential wages, Plaintiffs allege sick pay was paid as their base pay rate rather than the regular rate of pay. *(Ibid.)* So Plaintiffs claim Defendant owes waiting time penalties for those whose employment had ended. *(Ibid.)* Plaintiffs also allege they were also required to use their personal cell phones in discharging their duties, but were not reimbursed. *(Ibid.)*

Plaintiffs allege that when they were paid shift differential wages, including for night and weekend shifts, the hours worked for shift differentials were redundantly listed in the total hours worked section of their wage statements, so the total hours worked were incorrect. (FAC, ¶ 22.) And because these differentials were not included in their regular rates of pay used to calculate sick pay, Plaintiffs allege their wage statements also failed to display the correct pay rate in this regard. *(Ibid.)* Similarly, Plaintiffs allege their wage statements did not accurately reflect all meal and rest period premiums to which they were entitled when denied off-duty meal and rest breaks. *(Ibid.)*

Based on these allegations, Plaintiffs asserted putative class claims for: (1) violation of Labor Code section 226 by failing to provide accurate itemized wage statements (all plaintiffs); (2) waiting time penalties under Labor Code sections 201-203 for failing to pay sick pay at the regular rate (plaintiffs Ferlatte and Coogan); (3) violation of Labor Code sections 226.7 and 512 by failing to provide adequate meal periods (all plaintiffs); (4) violation of Labor Code section 226.7 by failing to authorize and permit rest breaks (all plaintiffs); and (5) violation of Labor Code section 2802 by failing to reimburse all expenses (all plaintiffs). The three plaintiffs also brought: (6) a representative claim for PAGA penalties; and (7) a claim for violation of Business & Professions Code section 17200, et seq. Defendant denies any wrongdoing or liability as to any of the claims raised by Plaintiff.

Plaintiffs have moved for an order granting final approval of the Joint Stipulation of Class Action and PAGA Settlement and Release of Claims ("Settlement Agreement"), certifying the class for settlement purposes only, and entering final judgment as to all members of the Settlement Class, the Aggrieved Employees, and the State of California. The Court granted Plaintiffs' motion for final approval of the settlement on October 24, 2023.

II. 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.* (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. 224-245, 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 relevant 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 trial court also must independently confirm that "the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." *(Kullar, supra,* 168 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be "provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claim represents a reasonable compromise." *(Id.* at pp. 130, 133.)

B. PAGA

Labor Code section 2699, subdivision (1)(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) __U.S.__, 2022 U.S. LEXIS 2940.)

Similar to 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 in light of 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 WL 5907869, at *8-9.)

III. SETTLEMENT CLASS

For settlement purposes only, Plaintiffs requested the following class be certified:

(1) all of Defendant's past and present non-exempt California employees who were paid any shift differential wages reflected on wage statements through the Lawson payroll system during the Class Period; (2) all of Defendant's past and present non-exempt non-union California employees who worked at least one shift of 3.5 hours or more for Defendant during the Class Period; and (3) all former non-exempt California employees who were paid non-discretionary incentive wages (including, but not limited to, shift differential wages) and sick pay in the same workweek from Defendant and whose employment ended, either voluntarily or involuntarily, at any time during the Class Period. The Class Period is May 1, 2018 through April 1, 2023.

Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court .... "

Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence: (1) an ascertainable class and (2) a well-defmed community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319,326, 332 *(Sav-On Drug Stores*).) "Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing." (*Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

In the settlement context, "the court's evaluation of the certification issues is somewhat different from its consideration of certification issues when the class action has not yet settled." (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the settlement-only context, the case management issues inherent in the ascertainable class determination need not be confronted, and the court's review is more lenient in this respect. (*Id*. at pp. 93-94.) But considerations designed to protect absentees by blocking unwarranted or overbroad class definitions require heightened scrutiny in the settlement -only class context, since the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id*. at p. 94.)

At preliminary approval, the Court provisionally certified the above-described class, determining that Plaintiff had demonstrated by a preponderance of the evidence (1) an ascertainable class, (2) a well-defined community of interest among the class members and (3) that a class action provides substantial benefits to both litigants and the Court. Nothing has changed materially that would change the Court's determination. Consequently, the Court will certify the class for settlement purposes as requested.

IV. TERMS AND ADMINISTRATION OF SETTLEMENT

The non-revisionary gross settlement amount is $15,000,000. Attorney fees of up to $5,000,000 (one-third of the gross settlement), litigation costs of $29,087.04, and administration costs of $64,500 will be paid from the gross settlement. $500,000 will be allocated to PAGA penalties, 75% of which ($375,000) will be paid to the LWDA. The named Plaintiffs will seek inventive awards of $20,000 each, for a total of $60,000.

The net settlement, estimated at preliminary approval to be approximately $9,350,500, but now totaling $9,471,412.96 due to the decrease in the amount of litigation costs being sought, will be allocated to class members proportionally based on their pay periods during the class and PAGA periods. The average payment received by class members, who number 15,417, will be approximately $598.40. Class members will not be required to submit a claim to receive their payments. For tax purposes, settlement payments will be allocated 20 percent to wages and 80 percent to penalties and interest, with P AGA payments treated 100 percent as penalties. The employer's share of payroll taxes will be paid in addition to the gross settlement. Funds associated with checks uncashed after 180 days will be paid to Legal Aid at Work.

In exchange for settlement, class members who do not opt out will release all claims, charges, etc. "that were asserted in the Action, or that arise from or could have been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in the Action that have arisen during the Class Period," including specified wage and hour claims. As the Court determined in its order preliminarily approving the settlement, the release is appropriately tailored to the factual allegations at issue. (See *Amaro v. Anaheim Arena Management, ILC* (2021) 69 Cal.App.5th 521, 537.) Further, the PAGA release is appropriately limited to "claims for PAGA civil penalties based on any and all underlying Labor Code violations alleged or referenced in the First Amended Complaint or in the notice letters sent to the L WDA .... " Consistent with the statute, aggrieved employees will not be able to opt out of the PAGA portion of the settlement.[1]

[1] The release provides that "with the exception of class and PAGA claims for (1) derivative

In their motion for preliminary approval, Plaintiffs explained that the parties agreed to shorten the class period start date to May 1, 2018 and to exclude the putative "Expense Class," which was much broader than the other classes and less likely to be certified. The parties also agreed that the excluded putative class members--who would not release their claims—would not be prejudiced by the dismissal of their claims, and no notice to these individuals was necessary. The Court held that before final approval, Plaintiffs were required to file a request for dismissal of the claims not included in the settlement, along with a declaration pursuant to rule 3.770 of the Rules of Court. Plaintiffs have done so, with the Court entering the appropriate order on September 25, 2023, pursuant to a stipulation executed between the parties.

The notice process has been completed. There were no objections to the settlement and eleven requests for exclusion from the class. Of the 15,428 notice packets sent, 322 were returned to the administrator without a forwarding address. A skip trace performed on the returned notices produced 283 updated addresses, to which the notices were re-mailed. Ultimately, 39 notices remain undeliverable. The administrator estimates that the average payment will be $598.40, with a maximum payment of $1,318 and minimum payment of $25.

At preliminary approval, the Court found that the proposed settlement provides a fair and reasonable compromise to Plaintiffs' claims, and that the PAGA settlement is genuine, meaningful, and fair to those affected. It finds no reason to depart from these findings now, especially considering that there are no objections. The Court finds that the settlement is fair and reasonable for the purpose of final approval.

V. ATTORNEY FEES, COSTGS AND INCENTIVE AWARD

Plaintiffs seek a fee award of $5,000,000, or one-third of the gross settlement, which is not an uncommon contingency fee allocation in a wage and hour class action. This award is facially reasonable under the "common fund" doctrine, which allows a party recovering a fund

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waiting time penalties (Labor Code§§ 201-203) based on violations of Labor Code§ 246, and (2) claims related to inaccurate or non-compliant wage statements under Labor Code § 226," the settlement does not affect the related action of *Andrew Veitch, et al. v. Stanford Health Care* (Super. Ct. Santa Clara County, No. 22CV395001).

for the benefit of others to recover attorney fees from the fund itself. Plaintiffs also provide a lodestar figure of$1,966,370, based on 2,388.20 hours spent on the case by counsel and staff with billing rated of $670-950 per hour, resulting in a reasonable multiplier of 2.54. 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 Halflntem. Inc*. (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].)

Plaintiff also requests $29,087.04 in litigation costs, which appear reasonable based on the summaries provided and are approved. The $64,500 in administrative costs are also approved.

Finally, Plaintiffs request service awards of $20,000 each. To support their requests, they submit declarations describing their efforts on the case. The Court finds that the class representatives are entitled to enhancement awards and the amount requested is reasonable.

VI. ORDER AND JUDGMENT

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

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

> (1) all of Defendant’s past and present non-exempt California employees who were paid any shift differential wages reflected on wage statements through the Lawson payroll system during the Class Period; (2) all of Defendant's past and present non-exempt non-union California employees who worked at least one shift of 3.5 hours or more for Defendant during the Class Period; and (3) all former non-exempt California employees who were paid non-discretionary incentive wages (including, but not limited to, shift differential wages) and sick pay in the same workweek from Defendant and whose employment ended, either voluntarily or involuntarily, at any time during the Class Period.

Excluded from the class are the eleven individuals who submitted timely requests for exclusion.

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiffs 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. Under 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 has reviewed the Declaration of Taylor Mitzner with Respect to Final Accounting and makes the following findings:

1. On November 20, 2023, Defendant deposited $15,142,978.00 into the QSF, representing $15,000,000.00 for the GSA and $132,506.32 for the employer's share of payroll taxes;

2. On December 22, 2023, Phoenix issued and mailed checks from the QSF to each Settlement Class Member (totaling $9,471,412.96), Class Counsel ($5,000,000.00 Fees and $29,087.04 Costs), Class Representatives ($20,000.00 each), Phoenix ($64,500.00) and the LWDA ($375,000.00);

3. The check-cashing period for Settlement Class Members expired on June 19, 2024, which is one hundred and eighty (180) days from the date Individual Settlement Payment checks were issued. One thousand six hundred thirty-nine (1,639) checks, totaling $506,887.00 remain uncashed; and

4. Pursuant to the terms of the Settlement, funds from uncashed checks in the amount of $506,887.00 shall be paid to Legal Aid at Work.

IT IS SO ORDERED.

Date: 7/25/2024 9:09:06 AM

Charles F. Adams

The Honorable Charles F. Adams
Judge of the Superior Court

PROOF OF SERVICE

I am employed in the County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 515 S. Figueroa St., Suite 1250, Los Angeles, CA 90071.

On July 11, 2024, I served the foregoing document(s) described as: **[PROPOSED] AMENDED ORDER CONCERNING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS/PAGA SETTLEMENT,** on the interested parties in this action by placing a true copy thereof, in a sealed envelope(s) addressed as follows:

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__X__ **BY ELECTRONIC SERVICE**
I caused such document to be uploaded to Odyssey to be served on the offices of the addressees.

__X__ **(State)** I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 11, 2024, at Los Angeles, California.

Jacqueline Park