

MAR 24 2021

By [Signature] Clerk, Executive Officer/Clerk
K. Mason Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT
DEPARTMENT 53

ILLANA PIETE,

Plaintiff,

vs.

MT. SINAI MEMORIAL PARKS &
MORTUARIES;

Defendant.

Case No.: 20STCV11316

Hearing Date: March 24, 2021

Time: 10:00 a.m.

~~TENTATIVE~~ ORDER RE:

MOTION TO APPROVE SETTLEMENT
AGREEMENT PURSUANT TO THE
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT

MOVING PARTY: Plaintiff Illana Piete

RESPONDING PARTY: n/a

**Motion to Approve Settlement Agreement Pursuant to the Labor Code Private Attorneys
General Act**

The court considered the moving papers. No opposition to the motion was filed.

BACKGROUND

Plaintiff Illana Piete (“Plaintiff”) seeks an order approving the settlement of her claims under the Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698, et seq.) (“PAGA”) set forth in the Settlement and General Release Agreement (the “Settlement Agreement”) entered into by and between Plaintiff, on the one hand, and defendant Sinai Temple dba Mount Sinai Memorial Parks & Mortuaries (“Defendant”), on the other hand.

1 Plaintiff filed this action on March 20, 2020, asserting claims for violations of the Labor
2 Code, a claim under PAGA, and a claim for violation of Business and Professions Code section
3 17200 et seq. Plaintiff alleges that Defendant violated the Labor Code by, among other things,
4 failing to pay minimum wage, failing to pay overtime, failing to provide meal breaks, failing to
5 provide rest breaks, failing to compensate all hours, failing to provide accurate wage statements,
6 and failing to maintain payroll records.

7 The parties have reached a settlement of Plaintiff's PAGA claim. Plaintiff moves for
8 court approval of the PAGA settlement. The parties' proposed settlement allocates \$200,000
9 from the total settlement toward the PAGA claim.

10 **LEGAL STANDARD**

11 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf
12 of other current or former employees to recover civil penalties for Labor Code violations.
13 (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380.) Under PAGA,
14 75 percent of any penalties recovered go to the Labor and Workforce Development Agency
15 ("LWDA"), leaving the remaining 25 percent for the employees. (*Ibid.*) PAGA is intended "to
16 augment the limited enforcement capability of [LWDA] by empowering employees to enforce
17 the Labor Code as representatives of the Agency." (*Id.* at p. 383.) A judgment in a PAGA
18 action binds all those, including nonparty aggrieved employees, who would be bound by a
19 judgment in an action brought by the government. (*Id.* at p. 381.)

20 Labor Code section 2699, subdivision (l)(2) provides that "[t]he superior court shall
21 review and approve any settlement of any civil action pursuant to" PAGA. The court's review
22 "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court*
23 (2017) 3 Cal.5th 531, 549.) "[T]here is no requirement that the Court certify a PAGA claim for
24 representative treatment" as in a class action. (*Villalobos v. Calandri Sunrise Farm LP* (CD.
25 Cal., July 22, 2015, No. CV122615PSGJEMX) 2015 WL 12732709, at *5.)

26 In an effort to aid the court in the determination of the fairness of the settlement, *Wershba*
27 *v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245 (disapproved on other grounds),
28 discusses factors that the court should consider when testing the reasonableness of the settlement.

1 “[A] presumption of fairness exists where: (1) the settlement is reached through arm’s-length
2 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
3 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
4 is small.” (*Id.* at p. 245.) “[T]he test is not the maximum amount plaintiffs might have obtained
5 at trial on the complaint, but rather whether the settlement is reasonable under all of the
6 circumstances.” (*Id.* at p. 250; *see also City of Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d
7 448, 455 [stating that a proposed settlement that amounts to a fraction of the potential recovery
8 does not in itself render the proposed settlement grossly inadequate].)

9 **DISCUSSION**

10 A copy of the Settlement Agreement is attached as Exhibit B to the Declaration of
11 Douglas H. Hoang.

12 Under the terms of the Settlement Agreement, Defendant agrees to pay \$200,000, to be
13 allocated as follows:

- 14
- 15 • \$103,825: PAGA payment, of which 75%, or \$77,868.75, will be paid to the
16 Labor and Workforce Development Agency (“LWDA”) and 25%, or \$25,956.25,
17 will be paid to all “Aggrieved Employees,” which is defined as all current and
18 former non-exempt employees who worked for Defendant from January 14, 2019,
19 to the date the court issues its order approving the PAGA settlement;
- 20 • \$89,500: Attorney’s fees and costs to Plaintiff’s counsel;
- 21 • \$1,675: Payment to third-party administrator;
- 22 • \$5,000: Plaintiff’s enhancement award.

23 Plaintiff contends that the proposed PAGA settlement is fair and reasonable. Plaintiff’s
24 counsel, Douglas H. Hoang, states in his declaration that the parties participated in a full-day
25 private mediation with the Gig Kyriacou, Esq., a well-respected mediator experienced in
26 mediating complex labor and employment matters, including PAGA cases. (Hoang Decl., ¶ 6.)
27 Prior to the mediation, the parties engaged in pre-settlement discovery which included an
28 exchange of Defendant’s written policies, Plaintiff’s individual personnel file and payroll related
documents, and redacted payroll data as to other allegedly aggrieved employees that enabled

1 Plaintiff to evaluate the potential strengths and weaknesses of the claims and defenses in this
2 action. (Hoang Decl., ¶ 6.) The mediation was successful and the parties entered into the
3 Settlement Agreement at the conclusion of the mediation. (Hoang Decl., ¶ 8.) Hoang states that
4 the parties evaluated all aspects of the case and that they conducted their negotiations at arm's
5 length in an adversarial position. (Hoang Decl., ¶ 7.)

6 Hoang also states that, had this case not settled, the parties would have conducted
7 additional extensive formal discovery to prepare the case for trial, and that Defendant indicated
8 that it would aggressively defend against Plaintiff's allegations. (Hoang Decl., ¶ 12.) Hoang
9 calculates the realistic maximum PAGA penalty in this case to be approximately \$400,000, and
10 states that the proposed settlement is 50% of the realistic maximum penalty. (Hoang Decl., ¶
11 14.)

12 The Settlement Agreement also provides for an enhancement award of \$5,000 to
13 Plaintiff. Plaintiff states that, given the risks taken by Plaintiff in bringing this action, the time
14 spent assisting counsel in securing this benefit for the State and other aggrieved employees and
15 general waiver of all claims, \$5,000 is a fair and reasonable enhancement.

16 Finally, the court notes that Plaintiff's counsel has extensive experience in complex
17 wage-and-hour matters. (Hoang Decl., ¶ 19.)

18 After considering all relevant factors of fairness, the court finds that the PAGA settlement
19 set forth in the parties' Settlement Agreement is fair and reasonable.

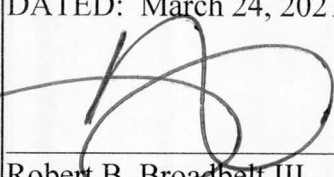
20 **ORDER**

21 For the reasons set forth above, the court grants plaintiff Illana Piete's motion for
22 approval of the PAGA settlement set forth in the Settlement and General Release Agreement.

23 The court orders plaintiff Illana Piete to give notice of this order.

24 IT IS SO ORDERED.

25 DATED: March 24, 2021

26 
27 _____
28 Robert B. Broadbelt III
Judge of the Superior Court