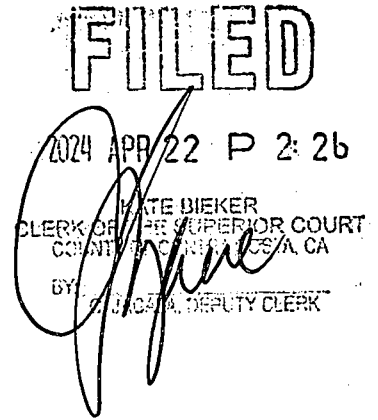


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Attorneys for Plaintiff
LAURIE JOHNSON



SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

LAURIE JOHNSON, an individual, on behalf
of herself and all others similarly situated,

Plaintiff,

vs.

AMSPEC, LLC, a New Jersey limited liability
company; and DOES 1 through 50, inclusive,

Defendants.

CASE NO. CIVMSC20-00718

[Assigned for all purposes to the Hon.
Charles S. Treat, Dept. 12]

~~[AMENDED PROPOSED]~~ FINAL
ORDER AND JUDGMENT

1 Plaintiff Laurie Johnson's ("Plaintiff") Motion for Approval of PAGA Settlement came on
2 regularly for hearing on April 11, 2024, the Honorable Charles S. Treat presiding. Having
3 reviewed Plaintiff's motion, the Declaration of Launa Adolph and the exhibits thereto, including
4 the Private Attorney General Action Settlement Agreement and Release ("Settlement
5 Agreement"), and the Declaration of Laurie Johnson, and good cause appearing,

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

7 1. For the reasons set forth in the Court's tentative ruling, which is adopted as the
8 final ruling of the Court, Plaintiff's motion is granted. A copy of the Court's tentative ruling is
9 attached hereto as Exhibit 1 and incorporated herein.

10 2. For purposes of this Final Order and Judgment ("Judgment"), the Court adopts all
11 defined terms as set forth in the Settlement Agreement. A copy of the Settlement Agreement is
12 attached as Exhibit A to the Declaration of Launa Adolph in Support of Plaintiff's Motion for
13 Approval of PAGA Settlement and is made part of this Judgment.

14 3. The Court has jurisdiction over all claims asserted in the Action, Plaintiff, the
15 PAGA Members, and Defendant. The PAGA Members consist of all persons who were
16 employed by Defendant in the State of California as hourly paid or non-exempt employees at any
17 time from February 4, 2019 through December 7, 2023 ("PAGA Period").

18 4. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"),
19 Labor Code section 2699, *et seq.*, the Court approves the Settlement and finds that it is fair and
20 reasonable and provides genuine and meaningful relief consistent with the underlying purpose of
21 PAGA to benefit the public.

22 5. The Court finds that notice of the Settlement was provided to the Labor and
23 Workforce Development Agency ("LWDA"), as required by Labor Code § 2699(1)(2).

24 6. Upon Defendant depositing the Gross Settlement Amount into the Settlement Fund
25 Account, all PAGA Members, including Plaintiff, shall be deemed to have released Defendant
26 and the Released Parties of any and all claims under PAGA which are based on the factual
27 allegations set forth in the operative complaint in this Action, including, but not limited to claims
28 based on alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 223, 224,

1 225.5, 226, 226.3, 226.7, 300, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1,
2 1198, 1199, 2699, and 2802, and the California Industrial Welfare Commission Wage Orders on
3 the preceding claims, which arose during the PAGA Period.

4 7. The Court finds the Gross Settlement Amount, as well as the methodology used to
5 calculate and pay the Individual Settlement Payments, is fair and reasonable. The Court enters
6 judgment against Defendant and in favor of Plaintiff and the PAGA Members in the amount of
7 \$275,000.00.

8 8. From the Gross Settlement Amount, PAGA Counsel is awarded \$91,666.67, which
9 represents thirty-three and one third percent (33-1/3%) of the Gross Settlement Amount, for their
10 reasonable attorneys' fees and \$22,305.64 for their actual costs incurred in the Action. The Court
11 finds that the requested attorneys' fees are reasonable in light of the relevant factors and that
12 PAGA Counsel costs were reasonable. Ten percent of the attorneys' fees shall be withheld by the
13 Settlement Administrator pending the compliance hearing.

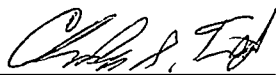
14 9. The Court approves Settlement Administration Costs in the amount of \$3,950.00,
15 to be paid from the Gross Settlement Amount.

16 10. This Judgment is intended to be a final disposition of the Action and is intended to
17 be immediately appealable.

18 11. Pursuant to Code of Civil Procedure section 664.6, the Court shall retain
19 jurisdiction with respect to the interpretation, implementation, and enforcement of the Settlement
20 and all orders and judgments entered in connection therewith.

21 12. Final judgment is hereby entered.

22
23 DATED: APR 19 2024



HON. CHARLES S. TREAT
JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 04/11/2024

Defendants' motion is therefore denied because it does not appear that the settlement of which they now seek enforcement still exists – if indeed it ever really did. Nor does their motion give the Court any solid and specific idea of what it is that defendants actually want the Court to order, beyond something like "live up to your (old, superseded) settlement".

19. 9:00 AM CASE NUMBER: MSC19-01010

CASE NAME: HERRERA VS RESIDENCE INN, ET AL.

*HEARING ON MOTION IN RE: COMPLIANCE HEARING

FILED BY:

TENTATIVE RULING:

The final report of the settlement administrator is **approved**. Counsel are reminded that pursuant to Code of Civil Procedure § 384(b), the judgment must be amended to reflect the amount paid to the *cy pres* recipient.

20. 9:00 AM CASE NUMBER: MSC20-00718

CASE NAME: JOHNSON VS. AMSPEC, LLC

*HEARING ON MOTION IN RE: APPROVAL OF PAGA SETTLEMENT

FILED BY: JOHNSON, LAURIE

TENTATIVE RULING:

Plaintiff Laurie Johnson moves for approval of the settlement of her PAGA suit against defendant AmSpec, LLC. Defendant is an oil inspection and testing company. Plaintiff was employed by defendant as a billing administrative specialist from July to December 2019. Plaintiff also moves for approval of her attorney's fees, litigation costs, administration costs, and representative payment.

The motion is **granted**.

A. Background of the Case and Terms of Settlement

This a PAGA case (not a class action), alleging a variety of violations of the Labor Code concerning failure to provide rest and meal breaks, failure to pay minimum wages and overtime, and cascading derivative violations. In particular, plaintiff asserts alleged violations for off-clock work and failure to give proper rest and meal breaks.

This case was first filed on April 22, 2020. Defendant moved successfully to compel arbitration. However, the parties proceeded to mediation and agreed to lift the stay pending arbitration so that this settlement can be considered.

The total settlement payment is \$275,000. Out of this is to come attorney's fees of \$91,667 (one-third of the recovery); \$22,305 in litigation costs, and \$3,950 in costs to the settlement Administrator. The

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 04/11/2024

plaintiff will be paid a service payment of \$5,000 for her efforts in this litigation.

The remaining amount, \$152,078, is allocated as PAGA penalties. Those penalties are apportioned 75% to the LWDA and 25% to the aggrieved employees.

The settlement covers all non-exempt employees between February 4, 2019 and December 7, 2023. There are an estimated 183 covered employees. The payments from the employee share of the penalty (\$38,120) will be distributed among the employees based on the number of pay periods each individual worked during the released period. The average employee share will be about \$208, though this will vary from employee to employee based on the pay-period allocation formula.

Plaintiff's counsel attests that informal discovery was undertaken, and the settlement was reached after a session with an experienced mediator.

Plaintiff provided required notices to the LWDA of the initial claims and of the proposed settlement.

The settlement provides a process for mailing the notices to the aggrieved employees, who will not have to submit a claim, along with a process for following up on returned mail. Information for mailing will be provided within 10 days after Final Approval. The settlement amount will be paid to the administrator within 10 days. The administrator will seek to obtain current mailing addresses, and will remit all settlement funds to the appropriate recipients, including the LWDA and the aggrieved employees.

The settlement provides that the value of checks uncashed after 180 days shall be remitted to the State Controller's Office, Unpaid Property Division.

Specified PAGA claims, and any claims which could have been pleaded under the PAGA based on the factual allegations in PAGA Complaint and the LWDA Letter, would be released. It also provides that the parties intend to fully resolve all PAGA claims for the full PAGA Period described above.

A. Standards for Review of a PAGA Settlement

Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees". (*Id.*, at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "The court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 04/11/2024

noted that *Neary* does not always apply, because “Where the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63.)

B. Application to This Settlement

Plaintiff indicates that the settlement is fair, and was evaluated by counsel based on adequate information and arms-length negotiation. In response to plaintiff’s allegations, defendant asserted that it paid employees for all recorded time; that off-the-clock time was undocumented and unknown to defendant; and that employees were paid meal time premiums or signed waivers. Plaintiffs’ counsel has provided a detailed declaration analyzing the potential strengths and weaknesses of plaintiffs’ claims and defendants’ potential defenses. The Court is satisfied with the analysis.

Of course, some reduction must be made for the strength of the case, and the time and expense of obtaining recovery. Even assuming success on the merits of each claim, PAGA gives the court discretion to reduce penalties for a variety of reasons, including where “based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory.” (Labor Code § 2699(e)(2).) Moreover, recent decisions may make it difficult for PAGA plaintiffs to recover statutory penalties, as opposed to actual missed wages. (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 937; but see *Gola v. University of San Francisco* (2023) 90 Cal.App.5th 548, 566-67.) These factors make the result hard to predict.

Labor Code § 2699(g)(1) provides that a prevailing employee in a PAGA action may recover attorney’s fees. Plaintiff seeks one-third of the total settlement amount as fees, relying on the “common fund” theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.) Although *Lafitte* concerns a class action, not a PAGA-only case, this Court views the use of a lodestar cross-check as appropriate here. Plaintiffs’ counsel have provided a breakdown and documentation of their lodestar figure of \$130,332, which exceeds the fee requested; thus, the lodestar multiplier is approximately 0.70. This appears appropriate in light of the risks of the case and the results achieved.

The requested representative payment of \$5,000 for the named plaintiff is approved. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff has provided a declaration in support of her request. She points out that she executed a broader release than the class as a whole, but does not identify any particular claims of value that she may have. She also risks damage to her reputation and more difficulty in obtaining employment.

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 04/11/2024

Litigation costs of \$22,305 (mostly mediation, filing, and court reporter fees) are reasonable and are approved.

The settlement administrator's costs of \$3,950 are reasonable and are approved.

The statute does not expressly address how the 25% plaintiff's share of the penalties is to be allocated among all of the aggrieved employees. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 382.) One court has held, however, that the entire 25% share of penalties could not be awarded to the named plaintiff. (*Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742-43.) In *Moorer*, the plaintiff had claim worth about \$9,500, yet was collecting penalties of \$148,000, and keeping the entire employee share, causing the court to be concerned that the plaintiff had lost sight of the fact that the purpose of the action is to benefit the public, not private parties. Allocation based on pay periods is reasonable here.

C. Conclusion

The proposed settlement is approved. Counsel are directed to prepare an order including the Court's ultimate order, the other provisions submitted in the proposed order, and a corresponding judgment. The order would include a compliance hearing for a suitable date chosen in consultation with the Department's clerk. One week before the compliance hearing, counsel shall file a compliance statement. Ten percent of the attorney's fees shall be withheld by the Administrator pending the compliance hearing. Counsel will also be expected to update and document the actual litigation costs to be reimbursed.

21. 9:00 AM CASE NUMBER: MSC21-00403
CASE NAME: RAMOS/CHOLICO VS CB ENTERPRISES, INC.
*HEARING ON MOTION IN RE: QUASH SERVICE
FILED BY:
TENTATIVE RULING:

Defendant's motion to quash is **denied**. It appears that defendant's objections are that it should not have been brought in by Doe amendment, that the amendment is untimely, and that plaintiff did not properly notify LWDA. Those are substantive objections, not objections to the method of service of process. They are not properly raised on a motion to quash.

22. 9:00 AM CASE NUMBER: MSC21-00403
CASE NAME: RAMOS/CHOLICO VS CB ENTERPRISES, INC.
*HEARING ON MOTION IN RE: QUASH SERVICE
FILED BY:
TENTATIVE RULING:

Defendant's motion to quash is **denied**. It appears that defendant's objections are that it should not