

FILED
MAR 04 2021

CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By: [Signature] Deputy Clerk

**THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA**

**DATE: March 3, 2021
JUDGE: Edward G. Weil**

**DEPARTMENT: 39
CLERK: Denese Johnson
UNREPORTED**

**IVANA LEBRON,
Plaintiff(s),**

vs.

Case No.: MSC20-00981

**SYCAMORE HEALTHCARE ASSOCIATES,
Defendant(s).**

ORDER AFTER HEARING FEBRUARY 18, 2021
RE: APPROVAL OF PAGA SETTLEMENT

Ivana Lebron moves for approval of the settlement of her PAGA suit against Sycamore Healthcare Associates.

A. Background of the Case and Terms of Settlement

This is a PAGA case (not a class action), alleging a variety of violations of the Labor Code concerning failure to pay overtime, failure to provide proper meal and rest breaks, and failure to provide accurate itemized wage statements.

The total settlement payment is \$127,500. This is composed of \$50,000 in PAGA penalties (of which 75% will be paid to the LWDA, and the aggrieved employees will receive 25%, allocated based on the number of pay periods that they worked), \$50,000 in attorney's fees and costs, \$2,500 in costs to the settlement administrator, Phoenix, and \$25,000 to plaintiff in exchange for her individual claims.

Plaintiff's counsel attests that substantial discovery was undertaken, which established a relatively limited scope of violations. No quantitative analysis of the value of the case or extent of discounts was provided.

In seeking a \$50,000 fee, counsel attests to 87.4 hours of work, at an hourly rate of \$845, which would generate a lodestar fee of \$73,853.

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

The settlement provides a process for mailing the notices to the aggrieved employees, who will not have to submit a claim. Penalty shares will be apportioned based on the number of weeks worked during the time period in question. Checks not cashed within 180 days will be distributed pursuant to Code of Civil Procedure section 382.4.

B. Standards for Review of a PAGA Settlement

While there is no binding authority concerning the proper standard of review of a PAGA settlement, one federal District Court has addressed the issue. In *O'Connor v. Uber Techs, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133, the court denied approval of class action settlements that included PAGA claims in part because the plaintiffs' claims added up to as much as \$1 billion in PAGA penalties but parties settled those claims for \$1 million, or 0.1% of their alleged maximum value. As the court stated, "where plaintiffs bring a PAGA representative claim, they take on a special responsibility to their fellow aggrieved workers who are effectively bound by any judgment. [citation omitted] Such a plaintiff also owes responsibility to the public at large; they act, as the statute's name suggests, as a private attorney general, and 75% of the penalties go to the LWDA 'for enforcement of labor laws . . . and for education of employers and employees about their rights and responsibilities under this code.'" (*Id.*, at 1134.) In that case, the LWDA itself filed a brief stating that "[i]t is thus important that when a PAGA claim is settled, the relief provided for under the PAGA be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public[.]" The *Uber Techs* court noted that "a court may reduce the penalty when 'to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.'" (*Id.*, at 1134, citing Labor Code § 2699(e)(2).) Nonetheless, the court noted that the plaintiff had provided no "coherent analysis" to justify the "relatively meager value" assigned to the PAGA claim.

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

C. Application to this settlement

The overall assessment of the value of the case, while not quantified, is sufficient to establish that it is reasonable.

With respect to plaintiff's use of the provisions of Code of Civil Procedure section 382.4 governing the distribution of any uncashed checks, the provision by its terms applies only to class actions. Nonetheless, it may be used as a model, with the provisions being incorporated into the order approving the settlement. This must include compliance with the other provisions of that section, including preparation of an amended judgment and provision of information meeting the requirements of section 382.4, i.e., showing that there is no relationship between the recipients and counsel that would create the appearance of impropriety.

Where, as here, the PAGA plaintiff also settles her individual claims, there is the potential that the PAGA recovery may be reduced in exchange for a higher payment on the individual plaintiff's claims. In this instance, plaintiff has provided no description of her individual claims to enable the Court to determine if this occurred. The complaint did not raise individual claims, nor do the materials supporting the motion discuss them. Given that the entire group of 150-200 aggrieved employees is receiving a one-fourth share of \$50,000. (Counsel states that he reviewed about 30 sets of time records, and that this was 15-20% of the employees in question, meaning that there were 150-200 employees.) If there are 200 employees, this means that the other employees may be receiving 25% of \$250 each, i.e., \$62.50. Accordingly, at the initial hearing, the Court directed counsel to provide a supplemental submission to assure that plaintiff has not taken a disproportionate share of the recovery. (See *Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742-743 [award of entire employee share of PAGA penalties to named plaintiff improper].)

Counsel has provided a brief supplemental submission, in which he estimates that plaintiff's individual claims are worth \$10,000 to \$15,000. It also points out that while the other aggrieved employees will receive a share of PAGA penalties, they are not resolving their individual claims (as they would in a class action). This latter point is critical to the Court's analysis.

Labor Code section 2699(g)(1) provides that a prevailing employee in a PAGA action is may recover attorney's fees. Plaintiff seeks fees and costs on a lodestar basis, not a fixed percentage of the total settlement. The rate used by counsel, \$845 is high enough that it could require further review. Moreover, plaintiff's counsel here has no junior associates, but when he performs the work that ordinarily would be done by a junior level associate, the "reasonable" rate is that of the junior level associate. (569 *E. County Blvd. LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 438 [trial court permissibly reduced fees where "the yeoman's work could have been handled by associates billing much lower rates"].) Even assuming, however, that the Court determined that the reasonable rate would be \$800 per hour for half of the time, and \$400 for the other half, the resulting lodestar would be \$52,440. Accordingly, the Court finds that the \$50,000 fee is reasonable.

D. Conclusion

The motion is granted.

Counsel is directed to prepare an order including the Court's ultimate order, the other provisions submitted in the proposed order, and scheduling 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. 10% of the attorney's fees shall be withheld by the Administrator pending the compliance hearing. At the time of the compliance hearing, counsel will be required to comply with Code of Civil Procedure section 382.4, and 384(b) (even though this is not a class action), and shall provide an amended judgment so reflecting.

DATED: March 21, 2021



Hon. Edward G. Weil
Judge of the Superior Court

SUPERIOR COURT - MARTINEZ
COUNTY OF CONTRA COSTA
MARTINEZ, CA 94553
(925) 608-1000

CLERK'S CERTIFICATE OF MAILING

CASE TITLE: LEBRON VS SYCAMORE HEALTHCARE ASSOC.

CASE NUMBER: MSC20-00981 - CIVIL

THIS NOTICE/DOCUMENT HAS BEEN SENT TO THE FOLLOWING ATTORNEYS/PARTIES:

KEVIN F. WOODALL
100 PINE STREET
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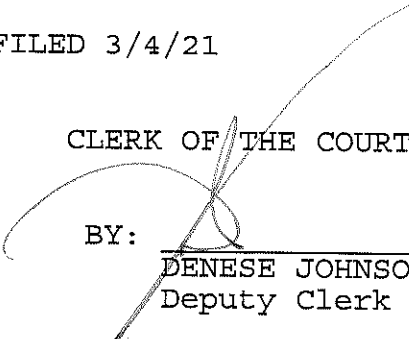
I am a Clerk of the Court indicated below and am not a party to this cause. On the date below indicated, I served a copy of the attached document(s) by depositing a true copy in the mail in a sealed envelope with postage prepaid, at MARTINEZ, California addressed as above indicated.

TITLE OF DOCUMENT SERVED: ORDER FILED 3/4/21

DATE MAILED: 03/04/21

CLERK OF THE COURT

BY:


DENESE JOHNSON
Deputy Clerk of the Court