

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

FATEEMA BROWN, individually, and on
behalf of aggrieved employees pursuant to the
Private Attorneys General Act ("PAGA");

Plaintiff,

v.

FAIR OAKS ESTATES, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 34-2020-00278787

Honorable Richard Sueyoshi
Department 53

**ORDER AND JUDGMENT
GRANTING APPROVAL OF
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE §§ 2698, ET
SEQ.) SETTLEMENT AGREEMENT
AND ATTORNEYS' FEES AWARD,
LITIGATION COSTS AWARD, AND
ENHANCEMENT PAYMENT**

[Reservation ID: 2641623]

Motion for PAGA Approval Hearing:

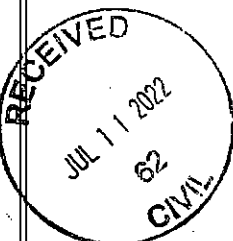
Hearing Date: June 28, 2022

Hearing Time: 1:30 p.m.

Hearing Place: Department 53

Complaint Filed: May 15, 2020

Trial Date: None Set



1 This matter has come before the Honorable James McFetridge in Department 53 of the
2 Sacramento County Superior Court (Gordon D. Schaber Courthouse), located at 720 9th Street,
3 Sacramento, California 95814, on Plaintiff Fateema Brown's ("Plaintiff") Motion for Approval
4 of Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement,
5 Attorneys' Fees Award, Litigation Costs Award, and Enhancement Payment. The Court issued
6 a tentative ruling on June 27, 2022 granting Plaintiff's motion but reducing the Attorneys' Fee
7 Award to thirty percent (30%). Attached hereto as **Exhibit 1** is a true and correct copy of the
8 Court's tentative ruling. Plaintiff's Counsel appeared at the hearing date on June 28, 2022 to
9 contest the Court's tentative ruling, and the Court took this matter under submission. On June
10 30, 2022, the Court issued a Minute Order affirming the tentative ruling. Attached hereto as
11 **Exhibit 2** is a true and correct copy of the Court's Minute Order. Pursuant to the tentative ruling
12 and Minute Order, the Court instructed Plaintiff's Counsel to provide a revised Order
13 Approving Settlement Agreement ("Order") consistent with the Court's ruling regarding the
14 reduced Attorneys' Fee Award.

15 This Court has reviewed the papers submitted by Plaintiff in support of approval of the
16 Confidential Settlement Agreement and Release ("Settlement Agreement," "Settlement," and
17 "Agreement") pursuant to the Private Attorneys General Act of 2004, Labor Code sections
18 2698, *et seq.* ("PAGA"). The Agreement is attached hereto as **Exhibit 3**. Based upon this
19 review, and the findings below, the Court finds good cause to enter this order.

20 **FINDINGS:**

21 1. Unless otherwise specified, defined terms in this Order have the same definition
22 as the terms in the Settlement Agreement.

23 2. The Court has jurisdiction over the subject matter of this litigation over all
24 current and former hourly-paid employees (whether hired directly or through a staffing agency)
25 of Defendant Fair Oaks Estates, Inc. ("Defendant") at any time from March 9, 2019, through
26 April 8, 2022 ("Settlement Group," "Settlement Group Members," and "Settlement Period").
27 The Court also has jurisdiction over those persons or entities undertaking affirmative
28 obligations under the Settlement Agreement.

1 3. On or about March 9, 2020, Plaintiff served a notice letter to the California Labor
2 and Workforce Development Agency ("LWDA") and Defendant, pursuant to Labor Code
3 section 2699.3, to notify the LWDA of the alleged Labor Code violations.

4 4. On or about May 15, 2020, Plaintiff filed this representative PAGA action
5 against Defendant, on behalf of the State of California, to represent herself and all current and
6 former hourly-paid employees of Defendant who worked for Defendant (whether hired directly
7 or through a staffing agency) at any time from March 9, 2019, through April 8, 2022.

8 5. The Parties expressly acknowledge that the Settlement Agreement is entered
9 solely for the purpose of compromising significantly disputed claims, and that nothing
10 contained therein is an admission of liability or wrongdoing by Defendant.

11 6. The Court determines there is sufficient evidence to suggest the Settlement was
12 entered in good faith, that the Settlement is fair, reasonable, and adequate under the
13 circumstances, and that the Parties have satisfied the standards and applicable requirements for
14 approval of a settlement of claims brought under PAGA.

15 7. The Court finds pursuant to Labor Code sections 2699(1)(2) and (1)(4), the
16 LWDA was given timely notice of the Agreement. On June 2, 2022, Plaintiff submitted to the
17 LWDA a Notice of Settlement, attached to which was a copy of the Agreement. Plaintiff's
18 Notice of Settlement complied with the requirements of Labor Code section 2699(1)(2).

19 **IT IS HEREBY ORDERED THAT:**

20 1. The terms of the Settlement Agreement are fair, adequate, and reasonable, and
21 the Settlement is approved under Labor Code section 2699(1)(2).

22 2. The Court affirms approval of the Settlement as to the following group of
23 individuals, collectively referred to as the "Settlement Group Members": all current and former
24 hourly-paid employees (whether hired directly or through a staffing agency) of Defendant at
25 any time from March 9, 2019, through April 8, 2022.

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1 3. The Agreement and the judgment to be entered by the Court forever bar Plaintiff,
2 the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to,
3 any and all allegedly aggrieved employees, from pursuing any action against Defendant under
4 Labor Code section 2698, *et seq.* (PAGA), based on or arising out of violations of sections
5 alleged in the Lawsuit, and claims that could have been asserted in the Lawsuit based upon the
6 facts alleged in Plaintiff's complaint through the end of the Settlement Period ("Released
7 Claims"). The Released Claims include, but are not limited to, claims under the PAGA for civil
8 penalties for alleged violations of Labor Code sections 201- 204, 226, 226.7, 256, 510, 512,
9 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198; and claims for attorneys' fees, costs, or
10 interest resulting therefrom.

11 4. The Gross Settlement Amount of \$200,000, the PAGA Penalties Fund of
12 approximately \$112,134.84, and the methodology used to calculate each Individual Settlement
13 Award, in accordance with the Settlement, is approved under Labor Code section 2699(1)(2).

14 5. The Court approves the Attorneys' Fees Award to Plaintiff's Counsel of
15 \$60,000, which represents thirty percent (30%) of the Gross Settlement Amount, the Litigation
16 Costs Award to Plaintiff's Counsel as reimbursement of documented actual litigation costs and
17 expenses of \$12,865.16, an Enhancement Payment to Plaintiff of \$10,000, and the Settlement
18 Administration Costs of \$5,000 to Simpluris, Inc., the Settlement Administrator, all payable
19 from the Gross Settlement Amount. The Court finds that the amounts requested are fair and
20 reasonable.

21 6. After deducting the approved payments described above, the balance of the
22 settlement amount will be approximately \$112,134.84 ("PAGA Penalties Fund"). Under the
23 terms of the Settlement, seventy-five percent (75%) of the PAGA Penalties Fund (\$84,101.13)
24 will be paid to the LWDA ("LWDA Payment"), and the remaining twenty-five percent (25%)
25 of the PAGA Penalties Fund (\$28,033.71) will be paid to the Settlement Group on a pro rata
26 basis ("Net Settlement Amount" and "Individual Settlement Awards").

27 7. The Court authorizes the Settlement Administrator to calculate and pay the
28 Individual Settlement Awards in accordance with the terms of the Settlement.

1 8. Ten (10) calendar days after the Effective Date, Defendant shall deposit
2 \$200,000 with the Settlement Administrator. Within ten (10) calendar days after the Effective
3 Date, Defendant will provide the Settlement Administrator with a list of the names, last known
4 addresses, dates of active employment with Defendant during the Settlement Period, and Social
5 Security Numbers for the Settlement Group Members. Within fourteen (14) calendar days of
6 the funding of the Settlement, the Settlement Administrator will issue the payments required by
7 section 7 of the Agreement to the appropriate entities or persons. Individual Settlement Awards
8 will be paid in the form of a check delivered to each Settlement Group Member at the last known
9 address on file with Defendant or as updated by the Settlement Administrator. Each Individual
10 Settlement Award will be accompanied by an explanatory letter (attached as **Exhibit A** to the
11 Agreement).

12 9. Individual Settlement Award checks will remain negotiable for one hundred
13 twenty (120) days after the date of their issuance (the "Check Stale Date"). Any Individual
14 Settlement Award checks that are not cashed, deposited, or negotiated after the Check Stale
15 Date will be void and the amount of those checks will be directed to the California State
16 Controller for the deposit in the Unclaimed Property Fund in the name of the employee.

17 10. Plaintiff's Counsel will not seek or be entitled to any attorneys' fees and/or
18 expenses related to the claims encompassed by the Agreement, other than those set forth above.

19 11. Plaintiff's compliance with the notice procedures described in the Settlement
20 Agreement shall constitute due and sufficient notice to the LWDA and shall be deemed to
21 satisfy any requirement of due process. Nothing else shall be required of, or done by, the Parties,
22 Plaintiff's Counsel, or Defendant's Counsel to provide notice of the Settlement.

23 12. Pursuant to Code of Civil Procedure section 664.6, the Court shall retain
24 continuing jurisdiction over this representative PAGA action and the Parties to the fullest extent
25 necessary to enforce and effectuate the terms and intent of the Agreement.

26 13. Nothing in this Order or the Settlement Agreement shall be construed as
27 evidence of an admission or concession by any Party. The Settlement and this resulting Order
28 simply represents a compromise of significantly disputed allegations.

1 14. Within ten (10) calendar days of entry of this Order, Plaintiff shall provide a
2 copy of this Order to the LWDA, pursuant to Labor Code section 2699, subdivisions (l)(3) and
3 (l)(4).

4 15. Plaintiff shall file a request for dismissal of the PAGA Action in its entirety as
5 to Defendant with prejudice, within ten (10) court days of the Court entering this Order and
6 serving it on the Parties.

7 16. *Parties shall contact the case management dept. to set final*
accounting and The Court sets a final accounting and compliance date for _____ at _____
8 ~~a.m./p.m. in Department 53.~~ No later than five (5) court days before final accounting and
9 compliance date, Plaintiff shall file a declaration regarding compliance.

10
11 **IT IS SO ORDERED.**

12
13 Dated: JUL 21 2022

14 
HONORABLE JAMES MCFETRIDGE
JUDGE OF THE SUPERIOR COURT



15 JUDGE RICHARD K. SUEYOSHI

16 SIGNATURE PURSUANT
17 TO CCP 635
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EXHIBIT 1

NOTICE:

Consistent with Local Rule 1.06(B), any party requesting oral argument on any matter on this calendar must comply with the following procedure:

To request limited oral argument, on any matter on this calendar, you must call the Law and Motion Oral Argument Request Line at (916) 874-2615 by 4:00 p.m. the Court day before the hearing and advise opposing counsel. At the time of requesting oral argument, the requesting party shall leave a voice mail message: a) identifying themselves as the party requesting oral argument; b) indicating the specific matter/motion for which they are requesting oral argument; and c) confirming that it has notified the opposing party of its intention to appear and that opposing party may appear via Zoom using the Zoom link and Meeting ID indicated below. If no request for oral argument is made, the tentative ruling becomes the final order of the Court.

Unless ordered to appear in person by the Court, parties may appear remotely either telephonically or by video conference via the Zoom video/audio conference platform with notice to the Court and all other parties in accordance with Code of Civil Procedure 367.75. Although remote participation is not required, the Court will presume all parties are appearing remotely for non-evidentiary civil hearings. The Department 53/54 Zoom Link is <https://saccourt-ca-gov.zoomgov.com/join/9212855555> and the Zoom Meeting ID is 161 4650 6749. To appear on Zoom telephonically, call (833) 568-8864 and enter the Zoom Meeting ID referenced above. NO COURTCALL APPEARANCES WILL BE ACCEPTED.

Effective January 31, 2022, official court reporters will not be available in Departments 53 and 54, with exceptions listed in the Court's Policy Regarding Availability and Unavailability of Official Court Reporters. Additional information regarding this policy as well as the Court's No. 6A Policy for Official Court Reporter's Pro Tempore in Departments 53 and 54 can be found on the Court's website at <https://www.saccourt.ca.gov/court-reporters/court-reporters.aspx>.

Parties arranging for their own reporter must file a completed Stipulation and Appointment of Official Reporter Pro Tempore - form CV/E-206 (<https://www.saccourt.ca.gov/forms/docs/cv-206.pdf>) prior to the hearing. Stipulations filed on or the day before the hearing must be emailed to the assigned Law and Motion department inbox at Dept53@saccourt.ca.gov or Dept54@saccourt.ca.gov.

**Department 53
Superior Court of California
813 Sixth Street, 2nd Floor
James E. McFetridge, Judge
J. Servantez, Clerk
J. Reilly/N. Alvi, Bailiff**

Tuesday, June 28, 2022, 1:30 PM

Item 1 2015-00177867-CU-MC

City of Sacramento vs. Leg Investments

Nature of Proceeding: Motion for Attorney Fees

Filed By: Agello, Frank P.

The motion of Defendant 2002 Investors, LLC ("2002 Investors") for an award of attorney's fees and costs against Defendant LEG Investments ("LEG") is DENIED as set forth herein.

Plaintiffs City of Sacramento and the People of the State of California commenced this action to obtain a permanent injunction against LEG and 2002 Investors to enjoin illegal drug activities and prostitution at property located at 1319 30th Street, Sacramento, California (the "Property"). LEG was the owner of the Property. 2002 Investors had a commercial lease to operate a hotel business at the Property. The

Nature of Proceeding: Motion to Set Aside Default and Default Judgment

Filed By: Vanacore, Derek

This matter is continued to 7/5/2022 at 01:30PM in this department.

Item 5 **2020-00278787-CU-OE**

Fateema Brown vs. Fair Oaks Estates, Inc.

Nature of Proceeding: Motion for Approval of Private Attorneys General Act Settlement

Filed By: Han, Douglas

The motion of Plaintiff Fateema Brown ("Plaintiff") for approval of a Private Attorneys General Act ("PAGA") Settlement is ruled upon as follows:

This is a wage-and-hour action against Defendant Fair Oaks Estates, Inc. ("Defendant") for PAGA penalties arising from various alleged violations of the Labor Code. (See Complaint.) After engaging in formal discovery and conducting an investigation the parties participated in mediation with Lisa Klerman serving as the neutral. (Han Decl., ¶¶ 12-15.) With the assistance of the mediator, the parties reached a proposed Confidential Settlement Agreement and Release (the "Settlement"). (Han Decl., ¶¶ 9, 15-16 and Exh. 2.) The Labor Workforce Development Agency ("LWDA") was timely notified of the Settlement. (Anderson Decl., ¶ 3 and Exh. 1.) The LWDA has not filed an opposition.

The PAGA Settlement resolves the claims asserted in this litigation as to all current and former hourly-paid employees of Defendant from March 9, 2019 through April 8, 2022 (the "Settlement Group Members"). (Agreement, ¶ 5.) The Settlement provides for a maximum gross payment (the "Gross Settlement Amount") by Defendant of \$200,000. (Agreement, ¶ 7(a).) The Gross Settlement Amount will be used to pay for an award of \$76,000 (38%) in attorney's fees to Plaintiff's counsel and a litigation costs award estimated not to exceed \$15,000, payment to the Settlement Administrator, Simpluris, Inc. in the amount of \$5,000, and an enhancement award to Plaintiff not to exceed \$10,000. (Agreement, ¶ (b)(i)-(iv).) After payment of these amounts, the remaining PAGA Penalties Fund is estimated to be \$94,000. (Agreement, ¶ b(v).) Of this amount, 75% shall be provided to the LWDA in accordance with Labor Code § 2699(i) and the remaining 25% shall be distributed to the Settlement Group Members based on the number of pay periods worked by each member during the Settlement Period. (Agreement, ¶ 7(b)(v)(A)-(B).)

Plaintiff now brings this unopposed motion for approval of the proposed PAGA Settlement. This motion is made pursuant to Labor Code section 2699 on the grounds the proposed PAGA settlement set forth in the Settlement Agreement is fair, adequate, reasonable, and in the best interests of the public, the PAGA Members, and the LWDA. The proposed settlement was reached through arms-length negotiations after exchange of documents and information between the parties, the parties' own

investigations, and mediation.

Legal Standard

The purpose of PAGA is to “create a means of ‘deputizing’ citizens as private attorneys general to enforce the Labor Code.” (*Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489, 501.) A PAGA plaintiff is an “aggrieved employee” who brings a civil action “personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations” as the “proxy or agent of the state’s labor law enforcement agencies.” (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380; Labor Code § 2699.) Thus, a PAGA dispute is essentially a “dispute between an employer and the state,” rather than between the employer and the aggrieved employee. (*Iskanian*, at 386-387.)

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part.” (Lab. Code § 2699(1)(2).) As with any settlement, the Court must be mindful in conducting its inquiry that the “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further.” (See *In re TD Ameritrade Account Holder Litig.* (N.D. Cal. 2011) 2011 U.S. Dist. LEXIS 103222, 24.) Indeed, the “very essence of a settlement is ... a yielding of absolutes an abandoning of highest hopes” (*Officers for Justice v. Civil Service Comm.* (9th Cir. 1982) 688 F.2d 615, 624), as it is “the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.” (*Id.* at 625.) Accordingly, “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits” or “judge against a hypothetical or speculative measure of what might have been achieved by the negotiators.” (*Id.*)

While the PAGA statute does not set forth the criteria upon which a PAGA settlement is judged, it is presumed that a reviewing court may utilize some of the factors for review of a class action settlement under Federal Rule of Civil Procedure 23, California Code of Civil Procedure section 382, and California Rule of Court 3.769, as courts within California have approved settlements of PAGA claims encompassed within class action settlements using Rule 23 criteria. That said, the Court underscores that not all Rule 23 factors can be applied, as a “PAGA claim asserted on a non-class representative basis ... is not considered a class action but a law enforcement action, and therefore does not have to meet the requirements of Rule 23.” (See *Casida v. Sears Holdings Corp.* (E.D. Cal. 2012) 2012 U.S. Dist. LEXIS 9302, *8; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. 2011) 2011 U.S. Dist. LEXIS 59377; *Mendez v. Tween Brands, Inc.* (E.D. Cal. 2010) 2010 U.S. Dist. LEXIS 66454.) Based thereon, the court’s review of a PAGA settlement necessarily implicates unique features that render the approval process completely distinct from approval of a class action settlement under either Rule 23 of Code of Civil Procedure section 382.

In evaluating the adequacy of the settlement amount, the Court's focus is not concerned with the amount which aggrieved employees are to receive but rather must focus on the settlement amount in achieving PAGA's objective. "The remedy sought in a PAGA suit consists of civil penalties, not individual or class damages." (*Mendez, supra*, at *11), and, "[u]nlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." (See *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. 2010) 2010 U.S. Dist. LEXIS 32774, *12.) Further, consistent with the fact that unnamed employees have no property interest in a PAGA claim, "[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim. (*Id.* at *13.) Finally, unlike a class action settlement under Rule 23 or Code of Civil Procedure section 382, the scope of release permitted in a PAGA settlement is limited. While "judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986), "the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." (See *id.* at 987.) Thus, the scope of a release in a PAGA settlement necessarily is strictly confined to the civil penalties alleged in the operative complaint.

Analysis

In deciding whether to grant approval of the proposed settlement, the primary issue to be decided is whether the settlement is fair, adequate, and reasonable. It is this Court's conclusion that, as set forth herein, the proposed settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is (1) the product of arms-length negotiations; (2) negotiated by attorneys experienced in the applicable field of law; (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the PAGA claim; and (4) reflects a reasoned compromise based directly on the relative strength and value of the PAGA claim, as well as the risks expense, complexity, and likely duration of further litigation.

Subject to the modification of the award of attorney's fees as set forth below, the Court approves the settlement, as required under Labor Code section 2698, *et seq.* Based on the amount of penalties at issues, the risk of loss on the merits, the risk of being able to prove violation as to each individual as required by statute for purposes of damages, and the Court's statutorily authorized power to reduce penalties, the Settlement Agreement represents a substantial recovery for individuals within the scope of the PAGA claims and the LWDA to further the latter's purpose in enforcing the Labor Code. The Court also finds that the Settlement Agreement provides a recovery that creates an effective substantial deterrent to any potential future non-compliance, thereby additionally furthering the purpose of the LWDA.

However, the Court finds the request for attorney's fees in the amount of 38% exceeds

the award provided in similar cases and is not supported by the evidence presented in this motion. Notably, Plaintiff's counsel representation of the reasonable amount of an award is based on rates for attorneys in the Los Angeles area. (Han Decl., ¶¶ 31-38, Exhs. 4-6.) Here, the award must be based on rates appropriate for attorneys of equal skill and experience in the Sacramento Area, which are lower than the rates charged by attorneys in Los Angeles. Further, while counsel conclusively declares the case was "novel and difficult", there are no specific facts offered to support this conclusion. Significantly, there were no motions filed in this action other than the pending motion for approval and the record is devoid of indication that the action involved the resolution of novel issues or required an extraordinary effort. The Complaint involves only a single cause of action and is on its face no more complex than typical wage-and-hour class and PAGA actions for which lesser awards are routinely requested and provided. Based on the evidence before it, the Court finds an award of reasonable attorney's fees in the amount of \$60,000 (30% of the Gross Settlement Fund) is appropriate.

The motion for approval of the PAGA Settlement is granted. As the proposed order includes an award of attorney's fees in excess of the amount actually awarded, Plaintiff shall provide a revised proposed order consistent with this ruling.

This Court will monitor compliance with the approved settlement agreement until the settlement administrator confirms via declaration that all disbursements, including disbursement of the amount of any uncashed payments to the State of California Unclaimed Property Fund, have been completed. The Court will address the setting of the first compliance hearing.

Item 6 **2020-00281465-CU-BC**

Charel Winston vs. Patrick Saxon

Nature of Proceeding: Motion for Terminating Sanctions

Filed By: Barrett, David S.

Plaintiff Charel Winston's ("Plaintiff") unopposed motion for terminating sanctions is DROPPED from calendar on grounds it was improperly filed while there is an automatic stay on proceedings against Defendant Steve Saxon ("Defendant") pursuant to 11 U.S.C. § 362(a). (See ROA 66.)

On January 20, 2022, this Court granted Plaintiff's unopposed motions to compel. By way of the two orders, Defendant Steve Saxon ("Defendant") was ordered to provide verified responses, without objections, to Plaintiff's form interrogatories and requests for production (sets one) no later than January 31, 2022. (ROA 50, 51) No sanctions were awarded as the motions were unopposed.

On February 7, 2022, Plaintiff filed a motion for terminating sanctions and monetary sanctions. In recognition that discovery sanctions should not be punitive in nature, the Court adopted an incremental approach by denying the request for terminating

EXHIBIT 2

**UPERIOR COURT OF CALIFOR.
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

DATE: 06/30/2022

TIME: 01:30:00 PM

DEPT: 53

JUDICIAL OFFICER PRESIDING: James McFetridge

CLERK: J. Servantez

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **34-2020-00278787-CU-OE-GDS** CASE INIT.DATE: 05/15/2020

CASE TITLE: **Fateema Brown individually and on behalf of aggrieved employess pursuant to the Private Attorneys General Act vs. Fair Oaks Estates Inc**

CASE CATEGORY: Civil - Unlimited

APPEARANCES

Nature of Proceeding: Ruling on Submitted Matter (Motion for Approval of Private Attorneys General Act Settlement Agreement) Taken under submission on 6/28/22

TENTATIVE RULING

The motion of Plaintiff Fateema Brown ("Plaintiff") for approval of a Private Attorneys General Act ("PAGA") Settlement is ruled upon as follows:

This is a wage-and-hour action against Defendant Fair Oaks Estates, Inc. ("Defendant") for PAGA penalties arising from various alleged violations of the Labor Code. (See Complaint.) After engaging in formal discovery and conducting an investigation the parties participated in mediation with Lisa Klerman serving as the neutral. (Han Decl., ¶¶ 12-15.) With the assistance of the mediator, the parties reached a proposed Confidential Settlement Agreement and Release (the "Settlement"). (Han Decl., ¶¶ 9, 15-16 and Exh. 2.) The Labor Workforce Development Agency ("LWDA") was timely notified of the Settlement. (Anderson Decl., ¶ 3 and Exh. 1.) The LWDA has not filed an opposition.

The PAGA Settlement resolves the claims asserted in this litigation as to all current and former hourly-paid employees of Defendant from March 9, 2019 through April 8, 2022 (the "Settlement Group Members"). (Agreement, ¶ 5.) The Settlement provides for a maximum gross payment (the "Gross Settlement Amount") by Defendant of \$200,000. (Agreement, ¶ 7(a).) The Gross Settlement Amount will be used to pay for an award of \$76,000 (38%) in attorney's fees to Plaintiff's counsel and a a litigation costs award estimated not to exceed \$15,000, payment to the Settlement Administrator, Simpluris, Inc. in the amount of \$5,000, and an enhancement award to Plaintiff not to exceed \$10,000. (Agreement, ¶ (b)(i)-(iv).) After payment of these amounts, the remaining PAGA Penalties Fund is estimated to be \$94,000. (Agreement, ¶ b(v).) Of this amount, 75% shall be provided to the LWDA in accordance with Labor Code § 2699(i) and the remaining 25% shall be distributed to the Settlement Group Members based on the number of pay periods worked by each member during the Settlement Period. (Agreement, ¶ 7(b)(v)(A)-(B).)

Plaintiff now brings this unopposed motion for approval of the proposed PAGA Settlement. This motion is made pursuant to Labor Code section 2699 on the grounds the proposed PAGA settlement set forth in the Settlement Agreement is fair, adequate, reasonable, and in the best interests of the public, the PAGA Members, and the LWDA. The proposed settlement was reached through arms-length negotiations after exchange of documents and information between the parties, the parties' own investigations, and mediation.

Legal Standard

The purpose of PAGA is to "create a means of 'deputizing' citizens as private attorneys general to enforce the Labor Code." (*Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489, 501.) A PAGA plaintiff is an "aggrieved employee" who brings a civil action "personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations" as the "proxy or agent of the state's labor law enforcement agencies." (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380; Labor Code § 2699.) Thus, a PAGA dispute is essentially a "dispute between an employer and the state," rather than between the employer and the aggrieved employee. (*Iskanian*, at 386-387.)

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part." (Lab. Code § 2699(1)(2).) As with any settlement, the Court must be mindful in conducting its inquiry that the "[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further." (*See In re TD Ameritrade Account Holder Litig.* (N.D. Cal. 2011) 2011 U.S. Dist. LEXIS 103222, 24.) Indeed, the "very essence of a settlement is ... a yielding of absolutes an abandoning of highest hopes" (*Officers for Justice v. Civil Service Comm.* (9th Cir. 1982) 688 F.2d 615, 624), as it is "the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." (*Id.* at 625.) Accordingly, "the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits" or "judge against a hypothetical or speculative measure of what might have been achieved by the negotiators." (*Id.*)

While the PAGA statute does not set forth the criteria upon which a PAGA settlement is judged, it is presumed that a reviewing court may utilize some of the factors for review of a class action settlement under Federal Rule of Civil Procedure 23, California Code of Civil Procedure section 382, and California Rule of Court 3.769, as courts within California have approved settlements of PAGA claims encompassed within class action settlements using Rule 23 criteria. That said, the Court underscores that not all Rule 23 factors can be applied, as a "PAGA claim asserted on a non-class representative basis ... is not considered a class action but a law enforcement action, and therefore does not have to meet the requirements of Rule 23." (*See Casida v. Sears Holdings Corp.* (E.D. Cal. 2012) 2012 U.S. Dist. LEXIS 9302, *8; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. 2011) 2011 U.S. Dist. LEXIS 59377; *Mendez v. Tween Brands, Inc.* (E.D. Cal. 2010) 2010 U.S. Dist. LEXIS 66454.) Based thereon, the court's review of a PAGA settlement necessarily implicates unique features that render the approval process completely distinct from approval of a class action settlement under either Rule 23 of Code of Civil Procedure section 382.

In evaluating the adequacy of the settlement amount, the Court's focus is not concerned with the amount which aggrieved employees are to receive but rather must focus on the settlement amount in achieving PAGA's objective. "The remedy sought in a PAGA suit consists of civil penalties, not individual or class damages." (*Mendez, supra*, at *11), and, "[u]nlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." (*See Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. 2010) 2010 U.S. Dist. LEXIS 32774, *12.) Further, consistent with the fact that unnamed employees have no property interest in a PAGA claim, "[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim." (*Id.* at *13.) Finally, unlike a class action settlement under Rule 23 or Code of Civil Procedure section 382, the scope of release permitted in a PAGA settlement is limited. While "judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986), "the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies

other than civil penalties." (*See id.* at 987.) Thus, the scope of a release in a PAGA settlement necessarily is strictly confined to the civil penalties alleged in the operative complaint.

Analysis

In deciding whether to grant approval of the proposed settlement, the primary issue to be decided is whether the settlement is fair, adequate, and reasonable. It is this Court's conclusion that, as set forth herein, the proposed settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is (1) the product of arms-length negotiations; (2) negotiated by attorneys experienced in the applicable field of law; (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the PAGA claim; and (4) reflects a reasoned compromise based directly on the relative strength and value of the PAGA claim, as well as the risks expense, complexity, and likely duration of further litigation.

Subject to the modification of the award of attorney's fees as set forth below, the Court approves the settlement, as required under Labor Code section 2698, *et seq.* Based on the amount of penalties at issues, the risk of loss on the merits, the risk of being able to prove violation as to each individual as required by statute for purposes of damages, and the Court's statutorily authorized power to reduce penalties, the Settlement Agreement represents a substantial recovery for individuals within the scope of the PAGA claims and the LWDA to further the latter's purpose in enforcing the Labor Code. The Court also finds that the Settlement Agreement provides a recovery that creates an effective substantial deterrent to any potential future non-compliance, thereby additionally furthering the purpose of the LWDA.

However, the Court finds the request for attorney's fees in the amount of 38% exceeds the award provided in similar cases and is not supported by the evidence presented in this motion. Notably, Plaintiff's counsel representation of the reasonable amount of an award is based on rates for attorneys in the Los Angeles area. (Han Decl., ¶¶ 31-38, Exhs. 4-6.) Here, the award must be based on rates appropriate for attorneys of equal skill and experience in the Sacramento Area, which are lower than the rates charged by attorneys in Los Angeles. Further, while counsel conclusively declares the case was "novel and difficult", there are no specific facts offered to support this conclusion. Significantly, there were no motions filed in this action other than the pending motion for approval and the record is devoid of indication that the action involved the resolution of novel issues or required an extraordinary effort. The Complaint involves only a single cause of action and is on its face no more complex than typical wage-and-hour class and PAGA actions for which lesser awards are routinely requested and provided. Based on the evidence before it, the Court finds an award of reasonable attorney's fees in the amount of \$60,000 (30% of the Gross Settlement Fund) is appropriate.

The motion for approval of the PAGA Settlement is granted. As the proposed order includes an award of attorney's fees in excess of the amount actually awarded, Plaintiff shall provide a revised proposed order consistent with this ruling.

This Court will monitor compliance with the approved settlement agreement until the settlement administrator confirms via declaration that all disbursements, including disbursement of the amount of any uncashed payments to the State of California Unclaimed Property Fund, have been completed. The Court will address the setting of the first compliance hearing.

COURT RULING

The matter was argued and submitted. The Court takes this matter under submission.

SUBMITTED MATTER RULING

Having taken the matter under submission on 6/28/22, the Court now rules as follows:

The Court affirmed the tentative ruling.

EXHIBIT 3

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

Subject to approval by the Superior Court of the State of California, County of Sacramento (the "Superior Court"), this Confidential Settlement Agreement and Release ("Agreement") is made and entered into by and between Plaintiff Fateema Brown ("Plaintiff"), on behalf of herself and as a representative aggrieved employees pursuant to the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), California Labor Code section 2698 *et seq.*, and Defendant Fair Oaks Estates, Inc. ("Fair Oaks") ("Defendant") to settle the civil action entitled *Brown v. Fair Oaks Estates, Inc., et al.*, Case Number 34-2020-00278787 (the "Lawsuit"), in the Sacramento County Superior Court. Plaintiff and Defendant are collectively referred to herein as the "Parties," and each may be individually referred to herein as a "Party."

RECITALS

This Agreement is made in consideration of the following facts:

A. Plaintiff Fateema Brown ("Plaintiff") is a former hourly-paid non-exempt employee of Fair Oaks Estates, Inc., who worked for Fair Oaks as a medication technician from November 2018 until or about September 2019.

B. Plaintiff contends she suffered one or more violations of the California Labor Code during her employment at Fair Oaks and she is therefore an "aggrieved employee" under PAGA, Labor Code section 2698 *et seq.*, pursuant to which an "aggrieved employee" may, after exhausting administrative remedies with the California Labor and Workforce Development Agency (the "LWDA"), act as an agent of the State of California to bring an action to recover civil penalties from his or her former employer on behalf of himself or herself and other current or former employees for violations of the California Labor Code.

C. Pursuant to PAGA, on March 9, 2020, Plaintiff submitted a letter to the LWDA (the "PAGA Notice"), alleging Defendants subjected Plaintiff and other current and former hourly-paid or non-exempt employees of Defendants within the State of California to certain violations of the California Labor Code, including sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, premised upon Defendants' alleged failure to compensate its hourly-paid or non-exempt employees for all hours worked, failure to pay all minimum and overtime wages, failure to provide, authorize, and/or permit meal and rest breaks (or pay premiums in lieu thereof), failure to keep and provide complete and accurate wage statements, failure to reimburse employees for all necessary business expenses and related costs, failure to timely pay all wages due during employment and upon termination, and failure to maintain accurate and complete payroll records, all of which are collectively referred to herein as the "PAGA Claims."

D. The Lawsuit includes the Complaint Plaintiff filed on May 15, 2020, which sought to recover civil penalties and attorneys' fees based on the PAGA Claims.

E. Defendant denies all of the allegations in the Lawsuit and any contention that Defendant committed any misconduct, wrongdoing, or any other actionable conduct of any kind, including any violation of the California Labor Code.

F. The Parties have each independently analyzed and investigated the facts and law relevant to the Lawsuit through informal discovery. Pursuant to this informal discovery, Defendant produced, and Plaintiff reviewed, a substantial amount of documents and data, including, but not limited to, information pertaining to the employment policies, practices, and procedures implicated by the PAGA Claims, such as Defendant's meal and rest period, overtime, timekeeping, and payroll policies; a sampling of timekeeping and payroll records; wage statements for Plaintiff and other hourly-paid or non-exempt employees on whose behalf Plaintiff brought the PAGA Claims asserted in the Lawsuit; and summaries of data pertaining to the number of employees allegedly affected by the PAGA Claims.

G. After evaluating the strengths and weaknesses of their respective positions; considering the time, expense, and risk associated with litigating the Lawsuit to judgment; and engaging in arm's-length settlement negotiations at an all-day mediation session with mediator Lisa Klerman, an experienced and well-respected mediator, the Parties desire, and have agreed, to fully and finally settle any and all claims in the Lawsuit up to and through the Settlement Period (as defined herein).

NOW, THEREFORE, in consideration of the promises and agreements contained herein, the Parties agree to, and, pursuant to Labor Code section 2699(1)(2), seek approval of, the following settlement terms.

SETTLEMENT TERMS

1. **Superior Court Approval of the Agreement.** In accordance with California Labor Code section 2699(1)(2), the Parties will present this Agreement to the Superior Court for its review and approval via stipulation or a noticed motion.

2. **Delivery of Agreement to the LWDA.** As required by California Labor Code section 2699(1)(2), Plaintiff will cause this Agreement to be submitted to the LWDA at the same time that this Agreement is submitted to the Superior Court for approval.

3. **Effective Date.** This Agreement shall become fully effective the later of either: (i) the date the Superior Court approves the Settlement; or, (ii) if the LWDA files an objection, the date there is a final resolution of the objection or appeal.

4. **No Admission of Liability.** The Parties acknowledge and agree that this Agreement is the result of, and evidences, a compromise and settlement of disputed claims in the Lawsuit and that this Agreement is made and entered into without any admission of liability or wrongdoing of any kind whatsoever by Defendant, who expressly denies and disclaims any liability or wrongdoing whatsoever. Accordingly, neither the execution of this Agreement, its creation, the payment of any sum or consideration hereunder, nor the performance of any obligation required by this Agreement is, or shall be construed as, an admission of wrongdoing or

liability on the part of Defendant. Additionally, neither the execution of this Agreement, its creation, the payment of any sum or consideration hereunder, nor the performance of any obligation required by this Agreement is, or shall be construed as, an admission of the truth or accuracy of any allegation made by Plaintiff or Plaintiff's Counsel in the Lawsuit.

5. **Persons and Entities Covered by this Agreement.**

(a) **The Settlement Period.** This Agreement shall cover the period from March 9, 2019, through April 8, 2022, inclusive (the "Settlement Period").

(b) **The Settlement Group.** This Agreement shall cover all current and former hourly-paid employees (whether hired directly or through a staffing agency) of Defendant at any time from March 9, 2019, through April 8, 2022. Such employees shall be collectively referred to herein as the "Settlement Group." Each employee within the Settlement Group may be individually referred to herein as a "Settlement Group Member."

6. **Settlement Administration.**

(a) The Parties will retain Simpluris, Inc. ("Simpluris"), to act as the "Settlement Administrator" with respect to this Agreement.

(b) The Settlement Administrator shall be responsible for establishing a qualified settlement fund pursuant to 26 U.S.C. § 486B, making all payments required by this Agreement, handling all required state and federal tax withholding and reporting related thereto to the extent necessary, and issuing all appropriate tax forms to Plaintiff, Plaintiff's Counsel, the Settlement Group, and the LWDA resulting from the settlement payments under this agreement.

(c) Any disputes concerning administration of the Agreement may be submitted to Lisa Klerman, the mediator who facilitated the negotiation of this Agreement. If the Parties cannot resolve their dispute with the mediator's assistance, the dispute may be submitted to and resolved by the Superior Court.

7. **Settlement Payments.**

(a) **Gross Settlement Amount.** In consideration of, and subject to, the promises, terms, and conditions set forth in this Agreement – including the releases set forth in Section 9 of this Agreement – Defendant shall pay the maximum gross sum of Two Hundred Thousand Dollars (\$200,000.00) (the "Gross Settlement Amount"), in the manner and method set forth in this Agreement, to fully, finally, and completely settle the Lawsuit and the PAGA Claims alleged therein on behalf of the Settlement Group, including any and all associated claims for civil penalties, attorneys' fees, and litigation costs and expenses. Nothing in this Agreement, aside from the conditions set forth in Section 10, shall require Defendant to pay, or make Defendant liable for, more than the Gross Settlement Amount to fully, finally, and completely settle the Lawsuit and all claims alleged therein.

(b) **Allocation of Gross Settlement Amount.** The Gross Settlement Amount shall consist of the following categories of payments: the proposed award of attorneys' fees to Plaintiff's Counsel in the Lawsuit, the proposed award of litigation costs and expenses to Plaintiff's Counsel, the proposed payment of settlement administration costs to the Settlement Administrator, the proposed payments of civil penalties to the LWDA and the Settlement Group, and the proposed enhancement payment to Plaintiff in the amount of \$10,000.00 for her time and effort and for the risk she undertook in bringing and prosecuting the Lawsuit. Subject to approval by the Superior Court, these amounts shall be paid and allocated as set forth below in Sections 7(b)(i) through 7(b)(vi) of this Agreement.

(i) **Attorneys' Fees Award.**

(A) Plaintiff's attorneys in the Lawsuit – Douglas Han, Shunt Tatavos-Gharajeh, and Phillip Song of Justice Law Corporation ("Plaintiff's Counsel") – may submit a combined application to the Superior Court for an award of attorneys' fees in an amount not to exceed the gross sum of Seventy-Six Thousand Dollars (\$76,000.00) (38% of the Gross Settlement Amount) (the "Attorneys' Fees Award"). Defendants will not oppose or object to this application.

(B) Any Attorneys' Fees Award approved by the Superior Court will be paid by Defendant out of the Gross Settlement Amount and shall constitute a full and complete satisfaction of all claims Plaintiff may have for attorneys' fees arising out of the Lawsuit through the Effective Date of this Agreement, including work not yet performed.

(C) This Agreement is not contingent upon the Superior Court approving an Attorneys' Fees Award in an amount equal to the maximum amount authorized by Section 7(b)(i)(A) of this Agreement. This Agreement shall remain fully effective and enforceable notwithstanding any decision by the Superior Court to approve an Attorneys' Fees Award that is less than the amount authorized by Section 7(b)(i)(A) of this Agreement or the amount requested by Plaintiff's Counsel.

(D) In the event that any portion of the Attorneys' Fees Award authorized by Section 7(b)(i)(A) of this Agreement is not approved by the Superior Court, only the approved amount shall be paid, and the payment of that amount shall constitute satisfaction of Defendant's obligations with respect to the Attorneys' Fees Award. Additionally, any difference between the Attorneys' Fees Award authorized by Section 7(b)(i)(A) and the Attorneys' Fees Award approved by the Superior Court will become part of the Net Settlement Amount.

(ii) **Litigation Costs Award.**

(A) Plaintiff's Counsel may submit an application to the Superior Court for an award for reimbursement of litigation costs and expenses incurred by Plaintiff's Counsel in connection with the Lawsuit that is currently estimated not to exceed the combined gross sum of Fifteen Thousand Dollars (\$15,000.00) (the "Litigation Costs Award"). Defendant will not oppose or object to this application.

(B) Any Litigation Costs Award approved by the Superior Court will be paid by Defendant out of the Gross Settlement Amount and shall constitute a full and complete satisfaction of all claims Plaintiff may have for litigation costs and expenses arising out of the Lawsuit through the Effective Date of this Agreement, including litigation costs and expenses not yet incurred.

(C) This Agreement is not contingent upon the Superior Court approving a Litigation Costs Award in an amount equal to the maximum amount authorized by Section 7(b)(ii)(A)7(b)(ii) of this Agreement. This Agreement shall remain fully effective and enforceable notwithstanding any decision by the Superior Court to approve a Litigation Costs Award that is less than the amount authorized by Section 7(b)(ii)(A) of this Agreement or the amount requested by Plaintiff's Counsel.

(D) In the event that any portion of the Litigation Costs Award authorized by Section 7(b)(ii)(A) of this Agreement is not approved by the Superior Court, only the approved amount shall be paid, and the payment of that amount shall constitute satisfaction of Defendant's obligations with respect to the Litigation Costs Award. Additionally, any difference between the Litigation Costs Award authorized by Section 7(b)(ii)(A) and the Litigation Costs Award approved by the Superior Court will become part of the Net Settlement Amount.

(iii) **Settlement Administration Costs.**

(A) Subject to approval by the Superior Court, an amount not to exceed Five Thousand Dollars (\$5,000.00) will be paid to the Settlement Administrator out of the Gross Settlement Amount to cover the costs of the settlement administration process ("Administration Costs"). If the actual costs of the settlement administration process are less than the amount approved by the Superior Court, the balance will become part of the Net Settlement Amount.

(B) Any Administration Costs approved by the Superior Court will be paid out of the Gross Settlement Amount and shall constitute a full and complete satisfaction of any settlement administration costs.

(C) This Agreement is not contingent upon the Superior Court approving Administration Costs in an amount equal to the maximum amount authorized by Section 7(b)(iii)(A) of this Agreement. This Agreement shall remain fully effective and enforceable notwithstanding any decision by the Superior Court to approve Administration Costs in an amount that is less than the amount authorized by Section 7(b)(iii)(A) of this Agreement.

(D) In the event that any portion of the Administration Costs authorized by Section 7(b)(iii)(A) of this Agreement is not approved by the Superior Court, no more than the approved amount shall be paid to the Settlement Administrator out of the Gross Settlement Amount. Additionally, the difference between the Administration Costs authorized by Section 7(b)(iii)(A) and the Administration Costs approved by the Superior Court will become part of the Net Settlement Amount.

(iv) **Plaintiff's Enhancement Payment.**

(A) Plaintiff may submit an application to the Superior Court for an award of an enhancement payment in an amount not to exceed Ten Thousand Dollars (\$10,000.00) for Plaintiff's time and effort and for the risk she undertook in bringing and prosecuting the Lawsuit ("Enhancement Payment"). Defendant will not oppose any requests by Plaintiff for the Enhancement Payment, which will be paid out of the Gross Settlement Amount.

(B) This Agreement is not contingent upon the Superior Court approving the Enhancement Payment in an amount equal to the maximum amount authorized by Section 7(b)(iv)(A). This Agreement shall remain fully effective and enforceable notwithstanding any decision by the Superior Court to approve the Enhancement Payment in an amount less than that authorized by Section 7(b)(iv)(A).

(C) In the event that any portion of the Enhancement Payment authorized by Section 7(b)(iv)(A) is not approved by the Superior Court, no more than the approved amount shall be paid to Plaintiff from the Gross Settlement Amount. Additionally, any difference between the Enhancement Payment authorized by Section 7(b)(iv)(A) and the Enhancement Payment approved by the Superior Court will become part of the Net Settlement Amount.

(v) **PAGA Penalties Fund.** The portion of the Gross Settlement Amount remaining after the Attorneys' Fees Award, Litigation Costs Award, Enhancement Payment, and Administration Costs are paid shall be designated the "PAGA Penalties Fund," from which payments deemed to constitute a full and complete satisfaction of any and all claims in the Lawsuit for civil penalties under PAGA shall be made. Based on the terms of the Agreement, the PAGA Penalties Fund is estimated to be Ninety-Four Thousand Dollars (\$94,000.00). (This number may change if the Attorneys' Fees Award, Litigation Costs Award, Administration Costs and/or the Enhancement Payment are awarded in amounts other than those set forth above.) Subject to approval by the Superior Court, the PAGA Penalties Fund shall be allocated and paid as follows:

(A) **The LWDA Payment.** The gross sum of Seventy Thousand, Five Hundred Dollars (\$70,500.00), which represents seventy-five percent (75%) of the PAGA Penalties Fund, will be paid to the LWDA for enforcement of California's labor laws, including the administration of PAGA, and for education of employers and employees about their rights and responsibilities under the California Labor Code.

(B) **Individual Settlement Awards.** The gross sum of Twenty-Three Thousand, Five Hundred Dollars (\$23,500.00), which represents twenty-five percent (25%) of the PAGA Penalties Fund, shall be designated as the "Net Settlement Amount" and will be paid to the Settlement Group on a pro rata basis. Each Settlement Group Member will receive a pro-rated share of the Net Settlement Amount based on the total number of pay periods the Settlement Group Member worked as an hourly-paid employee of Defendant during the Settlement Period. The maximum amount that each Settlement Group Member is entitled to receive ("Individual Settlement Award") is determined by multiplying the Net Settlement Amount by a ratio that is

determined by dividing the total number of pay periods worked by the Settlement Group Member for Defendants in California during the Settlement Period by the total number of pay periods worked by all Settlement Group Members for Defendant in California during the Settlement Period, as expressed in the following formula:

(1) **Settlement Group Member Payment** = Net Settlement Amount, multiplied by the total number of pay periods worked by the Settlement Group Member, divided by the total number of pay periods worked by all Settlement Group Members.

(2) The Parties intend that the Net Settlement Amount shall be sufficient to pay all valid claims of Settlement Group Members in accordance with the formula set forth above. Accordingly, if for any reason the total value of payments to Settlement Group Members exceeds this amount, then payments to each Settlement Group Member will be adjusted on a pro-rata basis so that the total payout to Settlement Group Members does not exceed the Net Settlement Amount.

(c) **No Effect on Employee Benefits.** The payments made to Settlement Group Members pursuant to this Agreement shall not be utilized to calculate any additional benefits under any benefit plans to which any Settlement Group Members may be eligible, including, but not limited to, any profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, or other benefit plans available to the Settlement Group. It is the Parties' intention that this Agreement will not affect any rights, contributions, or amounts to which any Settlement Group Members may be entitled under any benefit plans.

(i) **Payments to Plaintiff's Counsel.** The Attorneys' Fees Award and Litigation Costs Award shall be treated as IRS Form 1099 income. Accordingly, the Settlement Administrator shall issue an IRS Form 1099 to Justice Law Corporation in connection with their Attorneys' Fees Award and Litigation Costs Award.

(ii) **Payments to the LWDA.** The seventy-five percent (75%) of the PAGA Penalties Fund payable to the LWDA under Section 7(b)(vi)(A) of this Agreement shall be deemed to consist entirely of civil penalties recovered under PAGA and subject to treatment as IRS Form 1099 income.

(iii) **Payments to the Settlement Group.** Individual Settlement Awards shall be deemed to consist entirely of civil penalties recovered under PAGA and subject to treatment as IRS Form 1099 income. Accordingly, an IRS Form 1099 will be issued to each Settlement Group Member in connection with his or her Individual Settlement Award if it is \$600.00 or more.

(d) **Tax Indemnification.** Plaintiff, Plaintiff's Counsel, the Settlement Group, and applicable governmental authorities (including the LWDA) are solely responsible for all tax obligations, including all reporting and payment obligations, attributable to them that may arise as a consequence of this Agreement and the payment of the amounts set forth above in Section 7(b). Neither Defendant nor Defendant's attorneys make any express or implied promise, representation,

or warranty regarding the tax consequences or tax treatment under federal or state tax laws for any sum paid pursuant to this Agreement.

8. **Distribution of Settlement Payments.**

(a) **Funding of Settlement by Defendant.** Ten (10) calendar days after the Effective Date, Defendant shall: deposit Two Hundred Thousand Dollars (\$200,000.00) with the Settlement Administrator.

(b) Within ten (10) calendar days after the Effective Date, Defendant will provide the Settlement Administrator with a list of the names, last known addresses, dates of active employment with Defendant during the Settlement Period, and Social Security Numbers for the PAGA Settlement Members.

(c) **Timing of Payment by Settlement Administrator.** Within fourteen (14) calendar days of the funding of the Settlement, the Settlement Administrator will issue the payments required by Section 7 of this Agreement to the appropriate entities or persons. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual Settlement Awards.

(d) **Payment of Individual Settlement Awards.**

(i) Individual Settlement Awards will be paid in the form of a check delivered to each Settlement Group Member at the last known address on file with Defendants or as updated by the Settlement Administrator. Each Individual Settlement Award will be accompanied by an explanatory letter, mutually approved by the Parties, substantially in the form attached hereto as **Exhibit A**.

(ii) Individual Settlement Award checks will remain negotiable for one hundred twenty (120) days after the date of their issuance (the "Check Stale Date"). Any Individual Settlement Award checks that are not cashed, deposited, or negotiated after the Check Stale Date will be void and the amount of those checks will be directed to the California State Controller for deposit in the Unclaimed Property Fund in the name of the employee.

(iii) Any checks to the Settlement Group that are returned as undeliverable on or before the Check Stale Date will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip trace or other reasonable method and will then perform a single remailing. Any Settlement Group Member who cannot be located after the above procedures are followed will continue to be bound by this Agreement, but the funds associated with his or her Individual Settlement Award will be directed to the California State Controller for deposit in the Unclaimed Property Fund in the name of the employee.

9. **Release of PAGA Claims.** This Agreement and the judgment to be entered by the Superior Court following this Agreement, forever bar Plaintiff, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all allegedly aggrieved employees, from pursuing any action against Defendant under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698, *et seq.*, based on or arising out of violations of Labor Code sections alleged in the Lawsuit, and claims that could have been asserted in the Lawsuit based upon the facts alleged in Plaintiff’s Complaint through the end of the Settlement Period (“Released Claims”). The Released Claims include, but are not limited to, claims under the PAGA for civil penalties for alleged violations of Labor Code §§ 201-204, 226, 226.7, 256, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198; and claims for attorneys’ fees, costs, or interest resulting therefrom.

10. **Escalator Clause.** This Agreement was reached based on a total number of 2,567 pay periods. If the number of pay periods as of the end date of the Settlement Period exceeds this figure by more than ten percent (10%), or 2,824 pay periods, Defendants shall increase the Gross Settlement Amount on a pro-rata basis according to the number of additional compensable pay periods over 2,567 pay periods.

11. **Dismissal.** Upon the Superior Court’s approval of this Agreement and payment of all sums required by this Agreement, Plaintiff shall file a request for dismissal of the Action in its entirety as to Defendant with prejudice. Pursuant to California Code of Civil Procedure section 664.6, the Superior Court shall retain jurisdiction to enforce the terms of this Agreement.

12. **Acknowledgement of Fair and Reasonable Settlement.** The Parties have arrived at this Agreement after arm’s-length negotiations between experienced counsel and facilitated by a full-day mediation with Lisa Klerman, an experienced and well-respected mediator. Each of the Parties acknowledges, agrees, and believes that this Agreement is a fair, adequate, and reasonable settlement of the Lawsuit. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Agreement. Each Party to this Agreement agrees and represents that it has investigated the facts relevant to this Agreement, and all matters pertaining thereto, to the full extent that each Party deems necessary. The Parties agree that this Agreement reflects their good faith compromise of the claims raised in the Lawsuit based on their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.

13. **Authority to Enter into Agreement.** Each Party represents and warrants that it has the right and authority to execute this Agreement.

14. **Ownership of Claims.** The Parties represent that they have not transferred or assigned, or purported to transfer or assign, to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

15. **Authorization of Counsel.** Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement

to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement.

16. **Attorneys' Fees.** Except as set forth in this Agreement, each side shall bear its own costs and attorneys' fees.

17. **Confidentiality.** Except as provided below to the extent necessary to effectuate the settlement or as required by court or legal process, the Parties and their respective Counsel will keep the facts relating to the existence of this Agreement, the negotiations leading to the execution of this Agreement, the terms of this Agreement, and the alleged factual basis for Plaintiff's claims, if any, confidential. Neither the Parties nor their respective Counsel shall issue a press release, hold a press conference, publish information about the settlement on any website or through any social media or otherwise publicize the settlement or communicate its terms in public or in private, unless ordered by the Court. However, for the limited purpose of establishing adequacy of counsel in future actions, Plaintiff's counsel may reference the Action only by name and case number in a declaration establishing adequacy as class or representative counsel.

18. **Duty to Cooperate.** Each Party agrees that it will abide by this Agreement, and that the Parties and their counsel will cooperate with each other to effect the implementation of this Agreement. The Parties pledge their good faith and fair dealing in supporting the approval of this Agreement by the Superior Court, including, but not limited to, fully documenting the settlement, completing or filing any other documents or pleadings, arguing that the terms and conditions agreed upon should be enforced fully, commencing any required action (either in court or in arbitration), jointly appealing and/or otherwise exhausting judicial review of any adverse ruling, etc. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of Lisa Klerman, the mediator who facilitated the negotiation of this Agreement. If the Parties cannot resolve their dispute with the assistance of the mediator, the Parties may seek the assistance of the Superior Court to resolve their disagreement.

19. **Nullification of Agreement.** Defendant's payment of the Gross Settlement Amount shall be subject to the Superior Court granting approval, and if the Superior Court fails to grant approval, the Parties shall be returned to their original respective positions as though this Agreement had never been entered into at all, with the exception that if any settlement administration costs are due and payable, the Parties agree to split those costs.

20. **Defendants' Option to Revoke.** Should the settlement, or any terms therein, be modified, vacated, altered, or become otherwise subject to challenge by law, including, but not limited to, any law that became effective after the execution of this Agreement, so that this Agreement is not approved by the Superior Court in its entirety and therefore the intent of the Parties cannot be accomplished after jointly taken efforts to enforce it have been exhausted, Defendant shall have the option to revoke this Agreement at its sole discretion.

21. **Severability.** Should any clause or provision of this Agreement be declared illegal or unenforceable, it shall be modified as minimally as necessary to be enforceable. If the provision

cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect.

22. **Governing Law and Interpretation.** This Agreement shall be governed in accordance with the laws of the State of California. The Agreement shall be interpreted in accordance with the plain meaning of its terms and shall not be strictly interpreted for or against any of the Parties to this Agreement. Given that all Parties hereto had the opportunity to draft, review, and edit the language of this Agreement, the Parties expressly waive the benefit of any legal principle or rule providing that in cases of uncertainty the language of a contract should be interpreted against the Party who caused the uncertainty to exist.

23. **Continuing Jurisdiction of the Superior Court.** Pursuant to California Code of Civil Procedure section 664.6, the Superior Court shall retain continuing jurisdiction over the Lawsuit and the Parties to the fullest extent necessary to enforce and effectuate the terms and intent of this Agreement.

24. **Admissibility of Agreement.** The Parties agree that this Agreement is admissible for the purposes of proving up and or enforcing the terms of the Agreement, as set forth herein, pursuant to California Evidence Code section 1123.

25. **Amendment and Modification.** This Agreement may not be modified, altered or changed, except by a written instrument signed by either the Parties or their successors-in-interest or counsel for all Parties.

26. **Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the Parties hereto and their respective agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, heirs, executors, administrators, insurers, and successors in interest.

27. **No Representations.** The Parties acknowledge that, except as expressly set forth herein, no representation of any kind or character has been made to induce the execution of this Agreement.

28. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures sent by facsimile transmission or scanned e-mail transmission have the same force, validity, and effect as original signatures.

* * *

IN WITNESS WHEREOF, the Parties – Plaintiff Fateema Brown and Defendant Fair Oaks Estates, Inc., and their counsel – knowingly and voluntarily accept the terms of this Settlement Agreement and Release by affixing their signatures below.

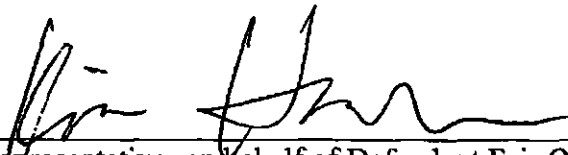
Date: 04/28/2022

PLAINTIFF FATEEMA BROWN

By: 
Fateema Brown

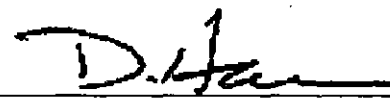
Date: 4/29/22

DEFENDANT FAIR OAKS ESTATES, INC.

By: 
Representative, on behalf of Defendant Fair Oaks
Estates, Inc.

Date: April 28, 2022

JUSTICE LAW CORPORATION

By: 
Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Attorneys for Plaintiff Fateema Brown

Date: 4-28-22

BURKE, WILLIAMS, AND SORENSON, LLP

By: *Susan K. Chelsea*
Susan K. Chelsea
Attorney for Defendant Fair Oaks Estates, Inc.

EXHIBIT A

TRANSMITTAL OF INDIVIDUAL SETTLEMENT AWARD

Fateema Brown v. Fair Oaks Estates, Inc.
Superior Court of the State of California for the County of Sacramento
Case No. 34-2020-00278787-CU-OE-GDS

Dear [Settlement Group Member's Name]:

Enclosed with this letter is a settlement check being paid to you pursuant to the settlement of the lawsuit filed in the Sacramento County Superior Court as *Fateema Brown v. Fair Oaks Estates, Inc.*, which has been designated case number 34-2020-00278787-CU-OE-GDS (the "Lawsuit"). The purpose of this letter is to provide you with basic information about the Lawsuit, the reasons why you are receiving the enclosed settlement check, and the effect of the settlement on your legal rights.

I. The Lawsuit

The Lawsuit was filed on May 15, 2020, by Plaintiff Fateema Brown ("Plaintiff"), a former employee of Fair Oaks Estates, Inc. ("Defendant").

In the Lawsuit, Plaintiff alleged she and other current and former hourly-paid employees of Defendant experienced violations of the Labor Code. Specifically, Plaintiff alleged Defendant violated Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, premised upon Defendant's alleged: (1) failure to properly pay its hourly-paid employees for all hours worked; (2) failure to properly provide or compensate minimum and overtime wages; (3) failure to provide/authorize and permit meal and rest breaks (or pay premiums in lieu thereof); (4) failure to issue and/or provide complete and accurate wage statements; (5) failure to reimburse for all necessary business expenses and related costs; (6) failure to timely pay all wages due during employment and upon termination; and (7) failure to maintain accurate and complete payroll records. Based thereon, the Lawsuit sought civil penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), which is codified at Labor Code section 2698 *et seq.*, on behalf of the State of California and all current and former hourly-paid employees of Defendant.

Defendant denies the allegations in the Lawsuit. Defendant contends it followed lawful policies and practices and that Plaintiff and the other hourly-paid employees at issue in the Lawsuit: (1) were properly paid for all hours worked; (2) were paid appropriate minimum and overtime wages; (3) were provided compliant meal and rest breaks (or were paid premiums in lieu thereof); (4) received compliant wage statements; (5) were reimbursed for all necessary business expenses; (6) were timely paid all wages due during employment and upon termination; and (7) that Defendant properly kept accurate and complete payroll records.

The merits of the Lawsuit have not been determined. On [Approval Date], however, the Sacramento County Superior Court approved a settlement of the Lawsuit.

II. Why the Settlement Check Is Being Sent to You

The settlement approved by the Sacramento County Superior Court on [Approval Date] involves a payment of civil penalties and the reimbursement of attorneys' fees and litigation costs incurred by Plaintiff in furtherance of the Lawsuit. In accordance with PAGA, seventy-five percent (75%) of the civil penalties paid under the settlement are being paid to the California Labor and Workforce Development Agency. The remaining twenty-five percent (25%) of the civil penalties paid under the settlement are being distributed to all current and former hourly-paid employees (whether hired directly or through a staffing agency) of Defendant at any time from March 9, 2019, through April 8, 2022 (the "Settlement Group" and "Settlement Group Members"). The enclosed settlement check is being sent to you because you have been identified as a Settlement Group Member.

III. How the Amount of Your Settlement Check Was Determined

The enclosed settlement check was calculated based on the total number of pay periods you worked as an hourly-paid employee of Defendant between March 9, 2019, through April 8, 2022 (the "Settlement Period") relative to the entire Settlement Group. Specifically, the enclosed settlement check was calculated as follows:

- Twenty-five percent (25%) of the PAGA Penalties Fund ("Net Settlement Amount"), multiplied by the total number of pay periods worked by the Settlement Group Member, divided by the total number of pay periods worked by all Settlement Group Members.
- You should obtain tax advice from your own tax advisor with respect to any payment resulting from this Settlement.

Your settlement check will remain negotiable for one hundred twenty (120) days. If you do not cash, deposit, or negotiate your settlement check within one hundred twenty (120) days, the check will become void and the funds will be directed to the California State Controller for deposit in the Unclaimed Property Fund in your name. Cashing the settlement check releases claims only for civil penalties that could be collected by the State of California.

IV. Consequences of the Settlement

The Lawsuit was filed exclusively as a representative action under PAGA, which functions as a substitute for an enforcement action by the State of California.

The Superior Court's order and judgment approving the settlement of the Lawsuit binds all persons, including nonparty employees, who would be bound by a judgment in an action brought by the State of California itself. As a result, although you are not a "party" to the Lawsuit, the judgment entered upon settlement of the Lawsuit is binding on you with respect to any claims for civil penalties under PAGA encompassed by the settlement. That is true regardless of whether you choose to cash, deposit, or negotiate the enclosed settlement check.

V. Taxation of Your Individual Settlement Award

You will be issued an IRS Form 1099 in connection with the funds paid to you via the enclosed check. However, you are solely responsible for all tax obligations attributable to you that may arise as a result of receiving the settlement check. Should you seek tax advice or have tax questions relating to your receipt of the enclosed check, you should direct them your own personal tax advisor.

VI. Where to Get More Information

Do not call or contact the Sacramento County Superior Court about this letter, the settlement, the settlement check sent to you, or the Lawsuit in general. If you have questions about the this letter, the settlement, the settlement check sent to you, or the Lawsuit in general, you may contact the Settlement Administrator, Simpluris, Inc., at [INSERT CONTACT INFORMATION].

Dated: [INSERT DATE]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

On July 7, 2022, I served the foregoing document described as

/ / /

1 **[X] STATE**

2 I declare under penalty of perjury under the laws of the State of California that the above
3 is true and correct.

4 Executed on July 7, 2022, at Pasadena, California.

5 
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7 Mariah Anderson
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1 **PROOF OF SERVICE**
2 **1013A(3) CCP**

3 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18
5 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101,
6 Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

7 On July 22, 2022, I served the foregoing document described as

8 **ORDER AND JUDGMENT GRANTING APPROVAL OF PRIVATE ATTORNEYS**
9 **GENERAL ACT (LABOR CODE §§ 2698, ET SEQ.) SETTLEMENT AGREEMENT**
10 **AND ATTORNEYS' FEES AWARD, LITIGATION COSTS AWARD, AND**
11 **ENHANCEMENT PAYMENT**

12 for the following case: **Brown v. Fair Oaks Estates, Inc.**
13 **LWDA/Court Case No.: LWDA Case No.: CM-777236-20**
14 **Court Case No.: 34-2020-00278787**
15 **Sacramento County Superior Court**

16 on interested parties in this action by electronically submitting as follows:

17 **State of California**
18 **Labor & Workforce Development Agency**
19 **800 Capitol Mall, MIC-55**
20 **Sacramento, California 95814**

21 **[X] BY ELECTRONIC SUBMISSION**

22 Pursuant to California Senate Bill No. 836, I caused the documents described above to be
23 electronically submitted by and through the procedure stated on the website of the State
24 of California Labor and Workforce Development Agency.

25 **[X] STATE**

26 I declare under penalty of perjury under the laws of the State of California that the above
27 is true and correct.

28 Executed on July 22, 2022, at Pasadena, California.



Mariah Anderson