

FEB 25 2022

~~THE~~ **RULING**
JUDGE KEVIN C. BRAZILE
DEPARTMENT 20

Sherri R. Carter, Executive Officer/Clerk of Court
By Erica Perez, Deputy
Erica Perez

Hearing Date: February 25, 2022
Case Name: Velasco v. Caledonian, Inc., et al.
Case No.: 20STCV19427
Matter: **Motion to Approve PAGA Settlement**
Moving Party: Plaintiff Alba Velasco
Responding Party: Unopposed
Notice: OK

Ruling: The Motion is granted.

Moving party to give notice.

If counsel do not submit on the tentative, they are strongly encouraged to appear by LACourtConnect rather than in person due to the COVID-19 pandemic.

On October 19, 2021, Plaintiff Alba Velasco filed the operative First Amended Complaint ("FAC") for (1) Failure to Reimburse and Indemnify for Expenditures, (2) Unpaid Wages and Failure to Pay Minimum Wages, (3) Labor Code § 203 Waiting Time Penalties, (4) Failure to Provide Accurate Itemized Wage Statements, (5) Labor Code § 1198.5(k) Penalty, (6) PAGA claim, (7) Labor Code § 1102.5 Retaliation, and (8) Wrongful Discharge in Violation of Public Policy. The FAC primarily alleges misclassification of Plaintiff and similarly situated employees, who were tutors for Defendant Caledonian, Inc.

The parties have settled this matter, and Plaintiff Alba Velasco moves for approval of their PAGA settlement. Plaintiff indicates the terms of the settlement are as follows:

¶ 2. Gross Settlement Fund: Defendant to pay \$118,000.00 ("Gross Settlement Fund").

¶ 3. Settlement Administrator: Settlement payments shall be distributed by the Settlement Administrator along with a notice. The Settlement Administrator's costs are \$2,600.00.

¶ 4. Non-Monetary Consideration: Caledonian shall undertake a self-audit of Labor Code section 2777 to seek maximum compliance with the Labor Code as applied to tutors.

¶ 5. Alleged Aggrieved Employees: The group of allegedly aggrieved employees affected by the Agreement are those who were classified by Defendants as independent contractors and are residents of California including Plaintiff, who were classified as independent contractors any time from March 3, 2020, to June 3, 2021 ("Aggrieved Employees").

¶ 6. PAGA Period: The relevant settlement period for the PAGA Claims is from March 3, 2020, to June 3, 2021 ("PAGA Period").

¶ 7. Attorneys' Fees and Costs: Defendant shall pay to Plaintiff's Counsel \$38,940.00 for attorneys' fees and \$5,100.00 for litigation costs and expenses.

¶ 8. Net Settlement PAGA Amount: The "Net Settlement PAGA Amount" is \$71,360.00 of which 75% shall be paid to the LWDA, and the remaining 25% shall be paid to the Aggrieved Employees.

On August 19, 2021, the Court denied a prior motion to approve PAGA settlement in this action because (1) the amount of PAGA penalties was low relative to Defendant's potential exposure; (2) the attorneys' fees were excessive, and (3) the amount sought by Plaintiff Alba Velasco slightly exceeded her maximum potential recovery.

The PAGA is "a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies." (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003.) The statute provides a mechanism for private enforcement of Labor Code violations for the public benefit. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986; *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D.Cal. 2010) 2010 WL 1340777, at p. *4.) To incentivize employees to bring PAGA actions, the statute provides aggrieved employees 25 percent of the recovered civil penalties. (Lab. Code, § 2699, subd. (i).) The remaining 75 percent is distributed to the Labor and Workforce Development Agency (LWDA) "for enforcement of

labor laws and education of employers and employees about their rights and responsibilities under [the Labor Code].” (*Ibid.*)

In reviewing the terms of a settlement agreement, the court determines whether the settlement is fair, reasonable, and adequate to all concerned, and not the product of fraud, collusion, or overreaching. (*Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337; *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 581.) In the context of a class action settlement, the court considers various factors including whether (1) the settlement is the result of arm’s length bargaining, (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently, (3) counsel is experienced in similar litigation, and (4) the percentage of objectors is small. (*Nordstrom*, at p. 581; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) In considering the amount of settlement, the court is mindful that compromise is inherent and necessary in the settlement process. (*Wershba*, at p. 250.)¹

After review and consideration of the papers, oral argument, such other and further evidence submitted for consideration, and the remaining papers and pleadings currently on file in this action, the Court finds that there is good cause to approve the settlement as fair, just and equitable. The Motion is granted.

Moving party to give notice.

If counsel do not submit on the tentative, they are strongly encouraged to appear by LACourtConnect rather than in person due to the COVID-19 pandemic.

¹The general principles applicable to class action settlements apply in the PAGA context.