

COHELAN KHOURY & SINGER

Isam C. Khoury (SBN 58759)

ikhoury@ckslaw.com

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Tel: (619) 595-3001/Facsimile: (619) 595-3000

DAVTYAN LAW FIRM, INC.

Emil Davtyan (SBN 299363)

support@davtyanlaw.com

880 E. Broadway

Glendale, CA 91205

Telephone: (818) 875-2008/Facsimile: (818) 722-3974

Attorneys for Plaintiff VERNELL BATTLE, JR., on behalf of himself and others

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER

VERNELL BATTLE, JR., on behalf of himself
and other similarly-situated employees,

Plaintiff,

vs.

SAFRAN CABIN, INC., a Delaware
Corporation; and DOES 1 through 25, inclusive,

Defendants.

CASE NO. 30-2020-01140831-CU-OE-CXC
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Peter J. Wilson
Department CX 102

CLASS ACTION

**NOTICE OF ERRATA RE:
MOTION FOR ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing Information

Date: October 13, 2022

Time: 2:00 p.m.

Dept: CX 102

Judge: Hon. Peter J. Wilson

Complaint filed: May 26, 2020

Trial date: Not set

PLEASE TAKE NOTICE that Plaintiff Vernell Battle, Jr. provides notice of errata to the Motion for Order Granting Preliminary Approval of Class Action Settlement filed August 11, 2022, to correct the following clerical errors:

I. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT (ROA# 136)

The incorrect number of pay periods, 79,155, was used to determine the PAGA penalties. As noted in Section II.C of the Points and Authorities, the correct number of PAGA pay periods is 68,592. The Memorandum of Points and Authorities, pages 18:25 through 21:8, should read as follows:

There are 1,741 allegedly aggrieved employees and approximately 68,592 pay periods during the PAGA period, April 28, 2019, to April 18, 2022. Using initial violation rates for these pay periods, maximum penalties were estimated for seven potential violations:

a. Labor Code § 203

Using the data provided by Safran Cabin, there are 791 terminated/separated employees which would generate a claim of \$79,100.

b. Labor Code § 1194 unpaid wages

Data analysis indicated that approximately 67% of the pay periods involved “rounded “time. Given $67\% \times 68,592 = 45,956.64$. PAGA pay periods. $= 45,956 \text{ pay periods} \times \$100 = \$4,595,600$

c. Labor Code § 226 Wage Statements

Since the claim is based on the “rounding” claim only 67% of the pay periods would be affected. The calculation would be: $45,956 \text{ pay periods} \times \$100 = \$4,595,600$.

d. Labor Code § 226.7 Meal Period

Assuming a 38% ^[9] “violation rate, the exposure would be calculated as follows: $.38 \times 68,592 = 26,065$. $26,065 \times \$100 = \$2,606,500$.

e. Labor Code § 226.7 Rest Period

The damage assessment relied on the meal period findings for purposes of negotiation since employers are not required to record rest periods. \$2,537,904.

^[9] Plaintiff’s consultant independently calculated the frequency of meal period violations for pay periods at 38% for purposes of PAGA penalties, as contrasted with the 16% allocated to shifts for meal period premiums.

f. Labor Code § 1174 Failure To Maintain Time and Pay Records

Assuming that Safran Cabin’s group meal provision with auto deduct did not satisfy the exemption it would be liable for the PAGA civil penalties available under Labor Code section 1174. This would represent a claim of \$500 per employee x 1,174 = \$587,000. Khoury Decl. ¶52.

Maximum PAGA exposure of approximately \$14,933,108 was discounted by 90% to \$1,493,108 for several reasons, i.e., the risk of not proving underlying violations, Defendant’s compliant policies, and Court’s authority to reduce penalties, as long as not to “zero.” *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1135 (2012). *See Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 517 (2018) (Plaintiff requested “nearly \$70 million in penalties”; trial court’s \$150,000 award upheld on appeal). Khoury Decl. ¶53.

The Court also has the authority to reduce or eliminate any civil penalty deemed punitive or confiscatory under the circumstances. Under all the circumstances here, regardless of liability proven or damages awarded, it would be extremely unlikely to obtain a significant amount of PAGA penalties, and perhaps no award in addition to Labor code awards for the same violations. Indeed, courts have rejected attempts to “stack” PAGA penalties with statutory penalties. *See Li v. A Perfect Day Franchise, Inc.*, 2012 U.S. Dist. LEXIS 83677, *52 (N.D. Cal. June 15, 2012) (denying PAGA penalty as duplicative of penalty provided under Labor Code section 226(e)); *see also Rodriguez v. Scripps Media*, 2015 U.S. Dist. LEXIS 9936 (C.D. Cal. Jan. 28, 2015) (“there is no basis for plaintiff to recover penalties under the PAGA §2699(f)(2) in addition to the penalties provided for in § 226(e) for a violation of § 226(a)”).

The \$250,000 PAGA allocation is well within the range approved by California courts. *See, In re Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 589 (2010) (no abuse of discretion approving a class action settlement attributing \$0 to PAGA penalties.); *Alcala v. Meyer Logistics, Inc.*, 2019 LEXIS 166879, *26 (C.D. Cal. June 17, 2019) (PAGA penalties 1.25% of settlement reasonable, “falls within the zero to two percent range for PAGA claims approved by courts.”); *In re M.L. Stern Overtime Litig.*, 2009 LEXIS 31650, *1 (S.D. Cal. Apr. 13, 2009) (PAGA settlement of 2%); *Ceja-Corona v. CVS Pharm., Inc.*, 2015 U.S. Dist. LEXIS 5118 (E.D. Cal. Jan. 14, 2015) (\$10,000 penalties, \$900,000 settlement, recommendation adopted, 2015 U.S. Dist. LEXIS 25730 (E.D. Cal. Mar. 3, 2015). (This

Motion and its exhibits were provided to the LWDA, via its website on the date filed with the Court.
Khoury Decl. ¶57, Ex. B).

TOTAL PAGA REASONABLE EXPOSURE CALCULATIONS FOR MEDIATION:

LC203:	\$ 79,100.00
LC1194	\$ 4,595,600.00
LC226	\$ 4,595,600.00
LC226.7 Meal Periods	\$ 2,537,904.00
LC226.7 Rest Periods	\$ 2,537,904.00
LC1174	\$ 587,000.00
Sub-Total	\$14,933,108.00
Discount Rate:	90%
TOTAL:	\$ 1,493,108.00

Plaintiff and his Counsel gave serious consideration to all facts and arguments and concluded the Settlement is fair and reasonable. The Gross Settlement Amount of \$5,455,000 represents approximately 52.7% of the reasonable combined value of the claims, \$10,349,077 (Non-PAGA \$8,855,969+ PAGA \$1,493,108 = \$10,349,077), or separately, the \$5,205,000 non-PAGA settlement is 58.7% of the reasonable claim value of \$8,855,969, and the \$250,000 PAGA allocation is 16.7% of the reasonable PAGA claim value. Khoury Decl. ¶54.

II. DECLARATION OF ISAM C. KHOURY IN SUPPORT OF MOTION FOR ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT (ROA# 140)

The Declaration of Isam C. Khoury, paragraph 52, 53 and 54, are replaced to track the above changes, and shall read as follows:

52. There are 1,741 allegedly aggrieved employees and approximately 68,592 pay periods during the PAGA period, April 28, 2019, to April 18, 2022. Using initial violation rates for these pay periods, maximum penalties were estimated for seven potential violations:

a. Labor Code § 203 - Using the data provided by Safran Cabin, there are 791 terminated/separated employees which would generate a claim of \$79,100.

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- b. Labor Code § 1194 unpaid wages** - Data analysis indicated that approximately 67% of the pay periods involved “rounded “time. Given $67\% \times 68,592 = 45,956.64$. PAGA pay periods. $=45,956 \text{ pay periods} \times \$100 = \$4,595,600$
- c. Labor Code § 226 Wage Statements** - Since the claim is based on the “rounding” claim only 67% of the pay periods would be affected. The calculation would be: $45,956 \text{ pay periods} \times \$100 = \$4,595,600$.
- d. Labor Code § 226.7 Meal Period** - Assuming a 38% “violation rate, the exposure would calculated as follows: $.38 \times 68,592=35,379 \times \$100 = \$2,537,904$.
- e. Labor Code § 226.7 Rest Period** - The damage assessment relied on the meal period findings for purposes of negotiation since employers are not required to record rest periods. $\$2,537,904$.
- f. Labor Code § 1174 Failure To Maintain Time and Pay Records** - Assuming that Safran Cabin’s group meal provision with auto deduct did not satisfy the exemption it would be liable for the PAGA civil penalties available under Labor Code section 1174. This would represent a claim of $\$500 \text{ per employee} \times 1,174 = \$587,000$.

53. Maximum PAGA exposure of approximately \$14,933,108 was discounted by 90% to \$1,493,108 for several reasons, i.e., the risk of not proving underlying violations, Defendant’s compliant policies, and Court’s authority to reduce penalties, as long as not to “zero.”

54. The Gross Settlement Amount of \$5,455,000 represents approximately 52.7% of the reasonable combined value of the claims, \$10,349,077 (Non-PAGA \$8,855,969+ PAGA \$1,493,108 = \$10,349,077), or separately, the \$5,205,000 non-PAGA settlement is 58.7% of the reasonable claim value of \$8,855,969, and the \$250,000 PAGA allocation is 16.7% of the reasonable PAGA claim value.

Respectfully submitted,

COHELAN KHOURY & SINGER
DAVTYAN LAW FIRM, INC.

Dated: October 7, 2022

By: 
Isam C. Khoury, Esq.
Attorneys for Plaintiff Vernell Battle, Jr., on behalf of
himself and all others similarly situated