

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

MENCHILA VILLARUBIA WOODALL, as an
individual and on behalf of all others similarly
situated,

Plaintiffs,

vs.

VASONA MANAGEMENT, INC., a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 20CV366143

**ORDER RE: MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

The above-entitled matter came on for hearing on Wednesday, September 1, 2021, at 1:30 p.m. in Department 3, the Honorable Patricia M. Lucas presiding. The court reviewed and considered the written submissions filed by the parties and issued a tentative ruling on Tuesday, August 31, 2021. No party contested the tentative ruling; therefore, the court orders that the tentative ruling be adopted as the order of the court, as follows:

I. INTRODUCTION

This is a representative action pursuant to the Private Attorneys General Act of 2004 (“PAGA”) on behalf of employees of defendant Vasona Management, Inc. (“Defendant”), alleging Defendant provided inaccurate wage statements that failed to identify the correct hourly rates of pay for overtime wages and the pay period start date. The original Complaint, filed on

1 April 20, 2020, included both a class action claim and a PAGA claim. It set forth causes of
2 action for: (1) Violation of Labor Code § 226; and (2) Violation of Labor Code § 2698, et seq.
3 The First Amended Complaint, filed on July 16, 2020, set forth a single PAGA cause of action,
4 which included allegations of violations of various Labor Code sections.

5 The parties reached a settlement of the PAGA claim. On May 24, 2021, plaintiff
6 Menchila Villarubia Woodall (“Plaintiff”) moved for approval of the settlement. On June 17,
7 2021, the court issued an order denying the motion without prejudice. In its order, the court
8 explained that Plaintiff did not file a request to dismiss the class claim before filing the First
9 Amended Complaint, as required by California Rules of Court, rule 3.770(a). Consequently, the
10 court struck the First Amended Complaint, with the result that the original Complaint became the
11 operative pleading.

12 On July 22, 2021, the parties requested, and the court granted, dismissal of the class
13 claims. Now, Plaintiff again moves for approval of the settlement of the PAGA claim.

14 **II. LEGAL STANDARD**

15 Pursuant to PAGA, an aggrieved employee may bring a civil action personally and on
16 behalf of other current or former employees to recover civil penalties for Labor Code violations.
17 (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380.) 75 percent of any
18 penalties recovered go to the Labor and Workforce Development Agency (“LWDA”), leaving
19 the remaining 25 percent for the employees. (*Ibid.*) PAGA is intended “to augment the limited
20 enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as
21 representatives of the Agency.” (*Id.* at p. 383.) A judgment in a PAGA action binds all those,
22 including nonparty aggrieved employees, who would be bound by a judgment in an action
23 brought by the government. (*Id.* at p. 381.)

24 The superior court must review and approve any PAGA settlement. (Lab. Code, § 2699,
25 subd. (l)(2).) The court’s review “ensur[es] that any negotiated resolution is fair to those
26 affected.” (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) The proposed settlement
27 must be submitted to the LWDA at the same time it is submitted to the court. (*Ibid.*)

28 As discussed by one court:

1 PAGA does not establish a clear standard for evaluating PAGA settlements.

2 ...
3 Accordingly, certain courts have been willing to approve PAGA settlements only
4 if (1) the statutory requirements set forth by PAGA have been satisfied, and
5 (2) the settlement agreement is fair, reasonable, and adequate in view of PAGA's
6 public policy goals.

7 (*Patel v. Nike Retail Services, Inc.* (N.D. Cal. 2019) 2019 WL 2029061 at *2.)

8 As part of this analysis, courts have evaluated proposed PAGA settlements under the
9 relevant factors from *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. (*Patel v.*
10 *Nike Retail Services, Inc., supra*, 2019 WL 2029061 at *2.) "Of the *Hanlon* factors, the
11 following are relevant to evaluating [a] PAGA settlement: (1) the strength of the plaintiff's case;
12 (2) the risk, expense, complexity, and likely duration of further litigation; (3) the amount offered
13 in settlement; (4) the extent of discovery completed and the stage of the proceedings; (5) the
14 presence of government participation; and (6) the expertise and views of counsel. (*Ibid.*)

15 "[W]hen a PAGA claim is settled, the relief provided ... [should] be genuine and
16 meaningful, consistent with the underlying purpose of the statute to benefit the public"
17 (*Villalobos v. Calandri Sunrise Farm LP* (C.D. Cal., July 22, 2015, No. CV122615PSGJEMX)
18 2015 WL 12732709, at *13.) The settlement must be reasonable in light of the potential verdict
19 value. (See *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135
20 [rejecting settlement of less than one percent of the potential verdict].) But a permissible
21 settlement may be substantially discounted, given that courts often exercise their discretion to
22 award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See
23 *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL
24 5907869, at *8–9.)

25 **III. DISCUSSION**

26 The proposed settlement has been made with regard to the following aggrieved
27 employees: "[A]ll current and former non-exempt employees of Defendant in California who
28 were paid overtime wages at any time during the PAGA Period:" April 1, 2019 through May 4,
29 2020. (Declaration of Nicholas Rosenthal in Support of Plaintiff's Motion to Approve

1 Settlement Agreement Pursuant to the Private Attorneys General Act (“Rosenthal Dec.”), Ex. C
2 (“Settlement Agreement”), p. 3, ¶ 2 & p. 4, ¶ 11.)

3 Pursuant to the settlement, Defendant will pay a gross settlement amount of \$130,000.00.
4 (Settlement Agreement, p. 4, ¶ 9.) This amount includes \$43,333.33 for attorney fees,
5 \$10,000.00 for litigation costs and expenses, a service award of \$15,000 for Plaintiff, and
6 settlement administration estimated at \$2,250. (Settlement Agreement, p. 4, ¶ 9, p. 5, ¶¶ 1 & 16,
7 p. 7, ¶ 8, p. 8, ¶¶ 9 & 10.) Of the remaining net settlement amount, 75 percent will be paid to the
8 LWDA. (Settlement Agreement, p. 6, ¶ 4.) The remaining 25 percent of the net settlement
9 amount will be distributed to aggrieved employees pro rata based on the number of wage
10 statements reflecting the payment of overtime wages each aggrieved employee received during
11 the PAGA Period. (Settlement Agreement, p. 7, ¶ 5.)

12 In exchange for the settlement, the aggrieved employees will release “any and all of the
13 Released Parties of and from any and all Released Claims” (“Release of Claims by Aggrieved
14 Employees”). (Settlement Agreement, p. 10, ¶ 6.) “Released Parties” are defined as “Defendant
15 and/or any other entity or individual which could be liable for the acts or omissions of Defendant
16 in relation to the Released Claims.” (Settlement Agreement, p. 4, ¶ 14.) “Released Claims” are
17 defined as “all claims for penalties under the California Private Attorneys General Act, including
18 costs and attorneys’ fees related thereto, predicated on the violation of Labor Code section 226,
19 based on the facts as alleged in the Complaint, that accrued during the PAGA Period.”
20 (Settlement Agreement, p. 4, ¶ 15.) The Settlement Agreement defines the “Complaint” as the
21 First Amended Complaint. (Settlement Agreement, p. 3, ¶ 4.)

22 Plaintiff also agrees to a comprehensive general release of any and all claims against
23 Defendant. (Settlement Agreement, p. 10, ¶ 8.)

24 There are two difficulties with the settlement terms as framed in the motion. First, the
25 Settlement Agreement defines the “Complaint” as the First Amended Complaint, and thus the
26 Settlement Agreement purports to settle and release the PAGA claim as alleged in the FAC.
27 However, the original Complaint is the operative pleading. The Settlement Agreement must be
28

1 modified to state that the original Complaint is the operative pleading and the parties are settling
2 and releasing the PAGA claim as alleged in the original Complaint.

3 Second, the Release of Claims by Aggrieved Employees is overbroad and not at all clear
4 who is begin released. The term “Released Parties” is vaguely defined to include any
5 unspecified entity or individual which could be liable for the acts or omissions of Defendant in
6 relation to the “Released Claims.” (See Settlement Agreement, p. 4, ¶ 14.) The Settlement
7 Agreement must be modified to omit the language regarding other unidentified entities or
8 individuals from the Release of Claims by Aggrieved Employees.

9 With respect to the other terms of the settlement, Plaintiff argues that the PAGA penalties
10 secured by the settlement are genuine and meaningful and fulfill PAGA’s underlying purpose to
11 benefit the public. Plaintiff also contends that the settlement is reasonable given the risks of
12 further litigation. The court agrees and finds that the settlement is fair. It provides for a
13 significant recovery and eliminates the risk and expense of continued litigation.

14 As part of the settlement, Plaintiff seeks a service award of \$15,000. Although service
15 awards are common in class actions, there is less authority regarding the propriety of service
16 awards in PAGA cases. Nevertheless, a PAGA case is a representative action like a class action
17 and it has been recognized that an individual’s willingness to act as a private attorney general
18 may merit a service award. (See *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d
19 948, 959.)

20 Plaintiff submitted a declaration detailing his participation in the action. Plaintiff states
21 that he spent approximately 25 hours on the case, including communicating with counsel,
22 explaining Defendant’s company practices to counsel, discussing the facts of the case with
23 counsel, finding and producing relevant documents, responding to questions from counsel, and
24 reviewing the pleadings. (Declaration of Menchila Villarubia Woodall in Support of Plaintiff’s
25 Motion to Approve Settlement Agreement Pursuant to the Private Attorneys General Act, ¶ 5.)

26 While it is appropriate for Plaintiff to receive some amount in the form of a service
27 award, the amount requested is excessive given the amount of the settlement, the amount
28 available to distribute to other aggrieved employees, the extent of Plaintiff’s participation, and

1 the amount of service awards typically approved in similar cases. As proposed, the service
2 award would exceed the total amount to be distributed to all other aggrieved employees.
3 Therefore, the court approves a service award in the amount of \$7,500.

4 Plaintiff's counsel seek attorney fees of \$43,333.33 (1/3 of the gross settlement amount).
5 Plaintiff's counsel present evidence demonstrating a total lodestar of \$41,005.00 (based on fees
6 actually incurred). (Rosenthal Dec., ¶¶ 28-29 & Ex. D; Declaration of Larry W. Lee in Support
7 of Plaintiff's Motion to Approve Settlement Agreement Pursuant to the Private Attorneys
8 General Act ("Lee Dec."), ¶ 9 & Ex. A; Declaration of William L. Marder [in] Support of
9 Plaintiff's Motion to Approve Settlement Agreement Pursuant to the Private Attorneys General
10 Act, ¶¶ 9-10 & Ex. A.) This results in a multiplier of 1.06. The court finds that the requested
11 attorney fee award is reasonable.

12 Under the terms of the Settlement Agreement, Plaintiff's counsel seek \$10,000.00 for
13 litigation costs and expenses. (Settlement Agreement, p. 8, ¶ 9.) However, in the moving
14 papers, Plaintiff's counsel request and provide evidence of only \$6,498.39 in incurred costs.
15 (Lee Dec., ¶ 10 & Ex. B.) Only actual, incurred costs are recoverable. Accordingly, the costs
16 are approved in the amount of \$6,498.39.

17 Lastly, Plaintiff's counsel request up to \$2,250 for the claims administration fee for
18 Phoenix Settlement Administrator to administer the Settlement. (Rosenthal Dec., ¶ 18.) This
19 amount is also approved.

20 The motion to approve PAGA settlement is continued to September 15, 2021, to allow
21 the Parties to file no later than September 8, 2021, a declaration attaching a modified settlement
22 agreement addressing the identification of the operative pleading and the scope of the release,
23 discussed above. No other additional filings are authorized. If presented with an appropriate
24 modified settlement agreement, the court expects to be able to approve the settlement as set forth
25 above.

26
27 Dated: September 1, 2021


Patricia M. Lucas
Judge of the Superior Court