

ORDER ON SUBMITTED MATTER

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

MARITZA EVELYN MAGANA, et al.,

Plaintiffs,

v.

OREN'S HUMMUS CATERING LLC, et al.,

Defendants.

Case No.: 20CV371894

**ORDER CONCERNING PLAINTIFFS'
MOTION TO APPROVE PAGA
SETTLEMENT**

This is a representative Private Attorneys General Act ("PAGA") action alleging wage and hour violations by defendants Oren's Hummus Catering, LLC; Oren's Hummus Cupertino, LLC; Oren's Hummus Mountain View, LLC; Oren's Hummus SF1, LLC; and Oren's Hummus, LLC (collectively "Defendants"). Plaintiff Maritza Evelyn Magana, Yeranla Guadarrama, Gloria Torres, Arnulfo Ruiz, and Roxana Aguilar (collectively "Plaintiffs") allege that Defendants failed to pay employees for all hours worked, failed to provide meal and rest periods, failed to timely pay wages during employment and upon termination, failed to provide accurate wage statements, and failed to reimburse for required expenses.

Before the Court is Plaintiff's motion for approval of a settlement, which is unopposed. As discussed below, the Court GRANTS the motion, but: a) reduces the incentive awards to the named plaintiffs, in light of the relatively small average monetary recovery that each Aggrieved

Employee will receive; b) reduces the percentage of attorney fees for Plaintiffs’ counsel to 33%; and c) orders the money “freed up” by items a) and b) to be allocated to the net settlement amount.

I. BACKGROUND

Defendants operate restaurants and catering services in Northern California. As alleged in the operative complaint, Plaintiffs are or were non-exempt employees of Defendants. (Complaint for Penalties Under Labor Code § 2698, *et seq.* (“Complaint”), ¶ 9.) Plaintiffs worked for Defendants for varying periods (and two still work for Defendants). (*Id.*, ¶ 9.)

Plaintiffs allege that Defendants had a consistent practice of requiring employees to work off-the-clock, resulting in failure to pay minimum and overtime wages. (Complaint, ¶ 20.) Defendants failed to provide employees with required meal and rest breaks. (*Id.*, ¶¶ 23-26.) Defendants failed to timely pay employees during their employment and upon separation. (*Id.*, ¶¶ 27-30.) Defendants failed to provide accurate itemized wage statements. (*Id.*, ¶ 42.) Defendants required Plaintiffs and other aggrieved employees to purchase their uniforms and failed to reimburse them for expenses. (*Id.*, ¶ 34.)

Based on these allegations, Plaintiffs assert a single cause of action for PAGA penalties. Before filing the Complaint, Plaintiffs informed the Labor and Workforce Development Agency (“LWDA”) of their intent to file a representative action and the LWDA declined to take action.

II. LEGAL STANDARD FOR APPROVING A PAGA SETTLEMENT

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940.) 75 percent of any penalties recovered go to the LWDA, leaving the remaining 25 percent for the employees. (*Ibid.*) PAGA is intended “to augment the limited enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency.” (*Id.* at p. 383.) A judgment in a PAGA action binds all those, including nonparty

1 aggrieved employees, who would be bound by a judgment in an action brought by the
2 government. (*Id.* at p. 381.)

3 Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall
4 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
5 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
6 *Court* (2017) 3 Cal.5th 531, 549.) “[C]lass certification is not required” in this context as in a
7 class action. (*Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971
8 (*Haralson*).)

9 Similar to its review of class action settlements, the Court must “determine
10 independently whether a PAGA settlement is fair and reasonable,” to protect “the interests of the
11 public and the LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.*
12 (2021) 72 Cal.App.5th 56, 76-77 (*Moniz*).) It must make this assessment “in view of PAGA’s
13 purposes to remediate present labor law violations, deter future ones, and to maximize
14 enforcement of state labor laws.” (*Id.* at p. 77; see also *Haralson, supra*, 383 F. Supp. 3d at
15 p. 971 [“when a PAGA claim is settled, the relief provided for under the PAGA [should] be
16 genuine and meaningful, consistent with the underlying purpose of the statute to benefit the
17 public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D.
18 Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

19 The settlement must be reasonable in light of the potential verdict value. (See *O’Connor,*
20 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential
21 verdict].) But a permissible settlement may be substantially discounted, given that courts often
22 exercise their discretion to award PAGA penalties below the statutory maximum even where a
23 claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-
24 CV-02198-EMC) 2016 WL 5907869, at *8-9.)

25 **III. PLAINTIFF’S INVESTIGATION, SETTLEMENT PROCESS, AND THE** 26 **PARTIES’ AGREEMENT**

27 The parties engaged in formal and informal written discovery and depositions.
28 Defendants produced documents, including contact information and employment summaries for

1 the aggrieved employees, time and pay records, employee schedules, and all relevant policies
2 and handbooks. This enabled Plaintiff to analyze the strengths and weaknesses of the claims and
3 calculate potential damages. The parties then engaged in a full session of mediation with David
4 Lowe, Esq. on October 3, 2022. The mediation was unsuccessful but the parties were eventually
5 able to reach the settlement now before the Court.

6 Pursuant to that settlement, Defendants will pay a gross amount of \$300,000. One
7 hundred and five thousand dollars in attorney fees, litigation costs of \$12,565.41, and \$7,500 in
8 administrative costs are scheduled to be deducted. Plaintiffs Guadarrama, Torres, and Ruiz seek
9 incentive award in the amount of \$5,000.00 each and to Plaintiffs Magana and Aguilar seek an
10 incentive award in the amount of \$2,500.00, for a total of \$20,000. The net settlement of
11 approximately \$154,934.59 will then be distributed 75 percent (\$116,200.94) to the LWDA and
12 25 percent (\$38,733.65) to the aggrieved employees based on their pay periods worked during
13 the PAGA period. The parties also agreed to an escalator clause stating that in the event of an
14 increase in workweeks over 16,500 worked during the covered period, Defendants may either
15 increase the gross settlement amount or elect to set the end date for the covered period such that
16 the total workweeks would be 16,500. Defendant elected to cap to the total work weeks at
17 16,500.

18 The aggrieved employees, called the “PAGA Group” in the settlement agreement, are
19 defined as “all persons who worked any regular hours for any Defendant as a non-exempt
20 employee in the State of California at any time within the PAGA Period [(from August 19, 2019
21 to the date of the court’s approval of the settlement)].” The 1,133 aggrieved employees will
22 receive an average payment of about \$34.19.

23 In exchange for the settlement, aggrieved employees will release “any and all claims and
24 causes of action, known or unknown, contingent or accrued, against the Released Entities,
25 arising out of the facts and claims asserted in the Litigation, any PAGA letters and amended
26 PAGA letters sent to the LWDA by Named Plaintiffs during or prior to the Litigation, and all
27 claims which could have been alleged under the same or similar facts, allegations and/or claims
28 pleaded in the Litigation, against the Released Parties, for work performed during the PAGA

Period,” including specified Labor Code provisions and other wage and hour requirements. The release is appropriately tailored to the factual allegations at issue and applies only to PAGA claims, not the underlying Labor Code violations. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537; *Moniz, supra*, 72 Cal.App.5th at p. 86 [release of “ ‘any and all known and unknown claims under PAGA against the Released Parties that were or could have been pled based on the factual allegations of the Complaint’ ” was appropriately limited].)

IV. DISCUSSION

A. Potential Verdict Value

Based on the data produced, Plaintiff calculates a maximum potential penalty award of \$6,074,900, assuming approximately 16,500 violative pay periods for each Labor Code violation. This amount is comprised of PAGA penalties of \$1,812,800 for minimum wage violations under Labor Code section 1197.1; \$736,450 for overtime wage violations under Labor Code section 558; \$70,000 for waiting time violations under Labor Code section 203; \$1,982,750 for inaccurate wage statements (Lab. Code, § 226.3); and \$736,450 each for meal and rest period premiums (Lab. Code, § 558).

Based on this analysis, the settlement represents about 4.9 percent of the maximum value of the case. Plaintiffs’ counsel explained that the significant discount is due to the highly uncertain nature of PAGA penalty recovery, issues with manageability, the difficulty in proving certain claims, Defendants’ policies against the working off the clock, Defendants’ policy against requiring employees to purchase their uniforms, and the individual nature of the expense reimbursement issues. (See Declaration of Jose Macias, Jr. in Support of Plaintiffs’ Unopposed Motion for Approval of Private Attorneys General Act Settlement and Release, Attorneys Fees, Costs and Enhancement Award, ¶¶ 30-33.)

“ ‘It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.’ [Citation.]” (*In re Omnivision Techs.* (N.D.Cal. 2007) 559 F.Supp.2d 1036, 1042 [approving net settlement of 6% of total value of claims].) Considering the discretionary and uncertain nature of PAGA penalty awards in general and the nature of the violations at issue here, the Court agrees that the

1 settlement is fair to those affected and is genuine, meaningful, and reasonable in light of the
2 statute's purposes.

3 **B. Attorney Fees**

4 While the text of PAGA does not expressly require judicial review of claimed attorney
5 fees, the Court believes it cannot adequately fulfill its statutory duty to review the penalties
6 associated with PAGA settlements without also considering attorney fees. The Court thus finds
7 that it must scrutinize the attorney fee arrangement associated with a PAGA settlement. This is
8 consistent with the observation of many courts that PAGA claims are analogous to "*qui tam*"
9 suits like those under the federal False Claims Act: when reviewing settlements of *qui tam*
10 claims, courts should and do consider any associated attorney fee arrangement. (See *U.S. v.*
11 *Texas Instruments Corp.* (9th Cir. 1994) 25 F.3d 725, 728 [attorney fee award must be
12 considered by the trial court as part of its review of the "entire settlement arrangement"].)

13 Here, Plaintiffs' counsel request 35 percent of the gross settlement. In the Court's view,
14 there has been no showing why the more-customary 33% is inappropriate here. The Court
15 therefore only approves 33%. A 33% fee award is reasonable, considering counsel's lodestar of
16 \$179,815, resulting in a negative multiplier. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1
17 Cal.5th 480, 488, 503-504 [trial court did not abuse its discretion in approving fee award of 1/3
18 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

19 **C. Other Costs and Expenses**

20 Counsel's request for litigation costs of \$12,565.41 appears reasonable based on the
21 summary provided and is approved. The \$7,500 allocated to administrative costs also appears
22 reasonable and is also approved.

23 Finally, the named plaintiffs request enhancement awards totaling \$20,000. The rationale
24 for such awards in class actions is that named plaintiffs "should be compensated for the expense
25 or risk they have incurred in conferring a benefit on other members of the class," considering "1)
26 the risk to the class representative in commencing suit, both financial and otherwise; 2) the
27 notoriety and personal difficulties encountered by the class representative; 3) the amount of time
28 and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal

benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.”
(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394–1395, internal citations and quotations omitted.)

These considerations apply equally in the PAGA context. Plaintiffs have provided a declaration of their counsel describing the named plaintiffs’ efforts on the case as well as detailed declarations from each named plaintiff.

However, given the relatively small average recovery that each Aggrieved Employee is going to receive, the Court believes the requested incentive awards are too high. Therefore, Plaintiffs Guadarrama, Torres, and Ruiz will receive incentive awards of \$2,500.00 each and to Plaintiffs Magana and Aguilar seek an incentive award in the amount of \$1,250.00, for a total of \$10,000.¹ The extra \$10,000 (along with the 2% of attorney fees not awarded to Plaintiffs’ counsel) should go into the “net settlement amount” so as to increase payouts to the other aggrieved employees.

V. ADMINISTRATION PROCESS

Within 20 days of the Effective Date,² Defendants shall provide the list of aggrieved employees to the settlement administrator, Phoenix Settlement Administrators, who shall update employees’ addresses using the National Change of Address database. Within 30 days of Defendants’ provision of the list, the settlement administrator will mail checks for individual PAGA payments along with the Notice of Settlement, which explains the lawsuit, the settlement, and the release in Spanish and English. Defendants shall pay to the settlement administrator the gross settlement amount within 30 days of the Effective Date. The administrator will send the

¹ The Court originally was unsure why certain named plaintiffs were requesting lower incentive awards than the other named plaintiffs, but Plaintiffs’ counsel’s supplemental declaration has adequately answered this question. In addition, the Court has reviewed the individual settlement agreements in *Roxana Aguilar, et al v. Otoniel Dominguez*, 21CV388699, and finds these agreements do not affect the Court’s assessment of the propriety of the settlement here.

² The Effective Date is defined as five business days after the 60-day timeframe in which to file a notice of appeal or seek writ or other appellate relief has passed or five business days after any appellate proceedings have concluded.

1 incentive awards, the LWDA payment, and payments for fees and expenses under the same
2 terms as the individual PAGA payments.

3 Any checks returned as non-deliverable will be re-mailed to any forwarding address
4 provided or updated address located through skip tracing technology. Checks will remain
5 negotiable for 180 days and funds associated with funds from settlement checks remaining
6 uncashed after that point will be sent to *cy pres* recipient Second Harvest of Silicon Valley.
7 Plaintiff's counsel explains that the parties agree to a *cy pres* recipient because many of the
8 aggrieved employees are migrant workers and there may be difficulty contacting them. The
9 Court accepts that explanation.

10 These administrative procedures are appropriate and are approved.

11 **VI. CONCLUSION**

12 For the foregoing reasons, the Court GRANT Plaintiffs' motion for approval of this
13 PAGA settlement. The Court sets a compliance hearing date for April 18, 2024 at 2:30 pm. At
14 least ten court days before the hearing, Plaintiffs' counsel and the settlement administrator shall
15 submit a summary accounting of the net settlement fund identifying distributions made as
16 ordered herein; the number and value of any uncashed checks; amounts remitted to the *cy pres*
17 recipient; the status of any unresolved issues; and any other matters appropriate to bring to the
18 Court's attention. Counsel shall also submit a final judgment for the Court's signature.

19 **IT IS SO ORDERED.**

20
21 Date: **June 22, 2023**



The Honorable Sunil R. Kulkarni
Judge of the Superior Court