

FILED
LOS ANGELES SUPERIOR COURT

JUN 15 2022

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK
BY N. Navarro Deputy
NANCY NAVARRO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ANTHONY SHAUN COOPER, on behalf
of himself and all others similarly situated,

Plaintiffs,

v.

LUCAS HEALTH PARTNERS, LLC, a
California limited liability company doing
business as MORNING SIDE ADULT
HEALTH CARE CENTER; LUCAS
HEALTH CARE, INC., a suspended
California corporation; VARDAN
ASIKIAN, an individual; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 20STCV20050

ORDER RE
APPROVAL OF PAGA
SETTLEMENT

Date: June 15, 2022
Time: 9:30 a.m.
Dept.: SS 17

I. BACKGROUND AND PROCEDURAL HISTORY

This action, filed in May 2020, alleged wage and hour claims on behalf of a putative class. The operative First Amended Complaint (FAC) adding a cause of action under the Labor Code's Private Attorney General Act (PAGA), Labor Code §2698 et seq., was filed in October 2020. In February 2021, after Defendants Lucas Health Partners (Lucas Health) and Vardan Asikian (collectively Defendants) indicated they would seek arbitration pursuant to a written agreement, the Parties agreed to mediate the matter.

Mediation resulted in a proposed resolution of the PAGA claim. Plaintiff Anthony S. Cooper (Plaintiff) agreed to dismiss the class claims. That dismissal was effectuated February 28, 2022.

The gist of the action is that Defendants, who own and operate an elder day care facility, failed to provide meal and rest periods, failed to pay all wages owed including overtime, and failed to reimburse necessary expenses; the pleading includes derivative claims for wage statement violations, final payment violations, and violations of the Unfair Competition Law (UCL) (Bus. & Prof. Code, § 17200, et seq). FAC, ¶¶ 1-15. The job duties of Plaintiff and the other aggrieved employees included driving a van, picking up and dropping off patients to and from their homes, assisting patients into and out of the van, and serving food to patients. FAC ¶ 16; Bibiyan Supp. Decl., ¶ 4. Plaintiff alleges that Defendants automatically deducted employees' meal periods and required employees to communicate with patients and patients' relatives outside of work hours. FAC ¶ 36. Plaintiff also alleges that Defendants manipulated time entries and failed to pay overtime at the proper rate. *Ibid.*

Hearing on this motion was originally held on April 29, 2022. At the hearing, the Court discussed the settlement and issued a checklist of items for further briefing. On May 23, 2022, Plaintiff submitted a Supplemental Brief and an accompanying declaration from Plaintiff's counsel, together with a First Amended Joint Stipulation of Representative Action Settlement.

1 Having considered the argument of counsel, the motion is tentatively granted,
2 subject to the terms set forth herein and any objections by the LWDA, which was served
3 with the operative settlement agreement on June 13, 2022. If no objection is received by
4 July 8, 2022 (sixteen court days from service), this Order will be the Court's Order
5 regarding approval of the settlement, provided that Plaintiff's counsel files with the Court a
6 proof of service of this Order on the LWDA, showing service on or before June 17, 2022.

7 II. ANALYSIS

8 A. Terms of the Proposed PAGA Settlement

9 The PAGA Settlement contains the following essential definitions and terms:

- 10 • **Aggrieved Employees** means all hourly-paid, non-exempt employees who
11 were employed by Defendants in the State of California from May 22, 2019
12 through December 8, 2021. ¶¶ 2, 27.
- 13 • Plaintiff represents that there are 25 Aggrieved Employees. Bibiyan April 7,
14 2022 Decl., ¶ 4.
- 15 • **Gross Settlement Amount** means the total gross settlement amount of
16 **\$50,000.00.** ¶ 34.
- 17 • **Escalator Provision:** Plaintiff's Counsel's acceptance of this Agreement is
18 based on Defendants' representation that the total number of Pay Periods is
19 approximately 549, which, based on the Gross Settlement Payment of
20 \$50,000, makes the gross per-pay-period settlement value \$91.07 per Pay
21 Period. If the total turns out to be more than 604 Pay Periods, the Total
22 Settlement Amount will be increased by \$91.07 per each additional Pay
23 Period. ¶ 56.
- 24 • **Funding Of The Gross Settlement Amount:** Within 15 calendar days after
25 the Effective Date, Defendants will deposit \$50,000 into a settlement fund to
26 be established by the Settlement Administrator. ¶ 46
- 27 • The PAGA Fund (**\$19,279.75**) means the Gross Settlement Amount less:
28 ○ up to \$17,500.00 (35%) for attorney fees;

- \$8,750.25 [or up to \$20,000] for attorney costs of litigation;
- \$2,500 Enhancement Payment to Plaintiff [the PAGA Settlement also references a \$5,000 payment to Plaintiff];
- up to \$1,970 for settlement administration. ¶¶ 13, 35.
- The PAGA Fund shall be designated as PAGA Penalties to be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699, subdivision (i), with 75% (\$14, 459.81) paid to the LWDA (the “LWDA PAGA Portion”) and 25% (\$4, 819.94) paid to the Aggrieved Employees (the “Aggrieved Employees’ PAGA Portion”) on a pro-rata basis. ¶¶ 36, 37.
- Aggrieved Employees shall not be required to make claims. ¶ 35b.
- **Allocation and Calculation of the PAGA Penalties:** Each Aggrieved Employee shall receive a portion of the PAGA Penalties on a pro-rata basis. The allocation among the Aggrieved Employees shall be determined by dividing by the aggregate number of workweeks worked by all Aggrieved Employees during the Settlement Period, resulting in the “Workweek Value.” Each Aggrieved Employee’s individual settlement payment will be calculated by multiplying each individual Aggrieved Employee’s total number of Workweeks by the Workweek Value. ¶ 37.
- **Tax Allocation:** Regarding settlement payments to Aggrieved Employees, IRS Form 1099s will be issued. ¶ 38.
- **PAGA Settlement Payments:** Within seven calendar days after Defendants deposit the Gross Settlement Amount into a settlement fund, the Settlement Administrator will issue payments to:
 - the Aggrieved Employees;
 - the LWDA;
 - Plaintiff; and
 - Plaintiff’s Counsel. ¶ 47.

- 1 • **Uncashed Checks:** Settlement Checks issued to Aggrieved Employees will
2 expire 180 days from the date of their issuance. The funds remaining
3 uncashed for more than 180 days after issuance shall be transmitted to the
4 California Controller's Office, Unclaimed Property Fund. ¶ 50.

5 • **Release by Aggrieved Employees**

- 6 ○ The Settlement resolves any and all claims, rights, or causes of action
7 seeking civil penalties under PAGA alleged in the PAGA Notice and
8 Operative Complaint, or that could have been alleged based on the
9 facts alleged in the PAGA Notice and Operative Complaint, including,
10 but not limited to: (a) Failure to pay employees for all overtime wages
11 owed (Lab. Code, §§ 510, 558, 1194); (b) Failure to compensate
12 employees with minimum wages for all hours worked (Lab. Code,
13 §§ 558, 1194, 1194.2, 1197.1); (c) Failure to provide compliant meal
14 breaks or compensation in lieu thereof (Lab. Code, §§ 226.7, 512); (d)
15 Failure to authorize or permit employees to take compliant rest breaks
16 or provide compensation in lieu thereof (Lab. Code, § 226.7); (e)
17 Failure to maintain accurate time records (Lab. Code, §§ 226, 1174);
18 (f) Failure to provide employees with accurate itemized wage
19 statements (Lab. Code, §§ 226, 226.3); (g) Failure to timely pay all
20 compensation owed to terminated and/or resigned employees (Lab.
21 Code, §§ 201, 202, 203); and (h) Failure to comply with the
22 requirements of the Wage Theft Protection Act of 2011 (Lab. Code,
23 § 2810.5) (the "Released Claims"). This Settlement excludes all other
24 legal claims. The "Released Parties" means Defendants, and all of
25 their current or former parent companies, subsidiary companies and/or
26 related companies, partnerships, joint ventures, and/or staffing
27 agencies, and, with respect to each of them, all of their and/or such
28 related entities' predecessors and successors, and, with respect to each
 such entity, all of its past, present, and future employees, officers,

1 partners, principals, directors, stockholders, owners, representatives,
2 assigns, attorneys, agents, insurers, employee benefit programs (and
3 the trustees, administrators, fiduciaries, and insurers of such
4 programs), and any other persons acting by, through, under, or in
5 concert with any of the persons or entities listed in this subsection, and
6 their successors. Bibiyan Decl., Ex. A.

7 Counsel represented in briefing and at hearing that the “employees” to
8 be released are those who could subject the employer to liability under
9 Labor Code §558.1. With this understanding the release language is
10 accepted.

- 11 • **Effective Date** means (i) the date the Court enters an order granting approval
12 of the Settlement, provided no appeal or motion for reconsideration or other
13 efforts to obtain review has been filed before said date; (ii) if any timely
14 appeals or motions for reconsideration or review are filed before an order
15 granting approval of the Settlement, the date of final resolution of any such
16 appeals or motions for reconsideration or review have been finally
17 concluded.
- 18 • Phoenix Settlement Administrators will perform settlement administration.
- 19 • The PAGA Settlement indicates that “[b]efore or concurrent with Plaintiff’s
20 filing of this stipulation for approval of the Settlement, Plaintiff’s Counsel
21 will send this stipulation to the LWDA pursuant to Section 2699(1)(2) of the
22 California Labor Code.” ¶ 52. However, the parties do not present proof of
23 service of this Agreement, although an earlier version was served on the
24 LWDA.

25 **B. The Legal Standard**

26 PAGA was enacted to aid public agencies in enforcement of California’s labor laws.
27 Private persons suing under the PAGA do so as a proxy of the state. *ZB, N.A. v. Superior*
28 *Court* (2019) 8 Cal.5th 175, 185. Aggrieved Employees suing under the PAGA are

1 authorized to recover civil penalties, which is essentially a law enforcement function,
2 designed to protect the public. *Ibid.*, citing *Arias v. Superior Court* (2009) 46 Cal.4th 969,
3 986 (*Arias*) and *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348
4 (*Iskanian*). Labor Code section 2699, subdivision (1)(2) requires courts to “review and
5 approve any settlement of any civil action filed pursuant to this part.”

6 The California Supreme Court explained that a PAGA claim is a form of a qui tam
7 action. *Iskanian, supra*, 59 Cal.4th at p. 382. The legal standard is set forth in *Moniz v.*
8 *Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77 (*Moniz*): Is the settlement fair, reasonable
9 and adequate in view of PAGA’s purposes to remediate present labor law violations, deter
10 future ones, and to maximize enforcement of state labor laws?

11 Assessing the fairness and adequacy of any settlement necessitates decision making
12 based on unknowns. However, in determining whether settlements fall within the
13 parameters of what may be considered reasonable, courts regularly rely on estimates of
14 potential maximum values weighed against weaknesses of the claims. Other important
15 indicia of fairness include arm’s-length negotiations, experienced counsel, and an adequate
16 investigation of the claims. But the potential value of the claims being settled is primary to
17 any evaluation. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802; *Kullar v.*
18 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (*Kullar*).

19 “[A]s the court does when it approves a settlement as in good faith under Code of
20 Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement
21 is within the ‘ballpark’ of reasonableness. (See *Tech-Bilt, Inc. v. Woodward-Clyde &*
22 *Associates* (1985) 38 Cal.3d 488, 499-500.) While the court is not to try the case, it is
23 ‘called upon to consider and weigh the nature of the claim, the possible defenses, the
24 situation of the parties, and *the exercise of business judgment* in determining whether the
25 proposed settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495
26 F.2d at p. 462, italics added.)” *Kullar, supra*, 168 Cal.App.4th at p. 133.

1 **C. Application of the Standard**

2 This is a mediated settlement. Plaintiff's counsel represents that there was
3 investigation prior to mediation that included production of documents and employee data
4 (hire dates, a sampling of time and payroll records, Plaintiff's time and pay records), and
5 all relevant policies and procedures. In assessing the data, Plaintiff's Counsel utilized an
6 expert. Bibiyan Supp. Decl., ¶ 5. In addition, counsel determined that plaintiff was
7 subject to an agreement to arbitrate. At hearing, it was represented that discovery was
8 served regarding other aggrieved employees' agreements to arbitrate but that objections
9 were served.

10 On October 8, 2021, the parties mediated the matter with Nikki Tolt, Esq.
11 Thereafter, the parties were able to solidify a settlement agreement. Bibiyan Decl., ¶ 14.

12 Plaintiff's counsel represents that he has experience in employee class and
13 representative actions. Bibiyan Decl., ¶¶ 56-62. Further, Plaintiff's counsel is of the
14 opinion that the \$50,000 PAGA Settlement is fair and reasonable given the highly
15 disputed nature of the claims. *Id.* ¶ 35.

16 Plaintiff's counsel explains that "the potential claims for penalties include: (1)
17 failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide
18 meal periods or compensation in lieu thereof; (4) failure to provided rest periods or
19 compensation in lieu thereof; (6) failure to pay wages due upon separation from
20 employment[;] (7) failure to issue compliant wage statements; (8) failure to reimburse
21 expenses incurred in furtherance of work; (10) engaging in unfair competition[;] (11)
22 failure to provide paid sick leave under Labor Code section 246, and failure to provide
23 notices as required under Labor Code section 2810.5." Bibiyan Decl., ¶ 36. According to
24 Plaintiff's counsel, Defendants' maximum exposure in PAGA penalties is \$306,950. *Id.*
25 ¶ 47.

26 Defendants, on the other hand, refute these contentions, claiming they properly
27 paid employees, provided meal periods, and authorized rest breaks. Bibiyan Decl., ¶ 51.
28

1 Defendants also claim the case is unmanageable under *Wesson v. Staples the Office*
2 *Superstore, LLC* (2021) 68 Cal.App.5th 746. *Id.* ¶ 50.

3 Plaintiff's counsel obtained a gross PAGA settlement value of \$50,000, subject to
4 escalation so as to protect employees. Bibiyan Decl., ¶ 34. Given that continued litigation
5 would be expensive, time consuming, and uncertain without this settlement, and in light of
6 the potential for a discretionary reduction of any penalties by the Court, Plaintiff's counsel
7 is of the opinion that \$50,000 is fair, reasonable and adequate and sufficient to advance
8 the purposes of the PAGA statute. Because of the relative strength of the claims and the
9 uncertainty of continued litigation, it appears the gross settlement amount is within the
10 "ballpark of reasonableness." *Kullar, supra*, 168 Cal.App.4th at p. 133, internal
11 quotations omitted.

12 **D. Settlement Administration**

13 Phoenix Settlement Administrators will perform settlement administration. PAGA
14 Settlement ¶ 24. Total payment to Settlement Administrator shall not exceed **\$1,970.00**.
15 Subject to Court approval regarding the use of the Administrator, the Administrator's
16 duties of administration include processing the data provided by Defendants to be used in
17 calculating the Individual Settlement Payments; preparing, printing, and mailing to the
18 Aggrieved Employees the PAGA Payment Letter; following up with reasonable skip
19 tracing; calculating and mailing Individual Settlement Payments to Aggrieved Employees;
20 filing any required federal and state tax forms and related agency reporting; filing any
21 required reports with the Court; and all other tasks described in this Stipulation, as to
22 which the Parties mutually agree, or which the Court orders the Settlement Administrator
23 to perform. *Id.* ¶ 42. This appears appropriate.

24 Nonetheless, for several reasons discussed below, the settlement as tendered may
25 not be approved and is approved only as indicated below.

26 **E. Release Language**

27 The release language releases defendant's "employees" and includes a release of
28 claims alleged in the PAGA Notice and Operative Complaint, or that could have been

1 alleged based on the facts alleged in the PAGA Notice and Operative Complaint. It also
2 releases all “employees.”

3 Counsel urge the latter is necessary to avoid future liability to the defendant for
4 claims that may arise under Labor Code section 558.1. However, the Released Parties are
5 not expressly limited to those employees who may subject an employer to liability under
6 that statute (e.g., “owner, director, officer, or managing agent of the employer”). With the
7 understanding that the employees to be released are only those identified under Labor
8 Code section 558.1, the release is acceptable.

9 **F. Request for Attorney Fees and Costs**

10 An aggrieved employee who prevails in a PAGA action may recover reasonable
11 attorneys’ fees and costs. Lab. Code, § 2699, subd. (g)(1). Here, a common fund was
12 created that benefits the LWDA and the aggrieved employees. As such, although this is in
13 the nature of a qui tam action, the Court adopts the analysis in *Laffitte v. Robert Half*
14 *Internat. Inc.* (2016) 1 Cal.5th 480 and uses a percentage method with regards to the fee
15 award.

16 Case law regarding class actions in general and the Court’s experience with PAGA
17 claims indicate that the average award is 33⅓ percent. “ ‘Empirical studies show that,
18 regardless whether the percentage method or the lodestar method is used, fee awards in
19 class actions average around one-third of the recovery.’ ” *Chavez v. Netflix, Inc.* (2008)
20 162 Cal.App.4th 43, 66, fn. 11, quoting *Shaw v. Toshiba America Information Systems,*
21 *Inc.* (E.D.Tex. 2000) 91 F. Supp. 2d 942, 972. Other cases suggest an award of 25 percent
22 “ ‘[i]s the “benchmark” award that should be given in common fund cases.’ ” *Lealao v.*
23 *Beneficial California Inc.* (2000) 82 Cal.App.4th 19, 24, fn. 1, quoting *Six Mexican*
24 *Workers v. Arizona Citrus Growers* (9th Cir. 1990) 904 F.2d 1301, 1311.

25 Plaintiff’s counsel requests a 35 percent attorney fee, arguing that such a fee is
26 supported by a lodestar analysis showing total fees of \$67,277.50. He avers his claimed
27 hourly rate has been approved by this Court “numerous times” and that the Court’s
28 observation in its checklist that “the lodestar is not substantiated as to the claimed hourly

1 rates, which are not shown to be market tested in the current Los Angeles market for
2 litigators in this particular field” is “simply untrue.” Plaintiff’s counsel further urges that
3 the claimed hourly rate has been found reasonable “countless times by this very Court.”
4 Plaintiff’s Brief at 6:6-6:8. As evidence, Plaintiff’s counsel points to two final approval
5 orders entered by this Court, both of which were class actions that approved a 33½ percent
6 fee in one action and a 29.5 percent fee in another, without any lodestar analysis. No
7 hourly rate was “approved.” See Bibiyan Supp. Decl., Ex. 2 at 10:1-10:7; Ex. 3 at 14:6-
8 14:14.

9 Plaintiff’s counsel also argues that requiring attorneys to show their rates are
10 “market tested” disadvantages attorneys with contingency practices. Comparable hourly
11 rates may be shown by what other attorneys in the geographic area litigating wage and
12 hour class actions charge their clients. Plaintiff’s counsel does not make such a showing
13 here.

14 Plaintiff’s counsel provides evidence that the proposed rates vary from \$700 per
15 hour for Attorney Bibiyan to either \$375 or \$250 per hour for Attorney Patel. See Bibiyan
16 Decl., ¶ 71. As support for these rates, Plaintiff’s counsel appends a 2002 National Law
17 Journal Article of sample billing rates and a 2011 Declaration by Richard Pearl in an
18 unrelated litigation. The National Law Journal surveyed national firms in all practice
19 areas and shows rates ranging from \$85 per hour for associate time (McGuire Woods) to
20 \$650 per hour for partner time (Loeb & Loeb). Mr. Pearl opined regarding hourly rates
21 for services in the San Francisco and Los Angeles areas, listing rates ranging from \$950
22 per hour for lawyers with 36 to 37 years of experience to \$180 per hour for associates.
23 Pearl also opined that a 1/3 contingency fee was reasonable and consistent with the legal
24 market place. See Bibiyan Decl., ¶ 17, Ex. 4.

25 A lodestar is calculated by multiplying the number of hours reasonably expended
26 by the reasonably hourly rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,
27 1095-1096 (*PLCM*). “Generally, ‘[t]he lodestar is calculated using the reasonable rate for
28 comparable legal services in *the local community* for noncontingent litigation of the same

1 type, multiplied by the reasonable number of hours spent on the case.’ ” *Environmental*
2 *Protection Information Center v. Dept. of Forestry & Fire Protection* (2010) 190
3 Cal.App.4th 217, 248, quoting *Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1242-
4 1243.

5 As to the reasonableness of the rate and hours charged, trial courts consider factors
6 such as “the nature of the litigation, its difficulty, the amount involved, the skill required
7 in its handling, the skill employed, the attention given, the success or failure, and other
8 circumstances.” *PLCM, supra*, 22 Cal.4th at p. 1096. “The evidence should allow the
9 court to consider whether the case was overstaffed, how much time the attorneys spent on
10 particular claims, and whether the hours were reasonably expended.” *Christian Research*
11 *Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1320.

12 The Declaration of Bibiyan filed April 7, 2022 does not provide this information
13 (see Bibiyan Decl., ¶¶ 56-64; 71; 75), nor does the Supplemental Declaration.
14 Accordingly, the Court declines to engage in a lodestar analysis.

15 As to the requested percentage (35%), this exceeds what is customarily awarded in
16 cases of this type. Counsel engaged in some formal discovery related to an agreement to
17 arbitrate which informed the PAGA settlement and also engaged in the informal exchange
18 of information sufficient to value the case for settlement purposes. See Bibiyan Supp.
19 Decl., ¶¶ 10-11. While this expedited the resolution of the case, it is not a reason to award
20 an above-average percentage amount.

21 Fees amounting to 33⅓ percent are appropriate.

22 As for costs, Plaintiff’s Counsel requests reimbursement in the amount of
23 **\$8,750.25**. Bibiyan Decl., ¶ 26. The settlement provides for costs up to \$20,000. PAGA
24 Settlement, ¶ 35. Counsel incurred \$8,750.25 in costs, which include: (1) \$1,622.40 for
25 court filing and messenger fees; (2) \$75.00 for LWDA filing fees; (3) \$312.81 for service
26 of process; (4) \$789.60 for Case Anywhere; (5) \$1,687.50 for expert consultants and data
27 analysis; (6) \$4,100.00 for mediation; (7) \$45.00 for LA Court Connect; (8) \$56.14 for
28 postage; and (9) \$61.80 for photocopies. Bibiyan Supp. Decl., ¶ 83.

1 The costs appear to be reasonable and necessary to the litigation, and are
2 reasonable in amount. They are approved in full.

3 **G. Enhancement Payment to Plaintiff**

4 The PAGA Settlement provides for a \$2,500.00 Enhancement Payment to Plaintiff
5 before the settlement amounts are distributed to the LWDA and other aggrieved
6 employees. Plaintiff urges that such an award is necessary to incentivize employees to
7 bring PAGA actions.

8 The Legislature has specifically determined civil penalties recovered by aggrieved
9 employees “shall be distributed as follows: 75 percent to the Labor and Workforce
10 Development Agency for enforcement of labor laws . . . and 25 percent to the aggrieved
11 employees.” Lab. Code, § 2699, subd. (i). This language is mandatory and instructs the
12 Court as to how a PAGA civil penalties must be distributed. As the Court of Appeal has
13 recognized, the 25 percent awarded to employees *is* the incentive to bring the action. *Huff*
14 *v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 760 (“Since the
15 Legislature sought to give individual employees an incentive to enforce labor laws in place
16 of understaffed state agencies, it provided for some of the penalties to be paid to the
17 plaintiff employees.”). Such incentive is supplemented by the statutory right to a
18 reasonable attorneys’ fee. Lab. Code, § 2699, subd. (g). In light of this express legislative
19 directive, the various policies that may support judicially sanctioned incentive awards in
20 class and other types of qui tam actions (see e.g. *Cellphone Termination Fee Cases* (2010)
21 186 Cal.App.4th 1380,1393-1395) have no applicability to statutory PAGA claims. The
22 Court declines to approve the Enhancement Payment.

23 **H. Notice to Aggrieved Employees**

24 Class action procedures do not apply in PAGA actions; thus, notice and an “opt-
25 out” mechanism is not required. *Arias, supra*, 46 Cal.4th 969, 975; 987. The PAGA
26 Settlement indicates that the checks to Aggrieved Employees will be accompanied by an
27 explanatory letter (PAGA Payment Letter). PAGA Settlement, Ex. A. In general, the
28 PAGA Payment Letter provides all required information and contains a satisfactory

1 explanation of the litigation and the claims that are being released. However, it states that
2 uncashed checks will be paid to a *cy pres* recipient. This is not a class action, and there
3 should be no payment to any *cy pres* recipient. The revised PAGA Settlement provides
4 for payment to the California Controller's Office, Unclaimed Property Fund (§ 50). The
5 PAGA Payment Letter is ordered to be corrected before mailing.

6 **H. Notice to LWDA**

7 The PAGA Settlement indicates that "[b]efore or concurrent with Plaintiff's filing
8 of this stipulation for approval of the Settlement, Plaintiff's Counsel will send this
9 stipulation to the LWDA pursuant to Section 2699(l)(2) of the California Labor Code."
10 ¶ 52. This undertaking is consistent with the statute but was not followed. Its evident
11 purpose, and that of the cited statutory requirement, is to provide the LWDA with the
12 opportunity to comment on the settlement. Accordingly, and given that the settlement was
13 served on the LWDA on June 13, 2022, this Order will be effective July 8, 2022, so as to
14 give the LWDA an opportunity to comment. Plaintiff shall serve this Order on the
15 LWDA no later than June 17, 2022 and file proof of service.

16 **III. CONCLUSION AND ORDER**

17 Having considered the moving papers, the Court grants the motion, effective July 8,
18 2022, provided that:
19

- 20 (1) No Enhancement Payment or incentive award is paid;
21 (2) Attorneys' fees of 33⅓ percent (\$16,666.67) are paid;
22 (3) The PAGA Payment Letter to aggrieved employees is amended to show that
23 unclaimed funds will be transmitted to the California Controller's Office,
24 Unclaimed Property Fund;
25 (4) No objection is received from the LWDA prior to July 8, 2022.

26 June 15, 2022



27 MAREN E. NELSON

28 Judge of the Superior Court