



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
DOWNTOWN COURTHOUSE
191 NORTH FIRST STREET
SAN JOSE, CALIFORNIA 95113
CIVIL DIVISION

Carolyn Hunt Cottrell
Schneider Wallace Conttrell Konecky Wotkey
2000 Powell St Ste 1400
EMERYVILLE CA 94608

RE: **Smith v. Curio Management, LLC, et al. (PAGA)**
Case Number: **20CV370665**

PROOF OF SERVICE

ORDER GRANTING PLAINTIFF'S MOTION FOR APPROVAL OF PAGA SETTLEMENT was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line (408) 882-2690 or the Voice/TDD California Relay Service (800) 735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on 10/01/2024. CLERK OF THE COURT, by Thomas Duarte, Deputy.

cc: Isabella Lee Shin Jackson Lewis P.C. 333 West San Carlos, Suite 1625 SAN JOSE, CA 95110

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7 SUPERIOR COURT, STATE OF CALIFORNIA
8 COUNTY OF SANTA CLARA
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10 MICHELLE SMITH, on Behalf of the State of) Case No.: 20CV370665
California and Aggrieved Employees,)
11 Plaintiff,) ORDER GRANTING PLAINTIFF'S
12 v.) MOTION FOR APPROVAL OF PAGA
13 CURIO MANAGEMENT, LLC, et al.,) SETTLEMENT
14 Defendants.) Dept. 7
15)
16)

17 This is a representative action under the Private Attorneys General Act ("PAGA").
18 Plaintiff Michelle Smith alleges that Defendants Curio Management, LLC, Curio Employer,
19 LLC and Hilton Domestic Operating Company, Inc. (collectively, "Defendants") committed
various wage and hour violations and seeks PAGA penalties for those violations.

20 Before the Court is Plaintiff's motion for approval of PAGA settlement, which is
21 unopposed. As discussed below, the Court GRANTS the motion.

22 **I. BACKGROUND**

23 According to the allegations of the operative First Amended Complaint ("FAC"),
24 Plaintiff was employed as a service worker, a non-exempt, hourly position, by Defendants at
25 Juniper Hotel Cupertino from August 2019 to February 2020. (FAC, ¶ 6.) She alleges that

1 Defendants failed to: pay her and Aggrieved Employees all tips owed from gratuity payments;
2 provide her and Aggrieved Employees timely and accurate, itemized wage statements; and
3 timely pay her and Aggrieved Employees full wages during their employment and upon
4 termination or resignation. (*Id.*, ¶ 4.)

5 Based on the foregoing, Plaintiff initiated this action in September 2020, and filed the
6 operative FAC on February 17, 2021, asserting claims for civil penalties under PAGA.

7 II. LEGAL STANDARD FOR APPROVING PAGA SETTLEMENT

8 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf
9 of other current or former employees to recover civil penalties for Labor Code violations.
10 (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other
11 grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 2022 U.S. LEXIS 2940.)
12 75 percent of any penalties recovered go to the Labor and Workforce Development Agency
13 (LWDA), leaving the remaining 25 percent for the employees. (*Ibid.*) PAGA is intended “to
14 augment the limited enforcement capability of [LWDA] by empowering employees to enforce
15 the Labor Code as representatives of the Agency.” (*Id.* at p. 383.) A judgment in a PAGA
16 action binds all those, including nonparty aggrieved employees, who would be bound by a
17 judgment in an action brought by the government. (*Id.* at p. 381.)

18 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall
19 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
20 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
21 *Court* (2017) 3 Cal.5th 531, 549.) “[C]lass certification is not required” in this context as in a
22 class action. (*Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971
23 (*Haralson*).)

24 Similar to its review of class action settlements, the Court must “determine independently
25 whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the

1 LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72
2 Cal.App.5th 56, 76–77 (*Moniz*).) It must make this assessment “in view of PAGA’s purposes to
3 remediate present labor law violations, deter future ones, and to maximize enforcement of state
4 labor laws.” (*Id.* at p. 77; see also *Haralson, supra*, 383 F. Supp. 3d at p. 971 [“when a PAGA
5 claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful,
6 consistent with the underlying purpose of the statute to benefit the public”], quoting LWDA
7 guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d
8 1110 (*O’Connor*).)

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

15 **III. PLAINTIFF’S INVESTIGATION, SETTLEMENT PROCESS, AND THE** 16 **PARTIES’ AGREEMENT**

17 After Plaintiff initiated this action and filed an individual demand to arbitrate her
18 individual, non-PAGA Labor Code claims, the parties engaged in both formal and informal
19 discovery. On August 27, 2021, the parties agreed in principle to mediate Plaintiff’s PAGA
20 claims as well as her individual arbitration claims, which were held in abeyance. However, no
21 confirmation of mediation was provided by Defendants, and thus it was never scheduled.
22 Consequently, Plaintiff reinitiated formal discovery in both this matter and the separate
23 individual arbitration proceedings.

24 After an informal discovery conference on July 6, 2022, the Court issued an order staying
25 discovery so that Defendants could amend their answer and file a petition to compel arbitration

1 given the U.S. Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana* (2022) 596
2 U.S. 639. Defendants' subsequent motion to compel arbitration was denied by the Court on
3 October 17, 2022, and Defendants filed an appeal, resulting in the stay of this action. In the
4 related arbitration case, discovery was exchanged and several depositions, including Plaintiff's,
5 were completed.

6 On May 4, 2023, the parties participated in a mediation session with Raul A. Ramirez, an
7 experienced wage and hour mediator. The mediation was partially successful, with the parties
8 reaching an agreement in principle to settle Plaintiff's individual arbitrable wage and hour
9 claims, but not her PAGA claims. After finalizing the arbitration settlement, the parties filed a
10 stipulation for dismissal of Defendants' appeal.

11 The parties participated in a second mediation with Mr. Ramirez on November 2, 2023,
12 and were able to reach an agreement in principle on the remaining PAGA claims. Thereafter, the
13 parties worked together to draft the Settlement Agreement that is now before the Court, fully
14 executing it on March 22, 2024.

15 Pursuant to the parties' agreement, Defendants will pay a non-reversionary gross
16 settlement of \$215,000, which is comprised of \$164,014.17 in attorney's fees, \$12,466.83 in
17 litigation costs, and \$2,450 in administration costs. The \$28,569 in PAGA penalties will be
18 distributed 75% (\$21,426.75) to the LWDA and 25% (\$7,142.25), on a pro rata basis, to
19 "Aggrieved Employees," who are defined as "any current and former non-exempt hourly service
20 worker who was employed by Defendants at the Juniper Hotel Cupertino, Curio Collection by
21 Hilton, in the State of California and were entitled to receive in-room dining gratuity payments
22 and/or service charges during [June 29, 2019 through March 16, 2020]." It is estimated that
23 there are approximately 20 Aggrieved Employees and 348 pay periods during the relevant time
24 period; this results in an average payment to each employee of \$357.11.

25 In exchange for settlement, Plaintiff will release:

1 [A]ll claims for PAGA penalties that were alleged, or reasonably could have been
2 alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including,
3 but not limited to, civil penalties pursuant to PAGA for or related to alleged violations of Labor
4 Code sections 201, 202, 203, 204, 351, 225.5, 226, 226(a), 226.3, 226.7, and 256, injunctive
5 relief as it relates to the claims listed above, declaratory relief as it relates to the claims listed
6 above, liquidated damages, penalties recoverable pursuant to the claims listed above, interest,
7 fees, costs, as well as all other claims and allegations alleged in the Action, throughout the
8 PAGA Period.

9 The LWDA will release:

10 All claims for PAGA penalties that were alleged, or reasonably could have been alleged,
11 based on the facts stated in the Operative Complaint and the PAGA Noticen [sic], including, but
12 not limited to, civil penalties pursuant to PAGA for or related to alleged violations of Labor
13 Code sections 201, 202, 203, 204, 351, 225.5, 226, 226(a), 226.3, 226.7, and 256, injunctive
14 relief as it relates to the claims listed above, declaratory relief as it relates to the claims listed
15 above, liquidated damages, penalties recoverable pursuant to the claims listed above, interest,
16 fees, costs, as well as all other claims and allegations alleged in the Action, throughout the
17 PAGA Period.

18 These releases are appropriately tailored to the allegations at issue, and do not release any
19 claims other than those for PAGA penalties. (See *Amaro v. Anaheim Arena Management,*
20 *LLC* (2021) 69 Cal.App.5th 521, 537; *Moniz, supra*, 72 Cal.App.5th at p. 82 [release of “all
21 known and unknown claims under PAGA ... that were or could have been pled based on the
22 allegations of the Complaint” was appropriately approved].)

1 **IV. DISCUSSION**

2 **A. Potential Verdict Value**

3 In the 4AC, Plaintiff asserts two causes of action for PAGA penalties based on
4 Defendants' alleged failure to (1) pay all wages owed from service charge/gratuities payments, (2)
5 provide accurate, itemized wage statements and (3) timely pay all wages owed during
6 employment and following separation from employment. Plaintiff notes that the second and
7 third alleged failures are not applicable because they require *underlying claims* for wages but
8 here, her theory of liability is the failure to pay all tip wages owed for service gratuities payments.
9 However, as tips are not wages under California law, they cannot serve as a basis for wage
10 statement penalties and waiting time penalties.

11 In the absence of known findings by a court or the Labor Commissioner that Defendants
12 violated the Labor Code, Defendants are not subject to the heightened \$200 penalty for
13 violations but only the \$100 penalty per employee, per pay period for each violation. Based on
14 figures provided by Defendants for mediation- 20 Aggrieved Employees and 348 pay periods
15 during the relevant time period- Plaintiff calculated Defendants' total exposure for PAGA
16 penalties to be \$34,800. Plaintiff's counsel then discounted this amount to account for the
17 following risks: that Plaintiff would not be able to proceed in this action in a representative
18 capacity; that Plaintiff may not be able to prove a specified violation rate; and that the Court may
19 reduce the amount of penalties.

20 The settlement amount of \$28,569 in PAGA penalties represents approximately 82.1% of
21 Defendants anticipated exposure on the PAGA claims. Given this, as well as the risks attendant
22 to proceeding to trial, Defendants' insistence that any violations were not willful and the
23 likelihood that PAGA penalties would be significantly reduced in line with numerous appellate
24 decisions, the Court finds that the proposed settlement is fair to those affected and is genuine,
25 meaningful, and reasonable in light of the statute's purposes.

1 **B. Attorney Fees**

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

11 As articulated above, Plaintiff seeks a fee award of \$164,014.17 in attorney’s fees.
12 Plaintiff submits a lodestar figure of \$596,958.50 based on 764.4 hours of work at billing rates of
13 \$250 to \$1,155 per hour, resulting in a negative multiplier of 0.27. This is well short of the range
14 of multipliers that courts typically approve. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1
15 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion in approving fee
16 award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of
17 2.03 to 2.13]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 [“[m]ultipliers
18 can range from 2 to 4 or even higher”]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d
19 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund
20 cases and citing the court’s own survey of large settlements finding “a range of 0.6–19.6, with
21 most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0
22 range”].)

23 Here, given the significant amount of work performed by Plaintiff’s counsel, and because
24 the requested multiplier sought by them is well short of the range of multipliers regularly
25

1 approved by California courts in similar actions, the Court finds counsel's requested fee award is
2 reasonable and therefore it is approved.

3 **C. Other Costs and Expenses**

4 Counsel's request for litigation costs of \$12,466.83 appears reasonable based on the
5 supporting declarations provided which establish that counsel actually incurred costs in this
6 amount and is approved. Administration costs of \$2,450 are also approved.

7 **V. ADMINISTRATION PROCESS**

8 Pursuant to the terms of the Settlement Agreement, within 15 days of Court approval of
9 its terms, Defendants will provide settlement administrator Phoenix Class Action Administration
10 Solutions ("Phoenix") with a list of all Aggrieved Employees with the relevant identifying
11 information (including the last known home address) and the number of pay periods worked.
12 Within seven days of the funding of the settlement (no later than 30 days after the Court enters a
13 judgment on its order approving the PAGA settlement and that judgment becomes final),
14 Phoenix will pay the various amounts approved by the Court to Plaintiff's counsel, the LWDA,
15 and each Aggrieved Employee. Each Aggrieved Employee will be sent a check in the
16 appropriate amount. Any checks returned as non-deliverable will promptly be re-mailed to the
17 forwarding address provided; if none is, Phoenix will attempt to locate one using a skip trace or
18 other search method. Any checks returned as undeliverable or that remain uncashed after 180
19 days will be transmitted to *cy pres* beneficiary Justice Gap Fund. These administrative
20 procedures are appropriate and are approved.

21 **VI. ORDER AND JUDGMENT**

22 Plaintiff's motion for approval of the parties' PAGA settlement is GRANTED. The
23 covered individuals are: any current and former non-exempt hourly service worker who was
24 employed by Defendants at the Juniper Hotel Cupertino, Curio Collection by Hilton, in the State
25

1 of California and were entitled to receive in-room dining gratuity payments and/or service
2 charges during June 29, 2019 through March 16, 2020.

3 Judgment shall be entered through the filing of this order and judgment. (Code Civ.
4 Proc., § 668.5.) Plaintiff and the Aggrieved Employees shall take from the PAGA claim in their
5 FAC only the relief set forth in the parties' settlement agreement and this order and judgment.

6 The Court retains jurisdiction over the parties to enforce the terms of the PAGA settlement
7 agreement and the final order and judgment.

8 The Court sets a compliance hearing for May 29, 2025 at 2:30 P.M. in Department 7. At
9 least ten court days before the hearing, Plaintiff's counsel and the settlement administrator shall
10 submit a summary accounting of the net settlement fund identifying distributions made as
11 ordered herein; the number and value of any uncashed checks; amounts remitted the Justice Gap
12 Fund; the status of any unresolved issues; and any other matters appropriate to bring to the
13 Court's attention. Counsel may appear at the compliance hearing remotely.

14
15 DATED: October 1, 2024

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17 CHARLES F. ADAMS
18 Judge of the Superior Court
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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**
DOWNTOWN COURTHOUSE
191 NORTH FIRST STREET
SAN JOSÉ, CALIFORNIA 95113
CIVIL DIVISION

(ENDORSED)
FILE

OCT 01 2024

Clerk of the Court
Superior Court of CA County of Santa Clara
BY T. DUARTE Deputy

RE: **Smith v. Curio Management, LLC, et al. (PAGA)**
Case Number: **20CV370665**

PROOF OF SERVICE

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DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on 10/01/2024. CLERK OF THE COURT, by Thomas Duarte, Deputy.

cc: Carolyn Hunt Cottrell Schneider Wallace Conttrell Konecky Wotkey 2000 Powell St, Ste 1400 EMERYVILLE, CA 94608
cc: Fraser Angus McAlpine 50 California St 9th Fl San Francisco, CA 94111
cc: Shannon L Bettis Nakabayashi JACKSON LEWIS P.C. 50 CALIFORNIA STREET, 9TH FLOOR SAN FRANCISCO, CA 94111



Superior Court of California
County of Santa Clara

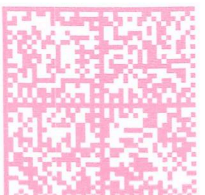
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