

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

TIFFANY DREYER,

Plaintiff,

v.

AUTOMATION ANYWHERE, INC., et al.,

Defendants.

Case No.: 20CV372730

**ORDER CONCERNING PLAINTIFF'S
MOTION FOR APPROVAL OF PAGA
SETTLEMENT AND JUDGMENT**

Plaintiff Tiffany Dreyer brings individual claims for gender discrimination and retaliation against Defendant Automation Anywhere, Inc. ("AAI"), along with related claims under the Private Attorneys General Act ("PAGA") and Unfair Competition Law ("UCL").

Before the Court is Plaintiff's motion for approval of a settlement of her PAGA claims, which is unopposed. The Court issued a tentative ruling on August 31, 2022, and no one contested it in substance at the hearing on September 1. The Court now issues its final order, which GRANTS Plaintiff's motion.

1 **I. BACKGROUND¹**

2 As alleged in the operative First Amended Complaint (“FAC”), Defendant is a Silicon
3 Valley-based company whose products combine traditional Robotic Process Automation
4 (“RPA”) with cognitive elements such as natural language processing and reading unstructured
5 data. (FAC, ¶ 7.) Although it markets itself as a start-up company, Defendant has existed since
6 2010 and its customers have included Google, LinkedIn, and GM. (*Ibid.*)

7 **A. Plaintiff’s Experience**

8 Plaintiff started working for Defendant on June 26, 2019, with the title of “Creative
9 Director.” (FAC, ¶ 21.) She was initially paid an annual salary of \$185,000, which was
10 increased to \$191,000 in November 2019, after she received a stellar performance review from
11 her then-female supervisor. (*Ibid.*) Plaintiff’s job duties included building and managing an in-
12 house creative content team responsible for graphic design, motion graphics, and video
13 production work, in addition to art direction of global support agencies. (*Ibid.*)

14 Not long after Plaintiff was hired, Defendant brought in a new Chief Marketing Officer,
15 Riadh Dridi. (FAC, ¶ 22.) Within a few months, Mr. Dridi launched a restructuring campaign,
16 which included layoffs and power shifting. (*Ibid.*) Although Defendant claimed that these
17 changes were due to Covid-19, the reorganization was an excuse to push out senior and mid-level
18 female employees, including Plaintiff, and to replace them with men. (*Ibid.*)

19 Included among initial layoffs were Plaintiff’s former supervisor and two female Vice
20 Presidents. (FAC, ¶ 23.) Meanwhile, in March 2020, Defendant demoted Plaintiff and stripped
21 her of her management responsibilities, even though she had excelled at her job. (*Id.*, ¶ 21.)
22 Defendant lead Plaintiff to believe that a new Vice President would replace her supervisor and
23 would help her build up her team. (*Id.*, ¶ 24.) Instead, it brought in a man to replace Plaintiff:
24 Mr. Dridi hired one of his former colleagues, Michael Baumert, and put him in an almost
25 identical position to Plaintiff, with the title “Director of Creative Services.” (*Ibid.*) Apart from
26 some additional experience in the technical industry, Mr. Baumert had the equivalent experience
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28 ¹ By summarizing Plaintiff’s allegations, the Court takes no position on their truth or accuracy.

1 and education as Plaintiff. (*Ibid.*) But Plaintiff is informed and believes that Defendant paid him
2 a higher salary than her. (*Ibid.*)

3 Beginning in February and early March 2020, Plaintiff reported her concerns about
4 Defendant's toxic and biased workplace culture and about being discriminated against to the
5 Senior Vice President of Human Resources. (See FAC, ¶¶ 25–27.) He could not allay her fears
6 about retaliation and told her it was not the first time he had received such complaints about
7 upper management. (See *ibid.*) In June 2020, Plaintiff was notified that she was being laid off.
8 (*Id.*, ¶ 28.)

9 **B. Pattern and Practice of Discrimination and Retaliation**

10 Plaintiff alleges that Defendant engaged in a pattern and practice of discriminating
11 against her and other aggrieved female employees by systematically paying them less in wages
12 and bonuses than male employees and disparately targeting them for layoffs and hostile,
13 demeaning treatment. (FAC, ¶ 13.) Specifically, male employees in Director positions are
14 regularly paid upwards of \$200,000 per year as a starting salary, while similarly situated women
15 in this position (including Plaintiff) received at least ten to fifteen thousand dollars less. (*Id.*,
16 ¶ 14.) There is a similar wage disparity between male and female Managers, Senior Managers,
17 and Vice Presidents, particularly in the Marketing Department(s). (*Ibid.*) Plaintiff is aware of at
18 least one instance where a female Director made, and is making, a significantly lower wage than
19 a male employee with less experience in a lower ranked Senior Manager position. (*Ibid.*, ¶ 15.)

20 There are also significantly fewer women than men working for Defendant: Plaintiff
21 estimates that the workforce is seventy percent male, a disparity that is even more pronounced in
22 the Executive and Vice President positions, where females occupy less than five percent of
23 positions. (*Id.*, ¶ 16.) And since layoffs in April and June 2020 targeted many higher-level
24 female employees, this gender disparity has only become more pronounced. (*Ibid.*)

25 Defendant's workplace culture is also toxic and demeaning towards women. (FAC,
26 ¶ 17.) Despite meeting the objective standards set out in Objective and Key Results, women are
27 given poor performance ratings and pushed out of the company. (*Ibid.*) In fact, during a summer
28 2020 roundtable discussion for female professionals, one of Defendant's top executives

1 suggested—behind a veil of concern over the work/life balance for working women with
2 children in the Covid-19 era—that women may want to consider the option of reducing their
3 hours and taking a pay reduction. (*Id.*, ¶ 18.) This “suggestion” was not put forth to male
4 employees. (*Ibid.*)

5 Over the last six-plus months, Plaintiff and other aggrieved employees filed ethics
6 complaints and reports with Defendant, raising concerns about wage disparity and a disparity in
7 treatment between male and female employees. (FAC, ¶ 19.) Specifically, Plaintiff and
8 aggrieved employees reported: (1) they were unjustly receiving negative performance ratings in
9 early 2020; (2) they did not receive earned bonus payments; (3) they were having their job duties
10 removed from them in favor of male counterparts; (4) they were being ignored and sabotaged in
11 their efforts to complete their job duties; and (5) they regularly did not receive credit for work
12 performed and, in some cases, credit was directly misattributed to male co-workers. (*Ibid.*)
13 Their efforts were ignored, and in some cases, their reports were followed by layoffs in April and
14 June 2020. (*Id.*, ¶ 20.)

15 **C. Claims Asserted in the FAC and PAGA Notice Letters**

16 Based on these allegations, Plaintiff asserts the following claims against Defendant on an
17 individual basis: (1) violation of California’s Equal Pay Act; (2) retaliation in violation of Labor
18 Code section 1102.5; (3) retaliation in violation of Labor Code section 98.6; (4) discrimination
19 based on gender/sex in violation of Government Code section 12490 et seq. (the Fair
20 Employment and Housing Act or “FEHA”); (5) retaliation in violation of FEHA; (6) failure to
21 prevent discrimination/retaliation in violation of FEHA; and (7) wrongful discharge in violation
22 of public policy. In addition, Plaintiff brings: (8) a representative claim under PAGA for
23 violation of Labor Code sections 1197.5 (the California Fair Pay Act), 1102.5, and 98.6; and (9)
24 a claim for unfair competition.

25 On April 12, 2022, Plaintiff filed an amended PAGA notice letter asserting an additional
26 representative allegation that AAI violated Labor Code section 432.3 by considering prior salary
27 history in determining the starting pay for new hires. Plaintiff has not amended her FAC to add
28 this claim, but has stated she would do so if the action continued.

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 Labor and Workforce Development Agency (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 aggrieved employees, who would be bound by a judgment in an action brought by the government. (*Id.* at p. 381.)

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

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

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

7 **III. PLAINTIFF’S INVESTIGATION, SETTLEMENT PROCESS, AND THE** 8 **PARTIES’ AGREEMENT**

9 In April 2021, Defendant filed a demurrer to and motion to strike portions of the FAC,
10 arguing, among other things, that Plaintiff’s PAGA claims were unmanageable due to the
11 individualized assessment required to determine liability as to each putatively aggrieved
12 employee. In an order filed in June 2021, the Court declined to dismiss the PAGA claims at the
13 pleading stage. However, it noted “AAI’s legitimate concerns about the manageability of the
14 specific claims at issue” and stated that the aggrieved employee definition was “almost certainly
15 overbroad,” observing that AAI could “seek Court intervention to address these concerns as the
16 case proceeds.” (June 1, 2021 Order, p. 7.)

17 The action proceeded to formal discovery. Plaintiff propounded three sets of requests for
18 production, two sets of form interrogatories, and two sets of special interrogatories. She
19 obtained personnel, compensation, and performance records for herself as well as companywide
20 documents, such as bonus plans, salary setting and review trainings, equity plans, employee
21 handbooks, policy and training documents, internal complaint information, and information
22 regarding employee terminations. Plaintiff also responded to 74 requests for production of
23 documents, 32 special interrogatories, and 29 form interrogatories. This required review of
24 several thousand pages of documents and the production of over 400 pages of responsive
25 documents. The parties engaged in multiple rounds of meet and confer over this written
26 discovery. In addition, Plaintiff sat for a deposition over two days, and the parties engaged in
27 more meet and confer about that deposition.
28

1 The parties exchanged more data in connection with mediation, including pay period and
2 payroll statistics for aggrieved employees. Defendant produced anonymized compensation and
3 termination data for the employees and their alleged male comparators. While the majority of
4 the litigation focused on issues relating to Plaintiff's individual claims and her status as an
5 aggrieved employee, the parties had all the information necessary to evaluate the strengths and
6 weaknesses of the PAGA claims, including merits issues, damages, the scope and configuration
7 of the aggrieved employees, the content and implementation of the policies and practices at
8 issue, and issues relating to manageability. This allowed Plaintiff to create an accurate damages
9 model to assess the reasonableness of any PAGA settlement. After a full day of mediation with
10 Lisa Klerman, the parties were able to resolve both Plaintiff's individual claims and the PAGA
11 claims based on a mediator's proposal.

12 Under that settlement, Defendant will pay a gross amount of \$35,000. \$10,000 in
13 attorney fees, litigation costs of up to \$7,000, and \$3,000 in administrative costs will also be
14 deducted. The net settlement of approximately \$15,000 will be distributed 75 percent (\$11,250)
15 to the LWDA and 25 percent (\$3,750) to the aggrieved employees based on their pay periods
16 worked during the PAGA period.

17 The aggrieved employees are defined as "all current and former California based, female
18 employees at the Vice President level and below in the Marketing Department of AAI who
19 worked between August 19, 2019, and either (1) the date that the Court enters an Order
20 approving this PAGA Settlement Agreement and dismissing the Action, or (2) September 6,
21 2022, whichever date is earlier." The 52 aggrieved employees will receive an average payment
22 of about \$72.

23 In exchange for the settlement, aggrieved employees will release all PAGA claims "that
24 were asserted or that could have been asserted based on the facts alleged in the Action and in the
25 Complaint filed October 26, 2020, the First Amended Complaint filed on March 23, 2021, the
26 LWDA letter filed August 19, 2020, and the Amended LWDA letter filed April 12, 2022,
27 arising between August 19, 2019 through the date the Court issues an order approving this
28 PAGA Settlement Agreement, including but not limited to any and all PAGA claims and any and

1 all civil penalties or other remedies recoverable thereunder arising for alleged violations of
2 California Labor Code § 1197.5 (California Equal Pay Act); California Labor Code § 1102.5
3 (retaliation for reporting a reasonable suspicion of unlawful activity); California Labor Code
4 § 98.6 (discharge, discrimination, or retaliation); California Labor Code § 432.3 (considering
5 prior salary history); as well as any other statute providing for civil penalties for the alleged
6 violations that were asserted or that could have been asserted based on the facts alleged, as well
7 as interest, attorneys' fees and costs based thereon."

8 The release is appropriately tailored to the allegations at issue, and does not release any
9 claims other than those for PAGA penalties. (See *Amaro v. Anaheim Arena Management,*
10 *LLC* (2021) 69 Cal.App.5th 521, 537; *Moniz, supra*, 72 Cal.App.5th at p. 82 [release of "all
11 known and unknown claims under PAGA ... that were or could have been pled based on the
12 allegations of the Complaint" was appropriately approved].)

13 **IV. DISCUSSION**

14 **A. Potential Verdict Value**

15 Plaintiff estimates that the Labor Code section 1197.5 claim is worth a maximum of
16 \$111,400, assuming a violation in every pay period and applying the penalty for an initial
17 violation. The claims for retaliation and discrimination under Labor Code sections 1102.5 and
18 98.6 were valued at \$140,000, assuming a violation for each of the 14 aggrieved employees who
19 were laid off. Finally, the claim for violation of Labor Code section 432.5 by considering prior
20 compensation history was valued at \$211,600. Thus, the maximum value of the PAGA claims
21 was estimated to be \$463,000. In addition, data produced by Defendant confirms that aggrieved
22 employees who are current employees have seen an increase to their salaries in 2021, and several
23 were promoted after this action was filed. Defendant has conducted pay equity analyses,
24 examined its salary bands, and implemented guardrails and procedures for promotions.
25 Defendant confirmed that it has not and will not inquire about a candidate's prior pay and will
26 comply with the Department of Fair Employment and Housing's reporting requirements.

27 In sum, the settlement represents about 7.6 percent of the maximum value of the case.
28 Granted, the individual payments to aggrieved employees are small. But importantly, this action

1 has furthered PAGA’s purposes to remediate present labor law violations, deter future ones, and
2 maximize enforcement of state labor laws, as evidenced by Defendant’s actions summarized
3 above.

4 Overall, considering the manageability issues previously noted by the Court and the
5 merits and manageability issues discussed in the Declaration of Galen T. Shimoda filed in
6 support of Plaintiff’s motion, as well as the discretionary and uncertain nature of PAGA penalty
7 awards in general, the Court agrees that the settlement is fair to those affected and is genuine,
8 meaningful, and reasonable in light of the statute’s purposes.

9 Finally, Plaintiff discloses that she has settled her individual claims for \$300,000. She
10 estimates that these individual claims have a maximum value of \$713,842. While this settlement
11 achieves a higher portion of the maximum recovery than the PAGA settlement, the Court finds in
12 this unique case that this is appropriate given the unique issues associated with the PAGA
13 claims, particularly with regard to manageability and the Court’s discretion to reduce any
14 penalties that are ultimately awarded.

15 **B. Attorney Fees**

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

25 Here, counsel requests a fee award of \$10,000, or about 29 percent of the gross
26 settlement. This percentage is typical for wage and hour cases, and the Court finds it is
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1 reasonable considering counsel's lodestar of \$60,071.60, resulting in a negative multiplier.² (See
2 *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503-504 [trial court did not abuse
3 its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar
4 resulting in a multiplier of 2.03 to 2.13].) The fees will be allocated 60 percent to Goldstein,
5 Borgen, Dardarian & Ho and 40 percent to Shimoda & Rodriguez Law, PC.

6 **C. Other Costs and Expenses**

7 Counsel's request for litigation costs of \$7,000 also appears reasonable based on the
8 summaries provided and is approved. The \$3,000 allocated to administrative costs is also
9 approved.

10 **V. ADMINISTRATION PROCESS**

11 The settlement will be funded within 21 calendar days of the effective date. Within 45
12 days of the effective date, the administrator will transmit payment to the LWDA. At the same
13 time, the administrator will issue payments to aggrieved employees, accompanied by an
14 explanatory notice, after updating their addresses based on a search of the National Change of
15 Address database. Any checks returned as non-deliverable will be re-mailed to any updated
16 address located through one search using the employees' Social Security Number. Checks will
17 remain negotiable for 90 days and funds associated with settlement checks remaining uncashed
18 after that point will be sent to the California State Controller's Office's Unclaimed Property
19 Division to be held as unclaimed funds in the aggrieved employees' names.

20 These administrative procedures are appropriate and are approved.

21 **VI. ORDER AND JUDGMENT**

22 In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND
23 DECREED THAT:

24 Plaintiff's motion for approval of the parties' PAGA settlement is GRANTED. The
25 aggrieved employees are: "all current and former California based, female employees at the Vice
26 President level and below in the Marketing Department of AAI who worked between August 19,

27 ² Counsel's combined total lodestar is \$437,423.50, but they estimate that only \$60,071.60 was
28 incurred in connection with the PAGA claims, with the remainder arising from Plaintiff's
individual claims.

2019, and either (1) the date that the Court enters an Order approving this PAGA Settlement Agreement and dismissing the Action; or (2) September 6, 2022, whichever date is earlier.”

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiff shall take from her complaint only the relief set forth in the parties’ settlement agreements and this order and judgment. The Court retains jurisdiction over the parties to enforce the terms of the PAGA settlement agreement and the final order and judgment.

The Court sets a compliance hearing for **April 13, 2023 at 2:30 P.M.** in Department 1. At least ten court days before the hearing, Plaintiff’s counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted to the Controller’s Office; the status of any unresolved issues; and any other matters appropriate to bring to the Court’s attention. Counsel may appear at the compliance hearing remotely.

IT IS SO ORDERED.

Date: September 6, 2022



The Honorable Sunil R. Kulkarni
Judge of the Superior Court