

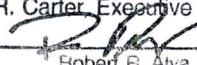
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3 **Superior Court of California**

4 **County of Los Angeles**

5 **Department 50**

FILED
Superior Court of California
County of Los Angeles

NOV 03 2021

Sherri R. Carter, Executive Officer/Clerk
By  Deputy
Robert R. Alva

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7 ISMAEL FRANCISCO,

8 Plaintiff,

9 vs.

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11 UNITED CONVALESCENT FACILITIES,
12 INC. dba UNIVERSITY PARK
13 HEALTHCARE CENTER, et al.,

14 Defendants.

Case No.: 20STCV33493

Hearing Date: November 3, 2021

Hearing Time: 10:00 a.m.

ORDER RE:

MOTION FOR APPROVAL OF PAGA
SETTLEMENT

15
16 **Background**

17 Plaintiff Ismael Francisco filed this action against Defendant United Convalescent
18 Facilities, Inc. dba University Park Healthcare Center on September 1, 2020. On November 19,
19 2020, Plaintiff filed a First Amended Complaint against Defendant asserting a cause of action
20 under the Labor Code Private Attorneys General Act of 2004 ("PAGA").

21 Plaintiff and Defendant have reached a settlement of the PAGA claim. Plaintiff now
22 moves for court approval of the settlement. The motion is unopposed.

23 **Discussion**

24 A superior court must "review and approve any settlement of any civil action filed
25 pursuant to this part." (Lab. Code, § 2699, subd. (1)(2).)
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1 The Court notes that though there is no statutory or common law standard for approval of
2 a PAGA settlement, the standard used for approval of class action settlements is instructive.
3 “[A] presumption of fairness exists where: (1) the settlement is reached through arm’s-length
4 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
5 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
6 is small.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The last factor, small
7 percentage of objectors, is inapplicable to PAGA claims. (*See Arias v. Superior Court* (2009) 46
8 Cal.4th 969, 984-985 [rejecting the argument that representative actions under PAGA violate the
9 due process rights of “nonparty aggrieved employees who are not given notice of, and an
10 opportunity to be heard”].) Additional factors that are useful to consider include the strength of a
11 plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the amount
12 offered in settlement, the extent of discovery completed, and the experience and views of
13 counsel. (*See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.)

14 The gross settlement amount is \$100,000.00. (Bradley Decl., ¶ 59, Ex. 1, § III, ¶ 2.)
15 The Settlement Agreement provides that Plaintiff’s counsel shall request and Defendant and
16 Defendant’s counsel shall not oppose a fee request of 33 and 1/3% of the gross settlement
17 amount. (Bradley Decl., ¶ 59, Ex. 1, § III, ¶ 4.) Plaintiff’s counsel shall also be reimbursed for
18 reasonable litigation costs, not to exceed \$10,000.00. (Bradley Decl., ¶ 59, Ex. 1, § III, ¶ 5.)
19 Settlement administration costs are not to exceed \$7,500.00 and shall be paid from the gross
20 settlement amount. (Bradley Decl., ¶ 59, Ex. 1, § III, ¶ 7.) The Settlement Agreement provides
21 that Plaintiff’s counsel shall request and Defendant and Defendant’s counsel shall not oppose an
22 incentive award of \$5,000.00 to Plaintiff. (Bradley Decl., ¶ 59, Ex. 1, § III, ¶ 6.) 75% of the
23 remaining net settlement amount will be paid to the LWDA. (Bradley Decl., ¶ 59, Ex. 1, § III, ¶
24 3.) The aggrieved employees will receive the remaining 25% of the net settlement amount.
25 (*Ibid.*)

26 The Court finds that the settlement terms conform with the requirements set forth Labor
27 Code section 2699, subdivision (i). Based on a review of the settlement agreement and the
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1 declarations submitted in support, the Court is satisfied that the settlement is fair, just, and
2 reasonable. Both sides were represented by counsel. The parties participated in a full-day
3 mediation on August 24, 2021. (Bradley Decl., ¶ 7.) At the close of the mediation, the parties
4 executed a memorandum of understanding to memorialize their agreement. (Bradley Decl., ¶ 7.)
5 Over the next several weeks, the parties negotiated the remaining details of the settlement and
6 finalized a long-form settlement agreement, among the other settlement documents that the
7 parties now submit to the Court. (Bradley Decl., ¶ 8.)

8 Plaintiff's counsel estimated that outside exposure for PAGA penalties that would be
9 awarded if successful at trial on all of their underlying allegations would be a maximum of
10 approximately \$3,220,950. (Bradley Decl., ¶ 9.) However, Plaintiff asserts this figure is based on
11 Plaintiff's assessment of a best-case-scenario. (*Ibid.*) To have obtained such a result at trial,
12 Plaintiff would have had to prove the aggrieved employees worked off-the-clock and were
13 denied at least one compliant rest period on every pay period as well, all of which Defendant
14 strongly disputed. (*Ibid.*) Plaintiff asserts that given there are only 4,400 pay periods on the
15 PAGA period, the PAGA damages if paid at a \$100 penalty and the in the absence of stacking
16 the exposure, would be closer to \$1.7 million. (*Ibid.*) Plaintiff asserts he also faced the risk that
17 he would not be able to prove liability on the merits based on "pattern and practice" evidence,
18 without being able to point to written policies that were, by themselves, contrary to law. (Bradley
19 Decl., ¶ 13.) For example, Defendant argued that to establish liability for rest period violations,
20 individualized inquiries would likely be necessary to determine if the potential violation occurred
21 due to an employee's personal choice or for some other reason. (*Ibid.*)

22 "The proposed settlement shall be submitted to the [Labor and Workforce Development
23 Agency] at the same time that it is submitted to the court." (Lab. Code, § 2699(1)(2).) The Court
24 finds that notice of the settlement has been provided to the LWDA. (Bradley Decl., ¶ 61, Ex. 3.)

25 A prevailing employee is entitled to an award of reasonable attorney fees and costs
26 incurred in the action. (Lab. Code, § 2699, (g)(1).) California Rules of Court, rule 3.769(b)
27 requires that "[a]ny agreement...with respect to the payment of attorney's fees or the submission
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1 of an application for the approval of attorney's fees must be set forth in full in any application for
2 approval of the dismissal or settlement of an action that has been certified as a class action."
3 Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and
4 responsibility to review the attorney fee provision of the settlement agreement and award only so
5 much as it determined reasonable." (*Garabedian v. Los Angeles Cellular Telephone Co.* (2004)
6 118 Cal.App.4th 123, 128.). Plaintiff seeks a total attorneys' fee award of \$33,333.33. (Bradley
7 Decl., ¶ 21.) Plaintiff submits that the amount for attorney's fees is reasonable under the lodestar
8 method. Plaintiff's counsel asserts that as of October 11, 2021, the lodestar amount for the fees
9 incurred by his firm is approximately \$71,320. (Bradley Decl., ¶¶ 21, 43.) In addition, Plaintiff
10 contends that the attorney's fees to be paid to Plaintiff's counsel is reasonable because it
11 represents one-third of the total settlement. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th
12 480, 503 [holding that "use of the percentage method to calculate a fee in a common fund case,
13 where the award serves to spread the attorney fee among all the beneficiaries of the fund, does
14 not in itself constitute an abuse of discretion"].)

15 Plaintiff also seeks costs in the amount of \$7,822.95. (Bradley Decl., ¶ 21; ¶ 51, Ex. 2.)
16 Plaintiff's counsel asserts that the costs incurred by Plaintiff's firm consist of filing fees, court
17 fees, service of process fees, and mediation fees. (Bradley Decl., ¶ 51, Ex. 2., ¶ 52.)

18 Based on the foregoing, the Court finds that the payment of \$33,333.33 in attorney's fees
19 and \$7,822.95 in costs is reasonable. The Court also finds that the amount requested for
20 administration of the settlement (\$4,923.75) is reasonable. (Hartranft Decl., ¶ 5, Ex. B; ¶ 6.)
21 Lastly, the Court finds that the amount requested for Plaintiff's incentive payment (\$5,000) is
22 reasonable based on the facts set forth in Plaintiff's declaration.

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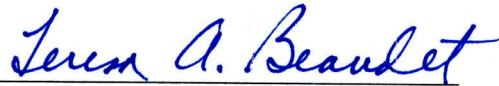
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1 **Conclusion**

2 Based on the foregoing, the Court grants the motion and will sign the proposed order and
3 judgment.

4 Plaintiff is ordered to give notice of this Order.

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6 DATED: November 3, 2021



Hon. Teresa A. Beaudet
Judge, Los Angeles Superior Court