FILED
August 8, 2025
Clerk of the Court
Superior Court of CA
County of Santa Clara

21CV376396
By: MJacobo

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

JEANINE WILSON, an individual, on behalf of the State of California, as a private attorney general, Plaintiff, v. SUNCREST HOSPICE SAN JOSE LLC, et al., Defendants.	Case No. 21CV376396 **ORDER GRANTING PLAINTIFF'S MOTION FOR APPROVAL OF PAGA SETTLEMENT**

This is an action under the Private Attorneys General Act ("PAGA"). Plaintiff Jeanine Wilson alleges that defendants Suncrest Hospice San Jose, LLC and Suncrest Hospice Sacramento, LLC (collectively, "Defendants") committed wage and hour violations.

Before the Court is Plaintiff's motion to approval PAGA settlement, which is unopposed. As discussed below, the Court GRANTS the motion.

I. BACKGROUND

According to the allegations of the operative First Amended Complaint ("FAC"), Plaintiff worked for Defendants as a non-exempt, hourly paid employee in California for December 2019 to September 17, 2020. (FAC, ¶ 8.) She alleges that she and other employees were not paid for all time worked, including time worked during supposedly off-duty meal breaks. (FAC, ¶ 13.) Specifically, Plaintiff was interrupted by work assignments while clocked out for meal breaks, and she and other employees would clock out in order to perform additional work necessary to meet Defendants' job requirements. (*Ibid*.) Plaintiff and other employees were also underpaid due to Defendants' pattern and practice of unevenly rounding their time. (*Ibid*.) Plaintiff and other employees suffered meal and rest period violations due to these practices and Defendants' failure to maintain adequate staffing levels while increasing the production levels for each employee. (*Id.,* ¶¶ 14-15.) Defendants' policy improperly restricted employees from unconstrained walks by requiring them to remain on premises during their rest periods. (*Id*., ¶ 15.)

In addition, Defendants failed to include non-discretionary incentive compensation in the "regular rate of pay" used to calculate overtime and sick pay. (*Id*., ¶ 17.) They failed to provide complete and accurate wage statements reflecting the correct gross and net wages earned, and identifying the correct rates of pay and hours worked, including for "Hazardous Pay." (*Id*., ¶ 19.) Defendants sometimes failed to pay employees all wages owed within 7 days of the close of the payroll period as required by Labor Code section 204. (*Id*., ¶ 20.)

Plaintiff commenced this action with the filing of the complaint on February 23, 2021, and on June 4, 2021, she filed her operative FAC, which asserts a single claim for PAGA penalties for various wage and hour violations.

II. LEGAL STANDARD FOR APPROVING 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) 596 U.S. 639, 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*).)

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

III. PLAINTIFF'S INVESTIGATION, SETTLEMENT PROCESS, AND THE PARTIES' AGREEMENT

On October 16, 2020, Plaintiff's counsel sent the necessary correspondence to the Labor & Workforce Development Agency ("LWDA"). On February 23, 2021, Plaintiff filed the initial complaint and on June 4, 2021, she filed her operative FAC.

The parties exchanged informal discovery and Defendants produced hundreds of pages of documents relating to Defendants' policies, practices, and procedures regarding paying non-exempt employees for all hours worked, overtime, meal and rest period policies, payroll and operations policies, and more. Plaintiff received sufficient records and data to determine the number of Aggrieved Employees and the number of pay periods in the PAGA Period. On December 13, 2024, the parties engaged in an all-day mediation with Steve Serratore, Esq., a respected and experienced mediator knowledgeable of both the wage and hour laws and representative claims at issue in this action. With his assistance, the parties reached an agreement to settle the PAGA claims in this action and they signed a memorandum of understanding.

Pursuant to the parties' agreement, Defendants will pay a non-reversionary gross settlement amount of $1,335,000, which is comprised of up to $445,000 in attorneys' fees, $60,000 in litigation costs, and $8,600 in administration costs. The net settlement is $821,400, which will be distributed 75% ($616,050) to the LWDA and 25% ($205,350) will be paid to "Aggrieved Employees" who are defined as "all individuals who are or previously were employed by Defendants in California and classified as non-exempt employee at any time during the PAGA Period."[1] It is estimated there are approximately 1,241 employees who worked approximately 39,951 PAGA Pay Periods during the PAGA Period.

In exchange for settlement, Aggrieved Employees will release:

> All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administration, successors, and assigns, the Released Parties from all "Released PAGA Claims."[2]

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[1] The "PAGA Period" is from October 16, 2019 to February 13, 2025.

[2] "Released PAGA Claims" are defined as "all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, and/or the PAGA Notices submitted by Plaintiff to the LWDA, which occurred during the PAGA Period, and expressly excluding all other claims, including the Individual Settlements which are subject to separate releases, claims for vested benefits, wrongful

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

IV. DISCUSSION

A. Potential Verdict Value

Plaintiff contends the PAGA settlement fairly and reasonably resolves the PAGA claims on behalf of 1,241 Aggrieved Employees. Plaintiff's counsel engaged an expert and with their help calculated that the maximum amount of statutory PAGA civil penalties was potentially $2,995,100 based on 39,951 pay periods in the applicable PAGA period. Plaintiff's counsel then considered the possibility that the Court could exercise its discretion and reduce the amount; and Defendant's defenses to liability and amount of penalties.

The settlement amount of $1,335,000 represents approximately 33.4% of the estimated amount of statutory PAGA civil penalties. Given this, as well as the risks attendant to proceeding to trial, Defendants' insistence that any violations were not willful and the likelihood that PAGA penalties would be significantly reduced in line with numerous appellate decisions, the Court finds that the proposed settlement is fair to those affected and is genuine, meaningful, and reasonable in light of the statute's purposes.

B. Attorney Fees

While the PAGA statute does not expressly require judicial review of claimed attorney fees, the Court believes it cannot adequately fulfill its statutory duty to review the penalties associated with PAGA settlements without also considering attorney fees. The Court thus finds that it must scrutinize the attorney fee arrangement associated with a PAGA settlement. This is consistent with the observation of many courts that PAGA claims are analogous to "*qui tam*"

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termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, and California class claims, and Plaintiffs individual claims that are subject to a separate release, and PAGA claims outside of the PAGA period."

suits like those under the federal False Claims Act: when reviewing settlements of *qui tam* claims, courts should and do consider any associated attorney fee arrangement. (See *U.S. v. Texas Instruments Corp.* (9th Cir. 1994) 25 F.3d 725, 728 [attorney fee award must be considered by the trial court as part of its review of the "entire settlement arrangement"].)

As articulated above, Plaintiff seeks a fee award of $445,000 in attorney's fees. Plaintiff submits a lodestar figure of $234,796.25 based on 347 hours of work at billing rates of $250 to $950 per hour, resulting in a positive multiplier of 1.89. This is within the range of multipliers that courts typically approve. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements finding "a range of 0.6–19.6, with 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 range"].)

Here, given the work performed by Plaintiff's counsel, and because the requested multiplier sought by them is within the range of multipliers regularly approved by California courts in similar actions, the Court finds counsel's requested fee award is reasonable and therefore it is approved.

C. Other Costs and Expenses

Counsel's request for litigation costs of $42,601.22 is less than the $60,000 allowed for in the agreement. The request appears reasonable based on the supporting declaration provided which establish that counsel actually incurred costs in this amount and is approved. Administration costs of $7,800 to ILYM Group, Inc. ("ILYM") are also approved.

V. ADMINISTRATION PROCESS

Pursuant to the terms of the Settlement Agreement, within fourteen (14) days of the effective date, Defendant will deliver the Aggrieved Employee days to ILYM. Within fourteen (14) days of funding of the settlement, ILYM will mail checks for all individual PAGA payments, the LWDA PAGA payments, the administration expenses payment, the service award and PAGA counsel's expenses payment. Each Aggrieved Employee will be sent a check in the appropriate amount. Any checks returned as non-deliverable will promptly be re-mailed to the forwarding address provided; if none is, ILYM will attempt to locate one using a skip-trace or other search method. Any checks returned as undeliverable or that remain uncashed after 180 days will be transmitted to the State Controller's Unclaimed Property Fund. These administrative procedures are appropriate and are approved.

VI. ORDER AND JUDGMENT

Plaintiff's motion for approval of the parties' PAGA settlement is GRANTED. The covered individuals are: All individuals who are or previously were employed by Defendants in California and classified as non-exempt employee at any time during the PAGA Period.

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiff and the Aggrieved Employees shall take from the PAGA claim in their FAC only the relief set forth in the parties' settlement agreement 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 2, 2026 at 2:30 P.M.** in Department 7. 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 the State Controller's Unclaimed Property Fund; 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: August 8, 2025

Charles F. Adams

CHARLES F. ADAMS
Judge of the Superior Court