

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

ERIN DUARTE, et al.,

Plaintiffs,

v.

SAGE VETERINARY CENTERS, LP, et al.

Defendants.

Case No.: 20CV375152

**ORDER CONCERNING PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS/PAGA
SETTLEMENT**

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiffs allege that Defendant Sage Veterinary Centers, LP failed to properly calculate overtime, did not pay employees for off-the-clock work, failed to provide duty-free meal and rest breaks, and committed other wage and hour violations.

Now before the Court is Plaintiffs' motion for preliminary approval of a settlement, which is unopposed. The Court issued a tentative ruling on October 18, 2022, and no one contested it at the hearing on October 20. The Court now issues its final order, which GRANTS preliminary approval.

I. BACKGROUND

Plaintiffs were employed by Defendant during the class period as non-exempt employees. (Second Amended Class Action Complaint ("SAC"), ¶ 12.) They allege that they and other

1 employees were paid overtime based on their base hourly wage rather than their regular rate of
2 pay as required by law. (*Id.*, ¶ 23.) They worked off-the-clock, including as a result of
3 Defendant’s unlawful donning and doffing policy. (*Id.*, ¶ 24.) Due to the demands of the job,
4 they were not provided with duty-free rest and meal periods. (*Id.*, ¶¶ 25–34.) As a result of
5 these other violations, Defendant failed to keep accurate payroll records, to provide accurate
6 wage statements, and to pay wages when owed and upon discharge. (*Id.*, ¶¶ 35–38, 42–50.) And
7 Defendant failed to reimburse employees for business expenses associated with their use of their
8 personal cell phones for work. (*Id.*, ¶¶ 39–41.) Finally, Defendant failed to provide separate
9 suitable facilities for employees to change their clothing in reasonable privacy and comfort, as
10 well as a place to store their non-work clothing. (*Id.*, ¶ 51.)

11 Based on these allegations, Plaintiffs assert the following putative class claims: (1)
12 failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide rest
13 periods; (4) failure to provide meal periods; (5) failure to maintain accurate employment records;
14 (6) failure to timely pay wages; (7) failure to reimburse business expenses; (8) failure to provide
15 accurate itemized wage statements; and (9) failure to timely pay final wages; as well as (10) a
16 representative claim for PAGA penalties. Plaintiffs also bring (11) a putative class claim for
17 Unfair Competition Law violations.

18 Plaintiffs now move for an order preliminarily approving the settlement of the class and
19 PAGA claims, provisionally certifying the settlement class, approving the form and method for
20 providing notice to the class, and scheduling a final fairness hearing.

21 **II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL**

22 **A. Class Action**

23 Generally, “questions whether a [class action] settlement was fair and reasonable,
24 whether notice to the class was adequate, whether certification of the class was proper, and
25 whether the attorney fee award was proper are matters addressed to the trial court’s broad
26 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
27 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
28 260.)

1 In determining whether a class settlement is fair, adequate and reasonable, the
2 trial court should consider relevant factors, such as the strength of plaintiffs’ case,
3 the risk, expense, complexity and likely duration of further litigation, the risk of
4 maintaining class action status through trial, the amount offered in settlement, the
5 extent of discovery completed and the stage of the proceedings, the experience
6 and views of counsel, the presence of a governmental participant, and the reaction
7 of the class members to the proposed settlement.

8 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

9 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
10 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
11 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
12 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
13 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
14 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
15 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
16 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
17 marks omitted.) The trial court also must independently confirm that “the consideration being
18 received for the release of the class members’ claims is reasonable in light of the strengths and
19 weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168
20 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be
21 “provided with basic information about the nature and magnitude of the claims in question and
22 the basis for concluding that the consideration being paid for the release of those claims
23 represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

24 **B. PAGA**

25 Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall
26 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
27 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
28 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA

1 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
2 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
3 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*
4 *Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940 (*Viking River*).)

5 Similar to its review of class action settlements, the Court must “determine independently
6 whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the
7 LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72
8 Cal.App.5th 56, 76–77.) It must make this assessment “in view of PAGA’s purposes to
9 remediate present labor law violations, deter future ones, and to maximize enforcement of state
10 labor laws.” (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383
11 F. Supp. 3d 959, 971 [“when a PAGA claim is settled, the relief provided for under the PAGA
12 [should] be genuine and meaningful, consistent with the underlying purpose of the statute to
13 benefit the public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies,*
14 *Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

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

21 **III. SETTLEMENT PROCESS**

22 According to Plaintiffs’ counsel, Plaintiffs have conducted informal discovery and
23 investigation including: (a) numerous telephonic conferences with Plaintiffs; (b) inspection and
24 analysis of documents and other information produced by Plaintiffs and/or Defendant including
25 time sheets, wage statements, and relevant employment policies; (c) analysis of the legal
26 positions and defenses taken by Defendant; (d) investigation into the viability of class treatment
27 and representative nature of the claims asserted in the Action; (e) analysis of potential class-wide
28 damages, including information sufficient to understand Defendant’s potential defenses;

1 (f) research of the law governing the claims and defenses in the case; and (g) assembling and
2 analyzing data for calculating damages.

3 Ultimately, the parties agreed to attend a private mediation on March 17, 2022 before
4 Mark S. Rudy, and were able were able to fully resolve the case.

5 **IV. SETTLEMENT PROVISIONS**

6 The non-reversionary gross settlement amount is \$1,300,000. Attorney fees of up to
7 \$433,290 (a little less than one-third of the gross settlement), litigation costs of up to \$16,000,
8 and \$20,000 in administration costs will be paid from the gross settlement. \$50,000 will be
9 allocated to PAGA penalties, 75 percent of which (\$37,500) will be paid to the LWDA. The
10 named plaintiffs will seek incentive awards of \$7,500 each, for a total of \$15,000.

11 The net settlement, approximately \$778,210, will be allocated to settlement class
12 members proportionally based on their weeks worked during the class/PAGA periods. By the
13 Court's calculation, the average payment will be around \$624.57 to each of the 1,246 class
14 members. Class members will not be required to submit a claim to receive their payments. For
15 tax purposes, settlement payments will be allocated 20 percent to wages and 80 percent to
16 penalties and interest. The employer's share of taxes will be paid separately from the gross
17 settlement. Funds associated with checks uncashed after 180 days will be paid to the California
18 State Controller for deposit in the Unclaimed Property Fund in the name of the appropriate
19 individual.

20 In exchange for the settlement, class members who do not opt out will release "claims
21 arising out of or related to the allegations set forth in the Complaint, First Amended Complaint,
22 and/or Second Amended Complaint, and PAGA notices to the LWDA, which arose during the
23 Class Period, including but not limited to" specified wage and hour claims. The release is
24 appropriately tailored to the allegations at issue. (See *Amaro v. Anaheim Arena Management,*
25 *LLC* (2021) 69 Cal.App.5th 521, 537.) Consistent with the statute, aggrieved employees will not
26 be able to opt out of the PAGA portion of the settlement.

1 **V. FAIRNESS OF SETTLEMENT**

2 As discussed in more detail in the Declaration of Jonathan Melmed filed in support of
3 Plaintiffs' motion, Plaintiffs valued the claims in this action as follows. The minimum wage
4 claims, based on both rounding and off-the-clock donning and doffing theories, were valued at
5 \$2,059,136.62. The overtime claims, based on miscalculation of the regular rate of pay, were
6 estimated at \$80,932. The rest period claims were valued at \$9,610,807.80, and the meal period
7 claims at \$7,455,101.72. Plaintiffs estimated that the unreimbursed business expenses associated
8 with cell phone use total \$265,740. The core claims were accordingly valued at \$19,471,718.10.

9 In addition, Plaintiffs estimated that wage statement penalties could total \$1,971,800,
10 waiting time penalties could total \$2,563,622.40, and PAGA penalties could be worth up to
11 \$2,202,100 (without "stacking" multiple violations). By this estimate, the maximum total value
12 of the case is \$26,209,240.50. The settlement accordingly represents about 5 percent of the
13 maximum value of the case, or about 6.7 percent of the maximum value of the core claims.

14 While on the low side of what the Court would approve, the Court believes the settlement
15 is a reasonable compromise based on the thorough analysis provided in Plaintiffs' moving
16 papers. Notably, the meal and rest period claims that account for much of the action's value
17 would be challenging to certify and prove on a classwide basis. In addition, many of the putative
18 class members executed on-duty meal agreements, and the recovery of penalties is uncertain. So
19 for purposes of preliminary approval, the Court finds that the settlement is fair and reasonable to
20 the class, and the PAGA allocation is genuine, meaningful, and reasonable in light of the
21 statute's purposes.

22 Of course, the Court retains an independent right and responsibility to review the
23 requested attorney fees and award only so much as it determines to be reasonable. (See
24 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127–128.)
25 Counsel shall submit lodestar information before the final approval hearing in this matter so the
26 Court can compare the lodestar information with the requested fees. (See *Laffitte v. Robert Half*
27 *Intern. Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to double-check the
28 reasonableness of a percentage fee through a lodestar calculation].)

1 **VI. PROPOSED SETTLEMENT CLASS**

2 Plaintiffs request that the following settlement class be provisionally certified:
3 all individuals who are or were employed as non-exempt employees by Defendant
4 in California during the Class Period [(December 29, 2016, through August 24,
5 2022)].

6 **A. Legal Standard for Certifying a Class for Settlement Purposes**

7 Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an order
8 approving or denying certification of a provisional settlement class after [a] preliminary
9 settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a
10 class “when the question is one of a common or general interest, of many persons, or when the
11 parties are numerous, and it is impracticable to bring them all before the court”

12 Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence:
13 (1) an ascertainable class and (2) a well-defined community of interest among the class
14 members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332 (*Sav-On*
15 *Drug Stores*)). “Other relevant considerations include the probability that each class member
16 will come forward ultimately to prove his or her separate claim to a portion of the total recovery
17 and whether the class approach would actually serve to deter and redress alleged wrongdoing.”
18 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of
19 establishing that class treatment will yield “substantial benefits” to both “the litigants and to the
20 court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

21 In the settlement context, “the court’s evaluation of the certification issues is somewhat
22 different from its consideration of certification issues when the class action has not yet settled.”
23 (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the
24 settlement-only context, the case management issues inherent in the ascertainable class
25 determination need not be confronted, and the court’s review is more lenient in this respect. (*Id.*
26 at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or
27 overbroad class definitions require heightened scrutiny in the settlement-only class context, since
28 the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

1 **B. Ascertainable Class**

2 A class is ascertainable “when it is defined in terms of objective characteristics and
3 common transactional facts that make the ultimate identification of class members possible when
4 that identification becomes necessary.” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980
5 (*Noel*.) A class definition satisfying these requirements

6 puts members of the class on notice that their rights may be adjudicated in the
7 proceeding, so they must decide whether to intervene, opt out, or do nothing and
8 live with the consequences. This kind of class definition also advances due
9 process by supplying a concrete basis for determining who will and will not be
10 bound by (or benefit from) any judgment.

11 (*Noel, supra*, 7 Cal.5th at p. 980, citation omitted.)

12 “As a rule, a representative plaintiff in a class action need not introduce evidence
13 establishing how notice of the action will be communicated to individual class members in order
14 to show an ascertainable class.” (*Noel, supra*, 7 Cal.5th at p. 984.) Still, it has long been held
15 that “[c]lass members are ‘ascertainable’ where they may be readily identified ... by reference to
16 official records.” (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932, disapproved of on
17 another ground by *Noel, supra*, 7 Cal.5th 955; see also *Cohen v. DIRECTV, Inc.* (2009) 178
18 Cal.App.4th 966, 975-976 [“The defined class of all HD Package subscribers is precise, with
19 objective characteristics and transactional parameters, and can be determined by DIRECTV’s
20 own account records. No more is needed.”].)

21 Here, the estimated 1,246 class members are readily identifiable based on Defendants’
22 records, and the settlement class is appropriately defined based on objective characteristics. The
23 Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

24 **C. Community of Interest**

25 The “community-of-interest” requirement encompasses three factors: (1) predominant
26 questions of law or fact, (2) class representatives with claims or defenses typical of the class, and
27 (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, supra*, 34
28 Cal.4th at pp. 326, 332.)

1 For the first community of interest factor, “[i]n order to determine whether common
2 questions of fact predominate the trial court must examine the issues framed by the pleadings
3 and the law applicable to the causes of action alleged.” (*Hicks v. Kaufman & Broad Home Corp.*
4 (2001) 89 Cal.App.4th 908, 916 (*Hicks*).) The court must also examine evidence of any conflict
5 of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court*
6 (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be
7 jointly tried, when compared with those requiring separate adjudication, are so numerous or
8 substantial that the maintenance of a class action would be good for the judicial process and to
9 the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105
10 (*Lockheed Martin*).) “As a general rule if the defendant’s liability can be determined by facts
11 common to all members of the class, a class will be certified even if the members must
12 individually prove their damages.” (*Hicks, supra*, 89 Cal.App.4th at p. 916.)

13 Here, common legal and factual issues predominate. Plaintiffs’ claims all arise from
14 Defendant’s wage and hour practices applied to the similarly-situated class members.

15 As to the second factor,

16 The typicality requirement is meant to ensure that the class representative is able
17 to adequately represent the class and focus on common issues. It is only when a
18 defense unique to the class representative will be a major focus of the litigation,
19 or when the class representative’s interests are antagonistic to or in conflict with
20 the objectives of those she purports to represent that denial of class certification is
21 appropriate. But even then, the court should determine if it would be feasible to
22 divide the class into subclasses to eliminate the conflict and allow the class action
23 to be maintained.

24 (*Medraza v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations,
25 brackets, and quotation marks omitted.)

26 Like other members of the class, Plaintiffs were employed by Defendant as non-exempt
27 employees and allege that they experienced the violations at issue. The anticipated defenses are
28

1 not unique to Plaintiffs, and there is no indication that Plaintiffs' interests are otherwise in
2 conflict with those of the class.

3 Finally, adequacy of representation "depends on whether the plaintiff's attorney is
4 qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the
5 interests of the class." (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class
6 representative does not necessarily have to incur all of the damages suffered by each different
7 class member in order to provide adequate representation to the class. (*Wershba, supra*, 91
8 Cal.App.4th at p. 238.) "Differences in individual class members' proof of damages [are] not
9 fatal to class certification. Only a conflict that goes to the very subject matter of the litigation
10 will defeat a party's claim of representative status." (*Ibid.*, internal citations and quotation marks
11 omitted.)

12 Plaintiffs have the same interest in maintaining this action as any class member would
13 have. Further, they have hired experienced counsel. Plaintiffs have sufficiently demonstrated
14 adequacy of representation.

15 **D. Substantial Benefits of Class Certification**

16 "[A] class action should not be certified unless substantial benefits accrue both to
17 litigants and the courts. . . ." (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120,
18 internal quotation marks omitted.) The question is whether a class action would be superior to
19 individual lawsuits. (*Ibid.*) "Thus, even if questions of law or fact predominate, the lack of
20 superiority provides an alternative ground to deny class certification." (*Ibid.*) Generally, "a
21 class action is proper where it provides small claimants with a method of obtaining redress and
22 when numerous parties suffer injury of insufficient size to warrant individual action." (*Id.* at pp.
23 120–121, internal quotation marks omitted.)

24 Here, there are an estimated 1,246 class members. It would be inefficient for the Court to
25 hear and decide the same issues separately and repeatedly for each class member. Further, it
26 would be cost prohibitive for each class member to file suit individually, as each member would
27 have the potential for little to no monetary recovery. It is clear that a class action provides
28 substantial benefits to both the litigants and the Court in this case.

VII. NOTICE

The content of a class notice is subject to court approval. (Cal. Rules of Court, rule 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of relief requested; (3) The stake of the individual class members; (4) The cost of notifying class members; (5) The resources of the parties; (6) The possible prejudice to class members who do not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule 3.766(e).)

Here, the notice describes the lawsuit, explains the settlement, and instructs class members that they may opt out of the settlement or object. The gross settlement amount and estimated deductions are provided. On a separate form, class members are informed of their qualifying workweeks as reflected in Defendant’s records and are instructed how to dispute this information. The notice makes it clear that class members may appear at the final fairness hearing to make an oral objection without filing a written objection. Class members are given 45 days to request exclusion from the class or submit a written objection to the settlement. And the notice describes how notice of final judgment will be provided to the class.

The notice is generally adequate, but must be modified to instruct class members that they may opt out of or object to the settlement by simply providing their name, without the need to provide their telephone number or other identifying information. Regarding appearances at the final fairness hearing, the notice shall be further modified to instruct class members as follows:

Hearings before the judge overseeing this case will be conducted remotely. (As of August 15, 2022, the Court’s remote platform is Microsoft Teams.) Class members who wish to appear should contact class counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml and

1 should be reviewed in advance. Class members may appear remotely using the
2 Microsoft Teams link for Department 1 (Afternoon Session) or by calling the toll
3 free conference call number for Department 1.

4 Turning to the notice procedure, the parties have selected ILYM Group, Inc. as the
5 settlement administrator. The administrator will mail the notice packet within 28 days of
6 preliminary approval. Any returned notices will be re-mailed to any new or different address
7 obtained through a skip trace search. Class members who receive a re-mailed notice will have at
8 least 14 days to respond.

9 These notice procedures are appropriate and are approved, with the modification that the
10 administrator shall update class members' addresses using the National Change of Address
11 Database before the initial mailing of the notices.

12 **VIII. CONCLUSION**

13 Plaintiffs' motion for preliminary approval is GRANTED, subject to the modifications to
14 the notice and notice procedure stated above. The final approval hearing shall take place
15 on **February 23, 2023** at 1:30 p.m. in Dept. 1. The following class is preliminarily certified for
16 settlement purposes:

17 all individuals who are or were employed as non-exempt employees by Defendant
18 in California during the Class Period [(December 29, 2016, through August 24,
19 2022)].

20 Before final approval, Plaintiffs shall lodge any individual settlement agreements they
21 may have executed in connection with their employment with Defendant for the Court's review.

22 **IT IS SO ORDERED.**

23
24 Date: October 24, 2022

25 
26 _____
27 The Honorable Sunil R. Kulkarni
28 Judge of the Superior Court