

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
(UNLIMITED JURISDICTION)

SIMONETTE VILLENA, on behalf of herself
and as an “aggrieved employee” on behalf of
other “aggrieved employees” under the Labor
Code Private Attorneys General Act of 2004,

Plaintiff,

vs.

MIDWAY VENTURE LLC, a California limited
liability company; PETER BALOV, an
individual; and DOES 1–50, inclusive,

Defendants.

Case No. 37-2021-00005970-CU-OE-CTL

**[PROPOSED] ORDER AND
JUDGMENT APPROVING PAGA
SETTLEMENT**



SPIVAK LAW
EMPLOYEE RIGHTS

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1 On April 13, 2023, the Court issued a Tentative Ruling. Attached as **Exhibit A** please
2 find the Minute Order issued on April 14, 2023, adopting the Tentative Ruling.

3 Having considered the Parties' the First Amended Settlement and Release Agreement
4 ("Agreement" or "PAGA Settlement"), IT IS HEREBY ORDERED THAT:

5 1. To the extent required by Labor Code § 2699(l), the Settlement and its terms
6 represent a reasonable and adequate settlement of highly disputed claims to Plaintiff, the
7 "Aggrieved Employees" (as the term is defined in the First Amended Settlement and Release
8 Agreement), the State of California, Plaintiff's counsel, and Defendant, and is approved.

9 2. Defendant shall pay the "Gross Settlement Amount" (as the term defined in the
10 Settlement) in the amount of \$74,000.00. The Gross Settlement Amount includes: (a) Attorney
11 fees in the amount of \$24,666.67 and litigation costs in the amount of \$9,943.64; (b) "PAGA
12 Penalty Fund" (as the term defined in the First Amended Settlement and Release Agreement)
13 payable to the Aggrieved Employees and the Labor and Workforce Development Agency
14 ("LWDA"); and (c) Settlement Administration Expenses of \$4,700.00 to administer the
15 settlement, in accordance with the procedure as mentioned in the Settlement.

16 3. The allocation of the Settlement payment among the Plaintiff, the Aggrieved
17 Employees, the State of California, the Administrator and Plaintiff's counsel is fair, just,
18 reasonable, adequate, and equitable to all concerned, and is approved to the extent required under
19 Labor Code § 2699(l).

20 4. The settlement is approved on the terms stated in the Settlement.

21 5. Judgment in this matter is entered in accordance with, and incorporates by
22 reference, the terms and conditions of the Settlement. Instead of filing a request for dismissal to
23 terminate this action, this judgment will terminate the action.

24 6. The Settlement is not an admission by Defendant, or any of the "Released Parties"
25 (as the term is defined in the Settlement), nor is this judgment a finding of the validity of any
26 allegations or of any wrongdoing by Defendant or the Released Parties. Neither this judgment,
27 the Settlement, nor any document referred to therein, nor any action taken to carry out the
28 Settlement, may be construed as, or may be used as, an admission of any fault, wrongdoing,
omission, concession, or liability whatsoever by or against Defendant or the Released Parties.



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EXHIBIT A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 04/14/2023

TIME: 01:30:00 PM

DEPT: C-72

JUDICIAL OFFICER PRESIDING: Timothy Taylor

CLERK: Valerie Secaur

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: O. Godoy

CASE NO: **37-2021-00005970-CU-OE-CTL** CASE INIT.DATE: 02/09/2021

CASE TITLE: **Villena vs Balov [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: Simonette Villena

CAUSAL DOCUMENT/DATE FILED: Motion - Other FOR APPROVAL OF PAGA SETTLEMENT,
03/22/2023

EVENT TYPE: Civil Case Management Conference

APPEARANCES

No Appearance by all parties

HEARING ON RENEWED MOTION FOR APPROVAL OF PAGA SETTLEMENT

Prior to calendar call: all parties submit on the Court's tentative ruling.

There are no appearances by any party.

The Court inquires whether anyone present in the courtroom or on Microsoft Teams objects to the settlement in this case. There is no response.

The Court confirms the tentative ruling as follows:

Ruling on Renewed Motion for Approval of PAGA Settlement

Villena v. Balov, Case No. 2021-05970

April 14, 2023, 1:30 p.m., Dept. 72

1. Overview and Procedural Posture.

This is a PAGA case arising out of plaintiff's employment as an exotic dancer at Pacers* for about a year and a half. The complaint was filed in February of 2021, and defendants answered in May. ROA 12. At the due course CMC, the court set the case for trial in October of 2022. ROA 20-25.

Plaintiff sought an order quashing service of a subpoena duces tecum which Pacers served on Déjà Vu (where plaintiff apparently worked several years before she worked at Pacers). ROA 26-30. After full briefing, the court resolved the discovery dispute. ROA 41.

Several months later, the parties announced a settlement (ROA 42) and filed a motion seeking the court's approval thereof. ROA 44-50. The court reviewed the papers, and published a detailed tentative ruling raising several fundamental questions regarding the proposed settlement. ROA 64. Following a hearing on Jan. 6, 2023, the court denied the motion without prejudice and offered the parties an opportunity today to renew their motion. ROA 68-71. The court has reviewed the new briefing. ROA 72-76.

The case is also set for a continued CMC. ROA 69.

2. Applicable Law.

The court incorporates part 2 of the minutes from January 6, 2023 (ROA 70).

3. Discussion and Ruling.

The court incorporates part 3 of the minutes for January 6, 2023 (ROA 70) for comparison purposes. The court discusses the PAGA fairness factors as follows:

1. Strength of plaintiff's case: Plaintiff's counsel estimates that defendant's maximum possible exposure in civil penalties is \$1,250,000. (Spivak Decl., ¶ 14.) However, counsel acknowledges that there were significant risks underlying each of plaintiff's claims. (See *id.* at ¶¶ 15-22.) The very essence of a settlement is compromise, *i.e.*, the "yielding of absolutes and an abandoning of highest hopes." *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242.

2. Expense associated with taking the case to trial, i.e., the avoided cost of further litigation: Plaintiff's counsel estimates that the cost of taking this case to trial would "exceed \$500,000.00 in attorney fees and costs alone." (Spivak Decl., ¶ 27.)

3. Amount or value offered in settlement: The total amount offered in settlement is \$74,000.00. The parties intend to allocate these funds as follows:

- Attorneys' fees: \$24,666.67 to plaintiff's counsel
- Litigation costs/expenses: up to \$10,000.00 to plaintiff's counsel**
- Administration costs: \$4,700.00 to ILYM Group

These deductions result in a net settlement amount of \$34,633.33. After sending 75%, or \$25,974.99, to the LWDA, the 50 aggrieved employees will receive approximately \$8,658.34. This comes out to an average payment of \$173.17 for each aggrieved employee.

4. Extent of discovery completed and state of proceedings: Informal discovery. (Spivak Decl., ¶ 6.) One discovery motion, described in part 1 above.

5. Experience and views of counsel: Plaintiff's counsel claim to have significant experience litigating wage and hour actions, including claims seeking PAGA penalties, and recommend the settlement. (Spivak Decl., ¶¶ 10, 12; Haines Decl., ¶¶ 2, 11.)

6. Presence of a governmental participant: Plaintiff's counsel provided notice of the amended settlement to LWDA on March 22, 2023. (Spivak Decl., ¶ 7; Ex. 6.)

Based on the foregoing, the court finds that the PAGA settlement is fair, adequate, and reasonable in light of PAGA's policies and purposes. Accordingly, the court approves the parties' proposed settlement.

B. Turning to attorneys' fees, the proposal of \$24,666.67 represents one-third of the total settlement amount. According to the declaration of David Spivak, plaintiff's counsel expended 185.58 hours prosecuting this action. (Spivak Decl., Ex. 11.) This results in a blended hourly rate of approximately \$132.92 (\$24,666.67 divided by 185.58), which is well below what would be considered reasonable for attorneys with similar skills and experience in the San Diego community. Moreover, the requested fee award is about \$50,000 **less** than counsel's theoretical lodestar of \$74,455.00 (using their design hourly rates, which are significantly higher than the one calculated by the court immediately above). (*Id.*) Accepting for these purposes the validity of the design rates, the requested fees represent, in effect, a negative multiplier.

The court practiced law in San Diego for 20 years prior to 2005. During this time, the court ran cases, supervised associates, reviewed, sent out and collected bills, and successfully made and resisted fee applications. In addition, since being appointed to the bench in 2005, the undersigned has ruled on hundreds of fee applications in a variety of settings. This experience has allowed the court to gain and retain an understanding of fees charged by attorneys in the community for similar work during the relevant timeframe. Based on this experience, and the evidence submitted with the moving papers, the court finds that \$24,666.67 is reasonable under the circumstances and is hereby granted. *See Nemecek & Cole v. Horn* (2012) 208 Cal.App.4th 641, 651 ("The amount to be awarded as attorney fees is left to the sound discretion of the trial court, which is in the best position to evaluate the services rendered by an attorney in his courtroom."); *see also 569 East County Boulevard, LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 436-37 ("In making its [lodestar] calculation, the court may rely on its own knowledge and familiarity with the legal market, as well as the experience, skill, and reputation of the attorney requesting fees.").

C. The litigation costs of \$10,000.00, payable to plaintiff's counsel, and administration costs of \$4,700.00, payable to ILYM Group, are reasonable for a case of this type and are hereby approved. To the extent plaintiff's counsel's costs total less than \$10,000.00, the remainder is to be poured over into the net settlement fund for distribution to the LWDA and the aggrieved employees in accordance with the statutory 75/25 split.

D. Counsel must prepare and submit a revised proposed order consistent with the foregoing. The continued CMC set for today is hereby vacated.

**See Pacers, Inc. v. Superior Court* (1984) 162 Cal.App.3d 686.

**Plaintiff's counsel anticipates that the total litigation costs will be \$9,943.64. (Spivak Decl., Ex. 12.)

IT IS SO ORDERED.



Judge Timothy Taylor

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 1801 Century Park East, 25th Floor, Los Angeles, CA 90067.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Wednesday, April 19, 2023, I served the foregoing document described as **[PROPOSED] ORDER AND JUDGMENT APPROVING PAGA SETTLEMENT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

Jason P. Saccuzo, Esq.
Vivoli Saccuzo, LLP
3104 Fourth Avenue
San Diego, CA 92103
jsaccuzo@vivolilaw.com

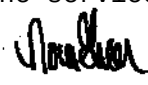
_____(BY MAIL) I caused such an envelope to be mailed by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of The Spivak Law Firm, 1801 Century Park East, 25th Floor, Los Angeles, CA 90067.

XXXX (BY EMAIL) Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address nora@spivaklaw.com.

EXECUTED on Wednesday, April 19, 2023, at Burbank, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_____(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



NORA GREER