

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

CHAFEN SUTTLE, on behalf of himself and all
other aggrieved employees,

Plaintiff,

vs.

CARE.STAT! INC. dba CAREREV; and DOES
1-10, inclusive,

Defendants.

Case No. 21CV383162

**ORDER RE: MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

The above-entitled matter came on for hearing on Wednesday, October 19, 2022, at 1:30 p.m. in Department 3, the Honorable Patricia M. Lucas presiding. At the hearing, counsel for Plaintiff Chafen Suttle (“Plaintiff”) requested the opportunity to file a further declaration by Plaintiff. The court granted Plaintiff leave to file such further declaration on or before October 28, 2022, at which time the matter would be submitted. On October 27, 2022, Plaintiff filed a Supplemental Declaration of Chafen Suttle. Having reviewed and considered all written submissions filed by the parties, and having listened carefully to arguments of counsel, the court rules as follows:

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1 **I. INTRODUCTION**

2 This representative action brought pursuant to the Private Attorneys General Act of 2004
3 (“PAGA”) arises out of alleged wage and hour violations. The Complaint, filed on June 17,
4 2021, sets forth causes of action for: (1) PAGA Civil Penalties for Violations of Labor Code
5 §§ 226.8 for Willful Misclassification; (2) PAGA Civil Penalties for Violations of Labor Code
6 §§ 1194, 1197.1 and the Applicable Wage Order for Failure to Pay All Minimum Wages;
7 (3) PAGA Civil Penalties for Violations of Labor Code §§ 510, 1194, 1198 and the Applicable
8 Wage Order for Failure to Pay All Overtime Wages; (4) PAGA Civil Penalties for Violations of
9 Labor Code §§ 204, 210 and the Applicable Wage Order for Failure to Pay All Wages;
10 (5) PAGA Civil Penalties for Violations of Labor Code §§ 226.7, 512 and the Applicable Wage
11 Order for Failure to Provide Timely and Compliant Meal Periods; (6) PAGA Civil Penalties for
12 Violations of Labor Code §§ 226.7, and the Applicable Wage Order for Failure to Provide
13 Timely and Compliant Rest Periods; (7) PAGA Civil Penalties for Violations of Labor Code
14 §§ 246 et seq. for Failure to Provide Sick Pay; (8) PAGA Civil Penalties for Violations of Labor
15 Code §§ 221 for Unlawful Deductions of Wages; (9) PAGA Civil Penalties for Violations of
16 Labor Code §§ 226(a), 226.3 and the Applicable Wage Order for Failure to Provide Accurate
17 and Itemized Wage Statements; (10) PAGA Civil Penalties for Violations of Labor Code §§ 201-
18 203 for Failure to Timely Pay All Wages Due to Terminated/Separated Employees; and
19 (11) PAGA Civil Penalties for Violations of Labor Code §§ 2802 and the Applicable Wage
20 Order for Failure to Reimburse All Reasonable and Necessary Business Expenses.

21 The parties have now reached a settlement. Plaintiff moves for approval of the
22 settlement. The motion is unopposed.

23 **II. LEGAL STANDARD**

24 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf
25 of other current or former employees to recover civil penalties for Labor Code violations.
26 (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380.) 75 percent of any
27 penalties recovered go to the Labor and Workforce Development Agency (“LWDA”), leaving
28 the remaining 25 percent for the employees. (*Ibid.*) PAGA is intended “to augment the limited

1 enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as
2 representatives of the Agency.” (*Id.* at p. 383.) A judgment in a PAGA action binds all those,
3 including nonparty aggrieved employees, who would be bound by a judgment in an action
4 brought by the government. (*Id.* at p. 381.)

5 A superior court must review and approve any PAGA settlement. (Lab. Code, § 2699,
6 subd. (1)(2).) The court’s review “ensur[es] that any negotiated resolution is fair to those
7 affected.” (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) The proposed settlement
8 must be submitted to the LWDA at the same time it is submitted to the court. (*Ibid.*)

9 As discussed by one court:

10 PAGA does not establish a clear standard for evaluating PAGA settlements.

11 ...
Accordingly, certain courts have been willing to approve PAGA settlements only
12 if (1) the statutory requirements set forth by PAGA have been satisfied, and
(2) the settlement agreement is fair, reasonable, and adequate in view of PAGA’s
13 public policy goals.

14 (*Patel v. Nike Retail Services, Inc.* (N.D. Cal. 2019) 2019 WL 2029061 at *2.)

15 As part of this analysis, these courts have evaluated proposed PAGA settlements under
the relevant factors from *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. (*Patel*
16 *v. Nike Retail Services, Inc., supra*, 2019 WL 2029061 at *2.) “Of the *Hanlon* factors, the
17 following are relevant to evaluating [a] PAGA settlement: (1) the strength of the plaintiff’s case;
18 (2) the risk, expense, complexity, and likely duration of further litigation; (3) the amount offered
19 in settlement; (4) the extent of discovery completed and the stage of the proceedings; (5) the
20 presence of government participation; and (6) the expertise and views of counsel. (*Ibid.*)

21 “[W]hen a PAGA claim is settled, the relief provided ... [should] be genuine and
22 meaningful, consistent with the underlying purpose of the statute to benefit the public”
23 (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV122615PSGJEMX)
24 2015 WL 12732709, at *13.) The settlement must be reasonable in light of the potential verdict
25 value. (See *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135
26 [rejecting settlement of less than one percent of the potential verdict].) But a permissible
27 settlement may be substantially discounted, given that courts often exercise their discretion to
28 award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See

1 *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL
2 5907869, at *8–9.)

3 **III. DISCUSSION**

4 The proposed settlement has been made with regard to the following aggrieved
5 employees: “[A]ll individuals classified by Defendant [Care.Stat! Inc. dba CareRev
6 (“Defendant”)] as independent contractors in the State of California during the PAGA Period.”
7 (Declaration of Jonathan M. Lebe in Support of Plaintiff’s Notice of Motion and Motion to
8 Approve Private Attorneys General Act Settlement, Reasonable Attorney Fees and Costs, and
9 Enhancement Award (“Lebe Dec.”), Ex. 3 (“Settlement Agreement”), ¶ III.3.) The PAGA
10 Period is defined as “the time period from October 3, 2019, until the earlier of: (1) August 15,
11 2022; or (2) the date on which the Court issues an Approval Order.” (Settlement Agreement,
12 ¶ III.25.)

13 Pursuant to the terms of the settlement, Defendant will pay a gross settlement amount of
14 \$1,000,000. (Settlement Agreement, ¶ III.15.) This amount includes payment of \$400,000 for
15 attorney fees (40 percent of the gross settlement amount), litigation expenses, a service award up
16 to \$5,000 for Plaintiff, and settlement administration costs. (Settlement Agreement, ¶¶ III.11,
17 III.15, III.31, VIII.3, VIII.4, & VIII.5.) Of the remaining settlement amount, 75 percent will be
18 paid to the LWDA and 25 percent be distributed to aggrieved employees pro rata based on the
19 total number of pay periods worked during the PAGA Period. (Settlement Agreement, ¶¶ III.15,
20 III.16, III.19, III.20, III.24 & VIII.6.) The settlement states that checks will remain valid for 180
21 days from the date of their mailing and, thereafter, any uncashed checks will be void and the
22 funds will be distributed to Court Appointed Special Advocates. (Settlement Agreement,
23 ¶¶ III.8, VIII.1, & IX.5.4.)

24 In addition to the gross settlement amount, the settlement also provides that Defendant
25 will separately fund a payment to Plaintiff in the amount of \$10,000 as a “General Release
26 Payment.” (Settlement Agreement, ¶¶ III.14 & VIII.7.)

27 In exchange for the settlement, the aggrieved employees will release Defendant, and
28 related entities and individuals, from all claims for PAGA civil penalties based on or reasonably

1 related to the factual allegations of the Complaint or Plaintiff's PAGA Notice to the LWDA.
2 (Settlement Agreement, ¶¶ III.26, III.29, & X.1.) Plaintiff further agrees to release Defendant,
3 and related entities and individuals, from all claims or causes of action, whether known or
4 unknown, arising out of or related to the action or the services Plaintiff rendered to Defendant.
5 (Settlement Agreement, ¶ X.2.)

6 Plaintiff contends that the PAGA settlement is fair, reasonable, and adequate. Plaintiff
7 states that the settlement was reached after informal discovery, mediation with mediator Louis
8 Marlin, Esq., and extensive arms-length negotiations. Plaintiff calculates Defendant's overall
9 potential exposure for the PAGA claims for the 1,572 aggrieved employees to be approximately
10 \$16,755,200. (Lebe Dec., ¶ 25.) Plaintiff states that there were serious concerns that the court
11 might substantially reduce the amount of PAGA penalties sought. Plaintiff contends the
12 settlement amount is reasonable in light of Defendant's defenses and the risks of continued
13 litigation. Plaintiff's evidence indicates that the average individual settlement payment for each
14 aggrieved employee will be approximately \$97.59. (Lebe Dec., ¶ 20.)

15 In general, the court finds the settlement to be fair in that it provides for some recovery
16 for each aggrieved employee and eliminates the risk and expense of further litigation.

17 Plaintiff seeks a service award of \$5,000. Although service awards are common in class
18 actions, there is less authority regarding the propriety of service awards in PAGA cases.
19 Nevertheless, a PAGA case is a representative action and has similarities to a class action, and it
20 has been recognized that an individual's willingness to act as a private attorney general may
21 merit a service award. (See *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948,
22 959.) Plaintiff submitted a declaration describing his participation in the action, but does not
23 state the number of hours devoted to the litigation. (Declaration of Chafen Suttle in Support of
24 Plaintiff's Notice of Motion and Motion to Approve Private Attorneys General Act Settlement,
25 Reasonable Attorney Fees and Costs, and Enhancement Award.) The court approves the
26 requested service award.

27 The settlement agreement provides for payment of attorney fees up to \$400,000 (40
28 percent of the gross settlement amount), and Plaintiff's counsel seeks attorney fees in the amount

1 of \$350,000 (35 percent of the gross settlement amount). Plaintiff's counsel presents evidence of
2 a total combined lodestar of \$138,920, which is premised on aggressive hourly rates of \$700 for
3 a ten-year lawyer, \$450 for a three-year lawyer, and \$350 for a lawyer of less than one year
4 experience. Even based on these high hourly rates, the fee request reflects a multiplier of 2.52.
5 (Lebe Dec., ¶¶ 27-30.) The court finds reasonable a fee award of \$277,840, which accepts the
6 high hourly rates claimed and a multiplier of 2.0 which is also high for this case. The balance
7 should be used to increase the payments to the LWDA and the other aggrieved employees, in
8 keeping with the purpose of the PAGA.

9 Plaintiff's counsel requests an award of costs in the amount of \$10,788.67, but Plaintiff's
10 counsel only provides evidence of incurred costs in the amount of \$10,643.67. (Lebe Dec.,
11 ¶ 28.) Anticipated costs are not recoverable. Accordingly, the costs are approved in the amount
12 of \$10,643.67.

13 Plaintiff's counsel also requests up to \$10,668 for the claims administration fee for Rust
14 Consulting, Inc. to administer the settlement. (Lebe Dec., ¶ 32; Declaration of Andrew Meyer in
15 Support of Motion for Settlement Approval of Claims Brought Under the Private Attorneys
16 General Act, Reasonable Attorneys' Fees and Costs, and Enhancement Awards, ¶ 13.) This
17 amount is approved, up to the amount of actual expenditures as established at the time of the
18 compliance hearing.

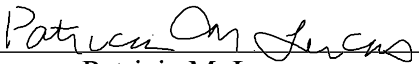
19 In specifying the relief sought on this motion, Plaintiff requested court approval of a
20 "General Release Payment" to Plaintiff in the amount of \$10,000. (Plaintiff's Notice of Motion
21 and Motion to Approve Private Attorneys General Act Settlement, at 2:25-26.) However, as
22 noted in the tentative ruling, all other aggrieved employees are already releasing claims and
23 Plaintiff did not articulate what additional claims he might possess or identify any facts on which
24 they might be based. Therefore the court had no basis to assess the value, if any, of a broader
25 release by Plaintiff, but noted that Plaintiff worked for Defendant for only thirty days, whereas
26 other aggrieved employees may have worked over 34 months. At the hearing, Plaintiff's
27 counsel stated that Plaintiff did not need court approval for this payment because, according to
28 the Settlement Agreement at ¶¶ VIII.8.7 and IX.9.5.2, the General Release Payment was not a

1 part of the PAGA settlement. Nevertheless, counsel requested the opportunity to provide a
2 declaration from Plaintiff stating facts giving rise to the wrongful termination claim Plaintiff has
3 not pled but claims to possess. Since the General Release Payment is, according to Plaintiff, not
4 a part of the PAGA settlement, the court declines to determine that it is reasonable to all parties
5 affected by the PAGA settlement. This payment shall not reduce the amount available to the
6 LWDA and aggrieved employees under the Settlement Agreement.

7 Accordingly, the motion for approval of PAGA settlement is GRANTED as modified
8 herein. The court sets a compliance hearing for September 6, 2023, at 2:30 p.m. in Department
9 3. At least ten court days before the hearing, class counsel and the settlement administrator shall
10 submit a summary accounting of the net settlement fund identifying distributions made as
11 ordered herein, the application of the escalator clause, the number and value of any uncashed
12 checks, amounts remitted to Defendants, the status of any unresolved issues, and any other
13 matters appropriate to bring to the court's attention. Counsel may appear at the compliance
14 hearing remotely.

15 The Case Management Conference set for October 19, 2022 was vacated.

16
17 Dated: October 28, 2022


Patricia M. Lucas
Judge of the Superior Court