

[TENTATIVE] RULINGS/ORDERS RE: MOTION FOR APPROVAL OF PAGA
SETTLEMENT

Costa v. University of Antelope Valley, Case No. 21STCV18531

The parties' Motion for Approval of PAGA Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable, on the **condition** that Plaintiffs file: (1) a proof of service of the revised settlement agreement on the LWDA; and (2) a revised proposed order that includes the language that Aggrieved Employees and Reimbursement Aggrieved Employees are not releasing their individual Labor Code claims against Defendant.

Supplemental papers must be filed and served by **August 11, 2022**.

Non-Appearance Case Review is set for August 18, 2022, 8:30 a.m., Department 9.

Plaintiff's Request for Judicial Notice is **GRANTED**, (except as to truth).

The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$150,000;
B. The Net Settlement Amount ("Net") (\$20,226.70) is the GSA minus the following:

\$49,500 (33%) for attorney fees to PAGA Counsel,
HammondLaw, P.C.;
\$9,593.19 for litigation costs to PAGA Counsel;
\$5,000 for settlement administration costs to
Simpluris;
\$5,000 for service award to named plaintiff, Aryton
Costa;
\$60,680.11 (75% PAGA penalty) to the LWDA.

C. Plaintiff's release of Defendant from claims described herein.

By **August 23, 2022**, Plaintiff must:

a. serve this Order on the LWDA pursuant to Labor Code section 2699(1)(3);

b. file and serve a [Proposed] Judgment consistent with this ruling containing among other things, the PAGA aggrieved employee definition; PAGA period; and full release language; and

c. email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

Non-Appearence Case Review is set for August 30, 2022, 8:30 a.m., Department 9.

By **April 20, 2023**, Plaintiff must file and serve a final accounting.

Non-Appearence Case Review is set for April 27, 2023, 8:30 a.m., Department 9.

I.
INTRODUCTION

A. Background

This is a putative wage and hour class action. Plaintiff Aryton Costa allege that he and the putative class members are and were non-exempt employees of Defendant University of Antelope Valley. Plaintiff also alleges that Defendant violated the Labor Code and Industrial Welfare Commission wage orders.

On May 14, 2021, Plaintiff filed his complaint.

On December 1, 2021, pursuant to Labor Code § 2699.3(a)(1) Plaintiff sent a second amended notice to the Labor and Workforce Development Agency (LWDA) of Defendant's alleged Labor Code violations. Sixty-five days elapsed after Plaintiff provided such notice, but the LWDA has not indicated that it intends to investigate the alleged violations.

On December 15, 2021, Plaintiff filed his first amended complaint (FAC). In the FAC, Plaintiff asserts a single cause of action for civil penalties under the Private Attorneys General Act (PAGA).

On March 4, 2022, Plaintiff filed the pending motion to approve PAGA settlement.¹

B. Terms of Settlement Agreement

The essential terms of the PAGA settlement are as follows:

“Aggrieved Employees” definition	• “Aggrieved Employees” are defined as “all part-time instructors employed by Defendant in California from April 6, 2020 to the date the Court grants approval of the Settlement.” Revised Settlement Agreement, § I.4; Hammond Decl., ¶¶ 19, 21. • “Reimbursement Aggrieved Employees” are defined as “all individuals other than Aggrieved Employees who were employed in California by Defendant and who were required by Defendant to work from home remotely as a result of the COVID-19 pandemic and incurred necessary business expenses from April 6, 2020 until August 31, 2021.” Revised Settlement Agreement, § I.5; Hammond Decl., ¶¶ 19, 21. • There are approximately 55 Aggrieved Employees and 54 Reimbursement Aggrieved Employees. Revised Settlement Agreement, §§ I.4, I.5; Hammond Decl., ¶¶ 19, 21.																				
Gross Settlement Amount (GSA)	\$150,000. Revised Settlement Agreement, §§ I.10, III.2.																				
Aggrieved Employee Escalator Clause	If the total number of pay periods as of November 10, 2021 actually exceeds 950 by more than ten percent (10%), the 75% of the Gross Settlement Amount allocated to Aggrieved Employees (i.e., \$112,500) will increase proportionately for every percent over the 10% grace. Revised Settlement Agreement, § III.3.																				
Reimbursement Aggrieved Employee Escalator Clause	If the total number of pay periods as of November 10, 2021 actually exceeds 781 by more than ten percent (10%), the 25% of the Gross Settlement Amount allocated to Reimbursement Aggrieved Employees (i.e., \$37,500) will increase proportionately for every percent over the 10% grace. Revised Settlement Agreement, § III.4.																				
GSA allocation	<table><tr><td></td><td>Maximum</td><td>Requested</td></tr><tr><td>PAGA counsel fees</td><td>\$52,500.00</td><td>\$49,500.00</td></tr><tr><td>Reasonable litigation costs</td><td>\$25,000.00</td><td>\$9,593.19</td></tr><tr><td>Plaintiff’s service award</td><td>\$5,000.00</td><td>\$5,000.00</td></tr><tr><td>Settlement administration costs</td><td>\$5,000.00</td><td>\$5,000.00</td></tr><tr><td>PAGA Payment</td><td>—</td><td>\$80,906.81</td></tr></table> Revised Settlement Agreement, § III.5; Hammond Decl., ¶¶ 66, 74. The remainder of the GSA (PAGA Payment) after deducting the requested amounts is \$80,906.81, and is the Net Settlement Amount to be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code § 2699(i), with 75% paid to the LWDA and 25% paid to the PAGA Settlement Members on a pro rata basis. Thus, the LWDA will receive \$60,680.11, Aggrieved Employees and Reimbursement Aggrieved Employees will				Maximum	Requested	PAGA counsel fees	\$52,500.00	\$49,500.00	Reasonable litigation costs	\$25,000.00	\$9,593.19	Plaintiff’s service award	\$5,000.00	\$5,000.00	Settlement administration costs	\$5,000.00	\$5,000.00	PAGA Payment	—	\$80,906.81
	Maximum	Requested																			
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Settlement administration costs	\$5,000.00	\$5,000.00																			
PAGA Payment	—	\$80,906.81																			

¹ Plaintiff requests judicial notice of an amicus curiae brief filed by the California Labor Commissioner in Price v. Uber Technologies, Inc., LASC Case No. BC554512. RJN, Exh. 1. Courts may take judicial notice of court records, but not of the truth of matters asserted in such documents if those matters are reasonably disputable. Evid. Code, § 452(d); Fremont Indemnity Co. v. Fremont General Corp. (2007) 148 Cal.App.4th 97, 113. Pursuant to Evidence Code § 452(d), the Court will take judicial notice of Exhibit 1, but not of the truth of the allegations contained therein.

	collectively receive \$20,226.70. Of this amount, Aggrieved Employees will receive 75% and Reimbursement Aggrieved Employees will receive 25%. Revised Settlement Agreement, § III.6.
Allocation and Calculation of PAGA Penalties	The payments to the Aggrieved Employees shall be paid on a pro rata basis as calculated by the Settlement Administrator, subject to the parties approval. <u>Id.</u> , § IV.2.
Tax Treatment of PAGA Penalties	Aggrieved Employee and Reimbursement Aggrieved Employee payments shall be reported as 1099-MISC income. <u>Id.</u> , § IV.7.
Payment Procedures	• Within 30 days of approval of the settlement, Defendant shall pay \$50,000 of the GSA. No later than June 30, 2022, Defendant will pay \$50,000 of the GSA. No later than September 30, 2022, Defendant will pay the final \$50,000 of the GSA. <u>Id.</u>, § III.2. • Within 10 days of the Effective Date, Defendant shall provide the list of Aggrieved Employees and Reimbursement Aggrieved Employees and their contact information to the Settlement Administrator. <u>Id.</u>, § IV.2. • Within 10 days of receiving the list of Aggrieved Employees and Reimbursement Aggrieved Employees, the Settlement Administrator shall calculate individual payments and determine whether the escalator clauses are triggered, subject to the parties' approval. <u>Id.</u>, § IV.2. • Within 5 days of the parties' approval, the Settlement Administrator shall search the USPS National Change of Address database to obtain current address information for the Aggrieved Employees and Reimbursement Aggrieved Employees. <u>Id.</u>, § IV.3. • Within 10 days of receiving the final GSA payment from Defendant, the Settlement Administrator shall issue payments to: (a) Aggrieved Employees and Reimbursement Aggrieved Employees; (b) the LWDA; (c) Plaintiffs' Counsel; (d) Plaintiff; and (e) itself. <u>Id.</u>, § IV.3, 5.
Unclaimed Funds	• Checks will remain negotiable for 90 days. <u>Id.</u>, § IV.3. • After 90 days, uncashed checks shall be transferred to the California State Controller's Unclaimed Property Fund. <u>Id.</u>
Settlement Administrator	Simpluris. <u>Id.</u> , § IV.1.
Settlement Submitted to LWDA	Submitted to the LWDA at the same time as the filing of the motion for settlement approval, per Labor Code § 2699(l)(1). Motion at 15. [Plaintiff must file proof of service of the Revised Settlement Agreement on the LWDA.]

II. DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. After arms-length negotiation, the parties agreed to a settlement of Plaintiff's PAGA claim. Revised Settlement Agreement, § VI.9; Hammond Decl., ¶ 64.

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Plaintiff's counsel investigated and researched the facts and circumstances underlying the pertinent issues and applicable law. This investigation and research included detailed discussions and

interviews with Plaintiff and other part-time adjunct instructors about their job duties and Defendant's compensation policies, as well as reviewing Plaintiff's teaching contracts. Plaintiff's counsel further investigated Defendant's organizational and operational structure in California and the manner in which it applies and enforces its uniform employee policies. As a result of this investigation, Plaintiff's counsel determined that Plaintiffs' PAGA claims stemmed from Defendant's systematic corporate policies, and that Plaintiff's claims were well suited for representative action adjudication. Hammond Decl., ¶¶ 15, 63.

3. Is counsel experienced in similar litigation? Yes.
Hammond Decl., ¶¶ 6-14; Exh. 1

4. What percentage of the class has objected? Not applicable.

The Court concludes that the settlement is entitled to a presumption of fairness.

B. Is the Settlement Fair, Adequate, and Reasonable?

1. Strength of Plaintiffs' case. "The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

Plaintiff's counsel provides a detailed factual basis for the claims asserted in the complaint. Hammond Decl., ¶¶ 15-29. Here, the maximum exposure in this case is \$617,100, but Plaintiff concedes that this outcome is unlikely given Defendant's defenses, the risk of losing at trial, and the risk that the Court would reduce the amount of civil penalties, the risk of reversal on appeal, and the difficulty of collecting on any judgment. Plaintiff confirmed that the correct maximum exposure is \$617,000. Hammond Supp. Decl., ¶ 9. After discounting for such defenses, Plaintiffs provide the following risk-adjusted exposure analysis:

PAGA Section 2699(f)		
Unpaid Wage Claim	1,045 pay periods x \$100 x 35% risk reduction = \$67,925	\$67,925
Rest Break Claim	1,045 pay periods x \$100 x 50% risk reduction = \$52,250	\$52,250
Meal Break Claim	1,045 pay periods x \$100 x 60% risk reduction = \$41,800	\$41,800
Wage Statement Claim	1,045 pay periods x \$100 x 35% risk reduction = \$67,925	\$67,925

PAGA Section 2699(f)		
Wages Due at Separation Claim	165 terms x \$100 x 30% risk reduction = \$11,550	\$11,550
Reimbursement Claim	<u>Aggrieved Employees:</u> 950 pay periods x \$100 x 65% risk reduction = \$33,250 <u>Reimbursement Aggrieved Employees:</u> 781 pay periods x \$100 x 65% risk reduction = \$27,335	\$60,585
Grand Total		\$302,035

Hammond Decl., ¶¶ 30-48. Plaintiff's counsel states in his supplemental declaration that the total is \$305,360. Hammond Supp. Decl., ¶ 11. However, Plaintiff's counsel's arithmetic still appears to be incorrect. Here, the PAGA Payment of \$80,906.81 represents approximately 26.8% of the maximum risk-adjusted PAGA exposure of \$302,035. Thus, the PAGA settlement amount compares reasonably to the realistic, risk-adjusted potential recovery in this case.

2. Risk, expense, complexity and likely duration of further litigation. The discounted settlement takes into consideration the significant risks inherent in moving forward, such as the possibility that the Court would refuse to award significant penalties, or any penalties at all, for many of the alleged violations, as well as the delay occasioned by continuing with the litigation. Hammond Decl., ¶¶ 58-62.

3. Risk of maintaining class action status through trial. Not applicable.

4. Amount offered in settlement. Defendant will pay a maximum settlement amount of \$150,000. This amounts to approximately 49.7% of Defendant's maximum risk-adjusted exposure of \$302,035 for the claims alleged. Given the uncertain outcomes, and the discretionary nature of PAGA penalties, this settlement appears to be within the "ballpark of reasonableness."

Assuming the deductions are taken in full, \$20,226.70 will remain for distribution to Aggrieved Employees (\$15,170.03) and Reimbursement Aggrieved Employees (\$5,056.68). The payments to Aggrieved Employees will average \$275.82 (\$15,170.03 / 55 Aggrieved Employees = \$275.82). The payments to Reimbursement Aggrieved Employees will average \$93.64 (\$5,056.68 / 54 Reimbursement Aggrieved Employees = \$93.64).

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Plaintiff's Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Plaintiff's Counsel who, as indicated above, is experienced in PAGA litigation.

The Court concludes that the settlement is fair, adequate, and reasonable.

C. Scope of the Release

"PAGA Released Claims" means any and all claims asserted in the Action under PAGA, or that could have been asserted in the Action under PAGA based on the facts alleged, including but not limited to any and all claims for PAGA penalties for violations of the California Labor Code governing: failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods or compensate an additional hour of pay for missed or improper meal periods, failure to permit rest breaks or compensate an additional hour of pay for missed or improper rest periods, failure to provide accurate itemized wage statements, failure to pay all wages due upon separation of employment, failure to keep accurate and complete time and payroll records for employees, failure to timely pay wages during employment, failure to pay rest periods at the proper rate, failure to comply with Labor Code Section 226.2, and failure to reimburse necessary business expenses. Revised Settlement Agreement, § I.15.

In consideration for the payments awarded pursuant to the terms of this Settlement, Plaintiff, in his capacity as a private attorney general and "aggrieved employee" acting on behalf of himself, the State of California, and the Aggrieved Employees, agrees that upon entry of an Order approving the Settlement, Plaintiff and the Aggrieved Employees, shall release Defendant from any and all PAGA Released Claims that arose during the PAGA Period. Upon entry of the Order approving the Settlement and judgment entered thereon, Plaintiff, and the Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against Defendant. Revised Settlement Agreement, § III.7.

In consideration for the payments awarded pursuant to the terms of this Settlement, Plaintiff, in his capacity as a private attorney general and "aggrieved employee" acting on behalf of himself, the State of California, and Reimbursement Aggrieved Employees agrees that upon entry of an Order approving

the Settlement, Plaintiff and Reimbursement Aggrieved Employees shall release Defendant from any and all Reimbursement PAGA Released Claims that arose during the Reimbursement PAGA Period. Upon entry of the Order approving the Settlement and judgment entered thereon, Plaintiff and Reimbursement Aggrieved Employees will be forever barred from pursuing any and all of the Reimbursement PAGA Released Claims that arose during the Reimbursement PAGA Period against Defendant. Revised Settlement Agreement, § III.8.

The Revised Settlement Agreement provides that Aggrieved Employees and Reimbursement Aggrieved Employees are not releasing their individual Labor Code claims against Defendant. Revised Settlement Agreement, § III.7, 8. However, the Proposed Order does not state that Aggrieved Employees and Reimbursement Aggrieved Employees are not releasing their individual Labor Code claims. File a revised proposed order.

D. Is the Notice Proper?

PAGA has no notice requirements for unnamed aggrieved employee members, nor may such employees opt out of a PAGA action. See Hernandez v. DMSI Staffing, LLC. (N.D. Cal. 2015) 79 F.Supp.3d 1054, 1063, aff'd sub nom. Hernandez v. DMSI Staffing, LLC (9th Cir. 2017) 677 Fed.Appx. 359.

A letter to Aggrieved Employees and Reimbursement Aggrieved Employees will accompany settlement checks. Revised Settlement Agreement, § IV.3. Copies of the proposed letters are attached to the Revised Settlement Agreement as Exhibits A and B. Their content appears acceptable.

E. Attorney Fees and Costs

An aggrieved employee who prevails in a PAGA action may recover reasonable attorney's fees and costs. (Labor Code §2699(g)(1)) Whether a plaintiff established entitlement to an award of fees under PAGA is a question best decided by the trial court. (San Diego Municipal Employees Association v. City of San Diego (2016) 244 Cal.App.4th 906.)

PAGA Counsel requests attorneys' fees of \$49,500 and costs of \$9,593.19. Hammond Decl., ¶¶ 66, 74. The Revised Settlement Agreement provides for fees up to \$52,500 and actual litigation costs up to \$25,000. Revised Settlement Agreement, § III.5.a.

"Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.) Here, PAGA counsel requests attorney fees using the percentage method. Motion at 21.

In common fund cases, the Court may employ a percentage of the benefit method, as cross-checked against the lodestar. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) Here, the fee request of \$49,500 represents 33% of the maximum settlement amount, which is equal to the 33% average generally awarded in class actions. See In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn.13 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.").

Regarding lodestar, PAGA Counsel has provided the following information:

Attorney	Hours	Rate	Totals
Julian Hammond,	36.5	\$870	\$31,755.00
Polina Brandler	48.5	\$695	\$33,707.50
Ari Cherniak	56.3	\$605	\$34,061.50
Arie Michelson	14.7	\$725	\$10,657.50
Adrian Barnes	2.4	\$695	\$1,668.00
Totals	158.4	—	\$111,849.50

Hammond Decl., ¶ 71. Plaintiffs' counsel's percentage-based fee request is lower than the unadjusted lodestar of \$111,849.50 and would represent application of a 0.44 multiplier. Plaintiffs' counsel contends that their fee request is thus also reasonable under the lodestar method. Hammond Decl., ¶ 73.

As for costs, Plaintiffs' counsel is requesting \$9,593.19. Hammond Decl., ¶ 74. This is less than the \$25,000 maximum stated in the Revised Settlement Agreement. Class counsel incurred actual costs as follows:

Cost Category	Amount
Fees charged by OneLegal for filing and electronic service	\$82.99
Fees charged by Rezac Meyer for filing, service, and courtesy copies delivery	\$1,916.41
Filing and service fees charged by other vendors	\$225.19
LWDA PAGA submission fee	\$75.00
Mediator's fees paid by Plaintiff	\$7,000.00
Research costs charged by Los Angeles Superior Court	\$60.60
Filing fees for approval motion and courtesy copies to Court	\$233.00
Total	\$9,593.19

The costs incurred appear to be reasonable in amount and reasonably necessary to this litigation. Defendant does not oppose the request for costs. Revised Settlement Agreement, § III.5.c. Plaintiff confirmed that \$9,593.19 is the correct amount.

Based on the above, the court awards \$49,500 for attorneys' fees and \$9,593.19 for costs.

III. CONCLUSION

Based upon the foregoing, the Court orders that:

1) The parties' Motion for Approval of PAGA Settlement is GRANTED as the settlement is fair, adequate, and reasonable, on the condition that Plaintiffs file: (1) a proof of service of the revised settlement agreement on the LWDA; and (2) a revised proposed order that includes the language that Aggrieved Employees and Reimbursement Aggrieved Employees are not releasing their individual Labor Code claims against Defendant.

2) Supplemental papers must be filed and served by August 11, 2022.

3) Non-Appearance Case Review is set for August 18, 2022, 8:30 a.m., Department 9.

4) Plaintiff's Request for Judicial Notice is GRANTED, (except as to truth).

5) The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$150,000;

B. The Net Settlement Amount ("Net") (\$20,226.70) is the GSA minus the following:

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HammondLaw, P.C.;

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Simpluris;

\$5,000 for service award to named plaintiff, Aryton
Costa;

\$60,680.11 (75% PAGA penalty) to the LWDA.

C. Plaintiff's release of Defendant from claims described herein.

6) By August 23, 2022, Plaintiff must:

a. serve this Order on the LWDA pursuant to Labor Code section 2699(1)(3);

b. file and serve a [Proposed] Judgment consistent with this ruling containing among other things, the PAGA aggrieved employee definition; PAGA period; and full release language; and

c. email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

7) Non-Appearance Case Review is set for August 30, 2022, 8:30 a.m., Department 9.

8) By April 20, 2023, Plaintiff must file and serve a final accounting.

9) Non-Appearance Case Review is set for April 27, 2023, 8:30 a.m., Department 9.

CLERK TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.

DATED: July 18, 2022

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT