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6 individually and on behalf of similarly situated employees

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

11 LEOPOLD ESTRADA, JR., individually and
on behalf of all other similarly situated
12 employees,

13 Plaintiff,

14 vs.

15 MAD SECURITY SERVICES, INC., a
16 California Corporation;
17 DAVID BLAINE FAIR, an individual;
18 MARGIE NELL FAIR, an individual; and
DOES 1 to 100, inclusive,

19 Defendants.
20
21
22

Case No. 34-2021-00300627

CLASS ACTION

**[PROPOSED] AMENDED ORDER
REGARDING APPROVAL OF PAGA
SETTLEMENT**

Reservation No.: 2654377

Date: August 12, 2022

Time: 9:00 a.m.

Dept.: 28

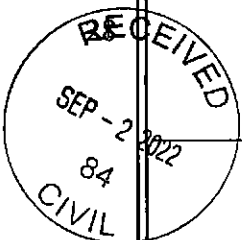
Judge: Hon. Lauri A. Damrell

Filed: May 12, 2021

FAC Filed: July 22, 2021

Trial Date: None Set

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25 The Motion for Approval of Private Attorney General Act ("PAGA") filed by Plaintiff Leopold
26 Estrada, Jr. ("Plaintiff") came on regularly for hearing before the Honorable Lauri A. Damrell on August
27 12, 2022. The Court issued a tentative ruling on August 11, 2022, and neither party requested oral



1 argument to contest the tentative ruling. Thereafter, the Court entered an order attached as Exhibit A
2 granting approval of the PAGA Settlement. Court affirmed its Tentative Ruling as follows:

3 Plaintiff Leopold Estrada, Jr.'s ("Plaintiff") Motion for Approval of Private Attorney Generals
4 Act ("PAGA") Settlement is UNOPPOSED and GRANTED as follows.

5 **Background**

6 Plaintiff commenced this putative class action against Defendant Mad Security Services, Inc. on
7 May 12, 2021. On July 22, 2021, Plaintiff filed a First Amended Complaint ("FAC") naming individuals
8 David Blaine Fair and Margie Nell Fair as additional Defendants and adding a cause of action under
9 PAGA. Plaintiff's FAC seeks unpaid meal and rest period premiums, unpaid reimbursement expenses,
10 and derivative penalties for failure to provide accurate wage statements and pay all wages at termination.
11 The claims stem from Plaintiff's allegations that Defendants required employees to remain on duty
12 during meal and rest periods without paying meal or rest premiums, required employees to download an
13 app on their personal cell phones to track hours worked without reimbursement, required employees to
14 use their personal cell phones during their shifts for work communications without reimbursement, and
15 failed to keep accurate records of hours worked. Plaintiff now moves for dismissal of the class claims
16 without prejudice and approval of settlement of the PAGA claims.

17 **Legal Standard**

18 The purpose of PAGA is to "create a means of 'deputizing' citizens as private attorneys general
19 to enforce the Labor Code." (*Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489, 501.) A PAGA
20 plaintiff is an "aggrieved employee" who brings a civil action "personally and on behalf of other current
21 or former employees to recover civil penalties for Labor Code violations" as the "proxy or agent of the
22 state's labor law enforcement agencies." (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59
23 Cal.4th 348, 380; Labor Code, § 2699, overruled on other grounds in *Viking River Cruises, Inc. v.*
24 *Moriana* (2022) 142 S.Ct. 1906.) The settlement of a PAGA claim requires court approval pursuant to
25 the operative PAGA statute, which states that the "[t]he superior court shall review and approve any
26 settlement of any civil action filed pursuant to this part." (Lab. Code, § 2699(1)(2).) Such review and
27 approval must "ensur[e] that any negotiated resolution is fair to those affected." (*Williams v. Superior*
28 *Court* (2017) 3 Cal.5th 531, 549.) Aside from the requirement that the court "review and approve "a

1 settlement in a civil action filed under PAGA (§ 2699, subd. (l)(2)), PAGA itself does not provide a
2 standard for this review and approval in the majority of PAGA cases. (*Moniz v. Adecco USA, Inc.* (2021)
3 72 Cal.App.5th 56, 75 (*Moniz*) (citing *Flores v. Starwood Hotels & Resorts Worldwide* (C.D. Cal. 2017)
4 253 F.Supp.3d 1074, 1075 “[PAGA] is surprisingly short on specifics”).) In *Moniz*, the First District
5 Court of Appeal clarified that a trial court “should evaluate a PAGA settlement to determine whether it
6 is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations,
7 deter future ones, and to maximize enforcement of state labor laws.” (*Id.* at p. 77.) Because many of the
8 factors used to evaluate class action settlements bear on a settlement’s fairness – including the strength
9 of the plaintiff’s case, the risk, the stage of the proceeding, the complexity and likely duration of further
10 litigation, and the settlement amount – these facts can be useful in evaluating the fairness of a PAGA
11 settlement. (*Ibid.*)

12 **Analysis**

13 The Settlement Agreement between the parties provides for a total non-reversionary Gross
14 Settlement Amount (“GSA”) of \$21,500, from which Plaintiff’s counsel will receive no more than
15 \$8,600 for Plaintiff’s attorneys’ fees and no more than \$3,151.90 for litigation costs. (Index of Exhibits
16 (“IOE”), Exh. A (“Settlement Agreement”), § 2.) Of the remaining amount of the GSA, 75% will be
17 paid to the Labor Workforce Development Agency (“LWDA”), and 25% will be distributed to
18 Aggrieved Employees on a pro rata basis based on the pay periods each employee worked. (*Id.*, §§ 2,
19 6e.) “Aggrieved Employees “are all individuals who have worked, or continue to work, for Defendants
20 in California as a Security Guard or other title performing Security Guard job” duties during the PAGA
21 Period, which from May 12, 2020 to June 30, 2022. (*Id.*, § 3.)

22 The entire PAGA payment to Aggrieved Employees will be treated as penalties. (*Id.*, § 6e.)
23 Aggrieved Employees will have 120 days to cash their checks; checks not negotiated within that time
24 will be donated equally to Capital Pro Bono, Inc. and the Center for Workers’ Rights. (*Id.*, § 6f.)
25 Because the Court is familiar with those entities, it finds them appropriate cy pres recipients in this case;
26 however, in the future, Plaintiff’s Counsel should describe how a proposed cy pres recipient meets the
27 purposes of the suit or is otherwise appropriate. (*See In re Microsoft I-V Cases* (2006) 135 Cal.App.4th
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1 706, 726 [trial court properly considered whether distribution to cy pres recipient was useful in fulfilling
2 the purpose of the underlying cause of action].)

3 Payments to Aggrieved Employees will be accompanied by a Notice of Settlement (“Notice”)
4 informing them of the basic information regarding the reason for the payment and the claims waived.
5 (Settlement Agreement, § 6a; IOE, Exh. D.) The settlement is provided in exchange for Plaintiff and
6 Aggrieved Employees releasing Defendants and other Releasees from all PAGA claims alleged in the
7 Complaint. (*Id.*, § 4.) To avoid any confusion in the Notice, the Court orders that the Notice shall be
8 modified to state at the top in bold letters, “This Settlement does not release any individual claims
9 that you might have against Defendants outside of PAGA.” The Settlement Agreement does not
10 include payment to a third-party claim administrator; instead, Defendant’s counsel will process and
11 distribute the GSA according to the Agreement. (*Id.*, § 6.) Plaintiff’s Counsel (“Counsel”) declares she
12 submitted the Settlement Agreement to the LWDA. (Berzin Decl., ¶7, Exh. D.)

13 Counsel declares Defendants have contested the merits of this case and Plaintiff’s ability to
14 prove a violation in each pay period. (*Id.*, ¶ 5.) Furthermore, Defendants contended that, even assuming
15 there was a finding supporting the imposition of PAGA penalties, the Court would exercise its discretion
16 to substantially reduce any penalties based on evidence of Defendants’ good faith attempts to comply
17 with their Labor Code obligations. (*Ibid.*) Counsel attests that her office thoroughly investigated the
18 merits of the claims and potential damages for those claims. (*Id.*, ¶ 7.) The parties engaged in informal
19 discovery, from which Plaintiff’s counsel was able to determine information critical to a reliable
20 damages analysis. (*Ibid.*) From this information, Counsel determined that the maximum damages for the
21 PAGA claims is \$59,153 based on the counts alleged to the LWDA and the Aggrieved Employee data
22 and excluding inclusion of subsequent violation penalties. (*Id.*, ¶ 9.) The Settlement was reached after
23 approximately one year of arm’s length negotiations. (*Id.*, ¶ 8.) Counsel believes the civil penalties
24 would likely be cut to between \$10,654.74 and \$41,407.10 due to the fact that some alleged violations
25 are based on technical non-compliance as opposed to substantive wage loss and due to Defendant’s good
26 faith compliance argument. (*Id.*, ¶ 10.) Thus, the settlement net recovery, after deduction of attorney’s
27 fees and costs, equals approximately 23.5% to 91.5% of that estimate. (*Ibid.*) Counsel attests to her
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1 firm's extensive experience in this type of litigation and to the firm's opinion that the Agreement is in
2 the best interest of Plaintiff, Aggrieved Employees, and the LWDA. (*Id.*, ¶¶ 6, 11-14.)

3 Overall, the Court finds that the Settlement Agreement is fair, reasonable, and adequate as
4 required under California Labor Code section 2698 et seq. Based on the amount of penalties at issue, the
5 risk of being able to prove violations as required by statute for damages purposes, and the Court's
6 statutorily authorized power to reduce penalties, the Settlement Agreement represents a substantial
7 recovery for individuals within the scope of the PAGA claims and the LWDA to further its purpose in
8 enforcing the Labor Code.

9 However, the Court is not persuaded that Counsel's request for 40% of the Settlement is
10 appropriate. This percentage exceeds the average reported by various authorities. (*See Chavez v. Netflix,*
11 *Inc.* (2008)162 Cal.App.4th 43, 66, fn. 11 ["Empirical studies show that, regardless whether the
12 percentage method or the lodestar method is used, fee awards in class action average around one-third of
13 the recovery."]; Rubenstein et al., *Newberg on Class Actions* (5th ed. 2021) § 15:83 [percentage awards
14 in class actions average around 25%].) In support of this award, Plaintiff argues the 40% falls within the
15 typical percentage negotiated between parties in class action and PAGA litigation and the size of the
16 settlement supports the request when compared to other PAGA settlements. These arguments are
17 insufficient to convince the Court that 40% is reasonable. Also, Plaintiff provided no information needed
18 to perform a lodestar cross-check. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 504
19 [courts are permitted to perform a "lodestar cross-check [which] provides a mechanism for bringing an
20 objective measure of the work performed into the calculation of a reasonable attorney fee."].)

21 Thus, the Court GRANTS Plaintiff's motion with modification to the Notice and with the
22 reduction of Counsel's attorney's fees to 33 percent of the GSA (\$7,167). Plaintiff shall submit a
23 proposed order for the Court's signature consistent with the foregoing.

24 The Court also continues the Case Management Conference currently scheduled for October 13,
25 2022 to March 9, 2023 at 1:30 p.m. in Dept. 28. At least 15 days prior to the hearing, counsel shall file a
26 declaration regarding the status of the distribution of the settlement funds. If the Court is satisfied that
27 the settlement funds have been fully distributed, no appearance will be required.

1 The claims of any putative class member, class claims, and/or class allegations within the
2 operative Complaint shall be dismissed without prejudice. Plaintiff has provided sufficient information
3 pursuant to California Rule of Court 3.770(a) to satisfy the Court that the class claims alleged in the
4 operative Complaint should be dismissed without prejudice. It is further ordered that Plaintiff's
5 individual claims and the PAGA claims be dismissed with prejudice with each party to bear their own
6 fees and costs outside of what has been ordered herein.

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10 Date: _____

Hon. Lauri A. Damrell