

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

RACHEL QUIJADA, as an individual and on behalf of aggrieved employees,	)	Case No.: 21CV385899
	)	
Plaintiff,	)	ORDER GRANTING PLAINTIFFS’
	)	MOTION FOR APPROVAL OF PAGA
v.	)	SETTLEMENT
	)	
	)	Dept. 7
EXTRA SPACE MANAGEMENT, INC., et al.,	)	
	)	
Defendants.	)	

This is a representative action under the Private Attorneys General Act (“PAGA”). Plaintiffs Rachel Quijada and Sasan Azar (collectively, “Plaintiffs”) alleged that Defendant Extra Space Management, Inc., who provides contracting services, failed to pay overtime and minimum wages, failed to provide compliant meal and rest periods or pay associated premiums, and failed to provide code-complaint wage statements, among other Labor Code violations.

Before the Court is Plaintiffs’ motion for approval of PAGA settlement, which is unopposed. As discussed below, the Court GRANTS Plaintiffs’ motion.

I. BACKGROUND

According to the allegations of the operative First Amended Complaint (“FAC”), Ms. Quijada was employed by Defendant from February 22, 2021 to April 19, 2021 as an Assistant

1 Manager, a non-exempt, hourly position, while Mr. Azar was employed in the same role from
2 January or February of 2020 to approximately February 18, 2021. Plaintiffs allege that, due to
3 lack of staffing, Defendant failed in its affirmative obligation to ensure that Aggrieved
4 Employees had the opportunity to take and were provided with off-duty 10-minute rest periods
5 and a thirty minute uninterrupted duty-free meal period within five hours of the beginning of
6 their shift. They further allege that Defendant underpaid overtime and meal/rest period premium
7 compensation to Aggrieved Employees. For the purpose of calculating overtime and premium
8 compensation, Defendant failed to include non-discretionary incentive pay, such as
9 “Gift/Awards” and “Monthly Field Incentives,” in the calculation of the regular rate. The base
10 rate did not take into account additional items of nondiscretionary remuneration, thus resulting in
11 the underpayment of overtime and meal/rest period premium compensation.

12 On August 17, 2021, Ms. Quijada filed a Representative Action Complaint (the “*Quijada*
13 *Action*”) in this court asserting single claim for penalties under PAGA. On October 17, 2022,
14 pursuant to an agreement to arbitrate, the Court compelled arbitration of the individual
15 component of Ms. Quijada’s PAGA claim. The remaining representative PAGA claim was
16 stayed.

17 On September 28, 2021, Mr. Azar filed a Representative Action Complaint (the “*Azar*
18 *Action*”) in Orange County Superior Court asserting a single claim for penalties under PAGA,
19 and then filed an amended pleading after erroneously naming Defendant as “Extra Space
20 Storage.” On December 2, 2022, the court granted Defendant’s motion to compel arbitration as
21 to Mr. Azar’s individual PAGA claim, and stayed the representative PAGA claim pending
22 completion of that arbitration.

23 As a condition of the settlement reached between the parties that is now before the Court,
24 the parties agreed to amendment of the Representative Action in the *Quijada Action*. On
25

November 6, 2023, Plaintiffs filed the FAC, which adds Mr. Azar as a named plaintiff. Accordingly, Mr. Azar filed a request for dismissal of his complaint in Orange County.

II. LEGAL STANDARD FOR APPROVING PAGA SETTLEMENT

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639.) 75 percent of any penalties recovered go to the Labor and Workforce Development Agency (LWDA), leaving the remaining 25 percent for the employees. (*Ibid.*) PAGA is intended “to augment the limited enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency.” (*Id.* at p. 383.) A judgment in a PAGA action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. (*Id.* at p. 381.)

Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) “[C]lass certification is not required” in this context as in a class action. (*Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 (*Haralson*).)

Similar to its review of class action settlements, the Court must “determine independently whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76–77 (*Moniz*).) It must make this assessment “in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (*Id.* at p. 77; see also *Haralson, supra*, 383 F. Supp. 3d at

p. 971 [“when a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*.)

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

III. PLAINTIFF’S INVESTIGATION, SETTLEMENT PROCESS, AND THE PARTIES’ AGREEMENT

Following the submission of Ms. Quijada’s individual claim to arbitration, her counsel and Defendant met and conferred to discuss the factual allegations and merits of their respective claims and defenses. In lieu of formal discovery, Defendant produced to Plaintiffs: a ten percent sampling of time and payroll records for employees during the period of June 13, 2020 and March 26, 2023; data points regarding the total number of pay periods worked by non-exempt employees between June 13, 2020 and March 26, 2023 in which a shift of 3.5 hours or more was worked; data points regarding the total number of pay periods worked by non-exempt employees between June 13, 2020 and March 26, 2023 in which a shift of 5 hours or more was worked; the total number of non-exempt employees employed by Defendant at any time between June 13, 2020 and March 26, 2023; the relevant policies, including those pertaining to meal and rest periods, the payment of meal/rest period premium compensation, the calculation of overtime wages, and mileage and travel time reimbursement; and the arbitration agreements signed by employees. Plaintiffs’ counsel retained Berger Consulting Group to analyze the foregoing time

1 and payroll records and assist Plaintiffs in preparing a penalties analysis as to the value of the
2 PAGA claims. Additionally, Plaintiffs' counsel investigated the applicable law as applied to the
3 facts regarding Plaintiffs' claims and potential defenses thereto.

4 In April 2023, Plaintiffs and Defendant agreed to participate in a global mediation of the
5 *Quijada* and *Azar* Actions and, on August 3, 2023, engaged in a full-day session with Steven R.
6 Denton. The parties reached a global settlement in principle and thereafter negotiated the
7 specific terms of the agreement that is now before the Court.

8 Pursuant to the parties' agreement, Defendant will pay a non-reversionary gross
9 settlement amount of \$350,000, from which \$116,655 in attorney's fees (one-third of the gross
10 settlement amount), \$13,624.86 in litigation costs, and \$9,600 in administration costs will be
11 paid. The resulting net settlement of \$190,120.14 will be distributed 75 percent (\$142,590.10)
12 to the LWDA and 25 percent (\$47,530.04) to "Aggrieved Employees," who are defined as "all
13 current and former hourly, non-[exempt] employees who work or who have worked for
14 [Defendant] in the State of California" at any time between June 13, 2020 and July 19, 2023, on
15 a pro rata basis based on the number of pay periods worked by each employee during the
16 foregoing period. It is estimated that there are approximately 38,285 pay periods within the
17 relevant period; however, in the event that the number of pay periods at issue exceeds this
18 amount by more than 10% (i.e., 42,114) as of the date that the Court enters its order approving
19 the settlement, Defendant may either (1) increase the gross settlement amount on a pro rata basis
20 according to the number of additional compensable pay periods over 42,114 pay periods; or (2)
21 elect to close the settlement period before the date the pay periods exceed the 42,114 pay period
22 limit.

23 In exchange for settlement, Aggrieved Employees will release:

24 All claims for penalties under the California Private Attorneys General Act, including
25 interest, costs and attorneys' fees related thereto, predicated upon Labor Code sections 201, 202,

203, 204, 226, 226.7, 510, 512, 558, 1194 and 2802 and any other Labor Code sections and/or duplicative or similar provisions arising under the Wage Orders of the California Industrial Welfare Commission that were alleged or that could have been alleged based on the factual allegations in the Quijada Complaint and/or PAGA Letters. The Released Claims include all claims for penalties recoverable under PAGA concerning: failure to pay minimum wages, straight time compensation and overtime compensation; failure to pay for all hours worked; the calculation of the regular rate of pay; failure to pay overtime compensation at the regular rate of pay; failure to provide meal and/or rest periods; failure to pay proper meal or rest period penalties; failure to provide accurate itemized wage statements; failure to timely pay wages during employment; failure to timely pay wages at separation of employment; payment for all hours worked; waiting time penalties; and off-the-clock work, and any other PAGA penalty claims whatsoever alleged in the Quijada Complaint and/or PAGA Letters, whether known or unknown, during the Settlement Period.

The release is appropriately tailored to the allegations at issue, and does not release any claims other than those for PAGA penalties. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537; *Moniz, supra*, 72 Cal.App.5th at p. 82 [release of “all known and unknown claims under PAGA ... that were or could have been pled based on the allegations of the Complaint” was appropriately approved].) Nor does it affect a waiver of claims by Aggrieved Employees (excluding Plaintiffs) against the released parties for any individual wage and hour claims.

IV. DISCUSSION

A. Potential Verdict Value

Based on the data provided by Defendant, Plaintiff and its retained expert estimated the maximum exposure of the PAGA claims to be \$3,828,500 without “stacking” and \$8,756,550 with “stacking.” Several factors reduced these amounts, including but not limited to the

1 following: the potential that the Court would award less penalties based on the employer lacking
2 knowledge of any violations; the lack of willfulness on the part of Defendant; the risk that
3 Plaintiffs may recover nothing; manageability issues; issues of individualized proof; and
4 Defendant's denial on the merits and related defenses (e.g., employee choice in taking breaks or
5 working off-the-clock). In consideration of these facts, the history of various similar PAGA
6 decisions that significantly reduce maximum penalties amounts (e.g., 90% reduction) and the
7 risk that Plaintiff may recover nothing, the Court finds that the proposed settlement is fair to
8 those affected and is genuine, meaningful, and reasonable in light of the statute's purposes.

9 **B. Attorney's Fees**

10 While the PAGA statute does not expressly require judicial review of claimed attorney
11 fees, the Court believes it cannot adequately fulfill its statutory duty to review the penalties
12 associated with PAGA settlements without also considering attorney fees. The Court thus finds
13 that it must scrutinize the attorney fee arrangement associated with a PAGA settlement. This is
14 consistent with the observation of many courts that PAGA claims are analogous to "*qui tam*"
15 suits like those under the federal False Claims Act: when reviewing settlements of *qui tam*
16 claims, courts should and do consider any associated attorney fee arrangement. (See *U.S. v.*
17 *Texas Instruments Corp.* (9th Cir. 1994) 25 F.3d 725, 728 [attorney fee award must be
18 considered by the trial court as part of its review of the "entire settlement arrangement"].)

19 As set forth above, Plaintiffs seek a fee award of \$116,655, one-third of the gross
20 settlement, which is not an uncommon contingency fee allocation in a wage and hour/PAGA
21 action. Plaintiffs also submit a lodestar figure of \$184,000 based on 238.50 hours spent on this
22 case by counsel billing at rates of \$750 to \$800 per hour. This amount exceeds the fees
23 requested by Plaintiffs here, resulting in a negative multiplier. Accordingly, the lodestar cross
24 check supports the percentage fee actually requested and this amount is approved. (See *Laffitte*
25 *v. Robert Half Intern. Inc.* (Cal. 2016) 1 Cal.5th 480, 488, 503-504 [trial court did not abuse its

1 discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar
2 resulting in a multiplier of 2.03 to 2.13].)

3 **C. Other Costs and Awards**

4 Counsel's request for litigation costs of \$13,624.86 appears reasonable based on the
5 supporting declarations provided which establishe that counsel actually incurred costs in this
6 amount and is approved. The Court also approves settlement costs of \$9,600. Both Plaintiffs
7 request a service award in the amount of \$10,000 for the time and effort expended by each in
8 bringing these actions, which Defendant does not oppose. These requests are supported by
9 declarations submitted by both Plaintiffs and are approved.

10 **V. ADMINISTRATION PROCESS**

11 The parties have selected Phoenix Settlement Administrators ("Phoenix") as the
12 administrator of the settlement. The parties have agreed that no later than 30 days following the
13 "Effective Date,"¹ Defendant will provide Phoenix with a list of all Aggrieved Employees with
14 the relevant identifying information (including the last known home address) and the number of
15 pay periods worked. Phoenix will cross-reference all addresses provided with the U.S. Postal
16 Service NCOA databased to obtain current address information. Within 15 days following
17 receipt of the gross settlement amount from Defendant (the deposit is required to take place no
18 later than 30 days following the Effective Date), Phoenix will pay the various amounts approved
19 by the Court to Plaintiff's counsel, the LWDA, and each Aggrieved Employee. Each Aggrieved
20 Employee will be sent a check in the appropriate amount with undeliverable amounts returned to
21 Defendant. Any checks that remain uncashed after 180 days will be transmitted to the State of
22
23

24 ¹ This phrase is defined as the last of the following to occur: (a) the 61st day after service
25 of notice of entry of the order granting approval of the settlement; or (b) if an appeal, review or
writ is sought from the order, the day after the order is affirmed or the appeal, review or writ is
dismissed or denied, and the order is no longer subject to further judicial review.

1 California Unclaimed Property Fund in the name of the Aggrieved Employee whose check went
2 uncashed. These administrative procedures are appropriate and are approved.

3 **VI. ORDER AND JUDGMENT**

4 Plaintiffs' motion for approval of the parties' PAGA settlement is GRANTED.
5 "Aggrieved Employees" are defined as: all current and former hourly, non-[exempt] employees
6 who work or who have worked for [Defendant] in the State of California at any time between
7 June 13, 2020 and July 19, 2023.

8 Judgment shall be entered through the filing of this order and judgment. (Code Civ.
9 Proc., § 668.5.) Plaintiffs and the PAGA members shall take from the PAGA claim in their FAC
10 only the relief set forth in the parties' settlement agreement and this order and judgment. The
11 Court retains jurisdiction over the parties to enforce the terms of the PAGA settlement agreement
12 and the final order and judgment.

13 The Court sets a compliance hearing for **December 19, 2024 at 2:30 P.M.** in Department
14 7. At least ten court days before the hearing, Plaintiffs' counsel and the settlement administrator
15 shall submit a summary accounting of the net settlement fund identifying distributions made as
16 ordered herein; the number and value of any uncashed checks; amounts remitted to the State's
17 Unclaimed Property Fund; the status of any unresolved issues; and any other matters appropriate
18 to bring to the Court's attention. Counsel may appear at the compliance hearing remotely.

19
20 DATED: April 25, 2024


21 CHARLES F. ADAMS
22 Judge of the Superior Court
23
24
25