

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

AIREEN BONWELL, individually and on behalf of all others similarly situated,	)	Case No.: 21CV384595
	)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF’S
	)	MOTION FOR APPROVAL OF PAGA
v.	)	SETTLEMENT
	)	
	)	Dept. 7
SILVERADO SENIOR LIVING	)	
MANAGEMENT, INC., et al.,	)	
	)	
Defendants.	)	

This is a representative action under the Private Attorneys General Act (“PAGA”). Plaintiff alleges that Defendant Silverado Senior Living Management, Inc. committed wage statement violations and incorrectly calculated the pay rate used to pay meal and rest period premiums.

Before the Court is Plaintiff’s motion for approval of PAGA settlement, which is unopposed. Neither party contested the court’s tentative ruling nor appeared at the hearing on March 14, 2024. As discussed below, the Court GRANTS Plaintiff’s motion.

I. BACKGROUND

As alleged in the operative complaint, Plaintiff worked for Defendant as an RN Case Manager from November 13, 2020 to June 28, 2021. (Second Amended Class Action Complaint

1 for Damages (“SAC”), ¶ 6.) Plaintiff alleges that Defendant failed to provide her and other
2 employees with accurate itemized wage statements and failed to pay meal and rest break
3 premiums at the regular rate of pay. (*Id.*, ¶ 18.) Specifically, whenever overtime incentive wages
4 were paid, the wage statements failed to identify the correct rates of pay and applicable number
5 of hours for such wages. (*Id.*, ¶ 20.) Whenever meal and rest break premium wages were paid,
6 the meal and rest break premium wages were paid at the base hourly rate of pay, which did not
7 include the non-discretionary incentive wages received during the same period. (*Ibid.*)

8 Based on these allegations, the SAC initially asserted putative class claims for: (1)
9 violation of Labor Code section 226; (2) violation of Labor Code sections 226.7 and 512; and (3)
10 violation of Business & Professions Code section 17200 et seq.; and (4) a representative claim
11 under PAGA.

12 In October 2022, Defendant moved to compel arbitration of all of Plaintiff’s claims,
13 including the PAGA claim, based on the U.S. Supreme Court’s then recently-issued decision in
14 *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639. In an order dated October 17, 2022,
15 the Court granted Defendant’s motion as to Plaintiff’s individual claims under the Labor Code
16 and Business and Professions Code, as well as her individual claim under PAGA. Pursuant to
17 the subject arbitration agreement, the Court dismissed the putative class claims. Finally,
18 Plaintiff’s representative PAGA claim was stayed pending a decision by the California Supreme
19 Court in *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104.

20 The parties subsequently engaged in private mediation in September 2023 and reached
21 the settlement agreement presently before the Court.

22 **II. LEGAL STANDARD FOR APPROVING PAGA SETTLEMENT**

23 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf
24 of other current or former employees to recover civil penalties for Labor Code violations.
25 (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other

1 grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 569 U.S.639.) 75 percent of any
2 penalties recovered go to the Labor and Workforce Development Agency (LWDA), leaving the
3 remaining 25 percent for the employees. (*Ibid.*) PAGA is intended “to augment the limited
4 enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as
5 representatives of the Agency.” (*Id.* at p. 383.) A judgment in a PAGA action binds all those,
6 including nonparty aggrieved employees, who would be bound by a judgment in an action
7 brought by the government. (*Id.* at p. 381.)

8 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall
9 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
10 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
11 *Court* (2017) 3 Cal.5th 531, 549.) “[C]lass certification is not required” in this context as in a
12 class action. (*Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971
13 (*Haralson*).)

14 Similar to its review of class action settlements, the Court must “determine
15 independently whether a PAGA settlement is fair and reasonable,” to protect “the interests of the
16 public and the LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.*
17 (2021) 72 Cal.App.5th 56, 76–77 (*Moniz*).) It must make this assessment “in view of PAGA’s
18 purposes to remediate present labor law violations, deter future ones, and to maximize
19 enforcement of state labor laws.” (*Id.* at p. 77; see also *Haralson, supra*, 383 F. Supp. 3d at
20 p. 971 [“when a PAGA claim is settled, the relief provided for under the PAGA [should] be
21 genuine and meaningful, consistent with the underlying purpose of the statute to benefit the
22 public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D.
23 Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

24 The settlement must be reasonable in light of the potential verdict value.
25 (See *O’Connor, supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of

1 the potential verdict].) But a permissible settlement may be substantially discounted, given that
2 courts often exercise their discretion to award PAGA penalties below the statutory maximum
3 even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11,
4 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at *8–9.)

5 **III. SETTLEMENT PROCESS, AND THE PARTIES' AGREEMENT**

6 On September 19, 2023, the parties engaged in private mediation with Christopher
7 Panetta, Esq. In connection with the mediation, Defendant provided Plaintiff's counsel with
8 information regarding the number of pay periods where meal and rest break premium wages and
9 non-discretionary remuneration were paid during the same pay period and wage statements that
10 included the foregoing. Based on this information, the parties conducted settlement negotiations
11 and, after further post-mediation negotiations through Mr. Panetta, ultimately reached settlement
12 of all claims.

13 Pursuant to the settlement agreement, Defendant will pay a gross amount of \$250,000, of
14 which \$83,333.33 (one-third of the gross settlement) is allocated to attorney's fees, up to
15 \$11,003.18 in litigation costs, \$5,000 to Plaintiff in exchange for a general release, and up to
16 \$10,000 in administrative costs. The net settlement amount of \$140,663.40 will be distributed 75
17 percent (\$105,497.62) to the LWDA and 25 percent (\$35,165.87) to "Aggrieved Employees,"
18 who are defined as "all current and former persons employed by Defendant as non-exempt
19 hourly paid employees in California at any point during the period of July 15, 2020, to April 10,
20 2022," and who either, during the aforementioned period, (a) received meal period or rest period
21 premium pay at a rate lower than the regular rate of pay or (b) was provided with "OT Incentive"
22 or "Coefficient OT Amount" pay on a wage statement. These individuals will receive a payment
23 that is proportionate to the number of pay periods worked in which one of the alleged issues in
24 this matter occurred.

1 In exchange for settlement, the Aggrieved Employees will release “any and all claims
2 under the PAGA alleged in the Complaint or could have been alleged based on the facts
3 pertaining to Plaintiff and the Aggrieved Employees. This includes PAGA claims predicated on
4 alleged violations of the California Labor Code sections 201, 202, 203, 226, 226.7, 512, and the
5 applicable California Industrial Welfare Commission Wage Orders.”

6 This release is effective during the PAGA period, which is defined as July 15, 2020, to
7 April 10, 2022. The release is appropriately tailored to the allegations at issue, and does not
8 release any claims other than those for PAGA penalties. (See *Amaro v. Anaheim Arena*
9 *Management, LLC* (2021) 69 Cal.App.5th 521, 537; *Moniz, supra*, 72 Cal.App.5th at p. 82
10 [release of “all known and unknown claims under PAGA ... that were or could have been pled
11 based on the allegations of the Complaint” was appropriately approved].)

12 **IV. DISCUSSION**

13 **A. Potential Verdict Value**

14 As part of the settlement negotiations, Defendant provided Plaintiff with data concerning
15 the number of pay periods at issue for each of the claims, and from this Plaintiff’s counsel
16 calculated Defendant’s maximum exposure to be \$4,281,650.

17 A court can decline to award the full amount of PAGA penalties where, “if, based on the
18 facts and circumstances of the particular case, to do otherwise, would result in an award that is
19 unjust, arbitrary and oppressive, or confiscatory.” (See, e.g., *Carrington v. Starbucks Corp.*
20 (2018) 390 Cal.App.5th 504, 517 [affirming trial court’s 90% reduction of maximum PAGA
21 penalty amount given employer’s good faith attempt at complying with the law].) After
22 calculating Defendant’s maximum exposure, Plaintiff discounted that exposure for settlement
23 purposes to account for the risks of continued litigation, as well as Defendant’s arguments on the
24 merits (including that it operated in good faith at all times with regards to its pay practices and
25

1 wage statement penalties are not available for rate violations) and the likelihood that the Court
2 would reduce the amount of penalties.

3 In consideration of the foregoing, the history of various similar PAGA decisions in which
4 potential penalties were significantly reduced (i.e., in excess of 80%), and the risk that Plaintiff
5 may recover nothing, the Court finds that the proposed settlement- which does not extinguish
6 any individual wage and hour claims- is fair to those affected and is genuine, meaningful, and
7 reasonable in light of the statute's purposes.

8 **B. Attorney Fees**

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

18 Plaintiff seeks a fee award of \$83,333.33, one-third of the gross settlement, which is not
19 an uncommon contingency fee allocation in similar actions. This award is facially reasonable
20 under the "common fund" doctrine, which allows a party recovering a fund for the benefit of
21 others to recover attorney fees from the fund itself. Plaintiff also submits a lodestar figure of
22 \$133,650, based on 128.50 hours spent on this case by counsel billing at a rate of \$900 per hour.
23 This amount far exceeds the fee requested by Plaintiff here, resulting in negative multiplier.
24 Accordingly, the lodestar cross check supports the percentage fee actually requested and this
25 amount is approved. (See *Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 1 Cal.5th 480, 488,

1 503-504 [trial court did not abuse its discretion in approving fee award of 1/3 of the common
2 fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

3 **C. Other Costs, Payments and Expenses**

4 Counsel's request for actual litigation costs of \$11,003.18 appears reasonable based on
5 the supporting declarations provided, as is the request for up to \$10,000 in administrative costs
6 and a \$5,000 service award to Plaintiff in exchange for her executing in a general release, as well
7 as compensating her for the time spent on this case.

8 **V. ADMINISTRATION PROCESS**

9 The parties have agreed on Phoenix Settlement Administrators ("Phoenix") to handle
10 administration of the settlement. Under the terms of the settlement, within five calendar days
11 from the date the Court signs an Order and Judgment approving its terms, Defendant will provide
12 Phoenix with a list of the Aggrieved Employees and their relevant identifying and contact
13 information. Within 30 calendar days of the aforementioned date, Defendant will fully fund the
14 gross settlement amount by transmitting the funds to Phoenix.

15 Within 10 days after the gross settlement amount is funded, Phoenix will disburse the
16 various settlement amounts discussed above. Payments to Aggrieved Employees will be made
17 by check via U.S. Mail, with Phoenix first having updated the addresses for these individuals
18 using the National Change of Address database. Any checks returned as non-deliverable will be
19 re-mailed to any forwarded address or updated address located by using the National Change of
20 Address database, a skip trace, direct contact by the administrator with the Aggrieved
21 Employees, or any other reasonably available sources and methods. Checks shall remain valid
22 for 180 days, and thereafter, will be cancelled, with associated funds transmitted to the State of
23 California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

24 These administrative procedures are appropriate and are approved.

In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND
DECREED THAT:

Plaintiff's motion for approval of PAGA settlement is GRANTED. The "Aggrieved Employees" are: "all current and former persons employed by Defendant as non-exempt hourly paid employees in California at any point during the period of July 15, 2020, to April 10, 2022," *and* who either, during the aforementioned period, (a) received meal period or rest period premium pay at a rate lower than the regular rate of pay or (b) was provided with "OT Incentive" or "Coefficient OT Amount" pay on a wage statement.

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiff shall take from the SAC only the relief set forth in the parties' settlement agreement and this order and judgment. The Court retains jurisdiction over the parties to enforce the terms of the PAGA settlement agreement and the final order and judgment.

The Court sets a compliance hearing for **November 21, 2024 at 2:30 P.M.** in Department

7. At least ten court days before the hearing, Plaintiff's counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted to the Controller's Office; the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. Counsel may appear at the compliance hearing remotely.

DATED: March 15, 2024


CHARLES F. ADAMS
Judge of the Superior Court