

Envelope: 16289400

Raul Perez (SBN 174687)
Raul.Perez@capstonelawyers.com
Orlando Villalba (SBN 232165)
Orlando.Villalba@capstonelawyers.com
Helga Hakimi (SBN 257381)
Helga.Hakimi@capstonelawyers.com
Roxanna Tabatabaee pour (SBN 260187)
Roxanna.Taba@capstonelawyers.com
CAPSTONE LAW APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff Norma Aguilar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

NORMA AGUILAR, as an aggrieved employee
pursuant to the Private Attorneys General Act
(PAGA), on behalf of the State of California and
other aggrieved employees,

Plaintiff,

vs.

SEASIDE DINING GROUP, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

FILED

August 16, 2024

Clerk of the Court
Superior Court of CA
County of Santa Clara

21CV390701

By: rwalker

Case No. 21CV390701

Assigned to the Hon. Theodore C. Zayner

**[PROPOSED] ORDER APPROVING THE
PARTIES' PAGA SETTLEMENT
AGREEMENT AND JUDGMENT**

Date: August 14, 2024
Time: 1:30 p.m.
Place: Department 19

Complaint Filed: November 22, 2021
Trial: Not Set

1 **ORDER APPROVING THE PARTIES’**

2 **PAGA SETTLEMENT AGREEMENT AND JUDGMENT**

3 **I. INTRODUCTION**

4 This is a representative action arising out of alleged wage and hour violations brought by
5 plaintiff Norma Aguilar (“Plaintiff”) against defendant Seaside Dining Group, Inc. (“Defendant”).
6 Plaintiff filed the operative complaint on November 22, 2021, stating a single cause of action for
7 violations of the Private Attorneys General Act (“PAGA”), Labor Code sections 2698, *et seq.*

8 The parties have reached a settlement. Plaintiff filed a motion for approval of the PAGA
9 settlement, and the motion is unopposed. At the initial hearing on February 7, 2024, the court continued
10 the motion to allow Plaintiff to file supplemental declarations addressing several identified issues. (See
11 February 7, 2024 Minute Order, pp. 3-4 (“February 7 Minute Order”).) Plaintiff filed supplemental
12 declarations on February 26, 2024.

13 At the hearing on March 13, 2024, the court continued the motion once more, instructing
14 Plaintiff to file a supplemental declaration. (March 13, 2024 Minute Order, pp. 4-5 (“March 13 Minute
15 Order”).) Specifically, the court directed Plaintiff to address the language of the release provisions and to
16 provide further explanation regarding the settlement amount. (*Id.* at p. 4.) On April 10, 2024, Plaintiff
17 filed a supplemental declaration. As explained below, the court now finds that Plaintiff has sufficiently
18 addressed the identified issues and therefore GRANTS the motion for approval of PAGA settlement.

19 **II. LEGAL STANDARD**

20 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other
21 current or former employees to recover civil penalties for Labor Code violations. (*Iskanian v. CLS*
22 *Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River*
23 *Cruises, Inc. v. Moriana* (2022) 596 U.S. ____ [2022 U.S. LEXIS 2940].) Seventy-five percent of any
24 penalties recovered go to the Labor and Workforce Development Agency (“LWDA”), leaving the
25 remaining 25 percent for the employees. (*Ibid.*) PAGA is intended “to augment the limited enforcement
26 capability of [the LWDA] by empowering employees to enforce the Labor Code as representatives of
27 the Agency.” (*Id.* at p. 383.) A judgment in a PAGA action binds all those, including nonparty aggrieved
28 employees, who would be bound by a judgment in an action brought by the government. (*Id.* at p. 381.)

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

5 As discussed by one court:

6 PAGA does not establish a clear standard for evaluating PAGA settlements. ...
7 [¶] Accordingly, certain courts have been willing to approve PAGA settlements
8 only 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
public policy goals.

9 (*Patel v. Nike Retail Services, Inc.* (N.D. Cal. 2019) 2019 WL 2029061, 2019 U.S. Dist. LEXIS 77988
10 (*Patel*), at *5.)

11 As part of this analysis, these courts have evaluated proposed PAGA settlements under the
12 relevant factors from *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. (*Patel, supra*, 2019
13 U.S. Dist. LEXIS 77988 at *5-6.) “Of the *Hanlon* factors, the following are relevant to evaluating [a]
14 PAGA settlement: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely
15 duration of further litigation; (3) the amount offered in settlement; (4) the extent of discovery completed
16 and the stage of the proceedings; (5) the presence of government participation; and (6) the expertise and
17 views of counsel.” (*Ibid.*)

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

27 “[W]hen a PAGA claim is settled, the relief provided ... [should] be genuine and meaningful,
28 consistent with the underlying purpose of the statute to benefit the public” (*O’Connor, supra* at p.

1 1133.) The settlement must be reasonable in light of the potential verdict value. (*Id.* at 1135 [rejecting
2 settlement of less than one percent of the potential verdict].) But a permissible settlement may be
3 substantially discounted, given that courts often exercise their discretion to award PAGA penalties below
4 the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D.
5 Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, 2016 U.S. Dist. LEXIS 140759 at *8-
6 9.)

7 **III. DISCUSSION**

8 **A. Provisions of the Settlement**

9 Plaintiff moves for approval of a proposed settlement made on behalf of:

10 [A]ll persons who, during the Representative Period [from September 15, 2020
11 through February 26, 2023], have previously been or currently are employed by
Defendant [Seaside Dining Group, Inc.], as a non-exempt employee.

12 (Supplemental Declaration of Raul Perez in Support of Motion for Court Approval of the Parties' PAGA
13 Settlement ("Perez Supp. Dec."), Ex. 1 (Amended Joint Stipulation of Representative PAGA Action
14 Settlement and Release of Claims ("Agreement"), ¶¶ 2, 18.)

15 According to the terms of the settlement, Defendant will pay a non-revisionary maximum
16 settlement amount of \$775,000. (Agreement, ¶¶ 11, 48.) This amount includes attorney fees in the
17 amount of \$258,333.33 (1/3 of the maximum settlement amount), litigation costs not to exceed \$25,000,
18 a service award up to \$10,000 for Plaintiff, reasonable settlement administration costs (estimated to be
19 \$10,000), and other unspecified fees and expenses. (*Id.* at ¶¶ 13, 15, 16, 19, 21, 49.)

20 Of the remaining net settlement amount, 75 percent will be paid to the LWDA and 25 percent
21 will be distributed to aggrieved employees based on the pro rata number of pay periods worked by each
22 aggrieved employee during the Representative Period. (Agreement, ¶¶ 4, 5, 8, 10, 13, 17, 18, 46, 49.)
23 Funds from checks that not cashed within 180 days from the date of mailing will be sent to the Controller
24 of the State of California to be held pursuant to the Unclaimed Property Law. (*Id.* at ¶¶ 42, 43.)

25 In exchange for the settlement, the aggrieved employees agree to release the "Released Parties"
26 from all claims that were or reasonably could have been alleged in the complaint based on the facts and
27 matter contained in the complaint and/or the LWDA letter. (Agreement, ¶ 53.) Plaintiff also agrees to a
28 comprehensive general release. (*Id.* at ¶¶ 51, 52.)

1 The court previously continued the instant motion, in part because the settlement agreement's
2 release provisions were overbroad. More specifically, paragraph 54 of the agreement stated: " 'Released
3 Parties' **includes** Defendant and their past, present and/or future, direct and/or indirect, officers, directors,
4 members" (See Declaration of Raul Perez in Support of Motion for Court Approval of the Parties'
5 PAGA Settlement ("Perez Dec."), Ex. 1, ¶ 54.) In its prior minute orders concerning the instant motion,
6 the court said that the list of persons and entities that comprises the "Released Parties" was not
7 exhaustive. (March 13 Minute Order, p. 3.)

8 Plaintiff's counsel has now filed a supplemental declaration indicating that the parties have
9 revised the definition of "Released Parties." (Perez Supp. Dec., ¶ 2.) As amended, paragraph 54 of the
10 Agreement now states: " 'Released Parties' **are** Defendant and their past, present and/or future, direct
11 and/or indirect, officers, directors, members" (*Id.* at ¶ 3; Agreement, ¶ 54.) The court finds that the
12 parties' revision to paragraph 54 of the amended Agreement sufficiently cures the overbreadth defect
13 previously identified by the court.

14 **B. Fairness of the Settlement**

15 Plaintiff contends that the PAGA settlement is fair and reasonable. (Notice of Motion and
16 Motion [] ("Mot."), p. 11:3-4.) Plaintiff states the settlement resolves PAGA claims on behalf of 2,300
17 aggrieved employees. (*Id.* at p. 11:15.) The parties participated in mediation with Louis Marlin, Esq., on
18 December 20, 2022. (*Id.* at p. 9:11-15.) Prior to mediation, Plaintiff's counsel investigated the claims,
19 which included interviews, evaluation of potential claims and estimating Defendant's liability for
20 purposes of settlement, researching similar PAGA actions and settlements, analyzing aggrieved
21 employee's time records, reviewing Defendant's policies and manuals, drafting a mediation brief, and
22 participating in mediation. (*Id.* at p. 10:18-25.)

23 In the initial moving papers, Plaintiff indicated that Defendant's maximum exposure is
24 \$24,016,100, providing a breakdown of this amount by claim. (Mot., pp. 14:21-15:7.) Plaintiff
25 discounted the exposure for settlement purposes to account for the risks associated with continued
26 litigation and asserted that the settlement amount \$775,000 was warranted by the circumstances of the
27 case. (*Id.* at p. 15:8-14.) In his memorandum of points and authorities, Plaintiff asserted that the
28 settlement amount is fair because courts have wide latitude to reduce the amounts of civil penalties based

1 on the facts and circumstances of a particular case. (*Id.* at p. 15:15-16.) In support, Plaintiff cited several
2 authorities, including: Labor Code, § 2699, subd. (h); *Carrington v. Starbucks Corp.* (2018) 30
3 Cal.App.5th 504, 528; *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F. Supp. 3d 1030, 1037; *Fleming v.*
4 *Covidien, Inc.* (C.D. Cal. Aug. 12, 2011, No. ED CV10-01487 RGK (OPx)) 2011 U.S.Dist.LEXIS
5 154590; and *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112, 1135-1136. (See Mot.,
6 pp. 15:15-16:24.)

7 In its prior minute orders concerning this motion, the court observed that the settlement amount
8 represents approximately 3.2 percent of the maximum potential value of the PAGA claims. As the court
9 explained previously, this percentage recovery is below the general range of percentage recoveries that
10 California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18,
11 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist. LEXIS 30201, at *41-42 [citing cases indicating
12 that a general range of 5 to 35 percent of the maximum potential exposure is reasonable].)

13 In its February 7, 2024 minute order, the court instructed Plaintiff to submit a supplemental
14 declaration explaining in greater detail the basis for the discount applied to the PAGA claim. (February 7
15 Minute Order, p. 4.) Plaintiff did not file a such a declaration prior to the next hearing. (March 13 Minute
16 Order, p. 4.) Therefore, the court gave Plaintiff a final opportunity to do so. (*Ibid.*)

17 As mentioned previously, Plaintiff's counsel has since filed a supplemental declaration. (See
18 Perez Supp. Dec., filed on April 10, 2024.) In this supplemental declaration, Plaintiff's counsel explains
19 in greater detail the nature of the alleged violations and Defendant's maximum exposure for PAGA
20 penalties. (*Id.* at ¶¶ 6-21.) Counsel also sets forth and explains the factors he contends support a reduction
21 in total penalties based on the anticipated trial result, weight of evidence, controlling law, and
22 defendant's defenses. (*Id.* at ¶¶ 22-48.) Plaintiff's counsel asserts that, based on the aforementioned
23 factors, Defendant's total *realistic* exposure at trial is \$4,584,825, and he provides a breakdown of this
24 amount by claim. (*Id.* at ¶ 44.) Based on this amount, the gross settlement amount of \$775,000 represents
25 a recovery of 16.9 percent of Defendant's *realistic* exposure at trial.

26 The court has reviewed the supplemental materials provided by Plaintiff in response to the
27 court's expressed concerns. Although the court continues to observe that the settlement amount is low, it
28 now finds that Plaintiff has sufficiently explained the rationale for the settlement amount. Therefore, the

1 court finds the terms of the settlement to be fair. The settlement provides for some recovery for each
2 class member and eliminates the risk and expense of further litigation.

3 **C. Incentive Award, Fees and Costs**

4 As part of the settlement, Plaintiff seeks a service award in the amount of \$10,000. Although
5 service awards are common in class actions, there is less authority regarding the propriety of service
6 awards in PAGA cases. Nevertheless, a PAGA case is a representative action like a class action, and
7 court's have recognized that an individual's willingness to act as a private attorney general may merit a
8 service award. (See *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 959.)

9 Plaintiff has submitted a declaration detailing her participation in the action. She states that she
10 spent approximately 71.5 hours on this case, including discussing the case with counsel, reviewing the
11 complaint, gathering facts and documents for counsel, preparing and being available for mediation, and
12 reviewing settlement documents. (Declaration of Norma Aguilar in Support of Motion for Court
13 Approval of the Parties' PAGA Settlement, ¶¶ 4-13.) Plaintiff acted as a representative for the aggrieved
14 employees and has agreed to a broader release.

15 Plaintiff also submitted a supplemental declaration stating that she also filed a wrongful
16 termination complaint against Defendant in Los Angeles County Superior Court (*Norma Aguilar v.*
17 *Seaside Dining Group, Inc.*, Case No. 23STCV0786). (Supplemental Declaration of Norma Aguilar in
18 Support of Motion for Court Approval of the Parties' PAGA Settlement, ¶¶ 4-5, Ex. A.) Plaintiff states
19 that as a condition of the settlement of the PAGA action, Defendant required her to generally release all
20 claims arising out of her employment, and she filed a request for dismissal of her wrongful termination
21 claims, which the court entered on August 31, 2023. (*Id.* at ¶¶ 6-7, Ex. B.)

22 For the foregoing reasons, the court approves a service award in the amount of \$10,000 to
23 Plaintiff.

24 Plaintiff's counsel seeks attorney fees of \$258,333.33 (1/2 of the maximum settlement amount).
25 Plaintiff's counsel provides evidence demonstrating a lodestar of \$261,800. (Perez Dec., ¶¶ 20-23.) This
26 results in a negative multiplier. The court finds the requested fees to be reasonable as a percentage of the
27 total recovery, and the fees are approved in the in the amount of \$258,333.33.

28 Plaintiff's counsel also requests litigation costs in the total amount of \$12,717,84 and provides

evidence of incurred costs in that amount. (Perez Dec., ¶ 24.) Therefore, the court finds cost in the amount of \$12,717.84 to be reasonable and approves that amount.

Plaintiff also asks for settlement administration costs in the amount of \$10,000. Plaintiff provides a declaration from the settlement administrator demonstrating that costs associated with settlement administration do not exceed \$9,000. (Declaration of Jule Green on Behalf of CPT Group, Inc., ¶ 11, Ex. B.) Therefore, the court approves settlement administration costs in the amount of \$9,000.

IV. CONCLUSION

Accordingly, the motion for approval of PAGA settlement is GRANTED.

The parties shall return for a compliance hearing to occur in Department 19 on: June 11, 2025 at 2:30 p.m. Plaintiff shall file a declaration from the Settlement Administrator regarding the completion of settlement administration activities no later than May 29, 2025.

IT IS SO ORDERED, ADJUDGED, AND DECREED

Date August 16, 2024



Hon. Theodore C. Zayner
Santa Clara County Superior Court Judge

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

On **August 15, 2024**, I served the document(s) described as: **[PROPOSED] ORDER APPROVING THE PARTIES' PAGA SETTLEMENT AGREEMENT AND JUDGMENT** on the interested parties in this action by sending ☐ the original ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Matthew Sgnilek
msgnilek@ohaganmeyer.com
Andrea Rosenkranz
arosenkranz@ohaganmeyer.com
Virginia Tomlinson
vtomlinson@ohaganmeyer.com
O'HAGAN MEYER
3200 Park Center Drive, Suite 700
Costa Mesa, CA 92626
Telephone: 949-942-8500
Facsimile: 949-942-8510

Attorneys for Defendants:
SEASIDE DINING GROUP, INC.

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

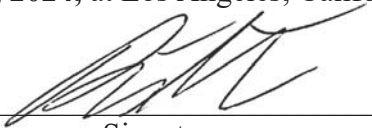
☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

☐ **BY PERSONAL SERVICE:** I caused delivery of the document(s), enclosed in a sealed envelope, by hand via ProLegal Network to the offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **August 15, 2024**, at Los Angeles, California.

Riley McIntire
Type or Print Name


Signature