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6 individually and on behalf of similarly situated employees

FILED

AUG 28 2023

CLERK OF THE SUPERIOR COURT
BY: K. MIRANDA, DEPUTY CLERK

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SHASTA**

10 JENIFER FISHER, individually and on behalf
11 of all other similarly situated employees,

12 Plaintiff,

13 vs.

14 SHASCADE COMMUNITY SERVICES,
15 INC., a California Corporation; and DOES 1 to
16 100, inclusive,

17 Defendants.

Case No. CVCV21-0198378

Assigned for All Purposes to Hon. Tamara L. Wood, Department 8

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT; DISMISS CLASS CLAIMS
WITHOUT PREJUDICE, PAGA CLAIMS
AND INDIVIDUAL CLAIM WITH
PREJUDICE**

Date: August 28, 2023

Time: 8:30 a.m.

Dept.: 8

Judge: Hon. ~~Tamara L. Wood~~

Filed: October 15, 2021

FAC Filed: January 20, 2022

SAC Filed: July 21, 2022

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion to Approve Private Attorneys General Act Settlement; Dismiss Class Claims
3 Without Prejudice, PAGA Claims and Individual Claim With Prejudice ("Motion") in the above
4 referenced case came before this Court, on August 28, 2023 at 8:30 a.m., in Department 8 before the
5 Honorable Tamara L. Wood, presiding. Plaintiff Jenifer Fisher ("Plaintiff") filed this Private Attorneys
6 General Act ("PAGA") action on October 15, 2021. The operative Complaint alleges that Shascade
7 Community Services, Inc. ("Defendant") violated California law by failing to pay minimum wages,
8 failing to pay overtime wages, failing to provide meal periods or pay premium in lieu thereof, failing to
9 provide rest periods or pay premium in lieu thereof, failing to provide accurate wage statements, failing
10 to pay final wages, failing to pay reimbursement for expenses, failing to maintain accurate records,
11 failing to provide all required sick pay, and violating California Labor Code sections 558 & 558.1. The
12 Complaint further alleges that Defendant is liable for civil penalties under the PAGA as a result of the
13 alleged violations. Defendant has denied all of Plaintiff's allegations. The Agreement and associated
14 settlement are made in compromise of disputed claims and nothing in the settlement is intended as an
15 admission of liability in any way by Defendant. Plaintiff sought attorneys' fees and costs as part of this
16 Action.

17 The parties have agreed to a settlement of the PAGA claims. The class claims and allegations
18 will be dismissed without prejudice and Plaintiff's individual claims and claims under the PAGA will
19 be dismissed with prejudice. Defendant will provide monetary consideration in exchange for a release
20 of claims and dismissal consistent with the terms of the PAGA Settlement ("Agreement" or
21 "Settlement"). Any capitalized terms herein shall have the same meaning as set forth in the Agreement.
22 The Court, having received and considered Plaintiff's Motion, the declarations in support, the
23 Agreement, the Notice of Settlement, and other evidence, HEREBY ORDERS AND MAKES
24 DETERMINATIONS AS FOLLOWS:

25 **I. SCOPE OF INDIVIDUALS WITHIN THE PAGA SETTLEMENT – AGGRIEVED**
26 **EMPLOYEES**

27 The Court finds that Plaintiff has exhausted all administrative remedies required to bring the
28 PAGA claims asserted in this litigation. Plaintiff is authorized to act on behalf of the Labor and

1 Workforce Development Agency ("LWDA") with respect to the PAGA claims being released under the
2 Agreement. The Court finds the scope of individuals subject to the terms and conditions of the
3 Agreement, its releases, and all rights and obligations thereunder include the following:

4 All individuals who have, or continue to, perform work for Defendants in
5 California as non-exempt employees in the position of Job Coach from
6 October 15, 2020, up to either (1) the Final Approval Date, or (2) sixty
(60) days after the Agreement is fully executed, whichever is earlier.

7 The Court recognizes that the foregoing definition is for Aggrieved Employee identification
8 purposes only and is not intended to capture the claims at issue or limit or alter the released claims under
9 the Agreement.

10 **II. APPROVING THE AGREEMENT**

11 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
12 A. The Court finds that the Agreement is fair, reasonable, and adequate, and, therefore, is approved as
13 required under California Labor Code sections 2698 *et seq.* Based on the potential amount of penalties
14 at issue, the risk of loss on the merits, the risk of being able to prove violations in each pay period as to
15 each individual as required by statute for damages purposes, and the Court's statutorily authorized
16 discretion to reduce penalties, the Agreement represents a substantial recovery for Aggrieved Employees
17 and the LWDA to further the LWDA's purpose in enforcing the California Labor Code. The Court also
18 finds that the Agreement provides a recovery that creates an effective, substantial deterrent to any
19 potential future non-compliance, furthering the purpose of the California Labor Code and LWDA.

20 The Court approves of the PAGA penalty allocations set forth in the Agreement wherein 75% of
21 the Net Settlement Amount will be paid to the LWDA and 25% of the Net Settlement Amount will be
22 paid to Aggrieved Employees as civil penalties pursuant to California Labor Code section 2699(i).

23 Additionally, because the Court finds the Parties' settlement to have been agreed upon only after
24 extensive and costly investigation, arms-length negotiations, and in an attempt to avoid further delays
25 and costs, the Court approves the Agreement and terms stated therein, which is incorporated by
26 reference in its entirety, as if stated here in full, including the \$45,000 Gross Settlement Amount.

27 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
28 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Aggrieved employees and the

1 LWDA), the benefits can be accurately traced as set forth in the Agreement, Plaintiff and Plaintiff's
2 Counsel were able to negotiate on behalf of Aggrieved employees and the LWDA, and the fee can be
3 shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the
4 Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir.
5 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th
6 480, 506 (2016). The Court finds the attorneys' fees request of thirty-five (35%) of the Gross
7 Settlement Amount, *i.e.* \$15,750, to be appropriate compensation for Plaintiff's Counsel. The attorneys'
8 fees request is within the range of percentages that have been approved by other Courts in similar cases
9 and is reasonable in light of the circumstances of this case, the substantial and beneficial results obtained
10 on behalf of Aggrieved Employees and the LWDA, and the contingent nature of the recovery over the
11 course of this case, which included potential loss at summary judgment and/or trial proceedings.
12 Additionally, the Court orders that \$15,395.97 of the Gross Settlement Amount will be paid to Plaintiff's
13 Counsel for reasonable costs incurred in this case.

14 The Court orders and approves ILYM Group, Inc. to act as the Settlement Administrator in this
15 case. The Settlement Administrator will take its fees out of the Gross Settlement Amount, which are not
16 to exceed \$2,850. Any difference between the actual Settlement Administrator Costs and the approved
17 amount will be added to the Net Settlement Amount for distribution between the LWDA and Aggrieved
18 Employees consistent with the allocations and formulas set forth in the Agreement.

19 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
20 Aggrieved Employees that are not cashed by the deadline to do so shall be donated equally, *i.e.* 50/50, to
21 Capital Pro Bono, Inc., and the Center for Workers' Rights. *See In re Microsoft I-V Cases*, 135
22 Cal.App.4th 706, 718 (2006). No portion of the Gross Settlement Amount will revert to Defendant for
23 any reason.

24 The releases and waivers for Aggrieved Employees are also approved by the Court as set forth in
25 the Agreement.

26 **III. APPROVAL OF THE NOTICE OF SETTLEMENT**

27 The Court finds that the Notice of Settlement, which was submitted with Plaintiff's Motion as
28 Exhibit E, fairly and adequately advised Aggrieved Employees about the Agreement and its effect. The

1 Court further finds that the Notice of Settlement and distribution of such notice by first class mail to
2 each identified Aggrieved Employees at his or her most recent address based on a National Change of
3 Address database search from the Aggrieved Employees' last known address and a skip trace on any
4 Aggrieved Employees who have their notice returned as "undeliverable" or "not at this address"
5 comported with all constitutional requirements, including those of due process.

6 The Court also finds that because there is a strong interest in providing Aggrieved Employees the
7 opportunity to recover under the Agreement, along with the parties' efforts to minimize any intrusion to
8 privacy rights, the sharing of employment information, including social security numbers, is not a
9 serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide the Aggrieved
10 Employees' names, last known mailing address, last known telephone number, Social Security
11 Numbers, and Qualifying Pay Periods to the Settlement Administrator only, and not to Plaintiff or
12 Plaintiff's Counsel, in order to process this settlement as contemplated within the Agreement and
13 approved by this Order. The Settlement Administrator shall only use this information for settlement
14 purposes identified herein, and this information shall be kept confidential, not be shared with any third-
15 party, and used only to administer the settlement.

16 **IV. IMPLEMENTATION SCHEDULE**

17 Accordingly, with good cause shown, the Court hereby approves and orders that the following
18 implementation schedule be adhered to:

19 20 21 22 23 24 25 26 27 28	<table><tr><td>Last day for Defendant to provide Settlement Administrator with Aggrieved Employee information</td><td>Within 7 calendar days after the Effective Date</td></tr><tr><td>Last day for Settlement Administrator to calculate and report to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees</td><td>Within 7 calendar days after receiving Aggrieved Employee information</td></tr></table>	Last day for Defendant to provide Settlement Administrator with Aggrieved Employee information	Within 7 calendar days after the Effective Date	Last day for Settlement Administrator to calculate and report to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees	Within 7 calendar days after receiving Aggrieved Employee information
Last day for Defendant to provide Settlement Administrator with Aggrieved Employee information	Within 7 calendar days after the Effective Date				
Last day for Settlement Administrator to calculate and report to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees	Within 7 calendar days after receiving Aggrieved Employee information				

Last day for Defendant to fund Gross Settlement Amount	Within 14 calendar days after the Settlement Administrator calculates and reports to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees
Last day for Settlement Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing	Within 7 calendar days after Defendant has funded the settlement
Last day for Settlement Administrator to deliver payment of Plaintiff's Counsel's attorney's fees and costs, PAGA Payment, Settlement Administrator Costs, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement
Last day for Aggrieved Employees to cash settlement checks	270 calendar days after issuance of checks to Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

IT IS FURTHER ORDERED that the class claims and allegations be dismissed without prejudice and the remainder of this action, including Plaintiff's individual claims and the PAGA claims, be dismissed with prejudice with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved Agreement pursuant to California Civil Procedure Code section 664.6.

IT IS SO ORDERED.

Date: **AUG 28 2023**

By: **B.L. BOECKMAN**

Judge of the Superior Court