

LAW OFFICE OF SCOTT E. WHEELER

Scott E. Wheeler (SBN 187998)

250 West First Street, Suite 216

Claremont, CA 91711

Telephone: (909) 621-4988

Facsimile: (909) 621-4622

E-mail: sew@scottwheelerlawoffice.com

Attorneys for Plaintiff

FILED
Superior Court of California
County of Los Angeles

07/22/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: C. Guerrero Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

OSCAR ORELLANA, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

ENVIRONMENT CONTROL – PUENTE
HILLS, INC., a California corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No: 21STCV41665

[Assigned for all purposes to the Honorable
Michelle Williams, Department 74]

**~~[PROPOSED]~~ ORDER AND JUDGMENT
APPROVING PAGA SETTLEMENT**

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. “Operative Complaint” means Plaintiff’s First Amended PAGA Complaint filed by Plaintiff, which the Parties stipulate to filing subject to the terms of this Settlement in order to carry out the terms of this settlement.

2. “LWDA Notices” means September 8, 2021, and June 22, 2022, submitted by Plaintiff to the Labor and Workforce Development Agency (LWDA) notifying the LWDA of alleged violations by Defendants.

4. “PAGA Representative Claims” means Plaintiff’s PAGA claims under California Labor Code § 2698 *et. seq.* based on alleged predicate violations of the California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.2, 226.7, 248.1, 248.2, 300, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 1199, 2802, and 2810.5 and all alleged violations of the accompanying and relevant IWC Wage Order provisions of Wage Order 5-2001 cited in Plaintiff’s LWDA Notice and/or alleged in the Operative Complaint.

6. “PAGA Release Period” means September 8, 2020, through July 5, 2022.

-2-

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. Unless otherwise provided herein, all capitalized terms used herein shall have the same meaning as defined in the Settlement Agreement and Release (“Settlement Agreement”). The Court has jurisdiction over the subject matter of this lawsuit and all matters relating thereto, and over all parties to the action.

3. The Court hereby finds the Settlement involves the resolution of a bona fide dispute, was entered into in good faith, and is fair, reasonable, and adequate. The Court also finds that the Settlement provides genuine and meaningful relief that benefits the public consistent with the purpose of the Private Attorneys General Act of 2004, California Labor Code § 2699 *et seq.*

5. Neither the Settlement nor any of the terms set forth in the Settlement Agreement are admissions by Defendants, or any of the other Released Parties, of liability on any of the allegations alleged in the Action, nor is this Order a finding of the validity of any claims in the Action, or of any wrongdoing by the Defendants, or any of the other Released Parties.

1 6. The Court finds that Plaintiff's Counsel has adequately represented the Plaintiff, the
2 PAGA Employees, and the LWDA for purposes of entering into and implementing the Settlement.

3 7. The Court finds that the Settlement, and in particular the Gross Settlement Amount
4 ("GSA") of \$225,000.00 total to be distributed as set forth herein and in the Settlement Agreement,
5 is in all respects fair, reasonable, and adequate and is hereby approved. *See* California Labor Code
6 § 2699(1)(2).

7 8. Pursuant to the terms of the Settlement, Administration Costs in the amount of
8 \$5,500.00, which are necessary to administer the Settlement, are hereby granted and shall be paid
9 to Phoenix Settlement Administrators, the designated third-party Settlement Administrator.

10 9. Pursuant to the terms of the Settlement, the requested attorneys' fees in the amount
11 of \$74,925.00 are reasonable under the common fund method and the lodestar method. The GSA of
12 a total of \$74,925.00 represents a true and common fund, as Defendants must pay the full GSA and
13 no amount of the GSA will return to Defendants under any circumstances. It is recognized that
14 attorneys who recover a common fund are entitled to a reasonable fee award from the fund. *See,*
15 *e.g., Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ("a litigant or a lawyer who recovers a
16 common fund for the benefit of persons other than himself or his client is entitled to a reasonable
17 attorney's fee from the fund as a whole."); *In re Washington Public Power Supply Sys. Sec. Litig.*
18 (9th Cir. 1994) 19 F.3d 1291, 1300 ("[T]hose who benefit from the creation of the fund should share
19 the wealth with the lawyers whose skill and effort helped create it."); *Serrano v. Priest* (1977) 20
20 Cal.3d 25, 34 ("[W]hen a number of persons are entitled in common to a specific fund, and an
21 action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation
22 of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund.
23 [Citations.]"). Moreover, one-third of the common fund is standard in settlements similar to this
24 one. *See, e.g., Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 506 (approving fees
25 of one-third of the common fund); *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558
26 n.13 ("Empirical studies show that, regardless whether the percentage method or the lodestar method
27 is used, fee awards in class actions average around one-third of the recovery."); *Chavez v. Netflix,*
28 *Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (recognizing that fee awards in class actions average around

1 one-third of the recovery”). Courts also regularly approve fee awards in excess of one-third of the
2 fund. *See, e.g., Cubillas v. Dav-El Los Angeles*, 2018 WL 3760657, at *3-4 (Cal. Super.) (awarding
3 \$1.12 million in attorneys’ fees, equivalent to 40% of the common fund, where lodestar-multiplier
4 exceeded the fee request).

5 10. The Court also finds that the requested attorneys’ fees are reasonable under the
6 lodestar method, or as a crosscheck on the percentage fee. *See Laffitte*, 1 Cal.5th at 506. Plaintiff’s
7 counsel’s lodestar of \$122,595.00 exceeds the attorneys’ fees amount of \$74,925.00. In fact, the fee
8 award amounts to an implied negative multiplier on Plaintiff’s counsel’s lodestar.

9 11. The Court further finds that Plaintiff’s counsel’s requested litigation costs of
10 \$14,640.66 are reasonable and were necessary to prosecute the action.

11 12. Accordingly, and consistent with California Labor Code § 2699(g)(1), which
12 authorizes an award of attorneys’ fees and costs, the requested attorneys’ fees in the amount of
13 \$74,925.00 and litigation costs in the amount of \$14,640.66, are hereby granted and shall be paid to
14 the Law Office of Scott E. Wheeler pursuant to the terms of the Settlement.

15 13. Pursuant to the terms of the Settlement, service awards to Plaintiff Oscar Orellana in
16 the amount of \$6,000.00 in recognition of his efforts in prosecuting this action for the benefit of the
17 State of California and PAGA Employees, and Plaintiff’s broad general release of all of his
18 individual claims against Defendants, is hereby granted and shall be paid to Plaintiff Oscar Orellana.
19 Comparable service awards are routinely issued to named plaintiffs in analogous wage-and-hour
20 class action settlements, *see, e.g., In re Yahoo Mail Litig.*, No. 13-CV-4980-LHK, 2016 WL
21 4474612, at *11 (N.D. Cal. Aug. 25, 2016) (“Ninth Circuit has established \$5,000 as a reasonable
22 benchmark [for service awards].”); *Alikhan v. Goodrich Corp.*, 2020 WL 4919382, at * (C.D. Cal.
23 Jun. 25, 2020) (approving a \$10,000 service award), as well as PAGA settlements like this one. *See,*
24 *e.g., Abelar v. American Residential Services, L.L.C.*, 2019 WL 6054607, at *6 (C.D. Cal. Nov. 14,
25 2019) (approving PAGA only settlement and holding “[t]he service award of \$5000 is reasonable
26 compensation for the time and acceptance of adverse employment risk by Plaintiff.”).

27 14. After deducting Settlement Administration Costs, Attorneys’ Fees and Costs, and the
28 Service Awards from the GSA, the remainder of \$123,934.34, consistent with California Labor

1 Code § 2699(i), shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent
2 (25%) to PAGA Employees. Accordingly, \$92,950.75 shall be paid to the LWDA, and \$30,983.59
3 shall be paid to PAGA Employees. The payments to the PAGA Employees will be paid
4 proportionally based on the number of pay periods that each individual employee worked for
5 Defendants during the PAGA Release Period.

6 15. As of the Effective Date, Plaintiffs, as the representatives for the State of California,
7 and on behalf of all PAGA Employees, will forever completely release and discharge the Released
8 Parties from any claim for the recovery of civil penalties under the California Private Attorneys
9 General Act, California Labor Code § 2698, *et. seq.* only. It is expressly understood and agreed that
10 this settlement includes a release of all PAGA Representative Claims based on violations of Labor
11 Code §§ 201, 202, 203, 204, 210, 221, 226, 226.2, 226.7, 248.1, 248.2, 300, 510, 512, 558, 1174,
12 1174.5, 1194, 1197, 1198, 1199, 2802, and 2810.5 and all alleged violations of the accompanying
13 and relevant IWC Wage Order provisions of Wage Order 5-2001 cited in Plaintiff's LWDA Notice
14 and/or the Operative Complaint. The release shall be effective as of the Effective Date, and it shall
15 apply to claims within the above scope impacting the PAGA Employees arising within the PAGA
16 Release Period. This settlement agreement shall not impact any PAGA Employee's ability to assert
17 Labor Code claims other than PAGA claims (i.e., a claim brought under California Labor Code §
18 2698, *et. seq.*).

19 16. In accordance with California law as stated in *inter alia* *Arias v. Superior Court*
20 (2009) 46 Cal.4th 969, 985, a judgment in "a representative action brought by an aggrieved
21 employee under the Labor Code Private Attorneys General Act of 2004 . . . is binding not only on
22 the named employee plaintiff but also on government agencies and any aggrieved employee not a
23 party to the proceeding." Thus, both the named employee plaintiff and nonparty aggrieved
24 employees (i.e. all PAGA Employees) are bound by this Order and Judgment. *Id.* at 986. However,
25 the Parties' Settlement Agreement shall not impact any PAGA Employee's ability to assert Labor
26 Code claims other than the PAGA claims (i.e., a claim brought under California Labor Code § 2698,
27 *et. seq.*) unless such claim is subject to res judicata, issue preclusion, or claim estoppel.

17. Neither this Order nor the Settlement Agreement (nor any other document referred to herein, nor any action taken to carry out this Order) is, may be construed as, or may be used as, an admission or concession by or against Defendants or the Released Parties of the validity of any claim or actual or potential fault, wrongdoing, or liability. Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings related to it, shall not be considered as, or deemed evidence of, an admission or concession as to Defendants' denials or defenses and shall not be offered or received in evidence in any action or proceeding against any party hereto in any court, administrative agency or other tribunal for any purpose whatsoever, except as evidence of the Settlement or to enforce the provisions of this Order and the Settlement Agreement; provided, however, that this Order and the Settlement Agreement may be filed in any action against or by Defendants or the Released Parties to support a defense of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

18. Judgment in this matter is entered in accordance with the terms of the Settlement Agreement and Approval Order. This judgment is intended to be a final disposition of the above captioned action in its entirety and is intended to be immediately appealable.

19 The Court reserves exclusive and continuing jurisdiction over the lawsuit for the purposes of supervising the implementation, enforcement, construction, administration, and interpretation of the Settlement Agreement and this Order.

IT IS SO ORDERED.

DATED: 07/22/2022


HONORABLE MICHELLE WILLIAMSCOURT
JUDGE OF THE SUPERIOR COURT