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Superior Court of CA
County of Santa Clara
22CV398574
By: tduarte

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

ALONZO PINEDA, individually, on behalf of)	Case No.: 22CV398574
those similarly situated, and all Aggrieved)	
Employees,)	ORDER GRANTING PLAINTIFF'S
Plaintiff,)	MOTION FOR APPROVAL OF PAGA
v.)	SETTLEMENT
RECON360, LLC, et al.,)	
Defendants.)	Dept. 7

This is a putative class and representative action under the Private Attorneys General Act ("PAGA"). Plaintiff Alonzo Pineda alleges Defendants Recon 360, LLC and Rosario Wong (collectively, "Defendants") committed various wage and hour violations. Before the court is Plaintiff's unopposed motion for approval of the PAGA settlement.¹

I. BACKGROUND

According to the allegations of the complaint, Defendants employed Plaintiff as a non-exempt, hourly-paid employee from approximately January 2021 to approximately September 2021. (Complaint, ¶ 13.) Plaintiff alleges Defendants failed to pay minimum wages; failed to

¹ The court previously dismissed the putative class claims.

1 pay overtime wages; failed to provide meal periods; failed to authorize and permit rest periods;
2 failed to pay final wages; failed to reimburse business expenses; failed to provide accurate
3 itemized wage statements; and engaged in unfair competition practices.

4 Based on these allegations, Plaintiff filed a complaint on May 24, 2022, alleging causes
5 of action for: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to
6 provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to reimburse
7 business expenses; (6) failure to pay final wages due upon separation; (7) failure to provide
8 accurate itemized wage statements; (8) unfair competition; and (9) PAGA penalties.

9 On February 27, 2023, the court issued a ruling on Defendants' motion to compel
10 arbitration, ordering Plaintiff's individual claims to arbitration, dismissing Plaintiff's class
11 claims, and staying the representative PAGA claims pending the completion of the individual
12 arbitration. Plaintiff now seeks an order preliminarily approving a settlement agreement (the
13 "Settlement Agreement" or "PAGA Settlement Agreement") as to the representative PAGA
14 claims.

15 On February 3, 2025, Plaintiff filed a motion for approval of the representative PAGA
16 settlement. On February 21, 2025, Defendants filed a notice of non-opposition to Plaintiff's
17 motion.

18 **II. LEGAL STANDARDS FOR PAGA SETTLEMENT APPROVAL**

19 Labor Code section 2699, subdivision (s)(2) provides that "[t]he superior court shall
20 review and approve any settlement of any civil action filed pursuant to" PAGA. (Lab. Code, §
21 2699, subd. (s)(2).) The court's review "ensur[es] that any negotiated resolution is fair to those
22 affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549, citing former Lab. Code, §
23 2699, subd. (l)(2)².) Seventy-five percent of any penalties recovered under PAGA go to the
24

25 ² The court notes that the contents of Labor Code section 2699, subdivision (s)(2), used to
be located in Labor Code section 2699, subdivision (l)(2).

1 Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent
2 for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59
3 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022)
4 596 U.S. 639.)

5 Similar to its review of class action settlements, the Court must “determine independently
6 whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the
7 LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72
8 Cal.App.5th 56, 76-77.) It must make this assessment “in view of PAGA’s purposes to
9 remediate present labor law violations, deter future ones, and to maximize enforcement of state
10 labor laws.” (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383
11 F. Supp. 3d 959, 971 [“when a PAGA claim is settled, the relief provided for under the PAGA
12 [should] be genuine and meaningful, consistent with the underlying purpose of the statute to
13 benefit the public . . .”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies,*
14 *Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

15 The settlement must be reasonable in light of the potential verdict value. (See *O’Connor,*
16 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential
17 verdict].) But a permissible settlement may be substantially discounted, given that courts often
18 exercise their discretion to award PAGA penalties below the statutory maximum even where a
19 claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-
20 CV-02198-EMC) 2016 U.S. Dist. LEXIS 140759, at *8-9.)

21 **III. PLAINTIFF’S INVESTIGATION AND SETTLEMENT PROCESS**

22 Following discovery in arbitration, the parties participated in a private mediation with
23 Brandon Coen, an “experienced employment law mediator,” to resolve the representative PAGA
24 claims and Plaintiff’s individual claims in arbitration. (Motion for Approval of Representative
25 PAGA Settlement (“MPA”), p. 8:16-19.) In addition to discovery that the parties had already

1 conducted, Defendants provided information specifically related to the representative PAGA
2 claims, including data regarding the number of aggrieved employees, the pay periods at issue
3 during the PAGA claim period, and a sampling of allegedly aggrieved employees' payroll and
4 timekeeping records. (*Id.* at p. 8:19-22.)

5 The parties participated in a full day mediation on July 9, 2024. (MPA, p. 8:23.) At the
6 end of mediation, the parties reached an agreement on the principal terms of a settlement of the
7 entire action, including a proposed settlement of the PAGA representative claims. (*Id.* at p. 8:23-
8 26.) The parties executed a memorandum of understanding regarding the settlement. (*Id.* at p.
9 8:26-27.) On or about August 13, 2024, the parties executed a long-form agreement with respect
10 to the proposed PAGA settlement, and soon thereafter reserved a hearing date to obtain court
11 approval. (*Id.* at p. 9:1-7.)

12 **IV. SETTLEMENT PROVISIONS**

13 The non-reversionary settlement amount is \$195,000. (Declaration of John A. Van Hook
14 ("Van Hook Decl."), Ex. 1 at p. 3.) Attorney's fees of up to \$65,000 (one-third of the gross
15 settlement), litigation costs not to exceed \$6,000, and administration costs not to exceed \$4,500,
16 will be paid from the gross settlement. (*Id.* at pp. 1, 4) \$114,500 will be allocated to PAGA
17 penalties, 75% of which (\$85,875) will be paid to the LWDA, with the remaining 25% (\$28,625)
18 distributed, on a pro rata basis according to their pay periods during the PAGA period, to
19 Aggrieved Employees, who are defined as "Defendants' current and former hourly, non-exempt
20 employees who worked for Defendants in California at any time from July 31, 2021, through
21 July 9, 2024." (*Id.* at pp. 1, 4; see also MPA, pp. 9:18-10:4.) Plaintiff requests a service award
22 of \$5,000. (Van Hook Decl., Ex. 1 at p. 4.)

23 "As required by the applicable PAGA provisions, 75% of the Net PAGA Settlement Fund
24 will be paid to the LWDA and the remaining 25% of the Net PAGA Settlement Fund will be
25 distributed among the Aggrieved Employees on a pro-rata basis according to their pay periods

1 during the relevant time period.” (Van Hook Decl., ¶ 27.) “Payments will be made to the
2 Aggrieved Employees by check to their last known home address, and Aggrieved Employees
3 will not be required to submit a claim form or take any other steps to receive their payment.”
4 (*Id.* at ¶ 29.)

5 “Plaintiff agrees that upon entry of an Order approving the PAGA settlement and
6 judgment entered thereon, and upon the PAGA Settlement being fully funded, Plaintiff, the
7 LWDA, and all Aggrieved Employees release the PAGA Released Claims against the Released
8 Parties that arose during the PAGA Period. Upon entry of the Order approving the PAGA
9 Settlement and judgment entered thereon and the PAGA Settlement being fully funded, Plaintiff,
10 the LWDA, and all Aggrieved Employees will be forever barred from pursuing any and all of the
11 PAGA Released Claims that arose during the PAGA Period against the Released Parties.” (Van
12 Hook Decl., Ex. 1 at p. 4.) The Settlement Agreement defines “PAGA Released Claims” as: “all
13 claims, rights, demands, liabilities and causes of action that arose during the PAGA Period for
14 civil penalties under the PAGA, that were alleged in the Action or that reasonably could have
15 been alleged in the Action. The PAGA Released Claims include, but are not limited to, claims
16 under the PAGA for civil penalties for alleged violations of Labor Code §§ 201, 202, 203, 204,
17 216, 226, 226.7, 510, 512, 1174, 1194, 1197, 1991.1, 1198, 1199, and 2802, as well all
18 applicable Industrial Welfare Commission Wage Orders; and claims for attorneys’ fees, costs, or
19 interest resulting therefrom. The release of the PAGA Released Claims shall extend for the
20 duration of the PAGA Period.” (*Id.* at Ex. 1 at p. 2.)

21 The foregoing releases are appropriately tailored to the allegations at issue. (See *Amaro*
22 *v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)

23 **V. FAIRNESS OF THE SETTLEMENT**

24 Based on the data provided by Defendants, Plaintiff’s counsel “estimated in the PAGA
25 Settlement that there were a total of 291 non-exempt employees who worked a total of

1 approximately 7,618 pay periods during the PAGA Period. For purposes of Plaintiff's
2 calculations of the total potential exposure for PAGA penalties, the 'initial' penalty rate of \$100
3 per pay period was applied for all pay periods. . . . [A]ssuming a Labor Code violation could be
4 proven for every aggrieved employee in every pay period, and assuming no discretionary
5 reduction of penalties by the Court, the maximum potential PAGA penalties total \$761,800.00
6 (7,618 pay periods x \$100 per pay period)." (MPA, pp. 13:13-14:2.)

7 Plaintiff and his counsel "took into account various risk factors and uncertainties in
8 negotiating the PAGA settlement," including the "availability of 'stacked' PAGA penalties," the
9 trial court's discretion to reduce PAGA penalties, and Defendants' legal defenses. (MPA, pp.
10 14:12-17:3.) The parties engaged in arms-length negotiations, and, as discussed below in the
11 context of fees sought, Plaintiff's counsel are experienced in the litigation and settlement of
12 complex wage-and-hour cases. (*Id.* at pp. 12:15-13:11.) Considering the various rationales
13 provided by Plaintiff, the settlement, which represents 25.6% of the maximum potential PAGA
14 penalties, achieves a good result for the aggrieved employees. (See MPA, p. 14:3-4 ["The
15 PAGA settlement here is \$195,000, or 25.6% of this estimated PAGA exposure. Based on an
16 estimated 7,618 pay periods, the settlement provides for \$25.60 per pay period."].)

17 While the PAGA statute does not expressly require judicial review of claimed attorney
18 fees, the Court believes it cannot adequately fulfill its statutory duty to review the penalties
19 associated with PAGA settlements without also considering attorney fees. The Court thus finds
20 that it must scrutinize the attorney fee arrangement associated with a PAGA settlement.
21 (See *U.S. v. Texas Instruments Corp.* (9th Cir. 1994) 25 F.3d 725, 728 [attorney fee award must
22 be considered by the trial court as part of its review of the "entire settlement arrangement"].)

23 Plaintiff's counsel seeks a fee award of \$65,000 (one-third of the gross settlement
24 amount). (Van Hook Decl., ¶ 26.) Counsel Adrian C. Byrne submits evidence of a lodestar of
25 \$22,878, based on a total of 49.2 hours billed at a rate of \$465 per hour. (Declaration of Adrian

1 C. Byrne (“Byrne Decl.”), ¶ 8, Ex. 4.) Counsel John A. Van Hook submits evidence of a
2 lodestar of \$59,280, based on a total of 91.2 hours billed at a rate of \$650 per hour. (Van Hook
3 Decl., ¶¶ 46, 48, Ex. 3.) Taking counsels’ lodestar calculations together, this results in a negative
4 multiplier, weighing in favor of the reasonableness of the request. (See *Laffitte v. Robert Half*
5 *Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503-504 [trial court did not abuse its discretion in
6 approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a
7 multiplier of 2.03 to 2.13]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255
8 [“[m]ultipliers can range from 2 to 4 or even higher”]; *Vizcaino v. Microsoft Corp.* (9th Cir.
9 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in
10 common fund cases and citing the court’s own survey of large settlements finding “a range of
11 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in
12 the 1.5–3.0 range”].) The benefits achieved by the settlement justify an award of attorney fees to
13 Plaintiff’s counsel, and that the requested attorney fee award is reasonable. Therefore, the court
14 approves an attorney fees award in the amount of \$65,000.

15 Plaintiff’s counsel requests reimbursement of litigation costs in the amount of \$6,000,
16 despite providing an itemized list showing a higher total cost. (See Van Hook Decl., ¶¶ 51, 52.)
17 \$6,000 is the maximum amount set by the agreement. (See *id.* at Ex. 1 at p. 1.) The court finds
18 the requested amount to be reasonable and approves litigation costs in the amount of \$6,000.
19 The settlement administration costs are also approved in the requested amount of \$4,500, which
20 is the maximum set by the agreement. (See *ibid.*) Counsel for Plaintiff submits evidence from
21 the proposed settlement administrator supporting an award in the amount requested. (See *id.* at
22 Ex. 2.)

23 A PAGA case is a representative action like a class action, and courts have recognized
24 that an individual’s willingness to act as a private attorney general may merit a service award.
25 (See *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 959.) Plaintiff’s counsel

1 has submitted statements in their declarations describing Plaintiff's participation in this action,
2 including his participation in a full day of in-person deposition and a full day of mediation. (See
3 Van Hook Decl., ¶ 53; Byrne Decl. ¶ 10.) Also, the court also acknowledges that Plaintiff
4 undertook a reputational risk by attaching his name to this case because doing so could impact
5 his future employment. (See *Covillo v. Specialty's Café* (N.D. Cal. 2014) 2014 U.S.Dist.LEXIS
6 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a
7 significant "reputational risk" in bringing an action against an employer].) In light of this
8 information, and since Plaintiff is requesting what is considered the standard service award for
9 these types of cases, the Court finds the request reasonable and approves it.

10 VI. ADMINISTRATION PROCESS

11 The parties have selected Phoenix as the settlement administrator. "Within fourteen (14)
12 day calendar days after entry by the Court of an order approving the settlement, Defendant shall
13 provide the Settlement Administrator with information for Aggrieved Employees. Defendants
14 will in good faith compile from Recon360's records a list of Aggrieved Employees that will be in
15 a computer-readable format, such as a Microsoft Excel Spreadsheet, and shall include each
16 Aggrieved Employee's full name, last known mailing address, number of pay periods, employed
17 during the PAGA period, and Social Security numbers to the extent available from Recon360's
18 records. Because Social Security Numbers are included in the list, the Settlement Administrator
19 will maintain the list in confidence, and access shall be limited to those with a need to use the list
20 as part of the administration of the Settlement. Within seven (7) calendar days of receiving the
21 Aggrieved Employees' information from Defendants, the Settlement Administrator will circulate
22 to counsel for both Parties a spreadsheet (without names or personally identifying information)
23 containing the Individual PAGA payments to each Aggrieved Employee and the data used to
24 calculate said payments. The Settlement Administrator shall obtain approval from all counsel of
25 the calculations before mailing Individual PAGA payments." (Van Hook Decl., Ex. 1 at p. 6.)

1 Within 14 days of the court’s order approving the settlement, Defendants will fund the
2 settlement. (Van Hook Decl., ¶ 32.) Within 14 days of funding of the settlement by Defendants,
3 the Settlement Administrator shall: (1) distribute a total of 25% of the Net PAGA Fund to the
4 Aggrieved Employees, along with the notice; (2) distribute 75% of the Net PAGA Fund to the
5 LWDA; (3) distribute Plaintiff’s counsel’s fees and costs, as approved by the Court; (4)
6 distribute enhancement payment to Plaintiff, as approved by the Court; and (5) pay itself for
7 services as Settlement Administrator, as approved by the Court. (*Id.* at ¶ 33, 35; MPA, p. 11:8-
8 17.) “The payment checks shall be sent to each Aggrieved Employee by U.S. First Class mail to
9 the Aggrieved Employee’s last known mailing address. Any checks returned as non-deliverable
10 on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to
11 the forwarding address affixed thereto. If no forwarding address is provided, the Settlement
12 Administrator will promptly attempt to determine the correct address using a skip-trace, or other
13 search using the name, address and/or Social Security number of the Aggrieved Employees
14 involved, and will then perform a single remailing.” (*Id.* at ¶ 34; see also Ex. 1 at p. 7.) “Funds
15 represented by checks returned as undeliverable after a re-mailing, checks for whom the
16 Settlement Administrator could not locate an updated address after performing a skip trace, and
17 funds represented by checks remaining un-cashed more than 180 days after issuance . . . shall be
18 tendered to the State Controller’s Office, Unclaimed Property Division.” (*Id.* at Ex. 1 at p. 7.)
19 These notice procedures are appropriate and are approved.

20 **VII. CONCLUSION AND ORDER**

21 Plaintiff’s motion for approval of the parties’ PAGA settlement is GRANTED. The
22 covered individuals are: Defendants’ current and former hourly, non-exempt employees who
23 worked for Defendants in California at any time from July 31, 2021, through July 9, 2024.
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1 Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., §
2 668.5.) Plaintiff and the Aggrieved Employees shall take from the PAGA claim only the relief
3 set forth in the parties' settlement agreement and this order and judgment. The court retains
4 jurisdiction over the parties to enforce the terms of the PAGA settlement agreement and the final
5 order and judgment.

6 The Court sets a compliance hearing for **October 23, 2025 at 2:30 P.M.** in Department
7 7. At least ten court days before the hearing, Plaintiff's counsel and the settlement administrator
8 shall submit a summary accounting of the net settlement fund identifying distributions made as
9 ordered herein; the number and value of any uncashed checks; amounts remitted the Unclaimed
10 Property Fund; the status of any unresolved issues; and any other matters appropriate to bring to
11 the Court's attention. Counsel may appear at the compliance hearing remotely.

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13 DATED: March 10, 2025


14 CHARLES F. ADAMS
15 Judge of the Superior Court
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