

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

KIMBERLY A. SANDERS, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

CONTRA LOMA HEALTHCARE, LLC;
REHAB SPECIALISTS CALIFORNIA, LLC;
and DOES 1 through 20, inclusive,

Defendants.

Case No. MSC21-02680

*Assigned for All Purposes to:
Hon. Charles S. Treat
Dept. 12*

**ORDER GRANTING MOTION FOR
APPROVAL OF PRIVATE ATTORNEYS
GENERAL ACT REPRESENTATIVE
ACTION SETTLEMENT**

Date: October 5, 2023
Time: 9:00 a.m.
Dept: 12

ORDER GRANTING MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT
REPRESENTATIVE ACTION SETTLEMENT

1 The Court has received and considered the Motion of Plaintiff Kimberly Sanders
2 ("Plaintiff"), as an individual, and on behalf of the people of the State of California and as an
3 "aggrieved employee" acting as a private attorney general under the Labor Code Private
4 Attorneys General Act of 2004, § 2699, *et seq.* ("PAGA") in the above-captioned action.

5 The Court's tentative ruling is adopted in its entirety as provided below with only the
6 heading lettering changed, a final compliance date included, and a revised date for payment
7 added:

8
9 Plaintiff Kimberly Sanders moves for approval of the settlement of her PAGA suit against
10 defendants Contra Loma Health Care, LLC and Rehab Specialists California, LLC. The moving
11 papers don't identify defendants' business, but it appears from their web pages that Contra Loma
12 is a nursing home in Antioch, while Rehab is a related outpatient provider. Plaintiff was employed
13 as a non-exempt employee during the relevant time period, though the pleadings and moving
14 papers do not identify her job capacity or employment dates.

15 The motion is **granted**.

16 **A. Background of the Case and Terms of Settlement**

17 This a PAGA case (not a class action), alleging a variety of violations of the Labor Code
18 concerning failure to provide rest and meal breaks, failure to pay minimum wages and overtime,
19 and cascading derivative violations. In particular, plaintiff asserts alleged violations for rest and
20 meal breaks and unpaid overtime.

21 This case was first filed on December 28, 2021 as a class action. In light of applicable
22 arbitration agreements, the parties agreed to amend the complaint to PAGA-only on September
23 22, 2022.

24 The total settlement payment is \$210,550. Out of this is to come attorney's fees of \$78,183
25 (one-third of the recovery); \$12,534 in litigation costs (substantially less than the settlement
26 agreement allows), and up to \$3,000 in costs to the settlement Administrator. The plaintiff will
27 be paid a service payment of \$10,000 for her efforts in this litigation.

1 The remaining amount, \$106,833, is allocated as PAGA penalties. Those penalties are
2 apportioned 75% to the LWDA and 25% to the aggrieved employees.

3 Counsel's motion indicates that there are an estimated 203 covered employees. The
4 payments from the employee share of the penalty (\$26,708) will be distributed among the
5 employees based on the number of pay periods each individual worked during the released period.
6 The average employee share will be about \$132, though this will vary from employee to employee
7 based on the pay-period allocation formula.

8 Plaintiff's counsel attests that informal discovery was undertaken, and the settlement was
9 reached after a session with an experienced mediator.

10 Plaintiff provided required notices to the LWDA of the initial claims and of the proposed
11 settlement.

12 The settlement provides a process for mailing the notices to the aggrieved employees, who
13 will not have to submit a claim, along with a process for following up on returned mail.
14 Information for mailing will be provided within 30 days after Final Approval. The settlement
15 agreement calls for payment of the settlement amount in two halves, one within 90 days of final
16 approval and the other by October 1, 2023. Given the delays caused by the Court calling for
17 supplemental documentation, the latter date will actually occur substantially earlier than the first
18 date, which is not what was contemplated; accordingly, the Court will assume that the second
19 payment will be made by the end of 2023. (If a different adjustment is needed, the parties can
20 submit an appropriate stipulation) The administrator will seek to obtain current mailing addresses,
21 and will remit all settlement funds to the appropriate recipients, including the LWDA and the
22 aggrieved employees.

23 The settlement provides that the value of checks uncashed after 180 days shall be remitted
24 to the State Controller's Office, Unpaid Property Division.

25 Specified PAGA claims, and any claims which could have been pleaded under the PAGA
26 based on the factual allegations in PAGA Complaint and the LWDA Letter, would be released. It
27 also provides that the parties intend to fully resolve all PAGA claims for the full "PAGA Period"
28 of May 4, 2021 to January 24, 2023.

1 **B. Standards for Review of a PAGA Settlement**

2 Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72
3 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair,
4 reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*,
5 at 64.) The Court also held that the trial court must assess "the fairness of the settlement's
6 allocation of civil penalties between the affected aggrieved employees". (*Id.*, at 64-65.)

7 California law provides some general guidance concerning judicial approval of any
8 settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of*
9 *California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement
10 contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412;
11 *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "The court cannot surrender its
12 duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet
13 in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d
14 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because
15 "Where the rights of the public are implicated, the additional safeguard of judicial review, though
16 more cumbersome to the settlement process, serves a salutary purpose." (*Consumer Advocacy*
17 *Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63.)

18 **B. Application to This Settlement**

19 Plaintiff indicates that the settlement is fair, and was evaluated by counsel based on
20 adequate information and arms-length negotiation. In response to plaintiff's allegations,
21 defendant asserted that it paid employees for all recorded time; that off-the-clock time was
22 undocumented and unknown to defendant; and that employees were paid meal time premiums or
23 signed waivers. Plaintiffs' counsel has provided a detailed declaration analyzing the potential
24 strengths and weaknesses of plaintiffs' claims and defendants' potential defenses. The Court is
25 satisfied with the analysis.

26 Of course, some reduction must be made for the strength of the case, and the time and
27 expense of obtaining recovery. Even assuming success on the merits of each claim, PAGA gives
28 the court discretion to reduce penalties for a variety of reasons, including where "based on the

1 facts and circumstances of the particular case, to do otherwise would result in an award that is
2 unjust arbitrary and oppressive, or confiscatory.” (Labor Code § 2699(e)(2).) Moreover, recent
3 decisions may make it difficult for PAGA plaintiffs to recover statutory penalties, as opposed to
4 actual missed wages. (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2023) 88
5 Cal.App.5th 937; but see *Gola v. University of San Francisco* (2023) 90 Cal.App.5th 548, 566-
6 67.) These factors make the result hard to predict.

7 Labor Code § 2699(g)(1) provides that a prevailing employee in a PAGA action may
8 recover attorney’s fees. Plaintiff seeks one-third of the total settlement amount as fees, relying on
9 the “common fund” theory. Even a proper common fund-based fee award, however, should be
10 reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th
11 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine
12 whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means
13 of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether
14 the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable
15 range, but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.)
16 Although *Lafitte* concerns a class action, not a PAGA-only case, this Court views the use of a
17 lodestar cross-check as appropriate here. Plaintiffs’ counsel have provided a breakdown and
18 documentation of their lodestar figure of \$83,825, which exceeds the fee requested; thus, the
19 lodestar multiplier is slightly less than one. This appears appropriate in light of the risks of the
20 case and the results achieved.

21 The Court also approves as reasonable plaintiff’s request for litigation costs of \$12,534,
22 most of them for mediation and filing fees. It also approves the proposed representative payment
23 to plaintiff of \$10,000, and the payment of \$3,000 in administration costs.

24 The statute does not expressly address how the 25% plaintiff’s share of the penalties is to
25 be allocated among all of the aggrieved employees. (*Iskanian v. CLS Transp. Los Angeles, LLC*
26 (2014) 59 Cal.4th 348, 382.) One court has held, however, that the entire 25% share of penalties
27 could not be awarded to the named plaintiff. (*Moorer v. Noble L.A. Events, Inc.* (2019) 32
28 Cal.App.5th 736, 742-43.) In *Moorer*, the plaintiff had claim worth about \$9,500, yet was

collecting penalties of \$148,000, and keeping the entire employee share, causing the court to be concerned that the plaintiff had lost sight of the fact that the purpose of the action is to benefit the public, not private parties. Allocation based on pay periods is reasonable here.

C- Conclusion

The proposed settlement is approved. Counsel are directed to prepare an order including the Court's entire order, the other provisions submitted in the proposed order, and a corresponding separate judgment. The order would include a compliance hearing for a suitable date chosen in consultation with the Department's clerk by phone. One week before the compliance hearing, counsel shall file a compliance statement. Ten percent of the attorney's fees shall be withheld by the Administrator pending the compliance hearing. Counsel will also be expected to update and document the actual litigation costs to be reimbursed.

D: Final Compliance Hearing

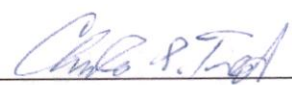
The final compliance hearing is set for October 10, 2024 at 9:00 a.m. in Department 12. One week before the compliance hearing, on October 3, 2024, counsel shall file a compliance statement, shall update and document the actual litigation costs to be reimbursed, and shall file an amended judgment.

E. Payment Date

The parties have stipulated that the initial payment be made by November 30, 2023, with the second payment to be made by January 31, 2024.

IT IS SO ORDERED.

Dated: NOV 09 2023


Hon. Charles S. Treat
Judge of the Superior Court, County of Contra Costa