

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

HECTOR DOMINGUEZ HERRERA,

Plaintiff,

v.

COASTAL CONSTRUCTION & LUMBER
COMPANY, et al.,

Defendants.

Case No.: 22CV394683

**ORDER CONCERNING PLAINTIFF'S
MOTION FOR APPROVAL OF PAGA
SETTLEMENT**

Plaintiff Hector Dominguez Herrera brings claims under the Private Attorneys General Act ("PAGA") against Defendant Coastal Construction & Lumber Company. Plaintiff alleges that Defendant failed to pay employees for off-the-clock, failed to provide compliant meal and rest periods, and committed other wage and hour violations.

Before the Court is Plaintiff's motion for approval of a settlement, which is unopposed. As discussed below, the Court GRANTS Plaintiff's motion.

I. BACKGROUND

Plaintiff worked for Defendant in Santa Clara County as a construction worker and foreman assistant from 2014 to June 2021. (First Amended Class and Representative Action Complaint ("FAC"), ¶ 8.) He alleges that Defendant failed to pay employees for all hours

1 worked, including overtime, by requiring them to work off-the-clock: for example, when
2 undergoing COVID screenings. (*Id.*, ¶ 16.) To receive their paychecks, employees were
3 required to sign a statement that they took a 1-hour lunch period and 10-minute break, even
4 though they did not receive these breaks. (*Ibid.*) Employees were paid based on their schedule
5 rather than their actual time worked, and Defendant failed to maintain accurate records of the
6 hours employees worked. (*Ibid.*) Defendant did not always provide compliant meal and rest
7 breaks and did not have adequate policies on these subjects. (*Id.*, ¶¶ 17–18.) And Defendant
8 failed to reimburse employees for business expenses, such as the purchase of tools and masks
9 and employees’ use of their personal cellular phones for work. (*Id.*, ¶ 19.)

10 As a result of these other violations, Defendant failed to pay all wages at the conclusion
11 of employment and to provide accurate itemized wage statements. (FAC, ¶¶ 20–21.) And
12 Defendant’s wage statements also failed to show its address as required. (*Id.*, ¶ 21.)

13 Based on these allegations, Plaintiff asserts a single cause of action under PAGA.¹

14 **II. LEGAL STANDARD FOR APPROVING A PAGA SETTLEMENT**

15 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf
16 of other current or former employees to recover civil penalties for Labor Code violations.
17 (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other
18 grounds by *Viking River Cruises, Inc. v. Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940.)
19 75 percent of any penalties recovered go to the Labor and Workforce Development Agency
20 (“LWDA”), leaving the remaining 25 percent for the employees. (*Ibid.*) PAGA is intended “to
21 augment the limited enforcement capability of [LWDA] by empowering employees to enforce
22 the Labor Code as representatives of the Agency.” (*Id.* at p. 383.) A judgment in a PAGA
23 action binds all those, including nonparty aggrieved employees, who would be bound by a
24 judgment in an action brought by the government. (*Id.* at p. 381.)

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26
27 ¹ The FAC originally asserted eight other individual and putative class claims arising from the
28 factual allegations summarized above. But due to Plaintiff’s execution of an arbitration
agreement including a class action waiver, these claims were dismissed without prejudice under
the Court’s order entered on December 21, 2022.

1 Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall
2 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
3 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
4 *Court* (2017) 3 Cal.5th 531, 549.) “[C]lass certification is not required” in this context as in a
5 class action. (*Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971
6 (*Haralson*).)

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

17 The settlement must be reasonable in light of the potential verdict value. (See *O’Connor,*
18 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential
19 verdict].) But a permissible settlement may be substantially discounted, given that courts often
20 exercise their discretion to award PAGA penalties below the statutory maximum even where a
21 claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-
22 CV-02198-EMC) 2016 WL 5907869, at *8–9.)

23 **III. PLAINTIFF’S INVESTIGATION, SETTLEMENT PROCESS, AND THE** 24 **PARTIES’ AGREEMENT**

25 The parties agreed to attempt mediation in an effort to resolve Plaintiff’s PAGA claim.
26 Plaintiff requested substantial data from Defendant, which Defendant provided. The parties then
27 engaged in a full day of mediation with Steve Serratore, Esq. on November 7, 2022. They were
28

1 able to reach a settlement, and continued negotiating the detailed terms of the long-form
2 agreement now before the Court.

3 Pursuant to that settlement, Defendant will pay a gross amount of \$100,000. \$33,333.33
4 in attorney fees, litigation costs of \$18,106.70, and \$5,950 in administrative costs will also be
5 deducted. The named plaintiff also seeks an enhancement award of \$5,000. The net settlement
6 of approximately \$37,609.97 will be distributed 75 percent (\$28,207.48) to the LWDA and 25
7 percent (\$9,402.49) to the aggrieved employees based on their pay periods worked during the
8 PAGA period.

9 The aggrieved employees are defined as “[a]ll non-exempt employees who are or were
10 employed by Defendant within the State of California from February 19, 2021 through
11 December 31, 2022.” By the Court’s calculation, the 197 aggrieved employees will receive an
12 average payment of about \$47.73.

13 In exchange for the settlement, aggrieved employees originally agreed to provide “a full
14 release of the PAGA claims asserted, or that could have been asserted, in the Complaint and/or
15 PAGA Notice filed with the LWDA attached as Exhibit A during the time period of February 19,
16 2021 through December 31, 2022 (the ‘Release Period’), including, but not limited to, the
17 following: 1) failure to provide meal periods, 2) failure to provide rest periods, 3) failure to pay
18 overtime or minimum wages (including alleged off-the-clock work, miscalculation of the regular
19 rate of pay for overtime and paid sick leave), 4) failure to pay all wages due to discharged and
20 quitting employees, 5) failure to furnish accurate itemized wage statements, and 6) failure to
21 reimburse for necessary business expenses (all of the foregoing are collectively referred to as
22 ‘Released PAGA Claims’).”

23 In the Court’s view, this release was too broad in light of *Amaro*. *Amaro* instructs that a
24 release of class claims “must be tied to the *factual allegations* in the complaint, not the claims or
25 theories of liability asserted.” (*Amaro, supra*, 69 Cal.App.5th at p. 538, italics original.) Here,
26 the original release encompassed all claims “that could have been asserted” by Plaintiff, rather
27 than just claims arising out of the *facts* asserted in the complaint and PAGA notice.
28

1 The Court asked the parties to meet and confer about whether they can amend the release
2 to conform with *Amaro*. The parties have done so. (See generally 3/22/23 K. Moon Decl.) The
3 Court has reviewed the amended release and is satisfied that it conforms with *Amaro*.²

4 **IV. DISCUSSION**

5 **A. Potential Verdict Value**

6 Based on the data produced, Plaintiff estimates that there were approximately 4,720 pay
7 periods in the PAGA period, resulting in a maximum of \$732,016.67 in PAGA penalties
8 (stacking the several violations alleged). Based on this analysis, the settlement represents over
9 13 percent of the maximum value of the case. Considering the discretionary and uncertain nature
10 of PAGA penalty awards in general and the nature of the violations at issue here, the Court
11 agrees that the settlement is fair to those affected and is genuine, meaningful, and reasonable in
12 light of the statute's purposes.

13 **B. Attorney Fees**

14 While the PAGA statute does not expressly require judicial review of claimed attorney
15 fees, the Court believes it cannot adequately fulfill its statutory duty to review the penalties
16 associated with PAGA settlements without also considering attorney fees. The Court thus finds
17 that it must scrutinize the attorney fee arrangement associated with a PAGA settlement. This is
18 consistent with the observation of many courts that PAGA claims are analogous to "*qui tam*"
19 suits like those under the federal False Claims Act: when reviewing settlements of *qui tam*
20 claims, courts should and do consider any associated attorney fee arrangement. (See *U.S. v.*
21 *Texas Instruments Corp.* (9th Cir. 1994) 25 F.3d 725, 728 [attorney fee award must be
22 considered by the trial court as part of its review of the "entire settlement arrangement"].)

23 Here, counsel request a fee award of \$33,333.33, or one-third of the gross settlement.
24 This percentage is typical for wage and hour cases, and the Court finds it is reasonable
25 considering counsel's lodestar of \$42,247.50, resulting in a negative multiplier. (See *Laffitte v.*
26 *Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503-504 [trial court did not abuse its

27 ² The Court also had some concerns about a potentially-new theory of liability, but the discussion
28 in paragraph 9 of the March 22, 2023 K. Moon Declaration has provided clarity on this theory.
The Court no longer has these concerns.

1 discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar
2 resulting in a multiplier of 2.03 to 2.13].)

3 **C. Other Costs and Expenses**

4 Counsel's request for litigation costs of \$18,106.70 also appears reasonable and is
5 approved. The \$5,950 allocated to administrative costs is also approved.

6 Finally, the Court finds that the named plaintiff is entitled to an enhancement award. The
7 rationale for such awards in class actions is that named plaintiffs "should be compensated for the
8 expense or risk they have incurred in conferring a benefit on other members of the class,"
9 considering "1) the risk to the class representative in commencing suit, both financial and
10 otherwise; 2) the notoriety and personal difficulties encountered by the class representative;
11 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation
12 and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the
13 litigation." (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394–1395,
14 internal citations and quotations omitted.) These considerations apply equally in the PAGA
15 context. To support his request for an enhancement award, the named plaintiff provides a
16 declaration describing his efforts on the case. Applying the relevant factors, the Court is finds
17 that an enhancement award of \$5,000 is appropriate here.

18 **V. ADMINISTRATION PROCESS**

19 The settlement will be funded within 20 days of the effective date. By the same date,
20 Defendant will provide the administrator with data concerning the aggrieved employees. Within
21 14 days, the administrator will mail checks for all individual PAGA payments, the LWDA
22 payment, and fees and expenses. The administrator shall update employees' addresses using the
23 National Change of Address database prior to the initial mailing, and will include an explanatory
24 notice with the individual payments.

25 Any checks returned as non-deliverable will be re-mailed to any updated address located
26 through a skip trace. Checks will remain negotiable for 180 days and funds associated with
27 settlement checks remaining uncashed after that point will be sent to the California State
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1 Controller's Office to be held pursuant to the Unclaimed Property Law in the relevant aggrieved
2 employee's name.

3 These administrative procedures are appropriate and are approved.

4 **VI. ORDER AND JUDGMENT**

5 In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND
6 DECREED THAT:

7 Plaintiff's motion for approval of the parties' PAGA settlement is GRANTED. The
8 aggrieved employees are: "[a]ll non-exempt employees who are or were employed by Defendant
9 within the State of California from February 19, 2021 through December 31, 2022."

10 Judgment shall be entered through the filing of this order and judgment. (Code Civ.
11 Proc., § 668.5.) Plaintiff shall take from his complaint only the relief set forth in the parties'
12 settlement agreement and this order and judgment. The Court retains jurisdiction over the parties
13 to enforce the terms of the PAGA settlement agreement and the final order and judgment.

14 The Court sets a compliance hearing for **December 7, 2023 at 2:30 P.M.** in Department
15 1. At least ten court days before the hearing, Plaintiff's counsel and the settlement administrator
16 shall submit a summary accounting of the net settlement fund identifying distributions made as
17 ordered herein; the number and value of any uncashed checks; amounts remitted to the
18 Controller's Office; the status of any unresolved issues; and any other matters appropriate to
19 bring to the Court's attention. Counsel may appear at the compliance hearing remotely.

20 **IT IS SO ORDERED.**

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22 Date: March 31, 2023

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22 _____
23 The Honorable Sunil R. Kulkarni
24 Judge of the Superior Court
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