

01/25/2024

David W. Slayton, Executive Officer / Clerk of Court

Deputy
B. Arriaga

FINAL RULINGS/ORDERS RE: MOTION FOR APPROVAL OF PAGA SETTLEMENT

Cobian v. Arcadia Gardens Management Corporation, Case No.
22STCV06695

The Parties' Motion for Approval of PAGA Settlement is
GRANTED as the settlement is fair, adequate, and reasonable.

Counsel may file a Stipulation and [Proposed] Order
regarding a payment plan by **February 14, 2024**. (Include
provision that PAGA Aggrieved Employees are paid before other
entities).

**Non-Appearance Case Review is set for February 21, 2024,
8:30 a.m., Department 9.**

The essential terms are:

- A. The Gross Settlement Amount ("GSA") is \$142,500.
- B. The Net Settlement Amount is the GSA minus the
following:
 - \$47,500 for attorney fees to PAGA Counsel, Moon Law Group,
PC.
 - \$14,187.20 for litigation costs to PAGA Counsel.
 - \$3,750 for settlement administration costs to Phoenix Class
Action Administration Solutions.
 - \$53,250 (75% PAGA penalty) to the LWDA.
- C. Plaintiffs release of Defendants from claims described
herein.

By **March 18, 2024**, Plaintiffs must:

- a. serve this Order on the LWDA pursuant to Labor Code
section 2699 (1)(3);
- b. file and serve a [Proposed] Judgment consistent with
this ruling containing among other things, the PAGA aggrieved
employee definition; PAGA period; and full release language; and
- c. email the [Proposed] Judgment in Word format to Dept.
9 staff at sscdept9@lacourt.org.

**Non-Appearance Case Review is set for March 25, 2024, 8:30
a.m., Department 9.**

By **January 27, 2025**, Plaintiffs must file and serve a Final Accounting.

Non-Appearance Case Review is set for February 3, 2025, 8:30 a.m., Department 9.

I.
INTRODUCTION

A. Background

This is a putative wage and hour class action. Plaintiff Maria Adelaida Sillas Cobian alleges that she and the putative class members are and were non-exempt employees of Defendant Arcadia Gardens Management Corporation. Plaintiff also alleges that Defendant violated the Labor Code, Industrial Welfare Commission wage orders, and the Business and Professions Code.

On February 23, 2022, Plaintiff filed her class action complaint. On May 13, 2022, Plaintiff filed her first amended complaint (FAC). In the FAC, Plaintiff asserts the following causes of action: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to indemnify necessary business expenses; (6) failure to timely pay wages at termination; (7) failure to provide accurate itemized wage statements; (8) unfair business practices; and (9) civil penalties under the Private Attorney General Act (PAGA).

On May 25, 2022, Plaintiff voluntarily dismissed her first eight causes of action and class claims, leaving only her PAGA cause of action.

On July 19, 2022, Defendant filed a motion to compel arbitration.

On October 31, 2023, Plaintiff filed the pending motion to approve PAGA settlement.

B. Terms of Settlement Agreement

The essential terms of the PAGA settlement are as follows:

//

“Aggrieved Employees” definition	“Aggrieved Employees” are defined as all current and former hourly-paid, non-exempt employees of Arcadia Gardens in the State of California who worked for Arcadia Gardens at any time during the PAGA Period. Settlement Agreement, § 1.4. The PAGA Period is February 23, 2021, through the date the settlement is approved. <u>Id.</u>, § 1.19. - There are approximately 197 Aggrieved Employees who worked approximately 6,496 pay periods. Moon Decl., ¶ 19.																				
Gross Settlement Amount (GSA)	\$142,500.00 Settlement Agreement, § 3.1.																				
GSA allocation	<table><tr><td></td><td>Maximum</td><td>Requested</td></tr><tr><td>PAGA counsel fees</td><td>\$47,500.00</td><td>\$58,333.33¹</td></tr><tr><td>Reasonable litigation costs</td><td>\$18,000.00</td><td>\$14,187.20</td></tr><tr><td>Settlement administration costs</td><td>\$6,000.00</td><td>\$3,750.00</td></tr><tr><td>LWDA Payment</td><td>\$53,250.00</td><td>No request</td></tr><tr><td>Aggrieved Employee Payment</td><td>\$17,750.00</td><td>No request</td></tr></table> Settlement Agreement, § 3.2; Moon Decl., ¶¶ 42, 50. Lawrence Decl., ¶ 16. Plaintiff deducts PAGA counsel fees, PAGA counsel litigation expenses, and administration expenses to calculate the net settlement amount. Settlement Agreement, § 3.2.3. The net settlement amount shall be allocated 75 percent to the LWDA PAGA payment and 25 percent to the aggrieved employees. <u>Ibid.</u>				Maximum	Requested	PAGA counsel fees	\$47,500.00	\$58,333.33 ¹	Reasonable litigation costs	\$18,000.00	\$14,187.20	Settlement administration costs	\$6,000.00	\$3,750.00	LWDA Payment	\$53,250.00	No request	Aggrieved Employee Payment	\$17,750.00	No request
	Maximum	Requested																			
PAGA counsel fees	\$47,500.00	\$58,333.33 ¹																			
Reasonable litigation costs	\$18,000.00	\$14,187.20																			
Settlement administration costs	\$6,000.00	\$3,750.00																			
LWDA Payment	\$53,250.00	No request																			
Aggrieved Employee Payment	\$17,750.00	No request																			
Allocation and Calculation of PAGA Penalties	The payments to the Aggrieved Employees shall be paid on a pro rata basis as calculated by the Settlement Administrator. Settlement Agreement, § 3.2.3.																				
Tax Treatment of PAGA Penalties	The Administrator will report the individual PAGA payments on IRS 1099 forms. § 3.2.3.2																				
Payment Procedures	- Within 15 days after the Approval Order, Defendant shall provide Aggrieved Employee Data to Settlement Administrator. <u>Id.</u>, § 4.2. - Arcadia Gardens shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than fourteen (14) days after the Effective Date. <u>Id.</u>, § 4.3. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order approving the PAGA Settlement; and (b) the Judgment is final. The Judgment is final as of the day the Court enters Judgment. <u>Id.</u>, § 1.9. - Within fourteen (14) days after Arcadia Gardens funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment. <u>Id.</u>, § 4.4. Disbursement of the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of individual PAGA payments. <u>Ibid.</u>																				
Unclaimed Funds	- Checks will remain negotiable for 180 days. <u>Id.</u>, § 4.4.1. - The Administrator will cancel all checks not cashed by 180 days. <u>Ibid.</u> - After 180 days, uncashed checks shall be deposited with the State Controller. <u>Id.</u>, § 4.4.3.																				
Publicity	No publicity term.																				
Settlement Administrator	Phoenix Class Action Administration Solutions. <u>Id.</u> , § 7.1.																				
Settlement Submitted to LWDA	Submitted to the LWDA at the same time as the filing of the motion for settlement approval, per Labor Code § 2699(l)(1). Decl. Moon, ¶ 12.																				

¹ Counsel confirmed at the hearing that the \$58,333.33 fee amount is an error. Counsel requests fees as provided in the settlement agreement, that is, \$47,500.

II.
DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. After arms-length negotiation, the Parties agreed to a settlement of Plaintiff's PAGA claim. Settlement Agreement, § 5.1; Moon Decl., ¶ 11.

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Prior to mediation, the parties engaged in informal discovery, including an exchange of sample data and demographic information which allowed the Parties to meaningfully mediate this matter. Moon Decl., ¶ 9. Defendant provided the approximate number of aggrieved employees and pay periods within the relevant period, documents regarding Defendant's written employment policies, Plaintiff's personnel file and her time and payroll records, and time and payroll records for a statistically significant sample of the Aggrieved Employees. Ibid.

PAGA Counsel retained an expert to analyze the sample records produced and prepare a damage analysis prior to mediation. Id., ¶ 10. The sample of time and pay records contained 6,677 shifts that employees worked (representing roughly 10% of total shifts worked in the proposed PAGA Period), which allowed the expert to prepare an analysis with a high degree of certainty. Ibid.

In conjunction with their extensive factual investigation, PAGA Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. Ibid.

3. Is counsel experienced in similar litigation? Yes. Moon Decl., ¶¶ 28-29, 32, 35-39.

4. What percentage of the class has objected? Not applicable.

The Court concludes that the settlement is entitled to a presumption of fairness.

B. Is the Settlement Fair, Adequate, and Reasonable?

1. Strength of Plaintiffs' case. "The most important factor is the strength of the case for plaintiffs on the merits,

balanced against the amount offered in settlement.” (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

Plaintiff’s counsel provides a detailed factual basis for the claims asserted in the complaint. Moon Decl., ¶¶ 18-20. Here, Plaintiff’s counsel asserts that the maximum exposure in this case is \$649,600 based on \$100 civil penalty and 6,496 pay periods, but Plaintiff’s counsel concedes that this outcome is unlikely given that the records do not provide “overwhelming” evidence to support the case on a representative basis.

After discounting this lack of evidence, Plaintiff’s counsel provides the following risk-adjusted exposure analysis. According to Plaintiff’s expert, 53.8% of all pay periods were affected by Defendant’s time-rounding practice, resulting in an estimated 961.9 hours that were underpaid. Plaintiff’s expert also determined there were 9,104 unique meal period violations, and that Defendant did not properly incorporate all remunerations into the regular rate of pay and thereby underpaid employees’ overtime and sick pay. However, the expert’s analysis also revealed that certain claims were not as strong as originally believed. For example, the expert determined that Plaintiff’s regular rate of pay claim impacted only 2.1% and 0.4% of pay periods for overtime and sick pay, respectively. Additionally, the records evidenced unique meal break violations in only 15% of shifts greater than 6 hours without a first meal period recorded.

Plaintiff’s counsel also states that Defendant would be subject to civil penalties based on Plaintiff’s allegation that employees were not paid for off-the-clock hours worked (penalty under Labor Code section 1197.1 for violation of Labor Code section 1194 – failure to pay minimum wage) as well as Plaintiff’s allegation that Defendant did not authorize or permit code-compliant rest periods, but these claims would largely need to be supported by declarations from Aggrieved Employees. However, obtaining such declarations potentially would reveal that each Aggrieved Employee had a different experience. The individualized nature of employees’ employment experience and the number of employees affected present significant risk with manageability and proof of the merits.

Based on PAGA Counsel’s investigation and analysis, the maximum exposure did not comport with the reasonable exposure that Defendant faced. Specifically, Defendant argued it paid employees for all hours worked and that it did not permit off-the-clock work. Defendant contends, and the records confirm,

that its time-rounding practice also resulted in employees being overpaid and thus, they were not systematically harmed. Defendant contends that any bonuses were discretionary, so the regular rate of pay was always properly calculated for purposes of paying overtime and sick pay; moreover, Defendant contends, and the records confirm, the regular rate issue would not result in high damages and thus, a Court would likely not award the full number of penalties so as not to raise due process concerns. Defendant maintains its compliance with all its meal and rest period obligations, and that any missed lunches or breaks was solely the result of employees' voluntary choice. To the employees who received wage statements that were allegedly inaccurate, Defendant asserts they suffered no actual damage or harm as a result.

Based on the foregoing, Plaintiff's counsel asserts that is reasonable to assume for resolution purposes, that a violation occurred in approximately one-half of all pay periods resulting in a realistic (risk-adjusted) exposure of \$324,800 (\$649,600 / 2). A further discount is warranted in consideration of the potential manageability issues, Defendant's defenses on the merits, due process concerns related to penalizing Defendant disproportionately to the amount of damages at issue, and the discretionary nature of awarding penalties. Thus, a more realistic exposure is approximately half of the above amount as follows: $50\% \times \$324,800 = \$162,400$.

Here, the PAGA payment of \$142,500 represents approximately 87.75% of Defendant's realistic recovery. (Villalobos v. Calandri Sunrise Farm LP (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709, at *5; see also O'Connor v. Uber Technologies, Inc. (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

2. Risk, expense, complexity and likely duration of further litigation. The discounted settlement takes into consideration the risk of significant delay, trial risk, appellate risk, and Defendant's defenses. Moon Decl., ¶ 23.

3. Risk of maintaining class action status through trial. Not applicable.

4. Amount offered in settlement. Defendant will pay a maximum settlement amount of \$142,500. This amounts to approximately 21.94% of Defendant's maximum exposure of \$649,600 for the claims alleged. Given the uncertain outcomes, and the

discretionary nature of PAGA penalties, this settlement appears to be within the "ballpark of reasonableness."

Assuming the maximum deductions are taken in full, \$17,750 will remain for distribution to Aggrieved Employees. The payments to Aggrieved Employees will average \$90.10 (\$17,750 / 197 Aggrieved Employees = \$90.10).

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Plaintiff's Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Plaintiff's Counsel who, as indicated above, is experienced in PAGA litigation.

The Court concludes that the settlement is "fair, adequate, and reasonable."

C. Scope of the Release

All aggrieved employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the operative complaint and the PAGA notice. Settlement Agreement, § 5.1.

PAGA Counsel releases on behalf of their present and former attorneys, employees, agents, successors and assigns the released parties from all claims for PAGA fees incurred in connection with the operative complaint and the PAGA period facts stated in the operative complaint and the PAGA notice. Id., § 5.2.

D. Is the Notice Proper?

PAGA has no notice requirements for unnamed aggrieved employee members, nor may such employees opt out of a PAGA action. See Hernandez v. DMSI Staffing, LLC. (N.D. Cal. 2015) 79 F.Supp.3d 1054, 1063, aff'd sub nom. Hernandez v. DMSI Staffing, LLC (9th Cir. 2017) 677 Fed.Appx. 359.

A letter to aggrieved employees will accompany settlement checks. Lawrence Decl., ¶ 12. A copy of the proposed letter is

attached to the Settlement Agreement as Exhibit A. Its content appears to be acceptable.

E. Attorney Fees and Costs

An aggrieved employee who prevails in a PAGA action may recover reasonable attorney's fees and costs. (Labor Code §2699(g)(1)) Whether a plaintiff established entitlement to an award of fees under PAGA is a question best decided by the trial court. (San Diego Municipal Employees Association v. City of San Diego (2016) 244 Cal.App.4th 906.)

PAGA Counsel requests attorney's fees of \$58,333.33 and costs of \$14,187.20. Moon Decl., ¶ 42, 50. The Settlement Agreement provides for fees up to \$47,500 and reasonable litigation costs up to \$18,000. Settlement Agreement, § 3.2.1. Counsel confirmed at the hearing that the \$58,333.33 fee amount is an error. Counsel requests fees as provided in the settlement agreement, that is, \$47,500.

"Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.) Here, PAGA counsel requests attorney fees using the percentage method. Moon Decl., ¶ 42.

In common fund cases, the Court may employ a percentage of the benefit method, as cross-checked against the lodestar. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) Here, the fee request of \$58,333.33 represents 40.94% of the maximum settlement amount, which is not equal to the 33% average generally awarded in class actions. See In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn.13 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.")

Regarding lodestar, Plaintiff's counsel provided has provided the following information:

Attorney	Rate	Hours	Lodestar
Kane Moon	\$725.00	46.1	\$33,422.50
Allen Feghali	\$675.00	74.8	\$50,490.00
Linh H. Tran	\$325.00	37.6	\$12,220.00

Attorney	Rate	Hours	Lodestar
Total:		158.5	\$96,132.50

Plaintiff's counsel's percentage-based fee request is lower than the unadjusted lodestar of \$96,132.50 and would represent application of a 0.61 negative multiplier. Plaintiff's counsel contends that their fee request is thus also reasonable under the lodestar method. Moon Decl., ¶ 46(b).

As for costs, Plaintiffs' counsel is requesting \$14,187.20. Moon Decl., ¶ 50.

Based on the above, the court awards \$47,500 for attorneys' fees and \$14,187.20 for costs.

III. CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Approval of PAGA Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

2) Counsel may file a Stipulation and [Proposed] Order regarding a payment plan by **February 14, 2024**. (Include provision that PAGA Aggrieved Employees are paid before other entities).

3) **Non-Appearence Case Review is set for February 21, 2024, 8:30 a.m., Department 9.**

4) The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$142,500.

B. The Net Settlement Amount is the GSA minus the following:

\$47,500 for attorney fees to PAGA Counsel, Moon Law Group, PC.

\$14,187.20 for litigation costs to PAGA Counsel.

\$3,750 for settlement administration costs to Phoenix Class Action Administration Solutions.

\$53,250 (75% PAGA penalty) to the LWDA.

C. Plaintiffs release of Defendants from claims described herein.

5) By **March 18, 2024**, Plaintiffs must:

- a. serve this Order on the LWDA pursuant to Labor Code section 2699 (1)(3);
- b. file and serve a [Proposed] Judgment consistent with this ruling containing among other things, the PAGA aggrieved employee definition; PAGA period; and full release language; and
- c. email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

6) **Non-Appearence Case Review is set for March 25, 2024, 8:30 a.m., Department 9.**

7) By **January 27, 2025**, Plaintiffs must file and serve a Final Accounting.

8) **Non-Appearence Case Review is set for February 3, 2025, 8:30 a.m., Department 9.**

CLERK TO GIVE NOTICE TO MOVING PARTY. THE MOVING PARTY TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: January 25, 2024





YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT
Yvette M. Palazuelos / Judge