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Clerk of the Court
Superior Court of CA
County of Santa Clara
22CV398619
By: tduarte

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

JOY NAVA, individually and on behalf of all others similarly situated,	)	Case No.: 22CV398619
	)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF'S
	)	MOTION FOR FINAL APPROVAL OF
v.	)	CLASS ACTION AND PAGA
	)	SETTLEMENT
	)	
CHANNING HOUSE, et al.,	)	Dept. 7
	)	
Defendants.	)	

This is a wage and hour putative class action and a Private Attorneys General Act ("PAGA") representative action. Plaintiff Joy Nava alleges that Defendant Channing House ("Defendant"), which operates a retirement community in Palo Alto, committed various Labor Code violations. Before the Court is Plaintiff's motion for final approval of settlement, which is unopposed. As discussed below, the Court is GRANTED.

I. BACKGROUND

According to the allegations of the operative Complaint, Plaintiff was employed by Defendant as a non-exempt, hourly-paid charge nurse at its facility in Palo Alto from June 1992 to February 16, 2022. (Complaint, ¶ 2.) Plaintiff alleges that Defendant failed to pay her and putative class members and aggrieved employees sick pay and meal and rest period premium

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1 wages at the correct, higher regular rate of pay and failed to provide accurate itemized wage
2 statements. (*Id.*, ¶ 20.) More specifically, Defendant failed to pay the correct wages to which
3 Plaintiff and others were entitled by not including all non-discretionary remuneration into the
4 regular rate. (*Id.*, ¶ 20.) Whenever meal and/or rest periods were denied to Plaintiff and class
5 members, Defendant was required to pay meal and rest period premium wages based on the
6 regular rate of pay by factoring in all non-discretionary pay, including without limitation, shift
7 differentials. (*Ibid.*) Defendant was also required to pay sick pay wages at the regular rate of
8 pay. Defendant did not include all non-discretionary pay, including without limitation, all shift
9 differentials/shift premiums called RN Night/OT and RN Night/Reg, into the meal and rest
10 period premium and sick pay wages and instead paid these wages based on the base rate of pay.
11 (*Ibid.*)

12 Based on the foregoing, Plaintiff initiated this action with the filing of the Complaint on
13 May 26, 2022, asserting the following causes of action: (1) failure to provide accurate itemized
14 wage statements; (2) failure to timely pay all wages due upon separation of employment (sick
15 leave); (3) failure to timely pay all wages due upon separation of employment (meal period); (4)
16 failure to timely pay all wages due upon separation of employment (rest period); (5) violation of
17 PAGA; and (6) unfair or unlawful business practices.

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

19 **A. Class Action**

20 Generally, “questions whether a [class action] settlement was fair and reasonable,
21 whether notice to the class was adequate, whether certification of the class was proper, and
22 whether the attorney fee award was proper are matters addressed to the trial court’s broad
23 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
24 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
25 260.)

1 “In determining whether a class settlement is fair, adequate and reasonable, the trial court
2 should consider relevant factors, such as the strength of plaintiffs’ case, the risk, expense,
3 complexity and likely duration of further litigation, the risk of maintaining class action status
4 through trial, the amount offered in settlement, the extent of discovery completed and the stage
5 of the proceedings, the experience and views of counsel, the presence of a governmental
6 participant, and the reaction of the class members to the proposed settlement.” (*Wershba, supra*,
7 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

8 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
9 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
10 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
11 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
12 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
13 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
14 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
15 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
16 marks omitted.) The trial court also must independently confirm that “the consideration being
17 received for the release of the class members’ claims is reasonable in light of the strengths and
18 weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168
19 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be
20 “provided with basic information about the nature and magnitude of the claims in question and
21 the basis for concluding that the consideration being paid for the release of those claims
22 represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

23 **B. PAGA**

24 Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall
25 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s

1 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
2 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
3 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
4 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
5 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*
6 *Moriana* (2022) 596 U.S. 639, 2022 U.S. LEXIS 2940.)

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

24 For settlement purposes only, Plaintiff requests that the following settlement classes be
25 provisionally certified:

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1 (a) All of Defendant's current and former non-exempt employees in the state of
2 California who were paid sick pay in the same workweek in which they earned any
3 nondiscretionary remuneration, including without limitation, shift differentials and
4 shift premiums during the Class Period (the "Sick Pay Class").

5 (b) All of Defendant's current and former non-exempt employees in the State of
6 California who were paid any meal period premium payments in the same workweek
7 in which they earned any non-discretionary remuneration, including without
8 limitation, shift differentials and shift premiums, covering the same period that meal
9 period premiums were paid, during the Class Period (the "Meal Period Premium
10 Class").

11 (c) All of Defendant's current and former non-exempt employees in the State of
12 California who were paid any rest period premium payments in the same workweek
13 in which they earned any non-discretionary remuneration, including without
14 limitation, shift differentials and shift premiums, covering the same period that rest
15 period premiums were paid, during the Class Period (the "Rest Period Premium
16 Class").

17 Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order
18 approving or denying certification of a provisional settlement class after [a] preliminary
19 settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a
20 class "when the question is one of a common or general interest, of many persons, or when the
21 parties are numerous, and it is impracticable to bring them all before the court"

22
23 Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence:
24 (1) an ascertainable class and (2) a well-defined community of interest among the class
25 members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332 (*Sav-On*

1 *Drug Stores*.) “Other relevant considerations include the probability that each class member
2 will come forward ultimately to prove his or her separate claim to a portion of the total recovery
3 and whether the class approach would actually serve to deter and redress alleged wrongdoing.”
4 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of
5 establishing that class treatment will yield “substantial benefits” to both “the litigants and to the
6 court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

7 In the settlement context, “the court’s evaluation of the certification issues is somewhat
8 different from its consideration of certification issues when the class action has not yet settled.”
9 (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the
10 settlement-only context, the case management issues inherent in the ascertainable class
11 determination need not be confronted, and the court’s review is more lenient in this respect. (*Id.*
12 at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or
13 overbroad class definitions require heightened scrutiny in the settlement-only class context, since
14 the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

15 At preliminary approval, the Court provisionally certified the above-described class,
16 determining that Plaintiff had demonstrated by a preponderance of the evidence (1) an
17 ascertainable class, (2) a well-defined community of interest among the class members and (3)
18 that a class action provides substantial benefits to both litigants and the Court. Consequently, the
19 Court will certify the class for settlement purposes as requested.

20 **IV. TERMS AND ADMINISTRATION OF SETTLEMENT**

21 The non-reversionary gross settlement amount is \$195,000. Attorney’s fees of up to one-
22 third of the gross settlement (\$65,000), litigation costs of up to \$30,000, and up to \$8,250 in
23 administrative costs will be paid from the gross settlement. \$19,500 will be allocated to PAGA
24 penalties, 75% of which (\$14,625) will be paid to the LWDA, with the remaining 25% (\$4,875)
25 paid to “Aggrieved Employees,” who are defined as “individuals who fall within any of the three

[classes defined within the settlement agreement] during the PAGA Period, i.e., April 7, 2021, through June 22, 2023.” “Class Members” are defined as:

- (a) All of Defendant’s current and former non-exempt employees in the state of California who were paid sick pay in the same workweek in which they earned any nondiscretionary remuneration, including without limitation, shift differentials and shift premiums during the Class Period (the “Sick Pay Class”).
- (b) All of Defendant’s current and former non-exempt employees in the State of California who were paid any meal period premium payments in the same workweek in which they earned any non-discretionary remuneration, including without limitation, shift differentials and shift premiums, covering the same period that meal period premiums were paid, during the Class Period (the “Meal Period Premium Class”).
- (c) All of Defendant’s current and former non-exempt employees in the State of California who were paid any rest period premium payments in the same workweek in which they earned any non-discretionary remuneration, including without limitation, shift differentials and shift premiums, covering the same period that rest period premiums were paid, during the Class Period (the “Rest Period Premium Class”).

The “Class Period” refers to the time period from May 25, 2018 through June 22, 2023. Plaintiff will seek a service award of \$10,000.

The net settlement will be allocated to Class Members on a pro rata basis based on the number of pay periods worked during the Class Period. For tax purposes, 10% will be allocated to wages, 45% to interest and 45% to penalties. 100% of the PAGA payment to Aggrieved Employees will be allocated to penalties. The employer side payroll taxes will be paid by

1 Defendant separately from the gross settlement amount. Funds associated with checks uncashed
2 after 180 days will be transmitted to the California State Controller in the name of the Class
3 Member.

4 In exchange for settlement, Class Members who do not opt-out will release:

5 [A]ll claims, demands, liabilities, damages, attorneys' fees, costs, and penalties against
6 Released Parties, relating to any and all facts and claims asserted in the Action or any other
7 claims that could have been asserted in the Action based on the facts alleged, including but not
8 limited to claims arising from alleged unpaid sick pay wages; meal and rest period violations
9 during employment; wage statement violations based on unpaid sick pay wages, meal and rest
10 period violations; timely pay wages based on unpaid sick pay wages, meal and rest period
11 violations upon separation of employment.

12 Aggrieved Employees, who consistent with the statute will not be able to opt out of the
13 PAGA portion of the settlement, will release:

14 [A]ny and all PAGA penalties based on unpaid sick pay wages, meal and rest period
15 violations during the PAGA Period. Regardless of whether Class Members opt-out of the Class
16 Settlement, Aggrieved Employees and the State of California shall release all PAGA claims as
17 alleged on behalf of all Aggrieved Employees, as detailed herein.

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

20 The notice period has now been completed. According to the declaration of case
21 manager Nathalie Hernandez with settlement administrator ILYM Group, Inc. ("ILYM")
22 submitted in support of the instant motion, on July 8, 2024, ILYM received from Defendant class
23 data files containing the names, social security numbers, last known mailing addresses, and the
24 total number of relevant workweeks worked for each of the 353 settlement class members.
25 ILYM processed the addresses it had against the National Change of Address database to

1 confirm and update this information and then mailed the notice packet to Class members on July
2 18, 2024 via first class mail. As of the date of Ms. Hernandez' declaration, October 30, 2024, 16
3 notices have been returned to ILYM as undeliverable, none of which included a forwarding
4 address. ILYM performed a skip trace on these notices and located 12 updated addresses, to
5 which notices were promptly re-mailed. At present, four notices have been deemed
6 undeliverable.

7 The deadline to submit a request for an exclusion, a challenge to the amount of work
8 weeks listed, or an objection to the settlement was September 3, 2024. As of the date of Ms.
9 Hernandez's declaration, ILYM has not received any workweek disputes, requests for exclusion
10 or objections to the settlement. Consequently, there are 353 participating settlement class
11 members, representing 100% of the class. Based on this number, class members will receive an
12 estimated average payment of \$230.12, with the highest estimated payment being \$645.24.

13 At preliminary approval, the Court found that the proposed settlement provides a fair and
14 reasonable compromise to Plaintiff's claims, and that the PAGA settlement is genuine,
15 meaningful, and fair to those affected. It finds no reason to depart from these findings now,
16 especially considering that there are no objections. Therefore, the Court finds that the settlement
17 is fair and reasonable for the purposes of final approval.

18 **V. ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS**

19 As set forth above, Plaintiff's counsel seeks a fee award of \$65,000, or one-third of the
20 gross settlement amount, which is not an uncommon contingency fee allocation in a wage and
21 hour class action. Plaintiff also provides a lodestar figure of \$129,030, which is based on 151.8
22 hours of work at a billing rate of \$850, resulting in a negative multiplier of 0.5. This is far less
23 than the range of multipliers that courts typically approve. (See *Laffitte v. Robert Half Intern.*
24 *Inc.* (2016) 1 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion in
25 approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a

1 multiplier of 2.03 to 2.13]; *Wershba, supra*, 91 Cal.App.4th at p. 255 “[m]ultipliers can range
2 from 2 to 4 or even higher”]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051,
3 fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and
4 citing the court’s own survey of large settlements finding “a range of 0.6–19.6, with most (20 of
5 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range”].)

6 “While the percentage method has been generally approved in common fund cases,
7 courts have sought to ensure the percentage fee is reasonable by refining the choice of a
8 percentage or by checking the percentage result against a lodestar- multiplier calculation.”
9 (*Laffitte, supra*, 1 Cal.5th at pp. 494-495.) Applying this latter approach, “the percentage-based
10 fee will typically be larger than the lodestar based fee. Assuming that one expects rough parity
11 between the results of the percentage method and the lodestar method, the difference between the
12 two computed fees will be attributable solely to a multiplier that has yet to be applied. Stated
13 another way, the ratio of the percentage-based fee to the lodestar-based fee implies a multiplier,
14 and that implied multiplier can be evaluated for reasonableness. If the implied multiplier is
15 reasonable, then the cross-check confirms the reasonableness of the percentage-based fee; if the
16 implied multiplier is unreasonable, the court should revisit its assumptions.” (*Laffitte, supra*, 1
17 Cal.5th at p. 496, quoting Walker & Horwich, *The Ethical Imperative of a Lodestar Cross-check:
18 Judicial Misgivings About “Reasonable Percentage” Fees in Common Fund Cases* (2005) 18
19 Geo. J. Legal Ethics 1453, 1463.) As described by the California Supreme Court, “[i]f the
20 multiplier calculated by means of a lodestar crosscheck is extraordinarily high or low, the trial
21 court should consider whether the percentage used should be adjusted so as to bring the imputed
22 multiplier within a justifiable range, but the court is not necessarily required to make such an
23 adjustment.” (*Id.* at p. 505.)
24
25

1 Here, as the multiplier sought by Plaintiff's counsel is negative, far less than the range of
2 modifiers typically approved by courts and is supported by the percentage cross-check, the Court
3 finds counsel's requested fee award is reasonable.

4 Plaintiff's counsel also seeks \$11,015.93 in litigation costs, which is less than the
5 maximum amount (\$30,000) permitted under the settlement agreement. Based on the
6 information contained in the declaration of Plaintiff's counsel, this amount is reasonable and is
7 therefore approved. The \$8,250 in administrative costs are also approved.

8 Finally, Plaintiff requests an enhancement award of \$10,000. To support this request,
9 Plaintiff submits a declaration in support of the motion in which she describes her efforts in this
10 action. The Courts finds that she is entitled to an enhancement award and the amounts requested
11 are reasonable and are therefore approved.

12 **VI. CONCLUSION**

13 In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND
14 DECREED THAT:

15 Plaintiff's motion for final approval and for fees and costs is GRANTED. The following
16 settlement classes are certified for settlement purposes only:

17 (d) All of Defendant's current and former non-exempt employees in the state of
18 California who were paid sick pay in the same workweek in which they earned any
19 nondiscretionary remuneration, including without limitation, shift differentials and
20 shift premiums during the Class Period (the "Sick Pay Class").

21 (e) All of Defendant's current and former non-exempt employees in the State of
22 California who were paid any meal period premium payments in the same workweek
23 in which they earned any non-discretionary remuneration, including without
24 limitation, shift differentials and shift premiums, covering the same period that meal
25

1 period premiums were paid, during the Class Period (the “Meal Period Premium
2 Class”).

3 (f) All of Defendant’s current and former non-exempt employees in the State of
4 California who were paid any rest period premium payments in the same workweek
5 in which they earned any non-discretionary remuneration, including without
6 limitation, shift differentials and shift premiums, covering the same period that rest
7 period premiums were paid, during the Class Period (the “Rest Period Premium
8 Class”).

9 Judgment will be entered through the filing of this order and judgment. (Code Civ. Proc.,
10 § 668.5.) Plaintiff and the members of the Class/Aggrieved Employees will take from the
11 Complaint only the relief set forth in the settlement agreement and this order and judgment.
12 Pursuant to Rule 3.769(h) of the California Rules of Court, the Court will retain jurisdiction over
13 the parties to enforce the terms of the settlement agreement and the final order and judgment.

14 The Court sets a compliance hearing for **July 31, 2025 at 2:30 P.M.** in Department 7. At
15 least ten court days before the hearing, class counsel and the settlement administrator shall
16 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 pursuant to
18 Code of Civil Procedure section 384, subdivision (b); the status of any unresolved issues; and
19 any other matters appropriate to bring to the Court’s attention. Counsel shall also submit an
20 amended judgment as described in Code of Civil Procedure section 384, subdivision (b).
21 Counsel may appear at the compliance hearing remotely.

22 DATED: December 11, 2024

23 
24 CHARLES F. ADAMS
25 Judge of the Superior Court