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22CV401053
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

ESMERLADA VELASCO, on behalf on herself and Similarly Aggrieved Employees, Plaintiffs, v. BRIGHT MATTERS, INC., a California Corporation; ALEJANDRO NAVARRO, an individual; KELLERMEYER BERGENSONS SERVICESS, LLC, a Delaware Corporation; and DOES 1 through 50, inclusive, Defendants.	Case No. 22CV401053 **ORDER GRANTING PLAINTIFF'S MOTION FOR APPROVAL OF PAGA SETTLEMENT**

This is a representative action under the Private Attorneys General Act ("PAGA"). Plaintiff Esmeralda Velasco alleges that defendants Bright Matters, Inc. ("Bright Matters"), Alejandro Navarro ("Navarro"), Kellermeyer Bergensons Services, LLC ("KBS") (collectively, "Defendants") committed various wage and hour violations and seeks PAGA penalties for those violations.

Before the Court is Plaintiff's motion for approval of PAGA settlement with defendant KBS, which is unopposed.[1] As discussed below, the Court GRANTS the motion.

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[1] Defendants Bright Matters and Navarro are not parties to the Settlement. (Plaintiff's Memorandum of Points and Authorities ("MPA"), p.1:4-5.)

I. BACKGROUND

According to the allegations of the operative Complaint, Plaintiff was employed as a janitor from September 2021 until she was terminated in January 2022. (Complaint, ¶ 1.) She alleges Defendants failed to: accurately classify her and Aggrieved Employees; pay all earned wages upon discharge; provide accurate wage statements; and provide employment records.

Based on the foregoing, Plaintiff initiated this action on July 22, 2022, asserting claims for civil penalties under PAGA.

II. LEGAL STANDARD FOR APPROVING PAGA SETTLEMENT

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

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

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

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

III. PLAINTIFF'S INVESTIGATION, SETTLEMENT PROCESS, AND THE PARTIES' AGREEMENT

On July 22, 2022, Plaintiff initiated this action and filed charges with the California Civil Rights Department ("CRD") against Defendants. She obtained a Right-to-Sue letter, which was served to Defendants along with the Complaint. After an initial stay in the case was lifted, the parties engaged in formal and informal discovery. On June 22, 2023, the parties engaged in mediation with Philip K. Cha ("Mr. Cha"), an experienced employment mediator. However, the parties were unable to resolve the matter. Subsequently, the parties engaged in further settlement discussions with the assistance of Mr. Cha. After months of discussions, Plaintiff and KBS reached a conditional settlement regarding Plaintiff's individual wage and hour claims, her potential claims outlined in her CRD complaint, and the PAGA claim.

Pursuant to the parties' agreement, KBS will pay a non-reversionary gross settlement amount of $39,500.00, which is comprised of $9,875.00 in attorneys' fees, no more than $7,000 in litigation costs, and approximately $1,100 in administrative costs. The $21,525 in PAGA penalties will be distributed 75% ($16,143.75) to the LWDA and 25% ($5,381.25), on a pro rata basis, to ("Aggrieved Employees"), who are defined as "all former non-exempt/hourly paid employees who were misclassified as independent contractors and were employed by Bright Matters, who performed work for KBS's clients, pursuant to the contract between Bright Matters and KBD, in the State of California from May 3, 2021 to August 31, 2023." It is estimated that there are approximately 56 Aggrieved Employees and 658 pay periods during the relevant time period; this results in an average payment to each employee of $96.09. The individual PAGA Payments will be allocated 100% as civil penalties and Aggrieved Employees will be issued IRS Form 1099s for their respective shares of PAGA penalties.

In exchange for settlement, Plaintiff will release:

> [A]ny and all claims or causes of action for PAGA penalties, or whatever kind of nature, which occurred during the PAGA period that were alleged, or that reasonably could have been alleged based on the facts alleged in the Action and Plaintiff's LWDA's Letter, regardless of theory of recovery… The release thus includes PAGA claims or PAGA causes of action for violations of the Labor Code sections raised by Plaintiff's Action and Plaintiff's LWDA Letter against KBS, regardless of theory of recovery.

The LWDA will release:

> Covered Claims of Plaintiff and the Aggrieved Employees (as defined herein) that arise under PAGA, and does not cover an Aggrieved Employees' individual Labor Code claims. The release by the LWDA excludes claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, class claims, and PAGA claims that were not alleged by Plaintiff and Aggrieved Employees as defined herein.

These releases are appropriately tailored to the allegations at issue, and do not release any claims other than those for PAGA penalties. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537; *Moniz, supra,* 72 Cal.App.5th at p. 82 [release of "all known and unknown claims under PAGA … that were or could have been pled based on the allegations of the Complaint" was appropriately approved].)

IV. DISCUSSION

A. Potential Verdict Value

In the Complaint, Plaintiff asserts one claim for PAGA penalties based on KBS' knowledge that Plaintiff and Aggrieved Employees were misclassified and consequential liability.

In the absence of known findings by a court of the Labor Commissioner that KBS violated the Labor Code, KBS is not subject to the heightened $200 penalty for violations but only the $100 penalty per employee, per pay period for each violation. Based on the figures provided by KBS – 56 Aggrieved Employees and 658 pay periods during the relevant time period- Plaintiff calculated KBS' total exposure as $345,800. Plaintiff's counsel discounted this amount to account for the following risks: uncertainties regarding Plaintiff's standing; uncertainties regarding the availability of "stacked" PAGA penalties; Plaintiff's ability to prove KBS was a joint employer.

The settlement amount of $39,500 in PAGA penalties represents approximately 11% of KBS' estimated PAGA exposure, if two separate penalties for the willful misclassification and wage statement violations are assessed. If Plaintiff fails to establish willfulness on the part of KBS, the settlement amount represents 60% of the estimated PAGA exposure. Given this, as well as the risks attendant to proceeding to trial, KBS's insistence that any violations were not willful, and the likelihood that PAGA penalties would be significantly reduced in line with numerous appellate decisions, the Court finds that the proposed settlement is fair to those affected and is genuine, meaningful, and reasonable in light of the statute's purposes.

B. Attorney Fees

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

As articulated above, Plaintiff seeks a fee award of $9,875 which is 25% of the PAGA Settlement amount. This amount is facially reasonable under the "common fund" doctrine, which allows a party recovering a fund for the benefit of others to recover attorney fees from the fund itself, however, the Court previously continue the motion as Plaintiff's counsel did not provide any information regarding hours worked and billing rates. Plaintiff's counsel has since submitted a supplemental declaration which states that she spent 179 hours working on this matter at an hourly rate of $850. She provides a lodestar calculation of $134,250, resulting in a negative multiplier of .07. This is well short of the range of multipliers that courts typically approve. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements finding "a range of 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 the 1.5–3.0 range"].)

Here, given the amount of work performed by Plaintiff's counsel, and because the requested multiplier sought by them is well short of the range of multipliers regularly approved by California courts in similar actions, the Court finds counsel's requested fee award is reasonable and therefore it is approved.

C. Other Costs and Expenses

Counsel's request for litigation costs of $7,000 appears reasonable based on the supporting declaration provided which establish that counsel incurred costs in this amount and is approved. The administrative costs of $1,100 are also approved.

V. ADMINISTRATION PROCESS

Pursuant to the terms of the Settlement Agreement, within twenty-one (21) days of the Effective Date, KBS shall fund the gross settlement amount with the settlement administrator, Phoenix Settlement Administrators ("PSA"), on the condition that the Effective Date has occurred. Within fifteen (15) days of receival of the full gross settlement amount, Defendants will provide PSA with a list of all Aggrieved Employees and their contact information; disperse attorneys' fees and costs as approved by the Court to PAGA Counsel. A notice will accompany the PAGA payment to Aggrieved Employees in Spanish and English. Aggrieved Employees will not be required to submit a claim form or take any other steps to receive their payment. PSA shall ensure that 75% of the PAGA payment is paid to the LWDA within 30 days of receipt of the gross settlement amount from KBS. Any checks returned as non-deliverable will promptly be re-mailed to the forwarding address provided; if none is, Phoenix will attempt to locate one using a skip trace or other search method. Any checks returned as undeliverable or that remain uncashed after 180 days will be transmitted to the State of California's unclaimed property fund in the name of the respective PAGA member. These administrative procedures are appropriate and are approved.

VI. CONCLUSION

Plaintiff's motion for approval of the parties' PAGA settlement is GRANTED. The covered individuals are: All former non-exempt/hourly paid employees who were misclassified as independent contractors and were employed by Bright Matters, who performed work for KBS's clients, pursuant to the contract between Bright Matters and KBD, in the State of California from May 3, 2021 to August 31, 2023.

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiff and the Aggrieved Employees shall take from the PAGA claim in their FAC only the relief set forth in the parties' settlement agreement and this order and judgment. The Court retains jurisdiction over the parties to enforce the terms of the PAGA settlement agreement and the final order and judgment.

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

IT IS SO ORDERED.

Date: February 25, 2025

CHARLES F. ADAMS
Judge of the Superior Court