

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

FRANCISCO DUENAS ORELLANA and
RONALD LOPEZ MENDEZ, individually, and
on behalf of all others similarly situated,

Plaintiffs,

v.

PROMPT FOOD SERVICE, INC., a California
corporation, and DOES 1 through 10, inclusive,

Defendants.

Case No. 22CV403853

**ORDER GRANTING MOTION FOR
APPROVAL OF PAGA
SETTLEMENT; GRANTING MOTION
TO BE RELIEVED AS COUNSEL**

This is a representative action under the Private Attorneys General Act ("PAGA Plaintiffs Francisco Duenas Orellana ("Duenas Orellana") and Ronaldo Lopez Mendez ("Lopez Mendez") allege defendant Prompt Food Service, Inc. ("Prompt") committed various wage and hour violations.¹

Before the Court is (1) Plaintiff Duenas Orellana's motion for approval of PAGA settlement and (2) the motion to be relieved as counsel by Mariam Nazaretyan ("Nazaretyan") and Wilshire Law Firm, PLC (collectively, "Counsel"), who represent Plaintiff Mendez. Both motions are unopposed.

¹ Counsel uses "Ronaldo" as Plaintiff Lopez Mendez's first name, however, the Complaint and Odyssey state "Ronald" as his first name. Thus, the Court will use the latter to avoid any confusion or inconsistencies with its records.

1 For reasons discussed below, the Court GRANTS Counsel's motion to be relieved as
2 Counsel for Plaintiff Lopez Mendez and GRANTS Plaintiff Duenas Orellana's motion for
3 approval of PAGA settlement.

4 **I. BACKGROUND**

5 According to the allegations of the operative Complaint, Plaintiff Duenas Orellana
6 worked for Defendant as an hourly-paid, non-exempt employee from November 2021 to April
7 2022. (Complaint, ¶ 8.) Plaintiff Lopez Mendez worked for Defendant as an hourly-paid, non-
8 exempt employee from December 2021 to March 2022. (Complaint, ¶ 9.)

9 Defendant failed to: pay for all hours worked, including minimum and overtime wages;
10 provide meal periods of compensation in lieu thereof; provide rest periods or compensation in
11 lieu thereof; pay all earned wages twice a month; maintain accurate records; timely pay all wages
12 at termination; furnish accurate itemized wage statements; and produce requested employment
13 records.

14 On September 30, 2022, Plaintiffs initiated this action with the filing of the representative
15 PAGA action.

16 **II. MOTION TO BE RELIEVED AS COUNSEL**

17 **A. Legal Standard**

18 Motions to be relieved as counsel are technical and governed by Rules of Court, rule
19 3.1362 ("Rule 3.1362"). Notice and motion must be directed to the client on Judicial Council
20 Form MC-051. No memorandum is required. (Rule 3.1362(a) & (b)). Counsel must provide a
21 declaration on Judicial Council Form MC-052 stating "in general terms and without
22 compromising the confidentiality of the attorney-client relationship why a motion under Code of
23 Civil Procedure section 284(2) is brought instead of filing a consent under Code of Civil
24 Procedure section 284(1)." (Rule 3.1362(c)).

25 The notice of motion and motion, the declaration, and the proposed order must be served
26 on the client and all parties "by personal service, electronic service, or mail." (Rule 3.1362(d)).

27 If the notice is served on the client by mail under Code of Civil Procedure section
28 1013, it must be accompanied by a declaration stating facts showing that either:

1 (A) The service address is the current residence or business address of the client;
2 or

3 (B) The service address is the last known residence or business address of the
4 client and the attorney has been unable to locate a more current address after
5 making reasonable efforts to do so within 30 days before the filing of the motion
6 to be relieved.

7 (Rule 3.1362(d).)

8 The proposed order relieving counsel must be prepared on the Order Granting
9 Attorney's Motion to Be Relieved as Counsel—Civil (form MC-053) and must be
10 lodged with the court with the moving papers. The order must specify all hearing
11 dates scheduled in the action or proceeding, including the date of trial, if known.
12 If no hearing date is presently scheduled, the court may set one and specify the
13 date in the order. After the order is signed, a copy of the signed order must be
14 served on the client and on all parties that have appeared in the case. The court
15 may delay the effective date of the order relieving counsel until proof of service
16 of a copy of the signed order on the client has been filed with the court.

17 (Rule 3.1362(e).)

18 **B. Discussion**

19 Nazaretyan submitted a declaration in support of Counsel's motion. She states that the
20 motion is made pursuant to Rules of Professional Conduct Rule 1.16(b) and it is due to a
21 breakdown in the attorney-client relationship with Plaintiff Lopez Mendez. She further states that
22 Counsel will continue to represent Plaintiff Duenas Orellana and aggrieved employees in the
23 PAGA action.

24 With regard to service, Nazaretyan states that Plaintiff Lopez Mendez was served by mail
25 at his last known address with copies of the motion papers along with the declaration. She
26 confirmed within the past 30 days that the address is current by using a skip trace. The motion
27 papers were mailed to the last known address with a return receipt requested and the documents
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1 were emailed to Plaintiff Lopez Mendez at his last known e-mail address. This is sufficient to
2 meet the requirements of Rule 3.1362(d)(1)(A).

3 Counsel has provided a proposed order on the correct judicial counsel form (MC-053).
4 The proposed order indicates that there is a case management conference (“CMC”) on August
5 20, 2026 and the docket shows that there is a motion for approval of PAGA settlement and
6 Counsel’s motion to be relieved as counsel in the Class action. The Court’s docket does not
7 reflect any other scheduled hearing.

8 Based on the foregoing, Counsel’s motion is GRANTED. Counsel is ordered to inform
9 Plaintiff Lopez Mendez to appear at the hearing.

10 **III. MOTION FOR APPROVAL OF PAGA SETTLEMENT**

11 Plaintiff Duenas Orellana moves for an order approving the PAGA Settlement (the
12 “Settlement”) between him and Defendant.

13 **A. LEGAL STANDARD FOR APPROVING PAGA SETTLEMENT**

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

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
26 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
27 *Court* (2017) 3 Cal.5th 531, 549.) “[C]lass certification is not required” in this context as in a
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1 class action. (*Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971
2 (*Haralson*).)

3 Similar to its review of class action settlements, the Court must “determine
4 independently whether a PAGA settlement is fair and reasonable,” to protect “the interests of the
5 public and the LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.*
6 (2021) 72 Cal.App.5th 56, 76–77 (*Moniz*).) It must make this assessment “in view of PAGA’s
7 purposes to remediate present labor law violations, deter future ones, and to maximize
8 enforcement of state labor laws.” (*Id.* at p. 77; see also *Haralson, supra*, 383 F. Supp. 3d at
9 p. 971 [“when a PAGA claim is settled, the relief provided for under the PAGA [should] be
10 genuine and meaningful, consistent with the underlying purpose of the statute to benefit the
11 public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D.
12 Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

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

19 **B. PLAINTIFF’S INVESTIGATION, SETTLEMENT PROCESS, AND THE**
20 **PARTIES’ AGREEMENT**

21 On September 30, 2022, Plaintiffs initiated this action on January 5, 2024, with the filing
22 of the operative Complaint. Prior to filing the Complaint, Plaintiffs gave notice to the Labor and
23 Workforce Development Agency (“LWDA”). The parties agreed to mediate the PAGA action
24 with Russ Wunderli (“Wunderli”), a well-respected and experienced mediator of wage and hour
25 and representatives PAGA actions. PAGA Counsel conducted a thorough investigation into the
26 facts and applicable law. The parties conducted informal discovery and Defendant produced a
27 representative sampling of time and payroll data for aggrieved employees and the necessary
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1 policy documents to properly evaluate the strengths and weaknesses of the claims and engage in
2 meaningful settlement discussions.

3 On March 12, 2025, the parties engaged in an all-day mediation session with Wunderli
4 and with his help, the parties were able to reach an agreement on general settlement terms at
5 mediation.

6 Pursuant to the parties' agreement, Defendant will pay a non-reversionary gross
7 settlement amount \$115,000, which is comprised of \$38,333.33 in attorneys' fees, litigation costs
8 not to exceed \$27,000, and \$3,250 in administration costs. The \$43,775.32 will be distributed
9 75% (\$32,831.49) to the LWDA and 25% (\$10,943.83) to "Aggrieved Employees," who are
10 defined as "all current and former hourly-paid, non-exempt employees directly employed by
11 Defendant in the State of California during the PAGA Period [July 29, 2021 through July 12,
12 2025]." There are approximately 100 Aggrieved Employees and there is an estimated 3,800 pay
13 periods in the PAGA Period. Plaintiff Orellana will seek a service award of \$7,500.

14 In exchange for settlement, Aggrieved Employees will release:

15 [A]ll claims for PAGA civil penalties that are alleged or reasonably could have
16 been alleged based on the facts alleged in the PAGA Action and the PAGA
17 Notice during the PAGA Period.²

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

23 C. DISCUSSION

24 1. Potential Verdict Value

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28 ² The Released PAGA Claims are those that accrued during the PAGA Period.

1 In the Complaint, Plaintiff alleges meal period violations, rest break violations, unpaid
2 wages, failure to pay overtime wages, failure to pay timely wages, and failure to maintain
3 records.

4 Plaintiff's counsel estimated the maximum amount of statutory PAGA civil penalties as
5 approximately \$380,000 for estimated 100 employees based on 3,800 pay periods. Plaintiff states
6 that the gross settlement amount is favorable especially in consideration of the risks associated
7 with further litigation, Defendant's defenses, the possibilities of appeals, and the potential
8 reduction of any recovery.

9 The gross settlement represents approximately 30.2% of the maximum exposure. This is
10 within the percentage range typically approved by courts. (See *Cavazos v. Salas Concrete, Inc.*
11 (E.D. Cal., Feb. 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist. LEXIS 30201, at *41-
12 42 [citing cases approving settlements in the range of 5 to 35 percent of the maximum potential
13 exposure].)

14 Given this, as well as the risks attendant to proceeding to trial, Defendant's defenses and
15 the likelihood that PAGA penalties would be significantly reduced in line with numerous
16 appellate decisions, the Court finds that the proposed settlement is fair to those affected and is
17 genuine, meaningful, and reasonable in light of the statute's purposes.

18 2. Attorney Fees

19 While the PAGA statute does not expressly require judicial review of claimed attorney
20 fees, the Court believes it cannot adequately fulfill its statutory duty to review the penalties
21 associated with PAGA settlements without also considering attorney fees. The Court thus finds
22 that it must scrutinize the attorney fee arrangement associated with a PAGA settlement. This is
23 consistent with the observation of many courts that PAGA claims are analogous to "*qui tam*"
24 suits like those under the federal False Claims Act: when reviewing settlements of *qui tam*
25 claims, courts should and do consider any associated attorney fee arrangement. (See *U.S. v.*
26 *Texas Instruments Corp.* (9th Cir. 1994) 25 F.3d 725, 728 [attorney fee award must be
27 considered by the trial court as part of its review of the "entire settlement arrangement"].)
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1 As articulated above, Plaintiff seeks a fee award of \$38,333.33 in attorneys' fees.
2 Plaintiff counsel submits a lodestar figure of \$194,565 based on 224.4 hours of work at billing
3 rates ranging from \$600 to \$1,500 per hour resulting in a negative multiplier of 0.20. This is
4 below the range of multipliers that courts typically approve. (See *Laffitte v. Robert Half Intern.*
5 *Inc.* (2016) 1 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion in
6 approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a
7 multiplier of 2.03 to 2.13]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255
8 [“[m]ultipliers can range from 2 to 4 or even higher”]; *Vizcaino v. Microsoft Corp.* (9th Cir.
9 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in
10 common fund cases and citing the court’s own survey of large settlements finding “a range of
11 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
12 the 1.5–3.0 range”].)

13 Here, given the amount of work performed by PAGA Counsel, and because the requested
14 multiplier sought by them is below the range of multipliers regularly approved by California
15 courts in similar actions, the Court finds PAGA Counsel’s requested fee award is reasonable and
16 therefore it is approved.

17 3. Other Costs and Expenses

18 PAGA counsel requests litigation costs in the amount of \$22,141.35. This is supported by
19 declaration of PAGA Counsel John G. Yslas and is below the \$27,000 provided for in the
20 Settlement. Thus, this amount appears reasonable and is approved.

21 Administration costs of \$3,250 are also approved.

22 D. ADMINISTRATION PROCESS

23 The parties agreed on Apex Class Action Administration (“Apex”) as the settlement
24 administrator. Pursuant to the terms of the Settlement, Defendant shall fully fund the gross
25 settlement amount within 30 days after the effective date. Within 10 calendar days after
26 Defendant funds the gross settlement amount, Apex will issue checks for the individual PAGA
27 payments and send them to Aggrieved Employees, along with the PAGA settlement notice. Apex
28 shall conduct an address search for all Aggrieved Employees whose checks are returned as

undeliverable. Within 7 calendar days of receiving a returned check, Apex shall re-mail the checks. Funds associated with checks uncashed after 180 days will be transmitted to St. Jude's Children's Hospital. These administrative procedures are appropriate and are approved.

IV. CONCLUSION

Counsel's motion to be relieved as counsel for Plaintiff Lopez Mendez is GRANTED. Counsel is ordered to inform Plaintiff Lopez Mendez to appear at the hearing.

Plaintiff Duenas Orellana's motion for approval of the parties' PAGA settlement is GRANTED. The covered individuals are: all current and former hourly-paid, non-exempt employees directly employed by Defendant in the State of California during the PAGA Period.

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 Complaint 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 April 22, 2027 at 2:30 P.M. in Department 22. At least ten court days before the hearing, Plaintiff's counsel and the settlement administrator 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 cy pres recipient; 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:

8/20/26


BETH MCGOWEN
Judge of the Superior Court