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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

RAFAEL NAVARRO, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the State
of California and other non-party PAGA
Settlement Members,

Plaintiff,

v.

FLOOR AND DECOR OUTLETS OF
AMERICA, INC., a Delaware corporation;
FLOOR & DECOR HOLDINGS, INC., a
Delaware corporation; and DOES 1 through
10, inclusive,

Defendant.

Case No. 22CV403852

Assigned to the Hon. Theodore C. Zayner

**~~[AMENDED PROPOSED]~~ ORDER
APPROVING THE PARTIES' PAGA
SETTLEMENT AGREEMENT AND
JUDGMENT**

Date: October 2, 2024
Time: 1:30 p.m.
Place: Department 19

Complaint Filed: September 30, 2022
Trial Date: None Set

1 **I. Introduction**

2 This is a representative action arising from alleged wage and hour violations. On September 30,
3 2022, Plaintiff Rafael Navarro (“Plaintiff”) filed a Complaint against Defendants Floor and Decor
4 Outlets of America, Inc. and Floor & Decor Holdings, Inc. (collectively, “Defendant”), setting forth a
5 single cause of action for civil penalties for violations of Labor Code section 2698, *et seq.* (the Private
6 Attorneys General Act (“PAGA”).

7 On April 6, 2023, Defendant moved to compel arbitration and to dismiss Plaintiff’s
8 representative PAGA claims. At the hearing on May 17, 2023, the court the denied the motion, finding
9 that the arbitration agreement states that claims under PAGA are not arbitrable. (March 17, 2023 Minute
10 Order, pp. 2, 4.)

11 The Parties have reached a settlement. (See Joint Stipulation Re Filing of First Amended
12 Complaint for Settlement Purposes; Order Granting Plaintiff Leave to File a First Amended Complaint,
13 p. 2:6-14.) On September 12, 2024, the court entered an order on the Parties’ stipulation, granting
14 Plaintiff leave to file an amended complaint to conform the pleadings with the scope of the settlement
15 and the claims to be released. (*Ibid.*) The following day, Plaintiff filed the operative First Amended
16 Complaint, setting forth a single cause of action for civil penalties for violations of Labor Code section
17 2698, *et seq.* (the Private Attorneys General Act (“PAGA”).

18 Now before the court is Plaintiff’s unopposed motion for approval of PAGA settlement.

19 **II. Legal Standard**

20 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other
21 current or former employees to recover civil penalties for Labor Code violations. (*Iskanian v. CLS*
22 *Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River*
23 *Cruises, Inc. v. Moriana* (2022) 596 U.S.____ [2022 U.S. LEXIS 2940].) Seventy-five percent of any
24 penalties recovered go to the Labor and Workforce Development Agency (“LWDA”), leaving the
25 remaining 25 percent for the employees. (*Ibid.*) PAGA is intended “to augment the limited enforcement
26 capability of [the LWDA] by empowering employees to enforce the Labor Code as representatives of
27 the Agency.” (*Id.* at p. 383.) A judgment in a PAGA action binds all those, including nonparty aggrieved
28 employees, who would be bound by a judgment in an action brought by the government. (*Id.* at p. 381.)

1 A superior court must review and approve any PAGA settlement. (Lab. Code, § 2699, subd.
2 (l)(2).) The court’s review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v.*
3 *Superior Court* (2017) 3 Cal.5th 531, 549.) The proposed settlement must be submitted to the LWDA at
4 the same time it is submitted to the court. (*Ibid.*)

5 As discussed by one court: PAGA does not establish a clear standard for evaluating PAGA
6 settlements. ... [¶] Accordingly, certain courts have been willing to approve PAGA settlements only if
7 (1) the statutory requirements set forth by PAGA have been satisfied, and (2) the settlement agreement is
8 fair, reasonable, and adequate in view of PAGA’s public policy goals. (*Patel v. Nike Retail Services, Inc.*
9 (N.D. Cal. 2019) 2019 WL 2029061, 2019 U.S. Dist. LEXIS 77988 (Patel), at *5.)

10 As part of this analysis, these courts have evaluated proposed PAGA settlements under the
11 relevant factors from *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. (Patel, *supra*, 2019
12 U.S. Dist. LEXIS 77988 at *5-6.) “Of the *Hanlon* factors, the following are relevant to evaluating [a]
13 PAGA settlement: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely
14 duration of further litigation; (3) the amount offered in settlement; (4) the extent of discovery completed
15 and the stage of the proceedings; (5) the presence of government participation; and (6) the expertise and
16 views of counsel.” (*Ibid.*)

17 Similar to its review of class action settlements, the Court must “determine independently
18 whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the LWDA
19 in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76–77.) It
20 must make this assessment “in view of PAGA’s purposes to remediate present labor law violations, deter
21 future ones, and to maximize enforcement of state labor laws.” (*Id.* at p. 77; see also *Haralson, supra*,
22 383 F. Supp. 3d at p. 971 [“when a PAGA claim is settled, the relief provided for under the PAGA
23 [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the
24 public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D. Cal.
25 2016) 201 F.Supp.3d 1110 (O’Connor).)

26 “[W]hen a PAGA claim is settled, the relief provided ... [should] be genuine and meaningful,
27 consistent with the underlying purpose of the statute to benefit the public” (*O’Connor, supra* at p.
28 1133.) The settlement must be reasonable in light of the potential verdict value. (*Id.* at 1135 [rejecting

1 settlement of less than one percent of the potential verdict].) But a permissible settlement may be
2 substantially discounted, given that courts often exercise their discretion to award PAGA penalties below
3 the statutory maximum even where a claim succeeds at trial. (*See Viceria v. Mistras Group, Inc.* (N.D.
4 Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, 2016 U.S. Dist. LEXIS 140759 at *8-
5 9.)

6 **III. Discussion**

7 **A. Provisions of the Settlement**

8 This case has been settled on behalf of “PAGA Settlement Members,” defined as:

9 [A]ll individuals employed in California by Defendant Floor and Decor Outlets of
10 America, Inc. [hereafter, “Defendant”], as non-exempt employees at any time
11 during the PAGA Period [July 26, 2021 to the earlier of March 5, 2024 or the date
of approval of this Settlement].

12 (Declaration of Raul Perez (“Perez Dec.”), Ex. 1 (“Agreement”), p. 3:1-5.)

13 According to the terms of the settlement, Defendant will pay a gross settlement amount of
14 \$1,200,000. (Agreement, p. 5:2-4.) This amount includes attorney fees of up to one-third of the gross
15 settlement amount (\$399,600), litigation costs up to \$25,000, a service award to Plaintiff of up to
16 \$10,000, and settlement administration costs of up to \$20,000. (*Id.* at pp. 4:4-11, 6:5-7:2.) The net
17 remaining amount will be allocated to a “PAGA Fund,” 75% of which be sent to the LWDA and 25% of
18 which will be allocated among the PAGA Settlement Members based on his or her proportionate share
19 of the pay periods worked during the PAGA Period. (*Id.* at p. 7:3-10.)

20 The gross settlement amount is based upon Defendant’s data regarding the number of pertinent
21 pay periods. (Agreement, pp. 7:21-8:1.) If it is determined that the pay periods worked by PAGA
22 Settlement Members during the PAGA Period is 10% more than the figure used to calculate the gross
23 settlement amount, then the gross settlement amount will be increased proportionately, or in the
24 alternative, Defendant may elect to end the PAGA Period on the date the number pay period reaches the
25 number used in calculating the gross settlement amount. (*Ibid.*)

26 In exchange for the settlement, PAGA Settlement Members will be deemed to have released
27 Defendant, and related entities and persons, from the “Released Claims,” defined by the Parties’
28 stipulated amendment to the settlement filed on October 2, 2024 as follows:

1 [A]ny and all claims, whether known or unknown, to recover civil penalties
2 pursuant to PAGA for any alleged violations of California Labor Code sections
3 201, 202, 203, 204, 206.5, 210, 221, 226(a), 226.7, 227.3, 246, 510, 512(a), 516,
4 558(a)(1)(2), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802, 2810.5, and
5 2698 *et seq.*, and the applicable IWC Wage Order for the PAGA Period.

6 The Court finds that the release, as modified by the Parties' October 2, 2024 stipulated
7 amendment to the settlement, complies with *Amaro v. Anaheim Arena Management, LLC* (2021) 69
8 Cal.App.5th 521, 538 ("Releases must be appropriately tethered to the complaint's factual allegations.
9 For example, [a release] covering 'potential claims reasonably arising out of ... the same set of operative
10 facts' pleaded in the complaint is sufficiently tailored.").

11 **B. Fairness of the Settlement**

12 Plaintiff contends that the proposed settlement is fair, reasonable, and adequate in light of all
13 known facts and circumstances. (Perez Dec., ¶¶ 5, 10.) Following an informal exchange of documents
14 and data, the Parties participated in a mediation with Daniel Turner, Esq. (Id. at ¶ 3.) Plaintiff's counsel
15 performed a thorough investigation into the claims. (Id. at ¶ 9.) Plaintiff's counsel determined that
16 approximately 3,500 PAGA Settlement Members worked a total of 80,00 pay periods during the PAGA
17 Period. (Id. at ¶ 11.)

18 According to Plaintiff's analysis, Defendant's estimated total maximum exposure as to all of
19 Plaintiff's claims is \$31,192,000. (Perez Dec., ¶¶ 11-26.) Plaintiff provides a breakdown of this amount
20 by claim. (Ibid.) Plaintiff also sets forth factors supporting a reduction in penalties based on the
21 anticipated trial result, weight of the evidence, the clarity of controlling law, and the anticipated defenses.
22 (Id. at ¶¶ 27-53.) Plaintiff provides a detailed analysis of these factors as applied to his different claims.
23 (Ibid.) Based upon these factors, Plaintiff asserts that Defendant's estimated realistic total exposure is
24 \$3,900,000, and Plaintiff provides a breakdown of this amount by claim. (Id. at ¶¶ 54-55.)

25 The gross settlement amount of \$1,200,000 represents approximately 3.85% of Defendant's
26 estimated maximum exposure and 30.8% of Defendant's estimated realistic exposure. This percentage
27 recovery, when based on Defendant's estimated maximum exposure, is below the general range of
28 percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas*
Concrete, Inc. (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S. Dist. LEXIS 30201,
at *41-42 [citing cases approving settlements in the range of 5 to 35 percent of the maximum potential

1 exposure].)

2 Nevertheless, the court finds that Plaintiff has offered a sufficient explanation for the reduction in
3 penalties. The percentage recovery, when based on Defendant's estimated realistic exposure, is at the
4 high end of the general range of percentage recoveries that courts have found to be reasonable. The
5 settlement provides for some recovery for each class member and eliminates the risk and expense of
6 further litigation. Based on the circumstances of the case, including the strength of Plaintiffs' case and
7 the likelihood of obtaining recovery from Defendant, the court finds the terms of the settlement to be fair.

8 **C. Service Award, Attorney Fees and Costs**

9 As part of the settlement, Plaintiff seeks a service award (or "general release payment") in the
10 amount of \$10,000. Although service awards are common in class actions, there is less authority
11 regarding the propriety of service awards in PAGA cases. Nevertheless, a PAGA case is a representative
12 action like a class action, and courts have recognized that an individual's willingness to act as a private
13 attorney general may merit a service award. (See *Rodriguez v. West Publishing Corp.* (9th Cir. 2009)
14 563 F.3d 948, 959.)

15 Plaintiff has submitted a declaration detailing his participation in the action. He states that he has
16 spent between 25 and 35 hours on this case, including discussing the case with counsel, reviewing the
17 complaint, gathering facts and documents for counsel, and reviewing settlement documents. (Declaration
18 of Rafael Navarro, ¶¶ 4-13.) Plaintiff has agreed to a comprehensive general release, negotiated in
19 exchange for general release payment of \$10,000.

20 The amount requested, in relation to the time on the litigation, is more than the court typically
21 awards in similar situations. However, the court acknowledges that Plaintiff agreed to a broader release
22 in exchange for the service award and took risk in attaching his name to this action. Accordingly, the
23 court approves a service award in the amount of \$7,500.

24 The Agreement provides for the recovery of attorney fees of up to \$399,600 (one-third of the
25 gross settlement amount). Plaintiff's counsel provides evidence demonstrating \$257,392.50 incurred in
26 attorney fees, based on 391.5 hours billed at rates ranging from \$475 to \$950 per hour. (Perez Dec., ¶
27 66.) The court finds the requested fees to be reasonable, and the fees are approved in the full amount of
28 \$399,600.

1 The Agreement provides for the recovery of litigation costs of up to \$25,000. Plaintiff's counsel
2 provides evidence of costs incurred in the amount of \$21,073.18. (Perez Dec., ¶ 70.) The court finds
3 costs in the incurred amount of \$21,073.18 to be reasonable and approves that amount.

4 Finally, the Agreement provides for the recovery of settlement administration costs of up to
5 \$20,000. Plaintiff submits the settlement administrator's bid indicating a discounted flat rate of \$18,750.
6 (Perez Dec., ¶ 71, Ex. 4.) Therefore, the court approves settlement administration costs in the amount of
7 \$18,750.

8 **IV. Conclusion**

9 Accordingly, the motion for approval of PAGA settlement is GRANTED. The parties shall
10 return for a compliance hearing to occur in Department 19 on: September 3, 2025 at 2:30 p.m. Plaintiff
11 shall file a declaration from the Settlement Administrator regarding the completion of settlement
12 administration activities no later than August 8, 2025.

13 **IT IS SO ORDERED, ADJUDGED, AND DECREED**

14 Date October 3, 2024

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16 _____
17 Hon. Theodore C. Zayner
18 Santa Clara County Superior Court Judge
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