FILED
Superior Court of California
County of San Francisco
OCT 09 2026
CLERK OF THE COURT
BY: Dan Kane
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

JENAE HEITKAMP, on behalf of himself and all aggrieved employees,

Plaintiff,

v.

BRIGHTSIDE HEALTH, INC., and DOES 1 through 50, inclusive,

Defendants.

Case No. CGC-25-626072

ORDER GRANTING PLAINTIFF'S MOTION FOR APPROVAL OF AMENDED PAGA SETTLEMENT

INTRODUCTION

This is s wage-and-hour action brought by plaintiff Jenae Heitkamp ("plaintiff") against defendant Brightside Health, Inc. ("defendant"). Plaintiff asserts causes of action for violations of the Labor Code Private Attorneys' General Act of 2004, and prays for relief in the form of civil penalties. Heitkamp now asks the court to approve the settlement of the PAGA action and dismiss the action with prejudice. The court held a hearing on the motion and request for dismissal on October 9, 2026, at 9:00 a.m. in Department 613, the Honorable Jeffrey S. Ross presiding. Robert Spencer (Keller Grover) appeared for Jenae Heitkamp. Elvira Kras (McDermott Will & Emery LLP) appeared for Brightside Health, Inc. IT IS HEREBY ORDERED THAT the motion for approval of the PAGA settlement is GRANTED, with some

modifications, and a compliance hearing is RESERVED for June 25, 2027, at 9:00 a.m., with a compliance report that confirms and accounts for all disbursements to date due no later than June 17, 2027. An interim compliance update must be filed by the administrator by February 12, 2027, confirming disbursements and providing proof of the checks being sent.

LEGAL STANDARD

PAGA settlements are subject to distinct standards for judicial review and approval. (Lab. Code, § 2699, subd. (s).) First, "the proposed settlement shall be submitted to [LWDA] at the same time that it is submitted to the court." (Lab. Code, § 2699, subd. (s)(2).) Second, under Labor Code section 2699, a court "shall review and approve any settlement of any civil action filed pursuant to [PAGA]." (Lab. Code, § 2699, subd. (s)(2).)

"In review and approval of a proposed settlement under section 2699, [former] subd. (*l*)(2), a trial court thus must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the state's interests, and hence the public interest." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 89, disapproved on another ground in *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664.) Although PAGA actions are not class actions—more closely resembling *qui tam* proceedings—courts often review PAGA settlements using the class action criteria of fairness, adequacy, and reasonableness due to the absence of clear statutory, regulatory, or judicial guidance for the standard of review. (*Haralson v. U.S. Aviation Svcs. Corp.* (N.D. Cal. 2019) 383 F.Supp.3d 959, 971–72.) While courts sometimes look to class action jurisprudence on some issues, fees in PAGA-only actions—where aggrieved employees serve as private attorneys general—are properly assessed using the lodestar method. (See generally *Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1259–60; see also *Serrano v. Priest* (1977) 20 Cal.3d 25, 35–36 ("*Serrano III*").)

ANALYSIS

With the benefit of the supplemental briefing and evidence, the court approves the amended PAGA settlement pursuant to Labor Code section 2699, subdivision (s)(2). First, on September 24, 2026, the parties provided proof of service on the LWDA, and the agency did not object to the settlement. (Proof of Service on LDWA, Exhibit A.) Second, the court finds the settlement is fair, sufficient and

reasonable. The LWDA did not object to or comment on the settlement after being provided with a copy of each version. The settlement is fair, adequate, and reasonable in light of the public policies underlying California's labor standards. Third, the settlement lawfully allocates penalties as between the aggrieved employees and the LWDA. The PAGA Group will receive 35% of the Net Settlement Amount (Supp. Spencer Decl. ISO Motion for Award of Fees and Costs, pg. 9-10.) (See generally *Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1259–60; see also *Serrano v. Priest* (1977) 20 Cal.3d 25, 35–36 ("*Serrano III*").) The issue is, thus, the amount of attorney's fees and costs that should be allowed.

Courts may use a percentage of a common fund to award fees in common fund cases, such as class actions. (*Laffitte v. Robert Half (2016) 1 Cal.5th 480, 485–86.*) The court has not found any authority that applies that approach in PAGA settlements, which do not also include the settlement of a class action. Employees in PAGA cases serve as private attorneys general and, therefore, counsel should be compensated accordingly. (*Serrano III, supra*, 20 Cal.3d at pp. 35–36.) Notwithstanding the frequent suggestion of plaintiffs, *Lafitte* is *not* authority for the proposition that, contrary to *Serrano III*, the percentage method must be used to calculate fees in *PAGA-only cases*. (*Laffitte, supra*, 1 Cal.5th at pp. 485–86.) Nor does *Lafitte* support the proposition that, even in class actions that create a common fund, counsel are entitled to a **particular** percentage of the fund in all cases, such as 33 percent. (*Id.* at pp. 495, 499.) Therefore, here, the court applies *Serrano III* and uses a lodestar to calculate fair compensation for PAGA counsel.

In approving the settlement, the court reviewed the declaration of Robert W. Spencer and the attached exhibits which include: the billing details for Eric Grover (exhibit 4); Elizabeth Aceveo (exhibit 5); and Robert Spencer (exhibit 6) and the fee division among lawyers agreement signed by plaintiff and counsel (exhibit 7 "Fee Agreement"), and the supplemental declaration of Alex P. Katofsky. Plaintiff seeks reasonable attorneys' fees in the amount of $64,993.50, the amount agreed to among the parties. On that basis the court finds attorneys' fees for all counsel in the amount of $64,993.50 to be reasonable. The court finds that reasonable attorneys' fees in the amount of $56,993.50 should be awarded to Keller Grover and that fees in the amount of $8,000 should be awarded to Alex P. Katofsky. In reaching that conclusion the court considered the Fee Agreement. Notwithstanding the agreement among counsel and

plaintiff, the court is required to consider counsel's contributions to the case and to achieving the settlement. Mr. Katofsky's role was limited to securing Ms. Heitkamp as a client and referring her to Keller Grover LLP which provided legal services that Keller Grover values as $113, 420. Although the Spencer declaration values the contributions of Mr. Katofsky at $12,000, there is no evidence in the record to support that claim. To the contrary, Mr. Katofsky acknowledges that he did not maintain time records, his role was limited to interviewing plaintiff and obtaining and reviewing documents and he is merely estimating the hours devoted to plaintiff's representation. Further, the same services Mr. Katofsky performed appear to have also been performed by Mr. Spencer. In reviewing Mr. Katofsky's services without the benefit of any billing records, the court credits 10 hours at his claimed hourly rate of $800 and approves $8,000 in fees to Mr. Katofsky. Were the court to accept and apply the terms of the Fee Agreement, Keller Grover would receive fees in the amount of $43, 328.95, or approximately 38% of their assessment of the value of their legal services.

The court reviewed the declaration of Robert W. Spencer and the attached exhibit 8 which itemizes counsels' litigation expenses in the amount of $ 2,772.07, which the court hereby approves.

Plaintiff seeks a service award in the amount of $5,000. The court recognizes that named plaintiffs "should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class" (*Cellphone Termination Fee Cases* (2009) 186 Cal.App.4th 1380, 1394 "*Cellphone*") and that in another case, the LWDA has opined that the *Cellphone* criteria for incentive awards in class actions (*ibid.*) are equally applicable to plaintiffs who file PAGA cases.) "The Legislature's sole purpose in enacting PAGA was 'to augment the limited enforcement capability of the [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency.' [citation]." (*Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1122.) Criteria courts may consider in determining whether to make an incentive award include:

> 1) the risk to the [] representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the [] representative; 3) the amount of time and effort spent by the [] representative; 4) the duration of the litigation and; 5) the personal benefit (or |lack thereof) enjoyed by the representative as a result of the litigation.

(*Ibid.*) (*Cellphone Termination Fee Cases, supra*, 186 Cal.App.4th 1380, 1394-1395.)

While under other circumstances, an award of $5,000 might be approved, the court considered the *Cellphone* criteria and concludes that an incentive award of $5,000 does not bear a reasonable relationship to the result achieved in this case. Here the settlement totals $195,000 and by counsel's estimate on average each PAGA Group member will receive approximately $297.71. The court applied the factors applicable to service award determination in class action cases (*ibid.*) and awards plaintiff $2,500 for her contributions to the case and its resolution.

Dated: October 9, 2026

JEFFREY S. ROSS
Judge of the Superior Court

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6 & CRC 2.251)

I, Sean Kane, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On October 9, 2026, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: October 9, 2026

Brandon E. Riley, Court Executive Officer

By: _____
Sean Kane, Deputy Clerk