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2024 JUL 25 A 11:30

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CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
BY: [Signature]
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individually and on behalf of all others similarly situated.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

HOWARD HINES, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

SYNERGY GLOBAL HOUSING LLC; and
DOES 1 through 20, inclusive,
Defendants.

Case No. C22-02096

*Assigned for All Purposes to:
Judge Charles S. Treat
Dept. 12*

**[PROPOSED] ORDER GRANTING
MOTION FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT
REPRESENTATIVE ACTION
SETTLEMENT**

Date: June 27, 2024
Time: 9:00 a.m.
Dept.: 12

1 This matter was set for hearing on June 27, 2024, at 9:00 AM, in Department 12 of the
2 above-captioned Court on the unopposed Motion for Approval of Private Attorneys General Act
3 Representative Action Settlement. The Court posted a tentative ruling on the internet, which no
4 party contested.

5 Thus, the Court grants final approval of the Settlement and HEREBY ADOPTS AS ITS
6 ORDER the tentative ruling attached hereto as Exhibit A.

7
8
9 **IT IS SO ORDERED.**

10
11 Dated: 7/22, 2024



Hon. Charles S. Treat
Judge of the Superior Court

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 06/27/2024

Law & Motion

4. 9:00 AM CASE NUMBER: C22-02096
CASE NAME: HOWARD HINES VS. SYNERGY GLOBAL HOUSING LLC
*HEARING ON MOTION IN RE: APPROVAL OF PAGA ACTION SETTLEMENT
FILED BY: HINES, HOWARD
TENTATIVE RULING:

Plaintiff Howard Hines moves for approval of the settlement of his PAGA suit against defendant Synergy Global Housing LLC. Defendant does business in serviced apartments. Plaintiff was employed

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by defendant during the relevant time period. Plaintiffs also move for approval of their attorney's fees, litigation costs, administration costs, and representative payments.

The motion is **granted**.

A. Background of the Case and Terms of Settlement

This a PAGA case (not a class action), alleging a variety of violations of the Labor Code concerning failure to provide rest and meal breaks, failure to pay minimum wages and overtime, and cascading derivative violations.

This case was first filed on September 30, 2022, as a class action. PAGA claims were later added by amendment, and the class claims were dismissed on account of an arbitration agreement.

The total settlement payment is \$225,000. Out of this is to come attorney's fees of \$75,000 (one-third of the recovery); \$12,923 in litigation costs, and up to \$3,500 in costs to the settlement Administrator. The plaintiff will be paid an individual settlement of \$10,000.

The remaining amount, \$123,577, is allocated as PAGA penalties. Those penalties are apportioned 75% to the LWDA and 25% to the aggrieved employees.

The settlement covers all non-exempt employees between September 30, 2021 and July 11, 2023. There are an estimated 182 covered employees. The payments from the employee share of the penalty (\$30,894) will be distributed among the employees based on the number of pay periods each individual worked during the released period. The average employee share will be about \$170, though this will vary from employee to employee based on the pay-period allocation formula.

Plaintiff's counsel attests that informal discovery was undertaken, and the settlement was reached after a session with an experienced mediator.

Plaintiff provided required notices to the LWDA of the initial claims and of the proposed settlement.

The settlement provides a process for mailing the notices to the aggrieved employees, who will not have to submit a claim, along with a process for following up on returned mail. Information for mailing will be provided within 10 days after Final Approval. The settlement amount will be paid to the administrator within 10 days. The administrator will seek to obtain current mailing addresses, and will remit all settlement funds to the appropriate recipients, including the LWDA and the aggrieved employees.

The settlement provides that the value of checks uncashed after 180 days shall be remitted to the State Controller's Office, Unpaid Property Division.

Specified PAGA claims, and any claims which could have been pleaded under the PAGA based on the factual allegations in PAGA Complaint and the LWDA Letter, would be released. It also provides that the parties intend to fully resolve all PAGA claims for the full "PAGA Period".

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A. Standards for Review of a PAGA Settlement

Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees". (*Id.*, at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "The court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "Where the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63.)

B. Application to This Settlement

Plaintiff indicates that the settlement is fair, and was evaluated by counsel based on adequate information and arms-length negotiation. In response to plaintiff's allegations, defendant asserted that it paid employees for all recorded time; that off-the-clock time was undocumented and unknown to defendant; and that employees were paid meal time premiums or signed waivers. Plaintiffs' counsel has provided a detailed declaration analyzing the potential strengths and weaknesses of plaintiffs' claims and defendants' potential defenses. The Court is satisfied with the analysis.

Of course, some reduction must be made for the strength of the case, and the time and expense of obtaining recovery. Even assuming success on the merits of each claim, PAGA gives the court discretion to reduce penalties for a variety of reasons, including where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory." (Labor Code § 2699(e)(2).) Moreover, recent decisions may make it difficult for PAGA plaintiffs to recover statutory penalties, as opposed to actual missed wages. (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2024) 2024 Cal.Lexis 2438.) These factors make the result hard to predict.

Labor Code § 2699(g)(1) provides that a prevailing employee in a PAGA action may recover attorney's fees. Plaintiff seeks one-third of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is

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extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.) Although *Lafitte* concerns a class action, not a PAGA-only case, this Court views the use of a lodestar cross-check as appropriate here. Plaintiffs’ counsel have provided a breakdown and documentation of their lodestar figure of \$86,275, which exceeds the fee requested; thus, the lodestar multiplier is approximately 0.87. This appears appropriate in light of the risks of the case and the results achieved.

The requested individual settlement of \$10,000 for the named plaintiff is approved. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff has provided a declaration in support of his request. He points out that he executed a broader release than the class as a whole, but does not identify any particular claims of value that he may have. He also risks damage to his reputation and more difficulty in obtaining employment.

Litigation costs of \$12,923 (mostly mediation, consultant, and filing fees) are reasonable and are approved.

The settlement administrator’s costs of \$3,500 are reasonable and are approved.

The statute does not expressly address how the 25% plaintiff’s share of the penalties is to be allocated among all of the aggrieved employees. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 382.) One court has held, however, that the entire 25% share of penalties could not be awarded to the named plaintiff. (*Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742-43.) In *Moorer*, the plaintiff had claim worth about \$9,500, yet was collecting penalties of \$148,000, and keeping the entire employee share, causing the court to be concerned that the plaintiff had lost sight of the fact that the purpose of the action is to benefit the public, not private parties. Allocation based on pay periods is reasonable here.

C. Conclusion

The proposed settlement is approved. Counsel are directed to prepare an order including the Court’s ultimate order, the other provisions submitted in the proposed order, and a corresponding judgment. The order would include a compliance hearing for a suitable date chosen in consultation with the Department’s clerk. One week before the compliance hearing, counsel shall file a compliance statement. Ten percent of the attorney’s fees shall be withheld by the Administrator pending the compliance hearing. Counsel will also be expected to update and document the actual litigation costs to be reimbursed.