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County of Santa Clara
22CV409059
By: tduarte

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

AMEL HAIMES, as aggrieved employee pursuant to the Private Attorneys General Act ("PAGA"), on behalf of the State of California and other non-party PAGA Settlement Group Members, Plaintiff, v. SUNRISE SENIOR LIVING MANAGEMENT, INC., et al., Defendants.	Case No. 22CV409059 **ORDER GRANTING PLAINTIFFS' MOTION FOR APPROVAL OF PAGA SETTLEMENT**

This is a representative action under the Private Attorneys General Act ("PAGA"). Plaintiffs Amel Haimes, Morine Devi, Kerry-Ann Lewin, and Sean Boyd (collectively, "Plaintiffs") allege Defendants Sunrise Senior Living Management, Inc., Sunrise Senior Living Services, Inc., and Sunrise Senior Living LLC (collectively, "Defendant") committed various wage and hour violations and seek PAGA penalties for those violations.[1]

[1] On July 2, 2025, the Court entered its order regarding the parties' stipulation which, among other things, granted Plaintiff leave to file the proposed first amended complaint. However, Plaintiffs have yet to file it. Nevertheless, the Court will recite the allegations from the proposed FAC as it contains the allegations regarding Plaintiffs Devi, Lewin, and Boyd to this action.

Before the Court is Plaintiff's motion for approval of PAGA settlement, which is unopposed. As discussed below, the Court GRANTS the motion.

I. BACKGROUND

According to the allegations of the First Amended Complaint ("FAC"), Plaintiff Haimes was employed as a Care Manager, in an hourly paid, non-exempt position from March 2022 to July 2022 at the facility in San Diego, California. (FAC, ¶ 6.) Plaintiff Lewin was employed as a Lead Care Manager, in an hourly paid, non-exempt position from August 2021 to August 2022 at the facility in Petaluma, California. (FAC, ¶ 7.) Plaintiff Devi was employed as a Lead Caregiver and Care Manager, in an hourly paid, non-exempt position at the facility in Sacramento, California. (FAC, ¶ 8.) Plaintiff Boyd was employed as an Activity and Volunteer Coordinator, in an hourly paid, non-exempt position at the facility in Pleasanton, California. (FAC, ¶ 9.) Plaintiffs allege Defendants failed to: pay all wages due (including minimum wages and overtime wages); provide meal periods or compensation in lieu thereof; provide rest periods or compensation in lieu thereof; provide complete and accurate wage statements; maintain accurate and complete payroll records; timely pay wages during employment and after termination; and provide reimbursement for all business-related expenses.

Based on the foregoing, Plaintiff Haimes initiated this action on December 27, 2022 with the filing of the Complaint, which asserted a claim for civil penalties pursuant to PAGA. The proposed FAC asserts a claim for civil penalties pursuant to PAGA and adds Plaintiffs Lewin, Devi, and Boyd to the instant matter.

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) 569 U.S. 639, 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. PLAINTIFFS' INVESTIGATION, SETTLEMENT PROCESS, AND THE PARTIES' AGREEMENT

On October 20, 2022, Plaintiff Haimes submitted a notice to the LWDA and on December 27, 2022, she filed the Complaint. On February 22, 2023, Plaintiff Devi submitted a notice to the LWDA and on March 15, 2023, she filed a class and PAGA action against Defendants in Sacramento County Superior Court. Defendants removed the action to federal court and Plaintiff Devi subsequently voluntarily dismissed all class and individual claims from the action. On June 6, 2023, Plaintiff Lewin submitted a notice to the LWDA and on August 11, 2023, she filed a PAGA-only action against Defendants in Sonoma County Superior Court. On September 18, 2023, Plaintiff Lewin submitted an amended notice to the LWDA to include Plaintiff Boyd.

The parties engaged in informal discovery and Defendants provided various documents and information that allowed both sides to evaluate the potential exposure and potential risks in the actions. On April 15, 2024, the parties participated in a full-day mediation with mediator Kevin Barnes, Esq. ("Mr. Barnes"), but they were unable to reach a settlement. After the mediation, Mr. Barnes continued to facilitate arms-length settlement negotiations between the Parties, including issuing mediator's proposals on May 3, 2024 and June 17, 2024, which resulted in the parties subsequently reaching a settlement, which is now before the Court for approval.

Pursuant to the parties' agreement, Defendants will pay a non-reversionary gross settlement of $2,680,000, which is comprised of $893,333 in attorneys' fees, $26,109.45 in litigation costs, and $20,000 in administration costs. The $1,700,557.55 in PAGA penalties will be distributed 75% ($1,275,418.16) to the LWDA and 25% ($425,139.39) to the "PAGA Settlement Group Members," who are defined as "all persons who were employed in non-exempt positions at Sunrise's California communities at any time during the Settlement Period of October 20, 2021 through April 15, 2024." Plaintiffs seek enhancement payments of $10,000—totaling $40,000. It is estimated that there are approximately 7,225 PAGA Settlement Group Members.

In exchange for settlement, the PAGA Settlement Group Members will release:

> [A]ll claims or causes of action for PAGA civil penalties based on the facts alleged in the Actions that arose during the Settlement Period, including any rights, demands, penalties, costs, and attorneys' fees arising from or based on such a claim under PAGA, including but not limited to claims based on alleged violations of Labor Code §§ 201, 202, 203, 204, 210, 1216, 225.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5,1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and 2810.5.

This release is appropriately tailored to the allegations at issue, and it does 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 FAC, Plaintiffs assert a single cause of action for PAGA penalties based on Defendants' alleged failure to: (1) pay minimum wage; (2) pay overtime wages; (3) provide meal periods or compensation in lieu thereof; (4) provide rest periods or compensation in lieu thereof; (5) provide notice material terms of employment; (6) reimburse business expenses; (7) pay wages due on termination; and (8) provide accurate and complete wage statements.

Based on figures provided by Defendants for mediation-7,225 PAGA Settlement Group Members and 175,229 pay periods during the relevant time period- Plaintiffs calculated Defendants' total exposure for PAGA penalties to be as follows: $1,752,290.00 (minimum wage claim); $1,752,290.00 (overtime claim); $1,752,290.00 (meal period claim); $1,752,290.00 (rest period claim); $36,125.00 (notice of material terms of employment claim); $1,752,290.00 (business expense reimbursement claim); $22,500.00 (final pay claim); and $876,145.00 (wage statement claim).

Plaintiffs' counsel then discounted the amount to account for the following risks: the strength of Defendants' defenses to the merits; the risk of losing at trial; the risk that the Court would exercise discretion under PAGA to significantly reduce maximum civil penalties available by statute; the chances of a favorable verdict being reversed on appeal; and the difficulties attendant to collecting on a judgment.

The settlement amount of $2,680,000 in PAGA penalties represents approximately 27.6% of Defendants total exposure. Given this, as well as the risks attendant to proceeding to trial, Defendants' defenses, 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. Attorneys' 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, Plaintiffs seeks a fee award of $893,333 in attorneys' fees. Plaintiffs submit a lodestar figure of $336,544.60, based on approximately 440 hours of work at billing rates of $220 to $1050, resulting in positive multiplier to 2.65. This is within 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 within 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 $26,109.45 appears reasonable based on the supporting declarations provided which establish that counsel actually incurred costs in this amount and is approved. Administration costs of $20,000 are also approved.

Finally, the Court finds that Plaintiffs are entitled to an enhancement award. The rationale for such awards in class actions is that named plaintiffs "should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class," considering "1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394–1395, internal citations and quotations omitted.) These considerations apply equally in the PAGA context. To support their request for enhancement awards, Plaintiffs provide declarations describing their efforts on the case.

Applying the relevant factors, the enhancement awards of $10,000 each is approved.

V. ADMINISTRATION PROCESS

Pursuant to the terms of the Settlement Agreement, within fifteen (15) days of effective date, Defendants will provide settlement administrator ILYM Group, Inc. ("ILYM") with the PAGA Settlement Group Members List. Within fifteen (15) days of the effective date, Defendants will deposit the total settlement amount into the qualified settlement fund to be established by ILYM. Within fourteen (14) days, ILYM will issue payments to: (a) the PAGA Settlement Group Members; (b) the LWDA; (c) Plaintiffs; (d) Plaintiffs' counsel; and (e) itself. 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 used to offset any outstanding costs of settlement administration and any remaining funds will be transmitted to *cy pres* beneficiary Justice Gap Fund. These administrative procedures are appropriate and are approved.

VI. ORDER AND JUDGMENT

Plaintiff's motion for approval of the parties' PAGA settlement is GRANTED. The covered individuals are: All persons who were employed in non-exempt positions at Sunrise's California communities at any time during the Settlement Period of October 20, 2021 through April 15, 2024.

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.

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The Court sets a compliance hearing for **<u>March 26, 2026 at 2:30 P.M.</u>** in Department 7. 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 Justice Gap 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: July 25, 2025

CHARLES F. ADAMS
Judge of the Superior Court