

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

DIEGO GONZALO LLUEN LIENDO,

Plaintiff,

v.

MIRAPATH, INC., et al.,

Defendants.

Case No.: 22CV404785

**ORDER CONCERNING PLAINTIFF’S
MOTION FOR PAGA APPROVAL OF
SETTLEMENT**

This is a putative class and Private Attorneys General Act (“PAGA”) action. Plaintiff Diego Gonzalo Lluen Liendo alleges that Defendant Mirapath, Inc. failed to pay overtime and minimum wages, failed to provide compliant meal and rest periods or pay associated premiums, and failed to provide code-complaint wage statements, among other Labor Code violations.

Before the Court is Plaintiff’s motion for approval of PAGA settlement, which is unopposed. The Court GRANTS the motion, now that following the November 30, 2023 hearing, Plaintiff has clarified the procedures to be followed where checks mailed to Aggrieved Employees are returned to the administrator as undeliverable.

1 **I. BACKGROUND**

2 According to the operative First Amended Complaint (“FAC”), Defendant employed
3 Plaintiff and “Aggrieved Employees” as non-exempt, hourly employees in California during the
4 relevant statutory period. Plaintiff alleges that Defendant failed to: pay minimum wages for all
5 hours worked; compensate employees for all overtime hours worked; provide employees with all
6 rest and meal breaks to which they were entitled, or provide the requisite compensation when
7 those breaks were not provided; timely pay all wages due during employment and at separation
8 of employment; reimburse employees for business expenses incurred by them during the course
9 of the performance of their duties; provide code-compliant wage statements; and keep accurate
10 employment records.

11 Based on the foregoing, Plaintiff filed his original complaint in October 2022, asserting
12 the following causes of action: (1) failure to pay minimum wages; (2) failure to pay overtime
13 wages; (3) failure to pay accrued vacation wages; (4) failure to provide rest periods and pay
14 missed rest period premiums; (5) failure to provide meal periods and pay missed meal period
15 premiums; (6) failure to maintain accurate employment records; (7) failure to pay wages timely
16 during employment; (8) failure to pay all wages earned and unpaid at separation; (9) failure to
17 indemnify all necessary business expenses; (10) failure to furnish accurate itemized wage
18 statements; and (11) violations of California unfair competition law.

19 The parties stipulated to allow Plaintiff to file the FAC, which added a single cause of
20 action for PAGA penalties based on the various Labor Code violations alleged therein.¹

21 **II. LEGAL STANDARD FOR APPROVING PAGA SETTLEMENT**

22 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf
23 of other current or former employees to recover civil penalties for Labor Code violations.

24 (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other
25 grounds by *Viking River Cruises, Inc. v. Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940.)
26 75 percent of any penalties recovered go to the Labor and Workforce Development Agency
27

28 ¹ In March 2023, the Court dismissed all of the non-PAGA claims without prejudice at the
request of the parties.

1 (“LWDA”), leaving the remaining 25 percent for the employees. (*Ibid.*) PAGA is intended “to
2 augment the limited enforcement capability of [LWDA] by empowering employees to enforce
3 the Labor Code as representatives of the Agency.” (*Id.* at p. 383.) A judgment in a PAGA
4 action binds all those, including nonparty aggrieved employees, who would be bound by a
5 judgment in an action brought by the government. (*Id.* at p. 381.)

6 Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall
7 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
8 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
9 *Court* (2017) 3 Cal.5th 531, 549.) “[C]lass certification is not required” in this context as in a
10 class action. (*Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971
11 (*Haralson*).)

12 Similar to its review of class action settlements, the Court must “determine
13 independently whether a PAGA settlement is fair and reasonable,” to protect “the interests of the
14 public and the LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.*
15 (2021) 72 Cal.App.5th 56, 76–77 (*Moniz*).) It must make this assessment “in view of PAGA’s
16 purposes to remediate present labor law violations, deter future ones, and to maximize
17 enforcement of state labor laws.” (*Id.* at p. 77; see also *Haralson, supra*, 383 F. Supp. 3d at
18 p. 971 [“when a PAGA claim is settled, the relief provided for under the PAGA [should] be
19 genuine and meaningful, consistent with the underlying purpose of the statute to benefit the
20 public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D.
21 Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

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

1 **III. PLAINTIFF’S INVESTIGATION, SETTLEMENT PROCESS, AND THE**
2 **PARTIES’ AGREEMENT**

3 After this case was filed, the parties, in an effort to reach a resolution, exchanged various
4 documents and information that allowed them to evaluate the potential exposure and risk,
5 including Defendant’s policies relating to the claims at issue and potential appellate questions,
6 among others. The parties concluded that, considering the sharply disputed factual and legal
7 issues involved and the risks associated with further prosecution, settlement was in the best
8 interests of both sides and reached the agreement now before the Court.

9 Under that agreement, Defendant will pay a gross amount of \$34,575, which is comprised
10 of, among other things, \$11,410 in attorneys’ fees, litigation costs of \$1,000, and administration
11 costs of \$1,761.35. The named Plaintiff, Mr. Liendo, also seeks an incentive payment of \$1,500
12 for serving as the PAGA representative. The net settlement amount of approximately \$18,903.65
13 will be distributed 75 percent (\$14,177.74) to the LWDA and 25 percent (\$4,725.91) to the
14 “Aggrieved Employees,” based on the number of pay periods that each of these individuals
15 worked during the PAGA period, i.e., the period of time from October 17, 2021 to the date of
16 entry of the order approving the parties’ settlement. The 18 Aggrieved Employees will receive
17 an average payment of \$262.55.

18 In exchange for the settlement, Aggrieved Employees will release:

19
20 [A]ny and all known and unknown claims under PAGA, including but not limited
21 to any and all claims for penalties, attorneys’ fees, and/or costs, that arise from or
22 relate to the allegations in the Complaint and the allegations in Plaintiff’s letter to
23 the LWDA dated June 24, 2022, including but not limited to alleged failure to
24 provide meal and rest periods, alleged failure to provide complete and accurate
25 wage statements, alleged failure to maintain accurate records, alleged failure to
26 pay all overtime wages, alleged failure to pay all minimum wages, alleged failure
27 to timely pay wages during employment, alleged failure to pay all wages on
28 separation, and alleged failure to reimburse necessary expenditures and/or alleged

violation of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1198, 1198.5, 1199, 2802, 2804 et seq., and/or violation of Industrial Welfare Commission Wage Order No. 4-2001.

The release is appropriately tailored to the allegations at issue, and 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

Based on the data provided by Defendant, particularly that there were 431 pay periods during the covered period, Plaintiff calculated the maximum exposure of the PAGA claim to be \$43,100 (431 x \$100 penalty/period).

A court can decline to award the full amount of PAGA penalties where, “if, 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.” (See, e.g., *Carrington v. Starbucks Corp.* (2018) 390 Cal.App.5th 504, 517 [affirming trial court’s 90% reduction of maximum PAGA penalty amount given employer’s good faith attempt at complying with the law].) Here, while Plaintiff maintains no reason exists to reduce the PAGA penalties, it acknowledges that Defendant could make compelling arguments to the contrary, including that it complied with all applicable Labor Code provisions. In consideration of this, the history of various similar PAGA decisions and the risk that Plaintiff may recover nothing, the Court finds that the proposed settlement, which represents over 80% of the total possible liability for PAGA penalties in this case, is fair to those affected and is genuine, meaningful, and reasonable in light of the statute’s purposes.

1 **B. Attorney Fees**

2 While the PAGA statute does not expressly require judicial review of claimed attorney
3 fees, the Court believes it cannot adequately fulfill its statutory duty to review the penalties
4 associated with PAGA settlements without also considering attorney fees. The Court thus finds
5 that it must scrutinize the attorney fee arrangement associated with a PAGA settlement. This is
6 consistent with the observation of many courts that PAGA claims are analogous to “*qui tam*”
7 suits like those under the federal False Claims Act: when reviewing settlements of *qui tam*
8 claims, courts should and do consider any associated attorney fee arrangement. (See *U.S. v.*
9 *Texas Instruments Corp.* (9th Cir. 1994) 25 F.3d 725, 728 [attorney fee award must be
10 considered by the trial court as part of its review of the “entire settlement arrangement”].)

11 Plaintiff seeks a fee award of \$11,410, one-third of the gross settlement, which is not an
12 uncommon contingency fee allocation in a wage and hour class action. This award is facially
13 reasonable under the “common fund” doctrine, which allows a party recovering a fund for the
14 benefit of others to recover attorney fees from the fund itself. Plaintiff also submits a lodestar
15 figure of \$19,004.40, based on 27.2 hours spent on this case by counsel billing at rates of \$225 to
16 \$997 per hour. This amount exceeds the fees requested by Plaintiff here, resulting in a negative
17 multiplier. Accordingly, the lodestar cross check supports the percentage fee actually requested
18 and this amount is approved. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488,
19 503-504 [trial court did not abuse its discretion in approving fee award of 1/3 of the common
20 fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

21 The Court finds the requested attorney fees to be reasonable.

22 **C. Other Costs and Expenses**

23 Counsel’s request for litigation costs of \$1,000 appear reasonable based on the supporting
24 declarations, which establish that counsel actually incurred \$1,930.33 in total costs and is
25 approved, as is the request for \$1,761.35 in administrative costs.

26 Finally, the Court finds that the named plaintiff is entitled to the incentive payment
27 totaling \$1,500 as agreed by the parties. The rationale for such awards in class actions is that
28 named plaintiffs “should be compensated for the expense or risk they have incurred in conferring

1 a benefit on other members of the class,” considering “1) the risk to the class representative in
2 commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties
3 encountered by the class representative; 3) the amount of time and effort spent by the class
4 representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
5 enjoyed by the class representative as a result of the litigation.” (*Cellphone Termination Fee*
6 *Cases* (2010) 186 Cal.App.4th 1380, 1394–1395, internal citations and quotations omitted.)

7 These considerations apply equally in the PAGA context.

8 **V. ADMINISTRATION PROCESS**

9 The parties have agreed that Defendant will deposit the gross settlement amount with the
10 settlement administrator, ILYM Group, Inc., within 20 days after the “Effective Date,” which is
11 defined as two courts days after: (a) sixty-one (61) calendar days after the entry of the Court’s
12 order granting approval of the settlement, if no motions for reconsideration and no appeals or
13 other efforts to obtain review have been filed; or (b) in the event of an appeal or other effort to
14 obtain reconsideration or review has been initiated, the date sixty-one (61) calendar days after
15 the foregoing has been concluded in favor of the order granting approval of the settlement and
16 the order is no longer subject to review. Within 10 business days after the Effective Date,
17 Defendant is to provide the administrator with a list of all members of the PAGA group, i.e., the
18 Aggrieved Employees, and their last known mailing address.

19 Within 10 business days after receiving the gross settlement amount, the administrator
20 shall distribute the payments to each member of the PAGA group by check via U.S. Mail. Any
21 checks that remain uncashed after 180 days will be transmitted to the California State
22 Controller’s Office Unclaimed Property Fund.

23 The Court was initially concerned as to what would happen if any of these checks are
24 returned as non-deliverable to the administrator, as the settlement agreement does not address
25 that issue. In response to this concern, Plaintiff’s counsel submitted a supplemental declaration
26 that attach ILYM’s procedure for handling returned checks. (See 11/30/23 M. Ross Supp. Decl.)
27 The Court has reviewed the procedure and finds this procedure to be acceptable.

28 Overall, the Court approves the parties’ proposed administration process.

1 **VI. ORDER AND JUDGMENT**

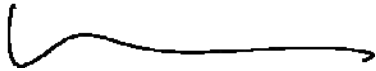
2 For the foregoing reason, Plaintiff's motion for approval of the parties' PAGA settlement
3 is GRANTED. The Aggrieved Employees are defined as follows: "non-exempt employees
4 employed by Defendant in California during the period of October 17, 2021, to the date of entry
5 of the order granting approval of the settlement."

6 Judgment shall be entered through the filing of this order and judgment. (Code Civ.
7 Proc., § 668.5.) Plaintiff and Aggrieved Employees shall take from the PAGA claim in their
8 FAC only the relief set forth in the parties' settlement agreement and this order and judgment.
9 The Court retains jurisdiction over the parties to enforce the terms of the PAGA settlement
10 agreement and the final order and judgment.

11 The Court sets a compliance hearing for **August 1, 2024 at 2:30 P.M.** in Department 1.
12 At least ten court days before the hearing, Plaintiff's counsel and the settlement administrator
13 shall submit a summary accounting of the net settlement fund identifying distributions made as
14 ordered herein; the number and value of any uncashed checks; amounts remitted to the
15 Controller's Office; the status of any unresolved issues; and any other matters appropriate to
16 bring to the Court's attention. Counsel may appear at the compliance hearing remotely.

17 **IT IS SO ORDERED.**

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19 Date: 12/6/2023

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21 The Honorable Sunil R. Kulkarni
22 Judge of the Superior Court
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