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10
11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF ALAMEDA
13

14 EMMA JEAN ELWOOD, individually and on)
behalf of all aggrieved employees,)

15 Plaintiffs,)

16 v.)

17 ALL AMERICAN HEALTHCARE)
18 SERVICES, INC., ALAMEDA)
HEALTHCARE & WELLNESS CENTER,)
19 LLC a California limited liability company)
20 DBA ALAMEDA HEALTHCARE AND)
WELLNESS CENTER and DOES 1 to 100,)

21 Defendants.)

Case No. 23CV028398

Hon. Julia Spain

Dept. 520

CLASS ACTION

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR COURT
APPROVAL OF PAGA SETTLEMENT

Date: October 11, 2024

Time: 2:00 p.m.

Dept.: 520

Reservation No. A-28398-001

Action filed: February 27, 2023

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State Cases

<i>Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.</i> , 46 Cal.4 th 993, 1003 (2009).....	5, 11
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<i>Pedroza v. PetSmart, Inc.</i> , 2013 WL 1490667, at *15 (C.D. Cal. Jan. 28, 2013).....	4

INTRODUCTION AND SUMMARY OF MOTION

Plaintiff Emma Jean Elwood (“Plaintiff”) filed the original Complaint on February 27, 2023, as a representative Private Attorneys General Act (“PAGA”) action, seeking recovery of unpaid wages and penalties under California Labor Code (“Labor Code”) §§ 2699, et seq.

Plaintiff has agreed to settle the PAGA claims for a Gross Settlement Fund of \$22,290.00. The settlement is a fair compromise after approximately three years of litigating the underlying wage and hour claims.

The Gross Settlement Fund includes all attorneys’ fees and costs, settlement administration expenses, and payments to the aggrieved employees and the Labor and Workforce Development Agency (LWDA). The Net Settlement Fund is approximately \$5,910.00, as explained below. Of the net settlement fund, 75% or \$4,432.50 is directed to go to the LWDA, and 25% or \$1,477.50 will be divided among aggrieved employees on a *pro rata* basis.

In exchange for such payment, the aggrieved employees are only releasing PAGA claims and are not giving up any rights whatsoever to recover individual wage and hour damages.

Based upon the discovery and investigation performed in this case, and given the considerable risks based on this Court’s discretion to decrease penalties, the proposed settlement is fair, adequate and reasonable and should be approved.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Plaintiff filed the Complaint on March 8, 2024, as a representative PAGA action, seeking recovery of unpaid wages and penalties under Labor Code §§ 2698, et seq.

On or about January 19, 2024, Plaintiff filed the Declaration of Janelle Carney Re: Dismissal of Class Allegations, requesting that the Court allow the dismissal of Plaintiff’s proposed class allegations without prejudice. The Parties met and conferred regarding Defendant’s anticipated motion to compel arbitration, which contains a class action waiver, and agreed to submit Plaintiff’s individual claims to arbitration. The Order Re: Dismissal of Class Allegations was entered on January 23, 2024.

Thereafter, Plaintiff and Defendant agreed to mediate Plaintiff’s individual and PAGA claims and on May 21, 2024, participated in a full day mediation with Arthur M. Eidelhoch. Prior to the mediation, Defendant provided time and payroll records, and Plaintiff hired an expert to

1 prepare an exposure analysis.

2 **III. SUMMARY OF SETTLEMENT**

3 **A. Aggrieved Employees**

4 The Settlement covers the following aggrieved employees: all current and former non-
5 exempt employees who worked for Defendant AllShifts and were placed at Defendant Alameda's
6 care facility to provide nursing services in the State of California from December 1, 2021, to the
7 date of the Court's approval of the Settlement.

8 Based upon Defendant's records, there are approximately 138 aggrieved employees as of
9 May 21, 2024. The total pay period count is 618, as of May 21, 2024.

10 **B. Settlement Fund**

11 The Net Distribution Amount shall be calculated by deducting the Attorneys' Fees
12 Payment, the Litigation Costs Payment, the Individual Settlement Payment, and the Settlement
13 Administration Costs from the Gross Settlement of Twenty Two Thousand, Two Hundred Ninety
14 (\$22,290.00). Pursuant to the PAGA statute, one hundred percent of the Net Distribution Amount
15 shall be considered payment of penalties and thus will not be subject to local, state, or federal
16 payroll taxes or withholdings. **(Decl. Carney, ¶17)**

17 A breakdown of the Gross Settlement Fund after reimbursement of the mediation fees is
18 Eighteen Thousand, Five Hundred Forty Dollars (\$18,540.00) is provided below:

- 19 1. Total PAGA Penalties: \$5,910.00
20 - Net Distribution Amount to Aggrieved Employees: \$1,477.50 (25%);
21 - Net Distribution Amount to the LWDA: \$4,432.50 (75%);
- 22 2. Attorneys' Fees: \$6,180.00;
- 23 3. Litigation Costs: \$3,000.00;
- 24 4. Settlement Administration expenses: \$3,450.00. **(Decl. Carney, ¶17)**

25 **C. Release (See Carney Decl., Exhibit "1", ¶ 39)**

26 Aggrieved Employees' Release: Upon the payment of the Gross Settlement Amount,
27 Plaintiff, individually and in her capacity as representative for the LWDA, and Aggrieved
28 Employees will fully and finally release and discharge the Released Parties from all Released
Claims. "Released Claims" means all claims asserted in the operative complaint and LWDA letter,

1 or that could have been asserted based on the factual allegations and/or theories of any complaint in
2 this Action and LWDA letter during the PAGA Period. This includes, but is not limited to claims
3 for civil PAGA penalties predicated on Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7,
4 246, 510, 512, and 1194, 1194.2, 1197, 1198, 2802, 2810.5, and Industrial Welfare Commission
5 Wage Orders based on the primary rights of those statutes, irrespective of the theory of recovery
6 alleged.

7 **IV. LEGAL STANDARD FOR APPROVAL OF PAGA SETTLEMENT**

8 The PAGA statute allows an “aggrieved employee” to bring a civil action on behalf of
9 himself or herself and on behalf of other aggrieved employees and the State to recover civil
10 penalties which are specifically established by the PAGA with respect to provisions of the
11 California Labor Code which does not otherwise provide for civil penalties (Labor Code §
12 2699(g)), and also, civil penalties which, outside of PAGA, only the LWDA can assess upon and
13 collect from an employer (Labor Code § 2699(a)). Before bringing a civil action under PAGA, an
14 employee must comply with California Labor Code § 2699.3. *See* Labor Code § 2699(a).

15 The settlement of a PAGA claim requires court approval. *See* Labor Code § 2699(1)(2)
16 (“The superior court shall review and approve any settlement of any civil action pursuant to this
17 part”). However, “A PAGA claim asserted on a non-class representative basis . . . is not considered
18 a class action but a law enforcement action” and therefore one does not have to meet the
19 requirements of a class action. *Casida v. Sears Holding Corp.*, 2012 WL 253217, at *3 (E.D. Cal.
20 Jan. 26, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 WL 2173715, at * 11 (E.D. Cal. June 2,
21 2011); *Arias v. Superior Court*, 46 Cal.4th 969, 980-88 (affirming lower court’s holding that
22 “plaintiff need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v.*
23 *PetSmart, Inc.*, 2013 WL 1490667, at *15 (C.D. Cal. Jan. 28, 2013). A court reviewing a PAGA
24 settlement need only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams v.*
25 *Superior Court*, 3 Cal.5th 531, 549 (2017).

26 In a PAGA case, the Court’s focus is not the monetary amount which aggrieved employees
27 or the State are to receive, but instead, whether the total settlement amount achieves the PAGA’s
28 objectives. The purpose of the PAGA is “to incentivize private parties to recover civil penalties for
the government that otherwise may not have been assessed and collected by overburdened state

1 enforcement agencies.” *See Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *4
2 (N.D. Cal. Apr. 2, 2010) (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the
3 PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor laws . . . and for
4 education of employers and employees about their rights and responsibilities under this code, to be
5 continuously appropriated to supplement and not supplant the finding to the agency for those
6 purposes.” *See Labor Code* § 2699(j). The recovery of penalties on behalf of the state, by way of a
7 PAGA claim, is essentially a law enforcement action. *See Amalgamated Transit Union, Local*
8 *1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009) (stating that the PAGA is mechanism for
9 “an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise
10 would be sought by state labor law enforcement agencies”).

11 **V. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE**

12 The Settlement fulfills the purposes of the PAGA, and is fair, adequate and reasonable.

13 **A. The Settlement Is Presumed Fair**

14 A representative settlement is presumed fair where: (1) the settlement is reached through
15 arm’s length bargaining, (2) investigation and discovery are sufficient to allow counsel and the
16 court to act intelligently, (3) [and] counsel is experienced in similar litigation. (*See Dunk v. Ford*
17 *Motor Company* (1996) 48 Cal. App. 4th 1794, 1802.) A court may also consider factors such as
18 the strength of the plaintiffs’ case, the risk, expense, complexity and likely duration of further
19 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
20 the extent of discovery completed and the stage of the proceedings, the experience and views of
21 counsel, [and] the presence of a governmental participant. . . . (*See Officers of Justice v. Civil*
22 *Service Com’n of City and County of San Francisco* (9th Cir. 1995) 688 F.2d 615, 624.) “This list
23 is not exhaustive and should be tailored to each case. Due regard should be given to what is
24 otherwise a private consensual agreement between the parties.” (*Dunk, supra*, 48 Cal. App. 4th at
25 1801.) Moreover, the trial court has broad powers to determine whether a proposed [representative
26 action] settlement is fair. (*See Mallick v. Superior Court* (1979) 89 Cal. App. 3d 434.) *Moniz v.*
27 *Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021) expressly holds that the standard for reviewing
28 PAGA settlements is similar to the standard for reviewing class settlements, and therefore class
cases (including *Dunk* specifically) are instructive in this context.

1 **B. The Settlement is the Product of Arm's Length Negotiations**

2 The stage of the proceedings and the amount of discovery completed are important factors
3 for courts to consider in determining whether a settlement is fair, adequate and reasonable. (*See In*
4 *re Warner Communications Sec. Lit.* (S.D.N.Y. 1985) 618 F.Supp. 735, 741, *affd.*, 198 F.2d 35 (2d

5 Cir. 1986); *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.*, 661 F.2d

6 939 (9th Cir. 1981).)

7 Plaintiff has conducted sufficient investigation, reviewed the data exchanged for mediation
8 and hired an expert to compute the damage exposure.

9 The parties attended a mediation on May 21, 2024, with experienced employment law
10 mediator Arthur M. Eidelhoch. All of the parties' negotiations have been non-collusive and
11 involved disputes over payment terms. Plaintiff did not settle this case until she and her counsel
12 conducted sufficient investigation into the claims. (**Decl. Carney, ¶10**) Further, the LWDA has had
13 the opportunity to review and investigate the claims in the operative pleading and the executed
14 Settlement Agreement and has not taken any further action in response.

15 **C. Plaintiff's Counsel is Experienced in Similar Litigation**

16 The view of attorneys in representative litigation is "entitled to significant weight."
17 (*Fisher Bros. v. Cambridge-Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *see also*
18 *Ellis, supra*, 87 F.R.D. at 18.) Plaintiff's counsel has significant experience in complex,
19 representative, and class action wage and hour litigation. As such, they are experienced and
20 qualified to evaluate the claims and defenses in this case, and unequivocally support the settlement
21 reached herein. (**Decl. Carney, ¶2; Decl. Rose.**)

22 **D. The Strength of Plaintiff's Case, The Amount Offered in Settlement, and The**
23 **Risk, Expense, Complexity, and Duration of Further Litigation Favors**
24 **Settlement**

25 Where both sides face significant uncertainty, the attendant risks favor settlement. (*Hanlon*
26 *v. Chrysler Comm.* (9th Cir. 1998) 150 F.3d 1011, 1026. Moreover, "[t]he expense and possible
27 duration of the litigation should be considered in evaluating the reasonableness of [a] settlement."
28 (*In re Mega Financial Corp. Securities Litigation* (9th Cir. 2000) 213 F.3d 454, 458.)

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1 **1. Total exposure to PAGA penalties**

2 During the PAGA period, there were 618 pay periods through the date of mediation (May
3 21, 2024), for 138 aggrieved employees. Because there is no evidence that Defendant has been the
4 subject of prior Labor Code citations for the conduct alleged in this case, subsequent and
5 heightened penalty amounts are unlikely here. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th
6 1157, 1208-1209 (2008) (“Until the employer has been notified that it is violating a Labor Code
7 provision. . . , the employer cannot be presumed to be aware that its continuing underpayment of
8 employees is a ‘violation’ subject to penalties”).

9 **Meal and Rest Period PAGA Exposure**

10 Plaintiff’s position is that Defendant’s policies did not provide for compliant meal and rest
11 breaks as all breaks were “working” and on-duty. Defendant denies this claim.

12 Plaintiff claims he and the Aggrieved employees were required to keep their
13 communication devices on and respond to calls during alleged breaks. Defendant denies this claim.
14 In addition to the communication devices, Plaintiff claims Defendant had a practice of requiring
15 employees to sign on duty meal agreements, even though the nature of the hourly employees is not
16 such that an on-duty meal is required. Further, Defendant requires employees to work through
17 their meals while they remained on site, thereby failing to provide Plaintiff and the aggrieved
18 employees with duty-free meal periods and rest periods as required by California law. Defendant
19 denies this claim.

20 Taking into account Defendant’s arguments and the risks Plaintiff faces up to and including
21 trial, Plaintiff calculates the reasonable, maximum exposure to Defendant for PAGA penalties
22 related to the meal break claim at (\$50 initial violation rate x 618 pay periods x 20% chance of
23 prevailing) **\$6,180.**

24 Likewise, Plaintiff calculates the reasonable, maximum exposure to Defendant for PAGA
25 penalties related to the rest break claim at (\$100 initial violation rate x 618 pay periods x 15%
26 chance of prevailing) **\$9,270.**

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1 **Failure To Pay Proper Wages, Premium Pay and Overtime Compensation Based On**
2 **The Correct Regular Rate Of Pay**

3 Plaintiff alleged that it was Defendant's policy to pay both straight time (first eight (8)
4 hours) and overtime (last four (4) hours) based off of the base hourly rate which is lower than
5 required by law due to Defendant's failure to properly blend all rates in the workweek paid. The
6 DLSE specifically states that where two rates of pay are paid during a workweek, the California
7 method for determining the regular rate of pay for calculating overtime in that workweek mirrors
8 the federal method, based upon the weighted average of all hourly rates paid. (See 29 CFR
9 §778.115) Initially, therefore, it must be predicated upon the finding that there are established
10 hourly rates being paid. The rate will be established by adding all hours worked in the week and
11 dividing that number into the total compensation for the week. This is consistent with the
12 provisions of *Skyline v. DIR* (1985) 165 Cal.App.3d 239, since the hourly rates have already been
13 established and what needs to be established now is the weighted average of those rates for
14 purposes of overtime payment. (DLSE Enforcement Manual §49.2.5) However, Defendant denied
this allegation, and stated that it was doing the overtime calculation correctly.

15 Taking into account Defendant's arguments and the risks Plaintiff faces up to and including
16 trial, Plaintiff calculates the reasonable, maximum exposure to Defendant for PAGA penalties
17 related to the regular rate claim at (\$100 initial violation rate x 618 pay periods x 50% chance of
18 prevailing) **\$30,900.**

19 **Work Expenditure Reimbursement**

20 *Labor Code* § 2802 requires an employer to "indemnify his or her employee for all
21 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
22 of his or her duties." Here, Plaintiff incurred out of pocket expenses in connection with her
23 employment, including but not limited to out-of-pocket expenses for blood pressure cuff, pulse
24 oximeter, and thermometers because Defendants' were not available or did not work properly.
25 Plaintiff's expert's exposure figure estimated a \$100.00 per employee, or 1 pay period per
26 employee where expenses were incurred, totaling (\$100 x 138 pay periods x 33% chance of
prevailing) **\$4,554.**

27 /////
28

1 **Wage Statement Violations**

2 Plaintiff alleges that Defendants willfully failed to provide accurate itemized wage
3 statements to her as well as the Aggrieved Employees pursuant to *Labor Code* § 226. Specifically,
4 Defendants' wage statements did not include accurate information uniformly for all
5 employees. This is a derivative and stand-alone claim as Defendants' pay stubs do not contain
6 required elements of *Labor Code* §226, including "total hours worked." Total hours worked is
7 required to calculate the regular rate properly.

8 If Plaintiff were to lose on any of the underlying claims or if the Court were to make the
9 determination that derivative wage statements do not apply, the wage statement penalty claim could
10 be reduced to zero. Taking this into account, Plaintiff believes the reasonable, risk adjusted
11 maximum exposure to Defendant for PAGA penalties relating to the wage statement claim is (\$100
12 initial violation rate x 618 pay periods x 10% chance of prevailing) **\$6,180**.

13 **Waiting Time Penalties**

14 The waiting time penalty claim is derivative of the missed break violations. Plaintiff's
15 values the maximum PAGA penalties related to waiting time penalties (\$100 initial violation rate x
16 4 former employees) **\$400**.

17 **Total Maximum PAGA Penalties**

18 Based on the above, the reasonable, risk adjusted maximum exposure is the following:

- | | | |
|----|--|----------|
| 19 | 1. Meal Breaks | \$6,180 |
| 20 | 2. Rest Breaks | \$9,270 |
| 21 | 3. Failure to Pay Overtime, meal and rest premiums | |
| 22 | at the correct regular rate: | \$30,900 |
| 23 | 4. Work Expenditure Reimb. | \$4,554 |
| 24 | 5. Wage Statement | \$6,180 |
| 25 | 6. Waiting Time Penalty | \$400 |

26 **Total Maximum Exposure \$57,484**

27 Plaintiff asserts the PAGA settlement of \$18,540.00 is 32% of the maximum, risk adjusted
28 exposure. As explained below, the PAGA settlement is within the range of reasonableness when
viewed in tandem with the attendant risks described above.

1 Plaintiff further believes this to be a good result, given that there is a substantial question as
2 to whether a trial court will even award cumulative penalties sought by Plaintiff for alleged
3 multiple Labor Code violations because there is no precedent for such an award. Moreover, *Labor*
4 *Code* §2699(e)(2) also gives a trial court broad discretion to reduce PAGA penalties: “[A] court
5 may award a lesser amount than the maximum civil penalty amount specified by this part if, based
6 on the facts and circumstances of the particular case, to do otherwise would result in an award that
7 is unjust, arbitrary and oppressive, or confiscatory.” Case law supports a trial court’s discretion in
8 downgrading penalties based on these factors. See *Thurman v. Bayshore Transit Management,*
9 *Inc.*, 203 Cal.App.4th 1112, 1135-1136 (2012) (no abuse of discretion by reducing penalty by 30
10 percent).

11 Because of the discretionary nature of PAGA penalties, oftentimes the penalties are
12 discounted by approximately 75%-85%. See, e.g., *Magadia v. Wal-Mart Associates, Inc.* (N.D.
13 Cal. May 31, 2019) 384 F.Supp.3d 1058, 1104 (penalties on wage statement claim reduced by
14 80%).

15 In sum, Plaintiff estimates that the risk adjusted maximum penalty exposure is **\$57,484**.
16 Based on the risks outlined above, the substantial costs that would be expended to proceed to trial,
17 the fact that class certification was denied on the issues which remain in the case, and the
18 discretionary natures of the penalties, Plaintiff believes the \$18,540.00 settlement, representing
19 32% of the risk adjusted potential recovery, is fair, reasonable, and serves the purpose of PAGA.
(Decl. Carney ¶ 11)

20 **VI. NOTICE OF THE SETTLEMENT IS NOT REQUIRED**

21 “[A] PAGA action is a statutory action for penalties brought as a proxy for the State,” as
22 such, “there is no need to protect absent employees’ due process rights[.]” *Williams v. Superior*
23 *Court*, 3 Cal.5th 531, 546 (2017). “Unnamed employees need not be given notice of the PAGA
24 claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-*
25 *Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *5 (N.D. Cal. Apr. 2, 2010). A
26 representative PAGA action need not satisfy class action requirements, and no due process concern
27 arises from the fact that there are “nonparty aggrieved employees who are not given notice of, and
28 an opportunity to be heard in, a representative action that is not brought as a class action.” *Arias v.*

1 *Sup. Ct.*, 46 Cal.4th 969, 984 (2009). “PAGA does not make other potentially aggrieved employees
2 parties” to the action and no “due process concerns arise under PAGA because absent employees
3 do not own a personal claim for PAGA civil penalties and whatever personal claims the absent
4 employees might have for a relief are not at stake.” *Williams, supra*, 3 Cal. 5th at 546-547 (internal
5 references omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46th
6 Cal.4th 993, 1003 (2009) and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348,
7 381 (2014).)

8 Moreover, Plaintiff has served (uploaded) the LWDA with the Settlement Agreement and
9 will upload this motion and supporting documents after they are filed. (**Decl. Carney, ¶23**)

10 **VII. PLAINTIFF’S ATTORNEYS’ FEES, COSTS, AND ADMINISTRATIVE EXPENSES**

11 **ARE FAIR AND REASONABLE**

12 Pursuant to the PAGA Settlement Agreement, Plaintiff’s counsel requests that this Court
13 approve an award of attorneys’ fees of \$6,180.00 (one-third of the Gross Settlement Amount after
14 deducting Plaintiff’s \$3,750 share of the mediator’s fee) and additional costs of \$3,000.00.

15 Pursuant to *Labor Code* § 2699 subd. (g)(1): “Any employee who prevails in any [PAGA] action
16 shall be entitled to an award of reasonable attorney’s fees and costs.”

17 **A. Fees Can Be Awarded as A Percentage of the Common Fund**

18 When a common fund is created, attorneys who secured the fund are entitled to a
19 percentage of the fund. (*See Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 [“the court
20 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
21 created]; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26 [“percentage fees have
22 traditionally been allowed in . . . common fund cases”]). Plaintiff’s request for 35% of the
23 common fund is reasonable, and is fair compensation for undertaking complex litigation on a
24 contingent basis. (*See, e.g., Rubinstein, Conte and Newberg, Newberg on Class Actions* at § 14:6
25 [surveying cases and finding that 30-50% of fees awarded in cases in which the common fund is
26 relatively small]; *see also In re Ampicillin Antitrust Litigation* (D.D.C. 1981) 526 F.Supp. 494
[court approved attorney fee award equal to 45% of the settlement fund].)

27 Under the common fund doctrine, “a litigant or a lawyer who recovers a common fund for
28 the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from

1 the fund as a whole.” (*Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *see also Laffitte,*
2 *supra*, 1 Cal.5th at 503 [“the percentage method is a valuable tool that should not be denied our
3 trial courts”]; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 [“one who expends attorneys’ fees in
4 winning a suit which creates a fund from which other derive benefits, may require those passive
5 beneficiaries to bear a fair share of the litigation costs”].)

6 Because Plaintiff’s attorneys secured a successful PAGA settlement, they are entitled to a
7 reasonable percentage of that fund.

8 **B. Plaintiff’s Attorneys Fees Are Also Recoverable Under the Lodestar**
9 **Adjustment Approach**

10 Fees in representative cases are also appropriate under the lodestar method, whereby the
11 number of hours reasonably expended is multiplied by a reasonable hourly rate. (*See Lealao,*
12 *supra*, 82 Cal.App.4th at 26.) Once a lodestar has been established, it may “be adjusted, based on
13 consideration of factors specific to the case, in order to fix the fee at the fair market value for the
14 legal services provided.” (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095). In
15 evaluating the lodestar, and whether an upward adjustment is appropriate, courts look to the
16 qualifications of counsel, the reasonableness of the rates charged, the novelty and difficulty of the
17 case, the contingent nature of the case, the results achieved, and related matters. (*See, e.g.,*
18 *Serrano, supra*, 20 Cal.3d 25, 49; *see also Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 321-
322.) All such factors support the fee award here.

19 **1. Plaintiff’s Counsel Are Well-Qualified to Represent the Aggrieved**
20 **Employees and their Rates Are Reasonable**

21 Counsel for Plaintiff is experienced employment lawyers and have extensive experience in
22 the specific subcategory of wage and hour claims. (**Decl. Carney, ¶¶ 2-8; Decl. Rose.**)

23 Moreover, counsel for Plaintiff have hourly rates that are reasonable in the relevant market.
24 They are as follows:

25 **JANELLE CARNEY – ATTORNEY AT LAW, APC**

26 Janelle Carney (24 years’ experience) \$850.00

27 **FRONTIER LAW CENTER**

28 Adam Rose (22 years’ experience) \$800.00

1 Manny Starr (6 years' experience) \$650.00

2 Plaintiff asserts that Plaintiff's counsel's rates are reasonable market rates in Southern
3 California and have been reasonably incurred in connection with this litigation. (**Decl. Carney, ¶**
4 **21**)

5 **2. Plaintiffs' Counsel's Lodestar Is Well Documented**

6 A properly supported motion for attorney's fees is prima facie evidence that the expenses
7 and services were necessarily incurred. (*Hadley v. Krepel* (1985) 167 Cal.App.3d 677, 682.) Here,
8 counsel provides an appropriately detailed declaration. Plaintiff's counsel's lodestar from one firm
9 is \$45,905.00 with 55 hours to date, not including Paralegal time.(See Carney Decl and Decl of
10 Rose filed separately) Plaintiff anticipates that counsel will incur up to another 10-15 hours to
11 appear at the hearing, ensure the settlement receives approval, and comply with the filing of post
12 hearing filings once the settlement is distributed to the aggrieved employees as well as answer any
13 questions any aggrieved employee may have. (See **Decl. Carney, ¶¶ 18-20**) The fee request is
considerably lower than the actual Lodestar.

14 **3. Novelty And Difficulty of The Case**

15 Given Defendant's employees are placed at the Alameda Healthcare and Wellness Center,
16 this case presented potential manageability issues based on Defendant's position that its employees
17 have a variety of duties.

18 **4. Plaintiff's Counsel Worked Efficiently and Skillfully**

19 Since the beginning of this case, Plaintiff's counsel worked diligently for the aggrieved
20 employees, both in the PAGA case and in Plaintiff's individual claims, with an eye at proving the
21 claims on a representative basis once the individual trial was concluded.

22 **5. Plaintiff's Counsel Worked Entirely on A Contingency Basis**

23 Plaintiff's counsel worked on a complete contingency and advanced all expenses and costs.
24 The contingent risk included liability issues, damage issues, and evolving changes under PAGA.
25 According to the California Supreme Court:

26 A contingent fee must be higher than a fee for the same legal services paid as they
27 are performed. The contingent fee compensates the lawyer not only for the legal
28 services he renders but for the loan of those services. The implicit interest rate on
such a loan is higher because the risk of default (the loss of the case, which cancels

1 the debt of the client to the lawyer) is much higher than that of conventional loans.
2 (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133, quoting Posner, Economic
3 Analysis of Law (4th ed. 1992) pp. 534, 567.)

4 **6. Plaintiff's Counsel Achieved a Good Result**

5 Plaintiff's counsel believes the total \$22,290.00 PAGA settlement is a good result given the
6 substantial risks of going to trial on this case and the discretionary nature of the penalties.

7 **C. Plaintiffs' Counsel's Costs and Administrative Expenses Are Appropriate**
8 **and Well Documented**

9 Plaintiff's counsel is also entitled to their reasonable out-of-pocket costs incurred in
10 prosecuting this action. Plaintiff's counsel has incurred costs of approximately \$3,000.00 as of the
11 date of filing this motion (not including the cost of filing the herein motion or any subsequent
12 documents to be filed). It is anticipated that additional costs will be incurred for final filing costs
13 for the motion and the post motion filings of approximately \$150-\$200.00. The costs incurred were
14 necessary to prosecute this case. (**Decl. Carney, ¶¶ 18-21**) Moreover, after obtaining two (2)
15 quotes to be the administrator, ILYM has agreed to provide settlement administration services in
16 the amount of \$3,450.00 including preparing and mailing the payments to the aggrieved
17 employees, and performing other administration duties for this PAGA settlement. (**Decl. Carney,**
18 **¶¶ 22-23**) All such amounts should be deducted from the common fund created, and Defendant
19 does not oppose Plaintiff's counsel's request for costs up to \$3,000.00 (which includes the
20 reimbursed mediation fee) and administration costs up to \$3,450.00.

21 **CONCLUSION**

22 Based on the foregoing, Plaintiff respectfully requests that this Court grant his Motion to
23 Approve PAGA Settlement and enter the Order/Judgment accordingly.

24 Dated: October 1, 2024

25 FRONTIER LAW CENTER
26 JANELLE CARNEY – ATTORNEY AT LAW, APC

27 By:

28 
Janelle Carney, Attorney for Plaintiff