

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

MARKEL ROCKE, as an individual and on behalf of all employees similarly situated,	)	Case No.: 23CV413573
	)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF'S
	)	MOTION FOR APPROVAL OF PAGA
v.	)	SETTLEMENT
	)	
	)	
	)	Dept. 7
PINK CHICKU LLC, et al.,	)	
	)	
Defendants.	)	

This is a representative action under the Private Attorneys General Act ("PAGA"). Plaintiff Markel Rocke alleges that Defendant Pink Chicku LLC, which provides assisted living services in patients' residences, hospitals and nursing facilities in California, 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. As discussed below, the Court GRANTS Plaintiff's motion.

I. BACKGROUND

According to the allegations of the operative First Amended Complaint (“FAC”), Plaintiff was employed by Defendant as a client care coordinator, a non-exempt, hourly-paid position, from July 2020 to May 16, 2022. (FAC, ¶ 11.) Plaintiff alleges that Defendants systematically failed and refused to pay her and other Aggrieved Employees all wages due, and failed to pay those wages twice a month, in that they were not paid all wages for meal and rest periods not provided/authorized. (*Id.*, ¶¶ 24, 30-34.) Defendant also regularly used a system of time rounding in a manner that resulting in it failing to compensate Plaintiff and Aggrieved Employees for all of the time they actually worked. (*Id.*, ¶ 29.) Plaintiff and Aggrieved Employees were also required to perform “off-the-clock” work for which they were not compensated and were not reimbursed by Defendant for business-related expenses incurred by them. (*Id.*, ¶¶ 29, 35.)

Based on the foregoing, on April 5, 2023, Plaintiff initiated this action by filing a class action complaint asserting the following causes of action: (1) failure to pay all wages and sick pay; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to keep accurate itemized wage statements; (5) failure to pay wages upon termination of employment and accrued vacation upon termination of employment; (6) failure to reimburse for necessary expenditures; and (7) unfair business practices. On June 12, 2023, Plaintiff filed the FAC adding a claim for civil penalties under PAGA. Due to arbitration agreements signed by class members, Plaintiff subsequently requested and obtained dismissal of the first through seventh causes of action, leaving only the PAGA claim.

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

1 grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639.) 75 percent of any
2 penalties recovered go to the Labor and Workforce Development Agency (LWDA), leaving the
3 remaining 25 percent for the employees. (*Ibid.*) PAGA is intended “to augment the limited
4 enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as
5 representatives of the Agency.” (*Id.* at p. 383.) A judgment in a PAGA action binds all those,
6 including nonparty aggrieved employees, who would be bound by a judgment in an action
7 brought by the government. (*Id.* at p. 381.)

8 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall
9 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
10 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
11 *Court* (2017) 3 Cal.5th 531, 549.) “[C]lass certification is not required” in this context as in a
12 class action. (*Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971
13 (*Haralson*).)

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

24 The settlement must be reasonable in light of the potential verdict value. (See *O’Connor*,
25 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential

1 verdict].) But a permissible settlement may be substantially discounted, given that courts often
2 exercise their discretion to award PAGA penalties below the statutory maximum even where a
3 claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-
4 CV-02198-EMC) 2016 WL 5907869, at *8–9.)

5 **III. PLAINTIFF’S INVESTIGATION, SETTLEMENT PROCESS, AND THE** 6 **PARTIES’ AGREEMENT**

7 After the commencement of this action, the parties engaged in informal discovery, with
8 Plaintiff obtaining a large volume of documents and data from Defendant that included the
9 following: Plaintiff and Aggrieved Employees’ employment records; a detailed sampling of
10 Aggrieved Employees’ time and pay data; Defendant’s Employee Handbook; arbitration
11 agreements signed by non-exempt employees; employment practices, procedures, and policies
12 including, but not limited to Defendant’s expenses policy, meal and rest periods policy, work
13 time policy, overtime policy, pay periods and pay days policy. These materials enabled the
14 parties to engage in discussions regarding their evaluations of the case and various aspects of it,
15 including but not limited to, the risks and delays of further litigation, the risks to the parties of
16 proceeding with representative adjudication, the law relating to off-the-clock theory, meal and
17 rest periods, PAGA representative actions, and wage-and-hour law and enforcement, as well as
18 the evidence produced and analyzed, and the possibility of appeals, among other things.
19 Plaintiff’s counsel also invested time in researching and her claims and damages, and
20 Defendant’s defenses thereto, as well as facts discovered.

21 The parties agreed to participate in mediation before the Hon. Amy D. Hogue (Ret.),
22 Esq., a neutral with extensive experience as a former complex department judgment litigating
23 and mediating wage and hour representative actions, and did so on November 9, 2023. The
24 parties were able to reach a settlement at the full-day session, and then negotiated and
25 memorialized the details of the settlement in the weeks after that which is now before the Court.

1 Pursuant to the Agreement, Defendant will pay a non-reversionary gross settlement
2 amount of \$105,000, which is comprised of \$35,000 in attorney's fees (one third of the gross
3 settlement amount), \$13,294.63 in litigation costs and administration fees not to exceed \$3,950.
4 The net settlement of approximately \$42,755.37 will be distributed 75 percent (\$32,066.53) to
5 the LWDA and 25 percent (\$10,688.84) to "Aggrieved Employees," defined as "[a]ll non-
6 exempt employees who worked for Defendant in California during [the period of April 5, 2022
7 through the date of entry of the court order approving settlement]," on a pro rata basis based on
8 the number of pay periods each employee worked during the relevant period.

9 It is estimated that there are approximately 4,815 pay periods within the PAGA Period of
10 April 5, 2022 though the date of entry of the court order approving settlement, however, if the
11 actual number of pay periods exceeds this amount by more than 10%, the parties' settlement
12 agreement provides that Defendant must increase the net settlement amount on a pro rata dollar
13 value equal to the number of pay periods in excess of 5,296 pay periods. If this escalator clause
14 is triggered, Defendant may alternatively choose to end the PAGA Period on the date that the
15 increase would otherwise be triggered.

16 In exchange for settlement, Aggrieved Employees (and the State of California and the
17 LWDA) will release "PAGA claims for civil penalties under the California Private Attorneys
18 General Act, California Labor Code § 2698, et. seq. ("PAGA") based upon the allegations of
19 Defendant's conduct set forth in Plaintiff's pre-filing PAGA notice letter filed with the LWDA
20" The release is appropriately tailored to the allegations at issue, and does not release any
21 claims other than those for PAGA penalties. (See *Amaro v. Anaheim Arena Management,*
22 *LLC* (2021) 69 Cal.App.5th 521, 537; *Moniz, supra*, 72 Cal.App.5th at p. 82 [release of "all
23 known and unknown claims under PAGA ... that were or could have been pled based on the
24 allegations of the Complaint" was appropriately approved].)

1 In exchange for settlement, Plaintiff executed a general release which releases Defendant
2 from “all charges, complaints, claims and liabilities of any kind or nature whatsoever, known or
3 unknown, suspected or unsuspected (hereinafter “claims”) which Plaintiff at any time had or
4 claimed to have or which Plaintiff may claim to have regarding events that have occurred as of
5 the date Plaintiff signs this Agreement, including, without limitations, any and all claims related
6 or in any manner incidental to Plaintiff’s employment with Defendant or her separation
7 therefrom.”

8 **IV. DISCUSSION**

9 **A. Potential Verdict Value**

10 Plaintiff explains that using the most straightforward formulation of applying the “catch-
11 all” \$100 penalty specified in Labor Code section 2699, subdivision (f)(2), to each pay period
12 per employee, for all of the estimated 4,815 pay periods through mediation, the maximum single
13 penalty plausible exposure under that direct approach is \$481,500.00. The settlement represents
14 approximately 21.8% of this amount. Plaintiff’s counsel also calculated estimated the risk-
15 adjusted penalty recovery for each claim, separately, resulting in a maximum plausible risk-
16 adjusted exposure of \$540,435.

17 Several factors reduced the foregoing maximum exposure amounts, including the
18 potential for a significant reduction by the Court based on a lack of willfulness on the part of
19 Defendant to evade applicable wage and hour laws, the Court’s potential unwillingness to stack
20 penalties and its overall discretion in calculating penalties, the difficulties Plaintiff would
21 encounter in proving liability for roughly 230 Aggrieved Employees working in different
22 departments, disputes over which Wage Order applied to Aggrieved Employees, employee
23 choice as a barrier to proving claims, potential manageability issues and Defendant’s ability to
24 assert viable legal defenses. In consideration of these facts, the history of various similar PAGA
25 decisions and the risk that Plaintiff may recover nothing, the Court finds that the proposed

1 settlement is fair to those affected and is genuine, meaningful, and reasonable in light of the
2 statute's purposes.

3 **B. Attorneys' Fees**

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

13 As set forth above, Plaintiff seeks a fee award of \$35,000, one-third of the gross
14 settlement, which is not an uncommon contingency fee allocation in a wage and hour/PAGA
15 action. Plaintiff also submits a lodestar figure of \$60,370 (not including at least \$2,250 in
16 estimated future work) based on 134.9 hours spent on this case by counsel billing at rates of
17 \$400-450 per hour. This amount far exceeds the fees requested by Plaintiff here, resulting in a
18 negative multiplier. Accordingly, the lodestar cross check supports the percentage fee actually
19 requested and this amount is approved. (See *Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 1
20 Cal.5th 480, 488, 503-504 [trial court did not abuse its discretion in approving fee award of 1/3
21 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

22 **C. Other Costs and Awards**

23 Counsel's request for litigation costs of \$ \$13,294.63 appears reasonable (and is below
24 the \$17,000 maximum provided by the parties' agreement) based on the supporting declaration
25 provided which establishes that counsel actually incurred costs in this amount and is approved.

Also approved is Plaintiff's receipt of \$10,000 as consideration for general release of her individual wage and hour claims.

V. ADMINISTRATION PROCESS

The parties have selected ILYM Group, Inc. ("ILYM Group") as the settlement administrator. The parties have agreed that no later than 14 days after the "Effective Date,"¹ Defendants will provide ILYM Group with a list of all Aggrieved Employees and the relevant identifying information (including last known mailing address). Within 14 days from when the gross settlement amount has been deposited with the administrator by Defendant, ILYM Group will pay the various amounts approved by the Court to Plaintiff's counsel, the LWDA, and each Aggrieved Employee. Each Aggrieved Employee will be sent a check in the appropriate amount, and if such payment is returned to the administrator as undeliverable, it will search for a more current addresses (through a skip-trace and other similar means) and re-mail payment within ten days after the payment was returned. Any checks that remain uncashed after 180 days will be transmitted to the California State Controller's Unclaimed Property division. 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 Aggrieved Employees are: All non-exempt employees who worked for Defendant in California during the period of April 5, 2022 through the date of entry of this order approving settlement.

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

¹ This term is defined by the agreement as the date by when both of the following have occurred: (a) the Court enters a judgment on its order granting approval of the settlement; and (b) the judgment is final. The judgment is final as of the latest of the following occurrences: (a) if no Aggrieved Employee objects to the settlement, the day the Court enters Judgment; (b) if one or more Aggrieved Employees objects to the settlement, the day after the deadline for filing a notice of appeal the judgment; or if a timely appeal from the judgment is filed, the day after the appellate court affirms the judgment and issues a remittitur.

1 FAC only the relief set forth in the parties' settlement agreement and this order and judgment.

2 The Court retains jurisdiction over the parties to enforce the terms of the PAGA settlement
3 agreement and the final order and judgment.

4 The Court sets a compliance hearing for **December 19, 2024 at 2:30 P.M.** in Department
5 7. At least ten court days before the hearing, Plaintiff's counsel and the settlement administrator
6 shall submit a summary accounting of the net settlement fund identifying distributions made as
7 ordered herein; the number and value of any uncashed checks; amounts remitted to the California
8 State Controller; the status of any unresolved issues; and any other matters appropriate to bring
9 to the Court's attention. Counsel may appear at the compliance hearing remotely.

10
11 DATED: April 26, 2024


CHARLES F. ADAMS
Judge of the Superior Court