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Candise Hill

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

CANDISE HILL, an individual,
Plaintiff,

vs.

PACIFIC DERMATOLOGY INSTITUTE, INC.;
and DOES 1 through 20, inclusive,
Defendants.

Case No. CIVSB2312940

*Assigned to Honorable Joseph T. Ortiz
Dept. S-17*

**NOTICE OF MOTION AND MOTION FOR
ORDER APPROVING PAGA SETTLEMENT
AND AWARDING ATTORNEY'S FEES AND
COSTS; MEMORANDUM OF POINTS AND
AUTHORITIES**

*[Declaration of Suren N. Weerasuriya and
[Proposed] Order Filed Concurrently Herewith]*

Complaint Filed: June 05, 2023
Trial Date: None

**Date: April 05, 2024
Time: 1:30 p.m.
Dept: S-17**

1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD, please take notice
2 that on April 05, 2024, at 1:30 p.m. or as soon thereafter as this matter may be heard in Department
3 S-17 of the Superior Court of California, County of San Bernardino, located at 247 W. Third Street,
4 San Bernardino, California 92415, before the Honorable Joseph T. Ortiz, Plaintiff Candise Hill will and
5 herby does move the Court for an order approving the Parties' settlement of Plaintiff's representative
6 claims under the Private Attorney's General Act ("PAGA") and awarding attorney's fees and costs to
7 Plaintiff.
8

9 Plaintiff's Motion consists of this Notice, the ensuing Memorandum of Points and
10 Authorities, the Declaration of Suren N. Weerasuriya, the [Proposed] Order, and any oral argument
11 the Court may permit at the hearing on this Motion.

12 Dated March 08, 2024

GONZALEZ WEERASURIYA, APC

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16 Suren N. Weerasuriya
17 Attorneys for Plaintiff,
18 Candise Hill
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Candise Hill moves the Court for an order approving the settlement of her PAGA
4 representative claims (the “Settlement”) on behalf of the State of California, and 192 non-exempt
5 employees who worked for Defendant Pacific Dermatology Institute, Inc. (“PDI”) from June 05, 2022,
6 to January 22, 2024 (the “Aggrieved Employees”).

7 The Parties agreed to the Settlement after attending a full-day mediation with Steve Pearl and
8 accepting his proposal shortly thereafter. The Settlement is based on the following material terms:

- 9
- 10 • PDI will pay a gross settlement amount of \$100,000.00 (“GSA”).
 - 11 • Plaintiff would be entitled to seek up to 35% of the GSA as attorney’s fees.
 - 12 • Plaintiff would be entitled to seek reimbursement of litigation costs of up to \$15,000.00.
 - 13 • Plaintiff would be entitled to administration expenses up to \$7,500.

14 The Court should approve the Settlement and award the attorney’s fees, costs, and expenses
15 because (1) the Settlement is fair and reasonable; (2) the attorney’s fees and costs were reasonable and
16 necessarily incurred; and (3) the administration expenses were reasonable and necessary.

17 **II. PROCEDURAL HISTORY**

18 Plaintiff filed the Complaint in this case on June 05, 2023. (Declaration of Suren N. Weerasuriya
19 (“Dec. Suren”), ¶ 4.) That same day, she submitted a Notice of Violations to the LWDA (the “Notice of
20 Violations”). (*Id.*; Exhibit A, Notice of Violations.)

21 On August 30, 2023, Plaintiff filed her First Amended Complaint alleging representative claims
22 under PAGA. (Dec. Suren, ¶ 5; Exhibit B, First Amended Complaint.) Plaintiff timely submitted a
23 stamped copy of the First Amended Complaint to the LWDA as well. (Dec. Suren, ¶ 5.)

24 On September 05, the Parties filed a stipulation seeking an order dismissing Plaintiff’s class and
25 individual claims without prejudice and the Court subsequently issued an order granting the relief.
26 (Dec. Suren, ¶ 6.)

27 On September 08, 2023, the Parties agreed to mediate Plaintiff’s representative PAGA claims.
28 (*Id.*, ¶ 7.) On October 05, 2023, they agreed to set mediation with Steve Pearl. (*Id.*)

1 On October 18, 2023, the Parties submitted a stipulation continuing the Initial CMC and the
2 Court continued the CMC to January 23, 2024. (*Id.*, ¶ 8.)

3 The Parties attended a full-day mediation with Steve Pearl on January 18, 2024. (*Id.*, ¶ 9.) They
4 accepted Mr. Pearl's mediator's proposal on January 22, 2024, to settle the case on a representative basis
5 (the "Settlement"). (*Id.*)

6 On January 23, 2024, the Parties appeared at the CMC and informed the Court of the settlement.
7 (*Id.*, ¶ 10.) The Court set a March 14, 2024, hearing date for approval of the Settlement.

8 On March 08, 2024, the Parties executed the Long Form Settlement Agreement
9 (the "Agreement") memorializing the Settlement. (*Id.*, ¶ 12; Exhibit C, the Agreement.) On March
10 10, 2024, Plaintiff submitted the Agreement and this Motion to the LWDA. (Dec. Suren, ¶ 11.)

11 **III. FACTS**

12 **A. Summary of Plaintiff's Alleged Claims.**

13 Plaintiff's First Amended Complaint alleged claims for (1) failure to pay the minimum wage and
14 overtime wages, resulting from a failure to pay for driving time (Exhibit B, ¶¶ 26-42); (2) failure to
15 provide meal periods, based on insufficient staffing leaving the Aggrieved Employees without
16 reasonable opportunity to take meal periods (*Id.*, ¶¶ 43-49); (3) failure to permit and authorize rest
17 breaks, based on insufficient staffing leaving the Aggrieved Employees without reasonable opportunity
18 to take meal periods (*Id.*, ¶¶ 50-56); (4) failure to issue accurate wage statements, based on the omission
19 of premiums and overtime wages for driving time (*Id.*, ¶¶ 57-66); (5) failure to pay all wages upon
20 separation of employment (*Id.*, ¶¶ 67-72); and (6) failure to pay all wages during employment (*Id.*, ¶¶
21 73-77.)

22 The Notice to the LWDA alleged and detailed the same claims, except for claims under
23 Labor Code section 2800 and 2802. (Exhibit A, pp. 2-3.)

24 **B. The Exposure Analysis and Discounts**

25 Plaintiff initially valued the PAGA claims at approximately \$2,925,000.00, Plaintiff had to
26 discount the valuation for several reasons, as explained below. (Dec. Suren, ¶ 12.)

27
28 ///

Also, as a threshold matter, Plaintiff's exposure analysis relied on the initial penalty violation amount for all pay periods because the subsequent penalty rate of \$200 does not apply until the employer has been notified of a violation; and there has not been sufficient notice until they have been notified by the Labor Commissioner of such violations, or until a court has determined that the employer violated the Labor Code. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App 5th 334, 356 (2021). But neither has happened in this case. (*Id.*)

1. The Unpaid Minimum Wage and Overtime Wages Claims

These claims were based on the allegation that for a portion of the PAGA period, PDI did not pay for driving time. However, upon further investigation by Plaintiff's Counsel, and based on information exchanged during mediation, Plaintiff was able to determine that the claims for unpaid minimum wage and overtime wages presented no exposure for PDI. (*Id.*, ¶ 13.) This was because, before the statutory PAGA period (June 05, 2022, to January 22, 2024), PDI changed its policies and procedures to ensure that employees were paid for driving time; and because further investigation into mediation data showed Defendant paid for driving time. (*Id.*)

2. The Meal Period and Rest Break Claims

Based on the data provided for mediation, PDI had a 2% meal period violation rate. (Dec. Suren, ¶ 14.) Additionally, PDI maintained a compliant written meal period policy for the entire PAGA period. Thus, this claim was heavily discounted. (*Id.*)

Based on Plaintiff's experience working for PDI, Plaintiff initially assumed a 100% violation rate for rest break claims, and relatedly, wage statement violations, and violations of Labor Code sections 201 to 204 (for untimely payment of wages during employment). (*Id.*, ¶ 14.)

However, the rest break claim was discounted because (1) PDI had a compliant written policy for the PAGA period; (2) proving that inadequate staffing resulted in no reasonable opportunity to take rest breaks, in a manageable fashion at trial, would have been difficult because the Aggrieved Employees worked at 15 different locations with different staffing needs and customer demands; (3) PDI maintained that it complied with its rest break policies and ensured that the Aggrieved Employees took compliant rest breaks; (4) courts have generally not certified rest break claims, or found them to be manageable,

1 where the underlying theory is a non-compliant staffing practice; and (5) the Court has the discretion to
2 reduce the civil penalties extensively, which presents uncertainty in moving this claim forward. (*Id.*)

3 **3. *The Derivative Wage Statement and Labor Code Section 203 and 204 Claims***

4 For the wage statement claim, Plaintiff initially calculated exposure based on a \$250 initial
5 violation rate. However, because Defendant made a legitimate argument that only the \$100 initial PAGA
6 violation rate applies—unless the employer has entirely failed to provide a wage statement, which was
7 not the case here—Plaintiff discounted the claim based on the default \$100 rate. (Dec. Suren, ¶ 15.)

8 Additionally, because there is a legitimate argument to be made that there is no claim for
9 violations of Labor Code section 204, purely based on the underpayment of wages, Plaintiff heavily
10 discounted this claim as well. *Carter v. Jai-Put Enter.*, 2020 WL 3545094, at *10 (N.D. Cal. June 30,
11 2020).

12 Further, the value of the 203 claim was minimal because there were only 56 former
13 employees; thus, the claim’s maximum value was \$5,600.00. (*Id.*)

14 **C. The Terms of Settlement**

15 The Aggrieved Employees covered by the Settlement and Agreement are all non-exempt
16 employees who worked for PDI from June 05, 2022, to January 22, 2024 (the “PAGA Period”). (Exhibit
17 C, p. 2.) There are 192 Aggrieved Employees in the PAGA Period. (Dec. Suren, ¶ 16.)

18 The claims released by the Agreement are “the PAGA claims that could have been sought by the
19 State of California Labor Commissioner for the violations identified in Plaintiff’s pre-filing notice letter
20 filed with the LWDA,” i.e., claims for violations of Labor Code sections 201-203, 204, 210, 212, 225.3,
21 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 2800, and 2802. (*Id.*,
22 ¶ 17.)

23 Additionally, Plaintiff released her individual claims and agreed to a civil code section
24 1542 waiver, in exchange for compensation. (*Id.*) The individual claims were based on the same
25 facts alleged in this PAGA case and claims for Disability Discrimination and Wrongful Termination
26 in Violation of Public Policy. (*Id.*) Those claims have yet to be filed. (*Id.*) Because of the payment for
27 her individual claims, Plaintiff will not seek an incentive award for the Settlement. (*Id.*)
28

1 The GSA total is \$100,000.00. (Dec. Suren, ¶ 18; Exhibit C, ¶5.) Plaintiff's Counsel will be
2 entitled to seek up to 35% of the GSA as attorney's fees; up to \$15,000 in litigation costs; and up to
3 \$7,500 for administration expenses. (Dec. Suren, ¶ 18; Exhibit C, ¶5.)

4 If anticipated fees, costs, and expenses are awarded, the Net Settlement Amount that will be
5 distributed to the State of California and the Aggrieved Employees is estimated to be \$42,500.00. (*Id.*, ¶
6 19.) Of this amount, \$10,625.00 would be paid to the 192 Aggrieved Employees, at a rate of \$1.73 per
7 pay period worked. (*Id.*)

8 The amount of payment to each Aggrieved Employee will be based on his or her pro-rata share
9 of the 6,500 pay periods at issue in this case. (Dec. Suren, ¶ 20; Exhibit C, ¶ 7.) Taxes will not be withheld
10 from the payments, but an IRS Form 1099 will be issued to each Aggrieved Employee. (Dec. Suren,
11 ¶ 20; Exhibit C, ¶ 9.) Unclaimed funds will revert back to the GSA and be distributed to Aggrieved
12 Employees who deposited their settlement checks. (Dec. Suren, ¶ 20; Exhibit C, ¶ 10 c.) The Aggrieved
13 Employees will receive a notice of settlement with a settlement check by regular mailing from
14 administrator ILYM Group, Inc. (Dec. Suren, ¶ 20; Exhibit C, ¶ 11 a. and b.)

15 **IV. ARGUMENT**

16 "The superior court shall review and approve any settlement of any civil action filed" under
17 PAGA. Lab. Code § 2699(1)(2).

18 **A. The Settlement is Fair, Adequate, and Reasonable.**

19 In reviewing a PAGA settlement, a court must "evaluate a PAGA settlement to determine
20 whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law
21 violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA,*
22 *Inc.*, 72 Cal.App.5th 56, 77 (2021). While not *required* to do so, a court may also consider the strength
23 of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of more
24 litigation, and the settlement amount. *Id.*

25 Here, the Settlement is fair, adequate, and reasonable for several reasons.

26 First, it was reached after arm's-length negotiations at mediation with Steve Pearl. (Dec. Suren,
27 ¶ 21.)
28

1 Second, it was reached after extensive investigation and review of PDI's business records,
2 including timekeeping records, wage statements, scheduling data, job descriptions, and interviews with
3 multiple former employees. (*Id.*)

4 Third, Plaintiff's Counsel is experienced in wage and hour class actions and PAGA cases. (*Id.*, ¶
5 22.)

6 Fourth, the GSA is proper given the strengths and weaknesses of Plaintiff's case. (Dec. Suren,
7 ¶¶ 12-15, and 23.) Again, while the claims were initially valued at \$2,925.00 (maximum exposure), the
8 realistic exposure was closer to \$300,000.00, given the issues explained in Section III(B) of this Motion.
9 (*Id.*, ¶ 23.)

10 Fifth, the risk, expense, and complexity of further litigation all weigh in favor of settlement. That
11 is because the nature of the claims, the potential length and expense of the case, and procedural hurdles
12 (dealing with motion practice, manageability issues at trial, and potential appeals), presented significant
13 risk and expenses; and naturally rendered the case significantly complex. (*Id.*, ¶ 24.)

14 Sixth, the recovery of \$100,000.00 is approximately 33% of Plaintiff's calculation of realistic
15 recovery, which, given the uncertainty and risk involved in the case, is reasonable. (*Id.*, ¶ 25.)

16 **B. The Settlement Complies with PAGA Procedure.**

17 A party cannot bring a PAGA action until it has met the following requirements: (1) provide
18 written notice to the LWDA of the employer's alleged Labor Code violations, with a certified mail copy
19 sent to the employer; (2) at least 65 calendar days have passed without notice by the LWDA; and (3)
20 submit a stamped copy of the PAGA complaint to the LWDA within 10 days of the commencement of
21 the PAGA action. Lab. Code §§ 2699(1)(1) and 2699.3(a).

22 "The proposed settlement shall be submitted to the agency at the same time that it is submitted
23 to the court." Lab. Code § 2699(1)(2).

24 Here, the Settlement complies with the required procedure.

25 First, Plaintiff submitted the Notice to the LWDA on June 05, 2023. (Dec. Suren, ¶ 4.) The Notice
26 identifies the Labor Code sections allegedly violated by PDI, and the facts and theories supporting the
27 allegations. (*Id.*; Exhibit A.)
28

1 Second, On August 30, 2023, Plaintiff filed her First Amended Complaint alleging representative
2 claims under PAGA. (Dec. Suren, ¶ 6) The same day, Plaintiff submitted a stamped copy of the First
3 Amended Complaint to the LWDA as well. (*Id.*)

4 Thus, the Settlement complies with the PAGA procedure.

5 **C. The Attorney's Fees and Costs are Reasonable.**

6 A party bringing claims under PAGA is entitled to reasonable attorney's fees and costs. Lab.
7 Code § 2699(g)(1).

8 Here, Plaintiff seeks \$35,000.00, in attorney's fees; \$10,962.00, in litigation costs, including
9 mediation fees; and \$7,500.00 in administration expenses. (Dec. Suren, ¶¶27-31; Exhibit D, Attorney's
10 Fees Invoices.)

11 The fees were necessary because they were all required steps for moving this case forward, e.g.,
12 preparing and filing the LWDA Notice, preparing and filing the Complaint, reviewing mediation data,
13 conducting an exposure analysis, speaking with witnesses, investigating PDI, attending mediation, and
14 preparing and finalizing the settlement documents and this Motion. (Dec. Suren, ¶ 28.)

15 The fees were reasonable because (1) Plaintiff's Counsel, a highly experienced litigator,
16 performed all legal work himself, without any duplicity or overlap in work; (2) Plaintiff's Counsel's
17 hourly rate of \$650 is fair and reflective of his experience, skills, and knowledge; and (3) this was a
18 complex case impacting 192 individuals, with seven-figure potential exposure. (*Id.*, ¶ 29.)

19 The litigation costs were reasonable and necessary because they were all required expenses in
20 this case. (Dec. Suren, ¶ 31.) They consisted of (a) the \$75.00 filing fee for the LWDA Notice; (b) the
21 \$1,525.00 in filing fees (Complaint filing fees, complex fees, and the One Legal fee); (c) the \$70.00
22 filing fee for the certificate of assignment; (d) \$270.00 in filing fees for the Proof of Service of
23 Complaint, and for filing the CMC Statement and First Amended Complaint; and (e) \$9,012.50 in
24 mediation fees. (*Id.*)

25 The administration expenses were reasonable and necessary (a) third-party administration is the
26 most efficient way to ensure the Aggrieved Employees receive the notice of settlement and funds; and
27 (b) based on Plaintiff's Counsel's experience, the administrator, ILYM Group, Inc., provides competitive
28

1 and reasonable pricing for administration. (*Id.*, ¶ 32.)

2 Thus, the attorney's fees and costs were reasonable and necessary.

3 **V. CONCLUSION**

4 For the foregoing reasons, the Court should approve the Settlement and award attorney's fees,
5 costs, and expenses to Plaintiff.

6 Dated March 08, 2024

GONZALEZ WEERASURIYA, APC

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10 Suren N. Weerasuriya
11 Attorneys for Plaintiff,
12 Candise Hill
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PROOF OF SERVICE

I declare that I am employed in Orange County, California. I am over the age of 18 years. The name and address of my business is Gonzalez Weerasuriya, APC; 206 W. 4th Street, Suite 340, Santa Ana, California 92701.

On March 10, 2024, I served **MOTION FOR ORDER APPROVING PAGA SETTLEMENT AND AWARDING ATTORNEY'S FEES AND COSTS; DECLARATION OF SUREN N. WEERASURIYA; AND [PROPOSED] ORDER** on the parties listed below by electronically serving the documents in full compliance with the California Rules of Court and sections 1010.6(a)(2)(A)(ii) and (e)(1) the Code of Civil Procedure, pursuant to a court order requiring e-service of all documents in this case.

Fisher & Phillips LLP
Shannon N. Cahill
2050 Main Street, Suite 1000
Irvine, California 92614
scahill@fisherphillips.com

Executed on March 10, 2024, at Santa Ana, California.



Suren N. Weerasuriya