

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NAOMI HUDSON,

Plaintiff,

vs.

WILHELM LLC, and Does 1–50,

Defendant.

Case No. 4:24-cv-01602-YGR

**ORDER APPROVING SETTLEMENT OF
CLAIMS BROUGHT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT AND
JUDGMENT**

Re: Dkt. No. 33

Plaintiff Naomi Hudson filed this action in state court on December 15, 2023, asserting various wage and hour causes of action, including representative claims under California’s Private Attorneys General Act (“PAGA”) against defendant Wilhem LLC. After extensive discovery, the parties have agreed to settle plaintiff’s individual claims and have negotiated a settlement releasing the PAGA claims for civil penalties as to all individuals who are, or previously were, employed by the defendant during the PAGA period, which is defined as June 19, 2019, to the date of settlement approval.¹

Now, pending before the Court is the parties’ Unopposed Motion for Approval of Settlement of Claims Brought Under PAGA (“Stipulation,” Dkt. No. 33), as well as the joint memorandum of points and authorities in support incorporated therein. Having reviewed the Motion, the PAGA Settlement, the papers submitted, and the pleadings in this action, and for the reasons below, the Court hereby **GRANTS** the Motion and **APPROVES** the PAGA Settlement.

¹ The Private Attorney General Act (Labor Code Section 2298 *Et Seq.*) Settlement Agreement and Release (“PAGA Settlement”) is attached as Exhibit 1 to the Declaration of Vilmarie Cordero in Support of the Stipulation for Approval of Settlement of Claims Brought Under PAGA (“Cordero Declaration”). (Dkt. No. 33-2.)

DISCUSSION

A. Settlement Approval

“A PAGA representative action is . . . a type of qui tam action’ in which a private plaintiff pursues ‘a dispute between an employer and the state Labor and Workforce Development Agency’ (‘LWDA’) on behalf of the state.” *Haralson v. U.S. Aviation Servs. Corp.*, 383 F.Supp.3d 959, 971 (N.D. Cal. 2019) (quoting *Iskanian v. CLS Transp. L.A., LLC*, 59 Cal.4th 348, 382, 384 (2014)). While PAGA actions do not require class certification, the Court must “review and approve” the settlement of a PAGA action. *Id.*; Cal. Lab. Code § 2699(1)(2). This review is intended to ensure that “any negotiated resolution is fair to those affected.” *Williams v. Superior Court*, 3 Cal.5th 531, 549 (2017). “[A] trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGAs purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021). Courts may consider a non-exhaustive list of factors including “[1] the strength of plaintiffs’ case, [2] the risk, expense, complexity and likely duration of further litigation, [3] the risk of maintaining class action status through trial, [4] the amount offered in settlement, [5] the extent of discovery completed and the stage of the proceedings, [6] the experience and views of counsel, [7] the presence of a governmental participant, and [8] the reaction of the class members to the proposed settlement.” *Id.* at 76 (citation omitted). Those factors are considered in turn.

Strength of Plaintiff’s Case: Plaintiff’s counsel initially estimated that initial, maximum exposure was approximately \$17,319,546, which included recovery for both union and nonunion employees. (Cordero Decl. ¶ 72.) However, defendant had presented numerous defenses and arguments as to why that estimate was overstated, including without limitation, that plaintiff faced significant preemption issues related to the Collective Bargaining Agreement (CBA), arbitration clauses, and whether plaintiff could show that aggrieved employees were similarly situated. (*Id.* ¶ 76.) Plaintiff also recognized that it would be difficult to establish at trial that the alleged violations occurred, and that there was a pattern or practice of noncompliance. (*Id.* ¶ 77.) Having considered those limitations, including with the assistance of a mediator, plaintiff’s counsel

determined that a \$1,225,000 settlement was appropriate. (*Id.* ¶ 85.) Ultimately, the very essence of a settlement is compromise, i.e., the “yielding of absolutes and an abandoning of highest hopes.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). In light of facilitating compromise, plaintiff’s assessment of the case is reasonable.

Risk and Expense of Further Litigation: There is no doubt that the settlement avoids considerable costs of, risks, and burdens of continued litigation. Plaintiff’s expenses to date have been significant, including over 610 hours of work with an estimated lodestar of \$300,912. (*Id.* ¶ 113.) Prior to mediation, both parties engaged in extensive informal and formal discovery, including motion practice in state and federal court. As the parties acknowledged, additional depositions, expert reports, and summary judgment practice and trial readiness was looming. (Mot. at 13.) Settling the case at this juncture avoids those costs as well as the risks identified by plaintiff.

Risk of Maintaining Class Action: This factor is less significant since the case is not a class action and has not proceeded to class certification. However, the parties’ motion acknowledges that it may have been difficult to maintain a class given the individualized inquiries that would have been undertaken to prosecute it fully. (Cordero Decl. ¶ 76.)

Amount or Value Offered: The total amount offered in the proposed settlement is \$1,225,000, or approximately 9% of the maximum potential exposure. (PAGA Settlement §§ 1.9, 3.1.) As required by statute, 75% of this amount (\$918,750) will be distributed to LWDA and 25% (\$306,250) will be distributed to members of the PAGA settlement. (*Id.* at § 3.1; Mot. at 1.) Based upon the Court’s review of the papers, this will result in an average payment of \$6.84 per period, or about \$312 per employee. (Cordero Decl. ¶ 83.) The parties selected APEX² to administer the settlement and attorneys’ fees and costs. (*Id.* ¶ 98; PAGA Settlement § 4.1.) Attorneys’ fees and costs will be distributed from the Labor and Workforce Development Agency (LWDA) settlement amount, with LWDA to receive approximately \$485,966.92. Plaintiff

² The parties have selected APEX Class Action LLC (“APEX”) as the third-party administrator. APEX has experience administering PAGA settlements and is a reasonable selection. *See, e.g., Norton v. Strategic Staffing Sols., L.C.*, No. 3:23-CV-06648-JSC, 2025 WL 306220 (N.D. Cal. Jan. 27, 2025) (using Apex as PAGA administrator).

calculates that litigation expenses total \$9,559.75, APEX costs total \$14,890, and attorneys' fees of \$408,333.33. (Cordero Decl. ¶ 98.) The settlement agreement's release applies to PAGA civil penalties and releases defendant from all complaints that were alleged, or could have been alleged, in the complaint. (PAGA Settlement § 5.1.) It is also significant that the amount was reached through arms-length negotiations with two mediators. While it is clear that courts should not rubber stamp settlements, there is an initial presumption of fairness when the settlement was negotiated at arm-length by experienced counsel after extensive discovery. *Kullar v. Foot Locker Retail Inc.*, 168 Cal.App.4th 116, 130 (2008). LWDA also has not objected to the terms of the settlement despite notice.

Discovery Completed: Again, as noted above, discovery in this case was extensive. As represented by counsel, the parties exchanged key data points, including the number of PAGA settlement members, the average number of pay periods worked, sample statements, and wage and hour policies, which allowed plaintiff to conduct her independent investigation and valuation of her claims. (Cordero Decl. ¶¶ 39–54.) That discovery causes plaintiff to have a “clear view of the strengths and weaknesses of [her] case.” *Chun-Hoon v. McKee Foods Corp.*, 716 F.Supp.2d 848, 852 (N.D. Cal. 2010). Settlement is clearly informed and not premature.

Experience and Views of Counsel: “Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation.” *Linney*, 151 F.3d at 1242. Plaintiff's counsel has over 20 years in practice, including an extensive background litigating wage and hour cases involving representative PAGA claims. (Cordero Decl. ¶¶ 8–11.) The selected mediator that assisted the parties in reaching the settlement at arms-length was an experienced wage and hour mediator. (PAGA Settlement § 2.7.) This experience factors strongly in favor of approval.

Government Participation: LWDA was provided with notice of plaintiff's complaint as well as the settlement. (Cordero Decl. ¶ 5.) No objections have been received and the agreement contemplates the 75% payment to LWDA as required by California Labor Code section 2699(i).

Reactions of Class Members: Non-party aggrieved workers in a PAGA case are entitled to no notice and have no opt out rights. *Arias v. Superior Court*, 46 Cal.4th 969 (2009).

One individual, a non-party aggrieved employee named Jose Lainez, did object, arguing that “the settlement improperly extends more than four years before Hudson’s PAGA notice” and plaintiff “who is not a union member, lacks standing to pursue PAGA penalties on behalf of employees who were union members.” (Dkt. No. 36.) The objector informs the Court that he is involved in parallel litigation and arbitration, and that this settlement attempts to release his claims. (*Id.*) The Court, however, is not required to consider those objections under recent California Supreme Court precedent. *Turrieta v. Lyft, Inc.*, 16 Cal.5th 664, 716 (2024) (“[A]n aggrieved employee’s status as the State’s proxy in a PAGA action does not give that employee the right to seek intervention in the PAGA action of another employee, to move to vacate a judgment entered in the other employee’s action, or to require a court to receive and consider objections to a proposed settlement of that action.”)

Even if the Court were to consider the objector’s arguments, they are without merit under state law. As to the objector’s limitations argument, plaintiff provided the LWDA with notice of its amended class and time period definition, running from June 19, 2019 to the present. (Cordero Declaration, Ex. 5.) Moreover, although a one-year limitations period applies to PAGA claims, defendant agreed to toll the limitations period, which a defendant may waive as an affirmative defense. *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal.App.5th 521, 542–43 (2021) (“As such, it was within AAM’s discretion to waive its statute of limitations defense so Amaro could release class members’ PAGA claims dating back to December 2010. And even if PAGA’s statute of limitations were jurisdictional, that would not bar the court from approving a release of claims outside the limitations period.”) Nor has the objector shown that there is any meaningful difference between union and non-union members or that the plaintiff does not have standing as an aggrieved party, who filed before the 2024 PAGA amendments, under California Labor Code § 2699(c). The California Supreme Court has squarely rejected the objector’s position here, holding that “PAGA standing is not inextricably linked to the plaintiff’s own injury. Employees who were subjected to at least one unlawful practice have standing to serve as PAGA representatives even if they did not personally experience each and every alleged violation.” *Kim*

1 *v. Reins Int'l California, Inc.*, 9 Cal. 5th 73, 459 P.3d 1123 (2020).³

2 Based on the foregoing, the Court finds that the PAGA settlement is fair, adequate, and
3 reasonable in light of PAGA's policies and purposes. Accordingly, the Court **APPROVES** the
4 parties' proposed PAGA Settlement.

5 **B. Attorneys' Fees**

6 Under PAGA, a plaintiff is entitled to recover reasonable attorneys' fees, expenses, and
7 costs. PAGA, however, does not provide a specific standard for evaluating attorney's fees in
8 connection with a settlement of PAGA claims. *Ramirez v. Benito Valley Farms, LLC*, 2017 WL
9 3670794 (N.D. Cal. Aug. 25, 2017). The Court analyzes an attorneys' fee request based on either
10 the "lodestar" method or a percentage of the total settlement fund made available to the class,
11 including costs, fees, and injunctive relief. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th
12 Cir. 2002). The Ninth Circuit encourages courts to use another method as a cross-check in order
13 to avoid a "mechanical or formulaic approach that results in an unreasonable reward." *In re*
14 *Bluetooth*, 654 F.3d at 944–45 (citing *Vizcaino*, 290 F.3d at 1050–51.)

15 Under the lodestar approach, a court multiplies the number of hours reasonably expended
16 by the reasonable hourly rate. *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir. 2016) ("[A] court
17 calculates the lodestar figure by multiplying the number of hours reasonably expended on a case
18 by a reasonable hourly rate. A reasonable hourly rate is ordinarily the 'prevailing market rate [] in
19 the relevant community.'"). Under the percentage-of-the-fund method, courts in the Ninth Circuit
20 "typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing
21 adequate explanation in the record of any 'special circumstances' justifying a departure." *In re*
22 *Bluetooth*, 654 F.3d at 942 (citing *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d
23 1301, 1311 (9th Cir. 1990)). The benchmark should be adjusted when the percentage recovery
24 would be "either too small or too large in light of the hours devoted to the case or other relevant
25 factors." *Six (6) Mexican Workers*, 904 F.2d at 1311. When using the percentage-of-recovery
26 method, courts consider a number of factors, including whether class counsel "achieved

27
28 ³ The objector has not cited any authority that suggests that cases involving unions or
collective bargaining agreements would be treated differently from other aggrieved employees.

1 exceptional results for the class,’ whether the case was risky for class counsel, whether counsel’s
 2 performance ‘generated benefits beyond the cash settlement fund,’ the market rate for the
 3 particular field of law (in some circumstances), the burdens class counsel experienced while
 4 litigating the case (e.g., cost, duration, foregoing other work), and whether the case was handled
 5 on a contingency basis.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir.
 6 2015) (quoting *Vizcaino*, 290 F.3d at 1047-50. “[T]he most critical factor [in determining
 7 appropriate attorney’s fee awards] is the degree of success obtained.”) *Hensley v. Eckerhart*, 461
 8 U.S. 424, 436 (1983).

9 The lodestar figure is 610 hours, billed at rates from \$1,150 to \$260 per hour, for a total of
 10 \$300,912. Plaintiffs claim hourly rates that are commensurate with their experience and with the
 11 legal market in this district, although those rates appear to be on the high end. On the basis of
 12 those purported hourly rates and hours worked, counsel’s requested lodestar multiplier is just
 13 under 1.36, for a total of requested fees of \$408,333.33. Although counsel provides the number of
 14 hours worked per attorney (along with their hourly rate and experience), counsel does not provide
 15 billings records or a detailed account of how those hours were spent. The Court cannot determine
 16 from the information provided to it, however, whether those hours and rates were reasonably
 17 incurred. It would not be uncommon for lodestar to be padded and include inefficiencies of up to
 18 ten percent. That ten percent cut would not be unreasonable, thus reducing the lodestar from
 19 \$300,912 to \$270,820.80. That said, the lodestar provided does not include any post-motion fees.

20 In general, the Court finds that Class Counsel represented their clients with skill and
 21 diligence and obtained a sufficient result for the class, albeit significantly lower than originally
 22 anticipated, taking into account the possible outcomes and risks of proceeding trial.

23 Under the percentage-of-recovery method, the parties agreed to a settlement value of
 24 \$1,225,000, and plaintiff’s counsel requests a \$408,333.33 settlement. The attorneys’ fees
 25 requested would come to 33.33% of this total. That amount is above the 25% Ninth Circuit
 26 benchmark. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011) (“Applying
 27 this calculation method, courts typically calculate 25% of the fund as the ‘benchmark’ for a
 28 reasonable fee award, providing adequate explanation in the record of any ‘special circumstances’

justifying a departure.”). After reviewing the results achieved for the class, the Court believes that something closer to the Ninth Circuit’s 25% benchmark would be more appropriate. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011) (“Applying this calculation method, courts typically calculate 25% of the fund as the ‘benchmark’ for a reasonable fee award, providing adequate explanation in the record of any ‘special circumstances’ justifying a departure.”)

Based on the foregoing, an award of 29% (which splits the difference between the Ninth Circuit and California’s benchmarks) would result in an award of attorneys’ fees in the amount of \$355,250 which is over the proffered lodestar, and about 1.31 percent of an adjusted lodestar. The Court finds this amount to be fair, reasonable, and adequate given the result.

The Court has reviewed the itemized litigation costs and finds that those costs of \$9,559.75 are reasonable.

CONCLUSION

For the reasons stated above, it is **HEREBY ORDERED** that:

1. The proposed PAGA Settlement is **APPROVED** pursuant to California Labor Code section 2699(l);
2. Distribution of the PAGA Settlement amount shall comply with the terms of the PAGA Settlement;
3. APEX Class Action LLC is **APPOINTED** as the third-party settlement administrator consistent with the terms of the PAGA Settlement, including with costs being paid by defendant separately from the settlement fund;
4. Plaintiff’s counsel shall receive \$355,250 in attorneys’ fees and \$9,559.75 in litigation costs;
5. Plaintiff shall submit this Order and Judgment to the LWDA within 10 calendar days of entry of this Order and Judgment;
6. Final Judgment in this action is entered, along with the settlement agreement; and
7. The Court retains jurisdiction consistent with the terms of the PAGA Settlement for a period of one year.

This Order terminates Docket Number 33 and closes the case.

IT IS SO ORDERED.

Dated: July 2, 2025


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE

United States District Court
Northern District of California