

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA**

Dated and Entered: 04/30/2025
Judicial Officer: Thomas P Anderle
Deputy Clerk: Maria Vidal
Bailiff/Court Officer: Brandon Thillman
Court Reporter: Lindy DeBoer

Time: 10:00 AM

Dept: SB Dept 3
Case No: 24CV03864

Ronald Beardsley vs Alisal Properties et al

Parties Present:

Elliot Siegel Plaintiff's Attorney (via Zoom)
Leslie Joyner Defendant's Attorney (via Zoom)

NATURE OF PROCEEDINGS: Motion: Approval of Settlement

Counsel presented argument.

The Court adopted the tentative ruling as follows:

HEARING

Plaintiff's Unopposed Motion For Approval Of Settlement Pursuant To The Private Attorneys General Act of 2004 ("PAGA")

RULING

For all reasons discussed herein, the motion of plaintiff for approval of settlement pursuant to the Private Attorneys General Act of 2004 or "PAGA" is DENIED.

Background

On July 11, 2024, plaintiff Ronald Beardsley filed a class action complaint against defendants Alisal Properties doing business as Alisal Ranch (the Ranch) and James Hiland Jackson (Jackson) (collectively, defendants), alleging eleven causes of action: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or premium pay in lieu thereof; (4) failure to provide rest periods or premium pay in lieu thereof; (5) failure to reimburse necessary business expenses; (6) violation of sick leave laws; (7) failure to provide and maintain accurate records; (8) unlawful deductions from gratuities earned; (9) conversion; (10) failure to pay wages when due during employment and at separation; and (11) violation of California's Unfair Competition Law.

On August 21, 2024, the Ranch lodged a stipulation (the Stipulation) executed by the parties' counsel of record. Pursuant to the terms of the Stipulation, the parties agreed that plaintiff's claims are subject to binding arbitration under an agreement signed by the parties which also includes a class action waiver. (Stip., Recitals B-C & G.) Further, the parties agreed that plaintiff would dismiss the class claims asserted in the complaint and amend the complaint to allege claims under Labor Code section 2698 et seq. (the Labor Code Private Attorneys General Act or PAGA). (*Id.* at Recital G & ¶¶ 1-2.)

On August 22, 2024, the Court ordered a stay of the litigation based on a separate stipulation of the parties to engage in early mediation.

On August 30, 2024, the parties lodged a stipulation supported by the declaration of plaintiff's counsel, Elliot Siegel (Siegel), for the dismissal of the class claims alleged in the complaint.

On September 3, 2024, the Court entered an order dismissing the class and non-representative claims alleged in the complaint, and directing plaintiff to, on or before September 16, 2024, file a first amended complaint for civil penalties under PAGA.

On September 18, 2024, plaintiff filed a first amended complaint (the FAC) against defendants, alleging one cause of action for penalties under PAGA. As alleged in the operative FAC:

The Ranch is in the hotel and resort business, with its principal place of business located at 1054 Alisal Road in Solvang, California (the premises). (FAC, ¶ 7.) Jackson is the Chief Financial Officer of the Ranch. (FAC, ¶ 8.) Plaintiff worked for defendants as an hourly, non-exempt employee from November 2003 to June 24, 2024. (FAC, ¶ 6.)

During plaintiff's employment with defendants, defendants required its employees to monitor radios and cellphones while the employees were on a meal or rest period, interrupted meal and rest periods to discuss work-related matters, prohibited or prevented employees from taking breaks when the workload was high or locations were understaffed, and prohibited employees from leaving the premises during breaks. (FAC, ¶¶ 14-17.) Defendants also required employees to, while off the clock, respond to and assist guests and remain on-call in case of emergencies, and failed to pay to employees the gratuities which defendants collected from its customers. (*Id.* at ¶¶ 19, 21 & 23-25.)

On December 20, 2024, the parties lodged a joint notice stating that they have resolved this matter on a representative-wide basis and were finalizing the terms of a settlement agreement, and requesting a hearing date for a motion for preliminary approval of the parties' settlement.

On December 23, 2024, the Court entered an order scheduling a hearing for the forthcoming motion for preliminary approval of the settlement on February 19, 2025.

On January 22, 2025, plaintiff filed an unopposed motion (the first approval motion) for an order approving the terms of a Joint Stipulation of Settlement of PAGA Representative Action (the Settlement Agreement) entered into by plaintiff and defendants.

On February 19, 2025, the Court entered a Minute Order adopting its tentative ruling on the first approval motion as follows:

"There exist procedural problems with the present motion.

Subject to exceptions which do not apply here, under California Rules of Court, rule 3.1113(d), "no opening ... memorandum may exceed 15 pages." (Cal. Rules of Court, rule 3.1113(d).) (**Note:** Undesignated rule references herein shall be to the California Rules of Court, unless otherwise indicated.) The memorandum submitted in support of the present motion is 29 pages, which exceeds the page limit set forth in rule 3.1113(d) by nearly 100 percent of the prescribed page limit. The supporting memorandum also fails to include an opening summary of argument as required under rule 3.1113(f).

"A party may apply to the court ex parte but with written notice of the application to the other parties, at least 24 hours before the memorandum is due, for permission to file a longer memorandum. The application must state reasons why the argument cannot be made within the stated limit." (Cal. Rules of Court, rule 3.1113(e).) The Court's records reflect that plaintiff did not file an appropriate application with the Court requesting permission to file a longer memorandum.

Further, there is no information appearing in the memorandum submitted by plaintiff which would indicate or suggest that plaintiff's arguments, many of which are repetitive, could not have been made within the

limit stated in rule 3.1113(d). For example, plaintiff devotes nearly half of the opening memorandum to the issue of reasonableness of the attorney's fees and litigation costs claimed by plaintiff. (Memorandum at pp. 15-28.) The Court's review of the motion indicates that these arguments could, and should, have been advanced in fewer pages.

In addition, California Rules of Court, rule 2.100 et seq. "prescribe the form and format of papers to be filed in the trial courts. (Cal. Rules of Court, rule 2.10(b).) Rule 2.104 requires that "all papers filed must be prepared using a font size not smaller than 12 points." (Cal. Rules of Court, rule 2.104.) The Court's review of the opening memorandum submitted in support of the motion shows that it is prepared using a font size which is 11.5 points, in violation of rule 2.104. The use of a smaller font size than permitted by court rules also causes the memorandum to further exceed the page limit prescribed in rule 3.1113(d).

The opening memorandum also includes 13 footnotes which are single-spaced and occupy approximately 43 lines of text. The Court's approximate calculations show that the prolific use of footnotes which are prepared in a font size smaller than permitted by rule 2.104 adds an additional 2 pages of text to the opening memorandum.

In addition, while the use of footnotes can, in limited circumstances, be useful, the unsparing use of footnotes interrupts the flow of the text and is distracting. The use of footnotes to cite relevant authority (or state significant points) may also result in the cited authority being overlooked or ignored. (See, e.g., *Holden v. City of San Diego* (2019) 43 Cal.App.5th 404, 419-420 [use of footnotes for stating contentions or substantive legal arguments is disfavored].) Furthermore, the use of footnotes to cite to relevant authority causes the Court to expend more time than would typically be required to review the papers, resulting in a waste of scarce judicial resources.

"A memorandum that exceeds the page limits of these rules shall be filed and considered in the same manner as a late-filed paper." (Cal. Rules of Court, rule 3.1113(g).) Under rule 3.1300(d), the Court may, in its discretion, to refuse to consider a late-filed paper. Considering that there is nothing in the present record to indicate or suggest that plaintiff's position could not have been advanced in fewer pages, together with the added burden plaintiff's violations of court rules has placed upon scarce judicial resources, under the circumstances present here the Court will exercise its discretion under rule 3.1113 to not consider the memorandum. Further, the Court will order the memorandum stricken from the record.

As the Court will strike the memorandum, the motion is without factual or legal support as required under rule 3.1113(a). On this basis, the Court will deny the motion.

The Court's ruling herein is without prejudice to the filing of a procedurally appropriate motion for preliminary approval of the Settlement Agreement by plaintiff in the future, or an appropriate application for permission to file a longer memorandum. Though the Court's denial of the present motion is without prejudice, the Court notes there is nothing in the present record to show or suggest that there exists good cause to prescribe a shorter time for the filing and service of any future motion for preliminary approval of the Settlement Agreement or any basis for granting relief ex parte with respect to the time for filing and serving any future similar motion. Therefore, the Court expects that any future motion for preliminary approval of the Settlement Agreement will be filed and served within the time specified in Code of Civil Procedure section 1005. (See, e.g., Cal. Rules of Court, rules 3.1200 et seq. & 3.1300(b).)

Though the Court will decline to consider the present motion, there also appear to exist substantive deficiencies which also justify the denial of the motion. For example, in the FAC, plaintiff asserts that he brings this action solely in a representative capacity under PAGA, does not bring this action in any individual capacity, and does not seek to recover anything other than civil penalties to the extent permitted under PAGA. (FAC, ¶ 3.) Notwithstanding these assertions, plaintiff requests that the Court approve a service award in the amount of \$12,500, to be paid to plaintiff from the gross settlement

amount pursuant to the terms of the Settlement Agreement. (See Siegel Decl., ¶ 102 & Exh. 1 [Settlement Agreement], ¶ 31; Pl. Decl., ¶ 23; Memorandum at pp. 28-29.)

“A PAGA claim is legally and conceptually different from an employee’s own suit for damages and statutory penalties. An employee suing under PAGA ‘does so as the *proxy or agent of the state’s labor law enforcement agencies*.’ [Citation.] Every PAGA claim is ‘a dispute between an employer and the *state*.’ [Citations.] Moreover, the civil penalties a PAGA plaintiff may recover on the state’s behalf are distinct from the statutory damages or penalties that may be available to employees suing for individual violations. [Citation.] Relief under PAGA is designed primarily to benefit the general public, not the party bringing the action.” (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 81, original italics.)

Unlike enhancement or incentive awards which may be available to a named plaintiff in a class action lawsuit (see *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 806), plaintiff fails to cite, and the Court is unaware of, any legal authority authorizing a representative enhancement payment or service award in a PAGA action, such as the service award sought by plaintiff in the present motion.

Further, civil penalties recovered by an aggrieved employee under PAGA must be distributed as provided in Labor Code section 2699. (See Lab. Code, § 2699, subd. (m) [requiring 65 percent of recovered civil penalties to be distributed to the Labor and Workforce Development Agency and 35 percent to aggrieved employees].) Plaintiff sets forth no authority under which the distributions set forth in Labor Code section 2699 may be reduced by any incentive or service award to plaintiff. For these reasons, there exist sufficient grounds to deny the motion to the extent the Settlement Agreement provides for a service award to plaintiff.

In addition, and as noted above, the supporting memorandum includes repetitive and unnecessarily lengthy factual and legal arguments. This suggests to the Court that there exists inefficiency rather than oversight in the preparation of a concise memorandum in support of the position advanced by plaintiff. The ostensible inefficiencies and duplication which exist in the memorandum also raise concerns with respect to whether or not there exists inefficiency or duplication in any other aspect of this litigation and, accordingly, the overall reasonableness of the attorney’s fees sought by plaintiff. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 [“inefficient or duplicative efforts” are not subject to compensation].)

The Court expects that plaintiff will address the deficiencies and issues noted above, and any other issues or deficiencies that may exist which are not addressed herein, in any future motion for preliminary approval of the Settlement Agreement.”

For all reasons discussed in the Minute Order set forth above, the Court denied the first approval motion, without prejudice to any future filing of an appropriate noticed motion for approval of the Settlement Agreement in accordance with the Court’s ruling.

On February 19, 2025, plaintiff filed a second unopposed motion for approval of the Settlement Agreement. The motion is supported by a declaration of Siegel, and is accompanied by a copy of the Settlement Agreement at issue. (Siegel Decl., Exh. 1.)

Siegel declares that on January 2, 2025, plaintiff gave notice of the Settlement Agreement to the LWDA, and that the LWDA had not responded as of the date the present motion was filed. (Siegel Decl., ¶¶ 3-4 & Exhs. 1 [attachment 2B] & 6.) Siegel also asserts that plaintiff worked for the Ranch as an hourly, non-exempt employee from November 2003 to June 24, 2024, and that plaintiff and other non-exempt employees of the Ranch were subject to the same policies, practices, and procedures governing the control and payment of wages earned and hours worked. (*Id.* at ¶¶ 17-18.)

Siegel explains that this lawsuit challenges distinct wage and hour practices which give rise to plaintiff’s claims for penalties under PAGA. (Siegel Decl., ¶ 32.) The practices which plaintiff contends are unlawful

include: policies under which the Ranch collected a mandatory 22 percent charge or “Ranch Fee”, plaintiff contends constitutes a gratuity on room reservations, and which the Ranch failed to pay to employees; policies which required employees to remain on-duty during meal and rest breaks to monitor and respond to calls and guests; policies which did not permit employees to leave the premises during rest breaks; and policies which resulted in the failure by the Ranch to pay overtime wages including at the time of an employee’s discharge. (*Id.* at ¶¶ 32-49.) Based on PAGA provisions which became effective in June 2024, Siegel states that plaintiff has abandoned certain derivative claims for PAGA penalties. (*Id.* at ¶ 50.)

According to Siegel, the Ranch has, among other things, denied that this action is appropriate for representative treatment for any purpose other than settlement, alleged compliance with the requirements of the Labor Code, and asserted various defenses including with respect to manageability issues and whether the Ranch Fee constitutes a gratuity. (Siegel Decl., ¶¶ 51-65.)

Siegel further asserts that the Ranch contends that penalties under PAGA must be “capped”, are not subject to stacking, and are subject to adjustment to the extent the Ranch did not act willfully or with an intent to violate any provision of the Labor Code. (Siegel Decl., ¶¶ 66-69.)

Siegel believes that there exists a significant risk based on the defenses asserted by the Ranch, including respect to whether the Ranch acted willfully or knowingly. (Siegel Decl., ¶¶ 69-73.)

Siegel further explains that, after plaintiff filed the FAC, the parties engaged in discussions regarding the potential for settlement. (Siegel Decl., ¶ 24.) As part of these discussions, the Ranch informally produced data and documents which included policy-related documents, what Siegel describes as a “statistically significant sampling” of the time and payroll records of 25 percent of the “aggrieved employees” (which the Court understands to refer to all employees who suffered each of the violations alleged in the FAC), records pertaining to the Ranch Fee including the percentage of the Ranch Fee that was distributed to aggrieved employees, information relevant to potential damages including as to shifts worked and total pay periods for the class, and other aggregate data and information related to the Ranch’s defenses and contentions. (*Id.* at ¶¶ 20, 25 & 32.)

According to Siegel, the parties participated in an all-day mediation on December 17, 2024, with Abe Melamed, who Siegel describes as “a well-respected mediator in the field of employment law and wage-and-hour class actions.” (Siegel Decl., ¶ 26.) Siegel asserts that, based on the Ranch’s representations and documents produced during mediation, there exist an estimated 475 aggrieved employees (the Aggrieved Employees) who worked a total of 13,000 pay periods during the times relevant to this action. (*Id.* at ¶ 20.) Siegel declares that this representation was material to plaintiff’s decision to enter into the Settlement Agreement. (*Ibid.*)

For purposes of evaluating settlement, plaintiff assumed a 100 percent violation rate across the relevant time period under PAGA with respect to the number of Aggrieved Employees noted above. (Siegel Decl., ¶ 81.) Plaintiff’s expert determined that the Ranch’s maximum exposure to or liability for penalties under PAGA during the relevant time period is \$1.3 million. (*Ibid.*) Based on the risks described above, Siegel applied discounts to the Ranch’s maximum exposure which resulted in a total “realistic” maximum exposure to penalties under PAGA in the amount of \$394,875. (*Id.* at ¶¶ 82-88.)

When analyzing the Ranch’s exposure to penalties under PAGA, plaintiff considered whether the penalties under PAGA may be appropriately “stacked”, the rate at which penalties would be calculated, and whether the Court might exercise its discretion to reduce the penalties. (Siegel Decl., ¶¶ 74-78.) Plaintiff also incorporated the defenses asserted by the Ranch into his risk assessment to determine the appropriateness of the Settlement Agreement. (*Id.* at ¶ 51-65.)

Siegel also asserts that he also considered the possibility of unfavorable decisions on summary judgment and at trial, including with respect to the penalties awarded, the possibility of an appeal, the risk

of plaintiff not prevailing on one or more of the underlying claims due to factors such as the Ranch's ability to distinguish this case from existing cases, the risk that the penalties available under PAGA might be reduced due to difficulties in establishing bad faith by the Ranch, and the costs and time of continued litigation versus an immediate and guaranteed settlement. (Siegel Decl., ¶¶ 90-91.)

The mediation resulted in a "Mediator's Proposal" to resolve the matter subject to the parties' successful negotiation of certain non-monetary terms. (Siegel Decl., ¶ 27.) After accounting for the sharply disputed factual and legal issues involved in this litigation, the risks associated with further prosecution, and the benefits to be received pursuant to the compromise and settlement of the PAGA representative claims, the parties determined that there were benefits associated with settling the matter and accepted the Mediator's Proposal. (*Ibid.*)

Siegel states the Settlement Agreement, which the parties executed on December 27, 2024, requires the Ranch to pay the gross settlement amount of \$375,000 (the Gross Settlement Amount) which will be distributed to the LWDA, and a group of approximately 475 non-exempt employees of the Ranch (the PAGA Settlement Members) who worked at least one shift in California from July 11, 2023, through the date of the Court's order approving the Settlement Agreement. (Siegel Decl., ¶ 29; see also Exh. 1, ¶ 22.)

Siegel further states that the Settlement Agreement provides for deductions to be made from the Gross Settlement Amount for plaintiff's attorney's fees of up to one-third of the Gross Settlement Amount (or \$125,000), for plaintiff's counsel's out-of-pocket costs not to exceed \$20,000, for a service award in the amount of \$12,500 to be paid to plaintiff in consideration for a general release of plaintiff's individual claims, and for settlement administration costs of \$8,000 to be paid to CPT Group, Inc., who is the proposed "Settlement Administrator". (Siegel Decl., ¶ 30.)

Siegel explains that, after deducting the amounts described above, the remainder of the Gross Settlement Amount totals \$214,500.00, which the parties have agreed to allocate between the LWDA and the PAGA Settlement Members pursuant to Labor Code section 2699, subdivision (i), with 65 percent or the amount of \$139,425 to be paid to the LWDA and 35 percent or \$75,075 to be paid to the PAGA Settlement Members on a pro-rata basis. (Siegel Decl., ¶ 30.)

Siegel asserts that the Settlement Agreement also includes an "escalator provision" under which the Gross Settlement Amount will automatically increase if the Ranch's data is false or if the number of weeks worked by the Aggrieved Employees increases by more than 10 percent due to time involved in obtaining approval of the Settlement Agreement. (Siegel Decl., ¶ 20 & Exh 1, ¶ 29.)

Siegel contends that, because the Gross Settlement Amount represents over 90 percent of the Ranch's risk-adjusted, realistic maximum exposure for damages and penalties under PAGA described above, it provides a fair and reasonable monetary recovery for the LWDA and the Aggrieved Employees, and is a "clear win". (Siegel Decl., ¶¶ 89, 92, & 97.) Siegel further asserts that the Settlement Agreement provides for a per-pay period value of \$28.90 out of a maximum of \$100, which Siegel asserts is a fair valuation in light of the risks and factors discussed above and in the Siegel declaration. (*Id.* at ¶ 89.)

Siegel also notes that the claims released under the Settlement Agreement are confined to civil penalties under PAGA, and do not include any non-PAGA claims for any alleged violations of the Labor Code, which the Aggrieved Employees may pursue in a separate proceeding. (Siegel Decl., ¶ 98.) According to Siegel, the Settlement Agreement preserves the rights of the PAGA Settlement Members to separately file individual claims for underlying violations of law and damages. (*Id.* at ¶ 29.)

Siegel states that the Settlement Agreement was negotiated in light of all known facts and circumstances, including the difficulty of proving some of plaintiff's and the PAGA Settlement Members' claims, the potential defenses asserted by the Ranch, the discovery and information reviewed by counsel, and the risks inherent in PAGA litigation. (Siegel Decl., ¶ 31.) Siegel contends that the

Settlement Agreement represents a fair compromise of the claims based on counsel's risk assessment, and is fair, reasonable, adequate, and in the best interests of plaintiff, the Ranch, the State of California, and the PAGA Settlement Members. (*Id.* at ¶¶ 28 & 31.)

Analysis

PAGA “empowers employees to sue on behalf of themselves and other aggrieved employees to recover civil penalties previously recoverable only by the Labor Commissioner.... [Citations] The PAGA also creates new civil penalties, equally enforceable by aggrieved employees, for most other Labor Code violations that previously did not carry such penalties. [Citation.] [¶] All PAGA claims are ‘representative’ actions in the sense that they are brought on the state’s behalf. The employee acts as ‘the proxy or agent of the state’s labor law enforcement agencies’ and ‘represents the same legal right and interest as’ those agencies — ‘namely, recovery of civil penalties that otherwise would have been assessed and collected by the Labor Workforce Development Agency.’ [Citations.] The employee may therefore seek any civil penalties the state can, including penalties for violations involving employees other than the PAGA litigant herself.” (*ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 184-185 (*ZB*); see also Lab. Code, § 2699, subd. (a).)

The court must review and approve any settlement of a civil action filed pursuant to PAGA. (Lab. Code, § 2699, subd. (s)(2).) When evaluating a settlement of claims brought under PAGA, the court must determine whether it is “fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77, disapproved on another ground in *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, 709-710 (*Moniz*).) The plaintiff must also submit the proposed settlement to the LWDA “at the same time that it is submitted to the court.” (Lab. Code, § 2699, subd. (s)(2).)

Information and evidence submitted by plaintiff in support of the present motion shows that the Ranch has, under the terms of the Settlement Agreement, agreed to pay the Gross Settlement Amount “in full and final settlement of the PAGA Released Claims and the Lawsuit....” (Siegel Decl., Exh. 1, ¶ 28.) The term “Lawsuit” is defined in the Settlement Agreement as the “class action complaint” filed by plaintiff in this matter. (*Id.* at ¶ 2.) The term “PAGA Released Claims” is defined as “the limited release being given by the State of California and PAGA Release Members for those claims for civil penalties under PAGA that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint or the PAGA Notice Letter, which are claims under PAGA for civil penalties” arising under various provisions of the Labor Code. (*Id.* at ¶ 20.) The term “PAGA Release Members” does not appear to be defined in the Settlement Agreement.

Based on the terms described above, is unclear to the Court whether or to what extent the Gross Settlement Amount is intended to settle any class claims asserted by plaintiff, notwithstanding that plaintiff has dismissed those claims without prejudice. Though the Settlement Agreement is to some extent ambiguous as to this issue, it is the Court’s understanding, based on the representations made by plaintiff, that the Gross Settlement Amount is intended to settle only the sole cause of action for penalties under PAGA alleged by plaintiff in the operative FAC. (See Notice at p. i, // 9-10 & Memorandum at p. 1 [asserting that plaintiff seeks to represent the Aggrieved Employees as a private attorney general for the State of California].)

Subject to the Court’s understanding further discussed above, available information and evidence shows that the Gross Settlement Amount reflects what the parties have agreed is the Ranch’s potential exposure or liability for penalties under PAGA based on the violations alleged by plaintiff in the FAC and the defenses asserted by the Ranch described above. (Memorandum at pp. 6-7.) Plaintiff contends that the Gross Settlement Amount will result in the recovery of over 95 percent of the value of the Ranch’s liability for damages and penalties under PAGA. (*Id.* at p. 8.)

PAGA authorizes the imposition of civil penalties against a defendant for violating provisions of the Labor Code “that themselves provide for civil penalties, and that were previously recoverable only by the Labor Agency or its related entities[]” and “that do not themselves provide for civil penalties.” (*Sargent v. Board of Trustees of California State University* (2021) 61 Cal.App.5th 658, 670, disapproved on another ground in *Stone v. Alameda Health System* (2024) 16 Cal.5th 1040, 1086, fn. 28.) The penalties authorized under PAGA are “distinct from the statutory damages to which employees may be entitled in their individual capacities []” and are “intended ‘to punish the employer’ for wrongdoing.... [Citation.]” (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 381, overruled on another ground in *Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562, 583; *ZB, supra*, 8 Cal.5th at pp. 185-186.) The penalties are not intended to “compensate employees for actual losses incurred....” (*ZB, supra*, 8 Cal.5th at p. 186; *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1117.)

Labor Code section 2699, subdivision (m), sets forth the manner in which civil penalties recovered by aggrieved employees must be distributed. That section requires that 65 percent of the recovered civil penalties be distributed to the LWDA “for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code”, and that 35 percent of the recovered penalties be distributed to the aggrieved employees. (Lab. Code, § 2699, subd. (m).) The percent to be distributed to the aggrieved employees must be shared by all aggrieved employees, and may not be distributed only to the employee bringing the action. (*Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742-743.)

Though plaintiff contends that the Gross Settlement Amount reflects the Ranch’s maximum potential exposure to or liability for civil penalties under PAGA, the Settlement Agreement does not provide for a distribution of the civil penalties in compliance with PAGA. Instead, the Settlement Agreement permits the civil penalties recovered by plaintiff and reflected in the Gross Settlement Amount to be reduced by amounts to be paid solely to plaintiff for plaintiff’s attorney’s fees, costs, and an incentive award. (See, e.g., Siegel Decl., Exh. 1, ¶¶ 30-31.) The Settlement Agreement also provides that costs to administer the Settlement Agreement will be paid from the civil penalties recovered by plaintiff and reflected in the Gross Settlement Amount. (*Id.* at ¶¶ 25 & 32.)

As further discussed above, the plain language of the statute requires civil penalties recovered by an aggrieved employee to be distributed in the percentages set forth under Labor Code section 2699. Plaintiff does not provide, and the Court is unaware of, any legal authority which would permit the distributions set forth in Labor Code section 2699 to be altered or effectively reduced in the manner set forth above.

Furthermore, the allocation of a 35 percent share of civil penalties under PAGA may “not go disproportionately to the PAGA plaintiff and instead must be shared by all aggrieved employees.” (*Moniz, supra*, 72 Cal.App.5th at p. 87.) By providing for distributions of the civil penalties effectively recovered from the Ranch to plaintiff for the payment of attorney’s fees, costs, and an incentive award, the Settlement Agreement impermissibly allocates a greater share of these civil penalties to plaintiff and in a manner that primarily benefits plaintiff. “Relief under PAGA is designed primarily to benefit the general public, not the party bringing the action.” (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 81.) For these additional reasons, the terms of the Settlement Agreement are contrary to the purposes of PAGA further discussed above. (*Moniz, supra*, 72 Cal.App.5th at p. 87.)

In addition, unlike enhancement or incentive awards which may be available to a named plaintiff in a class action lawsuit (see *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 806), plaintiff fails to cite, and the Court is unaware of, any legal authority authorizing a representative enhancement payment or service award in a PAGA action, such as the service award sought by plaintiff in the present motion.

Plaintiff has also failed to make a sufficient showing that the Settlement Agreement is fair, reasonable, or appropriate, or why an award of attorney’s fees in the amount requested by plaintiff is reasonable. (Lab.

Code, § 2699, subd. (k)(1) [fee award must be “reasonable”]; *Harrington v. Payroll Entertainment Services, Inc.* (2008) 160 Cal.App.4th 589, 594 [amount of fees was reasonable given the “amount of the settlement”].)

For example, plaintiff contends that the Gross Settlement Amount (\$375,000) represents 95 percent of the amount of \$394,875, which plaintiff asserts is the Ranch’s maximum exposure to or liability for civil penalties under PAGA. (Memorandum at p. 2 & Siegel Decl., ¶¶ 88-89.) Plaintiff further contends that, after the deductions described above, the share of the civil penalties which will be available for distribution to the LWDA and the Aggrieved Employees is \$214,500. (Siegel Decl., ¶ 30; see also Exh. 1, ¶ 33.)

The Court’s calculations show that the amount of penalties available for distribution under PAGA does not represent 95 percent of the Ranch’s realistic exposure or liability. ($\$394,875 \times 0.95 = \$375,131.25$.) The Court’s calculations also show that the attorney’s fees and costs requested by plaintiff, which total \$125,000, represent more than 50 percent of the share of civil penalties available for distribution to the LWDA and the Aggrieved Employees after the deductions described above. ($\$214,500 \times 0.50 = \$107,250$.) For this additional reason, the terms of the Settlement Agreement reflect that a disproportionate share of the civil penalties will go to plaintiff and not be shared by all of the Aggrieved Employees.

Though the parties may, under appropriate circumstances, include within an agreement for the settlement of claims for civil penalties made under PAGA, amounts to be separately paid by a defendant apart from civil penalties (for example, for attorney’s fees that may be recoverable under Labor Code section 2699), a PAGA representative action is “ ‘fundamentally a law enforcement action designed to protect the public and not to benefit private parties’ [citation].” (*Arias v. Superior Court* (2009) 46 Cal.4th 969.) For all reasons discussed above, plaintiff has failed to show why the Settlement Agreement is fair, adequate, or reasonable, or that plaintiff has, in light of the issues discussed above, “adequately represented the state’s interests, and hence the public interest.” (*Moniz, supra*, 72 Cal.App.5th at p. 89.) Therefore, and for all reasons described above, the Court will deny the motion.

DARREL E. PARKER, EXECUTIVE OFFICER

Minutes Prepared by:

Maria Vidal, Deputy