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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 AMY MANCINI, on behalf of herself and
11 all others similarly situated,

12 Plaintiff,

13 vs.

14 THE WESTERN AND SOUTHERN LIFE
15 INSURANCE COMPANY, et al.,

15 Defendants.

CASE NO. 16cv2830-LAB (WVG)

**ORDER APPROVING SETTLEMENT
AND DISMISSING PAGA CLAIMS [Dkt.
45]**

16 Plaintiff brought suit on behalf of herself and similarly situated employees under
17 California's Private Attorneys General Act (PAGA), alleging that the Defendant-employers
18 violated various provisions of the California Labor Code. After two years, the parties have
19 reached a proposed settlement, which requires Court approval. For the reasons below,
20 the Court finds the settlement reasonable and **GRANTS** the parties' Motion.

21 **Background**

22 On September 22, 2016, Plaintiff Amy Mancini filed this PAGA suit in San Diego
23 Superior Court. Mancini alleges that Defendants willfully misclassified her (a "Registered
24 Representative") as an independent contractor instead of an employee, failed to pay
25 regular and overtime pay, failed to pay accrued PTO/vacation time at termination of
26 employment, failed to reimburse for expenditures, and violated various other labor laws.
27 Dkt. 1-A. According to Defendants' records, there are approximately 269 similarly
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1 situated individuals in the PAGA class. Dkt. 45-2 at ¶3.

2 Defendants removed the action to this Court in November 2016. Since removal,
3 the parties have engaged in multiple settlement negotiations, including an Early Neutral
4 Evaluation with Magistrate Judge William V. Gallo in February 2017 and a mediation with
5 Judge Linda Quinn (Ret.) in December 2017. Dkt. 45 at 5-6. These discussions have
6 been complicated by, among other things, a new California state court decision that
7 altered the standard for employer liability under PAGA, as well as protracted briefing on
8 Defendants' Motion to Compel Arbitration, which this Court ultimately denied. *Id.*
9 Nonetheless, the parties have now reached a tentative settlement resolving the PAGA
10 claims. Specifically, the cash settlement of \$477,500 includes the following allocations:

- 11 • **\$161,000** for payment of PAGA penalties, with 75% going to the California
12 Labor & Workforce Development Agency (LWDA) and 25% to the PAGA
13 members;
- 14 • **\$5,000** as an incentive award to Plaintiff for her status as the PAGA
15 representative;
- 16 • **\$3,000** for administration fees and costs;
- 17 • **\$8,400** for litigation costs; and
- 18 • **\$300,000** for attorneys' fees.

19 In addition, the Defendants have agreed to make various changes to their
20 employment policies, including reclassifying their Registered Representatives from
21 independent contractors to employees, implementing new reimbursement policies,
22 providing monthly cell phone allowances for sales and marketing expenses, and
23 amending their PTO policies so that employees no longer forfeit unused PTO at year's
24 end. Dkt. 45 at 7-8. Defendants claim the economic value of these changes is roughly
25 \$500,000. Dkt. 45-2 at 2.

26 **Analysis**

27 PAGA "authorizes an employee to bring an action for civil penalties on behalf of
28 the state against his or her employer for Labor Code violations committed against the
employee and fellow employees, with most of the proceeds of that litigation going to the
state." *Iskanian v. CLS Trans. Los Angeles, LLC*, 59 Cal. 4th 348, 360 (2014); *see also*

1 Cal. Lab. Code § 2699(a). When PAGA claims are settled, the trial court must “review
2 and approve” the settlement. Cal. Lab. Code § 2699(l). In so doing, the court must
3 consider whether the proposed “PAGA settlement is fair and adequate in view of the
4 purposes and policies of the statute.” *O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d
5 1110, 1135 (N.D. Cal. 2016). Those purposes and policies include “benefit[ing] the public
6 by augmenting the state’s enforcement capabilities, encouraging compliance with Labor
7 Code provisions, and deterring noncompliance.” *Id.* at 1132-33. However, “neither the
8 California legislature, nor the California Supreme Court, nor the California Courts of
9 Appeal, nor the [LWDA] has provided any definitive answer” as to what the appropriate
10 standard is for approval of a PAGA settlement. *Flores v. Starwood Hotels & Resorts*
11 *Worldwide, Inc.*, 2017 WL 2224265, at *1 (C.D. Cal. May 19, 2017).

12 The parties argue that their proposed settlement is reasonable and that courts
13 have routinely approved “PAGA settlements reflecting much smaller percentages of gross
14 settlement amounts.” Dkt. 45 at 8. The parties’ total proposed cash settlement is
15 \$477,500, of which they have allocated \$161,000 for PAGA penalties. *Id.* at 7. As
16 evidence of the reasonableness of this allocation, they point to several comparable cases,
17 including four in which the total settlement exceeded \$2,000,000 and the PAGA penalty
18 was \$10,000 or less. See *Hicks v. Toys ‘R’ Us–Delaware, Inc.*, 2014 WL 4703915, at *1
19 (C.D. Cal. Sept. 2, 2014); *Franco v. Ruiz Food Prods., Inc.*, 2012 WL5941801, at *14
20 (E.D. Cal. Nov. 27, 2012); *Garcia v. Gordon Trucking*, 2012 WL 5364575, at *3 (E.D. Cal.
21 Oct. 31, 2012); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal.
22 Feb. 16, 2011). The point is taken: PAGA settlements often make up a small percentage
23 of the overall settlement, and the parties’ proposal here is generally consistent with similar
24 cases.

25 Still, the \$161,000 appears less than impressive when put in context. It will first be
26 reduced by 75%, with that money going to the LWDA under the PAGA statute. The
27 remaining 25% (\$40,250) will be spread between the 269 employees. Dkt. 45-2 at ¶3.
28 This results in an average settlement of \$150 for each affected employee. If Plaintiff’s

1 allegations are true, that sum seems inadequate to compensate the employees for the
2 violations they have been subjected to. This is especially true because, unlike in many
3 of the comparable cases the parties cite, there is no separate class settlement from which
4 the employees will also receive compensation—their share of PAGA recovery is the
5 extent of their compensation. *See Hernandez v. Best Buy Stores, LP*, 2017 WL 2445438
6 at *3 (S.D. Cal.) (expressing similar concerns).

7 But several factors counsel in favor of finding the settlement reasonable. First, the
8 LWDA was notified of the proposed settlement and has not objected. The Court takes
9 this acquiescence as indication that the settlement is presumptively reasonable. *See,*
10 *e.g., Rodriguez v. Danell Custom Harvesting, LLC*, 293 F.Supp.3d 1117, 1133 (E.D. Cal.
11 2018) (“The Agency has not filed an objection to the terms of the settlement. Based on
12 the Agency’s lack of objection, the Court preliminarily approves the PAGA penalties.”).
13 Second, the settlement does not bar the employees other than Mancini from pursuing
14 other (non-PAGA) Labor Code claims against Defendants should they violate those,
15 which leaves open the possibility of additional compensation. *See Arias*, 46 Cal.4th at
16 987 (“[N]onparty employees, because they were not given notice of the action or afforded
17 any opportunity to be heard, would not be bound by the judgment as to remedies other
18 than civil penalties.”). Finally, the Court finds that the non-cash provisions of the
19 settlement provide significant value to the employees. Defendants have agreed to
20 reclassify their Registered Representatives, who comprise a portion of the PAGA class,
21 from independent contractors to employees. They have also agreed to implement new
22 expense reimbursement policies and to provide a monthly cell phone allowance for sales
23 and marketing expenses. And, although this is not in the actual settlement agreement,
24 Defendants have changed their internal polices so that unused employee PTO is not
25 forfeited at year’s end. These are significant changes that further the goals of PAGA by
26 improving the work conditions of the employees. For these reasons, the Court finds the
27 PAGA settlement reasonable.

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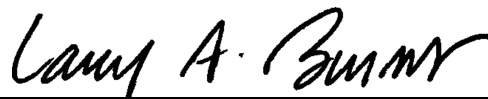
1 For similar reasons, the Court also finds the other provisions of the settlement
2 agreement reasonable, including its allocation for attorney's fees. Cal. Lab. Code §
3 2699(g)(1) ("Any employee who prevails in any action shall be entitled to an award of
4 reasonable attorney's fees and costs."). The lodestar method for determining appropriate
5 attorneys' fees is commonly accepted in similar situations. See, e.g., *Jordan v. NCI Grp.,*
6 *Inc.*, 2018 WL 1409590, at *4 (C.D. Cal. Jan. 5, 2018). The Court here finds that \$300,000
7 is an appropriate award of fees given the number of hours worked and the attorneys'
8 claimed billable rates. The provisions for incentive awards (\$5,000), administration fees
9 (\$3,000) and litigation costs (\$8,400) are also reasonable.

10 **Disposition**

11 The Court finds the parties' settlement reasonable. The Joint Motion to approve
12 the settlement is **GRANTED**. Plaintiff has asserted no non-PAGA claims, so this Order
13 resolves the case. The case is **DISMISSED WITH PREJUDICE**. The parties have
14 consented to the Magistrate Judge retaining jurisdiction over this case, and Magistrate
15 Judge William V. Gallo **SHALL RETAIN JURISDICTION** to resolve any disputes over the
16 terms of the settlement agreement.

17 **IT IS SO ORDERED.**

18 Dated: September 18, 2018



19 **HONORABLE LARRY ALAN BURNS**
20 United States District Judge
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