

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Southwest District, Torrance Courthouse, Department M

20TRCV00191

ESTEVAN ARNOLD vs EDWIN TRUCKING, INC., et al.

December 14, 2021

8:30 AM

Judge: Honorable Deirdre Hill
Judicial Assistant: M. Rivera
Courtroom Assistant: S. Gardner

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): John Arrington Lofton (Telephonic)

For Defendant(s): Matthew James Knez (Telephonic)

NATURE OF PROCEEDINGS: Hearing on Motion for Attorney Fees; Order to Show Cause
Re: Dismissal (Settlement)

The court issues a tentative ruling as follows:

Moving Parties: Plaintiff Estevan Arnold

Responding Party: None

Motion for Approval of Settlement of Labor Code Section 2698, et seq. (PAGA) Claims

The court considered the moving papers and defendants' notice of non-opposition.

RULING

The motion is GRANTED.

BACKGROUND

On February 27, 2020, plaintiff Estevan Arnold filed a complaint against Edwin Trucking, Inc. and Edwin Benitez for Labor Code violations and unfair business practices.

On March 20, 2020, plaintiff filed a FAC for Labor Code violations, unfair business practices, and penalties pursuant to PAGA.

On November 10, 2021, plaintiff filed a notice of settlement.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Southwest District, Torrance Courthouse, Department M

20TRCV00191

ESTEVAN ARNOLD vs EDWIN TRUCKING, INC., et al.

December 14, 2021

8:30 AM

Judge: Honorable Deirdre Hill
Judicial Assistant: M. Rivera
Courtroom Assistant: S. Gardner

CSR: None
ERM: None
Deputy Sheriff: None

LEGAL AUTHORITY

Labor Code §2699 states: “(a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3. . . .

(g) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs, including any filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 2699.3. . . .

(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency 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, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.

(l) . . . (2) The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court. (3) A copy of the superior court’s judgment in any civil action filed pursuant to this part and any other order in that action that either provides for or denies an award of civil penalties under this code shall be submitted to the agency within 10 days after entry of the judgment or order.”

Labor Code §2699.3 states: “A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met:

(1)

(A) The aggrieved employee or representative shall give written notice by online filing with the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Southwest District, Torrance Courthouse, Department M

20TRCV00191

ESTEVAN ARNOLD vs EDWIN TRUCKING, INC., et al.

December 14, 2021

8:30 AM

Judge: Honorable Deirdre Hill
Judicial Assistant: M. Rivera
Courtroom Assistant: S. Gardner

CSR: None
ERM: None
Deputy Sheriff: None

Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(B) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75). The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.

(C) The fees paid pursuant to subparagraph (B) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (j) of Section 2699.

(2)

(A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.

(B) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within 33 calendar days of the postmark date of the notice received pursuant to paragraph (1). Within 120 calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency, during the course of its investigation, determines that additional time is necessary to complete the investigation, it may extend the time by not more than 60 additional calendar days and shall issue a notice of the extension. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee of that decision within five business days thereof by certified mail. Upon receipt of that notice or if no citation is issued by the agency within the time limits prescribed by subparagraph (A) and this subparagraph or if the agency fails to provide timely or any notification, the aggrieved employee may commence a civil action pursuant to Section 2699.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Southwest District, Torrance Courthouse, Department M

20TRCV00191

ESTEVAN ARNOLD vs EDWIN TRUCKING, INC., et al.

December 14, 2021

8:30 AM

Judge: Honorable Deirdre Hill
Judicial Assistant: M. Rivera
Courtroom Assistant: S. Gardner

CSR: None
ERM: None
Deputy Sheriff: None

(C) Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.

(D) The time limits prescribed by this paragraph shall only apply if the notice required by paragraph (1) is filed with the agency on or after July 1, 2016. For notices submitted prior to July 1, 2016, the time limits in effect on the postmark date of the notice shall apply. . . .”

DISCUSSION

Plaintiff Estevan Arnold requests approval of the settlement pursuant to PAGA on behalf of all current and former aggrieved employees who worked for defendants during the PAGA period (January 10, 2019 through June 7, 2021).

Plaintiff explains that defendants own and operate a small trucking business in and around Torrance, California. Plaintiff was employed by defendants as a delivery driver from approximately early 2018 to October 18, 2019. Plaintiff alleges that he and other employees were misclassified as independent contractors and that defendants failed to provide timely and uninterrupted meal and rest periods, failed to track hours worked, failed to provide itemized wage statements, and failed to pay employees correctly for regular and overtime hours worked. Plaintiff also alleges that defendants required employees to wear a uniform and provide their own tools, without reimbursement.

Plaintiff notes that as to his individual claims, he estimates his actual damages were approximately \$94,254 and he settled for \$50,000.

Plaintiff states that the parties participated in a mediation conducted by Jamie, E. Wrage, Esq. on March 10, 2021. Plaintiff explains that in advance of the mediation, defendants provided plaintiff’s counsel with pay and time records for all aggrieved employees for the PAGA period. Defendants also provided tax returns and bank records which showed their “bleak financial circumstances.” At the mediation, each side was represented by counsel. The case was settled and on June 7, 2021, the parties finalized a written settlement agreement. See John Lofton decl., ¶9.

The court finds that the settlement was reached after arm’s length and good faith negotiations.

Defendants identified 21 Aggrieved Employees who worked during the PAGA period. Defendants’ records indicated that the Aggrieved Employees worked 600 pay periods.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Southwest District, Torrance Courthouse, Department M

20TRCV00191

ESTEVAN ARNOLD vs EDWIN TRUCKING, INC., et al.

December 14, 2021

8:30 AM

Judge: Honorable Deirdre Hill
Judicial Assistant: M. Rivera
Courtroom Assistant: S. Gardner

CSR: None
ERM: None
Deputy Sheriff: None

The parties agreed to a settlement as follows:

- non-reversionary Gross Settlement Amount - \$50,000
- PAGA Representative Incentive Fee - \$5,000
- Settlement Administrator Fee and Costs - \$2,500
- Attorney's Costs - \$1,596.73
- Attorney's Fees - \$16,665
- Net Settlement Amount ("NSA") - \$24,238.27
- LWDA payment (75% of NSA) - \$18,178.70
- Distribution to Aggrieved Employees - \$6,059.57
- Amount per pay period - \$10.10

The court finds that plaintiff has complied with the pre-filing requirements and has submitted the proposed settlement to the LWDA pursuant to Labor Code § 2699(1)(2).

As for the PAGA Representative Incentive Fee of \$5,000, the court finds the amount to be reasonable. See Lofton decl., ¶¶15-17.

As for the Settlement Administrator (Atticus Administration) fees and expenses of \$2,500, the court finds that the amount is supported. Lofton decl., ¶28.

As for attorney's costs, plaintiff incurred \$3,193.45 (see Lofton decl., ¶27, Exh. D), of which 50% will be allocated to the PAGA claims and 50% to plaintiff's individual claims.

As for attorney's fees, plaintiff requests \$16,665, which is 33.33% of the Gross Settlement Amount. Plaintiff's counsel states in his declaration that 47.8 hours were spent at an hourly rate of \$650, for a total of \$31,070. Plaintiff contends that if ½ of those hours are allocated to the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Southwest District, Torrance Courthouse, Department M

20TRCV00191

ESTEVAN ARNOLD vs EDWIN TRUCKING, INC., et al.

December 14, 2021

8:30 AM

Judge: Honorable Deirdre Hill
Judicial Assistant: M. Rivera
Courtroom Assistant: S. Gardner

CSR: None
ERM: None
Deputy Sheriff: None

PAGA claims, the result is very close to amount requested. See Lofton decl., ¶26. The court finds that the amount requested is reasonable in light of the hours expended, the experience, reputation, and ability of counsel, and results achieved.

The court finds that the settlement is fair, reasonable, and adequate, given that the settlement reflects a compromise of 25% of the maximum likely exposure and in light of defendants' defenses and financial condition. See Lofton decl., ¶¶10-12 for analysis of claims.

The motion is GRANTED.

Plaintiff is ordered to give notice of the ruling.

All parties submit on the tentative ruling and the court adopts it as the order of the court.

The Notice of Motion and Motion for Approval of Settlement of Labor Code Section 2698, et. seq., Private Attorney's General Act ("PAGA") Claims filed by Estevan Arnold on 11/10/2021 is Granted.

Order to Show Cause Re: Dismissal (Settlement) is continued to 06/01/22 at 08:30 AM in Department M at Torrance Courthouse.

Counsel for the plaintiff is to give notice.