

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 74

20STCV24775

November 28, 2022

FLORENCIO LEGASPI vs CUCUMBER HOLDINGS, LLC, et al.

10:00 AM

Judge: Honorable Michelle Williams Court
Judicial Assistant: C. Guerrero
Courtroom Assistant: R. Cruz

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Kristy R. Connolly (LA CourtConnect)

For Defendant(s): Grace Horoupian by Sean Kingston (LA CourtConnect)

NATURE OF PROCEEDINGS: Final Status Conference; Non-Jury Trial; Hearing on Motion - Other Motion for Approval of PAGA Settlement

The court's tentative ruling has been posted online for counsel to review prior to the hearing.

The matter is called for hearing.

Counsel submit on the tentative ruling which is adopted as the Order of the Court as follows:

The Motion for Final Approval of Settlement filed by Florencio Legaspi on 10/28/2022 is Granted. Plaintiff shall provide the LWDA a copy of this order. (Lab. Code § 2699(1)(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.”).)

Background

On June 29, 2020, Plaintiff Florencio Legaspi filed this PAGA action against Defendants Cucumber Holdings, LLC, California OPCO, LLC, and Plum Healthcare Group, LLC. On November 2, 2020, Plaintiff filed the operative First Amended Complaint alleging Defendants “had a consistent policy of violating state wage and hour laws by, among other things: (a) Failing to pay all wages (including minimum wages and overtime wages); (b) Failing to provide lawful meal periods or compensation in lieu thereof; (c) Failing to authorize or permit lawful rest breaks or provide compensation in lieu thereof; (d) Failing to provide accurate itemized wage statements; and (e) Failing to pay all wages due upon separation of employment.” (FAC ¶ 4.)

On September 7, 2022, Plaintiff filed a Notice of Settlement.

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Motion to Approve PAGA Settlement

On October 28, 2022, Plaintiff filed the instant motion to approve the PAGA settlement reached in this action.

The motion was properly served and is unopposed. (Code Civ. Proc. § 1005(b).)

Request for Judicial Notice

Plaintiff requests the Court take judicial notice of the Legislative Counsel Digest re Senate Bills 796 and 1809 related to PAGA as well as a Letter from Senator Joseph Dunn published in the Senate Daily Journal dated July 29, 2004. The requests are GRANTED as they are proper subjects for judicial notice, though they are offered solely for background purposes. (Evid. Code §§ 451(a); 452(c).)

Discussion

Standard

Pursuant to Labor Code section 2699(1)(2), “[t]he 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.” The purpose of this requirement is to “ensur[e] that any negotiated resolution is fair to those affected.” (Williams v. Superior Court (2017) 3 Cal.5th 531, 549.) “Aside from the requirement that the court ‘review and approve’ a settlement in a civil action filed under PAGA (§ 2699, subd. (1)(2)), PAGA itself does not provide a standard for this review.” (Moniz v. Adecco USA, Inc. (2021) 72 Cal.App.5th 56, 75.) “[A] trial court should evaluate a PAGA settlement to 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.” (Id. at 77.)

“A PAGA representative action is therefore a type of qui tam action.” (Iskanian v. CLS Transportation Los Angeles, LLC (2014) 59 Cal.4th 348, 382 abrogated on other grounds by Viking River Cruises, Inc. v. Moriana (2022) 142 S.Ct. 1906.) Approval of a qui tam action generally requires a court determination “that the proposed settlement is fair, adequate, and reasonable under all of the circumstances.” (Gov. Code § 12652(e)(2)(B).) “Because many of the factors used to evaluate class action settlements bear on a settlement’s fairness—including the strength of the plaintiff’s case, the risk, the stage of the proceeding, the complexity and likely

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duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement. Given PAGA's purpose to protect the public interest, we also agree with the LWDA and federal district courts that have found it appropriate to review a PAGA settlement to ascertain whether a settlement is fair in view of PAGA's purposes and policies.” (Moniz, *supra*, 72 Cal.App.5th at 77.)

Terms of the Settlement

The parties agreed to a gross settlement of \$175,000.00, which includes up to \$10,000.00 for a general release of Plaintiff's individual claims, attorneys' fees up to \$58,333.33, litigation costs up to \$17,000.00, and Settlement Administrator fees of \$4,000.00 resulting in a Net Settlement Amount of \$85,792.79 to be distributed between the LWDA and the aggrieved employees. (Connolly Decl. Ex. 1, “Settlement Agreement” § II ¶ 2.)

The settlement is properly non-reversionary. (Settlement Agreement § V ¶ 6.) The “PAGA Period” is defined as July 29, 2019 through September 1, 2022. (Settlement Agreement § I ¶ 11.) The release provided by the aggrieved employees is appropriately narrow to solely encompass claims for PAGA penalties that could have been asserted in this action. (Settlement Agreement § I ¶ 16.) The Settlement Administrator shall be Phoenix Settlement Administrators. (Settlement Agreement § I ¶ 18.)

The settlement includes the required distribution of Net Settlement Amount: 75% to the LWDA and 25% to the aggrieved employees. (Settlement Agreement § II ¶ 4; Labor Code § 2699(i).) There are approximately 300 aggrieved employees and 13,937 relevant pay periods during the PAGA period. (Connolly Decl. ¶ 19.) Aggrieved employees will be paid on pro rata based upon the number of pay periods worked, resulting in average payments of \$29.52 per employee. (Settlement Agreement § II ¶ 5.) The motion and settlement were properly provided to the LWDA. (Connolly Decl. ¶¶ 38-39.)

The Total Settlement Amount is Fair, Reasonable, and Adequate Under the Circumstances of the Case

Defendants produced “policy documents, timekeeping records, pay stubs and data to allow the Parties to calculate the pay periods worked” in anticipation of mediation. (Connolly ¶ 10.) The parties reached the proposed settlement after extensive negotiations and a mediation session with an experienced wage and hour mediator. (Id. ¶¶ 11-12.) The parties debated the effect of the Supreme Court's ruling in Viking River Cruises on Plaintiff's claims. (Id. ¶ 18.) Plaintiff

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calculated the maximum total PAGA exposure to be \$1,393,700.00 based upon the available data. (Id. ¶ 19.)

The Court finds the \$175,000.00 settlement is fair, reasonable, and adequate considering Plaintiff's PAGA claims, Defendants' potential defenses, possible reductions in any eventual PAGA award, and the posture of this case. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 ("The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.")) The \$175,000.00 settlement provides genuine and meaningful relief consistent with the purpose of PAGA. (*Moniz*, supra, 72 Cal.App.5th at 77 ("a trial court should evaluate a PAGA settlement to 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."))

Plaintiff requests attorneys' fees in the amount of \$58,333.33, or one-third of the Gross Settlement Amount, and \$16,873.88 in costs. The fees and costs are supported by the declaration of attorney Kristy Connolly, who indicates Plaintiff's lodestar attorneys' fees are \$112,927.50. (Connolly Decl. ¶¶ 21-35, 40-41, Ex. 5-6.) The proposed fees and costs are acceptable under the common fund doctrine and are significantly less than the pre-multiplier lodestar amount. (See *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557; *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 503.) Considering the work completed by Plaintiff's counsel to bring about this PAGA settlement, (e.g., legal research, discovery, damages analysis, mediation, etc.), the Court finds that the attorney fees and costs are reasonable.

Counsel for plaintiff is directed to submit a proposed Judgment for signature and filing.

The Final Status Conference and Trial set for this date are placed off calendar.

An Order to Show Cause Re: Entry of Judgment is scheduled for 01/12/2023 at 08:30 AM in Department 74 at Stanley Mosk Courthouse.

Notice is waived.