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DENA PALMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF LOS ANGELES
UNLIMITED JURISDICTION

DENA PALMER, an individual

Plaintiff,

v.

ETAIL PET, INC., a Delaware corporation,
BERENICE GIANNINI, an individual, and
DOES 1 through 20, inclusive,

Defendants.

Case No. 20STCV29415

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION SEEKING
APPROVAL OF PAGA SETTLEMENT**

Date: April 23, 2021
Time: 8:30 a.m.
Department: 32

Before the Honorable Daniel S. Murphy

Reservation No. 176742073468

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	2
A.	Factual Background	2
B.	Procedural Background.....	3
C.	The Litigation	4
D.	The Mediation and Settlement Agreement	5
III.	LEGAL ANALYSIS	9
IV.	CONCLUSION	14

TABLE OF AUTHORITIES

CASES

<u>Arias v. Superior Court</u> , 46 Cal. 4 th 969, 986 (2009)	13
<u>Browning v. Yahoo! Inc.</u> , No. C04-01463 HRL, 2001 WL 4105971, at *10 (N.D. Cal. Nov. 16, 2007)	16
<u>Chu v. Wells Fargo Investments, LLC</u> , 2011 WL 672645, at 1 (N.D. Cal. 2011)	17
<u>Cruz v. Sky Chefs Inc.</u> , 2014 WL 7247065, at 3 (N.D. Cal. 2014)	17
<u>Franco v. Ruiz Food Products, Inc.</u> , 2012 WL 5941801, at 13 (E.D. Cal. 2012)	17
<u>Garcia v. Gordon Trucking, Inc.</u> , 2012 WL 5364575, at 11 (E.D. Cal. 2012)	17
<u>Hanlon v. Chrysler Corp.</u> , 150 F.3d 1011, 1026 (9 th Cir. 1988),	15
<u>In Re Nordstrom Commission Cases</u> , 186 Cal. App. 4 th 576, 589 (2010)	15
<u>Iskanian v. CLS Transp. Los Angeles, LLC</u> , 59 Cal. 4 th 348, 381 (2014)	13
<u>Lazarin v. Pro Unlimited, Inc.</u> , 2013 WL 3541217 (N.D. Cal. 2013)	17
<u>O'Connor v. Uber Technologies Inc.</u> , 201 F. Supp. 3d. 1110 (N.D. Cal. 2016)	14, 15
<u>Price v. Uber Technologies, et al.</u> (LA Superior Court, Case No. BC554512, Judge Maren E. Nelson, Sept. 14, 2017)	14
<u>Ramirez v. Benito Valley Farms, LLC</u> , No. 16-CV-04708-LHK, 2017 WL 3670794, at *3 (N.D. Cal. Aug. 25, 2017)	14
<u>Sakkab v. Luxottica Retail N. Am. Inc.</u> , 8103 F.3d 425, 435 (9 th Cir. 2015)	13
<u>Salazar v. Sysco Central California, Inc.</u> , No. 1:15-cv-01758-DAD (E.D. Cal. Feb. 2, 2017, ECF No. 25 at 3)	14
<u>Schiller v. David's Bridal Inc.</u> , 2012 WL 2117001, at 14 (E.D. Cal. 2012)	17
<u>Singer v. Becton Dickinson & Co.</u> , 2010 WL 2196104, at 1-2 (S.D. Cal. 2010)	17

STATUTES

Cal Lab. Code §2699(a)	13
Cal. Lab. Code § 2699(1)(2)	13
Cal. Lab. Code § 2699(e)(2)	14
Cal. Lab. Code §2699.3(b)(4)	15
Cal. Lab. Code §2699(i)	13

I. INTRODUCTION

This case arises out of the employment of Plaintiff Dena Palmer (“Plaintiff”) by Defendants eTail Pet, Inc. and Berenice Giannini (“Defendants”) (collectively herein, the “Parties”). In Plaintiff’s Complaint for Damages, filed on August 4, 2020, Plaintiff alleged fifteen separate causes of action against Defendants – wrongful termination in violation of public policy, retaliation, unlawful or unfair business practices in violation of Business and Professions Code §17200, and numerous Labor Code violations¹ that Plaintiff alleged she had personally suffered during her employment by Defendants. Plaintiff also pled both individual and representative claims under California’s Private Attorneys’ General Act (“PAGA”).

After six months of litigation, a 14+-hour mediation before The Hon. Leo Papas (Ret.) after which the Parties remained substantially apart in their settlement positions, additional extensive post-mediation negotiations, and eventual acceptance by both Parties of a Mediator’s Proposal, on March 10, 2021, the Parties reached global settlement of all of Plaintiff’s claims, including Plaintiff’s individual PAGA claim. The Parties’ settlement explicitly states that all of Plaintiff’s **individual** claims shall be dismissed **with** prejudice, including Plaintiff’s individual PAGA claim – but that Plaintiff’s **representative** PAGA claim shall be dismissed **without** prejudice, so that there is no *res judicata* or collateral estoppel against any other “aggrieved employees.” As required by California Labor Code

¹ Plaintiff alleged that Defendants failed to pay minimum wage, failed to pay overtime wages, failed to pay for missed meal and rest periods, engaged in unlawful commission chargebacks, failed to pay wages timely when due, failed to reimburse expenses, failed to provide accurate wage statements, failed to provide personnel file, failed to maintain employment records, and failed to pay wages upon termination.

Section 2699(1)(2), Plaintiff presents this Motion to approve that portion of the settlement related to her individual PAGA Claim.²

II. BACKGROUND

A. Factual Background

Defendants employed Plaintiff from November 2019 to April 2020 as a Sales Representative. Despite being properly classified in her offer letter as a non-exempt employee, Plaintiff was at all times during her employment treated as if she were exempt. Plaintiff's salary was far lower than the minimum required for any possible exemption – even the “inside sales” exemption. Despite this fact, Defendants never recorded or tracked any of Plaintiff's work hours. Defendants failed to give Plaintiff meal or rest periods, or premium pay in lieu of those required meal and rest periods. Defendants regularly required Plaintiff to work overtime and denied Plaintiff various other benefits offered to non-exempt employees. In addition to her base salary, Plaintiff also earned commissions, residuals, and “SPIFFS,” some of which were paid via Venmo so were neither recorded on Plaintiff's paystub nor immediately available to Plaintiff without deduction of a fee, both patently illegal under California law. Defendants' commission policy was vague and frequently changed without notice to Plaintiff or other commission-eligible employees. Throughout her employment, Plaintiff regularly pointed out errors in the calculations of her commission wages and other inaccuracies in her pay. Plaintiff also repeatedly requested clarification on Defendants' commission policy and frequently complained that the ever-changing commission policy was applied inconsistently.

² Defendants do not oppose this Motion. See Defendants' Statement of Non-Opposition to Plaintiff's Motion Seeking Approval of PAGA Settlement (herein, “Statement of Non-Opposition”), attached as Exhibit D to the Declaration of Kathleen M. Pratt, Esq. in Support of Plaintiff's Motion Seeking Court Approval of PAGA Settlement (herein, “Pratt Decl.”).

After months of stress from working for Defendants, Plaintiff suffered a stroke in January 2020. Defendants never offered Plaintiff sick leave nor advised Plaintiff of any disability-related leaves of absence to which she was entitled. Because Plaintiff needed the income from her job, Plaintiff returned to work only one week after the stroke, and continued to meet all of her sales goals and quotas. But Plaintiff continued to be shortchanged commissions she was due and had to continue pointing out errors and discrepancies in Defendants' pay practices and to complain about Defendants' ever-shifting commission plan. In late March 2020, after Plaintiff's health continued to suffer, Plaintiff's doctor insisted that she change to a part-time work schedule in order to decrease the intense stress she was experiencing. Only a day after Plaintiff requested that Defendants accommodate her medical disability, Defendants terminated Plaintiff on April 6, 2020. Emails produced in the litigation made clear that Plaintiff's wrongful termination was in retaliation for Plaintiff's repeated complaints about Defendants' erratic and unlawful pay practices and her complaints that she was being paid improperly and illegally.

B. Procedural Background

On May 26, 2020, Plaintiff's counsel filed Plaintiff's PAGA claim notice with the California Labor and Workforce Development Agency ("LWDA"), detailing various Labor Code violations that Defendants had allegedly committed as well as the "facts and theories" supporting those violations. See Pratt Decl., ¶ 2. The LWDA assigned Case No. LWDA-CM-791254-20 to Plaintiff's PAGA claims. Id. Plaintiff's PAGA claim notice was served by certified mail on Defendants on May 27, 2020, and thereafter Plaintiff's counsel paid the \$75 filing fee required by the PAGA statute. Id. The 65-day time for the LWDA to investigate and/or prosecute Plaintiff's PAGA claims expired on July 30, 2021, without the LWDA indicating any wish to investigate and/or prosecute. Id.

On August 4, 2020, Plaintiff's counsel filed Plaintiff's Complaint for Damages in Los Angeles Superior Court (Case No. 20STCV29415, herein, the "Action") alleging 15 separate causes of action

1 against Defendants arising out of her employment. Pratt Decl., ¶ 3. Plaintiff's claims included wrongful
2 termination in violation of public policy and retaliation (entitling Plaintiff to compensatory damages,
3 punitive damages, and attorneys' fees, as well as a \$10,000 statutory penalty); unlawful or unfair
4 business practices in violation of Business and Professions Code §17200; and numerous Labor Code
5 violations that Plaintiff had personally suffered during her employment by Defendants (failure to pay
6 minimum wage, failure to pay overtime wages, failure to pay for missed meal and rest periods, unlawful
7 commission chargebacks, failure to pay wages timely when due, failure to reimburse expenses, failure to
8 provide accurate wage statements, failure to provide personnel file, failure to maintain employment
9 records, and failure to pay wages upon termination), all of which entitled Plaintiff to back-due wages,
10 penalties, and attorneys' fees and costs. Id. In her fourteenth cause of action, Plaintiff also pled both
11 individual and representative claims under California's Private Attorneys' General Act ("PAGA). Id.
12 As required by PAGA, Plaintiff's counsel uploaded to the LWDA website a copy of Plaintiff's August
13 4, 2020 Complaint. Id.

16 C. The Litigation

17 Defendants answered Plaintiff's Complaint on September 28, 2020, denying all of Plaintiff's
18 claims and asserting numerous affirmative defenses. Pratt Decl., ¶ 4. The Parties vigorously litigated
19 the Action for nearly six months. Id. at ¶ 5. Defendants prepared and propounded third-party
20 employment records subpoenas to Plaintiff's former employers. Id. Plaintiff objected strenuously to
21 these subpoenas and threatened to move to quash unless Defendants either significantly limited the
22 scope of the subpoenas or withdrew them altogether. Id. Defendants ultimately withdrew the
23 subpoenas. Id. Plaintiff's counsel prepared and propounded ten sets of written discovery (five sets on
24 each Defendant), including form interrogatories (two sets per Defendant), special interrogatories,
25 requests for admission, and demands for production of documents. Id. Drafting these ten sets of
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discovery was a massive amount of work, requiring re-review of the entire file, researching the elements and facts required to prove all of Plaintiff's 15 causes of action, and researching the elements necessary to prove Plaintiff's alter-ego claim against Defendant Berenice Giannini. Id.

Defendants initially responded to Plaintiff's ten sets of written discovery with nothing more than wholesale objections. Pratt Decl., ¶ 6. After Plaintiff threatened motions to compel, Defendants later supplemented their responses – but again, the supplemental responses were woefully inadequate and incomplete, and Defendants produced very few documents responsive to Plaintiff's numerous demands. Id. After heated and extensive meeting and conferring, including on the issue of electronically stored information ("ESI") to which Plaintiff was entitled, it was clear that Defendants intended to stonewall. Id. Plaintiff requested that Defendants participate in an Informal Discovery Conference with the Court, to attempt to sort out the discovery disputes, but Defendants refused to stipulate to do so. Id. Thus, Plaintiff's counsel began preparing ten separate motions to compel further discovery responses and requests for sanctions against Defendants and Defendants' counsel. Id.

D. The Mediation and Settlement Agreement

Just before Plaintiff filed her ten motions to compel further discovery responses and requests for sanctions, and on the eve of the Parties' initial Case Management Conference in January 2021, the Parties agreed to participate in early mediation before the Hon. Leo Papas (Ret.) of JudicateWest ("Judge Papas"). Pratt Decl., ¶ 6. As a condition of participating in the February 25, 2021 mediation, Plaintiff's counsel insisted that Defendants produce certain additional key information so that Plaintiff's counsel and Plaintiff could (a) evaluate the strength and weaknesses of Plaintiff's claims and Defendants' defenses; and (b) properly determine the value of Plaintiff's 15 causes of action. Id. at ¶ 7. Without this information, Plaintiff's counsel would be unable either to engage in meaningful settlement negotiations or to advise Plaintiff as to any settlement proposed by Defendants. Id. Among other

things, Plaintiff’s counsel demanded emails and other documents relating to Plaintiff’s ongoing and repeated complaints that Defendants were not paying her properly or accounting accurately for her commission wages, emails showing that Defendants decided to terminate Plaintiff mere days after Plaintiff complained again about pay practices and her commissions, documents outlining the duties, responsibilities, and compensation for Plaintiff’s position and others in that same position, and titles and pay rates for other of Defendants’ employees who had been classified as “exempt” and/or who received commissions. Id. Defendants’ counsel produced 142 pages of the requested information to Plaintiff’s counsel thirty days prior to the mediation date, so Plaintiff’s counsel had ample time to review and analyze all of it. Id.

As part of the pre-mediation information exchange, Defendants also produced declarations from four of Defendants’ former employees who had been employed during what would have been the relevant one-year period prior to when Plaintiff filed her PAGA Claim Notice with the LWDA, or the “PAGA Period.” Pratt Decl., ¶ 8 and Exhibit A. Each of these former employees – who would have been deemed “aggrieved employees” since they had also worked for Defendants during the PAGA Period – stated that they had not worked overtime, had been paid for all hours worked, had been properly provided expense reimbursements, had been provided all meal and/or rest breaks to which they were **entitled**, received all commissions they had earned, believed that Defendants had not committed any violation of the Labor Code against them, had never been discriminated or retaliated against, and attesting that they had no interest in participating in any PAGA representative action. Id.

In preparation for the February 25, 2021 mediation before Judge Papas, Plaintiff’s counsel also did extensive damages analyses for each of Plaintiff’s individual claims. Pratt Decl., ¶ 9. On Plaintiff’s wrongful termination in violation of public policy claim alone, Plaintiff’s damages of past and future economic loss, past and future non-economic loss, and steeply-discounted punitive damages totalled

well in excess of **\$800,000**. Id. Plaintiff's individual claims for retaliation and violations of numerous Labor Code provisions entitled her to recover an additional **\$442,332** in wages, civil and statutory penalties, and attorneys' fees and costs. Id. Accordingly, were this case to proceed to trial, Defendants faced liability to Plaintiff and her attorneys of nearly **\$1.25 million** on Plaintiff's **individual claims alone**. Id.

Plaintiff's counsel prepared and submitted to Judge Papas a 54-page Confidential Mediation Brief, attaching 166 pages of documents as exhibits. Pratt Decl., ¶ 10. Defendants' counsel also prepared and submitted a confidential mediation brief to Judge Papas in advance of the mediation. Id. The Parties and their respective counsel, as well as a representative of Defendants' EPLI insurance carrier, all attended the mediation, which was conducted by Zoom on February 25, 2021. Id.

The mediation with Judge Papas lasted 14.5 hours. Pratt Decl., ¶ 11. At conclusion of the day, the Parties remained hundreds of thousands of dollars apart in their settlement positions. Id. Judge Papas ended the Zoom mediation for the day, but informed both Parties of his wish to continue the momentum through caucusing with counsel for each side. Id. After the mediation, Judge Papas engaged in confidential discussions with each Party, and eventually, on March 8, 2021, Judge Papas made a Mediator Proposal on Monday, March 8, 2021. Id. On Wednesday March 10, 2021, all Parties accepted the Mediator Proposal, effectively resolving all of Plaintiff's claims. Id. at Exhibit B. Per the terms of the Mediator Proposal, Defendants were to prepare a long form settlement agreement consistent with the Mediator Proposal and provide it to Plaintiff within one week. Id. at ¶ 12. On March 17, 2021, Defendants' counsel forwarded a draft Settlement Agreement to Plaintiff's counsel. Id. Plaintiff's counsel reviewed and revised the long form Settlement Agreement and returned it to Defendants' counsel on March 23, 2021. Id. On March 29, 2021, Defendants approved all changes, and all Parties executed the Settlement Agreement. Id. at Exhibit C.

Both the Mediator Proposal and the Settlement Agreement made clear that the settlement sums were to be paid to Plaintiff in settlement of all of Plaintiff's individual claims only – including Plaintiff's individual PAGA claim – but that no monies would be paid for other aggrieved employees. Pratt Decl., ¶ 13 and Exhibits B and C. Consequently, the Parties are requesting dismissal **with** prejudice of **all of Plaintiff's individual claims**, but requesting dismissal **without** prejudice of the PAGA claim as to **all other aggrieved employees**. *Id.* at Exhibit C, paragraph 6(b).

Under the Settlement Agreement that Judge Papas facilitated, the gross settlement sum of \$660,000 is to be distributed as follows:

\$50,000 – Compensation for Plaintiff's alleged lost and unpaid wages

\$13,000 – Compensation for Plaintiff's individual PAGA claim, to be allocated \$4,290 (33%) to Plaintiff's counsel for attorneys' fees and costs on Plaintiff's individual PAGA claim, \$6,532.50 (75% of the \$8,710 remaining PAGA payment) to the LWDA for civil penalties pursuant to PAGA, and \$2,177.50 (25% of the \$8,710 remaining PAGA payment) to Plaintiff for civil penalties pursuant to PAGA

\$597,000 – Compensation for all of Plaintiff's other damages, including those for retaliation, wrongful termination in violation of public policy, emotional distress, pain and suffering and other general damages, and for Plaintiff's attorneys' fees, costs and interest.

Pratt Decl., ¶ 14 and Exhibit C, paragraph 3(a).

The amount allocated from the gross settlement to Plaintiff's individual PAGA penalties – \$13,000 – is approximately 15% of the “best case scenario” calculation of Plaintiff's individual PAGA penalties. Pratt Decl., ¶¶ 9 and 15. But in light of all of the risks, costs, and uncertainties, the Parties jointly determined that a more appropriate valuation of Plaintiff's individual PAGA claim is **not** the maximum she could get on her best day in Court, but rather is more conservatively \$13,000. *Id.* at ¶ 15. Moreover, the Settlement Agreement will **not** operate as a bar to any other employee who hereafter wishes to sue Defendants (or either of them) for his/her PAGA claims (or any other claim). *Id.* As a result, the Parties feel that their settlement is in the best interests of Plaintiff, the State of California and

the LWDA, and Defendants, and that it is fair, reasonable, and adequate under the totality of the circumstances. Id.; see also Defendants’ Statement of Non-Opposition, Pratt Decl., ¶ 16 and Exhibit D.³

Pursuant to California Labor Code §2699(1)(2), Plaintiff’s counsel submitted the executed Settlement Agreement to the LWDA via the LWDA’s online submission portal on Monday, March 29, 2021. Pratt Decl., ¶ 18. Also pursuant to California Labor Code §2699(1)(2), Plaintiff’s counsel submitted to the LWDA via the LWDA’s online submission portal the Notice of Motion and Motion for an Order Approving PAGA Settlement, Memorandum of Points and Authorities in Support, this Declaration, and [Proposed] Order Approving PAGA Settlement at the same time as these papers were submitted to this Court for review and approval. Id.

III. LEGAL ANALYSIS

Under PAGA, an “aggrieved employee” may bring an action for civil penalties for Labor Code violations on behalf of herself and other current or former employees. Cal Lab. Code §2699(a). A plaintiff who sues her employer under PAGA in a representative capacity is acting on behalf of the State of California, to recover “civil penalties” that would be owed to the State of California for all Labor Code violations suffered by the plaintiff and all other aggrieved employees. Arias v. Superior Court, 46 Cal. 4th 969, 986 (2009); see also Iskanian v. CLS Transp. Los Angeles, LLC, 59 Cal. 4th 348, 381 (2014). “An employee bringing a PAGA action does so as the proxy or agent of the state’s labor law enforcement agencies,... who are the real parties in interest.” Sakkab v. Luxottica Retail N. Am. Inc., 8103 F.3d 425, 435 (9th Cir. 2015) (internal citations omitted). Thus, “[a]n action brought under the

³ Defendants’ Statement of Non-Opposition certifies that neither Defendant objects to or contests any of the allocation of the settlement sums, including the PAGA Payment, and certifies that Defendants join Plaintiff in requesting that this Court approve the Parties’ settlement. Pratt Decl., Exhibit D.

PAGA is a type of qui tam action.” *Id.* At 429. If a plaintiff is successful under PAGA, she is awarded 25% of all civil penalties recovered (with the remaining 75% going to the State of California) along with her attorneys’ fees. Cal. Lab. Code §2699(i). Given its inherent nature as a representative claim, a PAGA claim that is settled by litigants require Court review and approval. Cal. Lab. Code § 2699(1)(2). This Court therefore must approve the settlement provisions related to Plaintiff’s PAGA claims.

A party seeking approval of a PAGA settlement must simultaneously submit the proposed settlement to the LWDA to all the LWDA to comment on the settlement if the LWDA so desires. Cal. Lab. Code § 2699(1)(2). Plaintiff has done so here, and to date there has been no response from the LWDA. Pratt Decl., ¶ 18. PAGA also states that the courts may exercise their discretion to lower the amount of civil penalties awarded “if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(e)(2).⁴

Other than the provisions discussed above, however, PAGA does not establish a standard for evaluating PAGA settlements, and there is scant legal authority identifying the proper standard of review of PAGA settlements to be employed by the Court. Indeed, the LWDA has stated that it “is not aware of any existing case law establishing a specific benchmark for PAGA settlements, either on their own terms or in relation to the recovery on other claims of the action.” Ramirez v. Benito Valley Farms, LLC, No. 16-CV-04708-LHK, 2017 WL 3670794, at *3 (N.D. Cal. Aug. 25, 2017) (quoting from the LWDA response in O’Connor v. Uber Technologies Inc., 201 F. Supp. 3d. 1110 (N.D. Cal. 2016)). In the O’Connor case, the LWDA emphasized that:

⁴ There is no indication that the settlement of Plaintiff’s individual PAGA claim would be “unjust, arbitrary and oppressive, or confiscatory” with respect to Defendants. See Cal. Lab. Code § 2699(e)(2). To the contrary, the Parties’ settlement requires Defendants to pay a very modest amount toward Plaintiff’s PAGA penalties.

When a PAGA claim is settled, the relief provided for under the PAGA be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public and, in the context of a class action, the court evaluates whether the settlement meets the standards of being “fundamentally fair, reasonable, and adequate” with reference to the public policies underlying the PAGA.

201 F. Supp. 3d 1110, 1134 (N.D. Cal. 2016). This rationale has been approved and cited favorably by several other California state and federal courts that have been asked to consider and approve PAGA settlements.⁵

In attempting to structure a settlement that is fair and reasonable, the Parties have great latitude. As was made clear in In Re Nordstrom Commission Cases, if the “strength of the case” or other aspects of it justify it, the Parties are free to allocate \$0 (**zero dollars**) to the PAGA claim and still have it approved by the Court. In Re Nordstrom Commission Cases, 186 Cal. App. 4th 576, 589 (2010) (instead of money, the Parties opted to credit the aggrieved employees with in-store vouchers). So long as the Parties have provided a “substantiated explanation of the strengths and weaknesses of the [Plaintiff’s] claims,” the Court may properly approve the settlement based on how the Parties structured it. Id. at 588.

At least one court has applied the factors set forth in Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1988), to evaluate a PAGA settlement. O’Connor, supra, 201 F. Supp. 3d 1110 at 1134. The Hanlon factors, which are used to evaluate class action settlements, include (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of

⁵ See e.g. Salazar v. Sysco Central California, Inc., No. 1:15-cv-01758-DAD (E.D. Cal. Feb. 2, 2017, ECF No. 25 at 3) (approved a settlement of PAGA claims upon a showing that the settlement terms (1) meet the statutory requirements set forth by PAGA, and (2) are fundamentally fair, reasonable, and adequate in view of PAGA’s public policy goals) Price v. Uber Technologies, et al. (LA Superior Court, Case No. BC554512, Judge Maren E. Nelson, Sept. 14, 2017) (considering whether a settlement is fair, adequate and reasonable under all of the circumstances in light of the public policies underlying California’s labor standards).

maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed; (6) the expertise and views of counsel; (7) the presence of government participation; and (8) the reaction of class members to the proposed settlement. Hanlon, supra, 150 F.3d at 1026. While the instant Action is not a class action, five of the eight Hanlon factors are deemed useful in evaluating a PAGA settlement⁶ and can assist in determining whether “the settlement provisions are at least as effective as the protections or remedies provided by state and federal law or regulation for the alleged violation.” Cal. Lab. Code §2699.3(b)(4).

The first two Hanlon factors – strength of Plaintiff’s case, and risk, expense, complexity and likely duration of further litigation – favor approval of Plaintiff’s Motion. Courts have long noted that legal uncertainty at the time of settlement strongly favors approval. See, e.g., Browning v. Yahoo! Inc., No. C04-01463 HRL, 2001 WL 4105971, at *10 (N.D. Cal. Nov. 16, 2007). Plaintiff’s counsel has evaluated “the validity and the strength of the asserted claims against problems of proof, collectability, and the legal standards” and believes the settlement is fair. Pratt Decl., ¶ 15. Similarly, further litigation would entail substantial further expenses and costs for both Plaintiff and Defendants, and this settlement provides a timely, certain, and meaningful recovery while the outcome at trial (and any subsequent appeal) is uncertain, and would substantially delay any recovery. Both Plaintiff and Defendants have concluded there were benefits to settling and acknowledge as much after taking into account the sharply disputed factual and legal issues involved as well as the expense, time, and burden of protracted litigation; it is in the best interest of all Parties to settle. See Pratt Decl., ¶ 15 and Exhibit D.

⁶ Three of the Hanlon factors – risk of maintaining class action status, presence of a governmental participant, and reaction of class members – are not relevant to a PAGA settlement that is not a class action and in which the LWDA is not involved.

Another Hanlon factor – the amount of settlement – also favors approval. While the settlement only allocates \$13,000 toward Plaintiff’s individual PAGA penalties and allocates significantly greater amounts to Plaintiff’s wrongful termination and retaliation claims, this is justified under the facts of this case. Plaintiff’s wage claims may be far more numerous, but offer far more limited damages (and penalties) since Plaintiff only worked for Defendants for six months. Most PAGA penalties are calculated based on the number of “pay periods” those violations occurred. On Plaintiff’s best day in Court, Plaintiff would be entitled to approximately \$83,000 in individual PAGA penalties. Pratt Decl., ¶ 9. Not only is this number ambitious, as it includes “stacking” of PAGA penalties (a practice that is controversial), but it also is subject to significant reduction due to various risks. For example, Defendants steadfastly dispute that Plaintiff was entitled to any of the wages or penalties alleged in her Complaint, insisting that Plaintiff was paid for all hours worked and is owed no wages or penalties whatsoever. Even if Plaintiff did prevail in the litigation, PAGA itself makes clear that the award of civil penalties under PAGA is always left to the discretion of the trial court. Given these uncertainties, the Parties jointly concluded that proper valuation of Plaintiff’s individual PAGA claim is reasonably valued at \$13,000.⁷ This is in line with other cases approving PAGA settlements.⁸

⁷ This amount represents only the settlement of the Plaintiff’s individual PAGA claims, not her representative PAGA claim. Id. at ¶¶ 14 and 15; see also Pratt Decl., Exhibit C. The parties have stipulated to a dismissal with prejudice of Plaintiff’s individual PAGA claim, and without prejudice of the PAGA claim as to all other “aggrieved employees.” Id.

⁸ See, e.g., Garcia v. Gordon Trucking, Inc., 2012 WL 5364575, at 11 (E.D. Cal. 2012) (approving payment of \$7,500 to the LWDA out of \$3.7 million gross settlement); Chu v. Wells Fargo Investments, LLC, 2011 WL 672645, at 1 (N.D. Cal. 2011) (approving PAGA payment of \$7,500 to the LWDA out of \$6.9 million gross settlement); Singer v. Becton Dickinson & Co., 2010 WL 2196104, at 1-2 (S.D. Cal. 2010) (approving payment of \$3,000 to the LWDA out of \$1 million gross settlement); Lazarin v. Pro Unlimited, Inc., 2013 WL 3541217 (N.D. Cal. 2013) (approving PAGA payment of \$7,500 to the LWDA out of \$1.25 million gross settlement); Cruz v. Sky Chefs Inc., 2014 WL 7247065, at 3 (N.D. Cal. 2014) (approving PAGA settlement payment of \$10,000 out of a \$1.75 million gross settlement); Franco v. Ruiz Food Products, Inc., 2012 WL 5941801, at 13 (E.D. Cal. 2012) (approving PAGA settlement payment of \$10,000 out of \$2.5 million gross settlement); Schiller v. David’s Bridal Inc., 2012 WL 2117001, at 14 (E.D. Cal. 2012) (approving PAGA settlement payment of \$10,000 out of \$518,245 gross settlement).

Two additional Hanlon factors – discovery completed and stage of the proceedings, and experience and opinions of counsel – also favor approval. The Parties engaged in vigorous litigation of Plaintiff’s claims. Plaintiff’s counsel insisted on being provided extensive documents, emails, and other information prior to mediation so both sides would be able to evaluate intelligently the strengths and weaknesses of their respective claims and defenses. Pratt Decl., ¶¶ 7-8. A respected, highly experienced, and impartial retired Judge, The Hon. Leo Papas (Ret.), served as the Parties’ mediator. Id. at ¶ 6. The mediation lasted 14.5 hours, and settlement was not yet reached in that single day. Id. at ¶ 11. Instead, the Parties continued to engage in confidential settlement negotiations with Judge Papas after the mediation, and ultimately, Judge Papas gave the Parties a Mediator Proposal in order to “bridge the gap” between their respective positions. Id. All of these facts indicate that the Parties were highly informed and engaged in zealous advocacy, at arms’ length, before reaching settlement. Also, the Parties are both represented by competent and experienced counsel with decades of experience specializing in employment litigation in state and federal courts, including cases similar to this one. Id. at ¶ 17. Plaintiff’s counsel and Defendants’ counsel agree that the Parties’ PAGA settlement is fair and reasonable and that the Court should approve it. Id. at ¶¶ 15-16.

IV. CONCLUSION

Based on the foregoing, the Parties respectfully jointly request that the Court approve the settlement of Plaintiff’s PAGA claims as set forth in the Parties’ Settlement Agreement.

Dated: March 31, 2021

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By: 

Kathleen M. Pratt, Esq.

ATTORNEYS FOR PLAINTIFF
DENA PALMER