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10 **SUPERIOR COURT OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SAN LUIS OBISPO**

12 JESSE MCCAULEY, as an individual and on
13 behalf of and others similarly situated and
14 aggrieved,

15 Plaintiff,

16 vs.
17

18 MULLAHEY FORD, INC., a California
19 corporation; MT. MULLAHEY, INC., a
20 California corporation; MULLAHEY
21 CHRYSLER DODGE RAM JEEP, a
22 California business; MICHAEL J.
23 MULLAHEY, an individual; TIMOTHY J.
24 MULLAHEY, an individual; and DOES 1 to
25 100, inclusive,

26 Defendants.
27
28

CASE NO. 21CV0001

Assigned for All Purposes to:
Hon. Tana L. Coates
Dept. 9

~~[PROPOSED]~~ ORDER GRANTING
MOTION FOR APPROVAL OF
SETTLEMENT UNDER PRIVATE
ATTORNEYS GENERAL ACT

Date: January 25, 2023
Time: 9:00 a.m.
Dept. 9

1 Under Labor Code section 2699(1)(2) of the Private Attorneys General Act of 2004
2 (“PAGA”), Plaintiff Jesse McCauley’s Motion for Approval of Settlement under PAGA came
3 before this Court on January 25, 2023 on a regularly noticed motion.

4 Plaintiff’s Complaint seeks civil penalties on behalf of the State of California and
5 similarly situated aggrieved employees (the “Aggrieved Employees”), as authorized by PAGA
6 under Labor Code § 2699, in relation to alleged violations of the predicate statutes set forth in
7 Plaintiff’s complaint and his letter to the Labor Workforce & Development Agency (“LWDA”) dated May 18, 2020 (the “LWDA Notice”), on behalf of all individuals who were employed by
8 Defendant MT Mullahey, Inc., and Michael J. Mullahey and Timothy J. Mullahey (collectively
9 “Mullahey”) as a non-exempt employee from October 31, 2019 to August 25, 2022.

11 Under PAGA, in any action brought by an aggrieved employee, the Court “shall review and
12 approve any settlement of any civil action filed pursuant to this part.” Labor Code section 2699(1)(2).
13 Accordingly the Court, having considered the proposed settlement set forth in the Settlement Agreement,
14 including the proposed PAGA penalties, under Labor Code section 2699(1)(2), having considered the
15 papers filed in support of the proposed settlement and the arguments of counsel, and good cause appearing,
16 HEREBY ORDERS AS FOLLOWS:

17 1. The Court’s summary of the case background, terms of the settlement, the
18 applicable law governing approval of settlements under the Private Attorney’s General Act, the
19 award of attorney’s fees and costs, the enhancement award to Plaintiff, and the payment of
20 settlement administration costs, and its discussion of these factors is set forth in the tentative
21 ruling attached hereto as Exhibit A, which ruling was adopted by the Court as its final ruling and
22 is incorporated herein by this reference;

23 2. The Court finds the instant Action presents a good faith dispute of the claims alleged;

24 3. The Court finds in favor of settlement approval, and therefore approves the Settlement of
25 the above-captioned action, as set forth in the Settlement Agreement and each of the releases and other
26 terms, as fair, reasonable, and adequate;

27 4. The Court finds further that Plaintiff, the State of California, and the Aggrieved
28 Employees, hereby release the Released Parties (as defined in the Settlement Agreement) from any and all

1 claims for violation of the PAGA as alleged in the Lawsuit and the LWDA Notice sent to the LWDA by
2 the Plaintiff that arose during the PAGA Period, including claims premised upon alleged violations of
3 California Labor Code sections 201, 202, 203, 204, 216, 221, 222, 223, 225.5, 226, 226.2, 226.3, 226.7,
4 226.8, 233, 234, 245-248.5, 256, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199,
5 2698, *et seq.*, 2802, 2810, and 2810.5.

6 5. The Court finds further that the foregoing release shall be binding on Plaintiff and the State
7 of California as to those claims brought in the Action, and shall bar any claim under PAGA brought by any
8 person, including the Aggrieved Employees, on behalf of the State of California, as to the Released Claims
9 and Released Parties.

10 6. The Court finds further that Plaintiff shall release, relinquish, and discharge, and by
11 operation of this Order and Judgment shall have, fully, finally, and forever released, relinquished, and
12 discharged all of his individual (non-PAGA) claims as against all Released Parties, as set forth in the
13 Settlement Agreement;

14 7. The Parties are directed to comply with all terms of the Settlement Agreement, and
15 Defendant is directed to make all payments required by the Settlement Agreement;

16 8. Under the Settlement Agreement, Defendant agrees to pay One Hundred Thirty Seven
17 Thousand Five Hundred Dollars and No Cents (\$137,500.00) (the “Gross Settlement Amount”), provided
18 that the other requirements of the Settlement Agreement has occurred and the Effective Date of settlement
19 has passed. The Gross Settlement Amount is inclusive of payments to the LWDA and Aggrieved
20 Employees, an enhancement award to Plaintiff, Attorney’s Fees and Costs, and Administration costs. No
21 portion of the Gross Settlement Amount will revert to Defendant. Plaintiff requests a representative
22 enhancement award of \$7,500.00, and Plaintiff’s Counsel requests an award of attorney’s fees of
23 \$45,833.33 and reimbursement of actual litigation expenses of \$12,431.78. Defendant does not oppose
24 these requests. The Court finds the Gross Settlement Amount is fair, reasonable and adequate, and
25 approves each of these payments, and directs the Settlement Administrator to make the following payments
26 from the Gross Settlement Amount:

27 a. \$45,833.33 in attorney’s fees to Crosner Legal, PC;

28 b. \$12,431.78 in litigation costs to Crosner Legal, PC;

1 c. \$7,500.00 to Plaintiff Jesse McCauley as a representative enhancement for his services as
2 the named plaintiff in this matter, and in consideration of his full general release of claims and waiver of
3 Civil Code section 1542; and

4 d. \$5,500.00 in administration costs to ILYM Group, Inc.;

5 9. After deducting the foregoing payments, the estimated remainder of approximately
6 \$66,224.89 shall form the Net Settlement Amount ("NSA"). Pursuant to Labor Code section 2699(i), the
7 NSA will then be distributed 75 percent (approximately \$49,676.17) to the LWDA, and the remaining 25
8 percent (approximately \$16,558.72) to the Aggrieved Employees on a pro rata basis, as set forth in the
9 Settlement Agreement. The Court approves these payments, and directs the Settlement Administrator to
10 issue checks to the LWDA and Aggrieved Employees, along with the Notice of PAGA Settlement, as set
11 forth in the Settlement Agreement, and to otherwise carry out its duties as set forth in the Settlement
12 Agreement; and

13 10. This document shall constitute a Judgment for purposes of California Rule of Court
14 3.769(h). The Court reserves exclusive and continuing jurisdiction over the Action and the Parties for the
15 purpose of supervising implementation, enforcement, construction, administration, and interpretation of the
16 Settlement Agreement and this Judgment.

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18 **IT IS SO ORDERED.**

19
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21 Dated: 2/14/2023



Judge of the Superior Court

EXHIBIT "1"

FILED

JAN 25 2023

McCauley v. Mullahey, 21CV-0001

Hearing: Motion for Approval of Settlement Under PAGA

SAN LUIS OBISPO SUPERIOR COURT
BY Alyssa R. Goriesky
Alyssa R. Goriesky, Deputy Clerk

Date: January 25, 2023

On January 4, 2021, Jesse McCauley (Plaintiff) filed a Private Attorneys General Act Representative Complaint against Mullahey Ford, Inc., Mt. Mullahey, Inc., Mullahey Chrysler Dodge Jeep Ram, Michel J. Mullahey and Timothy J. Mullahey (collectively Defendants). Plaintiff worked for Defendants from March 2019 to August 2019 in the parts department, at which time he started working as a porter. Defendant was terminated on November 5, 2019. Plaintiff alleges one cause of action under the Private Attorneys General Act, Labor Code sections 2698, et. seq. (PAGA) for wage and hour violations.

Now before the Court is Plaintiff's motion for approval of PAGA settlement. Plaintiff requests that the Court issue an order: 1) granting approval of the proposed settlement under the Private Attorneys General Act, Labor Code sections 2698, et seq.; 2) approving the payment of civil penalties to the State and the Aggrieved Employees; 3) approving ILYM Group, Inc. as the Settlement Administrator and payment of its fees in the amount of \$5,500.00; 4) approving payment of a service award to Plaintiff McCauley in the amount of \$7,500.00; and, 5) approving payment of Plaintiff's counsel's attorney fees in the amount of \$45,833.33 and costs in the amount of \$12,431.78.

The motion is supported by the declarations of Plaintiff and his counsel, Zachary M. Crosner (Crosner Dec.), and relevant exhibits. The motion was served on counsel for Defendants. No opposition is on file.

The PAGA statute provides that "[t] 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." (Lab. Code, § 2699, subd. (1)(2).) In a PAGA settlement, 75% of the settlement proceeds are distributed to the Labor and Workforce Development Agency (LWDA), with the remaining 25% going to the aggrieved employees. (Lab Code, § 2699, subd. (i).) A PAGA-only settlement does not need to meet the requirements for class certification. That said, the California Supreme Court has noted that any negotiated PAGA resolution must be "fair to those affected." (*Williams v. Sup. Ct.* (2017) 3 Cal.5th 531, 549.)

Plaintiff timely served the LWDA with the parties' settlement agreement and this motion and notified the LWDA of the approval hearing. (Crosner Dec., ¶ 27; Ex. 5.)

The parties mediated with professional mediator Tom Smith, Esq., on January 27, 2022, and after a full day of negotiations reached a settlement. (Crosner Dec., ¶¶ 3, 8; Ex. 1.) Under the settlement, Defendant will pay a non-reversionary gross settlement amount of \$137,500.00 (GSA). (*Id.*, ¶ 9; Ex. 1.) Prior to the mediation, the parties conducted discovery, both formal and informal. (*Id.*, ¶ 7.)

After payment of settlement administration costs (\$5,500), Plaintiff's service award (\$7,500), and reasonable attorney's fees (\$45,833.33) and costs (\$12,431.78) from the GSA, Plaintiff presently estimates about \$66,234.89 will remain (NSA). 75% of the NSA (about \$49,676.17) will go to the LWDA, and the remaining 25% (about \$16,558.72) will be distributed to the Aggrieved Employees in proportion to the total number of pay periods each individual worked during the PAGA Period, with an average award currently estimated at about \$254 per Aggrieved Employee. (Crosner Dec., ¶¶ 9, 10; Ex. 1.) Plaintiff's counsel declares that his firm's current lodestar totals approximately \$94,708, based on 133.77 hours spent litigating the case, which is less than the requested 1/3 of the common fund, or \$45,833.33. (Crosner Dec., ¶¶ 42, 43; Ex. 6.)

The Court has reviewed the parties' settlement and finds it is fair to those affected. Counsel are experienced in this type of litigation and were able to arrive at a settlement after consideration of the strength and weaknesses of both sides. The parties engaged in informal discovery prior to attending the mediation, which they participated in in good faith and with the requisite information available to them to ensure a fair settlement.

Plaintiff's motion is granted.