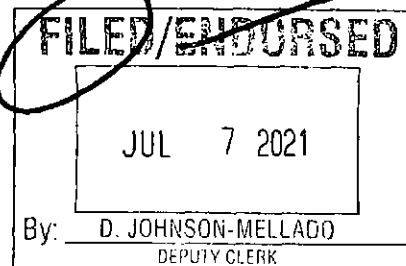


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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

JOSE HURTADO,

Plaintiff,

vs.

JS FOLSOM AUTOMOTIVE, INC., a
Delaware Corporation; FOLSOM BUICK-
PONTIAC-GMC, INC., an individual;
CLIFTON JOSEPH SMITH, an individual;
DENISE DEWEY, a Delaware Corporation;
and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00284813

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Reservation No. 2568549

Date: July 1, 2021

Time: 1:30 p.m.

Dept.: 53

Judge: Hon. Shama H. Mesiwala

Filed: August 25, 2020

Trial Date: None Set



1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 1. The Motion to Approve Private Attorneys General Act Settlement ("Motion") in the
3 above referenced case came before this Court, on July 1, 2021, at 1:30 p.m. in Department 53 before
4 the Honorable Shama H. Mesiwala, presiding. Plaintiff Jose Hurtado ("Plaintiff") filed this Private
5 Attorneys General Act ("PAGA") action on August 25, 2020. The operative Complaint alleges that JS
6 Folsom Automotive, Inc., Clifton Joseph Smith and Denise Dewey ("Defendants") violated California
7 law by failing to pay overtime, failing to pay minimum wages, failing to provide meal and rest periods,
8 failing to provide accurate wage statements, failing to pay final wages, and failing to provide paid sick
9 leave. The Complaint further alleges that Defendants are liable civil penalties under the PAGA as a
10 result of the alleged violations. Defendants have denied all of Plaintiff's allegations. Plaintiff sought
11 attorneys' fees and costs as part of this Action.

12 The parties have agreed to a settlement of the PAGA claims. Defendants will provide monetary
13 consideration in exchange for a release of claims and dismissal consistent with the terms of the Private
14 Attorneys General Act Settlement ("Agreement"). Any capitalized terms herein shall have the same
15 meaning as set forth in the Agreement. The Court, having received and considered Plaintiff's Motion,
16 the declarations in support, the Agreement, the Notice of Settlement, and other evidence, HEREBY
17 ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:

18 **1. SCOPE OF INDIVIDUALS WITHIN THE PAGA SETTLEMENT – AGGRIEVED**
19 **EMPLOYEES**

20 The Court finds that Plaintiff has exhausted all administrative remedies required to bring the
21 PAGA claims asserted in this litigation and is authorized to act as a private attorney general with respect
22 to the PAGA claims being released under the proposed Agreement. The Court finds the scope of
23 individuals within the scope of the Agreement, its releases, and all rights and obligations thereunder
24 include the following:

25 All non-exempt employees employed by Defendants from June 17, 2019
26 to June 15, 2021.
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1 The Court recognizes that the foregoing definition is for Aggrieved Employee identification
2 purposes only and is not intended to capture the claims at issue or limit or alter the released claims under
3 the Agreement.

4 **2. APPROVING THE AGREEMENT**

5 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
6 A. The Court finds that the Agreement is fair, reasonable, and adequate and approved as required under
7 California Labor Code section 2698 *et seq.* Based on the amount of penalties at issue, the risk of loss on
8 the merits, the risk of being able to prove violations in each pay period as to each individual as required
9 by statute for damages purposes, and the Court's statutorily authorized power to reduce penalties, the
10 Agreement represents a substantial recovery for Aggrieved Employees and the Labor and Workforce
11 Development Agency ("LWDA") to further its purpose in enforcing the Labor Code. The Court also
12 finds that the Agreement provides a recovery that creates an effective, substantial deterrent to any
13 potential future non-compliance, furthering the purpose of the Labor Code and LWDA.

14 The Court approves of the PAGA penalty allocations set forth in the Agreement wherein 75% of
15 the Net Settlement Amount will be paid to the LWDA and 25% of the Net Settlement Amount will be
16 paid to Aggrieved Employees as civil penalties pursuant to Labor Code section 2699(i).

17 Additionally, because the Court finds the Parties' settlement to have been agreed upon only after
18 extensive and costly investigation, arms-length negotiations, and in an attempt to avoid further delays
19 and costs, the Court approves the Agreement and terms stated therein, which is incorporated by
20 reference in its entirety, as if stated here in full, including the \$125,000.00 Gross Settlement Amount.

21 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
22 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Aggrieved employees and the
23 LWDA), the benefits can be accurately traced as set forth in the Agreement, Plaintiff and Plaintiff's
24 Counsel were able to negotiate on behalf of Aggrieved employees and the LWDA, and the fee can be
25 shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the
26 Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir.
27 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th
28 480, 506 (2016). The Court finds the attorneys' fees request of thirty-five percent (35%) of the Gross

1 Settlement Amount, *i.e.* \$43,750.00, to be appropriate compensation for Plaintiff's Counsel. The
2 attorneys' fees request is within the range that has been approved by other Courts in similar cases and is
3 reasonable in light of the circumstances of this case, the substantial and beneficial results obtained on
4 behalf of Aggrieved Employees and the LWDA, and the contingent nature of the recovery over the
5 course of this case, which included potential loss at summary judgment and/or trial proceedings.
6 Additionally, the Court orders that \$6,509.59 of the Gross Settlement Amount will be paid to Plaintiff's
7 Counsel for reasonable costs incurred in this case.

8 The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case.
9 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to exceed
10 \$3,000.00. Any difference between the actual cost of the Claims Administrator and the allocated
11 amount in the Agreement will be added to the Net Settlement Amount for distribution between the
12 LWDA and Aggrieved Employees.

13 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
14 Aggrieved Employees that are not cashed by the deadline to do so shall be paid out 50/50 to Capital Pro
15 Bono, Inc. and the Center For Workers' Rights.

16 The releases and waivers for Aggrieved Employees are also approved by the Court as set forth in
17 the Agreement.

18 **3. APPROVAL OF THE NOTICE OF SETTLEMENT**

19 The Court finds that the Notice of Settlement, which was submitted with Plaintiff's Motion as
20 Exhibit E, fairly and adequately advised Aggrieved Employees about the Agreement and its effect. The
21 Court further finds that the Notice of Settlement and distribution of such notice by first class mail to
22 each identified Aggrieved Employees at his or her most recent address based on a National Change of
23 Address database search from the Aggrieved Employees' last known address and a skip trace on any
24 Aggrieved Employees who have their notice returned as "undeliverable" or "not at this address"
25 comported with all constitutional requirements, including those of due process.

26 The Court also finds that because there is a strong interest in providing Aggrieved Employees the
27 opportunity to recover under the Agreement, along with the parties' efforts to minimize any intrusion to
28 privacy rights, the sharing of employment information, including social security numbers, is not a

serious intrusion on their privacy rights. Hence, the Court orders Defendants to provide first and last name, last known mailing address, social security number, hire and termination dates for pay period calculations to the Claims Administrator only, and not to Plaintiff or Plaintiff's Counsel, in order to process this settlement as contemplated within the Agreement and approved by this Order. The Claims Administrator shall only use this information for settlement purposes identified herein, and this information shall be kept confidential, not be shared with any third-party, and used only to administer the settlement.

4. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Defendants to provide Claims Administrator with Aggrieved Employee information	7 calendar days after Final Approval Date
Last day for Defendants to fund Gross Settlement Amount	21 calendar days after Final Approval Date
Last day for Claims Administrator to calculate and report to Parties the Net Settlement Amount, PAGA Payment, and Claim Amounts for Aggrieved Employees	Within 7 calendar days of receiving Aggrieved Employee information
Last day for Claims Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing	Within 7 calendar days of receiving the Gross Settlement Amount
Last day for Claims Administrator to deliver payment of Plaintiff's Counsel's attorney's fees and costs, PAGA Payment, Claims Administrator Costs, and payment to Aggrieved Employees	Within 7 calendar days of receiving the Gross Settlement Amount
Last day for Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Aggrieved Employees

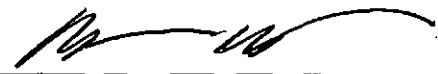
1 2 3 4 5	Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 days after settlement check cashing deadline
6 7 8 9 10	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline

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IT IS FURTHER ORDERED that this action be dismissed with prejudice with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved Agreement pursuant to California Civil Procedure Code section 664.6.

IT IS SO ORDERED.

Date: JUL - 7 2021

By: 

Judge of the Superior Court SHAMA H. MESIWALA