

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

John Colburn et al  
Plaintiff/Petitioner(s)  
VS.  
Asurion Insurance Services, Inc.  
et al  
Defendant/Respondent(s)

No. RG20071743

Date: 03/01/2023

Time: 10:00 AM

Dept: 21

Judge: Evelio Grillo

ORDER re: Hearing on Motion - Other  
Court Approval of a PAGA  
Settlement

The Motion re: NOTICE OF MOTION AND MOTION FOR COURT APPROVAL OF THE PARTIES PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT filed by Larry Clark, John Colburn on 12/16/2022 is Granted.

The Motion of Plaintiff for approval of PAGA settlement under Labor Code 2699(1)(2) is GRANTED.

The order of 1/24/23 identified the court's concerns. The amended agreement filed 2/22/23 addresses the court's concerns.

## LAW ON PAGA SETTLEMENTS

Plaintiff asserts the PAGA claim as proxy or agent of the State of California's Labor Workforce Development Agency. "An employee plaintiff suing ... under the [PAGA] does so as the proxy or agent of the state's labor law enforcement agencies." (ZB, N.A. v. Superior Court of San Diego County (2019) 8 Cal.5th 175, 185; Iskanian v. CLS Transp. Los Angeles, LLC (2014) 59 Cal.4th 348, 381.)

A person asserting a claim on behalf of the LWDA under PAGA must obtain court approval for any settlement. Labor Code 2699(1)(2) states: "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."

Regarding the standard for review, Williams v. Superior Court (2017) 3 Cal.5th 531, 549, states "PAGA settlements are subject to trial court review and approval, ensuring that any negotiated resolution is fair to those affected." In O'Connor v. Uber Technologies, Inc. (N.D. Cal., 2016) 201 F.Supp.3d 1110, 1133, the LWDA filed a brief that stated, "It is thus important that 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."

Regarding the evidence required for the court to evaluate a settlement under Labor Code

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2699(1)(2), the court is not required to undertake a comprehensive “what would have happened if the litigation had proceeded” analysis. The standard of review is similar to the standard for review of class action settlements under *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, and the standard for approval of good faith settlements under CCP 877.6 and *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488.

The court can consider the value of any effective injunctive relief that a PAGA plaintiff obtains through settlement even though Labor Code 2699(a) permits a PAGA plaintiff to recover only penalties on behalf of the LWDA. The primary purpose of LWDA law enforcement proceedings is to ensure compliance with the law and not to impose and collect penalties. In enacting PAGA, “The Legislature declared that adequate financing of labor law enforcement was necessary to achieve maximum compliance with state labor laws.” (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 980.)

The analysis of whether a proposed settlement will be “fair to those affected” concerns only fairness to the LWDA. If a PAGA plaintiff settles a claim on behalf of the LWDA for less than the maximum settlement values, the only injured person is the LDWA. The statute requires notice of a settlement to the LWDA so it can protect its interests and in addition it requires court approval. (Labor Code 2699(1).) The aggrieved employees retain whatever private claims they had before the settlement.

## **SETTLEMENT TERMS**

The gross settlement amount is \$625,000. Counsel seeks fees of \$208,333.33 (33%), costs of \$25,000, 3x incentive payments of \$5,000, 3x general release payments of \$5,000, and administrative cost of \$5,000. After costs of \$243,333, the net payment of \$371,667 would be \$95,416 to the LWDA and \$286,250, to the 700 aggrieved employees.

## **SCOPE OF THE RELEASE**

Plaintiff asserts the PAGA claim as proxy or agent of the State of California’s Labor Workforce Development Agency. “An employee plaintiff suing ... under the [PAGA] does so as the proxy or agent of the state’s labor law enforcement agencies.” (*ZB, N.A. v. Superior Court of San Diego County* (2019) 8 Cal.5th 175, 185; *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 381.)

The settlement agreement as amended releases claims on behalf of the LWDA. (Agt para 21.) Under PAGA, a private plaintiff brings an action on behalf of the LWDA.

The settlement agreement as amended clarifies that the plaintiff does not represent the “aggrieved employees” and does not release claims on their behalf. (Agt para 21)

The settlement agreement releases the claims of the named plaintiffs including any “individual PAGA claim” and for them has a Civil Code 1542 waiver. This is permissible. (Agt para 15)

## **VALUATION OF CLAIMS**

The motion contains an evaluation similar to that required by *Kullar v. Foot Locker Retail, Inc.*

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(2008) 168 Cal.App.4th 116.

## **DISPOSITION OF THE RESIDUAL.**

The disposition of any uncashed checks is to the LWDA. (Agt para 20) Counsel has not filed a declaration similar to the CCP 382.4 declaration required in class actions. Counsel does not need to file such as declaration if the residual goes to the LWDA.

## **ATTORNEYS FEES – AMOUNT**

The court approves fees in the amount of \$208,333.33 (33%). Counsel sought \$208,333 (33%). The Ninth Circuit's 25% benchmark suggests fees of \$156,250. This court's 30% benchmark suggest fees of \$187,500. Counsel spent 530 hours at a reasonable blended rate of \$550 (\$291,500) and a risk factor multiplier of 1.2 suggests fees of \$349,800. (Meridian Financial Services, Inc. v. Phan (2021) 67 Cal.App.5th 657, 708-709 [blended rate of \$550].) The Court is satisfied that the immediate and tangible interests of counsel do not overshadow the interests of the LWDA. (Apple Computer, Inc. v. Superior Court (2005) 126 Cal. App. 4th 1253.)

## **COSTS OF LITIGATION**

The court approves costs in the amount of \$25,000. This is the maximum amount under the agreement. Counsel actually incurred costs of \$25,669.87. (Perez - \$16,582.13; Grover - \$9,087.74)

## **SERVICE AWARDS**

The court approves a service award of \$5,000 to the named plaintiffs. The court approves general release payments of \$5,000 to the named plaintiffs.

## **CONCLUSION**

The court will sign the proposed Stipulation and Settlement as modified by this order.

The Court orders counsel to obtain a copy of this order from the eCourt portal.

Dated: 03/01/2023



**Evelio Grillo / Judge**