

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

**RG20073419: Flores VS West Coast Diner Management
06/28/2024 Hearing on Motion for Final Approval of Settlement in Department 520**

Tentative Ruling - 06/27/2024 Julia Spain

The Motion for Preliminary Approval of Settlement filed by Jonathan Flores on 05/09/2024 is Granted.

Plaintiff Jonathan Flores' ("Plaintiff") Unopposed Motion for Final Approval of PAGA Settlement is GRANTED. (Code Civ. Proc., § 2699, subd. (1)(2).)

BACKGROUND

On June 29, 2020, Plaintiff gave written notice to the Labor Workforce Development Agency ("LWDA") ("PAGA Notice") pursuant to Labor Code section 2699.3. (Hawkins Decl. ¶ 6.) Plaintiff filed his PAGA complaint on September 4, 2020, which he subsequently amended on November 23, 2020. (Hawkins Decl. ¶ 5; Register of Actions ("ROA").)

Related to the PAGA action, there was also a putative class action filed against Defendant West Coast Diner Management, Inc. dba Denny's ("Defendant") in this court on June 30, 2020, which was later amended on November 20, 2020 alleging failure to reimburse for necessary expenses and claims under the UCL (Case No. RG20066341). (Hawkins Decl. ¶ 4; ROA.)

There were also two prior-filed related actions that had a significant impact on the present action. These cases were Krake, et. al. v. Central Valley Diner, et. al. (Placer County Superior Court Case No. SCV0041654) and Baez, et. al. v. Bay Area Diner, et. al. (Alameda Superior Court Case No. RG15797841). (Hawkins Decl. ¶ 7.) As a result of settlements in these cases, Defense counsel demurred to the present case and claims asserted in this case were also limited. (Hawkins Decl. ¶¶ 8-9; 15; ROA.) Plaintiff successfully appealed the Court's order sustaining Defendant's demurrer in this matter. (ROA.) Finally, after extensive discovery to evaluate the various claims in the present case, the parties finally settled the present case in April of 2024, following multiple mediation efforts initiated on March 23, 2024, followed by concerted arms-length negotiations. (Hawkins Decl. ¶¶ 21-22; Exh. 1.)

COURT APPROVAL OF PAGA SETTLEMENT – LEGAL STANDARD

A plaintiff asserting a PAGA claim does so as a proxy or agent of the State of California's LWDA. (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.) Therefore, "PAGA settlements are subject to trial court review and approval, ensuring that any negotiated resolution is fair to those affected. (Williams v. Superior Court (2017) 3 Cal.5th 531, 549; Lab. Code. § 2699, subd. (1)(2).)

In reviewing the settlement, the court can consider the value of any effective injunctive relief obtained although Labor Code 2699(a) permits a PAGA plaintiff to recover only penalties on behalf of the LWDA.

The analysis of whether a proposed settlement will be "fair to those affected" concerns only

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fairness to the LWDA and therefore requires notice of settlement to be provided to the LWDA so it can protect its interests. (Labor Code 2699, subd. (l).) Where the settled claims are limited to PAGA claims, the aggrieved employees retain whatever private claims they had before the settlement.

Additionally, the Court has a fiduciary responsibility to ensure that a settlement is not “contrary to law or to public policy.” (Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America (2006) 141 Cal.App.4th 46, 61.) The Court is obligated to ensure that the “agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (Cellphone Termination Fee Cases (2010) 186 Cal.App.4th 1380, 1389.) Finally, the Court “must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished.” (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

ANALYSIS

Having reviewed the proposed PAGA Settlement between the parties, the Court grants Plaintiff’s Motion for Approval of PAGA Settlement, which it finds is reasonable, fair, and satisfies all statutory requirements. (Lab. Code. § 2699, subd. (l)(2); Williams, supra, 3 Cal.5th at p. 549.)

The trial court has broad discretion to determine whether the settlement is fair. (Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801.) Relevant factors to be considered include:

- 1) the strength of plaintiffs' case,
- 2) the risk, expense, complexity,
- 3) the likely duration of further litigation,
- 4) the risk of maintaining class action status through trial,
- 5) the amount offered in settlement,
- 6) the extent of discovery completed and the stage of the proceedings,
- 7) the experience and views of counsel,
- 8) the presence of a governmental participant, and
- 9) the reaction of the class members to the proposed settlement.

(Dunk, supra, 48 Cal.App.4th at p. 1801.)

PROPOSED SETTLEMENT AGREEMENT

Pursuant to the Stipulated Settlement Agreement, Defendant has agreed to pay a Gross Settlement Amount (“GSA”) of \$125,000.

GSA is to be divided up as follows:

- Attorney Fees of up to \$43,750.00
- Litigation Costs of up to \$21,471.33

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- Service Award to Named Plaintiff Jonathan Flores as PAGA Representative of \$5,000.00
- Settlement Administration Expenses to Phoenix Class Action Solutions of up to \$10,995.00
- PAGA Penalty Payment of \$43,783.67 (\$32,837.75 (75%) to the LWDA; \$10,945.92 (25%) to be split among the aggrieved employees)

COVERED PERIOD

The “PAGA Period” covers the period from January 22, 2020 until the date of resolution. (First Amended Complaint ¶ 7.)

AGGRIEVED EMPLOYEES

The aggrieved employees include all current and former hourly-paid, non-exempt employees who worked for Defendant from September 4, 2020, through the granting of the PAGA Settlement. (Supp. Hawkins Decl. Exh. B.)

SCOPE OF THE RELEASE

The scope of the proposed release is approved. It is sufficiently narrow and tailored to limit the released claims to those involving PAGA penalties directly in connection with this litigation.

UNCASHED SETTLEMENT CHECKS

The Settlement Agreement indicates that uncashed settlement checks will be mailed to the State Controller’s Office, Unclaimed Property Division, in the name of the aggrieved employee to which the check was made.

CLASS COUNSEL, ATTORNEY’S FEES AND COSTS

James Hawkins APLC and its attorneys James Hawkins; Christina Lucio; Mitchell Murray; Eric Tims are approved as PAGA counsel for purposes of this Settlement Agreement.

The Court will approve up to \$43,750.00 in attorney’s fees to be paid to PAGA counsel in connection with this litigation.

10% of any fee award will be kept in the administrator's trust fund until the completion of the distribution process and the Court’s final compliance hearing.

SETTLEMENT ADMINISTRATOR & FEES

Phoenix Class Action Solutions is approved as the settlement administrator in this matter and the

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Court approves up to \$10,995.00 in settlement administration fees and costs.

COMPLIANCE HEARING

The Settlement Administrator will provide written declaration of completion of settlement administration proceedings as provided in section III paragraph G(8) of the Settlement Agreement to the Court and counsel for the Parties, no later than 14 days after disbursement of all funds from the GSA.

This declaration shall be filed with the Court within three (3) business days of completion.

A compliance hearing is set for Friday January 3, 2025 at 2:00 p.m. in Department 520.

If distribution is completed at that time, the Court will release the remaining 10% of attorney's fees being held.

Plaintiff is directed to submit a copy of this Order and entry of Judgment to the LWDA within ten (10) days of the date of this Order.

NOTICE: This tentative ruling will automatically become the court's final order on Friday June 28, 2024 unless, by no later than 4:00 p.m. on Thursday June 27, 2024, a party to the action notifies BOTH: 1) the court by emailing Dept520@alameda.courts.ca.gov; AND 2) all opposing counsel or self-represented parties (by telephone or email) that the party is contesting this tentative ruling.

The subject line (RE:) of the email must state: "Request for CONTESTED HEARING: [the case name], [number]." When a party emails to contest a tentative ruling, the party must identify the specific holding(s) within the ruling they wish to contest via oral argument.

The court does not provide court reporters for hearings in civil departments. A party who wants a record of the proceedings must engage a private court reporter. (Local Rule 3.95.) Any privately retained court reporter must also participate via video conference. His/Her email must be provided to the court at the time the Notice of Contest is emailed.

ALL CONTESTED LAW AND MOTION HEARINGS ARE CONDUCTED VIA REMOTE VIDEO unless an in person appearance is required by the court. Invitations to participate in the video proceeding will be sent by the court upon receipt of timely notice of contest. A party may give email notice he/she will appear in court in person for the hearing, however all other counsel/parties and the JUDGE MAY APPEAR REMOTELY.