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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
09/01/2022 at 02:43:00 PM
Clerk of the Superior Court
By Melissa Reyes, Deputy Clerk

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

11 JOSHUA PESAVENTO, in his
12 representative capacity on behalf of the State
of California and fellow Aggrieved
13 Employees,

14 Plaintiff,

15 v.

16 BURGER AUTO GROUP, LLC, a
California Limited Liability Company; and
17 DOES 1 through 50, Inclusive,

18 Defendants.

19 JAMES CARR, individually and as a private
20 attorney general;

21 Plaintiff,

22 vs.

23 BURGER AUTO GROUP, LLC, a
California corporation; and DOES 1 through
24 50, inclusive,

25 Defendants.
26
27
28

Case No.: 37-2020-00015742-CU-OE-CTL
(Lead Case)
37-2020-00041521-CU-OE-CTL

*Assigned for all purposes to the
Honorable John S. Meyer, Dept. C-64*

**~~[PROPOSED]~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR ORDER
APPROVING SETTLEMENT PURSUANT
TO CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND ENTERING JUDGMENT**

Hearing Date: August 19, 2022
Hearing Time: 10:30 a.m.
Dept.: C-64

Complaint Filed: May 26, 2020
Trial Date: None Set

RESID: 2498768

1 **~~PROPOSED~~ ORDER**

2 Having reviewed and considered Plaintiffs' Motion for Order Approving Settlement
3 Pursuant to California Labor Code Private Attorneys General Act and Entering Judgment, and good
4 cause appearing for the same, it is hereby ORDERED, ADJUDGED, and DECREED AS
5 FOLLOWS:

6 1. The Court HEREBY APPROVES AND CONFIRMS the civil penalties and release
7 of claims provided for in the Parties' Private Attorneys General Act Settlement Agreement ("PAGA
8 Settlement Agreement," "Settlement Agreement," or "Settlement"), attached as Exhibit 3 to the
9 Declaration of Cody Payne, subject to revisions required by the Court's tentative ruling, attached
10 hereto as Exhibit 1.

11 2. Final judgment is hereby entered in conformity with the Settlement and the Court's
12 ruling at Exhibit 1. All terms used herein shall have the same meaning as defined in the Settlement
13 Agreement.

14 3. This Court has jurisdiction over the subject matter of this Action, and over all Parties
15 to this Action, including Plaintiffs Joshua Pesavento and James Carr ("Plaintiffs"), the State of
16 California, and all Aggrieved Employees.

17 4. The Court designates Phoenix Settlement Administrators as the third-party
18 Settlement Administrator ("the Settlement Administrator") for mailing the Aggrieved Employees
19 cover letters, distribution of the Gross PAGA Settlement Fund, and other duties set forth in the
20 Settlement.

21 5. Within twenty (20) business days after entry of this Order and Judgment, Defendant
22 Burger Auto Group, LLC ("Defendant") is hereby ordered to deposit the Gross PAGA Settlement
23 Fund of One Hundred Sixty Thousand Dollars and Zero Cents (\$160,000.00) with the Settlement
24 Administrator.

25 6. Within twenty (20) business days after entry of this Order and Judgment, Defendant
26 will provide to the Settlement Administrator the Employee List as defined in the Settlement
27 Agreement.
28

1 7. Within thirty (30) business days of the receipt of the Employee List from Defendant,
2 the Settlement Administrator shall distribute the Gross PAGA Settlement Fund as provided in the
3 Settlement and this Order as set forth below:

- 4 a. Fifty-Three Thousand Three Hundred Thirty Three Dollars and Thirty-Three Cents
5 (\$53,333.33) to Plaintiffs' Counsel for attorneys' fees, which is thirty-three percent
6 (33%) of the Gross PAGA Settlement Fund, and attorneys' costs in the amount of Eleven
7 Thousand Six Hundred Thirty-One Dollars and Fourteen Cents (\$11,631.14), from the
8 Gross PAGA Settlement Fund as final payment for and complete satisfaction of any and
9 all attorneys' fees and costs incurred by and/or owed to Plaintiffs' Counsel related to the
10 Action;
- 11 b. Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) to Plaintiff Joshua
12 Pesavento ("Service Award") from the Gross PAGA Settlement Fund, to compensate
13 him for his services in prosecuting the Actions and performing work in support of the
14 Actions;
- 15 c. Two Thousand Seven Hundred Fifty Dollars and Zero Cents (\$2,750.00) to the
16 Settlement Administrator, Phoenix Settlement Administrators, from the Gross PAGA
17 Settlement Fund for administration expenses incurred by the Settlement Administrator
18 ("Settlement Administration Costs"); and
- 19 d. The Net PAGA Settlement Fund remaining after the deduction of Plaintiff Pesavento's
20 Service Award, Attorneys' Fees and Costs to Plaintiffs' Counsel, and Settlement
21 Administration Costs (\$89,785.53), shall be distributed to the California Labor and
22 Workforce Development Agency ("LWDA") and Aggrieved Employees. 75% of the Net
23 PAGA Settlement Fund (\$67,339.15) shall be distributed to the LWDA. 25% of the Net
24 PAGA Settlement Fund (\$22,446.38) shall be distributed to the Aggrieved Employees
25 on a *pro rata* basis based on the number of pay periods worked by each Aggrieved
26 Employee during the PAGA Period. The Settlement Administrator shall mail each
27 Aggrieved Employee their Individual Settlement Share check along with the Notice
28 attached to the Settlement as Exhibit A.

1 8. All checks to Aggrieved Employees shall remain valid and negotiable for 180 days
2 from the date of their issuance. If any checks are not cashed within 180 days of mailing, those funds
3 shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed
4 Property Law, California Code of Civil Procedure § 1500, et seq. in the names of those Aggrieved
5 Employees who did not cash their checks until such time they claim their property.

6 9. Upon the Funding Date, Plaintiffs, the Aggrieved Employees, the LWDA, and the
7 State of California, shall discharge Defendant and its past, present, and future owners, parents,
8 subsidiaries, and all of its current, former, and future officers, directors, members, managers,
9 employees, consultants, partners, shareholders, joint venturers, successors, assigns, accountants,
10 insurers, or legal representatives (“Released Parties”) from the claims alleged in the Lawsuits arising
11 during the PAGA Period for civil penalties under PAGA that were asserted or could have been
12 asserted based on the facts alleged in the operative Complaint, including claims that Defendant is
13 liable for failure to pay minimum wages, failure to pay overtime wages, failure to provide meal
14 periods, failure to provide rest periods, failure to pay an additional hour of premium pay for alleged
15 meal period or rest period violations at employees’ regular rates of compensation, failure to provide
16 accurate wage statements, failure to maintain accurate records, failure to pay all wages owed during
17 and at the end of employment, failure to pay for all earned and unused and accrued vacation time,
18 failure to provide the amount of sick leave available, or paid time off leave provided in lieu of sick
19 leave and failure to accurately include such information on itemized wage statements, unlawful
20 retaliation against Plaintiff Carr and termination of Plaintiff Carr’s employment, or violations of
21 unfair competition law where the foregoing claims arise under Labor Code § 2698, *et seq.*, for the
22 alleged violations of the California Labor Code, including but not limited to sections 98.6, 201, 202,
23 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 245.5, 246, 510, 512, 558, 1102.5, 1174,
24 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2804, and all applicable Wage Orders
25 (“Released Claims”). Aggrieved Employees cannot opt out of or object to the Release.

26 10. The Court finds that Plaintiffs gave notice to the LWDA and to Defendant of their
27 intention to pursue claims for civil penalties under PAGA arising out of the facts and legal theories
28 alleged in the Complaint, that the LWDA did not give notice that it intended to investigate these
claims within 65 days of receiving Plaintiffs’ notices, and that Plaintiffs are therefore authorized to

1 pursue these claims on behalf of the LWDA. The Court further finds that Plaintiffs gave notice of
2 this proposed settlement of those claims under PAGA to the LWDA in accordance with Labor Code
3 section 2699(1)(2), and that the LWDA has not expressed any objection to the proposed settlement.
4 Accordingly, this Judgment also bars the LWDA, or any other agency of the State of California, or
5 any person acting on its behalf, from collecting any penalties due to any of them, to the extent those
6 penalties arise out of the Released Claims or the facts giving rise to those claims. *Arias v. Super.*
7 *Ct.*, 46 Cal.4th 969, 985-986 (2009).

8 11. Plaintiffs' Counsel is directed to submit a copy of this Order and Judgment to the
9 California Labor and Workforce Development Agency within ten (10) calendar days of entry of the
10 Judgment.

11 12. Without affecting the finality of this Order and Judgment, the Court shall retain
12 continuing jurisdiction over this action and the parties, and over all matters pertaining to the
13 implementation and enforcement of the terms of the PAGA Settlement Agreement pursuant to Civil
14 Procedure section 664.6. Except as provided to the contrary herein, any disputes or controversies
15 arising with or with respect to the interpretation, enforcement, or implementation of the PAGA
16 Settlement Agreement shall be presented to the Court for resolution.

17 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

18
19 DATED: 9-01-22



Judge John S. Meyer

20 _____
JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 08/19/2022

TIME: 10:30:00 AM

DEPT: C-64

JUDICIAL OFFICER PRESIDING: John S. Meyer

CLERK: Herlinda Chavarin

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: D. Aguirre

CASE NO: **37-2020-00015742-CU-OE-CTL** CASE INIT.DATE: 05/26/2020

CASE TITLE: **Joshua Pesavento in his representative capacity on behalf of the State of California and fellow Aggrieved Employees vs Burger Auto Group LLC [E-FILE]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT TYPE: Motion Hearing (Civil)

APPEARANCES

Jordon R Harlan, counsel, present for Plaintiff(s) via remote audio conference.

CHRISTOPHER C HOFFMAN, counsel, present for Defendant(s) via remote audio conference.

Sydney Johnson, counsel, present via remote video appearance for Plaintiff

All parties submit(s) on the Court's tentative ruling.

The Court CONFIRMS the tentative ruling as follows:

Plaintiffs Joshua Pesavento and James Carr's unopposed motion to approve PAGA settlement is **GRANTED** as set forth below.

Having reviewed the terms of the settlement and the evidence presented, the court finds that the settlement is generally "fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.)

However, the court will not approve the requested \$64,000 in attorney fees, equating to 40% of the gross settlement. The court will approve \$53,333.33 in attorney fees, equating to 33% of the gross settlement.

The court will also not approve the requested \$5,000 service award. The court will approve a \$2,500 service award.

Finally, the court will not sign the proposed order in its current form. Paragraph 10 purports to bar "the LWDA, or any other agency of the State of California, or any person acting on its behalf, from collecting any penalties due to any of them, or any unpaid wages due to Aggrieved Employees, to the extent those

penalties or unpaid wages arise out of the Released Claims or the facts giving rise to those claims." (Emphasis added.) A judgment in a PAGA action is binding "only with respect to recovery of civil penalties." (*ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 193.)

Plaintiffs are directed to revise the proposed order in conformance with this order, and to resubmit it for the court's signature. Plaintiffs shall thereafter submit the signed order to the LWDA within 10 days. (Lab. Code, § 2699, subd. (l)(3).)

IT IS SO ORDERED:



Judge John S. Meyer