

JUL 12 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By Erica Perez, Deputy
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~~MINUTE~~ **RULING**
JUDGE KEVIN C. BRAZILE
DEPARTMENT 20

Hearing Date: Monday, July 12, 2021
Case Name: Arthur Quintero, Jr. v. Seidner-Miller, Inc., et al.
Case No.: 20STCV36852
Motion: **Approval of PAGA Settlement**
Moving Party: Plaintiff Quintero
Responding Party: *UNOPPOSED*
Notice: OK

Ruling: **The Motion is GRANTED. The Court approves the settlement.**
Plaintiff to give notice.

BACKGROUND

On September 25, 2020 Plaintiff Arthur Quintero, Jr. filed a Complaint against Defendants Seidner-Miller, Inc., Seidner-Miller Automotive, Inc. (together "Defendant") and Does 1-100, stating a cause of action under the Private Attorney General Act ("PAGA") as an aggrieved employee representing other aggrieved employees of Seidner-Miller. The relevant period for PAGA violations is July 22, 2019 through the present.

On July 17, 2021, Plaintiff filed a Motion for Approval of PAGA Settlement.

DISCUSSION

Applicable Law

This is a motion for approval of a PAGA settlement, reasonable attorney's fees and costs, settlement administrator's fees, and an enhancement award. Settlement of PAGA claims requires court approval. (Labor Code sec. 2699(1)(2) ("The superior court shall review and approve any settlement of any civil action pursuant to" PAGA.)) However, "[n]either the California legislature, nor the California Supreme Court, nor the California Courts of Appeal, nor the California Labor & Workforce Development Agency ('LWDA') has provided any definitive" standard for approving PAGA settlements. (*Flores v. Starwood Hotels* (C.D. Cal. 2017) 253 F.Supp.3d 1074, 1075.) Many California courts apply the ordinary standard for approval of class action settlements with the recognition that PAGA actions are unlike ordinary class actions in

many ways. (See *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 581; *Sakkab v. Luxottica Retail* (9th Cir. 2015) 803 F.3d 425, 435 (noting “fundamental differences between PAGA actions and class actions.”))

A court cannot “determine the adequacy of a class action settlement without independently satisfying itself that the consideration being received for the release of the class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker* (2008) 168 Cal.App.4th 116, 129.) Rather, the court must “scrutinize the proposed settlement agreement to the extent necessary to ‘reach a reasoned judgment 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.’” (*Id.* at 131; *Munoz v. Coca-Cola Bottling* (2010) 186 Cal.App.4th 399, 410.)

In evaluating the settlement as a whole, the Court does not focus on recovery of damages “reasonable in light of the strengths and weaknesses of the claims” as it would in an ordinary class settlement. While a judgment in a PAGA action “is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding,” this does not affect the aggrieved employees’ rights to sue individually for damages. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986-87.) The aggrieved “nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties.” (*Id.*; *Mendez v. Tween Brands, Inc.* (E.D. Cal. 2010) 2010 WL 2650571 at *4 (“The remedy sought in a PAGA suit consists of civil penalties, not individual or class damages.”)) Hence, the Court focuses on whether the settlement provides for recovery proportionate to civil penalties which could be recovered “in light of the strengths and weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168 Cal.App.4th at 129.)

Application to Facts

Plaintiff and the other aggrieved employees worked as non-exempt “Sales Closers” for Toyota of Glendora, an automobile retailer, between March 2019 and May 2020. (Quintero Decl., para. 2.) Plaintiff contends “he and other Aggrieved Employees, who were paid on a commission-only basis, were not separately compensated for time spent working on tasks which were not compensated on a commission basis.” In response, Defendant argued the non-

commission work "was directly related to the activities that were being compensated via commissions, and therefore, did not need to be separately compensated" and argued the nature and extent of this work "would be highly individualized . . . making it difficult for Plaintiff to proceed on a representative basis." (Haines Decl., para. 16.) Further, Plaintiff alleged he and other Aggrieved Employees "were not provided with a paid rest period for every 4-hour period worked, or major fraction thereof" due to Defendant's "commission compensation plans," alleging violations of IWC Wage Order 4, Section 12(A). (Haines Decl., para. 17.) In response, Defendant contends its rest period policies were lawful and its commission pay plans were revised to address this issue "in approximately December 2020 . . . thereby cutting off any potential liability . . . for a portion of PAGA period." (Haines Decl., para. 17.) Defendant similarly contended its meal period policies were lawful though asserted "employees [chose] to waive second meal periods, as they are entitled to do." (Haines Decl., para. 18.)

On the whole, Plaintiff estimated Defendant's "total potential PAGA exposure" to liability at around \$216,600 based on 1,114 pay periods within the PAGA period for 62 aggrieved employees. (See Haines Decl., para. 22.) However, Plaintiff estimated the "realistic exposure" to be \$156,493 given the possibility of losing on the merits or discretionary reduction of penalties under Labor Code sec. 2699(e)(2). (Haines Decl., para. 22.) The gross amount of the settlement is \$150,000 before administration fees, attorney's fees and costs, and enhancement payments. On its face, the settlement is not clearly disproportionate to Plaintiff's estimated recovery "in light of the strengths and weaknesses of the claims and the risks of litigation"—even before adjustments based on the strength of the defenses and risks of litigation, the gross settlement amount is roughly two-thirds of Plaintiff's estimated "total potential PAGA recovery." Further, Plaintiff's adjusted estimate of \$156,493 based on mediation discussions and evaluation of Defendant's arguments appears reasonable. Therefore, the gross settlement amount is proportionate.

Courts must "be mindful of the 'temptation to include a PAGA claim in a lawsuit to be used merely as a bargaining chip, wherein the rights of individuals who may not even be members of the class and the public may be waived for little additional consideration in order to induce the employer to agree to a settlement.'" (*Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F.Supp.3d 959, 971-72.) But here, Plaintiff is suing *only* in a representative capacity and his individual recovery under the Settlement is limited to the \$5,000 enhancement award. The enhancement award is a legitimate incentive for a representative plaintiff. (See, e.g., *Bell v.*

Farmers Ins. Exchange (2004) 115 Cal.App.4th 715, 726 (noting trial court order approving “‘service payments’ to the five named plaintiffs compensating them for their efforts in bringing the action”); see *Ingram v. Coca-Cola Co.* (N.D.Ga. 2001) 200 F.R.D. 685, 694 (enhancement “awards are justified when the class representative expend considerable time and effort on the case” and so are “routinely approve[d] . . . to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.”)) While Plaintiff did not incur significant risk appearing solely in a representative capacity, and the risks to Plaintiff and represented employees are not as stark in PAGA actions due to the limited waiver of civil penalties only, Plaintiff expended “considerable time and effort” pursuing this case to a successful settlement comprising a substantial percentage of the maximum potential recovery.

Similarly, it does not appear Plaintiff’s counsel is recovering a windfall at the expense of the aggrieved employees. “[F]ee awards in class actions average around one-third of the recovery.” (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn. 11.) The fees requested here constitute one-third of the \$150,000 gross settlement amount, and the bulk of the remainder (after the enhancement payment and the costs of litigation and administration) is to be split between the aggrieved employees and the LWDA as specified by statute. (Lab. Code sec. 2699(i).) The requested fees are sufficiently supported and an award of reasonable fees is recoverable in a PAGA action. (Haines Decl., para. 23-26 (fee rates and services rendered in this action); see Labor Code sec. 2699(g) Moreover, the requested fees are substantiated in light of Plaintiff’s counsel’s extensive experience litigating and settling PAGA actions. (See Blakely Decl., para. 2-4 (decade of experience representing employees in wage and hour class actions and participated in several approved class settlements); Haines Decl., para. 3-6 (five years of experience defending wage and hour claims and nine years prosecuting wage and hour class actions, again including several approved class settlements)) Further, Plaintiff’s counsel has itemized costs incurred in this action in the amount of \$7,063.56. (Haines Decl., para. 27, Exh. 4 (costs sheet)) The Court therefore approves the Settlement insofar as it reserves \$57,063.56 in attorney’s fees and costs and \$5,000 for an enhancement payment to the representative Plaintiff.

Plaintiff also seeks approval of a carveout of \$1,895 from the gross settlement amount, attributable to the costs of administration of the settlement by Phoenix Settlement Administrators (“PSA”). The estimated costs are largely attributable to setting up and “scrub[bing]” the case database for the class of aggrieved employees (\$613.60), and subsequently contacting the

aggrieved employees and making necessary disbursements (\$1,281.40). (Lawrence Decl., Exh. B (cost breakdown).) The low costs of administration are proportionate to the complexity of the settlement, which requires distribution of funds to a settlement class of less than 70 people. However, the costs are warranted as it is necessary to ensure communications reach the aggrieved employees, including by conducting a search of the National Change of Address Database and locating the address of the aggrieved employees by other means if needed. (Lawrence Decl., para. 8.) Moreover, PSA employs a variety of safeguards for the settlement class, further supporting the costs claimed. (Lawrence Decl., para. 11-12.)

The remainder of the gross settlement amount, \$86,039.64, is to be split between the LWDA and aggrieved employees “as follows: 75 percent to the [LWDA] for enforcement of labor laws . . . and for education of employers and employees . . . to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.” (Labor Code sec. 2699(i)) The LWDA receives \$64,529.73 of the Settlement after carveouts for fees and costs, and the remaining \$21,509.91 is to be split between the 62 aggrieved employees “proportional” to their pay periods during the PAGA period. On average, each aggrieved employee’s recovery is estimated to be \$346.93 with proportional variance. While the overall recovery for each aggrieved employee appears low, it is nonetheless reasonable in light of the risks of litigation (e.g. discretionary reduction of penalties), Defendant’s potential defenses, the lower recovery characteristic of civil penalties compared to damages, the payment of fees for the administration of the settlement and legal services rendered in connection with the settlement, and the LWDA’s acquisition of 75% of the settlement after fees.

In sum, the Settlement is APPROVED.

CONCLUSION

The Motion for Approval of the Settlement is GRANTED. (Labor Code sec. 2699(l)(2).)

Plaintiff to give notice.