

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Lisette Elizalde

Plaintiff/Petitioner(s)

VS.

Eden Housing Inc

Defendant/Respondent(s)

No. RG20055706

Date: 04/06/2022

Time: 3:00 PM

Dept: 20

Judge: Richard Seabolt

ORDER re: Hearing on Motion for Order
Motion for Order Approving
PAGA Settlement

Matter was not contested and the tentative is affirmed.

The Motion for Order NOTICE OF MOTION AND MOTION FOR ORDER APPROVING SETTLEMENT PURSUANT TO CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT AND ENTERING JUDGMENT filed by Lisette Elizalde on 03/03/2022 is Granted.

Plaintiff Lisette Elizalde's Motion for Approval of PAGA (Cal. Labor Code § 2699 et seq.) Settlement and Plaintiffs' unopposed Motion for Attorney Fees are GRANTED, as set forth below.

The Motion is unopposed.

Plaintiff's First Amended Complaint alleges PAGA representative claims for defendant's alleged violations of various Labor Code provisions regarding, inter alia, failure to pay minimum wages, to provide for and compensate and meal and rest periods, to reimburse business expenses, to provide accurate wage statements and to pay all wages due at separation of employment. Defendant disputes these claims.

Pursuant to Cal. Labor Code 2699(1)(2) and (4), Plaintiffs gave The Calif. Labor and Workforce Development Agency ("LWDA") timely notice of the settlement.

The case settled for \$121,640.00. The estimated number of aggrieved employees for PAGA purposes is 83. These current and former employees are certain of defendant's employees who were employed by defendant between July 6, 2019, through the date of approval of the Settlement, and who meet the definition of "aggrieved employees" within the meaning of Cal. Labor Code § 2699(c). The Settlement Agreement states that attorneys' fees will be \$42,574.00 (35% of gross settlement amount) and documented costs of suit. Plaintiff's counsel identifies actual costs of suit of \$10,437.24. The Settlement Agreement calls for a \$15,000 representative

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service award to Plaintiff, and settlement administration costs of \$2,500. Based on the above numbers, this will leave a net settlement amount of \$51,128.76, 75% of which will be paid to the LWDA (\$38,346.57) and 25% (\$12,782.19) of which will be paid to aggrieved employees.

Settlement negotiations involved a mediation session with mediator Jeffrey Ross, Esq., which ultimately resulted in a settlement. The court gives "considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in [concluding] that [the] settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129.) (See also In re Sutter Health Uninsured Pricing Cases (2009) 171 Cal.App.4th 495, 504.)

Plaintiff's attorney calculates Defendant's maximum realistic maximum PAGA exposure is \$266,000. The Settlement amount represents approximately 46% of the realistic maximum PAGA penalties. In light of the information and evidence provided in Plaintiff's moving papers, the Court finds the settlement is fair, adequate and reasonable.

As stated above, Plaintiffs have submitted evidence that they timely noticed the LWDA in advance of the hearing.

The Court notes that counsel is authorized by the Settlement Agreement to seek 35% of the total value of the settlement. The trial court has discretion to calculate a fee award in a class action settlement pursuant to the percentage method or lodestar method, "the goal under either the percentage or lodestar approach being the award of a reasonable fee to compensate counsel for their efforts." (Laffitte v. Robert Half Intern. Inc. (2016) 1 Cal.5th 480, 503-504.) California permits courts to award fees based on a percentage of the settlement recovery where the fees are to be drawn from a common fund created by the litigation. (Id. at 503.) The rationale for such an award is that the fee is spread among all the beneficiaries of the common fund. (Ibid.) Recognized advantages of the percentage method include the following: "relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation." (Ibid.)

The Court will award Plaintiffs' counsel attorneys' fees of \$42,574, 35% of gross settlement amount, plus costs of suit in the amount of \$10,437.24.

With respect to the requested service award, the Court typically requires evidence in the form of a sworn declaration from the plaintiff regarding the efforts, including time spent, the plaintiff personally committed to the litigation. However, the requested \$15,000 service award to plaintiff is presumptively reasonable in light of the total amount of the Settlement and the service awards typically requested from this Court. Therefore, the Court will award Plaintiff a service award of \$15,000, as an appropriate service award under the circumstances.

The Court also approves payment of \$2,500 to Phoenix Settlement Administrators as the third-party settlement administrator to administer distribution of settlement funds to aggrieved employees.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

The Court will sign the proposed Order Approving Settlement Agreement.

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

Dated: 04/06/2022

A handwritten signature in black ink, appearing to read "Richard Seabolt".

Richard Seabolt / Judge