

Bokhur Law Group, P.C.
Attn: Bokhour, Mehrdad
1901 Avenue of the stars, suite 450
Los Angeles, CA 90067

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Garza Plaintiff/Petitioner(s) VS. Cen-Cal Fire Systems, INC	No. <u>RG20070111</u> Order Motion to Approve Paga Settlement Pursuant to the Private Attorney Granted
Defendant/Respondent(s) (Abbreviated Title)	

The Motion to Approve Paga Settlement Pursuant to the Private Attorney was set for hearing on 04/27/2021 at 03:00 PM in Department 23 before the Honorable Brad Seligman. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: Plaintiff Michael S. Garza moves for Court approval of a settlement agreement releasing claims he raises on behalf of the state against Defendant Cen-Cal Fire Systems, Inc. This motion was set for hearing on March 2, 2021, but was continued to allow the parties an opportunity to address the Court's concerns.

The Court takes guidance from the context of class action settlements, which includes a substantial body of precedent in comparison to PAGA cases. Settlements of both class actions and PAGA actions must be found to be "fair, adequate, and reasonable." (See, e.g., *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244.) When evaluating class action settlements, the Court considers (1) the relative strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation of this dispute; (3) the risk of maintaining class status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel that settlement is reasonable; and (7) the presence or lack of any objections to the proposed settlement. (See *id.* at 244-245; *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801.) At least two of these factors are not analogous in the PAGA settlement context: risk of maintaining class action status and reaction of other aggrieved employees. (Accord *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal., Aug. 25, 2017, No. 16-CV-04708-LHK) 2017 WL 3670794, at *3 [discussing factors elaborated in *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026].) Class action status is irrelevant because PAGA actions are not certified. The interest of absent aggrieved employees in a PAGA action is derivative of the interests of the LWDA.

A court approving the settlement of a PAGA claim should also consider whether the PAGA plaintiff is an "aggrieved employee" such that they qualify as proper PAGA representative plaintiffs. (Labor Code § 2699(c).) This is analogous to the requirement of class certification before approval of a class action settlement. (See *Anchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 625-627.)

The Court's procedural concerns have been addressed. Since the first hearing, Defendant Cen-Cal Fire Systems, Inc. has appeared and filed an answer to Plaintiff's complaint. Plaintiff received leave to dismiss the class-action claims asserted in his Complaint without prejudice. All parties have made a general appearance and the claim for civil penalties under the Labor Code Private Attorneys General

Act of 2004 ("PAGA") (Lab. Code §§ 2698 et seq.) is the only remaining cause of action at issue.

The parties have also addressed the Court's evidentiary concern regarding Plaintiff's request for an "incentive" award. Plaintiff has submitted a declaration under penalty of perjury estimating that he has spent roughly forty hours assisting counsel over the course of the litigation. Given the costs to his time and risks of an award of costs and risks to reputation, the Court finds a \$10,000 from the common fund to be reasonable and necessary under the circumstances.

The motion to approve the proposed settlement agreement is GRANTED.

The Court also hereby GRANTS class counsel's request for attorneys' fees. The Court finds that there is a common fund recovered in this matter, that class counsel's request for one-third of the common fund is reasonable under the circumstances. The Court has also considered the billing records and evidence of billing rates submitted with the motion and cross-checked the requested fees against the "lodestar" calculation. The lodestar calculation totals \$99,692.50, and the requested award of \$116,666.66 would reflect a modest 16% multiplier that is warranted under the circumstances. The Court finds that a fee award of \$116,666.66 represents a fair compensation for the class counsel's efforts on behalf of the class.

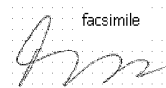
The Court also hereby GRANTS class counsel's request for an award of \$7,600 in costs to be paid from the common fund.

The Court hereby APPROVES the employment of Phoenix Class Action Administration Solutions as settlement administrator to be paid up to \$1,700 from the common fund.

The Court ORDERS that 10% of the fee award (\$11,666.67) shall be kept in the administrator's trust fund until the completion of the distribution process and Court approval of a final accounting. The administrator shall not release these funds to class counsel until the Court determines that these conditions have been met.

IT IS SO ORDERED.

Dated: 04/27/2021

facsimile


Judge Brad Seligman