

FILED
Superior Court of California
County of Los Angeles

DEC 13 2022

Sherri R. Carter, Executive Officer/Clerk of Court
By Michelle R. Zarate, Deputy
Michelle R. Zarate

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

RIDEL LOPEZ, as an individual and on
behalf of all others similarly aggrieved,

Plaintiff,

v.

FRITO-LAY, INC., a Delaware
corporation, and DOES 1 to 100, inclusive,

Defendant.

Case No. 21STCV01652

**[PROPOSED] ORDER AND JUDGMENT
APPROVING SETTLEMENT
AGREEMENT ORDER UNDER THE
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

Assigned for All Purposes to:
Hon. Richard L. Fruin

[Complaint Filed: January 14, 2021]
Trial Date: October 3, 2022

1 **ORDER AND JUDGMENT APPROVING SETTLEMENT AGREEMENT**

2 **UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

3 On January 14, 2021, Plaintiff Ridel Lopez ("Plaintiff") commenced this civil action under the
4 Labor Code Private Attorneys' General Act of 2004 ("PAGA"), Cal. Lab. Code § 2698 *et seq.*, by filing
5 a complaint against Defendant Frito-Lay, Inc. ("Defendant"). In his complaint, Plaintiff seeks civil
6 penalties under PAGA on behalf of himself and all persons employed by Defendant in California as
7 hourly-paid and/or non-exempt employees at any time from October 26, 2019, through the date the
8 Court grants approval of the Parties' settlement.

9 After participating in a full-day mediation, Plaintiff and Defendant agreed to a settlement of this
10 action, which they subsequently memorialized in a Term Sheet, signed on or about May 27, 2022. The
11 terms of the settlement were further memorialized in a writing signed by all parties to the action (the
12 "Settlement Agreement").¹ The settlement covers all current and former non-exempt California
13 production and warehouse employees of Frito-Lay who were employed by Frito-Lay from October 26,
14 2019 to May 13, 2022, inclusive (the "Representative Period"). Each individual covered by the
15 settlement is referred to as a "Settlement Group Member," and all covered individuals are collectively
16 known as the "Settlement Group."

17 Under Labor Code section 2699(1)(2), the settlement of any action under PAGA must be
18 "review[ed] and approv[ed]" by the court where the action is pending. *See* Cal. Lab. Code § 2699(1)(2).
19 Accordingly, Plaintiff filed a motion for approval of the Settlement Agreement in this Court on
20 November 15, 2022. The motion came on for regular hearing in this Court on December 13, 2022.
21 Appearances on behalf of Plaintiff and on behalf of Defendant were entered on the record.

22 As several federal district court have observed, aside from mandate to "review and approve"
23 settlements, PAGA provides no guidance on the appropriate standard for approval of a settlement. *See,*
24 *e.g., Haralson v. U.S. Aviation Servs. Corp.*, No. 16-CV-05207-JST, 2019 WL 2413545, at *7 (N.D.
25 Cal. June 7, 2019); *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1075-
26 76 (C.D. Cal. 2017). Neither the Legislature, the California Supreme Court, the California Courts of

27
28 ¹ Unless specifically defined in this order and judgment, all capitalized terms in this order and judgment
shall have the same meaning given to those capitalized terms in the Settlement Agreement.

1 Appeal, nor the California Labor and Workforce Development Agency (the "LWDA") have provided a
2 "definitive answer" to this "vexing question," either. *See Flores*, 253 F. Supp. 3d at 1075. Lacking
3 guidance from these authorities, this Court follows the lead of the majority of federal district courts and
4 asks whether the Settlement Agreement is "fundamentally fair, adequate, and reasonable in light of
5 PAGA's policies and purposes." *See, e.g., Jordan v. NCI Grp., Inc.*, 2018 WL 1409590, at *2 (C.D.
6 Cal. Jan. 5, 2018) (collecting cases).

7 Findings

8 Having fully reviewed and considered the Settlement Agreement, the motion for approval of the
9 Settlement Agreement, the oral and written submissions of the parties regarding the motion for approval
10 of the Settlement Agreement, all other pleadings, records, and papers on file in this action, and the
11 applicable law, the Court makes the following findings:

12 1. The Court finds that Plaintiff has complied with Labor Code section 2699(1)(2), which
13 requires a copy of any proposed settlement of a PAGA action to be submitted to the LWDA at the same
14 time that it is submitted to a court for approval. As reflected in Exhibit 1 to the declaration of Zachary
15 M. Crosner submitted in support of the motion for approval of the Settlement Agreement, Plaintiff's
16 Counsel electronically submitted a copy of the Settlement Agreement to the LWDA through the
17 LWDA's online filing system on November 15, 2022.

18 2. The Court finds that the terms of the Settlement Agreement are fundamentally fair,
19 adequate, and reasonable in light of PAGA's policies and purposes, the nature and relative strength of
20 Plaintiff's claims, the allocation of Settlement Amount, and the nature of the process that led to the
21 Settlement Agreement. In particular:

22 a. The Court finds that the Settlement Agreement is the result of extensive arm's-
23 length negotiations facilitated by a neutral third party – including a full-day mediation via Zoom, on
24 March 28, 2022, with Deborah Crandall Saxe, an experienced and well-respected mediator – and
25 conducted by counsel who are experienced in California wage and hour matters and who each
26 independently analyzed and investigated the facts and law relevant to the action. Accordingly, the
27 Settlement Agreement is entitled to a presumption of fairness. *See Dunk v. Ford Motor Co.*, 48 Cal.
28 App. 4th 1794, 1802 (1996).

1 b. The Court finds that the allocation of \$600,381.52 to the Payout Fund –
2 apportioned pursuant to Labor Code section 2699(i) with 75% (or \$450,286.12) for the payment of civil
3 penalties to the LWDA and 25% (or \$150,095.36) for the payment of civil penalties to Settlement Group
4 Members – is fundamentally fair, adequate, and reasonable in light of PAGA’s policies and purposes.
5 The Legislature’s purpose in enacting PAGA was to deter violations of the Labor Code by augmenting
6 the limited enforcement capability of the LWDA. *See Iskanian v. CLS Transportation Los Angeles,*
7 *LLC*, 59 Cal. 4th 348, 383 (2014). The payment of \$990,000.00 in exchange for a release of only those
8 claims specified in the Settlement Agreement will have a substantial deterrent effect on Defendant and
9 other California employers. Although the proposed PAGA penalty is less than the maximum PAGA
10 penalty authorized by PAGA, the amount reflects a compromise of the Parties’ respective positions
11 rather than a finding of liability at trial. Furthermore, courts may award less than the maximum civil
12 penalty in cases where the maximum amount would be “unjust, arbitrary and oppressive, or
13 confiscatory,” *see* Cal. Lab. Code § 2699(e)(2), and this fact may be considered when evaluating a
14 PAGA settlement. *See Haralson*, 2019 WL 2413545, at *9. The claims in the action are limited to
15 alleged violations of the California Labor Code that Defendant denies. Furthermore, Defendant believes
16 that it would prevail on the merits if the litigation of this matter continued, resulting in no PAGA
17 penalties at all. In view of these facts, the Court believes that the amount allocated to the Payout Fund is
18 fair, adequate, and reasonable.

19 c. The Court finds that the allocation of \$345,600.00 to the Attorneys’ Fees Award
20 is fundamentally fair, adequate, and reasonable. This amount represents 35% of the Gross Settlement
21 Amount, which is within the range of reasonableness frequently approved by courts in other PAGA
22 settlements and in analogous class action litigation. The Court finds that Plaintiff’s Counsel’s billing
23 rate is reasonable for the market and services performed and that the total amount of hours accounted for
24 are reasonable in light of the nature of this case.

25 c. The Court finds that the allocation of \$18,118.52 to the Litigation Costs Award is
26 fundamentally fair, adequate, and reasonable. Plaintiff’s Counsel has provided a summary of the costs
27 incurred in litigating the action, and the Court finds those amounts reasonable and appropriate in the
28 context of this case.

1 e. The Court finds that the allocation of \$10,000 to Plaintiff as a Service Award is
2 fundamentally fair, adequate, and reasonable. Service awards of this amount are commonly awarded in
3 representative actions to compensate plaintiffs for the time and effort expended in pursuing the matter.

4 f. The Court finds that the allocation of \$12,500 to Administration Costs is
5 fundamentally fair, adequate, and reasonable. The services of a third-party settlement administrator are
6 common in actions of this sort and are appropriate to ensure proper and timely payment to all interested
7 parties. The designated Settlement Administrator has extensive experience in administering wage and
8 hour settlements, including in PAGA cases.

9 **Order and Judgment**

10 Based on the foregoing findings, the Court, finding good cause therefor, **GRANTS** Plaintiff's
11 motion for approval of the Settlement Agreement, **APPROVES** the settlement agreement pursuant to
12 Labor Code section 2699(1)(2), and **HEREBY ORDERS, ADJUDGES, AND DECREES** as follows:

13 1. Judgment in this matter is entered in accordance with the terms and conditions of the
14 Settlement Agreement, which are incorporated herein by this reference.

15 2. Upon the Effective Date defined in Section 3 of the Settlement Agreement, the
16 Settlement Agreement shall be binding on, and enforceable against, Plaintiff, Defendant, the State of
17 California (including its labor law enforcement agencies), all non-parties who qualify as a "Settlement
18 Group Member" under Section 5(b) of the Settlement Agreement, and any other person who would be
19 bound by a judgment had this action been brought directly by the State of California. *See Arias v.*
20 *Superior Court*, 46 Cal. 4th 969, 986 (2009). Accordingly, on the "Effective Date" set forth in Section 3
21 of the Settlement Agreement, Plaintiff, each of the Settlement Group Members, and the State of
22 California vis-à-vis the LWDA shall, for the period spanning October 26, 2019, through May 13, 2022,
23 inclusive, fully and forever release the "Released Parties" from the "Released Claims," as those terms
24 are defined by Section 9 of the Settlement Agreement.

25 3. Plaintiff, Defendant, and Phoenix Settlement Administrators (the entity which the
26 Settlement Agreement designates as the "Settlement Administrator") are ordered to implement and
27 follow all remaining terms, conditions, and provisions of the Settlement Agreement.

28 4. Neither this order and judgment, the Settlement Agreement, nor the performance of any

1 act required by this order and judgment or the Settlement Agreement is, or shall be construed as, an
2 admission or finding of any fault, wrongdoing, or liability whatsoever by Defendant or as a finding of
3 the truth or accuracy of any allegation made by Plaintiff or Plaintiff's Counsel in this matter.

4 5. The action is hereby dismissed with prejudice, with each side to bear its own costs and
5 attorneys' fees, except as provided by the Settlement Agreement.

6 6. Without affecting the finality of this order judgment in any way, the Court retains
7 continuing jurisdiction over the interpretation, implementation, and enforcement of the
8 Settlement Agreement and all orders and judgments entered in connection therewith.

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

10
11 Dated: Dec. 13, 2022

By: Richard L. Fruin

The Honorable Richard L. Fruin
Judge of the Superior Court