

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 36

21STCV01402

FLORA FIROOZEH vs DAWN RUIZ, et al.

March 30, 2023

8:30 AM

Judge: Honorable Wendy Chang
Judicial Assistant: A. Rodriguez
Courtroom Assistant: A. Aguilar

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Thomas Eric Solmer via LACC

For Defendant(s): Kendra C. Chapman via LACC

NATURE OF PROCEEDINGS: Hearing on Motion for Order To Approve PAGA Settlement

The matter is called for hearing.

The Court has read and considered the moving papers and evidence.

The Court gives its oral tentative ruling and hears argument from counsel.

After consideration of all documents filed and oral argument, the Court adopts the tentative as the order of the Court as follows:

I. Analysis

A. Notice

The moving papers were timely filed and served on Plaintiff. (Code Civ. Proc., § 1005(b).) There is no opposition or reply.

A copy of the proposed settlement must be submitted to the LWDA at the same time that it is submitted to the court. (Lab. Code § 2699(1)(2).) Plaintiff filed proofs of service on the LWDA.

B. Motion for Approval of PAGA Settlement

Plaintiff Flora Firoozeh moves for an order approving the settlement agreement between Plaintiff and Defendant Q Squared Solutions, LLC ("Q Squared") of Plaintiff's PAGA claim. The motion is unopposed.

1. Legal Standard

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Labor Code § 2699(l)(2) states: “The superior court shall review and approve any settlement of any civil action filed pursuant to this part [Labor Code Private Attorneys General Act of 2004 (“PAGA”)]. The proposed settlement shall be submitted to the [Labor and Workforce Development Agency (“LWDA”)] at the same time that it is submitted to the court.” Any settlement of any civil action filed under PAGA must be “fair and adequate in view of the purposes and policies of the statute.” (Flores v. Starwood Hotels & Resorts Worldwide, Inc. (C.D. Cal. 2017) 253 F.Supp.3d 1074, 1077, quoting O’Connor v. Uber Technologies, Inc. (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

75 percent of all PAGA penalties must be paid to the LWDA. (See Lab. Code § 2699(i) [“Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.”].) For cases filed on or after July 1, 2016, the aggrieved employment must, within 10 days following commencement of a civil action, provide the LWDA with a file-stamped copy of the complaint that includes the case number assigned by the court. (Id. at (l)(1).) Labor Code § 2699(g)(1) provides, in relevant part: “Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs” (Lab. Code § 2699(g)(1).)

The court reviews “any penalties sought as part of a proposed settlement agreement pursuant to this part.” (Id. at (l)(2).) A copy of the proposed settlement must be submitted to the agency at the same time that it is submitted to the court. (Id.) In their review of PAGA settlement agreements, courts have discretion to assess a civil penalty and may award less than the maximum penalty authorized if, “based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (Id. at (e).)

2. Terms of Settlement Agreement

Plaintiff submits a copy of the Settlement Agreement with Defendant Q Squared. (Solmer Decl. ¶ 3, Exh. 1; Amended Order, Exhibit 1.) The terms provide as follows:

- “PAGA Settlement Group Members” means “current and former salaried non- exempt employees of Q Squared who worked at the Valencia, California facility during the Covered Period.”
- The “Covered Period” is “the period of time from October 13, 2019 to the date the Court grants approval of the Settlement.”

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- Plaintiff's counsel attests there are 230 aggrieved employees during the applicable time period. (Solmer Decl. ¶ 23.)
 - Plaintiff alleged ten individual claims in the First Amended Complaint, and an eleventh cause of action under the PAGA. The parties reached a global settlement resolving all of Plaintiff's claims, and the Agreement reflects the Parties' settlement with respect to Plaintiff's PAGA Claims only. (Solmer Decl. ¶¶ 20, 26; id. Exh. 1, at § II.)
 - "PAGA Claims" means "claims under California's Private Attorney General Act (Cal. Lab. Code §§ 2698, et seq.) that arise from or relate to the allegations contained in the Complaint with respect to Plaintiff's Eleventh Cause of Action."
 - The PAGA Settlement Group Members release "any and all claims for civil penalties pursuant to the California Labor Code Private Attorney's General Act based on the allegations in Plaintiff's Complaint and/or PAGA Notice, broadly construed, including, but not limited to, civil penalties based on or arising under California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1194, 1197, 2810.5 and the California Wage Orders, whether known or unknown, suspected or unsuspected, concealed or hidden, that were alleged in the Lawsuit and/or the PAGA Notice, or that could have been alleged in the Lawsuit and/or PAGA Notice, which Plaintiff and any PAGA Settlement Group Members have or had during the Covered Period and including the date the Settlement becomes Final, against any of the Released Parties identified in the PAGA Settlement Agreement ("Released Claims"). . . . It is expressly understood and agreed that this limited release is limited to the claims asserted as to Plaintiff's PAGA Claims."
 - Plaintiff as an individual only waives all claims whether known or unknown and waives her rights under Civil Code, section 1542.

The settlement amount is calculated as follows:

- \$175,000 is the Total Settlement Amount. (Exh. 1, at § III.C.)
- \$70,000 will go to attorney fees and costs (as 40% of the Total Settlement Amount). (Exh. 1, at § III.D.)
- \$6,000 will go to ILYM Group, Inc. as the settlement administrator for its fees and expenses. (Exh. 1, at § III.F.)
- The "Net Settlement Amount" is the Total Settlement Amount, less Plaintiff's counsel's fees, litigations costs, and expenses, and the Settlement Administrator's costs.
- \$99,000 is the Net Settlement Amount. (Solmer Decl. ¶ 27.)
- \$74,250 (75%) of the Net Settlement Amount will be allocated to the LWDA, and \$24,750 (25%) will be allocated to the PAGA Settlement Group Members. (Exh. 1, at § III.G.)
- The payments to each PAGA Settlement Group Member will be calculated on a pro rata basis based on the total number of workweeks (full or partial) worked by each member during the Covered Period. (Id. at § III.H.)

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3. Fairness of Settlement Agreement

The court finds that the settlement agreement is entitled to a presumption of fairness.

A settlement agreement in a class action is presumed fair where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the trial court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (Reed v. United Teachers Los Angeles (2012) 208 Cal.App.4th 332, 337.) This presumption applies in qui tam actions as well. (See Govt. Code § 12652(e)(2); see also Iskanian v. CLS Transportation Los Angeles LLC (2014) 59 Cal.4th 348, 382 (PAGA representative actions are a type of qui tam action).)

The parties actively litigated this action in Court, including conducting legal research and factual investigation, filing pleadings, conducting formal and informal discovery, filing motions, and engaging in settlement negotiations. (See Solmer Decl. ¶ 8.) The parties reached agreement after a full-day mediation with mediator James Philips on June 30, 2022. (Id. ¶ 24.) Plaintiff's counsel has provided testimony approximating the maximum exposure for this case at \$999,580.00 based upon the number of aggrieved employees and pay period. (Id. ¶ 23.) Plaintiff's counsel has also provided testimony on the difficulties in prevailing in this action based upon Defendant's contentions and defenses, causing risk in further litigation and additional costs incurred if the case did not settle. (See *ibid.*)

The court concludes that the parties arrived at the settlement agreement through arm's-length bargaining; that both sides were represented by counsel; and the parties engaged in investigation and discovery. There is no opposition to the motion. As such, it is entitled to a presumption of reasonableness.

4. Attorney's Fees and Costs

A trial court has discretion to conduct a lodestar cross-check on a percentage fee. (Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 506.) A computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys' fee award; the lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. (Serrano v. Priest (1977) 20 Cal.3d 25, 49.) Such an approach anchors the trial court's analysis to an objective determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary. (Id. at 48, fn. 23.)

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Plaintiff seeks \$70,000 in attorney's fees and costs for Plaintiff's counsel, as 40% of the Total Settlement Amount. (Solmer Decl. ¶ 27.) Plaintiff has also provided a calculation of the lodestar amount for Plaintiff's counsel's work in this action, totaling \$133,425, and representing 130 hours billed by Thomas Solmer and 35 hours billed by Lilit Solmer, at hourly rates based upon the Laffey Matrix. (Solmer Decl. ¶ 9; see id. ¶¶ 10-13.) Plaintiff has also supported that Plaintiff's counsel has incurred unreimbursed expenses of \$3,473.35. (Id. ¶ 14.) The cross-check supports that the amount sought for Plaintiff's counsel is reasonable and substantiated, and thus approved.

5. Administrator Costs

Plaintiff seeks \$6,000 in fees and costs for the Settlement Administrator. Plaintiff has attached a quote from ILYM Group, Inc. substantiating these costs. (Solmer Decl. ¶ 15, Exh. 2.) The amount is reasonable and substantiated and approved.

6. Notice to Aggrieved Employees

Plaintiff last seeks approval of the Notice of Settled Representative Action. (See Solmer Decl., Exh. 4.) The terms of the Notice are largely consistent with the terms of the Settlement. Plaintiff has provided a Notice of Settled Representative Action, consistent with the amended proposed settlement filed in this matter March 8, 2023. (Proof of Service, Exh. A, filed 3/22/23.)

II. Conclusion

The Motion for Order For Approval of PAGA Settlement filed by Flora Firoozeh on 10/26/2022 is Granted.

Order to Show Cause Re: Dismissal (Settlement) is scheduled for 07/27/2023 at 08:30 AM in Department 36 at Stanley Mosk Courthouse.

Plaintiff is to give notice.

Certificate of Mailing is attached.