

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited		Entered by:
TITLE OF CASE: Derek Dukes vs. K.W.P.H. Enterprises		
LAW AND MOTION MINUTE ORDER		Case Number: 21CECG00216

Hearing Date: **June 1, 2022** Hearing Type: **Motion – PAGA Settlement**
Department: **403** Judge: **Kristi Culver Kapetan**
Court Clerk: **Estela Alvarado** Reporter: **Not Reported**

Appearing Parties:	
Plaintiff:	Defendant:
Counsel:	Counsel:

☐ Off Calendar

☐ Continued to ☐ Set for ___ at ___ Dept. ___ for ___

☐ Submitted on points and authorities with/without argument. ☐ Matter is argued and submitted.

☐ Upon filing of points and authorities.

☐ Motion is granted ☐ in part and denied in part. ☐ Motion is denied ☐ with/without prejudice.

☐ Taken under advisement

☒ No Oral Argument requested; per Local Rule 2.2.6 & CRC 3.1308(a)(1).

☒ Tentative ruling becomes the order of the court; see attached copy.

☒ Plaintiff's Motion to Approve PAGA Settlement, Appointment of Settlement Administrator and Attorney's Fees is GRANTED. The proposed order submitted on 4/20/22 is now signed and available via the Court's portal.

☒ Pursuant to CRC 3.1312(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.

☒ Service by the clerk will constitute notice of the order.

☐ Judgment debtor ___ sworn and examined.

☐ Judgment debtor ___ failed to appear.
Bench warrant issued in the amount of \$ ___

JUDGMENT:

☐ Money damages ☐ Default ☐ Other ___ entered in the amount of:
Principal \$___ Interest \$___ Costs \$___ Attorney fees \$___ Total \$___
☐ Claim of exemption ☐ granted ☐ denied. Court orders withholdings modified to \$___ per ___

FURTHER, COURT ORDERS:

☐ Monies held by levying officer to be ☐ released to judgment creditor. ☐ returned to judgment debtor.
☐ \$___ to be released to judgment creditor and balance returned to judgment debtor.
☐ Levying Officer, County of ___, notified. ☐ Writ to issue
☐ Notice to be filed within 15 days. ☐ Restitution of Premises
☐ Other: ___

(35)

Tentative Ruling

Re: ***Dukes v. KWPH Enterprises dba American Ambulance***
Superior Court Case No. 21CECG00216

Hearing Date: June 1, 2022 (Dept. 403)

Motion: Plaintiff's Motion to Approve PAGA Settlement

Tentative Ruling:

To grant plaintiff's motion to approve PAGA settlement, appointment of settlement administrator, and attorney's fees.

Explanation:

1. Introduction

"The superior court shall review and approve any settlement of any civil action filed pursuant to [PAGA]. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." (Lab. Code, § 2699, subd. (i)(2).)

There are very few cases discussing section 2699, and none discuss the standards under which a court is to assess a settlement. Nor has the legislature provided any structure or standards for making the assessment. Published California case law has not done so either. However, the common practice when ruling on PAGA settlements seems to be to follow existing law on class action settlements.

2. Notice to LWDA

Labor Code section 2699, subdivision (i)(2), states: "The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court."

Here, plaintiff's counsel states that notice of the settlement was given to the LWDA on March 15, 2022. (Declaration of Hunter Pyle, ¶ 27, and Exhibit 5.) Therefore, plaintiff has complied with the requirement to give notice of the settlement to the LWDA.

3. Is the Settlement Fair and Reasonable?

As discussed above, there is no authority regarding what constitutes a fair and reasonable settlement under PAGA. However, the same standards appear to apply to PAGA settlements as to settlements of class actions.

"[A] court must be] provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (Kullar

v. *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In *Clark v. American Residential Services, LLC*, (2009) 175 Cal.App.4th 785, the Court of Appeal stated that, "[the] court [must] receive and consider sufficient information on a core legal issue, affecting the strength of the case for plaintiffs on the merits, to make the requisite independent assessment of the reasonableness of the terms of the settlement." (*Id.* at p. 798.)

"The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.' This list 'is not exhaustive and should be tailored to each case.' Relying on an earlier edition of *Newberg on Class Actions*, the court in *Dunk* asserted that 'a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.'" (*Kullar, supra*, 168 Cal.App.4th at p. 128 [internal citations omitted].)

""The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement."" The court 'must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case,' but nonetheless it 'must eschew any rubber stamp approval in favor of an independent evaluation.'" (*Id.* at p. 130 [internal citations omitted].)

Here, plaintiff is settling the PAGA claims for a gross payment of \$345,495.00, with \$109,595.34 deducted for attorney's fees, \$5,569.66 in litigation costs, and \$4,995.00 for administration costs. 75 percent of the net settlement will be paid to the LWDA as required by statute, and the aggrieved employees will receive the remaining 25 percent, apportioned among them based on how many pay periods they worked during the subject time period. There are approximately 744 aggrieved employees, and the average payment to each employee is estimated to be \$10.12 per pay period.

It does appear that the amount of the settlement is fair and reasonable under the circumstances. Plaintiff's counsel believes that settling the claims for \$345,495.00 is fair, adequate, and reasonable under the circumstances given the strength of the defenses raised by defendants, the risks of litigation, and the uncertainty of the law regarding some of plaintiff's claims. In addition, plaintiff's counsel points out that courts rarely award the full amount of penalties that are potentially available under PAGA, and may reduce the penalties for efforts to comply with the law. Moreover, plaintiff's counsel states that defendant possesses defenses that could potentially eliminate plaintiff's claims to off-the-clock and overtime, which would further extinguish plaintiff's derivative claims. Thus, plaintiff's counsel has adequately shown that the gross amount of the settlement is reasonable given the risks and uncertainties of litigation.

The settlement was also reached after discovery and arm's length negotiations between the parties at mediation, which suggests that it is fair and reached without

collusion. (*Anderson v. Nextel Retail Stores, LLC* (C.D. Cal. 2010) 2010 U.S. Dist. LEXIS 43377, 44.) In addition, the settlement will not bar the aggrieved employees from bringing their own individual Labor Code claims in the future, as it simply disposes of the PAGA claim brought by the named plaintiff here. Therefore, the court finds the gross settlement amount is fair, adequate, and reasonable.

4. Attorney's Fees and Costs:

Plaintiff's counsel has requested an award of \$115,165.00 in attorney's fees and costs, which is approximately 33 percent of the gross settlement. Courts have approved awards of fees in class actions that are based on a percentage of the total common fund recovery. (*Laffitte v. Robert Half Int'l.* (2016) 1 Cal.5th 480, 503.) It appears that the same reasoning would apply to PAGA settlements, which bear similarities to class actions. Thus, plaintiff's counsel's request for an award equal to one-third of the total gross settlement is not necessarily unreasonable. However, the court may also perform a lodestar calculation to double check the reasonableness of the fee request. (*Id.* at pp. 504-506.)

Here, the request for \$115,165.00 in fees and costs appears to be reasonable, especially in light of the fact that counsel incurred over 143.7 hours of time in working on the case, billed at \$250 to \$875 per hour, which resulted in total fees of approximately \$82,085.00. (Pyle Decl., ¶¶ 66-68.) Thus, the lodestar would be \$82,085.00. (*Ibid.*) Plaintiff's counsel seeks a 1.335 multiplier based on the time and labor performed, skill required, and risk undertaken to pursue plaintiff's claim on contingency, which, even when adding costs, would not exceed the average award of one-third of the recovery. (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557, fn. 13.) Therefore, the court approves the award of attorney's fees and costs as requested.

5. Payment to Named Plaintiff:

The individual plaintiff is not receiving an enhancement award from the gross settlement. The Settlement Agreement notes that plaintiff is not seeking any enhancement award from the PAGA settlement. (Pyle Decl., ¶ 2, Exhibit 1, p. 5.) Further, the complaint filed brought no individual claims. Therefore, there is no need to analyze the reasonableness of a payment to plaintiff.

6. Administration Costs:

Phoenix Class Action Administration Solutions will receive a maximum of \$4,995.00 to administer the settlement. Phoenix Class Action Administration Solutions estimates that the costs to administer will include establishing a settlement fund; receiving, depositing, and maintaining defendant's payment; calculating, withholding and remitting shares of taxes; mailing individual payments; and using a skip trace or other search for return of non-deliverable payments. The amount of administration costs appear to be reasonable as outlined. Therefore, the court finds that the administration costs are reasonable, and approves the appointment of Phoenix Class Action Administration Solutions as the settlement administrator.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By:

KCK

(Judge's initials)

on

(Date)

6/1/22

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-2000	<i>FOR COURT USE ONLY</i>
TITLE OF CASE: Derek Dukes vs. K.W.P.H. Enterprises	
CLERK'S CERTIFICATE OF MAILING	CASE NUMBER: 21CECG00216

I certify that I am not a party to this cause and that a true copy of the:

[Minute Order and Tentative Ruling, dated 6/1/22]

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: **Fresno, California 93724-0002**

On Date: **06/01/2022**

Clerk, by _____



E. Alvarado

, Deputy

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☐ Clerk's Certificate of Mailing Additional Address Page Attached