

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SISKIYOU

FEB 07 2022

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DEPUTY CLERK

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8 Attorneys for Plaintiff Jeffrey Kennedy, on behalf of himself and all "aggrieved employees"
9 pursuant to Labor Code § 2698 *et seq.*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SISKIYOU

12 JEFFREY KENNEDY, on behalf of
13 himself and all "aggrieved employees"
14 pursuant to Labor Code § 2698 *et seq.*

15 Plaintiffs,

16 v.

17 UNION PACIFIC RAILROAD
18 COMPANY, a Delaware corporation, and
19 DOES 1 through 10, inclusive,

20 Defendants.

CASE NO: SCCVCV21-076

*Assigned for all purposes to the Hon. Karen L.
Dixon, Dept. 2*

STIPULATION AND [PROPOSED] ORDER
APPROVING SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIMS,
AND DISMISSING ACTION WITH
PREJUDICE

Complaint Filed: January 26, 2021

STIPULATION

IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. On November 10, 2020, Plaintiff Jeffrey Kennedy ("Plaintiff") complied with the requirements set forth in Labor Code § 2698 *et seq.*, the Labor Code Private Attorneys General Act (hereinafter, "PAGA") by sending a letter, by online submission to the Labor and Workforce Development Agency ("LWDA") and by certified mail to Defendant Union Pacific Railroad Company ("Defendant") (hereinafter Plaintiff and Defendant are collectively referred to as the "Parties"), setting forth the facts and theories of the violations alleged against Defendant. (Declaration of Daniel F. Gaines ["Gaines Decl."] at ¶ 6; Exhibit "A" to Gaines Decl.).

2. Plaintiff filed his Representative Action Complaint on January 26, 2021 seeking penalties pursuant to Labor Code § 2699(I) for violations of Labor Code §§ 226(a) and 226.3 ("the Action"). (Gaines Decl. at ¶ 7).

3. The Parties engaged in informal discovery, which provided Plaintiff's counsel sufficient information to ascertain the size of the aggrieved employee group, the number of affected pay periods at issue among them, and the strength of Plaintiff's claims. (Gaines Decl. at ¶ 8).

4. Being fully apprised of the value and strength of Plaintiff's claims, the Parties participated in a mediation with the Steve Pearl, Esq. on October 18, 2021 in an attempt to resolve the claims asserted in the Action. (Gaines Decl. at ¶ 9).

5. The Parties engaged in arm's-length negotiations and reached a resolution of the PAGA claims asserted in the Action following a mediator's proposal by Mr. Pearl. Based on the information and documents obtained through informal discovery and during mediation, Plaintiff assessed the maximum value of the PAGA claims (without stacking) to be approximately \$4,551,000 (at the rate of a \$100 penalty for 45,551 pay periods at issue for approximately 1,692 aggrieved employees during the applicable time frame). (Gaines Decl. at ¶ 10).

6. The amount of the settlement is \$800,000, which represents nearly 18% of the maximum recoverable discretionary penalties and includes an apportionment of attorneys' fees and costs and a general release payment to Plaintiff Kennedy. (Gaines Decl. at ¶ 11).

1 7. The settlement amount represents a fair compromise of the claims. (Gaines Decl. at
2 ¶ 12).

3 8. Based on their extensive experience litigating over 100 representative actions,
4 counsel for Plaintiff believes the settlement here is fair and reasonable and warrants approval by
5 the Court. (Gaines Decl. at ¶¶ 2-5; Exhibit "B" to Gaines Decl.).

6 9. The Parties request that the Court enter the accompanying order, approving their
7 settlement (attached to the Gaines Declaration as Exhibit "C"), as permitted by Labor Code §
8 2699(1), and dismissing this Action with prejudice. (Gaines Decl. at ¶ 13).

9 **IT IS SO STIPULATED.**

10 Dated: January 24, 2022

11 For Plaintiff:

For Defendant:

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13 GAINES & GAINES, APLC

COZEN O'CONNOR

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15 By: Daniel F. Gaines
16 DANIEL F. GAINES

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18 By: Jason E. Barsanti
19 JASON E. BARSANTI

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ORDER

The Court, having reviewed the Parties' Private Attorneys General Act (Labor Code § 2698 *et. seq.*) Settlement Agreement (the "Settlement" or "Settlement Agreement") attached as Exhibit "C" to the concurrently-filed Declaration of Daniel F. Gaines, together with the Stipulation of the Parties and the Declaration of Daniel F. Gaines and exhibits attached thereto, hereby ORDERS:

1. The Court finds the Settlement was entered into in good faith, that the settlement is fair, reasonable and adequate, and that the settlement satisfies the standards and applicable requirements for approval of PAGA representative actions under California law.

2. The Court approves the penalties to be paid to the aggrieved employees and the State of California as set forth in the Settlement, pursuant to Labor Code § 2699(l). The Court further approves all payments to be made to Plaintiff's counsel and Plaintiff Pascua based on the terms of the Settlement.

3. This Action is hereby DISMISSED WITH PREJUDICE.

4. Upon entry of this Order, the Parties shall effectuate all terms of the Settlement based on the provisions and timelines set forth in the Settlement Agreement.

5. This Court shall retain jurisdiction, pursuant to Code of Civil Procedure 664.6 and as otherwise allowed by law, with respect to all matters related to the administration and consummation of the Settlement, including but not limited to all matters related to the settlement and the determination of all controversies relating thereto.

IT IS SO ORDERED.

Dated: 2/7/2022

THOMAS J. LINVILLE

JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE AND CERTIFICATION

I am employed in the County of LOS ANGELES, State of California. I am over the age of 18 and not a party to the within action; my business address is 27200 Agoura Road, Suite 101, Calabasas, CA 91301

____ (For messenger) my business address is:

On February 3, 2022, I served the foregoing document described as STIPULATION AND [PROPOSED] ORDER APPROVING SETTLEMENT OF PRIVATE ATTORNEYS GENERAL ACT CLAIMS, AND DISMISSING ACTION WITH PREJUDICE on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Jason E. Barsanti, Esq.
COZEN O'CONNOR
101 Montgomery Street, Suite 1400
San Francisco, CA 94104

 X (BY x U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

____ (BY FACSIMILE TRANSMISSION) On _____, at _____ a.m./p.m., at Calabasas, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the telephone number(s) of the receiving facsimile machine was (____) _____. A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

____ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

____ (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

 X (ONLINE TO THE LWDA): I caused the above-described document to be delivered to the Labor Workforce Development Agency via online process at the PAGA Filing website in accordance with the procedure imposed by the LWDA.

I certify that the above document was printed on recycled paper.
I declare under penalty of perjury that the foregoing is true and correct.
Executed on February 3, 2022, at Calabasas, California.



JEREMY REYES