

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Hayward Hall of Justice

Donovin Foxx et al  
Plaintiff/Petitioner(s)  
VS.  
Healthcare Services Group, Inc. et al  
Defendant/Respondent(s)

No. RG21100855

Date: 02/01/2022

Time: 8:39 AM

Dept: 512

Judge: Eumi Lee

ORDER re: Court Order

## Ruling on Submitted Matter

The Motion of Plaintiff for approval of PAGA settlement under Labor Code 2699(1)(2) is GRANTED.

## LAW ON PAGA SETTLEMENTS

Plaintiff asserts the PAGA claim on behalf of the State of California's Labor Workforce Development Agency. "An employee plaintiff suing ... under the [PAGA] does so as the proxy or agent of the state's labor law enforcement agencies." (Iskanian v. CLS Transp. Los Angeles, LLC (2014) 59 Cal.4th 348, 381.) (See also ZB, N.A. v. Superior Court of San Diego County (2019) 2019 WL 4309684 at \*4; Tanguilig v. Bloomingdale's, Inc. (2016) 5 Cal.App.5th 665, 671.)

A person asserting a claim on behalf of the LWDA under PAGA must obtain court approval for any settlement. Labor Code 2699(1)(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."

Regarding the standard for review, Williams v. Superior Court (2017) 3 Cal.5th 531, 549, states "PAGA settlements are subject to trial court review and approval, ensuring that any negotiated resolution is fair to those affected." In O'Connor v. Uber Technologies, Inc. (N.D. Cal., 2016) 201 F.Supp.3d 1110, 1133, the LWDA filed a brief that stated, "It is thus important that when a PAGA claim is settled, the relief provided for under the PAGA be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public."

Regarding the evidence required for the court to evaluate a settlement under Labor Code 2699(1)(2), the court is not required to undertake a comprehensive "what would have happened if the litigation had proceeded" analysis. The standard of review is similar to the standard for review of class action settlements under Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, and the standard for approval of good faith settlements under CCP 877.6 and Tech-Bilt, Inc. v. Woodward-Clyde & Associates (1985) 38 Cal.3d 488.

# **SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

Hayward Hall of Justice

The court can consider the value of any effective injunctive relief that a PAGA plaintiff obtains through settlement even though Labor Code 2699(a) permits a PAGA plaintiff to recover only penalties on behalf of the LWDA. The primary purpose of LWDA law

enforcement proceedings is to ensure compliance with the law and not to impose and collect penalties. In enacting PAGA, “The Legislature declared that adequate financing of labor law enforcement was necessary to achieve maximum compliance with state labor laws.” (Arias v. Superior Court (2009) 46 Cal.4th 969, 980.)

The analysis of whether a proposed settlement will be “fair to those affected” concerns only fairness to the LWDA. If a PAGA plaintiff settles a claim on behalf of the LWDA for less than the maximum settlement values, the only injured person is the LDWA. The statute requires notice of a settlement to the LWDA so it can protect its interests and in addition it requires court approval. (Labor Code 2699(1).) The aggrieved employees retain whatever private claims they had before the settlement.

## **CONTENT OF THE SETTLEMENT**

The proposed settlement states that defendant will make a payment of \$2,100,00. The proposed settlement contains no injunctive relief.

The proposed settlement states that there will be payment of attorneys’ fees of up to \$700,000 (33.3%), costs of \$25,030.80, a service award of \$15,000 for each of the three plaintiffs, and claim administration costs of \$24,000.

Consistent with Labor Code 2699(i), the balance of approximately \$1,305,969.20 will be distributed 75% to the LWDA (\$979,476.90) and 25% to the affected employees (\$326,492.30).

## **VALUATION OF CLAIMS FOR THE LWDA**

The terms of the settlement is “fair to those affected.” The motion contains an evaluation similar to that required by Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116.

## **AUTHORITY TO RELEASE CLAIMS OF EMPLOYEES**

The proposed settlement accurately states that the release releases the claims of the LWDA (the State of California).

California law is clear that when a private plaintiff files a case under PAGA the private plaintiff is acting as an agent or proxy of the state and is not representing the aggrieved or affected employees. The California Supreme Court has stated this repeatedly. (Kim v. Reins International California (2020) 9 Cal.5th 73, 81; Z.B. N.A. v. Superior Court (2019) 8 Cal.5th 175, 185; Iskanian v. CLS Transp. Los Angeles, LLC (2014) 59 Cal.4th 348, 381.)

## **DISPOSITION OF THE RESIDUAL.**

# **SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

Hayward Hall of Justice

The proposed settlement states that unused administration costs will be paid to California Unclaimed Property Fund. (Agt p 8.) (CCP 1500.) There is no settled law on what to do with the residual in a claim on behalf of the LWDA under the PAGA. The court thinks

that the distribution of the residual to the California Unclaimed Property Fund is problematic. The court suggests that the residual is more properly distributed to the LWDA or to an organization consistent with CCP 384.

The court does not on this basis deny approval of the proposed settlement. The court suggests that counsel for plaintiff (and thus for the LWDA) consider this issue in the future.

## **ATTORNEYS FEES – AMOUNT**

The court has an independent responsibility to consider the reasonableness of fee awards. "Because [the LWDA is] not directly involved in the proceedings, oversight to ensure settlements are fair and untainted by conflict is the responsibility of both the [PAGA] representative and the court." (Mark v. Spencer (2008) 166 Cal.App.4th 219, 227.)

"In any [PAGA] action there is always the temptation for the attorney for the [LWDA] to recommend settlement on terms less favorable to his clients because a large fee is part of the bargain. ... [T]horough judicial review of fee applications is required in all [PAGA] settlements and the fairness of the fees must be assessed independently of determining the fairness of the substantive settlement terms.' ... " 'The evil feared in some settlements-unscrupulous attorneys negotiating large attorney's fees at the expense of an inadequate settlement for the client-can best be met by a careful ... judge, sensitive to the problem, properly evaluating the adequacy of the settlement for the [LWDA] and determining and setting a reasonable attorney's fee....' " (Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 555-556.)

Counsel seeks fees of \$700,000, which is 33.3% of the total fund.

The court awards fees of 630,000, which is 30% of the total fund.

The Ninth Circuit's benchmark is 25%. (Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 495.)

When using the percentage of recovery approach, the court's benchmark for fees is 30% of a total fund. (Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 495; Schulz v. Jeppesen Sanderson, Inc. (2018) 27 Cal.App.5th 1167, 1175; Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 557 fn 13; Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 fn 11.) The percentage approach suggests fees of \$630,000.

When cross-checking with the lodestar/multiplier, the court will evaluate the lodestar based on reasonable fees that would have been charged at hourly rates and then apply a multiplier. The multiplier includes contingent fee risk and other factors.

Counsel spent approximately 378 hours on the case. (Cottrell Decl., ¶ 38, Exh. 2 (186 hrs),

# **SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

Hayward Hall of Justice

Singer Decl. ¶ 16, Exh 1 (115 hours), and Lebe Decl. ¶ 10, Exh 1 (77 hours).) The case involved an exchange of discovery and then mediation. The court finds that 378 hours was reasonable.

The court finds that a blended rate of \$650 is appropriate for the counsel in this case. (Meridian Financial Services, Inc. v. Phan (2021) 67 Cal.App.5th 657, 708-709 [blended rate of \$550]; Espejo v. Copley Press, Inc. (2017) 13 Cal.App.5th 329, 337 [blended rate of \$500/hour]; 569 East County Boulevard LLC v. Backcountry Against the Dump, Inc. (2016) 6 Cal.App.5th 426, 438-440 fn 14, fn 16 [blended rate of \$275].) Regarding the amount of the blended rate, the court considers the evidence and its own knowledge and familiarity with the legal market. (Meridian Financial Services, Inc. v. Phan (2021) 67 Cal.App.5th 657, 709.)

The blended rate of \$650 is below the SWCK implied asserted blended rate of \$761, is above the CKS implied asserted blended rate of \$614, and is equal to the Lebe implied asserted blended rate of \$650. The court is familiar with counsel's work and finds it to be above average, so the blended rate is above the blended rate the court uses in other PAGA case. The higher skill of counsel results in fewer hours worked. This results in a lodestar of \$245,000.

When considering risk, the court considers there is less risk in a case with fee shifting statutes because counsel's potential fees are not limited by and coupled to the monetary recovery. "The law does not mandate ... that attorney fees bear a percentage relationship to the ultimate recovery of damages in a civil rights case." (Harman v. City and County of San Francisco (2007) 158 Cal.App.4th 407, 419.) (See also Heritage Pacific Financial, LLC v. Monroy (2013) 215 Cal.App.4th 972, 1006-1007.) The PAGA has a fee shifting provision. The court would award a 1.2 multiplier for risk. This results in \$294,840.

Considering the percentage analysis fees of \$630,000 and the multiplier adjusted lodestar fees of \$294,840, the court will award fees of \$630,000.

The court approves costs of \$23,930.80.

The court approves settlement administration costs of \$24,000.

The court approves a service award of \$10,000 to each named plaintiff. Plaintiffs provided evidence regarding the nature of participation in the action, including a description of specific actions and the amount of time committed to the prosecution of the case. (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804-807.)

The Court ORDERS that 10% of any fee award to be kept in the administrator's trust fund until the completion of the distribution process and Court approval of a final accounting.

The Court will set a compliance hearing after the completion of the distribution process and the expiration of the time to cash checks for counsel for plaintiff and the Administrator to provide information comparable to that in CCP 384(b) and to submit a summary accounting how the funds have been distributed to the aggrieved employees and the status of any unresolved issues. If the distribution is completed, the Court will at that time release any hold-back of attorney fees.

# **SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

Hayward Hall of Justice

The court will sign the amended proposed order, which is modified by this order.

The Court orders that the Settlement shall be effectuated according to its terms. As provided for in the Settlement Agreement, the settlement funds shall be tendered by Defendants to the agreed-upon settlement administrator within twenty (20) calendar days after both the Effective date in this action or similar effective date in *Gonzales v. Healthcare Services Group, Inc., et al.*, San Francisco County Superior Court Case No. CGC-18-570988 (the “Gonzales Action”), whichever date is later.

Dated: 02/01/2022

A handwritten signature in black ink, appearing to read 'Eumi Lee', with a stylized, flowing script.

**Eumi Lee / Judge**

|                                                                                                   |                                                                                                                                                              |
|---------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p align="center"><b>SUPERIOR COURT OF CALIFORNIA<br/>COUNTY OF ALAMEDA</b></p>                   | <p align="center">Reserved for Clerk's File Stamp</p>                                                                                                        |
| <p>COURTHOUSE ADDRESS:<br/>Hayward Hall of Justice<br/>24405 Amador Street, Hayward, CA 94544</p> | <p align="center"><b>FILED</b><br/>Superior Court of California<br/>County of Alameda<br/>02/01/2022</p>                                                     |
| <p>PLAINTIFF/PETITIONER:<br/>Donovin Foxx et al</p>                                               | <p>Chad Finke, Executive Officer / Clerk of the Court<br/>By:  Deputy</p> |
| <p>DEFENDANT/RESPONDENT:<br/>Healthcare Services Group, Inc. et al</p>                            | <p align="center">S. Monroe</p>                                                                                                                              |
| <p align="center"><b>CERTIFICATE OF MAILING</b></p>                                               | <p>CASE NUMBER:<br/>RG21100855</p>                                                                                                                           |

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Hayward, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

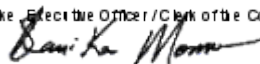
Carolyn H Cottrell  
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Emeryville, CA 94608-

Chad Finke, Executive Officer / Clerk of the Court

Dated: 02/01/2022

By:

Chad Finke, Executive Officer / Clerk of the Court



S. Monroe, Deputy Clerk

**CERTIFICATE OF MAILING**