

CLERK OF SUPERIOR COURT,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 12/21/2022

TIME: 08:30:00 AM

DEPT: C-72

JUDICIAL OFFICER PRESIDING: Timothy Taylor

CLERK: Valerie Secaur

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: O. Godoy

CASE NO: **37-2021-00006458-CU-OE-CTL** CASE INIT.DATE: 02/11/2021

CASE TITLE: **Moraga vs Jeromes Furniture Warehouse [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT TYPE: Ex Parte

APPEARANCES

Devon K Roepcke, counsel, present for Plaintiff(s).

Appearances are as noted above. There is no appearance by Defendant.

Ruling on Motion for Approval of PAGA Settlement

Moraga v. Jeromes Furniture, Case No. 2021-06458

December 21, 2022, 8:30 a.m., Dept. 72 (special set)

1. Overview and Procedural Posture.

This is an employment case in which plaintiff challenges the wage and hour practices of a local furniture retailer. Plaintiff alleges she worked in the Jeromes call center from 2018-2020 and was not paid for all time she worked, and that her supervisors manipulated her time records to make it appear (falsely) that she received meal and rest periods required under the Labor Code when she did not. The seven count complaint filed in February of 2021 includes a representative PAGA count.

Defendant sought to compel arbitration pursuant to an agreement plaintiff signed at the outset of her employment. ROA 8-11. After full briefing and a hearing on August 6, 2021, the court granted the motion as to plaintiff's individual claims, and stayed the PAGA claims. ROA 21. The court set an arbitration status conference one year later. ROA 22.

At the August 5, 2022 status conference, the parties reported the case was set for arbitration October 25-27, 2022. ROA 28. The court ordered the parties back on December 9. ROA 29. At that hearing,

they reported the individual claims had been settled, and asked for a hearing on the PAGA settlement. ROA 32. The court obliged, and specially set the hearing for today. ROA 31. The court has reviewed the unopposed moving papers (ROA 33-36), and no further submissions are authorized in connection with this motion.

2. Applicable Standards.

A. In 2003, the California Legislature, concerned that state labor laws were not being adequately enforced, enacted PAGA to deputize "aggrieved employees" to pursue civil penalties. *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 81. An aggrieved employee is a person who was employed by the defendant employer and who suffered one or more of the alleged Labor Code violations. Lab. Code § 2699(c).

B. Under Labor Code section 2699(l)(2), the court must "review and approve any settlement of any civil action pursuant to this part." This is to ensure that "any negotiated resolution is fair to those affected." *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549. The criteria for review and approval of a PAGA settlement was not well developed in the California case law until the First District Court of Appeal handed down its decision in *Moniz v. Adecco USA*, 72 Cal. App. 5th 56 (2021) (*Moniz*). There, the court adopted a test whereby the court inquires whether the settlement is fair, adequate and reasonable as well as meaningful and consistent with the purposes of PAGA.

Before *Moniz*, there were numerous California cases suggesting judicial approaches to approval of class action settlements, including *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 240; and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116. Under these cases, the factors to be considered by the court include:

- 1. Strength of plaintiff's case. This is the most important factor.
- 2. Expense associated with taking the case to trial, *i.e.*, the avoided cost of further litigation.
- 3. Amount or value offered in settlement.
- 4. Extent of discovery completed and state of proceedings.
- 5. Experience and views of counsel.
- 6. Presence of a governmental participant.
- 7. Reaction of class members to proposed settlement.

Moniz suggests items 1-6 from this list may provide guidance in the PAGA setting; obviously item 7 does not apply, because the non-party aggrieved workers in a PAGA case are entitled to no notice and have no opt out rights. *Arias v. Superior Court* (2009) 46 Cal.4th 969.

C. "The law empowers the court to set the amount of fees independently without disapproving the entire settlement." *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 129. The benchmark for determining attorney fees is reasonableness. *Karton v. Ari Design & Construction, Inc.* (2021) 61 Cal.App.5th 734, 744. The determination of what constitutes a reasonable fee generally begins with the lodestar, *i.e.*, the number of hours reasonably expended multiplied by the reasonable hourly rate. *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 154. The lodestar figure may then be adjusted, based on factors specific to the case, to fix the fee at the fair market value for the legal services provided. *PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095.

D. This court has previously ruled it would not approve "incentive awards" in PAGA cases. The court

"The Legislature's "sole purpose" in enacting PAGA was to ensure effective enforcement of the Labor Code. *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 86-87. As such, "[p]laintiffs may bring a PAGA claim only as the state's designated proxy, suing on behalf of all affected employees." *Id.* at 87. Awarding an incentive payment to the state's designated proxy is, in the court's view, inconsistent with PAGA's statutory purpose. Although incentive payments are well-established in the class action setting,* plaintiff has not cited, nor has the court located, any authority holding that such payments are authorized in a PAGA-only action."

This case involves a modest settlement which appears appropriate in light of the summary of the case provided by Mr. Roepcke. Plaintiff's counsel has forsworn attorneys' fees, and plaintiff has not requested an incentive award. Based on the court's review of the moving papers, the settlement meets the standards of *Moniz, supra*, and involves the usual windfall to the LWDA in the percentage specified by current law. Accordingly, the PAGA settlement is hereby approved. The court signs the order and judgment provided with the moving papers (ROA 35-36). The court thanks counsel for their work to resolve the case.

*Although well established, not without detractors. See *Johnson v. NPAS Solutions* (11th Cir. 2020) 975 F.3d 1244, suggesting that the practice of awarding a class representative an "incentive" payment as part of a class action settlement is unlawful. *Johnson*, 975 F.3d at 1260.

Judge Timothy Taylor