

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 48

21STCV09769

HEATHER SCOTT, et al. vs POLLY'S, INC., et al.

June 1, 2023

8:30 AM

Judge: Honorable Thomas D. Long

Judicial Assistant: Emily Ma Reyes

Courtroom Assistant: Sandra Brown

CSR: None

ERM: None

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): HYUNJIN KIM for Allen Victor Feghali (Telephonic) (via CourtConnect)

For Defendant(s): RYAN C. MCKIM for Beth Ann Kahn (via CourtConnect) (Telephonic)

NATURE OF PROCEEDINGS: ORDER TO SHOW CAUSE RE DISMISSAL

**PLAINTIFF'S MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT
REPRESENTATIVE ACTION SETTLEMENT**

The matters are called for hearing.

The Court issues a Tentative Ruling and hears oral argument.

The Tentative Ruling is adopted as the Final Ruling of the Court.

The PLAINTIFF'S MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT REPRESENTATIVE ACTION SETTLEMENT filed by Heather Scott on 04/18/2023 is Granted.

On June 23, 2021, Heather Scott filed a First Amended Complaint against Polly's, Inc. and Polly's Pies, Inc. in Case No. 21STCV09769.

On June 22, 2021, Sergio Palicio filed a First Amended Complaint against Polly's, Inc., Polly's Pies, Inc., Polly's Gourmet Coffee, Inc., and Kentucky Fried Chicken of Polly's, Inc. (collectively, "Defendants") in Case No. 21STCV11093.

Both actions included a representative claim for penalties under the Private Attorney General Act ("PAGA").

The parties have agreed on the terms of a settlement to resolve both actions. Under the proposed settlement, the Defendant will pay a total of \$185,000.00. Of that amount, no more than \$64,750.00 will be paid as attorney fees and \$20,000.00 will be paid as costs, and no more than \$15,000.00 will be paid to a Settlement Administrator. Of the remaining amount, 75% will be

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paid to the Labor and Workforce Development Agency ("LWDA") and 25% will paid to the aggrieved employees on a pro rata basis, based on the number of pay periods each employee worked for the Defendants during the covered period.

A Court must review and approve any penalties sought as part of a proposed settlement agreement pursuant to Labor Code §2699. (Labor Code §2699, subd.[1].) "[C]ivil 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." (Labor Code §2699, subd.[i].)

a. Plaintiffs Have Provided Notice to LWDA of the Settlement

A proposed PAGA settlement must be submitted to LWDA at the same time that it is submitted to the court for review and approval. (Labor Code §2699, subd.[1][2].) Counsel provides proof of submitting the proposed settlement to LWDA. (Declaration of Moon, ¶8 & Exhibit 3; Declaration of Connolly, ¶10.)

Accordingly, the Court finds that this requirement is satisfied.

b. Settlement is Entitled to a Presumption of Fairness

A presumption of fairness for a settlement agreement 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. (Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1802.) The final factor does not apply to PAGA. (See Arias v. Superior Court (2009) 46 Cal.4th 969, 984 [representative actions under PAGA do not violate the due process rights of "nonparty aggrieved employees who are not given notice of, and an opportunity to be heard"].)

The parties entered into the settlement after a mediation with a professional neutral mediator, and they accepted the mediator's proposal. (Declaration of Moon, ¶7; Declaration of Connolly, ¶¶7 - 8.) The settlement was therefore reached through arm's-length bargaining.

The parties considered the inconvenience, distraction, disruption, delay, and expense of a Trial, and the Plaintiffs took into account the risk and uncertainty of the outcome inherent in any litigation when determining whether this settlement was the correct option. (Declaration of

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Moon, ¶7.) Before the mediation, the parties engaged in discovery and analysis, including the use of an expert to analyze records. (Declaration of Moon, ¶¶5 - 6.) Accordingly, there was sufficient investigation to allow counsel and the Court to act intelligently.

Plaintiffs' Counsel has extensive experience in the Plaintiff-side employment law and is therefore experienced in similar litigation. (See Declaration of Moon, ¶¶18 - 22, 35 - 36; Declaration of Connolly, ¶19.)

The Court therefore finds that the settlement is entitled to a presumption of fairness.

c. Release is Permissible

Through the settlement agreement, the aggrieved employees release the Defendants from "any and all claims, wage and hour claims, rights, demands, liabilities and causes of action of any nature or description for civil penalties under PAGA alleged/asserted in the Actions, as amended, arising from and/or related to the facts and claims alleged/asserted in the Actions, as amended, that could have been alleged/asserted in the Actions based on the facts and claims alleged in the Actions, as amended, and the facts and claims asserted in, arising from or related to, or could have been alleged" in the Plaintiffs' PAGA Notices.

This release is limited to claims for civil penalties that arise from or relate to allegations in Plaintiffs' PAGA letter or Complaints in this action, and it is permissible.

d. Attorney Fees and Costs are Reasonable

A prevailing employee is entitled to an award of reasonable attorney fees and costs incurred in the action. (Labor Code §2699, subd.[g][1].) The Defendant will pay up to \$64,750.00 in attorney fees from the gross settlement amount of \$185,000.00, and up to \$20,000.00 in costs. This is less than the actual amount of attorney fees and costs already incurred. (Declaration of Moon, ¶10; Declaration of Connolly, ¶¶31 - 32.)

The Court finds that the attorney fees and costs are reasonable.

e. Conclusion

Accordingly, the Motion for Approval of PAGA Settlement is hereby Granted.

The Order to Show Cause is hereby Discharged.

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Plaintiff is to give notice.

LATER, IN CHAMBERS:

The Court schedules back on the Order to Show Cause re Dismissal on calendar and continues it to a future date as follows:

On the Court's own motion, the Order to Show Cause Re: Dismissal (Settlement) scheduled for 06/01/2023 is continued to 07/21/2023 at 08:30 AM in Department 48 at Stanley Mosk Courthouse.

Clerk is to give notice.

Certificate of Mailing is attached.