

05/28/2024

David W. Slayton, Executive Officer / Clerk of Court

By: R. Arraiga Deputy**FINAL RULING RE: MOTION FOR APPROVAL OF THE PAGA
SETTLEMENT***James Robins v Pacific World Corporation*, 21STCV14303

This is a putative wage-and-hour class action. Plaintiff James Robins alleges that he and putative class members are and were non-exempt employees employed by Defendant Pacific World Corporation. Plaintiff alleges that Plaintiff and the aggrieved employees were misclassified as independent contractors and were therefore not provided meal and rest periods and that Defendant did not reimburse Plaintiff and aggrieved employees for necessary expenses. (Moon Decl. ¶¶ 10-11.)

On April 14, 2021, Plaintiff filed a class action complaint. On August 12, 2022, Plaintiff filed a Second Amended Class and Representative Action Complaint ("SAC"). In the SAC, Plaintiff asserts three causes of action for (1) failure to indemnify necessary business expenses; (2) unfair business practices; and (3) civil penalties under the Private Attorneys General Act (PAGA).

On February 2, 2024, the Court – presided by the Honorable Yvette M. Palazuelos – granted Plaintiff's request to dismiss the first two causes of action, leaving only Plaintiff's claim for civil penalties under PAGA.

On February 27, 2024, Plaintiff filed the instant motion for approval of the PAGA settlement. No opposition or reply has been filed.

Legal Standard

Labor Code section 2699(l)(2), provides in pertinent part:

(2) The *superior court* shall review *and approve* any settlement of any civil action filed pursuant to this part [i.e., PAGA]. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court. (Emphasis added.)

By its terms, Labor Code section 2699(l)(2) above requires the Court to review and approve any settlement of a PAGA claim, and for the proposed settlement to be submitted to the LWDA. Thus, the Legislature has bestowed on the Court the responsibility to determine whether the PAGA settlement is fair or not. The PAGA statute does not provide any direction about what factors to consider when approving the settlement, but some courts have looked to the class action settlement approval process for direction. Federal courts, for example, have looked to class settlement standards as a guide for approving PAGA settlements. See, e.g., *O'Connor v. Uber Technologies* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1134 (noting that it would be appropriate to consider the factors discussed in *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026, [in assessing whether a PAGA settlement is justified, including: 1) the strength of the plaintiff's case; 2) the risk, expense, complexity, and likely duration of further litigation; 3) the amount and terms offered in settlement; 4) the extent of discovery completed and the stage of the proceedings; and 5) the experience and views of counsel].)

Discussion

Plaintiff's motion for approval of the settlement of the claim for civil penalties under PAGA is **GRANTED**.

The settlement is for a gross amount of \$150,000.00. (Moon Decl. ¶ 18, Exh. 1 [Settlement Agreement] at § 1.10.) Of this gross settlement amount, various amounts are set aside for expenses including up to \$2,950.00 for Administrator fees costs. (Moon Decl. ¶ 18, Exh. 1 at § 3.2.2.) Up to \$50,000.00 of the gross settlement amount – i.e., 1/3 of the total gross settlement – is set aside for attorneys' fees. (Moon Decl. ¶ 18, Exh. 1 at § 3.2.1.) Finally, \$15,000.00 is apportioned for litigation expenses. (Moon Decl. ¶ 18, Exh. 1 at § 3.2.1.) However, only \$14,288.66 in litigation expenses are claimed. (Moon Decl. ¶ 59, Exh. 5.)

Any reduction in Attorneys' fees or litigation costs shall go to the Net Settlement Amount. (Moon Decl. ¶ 18, Exh. 1 at § 3.2.1.) Similarly, any reduction in the Administrator's fee will go to the net settlement amount. (Moon Decl. ¶ 18, Exh. 1 at § 3.2.2.)

Accordingly, approximately \$82,761.34 of the PAGA settlement remains of which:

75% is to go to LWDA or \$62,071.00 (Moon Decl. ¶ 18, Exh. 1 at § 3.2.3.)

25% is to go to PAGA Settlement members or \$20,690.34 (Moon Decl. ¶ 18, Exh. 1 at § 3.2.3.)

The Settlement Administrator is to report the Individual PAGA payments on IRS 1099 forms. (Moon Decl. ¶ 18, Exh. 1 at § 3.2.3.2.) However, each individual aggrieved employee is responsible and liable for any taxes owed. (Moon Decl. ¶ 18, Exh. 1 at § 3.2.3.1.)

The PAGA settlement agreement clearly sets forth the scope of the settlement. "Aggrieved Employee" means all non-exempt employees of Defendant who worked in California and who were classified as independent contractors, from April 13, 2020, to Tuesday, October 24, 2023. (Moon Decl. ¶ 18, Exh. 1 at § 1.4.) The "PAGA Period" is from April 13, 2020 through October 24, 2023. (Moon Decl. ¶ 18, Exh. 1 at § 1.19.)

Moreover, the PAGA settlement amount is reasonable. There are approximately 54 PAGA Employees covered with a total of 2,100 pay periods covered by the settlement agreement. (Moon Decl. ¶ 18, Exh. 1 at § 4.1.) Therefore, assuming equal violations for each aggrieved employee, approximately \$383.15 per employee or approximately \$9.85 per pay period. Plaintiff's Counsel states that the penalties could be between \$5,400 (54 employees x \$100 penalty for initial violation) on the low end or \$43,200 on the high end with stacking PAGA penalties with (54 employees x \$100 penalty for initial violation x 8 theories of recoveries). (Moon Decl. ¶ 24.)

Theoretically, this amount could be significantly higher as the penalties are per pay period. (Lab. Code, § 2699(f).) Thus, there is a theoretical maximum of \$1,641,600.00 in penalties by taking the average number of pay periods per employee (2100 total pay periods divided by 54 employees – i.e., approximately 38 pay periods per employee) times the \$100 for each initial violation times the number of employees and times the 8 theories of recovery. However, this amount is unlikely due to the defenses, and that there is legal question as to whether stacking penalties by theories of recovery is permitted. (See e.g., *Salazar v. PODS Enterprises, LLC* (C.D. Cal., May 8, 2019, No. EDCV19260MWFKKX) 2019 WL 2023726, at *6.)

Further, reductions are generally applied if there are any mitigating circumstances. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming trial court's award of less than 10% of maximum PAGA penalty for meal break violations where company sought to comply with the law).) Moreover, Defendant did not concede the allegations in the complaint and had several defenses including that it had legally compliant employment policies and practices throughout the statutory period and that the employees were not misclassified. (Moon Decl. ¶¶ 12-13.)

Accordingly, a PAGA settlement of \$82,761.34 seems well within the reasonable range for a PAGA settlement based on the defenses and allegations in the operative SAC. Moreover, the PAGA settlement negotiations were at arm's length and came about through mediation with the Honorable Carl West (Ret.) (Moon Decl. ¶18.)

Plaintiff Attorney requests \$50,000.00 in attorney fees. The amount requested appears reasonable. This amount is 1/3 of the total settlement amount. The action took place over three years. Plaintiff's Counsel had two attorneys working on the case. The lead attorney Kane Moon has approximately 17 years of experience and approximately a decade of experience with employment class actions. (Moon Decl. ¶¶ 30-33.) He claims an hourly rate of \$725 and has had hourly rates of \$750 and approved in the past. (Moon Decl. ¶ 33.) Moon claims to have spent 44.5 hours on the instant action. (Moon Decl. ¶ 54.) Plaintiff's Counsel second attorney that worked on the case -- Brett Gunther -- has approximately 9 years of experience in mostly class action and representative actions. (Moon Decl. ¶¶ 34-37.) Gunther claims an hourly rate of \$475 an hour and that he spent 95.8 hours on the instant action. (Moon Decl. ¶ 54.) The total claimed lodestar is \$77,767.50. Thus, the requested \$50,000.00 is only approximately 64% of the claimed lodestar. The docket only represents minimal motion practice -- i.e., a single motion for leave to file a second amended complaint. In light of the length of time in the motion and without more information as to the specific hours spent on discovery, a slight reduction in the claimed lodestar might be warranted. However, this minor reduction would still be significantly more than the claimed amount of \$50,000.00. Therefore, the Court finds that the attorneys' fees claimed in the PAGA settlement are reasonable.

The costs of \$14,288.66 are all documented and supported. These costs consist of filing fees, court fees, service of process, caseanywhere fees, and mediation fees. (Moon Decl. ¶ 59, Exh. 5.)

The release of claims appears proper. Only claims raised in the letter to the LWDA and the SAC have been released for the aggrieved employees and only as to PAGA penalties. (Moon Decl. ¶ 18, Exh. 1 at § 5.2.)

Finally, Plaintiff has given notice of the settlement to the LWDA and has provided proof of receipt. (Moon Decl. ¶¶ 19, 21, Exhs. 2, 4.)

CONCLUSION

In sum, the terms of the PAGA Settlement Agreement are fair, adequate, and reasonable. Accordingly, Plaintiff's Motion for Approval of the PAGA Settlement Agreement is **GRANTED**.

By **June 27, 2024**, Plaintiff must:

- a. serve this Order on the LWDA pursuant to Labor Code section 2699(l)(3);
- b. file and serve a [Proposed] Judgment consistent with this ruling containing among other things, the PAGA aggrieved employee definition; PAGA period; and full release language;

Non-Appearence Case Review is set for July 3, 2024, 8:30 a.m., Department 9.

By **May 28, 2025**, Plaintiffs must file and serve a final accounting.

Non-Appearence Case Review is set for June 4, 2025, 8:30 a.m., Department 9.

IT IS SO ORDERED.

DATED: May 28, 2024



Elaine Lu
Judge of the Superior Court