

07/05/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: D. Provencio Deputy

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Attorneys for Plaintiff Michael Sanders, on behalf of himself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MICHAEL SANDERS, on behalf of himself
and all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*,

Plaintiff,

v.

KDW AUTOMOTIVE, INC., a Delaware
corporation, DOES 1 through 10, inclusive,

Defendants.

CASE NO: 21GDCV00857

Assigned to the Hon. David A. Rosen, Dept. E

**STIPULATION AND ~~PROPOSED~~
ORDER PERMITTING FILING OF
FIRST AMENDED COMPLAINT,
APPROVING SETTLEMENT OF
PRIVATE ATTORNEYS GENERAL ACT
CLAIMS, AND DISMISSING THE
ACTION WITH PREJUDICE**

Complaint Filed: June 21, 2021

STIPULATION

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

1. On April 8, 2021, Plaintiff Michael Sanders (“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 KDW Automotive, Inc. (“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 “B” to Gaines Decl.).

2. Plaintiff filed his Representative Action Complaint on July 21, 2021 seeking penalties pursuant to Labor Code § 2699(f) for violations of Labor Code §§ 201, 202, 226(a), 226.7, 510, and 512 and penalties pursuant to Labor Code § 2699(a) for violations of Labor Code §§ 226.3 and 558 (“the Action”). (Gaines Decl. at ¶ 7).

5. During the course of the litigation, the Parties engaged in informal discovery and shared the information necessary for all sides to conduct a legitimate investigation into the allegations of the action and potential defenses thereto. The Parties have reached this settlement only after such discovery and investigation was performed. (Gaines Decl. at ¶ 8).

6. On March 31, 2022, the Parties mediated with well-respected mediator Marc J. Feder, Esq., and reached a settlement of the action which was memorialized in a settlement agreement signed by all Parties. (Gaines Decl. at ¶ 10; Exhibit “C” thereto (the “Settlement Agreement”)).

7. The Parties engaged in arm’s-length negotiations and reached a resolution of all claims asserted in the action. 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 \$500,000 (at the rate of a \$100 penalty for 5,000 total pay periods at issue for approximately 200 aggrieved employees during the applicable time frame). (Gaines Decl. at ¶ 11).

8. Defendant denied and continues to deny any liability to Plaintiff or any other allegedly aggrieved employee for any violations alleged in the Action. (Gaines Decl. at ¶ 9).

1 9. The amount of the settlement is \$150,000 which represents 30% of the maximum
2 recoverable discretionary penalties and includes an apportionment of attorneys' fees and costs and an
3 Individual Claim Payment to Plaintiff. (Gaines Decl. at ¶12).

4 10. The Parties agree that the settlement amount represents a fair compromise of the
5 claims, including the related costs of litigation and risk. (Gaines Decl. at ¶ 13).

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

9 12. As part of the settlement, the Parties agreed that the complaint would be amended to
10 include allegations related to violations based on underpayment of overtime and double time wages,
11 including, but not limited to, the incorrect calculation of the regular rate of pay. The Parties agreed
12 that Plaintiff's theories relating to the alleged underpayment of overtime and double time wages were
13 discussed during the mediation and a release of any claim for PAGA penalties premised on such
14 theories was a material part of the Parties' agreement to resolve the Action. The proposed First
15 Amended Complaint, and a redline copy for the Court's convenience, are attached as Exhibits "D"
16 and "E" to the Gaines Declaration, respectively. Notice of all Labor Code violations alleged in the
17 proposed amended complaint and released by the proposed settlement were provided by letter to the
18 LWDA and Defendant on April 25, 2022, a copy of which is attached as Exhibit "F" to the Gaines
19 Declaration. (Gaines Decl. ¶ 15.)

20 13. The Parties now request that the Court enter the accompanying order, permitting the
21 filing of the First Amended Complaint, approving the settlement as reflected in the Parties' Settlement
22 Agreement (Exhibit "C" to Gaines Decl.) as permitted by Labor Code § 2699(l), and dismissing this
23 Action with prejudice. (Gaines Decl. at ¶ 14.)

24 14. The Parties further agree that, after entry of this Order and pursuant to California Code
25 of Civil Procedure section 664.6, the Court shall retain jurisdiction of the Action to construe, interpret,
26 implement, and enforce the Settlement Agreement and this Order.

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1 15. Concurrent with the filing of this Stipulation, the Parties have submitted the Settlement
2 Agreement to the LWDA in compliance with Labor Code section 2699(1)(2). (Gaines Decl., ¶ 16.)

3 16. If the Court should for any reason fail to approve the Settlement, this Stipulation shall
4 be considered null and void, except with respect to Plaintiff's filing of the First Amended Complaint.
5

6 **IT IS SO STIPULATED.**

7 Dated: June 30, 2022

Respectfully submitted,

8 GAINES & GAINES
9 A Professional Law Corporation

10 By: *Daniel F. Gaines*
Daniel F. Gaines
11 Alex P. Katofsky
12 Attorneys for Plaintiff

13 Dated: June 30, 2022

FISHER & PHILLIPS LLP

14 By: *Bret Martin*
15 John A. Mavros
16 Bret Martin
Attorneys for Defendant

ORDER

The Court, having reviewed the Parties' Settlement Agreement and Release of Claims (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 as follows:

1. The First Amended Complaint, attached to the concurrently filed Declaration of Daniel F. Gaines as Exhibit D, is hereby approved and deemed filed as of the date the Court signs this Order.

2. 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.

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

4. This Action is hereby DISMISSED WITH PREJUDICE.

5. 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.

6. This Court shall retain jurisdiction 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, per CCP sect. 664.6.

IT IS SO ORDERED.

Dated: 07/05/2022



A handwritten signature in black ink, appearing to read "D. Rosen".

JUDGE OF THE SUPERIOR COURT

David A. Rosen/Judge

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PROOF OF SERVICE AND CERTIFICATION

I am employed in the County of VENTURA, State of California. I am over the age of 18 and not a party to the within action; my business address is 4550 E. Thousand Oaks Blvd., Suite 100, Westlake Village, CA 91362.

____ (For messenger) my business address is:

On July 1, 2022, I served the foregoing document described as **(1) STIPULATION AND [PROPOSED] ORDER PERMITTING FILING OF FIRST AMENDED COMPLAINT, APPROVING SETTLEMENT OF PRIVATE ATTORNEYS GENERAL ACT CLAIMS, AND DISMISSING THE ACTION WITH PREJUDICE** and **(2) DECLARATION OF DANIEL F. GAINES IN SUPPORT OF STIPULATION AND [PROPOSED] ORDER PERMITTING FILING OF FIRST AMENDED COMPLAINT, APPROVING SETTLEMENT OF PRIVATE ATTORNEYS GENERAL ACT CLAIMS, AND DISMISSING THE ACTION WITH PREJUDICE** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

John A. Mavros, Esq.
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, CA 92614

Bret Martin, Esq.
FISHER & PHILLIPS LLP
4747 Executive Drive., Suite 1000
San Diego, CA 92121

 X (BY ☒ 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 that 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 ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic transmission via email on the counsel of record listed above.

 X (UPLOADED TO LWDA WEB PORTAL) I caused the above-described document to be delivered to the Labor & Workforce Development Agency via online process at the PAGA Filing website (www.dir.ca.gov) 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 July 1, 2022, at Westlake Village, California.

Beatriz Franco
BEATRIZ FRANCO