

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Hayward Hall of Justice

Chondra Phillips
Plaintiff/Petitioner(s)
VS.
A-Team Delivers LLC
Defendant/Respondent(s)

No. RG21104034
Date: 03/10/2022
Time: 1:30 PM
Dept: 517
Judge: Somnath Raj Chatterjee

ORDER re: Hearing on Motion - Other
Approval of Private Attorneys
General Act Settlement

The Motion re: for Approval of Private Attorneys General Act (PAGA) Settlement filed by Chondra Phillips on 02/22/2022 is Granted.

Plaintiff Chondra Phillips moves for court approval of the agreement to settle claims against Defendant A-Team Deliveries, LLC. ("Defendant" or "A-Team"). As a PAGA plaintiff, Phillips seeks only those civil penalties owed to and collectable by the Labor and Workforce Development Agency ("LWDA") pursuant to the Labor Code Attorneys General Act of 2004 ("PAGA") (Labor Code §§ 2698 et seq.).

LEGAL STANDARD

PAGA actions are in the nature of a qui tam proceeding in that plaintiff may seek civil penalties that would otherwise be recoverable by the LWDA. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 382.) Plaintiff cannot bring "individual" claims under PAGA; they may only bring the action on behalf of themselves and all other aggrieved employees to vindicate the LWDA's interest in enforcement of the Labor Code. (Labor Code § 2699(c) & (g)(1); *Williams v. Superior Court* (2015) 237 Cal.App.4th 642, 649.) Any monetary penalties assessed against the defendant are split between the LWDA and named plaintiffs, with 75% going to the LWDA. (Labor Code § 2699(i).) Even outside of the settlement context, the Court has the authority and discretion to diminish penalty awards that would be "unjust, arbitrary and oppressive, or confiscatory." (Labor Code § 2699(e)(2).)

Unlike government entities represented in False Claims Act qui tam actions, the LWDA does not have a statutory right to intervene or object to settlement. (Compare Gov. Code § 12652(c)(1), (e)(2)(b), (f)(2)(B), with Labor Code § 2699(l).) Because the LWDA is not present at the negotiating table, the Court's review of a PAGA settlement must make sure that the interests of the LWDA in civil enforcement are defended and that the settlement is fair, adequate, and reasonable under all the circumstances. (*Accord O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133; see also Gov. Code § 12652(e)(2)(B) [requiring False Claims Act qui tam settlements be "fair, adequate, and reasonable under all the circumstances"].)

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DISCUSSION

The settlement was mediated with the assistance of an experienced wage and hour / PAGA mediator, Kristin Rizzo, Esq. As in class action settlements, the court gives “considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in [concluding] that [the] settlement agreement represents an arm’s length transaction entered without self-dealing or other potential misconduct.” (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129; see also In re Sutter Health Uninsured Pricing Cases (2009) 171 Cal.App.4th 495, 504.)

Plaintiff asserts that in the instant action, the PAGA penalties have been significantly discounted in consideration of the defenses available to Defendant, economic hardships facing new businesses, and the pending review by the U.S. Supreme Court in the matter of Viking River Cruises Inc. v. Angie Moriana (No. 20-173).

The Court has considered the relative strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation of this dispute; the amount offered in settlement; the stage of the proceedings; and the experience and views of counsel that settlement is reasonable. Plaintiff has advised that Defendant employed approximately 374 PAGA Members between April 13, 2020 and January 7, 2021. The Court finds that the proposed gross settlement payment of \$98,000.00 is fair, reasonable and adequate.

The Court APPROVES the Gross Settlement Amount by Defendant A-TEAM DELIVERS, LLC (“Defendant”) of \$98,000. Of this amount, the Court APPROVES the PAGA Fund of \$48,716.11, from which: (i) \$36,537.08 (75%) shall be paid to the California Labor and Workforce Development Agency (“LWDA”), and (ii) \$12,179.03 (25%) shall be paid to all PAGA Members to be distributed on a proportionate basis.

The Court APPROVES Atticus Administration, LLC, as the Settlement Administrator. The Court finds payment of \$3,516 is fair and reasonable and ORDERS the Administrator to make payment to itself in accordance with the Settlement Agreement.

The Court GRANTS plaintiff’s counsel’s request for attorneys’ fees. Based on the discounted Gross Settlement Amount, the Court finds that 35% of the amount is reasonable under the circumstances. Therefore, the Court APPROVES and awards PAGA Counsel, Dychter Law Offices, APC, attorneys’ fees of \$34,300.00.

The Court has reviewed and GRANTS an award of \$6,467.89 to counsel as compensation for litigation costs, which reflect the parties’ costs as of the filing of this motion. (Dychter Decl. ¶ 17 Ex 4.)

The Court has reviewed and APPROVES a service award of \$5,000 to Chondra Phillips. This amount constitutes reasonable compensation for Phillips given the risks undertaken, the effort devoted to this litigation, and the general release of her underlying individual claims to Defendant.

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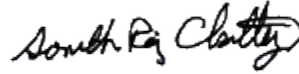
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If any PAGA Members fail to cash their settlement payment checks within 180 days after they are mailed by the Administrator, the checks will become void and escheat to the State of California Controller's Office – Unclaimed Fund in the names of the PAGA Settlement Members who did not cash such checks and shall be sent by the Administrator.

Pursuant to California Code of Civil Procedure § 664.6, the Court shall retain continuing jurisdiction over this action and the Parties, including after entry of this Order, to the fullest extent necessary to interpret, enforce and effectuate the terms and intent of the Agreement and this Order.

The Court will adopt the Proposed Order. Pursuant to California Labor Code § 2699(1)(3), a copy of this Order shall be submitted to the LWDA within 10 days after entry of this Order.

Dated: 03/10/2022

A handwritten signature in black ink, appearing to read "Somnath Raj Chatterjee", with a stylized flourish at the end.

Somnath Raj Chatterjee / Judge