

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - July 07, 2022

EVENT DATE: 07/08/2022

EVENT TIME: 10:30:00 AM

DEPT.: C-70

JUDICIAL OFFICER: Carolyn Caietti

CASE NO.: 37-2021-00018865-CU-OE-CTL

CASE TITLE: DELGADO VS BAKER COMMODITIES INC [E-FILE]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Other employment

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion - Other, 03/30/2022

Plaintiff Gabriel Delgado's unopposed Motion for Approval of PAGA Settlement is **GRANTED**.

Labor Code section 2699(l)(2) requires courts to "review and approve" PAGA settlements. (See also *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56.)

The PAGA settlement of \$200,000 appears "fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz, supra*, 72 Cal.App.5th at p. 77.) The distribution of the penalties (75% to LWDA; 25% to the aggrieved employees) is consistent with Labor Code section 2699(i).

The Court evaluated the strength of Plaintiff's case, risk, complexity, likely duration of further litigation, the settlement amount, any indications of fraud, collusion or unfairness, and whether Plaintiff adequately represented the state and public's interests.

Here, Defendant disputed Plaintiff's claims and asserted affirmative defenses. Defendant argued it had complied with all wage and hour laws, and denied any wrongdoing and liability. Defendant also disputed the penalties assessed by Plaintiff, considering the discretionary nature of PAGA awards and the potential the Court could reduce the PAGA penalty, especially where any technical violation of law would have been inadvertent and in good faith.

The parties engaged in extensive discovery and numerous discussions regarding the factual and legal issues. Defendant produced thousands of pages of discovery, including written policies, employee handbooks, a 25% sampling of time and payroll records for the Aggrieved Employees, union contracts, arbitration agreements, and timekeeping operations. Defendant provided Plaintiff's personnel file and employee records identifying the non-exempt positions and information regarding the number of employees holding these positions during the relevant time period. Defendant also provided substantial information concerning the potential size of the PAGA group, the total number of pay periods at issue, and other summary data related to the alleged class.

The evidence provided a factual framework for a damage model pertaining to all Aggrieved Employees, from which Plaintiff was able to confirm the PAGA group consisted of approximately 317 employees who worked during the period of July 2, 2020, through December 31, 2021. Thus, the parties had sufficient information to make an informed decision about the settlement, their claims and the defenses, considering the risks, likelihood of future litigation and attendant costs.

The parties agreed on a settlement of \$200,000 based on the above-noted risks, and potential the penalty award could be reduced by the Court. The settlement was a product of arms-length negotiations between experienced counsel. The settlement was reached after a full day of mediation and continued negotiation of the parties after the mediation. The LWDA has not objected to the settlement. There are otherwise no indications of fraud, collusion or unfairness.

Plaintiff maintains the settlement achieved a significant benefit considering the disputed issues, the risks, the range of realistic litigation outcomes, and costs of future litigation. Further, the parties jointly drafted the settlement agreement, relied on a full-day mediation, and neither the LWDA, nor any other Aggrieved Employee, objected to the settlement. Thus, the settlement amount is reasonable, and Plaintiff adequately represented the state and public's interest.

In addition, the released claims do not include nonparty employees' individual claims. (*Moniz, supra*, 72 Cal.App.5th at p. 86; ROA 32, Supp. Brief at p. 1:12-15; ROA 33, Exh. A ¶ 28.)

A prevailing plaintiff in a PAGA action is entitled to an award of reasonable attorney fees and costs. (Lab. Code, § 2699(g)(1).) Here, Plaintiff's counsel seeks 33.3% of the PAGA settlement fund amounting to \$66,666.67. Attorney Hawkins declares that his firm spent 149.30 hours in this case (54.70 hours by attorney James Hawkins at \$900/hour, 61.30 hours by attorney Gregory Mauro at \$850/hour, and 33.30 hours by paralegal Melissa Whitson at \$200/hour) for a total lodestar of \$107,995.

Having considered the supplemental declarations submitted by Plaintiff's counsel (ROA 49, 50), the Court finds the attorney's fees are reasonable.

The Court awards \$12,220.51 in costs as requested.

The flat fee of \$7,370 for service administration costs to ILYM, Inc. is also reasonable.

Plaintiff seeks an incentive award of \$10,000. (ROA 30, Hawkins Declr., Exh. 1 at p. 7, ¶ 5.) In support of the request, Plaintiff submitted his declaration, wherein he estimates he spent about 40 hours assisting with the preparation of the case. (ROA 31, Plt. Declr.) The Court finds the incentive award is reasonable and appropriate to compensate Plaintiff for his efforts and the risks he assumed in bringing this lawsuit in a representative capacity on behalf of other Aggrieved Employees. Thus, the request is GRANTED.

For these reasons, the Court approves the PAGA settlement as discussed, and the motion is **GRANTED**.

This minute order will be the final order of the Court. Plaintiff is ordered to serve written notice of ruling on all parties by July 13, 2022.

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On July 7, 2022, I served on the interested parties in this action the following document(s) entitled:

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Alma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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Executed on July 7, 2022, at Irvine, California


ALMA CHAVARIN