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SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

By A. Stewart, Deputy Clerk

BY FAX

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA – WAKEFIELD TAYLOR COURTHOUSE

GLORIBEL DE LA TRINIDAD, on behalf of
herself and all other aggrieved employees,

PLAINTIFF,

v.

DURANGO FOODS, INC., a California
corporation d/b/a EL POLLO LOCO; JOSEPH N.
RUBIN, an individual; and DOES 1 through 100,
inclusive,

DEFENDANTS.

Case No. C21-01819

ASSIGNED FOR ALL PURPOSES TO
JUDGE EDWARD G. WEIL

~~PROPOSED~~ SETTLEMENT
APPROVAL ORDER

Action Filed: September 1, 2021
Trial Date: None Set.

1 **[PROPOSED] SETTLEMENT APPROVAL ORDER**

2 The Court, having carefully considered the Joint Motion for Approval of Private Attorneys
3 General Act Representative Action Settlement ("Joint Motion") filed by Plaintiff Gloribel De La
4 Trinidad, on behalf of the State of California and the Labor Workforce Development Agency, for herself
5 and all other aggrieved employees ("Plaintiff") and Defendant Durango Foods, Inc. ("Defendant" and
6 together with Plaintiff, the "Parties") and all supporting evidence, issued the detailed Tentative Ruling
7 on February 16, 2022 (attached as Exhibit A), which the Court now adopts as the final ruling of the
8 Court.¹ For the reasons stated in the Tentative Ruling, the Joint Motion is hereby **GRANTED**.

9 Pursuant to Labor Code Section 2699, subdivision (1)(2), based on the Parties' Joint Motion, all
10 filings related to the Joint Motion, all other papers filed in this action, and good cause appearing therefor,

11 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

12 The Court hereby grants the Joint Motion and approves the Parties' settlement and hereby enters
13 final judgment based on the terms set forth in the Parties' settlement in favor of Plaintiff and the PAGA
14 Eligible Employees in the amount of \$65,000.00. Of this amount, \$22,750.00 is awarded as attorneys'
15 fees paid to Plaintiff's counsel, \$2,248.28 is awarded as costs paid to Plaintiff's counsel, and \$3,798.50
16 is awarded as Administrative Costs paid to the Settlement Administrator.

17 This Judgment incorporates by reference the definitions and terms in the Private Attorneys
18 General Act Settlement Agreement (the "Settlement"), and all terms defined therein shall have the same
19 meaning as set forth in the Settlement.

20 This Judgment intended to be a final disposition in its entirety of the above captioned action.
21 Without affecting the finality of this judgment in any way, the Court retains jurisdiction of all matters
22 relating to the interpretation, administration, implementation, effectuation, and enforcement of the
23 Settlement pursuant to Code of Civil Procedure Section 664.6.

24 A compliance hearing is scheduled for June 16, 2022 at 9:00 a.m. in Department 39.

25 DATED: FEB 22 2022

Edward G. Weil

26 **HONORABLE EDWARD G. WEIL**
27 **SUPERIOR COURT JUDGE**

28 ¹ The matter was heard initially on January 20, 2022 but was continued to February 17, 2022 pending submission of further information by Plaintiff.

EXHIBIT A

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medical training or has any educational or other qualifications to offer opinions regarding the cause or treatment for his eye injury. (Evid. Code §§ 800, 801.) He is not qualified to offer expert opinions on medical issues in this case, and his opinions extend beyond those within the proper scope of lay opinion testimony under Evidence Code § 800.

5. TIME: 9:00 CASE#: MSC21-00492
CASE NAME: RIZO VS. SCOTT'S JACK LONDON
HEARING ON MOTION TO STRIKE
FILED BY SCOTT'S JACK LONDON SEAFOOD, INC., et al.
*** TENTATIVE RULING: ***

Dropped at the request of the moving party on 2/3/22.

6. TIME: 9:00 CASE#: MSC21-00492
CASE NAME: RIZO VS. SCOTT'S JACK LONDON
HEARING ON DEMURRER TO 1st Amended COMPLAINT
FILED BY SCOTT'S JACK LONDON SEAFOOD, INC., et al.
*** TENTATIVE RULING: ***

Dropped at the request of the moving party on 2/3/22.

7. TIME: 9:00 CASE#: MSC21-01819
CASE NAME: DE LA TRINIDAD VS. DURANGO FOODS
HEARING ON MOTION FOR APPROVAL OF PAGA REP. ACTION SETTLEMENT
FILED BY GLORIBEL DE LA TRINIDAD, DURANGO FOODS, INC.
*** TENTATIVE RULING: ***

Gloribel De La Trinidad moves for approval of the settlement of her PAGA suit against defendant Durango Foods, Inc. The matter was heard initially on January 20, 2022, but was continued pending submission of further information by plaintiff.

A. Background of the Case and Terms of Settlement

This a PAGA case (not a class action), alleging a variety of violations of the Labor Code concerning failure to provide rest and meal breaks, failure to pay wages, and cascading derivative violations. Defendant operates a single El Pollo Loco franchise.

The total settlement payment is \$65,000. This is composed in part of attorney's fees of \$22,750 (35% of the total recovery), \$2,500 in litigation costs, and up to \$7,500 in costs to the settlement administrator, ILYM. (ILYM currently estimates that the actual costs will be \$3,798.50.)

The remainder (estimated at \$36,203.22, will be PAGA penalties, to be apportioned 75% to the state and 25% (\$9,050.80), to the aggrieved employees, defined as employees working

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for defendant from May 26, 2020, through the effective date of the settlement. Counsel's motion indicates that there are an estimated 62 covered employees. The payments will be distributed among the employees based on the number of pay periods each individual worked during the covered period., i.e., without allowing for any difference based on the number of pay periods or hours worked during the relevant time period. The average payment will be about \$145.

Plaintiff's counsel attests that informal discovery was undertaken, and the settlement was reached after substantial arms-length negotiation

Plaintiff provided required notices to the LWDA of the initial claims and of the proposed settlement.

The settlement provides a process for mailing the notices to the aggrieved employees, who will not have to submit a claim. Checks not cashed within 90 days "will escheat to the Contra Costa Court Appointed Special Advocates."

PAGA claims based on the facts alleged in the complaint will be released.

B. Standards for Review of a PAGA Settlement

Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees[.]" (*Id.*, at 64-65.)

Until recently, there had been no binding authority concerning the proper standard of review of a PAGA settlement, one federal District Court has addressed the issue. In *O'Connor v. Uber Techs, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133, the court denied approval of class action settlements that included PAGA claims in part because the plaintiffs' claims added up to as much as \$1 billion in PAGA penalties but parties settled those claims for \$1 million, or 0.1% of their alleged maximum value. As the court stated, "where plaintiffs bring a PAGA representative claim, they take on a special responsibility to their fellow aggrieved workers who are effectively bound by any judgment. [citation omitted] Such a plaintiff also owes responsibility to the public at large; they act, as the statute's name suggests, as a private attorney general, and 75% of the penalties go to the LWDA 'for enforcement of labor laws . . . and for education of employers and employees about their rights and responsibilities under this code.'" (*Id.*, at 1134.) In that case, the LWDA itself filed a brief stating that "[i]t is thus important that when a PAGA claim is settled, the relief provided for under the PAGA be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public[.]" The *Uber Techs* court noted that "a court may reduce the penalty when 'to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.'" (*Id.*, at 1134, citing Labor Code § 2699(e)(2).) Nonetheless, the court noted that the plaintiff had provided no "coherent analysis" to justify the "relatively meager value" assigned to the PAGA claim.

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of*

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California (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that Neary does not always apply, because “[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63.)

C. Application to this settlement

Plaintiff indicates that the settlement is fair, and was evaluated by counsel based on adequate information and arms-length negotiation. Counsel indicate that assuming a maximum initial violation penalty of \$100 for each pay period for which there was a wage statement violation, for each covered employee, the maximum penalty would be \$84,000. As to the other pleaded violations, in the initial submission, plaintiff indicated only that they often raised individualized issues and/or are unmanageable. No other evaluation of the case was provided. Of course, PAGA gives the court discretion to reduce penalties for a variety of reasons, making the result hard to predict. Nonetheless, the discussion of the value of the case was not sufficient, and the Court requested further explanation. Counsel’s responding declaration...indicates that electronic timekeeping system records provided information that undermined the violability of the meal and rest break claims, as well as the overtime claims. This left the wage statement violations as the strongest claim.

Plaintiff has submitted sufficient documentation of litigation costs.

Labor Code section 2699(g)(1) provides that a prevailing employee in a PAGA action may recover attorney’s fees. Plaintiff seeks 35% of the total settlement amount as fees, relying on the “common fund” theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.) Although *Lafitte* concerns a class action, not a PAGA-only case, this Court views the use of a lodestar cross-check as appropriate here. Accordingly, the Court directed counsel to provide an estimated lodestar based on hours worked and a reasonable hourly rate. By declaration, counsel now attest to 62 billable hours, at a rate of \$700, for a total of \$43,400. Since proposed attorney’s fee are \$22,750, the fee award is just over 50% of the lodestar. Although the documentation of the proposed hourly rate is lacking, a somewhat lower hourly rate would not be material in this case. The fee award is reasonable.

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The settlement would provide a small residue to a cy pres recipient, Contra Costa Court Appointed Special Advocates. Code of Civil Procedure section 382.4 provides that where a class action settlement is approved, and will distribute funds to a cy pres recipient, "in connection with the hearing for preliminary approval" counsel shall "notify the court if the attorney has a connection to or a relationship with a nonparty recipient of the distribution that could reasonably create the appearance of impropriety as between the selection of the recipient of the money or thing of value and the interests of the class." While this is not a class action, this Court is of the view that public policy supports the inclusion of a similar requirement in PAGA settlements. Thus, the Court directed counsel should provide a declaration describing the relationship between themselves and the recipient. Counsel has submitted such a declaration, which establishes that there is no connection that would create an appearance of impropriety.

D. Conclusion

The Court finds that the settlement is fair and reasonable, and the motion for approval is granted.

Counsel are directed to prepare an order including this order, the other provisions submitted in the proposed order, and a corresponding judgment. The order shall include a compliance hearing for a suitable date chosen in consultation with the Department's clerk. One week before the compliance hearing, counsel shall file a compliance statement. 10% of the attorney's fees shall be withheld by the Administrator pending the compliance hearing.

8. TIME: 10:00 CASE#: MSC19-02506
CASE NAME: PORTER VS. CITY OF RICHMOND
SPECIAL SET HEARING ON: IN CAMERA REVIEW
SET BY DEPT. 39

*** TENTATIVE RULING: ***

Hearing required, per previous ruling. The City's counsel, custodian of records, and court reporter are to attend in person for the in camera proceeding.

9. TIME: 9:05 CASE#: MSC13-01934
CASE NAME: FAVRO VS. KANG
HEARING ON JOINDER IN MOTION TO STRIKE OR TAX COSTS
FILED BY MORAGA-ORINDA FIRE DISTRICT

*** TENTATIVE RULING: ***

See tentative ruling from February 3, 2022.