

DEC 05 2022

~~TENTATIVE~~ **RULING**
JUDGE KEVIN C. BRAZILE
DEPARTMENT 20

Sherri R. Carter Executive Officer/Clerk of Court
By Erica Perez, Deputy
Erica Perez

Hearing Date: December 5, 2022
Case Name: Massey v. Children Of The Night, Inc., et al.
Case No.: 21STCV30464
Matter: **Motion to Approve PAGA Settlement**
Moving Party: Plaintiff Akanksha Massey
Responding Party: Unopposed
Notice: OK

Ruling: The Motion is granted.

Moving party to give notice.

If counsel do not submit on the tentative, they are strongly encouraged to appear by LACourtConnect rather than in person due to the COVID-19 pandemic.

On August 17, 2021, Plaintiff Akanksha Massey filed a Complaint against Defendant Children Of The Night for PAGA penalties due to Defendant's alleged failure to "(1) Provide all rest and meal periods; (2) Indemnify for necessary work-related expenditures; (3) Pay all wages earned for all hours worked at the correct rates of pay; (4) Issue accurate and complete itemized wage statements; (5) Timely pay wages during and upon termination of employment and; (6) Maintain accurate employment records."

The parties have settled this matter, and Plaintiff moves for approval of their PAGA settlement. Plaintiff indicates that the settlement is as follows:

Defendant will pay \$50,000.00 to settle the PAGA claims in the Action ("Maximum Settlement Amount"). . . . The Gross Settlement Amount will be allocated as follows:

a. Third-Party Settlement Administration Fees of up to Three Thousand Dollars and Zero Cents (\$3,000.00);

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b. Plaintiffs counsel's, David Spivak of The Spivak Law Firm and of ("PAGA Counsel"), request for attorneys' fees of up to one-third (1/3) of the Gross Settlement Amount, or Sixteen Thousand Six Hundred and Sixty Dollars and Sixty-Seven Cents (\$16,666.67) ("PAGA Counsel's Fees"), subject to Court approval, plus actual costs and expenses incurred by PAGA Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Eleven Thousand Dollars and Zero Cents (\$11,000.00) ("PAGA Counsel's Costs");

c. A payment to Plaintiff in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00) ("General Release Payment") for (1) her general release that includes a release of claims pursuant to California Civil Code section 1542 and (2) her service to the State of California and the PAGA Members in prosecuting the Action; This amount will be allocated 10% to wages and 90% to penalties and general damages. IRS Forms W-2 and 1099 shall issue for the two portions of this individual payment; and

...

The Net Settlement Amount shall be designated as PAGA penalties in full satisfaction of all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in or reasonably related to the operative Complaint with respect to PAGA Members, allocated between the LWDA and the PAGA Members pursuant to Labor Code Section 2699(i) with 75.0% paid to the LWDA and 25.0% paid to the PAGA Members on a pro rata basis ("PAGA Penalties Fund").

Among other things, the reasonableness of the settlement amount is based on the facts that (1) a mediator aided the settlement; (2) the parties engaged in adequate investigation of the claims; and (3) there are risks with the PAGA claim, including as to stacking, written policies precluding off-the-clock work, evidence indicating the majority of meal breaks were taken, and management and legal problems as to individualized evidence.

The PAGA is "a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies." (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003.) The statute provides a mechanism for private enforcement of Labor Code violations for the public benefit. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986;

Ochoa-Hernandez v. Cjaders Foods, Inc. (N.D.Cal. 2010) 2010 WL 1340777, at p. *4.) To incentivize employees to bring PAGA actions, the statute provides aggrieved employees 25 percent of the recovered civil penalties. (Lab. Code, § 2699, subd. (i).) The remaining 75 percent is distributed to the Labor and Workforce Development Agency (LWDA) “for enforcement of labor laws and education of employers and employees about their rights and responsibilities under [the Labor Code].” (*Ibid.*)

In reviewing the terms of a settlement agreement, the court determines whether the settlement is fair, reasonable, and adequate to all concerned, and not the product of fraud, collusion, or overreaching. (*Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337; *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 581.) In the context of a class action settlement, the court considers various factors including whether (1) the settlement is the result of arm’s length bargaining, (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently, (3) counsel is experienced in similar litigation, and (4) the percentage of objectors is small. (*Nordstrom*, at p. 581; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) In considering the amount of settlement, the court is mindful that compromise is inherent and necessary in the settlement process. (*Wershba*, at p. 250.)¹

After review and consideration of the papers, oral argument, such other and further evidence submitted for consideration, and the remaining papers and pleadings currently on file in this action, the Court finds that there is good cause to approve the settlement as fair, just and equitable. The Motion is granted.

Moving party to give notice.

¹The general principles applicable to class action settlements apply in the PAGA context.

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