

07/20/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: M. Lopez Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

OSCAR CASTRO LOPEZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

MOTORCAR PARTS OF AMERICA, INC., a
New York corporation; FAIRWAY STAFFING
SERVICES, a California corporation; and DOES
1 through 10, inclusive,

Defendants.

Case No.: 21STCV26640

[Assigned for All Purposes to Hon. Bruce G.
Iwasaki]

**~~[PROPOSED]~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR AN ORDER
APPROVING SETTLEMENT OF CLAIMS
BROUGHT PURSUANT TO THE PRIVATE
ATTORNEY GENERAL'S ACT OF 2004**

Date: July 20, 2022
Time: 9:00 a.m.
Courtroom: Dept. 58
Judge: Hon. Bruce G. Iwasaki

Action Filed: July 20, 2021
Trial Date: Not Set

1 **TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**

2 Plaintiff OSCAR CASTRO LOPEZ (“Plaintiff”) and Defendants Motorcar Parts of America,
3 Inc. (“MPA”), and Fairway Staffing Services (“Fairway”) (collectively “Defendants”) (Plaintiff and
4 Defendants are the “Parties”) have reached terms of settlement of this action alleging a claim for relief
5 pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*
6 (“PAGA”).

7 Pursuant to PAGA, Plaintiff, on behalf of the Parties, has filed a motion for approval of the
8 settlement of the claims asserted against Defendants in this action. Specifically, Plaintiff moves for an
9 order:

- 10 1. granting approval of the terms of the Agreement pursuant to the Labor Code Private
11 Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the
12 settlement; the amount of distributions to the State and Aggrieved Employees; the amounts
13 allocated to attorney’s fees and costs; the amount requested for an enhancement award; and, the
14 amount allocated to the settlement administrator; and,
15 2. directing disbursement of the Gross Settlement Amount pursuant to the terms of the
16 Agreement.

17 On July 20, 2022, Plaintiff’s Motion came on for hearing.

18 The PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND
19 RELEASE (referred to as the “Agreement,” or “Settlement,” and attached to the Declaration of H. Scott
20 Leviant as Exhibit 1) is conditioned upon the Court’s approval. Capitalized terms in this Order have the
21 same meaning as in the Settlement unless indicated otherwise. A summary of the terms of the Settlement
22 is as follows:

- 23 (a) The Aggrieved Employees: The Aggrieved Employees (also known as the
24 “PAGA Members”) are: “All individuals in California who worked for MPA as
25 hourly-paid or non-exempt employees employed in Operations, and all
26 individuals in California who Fairway deployed to work for MPA as hourly-paid
27 or non-exempt employees in Operations at any time between July 16, 2020
28 through June 20, 2022.” It is estimated that there are approximately 9,186 pay

- 1 periods covered by the Settlement. (Agreement, at 1-2, and ¶ 7.)
- 2 (b) No Reversion: The Settlement is *non-reversionary*. (Agreement, ¶ 5.)
- 3 (c) Gross Settlement Amount: Defendants agree to pay the maximum sum of
- 4 **\$200,000.00** (hereinafter referred to as the “Gross Settlement Amount” or
- 5 “GSA”) for settlement of the PAGA Penalties, which shall be inclusive of
- 6 Plaintiff’s Counsel attorney’s fees and costs, a general release payment to
- 7 Plaintiff, and the settlement administrator’s fees and costs. (Agreement, ¶ 5.)
- 8 (d) Net Settlement Amount (PAGA Fund): At least **\$101,500.00** will be available
- 9 for distribution to the Aggrieved Employees and the LWDA. Of this amount, the
- 10 LWDA will receive at least **\$76,125.00** under the Agreement, and Aggrieved
- 11 Employees will receive at least **\$25,375.00**. (Agreement, ¶ 5.d.)
- 12 (e) Attorney’s Fees: Plaintiff’s Counsel request an award of attorney’s fees in the
- 13 amount of **\$70,000.00**, which is one third of the GSA. (Agreement, ¶ 5.a.)
- 14 (f) Litigation Costs: Plaintiff’s Counsel seek reimbursement of actual litigation
- 15 costs, to a maximum amount of \$15,000. Those actual costs are currently
- 16 \$16,037.59, which exceeds the capped amount. Therefore, **\$15,000** is requested,
- 17 by Plaintiff. (Agreement, ¶¶ 5.a, 12.d; Leviant Decl., ¶ 38 and Exh. 2.)
- 18 (g) Settlement Administration: Payment to Aggrieved Employees and administration
- 19 will be accomplished through third-party settlement administrator Phoenix
- 20 Settlement Administrators, which has agreed to perform Administrator duties for
- 21 a flat fee not to exceed **\$6,000.00**, which is reasonable, based on all of the
- 22 services offered. (Agreement, ¶ 11; Leviant Decl., ¶ 39 and Exh. 3.)
- 23 (h) General Release Payment to Plaintiff: Plaintiff requests approval of an allocation
- 24 of **\$7,500.00** to Plaintiff from the GSA for his general releases of all potential
- 25 claims against Defendants and for his effort in bringing and prosecuting this
- 26 Action. (Agreement, ¶ 5.c.)
- 27 (i) Uncashed Checks: Funds represented by checks returned as undeliverable after a
- 28 re-mailing, and funds represented by checks remaining un-cashed for more than

180 days after issuance, will be tendered to the Unclaimed Property Fund or like fund. (Agreement, ¶ 12.c.)

(j) Release: In exchange for the above settlement consideration, Defendants shall be entitled to a *limited* release from the LWDA and each and every Aggrieved Employee, including Plaintiff.¹ (Agreement, ¶ 2; Leviant Decl., Exh. 1.)

(k) Notice to LWDA: The Declaration of H. Scott Leviant confirms that notice was provided to the LWDA and attaches the confirmatory submission documents. (Leviant Decl., ¶ 43 and Exh. 1.)

After reviewing the Settlement and other related documents, and the filings submitted by Plaintiff, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Court hereby GRANTS approval of the PAGA settlement upon the terms and conditions set forth in the Settlement. The Court finds that the terms of the proposed settlement are reasonable. In granting approval of the settlement the Court has considered the factors identified in *O'Connor v. Uber Technologies*, No. 13-CV-03826-EMC, 2016 WL 4398271 (N.D. Cal. Aug. 18, 2016), *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998), *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), and other authority providing a coherent framework for evaluating this Settlement.

2. The Court hereby identifies the Aggrieved Employees as:

All individuals in California who worked for MPA as hourly-paid or non-exempt employees employed in Operations, and all individuals in California who Fairway deployed to work for MPA as hourly-paid or non-exempt employees in Operations at any time between July 16, 2020 through June 20, 2022.

3. The Court hereby finds the Settlement was the product of informed, non-collusive negotiations conducted at arms' length by the Parties. In making these findings, the Court considered Defendants' potential liability, the benefit to the State of California, allocation of settlement proceeds among Aggrieved Employees, and the fact that a settlement represents a compromise of the Parties' respective positions rather than the result of a finding of liability at trial. The Court further finds that the

¹ This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (concluding that "with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act....").

1 terms of the Settlement have no obvious deficiencies. The Court finds that the risks of further
2 prosecution are substantial and include the risks that (1) penalties would be reduced after evaluation of
3 the totality of the circumstances, or (2) that no penalties would be awarded for some or all of the alleged
4 violations.

5 4. The Court hereby approves Phoenix Settlement Administrators to serve as the
6 Administrator. The Administrator will be paid pursuant to the Agreement's terms for such distribution,
7 in the requested amount of \$6,000.00 out of the Gross Settlement Amount to effectuate Administration.

8 5. Pursuant to the Agreement, the amount distributed as penalties under PAGA shall be
9 \$200,000.00, less administration costs, the Plaintiff's general release payment, attorney's fees, and costs
10 awarded to Plaintiff's counsel. After awards, the amount remaining to distribute as penalties is
11 \$101,500.00. The LWDA shall receive 75% of the penalties allocated, which is \$76,125.00. Aggrieved
12 Employees shall receive 25% of the penalties allocated, which is \$25,375.00.

13 6. The Court hereby awards Counsel attorneys' fees in the amount of \$70,000.00. The
14 Court finds that the attorneys' fees are reasonable compared to amounts routinely approved in similar
15 settlements and as guided by the California Supreme Court's decision concerning the awarding of fees
16 from monetary funds for class members. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).
17 Counsel proceeded on a contingency basis despite the uncertainty of any fee award. Counsel were
18 necessarily precluded from pursuing other potential sources of fees because of work in connection with
19 this Action. The Court observed that this is not a class action. It is more akin to contingent
20 representation with an additional requirement of Court review due to the qui tam nature of a PAGA
21 claim. Attorneys' fees that are fifty percent of a common fund are typically considered the upper limit,
22 with thirty to forty percent commonly awarded in cases where the settlement is relatively small. *See Van*
23 *Vranken v. Atlantic Richfield Company*, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases
24 where 30-50 percent was awarded involved "smaller" settlement funds of under \$10 million). Based on
25 these considerations, including the lodestar cross-check, a fee award of 35% of the total settlement
26 amount is reasonable.

27 7. The Court hereby awards Counsel litigation costs in the total amount of \$15,000.00. The
28 costs identified by Counsel exceed the capped amount allocated to litigation costs under the Agreement,

1 and the capped amount is awarded in lieu of the full amount of costs incurred.

2 8. Upon entry of this Order, the Parties shall effectuate all terms of the Settlement based on
3 the provisions and timelines set forth in the Agreement.

4 9. Pursuant to the terms of the Settlement, the released persons and entities include
5 Defendants (as defined above) and Defendants' joint employers, staffing companies, respective past,
6 present and future officers, directors, shareholders, agents, assigns, attorneys, financial advisors and
7 accountants, insurers, independent contractors, employees, predecessors, successors, parents,
8 subsidiaries, affiliated entities, related entities or other representatives of any kind, and related parties that
9 have been asserted in the operative Complaint (referred to in the Settlement as the "Released Parties").

10 10. Upon entry of the Order approving this Settlement and the Judgment thereon, PAGA
11 claims are released as follows:

12 The Parties agree and acknowledge that, to the maximum extent permitted by law, the
13 final judgment entered pursuant to this Settlement will bind all those who would be
14 bound by a judgment if the action had been brought by the LWDA, including Plaintiff,
15 the LWDA, and the Aggrieved Employees, with respect to the recovery of civil
16 penalties under the California Private Attorneys General Act, California Labor Code §
17 2698, et. seq. as against the "Released Parties". It is expressly understood and agreed
18 that this Settlement only includes a full release of the PAGA claims asserted, or which
19 could have been asserted in the Lawsuit and/or PAGA Notice filed with the LWDA,
20 attached as Exhibit A [to the Settlement] (i.e., the "Representative PAGA Claims"
described therein, which are those PAGA claims asserted, and all other claims and
allegations which could have been asserted in the Lawsuit as a predicate for PAGA
claims and/or in the PAGA Notice filed with the California Labor and Workforce
Development Agency ("LWDA") on or about July 16, 2021, based on the facts and
allegations included in the Lawsuit and/or PAGA Notice.). With the exception of
Plaintiff, this Settlement shall not impact Aggrieved Employees' ability to assert claims
other than PAGA claims arising from the foregoing alleged violations of the Labor
Code.²

21 11. The action is DISMISSED WITH PREJUDICE.

22 12. The Court will enter Final Judgment in accordance with this Order.

23 13. The Court shall retain jurisdiction with respect to all matters related to the administration
24 and consummation of the Settlement, and any and all claims asserted in, arising out of, or related to the
25 subject matter of the lawsuit, including but not limited to all matters related to the Settlement and the
26

27 ² The effective date ("Effective Date") of the Agreement shall mean the date of entry of the order of
28 the court granting approval of this Agreement and the PAGA Settlement.

1 determination of all controversies relating thereto.

2 *Written Notice of Settlement and other communication from plaintiff to aggrieved employees
3 shall be in English and Spanish.

4 **IT IS SO ORDERED.**



A handwritten signature in black ink, appearing to read "Bruce G. Iwasaki".

5 Dated: July 20, 12022

Bruce G. Iwasaki / Judge

Hon. Bruce G. Iwasaki

LOS ANGELES SUPERIOR COURT JUDGE

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEY GENERAL'S ACT OF 2004** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

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STAFFING SERVICES*

- ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.
- ☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.
- ☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.
- ☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **June 27, 2022** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature