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ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 10/072022
By Deputy: Conder, Perla

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MONTEREY

JAVIER ALCANTAR, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

CLASSIC SALADS, LLC, a limited liability company; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 21CV002309

[Assigned for All Purposes to Hon. Thomas W. Wills]

[AMENDED 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: October 7, 2022
Time: 8:30 a.m.
Courtroom: Dept. 15
Judge: Hon. Thomas W. Wills

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

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

Plaintiff JAVIER ALCANTAR ("Plaintiff") and Defendant CLASSIC SALADS, LLC ("Defendant") (Plaintiff and Defendant are the "Parties") have reached terms of settlement of this action alleging a claim for relief pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq*. ("PAGA").

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

1. granting approval of the terms of the Agreement pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq*., including the amount of the settlement; the amount of distributions to the State and Aggrieved Employees; the amounts allocated to attorney's fees and costs; the amount requested for an enhancement award; and, the amount allocated to the settlement administrator; and,

2. directing disbursement of the Gross Settlement Amount pursuant to the Agreement.

On September 2, 2022, again on October 7, 2022, Plaintiff's Motion came on for hearing. The PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE (referred to as the "Agreement," or "Settlement," and attached to the Declaration of H. Scott Leviant as Exhibit 1) is conditioned upon the Court's approval. Capitalized terms in this Order have the same meaning as in the Settlement unless indicated otherwise. A summary of the terms of the Settlement is as follows:

(a) The Aggrieved Employees: The Aggrieved Employees (also known as the "PAGA Members") are: "All non-exempt employees who are or were employed by Defendant within the State of California from July 16, 2020 through April 30, 2022." It is estimated that there are approximately 4,500 pay periods covered by the Settlement. (Agreement, at 1-2, and ¶ 9.)

(b) No Reversion: The Settlement is ***non-reversionary***. (Agreement, ¶ 6.)

(c) Gross Settlement Amount: Defendant agrees to pay the maximum sum of **$115,000.00** (hereinafter referred to as the "Gross Settlement Amount" or "GSA") for settlement of the PAGA Penalties, which shall be inclusive of Plaintiff's Counsel attorney's fees and costs, a general release payment to

Plaintiff, and the settlement administrator's fees and costs. (Agreement, ¶ 5.)

(d) Net Settlement Amount (PAGA Fund): At least $61,499.03 $ 61,481.53 will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least $46,086.77 $46,111.15 under the Agreement, and Aggrieved Employees will receive at least $15,362.26 $15,370.38. (Agreement, ¶ 6.d.)

(e) Attorney's Fees: Plaintiff's Counsel request an award of attorney's fees in the amount of **$38,333.33**, which is one third of the GSA. (Agreement, ¶ 6.a.)

(f) Litigation Costs: Plaintiff's Counsel seek reimbursement of actual litigation costs, to a maximum amount of $10,000. Following guidance from the Court regarding allowable costs, the current actual costs are $6,217.64 $6,185.14, which is less than the capped amount. Therefore, $6,217.64 $6,185.14 is requested, by Plaintiff. (Agreement, ¶¶ 6.a, 12.b; Second Supp. Leviant Decl., ¶¶ 6-8 and Exh. 6.)

(g) Settlement Administration: Payment to Aggrieved Employees and administration will be accomplished through third-party settlement administrator Phoenix Settlement Administrators, which has agreed to perform Administrator duties for a flat fee not to exceed **$4,000.00**, which is reasonable, based on all of the services offered. (Agreement, ¶ 11; Leviant Decl., ¶ 39 and Exh. 3; Second Supp. Leviant Decl., ¶ 15.)

(h) General Release Payment to Plaintiff: Based upon guidance from the Court, Plaintiff requests approval of an allocation of **$5,000.00** to Plaintiff from the GSA for his general releases of all potential claims against Defendant and for his effort in bringing and prosecuting this Action. (Agreement, ¶ 6.c.)

(i) Uncashed Checks: Funds represented by checks returned as undeliverable after a 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, Defendant 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. Chrystler 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 non-exempt employees who are or were employed by Defendant within the State of California from July 16, 2020 through April 30, 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 Defendant's 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 terms of the Settlement have no obvious deficiencies. The Court finds that risks of further prosecution are substantial and include the risks that (1) penalties would be reduced after evaluation of the totality of the circumstances, or (2) no penalties would be awarded for some or all of the alleged violations.

4. The Court hereby approves Phoenix Settlement Administrators to serve as the Administrator. The Administrator will be paid pursuant to the Agreement's terms for such distribution,

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[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….").

in the requested amount of **$4,000.00** out of the Gross Settlement Amount to effectuate Administration.

5. Pursuant to the Agreement, the amount distributed as penalties under PAGA shall be **$115,000.00**, less administration costs, the Plaintiff's general release payment, attorney's fees, and costs awarded to Plaintiff's counsel. After awards, the amount remaining to distribute as penalties is $61,481.53 ~~$61,499.03~~. The LWDA shall receive 75% of the penalties allocated, which is $46,111.15 ~~$46,086.77~~. Aggrieved Employees shall receive 25% of the penalties allocated, which is $15,370.38 ~~$15,362.26~~.

6. The Court hereby awards Counsel attorneys' fees in the amount of **$38,333.33**. The Court finds that the attorneys' fees are reasonable compared to amounts routinely approved in similar settlements and as guided by the California Supreme Court's decision concerning the awarding of fees from monetary funds for class members. *Laffitte v. Robert Half Intern. Inc*., 1 Cal. 5th 480, 503 (2016). Counsel proceeded on a contingency basis despite the uncertainty of any fee award. Counsel were necessarily precluded from pursuing other potential sources of fees because of work in connection with this Action. The Court observed that this is not a class action. It is more akin to contingent representation with an additional requirement of Court review due to the qui tam nature of a PAGA claim. Attorneys' fees that are fifty percent of a common fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. *See Van Vranken v. Atlantic Richfield Company*, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million). Based on these considerations, including the lodestar cross-check, a fee award of 35% is reasonable.

7. The costs identified by Counsel have been modified as directed by the Court to exclude items for which reimbursement will not be approved. The Court hereby awards Counsel litigation costs in the total amount of $6,185.14 ~~$6,217.64~~.

8. Consistent with the Court's findings at the September 2, 2022 hearing, the Court hereby approves payment to Plaintiff Javier Alcantar in the reduced amount of **$5,000.00** for his general release of all claims, which release is substantially broader than the limited release of PAGA claims applicable to all other Aggrieved Employees.

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

10. Pursuant to the terms of the Settlement, the released persons and entities include:

> Defendant (as defined above) and each of its past or present divisions, d/b/a's, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its respective successors and predecessors in interest, subsidiaries, affiliates, parent companies and attorneys (referred to in the Settlement as the "Released Parties").

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

> The Parties agree and acknowledge that, to the maximum extent permitted by law, the final judgment entered pursuant to this settlement will bind all those who would be bound by a judgment if the action had been brought by the LWDA, including Plaintiff, the LWDA, and the Aggrieved Employees, with respect to the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, et. seq. only, against the "Released Parties". It is expressly understood and agreed that this settlement only includes a full release of the PAGA claims asserted in the Lawsuit and Plaintiff's complaint and/or PAGA Notice filed with the LWDA attached as Exhibit A [to the Settlement], including all PAGA claims stated expressly or by implication in the Notice filed with the LWDA or that could have been alleged based on the facts and circumstances set forth therein and any related claims for attorneys' fees, costs, or interest resulting based on the PAGA cause of actions (all of the foregoing are collectively referred to as Plaintiff's "Representative PAGA Claims"). In addition, Plaintiff shall execute a general release of all claims as part of the terms of the Agreement. With the exception of Plaintiff, this settlement shall not impact Aggrieved Employees' ability to assert claims other than PAGA claims arising from the alleged foregoing violations of the Labor Code.[2]

12. The action is DISMISSED WITH PREJUDICE.

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

14. The Court shall retain jurisdiction with respect to all matters related to the administration and consummation of the Settlement, and any and all claims asserted in, arising out of, or related to the subject matter of the lawsuit, including but not limited to all matters related to the Settlement and the determination of all controversies relating thereto.

IT IS SO ORDERED.

Dated: October 7, 2022

Hon. Thomas W. Wills
MONTEREY SUPERIOR COURT JUDGE

[2] The effective date ("Effective Date") of the Agreement shall mean the following: (a) 65 days after the date of entry of the order of the court approving this settlement; or (b) if a timely appeal is made, ten (10) business days after the final resolution of that appeal if the appeal is rejected, the settlement is upheld, and the settlement approval order is no longer subject to further judicial review.

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: **[AMENDED 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:

Ana C. Toledo
Patty Arce
NOLAND, HAMERLY, ETIENNE & HOSS
333 Salinas Street
P.O. Box 2510
Salinas, CA 93902
atoledo@nheh.com
parce@nheh.com

Counsel for Defendant

[ ] **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 **September 15, 2022** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature