

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 71

21STCV27949

JESSICA CESENA vs JYM ENTERPRISES, INC.

October 21, 2022

8:30 AM

Judge: Honorable Monica Bachner

Judicial Assistant: K. Lappin

Courtroom Assistant: D. Major

CSR: None

ERM: None

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Roman Shkodnik appears via CourtConnect

For Defendant(s): Andrea Leigh Rosenkranz appears via CourtConnect

NATURE OF PROCEEDINGS: Hearing on Motion - Other Motion for PAGA Approval;
Status Conference Regarding Settlement

The Court's tentative ruling is posted online and in Court for parties/counsel to review.

The matter is called for hearing and argued.

After hearing oral argument, the Court adopts its tentative ruling as the Order of the Court as follows:

The Motion for Order to Approve PAGA Settlement filed by Jessica Cesena on 09/29/2022 is Granted.

Plaintiff Jessica Cesena's unopposed motion for an order approving a settlement pursuant to Labor Code §2698 et seq. is granted. A Status Conference re: Final Accounting is scheduled for 08/11/2023 at 08:30 AM in Department 71 at Stanley Mosk Courthouse. The Administrator is ordered to submit a report five court days in advance of the hearing.

Plaintiff Jessica Cesena ("Cesena") ("Plaintiff") moves for an order approving her Settlement Agreement and Release of PAGA Claims ("Settlement") with Defendant JYM Enterprises, Inc. ("Defendant"). (Notice of Motion, pg. 2.)

Plaintiff requests the Court issue an order approving the following: (1) the representative action settlement embodied in the Private Attorney General Act Settlement Agreement and General and Limited Release; (2) approve PAGA Counsel's application for attorney's fees and litigation costs; and (3) enter judgment approving the representative action settlement and release. (Notice of Motion, pg. 2.)

Labor Code §2699(1)(2) provides, as follows: "The superior court shall review and approve any

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settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the [Labor & Workforce Development Agency (“LWDA”)] at the same time that it is submitted to the court.”

As a threshold matter, Plaintiffs submitted evidence the parties complied with Labor Code section 2699(1)(2) by submitting a copy of the Settlement and instant motion to the LWDA on the same day it submitted the instant motion to this Court on September 29, 2022. (Decl. of Yeremian ¶43, Ex. 5.)

On July 28, 2021, prior to commencing her lawsuit, as required by California Labor Code §2699.3(a)(1), Plaintiff provided the LWDA and Defendant with written notice of her intent to assert claims under PAGA and the basis for those claims, to which the LWDA did not provide notice within sixty-five (65) days of its intention to investigate the alleged violations. (Decl. of Yeremian ¶4, Exh. 1.) On July 29, 2021, Plaintiff filed a complaint for her wage and hour claims. (Decl. of Yeremian ¶4.) On October 4, 2021, after 65 days from the mailing of the first notice to the LWDA, Plaintiff filed a first amended complaint (“FAC”) against Defendant adding a cause of cause of action under the Private Attorneys General Act (“PAGA”) under Labor Code §2699 et seq. (Decl. of Yeremian ¶5.) After amending her respective complaint, Plaintiff’s actions were brought on a representative basis under PAGA on behalf of herself, the State of California and other allegedly aggrieved employees, based on violations of (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime in Violation of Labor Code §510; (3) Non-Compliant Meal Periods; (4) Non-Compliant Rest Breaks; (5) Violation of Labor Code §2802; (6) Failure to Keep Required Payroll Records; (7) Violation of Labor Code §226(a); (8) Waiting Time Penalties Under Labor Code §203; and (9) Violation of Business & Professions Code §17200 et seq. (Decl. of Yeremian ¶4.)

On September 29, 2022, Plaintiff filed the instant motion and supporting documents indicating the parties reached a settlement after continued settlement discussions following their participation in the June 9, 2022, mediation with mediator Todd Smith. (Decl. of Yeremian ¶¶10, 11, Exh. 2 [“Settlement”].)

The Settlement defines “Aggrieved Employees” all individuals who, during the “Representative Period,” are or previously were employed by Defendant in California who were classified as non-exempt from July 28, 2020, through August 8, 2022. (Settlement, pgs. 3-4.) In this case, there are 1120 Aggrieved Employees. (Decl. of Yeremian ¶12.) “Effective Date” means the date by which the Settlement is approved by this Court by entry to Judgment and the Judgment becomes final, and if no appeal is filed, the Effective Date shall occur 60 calendar days from the entry of Judgment by the Court, and if a timely appeal is filed, Judgment shall become final on

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the date all appeals from the Judgment have been fully adjudicated. (Settlement, pg. 4.) The definitions are proper pursuant to the statute of limitations and the date of notice on the LWDA.

The Settlement defines “Released Claims” as the following:

[A]ll claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts and legal theories alleged in the operative complaint and LWDA Exhaustion Letter, including claims for civil penalties based on the following: (i) failure to pay all regular rate wages, minimum wages, straight wages, and overtime wages due; (ii) failure to provide compliant meal periods and/or pay meal period premium wages; (iii) failure to provide compliant rest breaks and/or pay rest break premium wages; (iv) failure to timely pay wages during employment; (v) failure to provide complete, accurate wage statements; (vi) failure to pay wages timely at time of termination or resignation; (vii) failure to maintain records in accordance with Labor Code Section 1174; (viii) failure to reimburse necessary expenditures; and/or (ix) claims, causes of action or legal theories of relief seeking civil penalties under the California Labor Code Private Attorneys General Act of 2004 plead in the operative complaint and underlying LWDA exhaustion letter (the “Released Claims”).

(Settlement, pg. 15.)

As such, the Settlement contemplates that “Released Claims” only include claims for civil penalties under PAGA and does not apply to any individual claims and is proper. (See Notice of Settlement Agreement, pg. 3; see *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175.)

The Settlement defines “Release Parties” as “Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.” (Settlement, pg. 16.)

The terms of the Settlement’s release imply that only in exchange for the consideration set forth in the Settlement (i.e., the individual PAGA payments) do Aggrieved Employees release Released Parties from Released Claims. As such, the release is accordingly effective after the payment date, which is proper. (See Settlement, pg. 15.)

The Settlement designates a Settlement Administrator, Phoenix Settlement Administrators, to handle administration of the Settlement. (Settlement, pg. 5.) Plaintiff’s Proposed Judgment Order indicates Plaintiff requests a payment to Settlement Administrator in the amount of \$7,000.00.

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(Proposed Order ¶g.) The Settlement includes a provision for the Settlement Administrator to establish a Settlement Account within ten calendar days of the Effective Date and to notify the Parties when the Settlement Account has been established, and to provide Defendant with an itemized statement for the total amount to be deposited into the Settlement Account, which shall equal the maximum settlement amount ("Settlement Account Deposit"). (Settlement, pgs. 10-11.) The Settlement provides that within 21 calendar days after receiving notification of the Settlement Account and statement for the Settlement Account Deposit, Defendant shall pay into the Settlement Account an amount equal to the Settlement Account Deposit. (Settlement, pg. 11.)

The Settlement provides that the Settlement Administrator shall pay each Aggrieved Employee his or her Aggrieved Employees' Payment Share from the Settlement Account by sending a check in the appropriate amount to the Aggrieved Employee at the address indicated in the Aggrieved Employees' Data, and such payment, with the Aggrieved Employees' Notice shall be sent by the Settlement Administrator via U.S. Mail within ten calendar days of its receipt of the Settlement Account Deposit from Defendant. (Settlement, pg. 11.)

Any checks paid to Aggrieved Employees shall be negotiable for one hundred eighty (180) calendar days from the date of their issuance. (Settlement, pg. 11.) If any Aggrieved Employee does not cash or deposit his/her settlement check within one hundred eighty (180) calendar days, or if a check is returned to the Settlement Administrator as undeliverable within the 180-day period, the Settlement shall take all reasonable steps to identify the Aggrieved Employee's correct address, including performance of a "skip-trace." (Settlement, pg. 11.) Funds remaining uncashed for more than 180 days after issuance will be voided and transmitted to the State Controller to be deposited in the California Unclaimed Property Fund in the Aggrieved Employee's name. (Settlement, pg. 12.)

A superior court must review and approve any penalties sought as part of a proposed settlement agreement pursuant to Labor Code section 2699(l). "If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation." (Lab. Code § 2699(f)(2).) A prevailing employee is entitled to an award of reasonable attorney fees and costs incurred in the action (Lab. Code § 2699(g)(1).) "[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the [LWDA] for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code to be continuously appropriated to supplement and not supplant the funding to the [LWDA] for those purposes; and 25 percent to the aggrieved employees." (Lab. Code § 2699(i).)

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Plaintiff provides information relating to the investigation done by their counsel. (Settlement, pg. 7; Decl. of Yeremian ¶¶6-7.) Plaintiff provided the Court with the Settlement and Plaintiff's Notice Letter to the LWDA. (Decl. of Yeremian ¶4; Exh. 1 [Notice Letters]; Exh. 2 [Settlement].) Plaintiff also provided information suggesting the Settlement is reasonable based on Plaintiffs' counsels' detailed analysis of Plaintiffs' claims and their potential value if Plaintiffs were successful at trial prior to mediation. (Decl. of Yeremian ¶14.) Plaintiff provided sufficient information to support the reasonableness of the Settlement and how the terms of the settlement were reached. (Decl. of Yeremian ¶¶14-20, 38.)

Plaintiffs provide the total amount of the settlement (\$500,000) and the manner of its distribution from a Settlement Sum. (Settlement, pgs. 4, 9-11.) The Settlement sets forth the tax treatment of each Aggrieved Employee's Payment Share. (Settlement, pgs. 13-14.)

As discussed above, to the extent the release of claims for PAGA penalties is based only on underlying allegations in this action, and as such it only releases claims alleged in the Notice Letters sent to the LWDA, the release does not release anything other than claims for penalties, and there is no Civil Code section 1542 waiver, and as such, the release is proper. (Settlement, pg. 16.)

The Settlement provides that the designated Administrator will be responsible for settlement administration and that the individual payment amounts for Aggrieved Employees are to be determined based on the number of applicable pay periods worked by each employee during the Representative Period according to Defendant's records. (Settlement, pgs. 11, 13; see Settlement, pg. 5.)

The Settlement includes a provision that PAGA Settlement Members will receive an explanatory letter of the instant Settlement (in English and Spanish) to reflect this order granting Approval of Settlement and the Aggrieved Employee's information that will be transmitted to the Settlement Administrator. (Settlement pgs. 8-9.)

As the prevailing employee, Plaintiff is entitled to reasonable attorneys' fees in this action. (Cal. Lab. Code § 2699(g)(1).) The PAGA Settlement provides for attorneys' fees in an amount not to exceed \$200,000.00 and expenses in an amount not to exceed \$15,000.00. (Settlement, pg. 14.) Plaintiff's Counsel requests, without opposition from Defendant, \$200,000.00, and reimbursement of reasonable costs of \$11,946.33. (Decl. of Yeremian ¶25, Exh. 3; Settlement, pgs. 4, 5.) Counsel David Yeremian provides his hourly rate of \$800.00 for a total of 50 hours, Counsel Roman Shkodnik's hourly rate of \$625.00 for a total of 105 hours, and Counsel Walter Haines's hourly rate of \$725.00 for a total of 23.30. (Decl. of Yeremian ¶33; Decl. of Shkodnik

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¶3, Exh. 1; Decl. of Haines ¶¶7-8.) Counsel Yeremian declares Plaintiff's Counsel lodestar is \$122,517.00 (\$40,000 for Yeremian's time, \$65,625 for Shkodnik's time, and \$16,892.50 for Haines's time), with the fee request resulting in a multiplier of approximately 1.6, demonstrating the reasonableness of Plaintiff's request. (Decl. of Yeremian ¶33.) The Court finds the attorneys' fees award is sufficiently supported and reasonable.

The Settlement also provides for an award of costs incurred for \$11,000.00. (Settlement, pg. 4.) Plaintiffs' Counsel submitted evidence in support of their request for incurred costs totaling \$10,811.24. (Decl. of Mahoney ¶ 23, Exh. E; Decl. of Haines ¶9.) The Court finds the requested costs are reasonable and supported.

The Settlement indicates that the upon approval of the Settlement, the Court shall approve a Judgment. (Proposed Order ¶j; Settlement, pg. 8.) The Settlement and Proposed Judgment submitted by the parties provides for a final judgment with the Court retaining jurisdiction for the purposes of (i) enforcing the Settlement; (ii) addressing settlement administration matters, and (iii) addressing post-Judgment matters as may be appropriate under court rules or applicable law. (Proposed Order ¶j; Settlement, pg. 8.)

Based on the foregoing, Plaintiff's motion for an order approving the Settlement is granted.

The Court's written Ruling is signed and filed this date.

The proposed Final Judgment is signed, filed, and made available for download from the court's website this date.

The Court will retain jurisdiction pursuant to CCP 664.6.

Plaintiff is to give notice.