

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012		FILED Superior Court of California County of Los Angeles 11/01/2022 Sherri R. Carter, Executive Officer / Clerk of Court By: <u>R. Navarro</u> Deputy
PLAINTIFF/PETITIONER: Eboney Chambers		
DEFENDANT/RESPONDENT: Action Youth America, LLC, et al.		
CERTIFICATE OF MAILING		CASE NUMBER: 21STCV41422

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order (Ruling on Submitted Matter) of 11/01/2022 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Aidin D. Ghayimi
 Starpoint, LC
 15233 Ventura Blvd. PH16
 Sherman Oaks, CA 91403

Adam Rosenthal
 Sheppard Mullin Richter & Hampton
 12275 El Camino Real Ste 200
 San Diego, CA 92130

Dated: 11/1/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: R. Navarro
 Deputy Clerk

CERTIFICATE OF MAILING

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
Civil Division

Central District, Stanley Mosk Courthouse, Department 34

November 1, 2022
9:44 AM

21STCV41422

EBONEE CHAMBERS vs ACTION YOUTH AMERICA, LLC,
et al.

Judge: Honorable Michael P. Linfield
Judicial Assistant: Reyna Navarro
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The Court, having taken the matter under submission on 11/01/2022 for Order to Show Cause
Re: Entry of Judgment/Order to Show Cause re: Dismissal, now rules as follows:

Case Number: 21STCV41422 Hearing Date: November 1, 2022 Dept: 34
SUBJECT: Motion for Approval of PAGA Settlement

Moving Party: Plaintiff Ebonee Chambers

Resp. Party: None

Plaintiff's Second Motion for Approval of PAGA Settlement is GRANTED.

BACKGROUND:

On November 10, 2021, Plaintiff Ebonee Chambers, individually and on behalf of other aggrieved employees, filed her Complaint against Defendants Action Youth America, LLC, and Claudia Villalba.

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On March 28, 2022, Defendants filed their Answer.

On August 23, 2022, Plaintiff filed her Motion for Approval of Settlement of Claims Brought under the Private Attorneys General Act ("Motion for PAGA Settlement"). Plaintiff concurrently filed multiple Declarations in support of her Motion for PAGA Settlement.

On September 20, 2022, the Court denied Plaintiff's Motion for PAGA Settlement. The Court concluded by noting that "the parties have not served the proposed settlement on the LWDA. Further, the Court finds insufficient evidence to determine if the entire settlement is fair, reasonable, and adequate for those concerned." (Minute Order, p. 14.)

On September 22, 2022, Plaintiff filed her second Motion for Approval of Settlement of Claims Brought under the Private Attorneys General Act ("Second Motion for PAGA Settlement"). Plaintiff filed multiple Declarations in support of her Second Motion for PAGA Settlement.

On October 19, 2022, the Court denied without prejudice the motion to approve the PAGA Settlement. The issue is now again before the Court.

ANALYSIS:

I. Legal Standard

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A. The PAGA

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.)

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].” (Id.)

B. Settlement Generally

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.) Although a PAGA plaintiff need not satisfy class action requirements (see *Arias v. Superior Court* (2009) 46 Cal.4th 969, 975), general principles applicable to class action settlements apply equally in this context. 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 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. (Id. at 250.)

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II. Discussion

A. Proof of Service on the LWDA

A proposed PAGA settlement must be submitted to the LWDA at the same time that it is submitted to the court for review and approval. (Lab. Code, § 2699, subd. (1)(2).)

Plaintiff's Counsel declares that he "submitted the proposed PAGA settlement attached hereto as Exhibit 'A' to the LWDA via online submission pursuant to Labor Code § 2699, subd. (1)(2) [sic]." (Decl. Ghavimi, ¶ 20.) Plaintiff's Counsel also attaches a copy of an email from the Department of Industrial Relations PAGA Unit confirming the online submission of the proposed PAGA settlement.

Plaintiff sufficiently demonstrates that the proposed PAGA settlement was sent to the LWDA. (Lab. Code, § 2699, subd. (1)(2).)

B. Terms of the PAGA Settlement

Among other things, the following are the highlights of the proposed PAGA settlement amount:

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(1) Defendants will pay a PAGA settlement amount of \$75,000.00;

(2) The actual settlement administrative cost will be \$3,750.00, paid to Phoenix Settlement Administrators;

(3) PAGA Counsel (who is Plaintiff's Counsel) will be paid \$27,000.00 for attorney's fees and \$1,793.82 for reimbursement of costs;

(4) The actual net settlement amount will be \$42,456.18, which is the PAGA settlement amount less the other costs and fees listed above;

(5) LWDA will receive \$31,842.13, which is 75% of the actual net settlement amount;

(6) PAGA Members (of which there could be as many as 363) will collectively receive \$10,614.05, which is 25% of the actual net settlement amount; and

(7) The estimated settlement amount per PAGA Member is \$29.24 (\$10,614.05/363 PAGA Members);

(Second Mot. for PAGA Settlement, ¶¶ 4-5.)

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The proposed PAGA settlement also includes other terms, such as for distribution of the settlement, release from claims, and Plaintiff's individual settlement of \$50,000.00 (which itself includes \$20,000.00 in attorney's fees to Plaintiff's Counsel).

C. Analysis of the Civil Penalties

Plaintiff's Counsel provided a lengthy explanation of the Parties' settlement negotiations. (Decl. Ghavimi, ¶¶ 9-12, 14-17.)

The Court finds that the circumstances surrounding the negotiation and resulting settlement agreement demonstrate that the agreement represents an arm's length transaction untainted by fraud, collusion, or self-dealing. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.)

D. Reversion of Funds

The proposed PAGA settlement includes the following provision:

All Individual Settlement Payment checks will remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their mailing by the Settlement Administrator. After one-hundred eighty (180) calendar days from the date of mailing, the checks shall become null and void, and any monies remaining in the distribution account shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of those PAGA Members who did not cash their checks until such time that they claim their property. The Settling Parties agree that this

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disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire PAGA Settlement Payment will be paid out to PAGA Members, whether or not they all cash their Individual Settlement Payment checks.

(Decl. Ghavimi, Ex. A., p. 14.)

The Court agrees that these funds should revert to the State, and not to the employer.

E. PAGA Settlement Administrator Costs

Plaintiff requests that the Court approve Phoenix Settlement Administrators ("Phoenix") as the Settlement Administrator and award up to \$3,750.00 to the Settlement Administrator for Settlement Administration Costs. (PAGA Motion, p. ii:18-19, ii:28—iii:3.) Phoenix attests that it "has adequate procedure in place to safeguard the data and funds to be entrusted to it. PSA's Technology and Banking groups are directly involved with Management on all issues of Information Security and Settlement Fund transfer, as it pertains to the continuance of business processes, and all risk, vulnerability, security, and assessments as it pertains to information. The group, along with internal systems in place, monitor and communicate with Management on a Preventative and comprehensive level, in order to prevent potential Strategic or Compliance Risks. All processing of confidential and personal information is handled and maintained within the organization and therefore all data received is kept within a strict chain of custody internally." (Decl. Lawrence, ¶ 11.)

Phoenix attests further that having "factored in the hard and hourly cost, the settlement administration for this project has a will not exceed fee of \$3,750." (Decl. Lawrence, ¶ 13, Ex. B.)

The Court finds that the costs in the amount of \$3,750.00 is reasonable for the PAGA Settlement Administrator, Phoenix Settlement Administrators.

F. Attorney Fees and Costs

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A prevailing employee is entitled to an award of reasonable attorney fees and costs incurred in the action. (Lab. Code § 2699, subd. (g)(1).)

Plaintiff's Counsel estimates he spent 75 hours prosecuting this action and that his customary billing rate is \$425.00 per hour. (Mot. 15; Decl. Ghavimi, ¶¶ 18, 24.) Plaintiff's Counsel also discusses at length his legal work experience and prior experience as PAGA Counsel. (Decl. Ghavimi, ¶¶ 22-23.) The proposed PAGA Settlement would pay Plaintiff's Counsel \$27,000.00 in attorney's fees for the PAGA Settlement, \$20,000.00 in attorney's fees for Plaintiff's individual settlement, and \$1,793.82 in costs. For the PAGA settlement alone, Plaintiff's Counsel would be making approximately \$360.00 per hour (\$27,000/75 hours.)

The Court now has evidence of Plaintiff's Counsel's customary billing rate, educational background, and experience with PAGA litigation. (See Ghavimi Declaration, ¶¶ 22-24.)

The Court grants the requested attorney's fees and costs.

G. Notice of Release of Claims

Plaintiff provides a copy of the Notice of PAGA Action Settlement. (Decl. Ghavimi, Ex. D.) On the first page of the Revised Notice, it states in a box with bold letters:

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“By cashing this check the employee is not giving up any right to sue for any alleged grievances that the employee has against AYA, but is releasing the right to recover PAGA penalties between August 16, 2020 and [date of approval], based on the following claims.” (Proposed Order and Judgment, Exh. 1.)

The second page of the notice contains a more detailed description:

“BY CASHING THIS CHECK, THE EMPLOYEE IS NOT GIVING UP ANY RIGHT TO SUE FOR ANY ALLEGED GRIEVANCES THAT THE EMPLOYEE HAS AGAINST AYA, BUT IS RELEASING THE RIGHT TO RECOVER PAGA PENALTIES BETWEEN AUGUST 16, 2020 AND [DATE OF APPROVAL], BASED ON THE FOLLOWING CLAIMS

By operation of the Settlement's terms, the Settlement includes a full release of the PAGA claim for unpaid wages, including, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; missed meal period and rest-period premiums, including failure to pay premiums at the regular rate of compensation; reimbursement for all necessary business expenses; payment for all hours worked, including off-the-clock work; failure to timely pay wages, including upon termination; wage statements; deductions; failure to keep accurate records; failure to provide accurate itemized wage statements; failure to indemnify for business expenses; unfair business practices; penalties, including, but not limited to, civil penalties, statutory penalties, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs; all claims for PAGA statutory penalties which are asserted in the Complaint or which could have been asserted based on the factual allegations pled in the Complaint arising under: the California Labor Code (including, but not limited to, sections 90.5200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, 206, 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 246, 256, 450, 510, 511, 512, 516, 550, 551, 552, 558, 1174, 1174.1, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1197.5, 1198, 2751; 2802, 2804, 2810.5 2698 et seq., and 2699 et seq), as well as the applicable provisions of the Industrial Wage Orders, and for any

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other PAGA violations that could have been asserted in the action based on the factual assertions and legal assertions in the operative Complaints and/or PAGA Notices.

This is sufficient. Although no lay-person would understand the 18-line legalese on the second page, the boxed notice on the first page is sufficient to alert the aggrieved employees that they are not giving up any right to sue for any alleged causes of action they personally have against their employer.

III. Conclusion

The Motion for Approval of the PAGA Settlement is GRANTED.

Certificate of Mailing is attached.