

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 48

21STCV37647

**HECTOR LOPEZ vs SUNRISE FOODS, LLC DBA JACK IN
THE BOX**

May 18, 2023

8:30 AM

Judge: Honorable Thomas D. Long
Judicial Assistant: Emily Ma Reyes
Courtroom Assistant: Sandra Brown

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

**NATURE OF PROCEEDINGS: PLAINTIFF'S MOTION FOR APPROVAL OF PAGA
SETTLEMENT**

The matter is called for hearing.

There are no appearances by or for either party.

The Court issues a Tentative Ruling, and it is adopted as the Final Ruling.

The PLAINTIFF'S MOTION FOR APPROVAL OF PAGA SETTLEMENT filed by Hector Lopez on 04/26/2023 is Granted.

On October 12, 2021, Plaintiff Hector Lopez filed this action against Defendant Sunrise Foods, LLC, DBA: Jack in the Box for penalties under the Private Attorney General Act ("PAGA").

The parties have agreed on the terms of a settlement. Under the proposed settlement, Defendant will pay a Gross Settlement Amount of \$135,000.00. Of that amount, up to \$47,250.00 will be paid as attorney fees, up to \$12,000.00 will be paid as costs, and up to \$7,500.00 will be paid to the Plaintiff. Some portion will also be paid to a settlement administrator. Of the remaining amount, estimated to be \$61,645.25 (Declaration of Bradley, ¶17), 75-percent will be paid to the Labor and Workforce Development Agency ("LWDA") and 25-percent will be paid to the aggrieved employees on a pro rata basis.

A Court must review and approve any penalties sought as part of a proposed settlement agreement pursuant to Labor Code §2699. (Labor Code §2699, subd.[1].) "[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated

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to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.” (Labor Code §2699, subd.[i].)

a. Plaintiff Has Provided Notice of the Settlement to LWDA

A proposed PAGA settlement must be submitted to LWDA at the same time that it is submitted to the court for review and approval. (Labor Code §2699, subd.[i][2].) Counsel declares the settlement agreement has already been served on LWDA. (Declaration of Bradley, ¶66 & Exhibit 3.)

Accordingly, the Court finds that this requirement is satisfied.

b. Settlement is Entitled to a Presumption of Fairness

A presumption of fairness for a settlement agreement exists where: (1) the settlement is reached through 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. (Dunk v. Ford Motor Co. (1996)48 Cal.App.4th 1794, 1802.) The final factor does not apply to PAGA. (See Arias v. Superior Court (2009) 46 Cal.4th969, 984 [representative actions under PAGA do not violate the due process rights of “nonparty aggrieved employees who are not given notice of, and an opportunity to be heard”].)

The parties conducted mediation with Steven Pearl, Esq. on January 12, 2023, leading to a finalized agreement signed on March 22, 2023. (Declaration of Bradley, ¶¶3, 7 - 8.) Leading up to the mediation, the Defendant provided data showing the approximate number of aggrieved employees, workdays, and pay periods, along with written policies, timekeeping data, and payroll data. The Plaintiff prepared a mediation brief that examined the evidence, claims, and defenses. Plaintiff’s Counsel declared that they and Defendant’s Counsel took their obligations in discovery extremely seriously, and they worked diligently to provide each other with sufficient information and documentation. (Declaration of Bradley, ¶5.) The settlement was therefore reached through arm’s-length bargaining with sufficient investigation to allow Counsel and the Court to act intelligently.

Plaintiff’s Counsel has significant experience in class actions since 1994. (Declaration of Bradley, ¶26; see also Declaration of Bradley, ¶¶31 - 35.) Since May 2000, Counsel has spent most of his time representing workers in wage-and-hour matters, including multi-district litigation and coordinated proceedings. (Declaration of Bradley, ¶¶27 - 28.) Counsel is therefore

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experienced in similar litigation

The Court finds that the settlement is entitled to a presumption of fairness.

c. Release is Permissible

Through the settlement agreement, the Plaintiff releases all of his claims against the Defendant through the effective date, including the rights and benefits of Civil Code §1542. (Declaration of Bradley, Exhibit 1 at pp. 6 - 7, ¶22.)

The Plaintiff also releases, on behalf of himself and all aggrieved employees, “all claims, rights, demands, liabilities, and causes of action for civil penalties under the PAGA that arose during employment in a non-exempt position in California during the Settlement Period, that were brought or could have been brought based on the factual allegations pled in the operative complaint in the Action,” including claims for meal periods, rest periods, wage statements, and timely payment of wages at separation of employment. (Declaration of Bradley, Exhibit 1 at p. 6, ¶21.)

This release is limited to claims for civil penalties that arise from or relate to allegations in Plaintiff’s Complaint in this action, and it is permissible.

d. Attorney Fees and Costs are Reasonable

A prevailing employee is entitled to an award of reasonable attorney fees and costs incurred in the action. (Labor Code §2699, subd.[g][1].) Plaintiff’s Counsel will receive up to 35% of the Gross Settlement Amount for attorney fees (\$47,250.00) and \$12,000.00 in costs and expenses from the Gross Settlement Amount. (Declaration of Bradley, Exhibit 1 at pp. 5 - 6, ¶20.)

Counsel declares they have spent 90.9 attorney and paralegal hours, totaling \$74,965.00 at their respective hourly rates. (Declaration of Bradley, ¶¶42, 45.) Counsel also incurred \$11,554.75 in out-of-pocket expenses. (Declaration of Bradley, ¶45.)

The Court finds that the attorney fees and costs are reasonable.

e. Conclusion

Accordingly, the Motion for Approval of PAGA Settlement is hereby Granted.

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Clerk is to give notice.

Certificate of Mailing is attached.