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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

GAETANO BALISTRERI, individually, and
on behalf of aggrieved employees pursuant to
the Private Attorneys General Act (“PAGA”),

Plaintiff,

v.

STERLING BANK & TRUST, FSB;
STERLING BANCORP, INC.; and, DOES 1
through 100, inclusive,

Defendants.

Case No. CGC-21-596359

Assigned to: Hon. Richard B. Ulmer
Dept. 302

**[PROPOSED] JUDGMENT AFTER
ORDER GRANTING MOTION FOR
APPROVAL OF PAGA SETTLEMENT
AND ENTRY OF JUDGMENT**

Hearing Date: July 16, 2024
Time: 9:30 a.m.
Judge: Hon. Richard B. Ulmer
Location: Dept. 302

Complaint Filed: November 1, 2021
Trial Date: None Set

1 The Court has considered MOTION FOR APPROVAL OF PAGA SETTLEMENT AND
2 ENTRY OF JUDGMENT, including the Settlement Agreement, and the record in this action
3 (“the Litigation”). The matter having been submitted and good cause appearing,

4 **IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:**

5 1. All defined terms contained herein shall have the same meaning as set forth in the
6 Settlement Agreement and the MOTION FOR APPROVAL OF PAGA SETTLEMENT AND
7 ENTRY OF JUDGMENT. The Labor Code Private Attorneys General Act, codified at California
8 Labor Code section 2698 et sec. is referred to herein as “PAGA.”

9 2. The Action consists of (a) a representative action by Gaetano Balistreri (the
10 “PAGA Representative”) against Sterling Bank & Trust, FSB and Sterling Bancorp, Inc.
11 (“Sterling”) under PAGA for penalties on behalf of the State of California and all current and
12 former non-exempt employees of Sterling Bank & Trust, FSB and Sterling Bancorp, Inc.
13 employed as non-exempt employees, and substantially similar roles from August 26, 2020
14 through May 15, 2024.

15 3. The Court has jurisdiction over the subject matter of the Litigation, the PAGA
16 Representatives, the Aggrieved Employees, and Sterling Bank & Trust, FSB and Sterling
17 Bancorp, Inc. This Judgment shall be binding not only on the named parties to the litigation but
18 also on all Aggrieved Employees and the State of California, who are hereby barred by the
19 doctrine of res judicata from re-litigating the Released Claims. *See Arias v. Superior Court*, 46
20 Cal. 4th 969, 986 (2009) (holding that a judgment in a representative action brought by an
21 aggrieved employee under PAGA is binding not only on the named employee Plaintiff but also
22 on state labor law enforcement agencies and any aggrieved employee not a party to the
proceeding).

23 4. In accordance with the Settlement Agreement, which the Court hereby approves
24 based on good cause showing for the reasons set forth in the Motion for Approval of PAGA
25 Settlement and with no objection received from the LWDA: (a) The Gross Settlement Amount
26 under this Settlement Agreement is Two Hundred and Thirty-Five Thousand Dollars
27 (\$235,000.00), which includes any and all payments that shall be made pursuant to the PAGA to
28 the Labor Workforce Development Agency, the Aggrieved Employees, Plaintiff’s Counsel’s fees

1 and litigation costs, Service Payment to the Named Plaintiffs, and all third-party costs of
2 settlement administration; (b) ILYM Settlement Administrators is hereby approved to administer
3 this Settlement; and (c) the LWDA and all Aggrieved Employees are hereby permanently
4 enjoined from pursuing, or seeking to reopen, any Released Claims against any Released Parties.

5 5. Plaintiff's request for attorney's fees and costs in the amount of \$78,333.33, and
6 Plaintiff's request for a service award of \$5,000.00 are hereby approved to compensate Plaintiff
7 and their counsel in connection with the prosecution of the Released Claims. The Court finds that
8 the attorney's fees, litigation costs, and service award, are reasonable under the circumstances of
9 this matter, including the length of the proceeding and effort required. No party shall be deemed
10 a prevailing party, and except as provided in this Paragraph, all parties shall bear their own
11 attorney's fees and litigation costs.

12 6. The Court hereby approves the payment of _____ to ILYM for their
13 services in administering the settlement.

14 7. The Court hereby designates that settlement checks uncashed for more than 180
15 days after issuance will be tendered to the California State Controller's Office - Unclaimed
16 Property Fund, to be held in the name of the Aggrieved Employee.

17 8. Pursuant to PAGA and Labor Code section 2699(l) in particular, the Court
18 approves the Settlement and finds that it is fair, just, reasonable, and adequate. The Settling
19 Parties are directed to perform their duties in accordance with the terms set forth in the Settlement
20 Agreement.

21 9. All of the Released Claims are deemed adjudicated and extinguished with
22 prejudice as to the PAGA Representative, all of the other Aggrieved Employees, and the State of
23 California.

24 10. Settlement Administrator shall make the payments to the LWDA, the Aggrieved
25 employees, and to the Settlement Administrator as provided for in the Settlement Agreement.

26 11. The Court finds that, under California law (which is applicable here), class action
27 procedural rules are not required when litigating representative PAGA actions. (See *Arias v.*
28 *Superior Court* (2009) 46 Cal.4th 969.) The differences between a traditional class action and a
PAGA suit are well summarized in *Sakkab v. Luxottica Retail North America, Inc.*, 803 F.3d 425,

1 435-436 (9th Cir. 2015) *en banc review denied* (2016). Following the California Supreme Court's
2 decision in *Iskanian v. CLS Transportation*, 59 Cal.4th 348 (2014), the Ninth Circuit explained:

3 The class action is a procedural device for resolving the claims of absent parties
4 on a representative basis. See Fed.R.Civ.P. 23; *Ortiz v. Fibreboard Corp.*, 527
5 U.S. 815, 832- 33 (1999); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613-
6 17 (1997). By contrast, a PAGA action is a statutory action in which the
7 penalties available are measured by the number of Labor Code violations
8 committed by the employer. An employee bringing a PAGA action does so "as
9 the proxy or agent of the state's labor law enforcement agencies," *Iskanian*, 59
10 Cal.4th at 380 (quoting *Arias v. Superior Court*, 46 Cal.4th 969, 986 (2009)),
11 who are the real parties in interest, *see id.* at 382. As the state's proxy, an
12 employee-plaintiff may obtain civil penalties for violations committed against
13 absent employees, Cal. Lab.Code § 2699(g)(1), just as the state could if it
14 brought an enforcement action directly. However, by obtaining such penalties,
15 the employee-plaintiff does not vindicate absent employees' claims, for the
16 PAGA does not give absent employees any substantive right to bring their
17 "own" PAGA claims. *See Amalgamated Transit Union. Local 1756, AFL-CIO v.*
18 *Superior Court*, 46 Cal. 4th 993. 1003 (2009); *see also Iskanian*, 59 Cal.4th at
19 381 (explaining that "[t]he civil penalties recovered on behalf of the state under
20 the PAGA are distinct from the statutory damages to which employees may be
21 entitled in their individual capacities").

22 *Sakkab, supra* at 435-436.

23 12. The Court finds that the notice requirements and other procedures applicable to
24 class action settlements do not apply to the settlement approval process for this PAGA Action.

25 13. The Court further finds that Plaintiff's counsel has sufficiently demonstrated that
26 notice of the Settlement has been provided to the LWDA as required by PAGA and Labor Code
27 section 2699, subdivision (1)(2), in particular.

28 14. Neither the Settlement Agreement nor any act performed or document executed
pursuant to or in furtherance of the Settlement (a) is or may be deemed to be or may be used as
an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or
liability of the Released Parties, or any of them; or (b) is or may be deemed to be or may be used
as an admission of, or evidence of, any fault or omission of the Released Parties, or any of them,
in any civil, criminal or administrative proceeding in any court, administrative agency or other
tribunal. Sterling Bank & Trust, FSB and Sterling Bancorp, Inc. or any of the Released Parties
may file the Settlement and/or the Judgment from this Litigation in any other action that may be

1 brought against it or them in order to support a defense or counterclaim based on principles of
2 *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any
3 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

4 15. After Settlement administration has been completed in accordance with the
5 Settlement Agreement, and in no event later than seven (7) months after the Effective Date,
6 Plaintiffs shall file a report with this Court certifying compliance with the terms of the Settlement.
7 The Court sets a status conference for _____ at _____ a.m./p.m. in
8 Department_____. A declaration(s) regarding disposition of the settlement shall be filed
9 five court days prior to the hearing.

10 16. The Court hereby enters final judgment in accordance with the terms of the
11 Settlement.

12 17. Without affecting the finality of this Judgment in any way, this Court hereby retains
13 continuing jurisdiction over the interpretation, implementation and enforcement of the Settlement
14 and all orders and judgments entered in connection therewith.

15 18. The Court reserves exclusive and continuing jurisdiction over the Action, the PAGA
16 Representative, the Aggrieved Employees and Sterling Bank & Trust, FSB and Sterling Bancorp,
17 Inc. for the purposes of supervising the implementation, enforcement, construction,
18 administration, and interpretation of the Settlement Agreement and Judgment.

19 **IT IS SO ORDERED AND ADJUDGED.**
20
21

22 Dated: _____

Hon. Richard B. Ulmer
Judge of the Superior Court