

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE

MINUTE ORDER

DATE: 01/18/2023

TIME: 09:00:00 AM

DEPT: 54

JUDICIAL OFFICER PRESIDING: Christopher Krueger

CLERK: G. Toda

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: N. Alvi, S. Khorn

CASE NO: **34-2022-00314556-CU-OE-GDS** CASE INIT.DATE: 01/26/2022

CASE TITLE: **Gersuk vs. RS&I, Inc.**

CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Motion - Other - Civil Law and Motion

APPEARANCES

Nature of Proceeding: Motion for an Order Approving Settlement of Claims

TENTATIVE RULING

Defendant RS&I, Inc.'s ("Defendant") motion for approval of PAGA settlement is UNOPPOSED and GRANTED.

Plaintiff Matthew Gersuk ("Plaintiff") worked for Defendant as an Account Executive during the relevant period. On September 1, 2021, Plaintiff gave written notice to the LWDA and Defendant regarding the facts and legal basis for his claims brought under the Private Attorneys General Act (Labor Code § 2699 *et seq.*) ("PAGA"). Plaintiff filed his Complaint on January 26, 2022, asserting a single claim under PAGA for failure to pay overtime wages, failure to pay minimum wages, failure to provide meal and rest periods or pay premiums in lieu thereof, failure to provide accurate wage statements, failure to pay final wages, failure to provide paid sick leave, failure to keep accurate time records, and violation of Labor Code sections 558 and 558.1. (ROA 1.)

Following meaningful negotiations and discovery, the parties reached a settlement and entered into the Joint Stipulation of Settlement and Release on May 4, 2022 (the "Agreement"). (Hamilton Decl. ¶¶ 4-7, Exh. A.) By this motion, Defendant seeks approval of the PAGA settlement. Plaintiff has not opposed.

PAGA permits an aggrieved employee in a civil action to recover any penalty authorized by any provision of the Labor Code. (Lab. Code § 2699.) Settlement of PAGA claims requires Court approval. Labor Code § 2699(l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action pursuant to this part." However, unlike a class action, aggrieved employees need not be given notice of a PAGA claim because it is fundamentally a law enforcement action to recover penalties. (*E.g., Ochoa Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. April 2, 2010) U.S.Dist.LEXIS 32774, *12; *Arias v. Superior Court* (2009) 46 Cal.4th 969.) This negates the need to do the two-step preliminary and final approval which is required for a class action settlement. In addition, a release in a PAGA action is limited solely to the penalties alleged in the complaint and any unnamed aggrieved employee is not bound by any judgment as to any remedy other than the PAGA civil penalties. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 987.)

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Analogizing, in the class action context, the trial court has broad powers to determine whether a proposed settlement is fair. (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3rd 1117, 1138.) The focus on a PAGA settlement is the total settlement amount, not the amount that an aggrieved employee receives, given that the remedy is a civil penalty, not individual or class damages. (*Mendez v. Tween Brands, Inc.* (E.D. Cal. June 30, 2010) 2010 U.S. Dist. LEXIS 66454, *11.)

The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. (See Newberg on Class Actions 4th (4th ed. 2002) § 11.41 (and cases cited therein); *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276.)

The Court here is guided by the same principle applicable in class actions that, the Court must "satisfy itself that the class settlement is within the 'ballpark' of reasonableness." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making its fairness determination, the Court should consider the relevant factors, such as the strength of the Plaintiff's case, the risk, expenses, complexity and likely duration of further litigation, the risk further litigation, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, and the experience and views of counsel. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

With these principles in mind, the Court finds that the PAGA settlement is entitled to be approved. The Agreement provides the following.

- Defendant will pay the Gross Settlement Amount of \$7,500. No portion of the settlement will revert to Defendants for any reason. (Agreement ¶¶ 14.c and 20.)
- The individuals falling within the PAGA settlement include all of Defendant's non-exempt and Account Executive employees who worked for Defendant in California from September 1, 2020, up to the approval of the PAGA settlement by the Court, or November 30, 2021, whichever comes first. (Agreement ¶ 7.) The estimated number of Aggrieved Employees at the time of the parties' agreement to settlement terms in October of 2021 was 13. (Agreement ¶ 4.)
- To save on administrative costs, the parties selected Duggan McHugh Law Corporation to act as the settlement administrator so there are no administrative fees. (Agreement ¶¶ 14.i and 15.)
- Up to 40% of the Gross Settlement Amount (\$3,000) will be paid for Plaintiff's attorney's fees and costs. (Agreement ¶¶ 14.h and 16.)
- In addition to their settlement share, Aggrieved Employees will receive an explanatory notice that provides them with information concerning all material terms of the settlement. (Agreement ¶ 19.)
- For any portion allocated to Aggrieved Employees that is not claimed by them by cashing their respective settlement checks within 180 days, the remaining amount shall be paid to a cy pres beneficiary mutually agreed upon by the Parties. (Agreement ¶ 19.)
- The Net Settlement Amount will equal the Gross Settlement Amount, less Plaintiff's attorney's fees and costs – approximately \$4,500. 25% of the Net Settlement Amount will be paid to Aggrieved Employees and the remainder will be paid to the LWDA. (Agreement ¶ 14.e.)

The Court finds that the settlement is entitled to approval. The settlement was the product of arms-length negotiations following meaningful discovery, and was negotiated by counsel with significant experience in wage and hour class and representative actions and occurred after counsel investigated and

evaluated the strength and potential value of the PAGA claims and risks of litigating through trial. (Hamilton Decl. ¶¶ 2-7; Shimoda Decl. ¶¶ 2-15.) Further, the settlement provides value to the Aggrieved Employees as it provides them with monetary compensation in a manner approximately commensurate with the potential value of their individual claims in light of the risks of continued litigation.

On March 2, 2022, Plaintiff advised the LWDA this matter has been resolved and the LWDA closed its file. (Hamilton Decl. ¶ 8; Shimoda Decl. Exh. D.)

As a result, the Court finds the instant settlement is fair, adequate, and reasonable and it is approved.

The Court will sign the proposed order.

COURT RULING

There being no request for oral argument, the Court affirmed the tentative ruling.