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9 **VLADIMIR J. KOZINA**
10 **CA State Bar No. 284645**

11 **Attorneys for Plaintiff, David Clark**

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF CONTRA COSTA – UNLIMITED JURISDICTION**

15 **DAVID CLARK,**

16 **Plaintiff,**

17 **vs.**

18 **CUATRO AMIGOS, INC., dba AJ BONO**
19 **PLUMBING; and DOES 1-100, inclusive,**

20 **Defendants.**

21 **Case No.: C22-00727**

22 **NOTICE OF ENTRY OF ORDER**

23 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

24 **PLEASE TAKE NOTICE** that, on October 3, 2024, the Court in this matter entered an
25 Order Approving PAGA Settlement, a true and correct copy of which is attached hereto as **Exhibit**
26 **A.**

27 **DATED:** October 3, 2024

28 **MAYALL HURLEY P.C.**

By _____


VLADIMIR J. KOZINA
Attorneys for Plaintiff
DAVID CLARK

Exhibit A

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Attorneys for Plaintiff, David Clark

FILED
OCT 03 2024

K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By K. Jinkerson, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA – UNLIMITED JURISDICTION

DAVID CLARK,

Plaintiff,

vs.

CUATRO AMIGOS, INC., dba AJ BONO
PLUMBING; and DOES 1-100, inclusive,

Defendants.

CASE NO: C22-00727

[PROPOSED] ORDER APPROVING PAGA
SETTLEMENT

Date: September 13, 2024
Time: 9:00 am
Dept.: 18

Plaintiff's Motion for Approval of PAGA Settlement and to Dismiss Action with Prejudice ("Motion") came before the Court on September 13, 2024, at 9:00 a.m. No opposition was filed, and no appearances were made by either party. Accordingly, the Court, having considered the papers and arguments submitted in support of the Motion, confirms the tentative ruling attached hereto as **Exhibit A** as the Order of this Court, and GRANTS Plaintiff's Motion.

IT IS SO ORDERED:

Dated: 10/2/24

GINA DASHMAN

Judge of the Superior Court

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Exhibit A

Superior Court of California, Contra Costa County

Department 18
925-608-1000
www.cc-courts.org



K. Bieker
Court Executive Officer

MINUTE ORDER

DAVID CLARK VS. CUATRO AMIGOS, INC.

C22-00727

HEARING DATE: 09/13/2024

PROCEEDINGS: *HEARING ON MOTION IN RE: TO APPROVE PAGA SETTLEMENT

DEPARTMENT 18
JUDICIAL OFFICER: GINA DASHMAN

CLERK: ANGELA CASSITY
COURT REPORTER:
BAILIFF:
INTERPRETER: ,

JOURNAL ENTRIES:

- No appearance by or for either party.

There being no opposition to the tentative ruling, the tentative ruling becomes the order of the court as follows:

Plaintiff David Clark brings this Motion to Approve PAGA Settlement. No opposition was filed.

Summary

Plaintiff seeks court approval of the settlement between Plaintiff and Defendant Cuatro Amigos, Inc. dba AJ Bono Plumbing pursuant to Labor Code section 2699(l)(2) as to Plaintiff's claims under the Labor Code Private Attorneys General Act of 2004 [PAGA] set forth as the Ninth Cause of Action to Plaintiff's First Amended Complaint. Defendant does not oppose the Motion.

A PAGA settlement requires Court approval. (Labor Code 2699, subpart (l)(2).) Courts performing their statutory review function have a duty to ensur[e] that [the] negotiated resolution [of a PAGA claim] is fair to those affected. (Turrieta v. Lyft, Inc. (2024) 16 Cal.5th 664, 693, citations omitted.) Public policy generally favors settlement. (Neary v. Regents of University of California (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (Bechtel Corp. v. Superior Court (1973) 33 Cal.App.3d 405, 412; Timney v. Lin (2003) 106 Cal.App.4th 1121, 1127.)

PAGA requires that a notice be submitted to the Labor and Workforce Development Agency [LWDA] prior to initiating the claim, and that the complaint and proposed settlement be submitted to LDWA at the same time that it is submitted to the court. (Labor Code 2699(l)(1), (2), 2699.3 (1)(A).) Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid. (Labor Code 2699, at subpart (g)(1).) The remaining amounts are then divided as 75% to LWDA and 25% to the Aggrieved Employees. (Id., at subpart (c), (i).)

Analysis

Plaintiff's Motion sets forth the basis for the potential maximum penalty amount, calculated as \$109,000, and discusses the weaknesses in the case uncovered during discovery that demonstrate the reasons for compromise of the potential penalties. These factors include availability of time for compliant meal periods, misclassification limited only to Plaintiff, defenses on claims relating to business reimbursement and sick pay, and partial compliance with wage statement requirements. (Declaration of Vladimir Kozina [Dec.], 8.) The settlement of \$20,000 is 18.3% of the potential

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Court Executive Officer

penalties. (Dec., 9.)

Plaintiff provides the terms of the agreement and confirms that the notice, complaint, first amended complaint, and a copy of the proposed agreement were sent to LWDA. (Dec. at 6, Ex. 2.) Plaintiff counsel's declaration describes as it is the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage and hour issues, and (3) it reflects a reasoned compromise based directly on the relative strength and value of the PAGA claim, as well as the risks, expense, complexity and likely duration of further litigation.

The settlement contemplates payment of one-third of the settlement amount (\$6,666.67) for attorney's fees and \$3,000 for costs, which, in total, is 48% of the settlement amount. Plaintiff provides the breakdown and basis for attorney's fees and costs distributions, including the extent of work performed and costs incurred by counsel to litigate this claim. (Dec. at 8, 10-11, Ex. 3.) Plaintiff advises that the remaining portion, \$10,333.33 is to be allocated as PAGA Penalties, to be distributed as follows pursuant to Labor Code 2699, subpart (i): 75% (\$7,750.00) to LWDA, and 25% (\$2,583.33) to the six Aggrieved Employees, including Plaintiff, on a pro-rata basis, calculated according to the number of PAGA Pay Periods for each Aggrieved Employee during the PAGA Period. (Dec., 3-4; Ex. 1 at 1.7.)

Plaintiff agrees to release, as to Plaintiff, all claims that may have been brought under the First Amended Complaint, and, as to the other Aggrieved Employees, the PAGA claims for the relevant PAGA period. As such, the scope of the release is appropriately tailored to protect the interests of the other Aggrieved Employees. The settlement funds are to be paid within six (6) months of approval of the settlement and will be distributed by Defendants, not a Settlement Administrator, due to the limited number of Aggrieved Employees.

Of course, some reduction must be made for the strength of the case, and the time and expense of obtaining recovery. Even assuming success on the merits of each claim, PAGA gives the court discretion to reduce penalties for a variety of reasons, including where based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory. (Labor Code 2699(e)(2).) Moreover, recent decisions may make it difficult for PAGA plaintiffs to recover statutory penalties, as opposed to actual missed wages. (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056.) These factors make the result hard to predict.

As such, this court finds the settlement amount, and attorney's fees and costs reasonable based on the work conducted, and the defenses to the claims found during discovery, as discussed herein and as reflected in the Declaration of counsel and Exhibit 3. The settlement of \$20,000, which is 18.3% of the potential penalties, is within the reasonable range of the value of the penalties available for this case, accounting for the risks of trial and the available defense to the claims. The amounts allocated to attorney's fees and costs are reasonable in light of the time invested and costs incurred. The remaining penalty amounts are appropriately allocated between the LWDA and the Aggrieved Employees.

For such reasons, the PAGA settlement is approved, and the Motion is granted.

FUTURE HEARING(S):

Superior Court of California, Contra Costa County

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Court Executive Officer

DATED: 9/13/2024

BY: _____

A. CASSITY, DEPUTY CLERK
