

FILED
Superior Court of California,
County of Solano
03/28/2024 at 01:55:32 PM
By: O. Camarena, Deputy Clerk

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aggrieved employees of Defendant in the State of
California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SOLANO

MICHAEL STODDART, individually and
on behalf of all aggrieved employees of
Defendants in the State of California,

Plaintiff,

v.

HEAVY METAL IRON, INC. a California
corporation; DANIEL BONG, and
individual; and DOES 1 THROUGH 50,

Defendant.

Case No.: FCS058244

**AMENDED [~~PROPOSED~~] ORDER
GRANTING PLAINTIFF'S MOTION FOR
APPROVAL OF PAGA SETTLEMENT AND
JUDGMENT THEREON**

Date: March 27, 2024

Time: 8:30 a.m.

Dept: 12

Judge: Hon. Christine A. Carringer

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1 This matter has come before the Honorable Christine A. Carringer in Department 12 of the Solano
2 County Superior Court, located at 580 Texas St., Fairfield, CA 94533, on Plaintiff Michael Stoddart's
3 ("Plaintiff") Motion for Approval of PAGA Settlement ("Approval Motion") pursuant to Labor Code
4 section 2699(l)(2). On March 27, 2024 at 8:30 a.m., each party appeared at the hearing through their
5 respective counsel of record.

6 Having duly considered all papers, including Plaintiff's Approval Motion, evidence, and oral
7 arguments presented, and having published the Tentative Ruling, attached here as **Exhibit A**, the Court
8 ORDERS, ADJUDGES AND DECREES as follows:

9 1. This Order Granting Plaintiff's Motion for Approval of PAGA Settlement ("Order and
10 Judgment") shall incorporate by reference the parties' Private Attorneys General Act (Labor Code § 2698
11 *et seq.*) Settlement Agreement and Release ("Settlement" or "Agreement"), which is attached as Exhibit
12 1 to the Declaration of Graham S.P. Hollis. To the extent the terms used in this Order and Judgment are
13 defined in the Agreement, the defined terms contained herein shall have the same meaning as set forth in
14 the Agreement.

15 2. Plaintiff provided notice to the Labor and Workforce Development Agency ("LWDA") on
16 February 28, 2022, and is authorized to act as private attorney general with respect to the PAGA claim
17 being released under the terms of the Settlement.

18 3. The LWDA was provided with notice of the Settlement and the motion for approval of the
19 PAGA settlement on November 20, 2023 and no objection has been received to the Settlement or the
20 motion from the LWDA.

21 4. In accordance with California Labor Code § 2699(l)(2), the Court has reviewed the
22 Agreement. The Court APPROVES the Settlement as set forth in the Agreement and the Gross PAGA
23 Settlement Amount of \$150,000.00 and finds that the allocation of civil penalties for the claim under the
24 PAGA is fair, reasonable, and appropriate.

25 5. The Settlement covers Plaintiff and all "Aggrieved Employees," defined as "all individuals
26 employed by HMI as non-exempt employees in California during the PAGA Period, excluding
27 Daniel C. Bong, Dustin Bong, and Jacob Bong, and all employees working for HMI whose employment
28 was covered by a collective bargaining agreement."

6. The PAGA Period is defined as the period from March 9, 2021, though the earlier date of February 28, 2024, or the date upon which the Court approves the Settlement.

7. The Court ORDERS that 75% of the Net PAGA Settlement Amount be paid to the LWDA as required by the California Labor Code Private Attorneys General Act ("PAGA").

8. The Court ORDERS that 25% of the Net PAGA Settlement Amount be paid to Aggrieved Employees.

9. Plaintiff is ORDERED to submit this Order and Judgment to the LWDA within 10 calendar days of entry of this Order and Judgment.

10. ILYM Group, Inc. shall be appointed as the Settlement Administrator. The Settlement Administrator shall administer the settlement in accordance with the Agreement and this Order and Judgment.

11. The Court finds that the costs of the administration of the settlement are reasonable. The Court awards and therefore ORDERS that the Settlement Administrator issue to ILYM Group, Inc. administration costs in the amount of \$2,450.00 for services performed and the costs incurred in connection with administration of the Settlement.

12. The Court ORDERS Defendant to provide the Settlement Administrator with a list of the name, last known mailing address, last known telephone number, and start and end date(s) of employment within ten (10) business days after the Effective Date.

13. The Settlement Administrator is ORDERED to establish a Qualified Settlement Fund ("QSF") for purposes of administering the Settlement. The Settlement Administrator is further ORDERED to calculate all settlement checks required under law based on information that will be confidentially furnished by Defendant.

14. The Court finds that awarding attorneys' fees in the amount of \$37,500.00, or twenty-five percent of the PAGA Settlement Amount falls within the range of reasonableness and the result achieved justifies the award sought. The Court awards and therefore ORDERS that the Settlement Administrator issue attorney's fees in the amount of \$37,500.00 to GrahamHollis APC.

15. The Court also finds that actual litigation costs incurred in the amount of \$6,592.19 falls within the range of reasonableness and the result achieved justifies the award sought. The Court awards

1 and thus ORDERS that the Settlement Administrator issue payment for litigation costs incurred in the
2 amount of \$6,592.19 to GrahamHollis APC.

3 16. Upon the Effective Date, except as to the right to enforce the terms and conditions of the
4 settlement, Plaintiff, in his capacity as private attorney general and acting on behalf of himself, the State
5 of California, LWDA, and the Aggrieved Employees, releases the PAGA Released Parties of any right or
6 claim for civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code
7 sections 2698, *et seq.*, arising under the California Labor Code based on the alleged violations in the
8 operative complaint in the above-referenced case (Case No. FCS058244), or alleged in Plaintiff's notice(s)
9 to the LWDA, or that could have been alleged based upon the facts alleged in the operative complaint or
10 notices, including any alleged failure by Defendants (1) to pay wages, minimum wages, or overtime; (2)
11 to provide meal or rest periods or compensation in lieu thereof; (3) to provide compliant wage statements;
12 (4) to timely pay wages during or at the end of alleged employment; (5) to reimburse for all necessary
13 business expenses or other losses/expenditures; (6) to accurately record work hours and meal break
14 periods; and (7) to accurately maintain records. This release includes, without limitation, violation of
15 California Labor Code sections 201–204, 216, 226, 226.7, 226.8, 510, 512, 516, 558, 1182.11, 1182.12,
16 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 2802 during the PAGA Period.

17 17. It is ORDERED that as of the Effective Date, Plaintiff and all Aggrieved Employees shall
18 be prohibited and permanently enjoined from pursuing in any fashion the PAGA Released Claims against
19 any of the PAGA Released Parties.

20 18. Final judgment in this Action is entered in conformity herewith, along with the Agreement.

21 19. Nothing in this Order and Judgment or the Settlement shall be construed as an admission
22 or concession by any party. The Settlement and this resulting Order and Judgment only represent a
23 compromise of disputed allegations.

24 20. In accordance with Code of Civil Procedure section 664.6 and California Rules of Court,
25 Rule 3.769, this document shall constitute a final judgment and this Court shall retain exclusive and
26 continuing jurisdiction over the Action, the parties, and Aggrieved Employees for purposes of addressing
27 (a) the interpretation and enforcement of the terms of the Agreement; (b) matters relating to the
28 administration of the settlement; and (c) such post-Judgment matters as may be appropriate under Court

rules or as set forth in the Agreement.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: 03/28/2024

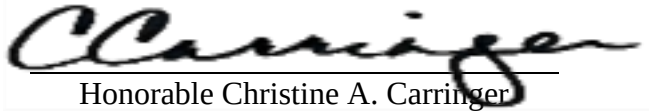

Honorable Christine A. Carringer
Solano County Superior Court

EXHIBIT A

**DEPARTMENT TWELVE
JUDGE CHRISTINE CARRINGER
707-207-7312
TENTATIVE RULINGS SCHEDULED FOR
WEDNESDAY, MARCH 27, 2024**

Join ZoomGov Meeting

<https://www.zoomgov.com/j/1610208382?pwd=UXhSbFlreXRtQ1BkeldQSUVBcHdOQT09>

Meeting ID: 161 020 8382

Passcode: 234174

One tap mobile

+16692545252,,1610208382#,,,,*234174# US (San Jose)

+16692161590,,1610208382#,,,,*234174# US (San Jose)

Dial by your location

+1 669 254 5252 US (San Jose)

+1 669 216 1590 US (San Jose)

+1 551 285 1373 US

+1 646 828 7666 US (New York)

833 568 8864 US Toll-free

CEMETERY AND FUNERAL BUREAU v. FRESNO CREMATION COMPANY

Case No. cl23-02672

And Consolidated Cases

Motion to Intervene filed by CONGREGATION KOL SHOFAR

TENTATIVE RULING

The court continues the hearing on this motion to Thursday April 25, 2024, at 8:30 a.m. in Dept. 12.

LUCERO v. FERRO AUTOMOTIVE GROUP, INC.

Case No. FCS055712

Motion by Plaintiff for Leave to File an Amended Complaint for the Purpose of Reinstating PAGA Claims and Further Adding Class Claims

TENTATIVE RULING

CRC 3.1324(b) requires a motion for leave to amend to be accompanied by a declaration detailing, among other things, when the facts giving rise to the amended allegations were discovered, and why leave to amend was not sought earlier.

Plaintiff's counsel filed a supporting declaration, but it made no effort to provide information about when the class action claims were discovered, or explain why they were not brought sooner.

In addition, leave to amend can be denied when it appears the new allegations would not survive a later motion challenge, such as by demurrer. Congleton v. National Union Fire Ins. Co. (1987) 189 Cal.App.3d 51, 62, quoting 5 Witkin, *California Procedure* (3d ed. 1985) *Pleading*, §1121, pp. 537-538 ["It is of course proper to deny leave when the proposed amendment or amended pleading is insufficient to state a cause of action or defense"].

The opposition claimed, without providing a copy to the court, that an arbitration agreement signed by Plaintiff at the outset of the employment contained a class action waiver.

The court takes judicial notice that in an earlier filing with the court, in support of its motion to compel arbitration of the PAGA claims, Defendant provided the terms of the arbitration agreement, as follows:

I and the Company both agree that any claim, dispute, and/or controversy that either party may have against one another . . . which would otherwise require or allow resort to any court or other governmental dispute resolution forum between myself and the Company . . . arising from, related to, or having any relationship with or connection whatsoever with my . . . employment by . . . the Company . . . shall be submitted to and determined exclusively by binding arbitration.

. . .

In order to provide for the efficient and timely adjudication of claims, the arbitrator is prohibited from consolidating the claims of others into one proceeding. This means that an arbitrator will hear only my individual claims and does not have the authority to fashion a proceeding as a class or collective action or to award relief to a group of employees in one proceeding. Thus, the Company has the right to defeat any attempt by me to file or join other employees in a class, collective or joint action lawsuit or arbitration.

Defendant's earlier motion to compel arbitration, and its later failure to timely post arbitration fees, concerned arbitration of the PAGA claims. It has no effect on

Defendant's right to seek enforcement of the class action waiver, as those claims were not asserted in the original complaint.

In this context, in the absence of some compelling showing of a defense to enforcement of the class action waiver in the arbitration agreement, it does not make sense for the court to grant leave to Plaintiff to add the class action allegations.

Thus, leave to amend to reinstate the PAGA claims, unopposed by Defendant, shall be granted. Leave to add the class action allegations is denied.

MICHAEL STODDART v. HEAVY METAL IRON, INC. and DANIEL BONG
Case No. FCS058244

Motion for Approval of PAGA Settlement

TENTATIVE RULING

Plaintiff MICHAEL STODDART moves for approval of the settlement reached with Defendants HEAVY METAL IRON, INC. and DANIEL BONG in Plaintiff's suit against them under the Private Attorneys General Act (the "PAGA") for labor law violations.

Standards of Settlement Review. Labor Code section 2699, subdivision (l)(2) states that the court "shall review and approve any settlement of any civil action filed pursuant to [the PAGA]" and that any proposed settlement must be submitted to the Labor and Workforce Development Agency simultaneously with the court. The trial court's task in reviewing a PAGA settlement is to ensure that the settlement is fair, adequate, and reasonable, as well as meaningful and consistent with the PAGA's goal of public benefit through increased enforcement of labor law. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 74-75 (*Moniz*).)

Plaintiff's counsel declares that the settlement has been simultaneously presented to the Labor and Workforce Development Agency and presents an acknowledgement of receipt email, satisfying that requirement. (Declaration of Graham S. P. Hollis in Support of Motion (Hollis) at ¶ 5, Exhibit 2.)

Reasonableness Analysis. The terms of the proposed settlement distribution are as follows: of the \$150,000 total settlement amount, 40% (\$60,000) will be given to Plaintiff's counsel as attorneys' fees, \$9,500 will be given to counsel for costs of litigation, and \$2,450 will go to ILYM Group, Inc. for services as settlement administrator. The remaining \$78,050 will be split such that 75%, or \$58,537.50, goes to the Labor and Workforce Development Agency and 25%, or \$19,512.50, will be allocated to aggrieved employees, following the percentage distributions required by statute. (Lab. Code, § 2699, subd. (i).)

It is appropriate to award Plaintiff's counsel attorneys' fees out of the total settlement amount because the settlement creates a "common fund" for the benefit of many persons – here, the aggrieved employees and the State of California as represented by Plaintiff in his PAGA action. (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 489-490 [approving common fund doctrine in class action case]; *Moniz, supra*, 72 Cal.App.5th at p. 74 [PAGA action is qui tam action benefiting state and aggrieved employees].) However, the court finds that the requested amount of 40% of the gross settlement amount is not reasonable in light of the circumstances of this case, which settled in one day of mediation and saw minimal motion practice. 25% is more appropriate. Federal courts routinely endorse the twenty-five percent benchmark for fees, under the "federal common fund doctrine." (*Colehan on California Class Actions* (2017-18 edition) §10:5, pp. 482-483.) A California secondary source suggests that "[a]bsent extraordinary circumstances that suggest lowering or increasing the percentage, the rate should be 25 to 30 percent." (*Colehan on California Class Actions* (2017-18 edition) §10:5, p. 483.)

The court finds that counsel's online research and telephone expenses (respectively totaling \$1,572.35 and \$578.22) are not appropriate items of costs. (Hollis at ¶ 79, Exhibit 4.) The court further finds that the claimed \$700.79 for "attorney service" and \$615 of the \$1,375 total claimed "filing / court fees" were incurred as mere conveniences for use of legal assistance services. Accordingly the court finds that counsel incurred \$6,592.19 in reasonable costs.

The court finds that the settlement meaningfully promotes and is consistent with the purposes of the PAGA because the \$103,457.81 that will go to the Labor and Workforce Development Agency and aggrieved employees (after adjusting attorneys' fees and costs as described above) is 69% of the total settlement amount, meaning that the majority of the settlement will satisfy the state interests Plaintiff represents in this PAGA action. (*Moniz, supra*, 72 Cal.App.5th at p. 76.)

Lastly, the court finds that \$2,450 is a reasonable amount to pay to ILYM Group, Inc. for settlement administration services.

Conclusion. The motion is granted, modified as follows: attorneys' fees are reduced to 25% of the gross settlement amount, or \$37,500, and costs are reduced to \$6,592.19.