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JENNIFER M. FULLER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

CELEBRITY FOUNDATION FOR
CHILDREN, a California Nonprofit
Corporation

Plaintiff,

JENNIFER M. FULLER, an individual;
and DOES 1 through 25, inclusive

Defendants.

JENNIFER M. FULLER, an individual,

Cross-Plaintiff,

v.

MICHAEL FARAH an individual, THE
CELEBRITY FOUNDATION FOR
CHILDREN, and DOES 1 through 5,
inclusive,

Cross-Defendants.

Case No.: CVRI2201097

Assigned to: Hon. Harold Hopp, Historic
Courthouse, Dept. 1

**NOTICE OF MOTION AND MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

RESERVATION ID: 273632334516

DATE: October 29, 2024
TIME: 8:30 a.m.
DEPT: 1

Case Filed: 3/17/22
Trial Date: None

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TO THE COURT, ALL PARTIES AND THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on October 29, 2024, at 8:30 a.m. in Department 1 of the above-entitled Court, located at 4050 Main Street Riverside, CA 92501, Jennifer Fuller will, and hereby does, move the Court for an order approving the parties’ settlement pursuant to the California Private Attorneys General Act, California Labor Code § 2698, *et. seq.*

This motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the concurrently filed Declarations of Corbett H. Williams and Jodey Lawrence, the pleadings and records on file herein, and on such further evidence and argument as may be presented at the hearing on the motion.

Dated: September 3, 2024

Law Offices of Corbett H. Williams

By: /s/ Corbett H. Williams
Corbett H. Williams
Attorney for Defendant and Cross-Plaintiff
JENNIFER FULLER

I. INTRODUCTION

Cross-Plaintiff Jennifer Fuller (“Fuller”) seeks Court approval of the parties’ settlement of Fuller’s claim for civil penalties under the Private Attorneys General Act (“PAGA”). The settlement is the product of arms-length negotiations resulting in \$50,000 being allocated to resolution of the Fuller’s representative PAGA claim. The settlement is fair and reasonable under the circumstances and represents a substantial portion of the penalties likely to be awarded had this case gone to trial. In addition, Fuller’s PAGA lawsuit has resulted in Cross-Defendant Celebrity Foundation for Children (“Celebrity”) making material changes to its employment practices, including the reclassification of independent contractors as employees.

For the reasons stated below and those set forth in the supporting declarations, Fuller requests that the Court enter an order approving the motion and enter judgment as contemplated by the Settlement Agreement.

II. BACKGROUND

A. PAGA Actions Seek To Vindicate The State’s Interest In Labor Code Enforcement

PAGA is a procedural statute that allows an “aggrieved employee” to vindicate the State’s interest in Labor Code enforcement. *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal. 4th 993, 1003 (2009); *Arias v. Sup. Ct.*, 46 Cal. 4th 969, 986 (2009). In a PAGA action, the employee acts “as [a] proxy or agent of the state’s labor law enforcement agencies.” *Arias*, 46 Cal. 4th at 986; *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 381 (2014) (a PAGA action is “a substitute for an action brought by the government itself”). Accordingly, PAGA neither creates nor vindicates substantive rights of individual aggrieved employees. *Amalgamated Transit Union*, 46 Cal. 4th at 1003; *see Arias*, 46 Cal. 4th at 986 (PAGA is not designed “to benefit private parties”) (internal quotation marks omitted).

To vindicate the State’s interest, the employee may bring a civil action for civil penalties “on behalf of himself or herself and other current or former employees.” Cal. Lab. Code § 2699(a). Recovery of a civil penalty requires proof of a Labor Code violation. *Arias*, 46 Cal. 4th at 987. When the employee recovers civil penalties, 75% goes to the State and the remaining 25%

1 goes to the aggrieved employees. Cal. Lab. Code § 2699(i); *Arias*, 46 Cal. 4th at 980-81. A
2 judgment in a PAGA action binds the government and nonparty employees with respect to claims
3 for civil penalties. *Iskanian*, 59 Cal. 4th at 381.

4 PAGA actions are not class actions. The California Supreme Court has analogized PAGA
5 actions to traditional *qui tam* actions in which a private citizen is deputized to sue on behalf of the
6 government to recover money that is owed to the government, with a portion of the recovery paid
7 to the private citizen as a reward. Because PAGA actions are not class actions, the settlement of a
8 PAGA action does not have to comply with the requirements for the settlement of class actions.
9 *Arias*, 46 Cal. 4th at 982 (“a representative action seeking civil penalties [under PAGA] need not
10 satisfy class action requirements”). Thus, the allegedly Aggrieved Employees have no right to
11 receive notice of the settlement, to opt out, or to object to the settlement, which again simply
12 resolves a law enforcement proceeding. *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117,
13 1122 (9th Cir. 2014). Instead, under PAGA, the only requirement is that the Court “review and
14 approve” the settlement to ensure that it is adequate.

15 **B. Fuller’s PAGA Claim**

16 This action was initiated by The Celebrity Foundation for Children (“Celebrity”) on March
17 17, 2022. Celebrity subsequently filed a First Amended Complaint, which alleges claims against
18 Fuller for: (1) Breach of Contract, (2) Conversion, (3) Unjust Enrichment, (4) and Fraud and
19 Deceit. Fuller filed a Cross-Complaint against Celebrity on May 16, 2022 asserting various
20 employment-related claims, including unpaid overtime, unpaid meal and rest break penalties,
21 sexual harassment, and retaliation. On June 9, 2022, Fuller filed a First Amended Cross Complaint
22 (“FACC”), which augmented her claims with a cause of action under PAGA for civil penalties.

23 Fuller seeks to recover PAGA penalties on grounds that Celebrity misclassified her and 12
24 other individuals as independent contractors. All such workers were employed in some capacity in
25 Celebrity’s charity ranch located in Hemet, California (“Celebrity Ranch”). Fuller further alleges
26 that Celebrity failed to: (1) pay overtime compensation; (2) furnish accurate wage statements; (3)
27 reimburse necessary expenses, including for personal cellular telephones; (4) provide code-
28 compliant meal periods and rest breaks; (5) timely pay wages due upon termination and (6)

1 maintain proper records. (Declaration of Corbett H. Williams (“Williams Decl.”), ¶ 6 and Exh. 3
2 thereto.)

3 Plaintiff’s PAGA claim concerns 13 individuals, including herself, employed by Celebrity
4 and classified as independent contractors. Based on information provided by Celebrity, in or about
5 June 2022, Celebrity reclassified workers at Celebrity Ranch as employees, retained the services
6 of a third-party payroll processor and took further steps to ensure compliance with the California
7 Labor Code. Based on the foregoing, Plaintiff alleges 13 individual violations of Labor Code
8 Section 226.8, which concerns misclassification of employees as independent contractors and 168
9 individual violations of specific Labor Code provisions. (*Id.*, ¶ 7.)

10 **C. The Parties’ Settlement Efforts**

11 The Settlement Agreement is the product of arms-length negotiations in a private mediation
12 with Michael H. Leb, a highly experienced and respected mediator specializing in wage and hour
13 collective and class action mediations. The mediation took place on June 21, 2024.

14 **D. Essential Settlement Terms**

15 The Settlement Agreement provides for payment of \$50,000 to be allocated as follows: (1)
16 attorney’s fees to Fuller’s Counsel’s of up to 33% of the Gross Settlement Amount or \$16,500; (2)
17 reasonable litigation costs reimbursed to Fuller’s counsel not to exceed \$5,500; (3) and
18 Administration costs not to exceed \$1,750 to be paid to the Settlement Administrator. The remainder
19 of the Gross Settlement Amount shall be allocated between the LWDA and the Aggrieved
20 Employees pursuant to Labor Code section 2699(i), with 75% paid to the LWDA and 25% paid to
21 the Aggrieved Employees on a pro-rata basis. (Williams Decl., ¶ 5, Exh 1.)

22 Defendant will calculate: (i) the total number of pay periods worked by each Aggrieved
23 Employee during the PAGA Period, and (ii) the total number of pay periods worked by all
24 Aggrieved Employees during the PAGA Period. To determine each Aggrieved Employee’s payment
25 from the Aggrieved Employees’ PAGA Portion, Celebrity Foundation will use the following
26 formula: Settlement Payment = Aggrieved Employees’ PAGA Portion ($\approx$ \$5,937.5) $\times$ [Pay
27 Periods Worked by Individual Aggrieved Employee during the PAGA Period $\div$ Total Pay Periods
28 Worked by All Aggrieved Employees during the PAGA Period]. (*Id.*)

**E. The Settlement Represents a Significant Share of Celebrity's Likely Exposure for
PAGA Penalties**

In preparation for mediation, Fuller's Counsel created a damages model and then determined a settlement range based on probable outcomes. Given a likely range of penalties should the case proceed to trial of \$50,000 and \$100,000 on behalf of the Aggrieved Employees, Fuller's Counsel considered \$50,000 well within the realm of reasonableness, particularly given the risks of proceeding to trial. (Williams Decl., ¶ 16.)

Fuller's Counsel believes strongly in the fairness of the settlement, particularly given the very real possibility of a finding that some or all of the Aggrieved Employees were properly classified. In addition, the non-profit status of Celebrity Foundation for Children and Celebrity's reclassification of workers as employees are substantial factors in Counsel's fairness determination. (*Id.*, ¶ 17.)

If all allegations made in connection with Fullers' PAGA claim were proven, including that Celebrity's misclassification of the Aggrieved Employees was willful and part of a pattern and practice, the maximum potential penalty provided under Labor Code 226.8(c) is \$25,000 per violation or \$325,000. In addition, were the Court to impose the maximum penalty available for all violations alleged in addition to that provided under Section 226.8(c), an additional \$21,000.00 in civil penalties could be assessed. In total Plaintiff estimates Celebrity's maximum exposure for PAGA penalties at \$346,000. (*Id.*, ¶ 8.)

However, it is very unlikely that following trial, the Court would impose the maximum penalty possible under the law. Celebrity has vigorously defended Plaintiff's claims and have asserted numerous defenses to Plaintiff's misclassification claim, including that the Aggrieved Employees were properly classified as independent contractors. (*Id.*, ¶ 9.)

In particular, Celebrity has provided deposition testimony that the 13 Aggrieved Employees were properly classified as independent contractors. Celebrity would certainly make this contention at trial and offer evidence to support that position. It is likely that some, or even most of the 13 Aggrieved Employees would be found to have been properly classified. Celebrity has also vigorously argued that any misclassification was not willful as required under Labor Code Section

226.8 for imposition of any civil penalty. Celebrity also contends that there was no pattern or practice of misclassification, as required under Section 226.8(c) for imposition of an enhanced penalty of between \$10,000 and \$25,000 per violation. Should any of the Aggrieved Employees be found to have been properly classified as independent contractors, Celebrity would not be liable for other violations, as the Labor Code would not apply to those individuals. (*Id.*, ¶ 10.)

Plaintiff also expects that if Celebrity was found to have misclassified employees, Celebrity will argue that civil penalties are inappropriate because (1) Celebrity took timely steps to remedy any possible future misclassification and Labor Code violations and (2) Celebrity Ranch is a charitable organization for the benefit of children in the local community. (*Id.*, ¶ 11.)

Further, to the extent Celebrity is found to have willfully misclassified the Aggrieved Employees, it is unclear whether the Court would impose additional civil penalties for Labor Code violations beyond those provide by Section 226.8. The law concerning the “stacking” of PAGA penalties is exceedingly unclear. (*Id.*, ¶ 12.)

Based on the foregoing, Plaintiff estimates that at most, a Court would impose civil penalties of between \$50,000 and \$100,000 against Celebrity. To achieve such a result would require Plaintiff to prevail on her allegations that Celebrity willfully misclassified most, if not all, of the 13 Aggrieved Employees. (*Id.*, ¶ 13.)

III. LEGAL STANDARD

As stated above, Labor Code §2699(l) requires this Court to “review and approve” any PAGA settlement. Cal. Lab. Code § 2699(l)(2). PAGA does not contain any other guidance regarding judicial review of PAGA settlements.

As noted above, however, a PAGA action is distinct from a class action, and the proper focus, therefore, is on what constitutes a fair and le “penalty” to the defendant under the circumstances, not the recovery to any class, which measures a fair recoupment of their potential damages. *See Commonwealth v. McKesson Corp.*, 2013 WL 5303769 at *4 (noting PAGA’s “punitive” nature). The Court, nonetheless, could look for further guidance to the standard for review and approval of class actions set forth in *Dunk v. Ford Motor Co.*, 48 Cal. App. 1794, 1801 (1996). In *Dunk*, the Court of Appeal identified the following factors to consider in evaluating a

1 class action settlement: (a) the strength of the plaintiff's case; (b) the risk, expense, complexity,
2 and likely duration of further litigation; (c) the risk of maintaining class action status through trial;
3 (d) the amount offered in settlement; (e) the extent of discovery completed and stage of the
4 proceedings; (f) the experience and views of counsel; (g) the presence of a governmental
5 participant; and (h) the reaction of the class members to the proposed settlement. *Id.* at 1801. The
6 *Dunk* Court recognized that this list "is not exhaustive and should be tailored to each case." *Id.*

7 **A. The Deductions To The Settlement's "Gross Settlement Amount" Are Fair And**
8 **Reasonable**

9 The deductions under the Settlement Agreement to the Gross Settlement Amount are
10 reasonable, which further militate in favor of settlement approval. Labor Code §2699(g)(1)
11 authorizes an award of reasonable attorneys' fees and costs to any employee who "prevails" in a
12 PAGA action. Cal. Lab. Code §2699(g)(1). Under long-standing precedent, a favorable settlement
13 is sufficient to constitute "prevailing" for purposes of an award of attorneys' fees from the settlement
14 proceeds. *Choi v. Orange County Great Park Corp.*, 175 Cal. App. 4th 524, 529-31 (2009)
15 (interpreting "prevailing" under Civil Procedure §1021.5 in private attorney general action).

16 Here, the requested attorneys' fees for Representative Plaintiff's Counsel of \$16,500 are
17 33.33% of the Gross Settlement Amount, which is consistent with their agreement with their
18 client. *See* Civ. Proc. Code §1021 ("the measure and mode of compensation of attorneys . . . is
19 left to the [parties'] agreement"). In addition to the favorable result achieved, the requested
20 attorneys' fees also are justified by the time and effort expended by Representative Plaintiff's
21 Counsel. (Williams Decl. ¶¶ 5-6, Exh. 4.) Moreover, the requested costs of \$3,651.99 reflect
22 actual, out-of-pocket costs. (*Id.*, ¶ 19, Exh. 4)

23 The parties have agreed to use Phoenix Class Action Administration Solutions ("Phoenix")
24 as administrator for the settlement. Phoenix has provided a "Not-to-Exceed" total estimate of
25 \$1,750.50 for its services. (*Id.*, ¶ 31; Declaration of Jodey Lawrence and Exhibits thereto.)
26 Multiple bids were sought for this assignment, including from ILYM Group, Inc. and Simpluris.
27 Phoenix was the lowest bidder by a \$1,000 margin. In addition, Counsel has used Phoenix for
28 numerous class action and PAGA settlements and has been satisfied with their services and

1 responsiveness, both to counsel and class members. (Williams Decl., ¶ 31.)

2 **IV. CONCLUSION**

3 For the foregoing reasons and those stated in the Declaration of Corbett H. Williams,
4 Plaintiff respectfully requests that the Court grant the motion and enter the Proposed Judgment.

5 Dated: September 3, 2024

Law Offices of Corbett H. Williams

6 By: /s/ Corbett H. Williams

7 Corbett H. Williams

8 Attorney for Defendant and Cross-Plaintiff

JENNIFER FULLER