

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 01/11/2024

GENERAL INSTRUCTIONS FOR CONTESTING TENTATIVE RULINGS IN DEPT. 12

NOTE PROCEDURE CAREFULLY

The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the court day preceding the hearing, counsel or self-represented parties call the department rendering the decision to request argument and to specify the issues to be argued. Calling counsel or self-represented parties requesting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of his or her decision to appear and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (*Local Rule 3.43(2).*)

Note: In order to minimize the risk of miscommunication, Dept. 12 prefers and encourages fax or email notification to the department of the request to argue and specification of issues to be argued – with a **STRONG PREFERENCE FOR EMAIL NOTIFICATION**. Dept. 12's Fax Number is: (925) 608-2686. Dept. 12's email address is: dept12@contracosta.courts.ca.gov. Warning: this email address is not to be used for any communication with the department except as expressly and specifically authorized by the court. Any emails received in contravention of this order will be disregarded by the court and may subject the offending party to sanctions.

Submission of Orders After Hearing in Department 12 Cases

The prevailing party must prepare an order after hearing in accordance with CRC 3.1312. If the tentative ruling becomes the Court's ruling, a copy of the Court's tentative ruling **must be attached to the proposed order** when submitted to the Court for issuance of the order.

1. 9:00 AM CASE NUMBER: C22-01360
CASE NAME: MARIA SMEBY VS. SEATEL, INC., A CALIFORNIA CORPORATION
*HEARING ON MOTION IN RE: APPROVAL OF PAGA SETTLEMENT
FILED BY:
TENTATIVE RULING:

Plaintiff Maria Smeby moves for approval of the settlement of her PAGA suit against defendant Seatel, Inc. Defendant is in the satellite communications business. Plaintiff was employed by defendant as an assembly worker from November 2007 to December 2021. Plaintiff also moves for approval of her attorney's fees, litigation costs, administration costs, and representative payment.

The motion is **granted**.

A. Background of the Case and Terms of Settlement

This is a PAGA case (not a class action), alleging a variety of violations of the Labor Code concerning failure to provide rest and meal breaks, failure to pay minimum wages and overtime, and cascading

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derivative violations. In particular, plaintiff asserts alleged violations for alleged failure to provide timely meal breaks, and improper rounding.

This case was first filed on June 30, 2022 as a class action and PAGA case. It then appeared that plaintiff had signed a release of her personal claims in connection with her severance, rendering her an inappropriate representative for class claims. The complaint was amended to a PAGA-only case.

The total PAGA settlement payment is \$72,500. Out of this is proposed to come attorney's fees of \$24,167 (one-third of the recovery); \$3,985 in litigation costs, and up to \$2,000 in costs to the settlement Administrator. The plaintiff will be paid a service payment of \$2,500 for her efforts in this litigation. (In addition, it appears that plaintiff personally is being paid \$5,000 outside of the settlement amount for some personal claims, though it is not identified what those are or why they were not covered by her severance settlement.)

The remaining amount, \$39,848, is allocated as PAGA penalties. Those penalties are apportioned 75% to the LWDA and 25% to the aggrieved employees.

Counsel's motion indicates that there are an estimated 43 covered employees. The payments from the employee share of the penalty (\$9,962) will be distributed among the employees based on the number of pay periods each individual worked during the released period. The average employee share will be about \$232, though this will vary from employee to employee based on the pay-period allocation formula.

Plaintiff's counsel attests that informal discovery was undertaken, and the settlement was reached after a session with an experienced mediator.

Plaintiff provided required notices to the LWDA of the initial claims and of the proposed settlement.

The settlement provides a process for mailing the notices to the aggrieved employees, who will not have to submit a claim, along with a process for following up on returned mail. The settlement amount will be paid to the administrator within 30 days. The administrator will seek to obtain current mailing addresses, and will remit all settlement funds to the appropriate recipients, including the LWDA and the aggrieved employees.

The settlement provides that the value of checks uncashed after 180 days shall be remitted to the State Controller's Office, Unpaid Property Division.

Specified PAGA claims, and any claims which could have been pleaded under the PAGA based on the factual allegations in PAGA Complaint and the LWDA Letter, would be released. It also provides that the parties intend to fully resolve all PAGA claims for the full "PAGA Period" of April 25, 2021 to now.

A. Standards for Review of a PAGA Settlement

Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate"

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standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess “the fairness of the settlement’s allocation of civil penalties between the affected aggrieved employees”. (*Id.*, at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, 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.) Moreover, “The court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because “Where the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutary purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63.)

B. Application to This Settlement

Plaintiff indicates that the settlement is fair, and was evaluated by counsel based on adequate information and arms-length negotiation. In response to plaintiff’s allegations, defendant asserted that it paid employees for all recorded time; that off-the-clock time was undocumented and unknown to defendant; and that employees were paid meal time premiums or signed waivers. Plaintiffs’ counsel has provided a detailed declaration analyzing the potential strengths and weaknesses of plaintiffs’ claims and defendants’ potential defenses. The Court is satisfied with the analysis.

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.* (2023) 88 Cal.App.5th 937; but see *Gola v. University of San Francisco* (2023) 90 Cal.App.5th 548, 566-67.) These factors make the result hard to predict.

Labor Code § 2699(g)(1) provides that a prevailing employee in a PAGA action may recover attorney’s fees. Plaintiff seeks one-third of the total settlement amount as fees, relying on the “common fund” theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.) Although *Lafitte* concerns a class action, not a PAGA-only case, this Court views the use of a lodestar cross-check as appropriate here.

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Plaintiffs' counsel have provided a breakdown and documentation of their lodestar figure of \$46,993, which exceeds the fee requested; thus, the lodestar multiplier is approximately 0.51. This appears appropriate in light of the risks of the case and the results achieved.

The settlement agreement includes an escalator provision, to be triggered in the event that the number of covered employees or work weeks turns out to be materially higher than now estimated. If the clause is triggered and the defendant elects to increase the total payment, no further approval will be needed. The parties are cautioned, however, that in the event the clause would result in a significant modification of the settlement (such as cutting back the covered period), it would be prudent to seek further approval from the Court.

The requested representative payment of \$2,500 for the named plaintiff is approved. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff points out that she executed a broader release than the class as a whole, but does not identify any particular claims of value that she may have. She also risks damage to her reputation and more difficulty in obtaining employment.

Litigation costs of \$3,985 (mostly mediation and filing fees) are reasonable and are approved.

The settlement administrator's costs of \$2,000 are reasonable and are approved.

The statute does not expressly address how the 25% plaintiff's share of the penalties is to be allocated among all of the aggrieved employees. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 382.) One court has held, however, that the entire 25% share of penalties could not be awarded to the named plaintiff. (*Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742-43.) In *Moorer*, the plaintiff had claim worth about \$9,500, yet was collecting penalties of \$148,000, and keeping the entire employee share, causing the court to be concerned that the plaintiff had lost sight of the fact that the purpose of the action is to benefit the public, not private parties. Allocation based on pay periods is reasonable here.

C. Conclusion

The proposed settlement is approved. Counsel are directed to prepare an order including the Court's entire order, the other provisions submitted in the proposed order, and a separate corresponding judgment. The order would include a compliance hearing for a suitable date chosen in consultation with the Department's clerk by phone. One week before the compliance hearing, counsel shall file a compliance statement. Ten percent of the attorney's fees shall be withheld by the Administrator pending the compliance hearing. Counsel will also be expected to update and document the actual litigation costs to be reimbursed.