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Attorney for Plaintiff,
Steven Joneson II

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

STEVEN JONESON II an individual,	)	Case No.: 22CECG02366
individually and on behalf of himself and all	)	
others similarly situated, under the Private	)	NOTICE OF ENTRY OF ORDER
Attorney General Act (PAGA), pursuant to	)	GRANTING APPROVAL OF
Labor Code §§ 2698, et seq.	)	SETTLEMENT UNDER THE
	)	CALIFORNIA PRIVATE
Plaintiff,	)	ATTORNEYS GENERAL ACT OF
	)	2004 ("PAGA")
v.	)	
	)	
JAMES MC KOANE ENTERPRISES, INC.	)	
dba CLAWSON MOTORSPORTS, a	)	
California Corporation; and DOES 1-50,	)	
	)	
Defendants.	)	
_____	)	

NOTICE IS HEREBY GIVEN TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

On July 13, 2023, this Court entered an Order granting Plaintiff's Motion for Approval of PAGA Settlement. A true and correct copy of the July 13, 2023 order is attached as Exhibit "A".

MICHAEL J. F. SMITH,
A PROFESSIONAL CORPORATION

Dated: July 14, 2023

By: /s/Michael J. F. Smith
Michael J. F. Smith,
Attorney for Plaintiff,
Steven Joneson

Exhibit “A”

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited		Entered by:
TITLE OF CASE: Steven Joneson, II vs. James MC Koane Enterprises, Inc		
LAW AND MOTION MINUTE ORDER		Case Number: 22CECG02366

Hearing Date: **July 13, 2023** Hearing Type: **Motion - PAGA Settlement**
 Department: **502** Judge: **Culver Kapetan, Kristi**
 Court Clerk: **Gonzalez, Estela** Reporter: **Not Reported**

Appearing Parties:	
Plaintiff:	Defendant:
Counsel:	Counsel:

☐ Off Calendar

☐ Continued to ☐ Set for ___ at ___ Dept. ___ for ___

☒ In light of the Supplemental Declaration filed on 7/11/23; the Court now approves the settlement.

☒ No appearances required for today's hearing.

☐ Motion is granted ☐ in part and denied in part. ☐ Motion is denied ☐ with/without prejudice.

☐ Taken under advisement

☐ Demurrer ☐ overruled ☐ sustained with ___ days to ☐ answer ☐ amend

☒ The Order After Hearing is adopted and becomes the order of the court. See attached signed copy.

☒ Parties are to file a Notice of Settlement or Proposed Judgment, whichever applicable, to conclude this matter.

☒ Pursuant to CRC 3.1312(a) and CCP 1019.5(a), no further order is necessary. The minute order adopting the Order After Hearing serves as the order of the court.

☒ Service by the clerk will constitute notice of the order.

☐ Judgment debtor ___ sworn and examined.

☐ Judgment debtor ___ failed to appear.
 Bench warrant issued in the amount of \$ ___

JUDGMENT:

☐ Money damages ☐ Default ☐ Other ___ entered in the amount of:
 Principal \$___ Interest \$___ Costs \$___ Attorney fees \$___ Total \$___
☐ Claim of exemption ☐ granted ☐ denied. Court orders withholdings modified to \$___ per ___

FURTHER, COURT ORDERS:

☐ Monies held by levying officer to be ☐ released to judgment creditor. ☐ returned to judgment debtor.
☐ \$___ to be released to judgment creditor and balance returned to judgment debtor.
☐ Levying Officer, County of ___, notified. ☐ Writ to issue
☐ Notice to be filed within 15 days. ☐ Restitution of Premises
☐ Other: ___

Order After Hearing

Re: **Steven Joneson, II v. James MC Koane Enterprises, Inc.**
Superior Court Case No. 22CECG02366

Hearing Date: July 13, 2023 (Dept. 502)

Motion: Plaintiff's Motion for Approval of PAGA Settlement

Ruling:

The motion is granted.

Explanation:

"PAGA settlements are subject to trial court review and approval, ensuring that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549, citing Labor Code section 2699(l)(2) ["The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court."])

The trial court is to "evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.) "Because many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement." (*Ibid.*)

1. Notice to LWDA

The moving party has given notice of the settlement to the LWDA, so it may address the court regarding it, if it so chooses. (Lab. Code, § 2966, subd. (l)(2); see *Migliazzo Decl.*, ¶ 113, Ex. 8.)

2. Fairness of the settlement amount

a. Strength of the Case

Plaintiff's counsel provides a detailed analysis of the primary claims and derivative Labor Code violations. (See *Migliazzo Decl.*, ¶¶ 47-74.) His analysis results in a realistic exposure (before any stacking of penalties) of is \$1,264,600. (*Id.* at ¶¶ 54-55.) If "stacking" was permitted, additional theoretical exposure would be \$6,455,050. (*Id.* at ¶ 57.) However, where the violations stem from a single error or omission, stacking is unlikely. The initial \$450,000 PAGA settlement represents about

35.5% of the Defendant's real exposure, or if stacking was permitted, about 11%. (*Id.* at ¶ 58.) This is based on 395 employees and 8,401 semi-monthly pay periods. (¶ 54; Connolly Decl., ¶ 5.)

The court notes that plaintiff asserts that maximum penalties likely would not be awarded because Defendant made changes to its policies to ensure legal compliance. (See Migliazzo Decl., ¶ 64, citing Connolly Decl., ¶ 8.) However, this is completely without foundation. Connolly merely states that "[f]ollowing receipt and analysis of this action, the Company made significant changes to compensation agreements and other payroll procedures to ensure compliance across positions with variable income potential." This statement too vague to be of any use in the analysis.

However, counsel's declaration adequately addresses the strength of the case, and shows that Defendant has viable defenses, primarily that maximum penalties would be unjust because most penalties derive from a single allegedly unlawful pay practice. (Migliazzo Decl., ¶ 63.)

b. Stage of the Proceeding

A presumption of fairness exists where the settlements is reached through arm's length mediation between adversarial parties, where there has been investigation and discovery sufficient to allow counsel and the court to act intelligently, and where counsel is experienced in similar litigation. (*Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1802.) Here, the case settled after the parties attended mediation. Plaintiff's counsel is highly experienced in representative litigation. Plaintiff's counsel shows that substantial information was provided by defendant, enabling plaintiff to fully evaluate the merits and valuation of the PAGA claims. (Migliazzo Decl., ¶¶ 11-13.) This factor favors approval of the settlement.

c. Risks of Litigating Case through Trial

PAGA provides that "a court may award a lesser amount than the maximum civil penalty amount ... if, 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, subd. (e)(2).) Also, the court may reduce penalties where there is a lack of willfulness and where there are efforts to comply with the law. Primarily, the risks of continuing to litigate the action is based on Defendant's argument that maximum penalties are "unjust, arbitrary and oppressive, or confiscatory" because Plaintiff seeks PAGA penalties for several separate Labor Code violations, all of which derive from essentially one unlawful pay practices. (Migliazzo Decl., ¶ 63.) The court agrees that maximum or stacking of penalties likely would be unwarranted in this case, favoring approval.

d. Amount of Settlement

As adjusted with the Escalation Threshold, the gross settlement is \$460,615.50. To assess the reasonableness of this amount, the court needs a good valuation of the total potential penalties. Based on the valuation provided by counsel, the court finds that this is a reasonable settlement for the effected employees. This factor favors approval.

e. *Experience and Views of Counsel*

Plaintiff's counsel are highly experienced in class and representative litigation. They have stated that the settlement is fair, adequate and reasonable under the circumstances. Therefore, this factor weighs in favor of approval.

f. *Government Participation*

No government entity participated in the case, so this factor does not favor either approval or disapproval of the settlement.

g. *Attorney's Fees and Costs*

The settlement agreement provides that plaintiff's counsel would get up to \$153,538.50 (1/3 of the total gross recovery) in attorney's fees, plus costs of up to \$6,000. Plaintiff's actual costs incurred to date are \$4,272.31. (Migliazzo Decl., ¶ 46, Exh. 3.) The costs all relate to the PAGA claim, or at least Plaintiff's individual claims could not be segregated from the PAGA claim costs.

Courts have approved awards of fees in class actions that are based on a percentage of the total common fund recovery. (*Laffitte v. Robert Half Internat.* (2016) 1 Cal.5th 480, 503.) It appears that the same reasoning would apply to PAGA settlements, which bear similarities to class actions. However, the court may also perform a lodestar calculation to double check the reasonableness of the fee request. (*Id.* at pp. 504-506.)

A court assessing attorney's fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney ... involved in the presentation of the case." (*Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48.) As our Supreme Court has repeatedly made clear, the lodestar consists of "the number of hours *reasonably expended* multiplied by the *reasonable* hourly rate. . . ." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, italics added; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.)

The court finds the stated hourly rates to be reasonable. The court declines to augment the hourly rates substantially by using the Laffey matrix. (See *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 702.)

Based on the hours worked, the lodestar is \$86,900. To account for the skill displayed, results achieved, and risks associated with the contingent nature of the

representation, the court is inclined to approve a 1.5 multiplier, resulting in a fee award of \$130,350. The court will only approve the actual costs of \$4,272.31.

h. *Scope of the release*

... PAGA's statutory scheme and the principles of preclusion allow, or "authorize," a PAGA plaintiff to bind the state to a judgment through litigation that could extinguish PAGA claims that were not specifically listed in the PAGA notice where those claims involve the same primary right litigated. Because a PAGA plaintiff is authorized to settle a PAGA representative action with court approval (§ 2699, (l)(2)), it logically follows that he or she is authorized to bind the state to a settlement releasing claims commensurate with those that would be barred by res judicata in a subsequent suit had the settling suit been litigated to judgment by the state.

(*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 83.)

The initial release was overbroad, including certain Labor Code violations that were not included in the notices to the LWDA. "The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation." (Lab. Code, § 2699.3, subd. (a)(1)(A).) The parties have since revised the release, appropriately limiting it to violations for which notice was given. (Supp. Migliazzo Decl., Exh. 1.) Accordingly, the settlement is approved, with the modification of the attorneys' fee award.

Ruling

Issued By:

Y. Kapetanion 7/13/23.
(Judge's initials) (Date)

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-2000	<i>FOR COURT USE ONLY</i>
TITLE OF CASE: Steven Joneson, II vs. James MC Koane Enterprises, Inc	
CLERK'S CERTIFICATE OF MAILING	CASE NUMBER: 22CECG02366

I certify that I am not a party to this cause and that a true copy of the:

Motion - PAGA Settlement Minutes/Order

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: **Fresno, California 93724-0002**

On Date: **07/14/2023**

Clerk, by , Deputy
E. Gonzalez

Michael J.F. Smith
 A Professional Corporation
 1391 W. Shaw Ave., Suite D
 Fresno, CA 93711

Derek J. Haynes
 PORTER | SCOTT
 350 University Ave., Suite 200
 Sacramento, CA 95825

☐ Clerk's Certificate of Mailing Additional Address Page Attached

My business address is 1391 West Shaw Avenue, Suite D, Fresno, California 93711. I am employed in Fresno County, California. I am over the age of 18 years and am not a party to this case.

On the date indicated below, I served the foregoing document(s) described as: **NOTICE OF ENTRY OF ORDER GRANTING APPROVAL OF SETTLEMENT UNDER THE CALIFORNIA PRIVATE ATTORNEY GENERAL ACT OF 2004 (“PAGA”)** on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Derek Haynes
PORTER & SCOTT
350 University Ave., Ste. 200
Sacramento, CA 95825
dhaynes@porterscott.com

[X] (BY ELECTRONIC MAIL) I caused such documents to be scanned into PDF format and sent via electronic mail to the electronic mail addressee(s) of the addressee(s) designated.

The foregoing document described above has been served on the California Labor and Workforce Development Agency (“Agency”) via the Agency’s online filing system:

Labor and Workforce Development Agency (<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>)

EXECUTED ON **July 14, 2023** at Fresno, California.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/Michael J. F. Smith
Michael J. F. Smith