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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DANIEL ROSALES, individually and on
behalf of the general public,

Plaintiffs,

vs.

KELLY PAPER COMPANY, a California
corporation; and DOES 1 through 20,
inclusive,

Defendants.

Case No. BC617205

*Assigned for All Purposes to the:
Honorable Teresa A. Beaudet
Department 50*

[PROPOSED] JUDGMENT

Reservation ID: 171127269609

By Fax

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

JUN 13 2018

Sherri R. Carter, Executive Officer/Clerk
By Sally Fletcher, Deputy

JUDGMENT

Pursuant to the May 3, 2018 Order granting Plaintiff's Motion for Approval of Private Attorneys General Act Representative Action Settlement, a copy of which is attached as Exhibit A, JUDGMENT IS HEREBY ENTERED AS FOLLOWS:

1. This Judgment incorporates by reference the definitions in the Settlement Agreement ("Settlement" or "Settlement Agreement"), and all terms defined therein shall have the same meaning as set forth in the Settlement Agreement.

2. This Final Judgment shall operate as a full release and discharge of the Released Claims against Kelly Paper Company. This Final Judgment shall bind Plaintiff, the State of California and its LWDA and each Aggrieved Employee with respect to the Released Claims. The Judgment shall have *res judicata* effect and shall bar Plaintiff, all Aggrieved Employees, the State of California and its LWDA, and any other person acting on behalf of the State of California or its LWDA, from seeking or recovering any civil penalties alleged in the action provided by the Labor Code, including any civil penalty provided by Labor Code sections 558 or 2699(a) or (f), from Defendant based on any act or omission alleged in the Complaint.

3. Without affecting the finality of this judgment in any way, the Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 6-11-18

TERESA A. BEAUDET

Hon. Teresa A. Beaudet
Los Angeles Superior Court Judge

EXHIBIT A

1
2
3 *Superior Court of California*

4 *County of Los Angeles*

5 *Department 50*

6
7 DANIEL ROSALES,

8 Plaintiff,

9 vs.

10
11 KELLY PAPER COMPANY, et al.,

12 Defendants.

Case No.: BC 617205

Hearing Date: May 3, 2018

Hearing Time: 8:30 a.m.

13 **[TENTATIVE] ORDER RE:**

14 MOTION FOR APPROVAL OF PRIVATE
15 ATTORNEYS GENERAL ACT
16 REPRESENTATIVE ACTION
17 SETTLEMENT

18 ***Factual Background***

19 Plaintiff Daniel Rosales ("Rosales") initiated this action individually and on behalf of the
20 general public on April 14, 2016 against Defendant Kelly Paper Company ("Kelly Paper").

21 Rosales's Complaint alleges one cause of action for civil penalties under Labor Code section
22 2698 *et seq.* ("PAGA") by failing to pay proper overtime wages, failing to provide proper meal
23 and rest periods, failing to provide accurate itemized wage statements, and failing to pay all
24 wages due within the required time and upon separation of employment. (Campbell Decl., ¶ 4.)

25 On October 12, 2017, the parties participated in mediation, where the parties ultimately
26 reached a settlement. (Campbell Decl., ¶ 7.)

27 Rosales now moves for approval of the settlement between him and Kelly Paper of his
28 PAGA claims. No opposition to the motion was filed.

Evidence

The Court grants Rosales's Request for Judicial Notice as to Exhibits A, B, and C.

1 **Discussion**

2 A superior court must "review and approve any settlement of any civil action filed
3 pursuant to this part." (Lab. Code, § 2699(1)(2).) "The proposed settlement shall be submitted to
4 the [Labor and Workforce Development Agency] at the same time that it is submitted to the
5 court." (Lab. Code § 2699(1)(2).) A prevailing employee is entitled to an award of reasonable
6 attorney fees and costs incurred in the action. (Lab. Code, § 2699(g)(1).) "[C]ivil penalties
7 recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and
8 Workforce Development Agency for enforcement of labor laws, including the administration of
9 this part, and for education of employers and employees about their rights and responsibilities
10 under this code, to be continuously appropriated to supplement and not supplant the funding to
11 the agency for those purposes; and 25 percent to the aggrieved employees." (Lab. Code, §
12 2699(i).)

13 As noted by Rosales, there is no statutory or common law standards for approval of a
14 PAGA settlement, therefore, the Court finds that the standards used for approval of class action
15 settlements are instructive. "[A] presumption of fairness exists where: (1) the settlement is
16 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow
17 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
18 the percentage of objectors is small." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
19 1802.) The Court is satisfied that the parties reached the settlement through arm's-length
20 bargaining and that the parties engaged in substantive discovery. (*See Campbell Decl.*, ¶ 7.)
21 However, the copy of the Settlement Agreement attached as Exhibit 1 to the Declaration of
22 Jessica L. Campbell does not include Kelly Paper's signature. The parties may bring a copy
23 thereof to the hearing that does include Kelly Paper's signature and attach it to a declaration from
24 counsel. Although Rosales does not provide any evidence that suggests his counsel and counsel
25 for Kelly Paper are experienced in similar litigation; the Court will allow the parties to present
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1 such evidence via declaration at the hearing on this matter. Finally, the last element, percentage
2 of objectors, is inapplicable to PAGA. (*See Arias v. Superior Court* (2009) 46 Cal.4th 969, 984-
3 985 [rejecting the argument the representative actions under PAGA violate the due process rights
4 of “nonparty aggrieved employees who are not given notice of, and an opportunity to be
5 heard”].) Considering the above factors, the Court finds that the settlement is entitled to a
6 presumption of fairness.

7 Moreover, the Court finds that the Settlement Agreement is compliant with Labor Code
8 section 2699. The proposed settlement was submitted to the California Labor and Workforce
9 Development Agency (“LWDA”) per Labor Code section 2699(1)(2). (Campbell Decl., Ex. 3.)
10 Substantively, the Court finds the Settlement Agreement compliant with Labor Code section
11 2699(i). The parties have agreed that Kelly Paper will pay a total of \$215,000.00 for PAGA
12 Penalties. (Campbell Decl., ¶ 13, Ex. 1.) Up to \$71,666.67 in attorneys’ fees and up to \$10,000
13 in litigation costs will be paid to Rosales’s counsel for reasonable attorneys’ fees and costs.
14 (Campbell Decl., Ex. 1, ¶ 5.2.) Up to \$10,000 will be paid to the Settlement Administrator for
15 costs associated with administration of the settlement, and up to \$5,000 will be paid to Rosales in
16 recognition of his efforts with the lawsuit. (Campbell Decl., Ex. 1, ¶¶ 5.3 and 5.4.) The net
17 amount, \$118,333.33, will be paid to the Net PAGA Settlement Fund. Of that, 50% is designated
18 as penalties to recover underpaid wages pursuant to Labor Code section 558, all of which will be
19 paid to Kelly Paper’s nonexempt employees who worked for Kelly Paper in California between
20 March 1, 2015 and October 12, 2017. (Campbell Decl., Ex. 1, ¶ 5.5.1; *see Thurman v. Bayshore*
21 *Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1144 [finding that Labor Code section
22 558 provides for a civil penalty that consists of both \$50 or \$100 penalties and any underpaid
23 wages, with the underpaid wages going entirely to the affected employees].) The other 50% shall
24 be divided, with 75% (or \$44,375.00) being paid to the LWDA and the remaining 25% (or
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1 \$14,791.67) being added to the amount designated as penalties and paid to the aggrieved
2 employees. (Campbell Decl., Ex. 1, ¶ 5.5.2.)

3 Additional factors that are useful to consider here are the factors to evaluate the
4 reasonableness of a class action settlement agreement, which includes the strength of a plaintiff's
5 case, the risk, expense, complexity and likely duration of further litigation, the amount offered in
6 settlement, the extent of discovery completed, and the experience and views of counsel. (See
7 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.)

8 In terms of the risks of litigation and strength of Rosales's case, Rosales submits that his
9 expert analyzed Kelly Paper's time records, which showed a 33% violation rate. (Campbell
10 Decl., ¶ 10.) Further, Kelly Paper maintained a lawful policy regarding rest and meal breaks, and
11 meal periods were provided 95% of shifts over six hours, making it difficult to prove that missed
12 meal periods were not waived voluntarily. (Campbell Decl., ¶ 10.) Additionally, Rosales
13 contends that at trial, Kelly Paper could have argued that its policies did not result in systematic
14 denials of proper meal and rest periods, and that their bonuses were discretionary. (Campbell
15 Decl., ¶ 11.) Rosales could also have argued that the subsequent violations under PAGA only
16 start to accrue after employers receive notice through a citation from the Labor Commissioner,
17 which would have significantly decreased Kelly Paper's exposure. (Campbell Decl., ¶ 11.)
18 Rosales's counsel calculated the total realistic recovery within a range from \$12,400 to
19 \$619,000. (Campbell Decl., ¶ 12.) Also, Kelly Paper employed only 261 aggrieved employees
20 during the relevant PAGA period, and Kelly Paper had already executed individual settlement
21 and release agreements with 137 of the aggrieved employees. (Campbell Decl., ¶ 9.) In light of
22 the foregoing, the Court finds that the settlement agreement appears reasonable.

23
24 California Rules of Court, rule 3.769(b) requires that "[a]ny agreement... with respect to
25 the payment of attorney's fees or the submission of an application for the approval of attorney's
26 fees must be set forth in full in any application for approval of the dismissal or settlement of an
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1 action that has been certified as a class action.” Despite any agreement by the parties to the
2 contrary, “the court ha[s] an independent right and responsibility to review the attorney fee
3 provision of the settlement agreement and award only so much as it determined reasonable.”
4 (*Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 128.)

5 Here, Rosales has set forth the parties’ agreement with respect to the submission of an
6 application for the approval of attorney fees, namely, that Kelly Paper will not oppose a request
7 by Rosales for attorneys’ fees of up to one-third of the total settlement amount and of costs of up
8 to \$10,000. (Campbell Decl., Ex. 1, ¶ 5.2.) Since Rosales is not seeking approval of a specific
9 attorneys’ fee amount in the instant motion, the Court rules that the attorney’s fee agreement
10 complies with California Rules of Court, rule 3.769(b).

11 ***Conclusion***

12 Based on the foregoing, Rosales’s motion for approval of settlement of his PAGA action
13 is granted. Rosales must file and serve a proposed judgment within 10 days of this Order.

14 Rosales is ordered to give notice of this Order.

15
16 DATED: May 3, 2018

17 _____
18 Hon. Teresa A. Beaudet
19 Judge, Los Angeles Superior Court
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1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On May 11, 2018, I served the foregoing document entitled:

5 • **[PROPOSED] JUDGMENT**

6 on all the appearing and/or interested parties in this action by placing ☐ the original ☒ a true
7 copy thereof enclosed in sealed envelope(s) addressed as follows:

8 E. Sean McLoughlin
9 smcloughlin@hillfarrer.com
10 Hill, Farrer & Burrill LLP
11 One California Plaza
12 300 So. Grand Ave., 37th Fl.
Los Angeles, CA 90071

11 *Attorneys for Defendants:*
12 *Kelly Paper Company*

13 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
14 correspondence for mailing. Under that practice it would be deposited with the U.S.
Postal Service on that same day with postage thereon fully prepaid at Irvine, California
15 in the ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postage cancellation date or postage meter date is more than one
16 day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc. § 1013(a); Fed.*
R. Civ. Proc. 5(a); Fed. R. Civ. Proc. 5(c).)

17 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
18 practice of Aegis Law Firm PC for collection and processing correspondence for
overnight delivery, and I caused such document(s) described herein to be deposited for
19 delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); Fed. R. Civ. Proc. 5(c).)

20 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
21 electronic transmission to the addressee(s) listed above on the date below. (*Cal. Code*
Civ. Proc. § 1010.6(6); Fed. R. Civ. Proc. 5(b)(2)(E); Fed. R. Civ. Proc. 5(b)(3).)

22 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
23 the addressed named above. (*Cal Code Civ. Proc. § 1011; Fed. R. Civ. Proc.*
5(b)(2)(A).)

24 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

25 Executed on May 11, 2018, at Irvine, California.

26 
27 Grethel Gonzalez
28

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