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

OTHELLA JONES, EMILY AZLIN,
DEANNA BUCKNER, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

APPLE INC., a California corporation; and
DOES 1–50, inclusive,

Defendants.

CASE NO.: 18CV-04557

**[PROPOSED] ORDER GRANTING
MOTION FOR APPROVAL OF PAGA
SETTLEMENT AND ENTRY OF
JUDGMENT**

1 The Court has considered MOTION FOR APPROVAL OF SETTLEMENT AND
2 ENTRY OF JUDGMENT, including the Settlement Agreement, and the record in this action
3 (“the Litigation”). The matter having been submitted and good cause appearing,

4 IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

5 1. All defined terms contained herein shall have the same meaning as set forth in the
6 Settlement Agreement and the MOTION FOR APPROVAL OF SETTLEMENT AND ENTRY
7 OF JUDGMENT. The Labor Code Private Attorneys General Act, codified at California Labor
8 Code section 2698 et sec. is referred to herein as “PAGA.”

9 2. The Action consists of (a) a representative action by Azlin and Deanna Buckner
10 (collectively, the “PAGA Representatives”) against Apple Inc. (“Apple”) under PAGA for
11 penalties on behalf of the State of California and all current and former non-exempt employees
12 of Apple employed as At Home Advisors, At Home Specialists, and substantially similar roles
13 (collectively, "AHA's") from November 9, 2017 through the date the Court grants approval of
14 the Settlement.

15 3. The Court has jurisdiction over the subject matter of the Litigation, the PAGA
16 Representatives, the Aggrieved Employees, and Apple. This Judgment shall be binding not only
17 on the named parties to the litigation but also on all Aggrieved Employees and the State of
18 California, who are hereby barred by the doctrine of res judicata from re-litigating the Released
19 Claims. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (holding that a judgment in a
20 representative action brought by an aggrieved employee under PAGA is binding not only on the
21 named employee Plaintiffs but also on state labor law enforcement agencies and any aggrieved
22 employee not a party to the proceeding).

23 4. In accordance with the Settlement Agreement, which the Court hereby approves
24 based on good cause showing for the reasons set forth in the Motion for Approval of PAGA
25 Settlement and with no objection received from the LWDA: (a) The Gross Settlement Amount
26 under this Settlement Agreement is Four Million Dollars (\$4,000,000.00), which includes any
27 and all payments that shall be made pursuant to the PAGA to the Labor Workforce Development
28 Agency, the Aggrieved Employees, Plaintiffs’ Counsels’ fees and litigation costs, Service
Payment to the Named Plaintiffs, and all third-party costs of settlement administration; (b) ILYM
Settlement Administrators is hereby approved to administer this Settlement; and (c) the LWDA

1 and all Aggrieved Employees are hereby permanently enjoined from pursuing, or seeking to
2 reopen, any Released Claims against any Released Parties.

3 5. Plaintiffs' request for attorneys' fees in the amount of \$2,000,000.00, Plaintiffs'
4 request for reimbursement of litigation costs in the amount of \$117,137.22, and Plaintiffs' service
5 awards of \$5,000.00 each and Plaintiffs' 1542 releases as to all claims Plaintiffs may have or
6 could have asserted against Apple in exchange for \$15,000.00 each are hereby approved to
7 compensate Plaintiffs and their counsel in connection with the prosecution of the Released
8 Claims. The Court finds that the attorneys' fees, litigation costs, service awards, and 1542
9 releases are reasonable under the circumstances of this matter, including the length of the
10 proceeding and effort required. No party shall be deemed a prevailing party, and except as
11 provided in this Paragraph, all parties shall bear their own attorneys' fees and litigation costs.

12 6. Pursuant to PAGA and Labor Code section 2699(l) in particular, the Court
13 approves the Settlement and finds that it is fair, just, reasonable and adequate. The Settling
14 Parties are directed to perform their duties in accordance with the terms set forth in the Settlement
15 Agreement.

16 7. All of the Released Claims are deemed adjudicated and extinguished with
17 prejudice as to the PAGA Representative, all of the other Aggrieved Employees, and the State of
18 California.

19 8. Settlement Administrator shall make the payments to the LWDA, the Aggrieved
20 employees, the Named Plaintiffs, Plaintiffs' counsel and to the Settlement Administrator as
21 provided for in the Settlement Agreement.

22 9. The Court finds that, under California law (which is applicable here), class action
23 procedural rules are not required when litigating representative PAGA actions. (See *Arias v.*
24 *Superior Court* (2009) 46 Cal.4th 969.) The differences between a traditional class action and a
25 PAGA suit are well summarized in *Sakkab v. Luxottica Retail North America, Inc.*, 803 F.3d 425,
26 435-436 (9th Cir. 2015) *en banc review denied* (2016). Following the California Supreme
27 Court's decision in *Iskanian v. CLS Transportation*, 59 Cal.4th 348 (2014), the Ninth Circuit
28 explained:

The class action is a procedural device for resolving the claims of absent parties
on a representative basis. See Fed.R.Civ.P. 23; *Ortiz v. Fibreboard Corp.*, 527
U.S. 815, 832- 33 (1999); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613-
17 (1997). By contrast, a PAGA action is a statutory action in which the

1 penalties available are measured by the number of Labor Code violations
2 committed by the employer. An employee bringing a PAGA action does so "as
3 the proxy or agent of the state's labor law enforcement agencies," *Iskanian*, 59
4 Cal.4th at 380 (quoting *Arias v. Superior Court*, 46 Cal.4th 969, 986 (2009)),
5 who are the real parties in interest, *see id.* at 382. As the state's proxy, an
6 employee-plaintiff may obtain civil penalties for violations committed against
7 absent employees, Cal. Lab.Code § 2699(g)(1), just as the state could if it
8 brought an enforcement action directly. However, by obtaining such penalties,
9 the employee-plaintiff does not vindicate absent employees' claims, for the
10 PAGA does not give absent employees any substantive right to bring their
11 "own" PAGA claims. *See Amalgamated Transit Union. Local 1756, AFL-CIO v.*
12 *Superior Court*, 46 Cal .4th 993. 1003 (2009); *see also Iskanian*, 59 Cal.4th at
13 381 (explaining that "[t]he civil penalties recovered on behalf of the state under
14 the PAGA are distinct from the statutory damages to which employees may be
15 entitled in their individual capacities").

16 *Sakkab, supra* at 435-436.

17 10. The Court finds that the notice requirements and other procedures applicable to
18 class action settlements do not apply to the settlement approval process for this PAGA Action.

19 11. The Court further finds that Plaintiffs' counsel has sufficiently demonstrated that
20 notice of the Settlement has been provided to the LWDA as required by PAGA and Labor Code
21 section 2699, subdivision (1)(2), in particular.

22 12. Neither the Settlement Agreement nor any act performed or document executed
23 pursuant to or in furtherance of the Settlement (a) is or may be deemed to be or may be used as
24 an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or
25 liability of the Released Parties, or any of them; or (b) is or may be deemed to be or may be used
26 as an admission of, or evidence of, any fault or omission of the Released Parties, or any of them,
27 in any civil, criminal or administrative proceeding in any court, administrative agency or other
28 tribunal. Apple, Inc. or any of the Released Parties may file the Settlement and/or the Judgment
from this Litigation in any other action that may be brought against it or them in order to support
a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good
faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion
or similar defense or counterclaim.

13 13. The Court reserves exclusive and continuing jurisdiction over the Action, the PAGA
14 Representative, the Aggrieved Employees and Apple, Inc. for the purposes of supervising the
15 implementation, enforcement, construction, administration and interpretation of the Settlement

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Agreement and this Judgment.

IT IS SO ORDERED AND ADJUDGED.

Dated: _____

Hon. Brian L. McCabe
Judge of the Superior Court