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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

Michael Guillen, on behalf of themselves and
on behalf of all persons similarly situated,

Plaintiff,

v.

Concord Automotive Sales and Service Inc.,
and DOES 1-25.

Defendants.

Case No: C23-01333

**~~[PROPOSED]~~ ORDER APPROVING
SETTLEMENT AND JUDGMENT**

Hearing Date: February 29, 2024

Time: 9:00 a.m.

Dept: 12

Hon. Charles S. Treat

The motion of Plaintiff Michael Guillen for an order approving the settlement of the above-captioned action and entering judgment thereon ("Motion") having come before the Court for a hearing on February 29, 2024. Emran Law Firm appeared on behalf of Plaintiff MICHAEL GUILLEN ("Plaintiff").

I. FINDINGS

Based on the oral and written argument and evidence presented in connection with the Motion, the Court makes the following findings:

1. The Court approves the total settlement payment of \$125,000.00, but with modifications.

2. The Court is satisfied with the analysis as to the fairness of the settlement.
3. The Court will only allow \$3,000.00 as a service payment to the Plaintiff for his efforts in this litigation.
4. A lodestar multiplier is appropriate in calculating recoverable attorney's fees of \$41,000.00 in light of the risks of the case and results achieved.
5. Litigation costs of \$563.00 are reasonable and are approved.
6. The settlement administrator's costs of \$1,500.00 are reasonable and are approved.

II. ORDERS

IT IS HEREBY ORDERED that the Motion shall be and is granted, and the settlement of this action is hereby approved, subject only to the modifications outlined by the Court in its ruling on Plaintiff's Motion dated February 29, 2024, attached hereto as Exhibit A, that the General Release Payment to Plaintiff be only \$3,000 pursuant to Section 3.3 of the Settlement Agreement, IT IS FURTHER ORDERED as follows:

1. Capitalized terms in this Approval Order shall have the same meaning they are given in the Settlement Agreement attached as Exhibit D to the Declaration of Harris Emran filed in support of the Motion;

2. Phoenix Settlement Administrators is approved to serve as the Settlement Administrator and is hereby authorized to perform all of the duties assigned to it in the Settlement Agreement and to disburse the following from the Settlement Fund Amount in accordance with the terms of the Settlement Agreement:

- a. The LWDA Payment in the amount of \$59,202.75;
- b. The Settlement Payments to PAGA Group Members in the aggregate amount of \$19,734.25;
- c. The Fee and Expense Award in the amount of \$41,563.00;
 - i. \$4,100.00, or 10% of the Fee and Expense Award, shall be withheld by the Settlement Administrator pending a Compliance Hearing with this Court.

- 1 d. The General Release Payment to Plaintiff in the amount of \$3,000;
2 and
3 e. The Settlement Administration Costs in the amount of
4 \$1,500.00.

5 3. The State of California and all PAGA Group Members (including Plaintiff) are
6 hereby deemed to have, and by operation of this Approval Order and Judgment shall have, expressly
7 released, waived, and discharged the Released Parties from the Released Claims as set forth in the
8 Settlement Agreement, and they shall be bound by this Approval Order and Judgment and be forever
9 barred from suing the Released Parties on any of the Released Claims.

10 4. Judgment shall be entered forthwith in accordance with the foregoing, with each side
11 to pay his or its own attorneys' fees and costs except as expressly set forth in the Settlement
12 Agreement.

13 5. The parties shall schedule a Compliance Hearing at a suitable date chosen in
14 consultation with the Departments Clerk which shall be approximately 200 days after the mailing
15 of Settlement Payments to the PAGA Group Members by the Settlement Administrator;

- 16 a. The parties, in consultation with the Department's clerk, set a
17 Compliance Hearing currently set for November 21, 2024 at 9:00 a.m.

18 6. Plaintiff shall give notice of this Judgment to the Labor and Workforce Development
19 Agency within ten (10) days after entry of the Judgment or order pursuant to California Labor Code
20 section 2699(1)(3).

21 7. The Court retains exclusive and continuing jurisdiction over this Action for purposes
22 of supervising, administering, implementing, interpreting, and enforcing this Order and Judgment,
23 as well as the Settlement.

24 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

Dated: _____, 2024

APR 08 2024



Honorable Charles S. Treat
Judge of the Superior Court

EXHIBIT A

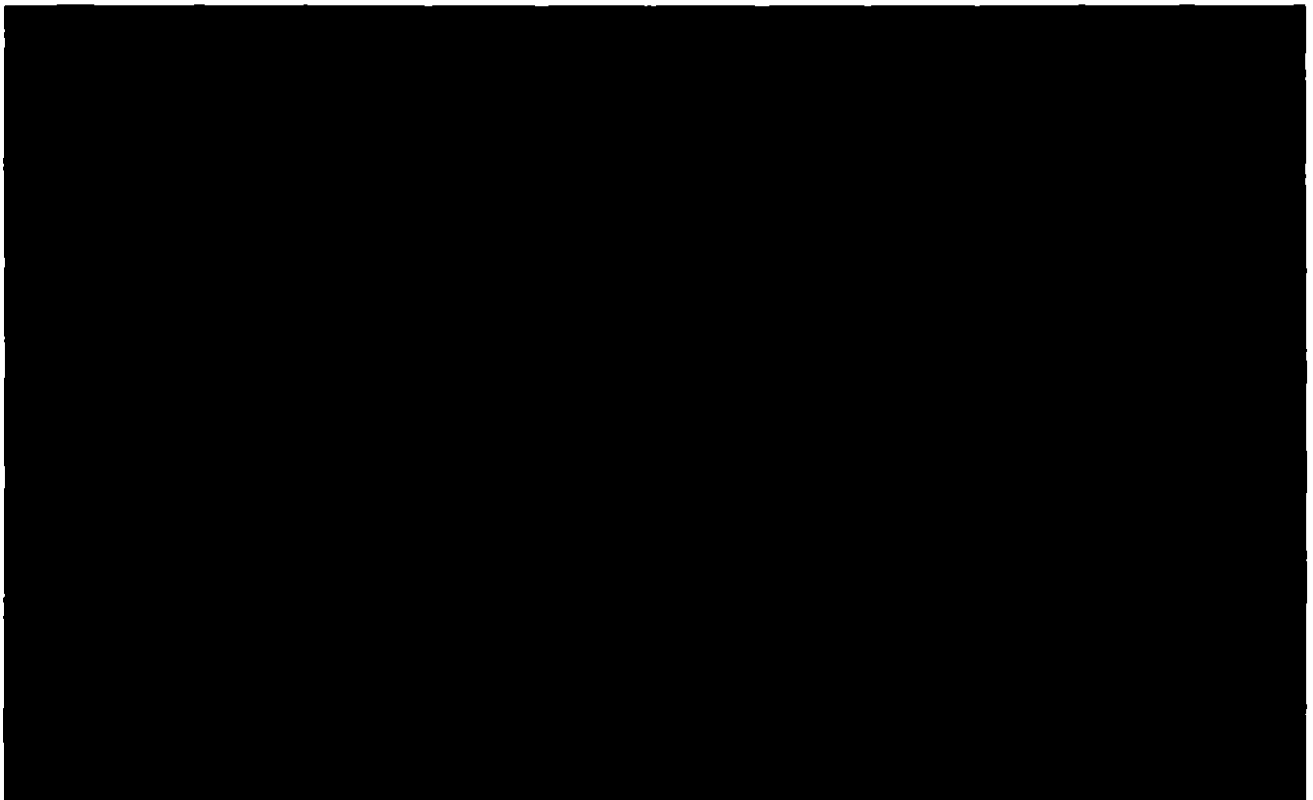
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The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the court day preceding the hearing, counsel or self-represented parties call the department rendering the decision to request argument and to specify the issues to be argued. 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.



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8. 9:00 AM CASE NUMBER: C23-01333
CASE NAME: MICHAEL GUILLEN VS. CONCORD AUTOMOTIVE SALES AND SERVICE INC.
*HEARING ON MOTION IN RE: APPROVAL OF PAGA SETTLEMENT
FILED BY:
TENTATIVE RULING:

Plaintiff Michael Guillen moves for approval of the settlement of his PAGA suit against defendant Concord Automotive Sales and Service, Inc. Defendant operates a number of auto dealerships. Plaintiff was employed by defendant during the relevant time period as a mechanic. Plaintiff also moves for approval of his attorney's fees, litigation costs, administration costs, and representative payment.

The motion is **granted with a modification.**

A. Background of the Case and Terms of Settlement

This 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 derivative violations. *In particular, plaintiff asserts alleged violations for off-the-clock work and failure to reimburse employee expenses such as tool purchase, mileage, and cell phone use.*

This case was first filed on June 1, 2023 as a PAGA action.

The total settlement payment is \$125,000. Out of this is to come attorney's fees of \$41,000 (slightly less than one-third of the recovery); \$563 in litigation costs, and up to \$1,500 in costs to the settlement Administrator. The motion proposes that the plaintiff will be paid a service payment of \$32,500 for his efforts in this litigation. As explained below, however, the Court will allow only \$3,000

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for this.

The remaining amount, \$78,937, is allocated as PAGA penalties. Those penalties are apportioned 75% to the LWDA and 25% to the aggrieved employees, meaning that the aggrieved employees involved will split about \$19,735.

Counsel's motion indicates that there are an estimated ten covered employees. The payments from the employee share of the penalty 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 \$1,973, 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. Information for mailing will be provided within 10 days after Final Approval. The settlement amount will be paid to the administrator within 10 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 March 22, 2022 to present.

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" 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

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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 salutatory 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. Plaintiffs’ counsel have provided a breakdown and documentation of their lodestar figure of \$37,260; thus, the lodestar multiplier is approximately 1.10. This appears appropriate in light of the risks of the case and the results achieved.

The settlement motion proposes a representative payment for plaintiff of \$32,500. This is greatly larger than is typical for representative payments even for settlements greatly larger in scope and dollar amount. The Court accordingly inquired in its prior tentative ruling:

[T]he Court notes that the named plaintiff is to be paid individual damages of \$32,500

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in addition to his share of the distribution to employees of PAGA penalties. But the complaint alleges no individual non-PAGA causes of action, such as wrongful termination, discrimination, or anything else of the kind. And the moving papers say only that plaintiff was written up and terminated in January 2023 for doing off-the-clock work – ironically, the very conduct that defendant is accused of requiring or tolerating in violation of PAGA.

The Court requests an explanation for why plaintiff is being paid such a substantial sum outside of the PAGA penalties. If this is in settlement of some non-PAGA claim, there is nothing in this settlement motion explaining what or why, nor why no such claim is pleaded. Otherwise, this unusually high personal damages payment appears to be only an impermissibly inflated representative payment for a PAGA settlement.

In response, plaintiff's counsel has provided a declaration, though there is none from plaintiff himself. The declaration doesn't have much to say. It asserts in very vague and conclusory terms that this sum is intended to settle plaintiff's individual damages claims. However, it does not say that Guillen has some other claim separate from wage-and-hour or reimbursement violations, such as wrongful termination or discrimination. The Court therefore assumes that the damages referred to are actual unpaid wages and the like, as opposed to the PAGA penalties being received by the rest of the aggrieved employees. But the supplement provides no meaningful support for supposing that plaintiff personally has any claim for actual wage-and-hour damages anywhere in that range. On the contrary, as previously noted, the only information provided that pertains to plaintiff personally is that it appears he was actually disciplined and fired for engaging in off-clock work – which if true would tend to the exoneration of the employer, not to the accrual of actual damages. In the absence of any better explanation in response to the Court's invitation, therefore, the Court adheres to its initial suspicion that this payment represents an impermissibly inflated representative payment rather than actual damages. Plaintiff's supplemental brief also provides assurance that if the Court reduces the representative payment, it will not result in undoing the overall settlement – again, not quite what would be expected if there were real hard-money damages in five figures. Given the exceptionally small group of employees involved, the modest settlement amount, and the relative ease and speed with which a settlement was reached, the Court approves a representative payment of \$3,000. This is in addition to plaintiff's proportional share in the distribution of PAGA penalties.

Litigation costs of \$563 are reasonable and are approved. Indeed, they are remarkably low, reflecting the unusual feature that no mediator was required.

The settlement administrator's costs of \$1,500 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.)

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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 ultimate order, the other provisions submitted in the proposed order, and a corresponding judgment. The order would include a compliance hearing for a suitable date chosen in consultation with the Department's clerk. 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.