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Attorneys for Plaintiff Evangelisto Ramirez

Electronically Filed
Superior Court of California
County of Santa Cruz
September 20, 2024
Clerk of the Court by Deputy,
Broughton, Karen



SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CRUZ

EVANGELISTO RAMIREZ, individually, and
on behalf of all others similarly situated

Plaintiff,

vs.

AMERI-KLEEN, a California corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 23CV01247

[Assigned to the Honorable
Syda Kosofsky Cogliati, Dept. 5]

**[AMENDED PROPOSED] ORDER
GRANTING PLAINTIFF'S MOTION FOR
AN ORDER APPROVING SETTLEMENT
OF CLAIMS BROUGHT PURSUANT TO
THE PRIVATE ATTORNEY GENERAL'S
ACT OF 2004**

Date: September 10, 2024
Time: 8:30 a.m.
Courtroom: 5
Judge: Hon. Syda Kosofsky Cogliati

Action Filed: May 30, 2023
Trial Date: Not Set

1 **TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**

2 Plaintiff EVANGELISTO RAMIREZ (“Plaintiff”) and Defendant AMERI-KLEEN
3 (“Defendant”) (Plaintiff and Defendant are the “Parties”) have reached terms of settlement of this action
4 alleging a claim for relief pursuant to the Labor Code Private Attorneys General Act of 2004, Labor
5 Code § 2698, *et seq.* (“PAGA”).

6 Pursuant to PAGA, Plaintiff, on behalf of the Parties, has filed a motion for approval of the
7 settlement of the claims against Defendant in this action. Specifically, Plaintiff moves for an order:

- 8
- 9 • granting approval of the terms of the Agreement pursuant to the Labor Code Private
10 Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the
11 settlement; the amount of distributions to the State and Aggrieved Employees; the amounts
12 allocated to attorney’s fees and costs; and, the amount allocated to the settlement
13 administrator; and,
 - 14 • directing disbursement of the Gross Settlement Amount pursuant to the terms of the
15 Agreement.

16 On September 10, 2024, Plaintiff’s Motion came on for hearing. After reviewing the Settlement
17 and other related documents, and the filings submitted by Plaintiff, *and as stated in the Court’s Tentative
18 Ruling issued on September 9, 2024, IT IS HEREBY ORDERED AS FOLLOWS:*

19 The motion is granted.

20 The court finds that the settlement is fair, reasonable, and adequate in light of PAGA’s purposes
21 to remediate present and deter future labor law violations and to maximize enforcement of state labor
22 laws. The court grants approval of the Settlement Agreement.

23 **IT IS HEREBY FURTHER ORDERED AS FOLLOWS:**

24 1. The PAGA SETTLEMENT AGREEMENT (referred to as the “Agreement,” or
25 “Settlement,” and attached to the Declaration of H. Scott Leviant as **Exhibit 1**) is conditioned upon the
26 Court’s approval. Capitalized terms in this Order have the same meaning as in the Settlement unless
27 indicated otherwise.

28 2. A summary of the terms of the Settlement is as follows:

- (a) Aggrieved Employees: All persons employed by Defendant as hourly-paid or non-exempt sanitation employees in the State of California from May 30, 2022, until approval of the settlement of the Action. (Agreement, ¶¶ 1.4 1.19.)
- (b) No Reversion: The Settlement is *non-reversionary*. (Agreement, ¶ 3.1.)
- (c) Gross Settlement Amount: Defendant agrees to pay the maximum sum of **\$192,500.00** (hereinafter referred to as the “Gross Settlement Amount” or “GSA”) for settlement of the PAGA Penalties, which shall be inclusive of Plaintiff’s Counsel’s attorney’s fees and costs, and the settlement administrator’s fees and costs. (Agreement, ¶¶ 3.1, 3.2.)
- (d) Net Settlement Amount: At least **\$104,468.16** will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least **\$78,351.12** under the Agreement, and Aggrieved Employees will receive at least **\$26,117.04**. (Agreement, ¶¶ 1.15, 3.2.3.)
- (e) Attorney’s Fees: Plaintiff’s Counsel requests an award of attorney’s fees in the amount of **\$64,166.67**, which is one-third of the GSA. (Agreement, ¶ 3.2.1.)
- (f) Litigation Costs: Plaintiff’s Counsel seeks reimbursement of actual litigation costs, which was anticipated to be a maximum amount of \$15,000.00. However, those actual costs are \$18,865.17. Therefore, **\$18,865.17** is requested. (Agreement, ¶ 3.2.1; Leviant Decl., ¶ 40, and Exh. 2.)
- (g) Settlement Administration: Payment to Aggrieved Employees and administration will be accomplished through third-party settlement administrator, Phoenix Class Action Administration Solutions (“Phoenix Settlement Administrators”), which has agreed to perform Administrator duties for a flat fee not to exceed **\$5,000.00**¹, which is reasonable, based on all of the services offered. (Agreement, ¶¶ 1.2, and 3.2.2; Leviant Decl., ¶ 41; Declaration of Michael Moore [Decl. of Moore], ¶ 17.)

¹ The Parties estimated that the settlement administration costs would not exceed \$10,000.00. The actual costs are \$5,000.00, which is less than the estimated amount.

- (h) Uncashed Checks: Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the Unclaimed Property Fund (Agreement, ¶¶ 4.4.1, 4.4.3.)
- (i) Release: In exchange for the above settlement consideration, Defendant shall be entitled to a *limited* release from the LWDA and each and every Aggrieved Employee, including Plaintiff.² (Agreement, ¶ 5; Leviant Decl., Exh. 1.)
- (j) Notice to LWDA: The Declaration of H. Scott Leviant confirms that notice was provided to the LWDA and attaches the confirmatory submission documents. (Leviant Decl., ¶ 45 and Exh. 3.)

3. In granting approval of the settlement the Court has considered the factors identified in *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), *O'Connor v. Uber Technologies*, No. 13-CV-03826-EMC, 2016 WL 4398271 (N.D. Cal. Aug. 18, 2016), *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998), *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), and other authority providing a coherent framework for evaluating this Settlement.

4. The Court hereby identifies the Aggrieved Employees as:

All persons employed by Defendant as hourly-paid or non-exempt sanitation employees in the State of California from May 30, 2022, until approval of the settlement of the Action. (Agreement, ¶¶ 1.4, 1.19).

5. The Court hereby finds the Settlement was the product of informed, non-collusive negotiations conducted at arms' length by the Parties. In making these findings, the Court considered Defendant's potential liability, the benefit to the State of California, allocation of settlement proceeds among Aggrieved Employees, and the fact that a settlement represents a compromise of the Parties' respective positions rather than the result of a finding of liability at trial. The Court further finds that the terms of the Settlement have no obvious deficiencies. The Court finds that risks of further prosecution are substantial and include the risks that (1) penalties would be reduced after evaluation of the totality of

² This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (concluding that "with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act....").

1 the circumstances, or (2) no penalties would be awarded for some or all of the alleged violations.

2 6. The Court hereby approves Phoenix Class Action Administration Solutions (“Phoenix
3 Settlement Administrators”) to serve as the Administrator. The Administrator will be paid pursuant to
4 the Agreement’s terms for such distribution, in the requested amount of \$5,000.00 out of the Gross
5 Settlement Amount, to effectuate Administration.

6 7. Pursuant to the Agreement, the amount distributed as penalties under PAGA shall be
7 \$192,500.00, less administration costs, attorney’s fees, and costs awarded to Plaintiff’s counsel. After
8 awards, the amount remaining to distribute as penalties is \$104,468.16. The LWDA shall receive 75%
9 of the penalties allocated, which is \$78,351.12. Aggrieved Employees shall receive 25% of the penalties
10 allocated, which is \$26,117.04.

11 8. The Court hereby awards Counsel attorneys’ fees in the amount of \$64,166.67. The
12 Court finds that the attorney’s fees are reasonable compared to amounts routinely approved in similar
13 settlements and as guided by the California Supreme Court’s decision concerning the awarding of fees
14 from monetary funds for class members. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).
15 Counsel proceeded on a contingency basis despite the uncertainty of any fee award. Counsel were
16 necessarily precluded from pursuing other potential sources of fees because of work in connection with
17 this Action. The Court observed that this is not a class action. It is more akin to contingent
18 representation with an additional requirement of Court review due to the qui tam nature of a PAGA
19 claim. Attorneys’ fees that are fifty percent of a common fund are typically considered the upper limit,
20 with thirty to forty percent commonly awarded in cases where the settlement is relatively small. *See Van*
21 *Vranken v. Atlantic Richfield Company*, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases
22 where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million). Based on
23 these considerations, including the lodestar cross-check, a fee award of one-third is reasonable.

24 9. The Court hereby awards Counsel litigation costs in the total amount of \$18,865.17.

25 10. Upon entry of this Order, the Parties shall effectuate all terms of the Settlement based on
26 the provisions and timelines set forth in the Agreement.

27 11. Pursuant to the terms of the Settlement, the released persons and entities include:

28 Defendant and any predecessor, successor, subsidiary, parent, or affiliate as defined by

Corporations Code § 150, and each of its supervisory/managerial employees, managing agents, shareholders, directors, and/or officers (referred to in the Settlement as the “Released Parties”). (Agreement, ¶ 1.26.)

12. Upon entry of the Order approving this Settlement and the Judgment thereon, PAGA claims are released as follows:

Effective on the date when Defendants fully fund the entire Gross Settlement Amount, Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, in the PAGA Period based on the facts stated in the Operative Complaint and the PAGA Notice. (Agreement, ¶ 5.2.)

Release by PAGA Counsel: PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice. (Agreement, ¶ 5.3). PAGA Counsel shall receive only the PAGA Counsel Fees Payment approved by the Court as part of this Settlement.

13. The action is DISMISSED WITH PREJUDICE.

14. The Court will enter Final Judgment in accordance with this Order.

15. The Court shall retain jurisdiction with respect to all matters related to the administration and consummation of the Settlement, and any and all claims asserted in, arising out of, or related to the subject matter of the lawsuit, including but not limited to all matters related to the Settlement and the determination of all controversies relating thereto.

IT IS SO ORDERED.

Dated: September 19, 2024



Hon. Syda Kosofsky Cogliati
SANTA CRUZ SUPERIOR COURT JUDGE

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 725 S. Figueroa St., 31st Floor, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **[AMENDED PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEY GENERAL'S ACT OF 2004** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Gladys Rodriguez-Morales
Elizabeth R. Leitzinger
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Attorneys for Defendant Ameri-Kleen

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **September 9, 2024** at Los Angeles, California.

H. Scott Leviant
Type or Print Name



Signature