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Attorneys for Plaintiff Kwane Gatlin and others similarly situated

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
(UNLIMITED JURISDICTION)

KWANE GATLIN, individually and on behalf
of others similarly situated,

Plaintiff,

vs.

ANHEUSER-BUSCH, LLC, an entity;
ANHEUSER-BUSCH INBEV WORLDWIDE,
INC. an entity, the HORIZON BEVERAGE
COMPANY, L.P., an entity, and DOES 1-50,
inclusive,

Defendants.

CASE NO. RG19015524

CLASS ACTION

RESERVATION NO. 075310611945

**SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

Date: August 11, 2023

Time: 10:00 A.M.

Dept: 21

Judge: Honorable Evelio Grillo

Filed: April 18, 2019

In response to this Court’s Tentative Ruling issued on June 28, 2023 (hereafter “June 28th Ruling”), Plaintiff Kwane Gatlin submits this Supplemental Memorandum and related materials in support of his Unopposed Motion to Approve the Proposed Class Action and PAGA Settlement and Release Agreement (“Settlement Agreement”) with Defendants Anheuser-Busch LLC and Anheuser-Busch Inbev Worldwide, Inc. (collectively referred to as “Defendants”). Plaintiff addresses the Court’s concerns regarding the Class Action and PAGA Settlement in the order they appear in the June 28th Ruling and cite to the June 28th Ruling verbatim. Plaintiff indicates in bolded text what if any amendments were made to the Settlement Agreement and Notice to address the Court’s concerns. The Amended Settlement Agreement is attached as Exhibit A to the Supplemental Declaration of Virginia Villegas In Support of Unopposed Motion for Preliminary Approval (hereinafter referred to as “Villegas Supp. Dec.”). Plaintiff’s counsel submitted the Amended Class Action and PAGA Settlement to the LWDA as required by Labor Code Section 2698 *et seq.* and attach the confirmation of receipt by the LWDA as Exhibit C.

I. ISSUE #1 – RELEASE OF LWDA’S CLAIMS BY PLAINTIFF UNDER PAGA.

Under the PAGA, a private plaintiff brings an action as proxy or agent of the LWDA. “An employee plaintiff suing ... under the [PAGA] does so as the proxy or agent of the state's labor law enforcement agencies.” (Kim v. Reins International California, Inc. (2020) 9 Cal.5th 73, 81; ZB, N.A. v. Superior Court of San Diego County (2019) 8 Cal.5th 175, 185; Iskanian v. CLS Transp. Los Angeles, LLC (2014) 59 Cal.4th 348, 381.)

Every PAGA action is “a dispute between an employer and the state.” Iskanian v. CLS Transp. Los Angeles, LLC (2014) 59 Cal.4th 348, 386; LaFace v. Ralphs Grocery Co. (2022) 75 Cal.App.5th 388, 397; Moniz v. Adecco USA, Inc. (2021) 72 Cal.App.5th 56, 74.)

The agreement includes a release of the LWDA’s claims. (Para 5.3) This is adequate

No changes made.

II. ISSUE #2 - RELEASE OF LWDA’S CLAIMS BY AGGRIEVED EMPLOYEES.

The Court notes that:

The named plaintiff does not represent the aggrieved employees in the claims under PAGA and therefore cannot release PAGA claims on their behalf. Some settlements suggest that

1 under the terms of the settlement the aggrieved employees are releasing the claims that they
2 might assert as agents of the LWDA under the PAGA. That would be contrary to California
3 law.

4 The harm of a misstatement that the plaintiff represents the aggrieved employees is twofold.
5 First, the court is not inclined to approve agreements that are contrary to law. Second, as
6 noted above, there have been many appellate decisions addressing and re-addressing the law
7 that a PAGA claim is on behalf of the state and is not on behalf of the employees. The court
8 is not inclined to perpetuate any confusion by approving a settlement that inaccurately states
9 that a PAGA plaintiff represents the aggrieved employees.

10 Defendant can assert the settlement as a defense to any future claims for penalties brought by
11 the LWDA or any claims brought on behalf of the LWDA under PAGA. A PAGA settlement
12 on behalf of the LWDA might preclude the LWDA from asserting the same claim for a
13 second time. Any such defense would exist because of the LWDA is bound by the terms of
14 the settlement agreement. (See also *Lacour v. Marshalls of CA, LLC* (2021) 2021 WL
15 2211953 [addressing “claim preclusion effect of settlements of claims brought as agent or
16 proxy of the LWDA under PAGA”].) Any such defense to a claim on behalf of the LWDA
17 under PAGA would exist because the LWDA is a party to the settlement and not because an
18 aggrieved employee is party to or is bound by the settlement.

19 This is similar to the situation where a District Attorney recovers restitution on behalf of a
20 victim of a crime. (Penal Code 1202.4(f)(3), (i).) The District Attorney does not represent the
21 victim. (*People v. Eubanks* (1996) 14 Cal. 4th 580, 589-590.) If the victim files a civil case
22 against the defendant, then the defendant can assert that any victim compensation payment in
23 the criminal case is an offset in the civil case. (Penal Code 1202.4(j).)

24 If an “aggrieved employee” in the future files a case under the PAGA asserting claims on
25 behalf of the LWDA that have been settled in this case, then the settlement in this case might
26 preclude the LWDA from asserting the same claims in a later case. The legal effect of the
27 settlement in this case will likely be that neither the LWDA directly and acting through its
28 attorneys or the LWDA indirectly acting through the PAGA can assert the claims that the
LWDA is releasing in the settlement. The court uses the word “might” because the judge in
the second case will determine the preclusive effect of the settlement agreement. (In re
Fireside Bank Cases (2010) 187 Cal.App.4th 1120, 1131 [“the preclusive effect of a prior
judgment is determined by the court in which it is asserted, not the court that rendered it”].)

The court notes that although it is legally significant that that a claim under the PAGA is on
behalf of the LWDA, that issue has no practical effect in the context of a settlement. If any
aggrieved employee asserted a subsequent claim on behalf of the LWDA then the employer
could assert the settlement agreement as a defense to the LWDA’s claims. If the LWDA’s
claims are released, then it is immaterial whether the settlement agreement states (correctly)
that LWDA is releasing its claims or states (incorrectly) that other employees cannot assert
claims on behalf of the LWDA.

The heading of Para 5.3 states “Release by Aggrieved Employees,” which is inconsistent
with the text. This is not adequate.

In order to address the concern raised by the Court and as reflected in the Amended Settlement Agreement with tracked changes that is attached as Exhibit A-1 (hereinafter referred to as “Exhibit A-1”), to the Villegas Supp. Dec., the parties have amended paragraph 5.3 of the proposed Settlement Agreement and have struck the referenced lines.

Para 5.3 goes on to state that “The PAGA Employees are collaterally estopped from pursuing the PAGA claims released and compromised by the LWDA. No PAGA Employee may pursue the same PAGA claims in a representative capacity that are released here in another action.” The PAGA Employees are not parties to the case, so the Agreement cannot bind them. As stated above, the plaintiff represents the LWDA in this case and when the LWDA releases its claims, then the PAGA Employees will not likely prevail on a later claim on behalf of the LWDA. This text is not adequate.

In order to address the concern raised by the Court and as reflected in Exhibit A-1 to the Villegas Supp. Dec., the parties have amended paragraph 5.3 of the proposed Settlement Agreement and have struck the referenced lines.

III. ISSUE #3 - RELEASE OF CLAIMS BY MEMBERS OF THE CLASS.

The Court notes that:

The members of the class release claims arising out of the claims in the complaint where the named plaintiffs are typical and can adequately represent the class. (Agt, para 24, 50.) (Amaro v. Anaheim Arena Management, LLC (2021) 69 Cal.App.5th 521, 537-538.)

The agreement at para 5.2 states that Participating Class Members release “claims for (1) violations of PAGA.” The participating class members do not release those claims. The claims under Labor Code 2699(a), 2699.3, and 2699.5 are the claims of the LWDA. That is not adequate.

In order to address the concern raised by the Court and as reflected in Exhibit A-1 to the Villegas Supp. Dec., the parties have amended paragraph 5.2 of the proposed Settlement Agreement and have struck the referenced lines.

IV. ISSUE #4 - RELEASE OF CLAIMS BY NAMED PLAINTIFF

The Court notes that:

1 The Agreement properly releases the claims of the named plaintiff, which can include a Civil
2 Code 1542 waiver. (Agt para 5.1.) This is adequate.

3 **No changes made.**

4 V. ISSUE #5. RESIDUAL BENEFICIARY

5 The agreement states that that the residual will go to Legal Aid at Work. (Agt para 4.4.3.)
6 Counsel is a Volunteer Attorney with Legal Aid at Work's Workers' Rights Clinic. (Villegas
7 Dec, para 6(j).) CCP 382.4 requires disclosure and suggests that residual funds should not be
8 given to a nonparty if the attorney has a connection to or a relationship with a nonparty
9 recipient of the distribution that could reasonably create the appearance of impropriety as
10 between the selection of the recipient of the money or thing of value and the interests of the
11 class." (See also Nachshin v. AOL, LLC (9th Cir. 2011) 663 F.3d 1034, 1039 ["the specter of
12 judges and outside entities dealing in the distribution and solicitation of settlement money
13 may create the appearance of impropriety"]; Weeks v. Kellogg Co. (C.D. Cal. 2013) 2013
14 WL 6531177 at *18- 21 ["Given the Westside Food Bank's primarily local focus, as well as
15 its preexisting relationship with certain of plaintiffs' counsel, the court concluded that the
16 organization was an inappropriate recipient of donations from the \$2.5 million Cy Pres
17 Fund"].)

18 The court finds the relationship between the attorney and the proposed recipient creates an
19 appearance of impropriety. The court is concerned with the perception that the attorneys are
20 directing the residual funds (which belong to the class) to organizations closely aligned with
21 the interests of counsel. This is not a reflection on the integrity of counsel or the quality of
22 the proposed recipient.

23 The parties must identify a different residual beneficiary consistent with CCP 384. Counsel
24 must provide a declaration with the CCP 382.4 information. The current beneficiary is not
25 adequate.

26 **In order to address the concern raised by the Court and as reflected in Exhibit A-1 to**
27 **the Villegas Supp. Dec., the parties have amended paragraph 4.4.3 of the proposed Amended**
28 **Settlement Agreement and instead of designating Legal Aid at Law as the *cy pres* beneficiary,**
the parties have identified La Raza Centro Legal as the *cy pres* beneficiary to whom any funds
remaining from uncashed checks will go. Other than having worked for La Raza Centro
Legal from 1995 to 2001, I have no other affiliation or relationship with the organization. The
Law Office of Richard Vaznaugh has no affiliation or relationship with the organization. A
declaration from Alejandra Cuestas-Jaimes providing information required by CCP 382.4 is
attached as Exhibit B to the Villegas Supp. Dec.

1 The court's PRE-TENTATIVE order is as follows:

2 The motion of plaintiffs for preliminary approval of class action settlement and PAGA
3 settlement is _____.

4 This settlement is with Defendants Anheuser-Busch, LLC's, and Anheuser-Busch InBev
5 Worldwide, Inc. The final settlement dated 2/9/23 was with Defendant Horizon Beverage
6 Company L.P.

7 The complaint alleges various Labor Code claims.

8 The case preliminarily settled for a total of \$2,000,000.

9 The settlement agreement states there will be attorneys' fees of up to \$666,666 (33%), costs
10 of up to \$20,000, service award of \$15,000 to plaintiff, settlement administration costs of up
11 to \$ 13,918, and a PAGA payment of \$25,000 (net of \$6,250). After these expenses, the
12 amount available to be distributed to the Class would be \$ 1,266,332.00. Assuming that there
13 are an estimated 880 Class Members, the average payment per Class Member would be \$__.

14 The proposed class notice form and procedure are adequate. [TO BE AMENDED IF
15 SETTLEMENT TERMS ARE CHANGED]

16 **The parties amended the Class Notice to correspond to the changes made in the**
17 **Amended Settlement Agreement and are reflected in tracked changes and the Class Notice is**
18 **attached to Exhibit A-1.**

19 The proposed class is appropriate for class certification.

20 The scope of the class release is [NOT] appropriate. The scope of the class release must be
21 limited to the claims arising out of the claims in the complaint where the named plaintiffs are
22 typical and can adequately represent the class. (Amaro v. Anaheim Arena Management, LLC
23 (2021) 69 Cal.App.5th 521, 537-538.) The release of claims by the class is limited by the
24 "factual predicate rule." (Hesse v. Sprint Corp. (9th Cir. 2010) 598 F.3d 581, 590.) (See also
25 Hendricks v. Starkist Co (N.D. Cal. 2016) 2016 WL 692739 at * 2-4 [Denying motion for
26 final approval of class settlement because scope of release overbroad].)

27 The scope of the PAGA release is [NOT] appropriate. The agreement releases the claims of
28 the LWDA. The agreement is [NOT] a release by the "Aggrieved Employees" (aka PAGA
Group Members).

The scope of the named plaintiff release is appropriate. The agreement for the named
plaintiff may include a Civil Code 1542 waiver.

The Court notes and approves of the plan to distribute the settlement funds with no claims
process.

The unclaimed funds will be distributed to [____]. (Agt, para ____.) This is consistent with CCP

384. Counsel has [NOT] provided a declaration in support of the motion that provides the information required by CCP 382.4.

A declaration from Alejandra Cuestas-Jaimes of La Raza Centro Legal is attached as Exhibit B to the Villegas Supp. Dec. that provides the information required by CCP 382.4.

The Court will not approve the amount of attorneys' fees and costs until the final approval hearing. The Court cannot award attorneys' fees without reviewing information about counsel's hourly rate and the time spent on the case. This is the law even if the parties have agreed that Defendants will not oppose the motion for fees. (*Robbins v. Alibrandi* (2005) 127 Cal. App. 4th 438, 450-451.)

"Because absent class members are not directly involved in the proceedings, oversight to ensure settlements are fair and untainted by conflict is the responsibility of both the class representative and the court." (*Mark v. Spencer* (2008) 166 Cal.App.4th 219, 227.)

"In any class action there is always the temptation for the attorney for the class to recommend settlement on terms less favorable to his clients because a large fee is part of the bargain. ...[T]horough judicial review of fee applications is required in all class action settlements and the fairness of the fees must be assessed independently of determining the fairness of the substantive settlement terms.' ... " 'The evil feared in some settlements- unscrupulous attorneys negotiating large attorney's fees at the expense of an inadequate settlement for the client-can best be met by a careful ... judge, sensitive to the problem, properly evaluating the adequacy of the settlement for the class and determining and setting a reasonable attorney's fee....' " (*Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 555-556.)

The court sets out its standard analysis below. Counsel may address that analysis in the fee application.

The Ninth Circuit's benchmark is 25%. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 495.)

This court's benchmark for fees is 30% of the total fund. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 495; *Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1175; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 fn 13; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn 11.)

When cross-checking with the lodestar/multiplier, the court will evaluate the lodestar based on reasonable fees that would have been charged at hourly rates and then apply a multiplier. The multiplier includes contingent fee risk and other factors.

When considering risk, the court considers there is less risk in a case with fee shifting statutes because counsel's potential fees are not limited by and coupled to the monetary recovery. "The law does not mandate ... that attorney fees bear a percentage relationship to the ultimate recovery of damages in a civil rights case." (*Harman v. City and County of San Francisco* (2007) 158 Cal.App.4th 407, 419.) (See also *Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1006-1007.)

Class Counsel will address the Court's analysis for fee applications when they file the motion for final approval and their application for fees and costs, including the submission of billing records and itemization of costs incurred.

The Court will not decide the amount of any service award until the final approval hearing. Plaintiff must provide evidence regarding the nature of his participation in the action, including a description of his specific actions and the amount of time he committed to the prosecution of the case. (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804-807.) The court's standard service award is \$7,500.

Class Counsel and the Class Representative will provide evidence regarding the nature of his participation in the action, including a description of his specific actions and the amount of time he committed to the prosecution of the case when the motion for final approval is filed.

The Court ORDERS that 10% of any fee award to be kept in the administrator's trust fund until the completion of the distribution process and Court approval of a final accounting.

Understood.

The Court will set a compliance hearing after the completion of the distribution process and the expiration of the time to cash checks for counsel for plaintiff and the Administrator to comply with CCP 384(b) and to submit a summary accounting how the funds have been distributed to the class members and the status of any unresolved issues. If the distribution is completed, the Court will at that time release any hold-back of attorney fees.

Understood.

The court will sign the proposed order, which is modified by this order. Plaintiff must reserve a hearing for the motion for final approval.

Understood.

DATED: August 4, 2023

THE VILLEGAS LAW FIRM, APC

THE LAW OFFICE OF RICHARD VAZNAUGH

By: Virginia Villegas
Virginia Villegas
Attorneys for Plaintiff