SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Hayward Hall of Justice

Jessica Plummer et al Plaintiff/Petitioner(s) vs. Flexcare, LLC Defendant/Respondent(s)	No. 23CV050251 Date: 05/16/2024 Time: 2:00 PM Dept: 520 Judge: Julia Spain ORDER re: Hearing on Motion for Final Approval of Settlement filed by Jessica Plummer (Plaintiff) + filed by Jessica Plummer (Plaintiff); Paige Rieboldt (Plaintiff) on 03/28/2024

The Motion for Order Unopposed Motion for Approval of PAGA Settlement, Attorneys' Fees and Costs, and Service Awards filed by Jessica Plummer, Paige Rieboldt on 03/28/2024 is Granted.

Plaintiffs Jessica Plummer, Paige Rieboldt, and Danielle Devenney's (collectively, "Plaintiffs") unopposed Motion for Approval of PAGA Settlement is GRANTED.

BACKGROUND

Plaintiffs Jessica Plummer, Paige Rieboldt, and Danielle Devenney's (collectively, "Plaintiffs") bring this action against Defendant Flexcare, LLC ("Defendant" or "Flexcare") for various Labor Code violations.

Plaintiffs originally filed this Motion on March 28, 2024. On April 18, 2024, the Court continued the hearing on this matter for Plaintiffs to file and serve an amended settlement agreement compliant with Labor Code § 2699 et seq. regarding the agreement's release of claims and the requested attorneys' fees. On May 9, 2024, Plaintiffs submitted supplemental papers and an amended joint stipulated settlement agreement ("Settlement Agreement") that addresses the Court's concerns. (Cervantes Dec. Exh. A.) The motion is unopposed.

LEGAL STANDARD

A plaintiff asserts the PAGA claim as proxy or agent of the State of California's Labor

Workforce Development Agency ("LWDA"). "An employee plaintiff suing ... under the [PAGA] does so as the proxy or agent of the state's labor law enforcement agencies." (*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.)

A person asserting a claim on behalf of the LWDA under PAGA must obtain court approval for any settlement. Labor Code 2699(l)(2) states: "The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court."

Regarding the standard for review, *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549, states "PAGA settlements are subject to trial court review and approval, ensuring that any negotiated resolution is fair to those affected." In *O'Connor v. Uber Technologies, Inc*. (N.D. Cal., 2016) 201 F.Supp.3d 1110, 1133, the LWDA filed a brief that stated, "It is thus important that when a PAGA claim is settled, the relief provided for under the PAGA be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public."

Regarding the evidence required for the court to evaluate a settlement under Labor Code 2699(l)(2), the court is not required to undertake a comprehensive "what would have happened if the litigation had proceeded" analysis. The standard of review is similar to the standard for review of class action settlements under *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, and the standard for approval of good faith settlements under CCP 877.6 and *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488.

The court can consider the value of any effective injunctive relief that a PAGA plaintiff obtains through settlement even though Labor Code 2699(a) permits a PAGA plaintiff to recover only penalties on behalf of the LWDA. The primary purpose of LWDA law enforcement proceedings is to ensure compliance with the law and not to impose and collect penalties. In enacting PAGA, "The Legislature declared that adequate financing of labor law enforcement was necessary to achieve maximum compliance with state labor laws." (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 980.)

The analysis of whether a proposed settlement will be "fair to those affected" concerns only fairness to the LWDA. If a PAGA plaintiff settles a claim on behalf of the LWDA for less than the maximum settlement value, the only injured person is the LDWA. The statute requires notice of a settlement to the LWDA so it can protect its interests and in addition, it requires court approval. (Labor Code 2699(l).) The aggrieved employees retain whatever private claims they had before the settlement.

SETTLEMENT TERMS

The "PAGA Members" in this action are defined as any and all current and former non-exempt clinicians who were employed in California or traveled to California for employment with Flexcare at any time during the PAGA Period (July 26, 2022 – February 21, 2024, which Flexcare represents are approximately 2,256 PAGA Members. (Settlement Agreement ¶ 1(e),

(g).)

The gross settlement amount is $860,000.00. (Settlement Agreement ¶ 1(l),)

Counsel seeks fees of 30% of the gross settlement amount, or $258,000.00. (Settlement Agreement ¶ 3(h). The Settlement Agreement states that Plaintiffs will seek expenses and costs reasonably incurred in connection with the litigation, not to exceed $20,000.00. (*Id*.) The Settlement Agreement provides for a service award of up to $1,000.00 to each Plaintiff, to be paid from the total settlement amount. (Settlement Agreement ¶ 3(i).) The Settlement Agreement further provides that they will allocate not more than $10,000.00 towards settlement administration costs. (Settlement Agreement ¶3(l).)

The net settlement amount shall be distributed 75% to the LWDA and 25% to the PAGA Members, pursuant to the allocations set forth in the Settlement Agreement. (Settlement Agreement ¶ 3(f), (j), and (k).)

SCOPE OF THE RELEASE

The Settlement Agreement releases claims for civil penalties and claims for attorneys' fees. (Settlement Agreement ¶¶ 1(p), 3(n).) The Settlement Agreement, therefore, releases claims for both civil penalties under Labor Code sections 2698 et seq. and 2699, and for reasonable attorneys' fees and costs under Labor Code section 2699(g).

DISPOSITION OF THE RESIDUAL

The disposition of any uncashed checks shall be paid to Legal Aid at Work, as *cy pres*. (Settlement Agreement ¶ 3(j)(d).)

ATTORNEYS' FEES – AMOUNT

Plaintiffs' counsel requests attorneys' fees in an amount not to exceed 30% of the total settlement amount, or $258,000.00. This meets this Court's benchmark for fees, when using the percentage of the recovery approach. (*Lafitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 495.) When using the percentage of the recovery approach, this Court's benchmark for fees is 30% of the total fund. (See *Laffitte v. Robert Half Internat. Inc., supra,* 1 Cal.5th at 495; see also *Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1175 in fee award involving minor, 10% too low and 31% in contract "not out of line"; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 fn 13 (citing awards of 25% and one-third); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn 11 (30.3% or 27.9 % "not out of line and citing study that "… fee awards in class actions average around one-third of the recovery.").)

The Court APPROVES fees not to exceed $258,0000, i.e., 30% of the total settlement amount.

COSTS OF LITIGATION

The Court APPROVES costs not to exceed $20,000.

SETTLEMENT ADMINISTRATION COSTS

The Court APPROVES settlement administration costs not to exceed $10,000.

SERVICE AWARD

The Court APPROVES the requested service awards of $1,000.00 each to Plaintiffs Jessica Plummer, Paige Rieboldt, and Danielle Devenney.

CONCLUSION

The Court will sign the amended proposed order submitted to the Court on May 9, 2024.

A compliance hearing is SET for February 14, 2025 at 2:00 P.M. in Department 520, at which time the Court will consider evidence that the distribution process is complete and that a final accounting may be approved.

Clerk is directed to serve copies of this order, with proof of service, to counsel and to self-represented parties of record.

Dated : 05/16/2024

Julia Spain / Judge

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp **FILED** Superior Court of California County of Alameda 05/17/2024 Chad Finke, Executive Officer / Clerk of the Court By: _____ Deputy D. Labrecque
COURTHOUSE ADDRESS: Hayward Hall of Justice 24405 Amador Street, Hayward, CA 94544	
PLAINTIFF/PETITIONER: Jessica Plummer et al	
DEFENDANT/RESPONDENT: Flexcare, LLC	
CERTIFICATE OF MAILING	CASE NUMBER: 23CV050251

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the attached document upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Hayward, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Eve Hedy Cervantez
Altshuler Berzon LLP
177 Post Street Suite 300
San Francisco, CA 94108

Chad Finke, Executive Officer / Clerk of the Court

Dated: 05/17/2024

By:

D. Labrecque, Deputy Clerk

CERTIFICATE OF MAILING