

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Hall of Justice, Department 54

JUDICIAL OFFICER: HONORABLE CHRISTOPHER E. KRUEGER

Courtroom Clerk: G. Toda
Bailiff: N. Alvi
Court Attendant: S. Carrera

CSR: None

23CV010056

May 20, 2025
9:00 AM

BRAZIL, et al.

vs

**BACO REALTY CORPORTION, A CALIFORNIA
CORPORATION, et al.**

MINUTES

APPEARANCES:

No Appearances

NATURE OF PROCEEDINGS: Hearing on Motion for Approval of PAGA Settlement

TENTATIVE RULING:

Plaintiffs Mike Brazil, Timothy Gorham, Enrique Serrano, and Melissa Serrano's (collectively, "Plaintiffs"), on behalf of themselves and others as "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004, motion for approval of settlement is UNOPPOSED and is GRANTED.

Overview

This settlement involves two cases against Defendant Baco Realty Corporation ("Defendant"). On October 17, 2023, Plaintiffs Brazil and Gorham filed the instant action alleging a single cause of action for civil penalties under the Private Attorneys General Act ("PAGA"). On August 22, 2023, Enrique Serrano and Melissa Serrano ("Serrano Plaintiffs") filed a complaint in Contra Costa County Superior Court (*Serrano, et al. v. Baco Realty Corporation, et al.*, Case Number C23-02083) alleging individual wage and hour causes of action and for civil penalties pursuant to the PAGA. On October 4, 2024, the Court granted the parties' request for leave to file a first amended complaint to add the Serrano Plaintiffs to the instant action as named plaintiffs.

The first amended complaint seeks penalties pursuant to Labor Code section 2699(f) for violations of Labor Code Sections 201, 202, 226(a), 226.7, 246, 510, 512, 1174, 1174.5, 1194, and 1198, and pursuant to Labor Code section 2699(a) for violations of Labor Code sections 226.3 and 558.

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On May 21, 2024, the parties participated in mediation with Honorable Amy D. Hogue (Ret.), and settled the claims. (Declaration of Anthony Orshansky (“Orshansky Decl.”), ¶ 16, Ex. A.) Prior to the mediation, Plaintiffs’ counsels interviewed Plaintiffs and investigated their claims, and the parties engaged in informal and formal discovery and exchange of documents. Defendant provided relevant wage and hour policies, as well as timekeeping and pay data on other Plaintiffs and PAGA members. (Orshansky Decl., ¶ 23; Declaration of Kent Bradbury (“Bradbury Decl.”), ¶¶ 17-18.)

Plaintiffs seek approval of this PAGA-only settlement agreement (“Agreement”) pursuant to former Labor Code section 2699(l)(2) – in effect for civil actions filed before June 19, 2024. A copy of the motion and proposed PAGA settlement was provided to the Labor and Workforce Development Agency (“LWDA”). (Bradbury Decl., ¶ 15, Ex. A; Orshansky Decl., ¶ 17, Ex. C.)

Aggrieved Employees are defined in the Agreement as: “all nonexempt employees employed by Defendant in California at any time between July 18, 2022, through the Court’s approval of this Stipulation of Settlement (“PAGA Period”).” (Orshansky Decl., Ex. A, ¶ 11.) The Settlement covers approximately 252 aggrieved employees, who worked approximately 6,373 pay periods. (*Ibid.*)

Legal Standard

In the event an aggrieved employee wishes to settle a PAGA claim, the Labor Code requires the superior court to “review and approve any penalties sought as part of [the] proposed settlement agreement.” (Lab. Code § 2699(s)(2), formerly Lab. Code § 2699(l)(2).) Such review and approval must “ensur[e] that any negotiated resolution is fair to those affected.” (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.)

As with any settlement, the Court must be mindful in conducting its inquiry that “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further.” (*See In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 12, 2011) 2011 U.S. Dist. LEXIS 103222, 24.) Indeed, “the very essence of a settlement is ... ‘a yielding of absolutes and an abandoning of highest hopes’” (*Officers for Justice v. Civil Service Com.* (9th Cir., 1982), 688 F.2d 615, 624) as “it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.” (*See Id.* at 625.) As such, “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits” or “judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” (*Ibid.*)

Although the operative PAGA statute does not set forth the criteria on which a PAGA settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a class action settlement under Fed. R. Civ. P. 23 (“Rule 23”), Code Civ. Proc. § 382 and Rule 3.769, Cal. Rules of Court, as courts within California have approved settlements of PAGA claims encompassed within class action settlements using Rule 23 criteria. However, it is important to underscore that not all Rule 23 factors can be applied, as “a PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action, and therefore does not have to meet the requirements of Rule 23.” (*See Casida v. Sears*

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Holdings Corp (E.D. Cal. Jan. 25, 2012) 2012 U.S. Dist. LEXIS 9302, 8; *Thomas v. Aetna Health of Cal. Inc.* (E.D. Cal. June 2, 2011) 2011 U.S. Dist. LEXIS 59377; *Mendez v. Tween Brands, Inc.*, (E.D. Cal. June 30, 2010) 2010 U.S. Dist. LEXIS 66454, 12.) Based thereon, a court's review of a PAGA settlement necessarily implicates the following unique features that render the approval process completely distinct from approval of a class action settlement under Rule 23 or Code Civ. Proc. § 382 and Rule 3.769, Cal. Rules of Court.

First, in evaluating the adequacy of the settlement amount, the Court's focus is not concerned with the amount which "aggrieved employees" are to receive, but rather, must focus on the total settlement amount in achieving PAGA's objective. Indeed, "[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or class damages" (*Mendez*, 2010 U.S. Dist. LEXIS 66454 at 11) and "[u]nlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." (See *Ochoa-Hernandez v. CJADERS Foods, Inc.*, (N.D. Cal. Apr. 2, 2010) 2010 U.S. Dist. LEXIS 32774, 12.) Second, consistent with the fact that unnamed employees have no property interest in a PAGA claim, "[u]named employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim." (See *Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS 32774, at 13.) Finally, unlike a class action settlement under Rule 23(e) or Code Civ. Proc. § 382, the scope of release permitted in a PAGA settlement is limited. While "judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding" (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986), "the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." (*Id.* at 987.) Thus, scope of a release in a PAGA settlement is necessarily strictly confined to the civil penalties alleged in the complaint.

In deciding whether to grant approval of the proposed Agreement, the primary issue to be decided is whether the settlement is fair, adequate and reasonable. As set forth herein, the proposed settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage and hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the PAGA claim, and (4) it reflects a reasoned compromise based directly on the relative strength and value of the PAGA claim, as well as the risks, expense, complexity and likely duration of further litigation.

Discussion

Defendant will pay the Gross Settlement Amount ("GSA") of \$260,000. (Orshansky Decl., Ex. A, ¶ 17.) The following will be paid out of the GSA: (1) settlement administration costs of no more than \$10,000, (2) and attorneys' fees equaling 33.34% of the GSA (\$86,858) and litigation costs in the amount of \$13,900.77 to Plaintiffs' counsels. (Orshansky Decl., Ex. A, ¶ 20; Orshansky Decl., ¶¶ 22-24; Bradbury Decl., ¶¶ 27-31; Declaration of Daniel Gaines ("Gaines Decl."), ¶¶ 6-11.)^[1] The deduction of these amounts will yield the Net Settlement Amount of approximately \$149,000. Seventy-five percent (75%) of the Net Settlement Amount (approximately \$111,750) will be paid to the LWDA and twenty-five (25%) of the Net Settlement Amount (approximately \$37,310) will be paid to Aggrieved Employees on a pro-rata

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basis. (Orshansky Decl., Ex. A, ¶ 18c; Bradbury Decl., ¶ 23.)

Plaintiffs contend that the settlement amount represents a fair penalty because it constitutes 40% of the Defendant's total estimated exposure of \$637,300. (Bradbury Decl., ¶ 22.) The Court agrees that the settlement amount appears reasonable. The Court also approves Plaintiffs' requests for \$86,858 in attorneys' fees, \$13,900.77 in litigation costs, and no more than \$10,000 in administration costs. The funds from any checks that remain uncashed after 180 days will be tendered to the California Unclaimed Property Fund, pursuant to California Civil Procedure Code § 384, subject to Court approval. (Orshansky Decl., Ex. A, ¶ 24.) Each aggrieved employee will receive an average settlement payment of approximately \$148.05 (Bradbury Decl., ¶ 24.)

Disposition

The Court finds that the PAGA settlement is fair, reasonable, and adequate. The settlement is approved as required under California Labor Code section 2698 et seq. Based on the amount of penalties at issue, the risk of loss on the merits, the risk of being able to prove violations as required by statute for damages purposes, and the Court's statutorily authorized power to reduce penalties, the Agreement represents a sufficient recovery for individuals within the scope of the PAGA claims and the LWDA to further its purpose in enforcing the Labor Code. The Court approves the requested attorneys' fees, litigation costs, and the service awards. The Court also approves of the proposed Notice of Settlement Approval attached to the proposed order. The Court will sign the proposed order submitted with the moving papers.

The Court sets a settlement compliance hearing for January 8, 2026 at 9:00 a.m. in this department. At least 15 days prior to the hearing, counsel shall file a declaration regarding the status of the distribution of the settlement funds. If the Court is satisfied that the settlement funds have been fully distributed, no appearance will be required.

Pursuant to California Rules of Court, rule 3.1312(a), no further written order is necessary. Counsel for Plaintiffs is directed to give notice to all parties of this order.

^[1] Counsel for Plaintiffs Mike Brazil and Timothy Gorham (CounselOne and Gaines & Gaines, APLC) and counsel for Plaintiffs Enrique Serrano and Melissa Serrano (Castle Law) have agreed to split any attorney's fee award, with 50% to CounselOne, PC and Gaines & Gaines, APLC, on the one hand, and 50% to Castle Law: California Employment Counsel, PC, on the other, as agreed upon by counsel. (Orshansky Decl., ¶ 25.)

COURT RULING:

There being no request for oral argument, the Court affirmed the tentative ruling.

Hearing on Motion - Other Settlement Compliance Hearing is scheduled for 01/08/2026 at 09:00 AM in Department 54 at Hall of Justice.

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/s/ G. Toda

G. Toda, Deputy Clerk

By:

Minutes of: 05/20/2025

Entered on: 05/20/2025