

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Hayward Hall of Justice

Ashleigh Garrett
Plaintiff/Petitioner(s)
VS.
Dan Chou et al
Defendant/Respondent
(s)

No. 23CV056472
Date: 10/31/2024
Time: 2:30 PM
Dept: 512
Judge: Elizabeth Riles

ORDER re: Hearing on Motion to
Confirm Settlement filed
by Ashleigh Garrett
(Plaintiff) filed by Ashleigh
Garrett (Plaintiff) on
10/14/2024

Prior to the hearing, the Court issued a tentative ruling, which was uncontested and is affirmed as set forth below.

The Hearing on Motion to Confirm Settlement filed by Ashleigh Garrett (Plaintiff) scheduled for 10/31/2024 is continued to 11/07/2024 at 02:30 PM in Department 512 at Hayward Hall of Justice .

Plaintiff Ashliegh Garrett's ("Plaintiff") unopposed Motion for Approval of PAGA (Cal. Labor Code § 2699 et seq.) Settlement is CONTINUED TO Thursday, 11/7/2024 at 2:30 p.m. in Dept. 512.

Plaintiff filed a declaration on 10/14/2024 declaring that her counsel did not serve the LWDA with fully executed copy of the PAGA Settlement Agreement until 10/14/2024. Therefore, the Court CONTINUES the hearing date to ensure that the LWDA has the full statutory period to respond pursuant to Labor Code § 2699.3(l)(3), should it wish to do so.

The Court provides the following substantive Tentative Ruling addressing the Motion Papers, which the Court will publish in advance of the continued 11/7/2024 hearing date.

Plaintiff Ashliegh Garrett's ("Plaintiff") unopposed Motion for Approval of PAGA (Cal. Labor Code § 2699 et seq.) Settlement is GRANTED.

Plaintiffs' Complaint alleges individual wage and hour claims under the California Labor Code and PAGA representative claims for defendant's alleged violations of various Labor Code

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Garrett (Plaintiff) filed by Ashleigh Garrett (Plaintiff) on
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requirements, including failure to pay overtime wages, failure to provide compliant meal and rest periods, failure to provide sick leave and inaccurate wage statements. Defendants Dan Chou, Have Blue, LLC, and A4 Capital LLC (“Defendants”) disputes these claims. The present Motion only appears to seek approval as to the settlement of the PAGA representative/private attorney general claims.

The PAGA claims settled for \$60,000. (See Kuchinsky Dec. Exh. 3 at § 1.11.) The estimated number of aggrieved employees for PAGA purposes is 116. (Kuchinsky Dec. ¶ 7.) These employees are hourly non-exempt employees of defendants’ Massage Envy business at two locations in Alameda County between 9/14/2022 and 9/19/2024. (Id. at Exh. 3 at §§ 1.4 and 1.21.) The Settlement Agreement states that attorneys’ fees and costs will be up to \$20,000 (33.33% of the settlement amount) and also actual costs of suit up to the amount of \$10,000 (\$8,720 requested in Motion). (Id. at Exh. 3 at § 1.19.) The Settlement Agreement calls for settlement administration costs of \$2,650. (Id. at Exh. 4.) The Kuchinsky Declaration declares that this will leave a net settlement amount of \$28,630, of which \$21,472.50 will be paid to the LWDA and \$7,157.50 will be paid to aggrieved employees. (Id. at ¶ 15.) The average payout to aggrieved employees will thus be approximately \$ 61,70. (Ibid.)

Settlement negotiations involved one day of mediation with mediator Michael Leb, which eventually resulted in a settlement. The court gives "considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in [concluding] that [the] settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129.) (See also In re Sutter Health Uninsured Pricing Cases (2009) 171 Cal.App.4th 495, 504.)

Plaintiff’s counsel calculates defendant’s maximum possible PAGA exposure as \$769,700 with a more realistic maximum recovery of \$113,721.20. (Kuchinsky Dec. ¶¶ 20-50.) The actual settlement amount represents 7.8% of the maximum possible amount and 52.8% of the more realistic recovery amount. In light of the information and evidence provided in Plaintiff’s moving papers, the Court finds the settlement is fair, adequate and reasonable. The motion makes an adequate analysis required by Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, because it provides a reasonable estimate of the number of Class members, the total estimated possible recovery and some explanation why the settlement was reasonable in light thereof.

Plaintiff provides evidence that he timely noticed the LWDA in advance of the hearing of the basic terms of the settlement through the LWDA’s website on 10/9/2024. (Id. at ¶ 10.)

The scope of the release contained at Kuchinsky Dec. Exh. 3 at § 5.1 appears consistent with the law and is sufficiently limited pursuant to the “factual predicate rule.” (Hesse v. Sprint Corp. (9th Cir. 2010) 598 F.3d 581, 590.)

With respect to Plaintiff’s counsels’ request for attorneys’ fees, the Court cannot award attorneys' fees without reviewing information about counsel's hourly rate and the amount of time Plaintiffs’ legal counsel 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

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438, 450-451.)

The court notes that counsel is authorized by the Settlement Agreement to seek 33.33% of the total value of the settlement. When using the percentage of recovery approach, the court's benchmark for fees is 30% of a 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.

Plaintiff's counsel presents evidence in the moving papers that they spent approximately 100.7 hours of work on this action with a lodestar of \$45,850. (*Kuchinsky Dec.* ¶ 56.)

The Court AWARDs Plaintiff's counsel attorneys' fees of \$20,000 and costs of suit in the amount of \$8,720, as requested (See *Kuchinsky Dec. Exh. 5* for costs of suit.). Although 33% of the total settlement is higher than the 30% benchmark for fees, the above award still represents a negative multiplier using the lodestar method, and counsel's requested hourly fees are not excessive.

The Court will order that 10% of any fee and costs awards be kept in the administrator's trust fund until the completion of the distribution process and Court approval of a final accounting.

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 submit a summary accounting how the funds have been distributed to the aggrieved employees 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.

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

Dated : 10/31/2024



Elizabeth Riles / Judge

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Hayward Hall of Justice

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Hayward Hall of Justice 24405 Amador Street, Hayward, CA 94544	FILED Superior Court of California County of Alameda 11/01/2024
PLAINTIFF/PETITIONER: Ashleigh Garrett	Chad Finke, Executive Officer / Clerk of the Court By: <u>M. Arvizu</u> Deputy
DEFENDANT/RESPONDENT: Dan Chou et al	M. Arvizu
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: 23CV056472

I, the below named Executive Officer/Clerk of Court 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 one copy of the Order re: Hearing on Motion to Confirm Settlement filed by Ashleigh Garrett (Plaintiff) filed by Ashleigh Garrett (Plaintiff) on 10/14/2024 entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

Alexei Kuchinsky
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NATALIE FUJIKAWA
nfujikawa@grsm.com

Dated: 11/01/2024

Chad Finke, Executive Officer / Clerk of the Court

By:

M. Arvizu

M. Arvizu, Deputy Clerk