

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
Hayward Hall of Justice

<p>Khayo Sishi et al Plaintiff/Petitioner(s) VS. Eskaton Properties Incorporated et al Defendant/Respondent(s)</p>	<p>No. RG21100764</p> <p>Date: 08/04/2023 Time: 9:00 AM Dept: 512 Judge: Eumi Lee</p> <p style="text-align: center;">ORDER re: Hearing on Motion - Other Preliminary Approval of Settlement</p>
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Matter is not contested and affirmed as set forth below.

The Motion for Final Approval of Settlement filed by Khayo Sishi, Cherra Redd, Sandeep Purewal on 07/05/2023 is Granted.

The unopposed motion of plaintiffs Khayo Sishi, Sandeep Purewal, Vanessa Barber, and Cherra Redd, on behalf of themselves and all others similarly situated, for final approval of class action settlement, is GRANTED.

LEGAL STANDARDS

PAGA actions are in the nature of a qui tam proceeding in that plaintiffs seek civil penalties that would otherwise be recoverable by the LWDA. (Iskanian v. CLS Transportation Los Angeles, LLC (2014) 59 Cal.4th 348, 382 (abrogated on other grounds by Viking River Cruises, Inc. v. Moriana (2022) 142 S.Ct. 1906).) Plaintiffs cannot bring “individual” claims under PAGA; they may only bring the action on behalf of themselves and all other aggrieved employees to vindicate the LWDA’s interest in enforcement of the Labor Code. (Labor Code § 2699(c) & (g)(1); Williams v. Superior Court (2015) 237 Cal.App.4th 642, 649.) Any monetary penalties assessed against the defendant are split between the LWDA and named plaintiffs, with 75 percent going to the LWDA. (Labor Code § 2699(i).) Even outside of the settlement context, the Court has the authority and discretion to diminish penalty awards that would be “unjust, arbitrary and oppressive, or confiscatory.” (Labor Code § 2699(e)(2).)

Representative litigants must submit any settlement of a PAGA representative action for Court approval. (Labor Code § 2699(l)(2).) The standard for approval of these settlements remains almost entirely unelaborated. Unlike government entities represented in False Claims Act qui tam actions, the LWDA does not have a statutory right to intervene or object to settlement. (Compare Gov. Code § 12652(c)(1), (e)(2)(b), (f)(2)(B), with Labor Code § 2699(l).) Because the LWDA is not present at the negotiating table, the Court’s review of a PAGA settlement must make sure that the interests of the LWDA in civil enforcement are defended and that the settlement is fair, adequate, and reasonable under all the circumstances. (Accord, O’Connor v.

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Uber Technologies, Inc. (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133; see also Gov. Code § 12652(e)(2)(B) [requiring False Claims Act qui tam settlements be “fair, adequate, and reasonable under all the circumstances”].)

The Court therefore takes guidance from the context of class action settlements, which must also be found to be “fair, adequate, and reasonable.” (See, e.g., *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244.) In approving class action settlements, the Court considers (1) the relative strength of the plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further litigation of this dispute; (3) the risk of maintaining class status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel that settlement is reasonable; and (7) the presence or lack of any objections to the proposed settlement. (See *id.* at 244-245; *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801.)

At least two of these factors are not analogous in the PAGA settlement context: risk of maintaining class action status and reaction of other aggrieved employees. (Accord, *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal., Aug. 25, 2017, No. 16-CV-04708-LHK) 2017 WL 3670794, at *3 [discussing factors elaborated in *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026].) Class action status is irrelevant because PAGA actions are not certified.

The interest of absent aggrieved employees in a PAGA action is different than the interests of absent class members. On the one hand, an absent aggrieved employee has no more interest in a PAGA litigation than he has in an LWDA enforcement action. On the other hand, absent aggrieved workers have a financial stake in the outcome of the litigation because they stand to benefit from 25 percent of the recovered penalties and the settlement would stand as *res judicata* against any later PAGA action. In class action practice, the financial and due process interests of absent class members are protected through a dual-track settlement approval procedure and the requirement that the parties provide notice to the class. (CRC 3.769.) In PAGA cases, there is no express requirement of a similar procedure. Because the absent aggrieved employees are not real parties in interest, the Court does not find it necessary to create one.

The Court also notes that PAGA claims are often settled in the context of class action claims brought to enforce a right to civil recovery and restitution for the same violations of the Labor Code. In these circumstances, plaintiffs have a financial incentive to minimize the share of the settlement denoted as PAGA penalties so they do not have to share with the LWDA, which is not present at the negotiating table to protect its own interests.

Class action settlements can only be approved if a class can be certified. (See *Anchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 625-627.) A court approving the settlement of a PAGA claim should also consider the preliminary consideration of whether the PAGA plaintiffs are “aggrieved employees” such that they qualify as proper PAGA representative plaintiffs. (Labor Code § 2699(c).)

DISCUSSION

The Court has considered the relative strength of Plaintiff’s case; the risk, expense, complexity, and likely duration of further litigation of this dispute; the amount offered in settlement; the

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extent of discovery completed and stage of the proceedings; and the experience and views of counsel that settlement is reasonable. The Court finds that the proposed gross settlement payment of \$5,500,000 is fair, reasonable and adequate.

The Court approves Plaintiffs' counsel's request for attorneys' fees in the amount of one third of the gross settlement amount, or \$1,833,333.33. The Court has considered the evidence of billing rates and billed time submitted with the motion and cross-checked the requested fees against the "lodestar" calculation, and finds that, given the amount of time spent on the case and the hourly rates for counsel given their level of experience, the amount requested is reasonable.

"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, 555-56.)

Careful judicial review in any particular case does not suggest that the Court suspects that counsel is unscrupulous. The law requires judicial review because, although the interests of counsel and client are aligned in seeking the best settlement possible for the class, the interests of counsel and the class diverge and are in opposition when counsel seeks to recover fees and costs from a common fund.

The Court has reviewed and grants an award of \$30,905.95 to counsel as compensation for litigation costs, which reflect the parties' costs as of the filing of this motion.

The Court has reviewed and approves incentive awards of \$10,000 to plaintiff Khayo Sishi, and \$5,000 each to plaintiffs Sandeep Purewal, Cherra Redd, and Zenaya White, to be paid from the gross settlement amount. The evidence shows that these plaintiffs dedicated significant personal time to this case, remaining fully involved and devoting time and effort to assisting counsel, prosecuting the claims, and finalizing the settlement. Given the risks undertaken and the effort devoted to this litigation, the requested incentive awards to these named plaintiffs are warranted.

The Court ORDERS that 10 percent of the revised fee award (\$183,333.33) shall be kept in the settlement administrator's trust fund until the completion of the distribution process and Court approval of a final accounting. The Administrator shall not release these funds to counsel until the Court determines that these conditions have been met.

The Court hereby SETS A COMPLIANCE HEARING for November 15, 2023, at 3:00 p.m., in Department 512, Hayward Hall of Justice, at which time the Court will consider evidence that

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the distribution process is complete and that a final accounting may be approved.

The Court will sign the amended proposed Order lodged on August 1, 2023.

The Court orders counsel to obtain a copy of this order from the eCourt portal.

Dated: 08/04/2023

A handwritten signature in black ink, appearing to read 'Eumi Lee', written in a cursive style.

Eumi Lee / Judge