Calendar Line 3

Case Name: Uribe v. Auto Driveaway Franchise Systems, LLC (Class Action/PAGA)
Case No.: 23CV417146

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on July 3, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

IV. INTRODUCTION

This is a class and representative action arising out of alleged wage and hour violations. The operative First Amended Class Action Complaint for Damages ("FAC"), filed on October 9, 2023, sets forth the following causes of action: (1) Minimum Wage Violations (Labor Code, §§ 1182.12, 1194, 1194.2, 1197); (2) Failure to Pay All Overtime Wages (Labor Code, §§ 204, 510, 558, 1194, 1198); (3) Meal Period Violations (Labor Code, §§ 226.6 & 512); (4) Rest Period Violations (Labor Code, §§ 227.6, 516); (5) Wage Statement Violations (Labor Code, § 226, *et seq.*); (6) Waiting Time Penalties (Labor Code, §§ 201-203); (7) Unfair Competition (Bus. & Prof. Code, § 17200, *et seq.*); (8) Failure to Reimburse for Necessary Business Expenses (Labor Code, § 2802); and (9) Civil Penalties Under the Private Attorney General Act (Labor Code, § 2698, *et seq.*).

The parties have reached a settlement. Plaintiff Jessica Uribe ("Plaintiff") now moves for preliminary approval of the settlement. The motion is unopposed.

V. LEGAL STANDARD

Generally, "questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

> In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement."

(*Wershba*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid*., quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

> The burden is on the proponent of the settlement to show that it is fair and reasonable. However "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."

(*Wershba*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1802.)

Similar to its review of class action settlements, the Court must "determine independently whether a PAGA settlement is fair and reasonable," to protect "the interests of the public and the LWDA in the enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76-77.) It must make this assessment "in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Id.* at p. 77.)

VI. DISCUSSION

A. Provisions of the Settlement

This case has been settled on behalf of the following class:

> All current and former non-exempt employees of Defendant Auto Driveway Franchise Systems, LLC ["Defendant"] who worked for Defendant ("Class Members") at any time during the period of June 9, 2022 through January 11, 2024 (the "Class Period").

(Declaration of Daniel J. Brown in Support of Plaintiffs' Motion for Preliminary Approval of Settlement ("Brown Dec."), Ex. 2 ("Settlement Agreement"), ¶ 1.)

The settlement also includes a subset PAGA Class of aggrieved employees [hereinafter "PAGA Employees"] who are defined as "[a]ll current and former non-exempt employees of Defendant Auto Driveway Franchise Systems, LLC who worked for Defendant at any time during the period of June 9, 2022 through January 11, 2024. (Settlement Agreement, ¶ 2.)

According to the terms of the settlement, Defendant will pay a gross settlement amount of $230,000. (Settlement Agreement, ¶ 4.) The gross settlement amount includes attorney fees up to $75,900 (1/3 of the gross settlement amount), litigation costs not to exceed $20,000, a PAGA allocation of $5,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Employees as individual PAGA payments), a service award up to $5,000, and settlement administration costs not to exceed $5,990. (Settlement Agreement, ¶¶ 4, 4(B)(ii)-4(B)(v).) The net settlement amount will be distributed to participating class members on pro rata basis according to the number of workweeks they were employed by Defendant. (Settlement Agreement, ¶ 5, 5(A)(ii).) Funds from uncashed payments will be transferred to Truckers Against Trafficking as the designated *cy pres*. (Settlement Agreement, ¶ 5(C).) The court approves the designated *cy pres* recipient.[3]

In exchange for the settlement, the class members agree to release Defendant from all claims that were alleged based on the facts pleaded in the FAC occurring during the Class Period. (Settlement Agreement, ¶ 3(C).) PAGA Employees agree to release Defendant, and related entities and persons, from all claims for PAGA civil penalties that were alleged based on facts pleaded in the FAC and/or the notice Plaintiff sent to the LWDA. (Settlement Agreement, ¶ 3(D).)

B. Fairness of the Settlement

Plaintiff states that the settlement was reached through discovery, analysis, and mediation with David Lowe, Esq. (Brown Dec., ¶¶ 10-11.) In anticipation of mediation, the

[3] Code of Civil Procedure section 384 requires that the unpaid residue or abandoned class member funds be paid to "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent."

parties conducted significant investigation of the facts through informal discovery, and Defendant produced a class list, time and pay records, class data points, and related documents and information. (Brown Dec., ¶ 10.) Plaintiff conducted a detailed review of the payroll records, time records, and other information provided by Defendant. (*Ibid.*) Defendant represented that there are approximately 133 Class Members who worked approximately 6,921 workweeks within the Class Period. (Brown Dec. ¶ 12; Settlement Agreement, ¶ 4(D).)

Plaintiff does not clearly indicate an amount for Defendant's estimated total maximum exposure. Nevertheless, Plaintiff provide amounts for Defendant's estimated exposure in relation to particular claims, as follows: meal period violations ($127,360.00); rest period violations ($352,230.00); overtime pay violations ($21,545.49); reimbursement violations ($138,800.00); wage statement violations ($109,600.00); and waiting time violations ($298,022.40). (Settlement Agreement, ¶¶ 15-19.) The sum of these figures is $1,047,557.89.

Based on this sum, the gross settlement amount represents approximately 22% of the potential maximum recovery. Thus, the proposed settlement is within the range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D.Cal., Feb. 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist.LEXIS 30201, at *41-42 [citing cases listing range of five to 25-35 percent of the maximum total exposure].)

Therefore, the court finds the terms of the settlement to be fair. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation.

C. Incentive Award, Fees, and Costs

Plaintiff requests an enhancement award in the amount of $5,000 for the class representative.

> The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit. Criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

> These "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit.

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks, brackets, ellipses, and citations omitted.)

Plaintiff filed a declaration generally describing her participation in the lawsuit. Plaintiff states that she gathered various documents, communicated with her attorneys regarding various aspects of this litigation, and reviewed and analyzed documents related to this litigation. (Declaration of Jessica Uribe in Support of Approval of Class Action Settlement ("Uribe Dec."), ¶ 4.) Plaintiff estimates that she spent approximately 17 hours of her time in connection with this litigation. (*Ibid.*)

Moreover, Plaintiff undertook risk by putting her name on the case because it might impact her future employment. (Uribe Dec., ¶ 5; see also *Covillo v. Specialty's Café* (N.D.Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].)

For the forgoing reasons, the court finds that a service award to Plaintiff is appropriate. However, the requested amount of $5,000 is more than the court typically awards for the amount of time Plaintiff spent in connection with this action. Therefore, the court approves an enhancement award in the total amount of $2,500.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel will seek attorney fees up to $75,000 (1/3 of the gross settlement amount) and litigation costs not to exceed $20,000. Plaintiffs' counsel shall submit lodestar information (including hourly rate and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiffs' counsel shall also submit evidence of actual costs incurred as well as evidence of any settlement administration costs.

D. Conditional Certification of Class

Plaintiff requests that the class be conditionally certified for purposes of the settlement. Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order

approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court …." As interpreted by the California Supreme Court, section 382 requires: (1) an ascertainable class; and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (*Sav-On*).)

The "community-of-interest" requirement encompasses three factors: (1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and, (3) class representatives who can adequately represent the class. (*Sav-On, supra*, 34 Cal.4th at p. 326.) "Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing." (*Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

As explained by the California Supreme Court,

> The certification question is essentially a procedural one that does not ask whether an action is legally or factually meritorious. A trial court ruling on a certification motion determines whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.

(*Sav-On, supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

Plaintiff states that there are approximately 133 class members that can be determined from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

E. Class Notice

The content of a class notice is subject to court approval. "If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court." (Cal. Rules of Court, rule 3.769(f).)

The notice generally complies with the requirements for class notice. (Brown Dec., Ex. B.) It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion.

However, the final paragraph beginning on page 1 and the section entitled "What is the next step?" on page 5 must be amended to include the following language regarding the final approval hearing:

> Class members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). Instructions for appearing remotely are provided at https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized.

The parties are ordered to submit the amended class notice to the court for approval prior to mailing.

VII. CONCLUSION

The motion for preliminary approval of the class and representative action settlement is GRANTED, subject to the court's approval of the amended class notice. The final approval hearing is set for January 8, 2025.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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