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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

SHARONDA TAYLOR, TATIANNA
SMITH, and ZENOBI A MILLIGAN,
individually and on behalf of all others
similarly situated,

Representative Plaintiffs,

vs.

TESLA, INC. doing business in California as
TESLA MOTORS, INC.; and DOES 1
THROUGH 50, INCLUSIVE,

Defendants.

Case No.: 23CV028922

**SUPPLEMENTAL BRIEFING OF
PLAINTIFFS TAYLOR AND MILLIGAN
ISO PAGA SETTLEMENT APPROVAL
ADDRESSING QUESTIONS RE TATIANNA
SMITH**

*[Concurrently filed with Plaintiffs' Supporting
Declaration]*

Date: August 8, 2025

Time: 9:30 a.m.

Location: Dept. 15

Judge: Hon. Peter Borkon

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INTRODUCTION

In its ruling of June 17, 2025, regarding “Issue #1,” the Court required supplemental briefing on the following issues before granting PAGA settlement approval:

1. Clarify whether Tatianna Smith is still a plaintiff in this case
2. Clarify whether Tatianna Smith is still represented by Bryan Schwartz and Matthew Helland in this case
3. Address whether Tatianna Smith must have an attorney if she is asserting claims on behalf of the LWDA under PAGA
4. Address what control a plaintiff has over a claim on behalf of the LWDA under PAGA
5. Address the issue of control by a single plaintiff where there are three individuals representing the LWDA in the same case
6. Distinguish between Smith’s complaints about counsel and Smith’s objections to the substantive terms of the settlement, and address the merits of each

DISCUSSION

As discussed in greater detail below, as an unrepresented non-attorney, Tatianna Smith cannot litigate PAGA claims in court without engaging in the unauthorized practice of law. Even if Ms. Smith were able to assert PAGA claims here, one Plaintiff has no authority to undo a settlement releasing Labor Workforce Development Agency (LWDA) claims reached by another plaintiff in a PAGA action. On their own merits, the concerns identified by Ms. Smith present no obstacle to settlement approval. Ms. Smith is still named as a Plaintiff in this case, because she has not been dismissed, though her dismissal is now warranted.

I. An Unrepresented Non-Attorney Cannot Litigate PAGA Claims.

Because a PAGA plaintiff represents the interests of others, namely the LWDA’s interests, Tatianna Smith, as an unrepresented non-attorney, cannot assert PAGA claims in court without engaging in the unauthorized practice of law.

1 Following the Court’s order of May 9, 2025, which granted the Motion of Plaintiffs’ Counsel to
2 Be Relieved as Counsel for Tatianna Smith, Tatianna Smith is no longer represented by Plaintiffs’
3 counsel. On May 9, 2025, the Court ordered Ms. Smith to identify alternative counsel by May 30, 2025,
4 or be subject to dismissal on a motion by Tesla. Plaintiffs’ counsel served these orders on Ms. Smith on
5 the same date, and on May 21, 2025, served the motions for settlement approval and fees on her. No
6 other counsel has entered any appearance for Ms. Smith. Instead, on June 12, 2025, she wrote to the
7 Court *pro se*, from the same email where she was served with the withdrawal of counsel and settlement-
8 related motions.

9 California law is “well settled that persons may represent their own interests in legal proceedings
10 but may not practice law for another in this State unless they are active members of the state bar.” *Drake*
11 *v. Super. Ct.* (1994) 21 Cal.App.4th 1826, 1830 (citation modified, quoting *J.W. v. Super. Ct.* (1993) 17
12 Cal.App.4th 958, 965). A PAGA plaintiff necessarily represents the interests of others, because “[a]n
13 employee who brings a PAGA action to recover civil penalties acts ‘as the proxy or agent’ of the state.”
14 *Adolph v. Uber Techs., Inc.* (2023) 14 Cal.5th 1104, 1116 (quoting *Iskanian v. CLS Transp. L.A., LLC*
15 (2014) 59 Cal.4th 348, 380). In this capacity, the employee can recover civil penalties “on behalf of the
16 employee *and other current or former employees.*” Lab. Code § 2699(a) (italics added).

17 Accordingly, an unrepresented non-attorney cannot assert PAGA claims in court without
18 engaging in the unauthorized practice of law. While no published California state court opinion has
19 addressed the issue, at least two federal district courts in California have reached this conclusion. *See*
20 *Ibrahim v. Morgan S., Inc.* (C.D. Cal., Oct. 17, 2019, No. 18-4514-DMG) 2018 WL 5095120, at *3;
21 *Sherman v. CLP Res., Inc.* (C.D. Cal., Aug. 13, 2015, No. 12-8080-GW), 2015 WL 13542749, at *3. As
22 an unrepresented non-attorney, Tatianna Smith can no longer litigate PAGA claims in this action.

23 **II. A PAGA Plaintiff Has No Authority to Undo a Settlement on Behalf of the LWDA**
24 **Reached by Another Plaintiff.**

25 In *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, the California Supreme Court held that a PAGA
26 plaintiff does not have the authority “to intervene in the ongoing PAGA action of another plaintiff
27 asserting overlapping claims, to require a court to consider objections to a proposed settlement in that
28

1 overlapping action, and to move to vacate the judgment in that action.” *Turrieta*, 16 Cal.5th at 677.
2 *Turrieta* did not address a dispute between plaintiffs in the same action. *See id.* at 699. Nevertheless, the
3 principles underlying the *Turrieta* decision compel the conclusion that PAGA does not permit objections
4 like those submitted by Ms. Smith.

5 First, like two plaintiffs in overlapping PAGA actions, two plaintiffs in the same PAGA action
6 represent the same interest: that of the LWDA. In *Turrieta*, one PAGA plaintiff, Olson, sought to
7 intervene in the action of another plaintiff, *Turrieta*, asserting overlapping claims. *Id.* at 676-77. The
8 court began by analyzing the statutory language. *Id.* at 688. Although PAGA contains “no language
9 expressly referencing intervention,” as the court observed, “the power to commence a PAGA action
10 necessarily implies the power to prosecute the action,” which includes those powers that are “reasonably
11 necessary to a proper exercise of the power to commence and prosecute a PAGA action for recovery of
12 civil penalties on the state’s behalf.” *Id.* at 688-89. Such powers are implied because “[b]y facilitating
13 the effective prosecution of representative PAGA actions, they further the Legislature’s objectives in
14 authorizing such actions: enforcing the state’s interest in penalizing and deterring employers who violate
15 California’s labor laws.” *Id.* The court therefore considered whether allowing Olson to intervene in
16 *Turrieta*’s PAGA action “would further the Legislature’s objectives in authorizing an aggrieved
17 employee to commence and prosecute a PAGA action.” *Id.* at 690. The court noted that by “attempting
18 to vindicate the LWDA’s interest in enforcing the Labor Code,” *Turrieta*’s PAGA action already
19 “serve[d] these statutory purposes.” *Id.* (citation modified). The court concluded that Olson’s
20 intervention to assert “*the very same state interests* that *Turrieta* already represents” would not be
21 necessary to effectuate the Legislature’s objectives in authorizing PAGA actions. *Id.* (italics in original).
22 Ultimately, because one plaintiff (*Turrieta*) represented the LWDA’s interests, there was no need to hear
23 from another plaintiff (Olson) asserting those interests, if the LWDA did not object and the court was
24 inclined to approve *Turrieta*’s resolution of the LWDA’s claims.

25 The same considerations apply in a situation where one PAGA plaintiff opposes a settlement
26 reached by other plaintiffs in the same PAGA action. Both plaintiffs represent the same interest: that of
27 the LWDA. *See id.* at 682; *see also Moniz v. Adecco USA, Inc.* (2025) 109 Cal.App.5th 317, 334 (“The
28 interest at stake in a PAGA action is that of the state, not the employees themselves. Thus, unlike a class

1 action where an absent class member can opt out and represent his or her own interests, it is not possible
2 to opt out of a PAGA suit.”). Accordingly, even if Ms. Smith were represented by counsel and able to
3 represent the LWDA’s interests in this case, allowing her to oppose the settlement reached by Plaintiffs
4 Taylor and Milligan would not be “reasonably necessary to effectuate the Legislature’s objectives in
5 authorizing PAGA actions.” *See Turrieta*, 16 Cal.5th at 690.

6 Second, PAGA provides for oversight only by the courts and the LWDA. After considering the
7 text of PAGA, *Turrieta* looked to the broader statutory scheme for further guidance. *Id.* at 691. The
8 court observed, “The existence of detailed provisions regarding *the state’s* involvement in an aggrieved
9 employee’s PAGA action, contrasted with the absence of *any* provision regarding involvement of
10 anyone else, suggests the Legislature neither envisioned nor intended that the scope of a duly deputized
11 PAGA plaintiff’s power to prosecute claims on behalf of the state includes the power to intervene in the
12 separate PAGA action of another plaintiff....” *Id.* at 692 (italics in original). Olson argued that allowing
13 intervention was necessary to help courts “sniff out bad deals and assess the fairness of a proposed
14 settlement.” *Id.* at 693 (citation modified). The Supreme Court rejected this argument, explaining that
15 the “actions of the Legislature and the explanatory comments in the legislative history – which contain
16 no mention or suggestion of oversight by anyone else – indicate the Legislature does not share Olson’s
17 view.” *Id.* at 697 (italics in original, internal quotation marks omitted). Here, similarly, a PAGA plaintiff
18 lacks authority to undo a settlement reached by another plaintiff, even one named in the same PAGA
19 action, because PAGA does not provide for this kind of oversight.

20 Third, allowing an individual PAGA plaintiff (expressly seeking a greater enhancement
21 payment) to undo a settlement reached by another plaintiff in the same PAGA action would make the
22 effective prosecution of PAGA actions more difficult, undermining the Legislature’s objectives. In
23 *Turrieta*, the court noted that allowing intervention in a PAGA action “would create a situation where a
24 single real party in interest – the state – is represented in a single action by multiple proxies or
25 agents....” *Id.* at 699 (internal quotation marks omitted). If the various proxies disagree about how to
26 proceed, “several questions would arise: Which plaintiff controls and directs the litigation and the
27 settlement process? Do all plaintiffs have equal authority? May any one of them unilaterally settle the
28 claims on the state’s behalf without agreement of, or in the face of affirmative opposition from, other

proxies?” *Id.* at 699. As the court acknowledged, PAGA “offers no guidance on these questions.” *Id.* Allowing intervention, therefore, “clearly implicates concerns about curtailing PAGA litigation by making it more difficult.” *Id.* Here, allowing one PAGA plaintiff to undo or oppose the settlement reached by another plaintiff in the same action implicates the same concerns about the difficulty of pursuing PAGA litigation, and therefore runs counter to the Legislature’s objectives. *See id.*; *see also Williams v. Super. Ct.* (2017) 3 Cal.5th 531, 548 (“Hurdles that impede the effective prosecution of representative PAGA actions undermine the Legislature’s objectives.”).

For the same reasons that a PAGA plaintiff has no authority to intervene in the overlapping PAGA action of another plaintiff, a PAGA plaintiff cannot undo a settlement reached by another plaintiff in the same action. *See id.* at 705. Therefore, even to the extent Ms. Smith is still a plaintiff in this case, since she has not been formally dismissed, and even if she were represented by separate counsel, she lacks the authority to undo the settlement reached by Plaintiffs Taylor and Milligan.

III. Ms. Smith’s Complaints About Counsel and Objections to the Substantive Terms of the Settlement Present No Obstacle to Settlement Approval.

A. Complaints About Counsel

Plaintiffs’ counsel did not misrepresent the settlement proceedings or the terms of the settlement agreement, either in statements to Ms. Smith or in the declarations provided in support of Plaintiffs’ Motion for Settlement Approval and Motion for Attorneys’ Fees and Costs. (Schwartz Decl. ¶ 3). Ms. Smith was not excluded from participating in the mediation, and she in fact attended the mediation by Zoom. (Schwartz Decl. ¶ 4). Plaintiffs’ counsel never bars clients from attending mediation as a matter of policy. *Id.*

Ms. Smith also claims that Plaintiffs’ counsel told her that she would receive an enhancement of around \$20,000. Plaintiffs’ counsel will not disclose past attorney-client communications with Ms. Smith. *See Aceves v. Super. Ct.* (1996) 51 Cal.App.4th 584. That said, Plaintiffs’ counsel never guarantees clients any kind of recovery amount as a matter of policy, and indeed, expressly disclaims any guarantees or warranties as to the outcome of any case in all of the firm’s representation agreements. (Schwartz Decl. ¶ 5). Finally, although Ms. Smith characterizes Plaintiffs’ counsel’s Motion to Be Relieved as Counsel as “retaliatory,” she does not identify any improper motives for withdrawal or deny

1 that she rejected the settlement which counsel has moved this Court to approve, while the other
2 Plaintiffs still represented by counsel accepted it.

3 **B. Objections to the Substantive Terms of the Settlement**

4 Ms. Smith's only substantive objection to the proposed settlement is that the amount of the
5 Plaintiff enhancement payments is too low, compared to the amount of attorneys' fees. This objection
6 does not address any of the arguments made in Plaintiffs' Counsel's Motion for Settlement Approval
7 and Motion for Attorneys' Fees and Costs, including that Plaintiffs' counsel is requesting fees
8 significantly less than their lodestar calculation, which is presumptively reasonable and should be the
9 basis for the fee award (as briefed previously), and that the settlement includes unprecedented and
10 valuable injunctive relief. Further, Ms. Smith offers no authority supporting the reasonableness of the
11 kind of enhancement she is seeking. An incentive award of \$20,000 for each representative plaintiff
12 would be over 300 times the average net payout to a PAGA group member in this case, and not one that
13 undersigned counsel supports. *See Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th
14 785, 805 (holding that an enhancement of \$25,000 was unreasonable because it was over 44 times the
15 average payout to a class member). The \$2,500 enhancements that counsel recommends, as discussed in
16 prior briefing, are well within the range of standard service awards approved by this and other courts.

17 **IV. Tatianna Smith's PAGA Claim Should be Dismissed when the Settlement is Approved.**

18 In its May 9, 2025 Order, the Court notified Ms. Smith to obtain other counsel by May 30, 2025
19 or be dismissed from the action. No other counsel appeared for Ms. Smith by May 30th, or as of the date
20 of the filing of this brief. When the PAGA settlement is approved, all LWDA claims based upon the
21 matters at issue in the case (involving personnel file requests for 766 people) will be dismissed,
22 including Ms. Smith's.

23 **V. Conclusion**

24 For the foregoing reasons, and those in Plaintiffs' settlement approval and fees motions, the
25 PAGA settlement and fees should be approved without further delay.

26 Dated: August 1, 2025

/s/ Bryan Schwartz

27 BRYAN SCHWARTZ LAW, P.C.

28 Counsel for Representative Plaintiffs