

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited		Entered by:
TITLE OF CASE: Tina Lara vs. Cannable, LLC / COMPLEX / CLASS ACTION		
LAW AND MOTION MINUTE ORDER		Case Number: 22CECG01618

Hearing Date: **May 22, 2024** Hearing Type: **Motion - PAGA Settlement**
 Department: **501** Judge/Temp. Judge: **Tharpe, D Tyler**
 Court Clerk: **Nunez, Sonia** Reporter/Tape: **Not Reported**

Appearing Parties:	
Plaintiff:	Defendant:
Counsel: No Appearances	Counsel: No Appearances

☐ Off Calendar

☐ Continued to ☐ Set for ___ at ___ Dept. ___ for ___

☐ Submitted on points and authorities with/without argument. ☐ Matter is argued and submitted.

☐ Upon filing of points and authorities.

☐ Motion is granted ☐ in part and denied in part. ☐ Motion is denied ☐ with/without prejudice.

[X] No Party requested oral argument pursuant to Local Rule 2.2.5 and CRC 3.1308(a)(1).

[X] Tentative ruling becomes the order of the court. No further order is necessary.

[X] Pursuant to CRC 3.1312(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.

[X] Service by the clerk will constitute notice of the order.

[X] See attached copy of the Tentative Ruling.

☐ Judgment debtor ___ sworn and examined.

☐ Judgment debtor ___ failed to appear.
 Bench warrant issued in the amount of \$ ___

JUDGMENT:

☐ Money damages ☐ Default ☐ Other ___ entered in the amount of:
 Principal \$___ Interest \$___ Costs \$___ Attorney fees \$___ Total \$___
☐ Claim of exemption ☐ granted ☐ denied. Court orders withholdings modified to \$___ per ___

FURTHER, COURT ORDERS:

☐ Monies held by levying officer to be ☐ released to judgment creditor. ☐ returned to judgment debtor.
☐ \$___ to be released to judgment creditor and balance returned to judgment debtor.
☐ Levying Officer, County of ___, notified. ☐ Writ to issue
☐ Notice to be filed within 15 days. ☐ Restitution of Premises
☐ Other: ___

(36)

Tentative Ruling

Re: ***Lara v. Cannable, LLC, et al.***
Superior Court Case No. 22CECG01618

Hearing Date: May 22, 2024 (Dept. 501)

Motion: by Plaintiff for Order Approving Settlement of Claims Brought Pursuant to the Private Attorneys General Act

Tentative Ruling:

To grant plaintiff's motion for an order approving the PAGA settlement, attorney's fees and costs, and reimbursement of settlement administration expenses, and entering judgment thereon.

If oral argument is timely requested, such argument will be entertained at 2:30 p.m. (rather than 3:30 p.m.).

Explanation:

1. Introduction

"The superior court shall review and approve any settlement of any civil action filed pursuant to [PAGA]. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." (Lab. Code, § 2699, subd. (i)(2).)

There are very few cases discussing section 2699, and none discuss the standards under which a court is to assess a settlement. Nor has the legislature provided any structure or standards for making the assessment. Published California case law has not done so either. However, the common practice when ruling on PAGA settlements seems to be to follow existing law on class action settlements.

2. Notice to LWDA

Labor Code section 2699, subdivision (i)(2), states: "The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court."

Here, plaintiff's counsel states that notice of the settlement was given to the LWDA on February 16, 2024. (Levant Decl., ¶ 45, Exh. 3.) Therefore, plaintiff has complied with the requirement to give notice of the settlement to the LWDA.

3. Is the Settlement Fair, Adequate and Reasonable?

As discussed above, there is no authority regarding what constitutes a fair and reasonable settlement under PAGA. However, the same standards appear to apply to PAGA settlements as to settlements of class actions.

"[A court must be] provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 133.)

In *Clark v. American Residential Services, LLC* (2009) 175 Cal. App. 4th 785, the Court of Appeal stated that, "[the] court [must] receive and consider sufficient information on a core legal issue, affecting the strength of the case for plaintiffs on the merits; to make the requisite independent assessment of the reasonableness of the terms of the settlement." (*Id.* at p. 798.)

"The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include '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 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.' This list 'is not exhaustive and should be tailored to each case.' Relying on an earlier edition of Newberg on Class Actions, the court in *Dunk* asserted that '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.'" (*Kullar, supra*, at p. 128, internal citations omitted.)

"[N]either *Dunk*, *7-Eleven*, nor any other case suggests that the court may determine the adequacy of a class action settlement without independently satisfying itself that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation... [I]n the final analysis it is the court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation. 'The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement.' 'The courts are supposed to be the guardians of the class.'" (*Ibid*, internal citations omitted.)

"'"The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.'" The court 'must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case,' but nonetheless it 'must eschew any rubber stamp approval in favor of an independent evaluation.'" (*Id.* at p. 130, internal citations omitted.)

Also, since a judgment in an action under PAGA is binding on the government and nonparty employees, the court must be careful not to approve a settlement of a PAGA claim unless it has determined that it is actually fair and reasonable. "A plaintiff who brings a PAGA claim 'does so as the proxy or agent of the state's labor law enforcement agencies.' Because the 'plaintiff represents the same legal right and interest as state labor law enforcement agencies,' the California Supreme Court has found that 'a judgment in an employee's action under the act binds not only that employee but also the state labor law enforcement agencies.' In short, because the employee's PAGA action acts as a 'substitute' for a governmental action, the judgment binds all those who would be bound by an action brought by the government, including nonparty employees. Thus, in a lawsuit which asserts a PAGA claims and seeks class certification for labor/wage claims, even class members who opt out of the class would be bound by an adverse PAGA judgment or settlement. For that reason, the LWDA rightly has stressed that: [¶] [']It is thus important that when a PAGA claim is settled, the relief provided for under the PAGA be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public and, in the context of a class action, the court evaluate whether the settlement meets the standards of being 'fundamentally fair, reasonable, and adequate' with reference to the public policies underlying the PAGA.[']" (*O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133, internal citations omitted.)

"It is important to note that where plaintiffs bring a PAGA representative claim, they take on a special responsibility to their fellow aggrieved workers who are effectively bound by any judgment. Such a plaintiff also owes responsibility to the public at large; they act, as the statute's name suggests, as a private attorney general, and 75% of the penalties go to the LWDA 'for enforcement of labor laws ... and for education of employers and employees about their rights and responsibilities under this code.' This duty imposed upon the PAGA representative is especially significant given that PAGA does not require class action procedures, such as notice and opt-out rights. The Court must be cognizant of the risk that despite this responsibility, there may be a temptation to include a PAGA claim in a lawsuit to be used merely as a bargaining chip, wherein the rights of individuals who may not even be members of the class and the public may be waived for little additional consideration in order to induce the employer to agree to a settlement with the class." (*Id.* at p.1134, internal citations omitted.)

- A. Strength of Case:** Plaintiff's counsel contends that the evidence collected establishes that employment violations occurred, but the violations were not systematic and not uniform across all of the aggrieved employees. Thus, it would be difficult to prove many of the claims, such as the off-the-clock work and rest break claims, because of the lack of records regarding work done off the clock and establishing missed rest breaks. Counsel would have to interview every aggrieved employee to determine how many of them worked off the clock, and for how many hours. For similar reasons, the unreimbursed expenses would also be difficult to prove. Therefore, while it does appear that plaintiff had a good chance of prevailing on various claims, the total value of the claims was probably not as high as plaintiff's counsel had originally estimated. Therefore, it was not unreasonable to settle for less than the full potential value of the claims. This factor weighs in favor of settlement.

- B. Risks of Litigating Case through Trial:** In light of the weaknesses of some of plaintiff's claims as discussed above, there was a real risk that plaintiff might not prevail at trial, or might recover too little to justify the cost of litigating the case. Thus, it was not unreasonable to settle the case early and minimize the expense and risk of continued litigation. This factor weighs in favor of settlement.
- C. Amount of Settlement:** Plaintiff is settling the PAGA claims for a gross payment of \$90,000, with \$30,000 deducted for attorney's fees, \$10,806.32 for costs, and \$3,150 for administration fees. 75%, or \$34,532.76 of the net settlement will be paid to the LWDA as required by statute, and the aggrieved employees will receive the remaining 25%, or \$11,510.92 apportioned amount them on a pro rata basis. There are approximately 130 aggrieved employees, and the average payment to each employee is estimated to be just under \$90. Plaintiff's counsel states that the maximum amount that plaintiff could have obtained for PAGA penalties under his wage and hour causes of action would have been \$594,220. He reached this estimate based on an assumption that the employment violations were systemic across all, or at least, half, of the aggrieved employees. However, plaintiff's counsel claims that this maximum amount is not realistic and overly optimistic given some of the problems with proving the claims, the fact that the violations were not systemic and uniform across all employees, and the lack of records regarding certain claims. Thus, he contends that a more realistic total penalty exposure is approximately \$203,300. He formulates this calculation by applying the "catch-all" \$100 penalty specified in Labor Code section 2699, subdivision (f)(2) to each PAGA Pay Period (\$100 x 2033 pay periods). Plaintiff's counsel claims that settling the claims for \$90,000 is fair, adequate, and reasonable under the circumstances, because this allows for a recovery of nearly \$100 in penalties for every other PAGA Pay Period. Given the circumstances, the amount of the settlement does appear to be fair and reasonable, even though it is about 15% of the recovery if plaintiff were able to prove all of her claims at trial. Thus, this factor weighs in favor of approving the settlement.
- D. Extent of Discovery and Stage of Proceedings:** There was no formal discovery before the settlement was reached, and the settlement was reached at an early stage of the proceedings. However, defendant did produce records for a significant sampling of defendants' employees, which were apparently enough to allow plaintiff's counsel to assess the strengths and weaknesses of the claims. The settlement was also reached after arm's length negotiations between the parties, which suggests that it is fair and reached without collusion. Thus, this factor weighs in favor of approving the settlement.
- E. Experience and Views of Counsel:** Plaintiff's counsel submits evidence showing that their firm, Moon Law Group, PC, has been practicing employment and labor law for almost a decade and presently exclusively focuses on plaintiffs' employment law. The firm has successfully settled more than 300 class action matters and have tried both bench and jury trials relating to employment matters. Counsel, H. Scott Leviant has participated in the litigation of more than 500 class actions, and more than 90% of those cases were wage and hour matters. The other attorneys on this matter also appear to have extensive experience in class action matters and employment matters. Thus, plaintiffs' counsel appears to be highly experienced in litigating the types of matters

related to this case. Plaintiff's counsel states that he believes that the settlement is fair, reasonable, and adequate. Given Mr. Leviant's extensive experience, this factor supports approval of the settlement.

- F. Government Participation:** No government entity participated in the case, so this factor does not favor either approval or disapproval of the settlement.
- G. Attorney's Fees and Costs:** Plaintiff's counsel has requested an award of \$30,000 in attorney's fees, which is about 1/3 of the gross settlement. Plaintiff's counsel also seeks another \$10,806.32 in costs. Courts have approved awards of fees in class actions that are based on a percentage of the total common fund recovery. (*Laffitte v. Robert Half Internat.* (2016) 1 Cal.5th 480, 503.) It appears that the same reasoning would apply to PAGA settlements, which bear similarities to class actions. Thus, plaintiff's counsel's request for an award based on a percentage of the total gross settlement is not necessarily unreasonable. Additionally, plaintiff's counsel provides evidence to show that the lodestar calculation incurred by plaintiff's counsel is approximately \$65,557.50. This is based on the following hourly rates and expenditure of time of counsel as follows: (1) Kane Moon, hourly rate of \$725, 21.3 hours; (2) H. Scott Leviant, hourly rate of \$925, 46.8 hours, and (3) Mariam Ghazaryan, hourly rate of \$375, 18.2 hours. Consequently, the firm has spent a total of 86.3 hours on this matter. Counsel further provides a summary of the costs incurred in this case, and the costs appear to be reasonable. Thus, the attorneys' fees and costs request appear to be fair and reasonable.
- H. Payment to Named Plaintiff:** No information is provided regarding any payment that the individual plaintiff will be receiving. Therefore, this factor does not weigh for or against approval of the settlement.
- I. Administration Costs:** The settlement administrator, ILYM Group, Inc., will receive an amount of \$3,150 to cover administration costs. This appears to be reasonable and the factor weighs in favor of approval of the settlement.
- J. Conclusion:** The settlement appears to be fair, adequate and reasonable, and therefore the court grants the motion for approval of the settlement.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DTT on 5/20/2024
(Judge's initials) (Date)

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-2000	<i>FOR COURT USE ONLY</i>
TITLE OF CASE: Tina Lara vs. Cannable, LLC / COMPLEX / CLASS ACTION	
CLERK'S CERTIFICATE OF MAILING	CASE NUMBER: 22CECG01618

I certify that I am not a party to this cause and that a true copy of the:

Minute order and tentative ruling

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: **Fresno, California 93724-0002**

On Date: **05/23/2024**

Clerk, by *S. Nunez*, Deputy
S. Nunez

Kane Moon Moon Law Group PC 1055 W. Seventh St., Suite 1880 Los Angeles, CA 90017
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Diane E. Coderniz Baker Manock & Jensen, PC 5260 N. Palm Ave, Suite 201 Fresno, CA 93704

☐ Clerk's Certificate of Mailing Additional Address Page Attached