

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited		Entered by:
TITLE OF CASE: Richard Reyes vs. Next Green Wave, LLC / COMPLEX / STAYED		
LAW AND MOTION MINUTE ORDER		Case Number: 22CECG02474

Hearing Date: **June 25, 2025** Hearing Type: **Motion - PAGA Settlement**
Department: **503** Judge: **Jon M Skiles**
Court Clerk: **J. Xiong** Reporter: **Not Reported**

Appearing Parties:	
Plaintiff: Not Present	Defendant: Not Present
Counsel:	Counsel:

☐ 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.

☐ Taken under advisement

☒ No party requested oral argument pursuant to Local Rule 2.2.5 and CRC 3.1308(a)(1).

☒ Tentative ruling becomes the order of the court. No further order is necessary.

☒ 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.

☒ Service by the clerk will constitute notice of the order.

☒ 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: ___

(03)

Tentative Ruling

Re: **Reyes v. Next Green Wave, LLC**
Case No. 22CECG02474

Hearing Date: June 25, 2025 (Dept. 503)

Motion: Plaintiff's Motion to Approve PAGA Settlement

**If oral argument is timely requested, it will be entertained on
Wednesday, July 23, 2025, at 3:30 p.m. in Department 503.**

Tentative Ruling:

To grant plaintiff's motion to approve the PAGA settlement.

Explanation:

1. Introduction

Under Labor Code section 2699, "[t]he 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).)

The statute does not explain what exactly the trial court should consider when reviewing a proposed PAGA settlement. However, recently the Court of Appeal in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56 did provide some guidance. The court explained that "many federal district courts have applied the 'fair, reasonable, and adequate' standard from class action cases to evaluate PAGA settlements." (*Id.* at pp. 75–76, disapproved on other grounds by *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664.)

"Despite the fact that "'a representative action under PAGA is not a class action'", and is instead a 'type of qui tam action', a standard requiring the trial court to determine independently whether a PAGA settlement is fair and reasonable is appropriate. Class actions and PAGA representative actions have many differences, with one salient difference being that certain due process protections afforded to unnamed class members are not part of PAGA litigation because aggrieved employees do not own personal claims for PAGA civil penalties. Nonetheless, the trial court must 'review and approve' a PAGA settlement, and the Supreme Court has in dictum referred to this review as a 'safeguard[].' The Supreme Court has also observed that trial court approval 'ensur[es] that any negotiated resolution is fair to those affected.' When trial court approval is required for certain settlements in other qui tam actions in this state, the statutory standard is whether the settlement is 'fair, adequate, and reasonable under all the circumstances.' Thus, while PAGA does not require the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for settlements that prevents 'fraud, collusion or unfairness', and protects the interests of the public and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors used to

evaluate class action settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement." (*Id.* at pp. 76–77, internal citations omitted.)

"Given PAGA's purpose to protect the public interest, we also agree with the LWDA and federal district courts that have found it appropriate to review a PAGA settlement to ascertain whether a settlement is fair in view of PAGA's purposes and policies. We therefore hold that a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate 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, internal citations and footnote omitted.)

On the other hand, "PAGA does not provide that aggrieved employees must be heard on the approval of PAGA settlements... PAGA provides no mechanism for aggrieved employees, including those pursuing PAGA lawsuits, to be heard in objection to another PAGA settlement. This concession is dispositive, and we will not read a requirement into a statute that does not appear therein." (*Id.* at p. 79, internal citation omitted.)

2. Notice to LWDA

Labor Code section 2699, subdivision (l)(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 May 8, 2025. (Connolly decl., ¶ 32, and Exhibit 3 thereto.) The LWDA has not objected to the settlement. 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 mentioned above, the Court of Appeal in *Moniz v. Adecco USA, Inc.*, *supra*, 72 Cal.App.5th 56 stated that the trial court should review PAGA settlements to determine whether they are fair, adequate and reasonable. (*Moniz, supra*, at pp. 75-77.) "Because many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement." (*Id.* at p. 77.)

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Here it does appear that the proposed gross settlement of \$350,000 is fair, adequate and reasonable under the circumstances.

A. Strength of Case: Plaintiff calculated the potential exposure at the initial violation rate of \$100.00 per pay period as follows: 5,907 pay periods x \$100.00 per pay period is \$590,700.00. If the court stacked different types of penalties in each pay period, plaintiff calculated the exposure as follows:

a. 5,907 pay periods x \$100 per pay period x 100% violation rate = \$590,700 for unpaid wages;

b. 5,907 pay periods x \$100 per pay period x 98% violation rate = \$578,886 for rest break violations;

c. 5,907 pay periods x \$100 per pay period x 28% violation rate = \$165,396 for meal period violations;

d. 5,907 pay periods x \$100 per pay period x 100% violation rate = \$590,700 for wage statement penalties;

e. 5,907 pay periods x \$100 per pay period x 100% violate rate = \$590,700 for unreimbursed business expenses; and

f. 68 former employees x \$100 = \$6,800 for waiting time penalties.

However, plaintiff concedes that defendant had raised a number of defenses and had cited to evidence that might have made it difficult for plaintiff to prevail. Also, there was the risk that the court might exercise its discretion to reduce the penalties to avoid an unjust, oppressive or confiscatory result.

Therefore, plaintiff has shown that the case was relatively strong, but entailed considerable risks as well, including the risk that he might not obtain anything at trial, or that, even if he did prevail, the award might be substantially reduced by the court. As a result, this factor weighs in favor of approving the settlement.

B. Stage of the Proceeding: A presumption of fairness exists where the settlement is reached through arm's length mediation between adversarial parties, where there has been investigation and discovery sufficient to allow counsel and the court to act intelligently, and where counsel is experienced in similar litigation. (*Dunk v. Ford Motor Company* (1996) 48 Cal. App 4th 1794, 1802.) Here, the case settled after the parties exchanged informal discovery and attended mediation. It appears that counsel obtained sufficient information to make an informed decision about settling the case, especially since plaintiff's counsel hired an expert to evaluate the risks and potential exposure involved with each of the claims based on the evidence and records provided by defendant. Plaintiff's counsel's firm is also highly experienced in representative litigation. Therefore, this factor weighs in favor of approving the settlement.

C. Risks of Litigating Case through Trial: Plaintiff contends that, while the potential maximum recovery here was substantial, the defendant raised strong defenses and litigating the case through trial would have involved considerable risks for plaintiff. There would also have been substantial costs to both parties in trying the case. There was also the risk that the court would have reduced the amount of penalties substantially even if

plaintiff prevailed at trial. Therefore, this factor weighs in favor of approving the settlement.

D. Amount of Settlement: As discussed above, the \$350,000 gross settlement amount appears to be reasonable given defendant's strong defenses and the likelihood that plaintiff would not be able to recover the full amount of penalties he sought. There is also a risk that the trial court would exercise its discretion to reduce the amount of penalties even if plaintiff prevailed at trial. Therefore, plaintiff's decision to settle for a gross amount of \$350,000 was reasonable under the circumstances.

E. Experience and Views of Counsel: Plaintiff's counsel are highly experienced in class and representative litigation. They have stated that the settlement is fair, adequate and reasonable under the circumstances. Therefore, this factor weighs in favor of approval.

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 seeks \$116,666.67 in attorney's fees, plus up to \$25,000 in court costs. The fees are the equivalent of 1/3 of the total gross recovery.

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. However, the court may also perform a lodestar calculation to double check the reasonableness of the fee request. (*Laffitte, supra*, at pp. 504-506.)

Here, counsel's fees are about 1/3 of the total gross settlement, which does not appear to be unreasonable. Also, counsel claims to have done 150.4 hours of work on the case, billing at rates from \$625 to \$950 per hour. (Connolly decl., ¶ 29.) Counsel claims that their work was equivalent to at least \$118,000 in work on the case. (*Ibid.*) The hours incurred appear to be reasonable. The hourly rates are high in comparison to the rates charged by Fresno attorneys, but they do appear to be in line with what other Southern California attorneys of similar background and experience charge. Therefore, the court intends to find that the hourly rates charged by plaintiff's counsel are reasonable.

The requested fees are actually somewhat lower than the lodestar fees incurred on the case, which also tends to show that the requested fees are reasonable here. Therefore, the court intends to find that the requested fees are reasonable under the circumstances.

Likewise, the request for \$25,000 in costs is reasonable, as counsel states that they incurred \$24,229.99 in costs over the course of the litigation, and they anticipate incurring more costs before the case is finished. (Connolly decl., ¶ 28.) Therefore, the court intends to approve the request for \$25,000 in costs.

H. Administration Costs: The settlement administrator, ILYM Group, Inc. will receive up to \$3,250 to cover administration costs. ILYM has provided a declaration from one of its representatives stating that it will charge fees of \$3,250 for administration costs. (See decl. of Lisa Mullins.) These costs for administering the settlement appear to be

reasonable. Therefore, plaintiff has shown that the requested amount of administration costs is reasonable here.

I. Incentive Award to Named Plaintiff: The settlement also provides that the named plaintiff will receive an incentive award of \$2,500. This amount will compensate plaintiff for his work on the case, as well as for the release of his individual claims. Plaintiff has provided his own declaration, in which he discusses the amount of work he has done on the case and the risks that he took in agreeing to be the named plaintiff. (Reyes decl., ¶¶ 5-9.) His declaration does support the requested incentive payment. Therefore, the court intends to find that the incentive payment is fair and reasonable.

4. Conclusion: The court intends to grant the motion to approve the PAGA 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: JS **on** 6/11/2025
(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: Richard Reyes vs. Next Green Wave, LLC / COMPLEX / STAYED	
CLERK'S CERTIFICATE OF MAILING	CASE NUMBER: 22CECG02474

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: **06/25/2025**

Clerk, by _____,


J. Xiong

Deputy

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☐ Clerk's Certificate of Mailing Additional Address Page Attached