| SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO<br>Civil Department - Non-Limited | Entered by: |
|---|---|
| TITLE OF CASE:<br>Janet Rangel vs. Noble Federal Credit Union / COMPLEX | |
| **LAW AND MOTION MINUTE ORDER** | Case Number:<br>22CECG02999 |

| | | | |
|---|---|---|---|
| Hearing Date: | **May 1, 2024** | Hearing Type: | **Motion - PAGA Settlement** |
| Department: | **503** | Judge/Temp. Judge: | **Hamilton, Jr., Jeffrey Y.** |
| Court Clerk: | **Lopez, Maria** | Reporter/Tape: | **Not Reported** |

**Appearing Parties:**

Plaintiff: No Appearances

Counsel:

Defendant: No Appearances

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

[ ] Demurrer [ ] overruled [ ] sustained with __ days to [ ] answer [ ] amend

**[ 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: __

(34)

**Tentative Ruling**

Re: ***Rangel v. Noble Federal Credit Union***
Superior Court Case No. 22CECG02999

Hearing Date: May 1, 2024 (Dept. 503)

Motion: by Plaintiff for Approval of PAGA Settlement

**Tentative Ruling:**

To grant and approve the PAGA Settlement Agreement, including requested attorney's fees of $123,333.33, actual costs of $15,825.54 and settlement administration fees of $4,200.

**Explanation:**

> Because an aggrieved employee's action under the [PAGA] functions as a substitute for an action brought by the government itself, a judgment in that action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. The act authorizes a representative action only for the purpose of seeking statutory penalties for Labor Code violations (Lab.Code, section 2699, subds. (a), (g)), and an action to recover civil penalties 'is fundamentally a law enforcement action designed to protect the public and not to benefit private parties.

(*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 381.)

> A PAGA representative action is therefore a type of *qui tam* action. Traditionally, the requirements for enforcement by a citizen in a qui tam action have been (1) that the statute exacts a penalty; (2) that part of the penalty be paid to the informer; and (3) that, in some way, the informer be authorized to bring suit to recover the penalty. The PAGA conforms to these traditional criteria, except that a portion of the penalty goes not only to the citizen bringing the suit but to all employees affected by the Labor Code violation. The government entity on whose behalf the plaintiff files suit is always the real party in interest in the suit.

(*Id.* at 382, internal citation omitted.)

"PAGA settlements are subject to trial court review and approval, ensuring that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549, citing Labor Code section 2699(l)(2): "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.")

> [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. (See *Williams, supra*, 3 Cal.5th at p. 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA "sought to remediate present violations and deter future ones"]; *Arias, supra*, 46 Cal.4th at p. 980, 95 Cal.Rptr.3d 588, 209 P.3d 923 [the declared purpose of PAGA was to augment state enforcement efforts to achieve maximum compliance with labor laws].)

(*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.)

> "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' " ' " (*Dunk, supra*, 48 Cal.App.4th at pp. 1800–1801, 56 Cal.Rptr.2d 483), 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."

(*Moniz, supra*, (2021) 72 Cal.App.5th 56, 77.)

Under the general provisions of the PAGA scheme, 75% of the civil penalties recovered goes to the state while the remaining amount is given to the aggrieved employees. (Lab. Code, § 2699, subd. (i).) Here, 75% of the settlement amount, *after deduction of attorney fees, costs, administration expenses and incentive payment*, is to be paid to the LWDA.

**1. Notice to LWDA**

The moving party has given notice of the settlement to the LWDA, so it may address the court regarding it, if it so chooses. (Lab. Code, § 2966, subd. (l)(2); see Moon Decl., ¶ 8, Exh. 3.)

**2. Fairness of the settlement amount**

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.)

"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." (*Ibid*, internal citations and footnote omitted.)

a. *Strength of the Case*

Plaintiff's action was initiated as a wage and hour class action with the PAGA cause of action added in the First Amended Complaint. Prior to an early mediation defendant presented counsel with an arbitration agreement signed by plaintiff precluding her ability to maintain the class action claims of the complaint. Plaintiff made the decision to pursue the PAGA claims only rather than oppose the enforceability of the arbitration agreement.

Plaintiff retained Jarrett Gorlick, a data and statistics expert, to analyze a sample of timekeeping records and employee data of approximately 25% of the 218 PAGA members. From the sample calculated there to be a total of 77,919 shifts and 9,071 pay periods for the 218 employees. Gorlick calculated the potential exposure based on assumptions given by plaintiff's counsel and on demographic data from counsel for defendant. (Gorlick Decl. ¶ 8.) He calculated unpaid hours due to rounding, potential meal break premiums owed, and rest break premiums at a pay period level. (Gorlick Decl., ¶¶ 9-11.) From this data, counsel calculated the maximum penalty recovery of $5,113,776.50 and the corresponding risk-adjusted penalty recovery of $481,103.16, combining the statistical analysis with counsel's experience in prosecuting such claims. (Moon Decl., ¶¶ 26(a)-(f).) Alternatively, calculating the maximum penalty exposure using the "catch-all" civil penalty for every pay period results in a maximum exposure of $907,100.00. Plaintiff argues the settlement figure of $370,000 represents an excellent result under both calculations and amounts to "genuine and meaningful" relief consistent with the purpose of the PAGA statute. The settlement represents 76.9% of the realistic risk-adjusted penalty recovery and 40.7% of the catch-all maximum exposure.

The moving papers do not clearly state the "strengths" of the case per se and instead focus on the defenses to plaintiff's claims that lower the maximum potential exposure to what a reasonable exposure would be. The court finds there is evidence to support the figures presented in the moving papers and to find that the settlement figure is reasonable.

b. *Stage of the Proceeding*

A presumption of fairness exists where the settlements 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 attended mediation. Plaintiff's counsel is highly experienced in representative litigation.

Plaintiff attests to the settlement as a product of arm's-length negotiations at mediation and resulting in a settlement amount that reflects the best feasible recovery. (Moon Decl. ¶ 12.)

Regarding pre-settlement discovery, counsel states that although no formal discovery commenced, the parties engaged in extensive informal discovery. (Moon Decl., ¶ 10.) Defendant provided a 25% sample of time and payroll records for PAGA members and that these records were analyzed by an expert for use in settlement negotiations. (Moon Decl., ¶¶ 9-10.) Additionally, counsel conducted informal interviews with other alleged employees. (Moon Decl., ¶10.) Counsel attests to the factual investigation providing familiarity with the case to allow them to act intelligently in negotiating the PAGA settlement. (Moon Decl., ¶10.)

The case settled after a full day mediation session, and Plaintiff's counsel are also highly experienced in representative litigation such as this. The pre-settlement discovery or information exchange was limited to informal document exchange. However, those documents provided a sample that allowed plaintiff's expert to calculate defendant's potential exposure. (Gorlick Decl., ¶ 8.) This appears to be a sufficient foundation for the negotiations and ultimately the settlement reached.

c. *Risks of Litigating Case through Trial*

Counsel notes that the parties both recognized the cost, time, inconvenience, and delay in the continued litigation PAGA claim. These factors are generally applicable to any civil action. The inability to pursue the class wage and hour claims as originally intended appears to also have played a role in limiting the time spent on this matter. The risks of continuing in litigation are recognizable and weigh in favor of approving the settlement.

d. *Amount of Settlement*

The gross settlement is $370,000, and, as discussed above with regard to the strengths of the case, this figure represents 76.9% of the realistic risk-adjusted penalty recovery and 40.7% of the catch-all maximum exposure. This is a reasonable settlement amount.

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

The settlement agreement provides that plaintiff's counsel would get up to $123,333.33 (1/3 of the total gross recovery) in attorney's fees, plus another costs of up to $20,000. Plaintiff's actual costs are $15,825.54. (Moon Decl., ¶ 54, Exh. 4.) Excess from the amount of the settlement reserved for costs should be added to the net PAGA 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.) Labor Code section 2699, subdivision (g)(1) states that the prevailing employee "shall be entitled to an award of reasonable attorney's fees and costs."

Records by counsel of the time actually spent on a matter are the starting point for any lodestar determination. (*Horsford v. Board of Trustees* (2005) 132 Cal. App. 4th 359, 394.)

A court assessing attorney's fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case." *Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48. As our Supreme Court has repeatedly made clear, the lodestar consists of "the number of hours *reasonably expended* multiplied by the *reasonable* hourly rate. . . ." *PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1095, italics added; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.)

Reasonable hourly compensation is the "hourly prevailing rate for private attorneys in the community conducting noncontingent litigation of the same type" (*Ketchum v. Moses, supra*, 24 Cal.4th at p. 1133.)

Here, the fee request is 1/3 of the total gross settlement, which does not appear to be unreasonable until compared with the hours actually spent by counsel litigating this action. In its first submission for settlement approval, Mr. Moon's firm worked 141.1 hours on the case. (12/18/23 Moon Decl., ¶ 37.) In the renewed motion the hours increased to 161.45 (Moon Decl., ¶ 47), an increase the court can attribute only to the preparation of this renewed motion necessitated by the deficiencies of the initial motion. The court does not find the additional hours reasonable to the conduct of the litigation.

Mr. Moon's hourly rate is $ 725 and he worked 42.25 hours on this case. (12/18/23 Moon Decl., ¶ 37.) His declaration also includes the rates and hours of his associates, Allen Feghali and Hyunjin Kim. Billing records from the three attorneys are submitted with the renewed motion as Exhibits 6, 7, and 8 to Mr. Moon's declaration. Mr. Feghali has been a member of the bar since 2014 and began working at the Moon Law Group in 2015. Mr. Feghali's billing rate is $675, an increase during the pendency of this action from $600, and he worked a total of 48.9 hours in this matter. (12/18/23 Moon Decl., ¶¶ 31-33, 36.) Ms. Kim bills at a rate of $350 and worked 49.95 hours in this matter. (12/18/23 Moon Decl., ¶¶ 36-37.) She was admitted to the bar in 2022 and during the pendency of this case her rate increased from $175 per hour to $350. (Moon Decl., ¶ 43-45.) At these billing rates the Moon Law Group's lodestar is $81,121.25. (12/18/23 Moon Decl., ¶ 37.)

Mr. Moon attests to the hours spent having been reasonable to the conduct of the litigation and the hourly rates to be reasonable. (12/18/23 Moon Decl., ¶¶ 39 (a)-(b).) Counsel describes the significant time invested in litigating this case. Including interviews with plaintiff and reviewing documents provided by plaintiff, researching and investigating the law regarding defendant's practices, drafting the original class action complaint and amended complaint, appearing at the initial status conference, analyzing and reviewing timekeeping and payroll records of plaintiff, engaging in settlement negotiations, drafting the settlement agreement and drafting this motion for approval of the settlement. (12/18/23 Moon Decl., ¶ 41.) The billing records provided reflect the activities described. (Moon Decl., ¶ 48, Exh. 6-8.)

Before any reduction in hourly rates to better match local counsel rates the lodestar is less than the fees requested. A multiplier of 1.52 is necessary to meet the requested fees of $123,333.33. In the context of using the lodestar method to cross-check attorney fees in a class action settlement, a multiplier can be used to increase or decrease the award "to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented." (*Laffitte v. Robert Half Internat. Inc.*, supra, 1 Cal.5th at p. 489, internal citation omitted.)

Counsel's declaration submitted with the renewed motion emphasizes that counsel took the case on a contingency basis and bore the risk of no payment for his services. (Moon Decl., ¶ 52.) Counsel also highlights that defendant's opposition to the claims was vigorous and the preclusion of other work due to this case. (Moon Decl., ¶ 49(c).) The factors described are generally true of any plaintiff-side wage and hour litigation and does not speak to anything unique about this action. The new evidence provided with this motion supports that the settlement, in proportion to the realistic maximum exposure value of the claims is a particularly good result, which would support the application of a multiplier.

In a PAGA settlement the court's prerogative is to review and approve the settlement. (Lab. Code § 2699, subd. (l)(2).) As a whole, the settlement appears reasonable and reflects a good result when compared to the "risk-adjusted" potential penalty exposure and the resolution of the claim without the parties incurring additional costs to prosecute and defend the claim. The court does not find counsel's rates to be reasonable in comparison to the local plaintiff's bar, however, in looking at the settlement as a whole it is reasonable and should be approved. As such, the court intends to approve the attorney's fees requested.

The court intends to approve the actual costs of $15, 825.54 as requested.

The court intends to approve the settlement administration costs of $4,200.00 to Simpluris as requested. (Moon Decl., Exh. 5.)

h. *Scope of the release*

> ... PAGA's statutory scheme and the principles of preclusion allow, or "authorize," a PAGA plaintiff to bind the state to a judgment through litigation that could extinguish PAGA claims that were not specifically listed in the PAGA notice where those claims involve the same primary right litigated. Because a PAGA plaintiff is authorized to settle a PAGA representative action with court approval (§ 2699, (*l*)(2)), it logically follows that he or she is authorized to bind the state to a settlement releasing claims

> commensurate with those that would be barred by res judicata in a subsequent suit had the settling suit been litigated to judgment by the state.

(*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 83.)

Here, the settlement agreement provides that the following claims would be released:

> PAGA Members, Plaintiff, and the State of California (through Plaintiff as a Private Attorney General) shall release Defendant and its predecessors, successors, subsidiaries, parent companies, other corporate affiliates, and assigns, and all of their officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by, through, under or in concert with any of them ("Released Parties"), from all claims for penalties, attorneys' fees and costs under the Private Attorneys General Act, California Labor Code §§ 2698, et seq. ("PAGA") during the PAGA Period that were or could have been alleged in the Action based on the facts or claims alleged in any version of the complaint or enumerated in the letter sent by Plaintiff to the Labor and Workforce Development Agency ("LWDA") irrespective of the underlying theory of recovery supporting the claim for PAGA penalties. The released claims include, but are not limited to, PAGA claims based on any alleged failure to pay all wages due (including minimum wage and overtime wages), failure to pay for all hours worked (including off-the clock work), failure to provide meal periods, failure to authorize and permit rest periods, short/late meal and rest periods, failure to relieve of all duties during meal and rest periods, failure to pay or properly compensate meal or rest break premiums, failure to pay or properly pay sick pay, failure to pay accrued vacation, failure to reimburse business expenses, failure to furnish accurate wage statements, record keeping Violations (including failure to maintain adequate and accurate payroll records), failure to pay wages timely during employment, failure to pay final wages upon separation of employment, claims related to pre and post-shift work, rounding, and failure to properly calculate or pay the regular rate of pay, claims derivative and/or related to these claims, liquidated damages, and conversion of wages ("PAGA Claims"). All class claims alleged in the Complaint shall be dismissed without prejudice.

(Moon Decl., Exh. 1, PAGA Settlement Agreement, ¶ 7.1.)

The notice of Labor Code violations sent on behalf of plaintiff includes allegations of failure to pay for all hours worked (Lab. Code §§ 510, 1194, 1198), failure to provide meal periods (Lab. Code §§ 210, 558), failure to permit rest breaks (Lab. Code §§210, 558), failure to maintain accurate records of hours worked and meal periods (Lab. Code §§ 1174(d), 1174.5; IWC Order § 7(A)(3)), failure to reimburse business expenses (Lab. Code § 2802), failure to pay all accrued vacation wages at termination (Lab. Code §227.3), failure to pay all wages at termination (Lab. Code §§ 201, 202, 203), failure to furnish accurate wage statements (Lab. Code § 226), and failure to pay all earned wages (Lab. Code § 204).The scope of the release appears to be appropriately limited to the PAGA claims of which the LWDA was given notice and those supported by the allegations of the complaint.

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:** ____jyh____ **on** ____4/29/24____.
(Judge's initials) (Date)

| SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO<br>Civil Department, Central Division<br>1130 "O" Street<br>Fresno, California 93724-0002<br>(559) 457-2000 | *FOR COURT USE ONLY* |
|---|---|
| TITLE OF CASE:<br>**Janet Rangel vs. Noble Federal Credit Union / COMPLEX** | |
| **CLERK'S CERTIFICATE OF MAILING** | CASE NUMBER:<br>**22CECG02999** |

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

**05/01/2024 Minute Order and copy of 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: **05/01/2024** Clerk, by M. Lopez, Deputy
M. Lopez

| | |
|---|---|
| Kane Moon<br>Moon Law Group PC<br>1055 W. Seventh St., Suite 1880<br>Los Angeles, CA 90017 | Andrew M. Paley<br>Seyfarth Shaw LLP<br>2029 Century Park East, Ste 3500<br>Los Angeles, CA 90067 |

☐ Clerk's Certificate of Mailing Additional Address Page Attached