

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited		Entered by:
TITLE OF CASE: Diane Gil vs. Electronic Recyclers of America, LLC		
LAW AND MOTION MINUTE ORDER		Case Number: 22CECG03745

Hearing Date: **December 20, 2023** Hearing Type: **Motion - PAGA Settlement**
Department: **502** Judge: **Culver Kapetan, Kristi**
Court Clerk: **Gonzalez, Estela** Reporter: **Not Reported**

Appearing Parties:	
Plaintiff:	Defendant:
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

☐ Demurrer ☐ overruled ☐ sustained with ___ days to ☐ answer ☐ amend

[X] No Oral Argument requested as required per Local Rule 2.2.5 & CRC 3.1308(a)(1).

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

[X] Any party intending to appear remotely for future hearings is required to submit a request to and obtain approval by the Court utilizing forms RA-010 & RA-020. Personal appearances are mandatory for trial dates pursuant to CRC 3.672 & Fresno Superior Court Local Rule 1.1.19.

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

☐ 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: ***Diane Gil v. Electronic Recyclers of America, LLC***
Superior Court Case No. 22CECG03745

Hearing Date: December 20, 2023 (Dept. 502)

Motion: Plaintiff's Motion 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, service award payment to plaintiff, and reimbursement of settlement administration expenses, and entering judgment thereon.

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.)

"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 (1)(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 November 28, 2023. (Gaines decl., ¶ 11.) 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 settlement is fair, adequate and reasonable under the circumstances.

A. Strength of Case: Plaintiff notes that, while she raised claims for unpaid wages and overtime, failure to provide meal and rest breaks, failure to provide accurate wage statements, etc. that might have allowed her to obtain penalties worth over \$3 million, this amount was unlikely to be awarded because it would require "stacking" of penalties, i.e. imposing multiple penalties for each Labor Code violation assessed during each pay period. Plaintiff's counsel claims that he is unaware of any court imposing such "stacked" penalties, and that it is unlikely that the court would allow stacking of penalties here. Also, even assuming that stacking of penalties is permissible, the court has discretion to reduce the amount of penalties in order to avoid an unjust or punitive result. Plaintiff's counsel believes that the court would likely substantially reduce the amount of the penalties here even if plaintiff prevailed and was theoretically entitled to the maximum amount of stacked penalties, particularly since defendant has not been cited for Labor Code violations in the past. Plaintiff's counsel contends that the actual maximum realistic amount of penalties here is \$798,900 based on \$100 in penalties for each pay period.

Therefore, plaintiff has shown that her case was relatively strong, but entailed considerable risks as well, including the risk that she might not obtain anything at trial, or that, even if she 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. Plaintiff's counsel 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 a judgment in favor of plaintiff would have been appealed by defendant. Therefore, this factor weighs in favor of approving the settlement.

D. Amount of Settlement: As discussed above, the \$330,000 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 she 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. Given that the maximum amount of penalties realistically obtainable by plaintiff was \$798,900, her decision to settle for a gross amount of \$330,000 was reasonable under the circumstances. The gross settlement is about 41% of the maximum that she might have obtained if she prevailed at trial, which is an excellent result. Therefore, plaintiff has adequately shown that the proposed settlement of her claims for \$330,000 is fair, reasonable, and adequate 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 \$110,000 in attorney's fees, plus another \$5,000 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 appears to be reasonable. Also, counsel claims to have done 105.5 hours of work on the case, billing at rates from \$625 to \$750 per hour. (Gaines decl., ¶¶ 33-36 and Exhibit D thereto.) Counsel claims to have billed \$74,025 in work on the case. (*Id.* at ¶ 33.) Counsel also attaches a billing summary to allow the court to do a lodestar cross-check of the fees. (Exhibit D to Gaines decl.) 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 Los Angeles attorneys of similar background and experience charge. Therefore, the court finds that the hourly rates charged by plaintiff's counsel are reasonable.

Also, while the requested fees are about 1.48 times more than the actual lodestar fees incurred, the 1.48 multiplier appears to be reasonable in light of the risk of taking the case on a contingent basis. In effect, counsel took the chance that they would receive no money at all despite over a year of work on the case. In addition, counsel's efforts have resulted in enforcement of labor laws, a substantial payment to the State of California, a payment to the aggrieved employees, and presumably some deterrent effect on employers who might otherwise violate the Labor Code. Therefore, the court finds that the requested fees are reasonable under the circumstances.

Likewise, the request for \$5,000 in costs is reasonable, particularly since counsel states that they incurred \$5,696.98 in costs over the course of the litigation. (Gaines decl., ¶ 43.) Therefore, the court intends to approve the request for \$5,000 in costs.

H. Payment to Named Plaintiff: Plaintiff seeks an enhancement payment of \$2,500. She has submitted her declaration, in which she describes the work she did on the case, including spending about 15-20 hours gathering documents and communicating with her attorneys. (Gil decl., ¶¶ 7-10.) She also took personal risks in prosecuting the case, as other potential employers may refuse to hire her if they learn that she was the plaintiff in a representative action against her former employer. (*Id.* at ¶ 11.) The court also notes that plaintiff has reached a separate settlement of her individual claims for a payment of \$7,500. However, given her work on the representative part of the case and the risks she took to bring it, the payment of another \$2,500 is fair and reasonable. Therefore, the court will approve the payment.

1. Administration Costs: The settlement administrator, Phoenix Class Action Solutions, will receive up to \$3,995 to cover administration costs. Phoenix has provided a declaration from its President of Project Management, Jodey Lawrence, in support of the request for costs, which includes a breakdown of how the costs were calculated. (Exhibit B to Lawrence decl.) Therefore, plaintiff has shown that the requested administration costs are reasonable and justified and the court intends to approve the payment.

4. Conclusion: The settlement is fair, adequate, and reasonable, and therefore the court intends to grant 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: KCK K. Kayet on 12/20/23
(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: Diane Gil vs. Electronic Recyclers of America, LLC	
CLERK'S CERTIFICATE OF MAILING	CASE NUMBER: 22CECG03745

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

[Minute Order and Tentative Ruling, dated 12/20/23]

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: **12/20/2023**

Clerk, by , Deputy
E. Gonzalez

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☐ Clerk's Certificate of Mailing Additional Address Page Attached