



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

MINUTE ORDER

Thompson v. Big 5 Corp., et al. (PAGA) [Lead Case;
Consolidated with Case No. 23CV412953]
23CV412334
Date of Hearing: 07/18/2024

Hearing Start Time: 1:30 PM

Hearing Type: Motion: Order

Comments:

Heard By: Adams, Charles F
Courtroom Reporter: - No Court Reporter

Location: Department 7
Courtroom Clerk: E. De Santiago
Court Interpreter:
Court Investigator:

Parties Present:

Future Hearings:

Exhibits:

- Not reported.

No appearances.

1:34 pm Court is in session on this matter.

No one has contested the Tentative Ruling.

The Tentative Ruling is adopted. See below for ruling.

Case Name: Zareyah Thompson v. Big 5 Corp., et al.

Case No.: 23CV412334 (consolidated with Case No. 23CV412953)

These are representative actions under the Private Attorneys General Act (PAGA). Plaintiffs Zareyah Thompson and Christopher Puga (collectively, Plaintiffs) each allege that Defendants Big 5 Corp. and Big 5 Sporting Goods Corporation (collectively, Defendants) committed various wage and hour violations and seek PAGA penalties for those violations.

Before the Court is Plaintiffs motion for approval of PAGA settlement, which is unopposed. As discussed below, the Court GRANTS Plaintiffs motion.

I. BACKGROUND

Plaintiff Zareyah Thompson alleges that she was employed by Defendants as a cashier, an hourly paid, non-exempt position, from approximately April 2021 to October 2021 and from February 2022 to July 2022, at Defendants retail store in Pinole, California. Mr. Puga alleges that he was employed as a non-exempt employee by Defendants from mid-2021 through March 2022, specifically as a human resources clerk. Plaintiffs allege that Defendants failed to, among other things: pay them (and Aggrieved Employees) for all hours worked; pay them all overtime compensation and minimum wages to which they were entitled;



SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA

MINUTE ORDER

provide meal periods and rest periods to which they were entitled or pay statutorily mandated premiums when none were provided; provide them with accurate wage statements; maintain accurate and complete payroll records; timely pay wages owed upon termination; and provide them with suitable seating. They also allege that Defendants wrongfully required them to release their claims for unpaid wages as a condition of receiving their paychecks. Mr. Puga also alleges that Defendants had a policy and practice of misclassifying some Aggrieved Employees as exempt, which resulted in those employees not receiving all wages to which they were entitled.

On March 13, 2023, Ms. Thompson filed a representative action against Defendants asserting a single claim for PAGA penalties based on the various Labor Code violations described above. Mr. Puga filed his representative action approximately a week later on March 21, 2023, similarly asserting a single claim for PAGA penalties. Because these actions allege substantially similar Labor Code violations against the same defendants, they were related by the Court on April 11, 2023. On June 26, 2024, in connection with the instant motion, Plaintiffs filed a joint stipulation to consolidate their actions for settlement approval purposes only.

II. LEGAL STANDARD FOR APPROVING PAGA SETTLEMENT

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940.) 75 percent of any penalties recovered go to the Labor and Workforce Development Agency (LWDA), leaving the remaining 25 percent for the employees. (*Ibid.*) PAGA is intended to augment the limited enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency. (*Id.* at p. 383.) A judgment in a PAGA action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. (*Id.* at p. 381.)

Labor Code section 2699, subdivision (l)(2) provides that [t]he superior court shall review and approve any settlement of any civil action filed pursuant to PAGA. The court's review ensur[es] that any negotiated resolution is fair to those affected. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) [C]lass certification is not required in this context as in a class action. (*Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 (*Haralson*).)

Similar to its review of class action settlements, the Court must determine independently whether a PAGA settlement is fair and reasonable, to protect the interests of the public and the LWDA in the enforcement of state labor laws. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76 77 (*Moniz*).) It must make this assessment 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; see also *Haralson*, *supra*, 383 F. Supp. 3d at p. 971 [when a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public .], quoting LWDA guidance discussed in *O Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O Connor*).)

The settlement must be reasonable in light of the potential verdict value. (See *O Connor*, *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a



SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA

MINUTE ORDER

permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at *8 9.)

III. PLAINTIFF S INVESTIGATION, SETTLEMENT PROCESS, AND THE PARTIES AGREEMENT

After the commencement of these actions, counsel for both plaintiffs conducted preliminary investigations into the factual bases for their clients' claims and engaged in informal discovery with Defendants, through which they obtained employee demographic data, a sample of Aggrieved Employees' time and pay records, and Defendants' California labor policies and procedures manuals which covered a broad range of topics including, inter alia, employee clock-in policies and procedures, attendance policies, meal periods/rest periods, overtime pay, etc. The foregoing materials enabled counsel to realistically assess the value of Plaintiffs' claims and pursue possible settlement. On September 27, 2023, the parties participated in full-day mediation with Louis Marlin, Esq., an experience mediator in wage and hour actions, and were able to reach the global settlement agreement that is now before the Court.

Pursuant to the parties' agreement, Defendants will pay a non-reversionary gross settlement amount of \$1,460,000, which is comprised of \$486,667 in attorney's fees (one-third of the gross settlement), \$19,938.07 in litigation costs, and \$22,000 in administration costs. The net settlement amount of \$931,394.93 will be distributed 75% (\$698,546.20) to the LWDA and 25% (\$232,848.73) to Covered Employees, i.e., all persons who were employed by Defendants in the State of California as non-exempt, hourly-paid retail store employees at any time from January 5, 2022 through October 31, 2023, on a pro rata basis based on the number of pay periods each employee worked during the relevant period of time. It is estimated that there are approximately 9,612 Covered Employees and 175,000 pay periods. If the number of pay periods worked between January 5, 2022 to September 27, 2023, exceeds 175,000 by more than 10% (i.e., more than 192,500 pay periods), then Defendants will proportionally increase the gross settlement amount by the number of pay periods above 192,500.

In exchange for settlement, Plaintiffs and the LWDA, on behalf of themselves and Covered Employees, will release

:

[A]ll claims for remedies under PAGA, of whatever kind or nature, whether known or unknown, arising during the Settlement Period, based on the facts alleged in the Actions and/or Plaintiffs' notice letters to the LWDA including, but not limited to, Labor Code sections 201, 202, 203, 204, 206.5, 210, 216, 218.5, 221, 222, 225.5, 223, 226, 226.3, 226.6, 226.7, 227.3, 233, 234, 245, 245.5, 246, 246.5, 247, 247.5, 248, 248.5, 256, 432, 432.5, 432.7, 510, 512, 516, 558, 558.1, 1024.5, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802 and 2810.5, and the corresponding provisions of the applicable IWC Wage Order, and any resulting claim for attorneys' fees and costs under PAGA.

The release is appropriately tailored to the allegations at issue, and does not release any claims other than those for PAGA penalties. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537; *Moniz*, supra, 72 Cal.App.5th at p. 82 [release of all known and unknown claims under PAGA that were or could have been pled based on the allegations of the Complaint was appropriately approved].)



SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA

MINUTE ORDER

IV. DISCUSSION

D. Potential Verdict Value

Based on the data provided by Defendants, Plaintiffs estimated the maximum exposure of the PAGA claims to be \$18.5 million. Several factors reduced this amount, including but not limited to the following: the potential that the Court would award less penalties based on the employer lacking knowledge of any violations; the lack of willfulness on the part of Defendants; the risk that Plaintiffs may recover nothing; and Defendants' denial on the merits and related defenses (including that Plaintiffs entered into binding and enforceable arbitration agreements). In consideration of these facts, the history of various similar PAGA decisions that significantly reduce maximum penalties amounts (e.g., 90% reduction) and the risk that Plaintiffs may recover nothing, the Court finds that the proposed settlement is fair to those affected and is genuine, meaningful, and reasonable in light of the statute's purposes.

E. Attorney Fees

While the PAGA statute does not expressly require judicial review of claimed attorney fees, the Court believes it cannot adequately fulfill its statutory duty to review the penalties associated with PAGA settlements without also considering attorney fees. The Court thus finds that it must scrutinize the attorney fee arrangement associated with a PAGA settlement. This is consistent with the observation of many courts that PAGA claims are analogous to *qui tam* suits like those under the federal False Claims Act: when reviewing settlements of *qui tam* claims, courts should and do consider any associated attorney fee arrangement. (See *U.S. v. Texas Instruments Corp.* (9th Cir. 1994) 25 F.3d 725, 728 [attorney fee award must be considered by the trial court as part of its review of the entire settlement arrangement].)

As articulated above, Plaintiffs seek a fee award of \$486,667 in attorney's fees (one-third of the gross settlement), which is not an uncommon contingency fee allocation in a wage and hour/PAGA action. This award is facially reasonable under the common fund doctrine, which allows a party recovering a fund for the benefit of others to recover attorney fees from the fund itself. Plaintiffs also submit a lodestar figure of \$288,371.50, which is based on 234.9 hours at rates of \$475 to \$800 per hour, resulting in a multiplier of 1.69. This is well within the range of multipliers that courts typically approve. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503 504 (Laffitte) [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 [multipliers can range from 2 to 4 or even higher]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements finding a range of 0.6 to 19.6, with most (20 of 24, or 83%) from 1.0 to 4.0 and a bare majority (13 of 24, or 54%) in the 1.5 to 3.0 range].)

Here, because the requested multiplier sought by Plaintiffs' counsel is well within the range of multipliers regularly approved by California courts in similar actions (and in fact is on the lower end of this range) and is supported by the percentage cross-check, the Court finds counsel's requested fee award reasonable and therefore it is approved.



SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA

MINUTE ORDER

F. Other Costs and Expenses

Counsels request for litigation costs of \$19,938.07 appears reasonable based on the supporting declarations provided which establish that counsel actually incurred costs in this amount and is approved. Administration costs of \$22,000 are also approved.

V. ADMINISTRATION PROCESS

The parties have agreed that within 14 days of the Effective Date, Defendants will provide settlement administrator CPT Group, Inc. (CPT), with a list of all Covered Employees with the relevant identifying information (including the last known home address) and the number of pay periods worked. Prior to mailing payment, CPT will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Within 14 days of the funding of the settlement (this deposit is required to take place within 14 days of the Effective Date), CPT will pay the various amounts approved by the Court to Plaintiff s counsel, the LWDA, and each Covered Employee. Each Covered Employee will be sent a check in the appropriate amount. Any checks returned as non-deliverable will promptly be re-mailed to the forwarding address provided; if none is, CPT will attempt to locate one using a skip trace or other search method. Any checks returned as undeliverable or that remain uncashed after 180 days will be transmitted to cy pres beneficiary Worksafe, Inc. These administrative procedures are appropriate and are approved.

VI. ORDER AND JUDGMENT

Plaintiffs motion for approval of the parties PAGA settlement is GRANTED. The covered individuals are: all persons who were employed by Defendants in the State of California as non-exempt, hourly-paid retail store employees at any time from January 5, 2022 through October 31, 2023.

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., 668.5.) Plaintiffs and the Covered Employees shall take from the PAGA claim in their Complaints only the relief set forth in the parties settlement agreement and this order and judgment. The Court retains jurisdiction over the parties to enforce the terms of the PAGA settlement agreement and the final order and judgment.

The Court sets a compliance hearing for March 20, 2025 at 2:30 P.M. in Department 7. At least ten court days before the hearing, Plaintiffs counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted Worksafe, Inc.; the status of any unresolved issues; and any other matters appropriate to bring to the Court s attention. Counsel may appear at the compliance hearing remotely.

The Court will prepare the order.