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11 FAMILY DOLLAR, LLC
12 (formerly FAMILY DOLLAR, INC.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

JASON A. RODRIGUEZ, individually and
on behalf of all others similarly situated,

Plaintiffs,

vs.

FAMILY DOLLAR, INC., a North Carolina
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. BCV-23-100786

**DECLARATION OF RYAN DERRY IN
SUPPORT FAMILY DOLLAR, LLC'S
SUPPLEMENTAL BRIEF IN SUPPORT
OF MOTION TO APPROVE PAGA
SETTLEMENT**

JUDGE: Hon. T. Mark Smith

Date: September 16, 2024

Time: 8:30 a.m.

Dept.: T-2

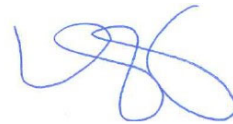
1 I, Ryan Derry, declare and state as follows:
2

3 1. I am an attorney duly licensed to practice law in the State of California. I am a
4 partner at the law firm Paul Hastings LLP, counsel of record for Defendant Family Dollar, LLC
5 (“Family Dollar”) in the above-captioned lawsuit. I have personal knowledge of the facts contained
6 herein, or know of such facts by my review of the files maintained by Paul Hastings LLP in the
7 ordinary course of business, and if called upon to do so, could and would competently testify
8 thereto.

9 2. On August 27, 2024, the parties in this matter appeared before this Court on the
10 hearing for Plaintiffs’ Motion to Approve PAGA Settlement. To the extent helpful for the Court’s
11 reference, attached hereto as **Exhibit 1** is a true and correct copy of the transcript from that hearing.
12

13 I declare under penalty of perjury under the laws of the State of California that the foregoing
14 is true and correct.

15 Executed this 10th day of September 2024, at San Francisco, California.
16

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18 _____
19 RYAN D. DERRY
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EXHIBIT 1

Transcript of Proceedings
August 27, 2024

Rodriguez
vs.
Family Dollar, Inc.



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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KERN
Department T-2 Hon. T. MARK SMITH, JUDGE

JASON A. RODRIGUEZ,) No. BCV-23-100786
Plaintiff,)
vs.)
FAMILY DOLLAR, INC., a) Pages Nos. 1-12
North Carolina Corporation,)
Defendants.)
Bakersfield, California)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Tuesday, August 27, 2024

(APPEARANCES ON NEXT PAGE)

Reported by: NAOMI S. ÁLVAREZ, CSR No. 13007
Official Reporter Pro Tempore
Job No. 10148236

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APPEARANCES:

For the Plaintiff:

The Mauro Law Firm

By MR. MICHAEL J.S. CALVO

790 East Colorado Boulevard, Ninth Floor

Pasadena, CA 91101

(949) 387-7200

For the Defendants:

Paul Hastings, LLP

By MR. RYAN D. DERRY

101 California Street, 48th Floor

San Francisco, CA 94111

(415) 856-7092

1 BAKERSFIELD, CA; TUESDAY, AUGUST 27, 2024

2 DEPT. T-2 Hon. T. MARK SMITH, Judge

3 ---00000---

4 THE COURT: Rodriguez versus Family Dollar,
5 Inc., case number BCV-23-100786.

6 And the Court will appoint the court reporter
7 Naomi Álvarez as reporter pro tem for purposes of these
8 proceedings.

9 MR. CALVO: Good morning, Your Honor. Michael
10 Calvo appearing on behalf of plaintiff.

11 MR. DERRY: Good morning, Your Honor. Ryan
12 Derry on behalf of Family Dollar, LLC.

13 THE COURT: Good morning.

14 This is on for a motion to approve a PAGA
15 settlement. Motion is made by plaintiff, no opposition
16 filed.

17 The Court has reviewed the materials. It is
18 the Court's tentative to require additional materials
19 prior to augment the Court's consideration of whether
20 the necessary requirements for approval of the PAGA
21 settlement have been met. Specifically, the Court notes
22 that pursuant to the PAGA settlement, an amount of
23 \$56,666.75 is to be paid to the aggrieved employees.
24 The estimate of that number of the aggrieved employees
25 is 7,500. Assuming 117,800 pay periods, that is
26 approximately \$0.48 per pay period or approximately
27 \$7.56 per employee.

28 The Court would like additional information as

1 to the fairness to the employees in light of those
2 calculations. If the Court's calculations aren't
3 correct, then certainly counsel can advise of that.

4 The estimate in terms of costs, there's a claim
5 of approximately \$9,305 in costs. The settlement
6 entitles counsel up to \$35,000 in costs. It remains
7 unclear as to what additional costs would be included in
8 the up to \$35,000 that is noted. The settlement
9 provides that plaintiff's counsel is allowed up to
10 \$153,033 in fees. There doesn't appear to be adequate
11 information regarding what tasks were undertaken in
12 order to earn the fees requested under the settlement.
13 In order for the Court to make a determination as to the
14 fairness and reasonableness, the Court would request
15 that additional information be submitted.

16 The Court also notes that there is a proposed
17 stipulation in order regarding consolidation of this
18 case with an Alameda case and it is the Court's
19 understanding that the PAGA settlement is predicated on
20 the Court approving the consolidation with this case
21 being the low numbered case or earlier filed case
22 between the two Kern County and Alameda County cases.

23 Comment from counsel.

24 MR. DERRY: Your Honor, if it would please the
25 Court, I would like to address the issue with respect to
26 requesting additional information as to the fairness of
27 the settlement, generally.

28 From a starting point, as the Court is well

1 aware, PAGA is set up with respect to the 75 percent
2 would go to the State and is the State's claim and is
3 the State's penalty and as the statutory scheme has been
4 created, only 25 percent was even set aside for
5 the individuals. The State, in creating PAGA, was not
6 necessarily concerned about the amount of the penalties
7 going to the individuals. It was the penalties going to
8 the State or ultimately the penalty being awarded. That
9 is the threshold issue with respect to PAGA in general
10 and looking to the amount going to the individuals.

11 Secondary, if we proceeded and litigated this
12 case all the way through, as the Court is well aware,
13 the PAGA penalty or the calculation would be only as to
14 those pay periods where there's potentially a violation
15 as to those aggrieved employees where there's a
16 violation. Here, we set forth in our papers that we
17 have extraordinary high compliance with respect to
18 Family Dollar that plaintiff sets forth in their
19 declaration that they had an expert that looked at this
20 and that expert calculated that of those 117,000 pay
21 periods, their expert, plaintiff's side, which we don't
22 even necessarily agree with, calculated only
23 approximately 13,000 pay periods where there was a
24 rebuttable presumption of a meal period violation.

25 Now, it's important to think about this as that
26 rebuttable presumption. It's set forth in the papers
27 and it discusses Donohue versus AMN Services, LLC, case.
28 That is a California Supreme Court decision 11 Cal.App.

1 Fifth at 58, 2021 decision. In that case in Donohue,
2 the California Supreme Court said if there is a time
3 record that reflects a short, a missed, or a late meal
4 period, that creates a rebuttable presumption for the
5 employer to be able to rebut that presumption.

6 In the Donohue circumstances, the Court found
7 and noted that the employer AMN had a drop-down menu
8 where the employee could go and click and say, well, I
9 missed it because of this reason or I missed it because
10 of that reason.

11 In Donohue -- and I'm not sure if the Court is
12 aware -- but the California Supreme Court reviewed that
13 and says that could be permissible. That could
14 eliminate any type of presumption of a meal period
15 violation.

16 Here for Family Dollar, Family Dollar has put
17 in place a precise punch guard system such as the
18 California Supreme Court has approved in Donohue. There
19 is punch guarding for both meal and rest periods where
20 it is set forth in the papers that employees could go
21 through and if the system automatically triggers if they
22 clock out late, ask them was it voluntary? Was it their
23 choice? Was it the company's? When they end their
24 shift, did they take all of their meal and rest periods?

25 When we look at the 13,000 pay periods that
26 plaintiffs calculate as that rebuttable presumption,
27 that doesn't take into account the punch guard. Family
28 Dollar also pays premiums on top of -- depending on the

1 punch guarding. And is set forth in the papers when the
2 premiums are accounted for, Mr. Rodriguez's store and
3 Mr. Rios' store, which is the plaintiff in Alameda
4 County, the compliance rates are 99 percent and
5 106 percent with respect to meal period compliance.

6 You may ask, how can it be 106 percent
7 compliance? Because the punch guarding asks the
8 individuals were you interrupted at all during your meal
9 period? That may not show up on a time record, but if
10 someone says yes, automatically that premium is paid. I
11 recognize the Court's calculation with respect to
12 looking at the pay periods, looking at the number of
13 employees and doing that math and what that calculation
14 is. But when we look at taking plaintiff's 13,000 pay
15 periods and the value of the settlement, that is \$35 a
16 pay period. That is taking the -- in total, that is \$35
17 a pay period which we would submit to the Court is well
18 within the lines of the penalties that the Courts have
19 been awarding when there is actually a finding of
20 liability at the conclusion of a trial.

21 So we are happy to submit additional
22 information to the Court, but this is a situation, I
23 will submit to the Court, where a California employer
24 has taken the steps to put in place this punch guard, to
25 have compliant policies, yet continue to be a California
26 employer, I will submit, as a PAGA claim and is
27 attempting to resolve that claim and move forward.

28 As plaintiff submitted in their papers, that

1 PAGA claim is not a high value PAGA claim. That PAGA
2 claim does not demonstrate or suggest there is any
3 violation across the population, across 117,000 pay
4 periods.

5 THE COURT: I understand. I do appreciate
6 counsel's argument that, in essence, what the defense
7 position is is that this is a thin liability claim and,
8 in counsel's words, the defendant wishes to enter into
9 the settlement and move on. The Court also understands
10 and recognizes the PAGA scheme, the rubric set out by
11 the statute requires that 75 percent be paid to the
12 State and so that leaves fewer dollars to the allegedly
13 aggrieved employee.

14 Nonetheless, the Court does wish additional
15 information here relative to the attorney's fees
16 requested. And also, the Court would note that the
17 additional information is needed with regard to the
18 claimed costs that are requested.

19 The Court may not have mentioned this, but the
20 Court would like additional information relative to the
21 named plaintiff, plaintiff's enhancement of \$7,500 per
22 plaintiff.

23 Comment from plaintiff's counsel?

24 We are having difficulty hearing you, Counsel.

25 MR. CALVO: Okay. The evaluation of the
26 claims, Your Honor, the real meat of the action were the
27 meal and rest period claims that plaintiffs have
28 pursued. With that, we value that at 13,437 pay periods

1 that could potentially have reflected violations. We
2 equated a reasonable \$100 valuation per pay period to
3 that which would be the total of \$1.3 million that we
4 estimated for meal period violations.

5 In consideration of the settlement amount and
6 the meat of the claims being around meal and rest, the
7 recovery, Your Honor, is equating to 34 percent
8 recovery, which is considerable and reasonable and high
9 considering the circumstances and considering
10 defendant's own policies, practices, and procedures for
11 ensuring compliance with California law.

12 In terms of the Court's questions regarding the
13 costs, Your Honor, we did submit our cost sheet along
14 with the declaration from our firm and also our
15 co-counsel's firm. We are actually just seeking the
16 actual cost accrued, which is about \$18,000 and not the
17 full amount of the cost allotted for in the settlement
18 agreement, Your Honor.

19 THE COURT: All right. Thank you, Counsel. I
20 do appreciate that.

21 Naturally, when the submission is made and
22 there's a request for up to \$35,000, but the actual
23 amount incurred is substantially less than that raises
24 issues with the Court. The claimed attorney's fees, the
25 Court would like additional information with respect to
26 that.

27 It appears that plaintiff's counsel is going to
28 bear the labor on that. How much time do you need to

1 submit additional material? And what the Court would
2 view is set a continued hearing date sometime after that
3 submission.

4 MR. CALVO: Plaintiff would request two weeks,
5 Your Honor.

6 THE COURT: All right. So further submission
7 in support of the motion for approval of the PAGA
8 settlement be submitted no later than close of business
9 September 10, 2024; continued hearing set for
10 September 17, 2024.

11 Conflict?

12 MR. DERRY: Your Honor, I do have a conflict on
13 the 17th. The 16th would work on my calendar, if that
14 works for the Court.

15 THE COURT: That would work. September 16,
16 2024, 8:30 a.m. in Department T-2.

17 MR. DERRY: Your Honor, with respect to the
18 supplemental briefing, would it please the Court that
19 Family Dollar also submits a short brief for setting its
20 substantive position on the claims and the lack of
21 viability of the claims to support the value of the
22 settlement?

23 THE COURT: Certainly defendant is free to
24 submit a supplemental brief in support of the motion.

25 MR. DERRY: Thank you, Your Honor.

26 MR. CALVO: And, Your Honor, just to clarify,
27 you also wanted clarification as to the enhancement
28 award for plaintiff. Is that correct, Your Honor?

1 THE COURT: Yes. Here, we have two plaintiffs.
2 The proposal and, admittedly, dollars are short here,
3 the proposal was to provide an enhancement for \$7,500
4 apiece for each plaintiff showing what have they done to
5 earn their enhancement.

6 MR. CALVO: Thank you, Your Honor.

7 THE COURT: All right. Further notice waived
8 as to briefing and hearing?

9 MR. DERRY: Yes, Your Honor.

10 MR. CALVO: Yes, Your Honor.

11 THE COURT: Thank you, Counsel.

12 (The proceedings were concluded.)

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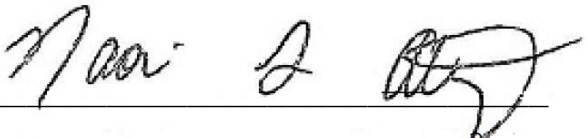
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1 STATE OF CALIFORNIA)
2 COUNTY OF KERN) SS

3
4 I, Naomi S. Álvarez, hereby certify that I, as
5 Official Reporter Pro Tempore, Kern County Superior
6 Court, was present and took down correctly in stenotype,
7 to the best of my ability, all the testimony and
8 proceedings in the foregoing-entitled matter; and I
9 further certify that the annexed and foregoing is a
10 full, true and correct statement of such proceedings and
11 a full, true and correct transcript of the stenotype
12 notes thereof.

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14 Dated: September 3, 2024

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18 _____
19 Naomi S. Álvarez, CSR #13007

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Transcript of Proceedings

Rodriguez vs.
Family Dollar, Inc.

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On September 10, 2024, I served the foregoing document(s) described as:

on the interested parties as follows:

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Service of the foregoing document(s) in PDF format on the interested parties as listed on the Service List posted on onelegal.com. and listed above on September 10, 2024. I did not receive an electronic message indicating any errors in transmission.


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