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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

PARASTOO MABOUDI and FRANCESCO
MASIELLO, individuals, in their representative
capacity on behalf of the State of California and
fellow Aggrieved Employees,

Plaintiff,

vs.

THE NEIMAN MARCUS GROUP LLC, a
Delaware Limited Liability Company; and DOES
1 through 50, Inclusive;

Defendants.

Case No. 21CV391973

Action Filed: December 15, 2021

**[PROPOSED] ORDER APPROVING
PLAINTIFFS' PAGA ACTION
SETTLEMENT**

Hearing Date: August 14, 2024

Hearing Time: 1:30 p.m.

Judge: Hon. Theodore C. Zayner

Department: 19

1 The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on
2 August 14, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

3 I. Introduction

4 On December 15, 2021, plaintiff Parastoo Maboudi (“Maboudi”) filed a Representative
5 Action Complaint against The Neiman Marcus Group LLC (“Defendant”), setting forth a single cause
6 of action for Civil Penalties Pursuant to Private Attorneys General Act (“PAGA”), Labor Code
7 section 2698, et seq. On January 16, 2024, plaintiffs Maboudi and Francesco Masiello (collectively,
8 “Plaintiffs”) filed their first amended representative action complaint (“FAC”), setting forth a set
9 forth a single cause of action for civil penalties pursuant to PAGA.

10 Thereafter, the parties reached an agreement. Now before the court is Plaintiffs’ unopposed
11 motion for approval of the PAGA settlement. At the initial hearing on this motion on June 26, 2024,
12 the court continued the matter to August 14, 2024. (See June 26, 2024 Minute Order (“June 26 Minute
13 Order”), p. 8.) After reviewing the proposed settlement, the court asked the Plaintiffs to address
14 several issues in further detail. (Id. at p. 6.)

15 On July 29, 2024, Plaintiffs’ counsel filed a supplemental declaration addressing the issues
16 identified by the court. Plaintiffs also submitted a stipulation for leave to file an amended complaint,
17 which the court entered as an order on July 31. Thus, Plaintiffs’ operative Second Amended
18 Representative Action Complaint (“SAC”), deemed filed on July 31, 2024, sets forth a single cause
19 of action for PAGA violations.

20 II. Legal Standard

21 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of
22 other current or former employees to recover civil penalties for Labor Code violations. (Iskanian v.
23 CLS Transp. Los Angeles, LLC (2014) 59 Cal.4th 348, 380, overruled on other grounds by Viking
24 River Cruises, Inc. v. Moriana (2022) 596 U.S. ____ [2022 U.S. LEXIS 2940].) Seventy-five percent
25 of any penalties recovered go to the Labor and Workforce Development Agency (“LWDA”), leaving
26 the remaining 25 percent for the employees. (Ibid.) PAGA is intended “to augment the limited
27 enforcement capability of [the LWDA] by empowering employees to enforce the Labor Code as
28 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.)

A superior court must review and approve any PAGA settlement. (Lab. Code, § 2699, subd.
(1)(2).) The court’s review “ensur[es] that any negotiated resolution is fair to those affected.”

1 (Williams v. Superior Court (2017) 3 Cal.5th 531, 549.) The proposed settlement must be submitted
2 to the LWDA at the same time it is submitted to the court. (Ibid.)

3 As discussed by one court:

4 PAGA does not establish a clear standard for evaluating PAGA settlements. ...

5 [¶]

6 Accordingly, certain courts have been willing to approve PAGA settlements only if (1) the
7 statutory requirements set forth by PAGA have been satisfied, and (2) the settlement
8 agreement is fair, reasonable, and adequate in view of PAGA’s public policy goals.

9 (Patel v. Nike Retail Services, Inc. (N.D. Cal. 2019) 2019 WL 2029061, 2019 U.S. Dist.
LEXIS 77988 (Patel), at *5.)

10 As part of this analysis, courts have evaluated proposed PAGA settlements under the relevant
11 factors from Hanlon v. Chrysler Corp. (9th Cir. 1998) 150 F.3d 1011, 1026. (Patel, supra, 2019 U.S.
12 Dist. LEXIS 77988 at *5-6.) “Of the Hanlon factors, the following are relevant to evaluating [a]
13 PAGA settlement: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely
14 duration of further litigation; (3) the amount offered in settlement; (4) the extent of discovery
15 completed and the stage of the proceedings; (5) the presence of government participation; and (6) the
expertise and views of counsel.” (Ibid.)

16 Similar to its review of class action settlements, the Court must “determine independently
17 whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the
18 LWDA in the enforcement of state labor laws.” (Moniz v. Adecco USA, Inc. (2021) 72 Cal.App.5th
19 56, 76–77 (Moniz).) It must make this assessment “in view of PAGA’s purposes to remediate present
20 labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (Id. at p.
21 77; see also Haralson, supra, 383 F. Supp. 3d at p. 971 [“when a PAGA claim is settled, the relief
22 provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying
23 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).)

24 “[W]hen a PAGA claim is settled, the relief provided ... [should] be genuine and meaningful,
25 consistent with the underlying purpose of the statute to benefit the public” (O’Connor, supra 201
26 F.Supp.3d at p. 1133.) The settlement must be reasonable in light of the potential verdict value. (Id.
27 at 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible
28 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.

1 Mistras Group, Inc. (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, 2016
2 U.S. Dist. LEXIS 140759 at *8-9.)

3 **III. Discussion**

4 **A. Provisions of the Settlement**

5 The proposed settlement has been on behalf of “Aggrieved Employees,” defined as “all
6 persons who were employed in an hourly-paid, non-exempt role by Defendant at any time from
7 October 8, 2020 through October 30, 2023.” (Declaration of Jean-Claude Lapuyade, Esq. in Support
8 of Plaintiffs’ Motion to Approve PAGA Action Settlement (“Lapuyade Dec.”), Ex. 1 (“Agreement”),
9 ¶ 1.) Likewise, the “Settlement Period” is defined as the period from October 8, 2020 through October
30, 2023. (Agreement, ¶ 2.)

10 Under the settlement, Defendant will pay a total maximum sum of \$1,750,000. (Agreement,
11 ¶¶ 3, 6.) This amount includes attorney fees of not more than \$583,333.33 (1/3 of the maximum
12 settlement amount), litigation costs not to exceed \$35,000, and settlement administration costs not to
13 exceed \$13,500. (Agreement, ¶¶ 30(a)-30(c).) Of the remaining net settlement amount, 75 percent
14 will be paid to the LWDA and 25 percent will be paid to aggrieved employees based on the pro rata
15 number of pay periods worked by each aggrieved employee during the Settlement Period.
16 (Agreement, ¶¶ 30(d), 33.) Funds from checks that are 4 not cashed within 180 days from the date of
mailing will be sent to the California Controller’s Unclaimed Property Fund. (Agreement, ¶ 38.)

17 In exchange for the settlement, the aggrieved employees agree to release The Neiman Marcus
18 Group LLC and “Released Parties” from all claims that were, or reasonably could have been, alleged
19 in this action based on the facts alleged in this action and/or notice provided to the LWDA.
20 (Settlement Agreement, ¶ 12, 46.) The court noted in its minute order that the Agreement’s definition
21 of “Released Parties,” found at paragraph 13 and containing the phrase “including but not limited to,”
22 was not exhaustive. (June 26 Minute Order, p. 7.) The parties have since stipulated to an amendment
23 of paragraph 13 of the Agreement, removing the aforementioned phrase. (Supplemental Declaration
24 of Jean-Claude Lapuyade, Esq. in Support of Plaintiffs’ Motion to Approve PAGA Action Settlement
25 (“Lapuyade Supp. Dec.”), ¶ 5 and Ex. B.) The court finds that the parties’ stipulated amendment to
the Agreement sufficiently cures the defect previously identified concerning the Agreement’s
definition of “Released Parties.”

26 As previously noted by the court, the Agreement indicates that plaintiff Maboudi agreed
27 to a general release as part of a separate settlement agreement. (June 26 Minute Order, p. 6;
28 Agreement, ¶ 6.)

B. Fairness of the Settlement

Plaintiffs contend the PAGA settlement is fair and reasonable. (Lapuyade Dec., ¶ 18; Memorandum of Points and Authorities in Support of Plaintiffs’ Motion for Approval of PAGA Action Settlement (“MPA”), p. 7:10.) In their moving papers, Plaintiffs indicate that the settlement resolves PAGA claims on behalf of approximately 2,663 aggrieved employees who collectively worked approximately 88,000 pay periods during the Settlement Period. (MPA, p. 4:24-26.) The parties participated in a full-day mediation with Jeffrey Ross on August 1, 2023. (Lapuyade Dec., ¶ 14.) Prior to the mediation, Defendant provided Plaintiffs with data and documents including the total number of aggrieved employees and pay periods, the written wage and hour policies, employee handbooks, and time and payroll records for aggrieved employees. (Ibid.)

Plaintiffs estimate that Defendant’s maximum potential liability for the PAGA claim is \$7,229,478.15. (Lapuyade Dec., ¶ 18.) Plaintiffs provide an explanation for how they arrived at this figure, beginning with their contention that Defendant pay sales associates and other employees via a compensation structure that pays them either an hourly wage or their commission, whichever is greater. (Id. at ¶ 19.) Plaintiffs assert that under such a pay structure, the employer must separately compensate employees for non-selling time. (Id. at ¶ 20.) Plaintiffs explain that several factors justify a discounted valuation, including Defendant’s defenses, obstacles to proving the allegations with respect to the group of Aggrieved Employees, and a court’s discretion to reduce PAGA penalty awards. (Id. at ¶¶ 22-25, 30, 34.) The settlement amount of \$1,750,000 is 24 percent of Plaintiffs’ estimate of Defendant’s maximum potential liability of the PAGA claim.

In its prior minute order, the court expressed approval of the settlement amount but requested Plaintiffs to provide supplemental information. More specifically, the court issues relating to the settlement period, the liability calculations, the release language, plaintiff Maboudi’s separate settlement agreement, attorney fees, and litigation costs. (June 26 Minute Order, pp. 6-8.) Plaintiffs’ counsel has since provided a supplemental declaration addressing each of these issues. (Lapuyade Supp. Dec., ¶¶ 2-8.)

First, the court noted that the FAC defines the PAGA Period as between October 8, 2020 to the present, while the Agreement defines it as between October 8, 2020 through October 30, 2023. (June 26 Minute Order, p. 6.) Plaintiffs’ counsel indicates that this discrepancy was an inadvertent error. (Lapuyade Supp. Dec., ¶ 3 and Ex. A.) As stated above, Plaintiffs have since filed the SAC pursuant to the court’s order granting leave to amend. The SAC reflects “the correct PAGA period, October 8, 2020 through October 30, 2023.” (Ibid., SAC ¶ 9.) Accordingly, Plaintiffs have

1 sufficiently addressed the settlement period issue.

2 Second, the court stated it was unclear how Plaintiffs arrived at the settlement amount of
3 \$1,750,000, noting that there were different figures for group of “Aggrieved Employees” referenced
4 throughout Plaintiffs’ moving papers. (June 26 Minute Order, pp. 6-9.) Plaintiffs’ counsel explains
5 that the number of known Aggrieved Employees, as represented by Defendant, changed from 2,345
6 in February 2023 (when the parties secured a bid from the settlement administrator) to 2,663 in
7 August 2023 (when the parties participated in mediation). (Lapuyade Supp. Dec., ¶ 4.) The parties
8 used the revised headcount to negotiate the \$1,750,000 settlement, and the settlement administrator
9 has agreed to revise the bid to reflect a headcount of 2,663, at no additional cost. (Ibid.) Accordingly,
the court finds that Plaintiffs have sufficiently addressed the settlement calculation issue.

10 Third, as discussed above, the court identified a defect concerning the language used for the
11 releases. (June 26 Minute Order, p. 7.) The parties have amended the Agreement’s definition of
12 “Released Parties” by stipulation. (“Lapuyade Supp. Dec.”), ¶ 5 and Ex. B.) The court finds that the
13 parties’ stipulated amendment to the Agreement sufficiently cures the defect previously identified
concerning the Agreement’s definition of “Released Parties.”

14 Fourth, the court noted that the Agreement references a separate settlement agreement and
15 asked the Plaintiffs to provide any individual settlement agreements to the court for an in camera
16 review. (June 26 Minute Order, pp. 7-8.) Plaintiffs’ counsel has provided the court with copies of the
17 Plaintiffs’ separate settlement for in camera review. The court has reviewed the documents submitted
18 and finds that the terms of the Plaintiffs’ separate settlement agreement do not adversely affect the
19 fairness of the PAGA settlement. Accordingly, Plaintiffs have sufficiently addressed the court’s
concerns related to their separate settlement agreements.

20 Fifth, the court asked Plaintiffs’ counsel to address whether they received any payment
21 for attorney fees in connection with any individual settlement. (June 26 Minute Order, p. 8.) In his
22 supplemental declaration, Mr. Lapuyade states:

23 “Plaintiffs’ counsel has not received payment of any Attorney fees in connection with any individual
24 settlement. The payment of Attorney’s fees in connection with the individual settlement is
25 conditioned on several factors, as noted in section 1.2 of the Individual Settlement Agreements
submitted to the Court.”

26 (Lapuyade Supp. Dec., ¶ 7.)

27
28 ///

1 Sixth, the court asked Plaintiffs' counsel to address whether payment was received for costs
2 in connection with any individual settlement agreements, and if so, whether any such payment
3 covered costs incurred in connection with the PAGA action. (June 26 Minute Order, p. 8.) The court
4 also noted there are multiple law firms involved and asked Plaintiffs' counsel to provide the fee
5 sharing agreement between the firms. (Ibid.) In this regard, Mr. Lapuyade states the following in his
supplemental declaration:

6 Plaintiffs' counsel has not received any payment of any costs in connection with any
7 individual settlement. The \$18,929.71 costs [sic] referenced in the motion are associated with
8 litigating the PAGA case only. The \$18,929.71 amount does not include costs associated with
9 handling the individual settlements. The payment of Attorney's fees and costs in connection with the
10 individual settlements is conditioned on several factors, as noted in section 1.2 of the Individual
11 Settlement Agreements. Plaintiffs are represented by JCL Law Firm and the Zakay Law Group with
Association of Counsel/Referral Fee Split with Browne Labor Law.

12 The Client was informed of and approved this Referral Fee Split. The fee split is as follows:
13 37.5% to the Zakay Law Group; 37.5% to JCL Law Firm and 25% to Browne Labor Law. (Lapuyade
14 Supp. Dec., ¶ 8.) The declaration includes a redacted version of Plaintiff Maboudi's Contingency Fee
15 Agreement that contains the referral fee split, and counsel offers to submit an unredacted version of
16 the fee agreement for an in camera review. (Id. at ¶ 8 and Ex. C.) As discussed above, the court has
17 received and reviewed the individual settlement agreements, and the courts finds that the terms of the
18 Plaintiffs' separate settlement agreement do not adversely affect the fairness of the PAGA settlement.

19 IV. Conclusion

20 Accordingly, the motion for approval of PAGA settlement is GRANTED.

21 The parties shall return for a compliance hearing to occur in Department 19 on:
22 February 26, 2025, at 2:30 p.m.
Plaintiffs shall prepare the order.

23 **IT IS SO ORDERED AND ADJUDGED, LET JUDGMENT BE FORTHWITH**
24 **ENTERED ACCORDINGLY.**

25
26 DATED: August 15, 2024

27 
HON. THEODORE C. ZAYNER