Tentative Rulings for May 1, 2024
Department 503

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)
The above rule also applies to cases listed in this "must appear" section.

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

_____

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(03)

Tentative Ruling

Re: ***Barth v. McGraw***
Superior Court Case No. 23CECG03499

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

Motion: Defendants' Motion to Compel Arbitration and Stay Proceedings Pending Arbitration

Tentative Ruling:

To grant defendants' motion to compel plaintiff to arbitrate her claims, and to stay the court proceedings pending the outcome of the arbitration.

Explanation:

California Code of Civil Procedure section 1281.2 states that, "[o]n petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that: (a) The right to compel arbitration has been waived by the petitioner; or (b) Grounds exist for the revocation of the agreement. (c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact. (Cal. Civ. Proc. Code § 1281.2, paragraph breaks omitted.)"

"California courts traditionally have maintained a strong preference for arbitration as a speedy and inexpensive method of dispute resolution. To this end, 'arbitration agreements should be liberally construed', with 'doubts concerning the scope of arbitrable issues [being] resolved in favor of arbitration [citations].'" (*Market Ins. Corp. v. Integrity Ins. Co*. (1987) 188 Cal. App. 3d 1095, 1098, internal citations omitted.) "This strong policy has resulted in the general rule that arbitration should be upheld 'unless it can be said with assurance that an arbitration clause is not susceptible to an interpretation covering the asserted dispute. [Citation.]' [Citations.] [¶] It seems clear that the burden must fall upon the party opposing arbitration to demonstrate that an arbitration clause cannot be interpreted to require arbitration of the dispute.'" (*Bono v. David* (2007) 147 Cal.App.4th 1055, 1062.)

"[W]hen a petition to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine whether the agreement exists and, if any defense to its enforcement is raised, whether it is enforceable. Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence. If the party opposing the petition raises a defense to enforcement - either fraud in the execution voiding the agreement, or a

statutory defense of waiver or revocation (see § 1281.2, subds. (a), (b)) - that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense." (*Rosenthal v. Great Western Fin. Securities Corp*. (1996)14 Cal. 4th 394, 413.) Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute, and general principles of California contract law guide the court in making this determination. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534.)

In the present case, defendants have presented copies of two agreements to arbitrate which were signed by plaintiff and a representative for defendant. (Exhibits A and B to Trafican decl.) The first agreement was allegedly signed by plaintiff when she was first hired by defendant in September of 2022, and the second was allegedly signed by her in February of 2023. The agreements clearly encompass all claims arising out of plaintiff's employment with defendants, including claims for breach of contract, retaliation, discrimination, harassment, and wrongful termination, as well as any other claims based on violations of local, state, or federal law, statute, or regulations or ordinance, or common law. Here, plaintiff is alleging claims for harassment, discrimination, retaliation, wrongful termination and the Labor Code that arise out of her employment with defendants, so the agreements encompass her claims.

Defendant's custodian of records states that the arbitration agreement is part of the documents that employees are required to sign when they are hired by defendant. (Trafican decl., ¶ 5.) Employees cannot start working for defendant until they execute the onboarding documents, including the arbitration agreement. (*Ibid*.) Plaintiff completed the onboarding process when she was hired in September of 2021, and she signed the arbitration agreement at that time. (*Id*. at ¶ 7, and Exhibit A thereto.) She also later completed another arbitration agreement in February of 2021. (*Id*. at ¶ 8, and Exhibit B thereto.)

Thus, defendants have met their burden of showing that plaintiff executed the agreements to arbitrate her disputes regarding her employment with defendant. While plaintiff objects that Ms. Trafican has no direct personal knowledge of the circumstances surrounding the execution of the agreement and does not know that plaintiff signed it, Ms. Trafican is the custodian of records for defendant Pridestaff and has authenticated the agreements. Thus, she can testify about the authenticity of the records in the company's personnel files, including the arbitration agreements executed by plaintiff.

Also, it is notable that plaintiff does not deny that she signed the agreements. She only claims that she does not recall whether she signed them or not, and claims that defendants did not explain the agreements to her or give her a chance to negotiate their terms. (Barth decl., ¶ 4.) She does recall briefly scanning some onboarding documents provided to her during the onboarding process, but she did not review them in detail because she felt pressured to sign them quickly. (*Ibid*.) The documents were not explained to her, and she was never told that they contained an arbitration agreement. (*Ibid*.) She was shocked to find out years later that she might be compelled to arbitrate her claims. She did not consent to the arbitration knowingly. (*Ibid*.) She did not have an opportunity to negotiate the terms of the agreements, which were provided to her on a take-it-or-leave-it basis. (*Id*. at ¶ 7.) No one at defendant explained how the arbitration would affect her substantive rights, or the disadvantages of the arbitration. (*Ibid*.)

However, while plaintiff claims that she does not recall signing the agreements, it does appear that she did sign at least the first the arbitration agreement, as she admits that she was presented with documents to sign as part of the onboarding process and she seems to concede that she did sign the documents. The fact that she cannot recall signing is not enough to raise a factual dispute about whether she signed the agreement. (*Iyere v. Wise Auto Group, Inc*. (2023) 87 Cal.App.5th 747, 756-758.) Also, the fact that plaintiff claims not to have read or understood the agreement does not mean that no contract was formed. "It is hornbook law that failing to read an agreement before signing it does not prevent formation of a contract. That settled rule cannot be evaded by adding, '... and if I had read the contract, I wouldn't've signed it.'" (*Iyere, supra,* at p. 759, citations omitted.) Therefore, defendants have met their burden of showing that there was an agreement to arbitrate the plaintiff's claims here.

Plaintiff also contends that the second arbitration agreement is not valid because it was not signed by defendant's CEO. She notes that the first agreement states that any modifications to the agreement shall be consented to in writing by Pridestaff's CEO, and there is no such written consent to the second agreement. However, the second agreement appears to be completely separate and independent agreement to arbitrate, rather than a modification of the first agreement, so the CEO's written consent was not necessary to make the second agreement valid. In any event, even if the second agreement was a modification of the first and thus required the CEO's consent, the first agreement would still be valid and enforceable. Since the first agreement was executed by plaintiff and requires arbitration of all of plaintiff's claims here, defendants have met their burden of showing that a valid agreement to arbitrate the dispute exists.

Next, plaintiff argues that the agreement is unenforceable because it is unconscionable. She contends that the agreement is procedurally unconscionable because it is a form contract was presented to her by defendant on a "take-it-or-leave-it" basis as a condition of working for defendant, it was not explained to her, that she was not given a chance to negotiate the agreement's terms or consult with an attorney before signing it, and is thus a contract of adhesion. She also contends that the agreement is substantively unconscionable, as it contains several unfair and one-sided provisions, including lack of mutuality of remedies, a confidentiality provision, and it does not allow her to recover her attorney's fees.

"'[U]nconscionability has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.' Phrased another way, unconscionability has both a 'procedural' and a 'substantive' element. [¶] The procedural element focuses on two factors: 'oppression' and 'surprise.' 'Oppression' arises from an inequality of bargaining power which results in no real negotiation and 'an absence of meaningful choice.' 'Surprise' involves the extent to which the supposedly agreed-upon terms of the bargain are hidden in a prolix printed form drafted by the party seeking to enforce the disputed terms. Characteristically, the form contract is drafted by the party with the superior bargaining position." (*A & M Produce Co. v. FMC Corp.* (1982) 135 Cal.App.3d 473, 486, citations omitted.)

"Substantive unconscionability is less easily explained. 'Cases have talked in terms of "overly harsh" or "one-sided" results. [Citations.] One commentator has pointed out, however, that ' ... unconscionability turns not only on a 'one-sided' result, but also on an absence of 'justification' for it" [citation], which is only to say that substantive

unconscionability must be evaluated as of the time the contract was made." (*Stirlen v. Supercuts, Inc.* (1997) 51 Cal.App.4th 1519, 1532, citations omitted.) In other words, the contract terms must be so one-sided as to "shock the conscience." (*Ibid*.) "The prevailing view is that these two elements must *both* be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability." (*Id.* at p. 1533, citations omitted, italics in original.)

Here, it does appear that the arbitration agreement is at least somewhat procedurally unconscionable. It was presented to plaintiff on a take-it-or-leave-it basis as a mandatory condition of employment. The agreement was a form drafted by the employer, the party with the greater power, with no opportunity for negotiation. Also, the agreement was allegedly buried in a stack of documents that were given to plaintiff during the onboarding process, and defendant did nothing to point it out or explain its terms to plaintiff. The arbitration agreement itself was dense and contained many complicated legal terms that a layperson like plaintiff would not be likely to understand. Plaintiff also felt pressured to sign the agreement in order to start working for defendant. As a result, the circumstances suggest some degree of procedural unconscionability.

With regard to the issue of substantive unconscionability, defendant notes that the agreement complies with all of the requirements under *Armendariz v. Foundation Health Pyschcare Services, Inc*. (2000) 24 Cal.4th 83. The *Armendariz* court listed five requirements for a finding that an employment arbitration clause to meet in order to be found lawful, namely the agreement must (1) provide for neutral arbitrators, (2) provide for more than minimal discovery, (3) require a written award, (4) provide for all types of relief that would otherwise be available in court, and (5) not require that the employee pay unreasonable fees or costs as a condition of access to the arbitration forum. (*Id*. at pp. 102, 110-111.)

In the present case, the agreement does provide for a neutral arbitrator, some discovery, and a written arbitration award. (Exhibits A and B to Trafican decl.) The agreement also provides for the same types of relief that would be available if the case were tried in court, and it provides that the employer will pay for all arbitrator's fees and other costs unique to arbitration. (*Ibid*.) Thus, the agreement does comply with the *Armendariz* requirements.

Nevertheless, plaintiff contends that the agreement is substantively unconscionable because it contains a confidentiality provision, allegedly lacks mutuality, and provides that each party will pay their own attorney's fees rather than allowing plaintiff to recover her fees if she prevails on her FEHA claims. Plaintiff claims that the agreement is unduly one-sided because it only compels arbitration of the types of claims that an employee might bring rather than the sorts of claims that an employer is likely to bring. However, the agreement does not appear to be unfairly one-sided, as it compels arbitration of "*any claim* that could be asserted in court… by you *or PrideStaff* including, but not limited to, claims for: *breach of contract* (express or implied), discrimination…, harassment; retaliation; wrongful discharge; violation of the Family and Medical Leave Act; *violation of confidentiality or misappropriation of trade secrets;* claims for wages, leaves or breaks; violation of the Fair Labor Standards Act; *violation of any federal, state or other law, statute, regulation or ordinance; and tort claims*, except to the extent applicable state law bars mandatory arbitration of the claim AND the state law is not preempted under the FAA." (Exhibit A to Trafican decl., italics added.) While many of the listed claims are the types of claims that are more likely to be brought by an employee, the claims for breach of contract, trade secrets, and any other claims for tort

or violation of state of federal law are just as likely to be brought by an employer. Therefore, the agreement does not simply single out the kinds of claims that an employee might bring, and the agreement does not appear to simply be a way for the employer to force its employees into arbitration of their claims while allowing the employer to sue in court on the claims it might wish to bring.

Next, while plaintiff notes that the agreements provide that each party will pay its own attorney's fees, which would prevent plaintiff from recovering all of her remedies if she prevails on her FEHA claims, it appears that plaintiff is reading the agreements too narrowly. The first agreement states: "The parties will be entitled to *any remedies*, and only those remedies, that would be available in a court of law. The parties will pay their own attorneys' fees *subject to any remedies to which that party may be entitled under applicable law.*"(Exhibit A to Trafican decl., italics added.) Also, the second agreement provides that: "The Arbitrator may award *any party any remedy to which that party is entitled under applicable law*..." (Exhibit B to Trafican decl., ¶ 7, italics added.)

Thus, while the agreements do provide that each party shall pay their own attorney's fees, they go on to state that this limit is subject to any remedies to which that party may be entitled under applicable law. In other words, if there is a law that provides for an award of attorney's fees, then one party may recover their fees from the other party under that law. The language of the agreements also allows the arbitrator to grant any remedy provided under the law, which would include an award of attorney's fees to the prevailing plaintiff in a FEHA claim. As a result, the agreements do not unfairly deny plaintiff her right to recover her attorney's fees if she prevails on her FEHA claims.

On the other hand, the confidentiality provision of the agreements does appear to be unconscionable. The provision states that, "Except as may be permitted or required by law, as determined by the Arbitrator, neither a party nor an Arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of all parties." (Exhibit A to Trafican decl. and Exhibit B, ¶ 7.) However, prohibiting the plaintiff from disclosing the existence, content or results of the arbitration would unfairly prevent plaintiff from conducting discovery, as it would prevent her from even telling witnesses that she is pursuing her claims and asking them for information about the case. She would also be unable to obtain documents from third parties that are relevant to her claims. (*Davis v. O'Melveny & Myers* (9th Cir. 2007) 485 F.3d 1066, 1078 [overruled on other grounds by *Ferguson v. Corinthian Colleges, Inc*. (9th Cir. 2013) 733 F.3d 928]; *Ramos v. Superior Court* (2018) 28 Cal.App.5th 1042, 1065.) The confidentiality provision also gives the employer an unfair advantage by preventing plaintiff from accessing precedent while allowing the employer to learn how to negotiate and litigate its contracts in the future. (*Ibid*.) The provision would also prevent others from building their cases. (*Ibid*.) "Future employees cannot take advantage of findings in past arbitrations or prove a pattern of discrimination and/or retaliation." (*Murrey v. Superior Court* (2023) 87 Cal.App.5th 1223, 1255.) Therefore, the confidentiality provision is unfair, one-sided, and substantively unconscionable.

Nevertheless, the court can cure the unconscionability caused by the confidentiality provision by severing it from the rest of the agreement. The court has discretion to sever out any unconscionable provisions and enforce the remainder of the agreement unless the agreement is so permeated with unconscionability as to render the entire agreement unenforceable. (Civil Code, § 1670.5, subd. (a); *Armendariz, supra,* 24 Cal.4th at pp. 121-122.) The agreements contain severability clauses that permit one

portion of the agreement to be stricken while the rest are enforced. (Exhibit B to Trafican decl., ¶ 9.) Here, while plaintiff argues that the entire agreement is so permeated with unconscionability that it would not be possible to cure the problem without rewriting the entire agreement, the only truly unconscionable provision of the agreement is the confidentiality clause. The offending clause can be easily severed from the rest of the agreement without affecting the other provisions in the agreement. Therefore, the agreement is not so permeated with unconscionability as to prevent the court from severing the confidentiality provision and enforcing the rest of the agreement.

As a result, the court intends to sever the confidentiality provision from the agreements, enforce the remainder of the agreements, and grant the motion to compel arbitration of plaintiff's claims. The court will also stay the action pending resolution of the arbitration.

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 4/30/24.
(Judge's initials) (Date)

(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)

(29)

Tentative Ruling

Re: ***Brizuela v. Williams Scotsman, Inc.***
Superior Court Case no. 22CECG00821

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

Motion: Application of David A. Gonzalez to appear as counsel *pro hac vice*

Tentative Ruling:

To grant the application. (Cal. Rules of Court, rule 9.40.)

Explanation:

Defendant Williams Scotsman, Inc., has filed an application for attorney David A. Gonzalez to appear in the above-titled case, *pro hac vice*. The application complies with the requirements of California Rules of Court, rule 9.40, and no opposition has been filed. The application is granted.

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 4/30/24 .
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***Torres v. Rodriguez, III***
Superior Court Case No. 24CECG00401

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

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To grant and sign the proposed order. No appearances necessary.

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 4/30/24.
(Judge's initials) (Date)