Tentative Rulings for July 28, 2026
Department 403

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.

19CECG03018	***Gatica v. Valley AG, Inc*. is continued to Thursday, July 30, 2026, at 3:30 p.m. in Department 403.**
24CECG00667	***Peterson v. NationWide Agribusiness Insurance Company* is continued to Thursday, July 30, 2026, at 3:30 p.m. in Department 403.**
24CECG02689	**Bernal v. Town N Country Reedley, Inc. is continued to Thursday, July 30, 2026, at 3:30 p.m. in Department 403.**
24CECG04998	**Long v. Esquivel is continued to Thursday, July 30, 2026, at 3:30 p.m. in Department 403.**
25CECG05700	***Hughey v. Promesa Apartments* in continued to Wednesday, September 16, 2026, at 3:30 p.m. in Department 403.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(34)

<u>Tentative Ruling</u>

Re: ***Clifton v. Flores, et al.***
Superior Court Case No. 24CECG04918

Hearing Date: July 28, 2026 (Dept. 403)

Motion: by Defendants for Summary Judgment, or, in the Alternative, Summary Adjudication

Tentative Ruling:

To deny defendants iMarket Global, Inc. and IMG Corporation's motion for summary judgment. To deny defendant's motion for summary adjudication of Issues 1, 2, 3, 4, 5, 6, and 7.

Explanation:

"'Summary judgment is granted when there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law.'" (*Lopez v. Superior Court* (1996) 45 Cal.App.4th 705, 713, quoting Code Civ. Proc. § 437c(c).) Summary judgment is properly directed toward the entire complaint and not portions thereof. (see *Barnick v. Longs Drug Stores, Inc*. (1988) 203 Cal.App.3d 377, 384; *Khan v. Shiley, Inc*. (1990) 217 Cal.App.3d 848, 858-859.)

Summary adjudication is the proper mechanism for challenging a particular, "cause of action, an affirmative defense, a claim for punitive damages, or an issue of duty." (*Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 242.) However, "[a] motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc. § 437c(f)(1); see also *Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 97 [piecemeal adjudication prohibited].)

In the case at bench, defendants iMarket Global, Inc. and IMG Corporation move for summary judgment of plaintiff's complaint or, in the alternative, summary adjudication of each of plaintiff's causes of action. The operative First Amended Complaint alleges causes of action for (1) Harassment Based on Sex – Hostile Work Environment; (2) Sexual Harassment – Quid Pro Quo; (3) Failure to Prevent Harassment; (4) Retaliation; (5)Negligent Supervision, Training, Hiring, and Retention; (6) Wrongful Termination; (7) Failure to Pay Earned Wages (Labor Code §201); (8) Waiting Time Penalties (Labor Code §203); (9) Failure to Reimburse Business Expenses (Labor Code §2802).

As an initial matter, California Rules of Court, rule 3.1350(b) provides in relevant part [emphasis added]: "If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty <u>must be stated specifically in the notice of</u>

motion and be repeated, verbatim, in the separate statement of undisputed material facts." (Emphasis added.)

In the case at bench, the moving parties' separate statement does not comply with the requirement that the notice of motion and separate statement include the same stated issues for adjudication. The notice of motion lists every cause of action. The separate statement begins with "Issue 1: Material Facts Relating to the Motion for Summary Adjudication of The Seventh Cause of Action for Failure to Pay Earned Wages under Labor Code section201" and continues out of order with Issue 2 as the eighth cause of action and Issue 3 as the ninth cause of action. Beginning at Issue 4 the separate statement corresponds to the first cause of action and continued through Issue 7 with the forth cause of action. The separate statement omits the fifth and sixth causes of action for negligent supervision and wrongful termination. Additionally, the separate statement is limited to those material facts as they relate to a specific "issue" and does not have a set of material facts directed toward the motion for summary judgment.

Failure to comply with the separate statement requirement constitutes ground for denial of the motion, in the court's discretion. (Code Civ. Proc., § 437c, subd. (b)(1); *Reeves v. Safeway Stores, Inc.* (2004) 121 Cal.App.4th 95, 106 [instead of stating key events as "undisputed facts," defendant stated what witnesses *said* about those events]; *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 160, [separate statement failed to address allegations of material fact in complaint].)

Although the court will not deny the motion for the failure to match the issues for adjudication in the separate statement with the notice of motion, the court will limit the scope of the motion to those issues addressed in the separate statement. "This is the Golden Rule of Summary Adjudication: If it is not set forth in the separate statement, *it does not exist*." (*United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 337 [superseded by statute on other grounds]; *Allen v. Smith* (2002) 94 Cal.App.4th 1270, 1282; *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 173 [failure of defendant's separate statement to address material allegation in complaint was "fatal flaw"].)

As a result, the motion for summary judgment is denied, as the separate statement fails to address the Fifth Cause of Action for Negligent Supervision, Training, Hiring, and Retention and the Sixth Cause of Action for Wrongful Termination.

Summary Adjudication of Issues 1, 2, and 3: Labor Code Violations

Defendants premise summary adjudication of plaintiff's seventh, eighth and ninth causes of action alleging violations of the Labor Code on plaintiff being classified as an independent contractor, not an employee. Plaintiff disputes that her day to day work was unsupervised and that she was free to set her own work schedule. (UMF No. 4.) Plaintiff offers evidence of her having been disciplined for complaints regarding her sales conduct and her declaration attesting to attending morning meetings on a set schedule, following set procedures in interacting with customers and completing sales and following the directions of SFE personnel over the phone on how to proceed with the sales process and completing enrollments, and receiving direction from Thomas Flores for direction of her day-to-day activities. (Clark Decl., Exs. 2 [Clifton Decl.], 5, 9.)

The determination of employee or independent contractor status is one of fact and only becomes a question of law in the absence of evidence disputes. (*S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 349.) Plaintiff has demonstrated there are disputes as to the defendants' control of her schedule and day-to-day activities, and, as such, her status as an independent contractor cannot be determined as a matter of law. Having demonstrated a dispute of material fact as to whether plaintiff is properly classified as an independent contractor, the motion for summary adjudication of Issues 1, 2 and 3 is denied.

Although defendants argue in the alternative that her designation as an outside sales person also supports they are not liable for Labor Code violations premised on her status as an employee, the plaintiff's additional material facts that regular scheduled meetings every morning were uncompensated, nonproductive time is sufficient to preclude summary adjudication of the Labor Code claims. (AMF No. 54; See *Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98, 110-111.)

Summary Adjudication of Issues 4, 5, 6, and 7: FEHA Claims

Defendants' arguments as to why plaintiff's claims for harassment and retaliation share a common material fact: each is predicated on Thomas Flores not being a manager or supervisor of plaintiff as alleged in the First Amended Complaint. This is not addressed in the separate statement and would appear to be a necessary fact to establish defendants are subject to the requirements for nonsupervisory coworker harassment for plaintiff's hostile work environment claim, that no work opportunity was conditioned on sexual favors for purposes of the quid pro quo harassment claim, and that Flores had no authority to terminate or discipline plaintiff for purposes of her retaliation claim. Further, defendants' arguments that the duration of the alleged "leering and shunning" was too short and nonpervasive to be considered a hostile work environment is not supported by material facts as to the duration of the alleged conduct in the separate statement.

Defendants additionally argue there was no adverse employment action to support the retaliation claim. This is not supported by the evidence submitted in support of defendants' separate statement at UMF No. 15. The fact to be supported is that plaintiff's "engagement with IMG ended," appearing to support the argument that there was no adverse employment action for plaintiff's retaliation claim. However, the evidence in support of this fact is limited to citation to the First Amended Complaint alleging plaintiff's employment was terminated. (See UMF 15, and citation to FAC, ¶ 22.) Termination is considered an adverse employment action. (*Light v. Department of Parks & Recreation* (2017) 14 Cal.App.5th 75, 91.) Thus, defendants' argument is not supported by the facts within the separate statement.

Based on the failure of the separate statement to include all necessary facts to support the moving defendants' arguments for summary adjudication of Issues 4, 5, and 7, the court finds defendants have not met their burden. (Code Civ. Proc., § 437c, subd. (p)(2).) Summary adjudication of Issues 4, 5, and 7 is denied.

With respect to Issue 6, defendants argue summary adjudication of the cause of action for failure to prevent harassment fails because the underlying harassment claims fail. As defendants' summary adjudication of these issues failed, so too must the adjudication of Issue 6, relying entirely on the adjudication of Issues 4 and 5 and the same deficient separate statement.

Negligent Supervision, Training, Hiring, Retention and Wrongful Termination Claims

Although identified in the notice of motion as subject to summary adjudication, these causes of action are not among the issues identified in the separate statement. Accordingly, summary adjudication is denied as to these causes of action.

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: SMC on July 27, 2026.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Herrera v. PrideStaff, Inc., et al.***
Superior Court Case No. 22CECG04217

Hearing Date: July 28, 2026 (Dept. 403)

Motion: by Plaintiff for Approval of PAGA Settlement

Tentative Ruling:

To grant in part and approve the PAGA Settlement Agreement, including requested attorney's fees of $112,000, actual costs of $25,156.63 and settlement administration fees of $4,775. The requested service payment to plaintiff is denied.

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 former 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. (former 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. As of July 1, 2024 Labor Code section 2699, subdivision (m) was amended to provide a greater share of PAGA penalties to the aggrieved employees, 65% of the penalties recovered going to the state and the remaining 35% given to the aggrieved employees. This action was filed before the amendment was effective and the settlement distribution reflects the statute at that time.

1. <u>Notice to LWDA</u>

"An employee plaintiff suing, as here, under [PAGA], does so as the proxy or agent of the state's labor law enforcement agencies." (*Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 674, internal quotations omitted.) For that reason, Labor Code section 2699, subdivision (s)(2) requires that any proposed settlement of a PAGA claim be submitted to the Labor Workforce Development Agency at the same time it was submitted to the court. The submission provided in evidence indicates the Settlement Agreement and previous moving papers were submitted to the LWDA on November 3, 2025 and the renewed motion together with the Settlement Agreement was submitted on May 14, 2026. (Hawkins Decl., ¶ 24-25, Ex. 6 and 7.)

2. <u>Fairness of the Settlement Amount</u>

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

The declaration of attorney James R. Hawkins sets out the maximum statutory liability of $3.36 million for the Labor Code violations for which PAGA penalties are sought and assesses the realistic exposure to be $963,598. (Hawkins Decl., ¶¶ 28, 30-31.) These calculations are premised on a total of 7,859 pay periods in the PAGA period. (*Ibid*.) The amount of pay periods is greater than those attested to for Distribution Management, Inc. and Pridestaff, Inc., which total only 7,077. The declaration of Rachel Freedman on behalf of defendant Distribution Management, Inc. confirms that during the PAGA period there were 121 employees who worked 5,501 pay periods. (*Id*., Ex. 4, Freeman Decl., ¶¶ 3-4.) The declaration of Elliot Meme on behalf of PrideStaff, Inc. confirms that during the PAGA period there were 198 temporary workers placed with Supplies Network who worked approximately 1,576 pay periods. (*Id*., Ex. 5, Meme Decl., ¶ 2.) This w

Counsel provides a thorough discussion of his assessment of the strengths and weaknesses in evaluating each of the Labor Code claims. (Hawkins Decl., ¶ 30.) The discussion of the potential value of the case is adequately supported by evidence of the total workweeks and supports finding the settlement is fair, reasonable, and adequate.

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 and reached a global settlement of the claims in the action. (Hawkins Decl., ¶ 12.)

Counsel attests to the settlement as a product of investigation of the potential value and strength of plaintiffs' claims while taking into account the legal issues related to the PAGA claim and the costs and risks of continuing litigation. (Hawkins Decl., ¶¶ 10-11.)

Regarding pre-settlement discovery, counsel attests to having engaged in informal discovery and independent investigation to evaluate the claims and defenses. (Hawkins Decl. ¶ 10.) Defendant produced a sample of pay and time records, detailed policies and practices regarding timekeeping, meal and rest periods, overtime calculations, plaintiff's wage statements, handbooks and job descriptions and other personnel-related documentation which was reviewed to evaluate the plaintiffs' claims. (*Ibid*.)

The case settled after a mediation session on December 18, 2024, approximately 26 months after the class action complaint was filed. This stage of the proceeding appears appropriate for settlement.

c. *Risks of Litigating Case through Trial*

The moving papers indicate risks in continuing to trial included defendants' disputed liability and assertion of defenses, including that any violations were not a result of company policy but of an employee's voluntary choice. Additionally cited in is the court's wide latitude to reduce civil penalties within the PAGA statute itself. (Lab. Code, § 2699, subd. (e)(2).) Although the analysis appear to be applicable to any PAGA action and not unique to plaintiff's claims, the court finds this factors weighs in favor of approval.

d. *Amount of Settlement*

The gross settlement is $320,000, and, as discussed above with regard to the strengths of the case, this figure represents about one-third of the realistic exposure of $963,598. (Hawkins Decl., ¶ 31.) This is a reasonable settlement amount.

e. *Experience and Views of Counsel*

Plaintiff's counsel with James Hawkins APLC law firm are experienced in wage and hour and employment litigation including individual claims and class actions. (Hawkins Decl., ¶¶ 38-48.) Attorney Hawkins has stated that the settlement is fair, adequate and reasonable under the circumstances which weighs in favor of approving the settlement.

f. Government Participation

No government entity participated in the case, so this factor does not favor either approval or disapproval of the settlement.

3. <u>Attorney's Fees and Costs</u>

The settlement agreement provides that plaintiffs' counsel would get up to $112,000 (35% of the total gross recovery) in attorney's fees, plus another costs of up to $26,000. (Settlement Agreement, ¶ 3.2.1.) Plaintiffs' actual costs are $25,156.63 and actual costs are requested to be approved. (Hawkins Decl., ¶ 68, Exh. 13.)

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 35% of the gross settlement, which is somewhat higher than the average request of one-third of the gross settlement. In support of the requested fees, counsel attests to the experience of himself and three associate attorneys, their hourly rates, tasks completed, and the number of hours spend on those litigation activities. (Hawkins Decl., ¶¶ 54-57.) Counsel's hourly rates range from $450 to $1,050 per hour and the attorneys spend a combined 234.9 hours litigating this action. (*Ibid*.) Counsel additionally attests to the paralegal billing rate of $220 and a total of 52.7 hours attributed to this action. (*Id*., ¶ 58.) The lodestar is calculated to be $205,254, which is supported by billing records through May 5, 2026. (*Id*., ¶ 50, Ex. 10.)

The hourly rates of the attorneys of the James Hawkins APLC law firm greatly exceed those of the local community. As a starting point in assessing the lodestar the billing rates were reduced to better reflect those of local counsel, ranging from $150 for a paralegal to $550 per hour for Mr. Hawkins. The reduction adjusts the lodestar to approximately the $112,000 sought approved in this motion. As such, finding the lodestar and percentage-based fees requested to be nearly equal, the court finds the percentage-based fee reasonable and will approve the attorney fees requested.

The court's approval of actual costs of $25,156.63 is requested. (Hawkins Decl., ¶ 68, Ex. 13.) The court intends to approve the request.

4. <u>Incentive Payment to Plaintiff</u>

Plaintiff Sophia Herrera is to be paid $2,500 as "PAGA Representative Service Payment" in recognition of her work in this litigation and the reputational risks assumed in litigating against a former employer. Plaintiff argues the purpose of such an award is to incentivize aggrieved employees to step forward to enforce the Labor Code.

There is nothing in PAGA that specifically authorizes an additional incentive payment to the named plaintiff. PAGA only authorizes awards of penalties to aggrieved employees based on actual violations of the Labor Code. (Labor Code § 2699(m).) It is unclear whether additional payments to named plaintiffs are proper in PAGA actions, although such payments are common in class actions. (*Rodriguez v. West Publishing Corp*. (2009) 563 F.3d 948, 958.) "Given the potential for recovery of significant civil penalties if the PAGA claims are successful, as well as attorney fees and costs, plaintiffs have ample financial incentive to pursue the remaining representative claims under the PAGA ... ." (*Munoz v. Chipotle Mexican Grill, Inc.* (2015) 238 Cal.App.4th 291, 311.)

In support of the requested deviation from the PAGA statutory scheme, the plaintiff cites to several persuasive authorities but none this court must follow. The court intends to deny the requested "PAGA Representative Service Payment" as it is not within the PAGA statutory scheme.

5. Settlement Administration

The parties request approval of up to $4,775 for settlement administration costs to Apex Class Action Administration. (Hawkins Decl., ¶ 22, Ex. 14, Hartranft Decl., ¶¶ 5-7, Ex. B.) The court intends to approve the settlement administration costs as requested.

6. 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:

> [A]ll claims for PAGA penalties, attorneys' fees, costs, or interest recoverable under PAGA that were alleged, or reasonably could have been alleged, in the Actions, arising during the PAGA Period based on the facts stated in the PAGA Notice and/or in the Actions, including, but not limited to, violations of California Labor Code sections 201, 202, 203, 204, 210, 216, 225.5, 226, 226.3, 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198, as well as all associated statutes and applicable Industrial Welfare Commission ("IWC") Wage Orders, for failure to pay wages due, including minimum, regular, and overtime wages; failure to timely pay all wages due upon separation of employment; failure to maintain accurate and itemized wage statements; and failure to maintain requisite payroll records.

(Settlement Agreement, ¶ 5.1.)

The scope of the release appears to be appropriately limited to the PAGA claims asserted in this action, and those for which the LWDA was provided notice in plaintiff's October 25, 2022 written notice to the LWDA and defendants. (Hawkins Decl., Ex. 2.)

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: SMC on July 27, 2026 .
(Judge's initials) (Date)

(48)

<u>Tentative Ruling</u>

Re:	***Reeves v. Volkswagen Group of America, Inc., et al.*** Superior Court Case No. 25CECG00128
Hearing Date:	July 28, 2026 (Dept. 403)
Motion:	By Plaintiff for an Award of Attorney Fees

Tentative Ruling:

To grant the motion for an award of attorney fees in the reduced amount of $10,697.00 in favor of plaintiff Brian Reeves. Payment of attorney's fees shall be made by defendants to Quill & Arrow, LLP within 30 days of the clerk's service of this minute order.

Explanation:

Plaintiff Brian Reeves ("Plaintiff") seeks an award of attorney fees under Civil Code section 1794, subdivision (d). The plaintiff's complaint alleges violations of the Song-Beverly Warranty Act. Plaintiff submits an executed Offer to Compromise pursuant to Code of Civil Procedure section 998 authorizing plaintiff to seek fees and costs from defendant Volkswagen Group of America, Inc. and CJ's Road to Lemans Corp. ("Defendant") by noticed motion. The court finds that plaintiff sufficiently states a basis upon which to seek an award of fees and costs. Plaintiff suggests that the settlement was for full restitution of the vehicle by way of repurchase.

The amount of attorney's fees awarded is a matter within the court's discretion. (*Clayton Development Co. v. Falvey* (1988) 206 Cal.App.3d 438, 447.) A prevailing buyer in an action under the Song–Beverly Act "shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action." (Civ. Code, § 1794, subd. (d).)

Civil Code section 1794 "requires the trial court to make an initial determination of the actual time expended; and then to ascertain whether under all the circumstances of the case the amount of actual time expended and the monetary charge being made for the time expended are reasonable. These circumstances may include, but are not limited to, factors such as the complexity of the case and procedural demands, the skill exhibited and the results achieved. If the time expended or the monetary charge being made for the time expended are not reasonable under all the circumstances, then the court must take this into account and award attorney fees in a lesser amount. A prevailing buyer has the burden of "showing that the fees incurred were 'allowable,' were 'reasonably necessary to the conduct of the litigation,' and were 'reasonable in amount.' [Citations.]" (*Morris v. Hyundai Motor America* (2019) 41 Cal.App.5th 24, 34.) Plaintiff as the moving party bears the burden to prove the reasonableness of the number of hours devoted to this action. (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1325.)

A trial court may not rubber stamp a request for attorney fees, and must determine the number of hours *reasonably* expended. (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 271 [emphasis in original].) 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.) Lodestar refers to the "number of hours reasonably expended multiplied by the reasonable hourly rate" of an attorney. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096.)

Counsel for plaintiff seeks to set the lodestar at $11,931.50, inclusive of fees sought in connection with the drafting of the reply and hearing for the motion at bench. Counsel submits a total of 27.9 hours of billed time across five timekeepers. Counsel's practice is largely in consumer protection claims, such as the present action. As to the attorneys, counsel submits hourly rates ranging from $395 per hour for an associate attorney to $495 for a senior associate attorney. Some of these rates are high for the Fresno area.

Reasonable hourly compensation is the "hourly prevailing rate for private attorneys in the community conducting noncontingent litigation of the same type" (*Ketchum v. Moses* (2001*)* 24 Cal.4th 1122,1133.) Where a party is seeking out-of-town rates, he or she is required to make a "sufficient showing…that hiring local counsel was impractical." (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1244.)

Plaintiff has made no showing that local counsel practicing "Lemon Law" and Song-Beverly consumer litigation are not available. As a result, the court intends to award fees based on local rates.

Having reviewed the qualifications of each of the five timekeepers the court finds the reasonable value of services as follows:

For Derek Chipman, an associate attorney admitted to the California Bar in 2019, a rate of $425 per hour.

For Donald Mahnke, a senior associate attorney admitted to the California Bar in 2021, a rate of $425 per hour as requested.

For Joshua Kohanoff, an attorney admitted to the California Bar in 2022, a rate of $425 per hour, as requested.

For Ellen Zakharian, an attorney admitted to the California Bar in 2024, a rate of $325 per hour.

For Stephanie Hovhannisyan, an attorney admitted to the California Bar in 2025, a rate of $300 per hour.

Defendant asserts that excessive time was spent on this case, primarily with respect to the preparation of the discovery, deposition, and the present motion. Also, Defendant argues that the fee motion billing is too high because it is substantially similar to Plaintiff's attorney's fee motions in other cases. It's then argued that billing more than

9 hours for drafting a reply to Defendant's opposition and attending a hearing is excessive. Defendant also objects to the meet and confer letters for being excessive, the billing for communication with the client as excessive and improper, and preparing a costs memorandum as excessive and improper.

On reply, Plaintiff's counsel declared to have spent 2.8 hours drafting the reply and anticipates 2 hours to attend a hearing instead of 9 hours for both, thus conceding a reduction of billable hours for these two items. These reduced hours are reasonable. In regard to the billing for the fee motion, Plaintiff's counsel claims to have spent 5.9 hours drafting the instant fee motion, which by counsel's own admission, is heavily drawn from a standard template. The court has extensive experience with assessing fee motions in lemon law matters, and finds 5.9 hours to be excessive. The possible lack of experience of the drafting attorney may not justify excessive billing. The other challenged time entries, which consist of a discovery motion, a meet and confer letter, four calls to the client, and drafting a memorandum of costs each range from 6 minutes to 36 minutes, none of which are excessive. These tasks are proper to be billed as compensable attorney's fees. Following a careful review of the entries submitted, the court finds that the remaining entries are reasonable for the tasks billed.

With the reductions in hourly rates and time entries, the lodestar is set at $9,910.00.

Plaintiff seeks the imposition of a multiplier of 1.25. As stated by the California Supreme Court regarding lodestar multipliers, sometimes referred to as fee enhancements:

> We emphasize that when determining the appropriate enhancement, a trial court should not consider these factors to the extent they are already encompassed within the lodestar. The factor of extraordinary skill, in particular, appears susceptible to improper double counting; for the most part, the difficulty of a legal question and the quality of representation are already encompassed in the lodestar. A more difficult legal question typically requires more attorney hours, and a more skillful and experienced attorney will command a higher hourly rate. (*See Margolin v. Regional Planning Com.* (1982) 134 Cal.App.3d 999, 1004, 185 Cal.Rptr. 145.) Indeed, the " 'reasonable hourly rate [used to calculate the lodestar] is the product of a multiplicity of factors ... the level of skill necessary, time limitations, the amount to be obtained in the litigation, the attorney's reputation, and the undesirability of the case.' " (*Ibid*.) Thus, a trial court should award a multiplier for exceptional representation only when the quality of representation far exceeds the quality of representation that would have been provided by an attorney of comparable skill and experience billing at the hourly rate used in the lodestar calculation. Otherwise, the fee award will result in unfair double counting and be unreasonable. Nor should a fee enhancement be imposed for the purpose of punishing the losing party.

(*Ketchum v. Moses*, *supra,* 24 Cal.4th at pp. 1138-1139 [emphasis in original].)

Once a lodestar figure is determined, on motion for attorney fees under Song-Beverly Consumer Warranty Act (Song-Beverly), the figure may be augmented or diminished by taking various relevant factors into account, including (1) the novelty and difficulty of questions involved and the skill displayed in presenting them, (2) the extent to which the nature of the litigation precluded other employment by the attorneys, (3) the contingent nature of the fee award, based on the uncertainty of prevailing on the merits and of establishing eligibility for the award, (4) the quality of the representation, and (5) the results obtained. (Civ. Code, § 1790 *et seq*.; *Pulliam v. HNL Automotive Inc.* (2021) 60 Cal.App.5th 396, 406; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556.)

Here, Plaintiff submits that counsel took the matter on contingency, and obtained an excellent result. The contingent risk taken by counsel, and the settlement amounting to approximately two times the alleged value of the vehicle to be above average to the statutory relief afforded in these actions, supports granting fee enhancement. Though plaintiff suggests undue delay, the timeline supports a finding that all parties treated the matter as proceeding to trial. The steady nature of the discovery conducted and law and motion practice suggests as much. This would not constitute a delay, much less undue delay. Moreover, plaintiff does not suggest that the delay precluded other employment. Over the roughly 18 months between the first engagement with the client to the date of settlement, the firm spent, on average, 1.5 hours per month on the matter. Such a time commitment does not support the conclusion that this action was so involved as to preclude commitment to other work. This case also did not appear to present novel or complex issues that would support a substantial fee enhancement. The court applies a reduced multiplier of 1.1 to the lodestar.

The court therefore grants attorney's fees for Plaintiff in the reduced amount of $10,697.

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: SMC on July 27, 2026 .
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***VanRyn v. Fresno Unified School District***
Superior Court Case No. 25CECG01812

Hearing Date: July 28, 2026 (Dept. 403)

Motion: Motion for a Protective Order

Tentative Ruling:

To take off calendar, as no moving papers have been filed.

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: SMC on July 27, 2026 .
(Judge's initials) (Date)