Department 5 Civil L&M Notes for Wednesday, October 22, 2025 @ 8:30 a.m.

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1. Verdugo v. Capstone Logistics LLC (CV66120)

Hearing on: Motion to Set Aside PAGA Approval and Permit Intervention
Moving Party: Prospective Intervenors
Case Note: Moot due to settlement

This case involves a wage/hour dispute with putative individual, class and representative (PAGA) claims. Although the Notice of Settlement has not yet been received/imaged, the settlement is noted and an OSC re dismissal is expected to be set.

2. Anderson v. Nate's Tree Service, Inc. (CV65881)

Hearing on: Motion to Approve PAGA Settlement
Moving Party: Plaintiff
Case Note: Probable Grant with conditions

This is a wage/hour dispute. Before the Court this day is a petition for provisional approval of the PAGA resolution. Although the action previously contained class claims, those were voluntarily dismissed earlier in the action (although the dismissal was technically defective as it did not include the required CRC 3.770 attestation). Regardless the only active claims in the case are the single cause of action for PAGA.

Procedurally, the trial court must confirm that plaintiff satisfied all of the pre- and post-filing requirements. Plaintiff was required to give the LWDA pre-filing notice via its online portal, within one year of the offense, "of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation." The notice must contain at least some evidentiary facts, and must make reference to other employees. Plaintiff was also required to tender to the LWDA the required $75 filing fee, and wait the minimum 65 calendar days for LWDA to respond. Plaintiff must also give the employer the same pre-filing notice via certified mail, and wait at least 33 calendar days for the employer to cure. After the lawsuit is filed, plaintiff has two additional procedural requirements. First, plaintiff must give LWDA, via its online portal, a file-stamped copy of the complaint "within 10 days following commencement of" the civil action. Second, plaintiff must give LWDA, via its online portal, a copy of the proposed settlement for court approval "at the same time that it is submitted to the court." Labor Code §§ 2699, 2699.3. See *Esparza v. Safeway, Inc.* (2019) 36 Cal.App.4th 42, 60-61; *Brown v. Ralphs Grocery Co.* (2018) 28 Cal.App.5th 824, 834-835; *Kahn v. Dunn-Edwards Corp.* (2018) 19 Cal.App.5th 804, 809. The papers filed in support of the motion are difficult to navigate. This Court would kindly appreciate some guidance from counsel as to proof compliance with the pre- and post-filing requirements.

Substantively, the trial court must review and approve the settlement, making sure it is fair to both the LWDA, as well as the employees (all of them, not just the named plaintiff) subjected to one or more of the alleged Labor Code violations. Although the litmus for fairness is not well-defined, courts generally look to whether the settlement is genuine, meaningful and consistent with the underlying purpose of PAGA, to wit: protecting employees, augmenting the state's enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance. Some of the factors to consider, subject to a sliding scale, include (1) the LWDA's views, or lack thereof, on the settlement; (2) the likelihood of any discretionary reduction of PAGA penalties under §2699(e)(2); (3) the value of any nonmonetary relief (such as changes in company policies); and (4) whether the same employees entitled to PAGA penalties are already recovering monetary relief as part of a class settlement. See, *e.g., Williams v. Superior Court* (2017) 3 Cal.5th 531, 548-549; *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 382; *Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742-744; *Julian v. Glenair, Inc.* (2017) 17 Cal.App.5th 853, 865-866.

The PAGA data points are as follows:

- Potential Exposure: $ 1,400,000.00
- Settlement Amount: $ 226,000.00
  - LWDA Portion: $ 94,663.67
  - Attorney Fee: $ 79,100.00
  - Litigation Costs: $ 10,221.77
  - Administrator Fee: $ 10,500.00
  - Employee Portion: $ 31,544.56
- Number of Employees: 440
- Average pay out: $ 71.69

Based on these numbers, the settlement represents a quotient of 20% - which is on the low end of average. Counsel claims an hourly rate of $950, which is twice what seasoned lawyers in this community bill. Counsel purports to have spent 67 hours on this case, but fails to subtract from his billing time spent on the class claims. Other lawyers in the same office billed another 16 and 67 hours, for a total effort of 146 hours. The requested contingency fee of 35% is too high; a fee in the range of 25% is far more palatable. That would avoid an order requiring counsel to cover litigation costs before calculating fees. Although there is reference in the motion and declaration to a representative fee for plaintiff, none is actually sought, so none is approved at this time. Litigation fees and administration costs are approved.

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3. Bennett v. Golden Living Congregate Nor-Cal (CV65132)

Hearing on: Demurrer to SAC
Moving Party: Defendants Mukhopadhyay and Rodriguez
Case Note: Needs Reassignment

This personal injury case involves allegations of custodial neglect and sexual assault of a gravely disabled resident at a senior care facility in Jamestown. Before the Court this day is a demurrer by defendants Mukhopadhyay and Rodriguez. Moving parties have declined to stipulate to permit the assigned bench officer to serve as Judge Pro Tem for law and motion matters, so the hearing (and the CMC accompanying the hearing) will need to be assigned to a different department. Parties will be notified via mail of that new hearing date and department.

4. Bruno v. Tuolumne County Sheriff Department (CV67524)

Hearing on: Petition for Writ of Mandate
Moving Party: Petitioner
Case Note: No POS, No First Appearance Fee

This is an inverse forfeiture action in which the alleged owner of personal property seized by law enforcement seeks an order for release and/or equitable replevin of said items. According to petitioner, personal items were seized pursuant to a warrant issued as part of an investigation for contraband, but charges were never pursued. The court file does not reveal any proof of service on the County, nor does it disclose compliance with the obligation to tender a first appearance fee (see H&S §11488.5(a)(3)). The matter will likely need to be continued.

5. Dolbeare v. McMahon (CV65594)

Hearing on: Motion to Withdraw as Counsel
Moving Party: Plaintiff's Counsel
Case Note: Likely continue for further activity

This is a personal injury action arising out of an automobile accident occurring in September of 2021. The case was commenced just prior to the expiration of the two-year statute of limitations, and has been languishing here for the past two years without service of the summons upon defendant. Although previous issues in the case may have been attributable to the "abrupt departure" of the original handling attorney, a review of the court file reveals affirmative failures on the part of counsel to represent this client. On 11/08/2024, this Court informed counsel of her failure to sign the operative pleading (CCP §128.7), her failure to effectuate service of the complaint (CRC 3.110), her failure to substantiate due diligence or

any basis for graduating to service via publication, and her failure to state a basis for withdrawing. All that has occurred since that time is (1) counsel filed an unsuccessful application for service via publication, and (2) counsel filed a renewed motion to withdraw, which suffers from the same barren factual statement as before ("There has been an irretrievable break in the attorney-client relationship.") Since plaintiff has already passed the line for a discretionary dismissal of the case (CCP §583.420), is already 2/3 the way to a mandatory dismissal (CCP §583.250), this Court would prefer to set a sua sponte hearing for dismissal (CRC 3.1340, 3.1342) in the next 30 days. That would give plaintiff the opportunity to be heard from, and the chance to sign a substitution of attorneys.

6. Dotson v. Entrust Solutions Group (CV65234)

Hearing on: Motion to Dismiss or Enforce
Moving Party: Defendant
Case Note: Request to Continue to 11/12/25 at 8:30 a.m. Granted

This is an employment dispute involving allegations of wage/hour violations and wrongful termination. Before the Court this day was at first a defense motion to dismiss following a putative settlement; however, defense counsel recently intimated that it might change course and proceed with a motion to enforce via CCP §664.6. On 05/09/2024, plaintiff and defendant filed a joint notice of *unconditional* settlement. On 07/18/2025, defendant filed a motion to dismiss. Plaintiff contends (in email attached as exhibit) that defendant failed to comply with settlement terms. Since there is a "good cause" exception to the mandatory dismissal under CRC 3.1385(b), and a motion to dismiss pursuant to CCP §583.420(a)(1)(B) requires notice (see CRC 3.1340), defendant's request for additional time to offset the unforeseen delay in serving plaintiff is reasonable.

7. Itria Ventures LLC v. Icenogle (CV65055)

Hearing on: Motion to Enforce Settlement
Moving Party: Plaintiff
Case Note: Likely to Grant, with conditions

This case involves a business dispute over a commercial loan secured by receivables. On 11/13/2023, plaintiff filed a notice of conditional settlement of the entire case, requesting 18 months to complete the settlement conditions (due to the agreement that plaintiff would make good on his obligation via eighteen sequential monthly payments). On the eve of that 18-month mark, plaintiff filed an ex parte application requesting to put the case back on the active list because the settlement had apparently fallen apart. The Court granted the application, but

took no action to set aside or declare unenforceable the 2023 settlement. Just recently, plaintiff filed a motion to enforce that settlement. The amount in controversy is roughly $10,000.00 – plus a request for legal fees associated with having to enforce the settlement. There is no opposition to the motion on file herein.

Pursuant to CCP §664.6, if parties to pending litigation agree to settle in a signed writing, a trial court may enter judgment pursuant to the terms of that settlement. This statute was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit. Not every settlement agreement is amenable to enforcement by way of this summary proceeding; sometimes, the parties will need to amend the operative pleading or file a new lawsuit. For example, settlements which either omit material terms or incorporate prospective conditions with "moving parts" are often ineligible for expedited summary treatment because the trial court is not allowed to interpret or resolve factual conflicts in this summary proceeding. See *In re Marriage of Assemi* (1994) 7 Cal.4th 896, 905, 911; *Machado v. Myers* (2019) 39 Cal.App.5th 779, 790-791; *Leeman v. Adams Extract & Spice, LLC* (2015) 236 Cal.App.4th 1367, 1375; *Khavarian Enterprises, Inc. v. Commline, Inc.* (2013) 216 Cal.App.4th 310, 328-329; *Lindsay v. Lewandowski* (2006) 139 Cal.App.4th 1618, 1624; *Terry v. Conlan* (2005) 131 Cal.App.4th 1445, 1459.

This Court has reviewed the settlement agreement, along with the supporting evidence to show that there is a breach of that agreement. By its clear and unambiguous terms, plaintiff "may enforce all rights and remedies under law or equity under this Agreement or, at its option, may seek enforcement of the unpaid amount specific in the Complaint along with any attorneys fees and costs accrued with respect to the negotiation and execution of this Agreement." In addition, the parties agreed "that the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the settlement terms under Code of Civil Procedure Section 664.6." Finally, the parties agreed that "if any party violates this Agreement or any of its provisions, the prevailing party shall be entitled to recoup its reasonable attorneys' fees, costs, and interest incurred as a consequence of such breach in any action to enforce this Agreement." The only issue this Court sees is that the fees plaintiff may recover must be "reasonable" and related to enforcing the settlement agreement. It appears from the spreadsheet provided that counsel is seeking fees from time immemorial – not just fees associated with having to enforce the settlement. Counsel will need to adjust this or simply agree that $1,000.00 in fees is sufficient.

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8. OLIT 2023 HB1 Alternative Holdings LLC v. Martin

Hearing on: Motion to Set Aside or Vacate Judgment
Moving Party: Defendant (Tenant)
Case Note: Non-substantive defects remain

This is a residential UD action. On 06/27/2025, plaintiff and defendant appeared before Hon. Donald Segerstrom (ret) and presented their case for trial (sans jury). Following what appears to be a robust exchange of testimony, exhibits and closing arguments, the Court found in plaintiff's favor and issued a judgment for possession only. Judgment was signed on 07/20/2025, and entered 08/05/2025. Seven days later, defendant filed the pending motion – which he titled "Motion to Vacate the Void Judgment Filed on June 27, 2025." Since there was no actual judgment filed on 06/27/2025, to avoid exalting form over substance, this Court intends to treat the motion as launching a direct attack on the judgment entered 08/05/2025, which memorializes the Court's decision made on 06/27/2025.

This motion was originally set for hearing on 09/10/2025. At that time, plaintiff and defendant both appeared here in Department 5. However, no substantive discussion of the motion took place because defendant argued that there was a service defect with the motion itself. To avoid any inequity, defendant and this Court agreed to a brief continuance. Oddly enough, there is still – five weeks later – no opposition filed to the motion. It may be that defendant has still not received an official copy of the motion from defendant, but given that plaintiff is certainly aware of the motion, the absence of opposition does come as something of a surprise.

Nevertheless, this Court has reviewed the motion and notes that it does not provide sufficient support for the desired relief. First, every motion must include a notice, which states with precision the nature of the relief sought and the grounds therefore. CCP §1010; CRC 3.1110(a). It is a basic tenant of motion practice that the moving party define the issues for the information and attention of the adverse party and the court. See *Kinda v. Carpenter* (2016) 247 Cal.App.4th 1268, 1277. Although this is labeled as a motion to set aside a judgment, there is no "notice" directing the reader to the statutes controlling such motions (see, *e.g.*, CCP §§ 473(b), 473(d), 663). Second, pursuant to CRC 3.1113, a party filing a motion must serve and file a supporting memorandum containing "a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced." See *Smith, Smith & Kring v. Superior Court* (1997) 60 Cal.App.4th 573, 577-578. Although the specific format of a memorandum is left mostly to the style of the party, "the court may construe the absence of a memorandum as an admission that the motion is not meritorious and cause for its denial." CRC 3.1113(a). What defendant

filed is not a memorandum tied to the facts and law at issue, but rather a repeat of arguments already made in this proceeding, and rejected by other bench officers. Moreover, there is no proof provided to support any contention that might alter the singular issue herein, to wit: possession. Finally, CRC 3.1300(C) required defendant to file proof of service of the moving papers on defendant "no later than five court days before the time appointed for the hearing," and to date there is still no proof of notice/service in the court file.

9. Pagni v. City of Sonora et al (CV66705)

Hearing on: Petition for Writ of Administrative Mandamus
Moving Party: Petitioner
Case Note: Court just received, and is amenable to, petitioner's emergency request to continue this hearing, but prefers direct input on new date given the likelihood of it being next year.

This is a citizen's dispute regarding approvals and zoning adjustments authorized for a mixed use commercial/residential project proposed for 956 Oregon Street. In addition to height and density concerns, plaintiff alleges that the approvals were made without the required public meetings and CEQA reviews. Plaintiff filed a petition for administrative mandamus, seeking an order compelling the planning commission and/or the city to revisit the project and fulfill obligations relating to pre-approval vetting. The City is working on the certified administrative record, after which a responsive pleading will be filed. Court hopes to have updates on timing.

10. In re Surplus Funds: 17028 Upper Starr King Drive

Hearing on: Petition to Deposit Funds and Release Trustee
Moving Party: Quality Loan Servicer
Case Note: Petitioner can issue surplus check as directed

This is a special proceeding to resolve competing claims to surplus funds remaining after a nonjudicial foreclosure sale. Before the Court this day is a petition by the foreclosing trustee to (1) deposit the surplus funds here in the Court and (2) receive a discharge from further responsibility over said funds. The amount in controversy is $86,506.04.

Following a foreclosure sale, the effectuating trustee has a statutory duty to collect proof of record ownership, identify potential claimants to surplus funds, and give notice of surplus funds. Civil Code §2924j. Once all of the competing claims have been received, the trustee's next obligation is to analyze and evaluate those claims, establish the order of priority, and – if a genuine conflict exists – provide the court with any information relevant to the dispute. Civil

Code §2924j. If no genuine dispute regarding priority exists, the trustee shall distribute the funds in accordance with Civil Code §2924k. If the trustee has failed, after due diligence, to determine the priority of any claims within the time allotted by statute, the trustee may then file a petition for permission to deposit the surplus funds with the Court (and put the onus on the Court to determine priority interests in the surplus funds). Civil Code §2924j(b)-(d). Once the funds are deposited with the Court, the clerk gives notice to the claimants and must "serve written notice of the hearing by first-class mail on all claimants identified in the trustee's declaration at the addresses specified." The hearing date must take place within 90 days – at which time all viable claimants will be prioritized, and the funds distributed accordingly. Civil Code §2924j(d). Once the funds are deposited, the trustee is relieved of further obligation.

Although it is understandable for petitioner to be concerned about the impact of the POA and the assignment to Asset Recovery Inc., there is in fact no conflicting claims being made to the surplus funds that would warrant deposit. Pursuant to Civil Code §2924k, the trustee "shall distribute" surplus funds in the following order of priority: to itself to cover costs of sale; to the foreclosing lienholder to cover that note; to "junior liens or encumbrances" as recorded in the chain of title; and finally, "to the trustor or the trustor's successor in interest." See *Banc of America Leasing & Capital, LLC v. 3 Arch Trustee Services, Inc.* (2009) 180 Cal.App.4th 1090, 1102. All priority claims were satisfied, meaning that the entire surplus either goes to the trustor (Mr. Norton) or his successor in interest. The term "successor in interest" is not defined in §2924k. In other, similar, areas of the law, the term "successor in interest" is defined as one who follows another in ownership or control of property, retaining the same rights, with no change in substance. See, *e.g.*, CCP §§ 377.11; in accord, *Shetty v. HSBC Bank USA, NA* (2023) 91 Cal.App.5th 796, 801-802; *Otay Land Co., LLC v. U.E. Limited, L.P.* (2017) 15 Cal.App.5th 806, 860–861; *Epps v. Lindsey* (2017) 10 Cal.App.5th Supp.1, 6-7. While that definition is certainly broad enough to cover someone holding a valid assignment (see Probate Code §24), it is important to note that the law recognizes a distinction between assignees and successors in interest. See, e.g., CCP §§ 680.240, 729.020, 749; Rev & Tax Code §§ 43478, 55248.

More importantly, *Placer Foreclosure, Inc. v. Aflalo* (2018) 23 Cal.App.5th 1109, makes plain that the foreclosing trustee's limited obligation is only to sort through conflicting claims "between parties who had recorded interests before the sale." *Id*. at 1114. The trustee is only supposed to look at the preliminary title report to figure out who has a recorded interest, and for all other claimants they can rely on the myriad of other non-2924k remedies. It is not petitioner's job to prove, or disprove, the validity of the assignment here – only to note that the assignment was never recorded, and in fact did not even exist when the foreclosure sale took

place (it was made two months later). As such, any interest that Asset Recovery may have acquired in the surplus funds vested after Mr. Norton's statutory rights were perfected. The surplus funds are to be delivered in the name of Mr. Norton, but based on his POA, delivered in care of Asset Recovery. That will relieve the trustee of any liability concerns and allow the parties to fully litigate their concerns in Los Angeles Superior Court. Since petitioner is aware of related litigation happening, perhaps petitioner might want to consider an interpleader in Los Angeles instead. Either way, deposit here is not warranted.

11. Trent v. Vela et al (CV67344)

Hearing on: Motion to Strike Answers
Moving Party: Plaintiff
Case Note: Defendants will need to retain counsel

This is a business dispute regarding the terms of conditions surrounding the recent sale and assumption of J. Trent Plumbing here in Sonora. Before the Court this day is a motion by plaintiff to strike the answers filed in pro per by J. Trent Plumbing, Inc. and On The Go Tax Pro, LLC. No opposition is seen in the court file.

A corporation cannot represent itself in litigation in a court of general jurisdiction either in propria persona or through an officer or agent who is not an attorney. *Merco Constr. Engineers, Inc. v. Municipal Court* (1978) 21 Cal.3d 724, 730; *CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1149; *Caressa Camille, Inc. v. Alcoholic Beverage Control Appeals Bd.* (2002) 99 Cal.App.4th 1094, 1101; *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284; *Ziegler v. Nickel* (1998) 64 Cal.App.4th 545, 547. If it appears within the four corners of the filed pleading, or from matters which the Court may properly take judicial notice of, that the answering party is an entity appearing without an attorney, a motion to strike that pleading is appropriate.

The answer filed by On The Go Tax Pros, LLC does not specifically state that it is a corporate entity, as opposed to a mere dba. However, it is identified in several places in the answer as a being distinct from the individual who signed the answer, and the individual who signed the answer identified herself as an "authorized representative" of that taxing service. Since a dba is not a distinct entity from the person in charge (see *Ball v. Steadfast-BLK* (2011) 196 Cal.App.4th 694, 701), and On The Go Tax Pros, LLC, is still required to tender a first appearance fee (which has yet to occur), there is sufficient smoke to declare this party an unrepresented entity subject to required representation.

The answer filed by J. Trent Plumbing, Inc. does not specifically state that it is a corporate entity, as opposed to a mere dba. However, it is identified in several places in the answer as a being distinct from the individual who signed the answer, and the individual who signed the answer identified herself as "president" of the company on a number of the agreements attached to the operative pleading. Since a dba is not a distinct entity from the person in charge (see *Ball v. Steadfast-BLK* (2011) 196 Cal.App.4th 694, 701), and J. Trent Plumbing, Inc. is still required to tender a first appearance fee (which has yet to occur), there is sufficient smoke to declare this party an unrepresented entity subject to required representation.

Court intends to grant the motions to strike, with 30 days leave to amend to (1) secure appropriate legal representation and (2) tender first appearance fees.

12. Wells Fargo Bank, NA v. Flanagan (CVL66821)

Hearing on: Motion to Deem RFA Admitted
Moving Party: Plaintiff
Case Note: No opposition filed; court trial needs to be re-set

This is a collections case which is subject to the Fast Track requirements based upon defendant's election to file an answer. Before the Court this day is a motion by plaintiff to have RFAs deemed admitted. Although defendant is represented by counsel, a review of the court file fails to reveal any opposition to the motion.

The primary purpose behind requests for admissions is to eliminate the need for proof and to set at rest triable issues so that they will not have to be tried. *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 865. Requests for admissions may be directed to any matter that is in controversy between the parties: facts, opinions or legal conclusions. See CCP §2033.010; *Miller v. American Greetings Corp.* (2008) 161 Cal.App.4th 1055, 1066. As noted by one Court of Appeal, "the law governing the consequences for failing to respond to requests for admission may be the most unforgiving in civil procedure." *Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 394-39. That is mostly true, save perhaps for one, often-overlooked, safe harbor therein, to wit: CCP §2033.280(c). Pursuant thereto, a substantially-compliant response to the RFAs made at any time "before the hearing on the motion" will moot the motion almost entirely (sanctions would still recoverable, but plaintiff did not seek those here). See *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 778; in accord, *Katayama v. Continental Investment Group* (2024) 105 Cal.App.5th 898, 908.

Counsel to discuss re-setting of court trial.

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13. Wells Fargo Bank, NA v. Watkins (CVL67114)

Hearing on: Motion to Deem RFA Admitted
Moving Party: Plaintiff
Case Note: No opposition filed

This is a collections case which is subject to the Fast Track requirements based upon defendant's election to file an answer. Before the Court this day is a motion by plaintiff to have RFAs deemed admitted. Although defendant made an appearance, a review of the court file fails to reveal any opposition to the motion.

The primary purpose behind requests for admissions is to eliminate the need for proof and to set at rest triable issues so that they will not have to be tried. *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 865. Requests for admissions may be directed to any matter that is in controversy between the parties: facts, opinions or legal conclusions. See CCP §2033.010; *Miller v. American Greetings Corp.* (2008) 161 Cal.App.4th 1055, 1066. As noted by one Court of Appeal, "the law governing the consequences for failing to respond to requests for admission may be the most unforgiving in civil procedure." *Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 394-39. That is mostly true, save perhaps for one, often-overlooked, safe harbor therein, to wit: CCP §2033.280(c). Pursuant thereto, a substantially-compliant response to the RFAs made at any time "before the hearing on the motion" will moot the motion almost entirely (sanctions would still recoverable, but plaintiff did not seek those here). See *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 778; in accord, *Katayama v. Continental Investment Group* (2024) 105 Cal.App.5th 898, 908.

Counsel to discuss setting of court trial as part of CMC.

14. Williams v. Harman Management Corporation (CV66073)

Hearing on: Dismiss Class Claims and Approve PAGA
Moving Party: Plaintiff
Case Note: Probable Grant with conditions

This is a wage/hour dispute among non-exempt managerial employees responsible for high-level operations within the KFC franchise development department. Before the Court this day is a petition for provisional approval of the PAGA resolution. Although the action previously contained class claims, those claims are now ready to be voluntarily dismissed with the revised compliant CRC 3.770 attestation.

A PAGA claim is a type of qui tam action in which a private plaintiff pursues a dispute between an employer and the state Labor and Workforce Development Agency on behalf of the state. Because the aggrieved employee stands in the shoes of the LWDA when prosecuting and resolving a PAGA claim, the trial court must review and approve any settlement thereof. Before the Court this day is plaintiff's motion to approve the settlement recently brokered. The defendant, obviously, has no objection.

Procedurally, the trial court must confirm that plaintiff satisfied all of the pre- and post-filing requirements. For example, before the lawsuit was filed, plaintiff was required to give the LWDA pre-filing notice via its online portal, within one year of the offense, "of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation." The notice must contain at least some evidentiary facts (rather than mere conclusions), and must make reference to other employees (not just plaintiff). Plaintiff was also required to tender to the LWDA the required $75 filing fee, and wait the minimum 65 calendar days for LWDA to respond. Plaintiff must also give the employer the same pre-filing notice via certified mail, and wait at least 33 calendar days for the employer to cure. After the lawsuit is filed, plaintiff has two additional procedural requirements. First, plaintiff must give LWDA, via its online portal, a file-stamped copy of the complaint "within 10 days following commencement of" the civil action. Second, plaintiff must give LWDA, via its online portal, a copy of the proposed settlement for court approval "at the same time that it is submitted to the court." Labor Code §§ 2699, 2699.3. See *Esparza v. Safeway, Inc.* (2019) 36 Cal.App.4th 42, 60-61; *Brown v. Ralphs Grocery Co.* (2018) 28 Cal.App.5th 824, 834-835; *Kahn v. Dunn-Edwards Corp.* (2018) 19 Cal.App.5th 804, 809. The supporting declaration with attachments permits this Court to confirm satisfaction of the required steps.

Substantively, the trial court must review and approve the settlement, making sure it is fair to both the LWDA, as well as the employees (all of them, not just the named plaintiff) subjected to one or more of the alleged Labor Code violations. Although the litmus for fairness is not well-defined, courts generally look to whether the settlement is genuine, meaningful and consistent with the underlying purpose of PAGA, to wit: protecting employees, augmenting the state's enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance. Some of the factors to consider, subject to a sliding scale, include (1) the LWDA's views, or lack thereof, on the settlement; (2) the likelihood of any discretionary reduction of PAGA penalties under §2699(e)(2); (3) the value of any nonmonetary relief (such as changes in company policies); and (4) whether the same employees entitled to PAGA penalties are already recovering monetary relief as part of a class settlement. See, *e.g.,*

Williams v. Superior Court (2017) 3 Cal.5th 531, 548-549; *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 382; *Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742-744; *Julian v. Glenair, Inc.* (2017) 17 Cal.App.5th 853, 865-866; in accord, *Haralson v. U.S. Aviation Services Corp.*, 383 F.Supp.3d 959, 971-974 (N.D. Cal. 2019); *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F.Supp.3d 1074, 1075 (C.D. Cal. 2017); *O'Connor v. Uber Techs., Inc.*, 201 F.Supp.3d 1110, 1133 (N.D. Cal. 2016).

The PAGA data points are as follows:

- Potential Exposure: $ 139,700.00
- Settlement Amount: $ 100,000.00
  - LWDA Portion: $ 32,750.00
  - Attorney Fee: $ 33,333.33
  - Litigation Costs: $ 14,958.12
  - Administrator Fee: $ 3,500.00
  - Employee Portion: $ 10,916.76
- Number of Employees: 57
- Average pay out: $ 191.52

Based on these numbers, the settlement represents a quotient of 71% - which is quite high. Despite this strong result, counsel's request for $950/hr is not justifiable in this particular region. Although the number of hours (56) spent on the file is quite reasonable, and the blended rate is only $577/hr, equalizing the lodestar with the proposed contingency, 33.33% is just too high. Given the results, a fee of 28% is more palatable. Otherwise, this Court will feel obligated to reimburse costs first before calculating any percentage for fees. Litigation fees and administration costs are approved.