

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN MATEO

Complex Law and Motion Calendar  
Judge: HONORABLE V. RAYMOND SWOPE  
Department 23  
400 County Center, Redwood City  
Courtroom 8A

Monday, April 8, 2024

IF YOU INTEND TO APPEAR ON ANY CASE ON THIS CALENDAR YOU MUST DO ONE OF THE FOLLOWING:

1. EMAIL [Dept23@Sanmateocourt.org](mailto:Dept23@Sanmateocourt.org) BEFORE 4:00 P.M.  
CONTEMPORANEOUSLY COPIED TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER, AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING.
  2. YOU MUST CALL (650) 261-5123 BEFORE 4:00 P.M. with the case name, number and the name of the party contesting.
- AND
3. You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a) (1) .

Failure to do both items 1 or 2 and 3 will result in no oral presentation.

**Appearances by Zoom are highly encouraged.**

**Zoom Video/Computer Audio Information:**

<https://sanmateocourt.zoomgov.com/>

Meeting ID: 160 045 1177

Password: 654598

**Zoom Phone-Only Information Please note: You must join by dialing in from a telephone; credentials will not work from a tablet or PC**

Dial in: +1 (669)-254-5252

*(Meeting ID and passwords are the same as above)*

**TO ASSIST THE COURT REPORTER, the parties are ORDERED** to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

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CaseTitle / Nature of Case

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3:00

LINE:1

17-CIV-02669 RONG JEWETT VS ORACLE AMERICA, INC.

RONG JEWETT  
ORACLE AMERICA, INC.JAMES M. FINBERG  
GARY R.  
SINISCALCO

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MOTION FOR CERTIFICATION OF A SETTLEMENT CLASS, PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT, APPROVAL OF NOTICE AND NOTICE DISSEMINATION PLAN, AND APPROVAL OF A SCHEDULE FOR THE FINAL APPROVAL PROCES BY PLAINTIFFS ELIZABETH SUE PETERSEN, MARILYN CLARK, MANJARI KANT AND THE CLASS

**TENTATIVE RULING:**

Plaintiffs Elizabeth Sue Petersen, Marilyn Clark, and Manjari Kant's (collectively "Plaintiffs") Unopposed Motion or (1) Certification Of A Settlement Class; (2) Preliminary Approval of Class Action and PAGA Settlement; (3) Approval of Notice and Notice Dissemination Plan; and (4) Approval of a Schedule for the Final Approval Process is CONTINUED to Monday, October 7, 2024 at 3 p.m. in Department 23 for supplemental briefing.

The reserved hearing date for final approval on that same date is VACATED.

At least 16 court days prior to the continued hearing date, Plaintiffs shall file and serve a supplemental brief and supporting evidence to address the following:

In ruling on settlements involving class and PAGA claims, the Court has a duty to independently determine whether a settlement is fair, reasonable and adequate. (Moniz v. Adecco USA, Inc. (2021) 72 Cal.App.5th 56, 76 77 ("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"); Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129 ("The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement" (cleaned up).)

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After conducting this independent review of the proposed settlement, the Court finds Plaintiffs have not provided sufficient evidence to demonstrate it is within the ballpark.

Plaintiffs do not provide the estimated numbers of individuals that are Settlement Class Members and PAGA Group Members, defined in the Settlement Agreement at Section III(16) and (25), to determine whether "the \$25 million settlement represents outstanding value" and substantial monetary relief. (MPA, p. 20:18-19. See also *id.* at p. 20:4 - 21:12.) Plaintiffs do not provide any analysis showing the estimated average and/or median recovery of each Settlement Class and/or PAGA Group Member.

Plaintiffs do not sufficiently address the potential exposure, realistic exposure, and any discounting made to settle. (See Finberg Dec., ¶ 20.) Further, Plaintiffs address the EPA claim, and not the other four causes of action for failure to pay all wages due (Fourth Am. Complaint, ¶¶ 31 -35), unlawful and unfair business practices (¶¶ 36 - 41), declaratory judgment (¶¶ 42 - 44), PAGA penalties (¶¶ 45 - 49). Except for the PAGA penalties, Plaintiffs do not address whether any of the settlement funds are allocated to these other causes of action.

Further, it is unclear whether the settlement allocation to the fifth cause of action for PAGA penalties is properly before the Court where upon the stipulation of the parties to dismiss this claim to perfect an appeal, the Court dismissed it. (Stip. & Order re: Motion to Dismiss Fifth Cause of Action, issued Jul. 14, 2022, p. 4 - 5.) The parties do not address whether this dismissal order was transmitted to the LWDA. The parties may be able to cure this issue by stipulating to the filing of an amended pleading to add this claim and filing the amended pleadings. The Court takes no position on whether Plaintiffs must first comply with any of the notice requirements to the LWDA prior to seeking amendment. Any amended pleading shall be transmitted to the LWDA.

Plaintiffs do not sufficiently address "[t]he Two Hundred Thousand Dollars (\$200,000.00) allocated to the PAGA Payment--- which amounts to just under 1 percent of the Total Settlement Amount." (MPA, p. 22:28 - 23:1; See Settlement Agreement, ¶ 17.) No analysis or evidence is provided and citation to a Superior Court tentative decision has no precedential value. (Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (Rutter, Jun. 2023 Update) ¶ 9:67.7 (citing *Harrott v. County of Kings* (2001) 25 Cal.4th 1138, 1148. See MPA, p. 23:12-15; Finberg Dec., ¶ 29, Ex. 3.)

Plaintiffs shall provide a declaration of proposed settlement administrator and a copy of its proposal. (See Finberg Dec., ¶ 26.)

Several terms used in the Settlement Agreement and proposed notice do not appear to be defined by the parties in the Settlement Agreement.

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(See Settlement Agreement, §§ III(A)(27) ("Net Settlement Fund"), X ("Total Settlement Payment"). See also Proposed Notice, ¶¶ 7, 9 ("Net Settlement Fund"), 11 ("Total Settlement Payment").)

Plaintiffs shall provide evidence of the transmittal of the Complaint, the Settlement Agreement and Stipulation to Modify Settlement Agreement, filed April 3, 2024, to the LWDA. (Lab. Code § 2699, subd. (1)(1)-(2). See Finberg Dec., ¶ 16 ("Plaintiffs are simultaneously notifying the LWDA of the proposed Settlement").) Further, Plaintiffs shall provide evidence of the timely submission of their motion for preliminary approval to the LWDA as required by Settlement Agreement, section XIV(B).

In Paragraph 13 of the Notice, the parties shall reiterate that PAGA Group members cannot opt out of the PAGA portion of the Settlement. (See Notice, ¶ 5.)

The parties shall submit proposed opt out and objection forms to be included with the notice.

Plaintiffs shall amend the proposed final approval process schedule to account for the following: (1) the deadline to object or opt out shall be 60 days from the latter of initial mailing or re-mailing; (2) the fees and final approval motions shall be filed after that deadline in order to address any opt out or objections. (See MPA, p. 26:20 - 27:11.)

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3:00  
LINE:2

20-CIV-05216      PAMELA WILLIAMS VS STONEMOR GP LLC

PAMELA WILLIAMS  
STONEMOR, INC.

ALEX P. KATOFISKY  
CARGAIN M. ANJULI

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MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004, AWARDING ATTORNEYS' FEES, COSTS, ENHANCEMENT AND GENERAL RELEASE PAYMENT, AND REIMBURSEMENT OF SETTLEMENT ADMINISTRATION EXPENSES, AND DISMISSING ACTION WITH PREJUDICE BY PLAINTIFF PAMELA WILLIAMS, ON BEHALF OF HERSELF AND ALL "AGGRIEVED EMPLOYEES" PURSUANT TO LABOR CODE §§ 2698 ET SEQ.

**TENTATIVE RULING:**

PARTIES SHALL APPEAR.

Before the court is plaintiff Pamela Williams' (hereafter plaintiff) unopposed motion for an order: (1) approving the proposed settlement of claims brought pursuant to the Private Attorneys General Act of 2004 (Lab. Code, § 2698 et seq.) (hereafter PAGA); (2) appointing Phoenix Settlement Administrators as the settlement administrator and approving payment of \$ 2,925 to settlement administrator from the PAGA gross settlement amount; (3) directing disbursement of the PAGA gross settlement amount pursuant to the terms of the settlement agreement; (4) directing payment of \$ 58,553.47 for attorneys' fees and litigation costs to plaintiff's counsel from the PAGA gross settlement; (5) directing an enhancement and general release payment of \$ 7,500.00 from the PAGA gross settlement amount to plaintiff; and (6) dismissing this action with prejudice.

Proposed Settlement

The Labor and Workforce Development Agency (LWDA) received timely notice of the cause of action and there has been no objection. The court finds plaintiff has appropriately brought this action as an aggrieved employee and properly exhausted her administrative remedies. (See Lab. Code, §§ 2699, subd. (a), 2699.3.)

In ruling on settlements of PAGA claims, this court has a duty to independently determine whether a settlement is fair, reasonable and adequate. (Moniz v. Adecco USA, Inc. (2021) 72 Cal.App.5th 56, 76-77 ["trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate

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present labor law violations, deter future ones, and to maximize enforcement of state labor laws"].) After conducting independent review of the proposed settlement, the court is satisfied that the settlement is fair, reasonable and adequate because parties were represented by experienced counsel and extensive discovery occurred: to wit, parties engaged in investigation of claims, informal discovery, production of documents and relevant data concerning the aggrieved employee group, as well as seeking an expert valuation of the claim asserted. Lastly, settlement was reached after a full day of mediation with an experienced wage and hour, retired jurist mediator. Disbursement of the PAGA gross settlement amount, pursuant to the terms of this court's order, shall be paid.

#### Class Service Award

Incentive awards to class representatives are intended to compensate class representatives for the work and risk undertaken on behalf of the class, to reimburse expenses incurred in the class litigation, and sometimes to recognize the willingness of class representatives to act as a private attorney general. (Cellphone Termination Fee Cases (2010) 186 Cal.App.4th 1380, 1393-1394.) In determining whether to make an incentive award, the court may consider (1) the risk, both financial and otherwise, the class representative faced in bringing the suit; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit received by the class representative as a result of the litigation. (Ibid.) Conclusory statements about potential stigma or risk in gaining future employment, absent indicia of supporting evidence or reasoned argument explaining why, under the particular circumstances, an actual risk exists, does not support finding significant risk exists. (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 805.)

Here, plaintiff's requested service award is roughly 50 times the average payment of \$ 148.11 to each aggrieved employee, yet plaintiff's fairly generic statements that she "spent a total of approximately 30 hours" assisting counsel with the action, including "approximately 3-4 hours gathering, organizing, and reviewing documents and information for this lawsuit" do not support finding she has expended a proportionate amount of effort relative to the other aggrieved employees. Moreover, she neither prepared for deposition nor was deposed, nor did she attend the mediation. She does evaluate the wage and hour claims she is releasing at \$ 7,720.00. Upon thoughtful review, the court finds a service award of \$ 3,000 is reasonably warranted in this matter. (See Golba v. Dick's Sporting Goods, Inc. (2015) 238 Cal.App.4th 1251, 1272 [reduction of service award from \$ 3500 to \$ 500 appropriate where plaintiff spent 16 hours on case, took no particular risk, had no unreimbursed expenses and other class members received payments ranging from \$ 10 to \$ 30]); Clark

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v. American Residential Services LLC, supra, 175 Cal. App.4th at 805, [service award providing named plaintiffs with 44 times average payout of other class members not justified by conclusory allegations of service performed].)

With respect to the unclaimed residue, the court notes that uncashed checks shall go to the State Controller's Unclaimed Property Division, held in the name of the class member. Plaintiff shall edit the notice of settlement and insert the following text between the first and second paragraph on page two:

- "Unclaimed funds shall be paid to the Office of the State Controller - Unclaimed Property Fund, and held in the name of the aggrieved employee. See [https://www.sco.ca.gov/search\\_upd.html](https://www.sco.ca.gov/search_upd.html) for further information."

Phoenix Settlement Administrators is appointed as settlement administrator. Payment of the proposed \$ 2,925 settlement administration fee from the PAGA gross settlement amount upon completion of settlement administration is approved.

Counsel provided documentation for the court to perform both a lodestar review and percentage of fund analysis of the requested \$ 43,333.33 fee. Counsel also provided itemized costs of \$ 15,220.14. The court notes fees and costs fall below the agreed not to exceed amounts agreed upon at settlement. Upon review, the court finds the requested amount of \$58,553.47 for attorneys' fees and litigation costs are reasonable and approved.

An enhancement and general release payment of \$ 3,000.00 from the PAGA gross settlement amount shall be paid to plaintiff Pamela Williams.

Finally, Plaintiff shall append the Settlement Agreement, Addendum and approved notice of settlement reflecting the changes regarding unclaimed residue and class service award, as exhibits to the amended proposed order.

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POSTED: 3:00 PM