

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, July 10, 2024, 3:00 p.m.
Courtroom 16 –Hon. Patrick M. Broderick
3035 Cleveland Avenue, Suite 200, Santa Rosa**

**TO JOIN “ZOOM” ONLINE,
Courtroom 16
Meeting ID: 161-460-6380
Passcode: 840359**

<https://sonomacourt-org.zoomgov.com/j/1614606380?pwd=NUdpOEZ0RGxnVjBzNnN6dHZ6c0ZQZz09>

**TO JOIN “ZOOM” BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 254-5252 US (San Jose)**

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6729**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing. Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

1. SCV-270295, Wolvek v Callahan

Defendant Joel S. Erickson, M.D. (“Erickson”) moves for summary judgment against Plaintiff Tiffany Wolvek aka Tiffany Stinson (“Plaintiff”) on the grounds that there is no triable issue of material fact in that Erickson’s care and treatment of Plaintiff was within the applicable standard of care and that there were no negligent acts or omissions on Erickson’s part.

Defendant Laura K. Sutliff, R.N. (“Sutliff”) also moves for an order granting summary judgment in her favor against Plaintiff on the same grounds.

On June 11, 2024, defendants’ counsel, Joseph Picchi, filed a Request for Dismissal of the complaint, with prejudice, as to defendants Erickson and Sutliff, which is signed by Plaintiff’s counsel. Accordingly, defendants Erickson’s and Sutliff’s motions for summary judgment are DROPPED as MOOT.

2. SCV-272762, Kraft v The Lagunitas Brewing Company

This matter is on calendar for the motion of Plaintiff Pasha Kraft (“Plaintiff”) pursuant to Labor Code section 2699(1)(2) for an order approving the parties’ PAGA settlement and entry of the agreed-upon proposed final judgment. Plaintiff requests the court: (1) grant approval of the parties’

PAGA Settlement; (2) appoint Apex Class Action LLC as the Claims Administrator; (3) direct that the agreed-upon Notice of PAGA Settlement be approved and sent to the allegedly aggrieved employees with their settlement share; and (4) award PAGA Counsel their fees and litigation costs. Plaintiff also requests that the Court sign and enter the proposed PAGA Settlement Approval Order and Final Judgment. **The motion is DENIED.**

Plaintiff filed her complaint on March 6, 2023, alleging violations of the Private Attorney General Act (“PAGA”) (Labor Code section 2698 et seq.). The complaint sought PAGA penalties for alleged failures of Defendant Lagunitas Brewing Company (“Defendant”) to provide compliant meal and rest periods; duty-free meal and rest periods; failure to pay all minimum, sick pay, regular pay, and overtime wages; failure to correctly calculate the regular rate of pay; failure to pay wages within seven days of the close of payroll; failure to pay for all hours worked; failure to maintain true and accurate records; failure to reimburse for required business expenses; failure to provide accurate itemized wage statements; and failure to timely pay wages due during employment and upon termination.

Plaintiff was employed with Defendant from June 2019 through November 2022. (Complaint, ¶10.) She was a non-exempt employee paid on an hourly basis. (*Ibid.*) Plaintiff alleges she and other employees were subjected to the above-named violations.

The PAGA period is defined as December 28, 2021, through August 21, 2023. The gross settlement amount is \$220,000. After deducting attorney’s fees and claims administration expenses, the remaining amount would be distributed 75% to LWDA and 25% to the 171 “Aggrieved Employees.” Plaintiff alleges the settlement should be approved as it is fair and reasonable, and was the product of informed, adversarial, non-collusive, and mediated negotiations between experienced counsel. Plaintiff does not request a representative payment.

On August 21, 2023, the parties attended a full-day mediation with Steven J. Serratore, Esq., who is described as an experienced wage and hour, class action, and PAGA mediator. Prior to the mediation, Defendant provided Plaintiff with information which Plaintiff provided to the mediator. This information included the number of aggrieved employees and pay periods, written wage and hour policies, employee handbooks, and a sample of time and payroll records for the aggrieved employees. The parties reached settlement at the mediation.

Pursuant to the parties’ agreement, Plaintiff requests \$73,333.33 in attorney fees, reimbursement of attorney expenses up to \$20,000, and payment of administration costs up to \$6,500. Thereafter, the remaining \$120,166.67 is to be distributed as required by Labor Code section 2699(i): 75%, or \$90,125, to LWDA and 25%, or \$30,042.67, to the aggrieved employees.

1. PAGA Standards

PAGA was intended to advance the state's public policy of affording employee’s workplaces free of Labor Code violations, notwithstanding the inability of state agencies to monitor every employer or industry. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 546.) By expanding the universe of those who might enforce the law, and the sanctions violators might be subject to, the Legislature sought to remediate present violations and deter future ones. (*Ibid.*)

Plaintiff’s memorandum makes generalizations about the nature of the case, which could apply to any similar action, and the declarations provide minimal facts specific to this case. The

declaration of Jean-Claude Lapuyade states that, without stacking the PAGA penalties, Defendant's maximum liability exposure was estimated to be \$481,500. (Lapuyade decl., ¶19.) If PAGA penalties are stacked, the maximum exposure was estimated to be \$1,148,200. (*Ibid.*) Plaintiff's counsel provides its expert consultant's estimation of Defendant's exposure, using the number of pay periods with violations. (*Id.*, ¶20.) Plaintiff's counsel does not specify what percentage of aggrieved employee's records were used to create the estimates provided of Labor Code violation rates of between 65.1% and 100%.

Plaintiff fails to demonstrate that the settlement is fair and reasonable. She does not address what records were obtained from Defendant, whether Plaintiff's counsel interviewed any of the aggrieved employees, or provide the methodology used to determine estimated violation rates. Based upon the relatively small fee paid to Plaintiff's expert, it does not appear that Plaintiff obtained a large percentage of timesheets or other discovery from Defendant.

2. Attorney Fees

The statements provided in support of the lodestar calculation appear to be for Sonoma County Case *Trevor Coffey v. Lagunitas Brewing Company*, SCV-271412. The timesheet entries start in advance of when this case was filed and contain entries for work not performed in this case, including a motion to remand. It appears the *Coffey* matter was removed from this court to the United States District Court for the Northern District of California, Case Number 3:23-cv-00219. The plaintiff in that case, Trevor Coffey, appears to have voluntarily dismissed that case on February 16, 2023, as noted in the timesheets. As incorrect timesheets have been provided, this court is not confident that this case generated a combined lodestar of \$95,793.33.

Plaintiff's counsel have not provided specific reasons why the instant action warrants hourly rates of up to \$600. Hourly rates of \$550 and \$600 have only been sparingly approved in this county for the upper echelon of attorneys practicing in very complex areas of law. Such large hourly rates have not been approved in Sonoma County for much of the type of work listed in Plaintiff's counsel's timesheets. For example, it is not clear that it is appropriate to charge \$600 per hour to "work on the complaint," for "[e]mails regarding service of the complaint," for emails with staff regarding a signed stipulation or court orders, or for working on a stipulation to stay. (Zakay decl., Exhibit 2.) Nor is it clear that \$550 per hour is appropriate, for example, for emails regarding stipulations to stay, for gathering data, or for requests for extensions to answer. (See Lapuyade decl., Exhibit 5.) Or, for attorneys charging \$525 to \$600 per hour to confer internally regarding "wage statement issues" and what terms to include in the MOU. (Zakay decl., Exhibit 2.) Even the lowest rate of \$400 per hour is excessive for working on a case management statement. (*Ibid.*)

Moreover, it appears that the settlement was based entirely on evidence evaluated by Plaintiff's expert, who appears to have been Berger Consulting. (Zakay decl., Exhibit 3.) Berger Consulting was paid \$1,600. The mediation fee was \$6,250. (*Ibid.*) It is not clear how initiating the lawsuit, requesting some discovery from Defendants, participating in mediation, and drafting this motion warrants \$73,333.33, or over 9 times the combined payment made to Plaintiff's expert and mediator. Regardless, again, the timesheets provided appear to have been prepared for a different case and are therefore irrelevant to this one.

3. Notice and Service

The proposed settlement must be submitted to the agency at the same time that it is submitted to the court. (Lab. Code, § 2699(1)(2).) The proofs of service filed in this action do not show service on the LWDA. Counsel have attached an email from “DIR PAGA Unit,” at lwdadonotreply@dir.ca.gov with the subject title: “Thank you for your Proposed Settlement Submission,” indicating that a proposed settlement was submitted on May 2, 2024. While this is the same date this motion was filed, it is not clear from the email what was actually submitted to the LWDA. In addition, the notice given to the LWDA appears to have provided a class action complaint alleging thirteen causes of action including wrongful termination and discrimination—with no cause of action for PAGA penalties. (Lapuyade decl., Exhibits 1, 3.) Therefore, it is not clear that Plaintiff has complied with the procedural requirements of Labor Code section 2699.

4. Conclusion and Order

Based upon the evidence provided with this motion, this court is not convinced that Plaintiff has complied with the requirements of Labor Code section 2699. Nor is this court persuaded that the settlement is fair and reasonable as Plaintiff has provided insufficient information for the court to evaluate the settlement. In addition, this court is not convinced that attorney fees and costs are reasonable. Therefore, the motion is DENIED.

Due to the lack of opposition, this court’s minute order shall constitute the order of the court.

3. 24CV0006, Looney v Rubens Bar & Grill Inc

Plaintiff Gary E. Looney, dba Collectronics of California (“Plaintiff”), moves for an order vacating the request for dismissal filed on March 4, 2024.

On March 4, 2024, Plaintiff filed proofs of service of process and a request for entry of default for defendants Rubens Bar & Grill, Inc. and Tito Valdez, a declaration in support of default judgment, computation of interest, and a request for dismissal. The request for dismissal sought dismissal of the entire action. Plaintiff’s administrative secretary, Merry McFarland, states that she prepared the request for dismissal to dismiss DOES one to ten. (McFarland decl., ¶2.) She states she incorrectly marked the form so that the entire action was dismissed. (*Ibid.*) She states that Plaintiff only wanted to dismiss DOES one to ten and to have the default and default judgment entered against defendants Rubens Bar & Grill, Inc. and Tito Valdez. (*Id.*, ¶3.) Plaintiff requests the dismissal be vacated pursuant to CCP section 473(b) due to mistake or excusable neglect. **The motion is GRANTED.** The court hereby vacates dismissal of the entire case filed on March 4, 2024.

Plaintiff is directed to submit a written order to the court consistent with this ruling.

4. SCV-270519, McCarthy v The TJX Company

APPEARANCE REQUIRED.