

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Zhou v. Chai

No. 21-cv-06067-AMO (N.D. Cal. May 1, 2025) · No. 21-cv-06067-AMO · Decided May 1, 2025

OPINION

Zhou v. Chai

PER CURIAM.

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4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 YUE ZHOU, et al., Case No. 21-cv-06067-AMO 8 Plaintiffs,

ORDER DENYING MOTION FOR

9 v. APPROVAL OF PAGA SETTLEMENT

WITHOUT PREJUDICE

10 SIN KIONG CHAI, et al., Re: Dkt. No. 115 Defendants. 11 12 13 This is a representative
action brought pursuant to the California Private Attorneys General 14 Act (“PAGA”) in which
Plaintiffs seek approval of a settlement of PAGA penalty claims. Motion 15 (“Mot.”) (ECF 115).
Because the motion contains several deficiencies, as discussed below, the 16 Court DENIES the
motion without prejudice and VACATES the May 8, 2025 hearing. 17 In the Third Amended
Complaint (“TAC”), ECF 20, Plaintiffs seek PAGA penalties for 18 Defendants’ (1) failure to pay
minimum wage pursuant to Cal. Lab. Code § 1197.1(a) as to the 19 three cooks; (2) failure to pay
overtime pursuant to Cal. Lab. Code § 558 and Industrial Welfare 20 Commission Order 5-2001
as to the three cooks; and (3) failure to furnish an accurate itemized 21 wage statement pursuant
Cal. Lab. Code, § 226.3 as to all nine former employees.1 Mot. at 5 22 (citing TAC). 23 The
proposed settlement provides for PAGA penalties in the amount of \$5,475. Id. at 6. 24 By statute,
75% of that amount – \$4,106.25 – will be distributed to the California Labor and 25 Workforce
Development Agency (“LWDA”). Id. at 3; see also Cal. Lab. Code § 2699(i). The 26 27 1
Plaintiffs’ motion acknowledges, as held in this Court’s prior order, that Plaintiffs’ fourth claim –
failure 1 remaining 25% – \$1,368.75 – will be allocated among the “aggrieved employees,” which
the 2 proposed settlement agreement defines as “employees who worked for Defendants from July
25, 3 2020 through December 6, 2022.” Id. at 4. Plaintiffs calculate that there were 124 weeks
within 4 the PAGA period, 62 of which were biweekly pay periods. Id. at 5. 5 As to the first claim
of minimum wage violations, Plaintiffs assert that Defendants’ 6 maximum exposure to PAGA
penalties is \$46,050 [=($\$100 \times 1 + \250×61) $\times 3$]. Mot. at 6. As to the 7 second claim concerning
overtime wages, Plaintiffs assert that Defendants’ maximum exposure to 8 PAGA penalties is

\$18,450 $[(\$50 \times 1 + \$100 \times 61) \times 3]$. Id. Plaintiffs therefore calculate that the 9 maximum exposure to PAGA penalties for these two claims is \$64,500 $[\$46,050 + \$18,450]$. 10 Plaintiffs assert that “5% of the maximum exposure [as to claims one and two] will be appropriate 11 and sufficient to serve the penalty purposes.” Id. Thus, Plaintiffs suggest PAGA penalties for 12 these two claims in the amount of \$3,225 $[=5\% \times \$64,500]$. 13 As to the third claim concerning wage statements, the PAGA statute allows for a penalty of 14 \$250 per employee per pay period for the initial violation, and \$1,000 per pay period for each 15 subsequent violation. Cal. Lab. Code § 226.3. Plaintiffs do not identify Defendants’ maximum 16 exposure to PAGA penalties as to claim three. Mot. at 5-6. Rather, Plaintiffs assert that, to avoid 17 an unjust or oppressive result pursuant to Cal. Lab. Code § 2699(e)(2), one initial \$250 penalty for 18 each nine employees will be “appropriate and sufficient to serve the penalty purposes.” Id. at 6. 19 Thus, Plaintiffs suggest liability of \$2,250 $[=\$250 \times 9]$ as to claim three. 20 Plaintiffs’ motion suffers from several deficiencies which prevent the Court from 21 determining whether the settlement is fair and adequate in view of the purpose and policies of the 22 PAGA statute while taking into account the parties’ respective litigation risks. See *O’Connor v. 23 Uber Technologies, Inc.*, 201 F. Supp. 3d 1110, 1135 (N.D. Cal. 2016). 24 First, Plaintiffs’ calculation of the number of relevant pay periods and asserted duration of 25 the proposed PAGA period suffer from the same deficiencies identified in the Court’s order 26 denying in part Plaintiffs’ motion for summary judgment: failure to make clear whether its figures 27 exclude penalties extending beyond an employee’s termination and failure to tabulate the number 1 Second, Plaintiffs’ assertion that a 95% discount of the maximum PAGA liability as to 2 claims one and two is warranted “[g]iven the questions of proof and the fact that the Court already 3 denied Plaintiffs’ [m]otion for summary judgement on [the] PAGA claims,” is insufficient. For 4 example, although Plaintiffs reference “questions of proof,” they do not discuss the significance of 5 the Court’s prior order adopting a magistrate judge’s report and recommendation for discovery 6 sanctions against Defendants, which included the Court making several factual findings in 7 Plaintiffs’ favor (ECF 90). See *O’Connor*, 201 F. Supp. 3d at 1135 (holding that the Court cannot 8 find that a proposed PAGA settlement is fair and adequate where the proposed reduction in PAGA 9 liability did not adequately reflect the parties’ respective risks). 10 Third, Plaintiffs’ motion fails to identify Defendants’ maximum PAGA exposure as to 11 claim three, or to provide sufficient justification for the proposal of limiting the penalty to a one- 12 time \$250 penalty per employee, rather than also seeking the \$1,000 penalty for subsequent 13 violations. See Cal. Lab. Code § 226.3. Plaintiffs’ assertion that “because wage statement 14 omissions are based on a technicality and the restaurant has already been sold,” Mot. at 10, does 15 not sufficiently address how the drastic reduction in the PAGA penalty serves PAGA’s purposes. 16 See *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 77 (2021) (“[A] trial court should evaluate a 17 PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s 18 purposes to remediate present labor law violations, deter future ones, and to maximize 19 enforcement of state labor laws.”), overruled in part on other grounds by *Turrieta v. Lyft, Inc.*, 16

20 Cal. 5th 664, 708-10 (2024).

21 Because of these deficiencies, the Court DENIES Plaintiffs' motion. If Plaintiffs can 22 remedy the deficiencies outlined above, they may file a renewed motion within 30 days of this 23 order. In addition to addressing the issues set forth above, and why the settlement should be 24 approved under the governing legal standard, any renewed motion must: 25 • Set forth why the proposed discounts on the maximum value of the PAGA claims 26 is appropriate, which can be addressed by supplying appropriate comparator cases 27 adopting such a discount. 1 settlement agreement. 2 Should Plaintiffs elect to not file a renewed approval motion within 30 days, the parties 3 must file a joint status report within 45 days, with a proposal for how this litigation should 4 || proceed. 5 In light of the foregoing, the Court VACATES the motion hearing scheduled for May 8, 6 || 2025. 7 IT IS SO ORDERED. 8 Dated: May 1, 2025 9 = 10 cok

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United States District Judge 12 13 © 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28