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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

VINH NGO, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

INTUITIVE SURGICAL, INC.;
INTUITIVE SURGICAL OPERATIONS,
INC.; IAN MARTIN INC.; and DOES 1
through 20, inclusive,

Defendants.

Case No. 22CV397297

Assigned for All Purposes to:
Hon. Theodore C. Zayner, Dept. 19

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR APPROVAL
OF PAGA SETTLEMENT**

Date: April 9, 2025
Time: 1:30 p.m.
Dept: 19

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Vinh Ngo ("Plaintiff") seeks approval of a settlement of claims under the Private
4 Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA") against
5 Defendants Intuitive Surgical, Inc., Intuitive Surgical Operations, Inc. and Raise Group Public
6 Benefit Corporation f/k/a/ Ian Martin, Inc. ("Defendants") in the amount of \$249,000.00. Plaintiff
7 alleges approximately 230 aggrieved employees who worked for Defendant that were allegedly
8 not paid at least minimum wages for all hours worked, not paid proper overtime compensation,
9 not provided with meal periods or compensation in lieu thereof, not provided with rest breaks or
10 compensation in lieu thereof, not provided with accurate wage statements, and were not paid all
11 wages owed upon separation of employment.

12 Under Labor Code § 2699(1)(2), the Court must review and approve any proposed PAGA
13 settlement. Here, the proposed Settlement is sufficient to deter and punish future violations. The
14 Settlement is attached to the Declaration of Kristy R. Connolly ("Connolly Decl.") as **Exhibit 1**,
15 and the proposed letter to be sent to the aggrieved employees is attached thereto as **Exhibit A**.
16 Plaintiff now seeks this Court's approval of the Settlement terms.

17 **II. FACTUAL AND PROCEDURAL BACKGROUND**

18 On April 26, 2022, Plaintiff's counsel sent a letter to the California Labor & Workforce
19 Development Agency ("LWDA") via online submission and to Defendant via certified mail
20 regarding Defendant's alleged violations. *See* Connolly Decl., ¶ 3, Exhibit 2. The LWDA did not
21 respond to this notice within 65 days, indicating it did not intend to investigate, thus allowing
22 Plaintiff to file the instant lawsuit pursuant to Labor Code Section 2699.3(a)(2)(A). Connolly
23 Decl., ¶ 4.

24 On April 26, 2022, Plaintiff filed his Complaint as a class action lawsuit, alleging that,
25 Defendant failed to: (1) pay minimum wages, (2) pay overtime wages, (3) provide lawful meal
26 periods or compensation in lieu thereof, (4) authorize or permit lawful rest breaks or provide
27 compensation in lieu thereof, (5) provide accurate itemized wage statements, (7) timely pay all
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1 wages during employment, (8) pay all wages timely upon separation of employment and, (9)
2 abide by the requirements of California Business and Professions Code Section 17200 *et seq.*
3 Connolly Decl., ¶ 5. On July 11, 2022, Plaintiff filed his First Amended Complaint adding a claim
4 for Enforcement of the Private Attorneys General Act (“PAGA”). *Id.*

5 Due to the presence of arbitration agreements that Plaintiff and class members allegedly
6 signed, Plaintiff dismissed his individual and class claims and proceeded on a PAGA-only basis.
7 Connolly Decl., ¶ 6.

8 The Parties agreed to attend private mediation. Connolly Decl., ¶ 7. In preparation for
9 mediation, Defendant informally produced data and documents for Plaintiff to evaluate the PAGA
10 claims and calculate the alleged exposure, including policy documents, the aggrieved employees’
11 time and payroll records, and a list of aggrieved employees with dates of employment to calculate
12 the pay periods worked. *Id.* Plaintiff’s Counsel engaged an expert to quantify the potential
13 exposure using the time and payroll records, and then assessed the risks associated with each of
14 the claims. *Id.*

15 The parties attended mediation on July 10, 2024, with Kevin Barnes, a respected class
16 action and PAGA action mediator. Connolly Decl., ¶ 8. Although the case did not settle at
17 mediation, the Parties ultimately accepted a mediator’s proposal. *Id.* The Parties spent the next
18 few months negotiating the terms of the Settlement, which was finalized in September of 2024.
19 *Id.*

20 Plaintiff provided notice of the Settlement and this Motion to the LWDA on October 17,
21 2024. Connolly Decl., ¶ 9, Exhibit 3.

22 **III. PAGA REQUIREMENTS**

23 Based on the California Supreme Court's opinions in *Arias v. Superior Court*, 46 Cal. 4th
24 969 (2009), and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014),
25 Plaintiffs can seek appropriate civil penalties as called for under PAGA on behalf of the State of
26 California and other similarly aggrieved employees without seeking class certification or meeting
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1 the requirements of class certification (i.e. numerosity, typicality, commonality and adequacy).
2 As such, the class action two-step preliminary and final approval process is not required.

3 PAGA was enacted to allow enforcement of the Labor Code and recovery of penalties by
4 the State and by private individuals who have been aggrieved by their employers. The statute
5 calls for 75% of any penalties recovered to be paid to California's LWDA and the remaining 25%
6 to the aggrieved employees (Cal. Lab. Code § 2699(i) (2016)).

7 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved
8 employee must first provide written notice to the LWDA and the employer of the particular Labor
9 Code violations the aggrieved employee alleges the employer has violated. *See* Cal. Labor Code §
10 2699.3(a)(1)(A) (2016). Once the LWDA notifies the aggrieved employee that it does not intend
11 to investigate the alleged violations, or if the LWDA does not respond within a certain time
12 period, the aggrieved employee is then allowed to proceed in a civil action against the employer
13 on behalf of the LWDA and all other similarly aggrieved employees. *See* Cal. Labor Code §
14 2699.3(a)(2)(A) (2016).

15 In 2009, the California Supreme Court considered the issue of whether an aggrieved
16 employee who brings a PAGA representative claim needs to meet class certification requirements.
17 *Arias*, 46 Cal. 4th at 976. After a substantial review of the legislative history of PAGA, the Court
18 held that an aggrieved employee's representative action brought on behalf of other aggrieved
19 employees against an employer for PAGA violations does not need to meet the requirements for
20 class certification. *Id.* at 975, 980-88. As the Court held, a plaintiff bringing suit under PAGA
21 does so as the proxy or agent of California's labor law enforcement agencies. *Id.* at 986. Because
22 the employee's PAGA action functions as a substitute for an action brought by the government
23 itself, a judgment in the PAGA action binds all those who would be bound by a judgment in an
24 action brought by the government. *Id.*

25 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the court
26 need only "review and approve" the settlement. Cal. Lab. Code § 2699(1)(2) (2016). The Parties
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1 to this current PAGA action have reached such an agreement and now seek this Court's approval
2 of the proposed settlement.

3 **IV. THE SETTLEMENT TERMS AND DISTRIBUTION OF PENALTIES**

4 The Parties have agreed that Defendant will pay a total settlement amount of \$249,000.00
5 (the "Gross Settlement Amount"). *See* Settlement Agreement, § 3.1. From this amount, up to
6 one-third (1/3) of the Gross Settlement Amount, or \$83,000.00, is allocated to attorneys' fees and
7 up to \$20,000.00 to actual litigation costs. *Id.* at § 3.2.2. To date, Plaintiff's counsel has spent
8 \$8,922.20 in actual litigation costs. *See* Connolly Decl., ¶ 29, Exhibit 4. The Settlement allocates
9 up to \$3,750 to payment for Phoenix Settlement Administrators' costs associated with
10 administration of the Settlement. Settlement Agreement, § 3.2.3. For Plaintiff's efforts in assisting
11 with the Lawsuit and in exchange for a general release of his individual claims, \$10,000.00 is
12 allocated to Plaintiff. *Id.* at § 3.2.1.

13 After deducting the above amounts for attorneys' fees and costs, Settlement
14 Administrator's costs, and Plaintiff's individual settlement award, the remaining fund will
15 constitute the "PAGA Penalties" in which 75% will be paid to the LWDA (the "LWDA PAGA
16 Payment") and 25% will be paid to the Aggrieved Employees as their "Individual PAGA
17 Payments". Settlement Agreement, § 3.2.4. The Aggrieved Employees are California citizens
18 assigned to work for Intuitive Surgical, Inc. by Raise Group Public Benefit Corporation f/k/a/ Ian
19 Martin, Inc. and classified as a non-exempt employee at any time during the PAGA Period. *Id.* at ¶
20 1.4. The PAGA Period means the period from May 7, 2021 through September 8, 2024. *Id.* at ¶
21 1.19.

22 The Individual PAGA Payments will be calculated pro rata based on the number of pay
23 periods working during the PAGA Period. Settlement Agreement, § 3.2.4.1. If the number of
24 PAGA Pay Periods exceeds 4,130 by more than 5%, the GSA will increase pro rata per additional
25 PAGA Pay Period at a rate of \$60.29 per additional PAGA Pay Period. *Id.* at § 8. The Individual
26 PAGA Payments shall be paid to the Aggrieved Employees by way of a single check which will
27 be valid for 180 days. *Id.* at § 4.4.1. All funds not claimed within 180 days of mailing of payment
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1 shall be sent to the California State Controller's Office Unclaimed Property Fund with an
2 identification of the amount of unclaimed funds attributable to each PAGA Employee. *Id.* at §
3 4.4.3. The Individual PAGA Payments will be characterized as penalties for tax purposes and
4 reported on IRS Form 1099. *Id.* at § 3.2.4.2.

5 Prior to this disbursement, the Settlement Administrator shall check the Aggrieved
6 Employees' addresses provided by Defendant using the National Change of Address database.
7 Settlement Agreement, § 4.4.1. For any returned payments without a forwarding address, the
8 Settlement Administrator shall run a skip trace. *Id.* at § 4.4.2. Aggrieved Employees will receive a
9 letter along with their Individual PAGA Payment explaining the reason for the payment, the
10 content of which will be submitted to the Court for approval. *Id.* at § 4.4.1. The proposed letter is
11 attached to the Settlement Agreement as Exhibit A.

12 In exchange for the settlement payment, the State of California and the Aggrieved
13 Employees will release the "Released Parties" meaning "Defendants and each of their former and
14 present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors,
15 successors, assigns, subsidiaries, and affiliates," from "all claims for PAGA penalties that were
16 alleged, or reasonably could have been alleged, based on the facts stated in the Operative
17 Complaint and the PAGA Notice, arising during the PAGA Period, including claims for (1)
18 Failure to Pay Minimum Wages, (2) Failure to Pay Overtime Wages, (3) Failure to Provide Meal
19 Periods, (4) Failure to Provide Rest Periods, (5) Failure to Provide Accurate Wage Statements, (6)
20 Failure to Timely Pay All Wages During Employment and Due at Termination, and (7) Failure to
21 Maintain Accurate and Complete Records." Settlement Agreement, §§ 1.26, 5.2.

22 **V. THE SETTLEMENT IS FAIR AND REASONABLE**

23 **A. Standard for Approval**

24 PAGA settlements must be "fair, reasonable, and adequate in view of PAGA's purposes
25 to remediate present labor law violations, deter future ones, and to maximize enforcement of
26 state labor laws." *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021). The court must find
27 that the plaintiff "has adequately represented the state's interests, and hence the public interest."
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1 *Id.* at 89. The LWDA must be notified of the settlement and be given an opportunity to object.
2 The court may look to parallel class action guidelines to determine what is “fair, adequate and
3 reasonable.” *Kullar v. Foot Locker Retail*, 168 Cal.App.4th 116, 126 (2008). In that analysis, the
4 court has “broad discretion in making this determination.” *In re Microsoft I-V Cases*, 135
5 Cal.App.4th 706, 723 (2006). Relevant factors may include “the strength of the plaintiffs’ case,
6 the risk, expense, complexity and likely duration of further litigation, ... the amount offered in
7 settlement, the extent of discovery completed and the stage of the proceedings, the experience
8 and views of counsel, the presence of a governmental participant” *Dunk v. Ford Motor Co.*,
9 48 Cal.App.4th 1794, 1801 (1996).

10 **B. The Settlement Meets the Standard for Approval**

11 Here, the \$249,000.00 Gross Settlement Amount is reasonable for a group of
12 approximately 230 employees. Connolly Decl., ¶ 10. A penalty of \$249,000.00 is large enough to
13 punish Defendants for alleged past violations and deter future violations. *Id.* The settlement
14 amount is equivalent to a penalty of about \$1,082.00 per employee. *Id.* At the same time, the
15 penalty amount is not so large as to be unjust, oppressive or confiscatory, considering the
16 company’s potential exposure explained below. *Id.* The Gross Settlement Amount is also
17 reasonable in light of the facts of the foregoing action, the real risk that no PAGA penalties would
18 be paid, and inherent risks and uncertainties associated with PAGA claims. *Id.* at ¶ 11.

19 Plaintiff calculated the potential exposure at the initial violation rate of \$100.00 per pay
20 period as follows: 4,130 x \$100.00 per pay period is \$413,000.00. Connolly Decl., ¶ 12. If the
21 Court stacked different types of penalties in each pay period, Plaintiff calculated the exposure as
22 follows:

- 23 a. 4,130 pay periods x \$100 per pay period x 100% violation rate = \$413,000.00
24 for rest break violations;
25 b. 4,130 pay periods x \$100 per pay period x 100% violation rate (for failure to
26 pay overtime at regular rate of pay) = \$413,000.00 for unpaid overtime wages;
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- 1 c. 4,130 pay periods x \$100 per pay period x 50% violate rate= \$206,500.00 for
2 failure to pay wages on a weekly basis; and
3 d. 4,130 pay periods x \$100 per pay period x 100% violation rate =\$413,000.00
4 for wage statement penalties.

5 *Id.* Defendant raised a number of arguments during settlement negotiations and provided
6 evidence that could have defeated Plaintiff's claims. *Id.* at ¶ 13. For example, Plaintiff's rest
7 break claim was based on the allegation that Defendant required employees to remain on-
8 premises during rest breaks. *Id.* Plaintiff argued that under *Augustus v. ABM Security Services,*
9 *Inc.*, 5 Cal.5th 257, 269 (2016), Defendant failed to relieve employees of duty during rest break.
10 However, Defendant pointed to written policies which authorized duty-free rest breaks and that it
11 would present testimony at trial confirming the same, which could seriously affect manageability
12 of this claim at trial. *Id.* For the overtime claim, Plaintiff argued that Defendant failed to
13 incorporate the sign-on bonuses into the rate of pay. *Id.* However, there are some federal
14 guidance papers that believe that sign-on bonuses are not to be incorporated as a non-
15 discretionary bonus, which could be used to convince the Court of the same. *Id.* Plaintiff also
16 argued that Defendant failed to pay wages on a weekly basis for its staffing employees pursuant
17 to Labor Code section 201.3. *Id.* However, Defendant argued and provided evidence that its
18 employees were assigned to work for a client over 90 days, entitling them to the exemption
19 found in section 201.3 for temporary employees. *Id.* Finally, while the wages claims could
20 trigger derivative wage statement penalties, the recent *Naranjo v. Spectrum Security Services,*
21 *Inc.*, 5 Cal.5th 1056 (2024) ruling could impact the amount of penalties awarded if Defendant
22 could prove it acted in good faith. *Id.*

23 Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA
24 awards are discretionary and can be reduced by the Court. Connolly Decl., ¶ 14. Under Labor
25 Code § 2699(e)(2), the Court can reduce the PAGA penalties "if, based on the facts and
26 circumstances of the particular case, to do otherwise would result in an award that is unjust,
27 arbitrary and oppressive, or confiscatory." In other words, were this matter to go to trial, any
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1 award granted would be at the discretion of the Court. *Id.* In settling this case, Plaintiff
2 recognizes that, although he believes there would be no persuasive grounds to reduce the
3 penalties, the Court could determine otherwise and significantly reduce the PAGA penalties,
4 especially with a small employer and temporary employees. *Id.* The wide range of potential
5 recovery and the additional delays and risks of trial justified settling for a reasonable amount of
6 recovery. *Id.*

7 **VI. CONCLUSION**

8 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement
9 pursuant to PAGA in this Action.
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12 Dated: October 18, 2024

AEGIS LAW FIRM, PC

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14 By 

15 Kristy R. Connolly
16 Attorneys for Plaintiff Vinh Ngo
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