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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JONATHAN HENRY,

Plaintiff(s),

vs.

DWWCM, INC. dba SOUTH COAST
TOYOTA and DOES 1 to 25, inclusive,

Defendants.

Case No.: 30-2020-01145799-CU-OE-CXC

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

Action filed: 5/26/2020
Hearing Date: March 4, 2022
Hearing Time: 10:00 a.m.
Hearing Dept: CX105, Hon. Randall J.
Sherman

Submitted Herewith Under Separate Cover:

1. Supplemental Declaration of Harout Messrelian in Support of Motion for Approval of PAGA Settlement and Release
2. [Proposed] Order on Motion for Approval of PAGA Settlement and Dismissal with Prejudice

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1. In its Order, the Court calls for a further discussion regarding the aggrieved employees' estimated individual recovery under the proposed settlement, including maximum, minimum and average workweeks, and estimated high, low and average payments to be paid to the aggrieved employees based on their workweeks, information that would enable the court to better evaluate the reasonableness of the settlement.

Defendant estimates that the lowest number of pay periods worked by an Aggrieved Employee is 1 pay period (1 work week), resulting in the lowest estimated individual settlement payment of \$2.48 (1 pay period x \$2.48 pay period value) and the highest number of pay periods is approximately 58 pay periods (135 work weeks), resulting in the highest estimated individual settlement payment of \$143.75 (58 pay periods x \$2.48 pay period value). Defendant also estimates that the average number of pay periods worked by an Aggrieved Employee is

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1 approximately 30 pay periods (71 workweeks) – resulting in an average estimated settlement
2 payment of \$74.35 (30 pay periods x \$2.48). Suppl. Messrelian Decl., ¶ 9.

3 Although an average payment of \$74.35 per Aggrieved Employee seems low, such
4 payments are reasonable amounts given the structure and purpose of the PAGA. The PAGA is
5 not a restitution statute with a traditional damages provision designed to restore victims to the
6 position they would have been in had the Labor Code violations not taken place. Rather, it is a
7 punishment statute. It provides for civil penalties only. *Id.* As recent caselaw makes clear,
8 plaintiffs in a PAGA lawsuit cannot recover as part of the civil penalty any wages the Labor Code
9 violations at issue caused. *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175 (2019). The penalties are
10 limited by the PAGA’s per paycheck cap of only \$100 and the caps of the Labor Code statutes it
11 incorporates, such as Labor Code § 558 which limits the civil penalty for a meal period violation
12 to \$50 per paycheck. Suppl. Messrelian Decl., ¶ 10.

13 Further, PAGA obligates the prevailing plaintiff to disburse 75% of the civil penalties
14 collected to the State. Within the framework he is bound by, Plaintiff achieved an outstanding
15 result for the employees concerned. What’s more, the Settlement the Plaintiff achieved permits
16 the employees concerned who are dissatisfied with the amount they received in civil penalties to
17 pursue any unpaid restitution, wages, interest, statutory penalties, and attorney fees and costs
18 they believe they are owed in arbitration pursuant to their agreements with the Defendant. The
19 Settlement does not require them to opt out to do so. Suppl. Messrelian Decl., ¶ 11.

20 **2. In its Order, the Court calls for an amendment to the Settlement Agreement in**
21 **§6.09: "Any claim arising out of or relating to the Agreement, or the subject matter**
22 **hereof, will be resolved solely and exclusively in the Superior Court of the State of**
23 **California for the County of Los Angeles."**

24 The Parties have executed an Addendum to the Settlement to correctly state “the County
25 of Orange” in §6.09 of the Settlement. Suppl. Messrelian Decl., ¶ 4, Ex. 4.

26 **3. In its Order, the Court call for an invoice from the Administrator to support its fee**
27 **request.**

28 Simpluris Inc.’s invoice reflecting the cost to administer the Settlement is attached as
Exhibit 5 to the Suppl. Messrelian Decl. *See* Suppl. Messrelian Decl. ¶ 5, Ex.5.

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1 **4. In its Order, the Court calls for a detailed hourly breakdown of Plaintiff's attorneys'**
2 **hours to support the court's review of the attorneys' fees request.**

3 Plaintiff has enclosed as an exhibit to the Suppl. Messrelian Decl. a breakdown of all
4 attorney fees incurred in the prosecution of this lawsuit. It shows the work performed by
5 Plaintiff's counsel. It also includes the total amount of hours and billings. Suppl. Messrelian
6 Decl., ¶ 14, Ex. 8.

7 Plaintiff's Counsel's fee request of \$29,833.33 (one-third of the Gross Settlement
8 Amount) is fair and reasonable based on his lodestar as cross-checked against the percentage
9 of the recovery. Suppl. Messrelian Decl., ¶ 12. "[R]egardless whether the percentage method or
10 the lodestar method is used, fee awards in class actions average around one-third of the
11 recovery." (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn.11 ("*Chavez*")); *In re*
12 *Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 ("*Pacific*") [affirming 33% fee award];
13 *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 ("*MGM*")
14 (awarding 33% of total fund amount.) This is also consistent with Plaintiffs' Counsel's
15 experience in wage and hour class and PAGA settlements. Suppl. Messrelian Decl., ¶ 12.

16 To date, Plaintiff's counsel has investigated and prosecuted this matter for over 44.70
17 hours. Plaintiff's counsel also expects to perform additional work on this case if the Court grants
18 approval of the Settlement, including supervision of the Settlement Administrator's disbursement
19 of the settlement funds to the Aggrieved Employees. Suppl. Messrelian Decl., ¶ 13.

20 In this case, Plaintiff's Counsel has a total lodestar of approximately \$22,350.00 without
21 the use of any multiplier, which results in a multiplier of 1.335 when compared against the
22 \$29,833.33 request for attorneys' fees. A general summary showing of the pre-multiplier lodestar
23 by Plaintiff's Counsel and the number of hours of work performed is set forth below with a total
24 lodestar of approximately \$22,350.00. Based on the experience and credentials of Plaintiff's
25 Counsel, which has been set forth in the previously filed declaration, this rate is well within the
26 range charged by attorneys with comparable experience and qualifications and thus is reasonable.

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Pre-Multiplier</u>
Harout Messrelian (10 th Year Attorney)	44.70	\$500 (9-10 th Year Atty)	\$22,350.00
Totals	44.70		\$22,350.00

1 Suppl. Messrelian Decl., ¶ 14, Ex 8.

2 Under California law, lodestar multipliers can range from 2 to 4 or even higher. (See, e.g.,
3 *Chavez*, 162 Cal.App.4th at p. 49; *Wershba*, 91 Cal.App.4th at p. 255.) In class actions, where
4 the value of the benefit conferred to the class “can be monetized with a reasonable degree of
5 certainty,” a court may “adjust the lodestar in comparison to a percentage of the common fund
6 to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the
7 legal marketplace in comparable litigation.” (*Consumer Privacy Cases* (2009) 175 Cal.App.4th
8 545, 557.) In doing so, “the court determines, retrospectively, whether the litigation involved a
9 contingent risk or required extraordinary legal skill justifying augmentation of the unadorned
10 lodestar in order to approximate the fair market rate for such services.” (*Id.* at p. 556.)

11 Plaintiff’s counsel’s previous experience in wage and hour litigation also supports the
12 reasonableness of the fee request. Plaintiff’s counsel’s previous experience in similar matters
13 was integral in evaluating the strengths and weaknesses of the case against Defendant and the
14 reasonableness of the Settlement. Because it is reasonable to compensate Plaintiff’s counsel
15 commensurate with their skill, reputation, and experience, attorney’s fees of approximately one-
16 third of the Gross Settlement Amount is reasonable. Suppl. Messrelian Decl., ¶ 15.

17 In this case, the award of attorney’s fees sought by Plaintiff’s counsel is justified by the
18 contingency nature of the attorney-client relationship, the experience of Plaintiff’s counsel, the
19 number of attorney hours Plaintiff’s counsel has spent on this lawsuit with a reasonable
20 multiplier, the percentage of attorney’s fees to the overall recovery, the high caliber of defense
21 counsel, the risks of non-payment and non-reimbursement, the delay in payment and cost
22 reimbursement, and the great results Plaintiff’s counsel has achieved for the Aggrieved
23 Employees. Suppl. Messrelian Decl., ¶ 16.

24 **5. In its Order, the Court requests that Plaintiff provide the court with the amount of**
25 **his individual settlement.**

26 The Parties finalized and fully executed a Confidential Settlement Agreement and
27 Release of All Claims regarding Plaintiff’s individual claims only in the amount of ten thousand
28 dollars (\$10,000.00). Suppl. Messrelian Decl., ¶ 17.

1 **6. In its Order, the Court requests that Plaintiff disclose the amount of attorneys' fees**
2 **and costs that counsel intends to receive from the individual settlement.**

3 Plaintiff's counsel intends to receive 25%, or two thousand five hundred dollars (\$2,500.00)
4 of the total settlement sum of \$10,000.00 from Plaintiff's individual settlement. Plaintiff's
5 counsel does not intend to receive any costs from the individual settlement. *See* Suppl. Messrelian
6 Decl., ¶ 18.

7 **7. In its Order, the Court expresses concerns that the proposed cover letter to be sent**
8 **to the aggrieved employees with their penalty checks fails to explain that no claims**
9 **for any unpaid or underpaid wages have settled, and that this settlement is without**
10 **prejudice to any pursuit of such claims.**

11 The Parties have amended the cover letter to be sent to the Aggrieved Employees to state
12 that "no claims for any unpaid or underpaid wages have settled, and that this settlement is without
13 prejudice to any pursuit of such claims." *See* Suppl. Messrelian Decl., ¶ 6, Exs. 6-7.

14 **8. In its Order, the Court expresses concerns that Plaintiff has not shown that he**
15 **served the LWDA with his moving papers. The Court orders that Plaintiff give**
16 **notice of the ruling to the LWDA and to defendant, and to serve the LWDA with his**
17 **original moving papers and well as any new papers filed for future hearings, and**
18 **file a proof of service showing compliance.**

19 On December 29, 2021, Plaintiff submitted a copy of the Settlement and Motion papers
20 with the LWDA concurrent with the filing of the Motion with the Court. True and correct copies
21 of Plaintiff's submission with the LWDA and the confirmation email were attached as **Exhibit 2**
22 to the Declaration of Harout Messrelian.

23 Pursuant to Labor Code § 2699(1)(2), Plaintiff submitted a copy of this supplemental
24 briefing and the Addendum to the Settlement to the LWDA at the same time Plaintiff's
25 supplemental briefing is being filed with the Court. A true and correct copy of Plaintiff's
26 submission with the LWDA and a confirmation email is attached as **Exhibit 9** to Suppl. Decl.
27 Messrelian.

28 Respectfully submitted,

Dated: February 16, 2022

MESSRELIAN LAW, INC.

By: 
HAROUT MESSRELIAN
Attorney for Plaintiff,
JONATHAN HENRY