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Electronically FILED by
Superior Court of California,
County of Los Angeles
12/11/2023 10:28 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Gnade, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

10 VAHIK NAZARPOUR, individually, and
11 on behalf of all similarly situated
12 individuals

13 Plaintiff,

14 vs.

15 GORGEE ENTERPRISES, INC., a
16 California corporation; PETROS
17 KESHISHIAN, an individual; SAN
18 GABRIEL TRANSIT, INC., a California
19 Corporation; TIMMY MARDIROSIAN, an
20 individual; ACCESS SERVICES
21 INCORPORATED, a California Nonprofit
22 Public Benefit Corporation; and DOES 1
23 through 100, inclusive,

24 Defendants.

Case No. 20STCV29734
Related to Case No. BC536584 (Lead Case)
Hon. Maren Nelson, Dept. SS-17

**PLAINTIFF VAHIK NAZARPOUR'S
NOTICE OF MOTION AND MOTION TO
APPROVE PAGA SETTLEMENT**

Date: January 23, 2024
Time: 9:00 a.m.
Dept.: Spring Street, 17

25 **TO THE COURT AND TO ALL PARTIES IN THIS ACTION**

26 **PLEASE TAKE NOTICE** that on January 23, 2024 at 9:00 a.m., or as soon thereafter as
27 the matter may be heard in Department 17 of this Court, located at 312 N. Spring Street, Los
28 Angeles, California 90012, plaintiff VAHIK NAZARPOUR will and hereby does move this Court
approving the settlement of Plaintiff's PAGA claims in this action.

Defendants have agreed to pay \$7,500 to resolve Nazarpour's individual PAGA claim, and
Nazarpour hereby asks for the Court to approve this settlement. Of the \$7,500 paid to settle the

1 PAGA claims, Plaintiff's attorney seeks 40%, or \$3,000, as compensation for Plaintiff's counsel's
2 attorney fees and costs. The settlement amount for Plaintiff's PAGA claim, and the allocation of
3 40% to attorneys fees/costs, are fair and reasonably based on potential liabilities and the ability to
4 collect a judgment in this case.

5 Plaintiff's motion is based on this Notice, the attached Memorandum of Points and
6 Authorities and Declaration of Frank Marchetti, the entire records and files in this action, those
7 matters subject to judicial notice, and upon such oral and documentary evidence as may be
8 presented at or before the hearing on this Motion.

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13 Dated: December 11, 2023

MARCHETTI LAW



14 Frank E. Marchetti
15 Attorneys for Vahik Nazarpour
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1 **MEMORANDUM OF POINT AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Vahik Nazarpour (“Nazarpour” or “Plaintiff”) and Defendants Gorgee
4 Enterprises, Inc., San Gabriel Transit, Inc., Petros Keshishian, Timmy Mardirosian and Access
5 Services Incorporated (collectively “Defendants”) have reached an agreement to settle the above-
6 captioned action (the “Action”) and they have memorialized the terms of the settlement in a
7 Settlement Agreement.

8 This Action was initially filed as a putative class action, but the Court denied Plaintiff’s
9 motion for class certification on November 17, 2022. The Court’s decision included a
10 determination that Plaintiff’s claims were not manageable as a class action. Plaintiff elected not to
11 appeal that ruling, and instead continued pursuing this action on Plaintiff’s individual claims. (See
12 1/23/23 Joint Status Report.) This included Plaintiff’s PAGA claims – given the Court’s ruling
13 regarding manageability of the class, which would likely apply in the same manner as to
14 manageability of PAGA claims. Plaintiff reported to the Court on January 23, 2023 that Plaintiff
15 would seek PAGA penalties only for himself in this action. See Marchetti Declaration, ¶6.

16 Every plaintiff that pursues a PAGA action, whether seeking penalties for only the plaintiff
17 bringing the action, or as to other employees as well, is a representative action on behalf of the
18 state. Accordingly, since Nazarpour’s individual PAGA claim is still legally a representative
19 action on behalf of the State, Court approval of the settlement of his claim is required.

20 The parties mediated Nazarpour’s claims on September 13, 2023 before Hon. Michael
21 Latin (Ret.), and reached a full settlement of all of Nazarpour’s claims, including of his individual
22 PAGA claim. Defendants have agreed to pay \$7,500 to resolve Nazarpour’s individual PAGA
23 claim, and Nazarpour hereby asks for the Court to approve this settlement. See Marchetti
24 Declaration, ¶7.

25 **II. ALLEGATIONS AND INVESTIGATION RELATED TO**
26 **PLAINTIFF’S PAGA CLAIM IN THIS ACTION**

27 Nazarpour worked for Gorgee Enterprises, Inc. for eleven years as a taxi cab driver, and
28 contended in this action that he was improperly classified and paid as an independent contractor.

1 **All of Plaintiff's claims in this action are based on that improper classification.** Plaintiffs'
2 claims were the following: (1) Mis-classification As An Independent Contractor (2) Failure to Pay
3 All Wages Due, (3) Failure to Pay Minimum Wages, (4) Failure to Pay Overtime Wages, (5)
4 Failure to Provide Meal Periods, (6) Failure to Provide Rest Breaks, (7) Failure to Provide
5 Accurate Itemized Wage Statements, (8) Waiting Time Penalties, (9) Illegal Deductions, (10)
6 Violation of Labor Code §2802, (11) Unfair Business Practices, (12) Civil Penalties under PAGA.
7 See Marchetti Declaration, ¶3.

8 In addition to Gorgee Enterprises, Inc., Plaintiff named defendants San Gabriel Transit,
9 Inc., Petros Keshishian (the owner of Gorgee Enterprises), Timmy Mardirosian (the owner of San
10 Gabriel Transit, Inc.) and Access Services Incorporated based on Plaintiff's contention that they
11 were each Plaintiff's joint employers and/or alter egos of Gorgee Enterprises, Inc. See Marchetti
12 Declaration, ¶4.

13 Plaintiff's PAGA claim, predicated on his being an employee misclassified as an
14 independent contractor, was further based on two theories: \$10,300 in PAGA penalties were due
15 for failure to pay overtime, and \$10,300 in PAGA penalties were due for failure to provide proper
16 wage statements.¹ See Marchetti Declaration, ¶5.

17 Factoring into the settlement for Plaintiff was the ability to collect. Although Gorgee
18 Enterprises still exists as an entity, the business was completely shut down in March of 2020
19 because, according to Mr. Keshishian, the Covid pandemic killed its business. Mr. Keshishian
20 further testified that Gorgee Enterprises has no assets or property. See Marchetti Declaration, ¶8.

21 **III. FAIRNESS OF THE SETTLEMENT**

22 Although Nazarpour's PAGA Claim is a representative claim on behalf of the State, the
23 Parties are not obligated to follow the class action procedural rules for obtaining approval of this
24 settlement. Arias v. Superior Court (2009) 46 Cal.4th 969.

25 As set forth above, Plaintiff contends that because he was misclassified as an independent
26 contractor when in fact he was an employee, he was not paid his overtime wages during each pay

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28 ¹ Each amount of \$10,300 is based on 52 pay periods, with the initial violation having a penalty of
\$100 and each subsequent violation having a penalty of \$200.

1 period that he earned them, and the documentation that was provided to him summarizing how he
2 was paid did not comply with the requirements for wage statements that must be provided to
3 employees under Labor Code Section 226.

4 Labor Code Section 2699(f)(2) provides that when a civil penalty is not specifically
5 provided for in the Labor Code, such as for failing to properly pay overtime wages, “the civil
6 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
7 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
8 subsequent violation.” Because this claim has a one year statute of limitations, and Nazarpour was
9 paid on a weekly basis, the penalties are capped at \$10,300. See Marchetti Declaration, ¶11.

10 Labor Code Section 226.3 provides penalties in the amount of \$250 for the initial violation
11 and \$1,000 for each subsequent violation, but Gunther v. Alaska Airlines, Inc. (2021) 72
12 Cal.App.5th 334, 352 held that these heightened penalties are only available where no records are
13 maintained at all, and that when records are maintained, the penalty is limited to \$100 for the
14 initial violation and \$200 for subsequent violations. Nazarpour did receive documentation with
15 each check explaining how each payment was calculated (per ride he drove), so arguably the
16 heightened penalties would not apply and Nazarpour would be limited to \$100 for the initial
17 violation and \$200 for subsequent violations. Because this claim has a one year statute of
18 limitations, and Nazarpour was paid on a weekly basis, the penalties are capped at \$10,300. See
19 Marchetti Declaration, ¶12.

20 Assuming Plaintiff’s calculations and legal theories are accurate, which were strongly
21 disputed by Defendants, the maximum exposure would be \$20,600, presuming that the Court
22 would not reduce the penalty award as unjust, arbitrary, oppressive or confiscatory. See Marchetti
23 Declaration, ¶13.

24 Moreover, Plaintiff is aware of no California state courts awarding a Plaintiff multiple
25 PAGA penalties for the same violation for the same pay period under different Labor Code
26 provisions. See Marchetti Declaration, ¶13. As such, one of the risks Plaintiff faces is that the
27 Court would refuse to “stack” civil penalties arising under the various Labor Code statutes. See
28 Marchetti Declaration, ¶13. Furthermore, judges have awarded extremely small sums to PAGA

1 claimants in the past. Defendants also adamantly dispute all of Plaintiff's allegations in the
2 operative Complaint. See Marchetti Declaration, ¶13.

3 The source of penalties available is under PAGA, which allows employees to seek civil
4 penalties for certain violations of the Labor Code so long as the penalties are not unjust, arbitrary,
5 oppressive, or confiscatory. See Marchetti Declaration, ¶14. There are no State Court decisions
6 under the PAGA to date with substantial awards of civil penalties. See Marchetti Declaration, ¶14.
7 There is a substantial risk that the Court could reduce civil penalties to an insignificant amount if it
8 is unpersuaded by Plaintiff's evidence of willful and intentional conduct. See Marchetti
9 Declaration, ¶14. The PAGA expressly counsels against such awards. See Lab. Code § 2699(e)(2)
10 ("...a court may award a lesser amount than the maximum civil penalty amount specified by this
11 part if, based on the facts and circumstances of the particular case, to do otherwise would result in
12 an award that is unjust, arbitrary and oppressive, or confiscatory.").

13 Plaintiff further recognizes that the issues presented in the PAGA Claim are likely only to
14 be resolved with extensive and costly trial proceedings, and that further litigation will cause
15 inconvenience, distraction, disruption, delay, and expense disproportionate to the maximum
16 potential benefits to Plaintiff from continued litigation, especially in this case where Gorgee
17 Enterprises, Inc. has already been non-operational and unless Plaintiff proves his theories of joint
18 employer liability or alter ego liability against the other defendants, could result in no monetary
19 compensation to Plaintiff, Plaintiff's attorney, and the State of California. The settlement of the
20 PAGA Claim involves monetary relief to Plaintiff, Plaintiff's attorney, and the State of California.
21 See Marchetti Declaration, ¶15.

22 Furthermore, Plaintiff recognizes that continued litigation presents significant risks that
23 support a significant downward departure from Plaintiff's estimated civil penalties amount. In
24 view of the risks, the Settlement represents a fair, adequate, and reasonable compromise amount
25 for these claims and is in the best interest of Plaintiff and the State of California, and thus warrants
26 approval. The PAGA settlement and its terms are fair, just, reasonable, adequate, and equitable to
27 Defendants, Plaintiff, and the State, especially in light of the current economic climate, and are the
28 product of good faith, and informed arms-length negotiations during a mediation before a retired

1 Judge between the Parties consistent with public policy and fully comply with applicable
2 provisions of law. See Marchetti Declaration, ¶16.

3 **IV. TERMS AND PROCEDURES OF THE SETTLEMENT**

4 Under the Settlement Agreement, \$7,500 shall be paid by Defendants within 30 days after
5 the Court’s order approving settlement of the PAGA claim. The payment will be mailed to
6 Plaintiff’s counsel, to be disbursed. Of the total PAGA settlement sum, Defendants do not oppose
7 payment of not more than 40% of the PAGA settlement sum to Plaintiff’s counsel for attorneys
8 fees and costs. Of the remaining amount after deduction of 40% for fees and costs, 75% is to be
9 allocated and paid to the LWDA and 25% is to be paid to Plaintiff. See Marchetti Declaration, ¶9.

10 Plaintiff has agreed that in exchange for said payment, Plaintiff releases all claims that he
11 has against Defendants for any PAGA claim. The release does not apply to any other potentially
12 or allegedly “aggrieved” employee of Defendants. See Marchetti Declaration, ¶10.

13 **V. THE PROPOSED ATTORNEYS FEES AND COSTS ARE FAIR**

14 Of the \$7,500 paid to settle the PAGA claims, Plaintiff’s attorney seeks 40%, or \$3,000, as
15 compensation for Plaintiff’s counsel’s attorney fees and costs. Plaintiff’s counsel represents
16 Nazarpour in this action on a contingency basis, and the agreement between Nazarpour and his
17 attorneys call for the fees to be 40% of the amount recovered plus reimbursement of costs.
18 Plaintiff’s counsel seeks a total of 40% of the PAGA amount for combined fees and costs. See
19 Marchetti Declaration, ¶9.

20 It is an accepted practice in wage and hour actions to award attorneys’ fees to Plaintiff’s
21 Counsel based on a percentage of the total recovery amount agreed upon by the parties. California
22 courts have long recognized that an appropriate method for awarding attorneys’ fees in
23 representative actions is to award a percentage of the settlement fund. See Serrano v. Priest (1977)
24 20 Cal.3d. 25, 48-49 [“when a number of persons are entitled in common to a specific fund, and
25 an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or
26 preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the
27 fund”]; Wershba v. Apple Computer, Inc. (2001), 91 Cal.App.4th, 230, 254; Lealao v. Beneficial
28 California, Inc. (2000) 82 Cal.App.4th 19, 26-30.)

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Dated: December 11, 2023


Frank E. Marchetti
Attorneys for Vahik Nazarpour

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1 6. This Action was initially filed as a putative class action, but the Court denied
2 Plaintiff's motion for class certification on November 17, 2022. The Court's decision included a
3 determination that Plaintiff's claims were not manageable as a class action. Plaintiff elected not to
4 appeal that ruling, and instead continued pursuing this action on Plaintiff's individual claims. (See
5 1/23/23 Joint Status Report.) This included Plaintiff's PAGA claims – given the Court's ruling
6 regarding manageability of the class, which I determined would likely apply in the same manner
7 as to manageability of PAGA claims. We reported to the Court on January 23, 2023 that Plaintiff
8 would seek PAGA penalties only for himself in this action.
9

10 7. The parties mediated Mr. Nazarpour's claims on September 13, 2023 before Hon.
11 Michael Latin (Ret.), and reached a full settlement of all of Mr. Nazarpour's claims, including of
12 his individual PAGA claim. Defendants have agreed to pay \$7,500 to resolve Mr. Nazarpour's
13 individual PAGA claim.
14

15 8. Factoring into the settlement for Plaintiff was the ability to collect. Although
16 Gorgee Enterprises still exists as an entity, the business was completely shut down in March of
17 2020 because, according to Mr. Keshishian, the Covid pandemic killed its business. Mr.
18 Keshishian further testified that Gorgee Enterprises has no assets or property.
19

20 9. Under the Settlement Agreement, \$7,500 shall be paid by Defendants within 30
21 days after the Court's order approving settlement of the PAGA claim. The payment will be
22 mailed to my office, to be disbursed. Of the total PAGA settlement sum, Defendants do not
23 oppose payment of not more than 40% of the PAGA settlement sum to my office for attorneys
24 fees and costs. Of the remaining amount after deduction of 40% for fees and costs, 75% is to be
25 allocated and paid to the LWDA and 25% is to be paid to Plaintiff.
26

27 10. Plaintiff has agreed that in exchange for said payment, Plaintiff releases all claims
28 that he has against Defendants for any PAGA claim. The release does not apply to any other
potentially or allegedly "aggrieved" employee of Defendants.

1 11. Labor Code Section 2699(f)(2) provides that when a civil penalty is not specifically
2 provided for in the Labor Code, such as for failing to properly pay overtime wages, “the civil
3 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
4 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
5 subsequent violation.” Because this claim has a one year statute of limitations, and Nazarpour was
6 paid on a weekly basis, I determined that the penalties are capped at \$10,300.

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8 12. Labor Code Section 226.3 provides penalties in the amount of \$250 for the initial
9 violation and \$1,000 for each subsequent violation, but Gunther v. Alaska Airlines, Inc. (2021) 72
10 Cal.App.5th 334, 352 held that these heightened penalties are only available where no records are
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12 initial violation and \$200 for subsequent violations. Nazarpour did receive documentation with
13 each check explaining how each payment was calculated (per ride he drove), so arguably the
14 heightened penalties would not apply and Nazarpour would be limited to \$100 for the initial
15 violation and \$200 for subsequent violations. Because this claim has a one year statute of
16 limitations, and Nazarpour was paid on a weekly basis, I determined that the penalties are capped
17 at \$10,300.

18
19 13. Assuming Plaintiff’s calculations and legal theories are accurate, which were
20 strongly disputed by Defendants, the maximum exposure would be \$20,600, presuming that the
21 Court would not reduce the penalty award as unjust, arbitrary, oppressive or confiscatory.
22 Moreover, I am aware of no California state courts awarding a Plaintiff multiple PAGA penalties
23 for the same violation for the same pay period under different Labor Code provisions. As such,
24 one of the risks Plaintiff faces is that the Court would refuse to “stack” civil penalties arising
25 under the various Labor Code statutes. Furthermore, based on my research and knowledge as a
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1 employment law litigator, judges have awarded extremely small sums to PAGA claimants in the
2 past. Defendants also adamantly dispute all of Plaintiff's allegations in the operative Complaint.

3 14. The source of penalties available is under PAGA, which allows employees to seek
4 civil penalties for certain violations of the Labor Code so long as the penalties are not unjust,
5 arbitrary, oppressive, or confiscatory. I am aware of no State Court decisions under the PAGA to
6 date with substantial awards of civil penalties. There is a substantial risk that the Court could
7 reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence of
8 willful and intentional conduct.
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10 15. As counsel for Plaintiff, I further recognize that the issues presented in the PAGA
11 Claim are likely only to be resolved with extensive and costly trial proceedings, and that further
12 litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to
13 the maximum potential benefits to Plaintiff from continued litigation, especially in this case where
14 Gorgee Enterprises, Inc. has already been non-operational and unless Plaintiff proves his theories
15 of joint employer liability or alter ego liability against the other defendants, could result in no
16 monetary compensation to Plaintiff, my firm, and the State of California. The settlement of the
17 PAGA Claim involves monetary relief to Plaintiff, my firm, and the State of California.
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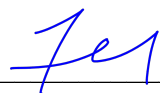
19 16. Furthermore, I recognize that continued litigation presents significant risks that
20 support a significant downward departure from Plaintiff's estimated civil penalties amount. In
21 view of the risks, I believe based on my 24 years as a civil litigator and trial attorney that the
22 Settlement represents a fair, adequate, and reasonable compromise amount for these claims and is
23 in the best interest of Plaintiff and the State of California, and thus warrants approval. The PAGA
24 settlement and its terms are fair, just, reasonable, adequate, and equitable to Defendants, Plaintiff,
25 and the State, especially in light of the current economic climate, and are the product of good faith,
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1 and informed arms-length negotiations during a mediation before a retired Judge between the
2 Parties consistent with public policy and fully comply with applicable provisions of law.

3 17. My regular rate is \$600/hour. Most recently, on January 13, 2023, Judge Michael
4 Vicencia found my regular rate of \$600/hour to be reasonable and he granted my client attorneys
5 fees based on that rate. (Case No. 22LBCV00168). I have spent over 215 hours on Mr.
6 Nazarpour's case, and advanced over \$23,000 in costs. I accordingly believe that 40% of the
7 PAGA claim, as contracted with Mr. Nazarpour, which totals \$3,000, is a fair and reasonable
8 amount in fees and costs for the PAGA claim.
9

10 18. I am filing a copy of this Motion with the LWDA concurrently with filing this
11 Motion with the Court.

12 I declare under penalty of perjury and the laws of the State of California that the foregoing
13 is true and correct and that this declaration was executed this 11th day of December, 2023 at
14 Virginia Beach, Virginia
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20 _____

21 FRANK E. MARCHETTI
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 3731 Wilshire Blvd., Ste. 635, Los Angeles, CA 90010.

On December 11, 2023, I served the foregoing document described as PLAINTIFF VAHIK NAZARPOUR'S NOTICE OF MOTION AND MOTION TO APPROVE PAGA SETTLEMENT on all interested parties in this action by scanning a true and correct copy thereof and serving it BY ELECTRONIC MAIL as follows: I caused a copy of such document to be sent via electronic transmission pursuant to a court order by transmission through Case Anywhere:

Kevin V. DeSantis
James A. McFaul
Bradley A. Lebow
DUNN DESANTIS WALT & KENDRICK, LLP
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Email: blebow@ddwklaw.com

Attorneys for Defendants Gorgee Enterprises, Inc., Petros Keshishian, San Gabriel Transit, Inc., Timmy Mardirosian and Access Services Incorporated

(X) STATE - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 11, 2023, at Virginia Beach, Virginia.



Frank E. Marchetti