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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SACRAMENTO

13 HEMANTH KUNDETI, as a proxy for the
State of California,

14 Plaintiffs,

15 v.

16 CORDOBA CORPORATION, a California
17 corporation; and DOES 1 through 50,
inclusive,

18 Defendants.
19
20
21

CASE NO. 34-2020-00278096-CU-OE-GDS
Dept.: 32

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO APPROVE SETTLEMENT
AGREEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT;
AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: May 19, 2021
Time: 9:00 a.m.
Department: 54

Reservation ID 2556326

22 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

23 **PLEASE TAKE NOTICE** that on May 19, 2021, at 9:00 a.m., or as soon thereafter as
24 the matter may be heard, before the Honorable Christopher Krueger, judge presiding, in
25 Department 54 of the above referenced Court located at Department 31 of the above referenced
26 Court located at 720 9th St., Sacramento, CA 95814, Plaintiff Hemanth Kundeti ("Plaintiff") will
27 seek an Order approving settlement pursuant to the Private Attorneys General Act.

28 This motion will be based on this notice of motion, the attached memorandum of points

1 and authorities, the accompanying PAGA Settlement Agreement, the declarations of William L.
2 Marder, Dennis S. Hyun, and Plaintiff, the records and file herein, and on such other evidence as
3 may be presented at the hearing of the motion.

4 Dated: April 13, 2021

POLARIS LAW GROUP

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7 By: William L. Marder
8 William L. Marder
9 Attorney for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The current operative complaint is premised upon Defendant Cordoba Corporation's
4 ("Defendant") alleged violation of California Labor Code § 2698, *et seq.*, the Private Attorneys
5 General Act of 2004 ("PAGA") for civil penalties. Specifically, Plaintiff Hemanth Kundeti
6 ("Plaintiff") (Defendant and Plaintiff collectively, the "Parties") asserts that Defendant failed to
7 comply with Labor Code § 204 by allegedly not timely paying employees their wages. Plaintiff
8 seeks PAGA penalties against Defendant on behalf of other similarly aggrieved employees and
9 the State of California.

10 As will be explained in further detail below, based on the California Supreme Court's
11 opinion in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009) and *Iskanian v. CLS Transportation*
12 *Los Angeles, LLC*, 59 Cal. 4th 348 (2014), Plaintiff can seek appropriate civil penalties as called
13 for under PAGA on behalf of the State of California and other similarly situated aggrieved
14 employees without seeking class certification or meeting any of the requirements of class
15 certification (i.e., numerosity, typicality, commonality and adequacy). As such, while the PAGA
16 penalties settlement reached herein is on behalf of the State of California and other aggrieved
17 employees, the usual two-step preliminary and final approval process is not required. Rather, as
18 called for under Labor Code § 2699(l), all that is required is an approval by this Court of the
19 PAGA penalties for which the Parties have agreed to settle.

20 The Parties have reached such an agreement, and thus, now seek this Court's approval of
21 the payment of the settlement civil PAGA penalties.

22 **II. FACTUAL AND PROCEDURAL BACKGROUND**

23 On May 6, 2020, Plaintiff filed the present PAGA Action, Sacramento County Superior
24 Court Case No. 34-2020-00278096-CU-OE-GDS, against Defendant for its alleged failure to
25 timely pay wages earned.

26 After filing the Action, the Parties agreed to mediate this matter with Steve Rottman, Esq.,
27 on November 4, 2020. Defendant provided sufficient data concerning the pay periods at issue
28 and that the alleged practices at issue in the Complaint were no longer at issue as of the pay
period ending on October 5, 2019. The Parties then reached a settlement after a full day of

1 mediation.

2 Based on the foregoing and on their own independent investigation and evaluation,
3 Plaintiff's Counsel is of the opinion that the settlement with Defendant for the consideration and
4 on the terms set forth in the PAGA Settlement Agreement ("Agreement," or "Settlement
5 Agreement") is fair, reasonable, and adequate and is in the best interest of the Plaintiff, the Labor
6 Workforce Development Agency (the "LWDA"), and the Aggrieved Employees in light of all
7 known facts and circumstances, including the risk of significant delay, the uncertainty associated
8 with litigation, the various defenses asserted by Defendant, and the numerous potential appellate
9 issues. Defendants and their Counsel also agree that the settlement is fair, reasonable, and
10 adequate.

11 **III. THE SETTLEMENT TERMS AND ACTUAL AMOUNTS REQUESTED**

12 The current PAGA settlement calls for a total settlement amount of \$100,000.00 for
13 resolution of this PAGA action. (*See* Agreement at § 4). The settlement contemplates that
14 Plaintiff is to receive up to \$2,500.00 as compensation for serving as the PAGA representative
15 and for entering into a general release of claims. (Agreement at § 4(d)). The settlement also
16 specifies up to 1/3 of the total settlement amount, or \$33,333.33 will be paid as attorneys' fees
17 and actual litigation costs up to \$25,000.00. (Agreement at § 4(b)-(c)). Plaintiff's actual costs are
18 actually \$10,299.50, with the unclaimed costs going to the Net Settlement Amount. (Hyun Decl.
19 ¶ 9; Declaration of William Marder ("Marder Decl.") ¶ 12, Exh. B). Up to \$2,500.00 will be paid
20 to the Settlement Administrator to administer the settlement. (Agreement at § 4(a)).

21 Accordingly, the remaining sum of Fifty-One Thousand Three Hundred and Sixty-Seven
22 Dollars and Seventeen Cents (\$51,367.17) will be distributed to the LWDA and the Aggrieved
23 Employees on a 75% / 25% basis pursuant to PAGA. (Agreement at §§ 4(e), 5). Assuming these
24 amounts are fully awarded, Thirty-Eight Thousand Five Hundred and Twenty-Five Dollars and
25 Thirty-Eight Cents (\$38,525.38) will be paid to the LWDA and approximately Twelve Thousand
26 Eight Hundred and Forty-One Dollars and Seventy-Nine Cents (\$12,841.79) will be distributed to
27 the Aggrieved Employees (the "Settlement Payment"). (*Id.*) The Aggrieved Employees are
28 defined as all persons who worked for Defendant in California as an employee at any time from
February 10, 2019 to the pay period ending October 5, 2019. (Agreement at § 1). For purposes

1 of this agreement, the term “PAGA Period” is defined as the time period from February 10, 2019
2 to the pay period ending October 5, 2019. (*Id.* at 2). Based upon Defendant’s records, there are
3 5,007 pay periods at issue. (*Id.*)

4 Each Aggrieved Employee’s share will be paid based on the number of pay periods the
5 employee worked during the PAGA Period. Specifically, the 25% of the Net Settlement Amount
6 will be paid to all Aggrieved Employees according to the following formula: Settlement
7 Payment to each Aggrieved Employee = \$[25% of Net Settlement Amount] × [Pay Periods
8 Worked by Individual Aggrieved Employee During PAGA Period ÷ Total Pay Periods Worked
9 by All Aggrieved Employees during PAGA Period]. (Agreement at § 5). For purposes of
10 computing taxes, one hundred percent (100%) of the Aggrieved Employees Settlement Proceeds
11 shall be considered miscellaneous income and shall not be subject to withholding, unless
12 otherwise required by law. (Settlement Agreement at § 10). Employees will be responsible for
13 any tax consequences for the portion of the Settlement Payments that they receive.

14 Based on the above, and as further detailed below, Plaintiff requests that this Court grant
15 approval of the current PAGA penalties settlement.

16 **IV. PAGA REQUIREMENTS**

17 Prior to the enactment of PAGA, many of the penalties provided against employers for
18 violations of certain Labor Code provisions were solely within the province of the California
19 Department of Labor to seek, enforce, and assess. *Arias v. Superior Court*, 46 Cal.4th 969, 980
20 (2009). However, due to the lack of financing to California’s agencies and the potential number
21 of Labor Code violations by California employers, the California Legislature found that it was in
22 the public interest to allow aggrieved employees to act as private attorneys general and to enforce
23 and recover penalties on behalf of other similarly situated aggrieved employees for Labor Code
24 violations committed by their employers. *Id.* As such, PAGA was enacted to allow such
25 enforcement and recovery by private individuals who have been aggrieved by their employers.
26 Moreover, 75% of any penalties recovered under PAGA by an aggrieved employee is to be paid
27 to California’s LWDA and the remaining 25% is to be shared amongst the Aggrieved Employees.
28 Cal. Lab. Code § 2699(i).

In order to enforce and seek penalties under PAGA in a civil action, an aggrieved

1 employee must first provide written notice to the LWDA and the employer of the particular Labor
2 Code violation the aggrieved employee alleges the employer has violated. *See* Cal. Labor Code §
3 2699.3(a)(1). Once the LWDA notifies the aggrieved employee that it does not intend to
4 investigate the alleged violations or the time for the LWDA to investigate the claims passes, the
5 aggrieved employee is allowed to proceed in a civil action against the employer on the alleged
6 violations on behalf of all other similarly situated employees. *See* Cal. Labor Code §
7 2699.3(a)(2)(A).

8 In 2009, the California Supreme Court considered the issue of whether an aggrieved
9 employee who brings a PAGA claim on behalf of himself and others similarly situated needs to
10 seek the PAGA claim as a class action and meet class certification requirements. *Arias*, 46 Cal.
11 4th at 976. After a substantial review of the legislative history of PAGA, the California Supreme
12 Court held that an aggrieved employee's representative action brought on behalf of other
13 similarly situated employees against an employer for PAGA violations do not need to meet the
14 requirements for class certification. *Id.* at 975; 980-88. As the California Supreme Court held, a
15 plaintiff bringing suit under PAGA does so as the proxy or agent of California's labor law
16 enforcement agencies. *Id.* at 986. Because an employee's PAGA action functions as a substitute
17 for an action brought by the government itself, a judgment in the PAGA action binds all those
18 who would be bound by a judgment in an action brought by the government. *Id.*

19 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the Superior
20 Court must "review and approve any penalties sought as part of a proposed settlement agreement"
21 relating to PAGA penalties. Labor Code § 2699(l). As the Parties to this current PAGA action
22 have reached such an agreement, the Parties now seek this Court's approval as to the settlement
23 of the penalties amount.

24 **V. PLAINTIFF'S RATIONALE FOR AGREEING TO THE SETTLEMENT**

25 Labor Code Section 204(d) provides that wages must be paid no later than 7 days
26 following the close of the payroll period. Plaintiff was informed and believes and based thereon
27 alleges that Defendant's practice was to issue payment after the 7 days. Thus, Plaintiff asserted
28 claims under Labor Code §§ 204 and 210 based on these allegations.

Based on the pay periods at issue, the maximum amount of potential PAGA penalties was

1 \$500,700 (5,007 pay periods x \$100). (Declaration of Dennis S. Hyun (“Hyun Decl. ¶ 7).
2 Therefore, the \$100,000 settlement represents 19.9% of the total exposure, which is fair, adequate
3 and reasonable. (*Id.*) Moreover, the settlement was reached only after a full day of mediation
4 with Steve Rottman, Esq., on November 4, 2020. (*Id.*)

5 Indeed, even assuming Plaintiff ultimately prevails, the Court still has discretion to reduce
6 any potential PAGA penalties. Pursuant to Labor Code § 2699(f)(2) the Court can decline to
7 award PAGA penalties where “...if, based on the facts and circumstances of the particular case,
8 to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or
9 confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks*
10 *Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial,
11 the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good
12 faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such
13 reduction to be proper. *Id.* at 539. Courts have also suggested that a reduction of civil penalties
14 may be appropriate where the alleged violation is a technical one. *Raines*, 23 Cal.App.5th at 681
15 (“a trial court has discretion in awarding civil penalties and may reduce the award for technical
16 violations that cause no injury”). Defendants have suggested that any penalties awarded should be
17 reduced under this line of reasoning.

18 Although Plaintiff believes in the merits of the alleged claims and maintains that there
19 does not exist any reason for reducing PAGA penalties, Plaintiff is aware that Defendant’s
20 defenses could be persuasive to the Court. Such a ruling from this Court would have resulted in
21 Aggrieved Employees and the State of California receiving zero monies.

22 Additionally, even if Plaintiff were to prove his claims at trial, there is a possibility that
23 the Court could award a small percentage of PAGA penalties, as the Court has the discretion to
24 do. Thus, while the gross settlement amount is approximately 19.9% of the potential maximum of
25 PAGA penalties, this settlement, in light of all of the attendant risks, is fair and reasonable.

26 Finally, the only claims being released are the PAGA penalties are limited to the claims
27 pled:

28 As of and subject to the occurrence of the Effective Date, and in
consideration for the Gross Settlement Amount, the claims settled,
fully released, and forever discharged by the LWDA and the
Aggrieved Employees, including Plaintiff, constitute any and all

1 claims, debts, liabilities, demands, actions, or causes of action for
2 civil penalties that were alleged or which could have been alleged
3 based on the factual allegations in the Complaint in the Action,
4 including all claims for civil penalties based upon or arising out of
5 Defendant's alleged failure to timely pay wages due during
6 employment, and claims arising under or based upon the alleged
7 violations of **California Labor Code Sections 204, 210, and 2698**
8 *et seq.* ("PAGA Released Claims"), against the Released Parties.

9 (Agreement at § 11 (emphasis added)). The Aggrieved Employees are not releasing their
10 individual claims under such Labor Codes – only their PAGA claims/penalties. For all of the
11 foregoing reasons, this Settlement should be approved.

12 **VI. ATTORNEYS' FEES AND COSTS ARE APPROPRIATE**

13 PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. Cal. Lab. Code §
14 2699(g). Although this is not a class action, in representative class actions California state and
15 federal courts have recognized that an appropriate method for determining award of attorneys'
16 fees is based on a percentage of the total value of benefits to class members by the settlement.
17 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d
18 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v.*
19 *Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine
20 is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all
21 the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*,
22 557 F. 2d at 769.

23 The Common Fund doctrine is predicated on the principle of preventing unjust
24 enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits,
25 he may require the passive beneficiaries to compensate those who created the fund. Both
26 California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35;
27 *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th
28 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has
been applied "consistently in California when an action brought by one party creates a fund in
which other persons are entitled to share." The reasons for applying the common fund doctrine
include: "...fairness to the successful litigant, who might otherwise receive no benefit because his
recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the

1 others who are entitled to share in the fund and who should bear their share of the burden of its
2 recovery; encouragement of the attorney for the successful litigant who will be more willing to
3 undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he
4 is assured that he will be properly and directly compensated should his efforts be successful.” *Id.*

5 Indeed, most recently, the California Supreme Court has also held that the award of
6 attorneys’ fees in common fund wage and hour class action settlements should start with the
7 percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the
8 overwhelming majority of federal and state courts in holding that when class action litigation
9 establishes a monetary fund for the benefit of the class members, and the trial court in its
10 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
11 of a reasonable fee by choosing an appropriate percentage of the fund created.”).

12 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent
13 of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that required a
14 multiplier of 2.13. (*Id.* at 487). As the Court held, only when the multiplier is “extraordinarily
15 high or low [should] the trial court [] consider whether the percentage method should be adjusted
16 so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

17 Here, Plaintiff’s counsel seeks 1/3 of the Maximum Settlement Amount in attorneys’ fees,
18 or \$33,333.33. By the time that this settlement is completely administered, Plaintiff’s counsel
19 would have incurred \$84,111.00 in attorneys’ fees, which is far more than the requested fee,
20 including reviewing the data and calculating damages, attending mediation, and preparing the
21 settlement papers. (Hyun Decl. ¶ 8, Exh. A; Marder Decl. ¶ 11, Exh. A).

22 Plaintiff’s counsel’s cost reimbursement request in the amount of \$10,299.50 is also
23 reasonable, especially in light of the fact that the Parties agreed that Plaintiff’s counsel may seek
24 up to \$25,000.00 in costs under the Settlement Agreement. As set forth in their declarations, the
25 costs were all directly incurred in the prosecution of this action, including, but not limited to,
26 filing and mediation fees. (Marder Decl. ¶ 12, Exh. B; Hyun Decl. ¶ 9). As such, the requested
27 costs should be awarded as fair and reasonable.
28

1 **VII. SERVICE AWARDS TO PLAINTIFFS FOR SERVING AS ATTORNEYS**
2 **GENERAL ARE APPROPRIATE**

3 Courts have held that named plaintiffs in class, or private attorney general actions can
4 receive service awards. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009)
5 (explaining that service awards “are intended to compensate class representatives for work done
6 on behalf of the class, to make up for financial or reputational risk undertaken in bringing the
7 action, and, sometimes, to recognize their willingness to act as a private attorney general”)
8 (emphasis added).

9 Here, Plaintiff seeks \$2,500 for his service award, which is intended to compensate
10 Plaintiffs for the time spent on this case and the potential for retaliation. (Declaration of Hemanth
11 Kundeti ¶¶ 3-4). These requested enhancements are consistent with awards approved in other
12 common fund cases. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D.
13 Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*,
14 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive
15 awards of \$35,000).

16 **VIII. NOTICE TO THE LWDA HAS BEEN PROVIDED**

17 On April 13, 2021, Plaintiff uploaded the instant motion, Settlement Agreement, and
18 proposed order to the LWDA’s website. (Hyun Decl. ¶ 10).

19 **IX. CONCLUSION**

20 Based on the above, Plaintiff requests the Court approve the current PAGA settlement.

21
22 DATED: April 13, 2021

POLARIS LAW GROUP

23 By: William L. Marder
24 William L. Marder
25 Attorneys for Plaintiff
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27
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