

WOODALL LAW OFFICES
100 PINE STREET, SUITE 1250
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE: (415) 413-4629
FACSIMILE: (866) 937-4109
KEVIN@KWOODALLLAW.COM

KEVIN F. WOODALL, BAR NO. 180650

ATTORNEYS FOR PLAINTIFF, IVANA LEBRON

SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
UNLIMITED JURISDICTION

IVANA LEBRON,

PLAINTIFF,

v.

SYCAMORE HEALTHCARE
ASSOCIATES, A CALIFORNIA
CORPORATION, AND DOES 1 THROUGH 10,
INCLUSIVE,

DEFENDANTS.

) CASE No. CIVMSC20-00981

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

) DATE:
) TIME:
) DEPT: 21
) JUDGE: Hon. Jill C. Fannin

I. INTRODUCTION

The Court should approve the Private Attorneys General Act (“PAGA”) settlement in this case because it is fair, adequate and reasonable.

In this case, Plaintiff Ivana Lebron (“Lebron”) alleges that Defendant Sycamore Healthcare Associates (“Sycamore”) violated the PAGA by providing inaccurate wage statements, failing to pay overtime wages, failing to pay reporting time pay, failing to timely pay wages during employment and when employment ends, and failing to provide premium pay for missed meal and rest periods to California employees. After thorough formal and informal discovery, Lebron determined there were substantial risks to her claims, including (1) there were very few instances of alleged unpaid overtime wages, reporting time pay violations and the failure to timely pay final wages, (2) employees reportedly waived some meal and rest periods, (3) there were no findings of the failure to timely pay wages during employment, and (4) Sycamore’s defense that administrative notice requirements were not exhausted for one wage statement allegation. Given the risks involved, the PAGA settlement represents a high percentage of the realistic potential penalties.

Accordingly, Lebron respectfully requests that the Court approve this PAGA settlement in its entirety.

II. STATEMENT OF FACTS

A. PAGA Notice

On March 30, 2020, Lebron exhausted her PAGA administrative notice requirements by filing a letter with the Labor Workforce Development Agency (“LWDA”). (Woodall Decl. in Supp. of Mtn. for Approval of PAGA Sett. (“Woodall Decl.”), ¶ 2, Exh. A.)

In the PAGA notice, Lebron alleges that Sycamore failed to: (1) pay overtime wages due under Labor Code §§ 510 and 1194; (2) issue accurate and compliant wage statements required by Labor Code § 226; (3) timely pay wages during employment and when employment ended, in violation of Labor Code §§ 201-204; (4) provide meal and

1 rest periods or premium pay for missed meal and rest periods under Labor Code §§ 226.7
2 and 512; and (5) provide reporting time pay under Labor Code § 1198. (*Id.*) The PAGA
3 notice contends that Sycamore violated the foregoing Labor Code provisions with respect
4 to Lebron and other California employees. (*Id.*)

5 **B. Allegation in this Case**

6 In June, 2020, Lebron filed a complaint in this Court, in which she alleges that
7 Sycamore violated the PAGA by failing to: (1) pay overtime wages due under Labor
8 Code §§ 510 and 1194; (2) issue accurate and compliant wage statements required by
9 Labor Code § 226; (3) timely pay wages during employment and when employment
10 ended, in violation of Labor Code §§ 201-204; (4) provide meal and rest periods or
11 premium pay for missed meal and rest periods under Labor Code §§ 226.7 and 512; and
12 (5) provide reporting time pay under Labor Code § 1198. (Compl., ¶¶ 8-14, and 33-78.)
13 Specifically, Lebron contends that Sycamore paid non-exempt employees by the shift
14 instead of the defined workday or workweek, which resulted in inaccurate wage
15 statements regarding the hours worked in the stated pay period and the hours worked at
16 each rate of pay, among other things. (*Id.*) Lebron further contends this same practice
17 resulted in unpaid overtime wages on some occasions. (*Id.*) Lebron also contends that
18 she and other non-exempt employees missed meal and rest periods, including not
19 receiving 30-minute, uninterrupted meal periods before the end of the fifth hour of work
20 or a 10-minute rest period for every four hours of work, yet they did not receive premium
21 pay for the missed meal and rest periods. (*Id.*) Moreover Lebron alleges that she and
22 other employees did not receive the unpaid overtime wages (above) when their
23 employment ended. (*Id.*) Lastly, Lebron alleges that on some occasions, when she and
24 others were given less than a shift of work, they were not paid half the shift or at least
25 two hours of compensation and they were not always paid timely during employment.
26 (*Id.*)

27 In addition to the PAGA claims, Lebron also pursued her individual wage and
28 hour claims. (Compl., ¶¶ 15-32.)

1 **C. Discovery**

2 Lebron propounded extensive formal and informal discovery requests prior to
3 settlement discussions including, but not limited to, the following document and
4 information requests: (1) a sampling of wage statements issued to non-exempt employees
5 from March, 2019 to present; (2) a sampling of time entry records of the same non-
6 exempt employees from March, 2019 to present; (3) policies used by Sycamore; (4) the
7 number of non-exempt employees and the number of pay periods worked from March,
8 2019 to present; and (5) how Sycamore changed its policies from March, 2019 to present.
9 (Woodall Decl., ¶ 4.)

10 **D. Litigation Risks**

11 During discovery, Sycamore produced the wage statements and time entry records
12 of approximately 30 non-exempt employees (representing 15-20 percent of all non-
13 exempt employees), from March 2019 to September, 2020. (Woodall Decl., ¶ 5.)
14 Lebron’s counsel analyzed the wage statements and time entry records and determined
15 there were very few failures to pay reporting time pay, including where employees
16 worked less than half of a shift, but did not receive at least two hours of pay. (*Id.*) From
17 this analysis, Lebron’s counsel also did not identify instances where employees were paid
18 late during their employment. (*Id.*) While Lebron’s counsel did determine some
19 employees worked more than 5 hours before starting a meal period, Sycamore asserted
20 that employees regularly waived their rights to take meal periods or the right to take them
21 before the end of the fifth hour of work. (*Id.*) Likewise, Sycamore asserted that many
22 employees waived their rest breaks. Sycamore also produced its meal and rest period
23 policy, which Sycamore claims is compliant with law. (*Id.*) Although Lebron’s counsel
24 determined that some of Sycamore’s wage statements were inaccurate for those who
25 worked on the night shift, as their hours worked were attributed to the shift worked
26 instead of the defined workday or workweek, Lebron’s counsel found minimal incidents
27 that led to unpaid overtime wages. (*Id.*) While Lebron’s counsel found there were four
28 (4) instances where non-exempt employees worked on the 31st day of a month, but their

1 wage statements did not accurately reflect the hours worked for the stated pay period,
2 Sycamore argued that Lebron did not properly exhaust administrative notice requirements
3 for this allegation. (*Id.*) Lastly, Sycamore argued the Court has discretion under the
4 PAGA not to award any civil penalties or to substantially reduce them. (*Id.*)

5 **E. Settlement Reached**

6 In late October, 2020, the parties reached a settlement after lengthy settlement
7 discussions. (Woodall Decl., ¶¶ 9-10, Exh. B.) The parties settled Lebron’s individual
8 claims and the PAGA claims for \$127,500. (*Id.*) Of the \$127,500 gross settlement
9 amount, the parties agreed that, subject to Court approval, the State of California and
10 PAGA Affected Employees would receive \$50,000, Lebron would receive \$25,000 to
11 resolve her individual claims, \$50,000 would be paid in attorney’s fees and costs related
12 to Lebron’s individual claims and the PAGA claims, and \$2,500 would be paid to a
13 settlement administrator, Phoenix Class Action Administration Solutions (“Phoenix”).
14 (*Id.*) The parties further agreed that if any PAGA Affected Employees failed to cash their
15 checks after 180 days, the checks would be voided and the unclaimed amount would
16 revert to cy pres recipients in accordance with Civil Code § 384. (*Id.*)

17 **III. DISCUSSION**

18 **A. The PAGA Settlement Should Be Approved By The Court Because It Is Fair,** 19 **Adequate And Reasonable**

20 The parties reached a settlement that is fair, adequate and reasonable given the
21 potential penalties and the risks involved with the litigation.

22 California Labor Code § 2699(l)(2) provides that the court shall review and
23 approve any PAGA settlement.¹ The California Supreme Court has determined class
24 certification is not necessary for PAGA cases. *Arias v. Superior Court* (2009) 46 Cal.4th
25 969, 981. The PAGA statute authorizes courts to award a lesser amount than the
26 maximum civil penalties if, based on the facts and circumstances of the case, to do

27 ¹ The PAGA also requires that a plaintiff notify the LWDA agency of the
28 settlements, which Lebron has done. (Woodall Decl., ¶ 21.)

1 otherwise would be unjust, arbitrary and oppressive, or confiscatory. Labor Code §
2 2699(e)(2); *Thurman v. Bayshore Transit Management* (2012) 203 Cal.App.4th 1112,
3 1136 (the standard for reviewing a trial court's reduction of PAGA civil penalties is
4 abuse of discretion).

5 Courts have repeatedly approved PAGA settlements that represent a small fraction
6 of the maximum potential civil penalties and overall settlement. *Kuang Xuan Liu v. Win*
7 *Woo Trading, LLC*, 2017 U.S. Dist. LEXIS 159384, *9 (N.D. Cal. Sept. 27, 2017)
8 (PAGA settlement approved, which represented 5% of maximum civil penalties); *Turner*
9 *v. Motel 6 Operating L.P.*, 2018 U.S. Dist. LEXIS 224004, *9, 19 (C.D. Cal. Nov. 6,
10 2018) (PAGA settlement represented less than 1% of maximum civil penalties);
11 *Nordstrom Comm'n Cases*, 186 Cal.App.4th 576, 589 (2010) (no money was allocated to
12 PAGA claims under the settlement); *Smith v. H.F.D. No. 55, Inc.*, 2018 U.S. Dist. Lexis
13 67192, *8 (E.D. Cal. Apr. 20, 2018) (approving \$100 PAGA settlement); *Davis v. Cox*
14 *Commc'ns California, LLC*, 2017 WL 1496407, *1 (S.D. Cal. Apr. 26, 2017) (approving
15 \$4,000 PAGA settlement, which represented a small fraction of total settlement); *Moore*
16 *v. Fitness Int'l, LLC*, 2014 WL 12571448, *5 (S.D. Cal. Jan. 22, 2014) (approving \$2,500
17 PAGA settlement, a small percentage of the total settlement); *Jack v. Hartford Fire Ins.*
18 *Co.*, 2011 WL 4899942, *6 (S.D. Cal. Oct. 13, 2011) (approving \$3,000 PAGA
19 settlement or less than 2.5% of total settlement); *Singer v. Becton Dickinson & Co.*, 2010
20 WL 2196104, *2 (S.D. Cal. June 1, 2010) (approving \$3,000 PAGA settlement, which
21 was approximately 3% of the total settlement and a small fraction of maximum civil
22 penalties); *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, *9 (N.D. Cal. Apr. 3, 2009)
23 (approving \$1,500 PAGA settlement); *Slavkov v. Fast Water Heater Partners I, LP*, 2017
24 WL 3834873, *2 (N.D. Cal. July 25, 2017) (approving \$7,500 PAGA payment, which
25 represented a small fraction of total settlement and maximum PAGA penalties in
26 individual action); *Sarinana v. DS Waters of America, Inc.*, 2014 WL 12709948, *2
27 (N.D. Cal. July 9, 2014) (approving \$5,000 PAGA payment, a small percentage of total
28 settlement and maximum PAGA penalties).

1 Here, while the maximum penalties relating to the PAGA claims for inaccurate
2 wage statements, unpaid overtime wages, unpaid reporting time pay, failure to timely pay
3 wages during employment and when employment ends and missed meal and rest periods
4 are approximately \$127,000, Sycamore has raised substantial defenses to the claims.
5 (Woodall Decl., ¶¶ 5-8.) As noted earlier, Sycamore contends that even though the time
6 entry records and wage statements show employees did not take timely meal periods on
7 some occasions, employees regularly waived their right to take or timely take meal
8 periods before the end of the fifth hour of work. (*Id.*) Likewise, Sycamore asserted that
9 many employees waived their rest breaks. (*Id.*) Sycamore also planned to defend against
10 the missed meal and rest period claims by arguing its policies are compliant with law.
11 (*Id.*) Moreover, Sycamore contends Lebron did not properly exhaust administrative
12 notice requirements that its wage statements were wrong on four (4) occasions when
13 employees worked on the 31st day of a month, but their wage statements did not
14 accurately reflect the hours worked for the stated pay period. (*Id.*) Finally, Sycamore
15 planned to defend against the claims by arguing it should not be assessed any PAGA
16 penalties or greatly reduced PAGA penalties because its conduct was not intentional and
17 awarding the maximum penalties would be unjust, arbitrary and oppressive, or
18 confiscatory under Labor Code § 2699(e)(2). (*Id.*)

19 If Sycamore were to prevail on some or all of the foregoing arguments, the PAGA
20 penalties would be substantially reduced. Although Lebron was prepared to counter the
21 arguments made by Sycamore,² she was aware of the risks involved with prevailing on
22 the merits. Indeed, given risks involved, Lebron's counsel believes the realistic potential
23 recovery was approximately \$75,000, exclusive of attorney's fees and costs. (Woodall
24 Decl., ¶ 8.) Thus, the \$50,000 settlement, exclusive of attorney's fees, costs and
25 settlement administrator costs, represents 67% of the realistic potential recovery, which is

26
27 ² Lebron was prepared to argue that Sycamore did not keep records showing
28 employees waived meal and rest periods and she properly exhausted administrative
notice requirements under the PAGA.

an outstanding result for the State of California and the PAGA Affected Employees. (*Id.*)

B. The Attorney's Fees and Costs and Administrator's Costs Are Reasonable

As set forth below, the attorney's fees and costs and the settlement administrator's fee are reasonable.

1. Reasonable Attorney's Fees and Costs

Under Labor Code § 2699(g)(1), reasonable attorney's fees and costs are available to a plaintiff who prevails in a PAGA action. It is also noteworthy that although Lebron does not need court approval to resolve her individual claims, she is entitled to reasonable attorney's fees and costs under Labor Code §§ 1194, 226 and 218.5 relating to her individual wage and hour claims.

The lodestar figure is based on the "careful compilation of the time spent and reasonable hourly compensation of each attorney ... involved in the presentation of the case." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-32; see also *Serrano v. Unruh* (1982) 32 Cal.3d 621, 639 ("absent circumstances rendering the award unjust, fees ... ordinarily include compensation for all hours reasonably spent, including those necessary to establish and defend the fee claim."). In the case of a lodestar analysis, the reasonable hourly rate is that prevailing in the community for similar work.³ *Ketchum*, 24 Cal.4th at

³ Under California law, every hour reasonably spent on a plaintiff's case is compensable: "Absent special circumstances rendering the award unjust, an attorney fee award should ordinarily include compensation for *all* the hours *reasonably spent*, including those relating solely to the fee." *Ketchum, supra*, 24 Cal.4th at 1133. In making that determination, courts must look at "the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself" *Vo v. Las Virgenes Municipal Utility Dist.* (2000) 79 Cal.App.4th 440, 447. Courts in California generally do not require detailed time records and can award fees based on declarations of counsel describing the work they performed and the court's own review of the number of hours reasonably spent. *Syers Props. III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 698 (prevailing attorneys bear burden of establishing entitlement to an award and must document the appropriate hours expended and hourly rates); *Laffitte*, 1 Cal. 5th at 574 ("trial courts conducting lodestar cross-checks have generally not been required to closely scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to "focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys.") Time records are *prima facie* evidence that counsel's hours were reasonable. *Hadley v. Krepel* (1985) 167 Cal.App.3d 677, 682; see *Horsford v. Bd. of Trustees* (2005) 132 Cal.App.4th 359, 396 ("the verified time statements of the attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the records are erroneous").

1 1132. A multiplier is warranted in cases where counsel assumed significant risk and
2 handled complex litigation matters on contingency. *Ketchum*, 24 Cal.4th at 1132-33;
3 *Serrano v. Priest* (1977) 20 Cal.3d 25, 48. Other enhancement factors include the
4 novelty and difficulty of the questions involved, the skill displayed in presenting them,
5 and the extent to which the nature of the litigation precluded other employment by the
6 attorneys. *Ketchum*, 24 Cal.4th at 1133 (citing *Serrano*, 20 Cal.3d at 49).

7 Here, the \$50,000 in attorney's fees and costs agreed to by the parties is
8 reasonable. Kevin Woodall of Woodall Law Offices has spent 72.4 hours and plans to
9 spend another 10-15 hours prosecuting this action. (Woodall Decl., ¶¶ 18-19, Exh. D.)
10 During this case, Mr. Woodall performed a number of tasks to advance the litigation and
11 resolve this matter including, but not limited to, the following: (1) preparing the
12 complaint; (2) preparing the PAGA notice; (3) preparing informal and formal discovery
13 requests; (4) reviewing and analyzing documents, information and other discovery
14 provided by Sycamore; (5) engaging in lengthy settlement negotiations with opposing
15 counsel; (6) preparing the settlement agreement; (7) preparing the notice to be distributed
16 to PAGA Affected Employees; (8) obtaining quotes from proposed settlement
17 administrators; (9) conducting extensive research addressing various issues, including the
18 defenses raised by Sycamore; (10) having multiple discussions with Lebron; (11)
19 preparing a Case Management Conference statement and attending a Case Management
20 Conference; (12) preparing this motion and supporting declarations. (Woodall Decl., ¶
21 18.)

22 Moreover, in 2020, the San Francisco Superior Court determined that Mr.

23
24 Lodestar hourly rates should be within the range of rates charged by and awarded
25 to attorneys of comparable experience, reputation, and ability for similar work, i.e.,
26 complex class action litigation. *Children's Hospital and Med. Center v. Belshe* (2002) 97
27 Cal.4th 740, 783 (affirming rates that were "within the range of reasonable rates charged
28 by and judicially awarded comparable attorneys for comparable work."); *Serrano*, 32
Cal.3d at 643. When sufficient evidence has been presented that the hourly rates
requested are within the range of rates charged by and awarded to attorneys of
comparable experience, reputation, and ability for comparably complex litigation, no
extrinsic evidence is necessary. *Id.*

1 Woodall's reasonable hourly rate is \$845. In the past, this other courts have approved
2 similar hourly rates for Kevin Woodall. (Woodall Decl, ¶ 16.)⁴

3 As Mr. Woodall has spent and plans to spend 87.4 hours prosecuting this action, at
4 his reasonable hourly rate of \$845, the reasonable attorney's fees in this matter are
5 \$73,853. Thus, the reasonable attorney's fees alone exceed the \$50,000 agreed to by the
6 parties to for attorney's fees and costs.

7 In addition to incurring attorney's fees, Lebron has incurred and will incur
8 additional costs, including the following: (Woodall Decl, ¶ 20):

9 Filing Fees/One Legal/process service: \$686.50

10 PAGA Filing Fee: \$75

11 Research-Westlaw: \$450

12 Postage: \$15

13 Court Call costs: \$188

14 Expected One Legal/Process and Filing Fees Relating to this Motion: \$150

15 Total: \$1,564.50

16 **2. The Administrator's Fee Is Appropriate**

17 The parties sought and obtained multiple quotes from potential settlement
18 administrators. (Woodall Decl., ¶ 18.) Phoenix provided a quote of \$2,500 for the
19 estimated costs associated with administering the settlement, which was lower than
20 another quote. (*Id.*) Given this quote and good reviews by other attorneys, Phoenix was
21 selected as the administrator. (*Id.*) Thus, the agreed upon administrator's fee of \$2,500
22 is reasonable.

23 ⁴ Mr. Woodall's rate is consistent with noted sources, such as the 2019-2020
24 Updated Laffey Matrix ("Laffey Matrix"). (Woodall Decl, ¶ 16, Exh. C.) According to
25 the Laffey Matrix, a reasonable rate for an attorney with over 20 years of experience,
26 such as Mr. Woodall, is \$899. (*Id.*) Courts have routinely determined that the reasonable
27 hourly rate is found in the Laffey Matrix. *Kempf v. Barrett Bus. Servs.* (N.D. Cal. Nov.
28 20, 2007) 2007 U.S. Dist. LEXIS 89447; *Long v. Stanley Black & Decker, Inc.* (S.D. Cal.
Apr. 23, 2015) 2015 U.S. Dist. LEXIS 53595 at *13-14 (applying 2014 Laffey Matrix,
\$771 per hour for an attorney with 20 years of experience). Further, California courts
have determined that the rate sought by Lebron's counsel is reasonable. *Cotter v. Lyft
Inc.* (N.D. Cal. Mar. 16, 2017) 2017 WL 1033527 (approving hourly rates of \$800 for
attorneys with 21 years of experience); *Prison Legal News v. Schwarzenegger* (9th Cir.
2010) 608 F.3d 446, 455 (district court did not abuse its discretion in awarding 2008
hourly rates for Bay Area attorneys of up to \$875 for a partner).

1 IV. CONCLUSION

2 For the reasons above, the PAGA settlement is fair, adequate and reasonable and
3 this motion should be granted in its entirety.

4
5 DATE: NOVEMBER 5, 2020

WOODALL LAW OFFICES

6
7 BY: 

8 KEVIN F. WOODALL
9 ATTORNEYS FOR PLAINTIFF, IVANA
10 LEBRON
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28