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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

RITA NAVARRO, on behalf of herself and all
“aggrieved employees” pursuant to Labor code
§ 2698 *et seq.*,

Plaintiff,

v.

TIRE STAFFING dba IT’S CALIBER, a
Nevada corporation, CALIBER GROUP
STAFFING, INC., a California corporation,
and DOES 1 through 10, inclusive,

Defendants.

JAMES D. HENRIQUEZ, individually, and on
behalf of all other aggrieved employees,

Plaintiff,

v.

TIRE STAFFING, doing business as IT’S
CALIBER, a Nevada corporation; and DOES
1 through 50, inclusive,

Defendants.

CASE NO.: CIVDS 2016343 Consolidated
with CIVDS 202100

**[PROPOSED] ORDER AND JUDGMENT
APPROVING SETTLEMENT PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT (“PAGA”)**

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as It's Caliber and Caliber Group Staffing, Inc.
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1 **[PROPOSED] ORDER AND JUDGMENT APPROVING SETTLEMENT PURSUANT TO**
2 **PRIVATE ATTORNEY GENERALS ACT ("PAGA")**

3 Plaintiffs now seek an Order granting approval of a Private Attorneys General Act (Labor
4 Code § 2698 *et. seq.*, ("PAGA")) Settlement Agreement, as follows:

5 Plaintiffs filed a motion regarding approval of their PAGA Settlement Agreement. The Court,
6 having considered the proposed PAGA Settlement Agreement and all evidence filed in support
7 thereof, hereby enters the following Order and Judgment, as follows. This Order and Judgment
8 incorporates the following defined terms.

9 **DEFINED TERMS**

10 1. "Operative Complaint" means the Consolidated Complaint filed on behalf of Plaintiffs
11 which asserts only certain PAGA claims against Defendants.

12 2. "LWDA Notice" means the letters each Plaintiff separately submitted to the Labor and
13 Workforce Development Agency (LWDA) notifying the LWDA of alleged violations by Defendants.

14 3. "PAGA Employees" means all non-exempt employees of Defendants who worked for
15 Defendants in California from May 28, 2019 through February 7, 2022.

16 4. "PAGA Representative Claims" means Plaintiffs' PAGA claims under California
17 Labor Code § 2698 *et. seq.* based on alleged predicate violations of the California Labor Code §§
18 226, 1024.5 and 2810.5 only, as alleged in the Operative Complaint.

19 5. "PAGA Settlement Agreement" or "Settlement" means the settlement of the Action
20 as memorialized in this Settlement Agreement.

21 6. "PAGA Release Period" means May 28, 2019 through February 7, 2022.

22 **TERMS OF THE ORDER AND JUDGMENT**

23 The Court has determined that the Settlement provides genuine and meaningful relief that
24 benefits the public, is fair, adequate, reasonable, and otherwise being fully informed and good cause
25 appearing therefor, it is hereby ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

26 1. Unless otherwise provided herein, all capitalized terms used herein shall have the same
27 meaning as defined in the PAGA Settlement Agreement. The Court has jurisdiction over the subject
28 matter of this lawsuit and all matters relating thereto, and over all parties to the action.

1 2. The Court finds that the Settlement has been reached as a result of serious and non-
2 collusive, arm's-length negotiations. The Court has considered the nature of the claims, the
3 procedural history of this case, the amounts to be paid under the Settlement, the involvement of an
4 experienced private mediator to facilitate the Settlement, the risks of continued litigation that
5 Plaintiffs would face, the civil penalties recoverable if Plaintiffs were to prevail at trial on their
6 theories of liability under their PAGA claim, the allocation of settlement proceeds among the PAGA
7 Employees, and the fact that a settlement represents a compromise of the Parties' respective positions
8 rather than the result of a finding of liability at trial.

9 3. The Court hereby finds the Settlement involves the resolution of a bona fide dispute,
10 was entered into in good faith, and is fair, reasonable, and adequate. The Court also finds that the
11 Settlement provides genuine and meaningful relief that benefits the public consistent with the purpose
12 of the Private Attorneys General Act of 2004, California Labor Code § 2699 *et seq.*

13 4. The Court therefore approves the Settlement as set forth in the PAGA Settlement
14 Agreement and directs the Parties to effectuate the Settlement according to the terms set forth in the
15 PAGA Settlement Agreement.

16 5. Neither the Settlement nor any of the terms set forth in the Settlement Agreement are
17 admissions by Defendants, or any of the other Released Parties, of liability on any of the allegations
18 alleged in the Action, nor is this Order a finding of the validity of any claims in the Action, or of any
19 wrongdoing by the Defendants, or any of the other Released Parties.

20 6. The Court finds that Plaintiffs' Counsel has adequately represented the Plaintiffs, the
21 PAGA Employees, and the LWDA for purposes of entering into and implementing the Settlement.

22 7. The Court finds that the Settlement, and in particular the Gross Settlement Amount
23 ("GSA") of \$300,000.00 total to be distributed as set forth herein and in the PAGA Settlement
24 Agreement, is in all respects fair, reasonable, and adequate and is hereby approved. *See* California
25 Labor Code § 2699(1)(2).

26 8. Pursuant to the terms of the Settlement, Administration Costs in the amount of up to
27 \$12,098.40, which are necessary to administer the Settlement, are hereby granted and shall be paid
28 to ILYM Group, Inc., the designated third-party Settlement Administrator.

1 9. Pursuant to the terms of the Settlement, the requested attorneys' fees in the amount of
2 \$100,000.00 are reasonable and shall be paid to Plaintiffs' Counsel for their work on these matters.
3 The GSA of a total of \$300,000.00 represents a true and common fund, as Defendants must pay the
4 full GSA and no amount of the GSA will revert to Defendants under any circumstances. It is
5 recognized that attorneys who recover a common fund are entitled to a reasonable fee award from the
6 fund. *See, e.g., Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ("a litigant or a lawyer who
7 recovers a common fund for the benefit of persons other than himself or his client is entitled to a
8 reasonable attorney's fee from the fund as a whole."); *In re Washington Public Power Supply Sys.*
9 *Sec. Litig.* (9th Cir. 1994) 19 F.3d 1291, 1300 ("[T]hose who benefit from the creation of the fund
10 should share the wealth with the lawyers whose skill and effort helped create it."); *Serrano v. Priest*
11 (1977) 20 Cal.3d 25, 34 ("[W]hen a number of persons are entitled in common to a specific fund,
12 and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or
13 preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund.
14 [Citations.]"). Moreover, one-third of the common fund is standard in settlements similar to this one.
15 *See, e.g., Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 506 (approving fees of one-
16 third of the common fund); *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 n.13
17 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is
18 used, fee awards in class actions average around one-third of the recovery."); *Chavez v. Netflix, Inc.*
19 (2008) 162 Cal.App.4th 43, 66 n.11 (recognizing that fee awards in class actions average around one-
20 third of the recovery"). Courts also regularly approve fee awards in excess of one-third of the fund.
21 *See, e.g., Cubillas v. Dav-El Los Angeles*, 2018 WL 3760657, at *3-4 (Cal. Super.) (awarding \$1.12
22 million in attorneys' fees, equivalent to 40% of the common fund, where lodestar-multiplier exceeded
23 the fee request). The Court also finds that the requested attorneys' fees are reasonable under the
24 lodestar method, or as a crosscheck on the percentage fee. *See Laffitte*, 1 Cal.5th at 506.

25 10. The Court further finds that Plaintiffs' Counsel's requested litigation costs of
26 \$13,219.80 are reasonable and were necessary to prosecute the action and are hereby approved to be
27 paid from the GSA.
28

1 11. Accordingly, and consistent with California Labor Code § 2699(g)(1), which
2 authorizes an award of attorneys' fees and costs, the requested attorneys' fees in the amount of
3 \$100,000.00 are hereby granted and shall be paid to Plaintiffs counsel as follows: \$25,000 to the Law
4 office of Scott E. Wheeler, \$25,000 to the Wand Law Firm and \$50,000 to Gaines & Gaines, APLC,
5 and litigation costs in the amount of \$13,219.80, are hereby granted and shall be paid to Plaintiffs
6 counsel as follows: \$6,929.92 to the Law Office of Scott Ernest Wheeler and \$6,289.88 to Gaines &
7 Gaines, APLC.

8 12. Pursuant to the terms of the Settlement, service awards to Plaintiffs Rita Navarro in
9 the amount of \$5,000 and James Henriquez in the amount of \$5,000.00, in recognition of their joint
10 effort in prosecuting this action for the benefit of the State of California and PAGA Employees, and
11 Plaintiffs broad general release of all of their individual claims against Defendants, is hereby granted
12 and shall be paid to Plaintiffs Rita Navarro and James Henriquez based on the time frames set forth
13 in the PAGA Settlement Agreement. Comparable service awards are routinely issued to named
14 plaintiffs in analogous wage-and-hour class action settlements, *see, e.g., In re Yahoo Mail Litig.*, No.
15 13-CV-4980-LHK, 2016 WL 4474612, at *11 (N.D. Cal. Aug. 25, 2016) ("Ninth Circuit has
16 established \$5,000 as a reasonable benchmark [for service awards]."); *Alikhan v. Goodrich Corp.*,
17 2020 WL 4919382, at * (C.D. Cal. Jun. 25, 2020) (approving a \$10,000 service award), as well as
18 PAGA settlements like this one. *See, e.g., Abelar v. American Residential Services, L.L.C.*, 2019 WL
19 6054607, at *6 (C.D. Cal. Nov. 14, 2019) (approving PAGA only settlement and holding "[t]he
20 service award of \$5000 is reasonable compensation for the time and acceptance of adverse
21 employment risk by Plaintiff.").

22 13. After deducting Settlement Administration Costs, Attorneys' Fees and Costs, and the
23 Service Awards from the GSA, the remainder of \$164,681.80, consistent with California Labor Code
24 § 2699(i), shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%)
25 to PAGA Employees. Accordingly, \$123,511.25 shall be paid to the LWDA, and \$41,170.45 shall be
26 paid to PAGA Employees. The payments to the PAGA Employees will be paid proportionally based
27 on the number of pay periods that each individual employee worked for Defendants during the PAGA
28 Release Period, as detailed in the PAGA Settlement Agreement.

1 14. As of the Effective Date, Plaintiffs, as the representatives for the State of California,
2 and on behalf of all PAGA Employees, will forever completely release and discharge the Released
3 Parties from any claim for the recovery of civil penalties under the California Private Attorneys
4 General Act, California Labor Code § 2698, *et. seq.* based on the claims alleged in the Operative
5 Complaint. It is expressly understood and agreed that this settlement includes a release of PAGA
6 Representative Claims based on violations of Labor Code §§ 226, 1024.5 and 2810.5 only, as alleged
7 in the Operative Complaint, and no other claims shall be released. The release shall be effective as of
8 the Effective Date, and it shall apply to claims within the above scope impacting the PAGA
9 Employees arising within the PAGA Release Period. This settlement agreement shall not impact any
10 PAGA Employee's ability to assert Labor Code claims other than the PAGA claims alleged in the
11 Operative Complaint.

12 15. This PAGA settlement is fair and reasonable, in accord with PAGA and in the interests
13 of the aggrieved employees, LWDA and State of California. See, *Moniz v. Adecco USA, Inc.* (2021)
14 72 Cal.App.5th 56.

15 16. In accordance with California law as stated in *inter alia* *Arias v. Superior Court* (2009)
16 46 Cal.4th 969, 985, a judgment in "a representative action brought by an aggrieved employee under
17 the Labor Code Private Attorneys General Act of 2004 . . . is binding not only on the named employee
18 plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding."
19 Thus, both the named employee plaintiffs and nonparty aggrieved employees (i.e. all PAGA
20 Employees) are bound by this Order and Judgment. *Id.* at 986. However, the Parties' Settlement
21 Agreement shall not impact any PAGA Employee's ability to assert Labor Code claims other than
22 the PAGA claims alleged in the Operative Complaint.

23 17. Judgment in this matter is entered in accordance with the terms of the PAGA
24 Settlement Agreement. This judgment is intended to be a final disposition of the above captioned
25 action in its entirety, and is intended to be immediately appealable.

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1 18. The Court reserves exclusive and continuing jurisdiction over the lawsuit for the
2 purposes of supervising the implementation, enforcement, construction, administration, and
3 interpretation of the PAGA Settlement Agreement and this Order and Judgment.

4 **IT IS SO ORDERED.**

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6 DATED: _____

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8 HONORABLE DAVID COHN
9 JUDGE OF THE SUPERIOR COURT
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