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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

JASON URREA, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

TEMECULA VALLEY HOSPITAL; and
DOES 1 through 20, inclusive,

Defendants.

Case No. RIC2002437

Assigned for all purposes to:

Hon. Harold W. Hopp

Dept. 1

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT
REPRESENTATIVE ACTION
SETTLEMENT**

Date: October 5, 2023

Time: 8:30 a.m.

Dept.: 1

Table of Contents

I.	INTRODUCTION.....	1
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	1
III.	PAGA REQUIREMENTS	3
IV.	THE SETTLEMENT TERMS AND DISTRIBUTION OF PENALTIES	4
V.	THE SETTLEMENT IS FAIR AND REASONABLE.....	6
A.	<i>Standard for Approval.</i>	6
B.	<i>The Settlement Meets the Standard for Approval.</i>	8
VI.	THE COURT SHOULD APPROVE THE REQUESTED ATTORNEY’S FEES	10
A.	<i>Plaintiff’s Counsel Is Entitled to Recover Attorneys’ Fees Under the Common Fund Doctrine in This Quasi Qui Tam Action.</i>	10
B.	<i>Lodestar Cross-Check Confirms the Reasonableness of the Fee Award.</i>	12
C.	<i>A Multiplier is Justified in Light of the Results Achieved and Plaintiff’s Counsel’s Extensive Work Performed at the Risk of Receiving No Payment.</i>	14
VII.	CONCLUSION	17

Table of Authorities

Cases

<i>Arias v. Superior Court</i> (2009) 46 Cal. 4th 969	3, 4
<i>Bank of America v. Cory</i> (1985) 164 Cal.App.3d 66	10, 11
<i>Chavez v. Netflix, Inc.</i> , (2008) 162 Cal. App. 4th 43	12, 14
<i>City and County of San Francisco v. Sweet</i> (1995) 12 Cal. 4th 105	11
<i>Cundiff v. Verizon Cal., Inc.</i> (2008) 167 Cal.App.4th 718	14
<i>Fernandez v. Victoria Secret Stores LLC</i> (C.D. Cal. July 21, 2008) 2008 U.S. Dist. LEXIS 123546.....	12
<i>Graciano v. Robinson Ford Sales, Inc.</i> (2006) 144 Cal.App.4th 140	16
<i>Graham v. DaimlerChrysler Corp.</i> (2004) 34 Cal.4th 553	16, 17
<i>Horsford v. Board of Trustees of Calif. State Univ.</i> (2005) 132 Cal.App.4th 359	17
<i>In re Consumer Privacy Cases</i> (2014) 175 Cal.App.4th 545	13
<i>Iskanian v. CLS Transportation Los Angeles, LLC</i> (2014) 59 Cal. 4th 348	3, 10
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122	14, 16
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	7, 8
<i>Laffitte v. Robert Half Int'l Inc.</i> (2014) 231 Cal. App. 4th 860	11, 12, 13
<i>Munoz v. BCI Coca-Cola Bottling Co. of L.A.</i> (2010) 186 Cal.App.4th 399	8
<i>PLCM Group, Inc. v. Drexler</i> (2000) 22 Cal.4th 1084	13
<i>Ridgeway v. Wal-Mart Stores Inc.</i> (N.D. Cal. 2017) 269 F.Supp.3d 975	14
<i>Serrano v. Priest</i> (1977) 20 Cal. 3d 25	11
<i>Viking River Cruises, Inc. v. Moriana's</i> (2022) 142 S.Ct. 1906.....	2, 15

Statutes

Cal. Lab. Code § 2698 <i>et. seq.</i>	1, 2, 6
Lab. Code § 2699(i)	10

Other Authorities

Eisenberg & Miller, <i>Attorney Fees in Class Action Settlements: An Empirical Study</i> , J. of Empirical Legal Studies, Vol. 1, Issue 1, March 2004	12
Herr, David F., <i>Manual for Complex Litigation</i> , § 14.122	13

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jason Urrea (“Plaintiff”) seeks approval of a settlement of claims under the Private
4 Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* (“PAGA”) against Defendant
5 Temecula Valley Hospital, Inc. d/b/a Southwest Healthcare Temecula Valley Hospital
6 (“Defendant”) in the amount of \$1,900,000.00. Plaintiff alleges approximately 2,000 non-exempt
7 employees who worked for Defendant were not paid wages for all hours worked, not provided with
8 meal periods or compensation in lieu thereof, not provided with rest breaks or compensation in lieu
9 thereof, were not paid all wages owed within the required time and upon separation of employment,
10 and not provided with accurate wage statements. The proposed Settlement seeks to release claims
11 for civil penalties for all claims, rights, demands, liabilities and causes of action for civil penalties
12 under the PAGA claim asserted, or PAGA claims that could have been asserted in the Operative
13 Complaint or could have arisen out of the allegations made in the Operative Complaint and/or
14 LWDA letters relating to any Aggrieved Employee’s employment with Defendant.

15 Under Labor Code § 2699(1)(2), the Court must review and approve any proposed PAGA
16 settlement. Here, the proposed Settlement is sufficient to deter and punish future violations. The
17 Settlement is attached to the Declaration of Jessica L. Campbell (“Campbell Decl.”) as Exhibit 1,
18 and the proposed letter to be sent to the Aggrieved Employees is attached thereto. Plaintiff now
19 seeks this Court's approval of the Settlement terms.

20 **II. FACTUAL AND PROCEDURAL BACKGROUND**

21 On May 27, 2020, Plaintiff’s counsel sent a letter to the California Labor & Workforce
22 Development Agency (“LWDA”) via online submission and to Defendant via certified mail
23 regarding Defendant’s alleged violations. (Campbell Decl., ¶ 3, Exhibit 2.) The LWDA did not
24 respond to this notice within 65 days, indicating it did not intend to investigate, thus allowing
25 Plaintiff to file the instant lawsuit pursuant to Labor Code Section 2699.3(a)(2)(A). (Campbell
26 Decl., ¶ 4.)

27 Plaintiff initially filed his class action Complaint against Defendant for failure to pay
28 wages; failure to provide meal periods, failure to permit rest breaks; failure to pay all wages due

1 within the required time and upon separation of employment; failure to furnish accurate wage
2 statements; and violation of Business and Professions Code §§ 17200 *et seq.* against Defendant on
3 June 1, 2020 in the Riverside County Superior Court. (Campbell Decl., ¶ 5.) On August 6, 2020,
4 Plaintiff filed his First Amended Complaint (“FAC”) adding a cause of action against Defendant
5 for Enforcement of Labor Code Private § 2698 *et seq.* (Campbell Decl., ¶ 6.)

6 During discussions with Defendant, it became apparent that Plaintiff had signed an
7 arbitration agreement, forcing him to arbitrate his individual and class claims. (Campbell Decl., ¶ 7.)
8 On September 1, 2020, Plaintiff filed a request to voluntarily dismiss his individual and class claims
9 against Defendant, without prejudice, leaving Plaintiff to litigate his PAGA claims against
10 Defendant. (*Id.*) This request was granted on the same day. (*Id.*)

11 On October 21, 2020, Defendant filed its answer to the FAC. (Campbell Decl., ¶ 8.) The
12 Parties proceeded with discovery. (*Id.*, at ¶ 9.) In response to Plaintiff’s discovery requests,
13 Defendant produced data and thousands of pages of documents for Plaintiff to evaluate the PAGA
14 claims and calculate the alleged exposure, including Plaintiff’s employee file, timekeeping and
15 wage records, Defendant’s relevant policy documents, its employee handbooks applicable to non-
16 exempt employees during the relevant time period and other relevant employment policies, an
17 approximately 65% sampling of timekeeping and payroll data for the aggrieved employees. *Id.*
18 Defendant also propounded discovery on Plaintiff and deposed Plaintiff on April 8, 2021. (*Id.*)

19 On February 28, 2022, Defendant filed its Motion for an Order Enforcing Plaintiff’s
20 Waiver of Collective Action Claims. (Campbell Decl., ¶ 10.) The Parties agreed that Defendant
21 would file a new Motion to Compel Arbitration motion in light of the United States Supreme Court
22 decision in *Moriana v. Viking River Cruises, Inc.* (*Id.*) On September 2, 2022, Defendant filed its
23 Motion to Compel Arbitration of Plaintiff’s Individual PAGA Claims, Dismiss Representative
24 PAGA Claims, and Stay Action. (*Id.*, at ¶ 11.) The Court denied Defendant’s motion on October
25 27, 2022. (*Id.*)

26 The Parties attended private mediation on June 6, 2023, with Hon. Carl J. West, a retired
27 judge. (Campbell Decl., ¶ 12.) Prior to mediation, Defendant produced the total number of
28 aggrieved employees and the total number of pay periods. (*Id.*) After engaging in extensive

1 negotiations at mediation, the Parties reached an agreement to settle for \$1,900,000.00, and
2 executed a Memorandum of Understanding, memorializing the basic terms of the Parties'
3 agreement. (*Id.*, at ¶ 13.) The Parties spent the next few months negotiating the terms of their more
4 detailed long-form settlement agreement, which was finalized on September 11, 2023. (Campbell
5 Decl., ¶ 14.)

6 Plaintiff provided notice of the Settlement and a copy of this Motion to the LWDA on
7 September 12, 2023. (Campbell Decl., ¶ 15, Exhibit 4.)

8 **III. PAGA REQUIREMENTS**

9 Based on the California Supreme Court's opinions in *Arias v. Superior Court* (2009) 46
10 Cal. 4th 969, and *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348,
11 plaintiffs can seek appropriate civil penalties as called for under PAGA on behalf of the State of
12 California and other similarly aggrieved employees without seeking class certification or meeting
13 the requirements of class certification (i.e. numerosity, typicality, commonality and adequacy). As
14 such, the class action two-step preliminary and final approval process is not required.

15 PAGA was enacted to allow enforcement of the Labor Code and recovery of penalties by
16 the State and by private individuals who have been aggrieved by their employers. The statute calls
17 for 75% of any penalties recovered to be paid to California's LWDA and the remaining 25% to the
18 aggrieved employees (Lab. Code § 2699(i).)

19 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee
20 must first provide written notice to the LWDA and the employer of the particular Labor Code
21 violations the aggrieved employee alleges the employer has violated. (Labor Code §
22 2699.3(a)(1)(A).) Once the LWDA notifies the aggrieved employee that it does not intend to
23 investigate the alleged violations, or if the LWDA does not respond within a certain time period,
24 the aggrieved employee is then allowed to proceed in a civil action against the employer on behalf
25 of the LWDA and all other similarly aggrieved employees. (Labor Code § 2699.3(a)(2)(A).)

26 In 2009, the California Supreme Court considered the issue of whether an aggrieved
27 employee who brings a PAGA representative claim needs to meet class certification requirements.
28 (*Arias, supra*, 46 Cal. 4th at 976.) After a substantial review of the legislative history of PAGA,

1 the Court held that an aggrieved employee's representative action brought on behalf of other
2 aggrieved employees against an employer for PAGA violations does not need to meet the
3 requirements for class certification. (*Id.* at 975, 980-88.) As the Court held, a plaintiff bringing
4 suit under PAGA does so as the proxy or agent of California's labor law enforcement agencies. (*Id.*
5 at 986.) Because the employee's PAGA action functions as a substitute for an action brought by
6 the government itself, a judgment in the PAGA action binds all those who would be bound by a
7 judgment in an action brought by the government. (*Id.*)

8 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the court
9 need only "review and approve" the settlement. (Lab. Code § 2699(1)(2).) The Parties to this
10 current PAGA action have reached such an agreement and now seek this Court's approval of the
11 proposed settlement.

12 **IV. THE SETTLEMENT TERMS AND DISTRIBUTION OF PENALTIES**

13 The Parties have agreed that Defendants will pay a total settlement amount of
14 \$1,900,000.00 (the "Settlement Sum"). See Settlement Agreement, § 3.1. From this amount, up to
15 one-third (1/3) of the Settlement Sum, or \$633,333.33, is allocated to attorneys' fees and up to
16 \$25,000.00 to actual litigation costs. Settlement Agreement, § 3.2. To date, Plaintiff's counsel has
17 spent \$15,501.75 in litigation costs. (Campbell Decl., ¶ 46; Exhibit 4.) Plaintiff's counsel
18 anticipates spending an additional \$60.00 associated with the filing of the instant motion, bringing
19 Plaintiff's total litigation costs to \$15,561.76. (*Id.*) The Settlement allocates up to \$12,000.00 to
20 payment for Settlement Administrator Phoenix Settlement Administrators' costs associated with
21 administration of the Settlement. (Settlement Agreement, § 3.2.3; *see also* Declaration of Jodey
22 Lawrence of Phoenix Settlement Administrators ("Settlement Administrator Decl."): Exhibit B
23 ("Settlement Administrator's Not-To-Exceed Bid").) Additionally, the Settlement allocates
24 \$10,000 to Plaintiff as an individual settlement, due to Plaintiff's general release of his individually
25 alleged claims against Defendant, including non-PAGA wage and hour claims arising out of his
26 employment. (Settlement Agreement, §§ 3.2.1 & 5.1; Campbell Decl., ¶¶ 23-24.) Plaintiff also
27 will release all known and unknown claims, including a waiver of Code of Civil Procedure § 1542.
28 (Settlement Agreement, § 5.1.1.)

1 After deducting the attorneys' fees and costs, Plaintiff's individual settlement, and
2 Settlement Administrator's costs, the remaining fund ("Net Settlement Amount") of \$1,229,104.91
3 will be paid 75% to the LWDA ("LWDA Payment") and 25% to the Aggrieved Employees (the
4 "PAGA Employee Fund"). (Settlement Agreement, § 3.2.4.) "Aggrieved Employee(s)" means
5 "current and former non-exempt employees who worked for at least one Pay Period for [Defendant]
6 in California" between May 27, 2019 and July 6, 2023. (Settlement Agreement, §§ 1.4, 1.20.)

7 The "Individual PAGA Payment" for the Aggrieved Employees shall be determined as
8 follows: Each PAGA Settlement Member's pro rata share of the PAGA Employee Fund (the
9 "Individual PAGA Payment") will be determined by the Settlement Administrator, by converting
10 the PAGA Employee Fund into a pay period value. (Settlement Agreement at § 3.2.4.1.) The pay
11 period value will be established by (a) dividing the amount of the Aggrieved Employees' 25% share
12 of PAGA Penalties (\$307,276.23) by the total number of PAGA Period Pay Periods worked by all
13 Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved
14 Employee's PAGA Period Pay Periods. (*Id.*) Plaintiff anticipates that each Aggrieved Employee
15 will receive approximately \$150.00. All payments are for penalties and will be reported on IRS
16 1099 forms, if required. (*Id.* at § 3.2.4.2.) There will be no reversion to Defendants and no claims
17 process for PAGA Employees to receive payment. (*Id.* at Exhibit A.)

18 The Settlement Administrator will disburse Individual PAGA Payments to each Aggrieved
19 Employee to the last known physical address on file with Defendant in its regularly maintained
20 records. (Settlement Agreement, § 4.2.) Prior to this disbursement, the Settlement Administrator
21 shall check the addresses provided using the National Change of Address database. (*Id.*, § 4.4.1.)
22 For any returned payments without a forwarding address, the Settlement Administrator shall run a
23 skip trace. (*Id.* at § 4.4.2.) Aggrieved Employees who receive their PAGA Settlement Member
24 Payments via U.S. Mail will receive a letter along with their Individual PAGA Payment explaining
25 the reason for the payment, the content of which will be submitted to the Court for approval.
26 (Settlement Agreement, Exhibit A.) The proposed letter is attached to the Settlement Agreement.
27 (Settlement Agreement, Exhibit A.) All funds not claimed within 180 days of mailing of payment
28 shall be sent to the California State Controller's Office Unclaimed Property Fund with an

1 identification of the amount of unclaimed funds attributable to each Aggrieved Employee.
2 (Settlement Agreement, § 4.4.3.)

3 In exchange for the settlement payment, Plaintiff, the LWDA, the State of California and
4 all Aggrieved Employees will release the following claims:

5 “[A]ll claims, rights, demands, liabilities and causes of action for civil penalties
6 under the PAGA claim asserted, or PAGA claims that could have been asserted in
7 the Operative Complaint or could have arisen out of the allegations made in the
8 Operative Complaint and/or LWDA letters relating to any Aggrieved Employee’s
employment [with Defendant].”

9 (Settlement Agreement, § 5.2.) Only Plaintiff signed a general release of claims. (Settlement
10 Agreement, § 5.1.1.)

11 Defendant represented that there were approximately 94,994 Pay Periods as of the date of
12 mediation, June 6, 2023, and this formed the basis of Plaintiff’s accepting agreement to settle.
13 (Settlement Agreement, § 8.) If the number of Pay Periods exceeds 94,944 by more than 10% as
14 of the Effective Date, the Gross Settlement Amount will increase pro rata per additional Pay Period.
15 (*Id.*)

16 **V. THE SETTLEMENT IS FAIR AND REASONABLE**

17 **A. Standard for Approval.**

18 While there are no statutory or common law standards for approval of PAGA settlements,
19 the legislative history of the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et. seq.*
20 (“PAGA”) sheds some light on the approval requirement as it was phrased in § 2699, subdivision
21 (l) prior to the July 1, 2016 amendments. (Lab. Code § 2699(l) (2015) (amended 2016) (“The
22 superior court shall review and approve any penalties sought as part of a proposed settlement...”).)
23 PAGA was passed by the legislature as Senate Bill (“SB”) 796, and it was signed by the Governor
24 and filed with the Secretary of State on October 12, 2003. (Legislative Counsel’s Digest re Senate
25 Bill No. 796, attached as Exhibit A to the Request for Judicial Notice (“RJN”) filed herewith, p.
26 1.) It took effect on January 1, 2004.

27 The original version of the act did not contain the court approval requirement now codified
28 in § 2699(l). That subdivision was added as part of the amendments to the Act that were introduced

1 as SB 1809 in February of 2004 and signed by the Governor and filed with the Secretary of State
2 on August 11, 2004. (See Legislative Counsel’s Digest re Senate Bill No. 1809, attached as Exhibit
3 B to the RJN, p. 1.) Those amendments took effect immediately, and the court approval
4 requirement of § 2699(l) was one of the provisions that the legislature made retroactive to January
5 1, 2004. (*Id.* at pp. 1-2.)

6 Senator Joseph L. Dunn authored both the original PAGA bill (SB 796) and the
7 amendments (SB 1809). (See RJN, Exhs. A & B.) On July 29, 2004, during the consideration of
8 the amendments in SB 1809, Senator Dunn sent a letter addressed to the President Pro Tem of the
9 Senate, which was published in the Senate Daily Journal, “to clarify the intent of subdivision (l)”
10 of what would become § 2699. (See 7/29/04 Letter from Sen. Dunn to Sen. Burton, attached as
11 Exhibit C to the RJN.) He was sending this letter “in response to an issue raised by the Judicial
12 Council of California.” (*Id.*) In the letter, Senator Dunn stated that:

13 The purpose of court review of the penalties in subdivision (l) is to ensure that
14 settlements involving penalties arising under Labor Code Section 2699 do not
15 undercut the dual statutory purposes of punishment and deterrence, or result in
unjust, arbitrary, and oppressive, or confiscatory settlements.

16 (RJN, Exhibit C.)

17 To Plaintiff’s knowledge, this is the only statement in the legislative history directly
18 addressing the purpose of the court approval requirement. While the letter does not address any
19 specific factual issues to be considered, it does provide some very broad criteria. It suggests that
20 the courts should consider whether the penalties are so small as to “undercut the dual purposes of
21 punishment and deterrence” or so large that they may result in an “unjust, arbitrary and oppressive,
22 or confiscatory” settlement. (*Id.*)

23 These broad criteria appear to give the Court wide latitude in determining whether to
24 approve the penalties proposed as part of a PAGA settlement. Interestingly, the criteria focus on
25 the effect the penalties may have on the defendant/employer rather than the LWDA or the
26 aggrieved employees who will receive the penalties. This is different than the analysis of a class
27 action settlement, which typically focuses on the amount received by the class and compares that
28 to the reasonable range of potential outcomes in the case. (See, *e.g.*, *Kullar v. Foot Locker Retail*,

1 *Inc.* (2008) 168 Cal.App.4th 116, 130; *Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186
2 Cal.App.4th 399, 407.)

3 *B. The Settlement Meets the Standard for Approval.*

4 The \$1,900,000.00 Settlement Sum is reasonable when considered in light of the principles
5 discussed in Senator Dunn’s letter. For a group of approximately 2,000 employees, a penalty of
6 \$1,900,000.00 is large enough to punish Defendant for alleged past violations and deter future
7 violations. (Campbell Decl., ¶ 18.) Before the division of payment between Aggrieved Employees
8 and the LWDA, the settlement amount is equivalent to a penalty of about \$600.00 per employee,
9 which is a significant penalty for a wage and hour case. (*Id.*) At the same time, the penalty amount
10 is not so large as to be unjust, oppressive or confiscatory, considering the company’s potential
11 exposure explained below. (*Id.*)

12 The Settlement Sum is also reasonable in light of the facts of the foregoing action, the real
13 risk that no PAGA penalties would be paid, and inherent risks and uncertainties associated with
14 PAGA claims. (Campbell Decl., ¶ 19.) Plaintiff calculated the potential exposure at the initial
15 violation rate of \$100 per Pay Period as follows: 94,994 Pay Periods x \$100 per Pay Period =
16 \$9,499,400.00. (*Id.*) If the Court stacked different types of penalties in each Pay Period, an expert
17 retained by Plaintiff calculated the exposure as follows:

- 18 - 99,994 Pay Periods x \$100 x 44.9% violation rate (for unpaid wages due to Defendant’s alleged
19 time rounding policies and failure to pay all wages for having employees remain “on-call” for
20 work) = \$4,489,730.60 for unpaid wages violations;
- 21 - 99,994 Pay Periods x \$100 x 10.5% violation rate (for failure to include bonuses in the regular
22 rates of pay) = \$1,049,937.00 for overtime – regular rate violations;
- 23 - 99,994 Pay Periods x \$100 x 88.2% violation rate (for meal periods violations allegedly shown
24 in the time records) = \$8,819,470.80 for meal period violations;
- 25 - 99,994 Pay Periods x \$100 x 99.2% violation rate (for rest breaks due to requiring Aggrieved
26 Employees to remain on the premises during their rest breaks) = \$9,919,404.80 for rest break
27 violations; and

1 - 99,994 Pay Periods x \$100 x 99.2% violation rate (for derivative wage statement penalties) =
2 \$9,919,404.80 for wage statement violations.

3 (*Id.*)

4 However, Defendant disputed the expert's calculations, and could have defeated Plaintiff's
5 claims by proving: (1) its time rounding practices were neutral and often overpaid Aggrieved
6 Employees; (2) the bonuses were discretionary and therefore should not be included in the overtime
7 or meal premium rates of pay; (3) that only a small percentage employees actually earned bonuses
8 during the relevant time period; (4) only a small number of employees were ever required to work
9 on-call; (5) that employees actually left the premises during their rest periods; (6) the wage
10 statement claims would thus fail as they were purely derivative of the unpaid wage and overtime
11 claims; (7) Defendant paid meal and rest period premiums to its employees; and (8) employees
12 waived their meal periods and rest breaks. (Campbell Decl., ¶¶ 20.) The settlement negotiations
13 took these risks into account. (*Id.*)

14 Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA
15 awards are discretionary and can be reduced by the Court. (Campbell Decl., ¶ 21.) The Court can
16 reduce the PAGA penalties "if, based on the facts and circumstances of the particular case, to do
17 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (Labor
18 Code § 2966(e)(2).) In other words, were this matter to go to trial, any award granted would be at
19 the discretion of the Court. (Campbell Decl., ¶ 21.) Thus, if Plaintiff was not able to "stack" PAGA
20 penalties, the maximum exposure could be reduced even further.

21 Plaintiff recognizes that, although he believes there would be no persuasive grounds to
22 reduce the penalties, the Court could determine otherwise and significantly reduce the PAGA
23 penalties, especially given that Defendant operates a nearby hospital. (Campbell Decl., ¶ 22.) The
24 wide range of potential recovery and the additional delays and risks of trial justified settling at this
25 point for a reasonable amount of recovery. (*Id.*) Assuming the Court would not stack penalties and
26 Plaintiff had a 20% chance of proving the claims and/or the Court would reduce the penalties by
27 80%, which is a common reduction percentage in PAGA cases, the realistic value of the claims was
28 about \$1,900,000.00. (*Id.*)

1 **VI. THE COURT SHOULD APPROVE THE REQUESTED ATTORNEY’S FEES**

2 For their efforts and the substantial risks Plaintiff’s counsel undertook in obtaining a common
3 fund settlement that benefits the LWDA and Aggrieved Employees, the Parties allocated one-third
4 of the Settlement Amount to Plaintiff’s counsel for reasonable attorneys’ fees, plus actual litigation
5 costs. These fees are warranted under the law and within the range of fees commonly awarded in
6 similar cases.

7 A. Plaintiff’s Counsel Is Entitled to Recover Attorneys’ Fees Under the Common Fund
8 Doctrine in This Quasi Qui Tam Action.

9 PAGA provides that a Plaintiff is entitled to recover reasonable attorneys’ fees, expenses,
10 and costs under Labor Code § 2699(g)(1), which provides that “[a]ny employee who prevails in any
11 action shall be entitled to an award of attorneys’ fees and costs, including any filing fee paid pursuant
12 to . . . Section 2699.3.” As discussed below, in a qui tam action, reasonable attorneys’ fees and costs
13 are typically awarded under the common fund doctrine, where, as here, the litigation creates a
14 common fund of money in a specific amount for the benefit of others.

15 A PAGA action is a quasi qui tam action because the statute allows the employee plaintiff,
16 acting as the proxy of the state’s labor law enforcement agency, to sue his employer for Labor Code
17 violations and recover civil penalties that otherwise would have been assessed and collected by the
18 LWDA. (*Iskanian, supra*, 59 Cal. 4th at 380.) “A PAGA representative action is therefore a type
19 of *qui tam* action.” (*Id.* at 382.) Indeed, the majority of the civil penalties recovered in a PAGA
20 action are paid to the state, with the smaller portion paid to the aggrieved employees (*e.g.* 75% to
21 the state, and 25% to the aggrieved employees. (Lab. Code § 2699(i).)

22 As here, where a common fund is created in a qui tam action by the successful litigation
23 of a plaintiff and his attorneys, the attorneys are entitled to recover their fees from the common
24 fund. (*Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-91.) In *Bank of America*, attorneys
25 were awarded their fees from the common fund in a taxpayer action to enforce unclaimed property
26 law. Affirming the award, the Court stated:

27 Those benefiting from the recovery of the fund, in this case some
28 depositors and eventually the People of the State of California, must bear

1 their share of the cost of litigation. Fees for taxpayers’ attorneys will be
2 deducted from the judgment, and each claimant’s share reduced
3 proportionately.

4 (*Id.* at 91.)

5 Likewise, in this case, through the successful efforts of Plaintiff and his attorneys, a
6 common fund was created in the amount of \$1,900,000.00 for the benefit of Defendant’s
7 employees and the State of California. Thus, these beneficiaries must bear their share of the costs
8 and attorneys’ fees which will be deducted from the Settlement Amount under the common fund
9 Theory.

10 In *Laffitte*, the California Supreme Court held that it is not an abuse of discretion for a trial
11 court to utilize the percentage method for calculating an attorneys’ fee award in a common fund
12 case, which this case is. (*Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal. 5th 480, 503; *see also Serrano*
13 *v. Priest* (1977) 20 Cal. 3d 25, 35-40; *City and County of San Francisco v. Sweet* (1995) 12 Cal.
14 4th 105, 110 (the common fund doctrine has been applied “consistently in California when an
15 action brought by one party creates a fund in which other persons are entitled to share.”).) The
16 Court held “that when class action litigation establishes a monetary fund for the benefit of the class
17 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
18 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
19 fund created.” (*Laffitte, supra*, 1 Cal. 5th at 503.) Explaining that the percentage method “is a
20 valuable tool” for trial courts to calculate attorneys’ fees, the Court extolled “[t]he recognized
21 advantages” of the method, such as “ease of calculation, alignment of incentives between counsel
22 and the class, a better approximation of market conditions in a contingency case, and the
23 encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging
24 the litigation.” (*Id.* (citations omitted).)

25 In applying the common fund doctrine, California courts routinely award attorneys’ fees
26 equaling one-third of the common fund’s total potential value. (*See, e.g., Laffitte v. Robert Half*
27 *Int’l Inc.*, 231 Cal. App. 4th 860, 878 (2014) (“trial court’s use of a percentage of 33 1/3 percent
28 of the common fund is consistent with [] awards in other class action lawsuits” and “studies show

1 that ... fee awards in class actions average around one-third of the recovery”), *aff’d by Laffitte*,
2 *supra*, 1 Cal. 5th at 489; *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) (“Empirical
3 studies show that, regardless of whether the percentage method or the lodestar method is used, fee
4 awards in class actions average around one-third of the recovery”); Eisenberg & Miller, *Attorney*
5 *Fees in Class Action Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue
6 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide conclude
7 that a one-third fee is consistent with market rates).)

8 One-third of the common fund is also reasonable because it best reflects the market rate
9 for contingency fees. (See *Lealoea, supra*, 82 Cal. App. 4th at 47 (“attorneys providing the essential
10 enforcement services must be provided incentives roughly comparable to those negotiated in the
11 private bargaining that takes place in the legal marketplace”).) Fees representing up to forty
12 percent of the recovery reflect the rate negotiated in “typical contingency fee agreements [which]
13 provide that class counsel will recover 33% if the case is resolved before trial and 40% if the case
14 is tried.” (*Fernandez v. Victoria Secret Stores LLC*, 2008 U.S. Dist. LEXIS 123546, *55-57 (C.D.
15 Cal. July 21, 2008) (citing an academic study collecting contingency fee agreements and finding
16 that a fee award constituting 34% of the fund is reasonable on that basis).) Because the negotiated
17 fee structure mimics the marketplace, it is reasonable and should be approved.

18 Here, Plaintiff’s counsel efficiently litigated this matter, making the entire Net Settlement
19 Amount available to Aggrieved Employees with no reversion to Defendant. The percentage of
20 fees sought by Plaintiff’s counsel is in line with awards in similar cases in California and is
21 reasonable for the benefit obtained for Aggrieved Employees in this case.

22 **B. Lodestar Cross-Check Confirms the Reasonableness of the Fee Award.**

23 Indeed, advocating for a one-third percentage in a PAGA settlement, rather than a recovery
24 based on lodestar plus a multiplier means that in some cases, Plaintiff’s counsel might come out
25 ahead and in some cases they might come out behind. This is a case where Plaintiff’s counsel will
26 come out ahead in requesting a percentage when viewing the case through the prism of a lodestar
27 cross-check.

1 Despite recognized limitations of the so-called lodestar method, some California and federal
2 courts acknowledge the utility of a lodestar “cross-check” for common fund awards (*Lealoe, supra*,
3 82 Cal.App.4th at 46-47.) In *Laffitte*, the court permitted use of a “lodestar cross check,” by which
4 the trial court would first select a percentage of the common fund for the fee award, and then verify
5 that the percentage chosen is fair and reasonable in light of the attorney hours spent on the case.
6 (*Laffitte, supra*, 1 Cal. 5th at 504.) While some “multiplier” would be expected, the multiplier
7 should be “evaluated for reasonableness;” “rough parity” between the lodestar and the percentage-
8 based recovery would make sense. (*Id.* at 496.) Use of the lodestar cross-check, the court
9 explained, represents a “blending of the two fee calculation methods” (percentage and lodestar),
10 where “one method is used to confirm or question the reasonableness of the other’s result.” (*Id.* at
11 497.) The court, however, did not require a lodestar cross check, explaining that courts “retain the
12 discretion to forego a lodestar cross-check and use other means to evaluate the reasonableness of
13 a requested percentage fee.” (*Id.* at 505.)

14 California’s lodestar/multiplier method is a two-step process of fee calculation under
15 which the court first determines a lodestar value for the fees by multiplying the time reasonably
16 spent by plaintiff’s counsel on the case by a reasonable hourly rate. (*In re Consumer Privacy Cases*
17 (2014) 175 Cal.App.4th 545, 556-557.) The starting point in determining the appropriate hourly
18 fee is to discern the prevailing rate for similar work in the pertinent geographic region. (*PLCM*
19 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096-97 (using prevailing hourly rate in community
20 for comparable legal services even though party used in-house counsel); see also Herr, David F.,
21 *Manual for Complex Litigation*, § 14.122 (“reasonable fees . . . are to be calculated according to the
22 prevailing market rates in the relevant community.”).

23 Here, Plaintiff’s counsel’s hourly rates are comparable to those charged by other class action
24 plaintiff’s counsel and the firms defending class actions. (Campbell Decl., ¶ 42.) Further, the total
25 attorney hours expended on this action are reasonable and in line with comparable cases.
26 Plaintiff’s counsel billed a total of 530.5 hours prosecuting this case. (Campbell Decl., ¶ 51.) The
27 firm dedicated significant resources to this case by dividing the tasks required according to skill
28

1 level; the professional hours generated by each attorney are not unreasonable or duplicative. (*Id.*,
2 at ¶ 42.)

3 Multiplying the total hours billed by Plaintiff's counsel in this litigation by their reasonable
4 hourly rates yields a lodestar of 337,662.50. (Campbell Decl., ¶ 51.) Plaintiff's counsel
5 accordingly requests a lodestar multiplier of approximately 1.88 to meet the fee award. (*Id.*, at ¶
6 52.)

7 *C. A Multiplier is Justified in Light of the Results Achieved and Plaintiff's Counsel's*
8 *Extensive Work Performed at the Risk of Receiving No Payment.*

9 The Court may enhance or reduce the lodestar by applying a multiplier to take into account
10 multiple factors, including the following: (1) the results achieved on behalf of the Aggrieved
11 Employees; (2) the novelty and difficulty of the questions involved and the skills displayed in
12 presenting them; (3) counsel's experience, reputation and ability; (4) counsel's preclusion from other
13 work; and (5) the contingent nature of the fee award. (See *Ketchum v. Moses* (2001) 24 Cal.4th 1122,
14 1139; *Cundiff v. Verizon Cal., Inc.* (2008) 167 Cal.App.4th 718, 724.) Application of each of these
15 factors strongly favors granting the full attorneys' fees and costs award that Plaintiff's counsel has
16 requested in this case, as explained in detail below.

17 California courts routinely award multipliers on plaintiff's counsel's lodestars ranging from
18 2 to 4, or even higher. (See, e.g. *Chavez, supra*, 162 Cal. App. 4th at 49-50 (approving multiplier
19 of approximately 2.5); *Ridgeway v. Wal-Mart Stores Inc.* (N.D. Cal. 2017) 269 F.Supp.3d 975,
20 1000 (approving multiplier of 2.0).) Here, Plaintiff's counsel requests a modest 1.88 multiplier to
21 reach the one-third fee amount provided in the Settlement. (Campbell Decl., ¶ 52.)

22 1. The Results Achieved on Behalf of the Aggrieved Employees

23 As a result of Plaintiff's counsel's efforts, Aggrieved Employees will receive immediate and
24 reasonable payment for their claims. (Campbell Decl., ¶ 44.) A settlement at this juncture also
25 avoids the risk and expense of losing on some or all of the claims at trial. (*Id.*) Plaintiff's counsel
26 believed it was preferable here to reach a resolution at this stage of the case to save time and
27 money that would otherwise go to litigation and would not have guaranteed any larger of an award
28

1 than the Settlement. (*Id.*) Accordingly, the cumulative benefits achieved by Plaintiff's counsel
2 favor approval of the requested fees.

3 2. The Novelty and Difficulty of the Questions Involved, and the Skill in Presenting Them.

4 Plaintiff's counsel used their experience to negotiate a suitable settlement that avoided
5 potential pitfalls for Aggrieved Employees who would be forced to arbitrate their claims. First,
6 Plaintiff's counsel engaged in substantial discovery with Defendant to prove PAGA claims,
7 including defending Plaintiff's deposition. (Campbell Decl., ¶ 9.) Additionally, Plaintiff's counsel
8 spent a significant amount of time briefing and successfully opposing Defendant's Motion to
9 Compel Arbitration and Motion to Enforce Collective Action Waiver for the PAGA claim. (*Id.*, at
10 ¶ 10.) After completing the first Opposition to Defendant's Motion to Enforce Collective Action
11 Waiver, Plaintiff's counsel thoroughly briefed and researched novelty in the changing law
12 resulting from the *Viking River Cruises, Inc. v. Moriana*'s, (2022) 142 S.Ct. 1906, change to splitting
13 of PAGA claims into representative and individual claims. (*Id.*, at ¶ 11.) Plaintiff's counsel then
14 drafted an Opposition to Defendant's Motion to Compel Arbitration based thereon that was
15 successful in allowing this Action to proceed. (*Id.*) Had Plaintiff's counsel lost this Opposition,
16 Plaintiff would have been forced to arbitrate his individual PAGA claim and would have been
17 precluded from recovering penalties on behalf of the State of California for Defendant's
18 employment violations. (*Id.*)

19 In preparation for mediation, Plaintiff's counsel also extensively reviewed and analyzed
20 discovery provided by Defendant and reviewed applicable law and other authority. (Campbell
21 Decl., ¶ 12.) For example, Plaintiff's counsel argued that Defendant's maintained a facially
22 unlawful on-premises rest period policy and argued that Defendant's rounding policy (which
23 rounded up and down to the nearest 15-minute increment) was unlawful as it did not offer a grace
24 period for employees reporting to begin their shifts and prohibiting them from gaining any benefit
25 from rounding due to specified clock-out policies. (*Id.*)

26 Plaintiff's counsel's skill in researching and presenting the issues in this case resulted in a
27 fair settlement for the Aggrieved Employees, and weighs in favor of approving the fee request.

28 3. Plaintiff's Counsel's Experience, Reputation, and Ability.

1 Plaintiff's counsel submit that their skill contributed to the efficient resolution of this case.
2 They are experienced litigators who focus their practices on wage and hour class actions and PAGA
3 cases, with extensive experience litigating both. (Campbell Decl., ¶¶ 25-41.) Plaintiff's counsel
4 has been appointed class counsel or co-class counsel in many cases, have obtained substantial
5 recoveries for thousands of employees through these cases, and have the requisite skill and
6 experience to justify the requested fees. (*See id.*)

7 4. Plaintiff's Counsel's Preclusion from Other Work

8 During the pendency of this action, Plaintiff's counsel thoroughly investigated and
9 researched the claims in controversy, their defenses, and the relevant body of law. (Campbell Decl.,
10 ¶ 44.) Overall, Plaintiff's counsel performed extensive work and obtained a favorable result through
11 time-consuming litigation, substantial analysis of the records, a full day of mediation, and
12 negotiation of the Settlement. (*Id.*) This time could have been spent on other potentially lucrative
13 cases. (*Id.*) Accordingly, Plaintiff's counsel's time should be compensated.

14 5. The Contingent Nature of the Fee Award

15 The California Supreme Court has recognized that attorney fee awards should be enhanced
16 to compensate attorneys for the risks of loss involved in contingency fee cases. (*Graciano v.*
17 *Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 154.) The main criterion for risk is the risk
18 of complete loss, which would leave counsel unable to recover fees. (*Graham v. DaimlerChrysler*
19 *Corp.*, (2004) 34 Cal.4th 553, 583 (explaining that a multiplier corresponds to risk of loss, with the
20 risk of not being the successful party ranking highest).) In *Ketchum*, the California Supreme Court
21 instructed courts to adjust fee compensation to ensure that the fees account for contingency risk:

22 A lawyer who both bears the risk of not being paid and provides legal services is
23 not receiving fair market value of his work if he is paid only for the second of these
24 functions. If he is paid no more, competent counsel will be reluctant to accept fee
25 award cases.

26 (*Ketchum, supra*, 24 Cal.4th at 1132-33.)

27 A fee award that adjusts for contingency fee risk "constitutes earned compensation; unlike
28 a windfall, it is neither expected or fortuitous." (*Id.* at 1138.) The contingent risk factor is the single

1 most important enhancement factor under California law even for actions where statutory fees are
2 available. (*See Horsford v. Board of Trustees of Calif. State Univ.* (2005) 132 Cal.App.4th 359, 399
3 (reversing a trial court order for failure to consider contingent risk for statutory fees pursuant to
4 FEHA).) The main criterion for the risk is the risk of complete loss, which would leave counsel
5 unable to recovery any fees. (*Graham, supra*, 34 Cal.4th at 583 (explaining that a multiplier
6 corresponds to risk of loss, with the risk of not being the successful party ranking highest).) This
7 risk is particularly acute for contingency fee attorney because they “must use savings or incur debt
8 to keep heir offices afloat and their families fed during the years-long litigation.” (*Horsford, supra*,
9 132 Cal.App.4th at 400.)

10 Here, Plaintiff’s counsel bore the entire risk of recovery. They took Plaintiff’s case on a
11 pure contingency basis, with no guarantee of any payment. (Campbell Decl., ¶ 45.) Before
12 mediation, Plaintiff’s counsel spent significant time litigating arbitration issues in court,
13 analyzing records, and researching theories of liability despite the risk of recovering nothing.
14 (*Id.*) A defeat at one of these stages could have foreclosed the possibility of Plaintiff’s counsel
15 recovering full remuneration for their time and effort. (*Id.*) Yet, in spite of these considerable
16 challenges that enhanced the already-high contingency risk, Plaintiff’s counsel was able to obtain
17 a settlement amount of \$1,900,000.00. A fee award in the amount of \$633,333.33 is fair and
18 reasonable.

19 VII. CONCLUSION

20 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement
21 pursuant to PAGA in this Action.

22
23 Dated: September 12, 2023

AEGIS LAW FIRM, PC

24
25 

26 By _____

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