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12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF LOS ANGELES

14 ROBERT NAVARRO, on behalf of himself and
15 all other Aggrieved Employees

16 Plaintiff,

17 v.

18 ALLIED PRIVATE INVESTIGATION &
19 SECURITY SERVICES, INC. and DOES 1 to
20 100, inclusive,

21 Defendants.

) NO. 20STCV16481

)
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES ISO PLAINTIFF'S**
) **MOTION FOR COURT APPROVAL OF**
) **PAGA SETTLEMENT**

)
) *Assigned to Hon. Judge Timothy Patrick*
) *Dillon*

)
) Date: June 15, 2021
) Time: 8:30 a.m
) Dept: 73
) Reservation No.: 403583638683
)
) Action Filed: April 30, 2020

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Private Attorneys General Act (“PAGA”) representative action relates to the
4 Aggrieved Employees’ work for Defendant Allied Private Investigation & Security Services, Inc.
5 (“Allied” or “Defendant”). The Aggrieved Employees, as defined herein, were allegedly subject to
6 violations of Labor Code sections 201, 201.3, 202, 203, 204, 210, 226, 510, 558, 1174, 1194, 1197,
7 1197.1, 1198, 2802, and 2699 regarding: (1) Defendant’s failure to provide suitable seating; (2)
8 Defendant’s failure to pay Plaintiff and the Aggrieved Employees on a weekly basis as required by
9 Labor Code section 201.3; (3) Defendant’s failure to pay minimum, or overtime, wages for all
10 hours worked; (4) Defendant’s failure to provide accurate wage statements; (5) Defendant’s failure
11 to reimburse their employees for work-related expenses; and (6) Defendant’s failure to pay their
12 employees all wages due and payable either at the time of termination, or within 72 hours of an
13 employee’s resignation.

14 Plaintiff Robert Navarro (“Plaintiff”) was formerly employed by Allied as a security guard
15 from January 2019 through January 2020. (Declaration of Manny Starr (“Starr Decl.”) ¶2).

16 The parties agreed to go to mediation, and attended mediation, on April 6, 2021. Through the
17 combination of informal discovery, extensive negotiations, and mediation, the parties were able to
18 reach an agreement.¹ (Starr Decl. ¶10). The case settled for \$120,000.00. (Starr Decl. ¶11).

19 Under Labor Code section 2699(1)(2), “The superior court shall review and approve any
20 settlement of any civil action filed pursuant to this part.” By this unopposed motion, Plaintiff
21 requests the Court to approve the settlement of the PAGA claims asserted in this action.

22 **II. FACTUAL BACKGROUND**

23 This action was originally filed as an individual action in the Los Angeles Superior Court
24 on April 30, 2020. (Starr Decl. ¶3). Plaintiff’s Cause of Action asserted that Allied had violated
25 Labor Code sections 201-203, 204, 210, 226, 510, 558, 1194, and 2802. (Starr Decl. ¶4).

26 On June 1, 2020 Plaintiff sent a PAGA letter to Defendant and the Labor and Workforce

27 _____
28 ¹ The Settlement Agreement and General Release is attached to the Starr Declaration as Exhibit 1 and filed as part of
this motion.

1 Development Agency (“LWDA”) which explained the Plaintiff’s claims against Defendant
2 (LWDA Case No. LWDA-CM-791903-20). (Starr Decl. ¶5).

3 On September 1, 2020, Plaintiff filed a First Amended Complaint (“FAC”) seeking PAGA
4 penalties based on violations of Labor Code sections 201, 202, 203, 204, 210, 226, 510, 558, 1174,
5 1194, 1197, 1197.1, 1198, and 2802. (Starr Decl. ¶6).

6 On December 8, 2020, Plaintiff sent a supplemental PAGA notice, alleging that Allied was
7 a temporary service employer (“TSE”), and failed to pay the Aggrieved Employees on a weekly
8 basis as required by Labor Code section 201.3. (Starr Decl. ¶7). On February 19, 2021, Plaintiff
9 filed a Second Amended Complaint (“SAC”) adding an additional PAGA claim based on the
10 violation of Labor Code section 201.3. (Starr Decl. ¶8). Defendant filed an answer on March 4,
11 2021. (Starr Decl. ¶9).

12 Under Labor Code section 2699(1), “[t]he Superior Court shall review and approve any
13 penalties sought” as part of the resolution of a case that involved PAGA claims.” Labor Code
14 section 2699(1). By this unopposed motion, the parties jointly request that the Court approve the
15 settlement of the PAGA-related claims asserted in this action. ²

16 **III. ARGUMENT AND BASIS FOR PAGA PENALTIES**

17 PAGA permits an aggrieved employee to sue an employer for civil penalties associated
18 with the employer’s alleged violation of various California Labor Code provisions. Labor Code
19 section 2699(a). Pursuant to the statute, of the amount paid to settle a claim for PAGA penalties,
20 twenty-five percent (25%) is payable to the Aggrieved Employees and seventy-five percent (75%)
21 is payable to the California Labor and Workforce Development Agency (LWDA). Labor Code
22 section 2699(i). Under Labor Code section 2699(1), “[t]he Superior Court shall review and
23 approve any penalties sought” as part of the resolution of a case that involved PAGA claims.”
24 Labor Code section 2699(1).

25 The PAGA period covers June 1, 2019 through April 13, 2021. This settlement covers the
26 estimated 8,528 pay periods where a violation allegedly occurred and the 809 Aggrieved

27
28 ² Plaintiff will file and serve this Settlement Agreement and motion with the LWDA at the same time that
Plaintiff files the same with the Court pursuant to the requirements of Labor Code section 2699(i)(2).

1 Employees which were impacted by the violation. Of the 809 Aggrieved Employees, 296 are
2 former employees.

3 **a) Failure to Provide Suitable Seating**

4 Industrial Welfare Commission Wage Order 4-2001 paragraph 14(B) states:

5 When employees are not engaged in the active duties of their employment and the
6 nature of the work requires standing, an adequate number of suitable seats shall be
7 placed in reasonable proximity to the work area and employees shall be permitted to
8 use such seats when it does not interfere with the performance of their duties.

9 When an employer fails to provide their employees with access to seating during lulls in
10 operation, as Plaintiff alleges occurred in this case, that employer violated IWC Wage Order 4-
11 2001 14(B). (*Kilby v. CVS Pharmacy, Inc.*, (2016) 63 Cal.4th 1, 19).

12 **i. Suitable Seating Penalties**

13 The applicable PAGA penalties for Defendants' failure to provide Plaintiff and the
14 Aggrieved Employees with suitable seating, in violation of IWC Wage Order 4-2001, 14(B) Labor,
15 are found in Labor Code section 2699(f), which are \$100 per pay period for the initial violation and
16 \$200 per pay period for each subsequent violation; Conservatively attributing only the initial
17 violation rate, Plaintiff estimated the total exposure to be approximately (8,528 initial violations *
18 \$100 per initial violation) **\$852,800.00**.

19 **b) Failure to Pay Weekly Pursuant to Labor Code section 201.3**

20 Labor Code section 201.3 requires a TSE to pay their employees on a weekly basis.
21 Plaintiff alleges that Allied was a TSE, but failed to pay their employees on a weekly basis, in
22 violation of Labor Code section 201.3.

23 **i. Labor Code Section 201.3 Penalties**

24 The applicable PAGA penalties for Defendants' failure to provide Plaintiff and the
25 Aggrieved Employees with weekly pay, in violation of Labor Code section 201.3, can be found in
26 Labor Code section 210, which are \$100 per pay period for the initial violation and \$200 per pay
27 period for each subsequent violation. Conservatively attributing only, the initial violation rate,
28 Plaintiff estimated the total exposure to be approximately (8,528 initial violations * \$100 per initial
violation) **\$852,800.00**.

1 **c) Failure to Pay all Minimum and Overtime Wages**

2 Labor Code sections 510, 1194, and 1197 operate to prohibit an employer from paying an
3 employee less than one-and-one-half times their regular rate of pay for “any work in excess of
4 eight hours in one workday and any work in excess of 40 hours in any one workweek...” and
5 prohibits an employer from paying an employee less than minimum wage for all hours worked.
6 These codes further provide the employee with a legal right to recover those wages in a civil
7 action. In the present case, Plaintiff alleges that the Aggrieved Employees were required to arrive
8 early, prior to the start of their shift, to perform various tasks including preparing their radios and
9 participating in briefings. Plaintiff further alleges that Allied failed to pay the Aggrieved
10 Employees for this time. As a result, Plaintiff and the Aggrieved Employees were not paid for all
11 hours worked. The net result of Defendant’s policies was to pay Plaintiff and the Aggrieved
12 Employees a wage less than the minimum fixed by Labor Code 510 and 1197.

13 **i. Minimum and Overtime Wage Penalties**

14 The applicable PAGA penalties for Defendant’s failure to pay Plaintiff and the Aggrieved
15 Employees all minimum and overtime wages are found in Labor Code section 1197.1, which are
16 one hundred dollars (\$100) for each underpaid employee for each pay period for which the
17 employee is underpaid and two hundred fifty dollars (\$250) for each subsequent violation for the
18 same specific offense. Plaintiff alleges that Defendants failed to fully compensate a subsection of
19 the Aggrieved Employees who worked in retail stores. This subsection of Aggrieved Employees
20 worked approximately 1,868 payroll periods of the total 8,528 payroll periods during the PAGA
21 Period. As such, Plaintiff estimated the total exposure to be approximately (1,868 initial violations
22 * \$100 per initial violation) **\$186,800.00**.

23 **d) Failure to Reimburse Work-Related Expenses**

24 Labor Code section 2802 requires an employer to reimburse their employees for
25 expenditures incurred in direct consequence of the discharge of their duties. In the present case,
26 Plaintiff and the Aggrieved Employees were required to show up to work in a clean and neatly
27 pressed suit. Plaintiff alleges that Allied failed to reimburse Plaintiff and the Aggrieved Employees
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1 for the costs of maintaining their work uniforms. Defendant's failure to reimburse the Aggrieved
2 Employees for these work-related expenses constitutes a violation of Labor Code 2802.

3 **i. Failure to Reimburse Work Related Expenses Penalties**

4 The applicable PAGA penalties for Defendants' failure to reimburse Plaintiff and the
5 Aggrieved Employees for their work-related expenses are found in Labor Code section 2699(f)(2):
6 "If, at the time of the alleged violation, the person employs one or more employees, the civil
7 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
8 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
9 subsequent violation." Plaintiff alleges that Defendant failed to reimburse work expenses for a
10 subsection of the Aggrieved Employees who worked in retail stores. This subsection of Aggrieved
11 Employees worked approximately 1,868 payroll periods of the total 8,528 payroll periods during
12 the PAGA Period. Furthermore, Plaintiff alleges that Defendant failed to reimburse work expenses
13 for these employees every other pay period, as opposed to every pay period. As such, Plaintiff
14 estimated the total exposure to be approximately (934 initial violations * \$100 per initial violation)
15 **\$93,400.00.**

16 **e) Failure to Provide Complete and Accurate Wage Statements**

17 Labor Code sections 226(a)(1) through (9) requires an employer to provide Plaintiff and the
18 Aggrieved Employees with wage statements that, among other things, list "total hours worked by
19 the employee" and "all applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee." As noted previously,
21 Defendant failed to notate, or compensate, all hours Plaintiff and the Aggrieved Employees
22 worked, regular and overtime. As such, Defendant failed to comply with the requirements of Labor
23 Code sections 226(a)(1) through (9).

24 **i. Wage Statement Penalties**

25 The applicable PAGA penalties for Defendant's failure to provide Plaintiff and the
26 Aggrieved Employees with proper wage statements, in violation of Labor Code 226(a), are found
27 in Labor Code section 226.3: "Any employer who violates subdivision (a) of Section 226 shall be
28 subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per

1 violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in
2 a subsequent citation, for which the employer fails to provide the employee a wage deduction
3 statement or fails to keep the records required in subdivision (a) of Section 226.” Plaintiff alleges
4 that Defendant failed to provide the Aggrieved Employees with accurate wage statements because
5 the wage statements did not reflect the unpaid overtime and minimum wage, as alleged above. The
6 group of Aggrieved Employees who were subject to this violation were those that worked in retail
7 stores. Therefore, Plaintiff estimated the total exposure to be approximately (1,868 initial
8 violations \$250 per initial violation) **\$467,000.00.**

9 **f) Failure to Timely Pay All Final Wages**

10 Labor Code sections 201 through 203 requires an employer to provide an employee with all
11 wages due and owing at the time of separation, or within seventy-two (72) hours of resignation.
12 “All wages due and owing” are comprised of, among other things: unpaid wages, unpaid premium
13 pay, and reimbursement under 2802. Since Plaintiff alleges Defendant failed to pay all wages due
14 to the Aggrieved Employees during their employment, it follows that Defendant failed to comply
15 with Labor Code sections 201 through 203.

16 **i. Waiting Time Penalties**

17 The PAGA penalties for Defendant’s failure to provide Plaintiff and the Aggrieved
18 Employees with all wages due and owing at the time of separation are found in Labor Code section
19 2699(f)(2), which are one hundred dollars (\$100) for each initial violation and two hundred dollars
20 (\$200) for each subsequent violation. There are 296 former Aggrieved Employees. Therefore,
21 Defendants’ *maximum* PAGA penalty exposure for failure to pay their employees all wages due
22 and payable upon separation is (296 initial violations * \$100 per initial violation) **\$29,600.00.**

23 **IV. DESCRIPTION OF THE SETTLEMENT TERMS**

24 The gross amount of the settlement is \$120,000.00. The settlement is broken down as follows:

- 25 - \$12,000.00 to Robert Navarro as an enhancement payment and in exchange for a
26 general release of all claims;
- 27 - \$40,000.00 to Frontier Law Center for attorney fees;
- 28 - \$7,440.80 to Frontier Law Center as reimbursement for costs;

- \$4,250.00 to Phoenix Administrators to administer the settlement; and
- \$56,309.20 in PAGA Penalties, of which 75% will go to the LWDA and 25% will be distributed to the Aggrieved Employees on a pro rata basis.

V. THE COURT IS AUTHORIZED TO APPROVE THE SETTLEMENT

Labor Code section 2699(e)(2) states: “In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504 (2018), while the plaintiff prevailed on his PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.

While Plaintiff estimates Defendant’s total potential exposure for the above-referenced violations to be approximately **\$2,748,800**, the facts and circumstances particular to this case allow for a reduced settlement amount to avoid an award that is unjust, arbitrary, oppressive, or confiscatory.

a) PAGA Penalties Applicable to Wage Statement Violations

There is significant legal debate as to whether the penalties in Labor Code section 226.3 apply to the present case, or whether this penalty only apply in cases where the Defendants failed to provide *any* wage statements whatsoever. (See *Lopez v. Friant & Assoc.* (2011) 192 Cal.App.4th 75.) Should a Court determine that the penalty amounts set forth in Labor Code section 226.3 do not apply, and applies the penalties set forth in Labor Code section 2699 instead, then Defendants’ exposure for wage statement penalties would be reduced from \$467,000 to \$186,800; this would reduce Defendants’ *maximum* exposure to \$2,468,600.

b) Suitable Seating, Reimbursement, and Unpaid Wages Defenses

If this case were to proceed, Defendant was prepared to argue that security guards could not competently do their job while seated or that the nature of the job allowed security guards to

1 sit while actively working. Furthermore, Defendant was prepared to argue that its clients required
2 their security guards to be standing, or on patrol at all times, and that by allowing its guards to sit,
3 they would breach their contracts with their customers. Additionally, Defendant took the position
4 that the Aggrieved Employees were not required to spend money to maintain their uniforms.
5 Lastly, as it relates to unpaid wages, Defendant was prepared to argue that the Aggrieved
6 Employees were not required to arrive at the worksite before their shift, and to the extent that they
7 did arrive early, they would be paid for that time. While Plaintiff strongly contests these positions,
8 the fact remains that there is a risk Defendant could prevail on these issues. Furthermore, even if
9 Plaintiff prevailed on these issues, the Court could reduce the penalties attributable to these
10 violations if Defendant could show a good faith attempt to comply with the law.

11 **c) The Court May Choose Not to Stack PAGA Penalties**

12 Courts are hesitant to award full PAGA penalties where those penalties are derivative of
13 other claims that were subject to PAGA penalties in the first instance; the basis for this is the
14 Court's concerns about double-recovery. (See *Naranjo v. Spectrum Security Services, Inc.* (2019)
15 40 Cal.App.5th 444.) In this case, the court may choose not to stack the PAGA penalties
16 attributable to wage statement violations and waiting time penalties, since those penalties are
17 derived from the unpaid wages claims. If the Court chooses not to stack these penalties, then these
18 PAGA penalties would be eliminated altogether. In the event the Court were to go this route,
19 Defendants' *maximum* exposure would be reduced from \$2,748,800 to \$1,985,800; this amount
20 could be further reduced by the Court based on Defendant's showing of good faith attempts to
21 comply with the law.

22 **VI. THE COURT SHOULD APPROVE THE PROPOSED PAGA SETTLEMENT**

23 **a. The PAGA Penalties Being Recovered are Reasonable Under the**
24 **Circumstances**

25 The terms of the parties' settlement are reasonable under the circumstances and serve the
26 purpose of PAGA. (*O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110,
27 1135.) Although Defendant's total maximum liability could result in \$2,748,800 in penalties, the
28 court has discretion to award a lesser amount than the maximum civil penalty allowed under

1 PAGA. Labor Code section 2699(e)(2). Here, the PAGA penalties being recovered are reasonable
2 for the reasons set forth above.

3 **b. Plaintiff's Requested Fees and Costs Should be Approved**

4 PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. (Lab. Code, §
5 2699(g).) In class actions, California state and federal courts have recognized that an appropriate
6 method for determining an award of attorneys' fees is based on a percentage of the total value of
7 benefits to class members by the settlement. (*Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
8 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van*
9 *Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir.
10 1997). One of the purposes of this equitable doctrine is to "spread litigation costs proportionally
11 among all the beneficiaries so that the active beneficiary does not bear the entire burden
12 alone." (*Vincent*, 557 F. 2d at 769.) Although this is not a class action, the same logic holds true
13 since a PAGA case is also a representative action.

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

28 Indeed, the California Supreme Court has also held that the award of attorneys' fees in
common fund wage and hour class action settlements should start with the percentage method. *See*

1 *Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming majority of
2 federal and state courts in holding that when class action litigation establishes a monetary fund for
3 the benefit of the class members, and the trial court in its equitable powers awards class counsel a
4 fee out of that fund, the court may determine the amount of a reasonable fee by choosing an
5 appropriate percentage of the fund created.”). The California Supreme Court in *Laffitte* affirmed a
6 fee award representing 33 1/3 percent of the fund.

7 Here, Plaintiff’s counsel requested fees are reasonable, as it represents 33 1/3 percent of the
8 fund. Furthermore, Plaintiff’s counsel has spent a significant amount of time litigating this case,
9 including time spent communicating with the clients, evaluating and analyzing the relevant legal
10 theories, drafting and filing various PAGA letters, drafting and filing the complaint and first
11 amended complaint, engaging in discovery, preparing for and attending mediation, and drafting the
12 instant motion. (Starr Decl. ¶16). In sum, Plaintiff’s counsel has spent approximately 183.75 hours
13 litigating this case to date, resulting in billable fees of approximately \$79,311.25. (Starr Decl. ¶17).
14 Therefore, Plaintiff’s counsel requested fees of \$40,000.00 is reasonable. (Starr Decl. ¶18).

15 Plaintiff has incurred \$7,440.80 in costs litigation this case. (Starr Decl. ¶20). These costs
16 include filing fees, service costs, costs to retain an expert to evaluate the time and payroll records,
17 mediation costs, and various other litigation costs. (Starr Decl. ¶21). The \$7,440.80 requested for
18 costs reimbursements should be granted, because it represents Plaintiff’s actual costs in relation to
19 this case.

20 **c. Plaintiff’s Requested Enhancement Payment Should be Approved**

21 Plaintiff participated in the discovery process, provided numerous documents to his counsel
22 for review, sat for a full day deposition and spent several hours collectively on the phone
23 answering questions about the case. (Starr Decl. ¶22). It is because of his willingness to participate
24 in the litigation process which ultimately resulted in this settlement. Furthermore, Plaintiff
25 provided a general release of all claims as part of the settlement, which Plaintiff’s counsel
26 calculated to be worth approximately \$15,483.30. (Starr Decl. ¶23). Therefore, the amount
27 attributed to Plaintiff as an enhancement payment is reasonable.

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