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ATTORNEYS FOR PLAINTIFF DANA LIPKEN

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SAN JOAQUIN COUNTY**  
**(UNLIMITED JURISDICTION)**

DANA LIPKEN,

PLAINTIFF,

V.

REYNOLDS PACKING CO., A  
CALIFORNIA CORPORATION, AND DOES 1  
THROUGH 10,

DEFENDANTS.

CASE No. STK-CV-UWT-2020-0005673

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

DATE:

TIME:

DEPT: 10C

JUDGE: Hon. Jayne C. Lee

## 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 Dana Lipken (“Lipken”) alleges that Defendant Reynolds Packing Co. (“Reynolds”) violated the PAGA by providing improper wage statements, including wage statements that contain the full social security number of employees. After informal discovery, Lipken determined there were risks to the PAGA claim, including Reynolds’ claim that the mistake was inadvertent and the Court has discretion to award substantially reduced or no penalties under the circumstances. Given the risks involved, the PAGA settlement is a good result.

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

## II. STATEMENT OF FACTS

### A. PAGA Notice

In early July, 2020, Lipken exhausted his 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, Lipken alleges that Reynolds issued noncompliant wage statements required by Labor Code § 226, including the full social security number of employees, among other things.

### B. Allegations in this Case

In July, 2020, Lipken filed a complaint in this Court, in which he alleges various individual claims against Reynolds, including wrongful termination, failure to pay vacation wages, inaccurate wage statements and failure to timely pay final wages. In September, 2020, after the PAGA exhaustion period expired, Lipken filed a First Amended Complaint adding the PAGA claim that Reynolds issued noncompliant wage statements to Lipken and other employees from July, 2019 to present. (Woodall Decl., ¶

3.) Specifically, Lipken contends in the First Amended Complaint that Reynolds violated the PAGA by including the full social security number on employees' wage statements, in violation of Labor Code § 226. (FAC, ¶¶ 30-35.) Lipken decided not to pursue PAGA claims based upon other allegations in the PAGA notice.

### **C. Discovery**

Lipken propounded informal discovery requests prior to mediation including, but not limited to, information relating to the number of employees who received wage statements containing their full social security numbers and how many wage statements contained this information from July, 2019 to present. (Woodall Decl., ¶ 4.)

### **D. Litigation Risks**

During informal discovery, Reynolds revealed that approximately 100 employees received wage statements containing their full social security numbers and that approximately 1,650 wage statements contained such information from July, 2019 until mid-July 2020. (Woodall Decl., ¶ 5; Reynolds Decl., ¶¶ 2-6.) Reynolds also produced all of Lipken's wage statements, which show his full social security number was sporadically included on wage statements. (*Id.*) Reynolds also revealed that the inclusion of the full social security number was inadvertent. (*Id.*) Reynolds argued the Court has discretion under the PAGA not to award any civil penalties or to substantially reduce them. (*Id.*) Thus, although the potential PAGA penalties were \$165,000 (\$100 x 1,650 wage statements), there were substantial risks the PAGA penalties awarded after lengthy and costly litigation would have been substantially less or none at all. (*Id.*)

### **E. Settlement Reached**

In January, 2021, the parties reached a settlement during a full day mediation with Jeff Wunderli. (Woodall Decl., ¶ 6, Exh. B.) The parties settled the PAGA claim for \$45,000., in addition to Reynolds' agreement to pay towards the costs of the settlement administrator and Lipken's mediation costs. Of the \$45,000 settlement amount, the parties agreed that, subject to Court approval, attorney's fees of \$15,000 would be paid to Lipken's counsel, along with litigation costs (\$1,847.10) and the remainder of the amount

1 (\$28,152.90) would be distributed to the State of California and PAGA Affected  
2 Employees (75 percent to the State of California and 25 percent to the PAGA Affected  
3 Employees). The parties agreed that in addition to the \$45,000 PAGA settlement  
4 amount, Reynolds would pay up to \$2,500 to the settlement administrator, Phoenix Class  
5 Action Administration Solutions (“Phoenix”), along with the costs of mediation beyond  
6 the initial \$500 paid by each party. (*Id.*) Phoenix has limited its fee to this \$2,500  
7 amount. (*Id.*)

8 The parties further agreed that if any PAGA Affected Employees failed to cash  
9 their checks after 180 days, the checks would be voided and the unclaimed amount would  
10 revert to cy pres recipients in accordance with Civil Code § 384. (*Id.*)

11 During the mediation, the parties also settled Lipken’s individual claims. In  
12 addition and as part of the settlement, the Parties also agreed that within 15 days of  
13 payment by Reynolds of the \$45,000 PAGA settlement amount to the settlement  
14 administrator, Phoenix, and payment of the settlement amount by Reynolds to settle  
15 Plaintiff’s individual claims, Plaintiff will file a request that the Court grant a judgment  
16 of dismissal with prejudice of the PAGA claims and all other claims set forth in the First  
17 Amended Complaint.

### 18 III. DISCUSSION

#### 19 A. The PAGA Settlement Should Be Approved By The Court Because It Is Fair, 20 Adequate And Reasonable

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

23 California Labor Code § 2699(l)(2) provides that the court shall review and  
24 approve any PAGA settlement.<sup>1</sup> The California Supreme Court has determined class  
25 certification is not necessary for PAGA cases. *Arias v. Superior Court* (2009) 46 Cal.4<sup>th</sup>  
26 969, 981. The PAGA statute authorizes courts to award a lesser amount than the

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27 <sup>1</sup> The PAGA also requires that a plaintiff notify the LWDA agency of the  
28 settlements, which Lipken has done. (Woodall Decl., ¶ 18, Exh. E.)

1 maximum civil penalties if, based on the facts and circumstances of the case, to do  
2 otherwise would be unjust, arbitrary and oppressive, or confiscatory. Labor Code §  
3 2699(e)(2); *Thurman v. Bayshore Transit Management* (2012) 203 Cal.App.4<sup>th</sup> 1112,  
4 1136 (the standard for reviewing a trial court's reduction of PAGA civil penalties is  
5 abuse of discretion).

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

1 settlement and maximum PAGA penalties).

2 Here, while the maximum penalties relating to the PAGA claims for noncompliant  
3 wage statements is \$165,000, Reynolds has raised a defense to the claim. (Woodall  
4 Decl., ¶¶ 5-8.) As noted earlier, Reynolds planned to defend against the claim by arguing  
5 it should not be assessed any PAGA penalties or greatly reduced PAGA penalties  
6 because its conduct was not intentional and awarding the maximum penalties would be  
7 unjust, arbitrary and oppressive, or confiscatory under Labor Code § 2699(e)(2). (*Id.*)

8 If Reynolds were to prevail on the foregoing argument, the PAGA penalties would  
9 be substantially reduced or nonexistent. Although Lipken was prepared to counter the  
10 arguments made by Reynolds, he was aware of the risks involved with prevailing on the  
11 merits. Indeed, given risks involved, Lipken’s counsel believes it was very possible that  
12 after extensive and costly litigation, the PAGA penalties awarded would not exceed or  
13 greatly exceed the \$45,000 settlement amount, exclusive of attorney’s fees and costs.  
14 (Woodall Decl., ¶ 8.) Thus, the \$45,000 settlement, along with Reynolds’ agreement to  
15 pay \$2,500 in settlement administrator costs and to pay mediation fees beyond the initial  
16 \$500 paid by each party, represents a substantial amount of the realistic potential  
17 recovery, which is an outstanding result for the State of California and the PAGA  
18 Affected Employees. (*Id.*)

19 **B. The Attorney’s Fees and Costs and Administrator’s Costs Are Reasonable**

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

22 **1. Reasonable Attorney’s Fees and Costs**

23 Under Labor Code § 2699(g)(1), reasonable attorney’s fees and costs are available  
24 to a plaintiff who prevails in a PAGA action.

25 The lodestar figure is based on the “careful compilation of the time spent and  
26 reasonable hourly compensation of each attorney ... involved in the presentation of the  
27 case.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-32; see also *Serrano v. Unruh*  
28 (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.<sup>2</sup> *Ketchum*, 24 Cal.4th at 1132. A multiplier is warranted in cases where counsel assumed significant risk and handled complex litigation matters on contingency. *Ketchum*, 24 Cal.4th at 1132-33; *Serrano v. Priest* (1977) 20 Cal.3d 25, 48. Other enhancement factors include the novelty and difficulty of the questions involved, the skill displayed in presenting them, and the extent to which the nature of the litigation precluded other employment by the attorneys. *Ketchum*, 24 Cal.4th at 1133 (citing *Serrano*, 20 Cal.3d at 49).

Here, the \$15,000 in attorney’s fees and costs agreed to by the parties is reasonable. Kevin Woodall of Woodall Law Offices has spent 47.9 hours and plans to

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<sup>2</sup> 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. 5<sup>th</sup> 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”).

Lodestar hourly rates should be within the range of rates charged by and awarded to attorneys of comparable experience, reputation, and ability for similar work, i.e., complex class action litigation. *Children’s Hospital and Med. Center v. Belshe* (2002) 97 Cal.4th 740, 783 (affirming rates that were “within the range of reasonable rates charged 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 spend another 10-15 hours prosecuting this action. (Woodall Decl., ¶¶ 14, Exh. D.)  
2 During this case, Mr. Woodall performed a number of tasks to advance the litigation and  
3 resolve this matter including, but not limited to, the following: (1) preparing the  
4 complaint and First Amended Complaint; (2) preparing the PAGA notice; (3) preparing  
5 informal discovery requests; (4) reviewing and analyzing documents, information and  
6 other discovery provided by Reynolds; (5) engaging in settlement negotiations with  
7 opposing counsel and engaging in a full day of mediation; (6) assisting in the preparation  
8 of the settlement agreement; (7) preparing the notice to be distributed to PAGA Affected  
9 Employees; (8) obtaining a quote from proposed settlement administrator; (9) conducting  
10 extensive research addressing various issues, including the defenses raised by Reynolds;  
11 (10) having multiple discussions with Lipken; (11) preparing a Case Management  
12 Conference statement and attending a Case Management Conference; (12) preparing this  
13 motion and supporting declarations. (Woodall Decl., ¶¶ 14-15.)

14 Moreover, in 2020, the San Francisco Superior Court determined that Mr.  
15 Woodall's reasonable hourly rate is \$845. In the past, this other courts have approved  
16 similar hourly rates for Kevin Woodall. (Woodall Decl, ¶ 13.)<sup>3</sup>

17 As Mr. Woodall has spent and plans to spend 62.9 hours prosecuting this action, at  
18 his reasonable hourly rate of \$845, the reasonable attorney's fees in this matter are  
19 \$53,150. Thus, the reasonable attorney's fees alone exceed the \$15,000 agreed to by the  
20 parties to for attorney's fees and costs.

21 In addition to incurring attorney's fees, Lipken has incurred and will incur

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22 <sup>3</sup> Mr. Woodall's rate is consistent with noted sources, such as the 2019-2020  
23 Updated Laffey Matrix ("Laffey Matrix"). (Woodall Decl, ¶ 16, Exh. C.) According to  
24 the Laffey Matrix, a reasonable rate for an attorney with over 20 years of experience,  
25 such as Mr. Woodall, is \$899. (*Id.*) Courts have routinely determined that the reasonable  
26 hourly rate is found in the Laffey Matrix. *Kempf v. Barrett Bus. Servs.* (N.D. Cal. Nov.  
27 20, 2007) 2007 U.S. Dist. LEXIS 89447; *Long v. Stanley Black & Decker, Inc.* (S.D. Cal.  
28 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 Lipken'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* (9<sup>th</sup> 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 additional costs, including the following: (Woodall Decl, ¶ 16):

2 Filing Fees/One Legal/process service: \$690

3 Research-Westlaw: \$450

4 Postage: \$7.10

5 Mediation fees: \$500

6 Expected One Legal/Process and Filing Fees Relating to this Motion: \$200

7 Total: \$1,847.10

8 **2. The Administrator's Fee Is Appropriate And Not Payable From**  
9 **Settlement Amount**

10 Phoenix provided a quote of \$2,500 for the estimated costs associated with  
11 administering the settlement, which was lower than quotes received by Lipken's counsel  
12 in similar cases. (Woodall Decl., ¶ 6.) Given this quote and good reviews by other  
13 attorneys, Phoenix was selected as the administrator. (*Id.*) As noted above, Reynolds  
14 agreed to pay this amount separately, such that it will not be paid from the \$45,000  
15 PAGA settlement amount.

16 **IV. CONCLUSION**

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

19 DATE: FEBRUARY 10, 2021

WOODALL LAW OFFICES

20 BY: 

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22 ATTORNEYS FOR PLAINTIFF, DANA LIPKEN  
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