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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SACRAMENTO

13 ALLANTE MILTON and RICK LEWIS,
individually and on behalf of all others
14 similarly situated,

15 Plaintiffs,

16 v.

17 CAPITOL GUEST SERVICES, LLC, a
California limited liability company; and
18 DOES 1 through 50, inclusive,

19 Defendants.
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CASE NO. 34-2020-00287884

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION TO APPROVE
SETTLEMENT AGREEMENT PURSUANT
TO THE PRIVATE ATTORNEYS GENERAL
ACT**

Date: May 6, 2021
Time: 9:00 a.m.
Department: 54

24 On ***, 2021, this Court held a hearing on Plaintiffs Allante Milton and Rick Lewis'
25 (collectively, "Plaintiffs") Motion to Approve Settlement Agreement Pursuant to the Private
26 Attorneys Generals Act (the "PAGA"). Plaintiffs appeared and argued through their counsel,
27 Dennis Hyun of Hyun Legal, and Defendant Capitol Guest Services, LLC ("Defendant")
28

1 appeared and argued through its counsel, Katie A. Collins of Weintraub Tobin. After
2 consideration of the papers and oral argument, the Court granted Plaintiff's Motion to Approve
3 Settlement.

4 ACCORDINGLY, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

5 1. Plaintiff's motion to approve the Settlement Agreement and Release
6 ("Agreement") pursuant to the Private Attorneys General Act, Labor Code § 2698, *et seq.*, is
7 granted.

8 2. Accordingly, Defendant is ordered to fund the \$35,000.00 PAGA Settlement
9 Amount pursuant to the terms of the Agreement.

10 3. Pursuant to Labor Code § 2699(i), the PAGA Settlement Amount of \$35,000.00
11 shall be distributed as follows:

- 12 • \$11,666.67 will be paid as attorneys' fees to Plaintiff's counsel;
- 13 • \$3,526.81 will be paid as Plaintiff's counsel's costs;
- 14 • \$2,500.00 shall be paid to each Plaintiff as compensation (for a total of \$5,000.00)
15 for serving as the PAGA representatives;
- 16 • \$1,150.00 will be paid to Phoenix Settlement Administrators (the "Settlement
17 Administrator") to administer the settlement;

18 4. The remaining balance of approximately \$13,656.52 (the "Net Settlement
19 Amount") shall be distributed as follows:

- 20 • 75%, or \$10,242.39 shall be paid to the Labor Workforce & Development Agency
21 (the "LWDA"), and 25%, or \$3,414.13 shall be paid the Aggrieved Employees.
22 Each Aggrieved Employee's share will be paid on the number of alleged violative
23 wage statements the employee worked during the PAGA Period. Specifically,
24 each Aggrieved Employee shall be allocated a proportionate share of the
25 Aggrieved Employee Amount based on the number of wage statements containing
26 payment of double time and holiday double time wages each Aggrieved Employee
27 received during the PAGA Period. (Agreement at § 2.6). Defendant shall provide
28 data to the Settlement Administrator establishing the number of wage statements

1 containing payment of double time and holiday double time wages each Aggrieved
2 Employee received during the PAGA Period. (*Id.*) The pro rata portion of the
3 Aggrieved Employee Amount shall be determined by dividing the total number of
4 wage statements issued during the PAGA Period containing payment of double
5 time and holiday double time wages into the Aggrieved Employee Amount to
6 arrive at a value per wage statement for each Aggrieved Employee. (*Id.*) The value
7 per wage statement shall be multiplied by the number of wage statements
8 containing payment of double time and holiday double time wages issued to each
9 Aggrieved Employee during the PAGA Period to calculate each Aggrieved
10 Employee's pro rata share of the Aggrieved Employee Amount. (*Id.*) This figure
11 will be known as the "Aggrieved Employee Settlement Award" (defined herein as
12 "the amount of money allocated to each Aggrieved Employee"). (*Id.*)

13 5. The Parties are ordered to carry out the terms of the settlement in accordance with
14 the terms of the Agreement.

15 IT IS SO ORDERED.

16 Dated: _____

17 _____
18 JUDGE OF THE SUPERIOR COURT
19 COUNTY OF SACRAMENTO
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28 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

1 **PLEASE TAKE NOTICE** that on _____, 2021, at _____ a.m., or
2 as soon thereafter as the matter may be heard, before the Honorable Christopher Krueger, judge
3 presiding, in Department 54 of the above referenced Court located at Department 31 of the above
4 referenced Court located at 720 9th St., Sacramento, CA 95814, Plaintiffs Rick Lewis and Allante
5 Milton (collectively, "Plaintiffs") will seek an Order approving settlement pursuant to the Private
6 Attorneys General Act.

7 This motion will be based on this notice of motion, the attached memorandum of points
8 and authorities, the declarations of William L. Marder and Dennis S. Hyun, which attaches the
9 Settlement Agreement and Release as Exhibit "A," the records and file herein, and on such other
10 evidence as may be presented at the hearing of the motion.

11 Dated: _____ 2021

POLARIS LAW GROUP

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13 By: _____
14 William L. Marder
15 Attorney for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The current operative complaint is premised upon Defendant Capitol Guest Services, LLC's ("Defendant") alleged violation of California Labor Code § 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") for civil penalties. Specifically, Plaintiffs Allante Milton and Rick Lewis (collectively, "Plaintiffs") (Defendant and Plaintiffs collectively, the "Parties") assert that Defendant failed to provide compliant wage statements by not listing the accurate double time and holiday double time rates. While this action was initially pled as a class and PAGA action, the Parties stipulated to dismiss the class claims, without prejudice, as Defendant disclosed that the violation was limited to 55 individuals who received a total of 203 wage statements. As such, the Parties agreed to proceed only on a PAGA basis and have reached a settlement as to only the PAGA Action as set forth herein and in the Parties' Settlement Agreement and Release, which is attached to the concurrently filed Declaration of Dennis Hyun ("Hyun Decl.") as Exhibit "A."

As will be explained in further detail below, based on the California Supreme Court's opinion in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009) and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014), Plaintiffs can seek appropriate civil penalties as called for under PAGA on behalf of the State of California and other similarly situated aggrieved employees without seeking class certification or meeting any of the requirements of class certification (i.e., numerosity, typicality, commonality and adequacy). As such, while the PAGA penalties settlement reached herein is on behalf of the State of California and other aggrieved employees, the usual two-step preliminary and final approval process is not required. Rather, as called for under Labor Code § 2699(l), all that is required is an approval by this Court of the PAGA penalties for which the Parties have agreed to settle.

The Parties have reached such an agreement, and thus, now seek this Court's approval of the payment of the settlement civil PAGA penalties.

II. FACTUAL AND PROCEDURAL BACKGROUND

1 Plaintiffs filed this putative class and representative action under the Private Attorneys
2 General Act (the “PAGA”) on October 23, 2020, alleging a violation of Labor Code § 226(a)
3 arising from wage statements allegedly not listing the correct overtime and double-time rates.

4 After filing the Action, the Parties engaged in direct settlement negotiations. As part of
5 those discussions, Defendant’s counsel disclosed that the alleged violation was limited to 55
6 employees and 203 pay periods. Thus, the Parties agreed that as part of this settlement (given the
7 low amount), the Parties would settle on a PAGA basis only. The Parties were able to reach the
8 instant settlement after engaging in arms’ length negotiations between highly experienced
9 counsel.

10 Based on the foregoing and on their own independent investigation and evaluation,
11 Plaintiff’s Counsel is of the opinion that the settlement with Defendant for the consideration and
12 on the terms set forth in the Settlement Agreement and Release (“Agreement,” or “Settlement
13 Agreement”) is fair, reasonable, and adequate and is in the best interest of the Plaintiff, the Labor
14 Workforce Development Agency (the “LWDA”), and the Aggrieved Employees in light of all
15 known facts and circumstances, including the risk of significant delay, the uncertainty associated
16 with litigation, the various defenses asserted by Defendant, and the numerous potential appellate
17 issues. Defendants and their Counsel also agree that the settlement is fair, reasonable, and
18 adequate.

19 **III. THE SETTLEMENT TERMS AND ACTUAL AMOUNTS REQUESTED**

20 The current PAGA settlement calls for a total settlement amount of \$35,000.00 for
21 resolution of this PAGA action. (See Agreement at § 2). The settlement contemplates that each
22 Plaintiff is to receive up to \$2,500.00 as compensation for serving as the PAGA representatives.
23 (Agreement at §§ 2.1, 2.2). The settlement also specifies up to 1/3 of the total settlement amount,
24 or \$11,666.66 will be paid as attorneys’ fees and actual litigation costs up to \$5,000.00.
25 (Agreement at § 2.3). Up to \$1,150.00 will be paid to the Settlement Administrator to administer
26 the settlement. (Agreement at § 2.4).

27 Accordingly, the remaining sum of _____ Dollars (\$) will be
28 distributed to the LWDA and the Aggrieved Employees on a 75% / 25% basis pursuant to PAGA.
(Agreement at § 2.5). Assuming these amounts are fully awarded,

_____ Dollars (\$_____) will be paid to the LWDA and approximately _____ Dollars (\$_____) will be distributed to the Aggrieved Employees (the “Settlement Payment”). (*Id.*)

The Aggrieved Employees are defined as all current and former California non-exempt employees who received a wage statement from Defendant containing payment of double time and holiday double time wages at any time during the period from April 28, 2019 through the present. (Agreement at § F). For purposes of this agreement, the term “PAGA Period” is defined as the time period from April 28, 2019, through the present. (*Id.*) Based upon Defendant’s records, there are 55 employees and 203 pay periods at issue. (*Id.*)

Each Aggrieved Employee’s share will paid on the number of alleged violative wage statements the employee worked during the PAGA Period. Specifically, each Aggrieved Employee shall be allocated a proportionate share of the Aggrieved Employee Amount based on the number of wage statements containing payment of double time and holiday double time wages each Aggrieved Employee received during the PAGA Period. (Agreement at § 2.6). Defendant shall provide data to the Settlement Administrator establishing the number of wage statements containing payment of double time and holiday double time wages each Aggrieved Employee received during the PAGA Period. (*Id.*) The pro rata portion of the Aggrieved Employee Amount shall be determined by dividing the total number of wage statements issued during the PAGA Period containing payment of double time and holiday double time wages into the Aggrieved Employee Amount to arrive at a value per wage statement for each Aggrieved Employee. (*Id.*) The value per wage statement shall be multiplied by the number of wage statements containing payment of double time and holiday double time wages issued to each Aggrieved Employee during the PAGA Period to calculate each Aggrieved Employee’s pro rata share of the Aggrieved Employee Amount. (*Id.*) This figure will be known as the “Aggrieved Employee Settlement Award” (defined herein as “the amount of money allocated to each Aggrieved Employee”). (*Id.*)

Based on the above, and as further detailed below, Plaintiff requests that this Court grant approval of the current PAGA penalties settlement.

IV. PAGA REQUIREMENTS

1 Prior to the enactment of PAGA, many of the penalties provided against employers for
2 violations of certain Labor Code provisions were solely within the province of the California
3 Department of Labor to seek, enforce, and assess. *Arias v. Superior Court*, 46 Cal.4th 969, 980
4 (2009). However, due to the lack of financing to California's agencies and the potential number
5 of Labor Code violations by California employers, the California Legislature found that it was in
6 the public interest to allow aggrieved employees to act as private attorneys general and to enforce
7 and recover penalties on behalf of other similarly situated aggrieved employees for Labor Code
8 violations committed by their employers. *Id.* As such, PAGA was enacted to allow such
9 enforcement and recovery by private individuals who have been aggrieved by their employers.
10 Moreover, 75% of any penalties recovered under PAGA by an aggrieved employee is to be paid
11 to California's LWDA and the remaining 25% is to be shared amongst the Aggrieved Employees.
12 Cal. Lab. Code § 2699(i).

13 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved
14 employee must first provide written notice to the LWDA and the employer of the particular Labor
15 Code violation the aggrieved employee alleges the employer has violated. *See* Cal. Labor Code §
16 2699.3(a)(1). Once the LWDA notifies the aggrieved employee that it does not intend to
17 investigate the alleged violations or the time for the LWDA to investigate the claims passes, the
18 aggrieved employee is allowed to proceed in a civil action against the employer on the alleged
19 violations on behalf of all other similarly situated employees. *See* Cal. Labor Code §
20 2699.3(a)(2)(A).

21 In 2009, the California Supreme Court considered the issue of whether an aggrieved
22 employee who brings a PAGA claim on behalf of himself and others similarly situated needs to
23 seek the PAGA claim as a class action and meet class certification requirements. *Arias*, 46 Cal.
24 4th at 976. After a substantial review of the legislative history of PAGA, the California Supreme
25 Court held that an aggrieved employee's representative action brought on behalf of other
26 similarly situated employees against an employer for PAGA violations do not need to meet the
27 requirements for class certification. *Id.* at 975; 980-88. As the California Supreme Court held, a
28 plaintiff bringing suit under PAGA does so as the proxy or agent of California's labor law
enforcement agencies. *Id.* at 986. Because an employee's PAGA action functions as a substitute

1 for an action brought by the government itself, a judgment in the PAGA action binds all those
2 who would be bound by a judgment in an action brought by the government. *Id.*

3 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the Superior
4 Court must “review and approve any penalties sought as part of a proposed settlement agreement”
5 relating to PAGA penalties. Labor Code § 2699(l). As the Parties to this current PAGA action
6 have reached such an agreement, the Parties now seek this Court’s approval as to the settlement
7 of the penalties amount.

8 **V. PLAINTIFF’S RATIONALE FOR AGREEING TO THE SETTLEMENT**

9 Labor Code § 226(a)(9) requires that wage statements containing payment of hourly
10 wages must specify the applicable hourly rates and number of hours worked. *See* Cal. Lab. Code
11 § 226(a)(9) (An employer must list “all applicable hourly rates in effect during the pay period and
12 the corresponding number of hours worked at each hourly rate by the employee.”).

13 Based on the pay periods at issue, the maximum amount of potential PAGA penalties was
14 \$50,750 (203 pay periods x \$250 per Labor Code § 226.3). (Declaration of Dennis S. Hyun
15 (“Hyun Decl. ¶ *). Therefore, the \$35,000 settlement represents 68.9% of the total exposure,
16 which is fair, adequate and reasonable.

17 Indeed, even assuming Plaintiff ultimately prevails, the Court still has discretion to reduce
18 any potential PAGA penalties. Pursuant to Labor Code § 2699(f)(2) the Court can decline to
19 award PAGA penalties where “...if, based on the facts and circumstances of the particular case,
20 to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or
21 confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks*
22 *Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial,
23 the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good
24 faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such
25 reduction to be proper. *Id.* at 539. Courts have also suggested that a reduction of civil penalties
26 may be appropriate where the alleged violation is a technical one. *Raines*, 23 Cal.App.5th at 681
27 (“a trial court has discretion in awarding civil penalties and may reduce the award for technical
28 violations that cause no injury”). Defendants have suggested that any penalties awarded should be
reduced under this line of reasoning.

1 Although Plaintiff believes in the merits of the alleged claims and maintains that there
2 does not exist any reason for reducing PAGA penalties, Plaintiff is aware that Defendant's
3 defenses could be persuasive to the Court. Such a ruling from this Court would have resulted in
4 Aggrieved Employees and the State of California receiving zero monies.

5 Additionally, even if Plaintiff were to prove his claims at trial, there is a possibility that
6 the Court could award a small percentage of PAGA penalties, as the Court has the discretion to
7 do. Thus, while the gross settlement amount is approximately 68.9% of the potential maximum of
8 PAGA penalties, this settlement, in light of all of the attendant risks, is fair and reasonable.

9 Finally, the only claims being released are the PAGA penalties are limited to the claims
10 pled:

Upon the approval by the Court of this Agreement, Plaintiffs,
11 individually and as the representative acting as a proxy or agent of
the LWDA, a State of California Executive Branch Agency, in this
12 Action, agrees to release Defendant, its joint employers, affiliates,
subsidaries, owners, members, partners, officers, directors,
13 predecessors, successors, assigns, agents, shareholders, investors,
insurers and legal representatives ("Released Parties") for penalties
14 under the California Private Attorneys' General Act predicated on
the violation of Labor Code § 226(a) based on the facts as alleged
15 in the Complaint that accrued at any time during the PAGA Period
("Released Claims").

16 (Agreement at § 6 (emphasis added)). The Aggrieved Employees are not releasing their
17 individual claims under such Labor Codes – only their PAGA claims/penalties. For all of the
18 foregoing reasons, this Settlement should be approved.

19 **VI. ATTORNEYS' FEES AND COSTS ARE APPROPRIATE**

20 PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. Cal. Lab. Code §
21 2699(g). Although this is not a class action, in representative class actions California state and
22 federal courts have recognized that an appropriate method for determining award of attorneys'
23 fees is based on a percentage of the total value of benefits to class members by the settlement.
24 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d
25 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v.*
26 *Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine
27 is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all
28

1 the beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent*,
2 557 F. 2d at 769.

3 The Common Fund doctrine is predicated on the principle of preventing unjust
4 enrichment. When a litigant’s efforts create or preserve a fund from which others derive benefits,
5 he may require the passive beneficiaries to compensate those who created the fund. Both
6 California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35;
7 *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th
8 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has
9 been applied “consistently in California when an action brought by one party creates a fund in
10 which other persons are entitled to share.” The reasons for applying the common fund doctrine
11 include: “...fairness to the successful litigant, who might otherwise receive no benefit because his
12 recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the
13 others who are entitled to share in the fund and who should bear their share of the burden of its
14 recovery; encouragement of the attorney for the successful litigant who will be more willing to
15 undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he
16 is assured that he will be properly and directly compensated should his efforts be successful.” *Id.*

17 Indeed, most recently, the California Supreme Court has also held that the award of
18 attorneys’ fees in common fund wage and hour class action settlements should start with the
19 percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the
20 overwhelming majority of federal and state courts in holding that when class action litigation
21 establishes a monetary fund for the benefit of the class members, and the trial court in its
22 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
23 of a reasonable fee by choosing an appropriate percentage of the fund created.”).

24 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent
25 of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that required a
26 multiplier of 2.13. (*Id.* at 487). As the Court held, only when the multiplier is “extraordinarily
27 high or low [should] the trial court [] consider whether the percentage method should be adjusted
28 so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

1 Here, Plaintiff's counsel seeks 1/3 of the Maximum Settlement Amount in attorneys' fees,
2 or \$11,666.67. Plaintiff's counsel has incurred far more than the requested fee, including
3 reviewing the data and calculating damages, attending mediation, and preparing the settlement
4 papers. (Hyun Decl. ¶ 7; Declaration of William Marder ("Marder Decl.") ¶ *).

5 Plaintiff's counsel's cost reimbursement request in the amount of \$_____ is also
6 reasonable, especially in light of the fact that the Parties agreed that Plaintiff's counsel may seek
7 up to \$_____ in costs under the Settlement Agreement. As set forth in their declarations, the
8 costs were all directly incurred in the prosecution of this action, including, but not limited to,
9 filing/service fees and deposition costs. (Marder Decl. ¶ __ ; Hyun Decl. ¶ __). As such, the
10 requested costs should be awarded as fair and reasonable.

11 **VII. NOTICE TO THE LWDA HAS BEEN PROVIDED**

12 On _____, 2021, Plaintiff uploaded the instant motion, Settlement Agreement, and
13 proposed order to the LWDA's website. (Hyun Decl. ¶ ____).

14 **VIII. CONCLUSION**

15 Based on the above, Plaintiff requests the Court approve the current PAGA settlement.
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17

18 DATED: March 8, 2021

POLARIS LAW GROUP, LLP

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20 By: _____
21 William L. Marder
22 Attorneys for PLAINTIFFS
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