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10 all aggrieved employees

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF SAN DIEGO**

13 CROSHEN KEITH WALTON, in a
14 Representative capacity only, and on behalf
15 of other members of the general public
16 similarly situated

17 Plaintiff

18 v.

19 GLOBAL POWER GROUP, INC., a
20 California Corporation, and DOES 1-10,
21 inclusive,

22 Defendants

CASE NO. 37-2020-00044702-CU-OE-CTL

**PLAINTIFF'S UNOPPOSED EX PARTE
APPLICATION *RE: PAGA SETTLEMENT*
APPROVAL**

Date: August 26, 2021

Time: 8:30 a.m.

Dept: C-66

Judge: Hon. Kenneth J. Medel

1 Plaintiffs CROSHEN KEITH WALTON respectfully submits the *Ex Parte* Application for
2 Approval of a PAGA representative Settlement. This Request is **Unopposed**. The LWDA was notified
3 of this proposal, and does **not object**.

4 I. SUMMARY OF APPLICATION

5 This is a Labor Code §2698 et seq. "Wage and Hour" ("PAGA") action brought against
6 GLOBAL POWER GROUP, INC. ("GPG"). As this is a "PAGA" action only. The Limitations Period
7 begins on September 11, 2018 and goes through the date of Settlement Approval. It is estimated that
8 there are approximately 74 employees within the proposed settlement group, which is made up of
9 GPG's non-exempt employees. (Decl. of Eric K. Yaeckel, ¶ 3).

10 Following several exchanges of information, analysis of numerous sets of time and wage data,
11 and Mediation presided over by Michael Young (Esq.), the parties reached a proposed settlement that
12 includes a payment of penalties to the LWDA. (Yaeckel Decl., ¶ 4; **Exhibit 1**).

13 On **August 24, 2021**, Plaintiff's counsel first notified the LWDA of the terms of the parties
14 agreement. (Yaeckel Decl., ¶ 5). To date, Plaintiff's counsel has not received notice that the LWDA
15 would intervene or object. (*Id.*)

16 On **August 25, 2021**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal the
17 entire ex parte application seeking settlement approval. (Yaeckel Decl., ¶ 6). To date, Plaintiff's
18 counsel has not received notice that the LWDA would intervene. (*Id.*)

19 Accordingly, proper notice has been provided and this application is **unopposed**.

20 The Maximum Settlement Amount of the proposed Settlement is **\$90,000.00** which is broken
21 down as follows:

- | | | | |
|----|---|--|---|
| 22 | * | \$2,300.00 | Settlement Administrator Fees; |
| 23 | * | \$30,00.00 | Attorneys' Fees (1/3 of Maximum Settlement Amount); |
| 24 | * | \$12,00.00 | Costs of Litigation. |
| 25 | * | Sub-Total of \$45,700 | |
| 26 | • | 75% (\$34,275) shall be assigned/paid to the LWDA as penalties. | |
| 27 | • | 25% (\$11,425) shall be disbursed as Individual Settlement Amounts to | |
| 28 | | the Representative Action Members. | |

1 (Yaeckel Decl., ¶ 7; See **Exhibit 1**).

2 Given the above, the average payment to each individual employee will be approximately
3 **\$154.39**. (*Id.*) Further, there are no restrictions for any of the **74** employees to file individual actions
4 as the release is limited to the representative PAGA claims only. (Yaeckel Decl., ¶ 8; **Exhibit 1**:
5 “RELEASE OF CLAIMS” § V, pg. 13).

6 **II. CONTROLLING AUTHORITY**

7 PAGA “authorizes an employee to bring an action for civil penalties on behalf of the state
8 against his or her employer for Labor Code violations committed against the employee and fellow
9 employees.” *Iskanian v. CLS Trans. Los Angeles* (2014) 59 Cal. 4th 348, 360. “To compensate for the
10 lack of [a]dequate financing of essential labor law enforcement functions,’ the California legislature
11 enacted PAGA to permit aggrieved employees to act as private attorneys general to collect civil
12 penalties for violations of the Labor Code.” *Sakkab v. Luxottica* (9th Cir. 2015) 803 F.3d 425.

13 Statutory penalties would be calculated according to Labor Code 2699(f)(2): If, at the time of
14 the alleged violation, the person employs one or more employees, the civil penalty is one hundred
15 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
16 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. However,
17 some courts have interpreted Labor Code section 2699(f)(2) to impose the enhanced "subsequent
18 violation penalty" or "heightened penalty" only after an employer has been notified that its conduct
19 violates the Labor Code. *See Trang v. Turbine Engine Components Technologies Corp.*, No. CV
20 12-07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) ("courts have held that employers
21 are not subject to heightened penalties for subsequent violations unless and until a court or
22 commissioner notifies the employer that it is in violation of the Labor Code").

23 “The superior court shall review and approve any settlement of any civil action filed pursuant
24 to [PAGA].” Cal. Lab. Code. § 2699(l). In so doing, the court must consider whether the proposed
25 “PAGA settlement is fair and adequate in view of the purposes and policies of the statute.” *O'Connor*
26 *v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1135 (N.D. Cal. 2016). Those purposes and policies
27 include “benefit[ing] the public by augmenting the state’s enforcement capabilities, encouraging
28 compliance with Labor Code provisions, and deterring noncompliance.” *Id.* at 1132-33; Accord *Syed*

1 v. *M-I LLC*, 2017 WL 714367, at *13 (E.D. Cal. Feb. 22, 2017) (concluding “the settlement amount
2 related to plaintiffs’ PAGA claims is fair, reasonable, and adequate in light of the public policy goals
3 of PAGA.”).

4 In deciding whether the settlement was “fair and adequate,” the *Flores* court looked at how the
5 parties divvied up the civil penalties under Section 2699(i) of the California Labor Code. *Flores* at
6 1076-77. As the court felt the parties’ division of penalties was fair and adequate pursuant to the
7 statute, the court approved the settlement. *Id.*

8 **III. DISCUSSION**

9 The parties reached the terms of their proposed settlement agreement following the exchange
10 of extensive information and employment records. The parties submit the proposed settlement of
11 PAGA penalties is fair, adequate, and reasonable.

12 **A. THE BASIS FOR THE *EX PARTE* REQUEST**

13 The instant *Ex Parte* request is based on the fact that **(1)** the PAGA period “cutoff date” is
14 contingent on Court approval, any delay diminishes the amounts received by the impacted employees;
15 and **(2)** Notice to certain ex-employees may be adversely impacted (*i.e.* ex-employees may change
16 their mailing address without a proper “forwarding address”) by further delay. (Yaeckel Decl., ¶ 9).

17 Additionally, the ongoing COVID-19 crisis has detrimentally impacted the majority of the
18 employees at issue due to layoffs and general reductions in work. Accordingly, an expedient approval
19 of this settlement will provide a direct benefit to the impacted employees at issue. It will also benefit
20 the Defendant, who has also been impacted by the economic downturn. Any “fixes” and/or internal
21 audits done in regard to the challenge policies provide for future Labor Code compliance. It also allows
22 **(2)** Defendant (who admirably “stepped up” to address these issues without heavily litigating the case)
23 the opportunity to move on, and focus on future business. (Yaeckel Decl., ¶ 10).

24 **B. THE NATURE AND SCOPE OF THE ALLEGED VIOLATIONS**

25 The Complaint alleges Labor Code violations which triggered penalties under the PAGA
26 statute (Labor Code §2698 et seq.). Plaintiff alleged he and others were denied compliant Meal and
27 Rest Periods, minimum wages, overtime, accurate wage statements, reimbursements, and suffered
28 waiting time violations. (See ROA #1, and Exhibit 1: “Plaintiff’s LWDA Notice” attached thereto).

Specifically, Plaintiff alleged that they - and other employees - received “interrupted,” “short,” “late,” or “missing” Meal Periods, including those documented within Defendant’s Time Records. (Yaeckel Decl., ¶ 11). Plaintiff also challenged whether Defendant maintained lawful meal and rest period practices. Plaintiff alleged he - and other employees - were not properly compensated due to Defendant’s failure to maintain accurate time records. (*Id.*)

C. ANALYSIS OF POTENTIAL CLAIMS, ON A REPRESENTATIVE BASIS

The catalyst of this litigation concerned allegations that Plaintiffs were denied legally compliant meal and rest periods, and were not paid for all hours worked. (Yaeckel Decl., ¶ 12).

Investigations completed by Plaintiff’s counsel revealed that some of Defendants’ employee records were not in compliance with California law. (Yaeckel Decl., ¶ 13). However, these investigations also revealed that the “rate of violation” by Defendant was significantly less than 100%. (*Id.*) On many of those occasions, it appears that Defendant did, in fact, comply with the law. (*Id.*)

Moreover, Plaintiff’s counsel is aware of the Court’s discretion to mitigate penalties pursuant to California Labor Code section 2699(e)(2). (Yaeckel Decl., ¶ 14). To confirm, Plaintiff’s counsel experienced the mitigation of “PAGA” penalties in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504. (*Id.*) In *Carrington*, Honorable Katherine Bacal significantly mitigated PAGA penalties (\$5 per violation), due to the efforts made by the employer to comply with the law. (*Id.*)

Plaintiff’s counsel, William B. Sullivan, has approximately 28 years of experience in “class action” and representative action litigation, both as plaintiff and defense counsel. (Yaeckel Decl., ¶ 15). Plaintiff’s counsel, Eric K. Yaeckel, has over 10 years of experience prosecuting class and representative action claims under the California Labor Code. (*Id.*) Plaintiff’s counsel, Eric K. Yaeckel and William B. Sullivan, are the attorneys of record in a matter that was recently heard (and favorably decided) before the California Supreme Court titled *Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58. (*Id.*) The *Donohue* matter was a certified class and PAGA action. (*Id.*) Plaintiff’s counsel were lead counsel on approximately 40 employment “wage and hour” claims with class action, or representative action allegations. (*Id.*) Based on said experience, it is the opinion of Plaintiff’s counsel that this settlement represents a fair and adequate payment. (Yaeckel Decl., ¶ 16).

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1 **D. THE ALLOCATION OF PENALTIES, AND *LIMITED RELEASE OF CLAIMS***

2 While Labor Code section 2699(*l*) requires a court to “review and approve any penalties sought
3 as part of a proposed settlement agreement,” it does not provide any guidance as to what is considered
4 an ‘adequate’ allocation of these penalties.

5 Courts that have weighed in on the review of a PAGA settlement have held the court must
6 consider whether the proposed "PAGA settlement is fair and adequate in view of the purposes and
7 policies of the statute." *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1135 (N.D. Cal. 2016).

8 Those purposes and policies include "benefit[ing] the public by augmenting the state's
9 enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring
10 noncompliance." *Id.* at 1132-33; Accord *Syed v. M-I LLC*, 2017 WL 714367, at *13 (E.D. Cal. Feb.
11 22, 2017) (concluding "the settlement amount related to plaintiffs' PAGA claims is fair, reasonable,
12 and adequate in light of the public policy goals of PAGA.").

13 Here the purposes of encouraging compliance and deterring non-compliance have been met.

14 Defendant, and its counsel, deserve credit for their willingness to consider - and address - the
15 allegations. Specifically, Defense Counsel (who have extensive experience and knowledge in "Wage
16 and Hour" litigation) agreed to produce a substantial amount of documents and information necessary
17 to evaluate the parameters of settlement. Following a full day Mediation and arms-length negotiations,
18 the parties have reached a proposed settlement that includes a settlement payment to resolve claims
19 for penalties under PAGA. (Decl. Yaeckel, ¶ 17).

20 After deductions for fees and costs ties seek to allocate **\$45,700.** of the total Gross Settlement
21 Amount to the PAGA Fund. 75% (**\$34,275.00**) shall be assigned and transmitted to the LWDA as
22 penalties. The remaining 25% (**\$11,425.00**) shall be allocated to the PAGA Settlement Employees on
23 a pro-rata basis based on the number of pay periods they worked during the PAGA Period. (Yaeckel
24 Decl., ¶ 7; Ex. 1 at ¶ 27(c), p. 12).

25 Given the above, the average payment to each individual employee will be approximately
26 **\$154.39**. The actual amount will vary based on pay periods worked. (*Id.*)

27 The parties contend the settlement agreement amount is fair, adequate, and reasonable.
28 (Yaeckel Decl., ¶ 16). Moreover, the PAGA settlement does not bar any employee from pursuing their

own individual Labor Code claims. (Yaeckel Decl., ¶ 8; **Exhibit 1**: “RELEASE OF CLAIMS” § V, pg. 13). The release only applies to the PAGA claims for penalties, based upon the allegations in Plaintiff’s operative Complaint. (*Id.*)

E. THE LWDA WAS NOTIFIED MULTIPLE TIMES, AND DOES *NOT* OBJECT

On **August 24, 2021**, Plaintiff’s counsel uploaded via the LWDA’s electronic filing portal the parties’ Settlement Agreement submitted with this application. (Yaeckel Decl., ¶ 5). To date, Plaintiff’s counsel has not received notice that the LWDA would intervene. (*Id.*)

On **August 25, 2021**, Plaintiff’s counsel uploaded via the LWDA’s electronic filing portal copies of this entire *ex parte* application, including the Notice, this supporting Memorandum, Declaration, and Proposed Order & Judgment. (Yaeckel Decl., ¶ 6). To date, Plaintiff’s counsel has not received any opposition from the LWDA. (*Id.*).

IV. CONCLUSION

The parties respectfully request that the Court approve their proposed allocation of PAGA penalties to the LWDA and the represented employees.

In the alternative, should the Court wish to have a noticed motion, Plaintiff asks for an order shortening time to have the motion heard based on these unopposed moving papers for as soon as the Court’s schedule will allow for it.

Dated: August 25, 2021

SULLIVAN & YAECKEL LAW GROUP, APC

Ernie Yaeckel

Attorney for Plaintiff CROSHEN KEITH WALTON, in
a Representative capacity only, on behalf of all
aggrieved employees