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Attorney for Plaintiff
BIANCA JAYANTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN THE COUNTY OF ALAMEDA
UNLIMITED JURISDICTION

LUIS ALBERTO GARCIA, RUBEN
ZAMORANO MORA, JUAN ROMAN LUNA,
JORGE OMAR, ERICK BECERRA, JORGE
LUNA IBARRA, MARCELO MORALES

Plaintiff,

-vs-

SMOAKLAND DISTRIBUTION LLC, IRFAN
JAFFERY, CHANG YI, DELIVERMD and
DOES 2-60 inclusive,

Defendants.

BIANCA JAYANTY, an individual,

Plaintiff,

v.

DELIVERMD d.b.a. SMOAKLAND, a
California Corporation; IRFAN JAFFERY, an
individual; and DOES 1- 20 inclusive,

Defendants.

Case No. RG20081357
Case No. RG20082062 (related case)

**NOTICE OF ENTRY OF ORDER
GRANTING JOINT UNOPPOSED
MOTION TO APPROVE PAGA
SETTLEMENT AND ATTORNEY'S
FEES**

Dept. 19

Assigned for all purposes to the Hon.
Stephen Kaus

**TO THE PARTIES, THEIR ATTORNEYS OF RECORD, AND THE LABOR
WORKFORCE DEVELOPMENT AGENCY, YOU ARE HEREBY NOTIFIED THAT** on
November 12, 2021, the Hon. Stephen Kaus of Department 19 entered its Order Granting
Plaintiffs LUIS ALBERTO GARCIA, RUBEN ZAMORANO MORA, JUAN ROMAN LUNA,
JORGE OMAR, ERICK BECERRA, JORGE LUNA IBARRA, MARCELO MORALES and
BIANCA JAYANTY's Joint Unopposed Motion To Approve Paga Settlement and Attorney Fees.

A true and correct copy of the Court's Order Granting Joint Unopposed Motion To Approve Paga Settlement and Attorney Fees is attached hereto as **Exhibit A**.

Dated: November 17, 2021

/s/ Carlos Jato

CARLOS JATO, Attorney for Plaintiffs LUIS
ALBERTO GARCIA, RUBEN ZAMORANO
MORA, JUAN ROMAN LUNA, JORGE
OMAR, ERICK BECERRA, JORGE LUNA
IBARRA, MARCELO MORALES

Dated: November 17, 2021

Anna

JOSHUA GREER, Attorney for Plaintiff
BIANCA JAYANTY

EXHIBIT A

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19 BIANCA JAYANTY

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 IN THE COUNTY OF ALAMEDA
22 UNLIMITED JURISDICTION

23 LUIS ALBERTO GARCIA, RUBEN
24 ZAMORANO MORA, JUAN ROMAN LUNA,
25 JORGE OMAR, ERICK BECERRA, JORGE
26 LUNA IBARRA, MARCELO MORALES

27 Plaintiff,

28 -vs-

SMOAKLAND DISTRIBUTION LLC, IRFAN
JAFFERY, CHANG YI, DELIVERMD and
DOES 2-60 inclusive,

Defendants.

BIANCA JAYANTY, an individual,

Plaintiff,

v.

DELIVERMD d.b.a. SMOAKLAND, a
California Corporation; IRFAN JAFFERY, an
individual; and DOES 1- 20 inclusive,

Defendants.

FILED
ALAMEDA COUNTY

NOV 12 2021

CLERK OF THE SUPERIOR COURT
By *[Signature]* Deputy

Case No. RG20081357
Case No. RG20082062 (related case)

54
[PROPOSED] ORDER GRANTING
JOINT UNOPPOSED MOTION TO
APPROVE PAGA SETTLEMENT
AND ATTORNEY'S FEES

Dept. 19
Date: October 25, 2021
Time: 3:00 p.m.

Reservation# R-2281448

Hon. Stephen Kaus

1 The JOINT UNOPPOSED MOTION TO APPROVE PAGA SETTLEMENT AND
2 ATTORNEY'S FEES (the "Motion") brought by Plaintiffs LUIS ALBERTO GARCIA, RUBEN
3 ZAMORANO MORA, JUAN ROMAN LUNA, JORGE OMAR, ERICK BECERRA, JORGE
4 LUNA IBARRA, MARCELO MORALES (hereinafter referred collectively as "Garcia
5 Plaintiffs") and BIANCA JAYANTI (hereinafter referred to as the "Jayanty Plaintiff" or "Ms.
6 Jayanty," and collectively with the Garcia Plaintiffs, they are referred to as "Plaintiffs") came on
7 for hearing on October 25, 2021 at 3:00 p.m. in the above-referenced Court. The Motion was
8 jointly brought before this Court by the Plaintiffs in the two related cases RG20081357 and
9 RG20082062 and the Clerk is hereby instructed to file this order in both cases. Based on the
10 papers submitted in this matter and arguments of counsel, and good cause appearing, the Court
11 **HEREBY GRANTS THE JOINT MOTION AS FOLLOWS:**

12 The Garcia Plaintiffs' First Amended Complaint alleges individual wage and hour
13 violation claims and an unfair business practices claim on behalf of the seven named Garcia
14 Plaintiffs only and also a representative claim under PAGA for defendants' alleged violations of
15 various Labor Code provisions regarding failure to pay for meal and rest periods, to pay overtime
16 wages, to provide accurate wage statements and to pay all wages in a timely manner. Defendants
17 dispute these claims. The Garcia Plaintiffs further contend that they worked as cannabis packers
18 at defendant Smoakland Distribution LLC's ("Smoakland") warehouse in Oakland.

19 Jayanty in her now-related Action alleges in her First Amended Complaint causes of
20 action for violations of FEHA, wrongful termination, violation of whistleblower protections,
21 individual wage and hour claims, unfair business practices and a representative PAGA cause of
22 action. Defendants dispute these claims also, Jayanty further alleges that worked at Smoakland's
23 offices in Oakland.

24 The Moving Jato Declaration at par. 8 a and b declares that the Garcia Plaintiffs settled
25 their individual claims for \$75,000 and that Jayanty settled her individual claims for \$120,000.
26 These individual settlements are not at issue on this Motion.

27 The Calif. Labor and Workforce Development Agency ("LWDA") was appropriately
28 served with the Moving papers on 9/1/2021 by on-line upload. (See Moving POS.)

1 The PAGA claims settled for a gross amount of \$208,000. (See Moving Jato Dec. Exh. A
2 at § 1.c.(1).) The estimated number of aggrieved employees for PAGA purposes is 64. (*Ibid.*) The
3 proposed Settlement Agreement defines “similarly aggrieved individuals” as “individuals who
4 worked for Employer (as defined in the Settlement Agreement) and who were allegedly
5 misclassified by the Employer as independent contractors between September 22, 2019 and the
6 date the Court approves [the Settlement] Agreement.” (*Id.* at p. 2 of 16 at fn 1.)

7 The Settlement Agreement states that attorneys’ fees will be up to \$68,640 (33% of the
8 gross settlement amount) and does not provide for an additional award for costs of suit. (*Id.* at
9 § 1.c.)

10 Plaintiffs’ counsel declares actual costs of suit in excess of \$5,300.00. (Jato Dec. ¶ 18;
11 Moving Greer Dec. 116.) The Settlement Agreement calls settlement administration costs of
12 \$2,000 to Settlement Administrator Phoenix Class Action Administrators (Jato Dec. at par. 11
13 and Exh. A at §1.c (3))

14 Based on the above numbers, this will leave a net PAGA settlement amount of \$137,360,
15 of which \$103,020 will be paid to the LWDA and \$34,340 will be paid to aggrieved employees.
16 (*Id.* at 11.)

17 The average payout to aggrieved employees will thus be approximately \$536.56.
18 Settlement negotiations involved one day of mediation on 7/9/2021 with mediator Eleanor Barr,
19 which ultimately resulted in a settlement. The court gives “considerable weight to the competency
20 and integrity of counsel and the involvement of a neutral mediator in [concluding] that [the]
21 settlement agreement represents an arm’s length transaction entered without self-dealing or other
22 potential misconduct.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.) (*See*
23 *also In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 504.)

24 Plaintiffs’ attorney calculates Defendant’s maximum possible PAGA exposure as \$1.6
25 million but with a more likely outcome at trial of \$320,000 based on maximum penalties of
26 \$5,000 per aggrieved employee. The gross Settlement amount thus represents approximately 65%
27 of the realistic maximum PAGA penalties. In light of the information and evidence provided in
28 Plaintiffs moving papers, the Court finds the settlement is fair, adequate and reasonable. The

1 motion makes an adequate analysis pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168
2 Cal.App.4th 116, because it provides a reasonable estimate of the number of aggrieved
3 employees, the total estimated possible recovery and meaningful explanation why the settlement
4 was reasonable in light thereof. (Jato Dec. ¶ 12-15.)

5 As stated above, Plaintiff has submitted evidence that she timely noticed the LWDA in
6 advance of the hearing.

7 The proposed definition of “similarly aggrieved individuals” (“individuals who worked
8 for Employer [as defined in the Settlement Agreement] and who were allegedly misclassified by
9 the Employer as independent contractors between September 22, 2019 and the date the Court
10 approves [the Settlement] Agreement”) is adequate for settlement purposes. (Jato Dec. Exh. A. at
11 p. 2 of 16 at fn. 1.)

12 The Court raised concerns as to whether the Mutual Release of Liability at § 2 of the
13 Settlement Agreement was properly limited by the exact factual predicate rule with respect to the
14 PAGA portion of the settlement. (*See Hesse v. Sprint Corp.* (9th Cir. 2010) 598 F.3d 581, 590.)
15 (*See also Hendricks v. Starkist Co.* (N.D. Cal. 2016) 2016 WL 692739 at * 2-4 [Denying motion
16 for final approval of class settlement because scope of release overbroad].) Although Plaintiffs
17 may release or waive their individual claims to any extent they wish as part of the settlement,
18 Plaintiffs have no authority to release or waive any rights of the State or other aggrieved
19 employees, except to the limited extent that if the settlement is approved, neither the State nor
20 other aggrieved employees may seek PAGA penalties against Defendants for the wage and hour
21 violations specifically identified in the PAGA notice(s) submitted to the LWDA prior to filing
22 suit for the period covered by the Settlement Agreement.

23 The Mutual Release of Liability at sec. 2.g. of the Settlement Agreement did not appear to
24 be so limited. Therefore, the Court requested that the Mutual Release of Liability portion of the
25 proposed Settlement Agreement be revised to state clearly that with respect to the PAGA claims
26 the settlement only releases claims that were made or could have been made based on the facts
27 and circumstances alleged in Plaintiffs’ operative Complaints.

28 In the parties’ supplemental submission dated October 18, 2021, Plaintiffs submitted a

1 revised release containing the following language to the satisfaction of the court:

2 With respect to the PAGA claims, the settlement and the releases of liability herein
3 releases only claims that were made or could have been made based on the facts
4 and circumstances alleged in Plaintiffs' operative Complaints (including any and
5 all amended Complaints) in both the Garcia Action and Jayanty Action, and neither
6 the State of California nor other aggrieved individuals may seek PAGA penalties
7 against the Defendants (i.e., Employer) for the wage and hour violations
8 specifically identified in the PAGA notice(s) submitted to the LWDA prior to filing
9 suit for the period covered by this Agreement. (10/18/21 Amended Release at p. 9)

10 With respect to Plaintiffs' request for attorneys' fees, the Court expressed
11 concern that it could not award attorneys' fees without reviewing information about counsel's
12 hourly rate and the amount of time Plaintiffs' legal counsel spent on the case. This is the law even
13 if the parties have agreed that Defendants will not oppose the motion for fees. (*Robbins v.*
14 *Alibrandi* (2005) 127 Cal.App.4th 438, 450-451.)

15 The Court notes that the Moving Declarations provide the total number of hours each
16 attorney worked on the cases and their respective hourly billing rates of \$550 and \$450 per hour
17 with very little detail regarding what work was performed with respect to those hours. Although
18 the Court does not necessarily require detailed billing records for a case of this size, a request for
19 fees should at a minimum provide some additional information regarding the work performed on
20 the case so that the Court may evaluate whether the hours claimed are reasonable in light of the
21 legal work actually performed.

22 The court notes that counsel is authorized by the Settlement Agreement to seek \$68,640 or
23 33% of the total value of the PAGA settlement, but did not seek any portion of counsel's declared
24 \$5,300+ costs of suit. When using the percentage of recovery approach, the court's benchmark
25 for fees is 30% of a total fund. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 495;
26 *Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1175; Consumer Privacy Cases
27 (2009) 175 Cal.App.4th 545, 557 fn 13; *Chavez v. Nettlelix, Inc.* (2008) 162 Cal.App.4th 43, 66 fit
28 11.)

When cross-checking with the lodestar/multiplier, the court will evaluate the lodestar
based on reasonable fees that would have been charged at hourly rates and then apply a

1 multiplier. The multiplier includes contingent fee risk and other factors.

2 Plaintiffs' counsel has submitted evidence showing that counsel has worked a total of
3 approximately 265 hours on this action with a total lodestar of \$128,985 based on hourly billing
4 rates of \$550 and \$450. (See Moving Jato, Greer and Berger Decls.)

5 However, this work apparently includes work performed in connection with Plaintiffs'
6 individual claims, for which the Settlement Agreement provides that Plaintiffs' counsel will be
7 paid a total of \$67,874.12. The \$5,300+ in costs presumably includes costs also attributable to the
8 individual claims.

9 The Court expressed that it was inclined to award Plaintiff attorneys' fees in the amount of
10 \$68,640, the amount requested. Explaining that although this amount is more than the Court's
11 30% benchmark, it represented a multiplier of only 1.016 upon the lodestar and costs for the
12 lawsuit as a whole. In light of the results achieved, the Court deemed the amount actually
13 awarded to be appropriate.

14 Accordingly, Plaintiffs' respective counsel submitted additional information to the Court.
15 The Court was satisfied by the submission of counsel for Plaintiffs dated October 18, 2021 which
16 contained a detailed breakdown of the work performed in the case.

17 The Court also APPROVES payment of \$2,000 to Phoenix Class Action Administrators
18 to administer distribution of settlement funds to aggrieved employees.

19 The Court hereby orders that 10% of any fee award be kept in the administrator's trust
20 fund until the completion of the distribution process and Court approval of a final accounting.

21 The Court hereby sets a compliance hearing on January 25, 2021
22 at 3p.m. after the completion of the distribution process and the expiration of the time to
23 cash checks for counsel for plaintiff and the Administrator to submit a summary accounting how
24 the funds have been distributed to the aggrieved employees and the status of any unresolved
25 issues. If the distribution is completed, the Court will at that time release the hold-back of
26 attorney fees.

27 In summary, pursuant to Labor Code sec. 2699(1), the court approves the PAGA
28 settlement totaling the gross amount of \$208,000.00 to be distributed as follows:

1. \$68,640.00 as an award of attorney's fees and costs representing 33.33% of the total PAGA penalties settlement to be allocated as follows: the amount of \$27,465.00 to Carlos Jato Esq. and \$41,184.00 to Berger Greer LLP. With the aforementioned hold-back until after distribution.
2. \$2,000.00 in settlement administration costs to be paid to Phoenix Class Action Administrators to administer the payment to the 64 individuals.
3. 75% of the net PAGA settlement amount allocated to the Labor Workforce Development Agency in the total amount of \$103,020.00
4. 25% of the net PAGA settlement amount allocated to the 64 individuals in the total amount of \$34,340.00

The clerk of the court is hereby directed to file this order in both related cases:

RG20081357 and RG20082062

IT IS SO ORDERED.

11-12-2021



HON. JUDGE STEPHEN KAUS

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number: RG20081357/RG20082062

Case Name: GARCIA v. SMOAKLAND DISTRIBUTION LLC
JAYANTY v. DILVERMD d.b.a.SMOAKLAND, a California Corporation

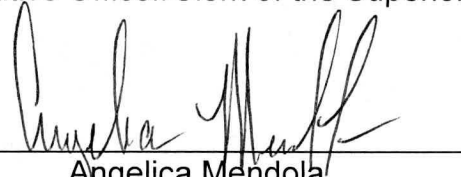
DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy **Order Granting Joint Unopposed Motion To Approve PAGA Settlement and Attorney's Fees** filed on November 12, 2021 was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, California.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 16, 2021

Chad Finke, Executive Officer/Clerk of the Superior Court

By: _____


Angelica Mendola
Deputy Clerk

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PROOF OF SERVICE

My business address is 468 N Camden Dr Suite 278B, Beverly Hills, California 90210. I am employed in the County of Los Angeles where this service occurs. I am over the age of 18 years and not a party to the within case.

On 11/17/2021, following ordinary business practice, I caused to have served the foregoing document(s) described as:

NOTICE OF ENTRY OF ORDER GRANTING JOINT UNOPPOSED MOTION TO APPROVE PAGA SETTLEMENT AND ATTORNEY'S FEES

On the parties listed below:

Sean B. Gentry (SBN 273061) Elizabeth L. Hurwitz (SBN 278846) AD ASTRA LAW GROUP, LLP 582 Market Street, 17th Floor San Francisco, CA 94104 Telephone: (415) 795-3579 Facsimile: (415) 276-1976 Email: sgentry@astralegal.com Email: ehurwitz@astralegal.com	CARLOS JATO, SBN 282710 LAW OFFICE OF CARLOS JATO 819 Eddy Street San Francisco, CA 94109 Tel: 415.771.6174 Fax: 415.474.3748 E-mail: cgjato@jato-law.com
Labor Workforce Development Agency By transmitting a copy of the entire motion electronically on the day in this proof of service through the agency's portal at https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html	

(x) (VIA ELECTRONIC SERVICE) by transmitting electronically via email the document(s) listed above to the recipient(s) set forth above on this date.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Los Angeles, California on 11/17/21.



Joshua C. Greer, Esq.