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Cruzelm Martinez, Renee Robinson and Ronald Pigram

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

CRUZELMA MARTINEZ, RENEE
ROBINSON, LISA STEINER, and RONALD
PIGRAM, individually, and on behalf of other
members of the general public similarly
situated and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act;

Plaintiffs,

v.

BURGER REHABILITATION SYSTEMS,
INC., a California corporation; BURGER
ASSOCIATES, INC., a California corporation;
BURGER PHYSICAL THERAPY
SERVICES, INC., a California corporation;
BURGER PHYSICAL THERAPY AND
REHABILITATION AGENCY, INC., a
California corporation; CAROL BURGER, an
individual, and DOES 4 through 100, inclusive,

Defendants.

Case No.: 34-2020-00286930-CU-OE-GDS

**NOTICE OF UNOPPOSED MOTION
FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT (CAL.
LABOR CODE § 2698, ET SEQ.)
SETTLEMENT AGREEMENT AND
AWARD OF PAGA COUNSEL FEES
PAYMENT, PAGA COUNSEL
LITIGATION EXPENSES PAYMENT,
AND ADMINISTRATION EXPENSES
PAYMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

*[Filed concurrently with: (1) Declaration of
Devin Rauchwerger; (2) Declaration of
Selena Matavosian; (3) Declaration of Jodey
Lawrence; and (4)[Proposed] Order]*

RESERVATION ID: A-286930-006

Hearing Information:

Date: October 2, 2026
Time: 9:00 am
Dept.: 8A
Judge: Hon. Jill Talley

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9 Attorneys for Plaintiffs
Cruzelm Martinez, Renee Robinson and
10 Ronald Pigram
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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on October 2, 2026, at 9:00 a.m., or as soon thereafter
3 as this matter may be heard by the Court in Department 8A of the Sacramento County Superior
4 Court, located at Tani G. Cantil-Sakauye Courthouse, 500 G Street, Sacramento, CA 95814,
5 Plaintiffs Cruzelma Martinez (“Plaintiff Martinez”), Renee Robinson (“Plaintiff Robinson”),
6 and Ronald Pigram (“Plaintiff Pigram”) (together, “Plaintiffs”) will and hereby do move for
7 entry of the following orders:

- 8 1. Granting approval, pursuant to California Labor Code section 2699(s)(2), of the
9 Settlement between Plaintiffs and Defendants Burger Rehabilitation Systems,
10 Inc., Burger Associates, Inc., Burger Physical Therapy Services, Inc., Burger
11 Physical Therapy and Rehabilitation Agency, Inc., and Carol Burger (collectively,
12 “Defendants”), resolving the claims brought pursuant to the Private Attorneys
13 General Act of 2004 (“PAGA”), as set forth in the PAGA Settlement Agreement
14 (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as
15 **“EXHIBIT 1”** to the Declaration of Devin Rauchwerger, including but not limited
16 to, the plan of allocation and distribution of the Gross Settlement Amount for
17 payment of the LWDA PAGA Payment to the California Labor and Workforce
18 Development Agency (“LWDA”), Individual PAGA Payments to the Aggrieved
19 Employees, PAGA Counsel Fees Payment and PAGA Counsel Litigation
20 Expenses Payment to PAGA Counsel, and the Administration Expenses Payment
21 to the Administrator.
- 22 2. Approving the Gross Settlement Amount of \$285,000.00.
- 23 3. Approving the Net Settlement Amount, estimated to be \$120,968.75, which will
24 be distributed to the LWDA and to the Aggrieved Employees, pursuant to
25 California Labor Code section 2699, of which seventy-five percent (75%),
26 estimated to be \$90,726.56, will be paid to the LWDA (“LWDA PAGA
27 Payment”) and twenty-five percent (25%), estimated to be \$30,242.19, will be
28 paid to the Aggrieved Employees (“Individual PAGA Payments”);

4. Appointing Phoenix Class Action Administration Solutions (“Administrator”) as the Administrator;
5. Directing Defendants to fund the Gross Settlement Amount of \$285,000.00 in accordance with the Settlement Agreement, and directing the Administrator to distribute the Gross Settlement Amount in accordance with the Settlement Agreement;
6. Directing the mailing of Individual PAGA Payment checks to the Aggrieved Employees in accordance with the Settlement Agreement, along with the Notice of PAGA Settlement, substantially similar in content and form to that attached as “EXHIBIT A” to the Settlement Agreement;
7. Awarding \$6,250.00 to the Administrator as an Administration Expenses Payment; and
8. Awarding to PAGA Counsel \$95,000.00 as compensation for reasonable attorneys’ fees (PAGA Counsel Fees Payment) and \$62,781.25 for reimbursement of litigation costs and expenses (PAGA Counsel Litigation Expenses Payment) (“Attorneys’ Fees and Costs”), pursuant to former California Labor Code section 2699(g)(1), applicable to this Action.

The Settlement Agreement and moving and supporting papers for this motion are being concurrently submitted to the California Labor and Workforce Development Agency in conformity with California Labor Code section 2699(s)(2).

This motion is made pursuant to California Labor Code section 2699(s)(2), which provides for review and approval by the Court of the Settlement of a civil action filed pursuant to PAGA.

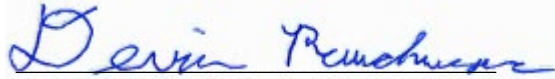
This motion will be based upon the following Memorandum of Points and Authorities, the Settlement Agreement, the Declaration of Plaintiffs’ Counsel Devin Rauchwerger in support thereof, Declaration of Plaintiffs’ Counsel Selena Matavosian, the Declaration of Jodey Lawrence from Phoenix Class Action Administration Solutions, as well as the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may

1 be presented at the hearing on this motion.

2
3 Dated: September 11, 2026

DOMB & RAUCHWERGER LLP

4
5 By:



ZACK I. DOMB

DEVIN E. RAUCHWERGER

Attorneys for Plaintiffs,

6 Cruzelma Martinez, Renee Robinson and Ronald
7 Pigram
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Plaintiffs seek approval of the Settlement Agreement entered into between Plaintiffs, on
4 behalf of the State of California and the Aggrieved Employees, and Defendants, pursuant to
5 California Labor Code section 2699(s)(2). (The Settlement Agreement (“SA”) is attached to the
6 Declaration of Devin Rauchwerger (“Rauchwerger Decl.”) at ¶ 2, **EXHIBIT 1.**)

7 Subject to approval by the Court, Plaintiffs and Defendants (together, the “Parties”) have
8 agreed to resolve the PAGA claims asserted in the above-captioned action, brought pursuant to
9 the Private Attorneys General Act of 2004, California Labor Code section 2698, et seq.
10 (“PAGA”), for a Gross Settlement Amount (“GSA”) of \$285,000.00. (SA §§ 1.13, 3.1.)

11 The Gross Settlement Amount will be used to pay the PAGA Counsel Fees Payment and
12 PAGA Counsel Litigation Expenses Payment to PAGA Counsel, the Administration Expenses
13 Payment, and the Net Settlement Amount, which will be paid to the California Labor and
14 Workforce Development Agency (“LWDA”) and the Aggrieved Employees, defined as all
15 persons employed by Burger Rehabilitation Systems, Inc. (“BRSI”) as hourly-paid or non-
16 exempt employees in the State of California at any time during the PAGA Period from October
17 13, 2019 through and including August 22, 2024. (SA §§ 1.3, 1.4, 1.13, 1.18, 1.21, 1.23, 3.2-
18 3.3.)

19 The Net Settlement Amount is currently estimated to be \$120,968.75 and is calculated
20 by taking the Gross Settlement Amount of \$285,000.00, less the PAGA Counsel Fees Payment
21 of \$95,000.00, the PAGA Counsel Litigation Expenses Payment of \$62,781.25, and the
22 Administration Expenses Payment of \$6,250.00. (SA §§ 1.18, 3.2.1.1-3.2.1.2; Phoenix Decl. ¶
23 22, **Exhibit B.**) The Net Settlement Amount will be distributed as follows: seventy-five percent
24 (75%) (\$90,726.56) to the LWDA (“LWDA PAGA Payment”) and twenty-five percent (25%)
25 (\$30,242.19) to the Aggrieved Employees (“Individual PAGA Payments”). (SA § 3.3.)
26 Aggrieved Employees will be entitled to their pro rata shares of the Individual PAGA Payments,
27 based on the number of PAGA Pay Periods each Aggrieved Employee worked during the PAGA
28 Period. (SA § 3.3.1.1.)

1 The payments to Aggrieved Employees will be treated and reported for tax purposes as
2 1099 payments and, if applicable, Aggrieved Employees will be issued IRS Forms 1099 for their
3 Individual PAGA Payments by the Administrator. (SA § 1.14.)

4 Plaintiffs submit that the Settlement is fair, adequate, and reasonable, and meets the
5 requirements for approval by the Court based upon the relevant fairness factors, the relative
6 strengths of the PAGA claims, the risk, expense, and complexity of further litigation, the benefit
7 conferred by the Settlement, the scope of the release of claims, the experience and views of
8 counsel, and the reasonableness of the Net Settlement Amount. Plaintiffs respectfully request
9 that this Court approve the Settlement, award the PAGA Counsel Fees Payment, PAGA Counsel
10 Litigation Expenses Payment, and the Administration Expenses Payment, which are provided
11 for by the Settlement and requested herein.

12 **II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY**

13 Defendant Burger Rehabilitation Systems, Inc. (“BRSI”) is headquartered in Folsom,
14 California, and provides various physical therapy and rehabilitation services through outpatient
15 rehabilitation centers located throughout California. (Rauchwerger Decl. ¶ 3.) Plaintiffs
16 Cruzelmá Martínez, Renee Robinson, and Ronald Pigram are former employees of BRSI. (*Id.*)
17 Plaintiff Martínez worked for BRSI from approximately August 2002 until May 2019 as a front-
18 office receptionist/aide. (*Id.*) Plaintiff Robinson worked for BRSI from approximately June
19 2017 until May 2019 as an hourly employee in the accounting department. (*Id.*) Plaintiff Pigram
20 worked as a Physical Therapy Assistant from approximately October 2015 to approximately
21 August 2019. (*Id.*)

22 Prior to commencing this lawsuit, on October 7, 2020, as required by California Labor
23 Code section 2699.3, Plaintiff Cruzelmá Martínez provided the LWDA and BRSI with written
24 notice of her intent to assert claims under PAGA and the basis for those claims. (Rauchwerger
25 Decl. ¶ 4.) A true and correct copy of Plaintiff’s original Notice from October 7, 2020 is attached
26 to the Declaration of Devin Rauchwerger as **EXHIBIT 2**. (*Id.*) On April 11, 2025, Plaintiffs
27 submitted an Amended PAGA Notice to the LWDA adding Burger Physical Therapy Services,
28 Inc., Burger Physical Therapy and Rehabilitation Agency, Inc., and Carol Burger as additional

1 alleged violators¹. (*Id.*) A true and correct copy of Plaintiffs’ Amended PAGA Notice is attached
2 to the Declaration of Devin Rauchwerger as **EXHIBIT 3**. (*Id.*)

3 On October 13, 2020, Plaintiff Cruzelma Martinez filed a Complaint alleging ten causes
4 of action for (1) Violation of Cal. Labor Code §§ 510 and 1198 (Unpaid Overtime), (2) Violation
5 of Cal. Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums), (3) Violation of Cal.
6 Labor Code § 226.7 (Unpaid Rest Period Premiums), (4) Violation of Cal. Labor Code §§ 1194,
7 1197, and 1197.1 (Unpaid Minimum Wages), (5) Violation of Cal. Labor Code §§ 201 and 202
8 (Final Wages Not Timely Paid), (6) Violation of Cal. Labor Code § 204 (Wages Not Timely
9 Paid During Employment), (7) Violation of Cal. Labor Code § 226(a) (Failure to Provide
10 Compliant Wage Statements), (8) Violation of Cal. Labor Code § 1174(d) (Failure to Maintain
11 Requisite Payroll Records), (9) Violation of Cal. Labor Code §§ 2800 and 2802 (Failure to
12 Reimburse Necessary Business Expenses), and (10) Violation of Cal. Business and Professions
13 Code § 17200, et seq. (Unfair Business Practices), against BRSI in the Sacramento County
14 Superior Court (“Court”), Case No. 34-2020-00286930 (the “Action”). (Rauchwerger Decl. ¶
15 5.)

16 On September 27, 2022, Plaintiffs filed a First Amended Complaint adding parties and
17 a cause of action for civil penalties under PAGA. (Rauchwerger Decl. ¶ 6.) Thereafter, on May
18 23, 2025, Plaintiffs filed a Second Amended Class Action Complaint for Damages and
19 Complaint for Enforcement Under the California Private Attorneys General Act, which is the
20 operative complaint in the Action. (*Id.*)

21 The Parties participated in multiple mediation sessions, including mediation with Jeffrey
22 Ross on December 6, 2021, and mediations with Brandon McKelvey, Esq. on January 24, 2024,
23 and September 19, 2025. (Rauchwerger Decl. ¶ 7.) The Parties also engaged in substantial
24 discovery, including multiple PMK depositions and the depositions of Plaintiffs. (*Id.*) In May
25 2025, the Parties agreed to temporarily hold off on further discovery and depositions while a
26 third-party financial expert evaluated Defendants’ financial condition and ability to pay. (*Id.*)

27
28 ¹ The Settlement Agreement identifies April 10, 2025 as the date Plaintiffs submitted the Amended PAGA
Notice. That date is a typographical error. Plaintiff Martinez submitted the Amended PAGA Notice to the LWDA
on April 11, 2025.

1 The financial expert completed the assessment at the end of July 2025, and the resulting financial
2 report was provided to Plaintiffs’ counsel on August 3, 2025. (*Id.*) The Parties thereafter
3 participated in a third day of mediation on September 19, 2025, presided over by Brandon
4 McKelvey, Esq., an experienced mediator of wage-and-hour class and representative actions.
5 (*Id.*) That mediation ultimately resulted in the Parties executing a Memorandum of
6 Understanding on October 27, 2025 to resolve the matter on a PAGA-only basis while
7 dismissing the class claims without prejudice, and led to the Settlement Agreement now
8 presented to this Court for approval. (Rauchwerger Decl. ¶ 7; Declaration of Selena Matavosian
9 (“Matavosian Decl.”) ¶¶ 3–8.)

10 Plaintiffs now move for an order granting approval of the PAGA Settlement pursuant to
11 California Labor Code section 2699(s)(2). Pursuant to California Labor Code section
12 2699(s)(2), the Settlement Agreement and this motion, along with all supporting documentation,
13 have been provided to the Labor and Workforce Development Agency. (Rauchwerger Decl. ¶
14 8, **EXHIBIT 4**.)

15 **III. SUMMARY OF THE SETTLEMENT TERMS**

16 **A. Aggrieved Employees**

17 The Aggrieved Employees who are covered by the Settlement are defined as: “all
18 persons employed by Burger Rehabilitation Systems, Inc. as hourly-paid or non-exempt
19 employees in the State of California at any time during the PAGA Period.” (SA § 1.4.)

20 Based on information provided by Defendants, there were approximately 631 Aggrieved
21 Employees who worked approximately 20,202 PAGA Pay Periods. (SA § 4.1.)

22 **B. Distribution of the Gross Settlement Amount**

23 Under the terms of the Settlement Agreement, Defendants will pay a Gross Settlement
24 Amount of \$285,000.00. (SA § 3.1.) The Net Settlement Amount will be the Gross Settlement
25 Amount less the following amounts: (1) PAGA Counsel Fees Payment of \$95,000.00 and PAGA
26 Counsel Litigation Expenses Payment of \$62,781.25 to PAGA Counsel; and (2) Administration
27 Expenses Payment estimated not to exceed \$6,250.00 to Phoenix Class Action Administration
28 Solutions (“Phoenix” or “Administrator”). (SA §§ 3.2.1.1-3.2.1.2; Phoenix Decl. ¶ 22, **Exhibit**

1 **B.)** There is no Enhancement Payment under the Settlement Agreement.² The Net Settlement
2 Amount will be fully distributed to the Aggrieved Employees and the LWDA, as described in
3 Part III.C, *infra*.

4 **C. Distribution of the Net Settlement Amount**

5 Seventy-five percent (75%) of the Net Settlement Amount (\$90,726.56) will be
6 distributed to the LWDA (i.e., LWDA PAGA Payment) and twenty-five percent (25%) of the
7 Net Settlement Amount (\$30,242.19) (i.e., Individual PAGA Payments) will be distributed to
8 the Aggrieved Employees on a *pro rata* basis, based on the total number of PAGA Pay Periods
9 worked by Aggrieved Employees during the PAGA Period. (SA § 3.3.) The Administrator will
10 calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved
11 Employees' 25% share of the Net Settlement Amount (\$30,242.19) by the total number of
12 PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)
13 multiplying the result by each Aggrieved Employee's PAGA Pay Periods. (SA § 3.3.1.1.)

14 Based on approximately 631 Aggrieved Employees, the estimated average Individual
15 PAGA Payment is approximately \$47.93 per Aggrieved Employee. Based on approximately
16 20,202 PAGA Pay Periods, the estimated payment rate is approximately \$1.50 per PAGA Pay
17 Period. Actual Individual PAGA Payments will vary based on the number of PAGA Pay Periods
18 attributable to each Aggrieved Employee. (Rauchwerger Decl. ¶ 29.)

19 Defendants will fund the Gross Settlement Amount in three equal installments, with the
20 first installment due thirty (30) days after the Court approves the Settlement and each subsequent
21 installment due six (6) months thereafter, with the Gross Settlement amount to be fully funded
22 by no later than October 27, 2027. (SA §§ 1.12, 4.3.)

23 No later than fifteen (15) days after the Effective Date, BRSI will provide the
24 Administrator with Aggrieved Employee Data, including each Aggrieved Employee's full
25 name, last-known mailing address, Social Security number, and the number of PAGA Pay
26 Periods worked during the PAGA Period. (SA §§ 1.5, 4.2.)

27 Within fifteen (15) days after Defendants fully fund the Gross Settlement Amount, the

28 ² The three Plaintiffs entered into individual settlement agreements to resolve their individual wage and hour claims with Defendants.

1 Administrator will mail the Notice of PAGA Settlement and all Individual PAGA Payment
2 checks to the Aggrieved Employees by First-Class United States Mail. At that time, the
3 Administrator will also issue the LWDA PAGA Payment, Administration Expenses Payment,
4 PAGA Counsel Fees Payment, and PAGA Counsel Litigation Expenses Payment. (SA § 4.4.)
5 Each Individual PAGA Payment check will remain valid and negotiable until the stated Void
6 Date, which will be not less than one hundred eighty (180) days from the date of mailing. (SA
7 § 4.4.1.)

8 For each Individual PAGA Payment check returned as undeliverable without a USPS
9 forwarding address, the Administrator will attempt to locate a valid mailing address for the
10 Aggrieved Employee using the Aggrieved Employee Address Search. Within seven (7) days
11 after receiving a returned check, the Administrator will re-mail the check to any USPS
12 forwarding address provided or to an address identified through the Aggrieved Employee
13 Address Search. (SA § 4.4.2.)

14 For any Aggrieved Employee whose Individual PAGA Payment check remains
15 uncashed after the applicable Void Date, the Administrator shall transmit the funds represented
16 by the uncashed check to the California State Controller's Office in the name of the Aggrieved
17 Employee pursuant to the California Unclaimed Property Law. (SA § 4.4.3.)

18 **D. The Scope of the Release in the Settlement Agreement**

19 Upon the date that Defendants fully fund the entire Gross Settlement Amount, Plaintiffs
20 and the State of California, on behalf of the Aggrieved Employees, will be deemed to release
21 Defendants and all Released Parties from the Released PAGA Claims. (SA § 6.) The Released
22 Parties are defined as Defendants and any of their predecessors, successors, subsidiaries,
23 parents, and affiliates, as defined by Corporations Code section 150, and each of their
24 supervisory or managerial employees, managing agents, shareholders, directors, and officers.
25 (SA § 1.29.)

26 The Released PAGA Claims are defined as all claims for civil penalties under PAGA
27 that arose during the PAGA Period and are based on the facts and Labor Code provisions alleged
28 in the Operative Complaint, the PAGA Notice, and the Amended PAGA Notice. (SA § 1.28.)

1 The Released PAGA Claims include claims for civil penalties predicated on alleged failures to
2 pay minimum, straight-time, and overtime wages; provide compliant meal and rest periods or
3 required premium payments; timely pay wages during employment and upon separation;
4 provide accurate itemized wage statements; provide required days of rest; maintain accurate
5 payroll records; pay reporting-time pay; and reimburse necessary business expenses. (*Id.*)

6 Plaintiffs have also entered into separate individual settlement agreements with
7 Defendants resolving their respective individual claims. (Rauchwerger Decl. ¶ 9.) Those
8 individual settlements are separate from and in addition to the Gross Settlement Amount, do not
9 reduce the amounts payable to the LWDA or Aggrieved Employees, and are not part of the
10 Released PAGA Claims under the PAGA Settlement Agreement. (*Id.*)

11 **E. No Right to Opt Out of the Settlement**

12 “[A] PAGA action is a statutory action for penalties brought as a proxy for the State,”
13 and, as such, “there is no need to protect absent employees’ due process rights[.]” (*Williams v.*
14 *Sup. Ct.* (2017) 3 Cal.5th 531, 546.) “Unnamed employees need not be given notice of the
15 PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.” (*Ochoa-*
16 *Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010) 2010 WL 1340777, at *5.) A
17 representative PAGA action need not satisfy class action requirements, and no due process
18 concern arises from the fact that there are “nonparty aggrieved employees who are not given
19 notice of, and an opportunity to be heard in, a representative action that is not brought as a class
20 action.” (*Arias v. Sup. Ct.* (2009) 46 Cal.4th 969, 984.) “PAGA does not make other potentially
21 aggrieved employees parties” to the action and no “due process concerns arise under PAGA
22 because absent employees do not own a personal claim for PAGA civil penalties and whatever
23 personal claims the absent employees might have for relief are not at stake.” (*Williams v. Sup.*
24 *Ct., supra*, 3 Cal.5th at p. 546-547 (internal references omitted, citing *Amalgamated Transit*
25 *Union, Local 1756, AFL-CIO v. Sup. Ct.* (2009) 46 Cal.4th 993, 1003 and *Iskanian v. CLS*
26 *Transportation Los Angeles, LLC* (2014) 58 Cal.4th 348, 381.)

27 “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
28 (*Williams v. Sup. Ct., supra*, 3 Cal.5th at p. 548 (internal references omitted, citing *Arias v. Sup.*

1 *Ct., supra*, 46 Cal.4th at p. 980-981; *Fireside Bank v. Sup. Ct.* (2007) 40 Cal.4th 1069, 1074 and
2 *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 474.)) A “judgment in such an action
3 is binding not only on the named employee Plaintiff but also on government agencies and any
4 aggrieved employee not a party to the proceeding” because “the employee Plaintiff represents
5 the same legal right and interest as state labor law enforcement agencies[.]” “collateral estoppel
6 applies [...] against those for whom the party acted as an agent or proxy[.]” and “[w]hen a
7 government agency is authorized to bring an action on behalf of an individual or in the public
8 interest, and a private person lacks an independent right to bring the action, a person who is not
9 a party but who is represented by the agency is bound by the judgment as though the person
10 were a party.” (*Arias v. Sup. Ct., supra*, 46 Cal.4th at p. 985-86 (citations omitted); see also
11 *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476 (aggrieved employee cannot
12 opt out of a PAGA Settlement).)

13 As such, the Settlement is consistent with the law, and there is no requirement that the
14 Aggrieved Employees be provided with a mechanism to opt out of or otherwise exclude
15 themselves from the Settlement.

16 **IV. STANDARDS FOR APPROVAL OF PAGA SETTLEMENT**

17 The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself
18 or herself and on behalf of other aggrieved employees and the State of California to recover civil
19 penalties which, outside of PAGA, only the LWDA can assess upon and collect from an
20 employer. (Lab. Code § 2699(a).) Before bringing a civil action under PAGA, an employee
21 must comply with California Labor Code section 2699.3. (*See* Lab. Code § 2699(a).) As
22 discussed above, Plaintiff Martinez has complied with the notice and exhaustion requirement.

23 The Settlement of a PAGA action requires court approval. (*See* Lab. Code § 2699(s)(2)
24 (“The superior court shall review and approve any Settlement of any civil action filed pursuant
25 to this part.”).) However, “[a] PAGA claim asserted on a non-class representative basis . . . is
26 not considered a class action but a law enforcement action” and therefore does not have to meet
27 the requirements of a class action. (*Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012)
28 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011

1 WL 2173715, at *11; *Arias v. Sup. Ct.*, *supra*, 46 Cal.4th at p. 980-88 (affirming lower court’s
2 holding that “Plaintiff need not satisfy class action requirements” to assert a PAGA claim);
3 *Pedroza v. PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15.)

4 As such, a court’s review of a PAGA Settlement involves analysis of several unique
5 features that render the approval process distinct from, and simpler than, the process for approval
6 of a class action Settlement. A court reviewing a PAGA Settlement need only “ensur[e] that a
7 negotiated resolution is fair to those affected.” (*Williams v. Sup. Ct.*, *supra*, 3 Cal.5th at p. 549
8 [citing former Lab. Code § 2699(l)(2), now § 2699(s)(2)].)

9 In a PAGA case, the court’s focus is not solely on the monetary amount which aggrieved
10 employees or the State stand to receive, but also on whether the Gross Settlement Amount
11 achieves the PAGA’s objectives. The purpose of the PAGA is “to incentivize private parties to
12 recover civil penalties for the government that otherwise may not have been assessed and
13 collected by overburdened state enforcement agencies.” (See *Ochoa-Hernandez v. CJADERS*
14 *Foods, Inc.*, *supra*, 2010 WL 1340777 at *4 [citing *Arias v. Sup. Ct.*, *supra*, 46 Cal.4th at p.
15 986].) Penalties recovered under the PAGA are, in part, to “be distributed to the [LWDA] for
16 enforcement of labor laws . . . and for education of employers and employees about their rights
17 and responsibilities under this code, to be continuously appropriated to supplement and not
18 supplant the funding to the agency for those purposes.” (See former Lab. Code § 2699(i),
19 applicable to this Action.) The recovery of penalties on behalf of the State, by way of a PAGA
20 claim, is essentially a law enforcement action. (See *Amalgamated Transit Union, Local 1756,*
21 *AFL-CIO v. Sup. Ct.*, *supra*, 46 Cal.4th at p. 1003 [stating that the PAGA is a mechanism for “an
22 aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise
23 would be sought by state labor law enforcement agencies”]; see also *Iskanian v. CLS*
24 *Transportation Los Angeles, LLC*, *supra*, 58 Cal.4th at p. 381.)

25 “[U]nnamed employees need not be given notice of the PAGA claim, nor do they have
26 the ability to opt-out of the representative PAGA claim.” (*Ochoa-Hernandez v. CJADERS*
27 *Foods, Inc.*, *supra*, 2010 WL 1340777 at *5.) This renders the approval process of a PAGA
28 Settlement distinct from a class action Settlement, and the Court need not employ the two-step

1 approval process that applies to a class action settlement, under both state and federal law.

2 **V. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED**

3 The Settlement resulted from hard-fought litigation that occurred over approximately six
4 years, and heavily took into account Defendant’s poor financial condition due to: 1) the amount
5 Defendants spent defending against the case for six years, and 2) the financial distress
6 Defendants are experiencing which could have resulted in Defendants having to declare
7 bankruptcy and go out of business if the litigation continued or if they attempted to settle the
8 matter for any more than was allocated to the settlement (such as if it had been settled on a Class
9 basis). (Rauchwerger Decl. ¶ 10.)

10 **A. The Factors Giving Rise to a Presumption of Fairness Exist**

11 The Parties were able to reach a Settlement following many years of litigation,
12 depositions, motion practice, and multiple mediations. (Rauchwerger Decl. ¶ 11; Matavosian
13 Decl. ¶¶ 3–8.) A settlement that is “the product of extensive and hard-fought adversarial
14 negotiations between the parties” is entitled to a presumption of fairness. (*Wershba v. Apple*
15 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.)

16 The Settlement is presumptively fair because: (1) it is the product of non-collusive,
17 arm’s-length negotiations; (2) it was negotiated by counsel with significant experience in similar
18 complex labor and employment matters; and (3) it occurred after counsel for the Parties engaged
19 in significant investigation to evaluate the strength and potential value of the PAGA claim.
20 (Rauchwerger Decl. ¶ 12; Matavosian Decl. ¶¶ 5–8, 18–23.)

21 During the course of discovery and mediation, the Parties engaged in substantial
22 discovery, including multiple PMK depositions. (Rauchwerger Decl. ¶ 13.) The Parties also
23 obtained and considered an assessment by a third-party financial expert concerning Defendants’
24 financial condition and ability to pay. (*Id.*) During all Settlement discussions, the Parties
25 conducted their negotiations at arm’s length in an adversarial position. (Rauchwerger Decl. ¶
26 13; Matavosian Decl. ¶ 8.)

27 Based on all of the information available to the Parties, the Parties agree that this matter
28 is well-suited for Settlement given the strengths and weaknesses of the PAGA claim, and in

1 particular, when factoring in Defendants' financial condition. Plaintiffs' Counsel believe that
2 the Settlement is a fair, adequate, and a reasonable resolution of this matter when taking into
3 account Defendants' financial condition. (Rauchwerger Decl. ¶ 14.)

4 **B. The Relative Strength of the PAGA Claim and the Range of Possible**
5 **Outcomes in the Litigation Strongly Favor Approval of the Settlement**

6 In order for Plaintiffs to prevail on the PAGA claim, they would have to prove that
7 Defendants engaged in the alleged California Labor Code violations and demonstrate that
8 Defendants' conduct warrants the imposition of penalties. (*See, e.g., Elliot v. Spherion Pac.*
9 *Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-82 ("Plaintiff's claim under [PAGA] is
10 wholly dependent upon her other claims. Because all of plaintiff's other claims fail as a matter
11 of law, so does her PAGA claim.")).

12 Plaintiffs advanced several theories as to why they would succeed on the PAGA claim.
13 (Rauchwerger Decl. ¶ 15.) Plaintiffs contended that Defendants required Aggrieved Employees
14 to perform work before and after their scheduled shifts, during off-the-clock meal periods,
15 and/or during rest periods without compensation. (*Id.*) Plaintiffs further alleged that Aggrieved
16 Employees were not provided compliant meal and rest periods or required premium payments
17 and were not paid all minimum, straight-time, and overtime wages owed. (*Id.*) Plaintiffs also
18 alleged violations relating to timely payment of wages during employment and upon separation,
19 accurate itemized wage statements, required days of rest, maintenance of accurate payroll
20 records, reporting-time pay, and reimbursement of necessary business expenses. (*Id.*)

21 Defendants maintained several defenses to Plaintiffs' theories of liability, which, if
22 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
23 (Rauchwerger Decl. ¶ 16.) Throughout this litigation, Defendants maintained, and continue to
24 maintain, that they had, and continue to have, legally compliant employment policies and
25 practices throughout the time period at issue. (*Id.*) Defendants deny that they ever violated any
26 provision of the California Labor Code, including, but not limited to, those sections for which
27 Plaintiffs seek penalties under the PAGA. (*Id.*) Defendants further denied, and continue to deny,
28 that the lawsuit is appropriate for representative treatment for any purpose other than settlement.

1 (*Id.*) Defendants specifically alleged that each of their locations operated independently, which
2 therefore made manageability of any representative action impossible. (*Id.*)

3 Defendants also challenged Plaintiffs’ standing as aggrieved employees and denied that
4 the other employees whom Plaintiffs seek to represent are aggrieved. (Rauchwerger Decl. ¶ 17.)
5 Defendants also argued that an important feature of PAGA is that the Court retains discretion to
6 lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise
7 would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” (*See* former
8 Lab. Code § 2699(e)(2), applicable to this Action; see also *Thurman v. Bayshore Transit*
9 *Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136 [holding that a court may reduce the
10 amount of PAGA penalties awarded to an employee based upon discretionary factors].) Even
11 if, *arguendo*, Defendants committed violations, which Defendants deny, Defendants contended
12 that the violations would only be considered “initial violations” and thus heightened “subsequent
13 violation” penalties were not warranted. (*See* former Lab. Code § 2699(f)(2), applicable to this
14 Action; see also *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1208-09 (“Until
15 the employer has been notified that it is violating a Labor Code provision [...], the employer
16 cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’
17 subject to penalties.”).)

18 Defendants also contended that, with respect to PAGA claims, the Court was unlikely to
19 assess cumulative penalties for the maximum number of possible, separate California Labor
20 Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory,
21 especially where certain conduct may be regulated by multiple provisions of the California
22 Labor Code that are interrelated and work in tandem. (Rauchwerger Decl. ¶ 17.) While Plaintiffs
23 disagree with Defendants’ contentions and maintain that their PAGA claim has serious merit, in
24 reaching the settlement, Plaintiffs and their counsel considered the strengths and weaknesses of
25 each side’s position and the uncertainty of how the case might have concluded as litigation
26 continued, at trial, and/or upon appeal. (*Id.*)

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1 **C. The Experience and Views of Plaintiffs’ Counsel Favor Approval of the**
2 **Settlement**

3 Plaintiffs’ Counsel is highly experienced in complex representative and class action
4 wage-and-hour litigation. (Rauchwerger Decl. ¶¶ 18-22; Matavosian Decl. ¶¶ 18–23.) In the
5 view of Plaintiffs’ Counsel, the benefits conferred by the Settlement are eminently fair and
6 reasonable, and in the best interests of the State of California and the Aggrieved Employees in
7 light of the risk, delay, and uncertainty of continued litigation, particularly given Defendants’
8 financial status. (Rauchwerger Decl. ¶ 23; Matavosian Decl. ¶ 25.)

9 **VI. THE PROPOSED ATTORNEYS’ FEES PAYMENT IS FAIR AND**
10 **REASONABLE, AND SHOULD BE APPROVED**

11 **A. A Fee Award of a Percentage of the Entire Fund Is Appropriate**

12 The Settlement provides for attorneys’ fees in an amount of up to one-third (33⅓%) of
13 the Gross Settlement Amount, or \$95,000.00, subject to approval and award by the Court.
14 (Rauchwerger Decl. ¶ 24; Matavosian Decl. ¶¶ 9, 11.) The requested attorneys’ fees award is
15 commensurate with (1) the risk that Plaintiffs’ Counsel took in bringing and litigating this case,
16 (2) the time, effort, and expense dedicated to the case, (3) the skill and determination that
17 Plaintiffs’ Counsel has shown, (4) the results that Plaintiffs’ Counsel achieved through litigation,
18 (5) the excellent value that the Aggrieved Employees and LWDA are receiving in comparison
19 to the maximum penalties available, and (6) the other cases that Plaintiffs’ Counsel has turned
20 down in order to devote time and effort to this case. (Rauchwerger Decl. ¶ 24; Matavosian Decl.
21 ¶¶ 10, 12–13.)

22 Plaintiffs’ Counsel is entitled to recover reasonable attorneys’ fees and costs as a matter
23 of right under PAGA. (*See* former Lab. Code § 2699(g)(1), applicable to this Action (“Any
24 employee who prevails in any [PAGA] action shall be entitled to an award of reasonable
25 attorney’s fees and costs”).) Plaintiffs’ Counsel is also entitled to fees and costs under California
26 Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition “for the
27 benefit” of others and secures monetary recovery for a large number of aggrieved employees,
28 as well as the State of California. (*See Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154

1 Cal.App.4th 1, 16-17 (recognizing that recovery obtained on behalf of 209 individuals satisfies
2 the “significant benefit,” “public interest,” and “large class of persons” requirements of Code of
3 Civil Procedure section 1021.5, regardless of Plaintiff’s personal motivation).) The Settlement
4 will also benefit the state labor agency in enforcing labor laws and educating “employers and
5 employees about their rights and responsibilities under [the California Labor Code].” (Former
6 Lab. Code § 2699(i), applicable to this Action.)

7 The propriety of calculating and awarding attorneys’ fees as a percentage of a monetary
8 fund that has, by litigation, been preserved or recovered for the benefit of others, has been
9 confirmed by the California Supreme Court. (*Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th
10 480, 486 & 506.) While trial courts have discretion to apply either a lodestar method or
11 percentage-of-the-fund method, the California Supreme Court has taken the position that trial
12 courts also “retain the discretion to forgo a lodestar cross-check and use other means to evaluate
13 the reasonableness of a requested percentage fee” and “[t]he percentage of fund method survives
14 in California.” (*Id.* [internal quotation marks omitted]; see also *Wershba v. Apple Computer,*
15 *Inc.* (2001) 91 Cal.App.4th 224, 254-255.)

16 In the present case, Plaintiffs’ Counsel has borne all of the risks and costs of litigation and
17 will not receive any compensation until recovery is obtained. (Rauchwerger Decl. ¶ 25;
18 Matavosian Decl. ¶¶ 15–16.) Plaintiffs’ Counsel is experienced in complex wage-and-hour
19 litigation and used that experience to obtain a fair and reasonable result for Plaintiffs, the
20 Aggrieved Employees and the State of California. (Rauchwerger Decl. ¶¶ 18-22; Matavosian
21 Decl. ¶¶ 18–23.) Considering the amount of fees requested, work performed, risks incurred,
22 results obtained, and experience of Plaintiffs’ Counsel in handling similar matters, Plaintiffs
23 maintain that the requested attorneys’ fees are reasonable and should be awarded.

24 Pursuant to the fee-sharing agreement, the requested \$95,000.00 PAGA Counsel Fees
25 Payment will be allocated sixty percent (60%), or \$57,000.00, to Domb & Rauchwerger LLP
26 and forty percent (40%), or \$38,000.00, to Lawyers for Justice, P.C. Plaintiffs provided written
27 consent to this allocation. (Rauchwerger Decl. ¶ 25, **EXHIBIT 5.**)

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B. The Lodestar Methodology Also Justifies Approval of the Requested Fees, Because Plaintiffs' Counsel Has Performed Work That Is of Significant Value Based on Reasonable Hours and Prevailing Hourly Rates of Compensation

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to “cross-check” the results of the other. (See *Laffitte v. Robert Half Int’l, Inc.*, *supra*, 1 Cal.5th at p. 505 (explaining that “[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court’s reasonableness determination”); see also, *e.g.*, *Vizcaino v. Microsoft Corp.* (2002) 290 F.3d 1043, 1050 (“[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award.”).) Importantly, “the lodestar calculation . . . does not override the trial court’s primary determination of the fee as a percentage” and “does not impose an absolute maximum or minimum on the potential fee award.” (*Laffitte v. Robert Half Int’l, Inc.*, *supra*, 1 Cal.5th at p. 505.)

The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-32.) Under California law, counsel is entitled to compensation for every hour reasonably spent on the matter. (*Id.* at 1133.)

Attached to the Declaration of Devin Rauchwerger as **EXHIBIT 6** is the Attorney Task and Time Chart setting forth the tasks performed by Domb & Rauchwerger LLP and the time required to complete those tasks. (Rauchwerger Decl. ¶ 26.) A separate Attorney Task and Time Chart setting forth the tasks performed by Lawyers for Justice, P.C. and the time required to complete those tasks is attached as Exhibit A to the Declaration of Selena Matavosian. (Matavosian Decl. ¶ 14, **EXHIBIT A**.) Together, the charts demonstrate that PAGA Counsel collectively spent 677.50 hours on this matter. (Rauchwerger Decl. ¶ 26, **EXHIBIT 6**; Matavosian Decl. ¶ 14, **EXHIBIT A**.) Domb & Rauchwerger LLP’s lodestar is \$305,475.00, and Lawyers for Justice, P.C.’s lodestar is \$283,660.00, resulting in a combined lodestar of \$589,135.00. (Rauchwerger Decl. ¶ 26, **EXHIBIT 6**; Matavosian Decl. ¶¶ 14–17, **EXHIBIT A**.) The requested \$95,000.00 fee award is \$494,135.00 less than PAGA Counsel’s combined

lodestar. Accordingly, the lodestar cross-check confirms that the requested attorneys' fees are reasonable.

VII. COSTS TO BE REIMBURSED TO PLAINTIFFS' COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED

The Settlement provides for reimbursement of litigation costs and expenses of up to \$65,000.00, however, Plaintiffs' Counsel seeks reimbursement of actual litigation costs and expenses in the amount of \$62,781.25. (SA § 3.2.1.1.) These expenses were reasonable and necessary in the prosecution of this matter and to obtain the Settlement. Domb & Rauchwerger LLP incurred \$31,801.49, and Lawyers for Justice, PC incurred \$30,979.76, in litigation costs and expenses, for a combined total of \$62,781.25. Attached to the Declaration of Devin Rauchwerger as **EXHIBIT 7** is the Expense Chart showing the various expenses that Domb & Rauchwerger LLP incurred in prosecuting this matter. (Rauchwerger Decl. ¶ 27, **EXHIBIT 7.**) Attached as **EXHIBIT B** to the Declaration of Selena Matavosian are Lawyers for Justice, P.C.'s expense charts reflecting \$30,979.76 in litigation costs and expenses. (Matavosian Decl. ¶ 24, **EXHIBIT B.**)

VIII. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval by the Court, Phoenix Class Action Administration Solutions to handle the administration of the Settlement. (SA §§ 1.2, 8.1; Rauchwerger Decl. ¶ 28.) The Administrator's fees and expenses are estimated to be \$6,250.00. (SA § 3.2.1.2; Phoenix Decl. ¶ 22, **Exhibit B.**) These costs include, but are not limited to, expenses for preparing, printing, and mailing the Notice of PAGA Settlement and Individual PAGA Payment checks to the Aggrieved Employees; performing skip-trace searches; re-mailing the returned checks to any updated addresses located; and handling inquiries from Aggrieved Employees regarding the Settlement, among other things. (Phoenix Decl. ¶¶ 12, 21–22, **Exhibit B.**) Accordingly, the Court should grant approval of the Administration Expenses Payment in the amount of \$6,250.00 to the Administrator, a necessary third party for handling the Settlement process. (Rauchwerger Decl.

¶ 28.)

IX. THE PROPOSED NOTICE OF PAGA SETTLEMENT SHOULD BE APPROVED

Although PAGA does not require notice to unnamed Aggrieved Employees of a Settlement, the Parties prepared, and now present for the Court's consideration and approval, the Notice of PAGA Settlement for transmission to the Aggrieved Employees along with their Individual PAGA Payment checks, substantially in the form attached as "EXHIBIT 1" to the [Proposed] Order Granting Approval of the PAGA Settlement and as "EXHIBIT A" to the Settlement Agreement. The Notice of PAGA Settlement informs the Aggrieved Employees about the Action and the Settlement. Accordingly, Plaintiffs respectfully request that the Court approve the Notice of PAGA Settlement for transmission to the Aggrieved Employees at the time of disbursing their Individual PAGA Payments.

X. CONCLUSION

The Settlement is fair, adequate, and reasonable, as it represents a reasonable compromise of disputed claims that has been reached through arm's-length negotiations, in light of the risks, complexity, and expense of further litigation. Plaintiffs respectfully request that the Court approve the Settlement, including the plan of allocation and distribution of the Gross Settlement Amount for the LWDA PAGA Payment to the LWDA, Individual PAGA Payments to the Aggrieved Employees, PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment to PAGA Counsel, and Administration Expenses Payment to the Administrator, and approve the Notice of PAGA Settlement for transmission to the Aggrieved Employees.

Dated: September 11, 2026

DOMB & RAUCHWERGER LLP

By:



ZACK I. DOMB

DEVIN R. RAUCHWERGER

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