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10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF SACRAMENTO**

13 JOSHUA ARANDA, individually, and on
behalf of all others similarly situated,

14 Plaintiff,

15 vs.

16 CHIPOTLE MEXICAN GRILL, INC., and
DOES 1 through 100, inclusive,

18 Defendants.

Case No. 34-2021-00294848

REPRESENTATIVE ACTION

**PLAINTIFF'S EX PARTE APPLICATION
FOR APPROVAL OF PAGA SETTLEMENT**

Date: October 6, 2021

Time: 1:30 p.m.

Dept: 54

Judge: Hon. Christopher E. Krueger

21 **TO THE COURT, THE PARTIES, AND THEIR ATTORNEYS OF RECORD:**

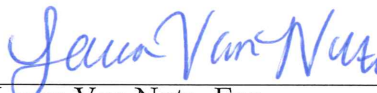
22 **PLEASE TAKE NOTICE** that, on October 6, 2021 at 1:30 p.m. in Department 54 of the
23 above entitled Court, Plaintiff Joshua Aranda ("Plaintiff"), by and through his counsel, Cole &
24 Van Note, hereby applies, on an *ex parte* basis, for an order approving the parties' PAGA
25 settlement. Pursuant to California Rule of Court 3.1202(a), Defendant Chipotle Mexican Grill
26 ("Defendant") is represented in this matter by DLA Piper, located at 2000 Avenue of the Stars,
27 Suite 400 North Tower, Los Angeles, CA, and available by telephone at (310) 595-3000.
28

1 Good cause for granting this *ex parte* application exists for the reasons stated in the
2 supporting Memorandum of Points and Authorities and the supporting Declaration of Scott
3 Edward Cole, Esq., submitted herewith. No previous application has been made for the same relief
4 requested herein.

5 Pursuant to California Rule of Court Rule 3.1203, notice of this *ex parte* application was
6 provided to all parties on October 5, 2021. This application is made pursuant to California Rules
7 of Court, Rules 3.1200–3.1207, and is based upon this application, the supporting memorandum,
8 the Declaration of Scott Edward Cole, Esq., all pleadings, records, and files in this action and such
9 further argument as Plaintiff's counsel may present at the hearing.

10
11 Dated: October 5, 2021

COLE & VAN NOTE

12
13 By: 
14 Laura Van Note, Esq.
15 Attorneys for Representative Plaintiff
16 and Aggrieved Employees
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PROOF OF SERVICE

I am over 18 years of age, not a party to the above-captioned action, and am employed by the law firm of Cole & Van Note, 555 12th St., Suite 1725, Oakland, California 94607.

On this date, I served a copy of:

PLAINTIFF'S EX PARTE APPLICATION FOR APPROVAL OF PAGA SETTLEMENT

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S EX PARTE APPLICATION FOR APPROVAL OF PAGA SETTLEMENT

DECLARATION OF SCOTT EDWARD COLE, ESQ. IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF PAGA SETTLEMENT

[PROPOSED] FINAL JUDGMENT RE: PAGA SETTLEMENT

	By depositing the document(s) with the U.S. Postal Service, with postage fully prepaid, addressed as indicated below, in the ordinary course of business.
	By facsimile transmission to the fax number(s) below, before 5:00 p.m. PST.
	By placing the document(s) in a sealed Federal Express envelope, affixing a pre-paid air bill and delivering it to a Federal Express agent.
	By personal delivery.
X	By e-mail transmission to the e-mail address(es) below.
	By electronic filing using the CM/ECF System which will send a Notice of Electronic Filing to the email address(es) listed in the Electronic Mail Notice List.
	By uploading the document(s) to the third-party document management/service company, court-approved for purposes of this litigation.
	By electronic submission to the Labor and Workforce Development Agency.

on the following person(s):

Steve L. Hernandez, Esq.

Levi W. Heath, Esq.

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I declare under penalty of perjury under the laws of the United States and the State of California the foregoing is true and correct. Executed in Oakland, California on October 5, 2021.



Nicole Randle

1 Scott Edward Cole, Esq. (S.B. #160744)
2 Laura Grace Van Note, Esq. (S.B. #310160)
3 Cody Alexander Bolce, Esq. (S.B. #322725)

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JOSHUA ARANDA, individually, and on
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Plaintiff,

vs.

CHIPOTLE MEXICAN GRILL, INC., and
DOES 1 through 100, inclusive,

Defendants.

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REPRESENTATIVE ACTION

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By and through this Motion, Plaintiff Joshua Aranda (“Plaintiff”) seeks this Court’s approval pursuant to Labor Code § 2699(l) of the settlement of Private Attorneys General Act (“PAGA,” Labor Code § 2698, *et seq.*) with defendant Chipotle Mexican Grill, Inc. (hereinafter “Chipotle” or “Defendant”). This is only a settlement of the PAGA claims for civil penalties, it is not a class settlement, and the Settlement does not release the individual claims of the members of the PAGA Collective other than Plaintiff.¹ Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation* (2014) 59 Cal.4th 348, 381.

The proposed Settlement Agreement (“Settlement Agreement”) provides that Defendant will pay \$1,500,000 to resolve the Aggrieved Employees’ claims of Labor Code violations² based on the allegations in the operative Complaint, including compensation to Plaintiff’s counsel for attorneys’ fees (\$525,000)³ and costs (actual costs being \$7,916.39, but a request being made for \$10,000 to cover post-approval efforts in communicating with PAGA aggrieved employees, to ensure compliance by the claims administrator, further court appearances, etc.),⁴ pay for third-party settlement administration in an amount not to exceed \$46,750⁵, provide the PAGA representative with an enhancement award of \$7,500⁶, and an estimated total of \$910,750 to be distributed (i.e., 75% to the California Labor and Workplace Development Agency for resolution of the PAGA claims (\$683,062.50) and the remaining 25% (\$227,687.50)⁷ to be distributed to the Settlement Group members. The non-reversionary Settlement Agreement encompasses all claims Plaintiff asserted in his operative Complaint on behalf of himself and a group of 29,918 current and former California employees of Defendant in the settlement group of “all current and former

¹ Settlement Agreement attached as Exhibit A to Declaration of Scott Edward Cole, Esq. in Support of Motion for Approval of PAGA Settlement (“Settlement Agreement”).

² Settlement Agreement ¶ 6.1.

³ Settlement Agreement ¶ 6.2.

⁴ Cole & Van Note Cost Journal attached as Exhibit B to Declaration of Scott Edward Cole, Esq. in Support of Motion for Approval of PAGA Settlement (“SCA Cost Journal”).

⁵ CPT Cost Estimate attached as Exhibit D to Declaration of Scott Edward Cole, Esq. in Support of Motion for Approval of PAGA Settlement (“CPT Cost Estimate”).

⁶ Settlement Agreement ¶ 6.3.

⁷ Settlement Agreement ¶ 6.5.

1 exempt and non-exempt restaurant workers who worked in California during the period of June
2 16, 2020 through the date this Court grants approval of the settlement.”⁸

3 Since its filing in February of 2021,⁹ Plaintiff’s Counsel has prosecuted and displayed
4 zealous advocacy on behalf of the collective members, and exhibited, at all times, a commitment
5 to pursuing the action through trial and any necessary appeals. Indeed, it was the display of this
6 effort, coupled with Plaintiff’s Counsel’s decades of that same commitment to such cases, that
7 generated this healthy settlement. In order to compensate them for those efforts, the Settlement
8 permits Plaintiff’s Counsel to request attorneys’ fees in the amount of \$525,500, an amount that is
9 35%¹⁰ of the common fund. The Settlement also allows Plaintiff’s Counsel to seek reimbursement
10 of their actual and reasonable litigation costs in addition to their fees, capped at \$10,000.¹¹ It also
11 provides for a representative enhancement award of up to \$7,500¹² for Plaintiff and reimbursement
12 of settlement administration fees. *Id.*

13 Plaintiff now respectfully requests that the Court approve the Settlement as fair, adequate
14 and reasonable, and approve the proposed awards for attorneys’ fees, representative enhancement
15 award and settlement administration costs, and enter judgment accordingly so that this complex
16 litigation can be resolved, judgment can be entered, and the settlement funds distributed to the
17 Settlement Group as expeditiously as possible.

18 19 **II. PROCEDURAL HISTORY AND SETTLEMENT NEGOTIATIONS**

20 On February 16, 2021, Plaintiff submitted to Defendant and the Labor Workforce and
21 Development Agency (“LWDA”) a notice of his intent to seek penalties pursuant to PAGA as
22 required by the statute.¹³ The LWDA did not provide any indication that it intended to investigate
23 Plaintiff’s claims, so he added a cause of action under PAGA to the operative complaint in the
24

25 ⁸ Settlement Agreement ¶ D.

26 ⁹ Settlement Agreement ¶ A.

27 ¹⁰ Settlement Agreement ¶ 6.2.

28 ¹¹ CVN Cost Journal.

¹² Settlement Agreement ¶ 6.3.

¹³ Declaration of Scott Edward Cole, Esq. in Support of Motion for Approval of PAGA Settlement (“Cole Decl.”)
¶ 2.

1 Sacramento Superior Court on April 26, 2021.¹⁴ Plaintiff served an initial set of written discovery
2 on March 10, 2021.¹⁵ However, shortly thereafter, the parties agreed to engage in mediation and
3 an informal exchange of information in an attempt to resolve the case before engaging in costly
4 and time-consuming formal discovery.¹⁶

5 Following the parties' agreement to engage in mediation, the parties engaged in further
6 informal discovery in order to prepare for this session, that included data for the 29,918 employees
7 who worked during the start of the applicable statutory period, as well as timekeeping data and
8 relevant policies of Defendant.¹⁷ Plaintiff compiled the data produced by Defendant, and estimated
9 PAGA penalties on all claims for the entirety of the Settlement Period based on the data provided
10 during the informal exchange.¹⁸ The information produced by Defendant, coupled with Plaintiff's
11 investigation of the claims, provided Plaintiff's counsel with sufficient information to evaluate the
12 likelihood of success on the merits and assess the potential risks facing Plaintiff.¹⁹

13 On August 5, 2021, the parties attended an exhaustive full-day mediation session with
14 Mariam Zadeh, a highly respected mediator who specializes in wage and hour class action and
15 PAGA mediations.²⁰ Plaintiff submitted a mediation brief summarizing the evidence that counsel
16 had marshalled and synthesized, the state of the applicable law, and potential group-wide
17 exposure.²¹ Defendant submitted its own brief arguing that it would prevail on the merits against
18 the individual Plaintiff and any other aggrieved employees and that the claims would be
19 unmanageable.²² With Ms. Zadeh's assistance, the Parties agreed, subject to approval by this
20 Court, to the Settlement Agreement, which was ultimately memorialized and executed on
21 September 27, 2021.²³

22
23
24 ¹⁴ *Id.*

¹⁵ Cole Decl. ¶ 7.

¹⁶ Cole Decl. ¶ 9.

25 ¹⁷ Cole Decl. ¶ 11.

¹⁸ *Id.*

26 ¹⁹ *Id.*

²⁰ Cole Decl. ¶ 10.

27 ²¹ Cole Decl. ¶ 12.

²² *Id.*

28 ²³ Cole Decl. ¶ 13.

1 Plaintiff and his counsel believe the Settlement Agreement is well within the range of
2 reasonableness and is in the best interest of the proposed Settlement Group in light of all known
3 facts and circumstances, including the risk of significant delay and defenses asserted by Defendant.
4

5 **III. TERMS OF THE PAGA SETTLEMENT**

6 The settlement agreement negotiated by the parties provides for Defendant to pay a total of
7 \$1,500,000 as the maximum settlement amount. From that maximum amount, after court-
8 approved deductions for attorneys' fees (one-third of the gross settlement fund, or \$525,500)
9 and attorneys' costs sought (capped at \$10,000), the claims administrator payment (\$46,750), and
10 an enhancement award to the named plaintiff (\$7,500), the net settlement amount is estimated to
11 be \$910,750. The PAGA payment would then be distributed as follows:
12

13 **A. PAGA CIVIL PENALTIES AMOUNT**

14 One-hundred percent (100%) of the Net Settlement Amount shall be designated as the
15 "PAGA Civil Penalties Amount." 75% of the PAGA Civil Penalties Amount shall be paid to the
16 LWDA as the LWDA's share of the PAGA Civil Penalties Amount and 25% shall be paid to the
17 Settlement Group Employees ("SGE") as the Settlement Group's share of the PAGA Civil
18 Penalties Amount.

19 Within twenty (20) business days of the Effective Date, Defendant will provide to the
20 Administrator the contact information and pay periods of employment during the Settlement
21 Period for each SGE. Within ten (10) days of the receipt of the Settlement Group Data, the
22 Settlement Administrator will: (i) run the names of all SGEs through the National Change of
23 Address database to determine any updated addresses; (ii) update the addresses of any SGE for
24 whom an updated address was found through the search; and (iii) provide Defendant with the
25 information required for disbursement of the settlement fund and wiring instructions. Within seven
26 (7) days of receiving the wiring instructions, Defendant will wire the disbursement amount to the
27 Settlement Administrator. Within seven (7) days of receiving the disbursement amount, the
28 Settlement Administrator will mail all required payments and the "Notice of Settlement" to the

1 SGEs. Any uncashed checks within 180 days from the date the Settlement Administrator mails it
2 will be sent to the California Unclaimed Property Fund maintained by the California State
3 Controller's Office.

4 The allegedly aggrieved employees in the Settlement Group are defined as "all non-exempt
5 restaurant workers employed by Defendant in California at any time after June 16, 2020 through
6 the date the Court signs an Order granting approval of the settlement." The total number of
7 allegedly aggrieved employees is 29,918.

8 As to the Settlement Group members (the SGEs), the Settlement only releases:

9 **Release.** Upon the Effective Date, Plaintiff, on behalf of himself, the State of California,
10 and Aggrieved Employees shall fully release and forever discharge the claims alleged in the
11 Lawsuit arising during the PAGA Period for civil penalties under PAGA for any and all Labor
12 Code violations including all claims that were asserted or could have been asserted based on the
13 facts alleged in the operative Complaint in this case against Defendant and its past, present, and
14 future owners, parents, subsidiaries, and all of its current, former, and future officers, directors,
15 members, managers, employees, consultants, partners, shareholders, joint venturers, successors,
16 assigns, accountants, insurers, or legal representatives ("Released Parties"). Upon entry of the
17 order approving this Agreement and judgment entered thereon, Plaintiff and all Aggrieved
18 Employees will be forever barred from pursuing any and all of the Released Claims that arose
19 during the PAGA Period. In addition, Plaintiff (as to himself only) agrees to a Section 1542
20 waiver.²⁴

21 No individual claims of any SGEs are released, and the only claims released are PAGA
22 claims for civil penalties based on the facts alleged in the Complaint. The California Labor
23 Workforce Development Agency ("LWDA") is being served with a copy of this motion and the
24 Settlement Agreement through the online process as required by Labor Code § 2699(l), and
25 therefore has notice of this PAGA settlement and motion.²⁵

26
27
28 ²⁴ Settlement Agreement ¶ 2.

²⁵ Cole Decl. ¶ 14.

1 **IV. THE PARTIES HAVE SETTLED PLAINTIFF’S PAGA CLAIM**

2 The only claims before this Court are the representative PAGA claims. The parties have
3 agreed to settle the representative claims in their entirety. The settlement is intended to fully and
4 finally resolve the PAGA claim asserted by Plaintiff on behalf of the Settlement Group of allegedly
5 aggrieved employees. This is only a settlement of PAGA claims for civil penalties and is not a
6 class settlement and does not release any individual claims of the Settlement Group. Attorneys’
7 fees equal to one-third of the settlement plus reasonable costs incurred, will be paid to Plaintiff’s
8 counsel as part of the settlement in accordance with Labor Code § 2699(g)(1) as set forth in the
9 Settlement Agreement. Plaintiff’s counsel seeks reimbursement of costs incurred of \$10,000.
10 There is also a payment for Administration capped at \$46,750 to CPT to administer the settlement.

11
12 **V. THE PARTIES REQUEST APPROVAL OF THE PAGA SETTLEMENT**

13 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of
14 other current or former employees and the State of California to recover civil penalties for Labor
15 Code violations. *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. Seventy-
16 five percent of any PAGA penalties go to the LWDA, leaving the remaining twenty-five percent
17 for the employees. *Id.*; see also *ZB, supra* at 275. PAGA is intended to augment the limited
18 enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as
19 representatives of the Agency. *Id.* at p. 383. A judgment in a PAGA action binds all those who
20 would be bound by a judgment in an action brought by the government. *Id.* at 381.

21 A PAGA action need not meet the requirements of a class action lawsuit. *Arias v. Superior*
22 *Court* (2009) 46 Cal.4th 969, 975. A court does not, for example, have a fiduciary duty to protect
23 putative class members. Nonetheless, Labor Code § 2699(l), provides that [t]he superior court shall
24 review and approve any penalties sought as part of a proposed settlement agreement pursuant to
25 [PAGA]. The relief provided in a PAGA settlement must “be genuine and meaningful, consistent
26 with the underlying purpose of the statute to benefit the public.” *Villalobos v. Calandri Sunrise*
27 *Farm LP* (C.D. Cal., July 22, 2015, No. CV122615PSGJEMX) 2015 WL 12732709, at *13. The
28 settlement must be reasonable in light of the potential verdict value. See *O’Connor v. Uber*

1 *Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135. Courts will generally approve a
2 PAGA settlement upon a showing that the settlement terms are “fundamentally fair, adequate, and
3 reasonable” in light of PAGA’s policies and purposes. See *Jordan v. NCI Grp., Inc.*, (C.D. Cal.
4 Jan. 5, 2018, No. EDCV161701JVSSPX) 2018 WL 1409590, at *3 (finding that proposed
5 settlement of plaintiff’s PAGA claims was fair, adequate, and reasonable in light of the policies
6 and purposes of PAGA); *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, (C.D. Cal. 2017)
7 253 F.Supp.3d 1074, 1075 (same, and noting that the California Supreme Court, California
8 legislature, California Courts of Appeal, and LWDA have failed to provide any definitive standard
9 for PAGA settlement approval). A settlement may be substantially discounted, however, given
10 that courts often exercise their discretion to award PAGA penalties below the statutory maximum
11 even when a claim succeeds a trial. See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016,
12 No. 15-CV-02198-EMC) 2016 WL 5907869, at *8-9.

13
14 **A. THE PAGA PENALTIES TO BE PAID ARE FAIR, ADEQUATE AND**
15 **REASONABLE**

16 The parties believe that the \$1,500,000 settlement amount is fair, adequate and reasonable
17 and, therefore should be approved. This amount compares favorably to the estimated amount of
18 PAGA penalties which Plaintiff calculated to be the maximum amount recoverable for mediation.
19 Plaintiffs calculated that the maximum PAGA penalties that could have been awarded were
20 approximately \$153,658,000. However, this calculation assumes that the aggrieved employees
21 could stack the PAGA penalties for multiple violations in one pay period. Defendant had a strong
22 argument that PAGA only provides for one penalty per employee per pay period. Defendant also
23 argues Courts have broad discretion to deny or significantly reduce PAGA penalties, particularly
24 when the prescribed award would be “unjust, arbitrary and oppressive, or confiscatory.” Indeed,
25 given the astronomically large potential penalty in this case, Defendant would have a strong
26 argument that such an award would be confiscatory and oppressive, and it is likely any Court
27 would significantly reduce any award on that basis. In addition, in order to recover any PAGA
28 penalties, Plaintiff would be required to prove at trial each of the underlying Labor Code violations.

1 See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011)
2 ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals
3 whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here,
4 Plaintiff would need to prove as to each non-exempt employee that he or she was not properly
5 compensated. While Plaintiff is confident that he could prove violations based on the testimony of
6 aggrieved employees and Defendants own time keeping records and policies, there are no records
7 available recording rest breaks, and the time keeping records show some compliant meal periods.

8 Defendant maintains that it did not engage in the alleged Labor Code violations, that
9 Plaintiff is not an aggrieved employee and that the group of employees identified are not aggrieved
10 employees. Defendant asserts that it maintains lawful policies and practices regarding pay for all
11 time worked, overtime pay, meal breaks, itemized wage statements and final pay.

12 Furthermore, Defendant contends that the claims asserted would be unmanageable due to
13 required individualized analyses regarding all of Plaintiff's claims. As state and federal courts have
14 held, while PAGA may not contain a manageability requirement per se, courts are empowered to
15 impose one, and this can be especially problematic in cases with a large number of aggrieved
16 employees and/or where the employment circumstances of individual workers vary widely. In
17 those circumstances, courts are empowered to find the action cannot be effectively managed and
18 the PAGA claims can be dismissed on that basis. See *Wesson v. Staples The Office Superstore,*
19 *LLC*, CA Ct. App., Case No. B302988 (September 9, 2021) (dismissing PAGA claims predicated
20 on overtime exemption claim where trial could take 4-8 years); *Amiri v. Cox Communications*
21 *California, LLC* (C.D. Cal. Sept. 27, 2017) 2017 WL 4400463 (granting motion to strike PAGA
22 claims based on lack of manageability); *Salazar v. McDonald's Corp.* (N.D.Cal. Jan. 5, 2017)
23 2017 WL 88999 (same); *Brown v. American Airlines, Inc.* (C.D. Cal. Oct. 5, 2015) 2015 WL
24 6735217, at *4 (granting motion to strike where claims required "too many individualized
25 assessments to determine PAGA violations concerning overtime pay"); *Bowers v. First Student,*
26 *Inc.* (C.D. Cal Apr. 23, 2015) 2015 WL 1862914, at *4 (granting motion to strike where a
27 "multitude of individualized assessments" for various underlying wage and hour violations
28 rendered claim unmanageable); *Bright v. 99 Cents Only Stores* (Cal. Super. Ct. L.A. County Dec.

1 7, 2011) 2011 WL 12913379 at *2 (granting motion to strike PAGA representative action due to
2 unmanageability).

3 Given Defendant's potential defenses to the claimed Labor Code violations at issue, and
4 the risks and costs of continued litigation, Plaintiff and his counsel believe that the Settlement
5 Amount is fair, adequate and reasonable. The terms of the settlement were negotiated by
6 experienced counsel at arm's length before a private mediator, Mariam Zadeh. The LWDA has
7 been provided with notice of this motion and the settlement, and the decision of the Agency to
8 accept the Settlement and not oppose this motion should be given considerable weight. This is not
9 a situation where the Court needs to be concerned about the rights of absent employees as in a
10 class action settlement, as this PAGA- only settlement does not release any individual claims of
11 any of the allegedly aggrieved employees other than Plaintiff's, and the LWDA has received its
12 statutorily-required notice of the Settlement and is fully able to object to the Settlement if it so
13 chooses.

14 The Settlement amount being paid out here to the LWDA and the SGEs exceeds amounts
15 that have been approved by courts in other cases. For example, in *Franco v. Ruiz Food Products,*
16 *Inc.*, 2012 WL 5941801 (E.D. Cal. 2012), the court approved a total PAGA penalty amount of
17 \$10,000, with the \$2,500 employee portion divided between as many as 2,055 current and former
18 employees. In *Schiller v. David's Bridal, Inc.*, 2012 WL 217001 (E.D. Cal. 2012), the court also
19 approved a PAGA penalty amount of \$10,000, with the \$2,500 employee portion divided between
20 as many as 3,326 individuals. Here, the parties have agreed to a Net Settlement amount of
21 \$910,750, of which 25%, or \$227,687.50 to be divided among the estimated 29,918 employees, at
22 an estimated average of \$7.61 per SGE.

23
24 **B. The Remaining Settlement Terms Should Be Approved.**

25 Finally, the settlement requires that attorneys' fees, costs, and incentive payment be paid
26 from the common fund. This is appropriate, even in the non-class action context. "California has
27 long recognized, as an exception to the general American rule that parties bear the costs of their own
28 attorneys, the propriety of awarding an attorney fee to a party who has recovered or reserved

1 a monetary fund for the benefit of himself or herself and others. In awarding a fee from the fund or
2 from the other benefited parties, the trial court acts within its equitable power to prevent the
3 other parties' unjust enrichment." *Lafitte v. Robert Half Intern., Inc.* (2016) 1 Cal.5th 480, 561
4 (approving percentage of recovery method in wage and hour class action); *Fox v. Hale & Norcross*
5 *Silver Mtn. Co.* (1895) 108 Cal. 475, 476 (approving fee payment from common fund in early
6 derivative case).

7 A prevailing PAGA plaintiff is entitled to no more than his or her "reasonable [attorney]
8 fees." *Harrington v. Payroll Entertainment Services, Inc.* (2008) 160 Cal.App.4th 589,
9 594(emphasis in original); Labor Code § 2699(g)(1). Here Plaintiff's counsel seeks one-third of
10 the total settlement, the amount typical in the analogous class action context. *Lafitte, supra* at 488.
11 Indeed, in class actions, "[m]ultipliers can range from 2 to 4 or even higher." *Wershba v. Apple*
12 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 (emphasis added).²⁶

13 Plaintiff also seeks reimbursement of litigation costs incurred in the amount of \$10,000
14 (actual costs being \$7,916.39, but a request being made for \$10,000 to cover post-approval efforts
15 in communicating with PAGA aggrieved employees, to ensure compliance by the claims
16 administrator, further court appearances, etc.)²⁷. The requested administration costs of \$46,750 are
17 reasonable and should be approved. Plaintiff's counsel sought bids from three different claims
18 administration companies before settling on CPT Group. CVN also used more competitive bids to
19 seek reductions from CPT, which agreed to lower the cost twice to match the lowest bid.²⁸ The
20 incentive payment sought by Plaintiff here is \$7,500. Plaintiff spent a significant amount of time
21 on this case, signed a general release of all claims, and now can be easily identified as a private
22 attorney general plaintiff by future prospective employers with a simple google search. The

23
24 ²⁶ In *Spann v. JC Penney Corporation* (N.D.Cal. Sept. 30, 2016) 307 F.R.D 508 at *14, the first published order to
25 cite to *Laffitte*, that court approved "a 3.07 multiplier, which is well within the range for reasonable multipliers." See
26 also *Vizcaino*, 290 F.3d at 1052–1054 (surveying multipliers in 23 class action suits and recognizing that courts
27 applied multipliers of 1.0 to 4.0 in 83% of surveyed cases); *Parkinson v. Hyundai Motor Am.* (C.D.Cal.2010) 796
28 F.Supp.2d 1160, 1170 (observing that "multipliers may range from 1.2 to 4 or even higher"); *Hopkins v. Stryker*
Sales Corp., 2013 (N.D.Cal. 2013) 2013 WL 496358, *4 ("Multipliers of 1 to 4 are commonly found to be
appropriate in complex class action cases.").

²⁷ Cole & Van Note Cost Journal attached as Exhibit B to Declaration of Scott Edward Cole, Esq. in Support of
Motion for Approval of PAGA Settlement ("SCA Cost Journal").

²⁸ Cole Decl. ¶ 28.

1 amount sought here as an incentive award is modest in comparison with Class Representative
2 Awards routinely granted in the analogous class action context. Plaintiff has submitted a
3 declaration outlining the work he performed in prosecuting these claims on behalf of the state and
4 the other aggrieved employees. The incentive award should be approved.
5

6 **D. Ex Parte Relief is Warranted Under the Circumstances of this Case.**

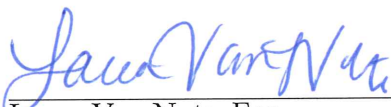
7 As discussed above, the Court is authorized to review and approve PAGA settlements
8 under Labor Code section 2699(1)(2). The notice for this ex parte application was given pursuant
9 to Cal. Rule of Court 3.1204 on October 5, 2021 to Defendant's counsel, Steve Hernandez, by
10 email. The notice stated Plaintiff would seek approval of the parties' settlement, and the date and
11 time of the ex parte hearing. This motion is brought pursuant to the settlement agreement of the
12 parties and is, thus, uncontested.
13

14 **VI. CONCLUSION**

15 Based on the foregoing, plaintiff respectfully requests that the court approve the settlement
16 agreement and grant the instant motion.
17

18 Dated: October 5, 2021

COLE & VAN NOTE

19
20 By: 
21 Laura Van Note, Esq.
22 Attorneys for Representative Plaintiff
23 and Aggrieved Employees
24
25
26
27
28