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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

CHRISTOPHER SOLTYSIAK, individually
and on behalf of all others similarly situated,

Plaintiff,

vs.

STEVE'S TOWING, INC.; and DOES 1
through 20, inclusive,

Defendants.

Case No. CVRI2105881

Assigned for all purposes to:

Hon. Harold W. Hopp

Dept. 1

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT
REPRESENTATIVE ACTION
SETTLEMENT**

Date: September 13, 2023

Time: 9:00 a.m.

Dept.: 1

Reservation ID: 094866257265

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Steve Soltysiak ("Plaintiff") seeks approval of a settlement of claims under the
4 Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA") against
5 Defendant Steve's Towing, Inc. ("Defendant") in the amount of \$240,000.00. Plaintiff alleges
6 approximately 120 non-exempt employees who worked for Defendant were not paid at least
7 minimum wages for all hours worked, not paid overtime compensation, not provided with meal
8 periods or compensation in lieu thereof, not provided with rest breaks or compensation in lieu
9 thereof, not issued reimbursements for work expenses, not provided with accurate wage statements,
10 and were not paid all wages owed upon separation of employment. The proposed Settlement seeks
11 to release claims for civil penalties for violations of Labor Code §§ 201, 202, 203, 204, 210,
12 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198,
13 2800, and 2802, and all applicable IWC Wage Orders as to the above claims.

14 Under Labor Code § 2699(l)(2), the Court must review and approve any proposed PAGA
15 settlement. Here, the proposed Settlement is sufficient to deter and punish future violations. The
16 Settlement is attached to the Declaration of Alexander G.L. Davies ("Davies Decl.") as Exhibit 1,
17 and the proposed letter to be sent to the aggrieved employees is attached thereto as Exhibit A.
18 Plaintiff now seeks this Court's approval of the Settlement terms.

19 **II. FACTUAL AND PROCEDURAL BACKGROUND**

20 On February 8, 2021, Plaintiff's counsel sent a letter to the California Labor & Workforce
21 Development Agency ("LWDA") via online submission and to Defendant via certified mail
22 regarding Defendant's alleged violations. *See* Davies Decl., ¶ 3, Exhibit 2. The LWDA did not
23 respond to this notice within 65 days, indicating it did not intend to investigate, thus allowing
24 Plaintiff to file the instant lawsuit pursuant to Labor Code Section 2699.3(a)(2)(A). *See* Davies
25 Decl., ¶ 4.

26 Plaintiff initially filed his Complaint for Violations of the California Labor Code Private
27 Attorneys General Act of 2004 ("PAGA") against Defendant on July 10, 2020 in the San
28 Bernardino County Superior Court. Davies Decl., ¶ 5. On December 27, 2021, this matter was

1 transferred to the Hon. Sunshine S. Sykes in Department 6 of the Riverside County Superior Court,
2 pursuant to the Court's Order granting Defendant's Motion to Transfer Venue. Davies Decl., ¶ 6.
3 On May 10, 2022, this matter was reassigned to the Hon. Harold W. Hopp in Department 10 for all
4 purposes. Davies Decl., ¶ 7. On May 16, 2022, Defendant filed its Answer to Plaintiff's PAGA
5 Complaint. Davies Decl., ¶ 8.

6 After the filing of Plaintiff's PAGA-only Complaint, and following several meetings
7 between counsel, the Parties began discussing potential early private resolution of their dispute via
8 early mediation following an informal exchange of discovery. Davies Decl., ¶ 9. In preparation
9 for mediation and in response to Plaintiff's informal discovery requests, Defendant produced data
10 and thousands of pages of documents for Plaintiff to evaluate the PAGA claims and calculate the
11 alleged exposure, including Plaintiff's employee file, timekeeping and wage records, Defendant's
12 relevant policy documents, all versions of its employee handbooks applicable to non-exempt
13 employees during the relevant time period, start and stop dates for the non-exempt employees at-
14 issue, timekeeping and payroll data for 100% of the aggrieved employees, and a sampling of wage
15 statements. Davies Decl., ¶ 10.

16 The Parties attended mediation on February 7, 2023, with Lynn Frank, Esq., of Frank and
17 Feder Mediators, a respected class action and PAGA action mediator. Davies Decl., ¶ 11. After
18 engaging in extensive negotiations at mediation, the Parties reached an agreement to settle for
19 \$240,000.00, and executed a Memorandum of Understanding, memorializing the basic terms of the
20 Parties' agreement. Davies Decl., ¶ 12. Separate and apart from the Parties' PAGA Settlement
21 Agreement, the Parties also negotiated a separate individual settlement agreement concerning
22 Plaintiff's non-wage and hour claims, which includes an agreement to resolve Plaintiff's
23 harassment and wrongful termination allegations, and a Section 1542 General Release. Davies
24 Decl., ¶13: Exhibit 3.

25 The Parties spent the next few months negotiating the terms of their more detailed long-
26 form settlement agreement, a process which was delayed slightly as the Parties sought the Court's
27 advice regarding the scope of the proposed release language in the agreement and the applicability
28 of the Court's standing Case Management Order. Davies Decl., ¶ 14. After discussing these issues

1 with the Court at the Parties' April 7, 2023 Case Management Conference, the Court, encouraged
2 the Parties to include the proposed, broader release language advocated for by Defendant, subject
3 to Defendant providing its authority for the broader release language (the *Arias* case) along with
4 the Motion for Approval, so it could properly determination these issues at the approval stage.
5 Davies Decl., ¶ 15.

6 Around May 9, 2023, the Parties finalized the terms of the Settlement Agreement, which
7 is now presented to this Court for approval. Davies Decl., ¶ 16.

8 Plaintiff provided notice of the Settlement to the LWDA on June 27, 2023. Davies Decl.,
9 ¶ 17, Exhibit 4. Plaintiff also served a copy of the motion on the LWDA on June 27, 2023. Davies
10 Decl., ¶ 19, Exhibit 5.

11 **III. PAGA REQUIREMENTS**

12 Based on the California Supreme Court's opinions in *Arias v. Superior Court*, 46 Cal. 4th
13 969 (2009), and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014),
14 Plaintiffs can seek appropriate civil penalties as called for under PAGA on behalf of the State of
15 California and other similarly aggrieved employees without seeking class certification or meeting
16 the requirements of class certification (i.e. numerosity, typicality, commonality and adequacy). As
17 such, the class action two-step preliminary and final approval process is not required.

18 PAGA was enacted to allow enforcement of the Labor Code and recovery of penalties by
19 the State and by private individuals who have been aggrieved by their employers. The statute calls
20 for 75% of any penalties recovered to be paid to California's LWDA and the remaining 25% to the
21 aggrieved employees (Cal. Lab. Code § 2699(i) (2016)).

22 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee
23 must first provide written notice to the LWDA and the employer of the particular Labor Code
24 violations the aggrieved employee alleges the employer has violated. See Cal. Labor Code §
25 2699.3(a)(1)(A) (2016). Once the LWDA notifies the aggrieved employee that it does not intend to
26 investigate the alleged violations, or if the LWDA does not respond within a certain time period,
27 the aggrieved employee is then allowed to proceed in a civil action against the employer on behalf
28

1 of the LWDA and all other similarly aggrieved employees. *See* Cal. Labor Code § 2699.3(a)(2)(A)
2 (2016).

3 In 2009, the California Supreme Court considered the issue of whether an aggrieved
4 employee who brings a PAGA representative claim needs to meet class certification requirements.
5 *Arias*, 46 Cal. 4th at 976. After a substantial review of the legislative history of PAGA, the Court
6 held that an aggrieved employee's representative action brought on behalf of other aggrieved
7 employees against an employer for PAGA violations does not need to meet the requirements for
8 class certification. *Id.* at 975, 980-88. As the Court held, a plaintiff bringing suit under PAGA does
9 so as the proxy or agent of California's labor law enforcement agencies. *Id.* at 986. Because the
10 employee's PAGA action functions as a substitute for an action brought by the government itself, a
11 judgment in the PAGA action binds all those who would be bound by a judgment in an action
12 brought by the government. *Id.*

13 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the court
14 need only "review and approve" the settlement. Cal. Lab. Code § 2699(1)(2) (2016). The Parties
15 to this current PAGA action have reached such an agreement and now seek this Court's approval of
16 the proposed settlement.

17 **IV. THE SETTLEMENT TERMS AND DISTRIBUTION OF PENALTIES**

18 The Parties have agreed that Defendants will pay a total settlement amount of \$240,000.00
19 (the "Settlement Sum"). *See* Settlement Agreement, ¶ I(s); *see also* ¶ II(C)(a). From this amount,
20 up to one-third (1/3) of the Settlement Sum, or \$80,000.00, is allocated to attorneys' fees and up to
21 \$20,000.00 to actual litigation costs. Settlement Agreement, ¶ II(C)(a)(1). To date, Plaintiff's
22 counsel has spent \$16,934.39 in litigation costs. *See* Davies Decl., ¶ 41, 49, Exhibit 6. Plaintiff's
23 counsel anticipates spending an additional \$60.00 associated with the filing of the instant motion,
24 bringing Plaintiff's total litigation costs to \$16,994.39. *Id.* The Settlement allocates up to \$2,750.00
25 to payment for Settlement Administrator Phoenix Settlement Administrators' costs associated with
26 administration of the Settlement. Settlement Agreement, § 3.2.2; *see also* Davies Decl., ¶17; *See*
27 also Declaration of Jodey Lawrence of Phoenix Settlement Administrators ("Settlement
28 Administrator Decl."): Exhibit B ("Settlement Administrator's Not-To-Exceed Bid"). Separate and

1 apart from plaintiff's agreement to release all PAGA wage and hour claims alleged in the Action,
2 Plaintiff has also entered into a confidential standalone agreement to release his individually alleged
3 claims against Defendants, including non-PAGA wage and hour claims and all other claims arising
4 out of his employment, and allegations of wrongful termination. *See*, Settlement Agreement, §
5 5.1.1; *see also*, Davies Decl., at ¶ 13. Plaintiff's individual Settlement Agreement also includes a
6 general release of all known and unknown claims, including a waiver of Section 1542, but excluding
7 his PAGA wage and hour claims, which he is releasing in this Agreement. *See*, Settlement
8 Agreement, § 5.1.1; *see also*, Davies Decl., at ¶ 13.

9 After deducting the attorneys' fees and costs, and Settlement Administrator's costs, the
10 remaining fund ("Net Settlement Amount") of \$140,315.61 will be paid 75% to the LWDA
11 ("LWDA Payment") and 25% to the Aggrieved Employees (the "PAGA Employee Fund").
12 Settlement Agreement, § 3.2.3. "Aggrieved Employee(s)" means "all current and former non-
13 exempt employees of Steve's Towing, Inc. who worked in the State of California from February 8,
14 2020, through January 31, 2023." Settlement Agreement, § 1.4.

15 The "Individual PAGA Payment" for the Aggrieved Employees shall be determined as
16 follows: Each PAGA Settlement Member's pro rata share of the PAGA Employee Fund (the
17 "Individual PAGA Payment") will be determined by the Settlement Administrator, by converting
18 the PAGA Employee Fund into a pay period value. Settlement Agreement at §3.2.3.1. The pay
19 period value will be established by (a) dividing the amount of the Aggrieved Employees' 25% share
20 of PAGA Penalties (\$34,312.50) by the total number of PAGA Period Pay Periods worked by all
21 Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved
22 Employee's PAGA Period Pay Periods. *Id.* All payments are for penalties and will be reported on
23 IRS 1099 forms, if required. *Id.* at §3.2.3.2. There will be no reversion to Defendants and no claims
24 process for PAGA Employees to receive payment. *Id.* at §3.1.

25 The Settlement Administrator will disburse Individual PAGA Payments to each Aggrieved
26 Employee to the last known physical address on file with Defendant in its regularly maintained
27 records. Prior to this disbursement, the Settlement Administrator shall check the addresses provided
28 using the National Change of Address database. Settlement Agreement, § 4.4.1. For any returned

1 payments without a forwarding address, the Settlement Administrator shall run a skip trace. *Id.* at
2 § 4.4.2. Aggrieved Employees who receive their PAGA Settlement Member Payments via U.S.
3 Mail will receive a letter along with their Individual PAGA Payment explaining the reason for the
4 payment, the content of which will be submitted to the Court for approval. The proposed letter is
5 attached to the Settlement Agreement as Exhibit A. All funds not claimed within 180 days of
6 mailing of payment shall be sent to the California State Controller's Office Unclaimed Property
7 Fund with an identification of the amount of unclaimed funds attributable to each Aggrieved
8 Employee. Settlement Agreement, § 4.4.

9 In exchange for the settlement payment, Plaintiff, the LWDA, the State of California and
10 all Aggrieved Employees will release the following claims:

11 Upon complete funding of the Gross Settlement Amount, Plaintiff, the LWDA, all
12 Aggrieved Employees, and the State of California shall fully release and forever
13 discharge the Released Parties, as defined herein, from any and all PAGA claims
14 which arose during PAGA Period (defined above), seeking civil penalties and any
15 other remedies available under California Labor Code sections 2698, et seq.,
16 including attorneys' fees and costs, that were described in the notice of alleged
17 PAGA violations sent by Plaintiff to the LWDA, and alleged or could have been
18 alleged in the Operative Complaint, including PAGA claims for violations of Labor
19 Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174,
20 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198, and all applicable IWC
21 Wage Orders as to the above claims. ("Released Claims"). The release of the
22 Released Claims shall be effective from February 8, 2020, through the date of entry
23 of the Order approving the PAGA settlement agreement ("PAGA Period"), which
24 is also the effective period for the Release of the Released Claims.

25 Settlement Agreement, § 5.2. Only Plaintiff signed a general release of claims. Settlement
26 Agreement, § 5.1.1.

27 Defendant represented that there were 2,917 Pay Periods as of the date of mediation,
28 February 7, 2023, and this formed the basis of Plaintiff's accepting agreement to settle. Settlement
Agreement, § 8. If the number of Pay Periods exceeds 2,917 by more than 10% as of the Effective
Date, the Gross Settlement Amount will increase pro rata per additional pay period. *Id.*
Alternatively, Defendant shall have the option to cap the PAGA Period on the date the total pay
periods reach 2,917. *Id.*

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1 **V. THE SETTLEMENT IS FAIR AND REASONABLE**

2 **A. Standard for Approval**

3 While there are no statutory or common law standards for approval of PAGA settlements,
4 the legislative history of the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et. seq.*
5 (“PAGA”) sheds some light on the approval requirement as it was phrased in § 2699, subdivision
6 (l) prior to the July 1, 2016 amendments. *See* Cal. Lab. Code § 2699(l) (2015) (amended 2016)
7 (“The superior court shall review and approve any penalties sought as part of a proposed
8 settlement...”). PAGA was passed by the legislature as Senate Bill (“SB”) 796, and it was signed
9 by the Governor and filed with the Secretary of State on October 12, 2003. *See* Legislative
10 Counsel’s Digest re Senate Bill No. 796, attached as Exhibit A to the Request for Judicial Notice
11 (“RJN”) filed herewith, p. 1. It took effect on January 1, 2004.

12 The original version of the act did not contain the court approval requirement now codified
13 in § 2699(l). That subdivision was added as part of the amendments to the Act that were introduced
14 as SB 1809 in February of 2004 and signed by the Governor and filed with the Secretary of State
15 on August 11, 2004. *See* Legislative Counsel’s Digest re Senate Bill No. 1809, attached as Exhibit
16 B to the RJN, p. 1. Those amendments took effect immediately, and the court approval
17 requirement of § 2699(l) was one of the provisions that the legislature made retroactive to January
18 1, 2004. *Id.* at pp. 1-2.

19 Senator Joseph L. Dunn authored both the original PAGA bill (SB 796) and the
20 amendments (SB 1809). *See* RJN, Exs. A and B. On July 29, 2004, during the consideration of
21 the amendments in SB 1809, Senator Dunn sent a letter addressed to the President Pro Tem of the
22 Senate, which was published in the Senate Daily Journal, “to clarify the intent of subdivision (l)”
23 of what would become § 2699. *See* 7/29/04 Letter from Sen. Dunn to Sen. Burton, attached as
24 Exhibit C to the RJN. He was sending this letter “in response to an issue raised by the Judicial
25 Council of California.” *Id.* In the letter, Senator Dunn stated that:

26 The purpose of court review of the penalties in subdivision (l) is to ensure that
27 settlements involving penalties arising under Labor Code Section 2699 do not
28 undercut the dual statutory purposes of punishment and deterrence, or result in
unjust, arbitrary, and oppressive, or confiscatory settlements.

1 See, RJN: Exhibit C.

2 To Plaintiff's knowledge, this is the only statement in the legislative history directly
3 addressing the purpose of the court approval requirement. While the letter does not address any
4 specific factual issues to be considered, it does provide some very broad criteria. It suggests that
5 the courts should consider whether the penalties are so small as to "undercut the dual purposes of
6 punishment and deterrence" or so large that they may result in an "unjust, arbitrary and oppressive,
7 or confiscatory" settlement.

8 These broad criteria appear to give the Court wide latitude in determining whether to
9 approve the penalties proposed as part of a PAGA settlement. Interestingly, the criteria focus on
10 the effect the penalties may have on the defendant/employer rather than the LWDA or the
11 aggrieved employees who will receive the penalties. This is different than the analysis of a class
12 action settlement, which typically focuses on the amount received by the class and compares that
13 to the reasonable range of potential outcomes in the case. See, e.g., *Kullar v. Foot Locker Retail,*
14 *Inc.*, 168 Cal.App.4th 116, 130 (2008); *Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186
15 Cal.App.4th 399, 407 (2010).

16 **B. The Settlement Meets the Standard for Approval**

17 The \$240,000.00 Settlement Sum is reasonable when considered in light of the principles
18 discussed in Senator Dunn's letter. Davies Decl., ¶ 20. For a group of approximately 120
19 employees, a penalty of \$240,000.00 is large enough to punish Defendant for alleged past violations
20 and deter future violations. Davies Decl., ¶ 20. The settlement amount is equivalent to a penalty of
21 about \$2,000.00 per employee, which is a significant penalty for a wage and hour case. *Id.* At the
22 same time, the penalty amount is not so large as to be unjust, oppressive or confiscatory, considering
23 the company's potential exposure explained below. *Id.*

24 The Settlement Sum is also reasonable in light of the facts of the foregoing action, the real
25 risk that no PAGA penalties would be paid, and inherent risks and uncertainties associated with
26 PAGA claims. Davies Decl., ¶ 21.

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1 Plaintiff calculated the potential exposure at the initial violation rate of \$100 per pay period
2 as follows: 2,917 pay periods x \$100 per pay period = \$291,700.00. *Id.* If the Court stacked
3 different types of penalties in each pay period, Plaintiff calculated the exposure as follows:

- 4 - 2,917 pay periods x \$100 x 25% violation rate (for rest breaks) = \$72,925.00 for rest break
5 violations;
- 6 - 2,917 pay periods x \$100 x 85.1% violation rate (alleged meal period violation rate shown in
7 the time records) = \$248,236.70 for meal period violations;
- 8 - 1,398 pay periods (pay periods in which employees worked overtime and earned annual bonuses
9 and/or incentive bonuses) x \$100 = \$139,800.00 for unpaid overtime penalties;
- 10 - 2,917 pay periods x \$100 x 50% violation rate (for failing to pay for required pre- and post-shift
11 duties and on-call assignments) = \$145,850.00 for minimum wage violations; and
- 12 - 1,398 pay periods (same as maximum overtime claims) x \$250 = \$349,500.00 for wage
13 statement penalties. *Id.*

14 However, these calculations assumed the Court would find violations in every pay period based
15 on Plaintiff's theories of liability.

16 Defendant could have defeated Plaintiff's claims by proving its written rest break and meal
17 period policies were compliant and that it issued premiums for the majority of violations, and thus
18 those PAGA claims were unmanageable; the annual bonuses were discretionary and therefore
19 should not be included in the overtime rate and that only a small percentage class members earned
20 incentive bonuses during the relevant time period; for the minimum wage claim, the pre- and post-
21 shift claims were heavily reliant on individual employee testimony and thus unmanageable and as
22 alleged at mediation, only a small number of employees were ever required to work on-call; and
23 the wage statement claims would thus fail as they were purely derivative of the unpaid wage and
24 overtime claims. Davies Decl., ¶¶ 22-38. The settlement negotiations took these risks into account.
25 Davies Decl., *Id.* Plaintiff felt the strongest claim was the overtime claim, which should be given
26 full value, but the other claims likely had about a 25% chance of winning, making a reduction in
27 potential exposure justified. Davies Decl., ¶ 39.

28 ///

1 Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA
2 awards are discretionary and can be reduced by the Court. Davies Decl., ¶ 40. Under Labor Code
3 § 2699(e)(2), the Court can reduce the PAGA penalties “if, based on the facts and circumstances of
4 the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
5 or confiscatory.” *Id.* In other words, were this matter to go to trial, any award granted would be at
6 the discretion of the Court. *Id.* Thus, if Plaintiff was not able to “stack” PAGA penalties, the
7 maximum exposure could be reduced even further. Davies Decl., ¶ 40. Plaintiff recognizes that,
8 although he believes there would be no persuasive grounds to reduce the penalties, the Court could
9 determine otherwise and significantly reduce the PAGA penalties, especially given that Defendant
10 does not have unlimited funds and required a payment plan to fund the settlement. Davies Decl., ¶
11 41. The wide range of potential recovery and the additional delays and risks of trial justified settling
12 at this point for a reasonable amount of recovery. *Id.*

13 **VI. CONCLUSION**

14 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement
15 pursuant to PAGA in this Action.

16 Dated: June 27, 2023

AEGIS LAW FIRM, PC

Alexander G.L. Davies

19 By _____
20 Alexander G.L. Davies
21 Attorneys for Plaintiff Christopher Soltysiak