

1 TOMAS E. MARGAIN, Bar No. 193555
2 HUY TRAN, Bar No. 288196
3 Justice at Work Law Group, LLP
4 1550 The Alameda, Suite 302
5 San Jose, California 95126
6 Telephone: (408) 317-1100
7 Facsimile: (408) 351-0105
8 Tomas@JAWLawGroup.com
9 Huy@JAWLawGroup.com

10 Attorneys for Plaintiffs JOSE ANGEL CASTELLANOS, GABRIEL CARRANZA,
11 and ULISES CEJA MARTINEZ

12
13 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF SANTA CLARA
15 UNLIMITED JURISDICTION, COMPLEX
16

17 JOSE ANGEL CASTELLANOS, GABRIEL
18 CARRANZA, and ULISES CEJA
19 MARTINEZ,

20 Plaintiffs,

21 v.

22 STARZ TELECOM, INC.; SAMMY DEAN
23 WILBUR ISAACSON; JOSHUA MICHAEL
24 WAYN ISAACSON AND DOES 1
25 THROUGH 50,

26 Defendants.
27
28

Case No. 21CV386437

**PLAINTIFFS' MOTION FOR COURT
APPROVAL OF PAGA SETTLEMENT**

Date: TBD

Time: TBD

Courtroom:

Complaint Filed: August 2, 2021
Hon. Patricia Lucas

TABLE OF CONTENTS

I.	INTRODUCTION	4
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	4
	a. Plaintiffs' Allegations	4
	b. Procedural Background.....	5
	c. Settlement Negotiations	5
	d. Attorney' Fees and Costs.....	6
III.	SUMMARY OF THE TERMS OF THE SETTLEMENT.....	6
IV.	STANDARD OF REVIEW	7
V.	THIS SETTLEMENT IS FAIR AND REASONABLE.....	9
	a. The Global Settlement is Fair and Reasonable Given the Strengths and Weaknesses of Plaintiffs' Individual Claims and the PAGA Claim.....	9
	b. The Settlement Allocation between Plaintiffs and the PAGA workforce/LWDA is Fair and Reasonable	10
	c. The Risk, Expense, Complexity and Likely Duration of Further Litigation.....	10
	d. The Amount and Terms Offered in the Settlement	11
	e. The Extent of Discovery Completed and the Stage of Proceedings.....	11
	f. The Presence of a Government Participant.....	11
VI.	CONCLUSION	12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Cases

Arias v. Superior Court (2009) 46 Cal. 4th 969..... 7, 8

Gonzalez v. Millard Mall Servs., 281 F.R.D. 455 (S.D. Cal. 2012) 8

Hanlon v. Chrysler Corp., 150 F.3d 1011 (9th Cir. 1998) 8, 9

Iskanian v. CLS Transportation Los Angeles, LLC (2014) 59 Cal. 4th 348, 360..... 7, 8

O’Connor v. Uber Technologies, 201 F. Supp. 3d. 1110 (N.D. Cal. 2016)..... 8

Sakkab v. Luxottica Retail N. Am. Inc., 803 F.3d 425 (9th Cir. 2015) 7

Statutes

Cal. Lab. Code § 2699.3 10

Cal. Labor Code § 2699 8

1 **I. INTRODUCTION**

2 Plaintiffs submit this motion for Court approval of the settlement that they have reached
3 with Defendants regarding their PAGA claims. Plaintiffs' individual and PAGA claims are being
4 settled for global amount of **\$315,000**, which is approximately 30% of the maximum liability of the
5 originally calculated maximum exposure. Of that amount, **\$256,288.63** (or over 81% of the Gross
6 Settlement amount) is dedicated towards PAGA claims and attorney's fees and costs.

7 **II. FACTUAL AND PROCEDURAL BACKGROUND**

8 Defendants own a construction company that specializes in the installation of underground
9 fiber optic cables. Plaintiffs were all employed by Defendants at various times during 2020 and
10 2021. Declaration of Huy Tran at ¶ 4. All were paid by the hour, ranging from \$24 to \$28 per hour.
11
12 *Id.*

13 a. Plaintiffs' Allegations

14 In this action, Plaintiffs alleged that Defendants' practice of rounding their hours to the
15 nearest quarter-hour left unpaid wages that were owed to them and other aggrieved workers. Tran
16 Declaration at ¶ 5. Defendants dispute that their practice of rounding violated the law or left wages
17 owed to any of their employees. *Id.*

18 Plaintiffs also alleged that Defendants did not meet their obligations under Labor Code §
19 226 based on inaccurate information and the inability to access some stubs that were only available
20 online. Tran Declaration at ¶ 6. Defendants dispute that their wage stubs were inaccurate or that any
21 stubs were inaccessible at all. *Id.*

22 Plaintiffs also alleged that Defendants failed to provide compliant meal and rest breaks. Tran
23 Declaration at ¶ 7. Defendants dispute that they failed in any way to provide compliant meal and
24 rest breaks. *Id.*

1 Defendants produced time and pay records for approximately half of the allegedly aggrieved
2 workers who were within the PAGA period in response to Plaintiffs' discovery and a stipulation
3 that allowed anonymized document productions. Tran Declaration at ¶ 8. Plaintiffs' analysis of
4 those records suggested that PAGA liability exceeded \$1,000,000, though Defendants also strongly
5 disputed this analysis. *Id.*

6 b. Procedural Background
7

8 Plaintiffs complied with PAGA's administrative exhaustion procedures by giving written
9 notice to Defendants and the LWDA of the alleged Labor Code and Wage Order violations and the
10 facts supporting these theories on May 7, 2021. Tran Declaration at ¶ 2. Plaintiffs filed this action
11 on August 2, 2021, which is over sixty-five (65) days after providing the initial notice to Defendants
12 and the LWDA. *Id.* at ¶ 3. Their Complaint alleged violations of Labor Code §§ 203, 204, 204(b),
13 218.5, 223, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1771, 1772, 1774, 1810, 1815, and Business
14 and Professions Code § 17200 *et seq* and sought remedies under PAGA and other statutes. The
15 LWDA never responded. *Id.* at ¶ 2. Defendants have contested the sufficiency of the PAGA notice.
16 *Id.*
17

18 c. Settlement Negotiations
19

20 The parties went to mediation on August 11, 2022 before the Hon. Kevin Murphy. At
21 mediation, the parties agreed to settle the case for a global amount of **\$315,000**. Tran Decl. at ¶ 9. In
22 the following months, the parties finalized all the terms of the Settlement Agreement. *Id.* at ¶ 9. The
23 final Agreement was executed on November 4, 2022 and dedicated **\$256,288.63** of the global
24 settlement amount to Plaintiffs' PAGA claims, which represents over 81%. *Id.* at ¶ 9.

25 The parties have also agreed to utilize Phoenix Settlement Administrators to administer the
26 payout of the PAGA penalties to workers, which is currently quoted at **\$2,850**.

27 ///
28

1 d. Attorney' Fees and Costs

2 Plaintiffs' Counsel HUY TRAN has nearly 10 years of experience with a specific focus on
3 employment law. Tran Declaration at ¶ 9. TRAN bills according to the Laffey Matrix
4 (www.laffeymatrix.com), which sets his rate at \$733 per hour. *Id.* Plaintiffs' Counsel TOMAS
5 MARGAIN has 25 years of experience with a specific focus on employment law and bills at \$997
6 per hour under the Laffey Matrix. Alan Jimenez is the legal assistant for Plaintiffs' Counsel and is
7 billed at \$150 per hour. *Id.* Prior to the filing of this Motion, TRAN committed 81.83 hours to this
8 case, MARGAIN committed 31.43 hours, and JIMENEZ committed 8.33 hours. *Id.* To date,
9 Plaintiffs' counsel has also incurred **\$8,990.27** in costs. *Id.* This comes to a total of **\$101,556.87**. *Id.*
10 These assessments do not take into account any additional hours required following the submission
11 of this Motion, which Plaintiffs estimate to be an additional three hours to finalize the distribution
12 with Phoenix and submitting documents to fully close out this case.
13

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

15 Under the parties' settlement, Defendants must pay a total of **\$315,000** (the "Gross
16 Settlement Amount") in a global resolution of this action. The settlement provides the following
17 allocations, subject to Court approval, of the Gross Settlement Amount:
18

19 - **\$58,711.37** for individual settlements, broken down as follows:

- 20 (1) Plaintiff Jose Castellanos' individual settlement of **\$20,382.25**;
21 (2) Plaintiff Gabriel Carranza's individual settlement of **\$21,429.27**;
22 (3) Plaintiff Ulises Ceja Martinez's individual settlement amount of **\$16,899.85**;

23 - **\$256,288.63** for the PAGA settlement amount, broken down as follows:

- 24 (1) No more than 40% or **\$102,515.45** for attorney's fees and costs;
25 (2) No more than **\$3000** for administrator costs;
26 (3) 75% of the balance for the LWDA; and
27 (4) The remainder to the aggrieved workers in the PAGA period.

28 Assuming that the maximum amount for attorney's fees and costs and for administrator costs is paid
out, the balance of **\$153,773.18** is dedicated to PAGA penalties. See Tran Declaration, Exhibit 1.

1 **IV. STANDARD OF REVIEW**

2 Judicial review of the Settlement is required due to the representative claim brought under
3 California’s PAGA. See Cal. Labor Code § 2699 (l)(2). The PAGA statute does not provide a
4 precise standard for settlement approval and case law has not extensively discussed the standard.
5 Importantly, the California Supreme Court considered whether an aggrieved employee who brings a
6 PAGA representative action needed to meet class certification requirements. *Arias v. Superior*
7 *Court* (2009) 46 Cal. 4th 969. Inherent in this is the fact that PAGA settlements are not subject the
8 same standard of review imposed on class action settlements. Even so, the statute and relevant case
9 law offer guidance for reviewing and assessing the fairness and reasonableness of the PAGA
10 settlement presented here for approval.
11

12 Per statute, the LWDA is afforded an opportunity to review a proposed PAGA settlement
13 and may submit objections. See, e.g., Cal. Lab. Code § 2699. Plaintiff has complied with that
14 provision by contemporaneously serving a copy of the Settlement Agreement to the LWDA.
15

16 The California Supreme Court has opined on how the PAGA is distinct from a class action.
17 The PAGA “authorizes an employee to bring an action for civil penalties on behalf of the state
18 against his or her employer for Labor Code violations committed against the employee and fellow
19 employees....” *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 360. “An
20 action brought under the PAGA is a type of qui tam action.” *Id.* at 382. The Ninth Circuit explained
21 in *Sakkab v. Luxottica Retail N. Am. Inc.*, 803 F.3d 425, 429 (9th Cir. 2015), “[t]he class action is a
22 procedural device for resolving the claims of absent parties on a representative basis. ...By contrast,
23 a PAGA action is a statutory action in which the penalties available are measured by the number of
24 Labor Code violations committed by the employer. An employee bringing a PAGA action does so
25 ‘as the proxy or agent of the state’s labor law enforcement agencies.” *Sakkab, supra*, 803 F.3d at
26 435 (internal citations omitted). The purpose in enacting PAGA was to boost compliance with the
27
28

1 state labor code by adding civil penalties for particular violations and deputizing individual workers
2 to file a private claim for civil penalties where a “shortage of government resources” might
3 otherwise undercut enforcement. *Id.* at 429-30 (citing *Iskanian*, 59 Cal. 4th at 378-79).

4 Distinguished from class actions, PAGA claims are intended to serve a decidedly different
5 purpose—namely to protect the public rather than for the benefit of private parties. See *Arias v.*
6 *Superior Court* (2009) 46 Cal.4th 969, 986 (2009); *Gonzalez v. Millard Mall Servs.*, 281 F.R.D.
7 455, 469 (S.D. Cal. 2012).) Furthermore, unlike with a class action, a PAGA action is different
8 because a judgment or dismissal with prejudice in a PAGA action is not binding on non-party
9 employees with respect to their individual remedies separate from civil penalties. *Arias, supra*, 46
10 Cal. 4th at 987 (“If the employer had prevailed, however, the nonparty employees, because they
11 were not given notice of the action or afforded any opportunity to be heard, would not be bound by
12 the judgment as to remedies other than civil penalties.”) As a result, it is the State that is bound in
13 PAGA litigation because the private plaintiff acts for the State of California, not as a representative
14 of other employees.
15

16
17 It is important that relief provided for under a PAGA action be genuine, meaningful, and
18 consistent with the underlying purpose of the statute to benefit the public. See *O’Connor v. Uber*
19 *Technologies*, 201 F. Supp. 3d. 1110, 1134 (N.D. Cal. 2016). “By creating a cause of action under
20 which private plaintiffs may recover civil penalties otherwise recoverable by the state, PAGA
21 benefits the public by augmenting the state’s enforcement capabilities, encouraging compliance
22 with Labor Code provisions, and deterring noncompliance.” *Id.* at 1132-33.
23

24 While it is clear that FRCP 23 or CCP § 382 have no application to a PAGA claim, it may
25 be appropriate to consider whether the factors pertinent in *Hanlon v. Chrysler Corp.*, 150 F.3d
26 1011, 1026 (9th Cir. 1998) “or any other coherent analysis” justified the proposed settlement of a
27 PAGA claim. *O’Connor, supra*, 201 F. Supp. 3d. at 1134-35. *Hanlon* calls for the consideration of
28

1 the following: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely
2 duration of further litigation; (3) the amount and terms offered in settlement; (4) the extent of
3 discovery completed and the stage of the proceedings; (5) the experience and views of counsel; and
4 (6) the presence of a government participant. *Hanlon, supra*, 150 F.3d at 1026. The interest served
5 is that of the State of California and the LWDA is the governmental entity which has standing to
6 comment upon any settlement. See Cal. Lab. Code § 2699(1). The relevant *Hanlon* factors provide
7 an instructive framework for settlement review, though the PAGA itself, at least with reference to
8 health and safety violations, points to review that "ensure[s] that the settlement provisions are at
9 least as effective as the protections or remedies provided...for the alleged violation." See Cal. Lab.
10 Code § 2699.3(b)(4).

12 **V. THIS SETTLEMENT IS FAIR AND REASONABLE**

13 The settlement presented here is fair, reasonable, and adequate to those concerned as it
14 provides for a recovery for Plaintiffs' releases of their individual claims and for the PAGA
15 workforce and the LWDA for the release of civil penalties pursuant to PAGA.

17 a. The Global Settlement is Fair and Reasonable Given the Strengths and Weaknesses
18 of Plaintiffs' Individual Claims and the PAGA Claim

19 Based on a careful consideration of the strengths and weaknesses of this controversy,
20 including the risks of delay, Defendants' defenses, and Defendants' ability to pay, Plaintiffs' counsel
21 believes this settlement allocating **\$153,773.18** of the Global Settlement to PAGA penalties is fair
22 and reasonable for Plaintiffs, the aggrieved employees, and the LWDA. Defendants produced time
23 and pay records for Plaintiffs and the aggrieved workers under PAGA, and the parties contest
24 whether employees were paid for all hours worked. The Parties also contest whether employees had
25 access to pay stubs sufficient to satisfy Labor Code § 226. Defendants contest Plaintiffs' claim for
26 rest and meal break violations and that Plaintiffs' notice was sufficient to pursue rounding under
27 PAGA. Through negotiation, the parties addressed the strengths and weaknesses of their respective
28

positions on this case by agreeing to pay out all aggrieved workers on a pro rata basis as determined by the work weeks worked by each of them. Given that there are nearly 2285 pay periods which implicate PAGA penalties and also challenges to Plaintiffs' rest and meal break claims under PAGA and the sufficiency of the PAGA notice to pursue rounding under PAGA, Plaintiffs believe a PAGA allocation of approximately \$67.30 per pay period for the estimated 60 aggrieved workers, exclusive of attorney's fees, is reasonable under the circumstances.

b. The Settlement Allocation between Plaintiffs and the PAGA workforce/LWDA is Fair and Reasonable

Allocating over 81% of the Gross Settlement Amount to resolve Plaintiffs' PAGA claims is fair and reasonable. The bulk of the total liability in this case is under PAGA. Plaintiffs are recovering statutory penalties on behalf of approximately 60 aggrieved workers. However, because they are only seeking statutory penalties for those aggrieved workers compared to the entirety of their individual claims, a proper balance is struck between the amount that is dedicated to PAGA and the amount that goes to each individual Plaintiff.

Lastly, the amount set aside for attorney's fees and costs is reasonable. PAGA authorizes recovery of attorney's fees. Labor Code § 2699(g). Plaintiffs' counsel incurred over **\$101,556.87** in fees and costs prior to the filing of this motion and does not take into account any additional hours required after the Motion is submitted.

c. The Risk, Expense, Complexity and Likely Duration of Further Litigation

The parties considered a number of risk factors in this action in determining an acceptable settlement after Defendants produced the timekeeping and payroll records before settlement negotiations. Though Plaintiffs' claims for rounding, noncompliant meal breaks, and noncompliant wage stubs was strong, Plaintiffs face a potential adverse ruling at summary judgment or at trial with respect to these claims and the sufficiency of their PAGA notice. Defendants are represented by talented counsel who were prepared to zealously litigate this case, and there is no way to

1 determine what would transpire at and after trial. This settlement resolves this uncertainty by
2 providing recovery for Plaintiffs, the aggrieved employees and the LWDA.

3 d. The Amount and Terms Offered in the Settlement

4 This settlement presents a fair recovery for Plaintiffs, the PAGA workforce and the LWDA.
5 Of the **\$315,000** Gross Settlement Amount, Plaintiffs will receive **\$58,711.37** to release their
6 individual claims, leaving **\$256,288.63** as the Gross PAGA Settlement Amount. Of the Gross
7 PAGA Settlement Amount, no more than 40% (or **\$102,515.45**) is allocated to cover all attorneys'
8 fees and costs, resulting in **\$153,773.178** as PAGA penalties, of which 75% will be paid to the
9 LWDA and the remaining 25% to the aggrieved workers in the PAGA workforce.
10

11 e. The Extent of Discovery Completed and the Stage of Proceedings

12 Written discovery was conducted by all parties, and Defendants deposed two out of the three
13 Plaintiffs. Defendants produced all time and pay records for Plaintiffs and anonymized time and pay
14 records for half of their work force who were part of Plaintiffs' PAGA claims. The parties formally
15 settled this case on November 4 after mediation, and the Agreement is pending court approval. No
16 trial date has yet been set.
17

18 f. The Presence of a Government Participant

19 Here, there is no active government participation. Plaintiffs notified the State of California
20 through the LWDA of their allegations before filing this claim for PAGA enforcement. The LWDA
21 has not taken any action against Defendants. Plaintiffs' counsel has also submitted a copy of the
22 parties' settlement agreement to the LWDA and has not received any objection from the LWDA as
23 of the date of this filing.
24

25 ///

26 ///

27 ///

1 **VI. CONCLUSION**

2 For the aforementioned reasons, Plaintiff requests that this Court approve the Settlement
3 Agreement and payment of \$256,288.63 from Defendants representing a settlement of the PAGA
4 claims and PAGA penalties for PAGA workforce.

5
6 Date: December 12, 2022

By: 
HUY TRAN
Counsel for Plaintiffs