

AEGIS LAW FIRM, PC

KASHIF HAQUE, State Bar No. 218672

SAMUEL A. WONG, State Bar No. 217104

JESSICA L. CAMPBELL, State Bar No. 280626

ALEXANDER G.L. DAVIES, State Bar No. 328125

9811 Irvine Center Drive, Suite 100

Irvine, California 92618

Telephone: (949) 379-6250

Facsimile: (949) 379-6251

jcampbell@aegislawfirm.com

adavies@aegislawfirm.com

Attorneys for Plaintiff Alisha Gurung, individually,
and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ALISHA GURUNG, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

UNIQLO CALIFORNIA, LLC; UNIQLO
USA, LLC; and DOES 1 through 20,
inclusive,

Defendants.

Case No. CIVSB2114380

Assigned for All Purposes to:

Hon. David Cohn

Dept. S-26

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

Date: January 9, 2023

Time: 9:00 a.m.

Dept.: S-26

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Alisha Gurung (“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 Defendants Uniqlo California, LLC, and Uniqlo USA, LLC (collectively “Defendants”) in the
6 amount of \$575,000.00. Plaintiff alleges approximately 1,452 non-exempt employees who worked
7 for Defendants were not paid at least minimum wages for all hours worked, not paid overtime
8 compensation, not provided with meal periods or compensation in lieu thereof, not provided with
9 rest breaks or compensation in lieu thereof, not provided with accurate wage statements, and were
10 not paid all wages owed upon separation of employment. The proposed Settlement seeks to release
11 claims for civil penalties for violations of Labor Code §§ 201, 202, 203, 204, 210, 221, 223, 226,
12 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and
13 2802.

14 Under Labor Code § 2699(1)(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 May 10, 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 her Complaint as a class action on May 10, 2021. Davies Decl., ¶ 5.
27 On August 20, 2021, Plaintiff filed a Request for Dismissal of her class action and individual claims,
28 without prejudice. Davies Decl., ¶ 6. Concurrently with Plaintiff’s Request for Dismissal, Plaintiff

1 filed her operative First Amended Complaint for Enforcement of the Private Attorneys General Act
2 (“PAGA”). Davies Decl., ¶ 7.

3 Prior to the filing of Plaintiff’s PAGA-only First Amended Complaint (“FAC”), the Parties
4 began discussing a potential informal exchange of discovery with an eye towards early private
5 mediation of their dispute. Davies Decl., ¶ 8. On August 6, 2021, Plaintiff sent Defendants a list
6 of informal requests for documents and data she would need in order to have a meaningful
7 mediation. Davies Decl., ¶ 9. In preparation for mediation and in response to Plaintiff’s discovery
8 requests, Defendant produced data and hundreds of pages of documents for Plaintiff to evaluate the
9 PAGA claims and calculate the alleged exposure, including policy documents, compensation plans,
10 pay stubs and a list of aggrieved employees with dates of employment to calculate the pay periods
11 worked. Davies Decl., ¶ 10. On May 6, 2022, Plaintiff submitted an amended PAGA violation
12 notice letter to the LWDA, notifying of Plaintiff’s intent to amend her complaint to add additional
13 Labor Code violations. Davies Decl., ¶ 11; Exhibit 3.

14 The parties attended mediation on May 9, 2022, with Judge Carl West (Ret.), a respected
15 class action and PAGA action mediator. Davies Decl., ¶ 12. While the parties did not settle at
16 mediation, they continued to engage in extensive negotiations, and later reached an agreement to
17 settle for \$575,000.00. Davies Decl., ¶ 13.

18 Around September 9, 2022, the Parties finalized the terms of the Settlement Agreement,
19 which is now presented to this Court for approval. Davies Decl., ¶ 14. On August 25, 2022, the
20 Parties filed a Joint Stipulation and [Proposed] Order Allowing Plaintiff to File Second Amended
21 Complaint. Davies Decl., ¶ 15. On August 21, 2022, the Court Granted the Order Allowing Plaintiff
22 to file her Second Amended Complaint. Davies Decl., ¶ 16. On October 6, 2022, Plaintiff filed his
23 Second Amended Complaint with the Court. Davies Decl., ¶¶ 17, 45; Exhibit 4. On October 25,
24 2022, Defendant filed its Answer to Plaintiff’s Second Amended Complaint. Davies Decl., ¶ 18.

25 Plaintiff provided notice of the Settlement to the LWDA on December 6, 2022. Davies
26 Decl., ¶ 19, Exhibit 3. Plaintiff also served a copy of the motion on the LWDA on December 19,
27 2022. Davies Decl., ¶ 20, Exhibit 4.

28 ///

III. PAGA REQUIREMENTS

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

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

In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee must first provide written notice to the LWDA and the employer of the particular Labor Code violations the aggrieved employee alleges the employer has violated. See Cal. Labor Code § 2699.3(a)(1)(A) (2016). Once the LWDA notifies the aggrieved employee that it does not intend to investigate the alleged violations, or if the LWDA does not respond within a certain time period, the aggrieved employee is then allowed to proceed in a civil action against the employer on behalf of the LWDA and all other similarly aggrieved employees. See Cal. Labor Code § 2699.3(a)(2)(A) (2016).

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

1 judgment in the PAGA action binds all those who would be bound by a judgment in an action
2 brought by the government. *Id.*

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

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

8 The Parties have agreed that Defendants will pay a total settlement amount of \$575,000.00
9 (the "Settlement Sum"). See Settlement Agreement, ¶ I(t); see also ¶ II(C)(a). From this amount,
10 up to one-third (1/3) of the Settlement Sum, or \$191,666.67, is allocated to attorneys' fees and up
11 to \$20,000.00 to actual litigation costs. Settlement Agreement, ¶ II(C)(a)(1). To date, Plaintiff's
12 counsel has spent \$14,534.55 in litigation costs. See Davies Decl., ¶ 40, 48, Exhibit 7. The
13 Settlement allocates up to \$3,500.00 to payment for Settlement Administrator Phoenix Settlement
14 Administrators' costs associated with administration of the Settlement. Settlement Agreement, ¶
15 II(C)(a)(2). For Plaintiff's efforts in assisting with the Lawsuit and in exchange for a general release
16 of her individual claims, \$10,000.00 is allocated to Plaintiff. Settlement Agreement, ¶ II(C)(a)(3).

17 After deducting the attorneys' fees and costs, Settlement Administrator's costs, and
18 Plaintiff's individual settlement awards, the remaining fund ("Net Settlement Amount") of
19 \$349,833.33 will be paid 75% to the LWDA ("LWDA Payment") and 25% to the PAGA Settlement
20 Members ("Employee Net Settlement Amount" of "PAGA Employee Fund"). Settlement
21 Agreement, ¶ II(C)(a)(4). "PAGA Settlement Members" are "all current and former non-exempt
22 employees of Defendants who worked in the State of California from May 10, 2020 through June
23 9, 2022." Settlement Agreement, ¶ I(h).

24 The "PAGA Settlement Member Payment" for the PAGA Settlement Members shall be
25 determined as follows: Each PAGA Settlement Member's pro rata share of the PAGA Employee
26 Fund ("PAGA Settlement Member Payment") will be determined by the Settlement Administrator,
27 by converting the Employee PAGA Employee Fund into a pay period value. Settlement Agreement
28 at ¶ II(C)(a)(4). The pay period value will be established by dividing the PAGA Employee Fund

1 by all pay periods worked by all PAGA Employees from May 10, 2020 through June 9, 2022
2 (“PAGA Period”). *Id.* The pay periods worked by PAGA Employees during the PAGA Period
3 will be derived by analysis of the time and payroll data in Defendants’ records and extrapolation as
4 needed, including estimates based on PAGA Employees’ hire and termination dates, for any periods
5 of time in which such data is not immediately available. *Id.* The Settlement Member Payment for
6 each PAGA Employee will be determined by multiplying the pay period value by each PAGA
7 Employee’s individual pay periods. Settlement Agreement at ¶ II(C)(a)(4). All payments are for
8 penalties and will be reported on IRS 1099 forms, if required. *Id.* There will be no reversion to
9 Defendants and no claims process for PAGA Employees to receive payment. *Id.*

10 The Settlement Administrator will disburse Individual Settlement Shares to each
11 Aggrieved Employee to the last known physical address on file with Defendants in its regularly
12 maintained records. Prior to this disbursement, the Settlement Administrator shall check the
13 addresses provided using the National Change of Address database. Settlement Agreement, ¶
14 II(C)(c). For any returned payments without a forwarding address, the Settlement Administrator
15 shall run a skip trace. *Id.* Aggrieved Employees who receive their PAGA Settlement Member
16 Payments via U.S. Mail will receive a letter along with their PAGA Settlement Member Payment
17 explaining the reason for the payment, the content of which will be submitted to the Court for
18 approval. *Id.* The proposed letter is attached to the Settlement Agreement as Exhibit A. All funds
19 not claimed within 180 days of mailing of payment shall be sent to the California State Controller’s
20 Office Unclaimed Property Fund with an identification of the amount of unclaimed funds
21 attributable to each Aggrieved Employee. *Id.*

22 In exchange for the settlement payment, the State of California and the PAGA Settlement
23 Members will release the following claims:

24 Upon complete funding of the Gross Settlement Amount, Plaintiff, the LWDA, all
25 PAGA Settlement Members, and the State of California shall be deemed to have
26 fully, finally, and forever waived, released, relinquished, and discharged
27 Defendants and each and all of its/their respective past, present, or future affiliates,
28 related entities, parents, subsidiaries, owners, members, partners, officers,
directors, board members, managers, supervisors, employees, co-employers,
predecessors, successors, assigns, agents, shareholders, investors, insurers, and
legal representatives, and representatives (“Released Parties”) from any and all

1 penalties under the California Private Attorneys' General Act (Labor Code section
2 2698, et seq.) that could have been sought by the Labor Commissioner for the
3 violations identified in Plaintiff's operative Second Amended Complaint, attached
4 as Exhibit 4, Plaintiff's pre-filing letter to the LWDA, attached as Exhibit 2, and
5 amended May 6, 2022 letter to the LWDA, attached as Exhibit 3, that accrued at
any time between May 10, 2020 to June 9, 2022. ("Released Claims"). The release
of the Released Claims shall be effective from May 10, 2020 through June 9, 2022
("Release Period"), which is also the effective period for the Release of the
Released Claims.

6
7 Settlement Agreement, ¶ IV(B). Only Plaintiff signed a general release of claims. Settlement
8 Agreement, ¶ IV(A).

9 Defendants estimated that, at the time of Mediation (May 9, 2022), there were
10 approximately 30,152 pay periods worked by PAGA Employees during the PAGA Period, and this
11 estimation served as one of the bases for the Parties' settlement. Settlement Agreement, ¶ II(C)(b).
12 If the total number of pay periods worked by PAGA Employees during the PAGA Period as of May
13 9, 2022 exceeds 33,166 (i.e., 10% more than Defendants' estimate) the Settlement Sum will
14 increase pro rata per additional pay period. *Id.*

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

16 **A. Standard for Approval**

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

26 The original version of the act did not contain the court approval requirement now codified
27 in § 2699(l). That subdivision was added as part of the amendments to the Act that were introduced
28 as SB 1809 in February of 2004 and signed by the Governor and filed with the Secretary of State

1 on August 11, 2004. *See* Legislative Counsel’s Digest re Senate Bill No. 1809, attached as Exhibit
2 B to the RJN, p. 1. Those amendments took effect immediately, and the court approval
3 requirement of § 2699(l) was one of the provisions that the legislature made retroactive to January
4 1, 2004. *Id.* at pp. 1-2.

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

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

15 *Id.*

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

22 These broad criteria appear to give the Court wide latitude in determining whether to
23 approve the penalties proposed as part of a PAGA settlement. Interestingly, the criteria focus on
24 the effect the penalties may have on the defendant/employer rather than the LWDA or the
25 aggrieved employees who will receive the penalties. This is different than the analysis of a class
26 action settlement, which typically focuses on the amount received by the class and compares that
27 to the reasonable range of potential outcomes in the case. *See, e.g., Kullar v. Foot Locker Retail,*
28

1 *Inc.*, 168 Cal.App.4th 116, 130 (2008); *Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186
2 Cal.App.4th 399, 407 (2010).

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

4 The \$575,000.00 Settlement Sum is reasonable when considered in light of the principles
5 discussed in Senator Dunn's letter. Davies Decl., ¶ 21. For a group of approximately 1,452
6 employees, a penalty of \$575,000.00 is large enough to punish Defendant for alleged past violations
7 and deter future violations. Davies Decl., ¶ 21. The settlement amount is equivalent to a penalty of
8 about \$396.01 per employee, which is a significant penalty for a wage and hour case. *Id.* At the
9 same time, the penalty amount is not so large as to be unjust, oppressive or confiscatory, considering
10 the company's potential exposure explained below. *Id.*

11 The Settlement Sum is also reasonable in light of the facts of the foregoing action, the real
12 risk that no PAGA penalties would be paid, and inherent risks and uncertainties associated with
13 PAGA claims. Davies Decl., ¶ 22.

14 Plaintiff calculated the potential exposure at the initial violation rate of \$100 per pay period
15 as follows: 30,152 pay periods x \$100 per pay period = \$3,015,200.00. *Id.* If the Court stacked
16 different types of penalties in each pay period, Plaintiff calculated the exposure as follows:

- 17 - 30,152 pay periods x \$100 x 25% violation rate (for on-premises rest breaks) = \$753,800.00 for
18 rest break violations;
- 19 - 30,152 pay periods x \$100 x 1.2% violation rate (alleged meal period violation rate shown in
20 the time records) = \$36,182.40 for meal period violations;
- 21 - 562 pay periods (pay periods in which employees worked overtime and earned annual bonuses)
22 x \$100 = \$53,200.00 for unpaid overtime penalties;
- 23 - 1,072 pay periods x \$100 x 100% violation rate (for rounding) = \$107,200.00 for minimum
24 wage violations;
- 25 - 1,634 pay periods (same as maximum unpaid wage and overtime claims) x \$250 = \$163,400.00
26 for wage statement penalties. *Id.*

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

1 Defendants could have defeated Plaintiff's claims by proving its rest break and meal period
2 policies were compliant and that it issued premiums for the majority of violations, thus those PAGA
3 claims were unmanageable, the bonuses were discretionary and therefore should not be included in
4 the overtime rate, from the minimum wage claim was reliant on individual employee testimony and
5 thus unmanageable whereas some PAGA Employees benefitted its rounding policies, and the wage
6 statements claims would fail as they were purely derivative of the unpaid wage claims. Davies
7 Decl., ¶ 23. The settlement negotiations took these risks into account. Davies Decl., *Id.* Plaintiff
8 felt the strongest claim was the overtime claim, which should be given full value, but the other
9 claims likely had about a 10% chance of winning, making a large reduction in potential exposure
10 justified. Davies Decl., ¶ 24.

11 Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA
12 awards are discretionary and can be reduced by the Court. Davies Decl., ¶ 25. Under Labor Code
13 § 2699(e)(2), the Court can reduce the PAGA penalties "if, based on the facts and circumstances of
14 the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
15 or confiscatory." *Id.* In other words, were this matter to go to trial, any award granted would be at
16 the discretion of the Court. *Id.* Thus, if Plaintiff was not able to "stack" PAGA penalties, the
17 maximum exposure of \$3,015,200.00 could be reduced even further. Plaintiff recognizes that,
18 although she believes there would be no persuasive grounds to reduce the penalties, the Court could
19 determine otherwise and significantly reduce the PAGA penalties. Davies Decl., ¶ 25. The wide
20 range of potential recovery and the additional delays and risks of trial justified settling at this point
21 for a reasonable amount of recovery. *Id.*

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

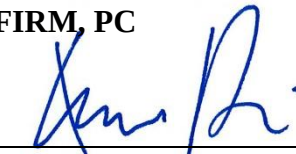
1 **VI. CONCLUSION**

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

4
5 Dated: December 19, 2022

AEGIS LAW FIRM, PC

6
7 By _____



Alexander G.L. Davies
Attorneys for Plaintiff Alisha Gurung