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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SANTA CLARA**

11 JAIME IBARRA, individually and on behalf
12 of others similarly situated, and as an
13 aggrieved employee and Private Attorney
General,

14 Plaintiff,

15 vs.

16 LITE-ON, INC., a California Corporation;
LITE-ON TECHNOLOGY SERVICE, INC.,
17 a California Corporation; LITE-ON
TRADING USA, INC., a California
18 Corporation; and DOES 1 through 50,
inclusive,

19 Defendants.
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Case No. 21CV385298

*Assigned for All Purposes to the Hon. Charles
F. Adams, Dept. 7*

NOTICE OF ENTRY OF ORDER

Action Filed: August 6, 2021
Trial Date None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on March 19, 2024, in Department 7 at the above-entitled
3 Court, located at 191 N. First Street, San Jose, CA 95113., the Honorable Charles F. Adams
4 executed an Order granting Plaintiff's Motion for Approval of PAGA Settlement. Attached hereto
5 as **Exhibit A** is a true copy of the Order Granting Plaintiffs Motion for Approval of PAGA
6 Settlement which was executed and filed on March 19, 2024.

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8 Dated: March 21, 2024

PROTECTION LAW GROUP LLP

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11 _____
12 D. Luke Clapp
13 Arnel Tan
14 Joseph Marshall
15 *Attorneys for Plaintiff*
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Exhibit A

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JAIME IBARRA, individually and on behalf	)	Case No.: 21CV385298
of others similarly situated, and as an	)	
aggrieved employee and Private Attorney	)	ORDER GRANTING PLAINTIFF'S
General,	)	MOTION FOR APPROVAL OF PAGA
	)	SETTLEMENT
Plaintiff,	)	
	)	
v.	)	Dept. 7
	)	
	)	
LITE-ON, INC., et al.,	)	
	)	
Defendants.	)	

Before the Court is Plaintiff's motion for approval of PAGA settlement, which is unopposed. Neither party contested the court's tentative ruling nor appeared at the hearing on March 14, 2024. As discussed below, the Court GRANTS Plaintiff's motion.

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1 **I. BACKGROUND**

2 According to the allegations of the operative First Amended Complaint, Plaintiff was
3 employed by Defendants as a non-exempt employee from January 1, 2017, through March 25,
4 2021. Defendant Lite-On Inc. is engaged in the research, development, sale and distribution of
5 optoelectronics, which are systems that detect and control light. Defendant Lite-On Technology
6 Service, Inc. provides related electronic devices, while defendant Lite-On Trading USA, Inc.
7 provides customer service, account management, and technical support for Lite-On products.
8 Defendants allegedly failed to pay overtime and minimum wages, failed to provide compliant
9 meal and rest periods or pay associated premiums, and failed to provide code-complaint wage
10 statements, among other Labor Code violations.

11 Plaintiff initiated this action on August 6, 2021 with the filing of a putative class action
12 complaint asserting nine causes of action. On September 8, 2021, Plaintiff filed the FAC,
13 asserting an additional cause of action under PAGA based on the same purported Labor Code
14 violations giving rise to the original nine causes of action.

15 **II. LEGAL STANDARD FOR APPROVING PAGA SETTLEMENT**

16 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf
17 of other current or former employees to recover civil penalties for Labor Code violations.
18 (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other
19 grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639.) 75 percent of any
20 penalties recovered go to the Labor and Workforce Development Agency (LWDA), leaving the
21 remaining 25 percent for the employees. (*Ibid.*) PAGA is intended “to augment the limited
22 enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as
23 representatives of the Agency.” (*Id.* at p. 383.) A judgment in a PAGA action binds all those,
24 including nonparty aggrieved employees, who would be bound by a judgment in an action
25 brought by the government. (*Id.* at p. 381.)

1 Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall
2 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
3 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
4 *Court* (2017) 3 Cal.5th 531, 549.) “[C]lass certification is not required” in this context as in a
5 class action. (*Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971
6 (*Haralson*).)

7 Similar to its review of class action settlements, the Court must “determine independently
8 whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the
9 LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72
10 Cal.App.5th 56, 76–77 (*Moniz*).) It must make this assessment “in view of PAGA’s purposes to
11 remediate present labor law violations, deter future ones, and to maximize enforcement of state
12 labor laws.” (*Id.* at p. 77; see also *Haralson, supra*, 383 F. Supp. 3d at p. 971 [“when a PAGA
13 claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful,
14 consistent with the underlying purpose of the statute to benefit the public ...”], quoting LWDA
15 guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d
16 1110 (*O’Connor*).)

17 The settlement must be reasonable in light of the potential verdict value. (See *O’Connor*,
18 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential
19 verdict].) But a permissible settlement may be substantially discounted, given that courts often
20 exercise their discretion to award PAGA penalties below the statutory maximum even where a
21 claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-
22 CV-02198-EMC) 2016 WL 5907869, at *8–9.)

1 **III. PLAINTIFF’S INVESTIGATION, SETTLEMENT PROCESS, AND THE**
2 **PARTIES’ AGREEMENT**

3 After the commencement of this action, the parties engaged in formal discovery,
4 propounding various interrogatories and requests for productions of documents, as well as
5 deposition notices. After issues developed with the sufficiency of the parties’ responses to
6 discovery, they engaged in an informal discovery conference in August 2022, and were able to
7 resolve many of their disputes. In October 2022, Plaintiff propounded additional discovery and,
8 through the responses to these requests, confirmed that there was a very limited number of
9 employees within the potential class period. Consequently, the parties began informal settlement
10 efforts to resolve the PAGA claims but were unable to reach an agreement.

11 On October 27, 2023, the parties attended an early settlement conference with the Court
12 and, after debating their positions and providing analysis for the Court’s consideration, accepted
13 a proposal- made by the Court- to resolve the representative PAGA claims at issue for a gross
14 settlement amount of \$9,500. On November 7, 2023, the Court granted Plaintiff’s request to
15 dismiss his class claims without prejudice. The parties then spent time drafting, revising and
16 negotiating the terms of a long form settlement agreement, resulting in the execution on January
17 17, 2024 of the Joint Stipulation of PAGA Settlement (the “Agreement”) now before the Court.

18 Pursuant to the Agreement, Defendants will pay a non-reversionary gross settlement
19 amount of \$9,500, which is comprised of \$3,166.67 in attorney’s fees (one-third of the gross
20 settlement amount) and \$223.90 in litigation costs. There are no administrative costs because the
21 parties have agreed that Defendants will handle the administration of the PAGA settlement. The
22 net settlement of approximately \$6,109.43 will be distributed 75 percent (\$4,582.07) to the
23 LWDA and 25 percent (\$1,527.36) to the PAGA members (i.e., “Aggrieved Employees”) on a
24 pro rata basis based on the number of pay periods each PAGA member worked during the PAGA
25 period, i.e., the period of time from August 6, 2020 through October 27, 2023. It is estimated
 that there are approximately 268 pay periods within the foregoing period, however, if the actual

1 number of pay periods exceeds this amount by more than 10%, the Agreement provides that
2 Defendants will have the option to either increase the gross settlement amount on a pro rata basis
3 equal to the percentage increase beyond this 10% threshold or cut off the PAGA period so that
4 this escalator is not needed.

5 In exchange for settlement, Aggrieved Employees (and the State of California and the
6 LWDA) will release Defendants from all claims under the California Labor Code Private
7 Attorneys General Act of 2004 for civil penalties that arose during the PAGA Period and which
8 could have been premised on the facts alleged in the PAGA Letter to the LWDA and/or in the
9 operative complaint in in the Action including but not limited to penalties that could have been
10 awarded pursuant to Labor Code sections 210, 226.3, 1197.1, 558, and 2699. The Released
11 Claims expressly exclude all claims by PAGA Members for individual wage claims, vested
12 benefits, wrongful termination, unemployment insurance, disability, social security, workers'
13 compensation, claims while classified as exempt, and claims outside of the PAGA Period. (See
14 Settlement Agreement, ¶¶ 17, 18, 35-39.)

15 The release is appropriately tailored to the allegations at issue, and does not release any
16 claims other than those for PAGA penalties. (See *Amaro v. Anaheim Arena Management,*
17 *LLC* (2021) 69 Cal.App.5th 521, 537; *Moniz, supra*, 72 Cal.App.5th at p. 82 [release of “all
18 known and unknown claims under PAGA ... that were or could have been pled based on the
19 allegations of the Complaint” was appropriately approved].)

20 **IV. DISCUSSION**

21 **A. Potential Verdict Value**

22 Based on the data provided by Defendants, Plaintiff estimated the maximum exposure of
23 the PAGA claims to be \$168,500. Several factors reduced this amount, including the Court's
24 expressed unwillingness to stack penalties; this factor alone reduced the value of Plaintiff's
25 PAGA claim down to \$76,500. Additionally, Plaintiff faced the difficulty of proving the

1 underlying Labor Code violations, which was made particularly harder by the fact that the
2 majority of the PAGA members were current employees who had provided declarations asserting
3 that they had not suffered from any of the alleged Labor Code violations. Plaintiff also
4 anticipated potential manageability issues. Based on the foregoing, Plaintiff further discounted
5 Defendants' estimated liability, resulting in an adjusted amount of \$9,359.24. In consideration
6 of these facts, the history of various similar PAGA decisions and the risk that Plaintiff may
7 recover nothing, the Court finds that the proposed settlement is fair to those affected and is
8 genuine, meaningful, and reasonable in light of the statute's purposes.

9 **B. Attorney Fees**

10 While the PAGA statute does not expressly require judicial review of claimed attorney
11 fees, the Court believes it cannot adequately fulfill its statutory duty to review the penalties
12 associated with PAGA settlements without also considering attorney fees. The Court thus finds
13 that it must scrutinize the attorney fee arrangement associated with a PAGA settlement. This is
14 consistent with the observation of many courts that PAGA claims are analogous to "*qui tam*"
15 suits like those under the federal False Claims Act: when reviewing settlements of *qui tam*
16 claims, courts should and do consider any associated attorney fee arrangement. (See *U.S. v.*
17 *Texas Instruments Corp.* (9th Cir. 1994) 25 F.3d 725, 728 [attorney fee award must be
18 considered by the trial court as part of its review of the "entire settlement arrangement"].)

19 Plaintiff seeks a fee award of \$3,166.67, one-third of the gross settlement, which is not an
20 uncommon contingency fee allocation in a wage and hour/PAGA action. Plaintiff also submits a
21 lodestar figure of \$19,410 based on 28.6 hours spent on this case by counsel billing at rates of
22 \$550 to \$850 per hour. This amount far exceeds the fees requested by Plaintiff here, resulting in
23 a negative multiplier. Accordingly, the lodestar cross check supports the percentage fee actually
24 requested and this amount is approved. (See *Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 1
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Cal.5th 480, 488, 503-504 [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

C. Other Costs and Expenses

Counsel's request for litigation costs of \$223.90 appears reasonable based on the supporting declaration provided which establishes that counsel actually incurred costs in this amount and is approved.

V. ADMINISTRATION PROCESS

The parties have agreed that no later than 14 days after the "Effective Date,"¹ Defendants will provide Plaintiff's counsel with an anonymized list with final calculations for their review and approval. Following this approval, and no later than twenty-eight days after the Effective Date, Defendants will pay the various amounts approved by the Court to Plaintiff's counsel, the LWDA, and each PAGA member. Each PAGA member will be sent a check in the appropriate amount and if such payment is returned to Defendants as undeliverable, they will search for a more current addresses and re-mail payment no later than five calendar days after the payment was returned. Any checks that remain uncashed after 180 days will be transmitted to Bay Area Legal Aid as the *cy pres* recipient. These administrative procedures are appropriate and are approved.

VI. ORDER AND JUDGMENT

Plaintiff's motion for approval of the parties' PAGA settlement is GRANTED. The PAGA members are: all current and former non-exempt employees of Defendants who for worked for Defendants in California at any time from August 6, 2020, through October 27, 2023.

¹ This term is defined by the Agreement as the later of the following: (a) if no timely objections are filed or if all objections are withdrawn, the date 61 days after entry of the Court's Order approving the PAGA Settlement; (b) if an objection is filed and not withdrawn, the date for filing an appeal and no such appeal being filed; (c) if any timely appeals are filed, the date of the resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the Settlement or Judgment.

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiff and the PAGA members shall take from the PAGA claim in their FAC only the relief set forth in the parties' settlement agreement and this order and judgment. The Court retains jurisdiction over the parties to enforce the terms of the PAGA settlement agreement and the final order and judgment.

The Court sets a compliance hearing for **October 24, 2024 at 2:30 P.M.** in Department 7. At least ten court days before the hearing, Plaintiff's counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted Bay Area Legal Aid; the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. Counsel may appear at the compliance hearing remotely.

Counsel shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

DATED: March 19, 2024


CHARLES F. ADAMS
Judge of the Superior Court