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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MANNY HANECH ZIPERMAN, an
individual, on behalf of the State of California,
as a private attorney general,

PLAINTIFF,

v.

PARKWAY MOTORCARS VALENCIA
INC. DBA PARKWAY BUICK GMC
CADILLAC; and DOES 1 thru 50, inclusive,

DEFENDANTS.

Case No. 21STCV31959

[Case Assigned for All Purposes to Hon. Holly
J. Fujie in Dept. 56]

**NOTICE OF MOTION AND MOTION
FOR APPROVAL OF
REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

*[Filed concurrently with Declarations of
Kelsey M. Szamet, Jonathan Paul of Xpand
Legal, and Plaintiff Manny Hanech Ziperman
in Support of Plaintiff's Motion for Approval
of Representative Action Settlement;
[Proposed] Order, and Judgment]*

Date: March 7, 2024
Time: 8.30a.m.
Dept.: 56

Complaint Filed: August 30, 2021
Trial Date: None Set
Reservation No. **456564842760**

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

2 **PLEASE TAKE NOTICE** that on March 7, 2024 at 8:30 A.M. in Department 56 of the
3 above-entitled court, Plaintiff MANNY HANECH ZIPERMAN will move the Court for an Order
4 Granting Approval of Representative Action Settlement.

5 The Motion will be made on the grounds that the proposed Settlement is fair, adequate,
6 reasonable, and in the best interest of Plaintiff, all aggrieved employees, and the Parties.

7 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
8 and Authorities, the Declaration of Kelsey M. Szamet, the PAGA Settlement Agreement (Exhibit
9 “1” to the concurrently filed Szamet Declaration, all other papers and records on file in this action,
10 and on such oral and documentary evidence as may be presented at the hearing on this Motion.

11
12 DATED: February 13, 2024

KINGSLEY & KINGSLEY, APC

13
14 By: 

15 Kelsey M. Szamet
16 Attorneys for Plaintiff MANNY HANECH
17 ZIPERMAN and all aggrieved employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Manny Hanech Ziperman (“Plaintiff”) submits this Memorandum of Points and
4 Authorities in support of Motion for Approval of Representative Action Settlement. Plaintiff and
5 Defendant PARKWAY MOTORCARS VALENCIA INC. DBA PARKWAY BUICK GMC
6 CADILLAC (“Defendant”) (collectively, the “Parties”) have reached a proposed settlement
7 documented in the PAGA Settlement Agreement (“Settlement” or “Agreement”), attached to the
8 concurrently-filed declaration of Kelsey M. Szamet.

9 This is a Settlement under the Private Attorneys General Act of 2004, Labor Code §2699,
10 et seq. (“PAGA”). The Gross Settlement Amount is \$160,000.00. After deduction of attorney’s
11 fees and litigation expenses, litigation enhancement to Plaintiff, and settlement administration
12 costs as discussed in the Agreement, the remaining amount to be divided between the Labor and
13 Workforce Development Agency (“LWDA”) and the aggrieved employees as required by Labor
14 Code section 2699(i) is \$84,711.72, with \$63,533.79 (or 75%) going to the LWDA and
15 \$21,177.93 (or 25%) distributed to the aggrieved employees.¹

16 Plaintiff requests that the Court “review and approve any settlement of any civil action
17 filed pursuant to this part” (See Lab. Code § 2699(1)(2).) If the Court deems the Settlement fair
18 and acceptable, Plaintiff requests that the Court enter an order approving the Settlement and
19 ordering the Parties to carry the terms of the Settlement Agreement and enter a Final Judgement
20 thereon.²

21 **II. BACKGROUND OF THE CASE AND RELEVANT PROCEDURAL HISTORY**

22 **A. Litigation Overview and Procedural History**

23 On August 30, 2021, Plaintiff filed a Representative Action Complaint against Defendant
24 in Los Angeles County Superior Court, Case No. 21STCV31959, entitled *MANNY HANECH*

26 ¹ Pursuant to PAGA, civil penalties recovered by aggrieved employees shall be distributed 75 percent to the
27 Labor and Workforce Development Agency (“LWDA”) and 25 percent to the aggrieved employee(s). Lab.
Code § 2699(i).

28 ² Plaintiff’s Motion for Approval of Representative Action Settlement will be concurrently uploaded to the
LWDA’s website on the date this Motion is filed. Proof of submission of Plaintiff’s Motion for Approval of
Representative Action Settlement, all related documents, and copy of the email from the LWDA confirming
receipt is attached as Exhibit 6 to the Declaration of Kelsey M. Szamet. (Szamet Decl. ¶85, Ex. 6.)

ZIPERMAN, an individual, on behalf of the State of California, as a private attorney general,
PLAINTIFF v. PARKWAY MOTORCARS VALENCIA INC. DBA PARKWAY BUICK GMC
CADILLAC; and DOES 1 thru 50, inclusive, DEFENDANTS. (Declaration of Kelsey M. Szamet
¶5.) (“Szamet Decl.”) Plaintiff alleged a single cause of action under Labor Code § 2699, et seq.,
the Private Attorneys General Act (“PAGA”) for penalties pursuant to Labor Code §§ 201, 202,
203, 226(a), 226.7, 245.4, 246, 510, 512, 1194, 1199, and 2802. (Hereafter, the “Action”.) (Szamet
Decl. ¶6.)

Plaintiff brings this Representative Action on behalf of a group of Aggrieved Employees
as defined in his June 24, 2021 letter to the Labor and Workforce Development Agency:

All persons who are employed or have been employed as an hourly employee by
PARKWAY MOTORCARS VALENCIA INC. DBA PARKWAY BUICK GMC
CADILLAC, in the State of California who worked one or more pay periods since
one (1) year prior to the date of Plaintiff’s notice letter to the Labor & Workforce
Development Agency (“LWDA”) and continuing to the present. (“Aggrieved
Employees”).

Plaintiff was previously compelled to arbitration pursuant to an arbitration agreement after
the Supreme Court’s decision in *Viking River Cruises River Cruises, Inc. v. Moriana* (2022), 596
U.S. 639, 142 S.Ct. 1906. However, Defendant failed to pay the required arbitration fees within
the allotted timeframe under California law. Thereafter, Plaintiff moved the Court to lift the stay
on Plaintiff’s case and allow both the individual and non-individual PAGA claims to move forward
in state court. The Court granted Plaintiff’s motion.

Thereafter, the Parties attended a formal, all-day mediation session with experienced
mediator Kim Deck, Esq., on August 22, 2023, which resulted in this settlement. (Szamet Decl.
¶7.) The Parties engaged in informal pre-mediation discovery, where Defendant produced a
sample of time and pay data, including the number of aggrieved employees. (Szamet Decl. ¶8.)
Based on Defendant’s records, the data reveals that there are 185 aggrieved employees who
worked a total of 6,741 pay periods between June 24, 2020 to October 22, 2023. (Szamet Decl.
¶9.)

Although Defendant denies that it violated any pertinent law, the Parties recognized the
risks and attendant costs of litigation, and now seek the Court’s approval of the tentative settlement
formalized in the Parties’ PAGA Settlement Agreement. (Szamet Decl. ¶10.) The Parties

negotiated the terms and conditions of the Agreement and now present the agreed-upon Settlement to the Court for Approval. (*Id.*)

III. PAGA ACTIONS AND THE REQUIREMENTS

A. The PAGA Statutory Scheme

PAGA creates a means of “deputizing” citizens as private attorney generals to enforce the Labor Code on behalf of the LWDA. *Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489, 501, review den. (Oct. 19, 2011, No. S195850), *cert. denied* (Apr. 16, 2012) 132 S.Ct. 1910. A plaintiff may not — and Plaintiff here does not — bring a PAGA claim simply on his or her own behalf as an individual claim, but “as the proxy or agent of the state’s labor law enforcement agencies.” *Id.*, at 986; *see also Reyes v. Macy’s, Inc.* 202 Cal.App.4th 1119, 1123-1124(2011); *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 380).

When an aggrieved employee brings a PAGA claim, “the government is always the real party in interest.” *Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty.*, 234 Cal.App.4th 1109, 1119 (2015); *Montano v. The Wet Seal Retail, Inc.* 232 Cal.App.4th 1214, 1222 (2015) (“[A] PAGA action is a dispute between an employer and the State agency.”). Accordingly, a plaintiff that brings a PAGA claim represents “the same legal right and interest as state labor law enforcement agencies,” in that the plaintiff is seeking to recover those civil penalties that otherwise would have been assessed and collected by the LWDA. *Arias, supra*, 46 Cal.4th at 986; Lab. Code § 2699 (a) & (f); *Securitas, supra*, 234 Cal.App.4th at 1119; *see also Medina v. Vander Poel* (E.D. Cal. 2015) 523 B.R. 820, 825 (holding “PAGA plaintiffs do not have property rights in their cases.”). This is borne out by the fact that the LWDA receives 75 percent of any civil penalties recovered; thus, recoveries are principally for the state and only secondarily for aggrieved employees. Lab. Code § 2699 (i). Therefore, when a plaintiff brings a PAGA claim, he or she is properly conceived of as a private attorney general prosecuting violations of California’s labor laws on behalf of the state.

An employee may commence a PAGA action by fulfilling the requirements of Cal. Lab. Code § 2699.3 (a)(1), which simply states:

“The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the

1 employer of the specific provisions of this code alleged to have been
2 violated, including the facts and theories to support the alleged violation.”

3 Lab. Code § 2699.3 (a)(1)

4 As explained above, Plaintiff has complied with the notice requirements and has properly
5 pled a PAGA cause of action. (Ex. 1, ¶ 2.1.)

6 B. The Court Has Discretion When Awarding the Amount of Penalties

7 PAGA provides for penalties in the amount of one hundred dollars (\$100) for each
8 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
9 each aggrieved employee per pay period for each subsequent violation. Lab. Code § 2699(f)(2).

10 “PAGA penalties...are mandatory, not discretionary” and must be awarded upon a showing
11 that Defendant violated the Labor Code.³ *Amaral v. Cintas Corp.* No. 2 163 Cal. App. 4th 1157,
12 1213 (2008); *Moreno v. Autozone, Inc.* (N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007 WL
13 1650942, at *3.

14 However, PAGA does provide the Court with discretion when it awards these penalties.
15 Labor Code §2699(e)(2) states that “a court may award a lesser amount than the maximum civil
16 penalty amount specified by this part if, based on the facts and circumstances of the particular case,
17 to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
18 Here, Defendant denies that it violated any law or that it engaged in any knowing or intentional
19 conduct giving rise to liability, and expressly deny that any employees suffered harm.

20 C. Standards for Settlement Approval

21 When approving a settlement of a PAGA action, the statute simply requires the Court to
22 “review and approve any settlement of any civil action filed pursuant to this part.” (Lab. Code §
23 2699(l)(2).) PAGA does not set forth standards for evaluating such settlements, and the California
24 appellate courts have not weighed in on the issue. However, trial courts have approved PAGA
25 settlements where the penalties are “genuine and meaningful” and “consistent with the underlying
26 purpose” of the statute. (See *O’Connor v. Uber Techs., Inc.* (N.D. Cal. 2016) 201 F. Supp. 3d
27 1110, 1113.) Additionally, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, class

28 ³ See also *Willner v. Manpower Inc.*, *supra*. 35 F. Supp. 3d at 1136; *McKenzie v. Federal Exp. Corp.*, *supra*, 765 F.Supp.2d at 1232.

action procedural rules do not apply in PAGA cases, including the two-step preliminary and final approval process. Rather, the approval process consists of one step where the court decides if the settlement should go into effect.

IV. THE SETTLEMENT

Defendant will pay the total sum of \$160,000 in full and final settlement of the PAGA claims alleged. (Szamet Decl. ¶12, Exhibit 1, ¶3.1.) Per the Agreement, the amount is allocated as follows:

Gross Settlement Amount:	\$160,000.00	
PAGA Counsel Fees Payment:	\$53,333.33	
PAGA Counsel Litigation Expenses Payment:	\$10,454.00 ⁴	
Administrator Expenses Payment:	\$6,500.00 ⁵	
Named Plaintiff Enhancement:	\$5,000.00	
PAGA Penalties:	\$84,711.72 <i>(\$63,533.79 to the LWDA; \$21,177.93 to remain in the Aggrieved Employees)</i>	

(Szamet Decl. ¶13, Exhibit “1”, ¶3.)

Each aggrieved employee shall receive a pro-rata portion of the remaining amount in PAGA penalties based by dividing the amount of the Aggrieved Employees 25% share of PAGA Penalties (\$21,177.93) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period.⁶ Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (Szamet Decl. ¶14., Exhibit “1”, ¶3.2.4.1.)

⁴ The Agreement provides for counsel to receive cost reimbursement of up to \$12,000.00. However, counsel’s costs to date are \$9,854.95. Plaintiff anticipates incurring an additional \$600 in future costs associated with filing this motion, appearing at the hearing, etc. so requests costs of \$10,454.95, including (Szamet Decl., Ex. 3.2.1.) Because the original cost estimate was higher, the delta will remain in the net settlement fund, causing the net amount for distribution to the LWDA and Aggrieved Employees to be slightly higher than the \$79,666.67 contemplated in the settlement agreement. (See Szamet Decl., Ex. 1 ¶3.2.1.)

⁵ The Agreement also provides for Administrator to receive an expenses payment of \$10,000. However, the bid obtained by Plaintiff’s counsel from Xpand Legal is \$6,500. As with the delta from the PAGA Counsel Litigation Expenses Payment and pursuant to the Settlement Agreement, the delta from the Administrator Expenses Payment will remain in the net settlement fund, also causing the net amount for distribution to the LWDA and Aggrieved Employees to be slightly higher than the \$79,666.67 contemplated in the settlement agreement. (See Szamet Decl., Ex. 1 ¶3.2.1.)

⁶ The PAGA Period means the period from June 24, 2020 to the date of the Order of Approval.

1 For settlement purposes, the Aggrieved Employees are defined as: “All persons who are
2 employed or have been employed as an hourly employee by PARKWAY MOTORCARS
3 VALENCIA INC. DBA PARKWAY BUICK GMC CADILLAC, in the State of California who
4 worked one or more pay periods since one (1) year prior to the date of Plaintiff’s notice letter to
5 the Labor & Workforce Development Agency (“LWDA”) and continuing to the date that the Court
6 approves the Agreement. (“Aggrieved Employee”). (Szamet Decl. ¶15, Exhibit “1”, ¶1.4.)

7 **V. ARGUMENT**

8 **A. The Court Should Approve the Agreement**

9 The Parties recognize that in accordance with Labor Code §2699(l), Court approval is
10 required in the event of a settlement of a PAGA action on a representative basis. However, as
11 explained in *Arias v. Superior Court* 46 Cal.4th 969 (2009), the Parties are not obligated to follow
12 the class action procedural rules in PAGA cases and therefore need not obtain approval of the
13 PAGA settlement through a motion for primary or final approval. Nonetheless, in order to comply
14 with the requirements of Labor Code §2699, the Parties submit the instant Motion and the
15 Agreement (Exhibit “1” to the Szamet Declaration) for Court approval.

16 **B. The Risks of Moving Forward with Plaintiff’s PAGA Claim**

17 To help the Court evaluate the fairness of the Settlement, a discussion of the risk evaluation
18 and discount taken follows. (Szamet Decl. ¶16.) Plaintiff believed that Defendant may
19 persuasively argue that the Court should exercise its discretion under PAGA to significantly reduce
20 or altogether waive any penalties under PAGA. (Szamet Decl. ¶17.) Pursuant to Labor Code
21 §226.3, the Labor Commissioner has the discretion to “decide not to penalize an employer for a
22 first violation when that violation was due to a clerical error or inadvertent mistake.” (Szamet Decl.
23 ¶18.) And in accordance with PAGA, the court in a PAGA action has the same discretion “to
24 assess a civil penalty” that the Labor Commissioner would have, as well as complete discretion to
25 “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on
26 the facts and circumstances of the particular case, to do otherwise would result in an award that is
27 unjust, arbitrary and oppressive, or confiscatory.” (Labor Code § 2699(e)(1) and (e)(2)); Szamet
28 Decl. ¶19.)

1 Furthermore, in accordance with the PAGA statute, the Court in a PAGA action has the same
2 discretion to “assess a civil penalty” that the Labor Commissioner would have, as well as complete
3 discretion to “award a lesser amount than the maximum civil penalty amount specified [by PAGA]
4 if, based on the facts and circumstances of the particular case, to do otherwise would result in an
5 award that is unjust, arbitrary and oppressive, or confiscatory.” (Labor Code §2699(e)(1) and (e)(2).)

6 Here, Plaintiff alleges that (1) he and the aggrieved employees were not paid all
7 wages/overtime, including off-the-clock work and due to an auto-deduct meal policy; (2) Defendant
8 failed to provide lawful meal and rest periods, and prohibited Plaintiff and the aggrieved employees
9 from leaving the premises; (3) Defendant failed to issue accurate, itemized wage statements which
10 reflected inaccurate vacation and holiday rates of pay; (3) Defendant failed to reimburse for all
11 necessary business expenses such as use of personal cell phone and personal computer; (4) Defendant
12 failed to pay sick days at the regular rate of pay; and (5) Defendant failed to provide all wages due at
13 termination. (Szamet Decl. ¶20.)

14 Through meet and confer efforts as well as negotiation efforts, Defendant vigorously
15 contested liability. (Szamet Decl. ¶21.) Defendant argued that Plaintiff and the aggrieved employees
16 were required to obtain authorization to work overtime, which would include the time Plaintiff
17 allegedly spent responding to texts, emails, and phone calls off the clock, and that Plaintiff and the
18 aggrieved employees were also required to certify that their timecards accurately reflected their hours
19 worked per pay period. (Szamet Decl. ¶22.) Defendant also argued that Plaintiff and the aggrieved
20 employees were required to submit a timecard certification each pay period to affirm they were
21 provided with all legally required meal and rest breaks. (Szamet Decl. ¶23.) Defendant further argued
22 that Plaintiff and the aggrieved employees were paid their holiday and vacation hours accurately
23 pursuant to Defendant’s policy. (Szamet Decl. ¶24.) Furthermore, Defendant argued that its written
24 policy allowed Plaintiff and the aggrieved employees to leave the premises during meal and rest
25 periods, although Plaintiff contends that Defendant’s written policy is conflicting and confusing to its
26 employees on this point. (Szamet Decl. ¶25.)

27 In light of all these significant risks and the fact that PAGA gives the Court broad discretion
28 to reduce any penalties ultimately awarded, PAGA Counsel determined that the Gross Settlement

1 Amount of \$160,000.00 was fair and reasonable. (Szamet Decl. ¶26, Exhibit 1, ¶3.1.)

2 C. A Court May Exercise its Discretion to Reduce the Maximum Civil Penalty
3 Awarded for Technical Violations of the Labor Code

4 “PAGA penalties...are mandatory, not discretionary” and must be awarded upon a
5 showing that Defendant violated the Labor Code. *Amaral v. Cintas Corp.* No. 2 163 Cal. App 4th
6 1157, 1213 (2008); *Moreno v. Autozone, Inc.* (N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007
7 WL 1650942, at *3.

8 However, PAGA does provide the Court with discretion when it awards these penalties.
9 Labor Code section 2699(e)(2) states that “a court may award a lesser amount than the maximum
10 civil penalty amount specified by this part if, based on the facts and circumstances of the particular
11 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
12 confiscatory.” A court exercising its discretion to significantly reduce the civil penalty awarded
13 under PAGA is not a rare occurrence. (See e.g., *Carrington v. Starbucks Corp.* (2018) 30
14 Cal.App.5th 504, 529 [awarding only 10% of maximum civil penalty for meal break claims in light
15 of Starbuck’s “good faith attempts” to comply and because the violations were minimal]; *Thurman*
16 *v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135–1136, disapproved on
17 another ground in *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 196, fn. 8 [considering the
18 defendant’s inability to pay as a factor in reducing the penalties imposed]; see also *Raines v.*
19 *Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 681 [noting that a court should
20 consider whether a violation was inadvertent when assessing penalties].)

21 Here, Plaintiffs’ counsel anticipates that should the matter go to trial and the Court find
22 that violations occurred, Defendant would argue that the Court should exercise its authority to
23 reduce any civil penalties awarded.

24 After engaging in pertinent informal discovery in this Action, Plaintiff’s counsel determined
25 that a settlement of \$160,000 is reasonable given the above risks.

26 D. There is a Strong Risk the Higher \$200 Civil Penalty Triggered for “Subsequent”
27 Violations Will Not Apply

28 Plaintiff believes there is a strong risk that the Court will not award the \$200 civil penalty

1 triggered for “subsequent” violations. Labor Code section 2699(f)(2). If this case were to proceed
2 to trial, Plaintiff would argue that a “subsequent” violation simply means that Defendant violated
3 section 226(a) more than once for a given employee. Plaintiff is not aware of any case law that
4 interprets “subsequent” in the context of section 2699. However, Defendant is likely to rely on
5 *Amaral v. Cintas Corp. No. 2, 163 Cal. App. 4th 1157 (2008)* because it rejected a purely temporal
6 understanding of the term “subsequent” and interpreted its use in Labor Code sections 210 and
7 225.5 to require that “the employer has been notified that it is violated a Labor Code provision”
8 before higher penalties are triggered. *Id.* at 1209. Defendant presumably will take the position that
9 it has not been notified that it actually violated section 226 until the Labor Commissioner has
10 issued a formal citation or this Court made a finding that a violation existed.

11 E. Based on the Risks Above and the Analysis of the Maximum Penalties Available,
12 Plaintiff Believes this Settlement is Fair and Reasonable

13 Based on these figures, the maximum potential exposure for the PAGA claims for the
14 Aggrieved Employees is \$4,718,700 (6,714 pay periods multiplied by \$100 a pay period,
15 multiplied by each Labor Code violation per pay period). The Court should note however that
16 number assumes a Court would permit “stacking “of PAGA penalties, meaning that the Court
17 ultimately awards a civil penalty for each distinct claim. There is not case law to address whether
18 a court would “stacking “is permissible. If a Court determined it is not permissible, the maximum
19 potential recovery is approximately \$671,400 (6,714 pay periods x \$100 per pay period).

20 Furthermore, during negotiation efforts, Defendant raised the issue of its inability to pay
21 the Gross Settlement Amount in one payment. (Szamet Decl. ¶27.) Such ability to pay issues
22 resulted in the Parties agreeing to a payment plan for Defendant to fund the GSA. *Id.* As
23 formalized by the Settlement Agreement, Defendant shall fund the Gross Settlement Amount by
24 transmitting \$100,000 first, then \$5,000 per month thereafter until the full amount is paid. *Id.*

25 Given that this Settlement is for \$160,000.00, Plaintiff believes this is a fair and reasonable
26 settlement.

27 ///

28 ///

1 **VI. THE REQUEST FOR ATTORNEYS' FEES AND COSTS**

2 As detailed fully in the Settlement, the settlement provides for Defendant to create a Gross
3 Settlement Amount of \$160,000.00. (Szamet Decl. ¶32; Ex. 1 at ¶3.1.) From that fund, Plaintiff
4 requests an award of attorneys' fees for PAGA Counsel in the amount of \$53,333.33, or 33.33%
5 of the Gross Settlement Amount, and \$10,454.95 in reimbursement for litigation costs. (*Id.* Ex. 1
6 at ¶3.2.1.)

7 A. Plaintiff's Counsel are Entitled to a Fee from the Common Fund

8 On August 11, 2016, the California Supreme Court decided *Laffitte v. Robert Half*
9 *International*, which addressed the correct methodology for awarding fees in a class action
10 settlement. (*Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 205 Cal.Rptr.3d 555, 573.) The *Laffitte*
11 Court approved awarding fees as a percentage of the settlement fund in cases like the present one,
12 where a settlement results in the creation of a common fund on behalf of a class:

13 We join the overwhelming majority of federal and state courts in
14 holding that when class action litigation establishes a monetary fund
15 for the benefit of the class members, and the trial court in its
16 equitable powers awards Class Counsel a fee out of that fund, the
court may determine the amount of a reasonable fee by choosing an
appropriate percentage of the fund created.

17 (*Id.* at 573.) The Court then set out several reasons why the percentage-of-the-fund method is
18 preferred over the alternative lodestar-multiplier approach in California courts:

19 The recognized advantages of the percentage method—including relative ease of
20 calculation, alignment of incentives between counsel and the class, a better
21 approximation of market conditions in a contingency case, and the encouragement
22 it provides counsel to seek an early settlement and avoid unnecessarily prolonging
the litigation [citations]—convince us the percentage method is a valuable tool that
should not be denied our trial courts.

23 (*Id.* at 573.)

24 An award of 33.33% of the common fund is appropriate here under the “substantial benefit”
25 theory. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1810; *Wershba v. Apple Computer,*
26 *Inc.* (2001) 91 Cal.App.4th 224, 254.) That theory permits a litigant who has sued in a
27 representative capacity to recover fees when the litigant's efforts have created a substantial, actual,
28 and concrete benefit for members of an ascertainable class and the court's jurisdiction over the

1 subject matter makes possible an award which spreads the cost proportionately among the
2 members of the benefitted class. (*See Ciani v. San Diego Trust & Sav. Bank* (1994) 25 Cal.App.4th
3 563, 578.)

4 This doctrine rests on the understanding that attorneys should normally be paid by their
5 clients, and that unless attorneys' fees are paid out of the common fund, those who benefitted from
6 the fund would be unjustly enriched. (*Woodland Hills Residents Assn., Inc. v. City Council* (1979)
7 23 Cal.3d 917, 943; *Save El Toro Ass'n v. Days* (1979) 98 Cal.App.3d 544, 548-49.) To prevent
8 this unfair result, courts exercise their inherent equitable powers to assess attorneys' fees against
9 the entire fund, thereby spreading the cost of those fees among all those who benefitted. (*Serrano*
10 *III*, 20 Cal.3d at p. 35.) "A court, in the exercise of its equitable discretion, may decree that those
11 receiving the benefit should contribute to the costs of its production." (*Save El Toro Assn., supra*,
12 98 Cal.App.3d at 548.) As this approach "better approximates the workings of the marketplace
13 than the lodestar approach," there is "a greater judicial willingness to evaluate a fee award as a
14 percentage of the recovery" in common fund cases. (*Lealao v. Beneficial Calif., Inc.* (2000) 82
15 Cal.App.4th 19, 31, 48.)

16 B. The Attorneys' Fees Request Are Well Within the Range of Fees in Comparable
17 Cases

18 Courts historically award fees in the twenty-to-fifty percent range, depending on the
19 circumstances of the case. As stated in Newberg:

20 No general rule can be articulated on what is a reasonable percentage
21 of a common fund. Usually 50% of the fund is the upper limit on a
22 reasonable fee award from a common fund in order to assure that
23 the fees do not consume a disproportionate part of the recovery
obtained for the Class, although somewhat larger percentages are
not unprecedented.

24 (Newberg on Class Actions, 3rd Ed., 1992, § 14.03; and see *Chavez v. Netflix, Inc.* (2008) 162
25 Cal.App.4th 43, 66, fn 11 ["Empirical studies show that, regardless whether the percentage method
26 or the lodestar method is used, fee awards in class actions average around one-third of the
27 recovery."].) Thus, PAGA Counsel's requested fee of 33.33% is not only well within the range of
28 reasonableness, but lower than the average fee award of 35% and is fair compensation for

undertaking this complex, risky, expensive, and time-consuming litigation on a contingent basis.

C. PAGA Counsel's Fee Request is Reasonable Under a Lodestar Crosscheck

Courts may “cross-check” the results of the common fund method against the lodestar method. (*See In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.) The lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. (*Serrano v. Priest*, 20 Cal.3d 25, 48-49 (1977) (“*Serrano III*”).) Those rates reflect “the general local hourly rate for a fee-bearing case” and do “not include any compensation for contingent risk, extraordinary skill, or any other factors.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138.) The court may then enhance the lodestar with a multiplier. (*Wershba, supra*, 91 Cal.App.4th at 254; *Serrano III, supra*, 20 Cal.3d at 49.)

i. No Requested Multiplier

The purpose of using the lodestar/multiplier method is to mirror the legal marketplace. Counsel will not handle cases for straight hourly fees payable only if they win; therefore, an enhancement is often awarded so that the fee received is commensurate with what attorneys could expect to be compensated for services in similar circumstances. (*See Tulare Valley Audubon Soc., Inc. v. County of Tulare* (1984) 155 Cal.App.3d 738, 755 [an award must be large enough “to entice competent counsel to undertake difficult public interest cases”].) No specific findings reflecting the court’s calculations are required. (*Wershba, supra*, 91 Cal.App.4th at 254; *Rebney, supra*, 232 Cal.App.3d at p. 1349.) “The record need only show that the attorney fees were awarded according to the ‘lodestar’ or ‘touchstone’ approach.” (*Ibid.*)

Here, a lodestar cross-check confirms that the percentage requested is reasonable. (Szamet Decl. ¶44.) To date, PAGA Counsel have an aggregate lodestar in the amount of \$72,615.00 which represents 112.55 hours of attorney work on this litigation from its inception through the date of this filing of Plaintiff’s instant Motion. (Szamet Decl. ¶45) PAGA Counsel also anticipates an additional ten hours of future time through the hearing and the administration process. (Szamet Decl. ¶46.) As such, no multiplier is requested because the lodestar calculation is greater than the requested attorneys’ fees. (Szamet Decl. ¶47.)

Moreover, this case dealt with difficult legal and factual questions. (Szamet Decl. ¶48.)

1 Significantly, the risk attendant to the underlying claims in this matter was great considering
2 Defendant's defenses as discussed in detail above. (*Ibid.*) Were this case to proceed, Defendant
3 would have a strong incentive to litigate tenaciously. (*Ibid.*) There are genuine issues in dispute.
4 (*Ibid.*) Furthermore, PAGA Counsel was able to obtain close to the full value for this case.
5 (Szamet Decl. ¶49.)

6 As discussed above, PAGA Counsel are skilled wage and hour practitioners with decades
7 of experience who diligently prepared and litigated this matter. (Szamet Decl. ¶50.) To achieve
8 the ultimate result in this case, PAGA Counsel had to incur substantial risk and expense, and were
9 precluded from taking other fee generating employment for 112.55 hours of attorney time.
10 (Szamet Decl. ¶51.) This matter had been handled purely on a contingency fee basis and PAGA
11 Counsel has advanced many thousands of dollars in costs while deferring all payment of fees, with
12 no guarantee that any of the fees incurred or costs advanced would ever be recovered, and diverting
13 significant firm resources to prosecution of this matter. (Szamet Decl. ¶52.) PAGA Counsel
14 believe this is an exceptional result that has been well received by the Aggrieved Employees.
15 (Szamet Decl. ¶53.)

16 **VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF** 17 **COSTS**

18 In addition to their request for fees, PAGA Counsel further request reimbursement of the
19 reasonable out-of-pocket expenses advanced and/or incurred by them in connection with this
20 litigation. The Settlement provides for a reimbursement of litigation costs of up to \$12,000.00. To
21 date, PAGA Counsel has incurred \$9,854.95 in costs. (Szamet Decl. ¶75.) PAGA Counsel
22 anticipates incurring an additional \$600.00 in costs to file and serve this motion. (Szamet Decl.
23 ¶76.) As such, counsel requests cost reimbursement of \$10,454.95. (Szamet Decl. ¶77.)

24 All of the requested costs are reasonable in amount and were necessarily incurred by PAGA
25 Counsel in prosecuting this litigation. (Szamet Decl. ¶78.); Exhibit 2 [Cost Report].) Expenses in
26 this matter to date include costs for filing fees, research, mediation, and additional costs for the
27 prosecution of this case evidenced in the costs spreadsheet attached to the Declaration of Kelsey
28 M. Szamet All of these costs have been incurred in the course of this litigation, and all costs

advanced have already been paid by PAGA Counsel, with the exception of the anticipated cost of filing the present motion. (Szamet Decl. ¶79.)

Accordingly, the requested reimbursement of the reasonable out-of-pocket expenses advanced and/or incurred is appropriate and justified as part of the overall settlement and the Court should approve the request for reimbursement in the amount of \$10,454.95. (Szamet Decl. ¶80.)

VIII. ENHANCEMENT TO PLAINTIFF

The Settlement calls for an enhancement payment of \$5,000.00 to the named Plaintiff, to be paid from the Gross Settlement Amount. (Szamet Decl. ¶81; Ex. 1 at ¶3.2.3.) Incentive awards “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and sometimes, to recognize their willingness to act as a private attorney general.” (*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59. “[I]t is established that named plaintiffs are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 (citing *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 805-806; *Staton v. Boeing Co.* (9th Cir.2003) 327 F.3d 938, 977)).

Here, the enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in coming forward to litigate this matter on behalf of the Aggrieved Employees. The time spent by Manny Hanech Ziperman includes identifying competent counsel, providing information to PAGA Counsel regarding Plaintiff’s relevant employment experiences, compiling documents, meeting with PAGA Counsel frequently to discuss the status of the case and the theories of liability, reviewing settlement documents, and making himself available for a full day of mediation. (Szamet Decl. ¶82.)

PAGA Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶83.) The enhancement takes into consideration the time, effort, risks, and expense incurred by Plaintiff in coming forward to litigate this matter on behalf of the Aggrieved Employees. (Szamet Decl. ¶84.) Accordingly, Plaintiff should be awarded the agreed-upon enhancement of \$5,000.00.

///

1 **IX. CONCLUSION**

2 Plaintiff and Plaintiff's Counsel submit that the proposed Settlement as documented in the
3 Agreement is fair, adequate, reasonable, and in the best interest of the Parties and the State of
4 California. Plaintiff respectfully requests that the Court approve the Settlement and Order that the
5 Settlement is carried out according to the terms of the Agreement.

6
7 DATED: February 13, 2024

KINGSLEY & KINGSLEY, APC

8
9 By: 

Kelsey M. Szamet
Attorneys for Plaintiff MANNY HANECH
ZIPERMAN and all aggrieved employees



Make a Reservation

MANNY HANECH ZIPERMAN vs PARKWAY MOTORCARS VALENCIA INC. DBA PARKWAY BUICK GMC CADILLAC

Case Number: 21STCV31959 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2021-08-30 Location: Stanley Mosk Courthouse - Department 56

Reservation

Case Name:
MANNY HANECH ZIPERMAN vs PARKWAY
MOTORCARS VALENCIA INC. DBA PARKWAY BUICK
GMC CADILLAC

Case Number:
21STCV31959

Type:
Motion re: (Motion for Approval of Representative
Action Settlement)

Status:
RESERVED

Filing Party:
Manny Hanech Ziperman (Plaintiff)

Location:
Stanley Mosk Courthouse - Department 56

Date/Time:
03/07/2024 8:30 AM

Number of Motions:
1

Reservation ID:
456564842760

Confirmation Code:
CR-9QSOZV3OHMGSOYMIF

Fees			
Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount:
\$61.65

Type:
MasterCard

Account Number:
XXXX4583

Authorization:
71400Z

Payment Date:
1969-12-31

- Print Receipt
- Reserve Another Hearing

(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On February 13, 2024, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR APPROVAL OF REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Robert W. Thompson
rthompson@ctsclaw.com
Alex A. Zolg
azolg@ctsclaw.com
**CALLAHAN, THOMPSON, SHERMAN
& CAUDILL LLP**
2601 Main Street, Suite 800
Irvine, California 92614

Emil Davtyan
emil@d.law
D.LAW, INC.
400 N. Brand Blvd, 7th Floor
Glendale, CA 91203

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] (BY ELECTRONIC MAIL TRANSMISSION): I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the above email address(es).

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 13, 2024, at Encino, California.



Michelle Tanzer