

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Norman B. Blumenthal (SBN #068687)
Kyle R. Nordrehaug (SBN #205975)
Aparajit Bhowmik (SBN #248066)
Nicholas J. De Blouw (SBN #280922)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858) 551-1223
Facsimile: (858) 551-1232

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

JENNA FRAIJO, on behalf of the State of
California, as a private attorney general,

Plaintiff,

v.

ATLAS COPCO COMPRESSORS LLC., a
Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Case No. 21NWCV00536

**NOTICE OF MOTION AND MOTION
TO APPROVE PAGA SETTLEMENT;
and,**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION**

Hearing Date: February 8, 2023

Hearing Time: 1:30 p.m.

Reservation # 256856332745

Judge: Hon. Olivia Rosales

Dept.: C

Action Filed: August 20, 2021

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

2 YOU ARE HEREBY NOTIFIED THAT at 130 p.m. on February 8, 2023, or as soon
3 thereafter as the matter can be heard, in Department C of the above entitled Court before the
4 Honorable Olivia Rosales, Plaintiff Jenna Fraijo (“Plaintiff”) will and hereby does move for
5 an order approving the settlement of the PAGA claim alleged against Defendant Atlas Copco
6 Compressors LLC (“Defendant”) in accordance with Labor Code §2699(1). The proposed
7 settlement is set forth in the accompanying PAGA Settlement Agreement (“Agreement”).

8 This Motion will be based on this notice, the accompanying points and authorities, the
9 Declaration of Kyle Nordrehaug, the Agreement, and the complete files and records in this
10 action. The Labor Workforce Development Agency has been served with this motion and
11 the Agreement as set forth in the accompanying proof of service.

12 Respectfully submitted,

13 Dated: January 11, 2023

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

14
15 By: /s/ Kyle Nordrehaug
16 Norman B. Blumenthal
17 Kyle R. Nordrehaug
18 Aparajit Bhowmik

Attorneys for Plaintiff

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	7
II. RELEVANT FACTS.....	7
III. TERMS OF THE PAGA SETTLEMENT	9
IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS.....	12
V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT OF THE PAGA CLAIM.....	13
VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE.....	16
VII. CONCLUSION.....	18

TABLE OF AUTHORITIES

Page(s)

Cases:

<i>Amaro v. Anaheim Arena Mgmt., LLC,</i> 69 Cal. App. 5th 521 (2021)	16
<i>Boyd v. Bank of America,</i> 2014 WL 6473804, at *11 (C.D. Cal. 2014).....	17
<i>Cardenas v. McLane Foodservice, Inc.,</i> 2011 U.S. Dist. LEXIS 13126 (C.D. Cal. 2011).....	14
<i>Carrington v. Starbucks Corp.,</i> 30 Cal.App.5th 504 (2018).....	14
<i>Chavez v. Netflix, Inc.,</i> 162 Cal.App.4th 43 (2008).....	16
<i>Fleming v. Covidien,</i> 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	14
<i>Hopkins v. Stryker Sales Corp.,</i> No. 11-CV-02786-LHK, 2013 WL 496358 (N.D. Cal. Feb. 6, 2013).....	17
<i>In re Taco Bell Wage & Hour Actions,</i> 2016 U.S. Dist. LEXIS 48557 (E.D. Cal. Apr. 6, 2016).....	14
<i>Iskanian v. CLS Transportation,</i> 59 Cal. 4th 348, 381 (2014).....	7
<i>Ketchum v. Moses,</i> 24 Cal.4th 1122, 1132 (2001).....	17
<i>Kim v. Reins Int'l Cal., Inc.,</i> 9 Cal. 5th 73, 80 (2020)	9
<i>Laffitte v. Robert Half Int'l,</i> 1 Cal. 5th 480, 503 (2016).....	16, 17
<i>Makabi v. Gedalia,</i> 2016 Cal. App. Unpub. 1489 (2nd Dist. Ct. of App. 2016).....	14

1	<i>Pellegrino v. Robert Half Intern., Inc.</i> ,	
2	182 Cal.App.4th 278 (2010).....	17
3	<i>Stetson v. Grissom</i> ,	
4	821 F.3d 1157, 1166 (9th Cir. 2016).....	17
5	<i>Topete v. Ramos Furniture</i> ,	
6	2018 U.S. Dist. LEXIS 142033 (E.D. Cal. 2018).....	17
7	<i>Vandervort v. Balboa Capital Corp.</i> ,	
8	8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014).....	17
9	<i>Van Gerwen v. Guarantee Mut. Life Co.</i> ,	
10	214 F. 3d 1041, 1045 (9 th Cir. 2000).....	17
11	<i>Wershba v. Apple Computer, Inc.</i> ,	
12	91 Cal.App.4th 224, 254 (2001).....	17
13	<i>ZB, N.A. v. Superior Court</i> ,	
14	8 Cal.5th 175 (2019).....	7, 10, 12
15	<u>Statutes:</u>	
16	California Labor Code § 201.....	11
17	California Labor Code § 202.....	11
18	California Labor Code § 203.....	11
19	California Labor Code § 204.....	11
20	California Labor Code § 210.....	11
21	California Labor Code § 221.....	11
22	California Labor Code § 226.....	11
23	California Labor Code §226(a).....	11
24	California Labor Code § 226.7.....	11
25	California Labor Code § 226.8.....	11
26		
27		
28		

1	California Labor Code § 246.....	11
2	California Labor Code § 351.....	11
3	California Labor Code § 510.....	11
4	California Labor Code § 512.....	11
5	California Labor Code § 558.....	11
6	California Labor Code § 558(a)(1).....	11
7	California Labor Code § 1194.....	11
8	California Labor Code § 1197.....	11
9	California Labor Code § 1197.1.....	11
10	California Labor Code § 1198.....	11
11	California Labor Code § 1198.5.....	11
12	California Labor Code § 2698.....	8, 11
13	California Labor Code § 2699.....	<i>passim</i>
14	California Labor Code § 2802.....	11
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jenna Fraijo (“Plaintiff”) reached a settlement of the California Private
4 Attorneys General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in this
5 action against Defendant Atlas Copco Compressors LLC (“Defendant”) (collectively, the
6 “Parties”) which provides for a “Gross PAGA Settlement Amount” payment in the amount
7 of \$200,000.00. In accordance with California Labor Code §2699(l), Plaintiff now asks this
8 Court to review and approve the settlement of Plaintiff’s PAGA claims.¹ This is only a
9 settlement of the PAGA claims for civil penalties, and is not a class settlement and does not
10 release the individual wage claims, if any, of the affected employees other than the Plaintiff
11 herself. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381
12 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not
13 recoverable under PAGA).

14 The PAGA settlement is set forth in the accompanying PAGA Settlement Agreement
15 (“Agreement”) and this Agreement is based upon the Los Angeles Court’s model form. A
16 true and correct copy of the Agreement which sets forth the terms for the settlement of the
17 PAGA claims is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug, filed
18 herewith. Capitalized terms shall have the same meaning as defined in the Agreement. The
19 LWDA received notice of this Settlement and this motion as set forth in the accompanying
20 proof of service.

21 A proposed order confirming review and approval of the PAGA settlement is
22 submitted herewith.

23
24 **II. RELEVANT FACTS**

25 PAGA Counsel mailed the necessary correspondence to the California Labor and
26 Workforce Development Agency (“LWDA”) on June 3, 2021, on behalf of Plaintiff Jenna
27

28 ¹ Section 2699(1)(2) provides as follows: “The superior court shall review and approve any settlement of any civil action pursuant to this part.”

1 Fraijo, requesting authorization from the LWDA to seek civil penalties as provided by the
2 Private Attorney General Act of 2004 (“PAGA”) for the wage and hour violations alleged in
3 the PAGA Notice. (Declaration of Kyle Nordrehaug, at ¶3 and Exhibit #5). The 65-day
4 notice period for the LWDA to notify of its intent to investigate expired on August 7, 2021.

5 On August 20, 2021, Plaintiff Fraijo filed a Representative Action Complaint in this
6 Court against Defendant Atlas Copco Compressors LLC alleging a single cause of action for
7 recovery of civil penalties for Violation of the PAGA [Labor Code §§ 2698, *et seq.*].

8 Plaintiff and Defendant agreed to mediate with Stephen J. Serratore. Prior to the
9 mediation, the Parties conducted significant investigation and discovery of the facts and law.
10 Defendant produced hundreds of documents relating to its policies, practices, and procedures
11 regarding paying non-exempt employees for all hours worked, overtime, meal and rest
12 period policies, payroll and operations policies, and more. Plaintiff was provided with
13 sufficient records and data to determine the number of Aggrieved Employees and the number
14 of pay periods in the PAGA Period. The Parties agree that the above-described investigation
15 and evaluation, as well as the information exchanged during the settlement negotiations, are
16 more than sufficient to assess the merits of the Parties’ positions and to compromise the
17 issues on a fair and equitable basis. (Declaration of Kyle Nordrehaug, at ¶3).

18 Plaintiff’s theory of PAGA liability as argued at mediation alleged that Defendant
19 routinely failed to provide compliant meal and rest breaks to the Aggrieved Employees. For
20 example, Plaintiff alleged that the Aggrieved Employees would work during their rest breaks
21 and also clock out and continue to work during meal periods. Plaintiff alleged that this
22 resulted in not only meal and rest break violations but also in unpaid minimum and overtime
23 wages. Moreover, Plaintiff alleged that not a single meal or rest period premium payment
24 was paid to Plaintiff or any of the other alleged Aggrieved Employees during the PAGA
25 Period. Additionally, Plaintiff alleged that Defendant provided inaccurate wage statements
26 which did not identify the correct number of total hours worked. Plaintiff also alleged that
27 Defendant required the Aggrieved Employees to use their personal cell phones for work-
28 related issues (e.g. communicating directly with customers) without being reimbursed for

1 such costs. Indeed, Plaintiff Fraijo was written up by her supervisors after certain customers
2 complained they were unable to reach her via phone. (Declaration of Kyle Nordrehaug, at
3 ¶3). On August 4, 2022, the Parties engaged in an all-day mediation session before Mediator
4 Serratore, a respected and experienced mediator knowledgeable of both the wage and hour
5 laws and representative claims at issue in this action. Through arms-length negotiations with
6 the assistance of the mediator, the Parties reached an agreement to settle the PAGA claims in
7 this action which led to the signing of a Memorandum of Understanding memorializing the
8 settlement.² (Declaration of Kyle Nordrehaug, at ¶3).

9 The settlement was negotiated in light of all known facts and circumstances and the
10 uncertainty associated with litigation – including the risk of Plaintiff not being able to
11 maintain representative claims, the difficulty of proving Plaintiff’s claims in a manageable
12 trial, the merits of Defendant’s potential defenses, and the significant delay and potential
13 appellate issues inherent to litigation – and was reached after extensive arm’s length
14 negotiations, with the assistance of Mediator Serratore. (Declaration of Kyle Nordrehaug, at
15 ¶3).

16 17 **III. TERMS OF THE PAGA SETTLEMENT**

18 The PAGA settlement is subject to Court approval consistent with Labor Code
19 §2699(1)(2). (Agreement at ¶ 6.1). The Agreement negotiated by the Parties provides for a
20 “Gross PAGA Settlement Amount” payment in the amount of \$200,000 to resolve the
21 Released PAGA Claims (hereinafter referred to as the “PAGA Settlement”). From this
22 PAGA Settlement of \$200,000, there is a deduction of attorneys’ fees (“PAGA Counsel Fees
23 Payment”) in the amount of \$66,666 (which is one-third of the PAGA Settlement),

24 ² In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle
25 Plaintiff’s individual claims pursuant to a separate confidential Individual Settlement Agreement
26 (“Individual Settlement”)(Settlement Agreement at ¶ 2.2). The individual claims were not at issue in
27 this action and exist independent and apart from the PAGA claims at issue before the Court. *See Kim*
28 *v. Reins Int’l Cal., Inc.*, 9 Cal. 5th 73, 80 (2020) (the “[s]ettlement of individual claims does not strip
an aggrieved employee of standing, as the state’s authorized representative, to pursue PAGA
remedies” nor resolve the PAGA claims.).

1 reimbursement of incurred costs (“PAGA Counsel Litigation Expenses Payment”) in an
2 amount not to exceed \$14,000, and Settlement Administration Costs (“Administration
3 Expenses Payment”) not to exceed \$7,000. (Agreement at ¶¶ 3.2.1-3.2.2).³ After these
4 deductions, the amount remaining is the “PAGA Payment”, which is estimated to be no less
5 than \$112,334.

6 Of the PAGA Payment amount, seventy-five percent (75%) (no less than \$84,250.50)
7 will be paid to the LWDA and the remaining twenty-five percent (25%) (no less than
8 \$28,083.50) will be paid to the Aggrieved Employees (Agreement at ¶ 3.2.3).⁴ This 75/25
9 allocation is required by Labor Code §2699 as explained by *ZB, N.A. v. Superior Court*, 8
10 Cal.5th 175 (2019).

11 The Individual PAGA Payment for each Aggrieved Employee shall be based on the
12 number of pay periods each Aggrieved Employee worked during the PAGA Period as an
13 Aggrieved Employee, as a percentage of the total pay periods worked by all Aggrieved
14 Employees during the PAGA Period.⁵ The PAGA Period is the time period from June 3,
15 2020 to September 30, 2022. (Agreement at ¶ 1.24).

16 For mediation, Defendant represented that there are approximately 112 Aggrieved
17 Employees who collectively worked approximately 5,000 pay periods during the PAGA
18 Period. (Agreement at ¶ 4.1). The Defendant then provided a declaration as required by the
19

20 ³ If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses
21 Payment less than the amounts requested, the Administrator will allocate the remainder to the PAGA
22 Payment. (Settlement Agreement at ¶ 3.2.1). To the extent the Administration Expenses are less or
23 the Court approves payment less than \$7,000, the Administrator will retain the remainder in the
PAGA Payment (*Id.* at ¶ 3.2.2).

24 ⁴ “Aggrieved Employees” means all individuals who were employed by Defendant Atlas Copco
Compressors LLC in California and classified as non-exempt employees during the PAGA Period.
25 The PAGA Period is the period from June 3, 2020 to September 30, 2022. (Settlement Agreement at
¶¶ 1.4, 1.24).

26 ⁵ See Settlement Agreement at ¶ 3.2.3.1 (“The Administrator will calculate each Individual PAGA
27 Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Payment by
the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the
28 PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Period Pay
Periods.”)

1 Agreement which provides that the final figures are 112 Aggrieved Employees who worked
2 5,257 pay periods. (Declaration of Kyle Nordrehaug, at ¶4)

3 Upon entry of final judgment, the Released Parties shall be entitled to a release from
4 the State of California and the Aggrieved Employees only for any “Released PAGA Claims”,
5 which means all PAGA claims for civil penalties under California Labor Code §§ 2698 *et*
6 *seq.*, predicated on the California Labor Code violations that are asserted in the LWDA
7 Notice and operative complaint (or PAGA Claims that could have been asserted based on the
8 facts alleged in the operative LWDA Notice and operative complaint) which are for civil
9 penalties pursuant to Labor Code section 2699, *et seq.* for violations of Labor Code sections
10 §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226, 226(a), 226.7, 226.8, 246, 351, 510, 512, 558,
11 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 1198.5, 2802 and applicable Industrial Welfare
12 Commission Wage Orders including California Code of Regulations, Title 8, Section 11040,
13 Subdivision 5(A)-(B) (the “Released PAGA Claims”)(Agreement at ¶ 5.2). The Released
14 PAGA Claims does not include underlying Labor Code claims, claims for wrongful
15 termination, discrimination, unemployment insurance, disability, and workers’
16 compensation, and claims outside of the PAGA Period. (*Id.*) The Released PAGA Claims do
17 not include any claims that cannot be released as a matter of law. (*Id.*) The Agreement
18 expressly confirms that **“In no event shall the release of the Released PAGA Claims in**
19 **this Settlement Agreement release any individual claims of any individuals.”** (*Id.*)

20 Within fifteen (15) days after Defendant funds the Gross PAGA Settlement Amount,
21 the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA
22 Payment, the Administration Expenses Payment and the PAGA Counsel Expenses Payment.
23 (Agreement at ¶ 4.4). Checks will remain negotiable for one hundred eighty (180) days. (*Id.*
24 at ¶ 4.4.1) For any Aggrieved Employee whose Individual PAGA Payment check is
25 uncashed and cancelled after the void date, the Administrator shall transmit the funds
26 represented by such checks to the California Controller’s Unclaimed Property Fund in the
27 name of the Aggrieved Employee (*Id.* at ¶ 4.4.3).

1 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of
2 the Agreement and this motion to the LWDA concurrently with the filing of the instant
3 motion for settlement approval as set forth in the accompanying proof of service in
4 compliance with Labor Code section 2699(1). In addition, Plaintiff shall submit to the
5 LWDA a copy of the Court's judgment and order approving the Agreement within ten (10)
6 days after entry of judgment or order.

7
8 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

9 The claim before this court is the representative claim under PAGA on behalf of the
10 State of California for civil penalties pursuant to the PAGA. The parties have agreed to
11 settle this PAGA claim in its entirety after investigation and an arm's length mediation
12 session. (Declaration of Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and
13 finally resolve the Released PAGA Claims asserted by Plaintiff on behalf of the State of
14 California. This is only a settlement of the PAGA claims for civil penalties, and is not a
15 class settlement and does not release the individual claims, if any, of the Aggrieved
16 Employees. This settlement does not release any claim that is not a PAGA claim.⁶ PAGA
17 Counsel Fees equal to one-third of the Gross PAGA Settlement amount (\$66,666.00) and
18 PAGA Counsel Litigation Expenses in an amount not to exceed \$14,000.00 will also be paid
19 to PAGA Counsel as part of the settlement in accordance with California Labor Code §
20 2699(g)(1), as set forth in the Agreement.⁷ Lastly, payment to the Administrator in an
21 amount not to exceed \$7,000 to perform the administrative duties to distribute the settlement
22 money shall also be paid. (Declaration of Kyle Nordrehaug, at ¶¶ 4-5.)

23
24
25
26 ⁶ As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th at 196: "Nonparty employees are bound
by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties."

27 ⁷ As set forth in the accompanying Declaration of Kyle Nordrehaug, PAGA Counsel incurred costs
28 in the current amount of \$12,889.42, which is less than the cost allocation in the Settlement
Agreement. See Declaration of Nordrehaug at ¶ 9.

1 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE**
2 **SETTLEMENT OF THE PAGA CLAIM**

3 Labor Code § 2699(l) requires that the Court “shall review and approve any
4 settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement
5 shall be submitted to the agency at the same time that it is submitted to the court.”
6 Consequently, the parties respectfully ask the Court to review and approve the settlement of
7 the PAGA claims and the PAGA Payment to be paid as part of the proposed settlement.

8 **A. The PAGA Settlement Amount To Be Paid Is Fair And Reasonable**

9 The Parties believe that the PAGA Settlement amount is fair and reasonable and
10 therefore "shall" be reviewed and approved. The Labor and Workforce Development Agency
11 has released data on PAGA settlement amounts. After removing the outliers at the low and
12 high end, the average, total settlement amount of PAGA claims is approximately \$10,000.
13 Here, the Gross PAGA Settlement Amount of \$200,000 is significantly more than other
14 PAGA settlements and constitutes approximately \$40 per pay period. (Declaration of
15 Nordrehaug, at ¶6.)

16 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
17 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of
18 statutory PAGA civil penalties was potentially \$500,000 based on 5,000 pay periods
19 applicable to the Aggrieved Employees during the PAGA Period.⁸ (Declaration of
20 Nordrehaug, at ¶6.) Importantly, however, these calculations were performed at the
21 maximum statutory rate for the penalties, when in fact, it is likely that any penalties awarded
22 would be at a lower rate. California Labor Code Section 2699(e)(1) permits a Court to
23 award a lesser amount than the maximum civil penalty if based on the facts and
24 circumstances to do otherwise would result in an award that is "unjust, arbitrary and
25 oppressive or confiscatory."

26 ⁸ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct.
27 The valuation of \$500,000 is the civil penalty amount without stacking. If stacking is permitted, then
28 the valuation increases with each additional penalty added to each pay period. Plaintiff, however, is
not aware of any PAGA award which permitted stacking and in the cases cited herein, only one
penalty per pay period was assessed.

1 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal
2 affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay
3 period. Therefore, at trial, any PAGA penalties awarded could be significantly less than
4 Plaintiff's calculation even where Plaintiff prevailed on the PAGA claim. If the amount of \$5
5 per pay period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties
6 would be only \$25,000.00, which is less than this settlement provides.

7 Under PAGA, Courts have considerable discretion to reduce the penalty award. In
8 *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court
9 reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, because the
10 court found maximum penalties "unjust" because the employees had suffered no injuries.
11 Some trial courts have actually awarded no civil penalties, even when Labor Code violations
12 are established. See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of
13 App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior
14 Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist.
15 LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

16 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove
17 each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*,
18 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of
19 PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven
20 suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to
21 prove that each Aggrieved Employee suffered a violation for each period the employee
22 worked in relation to meal or rest period violations, failure to pay minimum wages, failure to
23 pay overtime and sick pay wages, failure to provide accurate itemized wage statements,
24 failure to pay wages when due and failure to reimburse employees for required expenses.

25 Defendant maintains that Plaintiff and the Aggrieved Employees were properly
26 compensated, and that it did not violate the Labor Code. Accordingly, Defendant disputes
27 and denies Plaintiff's allegations and claims asserted in the complaint which are resolved by
28 the Agreement. Defendant asserted additional defenses to the PAGA claim, not only as to

1 liability but also as to the amount of the penalties. Defendant could argue that no penalties
2 prior to the PAGA notification should be awarded because the violations were not
3 intentional, and at least one Court has so ruled. These defenses present a risk to the PAGA
4 claims and the potential that some or all of the PAGA penalties sought may not be awarded.
5 (Declaration of Nordrehaug, at ¶7.)

6 Given Defendant's potential defenses to the violations at issue, the risks and costs of
7 continued litigation, Plaintiff and her attorneys believe that the PAGA Settlement is fair and
8 reasonable. (Declaration of Nordrehaug, at ¶7.) Defendant has similarly concluded that it is
9 desirable that the action is settled in the manner and upon the terms and conditions set forth
10 in the Agreement in order to avoid further expense, inconvenience and distraction of further
11 legal proceedings, as well as the uncertainty of litigation. Defendant has determined that it is
12 desirable and beneficial to put to rest the claims in this action and Defendant agrees that the
13 PAGA Settlement is fair, reasonable, and adequate.

14 PAGA Counsel have significant experience litigating wage and hour claims including
15 claims for PAGA penalties, and the PAGA Settlement here is similar to or greater than
16 similar settlements that courts have approved. (Declaration of Nordrehaug, at ¶¶ 7, 10.) The
17 PAGA Settlement, along with the other terms of the proposed settlement, were negotiated by
18 experienced counsel at arm's length with the assistance of a private mediator, Stephen
19 Serratore. (Declaration of Nordrehaug, at ¶7.)

20 As set forth in the accompanying proof of service, the LWDA has been provided
21 notice of this motion and the PAGA settlement. The decision of the LWDA to accept the
22 PAGA Settlement and not oppose the motion should be given considerable weight. This is
23 not a situation where the Court needs to be concerned about the rights of absent employees
24 as in a class settlement, as this PAGA-only settlement does not release the individual claims
25 of absent employees, and the LWDA is a sophisticated government entity that is more than
26 able to look out for its own rights.

27 **B. The Remaining Settlement Terms Are Fair And Reasonable**

28 Although PAGA requires that a court approve the proposed PAGA settlement, Labor

1 Code § 2699(1) does not require that a court approve any other elements of the proposed
2 settlement. Because there are no class allegations for which Plaintiff seeks approval, the
3 approval provisions applicable to class settlements under Cal. Code Civil Proc. §382 do not
4 apply. Accordingly, the Court only needs to approve the settlement of the civil penalties
5 sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for
6 attorneys' fees and costs are reasonable.

7

8 **VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

9 PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the
10 amount of \$66,666 representing one-third of the \$200,000 Gross PAGA Settlement Amount.
11 PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position
12 is that the payment of attorneys' fees and costs in this settlement is a matter of contract for a
13 contingent representation. Nevertheless, should this Court review the requested attorneys'
14 fees, it is clear that the requested fees and costs are reasonable.

15 First, the requested fees are justified by the result achieved. PAGA Counsel
16 negotiated a recovery of \$200,000.00, and this result justifies the requested fees equal to one
17 third of this recovery. This percentage is within the standard contingent recovery percentage
18 of one-third, and this percentage is what was expressly approved by the Supreme Court in
19 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt.*,
20 *LLC*, 69 Cal. App. 5th 521, 545 (2021) (recognizing that ““fee awards in class actions
21 average around one-third of the recovery”” regardless of ““whether the percentage method or
22 the lodestar method is used.”” (quoting *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11
23 (2008))).

24 Second, the fee award is justified by the work performed and contributions to the
25 case. As detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8, the fee award
26 represents PAGA Counsel's current lodestar of \$136,437, which means the requested award
27 is significantly less than the lodestar incurred by PAGA Counsel.

1 Generally, the Ninth Circuit and California Courts award positive multipliers between
2 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation
3 or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award
4 with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182
5 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and
6 affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
7 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa*
8 *Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which
9 was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D.
10 Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v.*
11 *Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6,
12 2013) (approving fee award that represented a multiplier of 2.76 as falling within the
13 "majority" range for risk multipliers). Here, where the fee award is less than the lodestar,
14 representing a negative multiplier, there can be no dispute that the fee award is reasonable.⁹

15 Third, consideration of the enhancement factors justify the enhancement of the
16 lodestar. Courts multiply the lodestar by a factor to account for the risk of non-payment,
17 delay in payment, the quality of work, and the novelty and difficulty of the issues involved.
18 See *Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001). Failure to apply a risk multiplier in
19 cases that meet these criteria is an abuse of discretion. *Stetson v. Grissom*, 821 F.3d 1157,
20 1166 (9th Cir. 2016).

21 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation
22 expenses in the total amount of \$12,889.42 which is less than the \$14,000 allocation for costs
23 in the Agreement, so the difference of \$1,110.58 will be added to the PAGA Payment
24 amount. These expenses are documented in the accompanying Declaration of Nordrehaug at
25 ¶9.

26
27
28 ⁹ "The lodestar amount is presumptively the reasonable fee amount." *Topete v. Ramos Furniture*,
2018 U.S. Dist. LEXIS 142033 (E.D. Cal. 2018), citing *Van Gerwen v. Guarantee Mut. Life Co.*,
214 F. 3d 1041, 1045 (9th Cir. 2000).

1
2 **VII. CONCLUSION**

3 Based on the foregoing, Plaintiff respectfully requests this Court approve the PAGA
4 settlement as set forth in the Agreement and enter the proposed order and judgment
5 submitted herewith.

6
7 Dated: January 11, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

8
9 By: /s/ Kyle Nordrehaug
10 Kyle Nordrehaug
11 Attorney for Plaintiff
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Journal Technologies Court Portal

Make a Reservation

JENNA FRAIJO vs ATLAS COPCO COMPRESSORS LLC

Case Number: 21NWCV00536 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2021-08-20 Location: Norwalk Courthouse - Department F

Reservation

Case Name: JENNA FRAIJO vs ATLAS COPCO COMPRESSORS LLC	Case Number: 21NWCV00536
Type: Motion re: (Motion to Approve Paga Settlement)	Status: RESERVED
Filing Party: Jenna Fraijo (Plaintiff)	Location: Norwalk Courthouse - Department C
Date/Time: 02/08/2023 1:30 PM	Number of Motions: 1
Reservation ID: 256856332745	Confirmation Code: CR-ADBFFMFIVWSOTWEFW

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: XXXX4445	Authorization: 43556J

[Print Receipt](#)[+ Reserve Another Hearing](#)