

1 HAROUT MESSRELIAN (SBN: 272020)
2 MESSRELIAN LAW INC.
3 500 N. Central Ave., Suite 840
4 Glendale, CA 91203
5 Telephone: (818) 484-6531
6 Facsimile: (818) 956-1983
7 E-mail: hm@messrelianlaw.com

8 Attorneys for Plaintiff CALYNDRA DAVIS

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 CALYNDRA DAVIS,

13 *Plaintiff,*

14 vs.

15 KAM ENTERPRISES LLC dba FARMER
16 BOYS; LEEZA JAYNE BRAZIER; and
17 DOES 1 to 25, inclusive,

18 *Defendant(s).*

Case No.: 22STCV17280

**PLAINTIFF'S SUPPLEMENTAL
UNOPPOSED MOTION FOR APPROVAL
OF PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Action filed: 5/25/22

Date: 12/29/23

Time: 8:30am

Dept: 34

Reservation ID:
341812301108

Department: 34, Hon. Michael
Linfield

Submitted Herewith Under Separate Cover:

1. Supplemental Declaration of Harout Messrelian in Support of Supplemental Motion for Approval of PAGA Settlement and Release;

1
2 TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

3 .. PLEASE TAKE NOTICE THAT on December 29, 2023 at 8:30 a.m., or as soon thereafter as
4 the matter may be heard in Department 34 of the above-entitled Court, located at 111 N. Hill
5 Street, Los Angeles, California 90012, Plaintiff Calynda Davis ("Plaintiff") and will and hereby
6 does move unopposed, the Court, pursuant to Labor Code § 2698 et seq., for an order approving
7 the Private Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code § 2698 et seq.,
8 settlement agreement between Plaintiff and Defendants KAM Enterprises LLC dba Farmer
9 Boys and Leeza Jayne Brazier ("KAM" or "Defendants") (collectively, "the Parties")

10 This supplemental Motion is based on this Notice, the attached Memorandum of Points and
11 Authorities; the concurrently-filed supplemental Declaration of Harout Messrelian, the papers
12 and pleadings on file in this action, any and such other evidence and oral argument as may be
13 presented in connection with the hearing on this Motion.

14 Respectfully Submitted,

15 MESSRELIAN LAW INC.

16
17 DATED: December 5, 2023

18 By _____
19 Harout Messrelian, Esq.
20 Attorneys for Plaintiff
21 CALYNDRA DAVIS
22
23
24
25
26
27
28

1 **I. INTRODUCTION**

2 Plaintiff Calyndra Davis (“Plaintiff”) and Defendants KAM Enterprises LLC dba Farmer
3 Boys and Leeza Jayne Brazier (“KAM” or “Defendants”) (collectively “Parties”) have reached
4 an agreement to settle the above-captioned action (the “Action”). The parties have memorialized
5 the terms of this settlement in a PAGA Settlement Agreement (the “Settlement Agreement”). By
6 this Motion and pursuant to California Labor Code § 2699(l), Plaintiff seeks an order approving
7 the terms outlined in the Settlement Agreement. The parties initially appeared for a hearing on
8 November 14, 2023 at 830am wherein the Court denied the original motion for approval without
9 prejudice and requested further information. The purpose of this supplemental motion is to
10 address the Court’s areas of concern.

11 Defendants adamantly deny any liability or wrongdoing of any kind whatsoever
12 associated with the Action. It is the desire of the Parties to fully, finally, and forever compromise,
13 and discharge all claims known or unknown related to those alleged in the Action.

14 The Settlement warrants approval because it fulfills the purpose of the PAGA and
15 provides fair and reasonable monetary recovery to the State of California and the Aggrieved
16 Employees. This is especially in light of the pending defense Motion for Summary Adjudication.
17 Should this litigation continue, there is a substantial risk that Plaintiff would not prevail on her
18 claims.

19 **II. ARGUMENT**

20 **A. SUBMISSION OF COURT COMPLAINT TO LWDA**

21
22 In its tentative ruling on the original motion, the Court raised the issue of whether Plaintiff
23 had filed a copy of the Court-stamped Complaint in this action with the LWDA within 10 days
24 of filing of the lawsuit.

25 After this issue was raised in the Court’s tentative ruling, Plaintiff’s counsel took a look
26 on the LWDA website and discovered that the complaint had not been filed with the LWDA
27 within 20 days of filing. Plaintiff’s counsel proceeded to file a copy of the complaint with the
28 LWDA on November 13, 2023. See Supplemental Declaration of Harout Messrelian, paragraph

1 4, Exhibit 1.

2 Plaintiff's position is that not filing the complaint with the LWDA within 10 days of filing
3 the action with the Court did not and does not prejudice the LWDA and does not materially alter
4 any notice issues. This is so because the LWDA had already been electronically served with the
5 PAGA notice on November 19, 2021 and had been fully apprised of the same theories of liability
6 for recovery of PAGA penalties as was included in the eventual filed Court complaint. In fact,
7 the theories of liability and general allegations in the PAGA notice were copied and pasted into
8 the operative complaint in this matter. Plaintiff's position is that since the LWDA has already
9 been served with the PAGA settlement agreement and the original motion for approval of PAGA
10 settlement on October 20, 2023, they have had adequate notice to chime in on any proposed
11 settlement in this matter. Whether the LWDA knew that a complaint had been filed in this matter
12 and whether they were aware of the case number or venue does not materially change anything
13 as they had already refused to take the matter themselves as evidenced by the expiration of the
14 65-day waiting period. The main notice requirements as far as the LWDA are concerned have to
15 do with the PAGA settlement. Further, a copy of these supplemental papers were also served on
16 the LWDA in anticipation of the December 29, 2023 approval hearing. See Supplemental
17 Declaration of Harout Messrelian, paragraph 11, Exhibit 3.

18
19 **B. ATTORNEY'S FEES AND COSTS**

20 In its tentative ruling on the original motion, the Court expressed skepticism as to whether
21 the attorney's fees of \$8,333.33 were reasonable in light of the fact that each aggrieved employee
22 would be receiving \$20.72 on average from the proposed PAGA settlement.

23 Plaintiff's position is that the attorney's fees are reasonable based on the percentage of
24 recovery method and as cross-referenced against the Lodestar. In fact, there is a negative
25 multiplier in this case, as Plaintiff's requested attorney's fees are less than the attorney's fees that
26 were incurred in prosecuting this case. Plaintiff's counsel has spent approximately 22.5 hours,
27 inclusive of this supplemental motion, in prosecuting this case. At \$550/hour, that equates to
28 \$12,375.00 in attorney's fees, which is a decent amount greater than the requested attorney's

1 fees. See Supplemental Declaration of Harout Messrelian, paragraph 5.

2 In terms of the requested reimbursement of Court costs in the amount of \$1,641.25, they
3 are reasonable and related to this litigation. The lawsuit filing fee in this matter was \$462.27; the
4 initial PAGA notice filing fee was \$75.00; the expert data analyst cost was \$1,000; the original
5 motion filing fee was \$61.54, and there were miscellaneous court filing fees of \$42.33. These
6 costs are directly related to this case and were reasonably incurred. Furthermore, Plaintiff's
7 counsel has not included the new filing fees associated with the filing of these supplemental
8 papers in the above calculation. See Supplemental Declaration of Harout Messrelian, paragraph
9 6.

10 Plaintiff's position is that since the PAGA statute was intended to penalize the employer
11 as opposed to compensate the employees, with the lion's share of the PAGA penalties going to
12 the LWDA, comparing the requested attorney's fees with the per employee average recovery
13 would not be a fair comparison. The PAGA penalties that are distributed to aggrieved employees
14 are not meant to make the employees whole and is not compensation for underlying labor code
15 violations. As stated clearly in the one-page PAGA notice that accompanies the PAGA settlement
16 check, each employee is free to bring their own individual labor board claims to potentially
17 recover compensation for wages that may be owed on an individual basis.

18 19 **C. NOTICE OF RELEASED CLAIMS**

20 In order to assuage the Court's concerns as it relates to the PAGA notice, Plaintiff's
21 counsel has revised the PAGA notice and included the exact language requested by the Court.
22 See Supplemental Declaration of Harout Messrelian, paragraph 7, Exhibit 2.

23 24 **D. FAIRNESS OF THE SETTLEMENT**

25 In its original ruling, the Court indicated that there could have been upwards of \$200,000
26 in total civil penalties assessed in this action. This figure is not accurate and would be irrelevant
27 in any event. Since the two main claims in this PAGA action are for rest break violations and
28 meal break violations, the total maximum penalties based on a 100% violation rate would have

1 been \$166,300. The latter is broken down as \$55,450 for meal break penalties (1109 pay periods
2 x \$50/pay period) and \$110,900 for rest break penalties (1109 pay periods x \$100/pay period).
3 The \$166,300 exposure would be at a 100% violation rate, meaning that each and every aggrieved
4 employee suffered a meal and rest break violation in each and every pay period they worked
5 throughout the entire PAGA period. The latter is not in line with reality. In fact, based on
6 Plaintiff's own expert data analysis, which Defendant vehemently disputes, there was in fact a
7 36.2% violation rate for either late, short, or interrupted meal periods for shifts over 6 hours.

8 Since the total number of pay periods in the PAGA period was 1,109 and since only
9 51.7% of the shifts were over 6 hours, the total number of pay periods to consider for potential
10 meal break violations was 573 (51.7% x 1109 pay periods). As such, with the 36.2% violation
11 rate, the maximum exposure would be \$10,350.00, which is calculated as \$50 penalty multiplied
12 by 207 pay periods (36.2% of the 573 pay periods). Plaintiff extrapolated the same 36.2% rate
13 for rest break violations, which would equate to a maximum exposure of \$40,100.00 (\$100
14 penalty per pay period multiplied by 401 pay periods, which is 36.2% x 1109 pay periods). As
15 such, the aggregate maximum exposure for meal and rest break claims would be \$50,450.00. As
16 such, the proposed settlement of \$25,000 would be approximately 50% of the maximum
17 exposure. See Supplemental Declaration of Harout Messrelian, paragraphs 8-10.

18 Moreover, there are risks in proceeding with this action, especially when considering the
19 defense contentions and affirmative defenses. The affirmative defenses and defense contentions
20 are summarized below, including procedural and substantive defenses, which will substantially
21 undercut the projected value of the claims and resultant damages, or even eliminate claims
22 altogether.

23 1. Plaintiff has failed to articulate the common evidence of a policy, or a pattern and
24 practice of labor code violations, that caused labor code violations, and Plaintiff will be unable
25 to overcome a substantial barrier to show the case is manageable prior to proceeding to trial.
26 Plaintiff has also failed to articulate any practicable means for addressing these voluminous
individualized issues for the represented employees in a manner consistent with Defendants' due
process rights. As such, there is a very real risk that the case will be dismissed for lack of
manageability.

27 2. Plaintiff will not survive the defense pending motion for summary adjudication

28 3. The pending Motion for Summary Adjudication is very likely to resolve Plaintiff's
individual wage and hour claims, thus, Plaintiff would lack standing to bring a representative
claim on behalf of other employees. The motion would also dispose of any alleged PAGA claim

1 against individual defendant Brazier as Plaintiff has no proof that she complied with the
2 mandatory PAGA as to the individual defendant.

3 4. Defendants review of the time and pay records discloses no violations of alleged failures
4 to pay overtime wages, minimum wages or payment of wages during and at the time of separation
5 of employment.

6 5. Defendants complied with required meal and rest period obligations under California law
7 have compliant written policies regarding meal and rest period obligations, and these claims are
8 unmanageable because they would require hundreds or thousands of time-consuming
9 individualized inquiries to resolve.¹

10 6. Defendants pay for all hours worked, and maintain and implement a lawful policy
11 regarding the payment of overtime wages and prohibiting off-the clock-work.

12 7. Throughout the PAGA recovery period, the employee handbook sets forth meal and rest
13 break policies compliant with the requirements set forth by the California Supreme Court in
14 *Brinker Restaurant Corp. v. Superior Court*. At the time of hire, each employee, including
15 Plaintiff, is provided with Defendants' policies and procedures, including, the employee
16 handbook, and the meal and rest break and overtime policies. All employees, including Plaintiff,
17 go through an orientation process, where each employee is trained on operations, company
18 policies, including how to record time, the importance of clocking in, and no off-the-clock work.
19 The employee agrees that he/she is responsible for adhering to the policies and procedures in the
20 handbook. When the handbook is revised employees are provided notice and access to the
21 updated handbook

22 8. For certain shifts like those that are six hours or less, Plaintiff and the aggrieved
23 employees waived meal breaks, and even if not waived, the meal and rest break claims to the
24 contrary are unmanageable for presentation at trial as there are countless individual inquiries on
25 the issues liability and damages.

26 9. Plaintiff has no common evidence or theory that aggrieved employees engaged in off-
27 the-clock work, and as such, these claims would be unmanageable requiring the trial judge to
28 hear evidence on each employee's work off-the-clock work, and Defendants' knowledge of that
employee's specific work.²

29 ¹E.g., *Amiri v. Cox Communs, LLC* (2017) 272 F.Supp.3d 1187, 1195 ("Absent a widespread
30 policy or practice of not permitting field employees to have their required meal and rest
31 periods, the Court would be required to determine (1) whether each individual took a particular
32 meal or rest break (2) on a particular occasion and (3) and if the individual skipped the break,
33 why it was skipped for each of the around 1,000 aggrieved employees"). Similarly, on the rest
34 period claim, the trial judge would need to determine for each alleged aggrieved employee if
35 and when each was ever prevented from taking a lawful rest period.

36 ²See *Ortiz v. CVS Caremark Corp.* (N.D. Cal. 2014) 2014 WL 1117614, *at 3 (to prove off-the-
37 clock PAGA claim "Plaintiffs would have to present evidence about each [individual] ... Proof
38 of this claim would be unmanageable, and could not be done with statistical or survey evidence
but only with detailed inquiries about each employee claimed to have done so and her manager's
knowledge thereof."; also see *Washington v. Joe's Crab Shack* (2010) 271 F.R.D. 629, 642
("Plaintiff has provided no evidence of any company-wide or class-wide policy of requiring 'off-
the-clock' work, and the individualized assessment necessary to ascertain whether there were in
fact any employees who were told to work 'off-the-clock' would not be susceptible to common
proof.")).

10. Plaintiff alleges derivative claims, such that if the underlying claims fails no PAGA penalties are owed.

11. The cause of action for Unfair Competition under the Business and Professions Code section 17200 *et seq.* is entirely derivative of underlying claims, so if the underlying claims fails so does this claim.

12. Plaintiff's claim under PAGA fails because Plaintiff did not fully comply with pre-filing notice requirements mandated by statute, and/or the PAGA claim fails to the extent Plaintiff seeks penalties for violations occurring prior to the applicable statute of limitations.

13. Even assuming manageability and liability, Plaintiff cannot stack or double dip PAGA penalties for the same alleged conduct, This rule is based on the well-established principle that a party is permitted one recovery, regardless of the number of theories asserted.³

14. Further, assuming manageability and liability, PAGA penalties would likely be substantially reduced because penalties are subject to significant reduction where, as here, Defendants took its obligations seriously and in good faith attempted to comply with the law. *See Lab. Code* § 2699(e)(2) ("...a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.").⁴

Based on the above, Plaintiff's position is that proposed PAGA settlement in this matter is fair, reasonable, and adequate.

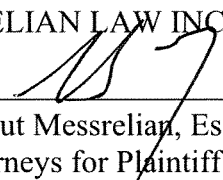
III. CONCLUSION

Plaintiff respectfully requests the Court grant this Motion.

Respectfully Submitted,

MESSRELIAN LAW INC.

DATED: December 5, 2023

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff

³*E.g., Plotnik v. Meihaus* (2014) 208 Cal.App.4th 1590, 1612 (emphasis added, internal citations omitted) (reversing recovery under alternate theories that "would amount to double recovery"); *see also Krusi v. Bear, Stearns & Co.* (1993) 144 Cal.App.3d 664, 673 (prohibiting "double recovery for the same wrong").

⁴*E.g., Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (court affirmed a 90% reduction in the penalty imposed based on employer's "good faith attempts" to comply with meal break obligations); *Fleming v. Covidien Inc.* (C.D. Cal. Aug. 12, 2011) No. 10-cv-1387, 2011 WL 7563047 (82 % reduction); *Aguirre v. Genesis Logistics* (C.D. Cal. July 3, 2013) No. SACV1200687, 2013 WL 10936036 at *2 (72 % reduction); *Parr v. Golden State Overnight Delivery Service, Inc.*, 2014 WL 11199453 at * 6 (Alameda Super. Court, RG12-618103 July 10, 2014) (94% reduction); *Magadia v. Wal-Mart Associates, Inc.* (N.D. Cal. 2019) 384 F.Supp.3d 1058, 1100 (63% reduction).