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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

GERARDO GARCIA AGUILAR,

Plaintiff,

vs.

YK MASON & SON, INC; YK MASON
CONSTRUCTION, INC.; and DOES 1
through 25, Inclusive,

Defendants.

Case No.: CGC-22-600003

**NOTICE OF MOTION AND MOTION
FOR APPROVAL OF SETTLEMENT OF
PLAINTIFF'S CLAIM FOR PENALTIES
UNDER CALIFORNIA LABOR CODE
SECTION 2698, ET SEQ. ("PAGA")**

Date: May 17, 2024

Time: 9:30 a.m.

Dept.: 302

Complaint Filed: June 3, 2022

Trial Date: None

NOTICE OF MOTION

TO EACH PARTY AND TO COUNSEL FOR EACH PARTY OF RECORD:

PLEASE TAKE NOTICE that on May 17, 2024, at 9:30 a.m., or as soon thereafter as counsel may be heard, Plaintiff Gerardo Garcia Aguilar (hereinafter “Plaintiff”) will move and hereby does move for an order granting approval of the settlement reached between him and Defendant YK Mason & Son, Inc. regarding Plaintiff’s claim for civil penalties pursuant to the Private Attorneys General Act, California Labor Code §§ 2698 et seq.

This motion will be made and based upon: (1) this notice of motion; (2) the memorandum of points and authorities in support thereof; (3) the declaration of Arlo Garcia Uriarte and the exhibits attached thereto, all of which are filed and served concurrently herewith; as well as (4) the records, pleadings, and papers on file in this action, and upon such other matters as may be presented at the time of hearing on this motion.

Dated: April 25, 2024



Arlo Garcia Uriarte
Liberation Law Group, P.C.
Attorneys for Plaintiff

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I. INTRODUCTION

Pursuant to Labor Code § 2699(1)(2),¹ Plaintiff Gerardo Garcia Aguilar (hereinafter “Plaintiff”) seeks approval of the instantly proposed \$440,000 PAGA² settlement³ reached between him and Defendant YK Mason & Son, Inc. (hereinafter “Defendant”). The settlement involves just twenty-six Aggrieved Employees⁴ who worked 1,672 pay periods during the PAGA Period⁵. [Agreement ¶ 7].

Plaintiff confidently submits this is an excellent settlement because Aggrieved Employees are expected to recover \$2,722.50 each on average, a particularly high per employee recovery for a PAGA-only settlement. Moreover, Defendant has agreed to meaningful policy and practice changes that will improve the company’s wage and hour compliance leading to better working conditions for its current and future employees, satisfying PAGA’s remedial purposes. [Agreement ¶ 9.1; See *generally*, the Declaration of Alan Chow, attached as Exhibit “2” to the Uriarte Dec]. A PAGA settlement that provides for substantial individual recoveries and also important workplace changes should be lauded. For these main reasons and all others described below, the Court should have no hesitation approving the settlement as fair, reasonable, and adequate.

II. FACTUAL BACKGROUND & PROCEDURAL POSTURE

Defendant is a contractor in the construction industry, specifically focused on assembling and removing scaffolding for construction projects in the San Francisco-Bay Area. [Uriarte Dec. ¶ 2]. Plaintiff was hired by Defendant’s predecessor, YK Mason Construction, Inc., in June of 2011 as a laborer. [Uriarte Dec. ¶ 3]. He was eventually promoted to foreman. *Id.* In or around December

¹ “The superior court shall review and approve any settlement of any civil action filed pursuant to [The Private Attorneys General Act]. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.”

² Private Attorneys General Act or “PAGA” is codified as California Labor Code §§ 2698 et seq.

³ The PAGA Settlement Agreement (hereinafter “Agreement” or “AGR”) executed by the parties is attached as Exhibit “1” to the Declaration of Arlo Uriarte (hereinafter “Uriarte Dec.”), filed concurrently herewith.

⁴ The term “Aggrieved Employee” means any person employed by Defendant in California and classified as a laborer or foreman who worked for Defendant during the PAGA Period. [Agreement ¶ 1.4].

⁵ The “PAGA Period” runs from March 3, 2021, through date of entry of Approval Order.

2019, YK Mason Construction, Inc. was converted to YK Mason & Son, Inc. [Uriarte Dec. ¶ 3]. Plaintiff's employment with Defendant ended in September 2021. *Id.*

On June 3, 2022, a complaint was filed on Plaintiff's behalf containing the following causes of action: (1) failure to pay all hours worked; (2) failure to pay overtime compensation; (3) failure to permit meal periods; (4) failure to permit rest periods; (5) failure to provide accurate itemized wage statements; (6) waiting time penalties; (7) civil penalties pursuant to the Private Attorneys General Act (Labor Code §§2698, et seq.); and (8) Unfair Competition in Violation of Cal. Business and Professions Code §§17200, et seq. Causes of action five through eight are derivative of causes of action one through four. In the main, Plaintiff claims he and Aggrieved Employees were not compensated for all of their hours worked or provided adequate meal and rest periods; these problems led Defendant to provide inaccurate wage statements and to fail to pay all final wages for separated employees. The complaint seeks individual relief for Plaintiff's wage and hour claims and civil penalties under PAGA for the wage and hour shortcomings suffered by Defendant's hourly-paid workforce during the PAGA Period.

The parties agreed to mediate this matter in July 2023 and selected Michael Ornstil as the mediator. [Uriarte Dec. ¶ 4]. Thereafter, the parties focused on discovery to ensure adequate mediation preparation. *Id.* Plaintiff propounded written discovery (two sets of form interrogatories, special interrogatories, and requests for production of documents) and deposed Defendant's owner and general manager, Alan Chow. *Id.* Defendant also propounded written discovery (two sets of form interrogatories) and deposed Plaintiff. *Id.* Mediation took place on January 25, 2024. [Uriarte Dec. ¶ 5]. Mr. Ornstil was instrumental in attaining the proposed \$440,000 settlement. *Id.* Plaintiff also settled his individual claims for \$70,000 at mediation. *Id.*

III. SETTLEMENT TERMS

The parties have agreed to a \$440,000 all-in, non-reversionary settlement. [Agreement ¶¶ 1.10, 3.1]. Defendant has agreed to fund the settlement in its entirety within twenty-one days after the Agreement's Effective Date⁶. [Agreement ¶ 4.4]. In exchange for the settlement consideration,

⁶ "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. [Agreement ¶ 1.9].

1 Aggrieved Employees will release “...all claims for PAGA penalties that were alleged, or reasonably
2 could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice.
3 The Release is only applicable to claims for PAGA penalties during the PAGA Period.” [Agreement
4 ¶ 5.1]. The Aggrieved Employee release is appropriately limited in terms of its substance and
5 timeframe.

6 Plaintiff has agreed to a general release [Agreement ¶ 5.2]. He will not be requesting any
7 enhancement payment due to his individual settlement. Plaintiff does request the following
8 deductions from the gross settlement amount.

- 9 • Attorney’s fees equaling \$146,652 (33.33% of the gross settlement fund)
10 for plaintiff’s counsel, Arlo Uriarte of Liberation Law Group, P.C.;
- 11 • Reimbursement of accrued litigation costs to plaintiff’s counsel in the
12 amount of \$7,201.86;⁷
- 13 • A \$3,000 settlement administration fee to Phoenix Settlement
14 Administrators (hereinafter “Phoenix”).⁸

15 The remaining amount, \$283,140.14 (hereinafter the “Net Settlement Amount”), is to be
16 distributed as required by law: seventy-five percent to the LWDA and twenty-five percent to PAGA
17 Group Members. Cal. Lab. Code § 2699(i). Twenty-five percent of the Net Settlement Amount is
18 \$70,785.04; this is to be distributed on a *pro rata* basis to the PAGA Group. [AGR ¶ 1.11]. In other
19 words, individual payments to PAGA Group Members will be based on their workweeks during
20 the PAGA Period. There are twenty six Aggrieved Employees, so each person will receive
21 \$2,722.50 on average, a very high average PAGA settlement payout to individuals in Plaintiff’s
22 counsel’s experience. [Uriarte Dec. ¶ 8].

23 There will be no need to make claims. The administrator will mail checks to Aggrieved
24 Employees within twenty-one days from the date Defendant funds the settlement. [AGR ¶ 4.4].

25 ⁷ Total costs for the case are \$8,588.31. [Uriarte Dec., Exhibit “3”]. Plaintiff’s counsel has allocated
26 sixteen percent of those costs to Plaintiff’s individual settlement because his settlement recovery
27 (\$70,000) is sixteen percent of the PAGA settlement recovery (\$440,000). [Uriarte Dec. ¶ 6]

28 ⁸ The parties sought administration bids from three different companies: Phoenix, CPT Group, Inc.
and Simpluris, Inc. Phoenix’s bid was most competitive. [Uriarte Dec. ¶ 7].

1 “Before mailing any checks, the Settlement Administrator must update the recipients’ mailing
2 addresses using the National Change of Address Database.” [AGR ¶ 4.41]. If any unnegotiated
3 checks remain after one hundred eighty days of issue, the administrator will disburse all outstanding
4 funds to La Raza Centro Legal, the *cy pres* recipient selected by the parties. [AGR ¶ 4.42].

5 The parties ask the Court to approve La Raza Centro Legal (hereinafter “LRCL”) as a
6 worthy *cy pres* for this settlement. It is LRCL’s “...mission is to provide high quality, free legal
7 representation to the Latino community and other low-income immigrant families, as the most
8 trusted partner in legal services.” [https://www.lrcl.org/mission-vision-values]. Plaintiff’s counsel
9 nor his firm are directly affiliated with LRCL; they have no financial investment in the non-profit
10 nor do they have any say-so as to its management. [Uriarte Dec. ¶ 9].

11 Lastly, Plaintiff fought for and received policy and practice changes in addition to the gross
12 settlement amount. [AGR ¶ 9.1]. Alan Chow, President of YK Mason & Son, Inc., has submitted a
13 declaration containing the following key statements [Exhibit “2” to Uriarte Dec.]:

14
15 5. Going forward, Defendant will capture and pay for all times when
each employee is laboring for the known benefit of Defendant.

16
17 6. Defendant provided and used, and continue[s] to provide and use,
18 an electronic time system to record the hours of work of Employees.
The electronic time clock captures the exact time that Employees
clock in and out and does not round the times.

19
20 7. Defendant is a construction firm. The Employees work at remote
21 locations. Defendant now requires the foreman of work crews to
22 record the beginning and end of meal periods for Employees on
forms created for this purpose. This information is used to track
23 missed meal periods and the reason therefore, *i.e.*, whether the
employee voluntarily waived the meal period or was requested to do
so by Defendant.

24
25 8. Defendant has instituted []and will maintain a meal and rest
26 period compensation policy, allowing employees to receive one
hour of premium pay for meal or rest breaks that were not provided
at the request of Defendant.

27
28 9. Defendant will issue a compliant wage statement to Employees
for every pay period worked.

IV. LEGAL ANALYSIS

A. Standard for PAGA Settlement Approval

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for labor code violations. *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. Seventy-five percent of any penalties recovered go to the LWDA, leaving the remaining twenty-five percent for the employees. *Id.* PAGA is intended “to augment the limited enforcement capability of [the LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency.” *Id.* at 59 Cal. 4th 383.) A judgment [or Court-approved settlement] in a PAGA action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. *Id.* at 381.

“The superior court shall review and approve any settlement of any civil action filed pursuant to this part.” Cal. Lab. Code § 2699(1)(2).) In *Moniz v. Adecco USA, Inc.*, our appellate court held “that a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 77, (2021). Notably, as shown by the California Supreme Court's holdings in *Arias v. Superior Court* (2009) 46 Cal.4th 969 and *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, there is no requirement under PAGA for Plaintiff to establish the requirements of class certification (*i.e.*, numerosity, typicality, commonality, and adequacy) nor is there the usual two-step preliminary and final approval process as found in class actions. Rather, this PAGA-only settlement merely requires a one-step review and approval by the Court.

Even before *Moniz*, the California Supreme Court had emphasized that “any negotiated resolution [must be] fair to those affected.” *Williams v. Superior Ct.* (2017) 3 Cal. 5th 531, 549, 398 P.3d 69, 81. However, it may be substantially discounted given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal. App. 4th 1157, 1213, 78 Cal. Rptr. 3d 572, 617 (“Section 2699, subdivision (e)(2) provides that in an action by an aggrieved employee to recover

1 PAGA penalties, the court ‘may award a lesser amount than the maximum civil penalty amount
2 specified by this part if, based on the facts and circumstances of the particular case, to do otherwise
3 would result in an award that is unjust, arbitrary and oppressive, or confiscatory.’”) *See also, Lopez*
4 *v. Friant & Assocs., LLC* (2017) 15 Cal. App. 5th 773, 787, 224 Cal. Rptr. 3d 1, 11 (recognizing
5 the trial court’s discretion to reduce PAGA penalties).

6 Furthermore, the *Moniz* court found the “abuse of discretion” standard appropriate when
7 reviewing trial court PAGA settlement approval decisions. [*Moniz* 72 Cal. App. 5th at 127] . This
8 means trial courts have wide discretion to determine what is “fair, reasonable, and adequate in view
9 of PAGA’s purposes” because “abuse of discretion” means “a decision that exceeds the bounds of
10 reason...or one that is arbitrary, capricious, patently absurd, or even whimsical.” *Artus v. Gramercy*
11 *Towers Condo. Ass’n, No. A161265*, 2022 WL 949799, at *4 (Cal. Ct. App. Mar. 30, 2022) (internal
12 quotations omitted).

13 **B. Plaintiff’s Rationale for Accepting this PAGA Settlement**

14 Plaintiff evaluated this settlement by comparing its gross value to maximum possible PAGA
15 penalties in light of the facts on record, including Defendant’s status as a small business employer
16 with less than twenty current employees, and the litigation risks that lie ahead. [Uriarte Dec. ¶ 9;
17 *see also*, Exhibit “4” for Plaintiff’s Maximum PAGA Penalties Chart]

18 Plaintiff’s PAGA allegations are tied to two core issues: (1) whether Defendant failed to
19 compensate Plaintiff and Aggrieved Employees for work performed outside of scheduled shifts;
20 and, (2) whether Defendant failed to provide Plaintiff and Aggrieved Employees adequate meal and
21 rest period opportunities. Plaintiff also alleges that the foregoing problems led Defendant to issue
22 inaccurate wage statements and underpay final wages to separated employees (waiting time
23 penalties).

24 **i. Unpaid Work, Inaccurate Wage Statements, Waiting Time Penalties**

25 The underpayment problem alleged by Plaintiff occurred because Defendant failed to
26 maintain accurate timekeeping records throughout the PAGA Period in Plaintiff’s view; Defendant
27 routinely compensated employees for their scheduled shifts and did not consider work tasks
28 performed outside of scheduled shifts compensable. A review of Plaintiff’s wage statements shows

1 that he was generally only compensated for eight hours of work per day. [Uriarte Dec. ¶ 10]. Any
2 work beyond eight hours, which Plaintiff claims was a common occurrence, was almost always not
3 captured or paid. *Id.*

4 More specifically, Plaintiff and Aggrieved Employees began their workday either at
5 Defendant's main offices, located in San Francisco's Bayview District, or about a mile and a half
6 away at Defendant's storage yard. [Uriarte Dec. ¶ 11]. At those locations, they received daily
7 instructions and/or picked up work materials to execute their upcoming tasks. *Id.* Employees
8 reported just before their scheduled shifts, so they were not paid for this preliminary work. *Id.*
9 Similarly, on days where work demands led employees to work beyond their scheduled shifts, the
10 continuation of common work tasks was not compensated by Defendant. *Id.* Employees were
11 generally assigned eight-hour shifts, so any unpaid work should have been compensated at an
12 overtime rate. *Id.*

13 Based on what he observed while in Defendant's employ, Plaintiff is confident that
14 Aggrieved Employees experienced underpayment at least once per pay period. For unpaid work, he
15 assessed⁹ civil penalties at \$378,800 (Labor Code § 210(a) – unpaid wages at straight time) and at
16 \$189,400 (Labor Code § 558(a) – unpaid overtime compensation). *See*, Uriarte Dec. Exhibit "4",
17 columns G and H. Ancillary claim penalties for inaccurate wage statements and waiting time
18 penalties have also been assessed; they equal \$1,600 for waiting time penalties per Labor Code §
19 210(a) and \$112,950 for wage statement violations under Labor Code § 226(e). The grand total for
20 all the above is \$682,750.

21 ii. Meal and Rest Period Violations

22 Plaintiff alleges Defendant routinely overburdened him and Aggrieved Employees with too
23 much work preventing them from having adequate meal and rest periods. As described above,
24 Defendant's practice was to only compensate employees for eight-hour days, yet they were assigned
25 work that required more than eight hours to complete. Generally, it was not possible for employees

26 ⁹ Labor Code §§ 210(a) and 558(a) have different initial and subsequent statutory penalty rates; the
27 former uses \$100/\$200 while the latter \$50/100. Plaintiff applied the appropriate initial penalty rate
28 in both instances. The initial was used versus the subsequent because the LWDA has not imposed
any penalties on Defendant in the past.

1 to have a complete thirty-minute meal period and two ten-minute rest periods while completing all
2 of their work in eight hours. Defendant placed them in an unenviable and unfair position wherein
3 employees had to decide to either skip breaks or work even longer days without the requisite
4 corresponding pay.

5 Notably, Mr. Chow admitted during his deposition that Defendant kept no meal period
6 records [Chow Depo. 15:1-2; 40:6-9]¹⁰, had no formal written policies regarding meal periods or
7 rest periods [Chow Depo. 35:1-8], no practice to verify whether breaks were being taken or not
8 [Chow Depo. 38:13-23; 41:1-6], no policy or practice to pay break premiums if violations occurred
9 [Chow Depo. 41:7-9; 42:14-18], and that he nor his foremen have ever attended any training
10 sessions or seminars on California employment laws [Chow Depo. 79:3-11].

11 Like with the unpaid work issue, Plaintiff maintains that meal and rest period problems were
12 common every pay period. He assesses civil penalties at \$100 per pay period for both meal and rest
13 period violations under Labor Code § 558(a) equaling \$189,400 for each. Therefore, maximum
14 possible penalties here amount to \$378,800. *See*, Uriarte Dec. Exhibit “4”, columns I and J.

15 iii. Risks Considered

16 Plaintiff’s allegations are strong, and Defendant has weaknesses with regard to
17 recordkeeping and its wage and hour policies and practices. However, legal outcomes are uncertain,
18 and Plaintiff would face the following key challenges ahead but for this settlement: (1) finalizing
19 discovery and attaining key witness testimony; (2) designing a convincing trial plan; (3) prevailing
20 at trial; and (4) defending against any potential appeals. Plaintiff and his counsel seriously
21 considered these challenges, plus the Court’s discretion to reduce PAGA penalties based on the
22 nature of the violations, when deciding whether to accept the instant settlement. Moreover,
23 Defendant may successfully argue the following to either defeat a liability determination or reduce
24 its penalty exposure.

25 Firstly, Defendant contends that it solved or ameliorated underpayment and break issues by:
26 (1) paying for full scheduled shifts when Aggrieved Employees finished their work early and were
27 relieved of duty; or (2) making cash payments to Aggrieved Employees to cover some overtime

28 ¹⁰ Mr. Chow’s deposition transcript excerpts are attached as Exhibit “5” to Uriarte Dec.

1 work. [Uriarte Dec. ¶ 11]. Secondly, Defendant facilitated meal periods¹¹ by routinely providing
2 food to its employees. *Id.* Thirdly, Defendant's business is seasonal (*i.e.*, violations were unlikely
3 to occur during the winter season because work demands were reduced or workers were not
4 needed). *Id.* Lastly, Defendant claims it is unable to pay over a million dollars in PAGA penalties;
5 it would be forced to cease operating and file for bankruptcy. *Id.* Plaintiff is wary of fighting a legal
6 battle that may not lead to increased gains for the LWDA or Aggrieved Employees.

7 iv. Total Maximum Penalties

8 The grand total for all assessed penalties is \$1,061,550. The gross settlement, \$440,000,
9 represents 41.4 percent of this amount. Plaintiff assessed maximum civil penalties by assigning a
10 penalty category to each of Plaintiff's causes of action. [See, Exhibit "4" to Uriarte Dec.]. Those
11 penalty categories are for unpaid wages (\$378,800), overtime compensation (\$189,400), meal
12 period violations (\$189,400), rest period violations (\$189,400), wage statement violations
13 (\$112,950), and waiting time penalties (\$1,600).

14 Plaintiff fears that an award here of over one million dollars in penalties would be unlikely
15 for at least two major reasons: (1) Plaintiff would have to surpass several litigation hurdles to
16 recover such a high penalty amount; and (2) trial courts have discretion to reduce penalties based
17 on severity of violations and other factors. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal. App. 4th
18 1157, 1213, 78 Cal. Rptr. 3d 572, 617 ("Section 2699, subdivision (e)(2) provides that in an action
19 by an aggrieved employee to recover PAGA penalties, the court 'may award a lesser amount than
20 the maximum civil penalty amount specified by this part if, based on the facts and circumstances
21 of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
22 oppressive, or confiscatory.'") *See also, Lopez v. Friant & Assocs., LLC* (2017) 15 Cal. App. 5th
23 773, 787, 224 Cal. Rptr. 3d 1, 11 (recognizing the trial court's discretion to reduce PAGA penalties).

24 Regarding the second point, there are only twenty-six Aggrieved Employees meaning that

25 ¹¹ The provide standard is problematic for Plaintiff as well in his representative capacity because it
26 is not sufficient to establish that he alone was forced to work through breaks; he must establish that
27 this was the reality for Defendant's other non-exempt workers as well. *See, Donohue v. AMN Servs.,*
28 *LLC*, 11 Cal. 5th 58, 67, 481 P.3d 661, 668 (2021) ("There is no meal period violation if an employee
voluntarily chooses to work during a meal period after the employer has relieved the employee of
all duty.")

1 Defendant is a small business. Moreover, Defendant has agreed to make key policy and practices
2 changes to improve the working conditions for its employees. In light of the foregoing, a recovery
3 that amounts to nearly half the maximum penalty amount is a very strong result.

4 **C. The Requested Attorney's Fees and Costs are Reasonable**

5 i. Legal Standard for Attorneys' Fee Awards in Representative Actions

6 PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. Cal. Lab. Code §
7 2699(g). The U.S. Supreme Court has recognized that "a lawyer who recovers a common fund for
8 the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from
9 the fund as a whole." *Boeing Co. v. Van Gemert* (U.S. 1980) 444 U.S. 472, 478. *Accord, Serrano*
10 *v. Priest* [Serrano III] (1977) 20 Cal.3d 25, 38 (trial courts have equitable power to award attorneys'
11 fees and costs when a litigation proceeding in a representative capacity secures a substantial
12 benefit). The purpose of the "common fund doctrine" is not only to reward effective legal advocacy
13 but to "spread litigation costs proportionally among all of the beneficiaries" preventing unjust
14 enrichment. *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. Both state and
15 federal courts in California have embraced the common fund doctrine. *E.g, Roos v. Honeywell*
16 *Internat., Inc.* (2015) 241 Cal.App.4th 1472, 1490.

17 In *Laffitte v. Robert Half Internat., Inc.*, the California Supreme Court "join[ed] the
18 overwhelming majority of federal and state courts in holding that when class action litigation
19 establishes a monetary fund for the benefit of the class members, and the trial court in its equitable
20 powers awards class counsel a fee out of that fund, the court may determine the amount of a
21 reasonable fee by choosing an appropriate percentage of the fund created." *Laffitte v. Robert Half*
22 *Internat., Inc.* (2016) 1 Cal. 5th 480, 503. Plaintiff submits that this guidance should equally apply
23 to representative actions under PAGA.

24 The Supreme Court highlighted some of the many advantages of the percentage method:
25 "relative ease of calculation, alignment of incentives between counsel and the class, a better
26 approximation of market conditions in a contingency case, and the encouragement it provides
27 counsel to seek an early settlement and avoid unnecessarily prolonging the litigation." *Id.* In
28 addition to its apparent endorsement of the percentage fee method, the *Laffitte* Court clarified that

1 it does not “perceive an abuse of discretion in [a] court's decision to double check the
2 reasonableness of the percentage fee through a lodestar calculation.” *Id.* at 504. The *Laffitte* Court
3 regards the lodestar cross-check as “a mechanism for bringing an objective measure of the work
4 performed into the calculation of a reasonable attorney fee.” *Id.*

5 In Plaintiff’s view, *Laffitte* stands for the proposition that a trial judge may rely on his or her
6 discretion and utilize either the percentage method, the lodestar method, or both to calculate a
7 reasonable attorney’s fee. Furthermore, should a lodestar crosscheck be elected, the trial court does
8 not abuse its discretion whether it chooses to “perform[] the cross-check using counsel declarations
9 summarizing overall time spent” or opts to do a more detailed analysis of daily time sheets. *Id.* at
10 505. Indeed, “[t]he choice of a fee calculation method is generally one within the discretion of the
11 trial court, the goal...being the award of a reasonable fee to compensate counsel for their efforts.”
12 *Id.* at 504.

13 *Laffitte* affirmed a fee award representing 33 and 1/3 percent of the fund. *Laffitte. Id.* at 506.
14 And this was based on a lodestar amount that required a multiplier of 2.13. *Id.* at 487. As the Court
15 held, only when the multiplier is “extraordinarily high or low [should] the trial court [] consider
16 whether the percentage method should be adjusted so as to bring the imputed multiplier within a
17 justifiable range.” *Id.* at 505.

18 ii. *33.33% of the Maximum Settlement Fund and the Requested Costs*
19 *Reimbursement are Appropriate and Should be Awarded*

20 On behalf of his counsel, Plaintiff requests an attorney fee award in the amount of
21 \$146,652, which equates to 33.33% of the gross settlement amount. The request is supported by the
22 excellent result achieved – \$2,722.50 average recovery per Aggrieved Employee and significant
23 policy/practice changes by Defendant – and the fact that Plaintiff’s counsel undertook the matter
24 on pure contingency. [Uriarte Dec. ¶ 13].

25 The requested percentage fee is also reasonable when compared to counsel’s lodestar.
26 Plaintiff’s counsel and his team have worked a combined 190.8 hours on this matter and have
27 accrued a lodestar of \$98,399. Uriarte Dec. ¶ 14. The request implies a 1.49 multiplier. This is not
28 an “extraordinarily high or low” multiplier, so the Court is not compelled to adjust the percentage

1 fee request in order to get the multiplier to a “justifiable range.” *Laffitte* 1 Cal. 5th at 505.
2 Considering the guidance provided by our state’s Supreme Court, Plaintiff submits that the fee
3 request should be granted. *Id.*

4 Plaintiff’s counsel’s cost reimbursement request in the amount of \$7,201.86 is also
5 reasonable. As set forth by declaration, costs accrued in this case were all incurred in direct
6 prosecution of this action; they include essential items like the mediation fee, filing fees, copies,
7 scans, and other similar things. [Uriarte Dec. ¶ 6]. Plaintiff submits that the requested costs should
8 be awarded as fair and reasonable.

9 **V. NOTICE TO THE LWDA**

10 Concurrent with this filing, Plaintiff uploaded the instant motion and all accompanying
11 documents, including the Agreement, to the LWDA’s website. A proof of service will be filed
12 promptly. Uriarte Dec. ¶ 15.

13 **VI. CONCLUSION & REQUEST FOR APPROVAL**

14 Plaintiff respectfully requests the Court grant this motion for PAGA settlement approval,
15 including his requested deductions, because he believes he has successfully vindicated the civil
16 penalties provisions of the Labor Code in favor of the LWDA and all Aggrieved Employees.

17
18 Dated: April 25, 2024,

Respectfully Submitted,

19
20 

21 _____
22 Arlo Garcia Uriarte
23 Liberation Law Group, P.C.
24 Attorneys for Plaintiff
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26
27
28

PROOF OF SERVICE

I, Luiseth Contreras, hereby declare:

I am employed in the City of San Francisco, State of California. I am over the age of 18 years and not a party to the within cause; my business address is 2760 Mission Street, San Francisco, California.

I served the document(s) listed below as follows:

Date Served: April 25, 2024

Documents Served:

NOTICE OF MOTION AND MOTION FOR APPROVAL OF SETTLEMENT OF PLAINTIFF'S CLAIM FOR PENALTIES UNDER CALIFORNIA LABOR CODE SECTION 2698, ET SEQ. ("PAGA")

DECLARATION OF ARLO GARCIA URIARTE IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF SETTLEMENT OF PLAINTIFF'S CLAIM FOR PENALTIES UNDER CALIFORNIA LABOR CODE SECTION 2698, ET SEQ. ("PAGA")

Parties Served:

Robert E. Williams
rwilliams@bwalaw.com

Jesse V. Azzam
jazzam@bwalaw.com

2535 Kettner Blvd, Suite 2A1
San Diego, California 92101

☐ BY MAIL: I placed a true and correct copy of the document(s) in a sealed envelope with first class postage fully prepaid in the United States Mail at San Francisco, California, addressed as shown above.

☒ BY ELECTRONIC MAIL: I caused true and correct copies of the above document(s) to be sent to the person(s) at the electronic service address(es) listed above. Such documents were transmitted via electronic mail from the electronic address: luiseth@liberationlawgroup.com in portable document format ("PDF") Adobe Acrobat.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on aPRIL 25, 2024, at San Francisco, California.



Luiseth Contreras