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Attorney for Plaintiff Chengman Ng

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

CHENGMAN NG, individually and on behalf of
other aggrieved employees,

Plaintiff,

vs.

HQS AUTOMOTIVE INTERNATIONAL,
INC., a private company doing business in
California; MO CHEN, an individual;
TIMOTHY SO, an individual; HUA ZENG, an
individual; and DOES 1-20, inclusive.

Defendants.

Case No.: 22CV016132

*Assigned for all purposes to the Honorable
Karin Schwartz, Dept. 20*

**NOTICE OF MOTION AND MOTION
FOR ORDER APPROVING PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Filed concurrently with: (1) Declaration of
Kelly Y. Chen in Support of Motion for Order
Approving PAGA Settlement; (2) Declaration
of Hua Zeng; (3) Joint Stipulation for Entry of
Order Approving PAGA Settlement; and (4)
Proposed Order]

Date: May 11, 2023

Time: 3:00 p.m.

Dept.: 20

Reservation ID: 396132617655

Complaint Filed: August 12, 2022

Trial Date: Not set

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

3 **PLEASE TAKE NOTICE** that on May 11, 2023, at 3:00 p.m. in Department 20 of the above-
4 entitled court, located at 1225 Fallon Street, Oakland, California 94612, Plaintiff CHENGMAN NG
5 (“Plaintiff”), will and hereby does move for entry of an order approving settlement of her claims
6 brought pursuant to the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code sections
7 2698 *et seq.* (“PAGA”). Specifically, by way of this motion, Plaintiff requests that the Court enter an
8 order:

- 9 1. Granting approval of the Private Attorneys General Act Settlement and Release
10 Agreement (“Settlement Agreement” or “Settlement”) between Plaintiff and
11 Defendants HQS AUTOMOTIVE INTERNATIONAL, INC., MO CHEN, TIMOTHY
12 SO, and HUA ZENG (collectively, “Defendants”) attached as Exhibit 1 to the
13 Declaration of Kelly Y. Chen in Support of this Motion for Order Approving PAGA
14 Settlement (“Chen Decl.”), including, but not limited to, the plan of allocation and
15 distribution of the Gross Settlement Amount;
- 16 2. Approving the distribution of the PAGA Payment, currently estimated to be \$9,000.00,
17 of which seventy-five percent (75%) shall be paid to the California Labor and
18 Workforce Development Agency and twenty-five percent (25%) shall be paid to
19 Aggrieved Employees on a *pro rata* basis based upon the number of pay periods
20 worked between June 1, 2021 and November 17, 2022 (the “Settlement Period”);
- 21 3. Awarding Plaintiff’s counsel, the Law Office of Kelly Y. Chen, attorney’s fees in the
22 amount of \$5,000.00 and payment of \$500.00 for reimbursement of actual litigation
23 costs and expenses pursuant to California Labor Code section 2699(g)(1);
- 24 4. Awarding Plaintiff \$500.00, less payroll deductions and withholdings, to settle her
25 individual wage and hour claims and as an incentive payment as the representative
26 plaintiff in this case; and
- 27 5. Directing Defendants to disburse the Gross Settlement Amount of \$15,000.00 in
28 accordance with the terms of the Settlement Agreement by no later than May 17, 2023.

1 This Motion is made on the grounds that the proposed PAGA Settlement is fair, adequate,
2 reasonable, and in the best interest of the aggrieved employees, the State of California, and the Parties.

3 Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Settlement, as well as
4 information regarding the approval hearing on this matter, were submitted to the California Labor and
5 Workforce Development Agency via online filing at [https://www.dir.ca.gov/Private-Attorneys-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
6 [General-Act/Private-Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html) on March 17, 2023. *See* Chen Decl., ¶ 30, Ex. 5.

7 The Motion is based on this Notice of Motion, the attached Memorandum of Points and
8 Authorities, the concurrently filed Declaration of Kelly Chen and all exhibits attached thereto, the
9 Declaration of Hua Zeng, the Parties' Joint Stipulation for Entry of Order Approving PAGA
10 Settlement, the pleadings and other records on file with the Court in this matter, and all other oral and
11 documentary evidence that may be presented at the hearing on this Motion.

12
13 Dated: 3/17/2023

Respectfully submitted,

14 **LAW OFFICE OF KELLY CHEN**

15
16 By: /s/Kelly Y. Chen
17 Kelly Chen, Esq.
18 Attorneys for Plaintiff
19 CHENGMAN NG
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Chengman Ng (“Plaintiff”) seeks approval of a PAGA Settlement Agreement
4 (“Settlement” or “Settlement Agreement”) entered into between Plaintiff and Defendants HQS
5 Automotive International, Inc., Mo Chen, Timothy So, and Hua Zeng (“Defendants”) pursuant to the
6 Labor Code Private Attorney General’s Act of 2004, Cal. Labor Code sections 2698, et seq.
7 (“PAGA”). See Declaration of Kelly Y. Chen in Support of Motion for Order Approving PAGA
8 Settlement Agreement (“Chen Decl.”), Ex. 1 (“Settlement” or “Settlement Agreement”). The
9 Settlement was reached following a full day mediation with Cynthia Remmers and extensive
10 investigation by Plaintiff and her counsel. The key terms of the Settlement are as follows:

- 11 • Number of Aggrieved Employees: approximately 352 individuals.
12 • Gross Settlement Amount: \$15,000.00
13 • Plaintiff’s counsel Fees Payment: \$5,000.00
14 • Plaintiff’s counsel Costs and Expenses Payment: \$500.00
15 • Plaintiff’s Individual Wage and Hour Release and Incentive Payment: \$500.00
16 • PAGA Payment Amount: \$9,000.00

17 The PAGA Payment Amount will be distributed as follows: seventy-five percent (75%), *i.e.*
18 \$6,750.00, will be paid to the California Labor and Workforce Development Agency (“LWDA”);
19 twenty-five percent (25%), *i.e.* \$2,250.00, will be paid to the Aggrieved Employees on a *pro rata* basis
20 according to the number of pay periods worked between June 1, 2021 and November 17, 2022
21 (“Settlement Period”).

22 The Settlement is the product of informed discovery and arms-length negotiations by highly
23 experienced counsel, and is fair, reasonable, and adequate in light of the relative strengths of Plaintiff’s
24 PAGA claims, the risk, expense, and uncertainty of further litigation, the benefit conferred by the
25 Settlement, and the underlying goals associated with recovery under PAGA. Plaintiff therefore
26 respectfully requests that the Court approve the proposed Settlement and enter judgment thereon.

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II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

On January 18, 2022, Plaintiff’s counsel provided Notice of PAGA Claims to the California Labor and Workforce Development Agency (“LWDA”) on behalf of Plaintiff alleging Defendants had violated certain Labor Code violations, and that Plaintiff intended to pursue civil penalties for the alleged violations pursuant to the Labor Code Private Attorneys General Act of 2004, Cal. Labor Code §§ 2698, et seq (“PAGA”). (Chen Decl., ¶ 3, Exh. 2.) On July 1, 2022, Plaintiff served a Supplemental Notice of PAGA Claims on behalf of Plaintiff against Defendants adding allegations related to newly discovered violations of California Labor Code section 221 (unlawful deductions). (*Id.*, ¶ 4, Exh. 3.)

On August 12, 2022, Plaintiff commenced a lawsuit against Defendants in Alameda Superior Court, Case No. 22CV016132 (the “Complaint” or the “Litigation”) seeking civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code section 2698, et seq. (“PAGA”). In addition to the PAGA Claim, Plaintiff also allege several other claims for *individual* damages relating to Defendants’ unlawful wage and hour practices, as well as claims for retaliation, and wrongful termination. (*Id.*, ¶ 5, Exh. 4.)

Shortly following the filing of Plaintiff’s Notice of PAGA Claims, the Parties met and conferred with respect the possibility of early resolution. Pursuant to these discussions, the Parties agreed to exchange informal discovery and participate in private mediation with Cynthia Remmers, Esq., a respected and experience wage and hour and employment law mediator. The mediation took place on November 17, 2022. (*Id.*, ¶ 7.) At the conclusion of mediation, the Parties fully executed the long-form PAGA Settlement Agreement. (*Id.*)

On March 17, 2023, Plaintiff’s counsel submitted the Settlement Agreement and this Motion to the LWDA via its online filing portal. Chen Decl., ¶ 30, Ex. 5.

III. STANDARD OF REVIEW OF APPROVAL OF PAGA SETTLEMENT

The LWDA and its constituent departments and divisions are authorized to assess and collect civil penalties for specified violations of the Labor Code committed by an employer. See Cal. Labor Code §2699(a). With a stated goal of improving enforcement of existing Labor Code obligations, the Legislature adopted the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698 et seq. (“PAGA”), permitting, as an alternative, an aggrieved employee to initiate a private civil action

1 for "civil penalties" which were previously enforceable only by the State's labor law enforcement
2 agencies. Cal. Labor Code § 2699; *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th
3 365, 377.

4 Before an employee may file an action seeking to recover such "civil penalties" for violations
5 of any of the Labor Code provisions enumerated in section 2699.5 (which include violations of Labor
6 Code claims which Plaintiff asserted in this action against Defendant), he or she must comply with
7 PAGA's administrative procedures as set forth in Labor Code section 2699.3(a) which include
8 providing notice to the LWDA and waiting a prescribed period of time to permit the LWDA to
9 investigate and to decide whether to cite the employer for the alleged violations. *Caliber Bodyworks*,
10 supra, 134 Cal.App.4th at 370; see also, *Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330. If the
11 LWDA fails to pursue the penalties, the employee may proceed in Court.

12 The settlement of a PAGA action requires court approval. See Cal. Labor Code § 2699(1)(2).
13 The process for PAGA settlement approval is very straightforward: "The superior court shall review
14 and approve any settlement of any civil action filed pursuant to this part." Labor Code § 2699(1)(2).
15 In reviewing a PAGA settlement, the Court need only ensure that "a negotiated resolution is fair to
16 those affected." *Williams v. Sup. Ct.*, 3 Cal.5th 531, 549 (2017). The court's focus is not the monetary
17 amount which aggrieved employees or the State stand to receive, but on whether the total amount
18 achieves PAGA's objective - "to incentive private parties to recover civil penalties for the government
19 that otherwise may not have been assessed and collective by overburdened state enforcement
20 agencies." See *Ochoa-Hernandez v. CJADERS Foods, Inc.*, 2010 WL 1340777 at *4 (N.D. Cal. Apr.
21 2, 2010) (citing *Arias v. Sup. Ct.*, 46 Cal.4th 969, 986 (2009)).

22 Finally, because a PAGA claim is effectively considered a law enforcement action, it does not
23 have to meet the requirements of a class action. See, *Arias v. Superior Court* (2009) 46 Cal.4th 969;
24 *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348. Accordingly, there is no
25 requirement under PAGA for a plaintiff to establish the requirements of class certification (*i.e.*
26 numerosity, typicality, commonality and adequacy), nor is there the usual two-step preliminary and
27 final approval process as found in class actions. Rather, the PAGA merely requires a one-step review
28 and approval process.

Any PAGA penalties recovered by an employee, however, do not entirely belong to the employee. Instead, PAGA requires that 75% of the recovered penalties must be paid to the LWDA, while the remaining 25% may be retained by the employee who prosecuted the claim. Cal. Labor Code §2699(i).

IV. SUMMARY OF THE SETTLEMENT TERMS

A. Definition of Aggrieved Employees

Under the Settlement Agreement, Plaintiff's representative claims are made on behalf of "Aggrieved Employees" defined as "non-exempt hourly paid employees . . . during the PAGA Period from June 1, 2021 to November 17, 2022 who were subjected to Defendant's [sic] allegedly deficient wage and hour practices." (Chen Decl., ¶ 9; Settlement Agreement, § E.) The Settlement Period runs from June 1, 2021, to November 17, 2022. (Chen Decl., ¶ 10; Settlement Agreement, § E.) There are approximately 352 Aggrieved Employees. (Chen Decl. ¶ 11; Settlement Agreement, § E.)

B. The Gross Settlement Amount

The Parties have agreed to settle Plaintiff's individual and PAGA claims for a non-reversionary Gross Settlement Amount of \$15,000.00. (Chen Decl., ¶ 7; Settlement Agreement § 2.) The Gross Settlement Amount is based on Defendants' representation that there are approximately 352 Aggrieved Employees. If the total number of Aggrieved Employees is found to be more than five percent (5%) than the estimated figure, i.e., more than 370 individuals total, the Gross Settlement Amount shall be increased proportionally to the percentage increase in the number of Aggrieved Employees above 370. (Chen Decl., ¶ 11; Settlement Agreement, § 4.c.)

C. Allocation and Funding of the Gross Settlement Amount

The Settlement is a common fund and therefore includes all requested costs, fees, and other allocations. (Chen Decl., ¶ 8.) As stated above, subject to Court approval, the Gross Settlement Amount includes: (1) payment to Plaintiff to resolve her individual wage and hour claims and as an incentive payment as the representative plaintiff for the PAGA claims in the amount of \$500.00, less deductions and withholdings; (2) payment of Plaintiff's counsel's attorneys' fees in the amount of \$5,000.00; and (2) reimbursement of Plaintiff's counsel's litigation costs and expenses up to \$500.00. (Chen Decl. ¶ 8; Settlement Agreement, §§ 2.1 – 2.3.) After the foregoing amounts are deducted from

the Gross Settlement Amount, the remaining amount shall be the “PAGA Settlement Fund” to be paid to the LWDA and Aggrieved Employees. (Chen Decl. ¶ 8; Settlement Agreement, § 2.4.)

The PAGA Payment is \$9,000.00, to be distributed as follows: 75% of the PAGA Payment, or \$6,750.00 will be paid to the LWDA, and the remaining 25%, or \$2,250.00 will be paid to all Aggrieved Employees on a *pro rata* basis based upon the number of pay periods worked by each Aggrieved Employee during the Settlement Period. (Chen Decl. ¶ 8; Settlement Agreement, §§ 2.4(a)-(b), 2.6.) The individual PAGA Payments will be treated as miscellaneous income for which an IRS Form 1099 will be issued. (Chen Decl. ¶ 8; Settlement Agreement, §§ 2.7, 6.)

Within six months after the date of the agreement is signed (i.e., by no later than May 17, 2023), Defendants shall make all payments owed under the Settlement Agreement. However, Defendant shall not be required to make payments required under this Settlement until after the Court’s approves the Settlement. (Chen Decl., ¶ 12; Settlement Agreement, § 2.5.) All checks to each Aggrieved Employee shall remain valid and negotiable for 120 days from their date of issuance. If any checks are not cashed within 120 days of mailing, those funds shall be sent to the State of California Unclaimed Property Fund in the name of the employee to whom the check was issued. (Chen Decl., ¶ 13; Settlement Agreement, § 3.)

D. Scope of the Release in the Settlement Agreement

Upon the Court’s approval of the Settlement, Plaintiff, the State of California and each Aggrieved Employee shall fully release and forever discharge the Defendants from any and all claims, rights, demands, and liabilities for seeking civil penalties pursuant to PAGA (Labor Code § 2699 et seq.) that arose during the Settlement Period as it relates to Labor Code section 2698, et seq. for alleged violations of Labor Code §§201-203, 204, 210, 221, 216, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 510, 512, 558, 558.1, 1174(d), 1174.5, 1102.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2699 et seq., and 2802. (Chen Decl., ¶ 14; Settlement Agreement, § 7.1.)

V. THE SETTLEMENT IS FAIR AND REASONABLE

As set forth below, the Settlement before the Court is the result of adversarial, arms-length negotiations, extensive investigation, and fulfills the objectives of the PAGA. Moreover, the Settlement is fair and reasonable considering the surrounding facts, the risks associated with protracted

litigation, and Defendants’ financial difficulties. Accordingly, the Settlement should be approved by the Court.

A. Plaintiff Has Complied with the Administrative Requirements of California Labor Code Section 2699.

Before bringing a civil action under PAGA, an employee must comply with the notice requirements set for in Labor Code section 2699.3. Plaintiff complied with these requirements. (Chen Decl. ¶¶ 3-4, Exh. 2-3.) Additionally, the Settlement Agreement and this motion are being concurrently submitted to the California Labor and Workforce Development Agency, as required by California Labor Code section 2699(1)(2). (*Id.*, ¶ 30, Ex. 5.)

B. Arm’s-Length Negotiations.

Although PAGA settlements are not subject to the same, heightened requirements as a class action settlement, the underlying guidelines utilized in class action settlements may be useful in evaluating the fairness of a PAGA settlement. California courts recognize that “a presumption of fairness exists where . . . [a] settlement is reached through arm’s-length bargaining.” *Wershba v. Apple Computer*, 91 Cal.App.4th 224, 245 (2001) (disapproved on other grounds). Here, the Parties engaged in arms-length, non-collusive negotiations at all times including attending a full day mediation with Cynthia Remmers, Esq., a highly respected mediator with extensive experience in wage and hour matters, including actions brought pursuant to PAGA. The proposed Settlement was reached at the end of a process that was neither fraudulent nor collusive. (Chen Decl. ¶¶ 18-20.) To the contrary, counsel for the Parties advanced their respective positions throughout the settlement negotiations. (*Id.*, ¶ 20.)

C. Sufficient Investigation and Discovery by Experienced Counsel.

Plaintiff conducted significant research and investigation of the alleged claims prior to reaching an agreement to settle her PAGA claim. Prior to filing the lawsuit, Plaintiff’s counsel investigated Defendants’ wage and hour practices. (*Id.*, ¶ 15.) Before and during mediation, Defendants informally produced a random sampling of time and payroll records for the Aggrieved Employees, as well as information regarding the total number of non-exempt employees, the number of pay periods, Defendant’s relevant policies and procedures, and other relevant information. (*Id.*, ¶

18.) This allowed Plaintiff's Counsel to conduct an informed assessment and analysis of Defendants' potential exposure. (*Id.*, ¶ 19.) Furthermore, negotiations were conducted by highly capable and respected counsel with a strong record of vigorous and effective advocacy handling complex wage and hour litigation. (*Id.*, ¶32.) Accordingly, Plaintiff's counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

D. The Settlement is Reasonable in Light of the Parties' Legal Positions, the Risks of Continued Litigation, and the Underlying Purpose of the PAGA.

The Gross Settlement Amount of \$15,000.00 is a reasonable settlement given the relative strengths and weaknesses of Plaintiff's claims and Defendants' defenses, the risks of further litigation, and the unique risks associated with litigation of PAGA claims. The PAGA Claims implicated approximately 352 Aggrieved Employees and approximately 2,412 pay periods. (*Id.*, ¶ 21.) Plaintiff's counsel reviewed and analyzed an extensive sampling of time records and other relevant documents and data and estimated with all claims adjudicated in favor of Plaintiff, Defendants' maximum liability was approximately \$241,200.00. (*Id.*, ¶ 22.)

Despite the potentially large liability, however, substantial barriers to recovery of such penalties exist. PAGA provides that the trial court has the discretion to reduce PAGA civil penalties "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." See Cal. Labor Code § 2699(e)(2). Given the highly discretionary nature of PAGA penalties, Plaintiff and his counsel recognized that there was significant risk that Defendant could present a persuasive argument that could cause the Court to substantially reduce the amount of PAGA penalties at trial. For example, Defendant presented evidence that it corrected the unlawful wage and hour practices alleged by Plaintiff promptly after receiving Plaintiff's Notices of PAGA Claims (see Settlement, § 18.0.), a factor that the Court would likely consider in reducing maximum penalties.¹

¹ See, e.g., *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (reducing maximum penalties by 97.5%); *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590, *8-9 (C.D. Cal. 2011). (reducing maximum penalties by over 80%); *Magadia v. Wal-Mart Assocs. et al.*, 384 F. Supp. 3d 1058, 1069 (N.D. Cal. 2019) (reduced PAGA penalties by 67% and 80%); *Carrington v. Starbucks*

One of the most significant risk-based factors faced by Plaintiff is Defendants’ poor financial condition. During the mediation Defendants disclosed that they were experiencing significant financial difficulties which rendered them unable to pay a sizable judgment. (Chen Decl., ¶ 24; Declaration of Hua Zeng, ¶¶ 5-8.) Defendants provided Plaintiff’s counsel with financial records to support their claims of financial hardship. (Chen Decl., ¶ 24; Zeng Decl., ¶ 8.) In light of this information, Plaintiff’s counsel recognized that the Court could ultimately be reluctant to impose maximum penalties against Defendant, as such an award could be viewed as unduly punitive and confiscatory in nature. (*Id.*) See *Thurman v. Bayshore Transit Management Inc.* (2012) 203 Cal.App.4th 1112, 1136 (finding the defendant’s inability to pay penalties from ongoing revenues justified a reduction in PAGA civil penalties.) Plaintiff’s counsel also recognized that the cost of continued litigation could potentially render Defendants unable to satisfy a judgment in the future. (Chen Decl., ¶ 24; Zeng Decl., ¶ 5.) Plaintiff’s counsel further considered the risk that a larger settlement or judgment could potentially require Defendants to downsize operations, to the detriment of currently-employed Aggrieved Employees. (*Id.*; Zeng Decl., ¶ 5.)

Plaintiff’s counsel also considered additional factors that added significant risk to continued prosecution of this matter, including: (1) the difficulties of establishing that the Aggrieved Employees actually suffered the alleged violations; (2) potential challenges to “manageability” of a PAGA action; (3) the significant investments of time and expense by the Parties to litigate the claims for penalties under PAGA; (4) the uncertainty of prevailing at trial; (5) even if a trial victory is secured, the risk of further delay due to appeals; and (6) the sparsity and ever-changing nature of case law on PAGA claims. (Chen Decl., ¶ 25.)

Finally, it is important to note that PAGA is fundamentally not intended to be compensatory in nature but is instead intended to facilitate enforcement of California’s labor laws by financing state activities and educating and deterring non-compliance. See Cal. Labor Code § 2699(i); *Arias v. Sup.*

Corp., 30 Cal.App.5th 504, 529 (2018) (approving reduction in penalties from \$50 per pay period to \$5 per pay period based on good faith attempts to comply with obligations and minimal violations); *Parr v. Golden State Overnight*, Alameda Superior Court Case No. RG12618103 (reducing maximum PAGA penalties by 93%) .

1 *Ct.*, 46 Cal. 4th 980; *Williams v. Sup. Ct.*, 3 Cal.5th 531, 546. The overall relief obtained by the
2 Settlement is significant, not only from a monetary perspective, but also because it fulfills the public
3 policy objectives of PAGA—to promote enforcement of California’s labor laws and deter future non-
4 compliance by Defendants. (Chen Decl., ¶ 26.)

5 Thus, taking into consideration both the potential value of the PAGA claim, the significant
6 risks associated with continued litigation, and the underlying objectives of PAGA, the Parties have
7 agreed that the Settlement presented herein is fair, reasonable, and adequate. (*Id.*, ¶ 27; Joint
8 Stipulation for Order Approving PAGA Settlement and Entering Judgment, ¶ 8.) The reasonableness
9 of the Settlement is further confirmed by the fact that the LWDA was provided notice of the alleged
10 violations and terms of the Settlement and has decided not to intervene. Accordingly, Plaintiff requests
11 the Court enter an order approving the PAGA Settlement and entering judgment thereon.

12 **V. THE REQUESTED ATTORNEY’S FEES ARE FAIR AND REASONABLE**

13 Plaintiff’s counsel is entitled to recover reasonable attorneys’ fees and costs as a matter of right
14 under PAGA. *See* Cal. Labor Code § 2699(g)(1). Counsel is also entitled to fees and costs under Code
15 of Civil Procedure section 1021.5, as the instant PAGA action is by definition “for the benefit” of
16 other and secures substantial monetary recovery of State of California and the Aggrieved Employees.
17 *See Estrada v. FedEx Ground Package Sys. Inc.*, 154 Cal.App.4th 1, 16-17 (2007) (recovery obtained
18 on behalf of 209 individuals satisfies C.C.P. § 1021.5). Where the amount of a settlement is a “certain
19 easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable
20 percentage of the settlement created. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1808 (1996).
21 The California Supreme Court has confirmed the propriety of awarding attorneys’ fees based on a
22 percentage of the total value made available by the settlement. *See Serrano v. Priest*, 20 Cal.3d 25, 34
23 (1977). The ultimate goal is the award of a “reasonable” fee to compensate counsel for their efforts,
24 irrespective of the method of calculation. *See Apple Computer, Inc. v. Super. Ct.*, 126 Cal.App.4th
25 1253, 1270 (2005).

26 Here, the Settlement provides for payment of attorneys’ fees to Plaintiff’s counsel in the
27 amount of \$5,000.00, e.g., one-third of the Gross Settlement Amount, subject to Court approval. (Chen
28 Decl., ¶ 8; Settlement Agreement § 2.2.) The requested fee award is well-within the range of

1 reasonableness given the facts and circumstances surrounding this case, and reflects the work
2 performed, risks incurred, results obtained, and experience of Plaintiff's counsel in handling similar
3 matters. (Chen Decl., ¶¶ 32-37.)

4 Furthermore, while percentages of a common fund is both common and universally accepted
5 in wage and hour representative action litigation, the requested fee award is also justified under a
6 lodestar "cross-check."² In this matter, Plaintiff's counsel expended 37.5 hours on this matter, for a
7 total lodestar of \$28,125.00 - significantly more than the fee award sought by way of this Application.
8 (Chen Decl., ¶¶ 36-37.) This lodestar is calculated based on reasonable hours at reasonable prevailing
9 hourly rates for the attorneys who worked on these matters. *See Ketchum v. Moses*, 24 Cal.4th 1122,
10 1131-32 (2001). Plaintiff's counsel is entitled to compensation for the time reasonably spent on this
11 matter. *See Id.* at 1133. For these reasons, Plaintiff respectfully requests the Court award the requested
12 attorneys' fees of \$5,000.00.

13 **VI. THE REQUESTED COSTS ARE FAIR AND REASONABLE**

14 Plaintiff's counsel requests payment of just \$500.00 for reimbursement of the costs incurred
15 litigating this case. (Chen Decl., ¶ 38.) This figure is less than the total costs incurred by Plaintiff's
16 counsel in prosecuting this matter, and further does not include the anticipated future costs that will
17 be necessary to successfully resolve this action including costs associated with the filing of this
18 Motion, attendance at the approval hearing, and additional costs for filing declarations following
19 distribution of the Gross Settlement Amount. (*Id.*) These costs are recoverable under the Settlement
20 and were necessary for the prosecution of this PAGA action.

21 **VII. CONCLUSION**

22 For the foregoing reasons, Plaintiff respectfully requests that this Court enter an order
23 approving of the Parties' PAGA Settlement and entering judgment thereon.

24 ///

26 ² It should be noted that courts have cautioned that the primary basis of the fee award in common fund cases remains the
27 percentage of the fund method and have advised that plaintiff's counsel should not necessarily receive a lesser fee
28 achieving a speedy and timely result for individuals in need of immediate relief. *See, e.g., Vizcaino v. Microsoft Corp.*, 290
F.3d. 1043, 1050 fn.1 (9th Cir. 2002). "[I]t is widely recognized that the lodestar method creates incentives for counsel to
expend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method
does not reward early settlement." *Id.*

1 Dated: 3/17/2023

Respectfully submitted,

LAW OFFICE OF KELLY CHEN

4 By: /s/Kelly Y. Chen
Kelly Chen, Esq.
Attorneys for Plaintiff



Superior Court of Alameda County Public Portal

Make a Reservation

NG vs HQS AUTOMOTIVE INTERNATIONAL INC., et al.

Case Number: 22CV016132 Case Type: Unlimited Civil Category: Other Employment
Complaint Case

Date Filed: 2022-08-12 Location: Rene C. Davidson Courthouse - Department 20

Reservation

Case Name:

NG vs HQS AUTOMOTIVE INTERNATIONAL
INC., et al.

Case Number:

22CV016132

Type:

Motion for Order (Motion for an Order
Approving PAGA Settlement)

Status:

RESERVED

Filing Party:

Chengman Ng (Plaintiff)

Location:

Rene C. Davidson Courthouse - Department 20

Date/Time:

05/11/2023 3:00 PM

Number of Motions:

1

Reservation ID:

396132617655

Confirmation Code:

CR-CWTFVBBZHBDDBMRZB

Fees

Description	Fee	Qty	Amount
Motion for Order (name extension)	0.00	1	0.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount:
\$1.00

Type:
Visa

Account Number:
XXXX6324

Authorization:
01005G

Payment Date:
1969-12-31



Print Receipt



Reserve Another Hearing



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