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Attorneys for Plaintiff and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BENITO**

LARRY OTIS, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

DELTA ASSOCIATED
INVESTIGATIONS, INC., a Florida
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: CU-22-00111

**JOINT STIPULATION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL ACT
(LABOR CODE § 2698, *ET SEQ.*)
SETTLEMENT AGREEMENT AND
RELEASE**

**[PROPOSED] JUDGMENT FILED
CONCURRENTLY HEREWITH**

Complaint Filed: June 13, 2022
Trial Date: Not Set

1 **I. INTRODUCTION**

2 This is a wage and hour representative Private Attorneys General Act (“PAGA”) action.
3 In this lawsuit, Plaintiff Larry Otis (“Plaintiff”) claims against Defendant Delta Associated
4 Investigations, Inc. (“Defendant”) for violation of the PAGA, California Labor Code § 2698, *et*
5 *seq.*, predicated on violations of Labor Code § 204. Specifically, Plaintiff alleges that Defendant
6 violated Labor Code § 204 by paying wages to Plaintiff and other aggrieved employees beyond
7 the time limits set forth in the Labor Code. Based thereon, Plaintiff sought civil penalties under
8 PAGA on behalf of the State of California and other aggrieved employees. Defendant denies
9 Plaintiff’s claims and allegations and denies that Plaintiff is entitled to any recovery whatsoever.

10 As will be explained in further detail below, based on the California Supreme Court’s
11 opinion in *Arias v. Superior Court* (2009) 46 Cal. 4th 969 and *Iskanian v. CLS Transportation*
12 *Los Angeles, LLC* (2014) 59 Cal. 4th 348, Plaintiff contends that he can seek civil penalties as
13 called for under PAGA on behalf of the State of California and other similarly situated aggrieved
14 employees without seeking class certification or meeting any of the requirements of class
15 certification—*i.e.*, numerosity, typicality, commonality, and adequacy. As such, while the
16 PAGA penalties settlement reached herein is on behalf of the State of California and other
17 purportedly aggrieved employees, the usual two-step preliminary and final approval process is
18 not required. Rather, court approval of PAGA settlements is governed by Labor Code § 2699,
19 subdivision (1), which provides that the only requirement for approval is an approval by this
20 Court of the amount of penalties the Parties have agreed to settle for.

21 The Parties have reached a PAGA settlement, the terms of which are outlined in the
22 Private Attorneys General Act Settlement Agreement and Release (the “Settlement
23 Agreement”).¹ The Parties now seek this Court’s approval of the settlement and dismissal of this
24 lawsuit with prejudice.

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28 ¹ The Private Attorneys General Act Settlement Agreement and Release (the “Settlement Agreement”) is attached to the Declaration of Max W. Gavron (“Gavron Decl.”) as **Exhibit B**.

1 **II. STATEMENT OF FACTS**

2 On or about January 18, 2022, Plaintiff submitted his written notice under Labor Code §
3 2699.3 (the “PAGA Notice”) to the California Labor & Workforce Development Agency
4 (“LWDA”) and Defendant. Gavron Decl. ¶ 2. As set forth in the PAGA Notice, Plaintiff alleged
5 that Defendant failed to comply with Labor Code § 204 by paying its employees beyond the time
6 limits set forth in the Labor Code. *Id.*, Ex. A.

7 On June 13, 2022, Plaintiff filed a representative PAGA action Complaint against
8 Defendant in the San Benito County Superior Court. The operative Complaint alleges a single
9 cause of action for violation of Labor Code § 2698, *et seq.*, predicated on the violation of Labor
10 Code § 204 (the “Action”). Gavron Decl. ¶ 3.

11 The Parties have engaged in significant informal settlement discussions since the filing of
12 Plaintiff’s PAGA Notice. In connection with the Parties’ settlement discussions, Defendant
13 provided Plaintiff with informal discovery pertaining to the aggrieved employees, including the
14 number of purported aggrieved employees employed by Defendant and the number of pay
15 periods at issue during the relevant PAGA period. Gavron Decl. ¶ 4. The data provided by
16 Defendant allowed Plaintiff to conduct an exposure analysis. *Id.*

17 Following arm’s length negotiations and discussions between the Parties, during which
18 the Parties spoke at length about the strengths and weaknesses of each side’s claims and
19 defenses, and the scope of Defendant’s purported liability, the Parties were able to reach an
20 agreement in principle. Gavron Decl. ¶ 6. The Parties then finalized the settlement terms in the
21 concurrently filed Settlement Agreement. *Id.*, Ex. B. The settlement is the result of informed
22 and non-collusive arm’s length negotiations.

23 Based on the above, and as further detailed below, Plaintiff and Defendant jointly request
24 that this Court grant approval of the PAGA settlement pursuant to Labor Code § 2699,
25 subdivision (1).

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1 **III. PAGA REQUIREMENTS**

2 Prior to the enactment of PAGA, many of the civil penalties provided against employers
3 for violations of certain Labor Code provisions were solely within the province of the California
4 Department of Labor to seek, enforce and assess. *Arias v. Superior Court* (2009) 46 Cal. 4th
5 969, 980. However, due to the lack of financing to California's agencies, the California
6 Legislature found that it was in the public interest to allow aggrieved employees to act as private
7 attorneys general, and to enforce and recover civil penalties on behalf of other similarly situated
8 aggrieved employees for Labor Code violations committed by their employers. *Id.* As such,
9 PAGA was enacted to allow such enforcement and recovery by private individuals who have
10 been aggrieved by their employers. Moreover, 75% of any penalties recovered under PAGA by
11 an aggrieved employee is to be paid to California's LWDA, and the remaining 25% is to be
12 shared amongst the aggrieved employees for collecting penalties on behalf of the State. Cal.
13 Lab. Code § 2699, subd. (i).

14 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved
15 employee must first provide written notice to the LWDA and the employer of the particular
16 Labor Code violation the aggrieved employee alleges the employer has violated. *See* Cal. Labor
17 Code § 2699.3, subd. (a)(1). Once the LWDA notifies the aggrieved employee that it does not
18 intend to investigate the alleged violations or fails to respond to the written notice within the time
19 period specified in the PAGA statute, the aggrieved employee is then allowed to proceed in a
20 civil action against the employer on the alleged violations on behalf of all other similarly situated
21 employees. *See* Cal. Labor Code § 2699.3, subd. (a)(2)(A).

22 In 2009, the California Supreme Court considered the issue of whether an aggrieved
23 employee that brings a PAGA claim on behalf of himself and others similarly situated needs to
24 seek the PAGA claim as a class action and meet class certification requirements. *Arias*, 46 Cal.
25 4th at p. 976. After substantial review of the legislative history of PAGA, the California
26 Supreme Court held that an aggrieved employee's representative action brought on behalf of
27 other similarly situated employees against an employer for PAGA violations do **not** need to meet
28 the requirements for class certification. *Id.* at pp. 975, 980-88. As the California Supreme Court

1 held, a plaintiff bringing suit under PAGA does so as the proxy or agent of California’s labor law
2 enforcement agencies. *Id.* at p. 986. ***Because an employee’s PAGA action functions as a***
3 ***substitute for an action brought by the government itself, a judgment in the PAGA action***
4 ***binds all those, who would be bound by a judgment in an action brought by the government.***
5 *Id.* (emphasis added).

6 Finally, court approval of PAGA settlements is governed by section 2699(1)(2) of the
7 Labor Code, which provides, in relevant part: “The superior court shall review and approve any
8 settlement of any civil action filed pursuant to this part.” Cal. Lab. Code § 2699, subd. (1)(2).
9 The Parties are not obligated to “satisfy class action requirements,” including the standards for
10 class action settlement approval. *Arias*, 46 Cal. 4th at pp. 980-988 (affirming lower court’s
11 holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim).

12 As the Parties to this current PAGA action have reached such an agreement, the Parties
13 now seek this Court’s approval as to the settlement of the penalties amount.

14 **IV. RELEVANT SETTLEMENT TERMS**

15 As noted above, this Court is only required to approve the actual penalties being settled
16 as part of the current PAGA settlement. The following section details the amount of PAGA
17 penalties to be paid, how such payments will be distributed and to whom, and what claims such
18 payments will release.

19 The Parties have agreed that a total of \$69,000.00 (“Total Monetary Settlement Amount”)
20 shall be paid by Defendant for the release of PAGA claims in this lawsuit by the “Aggrieved
21 Employees,” who are defined as “Plaintiff and all employees of Defendant who were paid wages
22 at any time from January 18, 2021 to January 28, 2022”² (the “Settlement Period”). Settlement
23 Agreement ¶¶ II.A.2, 19; Gavron Decl. ¶ 7. The Total Monetary Settlement Amount includes
24 the following:

- 25 • Settlement administration costs of \$2,200.00 to Phoenix Settlement
26 Administrators, the third-party Settlement Administrator agreed upon by
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28 ² The Settlement Period end date of January 28, 2022 is based on the cut-off date of the data
produced by Defendant. Gavron Decl. ¶ 7.

the Parties to administer this Settlement (Settlement Agreement ¶¶ II.A.16-17);

- Plaintiff's Counsel's fees of up to \$23,000.00, representing 1/3 of the Total Monetary Settlement Amount (Settlement Agreement ¶ II.B.2.a);
- Plaintiff's Counsel's actual litigation costs of \$1,767.83 (Settlement Agreement ¶ II.B.2.b.; Gavron Decl. ¶ 23, Ex. D; Declaration of William L. Marder ("Marder Decl.") ¶ 11, Ex. A); and
- An enhancement payment of \$10,000.00 to Plaintiff, in recognition for his efforts in obtaining the benefits of this settlement on behalf of other aggrieved employees and for providing a general release of all claims (Settlement Agreement ¶¶ II.B.2.c, II.B.5).

After subtraction of the amounts above, the remaining amount of **\$32,032.17**, or the PAGA Settlement Fund, will be distributed in accordance with PAGA's requirements. Gavron Decl. ¶ 9. Pursuant to the PAGA, 75% of the PAGA Settlement Fund, or approximately \$21,600.00, will be paid to the LWDA. Settlement Agreement at ¶ II.B.2.e.; Gavron Decl. ¶ 9. The remaining 25% of the PAGA Settlement Fund, or approximately \$7,200.00, will be distributed to the Aggrieved Employees. Settlement Agreement ¶ II.B.2.e., Gavron Decl. ¶ 9. Based upon Defendant's records and as reflected in the Settlement Agreement, there are no more than 69 individuals who are part of the Aggrieved Employees during the Settlement Period. Settlement Agreement ¶ II.A.2.

The portion of the PAGA Settlement Fund to be distributed to Aggrieved Employees will be distributed on a *pro rata* basis, based on the number of pay periods each individual Aggrieved Employee was paid wages during the Settlement Period against the aggregate total number of pay periods that all Aggrieved Employees were paid wages during the Settlement Period. Settlement Agreement ¶ II.C.12. As reflected in the Settlement Agreement, the total number of pay periods in which Aggrieved Employees were paid wages by Defendant during the Settlement Period does not exceed 967 pay periods. *Id.* Based on the number of Aggrieved Employees, each individual will be entitled to recover from the 25% of the PAGA Settlement Fund, on

1 average, approximately **\$104.35** each. Gavron Decl. ¶ 12. The amount any particular Aggrieved
2 Employee will be entitled to recover will be greater or lower than this average depending on the
3 actual number of pay periods during which he or she was paid wages during the Settlement
4 Period. *Id.* This is fair, as it directly allocates greater penalties to individual Aggrieved
5 Employees who have allegedly suffered greater harm. *Id.*

6 In exchange for such payments, Plaintiff and the Aggrieved Employees will provide the
7 following release:

8 [A]ll claims for civil penalties under PAGA that were alleged or
9 that could have been alleged in the Action by Plaintiff, on behalf of
10 the State of California, himself, and the Aggrieved Employees, for
11 penalties pursuant to PAGA for violation of the California Labor
12 Code arising from the alleged failure to comply with the timing
requirements of California Labor Code § 204 during the Settlement
Period.

13 Settlement Agreement ¶ II.A.13. As the release does not release any other claims as to the
14 Aggrieved Employees, the release is narrowly limited. Gavron Decl. ¶ 13. Further, none of the
15 Aggrieved Employees, except for the named Plaintiff, are bound by any general release of claims
16 under California Civil Code § 1542 as part of this settlement. *Id.*

17 As part of the Settlement Agreement, Defendant also does not object to Plaintiff's
18 Counsel's request for attorneys' fees of \$23,000.00, which represents one-third of the Total
19 Monetary Settlement Amount. Settlement Agreement ¶ II.B.2.a. The Settlement Agreement
20 provides of reimbursement of documented litigation costs of up to \$5,000.00. *Id.* ¶ II.B.2.b.;
21 Gavron Decl. ¶ 23, Ex. D.) Also, as part of the Settlement Agreement, Defendant does not
22 object to Plaintiff's request for a Service Award of \$10,000.00, in recognition for Plaintiff's
23 efforts in obtaining the benefits of the settlement on behalf of other aggrieved employees and for
24 providing a general release of his claims against Defendant. Settlement Agreement ¶¶ II.A.6,
25 II.B.2.c.

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1 **V. PLAINTIFF'S CONTENTIONS REGARDING FEES AND COSTS**

2 **A. THE ATTORNEYS' FEES ARE REASONABLE**

3 PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. Cal. Lab. Code §
4 2699, subd. (g). Similar to awarding fees in a class action, California state and federal courts
5 have recognized that an appropriate method for determining award of attorneys' fees for
6 representative actions is to use a percentage of the total value of benefits to class members by the
7 settlement. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254; *Serrano v.*
8 *Priest* (1977) 20 Cal. 3d 25, 34 ("Serrano III"); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472,
9 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1997) 557 F. 2d 759, 769. The purpose of this
10 equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs
11 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
12 burden alone." *Vincent*, 557 F. 2d at p. 769.

13 The Common Fund doctrine is predicated on the principle of preventing unjust
14 enrichment. When a litigant's efforts create or preserve a fund from which others derive
15 benefits, he may require the passive beneficiaries to compensate those who created the fund.
16 Both California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at
17 p. 35; *Vincent*, 557 F.2d at p. 769. Similarly, in *City and County of San Francisco v. Sweet*
18 (1995) 12 Cal. 4th 105, 110, the California Supreme Court recognized that the common fund
19 doctrine has been applied "consistently in California when an action brought by one party creates
20 a fund in which other persons are entitled to share." The reasons for applying the common fund
21 doctrine include: "fairness to the successful litigant, who might otherwise receive no benefit
22 because his recovery might be consumed by the expenses; correlative prevention of an unfair
23 advantage to the others who are entitled to share in the fund and who should bear their share of
24 the burden of its recovery; encouragement of the attorney for the successful litigant who will be
25 more willing to undertake and diligently prosecute proper litigation for the protection or recovery
26 of the fund if he is assured that he will be properly and directly compensated should his efforts
27 be successful." *Id.*

28 Indeed, most recently, the California Supreme Court has also held that the award of

1 attorneys' fees in common fund wage and hour class action settlements should start with the
2 percentage method. *See Laffitte v. Robert Half Int'l* (2016) 1 Cal. 5th 480, 503 ("We join the
3 overwhelming majority of federal and state courts in holding that when class action litigation
4 establishes a monetary fund for the benefit of the class members, and the trial court in its
5 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
6 of a reasonable fee by choosing an appropriate percentage of the fund created.").

7 An award of one-third of the fund in attorneys' fees "mimics the marketplace" as it is
8 "supported by the fact that typical contingency fee agreements provide that class counsel will
9 recover 33% if the case is resolved before trial and 40% if the case is tried." *Fernandez v.*
10 *Victoria Secret Stores LLC* (C.D. Cal. 2008) 2008 WL 8150856 at p. *16 n. 59 (citing
11 Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
12 *Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, "empirical studies [that]
13 show that...fee awards in class actions average around one-third of the recovery." *Chavez v.*
14 *Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66 n.11. In the *Laffitte* intermediate court decision, the
15 court observed that "33 1/3 percent of the common fund is consistent with, and in the range of,
16 awards in other class action lawsuits." *Laffitte v. Robert Half Int'l* (2014) 231 Cal. App. 4th 860,
17 871. Here, the fee award representing one-third of the settlement clearly falls within that range
18 and is consistent with other comprehensive surveys of class action settlements and fee awards.
19 *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award* (2010) 7 J.
20 *Empirical Leg. Stud.* 811, 833 (analyzing 444 cases between 2006-2007 and concluding that
21 "[m]ost fee awards were between 25 percent and 35 percent, with almost no awards more than
22 35 percent"); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical*
23 *Study: 1993-2008* (2010) 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (independent studies of
24 class action litigation nationwide conclude that fees representing one-third of the total recovery
25 is consistent with market rates).

26 Here, as set forth in their declarations, Plaintiff's Counsel seeks one-third of the Total
27 Monetary Settlement Amount in attorneys' fees, equivalent to \$23,000.00, which is reasonable
28 for wage and hour class actions. *Martin v. AmeriPride Servs., Inc.* (S.D. Cal. June 9, 2011) 2011

1 WL 231604, at *8 (“More particularly, courts may award attorneys’ fees in the 30–40% range in
2 wage and hour class actions that result in recovery of a common fund under \$10 million.”); *Singer*
3 *v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010 U.S. Dist. LEXIS 53416, 2010 WL
4 2196104, * 8 (approving attorney fee award and finding that award was similar to awards in
5 three other wage and hour class action cases where fees ranged from 30.3% to 40%); *Romero v.*
6 *Producers Dairy Foods, Inc.* (E.D. Cal. Nov.14, 2007) 2007 U.S. Dist. LEXIS 86270, 2007 WL
7 3492841.

8 Furthermore, Plaintiff’s Counsel’s skill and experience justify the requested amount of
9 attorneys’ fees. As shown in the supporting declarations, Plaintiff’s Counsel have significant
10 experience in the area of employment and wage and hour class actions. Specifically, Plaintiff’s
11 Counsel’s practice focuses on representing employees in employment matters, particularly wage
12 and hour cases. Gavron Decl. ¶¶ 15-22.

13 Accordingly, Plaintiff’s Counsel’s request for attorneys’ fees in the amount of \$23,000.00
14 is fair, reasonable, and adequate, and should be awarded in its entirety.

15 **B. THE COSTS ARE REASONABLE**

16 Additionally, Plaintiff’s Counsel’s request for reimbursement of actual litigation costs in
17 the amount of \$1,767.83 is also reasonable. *See* Settlement Agreement ¶ II.B.2.b.; Gavron Decl.
18 ¶ 23, Ex. D; Marder Decl. ¶ 11, Ex. A.) As set forth in Plaintiff’s Counsel’s declaration, the
19 costs were all directly incurred in the prosecution of this action, including, but not limited to,
20 filing and service fees, postage fees, and court fees. Gavron Decl. ¶ 23; Marder Decl. ¶ 11.) As
21 such, the requested costs are fair and reasonable.

22 **VI. APPROVAL OF PAGA SETTLEMENT SHOULD BE GRANTED**

23 Based on the above, Plaintiff and Defendant mutually request that this Court grant filing
24 approval to the PAGA settlement in this matter. The terms of the PAGA settlement completely
25 comply with the requirements of the Labor Code, and are fair, reasonable, and adequate.

26 Plaintiff has provided notice to the LWDA of the alleged violations committed by
27 Defendants. The settlement is the result of informed and non-collusive arm’s length
28 negotiations, based on discovery and information exchanged between the Parties. Finally, with

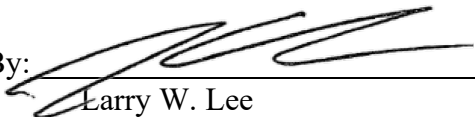
1 respect to the current settlement, the distribution of the PAGA penalties will be completed
2 pursuant to the percentages as called for in the Labor Code.

3 As such, in accordance with PAGA and the relevant case law, including the seminal case
4 of *Arias v. Superior Court* (2009) 46 Cal.4th 969, the Parties respectfully request that this Court
5 grant approval to the joint stipulation regarding the settlement.

6 IT IS SO STIPULATED.

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8 DATED: September 8, 2022

DIVERSITY LAW GROUP, P.C.

9
10 By: 

Larry W. Lee

Mai Tulyathan

Max Gavron

11
12 Attorneys for Plaintiff and the Aggrieved Employees

13 DATED: September 8, 2022

JACKSON LEWIS, P.C.

14
15 By: 

Nathan W. Austin

16 Attorneys for Defendant Delta Associated
17 Investigations, Inc.

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