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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

SHARONDA TAYLOR, TATIANNA SMITH, and ZENOBIA MILLIGAN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

TESLA, INC., doing business in California as TESLA MOTORS, INC.; and DOES 1 THROUGH 50, INCLUSIVE,

Defendants.

Case No. 23CV028922

NOTICE OF MOTION AND PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL OF PRIVATE ATTORNEY GENERAL ACT SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

[*Concurrently filed with Plaintiffs' Unopposed Motion for Attorneys' Fees and Costs and Supporting Declarations*]

Date: June 13, 2025
Time: 9:30 a.m.
Location: Dept. 15
Judge: Hon. Peter Borkon
Reservation No.: A-28922-002

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TO DEFENDANT AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at 9:30 a.m. on June 13, 2025, or as soon thereafter as counsel may be heard, in Department 15 of the Superior Court for the County of Alameda, Plaintiffs will and do move the Court for an order granting approval of settlement. The motion is based on this notice, the memorandum of points and authorities below, the Unopposed Motion for Approval of Fees and Costs, the Declarations of Matthew Helland, Bryan Schwartz, Sharonda Taylor, and Zenobia Milligan in support of the motions, the pleadings and papers on file in this action, and any such other matter on which the Court may rely. Defendants do not oppose this Motion.

DATED: May 21, 2025

By: /s/ Matthew C. Helland
Matthew C. Helland
BRYAN SCHWARTZ LAW, P.C.
CALIFORNIA CIVIL RIGHTS LAW GROUP
NICHOLS KASTER LLP

Attorneys for Representative Plaintiffs

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I. INTRODUCTION

This may be the first representative action litigated concerning workers' important rights to obtain copies of their personnel files in California. On March 7, 2023, Plaintiffs Sharonda Taylor, Shaka Green, Tatianna Smith, and Zenobia Milligan ("Plaintiffs") filed their Private Attorneys General Act, Labor Code § 1198, *et seq*. ("PAGA") complaint seeking penalties for Defendant Tesla, Inc.'s ("Defendant" or "Tesla") alleged failure to produce certain personnel records requested by 766 workers and former workers as required by the California Labor Code, §§226, 432, and 1198.5. Defendant filed a special motion to strike Plaintiffs' PAGA complaint pursuant to Section 425.16 of the Code of Civil Procedure (an "anti-SLAPP" motion), alleging that this litigation was prohibited because it arises from Tesla's protected petitioning and free speech activities in the *Marcus Vaughn, et al. v. Tesla Motors, Inc.*, *et al.* class action, Case No. RG17882082 ("*Vaughn*"), during a stay in *Vaughn*. On July 7, 2023, the Honorable Julia Spain of Department 520 of Alameda County Superior Court issued an order denying Tesla's anti-SLAPP motion and the Court of Appeal affirmed the trial court's denial on August 8, 2024. Although the Court of Appeal's decision in *Taylor v. Tesla, Inc.* (2024) 104 Cal.App.5th 75 acknowledged that Plaintiffs' right to obtain personnel files may be independent of Tesla's defenses in *Vaughn*, the appellate court did not reach the merits of Plaintiffs' PAGA claim, finding only that Tesla did not engage in protected activity under the first step of the anti-SLAPP analysis. *See Taylor v. Tesla, Inc.* (2024) 104 Cal.App.5th 75, 88-89, *as modified* (Aug. 30, 2024).

After the appellate victory, the parties mediated and ultimately agreed to this settlement, since the escalating attorneys' fees on both sides of this novel litigation would dwarf the amount of underlying PAGA penalties likely at stake. The parties first negotiated financial recovery for the PAGA action, then injunctive relief (production of the files), and finally, the attorneys' fees, accepting three separate mediator's proposals.

Now, Plaintiffs Sharonda Taylor and Zenobia Milligan[1] seek approval of the three aspects of the settlement: $210,000 in non-reversionary PAGA penalties; substantial nonmonetary relief consisting of production of specified employment or job-assignment related documents for each of the identified

[1] As discussed *infra*, Plaintiff Tatianna Smith did not sign the settlement agreement, and Plaintiffs' counsel withdrew from representing her. The court granted former Plaintiff Shaka Green's motion to dismiss his claims on January 15, 2025.

aggrieved individuals; and $340,000 in attorneys' fees and costs, which represents a fraction of the attorneys' fees incurred by Plaintiffs' counsel during over two years of factual investigation and litigation, including at the Court of Appeal (nearly $600,000 in fees alone to date, plus over $15,000 in costs, and continuing to accrue through final approval and administration). The proposed settlement is an excellent result for aggrieved individuals and the Labor Workforce Development Agency ("LWDA"). Tesla does not oppose this motion.

The $210,000 in non-reversionary penalties will be distributed to the LWDA and to aggrieved individuals. This amount includes a $2,500 Plaintiff Enhancement Payment (each) to Representative Plaintiffs Sharonda Taylor, Zenobia Milligan, and Tatianna Smith in recognition of their role in bringing the litigation and serving as the deputized PAGA representatives, including during mediation. The nonmonetary relief provides that Tesla will produce certain employment or job-assignment related documents, on a rolling basis following settlement approval, with production to be complete within 120 days. This relief is meaningful and significant, since Tesla's alleged failure to produce this information and/or otherwise comply with the Labor Code personnel records request was the reason Plaintiffs filed this case. Lastly, the settlement payment of $340,000 in Plaintiffs' attorney's fees and costs: less than 0.55x Plaintiffs' lodestar attorneys' fees already incurred in this matter, though Plaintiffs' counsel would be justified in asking for a positive (greater than 1x) multiplier based upon the successful, contingency litigation. Plaintiffs seek approval of those fees and costs on their concurrently-filed Motion for Attorneys' Fees and Costs.

The Court must "review and approve any settlement of any civil action filed pursuant to" PAGA. Lab. Code § 2699(1)(2). This settlement is fair, adequate, and reasonable, with a release that is appropriately limited to the PAGA claims at issue in this action. The arm's-length settlement provides payment of the most substantial penalties ever achieved, to Plaintiffs' knowledge, for a company's alleged failure to produce certain records in response to workers' Labor Code personnel record requests and will result in Tesla's production of specified employment or job-assignment related documents in response to the Labor Code records requests submitted by the aggrieved individuals. The Court should approve the settlement.

II. BACKGROUND ON THE CASE

A. Plaintiffs' Allegations and Tesla's Defenses

Plaintiffs' counsel represents the plaintiffs in this case and the plaintiffs and class members in *Vaughn*, which is also pending in this Department. *Vaughn* alleges race discrimination and harassment claims under the Fair Employment and Housing Act and does not involve any Labor Code issues. (Helland Decl. ¶ 3.)

On or about April 26, 2021, through her counsel, Plaintiff Taylor issued a written request to Tesla "to make available all of [her] time and pay records and personnel records covering the duration of [her] employment with" Tesla. (Compl. ¶ 23.) Plaintiffs claim that under Labor Code §§ 226, 432, and 1198.5, Tesla was obligated to produce records relating to Plaintiff Taylor's hours worked, wage statements, compensation, and any grievances she has raised. (*Id.*) Plaintiffs contend that Tesla responded that it could not find Plaintiff Taylor among its current or former employees and, therefore, was not required to produce any records. (*Id.*) On or about March 30, 2022, Plaintiff Milligan issued a written request Tesla to provide copies of personnel records. (Compl. ¶ 26.) Plaintiffs allege that Tesla failed to respond to this request. (*Id.*)

Approximately 766 individuals represented in this action submitted substantially similar personnel record requests to Tesla between December 28, 2020, and December 5, 2022. (Compl. ¶¶ 27-28; Helland Decl. ¶ 9.) Plaintiffs allege that Tesla failed to produce the pertinent personnel records for 597 individuals (63 of whom Tesla claimed it had no records to produce for), partially produced personnel records for 168 individuals, and produced a personnel record pertaining to a different individual for the remaining individual. (Helland Decl. ¶ 9.)

Tesla contends it properly suspended its response to Plaintiffs' pending Labor Code personnel records requests because, among other reasons, (1) the *Vaughn* court created a discovery framework for Plaintiffs to submit their requests for records, which Tesla had responded and produced records for under that framework, but stopped its production when the *Vaughn* court issued a stay in the *Vaughn* litigation pending appeal.(2) Tesla properly asserted its statutory litigation privilege of Labor Code Section 1198.5(n)[2] and Civil Code § 47; and (3) it was impossible for Tesla to comply with many of the

[2] "If an employee or former employee files a lawsuit that relates to a personnel matter against his or her employer or former employer, the right of the employee, former employee, or his or her representative

pending Labor Code personnel records request because Tesla does not maintain the requested records for those individuals assigned to Tesla by third-party staffing agencies nor does Tesla have access to payroll records that it did not generate. (*See* Labor Code § 1198.5(m); *see also* Labor Code § 226(c).

B. Procedural Background

Plaintiffs submitted letters to the LWDA and Tesla on February 9, 2022 (Plaintiff Taylor), and April 19, 2022 (Plaintiff Milligan), pursuant to Labor Code § 2699.3(a), identifying Tesla's alleged violations of Labor Code §§ 226, 432, and 1198.5. (Compl. ¶¶ 30-31; Helland Decl. ¶ 4.). After receiving no response, Plaintiffs filed this representative PAGA-only action on March 7, 2023, seeking penalties plus injunctive and declaratory relief for Tesla's alleged failure to respond to statutory requests for personnel records in violation of Labor Code §§ 226, 432, and 1198.5. (Compl. ¶¶ 11-53.)

On May 12, 2023, Tesla filed an answer and filed the "anti-SLAPP motion" seeking to strike the complaint. On July 7, 2023, the trial court denied Tesla's anti-SLAPP motion, finding that "Tesla did not meet its initial burden as the movant to make a 'threshold showing that [Plaintiffs'] claims arise from petitioning activity within the purview of the anti-SLAPP statute.'" (*See* July 7, 2023 Order re: Hearing on Motion to Strike.) Immediately thereafter, on July 20 and 21, 2023, Plaintiffs served 1,635 requests for admissions seeking that Tesla admit, as to all of the aggrieved individuals, listed individually, that they requested their personnel files and that Tesla did not produce their personnel files within the statutorily-required 30 days.

Tesla appealed the trial court's order denying the anti-SLAPP motion on July 24, 2023. After full briefing and oral argument, the Court of Appeal issued and published an order affirming the Superior Court's denial of Tesla's Special Motion to Strike on August 8, 2024. *See Taylor v. Tesla, Inc.* (2024) 104 Cal. App. 5th 75, *as modified* (Aug. 30, 2024). The Court found "no merit" in Tesla's anti-SLAPP arguments, holding:

> The bottom line, as we see it, is this. Faced with many requests for information that had nothing to do with the allegations in *Vaughn*, Tesla produced virtually nothing. This suggests it viewed the *Vaughn* case as a convenient excuse to relieve itself of the burden of meeting statutory obligations that were independent of its *Vaughn* defense.

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to inspect or copy personnel records under this section ceases during the pendency of the lawsuit in the court with original jurisdiction." Lab. Code § 1198.5(n).

Id. at 88. But since the court ruled on the first step of the anti-SLAPP analysis—*i.e.,* finding that Tesla did not engage in protected conduct—it did not reach the merits of Plaintiffs' PAGA claims. *Id.* at 89.

C. Settlement Negotiations

Immediately after receiving the remittitur from the Court of Appeal, Plaintiffs served Tesla with a Code of Civil Procedure § 998 Offer of Compromise on October 16, 2024, which expired, unaccepted, on November 19, 2024. (Helland Decl. ¶ 8.) The parties began a dialogue which concluded in agreement to mediation. On February 20, 2025, the parties attended an all-day mediation with respected and experienced employment mediator Peter Rukin. (*Id*. ¶ 11.) Prior to the mediation the parties conducted an informal exchange of extensive information, which included identifying all individuals who had submitted statutory requests for personnel records during the time period at issue. (*Id*. ¶ 9.) Plaintiffs calculated the maximum potential penalties as follows: $750 for each aggrieved individual for failure to respond to a request under California Labor Code § 1198.5(k); $750 for each aggrieved individual for failure to allow copying or inspection of age statements under California Labor Code § 226(f); and $100 penalty for each aggrieved individual under California Labor Code § 2699(f)(2). (*Id*. ¶ 10.) With triple-stacking and no reduction by the Court, potential penalties were $1,225,600. (*Id*.) Without stacking, the maximum penalties were $574,600. (*Id*.) The parties agree that no case precedent has yet determined the availability of stacked penalties for failing to comply with a personnel file request.

The parties negotiated the three aspects of the settlement separately and sequentially, first negotiating the amount of PAGA penalties to impasse, then negotiating nonmonetary relief, then negotiating the amount of attorneys' fees and costs to impasse. (*Id*. ¶ 11.) At the close of the mediation, the mediator issued three separate mediator's proposals, one on each area of negotiation. (*Id*.) On February 26, 2025, the mediator informed the parties that both sides had accepted all three mediator's proposals. (*Id*.) The parties then negotiated and executed a long-form settlement agreement for approximately six weeks, which was fully executed by April 11, 2025 (other than as to Tatianna Smith).[3] (*Id*.; Exh. 1.)

[3] After Plaintiff Smith rejected the settlement, Plaintiffs' counsel moved to be relieved as her counsel, serving the motion on her, and the motion was granted on May 9, 2025. (Schwartz Decl.¶ 7.) The order granting Plaintiffs' counsel's withdrawal from representation was served upon her on the same date by email and certified mail, notifying her that she would need to obtain new counsel by May 30, 2025, or the court would entertain a Tesla motion to dismiss her from the action. (*Id.*)

III. SETTLEMENT TERMS

The material terms of the settlement are summarized below and set forth in the PAGA Representative Action Settlement and Release Agreement ("Settlement"). (*Id*. Exh. 1.)

A. The Settlement Period and PAGA Settlement Members

The aggrieved individuals covered by the Settlement include the 766 individuals who, while represented by Bryan Schwartz Law, P.C. and California Civil Rights Law Group, submitted a written request for records from Tesla pursuant to California Labor Code §§ 226, 432, and/or 1198.5. (Settlement ¶ 1.27.) These 766 individuals fall into one of two groups:

> (1) current or former hourly-paid, non-exempt employees who worked for Tesla in the State of California during the period between February 9, 2021 and the date of the Court grants approval of the Settlement, who submitted a Labor Code § 1198.5, Labor Code § 226, and/or Labor Code § 432 request to Tesla, and who allege they were not provided timely and/or complete records in response to the Labor Code request (*i.e.,* "Directly Hired PAGA Settlement Members");
>
> (2) individuals who were assigned to work at Tesla's California facility through a third-party staffing agency during the period between February 9, 2021 and the date of the Court grants approval of the Settlement, who submitted a Labor Code § 1198.5, Labor Code § 226, and/or Labor Code § 432 request to Tesla, and who allege they were not provided timely and/or complete records in response to the Labor Code request (*i.e.,* "Contractor PAGA Settlement Members"). (*Id*.)

B. The PAGA Settlement Member Amount and Allocation

Tesla agreed to pay a PAGA Settlement Member Gross Settlement Amount of $210,000 – an average per-worker gross recovery of nearly $275. (Settlement ¶ 3.3.) The PAGA Settlement Member Gross Settlement Amount includes:

1. Representative Plaintiff Enhancement Payments of up to $2,500 to Representative Plaintiffs Taylor, Milligan, and Smith (for a total of $7,500) in recognition of their role in bringing the litigation and serving as the deputized PAGA representatives, and their efforts on behalf of the PAGA aggrieved workers and the State. (*See* Settlement ¶¶ 1.31; 3.4.3.)
2. Seventy-Five Percent (75%) of the remaining PAGA Settlement Member Gross Settlement Amount (estimated to be $151,875) to the LWDA. (*Id*. ¶ 3.4.1.)
3. Twenty-Five Percent of the PAGA Settlement Member Gross Settlement Amount (estimated to be $50,625) as Individual PAGA Payments to the 766 PAGA Settlement Members. (*See id*.)

Plaintiffs' counsel will calculate each Individual PAGA Payment according to a PAGA Share formula whereby those PAGA Settlement Members for whom Tesla made a partial production will receive one PAGA Share and those PAGA Settlement Members for whom Tesla made no production shall receive three PAGA Shares. (*See id*. ¶ 3.4.2.) Plaintiffs' counsel will then divide the amount of the PAGA Settlement Members' 25% share of the PAGA Settlement Member Gross Settlement Amount (*i.e.,* the PAGA Settlement Member Net Settlement Amount) by the total number of PAGA Shares. (*Id*.) Each PAGA Settlement Member for whom Tesla made a partial production will receive the resulting share amount, while those for whom Tesla made no production will receive three shares. (*Id*.)

C. Tesla's Production of PAGA Settlement Member Records

The Settlement also provides that Tesla's will produce certain employment or job-related assignment related documents for each PAGA Settlement Member. (Settlement ¶ 3.6.) Specifically, Tesla has agreed to produce:

1. For each Directly Hired PAGA Settlement Member: (i) the employment contract; (ii) payroll authorization form; (iii) notices of commendation, warning, discipline, or termination; (iv) performance reviews; (v) wage statements; and (vi) any complaint or report lodged by the Directly Hired PAGA Settlement Member regarding race-based discrimination and/or harassment that Defendant received. (*Id*. ¶ 3.6.1.)
2. For each Contractor PAGA Settlement Member: (i) any notices of commendation, warning, discipline, or termination of assignment; and (ii) any complaint or report lodged by the Contractor PAGA Settlement Member regarding race-based discrimination and/or harassment that Defendant received. (*Id*. ¶ 3.6.2.)

Tesla will begin production on a rolling basis beginning seven (7) calendar days following the settlement approval order. (*Id*. ¶ 3.6.3.) Tesla will produce approximately twenty-five percent (25%) of the responsive files every thirty (30) calendar days thereafter, with the entire production to conclude within 120 days from the date of the approval order. (*Id*. ¶ 3.6.3.)

D. Payment of Attorneys' Fees and Costs

Tesla separately agreed to pay $340,000, with up to $10,000 to be paid to the settlement administrator and the remaining sum to Plaintiffs' counsel for attorneys' fees and costs. (*See* Settlement, ¶¶ 3.5.1., 3.5.2.) This payment is subject to court approval, which Plaintiffs seek in their concurrently-filed Motion for Attorneys' Fees and Costs.

E. Targeted Scope of the Release

For the 766 individuals at issue, the release of claims includes all claims arising between February 9, 2021 and the date on which the Court grants approval of the settlement for all PAGA claims alleged, or that could have reasonably been alleged arising out of the facts asserted in the operative Complaint filed in this action, including specifically, claims for (1) failure to allow copying and/or access to wage statements under California Labor Code § 226; (2) failure to allow copying of signed instrument under California Labor Code § 432; and (3) failure to make personnel records available for inspection and copying under California Labor Code § 1198.5. (Settlement ¶ 5.1.)

F. Distribution of Funds to PAGA Aggrieved Individuals

Because this is a PAGA-only settlement, there will be no class notice or opportunity to object or opt out. If the Court approves the settlement, Tesla will provide contact information and other data to the Settlement Administrator within twenty-one (21) calendar days of the approval order. (Settlement ¶ 4.1.) Plaintiffs' counsel may also provide PAGA Settlement Members' contact information to the Settlement Administrator to ensure that the Administrator has current contact information. (*Id.*) Because Social Security Numbers are included in the list, the Settlement Administrator will maintain the list securely and in confidence. (*Id.*) Within thirty (30) calendar days after the approval order, Tesla will fund the PAGA Settlement Member Gross Settlement Amount and Plaintiffs' counsel's fees and costs by depositing such funds with the Settlement Administrator. (*Id.* ¶ 4.2.)

Within fourteen (14) calendar days after Defendant fully funds the PAGA Settlement Member Gross Settlement Amount and Plaintiffs' counsel's attorneys' fees and costs, the Administrator will mail checks for all individual settlement payments and the LWDA settlement payment via First Class U.S. Mail. (*Id.* ¶ 4.3.1.) For any PAGA Settlement Member whose individual payment check is uncashed and canceled after the void date (not less than 180 days after the date of mailing), the Administrator shall transmit the funds represented by such checks to the designated *cy pres* recipient, the Impact Fund, which supports (among other projects) workers' rights impact litigation. (*Id.* ¶ 4.3.3.)

IV. THE COURT SHOULD APPROVE THE PROPOSED PAGA SETTLEMENT.

A. The Proposed Settlement is Fair, Adequate, and Reasonable.

PAGA was enacted because the California legislature determined that it was "in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations . . . ." (*Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 980.) The California Supreme Court has explained that a PAGA plaintiff "represents the same legal right and interest as state labor law enforcement agencies," and brings PAGA claims "as the proxy or agent" of the state. (*Id.* at 986.) Of the civil penalties recovered, 75% goes to the LWDA and the remaining 25% goes to the "aggrieved employees" for collecting the penalties on behalf of the State. Lab. Code § 2699(i).[4]

Courts must "review and approve" a settlement in a civil action filed under PAGA. (Lab. Code § 2699(l)(2).) The 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.*, (2021) 72 Cal. App. 5th 56, 77 [citing *Williams v. Super. Ct.* (2017) 3 Cal.5th 531, 546; *Arias*, 46 Cal.4th at 980], reversed on other grounds in *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664.) Accordingly, the court evaluates whether the settlement is fair using many of the factors used to evaluate a class settlement, *i.e.,* the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount, and whether it is fair in view of PAGA' purposes and policies. *Id.*

1. The Settlement Reflects the Informed Views of Experienced Counsel and is the Product of Serious, Arm's-Length Negotiations Conducted After Investigation and Information Sharing.

An arm's-length negotiation by competent counsel is an indicator of fairness. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802, as modified (Sept. 30, 1996). Here, the settlement is the result of arm's-length negotiations between experienced attorneys who are familiar with PAGA actions, Labor Code rights, and the legal and factual issues of the case. (*See* Helland Decl. ¶¶ 16-18, 21-22; Schwartz Decl. ¶¶ 8-18.) This case was fiercely-litigated, as Tesla's anti-SLAPP motion and subsequent appeal required the expenditure of substantial resources. (Helland Decl. ¶ 6; Schwartz Decl. ¶ 4.) Given the intense early litigation in this case here and the Court of Appeal, the Court can take comfort that there were no collusive negotiations in this case.

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[4] PAGA was amended effective June 19, 2024. Cases filed prior to the effective date of the amendment (like this one) follow the prior version of PAGA. *See* Lab. Code, § 2699(v)(2) (2024). Citations to PAGA in this memorandum are to the pre-amendment version of PAGA unless noted.

The parties had sufficient information to resolve the case. This case is different than many class actions or PAGA cases in that counsel had the information necessary to assess the claims—*i.e.,* information regarding personnel records requests—prior to filing suit. (Helland Decl. ¶ 9.) Nevertheless, the parties exchanged information prior to mediation to ensure that all potentially-aggrieved individuals were identified. (*Id.*) There was no need for payroll or other data sharing. Plaintiffs' counsel shared their penalty calculations and attorneys' fees and costs, which enabled the parties to analyze the potential penalties at issue, though the parties disagreed mightily on the extent of any penalties that any court would issue, and whether penalties were available for many/any of the aggrieved workers, given Tesla's numerous defenses. Likewise, both parties were privy to facts affecting the merits, since Plaintiffs' counsel represented the aggrieved individuals who sought their personnel records from Tesla. (*Id.* ¶ 3.) This allowed both sides to weigh the likelihood of success on the merits.

The parties participated in a full-day mediation, negotiating in three phases. (*Id.* ¶ 11.) The three phases were, in order: (1) the PAGA Penalties corresponding to the PAGA Settlement Members; (2) nonmonetary relief; and (3) attorneys' fees and costs. (*Id.*) At the end of the mediation, the mediator made three mediator's proposals, one for each of these areas. (*Id.*)

2. The Settlement is Fair Given the Strength of Plaintiffs' Case and the Risk, Expense, and Complexity of Further Litigation.

Plaintiffs defeated Tesla's anti-SLAPP motion and prevailed at the Court of Appeal—two significant victories that Plaintiffs hoped would set the case on a course for full victory on the merits. Nevertheless, Plaintiffs recognize that litigation entails significant risks.

a) Tesla maintains that its defenses survived the Court of Appeal.

Because an anti-SLAPP motion requires a showing of protected activity plus a likelihood of success on the merits, Tesla's anti-SLAPP motion previewed its merits defenses. *See Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 884-885. Tesla argued that its decision to pause its production based on the Vaughn stay was protected petitioning or litigation activity within the *Vaughn* case, and therefore Plaintiffs were prohibited from suing for PAGA penalties. Tesla would argue that its defenses survived the appeal because the Court stopped its analysis after concluding that Tesla did not establish any protected activity. *See Taylor,* 104 Cal. App. 5th at 89.

Tesla first argued that Labor Code Section 1198.5(n) excuses its non-compliance because it extinguishes the right to records when "an employee or former employee files a lawsuit that relates to a personnel matter against his or her employer or former employer . . . ." (Lab. Code § 1198.5(n).) Tesla argued the Plaintiffs here "file[d] a lawsuit" by virtue of their status as ***putative class members*** in *Vaughn*. Similarly, Tesla asserted a litigation privilege defense. *See* Civ. Code § 47. The litigation privilege applies to communications "required or permitted by law in the course of a judicial proceeding to achieve the objects of the litigation." (*Rusheen v. Cohen* (2006) 37 Cal. 4th 1048, 1057.)

Plaintiffs believe they would have overcome these defenses. As absent class members, Plaintiffs had not "filed a lawsuit" in *Vaughn* (for purposes of Section 1198.5) and Tesla's decision to pause its production of personnel records was not "required or permitted" in *Vaughn*. Indeed, the Court of Appeal's decision undermines Tesla's continued reliance on these defenses. *See, e.g., Taylor*, 104 Cal. App. 5th at 88 n.7 ("Tesla's reliance on [Section 1198.5(n)] rests on the premise that the *Vaughn* case is a lawsuit plaintiffs filed against Tesla. That premise is incorrect."); *id.* at 87 (Tesla "wants us to conclude that refusing to respond to plaintiffs' statutory information requests was, as a practical matter, petitioning activity undertaken in support of its defense of the *Vaughn* case. On this record, based on the arguments Tesla made in the trial court, as reiterated here on appeal, we see no basis to do so.") Nevertheless, Plaintiffs recognize that the Court of Appeal did not reach Tesla's defenses on the merits and that litigating these defenses could be time-consuming.

b) The amount of PAGA penalties is reasonable in light of litigation risks.

On top of merits risks, Plaintiffs risked recovering a small amount of penalties even if they prevailed. Trial courts enjoy broad discretion in reducing PAGA penalties at trial as oppressive/ confiscatory and/or to refusing to "stack" penalties for multiple violations of the Code. *See* Lab. Code § 2699(e)(2); see also *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037 (concluding that "[a] significant reduction would be appropriate" because defendant "ha[d] not deliberately evaded a clear legal obligation… nor negligently failed to learn about its obligations."). Indeed, even plaintiffs who enjoy success in a PAGA trial may see very little in the way of penalties at the end of trial. *See e.g., Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504 (reducing PAGA penalties by 95%);

Fleming v. Covidien (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047 at *4 (reducing PAGA penalties by 82%); *Aguirre v. Genesis Logistics* (C.D. Cal. Dec. 30, 2013) 2013 WL 10936035, at *2-3 (reducing penalty award by 72% because a higher penalty would be oppressively punitive); *Sanchez v. McDonald's* (L.A Superior Court, filed Jan. 24, 2013) BC499888 (after a full trial on the merits, awarding $774,442 of $41 million in PAGA penalties sought – 1.89%) (*see* Schwartz Decl. Exh. A, Statement of Decision and *Daily Journal* articles re *Sanchez*). Although Plaintiffs believe they would have prevailed on the merits, the unique nature of this case left Plaintiffs at risk for a significant reduction of PAGA penalties. This risk warranted consideration at settlement.

Further, the upside for aggrieved individuals was relatively low, especially if the Court did not allow stacking. The $210,000 in PAGA penalties represents 36.5% of the non-stacked PAGA penalties—an excellent result in settlement. *See e.g.*, *Viceral v. Mistras Grp. Inc.,* (N.D. Cal. Feb. 17, 2017) 2017 WL 661352, at ** 1, 3 (approving PAGA penalties worth 0.33% of gross settlement and 0.15% of total estimated value of PAGA claims); *Cotter,* 193 F.Supp.3d 1030, 1037 (approving class action settlement allocating a PAGA set-aside worth "a fraction" of the PAGA claim's potential value); *Rodriguez v. Danell Custom Harvesting, LLC* (E.D. Cal. 2018) 293 F. Supp. 3d 1117, 1133 (approving 0.6% PAGA payment because LWDA did not object to terms of settlement); *McLeod v. Bank of Am., N.A.* (N.D. Cal. Nov. 14, 2018) 2018 WL 5982863, at *4 (finding $50,000 PAGA allocation for claims estimated at $ 4.7 million (approximately 1.1 percent) adequate).

c) The production of personnel files is an excellent result.

Plaintiffs' lawsuit was motivated by their desire to recover their personnel files and remedy Tesla's non-production of the files. Tesla did not believe production was justified in light of *Vaughn*, and it took this case to secure release of the records. While the penalties alone would be sufficient to support approval of the settlement, this additional nonmonetary relief is further basis for approval. *See Rojas-Cifuentes v. ACX Pacific Northwest Inc.* (E.D. Cal., Mar. 31, 2025) 2025 WL 959206, at *13 ("Non-monetary relief provided through the settlement may also satisfy PAGA's interests in enforcement and deterrence." (citing *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1134-35); *Manuel Perez and Macario Perez v. All AG, Inc.* (E.D. Cal. July 23, 2021) 2021 WL 3129602, at *3 (approving PAGA settlement, factoring in the inclusion of nonmonetary relief); *FedEx Office Seating Cases* (Alam. Super. Ct. Sept. 20, 2019) JCCP005010, 2019 WL 5873727 (same); *Cruz v. Island Hospitality III LLC* (Santa Clara Super. Ct. Aug. 7, 2020) 19CV353655, 2020 WL 5088164 (same); *see also Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-50 ("Non-monetary benefits" to the Class, such as causing the defendant "to change its personnel classification practices," are "a relevant circumstance" in evaluating a class settlement).

The injunctive relief is especially significant here because the PAGA statute at issue – pre-2024 amendment – did not provide for injunctive relief, and so this settlement is the only means for Plaintiffs and the aggrieved 766 workers to obtain the important relief sought, *i.e.,* disclosure of the personnel records. *See* Labor Code 1198.5(n); *Plaisted v. Dress Barn* (C.D. Cal. Sept. 9, 2021) 2012 WL 4356158, *2 ("PAGA does not provide for equitable restitutionary or injunctive relief…".) The injunctive relief component of the settlement strongly supports settlement approval.

d) The settlement furthers PAGA's purposes and policies.

The production of personnel files also furthers PAGA's policy interest "in augmenting the state's enforcement capabilities, encouraging compliance with provisions, and deterring noncompliance" as contemplated in Lab. Code §2699(l)(2). *O'Connor*, 201 F. Supp. 3d at 1134-35. The non-monetary relief stems directly from the Labor Code and secures the production of personnel records to which plaintiffs maintained they were entitled. Without this representative PAGA lawsuit and this settlement, the 766 aggrieved individuals would never have received their personnel files. The settlement also accomplishes PAGA's objectives in that it puts Tesla and other California businesses on notice that the penalties for failing to maintain or produce certain personnel records can be significant. *O'Connor*, 201 F.Supp.3d at 1134 (noting that deterring noncompliance with the Labor Code is one of PAGA's objectives).

B. The Requested Plaintiff Enhancement Payments Are Reasonable.

Service awards, such as the "Plaintiff Enhancement Payments" requested here, are common in class and representative actions and are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and sometimes, to recognize their willingness to act as a private attorney general." *In re Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393-94 (internal citations omitted). Criteria which warrant an appropriate service award include: "(1) risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." *Id.* The Ninth Circuit has "observed that incentive payments may recognize a named plaintiff's willingness to act as a private attorney general." *Razo v. AT&T Mobility Services, LLC* (E.D. Cal. Apr. 26, 2023) 2023 WL 3093845, at *29 (internal quotation omitted). "Service awards in the Northern District of California commonly range from $2,000 to $10,000 [and] $5,000 is presumptively reasonable." *Oliveira v. Language Line Services, Inc.* (N.D. Cal. Feb. 24, 2025) 2025 WL 586589, at *11 (internal citations omitted.) *See also, e.g., Cruz,* 2020 WL 5088164, at *2 ($5,000 service award to plaintiff in PAGA action.)

Here, Plaintiffs request only $2,500 for each Representative Plaintiff. By serving as plaintiffs in a lawsuit against their employer, Representative Plaintiffs incurred the risk of paying costs if Tesla prevailed (*see* Code Civ. Proc. § 1032), as well as a significant reputational risk. Representative Plaintiffs also assisted counsel in their investigation of the claims, remained actively engaged with counsel throughout the litigation and conferred with counsel regarding the settlement. (Helland Decl. ¶ 7; Taylor Decl. ¶ 5; Milligan Decl. ¶ 5.) The Representative Plaintiffs also deserve recognition for their willingness to act as private attorneys general. Plaintiffs' and aggrieved individuals' requests for personnel records began as early as 2020 and had stalled for years. The Representative Plaintiffs, recognizing the need to bolster the State's enforcement resources, filed suit to vindicate Labor Code rights not just for themselves, but for all aggrieved individuals. The Representative Plaintiffs served in this role despite the limited financial upside in a single-violation PAGA lawsuit. This settlement was hard-earned and could not have been reached without the commitment of the Representative Plaintiffs. The Court should approve the modest $2,500 enhancements.

C. The Settlement Administrator

The Parties agree to use Simpluris as the Settlement Administrator. Simpluris will be responsible for processing the individual payments and any related tax documents. Simpluris has provided a $5,000 not to exceed bid for administration. (Helland Decl. ¶ 13.) Plaintiffs' counsel has used Simpluris recently and has found the company to be professional, competent, and reasonably priced. (*Id*.).

D. *Cy Pres* Recipient

For any PAGA Settlement Member whose individual payment check is uncashed and canceled after the void date (not less than 180 days after the date of mailing), the Administrator shall transmit the funds represented by such checks to *Cy Pres* recipient, the Impact Fund, subject to Court approval. The Impact Fund is a suitable *cy pres* recipient, providing support to public interest lawyers and communities in need in California and across the country in vindicating workers' rights, *inter alia*. (*Id*. ¶ 14.)

E. Submission to the LWDA

This Settlement is being submitted to the LWDA in accordance with Lab. Code § 2699(l)(2). (*Id*. ¶ 15.)

F. The Court Should Approve the Settlement Despite Smith's Refusal to Sign.

PAGA settlements do not follow the notice, opt out, and objection procedures of traditional class actions. See, e.g., *Turrieta,* 16 Cal.5th at 715 ("nothing in PAGA's text, statutory scheme, or legislative history suggests the Legislature understood or intended an aggrieved employee's authority to commence and prosecute a PAGA action on the state's behalf to include the power to file objections to the settlement reached by another aggrieved employee representing the same state interest and also acting on the state's behalf."); *Uribe v. Crown Building Maintenance Co.* (2021) 70 Cal.App.5th 986, 1001, as modified on denial of reh'g (Oct. 26, 2021) ("A plaintiff 'cannot opt out of [a PAGA] settlement and thereafter pursue civil penalties for the same violations again on behalf of the LWDA.'" (quoting *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476, 483).) *Uribe* suggests that a non-party may intervene in a PAGA action to address the adequacy of the settlement, 70 Cal.App.5th at 1001, but the California Supreme Court later held that aggrieved employees have no such right. *Turrieta*, 16 Cal.5th at 705.

Once a court reviews and approves a PAGA settlement, no aggrieved employees may pursue claims for those PAGA violations. *See Robinson,* 53 Cal.App.5th at 483 ("the doctrine of claim preclusion bars relitigation of the claim for civil penalties based on the Labor Code violations resolved in" a previous PAGA settlement). Accordingly, if the Court approves this settlement, the right to PAGA penalties for any of the 766 aggrieved individuals—including Ms. Smith—will be extinguished. Ms. Smith's failure to sign the settlement agreement is not a barrier to full dismissal of the case.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (1) approve the proposed Settlement; (2) appoint Simpluris as the Settlement Administrator; (3) award Plaintiffs' counsel $340,000 in attorneys fees and litigation costs;[5] (4) award Plaintiffs Taylor, Milligan and Smith $2,500 each in service awards ($7,500 total); and (5) approve the Impact Fund as the *cy pres* recipient.

Dated: May 21, 2025

/s/ *Matthew C. Helland*
Matthew C. Helland
Counsel for Representative Plaintiffs

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[5] Because Plaintiffs contemporaneously file their motion for attorneys' fees and costs, they omit separate facts and arguments regarding the fees/costs here but incorporate the facts and arguments in that motion here by reference.

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Taylor v. Tesla, Inc., 23CV028922: Motion Hearing Request

Dept. 15, Superior Court <dept15@alameda.courts.ca.gov> Thu, May 15, 2025 at 9:33 AM
To: Avni Wadhwani <avni@bryanschwartzlaw.com>
Cc: "Obbard, Philip, Superior Court" <pobbard@alameda.courts.ca.gov>, Bryan Schwartz <bryan@bryanschwartzlaw.com>, Jane Mackie <jane@bryanschwartzlaw.com>, Emmanuel Uyong <emmanuel@bryanschwartzlaw.com>, Marqui Hood <marqui@civilrightsca.com>, Cimone Nunley <cimone@civilrightsca.com>, Larry Organ <larry@civilrightsca.com>, "Helland, Matthew" <helland@nka.com>, "Perez, Ricardo" <rperez@nka.com>, Tyree Jones <tjones@polsinelli.com>, Tina Tellado <ttellado@polsinelli.com>, Billy Sahachartsiri <bsahachartsiri@polsinelli.com>, rcardozo <rcardozo@reedsmith.com>, Sara Begley <sbegley@polsinelli.com>

Good morning,

Per your request, see motion reservation numbers highlighted below.

06/13/2025 09:30 AM	Hearing on Motion - Other for Attorneys' Fees and Costs	Reserved	Dept 15 / Rene C. Davidson	A-28922-003
06/13/2025 09:30 AM	Hearing on Motion - Other for Approval of Private Attorney General Act Settlement	Reserved	Dept 15 / Rene C. Davidson	A-28922-002

Thank you,

Aquetta Y. Scoggins
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Hon. Peter Borkon
Superior Court of California, County of Alameda
Administration Building
1221 Oak Street, 3rd Floor | Oakland, CA 94612
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Please review your case at https://eportal.alameda.courts.ca.gov/ for the status of filings, issued orders and upcoming hearings.

From: Avni Wadhwani <avni@bryanschwartzlaw.com>
Sent: Wednesday, May 14, 2025 4:25 PM
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