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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

TRISIA PISQUIY, an individual,

Plaintiff,

v.

1ST-TIME RIGHT LLC, a California limited liability company; B. KRAMER, INC., a California corporation; TERRIL A. GRANT, an individual; BRUCE KRAMER, an individual; and DOES 1 to 10, inclusive,

Defendants.

Case No. 22STCV21362

Assigned for All Purposes to the
Honorable Rupert Byrdsong

**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 Defendant Terrill Grant; and (3) Proposed Order]

Date: July 11, 2023
Time: 8:30 a.m.
Dept.: 28
Reservation ID: 391538964128

Complaint Filed: June 30, 2022

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

3 **PLEASE TAKE NOTICE** that on **July 11, 2023**, at **8:30 a.m.** in Department 28 of the above-
4 entitled court, located at 111 N. Hill St. Los Angeles, California 90012, Plaintiff Trisia Pisquiy
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 Settlement Agreement (“Agreement” or “Settlement”)
10 between Plaintiff and Defendants 1st-Time Right LLC, B. Kramer, Inc., Terril A.
11 Grant, and Bruce Kramer, (collectively, “Defendants”) attached as Exhibit 1 to the
12 Declaration of Kelly Y. Chen in Support of this Motion for Order Approving PAGA
13 Settlement (“Chen Decl.”), including, but not limited to, the plan of allocation and
14 distribution of the Gross Settlement Amount;
- 15 2. Directing the distribution of the Gross Settlement Amount of Ten Thousand Dollars
16 and Zero Cents (\$10,000.00) pursuant to the terms of the Settlement;
- 17 3. Approving the net PAGA settlement (“PAGA Settlement Fund”), currently estimated
18 to be \$5,167.00, of which seventy-five percent (75%) shall be paid to the California
19 Labor and Workforce Development Agency and twenty-five percent (25%) shall be
20 paid to Aggrieved Employees on a *pro rata* basis based upon the number of pay periods
21 worked between March 23, 2021 to December 31, 2022 (the “PAGA Period”);
- 22 4. Awarding Plaintiff’s counsel, the Law Office of Kelly Y. Chen, attorney’s fees in the
23 amount of Three Thousand Three Hundred Thirty-Three Dollars and Zero Cents
24 (\$3,333.00) (“PAGA Counsel’s Fees”) and payment of Five Hundred Dollars and Zero
25 Cents (\$500.00) for reimbursement of actual litigation costs and expenses pursuant to
26 California Labor Code section 2699(g)(1) (“PAGA Counsel’s Costs”);
- 27 5. Awarding Plaintiff One Thousand Dollars and Zero Cents (\$1,000.00) to settle her
28 individual wage and hour claims; and

6. Directing Defendant 1st-Time Right LLC to disburse the Gross Settlement Amount of \$10,000.00 in accordance with the terms of the Settlement Agreement within ninety calendar days after the date the Court signs an order approving the Settlement (the “Effective Date”).

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

Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Settlement, as well as information regarding the approval hearing on this matter, were submitted to the California Labor and Workforce Development Agency via online filing at <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html> on June 14, 2023. *See* Chen Decl., ¶ 29, Exh. 4.

The Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the concurrently filed Declaration of Kelly Chen and all exhibits attached thereto, the Declaration of Terrill Grant, the pleadings and other records on file with the Court in this matter, and all other oral and documentary evidence that may be presented at the hearing on this Motion.

Dated: June 14, 2023

Respectfully submitted,

LAW OFFICE OF KELLY CHEN

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Trisia Pisquiy (“Plaintiff”) seeks approval of the Settlement Agreement (“Settlement”
4 or “Agreement”) entered into between Plaintiff and Defendants 1st-Time Right, LLC, B. Kramer, Inc.,
5 Terril A. Grant, and Bruce Kramer (“Defendants”) pursuant to the Labor Code Private Attorneys
6 General Act of 2004, Cal. Labor Code sections 2698, et seq. (“PAGA”). See Declaration of Kelly Y.
7 Chen in Support of Motion for Order Approving PAGA Settlement Agreement (“Chen Decl.”), Ex. 1.
8 The key terms of the Settlement are as follows:

- 9
- 10 • Number of Aggrieved Employees: approximately 254 individuals.
 - 11 • Gross Settlement Amount: \$10,000.00
 - 12 • Plaintiff’s counsel’s fees payment (“PAGA Counsel’s Fees”): \$3,333.00
 - 13 • Plaintiff’s counsel’s costs and expenses payment (“PAGA Counsel’s Costs”): \$500.00
 - 14 • Plaintiff’s settlement for a release of her individual wage and hour claims: \$1,000.00
 - 15 • Net PAGA penalties for distribution to the State of California and Aggrieved Employees
16 (“PAGA Settlement Fund”): \$5,167.00

16 The PAGA Settlement Fund will be distributed as follows: seventy-five percent (75%), *i.e.*
17 \$3,875.25, will be paid to the California Labor and Workforce Development Agency (“LWDA”);
18 twenty-five percent (25%), *i.e.* \$1,291.75, will be paid to the Aggrieved Employees on a *pro rata* basis
19 according to the number of pay periods worked between March 23, 2021 and December 31, 2022
20 (“PAGA Period”).

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

26 **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

27 On March 23, 2022, Plaintiff’s counsel provided a Notice of PAGA Claims to the LWDA on
28 behalf of Plaintiff and other aggrieved employees alleging Defendants had violated certain provisions

1 of the Labor Code, and that Plaintiff intended to pursue civil penalties for the alleged violations
2 pursuant to PAGA. (Chen Decl., ¶ 3, Exh. 2.)

3 On June 30, 2022, Plaintiff commenced a lawsuit against Defendants in the Los Angeles
4 Superior Court, Case No. 22STCV21362 (the “Complaint” or the “Litigation”) seeking civil penalties
5 pursuant to PAGA. In addition to the PAGA Claim, Plaintiff also alleged several other claims for
6 *individual* damages relating to Defendants’ unlawful wage and hour practices, as well as claims for
7 sexual harassment in violation of Fair Employment and Housing Act (“FEHA”) and Civil Code § 59.1.
8 (*Id.*, ¶ 4, Exh. 3.)

9 Shortly following the filing of Plaintiff’s Notice of PAGA Claims, the Parties met and
10 conferred with respect to the possibility of early resolution. Pursuant to these discussions, the Parties
11 agreed to exchange informal discovery. (*Id.*, ¶ 5.) At the conclusion of extensive settlement
12 negotiations, the Parties fully executed the long-form Settlement Agreement. (*Id.*)

13 On June 14, 2023, Plaintiff’s counsel submitted the Settlement Agreement and this Motion to
14 the LWDA via its online filing portal. (Chen Decl., ¶ 29, Ex. 4.)

15 **III. STANDARD OF REVIEW OF APPROVAL OF PAGA SETTLEMENT**

16 The LWDA and its constituent departments and divisions are authorized to assess and collect
17 civil penalties for specified violations of the Labor Code committed by an employer. See Cal. Labor
18 Code §2699(a). With a stated goal of improving enforcement of existing Labor Code obligations, the
19 Legislature adopted the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698
20 et seq., permitting, as an alternative, an aggrieved employee to initiate a private civil action for “civil
21 penalties” which were previously enforceable only by the State’s labor law enforcement agencies. Cal.
22 Labor Code § 2699; *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 377.

23 Before an employee may file an action seeking to recover such “civil penalties” for violations
24 of any of the Labor Code provisions enumerated in section 2699.5 (which include violations of Labor
25 Code claims which Plaintiff asserted in this action against Defendants), he or she must comply with
26 PAGA’s administrative procedures as set forth in Labor Code section 2699.3(a) which include
27 providing notice to the LWDA and waiting a prescribed period of time to permit the LWDA to
28 investigate and to decide whether to cite the employer for the alleged violations. *Caliber Bodyworks,*

1 supra, 134 Cal.App.4th at 370; see also, *Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330. If the
2 LWDA fails to pursue the penalties, the employee may proceed in Court.

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

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

20 Any PAGA penalties recovered by an employee, however, do not entirely belong to the
21 employee. Instead, PAGA requires that 75% of the recovered penalties must be paid to the LWDA,
22 while the remaining 25% may be retained by the employee who prosecuted the claim. Cal. Labor Code
23 §2699(i).

24 **IV. SUMMARY OF THE SETTLEMENT TERMS**

25 **A. Definition of Aggrieved Employees**

26 Under the Settlement Agreement, Plaintiff’s representative claims are made on behalf of
27 “Aggrieved Employees” defined as “all individuals who are or were employed as non-exempt hourly
28 employees by 1st-Time Right, LLC within the State of California at any time from March 23, 2021 to

December 31, 2022.” (Chen Decl., ¶ 8; Settlement Agreement, § 1.) The PAGA Period runs from March 23, 2021 to December 31, 2022. (Chen Decl., ¶ 9; Settlement Agreement, § 2.) There are approximately 254 Aggrieved Employees. (Chen Decl. ¶ 10; Declaration of Defendant Terrill Grant in Support of Plaintiff’s Application for an Order Approving PAGA Settlement [“Grant Decl.”], ¶ 7; Settlement Agreement, § 1.)

B. The Gross Settlement Amount

The Parties have agreed to settle Plaintiff’s individual wage and hour claims and representative PAGA claims for a non-reversionary Gross Settlement Amount of \$10,000.00. (Chen Decl., ¶ 6; Settlement Agreement § 4.a.) The Gross Settlement Amount is based on Defendants’ representation that there are approximately 254 Aggrieved Employees.

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., ¶ 7.) As stated above, subject to Court approval, the Gross Settlement Amount includes: (1) payment to Plaintiff to resolve her individual wage and hour claims in the amount of \$1,000.00, less deductions and withholdings; (2) payment of Plaintiff’s counsel’s attorneys’ fees in the amount of \$3,333.00; and (3) reimbursement of Plaintiff’s counsel’s litigation costs and expenses up to \$500.00. (Chen Decl. ¶ 7; Settlement Agreement, §§ 4.a.i-iii.) 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. ¶ 7; Settlement Agreement, § 4.a.iv.)

The PAGA Settlement Fund is \$5,167.00, to be distributed as follows: 75% of the PAGA Payment, or \$3,875.25 will be paid to the LWDA, and the remaining 25%, or \$1,291.75 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 PAGA Period. (Chen Decl. ¶ 7; Settlement Agreement, §§ 4.a.iv, 5.) The Settlement Payments to Aggrieved Employees will be treated as miscellaneous income for which an IRS Form 1099 will be issued. (Chen Decl. ¶ 7; Settlement Agreement, § 11.)

No later than ninety (90) calendar days after the date the Court signs an order approving the Settlement, Defendant 1st-Time Right, LLC shall deliver the PAGA Settlement Fund to the LWDA

1 and the Aggrieved Employees. (Chen Decl. ¶ 11; Settlement Agreement, § 11.) All checks to each
2 Aggrieved Employee shall remain valid and negotiable for 180 days from their date of issuance. If any
3 checks are not cashed within 180 days of mailing, those funds shall be sent to the State of California
4 Unclaimed Property Fund in the name of the employee to whom the check was issued. (Chen Decl., ¶
5 12; Settlement Agreement, § 11.)

6 **D. Scope of the Release in the Settlement Agreement**

7 Upon the Court's approval of the Settlement, Plaintiff, the State of California and each
8 Aggrieved Employee shall fully release and forever discharge Defendants from any and all claims,
9 rights, demands, and liabilities for civil penalties pursuant to PAGA (Labor Code § 2699 et. seq.) that
10 arose during the PAGA Period as they relate to Labor Code section 2698, et seq. for alleged violations
11 of Labor Code §§ 201-204, 210, 226, 226.2, 226.3, 226.7, 246, 248.5, 510, 512, 558, 1174, 1174.5,
12 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and 2698 et seq. (Chen Decl., ¶ 13; Settlement
13 Agreement, § 15.)

14 **V. THE SETTLEMENT IS FAIR AND REASONABLE**

15 As set forth below, the Settlement before the Court is the result of adversarial, arms-length
16 negotiations, extensive investigation, and fulfills the objectives of the PAGA. Moreover, the
17 Settlement is fair and reasonable considering the surrounding facts, the risks associated with protracted
18 litigation, and Defendants' financial difficulties. Accordingly, the Settlement should be approved by
19 the Court.

20 **A. Plaintiff Has Complied with the Administrative Requirements of California** 21 **Labor Code Section 2699.**

22 Before bringing a civil action under PAGA, an employee must comply with the notice
23 requirements set forth in Labor Code section 2699.3. Plaintiff complied with these requirements.
24 (Chen Decl. ¶ 3, Exh. 2.) Additionally, the Settlement Agreement and this motion are being
25 concurrently submitted to the California Labor and Workforce Development Agency, as required by
26 California Labor Code section 2699(1)(2). (*Id.*, ¶ 29, Ex. 4.)

27 **B. Arm's-Length Negotiations.**

28 Although PAGA settlements are not subject to the same, heightened requirements as a class

1 action settlement, the underlying guidelines utilized in class action settlements may be useful in
2 evaluating the fairness of a PAGA settlement. California courts recognize that “a presumption of
3 fairness exists where . . . [a] settlement is reached through arm’s-length bargaining.” *Wershba v. Apple*
4 *Computer*, 91 Cal.App.4th 224, 245 (2001) (disapproved on other grounds). Here, the Parties engaged
5 in arms-length, non-collusive negotiations at all times. The proposed Settlement was reached at the
6 end of a process that was neither fraudulent nor collusive. (Chen Decl. ¶¶ 17-19.) To the contrary,
7 counsel for the Parties advanced their respective positions throughout the settlement negotiations. (*Id.*,
8 ¶ 19.)

9 **C. Sufficient Investigation and Discovery by Experienced Counsel.**

10 Plaintiff conducted significant research and investigation of the alleged claims prior to
11 reaching an agreement to settle her PAGA claim. Prior to filing the lawsuit, Plaintiff’s counsel
12 investigated Defendants’ wage and hour practices. (*Id.*, ¶ 14.) During settlement negotiations,
13 Defendants informally produced a random sampling of time and payroll records for the Aggrieved
14 Employees, as well as information regarding the total number of non-exempt employees, the number
15 of pay periods, Defendants’ relevant policies and procedures, and other relevant information. (*Id.*, ¶
16 17.) This allowed Plaintiff’s Counsel to conduct an informed assessment and analysis of Defendants’
17 potential exposure. (*Id.*, ¶ 18.) Furthermore, negotiations were conducted by highly capable and
18 respected counsel with a strong record of vigorous and effective advocacy handling complex wage
19 and hour litigation. (*Id.*, ¶ 31.) Accordingly, Plaintiff’s counsel had sufficient information and
20 experience to act intelligently in negotiating the Settlement.

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

23 The Gross Settlement Amount of \$10,000.00 is a reasonable settlement given the relative
24 strengths and weaknesses of Plaintiff’s claims and Defendants’ defenses, the risks of further litigation,
25 and the unique risks associated with litigation of PAGA claims. The PAGA claims implicated
26 approximately 254 Aggrieved Employees and approximately 421 pay periods. (*Id.*, ¶ 20.) Plaintiff’s
27 counsel reviewed and analyzed an extensive sampling of time records and other relevant documents
28 and data and estimated with all claims adjudicated in favor of Plaintiff, Defendants’ maximum liability

1 was approximately \$42,100.00. (*Id.*, ¶ 18.)

2 Despite the potentially large liability, however, substantial barriers to recovery of such
3 penalties exist. PAGA provides that the trial court has the discretion to reduce PAGA civil penalties
4 “if, based on the facts and circumstances of the particular case, to do otherwise would result in an
5 award that is unjust, arbitrary and oppressive, or confiscatory.” See Cal. Labor Code § 2699(e)(2).
6 Given the highly discretionary nature of PAGA penalties, Plaintiff and her counsel recognized that
7 there was significant risk that Defendants could present a persuasive argument that could cause the
8 Court to substantially reduce the amount of PAGA penalties at trial. For example, Defendants
9 presented evidence that it corrected the unlawful wage and hour practices alleged by Plaintiff promptly
10 after receiving Plaintiff’s Notice of PAGA Claims (see Settlement Agreement, § 7), a factor that the
11 Court would likely consider in reducing maximum penalties.¹

12 One of the most significant risk-based factors faced by Plaintiff is Defendants’ poor financial
13 condition. During the settlement negotiations, Defendants disclosed that they were experiencing
14 significant financial difficulties which rendered them unable to pay a sizable judgment. (Chen Decl.,
15 ¶ 23; Grant Decl., ¶¶ 4-7.) Defendants provided Plaintiff’s counsel with records to support their claims
16 of financial hardship. (Chen Decl., ¶ 23.) In light of this information, Plaintiff’s counsel recognized
17 that the Court could ultimately be reluctant to impose maximum penalties against Defendants, as such
18 an award could be viewed as unduly punitive and confiscatory in nature. (*Id.*) See *Thurman v.*
19 *Bayshore Transit Management Inc.* (2012) 203 Cal.App.4th 1112, 1136 (finding the defendant’s
20 inability to pay penalties from ongoing revenues justified a reduction in PAGA civil penalties.)
21 Plaintiff’s counsel also recognized that the cost of continued litigation could potentially render
22 Defendants unable to satisfy a judgment in the future. (Chen Decl., ¶ 23; Grant Decl., ¶ 6.) Plaintiff’s
23 counsel further considered the risk that a larger settlement or judgment could potentially require
24

25
26 ¹ See, e.g., *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (reducing maximum penalties by 97.5%);
27 *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590, *8-9 (C.D. Cal. 2011). (reducing maximum penalties by over 80%);
28 *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 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%).

Defendants to downsize operations, to the detriment of currently-employed Aggrieved Employees. (Chen Decl., ¶ 23; Grant 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., ¶ 24.)

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. Ct.*, 46 Cal. 4th 980; *Williams v. Sup. Ct.*, 3 Cal.5th 531, 546. The overall relief obtained by the Settlement is significant, not only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to promote enforcement of California's labor laws and deter future non-compliance by Defendants. (Chen Decl., ¶ 25.)

Thus, taking into consideration both the potential value of the PAGA claim, the significant risks associated with continued litigation, and the underlying objectives of PAGA, the Parties have agreed that the Settlement presented herein is fair, reasonable, and adequate. (*Id.*, ¶ 26.) The reasonableness of the Settlement is further confirmed by the fact that the LWDA was provided notice of the alleged violations and terms of the Settlement and has decided not to intervene. Accordingly, Plaintiff requests the Court enter an order approving the PAGA Settlement and entering judgment thereon.

V. THE REQUESTED ATTORNEY'S FEES ARE FAIR AND REASONABLE

Plaintiff's counsel is entitled to recover reasonable attorneys' fees and costs as a matter of right under PAGA. *See* Cal. Labor Code § 2699(g)(1). Counsel is also entitled to fees and costs under Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition "for the benefit" of other and secures substantial monetary recovery of State of California and the Aggrieved Employees.

1 *See Estrada v. FedEx Ground Package Sys. Inc.*, 154 Cal.App.4th 1, 16-17 (2007) (recovery obtained
2 on behalf of 209 individuals satisfies C.C.P. § 1021.5). Where the amount of a settlement is a “certain
3 easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable
4 percentage of the settlement created. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1808 (1996).
5 The California Supreme Court has confirmed the propriety of awarding attorneys’ fees based on a
6 percentage of the total value made available by the settlement. *See Serrano v. Priest*, 20 Cal.3d 25, 34
7 (1977). The ultimate goal is the award of a “reasonable” fee to compensate counsel for their efforts,
8 irrespective of the method of calculation. *See Apple Computer, Inc. v. Super. Ct.*, 126 Cal.App.4th
9 1253, 1270 (2005).

10 Here, the Settlement provides for payment of attorneys’ fees to Plaintiff’s counsel in the
11 amount of \$3,333.00, e.g., one-third of the Gross Settlement Amount, subject to Court approval. (Chen
12 Decl., ¶ 7; Settlement Agreement § 4.a.i.) The requested fee award is well-within the range of
13 reasonableness given the facts and circumstances surrounding this case, and reflects the work
14 performed, risks incurred, results obtained, and experience of Plaintiff’s counsel in handling similar
15 matters. (Chen Decl., ¶¶ 31-36.)

16 Furthermore, while percentage of a common fund is both common and universally accepted in
17 wage and hour representative action litigation, the requested fee award is also justified under a lodestar
18 “cross-check.”² In this matter, Plaintiff’s counsel expended 63.5 hours on this matter, for a total lodestar
19 of \$47,625 - significantly more than the fee award sought by way of this Application. (Chen Decl., ¶¶
20 35-36.) This lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for
21 the attorneys who worked on these matters. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1131-32 (2001).
22 Plaintiff’s counsel is entitled to compensation for the time reasonably spent on this matter. *See Id.* at
23 1133. For these reasons, Plaintiff respectfully requests the Court award the requested attorneys’ fees
24 of \$3,333.00.

25
26
27 ² It should be noted that courts have cautioned that the primary basis of the fee award in common fund cases remains the
28 percentage of the fund method and have advised that plaintiff’s counsel should not necessarily receive a lesser fee 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 **VI. THE REQUESTED COSTS ARE FAIR AND REASONABLE**

2 Plaintiff's counsel requests payment of just \$500.00 for reimbursement of the costs incurred
3 litigating this case. (Chen Decl., ¶ 37.) This figure is less than the total costs incurred by Plaintiff's
4 counsel in prosecuting this matter, and further does not include the anticipated future costs that will
5 be necessary to successfully resolve this action including costs associated with the filing of this
6 Motion, attendance at the approval hearing, and additional costs for filing declarations following
7 distribution of the Gross Settlement Amount. (*Id.*) These costs are recoverable under the Settlement
8 and were necessary for the prosecution of this PAGA action.

9 **VII. CONCLUSION**

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

12
13 Dated: 6/14/23

Respectfully submitted,

14 **LAW OFFICE OF KELLY CHEN**

15
16 By: /KellyY. Chen
17 Kelly Chen, Esq.
18 Attorneys for Plaintiff
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Journal Technologies Court Portal

Make a Reservation

TRISIA PISQUIY vs 1ST-TIME RIGHT, LLC, et al.

Case Number: 22STCV21362 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2022-06-30 Location: Stanley Mosk Courthouse - Department 28

Reservation	
Case Name: TRISIA PISQUIY vs 1ST-TIME RIGHT, LLC, et al.	Case Number: 22STCV21362
Type: Motion re: (Motion for Approval of PAGA Settlement)	Status: RESERVED
Filing Party: Trisia Pisquiy (Plaintiff)	Location: Stanley Mosk Courtho
Date/Time: 07/11/2023 8:30 AM	Number of Motions: 1
Reservation ID: 391538964128	Confirmation Code: CR-OGP9NAYFYUEE

Fees	
Description	
Motion re: (name extension)	
Credit Card Percentage Fee (2.75%)	
TOTAL	

Payment	
Amount: \$61.65	Type: Visa
Account Number: XXXXXX	Authorization: XXXXXX

XXXX6324

U343UG

Payment Date:
1969-12-31

 Print Receipt

 [Reserve Another Hearing](#)

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