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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

MARIA C. SOTO, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

DFA OF CALIFORNIA; SAFE FOOD
ALLIANCE; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 34-2022-00317275

Assigned for All Purposes to:
Judge Jill Talley; Dept. 23

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR APPROVAL
OF PAGA SETTLEMENT**

Date: February 7, 2025

Time: 9:00 a.m.

Dept: 23

Reservation ID: # A-317275-001

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Maria C. Soto (“Plaintiff”) seeks approval of a settlement of claims under the
4 Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* (“PAGA”) against
5 Defendant DFA of California and Defendant Safe Food Alliance (“Defendants”) in the amount of
6 \$300,000.00. Plaintiff alleges approximately 324 aggrieved employees who worked for Defendants
7 were allegedly not paid all wages owed, not provided with meal periods, not provided with rest
8 breaks, not provided with accurate wage statements, and were not reimbursed for Defendants’
9 necessary business expenses.

10 Under Labor Code § 2699(l)(2), the Court must review and approve any proposed PAGA
11 settlement. Here, the proposed Settlement is sufficient to deter and punish future violations. The
12 Settlement is attached to the Declaration of Jamie Loos (“Loos Decl.”) as **Exhibit 1**, and the
13 proposed letter to be sent to the aggrieved employees is attached thereto as **Exhibit A**. Plaintiff now
14 seeks this Court’s approval of the Settlement terms.

15 **II. FACTUAL AND PROCEDURAL BACKGROUND**

16 On March 23, 2022, Plaintiff’s counsel sent a letter to the California Labor & Workforce
17 Development Agency (“LWDA”) via online submission and to Defendants via certified mail
18 regarding Defendants’ alleged violations. *See* Loos Decl., ¶¶ 3, 38, Exhibit 2. The LWDA did not
19 respond to this notice within 65 days, indicating it did not intend to investigate, thus allowing
20 Plaintiff to file the instant lawsuit pursuant to Labor Code Section 2699.3(a)(2)(A). *See* Loos Decl.,
21 ¶ 4.

22 On March 23, 2022 Plaintiff filed her Complaint as a class action lawsuit, alleging
23 Defendants’ failure to pay minimum wages, failure to pay overtime wages, failure to provide meal
24 periods, failure to permit rest breaks, failure to reimburse business expenses, failure to provide
25 accurate itemized wage statements, failure to pay all wages due upon separation of employment,
26 and violation of Business and Professions Code §§17200, *et seq.* Loos Decl. at ¶ 5. On May 31,
27 2022, Plaintiff filed her First Amended Complaint adding a claim for Enforcement of the Private
28 Attorneys General Act (“PAGA”). *Id.* at ¶ 6. On June 21, 2022, Plaintiff requested to dismiss her

1 class action claims without prejudice due to the presence of arbitration agreements that Plaintiff
2 and class members allegedly signed. *Id.* at ¶ 7. The Court granted Plaintiff's request. *Id.* Defendants
3 deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified
4 in in the Operative Complaint and deny any and all liability for the causes of action alleged.

5 In July of 2022, Plaintiff propounded Requests for Production of Documents and Special
6 Interrogatories on Defendants. Loos Decl. ¶ 8. Defendants provided responses in October of 2022,
7 but the responses contained several deficiencies. *Id.* Plaintiff attempted to meet and confer with
8 Defendants, but ultimately had to file a Motion to Compel Further Responses to Plaintiff's Requests
9 for Production of Documents and a Motion to Compel Further Responses to Plaintiff's Special
10 Interrogatories. *Id.* Before the hearing on Plaintiff's motions, Defendants provided further
11 supplemental responses to Plaintiff's requests. *Id.* The Parties continued to meet and confer
12 regarding Plaintiff's requests, and thereafter agreed to attend a private mediation. *Id.*

13 The Parties attended mediation on January 8, 2024, with Jill R. Sperber, a respected class
14 action and PAGA action mediator. *Id.* at ¶ 9. In preparation for mediation, Defendants formally and
15 informally produced data and documents for Plaintiff to evaluate the PAGA claims and calculate
16 the alleged exposure, including Plaintiff's personnel file, policy documents, a sample of aggrieved
17 employee time and payroll records, and data pertaining to the aggrieved employees. *Id.* Plaintiff's
18 Counsel engaged an expert to quantify the potential exposure using the time and payroll records,
19 and then assessed the risks associated with each of the claims. *Id.*

20 After a full day of negotiating, the Parties agreed to a settlement amount and executed a
21 Memorandum of Understanding with the material terms the parties had agreed to. *Id.* The Parties
22 spent the next few months negotiating the terms of the Settlement, which was finalized in October
23 of 2024. *Id.*

24 Plaintiff provided notice of the Settlement and a copy of this Motion to the LWDA. *Id.* at
25 ¶¶ 11, 39, Exhibit 3.

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III. PAGA REQUIREMENTS

Based on the California Supreme Court's opinions in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014), a plaintiff can seek appropriate civil penalties as called for under PAGA on behalf of the State of California and other similarly aggrieved employees without seeking class certification or meeting the requirements of class certification (i.e. numerosity, typicality, commonality and adequacy). As such, the class action two-step preliminary and final approval process is not required.

PAGA was enacted to allow enforcement of the Labor Code and recovery of penalties by the State and by private individuals who have been aggrieved by their employers. The statute calls for 75% of any penalties recovered to be paid to California's LWDA and the remaining 25% to the aggrieved employees (Cal. Lab. Code § 2699(i) (2016)).

In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee must first provide written notice to the LWDA and the employer of the particular Labor Code violations the aggrieved employee alleges the employer has violated. See Cal. Labor Code § 2699.3(a)(1)(A) (2016). Once the LWDA notifies the aggrieved employee that it does not intend to investigate the alleged violations, or if the LWDA does not respond within a certain time period, the aggrieved employee is then allowed to proceed in a civil action against the employer on behalf of the LWDA and all other similarly aggrieved employees. See Cal. Labor Code § 2699.3(a)(2)(A) (2016).

In 2009, the California Supreme Court considered the issue of whether an aggrieved employee who brings a PAGA representative claim needs to meet class certification requirements. *Arias, supra*, 46 Cal. 4th at 976. After a substantial review of the legislative history of PAGA, the Court held that an aggrieved employee's representative action brought on behalf of other aggrieved employees against an employer for PAGA violations does not need to meet the requirements for class certification. *Id.* at 975, 980-88. As the Court held, a plaintiff bringing suit under PAGA does so as the proxy or agent of California's labor law enforcement agencies. *Id.* at 986. Because the employee's PAGA action functions as a substitute for an action brought by the government itself, a

1 judgment in the PAGA action binds all those who would be bound by a judgment in an action
2 brought by the government. *Id.*

3 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the court
4 need only "review and approve" the settlement. Cal. Lab. Code § 2699(1)(2) (2016). The Parties
5 to this current PAGA action have reached such an agreement and now seek this Court's approval of
6 the proposed settlement.

7 **IV. THE SETTLEMENT TERMS AND DISTRIBUTION OF PENALTIES**

8 The Parties have agreed that Defendants will pay a total settlement amount of \$300,000.00
9 (the "Gross Settlement Amount"). See Settlement Agreement, § 3.1. From this amount, up to one-
10 third (1/3) of the Gross Settlement Amount, or \$100,000.00, is allocated to attorneys' fees and not
11 more than \$30,000.00 to actual litigation costs. *Id.* at § 3.2.2. To date, Plaintiff's counsel has spent
12 \$13,169.75 in actual litigation costs and incurred \$81,485.00 in attorneys' fees. See Loos Decl., ¶¶
13 34-35, 40-41, Exhibit 4. The Settlement allocates up to \$4,750.00 to payment for Phoenix
14 Settlement Administrators' costs associated with administration of the Settlement. Settlement
15 Agreement, § 3.2.3. For Plaintiff's efforts in assisting with the Lawsuit and in exchange for a
16 general release of her individual claims, \$10,000.00 is allocated to Plaintiff. *Id.* at § 3.2.1.

17 After deducting the above amounts for attorneys' fees and costs, Settlement
18 Administrator's costs, and Plaintiff's individual settlement award, the remaining fund will
19 constitute the "PAGA Penalties" in which 75% will be paid to the LWDA (the "LWDA PAGA
20 Payment") and 25% will be paid to the Aggrieved Employees as their "Individual PAGA
21 Payments". Settlement Agreement, § 3.2.4. The Aggrieved Employees are all persons employed by
22 Defendants as a non-exempt employee in California at any time during the PAGA Period. *Id.* at §
23 1.4. The PAGA Period means the period from March 23, 2021 to February 8, 2024. *Id.* at § 1.20.

24 The Individual PAGA Payments will be calculated pro rata based on the number of pay
25 periods working during the PAGA Period. Settlement Agreement, § 3.2.4.1. If the number of PAGA
26 Periods exceeds 7,702 by more than 10%, then the Gross Settlement Amount will increase pro rata
27 per additional PAGA Pay Period. Settlement Agreement, at § 8. The Individual PAGA Payments
28 shall be paid to the Aggrieved Employees by way of a single check which will be valid for 180

1 days. *Id.* at §§ 4.4.1. 4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check
2 is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented
3 by such checks to the California Controller's Unclaimed Property Fund in the name of the
4 Aggrieved Employee. *Id.* at § 4.4.3. The Individual PAGA Payments will be characterized as
5 penalties for tax purposes and reported on IRS Form 1099. *Id.* at § 3.2.4.2.

6 Prior to this disbursement, the Settlement Administrator shall check the Aggrieved
7 Employees' addresses provided by Defendants using the National Change of Address database.
8 Settlement Agreement, § 4.4.1. Aggrieved Employees will receive a letter along with their
9 Individual PAGA Payment explaining the reason for the payment, the content of which will be
10 submitted to the Court for approval. *Id.* at § 4.4.1. The proposed letter is attached to the Settlement
11 Agreement as Exhibit A.

12 The "Released Parties" are defined as "(i) Defendant DFA of California ("DFA"), (ii)
13 DFA's past and present parents, subsidiaries and affiliates including without limitation any
14 corporation, limited liability company, partnership, trust, foundation and non-profit entity
15 which controls, is controlled by, or is under common control with DFA; (iii) Defendant Safe
16 Food Alliance ("SFA"), (iv) the past and present parents, subsidiaries and affiliates of SFA; (v)
17 the past and present shareholders, directors, officers, agents, employees, members, consultants,
18 benefit plans, successor and assigns of any of the foregoing; and (v) any individual or entity
19 that could be jointly liable with any of the foregoing." In exchange for the settlement payment,
20 the Aggrieved Employees will release the Released Parties from "all claims for civil penalties
21 under PAGA (the Private Attorneys' General Act, California Labor Code §§ 2698, *et. seq.*)
22 based on the allegations of Defendants' conduct set forth in the Operative Complaint or based
23 on the claims that were specified in Plaintiff's PAGA Notice – including all claims for civil
24 penalties under PAGA for (1) failure to pay minimum wages; (2) failure to pay overtime wages;
25 (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to reimburse
26 business expenses; (6) failure to provide accurate itemized wage statements; and (7) failure to
27 pay all wages due upon separation of employment. The release of the PAGA claims is effective,
28 regardless of whether the Aggrieved Employee actually receives or cashes a settlement

1 payment. The claims released by this paragraph are limited to those that arose during the PAGA
2 Period.” Settlement Agreement, § 5.2.

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

4 **A. Standard for Approval**

5 PAGA settlements must be “fair, reasonable, and adequate in view of PAGA’s purposes to
6 remediate present labor law violations, deter future ones, and to maximize enforcement of state
7 labor laws.” *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021). The court must find that
8 the plaintiff “has adequately represented the state’s interests, and hence the public interest.” *Id.* at
9 89. The LWDA must be notified of the settlement and be given an opportunity to object. The court
10 may look to parallel class action guidelines to determine what is “fair, adequate and reasonable.”
11 *Kullar v. Foot Locker Retail*, 168 Cal.App.4th 116, 126 (2008). In that analysis, the court has
12 “broad discretion in making this determination.” *In re Microsoft I-V Cases*, 135 Cal.App.4th 706,
13 723 (2006). Relevant factors may include “the strength of the plaintiffs’ case, the risk, expense,
14 complexity and likely duration of further litigation, ... the amount offered in settlement, the extent
15 of discovery completed and the stage of the proceedings, the experience and views of counsel, the
16 presence of a governmental participant” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801
17 (1996).

18 **B. The Settlement Meets the Standard for Approval**

19 Here, the \$300,000.00 Gross Settlement Amount is reasonable for a group of
20 approximately 324 employees. A penalty of \$300,000.00 is large enough to punish Defendants for
21 alleged past violations and deter future violations. The settlement amount is equivalent to a penalty
22 with a deterrent value of about \$925.00 per employee based on the Gross Settlement Amount. At
23 the same time, the penalty amount is not so large as to be unjust, oppressive or confiscatory,
24 considering the company’s potential exposure explained below. The Gross Settlement Amount is
25 also reasonable in light of the facts of the foregoing action, the real risk that no PAGA penalties
26 would be paid, and inherent risks and uncertainties associated with PAGA claims.

1 As a preliminary matter, the penalties were extrapolated from the records produced to
2 cover the entire PAGA Period. Defendants produced an approximate 27.5% sample for the
3 aggrieved employees. See Loos Decl. at ¶ 12.

4 Rest Break Violations: Plaintiff alleged that Defendants' rest break policy only stated that
5 employees may receive rest breaks, dependent on the needs of the company, and that in practice,
6 employees were routinely denied timely, uninterrupted rest breaks. *Id.* at ¶ 13. Plaintiff's expert
7 estimated this claim to be worth approximately \$770,200.00 based on an initial violation rate of
8 \$100 per 7,702 pay periods and a 100% violation rate. *Id.* Defendants responded by arguing that
9 their rest break policy is compliant, and in practice, they routinely reminded employees to take their
10 rest breaks in a timely manner and away from their work stations to avoid interruptions. *Id.* This
11 claim would likely become dependent on opposing testimony and be difficult to prove. *Id.*
12 Accordingly, Plaintiff discounted this claim to be worth approximately \$38,510.00, as she
13 suspected a 5% chance of prevailing at trial. *Id.*

14 Meal Period Violations: Plaintiff argued that Defendants maintained an illegal practice of
15 requiring employees to record timely first meal periods, despite being required to work through
16 said meal periods, and by failing to provide employees with second meal periods. *Id.* at ¶ 14. Based
17 on an estimated 100% violation rate with an initial penalty of \$100 per 7,702 pay periods, Plaintiff
18 calculated this claim to be worth \$770,200.00. *Id.* However, Defendants denied requiring
19 employees to work through their first meal periods, stating that employees were responsible for
20 accurately recording their own time, and stated they had compliant meal period waivers as to second
21 meal periods. *Id.* As such, Plaintiff estimated a 20% chance of success at trial, thereby discounting
22 this claim to be worth \$154,040.00.

23 Unpaid Minimum Wages: Plaintiff alleged that aggrieved employees were required to work
24 off the clock both before and after their shifts in order to pick up and complete paperwork related
25 to the status of orders, or drop off completed paperwork after clocking out. *Id.* at ¶ 15. Based on a
26 100% violation rate during 7,702 pay periods and an initial violation rate of \$100 per pay period,
27 Plaintiff's expert calculated this claim to be worth approximately \$770,200.00. *Id.* However,
28 Defendants argued they had compliant written policies that required aggrieved employees to

1 accurately record all time worked, and that employees were not permitted to work off the clock. *Id.*
2 In fact, they argued that requiring aggrieved employees to work off the clock would only
3 detrimentally affect them, as they bill their customers for time worked by their employees. *Id.* As
4 such, Plaintiff estimated a 10% of prevailing at trial, and thus discounted the claim to approximately
5 \$77,020.00. *Id.*

6 Unpaid Overtime Wages: Plaintiff argued that Defendants failed to implement a blended
7 rate of pay as to night shift premiums, thereby resulting in an underpayment of overtime wages to
8 aggrieved employees. *Id.* at ¶ 16. With 7,702 pay periods and an initial \$100 penalty per pay period,
9 Plaintiff's expert calculated this claim to be worth \$32,384.00 for unpaid overtime wages, based on
10 a 4.2% violation rate. *Id.* Defendants argued that they appropriately applied a "rate in effect"
11 method, and showed that in some scenarios, this resulted in an overpayment of overtime wages. *Id.*
12 Accordingly, Plaintiff estimated an approximate 5% chance of prevailing at trial and discounted
13 this claim to approximately \$1,619.20. *Id.*

14 Unreimbursed Business Expenses: Plaintiff alleged Defendants failed to reimburse
15 necessary business expenses by requiring employees to use personal phones and vehicles for work-
16 related purposes. *Id.* at ¶ 17. Plaintiff's expert calculated this claim to be worth \$770,200.00 based
17 on a 100% violation rate and an initial penalty of \$100 per 7,702 pay periods. *Id.* However,
18 Defendants responded by providing policy documents that allegedly state employees would be
19 reimbursed mileage for usage of their personal vehicles, and argued that use of personal cell phones
20 was not necessary to perform job functions because employees were on a regular schedule and
21 could walk into the office to ask questions when needed. *Id.* In light of Defendants' policy and
22 arguments, Plaintiff estimated a 5% chance of prevailing at trial, thus discounting the claim to be
23 worth approximately \$38,510.00. *Id.*

24 Wage Statement Claim: Plaintiff argued that Defendants provided facially deficient wage
25 statements that failed to include the total hours worked. *Id.* at ¶ 18. Using a 100% violation rate and
26 an initial \$100.00 penalty per 7,702 pay periods, Plaintiff's expert calculated this claim to be worth
27 \$770,200.00. *Id.* However, Defendants argued that this claim only affected certain aggrieved
28 employees who worked both day and night hours, as Defendants' payroll company inadvertently

1 set the total hours to only include hours worked during the day. *Id.* Defendants also argued that the
2 correct total hours were listed elsewhere on the wage statements, on the line reporting the gross
3 earnings. *Id.* As such, Plaintiff estimated a 5% chance of success at trial, discounting this claim to
4 be worth \$38,510.00. *Id.*

5 Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA
6 awards are discretionary and can be reduced by the Court. Loos Decl., ¶ 19. Under Labor Code §
7 2699(e)(2), the Court can reduce the PAGA penalties “if, based on the facts and circumstances of
8 the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
9 or confiscatory.” In other words, were this matter to go to trial, any award granted would be at the
10 discretion of the Court. *Id.* In settling this case, Plaintiff recognizes that, although she believes there
11 would be no persuasive grounds to reduce the penalties, the Court could determine otherwise and
12 significantly reduce the PAGA penalties, especially with such a small employer, and given multiple
13 facially compliant policies identified above. *Id.* The wide range of potential recovery and the
14 additional delays and risks of trial justified settling for a reasonable amount of recovery. *Id.*

15 **VI. CONCLUSION**

16 For the foregoing reasons, Plaintiff respectfully requests the Court approve the proposed
17 settlement pursuant to PAGA in this Action.

18
19 Dated: January 15, 2025

AEGIS LAW FIRM, PC

20
21 By _____



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