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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JOEY LEON, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

TTX COMPANY; and DOES 1 through 20,
inclusive,

Defendants.

Case No. CIVSB2228412

*Assigned for All Purposes to:
Judge Joseph T. Ortiz
Dept. S17*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR APPROVAL OF PAGA
SETTLEMENT**

Date: July 9, 2024

Time: 9:00 a.m.

Dept.: S17

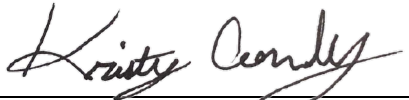
1 **TO THE COURT, DEFENDANTS, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 9, 2024 at 9:00 a.m., in Department S17 of the
3 Superior Court of the County of San Bernardino, located at 247 West Third Street, San
4 Bernardino California 92415, Plaintiff Joey Leon (“Plaintiff”) will and hereby does move this
5 Court for an Order granting approval of the Private Attorneys General Act of 2004, California
6 Labor Code § 2698 *et seq.* (“PAGA”) representative action settlement.

7 This Motion will be based upon this Notice, the Memorandum of Points and Authorities,
8 the Declaration of Kristy R. Connolly, the Declaration of Joey Leon, and exhibits filed
9 herewith, and any additional papers or arguments submitted on or before the hearing on the
10 Motion.

11
12 Dated: May 31, 2024

AEGIS LAW FIRM, PC

13 By 
14 _____
15 Kristy R. Connolly
16 Attorneys for Plaintiff Joey Leon
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Joey Leon ("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 TTX Company ("Defendant") in the amount of \$499,000. Plaintiff alleges
6 approximately 500 non-exempt, aggrieved employees who worked for Defendant were not paid at
7 least minimum wages for all hours worked, not paid proper overtime compensation, not provided
8 with meal periods and/or rest breaks or compensation in lieu thereof, not provided with accurate
9 wage statements and that Defendant failed to maintain required records, were not reimbursed for
10 Defendant's necessary business expenses, and were not paid all wages owed timely or upon
11 separation of employment.

12 Under Labor Code § 2699(1)(2), the Court must review and approve any proposed PAGA
13 settlement. Here, the proposed Settlement is sufficient to deter and punish future violations. The
14 Settlement is attached to the Declaration of Kristy R. Connolly ("Connolly Decl.") as **Exhibit 1**,
15 and the proposed letter to be sent to the aggrieved employees is attached thereto as **Exhibit A**.
16 Plaintiff now seeks this Court's approval of the Settlement terms.

17 **II. FACTUAL AND PROCEDURAL BACKGROUND**

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

24 On March 18, 2022, Plaintiff filed a class action lawsuit, alleging that, Defendant failed
25 to: (1) pay minimum wages, (2) pay overtime wages, (3) provide lawful meal periods or
26 compensation in lieu thereof, (4) authorize or permit lawful rest breaks or provide compensation
27 in lieu thereof, (5) reimburse class members for necessary business expenses, (6) provide accurate
28 itemized wage statements, (7) timely pay all wages during employment, (8) pay all wages timely

1 upon separation of employment and, (9) abide by the requirements of California Business and
2 Professions Code Section 17200 *et seq.* Connolly Decl., ¶ 4. On May 25, 2022, Defendant
3 removed the action to the United States District Court. *Id.* While in federal court, Defendant
4 presented Plaintiff with an arbitration agreement that Plaintiff allegedly signed. Accordingly,
5 Plaintiff dismissed his class complaint. *Id.*

6 On April 6, 2023, Plaintiff filed this action alleging a single cause of action for
7 Enforcement of the Private Attorneys General Act (“PAGA”). Connolly Decl., ¶ 5. Defendant
8 contended that Plaintiff’s individual PAGA claims are subject to arbitration and that Plaintiff’s
9 representative PAGA claims were subject to dismissal. *Id.* The Parties agreed to stay the action
10 pending the California Supreme Court’s ruling in *Adolph v. Uber Technologies, Inc.*, 14 Cal.5th
11 1104 (2023), which was anticipated to address the questions of law of whether a plaintiff who has
12 submitted the “individual” portion of a PAGA claim to arbitration lacks standing under state law
13 to pursue a representative PAGA claim on behalf of others. *Id.*

14 Once the Supreme Court issued the *Adolph* decision, which allowed Plaintiff to proceed
15 with his representative PAGA claim, the Parties agreed to attend private mediation. Connolly
16 Decl., ¶ 6. In advance of mediation, Defendant informally produced a significant amount of
17 documents, including Plaintiff’s personnel file, relevant policy documents, including documents
18 pertaining to Defendant’s alternative workweek schedule election, incentive bonuses, and the
19 governing collective bargaining agreement, as well as a 15% sample of time and pay records. *Id.*
20 Plaintiff’s Counsel engaged an expert to quantify the potential exposure using the time and
21 payroll records, and then assessed the risks associated with each of the claims. *Id.*

22 The parties attended mediation on March 19, 2024 with Kevin Barnes, a respected wage
23 and hour mediator. Connolly Decl., ¶ 7. After a full day of negotiating, the Parties agreed to a
24 settlement amount and executed a Memorandum of Understanding with the material terms the
25 parties had agreed to. *Id.* The Parties spent the next few months negotiating the terms of the
26 Settlement, which was finalized in May of 2024. *Id.* The negotiations were adversarial,
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1 conducted at arm's length and tempered by the efforts of both sides to serve the interests of
2 their clients. *Id.*

3 Plaintiff provided notice of the Settlement and this Motion to the LWDA on May 31,
4 2024. Connolly Decl., ¶ 8, Exhibit 3.

5 **III. PAGA REQUIREMENTS**

6 Based on the California Supreme Court's opinions in *Arias v. Superior Court*, 46 Cal. 4th
7 969 (2009), and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014),
8 Plaintiff can seek appropriate civil penalties as called for under PAGA on behalf of the State of
9 California and other similarly aggrieved employees without seeking class certification or meeting
10 the requirements of class certification (i.e. numerosity, typicality, commonality and adequacy).
11 As such, the class action two-step preliminary and final approval process is not required.

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

16 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved
17 employee must first provide written notice to the LWDA and the employer of the particular Labor
18 Code violations the aggrieved employee alleges the employer has violated. *See* Cal. Labor Code §
19 2699.3(a)(1)(A) (2016). Once the LWDA notifies the aggrieved employee that it does not intend
20 to investigate the alleged violations, or if the LWDA does not respond within a certain time
21 period, the aggrieved employee is then allowed to proceed in a civil action against the employer
22 on behalf of the LWDA and all other similarly aggrieved employees. *See* Cal. Labor Code §
23 2699.3(a)(2)(A) (2016).

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

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

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

12 The Parties have agreed that Defendant will pay a total settlement amount of \$499,000.00
13 (the "Gross Settlement Amount"). *See* Settlement Agreement, § 3.1. From this amount, up to
14 one-third (1/3) of the Gross Settlement Amount, or \$166,333.33, is allocated to attorneys' fees
15 and up to \$30,000.00 to actual litigation costs. *Id.* at § 3.2.2. To date, Plaintiff's counsel has spent
16 \$12,984.10 in actual litigation costs and incurred \$161,530 in attorneys' fees. *See* Connolly Decl.,
17 ¶¶ 27-28, Exhibit 5. The Settlement allocates up to \$8,000.00 to payment for the costs of the
18 Settlement Administrator, CPT Group, Inc., associated with the administration of the Settlement.
19 Settlement Agreement, § 3.2.3. For Plaintiff's efforts in assisting with the Lawsuit and in
20 exchange for a general release of his individual claims, \$10,000.00 is allocated to Plaintiff. *Id.* at
21 § 3.2.1.

22 After deducting the above amounts for attorneys' fees and costs, Settlement
23 Administrator's costs, and Plaintiff's individual settlement award, the remaining fund will
24 constitute the "PAGA Penalties" in which 75% will be paid to the LWDA (the "LWDA PAGA
25 Payment") and 25% will be paid to the Aggrieved Employees as their "Individual PAGA
26 Payments". Settlement Agreement, ¶ 3.2.4. The Aggrieved Employees are all current and former
27 persons employed by Defendant in California as a non-exempt employee at any time during the
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1 PAGA Period. *Id.* at ¶ 1.4. The PAGA Period means the period from October 15, 2021 through
2 May 18, 2024. *Id.* at ¶ 1.19.

3 The Individual PAGA Payments will be calculated pro rata based on the number of pay
4 periods working during the PAGA Period. Settlement Agreement, § 3.2.4.1. If the number of pay
5 periods worked by Aggrieved Employees in the PAGA Period exceeds 20,225 by more than 10%,
6 then the Gross Settlement Amount will increase pro rata per additional PAGA Pay Period. *Id.* at §
7 8. Alternatively, Defendant may elect to shorten the PAGA Period in order to stay within the 10%
8 cushion. *Id.* The Individual PAGA Payments shall be paid to the Aggrieved Employees by way of
9 a single check which will be valid for 180 days. *Id.* at § 4.4.1. All funds not claimed within 180
10 days of mailing of payment shall be sent to the California State Controller's Office Unclaimed
11 Property Fund with an identification of the amount of unclaimed funds attributable to each PAGA
12 Employee. *Id.* at § 4.4.3. The Individual PAGA Payments will be characterized as penalties for
13 tax purposes and reported on IRS Form 1099. *Id.* at § 3.2.4.2.

14 Prior to this disbursement, the Settlement Administrator shall check the Aggrieved
15 Employees' addresses provided by Defendant using the National Change of Address database.
16 Settlement Agreement, § 4.4.1. For any returned payments without a forwarding address, the
17 Settlement Administrator shall run a skip trace. *Id.* at § 4.4.2. Aggrieved Employees will receive a
18 letter along with their Individual PAGA Payment explaining the reason for the payment, the
19 content of which will be submitted to the Court for approval. *Id.* at § 4.4.1. The proposed letter is
20 attached to the Settlement Agreement as Exhibit A.

21 In exchange for the settlement payment, the State of California and the Aggrieved
22 Employees will release the "Released Parties" meaning "Defendant and each of its insurers,
23 brands, concepts, affiliates, subsidiaries, parent companies, predecessors, successors, assigns,
24 employees, officers, directors, agents, attorneys, administrators, representatives, heirs, estates,
25 powers-of-attorney, and any individual or entity which could be jointly liable with Defendant"
26 from "all claims for PAGA penalties that were alleged, or reasonably could have been alleged,
27 based on the facts stated in the Operative Complaint and the PAGA Notices during the PAGA
28 Period, including claims for (1) Failure to Pay Minimum Wages, (2) Failure to Pay Overtime

1 Wages, (3) Failure to Provide Meal Periods, (4) Failure to Provide Rest Periods, (5) Failure to
2 Provide Accurate Wage Statements, (6) Failure to Timely Pay All Wages During Employment
3 and Due at Termination, (7) Failure to Reimburse Expenses, and (8) Failure to Maintain Accurate
4 and Complete Records.” Settlement Agreement, §§ 1.26, 5.2.

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

6 **A. Standard for Approval**

7 PAGA settlements must be “fair, reasonable, and adequate in view of PAGA’s purposes
8 to remediate present labor law violations, deter future ones, and to maximize enforcement of
9 state labor laws.” *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021). The court must find
10 that the plaintiff “has adequately represented the state’s interests, and hence the public interest.”
11 *Id.* at 89. The LWDA must be notified of the settlement and be given an opportunity to object.
12 The court may look to parallel class action guidelines to determine what is “fair, adequate and
13 reasonable.” *Kullar v. Foot Locker Retail*, 168 Cal.App.4th 116, 126 (2008). In that analysis, the
14 court has “broad discretion in making this determination.” *In re Microsoft I-V Cases*, 135
15 Cal.App.4th 706, 723 (2006). Relevant factors may include “the strength of the plaintiffs’ case,
16 the risk, expense, complexity and likely duration of further litigation, ... the amount offered in
17 settlement, the extent of discovery completed and the stage of the proceedings, the experience
18 and views of counsel, the presence of a governmental participant” *Dunk v. Ford Motor Co.*,
19 48 Cal.App.4th 1794, 1801 (1996).

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

21 Here, the \$499,000.00 Gross Settlement Amount is reasonable for a group of
22 approximately 500 employees. A penalty of \$499,000.00 is large enough to punish Defendant for
23 alleged past violations and deter future violations. The settlement amount is equivalent to a
24 penalty of about \$998.00 per employee. At the same time, the penalty amount is not so large as to
25 be unjust, oppressive or confiscatory, considering the company’s potential exposure explained
26 below. Connolly Decl., ¶ 9. The Gross Settlement Amount is also reasonable in light of the facts
27 of the foregoing action, the real risk that no PAGA penalties would be paid, and inherent risks and
28 uncertainties associated with PAGA claims. *Id.* at ¶ 10.

1 Plaintiff calculated the potential exposure at the initial violation rate of \$100.00 per pay
2 period as follows: 20,225 x \$100.00 per pay period is \$2,022,500 for an estimated 20,225 pay
3 periods. Connolly Decl., ¶ 11. If the Court stacked different types of penalties in each pay period,
4 Plaintiff calculated the exposure as follows:

- 5 a. 20,225 pay periods x \$100 per pay period x 29% alleged violation rate =
6 \$586,525 for meal period violations;
- 7 b. 20,225 pay periods x \$100 per pay period x 6% alleged violation rate =
8 \$121,350 for third rest break violations;
- 9 c. 20,225 pay periods x \$100 per pay period x 25% violation rate (for alleged
10 failure to pay overtime at proper regular rate of pay and uncompensated time) =
11 \$505,625 for unpaid overtime wages;
- 12 d. 20,225 pay periods x \$100 per pay period x 100% alleged violation rate =
13 \$2,022,500 for wage statement penalties;
- 14 e. 20,225 pay periods x \$100 per pay period x 100% alleged violation rate=
15 \$2,022,500 for unreimbursed business expenses; and
- 16 f. 209 former employees x \$100 alleged penalty = \$20,900 for waiting time
17 penalties. *Id.*

18 Defendant raised a number of arguments during settlement negotiations and provided
19 evidence that could have defeated Plaintiff's claims. Connolly Decl., ¶ 12. For example, Plaintiff
20 argued Defendant failed to provide employees with all lawful meal and rest periods, including
21 due to rounding of employee time, auto deduction policies, and missed, short or late meal or rest
22 periods. *Id.* However, Defendant argued that it was exempt from California's meal and rest break
23 requirements under Labor Code section 512(e) because its employees were covered by a
24 collective bargaining agreement, which provided for the wages, hours of work, and working
25 conditions of employees and expressly provided for meal and rest periods for them. *Id.*
26 Additionally, Plaintiff argued that Defendant failed to incorporate non-discretionary bonuses into
27 the regular rate of pay when it paid overtime, failed to pay overtime due to an improper
28 alternative workweek schedule, and also failed to compensate for all hours worked including off-

1 the-clock work. *Id.* However, Defendant again argued that it was exempt from California's
2 overtime requirements under Labor Code section 514 due to the existence of the collective
3 bargaining agreement, which provided for the premium wage rates for overtime hours worked.
4 *Id.* Moreover, Plaintiff alleged Defendant failed to reimburse necessary business expenses by
5 requiring employees to purchase personal protective equipment, like steel-toed boots and
6 protective welding jackets. *Id.* However, Defendant provided evidence of vouchers that
7 employers were given to use at Boot Barn to purchase these items, and also claimed these claims
8 were addressed in the collective bargaining agreement and thus preempted under federal law. *Id.*
9 Finally, Plaintiff alleged that Defendant failed to identify the overtime rate of pay and instead
10 wrote that overtime was being paid at a multiple of 1.5 the base hourly rate. *Id.* However,
11 Defendant argued that employees could still determine the rate at which they are being paid from
12 the wage statement alone, which complies with California law, including *General Atomics v.*
13 *Superior Court* (2021) 64 Cal.App.5th 987. *Id.* Further, by providing all of the information
14 necessary to determine an employee's overtime rate of pay, Defendant argued that it reasonably
15 and in good faith believed it was providing a complete and accurate wage statement. *Id.*

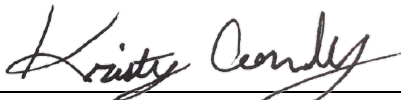
16 Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA
17 awards are discretionary and can be reduced by the Court. Connolly Decl., ¶ 13. Under Labor
18 Code § 2699(e)(2), the Court can reduce the PAGA penalties "if, based on the facts and
19 circumstances of the particular case, to do otherwise would result in an award that is unjust,
20 arbitrary and oppressive, or confiscatory." In other words, were this matter to go to trial, any
21 award granted would be at the discretion of the Court. *Id.* In settling this case, Plaintiff
22 recognizes that, although he believes there would be no persuasive grounds to reduce the
23 penalties, the Court could determine otherwise and significantly reduce the PAGA penalties,
24 especially given the bargained-for protections of the collective bargaining agreement. *Id.* The
25 wide range of potential recovery and the additional delays and risks of trial justified settling for a
26 reasonable amount of recovery. *Id.*

27 VI. CONCLUSION

1 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement
2 pursuant to PAGA in this Action.

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4 Dated: May 31, 2024

AEGIS LAW FIRM, PC

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6 By 
7 Kristy R. Connolly
8 Attorneys for Plaintiff Joey Leon
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