

1 **AEGIS LAW FIRM, PC**

2 KASHIF HAQUE, State Bar No. 218672
3 SAMUEL A. WONG, State Bar No. 217104
4 JESSICA L. CAMPBELL, State Bar No. 280626
5 9811 Irvine Center Drive, Suite 100
6 Irvine, California 92618
7 Telephone: (949) 379-6250
8 Facsimile: (949) 379-6251
9 Email: jcampbell@aegislawfirm.com

10 Attorneys for Plaintiff Phillip Nguyen,
11 individually and on behalf of all others similarly situated.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF SAN BERNARDINO**

14 PHILLIP NGUYEN, individually and on behalf
15 of all others similarly situated,

16 Plaintiff,

17 vs.

18 OCEANIA INTERNATIONAL, LLC; FLEX
19 SOLUTIONS, INC.; GREENLEAF GLOBAL;
20 and DOES 2 through 20, inclusive,

21 Defendants.

Case No. CIVSB2208552

*Assigned for all purposes to
Hon. Joseph Ortiz
Dept. S-17*

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

Date: December 7, 2023
Time: 1:30 p.m.
Dept: S17

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Philip Nguyen ("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 Greenleaf Global ("Defendant") in the amount of \$99,000.00. Plaintiff alleges
6 approximately 50 aggrieved employees who worked for Defendant that were allegedly not paid at
7 least minimum wages for all hours worked, not paid overtime compensation, not provided with
8 meal periods or compensation in lieu thereof, not provided with rest breaks or compensation in lieu
9 thereof, not provided with accurate wage statements, were not reimbursed for Defendant's
10 necessary business expenses, and were not paid all wages owed upon separation of employment.

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

16 **II. FACTUAL AND PROCEDURAL BACKGROUND**

17 On April 25, 2022, Plaintiff's counsel sent a letter to the California Labor & Workforce
18 Development Agency ("LWDA") via online submission and to Defendant via certified mail
19 regarding Defendant's alleged violations. *See* Campbell Decl., ¶ 3, Exhibit 2. ("Campbell Decl.").
20 The LWDA did not respond to this notice within 65 days, indicating it did not intend to investigate,
21 thus allowing Plaintiff to file the instant lawsuit pursuant to Labor Code Section 2699.3(a)(2)(A).
22 *See* Campbell Decl., ¶ 4.

23 On April 25, 2022 Plaintiff filed his Complaint as a class action lawsuit, alleging that,
24 Defendant failed to: (1) pay minimum wages, (2) pay overtime wages, (3) provide lawful meal
25 periods or compensation in lieu thereof, (4) authorize or permit lawful rest breaks or provide
26 compensation in lieu thereof, (5) reimburse class members for Defendant's Necessary Business
27 expenses, (6) provide accurate itemized wage statements, (7) timely pay all wages during
28 employment, (8) pay all wages timely upon separation of employment and, (9) abide by the

1 requirements of California Business and Professions Code Section 17200 *et seq.* Campbell Decl.
2 at ¶ 5. Plaintiff originally named as defendants Oceania International, LLC and Flex Solutions, Inc.,
3 but these defendants provided proof that Greenleaf Global was Plaintiff’s true employer, prompting
4 Plaintiff to dismiss Oceania International, LLC and Flex Solutions, Inc., and Doe in Greenleaf
5 Global. *Id.* at ¶ 6.

6 Due to the presence of arbitration agreements that Plaintiff and class members allegedly
7 signed, Plaintiff filed a First Amended Complaint on September 26, 2022, alleging a single cause
8 of action for Enforcement of Labor Code Section 2698 *et seq.*, (“PAGA.”) Campbell Decl., ¶ 7.

9 Through informal document production, Plaintiff received Defendant’s policy documents,
10 employee time records and pay records, and Plaintiff’s personnel file. Campbell Decl., ¶ 8.
11 Plaintiff’s counsel then reviewed timekeeping and payroll records and compared them to pay
12 records to identify potential violations. *Id.* Although the Parties originally set a mediation date, they
13 ultimately were able to resolve the case through negotiations between counsel due to the small class
14 size and experience of counsel in numerous PAGA cases on each side. Campbell Decl., ¶ 9.

15 On September 7, 2023, the parties then fully executed a joint stipulation of settlement. *Id.*
16 at ¶ 10. Plaintiff provided notice of the Settlement to the LWDA and served a copy of the motion
17 on the LWDA. Campbell Decl., ¶ 28, Exhibit 3.

18 **III. PAGA REQUIREMENTS**

19 Based on the California Supreme Court's opinions in *Arias v. Superior Court*, 46 Cal. 4th
20 969 (2009), and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014),
21 Plaintiffs can seek appropriate civil penalties as called for under PAGA on behalf of the State of
22 California and other similarly aggrieved employees without seeking class certification or meeting
23 the requirements of class certification (i.e. numerosity, typicality, commonality and adequacy). As
24 such, the class action two-step preliminary and final approval process is not required.

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

1 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee
2 must first provide written notice to the LWDA and the employer of the particular Labor Code
3 violations the aggrieved employee alleges the employer has violated. See Cal. Labor Code §
4 2699.3(a)(1)(A) (2016). Once the LWDA notifies the aggrieved employee that it does not intend to
5 investigate the alleged violations, or if the LWDA does not respond within a certain time period,
6 the aggrieved employee is then allowed to proceed in a civil action against the employer on behalf
7 of the LWDA and all other similarly aggrieved employees. See Cal. Labor Code § 2699.3(a)(2)(A)
8 (2016).

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

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

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

24 The Parties have agreed that Defendant will pay a total settlement amount of \$99,000.00
25 (the "Settlement Sum"). See Settlement Agreement, § II, paragraph 2. From this amount, up to
26 one-third (1/3) of the Settlement Sum, or \$33,000.00, is allocated to attorneys' fees and up to
27 \$10,000.00 to actual litigation costs. Settlement Agreement, § II(8). To date, Plaintiff's counsel has
28 spent \$3,888.85 in actual litigation costs and incurred \$92,530.00 in attorneys' fees. See Campbell

1 Decl., ¶¶ 24-25, Exhibit 4. The Settlement allocates up to \$2,500.00 to payment for Phoenix
2 Settlement Administrators' costs associated with administration of the Settlement. Settlement
3 Agreement, § II(2)(a). Plaintiff entered into a separate and confidential settlement for his individual
4 claims. Settlement Agreement, §II(3). Plaintiff's individual settlement contains his general release
5 and waiver of Civil Code § 1542 protections. *Id.*

6 After deducting the attorneys' fees and costs, Settlement Administrator's costs, and
7 Plaintiff's Service Payment, the remaining fund ("Net Settlement Amount") of \$59,611.15 will be
8 paid 75% to the LWDA ("LWDA PAGA Payment") and 25% to the PAGA Employees ("Employee
9 Amount"). Settlement Agreement, §II, Paragraphs 5-6. "PAGA Employees" or singularly "PAGA
10 Employee" means and refers to Plaintiff and all current and former non-exempt employees who
11 worked for Defendant within the State of California during the PAGA Period of April 25, 2021
12 through the date of court approval of the settlement agreement. Settlement Agreement, § 1(10)-
13 (11).

14 Each PAGA Employee will receive a pro rata portion of the Employee Amount, determined
15 based on the pay periods that he or she worked for Defendant in the State of California during the
16 PAGA Period, to be calculated as follows: the Employee Amount will be divided by the total
17 number of Pay Periods of all PAGA Employees to yield the "Per Pay Period Amount," and then
18 each PAGA Employee's individual number of Pay Periods will be multiplied by the Per Pay Period
19 Amount to yield his or her "Individual Settlement Payment." Individual Settlement Payments shall
20 be paid to PAGA Employees by way of a single check to each PAGA Employee ("Individual
21 Settlement Check"). Settlement Agreement, § II(6). All PAGA Employees' Payments will be
22 characterized as penalties for tax purposes and reported on IRS Form 1099. Settlement Agreement,
23 § II(7).

24 The Settlement Administrator will disburse Individual Settlement Checks to each PAGA
25 Employee to the last known physical address on file with Defendant in its regularly maintained
26 records. Prior to this disbursement, the Settlement Administrator shall check the addresses provided
27 using the National Change of Address database. Settlement Agreement, § V(4). For any returned
28 payments without a forwarding address, the Settlement Administrator shall run a skip trace. *Id.*

1 PAGA Employees will receive a letter along with their Individual Settlement Check explaining the
2 reason for the payment, the content of which will be submitted to the Court for approval. Settlement
3 Agreement, § V(4). The proposed letter is attached to the Settlement Agreement as Exhibit A. All
4 funds not claimed within 180 days of mailing of payment shall be sent to the California State
5 Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed
6 funds attributable to each PAGA Employee. Settlement Agreement, §V(6).

7 In exchange for the settlement payment, the State of California and the PAGA Employees
8 will release the "Released Parties" meaning "Defendant and its current and former parents,
9 predecessors or successors, holding companies, affiliated and subsidiary companies and entities,
10 owners, investors, shareholders, members, partners, officers, directors, managers, employees,
11 agents, attorneys, insurers, and assigns," from "all claims for PAGA civil penalties that were alleged
12 or could have been alleged based on the facts in Plaintiff's operative Complaint, or in Plaintiff's
13 notice letters to the LWDA on April 25, 2022 and June 2, 2022, which arose during the PAGA
14 Period. The Released Claims include, but are not limited to, claims for alleged off-the clock work
15 and Defendant's alleged failure to: pay all wages owed (including minimum wages and overtime
16 wages); provide lawful meal periods or compensation in lieu thereof; authorize or permit lawful
17 rest breaks or provide compensation in lieu thereof; reimburse necessary business related expenses;
18 provide accurate itemized wage statements; maintain accurate and complete records; pay wages
19 timely during employment; pay all wages owed upon separation of employment, and alleged
20 violations of Labor code sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,
21 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2698, et seq., and all applicable IWC Wage
22 Orders." Settlement Agreement, §§ I(16)-(17), III (1) – (2). Plaintiff entered into a separate and
23 confidential settlement for his individual claims. Settlement Agreement, §II(3). Plaintiff's
24 individual settlement contains his general release and waiver of Civil Code § 1542 protections. *Id.*

25 If the number of pay periods exceeds 800 by more than 15%, there will be a *Pro Rata*
26 adjustment to the Gross Settlement Amount Per Additional Pay Period. Settlement Agreement, §
27 II(4).

28

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

2 **A. Standard for Approval**

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

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

17 Here, the \$99,000.00 Gross Settlement Fund is reasonable for a group of approximately 50
18 employees. A penalty of \$99,000.00 is large enough to punish Defendant for alleged past violations
19 and deter future violations. The settlement amount is equivalent to a penalty of about \$1,980.00 per
20 employee. At the same time, the penalty amount is not so large as to be unjust, oppressive or
21 confiscatory, considering the company’s potential exposure explained below. Campbell Decl., ¶ 11.
22 The Settlement Sum is also reasonable in light of the facts of the foregoing action, the real risk that
23 no PAGA penalties would be paid, and inherent risks and uncertainties associated with PAGA
24 claims. Campbell Decl., ¶ 12.

25 Plaintiff calculated the potential exposure at the initial violation rate of \$100.00 per pay
26 period as follows: 800 x \$100.00 per pay period is \$80,000.00 Campbell Decl., ¶ 13. If the Court
27 stacked different types of penalties in each pay period, Plaintiff calculated the exposure as follows:
28

- a. 800 pay periods x \$100 per pay period x 100% violation rate = \$80,000.00 for rest break violations;
- b. 800 pay periods x \$100 per pay period x 30% violation rate = \$24,000.00 for meal period violations;
- c. 800 pay periods x \$100 per pay period x 8% violation rate (for failure to pay daily overtime) = \$6,400.00 for unpaid wages;
- d. 800 pay periods x \$250 per pay period x 100% violation rate = \$200,000.00 for wage statement penalties and;
- e. 800 pay periods x \$100 per pay period x 100% violate rate= \$80,000.00 for unreimbursed business expenses. *Id.*

Defendant raised a number of arguments during settlement negotiations and provided evidence that could have defeated Plaintiff's claims. Campbell Decl., ¶ 14. For example, Defendant argued daily overtime was paid correctly and Plaintiff at best had only identified an isolated incident, not a group-wide issue capable of a manageable trial. *Id.* Moreover, Plaintiff alleged Defendant failed to reimburse necessary business expenses by requiring employees to use personal phones and vehicles for work-related purposes. *Id.* However, Defendant responded by providing policy documents that allegedly state employees would be reimbursed mileage for usage of their personal vehicles, and Defendant has an expense reimbursement form that was made available for all employees who sought reimbursement for any purposes. *Id.* Regarding meal and rest violations, Plaintiff argued that Defendant maintained an illegal policy and practice of combining meal and rest breaks. *Id.* Defendant responded by citing policy documents that allegedly authorized compliant meal and rest breaks. *Id.*

Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA awards are discretionary and can be reduced by the Court. *Id.* at ¶ 15. Under Labor Code § 2699(e)(2), the Court can reduce the PAGA penalties "if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." In other words, were this matter to go to trial, any award granted would be at the discretion of the Court. *Id.* In settling this case, Plaintiff recognizes that, although he believes there

1 would be no persuasive grounds to reduce the penalties, the Court could determine otherwise and
2 significantly reduce the PAGA penalties, especially with such a small employer. *Id.* The wide
3 range of potential recovery and the additional delays and risks of trial justified settling for a
4 reasonable amount of recovery. *Id.*

5 **VI. CONCLUSION**

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

8
9 Dated: October 6, 2023

AEGIS LAW FIRM, PC

10
11 By _____



Jessica L. Campbell
Attorneys for Plaintiff Philip Nguyen