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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JOSEPH VAN DERA, an individual,

Plaintiff,

vs.

COMPA INDUSTRIES, INC., a
California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 3:23-cv-00049-W-JLB

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION TO APPROVE THE
PARTIES' SETTLEMENT
AGREEMENT PURSUANT TO THE
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004; AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: June 26, 2023

Time: Taken under submission. No oral
argument pursuant to Local Rule 7.1(d)(1)
Dept.: 3C

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Attorneys for Plaintiff JOSEPH VAN DERA

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

2 **PLEASE TAKE NOTICE** that on June 26, 2023, before the Honorable
3 Thomas J. Whelan, District Judge, in Courtroom 3C of the United States District
4 Court, Southern District of California, located at 221 W. Broadway, San Diego,
5 California 92101, Plaintiff Joseph Van Dera (“Plaintiff”) will, and hereby does, move
6 the Court for entry of an order approving the Settlement Agreement and Mutual
7 Release (“Settlement Agreement” or “Settlement”) entered into in the above-
8 captioned civil action between Plaintiff and Defendant COMPA INDUSTRIES, INC.
9 (“Defendant”) (Plaintiff and Defendant shall collectively be referred to as the
10 “Parties”) under the Labor Code Private Attorneys General Act of 2004 (the
11 “PAGA”). Pursuant to Local Rule 7.1(d)(1), the matter will be taken under
12 submission.

13 This motion is made pursuant to California Labor Code § 2699(l)(2), which
14 requires trial courts to “review and approve any settlement of any civil action filed
15 pursuant to [PAGA],” *see* Cal. Lab. Code § 2699(l)(2), and on the grounds that the
16 parties’ settlement is fundamentally fair, adequate, and reasonable in light of the
17 PAGA’s policies and purposes. As set forth in the concurrently filed declaration of
18 Edward W. Choi, a copy of the Parties’ proposed Settlement Agreement and this
19 motion was electronically submitted to the Labor and Workforce Development
20 Agency in accordance with California Labor Code §§ 2699(l)(2) and 2699(l)(4)
21 concurrent with the filing of this motion.

22 This motion is based on this notice of motion and motion for approval of the
23 Parties’ Settlement Agreement attached to the Declaration of Edward W. Choi and
24 the Settlement Agreement attached thereto as **Exhibit A**, concurrently filed herewith;
25 the attached memorandum of points and authorities in support of this motion; the
26 concurrently filed declaration of Edward W. Choi in support of this motion; all
27 pleadings, records, and files in this action; and upon such other matters as may be
28 properly presented to, or received by, the Court at or before the hearing on this

1 motion.

2
3 Dated: May 3, 2023

LAW OFFICES OF CHOI & ASSOCIATES, P.C.

4
5 By: /s/ Edward W. Choi
6 Edward W. Choi, Esq.
7 Attorneys for Plaintiff Joseph Van Dera and the
8 Aggrieved Employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion Plaintiff Joseph Van Dera (“Plaintiff”) respectfully
4 request the Court’s approval of the Settlement Agreement and Mutual Release (the
5 “Settlement Agreement” or “Settlement”) with Defendant Compa Industries, Inc.
6 (“Defendant”).

7 The settlement was reached after two early neutral evaluation sessions with
8 Honorable Jill L. Burkhardt on February 23, 2023 and March 6, 2023. (Declaration
9 of Edward W. Choi (“Choi Decl.”) ¶13).

10 As part of their privileged settlement negotiations, Defendant produced the
11 wage statements issued for the Aggrieved Employees during the PAGA period, from
12 which Plaintiff’s counsel calculated the maximum PAGA penalty exposure. (Choi
13 Decl. ¶14). Based on this information along with a declaration submitted by
14 Defendant’s chief executive officer, the Parties have settled this case on a
15 representative PAGA basis for \$1,000.00. *Id.*

16 Attorney’s fees and service award are not being sought through the settlement.
17 Instead, the Parties propose that the entire settlement amount be distributed per the
18 PAGA, of which 75% is to be distributed to the Labor and Workforce Development
19 Agency (the “LWDA”) and 25% of which is to be distributed to the “Aggrieved
20 Employees” on whose behalf Plaintiff filed this action as required by PAGA. *Id.*

21 Under PAGA, the Court must review and approve the proposed settlement. *See*
22 Cal. Lab. Code § 2699 (l)(2). Accordingly, Plaintiffs bring this motion to request
23 approval of the Settlement Agreement on the grounds it is fundamentally fair,
24 adequate, and reasonable in light of PAGA’s policies and purposes and the facts and
25 circumstances discussed in detail below.

26 **II. PROCEDURAL BACKGROUND**

27 On July 21, 2022, Plaintiff sent notice to the LWDA giving notice of his intent
28 to pursue a representative PAGA action, on behalf of himself and the State of

1 California as well as on behalf of other aggrieved employees (the “PAGA Notice”).
2 (Choi Decl. ¶2, Ex. B). On or about November 28, 2022, Plaintiff sent an additional
3 written notice to the LWDA of Defendant’s violations of Labor Code §§ 98.6, 970,
4 972, and 1102.5, pursuant to Labor Code § 2698. (*Id.* at ¶9).

5 On November 29, 2022, Plaintiff filed a Complaint in the Superior Court of the
6 State of California for the County of San Diego, entitled *Joseph Van Dera v. Compa*
7 *Industries, Inc.*, Case No. 37-2022-00047770-CU-WT-CTL for (1) Disability
8 Discrimination in Violation of the Fair Employment and Housing Act (“FEHA”); (2)
9 Failure to Accommodate in Violation of the FEHA; (3) Failure to Engage in
10 Interactive Process in Violation of the FEHA; (4) Failure to Prevent Discrimination
11 in Violation of the FEHA; (5) Retaliation in Violation of the FEHA; (6) Violation of
12 Labor Code §§ 970 and 972; (7) Whistleblower Retaliation in Violation of Labor
13 Code §§ 98.6 and 1102.5; (8) Wrongful Termination in Violation of Public Policy;
14 (9) Intentional Infliction of Emotional Distress; and (10) Violation of the Private
15 Attorneys General Act (“PAGA”). (Choi Decl. ¶10)

16 On January 11, 2023, Defendant removed the action to the U.S.D.C. Southern
17 District of California (the “Court”), Case No. 23CV0049W JLB.

18 On February 23, 2023 and March 6, 2023, the Parties attended an Early
19 Neutral Evaluation with Honorable Jill L. Burkhardt and reached a settlement of the
20 representative PAGA claim for \$1,000.00 (“Settlement Amount”).

21 **III. FACTUAL BACKGROUND**

22 Defendant is a company that provides personnel, technical, and administrative
23 support to various U.S. government entities. (Choi Decl. ¶6). Defendant recruits and
24 employs individuals from various states, including the state of California to work for
25 its clients in different states. (*Id.* at ¶6). Plaintiff, as California resident, was
26 formerly employed by Defendant to work for Defendant’s client, TRIAD National
27 Security LLC, in the Los Alamos National Laboratory located in New Mexico. (*Id.*
28 at ¶8).

1 Plaintiff's July 21, 2022 PAGA notice alleges that Defendant violated Labor
2 Code §204 by failing to pay all wages earned within 7 days of the end of the pay
3 period end date. (Choi Decl. ¶2, Ex. B). For the pay period ending on September
4 25, 2022, Defendant revised its payroll practice to pay all wages earned within 5 days
5 of the pay period ending date, which is compliant with Labor Code §204. (*Id.* at ¶3).

6 During the PAGA Period (July 21, 2021 to September 30, 2022), Defendant
7 has employed two full time employees and three part time employees who were
8 based out of California. (Choi Decl. ¶4). During the PAGA Period, Defendant
9 issued a total of 57 wage statements to the aggrieved employees. (*Id.* at ¶5).

10 The Parties have agreed to settle Plaintiff's the PAGA claim for \$1,000.00.
11 (Settlement Agreement ¶ 1). PAGA Settlement Amount is allocated to the payment
12 of civil penalties under PAGA, of which 75% is to be distributed to the LWDA and
13 25% of which is to be distributed to the Aggrieved Employees on whose behalf
14 Plaintiffs filed this action as required by PAGA. (*Id.* ¶¶ 5-6).

15 The Settlement Agreement provides the following release:

16 Plaintiff, as a proxy of the State of California's LWDA,
17 releases any all claims under the PAGA *with prejudice*
18 against Defendant, and any of its present and former parents,
19 subsidiaries and affiliated companies, including Triad
20 National Security, LLC and Los Alamos National
21 Laboratory ("LANL"), or entities, from penalties under the
22 California Private Attorneys' General Act predicated on the
23 violation of Labor Code § 204 that accrued during the PAGA
24 Period.

25 *Id.* ¶ 9.

26 Each Aggrieved Employee will receive an individual payment proportionate to
27 the number of Compensable Pay Periods worked. *See Id.* ¶ 5. Each Aggrieved
28 Employee's Settlement Share shall be determined by multiplying the Aggrieved
Employee Fund by a fraction, with the numerator equal to the number of pay periods
worked by each Aggrieved Employee during the PAGA Period and the denominator
equal to the number of whole pay periods collectively worked by all of the Aggrieved

1 Employees during the PAGA Period. Each Settlement Share will be considered the
2 payment of a civil penalty and treated as IRS Form 1099 income. (*Id.*).

3 **IV. STANDARD OF REVIEW**

4 Although PAGA requires courts to “review and approve” the settlement of any
5 civil action filed under PAGA, *see* Cal. Lab. Code § 2699 (l)(2), neither the
6 Legislature, the California Supreme Court, the California Courts of Appeal, nor the
7 LWDA has identified the standard PAGA settlements must satisfy. *See Haralson v.*
8 *U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d 959, 971 (N.D. Cal. 2019) (noting the
9 absence of a “definitive” guidance for approval of a PAGA settlement); *see also*
10 *Smith v. H.F.D. No. 55, Inc.*, No. 2:15-cv-01293, 2018 WL 1899912, at *2 (E.D. Cal.
11 Apr. 20, 2018) (“PAGA does not establish a standard for evaluating PAGA
12 settlements.”). The LWDA itself has acknowledged the lack of a “specific
13 benchmark” and stated only that the relief provided under PAGA must be “genuine
14 and meaningful,” “consistent with the underlying purpose of the statute to benefit the
15 public” and, in the context of a class action, “meet[] the standards of being
16 ‘fundamentally fair, reasonable, and adequate’ with reference to the public policies
17 underlying the PAGA.” *See* California Labor and Workforce Development Agency’s
18 Comments on Proposed PAGA Settlement at 2-3, *O’Connor v. Uber Techs. Inc.*, 201
F. Supp. 3d 1110, 1133 (N.D. Cal. 2016).

19 Left to develop their own standards, federal district courts have typically
20 followed the LWDA’s limited guidance by requiring settlements to be
21 “fundamentally fair, adequate, and reasonable in light of PAGA’s policies and
22 purposes.” *See Haralson*, 383 F. Supp. 3d at 972 (collecting cases). When applying
23 this test, federal district courts often consider factors such as strength of a plaintiff’s
24 case; the risk, expense, complexity, and likely duration of further litigation; the
25 amount offered in settlement; the extent of discovery completed; and the expertise
26 and views of counsel. *See Smith*, 2018 WL 1899912 at *3. Federal district courts
27 have also been mindful of the fact that trial courts have broad discretion to award
28 civil penalties in amounts that are less than the maximum amounts authorized by

1 PAGA. *See, e.g., id.* at *3; *see also* Cal. Lab. Code § 2699 (e)(2).

2 **V. ARGUMENT**

3 **A. Notice of the Settlement Agreement Has Been Given to the LWDA**
4 **Pursuant to Labor Code § 2699(l)(2)**

5 When enacting PAGA, the Legislature intended to ensure that the LWDA
6 retained “primacy” over private enforcement actions. *See* 2003 Cal. Stat. ch. 906 §
7 1(d). To that end, PAGA requires parties who seek approval of a proposed PAGA
8 settlement to submit the proposed settlement to the LWDA online “at the same time
9 that it is submitted to the court,” to give LWDA an opportunity to comment on the
10 proposed settlement. *See* Cal. Lab. Code §§ 2699(l)(2), 2699(l)(4). In satisfaction of
11 that requirement, Plaintiff submitted a copy of the Settlement Agreement and this
12 motion to the LWDA through the LWDA’s online filing system in conjunction with
13 filing this motion. *See* Choi Decl. ¶23, Ex. C.

14 **B. The Court Should Approve the Settlement Agreement**

15 **1. The Settlement Agreement is Entitled to a Presumption of**
16 **Fairness**

17 In class actions, judicial review of a settlement’s fairness is designed to protect
18 class members who had no say in the negotiation of the settlement by ensuring that
19 the settlement is not the product of “fraud,” “overreaching,” or “collusion” by the
20 negotiating parties and that “due regard” was given to the rights and interests of
21 absent class members subject to the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.
22 App. 4th 1794, 1800-01 (1996). Although PAGA actions and class action have
23 certain “fundamental” differences (*see Sakkab v. Luxottica Retail North America,*
24 *Inc.*, 803 F.3d 425, 435 (9th Cir. 2015)), PAGA settlements are also subject to Court
25 approval. *See Arias v. Superior Court*, 46 Cal. 4th 969, 985 (2009) (discussing the
26 scope of a judgment in a PAGA action); *O’Connor v. Uber Techs., Inc.*, 201 F. Supp.
3d 1110, 1134 (N.D. Cal. 2016).

27 Against this backdrop, California courts have identified a set of circumstances
28 entitling class action settlements to a “presumption of fairness.” *See Dunk*, 48 Cal.

1 App. 4th at 1802. In particular, a presumption of fairness arise where “(1) the
2 settlement is reached through arm’s-length bargaining; (2) investigation and
3 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
4 is experienced in similar litigation; and (4) the percentage of objectors is small.” See
5 *id.*

6 All of the factors that would give rise to a presumption of fairness in the
7 context of a class action settlement are present in this PAGA action. After this
8 lawsuit was commenced, the Parties agreed to engage in arm’s length negotiations
9 between highly experienced counsel. As part of their privileged settlement
10 negotiations, Defendant produced all of the wage statements issued to the Aggrieved
11 Employees, from which Plaintiffs’ Counsel calculated the maximum PAGA penalties
12 and analyzed Defendant’s potential liability. (Choi Decl. ¶14). Plaintiff’s counsel
13 have significant experience in litigating wage and hour class and PAGA actions,
14 which further supports the reasonableness of the settlement. (*Id.* at ¶21-22).
15 Therefore, the Settlement Agreement is entitled to a presumption of fairness.

16 **2. The Scope of the Settlement Agreement is Fair, Adequate, and**
17 **Reasonable**

18 Citing a decline in “[s]taffing levels for state labor law enforcement” and
19 finding the “vigorous assessment and collection of civil penalties as provided in the
20 Labor Code” to sometimes be “the only meaningful deterrent to unlawful conduct,”
21 the Legislature enacted PAGA in 2003 to deter violations of the Labor Code by
22 augmenting the limited enforcement capability of the LWDA with private
23 enforcement actions by “aggrieved employees” acting as private attorneys general.
24 See 2003 Cal. Stat. ch. 906 § 1; see also *Iskanian v. CLS Transportation Los Angeles,*
25 *LLC*, 59 Cal. 4th 348, 383 (2014). Thus, a PAGA is in the nature of in the nature of
26 an enforcement action, where the named plaintiff acts as a proxy of the LWDA to
27 collect penalties otherwise recoverable only by the LWDA. See *Arias*, 46 Cal. 4th at
28 986; see also *Iskanian*, 59 Cal. 4th at 381-82. In that role, the named plaintiff “take[s]
on a special responsibility to their fellow aggrieved workers who are effectively

1 bound by any judgment.” *See O’Connor*, 201 F. Supp. 3d at 1134.

2 The Settlement in this matter is only for Plaintiff’s claims for alleged
3 violations of Labor Code §204, and 2698, *et seq.*

4 When reviewing a settlement agreement, “the test is not the maximum
5 amount plaintiffs might have obtained at trial on the complaint,” *see Wershba v.*
6 *Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001), nor is it “whether the
7 settlement agreement is perfect in the estimation the reviewing court.” *See Lane v.*
8 *Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012). The test is “whether the
9 settlement is reasonable under all of the circumstances.” *See Wershba*, 91 Cal. App.
10 4th at 250. Relevant considerations include the strength of a plaintiff’s case and the
11 risk, expense, complexity, and likely duration of further litigation. *See Kullar v. Foot*
12 *Locker Retail, Inc.*, 168 Cal. App. 4th 116, 130 (2008); *see also Smith*, 2018 WL
13 1899912 at *2. In PAGA settlements, courts also consider their authority to award
14 less than the maximum penalty authorized by PAGA. *See Cal. Lab. Code § 2699*
15 *(e)(2); see also Smith*, 2018 WL 1899912 at *3.

16 Here, there were a total of 57 wage statements issued to its Aggrieved
17 Employees. (Choi Decl. ¶15). Based thereon, PAGA’s penalty structure is based on
18 the number of violations of the Labor Code committed during a given pay period. *See*
19 *Cal. Lab. Code § 2699(f)*. Defendant’s potential exposure could be as high as
20 \$5,700.00 if the Court were to award a \$100 penalty for each pay period
21 encompassed by the proposed settlement for each of the violation of Labor Code
22 §204. (Choi Decl. ¶16).

23 Defendant also argued that even if Plaintiff prevailed, the recoverable
24 penalties under PAGA are minimal. Indeed, courts to often significantly reduce the
25 penalties awarded when there is a good faith attempt to comply with the law. *See*
26 *Carrington v. Starbucks Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392
27 (published Dec. 19, 2018) (approving PAGA penalty reduction to \$5 per pay
28 period); *accord Atempa v. Pedrazzani*, 27 Cal. App. 5th 809 (2018). If the Court in
this case were to reduce penalties to \$5 a pay period, as was approved in

1 *Carrington*, the potential exposure amounts to approximately \$285.00 (57 pay
2 periods x \$5.00).

3 Under the circumstances of this case, the payment of \$1,000.00 in civil
4 penalties is fair, adequate, and reasonable. The payment of \$1,000.00 in exchange for
5 a release of only those claims for civil penalties for violation of Labor Code §204.

6 In sum, this settlement is fair, reasonable, and consistent with PAGA's policies
7 and purposes under these circumstances.

8 **3. The Settlement Agreement Apportions Civil Penalties**
9 **Between the LWDA and the Aggrieved Employees as**
10 **Required by PAGA**

11 Except when civil penalties are recovered from a defendant who did not have
12 any employees at the time of an alleged violation, civil penalties recovered under
13 PAGA must be distributed so that 75% of the civil penalties are paid to the LWDA
14 and 25% are paid to the "aggrieved employees" on whose behalf the PAGA action
15 was brought. *See* Cal. Lab. Code § 2699(i).

16 In full compliance with that rule, the Settlement Agreement requires 75% of
17 the Settlement Amount to be paid to the LWDA and 25% of the Settlement Amount
18 to be paid to the Aggrieved Employees. (Settlement Agreement ¶¶6-7). The
19 Aggrieved Employees will receive penalties based on the number of pay periods they
20 worked during the applicable period using a pro rata distribution formula. (*Id.* ¶ 5).

21 **4. While PAGA Allows a Prevailing Plaintiff to Recover**
22 **Attorney's fees, Plaintiff's counsel are Not Seeking Fees and**
23 **Costs From the PAGA Settlement**

24 PAGA allows a prevailing plaintiff to recover reasonable attorneys' fees. *See*
25 Cal. Lab. Code § 2699(g). However, Plaintiff's counsel is not seeking fees and costs
26 from this Settlement.

27 ///

28 ///

1 **5. The Settlement Agreement Requires Defendant to Calculate**
2 **and Pay the LWDA and Aggrieved Employees**

3 Because the amount in controversy for PAGA penalty is at maximum \$5,700,
4 even if the Plaintiff were to prevail at trial and was awarded maximum penalties, the
5 retention of a Settlement Administrator, would have been cost prohibitive since a
6 large percentage of the Settlement would be paid to a Settlement Administrator.
7 (Choi Decl. ¶18).

8 **VI. CONCLUSION**

9 For all of the foregoing reasons, Plaintiffs request that the Court approve the
10 Settlement Agreement pursuant to Labor Code § 2699(1)(2).

11
12 Dated: May 3, 2023

LAW OFFICES OF CHOI & ASSOCIATES, P.C.

13
14 By: /s/ Edward W. Choi

15 Edward W. Choi, Esq.

16 Attorneys for Plaintiff Joseph Van Dera and the
17 Aggrieved Employees
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