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7 **SUPERIOR COURT OF CALIFORNIA**

8 **COUNTY OF TULARE**

9 STATE OF CALIFORNIA ex rel. JAVIER
10 MIRELES as Private Attorney General,

11 Plaintiffs,

12 vs.

13 CENTRAL VALLEY CONSTRUCTION;
14 and DOES 1-25, inclusive,

15 Defendants.
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CASE NO. VCU293499

**MEMORANDUM OF POINTS AND
AUTHORITIES OF UNOPPOSED
MOTION AND MOTION FOR AN
ORDER APPROVING
SETTLEMENT OF CLAIMS
BROUGHT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

*[Concurrently filed with the Notice; Decl.
of Lauren E. Grochow; and Proposed
Order]*

Complaint Filed: September 26, 2022
Trial Date: April 28, 2025

Hearing Date: March 24, 2025
Time: 08:30 AM
Dept.: 07

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Javier Mireles (“Plaintiff”) hereby seeks court approval of a settlement of a pending Private Attorneys General Act of 2004 (“PAGA”) claim, which was initiated by Plaintiff’s Counsel submitting the PAGA Notice on behalf of Plaintiff, to the Labor and Workforce Development Agency (“LWDA”) and Defendant Central Valley Construction (“Defendant”), dated July 20, 2022, pursuant to the PAGA. The PAGA Notice detailed Plaintiff’s intent to seek civil penalties under PAGA for Defendant’s alleged violations of California Labor Code sections 201, 201.3, 201.5, 201.9, 202, 204.1, 204.2, 205.5, 226, 226.7, 1174, 1182.12, 1197, 1198, 6400, 6401, 6402, 6403, 6404, and 6401.7; Health and Safety Code section 25910; and applicable Industrial Welfare Commission Wage Orders, thereby initiating LWDA Case Number LWDA-CM-896585-22.

On September 26, 2022, Plaintiff filed a complaint in Tulare County Superior Court, thereby initiating this Action.

The \$100,000.00 PAGA Settlement is for approximately 361 employees for the period of July 1, 2021 to December 31, 2023. The corresponding allocation for civil penalties therein, is more than fair, adequate, and reasonable and constitutes a noteworthy recovery for what is a largely defensible PAGA claim and is sufficient enough to deter any further violations and encourage compliance. The Parties reached their settlement after months of negotiations, which included an analysis of Defendant’s financial status as a sole proprietorship.

II. PROCEDURAL HISTORY AND ANALYSIS

The procedural calendar for the case started from July 20, 2022, when Plaintiff submitted a Notice of his intention with LWDA to proceed with Labor Code violations under the PAGA against Defendant. The Notice communicated an intention by Plaintiff to file a civil lawsuit in the State of California pursuant to Labor Code § 2698 et seq. (Decl. of Lauren E. Grochow (“LG Dec.”) ¶ 10.)

On September 26, 2022, Plaintiff filed a complaint in Tulare County Superior Court, thereby initiating the Action. (LG Dec. ¶ 11.)

The Complaint comprised of a single cause of action under the PAGA for the following Labor Code violations: 1) Failure to Pay Minimum Wages and Overtime; 2) Failure to Provide or Pay for Rest Periods; 3) Failure to Provide or Pay for Recovery Periods; 4) Untimely Payment of Wages; 5) Failure to Keep or Produce Records of Hours Worked; 6) Failure to Issue and Keep Records of Wage Statements; 7) Failure to Pay Wages at Termination; 8) Violation of Heat Illness Prevention Health-and-Safety Standards; 9) Failure to Establish, Implement, and Maintain Effective Injury Prevention Program; and 10) Requiring Unsafe Work and Failure to Provide Safe Workplace, Practices, and Processes. (LG Dec. ¶ 12.)

III. SETTLEMENT AND DISTRIBUTION

The parties entered into a PAGA Settlement Agreement (The “Settlement Agreement” or “SA”), Exhibit A. The Settlement Agreement has 10 separate Provisions, addressing, among other terms: Definitions (Provs. 1.1 – 1.29), Monetary Terms (Provs. 3.1 – 3.2.4.3), Settlement Funding and Payments (Provs. 4.1 – 4.4.4.), Releases of Claims (Provs. 5.1 – 5.2), Settlement Administration (Provs. 7.1 – 7.3.3). The Aggrieved Employee Size is estimated at 361, who worked 5,724 Pay Periods during the PAGA period (Prov. 4.1). (LG Dec. ¶ 13.)

The monetary terms may be summarized as follows: The Parties’ settlement allocates \$100,000 for settlement of the Released PAGA Claims (“Gross Settlement Amount”) (Ex. A, SA, § 3.1); the agreed attorneys’ fees are up to 33% of the gross recovery or \$33,000 (SA, § 3.2.1); the incurred litigations costs is \$847.37; \$3,750 is allocated to Phoenix Class Action Administration Solutions (“Settlement Administrator”) (SA, § 3.2.2) pursuant to the administrative bid (LG Dec., Ex. B); and \$5,000 as enhancement payment to Plaintiff for representing the PAGA class (LG Dec. ¶ 14; SA, § 3.2.3). The Settlement Administrator’s qualifications are set forth in a declaration from the administrator. (LG Dec., Ex. B.)

The above computation will leave a net balance of \$57,402.63, from which sum 75% or \$43,051.97 will be paid to the State of California (LWDA) and the remaining 25% or \$14,350.66 will be distributed to the PAGA class – the Aggrieved Employees – which may translate into an average payout to each member about \$39.75. Of course, the Administrator will adjust these

1 figures before making the distributions in accordance with the Court's Order. (LG. Dec. ¶ 15.,
2 SA, §§ 3.2.4.1 and 3.2.4.2)

3 Within 14 calendar days after Defendant fully funds the Gross Settlement Amount, in
4 installments detailed below, the Administrator will calculate each Individual PAGA Payment by
5 (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$39.75 or
6 the amount to be approved by the court) by the total number of PAGA Period Pay Periods
7 worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by
8 each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full
9 responsibility and liability for any taxes owed on their Individual PAGA Payment. (LG Dec.
10 ¶ 16, Ex. A, SA, §§ 3.2.4.1, 3.2.4.2.)

11 Within 10 days after the Administrator receives the Gross Settlement Amount, Defendant
12 will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a
13 Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator
14 must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data
15 only for purposes of this Settlement and for no other purpose, and restrict access to the
16 Aggrieved Employee Data to Administrator employees who need access to the Aggrieved
17 Employee Data to effect and perform under this Agreement. (LG Dec. ¶ 17, Ex. A, SA, § 4.2.)

18 Due to the Defendant's financial condition, the Gross Settlement Amount shall be paid as
19 follows: \$40,000 within 14 days after the effective date, then monthly payments of no less than
20 \$2,500 commencing on January 1, 2025 and continuing until the remaining \$60,000 is paid in
21 full. (LG Dec. ¶ 18, SA, § 4.3)

22 The Administrator will issue checks for the Individual PAGA Payments and send them to
23 the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check
24 shall prominently state the date (not less than 180 days after the date of mailing) when the check
25 will be voided. The Administrator will cancel all checks not cashed by the void date. Before
26 mailing any checks, the Settlement Administrator must update the recipients' mailing addresses
27 using the National Change of Address Database. (LG Dec. § 19, SA, § 4.4.1.)
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1 The Administrator must conduct an Aggrieved Employee Address Search for all
2 Aggrieved Employees whose checks are returned undelivered without USPS forwarding address.
3 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
4 forwarding address provided or to an address ascertained through the Aggrieved Employee
5 Address Search. The Administrator need not take further steps to deliver checks to Aggrieved
6 Employees whose re-mailed checks are returned as undelivered. The Administrator shall
7 promptly send a replacement check to any Aggrieved Employee whose original check was lost or
8 misplaced, requested by the Aggrieved Employee prior to the void date. (LG Dec. ¶ 20, SA,
9 § 4.4.2.)

10 The Settlement Administrator will compute the pro-rate share of each Aggrieved
11 Employee in accordance with the work week factor set forth above and will mail the respective
12 share of the Aggrieved Employees together with a “Notice of Settlement,” explaining in detail
13 and in conformity with the Settlement Agreement, which, *inter alia*, provides notice of the
14 following to each PAGA class member:

- 15 ➤ What is this notice about?
- 16 ➤ What is this lawsuit about?
- 17 ➤ Who is included in this settlement?
- 18 ➤ What will I receive from the settlement & the release?
- 19 ➤ What are my rights & contact information?

20 (LG Dec. ¶ 21, Ex. B.)

21 **IV. THE SETTLEMENT IS ADEQUATE, REASONABLE & FAIR**

22 This case addresses violations of important employee protections embodied in the
23 California Labor Code as follows: Defendants failed to pay Plaintiff and Aggrieved Employees
24 all wages due including all overtime and minimum wages in violation of Labor Code § 510, and
25 § 1198; failed to provide legally compliant rest periods to Plaintiff and Aggrieved Employees in
26 violation of Labor Code § 226.7; failed to provide legally compliant pay for recovery periods to
27 Plaintiff and Aggrieved Employees in violation of Labor Code § 226.7 and § 3395 ; failed to pay
28 Plaintiff and Aggrieved Employees their timely wages in violation of Labor Code § 201, § 201.3,

§ 202, § 204.1, or § 204.2; failed to keep or provide Plaintiff and Aggrieved Employees records of hours worked in violation of Labor Code § 1174 and § 1198; failed to issue and keep records of Wage statements of Plaintiff and Aggrieved Employees in violation of Labor Code § 226; failed to provide wages at termination to the Plaintiff and Aggrieved Employees in violation of Labor Code § 201 and §203; failed to prevent violation of heat illness and health-and-safety standards towards the Plaintiff and Aggrieved Employees in violation of Labor Code § 6407 and § 3395; failed to establish, implement, and maintain effective injury prevention program to the Plaintiff and Aggrieved Employees in violation of Labor Code § 6401.7; failed to provide safe workplace, practices, and processes to the Plaintiff and Aggrieved Employees in violation of Labor Code § 6400, § 6401, § 6402, § 6403 and § 6404. (LG Decl. ¶ 22.)

In addition to the factors presented above, the proposed Settlement does not possess any obvious deficiencies. The Settlement contemplates entry of an order (submitted concurrently herewith) which approves the Settlement and dismisses the Action with prejudice. (LG Decl. ¶ 23.)

PAGA settlement of \$100,000 is more than fair, reasonable, and adequate settlement due to the above-described circumstance, especially considering the strong possibility there would be no recovery without this settlement. Even if Plaintiff was to prevail on the underlying claim, he would face the potential of discretionary reduction of maximum penalties by the Court and reported cases. (LG Decl. ¶ 24.)

V. ATTORNEYS' FEES ARE REASONABLE

Grochow Law, APC ("GL") is the PAGA counsel, and seeks a fee award calculated as a percentage of the total value of the settlement for successful prosecution and resolution of all existing claims. From June 1, 2023, two attorneys from our GL have worked on this matter for the past 19 months, with a lodestar of over 50 hours for attorney Lauren E. Grochow (12 years as a practicing attorney in the state of California with an hourly rate of \$795.00) and over 20 hours for attorney Daniel M. Kalinowski (10 years of practicing attorney in the State of California with an hourly rate of \$650.00). These are reduced rates to those of the Laffey Matrix (for attorneys of like experience and years of practice in the Los Angeles County). The represented working hours

1 include the time spent with client, preparation of the file, drafting and filing of the complaint,
2 amending and filing Complaints, meet and confer between counsel, submittal of PAGA letter
3 and amendment thereto, follow up with client regarding status, review and analysis of the
4 produced data, communications re follow up production, settlement negotiations, preparation and
5 participation at mediation, drafting settlement papers, review of the terms with the client, as well
6 as preparation of the approval papers. (LG Dec. ¶ 25.)

7 GL also has a 20% fee splitting agreement with Attorney Ruben Escobedo who originally
8 filed the LWDA Letter and complaint in this matter. Mr. Escobedo spent a significant amount of
9 time investigating and drafting the LWDA Letter and Complaint. There is a signed retainer
10 agreement with Plaintiff, which is for a contingency recovery of 33% of the gross recovery. That
11 signed retainer agreement also discloses the fee-splitting agreement with Mr. Escobedo for the
12 work he performed on the matter. Both California State and Federal Courts have recognized that
13 an appropriate method in determining an attorney fee award may be based on the percentage on
14 the total value of the benefits conferred by the settlement. *Serrano v. Priest* (1997) 20 Cal. 3d 25-
15 34 [*Serrano III*]; *Boeing Co. v. Van Gemert* (1980) 344 U.S. 472, 478; *Vincent v. Hughes*
16 *Airwest, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. (LG Dec. ¶ 26.)

17 The California Supreme Court endorsed a fee award as a percentage of the common
18 Fund. The Court clarified “that when an attorney fee is awarded out of a common fund preserved
19 or recovered by means of litigation (internal citation omitted), the award is not per se
20 unreasonable merely because it is calculated as a percentage of the common fund.” *Laffitte v.*
21 *Robert Half Int’l. Inc.* (2016) 1 Cal. 5th 480, 486. Also “[t]hat the recognized advantages of the
22 percentage method...convince us that the percentage method is a valuable tool that should not be
23 denied in our trial courts.” *Id.* at 503. (LG Dec. ¶ 27.)

24 The Common Fund Doctrine is predicated on the principle of preventing unjust
25 enrichment. When a litigant’s efforts create or preserve, or generate a fund from which others
26 derive benefits, he may require the passive beneficiaries to compensate those who created the
27 fund. Both California State and Federal Courts have embraced this Doctrine. *Serrano III, supra*,
28 at 35; *Vincent, supra*, at 769. Since *Serrano III, supra*, there has been a ground swell of support

1 for mandating the percentage of the fund approach in common fund cases. Both State and
2 Federal Court have found the percentage approach preferable to the Lodestar because; (1) it
3 aligns the interest of counsel and absent parties (PAGA Counsel and the LWDA here); (2) it
4 encourages efficient resolution of the litigation by providing an incentive for early, yet
5 reasonable, settlement; and (3) it reduces the demand on judicial resources. *In re Activision Sec.*
6 *Litig.* (N.D. Cal. 1989) 723 F Supp. at 1378-79. ((LG Dec. ¶ 28.))

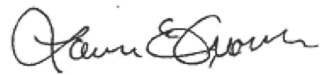
7 In accordance, therefore, the PAGA settlement is fair, adequate, and reasonable, as are
8 PAGA Counsel's fees and costs, and request the Court enter Order in accordance.

9 **VI. CONCLUSION**

10 In light of the foregoing and other evidence which may be presented during the hearing
11 as called upon by the Court, Plaintiff submits that the PAGA settlement is fair, adequate and
12 reasonable and so too the requested distributions. An Order in conformity is respectfully
13 requested hereby.

14 Dated: February 18, 2025

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