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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MARK SAILAS, individually, and on behalf
of aggrieved employees pursuant to the
Private Attorneys General Act ("PAGA");

Plaintiff,

v.

HEALTH-ADE LLC, a Delaware limited
liability company; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 22TRCV00881

Assigned for All Purposes to:
Honorable Ronald F. Frank
Department 8

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT (LABOR
CODE § 2698, *ET SEQ.*) SETTLEMENT
AGREEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Reservation ID: 145348680453]

[Declaration of Counsel (Douglas Han);
Declaration of Plaintiff (Mark Sailas); and
[Proposed] Order and Judgment filed
concurrently herewith]

Hearing Date: May 23, 2023
Hearing Time: 8:30 a.m.
Hearing Place: Department 8

Complaint Filed: October 4, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on May 23, 2023 at 8:30 a.m., or as soon as thereafter as
2 the matter may be heard, before the Honorable Ronald F. Frank in Department 8 of the Los
3 Angeles County Superior Court (Inglewood Courthouse) located at 1 Regent Street, Inglewood,
4 California 90301, Plaintiff Mark Sailas (“Plaintiff”) will and hereby does move for entry of an
5 order and judgment approving the Parties’ Settlement Agreement and Release (“Settlement
6 Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to the declaration of Douglas
7 Han, pursuant to Labor Code section 2699(l).

8 This motion is based upon this notice of motion and motion; Settlement Agreement;
9 Declarations of Plaintiff’s Counsel (Douglas Han) and Plaintiff (Mark Sailas) in support thereof;
10 proposed order approving the Settlement Agreement; pleadings and other records on file with the
11 Court in this matter; and such evidence and oral argument as may be presented at the hearing.

12
13 Dated: April 25, 2023

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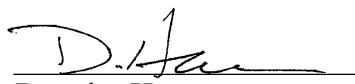
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15 By: 
16 Douglas Han
17 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Under Labor Code section 2699(1)(2), Plaintiff Mark Sailas (“Plaintiff”) seeks approval
4 of the Settlement Agreement entered between Plaintiff and Defendant Health-Ade LLC
5 (“Defendant”). Plaintiff entered the Settlement Agreement on behalf of himself and all current
6 and former hourly-paid employees of Defendant at any time from July 18, 2021, through April
7 30, 2023 whether such employees worked as a payrolled employee or through a temporary
8 and/or staffing agency (“Settlement Group,” “Settlement Group Members,” and “Settlement
9 Period”).

10 Plaintiff submits the Settlement is fair, adequate, and reasonable, and meets
11 requirements for Court approval. Thus, Plaintiff requests the Court to approve the Settlement.

12 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

13 On July 18, 2022, Plaintiff provided written notice to the LWDA and Defendant. On
14 October 4, 2022, Plaintiff filed a representative Private Attorneys General Act of 2004
15 (“PAGA”) action against Defendant. The representative PAGA action was predicated on
16 Defendant’s alleged failure to compensate employees for, *inter alia*, all hours worked,
17 noncompliant breaks, reasonable business expenses, and associated wage statements and
18 waiting time penalties.¹

19 The Parties then engaged in discovery, investigations, and negotiations. Eventually, the
20 Parties participated in private mediation on January 6, 2023 with Jeffrey A. Winikow that
21 ultimately resulted in the settlement of this case.²

22 Plaintiff now moves for an order granting approval of the Settlement, pursuant to Labor
23 Code section 2699(1)(2).

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25 ¹ (Declaration of Douglas Han In Support of Plaintiff’s Motion for Approval of Private
26 Attorneys General Act (Labor Code § 2698, *et seq.*) Settlement Agreement (“Han Decl.”), ¶¶
11, 13.)

27 ² (*Id.* at ¶ 16.)

1 **III. SUMMARY OF THE SETTLEMENT TERMS**

2 **A. Allocation of the Gross Settlement Amount**

3 The Settlement provides Defendant will pay a non-reversionary Gross Settlement
4 Amount of \$180,000. The PAGA Penalties Fund will be the Gross Settlement Amount less: (1)
5 Attorneys’ Fees Award of up to \$63,000; (2) Litigation Costs Award of \$12,802.08; (3)
6 Enhancement Payment of up to \$10,000; and (4) Settlement Administration Costs of up to
7 \$7,950.³

8 The current amount of the PAGA Penalties Fund is estimated to be \$86,247.92. Twenty-
9 five percent (25%) of the PAGA Penalties Fund will be distributed to the Settlement Group
10 Members as their Individual Settlement Awards. The Settlement Administrator will calculate
11 each Individual Settlement Award using the formula set forth in the Settlement Agreement. The
12 remaining seventy-five percent (75%) of the PAGA Penalties Fund will be transmitted to the
13 LWDA as the LWDA Payment, pursuant to Labor Code section 2699(i).⁴

14 **B. Distribution of the PAGA Penalties Fund**

15 Within fifteen (15) days after the Effective Date, Defendant shall provide a list of
16 Settlement Group Members to the Settlement Administrator. Within fifteen (15) days after the
17 Effective Date, Defendant also shall deposit the Gross Settlement Amount with the Settlement
18 Administrator. Within fourteen (14) calendar days of the funding of the settlement, the
19 Settlement Administrator will issue the payments required by section 7 of the Agreement.⁵

20 Individual Settlement Award checks will remain negotiable for one hundred twenty
21 (120) days after the date of issuance. Uncashed settlement checks will be voided and directed
22 to the California State Controller for deposit in the Unclaimed Property Fund.⁶

23 ³ (See Settlement Agreement attached as **Exhibit 2** to the Declaration of Douglas Han In
24 Support of Plaintiff’s Motion for Approval of Private Attorneys General Act (Labor Code §
25 2698, *et seq.*) Settlement Agreement (“Settlement Agreement”), §§ 7(a), 7(b).)

26 ⁴ (*Id.* at § 7(b)(v).)

27 ⁵ (*Id.* at §§ 8(a)-8(c).)

28 ⁶ (*Id.* at § 8(c)(ii).)

1 **C. The Scope of the Release in the Settlement Agreement**

2 The Agreement and the judgment to be entered by the Court forever bars Plaintiff,
3 LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any
4 and all allegedly aggrieved Settlement Group Members, from pursuing any action against the
5 Released Parties under PAGA based on or arising out of violations of Labor Code sections
6 alleged in this matter and claims that could have been asserted in this matter based upon the
7 facts alleged and legal assertions alleged, whether or not specifically delineated as a claim or
8 cause of action in this matter through the end of the Settlement Period, including, but not limited
9 to, those alleged in Plaintiff's notices provided to the LWDA, operative complaint in this
10 matter, and any amended complaint in this matter, including claims that reasonably arise out of
11 or arise in connection with the claims and facts alleged in this matter, and any claims which
12 could have reasonably been asserted in this matter arising from the alleged facts and/or primary
13 rights alleged to have been invaded.⁷ (See *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969, 980, 986 [a
14 plaintiff suing under PAGA "does so as the proxy or agent of the state's labor law enforcement
15 agencies," and, as such, "represents the same legal right and interest as state labor law
16 enforcement agencies"].) A judgment in a PAGA action "binds not only that [plaintiff]
17 employee but also the state labor law enforcement agencies." (*Ibid.*) Further, "[b]ecause an
18 aggrieved employee's action under [PAGA] functions as a substitute for an action brought by
19 the government itself, a judgment in that action binds all those, including nonparty aggrieved
20 employees, who would be bound by a judgment in an action brought by the government." (*Ibid.*)
21 "Accordingly, with respect to the recovery of civil penalties, nonparty employees as well as the
22 government are bound by the judgment in an action brought under [PAGA]" (*Ibid.*)

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⁷ (Settlement Agreement, *supra*, at § 9(a).)

1 **D. No Right to Object to or Opt Out of the Settlement**

2 “[A] PAGA action is a statutory action for penalties brought as a proxy for the state,
3 rather than a procedure for resolving the claims of other employees, there is no need to protect
4 absent employees’ due process rights[.]” (*Williams v. Sup. Ct.* (2017) 3 Cal.5th 531, 546.)
5 “Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability
6 to opt-out of the representative PAGA claim.” (*Ochoa-Hernandez v. CJADERS Foods, Inc.*
7 (N.D. Cal. Apr. 2, 2010), 2010 WL 3570777, at *5.) “PAGA does not make other potentially
8 aggrieved employees parties” and no “due process concerns arise under PAGA because absent
9 employees do not own a personal claim for PAGA civil penalties and whatever personal claims
10 the absent employees might have for relief are not at stake.” (*Williams v. Sup. Ct., supra*, 3
11 Cal.5th at pp. 546-547 (internal references omitted, citing *Amalgamated Transit Union, Local*
12 *1756, AFL-CIO v. Sup. Ct.* (2009) 46th Cal.4th 993, 1003 and *Iskanian v. CLS Trans. Los*
13 *Angeles, LLC*, (2014) 58 Cal.4th 348, 381.))

14 “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
15 (*Williams v. Sup. Ct., supra*, 3 Cal.5th at p. 548 (internal references omitted, citing *Arias v. Sup.*
16 *Ct., supra*, at pp. 980-981; *Fireside Bank v. Sup. Ct.* (2007) 40 Cal.4th 1069, 1074 and
17 *Richmond v. Dart Indus., Inc.* (1981) 29 Cal, 3d 462, 474.))

18 Consistent with this law, the Settlement does not provide for a procedure for Settlement
19 Group Members to object to or exclude themselves from the Settlement.⁸

20 **IV. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT**

21 The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself,
22 other aggrieved employees and the State to recover civil penalties with respect to provisions of
23 the Labor Code that do not otherwise provide for civil penalties (Lab. Code § 2699(g)), and
24 also, civil penalties which, outside of PAGA, only the LWDA can assess upon and collect from
25 an employer (Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee
26 must comply with Labor Code section 2699.3. (See Lab. Code § 2699(a).) Although PAGA
27

28 ⁸ (Settlement Agreement, *supra*, at § 5(b).)

1 penalties must be awarded by a court if a violation is found, a court “may award a lesser amount
2 than the maximum civil penalty amount specified by this part if, based on the facts and
3 circumstances of the particular case, to do otherwise would result in an award that is unjust,
4 arbitrary and oppressive, or confiscatory.” (Lab. Code § 2699(e)(2).)

5 The settlement of a PAGA claim requires court approval. (See Lab. Code § 2699(l)(2)
6 (“The superior court shall review and approve any settlement of any civil action pursuant to
7 this part.”).) However, “[a] PAGA claim asserted on a non-class representative basis . . . is not
8 considered a class action but a law enforcement action” and, therefore, does not have to meet
9 the requirements of a class action. (*Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012)
10 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011
11 WL 2173715, at *11; *Arias v. Sup. Ct., supra*, 46 Cal.4th at pp. 980-88 (affirming lower court’s
12 holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim);
13 *Pedroza v PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15.) As such, a
14 court’s review of a PAGA settlement involves analysis of several unique features that render
15 the approval process distinct from approval of a class action settlement. A court reviewing a
16 PAGA settlement need only “ensur[e] that a negotiated resolution is fair to those affected.”
17 (*Williams v. Sup. Ct., supra*, 3 Cal.5th at p. 549 (citing Lab. Code § 2699(l)(2)).) Although
18 Labor Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be
19 judged, courts have approved settlements of a PAGA claim.⁹ The Court of Appeal has held that
20 “a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable,
21 and adequate in view of PAGA’s purposes to remediate present labor law violations, deter
22 future ones, and to maximize enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.*
23 (2021) 72 Cal.App.5th 56, 77.)

24 _____
25 ⁹ (See, e.g., *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Sup. Ct., Case
26 No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct., Case No.
27 JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL
28 5364575, at *3; *Schiller v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001,
at *14; *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1;
Franco v. Ruiz Food Prods. (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom*
Commissions Case (2010) 186 Cal.App. 4th 576, 589.)

1 In a PAGA case, the Court’s focus is not the amount which “aggrieved employees” are
2 to receive but whether the total settlement amount achieves PAGA’s objectives. PAGA’s
3 purpose “to incentivize private parties to recover civil penalties for the government that
4 otherwise may not have been assessed and collected by overburdened state enforcement
5 agencies.” (See *Ochoa-Hernandez*, *supra*, 2010 WL 3570777, at *4 (citing *Arias v. Sup. Ct.*,
6 *supra*, 46 Cal.4th at p. 986).) Penalties recovered under the PAGA are, in part, to “be distributed
7 to the [LWDA] for enforcement of labor laws . . . and for education of employers and employees
8 about their rights and responsibilities under this code, to be continuously appropriated to
9 supplement and not supplant the funding to the agency for those purposes.” (See Lab. Code §
10 2699(j).) The recovery of penalties on behalf of the state, by way of a PAGA claim, is
11 essentially a law enforcement action. (See *Amalgamated Transit Union, Local 1756, AFL-CIO*
12 *v. Sup. Ct.*, *supra*, 46 Cal.4th at p. 1003 (stating the PAGA is mechanism for “an aggrieved
13 employee to recover civil penalties – for Labor Code violations – that otherwise would be
14 sought by state labor law enforcement agencies”); see also *Iskanian v. CLS Trans. Los Angeles,*
15 *LLC*, *supra*, 58 Cal.4th at p. 381.)

16 **V. THE PROPOSED SETTLEMENT IS FAIR AND SHOULD BE APPROVED.**

17 **A. The Factors Giving Rise to a Presumption of Fairness Exist.**

18 A settlement agreement that is “the product of extensive and hard-fought adversarial
19 negotiations between the parties” is entitled to a presumption of fairness. (*Wershba v. Apple*
20 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.)

21 The Settlement Agreement is presumptively fair. This is because the Settlement
22 Agreement: (1) is the product of non-collusive, arm’s-length negotiations; (2) was negotiated
23 by counsel with significant experience in similar wage-and-hour litigation following a full-day
24 mediation with an experienced mediator; and (3) occurred after Parties’ counsel engaged in
25 significant investigation of the strengths of this case and the risks of continued litigation.
26 Plaintiff’s Counsel also have extensive experience in representative and class action wage-and-
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hour litigation and used that experience to achieve a reasonable result.¹⁰

Therefore, the Court should give considerable weight to the competency, experience, and opinion of counsel and the involvement of a neutral mediator in assuring the Settlement is a product of hard-fought negotiations that was entered without collusion. (See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs' counsel should be given a presumption of reasonableness); see also *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating the "assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive").)

B. The Relative Strength of the PAGA Claim and the Range of Possible Outcomes in the Litigation Strongly Favor Approval of the Settlement.

Plaintiff contends the provisions of the Labor Code potentially triggering PAGA penalties in this case include, but are not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. For Plaintiff to recover civil penalties, he must prove the underlying Labor Code violations with respect to the Settlement Group and show Defendant's conduct gave rise to penalties. (See, e.g., *Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-82 ("Plaintiffs' claim under [PAGA] is wholly dependent upon her other claims. Because all of Plaintiffs' other claims fail as a matter of law, so does her PAGA claim.")).¹¹

Defendant maintained it had legally compliant employment policies and practices throughout the statutory period. Defendant also denied it ever violated any provision of the Labor Code. Next, Defendant denied this case is appropriate for representative treatment for any purpose other than the Settlement. If this case had not settled, Defendant would likely have

¹⁰ (Han Decl., *supra*, at ¶¶ 2-8, 24; Exhibit 1.)

¹¹ (Han Decl., *supra*, at ¶ 25.)

1 challenged Plaintiff's standing as a Settlement Group Member and denied its other employees
2 were aggrieved. Finally, Defendant argued the Court was unlikely to assess cumulative
3 penalties for the maximum number of possible separate Labor Code violations because the
4 "subsequent violation" theory of PAGA recovery would not be triggered in this case, and it
5 would be unjust, arbitrary, oppressive, and/or confiscatory. (See, e.g., *Bernstein v. Virgin Am.,*
6 *Inc.* (9th Cir. 2021) 3 F.4th 1127, 1144.) Collectively, this meant Plaintiff and Plaintiff's
7 Counsel had to consider the strengths and weaknesses of each side's position and the
8 uncertainty of how the case might have ended.¹² Defendant asserted, regardless of any alleged
9 liability for Labor Code violations, PAGA penalties are not mandatory but permissive and
10 discretionary. Defendant also maintained it had a strong argument it would be unjust to award
11 maximum PAGA penalties given the unsettled state of PAGA liability. (*Thurman v. Bayshore*
12 *Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this
13 authority].)

14 Although wage-and-hour actions are amenable to class-wide resolution,¹³ courts have
15 found certain Labor Code violations raise individualized issues and/or are unmanageable and
16 are not suitable for class adjudication.¹⁴ Similarly, in PAGA-only actions, Defendant contends
17 courts have found due process requires the adjudication of a PAGA claim meet a
18 "manageability" requirement. (See, e.g., *Liuy v. Merrill Lynch & Co.* (C.D.Cal. Nov. 10, 2014)
19 No. CV-14-0425-PA, WL 5904904 at **3-4 (Court dismissed the PAGA claim because a
20 multitude of individualized assessments would be necessary, making the PAGA claim
21 unmanageable); see also *Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th
22 746, 766-767.)

23
24 ¹² (Han Decl., *supra*, at ¶¶ 20-23.)

25 ¹³ (See, e.g., *Martinez vs. Joe's Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362,
26 383-84, modified on other grounds by *Martinez v. Joe's Crab Shack Holdings, et al.* (Dec. 3,
2014 B242807) 2014 Cal.App. LEXIS 1102, *1-2.)

27 ¹⁴ (See, e.g., *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 25, 29, 31, and 34-35.)
28

1 Plaintiff alleges, under Defendant’s argument that stacking penalties does not apply to
2 the PAGA claim, and limiting potential exposure to an initial violation only, PAGA penalties
3 would be **\$33,200** (332 employees x \$100 penalty for initial violation) on the low end and
4 **\$265,600** (332 employees x \$100 penalty for initial violation x 8 theories of recovery) on the
5 high end.¹⁵

6 Plaintiff also recognized the risk any PAGA award could be reduced. Many of the
7 claimed Labor Code violations underlying the PAGA claim were cumulative for which the
8 Court may or may not stack. Thus, a Gross Settlement Amount of \$180,000 for PAGA civil
9 penalties was reasonable and significant. When PAGA penalties are negotiated in good faith
10 and “there is no indication that [the] amount was the result of self-interest at the expense of
11 other Class Members,” such amounts are generally considered reasonable. (*Hopson v.*
12 *Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. 08-00844, 2009 U.S. Dist. LEXIS 33900 at *24;
13 see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse
14 its discretion in approving a settlement which does not allocate any damages to the PAGA
15 claims.”).)¹⁶

16 **C. The Settlement Avoids Risky, Complex, and Lengthy Further Litigation.**

17 Courts favor voluntary conciliation and settlement of complex litigation. (*Class*
18 *Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276.) Generally, “unless the
19 settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and
20 expensive litigation with uncertain results.” (*Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*
21 (C.D. Cal. Jan. 5, 2004) 221 F.R.D. 523, 526 (citation omitted).)

22 Both sides used the pre-mediation time to investigate the veracity, strength, and scope
23 of the PAGA claim. The Parties engaged in discovery and exchanged documents and data to
24 mediate the claims relevant to the Labor Code violations and applicable defenses thereto and to
25 determine the potential value and strength of the PAGA claim. After engaging in extensive

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27 ¹⁵ (Han Decl., *supra*, at ¶¶ 26-27.)

28 ¹⁶ (*Id.* at ¶¶ 28-29.)

1 investigation and negotiations, Plaintiff's Counsel believed it would be best to pursue a
2 settlement rather than take the risky and uncertain trial route. Even if the Parties had managed
3 to negotiate a similar settlement at a later date, it would have been undercut but the additional
4 costs and expenses incurred. In other words, the Settlement offers immediate recovery rather
5 than only the possibility of recovery at some indeterminate later date.¹⁷

6 **D. The Settlement Is Fair, Adequate, and Reasonable.**

7 "[T]he very essence of a settlement is compromise, 'a yielding of absolutes and an
8 abandoning of highest hopes.'" (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1981) 688
9 F.2d 615, 624.) "The proposed settlement is not to be judged against a hypothetical or
10 speculative measure of what might have been achieved by the negotiators." (*Id.* at p. 625.)

11 The Settlement provides a significant monetary benefit to the LWDA and Settlement
12 Group Members. Specifically, the PAGA Penalties Fund is currently estimated to equal
13 \$86,247.92. In addition, the proposed plan of allocation of the PAGA Penalties Fund to the
14 LWDA and Settlement Group Members fully complies with Labor Code section 2699(i).

15 After their investigations and inquiries, Plaintiff and Plaintiff's Counsel recognize the
16 expense, length, risk, and uncertainty of continued proceedings necessary to litigate this dispute.
17 To recover civil penalties, Plaintiff would have to prove the Settlement Group Members
18 suffered from the underlying Labor Code violations and that Defendant's conduct gave rise to
19 penalties, which could take several months, or even years, to prove. Plaintiff would also have
20 to proffer a manageable trial plan to the Court to prove penalties. Plaintiff and Plaintiff's
21 Counsel are aware of the burdens of proof necessary to establish liability and the difficulties in
22 establishing liability for penalties. Plaintiff and Plaintiff's Counsel also considered Defendant's
23 agreement to enter a settlement that confers significant relief. Plaintiff and Plaintiff's Counsel
24 determined the Settlement represents a fair, adequate, and reasonable resolution of the PAGA
25 claim.¹⁸

26 ¹⁷ (Han Decl., *supra*, at ¶¶ 13-16, 24.)

27 ¹⁸ (Han Decl., *supra*, at ¶¶ 21, 24.)

1 Therefore, the results achieved, and the PAGA allocation provided by the Settlement
2 Agreement, is within the range of acceptable settlement under the circumstances.¹⁹

3 **E. The Experience and Views of Plaintiff's Counsel Favor Settlement**
4 **Approval.**

5 Plaintiff's Counsel are experienced in complex representative and class action wage-
6 and-hour litigation. Plaintiff's Counsel believe the benefit conferred by the Settlement is
7 eminently fair and reasonable and in the best interests of the LWDA and Settlement Group
8 Members. In other words, Plaintiff's Counsel used their experience to negotiate a proper
9 settlement.²⁰

10 **VI. APPROVAL OF THE REQUESTED ATTORNEYS' FEES.**

11 **A. A Fee Award of Percentage of the Entire Fund is Appropriate.**

12 The Settlement provides for Plaintiff's Counsel to apply for an Attorneys' Fees Award
13 \$63,000 (35% of the Gross Settlement Amount). Per the Settlement, Defendant does not oppose
14 Court approval of, but makes no claims or admissions with respect to, the reasonableness of the
15 Attorneys' Fees Award or the grounds and attorney billing rates supporting such Attorneys'
16 Fees Award claimed by Plaintiff's Counsel. The Attorneys' Fees Amount is commensurate with
17 the: (1) risks undertaken; (2) time, effort, and expense dedicated; (3) skills and determination
18 shown; (4) value achieved; and (5) other cases turned down.

21 ¹⁹ (See, e.g., *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct., Case No. JCCP4833
22 (May 2017) (approving \$15,000 out of \$4 million toward settlement of the PAGA
23 claim); *Garcia*, *supra*, 2012 WL 5364575, at *3 (approving \$10,000 out of \$3.7 million toward
24 settlement of the PAGA claim); *Schiller v. David's Bridal, Inc.*, *supra*, 2012 WL 2117001, at
25 *14 (approving \$10,000 out of \$518,245 toward settlement of the PAGA claim); *Chu v. Wells*
26 *Fargo Invs.*, *supra*, 2011 WL 672645, at *1 (approving \$10,000 out of \$6.9 million toward
27 settlement of the PAGA claim); *Franco v. Ruiz Food Prods.*, *supra*, 2012 WL 5941801, at *14
(approving \$10,000 out of \$2.5 million toward settlement of the PAGA claim); *Nordstrom*
28 *Commissions Case*, *supra*, 186 Cal.App.4th at p. 589 (finding no abuse of discretion by the trial
court in approving a settlement that allocates \$0 toward the settlement of the PAGA claim at
issue in the lawsuit).)

²⁰ (Han Decl., *supra*, at ¶¶ 2-8; Exhibit 1.)₂₀

1 Plaintiff's Counsel are entitled to recover reasonable attorneys' fees and costs as a
2 matter of right under PAGA. (See Lab. Code § 2699(g)(1).) Plaintiff's Counsel are also entitled
3 to fees and costs under Code of Civil Procedure section 1021.5, as the instant PAGA action is
4 by definition "for the benefit" of others and has secured monetary awards for the Settlement
5 Group Members.²¹ The payment to the LWDA will also benefit the agency in enforcing labor
6 laws and educating "employers and employees about their rights and responsibilities under [the
7 Labor Code]." (Lab. Code § 2699(i).)

8 Plaintiff's Counsel thoroughly investigated and litigated this case before mediation with
9 a real chance of not reaching a resolution. The ongoing work has been extensive and successful
10 in achieving a settlement. Plaintiff's Counsel have also borne all the risks and costs of litigation
11 and will not receive any compensation until recovery via the Settlement.²²

12 **B. The Requested Attorneys' Fees is Reasonable Based on the Factors**
13 **Considered in Determination of Fee Awards.**

14 The factors courts consider in determining whether fee awards are reasonable are: (1)
15 time and labor required; (2) novelty and difficulty of the questions; (3) requisite skills to
16 perform the legal services; (4) preclusion of other employment by the attorney; (5) customary
17 fee; (6) whether the fee is fixed or contingent; (7) time limitation imposed; (8) amount involved
18 and results obtained; (9) experience, reputation and ability of the attorney; (10) undesirability
19 of the case; (11) nature and length of the professional relationship; and (12) awards in similar
20 cases. (*Camden I Condo. Ass'n, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.)

21 It should be highlighted that the percentage award sought is commensurate with the: (1)
22 results obtained; (2) extraordinary risks undertaken; (3) difficulty of this case; and (4) skills
23 displayed and the quality of work, which are each addressed below.

24
25 ²¹ (See *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17
26 (recognizing that recovery obtained on behalf of 209 individual satisfies the "significant
27 benefit," "public interest," and "large class of persons" requirements of Code of Civil Procedure
section 1021.5, regardless of plaintiff's personal motivation).)

28 ²² (Han Decl., *supra* at ¶ 44.)

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The results obtained are reasonable as Plaintiff's Counsel obtained a settlement of \$180,000 without the need for extended litigation. If this case went to trial, there was no guarantee the trial would have been short or either party would have prevailed. As stated above, even if the Parties reached a similar settlement, it would have been undercut by additional expenses incurred. Resolution of this dispute at this stage is preferred as the Parties were moving to the phase where significant time and money would inevitably have to be spent to prepare for trial. Preparation for trial would have also entailed preparing for and deposing persons most qualified, which would have been a lengthy and expensive endeavor with no guarantee of a successful resolution.

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1 **2. The Extraordinary Risk Taken by Plaintiff's Counsel**

2 Whether or not representation is provided on a contingency basis is an important
3 factor:

4 A contingent fee must be higher than a fee for the same legal services paid as they are
5 performed [and] [...] compensates the lawyer not only for the legal services he renders
6 but for the loan of those services. A lawyer who both bears the risk of not being paid
7 and provides legal services is not receiving the fair market value of his work if he is
paid only for the second of these functions. If he is paid no more, competent counsel
will be reluctant to accept fee award cases. (internal quotes and citations omitted)

8 (*Cates v. Chiang* (2013) 213 Cal.App.4th 791, 823.)

9 Plaintiff executed a contingent fee agreement. This meant no recovery would have
10 equated to no compensation for 274.5 hours of work and \$12,802.08 litigation costs incurred.²³
11 Several factors also made this case difficult, thereby contributing to the risks undertaken. These
12 factors included: (1) size of the Settlement Group (over 300); (2) difficulties in pinning down
13 job responsibilities, wages paid, meal and rest breaks taken; (3) number of documents that had
14 to be analyzed; (4) shifting wage-and-hour laws; and (5) Defendant's firm resistance to the
15 relief.²⁴

16 **3. The Difficulty of the Litigation**

17 The unsettled nature of the law, factual complexities underlying the policies and
18 practices in place, and other issues made this case complex and difficult. Yet, Plaintiff's
19 Counsel overcame these obstacles by obtaining a settlement that is fair, adequate, and
20 reasonable. Plaintiff's Counsel obtaining a fair settlement despite these roadblocks speaks
21 volumes of their skill and experience. (See *Lealao v. Beneficial Cal., Inc.*, *supra*, 82
22 Cal.App.4th at p. 42 (the "special skill and experience of counsel" is a relevant factor when
23 determining fee award).)

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27 ²³ (Han Decl., *supra*, at ¶¶ 40-41, 44.)

28 ²⁴ (*Id.* at ¶ 30.)

1 Due to the difficulty of this case, Plaintiff's Counsel devoted substantial hours to this
2 matter. The Task & Time Chart sets forth these hours, allocating the total time to the tasks
3 required to conclude this lawsuit. The work commenced with the pre-filing case analysis and
4 research and continues up to the moment of the work for final approval.²⁵

5 As stated in the previous section, this was not a clear-cut case, and Plaintiff's Counsel
6 had to overcome roadblocks and obstacles before they could reach a reasonable settlement.
7 These difficulties ranged from arguing against Defendant's defenses, drafting and propounding
8 discovery, gathering and analyzing relevant documents and data, preparing for mediation, etc.

9 **4. The Skill Displayed and Quality of Work**

10 The level of skill displayed and the excellent quality of work it produced also justify the
11 requested fee. Plaintiff's Counsel are skilled and experienced representative and class action
12 wage-and-hour litigators, and the Task & Time Chart further illustrates this assertion.

13 Plaintiff's Counsel used the pre-mediation time period to investigate the veracity,
14 strength, and scope of the PAGA claim and to prepare for representative adjudication. This
15 included, among other things: (1) case strategy and analysis; (2) drafting, reviewing, and
16 revising pleadings and a mediation brief; (3) preparing for and appearing at court proceedings;
17 (4) undertaking calculations of potential damages; (5) preparing for and attending mediation
18 and settlement negotiations; and (6) working with Defense Counsel to draft, update and finalize
19 the Settlement Agreement following mediation. In addition to determining the scope of the
20 Settlement Group, Plaintiff's Counsel undertook the arduous task of locating and interviewing
21 Settlement Group Members to verify if the PAGA claim raised individualized issues.²⁶

22 Thus, Plaintiff's Counsel's accumulated skill and expertise contributed to the Settlement
23 in this case. Under California law, this factor (skills displayed and quality of work) also supports
24 the Attorneys' Fees Award. (See *Lealao v. Beneficial Cal., Inc.*, *supra*, 82 Cal.App.4th at p.
25 51.)

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27 ²⁵ (Han Decl., *supra*, at ¶ 40; Exhibit 3.)

28 ²⁶ (*Id.* at ¶ 14.)

1 **C. The Lodestar Methodology Justifies Approval of the Requested Fees.**

2 Plaintiff's Counsel spent 274.5 hours litigating this matter. Plaintiff's Counsel's hourly
3 rates are supported by the 2021 Real Rate Report that was compiled by Wolter Kluwer that
4 surveyed the hourly rates charged in 2021 by hundreds of attorneys in California. Likewise,
5 Plaintiff's Counsel's hourly rates are also in line with the Laffey Matrix.²⁷

6 **1. *Plaintiff's Counsel Performed Work for a Reasonable Number of Hours.***

7 This matter required a significant amount of time and labor, and Defendant disputed the
8 PAGA claim and questioned its manageability. The Task & Time Chart evidence the numerous
9 tasks that were performed to seek all necessary information. Specifically, the Task & Time
10 Chart illustrates Plaintiff's Counsel spent a reasonable number of hours working on this case,
11 thereby demonstrating the application for the attorneys' fees is within the range of
12 reasonableness.²⁸

13 The case involved, among other things, gathering and analyzing data from Defendant
14 and the Settlement Group Members. Plaintiff's Counsel undertook intense preparation to
15 resolve the entire matter through mediation. These preparations ranged from locating and
16 interviewing several putative aggrieved employees, gathering and reviewing a myriad of
17 documents, determining the scope of the Settlement Group, verifying the strengths of the PAGA
18 claim, etc.

19 **2. *The Fees Requested Represent a Reasonable Hourly Rate of***
20 ***Compensation.***

21 Plaintiff's Counsel's hourly rates are well within the range of rates charged by
22 comparably qualified attorneys in California and the legal profession in general for comparably
23 complex work. By extension, Plaintiff's Counsel's hourly rates are also in line with the Laffey
24 Matrix.²⁹

25 _____
26 ²⁷ (Han Decl., *supra*, at ¶¶ 40-42; Exhibits 4-5.)

27 ²⁸ (*Id.* at ¶ 40; Exhibit 3.)

28 ²⁹ (*Id.* at ¶¶ 41-42; Exhibits 4-5.)

1 Plaintiff's Counsel's hourly rates are also reasonable for the following reasons: (1)
2 comparable hourly rates for similar services have been deemed to be reasonable in several cases
3 in California; and (2) several surveys of legal rates have supported Plaintiff's Counsel's hourly
4 rates. This shows Plaintiff's Counsel's hourly rates used for the lodestar calculation are well
5 within the range of non-contingent rates charged by comparable attorneys for similar work
6 performed throughout California.

7 Based on the attorney time expended, the base lodestar fees calculation is \$117,685,
8 resulting in a negative multiplier of 0.54 when cross-checked to the Attorneys' Fees Award.³⁰

9 **VII. THE LITIGATION COSTS TO BE REIMBURSED SHOULD BE APPROVED**

10 The Settlement allows for Litigation Costs Award not to exceed \$15,000. Plaintiff's
11 Counsel incurred \$12,802.08 in litigation costs and expenses.³¹ Plaintiff's Counsel request the
12 Court order reimbursement for these costs and expenses.

13 **VIII. THE ENHANCEMENT PAYMENT SHOULD BE APPROVED**

14 The Settlement provides for an Enhancement Payment of \$10,000 to Plaintiff for his
15 claimed services and contributions on behalf of the Settlement Group Members. Per the
16 Settlement, Defendant will not oppose Plaintiff's request for the Enhancement Payment but
17 makes no other admissions or concessions with respect to such request.

18 Plaintiff spent a substantial amount of time and effort in locating and producing relevant
19 documents and past employment records, reviewing relevant documents alongside Plaintiff's
20 Counsel, and providing the facts and evidence supporting his allegations. Plaintiff was available
21 whenever Plaintiff's Counsel needed him and actively tried to obtain and provide as much
22 information as he could (*i.e.*, giving the names and contact information of putative aggrieved
23 employees, speaking to current and former employees of Defendant). In addition, Plaintiff spent
24 numerous hours speaking with Plaintiff's Counsel about Defendant's alleged Labor Code
25 violations, discussing his work experiences and work environment, helping Plaintiff's Counsel

26 ³⁰ (Han Decl., *supra*, at ¶¶ 41, 43.)

27 ³¹ (*Id.* at ¶ 44; Exhibit 6.)
28

1 develop a strategy to obtain additional documents, aiding Plaintiff's Counsel to determine the
2 importance of the documents produced, and reviewing the operative complaint and Settlement.
3 Plaintiff made himself available all day to participate in and assist with mediation.³²

4 Plaintiff was advised of and accepted the risks and sacrifices associated with serving as
5 the named plaintiff (*i.e.*, risking a judgment entered against him for attorneys' fees and costs,
6 agreeing to a broad release). Plaintiff is also not related to anyone associated with Plaintiff's
7 Counsel, has not entered any undisclosed agreement, and has not received undisclosed
8 compensation. This is further proof Plaintiff's interests are not averse to the Settlement Group
9 Members. Therefore, Plaintiff elected to serve as the named plaintiff to his own detriment and
10 should be properly compensated.³³

11 **IX. THE SETTLEMENT ADMINISTRATION COSTS SHOULD BE APPROVED**

12 The Agreement provides for the payment of Settlement Administration Costs of up to
13 \$7,950 to the Settlement Administrator. The Settlement Administration Costs are intended to
14 cover the costs incurred by the Settlement Administrator for performing its duties outlined in
15 the Agreement. Plaintiff's Counsel has worked with the desired Settlement Administrator in the
16 past and are familiar with its superior reputation and work product. Thus, the Court should
17 approve the payment of the Settlement Administration Costs to the Settlement Administrator.

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26 ³² (Han Decl., *supra*, at ¶ 47; Declaration of Mark Sailas In Support of Plaintiff's Motion
27 for Approval of Private Attorneys General Act (Labor Code § 2698, *et seq.*) Settlement
Agreement ("Sailas Decl."), ¶¶ 6-10.)

28 ³³ (Han Decl., *supra*, at ¶ 47; Sailas Decl., *supra*, at ¶¶ 11-14.)

1 **X. CONCLUSION**

2 The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise.
3 Based thereon, Plaintiff requests the Court approve the Settlement, including the plan of
4 allocation and distribution of the above-mentioned payments.

5
6 Dated: April 25, 2023

JUSTICE LAW CORPORATION

7
8 By: 
9 Douglas Han
 Attorneys for Plaintiff



Make a Reservation

MARK SAILAS vs HEALTH-ADE LLC

Case Number: 22TRCV00881 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2022-10-04 Location: Inglewood Courthouse - Department 8

Reservation

Case Name: MARK SAILAS vs HEALTH-ADE LLC	Case Number: 22TRCV00881
Type: Motion re: (Approval of Private Attorneys General Act (Labor Code §§ 2698, ET SEQ.) Settlement Agreement)	Status: RESERVED
Filing Party: Mark Sailas (Plaintiff)	Location: Inglewood Courthouse - Department 8
Date/Time: 05/23/2023 8:30 AM	Number of Motions: 1
Reservation ID: 145348680453	Confirmation Code: CR-YSTSCT6MXDYGGMFBH

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount: \$61.65	Type: Visa
Account Number: XXXX1109	Authorization: 01734G
Payment Date: 1969-12-31	

[Print Receipt](#)[+ Reserve Another Hearing](#)

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