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JESUS CRUZ MOLINA, MARCIA PAZ, NELSON PAZ, and RONALD PAZ, individually, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

JESUS CRUZ MOLINA, an individual;
MARCIA PAZ, an individual; NELSON PAZ, an individual; RONALD PAZ, an individual; and on behalf of other members of the general public similarly situated

Plaintiff,

v.

ATC LOGISTICS, INC., a California Corporation; and DOES 1 through 25, Inclusive,

Defendants.

) Case No. 37-2022-00037368-CU-OE-CTL

) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **PLAINTIFFS' UNOPPOSED MOTION**
) **FOR PAGA SETTLEMENT**
) **APPROVAL**

) Hearing Date: February 21, 2025

) Hearing Time: 9:00 a.m.

) Department: 2004

) Judge: Hon. Timothy B. Taylor

) Complied Filed: September 19, 2022

) FAC Filed: December 13, 2022

I. SUMMARY OF MOTION

Plaintiffs JESUS CRUZ MOLINA, MARCIA PAZ, NELSON PAZ, and RONALD PAZ (collectively “Plaintiffs”) respectfully submit the following Memorandum of Points and Authorities in support of their motion for an order granting approval of a PAGA Settlement. This motion is **unopposed**. The LWDA was timely notified of this proposal and does **not** object.

This case involves PAGA and individual claims. The PAGA Period begin on July 16, 2021. There are approximately **2,680** pay periods and **19** aggrieved employees. Pamela Vallero (“Vallero Decl.” herein) ¶ 3. After multiple rounds of discovery, depositions, and a mandatory settlement conference with the Honorable Judge Taylor, the parties agreed to the terms of the proposed PAGA settlement. The parties have drafted and executed a formal PAGA Settlement Agreement. (Vallero Decl. ¶ 4; the "Agreement," please see **Exhibit A.**) The proposed terms of the settlement are as follows:

PAGA Members:	19
Settlement Fund (GSA”):	\$90,000
Claims Period:	July 16, 2021, until the date of approval
LWDA Payment:	\$43,500
Attorney’s Fees and Costs:	\$30,000
Settlement Administration Fee:	up to \$2,000
Resultant Net Settlement Fund:	\$14,500

An “average” PAGA employee will receive a payment of approximately **\$763.16**. Vallero Decl. ¶ 8.

On July 12, 2022, Plaintiffs’ counsel uploaded via the LWDA’s electronic filing portal, the PAGA Settlement Agreement. Vallero Decl. ¶ 5. To date, Plaintiffs’ counsel has not received a notice that the LWDA would intervene. *Id.*

On February 7, 2025, Plaintiffs’ counsel uploaded via the LWDA’s electronic filing portal, copies of this entire Motion, including the Notice, this supporting Memorandum, Declaration, Proposed Order & Judgment, and PAGA Settlement Agreement. Vallero Decl. ¶ 6. To date, Plaintiffs’ counsel has not received any opposition from the LWDA. *Id.* If the LWDA

1 contacts Plaintiffs' counsel at any time prior to the February 21, 2025, hearing, Plaintiffs'
2 counsel will provide an updated declaration to the Court. Vallero Decl. ¶ 7.

3 Further, there are no restrictions for any of the 19 PAGA employees to file individual
4 actions, as the settlement agreement only covers PAGA claims. Vallero Decl. ¶¶ 4, 8; Exhibit A:
5 Paragraph 9.

6 The Parties now move the Court for approval of the PAGA Settlement Agreement.

7 **II. CONTROLLING LAW**

8 PAGA "authorizes an employee to bring an action for civil penalties on behalf of the state
9 against his or her employer for Labor Code violations committed against the employee and
10 fellow employees." *Iskanian v. CLS Trans. Los Angeles* (2014) 59 Cal. 4th 348, 360. "To
11 compensate for the lack of [a]dequate financing of essential labor law enforcement functions" the
12 California legislature enacted PAGA to permit aggrieved employees to act as a private attorneys
13 general to collect civil penalties for violations of the Labor Code." *Sakkab v. Luxottica* (9th Cir.
14 2015) 803 F.3d 425.

15 Statutory penalties would be calculated according to Labor Code § 2699(f)(2): If, at the
16 time of the alleged violation, the person employs one or more employees, the civil penalty is one
17 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
18 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
19 violation. However, some courts have interpreted Labor Code § 2699(f)(2) to impose the
20 enhanced "subsequent violation penalty" or "heightened penalty" only after an employer has
21 been notified that its conduct violates the Labor Code. *See Trang v. Turbine Engine Components*
22 *Technologies Corp.*, No. CV 12-07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19,
23 2012) ("courts have held that employers are not subject to heightened penalties for subsequent
24 violations unless and until a court or commissioner notifies the employer that it is in violation of
25 the Labor Code"); *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit*
26 *Services, Inc.*, No. 05cv1199-IEG-CAB, 2009 WL 2448430 (S.D. Cal. 2009) (finding that
27 California law imposes the "subsequent violation penalty" only after an employer has been
28 notified its conduct violates the Labor Code).

Further, a court may award a lesser amount than the maximum civil penalty amount 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. Labor Code § 2699(e)(2); *Amaral vs. Cintas Corp.* No. 2 (2008) 163 Cal.App.4th 1157, 1213-1214; *See e.g., Fleming v. Covidien Inc.*, 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011).

“The superior court shall review and approve any settlement of any civil action filed pursuant to [PAGA].” Labor Code § 2699(l). In doing so, the Court must consider whether the proposed “PAGA settlement is fair and adequate in view of the purposes and policies of the statute.” *O’Conner v. Uber Techs. Inc.*, 201 F. Supp. 3d 1110, 1135 (N.D. Cal. 2016). Those purposes and policies include “benefit[ing] the public by augmenting the state’s enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance,” *Id.* at 1132-33; *Accord Syed v. M-I LLC*, 2017 WL 714367 at *13 (E.D. Cal. Feb. 22, 2017) (concluding the “settlement related to plaintiffs’ PAGA claims is fair, reasonable, and adequate in light of the public policy goals of PAGA.”)

Recently the Court of Appeal has given guidance to trial courts in reviewing a PAGA settlement:

We therefore hold that a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws. (*See Williams, supra*, 3 Cal.5th at p. 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA “sought to remediate present violations and deter future ones”]; *Arias, supra*, 46 Cal.4th at p. 980, 95 Cal.Rptr.3d 588, 209 P.3d 923 [the declared purpose of PAGA was to augment state enforcement efforts to achieve maximum compliance with labor laws].)

Moniz v. Adecco USA, Inc., (2021) 72 Cal.App.4th 56, 77.

Prior to *Moniz*, other courts have followed the rationale in *O’Connor v. Uber Techs., Inc.*, 201 F.Supp.3d 1110, 132-35 (N.D. Cal. 2016), which states a court is permitted to approve a PAGA settlement if the settlement is “fair and adequate in view of the purposes and policies of the statute.” *Id.*

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1 In deciding whether the settlement was “fair and adequate,” the *Flores* court looked how
2 the parties divvied up the civil penalties under Section 2699(i) of the California Labor Code.
3 *Flores* at 1076-77. As the court felt the parties’ division of penalties was fair and adequate
4 pursuant to the statute, the court approved the settlement. *Id.*

5 **III. DISCUSSION**

6 The Parties reached the terms of their proposed PAGA Settlement Agreement, following
7 the exchange of extensive information and employment records. Vallero Decl. ¶ 10. The Parties
8 submit the proposed settlement of PAGA penalties is fair, adequate, and reasonable. *Id.* The
9 Parties are unaware of any other cases that may be impacted by the PAGA Settlement. *Id.*

10 **A. Settlement Terms**

11 The allegedly aggrieved employees are defined as all individuals employed by Defendant
12 ATC Logistics, Inc. and classified as “non-exempt” from July 16, 2021, through the date of the
13 Court’s Order granting approval of the PAGA Settlement (the “Aggrieved Employees”). Vallero
14 Decl. ¶ 4; Exhibit A: Paragraphs 6, 10.

15 Upon the Effective Date (Vallero Decl. ¶ 4; Exhibit A: Paragraph 13, 25), Defendant
16 agrees to pay the non-reversionary settlement amount of \$90,000 in connection with the PAGA
17 Settlement (“Gross Settlement Amount”). Apart from the employer’s share of payroll taxes,
18 Defendant shall not be required to pay more than the Gross Settlement Amount in connection
19 with the PAGA Settlement. The Gross Settlement Amount is broken down as follows:

- 20 • \$30,000 Attorneys’ Fees and Costs (1/3 of Gross Settlement Amount) (Vallero
21 Decl. ¶ 8)

22 After deducting the proposed amounts for Plaintiffs’ counsel’s Attorneys’ Fees and
23 Costs, the amount remaining is defined as the “PAGA Payment.” One hundred percent (100%)
24 of the PAGA Payment shall be allocated to the payment of civil penalties under the PAGA
25 Payment. Pursuant to the PAGA Payment, seventy-five (75%) of the PAGA Payment, or Forty-
26 Three Thousand Five Hundred Dollars (\$43,500.00), shall be allocated to the State of California
27 Labor and Workforce Development Agency (the “LWDA PAGA Payment”), with the remaining

1 twenty-five percent (25%), or Fourteen Thousand Five Hundred Dollars (\$14,500.00), allocated
2 to the PAGA Employees (“Aggrieved Employees PAGA Payments”). Vallero Decl. ¶ 11.

3 Given the above, the average payment to each individual PAGA Employee will be
4 approximately \$763.16. Vallero Decl. ¶ 8. Pursuant to the PAGA Settlement Agreement, any
5 unclaimed funds will be tendered to the State of California Unclaimed Property Fund. Vallero
6 Decl. ¶ 4; Exhibit A: Paragraph 30.

7 Each PAGA Employee’s pro rate share shall be determined based on the number of
8 Eligible Pay Periods that he or she worked for Defendant during the PAGA Period, and shall be
9 calculated as follows: (1) for PAGA Employees, the Aggrieved Employees PAGA Payments will
10 be divided by the total number of eligible pay periods worked by all PAGA Employees during
11 the PAGA Period, and the resulting figure will be referred to as the “Multiplier,” and (2) each
12 PAGA Employee’s pro rate share of the Aggrieved Employees PAGA Payments will be
13 determined by multiplying the Eligible Pay Periods that the PAGA Employee worked during the
14 PAGA Period by the multiplier. Vallero Decl. ¶ 4; Exhibit A: Paragraph 23(a). That amount shall
15 be referred to as the “Individual Settlement Payment.” Vallero Decl. ¶ 4; Exhibit A: Paragraph
16 23.

17 Each PAGA Employee’s Individual Settlement Payment share will be reported on an IRS
18 Form 1099 to the respective PAGA Employee and applicable governmental authority. Vallero
19 Decl. ¶ 4; Exhibit A: Paragraph 23(a).

20 Further, the Settlement only covers PAGA claims. Vallero Decl. ¶ 4; Exhibit A:
21 Paragraph 25. It does not cover PAGA Employee’s individual wage and hour claims. *Id.*

22 The proposed notice of the PAGA Settlement to be sent to the allegedly aggrieved
23 employees (the “Notice”) along with his or her Individual PAGA Payment is attached to the
24 Declaration of Pamela Vallero as Exhibit D. Vallero Decl. ¶ 12.

25 Defendant shall mail attorneys’ fees and costs payments to the Settlement Administrator.
26 The Settlement Administrator shall mail the PAGA payments directly to the LWDA and to the
27 Aggrieved Employees. Concurrently with sending each Aggrieved Employee their share of the
28 amount, the Settlement Administrator will include a “Notice of PAGA Action Settlement” along

1 with each Aggrieved Employee's check. The Settlement Administrator shall send each
2 Aggrieved Employee their check via U.S. First Class mail to each Aggrieved Employee's address
3 with directions to the Postmaster to return all undeliverable mail to the forwarding address
4 affixed thereto. For each returned check/notice that is returned as undeliverable, the Settlement
5 Administrator shall promptly attempt to locate the Aggrieved Employee's by using the NCOA
6 database. Following the distribution of the Settlement Payment, the Settlement Administrator
7 will provide a declaration to Plaintiffs' counsel regarding the distribution to be filed with the
8 Court. Vallero Decl. ¶ 13; Exhibit A: Paragraphs 22, 29, 30, and 35.

9 The Court will retain jurisdiction of this matter to enforce the Settlement pursuant to
10 C.C.P. § 664.6. Vallero Decl. ¶ 4; Exhibit A: Paragraph 37.

11 **B. Basis for Request**

12 The instant request is based on the fact that (1) the PAGA Period "cutoff date" is
13 contingent on Court approval, any delay diminishes the amounts received by the impacted
14 employees; (2) Notice to certain ex-employees may be adversely impacted by further delay (i.e.
15 ex-employees may change their mailing address without filing a proper "forwarding address").
Vallero Decl. ¶ 14.

16 An expedient approval of this settlement will provide a direct benefit to the impacted
17 employees at issue. The "fixes" provide a guarantee of future Labor Code compliance, and an
18 immediate monetary benefit. It also allows Defendant (who admirably "stepped up" to address
19 these issues) the opportunity to move on and focus on future business. Vallero Decl. ¶ 15.

20 **C. The Nature and Scope of the Alleged Violations**

21 The First Amended Complaint alleges Labor Code violations¹ which triggered penalties
22 under the PAGA statute (Labor Code § 2698 *et seq.*) (See ROA #10.) Plaintiff also alleged all
23 employees were willfully misclassified, denied minimum wages, accurate wage statements,
24 reimbursements, timely payment of wages during employment and upon separation of
25 employment, and suffered waiting time violations. *Id.*

26
27 ¹ The First Amended Complaint also alleges Discrimination on the Basis of Race, and Retaliation [Cal.
Labor Code § 1102.5], which the Court granted summary adjudication in favor of Defendant.

Specifically, Plaintiffs alleged they – and other employees – were misclassified due to Defendant’s classification of its workers as independent contractors as opposed to employees, and were not properly and timely paid for all hours worked. *Id.*

D. Analysis of Potential Liability on a Representative Basis

One of the main issues of this litigation concerned allegations that Plaintiffs were allegedly misclassified. Vallero Decl. ¶ 16. Investigations completed by Plaintiffs’ counsel revealed that only Plaintiffs and, at most, nineteen other employees were misclassified. Defendant’s violations were minimal as to properly classified employees. Vallero Decl. ¶ 17. The investigations also revealed that the “rate of violation” by Defendant was significantly less than 100%. *Id.* On many of those occasions, it appears that Defendant did, in fact, comply with the law. *Id.*

Based on the above, the maximum liability in a case of this type would be in the range of \$0 to \$190,000. Vallero Decl. ¶ 18.

Moreover, Plaintiffs’ counsel is aware of the Court’s discretion to mitigate penalties pursuant to California Labor Code § 2699(e)(2). Vallero Decl. ¶ 19. Plaintiffs’ counsel agrees with the provision of the Labor Code, that penalties should be mitigated where violations are minimal (or rare), or where the employer makes significant efforts to comply with the Labor Code. Vallero Decl. ¶ 20.

The Parties agree that, given the number of violations at issue here, that this settlement represents a fair and adequate payment. Vallero Decl. ¶ 21.

E. Case Law Supports a Further Reduction on Any Recovery

Plaintiffs concede they would be unlikely to ever be awarded an amount approaching the maximum damages set forth above. To wit, many of the damages were “derivative” penalties under PAGA, Labor Code § 226. The Court would have great discretion to mitigate any penalties awarded. *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 [disapproved on other grounds].

Some trial courts have declined to “stack” (impose multiple) penalties based on the same underlying Labor Code violation. *See Ruelas v. Costco Wholesale Corporation* (N.D. Cal. 2014)

67 F.Supp.3d 1137; *See accord Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444 [declining to impose Labor Code section 203 and 226 penalties based on unpaid meal break premiums].

Accordingly, counsel submits the **\$43,500** allocation to PAGA penalties secured via this Settlement is a reasonable compromise and is in the best interests of the State and the Plaintiffs given all the risk of continued litigation. Vallero Decl. ¶ 22.

F. Allocation of Penalties and *Limited Release of Claims*

While Labor Code § 2699(l) requires a court to "review and approve any penalty sought as part of the proposed settlement agreement," it does not provide any guidance as to what is considered an "adequate" allocation of these penalties. However, the California Court of Appeal has upheld that an allocation of zero dollars to resolve PAGA claims may be appropriate:

The Nordstrom Commission Cases settlement agreement identifies liability for PAGA penalties as a claim against Nordstrom and includes the following language: "The Parties allocate \$0 to any Private Attorney General Act penalty claim under Labor Code § 2699 et seq., for penalty claims based on the Released Claims. During the Class Period, Nordstrom paid Putative Class Members' commissions pursuant to a commission plan that it contends was approved by the United States District Court in Rios, and consequently Nordstrom contends no claim for penalties of any nature is valid." Thus, the PAGA penalty claims were at issue, and were resolved as part of the overall settlement of the case. We find no abuse of discretion in the trial court's approval of the settlement agreement containing these terms.

Nordstrom Com 'n Cases (2010) 186 Cal.App.4th 576, 589.

Moreover, District Courts in California have routinely approved settlement agreements, which allocate **less than 1%** of the overall settlement amount to PAGA penalties. *See, e.g., Chu v. Wells Fargo Investments, LLC* (N. D. Cal., Feb. 16 2011, No. C 054526MHP) 2011 WL 672645 at *1 (approving allocation of \$10,000 to park at penalties out of us \$6,900,000 settlement); *see also Schiller v. David's Bridal, Inc.* (E.D. Cal June 11, 2012, No. 1:10 CV 00616 AWL) 2012 WL 2117001 at *14. (approving allocation of \$7,500 to PAGA penalties out of \$518,245 settlement).

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1 Defendant, and its counsel, deserve credit for their willingness to consider – and address
2 – the allegations. Specifically, Defense Counsel, produced a substantial amount of documents
3 and information necessary to evaluate the parameters of settlement. Following a mandatory
4 settlement conference with the Honorable Judge Taylor, the Parties have reached a proposed
5 settlement. That includes a payment of penalties under PAGA. Vallero Decl. ¶ 23.

6 Here, the Parties seek to allocate **\$43,500** of the Gross Settlement Amount to the total
7 value of the PAGA Penalties. Of this amount, the LWDA will receive **\$43,500**. Vallero Decl. ¶¶
8 4, 8; Exhibit A: Paragraph 22(c). The remaining **\$14,500.00** will be allocated and distributed
9 among the PAGA Employees. *Id.* Each PAGA member would receive an average payment of
10 approximately **\$763.16**. *Id.*

11 The Parties contend the PAGA Settlement Agreement amount is very adequate and
12 reasonable. Vallero Decl. ¶ 21. Moreover, the PAGA Settlement does not bar any employee from
13 pursuing their own individual Labor Code claims. Vallero Decl. ¶ 9. The release only applies to
14 the PAGA claims for penalties, based upon the allegations in Plaintiffs’ operative complaint. *Id.*

15 **G. The LWDA Was Notified Multiple Times and Does Not Object**

16 On February 7, 2025, Plaintiffs’ counsel uploaded via the LWDA’s electronic filing
17 portal, the PAGA Settlement Agreement. Vallero Decl. ¶ 5. To date, Plaintiffs’ counsel has not
18 received a notice that the LWDA would intervene. *Id.*

19 On February 7, 2025, Plaintiffs’ counsel uploaded via the LWDA’s electronic filing
20 portal, copies of this entire Motion, including the Notice, this supporting Memorandum,
21 Declaration, Proposed Order & Judgment, and PAGA Settlement Agreement. Vallero Decl. ¶ 6.
22 To date, Plaintiffs’ counsel has not received any opposition from the LWDA. *Id.* If the LWDA
23 contacts Plaintiffs’ counsel at any time prior to the February 21, 2025, hearing, Plaintiffs’
24 counsel will provide an updated declaration to the Court. Vallero Decl. ¶ 7.

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1 **IV. CONCLUSION**

2 The Parties have negotiated a fair, adequate, and reasonable settlement of the PAGA
3 claims. For the foregoing reasons, Plaintiffs respectfully request that this Court issue an Order
4 Granting their Motion for Approval of the PAGA Settlement.

5
6 DATED: February 7, 2025

GRUENBERG LAW

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