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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

JASON TRACY, in a Representative capacity only, and on behalf of other members of the general public similarly situated,

Plaintiff

v.

DESERT AUTO GROUP IV, LLC, a California Limited Liability Company; DESERT AUTO GROUP, LLC, a California Limited Liability Company; and DOES 1-10, inclusive

Defendants

CASE NO. 37-2022-00045443-CU-OE-CTL

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION RE: UNOPPOSED PAGA APPROVAL

Date: September 20, 2024

Time: 9:00 a.m.

Dept.: C-75

Judge: Hon. James Mangione

1 **I. SUMMARY OF MOTION**

2 This is a “Wage and Hour” representative action, under California’s Private Attorneys General
3 Act of 2004. Plaintiff JASON TRACY (“Plaintiff”), in a Representative capacity only, and on behalf
4 of other members of the general public similarly situated respectfully submits the instant Points and
5 Authorities in support of his motion for Approval of the PAGA Settlement.

6 This Request is **Unopposed**.

7 The LWDA was timely notified of this proposal, concurrent with the filing of the motion, and
8 does **not** object to the allocations. (See Proof of Service on LWDA).

9 **II. SUMMARY OF SETTLEMENT TERMS**

10 This is a Labor Code §2698 *et seq.* “Wage and Hour” (“PAGA”) action brought against
11 DESERT AUTO GROUP IV, LLC and DESERT AUTO GROUP, LLC, (collectively “DESERT
12 AUTO” or “Defendants”). As this is a “PAGA” action only, the Limitations Period begins on August
13 31, 2021. (Ex. 1 at ¶ 1.P) There are approximately **55** PAGA Members at issue. (*Id.*)

14 Following the exchange of discovery, analysis of numerous sets of time and wage data, and a
15 full day mediation presided over by Hon. Herbert B. Hoffman, the Parties reached a proposed
16 settlement that includes a payment of penalties to the LWDA. (Yaeckel Decl., ¶4–5).

17 Based on the below figures, each PAGA Member would receive an average payment of
18 approximately **\$124.12**. This figure represents an average *only*, as the actual amounts paid will vary
19 depending on the amount of pay periods employed during the PAGA period. (Ex. 1 at ¶ III.C. e).

20 The Total Value of the proposed Settlement is **\$80,000**. The “Monetary Terms” are found in
21 Exhibit 1 (paragraph 3) and are summarized as follows:

22	*	\$26,666.67	Attorneys’ Fees (1/3 of total settlement value);
23	*	\$8,277.50	Costs of Litigation
24	*	\$2,750.00	Claims Administration Expenses
25	*	\$5,000.00	Plaintiff Enhancement Award
26	*	\$10,000.00	Plaintiff’s Individual Section 1542 Release
27	*	Sub-Total of \$27,305.83	

1 * 75% (\$20,479.37) shall be assigned/paid to the LWDA as penalties.

2 * The remaining 25% (\$6,826.46) will be disbursed among all employees based
3 on pay periods employed during the PAGA period.

4 Given the above, the average payment to each individual employee will be approximately
5 **\$124.12.** (Yaeckel Decl., ¶6).

6 Further, there are no restrictions for any of the **55** employees to file individual actions, as the
7 settlement agreement only covers PAGA claims. (Yaeckel Decl., ¶7); **Exhibit 1**: “Release, Waiver of
8 Claims, Dismissal” § 5.(B).

9 **Please Note**: Although this was alleged as a PAGA only claim, the Parties subsequently
10 negotiated an individual settlement in which Plaintiff will receive a total of \$10,000, less applicable
11 withholdings and deductions, in exchange for a full and general release of his individual claims only,
12 including unknown claims, separate and apart from the settlement of his claims alleged in this action.
13 As set forth above, the LWDA has notice of this Settlement and does **not** object.

14 Plaintiffs’ counsel is well versed in class and representative (PAGA) litigation. Based on that
15 experience, counsel submits this settlement represents a fair and adequate payment to the LWDA and
16 aggrieved employees. (Yaeckel Decl., ¶13).

17 Should the Court deem if necessary, a lodestar cross-check confirms the propriety of the
18 requested attorneys fees. Given the actual fees incurred, in the amount of **\$26,666.67**, no lodestar
19 multiplier is necessary. Counsel is requesting less in fees than what was billed. (Yaeckel decl. ¶ 14).

20 Plaintiff’s counsel submits its fees are reasonable and in line with (or lower) than rates charged
21 in the community by attorneys with similar experience. (See Yaeckel decl. ¶¶ 15-20).

22 Plaintiff also seeks reimbursement for reasonable litigation expenses incurred in the amount
23 of \$8,277.50. (See Yaeckel decl. ¶ 21).

24 The parties proposed notice, to accompany the settlement checks following approval, is
25 attached for the Court’s review to the Declaration of Eric Yaeckel as **Exhibit 4**.

26 **III. CONTROLLING AUTHORITY**

27 PAGA “authorizes an employee to bring an action for civil penalties on behalf of the state
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1 against his or her employer for Labor Code violations committed against the employee and fellow
2 employees.” *Iskanian v. CLS Trans. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 360. “To compensate
3 for the lack of [a]dequate financing of essential labor law enforcement functions,’ the California
4 legislature enacted PAGA to permit aggrieved employees to act as private attorneys general to collect
5 civil penalties for violations of the Labor Code.” *Sakkab v. Luxottica Retail N. Am., Inc.* (9th Cir.
6 2015) 803 F.3d 425, 430.

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

9 We therefore hold that **a trial court should evaluate a PAGA settlement to**
10 **determine whether it is fair, reasonable, and adequate in view of PAGA's**
11 **purposes to remediate present labor law violations, deter future ones, and to**
12 **maximize enforcement of state labor laws.** (*See Williams , supra ,* 3 Cal.5th at p.
13 546, 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.

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

18 A court may award a lesser amount than the maximum civil penalty amount if, based on the
19 facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,
20 arbitrary and oppressive, or confiscatory. Lab. Code, § 2699(e)(2); *Amaral vs. Cintas Corp. No. 2*
21 (2008) 163 Cal.App.4th 1157, 1213-1214. *See e.g., Fleming v. Covidien Inc.*, 2011 WL 7563047, at
22 *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 82%).

23 The Court in *Flores v. Starwood Hotels & Resorts Worldwide, Inc.* (“Flores”) the court was
24 asked to approve a PAGA settlement (the “Settlement”). *Flores v. Starwood Hotels & Resorts*
25 *Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1075–76 (C.D. Cal. 2017). In deciding whether the court
26 should approve the Settlement, the court looked at the California legislature, the California Courts of
27 Appeal, the California Supreme Court, and the California Labor & Workforce Development Agency
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1 for a definitive answer as to what precedent the court should follow in either approving or denying the
2 settlement. *Id.* The court was not able to find a definitive answer. *Id.* As such, the court followed the
3 rationale in *O'Connor v. Uber Techs., Inc.*, 201 F.Supp.3d 1110, 132-35 (N.D. Cal. 2016), which states
4 a court is permitted to approve a PAGA settlement if the settlement is “fair and adequate in view of
5 the purposes and policies of the statute.” *Id.*

6 In deciding whether the settlement was “fair and adequate,” the *Court’s have* looked sought
7 how the parties divvied up the civil penalties under Section 2699(i) of the California Labor Code.
8 *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1076–77 (C.D. Cal.
9 2017). As the court felt the parties’ division of penalties was fair and adequate pursuant to the statute,
10 the court approved the settlement. *Id.*

11 **IV. DISCUSSION**

12 The parties reached the terms of their proposed settlement agreement following the exchange
13 of extensive information and employment records. The parties submit the proposed settlement of
14 PAGA penalties is fair, adequate, and reasonable.

15 **A. THE NATURE AND SCOPE OF THE ALLEGED VIOLATIONS**

16 The Complaint alleges Labor Code violations which triggered penalties under the PAGA
17 statute (Labor Code §2698 et seq.) (See ROA #1.) Plaintiff specifically alleged employees were denied
18 compliant Meal and Rest Periods, minimum wages, overtime, accurate wage statements,
19 reimbursements, and suffered waiting time violations. (See ROA #1, Exhibit 1: “Plaintiff’s LWDA
20 Notice” attached thereto).

21 Specifically, Plaintiff alleges that he - and other employees - received “short,” “late,” or
22 “missing” Meal Periods, including those documented within Defendant’s Time Records. (Decl.
23 Yaeckel, ¶22). Plaintiff also challenged whether Defendant maintained lawful meal and rest periods.
24 Plaintiff alleged he- and other employees -were not properly compensated due to Defendant’s failure
25 to maintain accurate time records. (*Id.*) Finally, Plaintiff also challenged whether Defendant
26 maintained lawful meal and rest period policies. (*Id.*)

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1 **B. ANALYSIS OF POTENTIAL LIABILITY, ON A REPRESENTATIVE BASIS**

2 The catalyst of this litigation concerned allegations that the aggrieved employees were denied
3 legally compliant meal and rest periods, and were not paid for all hours worked. (Decl. Yaeckel, ¶23).

4 Investigations completed by Plaintiff’s counsel revealed that Defendant’s timekeeping policies
5 and employee records were not in compliance with California law. (Decl. Yaeckel, ¶24). However,
6 these investigations also revealed that the “rate of violation” by Defendant was significantly less than
7 100%. (*Id.*). On many of those occasions, it appears that Defendant did, in fact, comply with the law.
8 (*Id.*)

9 Based on the above, counsel concluded a realistic maximum liability in a case of this type
10 would be in the range of **\$150,000.00** to **\$200,000.00**. (Decl. Yaeckel, ¶15). However, without
11 revealing settlement protected communications, it was highly unlikely Plaintiff could ever recover
12 anything approaching a maximum judgment. (*Id.*)

13 Moreover, Plaintiff’s counsel is aware of the Court’s discretion to mitigate penalties pursuant
14 to California Labor Code section 2699(e)(2). (Decl. Yaeckel, ¶26). To confirm, Plaintiff’s counsel
15 experienced the mitigation of “PAGA” penalties in *Carrington v. Starbucks Corp.* (2018) 30
16 Cal.App.5th 504. (*Id.*) In *Carrington*, the Court significantly mitigated PAGA penalties (\$5 per
17 violation), due to the efforts made by the employer to comply with the law. (*Id.*)

18 Plaintiff’s counsel agrees that penalties *should* be mitigated where violations are minimal (or
19 rare), or where the employer makes significant efforts to comply with the Labor Code. (Decl. Yaeckel,
20 ¶27).

21 As the above factors exist in this case, it is the opinion of Plaintiff’s counsel that the settlement
22 is fair, adequate, and reasonable. Specifically, Plaintiff’s counsel’s understanding is that Defendant
23 has agreed to review its policies and practices, and amend them to the extent they do not comply with
24 California law. (Decl. Yaeckel, ¶28).

25 Plaintiff’s counsel, Eric K. Yaeckel, has over 13 years of experience prosecuting class and
26 representative action claims under the California Labor Code. (Decl. Yaeckel, ¶8-12). (*Id.*) Plaintiff’s
27 counsel are the attorneys of record in a matter that was recently heard (and favorably decided) before
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1 the California Supreme Court titled *Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58. (*Id.*) The
2 *Donohue* matter was a certified class and PAGA action. (*Id.*)

3 Plaintiff's counsel were lead counsel on approximately 40 employment "wage and hour"
4 claims with class action, or representative action allegations. (*Id.*) Based on said experience, it is the
5 opinion of Plaintiff's counsel that this settlement represents a fair and adequate payment. (Decl.
6 Yaeckel, ¶13)

7 **C. THE ALLOCATION OF PENALTIES, AND LIMITED RELEASE OF CLAIMS**

8 While Labor Code section 2699(l) requires a court to "review and approve any penalties sought
9 as part of a proposed settlement agreement," it does not provide any guidance as to what is considered
10 an 'adequate' allocation of these penalties. However, Trial Courts have held that *where the* division
11 of penalties was fair and adequate and in accordance with the PAGA statute, the court should approved
12 the settlement. *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1076–77
13 (C.D. Cal. 2017).

14 After subtracting the contingent costs set forth above, the parties seek to allocate **\$27,305.83**
15 of the total settlement to the Total Value of the PAGA Fund. 75% (**\$20,479.37**) shall be assigned/paid
16 to the LWDA as penalties. The remaining 25% (**\$6,826.46**) will be allocated and distributed among
17 the current or ex-employees within the PAGA Period.

18 The parties contend the settlement agreement amount is fair, adequate, and reasonable. (Decl.
19 Yaeckel, ¶¶ 13). Moreover, the PAGA settlement does not bar any employee from pursuing their own
20 individual Labor Code claims. (Decl. Yaeckel ¶7; **Exhibit 1**: "Release, Waiver of Claims, Dismissal"
21 § 5.(B)). The release only applies to the PAGA claims for penalties, based upon the allegations in
22 Plaintiff's operative Complaint. (*Id.*)

23 **D. PLAINTIFF'S REQUEST FOR AN ENHANCEMENT PAYMENT**

24 Plaintiff requests an enhancement payment of \$10,000 for both (1) his service as the PAGA
25 representative and (2) for recognition that he was also required to release all of her underlying Labor
26 Code claims. There is no such restriction on the other alleged aggrieved employees.

27 First, An enhancement is justified in light of the reputational risk that Plaintiff assumed by
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1 litigating claims against a former employer. See *Billinghausen v. Tractor Supply Co.*, 306 F.R.D. 245,
2 267-68 (N.D. Cal. 2015) (finding "personal detriment" upon testimony that future employers can easily
3 learn that a prospective employee served as a plaintiff through the internet).

4 Second, the separate settlement payment is reasonable because Plaintiff "remained fully
5 involved and expended considerable time and energy during the course of the litigation." See *In re*
6 *Toys 'R' Us-Del FACTA Litig.*, 295 F.R.D. at 471 (citation omitted). Plaintiff devoted his time and
7 effort toward assisting his attorneys with the prosecution of the claims. (Yaeckel decl. ¶ 31).

8 The separate payment is also appropriate because Plaintiff otherwise "will not gain any benefit
9 beyond that [he] would receive as an ordinary [Aggrieved Employee]." *In re Toys "R" Us FACTA*
10 *Litig.*, 295 F.R.D. at 472; Van Vranken, 901 F. Supp. at 299 (holding that a substantial award is
11 appropriate where a [representative's] claim made up "only a fraction of the common fund.").

12 Lastly, because PAGA is a "type of qui tam action," it is appropriate for the Plaintiff to receive
13 a modest additional payment from the settlement as a "bounty" for his special effort in vindicating the
14 State's interests by enforcing its labor laws. See *Iskanian*, 59 Cal. 4th at 382 ("A PAGA representative
15 action is therefore a type of qui tam action."); see also *People ex rel. Strathmann v. Acacia Research*
16 *Corp.*, 210 Cal. App. 4th 487, 500 (2012) ("The person who brings the qui tam action, called the
17 'relator,' stands in the shoes of the People of the State of California, who are deemed to be the real
18 party in interest . . . The relator in a qui tam action under section 1871.7 does not personally recover
19 damages but, if successful, receives [a portion] of the recovery as a bounty.") (internal citations
20 omitted).

21 Here, by "sticking out his neck out" as a PAGA Representative in a publicly filed lawsuit,
22 Plaintiff took a substantial risk that may adversely impact his ability to work in this field in the future.
23 Any company who does a detailed background check, will be able to determine that Plaintiff asserted
24 legal claims against his former employer. An entire industry exists that allows employers to run
25 extensive background searches on potential employees. Companies who provide these services
26 specifically highlight the fact that their services allows employers to weed out litigious employment
27 candidates. (Yaeckel decl. ¶¶ 32-34).

1 Plaintiff also risked personally owing a large cost award, well into the tens of thousands of
2 dollars, had the claims been unsuccessful. Yaeckel decl. ¶ 35).

3 **E. THE LWDA WAS NOTIFIED AND DOES NOT OBJECT**

4 Plaintiff has uploaded this entire motion to the LWDA, concurrent with the filing. (See the
5 concurrently submitted Proof of Service on the LWDA.) To date, Plaintiff has not received a response
6 from the LWDA regarding the proposed settlement. If the LWDA contacts Plaintiff's counsel at any
7 time prior to the hearing, Plaintiff's counsel will provide an updated declaration to the Court. (Decl.
8 Yaeckel ¶24).

9 **IV. CONCLUSION**

10 The parties respectfully request that the Court approve their settlement and proposed allocation
11 of PAGA penalties to the LWDA and the represented employees.

12
13 Dated: August 14, 2024

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