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EDWIN RENDON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

EDWIN RENDON, an individual

Plaintiff(s),

vs.

MOVISO ACADEMY, an unknown business
entity; CSG ENTERPRISES, LLC, a
California Limited Liability Company; THE
LEARNING SOURCE LLC, a California
Limited Liability Company; GLORIA Y.
GONZALEZ, an individual; and DOES 1
through 25, inclusive

Defendant(s) .

Case No. 37-2022-00042482-CU-OE-CTL

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION
FOR PAGA SETTLEMENT APPROVAL**

Action Filed: October 21, 2022

Hearing Date: June 16, 2023

Hearing Time: 9:00 a.m.

Dept.: C-73

Judge: Hon. Joel R. Wohlfeil

Reservation Number: 2959558

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I. SUMMARY OF MOTION

Plaintiff EDWIN RENDON (“Plaintiff”), respectfully submits the following Memorandum of Points and Authorities in support of his 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 begins on October 21, 2021. There are approximately **1,058** pay periods and **33** aggrieved employees. Declaration of Katherine A. Dishongh (“Dishongh Decl.” herein) ¶ 3. After several months of pre-filing investigation and following lengthy settlement discussions, the parties agreed to the terms of the proposed PAGA settlement. The parties have drafted and executed a formal PAGA Settlement Agreement. (Dishongh Decl. ¶ 4; the “Agreement,” please see **Exhibit A.**) The proposed terms of the settlement are as follows:

PAGA Members:	33
Settlement Fund (“GSA”):	\$12,696.00
Claims Period:	October 21, 2021 until the date of approval
LWDA Payment:	\$4,368.00
Attorney’s Fees:	\$4,232.00
Litigations Costs:	\$760.00
Third Party Administrator:	\$1,630.00
Plaintiff Service Payment:	\$250.00
Resultant Net Settlement Fund:	\$1,456.00

An “average” PAGA employee will receive a payment of approximately **\$44.12**. Dishongh Decl. ¶ 8.

On April 5, 2023. Plaintiff’s counsel uploaded via the LWDA’s electronic filing portal, the PAGA Settlement Agreement. Dishongh Decl. ¶ 5. To date, Plaintiff’s counsel has not received a notice that the LWDA would intervene. *Id.*

On April 5, 2023, Plaintiff’s counsel uploaded via the LWDA’s electronic filing portal, copies of this entire Motion, including the Notice, this supporting Memorandum, Declaration,

1 Proposed Order & Judgment, and PAGA Settlement Agreement. Dishongh Decl. ¶ 6. To date,
2 Plaintiff's counsel has not received any opposition from the LWDA. *Id.* If the LWDA contacts
3 Plaintiff's counsel at any time prior to the June 16, 2023 hearing, Plaintiff's counsel will provide an
4 updated declaration to the Court. Dishongh Decl. ¶ 7.

5 Further, there are no restrictions for any of the 33 PAGA employees to file individual
6 actions, as the settlement agreement only covers PAGA claims. Dishongh Decl. ¶¶ 4, 8; Exhibit 1
7 III.5.

8 The Parties now move the court for approval of the PAGA Settlement Agreement.

9 **II. CONTROLLING LAW**

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

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

1 2009 WL 2448430 (S.D. Cal. 2009) (finding that California law imposes the "subsequent violation
2 penalty" only after an employer has been notified its conduct violates the Labor Code).

3 Further, a court may award a lesser amount than the maximum civil penalty amount if, based
4 on the facts and circumstances of the particular case, to do otherwise would result in an award that
5 is unjust, arbitrary and oppressive, or confiscatory. Lab. Code, § 2699(e)(2); *Amaral vs. Cintas*
6 *Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213-1214; *See e.g., Fleming v. Covidien Inc.*, 2011 WL
7 7563047, at *4 (C.D. Cal. Aug. 12, 2011)

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

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

19 We therefore hold **that a trial court should evaluate a PAGA settlement to**
20 **determine whether it is fair, reasonable, and adequate in view of PAGA's**
21 **purposes to remediate present labor law violations, deter future ones, and to**
22 **maximize enforcement of state labor laws.** (See *Williams* , *supra* , 3 Cal.5th at
23 p. 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA "sought to remediate present
24 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.

25 Prior to *Moniz*, Other Courts have followed the rationale in *O’Connor v. Uber Techs., Inc.*,
26 201 F.Supp.3d 1110, 132-35 (N.D. Cal. 2016), which states a court is permitted to approve a PAGA
27 settlement if the settlement is “fair and adequate in view of the purposes and policies of the statute.”
28 *Id.*

1 In deciding whether the settlement was “fair and adequate,” the *Flores* court looked sought
2 how 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 pursuant
4 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 the
7 exchange of extensive information and employment records. Dishongh Decl. ¶ 10. The Parties
8 submit the proposed settlement of PAGA penalties is fair, adequate, and reasonable. *Id.* The Parties
9 are unaware of any other cases that may be impacted by the PAGA Settlement. *Id.*

10 **A. Settlement Terms**

11 The group of allegedly aggrieved employees is defined as all individuals employed by
12 Defendant CSG Enterprises, LLC dba Moviso Academy in California and classified as “non-
13 exempt” from October 21, 2021, through the date of the Court’s Order granting approval of the
14 PAGA Settlement (the “Aggrieved Employees”). Dishongh Decl. ¶ 4; Exhibit A: I.4, 20.

15 Upon the Effective Date (Dishongh Decl. ¶ 4; Exhibit A: I.9.), Defendant agrees to pay the non-
16 reversionary settlement amount of \$12,696.00 in connection with the PAGA Settlement (“Gross
17 Settlement Amount”). Apart from the employer’s share of payroll taxes, Defendant shall not be
18 required to pay more than the Gross Settlement Amount in connection with the PAGA Settlement.
19 The Gross Settlement Amount is broken down as follows:

- 20 • \$1,630.00 Settlement Administrator Fees;
- 21 • \$4,232.00 Attorneys’ Fees (1/3 of Gross Settlement Amount)
- 22 • \$760 Costs of Litigation
- 23 • \$250 Plaintiff’s Service Payment (Dishongh Decl. ¶ 8.)

24 After deducting the proposed amounts for Plaintiff’s counsel’s Attorneys’ Fees and Costs, the
25 Settlement Administration Costs, and Plaintiff’s Service Payment from the Gross Settlement
26 Amount, the amount remaining is defined as the “PAGA Payment.” One hundred percent (100%) of
27 the PAGA Payment shall be allocated to the payment of civil penalties under the PAGA (the
28 “PAGA Payment”). Pursuant to the PAGA, seventy-five percent (75%) of the PAGA Payment, or

1 Four Thousand Three Hundred and Sixty-Eight Dollars (\$4,368.00) shall be allocated to the State of
2 California Labor and Workforce Development Agency (the “LWDA PAGA Payment”), with the
3 remaining twenty-five percent (25%) or One Thousand Four Hundred and Fifty-Six Dollars
4 (\$1,456.00), allocated to the PAGA Employees (“Aggrieved Employees PAGA Payments”).
5 Dishongh Decl. ¶ 11.

6 Given the above, the average payment to each individual PAGA Employee will be
7 approximately \$44.12. Dishongh Decl. ¶ 8. Pursuant to the PAGA Settlement Agreement, any
8 unclaimed funds will be tendered to the State of California Unclaimed Property Fund. Dishongh
9 Decl. ¶ 4; Exhibit A § IV.3.

10 Each PAGA Employee’s pro rata share shall be determined based on the number of Eligible
11 Pay Periods that he or she worked for Defendant during the PAGA Period, and shall be calculated
12 as follows: (1) for PAGA Employees, the Aggrieved Employees PAGA Payments will be divided
13 by the total number of eligible pay periods worked by all PAGA Employees during the PAGA
14 Period, and the resulting figure will be referred to as the “Multiplier,” and (2) each PAGA
15 Employee’s pro rata share of the Aggrieved Employees PAGA Payments will be determined by
16 multiplying the Eligible Pay Periods that the PAGA Employee worked during the PAGA Period by
17 the multiplier. Dishongh Decl. ¶ 4; Exhibit A § III. 3(a)(1). That amount shall be referred to as the
18 PAGA Employee’s “Individual PAGA Payments.” Dishongh Decl. ¶ 4; Exhibit A: Section I. 11.

19 Each PAGA Employee’s Individual PAGA Payment share will be treated as non-wage income
20 and reported by the Settlement Administrator on IRS Form 1099 to the respective PAGA Employee
21 and applicable governmental authority. Dishongh Decl. ¶ 4; Exhibit A § III.3(2).

22 Further, the Settlement only covers PAGA claims. Dishongh Decl. ¶ 4, 9; Exhibit A: “Released
23 Claims” § III.5. It does not cover PAGA Employee's individual wage and hour claims. *Id.*

24 The proposed notice of the PAGA Settlement to be sent to the allegedly aggrieved employees
25 (the “Notice”) along with his or her Individual PAGA Payment is attached to the Declaration of
26 Katherine A. Dishongh as Exhibit D, paragraph 12. Due to the nature of Defendant’s workforce, the
27 Parties agree that it is sufficient to provide the Notice in English only. *Id.*

1 The Settlement Administrator shall be responsible for: (a) processing the data provided by
2 Defendant to be used in calculating PAGA Employees' Individual PAGA Payments; (b) preparing,
3 printing and mailing the Notice to PAGA Employees, as well as following up with reasonable skip
4 tracing; (c) calculating and mailing Individual PAGA Payments to PAGA Employees; (d)
5 calculating and paying the employer's share of the applicable federal and state withholding tax; (e)
6 filing any required federal and state tax forms and related agency reporting; (f) filing any required
7 reports with the Court; and (g) any and all such tasks to which the Parties mutually agree, or which
8 the Court orders the Settlement Administrator to perform. Dishongh Decl. ¶ 13.

9 The Court will retain jurisdiction of this matter to enforce the settlement pursuant to C.C.P.
10 section 664.6. Dishongh Decl. ¶ 4; Exhibit A §§ III.11, V.8.

11 **B. Basis for Request**

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

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

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

21 The Complaint alleges Labor Code violations¹ which triggered penalties under the PAGA
22 statute (Labor Code §2698 et seq.) (See ROA #1.) Plaintiff also alleged all employees were denied
23 compliant meal and rest periods, minimum wages, overtime, accurate wage statements,
24

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26
27 ¹ The Complaint also alleges Individual Causes of Action for Disability Discrimination, Failure to Prevent
28 Discrimination, Retaliation (Lab. Code § 1102.5) and Retaliation (Gov't Code § 12940(h)) which are settled
pursuant to the parties' separate Individual Settlement Agreement.

1 reimbursements, and suffered waiting time violations. *Id.*
2 Specifically, Plaintiff alleged he- and other employees -were not properly compensated due to
3 Defendant’s failure to account for time preparing for class, responding to emails, and grading
4 assignments. *Id.*

5 **D. Analysis of Potential Liability, on a Representative Basis**

6 One of the main issues of this litigation concerned allegations that Plaintiff was denied legally
7 compliant meal and rest periods and was not paid for all overtime hours worked. Dishongh Decl. ¶
8 16. Investigations completed by Plaintiff’s counsel revealed that Defendant’s timekeeping policies
9 and employee records were not in compliance with California law. Dishongh Decl. ¶ 17. However,
10 these investigations also revealed that the “rate of violation” by Defendant was significantly less
11 than 100%. *Id.* On many of those occasions, it appears that Defendant did, in fact, comply with the
12 law. *Id.*

13
14 Based on the above, the maximum liability in a case of this type would be in the range of
15 \$50,000.00 to \$100,000.00. Dishongh Decl. ¶ 18.

16 Moreover, Plaintiff’s counsel is aware of the Court’s discretion to mitigate penalties pursuant to
17 California Labor Code section 2699(e)(2). Dishongh Decl. ¶ 19. Plaintiff’s counsel agrees with the
18 provision of the Labor Code, 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. Dishongh
20 Decl. ¶ 20.

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

23 **E. Allocation of Penalties and *Limited Release of Claims***

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

28 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 AWI) 2012 WL 2117001 at *14. (approving allocation of \$7,500 to PAGA penalties out of \$518,245 settlement).

Defendant, and its counsel, deserve credit for their willingness to consider – and address – the allegations. Specifically, Defense Counsel, (who have extensive experience and knowledge and “Wage and Hour” litigation) agreed to produce a substantial amount of documents and information necessary to evaluate the parameters of settlement. Following month-long informal negotiation at arms length, the parties have reached a proposed settlement. That includes a payment of penalties under PAGA. Dishongh Decl. ¶ 22.

Here, the parties seek to allocate **\$5,824.00** of the Gross Settlement Amount to the total value of the PAGA Penalties. Of this amount, the LWDA will receive **\$4,368.00**. Dishongh Decl. ¶ 4, 8; Exhibit A § III.3. The remaining **\$1,456.00** will be allocated and distributed among the PAGA Employees. *Id.* Each PAGA member would receive an average payment of approximately **\$44.12**. *Id.*

The Parties contend the PAGA Settlement agreement amount is very, adequate, and reasonable. Dishongh Decl. ¶ 21. Moreover, the PAGA Settlement does not bar any employee from pursuing their own individual Labor Code claims. Dishongh Decl. ¶ 9. The release only applies to the PAGA claims for penalties, based upon the allegations in Plaintiff's operative complaint. *Id.*

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