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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

TASJA GRAY, on behalf of herself and all aggrieved employees,	)	Case No.	CVPS2204289
	)		
	)	NOTICE OF MOTION AND MOTION	
	)	FOR APPROVAL OF PAGA	
Plaintiffs,	)	SETTLEMENT; MEMORANDUM OF	
	)	POINTS AND AUTHORITIES;	
v.	)	DECLARATION OF MANNY STARR;	
	)	[PROPOSED] ORDER	
G&M HIRE ENTERPRISES LLC, DR. ROB	)		
FARMS INC., and DOES 1 to 100,	)	Date: June 21, 2023	
	)	Time: 8:30 a.m.	
Defendants.	)	Dept: PS2	
	)		
	)	Complaint Filed: October 28, 2022	
	)	Trial: None set	

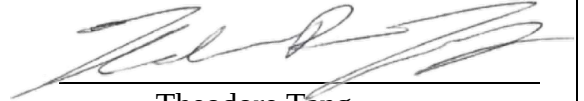
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on June 21, 2023 at 8:30 a.m. or as soon thereafter as
may be heard in Department PS2 of the Superior Court of California, County of Riverside, located
at 3255 E. Taquitz Canyon Way, Palm Springs, California 92262, Plaintiff Tasja Gray will and
hereby does move this court for an order approving settlement of PAGA claims.

1 This motion is based on this notice, the memorandum of points and authorities, the
2 declaration of Manny Starr, the declaration of Tasja Gray, the pleadings on file in this case, and
3 any other evidence or argument as may be properly placed before the court at or before the hearing.
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5 Date: May 12, 2023

FRONTIER LAW CENTER

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Theodore Tang
Attorney for Plaintiff
Tasja Gray

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Private Attorneys General Act (“PAGA”) representative action relates to the Aggrieved Employees’ working for G&M Hire Enterprises LLC (“G&M” or “Defendant”) from August 24, 2021 through the present. The Aggrieved Employees, as defined herein, were allegedly subject to violations of Labor Code sections 201, 202, 203, 226, 226.7, 510 512, 558, 1194, 1197, 1197.1, 1198 and 2802.

Plaintiff Tasja Gray (“Gray”) worked for G&M from approximately March to October of 2021.

The parties attended mediation with experienced employment law mediator Hon. Linda Quinn (Ret.) on March 6, 2023. Through arm’s-length negotiations and after an extensive review of informal discovery and documentation, the parties reached a resolution at mediation. (Declaration of Manny Starr (“Starr Decl.”) ¶¶4-5.) The case settled for \$50,000. (Starr Decl. ¶ 6).

Under Labor Code section 2699(1)(2), “The superior court shall review and approve any settlement of any civil action filed pursuant to this part.” Plaintiff requests the Court to approve the settlement of the PAGA claims asserted in this action. Plaintiff expects this motion to be uncontested.

II. PROCEDURAL HISTORY

On August 8, 2022, Plaintiff filed a PAGA notice letter with the Labor and Workforce Development Agency (“LWDA”) and sent the same via certified mail to the Defendant (LWDA Case No. LWDA-CM-900224-22). In this letter, Plaintiff asserted that Defendant failed to comply with Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1197, 1197.1, and 2802. Specifically, the letter alleged: that G&M implemented a policy of requiring employees to go through security checkpoints to enter or leave, and did not pay for this time. The letter alleged that as a result of this policy, G&M failed to pay the Aggrieved Employees of all time worked, failed to pay all overtime owed, and discouraged Aggrieved Employees from taking meal and rest breaks. (Starr Decl. ¶2).

1 On October 28, 2022, Plaintiff filed this action. (Starr Decl. ¶ 3). The complaint had a
2 single cause of action seeking PAGA penalties for Defendant's alleged Labor Code violations.
3 After answering the complaint, Defendant and Plaintiff discussed the possibility of resolution by
4 early mediation.

5 The parties mediated the case on March 6, 2023 with experienced employment law
6 mediator Hon. Linda Quinn (Ret.). An agreement was reached at mediation, and on April 21, 2023
7 the parties entered into a formal "Private Attorneys General Act Settlement Agreement and
8 Release (the "Settlement"). (Starr Decl. ¶ 5.) The "PAGA Period" is from August 24, 2021
9 through the date of approval of the Settlement. For purposes of this settlement only, "Aggrieved
10 Employees" is defined as "all individuals who are, or previously were, employed by G&M Hire
11 Enterprises, LLC and Dr. Robb Farms at DHS Lot 11 Holdings, LLC's location in Desert Hot
12 Springs, California and classified as a non-exempt employee during the PAGA Period." Through
13 informal discovery, Defendant produced data relating to the number of Aggrieved Employees and
14 the number of pay periods those employees worked, along with relevant policy documents and a
15 representative sampling of time and pay records for Aggrieved Employees.

16 **III. LEGAL ARGUMENT AND PAGA PENALTY CALCULATION**

17 PAGA permits an aggrieved employee to sue an employer for civil penalties associated
18 with the employer's alleged violation of various Labor Code provisions. Labor Code section
19 2699(a). Pursuant to the statute, of the amount paid to settle a claim for PAGA penalties, twenty-
20 five percent (25%) is payable to the Aggrieved Employees and seventy-five percent (75%) is
21 payable to the LWDA. Labor Code section 2699(i). The penalties being sought as part of this
22 settlement are derived from the labor code violations referenced above. Each is discussed briefly
23 in turn below.

24 The maximum penalty calculations below are based on 161 Aggrieved Employees having
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worked approximately 3,636 aggregated pay periods¹. (Starr Decl. ¶ 9.)

a. Failure to Provide Compliant Rest Breaks

Labor Code section 226.7 and the Wage Orders require an employer to provide a 10-minute **off-duty** rest break for every 4 hours worked or major fraction thereof. Employers are required to relinquish control over their employees during their 10-minute rest breaks. *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 269 (2016).

Plaintiff alleges that Defendant prohibited Plaintiff and the Aggrieved Employees from leaving the work site for rest breaks. Even if the Aggrieved Employees were not told not to leave, doing so would have been practically impossible due to Defendant's practice of requiring the employees to go through a security check before leaving the building, since the checkpoint process would exhaust the entire break period.

Plaintiff alleges that all rest breaks were noncompliant due to the Aggrieved Employees having to remain on the premises and generally on call during their rest breaks. The PAGA Penalty applicable to meal break violations is found in Labor Code section 2699, which is \$100 for initial violations and \$200 for subsequent violations. Prior to mediation, Plaintiff estimated the maximum liability for meal break violations was approximately (3,636 pay periods x \$100) **\$363,600**.²

b. Failure to Provide Compliant Meal Breaks

An employer provides compliant meal breaks when "it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, **and does not impede or discourage them from doing so.**" *Brinker Restaurant Corp. v. Superior Court*, (2012) 53 Cal.4th 1004, 1040. (emphasis added). Plaintiff alleges that Defendant impeded and discouraged the Aggrieved Employees from taking compliant

¹ Based on 3019 pay periods in the data set which runs through January 20, 2023, extrapolated through May 5, 2023.

² Plaintiff assumes in these calculations that all violations are "initial," even though some of the pay periods involved arose after the PAGA notice was sent and could arguably be treated as "subsequent" violations.

1 meal breaks because Defendant required them to pass through off-the-clock security checkpoints in
2 order to leave the work premises. Therefore, the Aggrieved Employees were deterred from taking
3 meal breaks off the premises, or their breaks were cut short as a result of the time spent passing
4 through security while off-the-clock.

5 The PAGA Penalty applicable to meal break violations is found in Labor Code section 558,
6 which is \$50 for initial violations and \$100 for subsequent violations. Prior to mediation, Plaintiff
7 estimated the liability for meal break violations was approximately (3,636 pay periods x \$50)
8 **\$181,800.**

9 **c. Failure to Pay for All Hours Worked**

10 Plaintiff alleges that Defendant required the Aggrieved Employees to travel to and undergo
11 security checks while off the clock. These occurred before a shift started (and before the Aggrieved
12 Employees were able to clock in) and after a shift ended (after the Aggrieved Employees had
13 already clocked out). The Aggrieved Employees were under the control of Defendant while
14 travelling to and while undergoing these security checks. Thus, the Aggrieved Employees should
15 have been paid for this time. *Frlekin v. Apple, Inc.* (2020) 8 Cal. 5th 1038 (holding Apple's exit
16 searches equated employer control, rendering the time compensable). This off the clock time was
17 often overtime.

18 The applicable civil penalty for minimum wage violations is found in Labor Code section
19 1197.1, which is \$100 for the initial violation and \$250 for each subsequent violation. Prior to
20 mediation, Plaintiff estimated the maximum liability for PAGA penalties attributed to minimum
21 wage violations was approximately **\$363,600.**

22 **d. Wage Statement and Waiting Time Penalties**

23 Derivative waiting time and wage statement penalties based on Labor Code section 226.7
24 for failure to pay all premium pay are permitted under *Naranjo v. Spectrum Sec. Servs., Inc.*, 13
25 Cal. 5th 93, 117, (2022). "In short, missed-break premium pay constitutes wages for purposes of
26 Labor Code section 203, and so waiting time penalties are available under that statute if the
27 premium pay is not timely paid." *Id.* Thus, since Defendant failed to pay premium pay for missed
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meal and rest breaks in violation of Labor Code section 226.7 as alleged above, Plaintiff may seek
PAGA Penalties relating to wage statement and waiting time penalties.

The PAGA Penalty applicable to waiting time penalties is found in Labor Code section
2699, which is \$100 for initial violations and \$200 for subsequent violations. However, the sample
data obtained by Plaintiff did not contain information about which employees were no longer
working for Defendant, making it impossible to accurately determine waiting time penalties.
However, even if every employee had been terminated, the PAGA penalties for waiting time would
be no more than \$16,100.

**The PAGA Penalty applicable to wage statement violations is found in Labor
Code section 2699 as well.³ Prior to mediation, Plaintiff estimated the liability for
wage statement violations was approximately (3,636 pay periods x \$100)
\$363,600.e. Failure to Reimburse Work-Related Expenses**

Labor Code Section 2802 requires employers to “indemnify [their] employees for all
necessary expenditures... incurred... in direct consequence of the discharge of [their] duties...”
Here, Plaintiff and the Aggrieved Employees were required to purchase several work-related items,
such as protective sleeves and eyewear. While Defendant was aware of the costs, no
reimbursement was provided.

The PAGA Penalty applicable to waiting time penalties is found in Labor Code section
2699, which is \$100 for initial violations and \$200 for subsequent violations. Assuming the
Aggrieved Employees each had to purchase some or all of the above work-related tools at least
once during the PAGA Period, prior to mediation Plaintiff estimated the liability relating to the
work expense violation was approximately (161 employees x \$100) **\$16,100.**

f. Maximum Liability

In sum, Plaintiff estimated maximum exposure to be the following:

³ Where, as here, Plaintiff alleges that the wage statements are inadequate, as opposed to where
they are not provided at all, which is covered by Labor Code section 226.3.

- Rest Break Violations: **\$363,600**
- Meal Break Violations: **\$181,800**
- Off the Clock Work: **\$363,600**
- Wage Statement Penalties: **\$363,600**
- Waiting Time Penalties: **\$16,100**
- Unreimbursed Word-Related Expenses: **\$16,100**
- Total Maximum Liability: **\$1,304,800**

This amount represents the maximum amount in civil penalties Plaintiff could reasonably expect to recover at trial on the merits of his claims. However, as set forth below, there were inherent risks in litigation, and would likely have been significant difficulties in trying the case, particularly in light of the specific defenses and evidence raised by the Defendant and the likely reduction of any civil penalty award by the Court pursuant to Labor Code section 2699 subdivision (e)(2).

IV. THE DESCRIPTION OF THE SETTLEMENT TERMS

The Settlement Agreement is attached to the Declaration of Manny Starr as **Exhibit A**. The gross amount of the settlement is \$50,000. The settlement is broken down as follows:

- \$16,666.00 to Frontier Law Center for attorney fees;
- \$3,000 to Frontier Law Center for costs of suit;
- \$2,950 to the Settlement Administrator, to administer the settlement, including providing notice, payment, accounting, and skip trace on returned mail;
- \$27,384 in PAGA Penalties, of which 75% (\$20,538) will go to the LWDA and 25% (\$6,846) will be distributed to the Aggrieved Employees on a pro rata basis.

(Settlement at section 3.2.)

In exchange for this consideration, the Aggrieved Employees and the State of California

1 will release all PAGA claims that were or could have been alleged in Plaintiff's Complaint.⁴
2 (Settlement section 5.01.)

3 **V.SETTLEMENT IS FAIR AND REASONABLE**

4 Labor Code section 2699(e)(2) states:

6 "In any action by an aggrieved employee seeking recovery of a civil penalty
7 available under subdivision (a) or (f), a court may award a lesser amount than the
8 maximum civil penalty amount specified by this part if, based on the facts and
9 circumstances of the particular case, to do otherwise would result in an award that is
unjust, arbitrary and oppressive, or confiscatory."

10 Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, 30
11 Cal.App.5th 504 (2018), while the plaintiff prevailed on his PAGA claim at trial, the trial court
12 reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at
13 complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be
14 proper. *Id.* at 539. While Plaintiff estimates Defendant's total potential exposure for the above-
15 referenced violations to be over approximately \$1.3 million, the facts and circumstances particular
16 to this case allow for a reduced settlement amount to avoid an award that is unjust, arbitrary,
17 oppressive, or confiscatory.

18 **a. Meal and Rest Break Claim Defenses**

19 If this case were to proceed, Defendant is prepared to argue that Plaintiff would not prevail
20 at all. First, Defendant claims security camera footage will confirm that there was no "security
21 checkpoint." According to Defendant, the "checkpoint" was merely a gate house to the business
22 park in which Defendant's facility was located, which Defendant neither controlled nor operated.
23 In addition, Defendant asserted this gate house was not operational for the entire PAGA period
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26
27 ⁴ Plaintiff and Defendant also resolved a dispute over alleged FEHA violations. Due to an
28 arbitration agreement, those allegations are not part of this suit, and any settlement thereof would
be governed by a separate agreement.

1 and, even when it was operational, it did not impede the aggrieved employees from taking meal or
2 rest periods, as the security guard merely checked for I.D. badges. According to Defendant, a
3 majority of the time the guard simply waves the employee through, in a process that takes at most a
4 few seconds. Defendant is prepared to argue that no reasonable person would actually be
5 discouraged from leaving the premises by so short a process, as it takes more time to cross the
6 parking lot to enter one's car than it does to drive to the entrance of the large business park, where
7 the "security checkpoint" was located. Further, Defendant contends that they maintained fully
8 compliant meal and rest period policies throughout the PAGA period, encouraged employees to
9 take all rest periods, and that no one actually told Plaintiff, or any other employee, that they could
10 not leave the premises on their breaks.

11 **b. Overtime and Unpaid Wage Claim Defenses**

12 Plaintiff's overtime and unpaid wage claims are also based on the presence of the security
13 checkpoint. Plaintiff alleges that the time spent waiting for the security checkpoint should have
14 been considered compensable.

15 As with the meal and rest breaks, Defendant contends that they did not control the "security
16 checkpoint" and thus any time spent waiting to enter or exit the business park, albeit *de minimis*,
17 was not time during which aggrieved employees were suffered or permitted to work by Defendant,
18 or other subject to Defendant's control. Furthermore, if the case were to proceed to trial, Defendant
19 was prepared to show video evidence that the "security checkpoint" was not operational the entire
20 PAGA period, but even when it was that security guards most often simply waived the employees
21 through. If this is true, the amount of time spent going through the checkpoint isn't just minimal,
22 it's not considered compensable.

23 **c. Waiting Time Penalty and Wage Statement Defenses**

24 Defendant contends that, since Plaintiff's waiting time and wage statement claims are
25 purely derivative of the other claims, they cannot survive if the underlying claim is also defeated.
26 In investigating the case, Plaintiff has not been made aware of any independent wage statement or
27 waiting time violations.

1 While Plaintiff strongly contests Defendant's position, the fact remains that there is a risk
2 that the Defendant could prevail on one or more of these issues and, as Plaintiff's wage statement
3 and waiting time penalty claims were strictly derivative of her unpaid wage/premium claims, and
4 would rise and fall therewith, it was very likely that the court may not award any PAGA penalties,
5 or at the very least substantially reduce any PAGA award for these claims accordingly.
6 Furthermore, even if Plaintiff prevailed on all of the issues, the Court could still reduce the
7 penalties if Defendant could show a good faith attempt to comply with the law.

8 **d. General PAGA Defenses**

9 Defendant contends that, in addition to the substantive issues with Plaintiff's claims,
10 proceeding with an actual trial on the PAGA cause of action would be impossible. Defendant
11 contends that there is no evidence of an "unwritten policy" upon which the matter could be
12 resolved on a representative basis, Plaintiff would be required to prove his cases using the
13 testimony of each individual employee – over 100 of them – in an overblown trial that has no
14 practical chance of being conducted in an orderly or manageable fashion. While PAGA actions do
15 not have to meet the same requirements as class actions, courts must still make sure a viable and
16 manageable method of trying the case exists. *See Wesson v. Staples Office Superstore, LLC*, 68
17 Cal.App.5th 746, 759 (2021).

18 Plaintiff contests all these defenses, and contends that, were the case to proceed through
19 litigation, sufficient uniform practice existed on which the case could be tried on a representative
20 basis. However, while Plaintiff is confident in his chances of success, she is all too aware that 1) a
21 reasonable trier of fact could disagree and 2) even were she to prevail on all his claims, the court
22 still has discretion to further reduce any award.

23 **VI. THE COURT SHOULD APPROVE THE PROPOSED PAGA SETTLEMENT**

24 The terms of the parties' settlement are reasonable under the circumstances and serve the
25 purpose of PAGA. (*O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal.
26 2016).) Although Defendant's total maximum liability could result in \$1.3 million in penalties, the
27 court has discretion to award a lesser amount than the maximum civil penalty allowed under
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1 PAGA. Labor Code section 2699(e)(2). Here, the PAGA penalties being recovered are reasonable
2 for the reasons set forth above.

3 Given the number of employees involved, \$2,950 is a reasonable amount to set aside for
4 administration costs. Plaintiff's counsel received a bid from Phoenix Settlement Administrators
5 for \$2,950. The quote includes all necessary mailing, processing, and tax reporting, as well as 1
6 round of remailing and skip-tracing for returned check and notice packets that come back without a
7 forwarding address (Starr Decl. ¶17.)

8 PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. (Lab. Code, §
9 2699(g).) In class actions, California state and federal courts have recognized that an appropriate
10 method for determining an award of attorneys' fees is based on a percentage of the total value of
11 benefits to class members by the settlement. (*Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
12 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van*
13 *Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir.
14 1997). One of the purposes of this equitable doctrine is to "spread litigation costs proportionally
15 among all the beneficiaries so that the active beneficiary does not bear the entire burden
16 alone." (*Vincent*, 557 F. 2d at 769.) Although this is not a class action, the same logic holds true
17 since a PAGA case is also a representative action.

18 The Common Fund doctrine is predicated on the principle of preventing unjust enrichment.
19 When a litigant's efforts create or preserve a fund from which others derive benefits, he may
20 require the passive beneficiaries to compensate those who created the fund. Both California state
21 and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35; *Vincent*, 557 F.2d at
22 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995), the
23 California Supreme Court recognized that the common fund doctrine has been applied
24 "consistently in California when an action brought by one party creates a fund in which other
25 persons are entitled to share." The reasons for applying the common fund doctrine include:
26 "...fairness to the successful litigant, who might otherwise receive no benefit because his recovery
27 might be consumed by the expenses; correlative prevention of an unfair advantage to the others
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1 who are entitled to share in the fund and who should bear their share of the burden of its recovery;
2 encouragement of the attorney for the successful litigant who will be more willing to undertake and
3 diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that
4 he will be properly and directly compensated should his efforts be successful.” *Id.*
5 Indeed, the California Supreme Court has also held that the award of attorneys’ fees in common
6 fund wage and hour class action settlements should start with the percentage method. *See Laffitte v.*
7 *Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming majority of federal and
8 state courts in holding that when class action litigation establishes a monetary fund for the benefit
9 of the class members, and the trial court in its equitable powers awards class counsel a fee out of
10 that fund, the court may determine the amount of a reasonable fee by choosing an appropriate
11 percentage of the fund created.”). The California Supreme Court in *Laffitte* affirmed a fee award
12 representing 33 1/3 percent of the fund.

13 Here, Plaintiffs’ counsel requested fees of \$16,666 is reasonable, as it represents one third
14 (33 1/3%) of the fund. Furthermore, Plaintiff’s counsel has spent a significant amount of time
15 litigating this case, including time spent communicating with the client, evaluating and analyzing
16 the relevant legal theories, drafting and filing PAGA letters, drafting and filing the complaint,
17 engaging in motion work including a demurrer and motion to consolidate, participating in informal
18 discovery, and attending mediation. (Starr Decl. ¶¶16, 18).

19 Plaintiff’s counsel have incurred \$3,027.85 in costs litigating this case. These costs include
20 filing fees, service costs, mediation costs, and various other litigation costs. (Starr Decl. ¶19). The
21 settlement agreement calls for reimbursement of \$3,000 in costs to Plaintiff’s counsel. Thus, the
22 costs award under the settlement is reasonable.

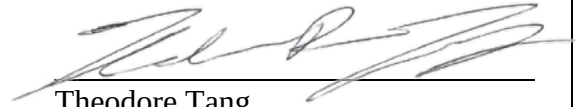
23 VII.CONCLUSION

24 Based on the above facts and arguments, Plaintiffs respectfully request the court to approve
25 this PAGA settlement and enter an order dismissing this action with prejudice.

27 Date: May 12, 2023

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Theodore Tang
Attorney for Plaintiffs
Tasja Gray