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13 individually and on behalf of all others similarly situated.

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF ORANGE**

16 PHETSAMONE SOLIS, individually and on
17 behalf of all others similarly situated

18 Plaintiff,

19 vs.

20 PIONEER HOMECARE INC; and DOES 1
21 through 20, inclusive,

22 Defendants.

Case No. 30-2022-01275365-CU-OE-CXC

*Assigned for all purposes to
Hon. William D. Claster
Dept. CX101*

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

Date: February 28, 2025
Time: 9:00 a.m
Dept: CX101
Reservation Number: 74478996

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Phetsamone Solis ("Plaintiff") seeks approval of a settlement of claims under the
4 Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA") against
5 Defendant Pioneer Homecare Inc. ("Defendant") in the amount of \$240,000.00. Plaintiff alleges
6 approximately 600 aggrieved employees who worked approximately 7,129 pay periods for
7 Defendant that were allegedly not paid all wages (including minimum wages and overtime wages),
8 not provided with meal periods or compensation in lieu thereof, not provided with rest breaks or
9 compensation in lieu thereof, not provided with accurate wage statements, not paid wages timely
10 during employment; and were not paid all wages owed upon separation of employment. Despite
11 the large number of employees, since these employees had very short tenures with Defendant, the
12 settlement provides about \$33.67 per pay period under the Gross Settlement Amount, which is a
13 fair value for this PAGA case.

14 Under Labor Code § 2699(l)(2), the Court must review and approve any proposed PAGA
15 settlement. Here, the proposed Settlement is sufficient to deter and punish future violations. The
16 Settlement is attached to the Declaration of Carolyn M. Bell ("Bell Decl.") as **Exhibit 1**, and the
17 proposed letter to be sent to the aggrieved employees is attached thereto as **Exhibit A**. Plaintiff now
18 seeks this Court's approval of the Settlement terms.

19 **II. FACTUAL AND PROCEDURAL BACKGROUND**

20 On August 16, 2022 Plaintiff filed her Complaint as a class action lawsuit, alleging
21 Defendant failed to: (1) pay all wages (including minimum wages and overtime wages), (2) provide
22 lawful meal periods or compensation in lieu thereof, (3) authorize or permit lawful rest breaks or
23 provide compensation in lieu thereof, (4) provide accurate itemized wage statements, (5) pay wages
24 timely during employment; and, (6) pay all wages due upon separation of employment, (7) abide
25 by the requirements of California Business and Professions Code Section 17200 *et seq.* Bell Decl.
26 at ¶ 3. On August 16, 2022, Plaintiff's counsel also sent a letter to the California Labor & Workforce
27 Development Agency ("LWDA") via online submission regarding Defendant's alleged violations.
28 *See* Bell Decl., ¶ 4, Exhibit 2. On August 25, 2022, Plaintiff's counsel sent an Amended written

1 notice correcting the employer's name to Pioneer Homecare Inc., to the California Labor &
2 Workforce Development Agency ("LWDA") via online submission and to Defendant Pioneer
3 Homecare Inc., ("Defendant") via certified mail. *See* Bell Decl., ¶ 5, Exhibit 3. The LWDA did not
4 respond to this notice within 65 days, indicating it did not intend to investigate, thus allowing
5 Plaintiff to file the instant lawsuit pursuant to Labor Code Section 2699.3(a)(2)(A). *Id.* Plaintiff
6 also filed an Amendment to the Complaint making the same correction. Bell Decl., ¶ 6. Thus, on
7 October 31, 2022, Plaintiff filed her First Amended Complaint adding a claim for Enforcement of
8 the Private Attorneys General Act ("PAGA"). Bell Decl., ¶ 7.

9 Due to the presence of arbitration agreements that Plaintiff and class members allegedly
10 signed, the Court dismissed the class claims in its ruling on a contested motion to compel
11 arbitration. Bell Decl., ¶ 8. Plaintiff initiated arbitration with Judicate West in June of 2023. Bell
12 Decl., ¶ 9. Shortly after selecting an arbitrator, the Parties agreed to attend private mediation. Bell
13 Decl., ¶ 10. In preparation for mediation, Defendant informally produced data and documents for
14 Plaintiff to evaluate the PAGA claims and calculate the alleged exposure, including an employee
15 roster, a pay period count extrapolated through the mediation date, policy documents, and a 30%
16 sample of time and payroll records. Bell Decl., ¶ 11. Plaintiff's Counsel engaged an expert to
17 quantify the potential exposure using the time and payroll records, and then assessed the risks
18 associated with each of the claims. Bell Decl., ¶ 12.

19 The parties attended mediation on April 23, 2024, with Honorable Carl J. West, a respected
20 class action and PAGA action mediator. Bell Decl., ¶ 13. After a full day of negotiating, the Parties
21 agreed to a settlement amount and executed a Memorandum of Understanding with the material
22 terms the parties had agreed to. Bell Decl., ¶ 14. The Parties then drafted and executed a long form
23 settlement agreement using the Los Angeles County Superior Court Model for PAGA Settlements.
24 Bell Decl., ¶ 15. Plaintiff provided notice of the Settlement to the LWDA. Bell Decl., ¶ 16, Exhibit
25 4. Plaintiff also served a copy of this Motion on the LWDA. Bell Decl., ¶ 17. After searching
26 Westlaw's docket search and the LWDA's website, Plaintiff's Counsel has found no related cases
27 which would be affected by this settlement. Bell Decl., ¶ 30.

III. PAGA REQUIREMENTS

Based on the California Supreme Court's opinions in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014), Plaintiffs can seek appropriate civil penalties as called for under PAGA on behalf of the State of California and other similarly aggrieved employees without seeking class certification or meeting the requirements of class certification (i.e. numerosity, typicality, commonality and adequacy). As such, the class action two-step preliminary and final approval process is not required.

PAGA was enacted to allow enforcement of the Labor Code and recovery of penalties by the State and by private individuals who have been aggrieved by their employers. The statute calls for 75% of any penalties recovered to be paid to California's LWDA and the remaining 25% to the aggrieved employees (Cal. Lab. Code § 2699(i) (2016)).

In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee must first provide written notice to the LWDA and the employer of the particular Labor Code violations the aggrieved employee alleges the employer has violated. *See* Cal. Labor Code § 2699.3(a)(1)(A) (2016). Once the LWDA notifies the aggrieved employee that it does not intend to investigate the alleged violations, or if the LWDA does not respond within a certain time period, the aggrieved employee is then allowed to proceed in a civil action against the employer on behalf of the LWDA and all other similarly aggrieved employees. *See* Cal. Labor Code § 2699.3(a)(2)(A) (2016).

In 2009, the California Supreme Court considered the issue of whether an aggrieved employee who brings a PAGA representative claim needs to meet class certification requirements. *Arias*, 46 Cal. 4th at 976. After a substantial review of the legislative history of PAGA, the Court held that an aggrieved employee's representative action brought on behalf of other aggrieved employees against an employer for PAGA violations does not need to meet the requirements for class certification. *Id.* at 975, 980-88. As the Court held, a plaintiff bringing suit under PAGA does so as the proxy or agent of California's labor law enforcement agencies. *Id.* at 986. Because the employee's PAGA action functions as a substitute for an action brought by the government itself, a

1 judgment in the PAGA action binds all those who would be bound by a judgment in an action
2 brought by the government. *Id.*

3 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the court
4 need only "review and approve" the settlement. Cal. Lab. Code § 2699(1)(2) (2016). The Parties
5 to this current PAGA action have reached such an agreement and now seek this Court's approval of
6 the proposed settlement.

7 **IV. THE SETTLEMENT TERMS AND DISTRIBUTION OF PENALTIES**

8 The Parties have agreed that Defendant will pay a total settlement amount of \$240,000.00
9 (the "Gross Settlement Amount"). *See* Settlement Agreement, § 3.1. From this amount, up to one-
10 third (1/3) of the Gross Settlement Amount, or \$80,000.00 is allocated to attorneys' fees and up to
11 \$20,000.00 to actual litigation costs. *Id.* at § 3.2.1. To date, Plaintiff's counsel has spent \$15,166.49
12 in actual litigation costs and incurred \$87,180.00 in attorneys' fees. *See* Bell Decl., ¶¶ 45-46,
13 Exhibits 5-6. The Settlement allocates up to \$5,750.00 to payment for Phoenix Settlement
14 Administrator's costs associated with administration of the Settlement. Settlement Agreement, §
15 3.2.3; *see also* Declaration of Jodey Lawrence. For Plaintiff's efforts in assisting with the Lawsuit,
16 \$5,000.00 is allocated to Plaintiff as a PAGA Representative Service Payment. *Id.* at § 3.2.2; *see*
17 *also* Declaration of Phetsamone Solis.

18 After deducting the above amounts for attorneys' fees and costs, Settlement
19 Administrator's costs, and Plaintiff's PAGA Representative Service Payment, the remaining fund
20 ("Net Settlement Amount") will constitute the "PAGA Penalties" of which 75% will be paid to the
21 LWDA (the "LWDA PAGA Payment") and 25% will be paid to the Aggrieved Employees as their
22 "Individual PAGA Payments". Settlement Agreement, § 3.2.4. The Aggrieved Employees are
23 persons employed by Defendant as a non-exempt employee at any time in California during the
24 PAGA Period. *Id.* at § 1.4. The PAGA Period means the period from August 16, 2021 to April 23,
25 2024. *Id.* at § 1.21.

26 The Individual PAGA Payments will be calculated pro rata based on the number of pay
27 periods working during the PAGA Period. Settlement Agreement, § 3.2.4.1. If the number of PAGA
28 Pay Periods exceeds 7,129 by more than 10%, the Gross Settlement Amount will increase pro rata

1 per additional PAGA Pay Period. *Id.* at § 8. The Individual PAGA Payments shall be paid to the
2 Aggrieved Employees by way of a single check which will be valid for 180 days. *Id.* at § 4.4.1. All
3 funds not claimed within 180 days of mailing of payment shall be sent to the California Controller's
4 Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to
5 each PAGA Employee. *Id.* at § 4.4.3. The Individual PAGA Payments will be reported on IRS
6 Form 1099. *Id.* at § 3.2.4.2.

7 Prior to this disbursement, the Settlement Administrator shall check the Aggrieved
8 Employees' addresses provided by Defendant using the National Change of Address database.
9 Settlement Agreement, § 4.4.1. For any returned payments without a forwarding address, the
10 Settlement Administrator shall run a skip trace. *Id.* at § 4.4.2. Aggrieved Employees will receive a
11 letter along with their Individual PAGA Payment explaining the reason for the payment, the content
12 of which will be submitted to the Court for approval. *See* Settlement Agreement, Exhibit A.

13 In exchange for the settlement payment, the State of California and the Aggrieved
14 Employees will release the "Released Parties" meaning "Defendant and each of its former and
15 present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors,
16 successors, assigns, subsidiaries, and affiliates," (*see* Settlement § 1.27) from "all claims for PAGA
17 penalties arising during the PAGA Period that were alleged, or reasonably could have been alleged,
18 based on the facts stated in the Operative Complaint and the PAGA Notice. Without limiting the
19 foregoing, and in addition to the foregoing, this release includes claims arising from the facts
20 alleged in the operative Complaint and PAGA Notice for failure to pay the minimum wage, failure
21 to pay regular wages, failure to pay overtime compensation and other premium wages, failure to
22 provide and maintain complete and accurate itemized wage statements that included all information
23 required by the California Labor Code; failure to provide meal periods and rest breaks or additional
24 pay in lieu thereof; failure to reimburse business expenses; untimely payment of wages during and
25 at the time of termination; violations of California Labor Code §§ 201-203, 204, 210, 226, 226.3,
26 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698, and the
27 applicable California Wage Orders." Settlement Agreement, §§ 1.27, 5.2.

1 **V. THE SETTLEMENT IS FAIR AND REASONABLE**

2 **A. Standard for Approval**

3 PAGA settlements must be “fair, reasonable, and adequate in view of PAGA’s purposes to
4 remediate present labor law violations, deter future ones, and to maximize enforcement of state
5 labor laws.” *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021). The court must find that
6 the plaintiff “has adequately represented the state’s interests, and hence the public interest.” *Id.* at
7 89. The LWDA must be notified of the settlement and be given an opportunity to object. The court
8 may look to parallel class action guidelines to determine what is “fair, adequate and reasonable.”
9 *Kullar v. Foot Locker Retail*, 168 Cal.App.4th 116, 126 (2008). In that analysis, the court has
10 “broad discretion in making this determination.” *In re Microsoft I-V Cases*, 135 Cal.App.4th 706,
11 723 (2006). Relevant factors may include “the strength of the plaintiffs’ case, the risk, expense,
12 complexity and likely duration of further litigation, ... the amount offered in settlement, the extent
13 of discovery completed and the stage of the proceedings, the experience and views of counsel, the
14 presence of a governmental participant” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801
15 (1996).

16 **B. The Settlement Meets the Standard for Approval**

17 Here, the \$240,000 Gross Settlement Amount is reasonable for a group of approximately
18 600 employees. A penalty of \$240,000 is large enough to punish Defendant for alleged past
19 violations and deter future violations. The settlement amount is equivalent to a penalty of about
20 \$400 per employee on the Gross Settlement Amount as a deterrent value against Defendant, and
21 actual payments to employees averaging around \$50 each. At the same time, the penalty amount is
22 not so large as to be unjust, oppressive or confiscatory, considering the company’s potential
23 exposure explained below. Bell Decl., ¶ 18. The Gross Settlement Amount is also reasonable in
24 light of the facts of the foregoing action, the real risk that no PAGA penalties would be paid, and
25 inherent risks and uncertainties associated with PAGA claims. *Id.* at ¶ 19.

26 Plaintiff calculated the potential exposure at the initial violation rate of \$100.00 per pay
27 period as follows: 7,129 x \$100.00 per pay period is \$712,900.00 Bell Decl., ¶ 20. If the Court
28 stacked different types of penalties in each pay period, Plaintiff calculated the exposure as explained

1 below, and compared that exposure to Defendant's defenses and evidence that could have defeated
2 Plaintiff's claims. *Id.* at ¶ 21. Mainly, Defendant argued all of the overtime, meal period, and rest
3 breaks claims were invalidated by the exemption in Wage Order 15 for in-home caregivers who
4 qualify as personal attendants ("...any person employed by a private householder or by any third
5 party employer recognized in the health care industry to work in a private household, to supervise,
6 feed, or dress a child or person who by reason of advanced age, physical disability, or mental
7 deficiency needs supervision. The status of "personal attendant" shall apply when no significant
8 amount of work other than the foregoing is required."). *Id.* at ¶ 22. In fact, Defendant included on
9 its timesheets, a statement for employees to certify each week stating "I did NOT spend more than
10 20% of my time in any shift performing housework or other duties unrelated to the care of the
11 client." *Id.* The timesheets even included an option for employees to dispute the statement, making
12 it harder for Plaintiff to argue employees were required to check the right box in order to get paid.
13 *Id.*

14 Overtime Claims: Plaintiff argued Defendant failed to use a blended rate of pay for shifts
15 in which shift premiums were paid and overtime hours were worked as required by 29 CFR §
16 778.115, thereby resulting in an underpayment of overtime wages to aggrieved employees. Bell
17 Decl. at ¶ 23. With 7,129 pay periods and an initial \$100 penalty per pay period, Plaintiff's expert
18 calculated this claim to be worth \$113,351 for unpaid overtime wages, based on a 15.9% violation
19 rate shown in the pay records. *Id.* Defendant argued the claim would not apply to the personal
20 attendants at all since they were exempt from overtime, as explained above. *Id.* Accordingly,
21 Plaintiff estimated an approximate 40% chance of prevailing at trial and discounted this claim to
22 approximately \$45,000. *Id.*

23 Unpaid Minimum Wages: Plaintiff alleged that aggrieved employees were required to work
24 off the clock when turning in time sheets. Bell Decl. at ¶ 24. Based on a 100% violation rate during
25 7,129 pay periods and an initial violation rate of \$100 per pay period, Plaintiff's expert calculated
26 this claim to be worth approximately in \$712,900. *Id.* However, Defendants argued they had never
27 required employees to complete this task while off-the-clock. *Id.* As such, Plaintiff estimated a 20%
28 of prevailing at trial, and thus discounted the claim to approximately \$143,000. *Id.*

1 Meal Period Violations: Plaintiff argued that Defendant maintained an illegal practice of
2 failing to provide employees an opportunity to take all compliant meal periods. Bell Decl., ¶ 25.
3 Plaintiff's expert calculated a violation rate of 88.3% of pay periods, which results in \$629,491 in
4 PAGA penalties for this claim (88.3% violation rate x initial penalty of \$100 per 7,129 pay periods).
5 *Id.* However, Defendant argued it maintained compliant written policies and the claim would not
6 apply to the personal attendants at all since they were exempt from meal periods, as explained
7 above. *Id.* As such, Plaintiff estimated a 20% chance of success at trial, thereby discounting this
8 claim to be worth about \$126,000. *Id.*

9 Rest Break Violations: Plaintiff argued that Defendant maintained an illegal practice of
10 failing to authorize or permit all required rest breaks or when rest breaks were provided they were
11 interrupted with calls from Defendant asking the employee to tend to a patient and respond to calls
12 from managers/supervisors and patients. Bell Decl., ¶ 26. Plaintiff's expert assumed a violation rate
13 of 100% of pay periods, which results in \$712,900 in PAGA penalties for this claim (100% violation
14 rate x initial penalty of \$100 per 7,129 pay periods). *Id.* However, Defendant argued it maintained
15 compliant written policies and the claim would not apply to the personal attendants at all since they
16 were exempt from rest breaks, as explained above. *Id.* Accordingly, Plaintiff discounted this claim
17 to be worth approximately \$72,000, as she suspected a 10% chance of prevailing at trial. *Id.*

18 Unreimbursed Business Expenses: Plaintiff alleged Defendant failed to reimburse
19 necessary business expenses by requiring employees to use personal phones for work-related
20 purposes, such as answering calls from their supervisors. Bell Decl., ¶ 27. Plaintiff's expert
21 calculated this claim to be worth \$712,900 based on a 100% violation rate and an initial penalty of
22 \$100 per 7,129 pay periods. *Id.* However, Defendant argued that use of personal cell phones was
23 not necessary to perform job functions and not all employees worked in a job location that could
24 even require phone use. *Id.* In light of Defendant's arguments, Plaintiff estimated a 20% chance of
25 prevailing at trial, thus discounting the claim to be worth approximately \$143,000. *Id.*

26 Derivative Claims: Plaintiff alleged derivative wage statement and waiting time claims.
27 Bell Decl., ¶ 28. Using a 100% violation rate and an initial \$100.00 penalty per 7,129 pay periods,
28 Plaintiff's expert calculated the wage statement claim to be worth \$712,900. *Id.* However, Plaintiff

1 could not succeed on this claim if she failed to prove the claims above, or if the claims were not
2 proven for every pay period. *Id.* Additionally, Plaintiff calculated \$47,000 for the waiting time
3 claim assuming each separated employee (470 total employees) had at least one violation during
4 the PAGA Period. As such, Plaintiff estimated a 6% chance of success at trial on the wage statement
5 claim (a combination of the 40% chance on the overtime claim and 15.9% pay period violation rate
6 for that claim) and 40% on the waiting time claim (matching the chance of success on the overtime
7 claim without any reduction for the frequency of the violations since only one violation is needed
8 to trigger the waiting time claim). Consequently, the claims were potentially worth about \$45,000
9 for wage statement claims and \$19,000 for waiting time claims. *Id.*

10 Despite the potential of almost \$600,000 in overall damages, all PAGA awards are
11 discretionary and can be reduced by the Court. Bell Decl., ¶ 29. Under Labor Code § 2699(e)(2),
12 the Court can reduce the PAGA penalties “if, based on the facts and circumstances of the particular
13 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
14 confiscatory.” In other words, were this matter to go to trial, any award granted would be at the
15 discretion of the Court. *Id.* In settling this case, Plaintiff recognizes that, although she believes
16 there would be no persuasive grounds to reduce the penalties, the Court could determine otherwise
17 and significantly reduce the PAGA penalties, especially given the compliant written policies and
18 the potential good faith defense to the main underlying claims due to the personal attendant
19 exemption in Wage Order 15. *Id.* If the Court granted a discretionary reduction of 85%, the case
20 could be worth around \$90,000 after accounting for the risks described above, or alternatively, the
21 case could be worth \$107,000 if the Court applied one PAGA penalty in every pay period (i.e., no
22 stacking) and then applied the discretionary reduction (7,129 pay periods x \$100 per pay period x
23 15% after reduction). *Id.* Thus, the wide range of potential recovery and the additional delays and
24 risks of trial justified settling for a reasonable amount of recovery. *Id.*

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1 **VI. CONCLUSION**

2 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement
3 pursuant to PAGA in this Action.

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5 Dated: January 29, 2025

AEGIS LAW FIRM, PC

6 By /s/ Carolyn Bell

7 Carolyn Bell
8 Attorneys for Plaintiff Phetsamone Solis
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