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individually and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

RICHARD R. REYES, individually and on
behalf of all others similarly situated

Plaintiff,

vs.

NEXT GREEN WAVE, LLC; and DOES 1
through 20, inclusive,

Defendants.

Case No. 22CECG02474

*Assigned for all purposes to
Judge Jonathan M. Skiles
Dept. 503*

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

Date: June 25, 2025
Time: 3:30 p.m.
Dept. 503

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Richard R. Reyes (“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 Next Green Wave, LLC (“Defendant”) in the amount of \$350,000.00. Plaintiff alleges
6 approximately 103 Aggrieved Employees who worked for Defendant as a non-exempt employee in
7 California from August 12, 2021 through January 27, 2025 (the “PAGA Period”) were allegedly
8 not paid at least minimum wages for all hours worked, not paid overtime compensation, not
9 provided with meal periods or compensation in lieu thereof, not provided with rest breaks or
10 compensation in lieu thereof, were not reimbursed necessary business expenses, not provided with
11 accurate wage statements, and not paid all wages timely during and upon separation of employment.

12 Under Labor Code § 2699(1)(2), the Court must review and approve any proposed PAGA
13 settlement. Here, the proposed Settlement is sufficient to deter and punish future violations. The
14 Settlement is attached to the Declaration of Kristy R. Connolly (“Connolly Decl.”) as **Exhibit 1**,
15 and the proposed letter to be sent to the Aggrieved Employees is attached thereto as **Exhibit A**.
16 Plaintiff now seeks this Court's approval of the Settlement terms.

17 **II. FACTUAL AND PROCEDURAL BACKGROUND**

18 On August 12, 2022, Plaintiff’s counsel sent a letter to the California Labor & Workforce
19 Development Agency (“LWDA”) via online submission and to Defendant via certified mail
20 regarding Defendant’s alleged violations. Connolly Decl., ¶ 3, Exhibit 2. The LWDA did not
21 respond to this notice within 65 days, indicating it did not intend to investigate, thus allowing
22 Plaintiff to file the instant lawsuit pursuant to Labor Code Section 2699.3(a)(2)(A). Connolly Decl.,
23 ¶ 4.

24 On August 12, 2022 Plaintiff filed his Complaint as a class action lawsuit, alleging that,
25 Defendant failed to: (1) pay minimum wages, (2) pay overtime wages, (3) provide lawful meal
26 periods or compensation in lieu thereof, (4) authorize or permit lawful rest breaks or provide
27 compensation in lieu thereof, (5) reimburse necessary business expenses (6) provide accurate
28 itemized wage statements, (7) pay all wages timely during employment (8) pay all wages timely

1 upon separation of employment and, (9) abide by the requirements of California Business and
2 Professions Code Section 17200 *et seq.* Connolly Decl., ¶ 5. On November 30, 2022, Plaintiff filed
3 his First Amended Complaint adding a claim for Enforcement of the Private Attorneys General Act
4 (“PAGA”). *Id.*

5 Defendant then brought a Motion to Compel Plaintiff’s individual claims to arbitration,
6 stay the action, and dismiss the putative class claims. Connolly Decl., ¶ 6. On October 25, 2023,
7 the Court granted Defendant’s motion to compel Plaintiff to arbitrate his individual claims,
8 dismissed the class claims, and stayed this litigation of the PAGA claim until Plaintiff’s individual
9 arbitration has been resolved. *Id.*

10 The Parties agreed to attend private mediation prior to initiating arbitration. Connolly
11 Decl., ¶ 7. In preparation for mediation, Defendant informally produced data and documents for
12 Plaintiff to evaluate the PAGA claims and calculate the alleged exposure, including policy
13 documents, a 15% sample of employees’ time and payroll records, and Plaintiff’s personnel file.
14 *Id.* Plaintiff’s Counsel engaged an expert to quantify the potential exposure using the time and
15 payroll records, and then assessed the risks associated with each of the claims. *Id.*

16 The Parties attended mediation on January 27, 2027, with Jill Sperber, a respected wage
17 and hour mediator. Connolly Decl., ¶ 8. After a full day of negotiating, the Parties ultimately
18 accepted a mediator’s proposal to resolve this action. *Id.* The Parties spent the next several months
19 negotiating the terms of the Settlement, which was finalized in April of 2025. *Id.* The negotiations
20 were adversarial, conducted at arm’s length and tempered by the efforts of both sides to serve the
21 interests of their clients. *Id.*

22 Plaintiff provided notice of the Settlement and this Motion to the LWDA on May 8, 2025.
23 Connolly Decl., ¶ 9, Exhibit 3.

24 **III. PAGA REQUIREMENTS**

25 Based on the California Supreme Court's opinions in *Arias v. Superior Court*, 46 Cal. 4th
26 969 (2009), and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014),
27 Plaintiffs can seek appropriate civil penalties as called for under PAGA on behalf of the State of
28 California and other similarly aggrieved employees without seeking class certification or meeting

1 the requirements of class certification (i.e. numerosity, typicality, commonality and adequacy). As
2 such, the class action two-step preliminary and final approval process is not required.

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

7 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee
8 must first provide written notice to the LWDA and the employer of the particular Labor Code
9 violations the aggrieved employee alleges the employer has violated. *See* Cal. Labor Code §
10 2699.3(a)(1)(A) (2016). Once the LWDA notifies the aggrieved employee that it does not intend to
11 investigate the alleged violations, or if the LWDA does not respond within a certain time period,
12 the aggrieved employee is then allowed to proceed in a civil action against the employer on behalf
13 of the LWDA and all other similarly aggrieved employees. *See* Cal. Labor Code § 2699.3(a)(2)(A)
14 (2016).

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

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

IV. THE SETTLEMENT TERMS AND DISTRIBUTION OF PENALTIES

The Parties have agreed that Defendant will pay a total settlement amount of \$350,000.00 (the “Gross Settlement Amount”). *See* Settlement Agreement, § 3.1. From this amount, up to one-third (1/3) of the Gross Settlement Amount, or \$116,666.67 is allocated to attorneys’ fees and up to \$25,000.00 to actual litigation costs. *Id.* at § 3.2.1. To date, Plaintiff’s counsel has spent \$24,229.99 in actual litigation costs and incurred \$118,000.00 in attorneys’ fees. *See* Connolly Decl., ¶¶ 28-29, Exhibits 4 and 5. The Settlement allocates up to \$3,250.00 to payment for ILYM Group, Inc., the Parties’ selected Settlement Administrator, for costs associated with administration of the Settlement. Settlement Agreement, § 3.2.3. For Plaintiff’s efforts in assisting with the Lawsuit, \$2,500.00 is allocated to Plaintiff as a Service Award. *Id.* at § 3.2.2.

After deducting the above amounts requested for attorneys’ fees and costs, Settlement Administrator’s costs, and Plaintiff’s Service Award, the remaining fund will constitute the “PAGA Penalties” in which 75% will be paid to the LWDA (the “LWDA PAGA Payment”) and 25% will be paid to the Aggrieved Employees as their “Individual PAGA Payments.” Settlement Agreement, § 3.2.4. The Aggrieved Employees are all persons employed by Defendant as a non-exempt employee in California at any time during the PAGA Period. *Id.* at ¶ 1.4. The PAGA Period means the period from August 12, 2021 through January 27, 2025. *Id.* at ¶ 1.12.

The Individual PAGA Payments will be calculated pro rata based on the number of pay periods working during the PAGA Period. Settlement Agreement, § 3.2.4.1. If the number of PAGA Pay Periods exceeds 5,907 by more than 10%, the Gross Settlement Amount will increase pro rata per PAGA Pay Period at a rate of \$59.25 per additional PAGA Pay Period. *Id.* at § 8. The Individual PAGA Payments shall be paid to the Aggrieved Employees by way of a single check which will be valid for 180 days. *Id.* at §§ 8, 4.4.1. All funds not claimed within 180 days of mailing of payment shall be sent to the California State Controller’s Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each Aggrieved Employee. *Id.* at § 4.4.3. The Individual PAGA Payments will be characterized as penalties for tax purposes and reported on IRS Form 1099. *Id.* at § 3.2.4.1.

1 Prior to this disbursement, the Settlement Administrator shall check the Aggrieved
2 Employees' addresses provided by Defendant using the National Change of Address database.
3 Settlement Agreement, § 4.4.1. For any returned payments without a forwarding address, the
4 Settlement Administrator shall run a skip trace. *Id.* at § 4.4.2. Aggrieved Employees will receive a
5 letter along with their Individual PAGA Payment explaining the reason for the payment, the content
6 of which will be submitted to the Court for approval. *Id.* at § 4.4.1. The proposed letter is attached
7 to the Settlement Agreement as Exhibit A.

8 In exchange for the settlement payment, effective on the date when Defendant fully funds
9 the entire Gross Settlement Amount, the State of California and the Aggrieved Employees will
10 release the "Released Parties" meaning "Defendant and its former, future and present directors,
11 officers, shareholders, partners, employees, contractors, members, owners, attorneys, insurers,
12 predecessors, successors, assigns, subsidiaries, contractors, managing agents, affiliates, and any and
13 all agents, legal representatives and/or attorneys acting under, by, through or in concert with any of
14 them" from "all claims for PAGA penalties arising during the PAGA Period that were alleged, or
15 reasonably could have been alleged, based on the facts stated in the Operative Complaint and the
16 PAGA Notice" Settlement Agreement, §§ 1.18, 5.1.

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

18 **A. Standard for Approval**

19 PAGA settlements must be "fair, reasonable, and adequate in view of PAGA's purposes to
20 remediate present labor law violations, deter future ones, and to maximize enforcement of state
21 labor laws." *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021). The court must find that
22 the plaintiff "has adequately represented the state's interests, and hence the public interest." *Id.* at
23 89. The LWDA must be notified of the settlement and be given an opportunity to object. The court
24 may look to parallel class action guidelines to determine what is "fair, adequate and reasonable."
25 *Kullar v. Foot Locker Retail*, 168 Cal.App.4th 116, 126 (2008). In that analysis, the court has
26 "broad discretion in making this determination." *In re Microsoft I-V Cases*, 135 Cal.App.4th 706,
27 723 (2006). Relevant factors may include "the strength of the plaintiffs' case, the risk, expense,
28 complexity and likely duration of further litigation, ... the amount offered in settlement, the extent

1 of discovery completed and the stage of the proceedings, the experience and views of counsel, the
2 presence of a governmental participant” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801
3 (1996).

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

5 Here, the \$350,000.00 Gross Settlement Amount is reasonable for a group of
6 approximately 103 employees. A penalty of \$350,000 is large enough to punish Defendant for
7 alleged past violations and deter future violations. The settlement amount is equivalent to a penalty
8 of about \$3,398 per employee. At the same time, the penalty amount is not so large as to be unjust,
9 oppressive or confiscatory, considering the company’s potential exposure explained below.
10 Connolly Decl., ¶ 10. The Gross Settlement Amount is also reasonable in light of the facts of the
11 foregoing action, the real risk that no PAGA penalties would be paid, and inherent risks and
12 uncertainties associated with PAGA claims. *Id.* at ¶ 11.

13 Plaintiff calculated the potential exposure at the initial violation rate of \$100.00 per pay
14 period as follows: 5,907 pay periods x \$100.00 per pay period is \$590,700.00. Connolly Decl., ¶
15 12. If the Court stacked different types of penalties in each pay period, Plaintiff calculated the
16 exposure as follows:

- 17 a. 5,907 pay periods x \$100 per pay period x 100% violation rate = \$590,700 for
18 unpaid wages;
- 19 b. 5,907 pay periods x \$100 per pay period x 98% violation rate = \$578,886 for rest
20 break violations;
- 21 c. 5,907 pay periods x \$100 per pay period x 28% violation rate = \$165,396 for
22 meal period violations;
- 23 d. 5,907 pay periods x \$100 per pay period x 100% violation rate = \$590,700 for
24 wage statement penalties;
- 25 e. 5,907 pay periods x \$100 per pay period x 100% violate rate= \$590,700 for
26 unreimbursed business expenses; and
- 27 f. 68 former employees x \$100 = \$6,800 for waiting time penalties.

28 *Id.*

1 Defendant raised a number of arguments during settlement negotiations and provided
2 evidence that could have defeated Plaintiff's claims. Connolly Decl., ¶ 13. For example, Plaintiff
3 alleged that Defendant failed to pay wages for all time worked by failing to compensate employees
4 for time spent undergoing security checks and health screenings before clocking in for work. *Id.*
5 However, Defendant argued that it staggered shifts, so no more than a few employees would start
6 work at the same time, reducing the amount of time that would be spent undergoing these checks.
7 *Id.* With respect to the break violations, Plaintiff's expert found that 28% of pay periods had a
8 meal violation (i.e., taken after the end of the 5th hour worked, less than 30-minutes, or missed).
9 *Id.* Defendant argued that it maintained policies providing compliant meal periods, was not
10 responsible for policing meal periods, and that any missed breaks were the employees' personal
11 choice to waive the break, citing to *Brinker Restaurant Corp. v. Superior Court* 53 Cal. 4th 1004,
12 1029 (2012), in which the Supreme Court explained that employers do not need to "police" breaks,
13 i.e., ensure that a meal is being taken if it was provided. See also *Murphy v. Kenneth Cole*
14 *Productions, Inc.*, 40 Cal. 4th 1094, 1104 (2007) (finding a violation occurs only if the employee
15 is "forced to forgo his or her meal period"). Defendant also argued that it paid meal period
16 premiums when the evidence showed that it failed to provide a meal period. *Id.* Plaintiff's Counsel
17 considered that a 100% violation rate was unrealistic since Defendant maintained facially
18 compliant rest break policies. *Id.* Accordingly, the meal and rest claims would be highly dependent
19 on employee testimony, which could render these claims unmanageable at trial. *Id.* Plaintiff also
20 argued that Defendant failed to reimburse business expenses associated with personal cell phone
21 use. *Id.* However, Defendant argued that it maintained complaint reimbursement policies that was
22 made available for all employees who sought reimbursement for any purposes and that this claim
23 would only be unique to Plaintiff in his role as a service technician. *Id.* Finally, If Plaintiff could
24 not prove the underlying claims, then he would not be able to recover any derivative wage
25 statement penalties or waiting time penalties. *Id.*

26 Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA
27 awards are discretionary and can be reduced by the Court. Connolly Decl., ¶ 15. Under Labor Code
28 § 2699(e)(2), the Court can reduce the PAGA penalties "if, based on the facts and circumstances

1 of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
2 oppressive, or confiscatory.” In other words, were this matter to go to trial, any award granted
3 would be at the discretion of the Court. *Id.* In settling this case, Plaintiff recognizes that, although
4 he believes there would be no persuasive grounds to reduce the penalties, the Court could
5 determine otherwise and significantly reduce the PAGA penalties, especially with such a small
6 employer and in light of Defendant’s facially compliant policies and *de minimis* defense. *Id.* The
7 wide range of potential recovery and the additional delays and risks of trial justified settling for a
8 reasonable amount of recovery. *Id.*

9 **VI. CONCLUSION**

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

12
13 Dated: May 8, 2025

AEGIS LAW FIRM, PC

14 By _____

15 Kristy R. Connolly
16 Attorneys for Plaintiff Richard R. Reyes
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