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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

IRVIN A. ZUNIGA, on behalf of himself and all "aggrieved employees" pursuant to Labor Code § 2698 et seq., Plaintiff, v. BAUER'S INTELLIGENT TRANSPORTATION INC., a corporation, and DOES 1-20, inclusive, Defendants.	Case No. CGC-25-627254 **PLAINTIFF'S NOTICE OF MOTION AND UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** [Filed concurrently with Declaration of Adam M. Kent; Declaration of Irvin A. Zuniga; and [Proposed] Order and Judgment] Date: December 16, 2026 Time: 9:00 AM Dept.: 302 Judge: Law and Motion Complaint Filed: July 15, 2025 Trial Date: Vacated

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 16, 2026 at 9:00 AM, or as soon thereafter as the matter may be heard, in Department 302 of the above-entitled Court, located at 400 McAllister Street, San Francisco, California 94102, Plaintiff Irvin A. Zuniga ("Plaintiff") will and hereby does move the Court, pursuant to Labor Code section 2699, subdivision (s)(2), for an order:

1. Approving the Joint Stipulation of PAGA Settlement (the "Settlement" or "SA") between Plaintiff and Defendant Bauer's Intelligent Transportation, Inc. ("Bauer's" or "Defendant") as fair, reasonable, and adequate;
2. Approving the $140,000 Gross Settlement Amount and its allocation, including payment of 65% of the Net Settlement Amount (estimated at $49,822.50) to the Labor and Workforce Development Agency ("LWDA") and 35% (estimated at $26,827.50) to the Aggrieved Employees, distributed pro rata by Pay Periods worked;
3. Awarding Plaintiff's Counsel attorneys' fees of $46,200 and actual litigation costs not to exceed $12,200;
4. Appointing ILYM Group, Inc. ("ILYM") as Administrator and approving Administration Costs not to exceed $5,000;
5. Entering judgment in accordance with the Settlement and retaining jurisdiction under Code of Civil Procedure section 664.6.

Defendant does not oppose this Motion. Plaintiff submitted the Settlement and this Motion to the LWDA on the date of filing. (Lab. Code, § 2699, subd. (s)(2); Declaration of Adam M. Kent ("Kent Decl.") ¶ 27, Ex. 4.) The Motion is based on this Notice, the Memorandum of Points and Authorities, the supporting declarations, the Settlement (Kent Decl., Ex. 1), the records in this action, and any argument the Court permits.

Dated: Nov. 7, 2026

LAW OFFICES OF JENNIFER B. SIVERTS

By: _____

Adam M. Kent
Jennifer B. Siverts
Attorneys for Plaintiff Irvin A. Zuniga

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This representative action under the Labor Code Private Attorneys General Act of 2004 ("PAGA") challenges Bauer's practice of paying the drivers assigned to its San Francisco Bar Pilots service solely by the trip, without separate pay for on-call and waiting time, as well as its meal period, rest period, and expense reimbursement practices for all non-exempt drivers. After informal discovery of Bauer's policies and of payroll and time records for a sample of its drivers, and a full-day mediation before Kristin Rizzo, Esq. of Judicate West, the parties agreed to resolve the PAGA claims for a non-reversionary Gross Settlement Amount of $140,000. No claim form is required. Every Aggrieved Employee will receive a pro rata share of 35% of the Net Settlement Amount, and the LWDA will receive 65%. The release is limited to PAGA civil penalties and expressly preserves every Aggrieved Employee's individual claims for wages and other relief.

Informal discovery showed that trip-based pay was limited to a subclass of 32 Bar Pilots drivers, who worked about 450 of the approximately 9,107 pay periods at issue. The rest of Bauer's drivers were paid hourly. Bauer's also contends that all of its non-exempt employees are drivers regulated by the U.S. Department of Transportation ("DOT"). Taking those facts into account, Plaintiff's counsel calculated Defendant's theoretical maximum penalty exposure at about $2.78 million. That figure assumes Plaintiff would prevail on every theory, for every driver, in every pay period, at the full statutory penalty. Plaintiff faced substantial obstacles on each of those assumptions: (1) Bauer's claimed DOT status supports an overtime exemption and federal preemption arguments against the meal and rest period claims for the entire workforce; (2) the core on-call and minimum wage theory reaches only the Bar Pilots subclass; (3) the expense claim is subject to an enhanced-compensation defense; and (4) the Court has broad discretion to reduce penalties. The Gross Settlement Amount is about 78% of the maximum penalty exposure for the Bar Pilots subclass on all four theories. Measured against Defendant's realistic exposure, rather than the theoretical maximum, the Settlement is fair, reasonable, and adequate, and it advances PAGA's purposes. Plaintiff asks the Court to

approve it.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Claims

Bauer's operates a 24-hour luxury ground transportation service in the San Francisco Bay Area. Plaintiff worked for Bauer's as an on-call driver from March 22, 2024 until November 8, 2024. (Kent Decl. ¶ 3; Declaration of Irvin A. Zuniga ("Zuniga Decl.") ¶¶ 2-3.) Plaintiff was one of 32 drivers assigned to Bauer's Bar Pilots service, the only drivers paid by trip and zone rather than by the hour. Across Plaintiff's 18 pay periods, Bauer's payroll records show only 9.5 recorded hours and no overtime, even though Plaintiff earned more than $56,000 in trip-based pay. (Kent Decl. ¶ 12.) Plaintiff contends that trip-paid drivers had to remain available for dispatch at any given time, respond to calls immediately, keep their company vehicles within minutes' reach, and forgo personal use of those vehicles. He also contends that dispatch communications interrupted meal periods, that rest periods were not authorized, and that drivers used personal cell phones and paid for parking without reimbursement. (*Id.* ¶¶ 3, 11–12.) Bauer's contends that all of its non-exempt employees are drivers regulated by the DOT. (*Id.* ¶ 13.)

B. The PAGA Notice and This Action

On April 29, 2025, Plaintiff gave written notice of the alleged violations to the LWDA through its online portal (LWDA Case No. LWDA-CM-1095466-25) and to Bauer's by certified mail. (Kent Decl. ¶ 4, Ex. 2.) The LWDA did not give notice that it would investigate. (*Id.* ¶ 5.) Plaintiff filed this action on July 15, 2025, alleging Labor Code violations and a cause of action for PAGA civil penalties. (*Id.* ¶ 6.) Plaintiff submitted the file-stamped Complaint to the LWDA. (*Id.* ¶ 7, Ex. 3.). The Court set trial for October 26, 2026. (*Id.* ¶ 9.)

C. Investigation, Informal Discovery, and Mediation

Before mediation, Bauer's produced its employee handbook, training and on-call materials, Plaintiff's payroll history (BIT_000001–BIT_000073), and payroll and timecard records for a sample of approximately 136 drivers. (Kent Decl. ¶¶ 10–12.) Plaintiff's counsel also reviewed Plaintiff's pay statements, Bauer's dispatch-group text messages, and public

information about Bauer's operations. Counsel cross-referenced the payroll and timecard records for each sampled driver. (*Id.* ¶¶ 10–12.) Defense counsel first estimated the workforce at 514 employees and 8,500 pay periods. By the mediation, Bauer's represented that there were 519 Aggrieved Employees and approximately 9,107 bi-weekly pay periods. (*Id.* ¶ 13; SA § III.6.)

On June 10, 2026, the parties mediated before Ms. Rizzo, an experienced mediator of wage-and-hour cases. Both sides submitted mediation briefs, and Plaintiff presented a violation-by-violation exposure analysis. With the mediator's help, the parties reached a settlement at arm's length. (Kent Decl. ¶ 14.) Plaintiff signed the Settlement on September 18, 2026 and Bauer's on September 25, 2026. (*Id.* ¶ 15, Ex. 1.)

III. THE SETTLEMENT

The material terms of the Settlement are:

- **Gross Settlement Amount.** $140,000, non-reversionary, with no claim requirement. (SA §§ II.14, III.2.)
- **Aggrieved Employees and PAGA Period.** All non-exempt drivers employed in California from April 29, 2024 through August 13, 2026. (SA §§ II.4, II.24.)
- **Allocation.** After Court-approved fees, costs, and Administration Costs are deducted, 65% of the Net Settlement Amount goes to the LWDA and 35% to the Aggrieved Employees, as Labor Code section 2699, subdivision (m) requires. (SA §§ II.19, III.3.)
- **Employee Payments.** Each Aggrieved Employee's share equals 35% of the Net Settlement Amount divided by total Pay Periods, multiplied by that employee's Pay Periods. Payments are reported on IRS Form 1099. (SA § III.3(a).)
- **Fees, costs, and administration.** Attorneys' fees of up to $46,200 (33% of the Gross Settlement Amount); actual costs of up to $12,200; and Administration Costs of up to $5,000 (ILYM's bid is $4,950). Any amount not awarded returns to the Net Settlement Amount. (SA §§ III.4, III.5.) No service award is

requested.

- **Distribution.** Bauer's will fund the settlement within 30 days after the Effective Date. The Administrator will update addresses through the National Change of Address database, perform skip traces on returned mail, and re-mail checks. Checks are void 180 days after mailing, and funds from uncashed checks go to the State Controller's Unclaimed Property Fund in the employee's name. (SA, Administration § 2(c)–(d).)
- **Release.** The release covers only PAGA civil penalties based on the facts, theories, and Labor Code provisions asserted in the Action or the PAGA Notice during the PAGA Period. It does not release any Aggrieved Employee's individual claims for wages, damages, restitution, interest, or other relief. (SA §§ II.26, III.7.)
- **LWDA submission.** Plaintiff's Counsel will submit the Settlement to the LWDA with this Motion and will submit the approval order and judgment within 10 days after entry. (SA § III.11.)

Based on 519 Aggrieved Employees and approximately 9,107 Pay Periods, and assuming the Court awards the requested amounts, the Settlement will be distributed as follows. (Kent Decl. ¶ 23.)

Component	Amount
Gross Settlement Amount	$140,000.00
Attorneys' fees (33%)	($46,200.00)
Litigation costs (not to exceed)	($12,200.00)
Administration Costs (ILYM Bid)	($4,950.00)
Net Settlement Amount	$76,650.00
LWDA PAGA Payment (65%)	$49,822.50
Employee Payments (35%)	$26,827.50
Estimated payment per Pay Period	≈ $2.95
Estimated average Employee Payment (519 employees)	≈ $51.69

IV. LEGAL STANDARD

A PAGA plaintiff sues as the proxy of the State's labor law enforcement agencies. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380; *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986.) The Court "shall review and approve any

settlement" of a PAGA action. (Lab. Code, § 2699, subd. (s)(2).) The Court must determine whether the settlement is "fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77; see *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549; *O'Connor v. Uber Technologies, Inc.* (N.D.Cal. 2016) 201 F.Supp.3d 1110, 1133.) Courts may consider class settlement factors to the extent they fit, including the strength of the plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the amount offered; the extent of discovery; and the experience and views of counsel. (*Moniz*, at p. 77; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) The record must allow the Court to independently assess the value of the claims released. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) The Court need not decide the merits. A settlement is a compromise and is not measured against "a hypothetical or speculative measure of what might have been achieved." (*Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 625.)

V. ARGUMENT

A. The Settlement Was Negotiated at Arm's Length by Informed, Experienced Counsel.

The Settlement followed informal discovery, counsel's analysis of payroll and timecard data, and a full-day mediation before an experienced wage-and-hour mediator. (Kent Decl. ¶¶ 10–14.) Plaintiff's counsel have litigated many wage-and-hour and PAGA actions, and Bauer's was represented by Gordon Rees Scully Mansukhani, LLP. (*Id.* ¶¶ 32–35.) These facts support a finding that the Settlement is not collusive. (See *Dunk*, *supra*, 48 Cal.App.4th at p. 1802.)

B. The Settlement Amount Is Adequate in Light of Defendant's Realistic Exposure.

1. Theoretical maximum exposure.

Absent a prior adverse finding, the civil penalty is $100 per aggrieved employee per pay period. (Lab. Code, § 2699, subd. (f)(2).) Plaintiff's counsel valued four independent violations. The minimum wage claim for unpaid on-call and waiting time (§§ 1194, 1197)

applies only to the trip-paid Bar Pilots subclass: 450 pay periods × $100 = $45,000. Meal periods, rest periods (§§ 226.7, 512), and expense reimbursement (§ 2802) were alleged for all drivers: 9,107 pay periods × $100 = $910,700 each. The theoretical maximum is therefore $2,777,100. (Kent Decl. ¶ 17.) For the Bar Pilots subclass, the maximum on all four theories is $180,000. (*Ibid.*) Penalties for late final and timely wages (§§ 201–204) cannot be added on top of the underlying wage violations. (Lab. Code, § 2699, subd. (i).) Wage statement and recordkeeping penalties are derivative of the same facts and would add little realistic value. (Kent Decl. ¶ 18.) Overtime is excluded because of the DOT exemption discussed below. (*Ibid.*)

2. The risks of continued litigation were substantial.

Plaintiff believes his claims are strong. On-call time is compensable when the employer's controls prevent employees from using the time for their own purposes. (*Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833, 840–841.) Piece-rate pay cannot be averaged to satisfy the minimum wage for nonproductive time. (*Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 49–51; *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323–324.) Each theory carried significant risk:

- **The trip-pay theory reaches a small subclass.** Only 32 drivers, about 5% of pay periods, were paid by trip. Whether their waiting time was compensable turns on a multi-factor, fact-intensive inquiry. (*Gomez v. Lincare, Inc.* (2009) 173 Cal.App.4th 508, 523–524.) Because Plaintiff earned roughly $56,000 in under eight months, a factfinder could also reduce the penalty even if some waiting time was compensable.
- **DOT regulation of the entire workforce.** Bauer's contends that all of its non-exempt drivers are regulated by the DOT, and its handbook invokes the resulting exemption from California overtime. (Cal. Code Regs., tit. 8, § 11090, subd. 3(L); Kent Decl. ¶ 20, citing BIT_000041.)
- **Meal and rest periods.** Bauer's DOT position also supports its argument that federal law preempts California's meal and rest period rules for drivers of

passenger-carrying commercial motor vehicles. (85 Fed.Reg. 3469 (Jan. 21, 2020).) Because those claims make up most of the theoretical exposure, that argument threatened the bulk of the case. For hourly drivers, who lost no pay by stepping away from dispatch, the claim that breaks were effectively denied is also weaker. An employer need only provide meal periods, not ensure they are taken. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040.) The rest period theory depends on proof that drivers stayed on call during breaks. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.)

- **Expense reimbursement.** Although employers must reimburse required personal cell phone use (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144), an employer may reimburse through enhanced compensation (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 559).
- **Penalty caps and discretion.** If Bauer's showed it took all reasonable steps to comply, penalties would be capped at 15% or 30% of the amount sought. (Lab. Code, § 2699, subds. (g), (h).) The Court may also reduce penalties that would be "unjust, arbitrary and oppressive, or confiscatory." (*Id.*, subd. (e)(2).) Courts use that discretion, including where several penalties rest on one pay practice. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528–529 [awarding $5 per violation]; *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135–1136 [30% reduction].)
- **Proof, delay, and collection.** Trying these claims would require representative testimony from many drivers, expert analysis of incomplete time data, and likely an appeal.

3. The Settlement falls within the range of reasonableness.

Weighting each violation by its probability of success yields a risk-adjusted value of about $532,385. Accounting for the statutory penalty caps and the Court's discretion to reduce stacked penalties, which Plaintiff's counsel estimates would reduce any award by 30% to 50%,

Defendant's realistic exposure falls to approximately $266,000 to $373,000. (Kent Decl. ¶¶ 21–22.) The $140,000 Gross Settlement Amount represents about 38% to 53% of that range. It also equals about 78% of the $180,000 maximum for the Bar Pilots subclass, where the pay-practice violation at the heart of this case occurred. It is paid now, without the risk of an adverse liability finding, a capped or reduced award, or years of delay. The Settlement is not measured against Plaintiff's best-case outcome. (*Officers for Justice*, *supra*, 688 F.2d at p. 624.) It is a reasonable compromise given the strength of Bauer's defenses and the Court's penalty discretion. (*Moniz*, *supra*, 72 Cal.App.5th at p. 77.)

C. The Settlement Advances PAGA's Purposes and Is Fair to Aggrieved Employees.

The Settlement is structured to deliver money to the State and to workers. The LWDA receives its full statutory 65% share. Every Aggrieved Employee is paid automatically in proportion to time worked, with no claim form, and no money reverts to Bauer's. (SA §§ III.2–III.3; SA, Administration § 2(d).) The release is limited to PAGA civil penalties. Each driver's individual claims for unpaid wages and other relief are expressly preserved, so no worker gives up any personal remedy. (SA § II.26.) Allocating by pay period is appropriate even though the trip-pay violation was limited to the Bar Pilots subclass. The meal, rest, and expense claims, which account for most of the released exposure, were alleged for all drivers. The subclass drivers also keep their individual claims for unpaid wages, which are the remedy for the trip-pay practice. (Kent Decl. ¶ 23.) A $140,000 payment also serves PAGA's deterrence goal. (See *Moniz*, *supra*, 72 Cal.App.5th at p. 77.)

D. Plaintiff's Separate Individual Settlement Does Not Affect the PAGA Settlement.

Plaintiff and Bauer's separately resolved Plaintiff's individual, non-PAGA claims. That payment does not come from the Gross Settlement Amount, is not a PAGA penalty or service award, does not reduce the Gross Settlement Amount, and is payable only if this Settlement is approved and becomes effective. (SA §§ III.8, IV.8.) It compensates Plaintiff for individual wage, premium, and statutory penalty claims that PAGA does not provide. Plaintiff

receives nothing from the PAGA fund beyond his pro rata Employee Payment. Plaintiff will lodge the agreement for in camera review at the Court's request. (Kent Decl. ¶ 24.)

E. The Requested Attorneys' Fees and Costs Are Reasonable.

A prevailing PAGA plaintiff is entitled to reasonable attorneys' fees and costs. (Lab. Code, § 2699, subd. (k)(1).) Where a settlement creates a common fund, the Court may award a percentage of that fund and may cross-check the award against counsel's lodestar. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 503–506.) The requested $46,200 is 33% of the Gross Settlement Amount, consistent with the one-third benchmark *Laffitte* affirmed. Counsel's lodestar of $46,455.00 (78.5 hours) shows that the request is reasonable and implies no multiplier is needed. (Kent Decl. ¶¶ 28–30, Ex. 6; see *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) Counsel took this case on contingency, advanced all costs, and has been paid nothing. (Kent Decl. ¶ 28.) Counsel's actual costs of $12,200 include the LWDA filing fee, court fees, and Plaintiff's share of mediation fees. (*Id.* ¶ 31.)

F. ILYM Should Be Appointed as Administrator.

The parties selected ILYM, an experienced settlement administrator, and Plaintiff's counsel has no financial relationship with it. ILYM's bid is $4,950.00, within the $5,000 cap. (SA §§ II.2, III.5; Kent Decl. ¶¶ 25–26, Ex. 5.) The reference to "Phoenix Class Action Administration Solutions" in the Settlement's administration section is a scrivener's error. Both parties intend ILYM to serve, as Definition 2 provides. (Kent Decl. ¶ 26.)

G. The LWDA Has Received Notice of the Settlement.

Plaintiff submitted the Settlement and this Motion to the LWDA on the date of filing. (Kent Decl. ¶ 27, Ex. 4.) Plaintiff will submit the approval order and judgment to the LWDA within 10 days after entry. (SA § III.11.)

VI. CONCLUSION

Plaintiff respectfully asks the Court to grant this Motion and enter the [Proposed] Order and Judgment.

Dated: Nov. 7, 2026

LAW OFFICES OF JENNIFER B. SIVERTS

By: _____

Adam M. Kent
Jennifer B. Siverts
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