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24
25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
26
27 **FOR THE COUNTY OF MERCED**

28 OTHELLA JONES, EMILY AZLIN, DEANNA
BUCKNER, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

APPLE INC., a California corporation; and
DOES 1–50, inclusive,

Defendants.

CASE NO.: 18CV-04557

**PLAINTIFFS' MOTION FOR APPROVAL
OF PAGA SETTLEMENT AND ENTRY OF
JUDGMENT**

Hearing Date: June 5, 2023
Time: 8:15 a.m.
Judge: Hon. Brian L. McCabe
Location: Courtroom 8

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1 **I. INTRODUCTION**

2 This PAGA action has been vigorously litigated for close to 4-1/2 years. Recently, after a
3 second full day of mediation, the parties reached an agreement to settle the matter in its entirety for
4 \$4,000,000.00. This settlement comes on the heels of \$1,000 payments made by Apple to employees
5 at the start of 2022 for previously unreimbursed business-related expenses. 1308 of the aggrieved
6 employees are amongst the employees (\$1000 each, totaling \$1,308,000.00) who received the
7 payment. Based on information provided to Plaintiffs' counsel from Apple's attorneys, the proposed
8 agreement includes payments to approximately 2,166 former and current PAGA Settlement
9 Aggrieved Employees for 154,070 pay periods, subject to court approval.¹

10 The Private Attorneys General Act of 2004 ("PAGA") provides:

11 The superior court shall review and approve any settlement of any civil action filed
12 pursuant to this part. The proposed settlement shall be submitted to the agency at the
same time that it is submitted to the court.

13 (3) A copy of the superior court's judgment in any civil action filed pursuant to this
14 part and any other order in that action that either provides for or denies an award of
15 civil penalties under this code shall be submitted to the agency within 10 days after
entry of the judgment or order.

16 (Cal. Labor Code §2699(I).)

17 This case alleged PAGA claims based on a variety of alleged Labor Code violations and was
18 filed on behalf of At Home Advisors and At Home Specialists i.e., At Home Employees (hereinafter
19 referred to as "PAGA Settlement Aggrieved Employees") dating back to November 9, 2017 (i.e.,
20 one year before this case was filed).² Plaintiffs Emily Azlin and Deanna Buckner (collectively
21 "Plaintiffs") have represented themselves individually and faithfully served as the representatives
22 for the State of California to collect civil penalties from Defendant Apple Inc. for the alleged
23

24
25 ¹ This is only a settlement of the PAGA claims for civil penalties. It is not a class settlement and
26 does not release the individual claims, if any, of the affected employees. (Cal. Labor Code
§2699(g)(1); *Iskanian v. CLS Transportation*, (2014) 59 Cal. 4th 348, 381.)

27 ² After extensive investigation, Plaintiffs concluded that the alleged violations for meal periods, rest
breaks, inaccurate wage statements, and waiting time penalties were not strong claims.

1 California Labor Code violations. At the time of settlement, the central issue involved whether
2 Defendant is required to reimburse employees for home office expenses. This issue is a case of first
3 impression under California Labor Code section 2802 and the PAGA.

4 This motion seeks approval of a non-reversionary settlement that consists of \$4,000,000,
5 following \$1,000 payments made by Apple to employees at the start of 2022 for business-related
6 expenses.³

7 Apple has steadfastly denied that it violated the Labor Code as to Plaintiffs and the alleged
8 Aggrieved Employees. The settlement reached by the parties is intended to resolve the entirety of
9 this matter on behalf of Defendant and Plaintiffs, including the State of California and all PAGA
10 Settlement Aggrieved Employees employed from November 9, 2017 (i.e., one year before this case
11 was filed) through the date the Court grants approval of the Settlement.

12 The PAGA settlement is set forth in the accompanying Settlement Agreement. See Ex. 1,
13 attached to the Declaration of Righetti, filed herewith. The LWDA received notice of this settlement
14 and this motion as set forth in the Declaration of Dodds, para. 16.

15 A proposed order confirming review and approval of the PAGA settlement has been lodged
16 with the Court.

17 **II. THE GOALS OF PAGA AND ITS REQUIREMENTS**

18 In 2003, the Legislature, recognizing the historic underfunding of the LWDA and the
19

20
21 ³ In approximately February 2022, Apple distributed \$1,000 payments for home office business
22 expenses to each of its employees, including all *currently* employed Aggrieved Employees in this
23 action. Approximately 1,308 *currently* employed Aggrieved Employees received this \$1,000
24 payment.

25 These payments totaling \$1,308,000.00 featured prominently in the resolution of this matter.
26 California Labor Section 2699(e)(1) & (2) bestows upon the Court the ability to consider the
27 imposition of a lesser PAGA penalty “based on the facts and circumstances of the particular case.”
At any trial on the merits, Apple made clear it would argue that the \$1,308,000.00 paid to Aggrieved
Employees constitutes a “fact and/or circumstance” under Section 2699(e)(1) & (2) warranting the
imposition of a lesser PAGA penalty sanction if Plaintiffs succeeded on the merits of this case.

1 California Division of Labor Standards & Enforcement (“DLSE”), passed the PAGA in an effort to
2 both spur more consistent compliance with California’s labor laws and discourage employers from
3 engaging in unlawful and anti-competitive business practices. (See Cal. Labor Code § 2698, note
4 §1.) The parties’ settlement agreement achieves the PAGA’s goals.

5 While procedurally a PAGA claim may be filed as a class action, a PAGA claim is really an
6 enforcement action pursued on behalf of the California Labor and Workforce Development
7 Agency—the real party in interest. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986.) The PAGA
8 Settlement Aggrieved Employees have *no* substantive claims under the PAGA. (*Amalgamated*
9 *Transit Union, Local 1756 v. Superior Court* (2009) 46 Cal.4th 993, 1003.)

10 The differences between a traditional class action and a PAGA representative action are well
11 settled. Following the California Supreme Court’s decision in *Iskanian v. CLS Transportation*
12 (2014) 59 Cal.4th 348, the Ninth Circuit in *Sakkab* explained:

13 The class action is a procedural device for resolving the claims of absent parties on
14 a representative basis. See Fed.R.Civ.P. 23; *Ortiz v. Fibreboard Corp.*, 527 U.S. 815,
15 832- 33 (1999); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613-17 (1997). By
16 contrast, a PAGA action is a statutory action in which the penalties available are
17 measured by the number of Labor Code violations committed by the employer. An
18 employee bringing a PAGA action does so “as the proxy or agent of the state’s labor
19 law enforcement agencies,” *Iskanian*, 59 Cal.4th at 380 (quoting *Arias v. Superior*
20 *Court*, 46 Cal.4th 969, 986 (2009)), who are the real parties in interest, *see id.* at 382.
21 As the state’s proxy, an employee-plaintiff may obtain civil penalties for violations
22 committed against absent employees, Cal. Lab.Code § 2699(g)(l), just as the state
23 could if it brought an enforcement action directly. However, by obtaining such
24 penalties, the employee-plaintiff does not vindicate absent employees’ claims, for
25 the PAGA does not give absent employees any substantive right to bring their “own”
26 PAGA claims. *See Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior*
27 *Court*, 46 Cal .4th 993. 1003 (2009); *see also Iskanian*, 59 Cal.4th at 381 (explaining
28 that “[t]he civil penalties recovered on behalf of the state under the PAGA are distinct
from the statutory damages to which employees may be entitled in their individual
capacities”).

Sakkab v. Luxottica Retail N. Am., Inc. (9th Cir. 2015) 803 F.3d 425, 435–436 *en banc* review denied.

24 The approval process in a PAGA case differs from a traditional class action as PAGA
25 aggrieved employees do not hold substantive rights. (See *Turrieta v. Lyft, Inc.* (2021) 69 Cal.App.5th
26 955, 972–974 (stating that aggrieved employees’ ability to file PAGA claims on behalf of the state
27 does not convert the state’s interest into their own or render them real parties in interest and that

1 PAGA settlements bind the government and do not injure the personal interests of aggrieved
2 employees)). While the PAGA Settlement Aggrieved Employees are to receive 25% of the penalties
3 the State collects (*see* Cal. Labor Code § 2699(i)), they lack a substantive right to these penalties.
4 Rather, the State authorizes the penalties to incentivize bringing a suit on its behalf:

5 The nature of PAGA penalties is also markedly different than damages sought in
6 Rule 23 class actions. In class actions, damages are typically restitution for wrongs
7 done to class members. But PAGA actions instead primarily seek to vindicate the
8 public interest in enforcement of California’s labor law. *See Sample v. Big Lots*
9 *Stores, Inc.*, No. C 10-03276 SBA, 2010 WL 4939992 at *3 (N.D. Cal. Nov. 30,
10 2010); *Franco v. Athens Disposal Co.*, 171 Cal.App.4th 1277 (2009). The bulk of any
11 recovery goes to the LWDA, not to PAGA Settlement Aggrieved Employees. And,
the twenty-five percent portion of the penalty awarded to the aggrieved employee
does not reduce any other claim that the employee may have against the employer –
in this case, for example, for withheld overtime pay. *See Caliber Bodyworks, Inc. v.*
Super. Ct., 134 Cal.App.4th 365 (2005). The employee’s recovery is thus an
incentive to perform a service to the state, not restitution for wrongs done to members
of the class.

12 In the end, Rule 23 and PAGA are more dissimilar than alike. A PAGA action is at
13 heart a civil enforcement action filed on behalf of and for the benefit of the state, not
a claim for class relief.

14 *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1123–1124. *Iskanian* makes
15 clear the 25% share of penalties does not make the employees real parties in interest:

16 A PAGA representative action is therefore a type of *qui tam* action. “Traditionally,
17 the requirements for enforcement by a citizen in a *qui tam* action have been (1) that
the statute exacts a penalty; (2) that part of the penalty be paid to the informer; and
18 (3) that, in some way, the informer be authorized to bring suit to recover the penalty.”
(Sanders v. Pacific Gas & Elec. CO. (1975) 53 Cal.App.3d 661, 671 (*Sanders*). The
19 PAGA conforms to these traditional criteria, except that a portion of the penalty goes
not only to the citizen bringing the suit but to all employees affected by the Labor
Code violation. The government entity on whose behalf the plaintiff files suit is
20 always the real party in interest in the suit. (See *In re Marriage of Biddle* (1997) 52
Cal.App.4th 396, 399.)

21 *Iskanian*, 59 Cal.4th at 382; *Turrieta*, Cal.App.5th at 973–974.

22 PAGA provides that PAGA Settlement Aggrieved Employees may bring actions to recover
23 civil penalties. (*See* Cal. Labor Code § 2699(a), (g).) Those civil penalties are a maximum of \$100
24 per employee per pay period escalating to \$200 per employee per pay period under certain
25 circumstances and subject to reduction based on statutory factors; *see Bernstein v. Virgin Am., Inc.*
26 (9th Cir. 2021) 3 F.4th 1127 at *1144:
27

1 Until the employer has been notified that it is violating a Labor Code provision
2 (whether or not the [Labor] Commissioner or court chooses to impose penalties), the
3 employer cannot be presumed to be aware that its continuing underpayment of
4 employees is a ‘violation’ subject to penalties.

5 Virgin was not notified by the Labor Commissioner or any court that it was subject
6 to the California Labor Code until the district court partially granted Plaintiffs’
7 motion for summary judgment. On this basis, we reverse the district court’s holding
8 that Virgin is subject to heightened penalties for any labor code violation that
9 occurred prior to that point.

10 (*Bernstein v. Virgin America, Inc.* (C.A. 9th 2021) 3 F.4th 1127, 1144; *see Gunther v. Alaska*
11 *Airlines, Inc.* (2021) 72 Cal.App.5th 334, 355–356.) Courts retain discretion to reduce the PAGA
12 penalty below the maximum based on a variety of factors. (Cal. Labor Code § 2699(e).) Of any civil
13 penalties collected, 75% belongs to the LWDA and 25% belongs to the PAGA Settlement Aggrieved
14 Employees. (Cal. Labor Code § 2699(i).)

15 The appropriate focus of the Court’s review here should be on whether or not the real party
16 in interest, i.e., the LWDA, objects to this proposed settlement and whether the proposed settlement
17 enhances the State’s enforcement of the State’s labor regulations. *See Moniz v. Adecco USA, Inc.*
18 (2021) 72 Cal.App.5th 56, 64.

19 It is submitted that this settlement warrants approval by the Court. The settlement amount of
20 \$4,000,000.00 on the heels of the \$1,000 business-related expense reimbursement payments made
21 by Apple to its employees is outstanding, especially in this case where the Court indicated at the
22 Trial Setting Conference that, in the Court’s opinion, Plaintiffs would face challenges in proving
23 their case in the requisite bench trial.

24 With respect to the amounts to be paid to the Aggrieved Employees from these settlement
25 funds, the payment of \$4,000,000.00 for 154,070 pay periods equates to an approximate \$25.96 per
26 pay period, or an average gross settlement of \$461.68 for each of the approximate 2,166 PAGA
27 Settlement Aggrieved Employees identified by Apple’s counsel. As noted above, at any trial on the
28 merits, Apple made clear it would argue that the \$1,000 payments made to Aggrieved Employees
29 constitutes a “fact and/or circumstance” warranting the imposition of a lesser PAGA penalty

1 sanction if Plaintiffs succeeded on the merits of this case.

2 After payment of administration, requested fees and costs, and service awards, the proposed
3 settlement provides a Net Settlement Amount of \$2,232,862.78 with approximately \$1,674,647.08
4 allocated to the LWDA and \$558,215.70 to the PAGA Settlement Aggrieved Employees. Based on
5 this Settlement, the PAGA Settlement Aggrieved Employees will receive an average payment of
6 \$257.71 to be mailed to each of the 2,166, PAGA Settlement Aggrieved Employees. (Declaration
7 of Matthew Righetti (“Righetti Decl.”) ¶19.)

8 **III. BECAUSE THE EMPLOYEES HAVE NO SUBSTANTIVE CLAIMS,**
9 **TRADITIONAL NOTICE IS NOT REQUIRED**

10 In a PAGA action, the real party in interest is the LWDA and the employees are nominal
11 parties. (*See Urbino v. Orkin Servs. of Cal.* (9th Cir. 2013) 726 F.3d 1118, 1122–1123.) The LWDA,
12 as the real party in interest has, of course, received formal notice of the terms of the settlement as
13 required under California Labor Code section 2698(l). In contrast, the employees do not receive the
14 traditional class notice because none is required:

15 Because a PAGA action is a statutory action for penalties brought as a proxy for the
16 state, rather than a procedure for resolving the claims of other employees, there is no
17 need to protect absent employees’ due process rights in PAGA arbitrations. *Compare*
18 *Concepcion*, 131 S.Ct. at 1751-52 (observing “it is...odd to think that an arbitrator
would be entrusted with ensuring that third parties’ due process rights are satisfied”),
with *Arias*, 46 Cal.4th at 984-87, 95 Cal.Rptr.3d 588, 209 P.3d 023. PAGA
arbitrations therefore do not require the formal procedures of class arbitrations. *See*
Baumann, 747 F.3d at 1123.

19 Unlike Rule 23(c)(2), PAGA has no notice requirements for unnamed PAGA
20 Settlement Aggrieved Employees, nor may such employees opt out of a PAGA
21 action. In a PAGA action, the court does not inquire into the named plaintiff’s and
22 class counsel’s ability to fairly and adequately represent unnamed employees –
critical requirements in federal class actions under Rules 23(a)(4) and
(g)...Moreover, unlike Rule 23(a), PAGA contains no requirements of numerosity,
commonality, or typicality *Id.* at 1122-23 (citations omitted).

23 (*Sakkab*, 803 F.3d at 436.)

24 **IV. RELEVANT ISSUES AND PROCEDURAL HISTORY**

25 On June 29, 2015, Apple hired plaintiff Emily Azlin and on October 19, 2015 hired plaintiff
26 Deanna Buckner as At Home Advisors.

1 Plaintiffs allege that from the outset, Apple required plaintiffs Azlin and Buckner to work
2 from their homes and incur necessary business expenses to perform their duties on Apple's behalf.
3 Plaintiffs allege that Apple required the same of all Settlement Aggrieved Employees in California.

4 On November 9, 2018, January 30, 2019, and September 9, 2022, Plaintiffs provided notice
5 of Plaintiffs' allegations to the Labor and Workforce Development Agency (LWDA), as presented
6 in Plaintiffs' Fourth Amended Complaint. Plaintiffs provided notice to Apple as well. The LWDA
7 did not respond to these notices, thus allowing Plaintiffs to initiate the PAGA lawsuit under
8 California Labor Code section 2699.3(a)(2)(A). Declaration of Matthew Righetti ¶10.

9 The parties engaged in hard-fought litigation and intended to take their claims and defenses
10 to trial. The parties engaged in voluminous discovery, which included:

- 11 • the production of thousands of documents,
- 12 • more than 27 depositions, including multiple depositions of Plaintiffs themselves, their
13 significant others and third parties,
- 14 • Defendant and its experts' inspection of Plaintiffs' homes, ⁴
- 15 • multiple notices to aggrieved employees,
- 16 • extensive work with numerous survey experts to support Plaintiffs' representative claims at
17 trial,
- 18 • motions to quash,
- 19 • preparation for summary judgment including extensive negotiations concerning stipulated
20 facts,
- 21 • litigation of motions to compel concerning various discovery requests, including
22 depositions, and inspections,

23
24 ⁴ Apple pursued personal inspection of Plaintiffs' homes where counsel for Apple and Apple's
25 experts/consultants examined not just the home offices at issue, but Plaintiffs' entire homes. This
26 was conducted during the COVID pandemic when even in-person depositions and court appearances
27 were uncommon.

- motions to quash subpoenas,
- production and analysis of payroll data provided by Apple, and
- interviews of hundreds of PAGA Settlement Aggrieved Employees concerning the “work from home” arrangements while working for Apple.

Plaintiffs also performed extensive work in this case preparing a trial plan that would meet the Court’s standards for a representative PAGA trial as to both liability and penalties. As the trial date drew near, Apple retained new counsel and Apple requested a continuance of the trial date, which was granted. Declaration of Matthew Righetti ¶ 11.

Reimbursement of expenses for “at-home employees” has become a “hot topic” when employers required employees to work from home coincidental with pandemic restrictions. Yet, this case was filed in 2018—almost a year-and-a-half before the pandemic—when such claims were truly novel issues. From Plaintiffs’ perspective, the evidence weighed in favor of Plaintiffs due to Apple’s written at-home work mandates and, in particular, after Apple disclosed an internal report recommending an increase in expense reimbursement for At Home workers—a recommendation Apple Corporate neglected to follow. Based on their investigation and discovery, Plaintiffs were prepared to take the case to trial. Conversely, Plaintiffs appreciated Apple’s position that \$1,000 payments made by Apple to aggrieved employees in early 2022 covered a portion of previously unreimbursed internet expenses. Thus, in terms of an award of penalties under California Labor Code Section 2699(e)(1) & (2), Apple was prepared to argue—and the Court could very well agree— that a lesser penalty was more appropriate than the statutory maximum penalty. (Righetti Decl. ¶12.)

These facts and the continuing risk and expense of further litigation, appeals, and a delayed trial led the parties to pursue mediation twice with different mediators. In preparation for the mediations, Apple provided Plaintiffs with information and data necessary for penalty calculations; for example, employment files, sampling data for all PAGA Settlement Aggrieved Employees, the total number of PAGA Settlement Aggrieved Employees, total number of pay periods between November 9, 2017 and September 30, 2022. Using this information, Plaintiffs were able to calculate

1 Apple's total penalty exposure for the one-year statutory PAGA period. (Righetti Decl. ¶13.)

2 On April 13, 2022, the parties attended the first mediation with Tripper Ortman, a respected
3 mediator. The parties' attempts to settle at mediation failed. The parties continued to litigate the
4 case and prepare for trial, which was initially scheduled for August 1, 2022. On January 17, 2023,
5 the parties made a final attempt to resolve the case with Jeff Ross, another well-known mediator
6 within Silicon Valley among larger cap tech companies also known for mediating employment
7 cases. The parties resolved the case with Jeff Ross on the terms set forth within the Settlement
8 Agreement. (Righetti Decl. ¶14.)

9 **V. PLAINTIFFS AND PLAINTIFFS COUNSEL'S EFFORTS WERE THE DRIVING**
10 **FORCE THAT LED TO \$1,000 PAYMENTS TO APPLE EMPLOYEES**

11 The extensive amount of work conducted over four years to bring this case to resolution
12 supports the requested fee award of \$1,600,000.00. This would equate to 40% of the total
13 Settlement, without taking into account the \$1,000.00 payments made to Apple employees for
14 business-related expenses incurred in operating their "home offices." Over the course of four years
15 this case was contentious. Apple fought with Plaintiffs every step of the way, including forcing
16 Plaintiffs to file motions to compel depositions and written discovery and requests for sanctions.
17 After extensive litigation, Apple's view of the case began to soften; on or about February 2022
18 Apple paid each of its employees \$1,000 for home office expenses. Apple may deny that this lawsuit
19 was a driving force behind the \$1,000 payments to employee. However, Apple most certainly
20 intended to argue and attribute the \$1,000 payments as justification for an offset in this litigation.

21 Further, Apple's \$1,000 payments to the Aggrieved Employees were significant. These
22 payments did not just provide the Aggrieved Employees monetary compensation, it also provided
23 Apple with a "fact and or circumstance" it could use to argue to the Court—whether or not
24 successful—to limit liability in this case by awarding a lesser PAGA penalty as authorized under
25 Cal. Labor Code Section 2698 [PAGA authorizes Courts to award lesser PAGA penalty amounts
26 based on "facts and circumstances" of the case].

27 Plaintiffs' attorneys' lodestar also supports this request. (See, Declarations of Righetti,

1 Dodds, Glugoski and Nathan.)

2 **VI. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES**

3 **A. Summary of Settlement Terms**

4 The proposed Settlement Agreement (Righetti Decl., Exhibit 1) involves the formation of a
5 non-reversionary fund consisting of \$4,000,000.00 (“Gross Settlement Fund”). The Gross
6 Settlement Fund will be used to make payments to the LWDA and PAGA Settlement Aggrieved
7 Employees after payment of attorney fees, costs of administration, Plaintiffs’ incentive awards,
8 Plaintiffs’ 1542 releases and litigation costs. Plaintiffs’ incentive awards are requested in the amount
9 of \$5,000 each and settlement administration costs to ILYM Group Inc. shall not exceed \$16,000.00.
10 Plaintiffs have executed a Cal. Civil Code §1542 waiver for claims that can be individually asserted
11 and are being released in exchange for \$15,000.00 each. The Net Settlement Fund will be distributed
12 as follows: Seventy-five percent (75%), i.e., \$1,674,647.08 will be distributed to the California
13 Labor & Workforce Development Agency (“LWDA”) as required by the PAGA and the remaining
14 twenty-five percent (25%), i.e., approximately \$558,215.70 will be distributed to all PAGA
15 Settlement Aggrieved Employees on a pro-rata share basis based on the number of pay periods
16 worked by each Settlement Aggrieved Employee. (Righetti Decl. ¶ 15.)

17 **B. The Notice**

18 Apple agreed to fund the Settlement Amount within 75 days of the Court’s Order approving
19 the Settlement. (Settlement Agreement ¶¶ 7, 26.) The PAGA Settlement Aggrieved Employees will
20 have 180 days to negotiate their checks. If for any reason a check is un-cashed, then a postcard
21 reminder will be mailed. Should checks remain uncashed then the funds will be tendered to the
22 California State Controller’s Office, Unclaimed Property Division in the name of the employee(s).
23 (Settlement Agreement ¶ 27.) The Notice (Settlement Agreement ¶ 27) informing the PAGA
24 Settlement Aggrieved Employees of the nature of the payment will be provided with the settlement
25 check. (Righetti Decl. Ex. 1.)

26 **C. Settlement Allocation to the PAGA Settlement Aggrieved Employees**

1 As noted, twenty-five percent (25%) of the PAGA penalties will be allocated to the PAGA
2 Settlement Aggrieved Employees. Based on the numbers Apple provided, approximately 2,166
3 current and former employees will share in this fund in proportion of the pay periods each member
4 worked. The portion to each of the PAGA Settlement Aggrieved Employees will be treated as non-
5 wages since these are civil penalties and reported by the Settlement Administrator by law PAGA
6 Settlement Aggrieved Employees will receive, on average, \$257.71, which exceeds the payout in
7 most employment wage and hour PAGA settlements.

8 **D. The Release**

9 The California Supreme Court has explained that a judgment in “a representative action
10 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004...is
11 binding not only on the named employee plaintiff but also on government agencies and any
12 aggrieved employee not a party to the proceeding.” (*Arias*, 46 Cal. 4th at 985–986.)

13 The release in the Settlement Agreement narrowly binds the PAGA Settlement Aggrieved
14 Employees for civil penalty claims brought in the Action (Settlement Agreement ¶ 15), as follows:

15 PAGA civil penalties that were asserted or that reasonably could have been asserted
16 based on the facts alleged in the Action and in the Class Action Complaint filed on
17 November 14, 2018, the First Amended Class Action Complaint filed on April 2,
18 2019, the Second Amended Class Action Complaint filed on April 25, 2019, the
19 Third Amended Class Action Complaint filed on July 25, 2019, or the operative
Fourth Amended Class Action Complaint filed on August 12, 2020, including but
not limited to civil penalties for alleged violations of Labor Code §§ 2800, 2802
and 2698 et seq.

20 (Settlement Agreement § 15.)

21 **VII. THE SETTLEMENT IS FAIR AND REASONABLE AND WARRANTS COURT**
22 **APPROVAL**

23 In 2016, the PAGA was amended to require the Court to “review and approve any settlement
24 of any civil action filed pursuant to this part.” (Cal. Labor Code § 2699(1)(2).) The amendment also
25 required that the “proposed settlement shall be submitted to the agency at the same time that it is
26 submitted to the court.” As such, the Settlement and this Motion have been concurrently submitted
27 to the LWDA in accordance with this section. (Righetti Decl. ¶16, Ex. 2.)

1 **A. Evaluation of the PAGA Settlement**

2 Although PAGA and the legislative history do not require a Court to analyze a PAGA
3 settlement in comparison to the “value” of the claims, the Court should pay particular attention to
4 the views, if any are presented, of the LWDA. Plaintiffs do not expect the LWDA to object to this
5 proposed settlement because the penalties obtained here are reasonable and should be viewed as a
6 successful resolution in favor of the PAGA Settlement Aggrieved Employees and the State of
7 California.

8 As well, a representative settlement is presumed fair where: (1) the settlement is reached
9 through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and
10 the court to act intelligently; (3) (and) counsel is experienced in similar litigation. (*Dunk v. Ford*
11 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1802; *see Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th
12 56, 77 (stating factors used in determining the fairness of class action settlements are useful in
13 evaluating a PAGA settlement).)

14 A court may also consider relevant factors such as the strength of the plaintiffs’ case, the
15 risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action
16 status through trial, the amount offered in settlement, the extent of discovery completed and the
17 stage of the proceedings, the experience and views of counsel, [and] the presence of a governmental
18 participant. (*Officers of Justice v. Civil Service Com’n of City and County of San Francisco* (9th
19 Cir. 1981) 688 F.2d 615, 625.) “This list is not exhaustive and should be tailored to each case. Due
20 regard should be given to what is otherwise a private consensual agreement between the parties.”
21 (*Dunk*, 48 Cal.App.4th at 1801.) Moreover, the trial court has broad powers to determine whether a
22 proposed [representative action] settlement is fair. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d
23 434, 438.)

24 In this case, Plaintiffs’ entire theory centers around Apple’s alleged practice of failing to
25 reimburse for certain categories of home office expenses for At-Home Employees. Apple maintains
26 data for all 2,166 PAGA Settlement Aggrieved Employees. The data produced by Apple confirms
27 approximately 154,070 pay periods of At-Home work activity involving approximately 2,166 (1,308

1 current) PAGA Settlement Aggrieved Employees between November 9, 2017 and September 30,
2 2022. While there were over 154,070 pay periods during the statutory period, PAGA Settlement
3 Aggrieved Employees received reimbursement for some internet expenses incurred and \$1,000.00
4 for home office expenses around the beginning of 2022. (Righetti Decl. ¶17.)

5 Therefore, based on this analysis, Plaintiffs believe the maximum total exposure value of the
6 claims is based on 154,070 pay periods (x \$100 per violation). (Righetti Decl. ¶17.)

7 Under the PAGA, the realistic range for PAGA penalties range between \$10-\$15 per pay
8 period. Courts have considerable discretion to reduce the penalty award below the maximum. In
9 *Fleming v. Covidien* (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, a federal court reduced PAGA
10 penalties from \$2,800,000.00 to \$500,000.00, a reduction of 82.2%, because the court found
11 maximum penalties “unjust.” Some trial courts have awarded no civil penalties, even when Labor
12 Code violations were established. Examples of such reductions include but are not limited to the
13 following:

14 • *Makabi v. Gedalia* (2nd Dist. Ct. of App. Mar. 6, 2016) 2016 Cal.App.Unpub. 1489,
15 *5–7 (no PAGA penalties were awarded by the Los Angeles County Superior Court) (unpublished
16 decision).

17 • *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D.
18 Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

19 • *Franco v. Ruiz Food Products, Inc.*, 2012 WL 5941801 (E.D. Cal. 2012), where the
20 court approved a total PAGA penalty amount of \$10,000, for as many as 2,055 current and former
21 employees.

22 • *Schiller v. David’s Bridal, Inc.*, 2012 WL 217001 (E.D. Cal. 2012), the court
23 approved a PAGA penalty amount of \$10,000 for 3,326 individuals.

24 • *Enombang v. Target*, Case No. RG17853948, on July 24, 2018 for a total amount of
25 \$9,000,000. The dispute involved 90,462 allegedly aggrieved employees and 1,939,006 pay periods
26 in Alameda Superior Court. [\$4.66 per pay period].

27 • *Pickett v. 99 Cents Only Stores*, Case No. BC473038, on August 1, 2017, for a total

1 amount of \$1,290,000. The dispute involved approximately 10,000 allegedly aggrieved employees
2 and approximately 1,592,592.6 pay periods in Los Angeles Superior Court. [\$.81 per pay period.]

3 • *Carrington v. Starbucks Corp.*, (2018) 30 Cal.App.5th 504, the Court of Appeal
4 affirmed a judgment after trial which provided for a PAGA penalty of \$5 per pay period. In *Doe v.*
5 *Google, et al.*, Case No. CGC-16-556034, the court approved \$15 per aggrieved employee.
6 (Declaration of Righetti ¶18).

7 This result is positive and favorable to the State, which will receive \$1,674,647.08. The
8 PAGA Settlement Aggrieved Employees will receive \$558,215.70, which amounts on average to
9 \$257.71 per aggrieved employee. (Declaration of Righetti ¶ 19).

10 **VIII. THE ATTORNEY’S FEES AND COSTS SHOULD BE AWARDED**

11 Notice to the LWDA has been provided as required by statute. We expect the LWDA will
12 have no objection to the fee and cost request in light of the factual and legal record supporting the
13 request.

14 PAGA carries with it a mandatory fee shifting statute under PAGA. Cal. Lab. Code Section
15 2699(g). As noted, Plaintiff has provided notice to the LWDA regarding all aspects of this
16 settlement, including the amount of fees sought. Should the LWDA contact Plaintiffs’ counsel
17 regarding any aspects of this settlement prior to the hearing date, we will promptly notify the Court.
18 Nevertheless, Plaintiff submits that the requested fees and costs sought are reasonable. As set forth
19 above in Section IV, the parties conducted substantial discovery and trial preparation prior to
20 agreeing to settle this case.

21 The tenacity of Apple’s defense strategy – coupled with the complexity, risk and demands
22 of this case -- required the expenditure of 2794.3 attorney hours from three law firms, Law Offices
23 of Bryce A. Dodds, Nathan & Associates, APC and Righetti Glugoski, P.C. Consistent with the
24 scope of this action, the nature of the relief obtained on behalf of the LWDA and Aggrieved
25 Employees and the amount of time expended in prosecution of the case, Plaintiffs and Counsel
26 hereby move for an award of attorney’s fees of \$1,600,00.00 and costs of \$111,137.22. The
27 requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming

1 litigation on a contingent fee basis, especially in light of the benefits achieved. As outlined above
2 and set forth in the accompanying Declarations of Bryce Dodds, Reuben Nathan, Matthew Righetti
3 and John Glugoski, Counsel diligently litigated and investigated this case without duplication of
4 efforts.

5 More importantly, not only are the attorney's fees being sought here in line with the market
6 rates, but also approved by Courts in California.

- 7 • In *Enombang v. Target*, Alameda County Superior Court Case No. RG17853948, the
8 court approved a settlement of \$9,000,000 for 1,939,006 pay periods, which equates
9 to \$4.66 per pay period and Plaintiff's counsel were awarded 40% of the \$9,000,000
10 settlement in attorney's fees;
- 11 • In *Varela et. al., v. Dolgen California, LLC*, Riverside County Superior Court Case
12 No. RIC1306158, the court approved a fee award of \$3,980,000.00 which equated to
13 40% of the Settlement Fund based on a lodestar of \$2,783,570.00 times a multiplier
14 of 1.43.

15 Declaration of M. Righetti ¶38

16 In *Varela*, the Court actually applied a 1.43 multiplier to Plaintiff Counsel's lodestar in
17 awarding the 40% fee request. Here, Plaintiffs Counsel's lodestar exceeds the fees being requested
18 and thus the practical effect would be an application of a negative multiplier to arrive at the
19 requested fee.

20 **a. Lodestar Calculation Approach**

21 The trial court has broad authority to calculate the lodestar. (*PLCM Group, Inc. v. Drexler*
22 (2000) 22 Cal.4th 1084, 1094-1095 [[T]he fee setting inquiry in California ordinarily begins with
23 the "lodestar," i.e., the number of hours reasonably expended multiplied by the reasonable hourly
24 rate)]. "California courts have consistently held that a computation of time spent on a case and the
25 reasonable value of that time is fundamental to a determination of an appropriate attorneys' fee
26 award." The reasonable hourly rate is that prevailing in the community for similar work. The
27 lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order

1 to fix the fee at the fair market value for the legal services provided. (*Id.* at 1095).

2 **b. Reasonable Hourly Rate**

3 In calculating the lodestar, a billing rate of the attorneys are as follows;

- 4 • Attorney Matthew Righetti of Righetti Glugoski (36 years in practice): \$1050.00;
- 5 • Attorney John Glugoski (26+ years in practice): \$850 per hour;
- 6 • Attorney Reuben Nathan (23 years in practice): \$900 per hour;
- 7 • Attorney Bryce Dodds (11 years in practice): \$675.00 per hour;
- 8 • Paralegals: rate of \$225 per hour;

9 See, Nathan Declaration ¶¶3-6; Righetti Declaration ¶¶1-5, 20-37; Dodds Declaration ¶¶1-18;
10 Glugoski Declaration ¶¶1-6, 13-24). These are equivalent to their current billing rates on a non-
11 contingency fee basis. (Nathan Declaration ¶¶5; Righetti Declaration ¶¶29-32; Dodds Declaration
12 ¶¶1-18; Glugoski Declaration ¶¶17-21). These amounts are supported by market rates of attorneys
13 with similar experience and are consistent with their hourly rates that have been approved by other
14 courts, as set forth in the accompanying declarations. (Nathan Declaration ¶¶5-10; Righetti
15 Declaration ¶¶29-32; Dodds Declaration ¶¶6-8; Glugoski Declaration ¶¶17-21).

16 **c. Number of Hours Expended**

17 In determining the number of hours expended by counsel, compensable hours include
18 services provided including services prior to the filing of the complaint that were reasonably
19 required. (*Stokus v. Marsh* (1990) 217 Cal.App.3d 647, 655). Moreover, detailed time records are
20 not required. “Testimony of an attorney as to the number of hours worked on a particular case is
21 sufficient evidence to support an award of attorney fees (*Martino v. Denevi* (1986) 182 Cal.App.3d
22 553, 559; *see also, Wershba., supra*, 91 Cal.App.4th at 255). Counsel has submitted time
23 summaries setting forth in detail the categories of work performed and the amount of time spent on
24 each of the various categories to support the number of hours expended. The categories are::

- 25 (1) Investigations, Factual Research
- 26 (2) Discovery
- 27 (3) Pleadings, Briefs and Pretrial Motions (includes legal research)

- 1 (4) Court Appearances
- 2 (5) Mediation Settlement and Administration
- 3 (6) Litigation Strategy, Analysis and Case Management
- 4 (7) Class Certification
- 5 (8) Trial Preparation and Trial

6 The time summaries are attached to the corresponding attorney's Declaration. (See Nathan
7 Declaration ¶24; Righetti Declaration ¶35; Dodds Declaration ¶21; Glugoski Declaration ¶ 22).

8 As of the filing of this motion, attorney Reuben Nathan of Nathan & Associates, APC has
9 expended over 780 hours in the prosecution of this lawsuit. The lodestar of attorney Nathan as of
10 the filing of this motion is \$702,090.00. (Nathan Declaration ¶24).

11 As of the filing of this motion, attorney Bryce Dodds of the Law Offices of Bryce Dodds
12 has expended over 759.2 hours in the prosecution of this lawsuit. The lodestar of attorney Dodds
13 as of the filing of this motion is \$512,460. (Dodds Declaration ¶¶4, 21).

14 As of the filing of this motion, attorney Matthew Righetti of Righetti Glugoski, P.C. has
15 spent 775.80 hours in the prosecution of this lawsuit. Attorney Righetti's lodestar as of the filing
16 of this motion is \$814,590 and the lodestar of the Righetti Glugoski paralegal is \$27,517.50.
17 (Righetti Declaration ¶35, Ex. 4).

18 As of the filing of this motion, attorney John Glugoski of Righetti Glugoski, P.C., has spent
19 479.30 hours in the prosecution of this lawsuit. Attorney Glugoski's lodestar at the time of the
20 filing of this motion is \$407,405.00. (Glugoski Declaration ¶22).

21 There was no duplication of effort and the combined efforts of Counsel were required for
22 the successful outcome in the case. (Nathan Declaration ¶5; Righetti Declaration ¶¶35, 37; Dodds
23 Declaration ¶4; Glugoski Declaration ¶¶22-24). It is estimated that Counsel will expend (in total)
24 an additional 20 hours of time beyond their current lodestars preparing for, the approval hearing
25 and overseeing the completion of administration of this Settlement including monitoring the
26 distribution of proceeds, following up on missing payments, communicating with clients, the
27 Administrator and aggrieved employees, providing a final accounting for the Court, etc.

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Generally, numerous courts have approved fee multipliers up to 4 times, but court's commonly have adjusted multiplier's upward to 2.0 multiplier based on certain factors such as (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. For example, 2.0 multipliers were awarded in *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 -2.25 multiplier and *Coalition for L.A. County Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251-2.0 multiplier.

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1 enforcing the California Labor Code, rewarding prevailing litigants with a substantial recovery
2 promotes PAGA's purpose. Plaintiffs have also executed a California Civil Code Section 1542
3 waiver for claims that can be individually asserted and are being released in exchange for
4 \$15,000.00. (Ex. 1, Settlement Agreement ¶ 21.)

5 **X. SUBMISSION TO THE LWDA**

6 As set forth in the Righetti Decl. at ¶16, the settlement and this motion are concurrently
7 being submitted to the LWDA in accordance with California Labor Code section 2699(1)(2). The
8 proof of electronic submission is attached as Exhibit "2" to the Righetti Declaration.

9 **XI. THE SETTLEMENT ADMINISTRATOR**

10 ILYM will serve as the Settlement Administrator and will be responsible for processing the
11 settlement payments and providing notice to the PAGA Settlement Aggrieved Employees. The
12 Settlement Agreement authorizes up to \$16,000.00 in administration costs (Settlement Agreement
13 ¶ 23).

14 **XII. CONCLUSION**

15 In light of the foregoing, Plaintiffs respectfully request that the Court approve the parties'
16 Settlement Agreement attached as Exhibit 1 to the Nathan Declaration, including Plaintiffs' request
17 for the representative award, attorney fees, costs, and administrative expenses, so that ILYM Group
18 Inc. may begin administering the settlement in accordance with the terms of the Agreement.

19 Dated: May 5, 2023

Respectfully submitted,

20 **RIGHETTI GLUGOSKI, P.C.**

21
22 By: /s/ Matthew Righetti
23 Matthew Righetti Esq.
24 Attorneys for Plaintiffs
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