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individually and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ERIKA GONZALEZ, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

OSI OPTOELECTRONICS, INC; OSI
SYSTEMS, INC.; and DOES 1 through 50,
inclusive,

Defendants.

Case No. No. 22STCV29235

The Honorable Elaine Lu

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

Date: June 6, 2024

Time: 8:30 a.m.

Dept: 26

Reservation ID: 417116857680

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Erika Gonazlez ("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 OSI Optoelectronics, Inc. ("Defendant") in the amount of \$360,000. Plaintiff alleges
6 approximately 215 aggrieved employees who worked for Defendant that were allegedly not paid at
7 least minimum wages for all hours worked, not paid proper overtime compensation, not provided
8 with meal periods or compensation in lieu thereof, not provided with rest breaks or compensation
9 in lieu thereof, not provided with accurate wage statements, and were not paid all wages owed upon
10 separation of employment.

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

16 **II. FACTUAL AND PROCEDURAL BACKGROUND**

17 On September 8, 2022, Plaintiff's counsel sent a letter to the California Labor & Workforce
18 Development Agency ("LWDA") via online submission and to Defendant via certified mail
19 regarding Defendant's alleged violations. *See* Connolly Decl., ¶ 3, Exhibit 2. ("Connolly Decl.").
20 The LWDA did not respond to this notice within 65 days, indicating it did not intend to investigate,
21 thus allowing Plaintiff to file the instant lawsuit pursuant to Labor Code Section 2699.3(a)(2)(A).
22 *Id.* at ¶ 4.

23 On September 8, 2022 Plaintiff filed her Complaint as a class action lawsuit, alleging that,
24 Defendant failed to: (1) pay minimum wages, (2) pay overtime wages, (3) provide meal periods,
25 (4) permit rest breaks, (5) provide accurate itemized wage statements; (6) failure to pay wages
26 timely during employment, (7) timely pay all wages during employment, (8) violation of business
27 and professions Code §§ 17200, *et seq.* Connolly Decl., ¶ 5. On November 15, 2022, Plaintiff
28 amended her complaint to add a claim under PAGA. *Id.*

1 Due to the presence of arbitration agreements that Plaintiff and class members allegedly
2 signed, Plaintiff dismissed her individual and class claims. Connolly Decl., ¶ 6. Subsequently,
3 Defendants brought a Motion to Compel Arbitration, in which the Court compelled Plaintiff's
4 individual PAGA claim to arbitration and stayed the remaining representative PAGA claim pending
5 the completion of arbitration. *Id.*

6 The Parties agreed to attend early, private mediation. Connolly Decl., ¶ 7. In preparation
7 for mediation, Defendant informally produced data and documents for Plaintiff to evaluate the
8 PAGA claims and calculate the alleged exposure, including policy documents, a 15% sample of
9 time and payroll records, and a list of aggrieved employees with dates of employment to calculate
10 the pay periods worked. *Id.* Plaintiff's Counsel engaged an expert to quantify the potential exposure
11 using the time and payroll records, and then assessed the risks associated with each of the claims.
12 *Id.*

13 The Parties attended mediation on December 6, 2023, with Daniel Turner, a respected class
14 action and PAGA action mediator. Connolly Decl., ¶ 8. Although the action did not settle at
15 mediation, the mediator made a mediator's proposal which was eventually accepted by all Parties.
16 *Id.* The Parties spent the next few months negotiating the terms of the Settlement, which was
17 finalized in February of 2024. *Id.*

18 Plaintiff provided notice of the Settlement to the LWDA and served a copy of the motion
19 on the LWDA. Connolly Decl., ¶ 31, Exhibit 3.

20 **III. PAGA REQUIREMENTS**

21 Based on the California Supreme Court's opinions in *Arias v. Superior Court*, 46 Cal. 4th
22 969 (2009), and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014),
23 Plaintiffs can seek appropriate civil penalties as called for under PAGA on behalf of the State of
24 California and other similarly aggrieved employees without seeking class certification or meeting
25 the requirements of class certification (i.e. numerosity, typicality, commonality and adequacy). As
26 such, the class action two-step preliminary and final approval process is not required.

27 PAGA was enacted to allow enforcement of the Labor Code and recovery of penalties by
28 the State and by private individuals who have been aggrieved by their employers. The statute calls

1 for 75% of any penalties recovered to be paid to California's LWDA and the remaining 25% to the
2 aggrieved employees (Cal. Lab. Code § 2699(i) (2016)).

3 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee
4 must first provide written notice to the LWDA and the employer of the particular Labor Code
5 violations the aggrieved employee alleges the employer has violated. *See* Cal. Labor Code §
6 2699.3(a)(1)(A) (2016). Once the LWDA notifies the aggrieved employee that it does not intend to
7 investigate the alleged violations, or if the LWDA does not respond within a certain time period,
8 the aggrieved employee is then allowed to proceed in a civil action against the employer on behalf
9 of the LWDA and all other similarly aggrieved employees. *See* Cal. Labor Code § 2699.3(a)(2)(A)
10 (2016).

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

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

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

26 The Parties have agreed that Defendant will pay a total settlement amount of \$360,000.00
27 (the "Total Settlement Payment"). *See* Settlement Agreement, § IV(A). From this amount, up to
28 33.3% of the Total Settlement Payment, or \$119,880.00, is allocated to attorneys' fees and up to

1 \$15,000.00 to actual litigation costs. *Id.* at § IV(B). To date, Plaintiff’s counsel has spent \$12,064.80
2 in actual litigation costs. *See* Connolly Decl., ¶ 27, Exhibit 4. The Settlement allocates up to
3 \$3,250.00 to payment for Phoenix Settlement Administrators’ costs associated with administration
4 of the Settlement. *Id.* at § IV(D). In exchange for her general release and waiver of Civil Code §
5 1542 protections and services as the PAGA representative, the Settlement allocates \$10,000 of the
6 Total Settlement Amount to Plaintiff as her General Release Payment. *Id.* at § IV(C).

7 After deducting the requested attorneys’ fees and costs, Settlement Administrator’s costs,
8 and Plaintiff’s Service Payment, the remaining fund (“Net Settlement Amount”) will be paid 75%
9 to the LWDA and 25% to the PAGA Settlement Members. Settlement Agreement, § IV(E). The
10 “PAGA Settlement Members” means and refers to all individuals employed in California by
11 Defendant as non-exempt employees at any time during the PAGA Period of September 7, 2021 to
12 December 6, 2023. Settlement Agreement, § I(7)-(8).

13 Each PAGA Settlement Member will receive a pro rata portion of the PAGA Fund,
14 determined based on the pay periods that he or she worked for Defendant in the State of California
15 during the PAGA Period. Settlement Agreement, § V(C). Individual Settlement Payments shall be
16 paid to PAGA Settlement Member by way of a single check. All PAGA Employees’ Payments will
17 be characterized as penalties for tax purposes and reported on IRS Form 1099. Settlement
18 Agreement, § V(D)(7).

19 The Settlement Administrator will disburse the settlement checks to each PAGA
20 Settlement Member to the last known physical address on file with Defendant in its regularly
21 maintained records. Settlement Agreement, § V(D)(1). For any returned payments without a
22 forwarding address, the Settlement Administrator shall run a skip trace. *Id.* at § V(D)(4). PAGA
23 Settlement Members will receive a letter along with their settlement check explaining the reason
24 for the payment, the content of which will be submitted to the Court for approval. *Id.* at § V(D)(3).
25 The proposed letter is attached to the Settlement Agreement as **Exhibit A**. All funds not claimed
26 within 180 days of mailing of payment shall be sent to the California State Controller’s Office
27 Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to
28 each PAGA Employee. *Id.* at § V(D)(6).

1 In exchange for the settlement payment, the State of California and the PAGA Settlement
2 Members will release the “Released Parties” meaning “Defendant and all of its past and present
3 parents (including OSI Systems, Inc.), subsidiaries, affiliates, predecessors, related entities, and all
4 of their respective current or former employees, officers, directors, owners (whether direct or
5 indirect), general partners, limited partners, trustees, representatives, shareholders, stockholders,
6 members, successors, assigns, and agents” from “any and all claims that were alleged, or reasonably
7 could have been alleged, based on the facts stated in the Operative Complaint and the notice
8 provided by Plaintiff to the LWDA, whether known or unknown, to recover civil penalties pursuant
9 to PAGA for any alleged violations of California Labor Code sections, including 201-204, 210,
10 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198
11 and 2698 et seq., and the applicable IWC Wage Order for the PAGA Period.” Settlement
12 Agreement, §§ I(12)-(13).

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

14 **A. Standard for Approval**

15 PAGA settlements must be “fair, reasonable, and adequate in view of PAGA’s purposes to
16 remediate present labor law violations, deter future ones, and to maximize enforcement of state
17 labor laws.” *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021). The court must find that
18 the plaintiff “has adequately represented the state’s interests, and hence the public interest.” *Id.* at
19 89. The LWDA must be notified of the settlement and be given an opportunity to object. The court
20 may look to parallel class action guidelines to determine what is “fair, adequate and reasonable.”
21 *Kullar v. Foot Locker Retail*, 168 Cal.App.4th 116, 126 (2008). In that analysis, the court has
22 “broad discretion in making this determination.” *In re Microsoft I-V Cases*, 135 Cal.App.4th 706,
23 723 (2006). Relevant factors may include “the strength of the plaintiffs’ case, the risk, expense,
24 complexity and likely duration of further litigation, ... the amount offered in settlement, the extent
25 of discovery completed and the stage of the proceedings, the experience and views of counsel, the
26 presence of a governmental participant” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801
27 (1996).

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

1 Here, the \$360,000.00 Total Settlement Amount is reasonable for a group of approximately
2 215 employees. A penalty of \$360,000.00 is large enough to punish Defendant for alleged past
3 violations and deter future violations. The Total Settlement Amount is equivalent to a penalty of
4 about \$1,674.00 per employee. At the same time, the penalty amount is not so large as to be unjust,
5 oppressive or confiscatory, considering the company's potential exposure explained below.
6 Connolly Decl., ¶ 9. The Total Settlement Amount is also reasonable in light of the facts of the
7 foregoing action, the real risk that no PAGA penalties would be paid, and inherent risks and
8 uncertainties associated with PAGA claims. Connolly Decl., ¶ 10.

9 Plaintiff calculated the potential exposure at the initial violation rate of \$100.00 per pay
10 period as follows: 8,592 x \$100.00 per pay period is \$859,200, assuming that Plaintiff could prove
11 a violation in each and every pay period. Connolly Decl., ¶ 11. If the Court stacked different types
12 of penalties in each pay period, Plaintiff calculated the maximum exposure as follows:

- 13 a. 8,592 pay periods x \$100 per pay period x 100% violation rate = \$859,200 for
14 unpaid wages for failing to compensate employees for undergoing health
15 screenings before clocking in;
- 16 b. 8,592 pay periods x \$100 per pay period x 73% violation rate in records =
17 \$653,496 for meal period violations for which a meal period premium as not
18 paid;
- 19 c. 8,592 pay periods x \$100 per pay period x 100% violation rate = \$859,200 for
20 rest break violations
- 21 d. 8,592 pay periods x \$100 per pay period x 100% violation rate = \$859,200 for
22 wage statement penalties and;
- 23 e. 76 former employees x \$100 each = \$7,600 for waiting time penalties

24 Defendant raised a number of arguments during settlement negotiations and provided
25 evidence that could have defeated Plaintiff's claims. Connolly Decl., ¶ 12. For example, Plaintiff
26 alleged that Defendant failed to pay wages for time spent undergoing mandatory Covid-19
27 screenings prior to clocking in for their shifts and that it stopped performing health screenings
28 during the liability period. *Id.* However, Defendant provided evidence that it added time on

1 employees' payroll records to compensate them for these health screenings. *Id.* Plaintiff also
2 argued that Defendant failed to provide compliant meal and rest breaks, as indicated by the
3 timekeeping records. *Id.* However, Defendant responded by citing policy documents that allegedly
4 authorized compliant meal and rest breaks. *Id.* Defendant also argued that employees could choose
5 to waive their breaks, which could cause manageability problems at trial. *Id.* Finally, Plaintiff
6 would not be able to recover the derivative penalties for wage statement and waiting time
7 violations if he could not prove the underlying claims. *Id.*

8 Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA
9 awards are discretionary and can be reduced by the Court. Connolly Decl., ¶ 13. Under Labor Code
10 § 2699(e)(2), the Court can reduce the PAGA penalties "if, based on the facts and circumstances
11 of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
12 oppressive, or confiscatory." In other words, were this matter to go to trial, any award granted
13 would be at the discretion of the Court. *Id.* In settling this case, Plaintiff recognizes that the Court
14 could determine that awarding the penalties discussed above could be oppressive, especially in
15 light of the facially compliant policies, and significantly reduce the PAGA penalties. *Id.* The wide
16 range of potential recovery and the additional delays and risks of trial justified settling for a
17 reasonable amount of recovery. *Id.*

18 VI. CONCLUSION

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

21 Dated: May 10, 2024

AEGIS LAW FIRM, PC

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23 By _____
24 Kristy R. Connolly
25 Attorneys for Plaintiff Erika Gonzalez
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