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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

ALFREDO ABARCA, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

CIRCOSTA IRON & METAL COMPANY,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No. CGC-22-602245

**PLAINTIFF ALFREDO ABARCA'S
NOTICE OF MOTION AND MOTION
FOR APPROVAL OF SETTLEMENT
OF CLAIMS BROUGHT UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT AND REASONABLE
ATTORNEYS' FEES, COSTS, AND
ENHANCEMENT PAYMENT**

Date: February 28, 2024
Time: 9:00 a.m.
Dept.: 304

Complaint Filed: October 6, 2022

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 PLEASE TAKE NOTICE that on February 28, 2024 at 9:00 a.m., or as soon thereafter as
4 the matter may be heard in Department 304 of the above-entitled Court, located at 400 McAllister
5 Street, San Francisco, California 94102, Plaintiff Alfredo Abarca (“Plaintiff”), individually and
6 on behalf of the State of California and other Aggrieved Employees, will, and hereby does, move
7 this Court for entry of an Order as follows:

- 8 1. Granting approval, pursuant to California Labor Code § 2699(l), of the proposed
9 settlement of claims brought pursuant to the Private Attorneys General Act of 2004 (Cal.
10 Labor Code § 2698, *et seq.*) and as set forth in the parties’ Settlement Agreement, a true
11 and correct copy of which is attached to the Declaration of Tuvia Korobkin filed
12 concurrently herewith;
- 13 2. Appointing ILYM Group, Inc. as the Settlement Administrator;
- 14 3. Approving the proposed Notice of PAGA Settlement (attached as Exhibit A to the
15 Settlement Agreement), and directing that it be distributed to Aggrieved Employees
16 pursuant to the terms of the Settlement Agreement;
- 17 4. Directing the funding and distribution of the PAGA Gross Settlement Amount pursuant
18 to the terms of the Settlement Agreement;
- 19 5. Approving an award of attorneys’ fees to Plaintiff’s counsel of \$45,000.00 and an award
20 of litigation costs to Plaintiffs’ counsel of \$7,086.84;
- 21 6. Approving an enhancement payment to Plaintiff in the amount of \$5,000.00;
- 22 7. Approving \$2,450.00 in administration costs to ILYM Group, Inc.; and
- 23 8. Approving payment of \$56,597.37 to the California Labor & Workforce Development
24 Agency for its share of PAGA civil penalties pursuant to the Settlement Agreement.

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1 This Motion is based on this Notice; the attached Memorandum of Points and Authorities;
2 the declaration of Tuvia Korobkin and all exhibits attached thereto; the declaration of Lisa Mullins
3 of ILYM Group, Inc. and all exhibits attached thereto; the declaration of Plaintiff Alfredo Abarca;
4 the Settlement Agreement; all other pleadings and papers on file in this action; and on any further
5 oral or documentary evidence or argument presented at the time of hearing.

6 Respectfully submitted,

7 Dated: February 2, 2024

ABRAMSON LABOR GROUP

8
9 By: _____


Tuvia Korobkin
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Alfredo Abarca (“Plaintiff”), an “aggrieved employee” under the Private
4 Attorneys’ General Act of 2004 (“PAGA”), respectfully moves this Court for an Order granting
5 approval of the Settlement Agreement (“Settlement”) with Defendant Circosta Iron & Metal
6 Company, Inc. (“CIMCO” or “Defendant”).

7 This PAGA representative settlement resolves Plaintiff’s claim for civil penalties
8 predicated on CIMCO’s alleged failure to pay all earned overtime wages, failure to provide meal
9 periods, and failure to authorize and permit rest periods, from October 6, 2021 through the date
10 the Court approves the Settlement (the “PAGA Period”). The proposed Settlement, under which
11 CIMCO has agreed to pay a PAGA Gross Settlement Amount (“PAGA GSA”) of **\$135,000.00**,
12 will resolve Plaintiff’s representative claim for civil penalties filed on behalf of the State of
13 California and all “Aggrieved Employees,” which consists of approximately 28 current and
14 former non-exempt employees who worked for CIMCO in California during the PAGA Period.

15 Notably, the relief provided for under the Settlement, and the claims released thereunder,
16 are solely for the payment of *civil penalties* under the PAGA, and not for any underlying Labor
17 Code violations. The release encompasses PAGA civil penalties based upon the alleged violations
18 mentioned above, and only for such claims arising during the PAGA Period.

19 In deciding whether to grant approval of a PAGA settlement, the primary issue is whether
20 the settlement is fair, reasonable, and adequate. As set forth herein, the proposed Settlement
21 embodies all of the features of a settlement that is fair, reasonable, and adequate, as it: (1) is the
22 product of arm’s-length negotiations; (2) was negotiated by attorneys experienced in wage-and-
23 hour issues and PAGA litigation with the assistance of an experienced, neutral mediator; (3) was
24 negotiated after undertaking sufficient discovery and investigation to evaluate the relative
25 strength and value of Plaintiff’s PAGA claim and CIMCO’s defenses thereto; and (4) reflects a
26 reasoned compromise based on the relative strength and value of the PAGA claim, as well as the
27 risks, expenses, complexity, and likely duration of further litigation.

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As noted above, the Settlement provides for a PAGA GSA of \$135,000.00. After deducting amounts for requested attorneys' fees (\$45,000.00), litigation costs (\$7,086.84), Plaintiff's enhancement payment of \$5,000, and Administration Costs of \$2,450, the Settlement provides for distribution of a Net Settlement Amount ("NSA") of approximately \$75,463.16 to be paid to Aggrieved Employees and the California Labor and Workforce Development Agency ("LWDA"). See Settlement, § 3.01(a) – (d); Declaration of Tuvia Korobkin ("Korobkin Decl."), ¶ 28 & Exh. 6; Declaration of Lisa Mullins ("Mullins Decl."), ¶ 7 & Exh. C.

The NSA shall be distributed 75% (approximately \$56,579.37) to the LWDA, and 25% (approximately \$18,865.79) to Aggrieved Employees, on a *pro rata* basis based on their respective number of pay periods worked for CIMCO during the PAGA Period, pursuant to the requirements of the PAGA as codified in Lab. Code § 2699(i). See Settlement, § 305(c). There are approximately 28 Aggrieved Employees, resulting in average payments of approximately \$673.78 to the Aggrieved Employees. Korobkin Decl., ¶ 18.

This Settlement represents a reasonable recovery for the State of California and Aggrieved Employees, who will receive significant monetary benefit in exchange for release of only civil penalties. In addition, the significant monetary recovery furthers the 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.*, 72 Cal.App.5th 56, 77 (2021). Further, the amounts requested for attorneys' fees and costs, Plaintiff's enhancement payment, and settlement administration costs are fair, adequate, and reasonable.

II. SUMMARY OF THE LITIGATION

A. Brief Factual Background and Summary of Claims

CIMCO is a metal and scrap recycling company based in San Francisco. Korobkin Decl., ¶ 10. Plaintiff was employed by CIMCO as a as a non-exempt welder from approximately December 2020 until approximately October 22, 2021. See Declaration of Alfredo Abarca ("Abarca Decl."), ¶ 2.

In this lawsuit, Plaintiff contends that CIMCO rounded employee time records, resulting in underpaid overtime wages. Plaintiff also contends that CIMCO provided late meal periods, and

1 failed to authorize and permit second rest periods on shifts over 6 hours. As explained below,
2 CIMCO denies Plaintiff's allegations and asserts several affirmative defenses to his claims.

3 **B. Relevant Procedural History**

4 On October 6, 2022, Plaintiff provided written notice to the LWDA and CIMCO of his
5 intent to pursue civil penalties under PAGA for alleged violations of the California Labor Code
6 based on the above violations, including Labor Code sections 201-204, 210, 226, 226.7, 510, 512,
7 516, 558, 1174, 1194, and 1198, and California Industrial Commission Wage Order 1. *See*
8 Settlement, § 2.01; Korobkin Decl., ¶ 11 & Exh. 2.

9 Also on October 6, 2022, Plaintiff filed the instant action as a putative class action,
10 alleging claims for unpaid overtime, meal and rest period violations, and derivative claims for
11 wage statement penalties, waiting time penalties, and unfair competition. On December 12, 2022,
12 Plaintiff filed a First Amended Complaint, adding a cause of action for PAGA civil penalties.

13 **C. Individual Settlements With Putative Class Members**

14 During the pendency of this action, CIMCO entered into individual settlement agreements
15 with the vast majority of putative class members. Korobkin Decl., ¶ 13. Specifically, and based
16 on information provided by counsel for CIMCO, 25 of the 33 putative class members entered into
17 individual settlement agreements with CIMCO, leaving only 8 putative class members. *Id.* This
18 presented significant hurdles in terms of class certification (and specifically, numerosity). As a
19 result, Plaintiff has filed concurrently with this Motion, a request to dismiss the class claims in
20 this action without prejudice.

21 **D. Pre-Mediation Discovery and Mediation**

22 Counsel for the parties engaged in multiple substantive discussions about the case, and
23 agreed to attend a private mediation with Hon. Maria-Elena James (Ret.). Korobkin Decl., ¶ 14.
24 In connection with mediation, CIMCO informally produced information and documents
25 pertaining to Plaintiff and other Aggrieved Employees, including timekeeping and payroll data
26 for a large sampling of non-exempt employees, a list of all non-exempt employees with their hire
27 and termination dates, relevant policy documents, and additional data. Korobkin Decl., ¶ 15.

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On December 6, 2023, the Parties participated in a full-day mediation with Judge James. See Korobkin Decl., ¶ 16. The Parties vigorously debated the legal basis for Plaintiff’s claims and CIMCO’s defenses, Plaintiff’s ability to proceed on a representative basis, and the Parties’ data analyses and conclusions based thereon. *Id.* With Judge James’s assistance, the Parties eventually agreed to fully and finally resolve Plaintiff’s PAGA claim. *Id.*

III. SUMMARY OF THE SETTLEMENT

The Settlement provides for CIMCO’s payment of a PAGA GSA of \$135,000.00, to be paid within 45 days of settlement approval. See Settlement, § 3.05(a). After deducting requested attorneys’ fees, litigation costs, Plaintiff’s service award, and Settlement Administration costs, the Settlement provides for the Net Settlement Amount (“NSA”) to be distributed 75% to the LWDA and 25% to Aggrieved Employees, per Labor Code § 2699(i). See Settlement, § 3.05(c).

Plaintiff’s counsel requests one-third of the GSA (i.e., \$45,000) in attorneys’ fees, and \$7,086.84 in litigation costs. See Settlement, § 3.01(a); Korobkin Decl., ¶ 28 & Exh. 6. As discussed below, one-third of the GSA is fair, adequate, and reasonable as a percentage of the settlement fund. The Parties have agreed to engage ILYM Group, Inc. (“ILYM”) as the third-party Settlement Administrator. See Settlement, § 3.01(b). ILYM will update Aggrieved Employees’ addresses using the NCOA database, calculate and distribute individual payments, mail payments to all Aggrieved Employees together with the Notice, and perform other duties integral to the Settlement. *Id.*, § 3.04. Plaintiff requests that the Court approve \$2,450 in Administration Costs to ILYM, which will cover all costs incurred by ILYM in connection with the Settlement. *Id.*; see also Declaration of Lisa Mullins (“Mullins Decl.”), ¶ 7 & Exh. C. Finally, Plaintiff requests a service award of \$5,000, in recognition of his contributions to this case and his efforts in bringing this case to successful resolution. Settlement, § 3.01(c).

Based on the above requested distributions, the NSA is estimated to be \$75,463.16, with \$56,597.37 paid to the LWDA and \$18,865.79 distributed to Aggrieved Employees. Korobkin Decl., ¶ 18.

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1 **IV. LEGAL ARGUMENT**

2 **A. Standards for Approval of a PAGA Settlement**

3 The PAGA statute provides that the “court shall review and approve any settlement of any
4 civil action filed pursuant to this part.” Labor Code § 2699(l). Of course, “[s]ettlement is a
5 compromise, which balances the possible recovery against the risks inherent in litigating further.”
6 *See In re TD Ameritrade Account Holder Litig.*, 2011 WL 4079226 at *9 (N.D. Cal. Sept. 13,
7 2011). “[T]he very essence of a settlement is...‘a yielding of absolutes and an abandoning of
8 highest hopes,’” as “it is the very uncertainty of outcome in litigation and avoidance of wasteful
9 and expensive litigation that induce consensual settlements.” *Officers for Justice v. Civil Service*
10 *Com.*, 688 F.2d 615, 624-25 (9th Cir. 1982). As such, “the settlement or fairness hearing is not to
11 be turned into a trial or rehearsal for trial on the merits” or “judged against a hypothetical or
12 speculative measure of what might have been achieved by the negotiators.” *Id.*

13 Although the PAGA statute does not set forth the criteria by which a PAGA settlement is
14 to be judged, it is presumed that a reviewing court may utilize some of the factors for review of
15 a class action settlement. However, “a PAGA claim asserted on a non-class representative
16 basis...is not considered a class action but a law enforcement action, and therefore does not have
17 to meet the requirements of [a class action].” *Casida v. Sears Holdings Corp.*, 2012 WL 253217
18 at *3 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571 at *4 (E.D.
19 Cal. Jul. 1, 2010) (“PAGA claims are law enforcement actions, not class actions”). A court’s
20 review of a PAGA settlement implicates a number of unique features that render the approval
21 process distinct from approval of a class action settlement.

22 First, in evaluating a PAGA settlement, the court is not concerned with amount(s) received
23 by “aggrieved employees,” but rather, must focus on the total settlement amount in achieving
24 PAGA’s objective. As the Court of Appeal recently held in *Moniz v. Adecco*, “a trial court should
25 evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of
26 PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize
27 enforcement of state labor laws.” *Moniz*, 72 Cal.App.5th at 77. “Unlike class actions, these civil
28 penalties are not meant to compensate unnamed employees because the action is fundamentally

1 a law enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, No. C-08-2073-MHP, 2010
2 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). As our Supreme Court confirmed, “PAGA claims
3 are ‘representative’ actions in the sense that they are brought on the state’s behalf. The
4 employee... ‘represents the same legal right and interest as’ those agencies — ‘namely, recovery
5 of civil penalties that otherwise would have been assessed and collected by the [LWDA].” *ZB,*
6 *N.A. v. Superior Court*, 8 Cal.5th 175, 185 (2019) (citing *Iskanian*, 59 Cal.4th at 380). “Unlike a
7 class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is
8 to incentivize private parties to recover civil penalties for the government that otherwise may not
9 have been assessed and collected by overburdened state enforcement agencies.” *Ochoa-*
10 *Hernandez*, 2010 WL 1340777 at *4.

11 Second, consistent with the fact that unnamed employees have no property interest in a
12 PAGA claim¹, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
13 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
14 1340777 at *5; *see also Robinson v. Southern Counties Oil Co.*, 53 Cal.App.5th 476, 482 (2020)
15 (recognizing that “there is no mechanism for opting out of the judgment entered on the PAGA
16 claim.”). This renders the approval process of a PAGA settlement distinct from a class action
17 settlement, as the Court need not employ the “two-step approval process” required for class action
18 settlements under Fed. R. Civ. Proc. Rule 23(e) and Cal. Rule of Court 3.769.

19 Finally, unlike a class action settlement under Fed. R. Civ. Proc. Rule 23(e) or Cal. Rule
20 of Court 3.769, the scope of release in a PAGA settlement is limited to *civil penalties*. While
21 “judgment in [a PAGA] action is binding not only on the named employee Plaintiffs but also on
22 government agencies and any aggrieved employee not a party to the proceeding...the nonparty
23 employees, because they were not given notice of the action or afforded any opportunity to be
24 heard, would not be bound by the judgment as to remedies other than civil penalties.” *Arias v.*
25 *Superior Court*, 46 Cal. 4th 969, 986-87 (2009).

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27 ¹ “The [PAGA] does not create property rights or any other substantive rights” as “[i]t is simply
28 a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code
violations—that otherwise would be sought by state labor law enforcement agencies.”
Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct., 46 Cal.4th 993, 1003 (2009).

1 **B. The Strength of Plaintiff’s Case**

2 While Plaintiff is confident in the merits of his claims, Plaintiff acknowledges there were
3 substantial risks and uncertainty in proceeding to trial. Korobkin Decl., ¶ 19. For example,
4 CIMCO argues that employees were paid for all overtime due to them, and that if employees
5 clocked in early for their shifts, they did not work (indeed, they were instructed *not* to work prior
6 to their scheduled start time) and instead attended to personal matters or otherwise used their time
7 as they wished until the scheduled start of their shift. *Id.* CIMCO further argues that its rounding
8 practice often resulted in employees being *over*-paid rather than under-paid. *Id.* With respect to
9 meal periods, CIMCO argues that employees took meal periods together, at the times of their
10 choosing, and that, consistent with CIMCO’s written policy, they were always provided no later
11 than 5 hours into their shift, and that they were always provided at least 30 minutes of off-duty
12 time for their meals. *Id.* Indeed, CIMCO argues, its meal period policy tells employees that they
13 are “encouraged to leave the premises during your meal period.” *Id.* Likewise, CIMCO asserts
14 that employees were always authorized and permitted a 10-minute rest period for each 4 hours of
15 work or major fraction thereof, as provided in its written policy. *Id.* CIMCO further points to the
16 fact that most of its employees have been with CIMCO for many years (many for well over 10 or
17 even 20 years), a testament to the fact that employees are well paid and well treated. *Id.*

18 Moreover, CIMCO argues that given its strong defenses and its good-faith attempts to
19 comply with the law, even if liability were established for some aggrieved employees, this Court
20 would utilize its discretion under Labor Code § 2699(e)(2) to substantially reduce the amount of
21 penalties awarded. Korobkin Decl., ¶ 20; *see also* Lab. Code § 2699(e)(2) (authorizing reduction
22 in PAGA penalties in court’s discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203
23 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because “defendants took
24 their obligations...seriously and attempted to comply with the law”); *Fleming v. Covidien, Inc.*,
25 No. ED-CV-10-1487, 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA
26 penalties by over 82%, in part because employer “not aware” of violations); *Carrington v.*
27 *Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just \$5 per pay
28 period where employer made “good faith attempts” to comply with the law).

1 **C. Amount Offered in Settlement Given Realistic Value of Claims**

2 The proposed Settlement provides a fair and reasonable monetary recovery for the State
3 of California and Aggrieved Employees in the face of vigorously disputed claims, when compared
4 with the potential realistic exposure. Based on Plaintiff’s review of the timekeeping and payroll
5 records produced by CIMCO, and after applying reasonable discounts for the possibility of losing
6 on the merits and of the Court reducing penalties, the realistic PAGA exposure for CIMCO’s
7 alleged overtime, meal period, and rest period violations was approximately \$141,897. Korobkin
8 Decl., ¶ 22. The PAGA GSA of \$135,000 therefore represents approximately 95% of the realistic
9 exposure, a favorable result for the State of California and Aggrieved Employees.

10 Approval of the Settlement is appropriate, as the Settlement will provide tangible monetary
11 benefit to Aggrieved Employees and the State of California, while avoiding the risks and costs of
12 continued litigation and trial.

13 In addition, approval of the Settlement is appropriate because it furthers the purpose of
14 PAGA. First, it requires CIMCO to pay a significant, six-figure amount for alleged violations.
15 Second, it acts as a deterrent to CIMCO and/or other employers from violating the Labor Code
16 in the future. Finally, it rectifies the alleged violations by providing significant monetary recovery
17 for both the State of California and the Aggrieved Employees.

18 **D. The Experience and Views of Counsel**

19 “Parties represented by competent counsel are better positioned than courts to produce a
20 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter. Sec.*
21 *Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by experienced counsel who
22 believe this Settlement to be fair and adequate for all involved. Korobkin Decl., ¶¶ 2-9. This factor
23 strongly supports settlement approval. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116,
24 130 (2008) (“The court undoubtedly should give considerable weight to the competency and
25 integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement
26 agreement represents an arm’s length transaction entered without self-dealing or other potential
27 misconduct.”).

28 ///

1 **E. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of the**
2 **Settlement Fund as Confirmed by a Lodestar Cross-Check**

3 Plaintiff is entitled to attorneys’ fees in this PAGA action under Labor Code § 2699(g)(1),
4 which provides that “[a]ny employee who prevails in any [PAGA] action shall be entitled to an
5 award of reasonable attorneys’ fees and costs.” *See also Gouskos v. Aptos Village Garage, Inc.*,
6 94 Cal.App.4th 754, 765 (2001) (holding that attorneys’ fees to prevailing party are mandatory
7 when the statute uses the word “shall”); *see also Graciano v. Robinson Ford Sales*, 144
8 Cal.App.4th 140, 153 (2006) (“[P]laintiffs may be considered ‘prevailing parties’ for attorney’s
9 fee purposes if they succeed on any significant issue in the litigation that achieves some of the
10 benefit the parties sought in bringing suit.”).

11 A fee award is justified where the legal action has produced benefits for its proponents,
12 including through a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91
13 (1987); *Westside Comty. for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983);
14 *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a number of persons are entitled in common
15 to a specific fund, and an action brought by a plaintiff...for the benefit of all results in the creation
16 or preservation of that fund, such plaintiff...may be awarded attorney’s fees out of the fund.”);
17 *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained
18 for the benefit of all parties, the trial court acts within its equitable power to prevent the other
19 parties’ unjust enrichment); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th
20 Cir. 1993) (the percentage of the fund method for calculating attorneys’ fees more accurately
21 reflects the results achieved for the putative class than the lodestar method and “establishes
22 reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it
23 encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Sec. Litig.*,
24 396 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in
25 common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards
26 counsel for success and penalizes it for failure.’”).

27 Fee awards of one-third of the settlement fund are routinely awarded in California courts
28 in class and representative PAGA actions. The California Supreme Court confirmed its approval

of the use of the “percentage of fund” method. *See Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016) (“the percentage of fund method survives in California class action cases...”)

Specifically, the *Laffitte* Court held:

The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts.

Id., at 503 (internal citation omitted). Indeed, “[F]ee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008). This is also consistent with Plaintiff’s counsel’s experience in similar wage-and hour class and PAGA matters. Korobkin Decl., ¶ 23.

Here, Plaintiff’s fee request of one-third of the PAGA GSA (estimated to be \$45,000), which is the same percentage approved by the California Supreme Court in *Laffitte*, is fair and reasonable based on the percentage of the recovery method, as confirmed by a lodestar cross-check.

In *Laffitte*, the California Supreme Court held that trial courts have discretion to assess the reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby the trial court calculates counsel’s lodestar and determines whether the “lodestar multiplier” needed to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.*, at 506 (“[w]e hold further that the trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.”).

Under the lodestar method, the court multiplies the number of hours reasonably expended by each attorney or legal staff member by their reasonable hourly rates, then enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the contingent nature of the case and the degree of success achieved. *See Serrano v. Priest*, 20 Cal.3d 25, 48-49 (1977); *Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92

Cal.App.4th 819, 834 (2001) (“There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation”).

“Multipliers can range from 2 to 4 or even higher.” *Wershba*, 91 Cal.App.4th at 255; *see also, e.g., Chavez*, 162 Cal.App.4th at 49-50, 66 (approving multiplier of about 2.5); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) (upholding multiplier of 3.65). In representative actions such as this one, where Plaintiff’s counsel effectively protected the rights of Aggrieved Employees and the State of California and where the value of the benefit conferred “can be monetized with a reasonable degree of certainty,” the Court may “adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 557 (2009).

In this case, and as represented in the table below, Plaintiff’s counsel has a lodestar of approximately \$91,617.50, resulting in a *negative* multiplier of about 0.49 compared to the \$45,000 fee request. Korobkin Decl., ¶ 25. The billing rates used are reasonable in view of the evidence submitted herewith. *Id.*, ¶¶ 26-27 & Exh. 5 (*Laffey Matrix*).

Name	Rate	Hours	Pre-Multiplier Lodestar
Tuvia Korobkin (15th Year Attorney)	\$675	92.5	\$62,437.50
Rijenea Appling (2nd Year Attorney)	\$375	42.4	\$15,900.00
Neil M. Larsen (13th Year Attorney)	\$600	18.3	\$10,980.00
Paralegals/Legal Assistants	\$200	11.5	\$2,300.00
Total Lodestar			\$91,617.50

As discussed above, this case presented significant risks, including the defenses CIMCO presented on the merits as well as the risk of significant reduction of penalties by the Court. It is fair and reasonable to account for these risks in compensating Plaintiff’s counsel, as well as the risks involved in undertaking this litigation and expending considerable effort while working on a pure contingency basis. Since undertaking representation of Plaintiff, Plaintiff’s counsel

1 dedicated substantial resources to this litigation, including expending \$7,086.84 in litigation
2 costs, without receiving any compensation to date. Korobkin Decl., ¶ 28 & Exh. 6. Plaintiff's
3 counsel conducted significant pre-filing research regarding the merits of Plaintiff's claims, his
4 ability to recover PAGA civil penalties, and CIMCO's potential defenses. Plaintiff's counsel also
5 conducted extensive informal discovery, and analyzed the data and information produced by
6 CIMCO, and drafted a comprehensive mediation brief. Korobkin Decl., ¶ 24. Plaintiff's counsel
7 also attended a full-day private mediation, and spent considerable time and effort negotiating and
8 preparing the settlement and related documents, as well as this Motion and supporting documents.
9 Plaintiff's counsel will also expend additional time attending the hearing on this Motion and
10 overseeing the settlement administration process. *Id.* Given the significant potential for adverse
11 outcomes in this case, the contingent risk borne by Plaintiff's counsel was great. *Id.* The quality
12 of Plaintiff's counsel's work, and the efficacy and dedication with which it was performed, should
13 be compensated.

14 Here, as noted above, Plaintiff's counsel expended significant time and resources in
15 litigating this case, which resulted in a positive result for Plaintiff, the State of California, and
16 Aggrieved Employees in the face of significant defenses. Counsel also bore the contingency risk
17 of this litigation for the benefit of the Aggrieved Employees, as well as the State of California
18 (which elected not to take the case after receiving Plaintiff's notification letter).

19 Plaintiff's counsel's previous experience in litigating wage and hour representative
20 actions also supports the reasonableness of the fee request. Plaintiff's counsel is well-versed in
21 wage and hour class and PAGA action litigation. *See* Korobkin Decl., ¶¶ 2-7. Plaintiff's counsel's
22 experience in similar matters was integral in evaluating the strengths and weaknesses of this
23 case and the reasonableness of the Settlement. Because it is reasonable to compensate Plaintiff's
24 counsel commensurate with their skill, reputation, and experience, the requested fee award is fair,
25 reasonable and adequate, and should therefore be approved. Based on all of the above, Plaintiff
26 respectfully submits that the requested fee award is fair, reasonable and adequate and should be
27 approved.

28 ///

1 **F. The Requested Litigation Costs and Settlement Administration Costs Are**
2 **Fair, Reasonable, and Adequate**

3 Plaintiff's request for reimbursement of litigation costs of \$7,086.84 is also fair and
4 reasonable. All of Plaintiff's litigation costs were reasonably incurred. *See* Korobkin Decl., ¶ 28
5 & Exh. 6. Moreover, the costs Plaintiff seeks are the types of costs routinely approved by courts.
6 *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-
7 of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*, 2011
8 WL 825713 at * 3 (N.D. Cal. Mar. 7, 2011) ("costs of reproducing pleadings, motions and exhibits
9 are typically billed by attorneys to their fee-paying clients" and are reimbursable); *In re Immune*
10 *Response Sec. Litig.*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (finding mediation expenses,
11 postage, filing fees, messenger and overnight delivery costs, and other costs reimbursable).

12 Likewise, the request for administration costs of \$2,450 is also fair and reasonable. ILYM
13 was selected because it is an experienced settlement administrator and returned a reasonable bid.
14 *See* Declaration of Lisa Mullins & Exhibits. Moreover, ILYM will perform several important
15 functions that are integral to the implementation of the Settlement. *Id.* Its requested fee is
16 therefore reasonable.

17 **G. The Court Should Approve Plaintiff's Requested Enhancement Payment**
18 **Because It Is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts**
19 **and the Risks He Assumed in This Litigation**

20 Courts routinely approve enhancement awards to compensate named plaintiffs for the
21 services they provide and the risks they incur during representative litigation. *See, e.g., Bell v.*
22 *Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named
23 plaintiffs); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
24 \$50,000 incentive payment); *Rodriguez v. West Publishing Co.*, 563 F.3d 948, 958-59 (9th Cir.
25 2009) (observing incentive awards are "fairly typical" and are awarded to named plaintiffs "...to
26 make up for financial or reputational risk undertaken in bringing the action, and, sometimes, **to**
27 **recognize their willingness to act as a private attorney general**") (emphasis added); *see also*
28 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (awarding \$10,000

incentive award in wage-and-hour class/PAGA action, in addition to a \$5,000 payment for the plaintiff's individual general release). Here, Plaintiff seeks an enhancement payment of \$5,000. See Settlement, § 3.01(c). This request is reasonable given Plaintiff's efforts in this case and the risks he undertook on behalf of Aggrieved Employees. See Abarca Decl., ¶¶ 4-5. Plaintiff provided substantial factual information to Counsel, participated in numerous discussions with Counsel regarding the case and the settlement, reviewed the settlement agreement and other documents in connection with this case, took on significant reputational risk in being the named plaintiff in a representative action against a former employer, and agreed to place his name on a lawsuit that benefitted not just himself, but also the State of California and dozens of Aggrieved Employees. *Id.*; see also Korobkin Decl., ¶ 29. Accordingly, Plaintiff's requested enhancement payment is appropriate and justified as part of the Settlement.

H. The Proposed Cy Pres Recipient Should Be Approved

The parties have agreed to designate Bay Area Legal Aid ("BALA") as a *cy pres* recipient of funds from checks that remain uncashed after 180 days. (See Settlement, § 3.05(c).) BALA is an appropriate *cy pres* recipient because it provides much-needed legal aid to indigent residents of the Bay Area. Among other programs, BALA administers Individualized Legal Support Services (ILSS), which assists San Francisco residents "address the legal problems that interfere with our clients' ability to obtain or retain employment." (See <https://baylegal.org/what-we-do/our-clients/individualized-legal-support-services/>). Indeed, "an award to a legal services organization is often an appropriate use of *cy pres* funds." *Boring v. Bed Bath & Beyond of Calif. LLC*, No. 12-cv-05259-JST, 2013 WL 6145706 at *7 (N.D. Cal. Nov. 21, 2013); see also *Ochoa v. McDonald's Corp.*, No. 3:14-cv-02098-JD, 2016 WL 8290114 (N.D. Cal. Nov. 14, 2016) (granting final approval to a wage and hour class action settlement that named BALA as a *cy pres* recipient).

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1 **V. CONCLUSION**

2 For the reasons stated herein, Plaintiff respectfully requests that this Court grant Plaintiff's
3 Motion and adopt the [Proposed] Order Granting Settlement Approval submitted concurrently
4 herewith.

5
6 Dated: February 2, 2024

Respectfully submitted,
ABRAMSON LABOR GROUP

7
8 By: 
9 Tuvia Korobkin
10 Attorneys for Plaintiff
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1700 W Burbank Blvd., Burbank, CA 91506.

On the below date, I served a true copy of the foregoing documents described as:

PLAINTIFF ALFREDO ABARCA'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF SETTLEMENT OF CLAIMS BROUGHT UNDER THE PRIVATE ATTORNEYS GENERAL ACT AND REASONABLE ATTORNEYS' FEES, COSTS, AND ENHANCEMENT PAYMENT

DECLARATION OF TUVIA KOROBKIN IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF SETTLEMENT OF CLAIMS BROUGHT UNDER THE PRIVATE ATTORNEYS GENERAL ACT AND REASONABLE ATTORNEYS' FEES, COSTS, AND ENHANCEMENT PAYMENT

DECLARATION OF ALFREDO ABARCA IN SUPPORT OF APPROVAL OF PAGA SETTLEMENT

DECLARATION OF LISA MULLINS

[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR APPROVAL OF SETTLEMENT OF CLAIMS BROUGHT UNDER THE PRIVATE ATTORNEYS GENERAL ACT, REASONABLE ATTORNEYS' FEES, COSTS, AND INCENTIVE PAYMENT

on all interested parties in this action directed as follows:

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/ / (BY MAIL): I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

1 / X / (BY ELECTRONIC SERVICE): BY ELECTRONIC TRANSMISSION) I served the
2 foregoing by electronic transmission to the email addresses listed above, pursuant to Cal. Code
3 Civ. Proc. § 1010.6 and Cal. Rules of Court Rule 2.251.

4 I declare under penalty of perjury under the laws of the State of California and the United
5 States of America that the foregoing is true and correct.

6 Executed on February 2, 2024, at Burbank, California.

Neil Larsen

Declarant, Neil M. Larsen