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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MONNITA YOUNG, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

MAR PIZZA, INC.; and DOES 1 through
20, inclusive,

Defendants.

Case No. 22STCV38153

*Assigned for All Purposes to:
Judge Stuart M. Rice; Dept. 1*

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT
REPRESENTATIVE ACTION
SETTLEMENT**

Date: August 16, 2024

Time: 10:30 a.m.

Dept.: 1

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Monnita Young ("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 Mar Pizza, Inc. ("Defendant") in the amount of \$1,020,000.00. Plaintiff alleges
6 approximately 2,522 non-exempt employees who worked for Defendant were not paid at least
7 minimum wages for all hours worked, not paid overtime compensation, not provided with meal
8 periods or compensation in lieu thereof, not provided with rest breaks or compensation in lieu
9 thereof, not provided with accurate wage statements, not paid wages in a timely manner, not
10 reimbursed for necessary business expenses, and were not paid all wages owed upon separation of
11 employment.

12 Under Labor Code § 2699(l)(2), the Court must review and approve any proposed PAGA
13 settlement. Here, Plaintiff contends that the proposed Settlement furthers PAGA's purpose of
14 enforcing the Labor Code and deterring and punishing violations of it; however, Defendant denies
15 that it violated the Labor Code in any way. The Settlement is attached to the Declaration of Jamie
16 M. Loos ("Loos Decl.") as Exhibit 1, and the proposed letter to be sent to the aggrieved employees
17 is attached thereto as Exhibit A. Plaintiff now seeks this Court's approval of the Settlement terms.

18 **II. FACTUAL AND PROCEDURAL BACKGROUND**

19 On December 7, 2022, Plaintiff's counsel filed a putative class action against Defendant
20 alleging various wage and hour violations. On that same day, Plaintiff's counsel sent a letter to the
21 California Labor & Workforce Development Agency ("LWDA") via online submission and to
22 Defendant via certified mail regarding Defendant's alleged violations. *See* Loos Decl., ¶ 3, Exhibit
23 2. The LWDA did not respond to this notice within 65 days, indicating it did not intend to
24 investigate, thus allowing Plaintiff to file a first amended complaint on February 15, 2023 adding a
25 claim for Enforcement of Labor Code § 2698 *et seq.* ("PAGA"). *See* Loos Decl., ¶ 4.

26 In June of 2023, the Court granted Defendant's Motion to Compel Arbitration, thereby
27 dismissing Plaintiff's class action claims. Loos Decl., ¶ 5. As such, the parties agreed to attend a
28

1 private mediation for both Plaintiff's individual and representative PAGA claims as an attempt to
2 globally resolve Plaintiff's pending claims. *Id.*

3 In preparation for mediation, Defendant informally produced hundreds of pages of data
4 and documents for Plaintiff to evaluate the PAGA claims and calculate the alleged exposure,
5 including policy documents, time and payroll records, and Plaintiff's personnel file. Plaintiff's
6 Counsel also engaged an expert to quantify the potential exposure using the time and payroll
7 records, and then assessed the risks associated with each of the claims. Loos Decl., ¶ 7. The parties
8 attended mediation on October 4, 2023, with Jeffrey Ross, Esq., a respected PAGA action mediator.
9 Loos Decl., ¶ 8. After a full day of mediation and engaging in extensive negotiations, the Parties
10 reached an agreement to settle for \$1,020,000.00, and thereafter executed a Memorandum of
11 Understanding memorializing the basic terms of the Parties agreement. *Id.*, at ¶9. The Parties spent
12 the next few months negotiating the terms of the Settlement, which was finalized in June of 2024.
13 *Id.* Plaintiff provided notice of the Settlement to the LWDA on July 19, 2024. Loos Decl., ¶ 10,
14 Exhibit 3. Plaintiff also served a copy of the motion on the LWDA on July 19, 2024. *Id.*, Exhibit 4.

15 **III. PAGA REQUIREMENTS**

16 Based on the California Supreme Court's opinions in *Arias v. Superior Court*, 46 Cal. 4th
17 969 (2009), and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014),
18 Plaintiffs can seek civil penalties under PAGA on behalf of the State of California and other
19 similarly aggrieved employees without seeking class certification or meeting the requirements of
20 class certification (i.e. numerosity, typicality, commonality and adequacy). As such, the class
21 action two-step preliminary and final approval process is not required.

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

26 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee
27 must first provide written notice to the LWDA and the employer of the particular Labor Code
28 violations the aggrieved employee alleges the employer has violated. See Cal. Labor Code §

1 2699.3(a)(1)(A) (2016). Once the LWDA notifies the aggrieved employee that it does not intend to
2 investigate the alleged violations, or if the LWDA does not respond within a certain time period,
3 the aggrieved employee is then allowed to proceed in a civil action against the employer on behalf
4 of the LWDA and all other similarly aggrieved employees. *See* Cal. Labor Code § 2699.3(a)(2)(A)
5 (2016).

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

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

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

21 The Parties have agreed that Defendants will pay a total settlement amount of
22 \$1,020,000.00 (the "Settlement Sum"). *See* Settlement Agreement, §§ 1.10, and 3.1. From this
23 amount, up to one-third (1/3) of the Settlement Sum, or \$340,000.00, is allocated to attorneys' fees
24 and up to \$25,000.00 to actual litigation costs. Settlement Agreement, § 3.2.1. To date, Plaintiff's
25 counsel has spent \$24,907.05 in litigation costs. *See* Loos Decl., ¶ 29, 34, Exhibit 4. The Settlement
26 allocates up to \$10,500.00 to payment for Settlement Administrator Atticus Class Action Settlement
27 Administrators' costs associated with administration of the Settlement. Settlement Agreement, §
28 3.2.2.

1 After deducting the attorneys' fees and costs, and the Settlement Administrator's costs, the
2 remaining fund ("Net Settlement Amount") will be paid 75% to the LWDA ("LWDA PAGA
3 Payment") and 25% to the Aggrieved Employees ("Employee Net Settlement Amount").
4 Settlement Agreement, § 3.2.3. "Aggrieved Employees" are "all non-exempt employees employed
5 by Defendant in California at any time during the PAGA Period" between December 7, 2021 until
6 December 1, 2023." Settlement Agreement, §§ 1.4, and 1.19

7 The "Individual PAGA Payments" for the Aggrieved Employees shall be determined as
8 follows: by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties
9 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the
10 PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay
11 Periods. Settlement Agreement, § 3.2.3.1. All Aggrieved Employees' Payments will be
12 characterized as penalties for tax purposes and reported on IRS Form 1099. Settlement Agreement,
13 § 3.2.3.2.

14 The Settlement Administrator will disburse Individual PAGA Payments to each Aggrieved
15 Employee to the last known physical address on file with Defendant in its regularly maintained
16 records. Prior to this disbursement, the Settlement Administrator shall check the addresses provided
17 using the National Change of Address database. Settlement Agreement, § 4.4.1 For any returned
18 payments without a forwarding address, the Settlement Administrator shall run a skip trace.
19 Settlement Agreement, §§1.6, and 4.4.2. Aggrieved Employees who receive their Individual PAGA
20 Payments via U.S. Mail will receive a letter along with their Individual PAGA Payment explaining
21 the reason for the payment, the content of which will be submitted to the Court for approval. The
22 proposed letter is attached to the Settlement Agreement as Exhibit A. All funds not claimed within
23 180 days of mailing of payment shall be sent to the California State Controller's Office Unclaimed
24 Property Fund with an identification of the amount of unclaimed funds attributable to each
25 Aggrieved Employee. Settlement Agreement, § 4.4.3.

26 In exchange for the settlement payment, the State of California and the Aggrieved
27 Employees agree:
28

1 “All Aggrieved Employees are deemed to release, on behalf of
2 themselves and their respective former and present representatives, agents,
3 attorneys, heirs, administrators, successors, and assigns, the Released
4 Parties from all PAGA claims alleged or which could have been alleged
5 based on the facts alleged in the PAGA Notice, which arose during the
6 PAGA Period, including claims for violation of Labor Code Sections 201,
7 202, 203, 204, 210, 226 et. seq., 226.3, 226.7, 512, 551, 552, 558, 558.1,
8 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2698 et seq.,
9 2699, 2802, and 2810.5; and Wage Order No. 7 §§ 3, 4, 7, 9, 11, and 12.”

10 Settlement Agreement, §§ 1.25, 5.2. The release of Released Claims shall be limited to the PAGA
11 Period, defined as, “the period from December 7, 2021, until December 1, 2023.” Settlement
12 Agreement, §1.19.

13 Plaintiff additionally signed a general release of claims and a waiver of rights under
14 California Civil Code § 1542. Settlement Agreement, § 5.1.1.

15 In the event that the number of pay periods through the end of the PAGA Period exceeds
16 51,000 by more than 10%, the Gross Settlement Amount shall increase pro rata per additional
17 PAGA Pay Period above the 10%. Settlement Agreement, § 8. Therefore, if the number of pay
18 periods exceeds 51,000 by 11%, the Gross Settlement Amount shall increase by 1%. *Id.*

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

20 **A. Standard for Approval**

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

1 complexity and likely duration of further litigation, ... the amount offered in settlement, the extent
2 of discovery completed and the stage of the proceedings, the experience and views of counsel, the
3 presence of a governmental participant” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801
4 (1996).

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

6 The \$1,020,000.00 Settlement Sum is reasonable when considered in light of the amount
7 of employees. Loos Decl., ¶ 11. For a group of approximately 2,522 employees, the settlement
8 amount is equivalent to a penalty of about \$400.00 per employee, which is a significant penalty for
9 a wage and hour case. *Id.* At the same time, the penalty amount is not so large as to be unjust,
10 arbitrary and oppressive, or confiscatory, considering the company’s potential exposure explained
11 below. *Id.*

12 The Settlement Sum is also reasonable in light of the facts of the foregoing action, the real
13 risk that no PAGA penalties would be paid, and inherent risks and uncertainties associated with
14 PAGA claims. *Id.*

15 Plaintiff calculated the potential exposure at the initial violation rate of \$100 per pay period
16 as follows: 51,000 pay periods x \$100 per pay period = \$5,100,000.00. Loos Decl., ¶ 12. If the
17 Court stacked different types of penalties in each pay period, Plaintiff calculated the exposure as
18 follows:

- 19 a. 51,000 pay periods x \$100 per pay period x 50% violation rate = \$2,550,000.00
20 for rest break violations due to lack of coverage;
- 21 b. 51,000 pay periods x \$100 per pay period x 29% violation rate = \$1,479,000.00
22 for meal period violations;
- 23 c. 51,000 pay periods x \$100 per pay period x 6.4% violation rate (for failure to
24 incorporate non-discretionary compensation into overtime calculations) =
25 \$326,400.00 for unpaid overtime wages;
- 26 d. 1,526 pay periods x \$100 per pay period x 100% violate rate= \$152,600.00 for
27 waiting time penalties;
- 28

- 1 e. 51,000 pay periods x \$100 per pay period x 100% violation rate =\$5,100,000.00
2 for wage statement penalties and;
3 f. 51,000 pay periods x \$100 per pay period x 40.6% violate rate= \$2,070,600.00
4 for unreimbursed business expenses due to allegedly required cell phone use for
5 work purposes. *Id.*

6 Defendant raised a number of arguments during settlement negotiations and provided
7 evidence that could have defeated Plaintiff's claims. Loos Decl., ¶ 14. For example, Defendant
8 argued that it had compliant policies regarding rest breaks, that employees were permitted to take
9 compliant rest breaks, and that any breaks not taken were voluntarily waived. *Id.* As such,
10 Plaintiff's rest break claim would be largely reliant on employee testimony and Defendant would
11 surely obtain opposing testimony. *Id.* Defendant also argued that it paid meal period premiums
12 when owed, and that waiting time penalties and derivative wage statement penalties were
13 dependent on the underlying claims. *Id.* Further, Defendant argued that any alleged violations were
14 not intentional. *Id.*

15 Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA
16 awards are discretionary and can be reduced by the Court. *Id.* at ¶ 13. Under Labor Code §
17 2699(e)(2), the Court can reduce the PAGA penalties "if, based on the facts and circumstances of
18 the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
19 or confiscatory." In other words, were this matter to go to trial, any award granted would be at the
20 discretion of the Court. *Id.* In settling this case, Plaintiff recognizes that, although he believes there
21 would be no persuasive grounds to reduce the penalties, the Court could determine otherwise and
22 significantly reduce the PAGA penalties, especially with such a small employer who actually paid
23 meal period premiums and maintained facially compliant policies. *Id.* The wide range of potential
24 recovery and the additional delays and risks of trial justified settling for a reasonable amount of
25 recovery. *Id.*

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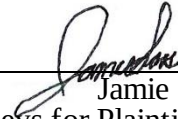
1 **VI. CONCLUSION**

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

4 Dated: July 19, 2024

AEGIS LAW FIRM, PC

5
6 By _____



Jamie Loos

Attorneys for Plaintiff Monnita Young