

AEGIS LAW FIRM, PC

KASHIF HAQUE, State Bar No. 218672

SAMUEL A. WONG, State Bar No. 217104

JESSICA L. CAMPBELL, State Bar No. 280626

JAMIE M. LOOS, State Bar No. 346492

9811 Irvine Center Drive, Suite 100

Irvine, California 92618

Telephone: (949) 379-6250

Facsimile: (949) 379-6251

Email: jloos@aegislawfirm.com

Attorneys for Plaintiff Chad Anthony Whelan, individually,
and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CHAD ANTHONY WHELAN, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

MADISON REED, INC.; and DOES 1 through
20, inclusive,

Defendants.

Case No. 23STCV01873

Assigned for All Purposes to:
Judge William F. Highberger
Dept. 10

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

Date: August 20, 2024

Time: 10:00 a.m.

Dept: 10

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Chad Anthony Whelan (“Plaintiff”) seeks approval of a settlement of claims under
4 the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* (“PAGA”) against
5 Defendant Madison Reed, Inc. (“Defendant”) in the amount of \$200,000.00. Plaintiff alleges
6 approximately 329 aggrieved employees who worked for Defendant were not paid all minimum
7 and overtime wages owed, were not provided with meal periods or compensation in lieu thereof,
8 were not provided with rest breaks or compensation in lieu thereof, were not provided with accurate
9 wage statements, were not reimbursed for Defendant’s necessary business expenses, were not paid
10 timely wages during employment, 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, the proposed Settlement is sufficient to deter and punish future violations. The
14 Settlement is attached to the Declaration of Jamie M. Loos in Support of Motion for Approval of
15 PAGA Settlement (“Loos Decl.”) as **Exhibit 1**, and the proposed letter to be sent to the aggrieved
16 employees is attached thereto as **Exhibit A**. Plaintiff now seeks this Court’s approval of the
17 Settlement terms.

18 **II. FACTUAL AND PROCEDURAL BACKGROUND**

19 On January 27, 2023, Plaintiff’s counsel sent a letter to the California Labor & Workforce
20 Development Agency (“LWDA”) via online submission and to Defendant via certified mail
21 regarding Defendant’s alleged violations. See Loos Decl., ¶ 3, Exhibit 2. The LWDA did not
22 respond to this notice, indicating it did not intend to investigate, thus allowing Plaintiff to file the
23 instant lawsuit pursuant to Labor Code Section 2699.3(a)(2)(A). See Loos Decl., ¶ 4.

24 On January 27, 2023 Plaintiff filed his Complaint as a class action lawsuit, alleging that,
25 Defendant failed to: (1) pay minimum wages, (2) pay overtime wages, (3) provide lawful meal
26 periods or compensation in lieu thereof, (4) authorize or permit lawful rest breaks or provide
27 compensation in lieu thereof, (5) reimburse class members for necessary business expenses, (6)
28 provide accurate itemized wage statements, (7) timely pay all wages during employment, (8) pay

1 all wages timely upon separation of employment and, (9) abide by the requirements of California
2 Business and Professions Code Section 17200 *et seq.* Loos Decl. at ¶ 5. On May 8, 20203, Plaintiff
3 filed his First Amended Complaint adding a claim for Enforcement of the Private Attorneys General
4 Act (“PAGA”). *Id.*

5 Due to the presence of arbitration agreements that Plaintiff and class members allegedly
6 signed, Plaintiff dismissed his individual and class claims and proceeded on a PAGA-only basis.
7 Loos Decl., ¶ 6.

8 The Parties agreed to attend private mediation. Loos Decl., ¶ 7. In preparation for
9 mediation, Defendant informally produced hundreds of pages of data and documents for Plaintiff
10 to evaluate the PAGA claims and calculate the alleged exposure, including policy documents, a
11 20% sample of time and payroll records, and Plaintiff’s personnel file. *Id.* Plaintiff’s Counsel also
12 engaged an expert to quantify the potential exposure using the time and payroll records, and then
13 assessed the risks associated with each of the claims. *Id.*

14 The parties attended mediation on February 15, 2024, with Lisa Cole, a respected class
15 action and PAGA action mediator. Loos Decl., ¶ 8. After a full day of negotiating, the Parties agreed
16 to a settlement amount and executed a Memorandum of Understanding with the material terms the
17 parties had agreed to. *Id.* The Parties spent the next few months negotiating the terms of the
18 Settlement, which was finalized in April of 2024. *Id.*

19 Plaintiff provided notice of the Settlement to the LWDA. Loos Decl., ¶ 9, Exhibit 3.
20 Plaintiff also provided a copy of this Motion to the LWDA on the same day. *Id.*

21 **III. PAGA REQUIREMENTS**

22 Based on the California Supreme Court's opinions in *Arias v. Superior Court*, 46 Cal. 4th
23 969 (2009), and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014),
24 plaintiffs can seek appropriate civil penalties as called for under PAGA on behalf of the State of
25 California and other similarly aggrieved employees without seeking class certification or meeting
26 the requirements of class certification (i.e. numerosity, typicality, commonality and adequacy). As
27 such, the class action two-step preliminary and final approval process is not required.
28

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

5 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee
6 must first provide written notice to the LWDA and the employer of the particular Labor Code
7 violations the aggrieved employee alleges the employer has violated. See Cal. Labor Code §
8 2699.3(a)(1)(A) (2016). Once the LWDA notifies the aggrieved employee that it does not intend to
9 investigate the alleged violations, or if the LWDA does not respond within a certain time period,
10 the aggrieved employee is then allowed to proceed in a civil action against the employer on behalf
11 of the LWDA and all other similarly aggrieved employees. See Cal. Labor Code § 2699.3(a)(2)(A)
12 (2016).

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

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

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

2 The Parties have agreed that Defendant will pay a total settlement amount of \$200,000.00
3 (the “Gross Settlement Amount”). See Settlement Agreement, § 3.1. From this amount, up to one-
4 third (1/3) of the Gross Settlement Amount, or \$66,666.67, is allocated to attorneys’ fees and up to
5 \$25,000.00 to actual litigation costs. *Id.* at § 3.2.1. To date, Plaintiff’s counsel has spent \$12,261.95
6 in actual litigation costs and incurred \$88,640.00 in attorneys’ fees. See Loos Decl., ¶¶ 28-29,
7 Exhibit 4. The Settlement allocates up to \$4,500.00 to payment for Phoenix Settlement
8 Administrators’ costs associated with administration of the Settlement. Settlement Agreement, §
9 3.2.2. For Plaintiff’s efforts in assisting with the Lawsuit and in exchange for a general release of
10 his individual claims, \$2,500.00 is allocated to Plaintiff.

11 After deducting the above amounts for attorneys’ fees and costs, Settlement
12 Administrator’s costs, and Plaintiff’s individual settlement award, the remaining fund will
13 constitute the “PAGA Penalties” in which 75% will be paid to the LWDA (the “LWDA PAGA
14 Payment”) and 25% will be paid to the Aggrieved Employees as their “Individual PAGA
15 Payments”. Settlement Agreement, ¶ 3.2.3. The Aggrieved Employees are all non-exempt
16 employees employed by Defendant in California hair color bars or as color crew at any time during
17 the PAGA Period. *Id.* at ¶ 1.4. The PAGA Period means the period from March 4, 2022 to March
18 16, 2024. *Id.* at ¶ 1.19.

19 The Individual PAGA Payments will be calculated pro rata based on the number of pay
20 periods working during the PAGA Period. Settlement Agreement, § 3.2.3.1. The Individual PAGA
21 Payments shall be paid to the Aggrieved Employees by way of a single check which will be valid
22 for 180 days. *Id.* at § 4.4.1. All funds not claimed within 180 days of mailing of payment shall be
23 sent to the California State Controller’s Office Unclaimed Property Fund with an identification of
24 the amount of unclaimed funds attributable to each PAGA Employee. *Id.* at § 4.4.3. The Individual
25 PAGA Payments will be characterized as penalties for tax purposes and reported on IRS Form
26 1099. *Id.* at § 3.2.3.2.

27 Prior to this disbursement, the Settlement Administrator shall check the Aggrieved
28 Employees’ addresses provided by Defendant using the National Change of Address database.

1 Settlement Agreement, § 4.4.1. For any returned payments without a forwarding address, the
2 Settlement Administrator shall run a skip trace. *Id.* at § 4.4.2. Aggrieved Employees will receive a
3 letter along with their Individual PAGA Payment explaining the reason for the payment, the content
4 of which will be submitted to the Court for approval. *Id.* at § 4.4.1. The proposed letter is attached
5 to the Settlement Agreement as Exhibit A.

6 In exchange for the settlement payment, the State of California and the Aggrieved
7 Employees will release the “Released Parties” meaning “Defendant, its affiliated or related
8 companies or divisions, all past and former employees, and all persons acting by, through, under,
9 or in concert with Defendant and each of its former and present directors, officers, shareholders,
10 owners, attorneys, insurers, predecessors, successors, and assigns” from “all PAGA claims that
11 were alleged, or reasonably could have been alleged, based on the facts in the Operative Complaint
12 and the PAGA Notices, which occurred during the PAGA Period, including any and all claims for
13 PAGA penalties involving any allegations that Defendant failed to pay all wages due (including
14 minimum wages, regular wages, sick pay, and overtime wages); failed to provide legally compliant
15 meal and rest breaks and failed to pay premium pay for missed, late, interrupted or short meal and
16 rest breaks; failed to timely pay all earned wages and compensation; failed to provide timely final
17 pay; failed to provide accurate itemized wage statements; failed to reimburse employees for
18 required expenses; and failed to pay sick leave, at any time during the PAGA Period.” Settlement
19 Agreement, §§ 1.26, 5.2.

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

21 **A. Standard for Approval**

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

1 “broad discretion in making this determination.” *In re Microsoft I-V Cases*, 135 Cal.App.4th 706,
2 723 (2006). Relevant factors may include “the strength of the plaintiffs’ case, the risk, expense,
3 complexity and likely duration of further litigation, ... the amount offered in settlement, the extent
4 of discovery completed and the stage of the proceedings, the experience and views of counsel, the
5 presence of a governmental participant” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801
6 (1996).

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

8 Here, the \$200,000.00 Gross Settlement Amount is reasonable for a group of
9 approximately 329 employees. A penalty of \$200,000.00 is large enough to punish Defendant for
10 alleged past violations and deter future violations. The settlement amount is equivalent to a penalty
11 of about \$607.00 per employee. At the same time, the penalty amount is not so large as to be unjust,
12 oppressive or confiscatory, considering the company’s potential exposure explained below. Loos
13 Decl., ¶ 11. The Gross Settlement Amount is also reasonable in light of the facts of the foregoing
14 action, the real risk that no PAGA penalties would be paid, and inherent risks and uncertainties
15 associated with PAGA claims. Loos Decl., ¶ 12.

16 Plaintiff calculated the potential exposure at the initial violation rate of \$100.00 per pay
17 period as follows: 7,417 x \$100.00 per pay period is \$741,700.00 Loos Decl., ¶ 13. If the Court
18 stacked different types of penalties in each pay period, Plaintiff calculated the exposure as follows:

- 19 a. 7,417 pay periods x \$100 per pay period x 50% violation rate = \$370,850.00 for
20 rest break violations due to lack of coverage when clients arrived early;
- 21 b. 7,417 pay periods x \$100 per pay period x 60.9% violation rate (for failure to
22 incorporate non-discretionary compensation into overtime calculations) =
23 \$451,695.30 for unpaid overtime wages;
- 24 c. 7,417 pay periods x \$100 per pay period x 16.8% violation rate (for failure to
25 incorporate non-discretionary compensation into meal period premiums) =
26 \$124,605.60 for unpaid premium compensation;
- 27
28

- 1 d. 7,417 pay periods x \$100 per pay period x 4.7% violation rate (for failure to
2 incorporate non-discretionary compensation into sick pay) = \$34,859.90 for
3 unpaid sick pay;
- 4 e. 167 pay periods x \$100 per pay period x 100% violate rate= \$16,700.00 for
5 waiting time penalties;
- 6 f. 7,417 pay periods x \$100 per pay period x 100% violation rate = \$741,700.00 for
7 wage statement penalties and;
- 8 g. 7,417 pay periods x \$100 per pay period x 100% violate rate= \$741,700.00 for
9 unreimbursed business expenses due to allegedly required cell phone use for
10 work purposes. *Id.*

11 Defendant raised a number of arguments during settlement negotiations and provided
12 evidence that could have defeated Plaintiff's claims. Loos Decl., ¶ 14. For example, Defendant
13 argued that it had compliant policies regarding rest breaks, that employees were permitted to take
14 compliant rest breaks, and that any breaks not taken were voluntarily waived. *Id.* As such,
15 Plaintiff's rest break claim would be largely reliant on employee testimony and Defendant would
16 surely obtain opposing testimony. *Id.* Moreover, Plaintiff alleged Defendant failed to reimburse
17 necessary business expenses by requiring employees to use personal phones for work-related
18 purposes. *Id.* However, Defendant argued it provided employees with iPads and that any use of
19 personal cell phones was for the convenience of the employees. *Id.* Further, Defendant argued that
20 it paid meal premiums when owed and that any bonuses were discretionary in nature. *Id.* Defendant
21 also argued that any waiting time penalties or derivative wage statement penalties would be
22 dependent on the underlying violations. *Id.* Moreover, Defendant alleged that any such violations
23 were not intentional. *Id.*

24 Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA
25 awards are discretionary and can be reduced by the Court. *Id.* at ¶ 15. Under Labor Code §
26 2699(e)(2), the Court can reduce the PAGA penalties "if, based on the facts and circumstances of
27 the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
28 or confiscatory." In other words, were this matter to go to trial, any award granted would be at the

1 discretion of the Court. *Id.* In settling this case, Plaintiff recognizes that, although he believes there
2 would be no persuasive grounds to reduce the penalties, the Court could determine otherwise and
3 significantly reduce the PAGA penalties, especially with such a small employer who actually paid
4 meal period premiums and maintained facially compliant policies. *Id.* The wide range of potential
5 recovery and the additional delays and risks of trial justified settling for a reasonable amount of
6 recovery. *Id.*

7 **VI. CONCLUSION**

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

10 Dated: July 19, 2024

AEGIS LAW FIRM, PC

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12 By _____



13 Jamie M. Loos
14 Attorneys for Plaintiff Chad Anthony Whelan
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