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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR MERCED COUNTY

SAMIR JIMENEZ, an individual, on behalf of himself, all aggrieved employees, and the State of California,

Plaintiff,

v.

ALVARADO STONE SLAB FABRICATION, INC., a California corporation; JUAN ALVARADO JR., an individual; JUAN ALVARADO SR., an individual; PEGGY S. LANE, INC., a California corporation, dba CULTURED MARBLE PRODUCTS; MATTHEW CLEMENTZ, an individual; and DOES 1-100 INCLUSIVE,

Defendants.

ALVARADO STONE SLAB FABRICATION, INC., a California corporation; JUAN ALVARADO JR., an individual; JUAN ALVARADO SR., an individual,

Cross-Complainants,

v.

PEGGY S. LANE, INC., a California corporation, dba CULTURED MARBLE PRODUCTS; WALKING LIBERTY PSL HOLDINGS, LLC, a California limited liability company; and ROES 1-10, inclusive,

Cross-Defendants.

Case No.: 22CV-01932

[Assigned for all purposes to the Honorable Brian McCabe, Courtroom 8]

NOTICE OF MOTION AND MOTION FOR APPROVAL OF SETTLEMENT OF PRIVATE ATTORNEYS GENERAL ACT ACTION

Complaint Filed: June 24, 2022
Trial Date: Not set

Hearing Date: November 15, 2024
Time: 8:15 a.m.
Courtroom: 8

TO THE COURT, DEFENDANTS, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on **November 15, 2024 at 8:15 a.m.** in **Courtroom 8** of the Superior Court of California, Merced County, Plaintiff Samir Jimenez ("Plaintiff") will move this Court for an Order granting approval of the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq*. ("PAGA') representative action settlement.

This Motion will be based upon this Notice of Motion and Motion for Approval of Settlement of Private Attorneys General Act Action, the Memorandum of Points and Authorities in Support Thereof, the Declaration of Steven Elster, the Declaration of Samir Jimenez, the Declaration of Lisa Mullins, exhibits filed herewith, and any additional papers or arguments submitted on or before the hearing on the Motion.

Dated: October 15, 2024

LAW OFFICE OF STEVEN ELSTER

Steven Elster
Attorney for Plaintiff Samir Jimenez

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

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I. INTRODUCTION

Plaintiff Samir Jimenez ("Plaintiff") respectfully seeks court approval of a $50,000 settlement of claims against Defendants Peggy S. Lane, Inc. dba Cultured Marble Products; Walking Liberty PSL Holdings, LLC; and Matthew Clementz (collectively, "PSL" or "Defendants"). The settlement resolves claims under the Private Attorneys General Act of 2004, California, Labor Code § 2698 *et seq*. ("PAGA") against PSL.[1] The settlement resolves all claims against PSL asserted by Plaintiff under PAGA on behalf of PSL employees ("Aggrieved Employees"), as set forth in the Plaintiff and PSL's (collectively the "Parties") PAGA Settlement and Release Agreement. Declaration of Steven Elster ("Elster Decl."), ¶ 2, Exh. 1 ("Settlement" or "Settlement Agreement").[2] The Settlement does not resolve any claims against Defendants Alvarado Stone Slab Fabrication, Inc.; Juan Alvarado Jr.; or Juan Alvarado Sr. (collectively the "Alvarados") and those claims continue to be litigated. The Settlement also does not release the individual claims that any Aggrieved Employees may have against PSL.

Accordingly, Plaintiff respectfully requests that the Court: (1) approve the proposed Settlement and (2) approve the request for the California Labor Workforce Development Agency ("LWDA") PAGA Payment, Aggrieved Employees' Individual PAGA Payments, PAGA Counsel's Fees Payment, and the Administration Expenses Payment.

II. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

A. Brief Overview of the Litigation

PSL employed Plaintiff as an as an hourly employee installing marble pieces in the homes of PSL's customers. PSL has employed Plaintiff from approximately February 2019. Declaration of Samir Jimenez, ¶ 2.

On June 24, 2022, Plaintiff filed a complaint against the Alvarados alleging various wage and hour claims on an individual basis only. On August 22, 2022, the Alvarados filed an answer

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[1] All references to PAGA are to the PAGA statutes in effect for cases filed before June 19, 2024. Recent legislative revisions to PAGA apply to cases filed on or after June 19, 2024. This case was amended to include PAGA claims on June 1, 2023.

[2] Unless otherwise defined, all capitalized terms used herein have the same meaning as those defined by the Parties' Settlement Agreement, which is attached as Exhibit 1 to the Declaration of Steven Elster filed in conjunction with this motion. Elster Decl., ¶ 2, Exh. 1.

to Plaintiff's complaint and the Alvarados separately filed a cross-complaint against Peggy S. Lane, Inc., dba Cultured Marble Products and Walking Liberty PSL Holdings, LLC. Elster Decl., ¶ 3.

On February 11, 2023, Plaintiff submitted a PAGA notice to the California Labor Workforce Development Agency ("LWDA") alleging Labor Code violations under PAGA by PSL and he sent the notice to PSL by certified mail. (Plaintiff also separately submitted a PAGA notice to the LWDA alleging Labor Code violations under PAGA by the Alvarados and he sent that separate notice to the Alvarados by certified mail.) As predicates to the PAGA claims against PSL, Plaintiff alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 226.8, 510, 512, 558, 558.1, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, and 1199, and Wage Order 16-2001, including for failing to pay employees for all hours worked and violations derivative thereof. Elster Decl., ¶ 3, Exh. 2.

On March 22, 2023, pursuant to stipulation, Plaintiff filed a first amended complaint adding PSL as defendants for the various wage and hour claims he alleged on an individual basis. On June 1, 2023, pursuant to stipulation, Plaintiff filed a Second Amended Complaint ("SAC") adding PAGA claims against PSL and the Alvarados in addition to Plaintiff's individual wage and hour claims against them. The SAC is the operative complaint in the Action. PSL denies the allegations in the SAC, denies any failure to comply with the laws identified in in the SAC and denies any and all liability for the causes of action and PAGA claims alleged. Elster Decl., ¶ 4.

B. Discovery and Investigation

Prior to mediating and negotiating the Settlement, Plaintiff obtained formal and informal discovery of thousands of pages of documents, including regarding PSL's relevant pay practices and policies and extensive time records and payroll records regarding Plaintiff and a sample of Aggrieved Employees. PAGA Counsel analyzed and evaluated these PSL documents and data as well as spreadsheets prepared by PAGA counsel evaluating this data as a prelude to mediation. Elster Decl., ¶ 5.

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C. Settlement Following a Day of Mediation, Weeks of Negotiations, and Then Another Day of Mediation

On January 11, 2024, Plaintiff, PSL, and the Alvarados engaged in an unsuccessful day-long mediation before Craig J. Ackermann, Esq. of Employment Mediation Corp. Subsequently, Plaintiff and PSL continued weeks of negotiations, supervised by Mr. Ackermann. Plaintiff and PSL then engaged in a second day-long mediation before Mr. Ackermann on March 25, 2024. That second mediation resulted in an agreement to settle all claims in the Action as to PSL alone for a Gross Settlement Amount of $50,000 for the LWDA PAGA Payment, Aggrieved Employees' Individual PAGA Payments, the Administration Expenses Payment, and PAGA Counsel's Fees Payment, as approved by the Court. [3] After months of further discussions, Plaintiff and PSL finalized the terms of the Settlement and a Notice of PAGA Settlement, which is now presented to this Court for approval. Elster Decl., ¶ 6, Exh. 3 ("Notice to Aggrieved Employees"). Plaintiff provided notice of the Settlement to the LWDA on August 20, 2024. Plaintiff also provided a copy of this motion to the LWDA on October 15, 2024. Elster Decl., ¶ 6.

III. SETTLEMENT TERMS AND DISTRIBUTION OF PAGA PENALTIES

A. Settlement Fund

In exchange for a release of all PAGA Released Claims, PSL will pay a total, non-reversionary Gross Settlement Amount of $50,000 to the Aggrieved Employees. The Aggrieved Employees means past or present non-exempt hourly employees of PSL who were paid on a piece rate basis and worked at any time in California between February 12, 2022 and the date of the Court's approval of the Settlement. Elster Decl., ¶ 2, Exh. 1, Settlement, §§ 1.4 & 1.21. As of the second mediation on March 25, 2024, PSL identified 30 Aggrieved Employees at that time, who had worked 1,914 PAGA Pay Periods. Id., § 4.1. PSL will update those numbers

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[3] At the second mediation with Mr. Ackermann, Plaintiff and PSL also reached a separate settlement and release of Plaintiff's individual claims against PSL. On September 10, PSL filed a Motion for Good Faith Settlement Approval of the separate settlement and release between Plaintiff and PSL and the Court will hear that motion on November 13. There is no settlement or release of the individual claims of any other Aggrieved Employees. Elster Decl., ¶ 6. Labor Code § 2699(g)(1) states:

> "Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with a [PAGA] action under this part."

to the date of the Court's approval of the Settlement. Elster Decl., § 13.

The Settlement includes the following components:

(1) A PAGA Penalties payment of approximately $30,333, which will be paid to the LWDA and Aggrieved Employees in full satisfaction of all PAGA Released Claims. Elster Decl., ¶ 2, Exh. 1, § 1.23.

(a) Seventy-five percent of the PAGA Penalties payment, or approximately $22,750, will be paid to the LWDA pursuant to Labor Code section 2699(i). Id., § 3.2.3.

(b) Twenty-five percent of the PAGA Penalties payment, or approximately $7,583, will be paid to the Aggrieved Employees, allocated pro rata based on the number of PAGA Pay Periods each Aggrieved Employee worked for PSL during the PAGA Period. Id., §§ 1.20, 1.21, 1.23, 3.2.3, 3.2.3.1. The Settlement Administrator will issue IRS Form 1099s to Aggrieved Employees for their Individual PAGA Payments. Id., § 3.2.3.2.

(2) Attorneys' fees under Labor Code section 2699(g) for PAGA Counsel's prosecution and resolution of this action. Pursuant to the Settlement, Plaintiff requests PAGA Counsel's Fees Payment of $16,666.67 (based on 1/3 of the Gross Settlement Amount of $50,000), consisting of a payment to the Law Firm of Steven Elster of $14,166.67 and a payment of $2,500.00 to Yeremian Law. Id., § 3.2.1.

(4) An Administration Expenses Payment of no more than approximately $3,000 to Settlement Administrator ILYM Group, Inc. ("ILYM") to cover the costs of administering the Settlement. Id., § 3.2.2.

B. Notice to Aggrieved Employees

PSL will provide the Administrator with information about the Aggrieved Employees (i.e., full name, last known address, phone number, social security number, and number of PAGA

Pay Periods worked during the PAGA Period) to the Settlement Administrator within thirty (30) calendar days of the Effective Date of the Settlement. Id., §§ 1.5, 1.9, 4.2.

Within twenty (20) calendar days after receipt of the Gross Settlement Amount from Defendant, the Settlement Administrator will issue to each Aggrieved Employee at their last known address a check for their Individual PAGA Payment, along with an explanatory notice substantially in the same form as the Notice to Aggrieved Employees. Id., § 4.4; Elster Decl., ¶ 6, Exh. 3. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Elster Decl., ¶ 2, Exh. 1, § 4.4.1. Before mailing any checks, the Settlement Administrator must update the recipients' mailing address using the National Change of Address Database. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date. Id., §4.4.2.

The Administrator shall transmit funds in the amount of all settlement checks remaining uncashed and cancelled after the void date by *cy pres* to Legal Aid at Work, which provides funding to support free civil legal services to low-income Californians, including with respect to workers' rights. Id., §4.4.3. After the Settlement Administrator has made the *cy pres* distribution, there shall be no "unpaid residue" subject to any requirements of California Code of Civil Procedure Section 384(b). An Aggrieved Employee's failure to claim or deposit any check issued by the Settlement Administrator shall have no effect on that Aggrieved Employee's release of all PAGA Released Claims set forth herein. Id., § 5.

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C. Releases

In exchange for the settlement payment, Plaintiff releases, on behalf of the State and all Aggrieved Employees, PSL and all other Released Parties from any and all claims for civil penalties under California Labor Code §§ 2698, *et seq.*, that were brought, or reasonably could have been brought, and/or alleged, based on the same facts alleged in the PAGA Notice and/or Action. Elster Decl., ¶ 2, Exh. 1, §§ 1.25, 1.26, 5. This includes, but is not limited to, claims for civil penalties for any alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 226.8, 510, 512, 558, 558.1, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1199, 2699, and IWC Wage Order No. 16 that were brought or reasonably could have been brought and/or alleged, based on the same facts alleged in the PAGA Notice and/or Action. Id. at §§ 1.25, 5. As noted above, Plaintiff has agreed to a broader release and settlement of all of his individual claims against PSL. *Supra*, FN 3.

IV. SETTLEMENT IS FAIR AND REASONABLE

The proposed settlement is fair, reasonable, and adequate based on Plaintiff's thorough investigation, formal and informal discovery, hard-fought negotiations, zealous litigation, and detailed knowledge of the factual and legal issues in this action. In agreeing to the Settlement, Plaintiff carefully considered the costs, challenges and delay of continued litigation, the zealousness of PSL's opposition, the Court's discretion to reduce PAGA penalties, the potential appeal of any judgment, and other potential risks. The Settlement accomplishes PAGA's objectives by imposing sufficient civil penalties "to punish and deter" employers from committing any of the Labor Code violations alleged, while also ensuring that the penalties are not "unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(e)(2); *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384.

A. Standard for Approval

PAGA was enacted to allow enforcement of the Labor Code and recovery of penalties by the State and by private individuals who have been aggrieved by their employers. The statute requires that 75% of any penalties recovered be paid to the LWDA and the remaining 25% to the aggrieved employees. Labor Code § 2699(i).

To enforce and seek penalties under PAGA in a civil action, an aggrieved employee must first provide written notice to the LWDA and the employer(s) of the particular Labor Code provisions alleged to have been violated. *Id.* § 2699.3. Once the LWDA notifies the aggrieved employee that it does not intend to investigate the alleged violations, or if the LWDA does not respond within the statutory time period, the aggrieved employee may proceed in a civil action, and may enforce civil penalties against the employer on behalf of the LWDA and all other similarly aggrieved employees. *Id.* § 2699.3.

When an aggrieved employee seeks to settle PAGA claims asserted in a PAGA action, the court "shall review and approve" the settlement. *Id.* § 2699(l)(2). Although PAGA does not define the standard against which a PAGA settlement should be evaluated, California courts have interpreted PAGA as "requiring the trial court to determine independently whether a PAGA settlement" is "fair, reasonable, and adequate in view of 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.* (2021) 72 Cal. App. 5th 56, 76-77. A PAGA settlement should be approved when "a PAGA plaintiff has adequately represented the state's interests, and hence the public interest." *Id.* at 89.

These broad criteria give the Court wide latitude in determining whether to approve the penalties proposed as part of a PAGA settlement. Notably, the criteria focus on the effect the penalties may have on the defendant/employer rather than the LWDA or the aggrieved employees who will receive the penalties. This is different than the analysis of a class action settlement, which typically focuses on the amount received by the class and compares that to the reasonable range of potential outcomes in the case. *See, e.g., Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App. 4th 116, 130; *Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App. 4th 399, 407. As the California Supreme Court held in *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 975, a plaintiff can seek civil penalties under PAGA on behalf of the State of

California and other similarly aggrieved employees without meeting class action certification or settlement requirements (i.e. numerosity, typicality, commonality and adequacy). As such, a one-step approval process is typically appropriate.[4]

B. Settlement Is Reasonable and Meets the Standard for Approval.

To determine whether the settlement is fair, reasonable, and adequate, the Court may consider several factors, including: "the strength of [the] plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, . . . the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel . . . ." *Kullar*, 168 Cal. App. 4th 116, 128 (quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801). "[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; [and] (3) counsel is experienced in similar litigation . . . ." *Dunk*, 48 Cal. App. 4th at 1802.

1. Settlement Is the Result of Extensive, Non-Collusive, Arm's Length Negotiations Between the Parties.

"The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct." *Kullar*, 168 Cal. App. 4th at 129. Here, the proposed settlement was reached through vigorous, arm's-length negotiations between lawyers with significant experience, supervised and conducted by Mr. Ackermann, an experienced third-party mediator, after an initial

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[4] In *Arias*, after a substantial review of the legislative history of PAGA, the Court held that an aggrieved employee's representative action brought on behalf of other aggrieved employees against an employer for PAGA violations does not need to meet the requirements for class certification. 46 Cal. 4th at 975, 980-88. As the Court held, a plaintiff bringing suit under PAGA "does so as the proxy or agent of [California's] labor law enforcement agencies." *Id*. at 986; *see also Adolph v. Uber Techs.* (2023) 14 Cal. 5th 1104, 1113. Because the employee's PAGA action functions as a substitute for an action brought by the government itself, a judgment in the PAGA action binds all those who would be bound by a judgment in an action brought by the government. *Arias,* 46 Cal. 4th at 985-986. However, PAGA distinguishes and preserves the right of employees to separately or concurrently pursue their own causes of action against their employers and to recover other available federal and state remedies. Labor Code § 2699(g)(1).

full day of mediation on January 11, 2024, followed by weeks of negotiations, followed by another full day of mediation on March 25, 2024. Elster Decl., ¶¶ 5-6.

2. Parties Had Sufficient Information to Enter into an Informed and Reasonable Settlement.

The parties engaged in sufficient discovery to provide a thorough understanding of the relevant facts and the litigation risks for both sides. Id., ¶¶ 5, 15. Plaintiff obtained thousands of pages of documents, including regarding PSL's relevant pay practices and policies and extensive time records and payroll records regarding Plaintiff and a sample of Aggrieved Employees. PAGA Counsel spent many hours analyzing and evaluating these data and spreadsheets and reviewing documents from PSL. Id., ¶ 5. This exchange of information was more than sufficient to create "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Kullar*, 168 Cal. App. 4th 120.

3. Plaintiff's Counsel Is Experienced in Complex Litigation.

PAGA Counsel has considerable experience in PAGA and other complex litigation and is qualified to evaluate the PAGA claims, the value of the settlement versus moving forward with litigation, and the viability of PSL's defenses. Elster Decl., ¶¶ 7-11. PAGA Counsel believes that the settlement is fair, reasonable, and adequate in light of the risks associated with the merits of Plaintiff's claims, the uncertainties of complex litigation, the Court's discretion to lower the amount of penalties ultimately awarded, and the secured benefit to the LWDA and Aggrieved Employees. Id., ¶¶ 13-15.

4. Settlement Is Fair and Reasonable Based on the Strength of Plaintiff's Case and the Risks and Costs of Further Litigation.

The $50,000.00 Gross Settlement Amount is reasonable and meets the standards for approval of a PAGA settlement. For a group of approximately 30 employees, a penalty of $50,000 is large enough to address the alleged past violations and deter future violations. Plaintiff calculates the maximum potential exposure at the initial violation rate of $100 per pay period, assuming a violation in every pay period as follows: 1,914 pay periods x $100 per pay period = $191,400. Id., ¶ 14.

Although Plaintiff believes his claims are meritorious, he recognizes the risks of continued litigation, including: (i) the strength of PSL's defenses on the merits; (ii) the risk of losing at trial; (iii) the chances of any favorable verdict being reversed on appeal; and (iv) the difficulties attendant to collecting on a judgment. For example, PSL could defeat Plaintiff's claims by proving it did not fail to pay employees for all hours worked and thereby did not violate the California Labor Code regarding unpaid minimum wage, overtime, and claims derivative thereof. Taking these risks into account, a $50,000 settlement is warranted by the circumstances of the case and provides the State of California and the Aggrieved Employees with a meaningful recovery. Id., ¶ 15.

Plaintiff also recognizes that, were this matter to go to trial, any award of civil penalties would be at the discretion of the Court. Even if Plaintiff prevailed at trial, the Court can reduce the PAGA penalties "if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(e)(2). Although Plaintiff believes there would be no persuasive grounds to reduce the penalties, the Court could determine otherwise and significantly reduce the PAGA penalties. The wide range of potential recovery (including the risk of zero recovery), the potential for significant additional delays, costs and risks of proceeding to trial, and the release of PAGA penalties only for the Aggrieved Employees, are all factors supporting the proposed settlement. For example, in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App. 5th 504, the plaintiff prevailed at trial but the trial court reduced the maximum PAGA penalties by 90%, based on the employer's good faith attempt at complying with the law. *Id.* at 517. The Court of Appeal sound this 90% reduction of the PAGA penalties to be proper. *Id.* at 529.

Given the Court's discretion to award lower penalties even if Plaintiff were to win at trial, the Gross Settlement Amount ($50,000) and the approximate PAGA Penalties amount ($30,333), respectively approximately 26.1% and 15.8% of the maximum total potential penalties that could be awarded if Plaintiff had prevailed completely on all Labor Code predicates, are reasonable. Elster Decl., ¶¶ 14-15.

5. The Plan of Allocation Is Fair.

The Plan of allocation is fair because it distributes funds to Aggrieved Employees on a pro rata basis based on the number of each Aggrieved Employee's PAGA Pay Periods. Elster Decl., 2, Exh. 1, ¶ 3.2.3.1.

C. Plaintiff's Requested Attorneys' Fees Are Fair.

Under the terms of the Settlement, PAGA Counsel seeks, and PSL does not oppose Counsel's request for Court approval of a PAGA Counsel Fees Payment of $16,666.67, consisting of a payment to the Law Firm of Steven Elster of $14,166.67 and a payment of $2,500.00 to Yeremian Law. Elster Decl., ¶¶ 1.18, 1.19, 3.2.1. Labor Code section 2699(g)(1) states that "[a]ny employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs." *Adolph*, 14 Cal. 5th 1104, 1127 ("PAGA has a provision for recovery of attorney's fees and costs.") (citing Labor Code, § 2699(g)(1)); *Iskanian*, 59 Cal. 4th 348, 389 ("[C]ontingent fee representation was appropriate in 'ordinary civil cases' in which a government entity's own economic interests were at stake.").

During the course of this litigation, PAGA Counsel has expended approximately 37.8 hours prosecuting these claims so far, with a total lodestar of $37,422. Elster Decl., ¶ 12. These amounts do not account for subsequent time to oversee administration of the Settlement. This results in a "negative" lodestar multiplier of approximately 0.445 (attorney's fees of $16,666.67 divided by lodestar of $37,422), below the typical multipliers in class and representative action settlements. *See Basiliali v. Allegiant Air, LLC* 2019 U.S. Dist. LEXIS 228250, at *11 (finding a common fund-based fee award in PAGA settlement reasonable where lodestar significantly exceeded requested fee); *Laffitte v. Robert Half Int'l* (2016) 1 Cal. 5th 480, 487, 506 (finding reasonable an award of attorneys' fees of one-third of the common fund that was more than twice (2.03 to 2.13) plaintiff's counsel's lodestar). This partial recovery of fees is warranted to ensure that capable lawyers remain willing to protect workers' rights to be free from Labor Code violations in future situations. *See Adolph*, 14 Cal. 5th 1104, 1127 (The attorney's fees and costs provision of PAGA "may help plaintiffs secure representation by enticing attorneys to take cases they might not if limited to recovering fees and costs for individual claims alone.").

D. Approval of the Settlement Administrator's Costs Is Appropriate.

Plaintiff is confident that ILYM will successfully administer the settlement and requests Court approval of the Administrator Expenses Payment not to exceed $3,000. To the extent the Administration Expenses are less than $3,000, ILYM will allocate the remainder to the PAGA Penalties. Elster Decl., ¶ 2, Exh. 1, ¶ 3.2.2. Plaintiff engaged three different settlement administrators in a competitive bidding process and chose ILYM, whose bid was the lowest. Elster Decl., ¶ 19. The Administrator Expenses Payment is reasonable based on PAGA Counsel's past experience with ILYM's quality of services, and the low cost of their bid considering the number of Aggrieved Employees and required notice, mailing and communications processes under the terms of the Settlement.

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court: (1) approve the proposed Settlement and (2) approve the requested PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Plaintiff's Individual Settlement Payment, and the Administrator Expenses Payment.

Dated: October 15, 2024

LAW OFFICE OF STEVEN ELSTER

Steven Elster
Attorney for Plaintiff Samir Jimenez