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Attorneys for Plaintiff DOUGLAS HERNANDEZ,
Individually and on behalf of all Aggrieved Employees,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

DOUGLAS HERNANDEZ, individually and on behalf of all Aggrieved Employees,

Plaintiff,

v.

CRAFTSMAN LATH AND PLASTER INC., a California Corporation; and DOES 1-50, inclusive,

Defendant.

CASE NO.: CVRI2301019

Assigned for all purposes to
Hon. Judge Harold Hopp
Dept. 1

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT

Date: June 10, 2024
Time: 8:30 am
Dept: 1

RESERVATION ID: 980865259011

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, **NOTICE IS HEREBY GIVEN** that at 08:30 a.m., on June 10, 2024, or as soon thereafter as the matter may be heard in Department 1 of the above-entitled Court, located at 4050 Main Street Riverside, CA 92501. Representative Plaintiff Douglas Hernandez, will and hereby does apply to this Court for an Order granting approval of the parties' PAGA settlement agreement.

This Motion is based upon the accompanying Memorandum of Points and Authorities, the Declaration of James Hawkins and exhibits attached thereto, the Declaration of the Third Party Administrator, Sean Hartranft, the declaration of Douglas Hernandez, and such other oral arguments and documentary evidence as may be presented to the Court at the hearing of this motion.

Dated: April 12, 2024

JAMES HAWKINS APLC

By: ____________________________

James R. Hawkins, Esq.
Gregory Mauro, Esq.
Michael Calvo, Esq.
Lauren Falk, Esq.

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Douglas Hernandez ("Plaintiff") seek approval of a settlement of claims under the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq*. ("PAGA") against Craftsman Lath and Plaster Inc., ("Defendant") in the amount of $325,000.00. Plaintiff alleges approximately 422 aggrieved employees who worked for Defendant that were allegedly not paid all wages owed, not provided with meal periods or compensation in lieu thereof, not provided with rest breaks or compensation in lieu thereof, not provided with accurate wage statements, not paid accurately for sick leave, were paid wages in a non-labor code compliant instrument, were not reimbursed for necessary business expenses, and were not paid all wages owed upon separation of employment.

Under Labor Code § 2699(l)(2), the Court must review and approve any proposed PAGA settlement. Here, the proposed Settlement is sufficient to deter and punish future violations. The Joint Stipulation of PAGA Settlement and Release of Claims ("Settlement Agreement") is attached to the Declaration of James Hawkins ("Hawkins Decl.") as **Exhibit 1**, and the proposed letter to be sent to the aggrieved employees is attached thereto as **Exhibit A**. Plaintiff now seeks this Court's approval of the Settlement terms.

II. FACTUAL AND PROCEDURAL BACKGROUND

On February 28, 2023, Plaintiff filed this matter as a putative class action alleging the following Causes of Action against Defendant for Defendant's alleged failure to (1) pay wages including overtime, (2) failure to provide meal periods, (3) failure to authorize and permit rest periods, (4) failure to timely pay wages at separation, (5) failure to timely pay wage during employment, (6) failure to provide accurate wage statements, (7) failure to reimburse expenses, and (8) for unfair competition (UCL). (Hawkins Decl. ¶ 3).

On June 28, 2023, Plaintiff filed a First Amended Complaint to add a Cause of Action for civil penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA"). *Id.* ¶ 4

On June 29, 2023, the Parties filed a stipulation to arbitrate Plaintiff's individual claims and individual PAGA claims pursuant to the Parties' arbitration agreement which contained a class action waiver. The Court stayed all remaining proceedings pending arbitration. *Id.* ¶ 5

On August 3, 2023, the Parties attended mediation with a well-respected wage and hour mediator, Jeffrey Krivis to mediate all PAGA claims as alleged in this matter. With the help of Mr. Krivis, the Parties reached a PAGA settlement and on August 8, 2023, the Parties executed a Memorandum of Understanding ("MOU"). *Id.* ¶ 6

As part of the terms of the settlement, on December 20, 2023, Plaintiff filed a Second Amended Complaint ("SAC" or "Operative Complaint") which modified Plaintiff's complaint to remove Plaintiff's class claims to only allege individual claims and representative PAGA claims.

The Parties diligently worked towards finalizing the long form settlement agreement in this matter, and fully executed the settlement on February 27, 2024. *Id.* ¶ 7.

Plaintiff provided notice of the Settlement to the LWDA and served a copy of this motion on the LWDA. *Id.* ¶ 8

III. PAGA REQUIREMENTS

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

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

In order 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 of the particular Labor Code violations the aggrieved employee alleges the employer has violated. *See* Cal. Labor Code§

2699.3(a)(l)(A) (2016). 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 a certain time period, the aggrieved employee is then allowed to proceed in a civil action against the employer on behalf of the LWDA and all other similarly aggrieved employees. *See* Cal. Labor Code § 2699.3(a)(2)(A) (2016).

In 2009, the California Supreme Court considered the issue of whether an aggrieved employee who brings a PAGA representative claim needs to meet class certification requirements. *Arias,* 46 Cal. 4th at 976. 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. *Id*. 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. 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. *Id.*

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

IV. THE SETTLEMENT TERMS AND DISTRIBUTION OF PENALTIES

The Parties have agreed that Defendant will pay a total settlement amount of $325,000.00 (the "Gross Settlement Amount"). (Hawkins Decl., Settlement Agreement §I ¶9). From this amount, up to one-third (1/3) of the Settlement Sum, or $108,333.33, is allocated to attorneys' fees and up to $20,000.00 to actual litigation costs. Settlement Agreement, §I ¶9. To date, Plaintiff's counsel has spent $20,074.59 in actual litigation costs and incurred $129,060.00 in attorneys' fees.[1] *See* Hawkins Decl., ¶¶ 45, 48, Exhibit 2. The Settlement allocates up to $10,000.00 to payment for

[1] Plaintiff's Counsel's lodestar and litigation costs far exceed the requested amounts and thus the amounts requested for attorneys' fees and litigation costs are reasonable.

costs associated with administration of the Settlement to Apex Class Action Administrators. Settlement Agreement, §I ¶¶ 9, 18. The Settlement allocates up to $10,000.00 to payment to Plaintiff for an Individual Settlement Payment associated with Plaintiff's individual unpaid wage claims in exchange for a general releases and waiver of Civil Code § 1542 protections of all potential claims. Settlement Agreement, §III ¶5.

After deducting the attorneys' fees and costs, Settlement Administrator's costs, and Plaintiff's Service Payment, the remaining fund ("Net PAGA Payment") will be paid 75% to the LWDA and 25% to the Aggrieved Employees. Settlement Agreement, §I(10) and §III(4). "Aggrieved Employees" or "Aggrieved Employees Members" means all individuals who were employed by Defendant in the State of California as non-exempt employees during the PAGA Period of April 10, 2022 to September 30, 2023 or the date the Court approves the Parties' long form, Joint Stipulation for Settlement (or similar long-form Settlement Agreement) whichever comes first. Settlement Agreement, §I ¶14.

Each Aggrieved Employee will receive a pro rata portion of the employee-portion of the Net Settlement Amount, determined based on the pay periods that he or she worked for Defendant in the State of California during the PAGA Period. The Net Settlement Amount shall be distributed to the LWDA and Aggrieved Employees as follows: Seventy-five percent (75%) of the Net Settlement Amount shall be distributed to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%) of the Net Settlement Amount shall be distributed to the Aggrieved Employees on a *pro rata* basis, based on their respective number of pay periods worked for Craftsman during the PAGA Period. Each Aggrieved Employee will be paid a non-wage check for their Employee Payment, and will receive an IRS Form 1099 for said payment. Settlement Agreement, §III ¶ 3.

The Settlement Administrator will disburse Individual Settlement Checks to each Aggrieved Employee to the last known physical address on file with Defendant in its regularly maintained records. Prior to this disbursement, the Settlement Administrator shall check the addresses provided using the National Change of Address database. Settlement Agreement, § IV ¶2. For any returned payments without a forwarding address, the Settlement Administrator shall run a skip trace. *Id*. The Aggrieved Employees will receive a letter along with their Individual

Settlement Check explaining the reason for the payment, the content of which will be submitted to the Court for approval. *Id.* The proposed letter is attached to the Settlement Agreement as Exhibit A. All funds not claimed within 180 days of mailing of payment shall be sent to the California State Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each PAGA Employee. *Id.*

In exchange for the settlement payment, the Aggrieved Employees (including Plaintiff) and the State of California will release the "Released Parties" meaning Defendant and its former, present and future owners, parents, subsidiaries, affiliated companies, and all of their current, former and future officers, directors, members, managers, employees, consultants, partners, shareholders joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives from Settlement Agreement, §I ¶ 15; from the "PAGA Released Claims" from all claims, rights, demands, liabilities and causes of action that arose during the PAGA Period for civil penalties under the PAGA, based on the factual allegations pled in the operative complaint in the Action, with respect to the following claims: (1) failure to pay wages including overtime; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to timely pay wages; (5) failure to provide accurate itemized wage statements; (6) failure to accurately record and pay sick leave; (7) payment of wages in a non-labor code compliant instrument; and (8) failure to indemnify necessary business expenses, including any related claims for attorneys' fees, costs, or interest resulting therefrom ("PAGA Released Claims"). Settlement Agreement, §III ¶0.

V. THE SETTLEMENT IS FAIR AND REASONABLE

A. Standard for Approval

PAGA settlements must be "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.*, 72 Cal.App.5th 56, 77 (2021). The court must find that the plaintiff "has adequately represented the state's interests, and hence the public interest." *Id.* at 89. The LWDA must be notified of the settlement and be given an opportunity to object. The court may look to parallel class action guidelines to determine what is "fair, adequate and reasonable." *Kullar v. Foot Locker Retail,* 168 Cal.App.4th 116, 126 (2008). In that analysis, the court has "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, complexity and likely duration of further litigation, … the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant …." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).

B. The Settlement Meets the Standard for Approval

Here, the $325,000.00 Gross Settlement Amount is reasonable for a group of approximately 422 employees. A penalty of $325,000.00 is large enough to punish Defendant for alleged past violations and deter future violations. The settlement amount is equivalent to a penalty of about $765.00 per employee. At the same time, the penalty amount is not so large as to be unjust, oppressive or confiscatory, considering the company's potential exposure explained below. Hawkins Decl., ¶ 16. The Settlement Sum is also reasonable in light of the facts of the foregoing action, the real risk that no PAGA penalties would be paid, and inherent risks and uncertainties associated with PAGA claims.

The nature of the violations here stemmed from Defendant's alleged practice and failure to: (1) pay wages including overtime; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to timely pay wages; (5) failure to provide accurate itemized wage statements; (6) failure to accurately record and pay sick leave; (7) payment of wages in a non-labor code compliant instrument; and (8) failure to indemnify necessary business expenses.

Plaintiff calculated the maximum potential exposure at the initial violation rate of $100.00 per pay period as follows: 13,000 x $50 per pay period x 100% violation rate is $650,000. Hawkins Decl., ¶ 18. If the Court stacked different types of penalties in each pay period, Plaintiff calculated the exposure as follows:

a. 13,000 pay periods x $50 per pay period x 100% violation rate = $650,000 for unpaid wages;

b. 13,000 pay periods x $100 per pay period x 10% violation rate = $130,000 for rest break violations;

c. 13,000 pay periods x $100 per pay period x 50% violation rate = $650,000 for meal period violations;

d. 206 pay periods x $100 per pay period x 100% violation rate = $20,600 for failure to timely pay final wages;

e. 13,000 pay periods x $100 per pay period x 25% violation rate = $325,000 for failure to reimburse business expenses;

f. 13,000 pay periods x $100 per pay period x 100% violation rate = $1,300,000 for wage statement penalties.

Id. at 19.

Despite this potential maximum exposure of $3,075,600, Defendant raised a number of arguments during settlement negotiations and provided evidence that could have defeated Plaintiff's claims. Hawkins Decl., ¶ 20. For example, Defendant argued there were manageability problems with Plaintiff's PAGA claims in light of the apparent complaint meal and rest period policies and affirmations from aggrieved employees as to complying with company policies. Further, Defendant showed that it paid Plaintiff and Defendant's other employees $10 per month to use cell phones for clocking in and out, employees also affirmed they took rest breaks, and employees were not required to use special or unique tools. Further, Defendant had legally compliant meal and rest period policies and argued these potentially aggrieved employees who worked in the field were required to take meal and rest breaks per company policy and that Defendant did not prohibit employees from taking complaint meals and rest breaks. Further, many employees worked in groups and these groups of employees typically took meal and rest breaks together. Defendant's records also demonstrated that Plaintiff and Defendant's other employees took timely and compliant meal periods and certified that that the time recorded on their time cards completely and accurately reflected the time they worked. In a more general sense, Defendant raised questions as to how Plaintiff would be able to establish who is and is not an aggrieved employee. And even if someone is an aggrieved employee, how would Plaintiff establish for which pay periods they were an aggrieved employee? *Id.* at ¶ 21

Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA awards are discretionary and can be reduced by the Court. *Id.* at ¶ 22. Under Labor Code § 2699(e)(2), 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." In other words, were this matter to go to trial, any award granted would be at the discretion of the Court. *Id.* Here, Plaintiffs believed a realistic recovery at trial could be $650,000 based on $50 per pay period for 100% of the pay periods. (Hawkins Decl., ¶ 22).

Consequently, the Parties settled for an amount equivalent to $25.00 per pay period, which represents either a 40% chance of prevailing at trial and/or the possibility that the Court could reduce the PAGA penalties by 60%. *Id.* The wide range of potential recovery and the additional risks of trial justified settling for a reasonable amount of recovery. *Id.*at ¶ 23.

VI. CONCLUSION

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

Dated: April 12, 2024

JAMES HAWKINS APLC

By: ______________________________
James R. Hawkins, Esq.
Gregory Mauro, Esq.
Michael Calvo, Esq.
Lauren Falk, Esq.

Attorneys for Plaintiff

PROOF OF SERVICE, COUNTY OF ORANGE

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On December 18, 2023, I served on the interested parties in this action the following document(s) entitled:

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT

DECLARATION OF JAMES HAWKINS IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF PAGA SETTLEMENT

DECLARATION OF DOUGLAS HERNANDEZ IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL PAGA SETTLEMENT

COMPLIANCE CHART IN SUPPORT OF MOTION TO APPROVE PAGA SETTLEMENT

[PROPOSED] ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION TO APPROVE PAGA SETTLEMENT

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Alma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SERVICE LIST

(Service List Attached)

[XX] **STATE:** I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on December 18, 2023 at Irvine, California

Alma Chavarin

Alma Chavarin

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