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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

ADAM SAFFIOTE, as an individual and on behalf of others similarly situated, Plaintiff, vs. LAST MILE LOGISTICS, INC., a California corporation; CRAIG ZIMMER, an individual; and DOES 1 through 50, inclusive, Defendants.	Case No. 37-2023-00025104-CU-OE-CTL *Hon. Gregory Pollack* *Dept. C-71* **Plaintiff's Memorandum of Points and Authorities in Support of Unopposed *Ex Parte* Application Requesting Review and Approval of Stipulated PAGA Settlement** *Ex Parte* Hearing Date: September 30, 2025 Time: 8:45 a.m. [Filed concurrently with Notice and *Ex Parte* Applciation, Declaration of Rick Waltman, and [Proposed] Order] Action Filed: June 15, 2023

Plaintiff Adam Saffiote ("Plaintiff") respectfully submits this unopposed *ex parte* application seeking the Court's approval of the Parties' PAGA Settlement, and entry of the proposed order and judgment provided herewith.

I. INTRODUCTION

Plaintiff seeks an order approving the Parties' PAGA Settlement, dismissing this matter, and entering judgment. The Parties signed a PAGA Settlement Agreement in July 2025, and submitted a Joint Stipulation Requesting PAGA Settlement Approval on July 31, 2025. The LWDA was given noticed of the proposed PAGA Settlement that same day, and has not objected or interjected to date.

Per the Court's request, Plaintiff respectfully submits this *ex parte* application, providing the LWDA with more than 16 Court days'notice, requesting the Court's approval of the PAGA Settlement on September 30, 2025 or as soon as is otherwise practical for the Court. Plaintiff is serving the LWDA and Defendants with notice of this *ex parte* application and moving papers at the time of filing.

Providing the requested *ex parte* relief services the interests of justice, and will conserve the Court's and Parties' time. The PAGA Settlement is fair and reasonable after good faith negotiation.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Lawsuit

On March 27, 2023, Plaintiff submitted a notice to the Labor and Workforce Development Agency ("LWDA") asserting claims for civil penalties under the PAGA on behalf of himself and other aggrieved employees who worked as drivers for Defendants. *See* Declaration of Rick A. Waltman ("Waltman Decl."), ¶¶ 2, 10. On June 15, 2023, Plaintiff filed a PAGA Representative Action in San Diego Superior Court ("Complaint"). Waltman Decl., ¶ 3. In the Complaint, Plaintiff requested civil penalties under California Labor Code section 2699, *et seq*. alleging violations by Defendants of the Labor Code, including but not limited to: California Labor Code Sections 201, 202, 203, 204, 210, 218.5 226, 226.3, 226.7, 510, 512, 516, 558, 558.1, 1182.12, 1194, 1197, 1197.1, 1198, 2802, and the applicable Wage Orders. Plaintiff alleged that he and others were not paid at the proper regular rate of pay for overtime, taking bonuses into account for the calculation. Plaintiff also alleged that the workload often prevented him and others from taking breaks. Waltman Decl., ¶ 11. Defendants contend they have complied with all applicable laws, deny that they have engaged in any unlawful activity, and deny that they have any liability to anyone under the claims asserted in the Complaint.

On April 5, 2024, the Court granted Defendants' motion to compel arbitration of Plaintiff's individual claims and class break claims, and stayed the action for Plaintiff's remaining representative PAGA claims. Waltman Decl., ¶ 12. The Court also denied the motion to compel arbitration of Plaintiff's class wage claims, which were based on Plaintiff's allegations that Defendant's payment of overtime was not paid at the proper regular rate of pay. As discussed, in paragraph 21 of the accompanying Declaration of Rick Waltman, such violations did not occur many times during the relevant period, and are not likely appropriate for class treatment. The accompanying proposed order would thus dismiss the remaining class wage claims without prejudice

B. Investigation and Negotiation

The Parties thereafter agreed to mediation, and exchanged information relevant to Plaintiff's claims, including break and pay policies, time and pay data for the alleged aggrieved employee group, payroll adjustments, Defendants' business operations, and other information pertinent to Plaintiff's claims and Defendants' defenses. Waltman Decl., ¶ 13

The Parties attended mediation on April 3, 2025 with experienced wage and hour mediator Scott Markus. The Parties were unable to reach a resolution on the day of mediation, as each side fought hard for their positions. However, settlement discussions continued with the help of the mediator, and the Parties eventually reached a settlement on April 15, 2025. Waltman Decl., ¶ 14.

The Parties fully executed the Settlement of Private Attorneys General Act Claims on July 11, 2025. Waltman Decl., ¶ 15, Ex. 1.

The Parties filed a stipulation to approve the PAGA Settlement without a hearing on July 31, 2025, providing notice to the LWDA that same day. Waltman Decl., ¶¶ 16-17, Ex. 2. The Court rejected the stipulation, and the clerk directed the Parties to apply *ex parte* for approval with at least 16 Court days' notice to the California Department of Labor Workforce Development Agency ("LWDA"). Waltman Decl., ¶ 17.

C. Notice to the LWDA

On July 31, 2025, Plaintiff electronically submitted Notice of the Proposed Settlement of this

PAGA action to the LWDA via the LWDA's online filing system. Waltman Decl., ¶ 16. Plaintiff is also serving the LWDA with notice of this *ex parte* application and the moving papers at the time of filing more than 16 court days prior to the hearing.

III. TERMS OF THE PROPOSED SETTLEMENT AGREEMENT

A. Scope of Release

In exchange for the payments described below, the aggrieved employees will be bound to release the "Released Claims," defined as:

> all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts, circumstances, or primary rights stated in the operative Complaint and PAGA Notice that occurred during the PAGA Period and were ascertained during the Action. This release includes any and all claims for PAGA penalties involving: (1) failure to pay all overtime wages (including failure to include non-discretionary incentive pay in the regular rate of pay for purposes of overtime); (2) failure to pay all regular wages; (3) meal period violations (including failure to include non-discretionary incentive pay in the regular rate of pay for purposes of meal period premiums); (4) rest period violations (including failure to include non-discretionary incentive pay in the regular rate of pay for purposes of rest period premiums); (5) untimely payment of wages during employment; (6) wage statement violations; and (7) failure to pay wages due upon separation of employment. The Released PAGA Claims expressly excludes other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period. In no event shall the release of the Released PAGA Claims in this Settlement Agreement release any non-PAGA claims of any individuals.

The release covers approximately 344 non-exempt employees who worked for Defendant from June 14, 2023 through May 30, 2025. The number of pay periods covered by the settlement is approximately 5,387. (Waltman Decl., ¶ 1, Ex. 1, PAGA Settlement, 6-8.)

B. Settlement Sum and Allocation

The Gross Settlement Amount of $40,000 will be distributed as follows under the Agreement:

LWDA Payment	$11,007.88
Payment to PAGA Employees	$3,669.29
Attorneys' Fees (33.33%)	$13,333.00
Litigation Costs	$6,239.83
Plaintiff Service Award	$500.00
Settlement Admin. Costs	$5,250.00

(Waltman Decl., ¶ 1, Ex. 1, PAGA Settlement, p. 5.)

As consideration for the settlement described herein and the release contained in the Settlement Agreement, Defendants agree to make a payment of $40,000.00 in connection with the PAGA Settlement ("Gross PAGA Amount"). (Id. at p. 2.) The Gross PAGA Amount includes the Individual PAGA Payments to the Aggrieved Employees, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Plaintiffs' Service Award, and the Administration Expenses Payment, which will be deducted from the Gross PAGA Settlement Amount by the Administrator as follows.

Defendants do not oppose PAGA Counsel's request for court approval of PAGA Counsel Fees Payment (as defined by the Settlement Agreement) of not more than one-third (1/3) of the Gross PAGA Settlement Amount which is currently estimated to be $13,333.00 and PAGA Counsel Litigation Expenses Payment (as defined by the Settlement Agreement) of not more than $6,239.83. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the PAGA Payment. (Id. at p. 5.)

An Administrator Expenses Payment (as defined by the Settlement Agreement) not to exceed $5,250.00 except for a showing of good cause and as approved by the Court. To the extent the Court approves payment less than $5,250.00, the Administrator will allocate the remainder to the PAGA Payment. (Ibid.)

Defendants agree not to oppose any application or request for up to $500.00 to be paid to Plaintiff as the Service Award (as defined by the Settlement Agreement), in recognition of Plaintiff's service as the representative in the Action. Any reduction in the amount of the Service Award by the Court shall become part of the net PAGA Payment. (Ibid.)

To the LWDA and Aggrieved Employees: Should the Court approve the amounts above in full, the resulting net PAGA Payment is estimated to be $14,677.17 and shall be paid from the Gross PAGA Settlement Amount, with 75% (no less than $11,007.88) allocated to the LWDA PAGA Payment and 25% (no less than $3,669.29) allocated to the Individual PAGA Payments. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Payment by the total number of PAGA Pay Periods attributed to all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's attributable PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. The Individual PAGA Payment to each Aggrieved Employee shall be allocated 100 percent (100%) as penalties paid via IRS Form 1099 issued to each Aggrieved Employee. (Waltman Decl., ¶ 3, Ex. 1, PAGA Settlement, pp. 5-6.)

C. Distribution of PAGA Fund

Within thirty (30) days of an order approving this PAGA Settlement, Defendants must deliver the aggrieved employee data to the Settlement Administrator. No later than fourteen(14) days after receiving the gross settlement funds from Defendants, the Settlement Administrator shall disburse: (1) the Net PAGA Payment to be paid to PAGA Employees and the LWDA; (2) the Attorney Fee Award and Cost Award to Plaintiff's Counsel for attorneys' fees and costs, as approved by the Court; (3) the enhancement award to Plaintiff; and (4) the Administrative costs as approved by the Court. Employee payments will be accompanied by a notice of the PAGA Settlement stating the case and release information and the amount of their payment. (Waltman Decl., ¶ 1, Ex. 1, PAGA Settlement, p. 6.)

If an Individual Settlement Share is returned because of an incorrect address, within seven (7) days from receipt of the returned Individual Settlement Share, Defendant will conduct a search for a more current address for the PAGA Employee and re-mail the Individual Settlement Share to the PAGA Employee to the more current address. (Waltman Decl., ¶ 1, Ex. 1, PAGA Settlement, p. 7.) If Defendant is unable to locate a better address, the Individual Settlement Share shall be re-mailed to the original address. (*Ibid*.)

PAGA Employees must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them. If any checks remain uncashed or not deposited after one hundred and eighty (180) days after the checks are mailed, the checks will be voided. (Id. at p. 7.) All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those Individual Settlement Share checks remaining uncashed, shall be deposited by Defendant to the State Controller's Office – Unclaimed Property Fund in the name of the PAGA Employee. If a PAGA Employee does not cash his or her check, he or she will be able to claim his or her settlement payment from the Unclaimed Property Fund at a future date. (*Ibid*.)

IV. LEGAL STANDARD FOR APPROVAL OF THE PAGA SETTLEMENT

A. Legal Standard

PAGA settlements require judicial review and approval. Cal. Lab. Code § 2699(s)(2). The criteria for review and approval is not well-developed, but when a PAGA claim is settled, the relief provided for must be genuine and meaningful, consistent with the purpose of the statute to benefit the public. *See Haralson v. U.S. Aviation Services Corp*. (N.D. Cal. 2019) 383 F. Supp.3d 959, 971-972. PAGA representative actions are different than class actions. *Kim v. Reins Int'l Inc.* (2020) 9 Cal. 5th 73, 86. As such, the settlement of a PAGA action is not evaluated subject to the same requirements as class actions, though courts like this one can and often do consider the factors applicable to class action settlements when reviewing PAGA settlements. "[A] trial court should evaluate a PAGA settlement to determine whether it 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, 77. However, the factors used to assess the reasonableness of class settlements may be used for PAGA settlements. *See, e.g., Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801; *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 240; *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116 (factors include the (1) strengths of plaintiffs' case; (2) risk, expense, complexity, and duration of further litigation; (3) amount offered in settlement; (4) discovery and investigation completed; (5) experience and views of counsel; and (6) governmental participant involvement). As detailed below and in the **Declaration of Rick A. Waltman**, each of these factors support approval of the PAGA settlement. Waltman Decl., ¶ 21.

B. The Parties' PAGA Settlement is Fair and Reasonable, and Should be Approved

First, though Plaintiff alleged a strong claim for individual regular rate of pay violations he suffered, Defendant produced records showing that the regular rate calculation issue was quickly fixed, and ultimately impacted very few employees during very few pay periods in the relevant timeframe. Plaintiff's claims then primarily depended on whether he and others were afforded proper breaks, and to what extent Defendant's policies requiring meal and rest breaks (including logging employes out of software required to complete deliveries during required break times) would prevent liability for these claims. Furthermore, based on expert analysis of the data provided by Defendant, potential violations occurred in a low percentage of pay periods. Plaintiff may have likewise faced challenges establishing his rest period claims as well as the safety violations due to the necessity of witness testimony from former employees. While Plaintiff believes his claims had merit, it was limited to a relatively small number of employees and pay periods, and Defendant made arguments that any applicable penalties would be eliminated or reduced.

Second, while the litigation could have proceeded with the aforementioned risks, the largest element of damages would have likely been for statutory attorneys' fees as the prevailing party; therefore, the remedial and enforcement mechanisms of the PAGA are better served through this settlement than through additional litigation. Additional litigation would have been costly to Defendants, time consuming, and likely reduced the amount of assets available to pay any future settlement or judgment.

Third, in the experience of counsel, the amount offered in settlement is fair, reasonable, and commensurate with other PAGA settlements routinely approved by courts.

Fourth, the settlement was reached only after Plaintiff's counsel obtained all the information necessary to conduct a liability exposure analysis. The settlement was negotiated at arm's length by counsel on both sides experienced in PAGA and wage and hour litigation. Negotiations were hard-fought and could only be resolved after a reasonable exchange of information needed to assess liability and estimate damages.

Fifth, Plaintiff's counsel focuses entirely on labor and employment litigation, with a particular emphasis on class and PAGA representative cases for wage and hour violations. Defendant's counsel likewise specialize in employment and representative action litigation. Counsel recommends the settlement as fair and reasonable. There are no objections or intervenors and no related cases.

Sixth, the LWDA was duly notified of the alleged violations when my office submitted the PAGA notice to the LWDA on Plaintiff's behalf. The LWDA has not intervened nor stated any intent to do so. The absence of LWDA intervention, as a governmental party, supports approval of the settlement. (*See* Waltman Decl., ¶ 21.)

B. The Fees and Costs May Be Approved.

The Settlement authorizes attorneys' fees of up to one third of the Gross Settlement Amount. Waltman Decl., ¶ 18, Ex. 1. The purpose of the percentage method is to avoid unjust enrichment of employers by spreading the litigation costs proportionally among all the beneficiaries. *See*, *e.g., Lealao v. Beneficial Cal., Inc*. (2000) 82 Cal. App. 4th 19, 47. This approach incentivizes lawyers to undertake risks of time and resources to vindicate the public interest and protect the policies underlying the wage laws. In the case of a common fund—like the one in this case where there is no reversion or claims process—the percentage method is the preferred method. (*See Laffitte v. Robert Half International, Inc*. (2016) 1 Cal. 5th 480, 503.) "[R]egardless whether the percentage method or the lodestar method is used, fee awards in class [and representative] actions average around one-third of the recovery." *Chavez v. Netflix, Inc*. (2008) 162 Cal. App. 4th 43, 66, n. 11. Defendants do not oppose a request by Plaintiff's counsel for attorneys' fees in an amount that does not exceed one third of the Gross Settlement Amount (*i.e*., $13,333.00). Plaintiff contends that attorneys' fees to Plaintiff's counsel in the amount of one third of the Settlement is reasonable and should be approved, which are further authorized by statute via Labor Code § 2699(k)(1).

Should the Court decide to perform an optional lodestar crosscheck, the requested attorneys' fees represent a lodestar of 0.18. Here, Plaintiff's counsel expended 119.8 hours, excluding administrative time, multiplied by the hourly rate of $600 per hour as detailed in the accompanying declaration of Mr. Waltman. (See Waltman Decl., ¶ 26, see generally ¶¶ 22-30). This multiplier satisfies the optional lodestar cross check and renders the one third fee requested pursuant to the terms of the Settlement squarely within the presumptively acceptable range. *Laffitte v. Robert Half International Inc.* (2016) 1 Cal. 5th 480; *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) ("the Ninth Circuit's presumptively acceptable range [is] 1.0-4.0"); *Vizcaino v. Microsoft Corp.,* 290 F.3d 1043, 1050-1052 (9th Cir. 2022) (awarding 3.65 multiplier).

Furthermore, Plaintiff's counsel is entitled to reimbursement of the out-of-pocket costs reasonably incurred investigating and prosecuting this case. *See In re Media Vision Tech. Sec. Litig*., 913 F. Supp. 1362, 1366 (N.D. Cal. 1995) (citing Mills *v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970)). Counsel expended over $6,239.83 in ordinary and reasonable litigation expenses, including LWDA filing fees, case filing fees, service fees, mailing costs, courtesy copy fees, OneLegal fees, and expert fees. *See* Waltman Decl. ¶ 23. Counsel's request for litigation costs should be granted in accordance with the Settlement Agreement, which allows for reimbursement of up to $6,239.83 in costs, which are recoverable by statute under the Labor Code and Code of Civil Procedure, including Code of Civil Procedure § 1021.5 and Labor Code § 2699(k)(1). (Waltman Decl., ¶ 23.)

C. Plaintiff's Service Award of $500 is Warranted

Plaintiff has spent many hours over the past 2.5 years prosecuting the PAGA claims at issue. In early 2023, Plaintiff Adam Saffiote sought legal advice and counsel regarding employment and payroll issues he perceived were affecting him and his coworkers. Prior to filing the case, he spoke with his attorneys, provided documents and records, and signed authorizations so that his attorneys could request additional employment and payroll records. Upon receipt of the records, counsel, in conjunction with Plaintiff, conducted a thorough investigation regarding the claims, including interviewing Plaintiff, reviewing policies and employment records, accessing publicly available information about Defendants, searching the LWDA website, Pacer, and state court dockets for any related cases, and conducting legal research and analysis. (See Waltman Decl., ¶¶ 9, 21(g).)

Plaintiff has remained involved in the case since it was filed. He helped with reviewing and evaluating policies and documents, and responding to counsel's questions as needed throughout the investigation. Plaintiff helped review the pleadings and discovery in the case, and helped in preparing the case for mediation. (See Waltman Decl., ¶ 21(g).)

Plaintiff also took on a reputational risk by acting as the named Plaintiff in this public representative lawsuit. He understood that the case could take a long time, but still chose to proceed on a representative basis to ensure Defendants complied with the law moving forward. Providing a modest Service Award in such cases furthers the purpose of PAGA by encouraging such enforcement action.

V. GOOD CAUSE EXISTS TO GRANT THIS RELIEF ON AN EX PARTE BASIS

Good cause exists to grant *ex parte* relief on this issue because approval of the settlement of the PAGA claims will fully and entirely resolve this case. Waiting for the process of a noticed motion will unnecessarily delay the resolution of the case into 2026.

Further, this is an unopposed application, and no party would be prejudiced by having this matter heard on an *ex parte* basis. Notice of the *ex parte* application and moving papers have been provided to the LWDA more than 16 court days in advance of the *ex parte* hearing, in addition to the previous notice provided to the LWDA on July 31, 2025.

The interests of justice of justice by preserving the Court's and the Parties' resources. It will give prompt effect to a reasonable settlement for this case that was reached after an informed arms-length negotiation between parties represented by experienced and qualified counsel.

VI. CONCLUSION

For the foregoing reasons, Plaintiff Adam Saffiote requests that this Court issue an order approving this PAGA Settlement Agreement, dismissing the action, and entering judgment.

Respectfully submitted,

Dated: September 4, 2024 WALTMAN EMPLOYMENT LAW

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Rick A. Waltman
Attorneys for Plaintiff Adam Saffiote