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Attorneys for Plaintiff Alejandro Esparza

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

ALEJANDRO ESPARZA *et al.*

Plaintiff,

vs.

OTAY MESA SALES, INC. *et al.*

Defendants.

Case No. 37-2023-00014957-CU-OE-CTL

Hon. Richard S. Whitney
Dept. 68

Notice of Entry of Order Granting PAGA Settlement and Entering Judgment

Action Filed: April 11, 2023

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE NOTICE THAT:

1. On August 13, 2025, in this Department, the Court entered the Order Approving PAGA Settlement and Entering Judgment attached hereto as Exhibit 1.

2. A copy of this Notice has been submitted to the LWDA via its online electronic portal in accordance with Labor Code § 2699(s)(3).

3. Notice of the Court's final ruling and entry of judgment is hereby provided.

Respectfully submitted,

Dated: August 20, 2025

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro

Nicholas J. Ferraro
Attorney for Plaintiff Alejandro Esparza

EXHIBIT 1

ELECTRONICALLY FILED
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Attorneys for Defendants
OTAY MESA SALES, INC. and OTAYSALES.COM, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

ALEJANDRO ESPARZA, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

OTAY MESA SALES, INC.; OTAYSALES.COM, INC.; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00014957-CU-OE-CTL

Hon. Richard S. Whitney
Dept. 68

JOINT STIPULATION REQUESTING PAGA SETTLEMENT APPROVAL; [redacted]] ORDER APPROVING PAGA SETTLEMENT AND ENTERING JUDGMENT

Action Filed: April 11, 2023

Plaintiff Alejandro Esparza ("Plaintiff") and Defendants Otay Mesa Sales, Inc. and Otaysales.com, Inc. (collectively, "Defendants") have reached a settlement of Plaintiff's claims brought under the Private Attorneys General Act ("PAGA"). The Parties, through this Stipulation, request that the Court sign the Proposed Order approving the PAGA Settlement under Labor Code section 2699(s)(2). The relevant facts related to the Settlement are detailed below and in the declaration of Nicholas J. Ferraro, filed concurrently herewith.

I. BACKGROUND

On March 23, 2023, Plaintiff submitted a notice to the Labor and Workforce Development Agency ("LWDA") asserting claims for civil penalties under the PAGA on behalf of themself and the Covered Employees. *See* Declaration of Nicholas J. Ferraro ("Ferraro Decl.)", ¶ 2. On April 11, 2023, Plaintiff filed a class action in San Diego Superior Court. Ferraro Decl., ¶ 11. After exhausting administrative remedies, Plaintiff filed a First Amended Complaint on May 31, 2023, adding a cause of action under the Private Attorneys General Act (PAGA) seeking civil penalties for the same alleged violations set forth in the original complaint. Ferraro Decl., ¶ 12.

On September 5, 2023, following the filing of the First Amended Complaint, Defendants filed a Motion to Compel Arbitration. On January 26, 2025, the Court granted the motion, ordering Plaintiff's individual PAGA claims to arbitration, dismissing Plaintiff's class action without prejudice, and staying the non-individual PAGA claims pending resolution of the arbitration. Ferraro Decl., ¶ 13.

On February 21, 2025, the Parties reached a resolution of Plaintiff's PAGA Action after engaging in settlement discussions and exchange of information. Ferraro Decl., ¶¶ 15-16. The Parties fully executed the Settlement of Private Attorneys General Act Claims on April 21, 2025. Ferraro Decl., ¶ 16, Ex. 1. A copy of the Settlement is attached to the declaration of Nicholas J. Ferraro as Exhibit 1.

On April 22, 2025, Plaintiff electronically submitted a Notice of Proposed Settlement of this PAGA action to the LWDA via the LWDA's online filing system. Ferraro Decl., ¶ 17.

II. LEGAL STANDARD

A. The PAGA Settlement May Be Approved.

PAGA settlements require judicial review and approval. Cal. Lab. Code § 2699(s)(2). "[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. 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 used to assess the reasonableness of class action settlements when reviewing 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 in full in the **Declaration of Nicholas J. Ferraro**, each of these factors support approval of the PAGA settlement. Defendants dispute all claims and reiterate that they have resolved this case without admission of liability.

B. The Fees and Costs May Be Approved.

The Settlement authorizes attorneys' fees of up to 33.33% of the Gross Settlement Amount. Ferraro Decl., ¶ 22, Ex. 1. The purpose of the percentage method is to avoid unjust enrichment 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:

> The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation … —convince us the percentage method is a valuable tool that should not be denied our trial courts.

Laffitte v. Robert Half International, Inc. (2016) 1 Cal. 5th 480, 503 (citations omitted). "[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. Plaintiff contends that attorneys' fees to Plaintiff's counsel in the amount of 33.33% of the Settlement is reasonable and should be approved, which are further authorized by statute via Labor Code § 2699(k)(1). See generally Amended Ferraro Decl., ¶¶ 22-42. Defendants do not oppose a request by Plaintiff's counsel for attorneys' fees in an amount that does not exceed 33.33% of the Gross Settlement Amount (i.e., $49,995.00).

Plaintiff's counsel is entitled to reimbursement of the out-of-pocket costs they 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 a total of $2,674.93 in ordinary and reasonable litigation expenses. See Ferraro Decl., ¶ 23. Counsel's request for litigation costs should be granted in accordance with the Settlement Agreement, which allows for reimbursement of *up to* $10,000.00 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). The itemized statement of counsel's costs is set forth in the declaration of Nicholas J. Ferraro. Ferraro Decl., ¶ 23.

C. The Named Plaintiff's Individual Payment May Be Approved.

Service awards are common in California class and representative actions, but there are no published California opinions available to Plaintiff's knowledge discussing the standard governing such payments in PAGA only actions like this one. Therefore, Plaintiff addresses the appropriateness of the service award under the same heightened standard used for class action settlements, as follows:

A "representative is entitled to a fee in a California class action." *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1394 (2010). Service awards "are fairly typical in class action[s]," "to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action." *Id.* To determine whether a service award is reasonable, courts may consider: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *See Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

The service award is justified considering the reputational risk Plaintiff assumed by litigating these claims against a former employer. *See Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at *36 (N.D. Cal. Apr. 1, 2011) (discussing risks for employees who file wage and hour class actions); *Billinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 267-68 (N.D. Cal. 2015) (finding "personal detriment" upon testimony that future employers can easily learn that a prospective employee served as a plaintiff through the internet); *La Fleur v. Medical Management Intern, Inc.*, 2014 WL 2967475, *8 (C.D. Cal. June 25, 2014) (awarding $15,000 to each named plaintiff in part for attesting to their fear that the lawsuit will harm their future job prospects in the industry).

The risk of judgment for the employer's litigation costs, alone, is sufficient to support Plaintiff's service award. *See Earley v. Superior Court*, 79 Cal. App. 4th 1420, 1433-34 (2000).

Further, the service award is appropriate because Plaintiff derives no monetary benefit from this case beyond what he would ordinarily receive as an ordinary aggrieved employee. *In re Toys 'R' Us-Delaware, Inc. FACTA Litig.*, 295 F.R.D. 438 (C.D. Cal. Jan. 17, 2014); *Van Vranken,* 901 F. Supp. 294, 299 (N.D. Cal. 1995). ***This is despite the fact that as part of the settlement Plaintiff agreed to a general settlement and release of all claims, including a 1542 waiver.*** Here, Plaintiff will recover no more than other employees, despite undergoing personal sacrifice in bringing this suit on their behalf. Plaintiff forewent the opportunity to file individual claims for their individual benefit alone so that they could together vindicate the rights of others and recover compensation for them on a representative-wide basis. Unlike other employees, Plaintiff faced the financial risk of a judgment for costs in the event Defendants had prevailed in this litigation. And Plaintiff delayed payment from what would be a relatively quick individual settlement in lieu of pursuing this action instead.

Plaintiff very respectfully submits these reasons under the foregoing legal standard, as further supported and discussed in the **Declaration of Alejandro Esparza** submitted herewith, in support of the request for the $10,000 service award.

III. STIPULATIONS

The Parties, through their attorneys of record, hereby stipulate that the PAGA settlement in this case is fair and reasonable.

Therefore, the Parties respectfully request that this Court approve the Settlement and sign the Proposed Order.

Respectfully submitted,

Dated: August 11, 2025

Ferraro Vega Employment Lawyers, Inc.

/s/ *Dorota A. James*
Dorota A. James
Nicholas J. Ferraro
Lauren N. Vega
Attorneys for Plaintiff Alejandro Esparza

Dated: August 11, 2025

Boren, Osher & Luftman, LLP

/s/ *Jeremy J. Osher*
Jeremy J. Osher
Attorney for Defendants Spirit Services, Inc. f/k/a Otay Mesa Sales, Inc. and Otaysales.com, Inc.

[[redacted]] ORDER

The Court has reviewed the Joint Stipulation Requesting PAGA Settlement Approval, the Declaration of Nicholas J. Ferraro, and its exhibits, including the Private Attorneys General Act Settlement Agreement and Release ("Settlement").

NOW, THEREFORE, THE COURT HEREBY ORDERS AS FOLLOWS:

The Parties' Joint Stipulation Requesting PAGA Settlement Approval is **GRANTED** and approved pursuant to California Labor Code section 2699(s)(2). After the attorneys' fees, individual representative service payment, costs, and administrator's expenses are deducted from the Gross Settlement Amount, the Net Settlement Amount is $82,330.07, of which 75% ($61,747.55) shall be distributed to the LWDA and the remaining 25% ($20,582.52) shall be distributed to the aggrieved employees as their share of PAGA penalties.

Accordingly, the $150,000.00 gross settlement shall be distributed as follows:

1. $61,747.55 to the Labor and Workforce Development Agency for PAGA penalties
2. $20,582.52 to the PAGA Employees
3. $10,000.00 to Plaintiff as an enhancement payment
4. $49,995.00 to Plaintiff's counsel for attorneys' fees
5. $2,674.93 to Plaintiff's counsel for costs
6. $5,000.00 to the Settlement Administrator

Plaintiff, Defendant, and the Settlement Administrator are ordered to carry out the terms of the settlement in accordance with the Settlement Agreement.

JUDGMENT

Judgment shall be entered through the filing of this order and judgment. Cal. Code Civ. Proc. § 668.5. Plaintiff shall take from the Complaint only the relief set forth in the Settlement Agreement and this Order and judgment. The Court retains jurisdiction over the parties to enforce the terms of the Settlement Agreement and the final order and judgment.

IT IS SO ORDERED

Date: 8-13-25

Hon. Richard S. Whitney
Judge of the Superior Court