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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

BAO CHA, in an individual capacity, as
well as a representative capacity on behalf
of the State of California,

Plaintiff,

vs.

ALLEN SPEES FAMILY HOME, an
unknown entity, and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 23CECG02451

**NOTICE OF MOTION AND MOTION FOR
APPROVAL OF PAGA SETTLEMENT;
SUPPORTING MEMORANDUM OF POINTS
& AUTHORITIES**

Date: July 8, 2025

Time: 3:30 p.m.

Dept: 403

Judge: Hon. Lisa Gamoian

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 8, 2025 at 3:30 p.m. in Department 403 of the Fresno County Superior Court, located at 1130 O Street, Fresno, CA 93721, Plaintiff, BAO CHA, will and hereby does move for an order approving settlement of claims under the Private Attorneys General Act ("PAGA"), Cal. Labor Code §§ 2699, *et. seq.*

This notice and motion is made on the grounds that the proposed settlement is fair, reasonable and adequate and consistent with the public policy goals of PAGA. This motion is also based upon this notice; the Memorandum of Points and Authorities submitted herewith; the Declarations and exhibits filed concurrently herewith; and upon such other documentary and oral

1 evidence or argument as may be presented to the Court at the hearing of this motion.

2
3 Dated: May 1, 2025

NARAYAN LAW, APC

4
5 By:


Santosh Narayan, Esq.
Attorney for Plaintiff, Bao Cha

1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Bao Cha ("Plaintiff") seeks the Court's approval, pursuant to Labor Code section
4 2699(1), of a settlement of Plaintiff's claims under the Labor Code Private Attorneys General Act
5 ("PAGA"), arising from Defendant's alleged failure to provide rest and meal periods, failure to
6 provide accurate itemized wage statements, failure to maintain accurate payroll records, and
7 failure to pay wages due upon termination. For the reasons explained below, Plaintiff respectfully
8 requests that the Court approve the settlement.

9 **II. FACTS & PROCEDURAL HISTORY**

10 Plaintiff filed this Action in the Fresno County Superior Court on February 7, 2023,
11 alleging six causes of action for: (1) Failure to Provide Meal Breaks; (2) Failure to Provide Rest
12 Breaks; (3) Failure to Provide Accurate Itemized Wage Statements; (4) Failure to Pay Wages Due
13 on Termination; (5) Failure to Keep Accurate Payroll Records; and (6) Recovery of PAGA
14 Penalties. In summary, Plaintiff's Complaint alleges Defendants failed to provide Plaintiff and
15 other aggrieved employees with duty-free rest and meal breaks in violation of California's wage
16 and hour laws. The Complaint further alleges Defendants failed to keep accurate records of hours
17 worked, and failed to provide employees with pay stubs as required by Labor Code section 226.
18 (Schwin Decl., ¶¶ 20-22, Exs A and B).

19 The Parties subsequently conducted discovery to ascertain the strength of Plaintiff's
20 PAGA claims asserted in the Lawsuit and the strength of Defendants' defenses. (Schwin Decl., ¶
21 23) On June 7, 2024, the Parties engaged in mediation with mediator Lee Jacobson. Following
22 the mediation, the Parties arrived at a settlement based on extensive, arms-length negotiations,
23 taking into account all relevant factors, present and potential. (Schwin Decl., ¶ 24).

24 The settlement is memorialized in a Settlement Agreement with the following material
25 terms: Defendant will pay a gross settlement amount of \$130,000, which will cover claims
26 administration, attorneys' fees, litigation costs, Plaintiff's damages, and PAGA penalties. \$15,000
27 of the \$130,000 will be paid directly to Plaintiff to compensate her for her individual claims and in
28 exchange for a general release. This amount is not a service award but rather is compensation for

1 damages sought by Plaintiff on her non-representative wage and hour claims. In addition, up to
2 \$10,000 of the \$130,000 gross settlement amount will cover claims administration, up to \$40,000
3 of the \$130,000 gross settlement amount will cover attorneys' fees, and up to \$10,000 of the
4 \$130,000 gross settlement amount will cover Plaintiff's out of pocket litigation expenses. To the
5 extent claims administration costs, attorneys' fees and/or Plaintiff's out of pocket litigation
6 expenses are set at lower amounts than these "up to" amounts, the remaining funds will go towards
7 PAGA penalties (i.e. the "Net Settlement Amount"). Of the Net Settlement Amount, for each
8 PAGA Settlement Group Member, seventy-five percent (75%) of his or her allocated share of the
9 Net Settlement Amount shall be distributed to the LWDA ("LWDA Penalty Payment") and the
10 remaining twenty-five percent (25%) shall be distributed to the PAGA Settlement Group Members
11 ("Putative Aggrieved Employee Penalty Payment"). The "Putative Aggrieved Employee Penalty
12 Payment" for each PAGA Settlement Group Member shall be determined based on a formula
13 taking into account the number of each PAGA Settlement Group Member's "Pay Periods." A "Pay
14 Period" shall be defined as any instance when a Putative Aggrieved Employee received a wage
15 statement from Defendant between April 4, 2022 and the Approval Date, based on Defendants'
16 data. The amount paid to each PAGA Settlement Group Member will be determined as follows:
17 The Net Settlement Amount will be divided by the total number of Pay Periods for all PAGA
18 Settlement Group Members during the relevant time period (April 4, 2022 up to and including the
19 Approval Date) ("Pay Period Amount"). Each PAGA Settlement Group Member will then be paid
20 an amount equal to the Pay Period Amount multiplied by that PAGA Settlement Group Member's
21 total number of Pay Periods, multiplied by twenty-five percent (25%). (Schwin Decl., ¶ 25). The
22 release of the PAGA claim is limited in scope to claims for civil penalties recoverable under
23 PAGA. While Plaintiff is bound by a general release and Civil Code section 1542 waiver, the
24 aggrieved employees and the LWDA will be subject only to a limited scope release. This further
25 supports that the settlement is fair and reasonable, and was negotiated by sophisticated counsel in
26 the interests of the public. (Schwin Decl., ¶ 26).

27 Plaintiff seeks court approval of attorneys' fees in the amount of \$40,000, which
28 represents 30.77% of the \$130,000 gross settlement amount. The requested fees are less than the

1 lodestar. (Schwin Decl., ¶ 27; Narayan Decl., ¶ 17). Plaintiff also seeks reimbursement for
2 advanced costs of \$5,341.51. (Schwin Decl., ¶ 28; Narayan Decl., ¶ 18).

3 Defendant's maximum exposure on Plaintiff's individual, non-PAGA claims is
4 \$70,319.60. Defendant's maximum exposure on the PAGA claim is \$1,228,800. The settlement
5 of \$130,000 represents approximately 10% of Defendant's maximum exposure. This discount is
6 justified because of: (a) Defendant's financial condition; (b) the strengths and weaknesses of the
7 case; and (c) a lack of evidence of intentional harm by Defendant. Not only are the PAGA
8 penalties discounted, but the amount to be paid to Plaintiff for her individual claims and in
9 exchange for a general release are also discounted, establishing there was no self-dealing. Based
10 on the above, the settlement is fair, reasonable, and consistent with the goals of PAGA. (Schwin
11 Decl., ¶¶ 30-33).

12 **III. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

13 **A. Standard of Review**

14 Labor Code § 2699(1)(2) states that "the superior court shall review and approve any
15 settlement of any civil action filed pursuant to this part." In deciding whether to grant approval of
16 the proposed PAGA settlement, the primary issues to be decided is whether the settlement is fair,
17 adequate, and reasonable. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.) "Because
18 many of the factors used to evaluate class action settlements bear on a settlement's fairness—
19 including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity
20 and likely duration of further litigation, and the settlement amount—these factors can be useful in
21 evaluating the fairness of a PAGA settlement." (*Id.*) "Given PAGA's purpose to protect the public
22 interest, we also agree with the LWDA and federal district courts that have found it appropriate to
23 review a PAGA settlement to ascertain whether a settlement is fair in view of PAGA's purposes
24 and policies." (*Id.* citing *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d
25 1110, 1133.)

26 **B. This Settlement Meets the Statutory Requirements of PAGA**

27 Under PAGA, an "aggrieved employee" may bring an action for civil penalties for Labor
28 Code violations on behalf of himself or herself and other current or former "aggrieved"

1 employees. (Cal. Lab. Code § 2699(a)). A plaintiff suing under PAGA “does so as the proxy or
2 agent of the state’s labor law enforcement agencies.” (*Arias v. Superior Court* (2009) 46 Cal.4th
3 969, 986). Accordingly, a judgment in a PAGA action “binds all those, including nonparty
4 aggrieved employees, who would be bound by a judgment in an action brought by the
5 government.” (*Id.*).

6 PAGA imposes two requirements for the settlement of a PAGA claim. Both are met here.
7 First, any civil penalties recovered, whether by judgment or settlement, must be distributed as
8 follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved employees. (See
9 *Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab. Code, § 2699(i)).
10 The parties’ settlement so provides. (Schwin Decl., ¶ 29, Ex C.) Second, the LWDA must be given
11 notice of the settlement so that it may be heard before the Court decides whether to grant approval.
12 (Cal. Lab. Code § 2699(l)(2)). Here, notice is being given to the LWDA concurrently with the
13 filing of this motion. (Narayan Decl., ¶ 19).

14 **C. This Settlement Is Fair, Reasonable, And Adequate In View Of PAGA’s Public**
15 **Policy Goals**

16 In bringing a PAGA action, “[t]he employee-plaintiff acts as the proxy or agent of the
17 state labor enforcement agencies representing the same legal right and interest as those
18 agencies...” (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 394). The
19 California Supreme Court and Courts of Appeal have held, the purpose of PAGA is not to seek the
20 recovery of damages for the individual employees. Rather, PAGA is a “law enforcement”
21 mechanism utilized to ensure that employers comply with the Labor Code. (*Arias v. Superior*
22 *Court, supra*, 46 Cal. 4th at 986 [holding that action to recover civil penalties “is fundamentally a
23 law enforcement action designed to protect the public and not to benefit private parties”]; see also
24 *Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489, 499 [explaining that restitution is not
25 goal of PAGA; it is law enforcement action designed to protect public.]). Consistent with this
26 view of PAGA as a law enforcement mechanism that is not designed to benefit private parties, the
27 California Supreme Court recently held that “the amount for unpaid wages referenced in [Labor
28 Code] section 558 is not part of that section’s civil penalty and is not recoverable through a PAGA

1 action[,]” because unpaid wages are “compensatory damages.” (*ZB, N.A. v. Superior Court* (2019)
2 8 Cal.5th 175, 188.)

3 As for the interests of the LWDA (in whose shoes Plaintiff stands), its top enforcement
4 priorities are “to vigorously enforce minimum labor standards in order to ensure employees are not
5 required or permitted to work under substandard unlawful conditions...” and to “protect employers
6 who comply with the law from those who attempt to gain a competitive advantage at the expense
7 of their workers by failing to comply with minimum labor standards.” (Labor Code § 90.5(a)).

8 However, in enacting PAGA, the Legislature sought to balance the interests of the State in
9 vigorously enforcing minimum labor standards with the rights of the citizens to be free from
10 excessive fines and overly harsh punishments. Accordingly, PAGA provides that “a court may
11 award a lesser amount than the maximum civil penalty amount ... if, based on the facts and
12 circumstances of the particular case, to do otherwise would result in an award that is unjust,
13 arbitrary and oppressive, or confiscatory.” (Labor Code § 2699(e)(2)).

14 Courts have discretion to determine how much, if any, money in a given case should be
15 attributed to PAGA. For instance, in *Nordstrom Conm’n Cases* (2010) 186 Cal.App.4th 576, the
16 Court affirmed a settlement approval after an objector argued that the settlement was not fair and
17 reasonable because it allocated no portion of the recovery to PAGA penalties. (*Id.* at 579). The
18 *Nordstrom* Court concluded that, based on the facts of that case, the lower court did not abuse its
19 discretion. (*Id.*) In *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, the Court found no
20 abuse of discretion in awarding only 10% of the \$50 maximum penalty per initial violation “based
21 on Starbucks’s ‘good faith attempts’ to comply with meal break obligations and because the court
22 found the violations were minimal.” (*Id.* at 529.)

23 Courts should take the employer’s financial condition into account in deciding whether to
24 approve a PAGA settlement. (See, e.g. *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal., Aug. 25,
25 2017, No. 16-CV-04708-LHK) 2017 WL 3670794, at *5 [approving PAGA settlement of 4.5% of
26 maximum exposure due to “Defendant’s weak financial condition.”].) Courts should also evaluate
27 the strengths and weaknesses of the case in deciding whether a settlement is fair. (*Kullar v. Foot
28 Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) And, because PAGA penalties are punitive

1 in nature and are designed to deter employers from violating the Labor Code, courts should
2 likewise assess whether the underlying labor code violations were intentionally designed to harm
3 workers or whether they were based on a good faith but mistaken belief. (*Fleming v. Covidien, Inc.*
4 (C.D. Cal. Aug. 12, 2011 No. ED-CV10-01487-RGK) 2011 U.S. Dist. LEXIS 154590, *8–*9
5 [finding lack of willfulness by employer and efforts to comply with law warranted more than 80%
6 reduction in penalties]; *Aguirre v. Genesis Logistics* (C.D. Cal. Dec. 30, 2013 No. SACV-12-
7 00687-JVS) 2013 U.S. Dist. LEXIS 189820, *5, *7 [reducing PAGA penalty by approximately
8 72% on grounds that full amount would be punitive, even though defendant had not corrected
9 unlawful practice after five years of notice.]).

10 Similarly, courts have consistently approved settlements that allocate very little to the
11 settlement of PAGA claims, even where the underlying claims result in much more substantial
12 settlement amounts. (See e.g., *Lopez v. Bank of Am., N.A.* (N.D. Cal. Aug. 27, 2015 No. 10-cv-
13 01207-JST) 2015 WL 5064085, at *9 [granting final approval of \$3,600,000 settlement that
14 allocated payment of \$15,000 to LWDA]; *Altamirano v. Shaw Industries, Inc.* (N.D. Cal. July 24,
15 2015 No. 13-cv-00939-HSG) 2015 WL 4512372, at *2 [granting preliminary approval of
16 \$500,000 settlement that allocated \$1,500 to LWDA]; *Boyd v. Bank of Am. Corp.* (C.D. Cal. Nov.
17 18, 2014 No. SACV 13-0561-DOC (JPRx)), 2014 WL 6473804, at *12-13 [granting final approval
18 of a \$5,800,000 settlement that allocated payment of \$18,750 to LWDA]; *Torchia v. W.W.*
19 *Grainger, Inc.* (E.D. Cal. Aug. 13, 2014 No., 1:13-cv-01427-LJO-JLT) 2014 WL 3966292, at *2
20 [granting preliminary approval of gross settlement amount of \$2,750,000 that allocated \$10,000 to
21 PAGA claims]).

22 Here, Defendant has a strong argument that the maximum penalties are “unjust, arbitrary
23 and oppressive, or confiscatory” because Defendant lacks the ability to pay. Specifically, as part
24 of the mediation in this Action, Defendant produced a confidential report by a CPA named
25 Kenneth Creal who opined Defendant would not be able to pay more than \$130,000 in settlement
26 without incurring financial hardship. In addition, the strength of the case also supports settlement
27 at the discounted amount. The payroll records produced in discovery reveal that Plaintiff and the
28 other aggrieved employees were clocking out and in for meal periods, which on their face appear

1 to establish compliance with meal period obligations. Liability would hinge on the ability of
2 Plaintiff and the other aggrieved employees to convince a trier of fact that even though they
3 clocked out and in for meal periods, they actually remained on duty and were working during
4 those meal periods. While the documents Plaintiff and the other aggrieved employees signed at
5 the time of hire seem to corroborate that meal periods were not duty-free, it is not at all a
6 foregone conclusion based on the evidence. Lastly, a significant reduction in PAGA penalties is
7 justified because there is no evidence Defendant was intentionally trying to take advantage of its
8 employees. Thus, the settlement is fair and reasonable due to Defendant's financial condition, the
9 significant risk of losing on the merits, and the lack of evidence of intentional harm. (Schwin
10 Decl., ¶ 33).

11 Moreover, the release of the PAGA claim is limited in scope to claims for civil penalties
12 recoverable under PAGA. While Plaintiff is bound by a general release and Civil Code section
13 1542 waiver, the aggrieved employees and the LWDA will be subject only to a limited scope
14 release. This further supports that the settlement is fair and reasonable, and was negotiated by
15 sophisticated counsel in the interests of the public. (Schwin Decl., ¶¶ 26, 29, Ex. C).

16 On May 1, 2025, Plaintiff's counsel submitted the settlement to the LWDA, and gave
17 notice of the instant motion and hearing date to the LWDA. To the extent the LWDA does not
18 object or seek to intervene, this factor will further support Court approval. (Narayan Decl., ¶ 19).

19 Finally, public policy strongly favors the settlement of litigation. (See *Consumer*
20 *Advocacy Group v. Kintetsu* (2006) 141 Cal.App.4th 46, 63). Because the proposed settlement is
21 neither unjust nor ignores the public interest, it should be approved.

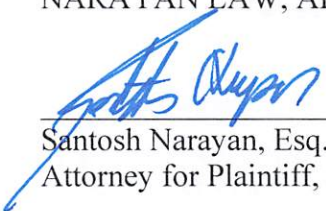
22 **IV. CONCLUSION**

23 For all the reasons discussed above, Plaintiff requests that the Court approve the proposed
24 settlement.

25 Dated: May 1, 2025

NARAYAN LAW, APC

26
27 By:


Santosh Narayan, Esq.
Attorney for Plaintiff, Bao Cha