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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

LAURA BARRAGAN, in a Representative capacity only, and on behalf of other members of the general public similarly situated,

Plaintiff

v.

HALL EQUITIES GROUP, a California Corporation; and DOES 1-10, inclusive

Defendants

CASE NO. C23-01379

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION RE: UNOPPOSED
PAGA APPROVAL**

Date: July 26, 2024

Time: 8:30 a.m.

Dept.: 18

Judge: Hon. Danielle K Douglas

1 **I. SUMMARY OF MOTION**

2 This is a “Wage and Hour” representative action, under California’s Private Attorneys General
3 Act of 2004. Plaintiff LAURA BARRAGAN, in a Representative capacity only, and on behalf of
4 other members of the general public similarly situated (“Plaintiff” respectfully submits the instant
5 Points and Authorities in support of her motion for Approval of the PAGA Settlement.

6 This Request is **Unopposed**.

7 The LWDA was timely notified of this proposal, concurrent with the filing of the motion, and
8 does **not** object to the allocations. (See Proof of Service on LWDA).

9 **II. SUMMARY OF SETTLEMENT TERMS**

10 This is a Labor Code §2698 *et seq.* “Wage and Hour” (“PAGA”) action brought against HALL
11 EQUITIES GROUP, (“HEG”). As this is a “PAGA” action only, the Limitations Period begins on
12 April 2, 2022. (Ex. 1 at ¶ 1.18). There are approximately **55** PAGA Members at issue. (Ex. 1 at ¶ 4.1).

13 Following the exchange of discovery, analysis of numerous sets of time and wage data, and a
14 full day mediation presided over by Jill Sperber, Esq., the Parties reached a proposed settlement that
15 includes a payment of penalties to the LWDA. (Yaeckel Decl., ¶4–5).

16 Based on the below figures, each PAGA Member would receive an average payment of
17 approximately **\$280.33**. This figure represents an average *only*, as the actual amounts paid will vary
18 depending on the amount of workweeks employed during the PAGA period. (Ex. 1 at 3.2.3.1).

19 The Total Value of the proposed Settlement is **\$114,375.00**. The “Monetary Terms” are found
20 in Exhibit 1 (paragraph 3) and are summarized as follows:

- 21 * **\$38,125.00** Attorneys’ Fees (1/3 of total settlement value);
22 * **\$11,827.63** Costs of Litigation.
23 * **\$2,750.00** Administration Expenses
24 * Sub-Total of **\$61,672.37**.
25 * 75% (**\$46,254.28**) shall be assigned/paid to the LWDA as penalties.
26 * The remaining 25% (**\$15,418.09**) will be disbursed among all employees based
27 on pay periods employed during the PAGA period.
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1 Given the above, the average payment to each individual employee will be approximately
2 **\$280.33.** (Yaeckel Decl., ¶6).

3 Further, there are no restrictions for any of the **55** employees to file individual actions, as the
4 settlement agreement only covers PAGA claims. (Yaeckel Decl., ¶7); **Exhibit 1:** “Release by
5 Aggrieved Employees” ¶ 5.3).

6 Plaintiffs’ counsel is well versed in class and representative (PAGA) litigation. Based on that
7 experience, counsel submits this settlement represents a fair and adequate payment to the LWDA and
8 aggrieved employees. (Yaeckel Decl., ¶13).

9 Should the Court deem if necessary, a lodestar cross-check of the requested attorneys fees.
10 Given the actual fees incurred, in the amount of \$52,890.00, no lodestar multiplier is necessary, and
11 counsel is requesting less in fees than what was billed. (See Yaeckel decl. ¶ 14).

12 Plaintiff’s counsel submits its fees are reasonable and in line with (or lower) than rates charged
13 in the community by attorneys with similar experience. (See Yaeckel decl. ¶¶ 15-20).

14 Plaintiff also seeks reimbursement for reasonable litigation expenses incurred in the amount
15 of \$11,827.63. (See Yaeckel decl. ¶ 21).

16 The parties proposed notice, to accompany the settlement checks following approval, is
17 attached for the Court’s review to the Declaration of Eric Yaeckel as **Exhibit 4.**

18 **III. CONTROLLING AUTHORITY**

19 PAGA “authorizes an employee to bring an action for civil penalties on behalf of the state
20 against his or her employer for Labor Code violations committed against the employee and fellow
21 employees.” *Iskanian v. CLS Trans. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 360. “To compensate
22 for the lack of [a]dequate financing of essential labor law enforcement functions,’ the California
23 legislature enacted PAGA to permit aggrieved employees to act as private attorneys general to collect
24 civil penalties for violations of the Labor Code.” *Sakkab v. Luxottica Retail N. Am., Inc.* (9th Cir.
25 2015) 803 F.3d 425, 430.

26 Recently the Court of Appeal has given guidance to trial courts in reviewing a PAGA
27 settlement:
28

1 We therefore hold that **a trial court should evaluate a PAGA settlement to**
2 **determine whether it is fair, reasonable, and adequate in view of PAGA's**
3 **purposes to remediate present labor law violations, deter future ones, and to**
4 **maximize enforcement of state labor laws.** (*See Williams*, *supra*, 3 Cal.5th at p.
5 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA "sought to remediate present
violations and deter future ones"]; *Arias*, *supra*, 46 Cal.4th at p. 980, 95 Cal.Rptr.3d
588, 209 P.3d 923 [the declared purpose of PAGA was to augment state enforcement
efforts to achieve maximum compliance with labor laws].)
Moniz v. Adecco USA, Inc., (2021) 72 Cal. App. 4th 56, 77.

6 Prior to *Moniz*, other Courts have followed the rationale in *O'Connor v. Uber Techs., Inc.*, 201
7 F.Supp.3d 1110, 132-35 (N.D. Cal. 2016), which states a court is permitted to approve a PAGA
8 settlement if the settlement is "fair and adequate in view of the purposes and policies of the statute."
9 *Id.*

10 A court may award a lesser amount than the maximum civil penalty amount if, based on the
11 facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,
12 arbitrary and oppressive, or confiscatory. Lab. Code, § 2699(e)(2); *Amaral vs. Cintas Corp. No. 2*
13 (2008) 163 Cal.App.4th 1157, 1213-1214. *See e.g., Fleming v. Covidien Inc.*, 2011 WL 7563047, at
14 *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 82%).

15 The Court in *Flores v. Starwood Hotels & Resorts Worldwide, Inc.* ("Flores") the court was
16 asked to approve a PAGA settlement (the "Settlement"). *Flores v. Starwood Hotels & Resorts*
17 *Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1075–76 (C.D. Cal. 2017). In deciding whether the court
18 should approve the Settlement, the court looked at the California legislature, the California Courts of
19 Appeal, the California Supreme Court, and the California Labor & Workforce Development Agency
20 for a definitive answer as to what precedent the court should follow in either approving or denying the
21 settlement. *Id.* The court was not able to find a definitive answer. *Id.* As such, the court followed the
22 rationale in *O'Connor v. Uber Techs., Inc.*, 201 F.Supp.3d 1110, 132-35 (N.D. Cal. 2016), which states
23 a court is permitted to approve a PAGA settlement if the settlement is "fair and adequate in view of
24 the purposes and policies of the statute." *Id.*

25 In deciding whether the settlement was "fair and adequate," the Court's have looked sought
26 how the parties divvied up the civil penalties under Section 2699(i) of the California Labor Code.
27 *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1076–77 (C.D. Cal.
28

2017). As the court felt the parties' division of penalties was fair and adequate pursuant to the statute, the court approved the settlement. *Id.*

IV. DISCUSSION

The parties reached the terms of their proposed settlement agreement following the exchange of extensive information and employment records. The parties submit the proposed settlement of PAGA penalties is fair, adequate, and reasonable.

A. THE NATURE AND SCOPE OF THE ALLEGED VIOLATIONS

The Complaint alleges Labor Code violations which triggered penalties under the PAGA statute (Labor Code §2698 et seq.) (See ROA #1.) Plaintiff specifically alleged employees were denied compliant Meal and Rest Periods, minimum wages, overtime, accurate wage statements, reimbursements, and suffered waiting time violations. (See ROA #1, Exhibit 1: "Plaintiff's LWDA Notice" attached thereto).

Specifically, Plaintiff alleges that she - and other employees - received "short," "late," or "missing" Meal Periods, including those documented within Defendant's Time Records. (Decl. Yaeckel, ¶22). Plaintiff also challenged whether Defendant maintained lawful meal and rest periods. Plaintiff alleged she- and other employees -were not properly compensated due to Defendant's failure to maintain accurate time records. (*Id.*) Finally, Plaintiff also challenged whether Defendant maintained lawful meal and rest period policies. (*Id.*)

B. ANALYSIS OF POTENTIAL LIABILITY, ON A REPRESENTATIVE BASIS

The catalyst of this litigation concerned allegations that the aggrieved employees were denied legally compliant meal and rest periods, and were not paid for all hours worked. Because the named Plaintiff was claiming she was "mis-classified" as exempt. Substantial litigation would have occurred over that threshold issue, if not for the settlement. (Decl. Yaeckel, ¶23).

As to all other employees, investigations completed by Plaintiff's counsel revealed that Defendant's timekeeping policies and employee records were not in compliance with California law. (Decl. Yaeckel, ¶24). However, these investigations also revealed that the "rate of violation" by Defendant was significantly less than 100%. (*Id.*). On many of those occasions, it appears that

1 Defendant did, in fact, comply with the law. (*Id.*)

2 Based on the above, counsel concluded a realistic maximum liability in a case of this type
3 would be in the range of **\$200,000.00** to **\$250,000.00**. (Decl. Yaeckel, ¶15). However, without
4 revealing settlement protected communications, it was highly unlikely Plaintiff could ever recover
5 anything approaching a maximum judgment. (*Id.*)

6 Moreover, Plaintiff's counsel is aware of the Court's discretion to mitigate penalties pursuant
7 to California Labor Code section 2699(e)(2). (Decl. Yaeckel, ¶26). To confirm, Plaintiff's counsel
8 experienced the mitigation of "PAGA" penalties in *Carrington v. Starbucks Corp.* (2018) 30
9 Cal.App.5th 504. (*Id.*) In *Carrington*, the Court significantly mitigated PAGA penalties (\$5 per
10 violation), due to the efforts made by the employer to comply with the law. (*Id.*)

11 Plaintiff's counsel agrees that penalties *should* be mitigated where violations are minimal (or
12 rare), or where the employer makes significant efforts to comply with the Labor Code. (Decl. Yaeckel,
13 ¶27).

14 As the above factors exist in this case, it is the opinion of Plaintiff's counsel that the settlement
15 is fair, adequate, and reasonable. Specifically, Plaintiff's counsel's understanding is that Defendant
16 has agreed to review its policies and practices, and amend them to the extent they do not comply with
17 California law. (Decl. Yaeckel, ¶28).

18 Plaintiff's counsel, Eric K. Yaeckel, has over 13 years of experience prosecuting class and
19 representative action claims under the California Labor Code. (Decl. Yaeckel, ¶8-12). (*Id.*) Plaintiff's
20 counsel are the attorneys of record in a matter that was recently heard (and favorably decided) before
21 the California Supreme Court titled *Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58. (*Id.*) The
22 *Donohue* matter was a certified class and PAGA action. (*Id.*)

23 Plaintiff's counsel were lead counsel on approximately 40 employment "wage and hour" claims
24 with class action, or representative action allegations. (*Id.*) Based on said experience, it is the opinion
25 of Plaintiff's counsel that this settlement represents a fair and adequate payment. (Decl. Yaeckel, ¶13)

26 **C. THE ALLOCATION OF PENALTIES, AND LIMITED RELEASE OF CLAIMS**

27 While Labor Code section 2699(l) requires a court to "review and approve any penalties sought
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1 as part of a proposed settlement agreement,” it does not provide any guidance as to what is considered
2 an ‘adequate’ allocation of these penalties. However, Trial Courts have held that *where the* division
3 of penalties was fair and adequate and in accordance with the PAGA statute, the court should approved
4 the settlement. *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1076–77
5 (C.D. Cal. 2017).

6 After subtracting the contingent costs set forth above, the parties seek to allocate **\$61,672.37**
7 of the total settlement to the Total Value of the PAGA Fund. 75% (**\$46,254.28**) shall be assigned/paid
8 to the LWDA as penalties. The remaining 25% (**\$15,418.09**) will be allocated and distributed among
9 the current or ex-employees within the PAGA Period.

10 The parties contend the settlement agreement amount is fair, adequate, and reasonable. (Decl.
11 Yaeckel, ¶¶ 13). Moreover, the PAGA settlement does not bar any employee from pursuing their own
12 individual Labor Code claims. (Decl. Yaeckel ¶7; **Exhibit A**: “Released Claims” § 1.01(i), p. 3).). The
13 release only applies to the PAGA claims for penalties, based upon the allegations in Plaintiff’s
14 operative Complaint. (*Id.*)

15 **D. THE LWDA WAS NOTIFIED AND DOES NOT OBJECT**

16 Plaintiff has uploaded this entire motion to the LWDA, concurrent with the filing. (See the
17 concurrently submitted Proof of Service on the LWDA.) To date, Plaintiff has not received a response
18 from the LWDA regarding the proposed settlement. If the LWDA contacts Plaintiff’s counsel at any
19 time prior to the hearing, Plaintiff’s counsel will provide an updated declaration to the Court. (Decl.
20 Yaeckel ¶24).

21 **IV. CONCLUSION**

22 The parties respectfully request that the Court approve their settlement and proposed allocation
23 of PAGA penalties to the LWDA and the represented employees.

24 Dated: June 18, 2024

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