

Aaron A. Bartz (SBN 198722)
BARTZ LAW GROUP, APC
5151 California Ave., Suite 100
Irvine, California 92617
Tel: (949) 504-4413
Fax: (949) 656-7760
Email: aaron@bartzlawgroup.com

Walter L. Haines, Esq. (SBN 71075)
UNITED EMPLOYEES LAW GROUP, PC
8605 Santa Monica Blvd., #63354
West Hollywood, CA 90069
Tel.: (562) 256-1047 / Fax: (562) 256-1006
Email: walter@uelglaw.com

Attorneys for Plaintiff KELSEY WOLFF, on behalf of herself and other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

KELSEY WOLFF, an individual; on
behalf of herself and other aggrieved
employees,

Plaintiffs,

vs.

ENTERPRISE FLEET MANAGEMENT,
INC., a Missouri corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No. 23STCV16885

*[Assigned For All Purposes To Judge Kevin
C. Brazile, Dept: 20]*

RESERVATION ID. # 429798124410

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT AGREEMENT,
FOR ATTORNEYS' FEES AND COSTS
AND ADMINISTRATIVE FEES;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

*[Declarations of Aaron A. Bartz, Walter
Haines, Kelsey Wolff, Jonathan Paul, and
[proposed] Order filed concurrently
herewith]*

Date: July 2, 2024

Time: 8:30 a.m.

Dept.: 20

1 PLEASE TAKE NOTICE that on July 2, 2024, at 8:30 a.m., or as soon thereafter as the
2 matter may be heard before the Honorable Kevin C. Brazile, Dept. 20 of the Superior Court of the
3 State of California, County of Los Angeles, Stanley Mosk Courthouse, 111 North Hill Street, Los
4 Angeles, California 90012, Plaintiff Kelsey Wolff (“Plaintiff”) will and hereby does move for
5 entry of the [PROPOSED] ORDER and JUDGMENT THEREON which is attached as Exhibit
6 “B” to the PAGA Settlement Agreement which is attached as Exhibit 1 to the Declaration of Aaron
7 A. Bartz, which Order And Judgment include the following provisions:

8 1. Granting approval, pursuant to California Labor Code section 2699, subd. (1)(2) of
9 the proposed settlement between Plaintiff and Defendant Enterprise Fleet Management, Inc.
10 (“Defendant”) of the claims brought pursuant to the Private Attorneys General Act of 2004
11 (“PAGA”) as set forth in the PAGA Settlement Agreement (“Settlement Agreement”), attached as
12 Exhibit 1 to the Declaration of Aaron A. Bartz;

13 2. Approving the PAGA Fund payable to the State of California and Aggrieved
14 Employees as authorized by California Labor Code section 2699, subd. (i);

15 3. Appointing Xpand Legal Consulting, LLC as the Settlement Administrator;

16 4. Directing Defendant to transmit settlement funds to the Settlement Administrator
17 in the total amount of \$70,000 pursuant to the Settlement Agreement;

18 5. Directing the Settlement Administrator to distribute the settlement funds to the
19 Aggrieved Employees, and distributing funds to the Labor and Workforce Development Agency
20 (“LWDA”), Plaintiff’s Counsel, and for Settlement Administration Costs, in accordance with the
21 terms of the Settlement Agreement;

22 6. Awarding to Plaintiff’s Counsel the amount of \$23,333 as compensation for
23 reasonable attorneys’ fees (“Attorneys’ Fees Payment”), \$1,000 for reimbursement of litigation
24 costs and expenses (“Litigation Costs Payment”), and \$3,500 for Settlement Administration Costs.

25 This motion is based on this Notice of Motion and Motion, the Memorandum of Points and
26 Authorities, the Settlement Agreement, the Declarations of Aaron A. Bartz, Walter Haines, Kelsey
27 Wolff, and Jonathan Paul, the pleadings and other records on file with the Court in this matter, and
28 such evidence and oral argument as may be presented at the hearing on this Motion.

1 Dated: April 21, 2024

2 BARTZ LAW GROUP, APC

3
4 By: /s/Aaron A. Bartz/s/
5 Aaron A. Bartz
6 Attorneys for Plaintiff KELSEY WOLFF
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I.

INTRODUCTION AND SUMMARY OF MOTION

This is an action brought by Plaintiff Kelsey Wolff (“Plaintiff”), pursuant to the Private Attorneys General Act of 2004 (“PAGA”), to recover civil penalties for herself and other aggrieved employees and the State of California. Plaintiff and the other aggrieved employees are non-exempt employees who worked for Defendant Enterprise Fleet Management, Inc. (“Defendant”), and allege California wage and hour violations including failure to pay wages, failure to authorize and permit meal and rest periods, and related violations.

Plaintiff has agreed to settle the PAGA penalties for a Maximum Settlement Amount of **\$70,000**. The Maximum Settlement Amount includes all attorneys’ fees and costs, settlement administration expenses, and penalties payments to the aggrieved employees and the Labor and Workforce Development Agency (LWDA). The PAGA Fund to be distributed to the aggrieved employees and the LWDA is approximately \$42,167. The PAGA Fund will be distributed 75% to the LWDA (\$31,625.25), and 25% to the aggrieved employees (\$10,541.75).

The number of aggrieved employees is 105. As such, each of the aggrieved employees will receive, on average, approximately \$100 in penalties. In exchange for such payment, the aggrieved employees are giving up no rights whatsoever to recover for underlying violations of the Labor Code other than for PAGA penalties. Any aggrieved employee may file a claim against Defendant for such violations.

This settlement is fair, reasonable and adequate, and therefore should be approved by this Court.

II.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant owns and operates a vehicle leasing business in California. Plaintiff and other aggrieved employees worked for Defendant as non-exempt employees in California.

Plaintiff filed and served her PAGA letter on the Labor and Workforce Development Agency (LWDA) on May 3, 2023, and thereafter filed and served an amended PAGA letter on April 1, 2024. (Declaration of Aaron Bartz (“Bartz Decl.”), ¶ 9, and Ex. A to the Exhibit 1

Settlement Agreement). Plaintiff filed her Complaint on July 19, 2023, and a First Amended Complaint on April 18, 2024. (Bartz Decl., ¶¶ 9, 12, and Exs. 2-3 thereto). Plaintiff served an initial set of formal discovery, and Defendant filed a motion to compel arbitration of Plaintiff's individual claims. Thereafter, the parties entered into informal negotiations in an attempt to resolve this matter. Defendant provided Plaintiff with a random 10% sampling of time and payroll records for the aggrieved employees, employment policies and procedures affecting Plaintiff and the aggrieved employees, and related employment data. (Bartz Decl., ¶ 10).

After months of back and forth negotiations, the parties were able to conclude a settlement of the PAGA claims. (Bartz Decl., ¶¶ 10-11).

III.

SUMMARY OF SETTLEMENT

A. Aggrieved Employees

The Settlement covers the following aggrieved employees:

All persons employed by Defendant as non-exempt employees in California between May 3, 2022 to June 21, 2024. (Bartz Decl., ¶ 7, Ex. 1).

Based upon Defendant's records, there are approximately 105 aggrieved employees between May 1, 2022 and February 2, 2024. (Bartz Decl., ¶ 7).

B. Settlement Fund

Defendant will pay into a common fund the total amount of \$70,000 within 21 days of the Effective Date. (Bartz Decl., ¶ 3.) Prior to distributing the settlement checks to aggrieved employees, the Settlement Administrator shall review the addresses provided using the National Change of Address database. Should any of the settlement checks be returned undeliverable, the Settlement Administrator will use the best available technology (via a skip trace or other reasonable method) to locate Settlement Members and to re-mail the settlement checks to any alternative or updated address obtained by the Settlement Administrator. (Bartz Decl., ¶ 4). The PAGA Fund shall be calculated by deducting the Plaintiff's Counsel Payment and Settlement Administration Costs from the Maximum Settlement Amount.

A breakdown of the Maximum Settlement Amount of **\$70,000** is provided below:

1. Individual Settlement Payments to Settlement Members: \$10,541.75;
2. PAGA Payment to the LWDA: \$31,625.25;
3. Plaintiff's Counsel Fees Payment: \$23,333;
4. Plaintiff's Counsel Expenses Payment: \$1,000;
5. Settlement Administration Costs: \$3,500.

C. Release

The "Released Parties" are the Defendant and all of its past and present parents, subsidiaries, affiliated and/or related corporations, predecessors, successors, and assigns, including each of their officers, directors, members, shareholders, managing agents, representatives, consultants, attorneys, insurers and divisions, whether previously or hereinafter affiliated in any manner. Released Parties specifically include without limitation Enterprise Holdings, Inc., which is an intended third-party beneficiary of this Agreement.

"Released Claims" include:

Any and all claims under PAGA on behalf of any Settlement Member, related to the Alleged Violations, all of which were alleged in Plaintiff's Notice Letters to the LWDA. (Exhibit 1 to Bartz Decl., ¶¶ I.T and I.U).

IV.

LEGAL STANDARD FOR APPROVAL OF PAGA SETTLEMENT

The PAGA statute allows an "aggrieved employee" to bring a civil action on behalf of himself or herself and on behalf of other aggrieved employees and the State to recover civil penalties which are specifically established by PAGA with respect to provisions of the California Labor Code which does not otherwise provide for civil penalties (Lab. Code § 2699(g)), and also, civil penalties which, outside of PAGA, only the LWDA can assess upon and collect from an employer (Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee must comply with California Labor Code section 2699.3. *See* Labor Code § 2699(a).

The settlement of a PAGA claim requires court approval. *See* Labor Code § 2699, subd. (1)(2) ("The superior court shall review and approve any settlement of any civil action pursuant to this part"). However, "[a] PAGA claim asserted on a non-class representative basis . . . is not

1 considered a class action but a law enforcement action” and therefore one does not have to meet
2 the requirements of a class action. *Casida v. Sears Holding Corp.*, 2012 WL 253217, at *3 (E.D.
3 Cal. Jan. 26, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 WL 2173715, at * 11 (E.D. Cal.
4 June 2, 2011); *Arias v. Superior Court*, 46 Cal.4th 969, 980-88 (2009) (affirming lower court’s
5 holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim);
6 *Pedroza v. PetSmart, Inc.*, 2013 WL 1490667, at *15 (C.D. Cal. Jan. 28, 2013). As such, a court’s
7 review of a PAGA settlement involves analysis of several unique features that render the approval
8 process distinct from approval of a class action settlement. A court reviewing a PAGA settlement
9 need only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams v. Superior*
10 *Court*, 3 Cal.5th 531, 549 (2017).

11 In a PAGA case, the Court’s focus is not the monetary amount which aggrieved employees
12 or the State are to receive, but instead, whether the total settlement amount achieves the PAGA’s
13 objectives. The purpose of the PAGA is “to incentivize private parties to recover civil penalties
14 for the government that otherwise may not have been assessed and collected by overburdened state
15 enforcement agencies.” *See Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *4
16 (N.D. Cal. Apr. 2, 2010) (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the
17 PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor laws . . . and for
18 education of employers and employees about their rights and responsibilities under this code, to
19 be continuously appropriated to supplement and not supplant the finding to the agency for those
20 purposes.” *See Labor Code § 2699(j)*. The recovery of penalties on behalf of the state, by way of
21 a PAGA claim, is essentially a law enforcement action. *See Amalgamated Transit Union, Local*
22 *1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009) (stating that the PAGA is mechanism for
23 “an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise
24 would be sought by state labor law enforcement agencies”).

25 V.

26 **THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE**

27 This Settlement resulted from Plaintiff’s thorough and extensive review of informal
28 discovery, and aggressive negotiating stance to obtain a reasonable recovery. This PAGA

1 settlement should therefore be approved.

2 **A. The Settlement Is Presumed Fair**

3 A representative settlement is presumed fair where: (1) the settlement is reached through
4 arm's length bargaining, (2) investigation and discovery are sufficient to allow counsel and the
5 court to act intelligently, (3) [and] counsel is experienced in similar litigation. *See Dunk v. Ford*
6 *Motor Company*, 48 Cal. App. 4th 1794, 1802 (1996). Similar to class actions, PAGA settlements
7 are subject to a court's approval under a fair, adequate and reasonable standard. *See Moniz v.*
8 *Adecco USA, Inc.*, 72 Cal.App.5th 56, 76-77 (2021). A court may also consider relevant factors
9 such as the strength of the plaintiffs' case, the risk, expense, complexity and likely duration of
10 further litigation, the risk of maintaining class action status through trial, the amount offered in
11 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
12 views of counsel, [and] the presence of a governmental participant. . . . *See Officers of Justice v.*
13 *Civil Service Com'n of City and County of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1995). "This
14 list is not exhaustive and should be tailored to each case. Due regard should be given to what is
15 otherwise a private consensual agreement between the parties." (*Dunk, supra*, 48 Cal. App. 4th at
16 1801.) Moreover, the trial court has broad powers to determine whether a proposed [representative
17 action] settlement is fair. (*See Mallick v. Superior Court*, 89 Cal. App. 3d 434 (1979).

18 **B. The Settlement Is The Product of Arm's Length Negotiations**

19 In this action, Defendant produced personnel and policy documents, detailed data regarding
20 the aggrieved employees' pay and time records, and related employment information for aggrieved
21 employees. (Bartz Decl., ¶ 10). After a thorough review of those records, Plaintiff compiled a
22 damages summary reflecting the total exposure to PAGA penalties in this case. (Bartz Decl., ¶
23 10).

24 The negotiations in this case were hard fought and lengthy, and took many months to
25 finally reach a deal. At all times, the settlement negotiations were non-collusive, and involved
26 considerable disputes over payment terms. (Bartz Decl., ¶¶ 10-11).

27 Plaintiff did not settle this case until she had conducted sufficient investigation into the
28 claims, interviewed other former non-exempt employees, and reviewed sufficient data to make a

1 settlement determination. (Bartz Decl., ¶ 11). Plaintiff believes that this is a good settlement of
2 the PAGA claims, which will not affect any aggrieved employee's right to pursue underlying
3 Labor Code violations against Defendant if he or she chooses to do so. (*Ibid*).

4 **C. Plaintiff's Counsel Is Experienced In Similar Litigation And Endorse The**
5 **Settlement**

6 The view of attorneys in representative litigation is "entitled to significant weight." *Fisher*
7 *Bros. v. Cambridge-Lee Industries, Inc.*, 630 F.Supp. 482, 488 (E.D. Pa. 1985); *see also Ellis v.*
8 *Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980). Plaintiff's counsel have significant
9 experience in complex representative and class action wage and hour litigation. (Bartz Decl., ¶¶
10 13-16; Declaration of Walter Haines ("Haines Decl."), ¶ 2). As such, they are experienced and
11 qualified to evaluate the claims and defenses in this case, and unequivocally support the settlement
12 reached herein.

13 **D. The Strength of Plaintiff's Case, The Amount Offered In Settlement, and**
14 **The Risk, Expense, Complexity, and Duration of Further Litigation Favors Settlement**

15 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon*
16 *v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Moreover, "[t]he expense and possible
17 duration of the litigation should be considered in evaluating the reasonableness of [a] settlement."
18 *In re Mega Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000).

19 In this case, Plaintiff seeks PAGA penalties only. The sole PAGA claim that is at issue
20 in this settlement concerns Defendant's failure to: (1) pay all wages owed; (2) provide duty-free
21 meal periods; (3) authorize and permit duty-free rest periods; (4) pay all wages due upon
22 termination; (5) properly maintain and submit accurate itemized wage statements; (6) reimburse
23 employees. (Bartz Decl., ¶ 17).

24 1. **Unpaid wages**

25 California Labor Code § 510(a) and the applicable Wage Orders regulating payment of
26 wages in the State of California, provide that eight (8) hours of labor constitutes a day's work
27 and any work in excess of eight (8) hours in one (1) workday and any work in excess of forty
28 (40) hours in any one workweek shall be compensated at the rate of no less than one and one-half

1 times the regular rate of pay for each employee and any work in excess of twelve (12) hours in
2 any one workday shall be compensated at the rate of no less than twice the regular rate of pay for
3 each employee.

4 Plaintiff contends that Defendant violated wage laws based on the theory that Plaintiff
5 and other aggrieved employees worked off-the-clock, including prior to and after their shifts.
6 For Plaintiff and other aggrieved employees, who worked remotely, Plaintiff alleges that she and
7 others received phone calls and text messages after their shifts, and were required to respond, but
8 Defendant failed to pay them for that time.

9 Defendant contends that it has numerous defenses to Plaintiff's unpaid wage claims,
10 including that it paid for all hours worked, and had policies prohibiting working off-the-clock.

11 Pursuant to Labor Code § 558, penalties for regular rate violations are \$50 for the first
12 pay period, and \$100 for each subsequent pay period. Thus, the maximum potential PAGA
13 penalties for the unpaid wage claim is \$346,650, which is calculated as follows: 105 [number of
14 aggrieved employees] x \$50 [first pay period penalty] + 3414 [number of subsequent pay
15 periods] x \$100 [subsequent pay period penalty] = \$346,650. Because of the difficulty of
16 proving off-the-clock claims with objective evidence, Plaintiff believes she had a 15% chance of
17 success on the unpaid wage theory. Nevertheless, Labor Code section 2699(e)(2) also gives a
18 trial court broad discretion to reduce PAGA penalties: "[A] court may award a lesser amount
19 than the maximum civil penalty amount specified by this part if, based on the facts and
20 circumstances of the particular case, to do otherwise would result in an award that is unjust,
21 arbitrary and oppressive, or confiscatory." Case law supports a trial court's discretion in
22 downgrading penalties based on these factors. *See Thurman v. Bayshore Transit Management,*
23 *Inc.*, 203 Cal.App.4th 1112, 1135-1136 (2012) (no abuse of discretion by reducing penalty by 30
24 percent). Thus, Plaintiff believes that the real value of the unpaid wage penalties is
25 approximately \$36,398. ($\$346,650 \times .15$ [chances of success] $\times .7$ [court discretion] = \$36,398).
26 (Bartz Decl., ¶ 17.a).

1 2. Meal period violations

2 Plaintiff contends that Defendant failed to provide Plaintiff and other aggrieved
3 employees thirty-minute duty-free meal periods for every five hours of work as is required by
4 Labor Code § 512, the applicable wage orders, and in violation of *Brinker Restaurant Corp. v.*
5 *Superior Court*, 53 Cal.4th 1004 (2012). In *Brinker*, the California Supreme Court held that
6 “under ... Labor Code § 512, subdivision (a), an employer must relieve the employee of all duty
7 for the designated period.” *Id.* at 1034.

8 Plaintiff alleges that meal periods were short, late and missed because of the work
9 demands on Plaintiff and other aggrieved employees, whereby Plaintiff alleges that Defendant
10 scheduled calls and meetings during the time that she should have had her meal period. After
11 extensively analyzing the meal period violations, Plaintiff found that for the most part,
12 Defendant was in substantial compliance with California’s meal period laws in terms of timing,
13 pursuant to *Donohue v. AMN Services, LLC*, 11 Cal.5th 58 (2021). As such, Plaintiff does not
14 value that part of the meal period claim highly. Moreover, because Plaintiff and other aggrieved
15 employees were remote workers, it would be difficult to prove on a representative basis that
16 Plaintiff and other aggrieved employees were not able to take duty-free meal periods.

17 Defendant contends that it permits all aggrieved employees more than 30-minute meal
18 periods, and whenever meal periods were late, short or missed, it was due to the fact that aggrieved
19 employees voluntarily chose to take their meal periods at differing times based on their flexible
20 work schedules. Defendant further argues that individual issues will predominate because of the
21 various scenarios affecting different classes of employees working for Defendant. As such,
22 Defendant claims that PAGA claims must meet a manageability requirement. *See Wesson v.*
23 *Staples The Office Superstore, LLC*, 68 Cal.App.5th 746 (2021) (holding that courts have inherent
24 authority to ensure the manageability of PAGA claims).

25 The maximum potential PAGA penalties recoverable for meal period violation are
26 \$693,300. Given that PAGA allows penalties of \$100 per pay period and a subsequent penalty of
27 \$200 per pay period, the amount is calculated as follows: 105 [number of aggrieved employees]
28 x \$100 [first penalty amount] + 3414 [subsequent pay periods] x \$200 [subsequent penalty amount]

1 = \$693,300. Based on the various issues raised above regarding proving meal period violations,
2 Plaintiff believes that she has a 10% chance of proving all of those penalties. Thus, Plaintiff
3 believes that the real value of the meal period penalties is \$48,531. ($\$693,300 \times .1$ [chances of
4 success] $\times .7$ [court discretion] = \$48,531). (Bartz Decl., ¶ 17.b).

5 3. Rest period claims

6 Section 12(A) of the IWC Wage Order(s) states: “Every employer shall authorize and
7 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
8 each work period. The authorized rest period time shall be based on the total hours worked daily
9 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However,
10 a rest period need not be authorized for employees whose total daily work time is less than three
11 and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which
12 there shall be no deduction from wages.”

13 Section 12(B) of the IWC Wage Order(s) states: “If an employer fails to provide an
14 employee a rest period in accordance with the applicable provisions of this order, the employer
15 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for
16 each workday that the rest period is not provided.”

17 Under *Brinker, supra*, the California Supreme Court found that employers have a “duty
18 to make a good faith effort to authorize and permit rest breaks in the middle of each work period.
19 . . .” *Brinker, supra*, 53 Cal.4th at 1031. Plaintiff alleges that rest periods were not authorized or
20 permitted because Plaintiff and other aggrieved employees were scheduled to be on calls and
21 attend meetings all day, and therefore had no opportunity to take duty-free and uninterrupted rest
22 periods.

23 Defendant contends that it complied with California’s rest period requirements, and
24 produced a rest period policy that facially complies with California law.

25 Plaintiff calculates total penalties on the rest period claim of \$693,300. Given that PAGA
26 allows penalties of \$100 per pay period and a subsequent penalty of \$200 per pay period, the
27 amount is calculated as follows: 105 [number of aggrieved employees] $\times$ $\$100$ [first penalty
28 amount] $+ 3414$ [subsequent pay periods] $\times$ $\$200$ [subsequent penalty amount] = \$693,300.

1 Given Defendant's facially valid rest period policy, the fact that Plaintiff and other aggrieved
2 employees were remote workers, and potential individual issues relating to proving rest break
3 violations, Plaintiff believes she had a 5% chance of recovering all of the above penalties on the
4 rest period claim, in the absence of other mitigating factors. Given that a court has discretion
5 regarding the amount of penalties to be assessed, Plaintiff therefore believes the real exposure of
6 PAGA penalties on the rest period claim is approximately \$24,266. ($\$693,300 \times .05$ [chances of
7 success] $\times .7$ [court discretion] = \$24,266.) (Bartz Decl., ¶ 17.c).

8 4. Failure to pay all wages on termination

9 Plaintiff further alleges that pursuant to Labor Code §203, aggrieved employees terminated
10 from Defendant's employment are entitled to a penalty pursuant to Labor Code §256, because
11 Defendant did not pay them all wages due upon separation. Such a claim is derivative, and for the
12 same reasons as stated above, Defendant contends no wages are due, and thus no penalties owed under
13 PAGA. Defendant further argues that its failure to pay wages upon separation was not "willful," in
14 that the law is uncertain as to claims asserted in this case or whether the failure to pay is due to a good
15 faith dispute. *See Barnhill v. Robert Saunders & Co.*, 125 Cal.App.3d 1, 8 (1981) (employer's failure
16 to pay is not willful if its failure is due to uncertainty in the law); *Road Sprinkler Fitters Local Union*
17 *No. 669 v. G & G Fire Sprinklers, Inc.*, 102 Cal.App.4th 765, 782 (2002) (willfulness not met if
18 defendant's failure to pay a result of a "good faith mistaken belief that wages are not owed").
19 Defendant further argues that Labor Code § 256 only applies to seasonal laborers and therefore is
20 inapposite to the aggrieved employees in this case. *See Culley v. Lincare, Inc.*, 236 F.Supp.3d 1184
21 (E.D. Cal. 2017).

22 Plaintiff calculates PAGA penalties on this claim of \$10,500. This was calculated by
23 multiplying 105 [employees] by \$100 [waiting time penalty]. Based on the heightened willfulness
24 standard, Plaintiff estimates that the real exposure of this claim is 10% of those total penalties.
25 Moreover, Plaintiff applies the same discounts as set forth above in the above analysis as to the
26 court's discretion to reduce penalties. As such, Plaintiff believes the real exposure on this claim
27 to be \$735 ($\$10,500 \times .1$ [chances of success] $\times .70$ [court discretion] = \$735). (Bartz Decl., ¶ 17.d).

1 5. Improper pay stubs

2 Plaintiff further alleges that Defendant failed to provide proper pay statements that
3 complied with Labor Code § 226.

4 Plaintiff alleges similar theories of liability as above with respect to the paystub claim, i.e.
5 that the wage statements are defective because they do not reflect all wages owed, and fail to show
6 premium payments for missed meal and rest periods. *See Naranjo v. Spectrum Security Servs.,*
7 *Inc.*, 13 Cal.5th 93 (2022). Plaintiff further alleges that to obtain PAGA penalties for pay stub
8 violations, a plaintiff need not satisfy the “injury” or “knowing and intentional” requirements of
9 Labor Code section 226(e)(1). *See Raines v. Coastal Pacific Food Distributors, Inc.*, 23
10 Cal.App.5th 667 (2018).

11 On the other hand, Defendant argues derivative violations of Labor Code § 226 do not give
12 rise to pay stub violations upon which PAGA penalties arise. *See Maldonado v. Epsilon Plastics,*
13 *Inc.*, 22 Cal.App.5th 1308 (2018); *see also Culley v. Lincare Inc.*, 236 F.Supp.3d 1184, 1195-1196
14 (E.D. Cal. 2017). Defendant further argues that any such violations were inadvertent, and therefore
15 not actionable. *See Heritage Residential Care, Inc. v. Division of Labor Standards Enforcement,*
16 192 Cal.App.4th 75 (2011).

17 Plaintiff calculates pay stub penalties to be approximately \$693,300. Given that PAGA
18 allows penalties of \$100 per pay period and a subsequent penalty of \$200 per pay period, the
19 amount is calculated as follows: 105 [number of aggrieved employees] x \$100 [first penalty
20 amount] + 3414 [subsequent pay periods] x \$200 [subsequent penalty amount] = \$693,300.
21 Plaintiff believes she had a 10% chance of recovering all of the potentially recoverable civil
22 penalties. Moreover, Plaintiff applies the same discounts as set forth above in the analysis as to
23 the court’s discretion to reduce penalties. As such, Plaintiff believes the real exposure on this
24 claim to be \$48,531. (\$693,300 x .1 [chances of success] x .7 [court discretion] = \$48,531). (Bartz
25 Decl., ¶ 17.e).

26 6. Reimbursement of expenses

27 Labor Code § 2802 provides, in pertinent part: “An employer shall indemnify his or her
28 employee for all necessary expenditures or losses incurred by the employee in direct consequence

1 of the discharge of his or her duties, or of his or her obedience to the directions of the employer. .
2 ..”

3 Plaintiff contends that Defendant required she and other aggrieved employees to use their
4 personal cell phones to respond to work calls and respond to text messages during their
5 employment. Defendant contends that Plaintiff and the other aggrieved employees were
6 prohibited from working off the clock, and therefore any use of personal cell phones for work
7 purposes during non-work hours was voluntary and not reimbursable.

8 Upon further investigation and discussions with witnesses, Plaintiff was unable to
9 substantiate this claim to prove PAGA penalties across all pay periods. At most, therefore, because
10 of proof problems with this claim, Plaintiff values the total reimbursement claim at \$100 per
11 employee, or \$10,500. But given the tenuous nature of this claim, Plaintiff estimates the real value
12 is 10% of that amount, or \$1,050. (Bartz Decl., ¶ 17.f).

13 7. Total exposure to PAGA penalties

14 Based upon the alleged Labor Code violations, Plaintiff’s believe the total actual PAGA
15 exposure is approximately \$159,511. Based on a settlement value of \$70,000, this amounts to
16 approximately 44% of the total exposure to PAGA penalties. Plaintiff believes this to be a good
17 result, given that Defendant has valid defenses to Plaintiff’s claims, and there is a substantial
18 question as to whether a trial court will even award cumulative penalties sought by Plaintiff for
19 alleged multiple Labor Code violations because there is no established precedent for such an
20 award.¹ Moreover, even to the extent any violations are proven, Defendant argues that any
21 heightened penalties from subsequent violations are not warranted. *See Amaral v. Cintas Corp.*
22 *No. 2, 163 Cal.App.4th 1157, 1208-1209 (2008)* (“Until the employer has been notified that it is
23 violating a Labor Code provision. . . , the employer cannot be presumed to be aware that its
24
25

26 ¹ While there are cases allowing for the “stacking” of penalties when it comes to evaluating the
27 “amount in controversy” where a case has been removed to federal court (*see Schiller v. David’s*
28 *Bridal, Inc.*, 2010 WL 2793650 (E.D. Cal. July 14, 2010), it appears to be an open question
whether such “stacked” penalties may be awarded when they potentially overlap and “double
count” remedies for similar violations.

continuing underpayment of employees is a ‘violation’ subject to penalties”). (Bartz Decl., ¶ 17.g).

The purpose of the PAGA is to “achieve maximum compliance with [California’s] labor laws.” *See Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 379 (2014). The penalties recovered here on behalf of the State and aggrieved employees achieve that purpose.

VI.

NOTICE OF THE SETTLEMENT IS NOT REQUIRED

“[A] PAGA action is a statutory action for penalties brought as a proxy for the State,” and as such, “there is no need to protect absent employees’ due process rights[.]” *Williams v. Superior Court*, 3 Cal.5th 531, 546 (2017). “Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *5 (N.D. Cal. Apr. 2, 2010). A representative PAGA action need not satisfy class action requirements, and no due process concern arises from the fact that there are “nonparty aggrieved employees who are not given notice if, and an opportunity to be heard in, a representative action that is not brought a class action.” *Arias v. Sup. Ct.*, 46 Cal.4th 969, 984 (2009). “PAGA does not make other potentially aggrieved employees parties” to the action and no “due process concerns arise under PAGA because absent employees do not own a personal claim for PAGA civil penalties and whatever personal claims the absent employees might have for a relief are not at stake.” *Williams, supra*, 3 Cal. 5th at 546-547 (internal references omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46th Cal.4th 993, 1003 (2009) and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 381 (2014).)

Notwithstanding the above, the Settlement Administrator will provide aggrieved employees, along with a check for their penalties, with notice of the nature of the claims and release at issue in this case, along with notice that the settlement does not preclude the aggrieved employees from pursuing an individual wage claim against Defendant. (Bartz Decl., ¶ 8, and Ex. C to the Exhibit 1 Settlement Agreement thereto).

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VII.

ATTORNEYS' FEES AND COSTS

A. Fees Can Be Awarded As A Percentage of the Common Fund

When a common fund is created, attorneys who secured the fund are entitled to a percentage of the fund. (*See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 [“the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created”]; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26 [“percentage fees have traditionally been allowed in . . . common fund cases”]). Plaintiff’s request for one-third of the common fund is reasonable, falls within the Ninth Circuit’s historical benchmark for attorneys fees of 25% to 50% of a common fund, and is fair compensation for undertaking complex litigation on a contingent basis. (*See, e.g.,* Rubinstein, Conte and Newberg, Newberg on Class Actions at § 14:6 [surveying cases, and finding that 30-50% of fees awarded in cases in which the common fund is relatively small]; *see also In re Ampicillin Antitrust Litigation* (D.D.C. 1981) 526 F.Supp. 494 [court approved attorney fee award equal to 45% of the settlement fund].)

Under the common fund doctrine, “a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S.Ct. 745, 750, 62 L.Ed.2d 676 (1980). The Supreme Court explained:

The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant’s expense. Jurisdiction over the fund involved in litigation allows a court to prevent this inequity by assessing attorney’s fees against the entire fund, thus spreading fees proportionately among those benefitted by the suit.” (Citations omitted.)

(*Id.*; *see also Laffitte, supra*, 1 Cal.5th at 503 [“the percentage method is a valuable tool that should not be denied our trial courts”]; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 [“one who expends attorneys’ fees in winning a suit which creates a fund from which other derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs”].)

1 Thus, the common fund doctrine ensures that each member of the class contributes
2 proportionately to the payment of attorney's fees recovered from monetary payments that the
3 prevailing party recovered in the lawsuit. "Put another way, in common fund cases, a variant of
4 the usual rule applies and the winning party pays his or her own attorneys fees. . ." *Stanton v.*
5 *Boeing*, 327 F.3d 938, 967 (9th Cir. 2003), citing *Wininger v. SI Mgmt L.P.*, 301 F.3d 1115 (9th
6 Cir. 2002).

7 Because Plaintiff's attorneys secured a fund for Plaintiff and the other aggrieved
8 employees, they are entitled to a reasonable percentage of that fund.

9 **B. Plaintiff's Attorneys Fees Are Also Recoverable Under The Lodestar**
10 **Adjustment Approach**

11 Fees in representative cases are also appropriate under the lodestar method, whereby the
12 number of hours reasonably expended is multiplied by a reasonable hourly rate. *See Lealao*,
13 *supra*, 82 Cal.App.4th at 26. Under PAGA, moreover, attorneys' fees and costs are statutorily
14 recoverable. *See* Cal. Labor Code § 2699, subd. (g)(1). Once a lodestar has been established, it
15 may "be adjusted, based on consideration of factors specific to the case, in order to fix the fee at
16 the fair market value for the legal services provided." *PLCM Group, Inc. v. Drexler*, 22 Cal.4th
17 1084, 1095 (2000). In evaluating the lodestar, and whether an upward adjustment is appropriate,
18 courts look to the qualifications of counsel, the reasonableness of the rates charged, the novelty
19 and difficulty of the case, the contingent nature of the case, the results achieved, and related
20 matters. *See, e.g., Serrano, supra*, 20 Cal.3d 25, 49; *see also Press v. Lucky Stores, Inc.*, 34
21 Cal.3d 311, 321-322 (1983). All such factors support the fee award here.

22 **1. Plaintiff's Counsel Are Well-Qualified To Represent The Aggrieved**
Employees And Their Rates Are Reasonable

23 Counsel for Plaintiff are experienced employment lawyers, and have extensive
24 experience in the specific subcategory of wage and hour claims. (Bartz Decl. ¶¶ 13-16; Haines
25 Decl., ¶ 2). Moreover, counsel for Plaintiff have hourly rates that are reasonable in the relevant
26 market, and below that found with other class action employment lawyers with similar expertise.
27 (Bartz Decl., ¶ 18).

1 **2. Plaintiff's Counsel's Lodestar Is Well Documented**

2 A properly supported motion for attorney's fees is prima facie evidence that the expenses
3 and services were necessarily incurred. *Hadley v. Krepel*, 167 Cal.App.3d 677, 682 (1985).
4 Here, counsel provide appropriately detailed declarations and detailed, contemporaneous billing
5 statements in support of the lodestar amounts. (Bartz Decl., ¶ 18, and Ex. 4).

6 **3. Novelty And Difficulty Of The Case**

7 Plaintiff and her counsel were able to secure a favorable settlement only after
8 investigating the claims and researching the theories of potential liability in this case.

9 **4. Plaintiff's Counsel Worked Efficiently And Skillfully**

10 Plaintiff obtained significant informal discovery, and researched all available claims in
11 investigating the alleged wage and hour violations. Plaintiff and her counsel resolved the case
12 only after intense settlement negotiations that nearly broke down several times. Plaintiff's
13 counsel's tenacity produced the highest and best settlement possible from Defendant.

14 **5. Plaintiff's Counsel Worked Entirely On A Contingency Basis**

15 Plaintiff's counsel worked on a complete contingency and advanced all expenses and
16 costs. The contingent risk included liability issues, damage issues, and evolving changes under
17 PAGA. According to the California Supreme Court:

18 A contingent fee must be higher than a fee for the same legal services paid as they
19 are performed. The contingent fee compensates the lawyer not only for the legal
20 services he renders but for the loan of those services. The implicit interest rate on
21 such a loan is higher because the risk of default (the loss of the case, which
22 cancels the debt of the client to the lawyer) is much higher than that of
23 conventional loans.

24 (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133, quoting Posner, *Economic Analysis of*
25 *Law* (4th ed. 1992) pp. 534, 567.)

1 **6. Plaintiff's Counsel Achieved A Good Result**

2 Plaintiff's counsel obtained a \$70,000 settlement, which would not have been achieved
3 but for Plaintiff and her attorneys' ability to efficiently prosecute the case to a successful
4 conclusion.

5 **C. Plaintiff's Counsel's Costs Are Documented and Reasonable**

6 Plaintiff's counsel are also entitled to their reasonable out-of-pocket costs incurred in
7 prosecuting this action, in the amount of \$1,000, which includes filing and motion fees, and other
8 costs necessary to the prosecution of this case. (Bartz Decl., ¶ 18, Ex. 5 thereto). Moreover,
9 Xpand Legal Consulting, LLC has agreed to provide settlement administration services in the
10 amount of \$3,500, including preparing and mailing the notices to the aggrieved employees,
11 distributing the payments, and performing other administration duties for this PAGA settlement.
12 (Paul Decl., ¶¶ 4-9, and Ex. B thereto). All such amounts should be deducted from the common
13 fund created, and Defendant does not oppose Plaintiff's counsel's request for costs and
14 administration expenses.

15 **VIII.**
16 **CONCLUSION**

17 Based on the foregoing, Plaintiff respectfully requests that this Court grant her Motion
18 and enter the [PROPOSED] ORDER and JUDGMENT THEREON which is attached as Exhibit
19 "B" to the PAGA Settlement Agreement which is attached as Exhibit 1 to the Declaration of
20 Aaron A. Bartz.

21 Dated: April 21, 2024

22 BARTZ LAW GROUP, APC

23
24 By: /s/Aaron A. Bartz/s/
25 Aaron A. Bartz
26 Attorneys for Plaintiff KELSEY WOLFF
27
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Make a Reservation

KELSEY WOLFF vs ENTERPRISE FLEET MANAGEMENT, INC.

Case Number: 23STCV16885 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2023-07-19 Location: Stanley Mosk Courthouse - Department 20

Reservation	
Case Name: KELSEY WOLFF vs ENTERPRISE FLEET MANAGEMENT, INC.	Case Number: 23STCV16885
Type: Motion for Order (To Approve PAGA Settlement)	Status: RESERVED
Filing Party: Kelsey Wolff (Plaintiff)	Location: Stanley Mosk Courthouse - Department 20
Date/Time: 07/02/2024 8:30 AM	Number of Motions: 1
Reservation ID: 429798124410	Confirmation Code: CR-8CYCPUDUXVTVV3JQT

Fees			
Description	Fee	Qty	Amount
Motion for Order (name extension)	0.00	1	0.00
TOTAL			\$0.00

Payment	
Amount: \$0.00	Type: NOFEE
Account Number: n/a	Authorization: n/a
Payment Date: 1969-12-31	

- Print Receipt
- Reserve Another Hearing
- View My Reservations

