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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 FOR THE COUNTY OF LOS ANGELES

20 JOSE ANDRADE, an individual, on behalf of
21 themselves and all others similarly situated and
22 the general public,

23 Plaintiff,

24 v.

25 ACE ATTORNEY SERVICES, INC., a
26 California corporation; and DOES 1 through 10,
27 inclusive,

28 Defendants.

Case No. 23STCV21822

**JOINT STIPULATION RE PAGA PENALTY
SETTLEMENT**

1 **JOINT STIPULATION RE PAGA PENALTY SETTLEMENT**

2 Plaintiff Jose Andrade (“Plaintiff”) and Defendant Ace Attorney Services, Inc. (“Defendant”)
3 (collectively with Plaintiff, the “Parties”), by and through their respective counsel of record, hereby seek
4 Court approval of their settlement of Plaintiff’s claim for civil penalties under the Labor Code Private
5 Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*:

6 **PROCEDURAL HISTORY**

7 **WHEREAS**, Defendant offers court and legal solutions along with e-filing, document
8 discovery, records retrieval and messenger services. Defendant has seven offices in California.

9 **WHEREAS**, Plaintiff worked for Defendant in California as a Driver from approximately
10 March 2022 to November 2022. Plaintiff’s primary duties as a Driver were to perform various courier-
11 related types of services which included delivering pleadings from Defendant’s office to a variety of
12 courthouses, retrieving documents from law offices, serving subpoenas, and delivering and retrieving
13 documents to and from courthouses.

14 **WHEREAS**, Plaintiff filed this PAGA representative action against Defendant in this Court on
15 September 11, 2023. The Complaint seeks PAGA civil penalties on behalf of the California Labor and
16 Workforce Development Agency (“LWDA”) and Aggrieved Employees.

17 **WHEREAS**, following the informal exchange of information and evidence with which to
18 evaluate Plaintiff’s PAGA claims—including (1) a randomized sample of time and pay records for 35%
19 of the Aggrieved Employees; (2) relevant policy documents maintained by Defendant pertaining to meal
20 and rest periods, compensation structure, time and pay processes; (3) demographic information relating
21 to the size and scope of the pool of Aggrieved Employees, the number of current versus former
22 employees, and the overall number of pay periods and workweeks captured during the Relevant Time
23 Period—the Parties then participated in a full-day mediation with Jeffrey Fuchsman, Esq., an
24 experienced mediator of wage and hour actions, on July 15, 2024. Mr. Fuchsman helped to manage the
25 Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. With
26 Mr. Fuchsman’s guidance, the Parties were eventually able to negotiate a complete settlement of
27 Plaintiff’s PAGA claim. The terms of the settlement are now set forth in complete and final form in the
28

PAGA Settlement Agreement,¹ attached as Exhibit 1.

SETTLEMENT TERMS

Allocation of Settlement Proceeds: The Settlement provides that Defendant will pay a total of \$185,000 to settle this action. No portion of this amount will revert to Defendant; rather, if, e.g., the Court does not grant the full amount of requested attorneys' fees, litigation costs, settlement administration costs, or service award, any amounts requested but not awarded will be added to the PAGA Penalties Fund. (PAGA Settlement Agreement ¶ 12.) From this amount, payments will be made to the LWDA and the Aggrieved Employees, to Plaintiff as compensation for his service, to Plaintiff's Counsel for their attorneys' fees and litigation costs, and to the Settlement Administrator (ILYM Group, Inc.) for settlement administration costs. (PAGA Settlement Agreement ¶¶ 12-17.)

Settlement Allocations	Amount
Gross Settlement Fund	\$185,000.00
Attorneys' Fees	\$64,750.00
Litigation Costs	\$15,000.00
Service Award	\$5,000.00
Administration Costs	\$3,550.00
PAGA Penalties Fund	\$96,700.00

The resulting balance, approximately \$96,700, will be distributed to the LWDA and Aggrieved Employees: the LWDA will receive approximately \$72,525, and Aggrieved Employees will receive approximately \$24,175.

The Aggrieved Employees encompassed by the proposed Settlement are all persons who were employed by Defendant in the State of California in non-exempt positions at any time during the Settlement Period. (PAGA Settlement Agreement ¶ 2.) There are approximately 170 Aggrieved Employees. (*Id.* at ¶ 17.)

Allocations to the LWDA and Aggrieved Employees: Payments to Aggrieved Employees will be made from the PAGA Penalties Fund. The individual allocations will be calculated on a pro-rata basis using the number of pay periods worked by each employee. Defendant will provide the total number of pay periods worked by each Aggrieved Employee and the total number of pay periods

¹ Unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the PAGA Settlement Agreement.

1 worked by all Aggrieved Employees during the Settlement Period. (PAGA Settlement Agreement ¶ 13.)
2 The Settlement Administrator will calculate each Aggrieved Employee's payment using the proportional
3 number of pay periods during which the employee worked. (*Id.*) Thus, the Settlement Administrator will
4 perform the following calculation to calculate individual payments: Settlement Payment = (25% of
5 PAGA Penalties Fund) × (pay periods worked by individual Aggrieved Employee during the Settlement
6 Period ÷ total pay periods worked by all Aggrieved Employees during the Settlement Period). (*Id.*)

7 This is a fair and equitable means of allocating the penalties. Aggrieved Employees who worked
8 for a longer duration during the Settlement Period will receive proportionally larger payments than those
9 employees who worked for shorter durations.

10 As the Settlement payments to the Aggrieved Employees are for the compromise of claims for
11 alleged PAGA civil penalties, the payments will be treated as non-wage income with no taxes withheld,
12 and will be reported by the Settlement Administrator on IRS Form 1099s to the respective PAGA
13 Settlement Employee and governmental authorities. (PAGA Settlement Agreement ¶ 21.)

14 **The Settled PAGA Claims:** Upon the Full Funding Date, Plaintiff and all Aggrieved
15 Employees will be forever barred from pursuing against Defendant any and all Settled Claims during the
16 Settlement Period: Any and all claims for PAGA civil penalties under the California Labor Code, Wage
17 Orders, regulations, and/or other provisions of law alleged or could have been alleged to have been
18 violated in the Action with respect to Aggrieved Employees based on the facts alleged in the Action
19 during the Settlement Period. (PAGA Settlement Agreement ¶¶ 10, 22.)

20 Aggrieved Employees, other than Plaintiff, will not be deemed to have released any individual
21 wage and hour claims by virtue of this Settlement. (*Id.* at ¶ 22.)

22 Additionally, Plaintiff has agreed to a broader release of all claims of any kind against
23 Defendant, including claims for interest, attorneys' fees and costs, restitution, and equitable and
24 declaratory relief, arising out of his employment with Defendant. (PAGA Settlement Agreement ¶ 16.)

25 STANDARD FOR APPROVAL

26 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other
27 current or former employees to recover civil penalties for Labor Code violations. *Iskanian v. CLS*
28 *Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 380 (2014). Seventy-five percent of any penalties recovered

1 go to the LWDA, leaving the remaining twenty-five percent for aggrieved employees.² *Id.* PAGA is
2 intended “to augment the limited enforcement capability of [LWDA] by empowering employees to
3 enforce the Labor Code as representatives of the Agency.” *Id.* at 383. A judgment in a PAGA action
4 binds all those, including non-party aggrieved employees, who would be bound by a judgment in an
5 action brought by the government. *Id.* at 381.

6 A superior court must review and approve any PAGA settlement. Cal. Lab. Code § 2699(l)(2).
7 The court’s review “ensur[es] that any negotiated resolution is fair to those affected.” *Williams v.*
8 *Superior Court*, 3 Cal. 5th 531, 549 (2017). The Court’s evaluation of the settlement must “determine
9 whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law
10 violations, deter future ones, and to maximize enforcement of state labor laws.” *Moniz v. Adecco USA,*
11 *Inc.*, 72 Cal. App. 5th 56, 77 (2021).

12 The Court’s evaluation of the settlement should therefore not focus on “restitution”—the average
13 recovery per aggrieved employee, as in a class action settlement, but rather take into account PAGA’s
14 statutory purpose in deterring Labor Code violations through the imposition of civil penalties, with
15 special attention on whether the relief is “genuine and meaningful.” *Salazar v. Sysco Central Cal.*, No.
16 15-01758-DAD, 2017 WL 1135801, *2 (E.D. Cal. Feb. 2, 2017).

17 **Plaintiff’s Position On Why the Penalties Secured by the Settlement Are Genuine and**
18 **Meaningful:** In assessing whether the amount of civil penalties is genuine and meaningful, the Court
19 may balance the amount in penalties against the risks of further litigation. Here, Plaintiff obtained a
20 meaningful amount of civil penalties despite facing hurdles had the litigation continued. Based on
21 information and evidence produced by Defendant during discovery, Plaintiff’s Counsel determined that
22 Aggrieved Employees worked during a total of approximately 4,975 pay periods during the PAGA
23 statute of limitations period. Statutory penalties would be calculated according to Labor Code 2699(f)(2):
24 If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is
25 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
26

27 ² The PAGA statute was recently amended on July 1, 2024. Certain citations to the PAGA’s
28 provisions in this Motion relate to the pre-amendment version of the statute, which applies to this action
based on the pre-amendment filing date of the initial complaint and related administrative exhaustion
letter.

1 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

2 However, a number of courts have found that the “subsequent” penalty under PAGA applies
3 only after a court or the Labor Commissioner determines that the employer has violated the Labor Code.
4 *See Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 356 (2021) (“the increased \$200 civil penalty
5 for ‘subsequent violation[s]’ does not apply unless [Plaintiff] presents evidence that the Labor
6 Commission or a court notified [Defendant] that it was in violation of the Labor Code.”); *Bernstein v.*
7 *Virgin Am., Inc.*, 990 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as to “heightened civil
8 penalties” because the defendant was not given notice by the Labor Commissioner when the
9 “subsequent” violations occurred).³ Under this line of cases, Defendant’s exposure would be
10 approximately $\$497,500 = 4,975 \text{ violative pay periods} \times \100 .

11 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil
12 penalties “based on the facts and circumstances of a particular case” when “to do otherwise would result
13 in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(e)(2). In
14 reducing PAGA penalties, courts have considered issues including whether the employees suffered
15 actual injury from the violations, whether the defendant was aware of the violations, and the employer’s
16 willingness to fix the violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018)
17 (awarding PAGA penalties of only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d
18 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL
19 7563047, at *4 (C.D. Cal. Aug. 12, 2011).

20 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA
21 penalties in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—

22
23 ³ *See also Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5
24 (C.D. Cal. June 10, 2019) (“employers are not subject to heightened penalties . . . until a court or
25 commissioner notifies the employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered
26 evidence that the Labor Commission or a court has notified them of PAGA violations [thus] PAGA’s
27 heightened penalty of \$200 for subsequent violations will not be calculated to determine the amount in
28 controversy”); *Chen v. Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014
WL 4961182 (C.D. Cal., October 2, 2014) (“Under the Labor Code, if an employer does not have notice
that they are committing a violation, they are not subject to the heightened penalties.”); *Trang v. Turbine
Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal.
Dec. 19, 2012) (“courts have held that employers are not subject to heightened penalties for subsequent
violations unless and until a court or commissioner notifies the employer that it is in violation of the
Labor Code”), citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).

1 or 0.21% of the calculated maximum—and stated that this reduction was warranted because (a) the
2 Court did not believe it was appropriate to impose multiple penalties per pay period in which a violation
3 occurred and (b) imposing the maximum penalty would be “unjust, arbitrary, and oppressive” based on
4 Starbucks’s “good faith attempts” to comply with meal period obligations and because the court found
5 the violations were minimal. *Carrington*, 30 Cal. App. 5th at 517-18. The Court of Appeal affirmed the
6 lower court’s reduced award of a \$150,000 penalty under PAGA. *Id.* at 529. If a similar reduction had
7 been applied here, Plaintiff would have recovered only approximately \$1,045 ($\$497,500 \times 0.0021$
8 reduction).

9 Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding
10 \$500,000 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also*
11 *Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction
12 under specified PAGA claim where the employer produced evidence that it took its obligations
13 seriously); *Elder v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May
14 12, 2011) (reversing trial court decision denying any civil penalties where violations had been proven,
15 remanding for the trial court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A*
16 *Perfect Day Franchise, Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15,
17 2012) (denying PAGA penalties for violation of California Labor Code section 226 as redundant with
18 recovery on a class basis pursuant to California Labor Code section 226, directly); *Aguirre v. Genesis*
19 *Logistics*, No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013)
20 (reducing penalty for past PAGA violations from \$1.8 million to \$500,000, after rejecting numerous
21 other PAGA claims).

22 Considering the issues, defenses, and the risks, a \$185,000 settlement for a limited release of
23 PAGA penalties—no individual wage and hour claims will be extinguished by the Settlement—is a fair
24 and just result and furthers PAGA’s objectives, and is not “unjust, arbitrary, and oppressive.”

25 **Defendant’s Position On Why the Penalties Secured by the Settlement Are Genuine and**
26 **Meaningful:** Defendant maintains that it had, and continues to have, legally-compliant employment
27 policies and practices. Defendant does not admit that it ever violated any provision of the California
28 Labor Code, including, but not limited to, those sections for which Plaintiff seeks penalties pursuant to

1 PAGA, during the Settlement Period. Defendant recognizes the expense and length of continued
2 proceedings necessary to litigate the disputes through trial and through any possible appeals, and has also
3 taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and
4 delays inherent in such litigation.

5 **The Parties' Settlement of Attorneys' Fees Is Reasonable:** For the reasons discussed in detail
6 below, an award of attorneys' fees in the amount of approximately 35% of the gross settlement fund is
7 fair and reasonable, and in line with what other California courts, both state and federal, have awarded in
8 settlements of similar litigation.

9 The PAGA provides that a plaintiff is entitled to recover reasonable attorneys' fees, expenses,
10 and costs. Section 2699(k)(1) of the California Labor Code provides that "[a]ny employee who prevails
11 in any action shall be entitled to an award of reasonable attorney's fees and costs." In a *qui tam* action,
12 reasonable attorneys' fees and costs are typically awarded under the common fund doctrine where, as
13 here, the litigation creates a common fund of money in a specific amount for the benefit of others. PAGA
14 "is a type of *qui tam* action." *See Iskanian*, 59 Cal. 4th at 382. "A *qui tam* action 'is a type of private
15 attorney general lawsuit' [citation], in which 'the *qui tam* plaintiff stands in the shoes of the state or
16 political subdivision [citation].'" *People ex rel. Strathmann v. Acacia Research Corp.*, 210 Cal. App. 4th
17 487, 501 (2012).

18 A PAGA action is a *qui tam* action because the statute allows the employee plaintiff, acting as
19 the proxy of the State's labor law enforcement agency, to sue his or her employer for Labor Code
20 violations and recover civil penalties that otherwise would have been assessed and collected by the
21 LWDA. *See Iskanian*, 59 Cal. 4th at 382. Indeed, the majority of the civil penalties recovered in a PAGA
22 action are paid to the State, with a smaller portion paid to the aggrieved employees (e.g., 75% paid to the
23 state; 25% paid to the aggrieved employees). *See* Cal. Lab. Code § 2699(i). Where, as here, a common
24 fund is created in a *qui tam* action by the successful litigation of a plaintiff and her attorneys, the
25 plaintiff's attorneys are entitled to recover their fees from the common fund:

26 Those benefiting from the recovery of the fund, in this case some depositors and eventually
27 the People of the State of California, must bear their share of the cost of litigation. Fees for
28 taxpayers' attorneys will be deducted from the judgment, and each claimant's share
reduced proportionately. To the extent the judgment relies upon section 1021.5 for recovery
of attorney fees, it must be modified to confine the award of fees to the common fund

theory.

Bank of America v. Cory, 164 Cal. App. 3d 66, 91 (1985) (authorizing common fund fees in a *qui tam* taxpayer suit against certain banks).

Likewise, through the successful efforts of Plaintiff and his attorneys, a common fund was created in the amount of \$185,000 for the benefit of the employees and the State of California. Thus, these beneficiaries must bear their share of the costs and attorneys' fees, to be deducted from the gross settlement fund under the common fund theory. *Id.* Such fees are deducted as a percentage of the settlement amount. *See, e.g., Boeing Co. v. Van Gernert*, 444 U.S. 472, 478-482 (1980); *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997); *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003).

The California Supreme Court recently upheld the use of the common fund theory of recovery for attorneys' fees in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 506 (2016). In *Laffitte*, the settlement created a common fund of \$19 million. The Court approved the award of attorneys' fees in the amount of one third of the gross \$19 million settlement (e.g., an award of \$6.33 million) under the common fund theory. *Id.* By awarding counsel a percentage of the total recovery, rather than fees based on hours worked, the common fund method encourages attorneys to efficiently litigate to achieve the best results possible. *See Laffitte*, 1 Cal. 5th at 492-494. Indeed, "the percentage method is generally favored in common fund cases because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure. *Id.* at 493 (quoting *In re Rite Aid Corp. Securities Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) (internal quotations omitted).

As a California appellate court very recently confirmed, "fee awards in class actions average around one-third of the recovery' regardless of 'whether the percentage method or the lodestar method is used." *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021) (quoting *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008)).

Consistent with that observation, California state and federal courts routinely award attorneys' fees equaling approximately 35% of the common fund. *See Rabin v. PricewaterhouseCoopers LLP*, No. 16-cv-02276-JST, 2021 WL 837626, at *9 (N.D. Cal. Feb. 4, 2021) (awarding class counsel 35% of

common fund); *Dawson v. Hitco Carbon Composites, Inc.*, No. 16-cv-07337, 2019 WL 7842550, at *9 (C.D. Cal. Nov. 25, 2019) (granting final approval of plaintiff’s counsel’s request for a fee award totaling 35% of the total settlement amount); *Miller v. CEVA Logistics USA, Inc.*, No. 2:13-cv-01321-TLN, 2015 WL 4730176, at *8 (E.D. Cal. Aug. 10, 2015) (“California district courts usually award attorneys’ fees in the range of 30-40% in wage and hour class actions that result in the recovery of a common fund under \$10 million.”); *Bennett v. SimplexGrinnell LP*, No. 11-cv-01854-JST, 2015 WL 12932332, at *6 (N.D. Cal. Sept. 3, 2015) (concluding award representing 38.8% of common fund was reasonable).

For all of these reasons, a common fund fee award in the amount of \$64,750 is fair and reasonable.

The Court Should Approve the Negotiated Service Award Payment: Paragraph 15 of the PAGA Settlement Agreement provides that Defendant will pay Plaintiff the sum of \$5,000 for his service on behalf of the LWDA and Aggrieved Employees.

The additional settlement payment is justified in light of the reputational risk that Plaintiff assumed by litigating claims against a former employer. *See Billingshausen 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); *see also Guippone v. BH S&B Holdings LLC*, No. 09 Civ. 1029, 2011 U.S. Dist. LEXIS 126026, at **4, 20 (S.D.N.Y. Oct. 28, 2011) (“[T]he fact that a plaintiff has filed a federal lawsuit is searchable on the internet and may become known to prospective employers when evaluating the person . . . Even where there is not a record of actual retaliation, notoriety, or personal difficulties, [representative Plaintiffs] merit recognition for assuming the risk of such for the sake of absent [parties.]”). By bringing this action against an employer, Plaintiff has assumed considerable reputational risk that may impact his ability to find employment in the future. *La Fleur v. Medical Management Intern, Inc.*, No. 13-00398-VAP, 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).

Second, the separate settlement payment is reasonable because Plaintiff “remained fully involved and expended considerable time and energy during the course of the litigation.” *See In re Toys ‘R’ Us-Del FACTA Litig.*, 295 F.R.D. at 471 (citation omitted). Plaintiff devoted his time and effort toward assisting his attorneys with the prosecution of the claims, and assisted counsel with finalizing the

1 settlement.

2 Lastly, because PAGA is a “type of qui tam action,” it is appropriate for the Plaintiff to receive a
3 modest additional payment from the settlement as a “bounty” for his special effort in vindicating the
4 State’s interests by enforcing its labor laws. *See Iskanian*, 59 Cal. 4th at 382 (“A PAGA representative
5 action is therefore a type of qui tam action.”); *see also People ex rel. Strathmann v. Acacia Research*
6 *Corp.*, 210 Cal. App. 4th 487, 500 (2012) (“The person who brings the qui tam action, called the
7 ‘relator,’ stands in the shoes of the People of the State of California, who are deemed to be the real party
8 in interest . . . The relator in a qui tam action under section 1871.7 does not personally recover damages
9 but, if successful, receives [a portion] of the recovery as a bounty.”) (internal citations omitted).

10 Such a payment incentivizes employees to step forward to enforce the Labor Code. *See MMM*
11 *Holdings, Inc. v. Reich*, 21 Cal. App. 5th 167, 180 (2018) (“The bounty advances the public purpose and
12 benefit by encouraging private qui tam actions; indeed, this prospect of reward may be the only means of
13 inducing such private parties to come forward with their information.”) (internal quotations omitted).
14 This is especially important in this context, as “the lack of government resources to enforce the Labor
15 Code led to a legislative choice to deputize and incentivize employees uniquely positioned to detect and
16 prosecute such violations through the PAGA.” *Iskanian*, 59 Cal. 4th at 390. Absent the incentive
17 payment, fewer employees would be willing to step forward, and PAGA’s primary purpose—
18 enforcement of the Labor Code—would be substantially undermined.

19 **NOW THEREFORE**, the Parties stipulate to settle this matter according to the terms and
20 conditions set forth in the PAGA Settlement Agreement attached hereto as Exhibit 1.

21 **IT IS SO STIPULATED.**

22 **BOYAMIAN LAW, INC.**

23 Dated: October 28, 2024

24 /s/ Michael H. Boyamian

25 Michael H. Boyamian

26 Attorneys for Plaintiff Jose Andrade
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LAW OFFICE OF ELI M. KANTOR

Dated: October 28, 2024

/s/ Eli M. Kantor
Eli M. Kantor
Attorneys for Defendant Ace Attorney
Services, Inc.

Exhibit 1

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JOSE ANDRADE, an individual, on behalf of
themselves and all others similarly situated and
the general public,

Plaintiff,

v.

ACE ATTORNEY SERVICES, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No. 23STCV21822

PAGA SETTLEMENT AGREEMENT

PAGA SETTLEMENT AGREEMENT

Subject to Court approval by the Superior Court of the State of California for the County of Los Angeles (“Court”), Plaintiff Jose Andrade (“Plaintiff”) and Defendant Ace Attorney Services, Inc. (“Defendant”) (collectively with Plaintiff, the “Parties”) hereby agree to the following binding settlement (“Settlement” or “Settlement Agreement”) of Plaintiff’s claim under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means *Andrade v. Ace Attorney Services, Inc.*, No. 23STCV21822 (Los Angeles County Superior Court).
2. “Aggrieved Employees” means all persons who were employed by Defendant in the State of California in non-exempt positions at any time during the Settlement Period.
3. “Court” means the Superior Court for the State of California, County of Los Angeles.
4. “General Release Payment” means the amount to be paid to Plaintiff as payment for a general release of all claims arising out of his employment with Defendant.
5. “Gross Settlement Amount” means the settlement amount of One Hundred Eighty-Five Thousand Dollars (\$185,000) to be paid by Defendant in full satisfaction of all Settled Claims arising from the Action.
6. “LWDA” means the California Labor and Workforce Development Agency.
7. “PAGA Penalties Fund” means the Gross Settlement Amount less the Attorneys’ Fees and Costs, Service Award, and Settlement Administrator Costs.
8. “Plaintiff’s Counsel” means Boyamian Law, Inc. and Capstone Law APC.
9. “Service Award” means the amount to be paid to Plaintiff as payment for his service on behalf of the LWDA and Aggrieved Employees.
10. “Settled Claims” means any and all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged or could have been alleged to have been violated in the Action with respect to Aggrieved Employees based on the facts

alleged in the Action during the Settlement Period.

11. “Settlement Period” means June 30, 2022 through the earlier of: (a) September 13, 2024, or (b) the date of entry of the Order and Judgment.

TERMS

12. Gross Settlement Amount. In consideration for Plaintiff’s promises and representations described in this Settlement Agreement, and subject to all of the conditions of the Settlement being met, Defendant will pay One Hundred Eighty-Five Thousand Dollars (\$185,000) (“Gross Settlement Amount”) to settle the Settled Claims. The Gross Settlement Amount includes Plaintiff’s attorneys’ fees, litigation costs and expenses, consideration for Plaintiff’s service on behalf of the LWDA and Aggrieved Employees, Settlement Administration Costs, and payments to Aggrieved Employees and the LWDA for their share of the PAGA Penalties Fund. No portion of the Gross Settlement Amount will be retained by, or revert to, Defendant.

13. PAGA Penalties Fund. The PAGA Penalties Fund will be paid to Aggrieved Employees and the LWDA in full satisfaction of all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in the Action with respect to Aggrieved Employees. Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Penalties Fund will be paid to the LWDA, and the remaining Twenty-Five Percent (25%) will be paid to all Aggrieved Employees according to the following formula:

13(a) Defendant will calculate: (i) the total number of pay periods worked by each Aggrieved Employee during the Settlement Period, and (ii) the total number of pay periods worked by all Aggrieved Employees during the Settlement Period.

13(b) To determine each Aggrieved Employee’s payment from the PAGA Penalties Fund, Defendant will use the following formula: Settlement Payment = 25% of PAGA Penalties Fund × [Pay Periods Worked by Individual Aggrieved Employee During the Settlement Period ÷ Total Pay Periods Worked by All Aggrieved Employees during the Settlement Period].

13(c) Defendant estimates that Aggrieved Employees worked during a combined total of approximately Four Thousand Nine Hundred Seventy-Five (4,975) pay periods during the Settlement Period. If the actual number of pay periods during the Settlement Period is greater than Five Thousand Four Hundred Seventy-Two (5,472), then Defendant must either: (i) proportionally increase the Gross Settlement Amount according the following formula—Proportionally Increased Gross Settlement Amount = $\$180,000 \times \text{Total Number of Pay Periods During the Settlement Period} \div 5,472$; (ii) advance the end date of the Settlement Period to correspond to the last date on which the total number of pay periods during the Settlement Period was not in excess of 5,472.

14. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application or motion by Plaintiff's Counsel for Attorneys' Fees and Costs of not more than Sixty-Four Thousand Seven Hundred Fifty Dollars (\$64,750), plus the reimbursement of all out-of-pocket costs and expenses associated with Plaintiff's Counsel's litigation and settlement of the Action (including expert/consultant fees, investigations costs, etc.), not to exceed Fifteen Thousand Dollars (\$15,000), both of which will be paid from the Gross Settlement Amount. Any portion of the Attorneys' Fees and Costs not awarded to Plaintiff's Counsel will be added to the PAGA Penalties Fund.

15. Service Award. For his service on behalf of the LWDA and Aggrieved Employees, Defendant agrees not to oppose or impede any application or motion by Plaintiff for a service award of up to Five Thousand Dollars (\$5,000) ("Service Award"). For tax purposes, the Service Award will be treated non-wages for which IRS Forms 1099-MISC will be issued.

16. General Release Payment. For a general release of all claims Plaintiff may have against Defendant arising out of his employment, Defendant agrees to pay Plaintiff the sum of Five Thousand Dollars (\$5,000) ("General Release Payment"). The General Release Payment will be paid separately from, and in addition to, the Gross Settlement Amount. For tax purposes, the General Release Payment will be treated non-wages for which IRS Forms 1099-MISC will be issued. Upon receipt of the General Release Payment, Plaintiff will be deemed to have fully released and discharged Defendant from any and

all claims, demands, obligations, causes of action, rights, or liabilities of any kind which have been or could have been asserted against Defendant arising out of, or relating to, Plaintiff's employment with Defendant or termination thereof, including but not limited to claims for wages, restitution, penalties, retaliation, defamation, discrimination, harassment or wrongful termination of employment. This release specifically includes any and all claims, demands, obligations and/or causes of action for damages, restitution, penalties, interest, and attorneys' fees and costs (except provided by the Settlement) relating to or in any way connected with the matters referred to herein, whether or not known or suspected to exist, and whether or not specifically or particularly described herein. Specifically, Plaintiff will be deemed to have waived all rights and benefits afforded by California Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

17. Settlement Administration Costs. The Parties will retain ILYM Group, Inc. as the third-party settlement administrator ("Settlement Administrator"). The Settlement Administrator will be responsible for establishing a qualified settlement fund ("QSF") and issuing payments and appropriate tax forms to Aggrieved Employees, the LWDA, Plaintiff, and Plaintiff's Counsel. The Settlement Administration Costs will be paid from the Gross Settlement Amount. Based on the estimate that there are approximately One Hundred Seventy (170) Aggrieved Employees, Settlement Administration Costs are estimated at Three Thousand Five Hundred Fifty Dollars (\$3,550).

18. Court Approval of the Settlement and Distribution of Settlement Payments. The Parties will present this Settlement Agreement to the Court and the LWDA. The Parties will request that the Court issue an order and judgment approving and incorporating by reference the terms and conditions of the Settlement Agreement (the "Order and Judgment").

19. List of Aggrieved Employees. Within seven (7) calendar days after entry of the Order and Judgment, Defendant will provide the Settlement Administrator a complete list of all Aggrieved

Employees (“Aggrieved Employee List”). The Aggrieved Employee List will be formatted in Microsoft Office Excel and will include each Aggrieved Employees full name; most recent mailing address and telephone number; Social Security number; the respective number of pay periods during which each Aggrieved Employee worked during the Settlement Period; and any other relevant information needed to calculate settlement payments.

20. Funding of the Settlement. Beginning on August 20, 2024, the Gross Settlement Amount will be funded in twelve (12) equal monthly installments. Each installment will be deposited into a Qualified Settlement Fund (“QSF”) established by the Settlement Administrator. Within fourteen (14) calendar days after the entire Gross Settlement Amount is deposited into the QSF (“Full Funding Date”), the Settlement Administrator will issue payments to: (a) Aggrieved Employees; (b) the Labor and Workforce Development Agency; (c) Plaintiff for his Service Award; (d) Plaintiff’s Counsel; and (e) itself. The Settlement Administrator, and not Defendant, will issue the appropriate tax forms for all payments issued under this Settlement.

21. Settlement Payments to Aggrieved Employees. The Settlement Administrator will issue each Aggrieved Employee one check for his or her share of the PAGA Penalties Fund along with an explanatory letter, attached as Exhibit A. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address or Social Security number of the Aggrieved Employee involved, and will then perform a single re-mailing. Checks will remain negotiable for 180 days. Those funds represented by un-cashed checks which remain outstanding 180 days after the mailing of the Settlement checks by the Settlement Administrator will be tendered to the LWDA. All settlement payments to Aggrieved Employees will be treated as miscellaneous income for which a 1099 will be issued.

22. Settled Claims. Upon the Full Funding Date, Plaintiff and all Aggrieved Employees will be forever barred from pursuing against Defendant any and all Settled Claims during the Settlement

Period. Aggrieved Employees, other than Plaintiff, will not be deemed to have released any individual wage and hour claims by virtue of this Settlement.

23. No Right to Exclusion or Objections by Representative Action Members. Because this settlement resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a Private Attorney General of, and for, the State of California and the LWDA, the Parties agree that no Aggrieved Employee has the right to exclude himself or herself from the Settlement. Aggrieved Employees will be bound by the terms of the Settlement Agreement, upon its approval by the Court, regardless of whether he or she cashes any payment received as a result of this Settlement. The Parties also agree that no Aggrieved Employee has the right to object to the terms of the Settlement Agreement.

24. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as referenced herein will not be utilized to calculate any additional benefits under any benefit plans to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

25. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

26. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

27. Judgment and Continued Jurisdiction. After entry of the Order and Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement.

28. Entire Agreement. This Settlement Agreement constitutes the entirety of the Parties'

1 settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding
2 on the Parties.

3 29. Amendment or Modification. This Settlement Agreement may be amended or modified
4 only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all
5 Parties, and approved by the Court.

6 30. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
7 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
8 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
9 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
10 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each
11 other and use their best efforts to affect the implementation of the Settlement. If the Parties are unable to
12 reach agreement on the form or content of any document needed to implement the Settlement, or on any
13 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties
14 may seek the assistance of the Court to resolve such disagreement.

15 31. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
16 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

17 32. California Law Governs. All terms of this Settlement Agreement will be governed by
18 and interpreted according to the laws of the State of California.

19 33. Execution and Counterparts. This Settlement Agreement is subject only to the execution
20 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
21 executed counterparts and each of them, including electronic signatures (e.g., Docusign), facsimiles, and
22 scanned copies of the signature pages, will be deemed to be one and the same instrument.

23 34. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
24 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
25 Settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that
26 they are each represented by competent counsel and that they have had an opportunity to consult with
27 their counsel regarding the fairness and reasonableness of this Settlement.

28 35. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that

1 Plaintiff may appeal any reduction to the Attorneys' Fees and Costs below the amount they request from
2 the Court, and either party may appeal any court order that materially alters the Settlement's terms.

3 36. Invalidity of Any Provision. Before declaring any provision of this Settlement
4 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
5 possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement
6 valid and enforceable.

7 37. Captions. The captions and section numbers in this Settlement Agreement are inserted
8 for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
9 provisions of this Settlement Agreement.

10 38. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement
11 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
12 constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

13 39. Enforcement Action. In the event that one or more of the Parties institutes any legal
14 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
15 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
16 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including
17 expert witness fees incurred in connection with any enforcement actions.

18 40. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
19 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
20 more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for
21 one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties,
22 all Parties have contributed to the preparation of this Settlement Agreement.

23 41. Representation By Counsel. The Parties acknowledge that they have been represented
24 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
25 that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed
26 in full.

27 42. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
28 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this

Settlement Agreement.

43. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

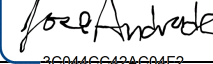
44. Denial of Liability. The Parties expressly recognize that the making of this agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the pendency of the Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 8/16/2024

Jose Andrade

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DEFENDANT

Dated: _____

Name of Authorized Signatory
Ace Attorney Services, Inc.

1 Settlement Agreement.

2 43. Binding Agreement. The Parties warrant that they understand and have full authority to
3 enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and
4 binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to
5 enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply
6 under federal or state law.

7 44. Denial of Liability. The Parties expressly recognize that the making of this agreement
8 does not in any way constitute an admission or concession of wrongdoing on the part of Defendant.
9 Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements,
10 discussions or communications, nor any materials prepared, exchanged, issued or used during the
11 pendency of the Action, is intended by the Parties to, nor will any of the foregoing constitute, be
12 introduced, be used or be admissible in any way in any other judicial, arbitral, administrative,
13 investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law,
14 statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.
15 Notwithstanding the foregoing, this agreement may be used in any proceeding in the Court that has as its
16 purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments
17 of the Court entered into in connection therewith.

18 **READ CAREFULLY BEFORE SIGNING**

19 **PLAINTIFF**

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21 Dated: _____

Jose Andrade

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23 **DEFENDANT**

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25 Dated: _____

By Melik Byendaye
Name of Authorized Signatory
Ace Attorney Services, Inc.

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APPROVED AS TO FORM

Dated: 8/20/2024

CAPSTONE LAW APC

Raul Perez

Dated: 8/20/2024

BOYAMIAN LAW, INC.

Michael H. Boyamian

Dated:

LAW OFFICE OF ELI M. KANTOR

Eli M. Kantor

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APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: _____

Raul Perez

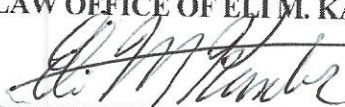
BOYAMIAN LAW, INC.

Dated: _____

Michael H. Boyamian

LAW OFFICE OF ELI M. KANTOR

Dated: 8/9/2024



Eli M. Kantor

Exhibit A

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

**Re: Payment From *Andrade v. Ace Attorney Services, Inc.*, No. 23STCV21822
(Los Angeles County Superior Court)**

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Andrade v. Ace Attorney Services, Inc.*, No. 23STCV21822 (Los Angeles County Superior Court) (the “Action”).

The Action was filed against Defendant Ace Attorney Services, Inc. (“Defendant”) pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called “PAGA”). The Action was brought by a former employee of Defendant on behalf of the State of California and all allegedly “aggrieved employees” of Defendant. You have been identified as one of the employees on whose behalf the case was brought.

The Plaintiff in the Action claimed that Defendant owed civil penalties recoverable under PAGA for alleged violations of the California Labor Code and California Wage Orders. Defendant denies that it violated the Labor Code or California Wage Orders. Moreover, in agreeing to this settlement, Defendant does not admit that it is liable in any way for any penalties.

The Court has not ruled on the merits of the Action but it has approved the settlement of PAGA civil penalties, of which 75% will be paid to the California Labor and Workforce Development Agency, and the remaining 25% will be paid to aggrieved employees. Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties.

Aggrieved employees, other than Plaintiff, will not be deemed to have released any individual wage and hour claims based on alleged violations of the Labor Code or of a California Wage Order, for which they have a private right of action, by virtue of the Settlement.

You are not a party to this lawsuit, but you and the government will be bound by the settlement in this matter as to civil penalties. If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter).

Very Truly Yours,

[Administrator]