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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

Plaintiff

v.

NIVA LABS LLC, a California Limited Liability Company; and BRIANA B. CHHIN, an individual; SOKOUN CHHIN, an individual; and JOSHUA SNYDER, an individual; and DOES 1-10, inclusive

Defendants

CASE NO. 23CHCV02971

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

Date: August 9, 2024
Time: 8:30
Dept.: F47
Judge: Hon. Melvin D. Sandvig

1 **I. SUMMARY OF MOTION**

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

6 This Request is **Unopposed**. The LWDA was timely notified of this proposal, concurrent with
7 the filing. (See Concurrently Filed Proof of Service on LWDA).

8 **II. SETTLEMENT TERMS**

9 This is a Labor Code §2698 *et seq.* “Wage and Hour” (“PAGA”) action brought against
10 Defendants NIVA LABS LLC; and BRIANA B. CHHIN; SOKOUN CHHIN; and JOSHUA
11 SNYDER. The Complaint specifically alleges (1) Meal and Rest Period Violations; (2) Minimum
12 Wage Violations; (3) Overtime Violations; (4) Wage Statement Violations; (5) Failure to Reimburse
13 Employment Related Expenses; (6) Failure to Pay Wages Upon Separation; and (7) Failure to Produce
14 Personnel Records Pursuant to Labor Code.

15 **Please Note:** NIVA LABS LLC is no longer a viable entity, as of May 2023, and as a result was
16 not able to appear in this action. They are separately being dismissed. (Yaeckel decl ¶ 3). However,
17 they are not a party to the settlement agreement and its release provisions. (Ex. 1 at § I(16)). For
18 purposes of this Motion and the Settlement Agreement, the term “Defendants” refers only to BRIANA
19 B. CHHIN; SOKOUN CHHIN; and JOSHUA SNYDER who are all parties to the Settlement
20 Agreement. The term “Parties” refers to Plaintiff, BRIANA B. CHHIN; SOKOUN CHHIN; and
21 JOSHUA SNYDER only.

22 Following the exchange of discovery, both formal and informal, and analysis of time and wage
23 data, the Parties reached a proposed settlement that includes a payment of penalties to the LWDA.
24 (Yaeckel Decl., ¶4).

25 The Parties “PAGA Settlement Agreement” (the “Agreement”) is attached to the declaration
26 of Eric K. Yaeckel as Exhibit 1.

27 The Aggrieved Employees for purposes of this settlement are defined as “all persons who are
28 alleged to have been employed or have been employed by Defendants in California as hourly,

1 non-exempt employees from July 26, 2022, through May 10, 2024. (Ex. 1 at ¶ I, 2). This time period
2 is the covered PAGA Period. (*Id.*)

3 It is estimated that there are 8 PAGA Members, including Plaintiff. (Yaeckel Decl., ¶3; Ex. 1
4 at § 7).

5 The operative complaint alleges seven causes of action (all under PAGA) for (1) meal
6 and rest period violations; (2) minimum wage violations; (3) overtime violations; (4) wage
7 statement violations; (5) failure to reimburse business expenses; (6) failure to pay all wages
8 owed to ex-employees at separation; and (7) Failure to Produce Personnel Records. (ROA #
9 1).

10 Here, the release is limited to PAGA claims only that arose during the PAGA Period and were,
11 or could have been, asserted in the Operative Complaint. (See Ex. 1 § I, 13). The settlement agreement
12 only covers PAGA claims.

13 Based on the below figures, each PAGA Member would receive an average payment of
14 approximately **\$70.31**. This figure represents an average only, as the actual amounts paid will vary
15 depending on the amount of pay periods worked during the PAGA period. (Exhibit 1 at 3.2.5).

16 The PAGA Member payments will be paid 100% as penalties pursuant to a IRS 1099 form.
17 (Exhibit 1 at 3.2.6).

18 The Total Value of the proposed Settlement is **\$10,000.00**, which is broken down as follows:

- 19 * **\$3,000.00** Attorneys' Fees (30% of total settlement value);
- 20 * **\$1,250.00** Costs of Litigation;
- 21 * **\$3,500.00** Plaintiff's Enhancement and § 1542 Release Payment
- 22 * Sub-Total of **\$2,250** as the Total PAGA Penalties;
- 23 * 75% (**\$1,687.50**) shall be assigned/paid to the LWDA as penalties; and
- 24 * The remaining 25% (**\$562.50**) will be disbursed among all employees based on
25 pay periods worked during the PAGA period.

26 (See Ex. 1: Section I, 10). Defendant will also self-administer the settlement and bear all costs
27 related to administration. (Ex. 1 section IV).

28 Given the above, the average payment to each individual employee will be approximately

1 \$70.31. (Yaeckel decl. ¶ 7.) This is an average only. The actual payment will be determined based of
2 the total pay periods worked by each of the eight employees during the PAGA period. (Ex. 1 § 3.2.5).

3 Subject to the Court’s Approval, the parties have jointly drafted a proposed notice to go out
4 with the settlement payments following approval. (Please see **Exhibit 2**).

5 After the check cashing deadline (which is not less than 180 days after the mailing) any
6 unclaimed funds sent to the Aggrieved Employees will be sent to the California Controller’s
7 Unclaimed Property Fund in the name of the Aggrieved Employee. (Ex. 1 at 4.1.1, 4.1.3).

8 **III. CONTROLLING AUTHORITY**

9 PAGA “authorizes an employee to bring an action for civil penalties on behalf of the state
10 against his or her employer for Labor Code violations committed against the employee and fellow
11 employees.” *Iskanian v. CLS Trans. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 360. “To compensate
12 for the lack of [a]dequate financing of essential labor law enforcement functions,’ the California
13 legislature enacted PAGA to permit aggrieved employees to act as private attorneys general to collect
14 civil penalties for violations of the Labor Code.” *Sakkab v. Luxottica Retail N. Am., Inc.* (9th Cir.
15 2015) 803 F.3d 425, 430.

16 Recently the Court of Appeal has given guidance to trial courts in reviewing a PAGA
17 settlement:

18 We therefore hold that **a trial court should evaluate a PAGA settlement to**
19 **determine whether it is fair, reasonable, and adequate in view of PAGA's**
20 **purposes to remediate present labor law violations, deter future ones, and to**
21 **maximize enforcement of state labor laws.** (*See Williams , supra ,* 3 Cal.5th at p.
22 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA "sought to remediate present
violations and deter future ones"]; *Arias , supra ,* 46 Cal.4th at p. 980, 95 Cal.Rptr.3d
588, 209 P.3d 923 [the declared purpose of PAGA was to augment state enforcement
efforts to achieve maximum compliance with labor laws].)
Moniz v. Adecco USA, Inc., (2021) 72 Cal. App. 4th 56, 77

23 The statute does not, however, require the two-step process utilized in class actions. See
24 *Salazar v. Sysco Central Cal.*, No. 15-01758-DAD, 2017 WL 1135801, *2 (E.D. Cal. Feb. 2, 2017)
25 (rejecting the application of class action settlement rules and procedures for PAGA settlement
26 approval). Nothing in the PAGA statute changes the strong judicial preference in support approving
27 settlements.

28 A court may award a lesser amount than the maximum civil penalty amount if, based on the

1 facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,
2 arbitrary and oppressive, or confiscatory. Lab. Code, § 2699(e)(2); *Amaral vs. Cintas Corp. No. 2*
3 (2008) 163 Cal.App.4th 1157, 1213-1214. *See e.g., Fleming v. Covidien Inc.*, 2011 WL 7563047, at
4 *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 82%).

5 The Court in *Flores v. Starwood Hotels & Resorts Worldwide, Inc.* (“Flores”) the court was
6 asked to approve a PAGA settlement (the “Settlement”). *Flores v. Starwood Hotels & Resorts*
7 *Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1075–76 (C.D. Cal. 2017). In deciding whether the court
8 should approve the Settlement, the court looked at the California legislature, the California Courts of
9 Appeal, the California Supreme Court, and the California Labor & Workforce Development Agency
10 for a definitive answer as to what precedent the court should follow in either approving or denying the
11 settlement. *Id.* The court was not able to find a definitive answer. *Id.* As such, the court followed the
12 rationale in *O’Connor v. Uber Techs., Inc.*, 201 F.Supp.3d 1110, 132-35 (N.D. Cal. 2016), which states
13 a court is permitted to approve a PAGA settlement if the settlement is “fair and adequate in view of
14 the purposes and policies of the statute.” *Id.*

15 In deciding whether the settlement was “fair and adequate,” the Court’s have looked sought
16 how the parties divvied up the civil penalties under Section 2699(i) of the California Labor Code.
17 *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1076–77 (C.D. Cal.
18 2017). As the court felt the parties’ division of penalties was fair and adequate pursuant to the statute,
19 the court approved the settlement. *Id.*

20 **IV. DISCUSSION**

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

24 **A. THE NATURE AND SCOPE OF THE ALLEGED VIOLATIONS**

25 The Complaint alleges Labor Code violations which triggered penalties under the PAGA
26 statute (Labor Code §2698 et seq.) (See ROA #2.) Plaintiff also alleged all employees were denied
27 compliant Meal and Rest Periods, minimum wages, overtime, accurate wage statements,
28 reimbursements, and suffered waiting time violations. (See ROA #2, Exhibit 1: “Plaintiff’s LWDA

1 Notice” attached thereto).

2 Specifically, Plaintiff alleges that he - and other employees - received “short,” “late,” or
3 “missing” Meal Periods, including those documented within Defendant’s Time Records. (Decl.
4 Yaeckel, ¶12). Plaintiff also challenged whether Defendant maintained lawful meal and rest periods.
5 Plaintiff alleged she- and other employees -were not properly compensated due to Defendant’s failure
6 to maintain accurate time records and a failure to reimburse all travel expenses. (*Id.*) Defendant denies
7 Plaintiff’s allegations entirely, and contends that its wage and hour policies and procedures are
8 compliant with California law.

9 **B. ANALYSIS OF POTENTIAL LIABILITY, ON A REPRESENTATIVE BASIS**

10 The catalyst of this litigation concerned allegations that Mr. Jenkins and others were denied
11 legally compliant meal and rest periods, and was not paid for all Overtime hours worked. (Decl.
12 Yaeckel, ¶10). Plaintiff further alleged that Defendant’s timekeeping policies and employee records
13 were not in compliance with California law. (*Id.*). Defendant denied Plaintiff’s allegations entirely and
14 contends that its policies and procedures at all times during the relevant time period complied with
15 California law. Defendant maintained employees were provided with compliant meal and rest periods,
16 and were properly paid for all hours worked.

17 Based on the above, the maximum liability in a case of this type would be in the range of
18 \$20,000-\$30,000. (Yaeckel, ¶11). However, without revealing settlement protected communications,
19 it was highly unlikely Plaintiff could ever recover anything approaching a maximum judgment. (*Id.*)

20 Moreover, Plaintiff’s counsel is aware of the Court’s discretion to mitigate penalties pursuant
21 to California Labor Code section 2699(e)(2). (Decl. Yaeckel, ¶12). To confirm, Plaintiff’s counsel
22 experienced the mitigation of “PAGA” penalties in *Carrington v. Starbucks Corp.* (2018) 30
23 Cal.App.5th 504. (*Id.*) In *Carrington*, the Court significantly mitigated PAGA penalties (\$5 per
24 violation), due to the efforts made by the employer to comply with the law. (*Id.*)

25 Plaintiff’s counsel agrees with *Carrington*, and with the provision of the Labor Code, that
26 penalties *should* be mitigated where violations are minimal (or rare), or where the employer makes
27 significant efforts to comply with the Labor Code. (Decl. Yaeckel, ¶13).

28 As the above factors exist in this case, it is the opinion of Plaintiff’s counsel that the settlement

1 is fair, adequate, and reasonable. (Decl. Yaeckel, ¶14).

2 Plaintiff's counsel, William B. Sullivan has approximately 29 years of experience in "class
3 action" litigation, both as plaintiff and defense counsel. (Decl. Yaeckel, ¶15). Plaintiff's counsel, Eric
4 K. Yaeckel, has over 13 years of experience prosecuting class and representative action claims under
5 the California Labor Code. (*Id.*) Plaintiff's counsel, Eric K. Yaeckel and William B. Sullivan, are the
6 attorneys of record in a matter that was recently heard (and favorably decided) before the California
7 Supreme Court titled *Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58. (*Id.*) The *Donohue* matter
8 was a certified class and PAGA action. (*Id.*)

9 Plaintiff's counsel were lead counsel on approximately 40 employment "wage and hour" claims
10 with class action, or representative action allegations. (*Id.*) Based on said experience, it is the opinion
11 of Plaintiff's counsel that this settlement represents a fair and adequate payment. (Yaeckel Decl., ¶16).

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

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

19 Here, after subtracting the proposed contingent costs the parties seek to allocate **\$2,250.00** of
20 the total settlement to the Total Value of the PAGA Fund. Of this amount, the value of additional
21 measures taken to address and effectuate Labor Code compliance attributed towards LWDA penalties
22 is **\$1,687.50**, which is 75% of the PAGA fund. (Decl. Yaeckel Decl. ¶22). The remaining (25%)
23 **\$562.50** will be allocated and distributed among the current or ex-employees within the PAGA
24 representation period. (*Id.*)

25 The parties contend the settlement agreement amount is fair, adequate, and reasonable.
26 (Yaeckel Decl., ¶¶ 14, 16). The release only applies to the PAGA claims for penalties, based upon the
27 allegations in Plaintiff's operative Complaint. The PAGA only settlement does not bar any employee
28 from pursuing their own individual Labor Code claims.

1 **D. THE REQUEST FOR ATTORNEYS' FEES, COSTS & PLAINTIFF'S**
2 **ENHANCEMENT**

3 Plaintiff also requests the Court approve the requested attorneys' fees, costs and plaintiff's
4 enhancement award for the reasons set forth below.

5 **1. Request for Reasonable Costs of Litigation**

6 Plaintiff's Counsel are entitled to reimbursement of their discretionary litigation costs. Cal. Lab. Code
7 § 2699(g)(1). Out-of-pocket discretionary expenses are compensable if they would normally be billed to a fee-
8 paying client. *See Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1407, 1419 (1991), *overruled in part on other*
9 *grounds in Olson v. Automobile Club of Southern Calif.*, 42 Cal. 4th 1142 (2008). Such discretionary costs may
10 be claimed as part of an attorneys' fees motion when seeking statutory fees under the Labor Code. *See Amaral*
11 *v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1218 n.27 (2008) (awarding costs that are necessarily incurred).

12 As itemized in Plaintiff's Counsel's declarations, Plaintiff's Counsel advanced \$1,695 dollars in filing
13 fees, attorney messenger fees, e-service, and postage and copying fees. Counsel has agreed to limit the cost
14 request to **\$1,250.00** to maximize the recovery for the PAGA employees. (Yaeckel Decl. ¶ 17). Because these
15 reasonable costs were necessarily incurred during the case's pendency, these costs are reasonable and should be
16 awarded. *See also* Cal. Civ. Pro. Code § 1033.5(c)(4) ("[i]tems not mentioned in this section and items assessed
17 upon application may be allowed or denied in the court's discretion.")

18 **2. Request for Reasonable Attorneys' Fees**

19 For the reasons discussed in detail below, an award of attorneys' fees in the amount of
20 approximately one-third of the gross settlement fund is fair and reasonable, and in line with what other
21 California courts, both state and federal, have awarded in settlements of similar litigation.

22 The PAGA statute provides that a plaintiff is entitled to recover reasonable attorneys' fees,
23 expenses, and costs. Section 2699(g)(1)

24 For all of these reasons, a common fund fee award in the amount of 30% of the total settlement
25 (**\$3,000.00**) is fair and reasonable.

26 Should the Court deem if necessary, a lodestar cross-check of the requested attorneys fees
27 further confirms the propriety of the request. Given the actual fees incurred, in the amount of
28 approximately \$21,000, no lodestar multiplier is necessary, and counsel is requesting far less in fees

1 than what was billed. (See Yaeckel decl. ¶ 18).

2 **3. Request for PAGA Representative Enhancement**

3 Plaintiff requests an enhancement payment of \$3,500 for his service as the PAGA
4 representative.

5 An enhancement is justified in light of the reputational risk that Plaintiff assumed by litigating
6 claims against a former employer. *See Billingshausen v. Tractor Supply Co.*, 306 F.R.D. 245, 267-68
7 (N.D. Cal. 2015) (finding “personal detriment” upon testimony that future employers can easily learn
8 that a prospective employee served as a plaintiff through the internet); *see also Guippone v. BH S&B*
9 *Holdings LLC*, No. 09 Civ. 1029, 2011 U.S. Dist. LEXIS 126026, at **4, 20 (S.D.N.Y. Oct. 28, 2011)
10 (“[T]he fact that a plaintiff has filed a federal lawsuit is searchable on the internet and may become
11 known to prospective employers when evaluating the person . . . Even where there is not a record of
12 actual retaliation, notoriety, or personal difficulties, [representative Plaintiffs] merit recognition for
13 assuming the risk of such for the sake of absent [parties].”).

14 An enhancement is justified given the time expended and reputational risk Plaintiff may suffer
15 for “sticking his neck out” as a PAGA representative. Plaintiffs also risked personally owing a large
16 cost award, which would be well into the tens of thousands of dollars, had the claims been
17 unsuccessful. (Yaeckel decl. ¶ 19-23).

18 The enhancement also recognizes that although this was alleged as a PAGA only claim,
19 Plaintiff agreed to release all claims (e.g., a full 1542 release) as a part of the proposed settlement.
20 (**Exhibit 1: “Released Claims”** § 5.1.1). In addition to the PAGA claims, Plaintiff possessed individual
21 Labor Code violations that were required to be released as a result of this settlement. (Yaeckel decl. ¶
22 25). All other employees are subjected to a limited release of PAGA claims only.

23 The PAGA Representative Service Payment will be issued, using an IRS 1099 Form. (Ex. 1
24 at 3.2.2).

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IV. CONCLUSION

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

Dated: July 3, 2024

SULLIVAN & YAECKEL LAW GROUP, APC

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