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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

ALEJANDRO ORTEGA, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

KEY ENERGY SERVICES, LLC, a Texas
limited liability company; and DOES 1
through 100,

Defendants.

Case No.: BCV-23-102240-BCB

*[Assigned for all purposes to the Hon. Bernard
C. Barmann, Jr., Bakersfield Division H]*

**DECLARATION OF MATTHEW K. MOEN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR SETTLEMENT APPROVAL OF
CLAIMS BROUGHT UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
REASONABLE ATTORNEYS' FEES AND
COSTS, AND REPRESENTATIVE
ENHANCEMENT PAYMENT**

Date: December 13, 2024

Time: 8:30 a.m.

Dept: Bakersfield Division H

Action Filed: July 12, 2023

Trial Date: None Set

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I, MATTHEW K. MOEN, declare as follows:

1. I am a Senior Associate with Haines Law Group, APC, and counsel for the Plaintiff Alejandro Ortega (“Plaintiff”) in the above-captioned matter. I am a member in standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to the facts called upon to do so.

2. I received a Bachelor of Arts degree from UCLA in 2011, and a Juris Doctor from Loyola Law School, Los Angeles, in 2015. Both before and during law school, I worked at the law firm of Prindle, Amaro, Goetz, Hillyard, Barnes & Reinholtz LLP (now known as Prindle, Goetz, Barnes & Reinholtz LLP), located in Long Beach, California. Both before and during law school, I also worked for Jill McBride Baxter, Certified Sports Agent and Sports Attorney.

3. From January 2016 to December 2017, I worked as an associate at Baltodano & Baltodano LLP, a law firm dedicated exclusively to the practice of Plaintiff-side employment litigation located in San Luis Obispo, California. After the founding partner and senior litigation attorney at Baltodano & Baltodano LLP, Justice Hernaldo J. Baltodano, was appointed to the San Luis Obispo County Superior Court in December 2017, the firm dissolved on December 31, 2017. Since January 1, 2018, I have worked as an associate at my current firm, Haines Law Group, APC.

4. During my time with both Baltodano & Baltodano LLP and Haines Law Group, my practice has been solely devoted to litigating plaintiff-side employment related cases in state and federal court, including wage and hour class actions arising under the California Labor Code and the Fair Labor Standards Act. I am currently staffed on over forty active wage and hour class and PAGA representative actions in which I am integrally involved in all aspects of the litigation. I also supervise the work of several junior attorneys on the same wage and hour class actions.

5. I have been appointed as Class Counsel in over fifty (50) class action settlements
ve been granted final approval. The following is a non-exhaustive list of the most recent

1 wage and hour class actions in which I have been named as Class Counsel and awarded
2 attorney's fees following a lodestar cross-check: *Roberto Arcos, et al. v. Panoramic Doors, LLC*,
3 Case No. 37-2021-00048823-CU-OE-CTL, San Diego County Superior Court, Honorable
4 Loren G. Freestone, presiding (awarding attorney's fees following a lodestar cross-check based
5 on a rate of \$650 for work performed in 2021-2023); *Aaron Hallum, et al. v. FCA US, LLC*,
6 Case No. CIVDS1936782, San Bernardino County Superior Court, Honorable Joseph T. Ortiz,
7 presiding (awarding attorney's fees following a lodestar cross-check based on a rate of \$650 per
8 hour for work performed in 2021-2024); *Rafael Perez v. Kyocera SGS Precision Tools, Inc.*,
9 Case No. 30-2022-01299232-CU-OE-CXC, Orange County Superior Court, Honorable Randall
10 J. Sherman, presiding (awarding attorney's fees following a lodestar cross-check based on an
11 hourly rate of \$650 for work performed in 2022-2024); and *Kevin Murphy, et al. v. Fusion*
12 *Learning, Inc.*, Case No. 2:21-cv-06732-JAK (ASx), United States District Court, Central
13 District of California, Honorable John A. Kronstadt, presiding (approving and finding
14 reasonable an hourly rate of \$650 for work performed in 2022-2024).

15 6. I have also been appointed as Class Counsel following a contested motion to
16 certify one or more classes in three (3) class action lawsuits, including as the lead litigation
17 attorney in the following cases:

- 18 • *George Gomez v. The Bedrock Company*, Case No. CIVDS1824255, San Bernardino
19 County Superior Court, Honorable David Cohn, presiding (certifying claims for unpaid
20 overtime and minimum wage violations, meal period violations, rest period violations,
21 wage statement violations, and waiting time penalties); and
- 22 • *Aurora Gatica v. Valley Ag, Inc. et al.*, Case No. 19CECG03018, Fresno County
23 Superior Court, Honorable Tyler D. Tharpe, presiding (certifying claims for meal period
24 violations, unpaid rest period violations, wage statement violations, and waiting time
25 penalties).

26 7. In every year from 2020 to 2024, Thomson Reuters and Los Angeles Magazine
27 recognized me as a Top Young Attorney in Southern California in the annual Rising Star
28

1 Edition of Super Lawyers. This is an honor awarded to no more than two-and-a-half percent
2 (2.5%) of attorneys under the age of forty in Southern California each year.

3 8. As counsel for Plaintiff, I have been closely involved in all aspects of this
4 litigation since its inception, and believe that the proposed settlement in this action is a fair and
5 reasonable result for the PAGA Aggrieved Employees.

6 9. I confirm that I do not have any interest or involvement in, and am not affiliated
7 with, the proposed settlement administrator, Phoenix Class Action Administration Solutions, or
8 the proposed *cy pres* recipient, Court Appointed Special Advocates (CASA) of Kern County.

9 10. A true and correct copy of the PAGA Settlement Agreement (the “Settlement
10 Agreement” or “Settlement”) entered into between Plaintiff and Defendant Key Energy Services,
11 LLC (“Defendant”) is attached hereto as **Exhibit 1**. The Notice of PAGA Settlement and
12 Release of Claims (“PAGA Notice”) is attached as Exhibit A to the Settlement Agreement.

13 11. Concurrently with the filing of Plaintiff’s motion, Plaintiff provided notice of the
14 proposed Settlement, a copy of the motion, and all papers filed in support thereof, to the LWDA.
15 True and correct copies of Plaintiff’s Settlement submission and the LWDA’s confirmation of
16 receipt are attached hereto as **Exhibit 2**.

17 12. Defendant operates an oil field in Bakersfield, California. Plaintiff has been
18 employed by Defendant as a non-exempt “Floorhand” since approximately June 2022. Since
19 March 2023, Plaintiff has been on a medical leave of absence. Plaintiff’s job duties consisted of
20 performing maintenance on and servicing oil wells. Plaintiff, like all PAGA Aggrieved
21 Employees, was subject to Defendant’s wage and hour policies and practices.

22 13. On July 12, 2023, Plaintiff filed a class action complaint, alleging Defendant
23 failed to: (1) pay all overtime wages owed; (2) pay all minimum wages owed; (3) provide all
24 lawful meal periods; (4) authorize and permit all lawful rest periods; (5) reimburse all
25 necessary business expenses; (6) issue accurate itemized waged statements; and (7) comply
26 with California’s unfair competition laws. On the same day, Plaintiff submitted a written
27 PAGA Notice Letter to the LWDA and Defendant, notifying both of his intent to file a claim
28 for civil penalties under PAGA. On September 18, 2023, after Plaintiff exhausted his

1 administrative remedies with the LWDA, Plaintiff filed a First Amended Class and
2 Representative Action Complaint (“FAC”), adding an eighth cause of action for civil penalties
3 under PAGA. Attached hereto as **Exhibit 4** are true and correct copies of Plaintiff’s July 12,
4 2023 PAGA Notice Letter, Plaintiff’s New PAGA Claim Notice Submission, and the LWDA’s
5 confirmation of receipt.

6 14. Shortly after Plaintiff filed this action, Defendant’s counsel provided Plaintiff’s
7 counsel with an arbitration agreement that was signed by Plaintiff containing a class action
8 waiver. Thereafter, Plaintiff dismissed his individual claims and the class-wide claims without
9 prejudice, and pursued this action on a representative PAGA basis only.

10 15. On March 25, 2024, the Parties attended an early private mediation with
11 mediator Hon. Amy D. Hogue (Ret.). Prior to attending mediation, Defendant provided
12 Plaintiff with a 15% representative sampling of the PAGA Aggrieved Employees’ timekeeping
13 and payroll records spanning the relevant time period, as well as policy documents and key
14 data points. Plaintiff then retained an expert with a Ph.D. in economics to examine Defendant’s
15 produced data and conduct a comprehensive exposure analysis for the claims at issue.

16 16. During mediation, the parties debated the legal bases for their claims and
17 defenses, their respective data analyses, and their positions regarding the extent to which the
18 Court might reduce any PAGA penalties recovered. At the conclusion of mediation, Judge
19 Hogue made a mediator’s proposal to fully resolve Plaintiff’s PAGA claim, which the parties
20 ultimately accepted. Over the following months, the parties negotiated the final terms of the
21 proposed Settlement now before this Court for approval.

22 17. Plaintiff alleges that he and the PAGA Aggrieved Employees were regularly
23 required to arrive at Defendant’s on-site locker room 15-minutes before the scheduled start of
24 their shift in order to don protective gear and prepare work-related equipment while off-the-
25 clock, but were only paid from the start of their scheduled shift time. Similarly, Plaintiff and
26 other PAGA Aggrieved Employees were required to clock out at the end of their scheduled
27 work shift prior to doffing their safety equipment in Defendant’s on-site locker room. Plaintiff
28 further alleges that he and the PAGA Aggrieved Employees were frequently required to clock

1 out for purported meal periods but to continue performing work, resulting in Defendant's
2 failure to accurately track and pay Plaintiff and other PAGA Aggrieved Employees all
3 minimum and overtime wages owed, as well as Defendant's failure to provide all lawful, duty-
4 free 30-minute meal periods to which the PAGA Aggrieved Employees are entitled. Plaintiff
5 also asserts that Defendant frequently provided untimely meal periods and interrupted meal
6 periods prior to the completion of a full 30 minutes due to work demands, and failed to provide
7 *any* second, duty-free 30-minute meal periods for shifts over ten hours.

8 18. In response, Defendant maintains it accurately records and properly pays all
9 wages for all hours worked by the PAGA Aggrieved Employees. First, Defendant argues that
10 its policies require all donning and doffing activities to be conducted while clocked in, and
11 points to the employee time records reflecting varying clock-in times prior to the employees'
12 scheduled shifts as evidence of this practice. Next, Defendant contends it maintained lawful
13 meal period policies/practices at all times and provided all timely, duty-free meal periods, and
14 whether any PAGA Aggrieved Employees chose to refrain from taking a compliant meal
15 period on any given day is an individualized issue not reflective of Defendant's policies and
16 practices. Lastly, Defendant argues that PAGA Aggrieved Employees voluntarily waived 93%
17 of their second meal periods, raising additional concerns about the individualized and
18 unmanageable nature of Plaintiff's claims.

19 19. Plaintiff further alleges that Defendant failed to authorize and permit the PAGA
20 Aggrieved Employees to take *any* lawful rest periods to which they were entitled. Specifically,
21 Plaintiff contends Defendant only provided one single break to Plaintiff and the PAGA
22 Aggrieved Employees during their work day—a purported meal period—and otherwise
23 required the PAGA Aggrieved Employees to perform their work duties without interruption, in
24 violation of California law. In response, Defendant maintains it authorized and permitted the
25 PAGA Aggrieved Employees to take all lawful rest periods to which they are entitled and
26 maintained lawful rest period policies/practices at all times throughout the relevant time period.
27 Defendant further contends that Plaintiff's claims lack merit, and questioned how Plaintiff
28 intended to prove such violations without any documentary evidence of rest period violations.

1 20. Moreover, Plaintiff alleges that Defendant failed to reimburse Plaintiff and the
2 PAGA Aggrieved Employees for the use of their personal cellular phones for essential work
3 duties. Specifically, Defendant required the PAGA Aggrieved Employees to download a
4 timekeeping application on their personal cell phones to clock in and out for meal periods,
5 without reimbursing the employees for a reasonable portion of their monthly cell phone
6 expenses. In response, Defendant argues it maintained a policy to reimburse all reasonable and
7 necessary business expenditures and that, to the extent that any expenses were not reimbursed,
8 it was the result of Defendant's employees failing to submit expense reimbursement requests.
9 Further, Defendant contends it provided all work crews with company tablets and/or company
10 cellular phones for employees to use to clock in and out with, and any use of personal cellular
11 phones was not authorized by Defendant.

12 21. Finally, Plaintiff contends that as a result of Defendant's failure to pay all
13 minimum wages, overtime wages, and meal period and rest period premiums, Defendant also
14 failed to issue accurate itemized wage statements and maintain accurate employment records.
15 In response, Defendant argues that Plaintiff's underlying claims will fail and, as a result, the
16 derivative claims will also fail. Defendant also maintains that any "derivative" PAGA claims
17 for violations of Labor Code section 226 would be entirely duplicative and would be unlikely
18 to be awarded in any significant manner by the Court. Further, Defendant argues that, given its
19 asserted good faith defenses, this Court would exercise its discretion to substantially reduce
20 any PAGA penalties awarded. Further, Defendant argues that Plaintiff could only seek PAGA
21 penalties at the \$100 "initial" violation rate, as opposed to the \$200 "subsequent" violation rate,
22 since Defendant had never been put on notice by a court or the Labor Commissioner that their
23 practices violated the Labor Code until Plaintiff initiated this action.

24 22. My office is requesting attorneys' fees of one-third of the Maximum Settlement
25 Amount, equal to \$83,333.33, and \$21,769.23 in actual litigation costs. A true and correct copy
26 of my firm's expense report for this matter is attached hereto as **Exhibit 3**. Although my firm's
27 expense summary identifies Plaintiff's Counsel's to-date out of pocket expenses as \$21,652.85,
28 the total amount that Plaintiff's Counsel is requesting for expense reimbursement (\$21,769.23)

1 includes an additional \$116.38 in anticipated future costs for the filing and service of this
2 motion, which will be incurred by the time the motion is heard, and costs for the filing of a
3 Final Accounting Declaration.

4 23. Although the Parties engaged in a significant exchange of documents and
5 information as part of the informal mediation production, no formal written or deposition
6 discovery had been conducted prior to mediation. Absent settlement, the Parties will be
7 required to expend substantial time and resources completing formal discovery. Preparation for
8 trial remained, as well as the prospect of appeals in the wake of a summary judgment ruling for
9 either party, as well as appeals after trial.

10 24. The PAGA Aggrieved Employees worked an aggregate 9,461 pay periods
11 during the PAGA Period. Plaintiff's expert's analysis confirmed that Plaintiff's primary
12 substantive theories of relief (daily off-the-clock unpaid wages, meal and rest period violations,
13 and failure to reimburse for work-related cell phone use) would be triggered in virtually every
14 pay period during the PAGA Period. Assuming that Plaintiff could prove at least one Labor
15 Code violation in each pay period, Plaintiff calculated Defendant's maximum possible PAGA
16 exposure at \$946,100 (9,461 pay periods x \$100 per violation). However, as discussed above,
17 Defendant raised numerous defenses to the merits of Plaintiff's underlying claims and argued
18 that even if found liable, the Court would exercise its discretion to drastically reduce any
19 potential PAGA penalties awarded. In the face of Defendant's defenses on the merits and the
20 Court's discretion to reduce PAGA penalties, Plaintiff discounted this figure by 30% to
21 account for the risk of losing on the merits and by an additional 60% for the risk of the Court
22 reducing the penalties, to arrive at a realistic recovery of \$264,908. Therefore, the mediator's
23 proposed settlement amount of \$265,000 represents *more* than Plaintiff's reasonably forecasted
24 recovery, which is well within the range approved by courts as being fair, reasonable and
25 adequate, while also avoiding further expense and risk of further litigation.

26 25. My office is requesting attorneys' fees of one-third of the Maximum Settlement
27 Amount, equal to \$83,333.33, which is the same percentage sought in *Laffitte v. Robert Half*
28 *Int'l, Inc.* (2016) 1 Cal.5th 480, and is fair and reasonable based on the percentage of the

1 recovery method. Based on my experience in similar wage and hour class and representative
2 actions in California state courts, fee awards in matters such as this one generally equal about
3 one-third of the gross recovery.

4 26. The fee award requested here is justified because Plaintiff's counsel achieved a
5 reasonable monetary recovery for the PAGA Aggrieved Employees and the State of California
6 (who did not take this case after receiving Plaintiff's July 12, 2023 PAGA Notice letter) in an
7 uncertain and risky case, while bearing the substantial burdens of representation on a
8 contingency basis. Since undertaking representation of Plaintiff, my firm has dedicated
9 substantial resources to this litigation without receiving any compensation to date. My office
10 has expended significant time and effort in this case, including but not limited to: conducting
11 pre-filing investigation, analyzing Plaintiff's claims, conducting legal research regarding the
12 merits and legal bases of Plaintiff's claims and ability to recover penalties under the PAGA,
13 conducting legal research regarding Defendant's potential defenses, drafting and filing
14 Plaintiff's complaint and July 12, 2023 PAGA Notice letter to the LWDA, attending various
15 court hearings, meeting and conferring extensively with Defendant's counsel regarding the
16 case and Defendant's informal document production, reviewing substantial documents and data
17 produced by Defendant prior to mediation, retaining an expert to analyze Defendant's
18 document production, evaluating the timekeeping and payroll data prior to mediation, drafting
19 a mediation brief, preparing for and attending mediation, negotiating and drafting the
20 memorandum of understanding, negotiating and drafting the long-form Settlement Agreement
21 and PAGA Notice, preparing this Motion for settlement approval and all supporting documents
22 hereto, and otherwise litigating the case. My office will spend additional time attending the
23 hearing on this Motion and overseeing the settlement administration process.

24 27. Plaintiff's Counsel's experience in similar matters was integral in evaluating the
25 strengths and weaknesses of this case and the reasonableness of the Settlement. Practice in the
26 narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly
27 evolving substantive state and federal law, as well as the procedural law of representative
28 litigation.

1 28. My firm utilized the expert services of Dr. J. Michael DuMond, Ph.D., of
2 Berkeley Research Group, to perform all expert analyses for this case. Attached hereto as
3 **Exhibit 5** is a true and correct copy of the full expert invoice that my office received from Dr.
4 DuMond for his expert services on this case.

5 29. Plaintiff also requests that the Court approve \$4,500 in administration costs to
6 the Settlement Administrator, Phoenix Class Action Administration Services. Phoenix was
7 selected to administer this Settlement because it is an experienced and well-respected
8 settlement administrator, and returned a bid at a competitive rate.

9 30. I believe the requested \$5,000 enhancement payment to Plaintiff is appropriate
10 given Plaintiff's efforts in this case. As stated in Plaintiff's declaration, Plaintiff dedicated
11 significant time to assisting my office in gathering facts and preparing for mediation.
12 Furthermore, there is a well-established history of courts awarding incentive payments in
13 PAGA-only settlements. Attached hereto as **Exhibit 6** are a sampling of court orders granting
14 enhancement awards in PAGA-Only settlements.

15 I declare under penalty of perjury under the laws of the United States and the state of
16 California that the foregoing is true and correct. Executed on November 15, 2024, at El
17 Segundo, California.

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19 Matthew K. Moen
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EXHIBIT 1

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Settlement”) of claims brought under the Private Attorneys General Act, Labor Code § 2698 *et seq.*, is made and entered into between Plaintiff Alejandro Ortega, acting in his capacity as a private attorneys general, and Defendant Key Energy Services, LLC.

I. DEFINITIONS

The following terms, when used in this Settlement, will have the following meanings:

1. “Action” means the lawsuit entitled *Alejandro Ortega v. Key Energy Services, LLC*, Kern County Superior Court, Case No. BCV-23-102240-BCB.
2. “PAGA Aggrieved Employees” means: all of Defendant Key Energy Services, LLC’s current and former non-exempt employees in California who held the job title(s) of Rig Services, Coiled Tubing, and/or Fishing and Rental, and who worked at any time during the PAGA Period.
3. “Defendant” means Key Energy Services, LLC.
4. “Court” means the Superior Court of California for the County of Kern.
5. “Effective Date” means the date on which the Court signs an Order approving this PAGA Settlement.
6. “Individual Settlement Payment” means the amount to be paid to each PAGA Aggrieved Employee based on the formula described herein.
7. “LWDA” means the California Labor and Workforce Development Agency.
8. “Maximum Settlement Amount” is the non-reversionary sum of \$265,000.00, which includes payments to all PAGA Aggrieved Employees, payment to the LWDA, payment of Plaintiff’s attorney’s fees and costs, payment of Plaintiff’s representative enhancement payment, and payment to the Settlement Administrator for administration costs.
9. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and PAGA Aggrieved Employees after the following amounts (subject to Court approval) are deducted from the Maximum Settlement Amount: (a) Plaintiff’s attorneys’ fees of up to one-third of the Maximum Settlement Amount, or \$88,333.33; (b) Plaintiff’s reasonable verified litigation costs in an amount not to exceed \$30,000.00; (c) Plaintiff’s representative enhancement payment of \$5,000.00; and (d) reasonable third-party administration costs up to \$4,500.00.
10. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*
11. “PAGA Period” means the time period from July 12, 2022, to March 25, 2024.

12. “PAGA Released Claims” means all PAGA claims that are based on the Labor Code violations pled in the operative complaint in the Action and Plaintiff’s July 12, 2023 PAGA Notice letter to the LWDA, or which could have been pled in the operative complaint in the Action based on the factual allegations therein, that arose during the PAGA Period. PAGA Aggrieved Employees other than Plaintiff will not be releasing any underlying wage and hour claims through this settlement, only PAGA claims. PAGA Aggrieved Employees will not be provided with the opportunity to opt out of this PAGA settlement and release.

13. “Parties” means Plaintiff and Defendant.

14. “Plaintiff” means Alejandro Ortega.

15. “Plaintiff’s Counsel” means Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen and Susan J. Perez of Haines Law Group, APC.

16. “Settlement Administrator” means Phoenix Class Action Administration Solutions.

II. OPERATIVE TERMS OF SETTLEMENT

The Parties agree as follows:

1. **Non-Admission of Liability.** Nothing in this Settlement will be construed to be an admission by Defendant of any liability or wrongdoing as to Plaintiff, PAGA Aggrieved Employees, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement and any related court documents or orders are not, and may not be, cited or admitted as evidence of liability.

2. **Maximum Settlement Amount.** Defendants will pay \$265,000.00 as the non-reversionary Maximum Settlement Amount. The Maximum Settlement Amount will be deposited with the Settlement Administrator within thirty (30) calendar days after the Effective Date.

3. **Representation as to Number of Pay Periods.** According to the data produced by Defendant, the PAGA Aggrieved Employees worked 9,461 aggregate pay periods during the PAGA Period. This representation is a material term of the Settlement. If the actual number of Pay Periods worked by PAGA Aggrieved Employees during the PAGA Period increase at all, Defendant shall increase the Maximum Settlement Amount on a proportional basis (i.e. if there is a 12% increase in the number of aggregate Pay Periods, Defendant shall increase the Maximum Settlement Amount by 12%).

4. **Net Settlement Amount.** The Parties agree that the following amounts should be deducted from the Maximum Settlement Amount, subject to Court approval, resulting in a Net Settlement Amount to distribute to the LWDA and PAGA Aggrieved Employees:

- a. **Plaintiff’s Attorney’s Fees and Costs.** Defendant will not oppose Plaintiff’s request for attorneys’ fees in the amount of up to one-third of the Maximum Settlement Amount (\$88,333.33) and actual costs incurred in prosecuting this Action, up to \$30,000.00 as supported by declaration. In the event the Court approves a payment

of less than these amounts, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report these payments on an IRS Form 1099-MISC issued to Plaintiff's Counsel.

- b. Plaintiff's Representative Enhancement Payment. Defendant will not oppose Plaintiff's request for a representative enhancement payment in the amount of \$5,000.00 for his service to the State of California and the PAGA Aggrieved Employees. In the event the Court approves payments of less than the requested amounts, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report these payments on IRS Forms 1099-MISC issued to Plaintiff.
- c. Administration Costs. Defendant will not oppose the Settlement Administrator's costs in the amount up to \$4,500.00 for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report this payment on an IRS Form 1099-MISC issued to the Settlement Administrator.

5. Allocation of Net Settlement Amount. The Net Settlement Amount will be distributed 75% to the LWDA and 25% to the PAGA Aggrieved Employees, pursuant to Labor Code § 2699(i). The 25% portion to be paid to PAGA Aggrieved Employees will be allocated to the PAGA Aggrieved Employees as follows: Individual Settlement Payments will be calculated based on the proportionate number of pay periods worked by each PAGA Aggrieved Employee during the PAGA Period, by multiplying the 25% portion of the Net Settlement Amount by a fraction, the numerator of which is each PAGA Aggrieved Employee's total pay periods worked during the PAGA Period, and the denominator of which is the total aggregate number of pay periods worked by all PAGA Aggrieved Employees during the PAGA Period.

6. PAGA Released Claims. In consideration for the payments awarded pursuant to the terms of this Settlement, Plaintiff, in his capacity as a private attorney general, acting on behalf of himself, the State of California, and the PAGA Aggrieved Employees, agrees that upon the date that Defendant deposits the entire Maximum Settlement Amount with the Settlement Administrator, Plaintiff and the PAGA Aggrieved Employees will release and discharge Defendant, its past and present parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, members, managers, managing agents, officers, directors, employees, agents, attorneys, insurers, successors and assigns from any and all liability for the PAGA Released Claims to the fullest extent permitted by law.

7. Judgment. As part of the Motion to approve the Settlement, Plaintiff will submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement and which retains jurisdiction of the Court over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement pursuant to Cal. Code Civ. Proc. § 664.6. This Settlement is expressly conditioned upon the Court entering an order as set forth herein.

III. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to use Phoenix Class Action Administration Solutions to handle the administration of this Settlement.

2. **Provision of Information for PAGA Aggrieved Employees.** Within ten (10) business days after the Court's signing of the settlement approval order, Defendant will provide the Settlement Administrator with information for the PAGA Aggrieved Employees. Defendant will, in good faith, compile from its records a list of PAGA Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and will include each PAGA Aggrieved Employee's full name, last known mailing address, last known telephone number, Social Security numbers, and pay period information. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access will be limited to those with a need to use the list as part of the administration of the Settlement.

Within ten (10) business days of receiving the PAGA Aggrieved Employees' information from Defendant, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual Settlement Payments to each PAGA Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator will also determine whether the Escalator Clause in Paragraph II.3 has been triggered. The Settlement Administrator will obtain approval from all counsel for the Parties of the calculations before mailing Individual Settlement Payments.

3. **Explanatory Letter and Individual Settlement Payments.** Within five (5) business days of receiving the PAGA Aggrieved Employees' information from Defendant, pursuant to Paragraph III.1, the Settlement Administrator will perform a search on the National Change of Address database to update the PAGA Aggrieved Employees' addresses.

Within ten (10) business days of Defendant's deposit of the Maximum Settlement Amount, and after receiving approval from all counsel for the Parties pursuant to Paragraph III.2, the Settlement Administrator will mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, in English only, along with the Individual Settlement Payments to all PAGA Aggrieved Employees via First-Class U.S. Mail.

Each Individual Settlement Payment will be deemed 100% penalties and reported using an IRS Form 1099-MISC. Checks will remain negotiable for one hundred eighty (180) days from the date they are mailed by the Settlement Administrator. Any funds from checks that are not negotiated within one hundred eighty (180) days of mailing to an PAGA Aggrieved Employee shall be transferred to Court Appointed Special Advocates (CASA) of Kern County, a 501(c)(3) non-profit organization (EIN: 77-0344298), the Parties' agreed-upon *cy pres* designee.

4. **Undeliverable Letters.** The Settlement Administrator will exercise its best judgment to determine the current mailing address for each PAGA Aggrieved Employee. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via 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 perform a re-mailing.

Defendant fully discharges its obligations to those PAGA Aggrieved Employees to whom it will pay an Individual Settlement Payment through the Settlement Administrator's initial mailing of a check, regardless of whether such checks are actually received and/or negotiated by PAGA Aggrieved Employees. PAGA Aggrieved Employees will not have any right to opt-out or object to this Settlement.

5. **Payment of Remainder.** Within ten (10) business days of Defendant's deposit of the Maximum Settlement Amount, and after receiving approval from all counsel for the Parties pursuant to Paragraph III.2, the Settlement Administrator will issue the following payments: (1) the 75% share of the Net Settlement Fund to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiff's Counsel; (3) Court-approved representative enhancement payment to Plaintiff; and (4) Court-approved administration costs to the Settlement Administrator.

6. **Accounting.** The Settlement Administrator will provide an accounting declaration under oath to the Parties of the amounts paid from the Settlement as soon as practicable after the check cashing deadline described in Paragraph III.3.

7. **Tax Consequences.** Individual Settlement Payments made under this Settlement will be attributed 100% as penalties and paid via IRS Form 1099-MISC issued to each PAGA Aggrieved Employee. Neither Plaintiff nor Defendant, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement.

IV. **MISCELLANEOUS PROVISIONS**

1. **Non-Publicity.** The Parties agree that no Party will issue any press release nor other public representation regarding the settlement other than as necessary to obtain Court approval and effectuate the terms of the Settlement. The Parties and their respective counsel agree to keep the Settlement confidential through settlement approval. Thereafter, the Parties agree to make no comments to the media or otherwise publicize the terms of the Settlement.

2. **Successors.** This Settlement will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

3. **Governing Law.** This Settlement will be construed under and governed by the laws of the State of California, without regard to choice of law principles. All questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement will be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it will be brought in the State of California, Kern County.

4. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement has been made to them and acknowledge and represent that this Settlement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA claim in the Action.

5. **Nullification of Settlement.** 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 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.

6. **Judgment and Continued Jurisdiction.** After approval of this Settlement, the Court will have continuing jurisdiction per California Code of Civil Procedure § 664.6 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.

7. **Amendment or Modification.** This Settlement may be amended or modified only by a written instrument, signed by the Parties or their successors-in-interest or counsel for the Parties.

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

9. **Execution and Counterparts.** This Settlement is subject only to the execution of the Parties. However, the Settlement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

10. **Severability.** If any term or provision of this Settlement is held to be invalid or unenforceable, the remaining portions of this Settlement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

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

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

13. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. Accordingly, this Settlement will not be construed more strictly

against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

14. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

15. **Cooperation and Execution of Necessary Documents.** The Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement. The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to seek the Court's approval of this Agreement are timely filed.

16. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement 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.

IN WITNESS THEREOF, the Parties to this Settlement each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

ALEJANDRO ORTEGA

Dated: 11/12/24


Alejandro Ortega (Nov 12, 2024 16:20 PST)
Alejandro Ortega, Plaintiff

KEY ENERGY SERVICES, LLC

Dated: _____

By: _____
Its: _____

APPROVED AS TO FORM ONLY:

Date: 11/12/2024

HAINES LAW GROUP, APC

By: 
Paul K. Haines
Fletcher W. Schmidt
Matthew K. Moen
Attorneys for Plaintiff

against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

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IN WITNESS THEREOF, the Parties to this Settlement each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

ALEJANDRO ORTEGA

Dated: _____

Alejandro Ortega, Plaintiff

KEY ENERGY SERVICES, LLC

Dated: 11/12/2024

DS
CH

DocuSigned by:
Katherine Hargis
A490765EC68D407

By: Katherine Hargis
Its: SVP, CAO, General Counsel & Secretary

APPROVED AS TO FORM ONLY:

Date: _____

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Fletcher W. Schmidt
Matthew K. Moen
Attorneys for Plaintiff

Date: 11.13.2024

BUCHALTER, A Professional Corporation

By: 

Kalley Aman
Michelle Lopez
Attorneys for Defendant,
Key Energy Services, LLC

Exhibit A

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Alejandro Ortega v. Key Energy Services, LLC, et al.
Kern County Superior Court, Case No. BCV-23-102240-BCB

[NAME]
[ADDRESS]
[CITY], [STATE] [ZIP CODE]
XXX-XX-[LAST 4 SSN]

I. NOTICE OF PAGA SETTLEMENT

The Kern County Superior Court (the “Court”) has approved the PAGA Settlement Agreement (“Settlement”) in the above-captioned lawsuit filed by Alejandro Ortega (“Plaintiff”) on behalf of himself and all other aggrieved employees, including you.

In this lawsuit, Plaintiff seeks to recover civil penalties for alleged violations of a California law known as the Private Attorneys General Act (“PAGA”). Plaintiff is acting as a “private attorney general” on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other employees of Defendant Key Energy Services, LLC (“Defendant”). Plaintiff alleges that Defendant is liable for civil penalties under PAGA because Defendant failed to pay all minimum and overtime wages; failed to authorize and permit all required rest periods; failed to provide all required meal periods; failed to reimburse all necessary business expenses; failed to issue accurate itemized wage statements; failed to pay all wages at least twice during each calendar month; and failed to maintain accurate employment records.

The Court has ***not*** ruled on Plaintiff’s claims. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of Plaintiff’s claims. Defendant maintains that Plaintiff’s allegations are without merit, and enters into this Settlement with no admission of liability.

You are receiving this Notice because you are in the group of employees referred to as the “PAGA Aggrieved Employees,” which is defined as: all of Defendant’s current and former non-exempt employees in California who held the job title(s) of Rig Services, Coiled Tubing, and/or Fishing and Rental, and who worked at any time from July 12, 2022 to March 25, 2024. The time period from July 12, 2022 to March 25, 2024 is also known as the “PAGA Period.”

II. CALCULATION OF INDIVIDUAL SETTLEMENT PAYMENT

Each PAGA Aggrieved Employee is receiving a share of the Net Settlement Amount based on the proportionate number of pay periods worked by each PAGA Aggrieved Employee during the PAGA Period, by multiplying the PAGA Aggrieved Employees’ 25% portion of the Net Settlement Amount by a fraction, the numerator of which is each PAGA Aggrieved Employee’s total pay periods worked during the PAGA Period, and the denominator of which is the total aggregate number of pay periods worked by all PAGA Aggrieved Employees during the PAGA Period.

Based on Defendants' records, you worked a total of [THIS EMPLOYEE'S PAY PERIODS] pay periods during the PAGA Period. The total number of pay periods worked by all PAGA Aggrieved Employees during the PAGA Period is [TOTAL PAY PERIODS]. Based on these figures, your Individual Settlement Payment has been calculated at \$[AMOUNT PAID TO THIS EMPLOYEE]. Your payment is enclosed with this Notice.

III. RELEASE

On [PAGA APPROVAL DATE], the Court approved the parties' Settlement Agreement. By operation of the Settlement's terms, the PAGA Aggrieved Employees will release and discharge Defendant, its past and present parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, members, managers, managing agents, officers, directors, employees, agents, attorneys, insurers, successors and assigns from any and all liability for all PAGA claims that are based on the Labor Code violations pled in the operative complaint in the Action and Plaintiff's July 12, 2023 PAGA Notice letter to the LWDA, or which could have been pled in the operative complaint in the Action based on the factual allegations therein, that arose during the PAGA Period, to the fullest extent permitted by law (the "PAGA Released Claims").

This release is solely limited to civil penalties that are recoverable under PAGA. PAGA Aggrieved Employees other than Plaintiff will not be releasing any underlying wage and hour claims through this settlement, only PAGA claims.

IV. SETTLEMENT ADMINISTRATOR

PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE.

You may contact the Court-approved Settlement Administrator, Phoenix Class Action Administration Solutions, at [ADMINISTRATOR INFO] with any questions.

Settlement checks will be null and void one hundred eighty (180) days after issuance if not deposited or cashed. Any check not deposited or cashed within one hundred eighty (180) days of mailing to a PAGA Aggrieved Employee shall be transferred to Court Appointed Special Advocates (CASA) of Kern County, a 501(c)(3) non-profit organization (EIN: 77-0344298), the parties' *cy pres* designee. **If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.**

EXHIBIT 2

EXHIBIT 3

November 15, 2024

Alejandro Ortega

Charges:

			<u>Qty/Price</u>	<u>Amount</u>
5/31/2023	ALL	Postage for May, 2023.	1 13.70	13.70
	ALL	Copying cost for May, 2023.	21 0.25	5.25
7/13/2023	IDLC	Filing fee for: LWDA. Order #: ORD-000241069	1 75.00	75.00
7/19/2023	IDLC	One legal's filing fee for: Complaint - Complex, Summons, Civil case cover sheet Order #: 20784241	1 1,494.53	1,494.53
7/24/2023	IDLC	One legal's filing fee for: Notice of jury deposit Order #: 20855710	1 171.62	171.62
7/25/2023	IDLC	First legal's service fee for: Service of summons and complaint Order #: 5386436 Process-3 days Advance Fee Base charge + PDF/Ship + Fuel charge	1 79.92	79.92
7/27/2023	IDLC	One legal's filing fee for: Proof of service of summons/complaint Order #: 20870494	1 17.04	17.04
7/31/2023	ALL	Postage for July, 2023.	1 7.42	7.42
	ALL	Copying cost for July, 2023.	6 0.25	1.50
8/7/2023	IDLC	One legal's filing fee for: Proof of service Order #: 20947369	1 17.04	17.04

11/15/2024

			<u>Qty/Price</u>	<u>Amount</u>
8/31/2023	ALL	Copying cost for August, 2023.	6 0.25	1.50
9/28/2023	IDLC	First legal's filing fee for: Amended complaint - Amount uncharged (No fee), proof of service by mail Order #: 21234202	1 17.04	17.04
9/30/2023	ALL	Postage for September, 2023.	1 5.01	5.01
	ALL	Copying cost for September, 2023.	42 0.25	10.50
10/20/2023	ALL	One legal's filing fee for: Proof of service of summons/complaint. Order #: 21394258	1 17.04	17.04
12/5/2023	IDLC	Signature resolution's mediation fee for March 25, 2024 mediation. Invoice #: 54938	1 7,950.00	7,950.00
12/15/2023	IDLC	One legal's filing fee for: Stipulation and order, Proof of service by mail Order #: 21834273	1 13.33	13.33
12/31/2023	ALL	Copying cost for December, 2023.	6 0.25	1.50
	ALL	Postage for December, 2023.	1 0.87	0.87
1/9/2024	ALL	One legal's filing fee for: (Proposed) order, Request for dismissal, Declaration, proof of service by mail Order #: 21957568	1 17.04	17.04
1/31/2024	ALL	Postage for January, 2024.	1 1.11	1.11
	ALL	Copying cost for January, 2024.	11 0.25	2.75
3/31/2024	ALL	Westlaw cost for March, 2024.	1 1.28	1.28
4/8/2024	PKH	BRG's expert fee for services through March 31, 2024. Invoice #: 172582	1 11,627.00	11,627.00
4/9/2024	ALL	One Legal's filing fee for: Stipulation and Order, Proof of Service Order #: 22616768	1 39.84	39.84
4/30/2024	ALL	Postage for April, 2024.	1 0.88	0.88

11/15/2024

			<u>Qty/Price</u>	<u>Amount</u>
4/30/2024	ALL	Copying cost for April, 2024.	9 0.25	2.25
7/17/2024	IDLC	One Legal's filing fee for: Stipulation and Order, Proof of Service Order #: 23299718	1 39.84	39.84
7/31/2024	ALL	Postage for July, 2024.	1 0.88	0.88
	ALL	Copying cost for July, 2024.	6 0.25	1.50
9/5/2024	IDLC	First legal's filing fee for: Case Management Statement; Proof of Service Order #: 5874785 Direct E-filing Base charge + Additional charges	1 15.70	15.70
9/30/2024	ML	Postage for September, 2024.	1 0.97	0.97
	ML	Copying cost for September, 2024.	8 0.25	2.00
Total charges				\$21,652.85

EXHIBIT 4

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

July 12, 2023

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Alejandro Ortega v. Key Energy Services, LLC*

To Whom It May Concern:

Please be advised that this law firm represents Mr. Alejandro Ortega (“Mr. Ortega”) in claims arising from his employment with Key Energy Services, LLC, a Texas limited liability company; and Does 1 through 100 (“Defendants”). Mr. Ortega is an “aggrieved employee” within the meaning of Labor Code section 2699.3 as to all of the violations alleged herein. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754 (“any Labor Code penalties recoverable by state authorities may be recovered in a PAGA action by a person who was employed by the alleged violator and affected by at least *one* of the violations alleged in the complaint.”) (emphasis added). The purpose of this letter is to comply with Labor Code § 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ non-exempt employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

Defendants operate an oil field in Bakersfield, California. Mr. Ortega has been employed by Defendants as a non-exempt “Floorhand” from approximately June 2022 until the present. Mr. Ortega’s primary job duties include performing maintenance on and servicing oil wells.

During Mr. Ortega’s employment with Defendants, Defendants failed to compensate Mr. Ortega and other aggrieved employees for all hours actually worked, resulting in unpaid minimum wages and additional unpaid overtime wages. Specifically, Mr. Ortega was required to clock in and out of his shifts, using his unique employee number and fingerprint, at a timeclock located on Defendants’ main yard. Defendants only permitted Mr. Ortega and other aggrieved employees to clock in when their scheduled shift time began at 5:45 a.m., and clock out at the end of their scheduled shift time, which varied between 4:45 p.m. and 7:45 p.m. Mr. Ortega and other aggrieved employees, however, arrived at Defendants’ onsite locker room approximately 15 minutes early at 5:30 a.m. to don protective gear, including coveralls, boots, safety glasses, and hard hats, and prepare work-related equipment prior to clocking in for their shift, then walk approximately 3

minutes from Defendants' locker room to the timeclock on the main yard. Similarly, Defendants instructed Mr. Ortega and other aggrieved employees to clock out of their shifts at the time clock on the main yard, then walk to Defendants' locker room to remove their protective gear. Defendants' policy/practice of requiring Mr. Ortega and other aggrieved employees to don and doff outside of their clock in and clock out time led to an underpayment of minimum and overtime wages. Moreover, Defendants failed to compensate Mr. Ortega and other aggrieved employees during the time they worked through their meal periods. Specifically, Defendants' supervisors frequently required Mr. Ortega and other aggrieved employees to clock in and out of their meal periods on a cellular phone application to reflect timely 30-minute meal periods, even if they were performing their job duties. Defendants then provided Mr. Ortega and other aggrieved employees with meal periods later in their shifts, which were frequently less than 30 minutes long. As a result, Defendants required Mr. Ortega and other aggrieved employees to perform work while off-the-clock, and Defendants failed to compensate Mr. Ortega and other aggrieved employees for all minimum and overtime wages owed.

Defendants also failed to provide Mr. Ortega and other aggrieved employees with all legally-compliant meal periods due to Defendants' unlawful meal period policies/practices that failed to provide timely, duty-free 30-minute meal periods before the fifth hour of work or any second meal periods when they worked shifts over 10.0 hours. As stated, Defendants' supervisors required Mr. Ortega and other aggrieved employees to clock out for their meal periods on a cellular phone application at 10:30 a.m., before the end of their fifth hour of work, in order to reflect timely meal periods on their timecards. Instead, Defendants' supervisors required that Mr. Ortega and other aggrieved employees continue to work through their meal periods, while clocked-out, and only provided meal periods later in the day that were often less than 30 minutes long. In the event Mr. Ortega and other aggrieved employees did not clock out for their meal periods at 10:30 a.m., Defendants' supervisors modified their time records to reflect timely, 30-minute meal periods. As a result of Defendants' policies and practices, Mr. Ortega and other aggrieved employees frequently took untimely and/or short meal periods or missed their meal periods altogether. Moreover, Defendants frequently interrupted Mr. Ortega and other aggrieved employees during their purported meal periods. As a result, Defendants failed to provide duty-free meal periods. On occasions when Mr. Ortega and other aggrieved employees were not provided with all lawful meal periods to which they were entitled, Defendants failed to pay Mr. Ortega and other aggrieved employees an additional hour of premium pay at their respective regular rates of pay for each workday in which a meal period violation occurred, as required by Labor Code section 226.7. Upon information and belief, Defendants failed to maintain pay codes for the payment of meal period premium payments as required by Labor Code section 226.7.

Defendants failed to authorize and permit Mr. Ortega and other aggrieved employees to take *any* duty-free 10-minute rest periods for every four hours worked, or major fraction thereof, due to Defendants' unlawful rest period policies/practices. Defendant failed to authorize and permit Mr. Ortega and other aggrieved employees to take any rest periods whatsoever. Furthermore, Defendants failed to compensate Mr. Ortega and

other aggrieved employees with an additional hour of premium pay at their respective regular rates of pay for each workday in which a rest period violation occurred, as required by Labor Code § 226.7.

As stated above, Defendants required Mr. Ortega and other aggrieved employees to download a timekeeping system onto their cellular phone to clock in and out of their meal periods. Despite requiring Mr. Ortega and other aggrieved employees to utilize their personal cellular phones for work purposes, Defendants failed to reimburse these aggrieved employees for all necessary business expenses associated with using their personal cell phones, in violation of Labor Code § 2802. Upon information and belief, Defendants failed to maintain any policy for reimbursing employees for work-related expenses.

As a result of Defendants' failure to pay all overtime wages, minimum wages, and meal and rest period premium wages owed, Defendants also maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Ortega and other aggrieved employees.

As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 16 ("Wage Order 16"):

Overtime Wage Violations

Defendants were required to properly pay Mr. Ortega and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours" per work day and/or in excess of 40 hours of work in the workweek. Wage Order 16, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek.

Minimum Wage Violations

Wage Order 16, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. Defendants failed to conform their pay practices to the requirements of the law by failing to pay Mr. Ortega and members of the Minimum Wage Class for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 16.

Meal Period Violations

Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Mr. Ortega and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 16, § 10, for the reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite Defendants' violations, Defendants did not pay an additional hour of premium pay to Mr. Ortega and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 226.7 and 512.

Rest Period Violations

Wage Order 16, § 11 and Labor Code §§ 226.7 and 516 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof. As alleged herein, and due to Defendants' unlawful rest period policies and/or practices, Defendants failed to authorize and permit Mr. Ortega and members of the Rest Period Class to take all paid rest periods to which they were legally entitled. Despite Defendants' violations, Defendants failed to pay an additional hour of premium pay to Mr. Ortega and members of the Rest Period Class at their respective regular rates of pay for each violation, as required by California Labor Code § 226.7.

Failure to Reimburse Necessary Business Expenses

Defendants failed to indemnify Mr. Ortega and the members of the Reimbursement Class for all necessary business expenses incurred, including, among other things, personal cellular phone usage. As a proximate result of Defendants' policies and/or practices in violation of Labor Code §§ 2802 and 2804, Mr. Ortega and members of the Reimbursement Class are entitled to damages, attorneys' fees and costs of suit, and interest thereon, in sums to be shown according to proof at trial, pursuant to Labor Code § 2802.

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Mr. Ortega and the Wage Statement Class with wage statements that complied with the requirements of Labor Code § 226(a). Defendants' failure to furnish Mr. Ortega and members of the Wage Statement Class with compliant wage statements resulted in actual injury, as said failures rendered Mr. Ortega unable to readily ascertain the information on their wage statements.

As an "aggrieved employee", Mr. Ortega will bring a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties (including an amount equal to the unpaid wages) resulting from the wage and hour violations alleged herein. Based on Mr. Ortega's own investigation, and on information and belief, Defendants committed and continue to commit the following

Labor Code violations:

- a. Defendants violated Labor Code §§ 204, 510, 558, 1194 and 1198 by failing to pay Mr. Ortega and other aggrieved employees all overtime compensation earned;
- b. Defendants violated Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Ortega and other aggrieved employees the statutory minimum wage for all hours worked;
- c. Defendants violated Labor Code §§ 226.7, 512, and 558, by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Ortega and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Ortega and other aggrieved employees to take all lawful rest periods to which they are entitled, and failing to pay rest period premiums to Mr. Ortega and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;
- e. Defendants violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Ortega and other aggrieved employees for all work-related expenses incurred;
- f. Defendants violated Labor Code § 226 by failing to furnish Mr. Ortega and other aggrieved employees with accurate and compliant itemized wage statements;
- g. Defendants violated Labor Code § 204 by failing to pay Mr. Ortega and other aggrieved employees all wages earned at least twice during each calendar month; and
- h. Defendants violated Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Mr. Ortega and aggrieved employees.

Pursuant to Labor Code § 2699.3, please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Fletcher W. Schmidt

cc: Key Energy Services, LLC, c/o Amanda Garcia, Agent for Service of Process. (via certified mail)



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Fletcher

Your Last Name *

Schmidt

Firm Name (if any) *

Haines Law Group, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

jramirez@haineslawgroup.

Your Street Name, Number and Suite/Apt *

2155 Campus Drive, Suite

Your Mobile Phone Number

Your City *

El Segundo

Your Work Phone Number

4242922350

Your State *

California

Your Zip/Postal Code *

90245

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Alejandro Ortega

Plaintiff/Aggrieved Employee Occupation *

Floorhand

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select...

Employer Name *

Key Energy Services, LLC

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

Employer City *

1500 Citywest Blvd.

Houston

Employer State *

Texas

Employer Zip/Postal Code *

77010

Employer Industry *

Other

Employer Industry for "Other" *

Oil

Add additional defendants

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

100

Notice Violations – Check All that Apply *

Child Labor – Specify Ages

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☒ Minimum Wage
- ☒ Overtime
- ☐ Not paid for all hours worked
- ☐ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☒ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☒ Other

Provide Details of Other Violation *

Failure to pay twice monthly

Other(Maybe Multiple)

- ☐ Other Violation

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☒ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Paul

Billing Last Name *

Haines

Billing Email *

jramirez@haineslawgroup.

Billing Phone

4242922350

Billing Street Name, Number and Suite/Apt *

2155 Campus Drive, Suite 180

Billing City *

El Segundo

Billing State *

California

Billing Zip/Postal Code *

90245

Credit Card Type *

Visa

Credit Card Number *

4154178575546940

CVV Number *

182

Credit Card Expiration Month *

05

mm

Credit Card Expiration Year *

2024

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File 2023-07-12 ... LWDA Ltr.pdf

Other Attachment – (if any) (must be a .pdf)

Choose File No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Previous Page

Submit

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Jonathan Ramirez](#)
Subject: Thank you for submission of your PAGA Case.
Date: Wednesday, July 12, 2023 3:43:38 PM

7/12/2023

LWDA Case No. LWDA-CM-967851-23
Law Firm : Haines Law Group, APC
Plaintiff Name : Alejandro Ortega
Employer: Key Energy Services, LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 5



Paul Haines, Esq.
Haines Law Group
2155 Campus Drive, Suite 180
El Segundo, CA 90245

April 8, 2024
Client-Matter: [REDACTED]
Invoice #: 172582
Tax ID #: [REDACTED]

Via Email: phaines@haineslawgroup.com

RE: Ortega v. Key Energy Services, LLC

Services Rendered Through March 31, 2024

Professional Services	\$ 11,627.00	USD
CURRENT CHARGES	\$ 11,627.00	USD

PAYMENT IS DUE BY May 8, 2024

Please direct questions regarding this invoice to: Jon M. DuMond at [REDACTED] or [REDACTED].

Please remit wire/ACH payment to:

Bank Name:

SWIFT:

ABA #:

Account Name:

Account #:

Reference:

Please remit check payment to:

BERKELEY RESEARCH GROUP, LLC

PO BOX 676158

DALLAS, TX 75267-6158

Please remit express/overnight payment to:

PNC BANK C/O BERKELEY RESEARCH GROUP, LLC

LOCKBOX NUMBER 676158

1200 E CAMPBELL RD, STE 108

RICHARDSON, TX 75081

Please send remittance advice details to:

cc:

Andrea Parashos

Via Email: adparashos@haineslawgroup.com



To: Paul Haines, Esq.
c/o: Haines Law Group
RE: Ortega v. Key Energy Services, LLC

Page 2 of 3
Invoice # 172582
Client-Matter: [REDACTED]

Services Rendered Through March 31, 2024

PROFESSIONAL SERVICES

	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
Managing Director			
Jon M. DuMond	675.00	3.80	2,565.00
Senior Managing Consultant			
Brooke Dinwiddie	460.00	19.70	9,062.00
Total Professional Services		23.50	11,627.00



To: Paul Haines, Esq.
c/o: Haines Law Group
RE: Ortega v. Key Energy Services, LLC

Page 3 of 3
Invoice # 172582
Client-Matter: 30239-053817

Services Rendered Through March 31, 2024

DETAIL OF PROFESSIONAL SERVICES

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Hours</u>
03/07/24	Brooke Dinwiddie	Loaded data; reviewed data.	2.20
03/07/24	Jon M. DuMond	Case discussions.	0.60
03/08/24	Brooke Dinwiddie	Prepared data.	4.80
03/08/24	Jon M. DuMond	Review data; case discussions.	1.90
03/11/24	Brooke Dinwiddie	Analyzed data.	5.10
03/12/24	Brooke Dinwiddie	Analyzed data.	7.60
03/12/24	Jon M. DuMond	Review analyses, programs; case discussions.	1.30
Professional Services			23.50

EXHIBIT 6

7/21
F8201
H

A
8.6

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Matthew K. Moen (SBN 305956)
mmoen@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

AUG 07 2020

STEPHANIE CAMERON, CLERK

BY:



SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE

IRMA FERREYRA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

ALVAREZ HARVESTING, INC., a California
Corporation; SUNWEST FRUIT CO., INC., a
California Corporation; and DOES 1 through
100,

Defendants.

Case No. VCU276487

*[Assigned for all purposes to the Hon. Bret D.
Hillman, Dept. 7]*

**[PROPOSED] JUDGMENT AND
ORDER GRANTING PLAINTIFF'S
RENEWED MOTION FOR
SETTLEMENT APPROVAL OF
CLAIMS BROUGHT UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT, REASONABLE ATTORNEYS'
FEES AND COSTS, AND
ENHANCEMENT AWARD**

Date: July 21, 2020
Time: 8:30 a.m.
Dept: 7

Action Filed: December 3, 2018
Trial Date: None Set

FAXED



1
2 **[PROPOSED] JUDGMENT AND ORDER**

3 The Renewed Motion of Plaintiff Irma Ferreyra ("Plaintiff") for Settlement Approval of
4 Claims Brought Under the Private Attorneys General Act, Reasonable Attorneys' Fees and Costs,
5 and Enhancement Award came on regularly for hearing before this Court on July 21, 2020 at 8:30
6 a.m. Having considered the Settlement Agreement entered into between Plaintiff and Defendants
7 Alvarez Harvesting, Inc. and Sunwest Fruit Co., Inc. (collectively, "Defendants") and the
8 documents and evidence presented in support thereof, and recognizing the disputed issues
9 involved in this case, the risks of further prosecution, the benefits to be received by the State of
10 California and the Aggrieved Employees pursuant to the Settlement Agreement, the Court hereby
11 makes a final ruling pursuant to Labor Code § 2699(l) that the proposed Settlement Agreement is
12 fair, reasonable, and adequate, and is the product of good faith, arms'-length negotiations between
13 the parties. Good cause appearing therefore, the Court hereby GRANTS Plaintiff's Renewed
14 Motion for Settlement Approval of Claims Brought under the Private Attorneys General Act,
15 Reasonable Attorneys' Fees and Costs, and Enhancement Award, and HEREBY ORDERS THE
16 FOLLOWING:

17 1. The "Aggrieved Employees" shall be defined as:

18 All current and former non-exempt employees who received at least one wage
19 statement from Defendant Alvarez Harvesting, Inc. in California from September
20 27, 2017 through January 30, 2019.

21 2. The "PAGA Period" means the time period from September 27, 2017 through
22 January 30, 2019.

23 3. The Court hereby approves the Settlement as set forth in the Settlement Agreement
24 as fair, reasonable, and adequate, and directs the parties to effectuate the Settlement Agreement
25 according to its terms.

26 4. The Court orders that Defendants shall pay the Maximum Settlement Amount of
27 \$240,000.00 to the Settlement Administrator within thirty (30) calendar days of the date this Order
28 is entered, as provided for in the Settlement Agreement.

///

1 5. The Court hereby approves, as to form and content, the Notice of PAGA
2 Settlement and Release of Claims, attached as Exhibit A to the parties' Settlement Agreement,
3 which shall be mailed via First-Class U.S. Mail to the Aggrieved Employees in English and
4 Spanish along with the Individual Settlement Payments.

5 6. The Court hereby appoints Phoenix Settlement Administrators as the Settlement
6 Administrator.

7 7. Within ten (10) business days of the date this Order is entered, Defendants will
8 provide the Settlement Administrator with a list containing the Aggrieved Employees' full name,
9 last known mailing address, last known telephone number, start date(s) of employment, end
10 date(s) of employment, total pay periods worked during the PAGA Period, and Social Security
11 numbers. The list will also contain the sum total of all pay periods worked by all Aggrieved
12 Employees during the PAGA Period.

13 8. The Settlement Administrator is directed to mail the Individual Settlement
14 Payments, as defined in the Settlement Agreement, and the Notice of PAGA Settlement and
15 Release of Claims to the Aggrieved Employees within two (2) business days after receiving
16 approval by counsel for the parties of the anonymized spreadsheet containing the Individual
17 Settlement Payment amounts for each Aggrieved Employee and the data used to calculate said
18 payments.

19 9. The Court finds that attorneys' fees in the amount of \$80,000.00 for Plaintiff's
20 Counsel, and reimbursement of litigation costs of \$3,946.58 to Plaintiff's Counsel are fair,
21 reasonable, and adequate, and orders that the Settlement Administrator distribute these payments
22 to Plaintiff's Counsel as provided for in the Settlement Agreement.

23 10. The Court orders that the Settlement Administrator shall be paid \$6,000.00 for all
24 of its work done and to be done until the completion of this matter, and finds that sum appropriate.

25 11. The Court finds that an enhancement award of \$5,000.00 to Plaintiff is fair and
26 reasonable in recognition of the contributions she has made and the risks she undertook on behalf
27 of the Aggrieved Employees and the State of California, as well as her general release of claims
28

1 against Defendants, including her underlying wage and hour claims, and orders that the
2 Settlement Administrator distribute this payment to Plaintiff as provided for in the Settlement
3 Agreement.

4 12. The Court finds that the payment to the State of California Labor and Workforce
5 Development Agency ("LWDA") in the amount of \$108,790.06 (representing 75% of the PAGA
6 civil penalties under Labor Code § 2699(i)) as provided for by the Settlement, is fair, adequate,
7 and reasonable, and orders that payment be made to the LWDA in accordance with the terms of
8 the Settlement Agreement.

9 13. The court approves the limited scope of the PAGA Release contained in the
10 Settlement Agreement. Following entry of this Order and Final Judgment, all Aggrieved
11 Employees will release Defendants and Defendants' affiliated companies and their respective
12 parent companies, subsidiaries, affiliates, shareholders, members, agents (including, without
13 limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past,
14 present or future officers, directors and employees), predecessors, successors, and assigns
15 (collectively, the "Released Parties") from any and all PAGA claims that were pled in the Action,
16 or which could have been pled under the PAGA based on the factual allegations in the Action,
17 that arose during the PAGA period ("PAGA Released Claims").

18 14. Upon entry of this Final Order and Judgment, Plaintiff and the Aggrieved
19 Employees will release any and all PAGA Released Claims against the Released Parties, and will
20 be forever barred from pursuing any and all of the PAGA Released Claims against the Released
21 Parties. Without affecting the finality of this Final Order and Judgment in any way, the Court
22 retains jurisdiction under California Code of Civil Procedure section 664.6 to enforce the terms
23 of the Settlement Agreement.

24
25 **IT IS SO ORDERED.**

26
27 Dated: 8/7, 2020

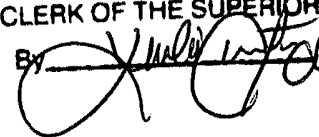


Honorable Bret D. Hillman
Judge of the Superior Court

FILED
ALAMEDA COUNTY

AUG 02 2018

CLERK OF THE SUPERIOR COURT

By  Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA - OAKLAND - RCD COURTHOUSE

VALERIE ENOMBANG, individually and
on behalf of all other similarly situated
aggrieved employees,

Plaintiff,

v.

TARGET CORPORATION, and DOES
1-10, inclusive,

Defendants.

CASE NO. RG17853948

~~PROPOSED~~ ORDER GRANTING JOINT
MOTION FOR APPROVAL OF
SETTLEMENT AND JUDGMENT
THEREON; AND AWARDING
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARDS

Date: July 24, 2018

Time: 3:00 p.m.

Dept: 23

Judge: Hon. Brad Seligman

The hearing on the parties' Joint Motion for Approval of Settlement came for hearing on July 24, 2018, in the Alameda County Superior Court, the Honorable Brad Seligman, presiding. The Court has reviewed the materials submitted by the parties, including the Settlement Agreement ("Settlement") and various motions and supplemental briefs.

During the hearing, the Court expressed concern about Section II(E)(2) of the Settlement, which sets forth a waiver of rights under Civil Code section 1542. The parties have agreed to strike Section II(E)(2) from the Settlement. With that revision, the Court finds the Settlement is entitled to judicial approval and meets all of the requirements for approval under the Labor Code Private Attorneys General Act, including the notice of the Settlement having been properly provided to the California Labor and Workforce Development Agency

1 ("LWDA"). The Court also finds that the LWDA has not objected to, and is deemed to have
2 approved of, the terms of the Settlement. The Court further finds that, although no one other
3 than the LWDA has standing to object to the terms of the Settlement, no other objection to the
4 Settlement has been received by the Court.

5 The Court further finds that executing the seating program set forth in Section
6 II(B)(2)(a-d) of the Settlement, namely notifying each affected employee of the right to request
7 and be provided with a suitable seat or stool, and by actually providing a suitable seat or stool
8 if requested, complies with Section 14 of Wage Order 7-2001.

9 The Court additionally finds that the dismissal of the PAGA cause of action in
10 *Thompson* without prejudice as to non-Cashiers comports with the requirements of PAGA, that
11 because the PAGA cause of action in *Thompson* was brought solely as a representative action
12 under PAGA, and not as a class action, the non-Cashiers have no legally cognizable interest
13 that is impacted by the dismissal of *Thompson*, the non-Cashiers in *Thompson* have no right to
14 notice of the dismissal, and the non-Cashiers in *Thompson* have no standing to object or
15 otherwise challenge the dismissal.

16 Accordingly, the Court hereby orders, adjudges, and decrees as follows:

17 1. The Parties, their Counsel, and the Settlement Administrator shall take all steps
18 necessary to implement and consummate the Settlement according to the terms and provisions,
19 including but not limited to the parties effectuating the dismissals of *Murphy v. Target*
20 *Corporation*, U.S. District Court for the Southern District of California Case No. 09-1436 and
21 *Thompson v. Target Corporation*, U.S. District Court of the Central District of California Case
22 No. 16-0839, pursuant to Section II(D)(2) of the Settlement.

23 2. The Court awards plaintiffs' counsel attorneys' fees in the amount of Three
24 Million, Six Hundred Thousand Dollars and No Cents (\$3,600,000.00), plus costs in the
25 amount of Two Hundred Thousand Dollars and No Cents (\$200,000.00). The Court finds the
26 attorney hours, hourly rates, and costs incurred by plaintiffs' counsel over this nine-year
27 litigation as reflected in their declarations were reasonable, and further that plaintiffs' counsel
28 are entitled to a multiplier given the novelty of the claims and the contingent nature of the fee.

1 The Court further awards the representative plaintiffs, Valerie Enombang, Danyell Murpy,
2 Candi Perry, and Stacy Thompson, Twenty Thousand Dollars (\$20,000.00) each for the time
3 they spent, and the risk they undertook, in prosecuting these actions on behalf of the State and
4 the aggrieved employees. All of these amounts shall be deducted from the \$9 million
5 settlement fund. Attorneys' fees shall be distributed consistent with the Settlement.

6 3. Without affecting the finality of this Judgment or the Settlement, this Court
7 shall, pursuant to Section II(F)(3) of the Settlement, retain continuing jurisdiction over the
8 parties to this action to ensure effectuation of the Settlement in accordance with the terms of
9 the Settlement and this Judgment.

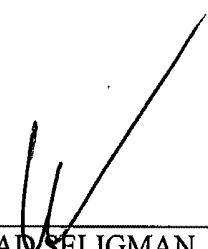
10 4. To the extent any settlement checks are uncashed by the deadline provided in
11 the Settlement, or in the event there any other undistributed settlement funds, such funds shall
12 be paid to the Equal Access Fund of the Judicial Branch, to be distributed in accordance with
13 Bus. & Prof. Code sections 6216 to 6223.

14 5. Judgment and dismissal is hereby entered as to Plaintiff Valerie Enombang, the
15 LWDA, and all individuals who worked for Defendant in California as a Cashier as that term
16 is defined in the Settlement Agreement at any time from April 14, 2008 through the date of
17 this Order.

18 6. Except as otherwise provided by the Settlement, each side shall bear their own
19 attorneys' fees and costs.

20 **IT IS SO ORDERED.**

21
22
23 DATED: 8/2/18


HON. BRAD SELIGMAN
JUDGE OF THE SUPERIOR COURT

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

DATE: 07/24/2018

TIME: 02:00:00 PM

DEPT: 53

JUDICIAL OFFICER PRESIDING: David Brown

CLERK: E. Brown

REPORTER/ERM: T. Huffman CSR# 13789

BAILIFF/COURT ATTENDANT: M. Oreschak, M. Meraz

CASE NO: **34-2017-00220347-CU-OE-GDS** CASE INIT.DATE: 10/10/2017

CASE TITLE: **Grace vs. Flowmaster Inc**

CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Motion - Other - Civil Law and Motion

APPEARANCES

Theresa Mak, counsel, present for Defendant(s).

Jill Vecchi, counsel present for plaintiff, telephonically

Nature of Proceeding: Motion for Approval of Settlement

TENTATIVE RULING

Plaintiff Carrie Grace's unopposed motion for approval of settlement of claims brought pursuant to the Private Attorney General Act of 2004 ("PAGA") is granted.

Plaintiff seeks an order approving settlement of claims brought in this action on behalf of herself and all persons employed by Defendant Flowmaster, Inc. in non-exempt positions in its warehouses between August 7, 2016 and July 27, 2018 or the date the Court approves the settlement, whichever is earlier. The PAGA claims were premised on six alleged violations of Labor Code (e.g., failure to pay wages, failure to provide meal and rest breaks, failure to provide itemized wage statements). Approximately 323 employees suffered the alleged Labor Code violations during the relevant period. Plaintiff calculated Flowmaster's maximum potential exposure at approximately \$3,459,000 based on multiplying 5,765 pay periods by 6 PAGA violations by \$100. Flowmaster contends its exposure is limited to \$576,500. Flowmaster asserted numerous defenses including that the case could not be managed. The parties reached a settlement for \$750,000. The settlement includes attorneys' fees of \$247,500 (33% of the settlement), \$15,588.67 in costs, a \$10,000 service payment to Plaintiff, and up to \$5,000 in claims administration costs. The net settlement amount is \$471,911.33. 75% of that amount (\$353,933.50) will be distributed to the Labor and Workforce Development Agency [LWDA] and 25% (\$117,977.83) to the aggrieved employees based on the number of pay periods worked during the relevant time period.

Settlement of PAGA claims requires Court approval. Labor Code § 2699(l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action pursuant to this part." Thus, the settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part." (See Labor Code § 2699(1)(2).) As with any settlement, the Court must be mindful in conducting its inquiry that "[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further." (See *In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist. LEXIS 103222, 24 (N.D. Cal. Sept. 12, 2011).) Indeed, "the very essence of a

settlement is ... 'a yielding of absolutes and an abandoning of highest hopes'" [*Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624 (9th Cir., 1982)], as "it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." (See *Id.*, at 625.) As such, "the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits" or "judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." (See *Id.*)

Although the operative PAGA statute does not set forth the criteria on which a PAGA settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a class action settlement under Fed. R. Civ. P. 23 ("Rule 23"), CCP. § 382 and Rule 3.769, Cal. Rules of Court, as courts within California have approved settlements of PAGA claims encompassed within class action settlements using Rule 23 criteria. However, it is important to underscore that not all Rule 23 factors can be applied, as "a PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action, and therefore does not have to meet the requirements of Rule 23." (See *Casida v. Sears Holdings Corp.*, 2012 U.S. Dist. LEXIS 9302, 8 (E.D. Cal. Jan. 25, 2012); *Thomas v. Aetna Health of Cal. Inc.* 2011 U.S. Dist. LEXIS 59377 (E.D. Cal. June 2, 2011); *Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010). Based thereon, a court's review of a PAGA settlement necessarily implicates the following unique features that render the approval process completely distinct from approval of a class action settlement under Rule 23 or CCP. § 382 and 15 Rule 3.769, Cal. Rules of Court.

First, in evaluating the adequacy of the settlement amount, the Court's focus is not concerned with the amount which "aggrieved employees" are to receive, but rather, must focus on the total settlement amount in achieving PAGA's objective. Indeed, "[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or class damages" [*Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454, 11 (E.D. Cal. June 30, 2010)], and "[u]nlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." (See *Ochoa-Hernandez v. CJADERS Foods, Inc.*, 2010 U.S. Dist. LEXIS 32774, 12 (N.D. Cal. Apr. 2, 2010). Second, consistent with the fact that unnamed employees have no properly interest in a PAGA claim, "[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim." (See *Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS 32774, at 13.) Finally, unlike a class action settlement under Rule 23(e) or CCP. § 382, the scope of release permitted in a PAGA settlement is limited. While "judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding" [*Arias v. Superior Court* (2009) 46 Cal. 4th 969, 986], "the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." (See *Id.*, at 987.) Thus, the scope of a release in a PAGA settlement is necessarily strictly confined to the civil penalties alleged in the first amended complaint.

In deciding whether to grant approval of the proposed Settlement, the primary issue to be decided is whether the Settlement is fair, adequate and reasonable. As set forth herein, the proposed Settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage and hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the PAGA claim, and (4) it reflects a reasoned compromise based directly on the relative strength and value of the PAGA claim, as well as the risks, expense, complexity and likely duration of further litigation. The settlement was the product of arms-length negotiations reached at mediation and was negotiated by counsel with significant experience in wage and hour litigation and occurred after counsel conducted significant investigation to evaluate the strength and potential value of the PAGA claims and risks of litigating through trial. (Turley Decl. ¶¶ 2-29) In addition, the settlement achieves a significant benefit given it results in a recovery of \$750,000 for the PAGA penalties. Further, the scope of the release is

narrowly tailored and is only limited to the civil penalties asserted in the action under PAGA, in conformity with *Arias, supra*, 46 Cal.4th at 987. In addition, Plaintiff submitted the proposed settlement to the Labor and Workforce Development Agency at the same time it was presented to the Court as required by Labor Code § 2699(l)(2). (Id. ¶ 18.) As a result, the Court finds that the instant settlement is fair, adequate and reasonable and it is approved.

In addition, the Court approves Plaintiff's Counsel's request for fees and costs. Counsel is entitled to recover attorneys' fees and costs under the "common fund" doctrine as a matter of right. As held by the U.S. Supreme Court, "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." (See *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478.) In *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn. 19, the California Supreme Court upheld an attorneys' fee award based on a percentage of the common benefit obtained in a lawsuit by a city employees' association for retroactive wages. "When assessing whether the percentage requested is reasonable, courts look to factors such as: (a) the results achieved; (b) the risk of litigation; (c) the skill required, (d) the quality of work; (e) the contingent nature of the fee and the financial burden; and (f) the awards made in similar cases." (See *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010).) Plaintiff's Counsel's request for attorneys' fees in the amount of \$247,500 (33%) from the \$750,000 PAGA Settlement Sum falls well within the "zone of reasonableness." It is important to highlight at the outset that the fee amount presently sought is not extraordinary, but actually falls at the "average" fee deemed reasonable under California State court authority, as it is recognized that "courts may award attorney's fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under \$10 million." (See, e.g. *Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). Moreover, taking into account the contingency risk Plaintiff's Counsel agreed to incur for the benefit of the State of California (which elected not to take the case after receiving the PAGA Notice), and the significant results achieved - facts which justify the requested fee - Plaintiff's Counsel's requested fee is reasonable under all applicable standards. In addition the \$15,588.67 in litigation costs are reasonable.

Further, the \$10,000 service payment to Plaintiff is appropriate. Case authority supports the award of incentive payments in private attorney general actions. A named plaintiff's "willingness to act as a private attorney general" can justify an award of an incentive payment. (*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 959.)

In addition, the \$5,000 in administration costs for Simpluris, Inc. to administer the settlement is reasonable.

The Court will sign the proposed order.

COURT RULING

The tentative ruling was affirmed as modified on the record.

CASE NAME: Resendez v. Bridgestone Retail Operations, LLC
CASE NO.: BC596892
HEARING DATE: 6/13/16
DEPARTMENT: 37
CALENDAR NO.: 9
TRIAL DATE: 2/14/17
NOTICE: OK
SUBJECT: Motion for Approval of Settlement of Claims Brought Under the Private Attorneys General Act
MOVING PARTY: Plaintiff Sophia P. Resendez, on behalf of herself and all others similarly situated
OPPOSING PARTY: None

FILED
Superior Court of California
County of Los Angeles

JUN 13 2016

Shérri A. Carter, Executive Officer/Clerk
By K. Mason Deputy
K. Mason

COURT'S TENTATIVE RULING

The unopposed motion is granted. Counsel for Plaintiff to give notice.

STATEMENT OF THE CASE

This is an action for civil penalties under the Private Attorneys General Act of 2004 (PAGA), which is codified in the Labor Code (Lab. Code, § 2698 et seq.). Defendant Bridgestone Retail Operations, LLC operates a chain of auto care and tire stores and employed Plaintiff Sophia P. Resendez from August 18, 2013 until May 14, 2015. Plaintiff alleges that Defendant failed to include its address on employee wage statements in violation of Labor Code section 226, subdivision (a)(8), and that Defendant paid meal period premiums to non-exempt employees pursuant to Labor Code section 226.7, thereby acknowledging that it had violated Labor Code section 512 regarding the provision of meal periods. Plaintiff filed suit on October 5, 2015, and the parties settled the matter during mediation with the Honorable Ronald M. Sabraw (Ret.) on February 25, 2016.

DISCUSSION

I. General Legal Principles Applicable to PAGA Settlements

A. The PAGA

Plaintiff moves the court to review and approve the civil penalties sought as part of the settlement of her PAGA claims. (Lab. Code, § 2699, subd. (f).) The PAGA is "a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies." (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003.) The statute provides a mechanism for private enforcement of Labor Code violations for the public benefit. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986; *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D.Cal. 2010) 2010 WL 1340777, at p. *4.) To incentivize employees to bring PAGA actions, the statute

06/15/2016

provides aggrieved employees 25 percent of the recovered civil penalties. (Lab. Code, § 2699, subd. (i).) The remaining 75 percent is distributed to the Labor and Workforce Development Agency (LWDA) "for enforcement of labor laws and education of employers and employees about their rights and responsibilities under [the Labor Code]." (*Ibid.*)

B. Settlement Generally

In reviewing the terms of a settlement agreement, the court determines whether the settlement is fair, reasonable, and adequate to all concerned, and not the product of fraud, collusion, or overreaching. (*Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337; *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 581.) In the context of a class action settlement, the court considers various factors including whether (1) the settlement is the result of arm's length bargaining, (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently, (3) counsel is experienced in similar litigation, and (4) the percentage of objectors is small. (*Nordstrom*, at p. 581; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) In considering the amount of settlement, the court is mindful that compromise is inherent and necessary in the settlement process. (*Wershba*, at p. 250.)¹

II. Application of General Principles

A. Terms of the Settlement

The settlement provides for Defendant to pay a Gross Settlement Amount (GSA) of \$950,000. After deducting one-third of the GSA (\$316,666.66) for attorney fees, attorney costs (\$7,005.82), an enhancement award for Plaintiff (\$10,000), and settlement administration costs (\$30,000), the settlement provides for distribution of a PAGA penalty fund of no less than \$585,833.34, with no less than \$439,375 to be paid to the LWDA, and no less than \$146,458.34 to be paid to the aggrieved employees. The parties have agreed to use CPT Group, Inc. (CPT) as the third-party settlement administrator. In that capacity, CPT will attempt to notify the aggrieved employees based on information provided by Defendant and distribute payments to the

¹ As Plaintiff points out, a PAGA settlement is different from a class action settlement in at least two respects. First, in considering a PAGA settlement, the court considers whether the total settlement amount achieves the PAGA's objective. Civil penalties are not meant to compensate employees but to serve law enforcement purposes by deterring unlawful conduct. Second, because the PAGA does not create property or substantive rights, aggrieved employees represented by the PAGA representative need not be given notice of the PAGA claim and cannot "opt out" of such a claim. Notwithstanding these difference, the general principles applicable to class action settlements apply equally in this context.

employees.² Aggrieved employees will not be required to submit claim forms to participate, will automatically receive the share of the settlement, and will have 180 days to cash their settlement checks. The amount of any checks that are returned as undeliverable or not cashed within 180 days shall be tendered to a fund benefitting Defendant's employees with personal or family emergencies.

B. Analysis of the Civil Penalties

The settlement represents a compromise with respect to the strength of Plaintiff's claims and Defendant's defenses to those claims. For instance, while Plaintiff contends that Defendant violated Labor Code section 226 by failing to include its address on wage statements, she acknowledges that Labor Code section was amended shortly before she filed suit to permit employers to "cure" such a violation by providing compliant wage statements to affected employees. The parties dispute whether Defendant timely cured the defective wage statements. Similarly, while Plaintiff contends that Defendant violated Labor Code section 512, which obligates employers to provide meal periods, Defendant maintains that it provided employees an extra hour of pay as a "meal period premium" pursuant to Labor Code section 226.7. Although Plaintiff disagrees, it is Defendant's position that it should not be penalized twice for the same violation. After considering the parties' respective positions before and during mediation, Plaintiff calculated civil penalties of \$842,511 for the failure to include an address on wage statements and \$178,145 for the failure to provide meal periods. The GSA represents about 93 percent of Plaintiff's projected total recovery of \$1,020,656.

The parties arrived at the settlement amount with the benefit of informal discovery and experienced counsel. For instance, Defendant provided Plaintiff with payroll data and calculations for aggrieved employees, including the number of deficient wage statements and the number of pay periods in which meal period premiums were paid. Plaintiff's counsel is experienced in wage-and-hour class actions, who believes the settlement to be fair and adequate for all involved. In addition, the parties reached their agreement with the benefit of a neutral mediator. These circumstances demonstrate that the agreement represents an arm's length transaction untainted by fraud, collusion, or self-dealing. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) Accordingly, for these reasons, the court determines that the settlement is fair, adequate, and reasonable.

C. Attorney Fees and Costs

The PAGA contains a fee-shifting provision providing the prevailing party recovery of attorney fees and costs. (Lab. Code, § 2699, subd. (g).) Here, the one-third fee award is reasonable and consistent with fee awards in class action cases. (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11 ["Empirical studies show

² Plaintiff represents that based on the latest information, there are 3,002 persons who fall into the definition of "aggrieved employees" in this case. The estimated average payment for each aggrieved employee is \$48.23.

that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery' "). In addition, the GSA exceeds other PAGA awards that have been approved by courts in this state. (E.g., *Aguirre v. DSW, Inc.* (C.D.Cal. 2012) 2012 WL 11875296, at p. *3 [approving \$10,000 PAGA payment]; *Boyd v. Bank of America Corp.* (C.D.Cal. 2014) 2014 WL 6473804, at p. *8 [approving \$18,750 PAGA payment].) The success of the litigation and the experience of counsel in handling similar matters also favors an award of one-third of the recovery.

The reimbursement of costs of \$7,005.82 is also warranted. Plaintiff presents an itemization of costs, which consists of (1) copying, postage, and research costs; (2) mediation fees; (3) filing and jury fees; (4) CourtCall fees; and (5) parking and mileage. (Declaration of Paul K. Haines, Exh. F.) Similarly, Plaintiff demonstrates that the \$30,000 of administrative costs for CPT is reasonable and warranted. CPT is experienced as a settlement administrator (Declaration of Julie Green ¶¶ 4-7), and Plaintiff represents that the bid of \$30,000 was low and discounted. Accordingly, the attorney and administrative costs are approved as well.

D. Enhancement Award

Finally, Plaintiff's enhancement award of \$10,000 is reasonable. The purpose of such an award is to incentive aggrieved employees to undertake the risks associated with serving in a representative capacity. (See *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 ["service payments" compensate named plaintiff "for their efforts in bringing the action"]; *Ingram v. The Coca-Cola Co.* (N.D.Ga. 2001) 200 F.R.D. 685, 694 ["Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation' "). Here, Plaintiff provided factual information and documentation to Plaintiff's counsel, assisted in identifying potential witnesses, and attended meetings with counsel. She estimates that she has spent at least 15 hours on these activities to help move the case forward. (Declaration of Sophia Resendez ¶ 5.) In addition, Plaintiff has agreed to a broader release of all known and unknown claims, including those that are not wage and hour related, subject to a waiver of Civil Code section 1542. Given Plaintiff's participation in the case and the broader waiver she has agreed to, the enhancement award is reasonable.

In sum, the settlement is fair, reasonable, and adequate for those concerned. The unopposed motion is granted.

06/15/2016

**Superior Court of California
County of Los Angeles**

Shelley Pickett, *et al.*,

Plaintiff,

vs.

99 Cents Only Stores, *et al.*

Defendants.

Case **BC473038**

No.:

Tentative Ruling

FILED
Superior Court of California
County of Los Angeles
AUG 01 2017
By Sherri R. Carter, Executive Officer/Clerk
Steve Temblador, Deputy

Hearing Date: August 1, 2017

Department 54, Judge Ernest M. Hiroshige

Motion for Approval of Representative Action Settlement

Moving Party: Plaintiff/Cross-Defendant Shelley Pickett ("Pickett")

Responding Party: Defendant/Cross-Complainant 99 Cents Only Stores ("99 Cents Only") [non-opposition]

T/R: THE MOTION IS GRANTED.

PLAINTIFF TO NOTICE.

The Court considers the moving papers and Defendant/Cross-Complainant's notice of non-opposition.

Plaintiff moves for an order granting approval of the proposed settlement of claims brought pursuant to the Private Attorneys general Act of 2004 ("PAGA"), Cal. Lab Code § 2698, *et seq.* Pursuant to the proposed settlement, the parties agree to the following terms: (1) 99 Cents Only will provide all of its cashiers in its California stores with suitable seating under Section 14(B) of Wage Order 7-2001, and to create, implement, and communicate pertinent policies to its cashiers regarding this change in policy; (2) \$75,000 to be paid to the California Workforce Development Agency; (3) \$12,500 to be paid to each of the two Plaintiffs; and (4) \$1,190,000 to be paid to Plaintiffs' Counsel for attorney fees and litigation costs. 99 Cents Only filed a statement of non-opposition. Based on the moving papers, the Court finds that the settlement is reasonable and meets the requirements of PAGA. Accordingly, the motion is GRANTED.

Date: August 1, 2017


Judge Ernest M. Hiroshige

08/03/2017

ORIGINAL

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JUN 19 2020

Filing Window

FILED
Superior Court of California
County of Los Angeles

SEP 24 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By *[Signature]*, Deputy

FILED
Superior Court of California
County of Los Angeles

SEP 24 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By *[Signature]*, Deputy
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Attorneys for Plaintiff
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

HELEN CATALINA VARGAS, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

GRUMA CORPORATION, a Nevada
Corporation; and DOES 1 through 100,

Defendants.

Case No. BC707897

[Assigned for all purposes to the Carolyn B.
Kuhl, Dept. SSC-12]

~~PROPOSED~~ JUDGMENT AND ORDER
GRANTING PLAINTIFF'S MOTION
FOR APPROVAL OF SETTLEMENT OF
CLAIMS BROUGHT UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT, REASONABLE ATTORNEYS'
FEES, COSTS, AND SERVICE AWARD

Date: July 21, 2020

Time: 1:45 p.m.

Dept.: SSC-12

Complaint Filed: June 5, 2018

Trial Date: None Set

RECEIVED
LOS ANGELES SUPERIOR COURT
JUN 19 2020
I. LOVO

09/25/2020

CSK

Sept. 24, 2020 at 10:00 am

1 This matter came on regularly for hearing before this Court on July 21, 2020 at 1:45 p.m.
2 Having considered the parties' Stipulation for PAGA Settlement ("Settlement");¹ the documents
3 and evidence presented in support thereof; and recognizing the outcome of Plaintiff's
4 investigation of her claims and allegations, the disputed factual and legal issues involved in this
5 case, the risks of further prosecution, the substantial benefits to be received by the State of
6 California and the Allegedly Aggrieved Employees pursuant to the Settlement, and the fair,
7 reasonable, and adequate nature of the settlement obtained as a result of good faith arm's-length
8 negotiations between the parties; and the absence of any objection or comment from the California
9 Labor and Workforce Development Agency ("LWDA") after having received notice of the
10 parties' Settlement and Plaintiff's motion; the Court hereby makes a final ruling that the
11 Settlement is approved pursuant to Labor Code section 2699(l). Good cause appearing therefor,
12 the Court hereby GRANTS Plaintiff's Motion for PAGA Settlement Approval of Claims and
13 ORDERS as follows:

- 14 1. The "Allegedly Aggrieved Employees" shall be defined as:
15 All individuals who worked for Defendant Gruma Corporation as
16 nonexempt employees within the State of California at any time from
17 June 11, 2017 through the date the Court Order granting approval of the
18 PAGA Settlement Agreement.
- 19 2. The "PAGA Period" means June 11, 2017 through the date the Court Order
20 granting approval of the Settlement.
- 21 3. The Court hereby approves the settlement set forth in the Settlement as fair,
22 reasonable, and adequate, and directs the parties to effectuate the Settlement according to its
23 terms.
- 24 4. The Court orders that Defendant Gruma Corporation ("Defendant") shall pay the
25 Settlement Fund of \$1,917,500 to the Settlement Administrator within thirty (30) days after the
26 Court's order granting final approval of the PAGA Settlement Agreement and is no longer subject
27 to appeal.

28 ¹ All terms used in this Order shall have the same meaning as that assigned to them in the Settlement, attached as Exhibit A to the Declaration of Paul K. Haines submitted concurrently with the Motion for Approval of PAGA Settlement.

09/25/2020

1 5. The Court hereby approves, as to form and content, the explanatory Notice
2 submitted by the parties and included as Exhibit A to the Settlement.

3 6. The Court hereby appoints Phoenix Settlement Administrators as the Settlement
4 Administrator.

5 7. Within fourteen (14) business days of the Effective Date, Defendant shall provide
6 the Settlement Administrator with a list containing the Allegedly Aggrieved Employees' names,
7 last known addresses, social security numbers, and dates of employment and/or number of pay
8 periods worked during the PAGA Period.

9 8. The Settlement Administrator is directed to mail the individual PAGA payments
10 and the Notice to the Allegedly Aggrieved Employees within five (5) business days after
11 Defendant provides the Settlement Fund to the Settlement Administrator.

12 9. The Court finds that attorneys' fees in the amount of \$639,166.67 for Plaintiff's
13 counsel, and reimbursement of litigation costs of \$29,396.60 to Plaintiff's counsel, are fair,
14 *in light of the benefit obtained for the state and the class* reasonable, and adequate, and orders the Settlement Administrator to distribute these payments
15 to Plaintiff's counsel as provided for in the Settlement.

16 10. The Court orders that Phoenix Settlement Administrators shall be paid \$11,000 for
17 all of its work done and to be done until the completion of this matter, and finds that sum
18 appropriate.

19 11. The Court finds that the Representative Plaintiff Service Award of \$5,000.00 to
20 Plaintiff Helen Catalina Vargas, is fair and reasonable in recognition of the unique contributions
21 she has made and the risks she undertook in representing the State of California and the LWDA
22 in this action, on behalf of the Allegedly Aggrieved Employees and the State, and orders that the
23 Settlement Administrator distribute this payment to Plaintiff as provided for in the Settlement.

24 12. The Court finds that the distribution of the PAGA Fund to the LWDA and to
25 Allegedly Aggrieved Employees as provided for in the Settlement, is fair, adequate, and
26 reasonable, and orders that payment be made to the LWDA and Allegedly Aggrieved Employees
27 in accordance with the terms of the Settlement.

28 13. The court approves the scope of the release set forth in the Settlement. Following

1 entry of this Judgment and Order and upon the Effective Date, the State of California, Plaintiff
2 and Allegedly Aggrieved Employees, on behalf of themselves and each of their heirs,
3 representatives, successors, assigns, and attorneys, hereby release, and settle any and all claims
4 against the Released Parties for civil penalties they and the State of California may have under
5 the California Labor Code, Wage Orders, regulations, and/or any other provisions of state law
6 arising from allegations that the Allegedly Aggrieved Employees (including Plaintiff) suffered
7 California Labor Code Violations based on (1) non-compliant rest breaks, (2) non-compliant meal
8 periods, (3) non-compliant meal and rest period premium payments, (4) unpaid minimum and
9 overtime wages, (5) failure to pay all wages at the agreed-upon rate and/or without discount, (6)
10 untimely payment of earned wages during employment and at separation of employment, (7) non-
11 compliant wage statements, (8) failure to maintain complete and accurate records, and (9) any
12 other Labor Code violations that were alleged in the Complaint, or that could have been alleged
13 in the Complaint based on the facts alleged in the Complaint, which includes alleged violations
14 of Labor Code sections 201-204, 210, 221-223, 226, 226.3, 226.7, 510, 512, 516, 558, 1174,
15 1174.1, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198 (collectively, the "Released Claims").
16 "Released Parties" means Defendant and each and all of its present, former and future controlling
17 persons, parents, affiliates, business partners, subsidiaries, successors-in-interest, benefit plans
18 sponsored by such companies, shareholders, owners, officers, directors, principals, employees,
19 agents, attorneys, insurers, managers, trustees, fiduciaries, representatives, divisions,
20 predecessors, successors, and assigns.

21 *This release in no way*
22 */// affects any claim an Allegedly Aggrieved*
23 */// Employee may have against the Released*
24 */// Parties for unpaid wages.*

25 *///*
26 *///*
27 *///*
28 *///*

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14. ~~Upon entry of this Final Order and Judgment and upon the Effective Date, the~~
(Upon payment being made in accordance with paragraph 4 hereof,

2 Court permanently enjoins and forever bars the Plaintiff or the Allegedly Aggrieved Employees
3 from instituting or prosecuting any of the "Released Claims" against the "Released Parties,"
4 which were fully and completely resolved as part of the Settlement. Without affecting the finality
5 of this Final Order and Judgment in any way, the Court retains jurisdiction to enforce the terms
6 of the Settlement.

7 15. The Settlement Administrator shall make a final report confirming the final
8 distribution of funds on or before Aug. 4, 2021. A Non-Appeal
9 Case Review Re: Submission of the Final Report of Disbursement is scheduled for
10 Aug. 11, 2021 at 4:30 a.m./p.m.

Cik

11 **IT IS SO ORDERED.**

12
13 Dated: Sept. 24, 2020 By: Carolyn B. Kuhl
14 Honorable Carolyn B. Kuhl
15 Judge of the Superior Court
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09/25/2020

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Rachael Buhl

(Additional counsel of record on next page)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

RACHAEL BUHL, as an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

SDX HOME CARE OPERATIONS, LLC, a
California Limited Liability Company; and
DOES 1 through 100,

Defendants.

No. 19STCV23623

**~~[PROPOSED]~~ ORDER GRANTING
JOINT MOTION FOR APPROVAL OF
PAGA SETTLEMENT (Cal. Lab. Code
§ 2699(1)(2)) AND PLAINTIFF'S
MOTION FOR APPROVAL OF
REASONABLE ATTORNEYS' FEES
AND COSTS AND ENHANCEMENT
AWARD**

Date: July 29, 2020
Time: 8:30 a.m.
Dept.: 20, 111 North Hill St., 3rd Flr.,
Los Angeles, CA
Judge: Hon. David J. Cowan

Complaint filed: July 1, 2019
Trial date: None set

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11 Attorneys for Defendant
12 SDX Home Care Operations, LLC
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1 On July 29, 2020, a hearing was held on the joint motion of plaintiff Rachael Buhl and
2 defendant SDX Home Care Operations, LLC, for approval of the settlement of this action under
3 the California Labor Code Private Attorneys General Act (“PAGA”), Cal. Lab. Code §§ 2698 *et*
4 *seq.*, and on plaintiff’s motion for reasonable attorneys’ fees and costs and enhancement award.

5 The Court having read and considered the parties’ Settlement Agreement (the “Settlement
6 Agreement” or “Settlement”), the papers on the motions, the arguments of counsel, the parties’
7 joint supplemental brief in support of the joint motion, and the law, and recognizing the disputed
8 factual and legal issues involved in this case, the risks of further prosecution, the substantial
9 benefits to be received by the State of California and the alleged aggrieved employees pursuant to
10 the Settlement, the Court hereby makes a final ruling pursuant to California Labor Code section
11 2699(*l*) that the Settlement is fair, reasonable, and adequate, and is the product of good faith, arm’s
12 length negotiations between the parties. Good cause appearing therefor, the Court hereby
13 GRANTS the parties’ joint motion and plaintiff’s motion and HEREBY ORDERS as follows:

14 1. All terms used for purposes of this order, not otherwise defined, will have the same
15 meaning as given in the Settlement. A copy of the Settlement Agreement executed between the
16 Parties is attached as Exhibit A to this order.

17 2. Pursuant to PAGA, Cal. Lab. Code § 2699(*l*)(2), the California Labor and
18 Workforce Development Agency (the “LWDA”) has been given notice of the Settlement and the
19 joint motion for approval of the Settlement and plaintiff’s motion; on April 15, 2020, plaintiff
20 submitted to the LWDA a notice of the Settlement enclosing a copy of the Settlement Agreement.
21 The Court finds and determines that this notice of the Settlement complied with the statutory
22 requirements of PAGA.

23 3. The Court confirms approval of the Settlement with respect to the following group
24 of individuals (“Settlement Group Members”):

25 All non-exempt employees employed by defendant SDX Home Care Operations,
26 LLC, in California as “Caregivers” or “Home Health Assistants” from April 24,
2018, through June 30, 2020.

27 ///

1 4. The Court finds that the Settlement is, in all respects, fair, reasonable, and adequate.
2 Accordingly, the Court hereby approves the Settlement, and directs the parties to effectuate the
3 Settlement according to its terms.

4 5. The Court finds that the form of Letter Enclosing Settlement Share Checks (the
5 “Cover Letter”), attached as Exhibit A to the Settlement Agreement, fairly and adequately
6 describes the Action, the approved Settlement, and the manner in which Settlement Group
7 Members may ask questions regarding their Settlement Shares, and orders that the Cover Letter
8 be mailed via first-class U.S. mail to the Settlement Group Members in English and Spanish, along
9 with the Settlement Share checks.

10 6. The Court finds that the Total Settlement Amount, Net Settlement Amount, and the
11 methodology used to calculate and pay each Settlement Share, in accordance with the Settlement,
12 are fair and reasonable.

13 7. Phoenix Settlement Administrators is appointed to act as the Settlement
14 Administrator, pursuant to the terms of the Settlement Agreement.

15 8. The Court finds that attorneys’ fees in the amount of 35% of the Total Settlement
16 Amount (\$280,000.00) for plaintiff’s counsel, and reimbursement of litigation costs of \$25,534.58
17 to plaintiff’s counsel are fair, reasonable, and adequate, and orders that the Settlement
18 Administrator distribute these payments to plaintiff’s counsel as provided for in the Settlement.

19 9. The Court orders that the Settlement Administrator shall be paid \$3,500.00 for all
20 of its work done and to be done until the completion of this matter, and finds that sum appropriate.

21 10. The Court finds that a Representative Plaintiff’s Payment of \$5,000.00 to plaintiff
22 is fair and reasonable in recognition of the contributions she has made and the risks she undertook
23 on behalf of the Settlement Group Members and the State of California, and orders that the
24 Settlement Administrator distribute this payment to plaintiff as provided for in the Settlement.

25 11. The Court finds that the amount of \$364,474.06 (representing 75% of the PAGA
26 civil penalties under California Labor Code section 2699(i)) payable to the LWDA as provided
27 for by the Settlement, is fair, adequate, and reasonable, and orders that payment be made to the
28 LWDA in accordance with the terms of the Settlement.

1 12. The Court authorizes the Settlement Administrator to calculate and pay the
2 Settlement Shares, in accordance with the terms of the Settlement, and to pay the LWDA Payment,
3 the Representative Plaintiff's Payment, and the Plaintiff's Counsel Fees and Expenses Payment at
4 the same time as the Settlement Shares.

5 13. Defendant is ordered to provide to the Settlement Administrator not later than 14
6 days after this order becomes Final the names, last known mailing addresses and telephone
7 numbers, Social Security numbers, and Covered Workweeks of all Settlement Group Members.
8 This information will not be disclosed to plaintiff or her counsel, and may be used solely for
9 purposes of administering the Settlement.

10 14. All payments due under the Settlement will be made pursuant to the Settlement.

11 15. If a Settlement Share check comes back to the Settlement Administrator as non-
12 deliverable, the Settlement Administrator will make reasonable efforts to find a current address
13 for the Settlement Group Member and re-mail the check.

14 16. If a Settlement Group Member fails to cash the check for his or her Settlement
15 Shares within 180 days after it is mailed to the Settlement Group Member (or, in the case where
16 the check was returned as non-deliverable, within 180 days after the initial mailing or within 90
17 days after it is mailed to the new address for the Settlement Group Member, whichever is later),
18 the Settlement Administrator will transfer the money represented by the check to the California
19 State Controller's Office Unclaimed Property Fund with an accounting of the amounts being
20 transferred.

21 17. The Court retains exclusive and continuing jurisdiction over this Action under
22 California Code of Civil Procedure section 664.6 for purposes of supervising, administering,
23 implementing, interpreting, and enforcing this order, as well as the Settlement Agreement.

24 18. Nothing in this order or the Settlement Agreement will be construed as an
25 admission or concession by any party, including an admission or concession that defendant bears
26 any liability to the Settlement Group Members or that they were owed the amounts being paid or
27 any amounts. The Settlement Agreement and this resulting order simply represent a compromise
28 of disputed allegations.

1 19. Plaintiff is directed to submit a copy of this order to the LWDA within 10 days of
2 the date of this order.

3 20. Upon entry of this order, plaintiff and the Settlement Group Members will waive
4 and release all claims against the Released Parties that were pled or could have been pled under
5 PAGA under the California Labor Code, Wage Orders, regulations, and/or other provisions of law
6 alleged in the Action to have been violated with respect to herself and the Settlement Group
7 Members during the Covered Period.

8 21. Based on the foregoing, and in accordance with the Settlement Agreement, this
9 action is DISMISSED WITH PREJUDICE, each side to bear its own costs and attorneys' fees
10 except as provided by the Settlement Agreement.

11 IT IS SO ORDERED.

12 Dated: July 30, 2020.



A handwritten signature in black ink, appearing to read "David J. Cowan".

David J. Cowan
Judge of the Superior Court
David J. Cowan / Judge

13
14 Counsel for plaintiff is ordered to give notice.

09/19/2019

Sherri R. Carter, Executive Officer / Clerk of Court

By: O. Chavez Deputy

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JORGE GUTIERREZ, as an individual and on
behalf of all other aggrieved employees,

Plaintiff,

vs.

SEIDNER & CO., INC., a California
Corporation; and DOES 1 through 100,

Defendants.

Case No.: BC724132

*[Assigned for all purposes to the Hon. Holly
J. Fujie; Dept. 56]*

**[PROPOSED] ORDER AND
JUDGMENT GRANTING PLAINTIFF'S
MOTION FOR APPROVAL OF PAGA
SETTLEMENT AND REASONABLE
ATTORNEYS' FEES, COSTS, AND
ENHANCEMENT AWARD**

Date: September 16, 2019

Time: 8:30 a.m.

Dept.: 56

Reservation No.: 122557984660

Action Filed: October 3, 2018

Trial Date: None Set

1 This matter came on regularly for hearing before this Court on September 16, 2019 at
2 8:30 a.m. Having considered the parties' Settlement Agreement, the documents and evidence
3 presented in support thereof, and recognizing the disputed factual and legal issues involved in
4 this case, the risks of further prosecution, the substantial benefits to be received by the State of
5 California and the Aggrieved Employees pursuant to the Settlement, the fair, reasonable, and
6 adequate nature of the settlement obtained as a result of good faith arm's-length negotiations
7 between the parties, the Court hereby makes a final ruling that the settlement is approved pursuant
8 to Labor Code § 2699(l). Good cause appearing therefor, the Court hereby GRANTS Plaintiff's
9 Motion for Approval of PAGA Settlement and Reasonable Attorneys' Fees, Costs, and
10 Enhancement Award and ORDERS as follows:

11 1. The "Aggrieved Employees" shall be defined as:

12 All current and former non-exempt employees of Defendant
13 in California from October 3, 2017, until the date that the
14 Court approves this settlement or September 16, 2019,
15 whichever comes earlier ("PAGA Period").

16 2. The Court hereby approves the Settlement as set forth in the Settlement
17 Agreement as fair, reasonable, and adequate, and directs the parties to effectuate the Settlement
18 according to the terms of the Settlement Agreement.

19 3. The Court orders that Defendant Seidner & Co., Inc. shall deposit the Maximum
20 Settlement Amount of \$325,000.00 to the Settlement Administrator within fourteen (14) business
21 days of the Court's approval of the Settlement Agreement.

22 4. The Court hereby approves, as to form and content, the Notice of PAGA
23 Settlement and Release of Claims, submitted by the parties.

24 5. The Court hereby appoints CPT Group, Inc. as Settlement Administrator.

25 6. Within fourteen (14) business days of Court approval, Defendant Seidner & Co,
26 Inc. ("Seidner") will provide CPT with a list containing the Aggrieved Employees' full name,
27 last known mailing address, last known telephone number, start date(s) of employment, end
28 date(s) of employment, total pay periods worked, and Social Security numbers. The list will also
contain the total of all pay periods worked by Aggrieved Employees during the PAGA Period.

1 Within ten (10) business days of receipt of this information, the Settlement Administrator will
2 circulate to counsel for Plaintiff and Defendant an anonymized spreadsheet containing the
3 Individual PAGA Payments to each Aggrieved Employee and the data used to calculate said
4 payments.

5 7. CPT Group, Inc. is directed to mail the individual settlement payments (which
6 will include the Aggrieved Employees' 25% share of civil penalties paid under Labor Code §
7 2699(i) and their share of civil penalties under Underpaid Wages and Civil Penalty) and Notice
8 of PAGA Settlement and Release of Claims to the Aggrieved Employees after approval of the
9 anonymized spreadsheet containing the individual settlement payments to each Aggrieved
10 Employee and the data used to calculate said payments from the parties.

11 8. The Court finds that attorneys' fees in the amount of \$108,333.33 for Plaintiff's
12 Counsel, and reimbursement of litigation costs of \$10,357.93 to Plaintiff's Counsel are fair,
13 reasonable, and adequate, and orders that the Settlement Administrator distribute these payments
14 to Plaintiff's Counsel as provided for in the Settlement Agreement.

15 9. The Court orders that the Settlement Administrator shall be paid \$7,750.00 for all
16 of its work done and to be done until the completion of this matter and finds that sum appropriate.

17 10. The Court finds that an enhancement award of \$5,000.00 to Plaintiff is fair and
18 reasonable in recognition of the unique contributions he has made and the risks he undertook on
19 behalf of the Aggrieved Employees and the State of California, and orders that the Settlement
20 Administrator distribute this payment to Plaintiff as provided for in the Settlement Agreement.

21 11. The Court finds that the amount of \$15,000.00 (representing 75% of the
22 \$20,000.00 set aside for PAGA civil penalties under Labor Code § 2699(i)) shall to be paid to
23 the California Labor and Workforce Development Agency ("LWDA") as provided for by the
24 Settlement, is fair, adequate, and reasonable, and orders that payment be made to the LWDA in
25 accordance with the terms of the Settlement Agreement.

26 12. The court approves the limited scope of the release. Following entry of this Order
27 and Final Judgment, all Aggrieved Employees will release Defendant Seidner & Co., Inc. and its
28 respective heirs, executors, administrators, successors, assignees, parents, subsidiaries and

1 related entities, officers, directors, shareholders, employees, agents, servants, representatives,
2 members, attorneys, insurers, re-insurers, assigns, and affiliates, and any and all other entities
3 with whom they have been, are now, or may hereafter be affiliated, and any of their affiliated
4 companies, predecessors, successors and assigns, as well as their past or present officers,
5 directors, agents, representatives, attorneys, insurers, re-insurers, assigns, or employees
6 (collectively, the "Released Parties") from any and all claims under PAGA that are pled in
7 Plaintiff's Complaint (including Labor Code § 558), or which could have been pled under the
8 PAGA based on the factual allegations in Plaintiff's Complaint, that arose during the PAGA
9 Period.

10 13. Upon entry of this Order and Judgment, the Court permanently enjoins and
11 forever bars Plaintiff and the Aggrieved Employees from instituting or prosecuting any action
12 against the Released Persons which was released as part of the Settlement Agreement. Without
13 affecting the finality of this Order and Judgment in any way, the Court retains jurisdiction to
14 enforce the terms of the Settlement.

15 14. Plaintiff shall file a declaration confirming the final distribution of funds on or
16 before June 5, 2020.

17
18 **IT IS SO ORDERED.**

19 09/19/2019

20 Dated: _____



Holly J. Fujie

Holly J. Fujie / Judge

Honorable Holly J. Fujie
Judge of the Superior Court

NOV 19 2018

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Attorneys for Plaintiff Silva and Aggrieved Employees

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

JORGE GONZALEZ, individually and on
behalf of himself and other persons similarly
situated,

Plaintiff,

vs.

CITISTAFF SOLUTIONS, INC., a California
corporation; and DOES 1 through 30,
inclusive,

Defendants.

LUIS SILVA, an individual, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

CITISTAFF SOLUTIONS, INC., a California
Corporation, and DOES 1 through 100,

Defendants.

Case No. BC620115 (Lead Case)
Case No. BC622512

*[Assigned for all purposes to the Honorable
David S. Cunningham III, Dept. 37]*

**[PROPOSED] ORDER AND JUDGMENT
GRANTING PLAINTIFF'S MOTION
FOR APPROVAL OF SETTLEMENT
CLAIMS BROUGHT UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT, REASONABLE ATTORNEYS'
FEES, COSTS, ENHANCEMENT
PAYMENT, AND SETTLEMENT
ADMINISTRATION EXPENSES**

Date: September 27, 2018
Time: 8:30 a.m.
Dept.: 37
Reservation ID: 180409304435

Complaint Filed [Lead Case]: May 10, 2016
FSC: October 22, 2018
Trial Date: October 30, 2018

NOVEMBER 19, 2018

This matter came on regularly for hearing before this Court on ~~September 27, 2018~~ at 8:30 a.m. Having considered the parties' Joint Stipulation of Settlement and Release ("Settlement Agreement" or "Settlement"),¹ the documents and evidence presented in support thereof, and recognizing the disputed factual and legal issues involved in this case, the risks of further prosecution, the substantial benefits to be received by the State of California and the Aggrieved Employees pursuant to the Settlement, the fair, reasonable, and adequate nature of the settlement obtained as a result of good faith arm's-length negotiations between the parties, the Court hereby makes a final ruling that the settlement is approved pursuant to Labor Code section 2699(1). Good cause appearing therefor, the Court hereby GRANTS Plaintiffs' Motion for Approval of Settlement of Claims and ORDERS as follows:

1. The "Aggrieved Employees" shall be defined as:

All persons who, at any time during the Settlement and Release Period were employed by Defendant in non-exempt hourly positions in the State of California who were provided with at least one wage statement.

2. "Defendant" means CitiStaff Solutions, Inc.

3. The "Settlement and Release Period" means from May 10, 2015 to September 12, 2016.

4. The Court hereby approves the Settlement as set forth in the Settlement Agreement as fair, reasonable, and adequate, and directs the parties to effectuate the Settlement according to the terms of the Settlement Agreement.

5. The Court orders that Defendant shall pay the Gross Settlement Amount of \$275,000.00 to the Settlement Administrator on the following schedule, as provided for in the Settlement Agreement: Payment 1: \$15,000.00, to be paid within five (5) business days from an Order from the Court approving this Settlement or June 1, 2018, whichever is later, representing Representative Plaintiffs' Enhancement Payments; Payment 2: \$12,146.04 to be paid on July 1, 2018 representing Aggrieved Employees' Counsel Costs; Payment 3: \$30,555.55 to be paid on August 1, 2018, representing the first 1/3 of the Aggrieved Employees' Counsel Fees; Payment 4: \$30,555.55 to be paid on October 1, 2018, representing the second 1/3 of the Aggrieved

¹ All terms used in this Order shall have the same meaning as that assigned to them in the Settlement Agreement.

1 Employees' Counsel Fees; Payment 5: \$30,555.55 to be paid on December 1, 2018,
2 representing the third 1/3 of the Aggrieved Employees' Counsel Fees; Payment 6: \$15,630.78
3 to be paid on January 1, 2019 representing the amounts distributable to the LWDA, Aggrieved
4 Employees and Settlement Administration Costs; Payments 7 through 18: \$12,777.78 to be
5 paid monthly, commencing on February 1, 2019 through December 1, 2019, to be paid on the
6 first date of each month, representing the amounts distributable to the LWDA, Aggrieved
7 Employees and Settlement Administration Costs.² See Settlement, § III.H.2.

8 6. The Court hereby approves, as to form and content, the Notice of Settlement submitted
9 by the parties.

10 7. The Court hereby appoints CPT Group, Inc. as Settlement Administrator.

11 8. Within fifteen (15) business days of settlement approval, CitiStaff will provide CPT
12 with a list containing the Aggrieved Employees' names, last known addresses, last known
13 telephone numbers, and social security numbers.

14 9. CPT Group, Inc. is directed to mail the individual settlement payments and Notice of
15 Settlement to the Aggrieved Employees within ten (10) days of receipt of the Defendant's final
16 payment of the Gross Settlement Amount.

17 10. The Court finds that attorneys' fees in the amount of \$91,666.66 for Plaintiffs' counsel,
18 and reimbursement of litigation costs of ~~\$12,147.00~~ ^{\$11,842.95} to Plaintiffs' counsel, are fair, reasonable,
19 and adequate, and orders that the Settlement Administrator distribute these payments to
20 Plaintiffs' Counsel as provided for in the Settlement Agreement.

21 11. The Court orders that the Settlement Administrator shall be paid up to \$65,000.00 for
22 all of its work done and to be done until the completion of this matter, and finds that sum
23 appropriate.

24 12. The Court finds that Representative Plaintiff Enhancement Payments of \$5,000.00 each
25 to Plaintiffs Jorge Gonzalez, Teresa Nieto, and Luis Silva for a total amount of \$15,000.00, is
26

27 ² The parties have agreed and this Court approves that to the extent that any of the payment
28 deadlines fall prior to the date that this Court issues its approval order, CitiStaff will make any
payments on the due dates with the Settlement Administrator holding the funds in escrow.

1 fair and reasonable in recognition of the unique contributions they have made and the risks they
2 undertook, on behalf of the Aggrieved Employees and the State of California, and orders that
3 the Settlement Administrator distribute this payment to Plaintiffs as provided for in the
4 Settlement Agreement.

5 13. The Court finds that the amount of \$68,389.75, representing 75% of the \$91,186.34
6 allocated as PAGA penalties in this action, to be paid to the California Labor and Workforce
7 Development Agency ("LWDA") as provided for by the Settlement, is fair, adequate, and
8 reasonable, and orders that payment be made to the LWDA in accordance with the terms of the
9 Settlement Agreement.

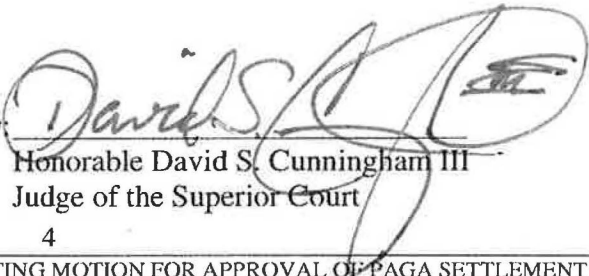
10 14. The court approves the limited scope of the release. Following entry of this Order and
11 Final Judgment, Representative Plaintiffs and Aggrieved Employees will have released all
12 Released Claims against Released Persons, meaning that PAGA civil penalties recoverable
13 under any theory of liability upon which such civil penalties under the PAGA could have been
14 recovered based upon the allegations in the operative Complaint, including specifically any and
15 all claims, causes of action, damages, wages, benefits, expenses, penalties, interest, debts,
16 liabilities, demands, obligations, attorneys' fees, costs, and any other form of relief or remedy
17 in law, equity, or whatever kind or nature that were asserted or could have been asserted
18 pursuant to Labor Code §§ 558 or 2698 et seq. for violation of Labor Code Section 226.

19 15. Upon entry of this Final Order and Judgment, the Court permanently enjoins and
20 forever bars the Representative Plaintiffs, Aggrieved Employees' Counsel, or the Aggrieved
21 Employees from instituting or prosecuting any action against the Released Persons which was
22 resolved as part of the Settlement. Without affecting the finality of this Final Order and
23 Judgment in any way, the Court retains jurisdiction to enforce the terms of the Settlement.
24 Plaintiffs shall file a declaration confirming the final distribution of funds on or before

25 JANUARY 21, ²⁰²⁰~~2019~~.

26 **IT IS SO ORDERED.**

27 Dated: 11-19-2018

28 By: 
Honorable David S. Cunningham III
Judge of the Superior Court