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BENTO BOX ENTERPRISE, INC.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

GHENA AL-BAZIRGAN, individually on behalf of herself and all others similarly situated,

Plaintiffs,

v.

BENTO BOX ENTERPRISE, INC., a California Corporation; and DOES 1-10,

Defendants.

Case No. 23CV005685

MEMORANDUM IN SUPPORT OF JOINT MOTION FOR APPROVAL OF PAGA SETTLEMENT AGREEMENT, DISMISSAL OF PLAINTIFF GHENA AL-BAZIRGAN'S CLASS ALLEGATIONS WITHOUT PREJUDICE, AND AWARD OF PLAINTIFF GHENA AL-BAZIRGAN'S ATTORNEYS' FEES AND COSTS

Date: June 8, 2026
Time: 1:30p.m.
Dept.: 25
Reservation No. A-05-685-001

Complaint Filed: July 28, 2023
FAC Filed: December 5, 2023
Trial Date: June 22, 2026

I. INTRODUCTION

Plaintiff Ghena Al-Bazirgan ("Plaintiff") together with defendant Bento Box Enterprise, Inc. ("Defendant") (collectively, the "Parties") seek approval of the Private Attorneys General Act ("PAGA") Settlement Agreement and Release ("Settlement") entered into between Plaintiff, individually and on behalf of the State of California with respect to the PAGA Members (as defined in the Settlement and below), and her former employer, Defendant, pursuant to California Labor Code section 2699(s)(2). PAGA "authorizes an employee to bring an action for civil penalties on behalf of the state against his or her employer for Labor Code violations committed against the employee and fellow employees." *Iskanian v. CLS Trans. Los Angeles, LLC* (2014) 59 Cal.4th 348, 360. "To compensate for the lack of '[a]dequate financing of essential labor law enforcement functions,' the California legislature enacted PAGA to permit aggrieved employees to act as private attorneys general to collect civil penalties for violations of the Labor Code." *Sakkab v. Luxottica Retail N. Am., Inc.* (9th Cir. 2015) 803 F.3d 425, 430. In the instant action, Plaintiff brings this PAGA suit on behalf of herself and three other employee servers who worked for Defendant. Pursuant to PAGA, Plaintiff seeks civil penalties against Defendant on the grounds that Defendant failed to pay them split shift premium wages.

The total PAGA Gross Settlement Amount is $14,800, which includes $9,628.86 for PAGA penalties (75% of which is to go to the California Labor and Workforce Development Agency ["LWDA"] and 25% of which is to go to the PAGA Members[1]), $4,933.33 for the attorneys' fees for the PAGA Representative Group Counsel, and $237.81 for costs. The Parties submit that the Settlement is fair, adequate, and reasonable, and meets the requirements for approval by the Court based upon the relevant fairness factors, the strengths of the PAGA claim, the risk, expense, and complexity of further litigation, the benefit conferred by the Settlement, the scope of the release of claims, the experience and views of counsel, and the reasonableness

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[1] For PAGA notices filed before June 19, 2024, 75% of the recovered penalties go to LWDA and 25% go to the aggrieved employees. Plaintiff's PAGA notice was filed on August 7, 2023.

of the Gross Settlement Amount (consisting of the LWDA Payment and the PAGA Members' payment plus attorneys' fees and costs). The Parties respectfully request that this Court approve the Settlement and award the attorneys' fees and costs to Plaintiff's counsel.

Additionally, subject to Court approval, the Parties have agreed that Plaintiff will dismiss the class claim allegations alleged in the above-captioned action without prejudice pursuant to California Rule of Court 3.770(a).

II. RELEVANT FACTUAL BACKGROUND

A. Lawsuit & Allegations

On or about July 28, 2023, Plaintiff filed a Class Action Complaint for Damages against Defendant Bento Box Enterprise, Inc., entitled *Ghena Al-Bazirgan, individually, on behalf of herself and all others similarly situated vs. Bento Box Enterprise, Inc., a California corporation, and Does 1 through 10*, Sacramento Superior Court, Case No. 23CV005685 ("Action"). In her Complaint, Plaintiff asserts four Causes of Action: (1) Failure to Pay Split Shift Premium Wages; (2) Failure to Furnish Accurate Itemized Wage Statements (Individual Only); (3) Failure to Timely Pay All Wages at Termination – Waiting Time Penalties (Individual Only); and (4) Unfair Business Practices. Declaration of Gary R. Basham ("Basham Decl.") ¶ 2.)

Plaintiff is a former employee of Defendant. Plaintiff was employed by Defendant from approximately September 25, 2022 to June 9, 2023. Defendant is an employer that owns and operates several Japanese Restaurants in the Sacramento, California area. Plaintiff alleges that Defendant required her and other employee servers to work split shifts but failed to pay split shift premium wages. For example, Plaintiff alleges that she would work a 10-hour shift from 11:45 a.m. to 9:45 p.m. However, Defendant allegedly required Plaintiff to take a 2-hour "break" during the shift, which allegedly allowed Defendant to avoid paying overtime to Plaintiff. (Complaint ¶¶ 6, 12; Basham Decl. ¶ 3.)

In her Complaint, Plaintiff identifies the putative class as: "All persons who are or have been employed in California at any time from four years prior to the filing of this action through the date of the Court's granting of class certification in this matter by Defendant Employer as servers who were required to work split shifts without receiving any split shift premium wages." (Complaint ¶15; Basham Decl. ¶ 4.)

When she filed the Complaint, Plaintiff believed there were at least 50 current and former employees of Defendant who were potential class members. (Complaint ¶17; Basham Decl. ¶ 5.)

On August 7, 2023, Plaintiff's counsel submitted a letter to the LWDA on behalf of Plaintiff to notify the LWDA that Plaintiff intended to seek civil penalties under PAGA, California Labor Code section 2698, *et seq.* Specifically, Plaintiff alleged that Defendant scheduled split shifts without paying employees the split shift premium wages. Plaintiff notified the LWDA of her intent to seek civil penalties under PAGA based on Defendant's alleged violation of IWC Wage Order No. 5-2001, section 4(c). (Basham Decl. ¶ 6, Exhibit A thereto.)

On December 5, 2025, Plaintiff filed her Class Action and PAGA First Amended Complaint ("FAC"), adding a Fifth Cause of Action for violation of the Private Attorneys' General Act against Defendant. In her Fifth Cause of Action, Plaintiff seeks civil penalties under Labor Code §2699(f) for Defendant's failure to pay split shift premium wages for split shifts worked, in violation of IWC Wage Order 5. (FAC ¶ 47; Basham Decl. ¶ 7.)

During the Action, the Parties engaged in extensive written discovery with one another. Defendant produced hundreds of pages of records showing employee shifts and possible split-shift violations. Moreover, Defendant shared with Plaintiff additional documents and information concerning Plaintiff's Class allegations. Based on Defendant's discovery responses and documents produced, additional information provided by Defendant, and Plaintiff's counsel's own investigation and analysis, including interviewing a number of current and former employees of Defendant, Plaintiff's counsel determined that this Action was not suitable for Class treatment. (Basham Decl. ¶ 8.)

Following written discovery and the production of hundreds of pages of documents, the PAGA Period was determined to be August 1, 2022 through August 31, 2023, and the aggrieved employees/PAGA Members include only 4 former employees - Plaintiff, Lucas Malik, Duachee Lao, and Autumn Her, who each worked during a portion of or during all the PAGA Period. (Basham Decl. ¶ 9.)

B. Settlement

Following the extensive discovery and investigation, Plaintiff's counsel determined that this Action should not continue as a class action. First, the numerosity requirement for class actions had not been met. In this case, there is no benefit to proceeding with the class action. The putative class is small - only 4 members, so it is not impractical to join all members in a single, traditional lawsuit and a class action will not be more efficient than individual lawsuits. (Basham Decl. ¶ 9.)

Second, one employee of Defendant who worked split shifts stated he did so out of his own preference and stated he and other servers were not forced to take extended breaks by Defendant. Moreover, Defendant argues vigorously that it never forced any employee to take extended breaks or meal periods, and any shifts with long breaks were scheduled based on employee preferences, not Defendant's requirements. (Basham Decl. ¶ 10, Exhibit C thereto.)

Third, the actual value of any successful class would yield a low level of damages, which cannot justify the significant number of hours and the costs it would take Plaintiff's counsel to obtain class certification or, in the case of settlement, obtain preliminary and final approval of any class settlement. (Basham Decl. ¶ 11.)

As a result, for over three months, the Parties exchanged information and documents and ultimately agreed to dismiss the class claims and focus on settling the PAGA cause of action and Plaintiff's individual claims. (Basham Decl. ¶ 12.)

Following the Parties' significant investigation to evaluate the strength and potential value of the PAGA claim, which involved both Parties propounding and responding to discovery requests, the production and review of hundreds of pages of documents, as well as the Parties' evaluation of the risks and expenses of litigating the PAGA claim through trial, and arm's-length negotiations, the Parties negotiated and reached a settlement agreement and release of the Action in its entirety in August and September 2025. The settlement of Plaintiff's PAGA claim is described herein. The Parties have agreed to a enter a separate settlement and release agreement with respect to Plaintiff's individual claims. At all times, the negotiations leading to this settlement have been adversarial, non-collusive, and at arm's length. At several points during the process, the Parties contemplated continuing with litigation rather than attempting resolution. The proposed Settlement was reached at the end of a process that was neither fraudulent nor collusive. To the contrary, counsel for the Parties advanced their respective positions throughout the settlement negotiations. The Settlement Agreement takes into account the strengths and weaknesses of each side's case. Each side has extensive experience litigating employment class actions and agrees the Settlement Agreement is fair, balanced, and reasonable. The Parties executed the Private Attorneys' General Settlement Agreement and Release in September 2025. (Basham Decl. ¶ 13, Exhibit D thereto.)

With respect to Plaintiff's Fifth PAGA Cause of Action, Plaintiff claims Defendant failed to comply with requirements of the California Labor Code relating to split shifts. Specifically, Plaintiff alleges that Defendant scheduled split shifts without paying employees the split shift premium wages between August 1, 2022 and August 31, 2023. Plaintiff is solely seeking civil penalties under Labor Code section 2699(f)(2)[2] on behalf of the LWDA and other aggrieved employees/PAGA Members under PAGA. The Settlement pertains to the following PAGA Members: Plaintiff, Lucas Malik, Duachee Lao, and Autumn Her, who each worked during a portion or all of the PAGA Period. (FAC ¶ 47; Basham Decl. ¶¶ 7, 9.)

The Gross Settlement Amount is $14,800.00. Under the PAGA Settlement, the following amounts will be deducted before any payments are made to the PAGA Members and the State of California: (1) Attorneys' Fees – up to 4,933.33; and (2) Costs of Suit – up to $237.81.[3] After these deductions, a Net Settlement Amount of approximately $9,628.86 will

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[2] Labor Code section 2699(f)(2) provides, "If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is as follows: (A) One hundred dollars ($100) for each aggrieved employee per pay period…."

[3] Plaintiff's counsel requests that the Court award him attorney's fees in an amount of Four Thousand Nine Hundred

remain. Pursuant to PAGA, seventy-five percent (75%) of the Net Settlement Amount ($7,221.65) shall be distributed to the LWDA and the remaining twenty-five percent (25%) of the Net Settlement Amount ($2,407.21) shall be distributed to the PAGA Members as follows: Plaintiff ($693.60), Lucas Malik ($408.00), Duachee Lao ($367.21), and Autumn Her ($938.40). (Basham Decl. ¶¶ 13-14, Exhibit D thereto; Settlement Agreement ¶¶ II.G, III.C&D.)

Pursuant to the Settlement Agreement, upon Defendant's payment of the Gross Settlement Amount to the LWDA, PAGA Members, and Plaintiff's counsel, the Plaintiff and the State of California, on behalf of all PAGA Members, will fully release and discharge Defendant and other Released Parties from any and all claims for civil penalties under PAGA that were or could have been recovered based on the facts alleged in the PAGA Notice to the LWDA and included in the PAGA Cause of Action (collectively, "Released Claims"). (Basham Decl. ¶ 15, Settlement Agreement ¶ III.E.)

III. ARGUMENT

A. The Court Should Approve The PAGA Settlement

1. A PAGA Settlement Requires Court Approval

The settlement of a PAGA action requires court approval. Cal. Lab. Code § 2699(s)(2) ("The superior court *shall review and approve* any settlement of any civil action filed pursuant to this part.") (Emphasis added.) A court reviewing a PAGA settlement need only "ensur[e] that a negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531.) The Court of Appeal has given guidance to trial courts in reviewing a PAGA settlement: "[A] trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.4th 56, 77.

2. The Gross Settlement Amount To Be Paid Is Fair, Reasonable, And

Thirty-Three Dollars and Thirty-Three Cents ($4,933.33) and actual litigation costs incurred in the amount of Two Hundred Thirty-Seven Dollars and Eighty-One Cents ($237.81).

Adequate

First, the Settlement is fair. A settlement that is "the product of extensive and hard-fought adversarial negotiations between the parties" is entitled to a presumption of fairness. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. Here, the Settlement is presumptively fair because: (1) it is the product of non-collusive, arm's-length negotiations; (2) it occurred after counsel for the Parties engaged in significant investigation to evaluate the strength and potential value of the PAGA claim, and risks and expenses of litigating this claim through trial; and (3) it was negotiated by counsel with significant experience in similar labor and employment matters.

In the course of litigation and after engaging in significant investigations, formal and informal discovery, and the exchange of information, data and documents, the Parties participated in extensive settlement discussions and negotiations to try to resolve the lawsuit. In the course of settlement negotiations, the Parties discussed all aspects of the case, including the risks and delays of further litigation and proceeding with trial, as well as the law relating to representative PAGA actions, split shifts and rest periods, split shift premium wages, wage-and-hour enforcement, civil and statutory penalties, the evidence produced and analyzed, among other things. During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position. (Basham Decl. ¶ 16.)

Based on all of the information available to the Parties, the Parties agree that this matter is well-suited for settlement given the strengths and weaknesses of the PAGA claim and the facts and circumstances of the case. Plaintiff and Plaintiff's counsel believe that the Settlement is a fair, adequate, and reasonable resolution of this matter. Plaintiff's counsel has extensive experience handling representative and class action wage-and-hour litigation and used that experience to achieve an excellent settlement recovery for Plaintiff, the State of California, and the other PAGA Members. (Basham Decl. ¶ 17.) Therefore, the Court should give considerable weight to the competency, experience, and opinion of counsel in assuring that the settlement is a product of arm's length bargaining. See *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs' counsel should be given a presumption of reasonableness); see also *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (stating that the "assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive").

Second, the Settlement is reasonable and adequate. With respect to civil penalties, Labor Code section 2699(f)(2) provides, "If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is as follows: (A) One hundred dollars ($100) for each aggrieved employee per pay period…." As mentioned above, the PAGA period is from August 1, 2022 through August 31, 2023. Defendant paid its employees twice a month (for work performed on the 1st through the 15th of the month, and for work performed on the 16th through the end of the month). This is a total of 26 pay periods. However, of four total PAGA Members, none of them worked the full PAGA period (all 26 pay periods). Each of the PAGA Members only worked for a portion of the PAGA period. In total, the four PAGA Members worked a total of 59 pay periods during the PAGA period. Awarding $100 for each aggrieved employee per pay period, pursuant to Labor Code section 2699(f)(2), amounts to $5,900 ($100 x 59 pay periods). This $5,900 sum is *less than* the $9,628.86 that Plaintiff is seeking for the Net Settlement Amount (to be distributed to the LWDA and PAGA Members). Given the costs of litigation and the risks of going to trial, the Settlement, including the Net Settlement Amount to be distributed to the LWDA and PAGA Members, is fair, reasonable, and accurate. (Basham Decl. ¶ 18.)

B. The Court Award Plaintiff's Attorneys' Fees And Costs Pursuant To Labor Code Section 2699(k)(1), As They Are Fair And Reasonable

Plaintiff's counsel is entitled to recover reasonable attorneys' fees and costs as a matter of right under PAGA. Specifically, Labor Code section 2699(k)(1) provides that "[a]ny employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs."

First, the requested fees are justified by the result achieved. Plaintiff's counsel negotiated a Gross Settlement Amount of $14,800, of which $4,933.33 are for attorney's fees. This result justifies attorneys' fees equal to **one-third of the total recovery**. This percentage is within the standard contingent recovery percentage of one-third, and this percentage is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 504; *Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 545 (recognizing that "fee awards in class actions average around one-third of the recovery" regardless of "whether the percentage method or the lodestar method is used." (quoting *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11).

Second, the small fee award is justified by the work performed, the skill required of Plaintiff's counsel and the quality of work, and the contingent nature of the fee and financial burden carried by Plaintiff. As detailed in the accompanying Declaration of Gary Basham, the fee award represents an amount that is exceedingly small in light of the work performed in connection with this Action and the experience of Plaintiff's counsel. To date, Plaintiff's counsel has expended a total of 79.60 hours on this matter at an hourly rate of $550 per hour, incurring fees in the amount of $43,780. This results in a lodestar multiplier of .11, which is significantly below Plaintiff's counsel's regular hourly rates, and is clearly below the market rates for similarly qualified counsel. (Basham Decl. ¶¶ 19-20, Exhibit E [Billing Records].)

In this matter, Plaintiff's counsel incurred and seeks **$237.81 in costs related to the PAGA Cause of Action:** (1) the $75 PAGA filing fee with the LWDA; (2) $8.56 in certified mail costs for sending the PAGA letter to Defendant; (3) $93 to file the Stipulation and Order to file the First Amended Complaint; and (4) $61.25 in e-filing fees for filing of FAC. Because the $237.81 in costs incurred by PAGA Counsel were directly related to efforts to prosecute the PAGA claim, and the total amount sought is fair and reasonable. (Basham Decl. ¶ 21.)

In conclusion, an award of attorneys' fees in the amount of thirty-three percent (33%) of the Gross Settlement Amount is fair and reasonable, and in line with what other California courts, both state and federal, have awarded in settlements of similar litigation.

C. The Court Should Dismiss Plaintiff's Class Action Allegations

As part of the Settlement, the parties have agreed that Plaintiff will seek to dismiss the putative class claims alleged in the Action without prejudice. The allegations asserted on behalf of a putative class may properly be dismissed consistent with California Rules of Court, Rule 3.770. Pursuant to California Rules of Court, Rule 3.770(c), if the court has not ruled on class certification, the court may dismiss the action "without notice to the class members if the court finds that the dismissal will not prejudice them." No class has been certified in the above-captioned Action. Additionally, there is no danger that members of the putative class have relied to their detriment on the Action to protect their right to make claims against Defendant.

Additionally, following written discovery, there is insufficient evidence to support a class action. Plaintiff and her counsel examined different timeframes and determined that the PAGA period was only from August 1, 2022 through August 31, 2023. Of Defendant's numerous employees, only four aggrieved employees/PAGA members were found. Because the number of PAGA Members is only four, there is not a sufficiently numerous class to warrant a class action. Moreover, there are no substantial benefits from certification that render proceeding as a class superior to the alternatives (i.e., individual claims).

Because Plaintiff has at no time moved this Court to certify the Action as a class action, and the Action has not yet been certified, it is appropriate for this Court to dismiss Plaintiff's class claims without prejudice and without notice to possible class members. Other than Plaintiff, the putative class members will release no claims as a result of the requested dismissal of class claims. None of the putative class members, the State of California, or the PAGA Members will be prejudiced by the dismissal of the putative class claims without prejudice in this Action in the absence of notice.

IV. CONCLUSION

Based on the foregoing, the Parties respectfully request this Court (1) approve the PAGA Settlement, (2) award Plaintiff's attorneys' fees and costs, and (3) dismiss Plaintiff's class allegations without prejudice.

Dated: January 20, 2026

BASHAM LAW GROUP

By: ______________________

Gary R. Basham (SBN 130119)
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Dated: January 21, 2026

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