

1 GREGORY P. WONG (SBN: 204502)

2 **LYFE LAW, LLP**

3 864 S. Robertson Blvd., 3rd Floor

4 Los Angeles, California 90035

5 Telephone: (888) 203-1422

6 Facsimile: (888) 203-1424

7 Email: Gregw@Lyfe.com

8 Attorneys for Plaintiff

9 ERIN NAYMARK

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

12 ERIN NAYMARK, an individual,

13 Plaintiff,

14 vs.

15 TUTORED BY TEACHERS, INC., a Delaware
16 Corporation; and DOES 1 through 100,
17 inclusive,

18 Defendants.

Case No.: 23SMCV04750

Assigned to: Hon. Michael E. Whitaker (Dept.
207)

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
APPROVAL OF PAGA SETTLEMENT
AND JUDGMENT THEREON

Date: July 17, 2024

Time: 8:30 a.m.

Location: Beverly Hills Courthouse –
Dept. 207

Reservation ID: 973134396193

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION1

II. SUMMARY OF ACTION1

III. SETTLEMENT TERMS.....3

 A. Gross Settlement Amount3

 B. Aggrieved Individuals4

 C. Temporal Scope4

 D. Releases5

 E. Individual PAGA Payments.....6

 F. Duties of Settlement Administrator6

IV. ARGUMENT7

 A. Legal Standard7

 B. The Proposed Settlement Resulted from Arm’s-Length Negotiations Based Upon
 Extensive Investigation Conducted by Experienced Counsel8

 C. The Proposed Settlement Is Fair, Reasonable, and Adequate.....9

 D. The Settlement Is of Significant Value.....10

 E. Allocation for Attorneys’ Fees and Costs.....10

 F. The Proposed Notice is Adequate12

 G. The Representative Release Payment is Reasonable and Warranted12

V. CONCLUSION.....13

1 **TABLE OF AUTHORITIES**

2 **Cases**

3

4 *Arias v. Superior Court.* 45 Cal4th 969,975 (2009).....8

5 *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* 480 F.Supp. 1195 (S.D. N.Y. 1979). 11

6 *Chavez v. Netflix, Inc.* 162 Cal.App.4th 43 (2008) 11

7

8 *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court, Case No.: BC 262247 (May

9 2005)..... 11

10 *In re American Bank Note Holographics, Inc., Sec. Lit.* 127 F.Supp.2d 418 (S.D.N.Y.2001).....9

11

12 *Ketchum v. Moses* 24 Cal. 4th 1122 (2001) 11

13

14 *Kullar v. Foot Locker Retail, Inc.* 168 Cal.App.4th 116 (2008).....10

15 *Laffitte v. Robert Half Int’l, Inc.* 1 Cal.5th 480 (2016) 11

16

17 *Lealao v. Beneficial Cal., Inc.* 82 Cal.App.4th 19 (2000)..... 10-11

18 *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021).....7

19

20 *Nordstrom Commission Cases* 186 Cal.App.4th 576, 581 (2010)7-8

21 *Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322,337 (2012)..... 7

22 *Vranken v. Atlantic Richfield Co.* 901 F.Supp. 294, 299 (N.D. Cal. 1995) 12

23

24 *Wershba v. Apple Computer, Inc.* 91 Cal.App.4th 224 (2001) 8

25 **Statutes**

26 Labor Code § 2699(1)(2) 7

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Other Authorities

Conte & Newberg, Newberg on Class Actions § 14.03 (4th Ed.)..... 11

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Plaintiff Erin Naymark (“Naymark” or “Plaintiff”) seeks judicial approval of the Joint
5 Stipulation re PAGA Settlement (hereinafter “Settlement,” “Agreement,” or “PAGA Settlement”)
6 entered into by and between Plaintiff, individually and in a representative capacity pursuant to the
7 California Private Attorneys General Act (Labor Code sec. 2698, et seq.) (“PAGA”), and Defendant
8 Tutored by Teachers, Inc., a Delaware Corporation (“Defendant” or “TBT”). For the reasons set
9 forth below, Plaintiff respectfully requests that the Court approve the settlement.

10 **II.**

11 **SUMMARY OF ACTION**

12 Plaintiff was engaged by Defendant from March of 2022 until September of 2023 as a
13 Teacher-Tutor. *See* Declaration of Gregory P. Wong (“Wong Decl.”) at ¶5. At all times during her
14 tenure as a Teacher-Tutor, Defendant classified her as an independent contractor. *Id.*

15 On September 14, 2023, Plaintiff, who at that time was represented by the Barkhordarian
16 Law Firm (the “Lien Holder”) submitted the PAGA Notice (Submitted as Exhibit A to the Wong
17 Decl.) to the LWDA through the online submission portal. *See* Wong Decl. at ¶6. Plaintiff served
18 Defendant with the PAGA Notice via certified mail on September 14, 2023. *Id.*

19 Plaintiff alleged in the PAGA Notice that she and the Aggrieved Individuals were
20 misclassified as independent contractors by Defendant and, on that basis, were subjected violations
21 of their rights under Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 226.8, 510, 512,
22 558, 558.1, 1174(d), 1194(a), 1197, 1197.1, 1198, and 2802. ¹

23 _____
24 ¹Subsequent to filing the PAGA Notice and in the course of investigating the claims in this action,
25 Plaintiff’s counsel determined that there was insufficient evidence to bring colorable claims for
26 violations of Labor Code sections 204, 510, 558, and 558.1. Thus the operative claims brought on
27 a representative basis in this Action are for: (1) Unlawful Misclassification as an Independent
28 (footnote continued)

1 On October 5, 2023, Plaintiff filed the original complaint in this Action, alleging the
2 following claims on an individual basis: (1) Misclassification of Employment Status; (2) Failure to
3 Pay Minimum Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Meal Periods; (5)
4 Failure to Provide Rest Periods; (6) Failure to Provide Adequate Paystubs; (7) Failure to Maintain
5 Accurate Records; (8) Failure to Indemnify For All Employment Related Losses/Expenditures; and
6 (9) Unfair Competition. *See* Wong Decl. at ¶9.

7 On November 27, 2023, after expiration of the LWDA review period, Plaintiff filed her First
8 Amended Complaint (“FAC”) adding a cause of action for civil penalties pursuant to the PAGA.
9 The FAC (Attached to the Wong Decl. as Exhibit B) is the operative complaint in this Action. *See*
10 Wong Decl. at ¶10.

11 Defendant answered the FAC on December 20, 2023. *See* Wong Decl. at ¶11.

12 On March 19, 2024, Plaintiff Erin Naymark substituted Lyfe Law, LLP as her counsel of
13 record in the place of the Barkhordarian Law Firm. *See* Wong Decl. at ¶12.

14 On March 21, 2024, the Barkhordarian Law Firm filed a Notice of Attorney Lien. *See* Wong
15 Decl. at ¶13.

16 On May 23, 2024, the Barkhordarian Law firm filed an Amended Notice of Attorney Lien
17 specifying that it was asserting a lien for Five Thousand One Hundred and Thirty-Five Dollars
18 (\$5,135.00) in attorneys’ fees and Seven Hundred Ninety-Five Dollars and Ninety Cents (\$795.00)
19 in costs. *See* Wong Decl. at ¶14.

20 The Parties mutually agreed to submit this matter to private mediation with Chris Barnes,
21 _____

22 Contractor (Labor Code section 226.8); (2) Minimum Wage (Labor Code sections 1194, 1197, and
23 1197.1); (3) Reimbursement of Business Expenses (Labor Code section 2802); (4) Failure to Permit
24 Rest Breaks (Labor Code section 226.7); (5) Failure to Provide Meal Periods (Labor Code sections
25 226.7 and 512); (6) Wage Statements (Labor Code section 226 and 226.3); (7) Failure to Maintain
26 Accurate Records (Labor Code section 1174(d)); and (8) Failure to Pay Wages at
27 Termination/Waiting Time Penalties (Labor Code sections 201-203). *See* Wong Decl. at ¶8.
28

1 Esq. of Barnes Dispute Resolution, an experienced labor and employment mediator and litigator
2 with substantial experience in the area of mediating PAGA claims. *See* Wong Decl. at ¶15.

3 In advance of mediation, Plaintiff obtained from Defendant via informal discovery, a
4 detailed production of documents and data that allowed Plaintiff's counsel to thoroughly investigate
5 and evaluate the alleged claims. The informal production included Plaintiff's complete personnel
6 and payroll records, all form independent contractor agreements used by Defendant with the
7 Aggrieved Individuals during the relevant time period, and spreadsheets containing data regarding
8 all hours worked by and wages paid to the Aggrieved Individuals. With the use of this data,
9 Plaintiff's counsel was able to fully model the maximum and risk-adjusted potential PAGA penalties
10 at issue and was also able to identify and quantify potential limiting factors and litigation risks
11 should the case not settle at mediation. *See* Wong Decl. at ¶16.

12 On May 1, 2024, the Parties engaged in an all-day mediation, at which the Parties'
13 negotiations reached an impasse. *See* Wong Decl. at ¶ 17. However, the Parties and mediator
14 Barnes remained in contact and were able to reach resolution after continued negotiations on May
15 14, 2024. *Id.*

16 Concurrent with the filing of this motion, PAGA Counsel has submitted the proposed PAGA
17 settlement to the LWDA via the online portal. *See* Declaration of Gregory P. Wong at ¶58, Exhibit
18 G (Confirmation of Submission of Settlement to LWDA).

19 III.

20 SETTLEMENT TERMS

21 The proposed Settlement encompasses the following material terms, which are summarized
22 herein and set forth in full in the Settlement Agreement itself.

23 A. Gross Settlement Amount

24 In order to resolve this dispute and subject to court approval, Plaintiff and Defendant have
25 agreed to settle this lawsuit for a Gross Settlement Amount of Five Hundred Fifty Thousand Dollars
26 and Zero Cents (\$550,000.00). *See* Settlement Agreement at ¶12 attached hereto as Exhibit D to
27 the Declaration of Gregory P. Wong (Wong Decl.). As set forth in Paragraph 44 of the Settlement
28 Agreement, the Gross Settlement Amount includes the following:

- 1 (a) To the California Labor Workforce Development Agency (“LWDA”)
2 and Aggrieved Individuals: PAGA Penalties in the total amount of
3 \$324,676.11 with 75% (\$243,507.08) allocated to the LWDA
4 PAGA Payment and 25% (\$81,169.03) allocated to the Individual
5 PAGA Payments.
6 (b) To Plaintiff’s current counsel of record, Lyfe Law, LLP (“PAGA
7 Counsel”) (1) attorneys’ fees and costs of \$187,365.00; and (2)
8 reasonable costs of \$8,277.99;
9 (b) To the Plaintiff’s former counsel, the Barkhordarian Law Firm
10 (“Lien Holder”) (1) attorneys’ fees and costs of \$5,135.00; and (2)
11 costs in the amount of \$795.90;
12 (c) To the proposed settlement administrator, Phoenix Class Action
13 Administration Solutions (“Phoenix” or the “Administrator”): An
14 Administrator Expenses Payment not to exceed \$3,750.00, except
15 for a showing of good cause and as approved by the Court.
16 (d) To Plaintiff Erin Naymark: The Representative Release Payment of
17 \$20,000.00.

18 **B. Aggrieved Individuals**

19 For purposes of the proposed PAGA settlement the Aggrieved Individuals are defined as
20 “all persons, including but not limited to Plaintiff, who performed work in the State of California
21 for Defendant during the PAGA Period as a “Teacher-Tutor,” a “Mentor Teacher,” an “Interviewer,”
22 or any other role with similar job duties and were classified as an independent contractor.” *See*
23 Settlement Agreement at ¶4.

24 **C. Temporal Scope**

25 The PAGA Period for purposes of the proposed PAGA settlement begins on September 14,
26 2022 and continued until the date (if any) upon which the Court grants approval of the PAGA
27 settlement. *See* Settlement Agreement at ¶24.

28 //

1 **D. Releases**

2 *a. Release applicable to Aggrieved Individuals*

3 As set forth in the Settlement Agreement, “All Aggrieved Individuals are deemed to release,
4 on behalf of themselves and their respective former and present representatives, agents, attorneys,
5 heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA
6 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts
7 stated in the Operative Complaint and the PAGA Notice, which are attached hereto as Exhibits B
8 and A, respectively, including but not limited to claims for civil penalties recoverable under Labor
9 Code section 2699 due to Defendant’s alleged misclassification as independent contractors.” See
10 Settlement Agreement at ¶53.

11 *b. Release applicable to Plaintiff Naymark*

12 Unlike the other Aggrieved Individuals, Plaintiff Naymark has asserted personal claims
13 beyond those which have been alleged pursuant to the PAGA. Accordingly, her release is
14 substantially broader in scope than the release that is applicable to the other Aggrieved Individuals.
15 Pursuant to the Settlement Agreement, Plaintiff Naymark has agreed to a General Release of claims
16 in addition to a specifically stated release that provides, “Plaintiff and his, her or their respective
17 former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs,
18 administrators, successors and assigns generally, release and discharge Released Parties from all
19 claims, transactions or occurrences that occurred prior to the approval of this Settlement, including,
20 but not limited to: all claims that were, or reasonably could have been, alleged, based on the facts
21 contained in the Operative Complaint and the PAGA Notice, including but not limited to claims for
22 alleged misclassification as an independent contractor, failure to pay minimum and overtime wages,
23 failure to provide meal and rest breaks, failure to provide and maintain accurate records, failure to
24 indemnify for all employment related losses and expenses, civil penalties recoverable under Labor
25 Code section 2699 for the same, and unfair competition (“Plaintiff’s Release”). Plaintiff’s Release
26 does not extend to any claims or actions to enforce this Agreement, or to any claims for vested
27 benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation
28 benefits that arose at any time or based on occurrences that cannot be released according to law.

1 Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the
2 facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's
3 Release shall be and remain effective in all respects, notwithstanding such different or additional
4 facts or Plaintiff's discovery of them." See Settlement Agreement at ¶51.

5 *c. Release by PAGA Counsel*

6 In addition to the Plaintiff and Aggrieved Individual releases, PAGA Counsel have agreed
7 to a separate release as follows: PAGA Counsel release on behalf of their present and former
8 attorneys, employees, agents, successors and assigns the Released Parties from all claims for the
9 PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment incurred in
10 connection with the Operative Complaint and the PAGA Period facts stated in the Operative
11 Complaint and the PAGA Notice." See. Settlement Agreement at ¶54.

12 **E. Individual PAGA Payments**

13 Under the Settlement, Individual PAGA Payments means Aggrieved Individual's pro rata
14 share of 25% of the PAGA Penalties calculated by: (a) dividing the amount of the Aggrieved
15 Individual's 25% share of the PAGA Penalties by the total number of PAGA Period Pay Periods
16 worked by all Aggrieved Individuals during the PAGA Period; and (b) multiplying the result by
17 each Aggrieved Individual's PAGA Period Pay Periods. See Settlement Agreement at ¶13.
18 Aggrieved Individuals do not have to submit a claim to receive an Individual PAGA Payment. See
19 Settlement Agreement at ¶43. Individual PAGA Payments will be issued via checks sent to
20 Aggrieved Individuals via First Class U.S. Mail, postage prepaid. See Settlement Agreement at ¶49.
21 Settlement checks will be void after 180 days. See Settlement Agreement at ¶49. For any Aggrieved
22 Individual whose Individual PAGA Payment check is uncashed and cancelled after the void date,
23 the Administrator shall transmit the funds represented by such checks to the California Controller's
24 Unclaimed Property Fund in the name of the Aggrieved Individual. See Settlement Agreement at
25 ¶49.

26 **F. Duties of Settlement Administrator**

27 After fielding competitive quotes from three other settlement administration companies, the
28 Parties have stipulated to retain Phoenix Class Action Administration Solutions to serve as a

1 fiduciary and neutral third-party administrator for the proposed settlement. *See* Settlement
2 Agreement at ¶¶2, 58. The Parties have verified through the Settlement Stipulation that they have
3 no interest or relationship, financial or otherwise, with the Administrator other than a professional
4 relationship arising out of prior experiences administering settlements. *See* Settlement Agreement
5 at ¶58. The duties of the Administrator shall include: receiving and processing the Aggrieved
6 Individual Data (*See* Settlement Agreement at ¶¶ 6,46); conducting the Aggrieved Individual
7 Address Search (*See* Settlement Agreement at ¶¶6, 49); collecting the Settlement Funds and
8 disbursing payments to the LWDA, the Aggrieved Individuals, PAGA Counsel, the Lien Holder,
9 and Plaintiff (*See* Settlement Agreement at ¶¶44, 48); reporting the Individual PAGA Payments on
10 IRS 1099 forms (*See* Settlement Agreement at ¶44); calculating and issuing all Individual PAGA
11 Payments (*See* Settlement Agreement at ¶49); establishing a Qualified Settlement Fund (*See*
12 Settlement Agreement at ¶60); and transmitting funds represented by uncashed and cancelled checks
13 to the California Controller’s Unclaimed Property Fund (*See* Settlement Agreement at ¶49).

14 IV.

15 ARGUMENT

16 Plaintiff submits that the proposed settlement, arrived at after substantial investigation and
17 analysis of the claims and through arms’ length bargaining, provides a substantial benefit to the
18 Aggrieved Individuals and the State of California. As set forth below, Plaintiff submits that the
19 settlement terms are fair and warrant preliminary approval.

20 A. Legal Standard

21 Labor Code § 2699(1)(2) states that “the superior court shall review and approve any
22 settlement of any civil action filed pursuant to this part.” “[A] trial court should evaluate a PAGA
23 settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to
24 remediate present labor law violations, deter future ones, and to maximize enforcement of state labor
25 laws.” *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021). In reviewing the terms of a
26 settlement agreement, courts determine whether the settlement is fair, reasonable, and adequate to
27 all concerned, and not the product of fraud, collusion, or overreaching. *See Reed v. United Teachers*
28 *Los Angeles* 208 Cal.App.4th 322, 337 (2012); *Nordstrom Commission Cases* 186 Cal.App.4th 576,

1 581. (2010). While a PAGA plaintiff need not satisfy class action requirements, *see Arias v.*
2 *Superior Court* 46 Cal.4th 969, 975 (2009), the general principles applicable to class action
3 settlements apply equally in this context.

4 In the context of a class action settlement, courts consider various factors including whether
5 (1) the settlement is the result of arm's length bargaining, (2) investigation and discovery are
6 sufficient to allow counsel and the court to act intelligently, (3) counsel is experienced in similar
7 litigation, and (4) the percentage of objectors is small. *See Nordstrom Commission Cases*, 186
8 Cal.App.4th at 581; *Wershba v. Apple Computer, Inc.* 91 Cal.App.4th 224, 245 (2001). The final
9 factor is not applicable to PAGA. *See Arias*, 46 Cal.4th at p. 984 (Rejecting the argument that
10 representative actions under PAGA violate the due process rights of "nonparty aggrieved employees
11 who are not given notice of, and an opportunity to be heard"). In considering the amount of
12 settlement, courts must be mindful that compromise is inherent and necessary in the settlement
13 process. *See Wershba*, 91 Cal.App.4th at 250.

14 **B. The Proposed Settlement Resulted from Arm's Length Negotiations Based Upon**
15 **Extensive Investigation Conducted by Experienced Counsel.**

16 Throughout the litigation of this case and in preparation for mediation, PAGA Counsel
17 conducted a thorough investigation of both the factual and legal issues affecting the strengths and
18 weaknesses of Plaintiff's claims, and the potential class recovery. PAGA Counsel thoroughly
19 reviewed and analyzed the relevant employer policies and handbooks as well as every version of
20 independent contractor agreement used by Defendant during the PAGA period. *See Wong Decl.* at
21 ¶ 16. Defendant provided PAGA Counsel with all available time keeping, payroll, and accounting
22 data for the entirety of the PAGA group. *Id.* This allowed PAGA Counsel to analyze the viability
23 of the core on-duty meal period, rest period, overtime, minimum wage, and wage statement
24 allegations. *Id.* at ¶ 8. PAGA Counsel's extensive factual investigation gave invaluable insight into
25 the nature and extent of the claims and the reasonable range of settlement. Due to Defendant's broad
26 production of electronic payroll and timekeeping data in advance of mediation, PAGA Counsel was
27 able to undertake a thorough investigation and analysis of the core claims in this litigation.

28 Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its

1 counsel felt strongly about their ability to prevail on the merits and had a very diffident view of the
2 amount of potential PAGA penalties at issue. Plaintiff and PAGA Counsel were confident in their
3 position and believed that they would be able to obtain an award of penalties after presenting their
4 claims to the Court in a bench trial. After conducting investigations, as well as informal discovery
5 efforts and settlement negotiations, the Parties have agreed that this case is well-suited for settlement
6 given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both
7 sides that would attend further litigation.

8 The proposed Settlement takes into account the strengths and weaknesses of each side's
9 position and the uncertainty of how the case might have concluded at trial. The parties reached the
10 proposed Settlement based on this large volume of facts, evidence, and investigation. In addition,
11 PAGA Counsel has extensive experience in employment class and representative actions, including
12 significant experience in California wage-and-hour litigation. *Id.* at ¶¶ 29-34.

13 **C. The Proposed Settlement is Fair, Reasonable, and Adequate**

14 The Gross Settlement Amount of \$550,000.00 represents a fair, adequate, and reasonable
15 resolution of this case. The proposed Settlement was calculated using the information and data
16 uncovered during the litigation, informal discovery, case investigation, as well as the exchange of
17 information in the context of settlement negotiations. The proposed Settlement takes into account
18 the potential risks and rewards inherent in any case and, in particular, with this case.

19 Assuming that all of the fees, costs, and payments are approved and awarded in the full
20 amounts provided for by the proposed Settlement, the PAGA penalties paid to the LWDA and the
21 Aggrieved Individuals is currently estimated to be approximately \$324,676.11. The Labor
22 Workforce Development Agency will receive a penalty payment of \$243,507.08, providing a
23 significant benefit to the State and People of California.

24 Aggrieved Individuals will receive an Individual PAGA Payment, that is calculated on a pro
25 rata basis, based upon their respective number of pay periods worked during the PAGA Period. As
26 class action precedent demonstrates, "[a]n allocation formula need only have a reasonable, rational
27 basis, particularly if recommended by experienced and competent ... counsel." *In re American*
28 *Bank Note Holographics, Inc., Securities Litigation* 127 F.Supp.2d 418, 429-430 (S.D.N.Y. 2001).

1 In light of the above considerations, PAGA Counsel believe that the proposed Settlement as
2 a whole is fair, reasonable, and adequate.

3 **D. The Settlement is of Significant Value**

4 Though not technically required for a proposed PAGA settlement, pursuant to *Kullar v. Foot*
5 *Locker Retail, Inc.* 168 Cal.App.4th 116 (2008), PAGA Counsel conducted significant formal and
6 informal discovery, including extensive review and analysis of a volume of documents and data,
7 including, but not limited to the complete relevant time and pay records. The data and information
8 obtained in this case allowed PAGA Counsel to develop a damages/valuation model and complete
9 evaluation of the claims and Defendant's defenses thereto. As outlined in the Declaration of
10 Gregory P. Wong, prior to entering into the proposed Settlement, Class Counsel performed an
11 extensive analysis of each claim pursuant to *Kullar*, based on a volume of documents and data
12 produced by Defendant. The results of the *Kullar* analysis returned a "Risk-Adjusted" Range of
13 Recovery of \$226,245.60 to \$630,856.31. The total settlement value achieved in this case of
14 \$550,000.00 is at the higher end of this range. See Wong Decl. at ¶¶ 19 - 28.

15 **E. Allocation For Attorneys' Fees and Costs**

16 PAGA Counsel's application for attorneys' fees in light of the facts and circumstances
17 surrounding this lawsuit is well within the range of reasonableness. The proposed Settlement
18 establishes a Gross Settlement Fund of \$550,000.00 and provides for PAGA Counsel to apply to the
19 Court for an award of attorneys' fees in an amount of up to 35% of the Gross Settlement Fund
20 (\$192,500.00) plus reimbursement of litigation costs and expenses in an amount of \$9,073.89. See
21 Settlement Agreement at ¶¶ 21-22. The attorneys' fees requested are commensurate with (1) the risk
22 the PAGA Counsel took in bringing and litigating this case, (2) the time, effort, and expense
23 dedicated to the case, (3) the skill and determination PAGA Counsel has shown, (4) the results
24 PAGA Counsel has achieved throughout the litigation, (5) the value of the Settlement that PAGA
25 Counsel has achieved for the Settlement Class, and (6) the other cases PAGA Counsel had to turn
26 down in order to devote their time and efforts to this matter.

27 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions
28 will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal.*,

1 Inc. 82 Cal.App.4th 19, 41 (2000). Indeed, it is long settled that the “experienced trial judge is the
2 best judge of the value of professional services rendered in his court.” *Ketchum v. Moses* 24 Cal.
3 4th 1122, 1132 (2001). California law provides that attorney fee awards should be equivalent to
4 fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte*
5 *v. Robert Half Int’l, Inc.* 1 Cal.5th 480, 503 (2016) (citing *Lealao*, 82 Cal.App.4th at p. 48-49). In
6 *Lealao*, the court held that when an action leads to a recovery that can be “monetized” with a
7 reasonable degree of certainty, the trial court should “ensure that the fee awarded is within the range
8 of fees freely negotiated in the legal marketplace in comparable litigation.” *Leolao*, 82 Cal.App.4th
9 at 50.

10 The propriety of calculating and awarding attorneys’ fees as a percentage of a monetary fund
11 that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by
12 the California Supreme Court. *Laffitte*, 1 Cal.5th 480 at 486, 506. The California Supreme Court
13 has taken the position that “[t]rial courts have discretion to conduct a lodestar cross-check on a
14 percentage fee,” “they also retain the discretion to forgo a lodestar cross-check and use other means
15 to evaluate the reasonableness of a requested percentage fee[,]” and “[t]he percentage of fund
16 method survives in California.” *Id.* (internal quotation marks omitted).

17 Historically, courts have awarded fees as high as fifty percent (50%) of the common fund,
18 depending on the circumstances of the case. Newberg, § 14.03; *see also In re Ampicillin Antitrust*
19 *Litig.* 526 F.Supp.494 (D.D.C. 1981) (awarding attorneys’ fees in the amount of 45% of the \$7.3
20 million settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* 480 F.Supp.
21 1195 (S.D.N.Y. 1979) (awarding approximately 53% of the settlement fund as attorney fees).
22 California Courts routinely approve class action attorneys’ fee awards “averag[ing] around one-
23 third of the recovery.” *Chavez v. Netflix, Inc.* 162 Cal.App.4th 43, 66 n.11 (2008) (lower court
24 found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions);
25 *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247
26 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles Superior Court Case No. BC263646
27 (Sept. 2006) (wage and hour).

28 PAGA Counsel and Lien Holder, the Barkhordarian Law Firm, have litigated this case

1 aggressively since its inception and have conducted significant investigation and analysis of the
2 facts and issues. As set forth in the Declaration of Gregory Wong, PAGA Counsel has expended
3 229.70 hours litigating this action and the requested attorneys' fees are supported by the lodestar
4 calculation. The ongoing work has been extensive, demanding, and ultimately successful in
5 achieving a substantial settlement resolution. PAGA Counsel conducted informal discovery and
6 investigation into the facts of the case. PAGA Counsel engaged in multiple interviews and strategy
7 sessions with Plaintiff, met and conferred with defense counsel, reviewed and analyzed all data and
8 documents provided by Defendant and prepared a valuation/damages model for settlement
9 negotiations, among other tasks.

10 PAGA Counsel is well-experienced in wage-and-hour class action litigation and used that
11 experience to obtain a great result for the Aggrieved Individuals. PAGA Counsel has borne all of
12 the risks and costs of litigation and will not receive any compensation until recovery is obtained.
13 The fees and costs provided for by the Settlement are reasonable, considering the amounts at issue,
14 the work performed, the risks incurred, and the results achieved, and as such, should be awarded.
15 See Declaration of Gregory P. Wong at ¶40-46.

16 **F. The Proposed Notice is Adequate**

17 The PAGA does not contain a provision requiring that the PAGA settlement group members
18 receive a formal notice of settlement. However, in the interest of making sure that effected
19 individuals are fully notified of the scope, nature, and terms of the PAGA settlement, the parties
20 have stipulated to have a Notice of PAGA Settlement sent along with the Individual PAGA
21 Payments. See Wong Decl. at ¶57, Exhibit F (PAGA Settlement Notice). The PAGA Settlement
22 Notice advises all Aggrieved Individuals of the claims alleged and resolved in this Action as well
23 as the scope of the release and the parties involved.

24 **G. The Representative Release Payment is Reasonable and Warranted**

25 Courts have discretion to award payment to Representative plaintiffs for their efforts and
26 work. *Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995) (approving \$50,000
27 participation award to a single class representative). Plaintiff Naymark respectfully requests a
28 Representative Release Payment of \$20,000.00, which Plaintiff submits is fair and appropriate for

1 multiple reasons.

2 To begin with, this case was originally filed as an individual action. Plaintiff is agreeing to
3 a broader release than that applicable to the other Aggrieved Individuals and, significantly, releases
4 the individual causes of action that were filed prior to the First Amended Complaint that added the
5 PAGA claims to this Action. Plaintiff's individual claims, had they been resolved separately, would
6 have had an approximate settlement value in the range of the requested Representative Release
7 Payment. See Declaration of Gregory P. Wong at ¶39.

8 The requested enhancement is also warranted in light of Plaintiff's role in the development
9 of this Action. Plaintiff's initiative and sense of justice motivated her to contact PAGA Counsel to
10 discuss the legality of the policies and practices she observed while working as a Tutor-Teacher for
11 Defendant. See Declaration of Erin Naymark ("Naymark Decl.") at ¶2. Plaintiff faces the potential
12 for professional backlash in her industry as a person who stepped up and actually took legal action
13 against a national private tutoring company. See Naymark Decl. at ¶7. Thus, Plaintiff's personal
14 investment and professional risks have led to the substantial settlement in this case and support the
15 requested Representative Release Payment.

16 Additionally, Plaintiff was a great benefit to this case as it was litigated and negotiated.
17 Plaintiff spent considerable time and effort to produce relevant documents and past employment
18 records, and to provide the facts and evidence necessary to prove the allegations. See Naymark Decl.
19 at ¶¶8-13. Plaintiff was available whenever PAGA Counsel needed her and actively tried to obtain
20 information that would benefit the Aggrieved Individuals as a whole and participated remotely in
21 the mediation of this matter. See Naymark Decl. at ¶¶8-13.

22 Accordingly, it is appropriate and just for Plaintiff to receive a reasonable enhancement
23 award as an incentive payment, in addition to her Individual PAGA Payment.

24 V.

25 CONCLUSION

26 For the foregoing reasons, Plaintiff respectfully requests that the Court grant approval of the
27 proposed Settlement; enter Judgment as requested; appoint Phoenix as the settlement administrator;
28 approve all payments to be made from the Gross Settlement Amount (including the Administration

1 Expense Payment, the Individual PAGA Payments, the Lien Satisfaction Payment, the LWDA
2 PAGA Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses
3 Payment, and the Representative Release Payment); approve the proposed Notice Packet; direct the
4 Administrator to undertake the notice and settlement administration process in conformity with the
5 deadlines provided by the Settlement Agreement; and schedule a Final Distribution Hearing.

6
7 DATED: June 25, 2024

Respectfully Submitted,
LYFE LAW, LLP

8
9 /s/ Gregory P. Wong
10 Gregory P. Wong
11 Attorneys for Plaintiff Erin Naymark
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28