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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

KEVIN LEMUS, an individual; on behalf of
himself and all Aggrieved Employees,

Plaintiff,

v.

ALLTIME MAINTENANCE, INC., a
California corporation;
JOSEPH ULLMAN, an individual; and
DOES 1-100, inclusive,

Defendants.

Case No.: 24STCV14397

[Assigned for All Purposes to Hon. Christopher
K. Lui, Dept. 76]

**NOTICE OF MOTION AND MOTION FOR
APPROVAL OF REPRESENTATIVE
ACTION SETTLEMENT PURSUANT TO
PRIVATE ATTORNEYS GENERAL ACT
OF 2004; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

*[Filed concurrently with Declaration of Adrian
C. Byrne; and [Proposed] Order]*

Date: August 23, 2024
Time: 8:30 a.m.
Dept.: 76

Complaint Filed: June 10, 2024
Trial Date: None set.

Reservation ID: 180461271967

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

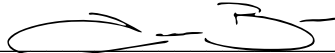
2 **PLEASE TAKE NOTICE** that on August 23, 2024 at 8:30 a.m. in Department 76 of the
3 above-entitled court, Plaintiff Kevin Lemus will move the Court for an Order Granting Approval
4 of Representative Action Settlement.

5 The Motion will be made on the grounds that the proposed Settlement is fair, adequate,
6 reasonable, and in the best interest of the State of California, all Aggrieved Employees, and the
7 Parties.

8 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
9 and Authorities, the Declaration of Adrian C. Byrne, the PAGA Settlement and Release
10 Agreement (*See* Exhibit “1” to the concurrently filed Declaration of Adrian C. Byrne), all other
11 papers and records on file in this action, and on such oral and documentary evidence as may be
12 presented at the hearing on this Motion.

13
14 Dated: July 2, 2024

THE BYRNE LAW GROUP

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17 _____
18 Adrian C. Byrne
19 Attorneys for Plaintiff
20 and all Aggrieved Employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Kevin Lemus (“Plaintiff”) and Defendants Alltime Maintenance, Inc., (“Alltime
4 Maintenance”) and Joseph Ullman (“Ullman”) (together, “Defendants”, and collectively with
5 Plaintiff, the “Parties”) negotiated a Seventy-Five Thousand Dollars (\$75,000.00) settlement
6 under the California Labor Code Private Attorneys General Act 2004, Labor Code section 2698,
7 *et seq.* (“PAGA”) (the “PAGA Settlement”). (See Exhibit “1” to the concurrently filed
8 Declaration of Adrian C. Byrne [“Byrne Decl.”])

9 For the reasons outlined herein, Plaintiff respectfully requests that this Court grant
10 approval of the PAGA Settlement and Order the Parties to take all steps necessary to effectuate
11 the terms of the settlement.

12 **II. FACTUAL AND PROCEDURAL BACKGROUND**

13 **A. Litigation Overview and Procedural History**

14 On or about November 6, 2023, pursuant to Labor Code § 2699.3(a)(1), Plaintiff filed
15 with the California Labor and Workforce Development Agency (“LWDA”) and posted by
16 certified mail to Defendants a PAGA Notice alleging violations of the Labor Code, including
17 the facts and theories to support such allegations (the “PAGA Notice”). (See Byrne Decl., ¶ 3.)

18 The LWDA failed to notify Plaintiff of its intent to investigate these penalty claims
19 within the sixty-five (65) day statutory notice period. Thus, Plaintiff has exhausted
20 administrative remedies pursuant to PAGA. (See Byrne Decl., ¶ 4.)

21 On June 10, 2024, Plaintiff filed his operative Complaint (the “Complaint”) in the
22 Superior Court of California, County of Los Angeles, Case No. 24STCV14397. Plaintiff’s
23 Complaint asserts one cause of action for civil penalties under PAGA for (1) Failure to Pay
24 Minimum Wage for All Hours Worked; (2) Failure to Pay to Pay Overtime and/or Double-
25 Time Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5)
26 Failure to Provide Complete and Accurate Wage Statements; (6) Failure to Indemnify or
27 Reimburse Necessary Business Expenses; (7) Failure to Pay Wages Owed at Separation; (8)

1 Failure to Keep Complete and Accurate Records; (9) Violations of IWC Wage Order 5-2011;
2 (10) Retaliation for Engaging in a Protected Activity; (11) Willful Misclassification as to
3 Independent Contractor Status; (12) Failure to Provide Sick Pay; and (13) Various Violations
4 of the Labor Code including but not limited to §§ 98.6, 201, 202, 203, 204, 204(b)(1), 226,
5 226(a), 226(b), 226.7, 226.7(c), 226.3, 226.8, 246, 246.5, 247, 247.5, 248.5, 510, 512, 558,
6 558.1, 1102.5, 1174(d), 1194, 1197, 1197.1, 1198, 1198.5, 1199(c), and 2802, and IWC Wage
7 Order 5-2011 §§3, 4, 7, 9, 11, 12, and 20. (*See generally* Complaint; Byrne Decl., ¶ 5.)

8 **B. The Discovery Process and Mediation**

9 Shortly after filing the PAGA Notice, the Parties met and conferred to discuss options
10 for streamlining the litigation. Significantly, Defendants argued that they run a family-owned
11 business upon which the financial burden of protracted litigation would have a devastating
12 effect, jeopardizing the existence of the business. Moreover, protracted litigation of these
13 claims would cause the Parties to incur attorney's fees and costs that would far outweigh the
14 potential civil penalties at issue. Therefore, in the interests of efficiency and judicial economy,
15 Plaintiff and Defendants began to focus their efforts on potential resolution. (*See* Byrne Decl.,
16 ¶ 6.)

17 The Parties engaged in informal fact discovery and exchanged pertinent information to
18 understand the nature of the allegations and the scope of potential liability and exposure under
19 PAGA. (*See* Byrne Decl., ¶ 7.)

20 Plaintiff requested and was provided information and documents relevant to the PAGA
21 claims, including (1) the list of Aggrieved Employees at issue;¹ (2) start dates of employment;
22 (3) end dates of employment/current; (4) total pay periods; and (5) relevant policies. (*See*
23 Byrne Decl., ¶ 8.)

24 Through the exchange of information and attendant discussions between the Parties,
25 Plaintiff learned that there are approximately 75 Aggrieved Employees (including Plaintiff)

26
27 ¹ Employee IDs were provided in lieu of names to address privacy concerns in the absence of
a *Belaire-West* opt-out process.

1 and approximately 1,703 pay periods at issue during the PAGA Claim Period (November 6,
2 2022, to April 18, 2024.) (*See* Byrne Decl., ¶ 9.)

3 The Parties agreed to participate in mediation. In further preparation for mediation and
4 to facilitate analysis of Defendants’ PAGA exposure, Plaintiff’s counsel also conducted their
5 own investigation, conducting extensive interviews with the Plaintiff, and reviewing relevant
6 documents, policies, and procedures applicable to the claims at issue. (*See* Byrne Decl., ¶ 10.)

7 On April 18, 2024, the parties participated in a full-day mediation with experienced
8 third-party neutral, Abe Melamed, Esq. of Signature Resolution. (*See* Byrne Decl., ¶ 11.) With
9 the assistance of the mediator, the Parties reached a settlement in principle of Plaintiff’s
10 Representative PAGA claims, subject to Court approval (the “PAGA Settlement”).² (*See* Byrne
11 Decl., ¶ 12.)

12 On or about June 3, 2024, the Parties executed a long-form agreement with respect to
13 the proposed PAGA Settlement (“PAGA Settlement and Release Agreement”). Attached as
14 **Exhibit 1** to the Byrne Decl. is a true and correct copy of the PAGA Settlement and Release
15 Agreement. (*See* Byrne Decl., ¶ 13; Ex. 1.)

16 As required by PAGA, concurrently with the filing of this Motion, Plaintiff’s counsel
17 submitted the PAGA Settlement and Release Agreement to the LWDA for its review. (*See* Byrne
18 Decl., ¶ 14.)

19 **III. SUMMARY OF SETTLEMENT TERMS**

20 The PAGA Settlement and Release Agreement provides that Defendants will pay a total
21 of Seventy-Five Thousand Dollars (\$75,000.00) (the “Gross PAGA Settlement Fund”), as a non-
22 reversionary settlement fund to settle the representative PAGA claims in this action.

23 The “Aggrieved Employees” for purposes of the PAGA Settlement are all of Defendants’
24 current and former non-exempt employees that worked at least one shift in the State of California
25 during the PAGA Period, i.e., from November 6, 2022, through April 18, 2024.

26 From the Gross PAGA Settlement Fund of \$75,000.00, the following amounts will be

27 ² The Parties also reached a confidential settlement of Plaintiff’s individual claims.

disbursed by the Settlement Administrator, subject to this Court's approval:

- Plaintiff's Counsel's attorney's fees of 1/3 of the Gross PAGA Settlement Fund (\$25,000.00) in connection with the PAGA claims;
- Plaintiff's Counsel's out-of-pocket litigation expenses not to exceed \$500.00 arising out of the PAGA Claims;³ and
- PAGA Settlement administration expenses of \$2,750.00.
- This results in an estimated "Net PAGA Settlement Fund" of \$46,750.00 (i.e., the Gross PAGA Settlement Fund, minus requested fees, costs, and PAGA settlement administration expenses).

(See Byrne Decl., ¶ 17; Ex. 1, III. (2)-(5).)

As required by PAGA, 75% of the Net PAGA Settlement Fund will be paid to the LWDA and the remaining 25% of the Net PAGA Settlement Fund will be distributed among the Aggrieved Employees on a pro-rata basis according to their pay periods during the relevant time period. (See Byrne Decl., ¶ 18; Ex. 1, III. (3).)

Defendants' data indicates that, as of April 18, 2024, there are approximately 75 current and former Aggrieved Employees (including Plaintiff) and a total of approximately 1,703 pay periods. (See Byrne Decl., ¶ 19; Ex. 1, IV. (1).)

Defendants shall fund Gross PAGA Settlement Fund within Fourteen (14) days after the Effective Date, i.e., after final approval of the PAGA Settlement is granted by the Court. (See Byrne Decl., ¶ 20; Ex. 1, III. (2).)

Payments will be made to the Aggrieved Employees by check to their last known home address, and Aggrieved Employees will not be required to submit a claim form or take any other steps to receive their payment. (See Byrne Decl., ¶ 21; Ex. 1, IV. (3).)

Subject to the Court's approval, the settlement administration, including calculation and issuance of payments, will be performed by nationally recognized settlement administrator

³ Plaintiff's share of the mediation fee and other costs are addressed via Plaintiff's individual settlement.

1 Phoenix Settlement Administrators (the “Settlement Administrator”). Attached as **Exhibit 2** to
2 the Byrne Decl. is a true and correct copy of the Settlement Administrator’s quote in the amount
3 of \$2,750 for the administration of the PAGA Settlement. (*See* Byrne Decl., ¶ 22; Ex. 2.)

4 The PAGA Settlement and Release Agreement releases all claims for civil penalties
5 under PAGA that were alleged, or reasonably could have been alleged based on the factual
6 allegations in the Complaint and PAGA Notice, that accrue through April 18, 2024. (*See* Byrne
7 Decl., ¶ 23; Ex. 1, I. (15).)

8 As this is a representative PAGA-only settlement, any non-PAGA individualized claims
9 (such as claims for alleged unpaid wages, retaliation, or wrongful termination) of other
10 Aggrieved Employees are not being released by virtue of this PAGA Settlement. (*See* Byrne
11 Decl., ¶ 24; Ex. 1, III. (6)(c).)

12 Defendants will provide the Settlement Administrator with the names and contact
13 information of all 75 Aggrieved Employees for administration and disbursement of the PAGA
14 penalties. (*See* Byrne Decl., ¶ 25; Ex. 1, IV. (3).)

15 Within Fifteen (15) days from the date the full amount of the Gross PAGA Settlement
16 Fund has been deposited with the Settlement Administrator, the Settlement Administrator shall
17 cause all PAGA Settlement payments to be paid, including the payment to the LWDA (75% of
18 the Net PAGA Settlement Fund), the payment to the Aggrieved Employees (25% of the Net
19 PAGA Settlement Fund), and the payments to Plaintiff’s Counsel for the approved attorney’s
20 fees and costs. (*See* Byrne Decl., ¶ 26; Ex. 1, IV. (4)(b).)

21 Accompanying the payments to the Aggrieved Employees the Settlement Administrator
22 shall mail a Notice of Settlement of PAGA Representative Action. Attached as **Exhibit 3** to the
23 Byrne Decl. is a true and correct copy of the Notice of Settlement of PAGA Action. (*See* Byrne
24 Decl., ¶ 27; Ex. 3).

25 Aggrieved Employees shall not be required to make claims to receive their share of the
26 PAGA settlement. All settlement payments to Aggrieved Employees will be treated as
27 miscellaneous income for which a 1099 will be issued. (*See* Byrne Decl., ¶ 28; Ex. 3).

1 Prior to mailing the Notice of Settlement of PAGA Action, the Settlement Administrator
2 shall check the addresses provided in the Aggrieved Employees List using the United States
3 Postal Service’s National Change of Address database, and update the addresses for known
4 address changes. Should any of the mailings to the Aggrieved Employees of their Notice of
5 Settlement of PAGA Action and their checks be returned to the Settlement Administrator after
6 mailing, the Settlement Administrator will have five (5) calendar days after it receives the
7 returned undeliverable mail to search for a more current address for the Aggrieved Employee
8 (via a skip trace or other reasonable method) and re-mail the Notice of Settlement of PAGA
9 Action and check to any alternative or updated address obtained by the Settlement Administrator.
10 (See Byrne Decl., ¶ 29; Ex. 1, IV. (3)(b).)

11 Each Aggrieved Employee will be issued one check for his or her payment, which will
12 expire one hundred eighty (180) calendar days from the date the checks are issued by the
13 Settlement Administrator. Any checks remaining uncashed after the 180-day period, shall
14 escheat to the State Controller’s Office, Unclaimed Property Division. (See Byrne Decl., ¶ 30;
15 Ex.1, IV. (3)(b).)

16 **IV. THE SETTLEMENT IS FAIR, REASONABLE, AND SHOULD BE APPROVED**

17 **A. Legal Standard**

18 Under PAGA, an Aggrieved Employee may bring a civil action personally and on behalf
19 of other current or former employees to recover civil penalties for Labor Code violations.
20 *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. Seventy-five percent of
21 any penalties recovered go to the LWDA, leaving the remaining 25% for the employees. *Id.*
22 Labor Code § 2699 (l) provides that “[t]he superior court shall review and approve any penalties
23 sought as part of a proposed settlement agreement pursuant to” PAGA. “[T]here is no
24 requirement that the Court certify a PAGA claim for representative treatment” as in a class
25 action. *Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No.
26 CV122615PSGJEMX), 2015 WL 12732709 at *5.

27 Settlement of a PAGA claim requires that the “Court shall review and approve any

1 penalties sought as part of a proposed settlement agreement pursuant to this part.” Labor Code §
2 2699 (1) (2). In contrast to a class settlement, there is little case law addressing the standard for
3 approving a PAGA settlement. “Despite the fact that a representative action under PAGA is not a
4 class action, and is instead a type of qui tam action, a standard requiring the trial court to
5 determine independently whether a PAGA settlement is fair and reasonable is appropriate.”
6 (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76) (citations omitted). When trial court
7 approval is required for certain settlements in other qui tam actions in California, the statutory
8 standard is whether the settlement is “fair, adequate, and reasonable under all the circumstances.”
9 *See, e.g.,* Gov. Code, § 12652, subd. (e)(2)(B) [standard for approval of government settlement
10 over qui tam plaintiff’s objection]. Thus, while PAGA does not require the trial court to act as a
11 fiduciary for aggrieved employees, adoption of a standard of review for settlements that prevents
12 fraud, collusion or unfairness, and protects the interests of the public and the LWDA in the
13 enforcement of state labor laws is warranted. (*Moniz, supra*, at 76, 77.) (citations omitted)
14 Because many of the factors used to evaluate class action settlements bear on a settlement’s
15 fairness—including the strength of the plaintiff’s case, the risk, the stage of the proceeding, the
16 complexity and likely duration of further litigation, and the settlement amount—these factors can
17 be useful in evaluating the fairness of a PAGA settlement. (*Id.*) Moreover, a PAGA settlement
18 shall be evaluated in view of “PAGA’s purposes to remediate present labor violations, deter
19 future ones, and to maximize enforcement of labor laws.” (*Id.*)

20 The PAGA statute permits a trial court to “exercise its discretion to award lesser penalties
21 if, based on the facts and circumstances of the particular case, to do otherwise would result in an
22 award that is unjust, arbitrary, oppressive, or confiscatory.” Lab. Code, § 2699 (e)(2). Moreover,
23 a PAGA settlement may be substantially discounted given that courts often exercise their
24 discretion to award PAGA penalties below the statutory maximum even where a claim succeeds
25 at trial. *See Visceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC)
26 2016 WL 5907869 at *8-9. *See also Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504
27 (affirming a judgment which only provided for a PAGA penalty of \$5 per violation, as opposed

1 to the \$100 maximum awardable penalty).

2 **B. The Settlement Is The Product Of Extensive, Arm's-Length Negotiations**

3 While PAGA settlements do not need to satisfy the same requirements as class action
4 settlements, in the context of class action settlements, a “presumption of fairness exists where:
5 (1) the settlement is reached through 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.” *Kullar v. Foot Locker Retail, Inc.* (2008)
8 168 Cal.App.4th 116, 128. *See also Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52–53
9 and *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389-1390.

10 Notwithstanding that PAGA settlements are not treated as class action settlements, the Parties
11 use the class action settlement standard here because of the dearth of guidance for approval of
12 PAGA settlements.

13 Here, with the exception of the percentage of objectors (which is not a factor in the
14 PAGA settlement context) all of these factors are present. The PAGA Settlement Agreement
15 here was the result of extensive arm’s-length negotiations between experienced employment law
16 attorneys who are familiar with the substantive legal issues and with complex representative
17 PAGA litigation. The Parties participated in a full-day, private mediation with a highly
18 experienced mediator and managed to reach a settlement of Plaintiff’s individual claims and a
19 settlement, in principle, of Plaintiff’s PAGA claims subject to court approval. (*See Byrne Decl.*,
20 ¶¶ 11-13.)

21 In addition, Plaintiff’s Counsel is experienced in the litigation and settlement of complex
22 wage-and-hour cases, including representative PAGA actions. (*See Byrne Decl.*, ¶ 39.) Based on
23 their experience litigating similar cases, Plaintiff’s Counsel believes that the PAGA Settlement is
24 fair, reasonable, and adequate and is in the best interests of the LWDA, the Aggrieved
25 Employees, and all Parties, in light of all known facts and circumstances and the risks inherent in
26 litigation. (*See Byrne Decl.*, ¶¶ 32-37, 43.)
27

1 **C. Calculation of Maximum Potential Civil Penalty Exposure**

2 Based on the data provided by Defendants, there are a total of 75 Aggrieved Employees
3 who worked a total of 1,703 pay periods during the PAGA Claim Period (November 6, 2022, to
4 April 18, 2024).

5 For purposes of Plaintiff’s calculations of the total potential exposure for PAGA
6 penalties, the “initial” penalty rate of \$100 per pay period was applied for all pay periods. *See*
7 *Bernstein v. Virgin Am., Inc.*, 990 F.3d 1157, 1172-73 (9th Cir. 2021) (“subsequent” penalty rate
8 applies only after an employer is notified by a court or the Labor Commissioner that it is
9 violating the Labor Code).

10 The following calculations assume a 100% violation rate, no discretionary reduction of
11 penalties by the Court, and “stacking” of penalties of the two primary predicate violations
12 advanced by Plaintiff, for unpaid overtime, and meal period violations.

13 Using this methodology, the maximum PAGA penalty for each distinct violation would
14 be: **\$170,300** (1,703 pay periods x \$100 “initial” penalty rate).

15 Unpaid overtime:	\$170,300
16 Meal period violations:	<u>\$170,300</u>
17 Total:	<u>\$340,600⁴</u>

18 The PAGA Settlement here is \$75,000, or 22% of this estimated PAGA exposure,
19 assuming two separate penalties are assessed for each pay period. Based on an estimated 1,703
20 pay periods, the settlement provides for \$44.03 per pay period.

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⁴ Plaintiff contends that he could theoretically pursue PAGA penalties for every Labor Code
24 provision that was allegedly violated. Even if PAGA did permit “stacked” penalties,
25 however, many of these violations would be derivative of each other, and provide arguably
26 redundant penalties. It is quite likely, therefore, that despite the maximum theoretical
27 recovery that might be available from “stacked” penalties, the Court would exercise its
discretion to reduce penalties that appeared redundant or excessive. Accordingly, for
purposes of settlement, and as discussed further below, Plaintiff believes that this is a
reasonable and appropriate method to calculate potential PAGA penalty exposure.

1 **D. The PAGA Settlement Provides Immediate Relief And The Risks Associated**
2 **With Further Litigation Are Substantial**

3 Given the risks and challenges that Plaintiff's claims would face in protracted litigation,
4 and the vigorous substantive and procedural defenses that Defendants would present, Plaintiff
5 and his counsel believe that this is a fair and reasonable settlement, and a fair and reasonable
6 outcome for the LWDA and the Aggrieved Employees. Plaintiff applied various risk discounts to
7 account for the perceived strengths and weaknesses of each claim, as well as the substantial risk
8 of Defendants filing for bankruptcy should the Parties continue litigating. (*See* Byrne Decl., ¶¶
9 32-37, 43.)

10 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each
11 of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.* 2011 U.S.
12 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ["Given the statutory language [of PAGA], a plaintiff
13 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of
14 the Labor Code by the defendant."]

15 **1. Uncertainties Regarding Calculation of PAGA Penalties**

16 Plaintiff took into account various risk factors and uncertainties in negotiating the PAGA
17 Settlement, including the following:

18 **a) The Availability of "Stacked" PAGA Penalties**

19 Plaintiff and his counsel believe that PAGA allows for a separate penalty to be assessed
20 each pay period *for each violation*. For example, if an employee suffered five separate Labor
21 Code violations in a single pay period, five penalties in the same pay period may be assessed.
22 Some trial court decisions have supported this interpretation. See, e.g., *Schiller v. David's Bridal,*
23 *Inc.* (E.D. Cal. July 14, 2010) 2010 WL 2793650 at *6 (finding that PAGA penalties may be
24 stacked in determining the amount in controversy); *Smith v. Brinker Intern., Inc.* (N.D. Cal.
25 May 5, 2010) No. 10-CV-213-VRW, 2010 WL 1838726, at *2-6 (stacking PAGA penalties in
26 determining the amount in controversy in an individual action and granting motion to remand);
27 *Pulera v. F & B, Inc.* (E.D. Cal. Aug. 19, 2008) No. 2:08-CV-275-MCE, 2008 WL 3863489,
 at *2-3 (concluding that the amount in controversy was not met despite stacking all PAGA

1 penalties).

2 Defendants, however, contend that only a single penalty may be assessed per pay period,
3 regardless of the number of different Labor Code provisions violated during that pay period.

4 Defendants argue that this reading is supported by, among other things, the language of Section
5 2699(f)(2): “the civil penalty is one hundred dollars (\$100) for each aggrieved employee for pay
6 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
7 pay period for each subsequent violation.” As the statute does not explicitly state that this
8 amount is multiplied by the number of violations, Defendants contend that only a single penalty
9 may be assessed for each employee for each pay period. While Plaintiff certainly disputes this
10 statutory interpretation, Plaintiff recognizes the lack of certainty, including the lack of appellate
11 authority, as to how trial Courts would interpret the statute.

12 In Plaintiff’s calculations set forth above, Plaintiff “stacked” two separate penalties
13 representing the primary predicate Labor Code violations advanced by Plaintiff. However, absent
14 the availability of “stacked” penalties, the maximum PAGA penalty that Plaintiff could recover –
15 no matter the number of violations he could prove at trial – would be **\$170,300**. If that were the
16 case, the settlement of \$75,000 represents *more than 44%* of the total potential PAGA penalties.

17 **b) The Trial Court’s Discretion to Reduce PAGA Penalties**

18 As Defendants have vigorously argued throughout these settlement negotiations, even if
19 Plaintiff were to prevail on some or all of his PAGA claims, the statute gives trial courts the
20 substantial discretion to reduce the penalties actually awarded. *See* Lab. Code § 2699(e)(2)
21 (allowing reductions of penalties where the full amount would be “unjust, arbitrary and
22 oppressive, or confiscatory”). Moreover, as long as the Court awards some penalties, the statute
23 imposes no limit to the reduction that a Court can make in a PAGA award. Defendants have
24 argued that this Court could (and should) greatly reduce any penalty award against them on
25 account of the fact that any substantial award would likely result in the closure of Defendants’
26 business and filing of bankruptcy on account of its inability to continue operations. While
27 Plaintiff disputes that a substantial discount would be appropriate, Plaintiff recognizes that

1 Defendants operate a relatively small business and that the Court's wide discretion to reduce
2 penalties is a substantial uncertainty that Plaintiff and his counsel properly considered in
3 reaching this settlement.

4 Likewise, in light of this judicial discretion (and the other uncertainties surrounding
5 PAGA), courts have approved significantly *lower* PAGA settlements involving many more
6 employees and pay periods. *See, e.g., Navarro v. Ordaz Cultured Marble & Onyx, Inc.*, 2015
7 U.S. Dist. LEXIS 21374, *2-3 (N.D. Cal. 2015) [approving \$20,000 PAGA settlement]; *Franco*
8 *v. Ruiz Food Prods., Inc.*, 2012 U.S. Dist. LEXIS 169057, *14 (E.D. Cal. 2012) [approving
9 PAGA penalties in amount of \$10,000 for 2,055 employees asserting wage and hour violations];
10 *Garcia v. Gordon Trucking*, 2012 U.S. Dist. LEXIS 160052, *3 (E.D. Cal. 2012) [approving
11 \$10,000 in PAGA penalties for 1,868 employees in wage and hour case]; *Chu v. Wells Fargo*
12 *Investments, LLC*, 2011 U.S. Dist. LEXIS 15821, *1 (N.D. Cal. 2011) [approving PAGA
13 penalties of \$7,500 for 2,752 employees in wage and hour action].

14 In light of these potential issues, this PAGA Settlement is a reasonable and fair result
15 for the State of California (which will receive 75% of the Net PAGA Settlement Fund) and the
16 Aggrieved Employees (which will receive the remaining 25% of the Net PAGA Settlement
17 Fund on a pro-rata basis).

18 **c) Defendants' Legal Defenses**

19 Throughout this litigation, including in the settlement negotiations, Defendants have
20 steadfastly argued that Plaintiff would lose his PAGA claims if they were tried because
21 Defendants substantially complied with their obligations under the Labor Code. As to Plaintiff's
22 claims for unpaid minimum wages and overtime, Defendants have argued that they paid Plaintiff
23 and other Aggrieved Employees for all hours worked. Defendants also argued that they provided
24 meal periods and authorized and permitted employees to take rest periods, and that any non-
25 compliant meal and rest periods were the result of decisions by the employees themselves, and
26 not the result of Defendants' actions. Defendants also argued that Plaintiff's theories of recovery
27 on wage statement penalties arising from failure to pay meal period premiums are factually and

1 legally unsupported. See *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056.
2 Defendants argued that to the extent that any violations occurred regarding the misclassification
3 of employees as independent contractors, or failure to include meal period premium pay on wage
4 statements, such violations were not willful, would be subject to individual inquiry, and would
5 not be suitable for representative treatment. Defendants also argued that even if some violations
6 could be proven, not every aggrieved employee could establish a violation in every pay period,
7 greatly reducing the potential PAGA penalties that Plaintiff could recover. (See Byrne Decl., ¶
8 33.)

9 While Plaintiff rejects these various defenses, they have not been tested in litigation,
10 raising substantial risks and uncertainty that some or all of Plaintiff's PAGA claims might be
11 defeated on the merits if this litigation continued. Further, even if Plaintiff were to prevail on all
12 of his PAGA claims, it is far from certain that Plaintiff could prove that Defendants conduct was
13 willful, or that *every aggrieved employee* suffered a violation in *every pay period*, as is assumed
14 by Plaintiff's estimate of potential PAGA penalties. (See Byrne Decl., ¶ 34.)

15 **d) Defendants' Financial Condition**

16 Based on the information shared during the mediation, and Plaintiff's counsel's
17 investigations, Plaintiff and his counsel reasonably believe that Defendants may be unable to pay
18 a substantial verdict if this case were litigated through trial and Plaintiff were to prevail.
19 Moreover, the Parties' fees and costs would significantly exceed the civil penalties at issue were
20 the parties to have engaged in protracted litigation. Thus, Plaintiff and his counsel believe that
21 these financial uncertainties and disproportionate risk further support the reasonableness of the
22 settlement obtained, which has resulted in a substantial recovery for the State of California,
23 Plaintiff, and the Aggrieved Employees. (See Byrne Decl., ¶¶ 6, 11, 35.)

24 **E. The Requested Fees and Litigation Costs are Reasonable and Appropriate**

25 PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. Labor Code §
26 2699(g). The U.S. Supreme Court has recognized that "a lawyer who recovers a common fund
27 for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee

1 from the fund as a whole.” *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478. *Accord*,
2 *Serrano v. Priest* (1977) 20 Cal.3d 25, 38 (trial courts have equitable power to award attorneys’
3 fees and costs when a litigation proceeding in a representative capacity secures a substantial
4 benefit); *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. This guidance
5 should equally apply to representative settlements under PAGA.

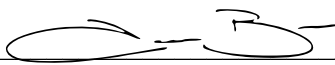
6 Plaintiff’s counsel requests an award of attorney’s fees of 1/3 of the Gross PAGA
7 Settlement Fund (\$25,000) in connection with the PAGA Settlement, which is typical in class
8 and PAGA settlements. Plaintiff’s counsel’s litigation costs are also very reasonable, as Plaintiff
9 seeks only \$500 for reimbursement of out-of-pocket litigation costs associated with filing of the
10 PAGA Complaint and this Motion for Approval. Attached as **Exhibit 4** to the Byrne Decl. is a
11 true and correct copy of the invoice for filing of the Representative Action Complaint (*See* Byrne
12 Decl., ¶ 42; Ex. 4.)

13 **V. CONCLUSION**

14 For the foregoing reasons, Plaintiff respectfully requests that this Court approve the
15 proposed PAGA Settlement and direct the Parties to take all steps necessary to effectuate its
16 terms.

17
18 Dated: July 2, 2024

THE BYRNE LAW GROUP

19
20 
21 Adrian C. Byrne
22 Attorneys for Plaintiff
23 and all Aggrieved Employees
24
25
26
27



Make a Reservation

KEVIN LEMUS, AN INDIVIDUAL, et al. vs JOSEPH ULLMAN, AN INDIVIDUAL, et al.

Case Number: 24STCV14397 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2024-06-10 Location: Stanley Mosk Courthouse - Department 76

Reservation	
Case Name: KEVIN LEMUS, AN INDIVIDUAL, et al. vs JOSEPH ULLMAN, AN INDIVIDUAL, et al.	Case Number: 24STCV14397
Type: Motion to Confirm Settlement	Status: RESERVED
Filing Party: Kevin Lemus, on behalf of himself and all Aggrieved Employees (Plaintiff)	Location: Stanley Mosk Courthouse - Department 76
Date/Time: 08/23/2024 8:30 AM	Number of Motions: 1
Reservation ID: 180461271967	Confirmation Code: CR-BCCDIUY9YA9YSBLMH

Fees			
Description	Fee	Qty	Amount
Motion to Confirm Settlement	0.00	1	0.00
TOTAL			\$0.00

Payment	
Amount: \$0.00	Type: NOFEE
Account Number: n/a	Authorization: n/a
Payment Date: n/a	

Print Receipt

[Reserve Another Hearing](#)