James B. Hardin (Bar No. 205071)
jhardin@hardinemploymentlaw.com
HARDIN LAW GROUP, APC
2901 W. Coast Highway, Suite 200
Newport Beach, California 92663
Telephone: (949) 337-4810
Facsimile: (949) 209-4853

Attorneys for Plaintiff
WENDY POTTER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

WENDY POTTER, in her individual and representative capacity,

Plaintiff,

vs.

CHEMCORE INC., a Texas corporation; and DOES 1-10, Inclusive,

Defendants.

Case No. 30-2024-01418250-CU-OE-CXC
Hon. Randall J. Sherman
Dept.: CX105

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

Date: May 16, 2025
Time: 10:00 a.m.
Dept: CX105

RESERVATION # 74458020

Action Filed: August 7, 2024
Trial Date: Not Set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Court Rules

Other Authorities

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to California Labor Code § 2699(l)(2) plaintiff Wendy Potter ("Plaintiff"), a former salesperson of defendant Chemcore, Inc. ("Chemcore" or "Defendant"), seeks this Court's approval of the Settlement of her claims asserted under the Private Attorneys' General Act ("PAGA"). The settlement (set forth in the accepted section 998 Statutory Settlement Offer attached as **Exhibit 2** to Hardin Declaration filed concurrently herewith) is very simple –$2,000 to settle Plaintiff's ***single-person PAGA*** claim for allegedly misclassifying her as an "independent contractor" instead of an employee – 75% of which shall be paid to the state of California and the remaining 25% shall be paid to Plaintiff herself.[1]

Plaintiff had sixteen (16) pay periods in which she was allegedly misclassified as an independent contractor.[2] Assuming PAGA penalties are ***not stacked***, the default PAGA penalty is $1,600 ($100 per pay period),[3] or, if assuming an initial violation rate of $100 and $200 per pay period for fifteen (15) subsequent violations, this would total a maximum of $3,100. In that scenario, the settlement would provide Plaintiff and the State of California a 125% or 64% recovery of potential penalties, respectively.

By contrast, if the penalties are ***stacked*** to include alleged violations for not only independent contractor misclassification (default PAGA penalties of $1,600), but also for violations related to meal periods (default PAGA penalties of $1,600), rest periods (default PAGA penalties of $1,600), unpaid overtime (default PAGA penalties of $1,600), unpaid minimum wages ($3,850),[4] unpaid expenses (default PAGA penalties of $1,600), and wage statements per pay period ($8,100),[5] the PAGA penalties could be approximately $26,950. In that unlikely scenario in which PAGA violations are stacked seven-fold in every single pay period, the settlement would provide a 7.5% recovery of potential PAGA penalties.

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[1] Because Plaintiff's PAGA Notice was submitted February 24, 2024 – before the ***June 19, 2024,*** deadline for application of the PAGA law amendments – the July 1, 2024, PAGA amendments ("PAGA amendments") to not apply to this settlement. *See* Cal. Lab. Code § 2699(v).

[2] The PAGA period is the year before Plaintiff filed this lawsuit, i.e., August 7, 2023, to August 7, 2024. Plaintiff's employment was terminated on or about December 7, 2023. Chemcore paid Plaintiff twice per month. (Hardin Dec.¶ 4).

[3] $100 x 16 violations = $1,600. *See* Cal. Lab. Code § 2699(f)(2).

[4] $100 for initial violation + $3,750 (15 subsequent violations x $250) = $3,850. *See* Cal. Lab. Code § 1197.1.

[5] $100 for initial violation + $15,000 (15 subsequent violations x $1000) = $15,100. *See* Cal. Lab. Code § 226.3.

The PAGA settlement does not provide for payment of any attorneys' fees or costs to Plaintiff or her counsel, nor would it require any administration other than the one-time disbursement of 75% to the State of California and 25% to Plaintiff.

Plaintiff submits this is a good result because Plaintiff is effectively compromising and settling the PAGA claim for ***herself only*** and paying 75% of it to the State of California, and in doing so, Plaintiff would receive over 100% of the value of the ***main wrong*** committed by the employer – misclassifying an employee as an independent contractor. Plaintiff's counsel believes this was an appropriate discount based on the risk factors, most notably the significant chance that the Court would decline to stack penalties and also exercise its discretion to reduce PAGA penalties based on the particular facts of this case, including most notably: (i) the law on this point was previously unsettled and the recent PAGA amendments eliminated arguments for "stacking" PAGA penalties for multiple Labor Code violations caused by the same underlying conduct; (ii) the $2,000 settlement offer exceeds the $1,600 in PAGA violations for the main violation alleged in the Complaint – misclassification of employees as "independent contractors;" and (iii) the potential impact of an unaccepted $2,000 statutory settlement offer if Plaintiff were to proceed to trial and recover less than $2,000 offered.

Moreover, although Plaintiff's counsel believes Plaintiff has a strong argument that she was an employee misclassified as an "independent contractor," beyond that foundational point Plaintiff's counsel recognizes that the Court could credit one or more of Chemcore's arguments against any significant liability for wage and hour violations, including arguments that: (i) if Plaintiff is deemed to have been an employee misclassified as an independent contractor, then she was allegedly at most an ***exempt employee*** (i.e., exempt from overtime, minimum wage, and meal and rest period requirements) under either the outside salesperson exemption – because she allegedly spent more than 50% of her working time making sales in the field – or the inside salesperson exemption – because she allegedly received at least 50% of her weekly income from commissions; (ii) Plaintiff allegedly failed to submit any unpaid expenses for reimbursement and Plaintiff lacks sufficient documentation of claims unreimbursed expenses; (iii) any non-compliant meal period or rest periods were purportedly voluntarily waived by Plaintiff; (iv) any wage statement violations were not "knowing and intentional," and (v) the Court should exercise its discretion and refuse to "stack" PAGA penalties given, among other things, the law on this point was previously unsettled and the recent PAGA amendments eliminated arguments for "stacking" PAGA penalties for multiple Labor Code violations caused by the same underlying conduct, (ii) the $2,000 settlement offer exceeds the $1,600 in PAGA violations for the main violation alleged in the Complaint – misclassification of employees as "independent contractors," and the potential impact of an unaccepted $2,000 statutory settlement offer if Plaintiff were to proceed to trial and recover less than $2,000 offered.

II. LITIGATION HISTORY

On February 23, 2024, Plaintiff initiated the PAGA procedures set forth in the Labor Code section 2699.3. Plaintiff gave written notice to the California Labor and Workforce Development Agency via its electronic system alleging certain California Labor Code violations by Chemcore (the "PAGA Letter"). Plaintiff sent the letter on behalf of Plaintiff and other allegedly aggrieved employees. (Hardin Dec. ¶ 4). The $75 filing fee has been paid. (*Id*.). Plaintiff also gave notice to the PAGA Notice to Defendants by certified mail postmarked on February 23, 2024. (*Id*.). The LWDA case number is LWDA-CM-1012770-24. (*Id*.).

The LWDA did not elect to proceed with an investigation, and Defendants did not cure the alleged violations. (Hardin Dec. ¶ 5). Following the passage of 65 days without a response from the LWDA to Plaintiff's written notice, Plaintiff commenced a putative representative action under PAGA for the alleged violations of the Labor Code on behalf of herself, the State, and other allegedly aggrieved employees. This action is now pending in Orange County Superior Court, Case No. 30-2024-01418250-CU-OE-CXC (the "Action."). (*Id*.)

Plaintiff alleged in the Action that Defendant engaged in a practice of misclassifying employees as "independent contractors," and that Defendant also failed to pay premium wages for non-compliant meal periods and rest periods, failed to pay overtime and minimum ages, and failed to provide compliant wage statements. Plaintiff alleges that this underlying conduct gives rise to a claim for penalties under PAGA pursuant to Labor Code §§ 2699, *et seq*. Conversely, Defendant asserts that at all times during the Covered Period it complied with the California Labor Code as it related to Plaintiff and all other PAGA Members. Defendant denies all of Plaintiff's allegations and denies any wrongdoing.

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III. INFORMAL DISCOVERY AND SETTLEMENT

After the Action was at issue, the Parties engaged in informal discovery regarding Plaintiff's claims, through which Plaintiff learned that Plaintiff was the only "aggrieved employee" for the PAGA claim, and that Plaintiff had only approximately sixteen (16) pay periods of alleged wage and hour violations for the PAGA claim.

Based on this information, the potential exposure for the PAGA penalties (without "stacking" penalties) for said PAGA Members – Plaintiff only – was estimated at a total of $1,600 ($100 per pay period), or, if assuming an initial violation rate of $100 and $200 per pay period for fifteen (15) subsequent violations this would total a maximum of $3,100. Plaintiff also asserted that the PAGA Members are entitled to more than one penalty per pay period, which would create a potential additional exposure for PAGA penalties. Conversely, Defendant contends that the higher, "subsequent" penalty should not apply to the pay periods after the initial alleged violation as there has been no prior finding of violations, and Defendant also contends that PAGA Members did not experience the violations alleged by Plaintiff.

On October 18, 2024, Defendant served a Statutory Offer to Compromise Pursuant to California Code of Civil Procedure section 988 ("998 Offer") which contained the following material terms:

> Pursuant to California *Code of Civil Procedure* Section 998, Defendant CHEMCORE INDUSTRIES, INC. erroneously sued as CHEMCORE INC. ("Defendant"), in full settlement of Plaintiff WENDY POTTER's ("Plaintiff") claims in the above-captioned action, hereby offers to pay Plaintiff the total sum of **Forty Two Thousand and One Dollars and Zero Cents ($42,001.00)** ("Total Sum"), which includes all reasonable attorney fees and costs. This Total Sum is allocated as follows:
>
> - **Forty Thousand and One Dollars and Zero Cents ($40,001.00)** for Plaintiff's individual claims (the first through eleventh causes of action); and
> - **Two Thousand Dollars and Zero Cents ($2,000.00)** for Plaintiff's twelfth cause of action for violation of the Private Attorneys General Act of 2004 (the "PAGA Claim"), of which 75% shall be paid to the state, and 25% to the aggrieved employee(s).
>
> This sum is conditioned upon acceptance by Plaintiff and is offered in exchange for the following: (1) entry of a Dismissal with Prejudice as to Defendant CHEMCORE INDUSTRIES, INC. on the first through eleventh causes of action of Plaintiff's claims asserted in her Complaint; and (2) a court-approved settlement of the PAGA Claim."

(Hardin Dec., Ex. 1).

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In evaluating Defendant's $2,000 offer to settle Plaintiff's PAGA claim, Plaintiff has considered the expense and length of continued proceedings necessary to litigate her Action through trial and through any possible appeals, and the burdens of proof necessary to establish liability for the claims asserted in the action, both generally and in response to Defendants' defenses thereto. Plaintiff has also considered the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation.

In particular, Plaintiff factored in the significant risk that the Court, in its discretion in evaluating and imposing PAGA penalties if Plaintiff were to prevail, would refuse to "stack" PAGA penalties given: (i) the law on this point was previously unsettled and the recent PAGA amendments eliminated arguments for "stacking" PAGA penalties for multiple Labor Code violations caused by the same underlying conduct; (ii) the $2,000 settlement offer exceeds the $1,600 in PAGA violations for the main violation alleged in the Complaint – misclassification of employees as "independent contractors;" and (iii) the potential impact of an unaccepted $2,000 statutory settlement offer if Plaintiff were to proceed to trial and recover less than $2,000 offered.

By contrast, Defendant maintained that it had and has legally compliant employment policies and practices throughout the PAGA Settlement Period as defined herein. Defendants do not admit that they ever violated any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiffs seek individual statutory remedies, as well as civil penalties pursuant to the PAGA, during the PAGA Settlement Period.

Based on the foregoing, Plaintiff has determined that the settlement is a fair and reasonable resolution of the Action that also promotes the objectives of the PAGA. Accordingly, on October 24, 2024, Plaintiff served and filed her Notice of Acceptance of Statutory Offer to Compromise Pursuant to California Code of Civil Procedure section 988 ("998 Acceptance" or "Settlement Agreement"). (Hardin Dec., Ex. 2).

IV. RELEVANT LAW UNDER PAGA

A. PAGA Statutory Scheme

Under PAGA, an "aggrieved employee" may bring an action for civil penalties on behalf of herself and other current or former employees. *See* Cal. Lab. Code § 2699(a). A plaintiff suing under

PAGA "does so as the proxy or agent of the state's labor law enforcement agencies." *Arias v. Superior Court*, 46 Cal.4th 969, 986 (2009). Accordingly, a judgment in a PAGA action "binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government." *Id*.; *Iskanian v. CLS Transp. L.A., LLC*, 59 Cal.4th 348, 381 (2014) ("When a government agency is authorized to bring an action on behalf of an individual or in the public interest, and a private person lacks an independent legal right to bring the action, a person who is not a party but who is represented by the agency is bound by the judgment as though the person were a party.")

B. Standard of Review for PAGA Settlements

Labor Code § 2699(l)(2) states that "the superior court shall review and approve any settlement of any civil action filed pursuant to this part." The Labor Code does not require the two-step settlement approval process utilized in class actions (i.e., preliminary, and then final approval) - instead, PAGA settlements are reviewed via a single motion. *See Salazar v. Sysco Central Cal,* Inc., No. 15-cv-01758-DAD, 2017 WL 1135801, *2 (E.D. Cal. Feb. 2, 2017) (rejecting the application of class action settlement rules and procedures for PAGA settlement approval). The California Labor Workforce Development Agency has explained that when trial courts are reviewing PAGA settlements, they should consider whether "the relief provided for under the PAGA [is] genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public." *O'Connor v. Uber Techs., Inc.*, No. 13-03826-EMC, CF No. 736 at 2-3 (N.D. Cal. Jul. 29, 2016); *see also Salazar*, 2017 WL 1135801, *2 (quoting the above passage). Accordingly, nothing in PAGA changes the strong judicial preference in support of approving settlements. *See e.g., Osumi v. Sutton*, 151 Cal.App.4th 1355, 1357 (2007) (confirming the "[s]trong public policy in favor of the settlement of civil cases").

Neither the Rules of Court nor the PAGA statute provides specific standards or procedures apart from Labor Code section 2699(l)(2). However, several recent federal cases have evaluated these issues and provided persuasive authority on the appropriate standards of review. Federal courts have approved PAGA settlements "if the settlement terms (1) meet the statutory requirements set forth by PAGA, and (2) are fundamentally fair, reasonable, and adequate in view of PAGA's public policy goals." *Rincon v. West Coast Tomato Growers, LLC*, No. 13-CV-2473-JLS (KSC), 2018 WL 8281046, *62 (S.D. Cal. Feb.

12, 2018); *Gutilla v. Aerotek, Inc.*, No. 115CV00191DADBAM, 2017 WL 2729864, at *3 (E.D. Cal. Mar. 22, 2017) (same).

C. Statutory Requirements of PAGA

PAGA imposes limits on litigants. First, to bring an action under PAGA, an aggrieved employee must first provide written notice to the LWDA as well as to the employer. Cal. Lab. Code § 2699.3(a)(1). Further, as to monetary relief, a plaintiff suing under PAGA is limited to recovery of civil penalties only, rather than damages available privately through direct or class action claims. *Gutilla v. Aerotek, Inc.*, 2017 WL 2729864, at *2. Because "an aggrieved employee's action under . . . [PAGA] functions as a substitute for an action brought by the government itself, PAGA is limited to the recovery of civil penalties; statutory penalties cannot be recovered." *Rincon*, 2018 WL 828104, at *3, citing *Iskanian*, 327 P.3d at 147. Any civil penalties recovered must be distributed as follows: 75% to the LWDA, and the remaining 25% to the aggrieved employees. Cal. Lab. Code § 2699(i). PAGA also requires that claim notices, responses, and certain court documents be filed with the LWDA via its electronic filing system such as the court complaint alleging PAGA claims, any proposed settlement of PAGA claims and any Court Order or Judgment in any PAGA case. Cal. Lab. Code § 2699(l).

D. Purpose of PAGA

In 2003, the California Legislature enacted the Private Attorney General Act ("PAGA"), Cal. Lab. Code § 2698 *et seq.*, after declaring: (i) that adequate financing of labor law enforcement was necessary to achieve maximum compliance; (ii) that staffing levels for state labor law enforcement agencies had declined and were unable to keep up with a growing labor market; (iii) that vigorous assessment and collection of civil penalties provides a meaningful deterrent to unlawful conduct; and (iv) that it was therefore in the public interest to allow aggrieved employees, acting as private attorneys general, to seek and recover civil penalties for Labor Code violations. *See e.g., Gutilla*, WL 2729864, at *2 (citing 2003 Cal. Stat. 6629).

PAGA was passed because the Legislature believed it necessary "to achieve maximum compliance with state labor laws" and "to ensure an effective disincentive for employers to engage in unlawful and anticompetitive business practices." *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal.App.4th 365, 374 (2005) (citing 2003 Cal. Legis. Serv. Ch. 906 §§ 1(b)). The Legislature further found that, while self-policing efforts have had some success, "in other cases the only meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil penalties as provided in the Labor Code." *Id.* Through PAGA, the Legislature thus: (1) sought to "enlist[] willing citizens in the task of private enforcement," *Iskanian*, 59 Cal.4th at 390; (2) "deputized" aggrieved employees to sue on behalf of the State to enforce state labor laws; and (3) authorized them to recover civil penalties, attorneys' fees, and costs. 2003 Cal. Legis. Serv. Ch. 906 (Legislative Counsel's Digest). In bringing a PAGA action, "[t]he employee-plaintiff acts as the proxy or agent of the state labor enforcement agencies, representing the same legal right and interest as those agencies . . . ." *Iskanian*, 59 Cal.4th at 394.

As for the interests of the LWDA (in whose shoes Plaintiff stands), its top enforcement priorities are "to vigorously enforce minimum labor standards in order to ensure employers are not required or permitted to work under substandard unlawful conditions . . ." and to "protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards." Cal. Lab. Code § 90.5(a).

E. Fairness of PAGA Settlements

A PAGA action is a quasi-law-enforcement action and therefore a PAGA settlement does not have to meet the requirements of a class action. *Arias*, 46 Cal. 4th at 982. Thus, a court's "fairness" review of a PAGA settlement necessarily implicates unique features that render the process distinct from approval of a class action settlement under Rule 3.769 of the California Rules of Court.

First, in evaluating the adequacy of the settlement amount, the Court's focus is not concerned with the amount(s) that "aggrieved employees" are to receive, but rather, must focus on the total settlement amount in achieving PAGA's objective. "The remedy sought in a PAGA suit consists of civil penalties, not individual or class damages." *Mendez v. Tween Brands, Inc.*, No. 2:10-cv-00072-MCE-DAD, 2010 WL 2650571, *4 (N.D. Cal. Apr. 2, 2010), citing Cal. Lab. Code § 2699(a). "Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." *Ochoa-Hernandez v. CJADERS Foods, Inc.*, No. C 08-2073 MHP, 2010 WL 1340777, at *4 (N.D. Cal. Apr. 2, 2010). "Unlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies." *Id.*

Second, consistent with the fact that unnamed employees have no property interest in a PAGA claim, "[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim." *Id.* at *5. This renders the approval process of a PAGA settlement distinct from a class action settlement, as there is no need for the Court to employ the "two-step approval process" required under Rule 3.769 of the California Rules of Court.

Finally, unlike a class action settlement under Rule 3.769, the scope of release permitted in a PAGA settlement is limited. While judgment in a PAGA action is binding not only on the named employee Plaintiffs but also on government agencies and any aggrieved employee not a party to the proceeding, the nonparty employees *would not* be bound by the judgment as to remedies other than civil penalties. *Arias*, 46 Cal. 4th at 986-87. Thus, except for the named Plaintiffs, the scope of a release in a PAGA settlement is confined to the PAGA penalties alleged in the complaint and PAGA claims that were or could have been alleged pursuant to PAGA.

F. California Policy Favoring Settlements

California courts have a strong policy in favor of settlement. *Stambaugh v. Superior Court*, 62 Cal.App.3d 231, 236 (1976). To be approved, a settlement must be "fair, reasonable and adequate to all concerned." *Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012). There is an initial presumption of fairness when the settlement agreement was negotiated at arm's length by experienced counsel. *See, e.g., Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008); *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996). Where these factors exist, as here, a courts review is generally "limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Dunk*, 48 Cal.App.4th at 1801.

"In the context of a settlement agreement, the test is not the maximum amount Plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). "A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable." *Id.* Compromise is inherent and necessary in the settlement process. *Id.* Thus, even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation. *Id.* In addition, courts review the discovery process and information received through it to assist them in assessing whether the parties sufficiently developed the claims and their supporting factual bases before reaching settlement. *See Kullar*, 168 Cal.App.4th at 129-31. Information is sufficient where it allows the parties and the Court to form "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Clark v. American Residential Services LLC*, 175 Cal.App.4th 785, 801 (2009).

V. THE TERMS OF THE SETTLEMENT ARE FAIR AND REASONABLE

A. The Settlement Terms Are Manifestly Fair and Reasonable

As set forth in the Settlement attached as **Exhibit 2** to the Hardin Declaration, the parties have agreed to $2,000 settlement of Plaintiff's single-person PAGA claim to the allocated as: (i) $1,500 to the LWDA; and (ii) $500 to Plaintiff. The PAGA settlement does not provide for payment of any attorneys' fees or costs to Plaintiff or her counsel, nor would it require any administration other than the one-time disbursement of 75% to the State of California and 25% to Plaintiff. (Hardin Dec. ⁋ 8).

As explained in the Hardin Declaration, the heart of Plaintiff's PAGA case is her claim that Defendant engaged in a practice of misclassifying Plaintiff as an "independent contractor," and that defendant also failed to pay premium wages for non-compliant meal periods and rest periods, failed to pay overtime and minimum ages, failed to reimburse expenses incurred, and failed to provide compliant wage statements.

Plaintiff had a maximum of sixteen (16) pay periods during the relevant time period in which she was allegedly misclassified as an independent contractor. Assuming PAGA penalties are not stacked, the default PAGA penalty of $100 for the initial violation would result in PAGA penalties of $1,600. Assuming subsequent violations after the first period at a $200 per pay period rate, penalties would be $3,100. In either scenario, the settlement of $2,000 would provide Plaintiff and the State of California a fair and reasonable recovery.

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By contrast, if the penalties are stacked to include violations for not only independent contractor misclassification, but also for derivative violations related to alleged meal period violations (default PAGA penalties of $1,600), rest period violations (default PAGA penalties of $1,600), unpaid overtime (default PAGA penalties of $1,600), unpaid minimum wages ($3,850), unpaid expenses (default PAGA penalties of $1,600), and wage statements per pay period ($15,100), the PAGA penalties could be approximately $26,950. In that unlikely scenario in which PAGA violations are stacked seven-fold in every pay period, the settlement would provide a 7.5% recovery of potential PAGA penalties.

Plaintiff asserted that the PAGA Members may be entitled to more than one penalty per pay period, which would create a potential additional exposure for PAGA penalties. Conversely, Defendant contends that stacking penalties would be factually and/or legally unwarranted or inappropriate here for many reasons, and Defendant also contends that PAGA Members did not experience the violations alleged by Plaintiff.

Although case law regarding approvals of PAGA-only settlements is somewhat sparse, the few rulings issued strongly indicate that this settlement is fair and reasonable. *See e.g., Franco v. Ruiz Food Products, Inc.,* No. 1:10-cv-02354-SKO, 2012 WL 5941801 (E.D. Cal. Nov. 27, 2012) (Court approved total PAGA penalty of $10,000, with the $2,500 employee portion divided between as many as 2,055 current and former employees); *Schiller v. David's Bridal, Inc*., No. 1:10-cv-616-AWI-SKO, 2012 WL 217001 (E.D. Cal. June 28, 2012) (Court approved total PAGA penalty of $10,000, with the $2,500 employee portion divided between as many as 3,326 individuals).

Similarly, in the class action context, Courts have approved PAGA allocations that pale in comparison to substantial result obtained in this case. *See e.g., Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *2-3 (E.D. Cal. Oct. 29, 2012) (approving settlement for $3.7 million with $10,000 allocated towards PAGA); *Reed v. Thousand Oaks Toyota*, No. 56-2012-00419282-CU-OE-VTA, 2013 WL 8118716 (class action settlement approved for $108,624, with $1,500 allocated towards PAGA penalties) (Cal. Super. Ct. Apr. 8, 2013); *Bolton v. U.S. Nursing Corp.*, No. C 12-4466 LB, 2013 WL 5700403 (N.D. Cal. Oct. 18, 2013) (approving class action settlement for $1,700,000, with $15,000 allocated towards PAGA); *Nordstrom Commission Cases,* 186 Cal.App.4th 576 (2010) (finding no abuse of discretion in approval over objection of more than $9 million settlement releasing California *Labor Code* § 203 waiting time penalties and PAGA, Labor Code section 2699 *et seq*. penalties, based on evidence before trial court that such claims were pled, argued, evaluated and resolved as part of settlement, despite PAGA claims being allocated $0 value).

Thus, based on these circumstances, this Settlement is clearly fair and reasonable.

B. The Settlement Was Reached Through an Arm's-Length Settlement Process Between Parties Represented by Experienced Counsel

"[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness." *State v. Levi Strauss & Co*., 41 Cal.3d 460, 482 (1986 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. *Nordstrom Com. Cases*, 186 Cal.App.4th 576, 581 (2010, quoting *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1117-1118 (2009).

There can be no doubt as to the fairness of the settlement before this Court. The Parties settled through the arms' length settlement process of a statutory offer and then statutory acceptance. Both Defendants and Plaintiff were represented by experienced counsel through the negotiations. (Hardin Dec. ¶¶ 7-14); *Kullar v. Foot Locker Retail, Inc*., 168 Cal.App.4th 116, 129 (2008) (Courts should weigh "the competency and integrity of counsel and the involvement of a neutral mediator in assuring ... that a settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct.")

Based on information obtained through informal discovery, PAGA Counsel was able to assess the strengths and weaknesses of the case and the benefits of settlement. (Hardin Dec. ¶¶ 7-14). As a result, PAGA Counsel firmly believes that the settlement represents a very favorable resolution of Plaintiff's PAGA claim. (Hardin Dec. ¶ 14).

C. The Strengths and Weaknesses of Plaintiff's Claims

"In determining whether the proposed settlement falls within the range of reasonableness, perhaps the most important factor to consider is Plaintiff's expected recovery balanced against the value of the settlement offer." *Cotter v. Lyft, Inc*. 176 F.Supp.3d 930, 935 (N.D. Cal. Apr. 7, 2016) (internal quotation omitted). Here, Plaintiff assessed Chemcore's likely maximum exposure, without stacking PAGA penalties, as $1,600. Hardin Dec. ¶¶ 14-15).

1. Litigation Risks

Chemcore denies that it violated any section of the California Labor Code or Wage Orders. (Hardin Dec. ¶ 5). Chemcore argues that its policies, procedures, and training are compliant with California labor law. (Hardin Dec. ¶¶ 11-12).

Although Plaintiff's counsel believes she has a strong argument that she was an employee misclassified as an "independent contractor," Plaintiff's counsel recognizes that the Court could credit one or more of Chemcore's arguments against any significant liability for wage and hour violations, including arguments that: (i) if Plaintiff is deemed to have been an employee misclassified as an independent contractor, that she was allegedly at most an ***exempt employee*** (i.e., exempt from overtime, minimum wage, and meal and rest period requirements) under either the outside salesperson exemption – because she allegedly spent more than 50% of her working time making sales in the field – or the inside salesperson exemption – because she allegedly received at least 50% of her weekly income from commissions; (ii) Plaintiff allegedly failed to submit any unpaid expenses for reimbursement and Plaintiff lacks sufficient documentation of claims unreimbursed expenses; (iii) any non-compliant meal period or rest periods were voluntarily waived by Plaintiff; (iv) any wage statement violations were not "knowing and intentional;" and (v) the Court should exercise its discretion and refuse to "stack" PAGA penalties given, among other things, the law on this point was previously unsettled and the recent PAGA amendments eliminated arguments for "stacking" PAGA penalties for multiple Labor Code violations caused by the same underlying conduct; (vi) the $2,000 settlement offer exceeds the $1,600 in likely PAGA penalties for the main violation alleged in the Complaint – misclassification of employees as "independent contractors" (for which Plaintiff was the only one) and the potential impact of an unaccepted $2,000 statutory settlement offer if Plaintiff were to proceed to trial and recover less than $2,000 offered. (Hardin Dec. ¶ 17).

Thus, applying all defenses and risks of litigation discussed above, including the likelihood of prevailing on a representative basis for all employees, and factoring in the Court's discretion to reduce the civil penalties, Plaintiff believes this is a fair and adequate settlement. (Hardin Dec. ¶ 19).

2. Potential Manageability Issues

A PAGA claim should be manageable. A PAGA claim will be deemed unmanageable if individualized inquiries—such as whether an employee was forced to forgo a meal period—are necessary to establish liability and ascertain which employees are aggrieved. *See e.g., Cardenas v. McLane Foodservice, Inc.*, 796 F. Supp. 2d 1246, 1260 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."); *Ortiz v. CVS Caremark Corp*., No. C-12-05859 EDL, 2014 WL 1117614, at *4 (N.D. Cal. Mar. 19, 2014) (striking PAGA claim; "[T]he circumstances of this case make the PAGA claim here unmanageable because a multitude of individualized assessments would be necessary … [p]roof of this [off-the-clock] claim would be unmanageable, and could not be done with statistical or survey evidence but only with detailed inquiries about each employee claimed to have done so and her manager's knowledge thereof."); *Amey v. Cinemark USA Inc*, No. 13-CV-05669-WHO, 2015 WL 2251504, at *16 (N.D. Cal. May 13, 2015), rev'd and remanded sub nom. *Brown v. Cinemark USA, Inc*., 705 F. App'x 644 (9th Cir. 2017) (dismissing PAGA claims; "[W]hen the evidence shows, as it does here, that numerous individualized determinations would be necessary to determine whether any class member has been injured by [Louis Vuitton's] conduct, then allowing a representative action to proceed is inappropriate."); *Bowers v. First Student, Inc*., No. 2:14-CV-8866-ODW EX, 2015 WL 1862914, at *4 (C.D. Cal. Apr. 23, 2015) (striking PAGA claim; "A PAGA claim can be considered unmanageable when 'a multitude of individualized assessments would be necessary.'") (internal quotations and citations omitted); *Litty v. Merrill Lynch & Co.*, No. CV 14-0425 PA PJWX, 2014 WL 5904904, at *3 (C.D. Cal. Nov. 10, 2014) (striking PAGA claim, Court stated "PAGA representative action allegations can be stricken where such claims would be unmanageable … The circumstances of this case make the PAGA claim unmanageable because a multitude of individualized assessments would be necessary.")

Although Plaintiff is the only "aggrieved employee" under the PAGA claim, the multiplicity of Plaintiff's legal claims – i.e., requiring consideration of independent contractor misclassification, outside sales and inside sales exemptions, unpaid overtime, unpaid minimum wages, meal and rest period violations, wage statement violations, unpaid expenses – might pose a minor manageability issue when weighed against the relatively small size of the PAGA penalties at issue. (Hardin Dec. ⁋ 6)

3. The Outcome in Litigation is Uncertain

Trial is always uncertain. Indeed, a number of PAGA trials have resulted in defense verdicts. *See e.g., Childers v. Anthony Shenouda Inc.*, Case No., BC517798, in the Superior Court for the State of California, County of Los Angeles (trial of misclassification case under PAGA resulting in a defense verdict after bench trial, the Honorable Elihu Berle presiding); *Allen v. American Multi-Cinema Inc*., Case No. RG-11-585502, in the Superior Court for the state of California, County of Alameda (trial of seating claims under PAGA resulted in a defense verdict following a bench trial, the Honorable George C. Hernandez); *Atempa v. Pama Inc*., Case No. 37-2013-00058208-CU-OE-CTL, in the Superior Court for the State of California, County of San Diego (verdict for plaintiff in the amount of $297,723 following bench trial on wage and hour case on behalf of 70 aggrieved employees, the Honorable Joel R. Wohlfeil presiding). Thus, in the face of such uncertainty, settlement was advantageous to Plaintiff, the LWDA and the aggrieved employees as it secured a substantial monetary recovery.

4. Damage Issues

Plaintiff recognizes that there is a significant chance that the Court would decline to stack penalties and also exercise its discretion to reduce PAGA penalties based on the particular facts of this case, including most notably: (i) the law on this point was previously unsettled and the recent PAGA amendments eliminated arguments for "stacking" PAGA penalties for multiple Labor Code violations caused by the same underlying conduct; (ii) the $2,000 settlement offer exceeds the $1,600 in PAGA violations for the main violation alleged in the Complaint – misclassification of employees as "independent contractors;" and (iii) the potential impact of an unaccepted $2,000 statutory settlement offer if Plaintiff were to proceed to trial and recover less than $2,000 offered.

With respect to derivative claims, such as penalties under Labor Code section 203 as incorporated into the PAGA, no waiting-time penalties can be awarded unless the failure to pay wages is "willful," an element that Plaintiff acknowledges would have been difficult to prove. *See* 8 CCR 13520 ("[a] willful failure to pay wages within the meaning of Labor Code § 203 occurs when an employer intentionally fails to pay wages to an employee when those wages were due"); *Smith v. Rae Venter Law Group*, 29 Cal.4th 345, 354 n.2 (2002) (holding that a good faith dispute that any wages are due will preclude an award of waiting time penalties). Chemcore would further argue that an employer's failure to pay wages is not willful unless it reached the standard of "gross negligence or recklessness." *See Amaral v. Cintas*, 163 Cal.App.4th 1157, 1201 (2008).

Plaintiff also recognizes that some courts have interpreted PAGA, i.e., Labor Code section 2699(f)(2), to impose the enhanced "subsequent violation penalty" or "heightened penalty" only after an employer has been notified that its conduct violates the Labor Code. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008); *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012); *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, No. 05cv1199– IEG–CAB, 2009 WL 2448430) (S.D. Cal. Aug.10, 2009). Plaintiff's counsel recognizes that this interpretation has gained traction with some courts.

Moreover, PAGA gives Courts wide latitude to reduce civil penalties "based on the facts and circumstances of a particular case" when "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." *Labor Code* § 2699(h). In reducing PAGA penalties, Courts have considered issues including whether the employees suffered actual injury from the violations, whether Chemcore was aware of the violations, and the employer's willingness to fix the violation. *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030, 1037 (N.D. Cal. June 23, 2016); *Fleming v. Covidien Inc.*, No. (OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011) (District Court reduced PAGA penalties from $2,800,000 to $500,000, a reduction of $82.2%, because the court found maximum penalties "unjust" because the employees had suffered no injuries).[6] For instance, in the *Lyft* case, the Court found that a $1 million PAGA settlement was fair and reasonable in light of the unsettled nature of the law, resulting in a $2.52 per pay period award to the aggrieved employees (there were 397,110 pay periods in a $1 million PAGA settlement, resulting in a 97.5% reduction from the maximum). In *Fleming v. Covidien*, the Court reduced the potential penalties by over 82%, awarding $500,000 for 28,742 pay periods at issue. Here, the defendant argues the Court should exercise its discretion to significantly reduce the PAGA penalties. In light of the foregoing, Plaintiff had to consider that such argument may find a sympathetic ear.

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[6] Some courts have awarded no PAGA penalties even when Labor Code violations were established. *See e.g., Makabi v. Gedalia*, 2016 Cal.App. Unpub. 1489, *5-7 (2nd. Dist. Ct. of App. Mar. 6, 2016 (no PAGA penalties awarded by Los Angeles Superior Court); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016 (PAGA penalties denied after trial).

D. The Expense, Complexity and Likely Duration of Further Litigation

To assess the fairness, adequacy, and reasonableness of a representative action settlement, the court also should consider the expense, complexity, and likely duration of further litigation. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th at 1801. Here, as outlined above, the parties faced the expense and uncertainty of a trial that greatly exceeded potential penalties and damages recoverable in this matter. Although Plaintiff is the only "aggrieved employee" under the PAGA claim, the multiplicity of Plaintiff's legal claims – i.e., independent contractor misclassification, outside sales and inside sales exemptions, unpaid overtime, unpaid minimum wages, meal and rest period violations, wage statement violations, unpaid expenses – does pose a minor manageability issue given the relatively small size of the PAGA penalties at issue. (Hardin Dec. ⁋ 6).

E. The Presence of a Government Participant

As set forth above, 75% of the penalty is paid to the LWDA, and Labor Code § 2699.3(b)(4 permits the LWDA to comment on the penalties. This provides an independent check on collusive settlements which are too low.

F. The Extent of Investigation and Discovery Completed

As detailed above, the Settlement was reached after the case was thoroughly investigated by counsel and had reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the settlement. *In re Warner Commc'ns Sec. Litig.*, 618 F.Supp. 735, 745 (S.D.N.Y. 1985)

VI. THE SETTLEMENT DOES NOT INCLUDE PAYMENT FOR ATTORNEYS' FEES, COSTS, OR INCENTIVE PAYMENTS

As noted, the Settlement does not provide any payment for attorneys' fees, costs, or an incentive payment to Plaintiff.

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VII. CONCLUSION

For the foregoing reasons, the Court should grant Plaintiff's Motion for Approval of PAGA Settlement.

Dated: January 3, 2025

HARDIN LAW GROUP, APC

By: ______________________________
James B. Hardin
Attorneys for Plaintiff Wendy Potter

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2901 W. Coast Highway, Ste. 200, Newport Beach, CA 92663.

On January 3, 2025, I served the foregoing document described as **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF PAGA SETTLEMENT** on the following person(s) in the manner indicated:

SEE ATTACHED SERVICE LIST

☐ (BY MAIL) I am familiar with the practice of Hardin Law Group, APC for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope, with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Hardin Law Group, APC, Newport Beach, California, following ordinary business practices.

☐ (BY OVERNIGHT FEDERAL EXPRESS) I am familiar with the practice of Hardin Law Group, APC for collection and processing of correspondence for delivery by overnight courier. Correspondence so collected and processed is deposited in a box or other facility regularly maintained by Federal Express that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope designated by Federal Express with delivery fees paid or provided for, addressed as set forth herein, and such envelope was placed for delivery by Federal Express at Hardin Law Group, APC, Newport Beach, California, following ordinary business practices.

☐ (BY HAND DELIVERY) I am familiar with the practice of Hardin Law Group, APC for collection and processing of correspondence for hand delivery by courier. I caused such document to be delivered by hand to the addresse(s) designated.

☒ (BY ELECTRONIC TRANSMISSION) I served electronically from the electronic notification address of brice@hardinemploymentlaw.com the document described above and a copy of this Declaration to the person and at the electronic notification address set forth herein. The electronic transmission was reported as complete and without error.

☐ **(**BY ELECTRONIC SERVICE) I am causing the document(s) to be served by email or electronic transmission via First Legal sent on the date shown below to the email addresses of the persons listed in the attached service list.

I Declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration was executed on January 3, 2025, at Newport Beach, California.

Briana Rice

SERVICE LIST

Natalie Alameddine Taylor C. Morosco BLANK ROME LLP 2029 Century Park East, 6th Floor Los Angeles, CA 90067 Tel: (424) 239-3400 Fax: (424) 239-3434 Email: natalie.alameddine@BlankRome.com taylor.morosco@BlankRome.com	Attorneys for Defendant, CHEMCORE INDUSTRIES, INC. *erroneously sued as* CHEMCORE INC.

From: donotreply@occourts.org
To: Info - hardinemploymentlaw
Subject: Superior Court of California, County of Orange - Motion Reservation Request - CONFIRMATION
Date: Thursday, January 2, 2025 10:36:53 AM
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THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

Reserve a Motion Date

Your reservation request has been CONFIRMED by the Superior Court. The hearing date and time below has been reserved. You will be asked to provide your reservation number to the court at a later date.

MOVING PAPERS MUST BE E-FILED WITHIN 24 HOURS AFTER COMPLETING THE ON-LINE RESERVATION. Failure to submit your moving papers within 24 hours will result in the automatic CANCELLATION of the reservation.

NOTE: To expedite your motion, please place the appropriate Court Reservation number (e.g. 7XXXXXXX) on each Motion being submitted. If multiple motions are submitted on one document, all reservations numbers must be listed on the face page of the pleading.

Please do not reply to this email.

Reservation Number:	74458020
Hearing Date:	May 16, 2025
Hearing Time:	10:00 AM
Department:	CX105
Motion Type:	Motion for Approval of Class Settlement
Case Number:	30-2024-01418250-CU-OE-CXC
Case Title:	Potter vs. Chemcore Inc.
Judicial Officer:	Randall J. Sherman
Email:	info@hardinemploymentlaw.com
Requestor Name:	James Hardin
Requestor Phone:	9493374810
Filing Party:	Wendy Potter
Date of Request:	January 02, 2025
Time of Request:	10:35 AM

Transaction Number:	1000526603