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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ARMANDO VENEGAS, an individual,

Plaintiff,

vs.

PREMCO FORGE, INC., a California
corporation; and DOES 1 – 10, inclusive,

Defendants.

Case No.: 24STCV20698

CRS Reservation ID: 923586362599

ASSIGNED FOR ALL PURPOSES TO:
The Honorable Michael Shultz
Department 40

REPRESENTATIVE ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR APPROVAL OF PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT**

Date: 05/09/2025

Time: 8:30 a.m.

Dept: 40

Complaint filed: August 15, 2024

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1 **I. INTRODUCTION**

2 Plaintiff, Armando Venegas (“Plaintiff”) submits this Memorandum of Points and Authorities in
3 support of Plaintiff’s Motion for Approval of the Private Attorneys General Act of 2004, (“PAGA”)
4 Settlement. Plaintiff and Defendant, PREMCO FORGE, INC. (“Defendant”) have documented the
5 proposed Settlement in the Private Attorneys General Act Settlement and Release (“Settlement
6 Agreement” or “SA”), attached as Ex. 1 to the Declaration of Sharon Ramirez in Support of Plaintiff’s
7 Motion for Approval of PAGA Settlement, filed herewith (“Ramirez Decl.”).

8 Pursuant to the terms of this Settlement, Defendant will pay a Gross Settlement Amount of
9 \$33,450.00, none of which will revert to Defendant. Ramirez Decl. ¶2, SA ¶3.1. Subject to Court
10 approval, from the Settlement Payment, the following shall be deducted: 1) administration expenses of
11 \$2,220 to ILYM Group, Inc.; 2) PAGA Counsel’s attorneys’ fees of up to \$11,038.50, and litigation
12 costs not to exceed \$1,650 (current costs are \$10,361.97); and 3) enhancement payment of not more
13 than \$5,000 to Plaintiff. The remaining sum estimated at \$13,541.50 will be disbursed as directed by
14 the PAGA (Labor Code § 2699(i)) with \$10,156.12 (75%) paid to the Labor and Workforce
15 Development Agency (“LWDA”); and, \$3,385.38 (25%) distributed proportionately to 17 non-exempt
16 employees (“aggrieved employees”) based on the number of Pay Periods each worked during the period
17 from May 22, 2023, to August 23, 2024. (“PAGA Period”). Ramirez Decl. ¶¶3-13; SA¶3.2.4.

18 The superior court “shall review and approve any settlement of any civil action filed pursuant to”
19 the Private Attorneys General Act of 2004, Labor Code section 2699(s)(2). The Settlement was reached
20 through extensive, arms’-length, informed negotiations, with the help of an experienced mediator
21 following an informal exchange of information and data. Ramirez Decl. ¶9. The result is fair, adequate,
22 reasonable, and fulfills PAGA’s purposes of enforcing California’s laws which collect civil penalties on
23 behalf of the State. Plaintiffs request the Court approve this PAGA Settlement, order it implemented
24 according to the terms of the Agreement, and enter Final Judgment.

25 **II. THE PARTIES AND AGGRIEVED EMPLOYEES**

26 Defendant is a manufacturer of hand-forged aluminum products for aerospace, semi-conductors,
27 marine, and automotive industries. Ramirez Decl. ¶5.

28 Plaintiff Armando Venegas (“Venegas”) worked for Defendant as a Machine Operator from

approximately November 2023 to April 2024. Aggrieved Employees means “a person employed by Premco Forge, Inc. in California and classified as a non-exempt, hourly wage employee who performed shop, forging, saw cutting, and/or packing work who worked for Premco Forge, Inc. during the PAGA Period.” SA ¶1.4.

III. FACTUAL AND PROCEDURAL HISTORY

On August 15, 2024, Plaintiff filed a representative action complaint for PAGA penalties alleging various violations of the Labor Code. On May 22, 2024, Plaintiff gave written notice to the Labor Workforce and Development Agency (“LWDA”) and to Defendant notifying them of his intent to pursue PAGA civil penalties pursuant to Labor Code sections 2698, *et seq.*, for the same violations of the Labor Code. Ramirez Decl. ¶7.

Shortly thereafter, the parties agreed to attend mediation to resolve Plaintiff’s individual claims as well as the PAGA claims on behalf of all allegedly Aggrieved Employees. The parties engaged in informal discovery with Defendant providing payroll and timekeeping data for Plaintiff, which allowed them to prepare for a meaningful and informed session at mediation. In this way, each side would be able to understand the nature of the allegations, the scope of potential liability, and the extent of civil penalties claimed. Plaintiff’s counsel reviewed and analyzed the data and calculated civil penalties owed to the aggrieved employees for the PAGA period. Ramirez Decl. ¶8.

On August 23, 2024, the parties participated in a full-day mediation with mediator, Kim Deck, Esq., which resulted in the parties reaching a settlement. Thereafter, the parties worked together to memorialize the terms of their settlement in a fully executed Settlement Agreement.

IV. PAGA’S PURPOSE AND PROCEDURE

A. **PAGA Actions are Brought on Behalf of the State of California**

“The California legislature enacted PAGA after a 2004 budget shortfall that led to understaffing in the Labor and Workforce Development Agency (“LWDA”) and insufficient resources to enforce the Labor Code. PAGA was intended to address these problems and ensure more vigorous enforcement of the labor and employment laws.” (citations omitted). *Tseng v. Nordstrom, Inc.*, 2016 U.S. Dist. LEXIS 176790, *13-14.

“[T]he 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.... Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action.” *Id.*

“The Legislature has made clear that an action under the PAGA is an enforcement action, with the aggrieved employee acting as a private attorney general to collect penalties from employers who violate labor laws. Such an action is fundamentally a law enforcement action designed to protect the public and penalize the employer for past illegal conduct. Restitution is not the primary object of a PAGA action, as it is in most class actions. The primary purpose of PAGA is to ensure compliance with the law; restitution is not the object of a PAGA action.” *Franco v. Athens Disposal Co., Inc.*, 171 Cal. App. 4th 1277, 1300 (2009).

PAGA “deputizes” citizens as private attorneys general to enforce the Labor Code on behalf of the State of California. *Brown v. Ralphs Grocery Co.*, 197 Cal. App. 4th 489 (2011) . “By deputizing aggrieved employees, the California Legislature intended to create incentives for non-governmental actors to enforce the law in a growing labor market that could not be effectively controlled by public agents.” *Tseng, supra*, at *13.

A plaintiff does not bring a PAGA claim on his or her own behalf as an individual claim, but “as the proxy or agent of the state’s labor law enforcement agencies.” *Id.*, at 986; *see also Reyes v. Macy’s, Inc.* (2011) 202 Cal.App.4th 1119, 1123-1124; *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 380 (2015). When an aggrieved employee brings a PAGA claim, “the government is always the real party in interest.” *Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego County*, 234 Cal. App. 4th 1109, 1119 (2015); *Montano v. The Wet Seal Retail, Inc.*, 232 Cal. App. 4th 1214, 1222 (2015) (“[A] PAGA action is a dispute between an employer and the State agency.”).

A PAGA plaintiff represents “the same legal right and interest as state labor law enforcement agencies,” and seeks the same civil penalties that could have been collected by the LWDA. *Securitas, supra*, 234 Cal. App. 4th at 1119; *see also Medina v. Vander Poel* (E.D. Cal. 2015) 523 B.R. 820, 825 (“PAGA plaintiffs do not have property rights in their cases.”).

B. Plaintiffs Exhausted the PAGA’s Administrative Prerequisite

A PAGA action is commenced by the aggrieved employee or representative giving written notice

1 to the LWDA and employer of the specific provisions of the Labor Code alleged to have been violated
2 (“PAGA Notice”). Labor Code § 2699.3(c)(1). The LWDA has 65 days to inform the claimant whether
3 it intends to investigate the violations alleged. If the LWDA does not serve notice, and the employer does
4 not cure the defect(s), a civil action may be initiated 65 days after service of the PAGA Notice. Labor
5 Code § 2699.3(c)(2).

6 On May 22, 2024, Plaintiff sent written notice to the LWDA and Defendant detailing the factual
7 allegations and legal theories. A notice of a cure was not provided by Defendant, and the LWDA did not
8 provide notice of its intent to investigate the charges. Ramirez Decl. ¶7. **Ex. 2** – PAGA Notice.

9 **V. SUMMARY OF PROPOSED SETTLEMENT**

10 **A. Mediation**

11 On August 23, 2024, the parties engaged in good faith, arms’-length and informed negotiations
12 facilitated by Kim Deck, Esq. of Judicate West, an experienced and well-regarded wage and hour
13 mediator. Ramirez Decl. ¶ 8. The parties reached an agreement in principle that day. Ramirez Decl. ¶ 8-
14 9. The parties worked diligently thereafter to negotiate the remaining terms of the PAGA Settlement
15 presented for approval; a fully executed settlement agreement was reached on August 29, 2024. **Ex.1** –
16 Settlement Agreement.

17 **B. Monetary Relief**

18 Pursuant to the terms of the PAGA Settlement, Defendant will pay a Gross Settlement Amount of
19 \$33,450.00. Ramirez Decl. ¶2; SA ¶3.1.

20 The Gross Settlement Amount of \$33,450.00 will be used to pay the following: Individual PAGA
21 Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation
22 Expenses Payment, Plaintiff’s Enhancement Payment and the Administrator’s Expenses Payment.
23 Ramirez Decl. ¶4; SA ¶3.2. Of the Gross Settlement Amount, \$13,541.50 will be disbursed pursuant to
24 PAGA i.e., \$10,156.12 (75%) will be paid to the LWDA, and \$3,385.38 (25%) will be paid to Aggrieved
25 Employees based on the number of pay periods worked during the PAGA period. Labor Code §2699(i).
26 Ramirez Decl. ¶ 4; SA ¶3.2.4.1. To streamline the settlement process, the parties agreed to distribute the
27 PAGA penalties on a pro-rata basis based on the number of pay periods worked by each Aggrieved
28 Employee during the PAGA Period. Ramirez Decl. ¶ 13; SA ¶3.2.4.1. Based on the 25% allocation, with

an aggregate 669 Pay Periods worked by all Aggrieved Employees, each will receive an estimated \$xx.xx per pay period. Ramirez Decl. ¶5; SA ¶¶4.1.

Accordingly, subject to Court approval, Plaintiff proposes the \$33,450.00 Gross Settlement Amount be distributed as follows:

1.	<u>SETTLEMENT PAYMENT:</u>	\$	33,450.00
	PAGA Counsel's Fees:	-\$	11,038.50
	PAGA Counsel's Litigation Costs:	-\$	1,650.00
	Enhancement Payment	-\$	5,000.00
	Administration Payment:	-\$	<u>2,220.00</u>
2.	<u>PAGA PENALTIES:</u>	\$	13,541.50
	Labor Workforce & Development Agency: 75%	\$	10,156.12
	Aggrieved Employees: 25%	\$	3,385.38

C. Scope of Release

The PAGA Settlement provides for a release of all claims alleged, or reasonably could have been alleged, based on the facts contained in the operative complaint and PAGA Notice. Specifically, the Released Claims release the following:

“5.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice (“Plaintiff's Release”). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all

1 respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

2 5.2 Release by Aggrieved Employees:

3 All Aggrieved Employees are deemed to release, on behalf of themselves and their
4 respective former and present representatives, agents, attorneys, heirs, administrators,
5 successors, and assigns, the Released Parties from all claims for PAGA penalties that were
6 alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in
7 the Operative Complaint and the PAGA Notice." SA ¶¶5.1 and 5.2.

8 Because a PAGA action is brought on behalf of the government, a "judgment [] is binding not
9 only on the named employee Plaintiffs but also on government agencies and any aggrieved employee not
10 a party to the proceeding." *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986. Non-party aggrieved
11 employees are not bound by the judgment except as to civil penalties. *Id.*, at 987; see also, Labor Code §
12 2699(g)(1) (non-party aggrieved employees retain all rights "to pursue or recover other remedies available
13 under state or federal law, either separately or concurrently with an action taken under this part.").

14 **D. Settlement Administration**

15 Following Court approval, Defendant will provide the Administrator with the Aggrieved
16 Employee Data (the full name of each Aggrieved Employee, the last known mailing address of each
17 Aggrieved Employee; the social security number of each Aggrieved Employee; and the number of PAGA
18 Pay Periods that each Aggrieved Employee worked during the PAGA Period). SA ¶4.2. Before mailing
19 checks to the Aggrieved Employees, the Administrator will search the National Change of Address
20 database to update stale addresses and then mail the Aggrieved Employees' Individual PAGA Payment.
21 SA ¶4.4.1. Included with the settlement checks will be a settlement notice letter informing the Aggrieved
22 Employees of the settlement and their respective payment. If any check remains uncashed after 180 days
23 of mailing, it will be voided and the value of the uncashed check will be forwarded to the State of
24 California, Controller's Office, Unclaimed Property Division for further handling on behalf of the
25 Aggrieved Employee. Ramirez Decl. ¶¶11, 13; SA ¶ 4.4.3.

26 **VI. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED**

27 **A. Class Action Standards Do Not Govern Approval of PAGA Settlements**

28 A proposed PAGA settlement must be submitted simultaneously to the Court and to the LWDA

1 to allow comment if the Agency desires. Courts “review and approve any penalties sought” and may
2 exercise their discretion to lower the amount of penalties awarded “‘if, based on the facts and
3 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
4 oppressive, or confiscatory.’” *Ramirez v. Benito Valley Farms, LLC*, 2017 U.S. Dist. LEXIS 137272, *6-8.

5 “Because state law enforcement agencies are the ‘real parties in interest’ for PAGA claims, the
6 Court’s task in reviewing the settlement is to ensure that the state’s interest in enforcing the law is upheld.”
7 “Other than the provisions discussed above, however, the PAGA does not establish a standard for
8 evaluating PAGA settlements.” *Id.*

9 In contrast to a class action settlement, the Parties are not obliged to “satisfy class action
10 requirements,” when seeking approval of a PAGA settlement. *Arias, supra*, at 980-988; *Baumann v.*
11 *Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1121.) (PAGA actions are not class actions under
12 state law). Unlike class actions, there is no requirement in a PAGA settlement, and no mechanism, for a
13 court to conduct a two-step settlement approval review. “Unnamed employees need not be given notice
14 of the PAGA claim, nor do they have the ability to ‘opt-out’ or ‘contest a settlement.’” *Ochoa-Hernandez*
15 *v. Cjaders Foods, Inc.* 2010 U.S. Dist. LEXIS 32774, *13 (N.D. Cal. April 2, 2010).

16 There is no binding authority identifying the proper standard of review of PAGA settlements to
17 be employed by the court. *Tenorio v. Gallardo*, 2019 U.S. Dist. LEXIS 169313, at *6 (E.D. Cal. Sept. 30,
18 2019). One approach in this still-emerging area, which courts have found consistent with the LWDA’s
19 approach, is simply to “approve a settlement of PAGA claims upon a showing that the settlement terms
20 (1) meet the statutory requirements set forth by PAGA, and (2) are fundamentally fair, reasonable, and
21 adequate in view of PAGA’s public policy goals.” *Salazar v. Sysco Cent. Cal., Inc.*, 2017 U.S. Dist.
22 LEXIS 14971, *6 (E.D. Cal. February 2, 2017).

23 **B. The Settlement Satisfies PAGA’s Purpose and the State’s Interest**

24 “A PAGA action is at the heart of a civil enforcement action filed on behalf of and for the benefit
25 of the state, not a claim for class relief.” *Baumann, supra*, at 1124. The Court’s focus is not the amount
26 aggrieved employees ultimately receive because of a settlement, but on whether the total settlement
27 achieves PAGA’s objectives. Here, the proposed Settlement fulfills PAGA’s purpose by (1) enforcing
28 the law, (2) collecting penalties from an employer and recovering \$13,541.50 in civil penalties, of which

1 \$10,156.12 (75% of the penalties) are on behalf of the State of California for purposes of enforcement
2 and education; and (3) distributing \$3,385.38 (25% of the penalties) to the Aggrieved Employees, Labor
3 Code § 2699(i).

4 The Settlement also accomplishes PAGA's objective of "detering noncompliance" with the
5 Labor Code, by protecting workers from "unlawful conditions," and protecting employers "who comply
6 with the law from those who attempt to gain a competitive advantage at the expense of their workers by
7 failing to comply with minimum labor standards." *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110,
8 1133 (2016).

9 **C. The Settlement is a Reasonable Compromise of PAGA Claims**

10 The PAGA allows aggrieved employees to recover any civil penalties provided by the Labor Code
11 that are recoverable by the LWDA. Labor Code. § 2699(a). "Under PAGA, a Plaintiffs may bring a
12 representative action as an aggrieved employee on behalf of themselves and other current or former
13 employees and may seek civil penalties for Labor Code violations." *Willner v. Manpower, Inc.*, 35 F.
14 Supp. 3d 1116 (N.D. Cal. 2014). When the Labor Code section violated "provides for a civil penalty to
15 be assessed and collected by the LWDA," the PAGA allows an employee to recover that penalty. Labor
16 Code § 2699(a). When the violated section does not specifically provide a "civil penalty," an employee
17 may recover \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
18 employee per pay period for each subsequent violation. Labor Code §2699(f)(2).

19 Here, Plaintiff seeks penalties for alleged violations of the Labor Code and Industrial Welfare
20 Commission Wage Orders as set forth in the operative complaint and PAGA Notice, including but not
21 limited to Labor Code sections 132a, 201-204b, 210, 226, 226.7, 500, 510, 512, 1182.12, 1194 and 1198,
22 and Industrial Welfare Commission Wage Orders 2 and 3, of which 75% will be paid to the State of
23 California's Labor Workforce and Development Agency and 25% will be paid to the PAGA Employees
24 pursuant to Labor Code §2699(i). Plaintiff is also entitled to recovery of attorneys' fees and costs pursuant
25 to the PAGA. Labor Code §2699(g)(1).

26 Liability under the PAGA is triggered for each pay period Defendant allegedly failed to provide
27 a meal or rest period, allegedly failed to pay all proper wages due during employment, allegedly failed to
28 pay timely final wages, and allegedly failed to issue accurate and itemized wage statements. Defendant

1 need only to have violated the Labor Code at least once during a pay period to impose liability.

2 **D. PAGA Penalties**

3 Based on data produced, Plaintiff's counsel analyzed the data provided by Defendant, which
4 included 669 pay periods worked by 17 employees. Ramirez Decl. ¶13. Plaintiff used the damage model
5 based on the actual timekeeping and payroll data provided by Defendant for settlement purposes. *Id.*

6 For mediation purposes, PAGA penalties were calculated using the initial violation rate of \$100
7 per pay period each for each claim. In evaluating the total value of the PAGA penalties, Plaintiff had to
8 consider that the award of PAGA penalties is uncertain, because the actual award is within the Court's
9 discretion. As such, maximum exposure was discounted for several reasons, i.e., the risk of not proving
10 underlying violations, and Court's authority to reduce penalties, as long as not to "zero." *Thurman v.*
11 *Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th 1112, 1135. *See Carrington v. Starbucks*
12 *Corp.* (2018) 30 Cal. App. 5th 504, 517 (Plaintiff requested "nearly \$70 million in penalties," trial court's
13 \$150,000 award upheld on appeal). Ramirez Decl. ¶16-19.

14 The Court also has the authority to reduce or eliminate any civil penalty deemed punitive or
15 confiscatory under the circumstances. Labor Code §2699. Under all the circumstances here, regardless
16 of liability proven or damages awarded, it would be extremely unlikely to obtain the full amount of
17 PAGA penalties, and perhaps no award.

18 A Gross Settlement amount of \$33,450, with PAGA penalties of \$13,541.50 is a fair and
19 reasonable amount warranting approval. *Id.* The maximum realistic total exposure for PAGA civil
20 penalties was calculated for each claim as described below.

21 **1. PAGA Penalties for Unpaid Wages (Minimum and Overtime) – Lab. Code**
22 **§§ 500, 510, 1182.12, 1194, 1198**

23 Plaintiff's claim for failure to pay minimum and overtime wages is predicated on Defendant's
24 systematic payroll practices, including only paying Plaintiff and other Aggrieved Employees overtime if
25 they worked on Fridays. This practice clearly violates Labor Code section 510(a), which requires that
26 employees receive overtime pay for all hours worked over 8 hours in a day and 40 hours in a week.
27 Additionally, Defendant had a systematic payroll practice of failing to record all hours worked by Plaintiff
28 and the other Aggrieved Employees. As stated in Plaintiff's PAGA Notice, "[B]ecause not all of the time

worked by Employees has been/is being reported on the Employees' time record and/or paychecks, Employees have not been paid at least the minimum wage for all the time they actually worked for the Employer."

Plaintiff calculated the total maximum and reasonable exposure for civil penalties would be for this violation to be \$66,900 (669 pay periods x \$100). Ramirez Decl. ¶16-19.

2. Failure to Provide Compliant Meal and Rest Periods

Plaintiff alleged that allegedly Aggrieved Employees were not provided off-duty, uninterrupted, timely meal periods before the end of their fifth hour of work and similarly were not provided timely, off-duty rest periods in violation of Labor Code sections 226.7 and 512.

PAGA provides for a \$100 penalty rate for an initial violation and \$200 penalty rate for each subsequent violation per affected pay period pursuant to Labor Code section 2699(f)(2); a violation of Labor Code section 512 provides for a \$50 penalty rate per affected pay period pursuant to Labor Code section 558. Plaintiff used the default civil \$100 penalty provided by the PAGA for each of the underlying violations of the Labor Code per pay period. Plaintiff worked a total of seventeen (17) pay periods during the one-year PAGA statute of limitations.

Plaintiffs also calculated the civil penalty for failure to provide rest period. The failure to provide rest periods is a violation of Labor Code sections 226.7 and 512. Under Labor Code section 226.7, the PAGA provides for a \$100 penalty rate for an initial violation and \$200 penalty rate for each subsequent violation per affected pay period pursuant to Labor Code section 2699(f)(2). Accordingly, Plaintiff estimated Defendant's maximum exposure for civil penalties for the failure to provide meal periods in violation of Labor Code section 512 to be \$66,900 (669 pay periods x \$100). Ramirez Decl. ¶16-19. Plaintiff estimated Defendant's maximum exposure for civil penalties for the failure to provide rest periods in violation of Labor Code section 512 to be \$66,900 (669 pay periods x \$100). *Id.*

3. Wage Statements

Plaintiff alleged derivative violations of Cal. Labor Code section 226 based on the practices described above, Plaintiff is entitled to recover penalties provided by Labor Code section 226.3, which provides a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each subsequent citation, for which

the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. Cal. Labor Code § 226.3.

Derivative penalties could not be recovered due to a failure to pay meal period premium wages *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444; *Betancourt v. OS Restaurant Services, LLC* (2020) 49 Cal.App.5th 240.

In evaluating the amount of civil penalties potentially owed for allegedly failing to provide wage statements due to purportedly failing to pay all wages and record all hours worked, Plaintiff believed it would be unlikely to obtain both Labor Code section 226.3 penalties for derivative wage statement violations. Therefore, Plaintiff used the default \$100 penalty per pay period. Plaintiff estimated Defendant's maximum exposure for civil penalties violation of Labor Code section 226 to be \$66,900 (669 pay periods x \$100). Ramirez Decl. ¶16-19.

E. Judicial Discretion in Reducing Civil Penalties

Even though Defendant's potential exposure was initially calculated at \$267,600.00, this was calculated assuming that Plaintiff received 100% of the maximum rate for each violation. However, Plaintiff also had to consider the fact that PAGA penalties are subject to review and reduction at the Court's discretion. Courts routinely award far less than the statutory maximum amount of penalties, even where an underlying violation of the Labor Code is found. For example, in *Fleming v. Covidien*, the court calculated the civil penalties for an employer providing 8,000 non-compliant wage statements to be \$2.8 million (\$100 per violation). *Fleming v. Covidien, Inc.* (C. D. Cal. August 12, 2011) 2011 U.S. Dist. Lexis 154590 at *3-4, vacated and remanded in part on other grounds, 546 Fed. Appx. 616 (9th Cir. 2013). Although the court found that the employer had violated Labor Code section 226, it noted that none of the employees suffered any injury because of this non-compliance (and none complained of the issues prior to filing suit.) *Id.* Pursuant to Labor Code section 2699(e)(2), the court reduced PAGA civil penalties from \$2.8 million to \$500,000. *Id.*

In another PAGA case, Defendant's potential exposure on the alleged claims was discounted for risks which included not proving the underlying Labor Code violations, as well as the Court's authority to completely reduce penalties, as long as not to "zero." *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1135 (2012); *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018) (the

penalty rate was dropped to \$5.00 per pay period.)

Based on these risks, Defendant's potential exposure for PAGA penalties was reduced by approximately 25% to account for the risk associated with the judge's discretion to reduce penalties. Then, the amount of \$200,700.00 was discounted again by 50% to account for risks associated with litigation and proving the underlying claims at trial. Accordingly, Defendant's maximum reasonable exposure for liability for civil penalties was calculated to be \$100,350.00.¹ Ramirez Decl. ¶15.

This PAGA amount is within the range, or higher, than other settlements. See *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d at 1101, citing, among others, *Ceja-Corona v. CVS Pharm., Inc.*, 2015 U.S. Dist. LEXIS 5118 (E.D. Cal. Jan. 14, 2015) (\$10,000 PAGA penalties in settlement of \$900,000), recommendation adopted, 2015 U.S. Dist. LEXIS 25730 (E.D. Cal. Mar. 3, 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) (\$10,000 PAGA penalties, \$1.25m settlement); *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, *5-6 (E.D. Cal. Nov. 27, 2012) (\$10,000 PAGA penalties, \$2.5m settlement); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052 (E.D. Cal. Oct. 31, 2012) (\$10,000 PAGA, \$3.7m settlement).

VII. THE ATTORNEYS' FEES ARE REASONABLE AND SHOULD BE AWARDED

PAGA Counsel requests \$11,038.50 for their attorneys' fees, (33.33% of the Gross Settlement Amount), and up to \$1,650.00 in litigation costs. As of the date of the filing of this Motion and to bring this settlement to a final closure, PAGA Counsel will have incurred \$44,486.00 in attorneys' fees and \$10,361.97 in litigation costs. PAGA Counsel have worked 68 hours prosecuting this lawsuit and calculate the lodestar fee on those hours to be \$44,486.00. The hours expended were reasonable considering the complexity and duration of the litigation. Ramirez Decl. ¶20.

PAGA provides for reasonable attorneys' fees and costs, but "does not provide a specific standard for evaluating attorney's fees in connection with a settlement of PAGA claims." "Under Ninth Circuit [and California] law, the district court has discretion in common fund cases to choose either the percentage-of-the-fund or the lodestar method" to determine a reasonable attorney's fee." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Laffitte v. Robert Half International, Inc.*, 1 Cal.5th

¹Calculated as follows: \$267,600.00*.75 (25% discount) = \$200,700.00; \$200,700.00*.50 (50% discount) = \$100,350.00.

480, 503 (2016) *Ramirez, supra*, at *18. California trial courts may use cases applying Federal Rule 23 for guidance in class issues. *Vasquez v. Sup. Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. “Despite its primacy, the lodestar method is not necessarily utilized in common fund cases.” *Lealao v. Beneficial California, Inc.*, 82 Cal.App.4th 19, 27 (2000).

The California Supreme Court affirmed the granting of attorneys’ fees in common fund cases based on a percentage of the recovery. *Laffitte, supra*, at 503. A fee award based on a percentage of the common fund recovery here is proper as it spreads the attorneys’ fees among all beneficiaries of the fund, aligns the incentives between Plaintiff’s counsel, the State, and the aggrieved employees, is a better approximation of the market conditions in a contingency case, and encourages counsel to seek early settlement and avoid unnecessarily prolonging the litigation. *Id.* The Court also approved an optional lodestar cross-check. *Id.* at 504.

A. The Results Achieved Support the Fee Request

The most important factor to consider in granting a fee award is the success obtained. *In re Heritage Bond Litig. v. U.S. Trust Co. of Tex., N.A.*, No. 02-ML-1475 (RCx), 2005 U.S. Dist. LEXIS 13627, at *27 (C.D. Cal. June 10, 2005) (citing *Hensley v. Eckerhart*, 461 U.S. 424 (1983)). In the face of uncertainties associated with continued litigation of Plaintiff’s claims, Defendant’s vigorous denials and affirmative defenses, there is no question the results achieved are excellent. Counsel fulfilled the purpose of PAGA by obtaining \$33,450.00 in penalties to distribute to the State, the LWDA for enforcement and education, and to the Aggrieved Employees, as well as to compensate the PAGA Counsel representing the interests of the State.

B. Attorneys’ Fees of 33.33% of the Settlement Payment is a Reasonable Fee

Several studies of class action fee awards have found the median common fund fee award is approximately one-third of the total settlement fund. See, e.g., *Chavez v. Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 66, n.11 (numerous studies have shown that “fee awards in class actions average around one-third of the recovery.”); Reagan W. Silber and Frank E. Goodrich, Common Funds and Common Problems: Fee Objections and Class Counsel’s Response, 17 Rev. Litig. 525, 546 (1128); T. Willging, L. Hooper and R. Niemic, Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules, 90 (1126) (finding attorneys’ fees in class litigation “were

generally in the traditional range of approximately one-third of the total settlement”).

PAGA Counsel’s request for 33.33% of the common fund created falls in the lower range of fee percentage awards which commonly range from 20% to 50% of a common fund. The requested sum constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation, strictly on a contingent basis, and for the results achieved for the State, and the Aggrieved Employees, as well as Defendant’s current and future employees. Numerous state and federal courts in California routinely approve fee requests equal to or more than the amount sought here. Some courts have found an award of 33% of the common fund represents the “benchmark” in California. *Smith v. CRST Van Expedited, Inc.*, 10-CV-1116- IEG WMC, 2013 WL 163293, *5 (S.D. Cal. Jan. 14, 2013) (“These percentages compare favorably with” the California (33%) benchmark.); *Dennis v. Kellogg Co.*, 09-CV-1786-L WMC, 2013 WL 6055326, at *7 (S.D. Cal. Nov. 14, 2013). PAGA Counsel’s fee request is in line with awards in similar cases in and demonstrates PAGA Counsel’s fee request is consistent with market rates and is reasonable.

C. PAGA Counsel’s Hourly Rates Are Reasonable

Counsel is entitled to hourly rates charged by attorneys of comparable experience, reputation, and ability for similar litigation. *Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001); *Children’s Hospital and Med. Center v. Bonta*, 97 Cal.App.4th 740, 783 (2002). When determining reasonable hourly rates, Courts may consider the attorney’s skill and experience, nature of the work performed, relevant area of expertise, and customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal.App.4th 629, 632 (1128). Prior awards of counsel’s rates are strong evidence of reasonableness. *Margolin v. Regional Planning Commission*, 134 Cal.App.3d 999, 1005 (1982).

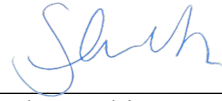
PAGA Counsel’s skill and experience support their hourly rates and are in line with rates typically approved in wage and hour class action and representative action litigation in California.

VIII. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests the Court approve the PAGA Settlement. PAGA Counsel will provide this PAGA Approval Motion to the Labor Workforce and Development Agency as required, via its website on the date the motion is served and filed with the Court.

1 DATED: April 1, 2025

2 **LAUREL EMPLOYMENT LAW**

3 

4 Joshua White, Esq.

5 Sharon Ramirez, Esq.

6 Attorneys for Plaintiff, Armando Venegas



Make a Reservation

ARMANDO VENEGAS vs PREMCO FORGE, INC.

Case Number: 24STCV20698 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2024-08-15 Location: Stanley Mosk Courthouse - Department 40

Reservation

Case Name:
ARMANDO VENEGAS vs PREMCO FORGE, INC.

Case Number:
24STCV20698

Type:
Motion to Confirm Settlement

Status:
RESERVED

Filing Party:
Armando Venegas (Plaintiff)

Location:
Stanley Mosk Courthouse - Department 40

Date/Time:
05/09/2025 9:00 AM

Number of Motions:
1

Reservation ID:
923586362599

Confirmation Code:
CR-ZAHTNEZHZUJPAZEQB

Fees

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

Payment