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GREGORY BROWN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

GREGORY BROWN, an individual, and on behalf of other members of the general public similarly situated

Plaintiff,

vs.

BIXPY, LLC, a California Limited Liability Company; HOUMAN NIKMANESH, an individual; and DOES 1 through 10, Inclusive,

Defendant(s).

Case No. 24CU009376C

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

Action Filed: September 4, 2024

Hearing Date: September 12, 2025
Hearing Time: 9:00 a.m.
Dept.: C-60
Judge: Hon. Matthew C. Braner

I. SUMMARY OF MOTION

Plaintiff GREGORY BROWN ("Plaintiff"), respectfully submits the following Memorandum of Points and Authorities in support of his motion for an order granting approval of a PAGA Settlement. This motion is **unopposed**. The LWDA was timely notified of this proposal and does **not** object.

This case involves PAGA and individual claims. The PAGA Period begins on July 1, 2023. There are approximately **189** pay periods and **10** aggrieved employees. (Declaration of Samuel F. Rotshtein ("Rotshtein Decl." herein) ¶ 3). After the parties exchanged written discovery and conducted one deposition, a pathway for resolution of the matter became apparent. (Rotshtein Decl. ¶ 4). Resolution efforts were commenced and the parties were able to reach a settlement. *Id*. Thereafter, the parties drafted and executed the PAGA Settlement Agreement and Release of Paga Action. (*Id*.; the "Agreement" attached hereto as **Exhibit A**). The proposed terms of the settlement are as follows:

PAGA Members:	10
Settlement Fund ("GSA"):	$1,000.00
Claims Period:	July 1, 2023 until the date of approval
LWDA Payment:	$650.00
Attorney's Fees:	$0
Litigation Costs:	$0
Settlement Administrator Fees:	$0
Resultant Net Settlement Fund:	$350.00

An "average" PAGA employee will receive a payment of approximately **$35.00**. **(**Rotshtein Decl. ¶ 8).

On August 18, 2025, Plaintiff's counsel uploaded via the LWDA's electronic filing portal, the PAGA Settlement Agreement. (Rotshtein Decl. ¶ 5; "LWDA Notice of Settlement," attached hereto as **Exhibit B.**) To date, Plaintiff's counsel has not received a notice that the LWDA would intervene. *Id*.

On August 18, 2025, Plaintiff's counsel uploaded via the LWDA's electronic filing portal, copies of this entire Motion, including the Notice, this supporting Memorandum, Declaration, Proposed Order & Judgment, and PAGA Settlement Agreement. (Rotshtein Decl. ¶ 6; **Exhibit B**.) To date, Plaintiff's counsel has not received any opposition from the LWDA. *Id*. If the LWDA contacts Plaintiff's counsel at any time prior to the September 12, 2025 hearing, Plaintiff's counsel will provide an updated declaration to the Court. (Rotshtein Decl. ¶ 7).

The settlement agreement only covers PAGA claims. (Rotshtein Decl. ¶ 8; Exhibit A: I.17).

The Parties now move the court for approval of the PAGA Settlement Agreement.

II. <u>CONTROLLING LAW</u>

PAGA "authorizes an employee to bring an action for civil penalties on behalf of the state against his or her employer for Labor Code violations committed against the employee and fellow employees." *Iskanian v. CLS Trans. Los Angeles* (2014) 59 Cal. 4th 348, 360. "To compensate for the lack of [a]dequate financing of essential labor law enforcement functions" the California legislature enacted PAGA to permit aggrieved employees to act as a private attorneys general to collect civil penalties for violations of the Labor Code." *Sakkab v. Luxottica* (9^{th} Cir. 2015) 803 F.3d 425.

Statutory penalties would be calculated according to Labor Code 2699(f)(2)(A)-(B): If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period if either within the five years preceding the alleged violation, the agency or any court issued a finding or determination to the employer that its policy or practice giving rise to the violation was unlawful or the court determines that the employer's conduct giving rise to the violation was malicious, fraudulent, or oppressive.

Further, a court may award a lesser amount than the maximum civil penalty amount if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory. Lab. Code, § 2699(e)(2); *Amaral vs. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213-1214; *See e.g., Fleming v. Covidien Inc*., 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011)

"The superior court shall review and approve any settlement of any civil action filed pursuant to [PAGA]." Cal. Lab. Code § 2699(s)(2). In doing so, the Court must consider whether the proposed "PAGA settlement is fair and adequate in view of the purposes and policies of the statute." *O'Conner v. Uber Techs., Inc.* 201 F. Supp. 3d 1110, 1135 (N.D. Cal. 2016). Those purposes and policies include "benefit[ting] the public by augmenting the state's enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance," Id. at 1132-33; *Accord Syed v. M-I LLC*, 2017 WL 714367 at *13 (E.D. Cal. Feb. 22, 2017)(concluding the "settlement related to plaintiffs' PAGA claims is fair, reasonable, and adequate in light of the public policy goals of PAGA.")

Recently the Court of Appeal has given guidance to trial courts in reviewing a PAGA settlement:

> We therefore hold **that a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws**. (See *Williams , supra* , 3 Cal.5th at p. 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA "sought to remediate present violations and deter future ones"]; *Arias , supra* , 46 Cal.4th at p. 980, 95 Cal.Rptr.3d 588, 209 P.3d 923 [the declared purpose of PAGA was to augment state enforcement efforts to achieve maximum compliance with labor laws].)

Moniz v. Adecco USA, Inc., (2021) 72 Cal. App. 4th 56, 77.

Prior to *Moniz*, Other Courts have followed the rationale in *O'Connor v. Uber Techs., Inc.,* 201 F.Supp.3d 1110, 132-35 (N.D. Cal. 2016), which states a court is permitted to approve a PAGA settlement if the settlement is "fair and adequate in view of the purposes and policies of the statute." *Id*.

In deciding whether the settlement was "fair and adequate," the *Flores* court sought how the parties divvied up the civil penalties under Section 2699(i) of the California Labor Code. *Flores* at 1076-77. As the court felt the parties' division of penalties was fair and adequate pursuant to the statute, the court approved the settlement. *Id*.

III. DISCUSSION

The Parties reached the terms of their proposed PAGA Settlement Agreement, following their successful resolution efforts. Rotshtein Decl. ¶ 10. The Parties submit the proposed settlement of PAGA penalties is fair, adequate, and reasonable. *Id.* The Parties are unaware of any other cases that may be impacted by the PAGA Settlement. *Id.*

A. Settlement Terms

The group of allegedly aggrieved employees is defined as any and all person employed by Defendant in California and classified as a non-exempt hourly employee who worked for Defendant during the PAGA period, from July 1, 2023, through the date of the Court's Order granting approval of the PAGA settlement. ("Effective Date"). Rotshtein Decl. ¶ 4; Exhibit A: I. 2.

Upon the Effective Date (Rotshtein Decl.¶ 4; Exhibit A: I. 5.), Defendants agree to pay the settlement amount of $1,000.00 in connection with the PAGA Settlement ("Gross Settlement Amount"). , Defendants shall not be required to pay more than the Gross Settlement Amount in connection with the PAGA Settlement. The Gross Settlement Amount is broken down as follows:

- $0 Settlement Administrator Fees;
- $0 Attorneys' Fees (1/3 of Gross Settlement Amount)
- $0 Costs of Litigation (Rotshtein Decl. ¶ 4.)

The Parties agreed to remain intact the net Settlement Fund and forego attorneys' fees and costs of litigation for the benefit of the Aggrieved Employees. (Rotshtein Decl. ¶ 11). Further, the parties agreed that, given the minimal number of Aggrieved Employees, Defendant will personally disburse the payment in an effort to reduce administration cost. *Id*. The sum of $1,000.00 will be defined as the "PAGA Payment." *Id*. One hundred percent (100%) of the PAGA Payment shall be allocated to the payment of civil penalties. Pursuant to the PAGA, sixty-five percent (65%) of the PAGA Payment, or Six Hundred and Fifty Dollars and Zero Cents ($650.00) shall be allocated to the State of California Labor and Workforce Development Agency (the "LWDA PAGA Payment"), with the remaining thirty-five percent (25%) or Three Hundred and Fifty Dollars and Zero Cents ($350.00), allocated to the PAGA Employees ("Aggrieved Employees PAGA Payments"). (Rotshtein Decl. ¶ 4, 11).

Given the above, the average payment to each individual PAGA Employee will be approximately Thirty-Five Dollars and Zero Cents ($35.00). (Rotshtein Decl. ¶ 8). Pursuant to the PAGA Settlement Agreement, any funds not collected within one hundred eighty days (180) from the date of issuance will be sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law. (Rotshtein Decl. ¶ 4; Exhibit A § IV. 3).

Each PAGA Employee's pro rata share shall be determined based on the number of Eligible Pay Periods that he or she worked for Defendants during the PAGA Period, and shall be calculated as follows: (1) for PAGA Employees, the Aggrieved Employees PAGA Payments will be divided by the total number of eligible pay periods worked by all PAGA Employees during the PAGA Period, and the resulting figure will be referred to as the "Multiplier," and (2) each PAGA Employee's pro rata share of the Aggrieved Employees PAGA Payments will be determined by multiplying the Eligible Pay Periods that the PAGA Employee worked during the PAGA Period by the multiplier. Rotshtein Decl. ¶ 4; Exhibit A: 1.10. That amount shall be referred to as the PAGA Employee's "Individual Settlement Payments." (Rotshtein Decl. ¶ 4; Exhibit A: III. 2).

Further, the Settlement only covers PAGA claims. (Rotshtein Decl. ¶ 4; Exhibit A: III. 3). ("Released Claims").

The proposed notice of the PAGA Settlement to be sent to the allegedly aggrieved employees (the "Notice") along with his or her Individual PAGA Payment is attached to the Declaration of Samuel F. Rotshtein as **Exhibit C**. Based on the nature of Defendant's workforce, the Notice will be provided in English. *Id*.

The Defendant shall be responsible for: (a) processing the employee data and calculating PAGA Employees' Individual PAGA Payments; (b) preparing, printing and delivering the PAGA Payment (by hand if still employed, or mail if no longer employed) to the Aggrieved Employees; (d) filing any required federal and state tax forms and related agency reporting; (e) filing any required reports with the Court; and (f) any and all such tasks to which the Parties mutually agree, or which the Court orders Defendant to perform. (Rotshtein Decl. ¶ 4, 13 Exhibit A: IV. 3).

The Court will retain jurisdiction of this matter to enforce the settlement pursuant to C.C.P. section 664.6. (Rotshtein Decl. ¶ 4; Exhibit A §§ III. 10)

B. The Nature and Scope of the Alleged Violations

The Complaint alleges Labor Code violations which triggered penalties under the PAGA statute (Labor Code §2698 et seq.) (See ROA #1.) Plaintiff's theories of liability alleged all employees were denied compliant meal and rest periods, minimum wages, overtime, accurate wage statements, and suffered waiting time violations. *Id.* Specifically, Plaintiff alleged he—and other employees—were not properly compensated due to Defendants' standard practice to only compensate employees for their scheduled work time as opposed to their actual work time. *Id.*

C. Analysis of Potential Liability, on a Representative Basis

One of the main issues of this litigation concerned allegations that Plaintiff was denied legally compliant meal and rest periods and was not paid for all overtime hours worked. Rotshtein Decl. ¶ 16. Defendants argued employees received compliant rest and meal breaks, that employees were gratuitously paid an extra hour of pay without any obligation to do so, and were properly paid overtime. *Id.*

Plaintiff's counsel is aware of the Court's discretion to mitigate penalties pursuant to California Labor Code section 2699(e)(2). Rotshtein Decl. ¶ 17. Plaintiff's counsel agrees with the provision of the Labor Code, that penalties should be mitigated where violations are minimal (or rare), or where the employer makes significant efforts to comply with the Labor Code. Rotshtein Decl. ¶ 18. Given Defendants' arguments that they provided legally compliant meal and rest periods, and paid employees for all hours worked, including overtime, the Parties believe the settlement represents a fair and adequate payment. *Id*.

D. Allocation of Penalties and *Limited Release* of Claims

While Labor Code section 2699(l) requires a court to "review and approve any penalty sought as part of the proposed settlement agreement," it does not provide any guidance as to what is considered an 'adequate' allocation of these penalties. However, the California Court of Appeal has upheld than an allocation of **zero dollars** to resolve PAGA claims may be appropriate:

> The Nordstrom Commission Cases settlement agreement identifies liability for PAGA penalties as a claim against Nordstrom and includes the following language: "The Parties allocate $0 to any Private Attorney General Act penalty claim under Labor Code § 2699 et seq., for penalty claims based on the Released Claims. During the Class Period, Nordstrom paid Putative Class Members' commissions pursuant to a commission plan that it contends was approved by the United States District Court in *Rios*, and consequently Nordstrom contends no claim for penalties of any nature is valid." Thus, the PAGA penalty claims were at issue, and were resolved as part of the

> overall settlement of the case. We find no abuse of discretion in the trial court's approval of the settlement agreement containing these terms.

Nordstrom Com'n Cases (2010) 186 Cal.App.4th 576, 589.

Moreover, District Courts in California have routinely approved settlement agreements, which allocate **less than 1%** of the overall settlement amount to PAGA penalties. *See, e.g.,Chu v. Wells Fargo Investments, LLC* (N. D. Cal., Feb. 16 2011, No. C 054526MHP) 2011 WL 672645 at *1 (approving allocation of $10,000 to park at penalties out of us $6,900,000 settlement); *see also Schiller v. David's Bridal, Inc.* (E.D. Cal June 11, 2012, No, 1:10 CV 00616 AWI) 2012 WL 2117001 at *14. (approving allocation of $7,500 to PAGA penalties out of $518,245 settlement).

Defendants, and their counsel, deserve credit for their willingness to consider – and address – the allegations. Specifically, Defense Counsel, (who have extensive experience and knowledge in "Wage and Hour" litigation) engaged Plaintiff's counsel in good faith arms-length negotiation to resolve the matter prior to protracted litigation commencing. Following successful settlement efforts, the parties have reached a proposed settlement. That includes a payment of penalties under PAGA. (Rotshtein Decl. ¶ 19).

Here, the parties seek to allocate **$1,000.00** of the Gross Settlement Amount to the total value of the PAGA Penalties. Of this amount, the LWDA will receive **$650.00**. (Rotshtein Decl. ¶ 11; Exhibit A §§ IV. 2, 3). The remaining **$350.00** will be allocated and distributed among the PAGA Employees. *Id.* Each PAGA member would receive an average payment of approximately **$35.00**. *Id*.

The Parties contend the PAGA Settlement agreement amount is fair, adequate, and reasonable. (Rotshtein Decl. ¶ 10). The release only applies to the PAGA claims for penalties, based upon the allegations in Plaintiff's operative complaint. (Rotshtein Decl. ¶ 9).

E. The LWDA Was Notified Multiple Times, And Does *Not* Object.

On August 18, 2025, Plaintiff's counsel uploaded via the LWDA's electronic filing portal, the PAGA Settlement Agreement. (Rotshtein Decl. ¶ 5). To date, Plaintiff's counsel has not received a notice that the LWDA would intervene. *Id*.

On August 18, 2025, Plaintiff's counsel uploaded via the LWDA's electronic filing portal, copies of this entire Motion, including the Notice, this supporting Memorandum, Declaration, Proposed Order & Judgment, and PAGA Settlement Agreement. Rotshtein Decl. ¶ 6. To date, Plaintiff's counsel has not received any opposition from the LWDA. *Id*. If the LWDA contacts Plaintiff's counsel at any time prior to the September 12, 2025, hearing, Plaintiff's counsel will provide an updated declaration to the Court. Rotshtein Decl. ¶ 7.

IV. CONCLUSION

The Parties have negotiated a fair, adequate and reasonable settlement of the PAGA claims. For the foregoing reasons, Plaintiffs respectfully request that this Court issue an Order Granting their Motion for Approval of the PAGA Settlement.

Dated: August 18, 2025

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