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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

ROBERT HOUSTON JR., on behalf of himself, and all others similarly situated, and on behalf of the general public,

Plaintiff,

vs.

POWER MACHINERY CENTER, a California Corporation, and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: BCV-24-104326

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF ROBERT HOUSTON JR.'S MOTION FOR APPROVAL OF PAGA SETTLEMENT

Date: October 28, 2026
Time: 8:30 a.m.
Dept.: Division J
Judge: Hon. Gregory Pulsksmp

I. INTRODUCTION

Plaintiff ROBERT HOUSTON JR. ("Plaintiff") seeks the Court's approval, pursuant to Labor Code section 2699(l), of a settlement of Plaintiff's claims under the Labor Code's Private Attorneys General Act ("PAGA"), arising from Defendant POWER MACHINERY CENTER's ("Defendant") alleged failure to: (1) provide legally compliant meal breaks or pay premium wages for any missed or legally noncompliant breaks; (2) provide legally compliant rest breaks or pay premium wages for any missed or legally noncompliant breaks; (3) pay all minimum and overtime wages due; (4) issue accurate, itemized wage statements; (5) timely pay wages during employment; (6) timely pay all wages due at the separation of employment; (7) pay all accrued and vested vacation/PTO wages; and (8) reimburse for business expenses, as described more fully below and in the PAGA Settlement Agreement ("Settlement Agreement"). For the reasons explained below, Plaintiff respectfully requests that the Court approve the Settlement.

II. FACTS & PROCEDURAL HISTORY

On October 9, 2024, Plaintiff sent a PAGA Notice to the Labor Workforce and Development Agency ("LWDA") with a copy to Defendant. (Otkupman Decl., ¶ 12, Exhibit 1)

On December 17, 2024, Plaintiff filed a class and representative action complaint alleging eleven (11) causes of action, including a cause of action for penalties pursuant to Labor Code section 2699(f) for violations of Labor Code sections 226.7, 512, 558, 510, 1194, 1194.2, 1194(a), 226(a), (e), 1174(d), 201-203, 204(a), (b), 2802, 227.3, 210, and 218. (Otkupman Decl., ¶ 13)

In the instant action, Plaintiff alleges that he and other allegedly aggrieved employees ("Aggrieved Employees") were routinely unable and not authorized to take their meal and rest breaks and were never paid the mandatory premiums for these missed breaks; were not properly compensated for all minimum and overtime hours worked; were not paid all of their wages in a timely manner; were not paid all final wages due at termination or within seventy-two (72) hours after separation; were not provided accurate, itemized wage statements; were not paid all vested/accrued vacation and PTO wages, and were not reimbursed for business expenses. Defendant denies all allegations and denies any liability, including in any way through the Settlement or this motion or any part hereof. (Otkupman Decl., ¶ 14)

Prior to engaging in mediation, the Parties exchanged extensive documents and information that allowed both sides to thoroughly evaluate the potential exposure and potential risk, including review of Defendant's policies and procedures related to the claims alleged and time and pay records, among others. Specifically, Plaintiff obtained, through informal discovery, statistical data including records of Aggrieved Employees, which consisted of wage statements, clock-in and clock-out times, times taken for meal breaks, wages earned during the relevant pay periods, written policies and procedures on meal breaks, rest breaks, and overtime compensation, the number of pay periods in the PAGA Period and the total number of Aggrieved Employees. (Otkupman Decl., ¶ 15)

Following discovery and investigation, Plaintiff and Defendant participated in an all-day mediation presided over by mediator Allison Eckstrom, Esq., on April 20, 2026, and reached a settlement of Plaintiff's individual Labor Code claims and the PAGA claim alleged in the Complaint, which is memorialized in the Parties' PAGA Settlement Agreement attached as Exhibit 2 to the Declaration of Roman Otkupman filed herewith. (Otkupman Decl., ¶ 16, Exhibit 2.) Based on the foregoing data and an independent investigation and evaluation, Plaintiff's Counsel is of the opinion that the settlement with Defendant for the consideration and terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the LWDA and the Aggrieved Employees in light of all known facts and circumstances, including the risk of significant delay, uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues. (Otkupman Decl., ¶ 17)

From the beginning, Defendant has contested the merits of this Action, including Plaintiff's ability to prove a violation in each pay period for each Aggrieved Employee, and, assuming arguendo any violations, updates to policies and procedures which Defendant contends would engender drastic reductions in PAGA penalties under the 2024 amendments to PAGA, among other defenses. Defendant further contends that, even assuming there was a finding supporting the imposition of PAGA penalties, the Court would likely exercise its discretion to substantially reduce any such penalties owed based on Defendant's alleged good-faith attempt to comply with the Labor Code. Notwithstanding the agreement to settle, Defendant maintains that the practices Plaintiff is contending are unlawful either do not exist, fully comply with all applicable employment laws,

and/or – even assuming arguendo that any violations exist – updates to Defendant's policies and procedures would otherwise drastically reduce any penalties under the 2024 amendments to PAGA legislation. (Otkupman Decl., ¶ 18)

With the mediator's assistance, the Parties have reached a settlement of the claims of Aggrieved Employees, defined as: All current and former non-exempt employees of Defendant who worked for Defendant in California at any time during the PAGA Period (October 9, 2023 through June 21, 2026). (Settlement Agreement, ¶¶ 1.4, 1.21)

III. SETTLEMENT RESULTS

A. Material Terms of the Settlement

1. The Payment

The Settlement Agreement provides for a Gross Settlement Amount of $185,000.00 to settle the PAGA claim (the "Gross Settlement Amount"). (Settlement Agreement, ¶ 1.11) This Settlement amount includes the Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Enhancement Payment to Named Plaintiff, and the Administrator's Expenses Payment. (*Id.*) Pursuant to the Settlement Agreement, after deducting the PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Enhancement Payment to Named Plaintiff, and the Administration Expenses Payment from the Gross Settlement Amount, thirty-five percent (35%) of the remaining funds will be distributed to the Aggrieved Employees who will receive a pro rata share according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period, and sixty-five percent (65%) of the remaining funds will be paid to the LWDA. (Settlement Agreement, ¶ 1.24)

2. PAGA Counsel Fees Payment, Litigation Expenses Payment, Enhancement Payment to Named Plaintiff, and Administration Expenses Payment

The Settlement provides that the amount awarded to Plaintiff's Counsel for attorney's fees shall not exceed thirty-five percent (35%) of the Gross Settlement Amount, which amounts to $64,750.00, and the amount awarded to Plaintiff's Counsel for out-of-pocket litigation costs and expenses shall not exceed $20,000.00. (Settlement Agreement, ¶ 3.2(a), (b)) Plaintiff's Counsel's costs are $11,822.12. (Otkupman Decl., ¶ 39, Exhibit 6) The Settlement also provides for an

Enhancement Payment to Named Plaintiff in an amount not to exceed $2,500.00, and a payment to the Administrator for settlement administration costs, in an amount not to exceed $10,000.00. (Settlement Agreement, ¶ 3.2 (c), (d)) The Parties have obtained a bid from Phoenix Settlement Administrators ("Phoenix") for administration costs in the amount of $3,250.00. (Otkupman Decl., ¶ 41, Exhibit 7)

3. Notice To The LWDA

Plaintiff submitted the Settlement Agreement to the LWDA prior to filing this Motion. (Otkupman Decl. ¶ 28, Exhibit 3) Plaintiff further gave notice of the instant Motion and hearing date to the LWDA and will serve this Motion on the LWDA. (Otkupman Decl. ¶ 28, Exhibit 4)

4. No Objection Received from LWDA

Plaintiff submitted the Settlement Agreement to the LWDA. (Otkupman Decl. ¶ 28, Exhibit 3) The LWDA has not objected to the Settlement to date. (Otkupman Decl. ¶ 28)

5. The Released Claims

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including PAGA claims arising under California Labor Code sections 201-204, 210, 218, 226(a), 226(e), 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197.1, 1198, 2802, and all applicable IWC Wage Orders. (Settlement Agreement, ¶ 5.2.) The Released Parties include Defendant and each of its former and present directors, officers, shareholders, owners, members, managers, agents, employees, attorneys, insurers, employees, independent contractors, predecessors, successors, parents, assigns, subsidiaries, affiliates, related entities or representatives of any kind. (Settlement Agreement, ¶ 1.28.)

6. Administration Process

The Settlement provides for a neutral administrator to distribute the funds to the Aggrieved Employees. (Settlement Agreement, ¶ 7) The Settlement Agreement provides for up to $10,000.00

to be allocated to the administrator. (Settlement Agreement, ¶ 3.2(c)) The Parties have obtained a bid from Phoenix for administration costs in the amount of $3,250.00, which was the lowest of three (3) bids the Parties obtained. (Otkupman Decl., ¶ 41, Exhibit 7)

IV. ARGUMENT

A. Standard of Review

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." While PAGA does not specify a standard of review, existing law provides guidance. Plaintiff contends, and for purposes of this Motion Defendants do not contest, that the Court should look to: (1) the standard of review used in analogous statutory schemes; and (2) the purposes and policies of PAGA.

A PAGA case is in the nature of a *qui tam* proceeding. *Iskanian v. CLS Transp. Los Angles LLC* (2014) 59 Cal. 4th 348, 394. California has at least two other statutory schemes whereby an individual may sue on behalf of the State or in the public interest: The California False Claims Act and Proposition 65. Under both schemes, a court must approve a settlement or dismissal of the action.

Under the California False Claims Act, a *qui tam* plaintiff may only dismiss the case with a court's (and the government's) consent. Gov't. Code § 12652(c)(1). In deciding whether to give consent, a court must take into account "the best interests of the parties involved and the public purposes behind the act." *Id.* Moreover, if a *qui tam* plaintiff objects to a settlement between the government and a defendant, the court can only approve the settlement after finding it is "fair, adequate, and reasonable under all the circumstances." Gov't Code § 12652(e)(2)(B).

Similarly, Proposition 65 actions, like PAGA actions, are brought by private plaintiffs to safeguard public rights. *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App. 4th 46, 63. In addition to complying with specified statutory criteria, Proposition 65 settlements may only be approved if: (1) they are "just" and (2) they "serve the public interest." *Id.* at 61-62. In making this determination, the *Kintetsu* court described the appropriate inquiry as similar to the "fair, reasonable, adequate" test used in class actions. *Id.* at 61. The Kintetsu court also stated that, in determining whether to approve a Proposition 65 settlement, a court should consider

the policies underlying the statute. *Id.* at 63.

B. <u>The Purposes and Policies of PAGA</u>

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." 2003 Cal. Legis. Serv. Ch. 906 § (1)(a). The Legislature 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.* at § 1(b). 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, attorney's 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 employees 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." Labor Code § 90.5(a).

In light of the above law, as well as the policies and purposes of PAGA, Plaintiff proposes (and for purposes of this Motion, Defendant does not contest) that the Court consider the following factors in determining whether to approve the settlement:

(1) The extent to which the settlement achieves compliance with state labor laws;

(2) The extent to which the settlement deters violations of state labor laws;

(3) Whether the settlement serves to enlist private citizens in public enforcement of PAGA; and

(4) Whether the settlement is otherwise "just" and "in the public interest."

Because the proposed settlement reasonably and fairly advances each of the above factors,

the Parties ask that it be approved.

C. The Settlement Should Be Approved

1. The Settlement Achieves Compliance With and Deters Violations of State Labor Laws

As described above, Defendant has agreed to pay a substantial sum in settlement of the PAGA claim. (Settlement Agreement, ¶ 1.11) This payment represents a meaningful sum that serves PAGA's purpose of achieving compliance with the Labor Code and deterring similar violations. (Otkupman Decl., ¶ 27)

2. The Settlement Serves to Enlist Private Citizens in Public Enforcement of PAGA

The proposed settlement acts to encourage private enforcement of PAGA. Through the settlement, Plaintiff's counsel will receive attorney's fees and costs as determined by the Court, Plaintiff will receive a modest Enhancement Payment, and all Aggrieved Employees will receive a share of the Net Settlement Amount. (See Settlement Agreement).

3. The Settlement Is "Just" and "In the Public Interest"

Finally, the proposed settlement is both just and in the public's interest. While Plaintiff believes the claims are meritorious and that he would have recovered unreduced penalties, Defendant has asserted numerous defenses to the claims. (Otkupman Decl., ¶¶ 18-20)

In accordance with the PAGA, the court in a PAGA action has discretion "to assess a civil penalty" that the Labor Commissioner would have, as well as complete discretion to "award a lesser amount than the maximum civil penalty amount specified [by the PAGA] 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." (Labor Code § 2699(e)(1) and (e)(2))).

Furthermore, there is a substantial risk that the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence that Defendant intentionally violated the law. These uncertainties increase Plaintiff's risk of pursuing the PAGA claims and required a reduction in Plaintiff's appraisal of Defendant's potential exposure for settlement purposes. Likewise, where the employer does not act willfully, and makes good faith attempts to comply with

wage and hour laws, a reduction or lesser penalty is warranted because imposing maximum PAGA penalty for each violation could be seen as unjust, arbitrary, and oppressive. (*Carrington v. Starbucks Corp*., *supra*, 30 Cal.App.5th at 528-529.) (affirming trial court's award of only 10% of maximum PAGA penalty for meal break violations). The amount to be paid to the LWDA under this settlement comports with PAGA settlement amounts approved by other courts. (Otkupman Decl., ¶¶ 23-25)

Assuming liability was found as set forth above after accounting for the potential risks, the overall PAGA penalties in this case may also be reduced under the discretionary authority provided to the Court pursuant to California Labor Code section 2699(e)(2). Furthermore, Defendant appears to have adopted a number of policies and practices covering the wage and hour issues being litigated, which a Court may find shows a good faith attempt to comply with the law, meriting a reduction of civil penalties. The statutorily authorized discretion that courts have used to reduce penalties ranges substantially. *See, e.g., Thurman v. Bayshore Transit Mgmt., Inc*., 203 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction). (Otkupman Decl., ¶ 26)

Plaintiff believes the Settlement is favorable for Plaintiff and the Aggrieved Employees, providing a remedy consistent with what the employees could expect to receive if they prevailed at trial, but without the lengthy delay and risk of loss that a trial and subsequent appeal would entail. The settlement terms represent a compromise of the Parties' disputes and are fair, adequate and reasonable to the representative group given the risks that both sides faced in the litigation. Thus, Plaintiff believes that the Settlement provides for a fair, adequate, and reasonable resolution of the Representative PAGA claim. (Otkupman Decl., ¶ 27)

Moreover, the settlement provides a substantial sum to the State. It also provides a small sum to each employee on a pro rata basis. Furthermore, public policy strongly favors the settlement of litigation. *Consumer Advocacy Group v. Kintetsu*, supra 141 Cal. App. 4th at 63. Because the proposed settlement is neither unjust nor ignores the public interest, is should be approved.

4. <u>Sufficiency of Amount of Settlement</u>

Plaintiff determined the maximum PAGA exposure to be $280,000.00. The Parties settled

this matter for $185,000.00, which is approximately 66% of the maximum exposure. (Otkupman Decl., ¶ 27)

The maximum exposure is based upon an analysis of a 100% violation rate. While this would be unlikely, even for purposes of the maximum exposure, Plaintiff calculated the PAGA liability at 100%. Plaintiff used the data provided by Defendant and determined that there were 2,800 pay periods in the PAGA Period, Since the Labor Code allows for a maximum exposure of $100 per pay period, and there are 2,800 PAGA pay periods, the maximum exposure was calculated to be $280,000.00. PAGA claims are subject to a one-year statute of limitations, and penalties can be received for a period of one year prior to the date notice is sent to the LWDA. Unless a Labor Code provision provides for a specific civil penalty, PAGA imposes a default civil penalty of "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 for each subsequent violation." Cal. Lab. Code § 2699(f)(2). Here, Plaintiff's appraisal of Defendant's potential PAGA penalties was reduced by using only initial violation rates, based on Defendant's argument that heightened penalties would not apply for violations that occurred before Defendant was notified by the Labor Commissioner or any court that it had violated the Labor Code provisions at issue. (Otkupman Decl., ¶ 27)

Defendant's defenses to liability are an important basis for validating the reasonableness of the settlement amount. Defendant has consistently maintained it has ample legal and factual grounds for defending this action. (Otkupman Decl., ¶ 19)

In addition to the defenses on the merits, Plaintiff considered Defendant's position that PAGA penalties are discretionary in nature and that even if Plaintiff was successful at trial, the Court has discretion to significantly decrease the amount of damages awarded in this PAGA action. (Otkupman Decl., ¶ 23)

5. <u>The Attorney's Fee Award Is Reasonable and Routinely Awarded</u>

Plaintiff's Counsel requests attorney's fees in an amount not to exceed 35% of the Gross Settlement Amount (i.e., $64,750.00). The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis, especially in light of the benefits achieved for the Aggrieved Employees. (Otkupman Decl., ¶¶ 33-38) Attorney's

fees may be calculated in one of two ways: the percentage method (a percentage of the common fund or settlement value); or the lodestar-multiplier method (reasonable hours multiplied by reasonable hourly rates multiplied by an amount more or less than 1.0 to account for factors such as the risks taken and results achieved.) *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 489.

The starting point for determining the appropriateness of attorney's fees is to assess the amount of time spent by the attorneys working for the class. *Lealao v. Beneficial California, Inc.*, 82 Cal.App.4th 19, 24-25 (2000). Under this approach, this Court can assess the reasonableness of the requested fees by comparing it to the amount of work performed. It is not an abuse of discretion to choose one method over another as long as the method chosen is applied consistently using percentage figures that accurately reflect the marketplace. *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 65 (2008).

Moreover, Plaintiff's Counsel has considerable expertise in PAGA matters and has been involved as lead counsel in a multitude of class and PAGA cases, which resulted in beneficial results for Aggrieved Employees in California. (Otkupman Decl. ¶¶ 5, 6; Farishta Decl., ¶¶ 5-8) Plaintiff's Counsel has also frequently received fee awards of this percentage from the gross recovery in class and representative cases and Plaintiff's Counsel's experience in wage and hour litigation was crucial in evaluating both the strengths and weaknesses of the case and the reasonableness of the settlement. Therefore, the requested fee award is fair and reasonable. (Otkupman Decl., ¶ 37)

Plaintiff's Counsel has worked no less than 124.6 on the matter. Plaintiff's Counsel's fees from the inception to completion of this matter are no less than $112,420.00. As such, the fees requested equate to a *negative* multiplier. (Otkupman Decl., ¶ 35)

The court should approve the requested attorneys' fees, which are justified by the results achieved, the complexity of the issues, the difficulty of the case, and the risks undertaken by Plaintiff's Counsel. The requested attorney's fees will not be opposed by Defendant, and are well within established guidelines.

G. <u>The Requested Costs Awarded is Reasonable</u>

The settlement provides for cost reimbursement to Plaintiff's Counsel of actual costs

incurred, not to exceed $20,000.00, upon submission of records to the Court. Plaintiff's Counsel's costs to date are $11,822.12, which include litigation expenses and out-of-pocket costs Plaintiff's Counsel incurred in investigating, prosecuting, and settling the case. (Otkupman Decl., ¶ 39, Exhibit 6) These costs were reasonably incurred in prosecuting this action on behalf of the Aggrieved Employees and should be approved by the Court. (Id.)

V. CONCLUSION

For all the reasons discussed above, the Parties request that the Court approve the proposed Settlement and adopt the Order attached to this Motion.

DATED: October 12, 2026

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