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REYNA ESTHER MAYA DAMIAN

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BENITO

REYNA ESTHER MAYA DAMIAN, on behalf of herself and all others similarly situated, Plaintiff, vs. CUSTOM AG-PAK, LLC; and DOES 1-10, inclusive, Defendants.	Case No. 24-CU-00259 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PAGA SETTLEMENT APPROVAL ORDER** Date: December 15, 2025 Time: 10:30 a.m. Dept: 1

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INTRODUCTION

Reyna Esther Maya Damian ("Plaintiff") seeks approval of the settlement agreement (the "PAGA Settlement") reached by the parties that resolves her claims against Custom Ag-Pak, LLC ("Defendant") for civil penalties under the Private Attorneys General Act ("PAGA") based on Defendant's alleged failure to comply with various labor laws with respect to non-exempt employees who engage in the packing of agricultural products ("Packing Employees"). Plaintiff principally contends that: Defendant fails to provide Packing Employees with duty free meal periods; Defendant fails to provide Packing Employees who work more than 10 hours in a workday with second meal periods or third rest periods; Defendant fails to pay Packing Employees minimum wages and/or overtime wages for their meal period time, the entirety of which constitutes compensable hours worked; Defendant also fails to pay Packing Employees minimum wages and/or overtime wages for the time spent undergoing security checks before entering the packing facility, and time spent donning protective clothing and equipment at the packing facility before clocking in for work; and as a result of the foregoing labor law violations, Defendant fails to provide Packing Employees with accurate itemized wage statements and fails to pay Packing Employees whose employment ends all the wages owed to them upon termination. The PAGA Settlement resolves the PAGA claims asserted by Plaintiff on behalf of approximately 200 allegedly aggrieved employees ("Aggrieved Employees") for the Gross Settlement Amount of $275,000. Upon approval of the PAGA Settlement, the Aggrieved Employees will receive pro rata shares (based on the number of pay periods they worked for Defendant during the relevant liability period) of 35% of the Net Settlement Amount of approximately $171,863.53– equal to $60,152.24 – which on average amounts to approximately $300 per Aggrieved Employee. (Karasik Decl. ¶ 13)

For the reasons explained below, the PAGA Settlement is fair and reasonable and should be approved by the Court. Plaintiff respectfully requests that the Court grant her unopposed motion for approval of the PAGA Settlement (to which Plaintiff anticipates the Labor Workforce Development Agency ("LWDA"), the real party in interest who has been given notice of the PAGA Settlement, will not object either) and award Plaintiff the full amounts of attorney's fees, costs and Service Payment requested by Plaintiff.

LITIGATION HISTORY

Plaintiff filed the Complaint on October 16, 2024. In the Complaint, Plaintiff asserted individual and class action claims for Failure to Provide Duty Free Meal Periods, Failure to Provide Second Meal Periods, Failure to Provide Third Rest Periods, Failure to Pay Minimum Wages, Failure to Pay Overtime Wages, Unfair Competition, Failure to Provide Accurate Wage Statements, and Failure to Pay All Wages Owed Upon Termination. (Karasik Decl. ¶ 6).

After learning of the complaint, Defendant's counsel advised Plaintiff's counsel that Plaintiff had entered into an arbitration agreement that includes a class action waiver that precludes Plaintiff from asserting class action claims against Defendant. In light of the arbitration agreement, Plaintiff agreed to request dismissal without prejudice of her class action claims (but not her individual claims) and pursue claims against Defendant for civil penalties under PAGA. On January 17, 2025 the Court granted Plaintiff's request for dismissal of her class action claims and dismissed those claims without prejudice. (Karasik Decl. ¶ 7).

On November 5, 2024, Plaintiff submitted electronically to the LWDA a notice letter pursuant to Labor Code Section 2699.3 (a copy of which, pursuant to the agreement of Defendant's counsel, was also sent by email to Defendant's counsel instead of by certified mail to Defendant). Following expiration of the sixty-five day notice period, Plaintiff on January 21, 2025 filed a First Amended Complaint which asserts individual wage and hour claims on Plaintiff's behalf and PAGA claims on behalf of Packing Employees. (Karasik Decl. ¶ 8).

The parties thereafter agreed to participate in a private mediation. The mediation took place on August 20, 2025 before mediator Christopher Panetta. Prior to the mediation, Defendant provided Plaintiff informally with Plaintiff's time and pay records and data regarding the number of pay periods worked by Packing Employees during the relevant liability period so Plaintiff could evaluate the strength and weaknesses of her claims and calculate the amount of Defendant's potential liability for civil penalties under PAGA. (Karasik Decl. ¶ 9).

After a full day of arms-length bargaining on August 20, 2025 resulted in an impasse, the mediator on August 21, 2025 sent to the parties a "mediator's proposal" which set forth the material terms of a settlement agreement. The parties accepted the mediator's proposal and after further negotiation of settlement details (including the maximum amount of fees and costs to be awarded to Plaintiff's Counsel), the parties executed this formal PAGA Settlement. (Karasik Decl. ¶ 10).

Plaintiff's counsel have conducted a thorough investigation into the facts of this case, including the reviewing of relevant documents obtained from Defendant and researching the applicable law and potential defenses. Based on their investigation and evaluation, Plaintiff's counsel are of the opinion that the PAGA Settlement is fair, reasonable and adequate, and is in the best interest of the employees on whose behalf it was negotiated, considering all known facts and circumstances, including Defendant's defenses. (Karasik Decl. ¶ 11).

MATERIAL TERMS OF THE SETTLMENT

The material terms of the Settlement are as follows:

- The Gross Settlement Amount is $275,000.
- There are approximately 200 aggrieved employees encompassed by the PAGA Settlement.
- Under the PAGA Settlement, "Aggrieved Employees" are defined all persons who, at any time between November 5, 2023 and December 15, 2025 (the "Liability Period"), worked for Defendant in California as a non-exempt employee
- After deductions from the Gross Settlement Amount are made for settlement administration expenses, litigation costs and attorney's fees, and a Service Payment to Plaintiff, 65% of the Net Settlement Amount shall be paid to the LWDA and the remaining 35% of the Net Settlement Amount shall be paid to Aggrieved Employees. The amount of settlement benefits payable to Aggrieved Employees shall be based on the number of pay periods they worked during the Liability Period.
- Defendant shall not object to an award of attorney's fees to Plaintiff's counsel up to the amount of $91,666.67 (1/3 of the Gross Settlement Amount) or to an award of litigation costs up to the amount of $5,000.

ARGUMENT

I. The PAGA Settlement Is Fair And Reasonable

Labor Code Section 2699(s)(2) provides that a court "shall review and approve" any settlement of claims for civil penalties brought under PAGA. In *Moniz v. Adecco USA, Inc*. (2021)

72 Cal.App.5th 56, 72 the court of appeal established that the standard for determining whether a PAGA settlement should be approved is 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."

Although the legal standard for approving a PAGA settlement resembles and to a large degree is based on the "fair, reasonable and adequate" standard for approving settlements in class actions, there is one significant difference between a PAGA action and a class action that bears on the legal standard for approving a settlement. A plaintiff bringing an action for civil penalties acts as the proxy or agent acting on behalf of the LWDA. *See, Arias v. Superior Court* (2014) 46 Cal.4th 969, 986 (employee plaintiff in PAGA action "represents the same legal right and interest as state labor law enforcement agencies."); *ZB, NA v. Superior Court* (2019) 8 Cal.5th 175, 185 (PAGA claims are "brought on the state's behalf"). Thus, unlike unnamed class members in a class action, aggrieved employees bound by a PAGA settlement have no personal interest in the recovery of civil penalties and have no right to object to a proposed settlement. Every PAGA claim "is a dispute between an employer and the state." *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 386; *accord*, *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 81. *See also*, *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003 (PAGA "does not create property rights or any other substantive rights;" therefore an aggrieved employee cannot assign a right to pursue a PAGA claim "because the employee does not own an assignable interest").

When deciding whether to approve a class action settlement, a trial court has a "fiduciary responsibility" to protect the rights of unnamed class members. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129. "The purpose of this requirement is 'the protection of those class members, including named plaintiffs, whose rights may not have been given due regard during the negotiating process.'" *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1117 [quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801].

But no such "fiduciary responsibility" exists in connection with approval of a PAGA settlement because aggrieved employees in a PAGA action have no substantive rights or personal financial interests at stake. As noted in *Moniz,* “PAGA does not require the trial court to act as a fiduciary for aggrieved employees.” *Moniz,* 72 Cal.App.5th at 77. Even more so than a class action settlement, a PAGA settlement is “a private consensual agreement between the parties” to which “[d]ue regard should be given.” *Cellphone Termination Fee Cases*, 180 Cal.App.4th at 1117.

In light of the differences between a class action and a PAGA action, Plaintiff submits that, while a court must always assure that any settlement is not the product of fraud or collusion, the paramount consideration for a court ruling on a motion to approve a PAGA settlement is whether the LWDA, the real party in interest on whose behalf the plaintiff was empowered to pursue civil penalties, has any objection to the settlement. While a court need not accept the LWDA's view on matters of statutory interpretation, any opinion by the LWDA regarding the furthering of PAGA's purposes should be entitled to deference. Indeed, many courts have deemed the lack of objection to a settlement from the LWDA as determinative. See, e.g., *Jordan v. NCI Group, Inc.* (C.D. Cal. 2018) 2018 WL 1409590, at *3 (lack of objection from LWDA considered “persuasive”); *Echavez v. Abercrombie & Fitch Co., Inc.* (C.D. Cal. 2017) 2017 WL 3669607, at *3 (non-response from LWDA “is tantamount to its consent to the proposed terms”). Moreover, case law suggests that, in the absence of any objection from the LWDA that a settlement did not promote the purposes of PAGA, a trial court would have extremely limited grounds for not approving a PAGA settlement. *Cf., Cellphone Termination Fee Cases*, 180 Cal.App.4th at 1125 (trial court abused its discretion when it refused to approve fee provision in class action settlement because its rationale “lacked any nexus to the goal of protecting unnamed class members”).

With the foregoing principles in mind, Plaintiff explains below why all the material terms of the PAGA Settlement are fair and reasonable such that the Settlement, in the absence of any objection from the LWDA, should be approved.

<u>The Gross Settlement Amount</u>

The Gross Settlement Amount of $275,000 reflects a gross recovery of approximately $40 a pay period. Although lower than the maximum penalty amount of $100 per pay period under Labor Code Sections 2699(f)(2)(B)(ii) and 2699(o) for violations if Defendant's conduct was “malicious, fraudulent or oppressive,”[1] a gross recovery of approximately $40 a pay period is fair and reasonable under the circumstances of this case because it was likely that Defendant only faced minimal exposure for PAGA penalties. (Karasik Decl. ¶ 13).

Labor Code Section 2699(i) provides that “an aggrieved employee shall not collect a civil penalty for any violation of Sections 201, 202, 203, of the Labor Code, or for a violation of Section 204 that is neither willful or intentional, or a violation of Section 226 that is neither knowing or intentional . . . in addition to the civil penalty collected by that aggrieved employee for the underlying unpaid wage violation.” Labor Code Section 2699(g) provides that, if an employer has taken “reasonable steps” to comply with the Labor Code prior to receipt of a notice letter to the LWDA alleging violations of the Labor Code, the amount of the civil penalty that may be recovered under PAGA “shall not be more than 15 percent of the penalty sought under subdivision (a) or (f).”

According to Defendant, it had written policies in place that demonstrated good faith efforts to comply with the Labor Code provisions Plaintiff alleges were violated. Thus, Plaintiff calculated that, if Plaintiff could prove that Defendant violated the Labor Code to begin with, it was likely that Defendant only faced the total amount of $297,562.50 for PAGA penalties. (Karasik Decl. ¶ 14). The Gross Settlement Amount of $275,000 is fair and reasonable because it reflects a recovery equal to 92.4% of the amount of penalties Plaintiff was likely to have recovered in light of Labor Code Sections 2699(i) and 2699(g). (Karasik Decl. ¶ 15).

The PAGA Settlement is also fair and reasonable based on the maximum amount of penalties that Defendant theoretically faced, which Plaintiff estimated to be approximately $5,088,750 (Karasik Decl. ¶ 17). Despite having an extremely low chance of proving that Defendant’s conduct was “malicious, fraudulent or oppressive” as required for recovery of $100 a pay period, Plaintiff achieved a settlement that reflects a percentage of maximum potential recovery (5.4%) higher than in other PAGA settlements. For example, in *Jennings v. Open Door Marketing, LLC* (N.D. Cal. 2018) 2018 WL 4773057, at *9, the court approved a settlement that only recovered 0.6% of the estimated maximum value of the PAGA claims in light of the “risks of no recovery” and “lack of

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[1] The maximum penalty under Section 2699(f)(2)(B)(ii) for “malicious, fraudulent or oppressive” conduct by an employer is $200 per pay period but, pursuant to Section 2699(o), penalty amounts are reduced by 50% when, as in this case, the pay period is weekly.

objection from the LWDA"; and in *Ruch v. AM Retail Group, Inc.* (N.D. Cal. 2016) 2016 WL 5462451, the court approved a settlement that only recovered 0.27% of the maximum potential value of the PAGA claims. In light of the risks that Plaintiff would not have obtained any recovery if she lost at trial, and the likelihood that Defendant's potential exposure for civil penalties under PAGA was realistically only about $297,562.50 in light of Labor Code Sections 2699(i) and 2699(g), the Gross Settlement Amount of $275,000 – which results in each Aggrieved Employee getting a settlement payment of, on average, about $300, reflects a fair and reasonable result that promotes the underlying purposes of PAGA. (Karasik Decl. ¶ 17).

<u>Attorney's Fees</u>

Plaintiff requests attorney's fees in the amount of $91,666.67 which is equal to 1/3 of the Gross Settlement Amount of $275,000. This fee request comports with typical fee requests in connection with settlement of wage and hour class actions in California state courts which are commonly around 33.3% of the gross settlement amount. *See*, *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, n.13 ("fee awards in class actions average around one-third of the recovery"). (Karasik Decl. ¶ 18).

Because this case does not involve a class action settlement but a PAGA settlement, a lodestar cross check is not required for protecting against the possibility that an unreasonably high attorney's fee award might unfairly reduce settlement benefits payable to class members. The fact that the LWDA has the right to object to a request for a fee award it deems too high a price to pay for the benefits achieved by the plaintiff's counsel on its behalf suffices to ensure that a fee award in a PAGA case is reasonable. Nevertheless, as set forth in the declarations from Plaintiff's counsel a lodestar cross check confirms that Plaintiff's fee request is reasonable. The lodestar value of the time spent by Plaintiff's counsel on this case is $79,885 which reflects a lodestar multiplier of approximately 1.15 (Karasik Decl. ¶ 19-20). In the experience of Plaintiff's counsel, a multiplier of 1.15 falls well within the typical range of lodestar multipliers for fee awards in class action and PAGA settlements, which routinely are often between 2 and 4. (Karasik Decl. ¶ 20).

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Attorney's Costs

The declarations from Plaintiff's counsel substantiate that their costs in this case are $4,964.80 (Karasik Decl. ¶ 22-23). There is no dispute about the reasonableness of these costs and the amount of costs requested by Plaintiff is less than the maximum amount of costs of $5,000 allowed by the PAGA Settlement without objection from Defendant.

Plaintiff's Service Payment

Plaintiff requests an incentive payment of $2,500. The amount of this request is not only reasonable based on the Gross Settlement Amount of $275,000 but is very well deserved in light of the superior result achieved by Plaintiff and, as set forth in her declaration, the considerable amount of time Plaintiff spent staying in touch with and assisting her counsel, and participating in the mediation on August 20, 2025. (Karasik Decl. ¶ 24).

Scope of the Release

The release applicable to Aggrieved Employees bound by the PAGA Settlement is properly limited to claims for civil penalties under PAGA "based on the facts that were alleged in the First Amended Complaint or asserted in the notice letter sent by Plaintiff to the LWDA, or that are reasonably related thereto." (PAGA Settlement ¶ E.1).

In accordance with *Amaro v. Anaheim Arena Mgmt.* (2021) 69 Cal.App.5th 521, the release is not impermissibly overbroad. In *Amaro*, the Court held that a class action settlement "may release not only those claims alleged in the complaint . . . but also claims which 'could have been alleged by reason of or in connection with any matter or fact set forth or referred to in' the complaint." *Id*. at 537 [citing *Villacres v. ABM Industries, Inc.* (2010) 189 Cal.App.4th 562, 586]. Furthermore, as explained in the Notice to Aggrieved Employees that will be mailed with their settlement checks (PAGA Settlement Ex. A), Aggrieved Employees (other than Plaintiff, who agreed to a general release in exchange for a Service Payment), "will not be deemed to have released any individual wage and hour claims based on alleged violations of the Labor Code or of a California Wage Order, for which they have a private right of action, by virtue of the Settlement."

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II. Plaintiff Gave Notice Of The Settlement To The LWDA

In accordance with Labor Code Section 2699(s)(2), Plaintiff has given the LWDA notice of the PAGA Settlement, Plaintiff's motion for settlement approval and the supporting memorandum (Karasik Decl. ¶ 25). Unless the LWDA objects to the PAGA Settlement, the Court should not have any reason for not granting approval of the PAGA Settlement because there is no evidence whatsoever the PAGA Settlement resulted from any fraud or collusion. There is no dispute that the parties, represented by experienced counsel, engaged in sufficient discovery to evaluate the strength and weaknesses of their respective claims or defenses, and only reached a settlement after a mediation session with an experienced mediator.

A class action settlement is presumed to be fair when: "1) the settlement is reached through arms-length bargaining; 2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of objectors is small." *Dunk*, 48 Cal.App.4th at 1802. A similar presumption should apply here. Therefore, unless the LWDA objects to the Settlement, the Court should conclude that this presumption stands unrebutted and there are no grounds for reaching any conclusion other than that, for all the reasons explained herein, the PAGA Settlement is fair and reasonable and should be approved.

CONCLUSION

Plaintiff respectfully requests that the Court, if the LWDA does not object, grant Plaintiff's motion for an order approving the PAGA Settlement and award Plaintiff the full amounts of attorney's fees, litigation costs and Service Payment requested.

Dated: November 19, 2025

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