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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

FRANCISCO SANCHEZ, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

BLOOM ENERGY CORPORATION; and
DOES 1 through 20, inclusive,

Defendants.

Case No. 20CV365816

Assigned for All Purposes to:

Judge Sunil R. Kulkarni

Dept. 1

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

Date: June 30, 2022

Time: 1:30 p.m.

Dept.: 1

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Francisco Sanchez ("Plaintiff") seeks approval of a settlement of claims under the
4 Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA") against
5 Defendant Bloom Energy Corporation ("Defendant") in the amount of \$1,100,000. Plaintiff alleges
6 approximately 500 non-exempt employees who worked for Defendant were not paid at least
7 minimum wages for all hours worked, not paid overtime compensation correctly, not provided with
8 meal periods or compensation in lieu thereof, not provided with rest breaks or compensation in lieu
9 thereof, not reimbursed for necessary business expenses, not provided with accurate wage
10 statements, and were not paid all wages owed upon separation of employment. The proposed
11 Settlement seeks to release claims for civil penalties for violations of Labor Code §§ 201, 202, 203,
12 204, 210, 226, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800,
13 and 2802.

14 Under Labor Code § 2699(1)(2), the Court must review and approve any proposed PAGA
15 settlement. Here, the proposed Settlement is sufficient to deter and punish future violations. The
16 Settlement is attached to the Declaration of Chelsea D. Hollins ("Hollins Decl.") as Exhibit 1, and
17 the proposed letter to be sent to the aggrieved employees is attached thereto as Exhibit A. Plaintiff
18 now seeks this Court's approval of the Settlement terms.

19 **II. FACTUAL AND PROCEDURAL BACKGROUND**

20 On March 17, 2020, Plaintiff's counsel sent a letter to the California Labor & Workforce
21 Development Agency ("LWDA") via online submission and to Defendant via certified mail
22 regarding Defendant's alleged violations. *See* Hollins Decl., ¶ 3, Exhibit 2. The LWDA did not
23 respond to this notice within 65 days, indicating it did not intend to investigate, thus allowing
24 Plaintiff to file the instant lawsuit pursuant to Labor Code Section 2699.3(a)(2)(A). *See* Hollins
25 Decl., ¶ 4. Plaintiff submitted an amended notice to the LWDA and Defendant on January 21, 2022
26 to supplement additional facts and theories. *See* Hollins Decl., ¶ 5, Exhibit 3.

27 Plaintiff initially filed his Complaint as a class action on March 17, 2020, but ultimately
28 dismissed the class claims due to an arbitration agreement. Hollins Decl., ¶ 6. On July 27, 2020,

1 Plaintiff filed his First Amended Complaint adding a claim for Enforcement of the Private
2 Attorneys General Act (“PAGA”). Hollins Decl., ¶ 7. On April 23, 2021, Plaintiff filed a Second
3 Amended Complaint to change the case to PAGA-only and add a minimum wage claim. Hollins
4 Decl., ¶ 8. Plaintiff served discovery on Defendant, including Special Interrogatories and Requests
5 for Production of Documents. Hollins Decl., ¶ 9.

6 Defendant provided Plaintiff and Plaintiff’s counsel with an arbitration agreement
7 containing a class claim waiver purportedly signed by Plaintiff. Hollins Decl., ¶ 10. After reviewing
8 the arbitration agreement, Plaintiff decided to dismiss his individual and class action claims without
9 prejudice. Hollins Decl., ¶ 11. On February 23, 2021, the Court granted Plaintiff’s request to dismiss
10 his individual and class claims without prejudice, leaving only the PAGA claim. Hollins Decl., ¶
11 12.

12 In preparation for mediation and in response to Plaintiff’s discovery requests, Defendant
13 produced data and documents for Plaintiff to evaluate the PAGA claims and calculate the alleged
14 exposure, including policy documents, compensation plans, time records, pay records, and a list of
15 aggrieved employees with dates of employment to calculate the pay periods worked. Hollins Decl.,
16 ¶ 13. The parties attended mediation on January 10, 2022, with Eve Wagner, Esq., a respected class
17 action and PAGA action mediator. Hollins Decl., ¶ 14. The Parties engaged in extensive
18 negotiations, and reached an agreement to settle for \$1,100,000. Hollins Decl., ¶ 15.

19 Around March 25, 2022, the Parties finalized the terms of the Settlement Agreement, which
20 is now presented to this Court for approval. Hollins Decl., ¶ 16. Plaintiff provided notice of the
21 Settlement to the LWDA on April 27, 2022. Hollins Decl., ¶ 17, Exhibit 3. Plaintiff also served a
22 copy of the motion on the LWDA on April 27, 2022. Hollins Decl., ¶ 18, Exhibit 5.

23 **III. PAGA REQUIREMENTS**

24 Based on the California Supreme Court's opinions in *Arias v. Superior Court*, 46 Cal. 4th
25 969 (2009), and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014),
26 Plaintiffs can seek appropriate civil penalties as called for under PAGA on behalf of the State of
27 California and other similarly aggrieved employees without seeking class certification or meeting
28

1 the requirements of class certification (i.e. numerosity, typicality, commonality and adequacy). As
2 such, the class action two-step preliminary and final approval process is not required.

3 PAGA was enacted to allow enforcement of the Labor Code and recovery of penalties by
4 the State and by private individuals who have been aggrieved by their employers. The statute calls
5 for 75% of any penalties recovered to be paid to California's LWDA and the remaining 25% to the
6 aggrieved employees (Cal. Lab. Code § 2699(i) (2016)).

7 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee
8 must first provide written notice to the LWDA and the employer of the particular Labor Code
9 violations the aggrieved employee alleges the employer has violated. See Cal. Labor Code §
10 2699.3(a)(1)(A) (2016). Once the LWDA notifies the aggrieved employee that it does not intend to
11 investigate the alleged violations, or if the LWDA does not respond within a certain time period,
12 the aggrieved employee is then allowed to proceed in a civil action against the employer on behalf
13 of the LWDA and all other similarly aggrieved employees. See Cal. Labor Code § 2699.3(a)(2)(A)
14 (2016).

15 In 2009, the California Supreme Court considered the issue of whether an aggrieved
16 employee who brings a PAGA representative claim needs to meet class certification requirements.
17 *Arias*, 46 Cal. 4th at 976. After a substantial review of the legislative history of PAGA, the Court
18 held that an aggrieved employee's representative action brought on behalf of other aggrieved
19 employees against an employer for PAGA violations does not need to meet the requirements for
20 class certification. *Id.* at 975, 980-88. As the Court held, a plaintiff bringing suit under PAGA does
21 so as the proxy or agent of California's labor law enforcement agencies. *Id.* at 986. Because the
22 employee's PAGA action functions as a substitute for an action brought by the government itself, a
23 judgment in the PAGA action binds all those who would be bound by a judgment in an action
24 brought by the government. *Id.*

25 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the court
26 need only "review and approve" the settlement. Cal. Lab. Code § 2699(1)(2) (2016). The Parties
27 to this current PAGA action have reached such an agreement and now seek this Court's approval of
28 the proposed settlement.

1 IV. THE SETTLEMENT TERMS AND DISTRIBUTION OF PENALTIES

2 The Parties have agreed that Defendants will pay a total settlement amount of
3 \$1,100,000.00 (the “Gross Settlement Amount”). See Settlement Agreement, § III.2. From this
4 amount, up to one-third (1/3) of the Gross Settlement Amount, or \$316,666.67, is allocated to
5 attorneys’ fees and up to \$20,000 to actual litigation costs. Settlement Agreement, § III.8. To date,
6 Plaintiff’s counsel has spent \$13,593.90 in litigation costs. See Hollins Decl., ¶ 38, 44, Exhibit 6.
7 The Settlement allocates up to \$3,000.00 to payment for Settlement Administrator Simpluris’ costs
8 associated with administration of the Settlement. Settlement Agreement, § III.2(a). Plaintiff also
9 had a wrongful termination claim, which is included in this global settlement, and \$50,000.00 is
10 allocated to Plaintiff for a general release of his individual claims. Settlement Agreement, § III.3.

11 After deducting the attorneys’ fees and costs, Settlement Administrator’s costs, and
12 Plaintiff’s individual settlement awards, the remaining fund (“Net Settlement Amount”) of
13 \$716,739.43 will be paid 75% to the LWDA (“LWDA Payment”) and 25% to the PAGA Employees
14 (“Employee Amount”). Settlement Agreement, § III.5. “PAGA Employees” are “all current and
15 former non-exempt employees who worked for Defendant within the State of California between
16 March 17, 2019 and May 10, 2022.” Settlement Agreement, § I.10.

17 The “Individual Settlement Payment” for the PAGA Employees shall be determined as
18 follows: the Employee Amount will be divided by the total number of Pay Periods of all PAGA
19 Employees to yield the “Per Pay Period Amount,” and then each PAGA Employee’s individual
20 number of Pay Periods will be multiplied by the Per Pay Period Amount to yield his or her
21 “Individual Settlement Payment.” Settlement Agreement, § III.6. All PAGA Employees’ Payments
22 will be characterized as penalties for tax purposes and reported on IRS Form 1099. Settlement
23 Agreement, § III.7.

24 The Settlement Administrator will disburse Individual Settlement Shares to each PAGA
25 Employee to the last known physical address on file with Defendant in its regularly maintained
26 records. Prior to this disbursement, the Settlement Administrator shall check the addresses provided
27 using the National Change of Address database. Settlement Agreement, § VI.4. For any returned
28 payments without a forwarding address, the Settlement Administrator shall run a skip trace.

1 Settlement Agreement, § VI.4. PAGA Employees who receive their Individual Settlement
2 Payments via U.S. Mail will receive a letter along with their Individual Settlement Payment
3 explaining the reason for the payment, the content of which will be submitted to the Court for
4 approval. Settlement Agreement, § VI.4. The proposed letter is attached to the Settlement
5 Agreement as Exhibit A. All funds not claimed within 180 days of mailing of payment shall be sent
6 to the California State Controller's Office Unclaimed Property Fund with an identification of the
7 amount of unclaimed funds attributable to each Aggrieved Employee. Settlement Agreement, §
8 VI.5.

9 In exchange for the settlement payment, the State of California and the PAGA Employees
10 will release the following claims:

11 Upon the Effective Date, Plaintiff and each PAGA Employee, shall fully release
12 and forever discharge Defendant and its past, present and/or future, direct and/or
13 indirect, officers, directors, members, managers, employees, agents,
14 representatives, attorneys, insurers, partners, investors, shareholders,
15 administrators, parent companies, subsidiaries, affiliates, divisions, predecessors,
16 successors, assigns, and joint venturers ("Released Parties") from any and all
17 claims, rights, or causes of action arising during the PAGA Period seeking civil
18 penalties under the PAGA that are based on the alleged violations by Defendant of
19 the Labor Code (including, but not limited to Labor Code §§ 201, 202, 203, 204,
20 210, 226, 226.7, 512, 510, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1,
1198, 2800, 2802) that were alleged or reasonably could have been alleged based
on the facts alleged in the Complaint ("Released Claims") during the period from
March 17, 2019 through January 10, 2022, and the State of California shall fully
release and forever discharge Released Parties from the Released Claims as they
pertain to Plaintiff and PAGA Employees from March 17, 2019 through May 10,
2022.

21 Settlement Agreement, § IV.2. Only Plaintiff signed a general release of claims. Settlement
22 Agreement, § IV.1.

23 If the total number of pay periods exceeds 18,656 by more than fifteen percent (15%), there
24 will be a pro rata adjustment to the Gross Settlement Amount per additional pay period. Settlement
25 Agreement, § III.4.

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1 **V. THE SETTLEMENT IS FAIR AND REASONABLE**

2 **A. Standard for Approval**

3 While there are no statutory or common law standards for approval of PAGA settlements,
4 the legislative history of the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et. seq.*
5 (“PAGA”) sheds some light on the approval requirement as it was phrased in § 2699, subdivision
6 (l) prior to the July 1, 2016 amendments. *See* Cal. Lab. Code § 2699(l) (2015) (amended 2016)
7 (“The superior court shall review and approve any penalties sought as part of a proposed
8 settlement...”). PAGA was passed by the legislature as Senate Bill (“SB”) 796, and it was signed
9 by the Governor and filed with the Secretary of State on October 12, 2003. *See* Legislative
10 Counsel’s Digest re Senate Bill No. 796, attached as Exhibit A to the Request for Judicial Notice
11 (“RJN”) filed herewith, p. 1. It took effect on January 1, 2004.

12 The original version of the act did not contain the court approval requirement now codified
13 in § 2699(l). That subdivision was added as part of the amendments to the Act that were introduced
14 as SB 1809 in February of 2004 and signed by the Governor and filed with the Secretary of State
15 on August 11, 2004. *See* Legislative Counsel’s Digest re Senate Bill No. 1809, attached as Exhibit
16 B to the RJN, p. 1. Those amendments took effect immediately, and the court approval
17 requirement of § 2699(l) was one of the provisions that the legislature made retroactive to January
18 1, 2004. *Id.* at pp. 1-2.

19 Senator Joseph L. Dunn authored both the original PAGA bill (SB 796) and the
20 amendments (SB 1809). *See* RJN, Exs. A and B. On July 29, 2004, during the consideration of
21 the amendments in SB 1809, Senator Dunn sent a letter addressed to the President Pro Tem of the
22 Senate, which was published in the Senate Daily Journal, “to clarify the intent of subdivision (l)”
23 of what would become § 2699. *See* 7/29/04 Letter from Sen. Dunn to Sen. Burton, attached as
24 Exhibit C to the RJN. He was sending this letter “in response to an issue raised by the Judicial
25 Council of California.” *Id.* In the letter, Senator Dunn stated that:

26 The purpose of court review of the penalties in subdivision (l) is to ensure that
27 settlements involving penalties arising under Labor Code Section 2699 do not
28 undercut the dual statutory purposes of punishment and deterrence, or result in
unjust, arbitrary, and oppressive, or confiscatory settlements.

1 *Id.*

2 To Plaintiff's knowledge, this is the only statement in the legislative history directly
3 addressing the purpose of the court approval requirement. While the letter does not address any
4 specific factual issues to be considered, it does provide some very broad criteria. It suggests that
5 the courts should consider whether the penalties are so small as to "undercut the dual purposes of
6 punishment and deterrence" or so large that they may result in an "unjust, arbitrary and oppressive,
7 or confiscatory" settlement.

8 These broad criteria appear to give the Court wide latitude in determining whether to
9 approve the penalties proposed as part of a PAGA settlement. Interestingly, the criteria focus on
10 the effect the penalties may have on the defendant/employer rather than the LWDA or the
11 aggrieved employees who will receive the penalties. This is different than the analysis of a class
12 action settlement, which typically focuses on the amount received by the class and compares that
13 to the reasonable range of potential outcomes in the case. *See, e.g., Kullar v. Foot Locker Retail,*
14 *Inc.*, 168 Cal.App.4th 116, 130 (2008); *Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186
15 Cal.App.4th 399, 407 (2010).

16 **B. The Settlement Meets the Standard for Approval**

17 The \$1,100,000.00 Gross Settlement Amount is reasonable when considered in light of the
18 principles discussed in Senator Dunn's letter. For a group of approximately 500 employees, a
19 penalty of \$1,100,000 is large enough to punish Defendant for alleged past violations and deter
20 future violations. The settlement amount is equivalent to a penalty of about \$2,200 per employee,
21 which is a significant penalty for a wage and hour case. At the same time, the penalty amount is not
22 so large as to be unjust, oppressive or confiscatory, considering the company's potential exposure
23 explained below. Hollins Decl., ¶ 19.

24 The Gross Settlement Amount is also reasonable in light of the facts of the foregoing action,
25 the real risk that no PAGA penalties would be paid, and inherent risks and uncertainties associated
26 with PAGA claims. Hollins Decl., ¶ 20. Plaintiff calculated the potential exposure at the initial
27 violation rate of \$100 per pay period as follows: 18,656 pay periods x \$100 per pay period =
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1 \$1,865,600. Hollins Decl., ¶ 21. If the Court stacked different types of penalties in each pay period,
2 Plaintiff calculated the exposure as follows:

- 3 - 18,656 pay periods x \$100 x 100% violation rate (for on-premises rest breaks) = \$1,865,600 for
4 rest break violations;
- 5 - 18,656 pay periods x \$100 x 69% violation rate (alleged meal period violation rate shown in
6 the time records) = \$1,287,264 for meal period violations;
- 7 - 2,827 pay periods (pay periods with bonuses or shift differentials and overtime) x \$100 =
8 \$282,700 for unpaid overtime penalties;
- 9 - 826 pay periods (pay periods with on-call time) x \$100 = \$82,600 for minimum wage violations;
- 10 - 18,656 pay periods x \$100 = \$1,865,600 for business expense violations;
- 11 - 2,827 pay periods (same as maximum unpaid wage claims) x \$250 = \$706,750 for wage
12 statement penalties. *Id.*

13 However, these calculations assumed the Court would find violations in every pay period based
14 on Plaintiff's theories of liability.

15 Defendants could have defeated Plaintiff's claims by proving its rest break and meal period
16 policies were compliant and thus those PAGA claims were unmanageable, the bonuses were
17 discretionary and therefore should not be included in the overtime rate, the on-call time was not
18 compensable or was reliant on individual employee testimony and thus unmanageable, and the
19 wage statements claims would fail as they were purely derivative of the unpaid wage claims. Hollins
20 Decl., ¶ 22. The settlement negotiations took these risks into account. *Id.*

21 Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA
22 awards are discretionary and can be reduced by the Court. Hollins Decl., ¶ 23. Under Labor Code
23 § 2699(e)(2), the Court can reduce the PAGA penalties "if, based on the facts and circumstances of
24 the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
25 or confiscatory." *Id.* In other words, were this matter to go to trial, any award granted would be at
26 the discretion of the Court. *Id.*

27 Plaintiff recognizes that, although he believes there would be no persuasive grounds to
28 reduce the penalties, the Court could determine otherwise and significantly reduce the PAGA

1 penalties, especially given that Defendant had taken some measures to improve its practices, such
2 as provided methods to request meal period premiums. Hollins Decl., ¶ 24. The wide range of
3 potential recovery and the additional delays and risks of trial justified settling at this point for a
4 reasonable amount of recovery. *Id.*

5 **VI. CONCLUSION**

6 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement
7 pursuant to PAGA in this Action.

8
9 Dated: April 27, 2022

AEGIS LAW FIRM, PC

10
11 By



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Attorneys for Plaintiff