

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Monnett De La Torre (State Bar #272884)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 599-8292

jlapuyade@jcl-lawfirm.com

mdelatorre@jcl-lawfirm.com

aamaya@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

Jaclyn Joyce (State Bar #285124)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 255-9047

shani@zakaylaw.com

jaclyn@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

CHARLETTE PERE, an individual, on behalf of
all persons similarly situated,

Plaintiff,

vs.

JAYLEX LLC dba EZ CARELINK, a California
limited liability company, previously named as
fictitious DOE 1; RESCARE, INC., a Kentucky
corporation; ROCKCREEK, INC., a California
corporation; ALTERNATIVE CHOICES, INC.,
a California corporation; RSCR INLAND, INC.,
a California corporation and DOES 2 through 30,
Inclusive;

Defendants.

Case No. CIVSB2317704

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
PAGA SETTLEMENT**

Date: February 25, 2025

Time: 8:30 a.m.

Judge: Hon. Christian Towns

Dept.: S26

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PERTINENT FACTUAL AND PROCEDURAL BACKGROUND	2
A.	Plaintiff's Exhaustion of Administrative Remedies Under PAGA And Civil Action Against Defendant	2
III.	TERMS OF THE PAGA SETTLEMENT	4
A.	The Gross Settlement Amount	4
B.	Allocation of Aggrieved Employee Payments	5
C.	Funding and Distribution	5
D.	Release of Claims	5
IV.	THE COURT SHOULD APPROVE THE PAGA SETTLEMENT	6
A.	The Gross Settlement Amount is Fair and Reasonable	7
B.	The Gross Settlement Compares Favorably To The Likely Recovery	9
C.	The Remaining Settlement Terms Are Fair and Reasonable	11
V.	THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE	11
A.	The Requested Attorneys' Fee is Fair and Reasonable	11
B.	PAGA Counsel is Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs	13

1 VI. PLAINTIFF’S SERVICE AWARD IS FAIR AND REASONABLE13

2 VII. CONCLUSION14

28 ///

TABLE OF AUTHORITIES

CASES

<i>Bell v. Farmers Ins. Exch.</i> , 115 Cal.App.4th 715, 726 (2004).....	13
<i>Bernstein v. Virgin America, Inc.</i> (2021) 3 F.4th 1127, 1144	7
<i>Boyd v. Bank of America</i> , 2014 WL 6473804, at *11 (C.D. Cal. 2014).....	12
<i>Cardenas v. McLane Foodservice, Inc.</i> , 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	9
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504	10
<i>Clark v. American Residential Services, LLC</i> , 175 Cal. App. 4th 785, 804-805 (2009).....	14
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794, 1800-1801.....	6
<i>Dynamex Operations West, Inc. v. Superior Court</i> 4 Cal.5th 903, 957-958 (2018).....	7-8
<i>Emmons v. Quest Diagnostics Clinical Labs., Inc.</i> , 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017).....	12-13
<i>Fleming v. Covidien, Inc.</i> , 2011 WL 7563047, *4 (C.D. Cal. 2011)	10
<i>Gola v. University of San Francisco</i> , San Francisco Superior Court Case No. CGC-18-5655018.....	10
<i>Harris v. Marhoefer</i> , 24 F.3d 16, 19 (9th Cir. 1994).....	13
<i>Hartless v. Clorox Company</i> , 273 F.R.D. 630 at 645-46	13
<i>Hibbs-Rines v. Seagate Technologies</i> , 2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009).....	9
<i>Hopkins v. Stryker Sales Corp.</i> , No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013).....	12
<i>Iskanian v. CLS Transportation</i> , 59 Cal. 4th 348, 381 (2014).....	1
<i>Kaanaana v. Barrett Bus. Servs., Inc.</i> , 29 Cal App 5th 778, 788 (2018).....	10
<i>Kim v. Reins International California, Inc.</i> (2020) 9 Cal.5th 73, 88;.....	6
<i>Laffitte v. Robert Half Int’l Inc.</i> , 1 Cal.5th 480, 504, 506 (2016).....	11-12
<i>Moniz v. Adecco USA, Inc.</i> (2021) 72 Cal.App.5th 56, 77, 88.....	6
<i>Naranjo v. Spectrum Sec. Servs., Inc</i> 15 Cal. 5th 1056, (2024)	6
<i>Pellegrino v. Robert Half Intern., Inc.</i> , 182 Cal.App.4th 278 (2010).....	12
<i>Rider v. City of San Diego</i> , 11 Cal. App. 4th 1410, 1423 n.6 (1992).....	13
//	

1	<i>Rodriguez v. West Publ'g Corp.</i> ,	
	563 F.3d 948, 958-59 (9th Cir. 2009).....	13
2	<i>Taylor v. FedEx Freight, Inc.</i> ,	
	2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016)	12
3	<i>Vandervort v. Balboa Capital Corp.</i> ,	
	8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014).....	12
4	<i>Wesson v. Staples the Off. Superstore</i> ,	
	2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021)	9
5	<i>Wershba v. Apple Computer, Inc.</i> ,	
	91 Cal.App.4th 224, 254 (2001)	12
6	<i>Williams v. Superior Court</i>	
	(2017) 3 Cal.5th 531, 549.....	6
7	<i>Zayerz v. Kiewit Infrastructure West</i> ,	
	2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018).....	9
8	<i>ZB, N.A. v. Superior Court</i>	
	8 Cal. 5th 175, 182 (2019).....	1, 3-4
9		
10		

RULES, CODES, AND STATUTES

11	<i>Cal. Lab. Code</i> § 201.....	7
12	<i>Cal. Lab. Code</i> § 202.....	7
	<i>Cal. Lab. Code</i> § 203.....	7
13	<i>Cal. Lab. Code</i> § 204.....	7
	<i>Cal. Lab. Code</i> § 226.....	7-8, 10
14	<i>Cal. Lab. Code</i> § 226.7.....	7
	<i>Cal. Lab. Code</i> § 382.....	11
15	<i>Cal. Lab. Code</i> § 558.....	7
	<i>Cal. Lab. Code</i> § 512.....	7
16	<i>Cal. Lab. Code</i> § 1194.....	7
	<i>Cal. Lab. Code</i> § 1197.....	7
17	<i>Cal. Lab. Code</i> § 1197.1.....	7
	<i>Cal. Lab. Code</i> § 1198.....	7
18	<i>Cal. Lab. Code</i> § 2698 et seq.....	2
19	<i>Cal. Lab. Code</i> § 2699 et seq	1-6, 9-11
	<i>Cal. Lab. Code</i> § 2775.....	9
20	<i>Cal. Lab. Code</i> § 2802.....	7
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 Plaintiff Charlette Pere (“Plaintiff”) seeks approval of the PAGA Settlement Agreement
3 (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 200
4 “PAGA Aggrieved Employees,” defined as all current and former individuals classified as
5 independent contractors who obtained work through JAYLEX, LLC *dba* EZ CARELINK at a
6 facility belonging to RESCARE, INC., ROCKCREEK, INC. ALTERNATIVE CHOICES, INC.,
7 RSCR INLAND, INC. or any other subsidiary of RESCARE, INC. during the period from July 5,
8 2022, to June 3, 2024 (“PAGA Period”). Agreement at §§ 1.4; 1.22; 8. This is only a settlement of
9 the PAGA claim for civil penalties and is not a class settlement and does not release the individual
10 wage claims, if any, of the affected employees other than Plaintiff himself. Cal. Lab. Code §
11 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior*
12 *Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

13 If approved, the PAGA Aggrieved Employees and the California Labor Workforce and
14 Development Agency (“LWDA”) will share a Net Settlement Amount of Two Hundred Nineteen
15 Thousand, Two Hundred Thirty-Three Dollars and Thirty-Four Cents (\$219,233.34). The Net
16 Settlement Amount shall be distributed, 75% to the LWDA and 25% to the PAGA Aggrieved
17 Employees (“Aggrieved Employee Payment”). Agreement at § 1.17.

18 An objective evaluation of the proposed settlement confirms that the relief negotiated on
19 behalf of the PAGA Aggrieved Employees and the LWDA is fair, reasonable, and valuable. The
20 Settlement is a product of informed, adversarial, and non-collusive and mediated negotiations
21 between experienced counsel. As discussed below, the proposed Settlement satisfies all criteria for
22 PAGA settlement approval. Accordingly, Plaintiff and PAGA Counsel respectfully request this
23 Court grant approval of the Agreement. Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 9.

24 ///

25 ///

26 ///

27 ¹ The Agreement is attached as Ex “1” to the Declaration Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to
28 the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise,
capitalized terms used herein have the same meaning as those defined by the Agreement.

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Exhaustion of Administrative Remedies Under PAGA And Civil Action Against Defendant

On November 4, 2022, Plaintiff, on behalf of himself and on behalf of other PAGA Aggrieved Employees, served Defendants and the LWDA with a Notice of Violations ("PAGA Notice") and draft complaint memorializing claims against Defendants for alleged violations of the California Labor Code, including causes of action for failure to provide compliant meal and rest periods; failure to accurately compensate for missed meal and rest periods; failure to pay all minimum, regular, and overtime wages; failure to provide accurate itemized wage statements; failure to timely pay wages due during, and upon termination of employment. (LWDA Case No. LWDA-CM-917903-22). JCL Dec., ¶ 10.

On December 6, 2022, Plaintiff filed a class action complaint against Defendants in the Superior Court for San Bernardino County, Case Number CIVSB2227164. The complaint alleged seven causes of action for (1) Unfair Competition; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Required Meal Periods; (5) Failure to Provide Required Rest Periods; (6) Failure to Provide Accurate Itemized Wage Statements; and (7) Failure to Provided Wages When Due. JCL Dec., ¶ 11.

The 65-day "waiting period" on Plaintiff's right to file a civil action under PAGA, *see* Cal. Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiff that they intended to investigate the claims in the PAGA Notice. To date, the LWDA still has not advised Plaintiff of any intent to take action with respect to the claims in the PAGA Notice. JCL Dec., at ¶ 12.

On June 16, 2023, Plaintiff filed a First Amended Complaint to add a cause of action against Defendants for violations of the Private Attorneys General Act at Cal. Lab. Code §§2698, *et seq.* JCL Dec., ¶ 13.

Plaintiff's counsel subsequently learned of the existence of an arbitration agreement by and between Plaintiff and Defendants that purportedly bars plaintiff's proposed class action claims. Accordingly, Plaintiff dismissed her class claims and individual component of her PAGA claim

1 against Defendants without prejudice. Plaintiff then filed a Second Amended Complaint on
2 November 29, 2023, alleging a single cause of action for violations of the PAGA. JCL Dec., ¶ 14.

3 On June 3, 2024, the Parties participated in an all-day mediation presided over by Monique
4 Ngo-Bonnici, Esq., an experienced mediator of wage and hour class and representative actions,
5 which led to this Agreement to settle the Action. In advance of the with the mediation, Defendants
6 provided Plaintiff with sufficient information to properly evaluate Defendant’s potential liability
7 exposure. Among the data and documents Defendant produced included, but was not limited to, the
8 total number of PAGA Aggrieved Employees, total number of current PAGA Aggrieved Employees,
9 total number of Pay Periods worked by PAGA Aggrieved Employees within the PAGA Period,
10 ResCare Worker Facility Data, ResCare Workers list 2021, Schedule Summary 2021-2022, ResCare
11 Worker Payments 2022, and ResCare Worker Payments 2023. Agreement at §2.6. JCL Dec., ¶ 15.

12 The mediation resulted in a settlement that was reached following a mediator’s proposal and
13 was memorialized in the form of a Memorandum of Understanding (“MOU”). After reaching an
14 agreement in the principle, the Parties drafted and negotiated a long-form settlement which is the
15 subject of the instant motion. The Settlement was negotiated in light of all known facts and
16 circumstances and the uncertainty associated with litigation – including the risk of Plaintiff not being
17 able to maintain representative claims, the difficulty of proving Plaintiff’s claims in a manageable
18 trial, the merits of Defendants’ potential defenses, and the significant delay and potential appellate
19 issues inherent to litigation – and was reached after extensive arm’s length negotiations, with the
20 assistance of the Mediator. JCL Dec., at ¶ 16.

21 The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted
22 by Plaintiff on behalf of himself, the LWDA, and the State of California. This is only a Settlement
23 of PAGA claims for civil penalties and is not a class settlement and does not release the individual
24 claims, if any, of the PAGA Aggrieved Employees. This Settlement does not release any claim that
25 is not a PAGA claim, except for Plaintiff.² Nor does this Settlement waive Defendant’s right to
26 assert *res judicata* or other available defense to any asserted claim or lawsuit. JCL Dec., at ¶ 17.

27
28 ² As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th 175 at 196: “Nonparty employees are bound by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties.”

Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion for settlement approval as set forth in the accompanying proof of service. Additionally, Plaintiff will submit to the LWDA a copy of the Court's judgment and order approving the Settlement Agreement within ten (10) days after entry of judgment or order. JCL Dec., at ¶ 18.

III. TERMS OF THE PAGA SETTLEMENT

A. The Gross Settlement Amount

The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(1)(2). The Settlement Agreement negotiated by the Parties provides for a Gross Settlement Amount payment in the amount of Three Hundred Ninety-Five Thousand Dollars and Zero Cents (\$395,000.00) to resolve the PAGA claims. From the Gross Settlement Amount, there is a deduction of: i) a PAGA Counsel Award in the amount of One Hundred Sixty One Thousand, Six Hundred Sixty-Six Dollars and Sixty Six Cents (\$161,666.66), comprised of one-third of the Gross Settlement Amount (estimated to be approximately \$131,666.66), and reimbursement of incurred litigation expenses in an amount not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00); ii) a Service Award to Plaintiff of up to Ten Thousand Dollars and Zero Cents (\$10,000.00); and iii) Settlement Administration Costs which will not exceed Four Thousand One Hundred Dollars and Zero Cents (\$4,100.00). Agreement generally at § 3.2.1 – 3.2.4. After these deductions, the amount remaining is the "Net Settlement Amount," which is estimated to be \$219,233.34. JCL Dec., ¶ 19.

Once the PAGA Counsel Award, Service Award, and Settlement Administration Costs are deducted from the Gross Settlement Amount, the remaining funds, estimated to be \$219,233.34, comprise the Net Settlement Amount. Of the Net Settlement Amount, seventy-five percent (75%) shall be paid to the LWDA (the "LWDA PAGA Payment") and the remaining twenty-five percent (25%) shall be paid to the PAGA Aggrieved Employees ("Individual PAGA Payment"). Agreement at § 1.13; 1.16; 1.17. This 75/25 allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

///

1 **B. Allocation of Individual PAGA Payments**

2 The Individual PAGA Payments will be calculated by dividing the amount of the PAGA
3 Aggrieved Employees' 25% share of the Net Settlement Amount (\$54,808.34) by the total number
4 of PAGA Pay Periods worked by all PAGA Aggrieved Employees during the PAGA Period and
5 then multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Agreement at §
6 3.2.4.1. The PAGA Period is the period between July 5, 2022, to June 3, 2024. Agreement at § 1.22.

7 At the time of the parties' settlement of this action, Defendant estimated that there were
8 approximately 200 PAGA Aggrieved Employees who worked approximately 2,868 pay periods
9 during the PAGA Period based on company records. Agreement at § 8.³

10 **C. Funding and Distribution**

11 Defendant shall fund the Gross Settlement Amount within thirty (30) days after the Effective
12 Date. The Effective Date means the date by when both of the following have occurred: (a) the Court
13 enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The
14 Judgment is final as of the day the Court enters Judgment and all appeal periods have expired.
15 Agreement at § 1.10; 1.11; 4.3. Within fifteen (15) calendar days after Defendants fully fund the
16 Gross Settlement Amount, the Settlement Administrator will mail the Aggrieved Employee Payment
17 to the PAGA Aggrieved Employees via First-Class U.S. Mail. Agreement at § 4.4. Settlement
18 checks issued to PAGA Aggrieved Employees will expire one hundred eighty (180) days from the
19 date they are issued by the Settlement Administrator. Agreement at § 4.4.1. If the check remains
20 uncashed by the expiration of the 180-day period, the Settlement Administrator shall transmit the
21 funds represented by such checks to the Community Law Project in accordance with CCP § 384 and
22 subject to Court approval. Agreement at § 4.4.3.

23 **D. Release of Claims**

24 Upon entry of Judgment and funding of the Gross Settlement Amount, Plaintiff, the LWDA,
25 and the State of California shall release the Released Parties (as defined in the Agreement) from the
26 Released PAGA Claims which means all PAGA claims that were alleged in the operative Complaint

27 _____
28 ³ The Agreement contains an escalator clause, providing that, should the number of Pay Periods increase by more than 10% of what was represented during the PAGA Period, the Gross Settlement Amount will increase proportionally for the number of Pay Periods over 110% of 2,868. Agreement at § 8.

1 in the Charlette Pere v. EZ CareLink Corp., et al. Case No. CIVSB2227164 matter and Plaintiff's
2 PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all
3 other claims, including claims for vested benefits, wrongful termination, unemployment insurance,
4 disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period.
5 Agreement at §1.26; 5.2.

6 **IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT**

7 Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of any
8 civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the
9 agency at the same time that it is submitted to the court." Further, the Court in *Moniz v. Adecco*
10 *USA, Inc.* (2021) 72 Cal.App.5th 56, 77 stated that "the trial court must review and approve a PAGA
11 settlement (§ 2699, subd.(l)(2)), and the Supreme Court has in dictum referred to this review as a
12 safeguard." (Citing *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 88; internal
13 quotations omitted.) "The Supreme Court has also observed that trial court approval ensures that
14 any negotiated resolution is fair to those affected," leading the Court in *Moniz* to determine that
15 "adoption of a standard of review for settlements that prevents fraud, collusion or unfairness, and
16 protects the interests of the public and the LWDA in the enforcement of state labor laws is
17 warranted." (*Moniz, supra*, 72 Cal.App.5th at 77; citing *Williams v. Superior Court* (2017) 3 Cal.5th
18 531, 549; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-1801; internal citations
19 omitted.) In other words, "[i]n review and approval of a proposed settlement under section 2699,
20 subd. (l)(2), a trial court thus must scrutinize whether, in resolving the action, a PAGA plaintiff has
21 adequately represented the state's interests, and hence the public interest." (*Moniz, supra*, 72
22 Cal.App.5th at 88.) Consequently, the Parties respectfully ask the Court to review and approve the
23 settlement of the PAGA claims and the Net Settlement Amount to be paid as part of the proposed
24 Settlement.

25
26
27
28 //

A. The Gross Settlement Amount is Fair and Reasonable

The Gross Settlement Amount of \$395,000.00 is fair and reasonable and, therefore, should be approved. Here, Defendant's *maximum* liability exposure for PAGA penalties is estimated at approximately \$1,316,450.00 in PAGA penalties. JCL Dec., ¶ 20.

Plaintiff's consultant estimated Defendant's exposure as follows:

Claim	Penalty Amount⁴	Number of Pay Periods w/ Violation	Violation Rate	Total Penalties
<i>Meal Period Violations Cal. Labor Code §§ 226.7 and 512</i>	\$50	3,257	99 % of PAGA Pay Periods	\$162,850
<i>Rest Period Violations Cal. Labor Code §§ 226.7 and 512</i>	\$50	3,278	99% of PAGA Pay Periods	\$163,900
<i>Unpaid Wages Cal. Labor Code §§ 201, 202, 203, 204, 510, 1194, 1197, 1997.1 1198 and 558</i>	\$100	3,299	100% of PAGA Pay Periods	\$329,900
<i>Failure to Reimburse for Mandatory Business Expenses</i> Cal. Labor Code § 2802	\$100	3,299	100% of PAGA Pay Periods	\$329,900
<i>Failure to Furnish Accurate, Itemized Wage Statements Cal. Labor Code § 226</i>	\$100	3,299	100% of PAGA Pay Periods	329,900

JCL Dec., ¶ 21.

The crux of Plaintiff's claims is that she and the PAGA Aggrieved Employees were misclassified as independent contractors when they should have been classified as employees. Specifically, Plaintiff alleges that Defendants cannot satisfy the first, second or third factors of the ABC test, as outlined in *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal.5th 903, 957-958 (2018). First, Plaintiff alleges that Defendants directed and controlled all aspects of her and the PAGA Aggrieved Employees' performance of work, including wages, hours and working conditions. The Aggrieved Employees did not set their own rates, did not have control over which

⁴ In *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144, the court decided that "[u]ntil the employer has been notified that it is violating a Labor Code provision ... the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties." Therefore, Plaintiff used only penalties for initial violations.

1 location they were sent to work at, were expected to show up for the designated, assigned shifts, and
2 did not have control over how to care for the residents. Moreover, Plaintiff alleges that all supplies
3 she and the PAGA Aggrieved Employees were to use to perform their work duties were provided by
4 the Defendants, and that she nor the PAGA Aggrieved Employees were permitted to use their own
5 supplies or materials. JCL Dec., ¶ 22.

6 As to the second prong, Plaintiff alleges that neither she nor the PAGA Aggrieved
7 Employees performed work that was outside the usual course of Defendants' business. The
8 Defendants provide nursing services. These are the same services provided by the PAGA Aggrieved
9 Employees, as healthcare professionals. JCL Dec., ¶ 23.

10 The final prong of the ABC test requires the hiring entity to prove that the worker is
11 customarily and currently engaged in an independently established trade, occupation or business.”
12 *Dynamex*, 4 Cal.5th 963. The hiring entity cannot unilaterally determine a worker's status simply by
13 assigning the worker the label “independent contractor” or by requiring the worker, as a condition of
14 hiring, to enter into a contract that designates the worker an independent contractor. *Id.* At 962.
15 Here, Plaintiff never incorporated a nursing services business when she worked for Defendants, nor
16 did she undertake any other formalities indicative of having an independently established business
17 such as incorporation, business licensure, advertisements etc. Plaintiff did not have her own patient
18 base, as her patients were provided entirely to her by Defendants. Accordingly, Plaintiff alleges that
19 Defendants cannot establish the third factor of the ABC test. JCL Dec., ¶ 24.

20 As Plaintiff argued that she and the PAGA Aggrieved Employees were misclassified as
21 independent contractors, she alleges that she and the PAGA Aggrieved Employees were not paid for
22 all hours worked, were not provided with compliant meal or rest breaks, were not provided with
23 accurate, itemized wage statements, and were not reimbursed for mandatory business expenses.
24 Plaintiff alleges that she and the PAGA Aggrieved Employees were not authorized to take duty-free
25 rest breaks, that they did not receive uninterrupted 30-minute timely meal breaks, that they were
26 unable to leave the premises when working a shift, and did not receive paystubs as required by Labor
27 Code 226(a). Moreover, Plaintiff alleges that Defendants required she and the PAGA Aggrieved
28 Employees to obtain liability insurance supplied through Defendant Jaylex and the costs of this were

1 deducted from their pay checks. Defendant argued that Plaintiff and the PAGA Aggrieved
2 Employees were properly classified as independent contractors because they fall under the Referral
3 Agency exemption pursuant to AB5 (Labor Code Section 2775(a)), thus the Borello test would be
4 used to determine their status rather than the ABC test.

5 **B. The Gross Settlement Compares Favorably to The Likely Recovery**

6 Considering the above, the Gross Settlement Amount is approximately 30% of Defendants'
7 potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely recovery
8 of PAGA penalties through continued litigation. Defendants' maximum exposure to PAGA penalties
9 is not a realistic outcome of the litigation because it fails to account for the risks of continued
10 litigation including, but not limited to, Defendant's defenses. *See, Zayerz v. Kiewit Infrastructure*
11 *West*, 2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018). For instance, Defendants
12 argued that it can only be assessed civil penalties for actual violations of the Labor Code. *See* Lab.
13 Code § 2699(f)(2). In other words, to recover any civil penalties, Plaintiff would be required to
14 prove the underlying Labor Code violations. (*Cardenas v. McLane Foodservice, Inc.*, 2011 U.S.
15 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ["Given the statutory language [of PAGA], a plaintiff
16 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the
17 Labor Code by the defendant."].) To do this, Plaintiff would need to prove each PAGA Aggrieved
18 Employee was subject to the alleged Labor Code violation, which would be difficult to do, since
19 Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in this
20 action. Thus, Defendants contended that Plaintiff would be required to "prove Labor Code violations
21 with respect to each and every individual on whose behalf Plaintiff seek to recover civil penalties
22 under PAGA."; *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar. 2,
23 2009). JCL Dec., ¶ 25. When "determining whether the employer committed Labor Code violations
24 with respect to each employee" is impractical, the PAGA action can be dismissed. *Wesson v. Staples*
25 *the Off. Superstore*, 2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021).

26 Finally, the maximum penalty figure does not consider that Courts have complete discretion
27 to "award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on
28 the facts and circumstances of the particular case, to do otherwise would result in an award that is

1 unjust, arbitrary and oppressive, or confiscatory.” (Cal. Lab. Code § 2699(e)(2)). In fact, Courts
2 routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g. Carrington v.*
3 *Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to \$5 per pay period;
4 “Although the trial court may have disagreed with Starbucks regarding the issue of liability, it
5 clearly took the circumstances proffered by Starbucks into consideration when it imposed the
6 penalty ... only \$5 per initial violation”); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal App 5th 778,
7 788 (2018), review granted on other grounds (noting that the trial court “exercised its discretion to
8 reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average,
9 plaintiffs were deprived of 13 percent of the 30-minute meal period”); *Fleming v. Covidien, Inc.*,
10 2011 WL 7563047, *4 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of
11 PAGA civil penalties for plaintiffs’ section 226 claims from \$2,800,000 to \$500,000 because the
12 employees suffered no injuries as a result of the erroneous wage statements and made no complaints
13 about the errors or omissions in the wage statements, thus reducing the maximum penalty by 82%);
14 *see also, Gola v. University of San Francisco*, 90 Cal. App. 5th 548 (2023), as modified (May 9,
15 2023), reh'g denied (May 15, 2023), review denied (July 12, 2023), and disapproved of by *Naranjo*
16 *v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 547 P.3d 980 (2024) (concluding after a full-blown
17 bench trial that a penalty of 15% of the maximum PAGA penalties was the appropriate penalty).
18 The gross amount obtained by PAGA Counsel is reasonable in light of Defendant’s arguments.

19 Given Defendant’s defenses to the claimed Labor Code violations at issue and the risks and
20 costs of continued litigation, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount
21 is fair and reasonable. This settlement was negotiated by experienced counsel at arm's length. The
22 LWDA has been provided with notice of this motion and the PAGA settlement, and the decision of
23 LWDA to accept the PAGA settlement and not oppose the motion should be given considerable
24 weight. Moreover, the LWDA is a sophisticated government entity that can assert and protect its
25 own rights. JCL Dec., ¶¶ 5, 26.

26
27
28 //

1 **C. The Remaining Settlement Terms Are Fair and Reasonable**

2 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
3 2699(1) does not require that a court approve any other elements of the proposed settlement.
4 Because there are no class allegations for which Plaintiff seeks approval, the approval provisions
5 applicable to class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the
6 Court only needs to approve the settlement of the civil penalties sought in the PAGA claim.
7 Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable.
8 JCL Dec., ¶ 27.

9 **V. THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE**

10 PAGA Counsel seeks approval of the PAGA Counsel Award, comprised of attorneys' fees in
11 the amount of \$131,666.66 (one-third of the Gross Settlement Amount) and reimbursement of
12 litigation costs not to exceed \$30,000.⁵ PAGA does not have any requirements for reviewing
13 attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this
14 Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court
15 review the requested attorneys' fees, the requested fees and costs are reasonable for experience wage
16 and hour counsel. JCL Dec., ¶ 28.

17 **A. The Requested Attorneys' Fee is Fair and Reasonable**

18 The requested PAGA Counsel Award of \$161,666.66 comprised of \$131,666.66 for
19 attorneys' fees and reimbursement of litigation expenses of up to \$30,000 is fair, reasonable, and
20 justified by the result achieved. Agreement at § 3.2.2; JCL Dec., ¶ 29. PAGA Counsel negotiated a
21 recovery of Three Hundred Ninety-Five Thousand Dollars and Zero Cents (\$395,000.00), and this
22 result justifies the requested fees equal to one third of this recovery. This percentage is within the
23 standard contingent recovery percentage of one-third, and this percentage is what was expressly
24 approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016). At
25 the time this case was brought, the result was far from certain. Defendants' defenses to the merits of
26 the case created difficulties with proof and complex legal issues for PAGA Counsel to overcome.

27 _____
28 ⁵ As detailed *infra*, at the time of filing this motion, Plaintiff's Counsel incurred \$17,530.48 litigating this matter. Plaintiff will provide the Court with a final amount of litigation costs at the time of hearing on this motion.

1 Here, several defenses asserted by Defendants present serious threats to the claims of Plaintiff and
2 the PAGA Aggrieved Employees. Defendants asserted that its employment practices complied with
3 all applicable labor laws. If successful, Defendants' factual and legal defenses would eliminate *any*
4 *recovery* to the PAGA Aggrieved Employees. While Plaintiff believes that these defenses could be
5 overcome, Defendants maintain that these defenses have merit and therefore present a serious risk to
6 recovery. The Settlement was possible because, in PAGA Counsels' eyes, PAGA Counsel was able
7 to persuade Defendants that there was an appreciable risk that Plaintiff would prevail on the factual
8 and legal issues underlying liability and overcome difficulties in proof as to monetary relief. JCL
9 Dec., ¶ 30.

10 Further, the fee award is justified by the work performed. Generally, the Ninth Circuit and
11 California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for
12 accepting the contingent risks of the litigation or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th
13 at 506 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert*
14 *Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often
15 applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
16 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*,
17 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier
18 of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-
19 third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-
20 02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented
21 a multiplier of 2.76 as falling within the "majority" range for risk multipliers).

22 As detailed in PAGA Counsels' time and billing records submitted herewith, PAGA
23 Counsels' current combined loadstar is \$110,441.00. JCL Dec.at ¶¶ 6, 31-42; Declaration of Shani
24 Zakay ("Zakay Dec.") at ¶¶ 3-7. Thus, PAGA Counsels' fee request is equal to PAGA Counsel's
25 loadstar with a negligible multiplier of 1.19 – well below the 2.13 multiplier approved in *Laffitte* –
26 and well within the recognized multiplier range between 2 and 4. See also *Taylor v. FedEx Freight,*
27 *Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award
28 with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*,

2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7).

B. PAGA Counsel is Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs.

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include counsel's incurred expenses because those who benefit from their effort should share in the cost. *See Rider v. City of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *see also Hartless v. Clorox Company*, 273 F.R.D. 630 at 645-46 (common fund class action settlement where court awarded litigation costs for consultants, online legal research, copying, postage, long distance charges, travel expenses, filing fees, mediation fees and investigation fees). Prior to incurring costs for filing of this motion, PAGA Counsel collectively expended \$17,530.48 prosecuting this action (JCL Law Firm, APC - \$8,218.61, Zakay Law Group, APLC - \$9,311.87; JCL Dec. ¶¶ 7, 43; Zakay Dec., ¶¶ 8-9) PAGA Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; factual and legal research charges; mediation fees; and expert costs which were all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed. JCL Dec. ¶¶ 7, 44.

VI. PLAINTIFF'S SERVICE AWARD IS FAIR AND REASONABLE

Incentive payments are intended to "compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (emphasis added). Courts routinely approve service awards to compensate named plaintiffs for the services they provide and the risks they incur during the litigation. *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to plaintiffs for their efforts in bringing class case). The factors

1 courts use in determining the amount of service awards include: (1) a comparison between the
2 service awards and the range of monetary recovery available to the class; (2) time and effort put into
3 the litigation; (3) whether the litigation will further the public policy underlying the statutory
4 scheme; and (4) risks of retaliation. *Clark v. American Residential Services, LLC*, 175 Cal. App. 4th
5 785, 804-805 (2009).

6 The Settlement provides for a Service Award of \$10,000 for Plaintiff. The Service Award
7 payment is fair and reasonable compensation for the Plaintiff's efforts in bringing the action,
8 assisting PAGA Counsel with the litigation and settlement, regularly conferring with PAGA Counsel
9 on the status of her case and the strategies for prosecuting the claims and agreeing to provide
10 Defendant a broad general release of all claims arising out of his employment. Plaintiff willingly
11 came forward to protect and advance the rights of the PAGA Aggrieved Employees on important
12 legal disputes affecting California workers. By way of example, Plaintiff assumed the serious risk of
13 liability for Defendant's costs and potentially fees if the case was unsuccessful. Nevertheless,
14 Plaintiff knowingly and voluntarily undertook the risk to vindicate the rights of the PAGA
15 Aggrieved Employees. JCL Dec., ¶ 45.

16 Plaintiff's efforts in bringing the lawsuit conferred a monetary benefit to 200 PAGA
17 Aggrieved Employees. Accordingly, Plaintiff and PAGA Counsel respectfully request the Court
18 approve the Service Award in accordance with the Settlement Agreement. Plaintiff and PAGA
19 Counsel also respectfully request approval of the requested Service Award in the amount of
20 \$10,000.00 to Plaintiff. JCL Dec., ¶ 46.

21 VII. CONCLUSION

22 Based on the foregoing, Plaintiff respectfully request this Court approve the PAGA
23 Settlement as set forth in the Settlement Agreement and enter the proposed order and judgment
24 submitted herewith.

25 Dated: November 8, 2024

JCL LAW FIRM, APC

26
27 By: 
28 Jean-Claude Lapuyade, Esq.
Attorney for Plaintiff