

1 **STATE OF CALIFORNIA**
2 Labor and Workforce Development Agency
3 Department of Industrial Relations
4 Division of Labor Standards Enforcement
5 MICHAEL L. SMITH (SBN 252726)
6 1515 Clay Street, Room 2206
7 Oakland, CA 94612
8 Telephone No. (510) 286-1340
9 Facsimile No. (510) 622-3258
10 mlsmith@dir.ca.gov
11 Attorney for the Labor Commissioner

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

11/30/2023
Clerk of the Court
BY: WILLIAM TRUPEK
Deputy Clerk

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN FRANCISCO**

11 JOHN DOE, PAOLA CORREA, and
12 DEWAYNE CASSEL, on behalf of the
13 State of California and aggrieved
14 employees,

15 Plaintiffs,

16 vs.

17 GOOGLE, INC., ALPHABET, INC.,
18 ADECCO USA INC., ADECCO GROUP
19 NORTH AMERICA and ROES 1 through
20 10,

21 Defendants.

Case No. CGC-16-556034

**COMMENTS OF LWDA REGARDING
PROPOSED PAGA SETTLEMENT**

Date: December 4, 2023

Time: 9:00 a.m.

Dept: 304 (COMPLEX)

Judge: Hon. Ethan P. Schulman

Date Action Filed: December 20, 2016

Trial Date: Not Set

*No filing fees, court costs, etc.,
per Labor Code §§101 and 101.5*

22 The California Labor and Workforce Development Agency ("LWDA") respectfully
23 submits these comments regarding the proposed settlement agreement in this action in response
24 to the Court's invitation in its order of October 31, 2023.

1 **I. IMPACT OF THE SETTLEMENT AND AMOUNT OF THE CIVIL PENALTY**

2 It is well established that PAGA serves to augment the limited enforcement capability of
3 the Labor and Workforce Development Agency by empowering employees to bring actions to
4 enforce California’s labor standards. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014)
5 59 Cal.4th 348, 383, *abrogated on other grounds by Viking River Cruises, Inc. v. Moriana*
6 (2022) 142 S.Ct. 1906.)

7
8 LWDA can confirm Plaintiffs’ statement that the \$27 million settlement in this action is
9 the largest PAGA-only settlement, and second largest civil penalty recovery, in a PAGA action
10 to date.¹ Thus, LWDA concurs with Plaintiffs that the settlement in this action constitutes one of
11 the most significant recoveries under PAGA. But the impact of this settlement goes beyond these
12 numbers.

13
14 The touchstone for the adequacy of a settlement must always be the purposes and policies
15 underlying California’s labor laws and PAGA, as a proxy for a state action. To that end, a PAGA
16 settlement must provide for relief that is genuine, meaningful, and consistent with the State’s
17 goal of benefitting the public through enforcement of its labor laws. A PAGA settlement that
18 deters noncompliance “augment[s] the state’s enforcement capabilities, encourage[es]
19 compliance with Labor Code provisions, and deter[s] noncompliance.” (*O’Connor v. Uber*
20 *Technologies* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1134-35 [internal citations omitted];
21 *Iskanian, supra*, 59 Cal.4th at 383 [“The PAGA was clearly established . . . to deter
22 violations.”].)

23
24
25
26

¹ This search was based on information submitted by private attorneys into LWDA’s PAGA
27 filing portal, pursuant to PAGA’s statutory requirements to submit proposed settlements and
28 court order and judgements to LWDA. (Lab. Code § 2699(1)(2) & (3).) Errors may account for
some deviation in this data.

1 Overall, this settlement has achieved significant labor law enforcement in inducing
2 Google to change its policies which allegedly violated fundamental rights of employees to
3 converse about their compensation (Lab. Code § 232) and conditions of employment (§ 232.5)
4 and including a notice to employees of their rights under the allegedly violated statutes. These
5 provisions of law protect fundamental rights rooted in public policy that the State has a strong
6 interest in enforcing.
7

8 To our knowledge this is the first PAGA case which has obtained remedies of this nature,
9 which clearly further labor law enforcement. And undoubtedly, as Plaintiffs state, “knowledge of
10 this \$27,000,000 PAGA settlement against Google should serve to deter Alleged Speech
11 Restrictions by other employers.” (MPA at p.18.) The Court should give due consideration to the
12 fact that the settlement provides for the recovery of monetary penalties, as well as effectuates the
13 State’s interests through other affirmative relief.
14

15 **II. THE SETTLEMENT AGREEMENT HERE DOES NOT INCLUDE ANY**
16 **COMMON DEFICIENCIES THAT CONFLICT WITH THE PUBLIC**
17 **INTEREST.**

18 In evaluating the adequacy of settlements, court should evaluate whether the
19 the settlement is fair, adequate, and reasonable under all of the circumstances in light of the
20 public policies underlying California’s labor standards. The proposed settlement agreement does
21 not include any common terms that conflict with the public interest. First, it does not purport to
22 settle claims beyond those pleaded in the plaintiffs’ PAGA notices. (Cf. January 27, 2021 and
23 January 27, 2022 PAGA Notices & Settlement Agreement § 5.1 release limited to claims “based
24 on or reasonably related to the facts and claims alleged by Plaintiffs in the Action and Plaintiffs’
25 notice letters to the LWDA including, but not limited to claims under California Labor Code
26
27
28

1 sections 96(k), 98.6, 232, 232.5, 432.5, 1101, 1102, 1102.5, and 1197.5(j)-(k)"). The PAGA
2 representatives release broader claims on behalf of themselves. (§ 5.2)

3 In addition, the proposed settlement agreement does not require ongoing confidentiality
4 by the plaintiffs now that the motion for approval has been filed. (See § 7.2.)

5 With regard to distribution to employees, the agreement does not require aggrieved
6 employees to make a claim to be entitled to payment, and there is no reversion to the employer
7 under any circumstances. (§ 4.9.)

8 In addition, according to the settling parties, there are no existing PAGA actions pursuing
9 the same claims that are being settled here. (§ 7.1.) Thus, there is no danger of a reverse auction
10 scenario which might incentivize plaintiffs to accept a lower settlement value in conflict with
11 LWDA's interest in enforcement.
12

13 Finally, as noted above, the settlement includes a notice to employees regarding their
14 rights which were at issue in this action, including the rights to discuss wages and working
15 conditions and to engage in political conduct. (§ 1.22, Ex. A)
16

17 **III. INCENTIVE PAYMENTS TO PAGA PLAINTIFFS**

18 "The rationale for making enhancement or incentive awards to named plaintiffs is that
19 they should be compensated for the expense or risk they have incurred in conferring a benefit on
20 other members of the class." (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380,
21 1394, quoting *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 791.) In
22 the class action context, courts have held that an incentive award is appropriate "if it is necessary
23 to induce an individual to participate in the suit." (*Clark*, 175 Cal.App.4th at p. 804.)
24

25 Although the express statutory terms of PAGA do not address incentive awards, the
26 reasons for awarding incentive awards in class actions may similarly be present in PAGA
27
28

1 litigation. “Incentive awards are commonly awarded in the context of class action settlements,
2 which bear many similarities to settlements in PAGA cases.” (*Smith v. Homeguard, Inc.* (Cal.
3 Super. Oct. 28, 2020), No. 18CV333804, 2020 WL 6749810, at *2.) Indeed, “[m]any if not most
4 PAGA settlements include an ‘incentive award’ paid to the named representative.” (See *Carillo*
5 *v. Blusky Restoration Contractors LLC* (Cal.Super. June 29, 2022), No. CIVSB2105793, 2022
6 WL 18406637, at *1 (recognizing incentive awards in PAGA settlements).)²

8 “The Legislature’s sole purpose in enacting PAGA was ‘to augment the limited
9 enforcement capability of the [LWDA] by empowering employees to enforce the Labor Code as
10 representatives of the Agency.’ [citation].” (*Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th
11 1104, 1122.) At least one court has recognized that providing financial incentives to employees
12 to serve as a PAGA plaintiff in actions that will recover civil penalties for Labor Code violations
13 is consistent with PAGA’s purpose. (See *Galindo*, 2021 WL 9880030, at *1 (incentive awards to
14 PAGA plaintiffs further the enforcement goal of the statute).)

16 Criteria courts may consider in determining whether to make an incentive award include:
17 1) the risk to the representative in commencing suit, both financial and otherwise; 2) the
18 notoriety and personal difficulties encountered by the representative; 3) the amount of time and
19 effort spent by the representative; 4) the duration of the litigation and; 5) the personal benefit (or
20 lack thereof) enjoyed by the representative as a result of the litigation. (*Ibid.*) (*Cellphone*
21 *Termination Fee Cases, supra*, 186 Cal.App.4th 1380, 1394-1395.) Given the similar roles of
22 plaintiffs in class and PAGA actions, these criteria are a logical starting point for evaluating
23 incentive awards in PAGA actions.
24


26 ² See also *Galindo v. 20/20 Plumbing and Heating, Inc.*, (Cal.Super. Oct. 24, 2021) No. CIVSB-
27 2118276, 2021 WL 9880030, at *1 (\$5000 incentive award to PAGA representative); *Tallon v.*
28 *Aluma Systems Concrete Const., LLC* (Cal.Super. Oct. 28, 2022) No. CIVDS2012039, 2022 WL
17224382, at *1 (court approval of \$2500 incentive award to PAGA plaintiff).)

1 Because the aggrieved employee bears some risk in commencing the suit, both financial
2 and otherwise, and must expend time and resources in pursuit of the litigation, incentive awards
3 may be appropriate in PAGA actions. In addition, the share of money that goes to employees
4 from a PAGA settlement is only a one-fourth share of the total civil penalty amount, divided
5 among all aggrieved employees.³ Thus, in this respect, the need for a representative plaintiff in a
6 PAGA action is at least as great as in the class context.
7

8 **IV. CONCLUSION**

9 Given the size and terms of the settlement and the strong advocacy of counsel over
10 several years, LWDA submits that the settlement meets the criteria for approval. LWDA thanks
11 the Court for the opportunity to submit the foregoing comments.
12

13 Dated: November 27, 2023 STATE OF CALIFORNIA
14 LABOR & WORKFORCE DEVELOPMENT AGENCY
15 DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

16 By: 
17 Michael L. Smith, Attorney
18
19
20
21
22
23
24

25 _____
26 ³ In addition, PAGA-only settlements can no longer include a component of restitution for
27 employees. See *ZB, N.A., and Zions Bancorporation v. Superior Court of San Diego County*
28 (2019) 8 Cal.5th 175 (“*Lawson*”) (civil penalties in PAGA action can no longer include “an
amount sufficient to recover underpaid wages” under Lab. C. § 558).