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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

ASHLEY FLORES, an individual, on behalf of
the State of California, as a private attorney
general,

PLAINTIFF,

v.

AVDC, INC., an Ohio Corporation; and DOES
1 to 50, inclusive,

DEFENDANTS.

Case No.: CIVSB2025388

[Assigned for all purposes to the Hon. David
Cohn, Dept. S-26]

**NOTICE OF MOTION AND MOTION
FOR APPROVAL OF
REPRESENTATIVE PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

*[Filed concurrently with Declaration of
David S. Winston, Declaration of Ashley
Flores and the Proposed Order]*

Date: October 21, 2021

Time: 10:00 a.m.

Complaint Filed: November 16, 2020

Trial Date: None Set

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that October 21, 2021 at 10:00 a.m. in Department S26 of the
3 above-entitled court, located at 247 W. 3rd St., San Bernardino, CA 92415, Plaintiff Ashley Flores
4 will and does move the Court for an Order of Approving Proposed PAGA Settlement ("PAGA
5 Settlement Approval Order"), a copy of which is filed concurrently herewith.

6 The Motion will be made on the grounds that the proposed PAGA Settlement is fair, adequate,
7 reasonable, and in the best interest of the State of California and aggrieved employees. The Motion
8 will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the
9 Declaration of David S. Winston, the Declaration of Ashley Flores, the Parties' Settlement
10 Agreement, and all other papers and records on file in this action, and on such oral and documentary
11 evidence as may be presented at the hearing on this Motion.

12 DATED: August 3, 2021

WINSTON LAW GROUP, P.C.

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14 By: David S. Winston
15 DAVID S. WINSTON
16 Attorney for Plaintiff Ashley Flores and the
17 Aggrieved Employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Ashley Flores submits this Memorandum of Points and Authorities in support of this
4 Motion for Approval of PAGA Settlement reached between Plaintiff and Defendant. Pursuant to
5 Labor Code § 2699(1)(2), the superior court is required to “review and approve any settlement of any
6 civil action filed pursuant to [PAGA].” The Proposed Settlement provides for a monetary payment
7 of \$280,000.00. The Proposed Settlement, which was negotiated in light of all known facts and
8 circumstances resulted from a mediator’s proposal by the Hon. John Leo Wagner (Ret.) and
9 represents a fair outcome in this litigation based upon the risk factors associated with the claims.
10 Declaration of David Winston In Support of PAGA Settlement, ¶ 8 (hereafter the “Winston Decl.”).
11 Notably, unlike with other security check related cases, Defendant actually started paying aggrieved
12 employees for five (5) minutes per day in excess of what their time punches indicated. *Id.*

13 By this Motion, Plaintiff requests that the Court:

14 (1) Grant approval of the PAGA Settlement and Release Agreement signed by the Parties (the
15 “Settlement Agreement”). A true and correct copy of the Settlement Agreement is attached to the
16 Winston Decl., as Exhibit 1;

17 (2) Appoint ILYM Group, Inc. as the Settlement Administrator;

18 (3) Award PAGA Representative Ashley Flores a Service Award in the amount of
19 \$5,000.00; and

20 (4) Approve PAGA Counsel’s Attorneys’ Fees and Costs Request;

21 Plaintiff believes that the proposed settlement of this action is fair, reasonable, adequate, and
22 in the best interests of the state of California and the aggrieved employees given the issues in this
23 action. Accordingly, Plaintiff respectfully requests that the Court grant approval of the Parties’
24 Proposed PAGA Settlement. The Proposed Settlement was provided to the LWDA as required by
25 PAGA. Winston Decl., ¶ 20, Exh. 2.

26 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

27 On September 9, 2020, Plaintiff filed and served a PAGA notice alleging that Defendant
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1 violated Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 510, 512, 558, 1194, 1197,
2 1197.1 and 1198 as well as IWC Wage Order Nos. 7-2001 and 9-2001. Winston Decl., ¶ 9.
3 Concurrently to serving her PAGA Notice, Plaintiff submitted a record request to Defendant and
4 filed a separate unrelated complaint with the California Department of Fair Employment and
5 Housing related to alleged discrimination. *Id.* at ¶ 10. Shortly thereafter, Plaintiff and Defendant
6 started discussing the possibility of mediation. *Id.* After exhausting her administrative remedies on
7 her PAGA claim, Plaintiff filed her PAGA claims in the San Bernardino County Superior Court
8 and the Parties agreed to mediate the action with the Hon. John Leo Wagner (Ret.). The Parties
9 mediated the action with Judge Wagner on February 11, 2021, but were unable to reach a resolution
10 during the Mediation. *Id.*

11 Shortly after the Parties' Mediation on February 11, 2021, Plaintiff filed an Amended PAGA
12 Notice incorporating Plaintiff's additional allegations that Defendant failed to maintain accurate
13 time records in violation of Labor Code §§ 1174 and 1174.5. Winston Decl., ¶ 11. Plaintiff also
14 served a Code of Civil Procedure Section 998 offer on February 19, 2021 that Defendant did not
15 accept. *Id.* On February 25, 2021, the California Supreme Court issued its decision in *Donohue v.*
16 *AMN Servs., LLC*, 11 Cal. 5th 58 (2021); *Donohue v. AMN Servs., LLC*, 11 Cal. 5th 58, 81 (2021)
17 ("It is the employer's duty to maintain accurate time records; the law does not expect or require
18 employees to keep their own time records to uncover potential meal period violations.").

19 In an effort to advance the litigation during the consideration of her Code of Civ. Proc.
20 Section 998 offer, Plaintiff propounded four sets of discovery consisting of Special Interrogatories,
21 Requests for Admission, Request for Production of Documents, and Employment Form
22 Interrogatories. Winston Decl., ¶ 12. The Parties also reengaged the Mediator after the expiration
23 of Plaintiff's Code of Civil Procedure Section 998 offer. *Id.* Judge Wagner made a Mediator's
24 Proposal that resulted in the proposed settlement currently pending before the Court. Winston Decl.,
25 ¶ 13, Exh. 1.

26 **III. THE NATURE OF A PAGA ACTION**

27 The Private Attorney General Act ("PAGA") (Labor Code section 2698, *et seq.*) creates a
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1 means of “deputizing” citizens as private attorney generals to enforce the Labor Code on behalf of
2 the state of California. *Brown v. Ralphs Grocery Co.*, 197 Cal.App.4th 489, 501 (2011). Through
3 PAGA, an aggrieved employee can recover civil penalties for violations of the Labor Code committed
4 against the aggrieved employee on behalf of the State of California. Lab. Code § 2699(a) and (f).
5 Thus, in bringing a PAGA action, the aggrieved employee acts as the proxy or agent of the state labor
6 law enforcement agencies, representing the same rights and interest of the state of California who
7 remains the real party in interest. *Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty.*, 234
8 Cal.App.4th 1109, 1119 (2015) (holding “the government is always the real party in interest” in a
9 PAGA action.).¹

10 Since in a PAGA action the state serves as the real party in interest, any judgment in a PAGA
11 action binds only the state of California and does not alter the rights of any of the allegedly aggrieved
12 employees except with respect to civil penalties that could be recovered by the state of California on
13 behalf of the aggrieved employees. *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*,
14 46 Cal.4th 993, 1003 (2009); (holding that “[PAGA] does not create property rights or any other
15 substantive rights.”); *Medina v. Vander Poel*, 523 B.R. 820, 825 (E.D. Cal. 2015) (holding “PAGA
16 plaintiffs do not have property rights in their cases.”).

17 Moreover, as the Ninth Circuit and California Supreme Court and Appellate Courts have
18 recognized, “a PAGA suit is fundamentally different than a class action.” *Baumann v. Chase Inv.*
19 *Servs. Corp.*, 747 F.3d 1117, 1122 (9th Cir. 2014); *Kim v. Reins International California, Inc.*, 9
20 Cal.5th 73, 81 (2020) (“A PAGA claim is legally and conceptually different from an employee’s own
21 suit for damages and statutory”). Unlike in a class action, “PAGA does not make other potentially
22 aggrieved employees parties or clients of plaintiff’s counsel, does not impose on a plaintiff or counsel
23 any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect
24 to the ability to represent a large class.” *Williams vs. Sup. Ct.*, 3 Cal.5th 531, 546-547 (2017). PAGA
25 also “has no notice requirements for unnamed aggrieved employees, nor may such employees opt out
26

27 ¹ See also *Montano v. The Wet Seal Retail, Inc.*, 232 Cal.App.4th 1214, 1222 (2015) (“[A] PAGA action is a dispute
28 between an employer and the State agency.”). Accordingly, a plaintiff may not bring a PAGA claim simply on his or her
own behalf as an individual. *Arias v. Sup. Ct.* 46 Cal.4th 969, 986 (2009); see also *Reyes v. Macy’s, Inc.*, 202 Cal.App.4th
1119, 1123-1124 (2011).

of a PAGA action.” *Baumann*, 747 F.3d at 1122.²

IV. THE PROPOSED SETTLEMENT

The Proposed Settlement only covers the State’s claims for Labor Code violations committed against a group of aggrieved employees defined as any and all individuals who were employed by AVDC, Inc. as a non-exempt, hourly employee in California for one or more pay periods from September 9, 2019 to July 15, 2021. Winston Decl., ¶¶ 13 and 15, Exh. 1 at p. 2. As of the July 15, 2021 cut-off date there were 943 aggrieved employees who worked 30,995 pay periods. Winston Decl., ¶ 14. Notably, as discussed above none of the employees, except for Plaintiff, are waiving any of their own individual rights to pursue claims against Defendant as only the State’s claims for civil penalties were ever at issue in this action. *Amalgamated Transit*, 46 Cal.4th at 1003; *Kim*, 9 Cal. 5th at 81.

The Proposed Settlement provides for Defendant to pay a non-reversionary Gross Settlement Amount of \$280,000.00 subject to the following proposed allocation:

Gross Settlement Amount:	\$280,000.00
Attorneys’ Fees: (1/3)	up to \$93,333.33
Case Costs:	up to \$9,699.22
Settlement Administration Costs:	\$8,790.00
Service Award for Plaintiff Flores:	up to \$5,000.00

Estimated Net PAGA Penalties:	\$163,177.45
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Winston Decl., ¶¶ 13 and 17, Exh. 1 at p. 6-7.

The Net PAGA Payment is the amount to be distributed to the LWDA and the aggrieved employees and consists of the Gross Settlement Amount minus Court Approved PAGA Counsel’s attorneys’ fees and litigation costs, the settlement administrator costs charged by third-party settlement administrator ILYM, and Plaintiff Flores’ proposed service award. Winston Decl., ¶¶ 13

² See also *O’Connor v. Uber Technologies, Inc.*, No. 13-CV-03826-EMC, 2016 WL 4398271, at *18 (N.D. Cal. Aug. 18, 2016), (“PAGA does not require class action procedures, such as notice and opt-out rights.”) citing *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 381 (2014) (emphasis added).

1 and 18, Exh. 1 at p. 6-7. The Net PAGA Payment Amount will be allocated pursuant to Labor Code
2 section 2699(i) with 75% paid to the LWDA (\$122,383.09) and 25% paid to the aggrieved employees
3 on a pro-rata basis (\$40,794.36). *Id.* The portion of PAGA penalties distributed to each PAGA
4 Aggrieved Employee shall be calculated by dividing the number of PAGA periods worked by an
5 aggrieved employees during the covered period by the total number of pay periods worked by all
6 aggrieved employees during the covered period and multiplying that amount by the amount of PAGA
7 penalties awarded to the Aggrieved Employees (*i.e.* \$40,794.36). *Id.* Based on the data provided by
8 Defendant, the Proposed Settlement itself represents a gross PAGA penalty award of \$9.03 per pay
9 period (\$280,000/30,995 pay periods) and a net PAGA penalty award of \$5.26 per pay period
10 (\$163,177.45/30,995 pay periods) in addition to the monetary and non-monetary relief already
11 enjoyed by the aggrieved employees. Winston Decl., ¶ 19. In addition, the average estimated
12 settlement award for an aggrieved employee is approximately \$43.26 (\$40,794.36 PAGA Penalties
13 for the aggrieved employees/943 aggrieved employees). Winston Decl., ¶ 19.

14 **V. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT**

15 Although a party need not bring a motion for approval of a PAGA settlement, nor must the
16 Court conduct a hearing on the fairness of a PAGA settlement—as evidenced by the fact that the
17 LWDA website notes a hearing time “**if any**”)—a court must nevertheless review and approve the
18 PAGA settlement. Lab. Code § 2699 (l)(2) (“The superior court shall review and approve any
19 settlement of any civil action filed pursuant to this part.”). Winston Decl., ¶ 23, Exh. 4.

20 **A. The Standard the Court Should Consider When Reviewing the Settlement**

21 While PAGA requires a trial court to approve a PAGA settlement, courts have noted there is
22 no governing standard to review PAGA settlements. *Moreno v. Beacon Roofing Supply, Inc.*, No.
23 19cv185-GPC(LL)) 2020 U.S. Dist. LEXIS 40417, at *18 (S.D.Cal. Mar. 9, 2020); *Sanchez v. Frito-*
24 *Lay, Inc.*, No. 1:14cv797-DAD-BAM, 2019 U.S. Dist. LEXIS 170556, at *12 (E.D. Cal. Sept. 30,
25 2019) (acknowledging “absence of authority governing the standard of review of PAGA
26 settlements”). “[N]either the California legislature, nor the California Supreme Court, nor the
27 California Courts of Appeal, nor the [LWDA] has provided any definitive answer’ as to what the
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appropriate standard is for approval of a PAGA settlement.” *Jordan v. NCI Grp., Inc.*, No. EDCV161701JVSSPX, 2018 U.S. Dist. LEXIS 25297, at *2 (C.D. Cal. Jan. 5, 2018). However, the Department of Industrial Relations on behalf of the Labor Commissioner provided some guidance for Courts to consider in *Price v. Uber Technologies, Inc.*, Case No. BC554512 (Los Angeles County Superior Court). Winston Decl., ¶ 21, Exh. 3.

As the DIR explained in *Price*, “the Labor Commissioner believes that courts evaluating PAGA settlement should utilize the standard employed in qui tam and other representative actions: is the settlement fair, adequate, and reasonable under all of the circumstances in light of the public policies underlying California’s Labor Standards.” *Id.* at 3:1-11.

In order to permit the Court to further assess the sufficiency of the Proposed Settlement, Plaintiff wishes to provide the Court with information concerning: (1) the experience and views of Counsel (2) the strength of Plaintiff’s case; (3) the risk, expense, complexity and likely duration of further litigation; and (4) the amount offered in settlement. The proposed Settlement satisfies each of these factors.

1. The Experience and Views of Counsel and Mediator’s Involvement Supports Approval of the Parties Agreement

Although not technically a factor in a PAGA action, PAGA Counsel is experienced in wage-and-hour class actions and has worked on numerous class and representative PAGA wage and hour cases. Winston Decl., ¶¶ 3-6.³ Indeed, PAGA Counsel has previously been appointed Class or PAGA Counsel by this Court. Winston Decl., ¶ 5 (e, h, j, n, y, aa, ff) (referencing *Espindola et al. vs. Panda Express, LLC et al.*, San Bernardino County Superior Court (Case No. CIVDS1931455, *Antonov et al. vs. GL HHR, LLC* (Ken Garff Automotive) et al., San Bernardino County Superior Court (Case No. CIVDS1724725), *Smith et al. vs. Burlington Merchandising Corporation et al.*, San Bernardino County Superior Court (Case No. CIVIDS1929684, *Berbano vs. Ingram Micro, Inc.*, San Bernardino County Superior Court (Case No. CIVDS1826805), *Herrera vs. Inland Staffing et al.*, San Bernardino County Superior Court (Case No. CIVDS2924284), *Sumlin vs. BNSF Railway Company*, San

³ *Williams*, 3 Cal.5th at 546-547 (2017) PAGA does not make other potentially aggrieved employees parties or clients of plaintiff’s counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class.”).

1 Bernardino County Superior Court (Case No. CIVDS1724126, and *Delayshon Thomas et al. vs.*
2 *Commercial Protective Services, Inc. et al.*, San Bernardino County Superior Court (Case No.
3 CIVDS1821925).

4 The Parties' sophisticated counsel, operating at arm's length and with the assistance of
5 mediator the Hon. John Leo Wagner (Ret.) weighed the strengths and risks of this case, and
6 unanimously share the view that this is a fair and reasonable settlement in light of the nature of the
7 claims, the complexities of the case, the state of the law, and the uncertainties of litigation. PAGA
8 Counsel's knowledge and experience as well as the mediator's participation in the settlement
9 negotiation weighs considerably against any inference of collusion.⁴ Further, after factoring in the
10 risks explained below, PAGA Counsel believes that the proposed Settlement is fair and reasonable
11 and should be approved. Winston Decl., ¶ 23.

12 2. **The Strengths and Risks Associated with Plaintiff's Case**

13 a. **The Strength of and Risks Associated with the Off-the-Clock 14 Minimum Wage and Overtime**

15 Under California law an employer must compensate an employee for each and every minute
16 worked. *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018) (finding that there is no *de minimis*
17 doctrine under California law and that California law does "not allow employers to require employees
18 to routinely work for minutes off the clock without compensation.").

19 Plaintiff alleged that as part of their employment, Defendant required Plaintiff and all
20 aggrieved employees to go through security checks when entering and leaving the premises at the
21 start of their shift, if they attempted to go outside during a meal/rest period, and at the conclusion of
22 their shift. Winston Decl., ¶ 24. Since Plaintiff and the other aggrieved employees worked shifts in
23 excess of eight (8) hours per day and/or forty (40) hours per week, some of the hours associated with
24 security checks included overtime hours. *Id.* While the informal discovery and pay/time records
25 substantiated that Defendant maintained a policy of paying employees five (5) minutes per day for

26 ⁴ *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS, 108195 (N.D. Cal.
27 Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *In re Amtel*
28 *Corp. Derivative Litig.*, No. C 06-4592 JF (HRL), 2010 U.S. Dist. LEXIS 145551 (N.D. Cal. June 25, 2008) (same);
D'Amato v. Deutsche Bank, 236 F.3d 78, 85 (2nd Cir. 2001) (a "mediator's involvement in pre-certification settlement
negotiations helps to ensure that the proceedings were free of collusion and undue pressure.").

1 off-the-clock work, Plaintiff still asserted that Defendant failed to compensate her for all of the time
2 associated with the security checks because security checks often took more than five (5) minutes in
3 aggregate per day. *Id.* at ¶ 25. Nevertheless, serious risk existed as to the manageability of these
4 claims as even the plaintiff's failed to certify *Troester*. Winston Decl., ¶ 26, Exh. 4 ("Order Granting
5 Defendant's Motion for Partial Summary Judgment and Denying Plaintiff's Motion for Class
6 Certification").

7 Further, it was uncertain that even if Plaintiff prevailed whether or not the Court would award
8 significant penalties on this claim in light of the fact that unlike other employers Defendant actually
9 attempted to provide Plaintiff and the other aggrieved employees with some amount of compensation
10 beyond their time punches for the time associated with security checks. Winston Decl., ¶ 27.

11 **b. The Strength of and Risks Associated with the Meal Period Claims**

12 Labor Code § 512 requires employers to provide employees with thirty (30) minute
13 uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover, an
14 employee who works more than ten (10) hours per day is entitled to receive a second thirty (30)
15 minute uninterrupted and duty free meal period.

16 Plaintiff alleged that Defendant violated Labor Code § 512 by requiring Plaintiff and all
17 aggrieved employees to go through security checks when entering and leaving the premises,
18 including if they attempted to go outside during a meal/rest period, and at the conclusion of their
19 shift. Winston Decl., ¶ 28. Plaintiff also alleged that Defendant's security check policies also
20 discouraged and disincentivized employees from taking proper meal periods and that as a result of
21 the security checks the aggrieved employees were not relieved of all of their duties. *Id.*; *see also*
22 *Hamilton v. Wal-Mart Stores, Inc.*, No. 5:17-cv-01415-AB (KKx)), 2019 U.S. Dist. LEXIS 77699,
23 at *12 (C.D.Cal. Mar. 4, 2019) ("Walmart's security check arguably 'impedes or discourages'
24 associates from taking an 'uninterrupted 30-minute break' because employees have only two
25 options: leave the premises and go through the security check even though the security check may
26 eat up some part of their meal break or stay inside the facility."); *Kaanaana v. Barrett Business*
27 *Services, Inc.*, 29 Cal.App.5th 778, 808 (2018) (acknowledging that the employees could get
28 separate PAGA penalties for interrupted meal periods because interrupted meal periods violated

1 Labor Code sections 1194 and 512 and remanding to the trial court to determine the amount of
2 PAGA penalties to award).

3 It was also undisputed that Defendant paid meal period premiums to employees who
4 reported not receiving proper meal periods but did not inquire about security checks and/or maintain
5 records of whether or not an employee underwent a security check during a meal period. Winston
6 Decl., ¶ 29. Further, Plaintiff's pay records and the informal discovery indicated that Defendant
7 paid employees' meal period premiums when they reported that they didn't receive proper meal
8 periods. *Id.* at ¶ 30. While the payment of a meal period premium does not absolve the employer of
9 liability, it could impact the amount of PAGA penalties awarded by the Court. *See e.g. Kim v. Reins*
10 *International California, Inc.*, 9 Cal.5th 73, 84 (2020) ("employers can pay an additional hour of
11 wages as a remedy for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have
12 held that payment of this statutory remedy 'does not excuse a section 226.7 violation.'") (*quoting*
13 *Kirby v. Immoos Fire Protection, Inc.*, 53 Cal.4th 1244, 1256 (2012)).

14 While Plaintiff was confident that she would prevail on this claim, some risk existed that
15 the amount of recoverable damages would be low because Defendant's practice made efforts both
16 to provide employees with meal periods and to compensate employees for the time associated with
17 security checks. Winston Decl., ¶ 31. Thus, Plaintiff believed a reasonable amount of risk existed
18 that the Court could exercise its discretion to award a small amount of PAGA penalties on this
19 claim due to Defendant's efforts to comply with California's meal period policies.

20 **c. The Strength of and Risks Associated with the Rest Period Claims**

21 Labor Code § 226.7 provides "an employer shall not require an employee to work during a
22 meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation,
23 standard, or order of the Industrial Welfare Commission ("IWC"). Under IWC Wage Order Nos.
24 5-2001 and 7-2001 an employer must authorize and permit all employees to take ten (10) minute
25 duty free rest periods for every major fraction of four hours worked. *See Augustus v. ABM Security*
26 *Services, Inc.* 2 Cal. 5th 257, 269 (2016) (concluding that "during rest periods employers must
27 relieve employees of all duties and relinquish control over how employees spend their time.").

28 Plaintiff alleged that as part of their employment, Defendant required Plaintiff and all

1 aggrieved employees to go through security checks when entering and leaving the premises at the
2 if they attempted to go outside during a rest period. Winston Decl., ¶ 32. As such, Plaintiff alleged
3 that Defendant failed to relieve employees of all control during rest periods and disincentivized and
4 discouraged Plaintiff and the aggrieved employees from taking and/or receiving lawful duty-free
5 rest periods and/or from using all ten (10) minutes for their own purposes. As with the off-the-clock
6 claims, serious risk existed as to the manageability of these claims as employers are not required to
7 maintain records of rest periods. Winston Decl., ¶ 32.

8 **d. The Strength of and Risks Associated With the Wage Statement**
9 **Claims**

10 Labor Code § 226 (a) states, in relevant part: (a) Every employer shall, semimonthly or at the
11 time of each payment of wages, furnish each of his or her employees . . . an accurate itemized
12 statement in writing showing . . . (1) gross wages earned; (2) total hours worked;...(5) net wages
13 earned;...and (9) all applicable hourly rates in effect during the pay period and the corresponding
14 number of hours worked at each hourly rate by the employee”. Unlike other provisions of the Labor
15 Code for which no default penalty exists, an employer who commits a non-knowing and intentional
16 violation of Labor Code § 226(a) is liable for PAGA penalties at the specific civil penalty proscribed
17 by Labor Code § 226.3. Notably, unlike the per pay period default PAGA penalties, Labor Code §
18 226.3 provides for a per employee penalty of \$250 for an initial violation and also gives the Court or
19 Labor Commissioner discretion to “decide not to penalize an employer for a first violation.” Lab.
20 Code § 226.3 *cf* Lab. Code § 2699.3.

21 (1) Plaintiff’s PAGA claims based upon Defendant’s alleged non-
22 derivative violations of Labor Code § 226
23 Labor Code § 226(a)(2) requires an employer to provide an accurate itemized wage
24 statement showing the total hours worked. Here, as a result of Defendant’s policy of paying Plaintiff
25 and the other aggrieved employees wages for five (5) minutes a day beyond the amount of time
26 noted in their time records, neither Plaintiff nor the aggrieved employees were able to determine
27 from the wage statement alone the total hours worked even if Defendant paid for all hours worked.
28 Winston Decl., ¶ 33.

Nevertheless, significant risk existed that the Court could exercise its discretion to reduce

1 the amount of the PAGA penalties awarded and at least some risk existed that the Court could award
2 no penalties for this violation. Winston Decl., ¶ 33. Unlike with other violations of the Labor Code,
3 when an employer commits a non-knowing and intentional violation of Labor Code § 226 the Court
4 possesses the ability to decline to award PAGA penalties altogether. Lab. Code § 226.3 (“the Labor
5 Commissioner...may decide not to penalize an employer for a first violation...”). Accordingly,
6 while Plaintiff believed that at least some risk existed that the Court could award no Labor Code
7 section 226.3 penalties, greater risk existed that the Court would exercise its discretion to reduce
8 the amount of PAGA penalties awarded. Winston Decl., ¶ 33.

9 (2) Plaintiff’s PAGA claims based upon Defendants alleged derivative
violations of Labor Code § 226

10 In addition to the non-derivative name related itemized wage statement claim, Plaintiff also
11 alleged a derivative claim based upon Defendant’s alleged failure to pay minimum wages, overtime
12 wages, and pay allegedly owed meal/rest period premiums. Winston Decl., ¶ 35. The issue of whether
13 or not an employee can recover wage statement penalties based upon an alleged meal/rest period
14 violation is currently pending before the California Supreme Court in *Naranjo v. Spectrum Security*
15 *Services, Inc.*, 257 Cal. Rptr. 3d 188 (2020) (granting review and denying request to depublish the
16 appellate decision). In the non-depublished appellate court decision in *Naranjo v. Spectrum Security*
17 *Services, Inc.*, 40 Cal. App. 5th 444 (2019), the California Court of Appeal held that employees could
18 not recover wage statement penalties based upon an employer’s failure to provide meal/rest period
19 premiums. With respect to the derivative wage statements claims predicated upon alleged off-the-
20 clock minimum wage and overtime violations, Plaintiff believed that a significant probability existed
21 that Defendant would prevail on the minimum wage and overtime related claims because the wage
22 statements showed the amount of minimum and overtime wages paid. *Maldonado v. Epsilon Plastics,*
23 *Inc.* 22 Cal. App. 5th 1308, 1336-1337 (2018). Given *Naranjo* and *Maldonado*, Plaintiff believed the
24 value of the non-derivative itemized wage statement claims to be negligible. Winston Decl., ¶ 36.

25 **e. The Strength of and Risks Associated With Plaintiff’s Claims Based**
26 **Upon Final Pay and Failure to Timely Pay Wages During Employment**

27 Plaintiff brought derivative claims for the late payment of wages during employment under
Labor Code §§ 204 and 210 as well as after employment pursuant to Labor Code §§ 201-203

1 predicated upon Defendants’ alleged failure to pay minimum wages, overtime wages, or meal/rest
2 period premiums allegedly owed due to Defendant’s unlawful security check policies. Winston Decl.,
3 ¶ 37. Since these claims were derivative in nature, Defendant possessed the same defenses to these
4 claims with the underlying claims. *Id.* In addition, as with the wage statement claim, the viability of
5 the rest period related aspects of this claim depends upon the outcome of the California Supreme
6 Court’s decision in *Naranjo*, 40 Cal. App. 5th 444. Further, the amount of PAGA penalties that
7 Plaintiff could recover in association with these claims is uncertain. Winston Decl., ¶ 37. To
8 Plaintiff’s knowledge, no appellate case exists concerning the number of pay periods for which such
9 penalties can be recovered. While since Labor Code § 2699.5 identifies violations of Labor Code §§
10 201 and 202—which can only arise post-employment—as separately enumerated non-curable PAGA
11 violations it seems likely that post-employment PAGA penalties can be recovered, it does not appear
12 that any appellate case has directly addressed this issue. Winston Decl., ¶ 37.

13 **f. The Strength of and Risks Associated With Plaintiff’s Claim for the**
14 **Failure to Maintain Accurate Time Records**

15 Labor Code § 1174 provides that each employer shall keep “payroll records showing the hours
16 worked daily by and the wages paid to...employees employed at...establishments.” An employer
17 who fails to maintain the records proscribed by Labor Code § 1174 is subject to a civil penalty of five
18 hundred (\$500) dollars under Labor Code § 1174.5. Plaintiff alleged that Defendant failed to maintain
19 accurate records of the actual time worked by Plaintiff and the aggrieved employees associated with
20 security checks. Winston Decl., ¶ 38. In light of the California Supreme Court’s explanation in
21 *Donohue*, 11 Cal. 5th 81 that “it is the employer’s duty to maintain accurate time records,” Plaintiff
22 was confident that she would prevail on this claim.

23 While Plaintiff was confident that she would prevail on this claim, some risk existed that
24 the amount of recoverable damages would be low because this action predated *Donohue* and the
25 fact that while Defendant’s practice may not have been compliant it did make efforts both to provide
26 employees with meal periods and to compensate employees for the time associated with security
27 checks. Winston Decl., ¶ 39. Thus, Plaintiff believed a reasonable amount of risk existed that the
28 Court could exercise its discretion to award a small amount of PAGA penalties on this claim due

1 to Defendant's efforts to comply with California's meal period policies. *Id.*

2 **3. The Risk, Expense, Complexity, and Likely Duration of Further Litigation**

3 There are always risks attendant to wage and hour cases given the evolving nature of such
4 claims. Winston Decl., ¶ 40. For instance, although recently it was generally well-established that
5 employees could recover both wage statement and waiting time penalties based upon an employer's
6 failure to provide lawful meal/rest periods, a recent appellate case held that such penalties are not
7 recoverable. *See Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (2019). While
8 Plaintiff was confident that she would prevail based upon present law with respect to at least some of
9 her claims, the plaintiff in *Naranjo* likely believed they would have as well and actually did on their
10 derivative claims prior to the California Court of Appeal's recent ruling. As the *Naranjo* court
11 explained, "[a]lthough wage and hour lawsuits are ubiquitous in state courts, most settle before trial.
12 Consequently, our appellate courts have not had much opportunity to publish decisions addressing
13 the derivative wage claim issue[s]." *Naranjo*, 40 Cal. App. 5th at 468. While Plaintiff acknowledges
14 that the California Supreme Court granted review in *Naranjo*, as the *Naranjo* Court recognized, there
15 is always inherent risk associated with litigating wage and hour cases and the fact that a new appellate
16 decision can dramatically alter the strength of the employees' claims at any time. Winston Decl., ¶
17 40.

18 In addition, as with any PAGA case, significant risk exists with respect to the amount of
19 PAGA penalties that a Court may award given their discretionary nature. Under PAGA, Courts can
20 exercise their discretion to reduce the amount of penalties awarded. Winston Decl., ¶ 41. Indeed, one
21 recent court in San Diego awarded \$5.00 per pay period. *Id.*; *see also Carrington v. Starbucks Corp.*,
22 30 Cal. App. 5th 504 (2018) (post-trial award of \$5 per violation, or 5% of the PAGA penalty claimed
23 in the suit). A similar methodology here would result in penalties of approximately \$154,975.00
24 (30,995 pay periods x \$5.00 per pay period *i.e.* 5% of the total exposure).

25 Finally, given the risks outlined above, the issues in this case were complex and the risks for
26 Plaintiff and the aggrieved employees were substantial. Winston Decl., ¶ 42. Due to the complexity
27 and unsettled nature of the issues in this case—including a dearth of case law regarding the valuation
28

of the PAGA penalties at issue—it is also likely that any outcome at trial would have resulted in a lengthy and costly appeal. *Id.*

4. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement. Winston Decl., ¶ 43. Defendant asserted that Plaintiff’s claims were worth very little, if any, money and doubted that Plaintiff would prevail on the PAGA claims or even that California law had been violated. *Id.* at ¶ 44. While PAGA Counsel believes that stacking of PAGA penalties is permissible based upon the California Court of Appeal’s ruling in *Kaanaana v. Barrett Business Services, Inc.*, 29 Cal.App.5th 778, 808 (2018),⁵ the *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) Court declined to award such penalties and instead limited its award only to Labor Code § 558 PAGA penalties where the plaintiff sought both Labor Code § 2699.3 and 558 PAGA penalties.⁶⁷

a. **The Proposed Settlement Falls Well Within The Range of Reasonableness**

Plaintiff and PAGA Counsel did not believe that in light of the risk associated with each claim and the numerous legal issues explained in detail above that the maximum possible settlement amount was a remotely plausible outcome given Defendant’s significant defenses and the discretionary nature of the PAGA penalties. Winston Decl., ¶ 45. Under PAGA, Courts can exercise their discretion to reduce the amount of penalties awarded. *See e.g. Carrington*, 30 Cal.App.5th at 529 (the trial court declined to stack PAGA penalties and the Court of Appeal affirmed the reduction of the PAGA penalties to \$5.00 per pay period). Moreover, assuming Plaintiff established liability for these pay periods and Plaintiff achieved a result equal to *Carrington* of \$5.00 per pay period, the aggrieved

⁵ *Kaanaana*, 29 Cal.App.5th at 808 (affirming the award of PAGA penalties for violations of Labor Code § 512 where employees’ meal periods were interrupted and remanding to the trial court the amount of PAGA penalties that should be awarded based upon the minimum wage violations associated with the same interrupted meal periods.);

⁶ *Carrington*, 30 Cal. App. 5th at 508 and 529 (“Carrington sought civil penalties and unpaid wages under sections 2699, subdivision (a) and 558, subdivision (a).... Although the trial court may have disagreed with Starbucks regarding the issue of liability, it clearly took the circumstances proffered by Starbucks into consideration when it imposed the penalty, as evident from the significant reduction of the \$50 maximum penalty (per initial violation) to the penalty imposed—only \$5 per initial violation.”).

⁷ Plaintiff believed that it was likely that the PAGA penalties would be assessed at the initial violation rate in accordance with *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008); *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code”).

employees would have recovered a mere \$154,975.00 (30,995 pay periods x \$5.00 per pay period *i.e.* 5% of the total exposure). in PAGA penalties. Winston Decl., ¶ 46. The proposed settlement of \$280,000.00 therefore represents 180.67% (\$280,000.00 /\$154,975.00) of the recovery obtained in *Carrington* and the net PAGA penalties alone represent 105.29% (\$163,177.45/\$154,975.00) of the recovery obtained in *Carrington*. *Id.* As illustrated by the comparison to *Carrington*, the results obtained by Plaintiff are comparable to those obtained in other PAGA cases where the aggrieved employees prevailed at trial. *Id.* Given that Plaintiff achieved a better result than a case where liability was established, the proposed settlement unquestionably falls within the range of reasonableness.

After weighing the other benefits and risks associated with each of the claims in light of the factual challenges as well as Defendants’ potential defenses, Plaintiff determined the amount offered in settlement was fair and reasonable considering the risks and the likelihood of success on the merits. Winston Decl., ¶ 47.

(1) The Maximum Penalties Potentially At Issue Without Taking Into Account the Risks

A trial court should not evaluate a proposed settlement “against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409 (2010). “The test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001), disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* 4 Cal.5th 260, 269 (2018). Nor does a *Kullar* showing require parties to submit the outer reaches of maximum possible recovery without taking into account various risks. *Munoz*, 186 Cal. App. 4th at 409; *Altamirano v. Shaw Industries, Inc.*, 2015 WL 4512372, at *9 (N.D. Cal. 2015) (preliminarily approving wage and hour class action settlement, stating, “[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval.”).

Nevertheless, to allow the Court to analyze the reasonableness of the Parties Proposed Settlement, Plaintiff analyzed the maximum possible value of the claims at issue in this action. Further, the Court should be aware that while one appellate court reversed and remanded a trial court’s

1 decision to award stacked PAGA penalties—*i.e.* that a court can award more than one set of PAGA
2 penalties per pay period—the court left open the possibility of the court awarding the same amount
3 or no additional PAGA penalties within the exercise of its discretion. When taking into account the
4 stacking of PAGA penalties and without taking into account any of Defendant’s significant defenses,
5 Plaintiff and PAGA Counsel determined the maximum exposure on the PAGA claims to be
6 \$15,775,250.00 calculated as follows:

7 **Labor Code § 2699 Penalties For Alleged Minimum Wage Violations**

- 8 • PAGA penalties assessed at the \$100 per pay period initial violation rate = 30,995
pay periods x \$100=\$3,099,500.00

9 **Labor Code § 2699 Penalties For Alleged Overtime Violations**

- 10 • PAGA penalties assessed at the \$100 per pay period initial violation rate = 30,995
pay periods x \$100=\$3,099,500.00

11 **Labor Code § 2699 Penalties For Alleged Meal Period Violations**

- 12 • PAGA penalties assessed at the \$100 per pay period initial violation rate = 30,995
pay periods x \$100=\$3,099,500.00

13 **Labor Code § 2699 Penalties For Alleged Rest Period Violations**

- 14 • PAGA penalties assessed at the \$100 per pay period initial violation rate = 30,995
pay periods x \$100=\$3,099,500.00

15 •

16 **Labor Code § 210 Penalties Recoverable Pursuant to PAGA for Defendant’s Violations
of Labor Code Section 204**

- 17 • Labor Code § 210 PAGA penalties are assessed at the rate of \$100 per pay period =
30,995 pay periods at issue x \$100=\$3,099,500.00

18 **Labor Code § 226.3 PAGA Penalties Related to the Issuance of Itemized Wage
Statements**

- 19 • Labor Code § 226.3 PAGA penalties are assessed at the default rate of \$250 per
20 employee =943 Aggrieved Employees x \$250=\$235,750.00

21 **Labor Code §§ 201-202 Related Penalties Recoverable Pursuant to PAGA for the
Aggrieved Employees Whose Employment Concluded**

- 22 • Labor Code §§ 201-202 PAGA penalties are assessed at the default rate of \$100
23 per pay period =420 pay periods at issue x \$100=\$42,000.00

24 Winston Decl., ¶ 48.

25 Although theoretically this is the maximum potential recovery in this action if Plaintiff
26 achieved complete and total victory, Plaintiff and PAGA Counsel did not believe that this
27 constituted a remotely plausible approximation of the actual expected recovery given Defendants’
28 significant defenses to several of the claims, the Court’s ability to decline to award stacked PAGA

1 penalties and/or exercise its discretion to reduce the amount of PAGA penalties awarded, the
2 significant efforts that Defendant made to compensate employees for the time associated with
3 security checks, and the nature of many of the violations. Winston Decl., ¶ 49. It is also important
4 to recognize that the many courts that recognize stacking nevertheless have declined to actually
5 award stacked PAGA penalties such that the likely realistic recovery was significantly less than
6 the maximum possible recovery. *See e.g. Carrington*, 30 Cal. App. 5th at 508 and 529.

7 **5. The Court Should Award PAGA Counsel Attorneys' Fees in the Amount of**
8 **\$93,333.33**

9 In *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 503 (2016), the California Supreme
10 Court unequivocally held that when “litigation established a monetary fund for the benefit of the class
11 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
12 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
13 fund created” without considering the amount of hours expended on the case. *Id.* The court further
14 held that “[t]he recognized advantages of the percentage method – including relative ease of
15 calculation, alignment of incentives between counsel and the class, a better approximation of market
16 conditions in a contingency case, and the encouragement it provides counsel to seek an early
17 settlement *and avoid unnecessarily prolonging litigation* – convince us the percentage method is a
18 valuable tool that should not be denied by our trial courts.” *Id.*

19 California Courts have consistently recognized “that most fee awards based on either a
20 lodestar or percentage calculation are 33%.” *McCrary v. Elations Co., LLC*, No. EDCV 13-0242 JGB
21 (SPx), 2016 U.S. Dist. LEXIS 24050, at *2 (C.D. Cal. Feb. 25, 2016); *McClellan v. Chase Home Fin.*
22 *LLC*, No. SACV 12-1331-JGB (JEMx) 2015 U.S. Dist. LEXIS 118005, at *20 (C.D. Cal. Aug. 31,
23 2015) (explaining that while the attorneys’ fee award that approximated 32% of all sums paid under
24 the Settlement Agreement was reasonable after citing numerous other cases finding that an award of
25 33% of the common fund was common in class actions.). In reaching its decision in *McClellan*, this
26 Court recognized that “California district courts routinely award attorneys’ fees in the range of 30-
27 40% in class actions that result in the recovery of a common fund under \$10 million.” *McClellan*,
28 *LLC*, No. SACV 12-1331-JGB (JEMx) 2015 U.S. Dist. LEXIS 118005, at *20 (*quoting Miller v.*

1 *CEVA Logistics USA, Inc.*, No. 2:13-CV-01321-TLN, 2015 U.S. Dist. LEXIS 104704, 2015 WL
2 4730176, at *8 (E.D. Cal. Aug. 10, 2015) and *citing In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,
3 463 (9th Cir. 2000).⁸

4 PAGA Counsel's diligent and efficient litigation of this action resulted in the creation of an
5 ascertainable common fund of \$280,000 that will substantially benefit the state of California. Winston
6 Decl., ¶ 59. Consistent with numerous cases, including those identified above, PAGA Counsel seeks
7 approval of an award of attorneys' fees in the amount of \$93,333.33 representing 1/3 of the common
8 fund. PAGA Counsel's fee request is inherently reasonable as he seeks only 1/3 of the monetary value
9 of the settlement fund as opposed to 1/3 of the entire value enjoyed by the State of California and
10 aggrieved employees through the prosecution of this action. PAGA Counsel's request is also
11 consistent with fee awards in other similar cases. PAGA Counsel has also each provided information
12 about the time spent on the case.

13 In the interest of transparency, Plaintiff and PAGA Counsel also wish to disclose to the Court
14 that Plaintiff and Defendant settled Plaintiff's separate individual employment discrimination claims,
15 DFEH Case No. 202009-11198809/EEOC Case No. 37A-2021-01356-C. Winston Decl., ¶ 71. PAGA
16 Counsel did receive compensation and cost reimbursement associated with Plaintiff's unrelated
17 employment discrimination claims that were never at issue in this action. Winston Decl., ¶ 71. The
18 attorney time sought in this matter does not include time associated with Plaintiff's DEFH case, which
19 was logged under a different matter code. Winston Decl., ¶ 71. Plaintiff's employment discrimination
20 claims were resolved prior to the Mediator's Proposal in this action that resulted in the Proposed
21 Settlement. Winston Decl., ¶ 71.

22 **6. The Court Should Award PAGA Counsel Cost Reimbursement Award in**
23 **the Amount of \$9,699.22**

24 PAGA Counsel further request that, in addition to awarding them reasonable attorneys' fees,

25 ⁸ See also *Romero v. Producers Dairy Foods, Inc.*, No. 05-0484, 2007 U.S. Dist. LEXIS 86270, 2007 WL 3492841, at
26 *4 (E.D. Cal. Nov. 14, 2007) (awarding 33% of the settlement fund in a wage-and-hour case involving allegations of
27 unpaid wages after explaining that "fee awards in class actions average around one-third of the recovery."); *Stuart v.*
28 *RadioShack Corp.*, No. C-07-4499 EMC, 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010) (noting that a fee award of 1/3 of
the settlement was "well within the range of percentages which courts have upheld as reasonable in other class action
lawsuits."); *Singer v. Becton Dickinson and Co.*, No. 08-cv-821-IEG (BLM), 2010 WL 2196104, at * 8 (S.D. Cal. June
1, 2010) (approving fee award of 33.33% of the common fund); *Boyd v. Bank of Am. Corp.*, No. SACV 13-0561-DOC
(JPRx), 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014) (awarding a 33.34% fee on a \$5,800,000 settlement).

1 the Court grant its application for reimbursement of the reasonable out-of-pocket expenses
2 advanced and/or incurred by them in connection with the prosecution of this litigation in the
3 amount of \$9,699.22. Winston Decl., ¶ 72, Exh. 6. All of these costs were necessarily incurred
4 and/or are expected to be incurred in the course of this hard-fought litigation.

5 **7. The Court Should Award Plaintiff Flores a Service Award of \$5,000 in**
6 **Recognition of the Time Spent Prosecuting this Action**

7 Before filing this action, in 2020, Plaintiff Flores researched and identified Counsel that she
8 believed could best represent the interests of the State of California and the aggrieved employees.
9 Flores Decl., ¶ 6. Plaintiff Flores expended time and effort assisting PAGA Counsel with the
10 investigation of the claims and gathering of information including discussing her work experience
11 and the experience of others that she had observed while working for Defendants, regularly contacted
12 PAGA Counsel for updates regarding her case, kept herself informed about the status of the
13 settlement discussions and claims, and assisted PAGA Counsel in evaluating possible settlements.
14 Flores Decl., ¶ 7. As of the submission of this Motion, Plaintiff Flores estimates that she has spent
approximately 19.5 hours on this case. *Id.*

15 In addition to the time and efforts Plaintiff Flores invested in the prosecution of this action,
16 Plaintiff Flores' proposed service award also reflects the fact that neither the State of California nor
17 any of the aggrieved employees would have enjoyed any benefits if she did not initiate this action.
18 Thus, for the reasons discussed above, this Court should grant Plaintiff's requested service award in
19 the amount of \$5,000.00.

20 **VI. EXPLANATORY LETTER TO THE AGGRIEVED EMPLOYEES**

21 Although the aggrieved employees do not possess property rights in a PAGA action and this
22 action is not subject to the class action approval or notice process, the aggrieved employees will
23 receive an explanatory letter, in English and Spanish, a true and correct copy of which is attached to
24 the Winston Declaration as **Exhibit 7**. *Arias v. Superior Court*, 46 Cal.4th 969 (2009) (explaining
25 that in a PAGA action "nonparty employees...[are] not given notice of the action or afforded an
26 opportunity to be heard."); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1122 (9th Cir. 2014)
27 ("PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt
28

1 out of a PAGA action.”); *see also O’Connor v. Uber Technologies, Inc.*, No. 13-CV-03826-EMC,
2 2016 WL 4398271, at *18 (N.D. Cal. Aug. 18, 2016), (“PAGA does not require class action
3 procedures, such as notice and opt-out rights.”) *citing Iskanian v. CLS Transportation Los Angeles,*
4 *LLC*, 59 Cal. 4th 348, 381 (2014) (emphasis added).

5 **VII. CONCLUSION**

6 Plaintiff respectfully submits that the proposed Settlement is fair, adequate, and reasonable.
7 Therefore, Plaintiff respectfully requests (and Defendants join in the request) that the Court (1) grant
8 approval of the PAGA Settlement; (2) appoint ILYM Group, Inc. as the Settlement Administrator,
9 direct that the explanatory Notice be sent to aggrieved employees in the manner set forth in the
10 Settlement Agreement; (3) award PAGA Counsel their fees’ and litigation costs; and (4) award
11 Plaintiff Flores a service award of \$5,000.00.

12 DATED: August 3, 2021

WINSTON LAW GROUP, P.C.

14 By: David Winston
15 DAVID S. WINSTON
16 Attorney for Plaintiff Ashley Flores and the
17 aggrieved employees
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