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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

MOHAMMAD ALAVICHEH, an individual,
on behalf of himself and on behalf of all other
Aggrieved Employees and the State of
California,

PLAINTIFFS,

vs.

SUBURBAN BUICK GMC CADILLAC,
LLC, a Michigan Limited Liability Company,
and DOES 1 through 50, Inclusive;

DEFENDANTS.

Case No: 30-2021-01181315-CU-OE-CXC

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR APPROVAL OF PAGA
SETTLEMENT**

Hearing Date: September 2, 2022
Hearing Time: 1:30 p.m.

Honorable Judge Glenda Sanders
Department CX101

Trial Date: Not Set
Action Filed: January 27, 2021

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Mohammad Alavicheh (“Plaintiff”) seeks approval of the Stipulation of Settlement of
4 PAGA Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable
5 monetary relief for 93 “Aggrieved Employees,” defined as all individuals who worked for Defendant
6 as non-exempt employees in California between November 18, 2019 to February 28, 2022 (“PAGA
7 Period”). Agreement at § I(B). This is only a settlement of the PAGA claim for civil penalties and
8 is not a class settlement and does not release the individual wage claims, if any, of the affected
9 employees other than Plaintiff himself. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS*
10 *Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019)
11 (unpaid wages are not recoverable under PAGA).

12 If approved, the Aggrieved Employees and the California Labor Workforce and Development
13 Agency (“LWDA”) will share in a Gross Settlement Amount of One Hundred Twenty Thousand
14 Dollars (\$120,000.00). Agreement at § I(Z). After deducting any Court-approved Plaintiff’s Counsel
15 Award and the Settlement Administration Costs, the Net Settlement Amount shall be distributed, 75%
16 to the LWDA and 25% to the Aggrieved Employees based on the number of Pay Periods each worked
17 while employed by Defendant during the PAGA Period. Agreement at § III(I).

18 An objective evaluation of the proposed settlement confirms that the relief negotiated on behalf
19 of the Aggrieved Employees and the LWDA is fair, reasonable, and valuable. The Settlement is a
20 product of informed, adversarial, and non-collusive and mediated negotiations between experienced
21 counsel. As discussed below, the proposed Settlement satisfies all criteria for PAGA settlement
22 approval. Accordingly, Plaintiff and Plaintiff’s Counsel respectfully request this Court grant
23 approval of the Agreement. JCL Dec., at ¶ 6.

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28 ¹ The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to 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

Plaintiff was employed by Defendant as a non-exempt employee in California during the PAGA Period. JCL Dec., ¶ 7. On November 18, 2020, Plaintiff served Defendant and the LWDA with a Notice of Violations (“PAGA Notice”) and draft complaint memorializing claims against Defendant for alleged violations of the California Labor Code, including claims for failure to pay minimum wages in violation of Labor Code sections 1194, 1197, and 1197.1; failure to provide required meal periods in violation of Labor Code sections 226.7 and 512; failure to provide required rest periods in violation of Labor Code sections 226.7 and 512; failure to provide accurate itemized wage statements in violation of Labor Code section 226(a); failure to reimburse for required business expenses in violation of Labor Code section 2802; failure to provide wages when due in violation of Labor Code sections 201, 202, 203 and 204; and violation of the California Labor Code Private Attorneys General Act of 2004 (LWDA Case No. 800898-20). JCL Dec., at ¶ 4, 8.

On January 27, 2021, Plaintiff filed a complaint against Defendant in the Superior Court of Orange County, Case No. 30-2021-01181315-CU-OE-CXC, alleging a single cause of action for violations of PAGA based on the above Labor Code violations. Thus, the sole claim before this Court is a putative representative claim under PAGA on behalf of Plaintiff, the Aggrieved Employees, and the State of California for civil penalties pursuant to the PAGA. JCL Dec., at ¶ 9.

Plaintiff and Defendant agreed to mediate the action with Hon. Judge William Pate (Ret.) (“Judge Pate”), a respected jurist and experienced wage and hour PAGA action mediator. Prior to the mediation, the Parties exchanged informal discovery to evaluate Defendant’s potential exposure. As part of this informal exchange, Defendant produced its relevant wage and hour policies, detailed statistical data regarding shifts and pay periods worked by the Aggrieved Employees, and a large sample of the Aggrieved Employees’ time and payroll records. JCL Dec., at ¶ 10.

Thereafter, on January 14, 2022, the Parties participated in a full-day mediation with Judge Pate. After extensive, arms-length negotiations and bargaining, the Parties reached an agreement to settle the action, which ultimately led to the signing of the Settlement Agreement memorializing the Settlement. The Settlement was negotiated considering all known facts and circumstances and the uncertainty associated with litigation – including the risk of Plaintiff not being able to establish

1 liability, the asserted defenses, the difficulty establishing manageability, and the significant delay and
2 potential appellate issues inherent to litigation. JCL Dec., at ¶ 11.

3 The parties agreed to settle this PAGA claim in its entirety after significant informal discovery,
4 and an arm's length mediation. The Settlement is intended to fully and finally resolve the PAGA
5 Released Claims asserted by Plaintiff on behalf of the Aggrieved Employees and State of California.
6 This is only a Settlement of the PAGA claims for civil penalties and is not a class settlement and does
7 not release the individual claims, if any, of the Aggrieved Employees. This Settlement does not release
8 any claim that is not a PAGA claim.² Nor does this Settlement waive Defendant's right to assert *res*
9 *judicata* or other available defense to any asserted claim or lawsuit. JCL Dec., at ¶ 12.

10 Pursuant to California Labor Code Section 2699(1), Plaintiff provided a copy of the Settlement
11 Agreement and this motion to the LWDA. JCL Dec., at ¶ 3. Additionally, Plaintiff will submit to the
12 LWDA a copy of the Court's judgment and order approving the Settlement Agreement within ten (10)
13 days after entry of judgment or order. Agreement § III(K).

14 **III. TERMS OF THE PAGA SETTLEMENT**

15 **A. The Gross Settlement Amount**

16 The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(1)(2).
17 The Settlement Agreement negotiated by the Parties provides for a "Gross Settlement Amount" in the
18 amount of \$120,000. The Gross Settlement Amount will be used to satisfy the Plaintiff's Counsel
19 Award, the Settlement Administration Costs, the LWDA Payment and the Aggrieved Employee
20 Payment. Agreement at § I(Z).

21 The Plaintiff's Counsel Award is comprised of \$40,000 for attorneys' fees (one-third of the
22 Gross Settlement Amount) and up to \$15,000 for reimbursement of actually incurred litigation
23 expenses. Agreement at § I(S). The Settlement Administration Costs are estimated to be \$3,000.00.
24 Agreement at § III(I)(8). Once the Plaintiff's Counsel Award and Settlement Administration Costs
25 are deducted from the Gross Settlement Amount, the remaining funds of approximately \$62,000,
26 known as the "Net Settlement Amount," shall be allocated as follows: a total of seventy-five percent
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28 ² As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th at 196: "Nonparty employees are bound by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties."

(75%) shall be paid to the LWDA (“LWDA Payment”), and the remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at § I(J). This allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

B. Allocation of Aggrieved Employee Payment

The Aggrieved Employee Payment shall be based on the number of payroll periods each Aggrieved Employee worked during the PAGA Period as a percentage of the total pay periods worked by all Aggrieved Employees during the PAGA Period. Agreement at § III(I)(1).

At the time of mediation, Defendant represented to Plaintiff’s Counsel that there are approximately 93 Aggrieved Employees who worked approximately 3,004 pay periods during the PAGA Period based on company records. Agreement at § III(A)(2).

C. Funding and Distribution

Provided that an order approving this Settlement is entered by the Court, Defendant shall fund the Gross Settlement Amount within fifteen (15) calendar days or the Court’s entry of the order approving this Settlement. Agreement at §§ I(G) and I(I).

Within fifteen (15) calendar days of its receipt of the Gross Settlement Amount, the Settlement Administrator will mail the LWDA Payment to the LWDA by check, via certified mail return receipt requested. Agreement at § III(I)(6).

No later than fifteen (15) calendar days after the Funding Date, the Settlement Administrator will mail the Aggrieved Employee Payments and a letter explaining why the check is being sent to the Aggrieved Employees by postmarked First Class U.S. Mail. Agreement at § III(I)(4). Settlement checks issued to Aggrieved Employees will expire one hundred eighty (180) days from the date they are issued by the Settlement Administrator. Agreement at § III(I)(5). If the check remains uncashed by the expiration of the 180-day period, the Settlement Administrator shall remit any unclaimed funds to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500. (*Id.*). The individual Aggrieved Employee Payments are 100% penalties and shall be reported using IRS Form 1099s. Agreement § III(I)(2).

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1 D. Release of Claims

2 Upon entry of Judgment and funding of the Gross Settlement Amount, the State of California,
3 the Aggrieved Employees and Plaintiff shall release the Released Parties from any and all claims *for*
4 *civil penalties* under PAGA, arising during the PAGA Period, based on the facts alleged in the
5 operative complaint and Plaintiff's notice letter to the LWDA and any resulting claim for attorneys'
6 fees and costs under PAGA, which occurred during the PAGA Period. Agreement at §§ I(U) and
7 III(B).

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

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

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1 A. The Gross Settlement Amount is Fair and Reasonable

2 The Gross Settlement Amount of \$120,000 is fair and reasonable and therefore "shall" be
3 reviewed and approved. California Labor Code Section 2699(e)(1) permits a Court to award a lesser
4 amount than the maximum civil penalty if, based on the facts and circumstances, to do otherwise
5 would result in an award that is "unjust, arbitrary and oppressive or confiscatory."

6 As a preliminary matter, prior to any recovery, Plaintiff would be required at trial to prove each
7 of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist.
8 LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot
9 recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor
10 Code by the defendant."). Here, if this case were to proceed to trial, Plaintiff would need to prove that
11 each Aggrieved Employee suffered a violation for each period the employee worked in relation to
12 alleged meal or rest period violations, failure to pay minimum or overtime wages, failure to provide
13 accurate itemized wage statements, failure to pay wages when due, failure to reimburse business
14 expenses, and/or failure to maintain required records. Throughout the litigation, Defendant has
15 maintained that Plaintiff and the Aggrieved Employees were properly compensated, and that it did not
16 violate the Labor Code. Thus, liability was far from certain in this case. JCL Dec., ¶ 13.

17 In advance of mediation, Plaintiff's Counsel, with the assistance of a forensic economist at the
18 Berger Consulting Group ("BCG"), analyzed Defendant's time and payroll data to develop various
19 damage models to estimate Defendant's liability exposure. To evaluate Defendant's *maximum*
20 liability exposure, Plaintiff's Counsel constructed a model which assumed a 100% violation rate for
21 each of Plaintiff's alleged PAGA claims notwithstanding the fact that the analyzed data did not support
22 a 100% violation rate. JCL Dec., ¶ 14. Based on that Maximum Exposure Model, Plaintiff's claims
23 and corresponding PAGA penalties can be broken down as follows:

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Labor Code Section	Number of employees	Statutory penalty	Number of pay periods / violations	Violation rate	Total Penalties
1194, 1197, and 1197.1 (unpaid wages)	93 aggrieved employees	\$100	2,704	100% of total pay periods	\$270,400
226.2, 226.7, 512, 558 (rest break violations)	93 aggrieved employees	\$50	2,704	100% of total pay periods	\$135,200
226.7, 512 & 558 (unpaid meal break violations)	93 aggrieved employees	\$50	2,704	100% of total pay periods	\$135,200
510 (unpaid overtime)	93 aggrieved employees	\$100	2,704	100% of total pay periods	\$270,400
226 (wage statement violations)	93 aggrieved employees	\$100	2,704	100% of total pay periods	\$270,400

Thus, at the time of mediation, Plaintiff's Counsel estimated Defendant's maximum liability exposure at \$1,081,600.00. Consequently, the Gross Settlement Amount of \$120,000 is approximately 11% of Defendant's *maximum* liability exposure – before any reduction. JCL Dec., ¶¶ 15-17.

Pursuant to PAGA, courts have considerable discretion to reduce the penalty award. In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, as the court found maximum penalties “unjust” because the employees had suffered no injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code violations are established. See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial). In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA penalties awarded in this case could be significantly less than Plaintiff's calculation, even had Plaintiff prevailed on the PAGA claim. Here, using *Carrington* as a guidepost, multiplying the

number of applicable pay periods (2,704) by \$5 results in a potential liability of merely \$13,520. Therefore, even assuming Plaintiff would have prevailed on every claim at trial, the result obtained by Plaintiff in the Settlement vastly exceeds the amount Plaintiff might have recovered had the Court relied on *Carrington* in awarding the PAGA penalties. JCL Dec., ¶ 18.

In addition to estimating Defendant’s maximum exposure, Plaintiff’s Counsel also developed a more realistic damage model that accounted for the uncertainties of continued litigation (“Realistic Model”). The Realistic Model reflects the uncertainty regarding the novel nature of Plaintiff’s primary claim, together with the uncertainty surrounding derivative liability for inaccurate wage statements and waiting time penalties resulting from meal and rest period violations. JCL Dec., at ¶19. Plaintiff’s counsel based the Realistic Model on the facts discovered during their investigation of Plaintiff’s claims, as well as information and defenses advanced by the Defendant leading up to the mediation. Based on that Realistic Model, Plaintiff’s claims and corresponding PAGA penalties can be broken down as follows:

Labor Code Section	Number of employees	Statutory penalty	Number of pay periods / violations	Violation rate	Total Penalties
1194, 1197, and 1197.1 (unpaid wages)	93 aggrieved employees	\$100	1,352	50% of total pay periods	\$135,200
226.2, 226.7, 512 & 558 (rest break violations)	93 aggrieved employees	\$50	2,163	80% of total pay periods	\$108,150
226.7, 512 & 558 (unpaid meal break violations)	93 aggrieved employees	\$50	2,163	80% of total pay periods	\$108,150
510 (unpaid overtime)	93 aggrieved employees	\$100	1,352	50% of total pay periods	\$135,200
226 (wage statement violations)	93 aggrieved employees	\$100	2,569	95% of total pay periods	\$256,900

1 Thus, at the time of mediation, Plaintiff’s Counsel estimated Defendant’s liability realistic
2 exposure at \$743,600.00. Consequently, the Gross Settlement Amount of \$120,000 is nearly 16%
3 of Defendant’s realistic liability exposure – before any reduction. JCL Dec., ¶¶ 20.

4 A case in point, the Realistic Model eliminated Plaintiff’s damages and penalties arising from
5 derivative wage statement and waiting time claims based on the then recent decision in *Naranjo v.*
6 *Spectrum Security Services, Inc.*, (2022) 13 Cal.5th 93. There, the California Court of Appeal, Second
7 District, held that meal and rest period violations do not entitle employees to pursue the derivative
8 waiting time and itemized wage statement penalties. Since then, The California Supreme Court
9 concluded that meal premiums are “wages,” thus entitled Plaintiff and Class Members to derivative
10 waiting time and wage statement penalties for Defendant’s meal and rest period violations.
11 However, at the time the Parties reached an agreement to settle the Action, Plaintiff’s damages and
12 penalties arising from derivative wage statement and waiting time claims was far from certain. JCL
13 Dec., at ¶21.

14 The Realistic Model also reflected the legal uncertainty and novel nature of Plaintiff’s primary
15 claim, that paid rest periods must be separately compensated at the regular rate of pay rather than
16 minimum wage. Defendant asserts that *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th
17 98 does not require paid rest periods be separately compensated at the regular rate of pay and, further,
18 that its policy of separately compensating paid rest periods at the applicable minimum wage complies
19 with California labor laws. Plaintiff’s Counsel, on the other hand, argues that by adopting the rationale
20 for piece-rate employees, the *Vaquero* court implicitly, if not explicitly, accepted that like piece-rate
21 employees, salespersons earning commission compensation, like the Aggrieved Employees, must be
22 separately compensated for paid rest periods at their regular rate of pay. Given the uncertainty, Plaintiff
23 Counsel’s conservative model factored an adverse ruling on the issue and eliminated resulting claims
24 for damages and penalties. JCL Dec., at ¶22.

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1 Additionally, the Realistic Model assumed an 80% violation rate, rather than a 100%
2 violation rate, for non-complaint meal periods³. This assumption resulted in a corresponding
3 reduction in off-the-clock work and minimum wage violations but still exceeded the violation rate
4 evidenced by the time records reviewed by Plaintiff's Counsel in advance of the mediation. Thus,
5 Realistic Model is fairly characterized as a middle ground model accounting for the strengths and
6 weaknesses of the asserted claims and defenses. JCL Dec., at ¶ 23.

7 Accordingly, Defendant disputes and denies Plaintiff's allegations and claims asserted in the
8 operative complaint which are resolved by the Settlement Agreement. Defendant asserted additional
9 defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties.
10 Defendant could argue that no penalties prior to the PAGA notification should be awarded because
11 the violations were not intentional, and at least one court has so ruled. These defenses present a risk
12 to the PAGA claim and the potential that some or all of the PAGA penalties sought may not be
13 awarded. JCL Dec., at ¶ 24.

14 Furthermore, the PAGA Settlement accounts for the uncertainty and risk at the time the Parties
15 reached an agreement to settle the Action considering the Supreme Court had just granted certiorari in
16 *Viking River Cruise v. Moriana* (2022) 596 U.S. _____, 2022 WL 213 5491. Defendant argued at
17 mediation that a favorable ruling in *Viking* could result in the Action being dismissed and Plaintiff's
18 individual claims being compelled to arbitration. While Plaintiff believes that his claims are not subject
19 to arbitration, and this defense, among others could be overcome, Defendant maintains these defenses
20 have merit and therefore present a serious risk to recovery of penalties. Since then, The California
21 Supreme Court concluded that a plaintiff's individual PAGA claim can be compelled to arbitration,
22 assuming there is an enforceable arbitration agreement compelling plaintiff's PAGA claims to
23 arbitration, and thus lose standing to pursue the non-individual PAGA claims once the individual
24 PAGA claim has been committed to arbitration. However, at the time the Parties reached an agreement
25 to settle the Action, Defendant's ability to compel Plaintiff's individual PAGA claims to arbitration
26 was far from certain. JCL Dec., at ¶ 25.

27 _____
28 ³ The time data produced by Defendant evidenced a violation rate of approximately 44%. Nevertheless, Plaintiff
assumed an 80% violation rate to account for instances where Aggrieved Employees punched out for meal periods but
continued working.

1 Given Defendant's potential defenses to the violations at issue, the risks and costs of continued
2 litigation, Plaintiff and his attorneys believe that the Gross Settlement Amount is fair and reasonable.
3 Plaintiff's Counsel have significant experience litigating wage and hour claims including claims for
4 PAGA penalties, and the Gross Settlement Amount here is similar to or greater than similar settlements
5 that courts have approved. The Gross Settlement Amount, along with the other terms of the proposed
6 settlement, were negotiated by experienced counsel at arm's length with the assistance of jurist and
7 experienced mediator Hon. Judge William Pate (Ret.). JCL Dec., at ¶ 26.

8 Further, on July 7, 2022 Plaintiff's Counsel provided the LWDA with a copy of the Settlement
9 Agreement and of the instant motion for Approval of the PAGA Settlement. Assuming the LWDA
10 does not register an objection to this Settlement, the decision of the LWDA to accept the Gross
11 Settlement Amount and not oppose the motion should be given considerable weight. This is not a
12 situation where the Court needs to be concerned about the rights of absent employees as in a class
13 settlement, as this PAGA-only settlement does not release the individual claims of absent employees,
14 if any, and the LWDA is a sophisticated government entity that is more than able to look out for its
15 own rights. JCL Dec., ¶ 27

16 Based on investigation, analysis and discounts for risk factors, Plaintiff adequately represented
17 the interests of both the State and the public in resolving this action and reaching the proposed PAGA
18 settlement.

19 B. The Remaining Settlement Terms Are Fair and Reasonable

20 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
21 2699(1) does not require that a court approve any other elements of the proposed settlement. Because
22 there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to
23 class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the Court only needs
24 to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained
25 herein, the settlement terms for attorneys' fees and costs are reasonable.

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1 **V. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

2 Plaintiff's Counsel seeks approval of the Plaintiff's Counsel Award in the amount of
3 **\$55,000.00**, comprised of \$40,000 for attorneys' fees (one-third of the Gross Settlement Amount) and
4 up to \$15,000⁴ for reimbursement of actually incurred litigation expenses. PAGA does not have any
5 requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of attorneys'
6 fees and costs in this Settlement is a matter of contract for a contingent representation. Nevertheless,
7 should this Court review the requested attorneys' fees, it is clear that the requested fees and costs are
8 reasonable for experience wage and hour counsel. JCL Dec., ¶¶ 28, 37-44.

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

10 The requested attorneys' fee is justified by the result achieved. Plaintiff's Counsel negotiated
11 a recovery of \$120,000, and this result justifies the requested fees equal to one third of this recovery.
12 This percentage is within the standard contingent recovery percentage of one-third, and this percentage
13 is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th
14 480, 504, (2016). At the time this case was brought, the result was far from certain. Defendant's
15 defenses to the merits of the case created difficulties with proof and complex legal issues for Counsel
16 to overcome. Here, a number of defenses asserted by Defendant present serious threats to the claims
17 of Plaintiff and the Aggrieved Employees. Defendant asserted that its employment practices complied
18 with all applicable Labor laws. If successful, Defendant's factual and legal defenses would eliminate
19 *any recovery* to the Aggrieved Employees. While Plaintiff believes that these defenses could be
20 overcome, Defendant maintains that these defenses have merit and therefore present a serious risk to
21 recovery. The Settlement was possible because, in Counsel's eyes, Counsel was able to persuade
22 Defendant that there was an appreciable risk that Plaintiff would prevail on the factual and legal issues
23 underlying liability and overcome difficulties in proof as to monetary relief.

24 Further, the fee award is justified by the work performed. Generally, the Ninth Circuit and
25 California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for accepting

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27 ⁴ As detailed *infra*, at the time of filing this motion, Plaintiff's Counsel incurred \$7,562.17 litigating this matter.
28 However, Plaintiff's Counsel anticipates an additional approximately \$300.00-\$500.00 will be incurred to through the
completion of this matter for, *inter alia*, filing and serving the Motion for PAGA Settlement Approval and PAGA
Settlement Approval Hearing. Consequently, Plaintiff's Counsel estimate that the total costs incurred in this matter will
be approximately \$8,000.00 – much less than the \$15,000.00 provided for under the Agreement.

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

11 As detailed in Plaintiff Counsel's time and billing records submitted herewith, Plaintiff's
12 Counsel's expended approximately 158.4 hours in the prosecution of this litigation for a combined
13 loadstar is \$64,065.00 – far exceeding the requested fee. JCL Dec., ¶¶ 29-33; Declaration of Shani
14 O. Zakay ("Zakay Dec.") at ¶¶ 1-3. Thus, Class Counsel's fee request is equal to Class Counsel's
15 loadstar with a negligible multiplier of .62 – well below the 2.13 multiplier approved in *Laffitte* – and
16 well within the recognized multiplier range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*,
17 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with
18 cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S.
19 Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check
20 lodestar multiplier of 1.7).

21 B. Plaintiff's Counsel Are Entitled to Reimbursement of Actual and Reasonably
22 Incurred Litigation Costs

23 Attorneys who create a common fund for the benefit of a class are entitled to payment from
24 the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include
25 counsel's incurred expenses because those who benefit from their effort should share in the cost. See
26 *Rider v. City of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in
27 deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to
28 paying clients in the marketplace. See *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); see also

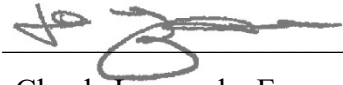
1 *Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded litigation
2 costs for consultants, online legal research, copying, postage, long distance charges, travel expenses,
3 filing fees, mediation fees and investigation fees). Prior to incurring costs for filing of this motion,
4 Plaintiff's Counsel collectively expended \$7,562.17 prosecuting this action (JCL Law Firm, APC -
5 \$3,097.68; Zakay Law Group, APLC - \$4,464.49). JCL Decl. ¶¶ 34-36; Zakay Dec., ¶¶ 1-3. All of
6 Plaintiff Counsel's out-of-pocket expenses are the types of expenses normally charged to paying
7 clients including the following: filing fees; copying; telephone; postage; factual and legal research
8 charges; mediation fees; expert costs and travel expenses, which were all incurred during, and were
9 necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed. JCL
10 Dec. ¶¶ 35-36.

11 **VI. CONCLUSION**

12 Based on the foregoing, Plaintiff respectfully requests this Court approve the PAGA settlement
13 as set forth in the Settlement Agreement and enter the proposed order and judgment submitted
14 herewith.

15 Dated: August 8, 2022

JCL LAW FIRM, APC

16 By: 

17 Jean-Claude Lapuyade, Esq.
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