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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

CARLOS ALBERTO MUNGUIA FLORES, individually, and on behalf of other members of the general public similarly situated,

Plaintiff,

vs.

SIERRA WES WALL SYSTEMS, INC., a California corporation; APEX CONSTRUCTION GROUP, INC., a California corporation; and DOES 1 through 100, inclusive;

Defendants.

Case No. 21CV375758 (Lead)
Consolidated with 21CV376174

Action Filed: February 3, 2021

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF PAGA ACTION SETTLEMENT

Hearing Date: July 31, 2025
Hearing Time: 1:30 p.m.

Judge: Honorable Charles F. Adams
Department: 7

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Carlos Alberto Munguia Flores ("Plaintiff") seeks approval of the Stipulation of Settlement of PAGA Action and Release of PAGA Claims ("Agreement")[1]. If approved the Agreement will provide valuable monetary relief for approximately 735 "Aggrieved Employees," defined as all current and former hourly-paid or non-exempt employees who worked for Defendants Sierra Wes Wall Systems, Inc. and Apex Construction Group, Inc. (collectively, "Defendants") in California at any time during the period between December 14, 2019, to December 31, 2024. (the "PAGA Period"). Agreement at § I(U). This is only a settlement of Plaintiff's PAGA claims for civil penalties and is <u>not</u> a class settlement and does <u>not</u> release the individual wage claims, if any, of the affected employees or the Plaintiff himself. Cal. Lab. Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 182 (unpaid wages are not recoverable under PAGA).

If approved, the Aggrieved Employees and the California Labor Workforce and Development Agency ("LWDA") will share in a Gross Settlement Amount of One Million Six Hundred Eighty Thousand Dollars and Zero Cents ($1,680,000.00). Agreement at § I(L). After deducting any Court-approved PAGA Counsel Award and the Claims Administration Costs, the PAGA Payment shall be distributed, 75% to the LWDA and 25% to the Aggrieved Employees. Agreement at § I(S). An objective evaluation of the proposed Settlement confirms that the relief negotiated on behalf of the Aggrieved Employees and the LWDA is fair and reasonable. The Settlement is a product of informed, adversarial, and non-collusive and mediated negotiations between experienced counsel. As discussed below, the proposed Settlement satisfies all criteria for PAGA settlement approval. Accordingly, Plaintiff and Plaintiff's Counsel respectfully request this Court grant approval of the Agreement. JCL Dec., ¶ 9.

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[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

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

On December 14, 2020, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendants. JCL Dec., ¶ 10.

B. On February 3, 2021, Plaintiff filed a Class Action complaint in the Santa Clara Superior Court, Case No. 21CV375758 ("Class Action"), alleging claims for: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); and (10) Violation of California Business & Professions Code §§ 17200, et seq. JCL Dec., ¶ 11.

On February 17, 2021, Plaintiff filed a Representative Action Complaint in the Santa Clara Superior Court, Case No. 21CV376174, for Violations of the Private Attorneys General Act (Labor Code sections 2698 et seq.) ("PAGA Action"). JCL Dec., ¶ 12.

On August 18, 2021, this Court consolidated the Class Action and PAGA Action, with the Class Action being the lead case. The consolidated cases now comprise this Action, as defined in Section I(A) of the Agreement. JCL Dec., ¶ 13.

On June 2, 2022, the Court granted Defendants' Motion to Compel Arbitration and stayed the class and individual claims. For purposes of mediation, the Parties agreed to mediate only the PAGA claims. JCL Dec., ¶ 14.

On July 2, 2024, the Parties participated in an all-day mediation presided over by Hon. Kendall J. Newman (Ret.), a retired jurist and experienced mediator of wage and hour representative actions.

The mediation did not result in a settlement. Subsequently, the Parties engaged in litigation until they agreed to mediate the Action a second time. JCL Dec., ¶ 15.

On October 24, 2024, the Parties participated in a second, all-day mediation presided over by Jason Marsili, Esq., an experienced mediator of wage and hour representative actions. In advance of the mediation, Defendants provided Plaintiff with sufficient information to properly evaluate Defendants' liability exposure for civil penalties to the Aggrieved Employees. The data and documents Defendants produced included, among other things, the total number of Aggrieved Employees and pay periods, written wage and hour policies, and time and payroll records for the Aggrieved Employees. The mediation led to this settlement, which was subsequently memorialized in the form of a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form Settlement which is the subject of the instant motion. The Settlement was negotiated in light of all known facts and circumstances and the uncertainty associated with litigation – including the risk of Plaintiff not being able to maintain representative claims, the difficulty of proving Plaintiff's claims in a manageable trial, the merits of Defendants' potential defenses, and the significant delay and potential appellate issues inherent to litigation – and was reached after extensive arm's length negotiations, with the assistance of the mediator. JCL Dec., ¶ 16.

On May 1, 2025, Plaintiff dismissed the class action claims, without prejudice. JCL Dec., ¶ 17.

The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted by Plaintiff on behalf of the Aggrieved Employees and the State of California. This is only a settlement of the PAGA claims for civil penalties and is not a class settlement and does not release the individual claims, if any, of the Aggrieved Employees other than those of Plaintiff. This Settlement does not release any claim that is not a PAGA claim, nor does this Settlement waive Defendants' right to assert *res judicata* or other available defense to any asserted claim or lawsuit. JCL Dec., ¶ 18.

Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the Agreement and this motion to the LWDA concurrently with the filing of the instant motion for settlement approval as set forth in the accompanying proof of service. Additionally, Plaintiff will submit to the LWDA a copy of the Court's judgment and order approving the Agreement within ten (10) days after entry of judgment or order. JCL Dec., ¶¶ 5, 19.

III. TERMS OF THE PAGA SETTLEMENT

A. The Gross Settlement Amount

This PAGA Settlement is subject to Court approval consistent with Labor Code § 2699(1)(2). The Agreement negotiated by the Parties provides for a "Gross Settlement Amount" payment in the amount of One Million Six Hundred Eighty Thousand Dollars and Zero Cents ($1,680,000.00) to resolve the Released PAGA Claims. From the Gross Settlement Amount, there is a deduction of the PAGA Counsel Award consisting of attorneys' fees not to exceed 35% of the Gross Settlement Amount (currently estimated to be $588,000.00) ***and*** costs and expenses supported by declaration not to exceed Sixty Thousand Dollars and Zero Cents ($60,000.00), and payment of Claims Administration Costs in an amount not to exceed Seven Thousand Six Hundred Ninety Dollars and Zero Cents ($7,690.00). Agreement at §§ I(F), I(R). After these deductions, the amount remaining is the PAGA Payment in an amount currently estimated to be One Million Twenty-Four Thousand Three Hundred Ten Dollars and Zero Cents ($1,024,310.00). Agreement at § I(S).

Of the Net Settlement Amount seventy-five percent (75%) shall be paid to the LWDA as the LWDA Payment and the remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees as the Aggrieved Employee Payments. *Id.* This allocation is required by Labor Code § 2699[2] as explained by *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175.

B. Allocation of Aggrieved Employee Payments

The Claims Administrator will calculate each Aggrieved Employee Payment by adding up the total number of Pay Periods for all Aggrieved Employees during the PAGA Period. The respective Pay Periods for each Aggrieved Employee will be divided by the total Pay Periods for all Aggrieved Employees, resulting in the "PAGA Payment Ratio" for each Aggrieved Employee. Each Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the Aggrieved Employee Payment to calculate each Aggrieved Employee's estimated share of the Aggrieved Employee Payment. Agreement at § III(J)(1).

At the time of mediation, Defendants estimated that there were 735 Aggrieved Employees who worked 81,000 Pay Periods during the PAGA Period. The Parties agreed that if the actual number of

[2] This allocation is required by the former version of Labor Code § 2699, which governs the Action.

Pay Periods worked during the PAGA Period exceeded the above number by more than 10%, Defendants would have the option to adjust the end date of the PAGA Period to an earlier end date at Defendant's' discretion in order to limit the amount of covered pay periods to 81,000. Agreement at § III(.A)(.2). On August 1, 2025, Defendants provided the Claims Administrator with the Employee Data. Using the Employee Data, the Claims Administrator determined the actual number of Pay Periods worked during the PAGA Period to be 88,891. Therefore, the actual number of Pay Periods worked during the PAGA Period does not exceed the above number by more than 10%. JCL Dec., ¶ 20.

C. Funding and Distribution

Defendants shall fund the Gross Settlement Amount to the Claims Administrator no later than sixty (60) calendar days after the Effective Date (the "Funding Date"). The Effective Date means the date upon which approval of the PAGA Settlement is granted by the Court. Agreement at §§ I(I), I(K), III(A)(3).

On August 1, 2025, Defendants delivered the Aggrieved Employee Data to the Claims Administrator in the form of a Microsoft Excel spreadsheet that contains each Aggrieved Employee's full name; last known address; Social Security Number; and start dates and end dates of employment for the Claims Administrator to accurately calculate the number of Pay Periods worked by each Aggrieved Employee during the PAGA Period. Agreement at §§ I(J), III(I).

Individual Aggrieved Employee Payments shall be mailed to the Aggrieved Employees' last known mailing address by regular First-Class U.S. Mail no later than five (5) calendar days after the Funding Date. Agreement at § III(J)(4). For any Aggrieved Employee whose Aggrieved Employee Payment check is uncashed within 180 days of payment, the Claims Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. Agreement at § III(J)(6).

D. Release of Claims

Following the Court's approval of the Settlement and upon Defendants' funding of the Gross Settlement Amount, in exchange for the consideration set forth in this Agreement, Plaintiff, the LWDA, and the State of California release Defendants from the Released PAGA Claims for the PAGA Period. Agreement at §§ I(I), III(B). The Released PAGA Claims include all PAGA claims alleged in the operative complaint in the Action and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period. Agreement at § I(Z).

IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT

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

A. <u>The Gross Settlement Amount is Fair and Reasonable</u>

The Gross Settlement Amount of $1,680,000.00 is fair and reasonable considering the nature and magnitude of the being settled and the various potential impediments to recovery. The various models were informed by PAGA Counsel's investigation, including the analysis of a significant sample of time and payroll data. PAGA Counsel projected Defendants' liability exposure ranged between $7,403,900.00 ("Realistic Penalties") and $12,175,300 ("Maximum Penalties") in PAGA penalties.

This range reflects the uncertainty regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between 22.69% ("Realistic Penalties") and 13.80% ("Maximum Penalties") of Defendants' potential exposure based on Plaintiff's alleged claims. JCL Dec., ¶ 21. Defendants' exposure is detailed below.

Labor Code Section	Penalty Amount	Maximum Penalties	Discount Applied	Realistic Penalties
Meal Period Violations Cal. Lab. Code §§ 226.7 and 512	$50	$1,012,500	85%	$151,875
Rest Period Violations Cal. Lab. Code §§ 226.7 and 512	$50	$1,012,500	85%	$151,875
Unpaid Wages Cal. Lab. Code §§ 201, 202, 203, 204, 510, 1194, 1197, 1997.1 1198 and 558	$50	$4,050,000	10%	$3,645,000
Wage Statement Violations Cal. Lab. Code § 226(a)	$50	$4,050,000	20%	$3,240,000
Business Reimbursement Violations Cal. Lab. Code § 2802	$100	$2,025,000	90%	$202,500
Waiting Time Penalties Cal. Lab. Code § 203	$100	$25,300	50%	$12,650

JCL Dec., ¶ 21.

1. Estimated Penalties for Meal Period Violations

Plaintiff alleges that Defendants failed to provide compliant meal periods in violation of Cal. Lab. Code § 512. Specifically, Plaintiff alleges that Defendants failed to record the actual time that Aggrieved Employees worked. Instead, Defendants required Aggrieved Employees to sign off on fictitious handwritten timecards, reflecting their scheduled hours, including a 30-minute meal period taken at the same time every day. Plaintiff contends that these records do not accurately record the start and stop times for meal periods and, more importantly, do not reflect missed, late or short meal periods. As a result, all of the recorded meal periods reflected exactly thirty (30) minutes, which Plaintiff argued creates a presumption of a meal period violation. JCL Dec., ¶ 22.

Defendants raised a number of defenses to this claim. Defendants argued that they maintained complaint meal period policies and, in practice, provided its employees with the opportunity to take compliant meal periods. Defendants argued, and the documents in fact reflect, that the written time records evidence nearly a 100% meal period compliance rate. Finally, Defendants argued that the manageability of this claim is difficult to prove as it is dependent on each Aggrieved Employee's testimony based on their individual experiences with their assigned crew and supervisors, rather than based on Defendants' company-wide policies or practices. JCL Dec., ¶ 23.

Consequently, Plaintiff applied an 85% discount to this claim. Plaintiff assigned $50 per meal break violation and estimated that Defendants' exposure for this claim ranged from $151,875 to approximately $1,012,500. JCL Dec., ¶ 24.

In assigning $50 per meal break violation when calculating Defendants' exposure under PAGA, Plaintiff considered a variety of defenses presented by Defendants, all of which resulted in Plaintiff discounting the value of their PAGA claims for purposes of this analysis. Defendants argued that increased civil penalties for subsequent violations do not apply unless the plaintiff can present evidence that the Labor Commissioner or a court notified the employer that it was in violation of the Labor Code. (*Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 355-356, citing *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144; see *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 ["Until the employer has been notified that it is violating a Labor Code provision … the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties."].) JCL Dec., ¶ 25. Separately, Defendants argued that courts have considerable discretion to reduce the penalty awards under PAGA. In *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, the trial court reduced the maximum PAGA penalty amount by 90%. The Court of Appeal affirmed a judgment after trial which only provided for a PAGA penalty of **$5** per pay period. JCL Dec., ¶ 26. In *Magadia v. Wal-Mart Associates, Inc.* (2019) 384 F.Supp.3d 1058, a federal court reduced PAGA penalties by 66.4%. 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% because the court found maximum penalties "unjust" because the employees had suffered no injuries. Some trial courts have even awarded no civil penalties, even when Labor Code violations are established. (*See In re Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 (affirming an award of $0 in PAGA penalties in a wage and hour class action); *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).) Accordingly, it is unlikely that Plaintiff would recover full penalty amounts even if they prevailed in establishing the underlying Labor Code violations. Plaintiff is not aware of any Court in California that has awarded the full $100 per pay period rate, let alone the subsequent rate of $200 per pay period. JCL Dec., ¶ 27.

2. Estimated Penalties for Rest Period Violations

Plaintiff further alleges that Defendants failed to provide compliant rest periods. Specifically, Plaintiff alleges that Aggrieved Employees were not authorized to take rest breaks. In addition, Defendants' written policies required employees to remain on premises for rest periods. JCL Dec., ¶ 28.

Defendants argue that its rest period policy is fully compliant with California law and that Plaintiff's rest break claim would have mainly relied on the testimony of Aggrieved Employees, making it a riskier claim. Establishing liability likely would have entailed competing testimony stating that rest breaks were voluntarily waived. *See, e.g.*, *Ordonez v. Radio Shack, Inc*. (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc*. (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices."). JCL Dec., ¶ 29.

Accordingly, Plaintiff applied an 85% discount to this claim and assigned $50 per rest break violation due to the reasons stated above. Plaintiff estimated that Defendants' exposure for this claim ranged from $151,875 to approximately $1,012,500. JCL Dec., ¶ 30.

3. Estimated Liability for Unpaid Wages

Plaintiff alleges that Defendant failed to pay all wages due to Plaintiff and Aggrieved Employees, based on two separate theories of liability. First, Plaintiff alleges that Defendants underpaid employees as a result of their unlawful fictitious and artificial timekeeping system. Specifically, Plaintiff and other Aggrieved Employees were required to sign off on handwritten timecards reflecting their scheduled hours, without any regard to the amount of time they actually worked. As a result, Plaintiff and Aggrieved Employees forfeited compensation, including overtime wages, for all the time they spent working under Defendants' control. Second, Plaintiff alleges that Defendants failed to compensate piece-rate employees for non-productive time. Specifically, employees engaged in several hours of non-productive time, including time spent driving to and from job sites and communicating with supervisors regarding work assignments. However, Plaintiff alleges that Defendants failed to compensate piece-rate employees for this non-productive time separate from any piece-rate compensation. JCL Dec., ¶ 31.

Defendants vigorously denied liability for this claim. As a preliminary matter, Defendants maintain that all hours worked were entered on timecards by the employees and not the employer. Defendants argued that they instructed employees to accurately fill out their timecards to accurately reflect all hours worked, and that employees certified the accuracy of these time entries. Defendants argued that they were entitled to rely on the accuracy of the time entries made by its employees. Further, Defendants argued that they paid Aggrieved Employees for all of their time worked, including separate compensation for non-productive time. JCL Dec., ¶ 32.

Accordingly, Plaintiff applied a 10% discount to this claim and assigned $50 per violation due to the reasons stated above. Plaintiff estimated that Defendants' exposure for this claim ranged from $3,645,000 to approximately $4,050,000. JCL Dec., ¶ 33.

4. Estimated Liability for Unreimbursed Business Expenses

Plaintiff alleges that Defendants failed to adequately reimburse Plaintiff and Aggrieved Employees for the use of their personal cell phones and vehicles in direct consequence and discharge of their work duties. Specifically, Plaintiff and other Aggrieved Employees were required to use their personal vehicles to drive to job sites and were required to use their personal cell phones to communicate with supervisors regarding work assignments. Plaintiff alleges that they were not reimbursed mileage or for personal cell phone usage by Defendants. Defendants maintain that they had proper policies and procedures in place to reimburse employees for personal cell phone usage and milage associated with the use of their personal vehicles. Additionally, Defendants produced paystubs evidencing compensation for "Phone Reim" beginning on January 20, 2021. JCL Dec., ¶ 34.

Accordingly, Plaintiff applied a 90% discount to this claim and assigned $100 per violation pursuant to Cal. Lab. Code § 2699(f). Plaintiff estimated that Defendants' exposure for this claim ranged from $202,500 to approximately $2,025,000. JCL Dec., ¶ 35.

5. Wage Statement Violations

Plaintiff further alleges that Defendants provided facially non-compliant wage statements in violation of Labor Code 226(a). Specifically, Plaintiff alleges that Defendants expressly violated Labor Code section 226(a) because they failed to identify the number of piece-rate units earned and any applicable piece rate as required under Labor Code 226(a)(3). JCL Dec., ¶ 36.

Defendants argue that even if they failed to furnish accurate wage statements, Plaintiffs cannot establish that their failure was knowing and intentional or that such failure resulted in actual harm to the Aggrieved Employees. Further, Defendants argue that this claim is derivative of the other claims asserted by Plaintiff, and that any such penalties associated with this claim would constitute improper "stacking." JCL Dec., ¶ 37.

Accordingly, Plaintiff applied a 20% discount to this claim and assigned $50 per violation due to the reasons stated above. Plaintiff estimated that Defendants' exposure for this claim ranged from $3,240,000 to approximately $4,050,000. JCL Dec., ¶ 38.

6. Estimated Penalties for Defendant's Violations Pursuant to Labor Code § 203

Plaintiff also alleges that the Defendants' Labor Code violations resulted in derivative liability for waiting time penalties. Defendants argue that Plaintiffs cannot prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, for the reasons stated above, *Naranjo v. Spectrum Security Services, Inc.*, 15 Cal. 5th 1056 (2024), creates difficulty in Plaintiff succeeding in a purely derivative waiting time penalty claim. Notwithstanding the uncertain nature of the claims, PAGA Counsel's Conservative Model discounted the waiting time penalty claim by 50% and estimated Defendants' exposure for these claims ranged between $12,650 and $25,300. JCL Dec., ¶ 39.

B. The Gross Settlement Compares Favorably to The Likely Recovery

In light of the above, the Gross Settlement Amount is between approximately 22.69% ("Realistic Penalties") and 13.80% ("Maximum Penalties") of Defendants' potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely recovery of PAGA penalties through continued litigation. JCL Dec., ¶ 40.

Defendants' maximum exposure to PAGA penalties is not a realistic outcome of the litigation because it fails to account for the risks of continued litigation including, but not limited to, Defendants' defenses. Here, Defendants argue that they can only be assessed civil penalties for actual violations of the Labor Code. *See* Cal. Lab. Code § 2699, subd. (f)(2). In other words, to recover any civil penalties, Plaintiff would be required to prove the underlying Labor Code violations. (*Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ["Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."].) To do this, Plaintiff would need to prove each Aggrieved Employee was subject to the alleged Labor Code violation. Thus, Defendants contend that Plaintiff would be required to "prove Labor Code violations with respect to each and every individual on whose behalf plaintiff seeks to recover civil penalties under PAGA." *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009). JCL Decl., ¶ 41.

Lastly, the maximum penalty figure does not consider that Courts have complete discretion to "award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code § 2699, subd. (e)(2). In fact, courts routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g. Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to $5 per pay period; "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 … only $5 per initial violation"); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal. App. 5th 778, 788 (2018), review granted on other grounds (noting that the trial court "exercised its discretion to reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average, plaintiffs were deprived of 13 percent of the 30-minute meal period"); *Fleming v. Covidien, Inc.*, 2011 WL 7563047, *4 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of PAGA civil penalties for plaintiffs' section 226 claims from $2,800,000 to $500,000 because the employees suffered no injuries as a result of the erroneous wage statements and made no complaints about the errors or omissions in the wage statements, thus reducing the maximum penalty by 82%); *see also*, *Gola v. University of San Francisco*, San Francisco Superior Court Case No. CGC-18-5655018, Proposed Statement of Decision, dated July 21, 2020, Judge Curtis A. Karnow of San Francisco Complex (concluding after a full-blown bench trial that a penalty of 15% of the maximum PAGA penalties was the appropriate penalty). The gross amount obtained by PAGA Counsel is reasonable in light of Defendants' arguments. JCL Decl., ¶ 42.

Given Defendants' defenses to the claimed Labor Code violations at issue, and the risks and costs of continued litigation, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount is fair and reasonable. This Settlement was negotiated by experienced counsel at arm's length. The LWDA has been provided notice of this motion and the PAGA Settlement, and the decision of LWDA to accept the PAGA Settlement and not oppose the motion should be given considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and protect its own rights. JCL Dec., ¶ 43.

C. <u>The Remaining Settlement Terms Are Fair and Reasonable</u>

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

V. THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE

Plaintiff's Counsel seeks approval of attorneys' fees in the amount of $588,000.00 (thirty-five percent of the Gross Settlement Amount) and attorneys' expenses not to exceed $60,000.00[3] for reimbursement of actually incurred litigation expenses. PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court review the requested attorneys' fees, the requested fees and costs are reasonable for experience wage and hour counsel. JCL Dec., ¶ 44.

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[3] As detailed *infra,* at the time of filing this motion, Plaintiff's Counsel incurred $23,708.52 litigating this matter.

A. <u>The Requested Attorneys' Fee is Fair and Reasonable</u>

The requested attorneys' fee of $588,000.00 and reimbursement of attorneys' expenses of up to $60,000.00 is fair, reasonable, and justified by the result achieved. Agreement at §§ III(J)(8), III(X). Plaintiff's Counsel negotiated a recovery of $1,680,000.00, and this result justifies the requested fees equal to thirty-five percent of this recovery. At the time this case was brought, the result was far from certain. Defendants' defenses to the merits of the case created difficulties with proof and complex legal issues for PAGA Counsel to overcome. Here, as noted above in section IV, several defenses asserted by Defendants present serious threats to the claims of Plaintiffs and the Aggrieved Employees. While Plaintiffs believe that these defenses could be overcome, Defendants maintain that these defenses have merit and therefore present a serious risk to recovery. The Settlement was possible because, in PAGA Counsels' eyes, PAGA Counsel was able to persuade Defendants that there was an appreciable risk that Plaintiffs would prevail on the factual and legal issues underlying liability and overcome difficulties in proof as to monetary relief. JCL Dec., ¶ 45.

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

Plaintiff's Counsel's current combined loadstar is $327,355.00. JCL Dec., ¶¶ 46-62; Declaration of Shani Zakay ("Zakay Dec.") at ¶¶ 3-6; Declaration of Brian J. St. John ("St. John Dec.") at ¶¶ 14-17. Thus, Plaintiff's Counsel's fee request is equal to Plaintiff's Counsel's loadstar with a multiplier of 1.8

and below the recognized multiplier range between 2 and 4. Thus, PAGA Counsels' fee request is equal to PAGA Counsel's loadstar with a reasonable multiplier of 1.8 – well below the 2.13 multiplier approved in *Laffitte.* See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte,* approved 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte,* approved 33% fee award with cross-check lodestar multiplier of 1.7).

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

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include counsel's incurred expenses because those who benefit from their effort should share in the cost. *See Rider v. City of San Diego,* 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *see also Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded litigation costs for consultants, online legal research, copying, postage, long distance charges, travel expenses, filing fees, mediation fees and investigation fees). Prior to incurring costs for filing of this motion, Plaintiff's Counsel collectively expended $23,708.52 prosecuting this action (JCL Law Firm, APC - $6,819.50, Zakay Law Group, APLC - $6,642.50, Lawyers *for* Justice, PC - $10,246.52). JCL Dec., ¶¶ 6, 63; Zakay Dec., ¶¶ 7-8; St. John Dec., ¶ 18. Plaintiff's Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; factual and legal research charges; mediation fees; and expert costs which were all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed. JCL Dec., ¶¶ 6, 64.

/ / /

VI. CONCLUSION

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

Dated: August 27, 2025

JCL LAW FIRM, APC
ZAKAY LAW GROUP, APLC

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