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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

VIVIAN KHODABANDEH on behalf of herself, and on behalf of all others similarly situated, Plaintiffs, v. CITY NATIONAL BANK, a California Based Company; DOES 1 to 50, inclusive, Defendant.	Case No. 21STCV20000 *Assigned for All Purposes: William F. Highberger* Department: 10 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF PAGA REPRESENTATIVE ACTION SETTLEMENT** Date: March 25, 2026 Time: 3:00 p.m. Courtroom: Dept. 10 Judge: Hon. William F. Highberger Complaint Filed: May 26, 2021 Trial Date: None

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Labor Code §2699(1)(2) requires that the Superior Court review and approve any settlement of a civil action filed pursuant to the Private Attorneys General Act of 2004, codified at Labor Code §2698, *et seq.,* ("PAGA").

Plaintiff, Vivian Khodabandeh ("Plaintiff') and defendant, City National Bank, ("Defendant" or "CNB")[1] have agreed to settle the PAGA claims alleged by the Plaintiff, fully resolving this case pursuant to the Private Attorneys General Act Settlement Agreement ("Settlement Agreement")[2]. A summary of the terms of the Settlement Agreement are as follows:

- PAGA Members: All current and former non-exempt employees who worked for Defendant in the state of California at any time during the period from September 22, 2019 through January 31, 2026. Based on a review of its records, CNB estimates that there are 3,313 PAGA Members who worked a total of 231,028 PAGA Pay Periods;
- Defendant will pay a maximum of $550,000, which is referred to hereinafter as the Gross Settlement Amount ("GSA"). This is non-reversionary settlement;
- PAGA Members will be paid their proportionate share based on the number of pay periods they worked during the PAGA Period;
- The Settlement Administration costs of approximately $10,200 will be paid out of the Gross Settlement Amount. The Settlement Administrator will be Apex Settlement Administrator[3];
- PAGA Counsel's attorneys' fees of $220,000, which represents 40% of the GSA and litigation costs not exceeding $25,000.00 will be paid out of the Gross Settlement Amount;

[1] Plaintiff and Defendant shall collectively be referred to herein as the "Parties".
[2] The Settlement Agreement is attached as Exhibit "1" to the Declaration of Natalie Mirzayan ("Mirzayan Decl.").
[3] The Settlement Administrator's quote is attached as Exhibit "2" to Mirzayan Decl., ¶ 4.

- PAGA Counsel will apply for, and CNB will not oppose, an enhancement award of $15,000 for Vivian Khodabandeh for her service on behalf of the Labor & Workforce Development Agency ("LWDA") and aggrieved employees. The enhancement award will be paid out of the GSA;
- Because the PAGA Members will be receiving civil penalties, their payment will not be reduced by payroll tax withholdings or deductions. Instead, they will receive a Form 1099. Payment of any taxes due will be the PAGA Members' responsibility;
- The Settlement checks will be valid for one year from date of issuance. The funds represented by checks which are returned as undeliverable or remain uncashed after one year will be void and unclaimed funds reissued to the California State Controller's Unclaimed Property Fund under the PAGA Member's name; and
- The Net Settlement Amount[4], approximately ($319,204.00), will be allocated as follows: seventy-five percent (75%) or ($239,403.00) of which will be paid to the LWDA; and twenty-five percent (25%) or ($79,801.00) of which will be distributed to PAGA Members.

II. FACTUAL AND PROCEDURAL BACKGROUND

On December 1, 2020, Plaintiff gave notice to the Labor & Workforce Development Agency ("LWDA") and CNB of alleged labor code violations. On May 26, 2021, Plaintiff filed a putative wage and hour class action complaint ("Complaint") in the Los Angeles Superior Court against Defendant, her former employer. Plaintiff's Complaint alleges, *inter alia*, that Defendant failed to pay for all hours worked including minimum wage and overtime, failed to provide compliant meal and rest periods, failed to pay all earned wages upon termination/resignation and during employment, failed to issue accurate wage statements, failed to pay all vacation wages owed, and failed to make

[4] The Settlement Agreement provides that "the Net Settlement Amount, approximately $279,800, will be allocated as follows: seventy-five percent (75%) or $209,850.00 of which will be paid to the LWDA; and twenty-five percent (25%) or $69,950.00 of which will be distributed to PAGA Members." This is because Plaintiff's Counsel Costs were calculated at the "not to exceed" amount of $25,000.00. Now that Costs have been finalized in the amount of $14,404.45. This increased the Net Settlement Amount.

regular rate and proper payments for meal and rest premiums, sick pay, and vacation payments. Mirzayan Decl., ¶5.

CNB litigated a heavily contested motion to compel arbitration and to dismiss the class claims, which necessitated three rounds of briefing on the motion to compel arbitration and to dismiss class claims, vast sets of discovery propounded by Plaintiff directed to the issue of arbitration, and two motions to compel brought by Plaintiff. These multiple rounds of briefing and hearings resulted in CNB fully prevailing on its motion to (1) compel arbitration of Plaintiff's individual claims, (2) dismiss the class claims; and (3) stay the representative PAGA claims. The Court compelled the individual (non-PAGA) claims to arbitration on December 12, 2022. The Court later compelled arbitration of Plaintiff's individual PAGA claim to arbitration on January 12, 2024, with the representative portion of the PAGA claim stayed. Plaintiff again attempted to challenge enforcement of the arbitration agreement before retired LASC Judge Amy Hogue, who ruled against the Plaintiff on July 18, 2023. *Id*., ¶6.

In the Litigation, Plaintiff alleges, *inter alia*, that Defendant owes civil penalties because it failed to provide meal and rest periods or compensation in lieu thereof, failed to pay wages upon termination and during employment, failed to provide accurate wage statements, failed to pay all vacation wages owed, and failed to make regular rate and proper payments for meal and rest premiums, sick pay, and vacation payments. *Id*., ¶7.

Defendant denies each of the allegations asserted in the Litigation, has repeatedly asserted and continues to assert defenses to Plaintiff's claims and contentions, expressly denies that it engaged in any wrongdoing or has any liability arising out of any of the facts or conduct alleged in the Litigation.

The Parties engaged in formal and informal discovery which yielded information and documentation concerning the claims set forth in the Litigation, such as obtaining Plaintiff's complete personnel file, wage statements, time records, all relevant wage and hour policies during the liability period, and an exchange of class data regarding the aggrieved employee population. Defendant also produced employee handbooks, policies, and procedures. Defendant took Plaintiff's full day deposition, and the Parties engaged in further written discovery. Counsel for the Parties engaged in extensive discussions about the strengths and weaknesses of the claims and defenses. On March 21, 2025, the Parties participated in an all-day mediation conducted by a highly experienced mediator Mr. Barry Appell, which led to this signing of the Agreement to settle the Action in its entirety. *Id.*, ¶8.

Based on Plaintiff's investigation and discovery conducted, and taking into account the liability defenses that Defendant raised, the expense and time necessary to pursue the Litigation through trial, the risks and costs of further prosecution of the action, the uncertainties and developing case authority on PAGA litigation, and the benefits that will ensure to the LWDA and the PAGA Members, Plaintiff and the PAGA Counsel believe that a settlement on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the PAGA Members and the LWDA. *Id.*, ¶9.

III. THE PAGA PENALTIES SECURED BY THE SETTLEMENT ARE FAIR AND REASONABLE AND FULFILL THE PAGA'S UNDERLYING PURPOSE TO BENEFIT THE PUBLIC.

The PAGA statute specifically provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part." Labor Code §2699(1(2). The statute, however, does not require a two-step process or otherwise mimic the class action approval requirements when the parties reach a settlement only as to PAGA civil penalties. *Salzar v. Sysco Central Cal Inc*. (E.D. Gal. 2017) 2017 WL 1135801, *2 (rejecting the application of class action settlement rules and procedure for PAGA settlement approval). In the absence of an explicit statutory requirement, the LWDA has provided guidance, explaining that courts should evaluate settlements of PAGA claims based on whether 'the relief provided for under the PAGA [is] genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public." *O'Connor v. Uber Techs, Inc.* (N.D. Cal. 2016) 201 F. Supp.3d 1110,1133. Courts defer to the agency's interpretation of a statute where authority has been delegated to the agency. *New Cingular Wireless PCS, LLC v. Pub. Utilities Comm 'n* (2016) 246 Cal.App.4th 784, 807. When evaluating a PAGA settlement, the court should analyze whether the amount of civil penalties obtained is "genuine and meaningful" in light of the PAGA's statutory purpose.

The California Legislature enacted PAGA to "augment the limited enforcement capability of the [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." *Iskanian v. CLS Transp. Los Angeles, LLC (2014) 59 Cal.4th 348, 383.* This statute authorizes an employee to bring an action for "civil penalties on behalf of the state against his or her employer for Labor Code violations committed against the employee and fellow employees." *Id.* at 360. An action under PAGA to recover civil penalties "is essentially a law enforcement action designed to protect the public and not benefit private parties." *Id*. at 381. Fundamentally, "a PAGA action is a statutory action in which the penalties available are measured by the number of Labor Code violations committed by the employer." *Sakkab v. Luxottica Retail North America, Inc. (9th Cir. 2015) 803 F.3d 425,435. "*As the state's proxy, an employee-plaintiff may obtain civil penalties for violations committed against absent employee [citation], just as the state could if it brought an enforcement action directly." *Id*

Under the general provisions of the PAGA scheme, 75% of the civil penalties recovered go to the State, while the remaining amount is given to the aggrieved employees. Labor Code §2699(1). The PAGA action is one of the "primary mechanisms for enforcing the Labor Code." *Iskanian, 59 Cal.4th at 383.* As the State's proxy or agent, "the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies- namely, recovery of civil penalties that otherwise would have been assessed by and collected by the [LWDA]." *Id*. "[A]n aggrieved employee's action under [PAGA] functions as a substitute for an action brought by the government itself." *Id*. The goal of PAGA is to impose civil penalties for Labor Code violations "significant enough to deter violations." *Id.* at 379.

Thus, a PAGA action is "fundamentally different from a class action." *Baumann v. Chase Inv. Servs. Corp. (9*" Cir. 2014) 747 F.3d 1117,1123* ("These differences stem from the central nature of PAGA. PAGA penalties are private attorneys general who, stepping into the shoes of the LWDA, bring claims on behalf of the state agency."). The PAGA statute expressly distinguishes and preserves the right of employees to separately (or concurrently) pursue their own causes of action against their employers and to recover other available federal and state remedies. Labor Code §2699(g)(l); see

Baumann, 747 F.3d 1123 (explaining the differences between the finality in class action judgments and the limited res judicata effect of PAGA judgments). "Unlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies." *McKenzie v. Federal Exp. Corp.* (C.D. Cal. 2011) 765 F.Supp.2d 1222,1233. PAGA penalties do not seek damages that are compensatory in nature. *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 188. Here, the Settlement penalizes Defendant for its alleged violation of California labor laws, provides a substantial benefit to the State and also provides relief to the aggrieved employees that is genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public. Lastly, the GSA of $550,000 is significant enough to deter Defendant from future violations. Accordingly, the Settlement fulfills the underlying purpose of the statute and confers a substantial benefit on the public.

IV. <u>THE PAGA SETTLEMENT MEETS THE STANDARDS FOR APPROVAL.</u>

Approval of a PAGA settlement requires a trial court to determine independently whether the settlement is fair, adequate and reasonable under all the circumstances. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76-77, *overruled on other grounds by Turrieta v. Lyft, Inc.* (2024) 16 Cal. 5th 664, 710, citing California Gov. Code, § 12652, subd. (e)(2)(B) [standard for approval of government settlement of a *qui tam* claim].) While PAGA does not require the trial court to act as a fiduciary for aggrieved employees, the appropriate standard of review of PAGA settlements prevents fraud, collusion or unfairness, and protects the interests of the public and the LWDA in the enforcement of state labor laws. (*Ibid.*) Moreover, Courts often apply the factors used in class action settlements to evaluate the fairness of a PAGA settlement. "Because many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement." (*Moniz,* 72 Cal.App.5th at 76-77, internal citations omitted.) These established standards provide a familiar, useful framework for a Court to evaluate PAGA settlements and have been adopted by several courts. (*See, e.g.*, *Salazar v. Sysco Cent. Cal., Inc.* (E.D. Cal. 2017) 2017 U.S. Dist. LEXIS 14971, *6, n. 4-5; *Juarez v. Villafan* (E.D. Cal. 2017) 2017 U.S. Dist. LEXIS 137205, *5 n. 4 [citing *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625]; *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal. 2017) 2017 U.S. Dist. LEXIS 137272, *8-9 [citing *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026]; *Gutilla v. Aerotek, Inc.* (E.D. Cal. 2017) 2017 U.S. Dist. LEXIS 41655, *7, n.4; *Smith v. H.F.D. No. 55, Inc.* (E.D. Cal. 2018) 2018 U.S. Dist. LEXIS 67192, *6; *Rincon v. W. Coast Tomato Growers, LLC* (S.D. Cal. 2018) 2018 U.S. Dist. LEXIS 22886, *6.) Factors evaluated include the amount offered in settlement, the extent of discovery completed, the stage of the proceedings, and the experience and views of counsel. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 703, 723; *see also* Newberg & Conte, Newberg on Class Actions, (2d.Ed. 1987) § 11.41, p. 11-91.) These factors are not exhaustive, and a court is free to balance factors depending on circumstances. (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal. App. 4th 224, 244-245.) Therefore, although class settlement jurisprudence has no direct application to this case, it is not inappropriate to consider the factors used in *Hanlon v. Chrysler Corp*. (9th Cir. 1998) 150 F.3d 1011, 1026: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the amount offered in settlement; (4) the extent of discovery completed and the stage of the proceedings; (5) the experience and views of counsel; and (6) the presence of a government participant.

The proposed settlement in this matter meets the relevant criteria for approval, as evaluating it under the above standards demonstrates that it is fair, reasonable and adequate.

A. <u>The Relative Strength of the PAGA Claim, and the Realistic Range of Outcomes in the Litigation, Strongly Favor Approval of the Settlement.</u>

"In determining whether the proposed settlement falls within the range of reasonableness, perhaps the most important factor to consider is plaintiffs' expected recovery balanced against the value of the settlement offer." (*Cotter v. Lyft, Inc*. (N.D. Cal. 2016) 176 5 F. Supp. 3d 930, 935 [internal quotation omitted]. Here, the relative strength of the PAGA claim brought by Plaintiff weighs in favor of the Court finding that the settlement is fair, adequate, and reasonable, as there are significant risk factors that Plaintiff would face if she did not settle this matter.

After analyzing the claims in this matter and conducting a thorough investigation of the claims and defenses, while Plaintiff and her Counsel believe that the asserted claims are meritorious and warranted by the facts, they are of the belief that the Settlement provides excellent value for the LWDA and for the Aggrieved Employees. To determine the potential recovery, prior to attending mediation, Plaintiff hired a statistical expert Mr. Sean Chasworth[5] at Phillips Fractor and Company. As a result, Plaintiff's counsel determined the potential value of the civil penalties sought as follows:

1. Unpaid Overtime Claims.

Plaintiff's unpaid overtime claim is premised on the contention that Defendant's policies and practices were to require employees to complete all their tasks within their assigned shift times while refusing to authorize payment of overtime, resulting in employees being forced to work "off-the-clock" before and after their scheduled shifts, and during meal periods. Defendant contends that there are several defenses to this claim for civil penalties, including the fact that they contend Plaintiff cannot demonstrate that she or the Aggrieved Employees actually worked off-the-clock and that even if they did, that Defendant was unaware that the Aggrieved Employees performed any such work. Specifically, CNB alleges that employees alleging off-the-clock claims must prove: (1) that they worked time for which they were not paid; and (2) that the employer had actual or constructive knowledge that they performed such work. *See White v. Starbucks Corp.*, 497 F. Supp. 2d 1080, 1083 (N.D. Cal. 2007). When an employer's policies prohibit off-the-clock work, "an employee's clocking out creates a presumption they are doing no work." *White v. Home Depot U.S.A. Inc.*, 2019 WL 1171163, at *24 (S.D. Cal. Mar. 13, 2019.) CNB contends that its timekeeping policies prohibit off-the-clock work and that Plaintiff admitted receiving and acknowledging CNB's timekeeping policy that required her to accurately record all hours of work, and which prohibits off-the-clock work.
CNB further alleges that Plaintiff admitted that she had the opportunity to review and identify corrections to her time entry (whether straight time or overtime hours) and that the system gave her

[5] Mr. Sean Chasworth's resume is attached to Mirzayan Decl., ¶10.

visibility into her recorded time and if that time entry did not accurately capture her time, she could request corrections. CNB finally alleges that Plaintiff's damaging testimony establishes that any time she asked for corrections, those were made, and that the timekeeping policies were complied with for the entire seven years at the Woodland Hills Branch, where she was never asked to work off the clock. Finally, CNB contends that Plaintiff was paid significant amounts of overtime under Zuniga's supervision, as confirmed by her wage statements and that CNB does properly adjust the overtime regular rate to reflect non-hourly compensation, as evidenced by Plaintiff's March 31, 2019 paystub, which shows the regular rate being adjusted to include the bonus payment. Based on the records provided by CNB, Plaintiff's economic expert calculated the PAGA penalties for the initial pay period at $261,700. Based on the risks posed by these defenses, the realistic value of that claim is estimated by Plaintiff's counsel to be approximately $65,425.00 (discounted by 75%) for the purpose of obtaining a settlement. Mirzayan Decl., ¶ 11.

2. Unpaid Minimum Wages.

Plaintiff's unpaid minimum wage claim is based on the same facts and theories discussed above in reference to the unpaid overtime claims, i.e., that Defendant's policies and practices required employees to work off the clock and thus, employees were not paid at all for work they performed. However, the same defenses apply to this claim as to the overtime claim because it is based in the same alleged conduct. CNB also alleges that Plaintiff's deposition testimony failed to show any violation of California Paid Sick leave, as she admitted receiving all sick pay due. Based on the risks posed by these defenses, the realistic value of that claim is estimated by Plaintiff's counsel to be approximately $41,872.00 for the purposes of obtaining a settlement. *Id.*, ¶12.

3. Failure to Provide Meal Periods.

Plaintiff's meal period claim is premised on the claim that Defendants failed to provide legally compliant meal periods to employees on a regular basis. However, Defendant contends that there are significant legal and factual defenses to the claim for civil penalties, including the fact that Defendant contend that the recorded time periods do not evidence clear violations. CNB further contends that Plaintiff has identified no defect in CNB's meal and rest period policy, which at all times authorized and permitted meal and rest periods in compliance with California law. Nor has Plaintiff identified any defect in CBN's actual practice of administering meal and rest breaks. To the contrary, CNB alleges that Plaintiff's testimony confirmed that the policy was administered in practice in a compliant manner, which she observed first hand administering the policy as a supervisor, and that her own personal experience, Plaintiff's admissions of compliance bar any meal period claim. Based on the records provided by CNB, Plaintiff's economic expert calculated the PAGA penalties for the initial pay period at $261,700. Based on the risks posed by these defenses, the realistic value of that claim is estimated by Plaintiff's counsel to be approximately $26,170.00 (90% discount) for the purpose of obtaining a settlement. *Id*., ¶13.

4. Failure to Provide Rest Periods.

Plaintiff's rest period claim is based on the claim that Defendant failed to provide legally compliant, timely rest periods to its employees and failed to maintain lawful rest period policies. Plaintiff's Counsel calculated Defendants' plausible penalty exposure for this claim by assuming that rest period violations occurred at a greater rate that meal period violations occurred. (*Ibid.*) Unlike meal period claims, rest periods are not recorded, and potential violations cannot be easily determined by reference to time and pay records. Based on the records provided by CNB, Plaintiff's economic expert calculated the PAGA penalties for the initial pay period at $261,700. Based on the risks posed by these defenses, the realistic value of that claim is estimated by Plaintiff's counsel to be approximately $26,170.00 (90% discount) for the purpose of obtaining a settlement. *Id*., ¶14.

5. Failure to Provide Vacation Pay

Plaintiff's vacation pay claim alleges that she was not paid all accrued/vested vacation time at the time of her termination. However, CNB contends that Plaintiff's testimony and her wage statements confirm she was paid all vacation owed. Specifically, Plaintiff admitted she was paid her vacation in full, and is not seeking to recover any unpaid vacation pay. Based on the records provided by CNB, Plaintiff's economic expert calculated the PAGA penalties for the initial pay period at $261,700. Based on the risks posed by these defenses, the realistic value of that claim is estimated by Plaintiff's counsel to be approximately $52,340.00 (80% discount) for the purpose of obtaining a settlement. *Id.*, ¶15.

6. Failure to Provide Lawfully Compliant Wage Statements.

Plaintiff's wage statement claim is premised on the fact that Defendant allegedly issued wage statements which violated Cal. Lab. Code § 226(a) because the wage statements failed to state the accurate number of hours worked and failed to list the correct rate of pay for any meal premiums paid.

The amendments to Cal. Lab. Code § 2699(f)(2)(A) provides that the applicable penalty for a violation to section 226(a) is limited to $25 per violation "if the employee could promptly and easily determine from the wage statement alone the accurate information specified by subdivision (a) of Section 226." Furthermore, the amendments provide that "an aggrieved employee shall not collect a civil penalty for . . . a violation of Section 226 that is neither knowing or intentional nor a failure to provide a wage statement, that is in addition to the civil penalty collected by that aggrieved employee for the underlying unpaid wage violation, effectively cutting off liability for penalties under this section where such claims are wholly derivative. (Cal. Lab. Code § 2699(i).) Moreover, the California Supreme Court recently held that wage statement violations under Cal. Lab. Code § 226(a) are not triggered where an employer reasonably and in good faith believes it is providing a complete and accurate wage statement because such a violation is not "knowing and intentional." (*Naranjo v. Spectrum Sec. Servs., Inc.* (2024) 15 Cal. 5th 1056, 1065.) *Cleveland v. Groceryworks.com LLC*, 200 F.Supp.3d 924, 958 (N.D. Cal. 2016) (granting summary judgment on 226 claim where there was no evidence that error was knowing and intentional: "Simply demonstrating a violation of 226(a) does not show "knowing and intentional" conduct.").

Based on the records provided by CNB, Plaintiff's economic expert calculated the PAGA penalties for the initial pay period at $654,250. Based on the risks posed by these defenses, the realistic value of that claim is estimated by Plaintiff's counsel to be approximately $98,138.00 (85% discount) for the purpose of obtaining a settlement. *Id.*, ¶16.

7. Wage Theft Claim.

Plaintiff alleges that wage theft notices were not provided as required by Labor Code 2810.5. This wage theft notice requirement was enacted in 2011, and requires that certain wage information (and identification of rights) be provided at the time of ***hire.*** CNB alleges that Plaintiff was already a current employee at the time of the enactment of the statute and that for any subsequent wage increases (after hire), the law is clear that this notice need not be provided in a wage theft notice – it can be conveyed via the wage statement (as confirmed by the California DIR) https://www.dir.ca.gov/dlse/faqs-noticetoemployee.html.

8. Failure to Indemnify Necessary Business Expenses.

Plaintiff's failure to indemnify claim is based on the fact that CBN required aggrieved employees to use their personal cell phones to communicate with co-workers and supervisors but failed to reimburse them for these necessary business expenses. However, CNB denies that Aggrieved Employees were ever required to use their personal cell phones as a part of their job duties or that CNB was obligated to compensate employees for any such expenditures. Furthermoe, CNB alleges that even if Plaintiff was able to clear dismissal at arbitration of the reimbursement claim, she would still remain unable to establish any statewide representative theory of liability, because her claim is uniquely individualized to only a small number of employees under one particular supervisor.

Based on the records provided by CNB, Plaintiff's economic expert calculated the PAGA penalties for the initial pay period at $261,700.00. Based on the risks posed by these defenses, the realistic value of that claim is estimated by Plaintiff's counsel to be approximately $91,595.00 (65% discount) for the purpose of obtaining a settlement. *Id*., ¶17.

9. Failure to Maintain Accurate Records of Hours Worked.

Plaintiff's failure to maintain accurate records claim is based on the fact that Plaintiff contends that CNB failed to maintain business records required by Cal. Labor Code §1174 and subject to the penalties set by Cal. Labor Code §1174.5. CNB denies that it failed to maintain the records required by that section, because the only portion of section 1174 that is implicated by the allegations is off-the-clock work, which is a derivative claim subject to the same defenses described above.

10. Failure to Pay All Earned Wages Twice Per Month.

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Plaintiff also contends that CNB violated Labor Code § 204. Labor Code § 204 requires employers to pay employees all earned wages two times per month. CNB contends that the pay records do not evidence any such violations. Moreover, CNB contends that such violations cannot be premised on derivative violations, as it contends that the code pertains solely to the timing of the payments issued.

11. Waiting Time Penalties.

Plaintiff's waiting time penalty claim is based on the contention that CNB hourly-paid or non-exempt employees are entitled to back overtime and compensation for time worked off-the-clock as well as missed meal and rest breaks (as discussed *supra*), thereby triggering waiting time penalties upon their separation under Cal. Labor Code § 203.

The waiting time penalty itself is a statutory penalty which cannot be collected under PAGA; however, the civil penalty accrues solely at termination and is, in this case, wholly derivative of the other claims. Moreover, the California Supreme Court in *Naranjo* has held that an employer's "good faith" is a defense to a claim for waiting time penalties under Section 203 under the same standards used to determine liability for a violation under Section 226(a). (*Naranjo* (2024) 15 Cal. 5th at 1081.) However, not all employees that were in the Aggrieved Employee group were terminated.

CNB contends that Plaintiff admitted at deposition that she received her final wages on the day of her termination, that she never identified any underpayment to CNB at the time of her termination, and that she never notified CNB after her termination that any wages were owed to her.

CNB further contends that Plaintiff's 203 claim for waiting time penalties is also barred as a matter of law, as there is no basis or evidence to establish any violation, much less any "willful" violation. CNB contends that the purpose of section 203 is to ensure the prompt payment of final wages relying on *Troster v. Starbucks Corporation*, 387 F.Supp.3d 1019, 1030 (S.D. Cal. 2019) (even though employer lost on the merits of its defense, section 203 penalties not owed where employer asserted in good faith it did not owe wages under de minimis doctrine). Indeed, no section 203 penalties are owed when the employer presents a defense which, if successful, would preclude any recovery on the part of the employee, even if the defense ultimately is unsuccessful. *Id.*, *see also Alonzo v. Maximus, Inc.*, 832 F.Supp.2d 1122, 1133-1134 (C.D. Cal. 2011) (unsuccessful arguments that bonus payments were not owed were not unsupported by evidence, were not unreasonable, and were not presented in bad faith, section 203 penalties denied); *Bargas v. Rite Aid Corporation*, 245 F.Supp.3d 1191, 1214-1215 (C.D. Cal. 2017) (defendant's partially successful arguments that it did not owe plaintiff unpaid overtime were neither unreasonable nor frivolous, section 203 penalties denied).

Based on the records provided by CNB, Plaintiff's economic expert calculated the PAGA penalties at $569,500.00. Based on the risks posed by these defenses, the realistic value of that claim is estimated by Plaintiff's counsel to be approximately $148,070.00 (74% discount) for the purpose of obtaining a settlement. Mirzayan Decl., ¶ 18.

12. Total Value of Penalties and Additional Risk Factors.

The Settlement of $550,000.00 is a fair and reasonable, risk-adjusted penalty discounted by Plaintiff's Counsel for the reasons stated above. Mirzayan Decl, ¶19. When considering the serious risks discussed herein, and the Court's inherent power to adjust penalties downward to reflect an employer that sought to be in compliance with wage and hour laws, even if mistakes were sometimes made, Plaintiff's Counsel contends that this compromise figure is fair and reasonable and represents an excellent value for the State and for the Aggrieved Employees. *Id.,* ¶20. The Settlement provides a monetary benefit that falls well within "the range of an acceptable settlement" under the circumstances, which is the standard on which the instant Settlement must be judged. *Id., ¶21.* As held by the Ninth Circuit, a settlement may be fair and reasonable even where it only provides a fraction of what could have been obtained at trial. *See Linney v. Cellular Alaska P'ship* (9th Cir. 1998) 151 F.3d 1234, 1242.

Moreover, the amount to be designated as PAGA Penalties is approximately **$319,204.00** which will be distributed as 75% (**$239,403.00**) to the LWDA and 25% (**$79,801.00**) to the Aggrieved Employees. Mirzayan Decl., ¶22. The Aggrieved Employees group consists of approximately 3,313 non-exempt employees who are or were employed by CNB during the PAGA Period. As a result, each Aggrieved Employee will receive an estimated average amount of **$24.08**. The amount to Aggrieved Employees will vary based on each individual's duration of employment during the PAGA

Period; those who worked longer for Defendant during the relevant period will receive a benefit greater than the average estimated amount. *Id.,* ¶23.

B. <u>The Risk, Expense, and Complexity of Further Litigation Balances Strongly in Favor of Approval of the Settlement.</u>

In assessing whether the amount in civil penalties is genuine and meaningful, the court may balance the amount in penalties with the risks of further litigation. What is certain is that to adequately establish the foundational violations that would support a substantial penalty award, tremendous time and expense would need to be invested. To adequately establish that aggrieved employees experienced the alleged violations, and at what frequency, significant number of the aggrieved employees would need to be interviewed in a systematic fashion and their testimony cataloged in way sufficiently meaningful to permit the submission of summary evidence at trial, such as via survey. The burdensome nature of such a process would be expensive and time-consuming.

Furthermore, it would be essentially impossible to formulate an objectively reliable means of summarizing testimonial experiences, other than by an extraordinarily detailed survey. And formulating such a survey would have been important, since frequency of violations would need to be established before any penalties could be recovered. Alternatively, direct testimony would have been required from aggrieved employees, which would be, at best, very difficult. Indeed, the 2024 amendments to PAGA provide that the trial court "may limit the evidence to be presented at trial or otherwise limit the scope of any claim filed pursuant to this part to ensure that the claim can be effectively tried. Cal. Lab. Code § 2699(p).

Resolution at this time will forestall the need for additional expensive and time-consuming litigation that could very well result in an outcome less satisfactory than that proposed under this settlement. But, before any other consideration, Plaintiff agreed to this settlement because it is objectively reasonable.

Here, Plaintiff obtained a meaningful amount in civil penalties despite facing significant challenges had the litigation continued. Plaintiff has calculated the maximum potential penalties to be approximately $2,793,950.00 (assuming a $100 for initial violation) if there is a violation of each

Labor Code section at issue, as discussed above.

While Plaintiff is confident in the merits of the case, a legitimate controversy exists as to each predicated Labor Code violation. For example. Plaintiff contends that aggrieved employees were subjected to, *inter alia*, unlawful meal and rest break policies and were denied meal and rest break premiums. Defendant refutes these contentions, claiming, for example, that it authorized and permitted meal and rest breaks and paid premium wages.

Specifically, CNB alleges that representative portion of her claims cannot be litigated unless and until she establishes liability on her individual PAGA claims in arbitration. CNB alleges that Plaintiff is poised to take nothing in this action because her deposition admissions regarding CNB's compliant wage/hour practices preclude her from establishing she suffered any individual violation, which will in turn bar her from ever litigating the representative portion of her PAGA claim. CNB contends that *even if* Plaintiff's claims were to somehow survive *individual* arbitration, her PAGA representative claim is already torpedoed by her deposition admissions confirming her inability to identify any systemic, structural (i.e., statewide) wage and hour theory of liability. CNB contends that Plaintiff's testimony confirmed the opposite: that CNB's policies and practices with respect to meal, rest, overtime, vacation, and prohibitions of off-the-clock-work, were not only complaint (but actually exceeded state law requirements) across her 12-year tenure. CNB contends that Plaintiff's testimony reflect that CNB's policies and practices were not only compliant *as to her* (in her role as a Client Services Supervisor), but that she was able to administer those policies in a complaint manner as to *all the hourly employees in the branches that she worked at and that she supervised*.

CNB is adamant that Plaintiff's testimony as to purported off-the-clock work and meal infractions were, based on her deposition testimony, simply a brief aberration that only occurred under one supervisor in one location, *for a period outside the statute of limitations*, and in a manner that Plaintiff has already admitted is incapable of proof.

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(1) Without the Settlement, Plaintiff Will Have to Meet Estrada's Due Process Requirements For Trying Her Claims On A Representative Basis, Which CNB Contends That She Will Not Be Able To Do.

The California Supreme Court in *Estrada v. Royalty Carpet Mills,* 15 Cal.5th 582 (2024) confirmed that courts have not just one tool—but many tools—to limit or eliminate overbroad PAGA claims. Previously, courts had often taken a strictly binary approach to whether manageability could be considered, with many courts—including the Ninth Circuit in a recent decision—stating that manageability had no role in limiting PAGA, and other courts, using manageability to strike claims. There is no longer that strictly binary (i.e., manageability applies/manageability does not apply) dichotomy. *Estrada* takes away just one tool (a "motion to strike" on standard-issue rule 23 grounds), but it is now black letter law that courts expressly have not one, but ***many*** tools that are now Supreme Court-endorsed to limit or dispose of PAGA claims: "And, of course, a trial court may issue substantive rulings, including those on demurrer, or on motions for summary judgment or judgment notwithstanding the verdict, provided for in the Code of Civil Procedure to fairly and efficiently adjudicate an action in cases in which a plaintiff pleads the claim ***in such an overbroad or unspecific manner that the plaintiff is unable to prove liability as to all or most employees***."

Estrada also expressly imports due process requirements and confirms they are the same as those that apply in class cases. Not only does it apply—that due process protection is not "lesser" as to PAGA—i.e., it is the same as that applied to class claims:

> Royalty argues that defendants, including employers in class or representative actions, have a due process right to present an affirmative defense. (*Citing Duran*, supra, 59 Cal.4th at p. 33, 172 Cal.Rptr.3d 371, 325 P.3d 916.) ***We agree***. In discussing class actions in *Duran*, we said that "defendants must have an opportunity to present proof of their affirmative defenses." (Id. at p. 38, 172 Cal.Rptr.3d 371, 325 P.3d 916.) ***There is no reason to think defendants have lesser due process rights in defending against representative PAGA claims***.

CNB contends that Plaintiff will be unable to meet that standard, as her own testimony confirms that any purported "violations" were unique to her individual experience, and even then to one supervisor (Ernie Zuniga) in one location (at Chatsworth), and not statistically shared across other positions. Moreover, Plaintiff admits that these violations only occurred during a limited time frame, only during the time that Tillman was Branch Manager came, the issue was resolved.

In other words, CNB contends that by Plaintiff's own admissions, she does not have a statewide theory of a violation capable of being prosecuted on a representative PAGA basis and that nothing in *Estrada* eliminates the requirement that a PAGA plaintiff must be an aggrieved employee, and Plaintiff's testimony forecloses Plaintiff from making such a showing.

Plaintiff also took into account the fact that continued litigation would be expensive, time-consuming and uncertain proposition, involving a trial and possible appeals, and would delay any recovery to the State and the aggrieved employees. There is also a substantial risk that the court would reduce the award even if Plaintiff is successful. In contrast, if the Court approves the Settlement, the aggrieved employees will receive timely relief and avoid the risk of an unfavorable judgment. Plaintiff objectively and knowledgeably balances the strengths and weaknesses of her claims against the risk of continued litigation, and was able to determine a realistic range of settlement recovery for PAGA penalties.

Thus, when the risks of litigation, the burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment are considered, it is clear that the Settlement is reasonable and in the best interest of the State and the public. The Settlement therefore accomplishes PAGA's objectives by imposing sufficient civil penalties "to punish and deter" Defendant from future alleged Labor Code violations, while also ensuring that the penalties are not "unjust, arbitrary and oppressive, or confiscatory." Labor Code §2699(e)(2); Iskanian, 59 Cal.4th at 384.

C. The Presence of a Government Participant

As set forth above, 75% of the penalty is paid to the LWDA. The LWDA is being notified of the Settlement at the same time that this motion is being filed. Mirzayan Decl., ¶24.

D. PAGA Counsel Is Experienced and Negotiated A Reasonable Settlement

The Court may also consider that negotiations between the Parties were conducted at arm's length, in an adversarial manner, despite a mutual desire to resolve the case. The court may consider the opinion of all counsel that the Settlement is fair, reasonable and in the best interests of the Aggrieved

Employees, and the LWDA. PAGA Counsel is highly experienced with employment class actions and representative actions and believes that the settlement is fair and reasonable.

E. The Substantial Exchange of Data and the Stage of the Proceedings Favor Approval.

In evaluating the Parties' basis for valuing a settlement, "'formal discovery is not a necessary ticket to the bargaining table.'" (*Linney*, 151 F.3d at 1239.) Here, the substantial exchange of data was sufficient to enable Plaintiff's Counsel to evaluate the strength and value of the claim for purposes of settlement. As discussed above, Plaintiff's Counsel reviewed policies, performed calculations with data, and inspected related documents, such as employee handbooks, policy documents, time records and wage statements in order to assess exposure and risk. Mirzayan Decl., ¶25.

Based on Plaintiff's Counsel's experience litigating wage and hour claims, such investigation was sufficient to determine the potential value of the PAGA claim, and to evaluate the strength of this claim for purposes of settlement. Mirzayan Decl., ¶26.

F. Additional Factors Weigh in Favor of Approving the Terms of the Proposed Settlement, Including the Requested Fees and Costs.

In addition to the factors presented above, the proposed settlement does not possess any obvious deficiencies with respect to its other terms, including the agreed-upon fees and costs.

1. The Requested Fees Are Reasonable And In Line With That Approved By California Courts.

Cal. Lab. Code § 2699(k)(1) provides that "any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs…" The fees and costs sought here are reasonable and should be approved as a part of the overall Settlement. Courts in the Ninth Circuit and California generally use the "percentage method" rather than the lodestar approach when awarding attorneys' fees in a common fund settlement. (*See* 7 Witkin, B.E., CALIFORNIA PROCEDURE (2007 Supp.) §§ 255-261 at 236-241 (describing prevalence of percentage method under California law); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ["[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole"]; *In re Activision Sec. Litig.* (N.D. Cal. 1989) 723 F. Supp. 1373, 1377-78 (Patel, J.) [endorsing percentage method]; *See generally*, *Serrano*, 20 Cal. 3d at 25; *accord Hanlon* (9th

Cir. 1998) 150 F.3d 1011.) While this settlement is what is traditionally imagined when using the term "common fund," it does create benefit for others beyond Plaintiff.

According to a leading treatise on class actions, "No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (*See* Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03.) Attorneys' fees that are fifty percent of the fund are typically considered the upper limit, with ***thirty to forty percent commonly awarded in cases where the settlement is relatively small***. (*See Ibid.*; *see also, Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million].)

PAGA Counsel's requested fee of 40% is well within the range of reasonableness. In discussing the fee ranges, the court in *In re Activision Securities Litigation*, 723 F. Supp. 1373, 1378 (N. D. Cal. 1989), noted that "fees range from 20% to **50%**" [emphasis added]. *See Greene v. Emersons, Ltd*., 1987 U.S. Dist. LEXIS 3980, Fed. Sec. L. Rep. (CCH) P93,263 (**46.2%** attorneys' fees award); *See In re Ampicillin Antitrust Litigation*, 526 F.Supp 494 (D.D.C. 1981) (**45%** attorneys' fees award of the $ 7.3 million settlement fund); *Friends for All Children v. Lockheed Aircraft, Corp*., 567 F. Supp 790, 819 (D.D.C. 1983) (**41.1386**% award); *Weber v. Einstein Noah Restaurant Group, Inc.,* No. 37-2008-00077680 (San Diego Super. Ct.) (**40%** award); *Kenemixay v. Nordstroms, Inc.,* No. BC318850 (L.A. Super. Ct.) (**50**% award); *Leal v. Wyndham Worldwide Corp.,* No. 37-2009-00084708 (San Diego Super. Ct.) (**38**% award); *Azbug v. Kerkorian,* Los Angeles Super. Ct. No. CA 000981 (Nov. 19, 1990) (**45**% award); *Haitz v. Meyer,* Alameda Super. Ct. No. 572968-3 (Aug. 20, 1990) (**40**% award); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp*. (S.D.N.Y. 1979) 480 F. Supp. 1195 (**53%** award); *Cicero v. DirecTV, Inc*. (C.D. Cal. 2010) 2010 U.S. Dist. LEXIS 86920; *Martin v. AmeriPride Servs., Inc*. (S.D. Cal. 2011) 2011 U.S. Dist. LEXIS 61796 ("courts may award attorneys in the 30-40% range in wage and hour class actions that result in recovery of a common fun[d] under $ 10 million"); *Birch v. Office Depot, Inc.* (S.D. Cal. 2007) 2007 U.S. Dist. LEXIS 102747 (awarding a **40%** fee on a $ 16 million wage and hour class action); *Rippee v. Boston Mkt. Corp* (S.D. Cal. 2006) 2006 U.S. Dist. LEXIS 101136 (**40%** award).

In a common fund case, the object "is to give the lawyer what he would have gotten in the way of a fee in an arm's-length negotiation, had one been feasible." *In re Cont'll Ill. Sec. Litig.,* 962 F.2d 566, 568 (7th Cir. 1992). In *In re Cont'll Ill. Sec. Litig.,* Judge Posner reasoned that the negotiated fee reflects a market-based price because it encompasses both parties' best estimate and view as to the value of the legal services and what the court might have awarded if the matter had been litigated. *Id.* For this reason, courts generally defer to the parties regarding the reasonableness of the negotiated attorneys' fees. Indeed, because "the parties are compromising to avoid litigation," the court "**need not inquire into the reasonableness of the fees at even the high end with precisely the same level of scrutiny as when the fee amount is litigated**." *Laguna v. Coverall No. Am.,* 753 F.3d 918,922 (9th Cir. 2014) (internal quotations omitted; emphasis added).

Stated differently, while the Court must conduct an independent inquiry into the reasonableness of fee request, it should give substantial weight the Parties' agreement on fees, which is the product of negotiations in the legal marketplace. *See Lealao,* 82 Cal. App. 4th at 47 "attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace".

The percentage of attorneys' fees set forth in the Settlement, *i.e.*, forty percent of the Gross Settlement Amount, is reasonable. As a PAGA claim is unique to California, it is also appropriate to consider how California treats common fund recoveries. The California Supreme Court removed all doubt about the use of the percentage of the fund method to award attorneys' fees in California, stating, "We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." (*Laffitte v. Robert*

Half Intern. Inc. (2016) 1 Cal. 5th 480, 503.)[6]

Plaintiff's counsel invested time and resources into prosecuting the action, with payment deferred to the end of the case, over four years, and entirely contingent on outcome. Mirzayan Decl., ¶27. It has been a long-recognized principle that an attorney merits a significantly larger fee when the compensation is contingent, rather than being fixed on a time or contractual basis. *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 148-51. During the period that the action has been pending, Plaintiff's counsel has advanced all expenses and has not received any compensation for prosecuting the action on behalf of the State and aggrieved employees. Mirzayan Decl., ¶28.

The significant outlay of monetary and personnel resources has been completely at risk and wholly dependent upon obtaining a substantial settlement or imposition of civil penalties at trial. Plaintiff's Counsel took on this case, which necessarily required the firm to forego other opportunities, given finite resources to devote to cases. Furthermore, the hours which were spent on this matter were reasonably spent on tasks which are typically involved in the litigation process of a representative wage and hour claim. Mirzayan Decl., ¶29.

Providing attorneys who represent clients under contingent-fee agreements a larger fee than the market-value of their services helps to assure adequate representation for plaintiffs unable to afford accomplished attorney hourly rates. In *Ketchum,* the California Supreme Court instructed courts to adjust fee compensation to ensure that the fees account for contingency risk:

> A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.

Ketchum, 24 Cal. 4th at 1132-33; *see also, Graham v. DaimlerChrysler Corp*., 34 Cal. 4th 553, 580.

A fees award that adjusts for contingency fee risk "constitutes earned compensation; unlike a windfall, it is neither unexpected or fortuitous." *Id.* at 1138. The contingent risk factor is the single most important enhancement factor under California law even for actions where statutory fees are

[6] The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases." *Laffitte*, at 501.

available. *See Horsford v. Board of Trustees of Calif. State Univ.,* 132 Cal. App. 4th 359, 399 (2005) (reversing a trial court order for failure to consider contingent risk for statutory fees pursuant to the Fair Employment and Housing Act). The main criterion for risk is the risk *of complete loss,* which would leave counsel unable to recover fees. *See Graham,* 34 Cal. 4th at 583 (explaining that a multiplier corresponds to risk of loss, with the risk of not being the successful party ranking highest). This risk is particularly acute for contingency fee attorneys because they "must use savings or incur debt to keep their offices afloat and their families fed during the years-long litigation." *Horsford,* 132 Cal. App. 4th at 400. "[a] contingent fee contract, ***since it involves a gamble on the result***, may properly provide for a larger compensation than would otherwise be reasonable." *Rader v. Thrasher* (1962) 57 Cal. 2d 244, 253. [Emphasis added.]

Plaintiff's counsel should not be penalized with a lower fee for settling the case prior to trial, because the percentage of the fund method "encourages early settlement, which avoids protracted litigation." *Laffitte v. Robert Half Int'I* (2016) 1 Cal.5th 480, 489. Thus, the requested award of attorneys' fees is reasonable under the percentage of the fund method.

The actual lodestar incurred by Plaintiff's Counsel to date is no less than $798,000.00[7] not including at least $20,000 in estimated future work. Mirzayan Decl., ¶30. PAGA Counsel's experience in employment class actions was integral in evaluating strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation. PAGA Counsel invested substantial amounts of time evaluating data before the mediation in this matter, revising damage models, and in preparing for the mediation. Those efforts led to this reasonable settlement. Plaintiff's Counsel requests **$220,000.00**, as specified in the Settlement, which constitutes a reasonable amount.

2. Plaintiff's Counsel's Hours Spent on the Case

Counsel for Plaintiff so far spent approximately 760 hours litigating this case and bringing it to fruition. Mirzayan Decl., ¶ 31. This excludes what Plaintiff's counsel expects to expend in

[7] Plaintiff's Counsel's current hourly rate is $1050.

administering the Settlement. Thus, Plaintiff's counsel requests that the Court find that these hours are reasonable in this litigation.

The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time records are not required. An attorney's testimony alone may suffice. "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559.

Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigation of the facts and the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62. Further, the fee award should include fees incurred to establish and defend the attorney's fee claim. *Serrano v. Priest* (1982) 32 Gal. 3d 621, 639.

3. Plaintiff's Counsel Litigation Expenses Are Reasonable

The Settlement provides for reimbursement of Plaintiff's counsel's reasonable litigation costs not to exceed $25,000. Plaintiff's counsel incurred approximately a total of $14,404.00 in costs - far less than the maximum allowed under the Settlement. Because these costs are reasonable. Plaintiff's counsel requests that the Court approve those costs. Mirzayan Decl, ¶ 32.

G. THE SETTLEMENT ADMINSTRATOR'S COSTS ARE REASONABLE

Settlement Administrator's costs of up to $10,200 is reasonable, given the tasks to be performed by the Settlement Administrator, including but not limited to printing, distributing and tacking documents, mailing and re-mailing (if necessary) checks to PAGA Members and the LWDA; calculating estimated amount per PAGA Member; establishing a Qualified Settlement Fund; preparing and submitting to PAGA Members and government entities all appropriate tax forms; distributing the Gross Settlement Amount; voiding uncashed or undeliverable checks to issue those funds to the State Controller's Office; and providing necessary reports and declaration. The Settlement Administrator's costs should be approved.

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H. THE REQUESTED ENHANCEMENT AWARD IS REASONABLE

Plaintiffs in class and representative actions are eligible for reasonable incentive payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186 Cal.App.4th 399,412. Courts routinely grant approval of class action settlement agreements containing service awards for the class representatives, which are "intended to compensate class representatives for work performed on behalf of the class to make up for financial or reputational risk undertaken in bringing the action, and to recognize their willingness to act as a private attorney general." *Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380,1393-94 (citation 19 omitted).

The same reasoning incentive awards are given in class actions should be applied in PAGA actions to provide for relief that is consistent with the underlying purpose of the statute. "Unlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by the overburdened state enforcement agencies." *McKenzie*, 765 F.Supp.2d at 1233. The California legislature enacted PAGA to "augment the limited enforcement capability of the [LWDA] be empowering employees to enforce the Labor Code as representatives of the Agency." Iskanian, 59 Cal.4th at 383.

Failing to provide an incentive award in a representative action for civil penalties would completely undermine the purpose of PAGA by eliminating any incentive to pursue such cases. As an action for civil penalties, a PAGA action is not compensatory in nature, and a PAGA plaintiff cannot expect to obtain restitution for the violations forming the basis for a PAGA settlement.

Moreover, defendants routinely require PAGA plaintiffs release claims broader than that of other aggrieved employees. It is for this reason that courts routinely award incentive payments in Class and PAGA settlements.

Furthermore, the requested amount is well within the acceptable range awarded in other cases. *See Smith v. CRST Van Expedited, Inc.,* 2013 U.S. Dist. LEXIS 6049, 2013 WL 163293 (approving **$15,000** enhancement); Garcia v. Gordon Trucking, Inc., 2012 U.S. Dist. LEXIS

160052 (approving **$15,000** to named plaintiff); *Thieriot v. Celtic Ins. Co.,* No. C 10-04462 LB, 2011 WL 1522385, at *7-8 (N.D. Cal. 2011) (approving **$25,000** enhancement); *Martin v. AmeriPride Servs., Inc.,* No. 08cv440-MMA (JMA), 2011 WL 2313604, at *9 (S.D. Cal. 2011) ("The **$18,500** incentive award is also well within the acceptable range awarded in similar cases.") [Emphasis added]; *Glass v. UBS Fin. Servs.,* 2007 U.S. Dist. LEXIS 8476, 15 Wage & Hour Cas. 2d (BNA) 1330 (awarding **$25,000** enhancement payment), *aff'd,* 331 F. App'x 452 (9th Cir. 2009); *Van Vranken v. Atl. Richfield Co*., 901 F. Supp. 294, 1995 U.S. Dist. LEXIS 18807 (approving **$50,000** enhancement); *Magee v. American Residential Services, LLC,* No. BC423798 (LA. County Super. Ct. Apr. 21,2011) (awarding **$15,000** enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC,* No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding **$15,000** enhancement payment); *Zamora v. Balboa Life & Casualty, LLC,* No. BC360026 (LA. County Super. Ct. Mar. 7, 2013) (awarding $25,000 enhancement payment); *Aguiar v. Cingular Wireless, LLC,* No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17,201 1) (awarding **$14,767** enhancement payment).

The proposed settlement would not have been made possible without Plaintiff's effort and commitment. The requested payment is intended to recognize Plaintiff's effort in bringing the action, serving as private attorney generals under PAGA, assisting counsel with the investigation, litigation, and settlement, regularly conferring with counsel on the status of the case, reviewing the Settlement Agreement and providing a broader release that other aggrieved employees. For these reasons, the Court should approve the requested enhancement award of $15,000 for Plaintiff.

V. <u>CONCLUSION</u>

For the foregoing reasons, the Parties respectfully request that the Court approve the PAGA settlement in its entirety.

DATED: February 27, 2026

Respectfully submitted,

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