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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

GERARDO ABUNDO, on behalf of himself and all others similarly situated,

Plaintiff,

v.

AMERICAN RESIDENTIAL SERVICES, LLC, a Tennessee limited liability company; and DOES 1 through 50, inclusive,

Defendant.

CASE NO. 30-2021-01202607-CU-OE-CXC

Assigned for all purposes to Hon. Melissa McCormick

Dept.: CX104

NOTICE OF RENEWED MOTION AND RENEWED MOTION FOR APPROVAL OF PAGA SETTLEMENT AGREEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

[Filed Concurrently with the Declarations of Gerardo Abundo, James Hawkins, and Amanda C. Sommerfeld; Memorandum of Points and Authorities; and [Proposed] Order and Judgment]

Date: May 8, 2024
Time: 2:00 p.m.
Dept: CX104

Reservation Number: 74450299

Complaint Filed: May 24, 2021
Amended Complaint Filed: July 12, 2021

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that on May 8, 2025 at 2:00 p.m. in Department CX104 of the Superior Court of California, County of Orange at the Civil Complex Center, 751 West Santa Ana Blvd., Santa Ana, CA 92701, Plaintiff Gerardo Abundo ("Plaintiff") will, and hereby does, move this Court for an Order (1) approving the Parties' settlement and ordering the Parties to carry out the terms of the Settlement Agreement and Release of PAGA Claims ("PAGA Settlement") (attached as Exhibit 3 to the Declaration of James R. Hawkins, submitted concurrently herewith); and (2) and entering a Final Judgment thereon.

This renewed Motion will be based on this notice, the attached memorandum of points and authorities filed contemporaneously herewith, the Parties' PAGA Settlement, the Declarations of James R. Hawkins, Gerardo Abundo, and Amanda C. Sommerfeld, as well as upon the pleadings, documents, memoranda, and other records on file with the Court in this matter, and upon such other and further oral and/or documentary evidence as may be properly presented at the hearing on this matter.

Pursuant to California Labor Code § 2699(l)(2), a copies of the PAGA Settlement and Approval Motion were filed with the LWDA on December 17, 2024 (Declaration of James R. Hawkins, Exs. 9, 10.)

Dated: December 17, 2024

JAMES HAWKINS APLC

By: ______________________

James R. Hawkins
Christina M. Lucio
Mitchell J. Murray

Attorneys for Plaintiff
GERARDO ABUNDO

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Gerardo Abundo ("Plaintiff") filed this case as an enforcement action under the Private Attorneys General Act of 2004 ("PAGA"). Following Plaintiff's and Defendant American Residential Services, LLC's ("Defendant") settlement of the claims asserted in the action, on May 29, 2024, Plaintiff brought a Motion for Approval of PAGA Settlement pursuant to Cal. Lab. Code § 2699(l)(2) for approval of the parties' settlement. This motion was set for hearing on October 17, 2024. At the hearing the Court issued a ruling denying the motion without prejudice and raising a number of concerns. The parties have met and conferred in good faith about the issues raised by the Court, and submit a revised settlement and this Renewed Motion for Approval of PAGA Settlement.

The terms of the settlement are more fully set forth in the PAGA Settlement Agreement ("PAGA Settlement" or "Settlement") fully executed on December 11, 2024 and attached as Exhibit 3 to the Declaration of James R. Hawkins ("Hawkins Decl.") filed in support of this renewed Motion. Under the Settlement, Defendant will pay a Gross Fund Value ("GSV") of $975,000 to settle the PAGA claim, subject to the escalator clause described below. The non-reversionary GSV will be allocated as follows: (1) PAGA Counsel Fees Payment not to exceed 35% of the GSV (estimated $341,250); (2) PAGA Counsel Litigation Expenses Payment of up to $25,000; (3) PAGA Representative Service Payment to Plaintiff up to $10,000; (4) Administration Expenses Payment not to exceed $9,000 except for a showing of good cause and as approved by the Court; and (5) the PAGA Fund Value, which is the amount remaining after deducting from the GSV aforementioned amounts. 75% of the PAGA Fund Value will be paid to the Labor Workforce Development Agency ("LWDA Payment"), and 25% will be paid to the PAGA Members ("Individual PAGA Payments").

In addition to the GSV, the Parties have agreed to an escalator clause, which provides for a commensurate increase in the settlement amount received by PAGA Members (as defined by the Settlement). Specifically, this escalator clause provides that "[i]f the PAGA Pay Periods exceed 110% of 103,861 (i.e., more than 114,247 PAGA Pay Periods), Defendant shall have the option to pay the pro-rata increase or have the PAGA Period expire as of that point in time and not incur any additional amounts." (Ex. 3[1] ("Settlement"), § 8). This escalator clause was negotiated and included in the Settlement to account for the passage of time between the date of the settlement and hearing on the approval of the settlement.

As presently estimated, there will be 128,479 PAGA Pay Periods between March 19, 2020, through the end of the PAGA period on April 3, 2025. Given this increase in PAGA Pay Periods, the escalator provision will provide for an increase of the GSV, and in turn, the Individual PAGA Payments. The Parties estimate, based on the estimated number of PAGA Pay Periods, that the escalator provision will provide for an approximately 13.7% increase beyond the GSV, for an addition in the amount of $133,602.63. This leads to an estimated GSV of $1,108,602.63. (Hawkins Decl. ¶ 20, Settlement, §§ 1.8, 4.1, 8).

As detailed below, the Settlement is fair, reasonable, and adequate. Plaintiff requests that the Court: (1) enter an Order approving the settlement pursuant to PAGA and ordering the Parties to carry out the terms of the Settlement Agreement; and (2) enter a Judgment thereon.

II. BACKGROUND AND PROCEDURAL HISTORY

a. Procedural History

On March 19, 2021, Plaintiff provided written notice to Defendant and the California Labor and Workforce Development Agency ("LWDA") of the alleged Labor Code violations, pursuant to Labor Code section 2699.3 (Hawkins Decl., ¶ 3.)

On May 24, 2021, Plaintiff Gerardo Abundo filed a PAGA representative action against Defendant in Orange County Superior Court, captioned *Abundo v. American Residential Services, LLC*, Case No. 30-2021-01202607-CU-OE-CXC (the "Action"). (Hawkins Decl., ¶ 4.)

On July 12, 2021, Plaintiff filed a First Amended Complaint in the Action, which is the operative complaint, seeking civil penalties under PAGA for Defendant's alleged failure to: (1) pay all wages owed, including minimum wages and overtime; (2) provide lawful meal periods; (3) authorize and permit lawful rest periods; (4) timely pay wages due and payable during employment; (5) timely pay wages owed at separation; (6) comply with itemized employee wage statements; (7) pay sick leave at the proper rate; and (7) reimburse business expenses. (Hawkins

[1] All exhibits referenced herein are attached to the Declaration of James Hawkins.

Decl., ¶ 5.)

On September 3, 2021, Defendant filed an answer to the First Amended Complaint (Hawkins Decl., ¶ 6.) Defendant denies all allegations and any liability for the PAGA claims.

On June 27, 2022, the Parties participated in a mediation session with Hon. William J. Cahill (Ret.), but did not reach a settlement. (Hawkins Decl., ¶ 7.)

On July 7, 2022, Defendant filed a motion to compel arbitration of Plaintiff's individual claims and to dismiss the representative PAGA claims. On September 8, 2022, the Court denied Defendant's request to dismiss the PAGA claims and stayed the action pending arbitration of Plaintiff's individual claims. (Hawkins Decl., ¶ 8.)

On February 14, 2024, the Parties participated in a second mediation with Hon. Steven J. Stone (Ret.) and reached a settlement in principle. (Hawkins Decl., ¶ 9.) Prior to the mediation, Plaintiff obtained PAGA employee data and information regarding Defendant's policies and practices to evaluate the claims and damages. (Hawkins Decl., ¶¶ 14-16.)

On or about April 22, 2024, the Parties executed a PAGA settlement agreement. (Hawkins Decl., ¶ 10; Settlement.)

On May 29, 2024, Plaintiff brought a Motion for Approval of PAGA Settlement. This motion was set for hearing on October 17, 2024. (Hawkins Decl. ¶ 11). At the hearing, the Court issued a tentative ruling denying the motion without prejudice and raised a number of concerns for the parties' consideration. The parties subsequently met and conferred in good faith about the issues raised by the Court. (Id.).

On December 11, 2024 the Parties executed the revised PAGA Settlement to address the Court's concerns about the settlement's terms. (Hawkins Decl. ¶ 12).

The Parties also obtained an updated number of PAGA Pay Periods through October 19, 2024, for the purpose of better estimating the extrapolated number of PAGA Pay Periods through the date of the hearing on Plaintiff's Renewed Motion for Approval of PAGA Settlement. (Hawkins Decl. ¶ 13).

b. Discovery and Investigation

In preparation for mediation, the Parties engaged in formal and informal discovery that allowed both sides to assess the potential damages and evaluate the risks. During the litigation and mediation process, PAGA Counsel analyzed, researched, and investigated the potential legal and factual issues, including matters related to liability, damages, trial, and appellate risks. Plaintiff obtained, through informal discovery, applicable policy documents, key data points regarding the size and makeup of the aggrieved employee group, and a sampling of employee time and pay records. Defendant produced Plaintiff's personnel file, a sampling of payroll and timekeeping records, and copies of its relevant written policies. (Hawkins Decl., ¶¶ 14-16.) Through these data and other documents, Plaintiff's counsel was able to thoroughly assess the merits of each claim. (*Id.*)

Although the June 27, 2022 mediation with Hon. William J. Cahill (Ret.) was unsuccessful, on February 14, 2024 the Parties participated in a second mediation with Hon. Steven J. Stone (Ret.) and reached a settlement. (*Id*. at ¶¶ 7-10.)

Counsel for the Parties engaged in thorough discussions regarding the documents and data, evaluating the strengths and weaknesses of their respective claims, defenses, and other pivotal factors for settlement. (*Id.* at ¶¶ 14-16, 21, 23.) Throughout this process, both Parties remained committed to comprehensive information sharing to ensure well-informed settlement discussions. (*Id.*)

Plaintiff and his counsel have diligently investigated the claims in this matter. Plaintiff and PAGA Counsel concluded, after considering the disputed factual and legal issues, the risks of further prosecution (including possible summary judgment), and the substantial benefits to be received under the Settlement, that settlement on the agreed terms is in the best interest of Plaintiff, the PAGA Members, and the LWDA, and is fair and reasonable. (Hawkins Decl., ¶ 21.)

III. SUMMARY OF SETTLEMENT

Plaintiff and his counsel believe that the settlement, which is the product of a mediator's proposal, is fair, reasonable and adequate. The settlement's terms are detailed in the Settlement Agreement attached as Exhibit 3 to the Hawkins Declaration, hereby incorporated by reference, encompassing the primary conditions:

a. PAGA Members

The PAGA Members include "all current and former non-exempt employees who worked at American Residential Services, LLC in California during the PAGA Period" from March 19, 2020 to April 3, 2025 (the date of the hearing). (Ex. 3, Settlement, at §§ 1.18, 1.23.) At the time of the original settlement, there were approximately 1,760 estimated PAGA Members. Presently, it is estimated that there are approximately 1,996 PAGA Members. (Hawkins Decl. ¶ 35.)

b. Amount of the Settlement and Allocation

In consideration for this Settlement and the releases provided herein, Defendant has agreed to pay a GSV of $975,000. (Hawkins Decl. ¶ 20, Ex. 3, Settlement, at § 1.8.) The Settlement's escalator provision provided that if the number of PAGA Pay Periods exceeds 114,247 (10% more than the 103,861 PAGA Pay Periods estimated for the period of March 19, 2020 through February 14, 2024), Defendant has the option to pay the pro-rata increase or have the PAGA Period expire at that point in time. (Ex. 3, §§ 4.1, 8.) Indeed, given the passage of time to have Plaintiff's motion for approval heard, and now, with the filing of a renewed motion for approval and the occurring delay before the next available hearing date, the escalator provision has been triggered. The total number of PAGA Pay Periods is estimated to be 128,479 through April 3, 2025, which is 23.7% greater than original PAGA Pay Period estimate. Therefore Defendants will pay an additional 13.7% above the GSV (23.7% minus the 10% allowance before the escalator clause was triggered), bringing the total GSV to $1,108,602.63. (Hawkins Decl. ¶ 20). The escalator clause ensures that the aggrieved employees receive a payment that is commensurate with the settlement that was reached at the time of mediation on February 14, 2024. The highest number of PAGA periods worked by an individual PAGA Aggrieved Employee during the PAGA period is 264, the average is 64, and the lowest is 1. The highest estimated payment to the Aggrieved employees is estimated to be $359.69, the average is $87.20, and the lowest is $1.36. Plaintiff Abundo is estimated to receive $1.36 as Individual PAGA Payment. (Hawkins Decl. ¶ 35).

Anticipating that the escalator provision will certainly be triggered, and that the GSV will be $1,108,602.63, the GSV is estimated to be allocated as follows:

Category	Amount
Settlement Administration Expenses Payment	$9,000
PAGA Counsel Litigation Expenses Payment	$23,198.03
PAGA Representative Service Payment	$10,000
PAGA Counsel Fees Payment	$388,010.92
LWDA Payment (75% of PAGA Fund Value)	$508,795.26
Individual Payments to PAGA Members (25% of PAGA Fund Value)	$169,598.42

IV. FORMULA FOR INDIVIDUAL PAGA PAYMENTS

The Individual PAGA Payments to PAGA Members represent the portion (25%) of the PAGA Fund Value distributed to the PAGA Members. Each PAGA Member will receive a pro-rata share of the Individual PAGA Payments based on the number of PAGA Pay Periods the PAGA Member worked during the PAGA Period. The Administrator will calculate each Individual PAGA Payment by (a) dividing the PAGA Members' 25% share of the PAGA Fund Value by the total number of PAGA Pay Periods worked by all PAGA Members during the PAGA Period and (b) multiplying the result by each PAGA Member's PAGA Pay Periods. (Ex. 3, Settlement, at § 3.3.) The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. (*Id*. at § 3.2.4.)

V. RELEASE BY PAGA MEMBERS

Effective on the date when Defendant fully funds the GSV, all PAGA Members are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties for the PAGA Period, whether known or unknown, arising from or relating to the claims pled in the Action, including in the Operative Complaint and PAGA Notice (attached to the Declaration of James R. Hawkins as **Exhibit 11**) or that could have been asserted based on the facts alleged in the Action, including civil penalties for various Labor Code violations. (Ex. 3, § 5.2.)

The release is specifically limited to claims for PAGA penalties. The PAGA Members, other than Plaintiff, will not be deemed to have released any individual, non-PAGA claims by virtue of this Settlement. Further, the release does not release more than the PAGA penalties available based on the facts alleged in the operative complaint and Plaintiff's LWDA Notice. As the release is narrowly related to the PAGA claims alleged, the Parties contend that the release is proper and reasonable. (*Id.*)

VI. <u>PAGA ACTIONS AND THE REQUIREMENTS</u>

a. Relevant Statutory History

In 2003, the California Legislature enacted PAGA after declaring: (1) that adequate financing of labor law enforcement was necessary to achieve maximum compliance; (2) that staffing levels for state labor law enforcement agencies had declined and were unable to keep up with a growing labor market; (3) that vigorous assessment and collection of civil penalties provides a meaningful deterrent to unlawful conduct; and (4) that it was therefore in the public interest to allow aggrieved employees, acting as private attorney general, to seek and recover civil penalties for Labor Code violations. 2003 Cal. Stat. § 6629. Under PAGA, an "aggrieved employee" may bring an action for civil penalties for labor code violations on behalf of herself and other current or former employees. (Cal. Lab. Code § 2699(a).) "Such an action is fundamentally a law enforcement action designed to protect the public and penalize the employer for past illegal conduct. Restitution is not the primary object of a PAGA action, as it is in most class actions." (*Brown v. Ralphs Grocery Co.* (2011) 197 Cal. App. 4th 489, 499.)

A plaintiff suing under PAGA "does so as the proxy or agent of the state's labor law enforcement agencies." (*Arias v. Superior Court* (2009) 46 Cal. 4th 969, 986.) Accordingly, a judgment in a PAGA action "binds all those, <u>including nonparty aggrieved employees</u>, who would be bound by a judgment in an action brought by the government." (*Id.* (emphasis added); *see also Iskanian v. CLS Transp. Los Angeles LLC* (2014) 59 Cal. 4th 348, 381 ("When a government agency is authorized to bring an action on behalf of an individual or in the public interest, and a private person lacks an independent legal right to bring the action, a person who is not a party but who is represented by the agency is bound by the judgment as though the person were a party.")

b. Penalties for Violations of PAGA

Where the underlying Labor Code section does not already provide a civil penalty, the PAGA penalty is equal to $100 for each employee per pay period for the initial violation, and

$200 for each employee per pay period for each subsequent violation. (Cal. Lab. Code §2699(f)(1)-(2).) The penalties themselves are not intended to compensate unnamed employees because the action "is fundamentally a law enforcement action"; the PAGA statute permits a trial court to "exercise its discretion to award lesser penalties based on the enumerated considerations." (*Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal. App .4th 1112, 1135; *see also* Cal. Lab. Code § 2699(e)(2) ("a court may award a lesser amount than the maximum civil penalty amount specified by this part 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.")

The PAGA statute requires that any civil penalties recovered must be distributed as follows: 75 percent to the LWDA and the remaining 25 percent to the aggrieved employees. (Cal. Lab. Code § 2699(i).)

c. Standards for Court Approval of PAGA Enforcement Settlement

Any settlement of a PAGA action brought by an aggrieved employee must be approved by the Court. (Cal. Lab. Code § 2699(1)(2).) The Labor Code does not require the two-step settlement approval process utilized in class actions—instead, PAGA settlements are approved on a single motion. (*See Salazar v. Sysco Central Cal,* No. 15-01758-DAD, 2017 WL 1135801, *2 (E.D. Cal. Feb. 2, 2017) (rejecting the application of class action settlement rules and procedures for PAGA settlement approval).) When trial courts review PAGA settlements, they should consider 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.*, No. 13-03826-EMC (N.D. Cal. Jul. 29, 2016), ECF No. 736 at 2-3; *see also Salazar*, 2017 WL 1135801, *2 (quoting the above passage).) "[A] trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws. *(Moniz v. Adecco USA, Inc. (2021*) 72 Cal.App.5th 56, 77 [287 Cal.Rptr.3d 107].)

VII. <u>THE SETTLEMENT IS FAIR AND REASONABLE, AND WARRANTS</u>

COURT APPROVAL

In 2016, PAGA was amended to require the Court to "review and approve any settlement of any civil action filed pursuant to this part." (Cal. Lab. Code § 2699(l)(2).) The amendment also required that the "proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." As such, the Settlement and this renewed Motion have been concurrently submitted to the LWDA in accordance with this section. (Hawkins Decl. at ¶ 80; See Exs. 9 and 10.)

a. The PAGA Settlement is Fair and Reasonable and Accomplishes the Objectives of PAGA

Based upon the data provided by Defendant, Plaintiff's Counsel estimates that the maximum potential liability that Defendant faced during the PAGA Period is approximately $12,847,900 based on 128,479 pay periods through April 3, 2025 (128,479 violative pay periods x $100 per pay period). (Hawkins Decl., ¶ 28.) The GSV of $1,108,602.63, represents approximately 8.6% of Defendant's maximum potential liability. *(Id.*).

There are significant risks that support the reduced compromise amount, including the risk that Plaintiff would be unable to establish liability for allegedly unpaid wages, as Defendant contends that PAGA Members were paid for all hours worked. (*Id*. at ¶ 31(a).) Additionally, there is the risk that Plaintiff would not be able to prove liability for alleged meal and rest break violations, or that establishing such liability would require individualized inquiries presenting manageability issues at trial. (*Id*. at ¶ 31(b).) There is also the risk that Plaintiff would not recover waiting time and wage statement penalties under Labor Code sections 203 and 226, as Plaintiff might not prove that Defendant acted with the requisite intent. (*Id*. at ¶ 31(c).) PAGA civil penalties could be reduced by the Court in its discretion. (*Id*. at ¶ 31(d).) Furthermore, there is the inherent risk of lengthy appellate litigation. (*Id*. at ¶ 31(e).)

While the potential PAGA penalties amount to $12,847,900, that amount is unlikely in this case as the penalty amount is always within the Court's discretion under Labor Code § 2699(e)(2). Courts may reduce the award if the facts and circumstances demonstrate that an unreduced award would be unjust, arbitrary and oppressive, or confiscatory. (*Id*. at ¶ 31(f)-(g).)

Additionally, Plaintiff faced the risk of a potentially prolonged and expensive trial, as Defendant indicated it would question each employee, which could lead to the claims being narrowed or dismissed due to manageability concerns. (*Id.* at ¶ 31(h).) Plaintiff also faced the risk of being held liable for Defendant's attorneys' fees and costs if unsuccessful. (*Id.* at ¶ 31(i).)

Despite these risks and defenses, Plaintiff obtained a settlement requiring Defendant to pay $1,108,602.63 (approximately 8.6% of the maximum potential liability) - a reasonable result in light of the risks and uncertainties associated with the PAGA claims. This is sufficient to accomplish the objectives of PAGA while not being unjust, arbitrary and oppressive, or confiscatory. (*Id.* at ¶¶ 19, 28-30, 34.)

b. Plaintiff's PAGA Representative Service Payment is Proper

Plaintiff is a former employee of Defendant who took the extraordinary step to challenge his former employer's actions by bringing this representative action. (*See* Declaration of Gerardo Abundo ("Abundo Decl.") at ¶¶ 2-11.) Plaintiff's actions have resulted in a substantial recovery under PAGA. Plaintiff fully participated in the case's preparation, initiation, litigation, and mediation. He provided valuable information and documents pertaining to the claims and kept well informed of the nature and extent of settlement discussions, and approved the same. (*Id.*)

The PAGA Representative Service Payment is reasonable, representing less than 1% of the GSV. Absent the actions taken by Plaintiff, neither the LWDA nor the PAGA Members would have reaped the rewards of this action and the settlement reached therein. Plaintiff respectfully requests that this Court approve the Settlement Agreement and the PAGA Representative Service Payment in the amount of $10,000. (Hawkins Decl., ¶¶ 65-77.)

The Administrator will report the PAGA Representative Service Payment on IRS 1099 Forms. (Ex. 3, Settlement, at § 3.2.2.)

VIII. <u>THE REQUESTED ATTORNEYS' FEES AND LITIGATION COSTS ARE FAIR AND REASONABLE</u>

For their efforts and the risk undertaken in obtaining a common fund settlement that benefits the LWDA and PAGA Members, the Parties allocated up to $388,010.92 to PAGA Counsel for reasonable attorneys' fees, which is 35% of the GSV accounting for the escalator provision. Additionally, the Parties agreed to reimburse PAGA Counsel for their litigation costs not to exceed $25,000 (actual costs $23,198.03). These fees and costs are warranted under the law and within the range commonly awarded in similar cases.

a. PAGA Counsel are Entitled to Recover Attorney's Fees Under the Common Fund Doctrine In This Qui Tam Action

PAGA provides that a Plaintiff is entitled to recover reasonable attorneys' fees and costs under section 2699(g)(1) of the California Labor Code. In a qui tam action like this PAGA case, reasonable attorney's fees and costs are typically awarded under the common fund doctrine where, as here, the litigation creates a common fund of money in a specific amount for the benefit of others.

A PAGA action is a type of *qui tam* action because the statute allows the employee plaintiff, acting as the proxy of the state's labor law enforcement agency, to sue his or her employer for Labor Code violations and recover civil penalties that otherwise would have been assessed and collected by the LWDA. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 380, 382.) The majority of the civil penalties recovered in a PAGA action are paid to the state, with a smaller portion paid to the aggrieved employees (75% paid to the state; 25% paid to the aggrieved employees). (See Cal. Lab. Code § 2699(i).)

Where a common fund is created in a *qui tam* action by the successful litigation of a plaintiff and her attorneys, the plaintiff's attorneys are entitled to recover their fees from the common fund. (*Bank of America v. Cory* (1985) 164 Cal. App. 3d 66, 89-91.) In this case, the Settlement creates a common fund for the benefit of the PAGA Members and the State of California. Thus, these beneficiaries must bear their share of the costs and attorney's fees, which are deducted from the settlement amount under the common fund theory. (*Id.*) Such fees are commonly awarded as a percentage of the settlement amount. (*Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478-482; *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal. 5th 480, 506.)

The common fund doctrine allows a court to award attorneys' fees based upon a percentage of the total fund when the fund consists of an easily calculable sum. (*Dunk v. Ford Motor, Co.* (1996) 48 Cal. App. 4th 1794, 1809.) California law has long upheld the percentage of recovery method for awarding attorneys' fees where a fund is established. (See e.g., *Serrano v. Priest* (1977) 20 Cal. 3d 25, 34; *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 563.)

Based on the foregoing, awarding attorneys' fees of up to 35% of the GSV is fair and warranted in light of the PAGA settlement reached on behalf of the State of California and PAGA Members. The requested fees are reasonable and appropriate. (Hawkins Decl., ¶¶ 36-53.)

b. The Percentage Fee of the Gross Fund Value Is Fair And Reasonable

An award of fees from the GSV under the common fund doctrine prevents unjust enrichment of those who benefit from the common fund created through PAGA Counsel's successful efforts and furthers the important goal of attracting competent counsel to handle representative actions enforcing minimum labor standards. (*Laffitte v. Robert Half Int'l. Inc.* (2016) 1 Cal. 5th 480, 503.) The California Supreme Court has summarized the benefits of the percentage method of recovery, including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation. (*Id*.)

Among the factors considered in determining whether the requested fee percentage is reasonable are: (1) the results achieved; (2) the risk of further litigation; (3) the skill required of PAGA Counsel and the quality of work performed by PAGA Counsel; (4) the contingent nature of the fee and the financial burden carried by the plaintiff; and (5) awards made in similar cases. (*Vizcaino v. Microsoft Corp*. (9th Cir. 2002) 290 F.3d 1043, 1048-50.) All these factors support an award here of 35% of the common fund.

First, PAGA Counsel achieved a substantial PAGA-only settlement in a case that involved highly contested issues related to alleged unpaid wages, meal period and rest break violations, and other Labor Code claims. (Hawkins Decl., ¶¶ 31.)

Second, there are significant risks going forward with the litigation. Defendant raised various defenses which threatened recovery, and it would have taken significant time and expense to realize any recovery in this action. (Hawkins Decl., ¶¶ 31-34.)

Third, PAGA Counsel are experienced wage and hour class action and representative action litigators and have achieved some of the largest representative awards in California. (Hawkins Decl., ¶¶ 54-64.) This experience and expertise, combined with the high quality of work performed in this case, resulted in the settlement achieved. (*Id*.)

Fourth, as set forth in the Hawkins Declaration, the request for attorney's fees falls well within the norms accepted by state and federal courts in California in comparable wage and hour actions handled by PAGA Counsel. (Hawkins Decl., ¶ 52.)

For all of the above reasons, a fee award here in the amount of 35% of the GSV is fair and reasonable.

c. A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award

Despite recognized limitations of the lodestar method, some California and federal courts acknowledge the utility of a lodestar "cross-check." (*Lealao v. Beneficial California, Inc*. (2000) 82 Cal. App. 4th 19, 46-47.) Under the "lodestar multiplier" method of cross-checking the reasonableness of attorneys' fees, the court ascertains counsel's total "lodestar" amount by multiplying the number of hours reasonably expended by each attorney or legal staff member by their hourly rates, and then enhances or reduces this lodestar figure by a "multiplier" to account for factors such as the novelty or difficulty of the case, its contingent nature, and the degree of success achieved. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1095-96; Lealao, 82 Cal. App. 4th at 43.)

As set forth in the Hawkins Declaration, the actual aggregated lodestar for the attorneys and paralegals who worked on this case is approximately $312,475. (Hawkins Decl., ¶ 50.) Thus the requested fee of $388,010.92 represents a multiplier of approximately 1.24. The total lodestar is summarized in the following table:

James Hawkins APLC Lodestar Summary				
Timekeeper	**Years**	**Hours**	**Rate**	**Total**
James R. Hawkins	25	108	$1050	$113,400
Christina M. Lucio	15	136	$775	$105,400
Mitchell J. Murray	11	83	$750	$62,250
Paul A. Brown	2	44.5	$450	$20,025
Eric D. Tims	2	16	$450	$7,200
Paralegals		21	$200	$4,200
	TOTALS	**394**		**$312,475**

The hourly rates above are comparable to those of other attorneys with equal or similar experience. The starting point in determining the appropriate hourly fee is to discern the prevailing rate for similar work in the pertinent geographic region. The 2023-2024 Adjusted Laffey Matrix sets forth hourly rates from $437 to $1057 for attorneys with similar experience levels. (Hawkins Decl., ¶ 52.) Plaintiff's counsel's hourly rates have also been approved by courts as consistent with prevailing rates in the community. (*Id.*)

Thus, not only are PAGA Counsel's rates reasonable and typical, but the attorneys' fees requested are in line with the lodestar, which further confirms that the fee request is fair and reasonable. (*Id.* at ¶ 53.)

d. The Requested Litigation Costs are Fair and Reasonable

PAGA Counsel requests reimbursement of their actual out-of-pocket expenses incurred to prosecute this action. These expenses were incidental and necessary to the effective representation of the PAGA Members. (See *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.) PAGA Counsel are permitted to recover their litigation costs and expenses under the common fund doctrine. (See *Serrano v. Priest* (1977) 20 Cal. 3d 25, 35; *Rider v. County of San Diego* (1992) 11 Cal. App .4th 1410, 1424 n.6.) Furthermore, PAGA Counsel are entitled to recover "those out-of-pocket expenses that would normally be charged to a fee-paying client." (*Harris,* 24 F.3d at 19.)

The Settlement Agreement authorizes PAGA Counsel to recover litigation costs not to exceed $25,000. (Ex. 3, Settlement, § 3.2.1.) The actual costs are $23,198.03, which is the amount requested. (Hawkins Decl., ¶ 58; Ex. 4.) These costs are reasonable, uncontested, and should be approved.

IX. <u>ADMISSION TO THE LWDA</u>

The Settlement and this renewed Motion are concurrently being submitted to the LWDA in accordance with Labor Code section 2699(l)(2). The proof of electronic submission is attached as Exhibits 9 and 10 to the Hawkins Declaration. (Hawkins Decl., ¶ 55.)

X. <u>THE SETTLEMENT ADMINISTRATOR</u>

The Parties mutually selected ILYM Group, Inc. to serve as the Settlement

Administrator. ILYM Group, Inc. will be responsible for processing the settlement payments and providing notice to the PAGA Members. They have estimated that the costs of administration will not exceed $9,000. (Ex. 3, § 3.2.3, Ex. 8).

XI. RELATED CASES

The PAGA settlement will fully resolve the PAGA claims in two related cases: *Montano v. American Residential Services LLC dba ARS Rescue Rooter*, which was filed on April 25, 2024 and is currently pending in Los Angeles Superior Court (Case No. 24STSV10500), and *Holmes v. ARS American Residential Services of California, Inc.*, which was filed on February 29, 2024 and is currently pending in Riverside Superior Court (Case No. CVRI2401096) (Sommerfeld Declaration ("Sommerfeld Decl.") ¶¶ 4-5). Both of these matters were filed after a settlement in principle in the present case had already been reached. (Id. ¶ 6).

XII. CONCLUSION

In the present case, a thorough evaluation of Plaintiff's claims supports a finding that the Settlement is fair, adequate and reasonable. The statutory purposes of PAGA may be fulfilled even with a relatively small award on the PAGA claim itself, because such "a settlement not only vindicates the rights of the [PAGA Members] as employees but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA." (*Viceral v. Mistras Group*, Inc. (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at *9.) Here, the settlement sum obtained is reasonable and should be approved.

Based on the above, Plaintiff respectfully requests that this Court: 1) approve the Parties' Settlement and order the Parties to carry out the terms of the Settlement Agreement, and 2) enter a Judgment thereon.

Dated: December 17, 2024

JAMES HAWKINS APLC

By: ______________________

James R. Hawkins, Esq.
Christina M. Lucio, Esq.
Mitchell J. Murray, Esq.

Attorneys for Plaintiff