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Attorneys for Plaintiff,
MARK RYCHLIK

IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE, COMPLEX CIVIL CENTER

MARK RYCHLIK, an individual, Plaintiff, vs. DAY & NITE DOORS, INC., a California corporation; NICHOLAS ALEXANDER CHRISTY, an individual; MELANIE ANN CHRISTY, an individual; and DOES 1 through 20 inclusive, Defendants.	Case No. 30-2021-01207960-CU-OE-CXC Assigned to Hon. Melissa R. McCormick in Dept. CX104 **PLAINTIFF'S NOTICE OF MOTION & AMENDED MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS & AUTHORITIES** Date: January 23, 2025 Time: 2:00 PM Dept.: CX104 Action Filed: June 29, 2021 Trial Date: **None**

PLEASE TAKE NOTICE that on January 23, 2025, at 2:00 PM, or as soon thereafter as the matter may be heard in Department CX104 of the above-entitled Court, located at 751 West Santa Ana Blvd., Santa Ana, California 92701, Plaintiff Mark Rychlik will and hereby does move an Order approving the Parties' PAGA settlement.

This Motion will be based upon the attached Memorandum of Points & Authorities, the declarations filed in support of this amended Motion, exhibits, all pleadings and records on file herein, all facts and other matters of which this Court may take judicial notice, and such other oral and documentary evidence as may be presented at hearing on this Motion.

PIMENTEL LAW, P.C.

Dated: January 9, 2025

By: ______________________________
Jenna M. Koleson, Esq.
Gabriel J. Pimentel, Esq.
Attorneys for Plaintiff

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MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

Plaintiff Mark Rychlik respectfully requests this Court grant approval of the Parties' Proposed Settlement, which would resolve Plaintiff's individual wage and hour claims as well as the representative claims brought under the Private Attorneys General Act ("PAGA"). If approved, the Proposed Settlement will provide monetary payments to thirty-three (33) Aggrieved Employees, defined as individuals employed by Defendants in California and classified as hourly-paid, non-exempt employees during the PAGA Period, April 14, 2020, through October 19, 2023, who worked a collective of 1,404 pay periods.

The Proposed Settlement will resolve the individual and representative claims of Plaintiff against Defendants for violations of California's Labor Code and Business & Professions Code, including: (1) failure to indemnify for necessary expenditures in violation of Labor Code § 2802; (2) failure to pay minimum wages in violation of Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198; (3) failure to pay overtime in violation of Labor Code §§ 510 and 1198; (4) failure to furnish compliant wage statements and maintain accurate pay records in violation of Labor Code §§ 226, 1174(d), and 1198; (5) failure to provide meal periods in violation of Labor Code §§ 226.7, 512(a), and 1198; (6) failure to provide rest periods in violation of Labor Code §§ 226.7 and 1198; (7) failure to timely pay wages in violation of Labor Code § 204; (8) willful failure to pay wages in violation of Labor Code §§ 201–203; (9) civil penalties pursuant to the PAGA, Labor Code §§ 2698, *et seq.*; and (10) unfair competition in violation of California's Unfair Competition Law ("UCL"), Business & Professions Code §§ 17200, *et seq.*

In consideration, Defendants have agreed to pay a total of $140,000, of which $10,000 is allocated to the settlement of Plaintiff's individual claims and the remaining $130,000 is the "Gross Settlement Fund" which provides consideration for the resolution of Plaintiff's representative PAGA action.

II. FACTS & PROCEDURAL HISTORY

Plaintiff Rychlik worked as a garage door technician for Defendant Day & Nite Doors, Inc. ("Day & Nite") from February 6, 2021, to March 18, 2021. Declaration of Jenna M. Koleson, ¶ 6

("Koleson Decl."). Defendants Nicholas Christy and Melanie Christy are the owner-operators of Day & Nite. *Id*. Mr. Rychlik's job duties included installing and repairing garage doors. *Id*.

The central issues of this wage and hour action are Defendants' failure to reimburse employees for necessary business expenses; high frequency of non-compliant meal and rest periods in the defendants' timekeeping records; failure to accurately pay all required meal and rest period premiums; off-the-clock work; and derivative liability for waiting time penalties, failure to provide accurate paystubs, and unfair competition. In order to investigate the strengths and weaknesses of Plaintiff's claims, Plaintiff propounded multiple sets of written discovery, consisting of document demands, special interrogatories, and form interrogatories; recorded numerous witness statements; deposed several individuals; and reviewed thousands of pages of records. Through formal discovery, Plaintiff's counsel reviewed Day & Nite's written employment policies, Plaintiff's employment records, and wage statements and time records of the aggrieved employees.

On June 29, 2021, Plaintiff filed this wage and hour action on behalf of himself and the other aggrieved employees. (Exhibit 1: Complaint). On April 14, 2021, Plaintiff sent notice to Defendants as well as the California Labor Workforce & Development ("LWDA") alleging the same wage and hour violations pursuant to the PAGA. (Exhibit 2: PAGA Notice).

The Parties engaged in a full-day mediation with Craig Ackermann on October 19, 2023, which resulted in a proposed global settlement of Plaintiff's individual and PAGA claims. Plaintiff thereafter filed his Motion for Approval of PAGA Settlement on April 19, 2024, and this Court ordered the Parties to address and respond to the issues outlined in its Tentative Ruling issued on September 12, 2024. Plaintiff now brings his amended Motion for Approval of the Parties' PAGA Settlement and attaches the Parties' amended Settlement Agreement. (Exhibit 3: Amended Settlement Agreement). On January 9, 2025, Plaintiff served this amended Motion and its supporting documents, the Parties' amended Settlement Agreement, and notice of the continued hearing on this Motion on the LWDA via electronic submission. (Exhibit 4: LWDA Submission Confirmation).

III. PAGA SETTLEMENT TERMS

A. Aggrieved Employees Defined

The aggrieved employees who are encompassed by the Proposed Settlement are all current and former employees of Defendants who worked as nonexempt employees at any time between April 14, 2020, and October 19, 2023. The total number of aggrieved employees is approximately thirty-three (33).

B. <u>Allocation of Settlement Sum</u>

The total sum of the global settlement is $130,000 ("Gross Settlement Fund"), which, subject to Court approval, will be allocated as follows: (1) $74,350 for payment of civil penalties under the PAGA (75% of which ($55,762.50) will be paid to the LWDA, and 25% of which ($18,587.50) will be paid to the aggrieved employees); (2) $2,650 for settlement administration expenses; (3) up to $7,500 reimbursement of Plaintiff's litigation costs; and (4) $45,500 for Plaintiff's statutory attorneys' fees (35% of the Gross Settlement Fund). (Exhibit 3, ¶ 6). The total time spent in connection with this litigation to date is no less than 219.2 hours, for a total of over $77,645 in attorneys' fees. (Exhibit 6: Itemized Attorney Time Records; Exhibit 7: Itemized Litigation Costs).

C. <u>Administration of Payments</u>

The Parties have agreed to use Phoenix Settlement Administrators ("Phoenix") to administer payment of the Gross Settlement Fund. (Exhibit 3, ¶ 7). Within seven (7) calendar days of receipt of Court approval, Defendants will provide Phoenix with an initial $10,000 installment to begin funding the Gross Settlement. (Exhibit 3, ¶ 6, 8). Thereafter, Defendants will continue to make $5,000 monthly installments to Phoenix. Once Phoenix receives $85,000 from Defendants (approximately fifteen (15) months after approval), which includes the $10,000 initial disbursement, Phoenix will initiate the first disbursement. *Id*. The initial disbursement of the Gross Settlement Fund will include payment to the Aggrieved Employees; payment of litigation costs, attorney's fees, settlement administration costs; and one $2,887.50 installment to the LWDA. *Id*. Then, Defendants will continue making $2,500 monthly installments to Phoenix, which will be disbursed to the State of California. The LWDA Payment will be completely paid after eighteen (18) months. *Id*.

If the Court approves a payment of less than the amounts requested and/or actually incurred for litigation costs, attorney's fees, and settlement administration costs, the difference will be added to the Net Settlement Amount. (Exhibit 3, ¶ 4).

D. <u>Notice to Aggrieved Employees</u>

Within ten (10) calendar days after PAGA approval has been granted, Defendants will provide Phoenix with the Aggrieved Employee data, which includes full names, last known addresses, total number of pay periods worked during the PAGA period, and social security numbers. Phoenix shall run all the addresses provided through the United States Postal Service NCOA database to obtain current address information. (Exhibit 3, ¶ 11).

Phoenix will then have seven (7) days to circulate an anonymized spreadsheet containing the expected settlement payment to each Aggrieved Employee. *Id*. After counsel for both parties have agreed regarding the payment calculations provided by Phoenix (which Phoenix will calculate after the $85,000 has been funded by Defendants), Phoenix will have two (2) calendar days to mail the explanatory letter together with a settlement payment to all Aggrieved Employees by first-class United States mail, postage prepaid, with directions to the Postmaster to forward the Notice and return all undeliverable Notices to the Settlement Administrator. (Exhibit 3, ¶ 12).

For each Notice of PAGA Settlement and settlement payment that is returned as undeliverable, Phoenix shall promptly attempt to locate the Aggrieved Employee by performing an additional skip trace and shall re-mail the Notice and settlement check. (Exhibit 3, ¶ 13).

E. <u>Uncashed Checks</u>

Settlement checks will specify that they are void if not negotiated or cashed within 180 days of their issuance. (Exhibit 3, ¶ 12). Phoenix will remit the entire amount of each PAGA aggrieved employees' uncashed Individual Settlement Payment to the California State Controller for deposit in the Unclaimed Property Fund in the name of the PAGA Aggrieved Employees to whom the uncashed Individual Settlement Payment was issued. (Exhibit 3, ¶ 13).

F. <u>Scope of Release</u>

For Aggrieved Employees, and, to the extent permitted by law, the State of California, the "PAGA Released Claims" include, for the duration of the PAGA Period, all claims asserted in the PAGA Notice, Amended PAGA Notice, and alleged in the Operative Complaint for PAGA civil penalties for: Failure to Indemnify for Necessary Expenditures, Failure to Pay Minimum Wage, Failure to Pay Overtime, Failure to Furnish Compliant Wage Statements and Maintain Accurate Pay Records, Failure to Provide Meal Periods, Failure to Provide Rest Periods, Failure to Timely Pay

Wages, Willful Failure to Pay Wages, Civil Penalties under Labor Code section 2698, and Unfair Competition. (Exhibit 3, ¶ 5). Plaintiff agrees that once the settlement is fully funded, all Aggrieved Employees will release any and all PAGA Released Claims against the Released Parties that arose during the PAGA Period. *Id*. Upon the completion of the settlement payments, Plaintiff and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties. *Id*.

IV. PLAINTIFF'S INDIVIDUAL SETTLEMENT TERMS

A. Nature of Unpled Claims Released

Plaintiff has individual causes of action for unpaid overtime, minimum wage, business expense reimbursement, wage statement violations, meal and rest period violations, and willful failure to pay wages.

B. Value of Each Individual Claim Released by Plaintiff

The total value of the wage claims released by Plaintiff is $22,761.45, plus no less than $2,276 in prejudgment interest, for a total of $25,037.14 as explained below. *Bell v. Farmers Ins. Exchange*, 135 Cal. App. 4th 1138, 1150 (2006) ("we conclude that the trial court properly applied the 10 percent prejudgment interest rate provided by Civil Code section 3289 to the accrual of unpaid wages").

Plaintiff typically worked five (5) days per week, for 40 to 45 hours per week. Koleson Decl. ¶ 10. He claims that on average, he failed to receive compliant meal and rest periods on about 20 days per month. *Id*. Based on this information, the total value of his individual wage claims are as follows: (1) meal period premiums: $595 (35 missed meal periods x $17 per hour); (2) rest period premiums: $595 (35 missed rest periods x $17 per hour); (3) wage statement penalties: $350 (7 pay periods x $50); (4) wait time penalties: $2,720 (30 days wages); (5) minimum wages: $17,280 (failure to provide double minimum wage for use of tools as required by IWC Wage Order No. 1–2001 § 9); and (6) tool reimbursement: $1,221.45.

The general release of known and unknown claims that Plaintiff is releasing has a value of somewhere between $2,500 and $5,000 because Plaintiff is not presently aware of any facts that would constitute any further causes of action against Defendant. However, that is not to say that at some point in the future, Plaintiff might learn of some facts that could warrant additional legal action against

Defendant, but which would be released by virtue of his general release.

C. **Form and Value of Consideration Paid to Plaintiff**

The consideration being paid to Plaintiff in exchange for his general release of all claims known and unknown, including his individual wage claims, is $10,000. (Exhibit 3, ¶ 2). This consideration was calculated by adding the total value of Plaintiff's individual wage claims and the value of the general release of unknown claims, then discounting it to account for the possibility that he would not obtain all damages sought in his wage claims and might not have any unknown claims that have any value.

V. LEGAL STANDARD FOR APPROVING PAGA SETTLEMENTS

"The superior court shall review and approve any settlement of any civil action filed pursuant to this part." LAB. CODE § 2699(l), (2). Class action "requirements need not be met when an employee's representative action against an employer is seeking civil penalties under the Labor Code Private Attorneys General Act of 2004[.]" *Arias v. Superior Court (Angelo Dairy)*, 46 Cal. 4th 969, 975 (2009). The court's task in approving a PAGA settlement is to "ensur[e] that any negotiated resolution is fair to those affected." *Williams v. Superior Court of L.A. Cnty.*, 3 Cal. 5th 531, 549 (2017). "The Court must evaluate . . . the adequacy of the settlement in view of the purposes and policies of PAGA," which is to create "a deterrent effect upon the defendant employer and other employers." *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1134 (N.D. Cal. 2016). "In the absence of California law on the subject, California courts look to federal authority." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 fn.7 (1996). Thus, in determining whether to approve a PAGA settlement, the focus is not on the amount of compensation received by aggrieved employees, but rather, whether the total settlement achieves PAGA's policy of deterrence.

Although class action procedures need not be met when approving a PAGA settlement, in the class action context, the reasonableness of a settlement is determined with an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Kullar v. Foot Locker Retail*, 168 Cal. App. 4th 116, 120 (2008). A settlement is fair if the "consideration being paid for the release of those claims represents a reasonable compromise." *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 408 (2010) (citing *Kullar*, 168 Cal. App. 4th at 133). "Ultimately, the trial court's determination is nothing more than an amalgam of delicate balancing, gross approximations and rough justice." *Dunk*, 48 Cal. App. 4th at 1801 (internal citations omitted).

> Neither the trial court nor this court is to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. In other words, the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits.

7-Eleven Owners for Fair Franchising v. Southland Corp., 85 Cal. App. 4th 1135, 1145 (Cal. Ct. App. 2000) (internal citations omitted) ("*7-Eleven*").

"The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 246 (2001), *overruled on other grounds by Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260 (2018), (citing *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998)); *7-Eleven*, 85 Cal. App. 4th at 1150 ("the merits of the underlying class claims are not a basis for upsetting the settlement of a class action"). The court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case." *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 799 (2009) (internal citations omitted).

"A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable." *See Wershba*, 91 Cal. App. 4th at 250 (citing *Rebney v. Wells Fargo Bank,* 220 Cal. App. 3d 1117, 1139 (1991) (settlements found to be fair and reasonable even though monetary relief provided was 'relatively paltry')). "Compromise is inherent and necessary in the settlement process." *Wershba*, 91 Cal. App. 4th at 250. "The very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615, 624 (9th Cir. 1982) (internal citations omitted). There is a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

A. The Proposed Settlement Provides Fair, Reasonable, & Adequate Relief to the Aggrieved Employees in Light of the Risk & Expense of Continued Litigation

Where settlements negotiate a good faith amount for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of other" aggrieved employees, such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133 at *1, 9 (N.D. Cal. Apr. 3, 2009) (approving a PAGA payment of 0.3%, or $1,500). Courts have approved amounts for PAGA penalties in the range of zero to two percent of the total maximum amount of the Settlement. *Id.*; *see also Jack v. Hartford Fire Ins. Co.*, 2011 WL 4899942 at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, 2012 WL 12882124 at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement). Here, the amount to be paid to the LWDA is larger than many other PAGA settlement amounts approved by the courts where seemingly nominal amounts were allocated for such claims. (See, e.g. *Zubia v. Shamrock Foods Co.*, No. CV1603128ABAGRX, 2017 WL 10541431, at *14 (C.D. Cal. Dec. 21, 2017) (approving a PAGA settlement of 0.1%); *Hopson,* 2008 WL 3385452, at *1 (N.D. Cal. Aug. 8, 2008) (approving a PAGA settlement of 0.3% or $1,500); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 (E.D. Cal. Oct. 31, 2012) (approving a PAGA settlement of 0.27%).

Out of the $130,000 Gross Settlement Amount, the Parties negotiated a good faith amount of $74,350 PAGA Penalties, 75% percent of which ($55,762.50) will be paid to the LWDA, with 25% ($18,587.50) to be distributed to the Aggrieved Employees. (Exhibit 3, ¶ 4). The $74,350 allocation equates to approximately 57% of the Gross Settlement Amount ($130,000), which far exceeds amounts that are routinely approved. Further, this settlement avoids the risks and the accompanying expense of further litigation. While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action as discussed below.

If the Proposed Settlement is approved, aggrieved employees will receive timely, guaranteed relief and avoid the risk of an unfavorable judgment. When considering the risks of litigation, the uncertainties involved in achieving the burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment, it is clear that the settlement amount of $130,000 is within the "ballpark" of reasonableness, and approval is appropriate.

B. <u>The Proposed Settlement Achieves the Objectives of the PAGA</u>

California Labor Code section 2699.3(c) authorizes an aggrieved employee to bring a representative action for the collection of civil penalties on behalf of themselves and other employees against an employer who has committed Labor Code violations against them. "The civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation." LAB. CODE § 2699(f)(2). The statute of limitations for collecting civil penalties is twelve months. CIV. PROC. CODE § 340(a). "In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), 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." LAB. CODE § 2699(e)(2).

As held in *Amaral v. Cintas Corp*, 163 Cal. App. 4th 1157, 1209 (2008):

> [A] "subsequent" violation (which carries a double penalty) must refer to something other than an underpayment that occurs after the first pay period. Although common sense might suggest a "subsequent" violation is nothing more than a violation that occurs at a later point in time after an "initial" violation, this definition is inadequate because the statutes provide for multiple penalties for "each failure to pay each employee" incurred in an initial violation. . . . Until the employer has been notified that it is violating a Labor Code provision (whether or not the commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware that its continuing underpayment of employees is a "violation" subject to penalties. However, after the employer has learned its conduct violates the Labor Code, the employer is on notice that any future violations will be punished just the same as violations that are willful or intentional — i.e., they will be punished at twice the rate of penalties that could have been imposed or that were imposed for the initial violation.

Here, there was no evidence prior to the filing of this suit that a court or Labor Commissioner had found Day & Nite to have violated any of the Labor Code provisions that were alleged in Plaintiff's PAGA suit. As such, per *Amaral*, Day & Nite's alleged violations of the Labor Code would be subject to civil penalties at a maximum $100 rate, subject to a discretionary reduction.

The total aggregate number of pay periods worked by all 33 aggrieved employees between April 14, 2020, and October 19, 2023, was 1,404. Thus, if Plaintiff proves that each and every aggrieved employee was subjected to minimum wage, overtime, meal period, rest period, and reimbursement violations on each of the 1,404 aggregate PAGA pay periods, the total number of violations would be 7,020 on these claims (5 violations * 1,404 pay periods).

Further, the *Maldonado* decision vitiates Plaintiff's wage statement claim. *Maldonado v. Epsilon Plastics, Inc.*, Cal. App. 5th 1308, 1344 (Cal. Ct. App. 2018). As discussed below, Plaintiff's wage statement claim is derivative of his minimum wage, overtime, meal period, and rest period claims. The *Maldonado* court held that a plaintiff cannot maintain a derivative Labor Code section 226(a) claim based on the allegation that the wages listed on the wage statement were inaccurate. Thus, this claim would not have survived summary judgment or trial, and the actual value is zero.

As to the 27 aggrieved employees whose employment separated at some point during the PAGA period, if Plaintiff were to have proven that Defendants willfully failed to pay each of them all due wages within the time required by Labor Code §§ 201 – 202, that would have given rise to 27 violations. Thus, the maximum aggregate number of violations that Defendants allegedly violated was 7,047.

a. Nature of the Alleged Violations

Failure to Indemnify for Necessary Expenditures

Under California law, employers must reimburse employees for the expenses incurred in the discharge of their duties. LAB. CODE § 2802. Plaintiff alleges that he and the other technicians were required to supply their own tools, which were necessary to perform their job duties for Day & Nite but were not reimbursed for the purchase of those hand tools.

In response, Defendants counter that (i) employees were not, in fact, required to provide their own work tools – Defendants furnished every work tool necessary, and if employees brought their own work tools, they did so for their own convenience, not because of any employer-mandated requirement; and (ii) employees can raise expense requests internally and get reimbursed for properly-incurred expenses.

Failure to Pay Minimum & Overtime Wages

California law broadly defines "hours worked" as the "time during which an employee is subject to the control of the employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." IWC Wage Orders, § 2(G). Moreover, there is no "de minimis" exception to California wage claims. *See generally, Troester v. Starbucks Corp.*, 5 Cal. 5th

829 (Cal. 2018). Overtime pay is based on an employee's "regular rate" of pay. *Alvarado v. Dart Container Corp. of California*, 4 Cal. 5th 542, 554 (Cal. 2018); LAB. CODE § 510.

In this case, Plaintiff's failure to pay minimum wages claim is predicated on Defendant's alleged failure to pay aggrieved employees for hours they spent working off-the-clock during meal breaks and after clocking out at the end of the day. Plaintiff alleged that employees were required to work off the clock and that some of those hours were eligible for overtime compensation. Plaintiff alleged that he frequently worked through the lunch hour but was instructed by supervisors to note that a meal period was taken. Additionally, Plaintiff alleged that certain projects would take longer than the expected completion time and was also instructed by supervisors to incorrectly note the time he left the jobsite.

In response, Defendants contend that (i) Defendants had no actual or constructive knowledge of alleged worked off-the-clock pre-shift, post-shift, during meal periods, or at any other time; (ii) employees are entrusted with clocking-in before completing any work, and likewise, clocking-out at the end of their shifts only once they've finished their job duties for the day, and Defendants' written policies state as much; and (iii) Defendants maintained lawful time-keeping and meal period policies, employees were not required to interrupt their meal periods to attend to work, and if that purported circumstance ever arose, they could simply clock out early for a meal period (rather than work off-the-clock).

Similar to his failure to pay minimum wage claim, Plaintiff's overtime claim is largely based on Defendants' alleged failure to pay employees for work that was required but completed off-the-clock. Thus, the same analysis applicable, evidentiary concerns, and defense contentions associated with the minimum wage claim equally apply to Plaintiff's overtime claim.

<u>*Failure to Furnish Compliant Wage Statements & Maintain Accurate Pay Records*</u>

Under California law, when wages are paid to employees, employers must issue corresponding wage statements that accurately show certain statutorily-required items of information, including, among others, their total hours worked, their net and gross wages earned, and the name and address of the employer. LAB. CODE § 226(a). A "knowing and intentional" wage statement violation that causes "injury" leads to penalties under Labor Code § 226. LAB. CODE § 226(e)(1).

With respect to the derivative theory, which is Plaintiffs' main theory, Plaintiffs' claim under Labor Code section 226 is based on the assertion that Defendants committed other wage-and-hour violations (e.g., failure to pay for off-the-clock work and meal period premiums) which resulted in inaccurate wage statements. *See Naranjo v. Spectrum Security Services, Inc.*, 13 Cal. 5th 93, 101 (Cal. 2022). More specifically, Plaintiff contends that his timecards did not reflect the accurate number of hours he worked each pay period as a result of his off-the-clock work, missed meal and rest periods, and therefore his wage statements correspondingly reported less than the amount of wages that were actually due to him.

Defendants contend that (i) its wage statements were facially-compliant in all material respects and employees could determine the legally-required information without resorting to other sources; (ii) there was no "injury" or "knowing and intentional" violations within the meaning of Labor Code § 226; and (iii) because Plaintiff's other alleged wage-and-hour claims lacked merit, Plaintiffs' derivative theory under Labor Code § 226 lacked merit.

Failure to Provide Meal & Rest Periods

California law requires employers to provide employees with timely, duty-free, and uncontrolled 30-minute meal periods. *Brinker Restaurant Corporation v. Superior Court*, 53 Cal.4th 1004, 1040 (Cal. 2012); LAB. CODE § 512. During Plaintiff's employment, Defendants' policies and practices made it difficult for employees to take compliant meal breaks. Plaintiff's main theories of meal and rest period liability were that Day & Nite runs continuous service operations, which made it difficult for employees to take meal and rest breaks if customers needed assistance, thereby resulting in employees experiencing a high volume of meal period interruptions. In this ongoing and busy environment, Plaintiff contends that Day & Nite lacked adequate meal and rest period infrastructure. There was no bell that sounded, or daily break schedule, or standardized relief crews.

In response, Defendants contended that (i) Defendants had compliant written policies on meal periods, employees were informed of the ability to take timely and duty-free meal periods, they did so, and they were not discouraged or prevented from doing so; (ii) Defendants utilized meal period waiver forms where appropriate; and (iii) Defendants paid meal period premiums for meal period issues.

California law requires employers to provide employees with timely, duty-free, and uncontrolled 10-minute rest breaks. *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269 (Cal. 2016); LAB. CODE § 226.7. Similar to his failure to provide meal periods claim, Plaintiff's rest period claim is largely based on Defendants' alleged lack of rest period infrastructure and prioritization of customer service over employee rest time. Thus, the same analysis applicable, evidentiary concerns, and defense contentions associated with the meal period claim equally apply to Plaintiff's rest period claim.

Failure to Timely Pay Wages

Plaintiff alleges that, because the sums due for technicians' overtime and minimum wage were never paid, technicians were therefore not paid all wages earned by the seventh calendar day following the close of their pay periods.

Willful Failure to Pay Wages

Plaintiff alleges that none of the 27 aggrieved employees whose employment separated with the company were ever paid any of their due wages.

Civil Penalties pursuant to the PAGA

Plaintiff is entitled to recover a civil penalty of $100 for every pay period in which the following alleged Labor Code violations were committed against the 33 Aggrieved Employees: failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize rest periods, and failure to reimburse business expenditures. Assuming each of the 33 aggrieved employees experienced all five (5) alleged Labor Code violations during all 1,404 PAGA Pay Periods, $702,000 is the maximum amount of civil penalties recoverable.

However, the Labor Code also provides,

> In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), 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.

LAB. CODE § 2699(e)(2). Essentially, because the actual amount of PAGA penalties is discretionary in nature, an economic valuation of PAGA claims results in merely a ballpark figure. *Abelar v.*

American Residential Services, L.L.C., 2019 WL 6054607 at *4 (C.D. Cal. 2019) (noting that because California courts frequently approved reductions in PAGA penalties, this makes an exposure estimate "not a concrete one"). Further, considering the weight of the evidence, clarity of applicable law, and relative strengths and weaknesses of the claims and defenses discussed above, Defendants would likely have been found liable for committing some Labor Code violations. But it is likely that the Court would exercise its discretion to lower the amount of penalties and refuse to allow "stacking" of multiple violations during each pay period. If the Court were to refuse to stack PAGA penalties for the five (5) causes of action pled, the maximum amount of PAGA penalties recoverable in this case (prior to any discretionary reductions), would have been $140,400. Indeed, the recent 2024 amendments to the PAGA statute allows "a court, in awarding a civil penalty, from reducing the penalty for any alleged violation if the same conduct or omission resulted in multiple violations." *See* LAB. CODE § 2699(i). Thus, to reflect the spirit of the legislature's intent, this Court would likely refuse to allow stacking of penalties founded on the same conduct in this action.

<u>*Unfair Competition*</u>

UCL claims are derivative of other violations of law. Here, Plaintiff's UCL claim seeks repayment of all unpaid minimum, overtime, and sick wages as well as reimbursement of all necessary business expenditures incurred by aggrieved employees based on Defendant's alleged Labor Code violations, and such relief is duplicative of that relief sought by Plaintiff's underlying minimum wage, overtime, and tool reimbursement claims, as it seeks compensation for the same harms. Assuming Plaintiff had prevailed on those claims, none of the damages pled in the UCL claim would have been recoverable as a matter of law because this claim seeks double recovery. Indeed, compensatory damages are intended to make the injured person whole, not to reward or enrich over and above their loss. "The compensatory damage principle dictates no double recovery, for by definition, double recovery is antithetical to compensatory damages." *Fuller v. Capitol Sky Park*, 46 Cal. App. 3d 727, 732 (Cal. Ct. App. 1975); *see also California v. IntelliGender, LLC*, 771 F.3d 1169 (9th Cir. 2014) (Plaintiff was precluded from recovering restitution and injunctive relief under UCL claim because it was duplicative of relief sought for similar claim). Because it would violate the compensatory damage principle to allow double recovery of unpaid wages and unreimbursed expenses, the amount Plaintiff could reasonably expect to be awarded at trial on this claim is zero.

b. Total Penalties Plaintiff Is Likely to Prove if this Action Proceeds to Trial

The only evidence of widespread, systematic Labor Code violations committed by Defendants against its employees during the PAGA period that Plaintiff uncovered was as to its technicians, which totaled 32 individuals. This is because the other one (1) non-technician employee (administration staff) had vastly different job duties and performance expectations. Indeed, administration staff were not required to work in the field using their own tools. Thus, any Labor Code violations committed against the one (1) non-technician employee during the PAGA period would have been isolated occurrences, as opposed to part of the larger pattern and practice of Labor Code violations that were committed against technicians employed by Defendants. The non-technician aggrieved employee's pay periods totaled 186, meaning the 32 technicians worked a total of 1,218 pay periods. As discussed below, the maximum amount of civil penalties obtainable in Plaintiff's PAGA suit is realistically $249,180, as opposed to $702,000. If the Court refuses to allow stacking, Plaintiff's PAGA suit would be worth only $60,900 in civil penalties ($121,800 x 50%).

Failure to Indemnify for Necessary Expenditures

The witnessed interviewed overwhelmingly corroborated the allegation that technicians were required to use their own personal tools while working out in the field and were not reimbursed by Defendants for their tool expenditures. Thus, Plaintiff believes that he would have proven the tool reimbursement claims at trial.

However, if a technician purchased tools at the beginning of their employment with Day & Nite, and worked the entire PAGA Period without ever having been reimbursed for those tool expenditures, this Court could treat Defendants' failure to reimburse that employee for those tool purchases in one of two ways: (1) as a single act, constituting just a single Labor Code section 2802 violation; or (2) a series of acts, constituting new and recurring violations for every pay period that the technician was not reimbursed during the PAGA Period.

If Day & Nite's failure to reimburse technicians for tool purchases during the PAGA Period is not a recurring violation, but rather, a one-time violation, then Defendants would have committed a total of 32 Labor Code § 2802 violations against the 32 aggrieved employee-technicians during that period. Day & Nite would have therefore been liable for a maximum $100 PAGA penalty for each of those 32 Labor Code section 2802 violations, for a maximum PAGA penalty of **$3,200**, subject to a discretionary reduction.

If, on the other hand, the Court treats Day & Nite's failure to reimburse technicians for tool expenditures as a recurring violation, such that every pay period in which Defendants failed to reimburse an employee for their tool purchases constitutes a brand-new violation, then Defendants would have committed a total of 1,218 Labor Code section 2802 violations against the 32 aggrieved employees during the PAGA Period, for a maximum PAGA penalty of **$121,800**. Of course, this penalty amount would have been subject to reduction at the Court's discretion, pursuant to Labor Code § 2699(e)(2).

It is possible that the Court could have treated Defendants' failure to reimburse technicians as one-time violations of Labor Code § 2802, as opposed to recurring, continuous violations. Indeed, once an employee incurs a business expense (i.e., purchase of tools), it thereby triggers Defendants' obligation to reimburse that expense. The moment the employer refuses or fails to reimburse that expense, it has committed a violation of Labor Code section 2802. However, does the mere passage of time, coupled with the employer's initial failure to reimburse, transform that initial refusal to reimburse into additional violations? For example, suppose Employee # 1 incurred tool expenses on the date of his hire. Then suppose he immediately requested reimbursement but was refused. Suppose further that he worked for 50 pay periods before he resigned. In this example, did the employer commit a single violation of Labor Code § 2802 when it initially failed to reimburse Employee # 1 for the expense, or did it commit 50 separate violations over the course of the 50 pay periods by virtue of the mere passage of time?

Because all the witnesses interviewed corroborated Plaintiff's allegation that Day & Nite failed to reimburse technicians for tool purchases, Plaintiff believes the merits of this claim are strong, and he could prove 100% violation rate. Defendants nevertheless dispute the claim, but Plaintiff only weighs this defense as having a ten percent likelihood of prevailing. In addition, the actual value of this claim is rife with uncertainty and subject to the mercy of this Court's determination as to how violations and penalties accumulate. Assuming the Court determines Day & Nite's failure to reimburse technicians for tool purchases during the PAGA Period is a recurring violation, the maximum value of this claim would be $121,800 in penalties. Then again, Plaintiff believes there is a seventy percent chance that this Court will treat Defendants' failure to reimburse as a one-time violation, thereby making the value of this claim as low as $3,200 in penalties. As Plaintiff believes this Court is more than likely to treat each violation as non-recurring, and Plaintiff believes he has a ninety percent chance of establishing all 32 aggrieved employee-technicians experienced a one-time violation, the value of this claim is actually $2,880 ($3,200 * 90%).

Failure to Provide Meal & Rest Periods

As to meal and rest period claims, witnesses largely corroborated Plaintiff's allegations that technicians were not authorized or permitted to take compliant meal and rest periods and were often forced to take their lunch en route to the next work site. Approximately two-thirds of the interviewees corroborated Plaintiff's claims. However, there was some divergence of opinion by a witness as to whether the demands of the job forced him to skip his meal and rest periods. Most witnesses stated that technicians rarely, if ever received compliant meal periods for every five hours worked or rest periods for every four hours worked, while a minority of them stated that they routinely took them. Thus, while Plaintiff believes that he would have proven meal and rest period violations at trial, it is uncertain how many pay periods the Court would have found the violations to have occurred. Further, the decider of fact could find that no employees experienced meal and rest break violations thereby zeroing the value of this claim.

Based on the foregoing, the actual settlement value of this claim should be discounted by fifty percent when weighing that only two-thirds of witnesses corroborated Plaintiff's claims and the finder of fact could determine the credibility of those witnesses as nonexistent or believe Defendants' contentions. Therefore, the value of Plaintiff's meal and rest period claims with the discount applied for settlement purposes is $121,800 (2 violations x $100 penalty x 1,218 pay periods = $243,600 maximum penalties x 50% discount).

Failure to Pay Minimum & Overtime Wages

There was also some divergence in opinion among witnesses interviewed as to how frequently technicians worked off-the-clock after the conclusion of their regularly scheduled shifts. Some witnesses characterized it as something that occurred once or twice a week (two thirds of interviewees), while others characterized it as occasional or infrequent. Thus, while Plaintiff believes that he would have proven minimum wage and overtime off-the-clock violations at trial, it is uncertain how many pay periods the Court would have found the violations to have occurred.

Based on the foregoing, the actual settlement value of this claim should be discounted by fifty percent when weighing that only two-thirds of witnesses corroborated Plaintiff's claims and the finder of fact could determine the credibility of those witnesses as nonexistent or believe Defendants' contentions. Therefore, the value of Plaintiff's minimum wage and overtime claims with the discount applied for settlement purposes is $121,800 (2 violations x $100 penalty x 1,218 pay periods = $243,600 maximum penalties x 50% discount).

Waiting Time Penalties

The waiting time penalties for the 27 aggrieved employees who separated from the company total $2,700 (27 aggrieved employees x $100 penalty).

c. Factors Suggesting the Court Would Reduce the Penalties as Unjust, Oppressive, or Confiscatory

Finally, Defendants presented some evidence that the company had written, facially compliant off-the-clock, meal and rest period policies, and therefore seemingly took reasonable steps to prevent violations. Further, the Court might take into account the extent to which some of the technicians might have acted outside of written policies in order to complete job assignments more efficiently. Thus, the Court would have likely applied a discretionary reduction to the $60,900 to $249,180 potential maximum penalties under Labor Code § 2699(e)(2), which could have further reduced the total penalties award by anywhere from ten to ninety percent. Further, assuming the unlikely event in which Plaintiff proves the potential maximum $702,000 in PAGA penalties, the Court could have nevertheless reduced the penalties as "unjust, oppressive or confiscatory" pursuant to Labor Code § 2699(e)(2) in light of the fact that Defendants have already paid money to settle this claim.

d. Likelihood of Violations Would Have Been Proven to be Knowing & Intentional

There is a fifty-fifty likelihood the violations would have been proven to be knowing and intentional. On the one hand, the violations against Defendants' technicians were so widespread and pervasive that it would have been very difficult for ownership to credibly deny that it was not aware of the violations. In addition, virtually all supervisors were aware of the ongoing violations because they participated and/or directed them to occur. On the other hand, there was some variation regarding the frequency of violations or whether certain violations even occurred. Additionally, Defendants produced facially compliant off-the-clock, meal and rest period policies, which prohibited off-the-clock work and required employees to take meal and rest periods. Thus, the defense could argue that it took all reasonable steps to prevent violations.

VI. AGGRIEVED EMPLOYEES WILL NOT BE PREJUDICED BY DISMISSAL OF THE PAGA CLAIM

With respect to PAGA judgments, nonparty employees are "not be bound by the judgment as to remedies other than civil penalties." *Arias v. Superior Court*, 46 Cal. 4th 969, 987 (2009). As such, aggrieved employees will not be prejudiced by a dismissal of this action because that dismissal will not bar them from seeking their own individual remedies against Defendants for any of the Labor Code violations that have been released as part of the parties' PAGA settlement. Further, there are no other known pending actions that would be affected by Plaintiff's release of PAGA claims in this suit.

The fact that none of the 33 alleged aggrieved employees have ever brought their own individual suit since this action was filed demonstrates an indifference by them to the amount of the settlement or penalty allocation. Also, to the extent that the LWDA does not object to this Proposed Settlement, this further militates in favor of settlement approval.

VII. THE PROPOSED SETTLEMENT PROVIDES FOR REASONABLE ATTORNEY'S FEES & COSTS

"When a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund." *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 497 (2016); CIV. PROC. CODE § 1021.5. Formal intervention is unnecessary to obtain section 1021.5 fees. *People v. Investco Mgmt. & Dev. LLC*, 22 Cal. App. 5th 443, 459 (Cal. Ct. App. 2018).

A. **Fees Awarded in Representative Actions Should be Comparable to Percentages Charged in Marketplace**

A "reasonable fee" should also mimic the market:

> [T]he amount of attorney fees typically negotiated in comparable litigation should be considered in the assessment of a reasonable fee in representative actions in which a fee agreement is impossible. Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, 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, as it will otherwise be economic for defendants to increase injurious behavior.

Lealao v. Beneficial California, Inc., 82 Cal. App. 4th 19, 47 (Cal. Ct. App. 2000).

B. **Common Fund Doctrine**

> "California has long recognized, as an exception to the general American rule that parties bear the costs of their own attorneys, the propriety of awarding an attorney fee to a party who has recovered or preserved a monetary fund for the benefit of himself or herself and others. In awarding a fee from the fund or from the other benefited parties, the trial court acts within its equitable power to prevent the other parties' unjust enrichment. [] Because it distributes the cost of hiring an attorney among all the parties benefitted, a common fund fee award has sometimes been referred to as 'fee spreading.' [] Class action litigation can result in an attorney fee award pursuant to a statutory fee shifting provision or through the common fund doctrine when . . . a class settlement agreement establishes a relief fund from which the attorney fee is to be drawn."

Lofton v. Wells Fargo Home Mortg., 27 Cal. App. 5th 1001, 1016-17 (2018) (citing *Laffitte*, 1 Cal. 5th at 488-89).

> "The common fund doctrine provides that a private plaintiff, or his attorney, whose efforts create, discover, increase, or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys' fees. The doctrine is 'employed to realize the broadly defined purpose of recapturing unjust enrichment.' [] That is, the doctrine is designed to spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone and the 'stranger' beneficiaries do not receive their benefits at no cost to themselves."

Vincent v. Hughes Air West, Inc., 557 F.2d 759, 769 (9th Cir. 1977).

C. Courts Should Provide Fee Enhancement in Contingency Litigation

"The multiplier for contingent risk brings the financial incentives for attorneys enforcing important constitutional rights into line with incentives they have to undertake claims for which they are paid on a fee-for-services basis." *Greene v. Dillingham Construction N.A., Inc.,* 101 Cal. App. 4th 418, 426-27 (2002). Indeed,

> [A]pplying a fee enhancement does not inevitably result in a windfall to attorneys: "Under our precedents, the unadorned lodestar reflects the general local hourly rate for a *fee-bearing case;* it does *not* include any compensation for contingent risk, extraordinary skill, or any other factors a trial court may consider under *Serrano III.* The adjustment to the lodestar figure, e.g., to provide a fee enhancement reflecting the risk that the attorney will not receive payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather, it is intended to approximate market-level compensation for such services, which typically includes a premium for the risk of nonpayment or delay in payment of attorney fees."

Id. (emphasis in original). "Multipliers can range from 2 to 4 or even higher." *Wershba*, 91 Cal. App. 4th at 255.

D. Parties in Representative Actions are Permitted to Choose Proper Allocation of Attorneys' Fees to Reflect Amount that Defendant Would Have Been Obligated to Pay Had Plaintiff Prevailed

> Even where the parties do not specifically agree to the amount of attorney fees, the defendant usually has a fairly good idea of the range of fees that will be sought and the approximate amount likely to be awarded. The value of the benefit a settling defendant is willing to confer on the class — either through the establishment of a separate fund or in some other way — will therefore invariably be influenced by the amount of fees it *would* be obliged, or estimates it *would* be obliged, to pay class counsel *if it did so directly.*

Apple Computer, Inc. v. Superior Court, 126 Cal. App. 4th 1253, 1269 (2005) (emphasis in original) (citing *Lealao*, 82 Cal. App. 4th at 33). Thus,

> It is well settled that the parties to a lawsuit may negotiate a settlement according to which the defendant makes a lump-sum payment embracing both monetary relief to the plaintiff and attorney's fees liability. The device of a lump-sum settlement is normally used in class action cases governed by a fee-shifting statute which, if the plaintiffs were to prevail at trial, might permit them to obtain substantial fees directly from the defendant in addition to the amount of any judgment.

Apple Computer, Inc., 126 Cal. App. 4th at 1269 (internal citations omitted).

Over the past four years, Plaintiff propounded four sets of written discovery, consisting of document demands, special interrogatories and form interrogatories, which required Plaintiff to meet and confer regarding supplemental responses. Koleson Decl., ¶ 31. Further, Plaintiff has taken three recorded witness interviews and two depositions. *Id*. In addition, Plaintiff's counsel has reviewed and analyzed 3,311 pages of documents produced by the defense, plus hundreds of additional pages of materials provided by Plaintiff. *Id*. Finally, the Parties extensively prepared for and attended a full-day mediation. *Id*.

As detailed in the contemporaneous time records produced herewith, Plaintiff's counsel has spent no less than 219.2 hours of work in connection with this case, for a total of over $77,645 in attorney's fees and nearly $7,900 in litigation costs to date. (Exhibit 6: Itemized Attorney Time Records; Exhibit 7: Itemized Litigation Costs). This figure does not take into account the lodestar multiplier that Plaintiff could have received if the case had been tried. Further, Plaintiff anticipates spending an additional fifteen hours of work after the filing of this Motion, including preparing for and attending the hearing on this Motion, and, assuming the Court approves the Proposed Settlement, post settlement obligations to implement the terms of the settlement. Koleson Decl., ¶ 32.

The proposed $45,500 allocation to attorney's fees (35% of the Gross Settlement Fund) and up to $7,500 in litigation costs is fair and reasonable given the result obtained on the PAGA claim and the amount of time, effort, risk, and expense incurred by Plaintiff's counsel to obtain the result. Based upon Plaintiff's counsel's efforts, Plaintiff would have had a certain Judgment at trial regarding his tool reimbursement claim, which would have entitled the firm to far more than $45,500 in attorneys' fees sought in this Motion.

Because Plaintiff's counsel takes only contingency cases, if the firm were not to receive the full amount of attorneys' fees requested in the majority of cases, it would not be economically feasible to undertake this type of representation in light of staffing costs and overhead required to maintain this type of practice. Declaration of Gabriel Pimentel, ¶ 11 ("Pimentel Decl."). Further, the rates charged by Plaintiff's counsel are in line with rates charged by other employment litigators with similar experience. Pimentel Decl., ¶ 10. Additionally, Plaintiff's counsel advanced nearly $7,900 in litigation costs in this case, undertook the risk of never being compensated for the work performed on the case and losing all out-of-pocket costs spent on the litigation. Thus, based on inherent complexity of PAGA litigation, risk of nonpayment, time and effort spent, expenses incurred, the anticipated delay in payment of attorneys' fees and reimbursement of litigation costs and the good result obtained, the amount sought in attorneys' fees is reasonable.

The fee agreement between Plaintiff's counsel and Plaintiff is a written contingency fee agreement, whereby our firm agreed to advance all litigation costs and take a percentage of any recovery that might be obtained in this matter. Koleson Decl. ¶ 35. There is no fee-splitting agreement between our firm and any other firm in connection with this case. *Id*. As such, all attorneys' fees would be paid to Plaintiff's counsel. *Id*.

VIII. CONCLUSION

Based on the above, Plaintiff respectfully requests this Court grant his amended Motion for Approval of the Parties' Proposed PAGA Settlement.

PIMENTEL LAW, P.C.

Dated: January 9, 2025

By: Jenna M Koleson

Jenna M. Koleson, Esq.

Attorney for Plaintiff