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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

BREANN HOWARD, an individual, on behalf of herself, and on behalf of all persons similarly situated,

Plaintiff,

vs.

KOULAX ENTERPRISES, a California Corporation; and DOES 1 through 50, Inclusive;

Defendants.

Case No. 21GDCV01154

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE PAGA SETTLEMENT

Date: January 14, 2026
Time: 8:30 a.m.
Reservation ID: 465957180582

Judge: Lauren A. R. Lofton
Dept.: X

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Breann Howard ("Plaintiff") seeks approval of the PAGA Settlement Agreement ("Agreement")[1]. The proposed settlement provides significant monetary relief—totaling $235,000—for approximately 483 "Aggrieved Employees," defined as all current and former non-exempt non-managerial employees who worked for Defendant Koulax Enterprises's ("Defendant") California stores, which are listed as follows: Riverside, Chino, Burbank, El Monte, Simi Valley, Ventura, Montclair, at any time during the period from April 9, 2020 through May 31, 2025. ("PAGA Period"). Agreement at §§ 1.4, 1.9; 1.22.

Importantly, this is only a settlement of the PAGA claim for civil penalties and is not a class settlement and does not release the individual wage claims, if any, of the affected employees other than Plaintiff herself. Cal. Lab. Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

If approved, the Aggrieved Employees and the California Labor Workforce and Development Agency ("LWDA") will share the remainder of the Net Settlement Amount estimated to be One Hundred Ten Thousand Nine Hundred Twenty-Six Dollars and Sixty-Seven Cents ($110,926.67). The Net Settlement Amount shall be distributed, 75% to the LWDA and 25% to the Aggrieved Employees ("Individual PAGA Payment"). Agreement §§ at 1.14; 1.17, 1.18.

An objective evaluation of the proposed settlement confirms that the relief negotiated on behalf of the Aggrieved Employees and the LWDA is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive and mediated negotiations between experienced counsel. As discussed below, the proposed Settlement satisfies all criteria for PAGA settlement approval. Accordingly, Plaintiff and PAGA Counsel respectfully request this Court grant approval of the Agreement. Declaration of Jean-Claude Lapuyade ("JCL Dec.") at ¶ 5.

[1] The Agreement is attached as Ex "1" to the Declaration of Jean-Claude Lapuyade ("JCL Dec.") at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

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

On April 9, 2021, Plaintiff filed a Notice of Violations ("PAGA Notice") with the LWDA and served the same on Defendant. JCL Dec., ¶ 11. The 65-day "waiting period" on Plaintiff's right to file a civil action under PAGA, *see* Cal. Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiff that they intended to investigate the claims in the PAGA Notice. To date, the LWDA still has not advised Plaintiff of any intent to take action with respect to the claims in the PAGA Notice. JCL Dec., at ¶ 10.

On September 8, 2021, Plaintiff Breann Howard filed a representative action pursuant to the Private Attorneys General Act, Labor Code section 2698 et seq. ("PAGA"), alleging that Defendant violated various California Labor Code Sections, including sections 201, 202, 203, 204, 210, 221, 226, 226.7, 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 1199, and 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), based on various theories of liability, including, but not limited to, Defendant's alleged failure to: pay wages, including overtime and minimum wages, provide meal periods, provide rest periods, timely pay all wages earned during employment and at the end of employment, provide accurate itemized wage statements, and reimburse for business expenses necessarily incurred. JCL Dec., ¶ 12.

On February 5, 2024, Plaintiff filed a First Amended Complaint to redefine the Aggrieved Employees. JCL Dec., ¶ 13.

Plaintiff commenced written discovery in August of 2022, and the Parties engaged in written discovery until December 2024. The Parties agreed to mediate and scheduled a mediation in November 2024. In advance of the mediation, Defendant provided Plaintiff with written policies, and the time and payroll data for a sample of the Aggrieved Employees. JCL Dec., ¶ 14. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in Dunk v. Foot Locker Retail, Inc. (1996) 48 Cal.App.4th 1794, 1801 and Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129-130. JCL Dec., ¶ 15.

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On November 5, 2024, the Parties participated in mediation presided over by Brian Sinclair, Esq., a mediator of wage and hour representative actions. The Parties' mediation resulted in a settlement of Plaintiff's PAGA claims. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement which is the subject of the instant motion. The Settlement was negotiated in light of all known facts and circumstances and the uncertainty associated with litigation – including the risk of Plaintiff not being able to maintain representative claims and establishing manageability, the difficulty of proving Plaintiff's claims in a manageable trial, the merits of Defendant's potential defenses, and the significant delay and potential appellate issues related to the litigation – and was reached after extensive arm's length negotiations, with the assistance of Brian Sinclair. JCL Dec., at ¶ 16.

The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted by Plaintiff on behalf of herself, the LWDA, and the State of California. This is only a Settlement of the PAGA claims for civil penalties and is not a class settlement and does not release the individual claims, if any, of the Aggrieved Employees. This Settlement does not release any claim that is not a PAGA claim.[2] Nor does this Settlement waive Defendant's right to assert *res judicata* or other available defense to any asserted claim or lawsuit. JCL Dec., at ¶ 17.

Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged. JCL Dec., ¶ 18.

The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement. JCL Dec., ¶ 19.

Pursuant to California Labor Code Section 2699(s), Plaintiff is providing a copy of the Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion for settlement approval as set forth in the accompanying proof of service. Additionally, Plaintiff will submit to the LWDA a copy of the Court's judgment and order approving the Settlement Agreement

[2] As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th 175 at 196: "Nonparty employees are bound by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties."

within ten (10) days after entry of judgment or order. JCL Dec., at ¶ 20.

III. TERMS OF THE PAGA SETTLEMENT

A. The Gross Settlement Amount

The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(s)(2). The Settlement Agreement negotiated by the Parties provides for a Gross Settlement Amount payment in the amount of Two Hundred Thirty-Five Thousand Dollars and Zero Cents ($235,000.00) to resolve the PAGA claims. From the Gross Settlement Amount, there is a deduction of a PAGA Counsel Fees and Litigation Expenses Payment in the amount of up to One Hundred Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents ($108,333.33), comprised of one-third of the Gross Settlement Amount for the PAGA Counsel Fees Payment (estimated to be approximately $78,333.33), reimbursement of the PAGA Counsel Litigation Expenses Payment for incurred litigation expenses in an amount not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00), the Service Award to Plaintiff in an amount not to exceed Ten Thousand Dollars and Zero Cents ($10,000.00), and Administration Expenses Payment which will not exceed Five Thousand Seven Hundred Forty Dollars and Zero Cents ($5,740.00). Agreement generally at §§ 3.2.2.1 – 3.2.2.4. After these deductions, the amount remaining is the Net Settlement Amount or "PAGA Penalties," which is estimated to be $110,926.67. JCL Dec., ¶ 21.

Of the PAGA Penalties Payment, seventy-five percent (75%) shall be paid to the LWDA and the remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees ("Individual PAGA Payment"). Agreement at §§ 1.18, 3.2.4. This 75/25 allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

B. Allocation of the Individual PAGA Payment

The Individual PAGA Payments will be calculated by dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (estimated to be $27,731.67) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and then multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Agreement at § 3.2.4.1 The PAGA Period is the period between April 9, 2020, through May 31, 2025. Agreement at § 1.22.

At the time of the Parties' settlement of this Action, Defendant estimated that there were approximately 483 Aggrieved Employees who worked approximately 12,500 pay periods during the PAGA Period based on company records. Agreement at § 4.1.[3]

C. Funding and Distribution

Provided that an order approving this Settlement is entered by the Court, Defendant shall fund the Gross Settlement Amount within twenty (20) calendar days after the Effective Date. Agreement at § 4.3. Within five (5) days after Defendant fully funds the Gross Settlement Amount, the Administrator will mail all Individual PAGA Payments via First-Class U.S. Mail to the Aggrieved Employees' last known mailing address. Agreement at § 4.4. Settlement checks issued to Aggrieved Employees will expire one hundred eighty (180) days from the date they are issued by the Administrator. Agreement at § 4.4.1. If the check remains uncashed by the expiration of the 180-day period, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. Agreement at § 4.4.3. The Individual PAGA Payments are 100% penalties and shall be reported using IRS Form 1099s. Agreement at § 3.2.4.2.

D. Release of Claims

As of the Funding Date, the State of California, the Aggrieved Employees, and Plaintiff shall release the Released Parties (as defined in the Agreement) from the Released PAGA Claims which include all claims arising under PAGA that were or could have reasonably been alleged based on the facts alleged in the Action through the end of the PAGA Period, including their right to bring representative PAGA claims on behalf of others. The release of claims for PAGA penalties shall bind the Aggrieved Employees, the LWDA, and the State of California. Agreement at § 5.2

IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT

Labor Code § 2699(s) requires that the Court "shall review and approve any settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." Further, the Court in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77 stated that "the trial court must review and approve a PAGA

[3] The Agreement contains an escalator clause, providing that, should the number of Pay Periods increase by more than 10% of what was represented during the PAGA Period, the Gross Settlement Amount will increase proportionally for the number of Pay Periods over 110% of 12,500. For example, if the total Pay Periods in the PAGA Period are 115% of 12,500, the Gross Settlement Amount shall increase by 5%. Agreement at § 8.

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

A. The Gross Settlement Amount is Fair and Reasonable

The Gross Settlement Amount of $235,000.00 is fair and reasonable and, therefore, should be approved. Here, *without stacking* the PAGA penalties, Defendant's liability exposure is estimated at approximately $957,187.50 in PAGA Penalties. JCL Dec., ¶ 22. Assuming the Court permitted Plaintiff to stack PAGA penalties, Plaintiff estimated Defendant's liability exposure at approximately $1,207,187.50. Plaintiff estimated Defendant's exposure as follows:

Claim	Penalty Amount[4]	Number of Pay Periods w/ Violation	Violation Rate	Total Penalties
Unpaid Wages Violations Cal. Labor Code §§ 201, 202, 203, 204, 246, 1194, 1197, 1997.1, 1198 and 558	$100	197	1.5% of PAGA Pay Periods	$19,687.50

[4] In *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144, the court decided that "[u]ntil the employer has been notified that it is violating a Labor Code provision … the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties." Therefore, Plaintiff used only penalties for initial violations.

Meal Period Violations Cal. Labor Code §§ 226.7 and 512	$50[5]	5,625	45% of PAGA Pay Periods	$281,250.00
Rest Period Violations Cal. Labor Code §§ 226.7 and 512	$50	2,500	30% of PAGA Pay Periods	$187,500.00
Wage Statement Violations Cal. Labor Code §§ 226 and 226.2	$100	2,500	20% of PAGA Pay Periods	$250,000.00
Failure to Reimburse for Mandatory Business Expenses Cal. Labor Code § 2802	$100	4,687	37.5% of PAGA Pay Periods	$468,750.00

JCL Dec., ¶ 23.

i. Estimated Liability for Unpaid Wages

Plaintiff alleged that Defendant failed to pay for all hours worked for Plaintiff and other Aggrieved Employees. Specifically, Plaintiff alleged that Defendant failed to properly calculate the regular rate of pay when paying Aggrieved Employees overtime and/or redeemed sick pay in a pay period in which that Aggrieved Employee also earned a non-discretionary bonus. JCL Dec., ¶ 24. The regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, non-discretionary bonuses and awards, shift differentials, and the per-hour value of any non-hourly compensation the employee has earned. *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. For overtime work, "an employee must receive a 50 percent premium on top of his or her regular rate of pay[.]" Id. at 553. California law also requires meal period premiums and rest period premiums to be paid at an

[5] The $50 penalty rate was used for a number of reasons in this instance. First, Defendant argued that increased civil penalties for subsequent violations do not apply unless the Plaintiff can present evidence that the Labor Commission or a court notified the employer that it was in violation of the Labor Code. *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144 citing *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 ["Until the employer has been notified that it is violating a Labor Code provision … the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties."].) Separately, Defendant also argued that courts have considerable discretion to reduce the penalty awards under PAGA. *See*, e.g. *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (reducing the maximum PAGA penalty amount by 90%, at $5 per pay period). Accordingly, it is unlikely that Plaintiff would recover full penalty amounts even if he prevailed in establishing the underlying Labor Code violations. Pursuant to California Labor Code section 558(a)(1), an employer is subject to a penalty of $50 for violations of a Labor Code section regulating hours and days of work, including meal period and rest period violations. Thus, because section 558(a)(1) specifically provides for a civil penalty, Plaintiff used a $50 penalty per violation for the meal and rest break claims. JCL Dec., ¶ 28.

employee's regular rate of pay. See Ferra v. Lowes Hollywood Hotel, LLC (2021) 11 Cal.5th 858.) JCL Dec., ¶ 25. Defendant denied liability for failing to pay Plaintiff and Aggrieved Employees at the regular rate of pay. Defendant argued that the bonuses in question are discretionary and therefore are not to be included in the regular rate of pay calculation. Defendant further denied liability for rounding. Taking into account Defendant's defenses, Plaintiff estimates Defendant's exposure for the Unpaid Wages claim be approximately $19,687.50. JCL Dec., ¶ 26.

ii. Estimated Penalties for Meal Period Violations

Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically, Plaintiff alleges that meal periods that appear compliant on paper are synthetic, contending that Defendant rounded time records to show a compliant meal period, as evidenced by more than 60% of the meal periods analyzed showing a meal period exactly 30 minutes in duration. Defendant denies these allegations, noting that its policy and practice did not include manipulating time records of employees' meal breaks. Taking into account Defendant's defenses, Plaintiff estimates Defendant's exposure for this claim to be approximately $281,250.00. JCL Dec., ¶ 27.

iii. Estimated Penalties for Rest Period Violations

Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff alleged that she and the Aggrieved Employees were unable to take rest periods, and when they did, they were short and/or interrupted. Defendant argued that Plaintiff's rest break claim would have mainly relied on the testimony of Aggrieved Employees, making it a riskier claim. Establishing liability likely would have entailed competing testimony stating either rest breaks were taken, or rest breaks were voluntarily waived. See, e.g., *Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices"). JCL Dec., ¶ 28. Taking into account Defendant's defenses, Plaintiff estimates Defendant's exposure for this claim to be approximately $187,500. JCL Dec., ¶ 29.

iv. Estimated Penalties for Unreimbursed Business Expenses

Plaintiff alleged that Defendant required Plaintiff and other Aggrieved Employees to utilize their personal cell phones for work-related communications, including communications with supervisors, managers, and/or co-workers. However, Defendant did not reimburse Plaintiff and other Aggrieved Employees for these expenses. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. (See Cal. Labor Code § 2802(a), providing that "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…"). JCL Dec., ¶ 30.

Defendant argued that employees were not required to utilize their personal cell phones and elected to use their own cell phones without Defendant's consent. Therefore, Defendant should not have to reimburse Plaintiff or other Aggrieved Employees. Plaintiff estimates Defendant's exposure for this claim to be $468,750.00. JCL Dec., ¶ 31.

v. Estimated Liability for Derivative Wage Statement Penalties

Plaintiff further alleged that the Defendant's labor code violations for non-compliant meal and rest breaks and unpaid wages result in derivative liability for waiting time penalties and penalties resulting from inaccurate wage statements. Although these penalties represent a large dollar amount of exposure, these are Plaintiff's most uncertain claims. Specifically, Defendant argued that Plaintiff could not prove "knowing or intentional" prong needed to obtain waiting time penalties under Labor Code Section 226. Taking into account Defendant's defenses, Plaintiff estimated Defendant's exposure for these claims to be $250,000.00 in penalties pursuant to Labor Code 226. JCL Dec., ¶ 32.

B. The Gross Settlement Compares Favorably To The Likely Recovery

In light of the above, the Gross Settlement Amount is approximately 20% of Defendant's potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely recovery of PAGA penalties through continued litigation. Defendant's maximum exposure to PAGA penalties is not a realistic outcome of the litigation because it fails to account for the risks of continued litigation including, but not limited to, Defendant's defenses. *See*, *Zayerz v. Kiewit Infrastructure West*, 2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018). For instance, Defendant argued that it can only be assessed civil penalties for actual violations of the Labor Code. *See* Lab. Code § 2699(f)(2). In other words, to recover any civil penalties, Plaintiff would be required to prove the underlying Labor Code violations. (*Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ["Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."].) To do this, Plaintiff would need to prove each Aggrieved Employee was subject to the alleged Labor Code violation, which would be difficult to do, since Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in this action. JCL Dec., ¶ 33.

Thus, Defendant contended that Plaintiff would be required to "prove Labor Code violations with respect to each and every individual on whose behalf Plaintiff seek to recover civil penalties under PAGA." *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009). When "determining whether the employer committed Labor Code violations with respect to each employee" is impractical, the PAGA action can be dismissed. *Wesson v. Staples the Off. Superstore,* 2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021). JCL Dec., ¶ 34.

Finally, the maximum penalty figure does not consider that Courts have complete discretion to "award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (Cal. Lab. Code § 2699(e)(2)). In fact, Courts routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g. Carrington v. Starbucks Corp*., 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to $5 per pay period; "Although the trial court may have disagreed with Starbucks regarding the issue of liability, it clearly took the circumstances proffered by Starbucks into consideration when it imposed the penalty … only $5 per initial violation"); *Kaanaana v. Barrett Bus. Servs., Inc*., 29 Cal App 5th 778, 788 (2018), review granted on other grounds (noting that the trial court "exercised its discretion to reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average, plaintiffs were deprived of 13 percent of the 30-minute meal period"); *Fleming v. Covidien, Inc*., 2011 WL 7563047, *4 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of PAGA civil penalties for plaintiffs' section 226 claims from $2,800,000 to $500,000 because the employees suffered no injuries as a result of the erroneous wage statements and made no complaints about the errors or omissions in the wage statements, thus reducing the maximum penalty by 82%); *see also*, *Gola v. University of San Francisco*, *90 Cal. App. 5th 548 (2023), as modified (May 9, 2023), reh'g denied (May 15, 2023), review denied (July 12, 2023), and disapproved of by Naranjo v. Spectrum Sec. Servs., Inc., 15 Cal. 5th 1056, 547 P.3d 980 (2024)* (concluding after a full-blown bench trial that a penalty of 15% of the maximum PAGA penalties was the appropriate penalty). The gross amount obtained by PAGA Counsel is reasonable in light of Defendant's arguments. JCL Dec., ¶ 35.

Given Defendant's defenses to the claimed Labor Code violations at issue and the risks and costs of continued litigation, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount is fair and reasonable. This settlement was negotiated by experienced counsel at arm's length. JCL Dec., ¶ 36. The LWDA has been provided with notice of this motion and the PAGA settlement, and the decision of LWDA to accept the PAGA settlement and not oppose the motion should be given considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and protect its own rights. JCL Dec., ¶¶ 5, 37.

C. The Remaining Settlement Terms Are Fair and Reasonable

Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code § 2699(s) does not require that a court approve any other elements of the proposed settlement. Because there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the Court only needs to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable. JCL Dec., ¶ 38.

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V. THE PAGA COUNSEL FEES AND EXPENSES PAYMENT IS FAIR AND REASONABLE

PAGA Counsel seeks approval of the PAGA Counsel Fees and Expenses Payment, comprised of attorneys' fees in the amount of one-third of the Gross Settlement Amount, calculated to be $78,333.33, and reimbursement of litigation costs not to exceed $30,000.[6] PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court review the requested attorneys' fees, the requested fees and costs are reasonable for experienced wage and hour counsel. JCL Dec., ¶ 39.

A. The Requested PAGA Counsel Fees and Expenses Payment is Fair and Reasonable

The requested PAGA Counsel Fees and Expenses Payment of $86,902.32, comprised of $78,333.33 for attorneys' fees and reimbursement of litigation expenses of $8,568.99, is fair, reasonable, and justified by the result achieved. Agreement at § 3.2.2; JCL Dec., ¶ 40. PAGA Counsel negotiated a recovery of Two Hundred Thirty-Five Thousand Dollars and Zero Cents ($235,000.00), and this result justifies the requested fees equal to one-third of this recovery. This percentage is within the standard contingent recovery percentage of one-third, and this percentage is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc*., 1 Cal.5th 480, 504, (2016). At the time this case was brought, the result was far from certain. Defendant's defenses to the merits of the case created difficulties with proof and complex legal issues for PAGA Counsel to overcome. Here, several defenses asserted by Defendant present serious threats to the claims of Plaintiff and the Aggrieved Employees. Defendant asserted that its employment practices complied with all applicable labor laws. If successful, Defendant's factual and legal defenses would eliminate *any recovery* to the Aggrieved Employees. While Plaintiff believes that these defenses could be overcome, Defendant maintains that these defenses have merit and therefore present a serious risk to recovery. The Settlement was possible because, in PAGA Counsels' eyes, PAGA Counsel was able to persuade

[6] As detailed *infra,* at the time of filing this motion, Plaintiff's Counsel incurred $8,568.99 litigating this matter. Plaintiff will provide the Court with a final amount of litigation costs at the time of hearing on this motion.

Defendant that there was an appreciable risk that Plaintiff would prevail on the factual and legal issues underlying liability and overcome difficulties in proof as to monetary relief. JCL Dec., ¶ 41.

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

As detailed in PAGA Counsels' time and billing records submitted herewith, PAGA Counsels' current combined loadstar is $219,146.00. JCL Dec., ¶¶ 6, 48-53; Declaration of Shani Zakay ("Zakay Dec.") at ¶¶ 2-5; Declaration of Nicholas J. De Blouw ("BNBD Dec.") at ¶ 3. Thus, PAGA Counsels' fee request is equal to PAGA Counsel's loadstar with a *negative* multiplier of 2.8 – well below the 2.13 multiplier approved in *Laffitte* – and well within the recognized multiplier range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte,* approved 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte,* approved 33% fee award with cross-check lodestar multiplier of 1.7).

B. PAGA Counsel is Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs.

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include counsel's incurred expenses because those who benefit from their effort should share in the cost. *See*

Rider v. City of San Diego, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *see also Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded litigation costs for consultants, online legal research, copying, postage, long distance charges, travel expenses, filing fees, mediation fees and investigation fees). Prior to incurring costs for filing of this motion, PAGA Counsel collectively expended $8,568.99 prosecuting this action (JCL Law Firm, APC - $5,003.91, Zakay Law Group, APLC - $2,813.30 Blumenthal Nordrehaug Bhowmik De Blouw LLP - $751.78). JCL Dec. ¶¶ 7, 53; Zakay Dec. ¶ 6; BNBD Dec. ¶ 3. PAGA Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; factual and legal research charges; and mediation fees; which were all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed. JCL Dec. ¶¶ 7, 54.

VI. CONCLUSION

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

Dated: November 13, 2025

JCL LAW FIRM, APC

By: ____________________________
Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF