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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

JERRY VELYINES, individually and on behalf of himself and all others similarly situated, Plaintiff v. VOLT MANAGEMENT CORP., a Delaware corporation; GUSMER ENTERPRISES, INC., a New Jersey corporation; GXO LOGISTICS SUPPLY CHAIN, INC., a North Carolina Corporation; and DOES 1-50, inclusive, Defendant.	Case No. 22CECG01885 Assigned for All Purposes To: Hon. Kristi Culver Kapetan Dept.: 502 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE SETTLEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004** Date: October 15, 2026 Time: 3:30p.m. Dept: 501 Complaint Filed: November 2, 2021 Trial Date: None Set

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jerry Velyines ("Plaintiff")—individually and on behalf of other allegedly aggrieved employees, and acting as representatives of the State of California—brought two representative actions for civil penalties against his former employers, Defendants Volt Management Corp. ("Volt"); Gusmer Enterprises, Inc. ("Gusmer") and GXO Logistics Supply Chain Inc. ("GXO") (collectively, "Defendants") (together with Plaintiff, the "Parties") under the Private Attorneys General Act of 2004, California Labor Code § 2698 et seq. ("PAGA"). The above-entitled action is effectively a consolidation of the two representative actions filed.

A PAGA action is a type of qui tam proceeding that enables private citizens to assist the State of California in enforcing labor laws. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380–382.) In such an action, the State of California is the real party in interest. (*Id.* at 382.)

As required by statute, at the time of the filing of this Motion, the State of California was timely served with the executed Settlement Agreement and this Motion for Approval. (Declaration of James Hawkins in Support of Plaintiff's Motion for Approval of PAGA Settlement ("Hawkins Decl.") ¶ 63.)

Plaintiff's operative claims are brought on behalf of two PAGA Groups of current and former employees working for Defendants (collectively, the "Aggrieved Employees"). The Volt/Gusmer PAGA Group consists of all individuals who are or were previously employed by Volt as a nonexempt hourly employee and placed with Gusmer at its M St. Fresno site at any time between August 26, 2020 and March 28, 2025, or a date prior based on operation of Section 9 of the Settlement Agreement. (Ex. 1, PAGA Settlement Agreement ("Settlement"), ¶ 1.30.) The Volt/Gusmer PAGA Period extends from August 26, 2020 to March 28, 2025. (Settlement ¶ 1.19). The Volt/GXO PAGA Group consists of all individuals who are or previously were employed by Volt as non-exempt hourly employees and placed with GXO at its E. Central Ave. Fresno site at any time between November 2, 2020 and March 28, 2025. (Settlement ¶ 1.31). The Volt/GXO PAGA Period extends from November 2, 2020 to March 28, 2025. (Settlement ¶ 1.20).

Collectively in the two actions, Plaintiff sought PAGA penalties for Defendants' alleged Labor Code violations including, (1) failure to pay minimum wages; (2) failure to pay overtime owed; (3)

failure to provide lawful meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay wages during employment; (6) failure to timely pay wages owed upon separation from employment; (7) unlawful deductions; (8) knowing and intentional failure to comply with itemized wage statement provisions, (9) failure to pay vacation/time off, (10) sick leave violations, (11) failure to provide signed instrument upon request, (12) failure to timely produce personnel records upon request, (13) failure to reimburse necessary business expenses, and (14) failure to provide required information at the time of hiring. (Hawkins Dec. ¶ 7.)

After the Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (June 15, 2022) ("*Viking River*"), Plaintiff was required to submit his individual claims and individual PAGA claims to arbitration because of an arbitration agreement between the Parties. (Hawkins Decl. ¶ 10.) Plaintiff filed two separate arbitration proceedings against Volt—one relating to the Gusmer Action (American Arbitration Association Case No. 01-23-0001-7110) and a second relating to the GXO Action (American Arbitration Association Case No. 01-23-0001-2874). (*Id*. ¶ 11). After extensive investigation, research, formal and informal information exchange and discovery, the Parties decided to devote their resources to preparing for mediation. (*Id.* ¶ 11). On March 28, 2025, the Parties participated in an all-day mediation presided over by Kristin Rizzo, Esq. which ultimately led to a global resolution of Plaintiff's individual claims and an agreement to settle the Actions and the pending arbitrations. (*Id*. ¶ 12.)

With a comprehensive Settlement Agreement now in place, Plaintiff seeks—without opposition from Defendants—the Court's approval of a $170,000 non-reversionary settlement resolving all claims alleged in this action pursuant to the PAGA. (Settlement ¶ 3.1.) The settlement covers approximately 691 Aggrieved Employees and approximately 6,112 PAGA Pay Periods. (*Id* ¶ 4.1; Hawkins Decl. ¶ 18)

Following the proposed deductions of:

- Attorneys' Fees up to $56,666.67 (33% of the Gross Settlement Amount),
- Litigation costs of up to $12,000, but only $9,147.27 are being sought,
- Administration Expenses Payment up to $6,850.00 and
- A Service Award of $5,000 to Plaintiff for his service in pursuing the action and assisting with settlement efforts,

The balance of approximately $92,336.06 will be allocated as PAGA Penalties in accordance with the California Labor Code ("Labor Code") § 2699(i). (Settlement. ¶ 3.2.4.) Of this amount:

- Seventy-five percent (75%), or $69,252.04, will be paid to the California Labor and Workforce Development Agency ("LWDA"), and
- Twenty-five percent (25%), or $23,084.02 will be distributed to Aggrieved Employees on a pro rata basis based on the number of PAGA Pay Periods worked during the PAGA Period. (Settlement ¶¶ 3.2.4.1, 3.2.4.2.)

The penalties achieved are significant in light of PAGA's purposes and given that the Settlement does not release any Aggrieved Employee's individual damages or statutory claims. (See, Settlement ¶ 5.2.)

This settlement merits full approval because it furthers the statutory goals of PAGA:

- To deter future California Labor Code violations,
- To incentivize employer compliance with wage and hour laws,
- And to provide meaningful enforcement of California labor standards for the public benefit. (*See* Labor Code § 2698 et seq.; *Arias v. Superior Court* (2009) 46 Cal.4th 969, 980.)

Approval of the Settlement is governed by Labor Code section 2699(l)(2), which provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part." Consistent with California Supreme Court precedent, PAGA settlements are not subject to the requirements of class certification (such as numerosity, typicality, adequacy, or commonality), and there is no preliminary/final two-step process as is required in class actions. (*See Arias*, supra, at pp. 975–976; *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380–382.)

For these reasons—and those discussed in more detail below—Plaintiff respectfully requests that the Court grant approval of the PAGA Settlement as fair, reasonable, and in the public interest.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The Volt/GXO Action

On August 26, 2021, Plaintiff submitted a letter to the LWDA providing notice that he intended to commence an action for PAGA Penalties under Cal. Labor Code § 2698 et seq. against Volt Management Corporation, XPO Logistics Freight, Inc., and XPO Logistics Supply Chain, Inc. for (1) failure to pay minimum wages; (2) failure to pay overtime owed; (3) failure to provide lawful meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay wages during employment; (6) failure to timely pay wages owed upon separation from employment; (7) unlawful deductions; and (8) knowing and intentional failure to comply with itemized wage statement provisions. (Hawkins Decl. ¶ 3.) On February 11, 2022, Plaintiff submitted an amended PAGA letter to the LWDA to clarify the scope of the group that he would seek to represent and to ensure that it was clear that the claims alleged in the GXO Action were alleged against GXO Logistics Supply Chain, Inc. (Hawkins Dec. ¶ 5.)

On January 7, 2022, Plaintiff filed a Complaint in the Superior Court of California, County of Orange, commencing the case entitled *Velyines v. Volt Management Corp.,* Orange County Case No. 30-2022-01239925-CU-OE-CXC alleging a single cause of action under PAGA against Volt, GXO Logistics Supply Chain, Inc. and XPO Logistics Freight, Inc. for PAGA Penalties for the alleged Labor Code violations (the "GXO Action"). (*Id.* ¶ 4.)

On February 11, 2022, Plaintiff submitted an amended PAGA letter to the LWDA to further clarify the scope of the group that he would seek to represent. (*Id.* ¶ 5.)

The Volt/Gusmer Action

On August 26, 2021, Plaintiff also provided notice that he intended to commence an action for PAGA Penalties under Cal. Labor Code § 2698 et seq. against Volt Management Corporation and Gusmer Enterprises for violations he allegedly suffered while assigned to work at Gusmer's facilities, including (1) failure to pay minimum wages; (2) failure to pay overtime owed; (3) failure to provide lawful meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay wages during employment; (6) failure to timely pay wages owed upon separation from employment; (7) unlawful deductions; and (8) knowing and intentional failure to comply with itemized wage statement provisions. (Hawkins Decl. ¶ 6.)

On November 2, 2021, after sixty-five days without response from the LWDA, Plaintiff filed a Complaint in the Superior Court of California, County of Orange, commencing the case entitled *Velyines v. Volt Management Corp.*, Orange County Case No. 30-2021-01229245-CU-OE-CXC alleging a single cause of action under PAGA against Volt and Gusmer for PAGA Penalties for the alleged Labor Code violations (the "Gusmer Action"). The Gusmer Action was later transferred to the Superior Court of California, County of Fresno as Fresno Superior Court Case No. 22CECG01885. (*Id.* ¶ 8.)

Arbitration

After the actions were initiated, Defendants sought to enforce an arbitration agreement between the Parties based on the United States Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (June 15, 2022) ("*Viking River*"). (Hawkins Decl. ¶ 10.) The Parties entered into a stipulation to submit Plaintiff's individual claims and the individual portion of Plaintiff's PAGA claim to arbitration and adjudicated via binding individual arbitration under the terms of the Agreement. (Id.)

Plaintiff then initiated two separate arbitration proceedings against Volt—one relating to the *Gusmer* Action (American Arbitration Association Case No. 01-23-0001-7110) and a second relating to the *GXO* Action (American Arbitration Association Case No. 01-23-0001-2874). (Hawkins Decl., ¶ 11.) Both of the Court actions were stayed pending arbitration. (Id.) During the course of each of the arbitrations, the Parties engaged in extensive investigation, formal and informal discovery, and disclosures before electing to stay responses to formal discovery and deciding to devote their resources to preparing for mediation. (*Id.*)

On March 28, 2025, the Parties participated in an all-day mediation presided over by Kristin Rizzo, esq. which ultimately led to a global resolution of Plaintiff's claims and an agreement to settle the Actions and the pending arbitrations. Prior to mediation, Plaintiff obtained, through formal and informal discovery, data regarding the aggrieved employees, relevant policy documents, and time and pay data for Plaintiff and the Aggrieved Employees. (*Id.* ¶ 12.) The time and pay data was analyzed and a comprehensive damages model was created. These documents and the analysis informed the negotiations between counsel aided by Mediator Rizzo. (*Id.*)

On November 10, 2025, Plaintiff submitted an amended PAGA letter to the LWDA to further clarify the scope of the group that he would seek to represent. (*Id.* ¶ 13.)

On November 17, 2025, Plaintiff filed a consolidated PAGA complaint in the Gusmer Action which effectively consolidated the Gusmer Action and GXO Action, added GXO as a named defendant in the Actions and added additional facts and theories which were investigated in connection with mediation. The consolidated Complaint is the operative complaint in the Actions (the "Operative Complaint.") (*Id.* ¶ 13.)

III. THE PAGA AND ITS REQUIREMENTS

The Private Attorneys General Act of 2004 ("PAGA"), codified at Labor Code § 2698 *et seq*., provides a mechanism for aggrieved employees to recover civil penalties on behalf of the State of California for violations of the Labor Code committed by their employers. Before PAGA, the enforcement of such civil penalties was vested exclusively in California's labor enforcement agencies. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 980.)

However, recognizing both the limited resources of enforcement agencies and the prevalence of Labor Code violations, the California Legislature determined it was in the public interest to deputize private individuals as "private attorneys general" to enforce the law. (*Id.*) As the Legislature explained: "The only meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil penalties as provided in the Labor Code." (Stats. 2003, ch. 906, § 1(b).) Labor Code § 90.5(a) reinforces that California's labor laws exist to prevent employees from being "required or permitted to work under substandard unlawful conditions," and protect compliant employers from unfair competition by those who cut corners on labor standards. The Legislature further found that: Labor enforcement agencies had insufficient staffing, unlikely to keep pace with growth in the labor market and allowing private enforcement through PAGA was a necessary supplement—while retaining agency primacy over enforcement. (Stats. 2003, ch. 906, § 1(c).)

Under Labor Code § 2699(i), civil penalties recovered in a PAGA action are distributed: 75% to the LWDA for enforcement and education efforts, and 25% to the aggrieved employees.

Before bringing a PAGA action, the employee must satisfy notice and exhaustion requirements under Labor Code § 2699.3(a) by submitting written notice to both the employer and the LWDA identifying the specific Labor Code provisions allegedly violated. The LWDA may then investigate or respond; if it declines to investigate or does not act within the statutory period, the aggrieved employee may proceed. (*See* Lab. Code §§ 2699.3(a)(2), 2699(h)).

In this case, Plaintiff submitted timely two PAGA Notice Letters on August 26, 2021, and subsequent amendment on November 2, 2021, notifying the LWDA and Defendants of the alleged violations. The LWDA did not intervene, thereby authorizing Plaintiff to proceed with this enforcement action on behalf of the State. (Hawkins Decl. ¶ 9.) Plaintiff sent an amended notice to the LWDA on November 10, 2025. (Id. ¶ 13.) Thus, the entire recovery in this case—the $170,000 Gross Settlement Amount—is the result of enforcement efforts undertaken solely by Plaintiff and his counsels. The LWDA was provided with notice of the proposed Settlement Agreement and of this Motion, in accordance with Labor Code § 2699(l)(2). (Hawkins Decl. ¶ 63; *see also* Hawkins Decl. ex. 10, LWDA Settlement Submission Confirmation).

PAGA also requires that any settlement of a PAGA claim brought by an aggrieved employee must be approved by the Court. (*Ibid.*) In *Arias*, the California Supreme Court held that PAGA representative actions are not subject to class certification requirements, nor is notice required for other employees. (*Arias*, 46 Cal.4th at 975–76, 980–88). The plaintiff is deemed to act as a proxy or agent of California's labor law enforcement agencies. (*Id.* at 986).

Accordingly, the Court's role is to review the terms of the PAGA settlement to ensure they are fair, reasonable, and in the public interest, that this proposed Settlement fully satisfies, as discussed below.

IV. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES

The following is a summary of the principal terms of the Settlement Agreement.

A. TERMS OF THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES

The Settlement provides that Defendants will pay a non-reversionary Gross Settlement Amount of $170,000 (the "Gross Settlement Amount"), which is inclusive of:

- Civil penalties payable to the LWDA and Aggrieved Employees,

- Attorneys' fees and costs,
- Administration Expenses Payment, and
- Service Awards to Plaintiff (Settlement ¶¶ 3.2.1-3.2.4.)

Following deductions of up to $56,666.67 in attorneys' fees, up to $12,000 in litigation costs (costs sought are $9,147.27, which is below this agreed allocation), up to $6,850.00 in Administration Expenses Payment, and $5,000 in Service Award to the named Plaintiff, the remaining amount—approximately $92,336.06—constitutes the PAGA Penalties. (Settlement ¶¶ 3.1-3.2.3.)

Pursuant to Labor Code § 2699(i) and the terms of the Settlement:

- 75 percent of the PAGA Penalties (approximately $69,252.04) will be paid to the LWDA (Settlement ¶ 3.2.4.)
- The remaining 25 percent (approximately $23,084.02) will be distributed to the Aggrieved Employees on a pro-rata basis based on the number of PAGA Pay Periods worked during the PAGA Period. (Settlement ¶¶ 3.2.4.1.)

This structure complies with the statutory distribution scheme and provides meaningful recovery to the State and to employees, without the possibility of reversion to Defendant. After the void date, the Administrator shall transmit the funds represented by the uncashed and cancelled checks to cy pres recipient, St. Jude Children's Research Hospital. (Settlement ¶ 4.4.4).

Based on a review of its records to date, Defendants estimate there are 691 Aggrieved Employees. Defendants estimate that the Volt/Gusmer PAGA Group worked a total of 1,280 PAGA Pay Periods during the Volt/Gusmer PAGA Period and the Volt/GXO PAGA Group worked 4,832 PAGA Pay Periods during the Volt/GXO PAGA Period, for a total of 6,112 PAGA Pay Periods. (Settlement ¶ 4.1).

If the total number of PAGA Pay Periods is more than 10% higher as measured from the date of mediation (e.g. exceeds 6,723 pay periods), then Defendants shall have the option to either:

(1) truncate the Settlement PAGA Period so that the applicable PAGA Period ends on the date that the pay period count totals no more than 6,723; or

(2) permit the Gross Settlement Amount to be increased proportionally by the pay periods worked in excess of 10% (i.e. if the total pay periods increase by 11%, the GSA will increase by 1%).

(Ex. 1, Settlement ¶ 9.) Defendants shall confer and agree on which option to choose, and all Defendants must agree to option (2), if option (2) is selected. Defendants will allocate any increase to the Gross Settlement Amount proportionately to their respective percentage of the current GSA allocations. Defendants have represented that the escalator/truncation provision has not been triggered. (Hawkins Decl. ¶ 18.)

B. PAYMENT AND THE NOTICE

Defendants will fully fund the Gross Settlement Amount by transmitting the funds to the Administrator 30 days after the Effective Date. (Settlement ¶ 4.3). The "Effective Date" is defined as the date by which both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the Agreement and (b) the Judgment is final. The Judgment is final as of the day the Court enters judgment. (Settlement ¶ 1.9).

Within fourteen (14) days after Defendants fully funds the Gross Settlement Amount, the Settlement Administrator will issue payments to:

- The Aggrieved Employees (25% of the PAGA Penalties),
- The LWDA (75% of the PAGA Penalties),
- The Settlement Administrator (for the Administration Expenses Payment),
- Plaintiff (Service Awards), and
- PAGA Counsel (approved Attorneys' Fees and Costs).

(Settlement ¶ 4.4.) Disbursement of the PAGA Counsel Litigation Expenses will not precede disbursement of the Individual PAGA Payments (*Id.*)

Each Aggrieved Employee will have one hundred eighty (180) days from the date of issuance to cash their settlement checks. (Settlement ¶ 4.4.1.) For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to cy pres recipient, St. Jude Children's Research Hospital. (Settlement ¶ 4.4.4.)

C. SETTLEMENT ALLOCATION TO THE AGGRIEVED EMPLOYEES

As set forth in the Settlement Agreement, twenty-five percent (25%) of the PAGA Penalties will be allocated to the Aggrieved Employees. (Settlement ¶ 3.2.4.) According to data provided by Defendant, approximately 691 Aggrieved Employees will share in this allocation on a pro rata basis, based on the number of PAGA Pay Periods each individual worked during the applicable PAGA Period. (Settlement ¶¶ 3.2.4.1, 4.1.)

The Volt/Gusmer PAGA Period is defined in the Settlement Agreement to cover period from August 26, 2020 to March 28, 2025. (Settlement ¶1.19). The Volt/GXO PAGA Period refers to the period from November 2, 2020 to March 28, 2025. (Settlement ¶ 1.20). Both PAGA Periods are subject to end on a date prior to March 28, 2025, per the provisions of paragraph 9. (Settlement ¶ 9). Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (Settlement ¶ 3.2.4.1.)

D. THE RELEASE

The California Supreme Court has held that a judgment in "a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ... is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 985–986.)

Here, the release in the Settlement Agreement is narrowly tailored and binds only the LWDA, the State of California, and the Aggrieved Employees, and only as to PAGA civil penalty claims, notably the release does not waive the Aggrieved Employee's statutory or individual claims. The release is triggered upon Defendants' full funding of the Gross Settlement Amount. (Settlement ¶ 5.)

The release for the Aggrieved Employees, the LWDA, and State of California is as follows:

> The claims released by the LWDA, State of California, Plaintiff, and Aggrieved Employees are all claims for PAGA civil penalties that are alleged or which reasonably could have been alleged based on the facts alleged in the Operative Complaint and the August 26, 2021, November 2, 2021 and February 11, 2022 PAGA Notices to the LWDA. The Released PAGA Claims are those that accrued during the Volt/Gusmer PAGA Period for the Volt/Gusmer PAGA Group, and during the Volt/GXO PAGA Period for the Volt/GXO PAGA Group. The Released PAGA Claims shall include the release of claims for civil penalties under California Labor Code Sections 201, 202, 203, 204, 210, 212 216, 218, 221, 222, 223, 225.5, 226, 226.3, 226.7, 227.3, 233, 234, 246,

246.5, 432, 510, 512, 516, 551, 552, 558, 558.1, 1174, 1174.5, 1175, 1182.12, 1193, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and 2810.5.

(Settlement ¶5.1.)

Given these parameters, the release under PAGA is appropriately narrow and consistent with California law governing representative PAGA actions and related to the claims alleged and identified in the Plaintiff's PAGA Notice Letters. Accordingly, the Parties respectfully submit that the scope of the release is both reasonable and enforceable.

V. <u>THE SETTLEMENT IS FAIR AND REASONABLE AND WARRANTS COURT APPROVAL</u>

In 2016, the California Legislature amended PAGA to require that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part." (Lab. Code § 2699(l)(2).) The same provision requires that the proposed settlement be submitted to the LWDA at the same time it is submitted to the Court. Plaintiff has complied with this requirement. The Settlement Agreement and this Motion for Approval have been concurrently submitted to the LWDA. (Hawkins Decl. ¶ 63; Ex. 10.)

Beyond procedural compliance, courts must evaluate whether a proposed PAGA settlement is fair, reasonable, and consistent with PAGA's statutory purpose—namely, to deter Labor Code violations, incentivize employer compliance, and serve the State's interest in enforcing labor standards. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 980.) Courts have held that a PAGA settlement should be approved where it represents a genuine and informed compromise, particularly when the parties have participated in arm's-length negotiations (such as mediation), exchanged relevant data or discovery, and thoroughly evaluated liability, exposure, and litigation risks. (*See Moniz v. Adecco USA, Inc*. (2021) 72 Cal.App.5th 56, 76.)

Here, the Parties engaged in meaningful pre-settlement litigation efforts and informal discovery. Litigation, disclosure and discovery efforts were formally conducted during two separate arbitrations of Plaintiff's individual and PAGA claims. (Hawkins Decl. ¶ 11-12). Further document exchanges occurred during informal discovery prior to mediation in which Plaintiff received data regarding the Aggrieved Employees, policy documents and Plaintiff's time and pay data. PAGA Counsel reviewed this data and conducted an exposure analysis to assess penalties and litigation risks. The Parties then participated in a full-day private mediation with an experienced wage and hour mediator and reached a negotiated resolution only after extensive analysis and good-faith negotiations. (*Id*.)

The resulting non-reversionary $170,000 settlement reflects a fair and reasonable compromise. It accounts for Defendants' asserted defenses as well as the challenges of proving liability and penalties, and the Court's discretion to reduce penalties under Labor Code § 2699(e)(2). Of the PAGA Penalties, $69,252.04will be paid to the LWDA and $23,084.02 will be distributed to approximately 691 Aggrieved Employees on a pro rata basis based on approximately 6,112 PAGA Pay Periods. Given the strength of Plaintiff's claims, the risks of further litigation, and the real and meaningful recovery for both the State and employees, the proposed settlement is fair, adequate, reasonable, and in the public interest. Accordingly, the Parties respectfully request that the Court grant approval. (Hawkins Decl. ¶¶ 14, 18-26.)

A. EVALUATION OF THE PAGA SETTLEMENT

Although PAGA and its legislative history do not expressly require courts to evaluate settlements against the theoretical "maximum value" of the claims, courts routinely assess whether the penalties recovered are reasonable in light of the potential exposure and litigation risks. Here, even under that framework, the penalties provided under the Settlement are fair and reasonable.

Assuming that stacking were allowed, Plaintiff estimated that Defendants' maximum realistic potential penalty exposure was approximately $4.278 million based on approximately 6,112 PAGA Pay Periods and the statutory $100 per-pay-period penalty, assuming multiple violations could be proven and obtained each pay period. (Hawkins Decl. ¶ 21). Plaintiff's calculation is based upon the allegation that Defendants engaged in a systematic pattern of wage and hour violations, including: (1) failure to pay minimum wages and overtime, resulting from Defendants' time-clock policy that required employees to wait in line to clock in at the start of shifts and after meal breaks, causing off-the-clock work; (2) failure to properly calculate the regular rate of pay by excluding non-discretionary bonuses when computing overtime and meal period premium pay; (3) failure to provide compliant 30-minute meal periods, as employees were forced to shorten their breaks in order to clock back in and report to their workstations on time; (4) failure to timely pay all wages due upon separation from employment; (5) unlawful wage deductions arising from Defendants' practice of issuing wages via pay cards that subjected employees to unauthorized ATM fees and charges, in violation of Labor Code sections 212 and 221; (6) failure to reimburse employees for necessary business expenses, including personal protective equipment such as work gloves and N95 masks; and (7) failure to provide accurate, itemized wage statements reflecting all hours worked, applicable pay rates, deductions, and premium pay owed. (Hawkins Decl. ¶ 20.)

Plaintiff based this estimate on civil penalties available under Labor Code § 2699(f)(2), which generally provides $100 for an initial violation and $200 for each subsequent violation, per aggrieved employee, per pay period—citing *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157. While Plaintiff initially asserted that Defendants' notice of the alleged violations through the PAGA Notice Letters justified applying the $200 rate for each pay period after the notices were served, Plaintiff acknowledges that some courts have held that the $200 "subsequent violation" rate applies only after an employer has been put on notice of a violation by a court or commission, not merely by the PAGA letter. (See, e.g., *Amalgamated Transit Union Local 1309 v. Laidlaw Transit Servs.*, 2009 U.S. Dist. LEXIS 69842, *26 (C.D. Cal. 2009).) At all times, Defendants maintained that the higher $200 rate does not apply and that only the $100 rate is available. (Hawkins Decl. ¶ 22).

Moreover, this maximum amount does not take into account the various risks and potential defenses to the claims herein. Defendants denied the factual basis for Plaintiff's claims, disputed liability on multiple grounds, and asserted various defenses that created significant litigation risks. (See, Hawkins Decl. ¶ 23.) Defendants raised evidentiary hurdles, and argued that its policies were at all times fully compliant with California law and that, in practice, employees were trained to follow the law. Defendants argued that employees were paid for all hours worked, provided all lawful meal and rest periods and reimbursed for any necessary expenditures. Defendants contended that any alleged violations resulted from employee voluntary choice rather than company policy, and that employees were provided with multiple opportunities to advise the company of any issues with their pay, meal periods, and rest periods, among other items. In addition to disputing the factual basis for Plaintiff's claims, Defendant argued that Plaintiff's exposure analysis was vastly overstated because Defendant alleged that Plaintiff lacked evidence to prove a violation each pay period. (Hawkins Decl. ¶ 23.)

Moreover, Defendants argued that, even if violations occurred, the Court has discretion under

Labor Code § 2699(e)(2) to significantly reduce any penalties "based on the facts and circumstances of the particular case," including where an award might otherwise be "unjust, arbitrary and oppressive, or confiscatory." Defendants further assert that any violations were unintentional, isolated, or de minimis and that any penalties should be mitigated due to the absence of "willfulness" or based on their good-faith compliance efforts. (Hawkins Decl. ¶ 24.) They also argued that stacking penalties for multiple derivative violations (e.g., wage statements and final pay) would be improper and excessive. (Id. ¶ 24.)

Taking into consideration Defendant's defenses and potential evidentiary hurdles, Plaintiff estimated that Defendants' realistic maximum potential penalty exposure was approximately $586,514.40 based on approximately 6,112 PAGA Pay Periods and the statutory $100 per-pay-period penalty. (Hawkins Decl. ¶ 21, 23, 23.)

Despite these formidable defenses and the litigation risks, Plaintiff secured a $170,000 PAGA penalty fund—representing approximately 29% of the total realistic maximum exposure. (Hawkins Decl. ¶ 26). This result reflects a meaningful compromise following a thorough and extensive investigation, informal discovery, arbitration proceedings, and private mediation. PAGA Counsel analyzed time and pay data, reviewed Defendants' policies and procedures, and modeled potential penalty outcomes using the data provided for approximately 20% of the Aggrieved Employees during the relevant time period. (Hawkins Decl. ¶ 12, 22-26.)

The agreed-upon penalty fund ensures meaningful recovery to the State and affected employees while avoiding the uncertainty and cost of further litigation. It advances the goals of PAGA and is neither unjust, arbitrary, nor excessive. Accordingly, the Settlement is a fair and reasonable resolution of the disputed claims and warrants the Court's approval. (Hawkins Decl. ¶ 26.)

B. THE REQUEST SERVICE AWARD TO PLAINTIFF IS FAIR AND REASONABLE

Plaintiff respectfully requests that the Court approve a $5,000 Service Award to named Plaintiff in recognition of his time, effort, and commitment in prosecuting this Action on behalf of the State of California and Aggrieved Employees. The award is reasonable given Plaintiff's active role in the case, including assisting counsel in preparing pleadings and declarations, participating in discovery and arbitration-related proceedings, attending status conferences, reviewing Defendants' policy documents and payroll data, assisting during mediation, and providing input throughout the settlement negotiations. (Hawkins Decl. ¶ 28-29; See, Declaration of Jerry Velyines, generally.)

Courts routinely approve service or enhancement awards in PAGA-only cases to compensate plaintiffs who invest time and energy in advancing claims for the benefit of others. Such awards reflect the burden representative plaintiffs undertake and the critical role they play in enforcing the Labor Code where state resources may be limited. (See, e.g., *Gonzalez v. CoreCivic of Tennessee, LLC* (E.D. Cal. Mar. 30, 2022) 2022 WL 1050300, at *6 [approving $7,500 service award in PAGA-only settlement].)

Here, Plaintiff helped initiate this enforcement action, litigated status conferences, and supported resolution of the case following extensive discovery and analysis. These efforts ultimately led to a significant, non-reversionary $170,000 PAGA settlement. As the California Supreme Court has explained, a PAGA plaintiff "represents the same legal right and interest as state labor law enforcement agencies," and acts as a proxy for the State in vindicating public rights. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986; *Iskanian v. CLS Transp.* (2014) 59 Cal.4th 348, 387.)

Considering Plaintiff's meaningful contributions to this matter and the strong result obtained on behalf of the State and Aggrieved Employees, the requested $5,000 in total Service Awards is fair, reasonable, and appropriate. Accordingly, Plaintiff respectfully requests that the Court approve the award as part of the overall settlement. (Hawkins Decl. ¶ 29.)

VI. THE REQUESTED ATTORNEYS' FEES AND LITIGATION COSTS ARE FAIR AND REASONABLE

For their efforts and the risk they undertook in obtaining a common fund settlement that benefits the LWDA and Aggrieved Employees, the Parties allocated $56,666.67 to PAGA Counsel for reasonable attorneys' fees, which is one-third of the Gross Settlement Amount. Additionally, the Parties agreed to reimburse PAGA Counsel for their actual litigation costs. These fees are warranted under the law and within the range of fees commonly awarded in similar cases. (Hawkins Decl. ¶ 30.)

A. PAGA COUNSEL ARE ENTITLED TO RECOVER ATTORNEYS' FEES UNDER THE COMMON FUND DOCTRINE IN THIS QUI TAM ACTION

PAGA provides that a plaintiff is entitled to recover reasonable attorneys' fees, expenses, and costs under section 2699(g)(1) of the California Labor Code, which provides that, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 2699.3." As discussed below, in a qui tam action, reasonable attorney's fees and costs are typically awarded under the common fund doctrine where, as here, the litigation creates a common fund of money in a specific amount for the benefit of others.

"A qui tam action is one brought under a statute that allows a private person to sue as a private attorney general to recover damages or penalties, all or part of which will be paid to the government." *People ex rel. Stratham v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 491-492. "A qui tam action 'is a type of private attorney general lawsuit' (citation), in which 'the qui tam Plaintiffs stand in the shoes of the state or political subdivision (citation).'" *Id.* at 501. As the name of the PAGA statute makes clear (e.g., "Labor Code Private Attorney General Act"), a PAGA action is a qui tam action because the statute allows the employee plaintiff, acting as the proxy of the state's labor law enforcement agency, to sue his or her employer for Labor Code violations and recover civil penalties that otherwise would have been assessed and collected by the LWDA. *Iskanian*, 59 Cal.4th at 380. "A PAGA representative action is therefore a type of *qui tam* action." *Id.* at 382. Indeed, the majority of the civil penalties recovered in a PAGA action are paid to the state, with a smaller portion paid to the aggrieved employees (*e.g.*, 75% paid to the state; 25% paid to the aggrieved employees). See Labor Code § 2699(i).

As here, where a common fund is created in a qui tam action by the successful litigation of a plaintiff and his attorneys, the attorneys are entitled to recover their fees from the common fund. *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-91. In *Bank of America*, California taxpayers compelled the State Controller to enforce the Unclaimed Property Law against banks who were retaining accounts that should have been turned over to the State. Because of the success of the taxpayers' lawsuit, a common fund was created in favor of some depositors and the State of California. *Id.* When the taxpayers' attorneys sought recovery of their attorney's fees from the judgment under the common fund doctrine, the Controller opposed the request. The Court of Appeal affirmed the trial court's fee award to the taxpayers' counsel under the common fund doctrine stating:

> "Those benefiting from the recovery of the fund, in this case some depositors and eventually the People of the State of California, must bear their share of the

> cost of litigation. Fees for taxpayers' attorneys will be deducted from the judgment, and each claimant's share reduced proportionately. To the extent the judgment relies upon section 1021.5 for recovery of attorney fees, it must be modified to confine the award of fees to the common fund theory." *Id*. at p. 91.

In this case, the PAGA Settlement creates a common fund for the benefit of the employees and the State of California. Thus, these beneficiaries must bear their share of the costs and attorneys' fees, which fees and costs must be deducted from the settlement amount under the common fund theory. *Id*. Moreover, such fees are deducted as a percentage of the settlement amount. *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478-482; *Six (6) Mexican Workers v. Arizona Citrus Growers* (9th Cir. 1990) 904 F.2d 1301, 1311; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027; *Staton v. Boeing Co.*(9th Cir. 2003) 327 F.3d 938, 967.

The California Supreme Court upheld the use of the common fund theory of recovery for attorneys' fees in *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506. In *Laffitte*, the settlement created a common fund of $19 million dollars. This ruling is consistent with the Court's prior rulings recognizing that "when a number of persons are entitled in common to a specific fund, and an action brought by … Plaintiff for the benefit of all results in the creation or preservation of that fund, such … Plaintiff may be awarded attorneys' fees out of the fund." *Serrano III v. Priest* (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ["(A) lawyer who recovers a common fund . . . is entitled to reasonable attorneys' fees from the fund as a whole"]; *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375, 393-394 [discussing the acceptance of awarding attorneys' fees and expenses from a settlement where "litigation has conferred a substantial benefit on the members of an ascertainable class"]; see also *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26 ["(f)ee spreading occurs when a settlement or adjudication results in the establishment of a separate or so-called common fund for the benefit of the class."].)

Accordingly, the common fund doctrine allows a court to award attorneys' fees based upon a percentage of the total fund that is created for the satisfaction of beneficiaries' claims when the fund consists of a "certain or easily calculable sum of money." *Dunk v. Ford Motor, Co.* (1996) 48 Cal.App.4th 1794, 1809; *Jutkowitz v. Bourns, Inc.* (1981) 118 Cal.App.3d 102, 1,282.91 [application of the percentage of the fund recovery depended on "(t)he critical point" that "a fund was created from which attorneys' fees could be paid"]; A. Conte & H. Newberg, *Newberg on Class Actions*, § 14:6 (4th ed. 2002).

California law has long upheld, and continues to uphold, the percentage of the recovery method for awarding attorneys' fees where a fund is established. See e.g., *Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 726; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 563 ["fees based on a percentage of the benefits are in fact appropriate in large class actions…"]; *Sanders v. City of Los Angeles* (1970) 3 Cal.3d 252, 261, 263 [affirming award of attorneys' fee based on percentage of recovery]; *Chavez v. Netflix, Inc.*, *supra*, 162 Cal.App.4th at pp. 65-66; see also *Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.* (2005) 127 Cal.App.4th 387, 397 [the common fund doctrine is "frequently applied in class actions when the efforts of the attorney for the named class representatives produce monetary benefits for the entire class"]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 ["courts recognize two methods for calculating attorney fees in class actions: the lodestar/multiplier method and the percentage of recovery"].

Based on the foregoing, awarding attorneys' fees of one-third of the Gross Settlement Amount is fair and warranted in light of the PAGA settlement that was reached on behalf of the State of California and Aggrieved Employees. Accordingly, awarding fees on this basis in this amount is reasonable and appropriate. (Hawkins Decl. ¶¶ 30-60.)

B. <u>The Percentage Fee of the Gross Settlement Amount Is Fair And Reasonable</u>

An award of fees from the Gross Settlement Amount under the common fund doctrine prevents unjust enrichment of those who benefit from the common fund created through the successful efforts of PAGA Counsel and furthers the important goal of attracting competent counsel to handle representative actions enforcing minimum labor standards. *Laffitte*, 1 Cal.5th at 503. In affirming the use of the common fund doctrine in California, the California Supreme Court summarized the benefits of the percentage method of recovery stating: "The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation (citations)—convince us the percentage method is a valuable tool that should not be denied our trial courts." (*Id*.)

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

First, PAGA Counsel achieved a superb PAGA settlement in a case that involved highly contested issues that were primarily related to alleged off the clock work, small alleged underpayments, as well as limited meal and rest break violation rates.

Second, Plaintiff faced significant risks going forward with the litigation. As discussed above, Defendants raised various defenses and, as such, Plaintiff faced risky issues going forward with this litigation, and it would have taken significant time to realize any recovery in this action.

Third, PAGA Counsel are experienced representative PAGA action litigators having achieved large PAGA awards in the State of California (Hawkins Decl. ¶ 31-41, 45-48.) This experience and expertise, combined with the high quality of work performed by PAGA Counsel, resulted in the settlement achieved in this case.

Fourth, as discussed above and as set forth in the Declaration of PAGA Counsel James R. Hawkins, the request for attorneys' fees falls well within the norms accepted by state and federal courts in California in comparable wage and hour actions actually handled by PAGA Counsel.

For all of the above reasons, a fee award of one-third of the Gross Settlement Amount is fair and reasonable.

C. A LODESTAR CROSS-CHECK CONFIRMS THE REASONABLENESS OF THE FEE AWARD

Despite recognized limitations of the lodestar method, California and federal courts often find it useful as a "cross-check" on the reasonableness of percentage-based attorneys' fee requests.[1] *Lealao*,

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[1] In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and capable of manipulation. In addition, the lodestar creates inherent incentive to prolong the

supra, 82 Cal.App.4th at 46-47. Under this approach, the court calculates counsel's total lodestar by multiplying the hours reasonably expended by each attorney or legal staff member by their respective hourly rates. The resulting figure may then be adjusted using a multiplier based on factors such as the novelty or difficulty of the issues, the contingency risk, and the results achieved. (*See PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095–96; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Lealao*, supra, at 43.)

Here, PAGA Counsel requests fees in the amount of $56,666.67, representing one-third of the Gross Settlement Amount. As set forth in the declarations of PAGA Counsel submitted herewith, this fee represents a negative multiplier when cross-checked against their actual lodestar, which totals $209,630 The fee request is approximately 27% of the lodestar. The table below summarizes the lodestar calculation:

Lodestar Summary

	Experience	**Hourly Rate**	**Total Hours**	**Lodestar**
James Hawkins	29 years	$1,050	57.6	$60,480.00
Christina Lucio	18 years	$800	112.9	$90,320.00
Mitchell Murray	14 years	$725	17.4	$12,615.00
Associate Attorneys	3-4 years	$450	78.7	$35,415.00
Paralegal Staff		$200	54.0	$10,800.00
		TOTAL	320.6	$209,630

(Hawkins Decl. ¶ 51.)

The requested fee of $56,666.67 is fully supported by Plaintiff's Counsel's lodestar, which does not require the application of a positive multiplier to reach the requested amount. (Hawkins Decl. ¶¶ 45-51.) The requested fee is thus reasonable and appropriate under both the percentage-of-recovery method and the lodestar cross-check.

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litigation until sufficient hours have been expended. Herr, David F., *Manual for Complex Litigation*, § 14.121 (1988); *see also In re Activision* (N.D. Cal 1989) 723 F.Supp 1373.

The hourly rates requested by PAGA Counsel are consistent with rates approved by California courts for attorneys of similar skill, experience, and reputation in complex wage-and-hour matters. (See Hawkins Decl. ¶ 51-55, Exs. 7-8.) The starting point for determining a reasonable hourly rate is the prevailing market rate in the relevant legal community. (*See PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095; *Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 985.)

Thus, the hourly rates used in Plaintiff's lodestar calculation are well-supported by recent authority, and further confirm that the requested attorneys' fees are fair, reasonable, and consistent with market standards.

D. THE REQUESTED LITIGATION COSTS ARE FAIR AND REASONABLE

PAGA Counsel respectfully requests reimbursement of their actual out-of-pocket litigation expenses incurred in prosecuting this action. These costs were both reasonable and necessary to the effective representation of Plaintiff and the Aggrieved Employees. Courts routinely allow prevailing plaintiffs to recover such costs under the common fund doctrine, which applies equally to representative PAGA actions. (*See Serrano v. Priest* (1977) 20 Cal.3d 25, 35 [common fund doctrine permits recovery of fees and costs from the fund]; *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424 n.6 [litigation costs may be recovered for the same reasons supporting a fee award].)

Additionally, courts recognize that counsel is entitled to recover "those out-of-pocket expenses that would normally be charged to a fee-paying client." (*Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.) Such reimbursable expenses may include filing fees, mediation costs, court reporting, research, and related case administration expenses.

Here, the Settlement Agreement authorizes recovery of litigation costs of up to $12,000. (Settlement ¶ 3.2.1.) However, PAGA Counsel seeks reimbursement of $9,147.27, which reflects their actual and anticipated costs through the approval hearing. (Hawkins Decl. ¶ 61, Ex. 9 [cost bill].) These costs are modest in relation to the size and complexity of the case and are uncontested by Defendant.

Because the requested costs are well-documented, reasonably incurred, and fall below the cap set by the Settlement, Plaintiff respectfully requests that the Court approve reimbursement in the amount of $9,147.27. The remaining balance of the Gross Settlement Amount will be directed to the PAGA Penalties, benefiting the LWDA and Aggrieved Employees.

VII. SUBMISSION TO THE LWDA

As required by Labor Code § 2699(l)(2), Plaintiff has concurrently submitted the Settlement Agreement and this Motion for Approval to the California Labor and Workforce Development Agency. (Hawkins Decl. ¶ 63.) Proof of the electronic submission to the LWDA is attached as Exhibit 10 to the Hawkins Declaration.

VIII. THE SETTLEMENT ADMINISTRATOR

ILYM Group, Inc. ("ILYM ") has been selected to serve as the Settlement Administrator. ILYM will be responsible for issuing settlement payments, providing notice to Aggrieved Employees, handling tax reporting, and performing other standard administrative functions related to the Settlement. ILYM submitted an all-inclusive bid to administer the Settlement for $6,850.00, which will be paid from the Gross Settlement Amount. (Settlement ¶¶ 3.2.3, 7.1.)

IX. CONCLUSION

For the foregoing reasons, Plaintiff respectfully request (without opposition from Defendant) that the Court grant approval of the Parties' PAGA Settlement Agreement pursuant to Labor Code § 2699(l)(2). The Settlement is fair, adequate, and reasonable, and it advances the enforcement goals of the PAGA by providing meaningful relief to the State of California and the Aggrieved Employees.

Dated: May 21, 2026 **JAMES HAWKINS, APLC**

By: ______________________________
James R. Hawkins, Esq.
Christina Lucio, Esq.
Attorneys for Plaintiff and the Aggrieved Employees