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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF STANISLAUS

ERIC ROMAN, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

SUNOPTA GRAINS AND FOODS INC., a Minnesota corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: CV-21-005589

[Assigned to the Hon. Clifford Tong, Dept. 23]

PLAINTIFF'S NOTICE OF MOTION AND MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

Date: September 1, 2026
Time: 8:30 a.m.
Dept.: 23

Action Filed: October 12, 2021
Trial Date: N/A

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 1, 2026, at 8:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable Clifford Tong, judge presiding, in Department 23 of the above referenced Court, located at 801 10th Street, 4th Floor, Modesto, California 95354, Plaintiff Eric Roman ("Plaintiff") will seek an Order approving the concurrently filed PAGA Settlement Agreement ("Agreement"), pursuant to the procedures set forth in Labor Code § 2698, *et seq*.

This motion will be based on this notice of motion, the attached memorandum of points and authorities, the accompanying declarations of Larry W. Lee, Max W. Gavron, and Plaintiff Eric Roman, upon the oral arguments of counsel (should there be any), and on the complete records and file herein.

DATED: June 9, 2026

DIVERSITY LAW GROUP, P.C.

By:______________________________

Max W. Gavron

Attorneys for Plaintiff and the Class

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I. INTRODUCTION

Pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code § 2698, *et seq.*, Plaintiff Eric Roman ("Plaintiff") hereby moves the Court for an order approving the settlement as set forth in the PAGA Settlement Agreement ("Agreement").[1]

The operative Complaint in this case alleges that Defendant SunOpta Grains and Foods Inc. ("Defendant") (together with Plaintiff, the "Parties") violated the PAGA by: (i) failing to provide off-duty rest breaks and/or pay rest period premium compensation in lieu thereof, in violation of Labor Code §§ 226.7 and 512; (ii) failing to pay employees sick pay at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201, 202, 203, 204, and 246; (iii) failing to provide accurate itemized wage statements, in violation of Labor Code § 226; (iv) issuing payment of final wages to employees in the form of a pay card without written authorization, which required employees to incur fees to use, was not fully cashable, and was not usable at all financial institutions, in violation of Labor Code §§ 201, 202, 203, 212 and 213; and (v) failing to pay final wages in a timely manner to separated employees as a result of the issuance of pay cards and underpayment and/or nonpayment of sick pay wages and meal and rest period premiums, in violation of Labor Code §§ 201, 202, and 203. With respect to the afore-mentioned PAGA claims, Plaintiff seeks to recover civil penalties against Defendant on behalf of the State of California and other similarly aggrieved employees.

As will be explained in further detail below, based on the California Supreme Court's opinion in *Arias v. Superior Court* (2009) 46 Cal. 4th 969 and *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, Plaintiff can seek appropriate civil penalties as called for under the PAGA, on behalf of the State of California and other similarly situated aggrieved employees, without seeking class certification or meeting the requirements of class certification (*i.e.*, numerosity, typicality, commonality and adequacy). As such, while the PAGA settlement

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[1] A true and correct copy of the Agreement is attached to the Declaration of Max W. Gavron ("Gavron Decl.") as **Exhibit A**. Unless otherwise indicated, capitalized terms used herein have the same meaning as defined in the Agreement.

reached herein is on behalf of the State of California and other aggrieved employees, the usual two-step preliminary and final approval process is not required. Rather, as called for under Labor Code § 2699(l), all that is required is an approval by this Court of the settlement of the PAGA claim by the Parties.

The Parties have reached such an agreement, and thus now seek this Court's approval of the settlement which provides for the payment of civil penalties under the PAGA. As demonstrated below, the proposed settlement warrants the Court's approval. Significantly, this settlement was reached after extensive investigation and the exchange of formal and informal discovery, including data pertaining to the aggrieved employees, motion practice, appellate practice, and exchange of documents pertaining to Defendant's relevant payroll policies. The Parties also participated in two separate full-day mediations, after which the Parties were ultimately able to reach this settlement.

Pursuant to the terms of the Parties' proposed Agreement, Defendant will pay the total amount of $340,000.00 (the "Gross Settlement Amount"). This amount encompasses a payment of attorneys' fees to Plaintiff's counsel ("PAGA Counsel") in the amount of $119,000.00, PAGA Counsel's litigation costs of up to $15,000.00,[2] an enhancement award to Plaintiff in the amount of $10,000.00, and settlement administration costs of up to $8,500.00. Assuming the Court grants the foregoing amounts in full, the net amount ("PAGA Penalties") totals approximately $187,500.00. Pursuant to the PAGA, 75%[3] of the PAGA Penalties, or $140,625.00, will be paid to the California Labor & Workforce Development Agency ("LWDA") as civil penalties ("LWDA PAGA Payment"), and 25% of the PAGA Penalties, or $46,875.00, will be paid to the aggrieved employees. The aggrieved employees include "all current and former non-exempt

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[2] PAGA Counsel's actual litigation costs total $11,164.61, which is less than the amount allotted in the Agreement. *See* Gavron Decl. ¶ 49; Ex. C (Cost Report). The difference will be included in the PAGA Penalties to be distributed to the LWDA and Allegedly Aggrieved Employees.

[3] While the PAGA was recently amended to revise this distribution allocation between the LWDA and aggrieved employees, this case is subject to the prior version of the statute because of when the PAGA Notice was filed, thus supporting a distribution of 75% to the LWDA and 25% to the Allegedly Aggrieved Employees.

California employees of Defendant from September 24, 2020, through December 31, 2025" ("Allegedly Aggrieved Employees"). Agreement ¶ 1.4.

The proposed settlement also has a limited and tailored release for Allegedly Aggrieved Employees that does not release any of their underlying wage claims, which Defendant contends are subject to arbitration agreements with class waivers. Specifically, the Allegedly Aggrieved Employees are releasing "all claims for civil penalties under the Private Attorneys' General Act ("PAGA") alleged in the operative complaint premised on Labor Code §§ 201, 202, 203, 204, 212, 213, 226, 226.7, 246, and 512, as well as all claims that could have reasonably been pled arising out of the same operative facts" ("Released PAGA Claims"). Agreement ¶ 1.27.

In light of the above, the proposed settlement constitutes an adequate, fair, and reasonable settlement on behalf of the LWDA and Allegedly Aggrieved Employees and accomplishes the goals of PAGA. Thus, the Court should approve the settlement.

II. PROCEDURAL HISTORY

A. Summary of the Litigation and Settlement

1. Plaintiff's Claims and Allegations

Plaintiff asserts claims against Defendant under the PAGA based on Defendant's failure to provide proper rest periods or pay premiums in lieu thereof, failure to pay overtime wages at the correct regular rate of pay, failure to provide accurate itemized wage statements, issuance of final wages in the form of a paycard without written authorization, and failure to pay all wages due and owing upon separation of employment. Gavron Decl. ¶ 13.

With respect to Plaintiff's claims under Labor Code §§ 201, 202, 203, 204, 226.7, and 512, Plaintiff alleges that employees were required to remain on work premises and respond to calls on company-issued radios during rest breaks. *Id*. ¶ 14. Moreover, employees were not paid rest period premium compensation at the regular rate of pay in lieu of receiving proper rest breaks. *Id*.

With respect to Plaintiff's claims under Labor Code §§ 201, 202, 203, 204, 226.7, and 246, Plaintiff alleges that Defendant failed to pay rest break premiums and sick pay at the regular rate of pay, incorporating all non-discretionary pay into the calculation of the hourly rate. *Id*. ¶

15.

With respect to Plaintiff's claims under Labor Code §§ 201, 202, 203, 212, and 213, Plaintiff alleges that Defendant issued payment of final wages to Plaintiff via a paycard without written authorization. *Id*. ¶ 16. Said paycard was not fully cashable and included fees with use, and as such, Plaintiff did not receive all final wages owed to her. *Id*.

As a result of the above, Plaintiff alleges that the wage statements provided failed to display accurate gross and net wages earned and accurate hourly rates of pay. *Id*. ¶ 17.

2. Procedural History of the Key Pleadings

On or about September 24, 2021, Plaintiff submitted written notice under Labor Code § 2699.3 to the LWDA and Defendant. As set forth in the notice, Plaintiff alleged that Defendant violated California Labor Code §§ 201, 202, 203, 204, 212, 213, 226, 226.7, 246, and 512, based on the theories alleged above. Gavron Decl. ¶ 2.

On October 12, 2021, Plaintiff filed a complaint in the Superior Court of California, County of Stanislaus, alleging causes of action for: (1) violation of Labor Code § 226.7; (2) violation of Labor Code §§ 201, 202, and 203; (3) violation of Labor Code § 226; and (4) violation of Business and Professions Code § 17200, *et seq.* (the "Action"). *Id*. ¶ 3.

On December 22, 2021, Plaintiff filed his First Amended Complaint, adding a fifth cause of action for violation of the PAGA. *Id*. ¶ 4. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint.").

On September 7, 2022, Defendant moved to compel Plaintiff's PAGA cause of action to individual arbitration and dismiss the class claims. *Id*. ¶ 5. Plaintiff's class claims were subsequently dismissed pursuant to a class waiver in the Parties' arbitration agreement, Plaintiff's individual PAGA claims were compelled to arbitration, and Plaintiff's representative PAGA claims were stayed pending the outcome of the arbitration proceedings. *Id.*

On August 22, 2022, Plaintiff filed a Demand for Arbitration of his individual PAGA claims with JAMS. *Id*. ¶ 6. The Parties engaged in further proceedings before JAMS, including the exchange of written discovery. *Id*. ¶ 6.

On or about June 20, 2024, Plaintiff filed a notice of withdrawal of his claims from arbitration pursuant to Code of Civil Procedure Section 1281.98. *Id*. ¶ 7. The trial court granted Plaintiff's motion on August 15, 2024. *Id*.

On September 30, 2024, Defendant filed an appeal of the order granting Plaintiff's motion for withdrawal of claims in arbitration. *Id*. ¶ 8.

3. The Parties Agree to Mediation

In about February 2024, the Parties agreed to participate in mediation with Daniel J. Turner, Esq. of Judicate West. Gavron Decl. ¶ 9. The Parties also agreed to conduct informal discovery to facilitate effective mediation. *Id.* As part of informal discovery, Defendant provided Plaintiff with the number of aggrieved employees, the number of pay periods at issue, sample time and payroll records, and relevant payroll policies. *Id*. ¶ 9. The data provided by Defendant allowed Plaintiff to analyze liability and calculate Defendant's potential exposure. *Id*.

The Parties participated in mediation with Mr. Turner on February 27, 2024. *Id*. ¶ 10. Despite vigorous arm's length negotiations, the Parties were unable to reach an agreement and continued arbitration proceedings. *Id*.

After further litigation in the trial and appellate courts, the Parties agreed to re-engage in settlement discussions. *Id*. ¶ 11.

On February 25, 2025, Parties participated in a mediation with Ari Stiller, Esq. through the Court's mediation program. *Id*. ¶ 12. During the mediation, the Parties spoke at length about the strengths and weaknesses of each side's claims and defenses and the scope of Defendant's liability. However, the matter did not resolve. Through continued negotiations, the Parties were ultimately able to reach the current settlement. Plaintiff also negotiated an individual confidential settlement regarding Plaintiff's individual Labor Code claims that he asserted in arbitration. *Id*.

III. <u>SUMMARY OF THE PROPOSED PAGA SETTLEMENT</u>

The material terms of the settlement are described below and set forth in detail in the Settlement Agreement. Should the Court approve the Settlement, Defendant will inform the Court of Appeal and seek dismissal of the pending appeal. Agreement ¶ 6.4.

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A. The Aggrieved Employees

The aggrieved employees affected by this settlement include “all current and former non-exempt California employees of Defendant from September 24, 2020, through December 31, 2025.” Agreement ¶ 1.4. The PAGA Period in this matter is the period from September 24, 2020, through December 31, 2025. *Id*. ¶ 1.21. Based upon Defendant’s records, Defendant represents that there are approximately 388 Allegedly Aggrieved Employees and approximately 19,837 pay periods at issue through November 30, 2025. Gavron Decl. ¶ 20; Agreement ¶¶ 4.1, 8. Should the number of pay periods worked by Allegedly Aggrieved Employees increase beyond five percent (5%) during the period of November 30, 2025, through December 31, 2025, then Defendant may elect to either: (a) increase the Gross Settlement Amount on a *pro rata* basis equal to the percentage increase in the number of pay periods worked by the Allegedly Aggrieved Employees above 5% (*e.g*., if the number of pay periods increases by 6%, the Gross Settlement Amount will increase by 1%), or (b) shorten the release period to an earlier date at which only 19,837 pay periods plus an additional 992 pay periods are covered by the PAGA Period (*i.e.*, the date on which the PAGA Pay Periods are equal to 20,829). Agreement ¶ 4.1. As of the date of this filing, Defendant has confirmed that the number of employees and/or pay periods provided for purposes of negotiating the settlement have not changed. Gavron Decl. ¶ 21.

B. Gross Settlement Amount and Allocation

The Agreement requires Defendant to pay the amount of Three Hundred Forty Thousand Dollars ($340,000.00) (the “Gross Settlement Amount”) for the resolution of this Action. Agreement ¶ 1.12. The Gross Settlement Amount includes the civil penalties pursuant to the PAGA to be paid to the LWDA and aggrieved employees, a PAGA Representative Enhancement Award to Plaintiff, PAGA Counsel’s attorneys’ fees and costs, and settlement administration expenses. *Id*.

The balance of the Gross Settlement Amount remaining after deduction of the Court-approved PAGA Representative Enhancement Award, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and Administration Expenses Payment, will be available for distribution to the LWDA and Allegedly Aggrieved Employees. *Id*. ¶ 3.2. Pursuant to the

PAGA, seventy-five percent (75%) of the PAGA Penalties, or approximately $187,500.00, will be paid to the LWDA. *Id*. ¶ 3.2.4; Gavron Decl. ¶ 23. The remaining twenty-five percent (25%), or approximately $46,875.00, will be distributed to Allegedly Aggrieved Employees as Individual PAGA Payments, based on the number of pay periods each individual Allegedly Aggrieved Employee worked during the PAGA Period. Agreement ¶¶ 3.2.4, 3.2.4.1. As noted above, these estimates are conservative and based on the amounts allocated in the settlement agreement. The distribution to the LWDA and Aggrieved Employees will actually likely be $143,501.54 and $47,833.85 respectively, based on the costs actually incurred and sought by counsel as reimbursement, as opposed to the maximums allocated in the Agreement.

Based on the number of Allegedly Aggrieved Employees, employees will be entitled to recover, on average, approximately **$120.81** each. Gavron Decl. ¶ 24. The amount each particular Allegedly Aggrieved Employee will be entitled to recover may be greater or lower than this average depending on the number of pay periods he or she worked during the PAGA Period. *Id*. This is fair, as it directly allocates greater penalties to individual Allegedly Aggrieved Employees who were employed longer and thus allegedly suffered greater harm. *Id*.

With respect to PAGA Counsel's attorneys' fees and costs, Defendant does not object to PAGA Counsel's request for attorneys' fees of approximately thirty-five percent (35%) of the Gross Settlement Amount, *i.e.*, One Hundred Nineteen Thousand Dollars ($119,000.00). Agreement ¶ 3.2.1. Although the Agreement provides for a payment of up to $15,000.00 in litigation costs, Plaintiff only seeks $11,164.61 of that amount. *Id*.; Gavron Decl. ¶ 49, Ex. C.

In addition, the Agreement contemplates an enhancement award to Plaintiff in recognition of his efforts in prosecuting this Action as PAGA representative on behalf of the State of California and other aggrieved employees, in the amount of up to $10,000.00. Agreement ¶ 3.2.3.

Finally, the Agreement provides for the payment of the fees and expenses reasonably incurred by the Administrator for administration of this PAGA settlement. *Id.* ¶ 1.3. The Parties have agreed to utilize Phoenix Settlement Administrators, a well-known third-party settlement administrator, to administer the settlement. *Id*. ¶ 1.2.

IV. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED

A. PAGA Overview

Prior to the enactment of PAGA, many of the penalties provided against employers for violations of certain Labor Code provisions were solely within the province of the California Department of Labor to seek, enforce, and assess. *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980. However, due to the lack of financing to California's agencies and the potential number of Labor Code violations by California employers, the California Legislature found that it was in the public interest to allow aggrieved employees to act as private attorneys general and to enforce and recover penalties on behalf of other similarly situated aggrieved employees for Labor Code violations committed by their employers. *Id*. Thus, PAGA was enacted to allow such enforcement and recovery by private individuals who have been aggrieved by their employers. Under the PAGA, 75% of any penalties recovered under PAGA by an aggrieved employee is to be paid to the state agency, the LWDA, and the remaining 25% is to be shared amongst the aggrieved employees. Cal. Lab. Code § 2699, subd. (i).

In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee must first provide written notice to the LWDA and the employer of the particular Labor Code violation(s) alleged to have been violated by the employer. *See* Cal. Labor Code § 2699.3, subd. (a)(1). Once the LWDA notifies the aggrieved employee that it does not intend to investigate the alleged violations or the time for the LWDA to investigate the violations passes, the aggrieved employee is allowed to proceed in a civil action against the employer on behalf of all other similarly aggrieved employees. *See* Cal. Lab. Code § 2699.3, subd. (a)(2)(A).

In 2009, the California Supreme Court considered the issue of whether an aggrieved employee who brings a PAGA claim needs to meet class certification requirements. *Arias*, 46 Cal. 4th at p. 976. After a substantial review of the legislative history of PAGA, the California Supreme Court held that an aggrieved employee's representative action brought on behalf of other similarly aggrieved employees against an employer for PAGA violations do not need to meet the requirements for class certification. *Id*. at pp. 975; 980-88. As held by the California Supreme Court, a plaintiff bringing suit under PAGA does so as the proxy or agent of

California's labor law enforcement agencies. *Id*. at p. 986. Because an employee's PAGA action functions as a substitute for an action brought by the government itself, a judgment in the PAGA action binds all those who would be bound by a judgment in an action brought by the government. *Id*.

B. Class Action Settlement Standards Do Not Govern the Settlement Approval Process for PAGA Claims

In class action cases, the purpose of the Court's preliminary evaluation of the settlement is to determine whether it is within the "range of reasonableness," and thus whether notice to the class of the terms and conditions of the settlement, and the scheduling of a formal fairness hearing, are worthwhile. *See* Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.25, *et seq.* and § 13.64 (4th ed. 2002 and Supp. 2004) ("*Newberg*"). The "judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing." *Manual for Complex Litigation, Fourth* § 21.632 (Fed. Jud. Ctr., 4th ed. 2004). To make the preliminary fairness determination, courts may consider several relevant factors, including "the strength of the plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status through trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; [and] the experience and views of counsel…." *See Hanlon v. Chrysler Corp*. (9th Cir. 1998) 150 F.3d 1011, 1026.

By contrast, court approval of PAGA settlements is governed by section 2699(1) of the Labor Code, which provides, in relevant part: "The court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." The parties are not obligated to "satisfy class action requirements," including the standards for class action settlement approval. *Arias*, 46 Cal. 4th at pp. 980-988 (affirming lower court's holding that "plaintiff need not satisfy class action requirements" to assert a PAGA claim).

Notably, unlike the class action settlement approval process, there is also no statutory mechanism for this Court to conduct a two-step settlement approval review. Cal. Lab. Code §

2699, subd. (1). In addition, "[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim" or "contest a settlement, if any, reached between the parties." *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. Apr. 2, 2010) 2010 WL 1340777 at p. *13.

C. The Settlement is Reasonable and Effectuates PAGA's Objectives

The Court's focus in a PAGA case is not the amount that aggrieved employees will ultimately receive as a result of a settlement, but instead, on whether the total settlement amount achieves PAGA's objectives. Under PAGA, the penalties recovered are meant to supplement agency funding for education and enforcement purposes. *See* Cal. Lab. Code § 2699, subd. (i).

Here, the settlement represents an excellent recovery for the small group of Aggrieved Employees and the State, and thus the settlement certainly effectuates PAGA's purpose. The settlement accomplishes PAGA's primary objective to enforce the Labor Code. *See O'Connor v. Uber Techs, Inc*. (N.D. Cal. 2016) 2016 WL 4398271, at p. *18 (noting that deterring noncompliance with the Labor Code is one of PAGA's objectives). The settlement is also consistent with the State's public policy favoring resolution of disputes. "California law favors the settlement of disputes as our high court clarified in *Neary*[]. Settlement is efficient; it reduces costs, saves resources, and minimizes court congestion. [] The parties are best positioned to understand their interests and resolve a dispute in a mutually beneficial manner without court intervention into the settlement." *Consumer Advocacy Group, Inc. v. Kintetsu* (2006) 141 Cal. App. 4th 46, 62-63 (citing *Neary v. Regents of Univ. of Cal*. (1992) 3 Cal. 4th 273, 277- 278).

D. The Scope of the Release is Appropriately Limited

If approved, the settlement would release the Released Parties from "all claims for civil penalties under the Private Attorneys' General Act ("PAGA") alleged in the operative complaint premised on Labor Code §§ 201, 202, 203, 204, 212, 213, 226, 226.7, 246, and 512, as well as all claims that could have reasonably been pled arising out of the same operative facts." Agreement ¶¶ 1.27, 5.2. The settlement would not impact Allegedly Aggrieved Employees' ability to pursue any Labor Code claims that are not predicated on PAGA. Therefore, the limited scope of the release also supports approval.

Because an aggrieved employee's PAGA action is a substitute for an action brought by the government, "judgment in [a PAGA] action 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*, 46 Cal. 4th at p. 986. However, "the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." *Id.* at p. 987; *see also*, Lab. Code § 2699(g)(l) (non-party aggrieved employees retain all rights "to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part").

E. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of Litigation

Although Plaintiff is reasonably confident that he would prevail at trial, proceeding in litigation entails significant risk on the underlying merits of Plaintiff's theory, in addition to the still-developing law under PAGA. Gavron Decl. ¶ 37.

1. Plaintiff's Claims are Contested

Plaintiff asserts that his representative PAGA claim is based on the allegations that Defendant failed to provide off-duty rest breaks or pay rest period premium compensation, failed to pay employees sick pay at the correct regular rate of pay, failed to provide accurate itemized wage statements, issued payment of final wages to employees in the form of a pay card, and failed to pay final wages in a timely manner to separated employees. Gavron Decl. ¶ 26.

Defendant has denied violation of any applicable laws and liability for any claims asserted in the Action. Defendant has argued, among other things, that it maintained facially compliant wage and hour policies that precluded any recovery by Plaintiff. Gavron Decl. ¶ 27. For example, Defendant argued that because it maintained and enforced legally compliant written policies, which satisfied *Brinker*, that, if proven, any failure to provide a legally compliant rest period by employees was isolated and/or infrequent. *See Brinker Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012) ("On the other hand, the employer is not obligated to police meal breaks and ensure no work thereafter is performed."). In contrast, Plaintiff argued that employees were often interrupted during their breaks and/or not permitted to take them within the time constraints provided by law and that they were often required to respond to communication devices during their breaks. Gavron Decl. ¶ 27.

With regard to Plaintiff's sick pay theory of liability, Defendant argued that, even if successful, any exposure on this claim would be limited given the small number of pay periods during which an employee earned sick pay wages and non-discretionary remuneration. Gavron Decl. ¶ 28.

Finally, Plaintiff's derivative failure to pay final wages and wage statement claims would be subject to a good faith defense, which could potentially extinguish the possibility of these penalties altogether. *Hill v. Walmart, Inc.*, 32 F. 4th 811 (9th Cir. 2022) (upholding good faith defense because defendant reasonably believed wages were not due and owing at time of separation of employment); *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1087 (2024) (upholding good faith defense to imposition of Section 226 penalties).

Moreover, Defendant argued that even if the Court ultimately found its employment practices violative of the Labor Code, the Court has discretion under PAGA to reduce the maximum allowable PAGA penalties at its discretion. Gavron Decl. ¶ 30. Defendant may have sought summary judgment on this issue or proceeded to trial or arbitration. Should Defendant have prevailed, the State of California and aggrieved employees would have been left with even less of a recovery. Even if Plaintiff prevailed at trial, Defendant could have appealed again, which would have continued litigation in this action for several additional years, thus depriving the State and aggrieved employees of any recovery for the foreseeable future.

2. Recovery of Penalties After Trial

Defendant has represented that there are approximately 388 individuals who comprise the Allegedly Aggrieved Employees and approximately 19,837 pay periods at issue during the period of September 24, 2020, through November 30, 2025. Gavron Decl. ¶ 31; Agreement ¶¶ 8, 4.1. Based on the data provided by Defendant, Plaintiff has calculated the reasonable maximum exposure for all PAGA claims to range between $1,983,700 if the Court were to award a $100 penalty for each pay period encompassed by the proposed settlement, or more if the Court were to "stack" multiple penalties for violations that occurred during the same pay period. Gavron Decl. ¶ 31. However, even if Plaintiff was to prevail on the merits of the PAGA claim, the potential recovery is uncertain. Pursuant to Labor Code § 2699(f)(2), the Court can decline to award the full amount of PAGA penalties where "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." Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 517, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. Upon review, the Court of Appeal found such reduction to be proper. *Id*. at p. 539; *see O'Connor*, 2016 WL 4398271, at p. *17 (noting that even if PAGA penalties amounted to $1 billion, such award "could well be reduced, as a court may reduce the penalty when to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory").

Here, Plaintiff maintains that there does not exist any reason for reducing PAGA penalties. However, Plaintiff is aware that Defendant could make a compelling argument to the contrary. Even if there were a finding of liability, Defendant has argued that these violations were not intentional violations of the law and did not occur during every pay period or apply to all employees. As such, the Court may be disinclined to award full PAGA penalties. On this basis, the Court again may find there is reason to significantly reduce the PAGA penalties awarded. If the Court were to reduce the PAGA penalties, as was done in *Carrington*, the realistic exposure would be approximately $198,370.00.

The Court's assessment of the proposed settlement must take into account that any penalties awarded may be subject to substantial reduction. When this is considered, in conjunction with the history of PAGA case law and settlements, and the fact that Plaintiff may recover nothing, the proposed settlement is patently reasonable. Settlement for this reduced value allows for the distribution of penalties in an amount which accounts for the risk of continued litigation, and Defendant's likely arguments that higher penalties would have been confiscatory. It also sufficiently deters Defendant from engaging in similar conduct in the future, which is one of the primary goals of PAGA.

The proposed settlement exceeds PAGA settlements that courts have approved in other cases, when considered as a percentage of the overall settlement value of the case. If the Court were to award $100 per pay period encompassed by the settlement, the proposed settlement amounts to approximately 17.5% of the potential maximum of PAGA penalties, which exceeds other PAGA settlements approved by courts — including those that provide for less than the one percent allocation to PAGA penalties. Gavron Decl. ¶ 36; *see, e.g.*, *Hopson v. Hanesbrands Inc*. (N.D. Cal. 2009) 2009 WL 928133, p. *9 (approving total PAGA allocation that was 0.49% of $408,420.32 gross settlement; *Moore v. PetSmart, Inc.* (N.D. Cal. 2015) 2015 WL 5439000, p. *8 (approving total PAGA allocation that was 0.5% of $10,000,000 gross settlement); *Lusby v. Gamestop Inc*. (N.D. Cal. 2013) 97 F.R.D. 400, 407 (approving total PAGA allocation that was 0.67% of $750,000 gross settlement). If the Court were to stack multiple penalties per pay period, then the percentage would be lower; however, still within a reasonable range of settlement. Gavron Decl. ¶ 36.

A PAGA allocation need not represent any particular percentage of the overall settlement value in order to secure court approval, and courts routinely approve PAGA settlements representing only a tiny fraction of the overall settlement value. The proposed Gross Settlement Amount in this case exceeds the percentage of overall settlement value of the typical PAGA settlement and thus, the settlement should be approved by the Court.

F. The Attorneys' Fees and Costs are Reasonable

PAGA Counsel seek a fee award calculated at thirty-five percent (35%) of the Gross Settlement Amount for the successful prosecution and resolution of this action. PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. Cal. Lab. Code § 2699, subd. (g). Similar to awarding fees in a class action, California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees for representative actions is to use a percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254; *Serrano v. Priest* (1977) 20 Cal. 3d 25, 34 ("*Serrano III*"); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air*

West, Inc. (9th Cir. 1997) 557 F.2d 759, 769. The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at p. 769.

The Common Fund doctrine is predicated on the principle of preventing unjust enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits, he may require the passive beneficiaries to compensate those who created the fund. Both California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at p. 35; *Vincent*, 557 F.2d at p. 769. Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." The reasons for applying the common fund doctrine include: "fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful." *Id*.

The California Supreme Court has provided guidance regarding the award of attorneys' fees in wage and hour class action settlements. Under California law, the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created."). Under the percentage of the fund method, the Court's objective remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner) ("When a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what the market will set.... The judge, in other words, is trying to mimic the market in legal services.").

Here, the fee award representing 35% of the fund clearly falls within that range and is consistent with other rulings of other courts and comprehensive surveys of class action settlements and fee awards. *See Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011) (recognizing that "courts may award attorney's fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under $10 million"); *see also* Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn. 16 (2010) (independent studies of class action litigation nationwide conclude that fees in the range sought here are consistent with market rates).

The results delivered by PAGA Counsel also support the requested percentage of the fund. Here, Plaintiff and his counsel secured a $340,000.00 settlement representing approximately 17.5% of the realistic maximum exposure in this PAGA action. Accordingly, the Court should award the fees requested.

G. The Costs are Reasonable

Additionally, PAGA Counsel's cost reimbursement request in the amount of $11,164.61 is also reasonable, especially in light of the fact that the Parties agreed that PAGA Counsel may seek up to $15,000.00 as reimbursement for litigation costs under the Agreement. Gavron Decl. ¶ 49, Ex. C; Agreement ¶ 3.2.1. As set forth in PAGA Counsel's declaration, the costs were all directly incurred in the prosecution of this action, including without limitation, filing fees, service of process costs, postage fees, mediation costs, and other litigation expenses. Gavron Decl. ¶ 49. As such, the requested costs are fair and reasonable, and should be awarded by the Court.

H. The Administrator's Fees Should be Approved

The Parties have agreed to pay actual costs of administration, which will not exceed

$8,500.00, to the Administrator, Phoenix Settlement Administrators, to administer this settlement. Agreement ¶¶ 1.2, 3.2.2. The Parties believe that the administration fee is reasonable and should be approved. Gavron Decl. ¶ 38.

I. Plaintiff's Enhancement Award Should be Approved

Courts have held that named plaintiff in class, or private attorney general actions can request a service award. *Rodriguez v. W. Publ'g Corp*. (9th Cir. 2009) 563 F.3d 948, 958-59 (explaining that service awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their **willingness to act as a private attorney general**") (emphasis added).

Here, Plaintiff seeks $10,000.00 for the service award, which is intended to compensate Plaintiff for the time spent on this case and for his efforts in prosecuting this case as a representative on behalf of the State of California and other aggrieved employees. In particular, Plaintiff met with his counsel to discuss the case, had numerous telephonic discussions with his counsel regarding the case, and reviewed pleadings and documents, including the PAGA Notice, complaints, and Agreement. Declaration of Eric Roman ("Roman Decl.") ¶¶ 2-12. Additionally, by serving as a PAGA representative and filing the lawsuit, Plaintiff also faced significant risk in not being able to find prospective employment and/or face retaliation from prospective employers. In this regard, future employers are less likely to hire and/or continue employment with individuals who have filed employment-related lawsuits, particularly cases of this nature. In light of Plaintiff's efforts, the enhancement award should be awarded to Plaintiff for his commitment, dedication, and risks taken for this litigation.

Furthermore, the requested service award is consistent with awards approved in other common fund cases. *See Van Vranken v. Atlantic Richfield Co*. (N.D. Cal. 1995) 901 F. Supp. 294, 299-300 (incentive award of $50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig*. (S.D. Ohio 1990) 130 F.R.D. 366, 374 (two incentive awards of $55,000, and three incentive awards of $35,000); *Brotherton v. Cleveland* (S.D. Ohio 2001) 141 F. Supp. 2d 907, 913-14 (granting a $50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas*

Transmission Corp. (S.D. Ohio 1991) 137 F.R.D. 240, 251-52 ($50,000 awarded to each class representative); *Glass v. UBS Fin. Servs*., No. C-06-4068 (N.D. Cal. Jan. 27, 2007) 2007 U.S. Dist. LEXIS 8476, *51-52 (awarding $25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016 (affirming $25,000 incentive award to class representative in ERISA case).

J. Notice to the LWDA Has Been Provided

Pursuant to California Labor Code § 2699(1), on June 9, 2026, Plaintiff uploaded the instant motion, Agreement, and proposed order to the LWDA's website. Gavron Decl. ¶ 50. In addition, Plaintiff shall submit to the LWDA a copy of the Court's judgment and order approving the Settlement Agreement within ten (10) days after entry of judgment or order. *Id.*

V. <u>CONCLUSION</u>

Based on the above, Plaintiff requests that the Court approve the current PAGA settlement.

DATED: June 9, 2026

DIVERSITY LAW GROUP, P.C.

By: ______________________

Max W. Gavron

Attorneys for Plaintiff and the Class