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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ELVA FLORES and MEGAN DREMIN, both in a Representative capacity only, and on behalf of other members of the general public similarly situated

Plaintiff

v.

RANCHO VALENCIA RESORT PARTNERS, LLC., a California Limited Liability Company, and RVR RANCHO VALENCIA HOLDINGS PARTNERS, L.P., and DOES 1-10, inclusive

Defendants

CASE NO. 37-2022-00006752-CU-OE-CTL

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S *UNOPPOSED EX PARTE* APPLICATION FOR PAGA SETTLEMENT APPROVAL

Date: October 23, 2025
Time: 8:30 a.m.
Dept.: C-68
Judge: Hon. Richard S. Whitney

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I. SUMMARY OF APPLICATION

This is a "Wage and Hour" representative action, under California's Private Attorneys General Act of 2004 ("PAGA"). The named Plaintiff respectfully submits the instant Points and Authorities in support of their application for Approval of the PAGA Settlement. This Request is **Unopposed**. The LWDA was timely notified of this proposal, and does **not** object to the allocations. (See concurrently filed Proof of Service on LWDA).

II. SUMMARY OF SETTLEMENT TERMS

This is a Labor Code §2698 *et seq*. "Wage and Hour" ("PAGA") action brought against RANCHO VALENCIA RESORT PARTNERS, LLC. and RVR RANCHO VALENCIA HOLDINGS PARTNERS, L.P., (Hereinafter, "Defendants"). As this is a "PAGA" action only, the Limitations Period begins on December 8, 2020. (Kuhn Decl., ¶3).

On **August 5, 2025**, and following the exchange of discovery, analysis of numerous sets of time and wage data, a full day mediation before Hon. Eddie C. Sturgeon (Ret.), and extensive "arms length" negotiations, the Parties reached a proposed settlement that includes a payment of penalties to the LWDA. (Kuhn Decl., ¶4).

Subsequent to reaching the above settlement, it was discovered that Plaintiff *Dremin* filed a separate PAGA action against Defendants. (Kuhn Decl.¶51). As part of a "global settlement," (1) *Dremin* has been added as a Plaintiff, and (2) the claims in *Dremin* action have been consolidated into the *Flores* action. *Id*.

On **October 6, 2025**, Plaintiff's Counsel gave notice of the instant Settlement to the LWDA. (Kuhn Decl., ¶5). To date, Plaintiff's counsel has not received notice that the LWDA would intervene. (*Id.*)

On **October 14, 2025**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal the Settlement Agreement and provided the LWDA notice of the instant hearing date. (Kuhn Decl., ¶6). To date, Plaintiff's counsel has not received notice that the LWDA would intervene. (*Id.*)

On **October 17, 2025**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal the Settlement Agreement and provided the LWDA notice of the instant hearing date. (*Id*). To date, Plaintiff's counsel has not received notice that the LWDA would intervene. (*Id.*)

On **October 21, 2025**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal copies of this Application, including the Notice, this supporting Memorandum, Declaration, and Proposed Order & Judgment. (Kuhn Decl., ¶7). To date, Plaintiff's counsel has not received any opposition from the LWDA. (*Id.*).

Defendants have confirmed that as of the date of this settlement, there are **1,100** PAGA group members and **36,000** pay periods at issue. (Kuhn Decl.¶8). After deduction of all "contingent costs" set forth below, each PAGA member will receive an average payment of **$112.82**. (*Id.*)

The Total Value of the proposed Settlement is **$800,000.00** which is broken down as follows:

* **$266,666.67** Attorneys' Fees (1/3 of total settlement value);
* **$10,938.90** PAGA Counsel Expenses Payment
* **$6,000.00** Settlement Administrator Fees
* **$20,000.00** Plaintiffs' Enhancement Award ($10,000.00 each)
* Sub-Total of **$496,394.43**. 75% (**$372,295.82**) shall be assigned/paid to the LWDA as penalties.
* The remaining 25% (**$124,098.61**) in cash will be disbursed among all employees based on work weeks employed during the PAGA period. (Kuhn Decl., ¶9)

Further, there are <u>**no**</u> restrictions for any of the employees to file individual actions, as the settlement agreement only covers PAGA claims. (Kuhn Decl., ¶10; **Exhibit 1**, ¶5.2).

Plaintiff's counsel authoring the instant motion is well versed in class and representative (PAGA) litigation. Based on that experience, counsel submits this settlement represents a fair and adequate payment to the LWDA and aggrieved employees. (Kuhn Decl., ¶11-18).

Should the Court deem it necessary, a lodestar cross-check confirms the propriety of the requested attorneys fees. Given the actual fees incurred, in the amount of approximately **$299,955.00,** no lodestar multiplier is necessary. (Kuhn Decl. ¶18).

Plaintiffs also seek reimbursement for reasonable litigation expenses incurred in the amount of **$10,938.90**. (Kuhn Decl. ¶27).

The parties proposed notice, to accompany the settlement checks following approval, is attached to the declaration of Ryan T. Kuhn as **Exhibit 7**.

III. CONTROLLING LAW

PAGA "authorizes an employee to bring an action for civil penalties on behalf of the state against his or her employer for Labor Code violations committed against the employee and fellow employees." *Iskanian v. CLS Trans. Los Angeles* (2014) 59 Cal. 4th 348, 360. "To compensate for the lack of'[a]dequate financing of essential labor law enforcement functions,' the California legislature enacted PAGA to permit aggrieved employees to act as private attorneys general to collect civil penalties for violations of the Labor Code." *Sakkab v. Luxottica* (9th Cir. 2015) 803 F.3d 425.

"The superior court shall review and approve any settlement of any civil action filed pursuant to [PAGA]." Cal. Lab. Code. § 2699(l). In so doing, the court must consider whether the proposed "PAGA settlement is fair and adequate in view of the purposes and policies of the statute." *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1135 (N.D. Cal. 2016). Those purposes and policies include "benefit[ting] the public by augmenting the state's enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance." *Id.* at 1132-33; Accord *Syed v. M-I LLC*, 2017 WL 714367, at *13 (E.D. Cal. Feb. 22, 2017) (concluding "the settlement amount related to plaintiffs' PAGA claims is fair, reasonable, and adequate in light of the public policy goals of PAGA.").

However, "neither the California legislature, nor the California Supreme Court, nor the California Courts of Appeal, nor the [LWDA] has provided any definitive answer" as to what the appropriate standard is for approval of a PAGA settlement. *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 2017 WL 2224265, at *1 (C.D. Cal. May 19, 2017).

A court may award a lesser amount than the maximum civil penalty amount if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory. Lab. Code, § 2699(e)(2); *Amaral vs. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213-1214. *See e.g.*, *Fleming v. Covidien Inc.*, 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 82%).

Courts have routinely approved PAGA settlements where the PAGA allocation reflects a much smaller percentage of the gross settlement amount. There are numerous comparable cases in which the total settlement exceeded $2,000,000 and the PAGA penalty was $10,000 or less. See e.g. *Hicks v. Toys 'R' Us–Delaware, Inc.*, 2014 WL 4703915, at *1 (C.D. Cal. Sept. 2, 2014); *Franco v. Ruiz Food Prods., Inc.*, 2012 WL5941801, at *14 (E.D. Cal. Nov. 27, 2012); *Garcia v. Gordon Trucking*, 2012 WL 5364575, at *3 (E.D. Cal. Oct. 31, 2012); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. Feb. 16, 2011).

In *Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d 959, 972 (N.D. Cal. 2019), the Court discussed two policies for the approval of a PAGA claim:

> Where PAGA claims are settled in the same agreement with the underlying Labor Code claims, courts have also looked to the interplay of the two recoveries to determine whether PAGA's purposes have been served. The *O'Connor* (Uber) court, for instance, adopted a "sliding scale," noting that "[b]y providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of the class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA." 201 F. Supp. 3d at 1134. Similarly, "if the settlement resolves the important question of the status of workers as employees entitled to the protection of the Labor Code or contained substantial injunctive relief, this would support PAGA's interest in augmenting the state's enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance." *Id.* at 1134-35.

Further, the Court in *Flores v. Starwood Hotels & Resorts Worldwide, Inc.* ("Flores") the court was asked to approve a PAGA settlement (the "Settlement"). *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1075–76 (C.D. Cal. 2017). In deciding whether the court should approve the Settlement, the court looked at the California legislature, the California Courts of Appeal, the California Supreme Court, and the California Labor & Workforce Development Agency for a definitive answer as to what precedent the court should follow in either approving or denying the settlement. *Id.* The court was not able to find a definitive answer. *Id*. As such, the court followed the rationale in *O'Connor v. Uber Techs., Inc.*, 201 F.Supp.3d 1110, 132-35 (N.D. Cal. 2016), which states a court is permitted to approve a PAGA settlement if the settlement is "fair and adequate in view of the purposes and policies of the statute." *Id*.

In deciding whether the settlement was "fair and adequate," the *Flores* court examined how the parties "divvied up" the civil penalties under Section 2699(i) of the California Labor Code. *Flores* at 1076-77. As the court felt the parties' division of penalties was fair and adequate pursuant to the statute, the court approved the settlement. *Id*.

IV. DISCUSSION

The parties reached the terms of their proposed settlement agreement following the exchange of extensive information and employment records. The parties submit the proposed settlement of PAGA penalties is fair, adequate, and reasonable.

A. THE BASIS FOR THE *EX PARTE* REQUEST

The instant *Ex Parte* request is based on the fact that Notice to certain ex-employees may be adversely impacted by further delay (*i.e.,* ex-employees may change their mailing address without filing a proper "forwarding address"). Additionally, Mr. Sullivan is soon going back on "medical leave" for certain health issues, and since he is the primary contact with the named Plaintiff, requests that this be done on an expedited basis before doing so. (Kuhn Decl. ¶52).

B. THE NATURE AND SCOPE OF THE ALLEGED VIOLATIONS

The Complaint alleges Labor Code violations which triggered penalties under the PAGA statute (Labor Code §2698 et seq.) (See ROA #1.) Plaintiff also alleges all employees were denied compliant Meal and Rest Periods, minimum wages, overtime, accurate wage statements, reimbursements, and suffered waiting time violations. (See ROA #1, Exhibit 1: "Plaintiff's LWDA Notice" attached thereto).

Specifically, Plaintiff alleges that she - and other employees - received "short," "late," or "missing" Meal Periods, including those documented within Defendant's Time Records. (Decl. Kuhn, ¶28). Plaintiff also challenged whether Defendant maintained lawful meal and rest periods. Plaintiff alleged she- and other employees -were not properly compensated due to Defendants' failure to maintain accurate time records. (*Id*.) Finally, Plaintiff also challenged whether Defendants maintained lawful meal and rest period policies. (*Id*.)

C. ANALYSIS OF POTENTIAL LIABILITY, ON A REPRESENTATIVE BASIS

The catalyst of this litigation concerned allegations that the aggrieved employees were denied legally compliant meal and rest periods, and were not paid for all hours worked. Investigations completed by Plaintiff's counsel revealed that Defendants' timekeeping policies and employee records were not in compliance with California law. (Decl. Kuhn, ¶29). However, these investigations also revealed that the "rate of violation" by Defendants was significantly less than 100%. (*Id*.). On many of those occasions, it appears that Defendants did, in fact, comply with the law. (*Id.*)

1. The Parameters of the Proposed PAGA Group

To confirm, this settlement is meant to encompass all current and former non-exempt employees who worked in California during the "PAGA period." (**Ex. 1**: ¶¶ 1.19-1.20).

Defendants have confirmed, and Plaintiffs' expert has independently verified, that there are approximately **1,100** employees who worked a total of **36,000** pay periods as of August 18, 2025. **Exhibit 1**: ¶4.1. (Kuhn Decl. ¶ 8).

If the Court approves the "contingent costs" as requested in the moving papers, the total amount of PAGA penalties will be **$496,394.43**. 75% (**$372,295.82**) shall be assigned/paid to the LWDA as penalties. The remaining 25% (**$124,098.61**) will be disbursed among all employees based on pay periods worked during the PAGA period. If you divide the $124,088.34 in penalties between the 1,100 employees, it results in an average payout of **$112.82** per employee. (Kuhn Decl. ¶ 8). **Please Note:** This is an average only. The actual payout per employee will vary based on the total pay periods worked during the PAGA period.

2. The Analysis of the Claims and Scope of Liability

Prior to settlement, Plaintiff's Counsel conducted a thorough analysis of documents and data produced by Defendant. This included an analysis of all relevant policies and ***all*** time and wage records for putative aggrieved employees. Plaintiff's Counsel were able to assess the value of Plaintiff's claims, and intelligently engage Defense Counsel in settlement discussions that culminated in the proposed settlement now before the Court. Plaintiff's Counsel calculated the estimated maximum scope of liability as being between $3,000,000.00 and $5,000,000.00. (Kuhn Decl. ¶30).

However, as is set forth more fully below, all counsel are aware "maximum" awards in PAGA only cases are exceedingly rare. Moreover, most trial Courts (including this Superior Court, in the *Carrington* matter) decline to "stack" PAGA penalties. "Stacking" refers to imposing multiple penalties for one alleged "harm." *E.g.* one single late meal period could arguably violate at least four Labor Code provisions that allow for separate penalties pursuant to PAGA. (Kuhn Decl.¶ 31).

i. Meal and Rest Period Claims

Plaintiff was able to identify hundreds of examples of "missing" or "late" Meal Periods without the provision of a Meal Period Penalty Payment. However, Defendants argued that these records do not conclusively show whether (1) Defendants actually failed to provide the Meal Period, (2) there was a voluntary waiver, (3) employees forgot to clock out, or (4) employees voluntarily chose to skip or take them late even though they were provided. (Kuhn decl. ¶32).

Plaintiff also alleged Defendants' written policies were illegal, and improperly restricted class members from leaving the premises during their Rest Periods. Defendants argued that witness testimony would demonstrate that - in practice - Defendants did not restrict its employees from "leave the premises" during Rest Periods. (Kuhn decl. ¶33). The rest period claims would have been harder to prove on a representative basis given that rest breaks were not recorded on the time records. *Id*. Based on counsels' analysis, this claim was worth as little as $0 (a defense verdict) or as much as approximately $3,600,000.00. *Id.*

ii. Minimum Wage and Overtime Violations

Plaintiff alleges Defendants failed to pay minimum wages to employees for all time spent under Defendants' control. This is based on the following alleged facts: Defendants failed to maintain accurate Time Records to the detriment of the employees. More specifically, although Defendants would receive "to-the-minute" start and end times, Defendants would thereafter alter - deduct time from - the Time Record, prior to payment of compensation to the employees. (Kuhn Decl. ¶34).

Plaintiff alleges that Defendants failed to pay Plaintiff and all other Aggrieved Employees all compensation, including overtime compensation, due in violation of, among other statutes, Labor Code section 510. These violations occurred due to Defendants' illegal policies, referenced above, whereby employees experienced monetary under-compensation. The systematic failure to provide proper overtime compensation is a violation of California law. Additionally, Defendants also failed to provide the actual Overtime Rate of Pay by ignoring certain compensation when calculating the Regular Rate of Pay including, but not limited to, various forms of bonus and/or incentive pay, and the value of employee benefits and employee discounts, in violation of Labor Code section 510. (*Id*). Based on counsels' analysis, this claim was worth as little as $0 (a defense verdict) or as much as approximately **$3,780,000.00**. *Id*.

iii. Wage Statements, Reimbursement and Other Derivative Penalties

The remaining claims are largely derivative, in that Wage Statement and Labor Code § 203 penalties would only be permissible if the above claims are proven. Plaintiff had also alleged violations for failure to reimburse business expenses pursuant to Labor Code § 2802. However, it appeared Defendants had compliant reimbursement policies and any un-reimbursed expenses would have been very minimal. (Kuhn Decl. ¶ 35). Based on counsels' analysis, this claim was worth as little as $0 (a defense verdict) or as much as approximately **$1,620,000.00**. *Id.*

iv. The Arguments for Mitigation of PAGA Penalties

Plaintiff's counsel is aware of the Court's discretion to mitigate penalties pursuant to California Labor Code section 2699(e)(2). (Kuhn Decl. ¶36). To confirm, Plaintiff's counsel experienced the mitigation of "PAGA" penalties before this Trial Court, in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504. (*Id.*) In *Carrington*, the Court significantly mitigated PAGA penalties (to $5 per violation), due to the efforts made by the employer to comply with the law. (*Id.*)

Plaintiff's counsel <u>agrees</u> that penalties *should* be mitigated where violations are minimal (or rare), or where the employer makes efforts to comply with the Labor Code. (Kuhn Decl., ¶37).

Given the above, a full award of penalties by the Trial Court would result in a judgment of approximately $9,000,000.00 dollars. However, the total penalties were then discounted as it is highly unlikely the Court would award a maximum penalty. It is also unlikely derivative penalties would be awarded at all. (Kuhn Decl., ¶38).

Here, for purposes of the exposure analysis, Plaintiffs ran one model where penalties were reduced approximately 65%, which would have resulted in an approximate judgment of $3,150,000.00. Plaintiffs also ran a more favorable model where penalties would be reduced by approximately 50%, which would have resulted in an approximate judgment of $4,500,000.00. Accordingly, this is how Plaintiffs calculated the estimated maximum scope of liability as being between **$3,000,000.00** and **$5,000,000.00**. (Kuhn Decl., ¶39).

As many of the above factors could be argued by Defendants in this case, it is the opinion of Plaintiffs' counsel that the settlement is fair, adequate, and reasonable. Specifically, Plaintiffs' counsel's understanding is that Defendants have reviewed its policies and practices, and made updates to attempt to ensure future compliance with California law. (Kuhn Decl., ¶40).

3. <u>Counsel Are Well Experienced in PAGA Matters and Recommend the Settlement</u>

The Lead Trial Counsel for Plaintiff, Mr. William Sullivan, has been a California-licensed attorney for 31 years. He has approximately 30 years of experience in "class action" litigation, both as plaintiff and defense counsel. Mr. Sullivan has acted as Trial Counsel (for Plaintiff) in multiple "Wage and Hour" Class/Representative actions, including the (San Diego Superior Court) Trial which is the subject of the Published decision entitled *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504. Mr. Sullivan estimates that, throughout the course of his 30-year career, he has acted as Lead Plaintiff's counsel on "Wage and Hour" Class/Representative actions that have collected more than $300 million for employees and/or the State of California, either through judgment following trial, or via negotiated settlement. (Kuhn Decl., ¶11).

Plaintiff's counsel, Eric K. Yaeckel, has over 14 years of experience prosecuting class and representative action claims under the California Labor Code. (Kuhn Decl. ¶¶12; 14-17). Plaintiff's counsel are the attorneys of record in a matter that was recently heard (and favorably decided) before the California Supreme Court, titled *Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58. (*Id.* at ¶14) The *Donohue* matter was a certified class and PAGA action. (*Id.*)

Plaintiff's counsel, Ryan T. Kuhn, has approximately 7 years of experience prosecuting class and representative action claims under the California Labor Code. (Kuhn Decl. ¶13-17).

Based on said experience, it is the opinion of all Plaintiffs' counsel that this settlement represents a fair and adequate payment. (Kuhn Decl. ¶18).

D. THE ALLOCATION OF PENALTIES, AND *LIMITED RELEASE* OF CLAIMS

While Labor Code section 2699(*l*) requires a court to "review and approve any penalties sought as part of a proposed settlement agreement," it does not provide any guidance as to what is considered an 'adequate' allocation of these penalties. However, Trial Courts have held that *where the* division of penalties was fair and adequate and in accordance with the PAGA statute, the court should approved the settlement. *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1076–77 (C.D. Cal. 2017).

After subtracting the contingent costs set forth above, the parties seek to allocate **$496,394.43** of the total settlement to the Total Value of the PAGA Fund. 75% (**$372,295.82)** shall be assigned/paid to the LWDA as penalties. The remaining 25% (**$124,098.61**) will be allocated and distributed among the current or ex-employees within the PAGA Period.

The parties contend the settlement agreement amount is fair, adequate, and reasonable. (Decl. Kuhn, ¶40). Moreover, the PAGA settlement does not bar any employee from pursuing their own individual Labor Code claims. (Decl. Kuhn ¶10; **Exhibit 1:** ¶5.2). The release only applies to the PAGA claims for penalties, based upon the allegations in Plaintiffs' operative Complaint. (*Id.*)

E. REQUEST FOR ATTORNEYS' FEES, COSTS & ENHANCEMENT AWARDS

Plaintiffs also request the Court approve the requested attorneys' fees, costs reimbursement and plaintiff's enhancement awards for the reasons set forth below.

1. <u>Request for Reasonable Costs of Litigation</u>

Plaintiff's Counsel are entitled to reimbursement of their discretionary litigation costs. Cal. Lab. Code § 2699(g)(1). Out-of-pocket discretionary expenses are compensable if they would normally be billed to a fee-paying client. *See Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1407, 1419 (1991), *overruled in part on other grounds in Olson v. Automobile Club of Southern Calif.*, 42 Cal. 4th 1142 (2008). Such discretionary costs may be claimed as part of an attorneys' fees motion when seeking statutory fees under the Labor Code. *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1218 n.27 (2008) (awarding costs that are necessarily incurred).

As itemized in Plaintiffs' Counsel's declaration, Counsel for PLaintiffs advanced approximately **$10,938.90** in out-of-pocket costs to the State for, among other things, filing fees, expert fees, deposition costs and mediation fees. (Kuhn Decl. ¶27). Defendant agreed not to oppose reimbursement of costs up to **$11,000.00**. Plaintiffs request the Court approve the request for costs in the specific amount of **$10,938.90**. *Id*. Because these reasonable costs were necessarily incurred during the case's pendency, these costs are reasonable and should be awarded. *See also* Cal. Civ. Pro. Code § 1033.5(c)(4) ("[i]tems not mentioned in this section and items assessed upon application may be allowed or denied in the court's discretion.")

2. <u>Request for Reasonable Attorneys' Fees</u>

For the reasons discussed in detail below, an award of attorneys' fees in the amount of one third of the gross settlement fund is fair and reasonable, and in line with what other California courts, both state and federal, have awarded in settlements of similar litigation.

The PAGA statute provides that a plaintiff is entitled to recover reasonable attorneys' fees, expenses, and costs. Section 2699(g)(1) of the California Labor Code provides that "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." In a qui tam action, reasonable attorneys' 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. PAGA "is a type of qui tam action." *See Iskanian*, 59 Cal. 4th at 382. "A qui tam action 'is a type of private attorney general lawsuit' [citation], in which 'the qui tam plaintiff stands in the shoes of the state or political subdivision [citation].'" *People ex rei. Stratham v. Acacia Research* Corp., 210 Cal. App. 4th 487, 501 (2012).

Where, as here, a common fund is created in a qui tam action by the successful litigation of a plaintiff and her attorneys, the plaintiff's attorneys are entitled to recover their fees from the common fund:

> Those benefitting 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.

Bank of America v. Cory, 164 Cal. App. 3d 66, 91 (1985) (authorizing common fund fees in a qui tam taxpayer suit against certain banks).

Likewise, through the successful efforts of Plaintiff and her attorneys, a common fund was created in the amount of **$800,000.00** for the benefit of the employees and the State of California.

The California Supreme Court recently upheld the use of the common fund theory of recovery for attorneys' fees in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 506 (2016). In *Laffitte*, the settlement created a common fund of $19 million. The Court approved the award of attorneys' fees in the amount of one third of the gross $19 million settlement (e.g., an award of $6.33 million) under the common fund theory. *Id.* By awarding counsel a percentage of the total recovery, rather than fees based on hours worked, the common fund method encourages attorneys to efficiently litigate to achieve the best results possible. See *Laffitte,* 1 Cal. 5th at 492-494. Indeed, "the percentage method is generally favored in common fund cases because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure. Id. at 493 (quoting *In re Rite Aid Corp. Securities Litig*., 396 F.3d 294, 300 (3d Cir. 2005) (internal quotations omitted).

California state and federal courts routinely award attorneys' fees approximating one-third of the common fund. See, e.g. *Laffitte v. Robert Half Internat. Inc*., 231 Cal. App. 4th 860, 871 (2016) ("33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits"); *Chavez*, 162 Cal. App. 4th at 66 n.11 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.")

A fee award in the amount of one-third of the common fund is also reasonable because it best reflects the market rate for contingency fees. See *Lealao v. Beneficial Cal. Inc.*, 82 Cal. App. 4th 19, 47 (2000) ("attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace. . . ."). Fees representing one-third of the recovery reflect the rate negotiated in "typical contingency fee agreements [which] provide that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried." *Fernandez v. Victoria Secret Stores*, LLC, No. CV 06-04149 MMM SHX, 2008 WL 8150856, at *16 (C.D. Cal. July 21, 2008) (citing an academic study collecting contingency fee agreements and finding that a fee award constituting 34% of the fund is reasonable on that basis). Because the negotiated fee structure mimics the marketplace, it is reasonable and should be approved. For all of these reasons, a common fund fee award in the amount of one third of the total settlement (**$266,666.67**) is fair and reasonable.

3. <u>A Lodestar Cross Check Further Confirms the Reasonableness of the Fee</u>

Should the Court deem it necessary, lodestar cross-check confirms the propriety of the requested attorneys fees. Given the actual fees incurred, in the amount of **$299,955.00**, no lodestar multiplier is necessary. (See Kuhn Decl. ¶ 19).

California courts and the Ninth Circuit hold that the trial court in determining whether to apply a multiplier should look at the case and its results as a whole. Historically California courts have approved multipliers of 1.5 to 4. See *Coalition for Los Angeles County Planning v. Board of*

Supervisors (1977) 76 Cal. App. 3d 241, 251 (multiplier of 2+); *Kern Rivet Public Access Committee v. City of Bakersfield* (1985) 170 Cal. App. 3d 1205, 1228 (multiplier of 1.5); *Downey Cares v. Downey Community Development Commission* (1987) 196 Cal. App. 3d 983, 994 (multiplier of 1.5); *Sternwest Com. v. Ash* (1986) 183 Cal. App. 3d 74, 75.

Counsel submits its fees are reasonable and in line with (or lower) than rates charged in the community by attorneys with similar experience. (See Kuhn Decl. ¶¶ 19-26).

Given the actual amount of fees incurred, no lodestar multiplier is necessary. **Please Note**: there is no authority Plaintiff is aware of requiring a lodestar analysis in a PAGA only matter, which is why Plaintiff cited to Class Action authority above. Moreover, the results obtained here, including the average net recovery per PAGA Member exceed those normally observed in PAGA only settlements. (See Kuhn Decl. ¶ 19(e)).

4. Request for PAGA Representative Enhancement

The named Plaintiffs request an enhancement payment of $10,000 each for their service as the PAGA representatives and for recognition that they were also required to release all of their underlying Labor Code claims via a full section 1542 release. There is no such restriction on the other alleged aggrieved employees.

An enhancement is justified in light of the "reputational risk" that Plaintiffs assumed by litigating claims against a former employer. *See Billinghausen v. Tractor Supply Co.,* 306 F.R.D. 245, 267-68 (N.D. Cal. 2015) (finding "personal detriment" upon testimony that future employers can easily learn that a prospective employee served as a plaintiff through the internet).

Second, the separate settlement payment is reasonable because Plaintiff "remained fully involved and expended considerable time and energy during the course of the litigation." *See In re Toys 'R' Us-Del FACTA Litig*., 295 F.R.D. at 471 (citation omitted). Plaintiff devoted her time and effort toward assisting her attorneys with the prosecution of the claims, and assisted counsel with finalizing the settlement. (Kuhn Decl. ¶ 42).

The separate payment is also appropriate because Plaintiffs otherwise "will not gain any benefit beyond that [he] would receive as an ordinary [Aggrieved Employee]." *In re Toys "R" Us FACTA Litig*., 295 F.R.D. at 472; *Van Vranken*, 901 F. Supp. at 299 (holding that a substantial award is appropriate where a [representative's] claim made up "only a fraction of the common fund.").

Lastly, because PAGA is a "type of qui tam action," it is appropriate for the Plaintiff to receive a modest additional payment from the settlement as a "bounty" for her special effort in vindicating the State's interests by enforcing its labor laws. *See Iskanian*, 59 Cal. 4th at 382 ("A PAGA representative action is therefore a type of qui tam action."); *see also People ex rel. Strathmann v. Acacia Research Corp.*, 210 Cal. App. 4th 487, 500 (2012) ("The person who brings the qui tam action, called the 'relator,' stands in the shoes of the People of the State of California, who are deemed to be the real party in interest .The relator in a qui tam action under section 1871.7 does not recover damages but, if successful, receives [a portion] of the recovery as a bounty.") (internal citations omitted). The Plaintiff contributed extensive time and resources in the prosecution of this case. (Kuhn Decl. ¶42).

Here, by "sticking out their neck out" as a PAGA Representative in a publicly filed lawsuit, Plaintiffs took a substantial risk that may adversely impact their ability to work in this field in the future. Any company who does a detailed background check, will be able to determine that Plaintiffs asserted legal claims against their former employer. An entire industry exists that allows employers to run extensive background searches on potential employees. Companies who provide these services specifically highlight the fact that their services allows employers to weed out litigious employment candidates. (Kuhn Decl. ¶¶ 44-45). Plaintiffs also risked personally owing a large cost award, into the tens of thousands of dollars, had their claims been unsuccessful. (Kuhn Decl. ¶ 46).

The enhancement also recognizes that although this involves a PAGA only settlement, Plaintiffs agreed to release all claims (e.g., a full 1542 release) as a part of the proposed settlement. (**Exhibit 1**: ¶ 5.1.1). In addition to the PAGA claims, Plaintiffs possessed individual Labor Code violations that were required to be released as a result of this settlement. All other employees are subjected to a limited release of PAGA claims only.

5. <u>Xpand Legal Consulting, LLC Will Serve as the Settlement Administrator</u>

The parties have agreed to engage Xpand Legal Consulting, LLC ("Xpand") as the Settlement Administrator. Xpand has agreed to carry out all Administration duties for an amount not to exceed $**6,000.00**. (Kuhn Decl. ¶48; **Exhibit 1**: ¶¶3.2.2, 7.1). Xpand has extensive experience acting as a

Settlement Administrator and is prepared to carry out all Settlement Administration duties consistent with the parties Agreement and the Final Order of this Court. (Kuhn Decl. ¶ 49).

F. THE LWDA WAS NOTIFIED MULTIPLE TIMES, AND DOES *NOT* OBJECT

On **October 6, 2025**, Plaintiff's Counsel gave notice of the instant Settlement to the LWDA. (Kuhn Decl., ¶5). To date, Plaintiff's counsel has not received notice that the LWDA would intervene. (*Id.*)

On **October 14, 2025**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal the Settlement Agreement and provided the LWDA notice of the instant hearing date. (Kuhn Decl., ¶6). To date, Plaintiff's counsel has not received notice that the LWDA would intervene. (*Id.*)

On **October 17, 2025**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal the Settlement Agreement and provided the LWDA notice of the instant hearing date. (*Id*). To date, Plaintiff's counsel has not received notice that the LWDA would intervene. (*Id.*)

To date, Plaintiff has not received a response from the LWDA regarding the proposed settlement. If the LWDA contacts Plaintiff's counsel at any time prior to the October 23, 2025 hearing, Plaintiff's counsel will provide an updated declaration to the Court. (Decl. Kuhn ¶50).

On **October 21, 2025**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal copies of this Application, including the Notice, this supporting Memorandum, Declaration, and Proposed Order & Judgment. (Kuhn Decl., ¶7). To date, Plaintiff's counsel has not received any opposition from the LWDA. (*Id.*).

V. CONCLUSION

The parties respectfully request that the Court approve their settlement and proposed allocation of PAGA penalties to the LWDA and the represented employees.

Dated: October 21, 2025

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Attorneys for Plaintiff ELVA FLORES in a Representative capacity only, and on behalf of other members of the general public similarly situated