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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JESUS HERRERA, individually and on behalf of others similarly situated, as an aggrieved employee and Private Attorney General,

Plaintiff,

vs.

REEVE STORE EQUIPMENT COMPANY, a California corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 22STCV04239

Honorable Elaine Lu
Department 9

NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT AND AWARD OF ATTORNEYS FEE AWARD, COST AWARD, PAGA REPRESENTATIVE ENHANCEMENT PAYMENT, AND ADMINISTRATION COSTS

Date:	December 11, 2025
Time:	8:30 a.m.
Department:	9
Complaint Filed:	February 3, 2022
FAC Filed:	May 12, 2022
Trial Date:	Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on December 11, 2025 at 8:30 a.m. in Department 9 of the above-captioned Court located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, California 90012, Plaintiff Jesus Herrera ("Plaintiff") will and hereby does move the Court for an Order granting approval of the California Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq*. ("PAGA") settlement. Specifically, Plaintiff requests that the Court enter an Order:

1. Granting approval pursuant to California Labor Code section 2699(l)(2) of the PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement") attached as **Exhibit 2** to the Declaration of Alexandra Rose in Support of Plaintiff's PAGA Settlement and Award of Attorneys Fee Award, Cost Award, PAGA Representative Enhancement Payment, and Administration Costs ("Rose Decl.");
2. Directing the distribution of the Gross Settlement Amount of Two Hundred Eighty Thousand Dollars and Zero Cents ($280,000.00) pursuant to the terms of the Agreement;
3. Approving the Net Settlement Amount, estimated to be One Hundred Fifty-Nine Thousand Two Hundred Two Dollars and Ninety-Nine Cents ($159,202.99), of which seventy-five percent (75%) will be distributed to the California Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%) of which will be distributed to the Aggrieved Employees;
4. Approving an award of reasonable attorneys' fees of Ninety-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents ($93,333.33) to PAGA Counsel;
5. Approving the amount of Nineteen Thousand Nine Hundred Sixty-Three Dollars and Sixty-Eight Cents ($19,963.68) to PAGA Counsel for reimbursement of actual litigation costs and expenses pursuant to California Labor Code section 2699(g)(1);
6. Approving the award of Five Thousand Dollars and Zero Cents ($5,000.00) to Plaintiff as a PAGA Representative Enhancement Payment;
7. Appointing Apex Class Action LLC as the Settlement Administrator; and

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8. Approving an award of up to Two Thousand Five Hundred Dollars and Zero Cents ($2,500.00) in anticipated costs to Apex Class Action LLC for its settlement administration services.

In accordance with California Labor Code sections 2699 *et. seq*., a copy of the proposed Settlement Agreement was submitted to the LWDA via online submission through the LWDA's website on October 21, 2025. (Rose Decl., ¶ 26 & Exh. 3).

Any Opposition to this Motion is due November 21, 2025 and a Reply is due December 1, 2025.

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declarations of Alexandra Rose, Plaintiff Jesus Herrera, and the Settlement Administrator (Sean Hartranft of Apex Class Action LLC), the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: October 21, 2025

BLACKSTONE LAW, APC

By: ______________________

Alexandra Rose
Attorneys for Plaintiff
JESUS HERRERA

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to the California Labor Code Private Attorneys General Act, California Labor Code sections 2698, *et seq*. ("PAGA"), Plaintiff Jesus Herrera ("Plaintiff") seeks approval of the PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement") entered into with Defendant Reeve Store Equipment Company ("Defendant") (together, with Plaintiff, the "Parties"), which is attached as Exhibit 2 to the Declaration of Alexandra Rose in Support of Plaintiff's Motion for Approval of PAGA Settlement and Award of Attorneys Fees Award, Costs Award, PAGA Representative Enhancement Payment, and Settlement Administration Costs ("Rose Decl."). The Agreement terms are outlined as follows:

- Gross Settlement Amount: Two Hundred Eighty Thousand Dollars and Zero Cents ($280,000.00).
- Attorneys Fee Award: Ninety-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents ($93,333.33) (1/3 of the Gross Settlement Amount), to be paid from the Gross Settlement Amount.
- Cost Award: Nineteen Thousand Nine Hundred Sixty-Three Dollars and Sixty-Eight Cents ($19,963.68), to be paid from the Gross Settlement Amount.
- PAGA Representative Enhancement Payment: Five Thousand Dollars and Zero Cents ($5,000.00) to Plaintiff, to be paid from the Gross Settlement Amount.
- Administration Costs: Up to Two Thousand Five Hundred Dollars and Zero Cents ($2,500.00), to be paid from the Gross Settlement Amount.
- Estimated Net Settlement Amount: One Hundred Fifty-Nine Thousand Two Hundred Two Dollars and Ninety-Nine Cents ($159,202.99), of which 75% ($119,402.24) will be paid to the California Labor and Workforce Development Agency ("LWDA") and the remaining 25% ($39,800.75) will be paid to the Aggrieved Employees.

As set forth herein, the Settlement Agreement is the product of informed discovery, arms-length negotiations, and provides a fair, adequate, and reasonable recovery for the State of California and Aggrieved Employees. Plaintiff therefore respectfully requests that the Court grant approval of the proposed Settlement Agreement, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is a manufacturer of custom metal store fixtures and components. (Rose Decl., ¶ 2). Defendant employed Plaintiff as an hourly-paid, non-exempt set up and punch press worker from approximately July 1998 through October 22, 2021. (Rose Decl., ¶ 2; Declaration of Jesus Herrera in Support of Plaintiff's Motion for Approval of PAGA Settlement and Award of Attorneys Fee Award, Cost Award, PAGA Representative Enhancement Payment, and Administration Costs ["Herrera Decl."], ¶ 2).

On February 3, 2022, Plaintiff provided written notice by electronic submission to the LWDA and by U.S. Certified Mail to Defendant, pursuant to California Labor Code § 2699.3, of the specific provisions of the California Labor Code alleged to have been violated by Defendant ("PAGA Notice"). (Rose Decl., ¶ 3 & Exh. 1).

On February 3, 2022, Plaintiff filed a Class Action Complaint in the action entitled *Jesus Herrera v. Reeve Store Equipment Company*, Los Angeles County Superior Court Case No. 22STCV04239 ("Action"), thereby commencing a putative class action against Defendant. (*Id*., ¶ 4).

On May 12, 2022, Plaintiff filed a First Amended Class Action and Representative Action Complaint ("Operative Complaint") in the Action, which added a cause of action under PAGA. (*Id*., ¶ 5).

On January 9, 2023, Plaintiff propounded written formal discovery onto Defendant (specifically, Special Interrogatories (Set One), Form Interrogatories – General (Set One), and Requests for Production of Documents (Set One)), noticed the deposition of Defendant's Person Most Qualified, and a proposed *Belaire-West* notice. (*Id*., ¶ 6).

On January 26, 2023, Defendant served an objection to Plaintiff's notice of deposition of Defendant's Person Most Qualified. (*Id*., ¶ 7).

On February 27, 2023, Defendant filed a Motion to Strike Class Allegations and supporting documents. (*Id*., ¶ 8).

On March 3, 2023, Defendant served responses to Plaintiff's written formal discovery (specifically, Special Interrogatories (Set One), Form Interrogatories – General (Set One), and Requests for Production of Documents (Set One)). (*Id*., ¶ 9).

On March 16, 2023, Plaintiff filed an Opposition to Defendant's Motion to Strike Class Allegations. (*Id.*, ¶ 10).

On March 21, 2023, Defendant filed a Reply in support of its Motion to Strike Class Allegations and supporting documents. (*Id.*, ¶ 11).

On March 22, 2023, Plaintiff filed a declaration in response to Defendant's Reply regarding Defendant's briefing schedule that it filed in support of the Motion to Strike Class Claims. (*Id.*, ¶ 12).

On March 29, 2023, the Court entered an Order, which denied Defendant's Motion to Strike Class Allegations. (*Id.*, ¶ 13).

On May 30, 2023, Defendant served supplemental responses to Plaintiff's written formal discovery (specifically, Special Interrogatories (Set One) and Requests for Production of Documents (Set One)). (*Id.*, ¶ 14).

On June 9, 2023, Plaintiff served a notice of deposition of Defendant's employee. (*Id.*, ¶ 15). On July 6, 2023, Defendant served an objection to Plaintiff's notice of deposition of Defendant's employee. (Ibid). On July 20, 2023, Plaintiff served an amended notice of Defendant's employee. (Ibid). On August 10, 2023, Defendant served an objection to Plaintiff's notice of deposition of Defendant's employee. (Ibid).

On August 16, 2023, Blackstone Law, APC took the deposition of Defendant's Person Most Qualified (Human Resources). (*Id.*, ¶ 16).

On November 17, 2023, pursuant to Plaintiff's request, the Court entered an Order, which dismissed the class claims in the Operative Complaint without prejudice. (*Id.*, ¶ 17).

On March 28, 2024, the Parties participated in a formal mediation conducted by Lou Marlin, Esq., a neutral and respected mediator with extensive experience in complex wage and hour matters, which did not result in a settlement at that time. (*Id.*, ¶ 18).

On March 28, 2024, Defendant served a notice of deposition of Plaintiff. (*Id.*, ¶ 19). On May 1, 2024, Plaintiff served an objection to Defendant's notice of deposition. (Ibid). On June 10, 2024, Plaintiff served an amended notice of deposition of Defendant's Person Most Qualified along with request for production of documents. (Ibid). On June 14, 2024, Defendant served an objection to Plaintiff's notice of deposition of Defendant's Person Most Qualified. (Ibid).

On November 11, 2024, after further negotiations and with the help of the mediator, the Parties were able to reach an agreement to resolve this dispute on a representative basis. (*Id*., ¶ 20). After which, the Parties worked diligently to negotiate and memorialize the terms in a long form settlement agreement. (Ibid).

On October 16, 2025, the Parties executed the Settlement Agreement. (*Id*., ¶ 21 & Exh. 2).

During the course of formal informal discovery in the Action, PAGA Counsel conducted an intense investigation into the facts of the Action. (*Id*., ¶ 22). This included obtaining data, information, and documents relating to the underlying alleged violations, including, but not limited to, Plaintiff's employee file, all of the Aggrieved Employees' time and payroll data, relevant wage and hour policies, and Aggrieved Employees' data points so that Plaintiff could assess the number of alleged potential violations and value of the recoverable penalties, as well as evaluate the strengths and weaknesses of her claims. (Ibid).

Based on the data, information, and documents received, as well as thorough discussions with Defendant's counsel, PAGA Counsel was able to (i) determine the total number of distinct individuals falling within the definition of "Aggrieved Employees" for the relevant statutory period, (ii) the number of affected pay periods at issue among them, and (iii) construct a damages model that calculated the maximum realistic amount of PAGA penalties that could be levied against Defendant within the relevant statutory period. (*Id*., ¶ 23). Defendant, however, disputed Plaintiff's claims and disputed both the existence of and extent of liability as alleged by Plaintiff, which allowed PAGA Counsel to further assess the strength of Plaintiff's claims. (Ibid). PAGA Counsel's experience in litigating similar representative wage and hour claims, the degree of investigation that was conducted here, and the amount of data, information, and documents that was obtained, was sufficient to determine the potential value of the PAGA claims, and to evaluate the strength of these claims for purposes of settlement. (Ibid).

The Parties believe the Settlement Agreement is fair, reasonable, and adequate. (*Id*., ¶ 24). The Parties understand, acknowledge, and agree that the Settlement Agreement constitutes a compromise of Plaintiff's PAGA claims, and that it is the desire and intention of the Parties to affect a final and complete resolution of the Action. (Ibid).

Defendant denies all of the claims in the Action, and does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations upon all legal, procedural, and factual grounds should the Settlement Agreement not become final. (*Id*., ¶ 25). The Settlement Agreement reflects a compromise reached to end litigation in the Action. (Ibid). Following significant investigation and extensive settlement negotiations, Plaintiff now seeks approval of the proposed Settlement Agreement, which will resolve all representative claims alleged in the Action. (Ibid).

III. THE SETTLEMENT TERMS

A. <u>Definition of the Aggrieved Employees</u>

For purposes of settlement only, the Parties have agreed that the "Aggrieved Employees" shall be defined as "all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period." (Rose Decl., ¶ 27; Settlement Agreement, ¶ I.2). The "PAGA Period" is the period from February 3, 2021 through March 28, 2024. (Rose Decl., ¶ 27; Settlement Agreement, ¶ I.22). There are approximately forty-six (46) Aggrieved Employees. (Rose Decl., ¶ 27)

B. <u>Amount of Settlement</u>

The Parties have agreed to settle the PAGA claims at issue in the Action for a non-reversionary Gross Settlement Amount of Two Hundred Eighty Thousand Dollars and Zero Cents ($280,000.00). (Rose Decl., ¶ 28; Settlement Agreement, ¶ I.13).

C. <u>Allocation and Funding of the Gross Settlement Amount</u>

The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. (Rose Decl., ¶ 28). The Gross Settlement Amount includes: (1) PAGA Counsel's fee award in the amount up to one-third (1/3) of the Gross Settlement Amount, equaling Ninety-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents ($93,333.33); (2) PAGA Counsel's actual litigation costs and expenses in the amount Nineteen Thousand Nine Hundred Sixty-Three Dollars and Sixty-Eight Cents ($19,963.68); (3) PAGA Representative Enhancement Payment in the amount of Five Thousand Dollars and Zero Cents ($5,000.00); and (4) Administration Costs, not to exceed Two Thousand Five Hundred Dollars and Zero Cents ($2,500.00). (Rose Decl., ¶ 28; Settlement Agreement, ¶¶ III.42.A-C).

After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount will amount to approximately One Hundred Fifty-Nine Thousand Two Hundred Two Dollars and Ninety-Nine Cents ($159,202.99), of which 75%, or One Hundred Nineteen Thousand Four Hundred Two Dollars and Twenty-Four Cents ($119,402.24), will be paid to the LWDA and the remaining 25%, or Thirty-Nine Thousand Eight Hundred Dollars and Seventy-Five Cents ($39,800.75), will be distributed and paid to Aggrieved Employees. (Rose Decl., ¶ 29; Settlement Agreement ¶ III.42.D).

Within five (5) business days after entry of the Approval Order, Defendant will deliver to the Settlement Administrator a list of the following information for each Aggrieved Employee: (1) first and last name; (2) last known mailing address; (3) Social Security number; (4) telephone number; and (5) dates worked for Defendant during the PAGA Period (collectively, "Aggrieved Employee Data"). (Rose Decl., ¶ 30; Settlement Agreement, ¶ 3).

Defendant shall wire or otherwise provide to the Settlement Administrator the Gross Settlement Amount in the following installments:

a. Initial Payment: No later than thirty (30) calendar days of the Effective Date, Defendant will wire $70,000.00 of the Gross Settlement Amount to the Settlement Administrator ("Initial Payment").

b. Installment Payment(s): The remainder of the Gross Settlement Amount shall be paid in nine (9) equal payments of $23,333.33 over the next nine (9) months with the ninth payment as $23,333.36 ("Installment Payment(s)").

c. Should the Escalator Provision of the Settlement Agreement be triggered, the First Payment and Installment Payments will be increased proportionally to the increase of the GSA. (Rose Decl., ¶ 31; Settlement Agreement, ¶ III.44.F.i)

Within seven (7) business days after Defendant provide the Gross Settlement Amount to the Settlement Administrator, the Settlement Administrator will disburse the: (1) Individual PAGA Settlement Shares (along with the Cover Letter) to the Aggrieved Employees; (2) Attorneys Fee Award and Cost Award to PAGA Counsel; (3) PAGA Representative Enhancement Payment to Plaintiff; (4) the Administration Costs; and (5) LWDA Payment to the LWDA. (Rose Decl., ¶ 32;

Settlement Agreement, ¶ III.44.F.ii)

Aggrieved Employees must negotiate, cash, or deposit their Individual PAGA Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them. (Rose Decl., ¶ 33; Settlement Agreement, ¶ III.44.H). After the 180-day deadline, the checks will be canceled and any funds associated with such canceled checks shall be transmitted by the Settlement Administrator to the State Controller's Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of their respective Individual PAGA Settlement Share(s). (Ibid).

Defendant has represented that the Aggrieved Employees worked a total of 6,047 Workweeks during the PAGA Period. (Rose Decl., ¶ 34; Settlement Agreement, ¶ III.39.A). If, by the time the Settlement Administrator receives the Aggrieved Employee Data, it is determined that the Workweeks increased by more than 10% above 6,047 (i.e., by more than 6,652 Workweeks), Plaintiff shall have the right to demand a pro-rata increase from Defendant to the Gross Settlement Amount equal to the percentage increase in the number of Workweeks worked by the Aggrieved Employees above 10%, and the right, but not obligation, to terminate the Settlement if Defendant refuses to such an increase in the Gross Settlement Amount. (Ibid).

IV. STANDARD FOR APPROVAL OF PAGA SETTLEMENT

The settlement of a PAGA claim requires court approval. (California Labor Code ("Lab. Code") § 2699(l)). The Court must be mindful that a "[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further." (*In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist. LEXIS 103222 at *24 (N.D. Cal. Sep. 12, 2011)). "[T]he very essence of a settlement is ... 'a yielding of absolutes and an abandoning of highest hopes,'" as "it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." (*Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-26 (9th Cir. 1982)). As such, "the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits," or "judged against a hypothetical or speculative measure of what might have been achieved." (Ibid).

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Although the California Labor Code does not set forth the criteria by which a PAGA settlement is to be evaluated, it is presumed that a reviewing court may take into consideration some of the factors that courts use when reviewing a class action settlement. However, "a PAGA claim asserted on a non-class representative basis...is not considered a class action but a law enforcement action, and therefore does not have to meet the requirements of [a class action]." (*Casida v. Sears Holdings Corp.*, 2012 U.S. Dist. LEXIS 9302 at *8 (E.D. Cal. Jan. 25, 2012)).

A court's review of a PAGA settlement necessarily implicates the following unique features that render the approval process distinct from approval of a class action settlement under Code of Civil Procedure Section 382 and California Rules of Court Rule 3.769. First, in evaluating the adequacy of the settlement amount, the Court's focus is not concerned with the amount aggrieved employees are to receive, but rather, must focus on the total settlement amount in achieving PAGA's objective. Indeed, "[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or class damages," and while a "[PAGA] action is ... designed to protect the public and penalize the employer for past illegal conduct," a reviewing court must be mindful of the fact that settlement of a PAGA claim involves a compromise. (*Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 at *11 (E.D. Cal. June 30, 2010)). "Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." (*Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 U.S. Dist. LEXIS 32774 at *12 (Apr. 2, 2010)). The Court should not lose sight of the fact that, "[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies." (Ibid).

Second, consistent with the fact that unnamed employees have no property interest in a PAGA claim, "[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." (*Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS 32774 at *13). Indeed, "[PAGA] does not create property rights or any other substantive rights" as "[i]t is simply a procedural statute allowing an aggrieved employees to recover civil penalties – for Labor Code violations – that otherwise would be sought by state labor law enforcement agencies."

(*Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009)). This renders the approval process of a PAGA settlement distinct from a class action settlement, as there is no need for the Court to employ the "two-step approval process" required under California Rules of Court Rule 3.769.

Finally, unlike class action settlements, the scope of release permitted in a PAGA settlement is limited. While "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...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." (*Arias v. Sup. Ct*., 46 Cal.4th 969, 985-87 (2009)). Thus, the scope of a release in a PAGA settlement is confined to the PAGA penalties alleged in the complaint and/or the plaintiff's notice to the LWDA and to the claims that were, or could have been, alleged pursuant to PAGA based on the factual allegations in the complaint and/or the plaintiff's notice to the LWDA. In the case at hand, as the only claims at issue are PAGA claims, those will be the only claims extinguished through the Settlement.

V. THE AGREEMENT IS FAIR AND SHOULD BE APPROVED

A. The Agreement is Presumed to Be Fair

California courts recognize that "a presumption of fairness exists where . . . [a] settlement is reached through arm's-length bargaining." (*Wershba v. Apple Computer, Inc.,* 91 Cal.App.4th 224, 245 (2001); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009)). Here, the Agreement is presumptively fair because: (1) it occurred after counsel for the Parties engaged in significant investigation to evaluate the strength and potential value of the PAGA claims, and the risks of litigating these claims through trial; and (2) it was negotiated at great length and effort by counsel with significant experience in similar complex labor and employment matters. (Rose Decl., ¶ 35).

B. The Agreement is Fair, Adequate, and Reasonable in Light of the Parties' Respective Legal Positions and Recovery Risks

In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if it is fair given the circumstances of the case. (*Mallick v. Sup. Ct.*, 89 Cal.App.3d 434, 438 (1979)). In exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." (*Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted)). A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain one hundred percent of the damages sought to be fair and reasonable. (*Wershba*, 91 Cal.App.4th at 246, 250). In evaluating the reasonableness of a settlement, a trial court must consider "the strength of plaintiffs' 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, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement."[1] (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)). Even though a *Kullar* analysis is not required for approval of a PAGA settlement, a brief analysis is included to support approval of the Settlement Agreement. (*See* Rose Decl., ¶¶ 42-55).

These factors require balancing and are non-exhaustive. Trial courts should therefore tailor the factors to each case and give due regard to "what is otherwise a private consensual agreement between the parties." (*Dunk, supra,* 48 Cal. App. 4th at 1801).

1. <u>Strength of Plaintiff's Case</u>

In order to prevail at trial, Plaintiff would have to prove violations of the California Labor Code underlying his PAGA claims, demonstrate that Aggrieved Employees suffered, and demonstrate that Defendant's conduct gives rise to penalties. (*See Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) ["Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because all of Plaintiff's other claims fail as a matter of law, so does her PAGA claim."]).

Here, Plaintiff's core allegations are that Defendant systematically violated the California Labor Code by, *inter alia,* failing to properly pay wages for all hours worked, failing to pay overtime at the correct rate, failing to provide compliant meal and rest periods, failing to pay premiums at the correct rate of pay, failing to timely pay wages during employment and upon termination, failing to maintain accurate payroll records, failing to provide accurate wage statements, and failing to reimburse

[1] As this is not a class action, the *Kullar* factors pertaining to the risk of maintaining class action status through trial and the reaction of class members to the proposed settlement are inapplicable.

necessary business expenses. (Rose Decl., ¶ 36).

Defendant maintained several defenses to Plaintiff's theories of liability, which, if successfully argued and proven, had the potential to eliminate or substantially reduce recovery. (*Id.*, ¶ 37). Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and continues to have, compliant employment policies and practices throughout the time period at issue. (Ibid). Defendant denies that it ever violated any provision of the California Labor Code, including, but not limited to, those sections for which Plaintiff seeks penalties under PAGA. (Ibid). Defendant further denied, and continues to deny, that the lawsuit is appropriate for representative treatment for any purpose other than settlement. (Ibid). Defendant also challenged Plaintiff's standing as an aggrieved employee and denied that any of Defendant's other employees whom Plaintiff seeks to represent are aggrieved. (Ibid).

Defendant also argued that an important feature of PAGA is that the Court retains discretion to lower the penalties 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." (Ibid; Lab. Code § 2699(e)(2); *see also Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1136 (2012) [holding that a court may reduce the amount of PAGA penalties awarded to an employee based upon discretionary factors]).

Even if violations of the California Labor Code occurred, which Defendant denies, Defendant contended that said violations would only be considered "initial violations" and thus heightened "subsequent violation" penalties were not warranted. (Rose Decl., ¶ 38; Lab. Code § 2699(f)(2); *see also Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1208-09 (2008) ["Until the employer has been notified that it is violating a Labor Code provision [...], the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties."]).

Defendant also contended that, with respect to PAGA claims, the Court was unlikely to assess cumulative penalties for the maximum number of possible, separate California Labor Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct may be regulated by multiple provisions of the California Labor Code that are interrelated and work in tandem. (Rose Decl., ¶ 39). While the PAGA does provide the potential for a heightened penalty for subsequent violations, courts are often hesitant to award a heightened penalty where there is no prior citation by the Labor Commissioner, as is the case here. (*See Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no heightened penalty where defendant was not notified by Labor Commissioner or any court that it was subject to the California Labor Code)). The Ninth Circuit's holding in *Bernstein* also supports that a settlement valuation that does not "stack" penalties. (Ibid).

While Plaintiff maintains that his PAGA claims have merit, in reaching the Agreement, Plaintiff and his counsel took into account the strengths and weaknesses of each side's position, and the uncertainty of how the case might have concluded as litigation continued, at trial, and/or upon appeal. (Rose Decl., ¶ 40). Based on these disputes, which had the potential to completely eliminate Plaintiff's recovery, the range of realistic "litigation outcomes" on Plaintiff's PAGA claims was defined by a "maximum possible liability" amount of approximately $604,700 and a "risk-adjusted realistic value" amount of approximately $296,303 (*Id*., ¶ 55). In light thereof, the Gross Settlement Amount of $280,000 is a significant settlement. (Ibid).

2. <u>Risk, Expense, Complexity, and Likely Duration of Further Litigation</u>

Approval of the Settlement Agreement is also appropriate in light of the risk, expense, and complexity of further litigation. As discussed above, the Settlement Agreement takes into consideration the specific factual and legal hurdles faced by Plaintiff in establishing Defendant's penalty-liability in this case, which may have resulted in a net-zero recovery. Any recovery on these claims is not certain. And even when liability is found, PAGA claims are discretionary, such that the Court could decline to award their full value. Some of Plaintiff's claims are also derivative, and as such, Plaintiff must prevail on his underlying California Labor Code claims in order to prevail on the derivative claims. These risks – when balanced with the fact that the Agreement achieved a very significant recovery (as demonstrated below), and that further litigation posed a risk of diminishing such recovery by increasing litigation expenses – weigh strongly in favor of settlement approval.

3.<u>The Benefits Conferred by the Agreement Balance in Favor of Approval</u>

The Settlement Agreement provides a *significant* monetary benefit that falls well within the range of an acceptable settlement under the circumstances, which is the standard on which the instant

Agreement must be judged. As held by the Ninth Circuit: "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." (*Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d at 625 (emphasis in original)). As the Second Circuit has pointed out: "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." (*City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 & n.2 (2nd Cir. 1974)).

The Net Settlement Amount is currently estimated to be One Hundred Fifty-Nine Thousand Two Hundred Two Dollars and Ninety-Nine Cents ($159,202.99). After all deductions are made from the Gross Settlement Amount for the Attorneys Fee Award, Cost Award, PAGA Representative Enhancement Payment, and Administration Costs, One Hundred Nineteen Thousand Four Hundred Two Dollars and Twenty-Four Cents ($119,402.24) (i.e. 75% of the Net Settlement Amount) will go to the LWDA, and Thirty-Nine Thousand Eight Hundred Dollars and Seventy-Five Cents ($39,800.75) (i.e. 25% of the Net Settlement Amount) will go to the Aggrieved Employees, as required by California Labor Code § 2699(i) in effect at the time of this matter ("civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency . . . and 25 percent to the aggrieved employees."). (Rose Decl., ¶ 56). There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement Amount as it fully complies with California Labor Code section 2699(i). (Ibid).

The Settlement Agreement is a compromise of highly disputed claims. (*Id.*, ¶ 57). Plaintiff and his counsel recognize the expense and length of continued proceedings necessary to litigate the matter through trial and any possible appeals. (Ibid). Plaintiff and his counsel have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. (Ibid). Plaintiff and his counsel are also aware of the burdens of proof necessary to establish liability, both generally and in response to Defendant's defenses thereto, and the difficulties in establishing Defendant's liability for, and the right to recover, penalties on behalf of Plaintiff, the State of California, and other Aggrieved Employees. (Ibid). Plaintiff and his counsel have also taken into account Defendant's agreement to enter into a settlement that confers significant relief upon the Aggrieved Employees and the State of California. (Ibid). Considering all of the facts in this case, Plaintiff and his counsel have determined that the Agreement represents a fair, adequate, and reasonable resolution of the PAGA claims, and that it is in the best interests of the Aggrieved Employees and the State of California. (Ibid).

The result achieved in this case is well within the range of what is considered an acceptable settlement under the circumstances, especially when compared to the settlement of PAGA claims in other cases. (*Id*., ¶ 58). (*See, e.g., DCH Auto Wage and Hour Cases,* Los Angeles Superior Court, Case No. JCCP4833 (May 2017) [approving $15,000 out of $4 million toward settlement of PAGA claims]; *Garcia v. Gordon Trucking, Inc.,* 2012 U.S. Dist. LEXIS 160052, at *9 (E.D. Cal. Oct. 29, 2012) [approving $10,000 out of $3.7 million toward settlement of PAGA claims]; *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, at *40 (E.D. Cal. June 11, 2012) [approving $7,500 out of $518,245 toward settlement of PAGA claims]; *Chu v. Wells Fargo Investments, LLC,* 2011 U.S. Dist. LEXIS 15821, at *4 (N.D. Cal. Feb. 15, 2011) (approving $10,000 out of $6.9 million toward settlement of PAGA claims]; *Franco v. Ruiz Food Prods.,* 2012 U.S. Dist. LEXIS 169057, at *14 (E.D. Cal. Nov. 27, 2021) [approving $10,000 out of $2.5 million toward settlement of PAGA claims]). Here, the value obtained for settlement of the PAGA claims is significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

4. <u>The Scope of the Release is Narrowly Tailored</u>

As discussed above, the California Supreme Court has concluded that in the context of PAGA "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." (*See Arias*, 46 Cal. 4th, at 987). Thus, the scope of the limited release provided in exchange for the foregoing consideration is limited to the civil penalties asserted in the Operative Complaint and the PAGA Notice, under California Labor Code §§ 2698 *et seq.* (*See* Settlement Agreement, at ¶ I.26).

As such, this factor balances strongly in favor of approval of the Agreement.

5. <u>Experience and Views of Counsel Favor Approval</u>

PAGA Counsel is experienced in complex representative and class action wage-and-hour litigation. (Rose Decl., ¶ 64). In the view of PAGA Counsel, the benefits conferred by the Agreement are eminently fair and reasonable, and in the best interests of the State of California and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Agreement. (*Id.*, ¶ 59). Furthermore, courts have acknowledged that "the interests of a plaintiff, counsel, and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]" (*Williams v. Superior Court*, 3 Cal. 5th 531, 548 (2017) [citing Labor Code § 2699(g)(l)(i)]).

6. <u>The Extent of Discovery and Stage of Proceedings Favor Approval</u>

In evaluating this element, the Court should be mindful that "'formal discovery is not a necessary ticket to the bargaining table'" [*Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239], as the relevant consideration is "whether 'the parties have sufficient information to make an informed decision about settlement.'" (*See Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at 26 (C.D. Cal. Nov. 9, 2011)).

Here, the extent of formal and informal discovery conducted was sufficient to enable PAGA Counsel to evaluate the strength and value of the PAGA claims for purposes of settlement. (Rose Decl., ¶ 60). Prior to mediation, Defendant provided Plaintiff with data, information, and documents relating to the underlying alleged violations, including, but not limited to, Plaintiff's employee file, all of the Aggrieved Employees' time and payroll data, relevant wage and hour policies, and Aggrieved Employees' data points. (*Id.*, ¶ 22). As discussed above, PAGA Counsel's investigation was sufficient to, among other things, tabulate with precision the total number of alleged California Labor Code violations at issue during the relevant statutory period and identify the total number of individuals falling within the definition of "Aggrieved Employees" for the relevant statutory period. (*Id.*, ¶ 23).

Based on PAGA Counsel's experience litigating wage and hour claims, such investigation was sufficient to determine the potential value of the PAGA claims, and to evaluate the strength of these claims for purposes of settlement. (Ibid).

VI. THE REQUESTED ATTORNEYS FEE AWARD IS FAIR AND REASONABLE

As the prevailing party in settlement, Plaintiff is entitled to recover attorneys' fees and costs for bringing his PAGA claims. (Lab. Code § 2699(k) ["Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."]). PAGA Counsel is also entitled to attorneys' fees pursuant to Code of Civil Procedure section 1021.5(a), as the instant action has resulted in the enforcement of important rights benefitting the public and secures monetary recovery for the State of California as well as the Aggrieved Employees. A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) ["when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff ... for the benefit of all results in the creation or preservation of that fund, such plaintiff ... may be awarded attorney's fees out of the fund."]).

In *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016), the California Supreme Court confirmed that "[t]he percentage of fund method survives in California class action cases." Specifically, the *Laffitte* Court held:

> 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-convince us the percentage method is a valuable tool that should not be denied our trial courts.

(*Id.*, at 503 [internal citation omitted]).

While trial courts have discretion to apply either a lodestar method or percentage-of-the-fund method, the California Supreme Court has taken the position that trial courts also "retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee." (*Lafitte*, 1 Cal.5th at 506; *see also Wershba*, 91 Cal.App. 4th at 253). Courts award fees to serve as an economic incentive for lawyers to undertake litigation, and thereby enhance and facilitate access to the judicial system for adjudication of meritorious claims, and to deter wrongdoing. This is especially true in situations where multiple similar alleged wrongs would not be economically feasible to pursue individually, such as here. Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." (*Lealao v. Beneficial Cal., Inc*., 82 Cal.App.4th 19, 41 (2000); *see also Laffitte,* 1 Cal.5th at 506 [holding that "trial court did not abuse its discretion in using [the percentage of fund method], in part to approve the fee request"]). Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." (*Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001)).

The percentage method is particularly appropriate where a monetary settlement has been recovered and "the benefit [recovered can be] easily quantified." (*In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011)). Where the amount of a settlement is a "certain or easily calculable sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the settlement created. (Weil and Brown, California Practice Guide, *Civil Procedure Before Trial,* Chapter 14, section 14:145; *Dunk, supra,* 48 Cal. App. 4th at 1808). The percentage fee method is preferred in representative actions because "it better approximates the workings of the marketplace than the lodestar approach." (*Lealao, supra,* 82 Cal.App.4th at 49). California law provides that the award for attorneys' fees should be equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation based on the result achieved and risk incurred. (*See Lealao,* 82 Cal.App.4th at 47-50; *Laffitte,* 1 Cal.5th 480 at 503). In cases where the settlement agreement provides that the defendant will pay the plaintiffs' attorneys a percentage of the fund created by the settlement, use of that percentage method is appropriate. (*Lealao,* 82 Cal.App.4th at 32). Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." (*Id.* at 53). Therefore, fees in representative actions should approximate the probable terms of a contingent fee contract negotiated by a sophisticated attorney and client in comparable litigation. (*Id.* at 48). "The ultimate goal ... is the award of a 'reasonable' fee to compensate counsel for their efforts, irrespective of the method of calculation." (*Consumer Privacy Cases*, 175 Cal.App.4th 545, 557-58 (2009) [quoting *Apple Computer, Inc. v. Superior Court, supra,* 126 Cal.App.4th at 1270]).

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PAGA Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the case is within the range of reasonableness. Historically, courts have awarded fees as high as fifty percent (50%) of the settlement in complex actions, depending on the circumstances of the case. (*See In re Ampicillin Antitrust Litig.*, 526 F.Supp. 494 (D.D.C. 1981) [awarding attorneys' fees in the amount of 45% of the $7.3 million total settlement amount]; *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* 480 F.Supp. 1195 (S.D.N.Y. 1979) [awarding approximately 53% of the settlement as attorneys' fees]).

Here, PAGA Counsel's fee request of one-third (1/3) of the Gross Settlement Amount (i.e., $93,333.33) is fair and reasonable based on the percentage of the recovery method. PAGA Counsel has vigorously litigated this case since it was commenced, with the very real possibility of an unsuccessful outcome and no fee recovery of any kind. (Rose Decl., ¶ 61). Counsel for Plaintiff undertook significant investigation and invested a significant amount of time analyzing relevant documents and data to evaluate the nature and extent of the alleged underlying California Labor Code violations and calculation of the potential monetary recovery as they relate to Plaintiff's PAGA claims under PAGA. (*Id*., ¶ 65). PAGA Counsel possesses combined extensive experience litigating wage and hour and other complex litigation matters, and the attorneys who worked on this matter have been approved as class counsel in other class and PAGA actions, numerous times. (*Id*., ¶ 64).

In the present case, PAGA Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained. (*Id*., ¶ 62). PAGA Counsel is experienced in complex wage-and-hour litigation and used that experience to obtain a favorable result for Plaintiff, the Aggrieved Employees, and the State of California. (Ibid). Considering the amount of fees requested, work performed, risks incurred, and experience of PAGA Counsel in handling similar matters, Plaintiff maintains that the requested attorneys' fees of one-third (1/3) of the Gross Settlement Amount (i.e., $93,333.33) are reasonable and should be awarded. (Ibid).

VII. THE REQUESTED COST AWARD IS FAIR AND REASONABLE

The Agreement provides for reimbursement of actual litigation costs and expenses up to the amount of Twenty-Five Thousand Dollars and Zero Cents ($25,000.00). (Rose Decl., ¶ 67; Settlement Agreement, ¶ I.7). PAGA Counsel only seeks reimbursement of a total of Nineteen Thousand Nine

Hundred Sixty-Three Dollars and Sixty-Eight Cents ($19,963.68) in litigation costs and expenses. (Rose Decl., ¶ 67 & Exh. 5). Accordingly, PAGA Counsel respectfully requests that the Court reimburse it for actual litigation costs and expenses in the amount of Nineteen Thousand Nine Hundred Sixty-Three Dollars and Sixty-Eight Cents ($19,963.68).

VIII. THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE

As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval by the Court, Apex Class Action LLC to handle the administration of the Agreement. (Rose Decl., ¶ 68; Settlement Agreement, ¶ I.28). The fees and expenses of the Administrator are estimated not to exceed Two Thousand Five Hundred Dollars and Zero Cents ($2,500.00). (Rose Decl., ¶ 68; Settlement Agreement, ¶ I.1). These costs include, but are not limited to, expenses for preparing, printing, and mailing the Cover Letter and Individual PAGA Settlement Share checks to the Aggrieved Employees, re-mailing the returned Individual PAGA Settlement Share checks to any new addresses obtained, and handling inquiries from Aggrieved Employees regarding the Agreement, among other things. (Rose Decl., ¶ 68). Accordingly, the Court should grant approval of the Administration Costs in the amount of *up to* Two Thousand Five Hundred Dollars and Zero Cents (2,500.00) to Apex Class Action LLC, a necessary third-party for handling the settlement process. (Ibid).

IX. THE REQUESTED PAGA REPRESENTATIVE ENHANCEMENT PAYMENT IS FAIR AND REASONABLE

The purpose of an enhancement award is to incentivize aggrieved employees to step into the shoes of the state labor agency and undertake the responsibilities associated with initiating a lawsuit and serving in a representative capacity. (*See, e.g., Bell v. Farmers Ins. Exch*., 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing the action); *Clark v. Am. Residential Servs., LLC*, 175 Cal.App.4th 785, 804 (2009) ("an incentive award is appropriate 'if it is necessary to induce an individual to participate in the suit'"). Plaintiff initiated this litigation on behalf of the State of California and his former co-workers who will now be entitled to receive payment from the Agreement. By initiating and pursuing the Action, Plaintiff stepped into the shoes of the State of California and undertook the responsibilities of serving in a representative capacity. (Rose Decl., ¶ 70; Herrera Decl., ¶¶ 4-6). Plaintiff was available whenever PAGA Counsel needed him and actively tried to obtain information that would benefit the prosecution of the Action. (Rose Decl., ¶ 71; Herrera Decl., ¶¶ 5-6). The PAGA Representative Enhancement Payment for Plaintiff is eminently reasonable given the time and effort Plaintiff spent on this matter, his services on behalf of the State of California and the Aggrieved Employees, and his broader, general release of claims. (Rose Decl., ¶ 69).

Accordingly, Plaintiff respectfully submits that it is appropriate and just for Plaintiff to receive a PAGA Representative Enhancement Payment in the amount of Five Thousand Dollars and Zero Cents ($5,000.00) in addition to the Individual PAGA Settlement Share he will receive as an Aggrieved Employee, for his services on behalf of the State of California and the other Aggrieved Employees, as well as for the broader, general release of claims. (Rose Decl., ¶ 71).

X. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's Motion for Approval of PAGA Settlement and Award of Attorneys Fee Award, Cost Award, PAGA Representative Enhancement Payment, and Administration Costs and grant the relief requested herein.

Respectfully submitted,

Dated: October 21, 2025

BLACKSTONE LAW, APC

By: ______________________________

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