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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

RICHARD CABANAS, individually, on behalf of all others similarly situated, and on behalf of the State of California and other aggrieved persons,

Plaintiff,

v.

F.R.T. INTERNATIONAL, INC. DBA FRONTIER LOGISTICS SERVICES, a California corporation FAIRWAY STAFFING SERVICES, a California corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 22STCV09374

PAGA REPRESENTATIVE ACTION

[*Assigned for all purposes to*: Hon. Elihu M. Berle, Dept. 6]

PLAINTIFF'S NOTICE OF MOTION AND MOTION TO APPROVE PAGA SETTLEMENT

Date: June 25, 2024
Time: 9:00 a.m.
Dept.: 6

Complaint Filed: March 16, 2022
FAC Filed: May 24, 2022
Trial Date: Not Set

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NOTICE OF MOTION AND MOTION

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on June 25, 2024 at 9:00 a.m. in Department 6 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, California 90012, the Honorable Elihu M. Berle presiding, Plaintiff Richard Cabanas ("Plaintiff") will, and hereby does, move for an order under Labor Code section 2699(l)(2) approving the PAGA Settlement Agreement ("Settlement") entered into by Plaintiff and Defendants Fairway Staffing Services ("Fairway Staffing") and F.R.T. International, Inc. dba Frontier Logistics Services ("Frontier" and collectively with Fairway, "Defendants").

Pursuant to Labor Code § 2699(l)(2), the settlement of Plaintiff's PAGA claims requires the Court's approval. The basis for this motion is that Plaintiff and Defendants reached and fully executed a Settlement of the above-entitled case, Case No. 22STCV09374, that disposes of the matter entirely and is fair, reasonable, and serves the purposes of the PAGA statute. The Settlement includes all non-exempt employees who were placed by Fairway Staffing to work at Frontier, in the state of California, and worked at any time from March 16, 2021 through the date of approval of the PAGA settlement. The Settlement is fair, adequate, and reasonable, and provides for civil penalties to be distributed to Plaintiff, all other aggrieved employees, and the California Labor & Workforce Development Agency.

This motion is based on this Notice, the attached Memorandum of Points and Authorities, the Declaration of Justin F. Marquez and attached exhibits, as well as the records on file in this action and any argument the Court is presented with at the time of the hearing.

Respectfully submitted,

Dated: May 30, 2024

WILSHIRE LAW FIRM

By: ______________________________
Justin F. Marquez
Benjamin H. Haber
Maxim Gorbunov

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

On March 16, 2022, Plaintiff Richard Cabanas ("Plaintiff") filed a Class Action Complaint against Defendant Fairway Staffing Services ("Fairway Staffing") and Defendant F.R.T. International, Inc. dba Frontier Logistics Services ("Frontier" and collectively with Fairway Staffing, "Defendants", and together with Plaintiff, the "Parties"), alleging (1) Failure to Pay Minimum and Straight Time Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197); (2) Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194 and 1198); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7 and 512); (4) Failure to Authorize and Permit Rest Periods (Cal. Lab. Code § 226.7); (5) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203); (6) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226); and (7) Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, et seq.). On May 24, 2022, Plaintiff filed a First Amended Complaint adding a cause of action against Defendants for civil penalties under the Private Attorneys General Act of 2004 ("PAGA") (Cal. Lab. Code §§ 2698, *et seq*.) On September 8, 2022, the Court dismissed Plaintiff's class claims. On October 16, 2023, Plaintiff dismissed his individual non-PAGA claims. On March 14, 2024, the Parties engaged in vigorous, arms-length negotiations regarding the resolution of this matter. After an all-day mediation with David Phillips, Esq., the Parties ultimately agreed to settle Plaintiff's PAGA claim for $100,000.00, which will provide significant civil penalties to the California Labor & Workforce Development Agency ("LWDA") and the aggrieved employees.

Labor Code § 2699(l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the [LWDA] at the same time that it is submitted to the court." Plaintiff submitted the proposed Settlement to the LWDA on May 30, 2024, pursuant to Labor Code § 2699(l)(2). (Declaration of Justin F. Marquez ["Marquez Decl."], ¶ 7, Ex. A.) The Parties now seek Court approval of the Settlement. For the reasons discussed in detail below, the Court should issue an order approving the Settlement.

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II. FACTUAL AND PROCEDURAL BACKGROUND.

Frontier provides logistics services for supply chains including freight delivery, warehousing and distribution, and customs compliance. Fairway provides staffing services with approximately 12 locations in California. (*Id.* at ¶ 3.) Plaintiff worked for Defendants in Ontario, California as an hourly-paid, non-exempt employee from approximately March 2019 to approximately March 2021. (*Id.*)

Plaintiff's PAGA claims stem from Defendants alleged failure to pay for all hours worked (minimum, straight time, and overtime wages), alleged failure to provide meal periods, alleged failure to authorize and permit rest periods, alleged failure to maintain accurate records of hours worked and meal periods, alleged failure to timely pay final wages, alleged failure to furnish accurate wage statements, and alleged failure to indemnify for necessary business expenditures. (*Id.* at ¶ 4.)

Plaintiff provided notice to the LWDA and Defendants of the violations described above, as required by Labor Code § 2699.3(a)(1). (*Id.* at ¶ 5.) Pursuant to Labor Code § 2699.3 (a)(2)(A), the LWDA had 65 calendar days to notify Plaintiff and Defendants whether it intended to investigate the alleged violations. (*Id.*) However, the LWDA did not do so. (*Id.*)

After Plaintiff filed this action, the Parties engaged in extensive settlement discussions and agreed to attend private mediation. (*Id.* at ¶ 6.) In advance of, and in order to facilitate a productive mediation,Defendants provided Plaintiff with informally produced discovery consisting of timekeeping and payroll data for a sampling of the aggrieved employees, and applicable policies in effect during the relevant time period. (*Id.*) Thereafter, the Parties engaged in extensive discussions about the factual and legal strengths (and weaknesses) of the claims and defenses. (*Id.*) Ultimately, after an all-day mediation presided over by David Phillips, Esq., the Parties agreed to settle the representative PAGA claims on behalf of all aggrieved employees for $100,000.00, which is comprised of all non-exempt employees who were placed by Fairway Staffing to work at Frontier, in the state of California, and worked at any time from March 16, 2021 through the date of approval of the PAGA Settlement ("Aggrieved Employees"). (*Id.* at ¶ 8.) There are approximately 452 Aggrieved Employees

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covered by the settlement. (*Id.*) Plaintiff submitted the Settlement to the LWDA on May 30, 2024, pursuant to Labor Code § 2699(l)(2). A true and correct copy of the Settlement executed by the Parties, is attached to the Declaration of Justin F. Marquez as **Exhibit A**. (Marquez Decl., ¶ 8; Ex. A.) Additionally, attached as **Exhibit B** to the Declaration of Justin F. Marquez is the Settlement Notice that will be sent to the Aggrieved Employees with payment after the Court enters a Judgement on its Order Approving the PAGA Settlement. (*Id.*; Settlement, ¶ 1.21.)

III. ARGUMENT.

PAGA permits an aggrieved employee to sue an employer for civil penalties associated with the employer's alleged violations of the Labor Code. (Cal. Lab. Code § 2699(a).) Under the statute, of the amount paid to settle a claim for PAGA penalties, twenty-five percent (25%) is payable to the aggrieved employees and seventy-five percent (75%) is payable to the LWDA. (Cal. Lab. Code § 2699(i).)

A. The Terms of the PAGA Settlement.

The Settlement provides for a gross Settlement Amount of $100,000.00 to be distributed to all non-exempt employees who were placed by Fairway Staffing to work at Frontier, in the state of California, and worked at any time from March 16, 2021 through the date of approval of the PAGA Settlement, and releases claims by the Aggrieved Employees during this period as well. (Settlement, ¶¶ 1.4, 5.2.) Of that amount, $33,333.33 is allocated to Attorneys' Fees, up to $20,000.00 is allocated to litigation costs, up to $9,750.00 is allocated to Settlement Administrator Costs, and $7,500.00 is allocated as a Service Award to Plaintiff. (Settlement, ¶¶ 3.2.) The Net Settlement Amount after these deductions is $29,968.39[1] and will be allocated and disbursed as follows:

Settlement Administration. The Effective Date of this settlement means the date of Plaintiff's service to Defendants of Notice of the Court's Entry of the Order and Judgment Approving the PAGA Settlement ("Effective Date"). Within thirty (30) days of the Effective

[1] This Net Settlement Amount incorporates Plaintiff's actual costs of $19,448.28, rather than the capped fees amount of $20,000.

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Date, Defendants will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet, for the purposes of distributing payments to the Aggrieved Employees. (Settlement, ¶ 4.2.) Within thirty (30) days of the Effective Date, Defendants shall fully fund the Settlement by transmitting the funds to the Settlement Administrator. (*Id.* at ¶ 4.3.)

Before mailing payments to the Aggrieved Employees, the Settlement Administrator will update contact information using the National Change of Address database. (*Id.* at ¶ 4.4.1.) The Settlement Administrator will then issue the Notice and payments to the Aggrieved Employees, issue any required IRS forms, issue the Service Award to Plaintiff, and issue payment to the LWDA and Plaintiff's counsel. (*Id.* at ¶ 4.4.2.) Aggrieved Employees will have 180 days to cash their checks, after which time a stop-payment will issued and the funds will be paid to the California Controller's Unclaimed Property Fund in the name of the PAGA Employee. (*Id.* at ¶¶ 4.4.1, 4.4.3.)

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B. <u>The Terms of the PAGA Settlement Are Fair and Should Be Approved.</u>

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the "court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." (Cal. Lab. Code § 2699(l).)

As with any settlement, the Court must be mindful in conducting its inquiry that "[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further." (*See In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 13, 2011) 2011 WL 4079226, *9.) Indeed, "the 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." (*See Officers for Justice v. Civil Service Com*. (9th Cir. 1982) 688 F.2d 615, 624-25.) 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 by the negotiators." (*Id.*)

Although the operative PAGA statute does not set forth the criteria by which a PAGA settlement is to be judged, a reviewing court may utilize some of the factors for review of a class action settlement. (*Moniz v. Adecco U.S., Inc*, 72 Cal.App.5th 56, 75-76.) 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]." (*See Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, *13 ; *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571, *4 (E.D. Cal. July 1, 2010).) Based thereon, 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 § 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(s) that "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." (*Mendez, supra*, 2010 WL 2650571 at *4.) "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.* (N.D. Cal. Apr. 2, 2010) 2010 WL 1340777, *4. Moreover, while "'[a PAGA] action is … designed to protect the public and penalize the employer for past illegal conduct," a reviewing Court must take into account the fact that settlement of a PAGA claim – like any settlement – involves a "compromise" that stops short of rendering findings of liability and damages. (*Mendez*, 2010 WL 2650571 at p. *4) As such, the Court must 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." (*See Ochoa-Hernandez,* 2010 WL 1340777 at p. *4.)

Second, consistent with the fact that unnamed employees have no property interest in a

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PAGA claim,[2] "[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." (*See Ochoa-Hernandez, supra,* 2010 WL 1340777 at p. *4.) 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 Federal Rule of Civil Procedure 23(e) and Rule 3.769.[3]

Finally, unlike a class action settlement under Rule 23(e) and Rule 3.769, 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 non-party 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. Superior Court* (2009) 46 Cal.4th 969, 986-87 .) Thus, with the exception of the named Plaintiff, the scope of a release in a PAGA settlement is necessarily strictly confined to the PAGA penalties alleged in the complaint, and claims that were or could have been alleged pursuant to PAGA based on the factual allegations in the Complaint. In the case at hand, as the only claims at issue are PAGA claims, those will be the only claims extinguished as a result of this Settlement, with the exception of Plaintiff's much broader, general personal release against Defendants.

California courts have a strong policy in favor of settlement. (*See, e.g., Stambaugh v. Superior Court* (1976) 62 Cal.App.3d 231, 236.) Unlike individual settlements, class action settlements (and representative PAGA settlements) involve a court approval process that exists

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[2] As held by the California Supreme Court, "[t]he Labor Code Private Attorneys General Act of 2004 does not create property rights or any other substantive rights" as "[i]t is simply a procedural statute allowing an aggrieved employee 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. Superior Court* (2009) 46 Cal.4th 993, 1003.)

[3] Significantly, the "two-step" approval process of Rule 23(e) is required to facilitate "notice" to absent class members, as Rule 23(e) expressly requires notice and an opportunity for absent class members to exclude themselves or object. (*See* Fed. R. Civ. P. 23(e) ("The following procedures apply to a proposed settlement … (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal…. (4) … the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members.… (5) Any class member may object to the proposal if it requires court approval under this subdivision").) Cal. Rule of Court 3.769 contains similar rules for State court class actions.

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to prevent fraud, collusion, and unfairness to absent individuals. (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-79.) In the class action context, there is a presumption of fairness of a class action settlement when: (1) the settlement is reached as a result of arm's length negotiations; (2) there has been sufficient investigation and discovery; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) Before approving a class action settlement, a trial court must develop an understanding "of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 120.).

The proposed settlement meets all of these factors.

1. The Settlement Was Reached Through Arms-Length Bargaining.

The Parties reached the Settlement after an all-day mediation presided over by David Phillips, Esq. (Marquez Decl., ¶¶ 7, 8.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.* at ¶ 7.) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. *(Id.)*

2. The Settlement Is Based On Sufficient Investigation and Discovery.

Before the Settlement, Plaintiff's counsel conducted an investigation into the claims alleged by Plaintiff, conducted legal research, and engaged in informal discovery as addressed above. Based upon the information obtained through informal discovery, Plaintiff's counsel was able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.* at ¶ 9.)

3. Plaintiff's Counsel Have Extensive Experience in PAGA Actions.

Highly capable and experienced counsel conducted the settlement negotiations. Plaintiff's counsel are respected members of the bar with a strong record of vigorous and effective advocacy for their clients, and they are experienced in handling complex wage and hour class action litigation and PAGA actions. (*Id*. at ¶¶ 27-39.) Although Plaintiff and counsel were prepared to litigate the claims in this action, they support the proposed Settlement as being

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in the best interests of the State of California and the aggrieved employees. (*Id*. at ¶ 9.)

4. Assessing the Amount In Controversy and the Risks of Trial.

Plaintiff and his counsel remain confident of the merits of Plaintiff's claims. (*Id.* at ¶ 10.) However, Plaintiff does acknowledge that his position includes risk and uncertainty, as described in more detail below. For instance, Plaintiff's allegation that Defendants failed to pay Plaintiff and the aggrieved employees all of their owed wages is based on Defendants' failure to: 1) pay employees for work performed "off-the-clock;" and 2) include non-discretionary remuneration (i.e., bonuses) in the regular rate of pay for overtime purposes. (*Id*.) Although present on the face of the records, Defendants may be able to show that any bonuses issued to employees were entirely discretionary, and therefore, did not need to be included in the regular rate of pay for purposes of calculating the overtime rate. (*Id.*; *see also* 29 C.F.R. §§ 778.208, 778.211 [excluding "discretionary" bonuses from the regular rate]; *see also* DLSE Manual § 49.1.2.4(3) [bonuses are discretionary, and therefore excludable, if "both the fact that payment is to be made and the amount of the payment" are discretionary].) With respect to the meal period allegation, Plaintiff alleges that Defendants had an auto-deduct meal period policy and would regularly interrupt or delay meal periods. (*Id.*) Although Plaintiff contends that this allegation is meritorious, there is risk with this underlying claim. (*Id.*) With respect to the rest period allegation, Plaintiff contends that employees, including himself, were not provided with California-compliant rest periods. (*Id.*) Again, despite Plaintiff's contention that this allegation is credible, proving rest period allegations is particularly difficult because rest periods do not have to be recorded and Defendants may be able to show that the aggrieved employees chose to voluntarily forego their rest periods. (*Id.*) With respect to the unreimbursed business expenses allegation, Plaintiff alleges that Defendants required him and the other aggrieved employees to purchase various work-related tools and equipment, including, without limitation, vests, notepads, calculators, and cutting blades, and also required aggrieved employees to use their cell phones after work to communicate with management, without reimbursement. (*Id.*) Defendants dispute this claim and may be able to show that they provided employees with all the necessary tools required for the performance of their duties and as such, any additional tools

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purchased by employees and personal cell phone use were not truly necessary. (*Id.*) Lastly, with regard to Plaintiff's wage statement claim, Defendants argue that the wage statements issued to employees meet the requirement of Labor Code § 226(a). (*Id.* at ¶ 11.)

Additionally, Plaintiff faced a significant risk that even if the Court did award PAGA penalties, the Court could drastically reduce the penalties based on the discretionary factors contained in Labor Code § 2699(e)(2) ("In action by an aggrieved employee…, a court may award a lesser amount than the maximum civil penalty amount specified by this part 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."). Plaintiff believed there was a legitimate risk of the Court significantly reducing penalties given the technical nature of the alleged violations. (Marquez Decl., ¶ 12.)

Without this settlement, the Parties face preparation for trial, as well as extensive formal discovery efforts and further depositions. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id.*) This settlement avoids those risks and the accompanying expense. Thus, this factor favors settlement approval. (*Id.*)

As described above, the proposed Settlement provides a fair and reasonable monetary recovery for the Aggrieved Employees and the LWDA in the face of the contested claims. Plaintiff estimated Defendants' realistic exposure for the PAGA penalties as follows:

<u>PAGA Penalties for Unpaid Wages, Meal Period Violations, Rest Period Violations, and Unreimbursed Business Expenses</u>: **$167,730.00**

Plaintiff's expert determined that there were 5,591, pay periods during the relevant time period which presented issues with regard to unpaid wages, meal period violations, rest period violations, and unreimbursed business expenses. (Marquez Decl., ¶ 13.) Plaintiff acknowledges that when evaluating Defendants' potential exposure, it is likely that the Court would impose only the initial $100 violation for all PAGA violations. (*See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 [finding that the "initial" violation rate applies until the employer has been notified that it is violating a Labor Code provision].) Applying the $100 "initial violation" penalty for each of these pay periods, Defendants' potential PAGA exposure

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is $559,100.00 (based on 5,591pay periods). (Marquez Decl., ¶ 13.) However, Defendants' contention that the underlying allegations lacked merit led to Plaintiff discounting this maximum exposure by 70% to account for the risk of not prevailing on the merits and the Court's discretion in reducing penalties. (*Id.*)

Accordingly, Plaintiff predicted that the realistic total potential recovery for the Aggrieved Employees and the LWDA would be approximately $167,730.00. (Marquez Decl., ¶ 14.) The proposed Settlement of $100,000 therefore represents 59% of Plaintiff's reasonably forecasted total recovery. (*Id.*) "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." (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 [internal quotations omitted].) In this case, continued litigation would delay payment to the LWDA and the Aggrieved Employees as they await trial and, potentially, appellate proceedings. (Marquez Decl., ¶ 14.) Furthermore, while Plaintiff is confident in the merits of the case, a legitimate controversy exists as to each of the predicate Labor Code violations. (*Id.*) The possibility that the Court finds no liability at the PAGA bench trial is also a risk. (*Id.*) In sum, when the risks of litigation, the burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment are balanced against the merits of Plaintiff's claims, it is clear that the Settlement amount is fair. (*Id.*) Further, because of the proposed Settlement, the Aggrieved Employees will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.*) Plaintiff also recognizes that proving the amount of wages due to each employee would be an expensive, time-consuming, and uncertain proposition. (*Id.*)

If the Court approves the terms of the Settlement, the gross amount per pay period would be approximately $17.89 with approximately $22,476.29 going to the LWDA. (*Id.* at ¶ 15.) In reality, some employees will likely receive more, and others may receive less depending on the length of their employment with Defendants. (*Id.*)

C. <u>The PAGA Representative Service Payment Is Reasonable.</u>

Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as

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compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186 Cal.App.4th 399, 412.) Courts routinely grant approval of class action settlement agreements containing additional awards for the class representatives, which 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." (*Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94 [citations omitted].)

The Settlement provides for a Service Payment to Plaintiff in an amount not to exceed $7,500.00. (Settlement, ¶ 3.2.3.) The requested service award is intended to recognize: (1) the substantial time and effort that Plaintiff has expended on behalf of the State and Aggrieved Employees; (2) the risks faced by Plaintiff as a result of bringing this action; (3) the fact that Plaintiff put the interests of the State of California and other aggrieved employees ahead of his own; and (4) the substantial benefit conferred upon the State and the aggrieved employees as a result of Plaintiff's actions. (Marquez Decl., ¶ 16.) Plaintiff has spent 45 hours performing tasks for this case, including, but not limited to, the following: preparing for and participating in an all-day deposition taken by Defendants' counsel; consulting with counsel in-person and over the telephone; searching for and producing relevant documents; reviewing documents produced by Defendants and settlement documents; keeping informed of the developments in the case; and participating in decisions concerning the case, including settlement. (*Id*. at ¶ 17; *See* Declaration of Richard Cabanas in Support of Plaintiff's Motion to Approve PAGA Settlement.) As a result of his efforts, the LWDA and about 452 Aggrieved Employees will receive compensation for civil penalties for underpaid wages and other wage and hour violations. (*Id*.)

Plaintiff put himself at significant risk in pursuing this action on behalf of the State, as serving as a Plaintiff in a representative action could affect his prospects for future employment. (*Id*. at ¶ 18.) Plaintiff also placed himself at substantial risk because, if Defendants were to prevail in this action, Plaintiff could be liable for Defendants' costs and attorneys' fees. (*Id*.)

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In short, this action would not have been possible without the aid of Plaintiff, who put his own time and effort into this litigation, sacrificed the value of his individual claims by entering into a general release of all known and unknown claims, and placed himself at risk for the sake of the State and the aggrieved employees. (*Id*. at ¶ 19.) Accordingly, the requested Service Payment is reasonable and should be approved by the Court.

D. The Requested Attorneys' Fees and Costs Are Reasonable.

A prevailing party in a PAGA action is entitled to recover his attorneys' fees and costs for his claims. (Cal. Lab. Code § 2699(g) ["Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."].) 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* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53.)

Fee awards of roughly one-third of the settlement fund are routinely awarded in California state and federal courts in class and representative PAGA actions. "[F]ee awards in class actions average around one-third of the recovery." (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11 ; *see also*, *In re Pacific Enterprises Securities Litig.* (9th Cir. 1995) 47 F.3d 373, 379 [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 [holding that class counsel's fee award should have been calculated as one-third of the gross settlement fund]; *Chavez v. Saticoy Lemon Ass'n* (Cal. Super. Ct. Ventura Cty. Aug. 10, 2015) Case No. 56-2015-00468600-CU-OE-VTA, 2015 WL 5561118 [approving attorneys' fees of one-third of settlement fund in representative PAGA settlement]; *Clavel v. Lupe's Thousand Oaks Mexican Restaurant, Inc.* (Cal. Super. Ct. Ventura Cty. Mar. 25, 2016) Case No. 56-2015-00467353-CU-OE-VTA, 2016 WL 1601221 [same].)

The fee award requested here ($33,333.33, representing 33 1/3% of the $100,000.00 gross settlement amount) is justified because Plaintiff's counsel achieved a significant monetary recovery for the aggrieved employees and the LWDA in an uncertain and risky case while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rates described above. Plaintiff's counsel expended significant time

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and resources in litigating this case, which resulted in a favorable result for the LWDA, Plaintiff, and the Aggrieved Employees. Plaintiff's counsel elected to bear the contingency risk of this litigation for the benefit of the aggrieved employees, as well as for the State of California (who elected not to take the case after receiving the PAGA notice). (Marquez Decl., ¶¶ 40-43.)

Critically, this settlement exceeds other PAGA awards approved by courts. (*See, e.g., Aguirre v. DSW, Inc.* (C.D. Cal. Nov. 29, 2012) 2012 WL 11875296, *3 [approving $10,000 PAGA payment]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, *7 ["GTI agrees to allocate $10,000 to Plaintiffs' PAGA claims, and will pay $7,500 to the LWDA, and $2,500 to participating Class Members on a pro-rata basis. This comports with settlement approval of PAGA awards in other cases. [Citations.] Therefore, the Court will approve the allocation of the Settlement to Plaintiffs' PAGA claim."]; *Boyd v. Bank of America Corp.* (C.D. Cal. Nov. 18, 2014) 2014 WL 6473804, *8 [approving $18,750 PAGA payment]; *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801, *14 [approving $10,000 PAGA payment]; *Chu v. Wells Fargo Investments, LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, *1 [approving $10,000 PAGA payment]; *cf. Nordstrom Comm'n Cases* (2010) 186 Cal.App.4th 576, 589 [holding that trial court did abuse its discretion in approving wage and hour class action settlement that involved PAGA claims even though no settlement money was allocated to the PAGA claims and paid to the LWDA].) The fact that Plaintiff's counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength of the results achieved.

As discussed above, this case carried substantial risk as to the merits as well as the potential of the Court drastically reducing penalties in the context of a contested trial or summary judgment proceeding. Accordingly, it is fair and reasonable to account for these risks in compensating Plaintiff's counsel. Since undertaking this representation, Plaintiff's counsel has dedicated substantial resources to this litigation, including approximately $19,148.28 in costs, without receiving any compensation to date. (Marquez Decl., ¶¶ 20, 26.) Plaintiff's counsel conducted extensive legal research regarding the merits of Plaintiff's claims, his ability to recover penalties under the PAGA, and Defendants' potential defenses. (*Id.* at ¶ 9.)

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Plaintiff's counsel expended significant additional effort in preparing formal settlement documents and this Motion to Approve PAGA Settlement. (*Id*. at ¶ 17.) Given the considerable potential for adverse outcomes in this case, including, but not limited to, Defendants defeating Plaintiff's claims on the merits, and/or facing a drastic reduction to potential PAGA penalties, the contingent risk borne by Plaintiff's counsel was great. The quality of Plaintiff's counsel's work, and the efficiency and dedication with which it was performed, should be compensated.

Plaintiff's counsel's previous experience in litigating similar class and representative actions also supports the reasonableness of the fee request. Plaintiff's counsel brings extensive plaintiff-side wage-and-hour class, collective, and representative action experience. (*Id*. at ¶¶ 27-39.) They have been found to be adequate counsel in numerous cases alleging wage and hour claims. (*Id.* at ¶ 39.) Practice in the narrow field of wage-and-hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class and representative action litigation. Because it is reasonable to compensate Plaintiff's counsel commensurate with its skill, reputation, and experience, a fee award of 33 1/3% of the gross settlement amount is reasonable.

Plaintiff's request for reimbursement of actual litigation costs of $19,448.28 is also fair and reasonable. As the evidence submitted herewith shows, all of Plaintiff's litigation costs are documented and reasonably incurred. (*See* Marquez Decl., Ex. C [Expense Summary].)

E. Settlement Administrator Costs Are Reasonable.

The Settlement Administrator Costs in the amount of $9,750.00 are reasonable, given the tasks to be performed by the Settlement Administrator, including, but not limited to, the following duties: mailing and re-mailing (if necessary) checks to approximately 452 Aggrieved Employees and the LWDA; establishing a Qualified Settlement Fund; preparing and submitting to Aggrieved Employees and government entities all appropriate tax filings and forms; distributing the PAGA Representative Service Payment and attorneys' fees and costs; keeping the Parties timely apprised of the performance of all obligations under the Agreement; and voiding uncashed or undeliverable checks to issue those funds to the California Controller's Unclaimed Property Fund. (Settlement, ¶ 4.4.3.) Plaintiff respectfully requests that the Court

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approve the requested costs.

IV. CONCLUSION.

For the reasons set forth above, Plaintiff requests that the Court grant this motion and approve the Parties' PAGA Settlement.

Respectfully submitted,

Dated: May 30, 2024

WILSHIRE LAW FIRM

By: ______________________________
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Benjamin H. Haber
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Attorneys for Plaintiff

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PROOF OF SERVICE

Cabanas v. F. R. T. International, Inc. dba Frontier Logistics Services, et al.
22STCV09374

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Rebecca Padilla, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is rpadilla@wilshirelawfirm.com.

On **May 30, 2024,** I served the foregoing **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO APPROVE PAGA SETTLEMENT** , on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

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FAIRWAY STAFFING SERVICES

(X) **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service **CASEANYWHERE**.

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on **May 30, 2024** at Los Angeles, California.

Rebecca Padilla

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