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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JOEL FARIAS and NICHOLAS ALEXANDER VEGA, on behalf of the State of California and other aggrieved persons, *Plaintiffs*, v. HHS CONSTRUCTION, LLC, a California limited liability company; CONGRUEX GROUP, LLC, a limited liability company; and DOES 1 through 10, inclusive, *Defendants*.	Case No.: CIVSB2213104 *[Assigned for All Purposes to the Hon. Joseph B. Widman, Dept. S36]* **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** Approval of PAGA Settlement Hearing: Date: April 28, 2026 Time: 9:00 a.m. Dept: S36 Action Filed: June 23, 2022

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

PLEASE TAKE NOTICE that on April 28, 2026, at 9:00 a.m., or as soon thereafter as it may be heard, in Department S36 of the Superior Court of California, County of San Bernardino, San Bernardino District, located at 247 West Third Street, San Bernardino, California 92415, pursuant to California Code of Civil Procedure § 382 and California Rules of Court, Rule 3.769, *et seq*., Plaintiffs Joel Farias and Nicholas Alexander Vega (collectively "Plaintiffs") will and hereby do move for an order approving the Private Attorneys General Act ("PAGA") Settlement Agreement ("Settlement") entered into by and between Plaintiffs and Defendants HHS Construction, LLC and Congruex Group, LLC (collectively "Defendants").

Pursuant to Labor Code § 2699, the settlement of Plaintiffs' PAGA claims requires the Court's approval. The basis for this motion is that Plaintiffs and Defendants reached and fully executed a Settlement of this case that disposes of the matter entirely and is fair, reasonable, and serves the purposes of the PAGA statute. The Settlement includes all persons employed by any Defendant in hourly or non-exempt positions in California at any time from April 8, 2021, through Approval of this Settlement. The Settlement is fair, adequate, and reasonable, and it provides for civil penalties to be distributed to Plaintiffs, 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 accompanying declarations, 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: March 13, 2026

WILSHIRE LAW FIRM, PLC

By: /s/ Courtney M. Miller
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On March 30, 2022, Plaintiff Joel Farias commenced a putative class action against Defendant HHS Construction, LLC alleging failure to pay minimum and straight time wages; failure to pay overtime wages; failure to provide meal periods; failure to authorize and permit rest periods; failure to timely pay final wages at termination; failure to provide accurate itemized wage statements; failure to indemnify employees for expenditures; failure to produce requested employment records; and unfair business practices in the Superior Court of California, County of San Bernardino, Case No. CIVSB2206498 ("Farias Class Action").

On June 23, 2022, Plaintiff Joel Farias commenced the instant representative action for civil penalties under the Private Attorneys General Act of 2004 ("PAGA") (Cal. Lab. Code §§ 2698, *et seq*.) against Defendant HHS Construction, LLC ("Instant PAGA Action"). On April 19, 2023, Plaintiff Nicholas Alexander Vega commenced a representative action for civil penalties under PAGA against Defendants HHS Construction, LLC and Congruex Group, LLC (collectively "Defendants") in the Superior Court of California, County of San Bernardino, Case No. CIVSB2309192 ("Vega PAGA Action"). The Court deemed the Farias Class Action and the Vega PAGA Action related.

On February 9, 2026, Plaintiffs filed a first amended PAGA representative action complaint in the Instant PAGA Action, which added Plaintiff Nicholas Alexander Vega as a named plaintiff and Defendant Congruex Group, LLC as a named defendant.

Plaintiffs and Defendants engaged in vigorous, arms-length negotiations regarding the resolution of this matter. After an all-day mediation presided over by the Hon. Amy D. Hogue (Ret.), the Parties ultimately agreed to settle Plaintiffs' PAGA claim for $995,000.00, which will provide significant civil penalties to the aggrieved employees and California Labor & Workforce Development Agency ("LWDA").

Labor Code § 2699(s)(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." Plaintiffs submitted the proposed

Settlement to the LWDA pursuant to Labor Code § 2699(s)(2). (Declaration of Arrash T. Fattahi ["Fattahi Decl."], ¶ 8, Ex. 4.) 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.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendants provide telecom and cable infrastructure services throughout Southern California. (Fattahi Decl., ¶ 3.) Plaintiff Joel Farias ("Plaintiff Farias") worked for Defendants as an hourly-paid non-exempt from approximately February 2020 to approximately October 2021. (*Id.*) Plaintiff Nicholas Alexander worked for Defendants as an hourly-paid non-exempt employee from approximately July 2020 to approximately March 2022. (*Id.*)

Plaintiffs' PAGA claim is based on their allegation that Defendants failed to pay for all hours worked (minimum, straight time, and overtime wages), failed to provide meal periods, failed to authorize and permit rest periods, failed to timely pay wages during employment, failed to maintain accurate records of hours worked and meal periods, failed to timely pay final wages, failed to furnish accurate wage statements, and failed to indemnify for necessary expenditures. (Fattahi Decl., ¶ 4.)

On or about April 8, 2022, Plaintiff Joel Farias provided notice to the LWDA and Defendant HHS Construction, LLC of the alleged violations described above, as required by Labor Code § 2699.3(a)(1)(A). (Fattahi Decl., ¶ 5, Ex. 1.) Pursuant to Labor Code § 2699.3(a)(2)(A), the LWDA had 65 calendar days to notify the parties whether it intended to investigate the alleged violations. (*Id.*) However, the LWDA did not do so. (*Id.*)

On February 9, 2023, Plaintiff Nicholas Alexander Vega provided notice to the LWDA and Defendants of the alleged violations described above, as required by Labor Code § 2699.3(a)(1)(A). (Declaration of James in Support of Motion for Approval of PAGA Settlement ("Hawkins Decl."), ¶ 2; Fattahi Decl., ¶ 5, Ex. 2.) Pursuant to Labor Code § 2699.3(a)(2)(A), the LWDA had 65 calendar days to notify the parties whether it intended to investigate the alleged violations. (*Id.*) However, the LWDA did not do so. (*Id.*)

After Plaintiffs filed their complaints, the Parties engaged in extensive settlement discussions. (Fattahi Decl., ¶ 6.) To facilitate settlement, Defendants provided Plaintiffs with timekeeping and payroll data for a sampling of the aggrieved employees, and the 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.*)

On February 5, 2024, the Parties and their counsel participated in private mediation with the Hon. Amy D. Hogue (Ret.) (Fattahi Decl., ¶ 7.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id*.) 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 own position through trial and appeal if a settlement had not been reached. (*Id.*) Ultimately, after an all-day mediation, the Parties agreed to settle the PAGA claim for $995,000.00, the scope of which includes all persons employed by any Defendant in hourly or non-exempt positions in California at any time from April 8, 2021, through Approval of the Settlement (the "PAGA Period"). (*Id.* at ¶ 8, Ex. 3) There are approximately 891 aggrieved employees covered by the settlement. (*Id*.) Plaintiffs submitted the Settlement to the LWDA pursuant to Labor Code § 2699(s)(2). (Fattahi Decl., ¶ 8, Ex. 4.) The Parties also agreed upon a Settlement Notice to be sent to the aggrieved employees with payment after the Court enters the Judgment and Order Approving the PAGA Settlement. (Fattahi Decl., ¶ 8, Ex. 5.)

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 for PAGA notices provided prior to June 19, 2024, twenty-five percent (25%) is payable to the aggrieved employees and seventy-five percent (75%) is payable to the LWDA. (Cal. Lab. Code §§ 2699(m), 2699.3(v).)

A. The Terms of the PAGA Settlement

The Settlement provides for a Gross Settlement Amount of $995,000.00, a portion of which will be distributed to all aggrieved employees. (Settlement, § IV.A.3.) Aggrieved employees are defined as all persons employed by any Defendant in hourly or non-exempt positions in California at any time from April 8, 2021, through Approval of the Settlement. (Settlement, § I.B.) Of the Gross Settlement Amount, up to one third (1/3) is allocated to PAGA Counsel's attorneys' fees (currently estimated to be $331,666.66), up to $40,000.00 is allocated to PAGA Counsel's litigation costs, up to $10,000.00 is allocated to the Administrator's costs, and up to $10,000.00 is allocated as Individual Settlement Payments to each of the Plaintiffs ($20,000.00 total). (Settlement, § IV.B.) The remainder will be allocated as PAGA penalties, with 75% allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments. (Settlement, § IV.B.)

Settlement Administration. Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to a Qualified Settlement Fund account established by the Administrator no later than 30 days after the Effective Date. (Settlement, § V.C.) Within 21 days after Defendants fully fund the Gross Settlement Amount, the Administrator will mail checks for the Individual PAGA Payments. Within 21 days after Defendants fully fund the Gross Settlement Amount, the Administrator will also transmit the checks for the Individual Settlement Payments, the LWDA PAGA Penalties payment, the Administration Expenses Payment, the Attorneys' Fees Payment, and the Litigation Expenses Payment in accordance with the Settlement Agreement. (Settlement, § VI.C.)

The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. (Settlement, § VI.D.) The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. (*Id*.) The Administrator will cancel all checks not cashed by the void date. (*Id*.) Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. (*Id*.) The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. (Settlement, § VI.F.) Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. (*Id*.) The Administrator need not take further steps to deliver checks to Aggrieved Employees whose remailed checks are returned as undelivered. (*Id*.) The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date. (*Id*.) For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. (Settlement, § VI.G.)

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." (*See* Cal. Lab. Code § 2699(s).) 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, it is presumed that a reviewing court may utilize some of the factors for review of 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]." (*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.* (E.D. Cal. July 1, 2010) 2010 WL 2650571, *4.) 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 (Cal. Rule), 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, supra,* 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 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." (*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 Rules of Civil Procedure ("FRCP"), Rule 23(e and Cal. Rule 3.769.2

Finally, unlike a class action settlement under FRCP 23(e) and Cal. 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." (*See Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 986-87.) Thus, with the exception of the named Plaintiffs, the scope of a release in a PAGA settlement is necessarily strictly confined to the PAGA penalties alleged in any of the complaints or letters to the LWDA, and claims that were or could have been alleged pursuant to PAGA based on the factual allegations in any of the complaints or the letters to the LWDA. 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 Plaintiffs' much broader release against Defendants.

California courts have a strong policy in favor of settlement. (*See, e.g., Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236.) Unlike individual settlements, class action settlements (and representative PAGA settlements) involve a court approval process that exists to prevent fraud, collusion, and unfairness to absent individuals. (*Malibu Outrigger Bd. Of Governors v. Super. Ct.* (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 these factors.

1. The Settlement Was Reached Through Arms-Length Bargaining

The Parties reached the Settlement after an all-day mediation presided over by the Hon. Amy D. Hogue (Ret.) (Fattahi 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 or its 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, Plaintiffs' counsel conducted an investigation into the claims alleged by Plaintiffs, conducted legal research, and engaged in informal discovery. Based upon the information obtained through informal discovery, Plaintiffs' counsel was able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.* at ¶ 9.)

3. Plaintiffs' Counsel Has Extensive Experience in PAGA Actions

Highly capable and experienced counsel conducted the settlement negotiations. Plaintiffs' 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. (Fattahi Decl., ¶¶ 26-35.) Although Plaintiffs and counsel were prepared to litigate the claims in this action, they support the proposed Settlement as being in the best interests of the State of California and the aggrieved employees. (*Id*. at ¶ 7.)

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

Plaintiffs and their counsel remain confident of the merits of Plaintiffs' claims. (Fattahi Decl., ¶ 10.) However, Plaintiffs do acknowledge that their position includes risk and uncertainty, as described in more detail below. For instance, Plaintiffs' allegation that Defendants failed to pay Plaintiffs and other aggrieved employees all of their owed wages is based on Defendants' failure to pay employees for work performed "off-the-clock." (*Id.*) With respect to the meal period allegation, Plaintiffs contend that they and other aggrieved employees were not provided with California-compliant meal periods during the PAGA Period. (*Id.*) Although Plaintiffs contend that this allegation is meritorious, there is risk with this underlying claim, particularly because Defendants implemented meal period waivers throughout the covered period. (*Id.*) With respect to the rest period allegation, Plaintiffs allege that Defendants lacked compliant policies providing rest periods and that Defendants failed to provide their employees with legally compliant rest periods. (*Id.*) Again, despite Plaintiffs' contention that this allegation is credible, proving rest period allegations is particularly difficult because rest periods do not have to be recorded and Defendants can argue that the aggrieved employees chose to voluntarily forego their rest periods. (*Id.*) With respect to the unreimbursed business expenses allegation, Plaintiffs allege that Defendants required them and other aggrieved employees to incur expenses by using their personal cell phones for work-related purposes and purchasing specific work attire, without reimbursement from Defendants. (*Id.*) Defendants dispute this claim. (*Id.*) Lastly, with regard to Plaintiffs' wage statement claim, Defendants argue that the wage statements issued to employees meet the requirement of Labor Code § 226(a) . (*Id.*)

Additionally, Plaintiffs 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 any action by an aggrieved employee…, a court may award a lesser amount than the maximum civil penalty amount specified by this part…"). Plaintiffs believed there was a legitimate risk of the Court significantly reducing penalties given the technical nature of the alleged violations. (Fattahi Decl., ¶ 11.)

Without this settlement, the Parties face preparation for trial, as well as extensive formal discovery efforts and depositions. (Fattahi Decl., ¶ 11.) 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. (*Id*.) 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.

My expert determined that there were approximately 60,905 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. (Fattahi Decl., ¶ 12.) Plaintiffs acknowledge 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 was $6,090,500.00 (based on approximately 60,905 pay periods). (Fattahi Decl., ¶ 12.) However, Plaintiffs discounted this maximum exposure by 90% to account for Defendants' contention that the underlying allegations lacked merit, Defendants' largely compliant policies, Defendants' issuance of meal period premiums to aggrieved employees, Defendants' implementation of meal period waivers throughout the liability period, the relatively modest violation rate for meal periods, the risk of not prevailing on the merits, and the Court's discretion in reducing penalties. (*Id.*; *see also Fleming v. Covidien*

Inc. (C.D. Cal., Aug. 12, 2011, No. (OPX)) 2011 WL 7563047, at *4 [reducing PAGA penalties from $2.8 million to $500,000]; *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136 [affirming trial court's finding that awarding maximum PAGA penalties would be unjust].) The estimated realistic total potential recovery is therefore $609,050.00 ($6,090,500.00 x 10%). (*Id.*)

The proposed Settlement of $995,000.00 therefore represents approximately **163%** of Plaintiffs' reasonably forecasted total recovery ($995,000.00 / $609,050.00). (Fattahi Decl., ¶ 13.) "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. (Fattahi Decl., ¶ 13.) Furthermore, while Plaintiffs are 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 Plaintiffs' claims, it is clear the settlement amount is fair. Further, because of the proposed Settlement, the aggrieved employees will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.*)

If the Court approves the terms of the Settlement, each aggrieved employee's payment will average approximately $169.08 and approximately $451,938.30 will go to the LWDA. (Fattahi Decl., ¶ 14.) In reality, the amount provided to each aggrieved employee will vary depending on the length of their employment with Defendants and the total number of aggrieved employees. (*Id.*)

C. <u>The Individual Settlement Payments to Plaintiffs Are Reasonable</u>

Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as 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 an Individual Settlement Payment to each of the Plaintiffs in an amount not to exceed $10,000.00 ($20,000.00 total). (Settlement, §§ I.L., IV.B.4.) The requested individual payments are intended to recognize: (1) the substantial time and effort that Plaintiffs have expended on behalf of the State of California and aggrieved employees; (2) the risks faced by Plaintiffs as a result of bringing this action; (3) the fact that Plaintiffs put the interests of the State of California and other aggrieved employees ahead of their own; and (4) the substantial benefit conferred upon the State of California and the aggrieved employees as a result of Plaintiffs' actions. (Fattahi Decl., ¶ 15.) Plaintiffs have spent numerous hours performing tasks for this case, including, but not limited to, the following: consulting with counsel 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*., ¶ 16; Declaration of Plaintiff Joel Farias in Support of Plaintiffs' Motion for Approval of PAGA Settlement ["Farias Decl."], ¶¶ 6-9; Declaration of Nicholas Alexander Vega in Support of Plaintiffs' Motion for Approval of PAGA Settlement ["Vega Decl."], ¶¶ 8, 13.) As a result of their efforts, the LWDA and about 891 aggrieved employees will receive compensation for civil penalties for underpaid wages and other wage and hour violations. (Fattahi Decl., ¶ 16.)

Plaintiffs put themselves at significant risk in pursuing this action on behalf of the State of California, as serving as Plaintiffs in a representative action could affect their prospects for future employment. (*Id*. at ¶ 17.) Plaintiffs also placed themselves at substantial risk because, if Defendants were to prevail in this action, Plaintiffs could be liable for Defendants' costs and attorneys' fees. (*Id*.; Farias Decl., ¶ 12.)

In short, this action would not have been possible without the aid of Plaintiffs, who put their own time and effort into this litigation and placed themselves at risk for the sake of the State of California and the aggrieved employees. (Fattahi Decl., ¶ 18.) Accordingly, the requested Individual Settlement Payments are 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(k) ["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 ($331,666.66, representing 1/3 of the $995,000.00 Gross Settlement Amount) is justified because Plaintiffs' 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. Plaintiffs' counsel expended significant time and resources in litigating this case, which resulted in a favorable result for the LWDA, Plaintiffs, and the aggrieved employees. Plaintiffs' 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 (which elected not to take the case after receiving the PAGA notices). (Fattahi Decl., ¶¶ 36-39.)

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 Plaintiffs' 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 Plaintiffs' counsel. Since undertaking this representation, Plaintiffs' counsel has dedicated substantial resources to this litigation, including at least $30,748.94 in costs, without receiving any compensation to date. (Fattahi Decl., ¶¶ 19, 25, Ex. 6; Hawkins Decl., ¶ 18, Ex. 1.) Plaintiffs' counsel conducted extensive legal research regarding the merits of Plaintiffs' claims, their ability to recover penalties under PAGA, and Defendants' potential defenses. (*Id.* at ¶ 9.) Plaintiffs' counsel expended significant additional effort in preparing formal settlement documents and this Motion to Approve PAGA Settlement. (*Id*. at ¶ 16.) Given the considerable potential for adverse outcomes in this case, including, but not limited to, Defendants defeating Plaintiffs' claims on the merits, and/or facing a drastic reduction to potential PAGA penalties, the contingent risk borne by Plaintiffs' counsel was great. The quality of Plaintiffs' counsel's work, and the efficiency and dedication with which it was performed, should be compensated.

Plaintiffs' counsel's previous experience in litigating similar class and representative actions also supports the reasonableness of the fee request. Plaintiffs' counsel brings extensive plaintiff-side wage and hour class, collective, and representative action experience. (*Id*. at ¶¶ 26-35.) They have been found to be adequate counsel in numerous cases alleging wage and hour claims. (*Id.*) 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 Plaintiffs' counsel commensurate with its skill, reputation, and experience, a fee award of one third (1/3) of the Gross Settlement Amount is reasonable. Plaintiffs' request for reimbursement of actual litigation costs of $30,748.94 is also fair and reasonable. As the evidence submitted herewith shows, all of Plaintiffs' litigation costs are documented and reasonably incurred. (*See* Fattahi Decl., ¶ 25, Ex. 6; Hawkins Decl., ¶ 18, Ex. 1.)

E. <u>Settlement Administrator Costs Are Reasonable</u>

The Administration Expenses Payment in the amount of $10,000.00 is reasonable, given the tasks to be performed by the Administrator, including, but not limited to, the following duties: mailing and re-mailing (if necessary) checks to approximately 891 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 Individual Settlement Payments and attorneys' fees and costs; keeping the Parties timely apprised of the performance of all obligations under the Settlement; and voiding uncashed or undeliverable checks to issue those funds to the California Controller's Unclaimed Property Fund. (Settlement, §§ VI.) Plaintiffs respectfully request that the Court approve the requested costs.

IV. **CONCLUSION**

For the reasons set forth above, Plaintiffs request that the Court grant this Motion and approve the Parties' PAGA Settlement.

Respectfully submitted,

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