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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

DAVID GUZMAN, a proxy for the State of California as an aggrieved employee pursuant to the Private Attorneys General Act ("PAGA"), Plaintiff, vs. GAMA AVIATION ENGINEERING, INC., and DOES 1 through 10, inclusive, Defendant.	Case No.: 22CV399013 Assigned for all purposes to Hon. Theodore C. Zayner, Dept. 19 ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698 ET SEQ. **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR COURT APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** [Filed concurrently with Declaration of Mark Yablonovich; and Declaration of Plaintiff David Guzman] Date: February 26, 2025 Time: 1:30 p.m. Dept.: 19 Complaint Filed: June 9, 2022

TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 26, 2025, at 1:30 p.m., or as soon as this matter may be heard, before Hon. Theodore C. Zayner in Department 19 of the Santa Clara County Superior Court, located at 161 North First Street, San Jose, California 95113, Plaintiff David Guzman ("Plaintiff") in the above-captioned action will, and does, move this Court for an order approving a PAGA settlement by Plaintiff and Defendant Gama Aviation Engineering, Inc. ("Defendant") (together the "Parties") pursuant to California Labor Code section 2699(*l*)(2).[1]

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declaration Mark Yablonovich and exhibits, the Declaration of Plaintiff David Guzman, the [Proposed] Order and Judgment, the complete files and records of this case, and any other evidence or oral argument which may be considered by the Court.

Plaintiff further requests a Final Reporting hearing in approximately nine months from the hearing, on or after November 19, 2025.

Dated: January 29, 2025

Respectfully submitted,

LAW OFFICES OF MARK YABLONOVICH

By: ______________________________
Mark Yablonovich
Monica Balderrama
Tony Roberts
Attorneys for Plaintiff David Guzman, a proxy for the State of California as an aggrieved employee pursuant to PAGA

[1] All references to Labor Code sections 2699, et seq. are to the PAGA statute in effect at the time the complaint was filed in 2022.

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MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), Plaintiff David Guzman ("Plaintiff") requests the Court approve the Parties' Joint Stipulation of PAGA Settlement and Release Agreement[2] that resolves this matter in its entirety.

I. INTRODUCTION

In this PAGA action, Plaintiff alleges that Defendant Gama Aviation Engineering, Inc. ("Defendant") violated various Labor Code sections. Plaintiff brought this action as a representative of the State of California to recover civil penalties. The proposed PAGA Settlement will dispose of this action in its entirety as to the following group of employees: all persons who were employed by Defendant as non-exempt hourly-paid employees within the State of California during the PAGA Period ("Aggrieved Employees"). (Settlement, ¶ 13.) The PAGA Period and Release Period are from April 5, 2021 through September 30, 2024. (*Id.*, ¶¶ 27.)

Under the terms of the Settlement Agreement, Defendant will pay a non-reversionary gross settlement amount of One Hundred Forty-Two Thousand Five Hundred Dollars ($142,500). (*Id.*, ¶¶ 9, 22, 38(a).) The PAGA penalties secured by the PAGA Settlement are fair, adequate, and reasonable, and fulfill PAGA's underlying purpose to benefit the public.

Plaintiff's request for attorneys' fees in the amount of Forty-Seven Thousand Five Hundred Dollars ($47,500), reimbursement of costs not to exceed Twenty Thousand Dollars ($20,000),[3] Plaintiff's Service Award Payment not to exceed Ten Thousand Dollars ($10,000), and Settlement Administration Costs not to exceed Five Thousand Dollars ($5,000), are also fair and reasonable.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is in the aviation services business, providing a variety of avionic, mechanical, electrical, and engineering support to aviation customers. (Yablonovich Decl., ¶ 7.)

During the PAGA period, Defendant operated a hangar facility in Van Nuys, California and employed approximately 45 non-exempt employees in various positions.

[2] The Joint Stipulation of PAGA Settlement and Release Agreement is referred to as the "Settlement Agreement" or "Settlement" and is attached as Exhibit 1 to the Declaration of Mark Yablonovich ("Yablonovich Decl."), ¶ 18, Ex. 1.)

[3] Costs incurred are $18,588.49, plus the additional anticipated $60 cost of filing this Motion, for a total of $18,648.49.

Defendant employed Plaintiff from approximately April of 2018, initially as a contractor, and then on a permanent and full-time basis from September 10, 2018, to approximately October 2021. Plaintiff worked as a non-exempt hourly-paid Maintenance Technician. (Declaration of Plaintiff David Guzman ["Guzman Decl."], ¶ 4; Yablonovich Decl., ¶ 8.)

On April 5, 2022, pursuant to PAGA, Plaintiff provided notice, via online submission, to the State of California's Labor and Workforce Development Agency ("LWDA") regarding various alleged Labor Code violations. (Yablonovich Decl., ¶ 10.)

On June 9, 2022, Plaintiff filed this representative action alleging Defendant violated various California Labor Code sections (the "Action")[4]. (*Id.*, ¶ 11.)

On June 14, 2022, the Court deemed the case complex and temporarily stayed discovery and responsive pleadings. (*Id.*, ¶ 12.) On November 8, 2022, Defendant filed an answer denying all allegations and further asserting various affirmative defenses to the claims. (*Id.*, ¶ 13.)

On November 16, 2022, Plaintiff propounded written discovery seeking from Defendant, among other things, employee contact information as well as their time and payroll records, and all applicable wage and hour policies and related documents. (*Id.*, ¶ 14.) On or about February 14, 2023, Defendant provided unverified responses. Defendant also produced Plaintiff's personnel file and a copy of Gama Aviation's "US Ground Employee Handbook" dated October 2020. (*Id.*)

After propounding written discovery, the Parties agreed to stay formal discovery and participate in mediation. (*Id.*, ¶ 15.) Defendant produced the time and pay records for the non-exempt employees as well as corporate policies as reflected in its employee handbooks. (*Id.*, ¶ 16.) Plaintiff's counsel engaged an expert/consultant to process and analyze the voluminous electronic data. (*Id.*)

[4] The Action alleges violations of Labor Code sections: (1) 510 and 1198 (unpaid overtime); (2) 223, 1182.12, 1194, 1197, and 1197.1 (unpaid minimum wages); (3) 226.7, 512(a), and 1198 (failure to provide meal periods and/or pay meal period premiums); (4) 226.7, and 1198 (failure to provide rest periods and/or pay rest period premiums); (5) 226(a) and 1198 (non-compliant wage statements); (6) 1174(d) and 1198 (failure to maintain accurate pay records); (7) 1174(d) and 1198 (failure to maintain accurate time records); (8) 204 (wages not timely paid during employment); (9) 201, 202, and 203 (wages not timely paid at termination); (10) 1198 and 2810.5(a)(1) (failure to provide employees with written notice of information material to employment); (11) 226(c) and 1198.5 (failure to provide the right to inspect employment records); (12) 227.3 (failure to pay vacation time); (13) 1198 and Wage Order (failure to provide reporting time pay); (13) 2802 (unreimbursed business expenses); (14) 1198 and Wage Order (failure to provide suitable working conditions); and (15) 246, 248.2, and 248.5 (failure to provide compliant sick leave pay). Unless otherwise indicated, all code section references are to the California Labor Code.

On August 1, 2024, the Parties participated in an all-day mediation with mediator Doug Leach. At the conclusion of the full day arm's-length mediation, the Parties accepted the mediator's proposal. (*Id.*, ¶ 17.) After further negotiations regarding the principal terms of the Settlement, the Parties memorialized their agreement in the Joint Stipulation of PAGA Settlement and Release Agreement ("Settlement Agreement"), which was fully executed on January 7, 2025. (*Id.*, ¶ 18, Ex. 1.)

On January 29, 2025, Plaintiff submitted a copy of the Settlement Agreement to the LWDA. (*Id.*, ¶ 46, Ex. 3.) Concurrently with the filing of the Motion, Plaintiff's Counsel will upload the Motion and proposed order to the LWDA via its website. (*Id.*, ¶ 47.)

III. ARGUMENT

A. The Civil Penalties Secured by the PAGA Settlement Are Fair, Adequate, and Reasonable and Consistent with PAGA's Underlying Purpose to Benefit the Public

Pursuant to Labor Code section 2699(*l*)(2),[5] a "superior court shall review and approve any settlement of any civil action filed pursuant to [PAGA]." While PAGA does not set forth specific standards governing judicial approval of a proposed settlement, the Court of Appeal delineated a standard in *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56 (2021) ("*Moniz*"). The court evaluated the standards for approving settlements in class actions and qui tam actions and concluded that those standards provide strong guidance for PAGA settlements. *Moniz*, 72 Cal.App.5th at 76. Accordingly, *Moniz* held that a trial court should review a PAGA settlement for "fraud, collusion or unfairness" and "protect[] the interests of the public and the LWDA in the enforcement of state labor law." *Id.* at 77. *Moniz* also examined whether courts should evaluate PAGA settlements through the prism of PAGA's statutory purpose. *Id.* Merging both principles, *Moniz* announced the governing standard: a "trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Id.*

The seminal cases in California that address whether a settlement is fair, adequate, and reasonable—*Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794 (1996) ("*Dunk*") and *Kullar v. Foot Locker*

[5] References to the PAGA statute, Labor Code sections 2699, et seq., are to the statute in effect at the time the complaint was filed in 2022, and not to the newly amended version.

Retail, Inc., 168 Cal.App.4th 116 (2008) ("*Kullar*")—are class actions. A PAGA action is "fundamentally different from a class action." *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014). "Unlike class actions, … civil penalties [in PAGA] are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777 *4 (N.D. Cal. April 2, 2010). PAGA actions are one of the "primary mechanisms for enforcing the Labor Code." *Iskanian v. CLS Transp. L.A., LLC*, 59 Cal.4th 348, 383 (2014) (rev. by *Viking River Cruises v. Moriana*, 142 S.Ct. 1906, 1924 (2022) on other grounds). As the State's proxy, "the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies – namely, recovery of civil penalties that otherwise would have been assessed by and collected by the [LWDA]." *Id.* "[A]n aggrieved employee's action under [PAGA] functions as a substitute for an action brought by the government itself." *Id.* The goal of PAGA is to impose civil penalties for violations "significant enough to deter violations." *Id*., at 379. "Unlike 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." *Id.* Thus, the Court's evaluation of the settlement should not focus on the average recovery per aggrieved employee as in a class action because, by definition, 75% of the recovery goes to the State.

Despite the differences between PAGA matters and class actions, "many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—[and] these factors can be useful in evaluating the fairness of a PAGA settlement." *Moniz*, 72 Cal.App.5th at 77. *Moniz* announced that trial courts are recommended to use the standards in *Dunk* and *Kullar* when evaluating a PAGA settlement to the extent the standards are relevant. *Id.*

Dunk found that a proposed settlement is presumed fair under the following circumstances: (1) the parties reached a settlement after arm's-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802. Here, as will be shown, these factors—with the exception of the percentage of objectors, which is not applicable in a

PAGA action—are present.

Kullar instructs that an understanding of the amount in controversy is an important factor into whether the settlement of "claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." *Kullar*, 168 Cal.App.4th at 129. The most important factor is "the strength of the case for Plaintiff on the merits, balanced against the amount offered in settlement." *Id.* In weighing the strength of Plaintiff's case, *Kullar* instructs that the court is not to "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys." *Id.*, at 133.

B. The PAGA Settlement Is Reasonable Given the Risks of Further Litigation

In assessing whether the amount in civil penalties is fair, adequate, and reasonable, the Court may balance the amount in penalties with the risks of further litigation. Here, Plaintiff obtained a meaningful amount in civil penalties despite facing daunting hurdles. (*See* Yablonovich Decl., ¶¶ 21-23.)

Plaintiff's Counsel determined an appropriate range of recovery for settlement purposes by offsetting Defendant's potential exposure for PAGA penalties by: (i) the strength of Defendant's affirmative defenses; (ii) the risk of the Court finding that a PAGA trial would be unmanageable;[6] (iii) the risk of losing on any dispositive motions that could have eliminated all or some of Plaintiff's claims or barred evidence; (iv) the risk of losing at trial or prevailing on only some of the claims; (v) the chances of the Court exercising its discretion to reduce PAGA penalties; (vi) the chances of a favorable verdict being reversed on appeal; and (vii) the difficulties attendant to collecting on a judgment (the "Discount Factors"). Plaintiff's Counsel, as set forth below and in Exhibit 2, determined an appropriate range of recovery for settlement purposes by offsetting Defendant's potential exposure for PAGA penalties by the strength of its defenses and the other Discount Factors. (*Id.*, ¶¶ 24-25, Ex. 2.)

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[6] Although Plaintiff maintains that such a trial would be manageable (*see, e.g.*, *Estrada v. Royalty Carpet Mills, Inc.*, 15 Cal.5th 382 (Jan. 18, 2024)), he is aware of the risks, as illustrated by several cases. *Ortiz v. CVS Caremark Corp.*, No. C-12-05859 EDL, 2014 U.S. Dist. LEXIS 36833, at *11 (N.D. Cal. Mar. 19, 2014) ("[T]he Court finds that the PAGA claim in this case is unmanageable… because a multitude of individualized assessments would be necessary"); *Wesson v. Staples the Office Superstore*, LLC, 68 Cal.App.5th 746 (2021) (same); *Brown v. Am. Airlines, Inc.*, No. CV 10–8431–AG (PJWx), 2015 U.S. Dist. LEXIS 150672, at *10 (C.D. Cal. Oct. 5, 2015) (same); *Litty v. Merrill Lynch & Co., Inc.*, No. CV 14–0425 PA (PJWx), 2014 U.S. Dist. LEXIS 160448, at *6 (C.D. Cal. Nov. 10, 2014) (same).

1. Assessment of the Meal Period and Rest Period Claims

Plaintiff contended that due to Defendant's facially deficient meal and rest break policies, employees were not provided with legally sufficient breaks. Plaintiff also contended that employees suffered meal period violations as reflected in the timekeeping records. Plaintiff and his co-workers regularly missed their meal breaks because the company was understaffed, the workload was immense, and there was a general culture that frowned upon taking breaks. Plaintiff also argued that Defendant's records demonstrated meal period violations.

Defendant contended that its records reflect only potential violations and that any such meal period 'violations' in the records reflect a matter of personal choice rather than a legal violation. Defendant contended that its meal and rest period policies and practices comply with California law in that it relieves employees of all duties during breaks and anything more would be requiring it "police" employees, a standard the California Supreme Court rejected in *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal.4th 1004 (2012).

With respect to rest periods, Plaintiff contended that Defendant's employee handbook did not contain an express rest period policy for California employees and did not inform employees that they are entitled to ten-minute duty-free rest breaks.

Defendant could contend that Plaintiff bears the burden of proving that breaks were not taken or taken late and that doing so would involve numerous individual issues, which ostensibly requires the testimony of almost all employees and thus raising concerns that the case may be unmanageable.

Defendant could also argue that its company-wide practices negate Plaintiff's claim and any deviation—the existence of which Defendant disputes—tending to conform to Plaintiff's position is isolated and random and therefore unbefitting of a manageable, actionable PAGA trial.

There was therefore a significant risk that Defendant would show not only that these claims were not manageable, but also that any failure to take breaks was voluntary rather than a result of Defendant's policies. Moreover, even if Plaintiff could prove that some employees were prevented from taking breaks, the amount of potential exposure would be significantly lower than the full verdict value.

Plaintiff determined a settlement value for civil penalties based on meal period violations by offsetting Defendant's maximum theoretical exposure of approximately $163,297 by the Discount

Factors, yielding a settlement value of $48,989, reflecting 30% of the exposure. (Yablonovich Decl., ¶ 25, Ex. 2.)

Plaintiff similarly determined a settlement value for civil penalties based on rest period violations by offsetting Defendant's maximum theoretical exposure of approximately $83,400 by the Discount Factors, yielding a settlement value of $8,340, reflecting 10% of the exposure.[7] (*Id.*)

2. Assessment of the Unpaid Wages Claims

Plaintiff asserted that Defendant's Alternative Workweek Schedule (AWS) was improper. Plaintiff further asserted that to the extent Defendant's AWS was proper, Defendant did not pay daily overtime on shifts that were less than ten hours but greater than eight hours. Plaintiff further asserted the Defendant's overtime policy failed to inform employees when they would be entitled to overtime pay and therefore overtime wages were miscalculated and owed to employees because the AWS was not properly adopted.

Defendant argued that its documentation supported a valid AWS and therefore there was no overtime violations. Defendant could contend that individualized issues would make this claim unmanageable.

Plaintiff determined a settlement value for civil penalties based on alleged unpaid wages by offsetting Defendant's maximum theoretical exposure of approximately $125,767 by the Discount Factors, yielding a settlement value of $25,153, reflecting 20% of the exposure. (*Id.*)

3. Assessment of the Wage Statement Claim

Plaintiff alleged that Defendant violated Labor Code section 226(a) in that the wage statements failed to list the correct amount of gross and net wages,[8] and also failed to set forth the correct double-time rate when it was earned. On the predicate violations, Defendant would contend that the wage statement claim is only as strong as the underlying predicate claims, and thus, all of the affirmative defenses to the preceding allegations apply with equal force to the wage statement claim. Defendant would further contend that it properly itemized its wage statements.

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[7] The rest period claim suffers from a greater challenge given the absence of time records establishing missed or late rest periods, thus, the discount is greater.

[8] Because Defendant did not pay any meal period premiums and rest period premiums to employees, Defendant did not list the correct amount of gross wages and net wages earned by employees in violation of Sections 226(a)(1) and (a)(5).

Plaintiff determined a settlement value for civil penalties based on the wage statement claim by offsetting Defendant's maximum theoretical exposure of approximately $103,416 by the Discount Factors, yielding a settlement value of $31,024, reflecting 30% of the exposure. (*Id.*)

4. Assessment of the Untimely Payment of Wages During Employment Claim

Plaintiff alleged that as a result of Defendant's failure to pay all meal and rest period premiums every pay period, and very likely failure to pay proper overtime wages, Defendant faced additional penalties for the untimely payment of wages during employment. See Cal. Lab. Code § 204. Defendant would contend that Plaintiff's 204 claim is only as strong as the underlying predicate claims, and thus, all of the affirmative defenses to the preceding allegations apply with equal force to this claim.

Plaintiff determined a settlement value for civil penalties for the untimely payment of wages during employment claim by offsetting Defendant's maximum theoretical exposure of approximately $166,800 by the Discount Factors, yielding a settlement value of $16,680, reflecting 10% of the exposure.[9] (*Id.*)

5. Assessment of the Untimely Payment of Final Wages Claim

The untimely payment of final wages claim was both derivative in nature and a standalone claim. Plaintiff argued that Defendant's written final pay policy was on its face invalid. However, Defendant would argue that the final pay policy in its handbook did not apply to California employees and that it timely paid its employees' final pay.

All of the merits-based risks associated with the underlying unpaid wages claims attach equally to the claim for waiting time penalties under Labor Code sections 201, 202, and 203. With respect to the theory based on non-derivative violations, Defendant's exposure was limited as this claim may only give rise to a single penalty per pay period as the untimely payment of final wages would arguably only arise on the former employee's final pay period.

Plaintiff determined a settlement value for civil penalties based on the untimely payment of final wages claim by offsetting Defendant's maximum theoretical exposure of approximately $2,400 by the Discount Factors, yielding a settlement value of $720, reflecting 30% of the exposure. (*Id.*)

[9] Plaintiff applied a further discount to this claim given that it is likely an impermissible stacking of civil penalties.

6. Assessment of the Inaccurate Pay and Time Records Claim

Based on the foregoing allegations, Plaintiff alleged that Defendant failed to maintain accurate payroll and time records per Labor Code sections 1174(d), 1198 and the applicable wage order. Plaintiff contended that Defendant failed to record accurate meal periods resulting in inaccurate time and pay records and that the payroll records did not match the timekeeping records produced by Defendant.

Similar to the wage statement claim, the inaccurate records claim is derivative of Plaintiff's wage claims. Therefore, the arguments Defendant could have raised for each of those claims apply here.

Plaintiff determined a settlement value for civil penalties based on the inaccurate payroll and time records claim by offsetting Defendant's maximum theoretical exposure of approximately $22,500 by the Discount Factors, yielding a settlement value of $6,750, reflecting 30% of the exposure. (*Id.*)

7. Assessment of the Labor Code Section 2810.5 Notice Claim

Plaintiff argued that Defendant failed to provide employees with written notice of information material to employment pursuant to Labor Code section 2810.5. Defendant disputed this claim, arguing that it fully complied with the notice requirements.

Plaintiff determined a settlement value for civil penalties based on the alleged failure to provide employees with proper notice under Section 2810.5 by offsetting Defendant's maximum theoretical exposure of approximately $4,500 by the Discount Factors, yielding a settlement value of $1,350, reflecting 30% of the exposure. (*Id.*)

8. Assessment of the Vacation Pay Claim

Plaintiff argued that Defendant did not properly pay accrued vacation pay to former employees in violation of Labor Code section 227.3. Plaintiff contended that employees who did not provide at least two-week's notice of resignation were not paid their accrued vacation and thus Defendant was liable $500 per employee. *See, e.g., Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (a PAGA violation of section 227.3 "was established and the $500 penalty was properly imposed.").

Defendant negated that it was its written policy to not pay accrued vacation, and to the extent it was, that policy did not apply to California employees. Defendant would further contend that the records did not demonstrate a failure to pay accrued vacation time.

Plaintiff determined a settlement value for civil penalties based on a failure to pay accrued vacation claim by offsetting Defendant's maximum theoretical exposure of approximately $2,500 by the Discount Factors, yielding a settlement value of $750, reflecting 30% of the exposure. (*Id.*)

9. The PAGA Settlement Is Fair and Reasonable and Fulfills PAGA's Objectives

As the above analysis demonstrates, Plaintiff objectively and knowledgeably balanced the strengths and weaknesses of his claims against the risks of continued litigation and was able to determine a realistic range of settlement recovery for PAGA penalties. The PAGA settlement therefore accomplishes PAGA's objectives by imposing sufficient civil penalties "to punish and deter" Defendant from future alleged Labor Code violations, while also ensuring that the penalties are not "unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code § 2699(e)(2).

While Plaintiff and his counsel believe that the claims are meritorious, Plaintiff faces significant risk that the Court could award a reduced amount of penalties under Labor Code section 2699(e)(2), or find no liability on some or all the theories of liability and/or find the case unmanageable and therefore not ripe to continue as a representative action.

Defendant also would contend that a reduction to any PAGA penalties would be appropriate, as the Court has the power to reduce PAGA penalties to ensure that they are not "unjust, arbitrary and oppressive, or confiscatory." *See* Cal. Lab. Code § 2699(e) ("…a court may award a lesser amount than the maximum civil penalty [if] … an award [ ] is unjust, arbitrary and oppressive, or confiscatory."); *see also Fleming v. Covidien Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590, *8-*9 (C.D. Cal. Aug. 12, 2011) ("Also, were not aware that the wage statements violated the law and took prompt steps to correct all violations once notified. Given these circumstances, the Court finds a $2.8 million penalty unjust according to § 2699(e)(2). Accordingly, in its discretion, the Court reduces the penalty to $500,000.").

Even when plaintiffs have prevailed at trial on PAGA claims, courts have routinely exercised their discretion to significantly reduce the amount of PAGA penalties awarded to as little as $5.00 per pay period. *See, e.g.*, *Carrington v. Starbucks Corp., et al.*, San Diego Superior Court No. 37-2014-00018637-CU-OE-CTL (Apr. 3, 2017) (holding that the plaintiff was only entitled to $5 for each pay period when a meal period violation occurred; the plaintiff requested more than $70 million in penalties and the court's reduction to $150,000 was affirmed on appeal and reflected .2% of the total recoverable penalties sought). In *Kaanaana v. Barrett Business Services, Inc.*, 29 Cal.App.5th 778, 788, 809 (2018), the Court of Appeal took no issue with the trial court exercising its discretion in reducing PAGA civil penalties for violations of Labor Code section 512 to 13% of the total recoverable penalties. Furthermore, the court in *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112 (2012) found that penalties may be reduced when a defendant has taken its obligations to comply with the law seriously. Defendant would contend that if the case were to continue in litigation, it would be able to show that it took its obligations to comply with the law seriously and it has continued to proactively keep its policies updated and compliant with California's evolving Labor Code. As such, if Plaintiff was able to prevail on the merits of his PAGA claims, it is likely that the Court would reduce the maximum penalty allowed.

Here, by comparison, the gross amount obtained by Plaintiff is closer to an average of 24% of the maximum exposure and approximately $85 per pay period ($142,500 Gross Settlement Amount ÷ 1,668 pay periods). (Yablonovich Decl., ¶ 23, Ex. 2.) Moreover, the maximum *net* recovery an employee will be paid is $333.

The proposed PAGA settlement here of $142,500 accounts for the realistic exposure, the real impediments of succeeding on the merits, and reflects an appropriate, balanced, and reasonable settlement value of the PAGA claims. The settlement amount in the thousands of dollars fits squarely within the "remedial purpose" of PAGA of enforcing compliance with important employee protections in the Labor Code and Wage Order.

C. The PAGA Settlement was Reached as a Result of Arm's Length Negotiations

The settlement was reached as a result of arm's-length negotiations. (*Id.*, ¶ 20.) Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. (*Id.*) At the mediation and subsequently, counsel for the Parties conducted extensive arm's length settlement negotiations until the settlement was reached. (*Id.*, ¶¶ 17, 18, 20.)

D. The Settlement is the Result of Thorough Investigation and Discovery

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before reaching the proposed settlement, and engaged in sufficient investigation, research, and discovery to support the settlement. (*Id.*, ¶¶ 16, 19.) Defendant produced its written wage and hour policies and the electronic time and wage records and data for most, if not all, employees. (*Id.*) Plaintiff's counsel also retained an expert/consultant to process and analyze the data. (*Id.*) Counsel for the Parties conducted the necessary exchange of data and information and performed thorough analyses which were the substantial bases upon which the Parties' "clear view of the strengths and weaknesses of their cases" was made possible. *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (1979).

E. Plaintiff's Counsel Has 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 and PAGA litigation. (Yablonovich Decl., ¶¶ 3-6.) Although Plaintiff and his counsel were prepared to try the case, they support the PAGA Settlement as being consistent with the PAGA's dual purpose and as being fair and reasonable. (*Id.*, ¶ 26.)

F. The Proposed Service Award to Plaintiff Is Fair and Reasonable

Both the State of California and all Aggrieved Employees are beneficiaries of a settlement that would not have been made possible but for the effort and commitment of Plaintiff David Guzman. (Yablonovich Decl., ¶¶ 28-33; Guzman Decl., ¶¶ 7-15.) Here, the PAGA Settlement provides for a modest Service Award Payment to Plaintiff in an amount not to exceed Ten Thousand Dollars ($10,000). (Settlement Agreement, ¶¶ 35, 38.a.iii.) The Service Award Payment is reasonable because Plaintiff "remained fully involved and expended considerable time and energy during the course of the litigation." *In re Toys "R" Us FACTA Litig*., 295 F.R.D. 438, 471 (*C.D.* Cal. 2014) (citation omitted). Plaintiff devoted substantial time and effort toward assisting his attorneys with the prosecution of the claims, and his unique contributions to the litigation should be rewarded. (*See* Yablonovich Decl., ¶¶ 28-33; *see, generally*, Guzman Decl.) The requested Service Award Payment is intended to recognize: (1) the substantial time and effort that Plaintiff expended on behalf of the State and Aggrieved Employees; (2) the significant risks Plaintiff faced as a result of bringing the Action, which could affect his prospects for future employment; (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 benefits conferred upon the State and the

Aggrieved Employees as a result of Plaintiff's action. (*Id.*) Plaintiff spent numerous hours performing tasks for this case, including but not limited to, consulting with counsel, searching for and producing relevant documents, providing counsel with information about witnesses, reviewing and consulting with counsel regarding settlement documents, keeping himself informed of the developments in the case, preparing for and remaining on stand-by during the full-day mediation, and participating in decisions concerning the case, including settlement. (*Id.*)

The amount is also reasonable in light of service awards approved in other similar actions.[10] In short, neither the action nor the PAGA Settlement would have been possible without the aid of Plaintiff who put his own time and effort into this litigation and placed himself at risk for the sake of the State and the Aggrieved Employees. (Yablonovich Decl., ¶¶ 28-33; Guzman Decl., ¶¶ 7-15.)

Other considerations also support the Service Award Payment. First, the service award is justified in light of the reputational risk that Plaintiff has assumed by litigating claims against a former employer. (*Id.*) *See Billinghausen v. Tractor Supply Co.,* 306 F.R.D. 245, 267-68 (N.D. Cal. 2015) (finding "personal detriment" upon testimony that future employers can easily learn that a prospective employee served as a plaintiff through the internet); *see also Guippone v. BH S&B Holdings LLC*, No. 09 Civ. 01209, 2011 U.S. Dist. LEXIS 126026, at **4, 20 (S.D.N.Y. Oct. 28, 2011) ("[T]he fact that a plaintiff has filed a federal lawsuit is searchable on the internet and may become known to prospective employers when evaluating the person... Even where there is not a record of actual retaliation, notoriety, or personal difficulties, [representative Plaintiff] merit recognition for assuming the risk of such for the sake of absent [parties].").

The Service Award Payment is appropriate because Plaintiff otherwise "will not gain any benefit beyond that he [or she] would receive as an ordinary [Aggrieved Employee]." *In re Toys 'R' Us FACTA Litig.*, 295 F.R.D. at 472; *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995)

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[10] Courts have routinely granted approval of settlements containing such incentive awards. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of $50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of $55,000, and three incentive awards of $35,000); *Brotherton v. Cleveland*, 141 F.Supp.2d 907, 913-14 (S.D. Ohio 2001) (granting a $50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) ($50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding $25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming $25,000 incentive award to class representative).

(holding that a substantial award is appropriate where a [representative's] claim made up "only a fraction of the common fund."). Here, absent the Service Award Payment, Plaintiff will recover no more than other Aggrieved Employees, despite undergoing personal sacrifice in bringing this suit on behalf of the State of California and Aggrieved Employees. (Yablonovich Decl., ¶ 30.) Plaintiff has also agreed to a general release of all claims he may have against Defendant. (Settlement Agreement, ¶ 47; Guzman Decl., ¶¶ 14-15.) The general release signed by Plaintiff is considerably broader than the separate, narrower releases required of other Aggrieved Employees. (Yablonovich Decl., ¶ 32.) *See Billinghausen*, 306 F.R.D. at 267-68 (awarding the plaintiff an incentive payment of $15,000 in part due to the plaintiff having executed a broad individual release).

G. The Requested Attorneys' Fees Are Reasonable

Labor Code section 2699(g)(l) provides that "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." Cal. Lab. Code § 2699(g)(1). Plaintiff has prevailed and is entitled to an award of reasonable attorneys' fees and costs. *See, e.g., Graciano v. Robinson Ford Sales, Inc.*, 144 Cal.App.4th 140, 153 (2006) ("[P]laintiffs may be considered 'prevailing parties' for attorney's fee purposes if they succeed on any significant issue in the litigation that achieves some of the benefit the parties sought in bringing suit.") (internal citation omitted); *DeSaulles v. Cmty. Hosp. of Monterey Peninsula*, 62 Cal.4th 1140, 1158 (2016) (a plaintiff who settles a lawsuit for payment of money or other tangible benefits may be considered a prevailing party.") (citations omitted).

1. The Requested Attorneys' Fees Are Reasonable Under the Common Fund Method

The PAGA Settlement provides for a payment of attorneys' fees to Plaintiff's Counsel in an amount not to exceed one-third of the Gross Settlement Amount, or Forty-Seven Thousand Five Hundred Dollars ($47,500). (Settlement, ¶¶ 15, 38.a.i.) Plaintiff's request for attorneys' fees as a percentage of the Gross Settlement Amount is supported by the "common fund doctrine," where "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." *Serrano v. Priest*, 20 Cal.3d 25, 35 (1977). The purpose of the common fund approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). The common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." *City and County of San Francisco v. Sweet*, 12 Cal.4th 105, 110 (1995).

A number of courts have recognized the advantages of awarding fees as a percentage of the common fund. *See, e.g., In re Activision Securities Litigation*, 723 F.Supp. 1373, 1375 (N.D. Cal. 1989). The percentage approach is preferable because: (1) it provides predictability to counsel; (2) encourages efficient resolution of the litigation by providing an incentive for early settlement; and (3) reduces the demands on judicial resources.[11]

California and federal courts have long recognized that a percentage of recovery for attorneys' fees is properly awarded on the basis of the total value. *Boeing v. Van Gemert*, 444 U.S. 472, 480-481 (1980); *see also In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 558 n.13 (2009) ("Empirical studies show that . . . fee awards in class actions average around one-third of the recovery.")

The Court should also consider that Plaintiff's Counsel's efforts have resulted in significant benefits in the form of a non-reversionary settlement fund established to enforce the Labor Code and help fulfill the dual purpose of PAGA. As a result, not only will the State of California benefit from the settlement, but so will the Aggrieved Employees.

2. The Requested Attorneys' Fees Are Reasonable Under the Lodestar Method

Under the lodestar method, the Court considers the time spent and a reasonable hourly compensation for each attorney to evaluate the reasonableness of the fee requested. *Ramos v.*

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[11] *Id.* at 1378-79; *see also Lealao v. Beneficial California, Inc.*, 82 Cal.App.4th 19 (2000). In *Lealao v. Beneficial California, Inc.*, the court discussed the findings of a task force commissioned by the Third Circuit, which "concluded that the lodestar approach (1) increases the workload of an already overtaxed judicial system, (2) is insufficiently objective and produces results that are far from homogenous, (3) creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law, (4) is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the Claimants or of an overall dollar amount, (5) encourages lawyers to expend excessive hours, and engage in duplicative and unjustified work, (6) creates a disincentive for the early settlement of cases, (7) deprives trial courts of flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered, (8) works to the particular disadvantage of the public interest bar, and (9) results in confusion and lack of predictability." *Lealao*, 82 Cal.App.4th at 28.

Countrywide Home Loans, Inc., 82 Cal.App.4th 615, 622 (2000). The hours spent and the reasonable hourly compensation produce a "lodestar" figure which may then be augmented or diminished by the court taking into account various "multiplier" factors. *See id*. (citing *Serrano v. Priest*, 20 Cal.3d 25, 48-49 (1977)). Here, Plaintiff's Counsel's total lodestar is over $140,000, which is based on approximately 185 hours of attorney time at customary hourly rates. (Yablonovich Decl., ¶¶ 37-38.) Plaintiff's Counsel is therefore requesting a negative multiplier.

Under the lodestar approach, courts determine that "the time spent was reasonably necessary and that [] counsel made 'a good faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary." *Jordan v. Multnomah County*, 815 F.2d 1258, 1263 n.8 (9th Cir. 1987). The court "should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) (noting that "[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee."). "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." *Martino v. Denevi*, 182 Cal.App.3d 553, 559 (1986) (citations omitted); *see also Wershba v. Apple Computer, Inc*., 91 Cal.App.4th at 255 (2001) ("California permits fee awards in the absence of detailed time sheets"); *Margolin v. Regional Planning Com*., 134 Cal.App.3d 999, 1006–1007 (1982) (the court may award fees based on time estimates).

The efforts expended by Plaintiff's Counsel to achieve this significant result include, but are not limited to, the following: interviews with Plaintiff and review of documents provided by Plaintiff and Defendant; drafting and mailing PAGA notice to the LWDA and Defendant; drafting and filing the PAGA complaint; propounding written discovery; preparing for and attending court proceedings; meeting and conferring and negotiating with Defendant regarding case management, discovery, and data produced by Defendant; working with expert/consultant in processing and analyzing the data; preparing for and participating in an all-day mediation; negotiating, and drafting the PAGA Settlement; communicating with the Settlement Administrator; and drafting this motion and the supporting papers. (Yablonovich Decl., ¶ 36.) Thus, Plaintiff's Counsel's hours were necessary and reasonable to achieve the result here.

The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group, Inc. v.* Drexler, 22 Cal.4th 1084, 1095 (2000); *see also Bihun v. AT&T Information Systems, Inc.*, 13 Cal.App.4th 976, 997 (1993) ("In setting the hourly fee the court was entitled to consider 'fees customarily charged by that attorney and others in the community for similar work.'"), disapproved on another ground in *Lakin v. Watkins Associated Industries,* 6 Cal.4th 644, 664 (1993). "[I]n assessing a reasonable hourly rate, the trial court is allowed to consider the attorney's skill as reflected in the quality of work, as well as the attorney's reputation and status." *MBNA Am. Bank, N.A. v. Gorman*, 147 Cal.App.4th 1, 3 (2006). The trial court may also "find hourly rates reasonable based on evidence of other courts approving similar rates." *Parkinson v. Hyundai Motor Am.*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

The rates requested here by Plaintiff's Counsel are in line with the current prevailing billing rates in California. (Yablonovich Decl., ¶ 38.) Plaintiff's Counsel's rates are also comparable to those approved by courts for other plaintiff's firms California area. *See, e.g., Kearney v. Hyundai Motor Am.*, No. SACV 09–1298–JST (MLGx), No. SACV 09-1298, 2013 U.S. Dist. LEXIS 91636 (C.D. Cal. June 28, 2013) (approving hourly rates of $650-$800 for senior attorneys in consumer class action); *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010) (approving hourly rates between $445 and $675); *Richard v. Ameri-Force Mgmt. Servs., Inc.*, Case No. 37-2008-00096019 (San Diego Sup. Ct., Aug. 27, 2010) ($695 to $750 an hour for partners; $495 an hour for associates); *Barrera v. Gamestop Corp.*, Case No. CV 09-1399 (C.D. Cal. Nov. 29, 2010) ($700 an hour for partners; $475 an hour for associates).

Plaintiff's Counsel are experienced litigators who concentrate in employment law, with a substantial wage and hour class action and PAGA practice. (Yablonovich Decl., ¶¶ 4-6.) Given the skill and experience of Plaintiff's Counsel, and the significant result achieved for the State and Aggrieved Employees, the requested rates are reasonable.

H. The Requested Litigation Costs Are Reasonable

Also pursuant to Labor Code section 2699(g)(l), Plaintiff is entitled to costs. Plaintiff's Counsel has incurred $18,648.99 in litigation costs (including $60 for the anticipated cost of filing this Motion).

Counsel was required to expend the funds prosecuting the Action to a successful resolution on, among other things, court filing fees, expert/consultant fees, document service, and mediation. (*Id.*, ¶¶ 40-43.) These costs were reasonable and necessary to the successful litigation and resolution of this action. (*Id.*)

I. The Settlement Administration Costs Are Reasonable

Settlement Administration Costs in an amount not to exceed Five Thousand Dollars ($5,000) is reasonable, given the number of Aggrieved Employees and the tasks to be performed by the Settlement Administrator, which include: mailing and re-mailing (if necessary) checks and notice letters to approximately 45 Aggrieved Employees and the LWDA; calculating each Aggrieved Employee's Individual Settlement Payment amount; mailing reminder postcards to Aggrieved Employees whose checks remain uncashed after ninety days; updating Aggrieved Employees' contact information using the National Change of Address database; preparing and submitting to Aggrieved Employees and government entities all appropriate tax filings and forms; establishing a QSF; providing reports and keeping the Parties timely apprised of the performance of all obligations under the Agreement; and transmitting all uncashed settlement checks to WorkSafe, the agreed-upon cy pres recipient. (Settlement Agreement, ¶ 38.b.v.; *see also* Yablonovich Decl., ¶¶ 44-45.)

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court approve the PAGA Settlement, allow distribution of the Notice and funds, set a Final Reporting hearing on or after November 19, 2025, and for any other relief it deems just and proper. Plaintiff further requests that this Court retain jurisdiction as to all matters relating to the enforcement of the PAGA Settlement pursuant to California Code of Civil Procedure section 664.6.

Dated: January 29, 2025

Respectfully submitted,

LAW OFFICES OF MARK YABLONOVICH

By: ______________________

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