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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DAMIAN DUNWOOD, an individual; Plaintiff, vs. BRINKS INCORPORATED, a Delaware Corporation; SILAS STEELE, an individual; and DOES 1 through 50, inclusive, Defendants.	CASE NO.: 25CV002238 **PLAINTIFF'S MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT** Reservation No. A-02238-010 Date: August 21, 2026 Time: 9:00 a.m. Dept.: 8A Judge: Hon. Jill H. Talley Filed: January 28, 2025 Trial Date: None Set

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I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

This Motion is brought seeking approval of a Private Attorneys General Act ("PAGA") settlement in the gross amount of $700,000. *See generally* **Exhibit A** (Proposed PAGA Settlement). Plaintiff Damian Dunwood ("Plaintiff") brought this PAGA lawsuit on behalf of the Labor & Workforce Development Agency ("LWDA") and Aggrieved Employees employed by Brink's, Incorporated ("Defendant"). Plaintiff worked for Defendant in California within the year prior to him submitting his notice to the LWDA and was subject to the policies and practices alleged to be unlawful in this litigation. *See generally* **Exhibit B** (Plaintiff's Operative Complaint); Declaration of Damian Dunwood ("Decl. Dunwood) ¶ 2. Plaintiff has alleged that Defendant violated California law by failing to pay regular and minimum wages, failing to pay overtime wages, failing to provide all meal and rest periods, failing to reimburse business expenses, failing to timely pay final wages, failing to provide accurate wage statements, failing to provide paid sick leave, failing to timely pay wages, failing to maintain accurate employment records, retaliating in violation of Labor Code section 1102.5, engaging in unfair business practices, and violations provisions of the Labor Code relating to health and safety. *See generally* Exhibit B.

Defendant has denied all of Plaintiff's allegations and any liability or wrongdoing of any kind. *See* Declaration of Brittany V. Berzin ("Decl. Berzin") ¶ 5. However, subject to approval by the Court, the parties have been able to compromise and settle all asserted claims for monetary compensation as a result of extensive investigation, informal document and information exchanges, and extended negotiations relating to all aspects of the asserted claims. *See* **Exhibit A**.

Plaintiff's counsel believes the proposed settlement is fair, reasonable, and adequate based on the investigations, discovery, employee data, negotiations, and a detailed knowledge of the issues in this case. *See* Decl. Berzin ¶¶ 6-13. The prospect of a potential adverse summary judgment ruling, difficulties of complex litigation, Defendant's possible defenses, the length and uncertain process of establishing specific violations as to each individual within the scope of the PAGA claims for each pay period, Defendant's contention that Plaintiff's individual claims were subject to arbitration and the PAGA claims subject to a stay, the Court's discretion to cut PAGA penalties, and various possible delays and appeals were carefully considered by Plaintiff and Plaintiff's counsel in agreeing to the proposed PAGA settlement. *See id.* at ¶ 6.

It is well within the discretion of this Court to approve the proposed settlement. Accordingly, Plaintiff requests that the Court: (1) make a finding that Plaintiff exhausted all administrative remedies and is authorized to enter into the proposed PAGA settlement on behalf of the LWDA; (2) approve the proposed settlement; (3) set dates for and direct the distribution of payment and the Notice of Settlement (**Exhibit E**) to Aggrieved Employees affected by the settlement as set forth in the settlement agreement; and (4) adopt the implementation schedule contained in the proposed order.

II. PROCEDURAL AND LITIGATION HISTORY

Plaintiff filed this lawsuit on January 28, 2025. On January 3, 2025, and May 27, 2026, Plaintiff gave written notice to the LWDA and Defendant providing facts and the legal basis for all claims asserted in the Complaint and the claims that are being resolved under the settlement agreement. *See* **Exhibit C** (Plaintiff's Notices to the LWDA). Plaintiff also submitted the $75.00 filing fee. *See* Decl. Berzin ¶ 3. The notices were also sent via certified mail to Defendant. *See id.* The LWDA did not provide any response to Plaintiff's notice correspondences within the statutorily required time frame and, as a result, Plaintiff became authorized to act as a Private Attorney General for the asserted claims. *See id.* Plaintiff uploaded a copy of the Second Amended Complaint to the LWDA after receiving a filed stamped copy from the Court. *See id.* No trial date has been set in this matter. *See id.*

III. INVESTIGATION AND DISCOVERY CONDUCTED

Plaintiff investigated the merits of the claims and potential damages for such claims. *See id.* at ¶¶ 6-8. Plaintiff worked provided information regarding the policies and practices at issue in the Complaint, enabling pre-filing investigations to take place. *See* Decl. Dunwood ¶¶ 2-3; Decl. Berzin ¶ 3. The parties engaged in informal discovery and an exchange of documents, including employee data, a representative sampling of time and payroll records, and relevant policies for the entirety of the statute of limitations period applicable to the PAGA claims. The discovery covered all aspects of the asserted claims, including merits issues, damages, the scope and configuration of Aggrieved Employees, the content and implementation of the wage and hour policies at issue, and issues relating to manageability concerns at trial. *See* Decl. Berzin ¶ 7. The information allowed Plaintiff to determine the extent and frequency of violations in accordance with Plaintiff's contentions and create a damages model to assess the reasonableness of any settlement. *See id.* at ¶¶ 6-7, 9-11.

IV. NEGOTIATION AND PROPOSED SETTLEMENT

a. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiation

The final settlement occurred only after extended, arm's length negotiations. Over the course of about a year, Plaintiff investigated the claims and discussed with Defendant's counsel the merits of the claims and issues presented in the case. *See id.* at ¶¶ 5-8. The parties exchanged substantial amounts of information and legal analysis regarding the asserted claims. *See id.* Only after about a year of litigation and negotiation, which included a full day mediation with Lisa Klerman, Esq., and a mediator's proposal the parties were able to reach a mutually aggregable settlement. *See id.* at ¶ 8. In light of the claims and defenses at issue, the parties agreed to a Gross Settlement Amount of $700,000. *See* **Exhibit A**.

b. The Terms of the Settlement

Under the settlement, Defendant Brinks Incorporated has agreed to the following:

1. The scope of individuals falling within the PAGA settlement would include all hourly, non-exempt current and former employees who worked for Defendant Brink's, Incorporated in California between November 15, 2022, through August 17, 2026. *See* **Exhibit A** ¶¶ 1.10, 1.4, 1.24. The estimated number of Aggrieved Employees is 1,138.

2. Pay the Gross PAGA Settlement Amount of $700,000 to resolve and release the PAGA claims alleged in the operative Complaint. *See id.* at ¶¶ 1.13, 1.27, 6.2.

3. The parties agree the cost of administering the settlement shall be paid from the Gross PAGA Settlement Amount. Subject to court approval, the parties selected Phoenix Settlement Administrators to act as the Administrator. The fees to administer the settlement shall not exceed

$15,000. Phoenix Settlement Administrators has provided a quote to administer the settlement of $9,250. *See id.* at ¶¶ 1.2, 4.22, 8.1; **Exhibit D** (Phoenix Settlement Administrators Quote). The difference between any actual administration costs and the allocated $15,000 shall be allocated to the PAGA Payment. *See id.* at ¶¶ 1.22, 8.1,

4. The parties agree that up to one third (1/3) of the Gross PAGA Settlement Amount ($233,333.33) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶¶ 4.2, 4.2.1. Additionally, the parties agree that Plaintiff's counsel will be entitled to the actual litigation costs as approved by the Court in an amount not to exceed $20,000. *See id.* At the time this Motion was filed, the estimated total costs incurred and that will be incurred in the future as a result of implementing the terms of the settlement is $14,388.40. *See* Decl. Berzin ¶ 28; **Exhibit G** (Plaintiff's Counsel's Itemized Costs). The difference between the actual costs and the $20,000 allocated will be added to the PAGA Payment. *See* **Exhibit A** ¶ 4.2.1.

5. Any Administrator costs, amounts paid for attorneys' fees and costs, and payment to the LWDA will be paid from the Gross PAGA Settlement Amount. *See id.* at ¶¶ 1.2, 1.3, 1.13, 1.17, 1.20, 1.22, 4.1, 4.2, 4.2.1, 4.2.2, 4.2.3.

6. The Administrator will perform searches to locate Aggrieved Employees based on the last contact information in Defendant's possession. The searched will include reference to the U.S. Postal Service's National Change of Address Database and, for any notice returned as undeliverable the Administrator will re-mail the check to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search (*i.e.* using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees). *See id.* at ¶¶ 1.5, 1.6, 5.2, 5.4.1, 5.4.2.

7. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transit the funds represented by such check(s) to the State of California Unclaimed Property Fund in the name of the Aggrieved

Employee. *See id.* at ¶ 5.4.3.

8. The Administrator will disburse the entire Gross PAGA Settlement Amount without asking or requiring Aggrieved Employes to submit any claim as a condition of payment. *See id.* at ¶ 4.1.

9. The Gross PAGA Settlement Amount shall be all-in and none of the Gross PAGA Settlement Amount will revert to Defendant Brinks Incorporated. *See id.*

c. Allocation of Settlement Funds

Under the terms of the settlement agreement, the Administrator will deduct the following payments from the Gross PAGA Settlement Amount in order to determine a net settlement amount: the PAGA Counsel Fees Payment, PAGA Counsel's Litigation Expenses Payment, and the Administrator Expenses Payment. *See id.* at ¶¶ 4.1-4.2.2. After deducting those expenses, a PAGA Payment in the amount of not less than $431,666.67[1] will be paid from the Gross PAGA Settlement Amount, with 65% (no less than $280,583.33) allocated to the LWDA PAGA Payment and 35% (no less than $151,083.34) allocated to the Individual PAGA Payments. *See id.* at ¶ 4.2.3. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of the PAGA Payment by the total number of Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. *See id.* PAGA Period Pay Period means any pay period during which an Aggrieved Employee worked for Defendant at least one day during the PAGA Period. *See id.* at ¶ 1.23.

V. ARGUMENT

a. PAGA Settlements Are Subject to Court Review & Approval

A PAGA settlement is not effective unless the statutory requirements for becoming an authorized representative of the LWDA have been complied with and the Court has reviewed and approved the terms of the settlement. *See* Cal. Labor Code § 2699(s)(2); Cal. Labor Code §

[1] The actual amount will be slightly larger as the Administrator's Quote is less than the $15,000 allocated under the agreement and Plaintiff's counsel's costs incurred are less than the $20,000 allocated, and the difference in those amounts are to be allocated to the PAGA Payment.

2699.3(a), (c). The Court necessarily has broad discretion in making the decision to approve or reject a settlement for civil penalties as the statutory scheme authorizes the Court to determine whether, in certain circumstances, penalties should be assessed and, if so assessed, the appropriate amount of penalties based on the facts and circumstances of the particular case. *See* Cal. Labor Code § 2699(e)(1)-(2). Although the PAGA does not set forth the particular standards against which a PAGA settlement should be evaluated, the LWDA has provided guidance for approval that mirrors the standards for evaluating class action settlements. *See e.g.*, *Salazar v. Sysco Cent. Cal, Inc.,* 2017 U.S. Dist. LEXIS 14971, *6, n.4-5 (E.D. Cal. 2017) (stating, based on the LWDA's guidance, that approval of PAGA settlements may be had where the statutory requirements of the PAGA are met and the terms of the settlement are fundamentally fair, reasonable, and adequate). The established standards for evaluating whether class action settlements are fair, reasonable, and adequate provide a familiar, useful framework for the Court to evaluate PAGA settlements and have been adopted by several courts. *See id.; Juarez v. Villafan*, 2017 U.S. Dist. LEXIS 137205, *5 n.4 (E.D. Cal. 2017) (citing *Officers for Justice v. Civil Serv. Comm 'n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)); *Ramirez v. Benito Valley Farms. LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017) (citing *Hanlon v. Chrysler Corp.,* 150 F.3d 1011, 1026 (9th Cir. 1998)); *Gutilla v. Aerotek. Inc.*, 2017 U.S. Dist. LEXIS 41655, *7, n.4 (E.D. Cal. 2017); *Smith v. H.F.D. No. 55. Inc.,* 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal. 2018); *Rincon v. W. Coast Tomato Growers. LLC*, 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal. 2018).

In making the determination whether a settlement taken as a whole is fair, reasonable, and adequate, the Court should be careful to still give "proper deference to the private consensual decision of the parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties …." *Hanlon,* 150 F.3d at 1027. The law favors settlement of lawsuits, particularly complex litigation cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of Univ. of Calif.,* 3 Cal.4th 273, 277-281 (1992); *In re Synocor ERISA Litigation,* 516 F.3d 1095, 1101 (9th Cir. 2008); *In re Exec. Life Ins. Co.,* 32 Cal.App.4th 344, 382 (1995).

b. Plaintiff Has Met All Statutory Requirements

Prior to commending a lawsuit under the PAGA, an aggrieved employee must give written notice of the facts, theories, and statutes supporting the violations to the LWDA by online filing and by certified mail to the employer as well as pay a filing fee of $75.00. *See* Cal. Labor Code §§ 2699.3(a)(1)(A)-(B), (c)(1)(A)-(B). An "'aggrieved employee' means any person who was employed by the alleged violator and personally suffered each of the violations." *Id.* at 2699(c)(1). If the LWDA does not provide notice of its intent to investigate the alleged violations within 65 calendar days of the notice, the aggrieved employee may commence a civil action. *See id.* at § 2699.3(a)(2)(A). An aggrieved employee must also submit a copy of any proposed PAGA settlement to the LWDA at the same time the proposed agreement is submitted to the Court. *See id.* at § 2699(s)(2).

Under California law, an aggrieved employee may release PAGA claims outside the limitations period of their own specific PAGA claim by means of a court approved settlement. *See Amaro v. Anaheim Arena Management, LLC,* 69 Cal.App.5th 521, 543 (2021).

As set forth above, Plaintiff complied with all statutory requirements to commence a civil action. *See* Decl. Berzin ¶ 3; **Exhibit C**. The notices to the LWDA set forth all claims and theories of liability stated in the operative Complaint, which Plaintiff and Aggrieved Employees experienced, as well as supporting facts. *See* **Exhibit C**. Plaintiff also paid the $75.00 filing fee. *See* Decl. Berzin ¶ 3. The LWDA has not responded to any of the notices Plaintiff submitted to the LWDA. *See id.* Plaintiff has also provided a copy of the PAGA settlement and the entire motion for approval of the PAGA settlement to the LWDA for its consideration at the same time this Motion was filed. *See* Decl. Berzin ¶ 30; **Exhibit F** (Proof of Submission of Proposed Settlement Agreement to LWDA). As a result, Plaintiff has met all procedural statutory requirements for commencing and settling a PAGA action.

c. The Terms of the Settlement Are Fair, Reasonable, and Adequate

To make its determination that the PAGA settlement is fair, reasonable, and adequate, the Court may consider several factors, including:

> The strength of the Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, and experience and views of counsel.

Dunk v. Ford Motor Co., 48 Cal.App.4th 1794, 1801 (1996); *Juarez,* 2017 U.S. Dist. LEXIS 137205, *5 n.4; *Ramirez,* 2017 U.S. Dist. LEXIS 137272, *8-9; *Gutilla,* 2017 U.S. Dist. LEXIS 41655, *7, n.4; *Smith,* 2018 U.S. Dist. LEXIS 67192, *6; *Rincon*, 2018 U.S. Dist. LEXIS 22886, *6. However, this Court should begin its analysis with a presumption that the proposed settlement is fair. "A presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation …." *Dunk,* 48 Cal.App.4th at 1802.

i. The Settlement Is a Result of Arm's Length Negotiations

Settlement in this case was reached only after litigation and extensive arm's length negotiations lasting about a year, which included a full day mediation with Lisa Klerman, Esq. and a mediator's proposal. *See* Decl. Berzin ¶¶ 6-8. Further, while Plaintiff contends he would ultimately prevail on the claims and the issues of arbitration and manageability, this is not a certainty and there is substantial risk in proceeding to further litigation. *See id. at* ¶¶ 6-9.

ii. The Discovery Conducted Provided Ample Information to Enter Into an Informed and Reasonable Settlement

The parties were in possession of all necessary information during the negotiations. The parties engaged in substantial informal discovery and an exchange of documents, including employee data, a representative sampling of payroll records and relevant policies for the entirety of the statute of limitations period resolved by the settlement, which covered all aspects of the PAGA claims and helped vet the extent of Plaintiff's claims against Defendant and create an accurate damages model. *See id.* Plaintiff was in possession of this information prior to calculating the potential damages in this case. *See id.* For these reasons, the settlement before the Court was reached at a stage where "the parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the settlement. *Boyd v. Bechtel Corp.,* 485 F.Supp. 610, 617 (N.D. Cal. 1979).

iii. Plaintiff's Counsel Is Experienced in Similar Litigation

Plaintiff's counsel has considerable experience in wage and hour class actions. Plaintiff's counsel has brought and is currently bringing several wage and hour class and/or PAGA actions. Thus, Plaintiff's counsel is qualified to evaluate the PAGA claims, the value of the settlement versus moving forward with litigation, and viability of possible defenses. *See* Decl. Berzin ¶¶ 14-27. Plaintiff's counsel believes that the settlement is fair, reasonable, and adequate in light of the risks associated with the merits of Plaintiff's claims, the uncertainties of complex litigation, the Court's discretion to lower the amount of penalties ultimately awarded, Defendant's alleged defenses, and the benefit to the Aggrieved Employees and the LWDA. *See id.* at ¶¶ 6-13.

iv. The Settlement Is Fair and Reasonable Based on the Strength of the Case and the Risks and Costs of Further Litigation

Based on the records and facts of this case, Plaintiff has secured a gross recovery of approximately 1.9 to 7.3% of the maximum possible recovery and 7.5% to 29.3% of an estimated realistic potential recovery.[2] *See id.* at ¶¶ 9-13. This settlement is a reasonable compromise of the PAGA claims, and exceeds approved settlement ranges in other cases. *See Davis v. Cox Commc'ns California. LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving $4,000 PAGA allocation in $275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving $2,500 PAGA allocation when attorneys' fees award alone amounted to $200,000); *Jack v. Hartford Fire Ins. Co.,* 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving $3,000 PAGA allocation in $1,200,000 settlement); *Singer v. Becton Dickinson & Co.,* 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving $3,000 PAGA

[2] While Plaintiff recognizes that certain claims may ultimately have no independent recovery—for example, because the amended PAGA statute limits or prohibits separate penalties for derivative violations such as waiting time penalties and other wage-related claims arising from the same underlying conduct—Plaintiff used the highest end of the realistic potential recovery range when calculating these percentages.

allocation in $1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving $1,500 PAGA allocation in $1,026,000 settlement); *Syed v. M-I, LLC*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving $100,000 PAGA allocation in a $3,950,000 settlement even though PAGA exposure was calculated at $53,600,000); *Garcia v. Gordon Trucking. Inc*., 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving $10,000 PAGA allocation in a $3,700,000 settlement); *Wershba v. Apple Computer, Inc.,* 91 Cal. App. 4th 224, 246, 250 (2001); *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice,* 688 F.2d at 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.,* 559 F.Supp.2d 1036, 1042 (2007) (noting that the median percentage for recoveries in shareholder class action settlements averaged 2.2%-3% from 2000 through 2002).

v. The Proposed Settlement Is A Reasonable Compromise of Claims

The case of *Kullar v. Foot Locker Retail, Inc.,* 168 Cal.App.4th 116 (2008) required additional information to be presented to the court in representative action settlements "to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation …." *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,* 186 Cal.App.4th 399 (2010), clarified that *Kullar* does not require the parties to submit an illusory prediction of the outer reaches of exposure without taking into account the actual risks associated with the litigation such ad dispositive motions and trial. *Kullar* also does not require an explicit statement of the maximum amount to be recovered if Plaintiff prevailed on all the claims, provided there is a record that allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Id.* at 409. The *Munoz* court found the record before the trial court was sufficient, having included the number of class members, payroll data, declarations describing hours and overtime worked, as well as variances in duties and rest and meal period experience, and a companion action alleging less than $5,000,000 in damages. This information constituted "an adequate basis from which to garner a reasonably adequate understanding of the amount that is in controversy within the meaning of *Kullar*." *Id.*

Plaintiff similarly relied upon payroll data and Aggrieved Employee data to determine the realistic potential civil penalties at issue. *See* Decl. Berzin ¶¶ 7, 9. This analysis allowed Plaintiff to determine the extent and frequency of potential violations on all claims as to all Aggrieved Employees. *See id.* Ultimately, Plaintiff secured an amount that is well within the range of what has found to be sufficient in several other cases. *See, supra,* Section V.c.iv; *see also, e.g. Omnivision Technologies, Inc.,* 559 F.Supp.2d at 1042; *Reed v. 1-800 Contacts, Inc.,* 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a settlement of $11.7 million where the maximum range of damages of $5,000 for each of the alleged 300,000 instances of unlawful recording violations ($1.5 billion), equaling approximately .78% of the total demand and approximately $800 per class member). This settlement represents a reasonable compromise given the facts of the case, potential defenses, and potential likely recoverable damages.

vi. The Requested Fees Are Reasonable and Customarily Approved by Courts

California state and federal courts have recognized that when a litigant's efforts create or preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally among all beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert,* 444 U.S. 472, 478 (1980) ("A lawyer who recovers a common fund for the benefit of persons other than … his client is entitled to a reasonable attorney's fee from the fund as a whole."); *Vincent v. Hughes Air West. Inc.,* 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co*., 396 U.S. 375 (1970); see also Serrano v. Priest, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Int'l. Inc.,* 1 Cal.5th 480, 506 (2016). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent,* 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.,* 129 F.3d 1026, 1029 (9th Cir. 1977). Courts have approved the use of a percentage of the fund to calculate reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable sum of money. *See Dunk,* 48 Cal.App.4th at 1808.

The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be shifted with some exactitude to those benefitting. *See Paul Johnson. Alston & Hunt v. Graulty,* 886 F.2d 268, 271 (9th Cir. 1989). These criteria are "easily met" when "each member of a represented group has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered on his behalf." *Id.* at 271 (citations omitted). Although this litigation is under the PAGA and not a class action, the basis for a common fund applies with equal force in this PAGA litigation. The three (3) factors set forth in *Paul, Johnson. Alston & Hunt*, exist in this case because there is a sufficiently identifiable class of beneficiaries (e.g. Plaintiff, Aggrieved Employees recovering under the settlement, and the LWDA), the benefits can be accurately traced to the settlement Plaintiff and his counsel were able to negotiate on behalf of the beneficiaries, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the common fund. As set forth in the fee award examples provided below for the Court's reference, it is an accepted practice in wage and hour litigation, which includes PAGA settlements, to award attorney's fees based on a percentage of the common fund. *See. e.g., Staton v. Boeing Co.,* 327 F.3d 938, 967-972 (9th Cir. 2003); *Sanders v. City of Los Angeles*, 3 Cal.3d 252, 261, 263 (1970); *Wershba,* 91 Cal. App. 4th at 254; *Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th 715, 726, 765 (2004); *Rincon v. W. Coast Tomato Growers, LLC,* 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal. 2018).

Historically, attorney's fee awards in common fund cases range generally from 20% to 50% of the fund, depending on the circumstances of the case. *See* Newberg on Class Actions, (3rd Ed.), 1992, § 14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are generally approved as reasonable in wage and hour settlements below $10 million:

> More particularly, courts may award attorneys gees in the 30-40% range in wage and hour class actions that result in a recovery of a common fund under $10 million. *See Vasquez v. Coast Valley Roofing, Inc.* 226 F.R.D. 482, 491-492 (E.D. Cal. 2010) (citing to give recent wage and hour class actions where federal district courts approved attorney fee awards ranging from 30% to 33%); *Singer v. Becton Dickenson and Co.,* 2010 U.S. Dis. LEXIS 543416, 2020 EL

> 2196104, *8 (S.D. Ca. June 1, 2010) (approving attorney fee award of 33.3% of the common fund and holding that award was similar to awards in three other wage and hour class action cases where fees ranged from 33% to 40%); *Romero v. Producers Dairy Foods, Inc.* 2007 U.S. Dist. LEXIS 86270, 2007 WL 3492841 (E.D. Ca. Nov. 14, 2007).

See Martin v. Ameripride Servs., 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011); *see also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457, 463 (9th Cir. 2000) (affirming 33% of find as fee in securities case); *In re Pac. Enter Sec. Litig.*, 41 F.3d 373, 379 (9th Cir. 1995) (same). Both California Courts and Federal District Courts regularly award fees within these ranges. *See Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-00634 (33-1/3% fee award); *Dirienzo v. Dunbar Armored, Inc*., USDC Southern District Case No. 3:09-cv-02745 (33-1/3% fee award); *Green, et a l v. Penske Logistics, LLC, et al.,* USDC Southern District Case No. 3:09-cv-00069 (33% fee award); *Benitez et a l v. Wilbur,* USDC Eastern District Case No. 1:08-cv-01122 (33.3% fee award); *Chavez et al V. Petrissans et al,* USDC Eastern District, Case No. 1:08-cv-00122 (33.3% fee award); *Willis, et al. v. Cal-Western Transport*, USDC Eastern District, Case No. 1:00-cv-05695 (33% fee award); *Birch v. Office Depot, Inc.,* USDC Southern District Case No. 06cvl690 DMS (WMC) (awarding 40% fee on a $16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.,* USDC Southern District Case No. 05cvl359 BTM (JMA) (awarding a 40% fee on a $3.75 million wage and hour class action settlement). To determine whether a percentage is reasonable, a Court may consider: (1) the percentage that would likely be negotiated between parties in a similar case; (2) the percentage applied in other representative actions; (3) the quality of counsel; and (4) the size of the award. *See In re Ikon Office Solutions. Inc. Secur. Litig.,* 194 F.R.D. 166, 193 (E.D. Pa. 2000).

These factors support Plaintiff's request for reasonable attorneys' fees. In class action and PAGA litigation, the typical percentage negotiated between the partis ranges from thirty to forty percent (30% to 40%). Plaintiff's request of $233,333.33 (1/3) falls within the typical range. The size of the settlement also supports the fee request when compared to other PAGA settlements that have been deemed to protect the public's interest. *See Davis,* 2017 U.S. Dist. LEXIS 63514, *1 ($4,000 PAGA allocation); *Moore,* 2014 U.S. Dist. LEXIS 8358, *5 ($2,500 PAGA allocation);

Jack, 2011 U.S. Dist. LEXIS 118764, *6 ($3,000 PAGA allocation); *Singer,* 2010 U.S. Dist. LEXIS 53416, *2 ($3,000 PAGA allocation); *Hopson,* 2009 U.S. Dist. LEXIS 33900, *9 (approving $1,500 PAGA allocation in $1,026,000 settlement); *Syed v. M-I, LLC,* 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving $100,000 PAGA allocation in a $3,950,000 settlement even though PAGA exposure was calculated at $53,600,000); *Garcia v. Gordon Trucking. Inc.,* 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) ($10,000 PAGA allocation). Further, Plaintiff's counsel took this case on a contingency basis and has not received any compensation for the work done in this case while shouldering the financial risk attendant to complex litigation involving 1,183 Aggrieved Employees.

Plaintiff's counsel also evaluated the requested attorney's fee in light of the time reasonably expended litigating this matter and counsel's lodestar. As of the date of this declaration, Brittany V. Berzin has expended approximately 228.6 hours at her customary hourly rate of $450, and Connor W. Olson has expended approximately 152.4 hours at his customary hourly rate of $550, resulting in a combined lodestar of approximately $186,690. *See* **Exhibit H** (Plaintiff's Counsel's Summary of Hours). The requested attorney's fee of $233,333.33, representing one-third of the Gross PAGA Settlement Amount, results in a lodestar multiplier of approximately 1.25. The requested fee is reasonable in light of the time expended, the contingent nature of the representation, the significant litigation risks assumed by counsel, the favorable result obtained for the Aggrieved Employees and the Labor and Workforce Development Agency, and the additional time that would have been required had this matter proceeded through dispositive motions, trial, and any appeal.

Further, "in the common fund context, attorneys whose compensation depends on their winning the case, must make up in compensation in cases they win for the lack of compensation in the cases they lose." *Chem. Bank v. City of Seattle,* 19 F.3d 1291, 1300-1301 (9th Cir. 1994); *see also Ketchum v. Moses,* 24 Cal.4th 1122, 1138 (2001) ("The adjustment to the lodestar figure, *e.g.,* to provide a fee enhancement reflecting the risk that the attorney will not receive payment if the suit does not success, constitutes earned compensation; unlike a windfall, it is neither unexpected or fortuitous"); *Wershba,* 91 Cal.App.4th at 225 ("Multipliers can range from 2 to 4 or even higher”). Given the requested multiplier is less than the 2-4x range typically applied by courts, a lodestar crosscheck validates the common fund percentage requested, and the Court should grant Plaintiff’s counsel’s fee request.

Plaintiff’s counsel also seeks reimbursement of $14,388.40 in expenses they have incurred and will continue to incur through carrying out the terms of this settlement. *See* **Exhibit G**. This is less than the $20,000 provided for in the settlement. Plaintiff’s request for reimbursement of litigation expenses should be granted.

VI. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court find that Plaintiff has met all statutory requirements to commence a PAGA civil action; approve the PAGA settlement, including counsel’s application for reasonable attorneys’ fees and costs; approve the notice and payment distribution procedures; and adopt the implementation schedule identified in the proposed order, which is being filed concurrently herewith.

Dated: July 30, 2026

EMPLOYEE & CONSUMER ADVOCATES OF NORTHERN CALIFORNIA PC

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