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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

SARAH THURSTON, individually and on behalf of others similarly situated, and as an aggrieved employee and Private Attorney General, Plaintiff, vs. PLACE INDUSTRIES, INC. D.B.A. DUTCH BROS COFFEE, a California corporation; and DOES 1 through 50, inclusive, Defendants.	Case No.: S-CV-0048697 **NOTICE OF MOTION AND MOTION FOR ORDER APPROVING CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND ENTERING JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Hearing Date: September 23, 2025 Hearing Time: 8:25 a.m. Department: 42 Complaint Filed: July 1, 2022 Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on September 23, 2025, at 8:25 a.m. in Department 42 of the Placer County Superior Court, located at 10820 Justice Center Dr., Roseville, CA 95678, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, Plaintiff Sarah Thurston ("Plaintiff") will and hereby does move the Court for an Order granting approval of the proposed PAGA settlement between Plaintiff and Defendant Place Industries, Inc. ("Defendant").

Specifically, Plaintiff requests that the Court enter an Order:

1. Approving the PAGA Settlement Agreement ("Settlement" or "Settlement Agreement") attached as Exhibit 1 to the Declaration of Heather Davis in support of Motion for Preliminary Approval ("Davis Decl.");

2. Approving the distribution of the Net Settlement Amount of $223,250.00, of which seventy-five percent (75%) shall be paid to the California Labor and Workforce Development Agency and twenty-five percent (25%) shall be paid to the PAGA Members on a *pro rata* basis based upon the number of Pay Periods worked during the PAGA Period;

3. Appointing Phoenix Class Action Administration Solutions ("Phoenix" or "Settlement Administrator") as the Settlement Administrator. Settlement Administration costs in the amount of $6,000.00 shall be paid to Phoenix in connection with the costs of administering the Settlement;

4. Awarding $7,500.00 to Plaintiff Sarah Thurston as a PAGA Representative Payment in return for her services in bringing the Action;

5. Awarding Plaintiff's Counsel, Protection Law Group, LLP, the Plaintiff's Counsel's Fees Payment of thirty-five percent (35%) the Gross Settlement Amount ($138,250.00) and Plaintiff's Counsel Litigation Costs Payment of $20,000.00 for reimbursement of actual litigation costs and expenses pursuant to California Labor Code section 2699(k)(1);

6. Directing Defendant to deposit the Gross Settlement Amount of $395,000.00 into an account for administration of the Settlement and directing the Settlement Administrator to distribute the Gross Settlement Amount in accordance with the Settlement Agreement; and

7. Directing the mailing of the PAGA Payment Share checks to the PAGA Members under a cover letter providing them notice substantially similar in content and form to the proposed

Notice attached as "Exhibit 4" to Davis. Decl.

Pursuant to California Labor Code § 2699(s)(2), a copy of the proposed Settlement, as well as information regarding the preliminary approval hearing on this matter, were submitted to the California Labor Workforce Development Agency via online filing at https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html on August 26, 2025. *See* Davis Decl. ¶ 96.

This Motion is made on the grounds that the proposed PAGA Settlement is fair, adequate, reasonable, and in the best interest of affected employees and the parties including the State of California. The Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the concurrently filed Declaration of Heather Davis and all exhibits attached thereto, the concurrently filed Declaration of Sarah Thurston; the Declaration of Jodey Lawrence on Behalf of Phoenix Class Action Administration Solutions and all exhibits attached thereto; and all exhibits attached thereto and all other oral and documentary evidence on file with the Court or that may be presented at the hearing on this Motion

Respectfully submitted,

DATED: August 26, 2025

PROTECTION LAW GROUP, LLP

By:____________________________________

Heather Davis
Amir Nayebdadash
Shadi Sahebghalam
Attorneys for Plaintiff
SARAH THURSTON

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I. INTRODUCTION

Plaintiff Sarah Thurston ("Plaintiff") seeks preliminary approval of a PAGA Settlement Agreement ("Settlement Agreement" or "Settlement") on behalf of all current and former non-exempt employees of Defendant Place Industries, Inc. ("Defendant") who employed by Defendant in the State of California at any time between July 4, 2021, to May 13, 2025. The Settlement terms are outlined as follows:

- Number of PAGA Members: approximately 495 individuals.
- Gross Settlement Amount: $395,000.00, exclusive of employer-side payroll taxes.
- Settlement Administration Costs: currently estimated at $6,000.00 to Phoenix Class Action Administration Solutions.
- Requested Representative Incentive Payment: $7,500.00 to Plaintiff Sarah Thurston.
- PAGA Penalties: $223,250.00, 75% (167,437.50) of which will be paid to the California Labor and Workforce Development Agency ("LWDA") with the remaining 25% ($55,812.50) distributed to the PAGA Members.
- Requested Attorneys' Fees and Costs: one third (35%) of the Gross Settlement Amount ($138,250.00) plus actual litigation costs and expenses not to exceed $20,000.00.
- Net Settlement Amount: approximately $223,250.00 to be distributed to LWDA and PAGA members

As set forth herein, the Settlement is the product of informed discovery, arms-length negotiations, and provides a fair, adequate, and reasonable recovery for the Class in light of the relative strength of Plaintiff's claims, the risk, expense and uncertainty of further litigation, and the benefit conferred by the Settlement. Plaintiff therefore respectfully requests that the Court grant preliminary approval of the proposed Settlement, conditionally certify the Class, approve the proposed Class Notice, and set a hearing date for final settlement approval, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Sarah Thurston ("Plaintiff") worked for Defendant Place Industries, Inc. dba Dutch Bros. Coffee ("Defendant") as a non-exempt employee from approximately January 2019 to September 15, 2021, as an hourly-paid Barista. *See* Declaration of Heather Davis in Support of Motion for Order Approving California Labor Code Private Attorneys General Act Settlement and Entering Judgment ("Davis Decl.") ¶12; See Declaration of Sarah Thurston in Support of Motion for Approval ("Thurston Decl.") ¶3.

On June 30, 2022, Plaintiff, through her Counsel, filed a letter notifying the Labor and Workforce Development Agency ("LWDA") of her intent to seek penalties under the Private Attorneys General Act and provided copies of this letter to Defendant via certified mail. Davis Decl. ¶13.

On July 1, 2022, Plaintiff filed her Class Action Complaint in the Placer County Superior Court, Case No. S-CV-0048697, alleging the following nine (9) causes of action: (1) Unpaid Overtime; (2) Unpaid Meal Period Premiums; (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wages; (5) Final Wages Not Timely Paid; (6) Wages Not Timely Paid During Employment; (7) Non-Compliant Wage Statements; (8) Failure to Reimburse Business Expenses; and (9) Violation of California Business & Professions Code § 17200, *et seq*. Davis Decl. ¶14.

On September 6, 2022, Plaintiff propounded and served Defendant with her initial discovery requests consisting of Form Interrogatories – General, Set One, Special Interrogatories, Set One, and Demand for Production of Documents, Set One. Plaintiff Cornelious also served her Notice of Deposition of Defendant's Person Most Qualified and also sent Defendant a draft of a proposed *Belaire-West* Notice. Davis Decl. ¶15.

On September 7, 2022, following the expiration of the statutory notice period, Plaintiff filed a First Amended Complaint ("FAC" or "Operative Complaint") adding a single cause of action for violation of California Labor Code section 2699, *et seq*. ("PAGA") to the Operative Complaint. Davis Decl. ¶16.

On November 23, 2022, Defendant filed its Motion to Compel arbitration of Plaintiff's

Individual Claims, Dismiss Class Claims, and Stay the Representative PAGA Claims. Davis Decl. ¶17.

On November 28, 2022, Defendant served objections and responses to Plaintiff's propounded Form Interrogatories – General, Set One, Special Interrogatories, Set One, and Demand for Production of Documents, Set One. Davis Decl. ¶18.

On January 3, 2023, the Court granted Defendant's Motion to Compel Arbitration and dismissed Plaintiff's class claims without prejudice, ordered the Plaintiff's individual wage and hour claims to arbitration, and stayed the non-individual PAGA claim pending the outcome of arbitration. Davis Decl. ¶19.

On June 23, 2023, Plaintiff submitted her Demand for Arbitration with the American Arbitration Association. Davis Decl. ¶20.

In or around June 2024, the Parties met and conferred, and agreed to attend a private global mediation of Plaintiff's PAGA claims only and focus their efforts on mediating the Action with Eve Wagner, Esq., a highly-respected mediator with experience in wage and hour class and representative actions. Davis Decl. ¶21.

Prior to mediation, Defendant provided Plaintiff with extensive documents regarding the claims brought in this action, including a 20% sampling of time and payroll records for employees during the covered period. Defendant also produced Plaintiff's personnel files, the operative employee handbook and addendum for the covered period, which contained all policies and procedures in place during the PAGA period related to meal breaks, rest breaks, timekeeping, the payment of wages and other relevant areas of investigation. Davis Decl. ¶22.

On March 13, 2025, the Parties participated in a private mediation with Eve Wagner, Esq. The mediation was hotly contested, but with the help of the mediator, the Parties were able to reach an agreement on the terms of a PAGA Settlement. Davis Decl. ¶23.

Thereafter, the Parties worked diligently to negotiate and memorialize the terms of the settlement in a Joint Stipulation and Agreement for PAGA Representative Action Settlement. After extensive discussions and revisions to the agreement, the Parties entered into a fully executed Joint

Stipulation and Agreement for PAGA Representative Action Settlement on May 31, 2025. Davis Decl. ¶24.

On or about August 26, 2025, at the same time Plaintiff's Motion for Order Approving California Labor Code Private Attorneys General Act Settlement and Entering Judgment ("Motion") was submitted to the Court, my Office submitted the Settlement Agreement to the LWDA. Davis Decl. ¶¶ 25, 96.

III. THE SETTLEMENT TERMS

A. Definition of PAGA Members

The Settlement Agreement defines “Aggrieved Employees” as: “all current and former hourly, non-exempt employees of Defendant Place Industries, Inc. dba Dutch Bros. Coffee who worked in California at any time during the PAGA Period.” Davis Decl. ¶27; Settlement Agreement ¶1.4.

B. Gross Settlement Amount

Subject to Court approval, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle the PAGA claims at issue in the Action for a Gross Settlement Amount (“GSA”) of Three Hundred Ninety-Five Thousand Dollars and Zero Cents ($395,000.00), to be paid by Defendant. Davis Decl. ¶29; Settlement Agreement ¶¶1.11, 3.1.

C. Allocation of the Gross Settlement Amount

The GSA is inclusive of: (1) Payments to the PAGA Members and the LWDA; (2) Plaintiff’s Counsel’s Fees Payment; (3) Plaintiff’s Counsel’s Litigation Costs; (4) Settlement Administration Costs; and (5) Plaintiff’s Representative Payments. Davis Decl. ¶30; Settlement Agreement ¶¶3.1, 3.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.2.4.1., and 3.2.4.2.

The GSA allocations are as follows:

a. Plaintiff’s Counsel’s Fees Payment Award: Thirty-five (35%) of the GSA, which amounts to Two Hundred Fifty Thousand Dollars and Zero Cents ($138,250.00). Davis Decl. ¶31; Settlement Agreement ¶¶1.11, 1.20, and 3.2.2.

b. Plaintiff’s Counsel’s Litigation Costs: Twenty Thousand Dollars and Zero Cents

($20,000.00). Davis Decl. ¶31; Settlement Agreement ¶¶1.11, 1.20, 3.2.2.

c. Plaintiff's Representative Payment: Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) each to Plaintiff Sarah Thurston. Davis Decl. ¶31; Settlement Agreement ¶¶1.11, 1.30, 3.2.1.

d. Settlement Administration Costs: Six Thousand Dollars and Zero Cents ($6,000.00). Davis Decl. ¶31; Settlement Agreement ¶¶1.11, 1.3, 3.2.3.

D. Allocation of the Net Settlement Amount

The "Net Settlement Amount" ("NSA") means the Gross Settlement Amount, less Plaintiff's Counsel's Fees Payment up to percent (35 %) of the Gross Settlement Amount, currently estimated at $138,250.00; Plaintiff's Counsel Litigation Expenses Payment of not more than $20,000.00; Representative Service Award in amount of $7,500; and the Administration Expenses Payment. Settlement Agreement ¶1.16. Based on the amounts above, the NSA will be Two Hundred Twenty-Three Thousand Two Hundred and Fifty Dollars and Zero Cents Davis Decl. ¶32; ($223,250.00).

The NSA will be distributed as follows: 75% of the NSA will be paid to the LWDA ("LWDA Payment"), and the remaining 25% will be paid to all PAGA Members ("PAGA Payment") on a *pro rata* basis based upon the number of pay periods worked by each PAGA Settlement Member during the PAGA Period. Davis Decl. ¶33; Settlement Agreement ¶¶1.16, 1.25.

The Individual Payment of PAGA Members will be treated as 100% civil penalties for which a 1099 will be issued. Davis Decl. ¶34; Settlement Agreement ¶1.20.

E. Proposed Settlement Order and Final Approval

The "Effective Date" means the "date on which the Approval Order becomes final." The Approval Order "becomes final" only after the Court grants the Motion for Approval and upon service of the Notice of Entry of Order and/or Judgment, and upon the latter of: (i) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Approval Order and/or Judgment (this time period shall not be less than sixty (60) calendar days after the Court's Order is entered); (ii) the date of affirmance of an appeal of the Approval Order and/or

Judgment becomes final under the California Rules of Court; or (iv) the date of final dismissal of any appeal from the Approval Order and/or Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Approval Order and/or Judgment. Davis Decl. ¶35; Settlement Agreement ¶1.10.

Within thirty (30) calendar days of the Effective Date, Defendant shall deliver to the Settlement Administrator the Aggrieved Employee Data in the form of a Microsoft Excel spreadsheet including each PAGA Member's: (1) name, (2) last-known mailing address, (3) Social Security number, (4) number of PAGA Pay Periods. Davis Decl. ¶36; Settlement Agreement ¶¶1.5, 4.2.

Within twenty-one (21) business days of the Effective Date, Defendant will deposit the Three Hundred Ninety-Five Thousand Dollars and Zero Cents ($395,000.00) into a Qualified Settlement Fund ("QSF") to be established by the Settlement Administrator. Davis Decl. ¶37; Settlement Agreement ¶¶1.10, 4.3, 7.3.

Within fourteen (14) business days following the receipt of the Gross Settlement Amount, the Settlement Administrator shall mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses Payment, and Plaintiff's Representative Service Award. Davis Decl. ¶38; Settlement Agreement ¶¶3.2, 4.4.

Payments to the PAGA Members will be accompanied by a cover letter, substantially similar in content and form to the proposed Notice of Representative Action Settlement. Davis Decl. ¶39, Ex. 4; Settlement Agreement ¶ ¶ 1.18, 4.4.2.

The proposed Settlement Agreement is a non-reversionary, non-claims made settlement. All money from the NSA will be distributed to the LWDA and the PAGA Members. No money from the Settlement will revert to Defendant or result in an unpaid residue. Davis Decl. ¶40; Settlement Agreement ¶3.1.

All checks to PAGA Members will be sent by the Settlement Administrator and shall remain valid and negotiable for 180 days from the date of their issuance. If an Individual Settlement Payment Check remains uncashed after one hundred eighty (180) calendar days from issuance, the Settlement

Administrator shall distribute the value of the uncashed checks to the State Controller's Unclaimed Property Fund in the name of the PAGA Member. In such event, such PAGA Member shall nevertheless remain bound by the Settlement. Davis Decl. ¶41; Settlement Agreement ¶¶ 4.4.1, 4.4.4.

F. Scope of the Release in the Settlement Agreement

Upon the last installment payment by Defendant and complete funding of the Gross Settlement Amount by Defendant to the Settlement Administrator, Plaintiff, the State of California, and the PAGA Members shall release the "Released Parties" from the "Release by Plaintiff and Aggrieved Employees" that arose during the PAGA Period. Davis Decl. ¶¶42-46; Settlement Agreement ¶¶1.27, 1.28, 5.1, 5.2, 11.8. The "Release by Plaintiff and Aggrieved Employees" specifically include "any and all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and/or the PAGA Notice, including, but not limited to, failure to pay minimum wages and overtime including working off the clock and reporting time, failure to provide meal breaks or meal period premiums, failure to provide rest breaks or rest period premiums, failure to timely pay final wages, failure to timely pay wages during employment, failure to provide accurate wage statements, failure to reimburse business expenses, violations of California Business & Professions Code section 17200, California Labor Code sections 201, 202, 203, 204, 210, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2698, 2699 *et seq*., 2699.3, 2800, 2802, California Code of Civil Procedure, section 1021.5, California Code of Regulations, Title 8, Section 11050, and the applicable Industrial Welfare Commission Orders." The "Release by Plaintiff and Aggrieved Employees" expressly excludes all claims by PAGA Members for individual wage claims, vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, claims while classified as exempt, and claims outside of the PAGA Period. The Released Claims expressly exclude any potential non-PAGA claims held individually by PAGA Members other than Plaintiffs. Davis Decl. ¶¶42, 43; Settlement Agreement ¶1.27, 5.1, 5.2.

However, in addition to this narrow release, named Plaintiff, on behalf of herself only, has also agreed to a broader general release of any claims they may have against Defendant. Davis Decl. ¶44; Settlement Agreement ¶5.2.

Upon the full and complete funding of the Gross Settlement Amount by Defendant to the Settlement Administrator, Plaintiff, the State of California, and the PAGA Members shall release the Released Parties from the Release by Plaintiff and Aggrieved Employees that arose during the PAGA Period. Plaintiff's General Release shall also be deemed released. Davis Decl. ¶45; Settlement Agreement ¶¶1.27, 5.1, 5.2.

This release shall apply to claims arising during the PAGA Period and will be binding and effective upon Plaintiff, PAGA Members, and the LWDA, subject to the terms and conditions in the Settlement Agreement and the Court's approval. Davis Decl. ¶46; Settlement Agreement ¶¶5.1, 5.2, 11.8.

IV. <u>STANDARD OF REVIEW FOR APPROVAL OF PAGA SETTLEMENT</u>

The settlement of a PAGA action requires court approval. *See* Cal. Labor Code § 2699(s)(2). In reviewing a PAGA settlement, the Court need only ensure that "a negotiated resolution is fair to those affected." *Williams v. Sup. Ct*., 3 Cal.5th 531, 549 (2017). In making this assessment, the court should consider that PAGA's primary objective "is to incentive private parties to recover civil penalties for the government that otherwise may not have been assessed and collective by overburdened state enforcement agencies." *See Ochoa-Hernandez v. CJADERS Foods, Inc*., 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010) (*citing Arias v. Sup. Ct*., 46 Cal.4th 969, 986 (2009)).

"Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." *Id.* Moreover, because a PAGA claim is considered a law enforcement action "there is no need to protect absent employees' due process rights" and the Court need <u>not</u> employ the two-step approval process that applies to class settlements. *Williams*, 3 Cal.5th at 546.

V. <u>THE SETTLEMENT IS FAIR AND REASONABLE</u>

As set forth below, the Settlement before the Court is the result of adversarial, arms-length negotiations, extensive investigation, and fulfills the objectives of PAGA. Plaintiff has followed the protocols for the State, PAGA, directives from this Court and other Courts throughout California, to ensure that the Settlement and this Motion, meet these objectives. The Settlement is fair and reasonable in light of the relative strengths of the PAGA Claims and risks associated with protracted litigation. Accordingly, the Settlement should be approved by the Court.

A. Plaintiff Has Complied with PAGA's Notice Requirements

Plaintiff has complied with the notice requirements set for in Labor Code section 2699.3. In addition, the Settlement Agreement and this motion have been submitted to the LWDA, as required by Labor Code section 2699(s)(2). *See* Davis Decl. ¶¶25, 47, 96.

B. Discovery and Arm's-Length Negotiations.

Although PAGA settlements are not subject to the same, heightened requirements as a class action settlement, the underlying guidelines utilized in class action settlements are useful in evaluating the fairness of a PAGA settlement. California courts recognize that "a presumption of fairness exists where . . . [a] settlement is reached through arm's-length bargaining." *Wershba v. Apple Computer,* 91 Cal.App.4th 224, 245 (2001)(disapproved on other grounds).

Here, the Parties engaged in arms-length, non-collusive negotiations at all times including engaging in extensive law and motion practice and attending a full day mediation with Eve Wagner, Esq. At all times, Plaintiff was willing and prepared to litigate this matter through trial and possible appeals if the Parties had been unable to reach a favorable resolution. The proposed Settlement was reached at the end of a process that was neither fraudulent nor collusive. To the contrary, counsel for the Parties advanced their respective positions throughout the negotiations. Davis Decl. ¶¶48-49; Settlement Agreement ¶2.2.

The settlement is based upon substantial investigation by experienced Counsel and on the informal discovery conducted. As a result thereof, Plaintiff's Counsel believes the settlement is fair, adequate and reasonable. Davis Decl. ¶¶2-11, 50. Prior to the March 13, 2025, mediation with Eve Wagner, Esq., the Parties in the Class Action and subsequent Arbitration engaged in extensive formal and informal discovery. Plaintiff served Defendant with Form Interrogatories – General, Special

Interrogatories, and Requests for Production of Documents. Defendant responded to these discovery requests and the Parties extensively met and conferred regarding this discovery. The Parties in the Class Action also engaged in substantial law and motion practice with Defendant filing a motion to compel arbitration. Prior to mediation, Defendant informally produced its written policies in place during the PAGA Period including its employee handbooks, Plaintiff's complete personnel file, and time and payroll data for the aggrieved employees. Defendant also provided Plaintiff with data points necessary for Plaintiff's Counsel to complete a damages analysis and estimate Defendant's potential exposure Davis Decl. ¶¶12-25, 51-54.

This discovery, in conjunction with Plaintiff's extensive prior investigation, allowed Plaintiff's Counsel to conduct an informed assessment and analysis of Defendant's potential exposure. The Parties briefed their positions regarding the strengths and weaknesses of their claims, provided their analyses to the mediator, and debated the merits of their respective positions at the mediation. Davis Decl. ¶54. Furthermore, negotiations were conducted by highly capable and respected counsel with strong records of vigorous and effective advocacy handling complex wage and hour litigation. Davis Decl. ¶¶2-11, 55.

C. The Settlement is Reasonable in Light of the Parties' Legal Positions.

The Gross Settlement Amount of $395,000.00 is a reasonable settlement in light of the strength of Plaintiff's claims and Defendant's defenses, the risks of further litigation, and the unique risks associated with litigation of PAGA claims. Davis Decl. ¶58.

1. *Plaintiff's Counsel's Analysis of Defendant's Maximum Potential Liability.*

Plaintiffs' Counsel reviewed and analyzed the time and payroll records for all aggrieved employees at the time of the mediation, along with other relevant documents and data and, based on this discovery, estimated with all claims adjudicated in favor of Plaintiffs, Defendant's potential liability exceeded $8,502,118.50 in potential penalties. Davis Decl. ¶56.

2. *Plaintiffs' Counsel's Risk-Based Analysis and Adjustments*

Despite this potentially large liability, substantial barriers to recovery of such penalties exist. First, in order to prevail at trial on his PAGA claim, Plaintiffs would have to prove the underlying

Labor Code violations. *See Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008). Plaintiffs' core allegations in the lawsuit are that Defendant systematically violated the California Labor Code by failing to pay its non-exempt employees for all time worked including minimum and overtime wages, failing to provide compliant meal and rest periods, failing to timely pay wages during and upon termination of employment, failing to provide accurate payroll records, and failing to reimburse necessary business expenditures. Davis Decl. ¶57.

However, Defendant argued that its policies and practices at all times were lawful and complied with California law; challenged Plaintiffs' standing as aggrieved employees and denied that any of its other employees whom Plaintiffs seek to represent are aggrieved; and contended that the claims of Plaintiff Cornelious and other PAGA Members are subject to enforceable agreements. Davis Decl. ¶58.

Defendant also contended that when determining whether or not to assess a penalty, the court exercises the same discretion as the Labor Commissioner and may reduce the penalties to be assessed against the employer pursuant to California Labor Code section 2699(e)(1)-(2). As such, Defendant contended that, with respect to a PAGA claim, the Court was unlikely to assess cumulative penalties for the maximum number of possible, separate California Labor Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct may be governed by multiple provisions of the California Labor Code that are interrelated and work in tandem. Davis Decl. ¶59.

Defendant maintained that, in addition to their strong arguments against the underlying claims, taking the current unsettled state of law, it would be unjust to award the maximum potential PAGA penalties. There was a dearth of law and guidance regarding trials and/or assessment of penalties under the PAGA statute, and there is no clearly established methodology for the valuation and/or assessment of PAGA penalties. However, the legislature has recently expressed that it no longer intended for employees to recover on a number of derivative penalties absent evidence that these penalties were willful or intentional and imposed heightened requirements for employees to obtain a heightened $200 penalty. Davis Decl. ¶60.

Moreover, in addition to Defendant's anticipated defenses to the alleged Labor Code violations, Plaintiff's Counsel remained mindful of the fact that PAGA gives the Court discretion to lower the penalties assessed if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory." *See* Cal. Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1136 (2012) (holding that a court may reduce the amount of PAGA penalties awarded to an employee based upon discretionary factors)(disapproved on other grounds); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D.Cal. Aug. 12, 2011)(reducing PAGA penalties by 80%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018)(approving reduction in penalties from $50 per pay period to $5 per pay period based on good faith attempts to comply with obligations and minimal violations). Davis Decl. ¶61.

Finally, Plaintiff's Counsel recognized that protracted litigation of this matter would be an expensive, time-consuming, and extremely uncertain proposition requiring extensive discovery, numerous depositions, and substantial uncertainty. Then, even if Plaintiff prevailed at trial, possible appeals would substantially delay any recovery. Accordingly, there is a significant risk that after years of costly litigation, Plaintiffs could ultimately recover nothing. Davis Decl. ¶62.

As such, while Plaintiffs maintain that their PAGA claims are meritorious, Plaintiffs' counsel considered the strengths and weaknesses of each side's respective positions in evaluating the reasonableness of the proposed settlement. Davis Decl. ¶63.

Based on the violations alleged above, Plaintiff's Counsel first applied a discount of 70% to account for risks and practical considerations of managing these claims at trial. Next, Plaintiff's Counsel applied a discount of 70% to account for the risks associated with succeeding on the merits, establishing liability, and proving the extent of penalties that are warranted. Davis Decl. ¶64.

Finally, Plaintiff's Counsel office discounted the remaining penalties an additional 50% in light of the discretionary nature of these penalties by the Court given the circumstances of the Action and the interrelated nature of the alleged claims. This brought the relative value of the PAGA claim to approximately $382,595.33. Davis Decl. ¶65.

In light of the Parties' respective legal positions and the risks to potential recovery, it is clear that the Gross Settlement Amount of $395,000.00 is fair, adequate, and reasonable. Davis Decl. ¶66.

3. *The Settlement Fulfills the Fundamental Purpose of PAGA*

Finally, Plaintiff's counsel was mindful of the fact that PAGA is fundamentally *not* intended to be compensatory in nature but is instead intended to facilitate enforcement of California's labor laws by financing state activities and educating and deterring non-compliance. Davis Decl. ¶67; *see* Cal. Labor Code § 2699(m); *Arias v. Sup. Ct.*, 46 Cal. 4th 969 (2009); *Kim v. Reins International California, Inc.*, 9 Cal.5th 73, 86-87 (2020). After considering this multitude of factors, Plaintiffs and Plaintiffs' Counsel concluded that it was in the best interest of the State and the PAGA Members to enter the Settlement. The overall relief obtained by the Settlement is significant, not only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to promote enforcement of California's labor laws, provide funds to the state, and deter future non-compliance by Defendants. The Settlement is also well-within the range of settlements of PAGA claims approved by Costs in other cases. Thus, taking into consideration both the potential value of the PAGA claim, the significant risks associated with continued litigation, Defendant's financial condition, and the underlying objective of PAGA, Plaintiff's Counsel submits that the Settlement presented herein is fair, reasonable, and adequate. Davis Decl. ¶¶68-70.

VI. REQUESTED ATTORNEYS' FEE AND COSTS

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal, Inc.*, 82 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id*. at 47. In cases where class members present claims against a common fund and the defendant agrees to the use of a percentage of the fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

Plaintiff's Counsel respectfully requests a fee award of thirty-five percent (35%) of the Gross Settlement Amount, which is well within the accepted range for complex wage-and-hour litigation and justified by the excellent result achieved. Plaintiff's Counsel undertook this matter on a contingency basis, assumed all litigation risk, and devoted significant time and resources to investigating and litigating this case—including opposing a motion to compel arbitration, analyzing complex wage data, conducting discovery, and negotiating a fair, non-reversionary $395,000 PAGA settlement. This recovery represents a strong outcome given the significant legal and procedural hurdles involved, including Defendant's vigorous defenses and the risk of no recovery if the case proceeded to trial. Davis Decl. ¶71-73; Settlement Agreement ¶¶1.19, 1.20, 3.2.2.

Protection Law Group is a small law firm specifically devoted to the representation of employees against employers in California involving claims relating to violations of the California Labor Code, including claims for failure to pay all wages owed, failure to pay overtime premiums, failure to pay meal and rest premiums and failure to provide accurate wage records. The practice of employment law is a very specific, narrow field which requires diligence in an ever-evolving field of substantive and procedural law. The significant time and attention spent on this case meant we could not spend time on other cases or clients. Davis Decl. ¶74.

As discussed above, Plaintiff's Counsel undertook extensive investigation, analysis, and research prior to filing the lawsuit and during litigation and settlement negotiations. Plaintiff's Counsel has aggressively litigated this case from the initial pleading to the settlement of this Action, including law and motion practice in opposing Defendant's motion to compel arbitration. As a result of Plaintiff's Counsel's efforts, Defendant agreed to attend mediation rather than proceeding with further litigation. The ongoing work performed by Plaintiff's Counsel has been extensive, complex, and ultimately successful in achieving a fair settlement for the PAGA Members and the State. Plaintiff's Counsel actively participated in this litigation, attending client meetings, conducting legal research, participating in case strategy and analysis, drafting, reviewing, and revising pleadings. Plaintiff's Counsel conducted extensive informal and formal discovery, researched defenses raised by Defendant, investigated Defendant's policies, practices, and procedures, and opposed Defendant's motion to compel arbitration before attending mediation. Plaintiff's Counsel also spent significant time drafting and revising the Settlement before the Court. A settlement was finally achieved despite all of these obstacles because of Plaintiff's Counsel's time, effort, experience, and skill. Davis Decl.

¶75.

In addition to the time and effort required, this matter also required substantial skill to successfully litigate. The skill required to properly litigate this case is evident not only in the results achieved, but in the steps necessary to reach this result. Defendant retained well-respected counsel and vigorously denied liability. Indeed, Defendant and their Counsel felt strongly about Defendant's ability to prevail and mounted several defenses that posed significant threats to Plaintiff's claims, challenged the theories of Plaintiff's Counsel, and promised a strong defense moving forward. Further, in order to evaluate these claims and defenses, Plaintiff's Counsel was required to oppose a motion to compel arbitration, and review and analyze a significant amount of data to determine Defendant's underlying practices and liability, a complex process that took considerable time, energy, and knowledge. This complicated analysis required substantial skill, but Plaintiff's Counsel were able to successfully navigate these challenges because of their extensive experience in complex wage and hour litigation. This settlement, against experienced defense counsel, and despite the existence of several strong defenses, was made possible through Plaintiff's Counsel's skill and reputation in complex employment matters. Moreover, the process of ensuring that the terms of the Settlement were fair took unique skills by counsel well-versed in the state of the law regarding PAGA settlements, defense counsel, and the appropriateness of the terms for this settlement. Davis Decl. ¶76.

The Settlement represents a fair resolution of this case given the risks inherent in litigating it through trial and possible appeals. As discussed at length above, although Plaintiff's Counsel believes that Plaintiff would prevail at trial, a number of risks reduced value of the case. Had the case not settled, Defendant would have vigorously challenged manageability and liability, and sought drastic reduction in the amount of any penalties assessed. Preparing the case for trial would have been extraordinarily expensive and risky proposition. In contrast, settlement at this stage guarantees immediate recovery for the State of California and the PAGA Members. Indeed, despite these challenges Plaintiff faced moving forward, Plaintiff was able to negotiate and reach a non-reversionary Gross Settlement Amount of $395,000.00, which is an outstanding result for a settlement limited to penalties arising under PAGA and which does not affect the PAGA Members' individual wage claims. Davis Decl. ¶77.

Additionally, this case was litigated on a contingency basis. Had Plaintiff's Counsel been unsuccessful, they would not receive any fee or recover any portion of their expenses spent litigating this matter. Plaintiff's Counsel has borne all risks and costs associated with the litigation and will not receive any compensation until recovery is obtained. If the Covid-19 crisis has made one thing clear, it is that economic uncertainty can arise swiftly and for reasons beyond any party's control. Plaintiff's Counsel took on the risk that they could ultimately recover nothing from the litigation if they were unsuccessful or if the organization experienced the financial difficulties faced by so many organizations during the pandemic. These increased risks were real, challenging, and significantly increased the contingent risk associated with litigating this matter. These are the types of risks Plaintiff's Counsel took in deciding to litigate this matter on a contingent basis and this risk is a relevant factor when considering the reasonableness of the requested fee. Davis Decl. ¶78.

Plaintiff has agreed to a fee of thirty-five percent (35%) of the Gross Settlement Amount. The Settlement Agreement and this Motion requesting these fees will also be submitted to the LWDA concurrently with the filing of this motion. I am aware that the common and acceptable rate for representation in complex wage and hour litigation is normally twenty-five (25) to thirty-five (35) percent. A fee of thirty-five percent (35%) is appropriate here because of the excellent result achieved for the State of California and PAGA Members despite the substantial risks described above, including the risk that Plaintiff could ultimately recover nothing at all. Davis Decl. ¶79.

While it is proper and common to request a fee award based on a percentage of the common fund, the fee request is also justified under a simple lodestar analysis. Since beginning work on this matter, Protection Law Group has spent a total of approximately 275.40 hours litigating this case. To date, applying a blended rate of $550.00 per hour for the work performed by Protection Law Group, LLP, results in an estimated lodestar of $151,470.00. Davis Decl. ¶¶80-86.

Given the complex nature of these claims and daunting legal challenges, Plaintiff's Counsel believes there are very few law firms who could have obtained the settlement obtained here by my office. Plaintiff's Counsel office has devoted itself to pursuing and understanding these types of cases and was able litigate this matter despite risks that may have dissuaded other counsel from pursuing this case. Davis Decl. ¶87.

Plaintiff's Counsel believes that the efforts of my office have resulted in substantial benefits to both the State and the PAGA Members and have helped achieve the underlying purpose of PAGA in deterring future violations and recovering penalties that would otherwise have gone unremedied. Through the efforts of Plaintiff's Counsel and Plaintiff in the Action, a fair and reasonable resolution has been reached that includes a non-reversionary settlement payment by Defendant of $395,000.00. Plaintiff's Counsel informed and believes that, without the efforts of my office, the Labor Code and Wage Order violations alleged in the Complaint and PAGA Notice to the LWDA would have gone completely unremedied. The allocation of thirty-five percent (35%) of this amount to fees as provided for in the Settlement is therefore reasonable given the result achieved and I would request the Court approve the payment of thirty-five percent (35%) of the Gross Settlement Amount to Plaintiff's Counsel, as called for under the agreement. Davis Decl. ¶88

VII. PLAINTIFF'S COUNSEL COSTS

To date, Plaintiff's Counsel has borne all risks and costs of litigation and will not receive any compensation until recovery is obtained by Plaintiff and the PAGA Members. Protection Law Group anticipates incurring $20,000.00 in costs, with respect to Plaintiff's PAGA claims. This includes $19,907 in costs currently incurred by Protection Law Group in this Action, plus additional costs Plaintiff's Counsel will likely bear for future approval filings and accounting, for a total exceeding $20,000.00. This is a conservative estimate based on Plaintiff's Counsel prior experience regarding the costs incurred as part of the final approval process. Davis Decl. ¶89.

VIII. PLAINTIFF'S REPRESENTATIVE PAYMENTS

Here, the requested $7,500.00 Representative payment to Plaintiff Sarah Thurston is justified. This amount is justified because of the extensive time Plaintiff spent and the assistance she has provided to Plaintiff's Counsel. Plaintiff has been intimately involved in the prosecution of the Action and served as indispensable resource to Plaintiff's Counsel. Plaintiff has taken actions throughout the litigation to protect the interests of the State of California and the PAGA Members. Plaintiff provided valuable information regarding allegations, kept herself informed of the developments in this Action, and participated in decisions concerning the case. Plaintiff spent time responding and reviewing discovery looking for documents and the information and the documentation provided by Plaintiff was instrumental in establishing the wage and hour violations alleged in this Action. Indeed, the recovery provided for in the Settlement Agreement would have been impossible to obtain without Plaintiff's participation. Davis Decl. ¶90; Thurston Decl. ¶4-14.

Additionally, Plaintiff faces actual risks with respect to her future employment by putting herself on public record in an employment lawsuit. As this Court is aware, prospective employers conduct searches on job applicants. One type of search is to learn about applicants' litigation history. These searches are easy to run on the internet and relatively inexpensive. Davis Decl. ¶91. Thurston Decl. ¶9.

As a result of Plaintiff's actions, the State of California and the PAGA Members will recover from the Settlement, receiving penalties for wage violations they may have never known of or been willing to pursue on their own. Davis Decl. ¶92.

As such, Plaintiff did more than simply lend her name for the lawsuit and arbitration, and Plaintiff's Counsel believe she deserves the requested Plaintiff's Representative Service Award of $7,500.00 each. Davis Decl. ¶93.

IX. THE NOTICE TO PAGA MEMBERS SHOULD BE APPROVED

Although not required by statute, the Parties have prepared a Notice to send to PAGA Members along with their Individual Payment. The Notice shall be sent to the PAGA Members in English and Spanish and includes information regarding this Action, the Settlement, the PAGA Members' Individual Pay Periods, the PAGA Settlement Member's share of the PAGA Fund, and the scope of the Released Claims. Davis Decl. ¶94; Settlement Agreement ¶¶1.18.

X. SETTLEMENT ADMINISTRATOR

Following the Parties' agreement to settle the case, the Parties solicited bids from Phoenix Class Action Administration Solutions ("Phoenix"), Apex Class Action Administration, and ILYM Group, Inc., with Phoenix providing the lowest bid. The quote provided by Phoenix to administer this

Settlement shall not exceed Five Thousand Seven Hundred and Fifty Dollars and Zero Cents ($5,750.00). Davis Decl. ¶95; Settlement Agreement ¶¶1.2, 1.3, 3.2.3, 7.1.

XI. THE OPT OUT AND OBJECTION PROCESS

The Parties agreed that there is no statutory right for any Aggrieved Employees to object, opt out or otherwise exclude himself or herself from the Settlement. The Parties further agree there is no right or opportunity for any Aggrieved Employees to appeal the approval of the Settlement by the Court. Davis Decl. ¶96, Settlement Agreement ¶7.5.

XII. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's Motion for Order Approving California Labor Code Private Attorneys General Act and Entering Judgement.

Respectfully submitted,

DATED: August 26, 2025

PROTECTION LAW GROUP, LLP

By: ____________________________
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