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10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES

13 KATHERINE ANNA CHEN, on behalf of the
general public as private attorney general,

14 Plaintiff,

15 v.

16 COMPASS GROUP, USA, INC.; MORRISON
17 MANAGEMENT SPECIALISTS, INC.;
18 MORRISON HEALTHCARE, INC.; and
DOES 1-50, inclusive,

19
20 Defendants.
21

CASE NO.: 22STCV30416

DEPT.: 24

[Assigned for All Purposes to:
The Hon. Kristin S. Escalante]

**NOTICE OF MOTION AND MOTION
TO APPROVE PAGA SETTLEMENT
AND MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
MOTION**

Action Filed: September 16, 2022

Date: November 6, 2024

Time: 8:30 a.m.

Dept.: 24

Reservation id: 067251110242

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT at November 6, 2024 at 8:30 a.m. or as soon thereafter as the matter can be heard, in Department 24 of the above entitled Court before the Honorable Kristin S. Escalante, Plaintiff KATHERINE ANNA CHEN, (“Plaintiff”) will and hereby does move for an order approving the settlement of the PAGA claim alleged against Defendants COMPASS GROUP, USA, INC., MORRISON MANAGEMENT SPECIALISTS, INC., and MORRISON HEALTHCARE, INC. (collectively “Defendants”) in accordance with Labor Code §2699(l). The proposed settlement is set forth in the accompanying Settlement Agreement and Release ("Settlement", "Agreement" or "Settlement Agreement"). This PAGA Settlement resolves this action in its entirety.

This Motion will be based on this notice, the accompanying points and authorities, the Declaration of James Hawkins, the Declaration of KATHERINE ANNA CHEN, and the complete files and records in this action. The Labor Workforce Development Agency has been served with this motion and the Settlement Agreement as set forth in the accompanying proof of service.

Dated: October 10, 2024

Respectfully submitted,

JAMES HAWKINS APLC

By:

JAMES R. HAWKINS
GREGORY MAURO
MICHAEL CALVO
LAUREN FALK
AVA ISSARY

Attorneys for Plaintiff KATHERINE ANNA
CHEN individually and on behalf of the
general public as Private Attorney General

1 **I. INTRODUCTION**

2 Plaintiff KATHERINE ANNA CHEN ("Plaintiff") reached a settlement of the California
3 Private Attorneys General Act, Cal. Labor Code §2699, et seq. ("PAGA") claim asserted in this
4 action against Defendants COMPASS GROUP, USA, INC., MORRISON MANAGEMENT
5 SPECIALISTS, INC., and MORRISON HEALTHCARE, INC., ("Defendants"). The only claim
6 in this action is the representative PAGA claim. In accordance with California Labor Code
7 §2699(l), Plaintiff now asks this Court to review and approve the settlement of Plaintiff's PAGA
8 claims. This is only a settlement of the PAGA claims for civil penalties, and is not a class
9 settlement and does not release the individual claims, if any, of the affected employees other than
10 the Plaintiff. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381
11 (2014).

12 The PAGA settlement is set forth in the accompanying Joint Stipulation of Settlement and
13 Release of PAGA Action ("Settlement", "Agreement" or "Settlement Agreement"). A true and
14 correct copy of the Settlement Agreement, which sets forth the terms for the settlement of the
15 PAGA claims, is attached as Exhibit 1 to the Declaration of James Hawkins, filed herewith.
16 Capitalized terms shall have the same meaning as defined in the Settlement Agreement. The
17 LWDA was served notice of this Settlement and this motion as set forth in the accompanying
18 proof of service. The Notice of Settlement to PAGA Members is attached to the James Hawkins
19 declaration as Exhibit A.

20 A proposed order confirming review and approval of the PAGA settlement is submitted
21 herewith.

22 **II. RELEVANT FACTS**

23 On September 16, 2022, Plaintiff filed the PAGA Representative Action in the Superior
24 Court of California in and for the County of Los Angeles, styled *Katherine Anna Chen, on behalf*
25 *of the general public as private attorney general v. Compass Group, USA, Inc., et al., and Does 1*
26 *through 50, Inclusive*, Case No. 22STCV30416 and alleged a singular cause of action under
27 PAGA for Defendant's alleged (1) failure to pay wages including overtime; (2) failure to provide
28 meal periods; (3) failure to provide rest periods; (4) failure to timely pay final wages at

1 separation; (5) failure to provide accurate wage statements, and (6) failure to reimburse necessary
2 business expenses. (Hawkins Decl., at ¶ 3).

3 During the course of this action Defendants and Plaintiff exchanged numerous documents
4 and information as well as an approximate 30% sample of the time and pay records for the
5 aggrieved employees. Defendants also produced policies and other relevant data points for
6 Plaintiff to conduct a thorough analysis. With this information, Plaintiff and Defendant agreed to
7 mediate this action with mediator Kelly Knight, a respected and experienced wage and hour class
8 action mediator. On August 2, 2024, the Parties participated in an all-day mediation. During the
9 mediation the Parties engaged in extensive, arms-length negotiations. As a result of the Parties’
10 efforts, the matter was fully resolved. The Parties engaged in significant efforts to obtain the
11 facts regarding the claims asserted, including the exchange of detailed statistical data regarding
12 weeks and pay periods worked by individuals and Plaintiff. Thereafter, the parties worked
13 together to finalize the terms of the long form settlement agreement that is now placed before this
14 Court for approval. (Hawkins Decl., at ¶¶ 4, 5, 8).

15 **III. TERMS OF THE AGREEMENT**

16 The Agreement negotiated by the parties provides for Defendants to pay \$1,476,075.00 as
17 the Gross Settlement Amount (“GSA”). (Agreement at § 1.10). The “Net Settlement Amount”
18 (“NSA”) is the amount remaining of the GSA minus the Court-approved amounts awarded for the
19 Attorneys Fees and Costs, Settlement Administration Fees, Enhancement Award to Plaintiff (if
20 any), and the LWDA Payment. (Agreement at § 1.12). The Net Settlement Amount is estimated
21 to be \$902,100.87. (Hawkins Decl. ¶ 6).

22 The NSA is calculated as follows: (1) \$516,626.25 (i.e. 35% of the GSA) shall be paid to
23 Plaintiff’s Counsel for payment of attorneys’ fees; (2) Plaintiff’s Counsel’s litigation expenses not
24 to exceed \$30,000.00 (Plaintiff’s counsel’s litigation costs to date is \$18,390.88, (Agreement at §
25 1.16); (3) \$20,000.00 Enhancement Award to the Plaintiff for Plaintiff’s time and risks in
26 prosecuting this case and Plaintiff’s service to the PAGA Members as well as for Plaintiff’s
27 general release of Plaintiff’s Released Claims; (4) Administration costs not to exceed \$18,957.00
28 (Agreement at §§ 1.9, 1.26). Any difference from these maximum amounts will be added to the

1 Net Settlement Amount. (Hawkins Decl., ¶ 7).

2 The Gross Settlement Amount is subject to Court approval consistent with Labor Code §
3 2699. Should the Net Settlement Amount increase or decrease, the amount to be distributed shall
4 be adjusted according to the changes made by the Court. Upon approval, the Net Settlement
5 Amount shall be allocated 75% (\$676,575.65) to the LWDA and 25% (\$225,525.22) among
6 PAGA Group Members. The share of the Net Settlement Amount to be distributed to each PAGA
7 Member is based on the number of his or her Pay Periods worked in the PAGA Period in relation
8 to the aggregate number of Pay Periods worked by the Settlement Group during the PAGA
9 Period. (Agreement at § 1.11). The 75/25 allocation is required by Labor Code § 2699 as
10 explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

11 The “PAGA Members” or “Aggrieved employees” are defined as “all persons who
12 worked for Defendants as non-exempt, hourly employees in the State of California at any time
13 from July 12, 2021, through September 30, 2024” It is estimated there are approximately 3,200
14 Aggrieved Employees. (Agreement at § 1.17). The PAGA Period is July 12, 2021, through
15 September 30, 2024. (Agreement at §1.18). (Hawkins Decl. ¶ 9).

16 Defendants provided Plaintiff’s Counsel with information concerning the PAGA
17 Members, including statistical data concerning the weeks and pay periods worked. Defendants
18 represented that PAGA Group Members consisted of approximately 3,200 employees who
19 worked during the PAGA Period. (Agreement at § 5.7).

20 Within five (5) days of the Effective Date ¹ Defendant will provide the Settlement
21 Administrator with the Gross Settlement Amount. (Agreement at § 7.1).

22
23 ¹ Effective Date shall be the later of the time when: (i) the date of final affirmance of the Judgment on an
24 appeal of the Judgment, the expiration of the time for, or the denial of, a petition to review the Judgment,
25 or if review is granted, the date of final affirmance of the Judgment following review pursuant to that
26 grant, (ii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any
27 proceeding to review the Judgment, provided that the Judgment is affirmed and/or not reversed in any part,
28 (iii) the final resolution (or withdrawal) of any filed appeal in a way that affirms the Final Approval Order
and Judgment in a form substantially identical to the form of the Final Approval Order entered by the
Court, and the time to petition for review with respect to any appellate decision affirming the Final
Approval Order has expired; or (iv) if no appeal is filed, the sixty-first (61st) day after the Court enters
final approval of the settlement and the Judgment approving this Agreement. (Agreement at § 1.8).

1 Within 30 calendar days of the Effective Date, the Administrator will pay to Settlement
2 Group Members, their Individual Settlement Payments via first-class regular U.S. Mail; to PAGA
3 Counsel, the Court-awarded Attorneys Fees and Litigation Expenses Payment; to the LWDA, the
4 Court-approved LWDA Payment; Enhancement Award to Plaintiff (if any); and to the
5 Administrator, the Court-awarded Administration Fees and Expenses. (Agreement at § 7.2).

6 Settlement Group Members shall have one hundred eighty days (180) to cash their checks.
7 Any funds associated with uncashed checks after one hundred eighty (180) days will be sent to
8 the Controller of the State of California to be held pursuant to the Unclaimed Property Law,
9 California Civil Code § 1500 et seq., for the benefit of those Settlement Group Members whose
10 checks were voided. (Agreement at § 7.3).

11 Each PAGA Member will grant in favor of each Released Party, and be subject to,
12 the settlement Release. The Released Claims means

13 [A]ll PAGA claims and theories that were set forth, or that could have been set
14 forth based on the facts alleged in the Action during the PAGA Period for PAGA
15 claims for civil penalties under the California Labor Code including, but not
16 limited to, under California Labor Code sections 201-203, 510, 512, 558, 226,
17 226.3, 226.7, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802 and related
18 IWC Wage Orders, based on the various theories of liability, including, but not
19 limited to, Defendants' alleged failure to: pay all wages earned and owed upon
20 separation, provide meal and rest periods, provide accurate written wage
21 statements, and reimburse business expenses. This release is intended only to
22 release aggrieved employees' PAGA claims.

23 (Agreement at §1.23).

24 The California Labor Workforce Development Agency ("LWDA") is being served with a
25 copy of this motion with the Settlement Agreement through the online process as required by
26 Labor Code § 2699(l). This service on the LWDA is verified in the separately filed proof of
27 service. (Hawkins Decl., ¶ 30).

1 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

2 The claim before this court is the representative claim under PAGA on behalf of the State
3 of California for civil penalties pursuant to the PAGA. The parties have agreed to settle this
4 PAGA claim in its entirety after discovery and arm's length mediation. (Hawkins Decl., at ¶¶ 4-
5 5.) The settlement is intended to fully and finally resolve the PAGA claims asserted by Plaintiff
6 on behalf of the State of California. This is only a settlement of the PAGA claims for civil
7 penalties, and is not a class settlement and does not release the individual claims, if any, of the
8 PAGA Members. Attorneys' fees equal to \$516,626.25 and actual litigation costs in the amount
9 of \$18,390.88 will also be paid to Plaintiff's Counsel, subject to Court approval as part of the
10 settlement in accordance with California Labor Code § 2699(g)(1) as set forth in the Agreement.
11 There is also payment of up to \$18,957.00 to the Settlement Administrator to perform the
12 administrative duties to distribute the settlement money and a \$20,000.00 Enhancement Award to
13 Plaintiff. (Hawkins Decl., ¶¶ 4-7.)

14 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE**
15 **SETTLEMENT OF THE PAGA CLAIM**

16 Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of
17 any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to
18 the agency at the same time that it is submitted to the court." Consequently, the parties
19 respectfully ask the Court to review and approve the settlement of the PAGA claims and the
20 Maximum and Net Settlement Amounts to be paid as part of the proposed settlement.

21 **A. The PAGA Group Recovery to Be Paid Is Fair and Reasonable**

22 The Parties believe that the PAGA Group Recovery is fair and reasonable and therefore
23 "shall" be reviewed and approved. The Labor and Workforce Development Agency has released
24 data on PAGA settlement amounts. The Gross Settlement Amount of \$1,476,075.00 constitutes
25 approximately \$12.50 per pay period before deductions for fees, costs, enhancement award, and
26 administration costs. The Gross Settlement Amount accounts for approximately 32% of the
27 maximum potential recovery. (Hawkins Decl. ¶17).

28 Since the filing of the complaint, the Parties have exchanged extensive discovery and

1 engaged in numerous discussions regarding the factual and legal issues surrounding this case.
2 Throughout the litigation, Defendants produced voluminous pages of information and data,
3 including policies, handbooks, time and payroll records for the PAGA Members reflecting time
4 punches at the start of employees' shifts, and at the end of the shift, and meal period punches as
5 well as the applicable pay rates. Defendant also provided Plaintiff's personnel file, records
6 regarding documents identifying the non-exempt positions and information regarding the number
7 of employees holding these positions during the relevant time period. Defendants also provided
8 substantial information concerning the total number of potential size of the PAGA group, the total
9 number of workweeks and pay periods at issue, and the applicable hourly rates and other
10 summary data related to the alleged PAGA Members. The Parties have conducted themselves in
11 informed, good faith arms-length negotiations after conducting discovery and exchanging
12 extensive evidence and information about the claims and defenses of this lawsuit and engaging in
13 pre-mediation discussions, telephone conferences, and correspondence all aimed at settling their
14 dispute (Hawkins Decl., ¶ 10.).

15 In preparation for the mediation, Plaintiff reviewed the entire discovery produced. The
16 information had to be extrapolated and processed to figure out the amount of compensation
17 Plaintiff contends are due to the PAGA Members. Defendants also provided substantial
18 information concerning the total number of potential PAGA Members, the total number of
19 workweeks and pay periods at issue, and the applicable hourly rates and other summary data
20 related to the alleged class. The evidence and information gathered and reviewed by Plaintiff's
21 counsel provided a factual framework for a comprehensible and reliable damage model pertaining
22 to all Settlement PAGA Members. The mediation and subsequent negotiations included
23 discussion and examination of the PAGA Members and the Parties' respective positions on the
24 legal and factual issues raised in the Complaint. This was both a thorough and exhaustive process.
25 (Hawkins Decl., ¶¶ 10-11).

26 The PAGA Members recovery compares favorably to the estimated amount of PAGA
27 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of
28 statutory PAGA civil penalties was potentially \$4,003,500 assuming multiple violations and

1 stacking based on 118,086 pay periods multiplied by a maximum per pay period violation rate of
2 \$100. These alleged penalties were for violations of Labor Code § 226.7/ 512/ (meal periods) at
3 \$3,418,700 based on approximately 34,187 alleged violations, penalties for violation of Labor
4 Code § 226 valued at a \$214,900 based on failure to accurately calculate and pay sick pay and
5 meal period premiums on wage statements and penalties for violation of Labor Code §§
6 201/202/203 for 1,550 former employees at approximately \$155,000. The sick pay under Labor
7 Code 204 was valued at \$157,400 and the meal period premium miscalculation was valued at
8 \$57,500. Importantly, however, in total, these calculations were performed at the \$100 statutory
9 rate for the penalties for the first violation, and it is likely that any penalties awarded would be at
10 a much lower rate given the facts of this case. California Labor Code Section 2699(e)(1) permits
11 a Court to award a lesser amount than the maximum civil penalty if based on the facts and
12 circumstances to do otherwise would result in an award that is "unjust, arbitrary and oppressive or
13 confiscatory." (Hawkins Decl., ¶ 12). The maximum exposure here could be higher if the Court
14 awarded 100% penalties for each and every pay period at \$200 per pay period. Of course, these
15 amounts would probably have been reduced given the policies in place, and manageability issues,
16 the issues of why someone missed a meal break on any occasion or worked off the clock, and the
17 issues of payment of meal period premiums. Given the risks involved, a reasonable Risk Value
18 reduction would put the realistic possibility of recovery of penalties at approximately \$2,402,100
19 taking account for a reasonable 60% chance of recovery. The risks include manageability issues,
20 not prevailing on the merits, prevailing on certain claims for certain periods, reduced penalty
21 amounts awarded by the trial Court, no liability found at all, and reversal on appeal. (Hawkins
22 Decl. ¶¶ 12-24).

23 Defendants dispute that the penalties assessed by Plaintiff and his expert would have
24 been awarded. Further, it is Defendants' contention that PAGA penalties cannot be stacked,
25 and that at most just one PAGA penalty can be awarded to an aggrieved employee in
26 any one pay period. See Labor Code section 2699 (f)(2) (authorizing awardable PAGA
27 penalties to be measure by "each "each aggrieved employee per pay period"); *Smith v. Lux*
28 *Retail North America, Inc.*, 2013 WL 2932243, at *1, *4 (N.D. Cal. 2013) (rejecting a pleading

1 that sought the “stacking of penalties”; “[f]or the single mistake of failing to include
2 commissions in the overtime base, plaintiff has asserted *five* (count them, five) separate labor
3 code violations that could lead to statutory penalties;” “is it plausible that we would really pile
4 one penalty on another for a single substantive wrong?”; noting that “no actual holding in any
5 judicial decision has ever blessed such stacking”). As such, and for this initial reason,
6 Defendant contends that the maximum potential recovery in this action is significantly lower
7 than as stated by Plaintiff. (*Id.*)

8 Further, Defendants argue that Plaintiff’s calculation of penalties as applicable to any
9 employee and for any pay period, is inflated for an additional reason. Defendants argue that
10 even were liability established, one does not reach the second-tier penalty for that violation
11 unless and until the employer is first cited for the violation, and that Defendant has never been
12 cited. *See Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Servs., Inc.*,
13 2009 WL 2448430 *1, *9 (S.D. Cal. 2009) (“For the purposes of subsequent violation penalties,
14 the issue is not whether [defendant] willfully violated the Labor Code, but rather whether a
15 court or commissioner had notified it of any violation.”); *Amaral v. Cintas Corp. No. 2*, 163
16 Cal. App. 4th 1157, 1209 (2008) (“[u]ntil the employer has been notified that it is violating a
17 Labor Code provision (whether or not the Commissioner or court chooses to impose penalties),
18 the employer cannot be presumed to be aware that its continuing underpayment of employees is
19 a ‘violation’ subject to penalties” at a second tier); *Robinson v. Open Top Sightseeing San*
20 *Francisco, LLC*, No. 14-CV-00852-PJH, 2018 WL 895572, at *20 (N.D. Cal. Feb. 14, 2018)
21 (applying “initial” penalty to each violation of § 226 and § 2699(f)(2) because there was no
22 evidence showing defendant was previously notified its practice violated § 226); *Willis v. Xerox*
23 *Bus. Servs., LLC*, 2013 WL 605383, at *1, *6 (E.D. Cal. 2013) (“for a plaintiff to recover for a
24 ‘subsequent violation,’ an employer must have notice that it has violated the Labor Code”). As
25 such, Defendants contends that Plaintiff’s calculation are inflated not only because the “stack”
26 penalties for a single person during a single pay period, but because the penalties Plaintiff would
27 award in each instances are at an inapplicable (doubled) rate. (*Id.*)

28 Defendants further argue that Plaintiff would still face significant practical problems in

1 any material exposure, as each violation would need to be proven as to each person and for each
2 period for which recovery is sought.² As an example, for purposes of section 226, “a good faith
3 dispute presents when there is (1) uncertainty in the law; (2) representations by an authority that
4 compliance was not required; or (3) an employer’s good faith mistaken belief grounded in a good
5 faith dispute.” *Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058 (N.D. Cal. 2019).
6 “Mere recklessness” is not a basis for liability. *Pedroza*, 2012 WL 9506073, *5. (*Id.*)

7 Defendants also note that PAGA grants the Court discretion to lower any PAGA penalty
8 otherwise due. See Labor Code section 2699 (e)(2). Defendants also argue that the Court could
9 reduce any penalty potentially due where, as Defendants contend, any technical violation of law
10 would have been inadvertent and in good faith, particularly where the law is undefined and

11
12 ² Defendant argues that claims of this sort tend to require individualized proof sets, and
13 are not the subject of “common proof.” See e.g., *Mateo v. V.F. Corp.* 2009 WL 3561539, at *6
14 (N.D. Cal. Oct. 27, 2009) (denying collective treatment of off-the-clock (OTC) and overtime
15 claims as involving individualized proof); *Lawrence v. City of Philadelphia* (E.D. Pa. 2004) WL
16 945139 at *1-3 (rejecting OTC claims for collective treatment; “each of the plaintiffs potentially
17 may claim that on any given day he or she arrived early or departed outside their regularly
18 scheduled hours and were not compensated for such. The circumstances of those individual
19 claims potentially vary too widely to conclude that in regard to their OTC claim, the plaintiffs
20 are similarly situated. The questions of fact will likely differ for each Plaintiff and will be unduly
21 burdensome to both Defendants and to the Court in managing as a collective action.”); *Basco v.*
22 *Wal-Mart Stores, Inc.* (E.D. La. 2002) 216 F.Supp.2d 592, 603 (individual issues arise from
23 “myriad of possibilities that could be offered to explain why any one of the plaintiffs worked
24 OTC” and predominate; rejecting collective treatment of such claims); *Chavez v. Zaldivar*, 2012
25 U.S. Dist. LEXIS 40984 *1, at *23-24 (N.D. Cal. 2012) (“To determine whether staffing levels
26 resulted in missed meal periods, the Court would need to engage in individualized questions
27 concerning the staffing requirements at each of [defendants’] locations. Additionally, these
28 staffing requirements would vary from day to day.”); *Washington v. Joe’s Crab Shack*, 271
F.R.D. 629, 641 (N.D. Cal. 2010) (“an individualized inquiry will be required to determine
whether any single employee failed to take a meal break because he/she was too busy and also to
determine whether a particular employee signed a waiver based on a decision not to take meal
breaks. For this reason alone, common issues do not predominate with regard to the meal break
claim”); *Ruiz v. Affinity Logistics Corp.*, 2009 WL 648973, *7-8 (S.D. Cal. 2009) (holding that
inquiry into the reasonableness and necessity of the expenses required a “case-by-case analysis
in which common questions did not predominate over individual questions.”). See also
Nikmanesh v. Wal-Mart Stores, Inc., No. 8:15-cv-00202-AG-JCG, ECF Dkt. 200, slip op. at 4-5
(C.D. Cal. Mar. 22, 2017) (dismissing uncertified PAGA claim “as unmanageable,” where court
previously “pointed to other examples of individualized variables when it denied class
certification for failure of common questions to ‘predominate over questions affecting only
individual class members’”); *Salazar v. McDonald’s Corp.*, No. 14-CV-02096-RS, 2017 WL
88999, at *7-9 (N.D. Cal. Jan. 5, 2017) (striking representative PAGA claims as unmanageable
where underlying claims would require individualized determinations).

1 capable of differing interpretations. Section 226, for example, is not violated where the employer
2 acted in “good faith.” See *Pedroza v. PetSmart, Inc.*, 2012 WL 9506073 (C.D. Cal. June 14,
3 2012) (“The good faith defense to the willfulness element of these sections [226, 203] is clearly
4 established under California law); *Woods v. Vector Mktg. Corp.*, 2015 WL 2453202, at *3 (N.D.
5 Cal. May 22, 2015) (“The ‘good faith dispute’ rule has been extended by courts to apply to
6 California Labor Code Section 226. (Id.)

7 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal
8 affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay period.
9 Therefore, at trial, any PAGA penalties awarded could be significantly less than Plaintiffs’
10 calculation even where Plaintiffs prevailed on the PAGA claim. If the amount of \$5 per pay
11 period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties would be
12 only \$65,000, which is less than this settlement provides.

13 Under PAGA, Courts have considerable discretion to reduce the penalty award. In
14 *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced
15 PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found
16 maximum penalties “unjust” because the employees had suffered no injuries. Some trial courts
17 have actually awarded no civil penalties, even when Labor Code violations are established. See
18 *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no
19 PAGA penalties were awarded by the Los Angeles County Superior Court) (unpublished
20 decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D.
21 Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

22 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each
23 of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S.
24 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff
25 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of
26 the Labor Code by the defendant.”). Here, Plaintiff would need to prove that each PAGA Group
27 Member suffered all violations for each pay period the employee worked.

1 The claims in this PAGA action are based upon the wage and hour practices of
2 Defendant. The settlement provides a recovery of approximately \$12.50 per pay period before
3 deductions. This provides the aggrieved employees money now rather than in the future to some
4 undetermined date and undetermined amounts. (Hawkins Decl. ¶ 17).

5 Upon approval, approximately \$676,275.65 will be sent to the State of California and
6 approximately \$225,825.22 will be shared with aggrieved employees. This equates to
7 approximately \$70.57 to each aggrieved employee. (*Id.*)

8 Defendants contend that Plaintiff and the PAGA Members were properly compensated,
9 and that they did not violate the Labor Code as to any of them. Defendants asserted additional
10 defenses to the PAGA claim as discussed above. These defenses present a risk to the
11 PAGA claim and the potential that some or all of the PAGA penalties sought may not be
12 awarded. (*Id.*)

13 Given Defendants' potential defenses to the violations at issue, the risks and costs of
14 continued litigation, Plaintiff and his attorneys believe that the PAGA Settlement is fair and
15 reasonable. (Hawkins Decl., ¶¶ 19.) Plaintiff's Counsel have significant experience litigating
16 wage and hour claims including claims for PAGA penalties, and the PAGA Group Recovery here
17 is similar to or greater than similar settlements that courts have approved. (Hawkins Decl., ¶ 26.)
18 The PAGA employees recovery, along with the other terms of the proposed settlement, were
19 negotiated by experienced counsel at arm's length with the assistance of a private mediator, Kelly
20 Knight, Esq. (Hawkins Decl., at ¶ 4)

21 As set forth in the accompanying proof of service, the LWDA has been provided notice of
22 this motion and the PAGA settlement. The decision of LWDA to accept the PAGA settlement
23 and not oppose the motion should be given considerable weight. This is not a situation where the
24 Court needs to be concerned about the rights of absent employees as in a class settlement, as this
25 PAGA-only settlement does not release the individual claims of absent employees, and the
26 LWDA is a sophisticated government entity that is more than able to look out for its own rights.

27 **B. The Remaining Settlement Terms Are Fair and Reasonable**

28 Although PAGA requires that a court approve the proposed PAGA settlement, Labor

1 Code § 2699(1) does not require that a court approve any other elements of the proposed
2 settlement. Because there are no class allegations, the approval provisions applicable to class
3 settlements under Cal. Code Civil Proc. §382 do not apply. Accordingly, the Court only needs to
4 approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as
5 explained herein, the settlement terms for attorneys' fees and costs are reasonable.

6 **VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

7 PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiffs'
8 position is that the payment of attorneys' fees and costs in this settlement is a matter of contract
9 for a contingent representation. Nevertheless, should this Court review the requested attorneys'
10 fees, it is clear that the requested fees and costs are reasonable.

11 First, the requested fees are justified by the result achieved. Plaintiff's Counsel negotiated
12 a recovery of \$1,476,075.00 and this result justifies the requested fees equal to 35% of this
13 recovery. This percentage is within the standard contingent recovery. Second, the fee award is
14 justified by the work performed. As detailed in the accompanying Declaration of Plaintiff's
15 Counsel, the fee award is reasonable as Plaintiff's Counsel represents its current lodestar far
16 exceeds the requested amount of \$516,626.25. (Hawkins Decl. ¶¶ 25-28).

17 Generally, the Ninth Circuit and California Courts award multipliers between 2 to 4 times
18 the lodestar to reward counsel for accepting the contingent risks of the litigation or obtaining
19 good results. *See, e.g., Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award with multiplier
20 between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010)
21 (noting reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier);
22 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can
23 range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D.
24 Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of*
25 *America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a
26 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL
27 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76
28 as falling within the "majority" range for risk multipliers). Here, no multiplier is requested as

1 Plaintiff's Counsel's lodestar exceeds the amount of requested fees.

2 Finally, the award of litigation expenses is based upon the actual expenses incurred by the
3 Plaintiff's Counsel. (Hawkins at ¶¶ 28-29). Plaintiff's Counsel will be recovering litigation
4 expenses in the total amount of \$18,390.88. These expenses are documented in the billing
5 statement attached to the Declaration of Hawkins as Exhibit 2.

6 **VII. THE ENHANCEMENT TO THE PLAINTIFF IS REASONABLE**

7 "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they
8 should be compensated for the expense or risk they have incurred in conferring a benefit on other
9 members of the class." *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785 (2009).

10 Approximately 3,214 PAGA Members will share a \$1,476,075.00 settlement fund due entirely to
11 the effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides for
12 an Enhancement Award of \$20,000.00. The Enhancement Award is fair and reasonable compensation for
13 Plaintiff's efforts in pursuing the action, serving as private attorneys general under PAGA, assisting
14 counsel with the litigation and settlement, regularly conferring with counsel on the status of their case and
15 the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are
16 fair and provide adequate relief for the Settlement Class. (Hawkins Decl. ¶ 25; see generally Declaration of
17 Plaintiff Chen filed concurrently herewith.)

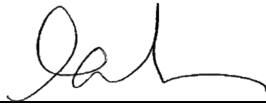
18 Based on the foregoing, Plaintiff respectfully request this Court approve the PAGA
19 enhancement to Plaintiff in the amount of \$20,000.00.

20 **VIII. CONCLUSION**

21 Based on the foregoing, Plaintiff respectfully request this Court approve the PAGA
22 settlement and the PAGA Member recovery as set forth in the Agreement and enter the proposed
23 order submitted herewith.

1 Dated: October 10, 2024

JAMES HAWKINS APLC

2
3
4 By: 

5 JAMES R. HAWKINS
6 GREGORY MAURO
7 MICHAEL CALVO
8 LAUREN FALK
9 AVA ISSARY

10 Attorneys for Plaintiff KATHERINE ANNA
11 CHEN, individually and on behalf of the
12 general public as Private Attorney General
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PROOF OF SERVICE

I am employed in the county of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is: 9880 Research Drive, Suite 200, Irvine, California 92618, On October 10, 2024, I served the foregoing document described as:

**NOTICE OF MOTION AND MOTION TO APPROVE PAGA SETTLEMENT AND
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**

**DECLARATION OF JAMES HAWKINS IN SUPPORT OF MOTION TO APPROVE
PAGA SETTLEMENT**

**DECLARATION OF KATHERINE ANNA CHEN IN SUPPORT OF PLAINTIFF'S
MOTION FOR APPROVAL OF PAGA SETTLEMENT**

[PROPOSED] ORDER APPROVING PAGA SETTLEMENT AND JUDGMENT

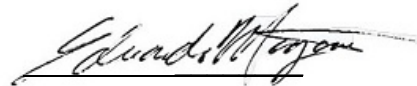
[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Eddie@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Service List

(See attached Service List)

(XX) (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 10, 2024 at Irvine, California.


Eddie Magana

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Via LWDA Website Only

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612

<http://www.dir.ca.gov/Private-Attorneys-General-Act>