AEGIS LAW FIRM, PC
KASHIF HAQUE, State Bar No. 218672
SAMUEL A. WONG, State Bar No. 217104
JESSICA L. CAMPBELL, State Bar No. 280626
KRISTY R. CONNOLLY, State Bar No. 328477
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251
Email: jcampbell@aegislawfirm.com
kconnolly@aegislawfirm.com

Attorneys for Plaintiff Emerald Porsche Jones, individually and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SOLANO

EMERALD PORSCHE JONES, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

WEST COAST CONVENIENCE, LLC; VINTNERS DISTRIBUTORS, INC; and DOES 1 through 20, inclusive,

Defendants.

Case No. FCS058783

Assigned for all purposes to
Hon. Tim Kam
Dept. 7, Fairfield Room 2

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF PAGA SETTLEMENT

Date: September 30, 2025
Time: 9:00 a.m.
Dept. 7, Fairfield Room 2

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Emerald Porsche Jones ("Plaintiff") seeks approval of a settlement of claims under the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq*. ("PAGA") against Defendants West Coast Convenience, LLC and Vintners Distributors, Inc., ("Defendants") in the amount of $1,300,000.00. The Settlement resolves claims for PAGA penalties for certain wage and hour violations allegedly suffered by approximately 6,000 Aggrieved Employees, defined as all persons employed by Defendant West Coast Convenience, LLC ("WCC") as a non-exempt employee who worked for WCC in California at any time during the PAGA Period. The PAGA Period is August 11, 2021 through June 30, 2025.

Under Labor Code section 2699(l)(2), the Court must review and approve any proposed PAGA settlement. Here, the proposed Settlement is sufficient to deter and punish future violations. The Settlement is attached to the Declaration of Kristy R. Connolly ("Connolly Decl.") as **Exhibit 1**, and the proposed letter to be sent to the Aggrieved Employees is attached thereto as **Exhibit A**. Plaintiff now seeks this Court's approval of the Settlement terms.

II. FACTUAL AND PROCEDURAL BACKGROUND

On August 11, 2022, Plaintiff's counsel sent a letter to the California Labor & Workforce Development Agency ("LWDA") via online submission and to Defendants via certified mail regarding Defendants' alleged violations. *See* Connolly Decl., ¶ 3, Exhibit 2. The LWDA did not respond to this notice within 65 days, indicating it did not intend to investigate, thus allowing Plaintiff to add a PAGA claim to the instant lawsuit pursuant to Labor Code Section 2699.3(a)(2)(A). Connolly Decl., ¶ 4.

On August 11, 2022, Plaintiff filed her this action alleging individual and class claims for (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to reimburse business expenses; (6) failure to provide accurate itemized wage statements; (7) failure to pay wages timely during employment; (8) failure to timely pay wages due upon separation of employment; and (9) violation of Business and

Professions Code § 17200, et seq. for the preceding claims. Connolly Decl., ¶ 5. On October 24, 2022, Plaintiff filed her First Amended Complaint adding the PAGA claim. *Id.* at ¶ 6.

Due to the presence of an arbitration agreement that Plaintiff allegedly signed containing a class action waiver, Plaintiff dismissed her individual and class claims without prejudice and proceeded on a PAGA-only basis. Connolly Decl., ¶ 7.

The Parties then engaged in extensive formal discovery. Connolly Decl., ¶ 8. Plaintiff served two sets of written discovery on Defendants, in which Defendants produced a significant amount of documents and information, including Plaintiff's personnel file, policy documents, job descriptions, class members' contact information after the completion of a *Belaire-West* opt-out notice procedure, class members' timekeeping and payroll records, and information regarding Defendants' wage and hour practices. *Id.* Plaintiff also responded to several discovery requests propounded on her, including information and documents in her possession in support of her claims. *Id.*

After formal discovery and engaging in numerous discussions between the Parties' attorneys, the Parties agreed to attend a private mediation session. Connolly Decl., ¶ 9. Plaintiff's Counsel engaged an expert to quantify the potential exposure using the time and payroll records, and then assessed the risks associated with each of the claims. *Id.*

The parties attended mediation on April 29, 2025, with Gig Kyriacou, a respected class action and PAGA action mediator. Connolly Decl., ¶ 10. After a full day of negotiating, the mediator made a mediator's proposal, which was eventually accepted by the Parties. *Id.* The Parties spent the next few weeks negotiating the terms of the Settlement, which was finalized in June of 2025. *Id.*

On August 26, 2025, Plaintiff provided a copy of the Settlement and this Motion to the LWDA. Connolly Decl., ¶ 11, Exhibit 3.

III. PAGA REQUIREMENTS

Based on the California Supreme Court's opinions in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), and *Iskanian v. CLS Transportation Los Angeles, LLC,* 59 Cal. 4th 348 (2014), Plaintiffs can seek appropriate civil penalties as called for under PAGA on behalf of the State of California and other similarly aggrieved employees without seeking class certification or meeting the requirements of class certification (i.e. numerosity, typicality, commonality and adequacy). As such, the class action two-step preliminary and final approval process is not required.

PAGA was enacted to allow enforcement of the Labor Code and recovery of penalties by the State and by private individuals who have been aggrieved by their employers. The statute calls for 75% of any penalties recovered to be paid to California's LWDA and the remaining 25% to the aggrieved employees (Cal. Lab. Code § 2699(i) (2016)).

In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee must first provide written notice to the LWDA and the employer of the particular Labor Code violations the aggrieved employee alleges the employer has violated. *See* Cal. Labor Code§ 2699.3(a)(l)(A) (2016). Once the LWDA notifies the aggrieved employee that it does not intend to investigate the alleged violations, or if the LWDA does not respond within a certain time period, the aggrieved employee is then allowed to proceed in a civil action against the employer on behalf of the LWDA and all other similarly aggrieved employees. *See* Cal. Labor Code § 2699.3(a)(2)(A) (2016).

In 2009, the California Supreme Court considered the issue of whether an aggrieved employee who brings a PAGA representative claim needs to meet class certification requirements. *Arias,* 46 Cal. 4th at 976. After a substantial review of the legislative history of PAGA, the Court held that an aggrieved employee's representative action brought on behalf of other aggrieved employees against an employer for PAGA violations does not need to meet the requirements for class certification. *Id*. at 975, 980-88. As the Court held, a plaintiff bringing suit under PAGA does so as the proxy or agent of California's labor law enforcement agencies. *Id*. at 986. Because the employee's PAGA action functions as a substitute for an action brought by the government itself, a judgment in the PAGA action binds all those who would be bound by a judgment in an action brought by the government. *Id.*

Finally, in a settlement of a PAGA action brought by an aggrieved employee, the court need only "review and approve” the settlement. Cal. Lab. Code § 2699(1)(2) (2016). The Parties to this current PAGA action have reached such an agreement and now seek this Court's approval of the proposed settlement.

IV. THE SETTLEMENT TERMS AND DISTRIBUTION OF PENALTIES

The Parties have agreed that Defendants will pay a total settlement amount of $1,300,000.00 (the "Gross Settlement Amount"). *See* Settlement Agreement, § 3.1. From this amount, up to one-third (1/3) of the Gross Settlement Amount (which is currently $433,333.33) is allocated to attorneys' fees and up to $35,000.00 to actual litigation costs. *Id.* at § 3.2.1. To date, Plaintiff's counsel has spent $22,555.32 in actual litigation costs. *See* Connolly Decl., ¶ 34, Exhibit 4. The Parties have jointly selected ILYM Group, Inc. to serve as the settlement administrator and have allocated up to $14,000.00 as the Administration Expenses Payment to cover ILYM Group, Inc.'s costs associated with the administration of the Settlement. Settlement Agreement, § 3.2.3. For Plaintiff's efforts in assisting with the Lawsuit, $2,500.00 is allocated to Plaintiff as her Service Award. *Id.* at § 3.2.2.

After deducting the above amounts for attorneys' fees and costs, the Administration Expenses Payment, and Plaintiff's Service Award, the remaining fund will constitute the "PAGA Penalties" in which 75% will be paid to the LWDA (the "LWDA PAGA Payment") and 25% will be paid to the Aggrieved Employees. Settlement Agreement, § 3.2.4. Aggrieved Employees' Individual PAGA Payments will be calculated pro rata based on the number of pay periods working during the PAGA Period. *Id.* at § 3.2.4.1. Defendants estimated that there are a total of 119,859 Pay Periods. *Id.* at § 4.1. If the number of PAGA Pay Periods exceeds 119,859 by more than 10% (i.e., exceeds 131,845), the Gross Settlement Amount will increase pro rata per PAGA Pay Period in excess of 131,845, at a rate of $10.85 per additional PAGA Pay Period. *Id.* at § 8. As an alternative, Defendants may elect to shorten the release to stay within the 10% escalator clause. *Id.*

The Individual PAGA Payments shall be paid to the Aggrieved Employees by way of a single check which will be valid for 180 days. Settlement Agreement, § 4.4.1. All funds not claimed within 180 days of mailing of payment shall be sent to the California State Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each PAGA Employee. *Id.* at § 4.4.3. The Individual PAGA Payments will be characterized as penalties for tax purposes and reported on IRS Form 1099. *Id.* at § 3.2.4.1.

Prior to this disbursement, the Settlement Administrator shall check the Aggrieved Employees' addresses provided by Defendant using the National Change of Address database. Settlement Agreement, § 4.4.1. For any returned payments without a forwarding address, the Settlement Administrator shall run a skip trace. *Id*. at § 4.4.2. Aggrieved Employees will receive a letter along with their Individual PAGA Payment explaining the reason for the payment, the content of which will be submitted to the Court for approval. *Id*. at § 4.4.1. The proposed letter is attached to the Settlement Agreement as Exhibit A.

Effective on the date when Defendants fully fund the entire Gross Settlement Amount, Plaintiff and all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties arising during the PAGA Period that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice. Settlement Agreement, § 5. The "Released Parties" means Defendants and each of their former and present directors, officers, shareholders, members, owners, attorneys, agents, insurers, predecessors, successors, assigns, subsidiaries, and affiliates. *Id.* at § 1.27.

V. THE SETTLEMENT IS FAIR AND REASONABLE

A. Standard for Approval

PAGA settlements must be "fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc*., 72 Cal.App.5th 56, 77 (2021). The court must find that the plaintiff "has adequately represented the state's interests, and hence the public interest." *Id.* at 89. The LWDA must be notified of the settlement and be given an opportunity to object. The court may look to parallel class action guidelines to determine what is "fair, adequate and reasonable." *Kullar v. Foot Locker Retail,* 168 Cal.App.4th 116, 126 (2008). In that analysis, the court has "broad discretion in making this determination." *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006). Relevant factors may include "the strength of the plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, … the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant …." *Dunk v. Ford Motor Co*., 48 Cal.App.4th 1794, 1801 (1996).

B. The Settlement Meets the Standard for Approval

Here, the $1,300,000.00 Gross Settlement Amount is reasonable for a group of approximately 6000 employees, which is equivalent to a penalty of about $216.67 per employee. Connolly Decl., ¶ 12. This penalty is large enough to punish Defendants for alleged past violations and deter future violations. *Id.* At the same time, the penalty amount is not so large as to be unjust, oppressive or confiscatory, considering the company's potential exposure explained below. *Id.* The Gross Settlement Amount is also reasonable in light of the facts of the Action and the inherent risks and uncertainties associated with PAGA claims. *Id.* at ¶ 13.

Plaintiff calculated the potential exposure at the initial violation rate of $100.00 per pay period as follows: 119,859 x $100.00 per pay period is $11,985,900, assuming Plaintiff can prove a violation in every pay period. Connolly Decl., ¶ 14. If the Court stacked different types of penalties in each pay period, Plaintiff calculated the exposure as follows:

a. 119,859 pay periods x 100% violation rate x $100 per pay period = $11,985,900 for rest break violations;

b. 119,859 pay periods x 11.6% violation rate x $100 per pay period = $13,903 for meal period violations;

c. 119,859 pay periods x 100% violation rate x $100 per pay period (for failure to pay wages for all time worked) = $11,985,900 for unpaid wages;

d. 119,859 pay periods x 100% violate rate x $100 per pay period x 100% violate rate= $11,985,900 for unreimbursed business expenses;

e. 119,859 pay periods x 100% violation rate x $100 per pay period x 100% violation rate =$11,985,900 for wage statement penalties; and

f. 4,049 former employees x $100 per employee = $404,900 for final wage waiting time violations.

Id. at ¶ 15. Defendants raised a number of arguments during settlement negotiations and provided evidence that could have defeated Plaintiff's claims. *Id.* at ¶ 16. For example, Plaintiff alleged that Defendants failed to provide duty-free rest breaks by requiring employees to remain on-premises, resulting in a 100% violation rate. *Id.* Specifically, the Aggrieved Employees generally worked for Defendants at fuel retailers and convenience stores. *Id.* As such, when an employee was working by himself, Plaintiff alleged that they were unable to leave the store unattended, resulting in an on-duty rest break. *Id.* In response, Defendants provided several policy and training documents which instruct employees to take a duty-free rest break and when working alone, to close the store and put up a sign telling customers when the employee will return from their break. *Id.* Additionally, Defendants argued that they conducted frequent audits of their stores to confirm that meal and rest breaks were being provided to employees. *Id.* Accordingly, the claim would be highly dependent on employee testimony, which could render these claims unmanageable at trial. *Id.*

Additionally, Plaintiff alleged that Defendants failed to pay for all time worked by requiring employees to respond to work-related communication during their breaks or while off-the-clock. Connolly Decl., ¶ 17. Plaintiff alleged that the purpose of this practice was to avoid the use of phones in front of customers, but as a result, employees were required to complete job duties on their own personal time. *Id.* However, Plaintiff considered that Defendants maintained compliant written policies which provide that Defendants will pay for all time recorded and that there was no written policy of the company requiring off-the-clock responses to work-related communications. *Id.* Further, this claim would be dependent on the Court's finding that Defendants knew or should have known that employees were working off the clock, which is difficult to satisfy on a state-wide basis. *Id.*

Similarly, Plaintiff alleged Defendants failed to reimburse necessary business expenses by requiring employees to use their personal cell phones for work-related purposes, as mentioned above. Connolly Decl., ¶ 18. However, Defendants argued that even if Plaintiff could show that she was required to use her personal cell phone for work, there was no source of common proof as to who incurred these expenses, whether those expenses were necessary in light of their job duties, and whether they sought reimbursement, making the claim difficult to prove at trial. *Id.*

Plaintiff also considered the arguable presence of derivative waiting time and wage statement penalties, and weighed the potential recoveries against probable defenses. Connolly Decl., ¶ 19. Specifically, Defendants could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. *Id.* Additionally, Plaintiff considered the fact that Defendant could argue that Plaintiff could not show that Class Members suffered an "injury" because of the wage statement violations, as required by Labor Code section 226. *Id.*

Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA awards are discretionary and can be reduced by the Court. Connolly Decl., ¶ 20. Under Labor Code § 2699(e)(2), the Court can reduce the PAGA penalties "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." In other words, were this matter to go to trial, any award granted would be at the discretion of the Court. *See, e.g. Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 528 (2018) (awarding PAGA penalties of only 0.2% of the maximum). In settling this case, Plaintiff recognizes that, although she believes there would be no persuasive grounds to reduce the penalties, the Court could determine otherwise and significantly reduce the PAGA penalties, especially with such a large employer. Connolly Decl., ¶ 20. The wide range of potential recovery and the additional delays and risks of trial justified settling for a reasonable amount of recovery. *Id*.

VI. CONCLUSION

For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement pursuant to PAGA in this Action.

Dated: August 26, 2025

AEGIS LAW FIRM, PC

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Kristy R. Connolly
Attorneys for Plaintiff Emerald Porsche Jones