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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

JEANNE HERNANDEZ, individually, and on behalf of all others similarly situated, Plaintiff, vs. SKYONE FEDERAL CREDIT UNION; and DOES 1 through 100, inclusive, Defendants.	CASE NO.: 25STCV13757 **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO APPROVE PAGA SETTLEMENT** [Assigned for all purposes to Hon. Judge David S. Cunningham III, Dept. 11] Department: 11 Date: September 8, 2026 Time: 10:00 a.m. Complaint Filed: May 9, 2025 Trial Date: None set

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

I. INTRODUCTION

Plaintiff Jeanne Hernandez ("Plaintiff") submits this memorandum of points and authorities in support of her motion for approval of the PAGA Settlement Agreement ("PAGA Settlement" or "Settlement") for the civil penalties claims she brought against Defendant SkyOne Federal Credit Union ("Defendant") under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* ("PAGA"). The Settlement is attached as Exhibit 1 to the Declaration of Taras Kick ("Kick Decl."), which is submitted herewith under a separate cover.

This approval is sought only after the Parties participated in an all-day mediation presided over by the Honorable Lisa Hart Cole (Ret.), and is the result of Judge Cole's mediator's proposal of $220,000 which the parties accepted. (Kick Decl. ¶ 6.) This mediation occurred only after Plaintiff had received a statistically significant sampling of data, and retained an economic consulting firm which specializes in California wage and hour and PAGA evaluations. (*Id.* ¶ 8.) There are only 70 aggrieved employees affected by the alleged conduct covered by the proposed $220,000 settlement. (Settlement ¶ 8.) Plaintiff brings this motion per Labor Code section 2699(l) requirement of Court approval of any civil penalties sought as part of a proposed settlement agreement. Based on Plaintiff's and her attorneys' investigation and evaluation, as well as The Hon. Lisa Hart Cole's recommendation, Plaintiff believes that the PAGA Settlement represents a reasonable and adequate settlement of strongly disputed claims and is in the best interest of the State of California, the Aggrieved Employees, and Plaintiff. Through this motion, therefore, Plaintiff respectfully requests for this Court to approve the PAGA Settlement for resolution of the PAGA claims. Plaintiff seeks division of the $220,000 Gross PAGA Settlement Amount as follows: $7,500 Service Award Payment to Plaintiff Jeanne Hernandez; $77,000 PAGA Counsel Fees Payment (35% of the Gross PAGA Settlement Amount); $19,912.25 PAGA Counsel Litigation Expenses Payment; $3,009.72 Administration Expenses Payment; $112,578.03 PAGA Payment (35% to the Aggrieved

Employees – $39,402.31; 65% to the Labor and Workforce Development Agency ("LWDA") – $73,175.72).

II. FACTUAL AND PROCEDURAL BACKGROUND

On April 29, 2025, Plaintiff sent a letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a). (Settlement ¶ 2.2.)

On May 9, 2025, Plaintiff filed a wage-and-hour class action Complaint in the Superior Court of the State of California, County of Los Angeles, Case Number 25STCV13757, alleging that she worked for Defendant as a Loan Servicing Representative from on or about February 28, 2023 to August 2024 and alleging causes of action against Defendant for (1) failure to pay minimum wage; (2) failure to pay all wages due to discharged or quitting employees; (3) failure to provide accurate itemized statements; (4) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (5) unlawful deductions from wages; and (6) unfair and unlawful business practices. (*Id.* ¶ 2.1; Complaint ¶ 3.) Thereafter, Defendant notified Plaintiff's counsel that Plaintiff signed an arbitration agreement on May 31, 2024, and that it is Defendant's position that the arbitration agreement is binding and enforceable. (Settlement ¶ 2.1 .) On July 7, 2025, the parties stipulated to arbitrate Plaintiff's individual claims, dismiss the class claims without prejudice, and stay the claims pursuant to the Private Attorneys General Act of 2004, Code of Civil Procedure section 2689, *et seq.* (*Id.*) The Parties attached the proposed first amended complaint ("FAC"), which added a cause of action for civil penalties pursuant to PAGA, to the stipulation. (*Id.*) On July 29, 2025, the Honorable David S. Cunningham III signed the order dismissing the class claims without prejudice and deeming Plaintiff's FAC filed as of that date. (*Id.*) The FAC is the operative complaint in the Action (the "Operative Complaint"). (*Id.*) Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint, and denies any and all liability for the causes of action alleged. (*Id.*)

On November 7, 2025, the Parties participated in an all-day mediation presided over by the Honorable Lisa Hart Cole (Ret.). (Kick Decl. ¶ 6.) On the day of the mediation, each side, represented by its respective counsel, agreed to globally settle the Actions, which was memorialized in the form of a Memorandum of Understanding. (*Id.*) Prior to mediation, Plaintiff obtained, through informal discovery, Plaintiff's personnel file, Defendant's employee handbook, time data pertaining to Aggrieved Employees, and pay data pertaining to Aggrieved Employees. (*Id.*) These documents and data allowed Plaintiff—through consultation with her expert—to ascertain the size of the Aggrieved Employee group and the number of pay periods worked by them during the PAGA Period to determine the total value of Plaintiff's PAGA claims. (*Id.*) Now that the Parties have finalized the PAGA Settlement, Plaintiff submits it to this Court for approval.

III. OVERVIEW OF THE SETTLEMENT

a. Definition of "Aggrieved Employees" and "PAGA Period."

The Settlement is on behalf of Plaintiff and all individuals who worked for Defendant as non-exempt, hourly paid employees in California at any time during the PAGA Period (the "Aggrieved Employees"). (Settlement ¶ 1.4.) The "PAGA Period" means the period from April 29, 2024 to December 7, 2025. (Settlement, ¶ 1.10.)

b. Monetary Terms

Defendant has agreed to pay $220,000 as the Gross PAGA Settlement Amount, except as provided in the Escalator Clause. (Settlement ¶¶ 1.20, 8.) The Gross Settlement Amount includes the Individual PAGA Payments to the Aggrieved Employees, the LWDA PAGA Payment, Service Award Payment to Plaintiff, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. (*Id.* ¶¶ 3.1-3.2.4.) Defendant has no obligation to pay the Gross PAGA Settlement Amount prior to the deadline stated in Paragraph 4.3 of the Settlement. (*Id.* ¶ 3.1.) The Administrator will disburse the entire Gross PAGA Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. (*Id.*) The Gross PAGA Settlement Amount shall be all-in, and none of the Gross PAGA Settlement Amount will revert to Defendant. (*Id.*)

The Administrator will make and deduct the following payments from the Gross PAGA Settlement Amount, in the amounts specified by the Court in the Approval Order:

To Plaintiff: Service Award Payment to Plaintiff of not more than $7,500 (in addition to any

Individual PAGA Payment Plaintiff is entitled to receive as an Aggrieved Employee). (Settlement ¶ 3.2.1.) Defendant will not oppose Plaintiff's request for a Service Award Payment that does not exceed this amount. (*Id.*) If the Court approves a Service Payment less than the amount requested, the Administrator will retain the remainder in the PAGA Payment. (*Id.*) The Administrator will pay the Service Award Payment using IRS Form 1099. (*Id.*) Plaintiff assumes full responsibility and liability for employee taxes owed on the Service Payment. (*Id.*)

To PAGA Counsel: A PAGA Counsel Fees Payment of thirty-five percent (35%) of the Gross PAGA Settlement Amount, which is currently estimated to be $77,000, and PAGA Counsel Litigation Expenses Payment of $19,912.25 (the Settlement provides for costs up to $25,000). (Settlement ¶ 3.2.2.) Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. (*Id.*)

To the Administrator: An Administration Expenses Payment not to exceed $3,009.72, except for a showing of good cause and as approved by the Court. (*Id.* ¶ 3.2.3.)

To the LWDA and Aggrieved Employees: PAGA Payment in the amount of $112,578.03 (35% to the Aggrieved Employees – $39,402.31; 65% to the Labor and Workforce Development Agency ("LWDA") – $73,175.72) (*Id.* ¶ 3.2.4.) Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (*Id.*) The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. (*Id.*)

c. Timing of Payments from the Gross PAGA Settlement Amount

Within seven (7) days after Defendant funds the Gross PAGA Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Service Award Payment, the Administration Expenses Payment, PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment. (Settlement ¶ 4.4.) Disbursement of the PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and Service Award Payment shall not precede disbursement of Individual PAGA Payments. (*Id.*)

The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. (Settlement ¶ 4.4.1.) The face of each check shall prominently state the void date, which is not less than 180 days after the date of mailing, when the check will be voided. (*Id.*) The Administrator will cancel all checks not cashed by the void date. (*Id.*) Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. (*Id.*)

The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without a USPS forwarding address. (Settlement ¶ 4.4.2.) Within fourteen (14) days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. (*Id.*) The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. (*Id.*) The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date. (*Id.*)

For any PAGA Member whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the proposed *cy pres* recipient, subject to Court approval, consistent with Code of Civil Procedure Section 384, subd. (b). .(Settlement ¶ 4.4.3.) The Parties propose that funds represented by any uncashed or undeliverable checks shall be distributed, subject to Court approval, to Public Citizen Foundation, a section 501(c)(3) non-profit organization. (*Id.*) If the Court does not approve Public Citizen Foundation as the *cy pres* recipient in this matter, PAGA Counsel will propose other section 501(c)(3) non-profit organizations until one is approved by the Court. (*Id.*) PAGA Counsel and Plaintiff are not involved in the work or governance of Public Citizen Foundation. (Declaration of Jeanne Hernandez ("Hernandez Decl.") ¶ 5; Kick Decl. ¶ 23.)

d. The Releases

Upon approval of the Settlement and full funding of the Gross Settlement Amount, the State of California, Plaintiff, and PAGA Counsel will release claims against all Released Parties as follows:

Release by Aggrieved Employees and State of California: All Aggrieved Employees are deemed to release Defendant from all "Released PAGA Claims." (Settlement ¶ 5.1.) "Released PAGA

Claims" are all claims, rights, demands, liabilities, and causes of action for PAGA civil penalties alleged or which could reasonably have been alleged in the Action based on the same set of operative facts alleged in Plaintiff's letter to the LWDA and the First Amended Complaint. (*Id.*) The Released PAGA Claims are those that accrued during the PAGA Period. (*Id.*)

IV. ARGUMENT

a. Standard for Approval of a PAGA Settlement

The California Legislature enacted PAGA in 2003 to deputize "aggrieved employees" to pursue civil penalties. (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 81.) An aggrieved employee is a person who was employed by the defendant employer and who suffered one or more of the alleged Labor Code violations. (Lab. Code § 2699(c).)

The Court necessarily has broad discretion in making the decision to approve or reject a settlement for civil penalties as the statutory scheme authorizes the Court to determine whether, in certain circumstances, penalties should be assessed and, if so assessed, the appropriate amount of penalties based on the facts and circumstances of the particular case. (*See id.* at § 2699(e)(1)-(2).) Although PAGA does not set forth the particular standards against which a PAGA settlement should be evaluated, the LWDA has provided guidance for approval that mirrors the standards for evaluating class action settlements. (*See, e.g., Salazar v. Sysco Cent. Cal., Inc.*, 2017 U.S. Dist. LEXIS 14971, *6, n.4-5 (E.D. Cal. 2017) (stating, based on the LWDA's guidance, that approval of PAGA settlements is proper where the statutory requirements of the PAGA are met and the terms of the settlement are fundamentally fair, reasonable, and adequate).)

PAGA penalties are designed to penalize an employer for its failure to comply with California's wage and hour laws and regulations and are not designed to compensate employees. (*Ochoa-Hernandez v. CJADERS Foods, Inc.,* 2010 WL 1340777 *1, *5 (E.D. Cal. Apr. 2, 2010). ("Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim. There is no indication that the unnamed plaintiffs can contest a settlement, if any, reached between the parties.").)

PAGA settlements are subject to trial court review and approval. (Lab. Code § 2699(l)(2).)

"[A] trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.) Many of the same factors used to evaluate the fairness of a class action settlement can be "useful" in evaluating the fairness of a PAGA settlement, including: 1) the strength of a plaintiff's case, 2) the expense associated with further litigation and taking the case to trial, 3) the amount or value offered in settlement, 4) the extent of discovery completed and state of proceedings, 5) the experience and views of counsel, and 6) presence of a governmental participant. (*Id.*)

In making the determination whether a settlement taken as a whole is fair, reasonable, and adequate, courts should be careful to still give "proper deference to the private consensual decision of the parties," since a "court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties . . . ." (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.) The law favors settlement of lawsuits, particularly complex litigation cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. (*See Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992); *In re Exec. Life Ins. Co.*, 32 Cal.App.4th 344, 382 (1995).)

b. The Settlement Meets the Procedural Statutory Requirements for Settling a PAGA Action.

Court approval of PAGA settlements is governed by section 2699(1) of the Labor Code, which provides, in relevant part: "The court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." In a PAGA action, plaintiffs seek appropriate civil penalties on behalf of the State of California and other similarly situated aggrieved employees, without needing to meet the requirements of class certification. (*Arias v. Superior Court* (2009) 46 Cal. 4th 969 and *Iskanian v. CLS Transportation Los Angeles*, LLC (2014) 59 Cal. 4th 348.) As such, the usual two-step preliminary and final approval process that exists in a class action does not exist in a

PAGA-only case; rather, all that is required is an approval by this Court of any settlement of the PAGA claims by the Parties. (Labor Code § 2699(l).) In addition, "[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim" or "contest a settlement, if any, reached between the parties." (*Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. 2010) 2010 WL 1340777, p. *13.)

PAGA imposes two requirements for a settling a PAGA action. First, any civil penalties recovered, whether by judgment or settlement, must be distributed as follows: 65 percent to the LWDA, and the remaining 35 percent to the aggrieved employees. (Cal. Lab. Code, § 2699(m).) Paragraph 3.2.4 of the Settlement provides for this distribution. Second, the LWDA must be given notice of the settlement so that it may be heard before the Court decides whether to grant approval. (Cal. Lab. Code § 2699(l)(2).) Under the Settlement, notice is being given to the LWDA concurrently with the filing of this motion. (Kick Decl. ¶ 17, Ex. 4.) As a result, Plaintiff has met all procedural statutory requirements for settling a PAGA action.

c. The PAGA Settlement Is Fair, Reasonable, and Adequate in Light of PAGA's Public Policy Goals.

The Court's focus in a PAGA case is not the amount that aggrieved employees will ultimately receive as a result of a settlement, but instead, on whether the total settlement amount achieves PAGA's objectives. Under PAGA, the penalties recovered are meant to supplement agency funding for purposes of education of employers and employees and enforcement of labor laws and rights. (*See* Cal. Lab. Code § 2699, subd. (i).) Here, the Settlement provides monetary recovery for the Aggrieved Employees and the State of California and accomplishes PAGA's primary objective to enforce the Labor Code, and thus the Settlement certainly effectuates PAGA's purpose. (*See O'Connor v. Uber Techs, Inc.* (N.D. Cal. August 18, 2016) 2016 WL 4398271, at p. *18 (noting that deterring noncompliance with the Labor Code is one of PAGA's objectives).)

To make its determination that the PAGA Settlement is fair, reasonable, and adequate, the Court may consider several factors, including: "the strength of the Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, and the experience and views of counsel." (*Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996).) However, this Court should begin its analysis with a presumption that the proposed settlement is fair. "A presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation . . . ." (*Id.* at 1802.)

The PAGA Settlement warrants a presumption of fairness for several reasons: (1) The Parties reached the Settlement through arm's-length negotiations with the assistance of an experienced and respected mediator; (2) As discussed above, the Parties conducted sufficient investigation and discovery to allow Counsel and the Court to act intelligently; and (3) Counsel for the Parties are experienced with PAGA cases. (Kick Decl. ¶¶ 2-4.) For the reasons discussed below, this Court should approve the PAGA Settlement.

d. The Settlement Is Fair and Reasonable Based on the Strength of Plaintiff's Case and the Risks and Expense of Further Litigation.

A court has discretion under PAGA to award a lesser amount than the maximum penalty. (Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award).) Defendant has posed arguably valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. (Kick Decl. ¶ 7.) Thus, the PAGA claims likewise face significant uncertainty. (*Id.*) There is a risk that the Court would consider the maximum civil penalty available to be confiscatory. (*Id.*) This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a significant discount for settlement purposes. (*Id.*)

In preparation for mediation and during the settlement negotiations that followed, Defendant disclosed that there were approximately 66 potentially aggrieved employees and 1,627 pay periods. (Kick Decl. ¶ 8.) Upon execution of the Settlement, Defendant estimated that there are 70 aggrieved employees and 1,658 PAGA Pay Periods. (Settlement ¶ 8.) For mediation purposes, PAGA Counsel retained Berger Consulting Group ("Berger Consulting") as its economic expert. (Kick Decl. ¶ 8.) Berger Consulting estimated a maximum exposure of approximately $733,000 in civil penalties. (*Id.*)

This estimate did not take into account any of the risks discussed in more detail below and assumed a violation for every pay period. (*Id.*) Berger Consulting also assessed multiple penalties for the same pay period for the same alleged violations of different Labor Code provisions and derivative violations. (*Id.*)

1. Risks Associated with Plaintiff's Claim That Defendant Failed to Pay All Earned Wages at the Correct Rates of Pay

The potential difficulty in proving that off-the-clock work occurred may pose a significant hurdle to Plaintiff. Plaintiff likely may need to rely on declarations and witness statements to prove this claim at trial. Plaintiff likely would need to rely on anecdotal evidence to prove the off-the-clock work claim, as Defendant has represented a lack of records indicating the start time and end time for such off-the-clock work. (Kick Decl. ¶ 10.)

2. Risks Associated with Plaintiff's Claim That Defendant Failed to Provide All Meal Periods

If an employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040.) Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper meal period, or otherwise failed to release the employee of all control. (*Id*. at 1040-41.) Defendant contends it did not impede, discourage, or prohibit Plaintiff or any other employees from taking their meal periods. (Kick Decl. ¶ 11.) Defendant's policies state they require employees to take at least one 30-minute, uninterrupted meal period before the fifth hour of the workday. (*Id.*) According to Plaintiff's expert, Berger Consulting, the time records produced by Defendant to Plaintiff in advance of mediation show that meal periods were taken a majority of the time. (*Id.*) Of the time records that show a late, short, short, or missed meal period—as analyzed by Berger Consulting—individualized evidence may be necessary to determine whether they occurred due to conduct of Defendant. (*Id.*) Accordingly, there is risk that the Court might significantly reduce the recoverable amount of civil penalties for unprovided meal periods at trial. (*Id.*)

3. Risks Associated with Plaintiff's Claim That Defendant Failed to Authorize or Permit All Rest Periods

Employers are not required to keep records of rest periods, which are paid. (Industrial Welfare Commission ("IWC") Wage Order No. 4-2001 at Sec. 7(A)(3).) Defendant contends it provided non-exempt employees the opportunity to take rest periods in compliance with California law. (Kick Decl. ¶ 12.) Plaintiff thus likely would depend on sample witness testimony and/or surveys to prove the rest period claim at trial. (*Id.*)

4. Risks Associated with Plaintiff's Claim That Defendant Failed to Reimburse Her and the Aggrieved Employees for Necessary Business Expenses

Plaintiff alleges that Defendant required Plaintiff and the Aggrieved Employees to use their mobile phones, utilities, and office equipment for work and failed to reimburse them for these necessary business expenses. (Kick Decl. ¶ 13.) If Defendant presented evidence that it supplied its employees with all necessary work equipment, there may be a risk that the Court may consider Plaintiff's claim to be individual in nature and thus decline to allow a trial on behalf of all Aggrieved Employees and the State of California.

5. Risks Associated with Plaintiff's Claim That Defendant Failed to Issue Accurate and Complete Wage Statements and to Timely Pay All Wages

Under Labor Code section 226, wage statements must include various information, including the applicable rates of pay, corresponding hours worked, and gross pay. Plaintiff's claim for untimely wages is predicated on Labor Code section 201 to 203. Here, Plaintiff's wage statement claim and claim for untimely wages have the same underlying risks as the above claims, as they are derivative of them. (Kick Decl. ¶ 14.) Further, Plaintiff must establish that the inaccurate wage statements and late payments were willful. (*Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1090)

e. PAGA Counsel's Estimate of the Expense of Taking This Case to Trial Also Favors This Settlement.

PAGA counsel estimate that the cost of taking this case to trial would substantially increase attorneys' fees and costs. (Kick Decl. ¶ 15.) Thus, the expense of taking this case to trial also favors this settlement.

f. The Amount Offered by Defendant to Settle the Case Favors This Settlement.

As discussed above, Defendant offered $220,000 to settle this case, and there are only 70 aggrieved employees. (Settlement ¶¶ 3.1, 8.) In light of the risks discussed above, this Gross PAGA Settlement Amount is substantial and favors this Settlement.

g. The Investigation and Discovery Provided Substantial Information to Enter into an Informed and Reasonable Settlement.

Plaintiff and her expert analyzed multiple sources of information before, during, and after the mediation that empowered her to achieve an informed and reasonable PAGA Settlement. Plaintiff's and her expert's analysis included, but was not limited to, the following: 1) Plaintiff's personnel file; 2) a representative sample of a majority of the Aggrieved Employees' time and payroll records (records for 45 employees); 3) Defendant's relevant policies during the PAGA Period; and 4) statutes and caselaw on PAGA claims and related claims. (Kick Decl. ¶ 9.)

h. The Experience and Views of Counsel Favor This Settlement.

As explained in the declaration of PAGA Counsel Taras Kick, this Settlement is supported by PAGA Counsel's substantial experience litigating wage and hour actions, including claims seeking civil penalties under PAGA. (Kick Decl. ¶¶ 2-4.) PAGA Counsel are qualified to evaluate the PAGA claims, the relative value of settlement versus continued litigation, and the viability of potential affirmative defenses. (*Id.*) PAGA Counsel view this Settlement as fair, adequate, and reasonable. (Kick Decl. ¶ 6.)

i. The Inclusion of a Governmental Participant Favors This Settlement.

As discussed in Section II, *supra*, Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under PAGA. In addition, Plaintiff notified the LWDA of this settlement.

(Kick Decl. ¶ 17, Exhibit 4.) However, there was no government agency prosecuting this matter or assisting Plaintiff. (Kick Decl. ¶ 17.) Only PAGA Counsel worked on this case for the State and Aggrieved Employees. (*Id.*)

j. The Settlement Fairly, Reasonably, and Adequately Awards Individual Payments to Aggrieved Employees Because Each Aggrieved Employee Will Be Paid Based on the Potential Extent of His or Her Injury Compared to Other Aggrieved Employees.

Each Aggrieved Employee will receive a portion of the civil penalties on a pro-rata basis depending on the number of pay periods Defendant employed them for during the PAGA Period. (Settlement ¶ 3.2.4.) With a total of approximately 70 Aggrieved Employees, the average estimated Individual PAGA Payment for each Aggrieved Employee is approximately $562.89 ($39,402.31 / 70 Aggrieved Employees). This is a reasonable result given the uncertainties this lawsuit entails. It is also reasonable given the structure and purpose of PAGA. As discussed in Section IV(A), *supra*, PAGA is not a restitution statute with a traditional damages provision designed to restore victims to the position they would have been in had the Labor Code violations not taken place. Instead, it is a punitive statute designed to reduce future Labor Code violations and, therefore, provides for civil penalties only.

V. THE PROPOSED PAGA COUNSEL FEES PAYMENT, IF AWARDED IN FULL, WILL RESULT IN A NEGATIVE LODESTAR AND IS FAIR, ADEQUATE, AND REASONABLE.

PAGA Counsel's lodestar in this case to date equals <u>$88,376.40</u>. (Kick Decl. ¶ 20, Ex. 5.) Despite this, PAGA Counsel seek only <u>$77,000</u> in fees, meaning thirty-five percent of the settlement, pursuant to a percentage of common fund analysis. That is actually a negative lodestar despite the risk of this case, because if the full $77,000 is awarded, that is only <u>87%</u> of the lodestar. When, as here, a lodestar in a case exceeds the amount being sought under the percentage-of-recovery methodology, this negative multiplier strongly supports the reasonableness of the percentage fee request. (*In re Amgen Sec. Litig.* (C.D.Cal. Oct. 25, 2016, No. CV 7-2536 PSG

(PLAx)) 2016 U.S.Dist.LEXIS 148577, at *27-28; (*Granados v. Hyatt Corp.* (S.D.Cal. Aug. 26, 2024, No. 23-cv-01001-H-VET) 2024 U.S.Dist.LEXIS 153064, at *28.) See discussion *infra* at V.a.

The Court may award attorneys' fees based on either the percentage method or the lodestar method. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 489.) Although PAGA Counsel apply pursuant to the percentage method, they provide detail about the lodestar in the Kick Declaration so that this Court may perform a cross-check. In terms of a fee award sought, the "lodestar figure is 'presumptively reasonable.'" (*In re Bluetooth Headset Products Liability Litigation* (9th Cir. 2011) 654 F.3d 935, 941–942 (quoting *Cunningham v. Cnty. of Los Angeles*, 879 F.2d 481, 488 (9th Cir. 1988)).) This figure may be adjusted upward or downward using a multiplier to account for "a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented." (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26.) Here, as stated, the requested fee award of $77,000, although 35% of the common fund, is only 87% of the lodestar, meaning a negative multiplier, 0.87.

Although PAGA Counsel believe the most straightforward manner in which to approve the requested fees is through the percentage of benefit methodology with a lodestar cross-check, if for some reason the Court does not wish to award the full requested amount under the percentage of common fund, Plaintiff alternatively requests this $77,000 be awarded strictly pursuant to a lodestar analysis. [1]

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[1] Under California law, an attorney declaration suffices to support a request for attorneys' fees, and detailed billing or timekeeping records are not necessary. (*See, e.g., Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375; *see also Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1398 (approving attorneys' fees based on attorney affidavits because "it cannot be said in this particular case that the absence of time records and billing statements deprived the trial court of substantial evidence to support the [attorneys' fee] award").) In conducting a lodestar analysis, the court is not required to make "specific findings" regarding its calculations, nor is counsel required to submit "detailed time sheets." (*Id.*) PAGA Counsel already detail the lodestar in the format approved in *Syers v. Rankin*, (2014) 226 Cal.App.4th 691. If it is this Court's preference to base the fee award on a lodestar analysis rather than on a percentage of benefit with lodestar cross-check analysis, PAGA Counsel also offer to bring detailed timesheets to the Court for *in camera* inspection.

a. A Negative Multiplier Supports the Requested Fee.

The benchmark for determining attorney fees is reasonableness. (*Karton v. Ari Design & Construction, Inc.* (2021) 61 Cal.App.5th 734, 744.) As explained by a federal district court in California, the reasonableness of a fee award is supported in a situation like this where the requested fees under the percentage of recovery methodology would result in a negative multiplier:

> Moreover, courts have recognized that a percentage fee that falls below counsel's lodestar strongly supports the reasonableness of the award. *See, e.g.*, *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, CV 2-3400 (CM), 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) **("Lead Counsel's request for a percentage fee representing a significant discount from their lodestar provides additional support for the reasonableness of the fee request.")**. Here, the percentage fee of $23.75 million represents a significant discount from the lodestar amount of $49.6 million—a negative multiplier of approximately .47. **Such a "negative" multiplier indicates that Class Counsel is seeking payment for only a portion of the hours that they expended on the action.** Because Class Counsel seeks reimbursement for a portion of their work and because Class Counsel will need to perform additional work to supervise the claims administration process, **the Court finds the lodestar amount reasonable**.

(*In re Amgen Sec. Litig.* (C.D.Cal. Oct. 25, 2016, No. CV 7-2536 PSG (PLAx)) 2016 U.S.Dist.LEXIS 148577, at *27-28 (emphasis added).)

As another district court in California explained recently:

> Finally, as a cross-check, class counsel represents that the fees calculated under the lodestar method would be approximately $142,987…Thus, the amount class counsel requests ($108,333.33) is approximately 0.76 times what class counsel would receive under the lodestar method ($142,987)...**<u>A multiplier of 0.76 is an implied negative multiplier, and "[a]n implied negative multiplier supports the reasonableness of the percentage fee request.</u>**" <u>Nosirrah Mgmt., LLC v. Franklin Wireless Corp.</u>, No. 21-CV-1316-RSH-JLB, 2024 WL 666149, at *13 (S.D. Cal. Feb. 16, 2024) (quoting <u>Schiller v. David's Bridal, Inc.</u>, No. 1:10-CV-00616-AWI, 2012 WL 2117001, at *23 (E.D. Cal. June 11, 2012), <u>report and recommendation adopted</u>, No. 1:10-CV-616-AWI-SKO, 2012 WL 13040405 (E.D. Cal. June 28, 2012)).

(*Granados v. Hyatt Corp.* (S.D.Cal. Aug. 26, 2024, No. 23-cv-01001-H-VET) 2024 U.S.Dist.LEXIS 153064, at *28 (emphasis added).)

Similarly, courts have held that counsel's voluntary reduction of its fee request below the lodestar amount supports a finding that the fee is reasonable. (*Schuchardt v. Law Office of Rory W. Clark* (N.D. Cal. 2016) 314 F.R.D. 673, 690–691 ("[W]hile the lodestar is $76,725, Class Counsel have requested an award of $52,500 . . . This represents a significant reduction compared to Class

Counsel's lodestar number, and **courts view self-reduced fees favorably**.") (emphasis added).)[2]

California courts have defined reasonable multipliers on a lodestar cross-check to "range from 2 to 4 or even higher." (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal. App. 4th 224, 255.) Here, not only will PAGA Counsel not be receiving such a positive multiplier in the "range from 2 to 4 or even higher" as is warranted by the result and risk and effort in this case, but if the full $77,000 is awarded, PAGA Counsel will be receiving a negative multiplier.

b. The Requested Fee Also Falls Well Within a Range of Acceptable Percentage Awards.

Even if there were not a lodestar which substantially exceeds the requested percentage fees as there is here, and viewed only through a percentage of benefit lens, a fee award of 35% of the common fund in a case with the risk and amount of work such as this one, is well-justified and falls within a recognized range of acceptable attorney fee awards. "[C]ase law surveys suggest that 50% is the upper limit, with 30-50% commonly being awarded in cases in which the common fund is relatively small." (*Miller v. CEVA Logistics USA, Inc.* (E.D.Cal. Aug. 7, 2015, No. 2:13-cv-01321-TLN-CKD) 2015 U.S.Dist.LEXIS 104704, at *18 (citing *Newberg on Class Actions* (4th 2002) § 14:6); *accord Rigo v. Kason Indus., Inc.*, 2013 U.S.Dist.LEXIS 99357, *19 (S.D. Cal. 2013); *In re Nuvelo Sec. Litig.*; *Cicero v. DirecTV, Inc.*, 2010 U.S.Dist.LEXIS 86920, *17 (C.D. Cal. 2010).)

Many other cases in California and within the Ninth Circuit have awarded substantially higher percentages than requested here. For example, in *Godfrey v. Oakland Port Services Corp.*, the Court of Appeal upheld an award of $487,810.50 in attorneys' fees in a wage and hour class action, representing over **<u>50%</u>** of the $964,557.08 damages award. ((2014) 230 Cal.App.4th 1267, 1270, 1272, 1288.)

Here, the amount of work done and the excellent result obtained for the Aggrieved

[2] PAGA Counsel's hourly rates are consistent with the market rate in California. (*See, e.g., Banas v. Volcano Corp.* (N.D. Cal. 2014) 47 F.Supp.3d 957, 965 ("rates ranging from $355 to $1,095 per hour for partners and associates . . . are within the prevailing market rates for similar cases in the Northern District [in 2014]").)

Employees and the State of California support that the requested fee award would be reasonable as a percentage of the common fund even if the lodestar did not exceed the fee request as it does.

c. The Requested Fee Award Is Appropriate Given the Complexity, Results, and Risk.

The requested fee award is also appropriate considering the "quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented." (*Lealao*, 82 Cal.App.4th at 26.) As discussed *supra*, the settlement is an excellent result. PAGA Counsel diligently prosecuted this action on a contingency fee basis without receiving a penny in compensation, and therefore a fee award of even the base lodestar amount would not properly compensate counsel, as the California Supreme Court explained in *Ketchum v. Moses*:

> The economic rationale for fee enhancement in contingency cases has been explained as follows: "A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans." (Posner, Economic Analysis of Law (4th ed. 1992) pp. 534, 567.) "**A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases**."

((2001) 24 Cal.4th 1122, 1133 (emphasis added).) (*See also Laffitte*, 1 Cal.5th at 504 (approving trial court's consideration of "contingency" as a factor in determining reasonableness of fee award).)

Accordingly, a fee award with a positive *Ketchum* risk multiplier would be justified in this matter. As stated, PAGA Counsel have not been paid a penny to date, accepted risk in the case which also required forsaking other matters, and achieved an excellent result for the Aggrieved Employees and State of California. (Kick Decl. ¶ 19.) But PAGA Counsel do not seek even their base lodestar with no multiplier.

In sum, the requested fee award is reasonable under the percentage of recovery methodology alone, the percentage of recovery with lodestar cross-check, or under a pure lodestar analysis.

VI. THE COSTS INCURRED BY PAGA COUNSEL WERE FOR THE BENEFIT OF THE AGGRIEVED EMPLOYEES, ARE REASONABLE, AND ARE REIMBURSABLE.

PAGA Counsel's costs in this case are $19,912.25, with $18,862.25 incurred to date, and $1,050 to be incurred up to the anticipated closing date of the case, were for the benefit of the Aggrieved Employees, and are reasonable. (Kick Decl. ¶ 21, Ex. 6.) The evidence submitted shows all of these costs are documented and reasonably incurred. (*Id.*)

VII. THE PROPOSED ADMINISTRATION EXPENSES PAYMENT IS REASONABLE.

Before agreeing to Phoenix Class Action Administration Solution's "not-to-exceed" bid of $3,009.72, the Parties obtained and reviewed a bid from another reputable and experienced third-party administrator, which provided a higher bid. (Kick Decl. ¶ 22.) Thus, the Administration Expenses Payment provision is fair and reasonable and warrants approval.

VIII. THE PROPOSED SERVICE AWARD PAYMENT TO PLAINTIFF IS FAIR.

Pursuant to the Settlement, Plaintiff seeks a Service Award Payment of $7,500. (Settlement ¶ 3.2.1.) In bringing this case on behalf of herself, the State of California, and the other Aggrieved Employees, Plaintiff understood significant work would be required. (Hernandez Decl. ¶ 5.) Plaintiff was willing to, and did do the work to keep the case moving forward, including, but not limited to: speaking with PAGA Counsel many times to discuss how Defendant implemented its company policies and procedures; assisting PAGA Counsel in their investigation into Plaintiff's claims by providing them documents and answering their questions; reviewing the complaint and other important documents to keep apprised with the developments in the case; and agreeing to testify, if necessary, through deposition testimony and to prepare for such testimony. (*Id.*)

PAGA Counsel explained to Plaintiff the risks and benefits of bringing a representative action. (*Id.* ¶ 6.) Plaintiff chose to take on the risk, both professionally and financially, in pursuing the case as a representative PAGA action. (*Id.*) Plaintiff communicated with PAGA Counsel regarding the terms of the Settlement and understood that the recovery in this case was for the benefit of her fellow coworkers, not just for herself, and therefore wanted the best possible result to be obtained for the Aggrieved Employees. (*Id.* ¶ 7.) Plaintiff has been actively involved with this lawsuit. (*Id.* ¶ 8.) She spent a significant amount of time on the issues presented during the lawsuit and in the settlement process. (*Id.*)

The requested service award is also consistent with many awards approved in other common fund cases. (*See Garner v. State Farm Mut. Auto. Ins. Co.* (N.D. Cal. Apr. 22, 2010) 2010 WL 1687832, at *17 n.8 ("Numerous Courts in the Ninth Circuit and elsewhere have approved Enhancement Awards of $20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class."); *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299-300 (incentive award of $50,000); *Glass v. UBS Fin. Servs.*, No. C-06-4068 (N.D. Cal. Jan. 27, 2007) 2007 U.S. Dist. LEXIS 8476, *51-52 (awarding $25,000 incentive award in FLSA overtime wages class action).)

Accordingly, the proposed Service Award Payment to Plaintiff warrants approval.

IX. CONCLUSION

For the reasons discussed above, this Court should grant the Plaintiff's Motion to Approve PAGA Settlement in its entirety and adopt the proposed order submitted concurrently herewith.

Respectfully submitted,

DATED: August 12, 2026

THE KICK LAW FIRM, APC

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