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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – NORTH COUNTY
(*UNLIMITED JURISDICTION*)

CARLOS PEREZ-GARCIA, SAUL RAMIREZ, ADELA ROBLES, MARGARITA ROBLES, MARIA REYES, and MARIO LOPEZ, on behalf of themselves and all others similarly situated, and the general public, and as "Aggrieved Employees" on behalf of other "Aggrieved Employees" under the Private Attorneys General Act of 2004,

Plaintiffs,

vs.

SYSTEMS MACHINES AUTOMATION COMPONENTS CORPORATION; EDWARD NEFF, an individual; and DOES 1 to 25, inclusive,

Defendants.

Case No.: 25CU050624N

NOTICE OF MOTION AND PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

Action filed:	09/22/2025
Hearing Date:	11/06/2026
Hearing Time:	1:30 p.m.
Hearing Dept:	N-31, Hon. Victor M. Torres

Submitted Herewith Under Separate Cover:
Declaration of Maralle Messrelian;
Declaration of Carlos Perez-Garcia;
Declaration of Margarita Robles;
Declaration of Michael Moore; and
[Proposed] Order and Judgment Approving PAGA Settlement.

TO ALL PARTIES, THE CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT AGENCY, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 6, 2026 at 1:30 p.m., or as soon thereafter as the matter may be heard, in Department N-31 of the San Diego County Superior Court, North County Division, located at 325 S. Melrose Drive, Vista, California 92081, Plaintiffs Carlos Perez-Garcia and Margarita Robles ("Plaintiffs") will and hereby do move this Court for an Order:

1. Approving the PAGA Settlement Agreement (the "Agreement" or "PAGA Settlement") entered into by Plaintiffs and Defendants Systems Machines Automation Components Corporation and Edward Neff;
2. Approving the Administration Expenses Payment;
3. Approving the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment;
4. Approving the release by Plaintiffs and the Aggrieved Employees;
5. Directing consummation of the Settlement pursuant to its terms and provisions;
6. Dismissing the eighth cause of action, and the Action, with prejudice;
7. Entering Judgment approving the Settlement; and
8. Reserving continued jurisdiction over the Parties, the Action and the Settlement solely for purposes of (i) enforcing the Settlement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

The Motion, which Defendants do not oppose, is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the declarations of Maralle Messrelian, Carlos Perez-Garcia, Margarita Robles and Michael Moore, the PAGA Settlement Agreement, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

Respectfully submitted,

Dated: October 14, 2026

MM LAW, APC

By: Maralle Messrelian
Maralle Messrelian,
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Carlos Perez-Garcia and Margarita Robles ("Plaintiffs") submit this memorandum of points and authorities in support of their unopposed motion for approval of the PAGA Settlement Agreement (the "Agreement" or "PAGA Settlement") resolving the claim for civil penalties they brought against Defendants Systems Machines Automation Components Corporation ("SMAC") and Edward Neff (collectively, "Defendants") under the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698 et seq. ("PAGA"). Labor Code section 2699, subdivision (s)(2), requires that the superior court "review and approve any settlement of any civil action filed pursuant to this part." This motion concerns the PAGA claim only. The class action claims are being dismissed by stipulation filed concurrently with this motion, as described below, and no part of the consideration for this Settlement is paid on account of those claims or of the named plaintiffs' individual claims.

II. FACTUAL AND PROCEDURAL BACKGROUND

SMAC manufactures precision programmable electric actuators and employs hourly, non-exempt employees at a single facility in Carlsbad, California. Edward Neff is SMAC's Chief Executive Officer. Plaintiffs are former SMAC hourly employees who worked during the PAGA Period. MM, ¶ 4.

A. Plaintiffs' Written Notices to the State of California

Plaintiffs complied with the procedures of Labor Code § 2699.3 for bringing this action under the PAGA. On July 16, 2025, Plaintiff Carlos Perez-Garcia, on behalf of himself and SMAC's other California non-exempt employees (hereafter collectively the "Aggrieved Employees") gave written notice by electronic service to the California Labor and Workforce Development Agency ("LWDA") and via certified mail to SMAC of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations (the "LWDA Notice".) On November 3, 2025, Plaintiff Margarita Robles submitted a supplemental notice to the LWDA and to Defendants, which also identified Edward Neff as a potential defendant. The notices were assigned LWDA Case No. LWDA-CM-

1112439-25. MM, ¶ 5, Ex. 2.

B. Plaintiffs' Lawsuit

On September 22, 2025, Plaintiff Carlos Perez-Garcia filed a class and representative complaint against SMAC in this Court. On November 3, 2025, Plaintiffs filed the First Amended Class Action Complaint (the "Operative Complaint"), which added Edward Neff as a defendant and added Saul Ramirez, Adela Robles, Margarita Robles, Maria Reyes and Mario Lopez as named plaintiffs. The Operative Complaint alleges nine causes of action for failure to pay all wages earned for all hours worked at the correct rates of pay, failure to provide rest periods, failure to provide meal periods, failure to indemnify for necessary business expenditures, failure to provide accurate itemized wage statements, failure to pay wages owed every pay period, failure to pay wages when employment ends, civil penalties under the PAGA, and unfair competition. The eighth cause of action is brought by Plaintiffs Carlos Perez-Garcia and Margarita Robles only. MM, ¶ 6, Ex. 3. SMAC answered on November 14, 2025, and Edward Neff answered on January 7, 2026. MM, ¶ 7, Ex. 4.

C. Mediation With the Honorable James Lambden (Ret.)

On August 20, 2026, the Parties participated in an all-day mediation session before the Honorable James Lambden (Ret.) of ADR Services, Inc., an experienced and well-regarded neutral with considerable experience mediating complex wage and hour actions. MM, ¶ 8. The negotiations were adversarial and contentious, although professional in nature. The Parties did not reach agreement at the mediation itself; Justice Lambden issued a Mediator's Proposal, which the Parties accepted on August 21, 2026. In advance of the mediation, the Parties engaged in informal discovery regarding SMAC's policies, practices, operations, timekeeping and payroll information. MM, ¶ 9. While Defendants have agreed to the PAGA Settlement, Defendants deny any liability or wrongdoing of any kind whatsoever. MM, ¶ 10.

D. Dismissal of the Class Claims

As a precondition to the PAGA Settlement, the named plaintiffs are filing concurrently with this motion a Stipulated Request for Dismissal of the class action claims alleged in causes of action numbers 1 through 7 and 9 of the Operative Complaint. Agreement, ¶ 6. The class claims

are to be dismissed without prejudice as to absent putative class members; no class has been certified, no notice has issued, and no putative class member releases any claim by reason of that dismissal. The named plaintiffs' individual claims are to be dismissed with prejudice pursuant to the Individual Settlement Agreements. No portion of the consideration under those agreements is paid from or reduces the Gross Settlement Amount, and no portion of the Gross Settlement Amount is paid on account of the claims they resolve. Agreement, ¶ 2.6. Those agreements, the aggregate amount payable to the six named plaintiffs, and the aggregate amount payable to PAGA Counsel as attorneys' fees are disclosed to the Court in the declaration filed in support of the Stipulated Request for Dismissal. Agreement, ¶ 10.21; MM, ¶ 31, Ex. 5.

III. OVERVIEW OF SETTLEMENT

A. "Aggrieved Employees" Definition

The Aggrieved Employees are all individuals who are or were employed by Defendants as non-exempt employees in California during the PAGA Period, July 16, 2024 through September 21, 2026. Agreement, ¶¶ 1.4, 1.21. Defendants estimate there are 59 Aggrieved Employees who worked a total of 2,349 PAGA Pay Periods, and the Gross Settlement Amount will not be adjusted if the actual numbers differ. Agreement, ¶ 4.1.

B. Monetary Terms Of The Settlement

Defendants have agreed to pay a total of $60,000.00 (the "Gross Settlement Amount" or "GSA") to settle the PAGA claim, from which all payments to the LWDA and the Aggrieved Employees, Court-approved attorneys' fees and litigation expenses, and administration expenses will be paid. None of it reverts to Defendants, and no Aggrieved Employee is required to submit a claim as a condition of payment. Agreement, ¶¶ 1.11, 3.1. The GSA will be divided as follows:

- A PAGA Counsel Fees Payment of $20,000.00, which is one-third (33⅓%) of the GSA;
- A PAGA Counsel Litigation Expenses Payment of $11,188.98;
- An Administration Expenses Payment of $3,158.52 to Phoenix Settlement Administrators ("Phoenix" or "Administrator") to administer the Settlement; and
- The Net Settlement Amount, constituting the PAGA Penalties, estimated at $25,652.50, divided $16,674.13 to the LWDA (65%) and $8,978.37 to the Aggrieved Employees (35%).

Agreement, ¶¶ 1.16, 1.24, 3.2.1-3.2.3. The Agreement states PAGA Penalties of $25,000.00 using the maximum litigation and administration expenses it allows; because less is

requested, the difference is added to the Net Settlement Amount, and the figures above reflect the exact amounts requested. Agreement, ¶¶ 3.2.1, 3.2.2, 3.2.3.2.

C. Funding and Distribution of the Settlement

Defendants must fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than thirty (30) days after the Effective Date. Agreement, ¶ 4.3. Within fifteen (15) business days after the Effective Date, Defendants must deliver the Aggrieved Employee Data to the Administrator, which must execute a confidentiality undertaking before receiving it, restrict access to personnel who need it, and destroy or return it within ninety (90) days after the final distribution of Settlement funds. Agreement, ¶ 4.2.

Within fourteen (14) days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment, and may not disburse the litigation expenses before the Individual PAGA Payments. Agreement, ¶ 4.4. Checks are mailed by First Class U.S. Mail with the Notice of PAGA Settlement attached to the Agreement as Exhibit A, after an address update, and any check returned undelivered is re-mailed within seven (7) days. Agreement, ¶¶ 4.4.1, 4.4.2.

D. Individual PAGA Payments and Uncashed Checks

Each Aggrieved Employee will receive a pro rata share of the 35 percent of PAGA Penalties allocated to the Aggrieved Employees, calculated by dividing $8,978.37 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and multiplying the result by each Aggrieved Employee's own PAGA Pay Periods. Agreement, ¶¶ 1.12, 3.2.3.1. Checks remain valid for not less than 180 days, and funds represented by checks uncashed after the void date are transmitted to the California State Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. Agreement, ¶¶ 4.4.1, 4.4.3. All Individual PAGA Payments are deemed penalties and interest, for which IRS Forms 1099 will be issued. Agreement, ¶ 3.2.3.2.

E. Release of Claims For Aggrieved Employees Limited To Those That Could Reasonably Arise From the Facts Alleged In The Action.

Effective on the date Defendants fully fund the Gross Settlement Amount, Plaintiffs,

acting as private attorneys general on behalf of the State of California, and the Aggrieved Employees will be deemed to have released the Released PAGA Claims against the Released Parties. Agreement, ¶¶ 5.1-5.3. The Released PAGA Claims are:

> all claims for civil penalties recoverable under PAGA arising out of or related to the allegations set forth in the Operative Complaint and/or the PAGA Notice that arose during the PAGA Period, based on the alleged violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2802 and 2804, and the applicable IWC Wage Orders, and on the Unfair Competition Law (Bus. & Prof. Code, §§ 17200-17210).

Agreement, ¶¶ 5.1-5.4.

IV. ARGUMENT

A. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT

The Settlement of a PAGA claim requires court approval. Lab. Code, § 2699, subd. (s)(2). 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 Lab. Code, § 2699, subds. (e)(1)-(2), Although the PAGA does not set forth the particular standards against which a PAGA settlement should be evaluated, the LWDA has provided guidance for approval that mirrors the standards for evaluating class action settlements. MM, ¶ 12; See, e.g., *Salazar v. Sysco Cent. Cal., Inc*., 2017 U.S. Dist. LEXIS 14971, *6, n. 4-5 (E.D. Cal. 2017) (stating, based on the LWDA's guidance, that approval of PAGA settlements may be had where the statutory requirements of the PAGA are met and the terms of the settlement are fundamentally fair, reasonable, and adequate). The established standards for evaluating whether class action settlements are fair, reasonable, and adequate provide a familiar, useful framework for the Court to evaluate PAGA settlements and have been adopted by several courts. *Id.*, See *Juarez v. Villafan*, 2017 U.S. Dist. LEXIS 137205, *5 n. 4 (E.D. Cal. 2017) (citing *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)); *Ramirez v. Benito Valley Farms, LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017) (citing

Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998)); *Gutilla v. Aerotek, Inc*., 2017 U.S. Dist. LEXIS 41655, *7, n.4 (E.D. Cal. 2017); *Smith v. H.F.D. No. 55, Inc*., 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal. 2018); *Rincon v. W. Coast Tomato Growers, LLC*, 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal. 2018).

In making the determination whether a settlement taken as a whole is fair, reasonable, and adequate, the Court should be careful to still give "proper deference to the private consensual decision of the parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties . . . ." *Hanlon*, 150 F.3d at, 1027. The law favors settlement of lawsuits, particularly complex litigation cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. See *Neary v. Regents of Univ. of Cal*., 3 Cal. 4th 273, 277-81 (1992); *In re Synocor ERISA Litigation*, 516 F.3d 1095, 1101 (9th Cir. 2008); *In re Exec. Life Ins. Co*., 32 Cal.App.4th 344, 382 (1995).

B. THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF PAGA

PAGA imposes two requirements for the settlement of a PAGA claim. Both are met here. 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. See *Moorer v. Noble L.A. Events, Inc*. (2019) 32 Cal.App.5th 736, 742; Lab. Code, § 2699, subd. (m). The Parties' Settlement so provides. MM, ¶ 13, Ex. 1. Second, the LWDA must be given notice of the settlement so that it may be heard before the Court decides whether to grant approval. Lab. Code, § 2699, subd. (s)(2). Here, notice is being given to the LWDA concurrently with the filing of this motion. MM, ¶¶ 13, 39, Ex. 8. As a result, Plaintiffs have met all procedural statutory requirements for settling a PAGA action.

C. THIS COURT SHOULD APPROVE THE PAGA SETTLEMENT BECAUSE IT IS FAIR, REASONABLE AND ADEQUATE

To make its determination that the PAGA settlement is fair, reasonable, and adequate, the

Court may consider several factors, including:

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

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

The PAGA Settlement warrants a presumption of fairness for several reasons: (1) The Parties reached the Settlement through intense, arm's-length bargaining with the aid of a respected mediator; (2) the Parties conducted sufficient investigation and discovery to allow Counsel and the Court to act intelligently. Specifically, Plaintiffs requested and Defendants provided the number of Aggrieved Employees, the total number of pay periods during the PAGA Period, all policies in effect during the PAGA Period, and payroll and time punch data for a twenty percent sample of SMAC's California non-exempt employees for the PAGA Period; and (3) Counsel for the Parties are experienced with PAGA cases. MM, ¶ 18. Moreover, neither Plaintiffs nor PAGA Counsel have any conflicts of interest with the absent Aggrieved Employees and there are no issues of ascertainability. MM, ¶ 18. These factors, which are discussed below, warrant the approval of the PAGA Settlement.

1. <u>The PAGA Settlement Is A Result of Extensive, Non-Collusive Arm's Length Negotiations Between The Parties.</u>

The PAGA Settlement was reached only after informal discovery and arms' length negotiations between experienced attorneys, which included a full-day mediation with the Honorable James Lambden (Ret.) and a mediator's proposal the Parties accepted on August 21,

2026. At all times, the negotiations were adversarial and contentious, although still professional in nature. MM, ¶ 9.

Counsel for the Parties have further investigated the applicable law as applied to the facts discovered regarding Plaintiffs' claims, the defenses thereto, and the Labor Code violations claimed by Plaintiffs. PAGA Counsel is experienced in prosecuting PAGA lawsuits. Moreover, counsel for the Defendants is experienced in defending PAGA cases. Based on the Parties' own independent investigations and evaluations, the Parties and their respective counsel are of the opinion that the Settlement for the consideration and on the terms set forth in the Agreement are fair, reasonable and adequate and are in the best interests of Plaintiffs, the Aggrieved Employees, the State, and Defendants in light of all known facts and circumstances and the risks inherent in litigation. MM, ¶ 11.

2. <u>The Extent of Investigation and Discovery Completed Provided Ample Information to Enter into an Informed and Reasonable Settlement</u>

PAGA Counsel considered various sources of information in the lead-up to and during the mediation of August 20, 2026 that enabled Plaintiffs to achieve the PAGA Settlement at issue. MM, ¶ 19. Among other things, PAGA Counsel considered the following:

- Defendants produced and PAGA Counsel reviewed Plaintiffs' personnel files, timekeeping records, and earnings statements.
- PAGA Counsel requested that Defendants provide any and all policies regarding overtime and double-time wages, off the clock work, expense reimbursement, meal periods, rest breaks, meal period waivers and agreements, compensation plans, and complaints about working conditions in effect during the relevant time period beginning in July of 2024. Defendants produced their pertinent wage and hour policies, including those contained within the employee handbook and its revisions.
- PAGA Counsel requested that Defendants provide the total number of employees, paychecks, and the pay cycles during the relevant PAGA Period. Defendants provided the answers to each of these questions.
- Defendants provided PAGA Counsel with payroll and time punch data for a twenty percent sample of the non-exempt employees who worked at SMAC's Carlsbad facility during the PAGA Period, randomly selected by PAGA Counsel from a master list of employee identification numbers.
- PAGA Counsel then retained a professional data analyst, James Toney, to examine the records and determine the meal period violation rates, if there was any pay discrepancy in timesheet hours versus paid hours, and if there was any rounding/time shaving issues. Plaintiffs are prepared to provide the Court with the data analysis for in camera inspection upon its request.
- PAGA Counsel analyzed the state of caselaw on PAGA claims, meal and rest break

violations, claims for "off the clock" work and business expense reimbursement, especially as it relates to the 2024 amendments to the PAGA.

MM, ¶ 19.

3. <u>The Settlement Is Fair and Reasonable Based on the Risks and Costs of Further Litigation</u>

Defendants estimated for purposes of mediation that, there were 59 Aggrieved Employees who worked a total of 2,349 PAGA Pay Periods when the mediation took place. Agreement, ¶ 4.1. Based on this information, PAGA Counsel prepared an estimate of the maximum possible civil penalties under the PAGA. MM, ¶ 20. The maximum possible civil penalties under the PAGA is the total number of pay periods with one or more violations multiplied by the maximum possible civil penalty amount per pay period.

PAGA Counsel did not aggregate civil penalties across every predicate statute. No California decision awards a plaintiff multiple civil penalties for the same pay period under different Labor Code provisions, and Labor Code section 2699, subdivision (i), independently bars a separate penalty on the wage statement, timely payment and waiting time claims, all of which derive from the same alleged failure to pay wages. The claim was therefore valued on Plaintiffs' two strongest disputed claims, the meal period claim and the rest period claim, with the meal period claim as the principal driver of value. MM, ¶ 21.

Assuming a violation in every one of the 2,349 PAGA Pay Periods, the maximum civil penalty on those two claims is $352,350.00: $117,450.00 on the meal period claim at $50.00 per pay period, and $234,900.00 on the rest period claim at $100.00 per pay period. MM, ¶ 22.

The parties disputed the violation rate. For most of the PAGA Period SMAC used a facility-wide lunch bell and automatically deducted a thirty-minute meal period from its time records, so the records do not show whether a meal period was taken. Scored against those records, the meal period violation rate is approximately 97 percent, which values the meal period claim at approximately $114,000.00. After SMAC stopped the automatic deduction, employees recorded their own meal periods, and on those records the data analysis revealed a violation rate of 21.6 percent, which values the claim at approximately $25,369.00. Plaintiffs would have had to prove the higher rate at trial. MM, ¶ 23.

The most significant legal risk is the cap imposed by the 2024 amendments, which govern because the PAGA notice was given on July 16, 2025. Lab. Code, § 2699, subd. (v). Where an employer has taken all reasonable steps to comply with the provisions identified in the notice within 60 days after receiving it, the civil penalty "shall not be more than 30 percent of the penalty sought." Lab. Code, § 2699, subd. (h)(1). The meal period practice was the violation Plaintiffs identified, and SMAC changed it almost immediately, advancing its meal period bell twenty-six days after the notice, eliminating the automatic deduction, reconfiguring its timekeeping system, engaging an outside human resources company, and implementing attestations. MM, ¶ 24. Subdivision (h)(2) provides that the continued existence of a violation despite those steps "is insufficient to establish that an employer failed to take all reasonable steps," and directs the Court to consider the employer's size and resources, a factor that favors a single-facility manufacturer employing fewer than sixty hourly workers. If the Court applied the cap, the recoverable penalty would be no more than $105,705.00, and the Gross Settlement Amount is approximately 57 percent of that figure.

There are risks to Plaintiffs' meal and rest period claims. MM, ¶ 25. Defendants contend that, to establish a violation for missed meal periods, a plaintiff must do more than show that a meal break was not taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. So long as 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." *Id.* at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Determining by a review of Defendants' time records the exact reasons why a meal period appears to be short or late would be difficult and pinpointing those days in which Plaintiffs and the Aggrieved Employees worked during their meal periods will be a challenge, which the automatic deduction makes harder still. Additionally, Defendants contend that the facility-wide bell schedule provided compliant meal and rest periods throughout the

PAGA Period. The rest period claim cannot be valued from records at all. Employers are not required to record rest periods, those periods are paid, and SMAC kept no record of them. Plaintiffs' damages model assumed a violation on every shift longer than 3.5 hours because the bell schedule placed both rest breaks on one side of the lunch bell for part of the PAGA Period, but that assumption rests on the schedule rather than on evidence that any particular employee was denied a break. The claim would have turned entirely on testimony. MM, ¶ 25.

Additionally, PAGA states a court has discretion to award a lesser amount than the maximum penalty. See Lab. Code, § 2699, subd. (e)(2) ("…a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."); see also *Thurman v. Bayshore Transit Management, Inc*. (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiffs' evidence of willful and intentional conduct. MM, ¶ 26. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504 ("*Carrington*") illustrates this. There, the Court of Appeal affirmed a heavily discounted award of only $5 per violation, reducing a request in excess of $70 million to $150,000 (30,000 violations x $5), because Starbucks had made "good faith attempts" to comply with its meal break obligations and the violations were minimal. Applying the same formula here and assuming there was one violation during each pay period, the award of civil penalties could not exceed $11,745.00 in PAGA penalties (2,349 violations x $5). As such, this Settlement is a great result based solely on the risk the Court chooses to apply the *Carrington* formula. Defendants have also posed formidable defenses to the Labor Code claims underlying Plaintiffs' allegations. Thus, the chance of Plaintiffs recovering a higher amount than the Gross Settlement Amount is uncertain. MM, ¶ 26.

The Parties further recognize that the issues presented in the representative PAGA claim are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the maximum potential benefits to the Aggrieved Employees and the State

from continued litigation. MM, ¶ 27.

The settlement of the representative PAGA claim involves monetary relief to all Aggrieved Employees, Plaintiffs, their attorneys, and the State of California. The Settlement is reasonable given the uncertainties this lawsuit entails. It is also reasonable given the structure and purpose of the PAGA, since the PAGA is not a restitution statute. Rather, it is essentially a punishment statute. It provides for civil penalties only. Within the PAGA framework they are bound by, Plaintiffs, considering the evidence they faced, achieved a great result for the employees concerned. Furthermore, any employees who are dissatisfied with the amount they received in civil penalties can pursue any damages they believe they are owed by the Defendants. The Settlement does not require them to opt out to do so. MM, ¶ 28.

Furthermore, Plaintiffs recognize that continued litigation presents significant risks that support a significant downward departure from Plaintiffs' estimated civil penalties amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable compromise amount for these claims and is in the best interest of Plaintiffs and Aggrieved Employees and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc*., Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair, just, reasonable, adequate, and equitable to Defendants, Plaintiffs, and the State, especially in light of the current economic climate, and are the product of good faith, and informed arms-length negotiations between the Parties consistent with public policy and fully comply with applicable provisions of law. MM, ¶ 28.

As such, the settlement of PAGA penalties in the gross sum of $60,000.00, of which 65% of the net amount after attorney's fees, litigation costs, and settlement administration costs ($16,674.13) will be paid to the LWDA and 35% ($8,978.37) will be distributed to the Aggrieved Employees, is reasonable and appropriate under the circumstances. MM, ¶ 29.

4. <u>Each Aggrieved Employee Will Be Paid Based on the Potential Extent of His or Her Injury Compared to Other Aggrieved Employees</u>

Each Aggrieved Employee will receive a portion of the civil penalties on a pro-rata basis depending on the number of pay periods Defendants employed them for during the PAGA Period. Agreement, ¶¶ 1.12, 3.2.3.1. With a total of 59 Aggrieved Employees, the average estimated

Individual PAGA Payment for each Aggrieved Employee is approximately $152.18 ($8,978.37 / 59 Aggrieved Employees). This is a good result given the uncertainties this lawsuit entails. MM, ¶ 30.

5. Counsel for the Parties Are Experienced in Similar Litigation

PAGA Counsel has considerable experience in wage and hour litigation and is qualified to evaluate the PAGA claim, the value of settlement versus moving forward with litigation, and viability of possible affirmative defenses. See MM, ¶¶ 14-17, 36. Similarly, Defendants' counsel, Blake Zollar, Natalie Blackburn, and Neal Gibeault of Koning Zollar LLP, have broad experience in handling employment matters and wage and hour litigation. MM, ¶ 36.

6. The Proposed PAGA Counsel Fees Payment and Litigation Expenses Payment Are Fair, Adequate, and Reasonable and Should Be Approved.

Of the $60,000.00 allocated towards the GSA, PAGA Counsel requests $20,000.00 (33⅓% of the GSA) in attorney's fees and $11,188.98 in litigation costs, which is fair and reasonable. MM, ¶¶ 34, 37.

It is an accepted practice in wage and hour class action settlements to award attorneys' fees to PAGA Counsel based on a percentage of the total settlement value agreed upon by the parties. California courts have long recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the common fund. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49 ["when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund"]; *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 254; *Lealao v. Beneficial California, Inc*. (2000) 82 Cal.App.4th 19, 26-30.)

California courts have the discretion to employ (or decline to employ) a "lodestar cross-check" on a request for a percentage of the fund award. *Laffitte v. Robert Half Intern*, Inc. (2016) 1 Cal. 5th 480, 505 ("*Laffitte*"). However, the California Supreme Court in *Laffitte* has now made clear that this cross-check is not required and approved one-third of the class action settlement fund as reasonable attorney fees as "[t]he percentage of the fund method survives in California class action cases...." *Id.* at 506. As other courts have acknowledged since *Laffitte*, "California

courts routinely award attorneys' fees of one-third of the common fund." *Lopez v. Mgmt. & Training Corp*., 2020 U.S. Dist. LEXIS 70029. The *Lopez* court explained that it need not "engage in a full-blown lodestar analysis when the primary basis remains the percentage method…" The lodestar calculation is merely a "useful perspective on the reasonableness of a given percentage award." *Id.* See also *Austin v. Foodliner, Inc*., 2019 U.S. Dist. LEXIS 79638 ("Trial courts 'also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.'" *Id.* (citing *Laffitte*)).

"[R]egardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." (See *Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43, 66, fn.11 ("*Chavez*")); *In re Pacific Enter. Sec. Litig*. (9th Cir. 1995) 47 F.3d 373, 379 ("*Pacific*") [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co*. (9th Cir. 1997) 129 F.3d 1026, 1027 ("*MGM*") (awarding 33% of total fund amount).) This is also consistent with PAGA Counsel's experience in wage and hour class and PAGA settlements. MM, ¶ 34.

PAGA Counsel's previous experience in litigating wage and hour class and representative actions and the caliber of opposing counsel also support the reasonableness of the fee request. MM, ¶ 36. The award of attorneys' fees sought is also justified by the contingency nature of the attorney-client relationship, the risks of non-payment and non-reimbursement, the delay in payment and cost reimbursement, and the good result PAGA Counsel has achieved for the Aggrieved Employees. Id.

In addition, PAGA Counsel incurred substantial costs, $11,188.98 to date, including the costs of a data analyst and a mediator, to aid in the representation of the Aggrieved Employees. MM, ¶ 37, Ex. 6. As the evidence submitted herewith shows, all of these costs are documented and reasonably incurred. Id. Accordingly, they warrant the Court's approval.

7. <u>The Proposed Settlement Administration Costs Are Fair and Reasonable and Should Be Approved</u>

With regard to the settlement administration costs provision, it is reasonable. Before agreeing to Phoenix Settlement Administrators ("Phoenix"), the Parties sought and reviewed bids from other reputable third-party administrators and Phoenix' bid was the lowest. MM, ¶ 38, Ex.

7. See generally Declaration of Michael Moore. Thus, the settlement administration costs provision should be given approval.

V. CONCLUSION

For the reasons stated above, this Court should grant the Plaintiffs' Motion in its entirety and adopt the proposed order submitted concurrently herewith.

Respectfully submitted,

Dated: October 14, 2026

MM LAW, APC

By: _____
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