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Attorneys for Plaintiffs and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

RAQUEL QUIJANO and INGRID AJUCHAN, on behalf of themselves and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq.*,

Plaintiff,

v.

CALIFORNIA EYE MANAGEMENT SERVICES, L.P., a California limited partnership, and DOES 1 through 10, inclusive,

Defendants.

Case No. 23PSCV01045

Assigned for all purposes to:
Hon. Lynette Gridiron Winston, Dept. 6

NOTICE OF MOTION AND PLAINTIFFS' AMENDED MOTION FOR APPROVAL OF PAGA REPRESENTATIVE ACTION SETTLEMENT, ATTORNEYS' FEES AND COSTS, PAGA REPRESENTATIVE SERVICE AWARDS, AND SETTLEMENT ADMINISTRATION COSTS; MEMORANDUM OF POINTS AND AUTHORITIES

[Declaration of Anthony J. Orshansky, Amended Proposed Order, and Proof of Service submitted concurrently herewith]

<u>Approval Hearing</u>
Date: October 16, 2025
Time: 8:30 a.m.
Dept. 6 [West Covina Courthouse]

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on October 16, 2025 at 8:30 a.m. before the Honorable Lynette Gridiron Winston in Department 6 of the above-entitled court located at 1427 West Covina Parkway, West Covina, California 91790, Plaintiffs Raquel Quijano and Ingrid Ajuchan ("Plaintiffs"), on behalf of themselves and other aggrieved employees under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), will and hereby do move for entry of an order approving the settlement between Plaintiffs and Defendant California Eye Management Services, L.P. ("Defendant") (together with Plaintiffs, the "Parties") of Plaintiffs' representative claims for penalties pursuant to the PAGA, Labor Code section 2698 et seq.

The Parties have reached a settlement that disposes of the matter entirely, which is set forth in the long-form Amended PAGA Settlement Agreement, which was entered into to address the Court's concerns in its tentative ruling on September 17, 2025 ("Settlement Agreement") regarding (1) the scope of the release language in paragraphs 5.1-5.2; and (2) the amount of settlement administration costs. Pursuant to statute, settlement of PAGA claims requires court approval. (See Lab. Code, § 2699, subd. (l).) Plaintiffs thus seek court approval of the Settlement Agreement pursuant to Labor Code section 2699(l) on the grounds that the settlement is fair, reasonable, and adequate as to all Aggrieved Employees. Specifically, Plaintiffs seek an order:

1. Finding that Plaintiffs exhausted the administrative remedies under the PAGA, and as such, are authorized to enter into the settlement on behalf of the California Labor and Workforce Development Agency ("LWDA");

2. Approving the Settlement Agreement, which is incorporated herein by reference as if stated in full, including the payment by Defendant of the Gross Settlement Amount of $325,000;

3. Approving payment to counsel for Plaintiffs ("Plaintiffs' Counsel") of reasonable attorneys' fees in the amount of $108,333.33 (which is one third of the Gross Settlement Amount);

4. Approving payment to Plaintiffs' Counsel of reasonable litigation costs in the amount of $15,000;

5. Approving payments to the named Plaintiffs in the amount of $5,000 each ($10,000 in the aggregate) as service awards in recognition of their service as PAGA representatives;

6. Appointing CPT Group, Inc. as the third-party administrator to administer the PAGA settlement according to the terms of the Settlement Agreement;

7. Approving payment of $7,000 to CPT Group, Inc. for administering the settlement;

8. Approving the PAGA penalty allocations as set forth in the Settlement Agreement and pursuant to Labor Code section 2699, subdivision (i), as follows: 75% of the Net Settlement Amount to the LWDA and 25% of the Net Settlement Amount to the Aggrieved Employees;

9. Approving the proposed Notice of Settlement of Lawsuit and Release of Claims ("Settlement Notice") and directing it to be disseminated to the Aggrieved Employees as provided in the Settlement Agreement;

10. Directing Defendant to collect employee contact information for purposes of administering the settlement; and

11. Entering the Amended Proposed Order Granting Motion for Approval of PAGA Representative Action Settlement, submitted concurrently herewith.

The Motion is based on this Notice; the attached Memorandum of Points and Authorities; the concurrently filed Declaration of Anthony J. Orshansky; the previously-filed Declarations of Daniel F. Gaines, Rachel Quijano, and Ingrid Ajuchan; 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.

The LWDA was provided with a copy of the Settlement Agreement, as evidenced in the concurrently submitted Declaration of Anthony J. Orshansky.

Dated: October 1, 2025

Respectfully submitted,

COUNSELONE, PC

By: ______________________

Anthony J. Orshansky
P. Bartholomew Quintans
Attorneys for Plaintiffs and Aggrieved Employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In accordance with Labor Code section 2699, subdivision (l), Plaintiffs Raquel Quijano and Ingrid Ajuchan ("Plaintiffs") seek approval of the settlement entered into with Defendant California Eye Management Services, L.P. ("Defendant"; together with Plaintiffs, the "Parties"), which resolves claims under the Private Attorneys General Act of 2004, Labor Code section 2698 et seq. ("PAGA") brought by Plaintiffs on behalf of themselves, the California Labor and Workforce Development Agency ("LWDA"), and all non-exempt, hourly-paid current or former employees who worked for Defendant during the PAGA Period[1] ("Aggrieved Employees"). This is only a settlement of claims for civil penalties under the PAGA—it is not a class settlement, and does not release the individual non-PAGA wage claims of any affected employees other than those of the Plaintiffs themselves. (See Lab. Code, § 2699, subd. (g)(1); *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 182 [unpaid wages are not recoverable under PAGA].) As such, the usual two-step preliminary and final approval process is not required.

The Parties reached the proposed settlement following an investigation of the claims by counsel, an exchange of information and an arm's length negotiation through a mediation with the Honorable Margaret Nagle (Ret.). Plaintiffs filed their original Motion for Approval as to the original Settlement Agreement on August 13, 2025. Pursuant to this Court's Tentative Ruling on September 17, 2025, the Parties entered into the Amended Settlement Agreement (hereafter referred to as the "Settlement Agreement"), a fully executed copy of which is attached as **Exhibit A** to the Declaration of Anthony J. Orshansky ("Orshansky Decl.") filed concurrently herewith. A copy of the Court's Tentative Ruling is attached to the Orshansky Decl. as Exhibit D. The settlement entails payment by Defendant of the Gross Settlement Amount of $325,000. The settlement covers 600 Aggrieved Employees who worked approximately 13,150 pay periods during the PAGA Period.

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[1] "PAGA Period" is defined as the period from January 31, 2022 to October 8, 2024. (Settlement Agreement ¶ 1.18.)

As detailed below, the settlement fully satisfies the standard set forth in *Moniz v. Adecco USA, Inc*. (2021) 72 Cal.App.5th 56, as fair, adequate and reasonable, and the release is appropriately tailored to the scope of claims that were asserted or could have been asserted based on the facts alleged in Plaintiffs' PAGA Notices and the operative complaint during the PAGA Period. Plaintiffs' Counsel's request for reasonable attorney's fees in the amount of $108,333.33 (one-third of the Gross Settlement Amount) is reasonable and in line with the standard award in similar cases, as is Plaintiffs' Counsel's request for reimbursement of litigation costs in the amount of $15,000, and the Settlement Administrator's expenses in the amount of $7,000.

II. PROCEDURAL HISTORY

On January 31, 2023, Plaintiff Quijano filed a PAGA Notice with the LWDA, and sent a copy by certified mail to Defendant, alleging various violations of the Labor Code by Defendant in accordance with the PAGA. (Orshansky Decl. ¶¶ 16-17 and Exhs. B-C.) On July 18, 2023, Plaintiffs filed a supplemental PAGA notice with the LWDA, and sent a copy by certified mail to Defendant, adding Ingrid Ajuchan as a named representative plaintiff. (*Ibid.*) Plaintiff Quijano filed her Complaint alleging Defendant's violations of the Labor Code pursuant to the PAGA on April 10, 2023. (*Id.* at ¶ 18.) Plaintiffs filed their First Amended Complaint on January 4, 2024, adding named Plaintiff Ingrid Ajuchan. (*Ibid.*)

Following counsel's investigation and the exchange of relevant information and documents, the Parties participated in a mediation, and as further described below, reached a resolution for settlement of the claims encompassed in the action. (Orshansky Decl. ¶ 19.)

III. PROPOSED SETTLEMENT

A. Aggrieved Employees and Terms of the Settlement

Under the settlement, and as noted above, the Aggrieved Employees are non-exempt, hourly-paid current or former employees who worked for Defendant during the PAGA Period. (Settlement Agreement ¶ 1.4.) Defendant has represented that there are 600 PAGA Members, who worked approximately 13,150 pay periods during the PAGA Period. (*Id.* at ¶ 2.4.)

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Defendant has agreed to pay the Gross Settlement Amount of $325,000. (Settlement Agreement ¶¶ 1.10, 3.1-3.2.) The Individual PAGA Payments, LWDA PAGA Payment, PAGA Counsel Fees and Litigation Expenses Payment, Plaintiffs' Service Payments, and the Administration Expenses Payment will be deducted from the Gross Settlement Amount. (*Id*. at ¶ 3.1.) The Settlement Agreement provides for a procedure to notify Aggrieved Employees of the settlement by mailing the Notice of Settlement of Lawsuit and Release of Claims ("Settlement Notice") (see Exh. A to Orshansky Decl. [Settlement Agreement] at internal Exhibit A), and payment of Settlement Awards to all Aggrieved Employees according to a specified formula as provided below and in the Settlement Agreement.

B. The Parties Reached a Settlement through Arm's-Length Negotiations, Including Mediation

Counsel interviewed Plaintiffs and investigated their claims prior to filing the operative Complaints, by reviewing their personnel records obtained from Defendant and interviewing other Aggrieved Employees. (Orshansky Decl. ¶ 19.) Subsequently, counsel for the Parties engaged in an exchange of information and documents, which included Defendant's provision of information showing pay periods worked by the Aggrieved Employees during the PAGA Period; a sampling of the Aggrieved Employees' time records and pay records; timekeeping policies and practices; and other relevant documents. (*Ibid.*) Here, the substantial exchange of data was sufficient to enable Plaintiffs' Counsel to evaluate the strength and value of the claim for purposes of settlement. (*Ibid*.) Plaintiffs' Counsel interviewed the Plaintiffs and other Aggrieved Employees; reviewed Plaintiffs' personnel files; reviewed employee handbooks and relevant policies; performed qualitative and quantitative analyses of Defendant-produced data, including the number of Aggrieved Employees during the PAGA Period, and counts of former employees, pay periods, and average hourly pay rates; and analyzed time and pay records to assess exposure and risk. (*Ibid.*) The Parties participated in a full-day mediation before the Honorable Margaret Nagle (Ret.), and pursuant to a mediator's proposal, reached a settlement in principle that was subsequently negotiated and memorialized into the original long-form written Settlement Agreement. (*Ibid.*) As noted above, to address this Court's concerns, the Parties entered into the Amended Settlement Agreement.

C. Releases by Aggrieved Employees and Representative Plaintiffs

Upon this Court's approval of the Settlement Agreement, all Aggrieved Employees (including Plaintiffs) 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 that were alleged, or reasonably could have been alleged, based on the facts stated in the operative complaint and the PAGA Notices. (Settlement Agreement ¶ 5.) The Released Parties include Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, trustees, fiduciaries, predecessors, successors, assigns, subsidiaries, parent companies and affiliates. (*Id.* at ¶ 1.26.)

In addition, the two named Plaintiffs have entered into a broader release of claims against the Released Parties including a waiver of Civil Code section 1542. (Settlement Agreement ¶¶ 5.1-5.2.)

D. Settlement Administration Process

The Parties have selected CPT Group, Inc. (CPT) to serve as the Settlement Administrator and verified that, as a condition of appointment, CPT agrees to be bound by the Settlement Agreement and to perform, as a fiduciary, all duties specified in the Settlement Agreement in exchange for payment of actual expenses and fees incurred in the administration of this Settlement (the "Administration Expenses"). (Settlement Agreement ¶ 7.1.) The Administration Expenses will be paid from the Gross Settlement Amount, and CPT has capped the Administration Expenses at $7,000. (*Id.* at ¶ 3.2.3.)

Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Settlement Administrator no later than ten (10) business days after the Effective Date.[2] (Settlement Agreement ¶ 4.3.) The Net Settlement Amount will be calculated by deducting the LWDA PAGA Payment, PAGA Counsel Fees and Litigation Expenses Payment, Plaintiffs' Service Awards, and

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[2] The "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the date the Court dismisses the Action with prejudice, subject to the Court's continuing jurisdiction pursuant to Code of Civil Procedure section 664.6 to monitor and enforce the terms of the PAGA Settlement. (Settlement Agreement ¶ 1.9.)

the Administration Expenses Payment from the Gross Settlement Amount. The Net Settlement Amount will be paid to Aggrieved Employees as Individual PAGA Payments. (*Id.* at ¶ 1.15.) The Individual PAGA Payments to Aggrieved Employees will be based on the number of pay periods they worked during the PAGA Period, as calculated by the Settlement Administrator based on Defendant's records, and paid out of the Net Settlement Amount as set forth in detail in the Settlement Agreement. (*Id.* at ¶ 3.3.)

After the deduction for the $108,333.33 in PAGA Counsel Fees, the $15,000 for PAGA Counsel Litigation Expenses Payment, the $5,000 Service Awards to the two Plaintiffs, and $7,000 for the Administration Expenses, the Net Settlement Amount is $184,666.70, of which seventy-five percent (75%), or approximately $138,500, will be allocated to the LWDA PAGA Payment, and the remaining twenty-five percent (25%), or approximately $46,166.67, will be paid as Individual PAGA Payments to the Aggrieved Employees. (Settlement Agreement ¶ 1.11; Orshansky Decl. ¶ 20.) Although the pay periods worked by each Aggrieved Employee will vary, the average amount that Aggrieved Employees will receive as their share of the penalty distribution can be estimated at approximately $76.94 (*i.e.*, the 25% of the Net Settlement Amount (or, $46,166.67) divided by 600 Aggrieved Employees). (Orshansky Decl. ¶ 20.)

These allocations are proper under Labor Code section 2699 pursuant to *ZB, N.A., supra*, 8 Cal.5th 175. The Individual PAGA Payments will be calculated by the Settlement Administrator based on Defendant's records, and paid out of the Net Settlement Amount. The Settlement Administrator will first determine each Aggrieved Employee's pay periods employed by Defendant during the PAGA Period. (See Settlement Agreement ¶ 3.3.) The Settlement Administrator will then divide the total amount allocated to the Individual PAGA Payments by the sum of all Aggrieved Employees' pay periods to calculate an "Estimated Amount Per Pay Period." (*Ibid.*) The Settlement Administrator will then multiply the Estimated Amount Per Pay Period by the individual Aggrieved Employee's pay periods to determine each Individual PAGA Payment. (*Ibid.*)

Within ten (10) calendar days after the Court has approved the settlement, Defendant will provide the Settlement Administrator with a spreadsheet, listing each Aggrieved Employee's name, address, Social Security number, and number of pay periods worked during the PAGA Period, based on Defendant's payroll and other business records. (Settlement Agreement ¶¶ 1.5, 1.9, 4.2.)

Prior to the mailing of the Settlement Notice and Individual PAGA Payments, the Settlement Administrator will search for updated addresses through the U.S. Postal Service's National Change of Address Database. (Settlement Agreement ¶ 4.4.1.) Notices returned to the Settlement Administrator as undeliverable will be re-mailed to the forwarding address, if any, on the returned envelope; any returned envelopes with forwarding addresses will be used by the Administrator to forward the Settlement Notice and Individual PAGA Payments to the Aggrieved Employees. (*Id.* at ¶ 4.4.2.) If no forwarding address is provided, the Administrator will perform a search for a new address and an additional skip tracing pursuant to its usual and customary procedures. (*Id.* at ¶¶ 1.6, 4.4.2.)

Within ten (10) business days after the Gross Settlement Amount is funded, the Individual PAGA Payments will be mailed to the Aggrieved Employees along with the Settlement Notice. (Settlement Agreement ¶ 4.4.1.) The Settlement Notice is attached as Exhibit 1 to the Proposed Order submitted herewith. The Individual PAGA Payment checks will remain valid and negotiable for 180 calendar days from the date of issuance, after which point they will be cancelled by the Settlement Administrator. (*Ibid.*) The checks provided to the Aggrieved Employees will prominently state that they will expire in 180 calendar days, or alternatively, such a statement may be made in the Settlement Notice accompanying the check. (*Ibid.*) Aggrieved Employees will be bound by the settlement whether or not they cash their check. (*Id.* at ¶ 5.3.)

E. Settlement Funds Are Allocated to Non-Wage PAGA Penalties

The Individual PAGA Payments will be allocated entirely to non-wage penalties to be reported on IRS Form 1099-MISC. (Settlement Agreement ¶ 3.3.) Aggrieved Employees assume full responsibility and liability for any taxes owed or attributable to the Individual PAGA Payments paid to the them. (*Ibid.*)

IV. ARGUMENT

Labor Code section 2699, subdivision (l), requires that the Court "shall review and approve any settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." As such, the Settlement Agreement has been submitted to the LWDA. (Orshansky Decl. ¶ 17 and Exh. C.) The statute does not explain what exactly the trial court should consider when reviewing a PAGA settlement. However, the appellate court in *Moniz v. Adecco USA, Inc*. (2021) 72 Cal.App.5th 56, 75-76, provides some guidance, explaining that "many federal district courts have applied the 'fair, reasonable, and adequate' standard from class action cases to evaluate PAGA settlements." Specifically, the Court stated:

> Despite the fact that "'a representative action under PAGA is not a class action'", and is instead a "type of qui tam action", a standard requiring the trial court to determine independently whether a PAGA settlement is fair and reasonable is appropriate. Class actions and PAGA representative actions have many differences, with one salient difference being that certain due process protections afforded to unnamed class members are not part of PAGA litigation because aggrieved employees do not own personal claims for PAGA civil penalties. Nonetheless, the trial court must "review and approve" a PAGA settlement, and the Supreme Court has in dictum referred to this review as a "safeguard[]."

(*Id.* at pp. 76-77, internal citations omitted.) Thus, the *Moniz* Court held that trial courts should review PAGA settlements to determine whether they are fair, adequate, and reasonable. (*Ibid.*) Moreover, "because many of the factors used to evaluate class action settlements bear on a settlement's fairness," some useful criteria include: the strength of the plaintiff's case; the risk, the stage of the proceeding, the complexity and likely duration of further litigation; and the settlement amount. (*Id.* at p. 77.) The instant settlement meets this standard.

A. The Risk, Expense, and Complexity of Further Litigation Weigh Strongly in Favor of Approval of the Settlement

Here, the expense, complexity, and likely duration of future litigation were, to some extent, unknown. However, what is certain is that to adequately establish the foundational violations that would support a substantial penalty award, investment of tremendous time and expense would be required. To adequately establish that the aggrieved employees experienced the alleged violations, and at what frequency, most of the aggrieved employees would need to be interviewed in a systematic fashion, and their testimony cataloged in a sufficiently meaningful way so as to permit the submission of summary evidence at trial (*i.e.*, planning and implementing a complicated illustrative survey). The nature of such a process would be expensive and time-consuming, and it would be essentially impossible to formulate an objectively reliable means of summarizing testimonial experiences, other than by an extraordinarily detailed survey. And formulating such a survey would have been important, since frequency of violations would need to be established before any penalties could be recovered. Alternatively, direct testimony would have been required from as many of the 600 Aggrieved Employees as could be obtained, which would be, at best, extremely difficult. Furthermore, there was substantial risk that the Court would find no liability at all based on the defenses on the merits presented by Defendant. The ability to secure a guaranteed settlement now and ensure Aggrieved Employees and the State of California receive compensation, rather than proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this settlement. (See Orshansky Decl. ¶ 21.)

B. The Settlement Amount Is Fair, Adequate, and Reasonable

The Parties believe that the settlement amount is fair, adequate, and reasonable, and therefore should be approved. “In determining whether the proposed settlement falls within the range of reasonableness, perhaps the most important factor to consider is plaintiffs’ expected recovery balanced against the value of the settlement offer.” (*Cotter v. Lyft, Inc*. (N.D.Cal. 2016) 176 F.Supp.3d 930, 935, internal quotation omitted.) Here, the relative strength of the PAGA claim brought by Plaintiffs weighs in favor of the Court finding that the settlement is fair, adequate, and reasonable, since there are significant risk factors that Plaintiffs would face if they did not settle.

As set forth above, the release is tailored to the claims that were or could be asserted in the lawsuit based on the facts alleged in the operative complaint and/or PAGA Notices. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538-39 [“Releases must be appropriately tethered to the complaint’s factual allegations”; “[A] court cannot release claims that are outside the scope of the allegations of the complaint.”].)

Most significantly, the ultimate decision as to the amount of PAGA penalties is always at the discretion of the Court.[3] Labor Code section 2699, subdivision (e)(2), states: “[i]n any action by

[3] The PAGA was recently amended to modify, and in many instances, significantly reduce, the penalties available to aggrieved employees, making the proposed settlement even more substantial. However, these amendments are not retroactive; they apply only to LWDA Notices and PAGA civil actions filed on or after June 19, 2024. (See Lab. Code, § 2699, subd. (v).) The analysis in this

an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), 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." Subdivision (a) states:

> Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

(Lab. Code, § 2699, subd. (a).) Subdivision (f) specifies the penalties in instances where the underlying statute does not specify any civil penalty. In other words, where the facts and circumstances of the case demonstrate that an unreduced award would be "unjust, arbitrary and oppressive, or confiscatory," the court may reduce the award to ameliorate such. (See Lab. Code, § 2699, subd. (e)(2).)

Under the PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v. Covidien* (C.D.Cal. 2011) 2011 U.S. Dist. LEXIS 154590, a federal court reduced PAGA penalties from $2,800,000 to $500,000, a reduction of over 80%, because the court found maximum penalties "unjust," finding the employees had suffered no injuries. Some trial courts have actually awarded ***no*** civil penalties, even when Labor Code violations were established. (See *Makabi v. Gedalia* (Mar. 2, 2016, No. B261005) ___Cal.App.5th___ [2016 Cal. App. Unpub. LEXIS 1489], at *5-7 [no PAGA penalties were awarded by the Los Angeles County Superior Court]; *In re Taco Bell Wage & Hour Actions* (E.D.Cal. Apr. 6, 2016) 2016 U.S. Dist. LEXIS 48557, at *40-43 [PAGA penalties denied after trial].) In *Cotter*, the court found a significant reduction of the PAGA claim would be appropriate because "[t]his does not appear to be a case where a company has deliberately sought to evade the law." (*Cotter, supra*, 176 F.Supp.3d at p. 941.) In *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, the Court of Appeal affirmed a judgment after trial which only provided for a PAGA penalty of $5 per pay period (inclusive of the 75% share of the penalty paid to the

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Motion therefore applies the pre-amendment standards for PAGA penalty and settlement analysis.

LWDA). Therefore, at trial in the instant matter, any PAGA penalties awarded could be significantly less than Plaintiffs' calculation, even ***if*** Plaintiffs prevailed on the PAGA claim. If the amount of $5 per pay period from *Carrington* was used, the potential recovery of civil penalties would be only $65,750, which is much lower than what this settlement provides. The monetary recovery provided by this settlement is well within the range of an acceptable settlement under the circumstances, especially when compared to other PAGA settlements.[4]

Moreover, the LWDA has released data on PAGA settlement amounts, showing that the settlement secured by Plaintiffs here is greater than other PAGA penalty awards approved by California state courts. These settlements often range between $7,500 and $15,000 for PAGA claims impacting hundreds or thousands of individuals, resulting in much lower PAGA penalty payments on a per capita basis. (See, e.g., *Penaloza v. PPG Industries Inc*. (Super. Ct. L.A. County May 20, 2013, No. BC471369) 2013 WL 2917624, at *2 [approving PAGA penalties of $5,000 to class of 667 members]; *Cabrera v. Advantage Sale & Marketing, LLC* (Super. Ct. L.A. County, March 12, 2013, No. BC485259) 2013 WL 1182822 [approving PAGA penalties of $10,000 for class of approximately 3,000 members].)

Here, Defendant contends, as the Court concluded in *Cotter*, its efforts to devise compliant operational policies do not indicate an organization that has deliberately sought to evade the law. This is a very significant risk factor. Defendant also disputes that Plaintiffs could find a coherent method for proving liability for the hundreds of employees working in different departments and/or job positions. Establishing violations for purposes of the PAGA would be difficult in this matter.

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[4] (See, e.g., *DCH Auto Wage and Hour Cases* (May 2017) Los Angeles Cnty. Super. Court Case No. JCCP433 [approving the amount of $15,000 out of $4 million toward settlement of PAGA claims]; *Garcia v. Gordon Trucking, Inc*. (E.D.Cal. Oct. 31, 2012) 2012 WL 5364575, at *3 [approving the amount of $10,000 out of $3.7 million toward settlement of PAGA claims]; *Schiller v. David's Bridal, Inc.* (E.D.Cal. June 11, 2012, No. 1:10-cv-00616-AWI-SKO) 2012 WL 2117001, at *14 [approving the amount of $10,000 out of $518,245 toward settlement of PAGA claims]; *Chu v. Wells Fargo Investments, LLC* (N.D.Cal. Feb. 16, 2011) 2011 WL 672645, at *1 [approving the amount of $10,000 out of $6.9 million toward settlement of PAGA claims]; *Franco v. Ruiz Food Products, Inc.* (E.D.Cal. Nov. 27, 2012) 2012 WL 5941801, at *14 [approving the amount of $10,000 out of $2.5 million toward settlement of PAGA claims]; *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576 [finding no abuse of discretion by the trial court in approving a settlement that allocates $0 toward the settlement of PAGA claims that were at issue in the lawsuit].) Here, the value obtained for settlement of the PAGA claims is significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

After analyzing the claims in this matter, Plaintiffs have concluded that the value of this settlement is fair, adequate, and reasonable. (Orshansky Decl. ¶¶ 21-29.)

Using the most straightforward formulation by applying the "catch-all" $100 penalty specified in Labor Code section 2699, subdivision (f)(2), to each pay period for the estimated 13,150 pay periods, the maximum exposure is $1,315,000. The settlement amount of $325,000 is about 25% of that estimated maximum exposure, assuming liability would be established as to ***each and every pay period*** and before likely significant reductions by a court. Thus, based on this method of calculation, the settlement amount compares favorably to the estimated amount of PAGA penalties. When considering the serious risks discussed herein, particularly the Court's inherent power to adjust penalties downward to reflect an employer that sought to be in compliance with wage and hour laws even if mistakes were sometimes made, the compromise figure is reasonable.

C. The Presence of a Government Participant Supports Approval

As set forth above, 75% of the PAGA penalties are to be paid to the LWDA. In connection therewith, Labor Code section 2699.3, subdivision (b)(4), permits the LWDA to comment on the penalties. This provides an independent check on collusive settlements. The LWDA has been provided with a copy of the original Settlement Agreement, and will be provided with a copy of the Amended Settlement Agreement concurrently with the filing of this Motion. (Orshansky Decl. ¶¶ 17, 39, and Exh. C.) The decision of the LWDA to accept the settlement and not oppose this Motion should be given considerable weight. This is not a situation where the Court needs to be concerned about the rights of absent employees, as with a class action settlement, given this PAGA-only settlement does not release the individual claims of absent employees and the LWDA is a specialized government entity empowered to monitor PAGA settlements and to protect its own interests and those of the public.

D. The Parties' Substantial Investigation and Exchange of Data Favor Approval

Here, the substantial exchange of information and documents was sufficient to enable Plaintiffs' Counsel to evaluate the strength and value of the claim for purposes of settlement. (Orshansky Decl. ¶ 19.) Counsel interviewed Plaintiffs and investigated their claims prior to filing the PAGA Notices and operative complaints by reviewing their personnel records obtained from

Defendant and interviewing other Aggrieved Employees. (*Ibid*.) Subsequently, counsel engaged in an exchange of information and documents, which included Defendant's provision of information showing pay periods worked by the Aggrieved Employees; a sampling of the Aggrieved Employees' time records and pay records; timekeeping policies and practices; and other relevant documents. (*Ibid*.) Plaintiffs' Counsel performed qualitative and quantitative analyses of Defendant-produced data, including the number of Aggrieved Employees during the PAGA Period, and counts of former employees, pay periods, and average hourly pay rates; and analyzed time and pay records to assess exposure and risk.

Based on Plaintiffs' Counsel's experience litigating wage and hour claims, such investigation was sufficient to determine the potential value of the PAGA claim, and to evaluate the strength of these claims for purposes of settlement. (Orshansky Decl. ¶¶ 6-15; 8/13/25 Declaration of Daniel P. Gaines[5] ("8/13/25 Gaines Decl.") at ¶ 6.)

E. All Relevant Factors Weigh in Favor of the PAGA Settlement

In summary, while Plaintiffs believe that the claims asserted in this action have merit and that the evidence developed to date is supportive, they recognize and acknowledge the expense and length of the continued proceedings necessary to prosecute the case against Defendant through trial and appeals. Plaintiffs' Counsel have also taken into account the uncertain outcome and risk of further litigation, especially in complex actions such as this one, as well as the difficulties and delays inherent in such litigation. Plaintiffs and Plaintiffs' Counsel are mindful of the inherent problems involved with such actions, including the risk of not being able to maintain representative claims, the difficulty of proving Plaintiffs' claims in a manageable trial, and the possible merits of Defendant's alleged defenses. Since the terms set forth in the Settlement Agreement confer substantial monetary benefits in the face of genuine risks to any recovery, after careful evaluation, Plaintiffs' Counsel have determined that the Settlement is in the best interests of the Plaintiffs, the State of California, and the Aggrieved Employees. (Orshansky Decl. ¶ 29.)

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[5] See Orshansky Decl. Exh. E.

F. The Requested Attorney's Fees and Costs Are Reasonable

Pursuant to Labor Code section 2699, subdivision (g)(1), the prevailing party in a PAGA action is entitled to reasonable attorneys' fees and costs. Though Plaintiffs are not claiming that they are prevailing parties, the settlement of a PAGA action must consider the fees that have been incurred as an element of the liability analysis and ultimate settlement. Plaintiffs' Counsel seek approval of attorneys' fees in the amount of $108,333.33, which represents 33.33% of the Gross Settlement Amount.[6]

The requested fees are justified as a percentage of the settlement amount, given that recovery akin to a common fund for the benefit of others was achieved. This percentage is reasonably comparable to the standard contingent recovery percentage of 33.33% in similar cases, as was expressly approved by the court in *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 504. Here, Plaintiffs' Counsel represented Plaintiffs and the State of California on a strictly contingency basis, and as such, had to forgo other financial opportunities (such as litigating other contingency and hourly cases where fees would be more easily recoverable), and incurred the risk of non-recovery after investment of time, money, and resources, having proceeded with Plaintiffs' representation since the inception of this case without payment or compensation. (Orshansky Decl. ¶ 33.)

Moreover, the attorneys' fees award requested is also consistent with what courts have awarded in other PAGA representative actions. There follows a sampling of PAGA actions and PAGA/class action cases where attorneys' fees were awarded on a common fund basis ranging between 33.33% and 40%:

- *Banda v. Verizon California, Inc.*, Los Angeles County Superior Court Case No. BC434587 (**35% fee awarded** on $15,000,000 settlement of mixed PAGA/class claims);

[6] CounselOne, PC and Gaines & Gaines, APLC have agreed to split any attorney's fee award, with 50% to CounselOne, PC, and 50% to Gaines & Gaines, APLC. (Orshansky Decl. ¶ 34.) Plaintiffs were informed of and consented to this arrangement. (*Ibid.*)

- *Padilla v. Staffmark Investment, Inc.*, San Bernardino County Superior Court Case No. CIVDS1408641 (**33.33% fee awarded** on $2,000,000 settlement of PAGA-only claims);
- *Birch v. Office Depot*, United States District Court for the Southern District of California Case No. 06-cv-1690-DMS (**40% fee awarded** on $16,000,000 settlement of mixed PAGA/class claims);
- *Zelada v. Majestic Terminal Services*, San Bernardino County Superior Court Case No. CIVDS1916968 (**38% fee awarded** on $1,800,000 settlement of PAGA-only claims); and
- *Garcia v. The Pep Boys*, Orange County Superior Court Case No. 30-2014-00720574-CU-OE-CXC (**33.33% fee awarded** on $1,030,000 settlement of PAGA-only claims).

According to a leading treatise on class actions, "[n]o general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (4 Conte & Newberg, *Newberg on Class Actions* (4th Ed. 2013) § 14.6.) Attorneys' fees that are fifty percent of the fund are typically considered the upper limit, with ***thirty to forty percent commonly awarded in cases where the settlement is relatively small***. (*Ibid.*; see also *Van Vranken v. Atlantic Richfield Company* (N.D.Cal. 1995) 901 F.Supp. 294 [stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million].) While this is not a class action, again, California courts routinely approve attorneys' fees awards at an "average [of] around one-third of the recovery." (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn. 11 [lower court found the range of contingency fees in marketplace to be up to 40 percent and determined such a percentage fee was appropriate].) Plaintiffs' Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the case is well within the range of reasonableness.

Additionally, the attorneys' fees award requested is justified by the lodestar cross-check method. Trial courts have discretion to assess reasonableness of fee awards with tools such as the lodestar cross-check, though they need not do so. (See *Laffitte, supra*, 1 Cal.5th at p. 506.) This Court can and should award attorneys' fees and costs based on the percentage fee alone in light of the excellent results achieved and for the reasons stated. Nevertheless, the lodestar "cross-check" here also supports the requested contingency-fee percentage. (See *Serrano v. Priest* (1975) 20 Cal.3d 25, 48; see also Orshansky Decl. ¶ 31 [attesting to 98.7 hours worked to date by CounselOne, PC for a lodestar of $73,531.50]; 8/13/25 Gaines Decl. ¶ 10 [attesting to 20.9 hours worked to date by Gaines & Gaines, APLC for a lodestar of $12,532.50].) Adding together the hours at the indicated rates spent by CounselOne, PC and Gaines & Gaines, APLC results in an aggregated lodestar of $86,064 for the work performed by Plaintiffs' Counsel. The requested fees award of $108,333.33 represents a lodestar multiple of approximately 1.26, which is well within the modest multipliers that are approved by California courts. (See, e.g., *Vizcaino v. Microsoft Corp*. (9th Cir. 2002) 290 F.3d 1043, 1050-1051 [looking to multipliers awarded in comparable cases as evidence of reasonableness; affirming 3.65 multiplier].) Multipliers routinely range from 3 to 5, and it is not uncommon that multipliers of between 5 and 10, or higher, are applied. (See, e.g., *Wilson v. Bank of Am. Natl. Trust & Savs. Assn.* (Cal. Sup. Ct., Aug. 16, 1982) Case No. 643872 [multiplier of 10]; *Glendora Comm. Redev. Agency v. Demeter* (1984) 155 Cal.App.3d 456, 465 [affirming multiplier of 12, and expressly rejecting argument that fee was either exorbitant or unconscionable]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 [noting that "[m]ultipliers can range from 2 to 4 or even higher"]; *Van Vranken, supra*, 901 F.Supp. at p. 298 [3-4 are in the "range [of] common" multipliers]; *Laffitte, supra*, 1 Cal.5th at pp. 487-88 [multiplier of 2.03 to 2.13]; *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 [affirming a 2.34 multiplier without remand]; *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 [applying a 2.52 multiplier]; *Chavez*, *supra*, 162 Cal.App.4th at p. 66 [applying a 2.5 multiplier]; *Chau v. CVS RX Services, Inc.*, Los Angeles County Superior Court No. BC349224 [a 3.8 multiplier was applied based primarily on contingent risk and the "excellent results [] obtained [] with relative efficiency"].) On October 23, 2020, the California Court of Appeal issued its ruling in *Santana v. FCA US, LLC*, Case Nos. G057244, G058020, affirming the trial court's award of fees to plaintiff's attorneys in a contingency case utilizing a 2.0 multiplier explaining:

> Under our precedents, the unadorned lodestar reflects the general local hourly rate for a fee-bearing case; it does not include any compensation for contingent risk, extraordinary skill, or any other factors a trial court may consider under *Serrano* III. The adjustment to the lodestar figure, *e.g*., to provide a fee enhancement reflecting the risk that the attorney will not receive payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather, it is intended to approximate market-level compensation for such services, which typically includes a premium for the risk of nonpayment or delay in payment of attorney fees.

(*Id.* at p. 20, citing *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138). The *Santana* court concluded that a multiplier was appropriate to account for the contingency factor.

Accordingly, the lodestar cross-check affirms that the fee award requested does in fact fall within the range of reasonableness. Plaintiffs' Counsel will also expend future attorney time in attending the hearing on this Motion, overseeing the notice and administration process, and addressing questions from Aggrieved Employees, among other tasks. (Orshansky Decl. ¶ 31.)

Finally, the litigation costs incurred by CounselOne, PC alone exceed $15,000, the maximum allowed by the Settlement Agreement. (Orshansky Decl. ¶ 35 [attesting to costs in the amount of $15,075.91]; see also 8/13/25 Gaines Decl. ¶ 16 [attesting to costs in the amount of $990.87].) However, Plaintiffs' Counsel are only requesting litigation costs be awarded pursuant to the Settlement Agreement in the amount of $15,000 ($14,009.13 to CounselOne, PC, and $990.87 to Gaines & Gaines, APLC). The costs incurred by Plaintiffs' Counsel were of the type routinely billed by attorneys in such litigation, and were reasonably and necessarily incurred. The reimbursement of uncontested litigation costs borne by Plaintiffs' Counsel should be approved.

G. Plaintiffs' Requested Service Awards Are Reasonable

As part of the settlement, the Parties seek Service Awards to be paid to the Plaintiffs in recognition of their respective time and service to the Aggrieved Employees and the State of California in pursuing this action and in fulfilling their obligations as PAGA representatives, and in exchange for their general release of claims against Defendant, in the amount of $5,000 to each of them (in the aggregate, $10,000). (Settlement Agreement ¶ 3.2.2, 5.1-5.2.) The Parties acknowledge that Plaintiffs took significant risks in bringing this litigation and actively supporting its prosecution.

(Orshansky Decl. ¶ 36.) Numerous other state courts have previously approved service awards to PAGA representatives in amounts that demonstrate the reasonableness of Plaintiffs' request. (See, e.g., *Garrett v. Bank of America* (Oct. 28, 2016) Alameda County Superior Court Case No. RG13699027 [awarding three PAGA plaintiffs $25,000 each as service awards]; *Brewer v. Connell Chevrolet*, Orange County Superior Court Case No. 30-2016-00852123 [approving a PAGA representative award of $15,000]; *Jones v. J.C. Penny Corp.*, Los Angeles County Superior Court Case No. BC451823 [awarding PAGA representative a service award of $10,000]; and *Garcia v. Macy's West Stores*, San Bernardino County Superior Court Case No. CIVDS1516007 [approving a PAGA settlement and service award of $10,000].)

Here, Plaintiffs spent a significant amount of time assisting Plaintiffs' Counsel with the prosecution of this action, including (1) regularly speaking with their attorneys; (2) providing relevant legal and factual information; (3) evaluating and producing relevant documents; (4) identifying potential witnesses; (5) participating in and being available during the mediation process; (6) reviewing, discussing, and evaluating the terms of the Settlement Agreement; and (7) regularly requesting updates on the status of the case. (Orshansky Decl. ¶ 37; 8/13/25 Declaration of Rachel Quijano[7] at ¶ 4; 8/13/25 Declaration of Ingrid Ajuchan[8] at ¶ 4.) Plaintiffs will not receive any windfall from this settlement, yet they have obtained a substantial payment for the State of California and for other Aggrieved Employees. (Orshansky Decl. ¶ 37.) Thus, the Service Awards to Plaintiffs are justified and reasonable, and should be approved.

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[7] See Orshansky Decl. Exh. G.
[8] See Orshansky Decl. Exh. F.

V. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request this Court approve the Settlement Agreement, and enter the Proposed Order and Judgment submitted concurrently herewith.

Dated: October 1, 2025

Respectfully submitted,

COUNSELONE, PC

By: ______________________

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