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Others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

RAUL CUENCA, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

PACIFIC WESTERN LOGISTICS, LLC,
DILIGENT DELIVERY SERVICES, and
DOES 1 through 50, respectively,

Defendants.

Case No.: 23STCV14082

**PLAINTIFFS' NOTICE AND MOTION
FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL SETTLEMENT,
AWARD OF ATTORNEYS' FEES AND
COSTS; [PROPOSED] ORDER AND
JUDGMENT**

*[[filed concurrently with Plaintiffs' Notice of
Motion and Motion; Memorandum of Points and
Authorities; Declarations of Katherine J.
Odenbreit, and Michael Moore, Phoenix
Settlement Administration; [Proposed] Order]*

Assigned for all purposes to:
Hon. Timothy Patrick Dillon, Dept. 15

Date: November 3, 2026
Time: 10:00 a.m.
Dept.: SS15

Complaint Filed: June 16, 2023
Trial Date: None Yet Set

1 **TO THE COURT AND DEFENDANT AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on November 3, 2026, at 10:00 a.m., or as soon thereafter
3 as the matter may be heard in Department 15 of the above-entitled Court, Plaintiff Raul Cuenca
4 (“Plaintiff”) as a designated representative for the State of California will and hereby do move
5 this Court for entry of an order: (1) lifting the stay for purposes of addressing approval of the
6 PAGA settlement; (2) approving the representative action settlement embodied in the PAGA
7 Settlement Agreement entered into between Plaintiff and Defendant Pacific Western Logistics,
8 LLC d/b/a Diligent Delivery Services (“Defendant”, collectively referred to as “Parties”)
9 (“Settlement Agreement” or “Settlement”); (3) approving PAGA Counsel’s application for
10 attorney’s fees and litigation costs and costs for the Administrator; and (4) entering judgment
11 approving the Settlement Agreement (the “Motion”).

12 The motion shall be based on this notice, the attached Memorandum of Points and
13 Authorities, the declarations of Katherine J. Odenbreit, and Michael Moore, Phoenix Settlement
14 Administrators and any exhibits attached thereto, on all records on file in this matter, and on such
15 other evidence and oral argument as may properly come before the Court at the time of hearing
16 on this motion.

17 As this motion is unopposed, Plaintiffs respectfully request the Court for relief from the
18 page limit requirement under California Rule of Court 3.1113(d).

19
20 Dated: August 28, 2026

MAHONEY LAW GROUP, APC

21 
22 _____
23 Kevin Mahoney, Esq.
24 Katherine J. Odenbreit
25 Attorneys for Representative Plaintiff RAUL
26 CUENCA
27
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This motion seeks approval of a settlement of the California Private Attorneys’ General
4 Act (“PAGA”) claims brought by designated PAGA Representatives Raul Cuenca (“Cuenca”)
5 (“Plaintiff”) on behalf of the State of California against Defendant Pacific Western Logistics, LLC
6 d/b/a Diligent Delivery Services (“Defendant”) (Plaintiff and Defendant collectively referred to as
7 “Parties”). The Parties have agreed to settle the representative PAGA claims for three hundred
8 seventy-one thousand seven hundred ten dollars and zero cents (\$371,710.00).

9 Plaintiff submits that the Settlement meets the requirements for court approval. To that end,
10 the Parties request that the Court enter an order (1) approving the settlement (“Settlement,”
11 “Agreement,” or “Settlement Agreement”), (Declaration of Katherine J. Odenbreit (“Odenbreit
12 Decl.”), Ex. A.) along with the Parties’ proposed Notice of Settlement to be disseminated to
13 Aggrieved Employees pursuant to the Settlement Agreement with their share of the civil penalties,
14 (3) awarding attorneys’ fees and costs and (3) entering final judgment.

15 **II. SUMMARY OF SETTLEMENT TERMS**

16 **A.PAGA Aggrieved Employees**

17 “Aggrieved Employees” or “PAGA Members” means persons employed by Defendant in
18 California and classified as hourly-paid, non-exempt who worked for Defendant at any time from
19 January 13, 2022 through April 24, 2026. (“PAGA Period”) (Odenbreit Dec., Ex. A, , ¶¶1.4 and
20 1.21).

21 **B.Summary of Distribution of Gross Settlement Amount**

22 The Settlement Agreement provides that Defendant will pay a Gross Settlement Amount
23 (“GSA”) of three hundred seventy-one thousand seven hundred ten dollars and zero cents
24 (\$371,710.00). (Odenbreit Dec., Ex. A, ¶1.12).

25 The Net Settlement Amount (“NSA”) will be the total settlement amount less the
26 following: (1) Attorneys’ Fees of up to one-third of the Gross Settlement Amount, estimated to
27 be one hundred twenty-three thousand nine hundred twenty-eight dollars and eleven cents
28 (\$123,928.11) and actual litigation costs to Plaintiffs’ counsel which is nine thousand dollars

1 (\$9,000.00), and; (2) Settlement Administration Costs not to exceed ten thousand five hundred
2 dollars (\$10,500.00). (Odenbreit Dec., Ex. A, ¶3; Declaration of Michael Moore, Phoenix
3 Settlement Administration (“Phoenix Dec.”), ¶x. Ex x). 75% of the NSA will be paid to the
4 California Labor and Workforce Development Agency (“LWDA”) and 25% of the NSA will be
5 distributed to Aggrieved Employees on a pro rata basis based on the total number of pay periods
6 each Aggrieved Employees worked during the PAGA Period. (Odenbreit Dec., Ex. A, ¶3.2.3.1).

7 If the total number of Aggrieved Employee pay periods provided to the Administrator by
8 Defendant exceeds thirty-seven thousand one hundred seventy-one (37,171) by more than ten
9 percent (10%) or forty thousand eight hundred eighty-eight (40,888), Defendant will have the
10 following options: (a) selecting a new end date for the release that limits the total pay periods
11 being released by the State of California to no more than forty thousand eight hundred eighty-
12 eight (40,888) pay periods (37,171 x 110%); or (b) increasing the Gross Settlement Amount
13 proportionally for any pay periods in excess of 40,888. (Odenbreit Dec., Ex. A, ¶4.1).

14 Defendant will fund the GSA by making thirty-six (36) monthly payments.¹ An initial
15 deposit of thirty thousand dollars (\$30,000) no later than October 15, 2026, or fifteen (15) days
16 after the Effective Date, whichever is later. (Odenbreit Dec., Ex A, ¶4.3). Thereafter, Defendant
17 will make thirty-five (35) equal monthly payments by the 10th of each month in the amount of
18 eight thousand three hundred thirty-four dollars seventeen cents (\$8,334.17) for the first ten (10)
19 months and then in the amount of ten thousand three hundred thirty-four dollars seventy cents
20 (\$10,334.70) for twenty-five (25) months thereafter or until the entire Gross Settlement is paid.
21 (*Id.*)

22 The Settlement Administrator will distribute to Aggrieved Employees their Individual
23 PAGA Payments by U.S. Mail with a Notice Letter in two installments. The first distribution of
24 Individual PAGA Payments will be made one year from the date Defendant deposits the first
25 payment to the GSA. (Odenbreit Dec., ¶10, Ex. A, Amendment No. 1, ¶4.4). The Notice will
26 advise the Aggrieved Employees their Individual PAGA Payment will be made in installments,
27 the total amount of their Individual PAGA Payment, the installment amounts of their Individual
28 PAGA Payments, the reason for the payment and the release. (Odenbreit Dec., Ex. B)

¹ The GSA is being paid over time premised on Defendant’s financial constraints, which were considered as a factor in evaluating the value of the settlement. (Odenbreit Dec., ¶10.)

1 Settlement Checks shall remain valid for one hundred eighty (180) days from the date of
2 issuance. For any Aggrieved Employee's Settlement check that is uncashed and cancelled after
3 the void date, the Administrator shall transmit the funds to the California State Controller's
4 Unclaimed Property Fund in the name of the Aggrieved Employee. (Odenbreit Dec., Ex. A,
5 ¶¶4.4.1, 4.4.3).

6 **A.Scope of Release**

7 As of the Effective Date all Aggrieved Employees including Plaintiff, by and through the
8 State of California including the LWDA, are deemed to release, on behalf of themselves and their
9 respective former and present representatives, agents, attorneys, heirs, administrators, successors
10 and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or
11 reasonably could have been alleged, based on the PAGA Period facts stated in the Operative
12 Complaint and the PAGA Notice. (Odenbreit Dec., Ex. A, ¶5.1). The applicable PAGA Notice
13 letter is attached to the Declaration of Katherine J. Odenbreit. (Odenbreit Dec., Ex. C).

14 **B.No Right to Object or Opt Out of Settlement**

15 Under applicable law, Aggrieved Employees cannot opt out of, or object to, the Settlement.
16 “[A] PAGA action is a statutory action for penalties brought as a proxy for the state,” as such,
17 “there is no need to protect absent employees’ due process rights[.]” (*Williams v. Superior Court*
18 (2017) 3 Cal.5th 531, 54647, n.4] (citation omitted).) “Unnamed employees need not be given
19 notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA
20 claim.” (*Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal., Apr. 2, 2010, No. C 082073 MHP)
21 2010 WL 1340777, at *5.) “PAGA does not make other potentially aggrieved employees parties”
22 to the action and no “due process concerns arise under PAGA because absent employees do not
23 own a personal claim for PAGA civil penalties, and whatever personal claims the absent
24 employees might have for relief are not at stake.”(*Williams, supra*, 3 Cal.5th at p. 546–47, and n.4
25 (citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th
26 993, 1003 and *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348,
27 381). “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
28 (*Williams, supra*, 3 Cal.5th at p. 548 (citing *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986;

1 *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069; and *Richmond v. Dart Industries, Inc.*
2 (1981) 29 Cal.3d 462, 474.) “[J]udgment in such an action is binding not only on the named
3 employee plaintiff but also on government agencies and any aggrieved employee not a party to
4 the proceeding” because “the employee plaintiff represents the same legal right and interest as
5 state labor law enforcement agencies[.]” “collateral estoppel applies [. . .] against those for whom
6 the party acted as an agent or proxy[.]” and “[w]hen a government agency is authorized to bring
7 an action on behalf of an individual or in the public interest, and a private person lacks an
8 independent legal right to bring the action, a person who is not a party but who is represented by
9 the agency is bound by the judgment as though the person were a party.” (*Arias, supra*, 46 Cal.4th
10 at p. 985–86 (citations omitted).)

11 **III. HISTORY AND SETTLEMENT NEGOTIATIONS**

12 On January 31, 2023, Plaintiff submitted a PAGA Notice of Violations to the LWDA and to
13 Defendants. Plaintiff alleged Defendant is liable for civil penalties for violations of Labor Code
14 sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, and
15 1197, and 2802. (Odenbreit Dec., Ex. C). Specifically, Plaintiff contends he and other aggrieved
16 employees were not paid for all hours worked, including minimum wage and overtime wages,
17 were not provided meal and rest breaks or premium pay, were not provided accurate itemized
18 wage statements, failed to reimburse necessary business expenditures, failed to pay all wages upon
19 separation of employment and unfair/unlawful business practices. (Odenbreit Dec., ¶4).

20 Following the order compelling arbitration of Plaintiff’s individual claims and dismissal of the
21 class allegations, Plaintiff continued to seek damages for his individual Labor Code, individual
22 PAGA claims and related claims in arbitration. These claims include: (1) Willful Misclassification
23 (Labor Code §226.8); (2) Unpaid Wages (Minimum Wage/Overtime-Labor Code §§510, 1194,
24 IWC Wage Order 9-2001); (3) Failure to Provide Meal Periods (Labor Code §§226.7, 512); (4)
25 Failure to Provide Rest Breaks (Labor Code §226.7); (5) Failure to Provide Accurate Itemized
26 Wage Statements (Labor Code §226); (6) Failure to Reimburse Necessary Business Expenditures
27 (Labor Code §2802); (7) Unfair/Unlawful Business Practices (Bus. & Prof. Code §§17200), and;
28 (8) Violations of Labor Code Sections 2698-2699 (“PAGA”). (Odenbreit

Dec., ¶5).

On January 18, 2024, the Court ordered Plaintiff’s individual claims to arbitration, dismissed the class allegations and stayed the PAGA representative claims. Subsequently, Plaintiff filed a demand for arbitration with National Arbitration and Mediation (“NAM”). The Parties engaged in an initial exchange of discovery and an Arbitration Hearing was set for August 4-6, 2026. Shortly after the Initial Status Conference in arbitration, the Parties decided to participate in private mediation. (Odenbreit Dec., ¶5).

While in the process of preparing for mediation, Plaintiff was notified by Defendant of three consolidated PAGA actions that included only those employees who were misclassified as Independent Contractors for which judgment was entered on June 30, 2023.² (Odenbreit Dec., ¶6). Plaintiff Cuenca did receive payment from that settlement for the PAGA claims only related to his classification as an Independent Contractor. (*Id.*) As such, those PAGA claims are not a part of the settlement discussions in this Action and only involve alleged PAGA violations when employees were classified as non-exempt.

Additionally, on February 26, 2024, a first amended complaint in another action was filed against Defendant that added an alleged claim for violations of PAGA as to all non-exempt employees of Defendant alleging the same claims that are at issue in this Action: *Hernandez v. Pacific Western Logistics, LLC dba Diligent Delivery Systems*, Orange County Superior Court Case No. 30-2022-01299036-CU-OE-CXC. Plaintiff Cuenca and Defendant have agreed to encompass in any settlement reached the timeframe at issue in the Hernandez action.³ (Odenbreit Dec., ¶7).

On April 24, 2026, the Parties participated in mediation with the Honorable Dan Downey (Ret.). Prior to mediation, Plaintiff received Defendant’s time and pay records for all potential Aggrieved Employees who worked for Defendant during the PAGA Period. (Odenbreit Dec., ¶8). Plaintiff retained an expert to conduct an analysis of the potential PAGA violations and total

² *In Re: Diligent Delivery Wage and Hour Cases*, JCCP4990 Alameda Superior Court. The parties agreed on a settlement following a third mediation with Dan Downey for \$2,836,667.00.

³ *See Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, 716 [representative plaintiff in overlapping PAGA action cannot intervene or object to settlement]; *Moniz v. Adecco USA, Inc.* (2025) 109 Cal.App.5th 317, 332-333 [representative plaintiff in overlapping PAGA action has no individual interest and no standing to appeal judgment].

1 potential civil penalties. Plaintiff also was provided with Defendant’s written employee policies,
2 the identity of potential witnesses, and the total estimated collective pay periods, number of
3 potential Aggrieved Employees and other data points necessary to conduct a complete analysis of
4 the potential value, risks and challenges with continued litigation to enable Plaintiff’s Counsel to
5 evaluate the reasonableness of any potential settlement. (Odenbreit Dec., ¶8). The Parties were
6 able to reach an agreement to settle at mediation the PAGA representative claims and separately,
7 a settlement for Plaintiff Cuenca’s Labor Code claims pending in arbitration. (Odenbreit Dec.,
8 ¶8).

9 **IV. GOOD CAUSE EXISTS TO LIFT THE STAY, WHICH IS UNOPPOSED**
10 **BY DEFENDANT.**

11 On June 18, 2024, the Court granted Defendant’s motion to compel arbitration, dismissed
12 the class claims and stayed the representative PAGA claims. (Odenbreit Dec., ¶5). A stay ordered
13 pursuant to an order compelling claims to arbitration may be lifted upon agreement by the parties.
14 (*Aronow v. Superior Court* (2022) 76 Cal.App.5th 865, 873). Further, an employee’s right to bring
15 a representative PAGA action is unwaivable and as such, an aggrieved employee compelled to
16 arbitrate individual PAGA claims still maintains standing to pursue the representative PAGA
17 claims in court. (*Iskanian v. CLS Trans. Los Angeles, LLC* (2014) 59 Cal.5th 348, 360; *LaCour v.*
18 *Marshalls of CA, LLC* (2025) 117 Cal.App.5th 505, 518). In other words, the Court retains
19 jurisdiction to litigate the non-individual PAGA claims. (*Adolph v. Uber Tech., Inc.* (2023) 14
20 Cal.5th 1104, 1123). Therefore, the Court can and should lift the stay for purposes of approving
21 the PAGA settlement.

22 **V. PAGA ACTIONS AND APPROVAL OF PAGA SETTLEMENTS**

23 PAGA creates a means of “deputizing” citizens as private attorney generals to enforce the
24 Labor Code on behalf of the LWDA. (*Brown v. Ralphs Grocery Co.* (2011) 197 Cal. App. 4th
25 489, 501, *review den.* (Oct. 19, 2011, No. S19”850), *cert. denied* 132 S.Ct. 1910 (Apr. 16, 2012).
26 A plaintiff may not — and Plaintiff here does not — bring a PAGA claim simply on his or her
27 own behalf as an individual claim, but “as the proxy or agent of the state’s labor law enforcement
28 agencies.” (*Id.*, at 986; *see also Reyes v. Macy’s, Inc.* (2011) 202 Cal. App. 4th 1119, 1123-1124;

1 *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380). When an aggrieved
2 employee brings a PAGA claim, “the government is always the real party in interest.” (*Securitas*
3 *Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty.* (2015) 234 Cal. App. 4th 1109, 1119; *Montano*
4 *v. The Wet Seal Retail, Inc.* (2015) 232 Cal. App. 4th 1214, 1222 (“[A] PAGA action is a dispute
5 between an employer and the State agency.”). Accordingly, a plaintiff that brings a PAGA claim
6 represents “the same legal right and interest as state labor law enforcement agencies,” in that the
7 plaintiff seeks to recover those civil penalties that the LWDA otherwise would assess and collect.
8 *Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 986; Labor Code § 2699(a) & (f); *Securitas, supra*, 234
9 Cal. App. 4th at 1119; *see also Medina v. Vander Poel* (E.D. Cal. 2015) 523 B.R. 820, 825
10 (holding “PAGA plaintiffs do not have property rights in their cases.”), and *Amalgamated Transit*
11 *Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003.

12 **A.PAGA One Step Approval Process and Criteria**

13 The PAGA statute imposes several limits on litigants. First, because a PAGA action
14 functions as a “substitute” for an action brought by the state government, a plaintiff suing under
15 PAGA is limited to recovery of civil penalties only, rather than damages or unpaid wages available
16 privately through direct or class action claims. (*Munoz v. RDO Equip. Co.*, 2025 WL 2158562 *5
17 (E.D.Cal. July 30, 2025)). The proposed settlement must be submitted to the LWDA and the trial
18 court must review and approve the settlement. (Labor Code §2699(s)(2)). Although California
19 courts apply a “Rule-23 like” standard when approving PAGA settlements, asking whether the
20 settlement of the PAGA claims is “fundamentally fair, adequate, and reasonable in light of
21 PAGA's policies and purposes.” (*Granillo v. Weatherford U.S., L.P.*, 2023 WL 5985321 *4
22 (E.D.Cal. Sept. 14, 2023)). However, this is not a class action, and PAGA claims are intended to
23 serve a decidedly different purpose—namely to protect the public rather than for the benefit of
24 private parties. (*Arias, supra*, 46 Cal.4th at 986.) The LWDA has provided some guidance
25 regarding court approval of PAGA settlements. “It is [] important that when a PAGA claim is
26 settled, the relief provided for under the PAGA be genuine and meaningful, consistent with the
27 underlying purpose of the statute to benefit the public and the court evaluates whether the
28 settlement meets the standards of being “fundamentally fair, reasonable, and adequate” with

reference to the public policies underlying the PAGA.” (*Granillo, supra* at *4, citing *O’Conner v. Uber Tech., Inc.* 201 F.Supp.3d 1110, 1133 (N.D.Cal. 2016)). As such, a Court will approve a PAGA settlement upon a showing the terms (1) meet the statutory requirements set forth in PAGA, and (2) are fundamentally fair, reasonable and adequate in view of the PAGA’s public policy goals. (*Id.*) When there is no objection to the settlement by the LWDA, the court can construe this as the settlement is presumptively reasonable. (*Mancini v. Western and Southern Life Ins. Co.*, USDC Case No. 16cv2830-LAB (WVG) (S.D.Cal., Sept. 18, 2108), 2018 WL 4489590 *2). On August 26, 2026, Plaintiff submitted the Settlement and these motion papers to the LWDA through its online portal. (Odenbreit Dec., Ex. F).

Further, **only a single approval is required**, unlike the class action two-step approval, since there is no requirement for notice and opt-out rights. (*Munoz, supra* at *5 [citations omitted]). Nor does PAGA provide the ability for other representative plaintiffs or aggrieved employees to object to the settlement. (*Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 665, 712-716).

VI. THE PAGA SETTLEMENT MEETS THE CRITERIA FOR APPROVAL

A.Plaintiff Satisfied the Pre-Filing Notice Requirements to Act As A Representative of the State

When a plaintiff brings a PAGA claim, he or she is properly viewed as a private attorney general prosecuting violations of California’s labor laws on behalf of the state. An employee may commence a PAGA action by fulfilling the requirements of California Labor Code § 2699.3(a)(1), which simply states: “The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.” (Labor Code § 2699.3(a)(1)). As explained above, Plaintiffs complied with the notice requirements and properly pled a PAGA claim. (Odenbreit Dec., Ex. C).

B.Total Estimated Value of PAGA Claim for Civil Penalties

To help the Court evaluate the fairness of the Settlement, below is a discussion of the risk evaluation made by Plaintiff and PAGA Counsel. Plaintiffs and PAGA Counsel considered the arguments and defenses asserted by Defendant at mediation and assessed the risks of moving

forward to trial and what this Court could do in awarding penalties even if Plaintiff prevailed at trial.

Plaintiff estimated that the maximum potential exposure on the PAGA claim is approximately three million seven hundred seventeen thousand one hundred dollars (\$3,717,100.00) (37,171 pay periods * \$100 per pay period). (Odenbreit Dec., ¶10). Plaintiff's calculation of the total potential exposure on the PAGA claim was based on one PAGA penalty per PAGA Pay Period. Plaintiff did not stack the PAGA penalties in their damages calculation as those penalties are only available for violations occurring after Defendant is on notice of the alleged violations. (*Hamilton v. Juul Labs Inc.*, 2021 WL 5331451 *9 (N.D.Cal. Nov. 16, 2021); *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021)).

Plaintiff also took into account, the violation rates for the various alleged violations revealed from the data provided by Defendant. For example, the data showed that of the shifts that were more than six (6) hours, the data revealed only an 8.4% meal period violation rate. (Odenbreit Dec., ¶12). Although the data showed a 53.9% violation rate for second meal periods when employees worked in excess of ten (10) hours, Defendant contends it secured waiver forms from employees for shifts worked more than five (5) hours, but under six (6) hours and for those who worked shifts in excess of ten (10) hours. (*Id.*) From the records, Plaintiff determined it could demonstrate, realistically, a meal period violation rate of approximately 35.4%, however, this figure includes 21.2% late second meal periods and 5.9% short second meal periods for which Defendant could produce waivers even though a meal period was taken. (Odenbreit Dec., ¶13). Plaintiff analyzed each alleged violation of PAGA considering the violation rates shown in the time and pay records, difficulty with proof at trial and Defendant's written policies and potential defenses to determine a reasonable potential value of the civil penalties. (Odenbreit Dec., ¶11). Such analysis, including the discretion provided to the Court to reduce proven civil penalties after trial⁴, revealed that a reasonable estimate of the recovery of civil penalties at trial is five hundred

⁴ Labor Code § 2699(e)(2) states that "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* (2012) 203 Cal. App. 4th 1112 (reducing PAGA penalties by 30% under this provision). It is not uncommon for the Court to dramatically reduce PAGA penalties, even where proven at trial. (*Magada v. Wal-Mart Assoc., Inc.*, 384 F.Supp.3d

thousand twenty-six thousand three hundred forty-one dollars thirty-six cents (\$526,341.36) or 14% of the original maximum estimated civil penalties. As a result, the Settlement reached represents approximately 70% of the reasonably estimated civil penalties that could be recovered after trial. (Odenbreit Dec., ¶¶12-16).

For the reasons set forth above, the settlement is fair, reasonable and in furtherance of the purpose of the PAGA statute.

VII. THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

PAGA Counsel is requesting a PAGA Counsel Fees Award in the amount of one hundred twenty-three thousand nine hundred twenty-eight dollars eleven cents (**\$123,928.11**) and a PAGA Counsel Costs Award of nine thousand dollars (**\$9,000.00**)⁵ for litigation costs incurred. (Odenbreit Dec., Ex. A, ¶3.2.1).

A.PAGA Counsel Are Entitled to Fees from the Civil Penalties Recovered

Prior to the enactment of PAGA, when the State had the resources to seek civil penalties on behalf of the public, it paid its employees (including their attorneys) their salaries and benefits for pursuing such penalties. The Legislature enacted PAGA because the Labor Commissioner and other agencies were hampered in their enforcement of civil penalties by inadequate funding and staffing constraints. (*Iskanian, supra*, 59 Cal.4th at 379). To facilitate broader enforcement, the Legislature enacted PAGA, authorizing “aggrieved employees” to pursue civil penalties on the state’s behalf. (Labor Code § 2699(a)). In creating PAGA, the Legislature expressly provided that the private counsel retained by the Plaintiff to represent the public’s interest can recover fees if the Plaintiff is the prevailing party. (Labor Code § 2699(g)(1)).

B.PAGA Counsel Are Entitled to Fees from the Civil Penalties Recovered

As previously indicated, this is *not* a class action. However, like a class action, it is a representative action where instead of a class, the Plaintiff represents the State and the public. As a matter of law and substance, counsel’s client is the public at large and the State of California.

The Plaintiff is simply a “proxy” for the State. On August 11, 2016, the California

1058, 1104 (N.D.Cal. 2019); *Taduran v. Glidewell* (2026) 121 Cal.App5th 196 *6 (2026) [reduction of penalties by 99% not an abuse of discretion].

⁵ The Settlement provides for up to \$10,000.00 in costs. Plaintiff’s actual costs to date are \$8,538.02, however, Plaintiff anticipates additional costs to be incurred for use of the CaseAnywhere service and filing fees. (Odenbreit Dec., ¶33, Ex. E).

1 Supreme Court decided *Laffitte v. Robert Half International*, which addressed, in a class action
2 context, the correct methodology for awarding fees in a representative action settlement. (*Laffitte*
3 *v. Robert Half Intern. Inc.* (2016) 205 Cal.Rptr.3d 555, 573). The *Laffitte* Court approved
4 awarding fees as a percentage of the settlement fund.:

5 We join the overwhelming majority of federal and state courts in holding that when
6 class action litigation establishes a monetary fund for the benefit of the class
7 members, and the trial court in its equitable powers awards Class Counsel a fee out
8 of that fund, the court may determine the amount of a reasonable fee by choosing an
9 appropriate percentage of the fund created. (*Id.* at p. 573).

10 Here, the three hundred seventy-one thousand seven hundred ten dollars (\$371,710.00)
11 common fund created for the benefit of the public is, with Plaintiffs as proxies for the State, not
12 unlike the fund created in class action settlements, with the public the equivalent of the class
13 referenced in *Laffitte*.

14 The Court, in *Laffitte*, pointed out several reasons why the percentage-of-the-fund method
15 is preferred over the alternative lodestar-multiplier approach in California courts:

16 The recognized advantages of the percentage method—including relative ease of
17 calculation, alignment of incentives between counsel and the class, a better
18 approximation of market conditions in a contingency case, and the encouragement
19 it provides counsel to seek an early settlement and avoid unnecessarily prolonging
20 the litigation [citations]—convince us the percentage method is a valuable tool that
21 should not be denied our trial courts.

22 (*Id.* at 573).

23 An award of one-third of the civil penalties realized in the Settlement is appropriate here
24 under the “substantial benefit” theory. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794,
25 1810; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254). That theory permits a
26 litigant who has sued in a representative capacity to recover fees from the beneficiaries of that
27 representation. Courts exercise their inherent equitable powers to assess attorneys’ fees against
28 the entire fund, thereby spreading the cost of those fees among the public who benefits from
PAGA actions. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 35 (*Serrano III*)). As this approach “better
approximates the workings of the marketplace than the lodestar approach,” there is “a greater
judicial willingness to evaluate a fee award as a percentage of the recovery.” (*Lealao v. Beneficial*
Calif., Inc. (2000) 82 Cal. App. 4th 19, 31, 48).

1 **C.The Requested Fees Are Within the Range of Reasonableness**

2 PAGA Counsel are experienced employment attorneys with expertise in wage and hour
3 class and representative actions. (Odenbreit Dec., ¶¶ 17-31). Throughout this case, PAGA Counsel
4 have borne, and continue to bear, the entire risk and cost of litigation associated with this Action
5 on a purely contingency basis. (Odenbreit Dec., ¶ 35.) As a result, PAGA Counsel have yet to
6 receive any compensation for the amount of time and money invested in the case to date. (*Id.*)
7 Moreover, courts in this county and others have approved attorneys’ fees awards in other PAGA
8 settlements on a common fund basis at higher percentages than the one-third Plaintiff is requesting
9 here. (*Id.*)

10 For these reasons, PAGA Counsel’s requested fee of one-third of the Gross Settlement
11 Amount is well within the range of reasonableness and is fair compensation for undertaking this
12 complex and risky litigation on a contingent basis.

13 **D.PAGA Counsel’s Fee Request Is Reasonable Under the Lodestar Crosscheck.**

14 PAGA Counsel’s fee request is reasonable when calculated using the lodestar method.
15 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
16 spent on the case and the reasonable hourly compensation of the attorney. (*Serrano v. Priest*
17 (1977) 20 Cal.3d 25, 48). The court then may enhance this lodestar figure by a “multiplier” to
18 account for a range of factors, such as the novelty and difficulty of the case, its contingent nature,
19 and the degree of success achieved. (*Id.* at 49; *see also Ketchum v. Moses* (2001) 24 Cal.4th 1122,
20 1132-36; *Thayer v. Wells Fargo Bank* (2001) 92 Cal. App. 4th 819, 834, (“[t]here is no...rule
21 limiting the factors that may justify an exercise of judicial discretion to [adjust the] lodestar”)).

22 Throughout this case, PAGA Counsel have borne, and continue to bear, the entire risk and
23 cost of litigation associated with this Action on a purely contingency basis. (Odenbreit Dec., ¶35.)
24 As a result, PAGA Counsel have yet to receive any compensation for the amount of time and
25 money invested in the case to date. (*Id.*) Contingent-fee cases present the very real risk of working
26 hundreds if not thousands of hours that may never be entirely compensated. (*Id.*) Moreover, while
27 the case is being litigated, counsel must pay overhead (salaries, rent, etc.), provide for their own
28 expenses, and in most cases pay the out-of-pocket expenses incurred on the plaintiff’s behalf. (*Id.*)

1 And the prospect of a court-awarded fee does not greatly reduce the risk posed by these cases.
2 (*Id.*) In many cases, the prospect is nothing more than a potential that never materializes. (*Id.*)
3 First, you must win the case to get a court-awarded fee; even those cases that seem strongest at
4 the onset can be lost and sometimes are lost (*Id.*). Second, there are always pitfalls and unforeseen
5 obstacles that arise along the way, such as settlement offers that the client may accept without
6 ensuring that we receive a reasonable fee or changes in the law that substantially affect the merits
7 of the case, or other uncertainties involving the client. (*Id.*) Finally, there is the great risk inherent
8 in advancing tens if not hundreds of thousands of dollars in out-of-pocket expenses. (*Id.*) If that
9 money were to be invested in some sort of financial investment, one would expect a reasonable
10 rate of return on that investment. (*Id.*) Here, however, the best we can hope to recover is our
11 money, and then only if we are substantially successful; if we are not, all or part of this
12 “investment” can be lost. (*Id.*)

13 The rates utilized by PAGA Counsel are reasonable in light of the rates charged by other
14 counsel in the community. A reasonable hourly rate is the prevailing rate charged by attorneys of
15 similar skill and experience in the relevant community. (*PLCM Group, supra*, 22 Cal.4th at p.
16 1095.) One difficulty in determining the hourly rate of attorneys of similar skill and experience in
17 the relevant community is the scarcity of hourly fee-paying clients in class action litigation. As a
18 practical matter, few, if any, consumers pay attorneys' fees on an hourly basis for such extensive
19 litigation, and thus retainer agreements in such cases are based on a contingency fee relationship.
20 Therefore, there is no customary billing rate, but the nature of class action work should be strongly
21 considered by the Court. However, the Court must consider the hourly rate based on counsel's
22 home market (*Caldera v. Calif. Dept. of Corrections & Rehab.* (2020) 48 Cal.App.5th 601, 610).

23 PAGA Counsel is well acquainted with the contingent fee market throughout California,
24 particularly as it pertains to PAGA and class action litigation. (Odenbreit Dec., ¶¶17-28.) PAGA
25 Counsel has negotiated numerous contingency-fee agreements with plaintiffs, both as individuals
26 and as representatives in class-action and PAGA suits. (Odenbreit Dec., ¶35) Many of those
27 agreements required that counsel receive a fee under certain scenarios that exceed one-third of the
28 recovery. (*Id.*) Plaintiffs here signed a retainer agreement indicating that PAGA Counsel could

1 receive a fee under certain scenarios that exceed one-third of the recovery, as much as 40%. (*Id.*;
2 Odenbreit Dec., ¶34.) PAGA Counsel’s recent attorneys’ fee awards in similar wage-and-hour
3 class and PAGA actions have been one-third of the recovery. (*Id.*)

4 Moreover, PAGA Counsel spent substantial time on this matter. (Odenbreit Dec., ¶34, 37-
5 39, Ex. D.) Aside from drafting the initial complaint, PAGA Counsel opposed the Motion to
6 Compel Arbitration, drafted the demand for arbitration, participated in status conferences and
7 discovery exchange, conducted informal discovery, reviewed and analyzed time and pay records,
8 an arbitration agreement, Plaintiff’s personnel files, relevant policies, and other documentation,
9 researched the applicable law and potential defenses, constructed damage models based on
10 interpretations of California law, engaged and consulted with experts, reviewed information
11 provided by Defendant at the mediation, engaged in meet and confer efforts with Defendant,
12 drafted and revised the Settlement Agreement, and drafted this Motion. (Odenbreit Dec., ¶37)
13 Further, PAGA Counsel will still not receive any compensation for this matter for at least a year
14 and a half and will not receive its full fee for over 3 years. (Odenbreit Dec., ¶35).

15 Courts routinely enhance lodestar amounts based on multipliers that “range from 2 to 4 or
16 even higher.” (*Wershba, supra*, 91 Cal.App.4th at p. 255; *accord, In re Lugo* (2008) 164
17 Cal.App.4th 1522, 1546; *see also, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66
18 (approving multiplier of 2.5); *Vizcaino, supra*, 290 F.3d at p. 1051; *Wal-Mart Stores, Inc. v. Visa*
19 *U.S.A., Inc.* (2d Cir. 2005) 396 F.3d 96, 123 (approving multiplier of 3.5); *Craft v. County of San*
20 *Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1125 (awarding multiplier of 5.2 and collecting
21 cases with cross-check multipliers ranging from 4.5 to 19.6).)

22 These factors alone would justify the 1.626 increase multiplier under the lodestar method
23 in this case. Therefore, under either the common fund or Lodestar theory, PAGA Counsel’s
24 requested attorneys’ fees are reasonable and should be approved by this court. Therefore, under
25 either the common fund or Lodestar theory, PAGA Counsel’s requested attorneys’ fees are
26 reasonable and should be approved by this court.

27 ///

28 ///

1 **E. The Court Should Approve PAGA Counsels’ Litigation Expenses**

2 The litigation expenses incurred by PAGA Counsel in this Action are also to be reimbursed
3 under the Settlement Agreement up to ten thousand dollars (\$10,000.00). (Odenbreit Dec., Ex. A,
4 ¶3.2.1) PAGA Counsel actually incurred eight thousand five hundred thirty-eight dollars and two
5 cents (\$8,538.02) and anticipates an additional four hundred dollars (\$400) in expenses will be
6 incurred in litigating this Action.⁶ (Odenbreit Dec., ¶32, Ex. E.) The lion’s share of these costs
7 were incurred in connection with mediation, and the others listed were all reasonably incurred and
8 necessary to the prosecution of this Action. (*Id.*) Thus, PAGA Counsel respectfully request the
9 Court approve their request for reimbursement in the amount of nine thousand dollars (\$9,000.00).

10 **VIII. THE COURT SHOULD APPROVE THE NOTICE, DISTRIBUTION PLAN**
11 **AND ADMINISTRATION COSTS**

12 The Parties have agreed to use Phoenix Settlement Administrators (“PSA”) as the third-
13 party administrator to facilitate the Settlement. (Odenbreit Dec., Ex. A, ¶1.2). PSA will be
14 responsible for updating Aggrieved Employees’ addresses, mailing the settlement payment letter,
15 submitting payment to the LWDA and calculating and distributing the settlement checks, among
16 other duties. (PSA Dec., ¶¶7-8, Ex. B)) PSA has capped its fees at ten thousand five hundred
17 dollars (\$10,500.00) for administering the Settlement and based on PAGA Counsels’ experience
18 in other class and PAGA settlements, PSA’s costs for administering this Settlement are fair and
19 reasonable. (PSA Dec., Ex. B.)

20 Since the Settlement provides for the Defendant to fund the GSA in monthly payments
21 over thirty-six (36) months, PSA will hold all payments in a QSF and make two (2) distributions
22 to Aggrieved Employees, the LWDA and PAGA Counsel. (Odenbreit Dec., Ex. A, Amendment
23 No. 1). Before each distribution to Aggrieved Employees, PSA will conduct a search for updated
24 addresses through the NCOA. (PSA Dec., ¶8). The Notice will advise Aggrieved Employees their
25 Individual PAGA Payment will be made in two installments, the estimated total Individual PAGA
26 Payment and the amount of each Individual PAGA Payment installment, the total number of pay
27 periods they worked for Defendant, and the void date of the Individual PAGA Payment check.

28 _____
⁶ Mahoney Law Group anticipates an additional \$400 will be spent on filing and service fees related to this motion and compliance documents to be filed following distribution. (Odenbreit Dec., ¶32).

(Odenbreit Dec., Ex. B). As set forth above, distributing the settlement proceeds in two distributions will reduce administration costs providing more funds available for distribution to the LWDA and Aggrieved Employees as well as provide larger payments increasing the likelihood the checks will be cashed. (Odenbreit Dec., ¶10).

IX. CONCLUSION

Plaintiffs and PAGA Counsel submit that the proposed Settlement as documented in the Settlement Agreement is fair, adequate, reasonable, and in the best interest of Aggrieved Employees and the State of California. Plaintiff respectfully requests that the Court approve the Settlement and order the Parties to carry out the Settlement according to the terms of the Settlement Agreement and enter the concurrently filed [Proposed] Order Granting Approval and Judgment to that end.

Dated: August 28, 2026

MAHONEY LAW GROUP, APC

By: 
Kevin Mahoney, Esq.
Katherine J. Odenbreit, Esq.
Attorneys for Plaintiff RAUL CUENCA

PROOF OF SERVICE

Code of Civ. Proc. § 1013a, subd. (3)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 249 East Ocean Boulevard, Suite 814, Long Beach, California, 90802.

On **August 28, 2026**, I served [X] true copies [] originals of the following document(s): **PLAINTIFF'S MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT, AWARD OF ATTORNEYS' FEES AND COSTS** . I served the document(s) on the person(s) below as follows:

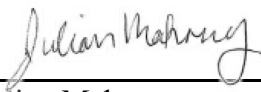
Steven A. Groode, Esq. Maria Lozano, Esq. LITTLER MENDELSON, P.C. 1255 Treat Boulevard, Suite 600 Walnut Creek, CA 94597	Attorneys for Defendant WESTERN DELIVERY & LOGISTICS, LLC dba DILIGENT DELIVERY SERVICES Telephone: (925) 932-2468 Facsimile: (925) 946-9809 Email: SGroode@littler.com AWitte-Rafizadeh@littler.com MLozano@littler.com JAGoldberg@littler.com MGerard@littler.com
Jennifer Goldberg, Esq. LITTLER MENDELSON, P.C. 2049 Century Park East, 5th Floor, Los Angeles, CA 90067-3107	Attorneys for Defendant WESTERN DELIVERY & LOGISTICS, LLC dba DILIGENT DELIVERY SERVICES Telephone: (310) 553-0308 Facsimile: (800) 715-1330 Email: awitte-rafizadeh@littler.com jagoldberg@littler.com

The document(s) were served by the following means:

☒ **By electronic service:** Based on a court order, I caused the document(s) to be sent to the persons at the electronic service addresses listed above by transmission through CASE ANYWHERE.

☒ **(State):** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **August 28, 2026**, at Long Beach, California.


Julian Mahoney