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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

DANELL PAGE, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

CONDUENT STATE & LOCAL SOLUTIONS,
INC., a New York corporation; RANDSTAD
US, LLC, a limited liability company; and DOES
1 through 10, inclusive,

Defendants.

Case No.: 23CV037588

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR AN ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEY GENERAL'S ACT OF 2004;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: December 12, 2024
Time: 2:30p.m.
Courtroom: Dept. 15
Judge: Hon. Peter Borkon

Reservation ID: 201764399314

Action Filed: July 6, 2023
Trial Date: Not Set

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on December 12, 2024 at 2:30 p.m., or as soon thereafter as the
matter may be heard, in Department 15 of the above-captioned Court, located at the Rene C. Davidson
Courthouse Administration Building on 1221 Oak Street, Oakland, CA 94612, Plaintiff DANELL PAGE
("Plaintiff") will and hereby does move this Court for an order approving the PAGA SETTLEMENT
AGREEMENT ("Agreement" or "Settlement") reached with defendant CONDUENT STATE &

1 LOCAL SOLUTIONS, INC (“Defendant”), a true and correct copy of which is attached as **Exhibit 1** to
2 the Declaration of H. Scott Leviant submitted herewith.

3 Specifically, Plaintiff moves for an order to:

4 1. grant approval of the terms of the Agreement pursuant to the Labor Code Private
5 Attorney Generals Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the
6 settlement; the amount of distributions to the State and Aggrieved Employees; the amounts
7 allocated to attorney’s fees and costs; and, the amount allocated to the settlement administrator;
8 and,

9 2. direct disbursement of the Maximum PAGA Settlement Amount pursuant to the terms
10 of the Agreement.

11 TENTATIVE RULINGS: The court adopts the tentative ruling procedure set out in California
12 Rules of Court, rule 3.1308(a)(1). The tentative ruling or notice to appear will generally be available by
13 4:00 p.m. two court days prior to the scheduled hearing and no later than 3:00 p.m. the court day before
14 the hearing. Unless the court directs otherwise, the court’s tentative ruling will be available online or by
15 calling (866) 223-2244. The process for viewing a tentative ruling online is subject to change.

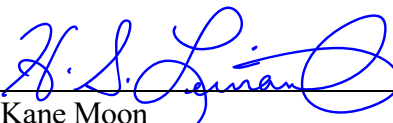
16 Instructions for access to tentative rulings online can be found at
17 <http://www.alameda.courts.ca.gov/Pages.aspx/Tentative-Rulings>. Whenever a tentative ruling has not
18 been issued, the parties are to appear at the hearing unless otherwise ordered.

19 This motion is based on this Notice, the following Memorandum, the Declarations of H. Scott
20 Leviant, and ILYM Group, Inc., submitted herewith, all other pleadings and papers on file in this
21 action, and any oral argument or other matter that may be considered by the Court.

22 Respectfully submitted,

23 Dated: November 18, 2024

MOON LAW GROUP, PC

24 By: 
25 Kane Moon
26 H. Scott Leviant
27 Mariam Ghazaryan

28 Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 Plaintiff DANELL PAGE (“Plaintiff”) moves the Court for approval of the PAGA
3 SETTLEMENT AGREEMENT (“Settlement”) between Plaintiff and Defendant (together with Plaintiff,
4 the “Parties”). The Settlement resolves the matter, including the Private Attorneys General Act
5 (“PAGA”) claims alleged in this Action on behalf of Plaintiff, all alleged Aggrieved Employees, and the
6 State of California.

7 PAGA requires Court approval of the settlement of a PAGA claim: “[T]he...court shall review
8 and approve any settlement of any civil action filed pursuant to this part.” Lab. Code § 2699(e)(2). The
9 California Supreme Court has interpreted this provision to ensure “any negotiated resolution [of a PAGA
10 claim] is fair to those affected.” *Williams v. Superior Court*, 3 Cal. 5th 531, 549 (2017). The California
11 Supreme Court has not defined a standard by which trial courts are to review and approve proposed
12 PAGA settlements. Nonetheless, California courts largely consider whether a proposed PAGA
13 settlement provides “genuine and meaningful [relief] consistent with the underlying purpose of the
14 statute” and is reasonable in light of the potential verdict value of all claims released. See *O’Connor v.*
15 *Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016); *see also* Lab. Code § 2699(e)(2).

16 After extensive formal discovery, the exchange of documents and data prior to mediation, and a
17 full day of mediation with experienced wage and hour mediator Tripper Ortman, Esq., Plaintiff and
18 Defendant reached a proposed settlement that will resolve the PAGA claims pending in this action (the
19 “Lawsuit”) for approximately 996 aggrieved employees.

20 Under the Agreement, Defendant shall pay a maximum sum of **\$320,000.00**, referred to in the
21 Agreement as the Maximum Settlement Amount, for aggrieved employees employed in California
22 during the designated PAGA period.

23 This motion is brought pursuant to Labor Code § 2699.3(b)(4). This motion and the Agreement
24 were served on the LWDA prior to the filing of this Motion. Lab. Code § 2699(e)(2).

25 For the reasons below, Plaintiff requests that the Court enter an order approving the settlement.

26 **II. SUMMARY OF THE TERMS OF SETTLEMENT**

27 The full terms of the settlement are in the Agreement. The key material terms are as follows:

28 (a) Aggrieved Employees: all current and former non-exempt employees employed

in California by Defendant at any time during the PAGA Period (the period between and including July 6, 2022 and July 31, 2024). (Agreement, ¶¶ 1.4, 1.19).

- (b) No Reversion: The Settlement is *non-reversionary*. (Agreement, ¶ 3.1).
- (c) Maximum Settlement Amount: Defendant agrees to pay the maximum sum of **\$320,000.00** (hereinafter referred to as the “Maximum Settlement Amount” or “MSA”) for settlement of the PAGA Penalties, which shall be inclusive of Plaintiff’s Counsel’s attorney’s fees and costs, the Plaintiff’s general release payment, and the settlement administrator’s fees and costs. (Agreement, ¶ 3.1).
- (d) Net Settlement Amount: At least **\$173,333.33** will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least **\$130,000.00** under the Agreement, and Aggrieved Employees will receive at least **\$43,333.33**. (Agreement, ¶¶ 1.15, 3.2).
- (e) Attorney’s Fees: Plaintiff’s Counsel requests an award of attorney’s fees in the amount of **\$106,666.67**, which is one-third of the MSA. (Agreement, ¶ 3.2.1.)
- (f) Litigation Costs: Plaintiff’s Counsel seeks reimbursement of actual litigation costs, to a maximum amount of \$17,500.00. Those actual costs are expected to be \$19,801.20, which is more than the maximum capped amount. Therefore, **\$17,500.00** is requested. (Agreement, ¶ 3.2.1; Leviant Decl., ¶ 40, and Exh. 2.)
- (g) Settlement Administration: Payment to Aggrieved Employees and administration will be accomplished through third-party settlement administrator ILYM Group, Inc., which has agreed to perform Administrator duties for a flat fee *not to exceed* \$15,000.00¹, which is reasonable, based on all of the services offered. (Agreement, ¶ 3.2.2; Leviant Decl., ¶ 41; and, Mullins Decl. filed herewith.)
- (h) Plaintiff’s General Release: Plaintiff is providing a general release of all claims, known and unknown, in exchange for a payment of \$7,500.00. (Agreement, ¶¶

¹ The actual administration cost is **\$10,410.82**.

3.2.4, 5.1.)

- (i) Uncashed Checks: Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the State Bar Justice Gap Fund (“Cy Pres Recipient”). (Agreement, ¶ 4.4.3)
- (j) PAGA Release: In exchange for the above settlement consideration, Defendant shall be entitled to a *specific* release from the LWDA and each and every Aggrieved Employee, including Plaintiff, of the claims alleged in this matter or that could have been alleged based on the allegation and claims.² (Agreement, ¶ 5.2; Exh. 1.) Plaintiff is also providing a general release of all claims, known or unknown.
- (k) Notice to LWDA: The Declaration of H. Scott Leviant confirms that notice was provided to the LWDA and attaches the confirmatory submission documents. (Leviant Decl., ¶ 45, and Exh. 3 thereto.)

III. STATEMENT OF FACTS

Defendant CONDUENT STATE & LOCAL SOLUTIONS, INC., delivers digital business services to the commercial, government and transportation sectors. (Leviant Decl., ¶ 5.) Plaintiff worked for Defendant in California during the PAGA Period. (Leviant Decl., ¶ 6.)

Plaintiff alleges that Defendant engaged in practices and procedures that violated the California Labor Code. These alleged statutory violations subject Defendant to potential liability for PAGA penalties pursuant to Labor Code § 2698. Through this action, Plaintiff seeks to recover penalties pursuant to Labor Code § 2698, *et. seq.* (Leviant Decl., ¶ 4.) Defendant contends it had lawful policies, including break and pay policies, in effect throughout the statutory period, and viable defenses the alleged penalty claims. (Leviant Decl., ¶ 7.)

² This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (concluding that “with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act....”).

1 **IV. PROCEDURAL HISTORY**

2 On March 30, 2023, Plaintiff's Counsel sent a letter to the LWDA on behalf of Plaintiff in
3 compliance with Labor Code § 2699.3. (Leviant Decl., ¶ 8.) More than 65 days passed after the letter
4 was sent to the LWDA, and the LWDA did not indicate that it intended to investigate the alleged
5 violations referenced in the letter. (Leviant Decl., ¶ 9.) On July 6, 2023, Plaintiff commenced this Action
6 by filing a Complaint alleging a cause of action against Defendant for civil penalties under the Private
7 Attorneys General Act ("PAGA"). The Complaint is the operative complaint in the Action (the
8 "Operative Complaint.") (Leviant Decl., ¶ 10.) Defendant denies all liability and admits to no claim by
9 virtue of its agreement to settle this matter. (Leviant Decl., ¶ 11.) Because Court approval of a PAGA
10 settlement is required, the settlement is presented for review and approval. (Leviant Decl., ¶ 12.)

11 **V. SETTLEMENT NEGOTIATIONS**

12 Counsel for Plaintiff has thoroughly investigated the facts relating to the claims alleged in the
13 operative complaint and have made a thorough study of the legal principles applicable to the claims
14 asserted against Defendant. Substantial formal discovery was conducted, and additional data was shared
15 in connection with mediation efforts. Based on their investigation and evaluation of this case, Plaintiff's
16 Counsel has concluded that the settlement is fair, reasonable, and adequate in light of all known facts and
17 circumstances, including the defenses asserted by Defendant, potential adverse findings regarding
18 liability, and numerous potential appellate issues. (Leviant Decl., ¶ 13.)

19 On June 26, 2024, following exchange and extensive review of relevant documents and data, the
20 Parties engaged in a full-day mediation with experienced wage and hour class and PAGA action
21 mediator, Tripper Ortman, Esq., which resulted in a settlement of the Lawsuit, and the individual non-
22 PAGA claims of Plaintiff which will be memorialized in a separate confidential settlement agreement.
23 (Leviant Decl., ¶ 14.)

24 The Parties have memorialized the terms of the settlement in a long-form agreement.
25 ("Settlement"). (Leviant Decl., ¶ 15.)

26 **DISCUSSION**

27 **VI. THE QUI TAM NATURE OF PAGA CLAIMS**

28 In 2003, California enacted the Private Attorneys General Act of 2004 after recognizing systemic

underenforcement of many worker-protection laws and regulations. *Williams*, 3 Cal. 5th at 545. The solution enacted by the Legislature deputized private citizens to recover civil penalties for the State, where those penalties were previously only available to law enforcement. *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009) (emphasis added).

“Because an aggrieved employee’s action under the Labor Code Private Attorneys General Act of 2004 functions as a substitute for an action brought by the government itself, a judgment in that action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government.” *Arias*, 46 Cal. 4th at 986. With limited exceptions, “[o]f the civil penalties recovered, 75 percent goes to the Labor and Workforce Development Agency, leaving the remaining 25 percent for the ‘aggrieved employees.’” *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 380 (2014) *certiorari denied sub nom. CLS Transportation Los Angeles v. Iskanian*, — U.S. —, 135 S.Ct. 1155, 190 L.Ed.2d 911 (Jan. 20, 2015). Thus, a PAGA claim is, predominantly, a claim belonging to the State.

“The civil penalties recovered on behalf of the state under the PAGA are distinct from the statutory damages to which employees may be entitled in their individual capacities.” *Iskanian*, 59 Cal. 4th at 381. Because of this distinction, and the fact that the penalties made available through PAGA fell previously within the exclusive domain of State enforcement, the California Supreme Court explained that PAGA suits are best viewed as a species of *qui tam* action. *Iskanian*, 59 Cal. 4th at 382 (“A PAGA representative action is therefore a type of *qui tam* action.”).

VII. THE STANDARDS FOR APPROVAL OF A PAGA SETTLEMENT

Prior to *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court decisions. In their view, a PAGA allocation, even if a small portion of the total settlement, could be reasonable if the settlement of the underlying wage and hour claims is robust and serves the deterrent purpose of the PAGA statute. *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) (“By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA.”).

1 *Moniz* then provided explicit confirmation that this was an appropriate yardstick by which to
2 measure reasonableness of a PAGA settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with
3 federal courts, concluded that the class action factors are appropriately considered, along with a
4 consideration of whether the settlement furthers “PAGA’s purposes to remediate present labor law
5 violations, deter future ones, and to maximize enforcement of state labor laws.”

6 The class action settlement factors used to assess the fairness, adequacy, and reasonableness of a
7 class action settlement are well understood. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), held
8 that “a presumption of fairness exists where: (1) the settlement is reached through arm’s-length
9 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
10 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
11 small.”³ *Id.*, at 1801. The court should also consider the expense, complexity and likely duration of
12 further litigation. *Dunk*, 48 Cal. App. 4th at 1801. “It is, of course, the strong public policy of this state to
13 encourage the voluntary settlement of litigation.” *Osumi v. Sutton*, 151 Cal. App. 4th 1355, 1359 (2007).
14 Finally, these factors are not exclusive and the court is free to balance and weigh, based on
15 circumstances. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 244-245 (2001).

16 While class settlement factors provide some guidance as to how a Court may approach the
17 evaluation of a PAGA settlement, there are significant differences between PAGA settlements and class
18 action settlements that must be recognized. Unlike a class action settlement, the scope of release
19 permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is binding not only on
20 the named employee plaintiff but also on government agencies and any aggrieved employee not a party
21 to the proceeding,” *Arias*, 46 Cal. 4th at 986, “the nonparty employees, because they were not given
22 notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to
23 remedies other than civil penalties.” *See id.*, at 987. Thus, the scope of a release in a PAGA settlement is
24 confined to PAGA penalties, and not the related individual claims available under the Labor Code.⁴

25
26 ³ PAGA provides no notice or claim procedures as exist in class action cases.

27 ⁴ This is contrasted with the much broader release permitted in a class action context, which may be
28 based on “any matter or fact” alleged in the complaint. *See In re Corrugated Container Antitrust*

Applying the above standards to this settlement, the settlement meets all criteria for approval.

VIII. THE SETTLEMENT MEETS ALL THE CRITERIA FOR APPROVAL

Applying the class settlement fairness factors discussed above – limited to those compatible with the unique features of PAGA claims – the proposed settlement embodies all of the key features of a settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for approval.

Plaintiff and Plaintiff's counsel have diligently investigated the claims in this matter. Plaintiff and Counsel concluded, after taking into account the disputed factual and legal issues involved in this Action, the substantial risks attending further prosecution, including risks related to the outcome of possible summary judgment efforts, and the substantial benefits to be received pursuant to the compromise and settlement of the Action as set forth in the Settlement, that settlement on the terms agreed to are in the best interest of Plaintiff and the Aggrieved Employees and are fair and reasonable. Plaintiff's Counsel brought to bear a great deal of experience with wage and hour actions in negotiating the settlement of this case. (Leviant Decl., ¶ 18.)

Resolution at this time will forestall the need for additional expensive and time-consuming litigation that could very well result in an outcome less satisfactory than that proposed under this settlement. But, before any other consideration, we have agreed to this settlement because it is objectively reasonable. The potential for resolution benefits the aggrieved employees and the State of California, since they do not have to wait additional years for a similar recovery. The efficiency of this litigation benefits the Court, the parties and their counsel. A settled resolution now is the most realistic method for addressing the claims raised in this matter. (Leviant Decl., ¶ 19.)

Plaintiff's counsel engaged in the necessary investigation in this case that made it possible to exercise informed judgment about the settlement process. The Defendant in this matter produced important information, including the employee handbook as well as pay and time data for a substantial sampling of employees. That information, coupled with other data provided prior to mediation, was sufficient to permit Plaintiff's counsel to adequately evaluate the settlement. Plaintiff had more than

Litigation, 643 F.2d 195, 221 (5th Cir. 1981). In this matter, the Agreement will not affect the rights of Aggrieved Employees who may possess individual wage and hour claims.

1 enough information upon which to evaluate a fair and reasonable settlement amount. (Leviant Decl., ¶
2 20.)

3 Here, the expense, complexity and likely duration of future litigation was to some extent an
4 unknown. However, what is certain is that to adequately establish the foundational violations that would
5 support any penalty award, significant time and expense would be invested. To adequately establish that
6 aggrieved employees experience the alleged violations, and at what frequency, the aggrieved employees
7 would need to be interviewed in a systematic fashion. The process would be expensive and time-
8 consuming. But doing so would have been required, since frequency of violations would need to be
9 established before any penalties could be recovered. As to claims such as meal period and rest break
10 violations, the decisions of aggrieved employees are a major factor in assessing liability. In sum, the
11 evidence collected to date leads us to conclude that, to the extent violations occurred, a fact which
12 Defendant strongly disputes, the violations were *not* systematic and *not* uniform across all of
13 Defendant's employees who worked during the PAGA period. With these considerations in mind, the
14 amount of the Settlement is reasonable. (Leviant Decl., ¶ 21.)

15 **A. The PAGA Penalties Provide Genuine and Meaningful Relief to the LWDA and**
16 **Aggrieved Employees Consistent with the Dual-Purpose of PAGA**

17 The PAGA Penalties, pursuant to PAGA and the terms of the Settlement Agreement, will be
18 allocated to the LWDA and all Aggrieved Employees, with seventy-five percent allocated to the former
19 and twenty-five percent allocated to the latter. (Leviant Decl., ¶ 22.)

20 The PAGA Penalties amount, which is estimated to be \$177,922.51⁵, provides genuine and
21 meaningful relief to the LWDA and all alleged Aggrieved Employees consistent with the dual-purpose
22 of PAGA because it both redresses the alleged Aggrieved Employees for the Labor Code violations they
23 suffered from throughout their employment with Defendant and deters Defendant from violating the
24 Labor Code in the future, in light of the long-term, costly process required to litigate, mediate, and
25 ultimately settle the Action. For these reasons, Plaintiff's Counsel believes the PAGA Penalties provides
26

27 ⁵ The PAGA Penalties equals the Maximum PAGA Settlement Amount (\$320,000.00) less the PAGA
28 Counsel fees (\$106,666.67), PAGA Counsel costs (\$17,500.00), Plaintiff's General Release (\$7,500.00) and
Administration Expenses Payment (\$10,410.82).

genuine and meaningful relief consistent with the underlying purpose of PAGA. (Leviant Decl., ¶ 23.)

B. The PAGA Penalties Are Reasonable Pursuant To Labor Code Section 2699(e)

Labor Code § 2699(e) states: “For purposes of this part, whenever the [LWDA] has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty...[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.” Lab. Code § 2699(e). This section grants the Court discretion to limit a PAGA civil penalties award where the facts or circumstances justify reduction, or where such award is unreasonable and/or excessive.

The PAGA Penalties are also reasonable in light of the potential verdict value of all claims released. Indeed, the Settlement contains a release of all PAGA claims that arise or could arise from the facts underlying the operative Complaint and PAGA Notice, including those related to unpaid wages, including minimum wages, overtime compensation, meal period premiums, rest break premiums and unreimbursed business expenses. These claims served as the basis of the alleged Aggrieved Employees’ PAGA claims. (Leviant Decl., ¶ 24.)

For the PAGA Period, the number of PAGA Pay Periods at issue is estimated to be 25,736 for the 996 Aggrieved Employees. Using the most straightforward formulation of applying the “catch-all” \$100 penalty specified in Labor Code § 2699(f)(2) to each PAGA Pay Period, the total penalty exposure is approximately \$2,573,600. In addition, with assistance from Plaintiff’s data consultant, and after a thorough review of evidence casting serious doubt on the viability of many of the theories of penalty recover, counsel separately estimated the plausible potential PAGA exposure to be, on a penalty-by-penalty basis, to be approximately **\$1,029,440.00**, which includes many overly optimistic assumptions about the ability to prove the frequency of violations for all aggrieved employees who allegedly experienced issues. The settlement is just over 30% of that very optimistic exposure calculation, described below:

- failure to provide meal periods – Deficient meal periods given the nature of the work resulted in the alleged non-compliant meal periods. Assuming that facial violations in time records all result in a penalty, a generous assumption given that employee choice can be a significant

factor, the calculated maximum exposure is \$1,286,800.00 (25,736 total pay periods * \$50 penalty). However, this claim is highly dependent upon Aggrieved Employee testimony, and the voluntary choice to take a late meal period by Aggrieved Employees, resulting in a more realistic exposure of **\$386,040.00** (\$1,286,800.00 maximum exposure * 30% violation rate).

- failure to provide rest breaks – Similarly, time constraints due to the nature of the work resulted in the alleged non-compliant rest breaks. Assuming that rest break violations occurred and all result in a penalty, a generous assumption given that employee rest breaks are not recorded and employee choice can be a significant factor, the calculated maximum exposure is \$1,286,800.00 (25,736 total pay periods * \$50 penalty). However, Defendant heavily disputed this theory. Given the absence of any record to establish missed rest breaks and the highly dependent Aggrieved Employee testimony, it is estimated that this claim could support, at best, a more realistic exposure of **\$128,680.00** (\$1,286,800.00 maximum exposure * 10% violation rate).
- failure to timely pay wages – The maximum exposure for this claim is \$2,573,600.00 (25,736 total pay periods * \$100 penalty), based on regular rate pay calculation errors, and assuming a regular rate error in every pay period, which did not occur. Thus, given Defendant's defenses, this claim could support, at best, penalties of **\$257,360.00** (\$2,573,600.00 maximum exposure * 10% violation rate).
- failure to furnish accurate itemized wage statements – It is estimated that the maximum exposure for this claim is \$2,573,600.00 (25,736 total pay periods * \$100 penalty). This claim is tied to the unpaid wage claims, which makes it entirely derivative, and not based on a facial violation, thus the \$250 penalty is inapplicable. It is also more plausible to assume that a fraction of aggrieved employees would support the regular rate error allegations, resulting in a more realistic exposure of no more than **\$257,360.00** (\$2,573,600.00 maximum exposure * 10% violation rate).

(Leviant Decl., ¶ 21.)

Further reflected in the PAGA Penalties is the potential risks in continuing to litigate the Action, including, but not limited to, the risk of not prevailing at trial, and the risk that, even if Plaintiff prevailed,

1 the PAGA damages would be limited due to the largely discretionary nature of PAGA civil penalties;
2 Defendant's defenses; and the fact that the ultimate purpose of the Action is and has been to obtain
3 genuine and meaningful relief for the LWDA and Aggrieved Employees. The PAGA Penalties
4 constitutes a reasonable and meaningful recovery. (Leviant Decl., ¶ 25.)

5 **1. The Total Amount Offered in Settlement is \$320,000.00**

6 The Settlement provides a monetary benefit that falls well within "the range of an acceptable
7 settlement" under the circumstances, which is the standard on which the instant Settlement must be
8 judged. As held by the Ninth Circuit, a settlement may be fair and reasonable even where it only
9 provides a fraction of what could have been obtained at trial. *See Linney v. Cellular Alaska P'ship*, 151
10 F.3d 1234, 1242 (9th Cir. 1998).

11 Under the Agreement, Defendant shall pay a maximum sum of \$320,000.00. Defendant asserted
12 a number of defenses that potentially could have undermined Plaintiff's claims if they were to be
13 litigated. Specifically, Defendant argued that numerous individualized inquiries would be needed to
14 determine liability on Plaintiff's claims, including (1) whether each individual took a particular meal
15 period or rest break on a particular occasion, (2) whether additional renumerations for purposes of
16 regular ate calculations were non-discretionary, (3) whether the meal period was waived or voluntarily
17 not taken, and (4) where the individual skipped the meal or rest period, or *why* it was skipped for each of
18 the allegedly aggrieved employees.

19 **2. Payment of At Least \$177,922.51 in Penalties**

20 Under the Agreement, the amount available for distribution as penalties under PAGA (the PAGA
21 Penalties) is **\$177,922.51**. The amount is a significant penalty, but it is not confiscatory, nor is it, in the
22 terms of the PAGA statute, "unjust, arbitrary, or oppressive." Lab. Code § 2699(e)(2).

23 *a) The LWDA shall receive \$133,441.88*

24 As 75% of the penalties are allocated to the LWDA, the LWDA stands to receive at least
25 **\$133,441.88** under the Agreement. Further, pursuant to Labor Code § 2699.3(b)(4) the "provisions of
26 the settlement relating to health and safety laws shall be submitted to the division at the same time that
27 they are submitted to the court. This requirement shall be construed to authorize and permit the division
28 to comment on the settlement provisions, and the court shall grant the division's commentary appropriate

weight.” The LWDA will have an opportunity to comment upon the amount to be paid to the LWDA. This provision protects against collusive settlements for less than a reasonable value of the claim.

b) *Aggrieved Employees shall receive \$44,480.63*

Approximately 996 Aggrieved Employees shall receive at least **\$44,480.63** (25% of the penalty) under the terms of the Agreement and by operation of PAGA. The Court should give weight to the fact that the primary purpose of PAGA is not to provide a windfall to Aggrieved Employees; the penalties recovered under PAGA are *not* surrogate individual damages. Instead, the amount available to Aggrieved Employees is in addition to any damages that could be recovered via individual claims.

C. The Presence of a Government Participant

As set forth above, 75% of the penalty is paid to the LWDA. In connection therewith, former Labor Code § 2699.3(b)(4) permits the LWDA to comment on the penalties. This provides an independent check on collusive settlements. The LWDA was notified of the Settlement. (Leviant Decl., ¶ 45.)

D. PAGA Counsel Are Experienced and Negotiated Aggressively

The court may also consider that negotiations between the Parties were conducted at arm's length, in an adversarial manner, despite a mutual desire to resolve the case. (Leviant Decl. ¶¶ 18-20.) The court may consider the opinion of all counsel that the settlement arrived at is fair, reasonable and in the best interests of the aggrieved employees. PAGA Counsel is experienced with employment class and representative actions, as set forth more fully in the Declaration of H. Scott Leviant filed herewith.

E. Additional Factors Weigh in Favor of Approving the Terms of the Proposed Settlement, Including the Requested Fees and Costs

In addition to the factors presented above, the proposed settlement does not possess any obvious deficiencies with respect to its other terms, including the agreed-upon fees and costs.

1. Fees and Costs

Courts in the Ninth Circuit and California generally use the “percentage method” rather than the lodestar approach when awarding attorneys’ fees in a common fund type settlements. *See* 7 Witkin, B.E., CALIFORNIA PROCEDURE (2007 Supp.) §§ 255-261 at 236-241 (describing prevalence of percentage method in California); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] litigant or a lawyer

1 who recovers a common fund for the benefit of persons other than himself or his client is entitled to a
2 reasonable attorney's fee from the fund as a whole"); *In re Activision Sec. Litig.*, 723 F. Supp. 1373,
3 1377-78 (N.D. Cal. 1989) (endorsing percentage method). *See generally*, *Serrano*, 20 Cal. 3d at 25.

4 While this is not a class action, the custom and practice in class actions is to award approximately
5 one-third of a fund as a fee award. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008)
6 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used,
7 fee awards in class actions average around **one-third** of the recovery.") (emphasis added). The proposed
8 attorney fee award here is 33 1/3% of the MSA, an amount reasonably comparable to "average" fees
9 awarded in California state court class action cases used for comparison purposes here. *Chavez*, 162 Cal.
10 App. 4th at 66 n. 11. Again, this is **not** a class action. It is more akin to contingent representation with
11 an additional requirement of Court review due to the *qui tam* nature of PAGA claims. The California
12 Supreme Court has removed any lingering doubt about the use of the percentage of the fund method to
13 award attorney's fees in California Courts, endorsing and encouraging that method. *Laffitte v. Robert*
14 *Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).⁶

15 Thus, courts regard circumstances in which class counsel's work is wholly contingent, such as in
16 class actions and other common fund type cases, as a factor weighing in favor of approving a negotiated
17 fee award that approximates market rates. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132-33 (2001). This
18 matter has been litigated by Plaintiff's Counsel in a manner that is reasonable, diligent, and efficient.
19 The actual lodestar incurred by Plaintiff's counsel to date is no less than \$90,180.00, not including
20 unbilled time and estimated future work. (Leviant Decl., ¶¶ 37-39.) Counsel for Plaintiff invested
21 significant time collecting information regarding Plaintiff's experience with Defendant, and participating
22 in many meet and confer calls with Defense counsel to obtain data. Counsel for Plaintiff has also spent
23 considerable time evaluating data before the mediation in this matter and in preparing for settlement
24 discussions with Defendant's counsel at mediation. Those efforts led to this reasonable settlement.

25
26
27 ⁶ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing
28 doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method
inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport
to bar its usage generally in common fund cases." *Laffitte*, at 501.

(Leviant Decl., ¶ 36-38.) Plaintiff's Counsel requests **\$106,666.67**, as specified in the Settlement Agreement, which represents a multiplier of just **1.2**. (Leviant Decl., ¶ 39.)

The Agreement also provides for the award of actual costs, capped at \$17,500 based on Plaintiff's Counsel's actual out of pocket expenses in taking on representation in this Lawsuit on a contingency basis. (Leviant Decl., ¶ 40.) Actual costs are above the capped amount, and, consistent with the Settlement, a cost award of **\$17,500.00** is requested. (*Id.*)

2. Administration Fees Are Very Reasonable

Administration will be completed by ILYM Group, Inc., for **\$10,410.82**, a very reasonable amount for the services rendered. (Leviant Decl., ¶ 41; Mullins Decl., ¶ 7.)

F. Plaintiff is Providing a General Release

From the Maximum Settlement Amount, \$7,500.00 is allocated to Plaintiff in exchange for a general release of all claims, known and unknown. Plaintiff's Declaration submitted herewith confirms Plaintiff's involvement in the matter and that Plaintiff is resolving individual claims by way of the general release. (Page Decl., ¶¶ 2-8.)

IX. CONCLUSION

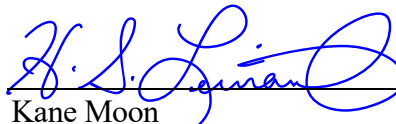
For the above reasons in fact and law, Plaintiff requests this court enter an order approving the settlement memorialized in the Agreement.

Respectfully submitted,

Dated: November 18, 2024

MOON LAW GROUP, PC

By: _____



Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 725 S. Figueroa St., Suite 3100, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **PLEADING NAME** on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

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[✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **November 18, 2024** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature