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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF KERN
12

13 JASON A. RODRIGUEZ, individually and on
behalf of all others similarly situated,

14 Plaintiffs,

15 v.

16 FAMILY DOLLAR, INC., a North Carolina
17 Corporation and DOES 1-50, inclusive,

18 Defendant.
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28

Case No.: BCV-23-100786

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

Judge: Hon. Thomas S. Clark

Date: August 27, 2024
Time: 10:00 a.m.
Dept.: 17

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD AND THE**
2 **CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT AGENCY:**

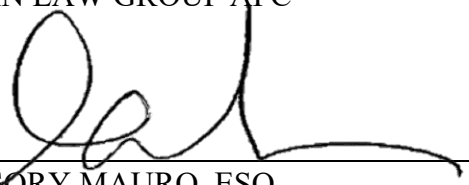
3 **YOU ARE HEREBY NOTIFIED THAT** on August 27, 2024, at 10:00 a.m., or as soon thereafter
4 as the matter can be heard, in Department 17 of the above entitled Court before the Honorable
5 Thomas S. Clark, Plaintiffs Jason A. Rodriguez and Joseph R. Rios ("Plaintiffs") will and hereby
6 do move for an order approving the settlement of the PAGA claim alleged against Defendant
7 Family Dollar, LLC (formerly Family Dollar, Inc.) in accordance with Labor Code section 2699(1).
8 The proposed settlement is set forth in the accompanying Settlement Agreement and Release. This
9 PAGA Settlement resolves this action in its entirety. As set forth herein, this PAGA Settlement is
10 fair and reasonable and Plaintiffs request the Court approve it.

11 This Motion will be based on this notice, the accompanying points and authorities, the
12 Declaration of James Hawkins, the Declaration of Marcus Bradley, the Declarations of Jason A.
13 Rodriguez and Joseph R. Rios, and the complete files and records in this action. The Labor and
14 Workforce Development Agency has been served with this motion and the Settlement Agreement
15 as set forth in the accompanying proof of service.

16
17 Dated: August 5, 2024

Respectfully submitted,

18 JAMES HAWKINS APLC
19 BRADLEY/GROMBACHER, LLP
20 MAJARIAN LAW GROUP APC

21
22 By: 

GREGORY MAURO, ESQ.

23 Attorneys for Plaintiffs JASON A. RODRIGUEZ
24 and JOSEPH RIOS on behalf of the general public
25 as private attorney general

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. RELEVANT FACTS	2
A. The <i>Rodriguez</i> Matter.	2
B. The <i>Rios</i> Matter.	2
C. The Parties Mediated The Rodriguez PAGA Action And Rios PAGA Action In February 2024.	3
D. Rios and Rodriguez Submitted An Amended LWDA Notice And Proposed Amended Complaint.	4
III. TERMS OF THE AGREEMENT	5
IV. THE SETTLEMENT IS FAIR AND REASONABLE	7
A. Family Dollar Asserts That Plaintiffs Cannot Establish Any PAGA Violations Or Exposure.	9
B. Family Dollar Argues That Its Punch Guarding Policy Precludes Plaintiffs' Recovery.	11
C. Discussion Of Settlement Value.	14
D. The LWDA Has Accepted The PAGA Settlement.	16
E. The Remaining Settlement Terms Are Fair And Reasonable	16
V. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE	16
VI. THE ENHANCEMENT TO PLAINTIFFS IS REASONABLE	17
VII. CONCLUSION	18

TABLE OF AUTHORITIES

Page(s)

CASES

<i>Adolph v. Uber Techs., Inc.</i> , 14 Cal. 5th 1104 (2023)	11
<i>Basco v. Wal-Mart Stores, Inc.</i> , 216 F. Supp. 2d 592 (E.D. La. 2002)	9
<i>Boyd v. Bank of America Corp.</i> , No. SACV 13-0561-DOC, 2014 WL 6473804 (C.D. Cal. Nov. 18, 2014)	17
<i>Cardenas v. McLane Foodservice, Inc.</i> , No. SACV 10-473 DOC (FFMx), 2011 U.S. Dist. LEXIS 13126 (C.D. Cal. Jan. 31, 2011)	9
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018)	8
<i>Chavez v. Lumber Liquidators, Inc.</i> , No. CV-09-4812 SC, 2012 U.S. Dist. LEXIS 40984 (N.D. Cal. Mar. 26, 2012)	9
<i>Clark v. American Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009)	17
<i>Domingo v. Prime Healthcare Paradise Valley, LLC</i> , No. D079848, 2023 WL 6531449 (Cal. Ct. App. Oct. 6, 2023)	12, 13, 14
<i>Donohue v. AMN Servs., LLC</i> , 11 Cal. 5th 58 (2021)	11, 12
<i>Estrada v. Royalty Carpet Mills, Inc.</i> , 15 Cal. 5th 582 (2024)	11
<i>Fleming v. Covidien</i> , No. ED CV10-01487 RGK, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011)	8
<i>Hopkins v. Stryker Sales Corp.</i> , No. 11-CV-02786-LHK, 2013 WL 496358 (N.D. Cal. Feb. 6, 2013)	17
<i>In re Taco Bell Wage & Hour Actions</i> , 2016 U.S. Dist. LEXIS 48557 (E.D. Cal. Apr. 6, 2016)	8
<i>Iskanian v. CLS Transportation</i> , 59 Cal. 4th 348 (2014)	1
<i>Laffitte v. Robert Half Internat., Inc.</i> , 1 Cal. 5th 480 (2016)	16

1	<i>Lawrence v. City of Philadelphia,</i>	
2	No. 03-CV-4009, 2004 WL 945139 (E.D. Pa. Apr. 29, 2004)	9
3	<i>Makabi v. Gedalia,</i>	
4	2016 Cal. App. Unpub.	8
5	<i>Mateo v. V.F. Corp.,</i>	
6	No. C 08-05313 CW, 2009 WL 3561539 (N.D. Cal. Oct. 27, 2009)	9
7	<i>Nikmanesh v. Wal-Mart Stores, Inc.,</i>	
8	No. 8:15-cv-00202-AG-JCG, ECF Dkt. 200, slip op. (C.D. Cal. Mar. 22, 2017)	10
9	<i>Pedroza v. PetSmart, Inc.,</i>	
10	No. ED CV 11-298 GHK DTB, 2012 WL 9506073 (C.D. Cal. June 14, 2012).....	8
11	<i>Pellegrino v. Robert Half Internat., Inc.,</i>	
12	182 Cal.App.4th 278 (2010)	16
13	<i>Ruiz v. Affinity Logistics Corp.,</i>	
14	No. 05CV2125JLS (CAB), 2009 WL 648973 (S.D. Cal. Jan. 29, 2009)	9
15	<i>Salazar v. McDonald’s Corp.,</i>	
16	No. 14-CV-02096-RS, 2017 WL 88999 (N.D. Cal. Jan. 5, 2017) <i>abrogated by</i>	
17	<i>Hamilton v. Wal-Mart Stores, Inc.</i> , 39 F.4th 575 (9th Cir. 2022).....	10
18	<i>Smith v. Lux Retail North America, Inc.,</i>	
19	No. C 13-01579 WHA, 2013 WL 2932243 (N.D. Cal. June 13, 2013).....	15
20	<i>Vandervort v. Balboa Capital Corp.,</i>	
21	8 F. Supp. 3d 1200 (C.D. Cal. 2014).....	17
22	<i>Washington v. Joe’s Crab Shack,</i>	
23	271 F.R.D. 629 (N.D. Cal. 2010)	9
24	<i>Wershba v. Apple Computer, Inc.,</i>	
25	91 Cal.App.4th 224 (2001)	17
26	<i>Woods v. Vector Mktg. Corp.,</i>	
27	No. C-14-0264 EMC, 2015 WL 2453202 (N.D. Cal. May 22, 2015)	8
28	<i>ZB, N.A. v. Superior Court,</i>	
	8 Cal.5th 175 (2019)	5
	STATUTES	
	Cal. Bus. & Prof. Code § 17200	2, 3
	Cal. Civ. Code § 1500	6
	Cal. Civ. Proc. Code § 382.....	16

1	Cal. Lab. Code § 226	8
2	Cal. Lab. Code § 2698 (Private Attorneys' General Act (PAGA))	<i>passim</i>
3	Cal. Lab. Code § 2699	1, 5
4	Cal. Lab. Code § 2699(c)	11
5	Cal. Lab. Code § 2699(e)(2)	8
6	Cal. Lab. Code § 2699(f)(2)	14
7	Cal. Lab. Code § 2699(g)(1)	1
8	Cal. Lab. Code § 2699(l)	1, 2, 16
9	Cal. Lab. Code § 2699(l)(2)	7
10		
11	REGULATIONS	
12	Cal. Code of Regs. tit. 8, § 11000	7

1 **I. INTRODUCTION**

2 On behalf of the State of California, Plaintiffs Jason A. Rodriguez and Joseph R. Rios
3 (“Plaintiffs”) have reached a settlement of claims each asserted against their former employer,
4 Family Dollar, LLC (previously Family Dollar, Inc.) under the California Private Attorneys
5 General Act, Cal. Labor Code § 2699, *et seq.* (“PAGA”). In accordance with California Labor
6 Code § 2699(l), Plaintiffs now ask this Court to review and approve the settlement of Plaintiffs’
7 PAGA claims. This is only a settlement of the PAGA claims for civil penalties, and is not a class
8 settlement and does not release the individual claims, if any, of the affected employees other than
9 the Plaintiffs. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381
10 (2014).

11 This Settlement seeks to resolve two different PAGA lawsuits that were filed in two
12 different counties in California. In March 2023, Rodriguez filed a lawsuit for a single cause of
13 action under PAGA against Family Dollar in this Court. One month later, in April 2023, Rios also
14 filed a single cause of action under PAGA against Family Dollar in Alameda County. Given the
15 overlapping nature of the PAGA claims, the Parties elected to attend a joint private mediation in
16 February 2024, during which the Parties were able to reach a mediated resolution. Following that
17 mediation, Plaintiffs amended their notice submitted with the California Labor and Workforce
18 Development Agency, to encompass all underlying theories articulated and resolved through the
19 Settlement. The Parties agreed to the filing of an amended consolidated complaint in this Court,
20 for purposes of seeking approval of this Settlement Agreement only. *See* [Stipulation], filed
21 concurrently herewith.

22 In agreeing to this Settlement, Family Dollar maintains that there was no violation of wage
23 and hour laws or otherwise. Rather, as described below, Family Dollar maintains that it has strong
24 policies and practices for wage and hour compliance, including the use of a punch guarding system
25 to ensure full compliance with California meal and rest break requirements. Family Dollar also
26 asserts that Plaintiffs would not be able to establish individual aggrieved status in their individual
27 arbitrations, and thus would not be permitted to proceed with their PAGA representative actions on
28 behalf of other employees. Therefore, any PAGA Settlement is in Plaintiffs’ and the state of

1 California's best interest, and avoids the risks associated with bringing these cases to trial
2 (including the risk of penalty reductions, should there be a finding of liability).

3 A true and correct copy of the Stipulation of PAGA Settlement and Release ("Settlement
4 Agreement"), which sets forth the terms for the settlement of the PAGA claims, is attached as
5 Exhibit 1 to the Declaration of James Hawkins, filed herewith. Capitalized terms shall have the
6 same meaning as defined in the Settlement Agreement. Plaintiffs served the LWDA with notice of
7 this Settlement and this motion as required under Labor Code section 2699(l), as set forth in the
8 accompanying proof of service. The proposed Notice of Settlement to Settlement Group Members
9 is attached to the James Hawkins declaration as Exhibit 2.

10 A proposed order confirming review and approval of the PAGA Settlement is submitted
11 herewith.

12 **II. RELEVANT FACTS**

13 **A. The Rodriguez Matter.**

14 Relevant here, on January 6, 2023, Rodriguez submitted on behalf of himself, other
15 allegedly aggrieved employees, and the State of California, a notice to the California Labor and
16 Workforce Development Agency ("LWDA") (the "Rodriguez LWDA Notice") alleging numerous
17 Labor Code violations.¹ The Rodriguez LWDA Notice sought to pursue penalties on behalf of all
18 California non-exempt employees of Family Dollar. On March 14, 2023, Rodriguez filed a single
19 cause of action for civil penalties under PAGA alleging the same wage-and-hour claims asserted in
20 the Rodriguez LWDA Notice ("Rodriguez PAGA Action"). Rodriguez is represented by the law
21 firm James Hawkins APLC.

22 **B. The Rios Matter.**

23 On February 14, 2023, Rios submitted on behalf of himself, other allegedly aggrieved
24 employees, and the State of California, a notice to the LWDA ("Rios LWDA Notice") alleging

25 ¹ Rodriguez simultaneously filed a class action complaint in this Court (Case No. BCV-23-100064),
26 alleging nine causes of action based on labor code violations, and a violation of Business and
27 Professions Codes section 17200. After being served, Family Dollar removed that action to the
28 Federal Court for the Eastern District of California, on March 28, 2023 (Case No. 1:23-cv-00466-
ADA-CDB). In light of Rodriguez and Family Dollar's mutual arbitration agreement, Rodriguez
dismissed that action on April 25, 2023.

1 numerous Labor Code violations. Rios simultaneously filed a class action complaint in the Superior
2 Court, Riverside County (Case No. CVRI2300764), alleging seven causes of action based on labor
3 code violations, and a violation of Business and Professions Codes section 17200. The Rios LWDA
4 Notice sought to pursue penalties on behalf of all California non-exempt employees of Family
5 Dollar.

6 On April 20, 2023, Rios filed a single cause of action in the Superior Court, Alameda
7 County (Case No. 23CV031615), for civil penalties under PAGA alleging the same wage-and-hour
8 claims asserted in the Rios LWDA Notice, and dismissed his class action lawsuit (the “Rios PAGA
9 Action”). Consistent with the terms of the Settlement Agreement, on June 28, 2024, Rios dismissed
10 the Rios PAGA Action in Alameda County without prejudice, to permit the filing of the
11 consolidated amended complaint in this Court. Rios is represented by the law firms of
12 Bradley/Grombacher, LLP, and the Majarian Law Group APC.

13 **C. The Parties Mediated The Rodriguez PAGA Action And Rios PAGA Action In**
14 **February 2024.**

15 On August 28, 2023, after service of each complaint, Family Dollar filed a Motion to
16 Compel Arbitration and Stay all Proceedings in both the Rodriguez PAGA Action and Rios PAGA
17 Action. Those motions asserted that Rodriguez and Rios would each need to proceed with
18 individual arbitration to establish their own aggrieved status, before either could proceed with their
19 PAGA representative actions. Subsequently, in the fall of 2023, Plaintiffs and Family Dollar agreed
20 to mediate this action with Hon. Angela Bradstreet (Ret.), former California Labor Commissioner
21 and retired Judge of the San Francisco County Superior Court. The parties stipulated to stay each
22 case pending mediation, which was granted.

23 In advance of the mediation, the Parties exchanged extensive substantive information
24 pertaining to the claims and engaged in numerous discussions regarding the factual and legal issues
25 surrounding this case. Family Dollar produced voluminous pages of information and data,
26 including Plaintiffs’ personnel files, policies, handbooks, time and payroll records reflecting time
27 punches at the start of employees’ shifts, and at the end of the shift. Hawkins Decl. ¶ 5. Family
28 Dollar provided substantial information concerning the potential size of the PAGA group, the total

1 number of workweeks and pay periods at issue, and other summary data related to the alleged
2 Settlement Group Members. *Id.* Family Dollar also provided extensive information regarding its
3 punch guarding systems and practices. *Id.* Plaintiffs reviewed the entire record produced. *Id.*
4 Plaintiffs retained an expert to review and analyze Family Dollar’s data and prepare a model for
5 potential penalties recoverable on behalf of non-exempt California Family Dollar store employees
6 (“Settlement Group Members”). *Id.*

7 On February 20, 2024, the Parties participated in an all-day mediation with Judge Bradstreet.
8 *Id.* at ¶ 6. This was both a thorough and exhaustive process, based on an informed, good faith arms-
9 length negotiation after exchange of extensive evidence and information about the claims and
10 defenses of the PAGA claims and theories asserted. *Id.* The Parties exchanged mediation briefs,
11 information, and data on their own analysis of time data for Plaintiffs and Family Dollar’s allegedly
12 aggrieved employees. *Id.* As a result of the Parties’ efforts, the matter was fully resolved. *Id.*
13 Thereafter, the Parties worked together to finalize the terms of the long form settlement agreement
14 that is now placed before this Court for approval. *Id.*

15 **D. Rios and Rodriguez Submitted An Amended LWDA Notice And Proposed**
16 **Amended Complaint.**

17 On April 19, 2024, Rodriguez submitted an amended notice to the LWDA, to conform his
18 notice to the claims raised prior to mediation and mediated for the purposes of the Parties’
19 Settlement (“Amended LWDA Notice”). Hawkins Decl. ¶ 7Ex. 4. Specifically, Rodriguez’s
20 Amended LWDA Notice was the “Proposed Consolidated First Amended PAGA Representative
21 Action Complaint Pursuant To The Private Attorneys General Act” (“Proposed Consolidated
22 Complaint”) now pending before this Court. *See* Stipulation, filed concurrently herewith. Through
23 the Amended LWDA Notice and Proposed Consolidated Complaint, Plaintiffs have alleged that
24 Family Dollar failed to: (1) provide meal and rest periods; (2) pay overtime and minimum wages;
25 (3) pay wages at termination, (4) pay wages during employment; (5) provide accurate wage
26 statements; (6) reimburse business expenses; (7) pay sick pay; (8) pay wages through a compliant
27 instrument; (9) provide suitable seating; (10) maintain required records; as well as a claim for
28

1 retaliation for disclosing a violation of state or federal statute, or a violation of or noncompliance
2 with a local, state, or federal rule or regulation (the “PAGA Theories”).² Hawkins Decl., at ¶ 7.

3 **III. TERMS OF THE AGREEMENT**

4 The Settlement Agreement negotiated by the parties provides for Family Dollar to pay
5 \$460,000.00 as the Total Settlement Amount (“TSA”). Hawkins Decl., Ex. 1 at ¶¶ 1:14-15. This
6 TSA is inclusive of the LWDA Payment, Settlement Administration Fees, Attorneys’ Fees and
7 Costs, Enhancement Award to Plaintiffs, and individual penalty payments to the Settlement Group
8 Members. *Id.* Specifically, once the Court-approved totals for the Settlement Administration Fees
9 (not to exceed \$30,000.00), Attorneys’ Fees and Costs amounts (\$153,333.00 in fees plus
10 \$35,000.00 in costs requested)³, and Plaintiffs’ Enhancement Awards (\$7,500 requested for each
11 of the Plaintiffs) are deducted from the TSA, the remainder shall be distributed at 75% to the
12 LWDA and 25% to the Settlement Group Members. Hawkins Decl., Ex. 1 at § 1(e). This 75/25
13 percentage allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior Court*,
14 8 Cal.5th 175 (2019). The Net Settlement Amount is approximately \$250,810.79.

15 Based on the amounts requested, the amount estimated to be distributed to the LWDA and
16 Settlement Group Members is \$243,310.79 with 75% going to the LWDA in the amount of
17 approximately \$182,483.099 and the remaining 25% going to the Aggrieved Employees in the
18 amount of approximately \$60,872.70. Hawkins Decl. ¶ 9. The payment to each Settlement Group
19 Member shall be based on the number of his or her Pay Periods worked in the PAGA Period in
20 relation to the aggregate number of Pay Periods worked by the Settlement Group during the PAGA
21 Period. Hawkins Decl., Ex. 1 at § 6(c).

22 The Settlement Group Members are comprised as “all current and former hourly, non-
23 exempt store employees of Family Dollar in California who were paid wages at any time [from
24 May 11, 2021, through the date the Court approves this PAGA settlement].” Agreement at
25

26 ² As set forth in the Proposed Consolidated Complaint, Plaintiffs assert a number of factual theories
27 underlying each alleged set of violations of the California Labor Code to support a claim for civil
28 penalties under PAGA.

³ Plaintiffs’ Counsels’ actual litigation costs are **\$18,356.21**. See Hawkins Decl., ¶ 21, Exh. 3;
Bradley Decl., ¶ 35, Exh. 1.

1 § 1(q). The Covered Period for which the settlement will release PAGA claims is the same.
2 Agreement at § 1(c); Hawkins Decl., ¶ 10. There are approximately 7,500 Settlement Group
3 Members who worked approximately 117,800 pay periods between May 11, 2021, and December
4 29, 2023. This means the value of the TSA per total pay period is approximately \$3.90.
5 However, that figure would assume a violation in every pay period across all Settlement Group
6 Members. As discussed in Section C., below, the value per pay periods with a rebuttable
7 presumption of a meal period violations equals approximately \$34 per pay period.

8 Within twenty-five days of the Effective Date⁴ Family Dollar has agreed to wire the Total
9 Settlement Amount to the Settlement Administrator. Hawkins Decl., Ex. 1 at § 6(b)(3). Within
10 fourteen calendar days of the date Family Dollar transfers the Total Settlement Amount to the
11 Settlement Administrator, the Administrator will pay to Settlement Group Members, their
12 Individual Settlement Payments via first-class regular U.S. Mail; to PAGA Counsel, the Court-
13 awarded Attorneys' Fees and Litigation Expenses Payment; to the LWDA, the Court-approved
14 LWDA Payment; Enhancement Award to Plaintiffs (if any); and to the Administrator, the Court-
15 awarded Administration Fees and Expenses. Hawkins Decl., Ex. 1 at § 6(b)(4).

16 Settlement Group Members shall have one hundred eighty days to cash their checks. Any
17 funds associated with uncashed checks after one hundred eighty days will be sent to the Controller
18 of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code
19 § 1500 *et seq.*, for the benefit of those Settlement Group Members whose checks were voided.
20 Hawkins Decl., Ex. 1 at § 6(c)(4).

21 Subject to the Court's approval, the Released Claims means:

22 [A]ny and all claims for PAGA civil penalties, whether known or unknown, arising
23 during the Covered Period based on the facts and allegations asserted by Plaintiffs

24
25 ⁴ "Effective Date" means the date this Agreement shall be effective upon the earliest date, following
26 entry of an order by the Court approving the Settlement, upon which one of the following has
27 occurred: (i) expiration of all potential appeal periods without a filing of a notice of appeal of the
28 order; (ii) final affirmance of the order by an appellate court as a result of any appeal(s); or (iii)
final dismissal or denial of all such appeals (including any petitions for review, rehearing, certiorari,
etc.) such that the order is no longer subject to further judicial review. The Effective Date shall
only apply if the Court has approved the Settlement. Hawkins Decl., Ex. 1 at § 1(f).

1 in their LWDA Notices, Amended LWDA Notice, and operative First Amended
2 Consolidated Complaint (“CFAC”), including, but not limited to claims that
3 reasonably could be premised on allegations related to and derivative of theories of
4 failure to compensate for all wages including minimum and overtime, failure to
5 provide meal periods or pay premium wages; failure to provide first and second rest
6 periods or pay premium wages; failure to timely pay all wages upon separation from
7 Defendant’s employment including accrued vacation time and other paid time off;
8 failure to timely pay during their employment; failure to provide accurate itemized
9 wage statements; failure to reimburse necessary business expenses; failure to pay all
10 wages with Labor Code-compliant instruments; paying wages in cash not reported
11 on paystubs; issuing payment in paycards that charged withdrawal fees; failure to
12 pay sick pay; failure to maintain required records; failure to provide suitable seating;
13 and retaliation for disclosing a violation of state or federal statute, or a violation of
14 or noncompliance with a local, state, or federal rule or regulation and incorporating
15 the applicable Labor Code sections, including but not limited to, Labor Code
16 sections 96, 98.6, 201-206, 206.5, 208, 210, 212-213, 216, 218.5, 218.6, 223, 225.5,
17 226, 226.3, 226.7, 227, 227.3, 230-230.8, 232, 232.5, 233, 246, 247, 256, 353, 432,
18 432.5, 450, 510-512, 513, 551, 552, 558, 970, 976, 1102.5, 1174, 1174.5, 1175,
19 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.3, 1198.5, 1199, 1199.5,
20 2698, et seq., 2699, 2800, 2802, 6310, 6311, 6399.7, and sections 3, 4, 7, 11, 12, 14,
21 and 20 of the applicable IWC Wage Orders, and California Code of Regulations,
22 Title 8, sections 11000, et seq., and any resulting claim for attorneys’ fees and costs
23 under PAGA. This release is intended only to release aggrieved employees’ PAGA
24 claims.

25 Mauro Decl., Ex. 1 at § 1(n).

26 **IV. THE SETTLEMENT IS FAIR AND REASONABLE**

27 California Labor Code § 2699(1)(2) requires that the Court “shall review and approve any
28 settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be

1 submitted to the agency at the same time that it is submitted to the court.” In reviewing a motion
2 for approval under PAGA, the Court shall assess and determine whether resolution is fair and
3 reasonable in light of what Plaintiffs could recover at trial. As the Court is certainly well aware,
4 under PAGA the default penalty is \$100 per pay period, but a court can reduce any penalty amount
5 due following trial, where an award would be unjust, arbitrary and oppressive, or confiscatory. See
6 Labor Code section 2699(e)(2). For example, penalties can be reduced where any technical
7 violation of law would have been inadvertent and in good faith, particularly where the law is
8 undefined and capable of differing interpretations. See Labor Code section 2699(e)(2). Section
9 226, for example, is not violated where the employer acted in “good faith.” See *Pedroza v. PetSmart,*
10 *Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *4 (C.D. Cal. June 14, 2012) (“The
11 good faith defense to the willfulness element of these sections [226, 203] is clearly established
12 under California law”); *Woods v. Vector Mktg. Corp.*, No. C-14-0264 EMC, 2015 WL 2453202, at
13 *3 (N.D. Cal. May 22, 2015) (“The ‘good faith dispute’ rule has been extended by courts to apply
14 to California Labor Code Section 226”). *Id.*

15 Accordingly, in practice, PAGA cases litigated through trial have resulted in significant
16 discretionary discounts, resulting in awards of between 10% and 75% of calculated penalties. In
17 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a
18 judgment after trial, which provided for a PAGA penalty of \$5 per pay period. In *Fleming v.*
19 *Covidien*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12,
20 2011), a federal court reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%,
21 because the court found maximum penalties “unjust” because the employees had suffered no
22 injuries. Indeed, some trial courts have actually awarded no civil penalties, even when Labor Code
23 violations are established. See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, at *5-7 (2nd Dist.
24 Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior
25 Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS
26 48557, at *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

27 Each of the Plaintiffs have asserted a single PAGA cause of action, but seek civil penalties
28 based on multiple different alleged PAGA Theories, as asserted in the proposed Consolidated

1 Complaint, submitted concurrently with this Motion. Plaintiffs submit that the PAGA Group
2 Recovery is fair and reasonable as to all of the PAGA Theories and therefore “shall” be reviewed
3 and approved. As discussed below, Plaintiffs first discuss the nature of Plaintiffs’ claims; Family
4 Dollar argues that there would be no finding of any wage and hour violation given its policies and
5 practices. Plaintiffs next discuss potential valuation—which also remains subject to dispute.
6 Specific as to valuation, there remain questions as to 1) stacking of penalties, and 2) discretionary
7 reductions where there is uncertainty in the law, or a good faith mistaken belief as to compliance.

8 **A. Family Dollar Asserts That Plaintiffs Cannot Establish Any PAGA Violations**
9 **Or Exposure.**

10 Family Dollar asserts that its production of information confirms that Plaintiffs face
11 significant practical problems in any material exposure. In order to recover PAGA penalties,
12 Plaintiffs would be required at trial to prove each underlying Labor Code violations alleged. *See*
13 *Cardenas v. McLane Foodservice, Inc.*, No. SACV 10-473 DOC (FFMx), 2011 U.S. Dist. LEXIS
14 13126, at *10 (C.D. Cal. Jan. 31, 2011) (“Given the statutory language [of PAGA], a plaintiff
15 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of
16 the Labor Code by the defendant.”). Here, Family Dollar contends that Plaintiffs would need to
17 prove that each PAGA Group Member suffered all violations for each pay period the employee
18 worked.⁵

19 ⁵ Family Dollars argues that claims of the sort asserted by Plaintiffs tend to require individualized
20 proof sets, and are not the subject of “common proof.” *See e.g., Mateo v. V.F. Corp.*, No. C 08-
21 05313 CW, 2009 WL 3561539, at *6 (N.D. Cal. Oct. 27, 2009) (denying collective treatment
22 of off-the-clock (OTC) and overtime claims as involving individualized proof); *Lawrence v. City*
23 *of Philadelphia*, No. 03-CV-4009, 2004 WL 945139, at *1-3 (E.D. Pa. Apr. 29, 2004) (rejecting
24 OTC claims for collective treatment; “each of the Plaintiffs may potentially claim that on any
25 given day he or she arrived early or departed outside their regularly scheduled hours and were
26 not compensated for such. The circumstances of those individual claims potentially vary too
27 widely to conclude that in regard to their ‘off-the-clock’ claim, the Plaintiffs are similarly
28 situated. The questions of fact will likely differ for each Plaintiff and will be unduly burdensome
to both Defendant and to the Court in managing as a collective claim.”); *Basco v. Wal-Mart*
Stores, Inc., 216 F. Supp. 2d 592, 603 (E.D. La. 2002) (individual issues arise from “myriad
of possibilities that could be offered to explain why any one of the plaintiffs worked off-the-
clock” and predominate; rejecting collective treatment of such claims); *Chavez v. Lumber*
Liquidators, Inc., No. CV-09-4812 SC, 2012 U.S. Dist. LEXIS 40984, at *23-24 (N.D. Cal.
Mar. 26, 2012) (“To determine whether staffing levels resulted in missed meal periods, the
Court would need to engage in individualized questions concerning the staffing requirements at
each of [defendants’] locations. Additionally, these staffing requirements would vary from day
to day.”); *Washington v. Joe’s Crab Shack*, 271 F.R.D. 629, 641 (N.D. Cal. 2010) (“an

1 Family Dollar contends Plaintiffs cannot establish PAGA violations for the following
2 reasons:

- 3 • Across the relevant time-period, Family Dollar contends that it maintains—and
4 provided to Plaintiffs—wage and hour policies and practices that, on their face, are
5 compliant with California law.
- 6 • As to Plaintiffs’ claims that employees are not paid for hours worked, Family Dollar
7 contends that it prohibits employees from working off-the-clock. Family Dollar
8 contends that where Family Dollar has been made aware that employees worked off-
9 the-clock, in violation of company policy, Family Dollar has disciplined and
10 terminated employees responsible for that conduct.
- 11 • As to meal and rest period compliance, Family Dollar asserts that it has policies
12 compliant with California law and has also implemented a punch guarding system,
13 which requires employees to confirm meal and rest period compliance and pays out
14 a premium for any missed meal or rest periods. Family Dollar has paid meal and rest
15 period premiums at the regular rate of pay since 2021.
- 16 • With respect to Plaintiffs’ uniform reimbursement claims, Family Dollar’s dress code
17 states that employees have wide latitude in what to wear. Employees may wear any
18 solid-colored, collared shirt and bottoms of numerous possibilities, including jeans
19 and denim.
- 20 • And, with respect to the suitable seating claim, Family Dollar maintains that, since

21 individualized inquiry will be required to determine whether any single employee failed to take
22 a meal break because he/she was too busy, and also to determine whether a particular employee
23 signed a waiver based on a decision not to take meal breaks. For this reason alone, common
24 issues do not predominate with regard to the meal break claim”); *Ruiz v. Affinity Logistics Corp.*,
25 No. 05CV2125JLS (CAB), 2009 WL 648973, at *7-8 (S.D. Cal. Jan. 29, 2009) (holding that
26 inquiry into the reasonableness and necessity of the expenses required a “case-by-case analysis
27 where common questions do not predominate over individual questions.”). *See also Nikmanesh*
28 *v. Wal-Mart Stores, Inc.*, No. 8:15-cv-00202-AG-JCG, ECF Dkt. 200, slip op. at 4-5 (C.D. Cal.
Mar. 22, 2017) (dismissing uncertified PAGA claim “as unmanageable,” where court previously
“pointed to other examples of individualized variables when it denied class certification for
failure of common questions to ‘predominate over questions affecting only individual class
members’”); *Salazar v. McDonald’s Corp.*, No. 14-CV-02096-RS, 2017 WL 88999, at *7-9
(N.D. Cal. Jan. 5, 2017) *abrogated by Hamilton v. Wal-Mart Stores, Inc.*, 39 F.4th 575 (9th Cir.
2022) (striking representative PAGA claims as unmanageable where underlying claims would
require individualized determinations).

1 2019, it has provided seats and stools that employees can use at the cash wrap, should
2 they so wish.

3 Further, given Plaintiffs’ arbitration agreements, Plaintiffs recognize that, to pursue their
4 claims on a representative basis, they must also first establish that they are “aggrieved employees”
5 of Family Dollar. *See Adolph v. Uber Techs., Inc.*, 14 Cal. 5th 1104, 1116 (2023) (holding that to
6 have standing to bring a PAGA action, a plaintiff must be an “aggrieved employee,” which is “any
7 person who was employed by the alleged violator and against whom one or more of the alleged
8 violations was committed.”) (citing Cal. Labor Code section 2699(c)). Family Dollar asserts that
9 Plaintiffs cannot prove they are so aggrieved.

10 Moreover, even if Plaintiffs *could* establish they are, individually, aggrieved employees
11 under PAGA, that does not transfer to the representative population of employees across California.
12 As the California Supreme Court acknowledged in *Estrada v. Royalty Carpet Mills, Inc.*:

13 [A] trial court may issue substantive rulings, including those on
14 demurrer, or on motions for summary judgment or judgment
15 notwithstanding the verdict, provided for in the Code of Civil
16 Procedure to fairly and efficiently adjudicate an action in cases in
 which a plaintiff pleads the claim in such an overbroad or unspecific
 manner that **the plaintiff is unable to prove liability as to all or
 most employees.**

17 15 Cal. 5th 582, 619-20 (2024) (emphasis added).

18 **B. Family Dollar Argues That Its Punch Guarding Policy Precludes Plaintiffs’**
19 **Recovery.**

20 It is Family Dollar’s position that one of the major hurdles facing Plaintiffs is Family
21 Dollar’s punch guarding policy and related procedures, which confirm meal and rest period
22 compliance throughout the Covered Period.

23 Plaintiffs recognize that California courts have recently held that employers may have in
24 place systems that eliminate any meal and rest period noncompliance. In *Donohue v. AMN Servs.,*
25 *LLC*, 11 Cal. 5th 58 (2021), the California Supreme Court held that time records that show a
26 noncompliant meal break raise a rebuttable presumption that there was a meal break violation. *Id.*
27 at 61, 74. However, the Court explained an employer may rebut that presumption by “presenting
28 evidence that employees were compensated for noncompliant meal periods or that they had in fact

1 been provided compliant meal periods during which they chose to work.” *Id.* at 77. In *Donohue*,
2 the employer points to their system that had a dropdown menu for employees to indicate that they
3 were not provided with a compliant meal break or whether they chose to work. *Id.* at 78. The
4 Court validated the use of such a system. However, the defendants in *Donahue* had a meal break
5 rounding issue and could not rebut the meal break presumed violations:

6 If time records show noncompliant meal periods, then a rebuttable
7 presumption of liability arises. **This presumption applies at the**
8 **summary judgment stage, and the employer may rebut the**
9 **presumption with evidence of bona fide relief from duty or**
10 **proper compensation.** Employers may use a timekeeping system
11 like Team Time to track meal period violations as long as the system
12 does not round time punches. Team Time included a drop-down
menu for employees to indicate whether they were provided a
compliant meal period but chose to work, and the system triggered
premium pay for any missed, short, or delayed meal periods due to
the employer’s noncompliance. **Thus, Team Time would have**
ensured accurate tracking of meal period violations if it had
simply omitted rounding.

13 *Id.* (emphasis added).

14 A similar system came before the Courts of Appeal last fall in *Domingo v. Prime Healthcare*
15 *Paradise Valley, LLC*, No. D079848, 2023 WL 6531449 (Cal. Ct. App. Oct. 6, 2023). There, the
16 employer had a timekeeping system that required employees to agree or disagree with the statement
17 that they received all meal breaks they were entitled to take. *Id.* at *8. Employees were *locked out*
18 during meal breaks, such that they could not clock back in before the end of their 30-minute break.
19 *Id.* If employees had to return to work early, they were required to select “disagree” with the
20 statement and indicate that “Workload Prevented” them from taking the meal break, report it to
21 their manager, or complete a meal attestation form. *Id.* at *8, n.8, 12-13. In such instances,
22 employees were required to go back and edit their time entry and the employer would automatically
23 pay the meal break premium; the employer did not investigate whether a meal break violation
24 occurred. *Id.* at *12.

25 During a bench trial, the court in *Domingo* granted judgment to the employer; the Court of
26 Appeal affirmed. Notwithstanding the employer’s time records showing some late, short, or missed
27 meal breaks, the Court of Appeal explained that the employer remedied any such potential
28

1 noncompliant meal breaks by paying the meal premium or permitting employees to indicate that
2 they voluntarily chose to work:

3 [The employer] used a timekeeping system that encouraged full meal
4 periods, but still provided ways to record noncompliant ones;
5 employees could indicate what happened (including that they ‘chose’
6 to work); and [the employer] paid premiums and/or compensation as
7 applicable. On this record, the court could find [the employer’s]
8 system did not violate meal period requirements, notwithstanding
9 any contrary presumptions.

10 *Id.* at *11.

11 Family Dollar maintains and produced documents and information before mediation
12 demonstrating that, throughout the entirety of the time-period at issue here, it has had in place a
13 punch guarding system like that approved by the *Donahue* and *Domingo* courts. Specifically,
14 Family Dollar submits that during and at the end of an employee’s shift, its time-keeping system
15 asks specific questions—depending on the employee’s time punching entries—to confirm
16 compliance with California’s meal and rest period requirements. For example:

- 17 • If an employee clocks out late for a meal or rest period, Family Dollar provided
18 information showing the system asks: *Your [rest break/meal break] is starting late.*
19 *Was this your choice?”*
- 20 • If an associate tries to clock back in from their break early, Family Dollar represents
21 that its system asks: *“You are returning early from your [rest break/meal break].*
22 *Is this your choice?”*
- 23 • According to Family Dollar’s system, a “yes” response to this question will prompt
24 a message to the associate to fully complete their rest break or meal break before
25 returning to their duties. A “no” response triggers the payment of a premium.
- 26 • Family Dollar provided information showing its punch guarding system also asks
27 questions at the end of a shift. For example: *“Did you take at least a 30 min*
28 *continuous meal break without working?”* and *“Were you allowed to leave the*
premises for your meal break?”

Family Dollar states that any “no” answer to a punch guarding question triggers a
corresponding premium, or a follow-up question to confirm whether a premium should be paid and

1 premiums are paid without further investigation. Family Dollar submits that a “no” response to
2 any of the punch guarding questions triggers an automatic premium—without investigation or any
3 further inquiry. Data Family Dollar produced in advance of mediation reflects rest and meal period
4 premiums paid. Accordingly, Family Dollar contends that its punch guarding system is sufficient
5 to rebut any presumption of meal period or rest period noncompliance, consistent with *Donahue*
6 and *Domingo*.

7 Thus, in reaching a settlement of this matter, Plaintiffs faced the possibility that Plaintiffs
8 could not establish violations as to themselves for any meal and rest break violations, let alone all
9 or most California employees Plaintiffs seek to represent.

10 **C. Discussion Of Settlement Value.**

11 In light of the PAGA theories asserted and Family Dollar’s policies, procedures, and
12 arguments presented, Settlement Group Members’ recovery compares favorably to the estimated
13 amount of PAGA penalties. Prior to mediation, Family Dollar provided data and information that
14 showed there were 117,764 pay periods between February 17, 2022, and September 2, 2023.

15 Based on the data provided, Family Dollar’s time records reflect that overtime
16 compensation was paid to non-exempt employees in California. Turning to Plaintiffs’ meal and
17 rest period theories, with the assistance of an expert, Plaintiffs’ calculated that at most there were
18 13,437 pay periods where a statutorily compliant meal period was not reflected in employees’ time
19 records. Assuming a PAGA default penalty of \$100 for each of those pay periods, Plaintiffs assert
20 this equals a potential exposure of \$1,343,700.00 for meal period violations.

21 Plaintiffs, however, recognize that this total does not take into account any potential
22 discount by the Court and do not take into account *Donahue*, *Domingo*, and Family Dollar’s
23 evidence of its punch guarding system. As discussed above, a Court may award a lesser amount
24 than the maximum civil penalty based on the facts and circumstances of the matter. See Section
25 III. Family Dollar asserts that there are no underlying Labor Code violations and no basis for the
26 award of any penalties under PAGA. For example, Family Dollar contends that when punch
27 guarding and premiums are taken into account, Family Dollar has fully complied with California’s
28 meal and rest break requirements. Family Dollar also contends that, even if penalties were awarded

1 for any purported Labor Code violation, penalties under PAGA cannot be stacked: at most, just
2 one PAGA penalty can be awarded to an aggrieved employee in any one pay period. See Labor
3 Code section 2699(f)(2) (authorizing awardable PAGA penalties to be measure by “each aggrieved
4 employee per pay period”); *Smith v. Lux Retail North America, Inc.*, No. C 13-01579 WHA, 2013
5 WL 2932243, at *3-4 (N.D. Cal. June 13, 2013) (emphasis in original) (rejecting a pleading that
6 sought the “stacking of penalties”; “[f]or the single mistake of failing to include commissions in
7 the overtime base, plaintiff has asserted *five* (count them, five) separate labor code violations that
8 could lead to statutory penalties;” “is it plausible that we would really pile one penalty on another
9 for a single substantive wrong?”; noting that “no actual holding in any judicial decision has ever
10 blessed such stacking”).

11 In light of the above, Plaintiffs recognize that there were significant risks in proceeding in
12 litigation of this matter. Plaintiffs faced risks of not prevailing on the merits, prevailing on certain
13 claims for certain periods, reduced penalty amounts awarded by the trial Court, and reversal on
14 appeal. Hawkins Decl., ¶¶ 14-16.

15 The Total Settlement Amount, along with the other terms of the proposed settlement, were
16 negotiated by experienced counsel at arm’s length with the assistance of a private mediator, Angela
17 Bradstreet. Hawkins Decl., at ¶ 4. The Total Settlement Amount calculates to approximately \$34
18 per pay period in which Plaintiffs calculated a rebuttable presumption of a meal period violation
19 ($\$460,000 / 13,473 \text{ pay periods} = \34.14). This means the per pay period value is approximately
20 34% of the potential \$1,343,700.00 in default PAGA penalties Plaintiffs calculate for pay periods
21 with a rebuttable presumption of a meal period violation. Notably, this percentage is reflective of
22 courts’ reduction PAGA penalties following a trial and where finding of liability is determined, as
23 discussed above. See Section [], *supra*. Moreover, this Settlement provides for the recovery of
24 penalties under PAGA now, rather than in the future to some undetermined date and undetermined
25 amounts. Hawkins Decl., ¶ 15. Plaintiffs’ Counsel have significant experience litigating wage and
26 hour claims including claims for PAGA penalties. Hawkins Decl., ¶¶ 17-18. Based on Family
27 Dollar’s potential defenses to the violations at issue, the risks and costs of continued litigation,
28

1 Plaintiffs and their attorneys believe that the PAGA Settlement is fair and reasonable. Mauro Decl.,
2 ¶ 21.

3 **D. The LWDA Has Accepted The PAGA Settlement.**

4 As set forth in the accompanying proof of service, the LWDA has been provided notice of
5 this motion and the PAGA Settlement. The decision of LWDA to accept the PAGA Settlement
6 and not oppose the motion should be given considerable weight. Nor is this a situation where the
7 Court must be concerned about the rights of absent employees as in a class settlement, as this
8 PAGA-only settlement does not release the individual claims of absent employees, and the LWDA
9 is a sophisticated government entity capable of protecting its own rights.

10 **E. The Remaining Settlement Terms Are Fair And Reasonable**

11 Although PAGA requires that a court approve the proposed PAGA Settlement, Labor Code
12 § 2699(1) does not require that a court approve any other elements of the proposed settlement.
13 Because there are no class allegations, the approval provisions applicable to class settlements under
14 Cal. Civ. Proc. Code § 382 do not apply. Accordingly, the Court only needs to approve the
15 settlement of the civil penalties sought in the PAGA claim.

16 **V. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

17 PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiffs'
18 position is that the payment of attorneys' fees and costs in this settlement is a matter of contract for
19 a contingent representation. Nevertheless, should this Court review the requested attorneys' fees,
20 it is clear that the requested fees and costs are reasonable.

21 First, the requested fees are justified by the result achieved. Plaintiffs' Counsel negotiated
22 a recovery of \$460,000.00 and this result justifies the requested fees equal to 1/3 or 33.333% of this
23 recovery. This percentage is within the standard contingent recovery. Second, the fee award is
24 justified by the work performed. As detailed in the accompanying Declaration of Plaintiffs'
25 Counsel, the fee award is reasonable as Plaintiffs' Counsel represents its current lodestar far
26 exceeds the requested amount of \$153,333.00. Hawkins Decl., ¶¶ 19-20; Bradley Decl., ¶ 24.

27 Generally, the Ninth Circuit and California Courts award multipliers between 2 to 4 times
28 the lodestar to reward counsel for accepting the contingent risks of the litigation or obtaining good

1 results. See, e.g., *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, at 488 (2016) (approving
2 one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Internat.,*
3 *Inc.*, 182 Cal.App.4th 278, 293 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied
4 and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254-55
5 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*,
6 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier
7 of lodestar); *Boyd v. Bank of America Corp.*, No. SACV 13-0561-DOC, 2014 WL 6473804, at *11
8 (C.D. Cal. Nov. 18, 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar);
9 *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb.
10 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the “majority”
11 range for risk multipliers). Here, no multiplier is requested as Plaintiffs’ Counsel’s lodestar exceeds
12 the amount of requested fees.

13 Finally, the award of litigation expenses is based upon the actual expenses incurred by the
14 Plaintiffs’ Counsel. Hawkins Decl., ¶¶ 28-29; Bradley Decl., ¶¶ 25. Plaintiffs’ Counsel will be
15 recovering litigation expenses in the total amount of \$18,356.21. These expenses are documented
16 in the billing statement attached to the Declaration of Hawkins as Exhibit 3 and Bradley as Exhibit
17 2.

18 **VI. THE ENHANCEMENT TO PLAINTIFFS IS REASONABLE**

19 “[T]he rationale for making enhancement or incentive awards to named plaintiffs is that he
20 or she should be compensated for the expense or risk they have incurred in conferring a benefit on
21 other members of the class.” *Clark v. American Residential Servs. LLC*, 175 Cal. App. 4th 785,
22 806 (2009).

23 Approximately 7,500 Settlement Group Members will share a \$460,000.00 settlement fund
24 due entirely to the effort and commitment of Plaintiffs. Subject to Court approval, therefore, the
25 Settlement provides for an Enhancement Payment of \$7,500.00. The Enhancement Payment is fair
26 and reasonable compensation for Plaintiffs’ efforts in pursuing the action, serving as private
27 attorneys general under PAGA, assisting counsel with the litigation and settlement, regularly
28 conferring with counsel on the status of their case and the strategies for prosecuting the claims,

1 reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for
2 the Settlement Class, and for signing a general release of their individual claims in addition to the
3 PAGA Settlement. Hawkins Decl., ¶ 22; see generally Declarations of Plaintiff Rios and Plaintiff
4 Rodriguez filed concurrently herewith.

5 Accordingly, Plaintiffs respectfully request this Court approve the PAGA enhancement to
6 Plaintiffs in the amount of \$7,500.00.

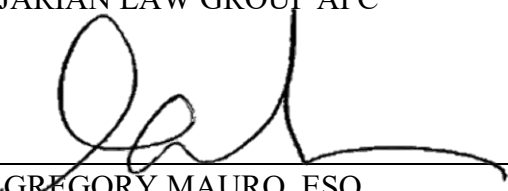
7 **VII. CONCLUSION**

8 Based on the foregoing, Plaintiffs respectfully request this Court approve the PAGA
9 Settlement and the Settlement Group Member recovery as set forth in the Agreement and enter the
10 proposed order submitted herewith.

11 Dated: August 5, 2024

Respectfully submitted,

13 JAMES HAWKINS APLC
14 BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC

15
16 By: 

17 GREGORY MAURO, ESQ.

18 Attorneys for Plaintiffs JASON A. RODRIGUEZ
19 and JOSEPH RIOS on behalf of the general public
20 as private attorney general

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On August 5, 2024, I served on the interested parties in this action the following document(s) entitled:

DECLARATION OF JAMES HAWKINS IN SUPPORT OF MOTION TO APPROVE PAGA SETTLEMENT

DECLARATION OF PLAINTIFF JOSEPH RIOS IN SUPPORT OF MOTION TO APPROVE PAGA SETTLEMENT

[PROPOSED] ORDER APPROVING PAGA SETTLEMENT AND JUDGMENT

SERVICE LIST

[XX] **STATE:** I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Alma Chavarin

Alma Chavarin

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22 **Via LWDA Website Only**
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28