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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

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

Plaintiffs,

v.

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

Defendant.

Case No.: BCV-23-100786

**SUPPLEMENTAL BRIEF OF FAMILY
DOLLAR, LLC IN SUPPORT OF
MOTION TO APPROVE PAGA
SETTLEMENT**

JUDGE: Hon. T. Mark Smith

Date: September 16, 2024

Time: 8:30 a.m.

Dept.: T-2

1 **I. INTRODUCTION**

2 The settlement before this Court results in a significant recovery for the State of California,
3 Plaintiffs, and other allegedly aggrieved employees where, if Plaintiffs were forced to litigate,
4 Family Dollar, LLC submits there would be no recovery.¹

5 Specific to Plaintiffs’ meal and rest break claims—which Plaintiffs’ counsel represented is
6 the predominant claim when last appearing before this Court—Family Dollar developed and
7 implemented a proprietary punch guarding system.² That system requires hourly associates to
8 certify their compliance with California’s meal and rest break requirements multiple times during
9 and at the end of their shifts and triggers meal and rest premiums, without question. *See* Motion to
10 Approve PAGA Settlement, filed Aug. 5, 2024 (“Motion for Approval”), p. 13. As discussed below,
11 this is precisely the type of system the California Supreme Court noted in *Donohue v. AMN Servs.,*
12 *LLC*, 11 Cal. 5th 58 (2021), *forecloses liability* against a California employer.

13 That said, Family Dollar recognizes the uncertainty of litigation and the value in certainty
14 and closure through resolution. Accordingly, as set forth in the Declaration of James Hawkins
15 (“Hawkins Decl.”), filed August 5, 2024, after the parties exchanged key policies, data, and
16 information and a full-day mediation with Hon. Angela Bradstreet (Ret.), former California Labor
17 Commissioner and Judge of the San Francisco Superior Court, the parties reached the settlement
18 presented here. *See* Hawkins Decl. ¶ 6.

19 In light of Family Dollar’s significant and substantial efforts to ensure compliance with
20 California’s wage and hour requirement, the value of the settlement is fair, reasonable, and
21 adequate—when compared to Plaintiffs’ potential recovery (or lack thereof) at trial. Family Dollar
22 respectfully requests the Court approve the total settlement value as fair and reasonable.³

24 ¹ As the Court is aware, Joseph Rios seeks to join this matter, after dismissing his overlapping
25 PAGA lawsuit that was pending in Alameda County Superior Court. *See* Stipulation to Consolidate
26 Matters and Grant Leave to File a Consolidated Amended Complaint, Subject to Order Approving
27 Motion for Settlement Approval, filed August 29, 2024.

27 ² For the Court’s reference, the transcript to the August 27, 2024 hearing before this Court is
28 attached as Exhibit A to the Declaration of Ryan D. Derry, filed concurrently herewith.

28 ³ Family Dollar takes no position with respect to Plaintiffs’ request as to attorneys’ fees and costs
 or enhancement payments to Mr. Rodriguez and Mr. Rios, the companion plaintiff.

1 **II. THE PAGA SETTLEMENT VALUE IS FAIR, REASONABLE, AND ADEQUATE.**

2 As the Court is well aware, California Labor Code § 2699(1)(2) requires that the Court
3 “review and approve any settlement of any civil [PAGA] action filed pursuant to this part.” In
4 reviewing a motion for approval under PAGA, “a trial court should evaluate a PAGA settlement to
5 determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate
6 present labor law violations, deter future ones, and to maximize enforcement of state labor laws.”
7 *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 75 (2021) (disapproved on other grounds, as to
8 intervention to appeal, in *Turrietta v. Lyft, Inc.*, 16 Cal. 5th 664 (2024)); *see also Patel v. Nike*
9 *Retail Servs., Inc.*, No. 14-cv-04781-RS, 2019 WL 2029061, at *2 (N.D. Cal. May 8, 2019)
10 (“Accordingly, certain courts have been willing to approve PAGA settlements only if (1) the
11 statutory requirements set forth by PAGA have been satisfied, and (2) the settlement agreement is
12 fair, reasonable, and adequate in view of PAGA’s public policy goals.”).

13 Because a PAGA is a claim brought on behalf of the State, the statute requires that 75% of
14 any penalty be distributed to the State, and the remaining 25% to be distributed amongst the
15 allegedly aggrieved employees. *See* Labor Code § 2699; *ZB, N.A. v. Superior Court*, 8 Cal.5th 175
16 (2019). Thus, Family Dollar submits that analysis of settlement value should evaluate the
17 settlement as a whole, as compared to potential recovery (which Family Dollar contends is zero).

18 **A. Plaintiffs Calculate That The Settlement Reflects A Recovery of 34% Of The**
19 **“Meat Of” Their Claims Assuming Their ‘Best Case’ At Trial.**

20 As Plaintiffs’ counsel represented during the last hearing before this Court, the “real meat
21 of the [Plaintiffs’] action were meal and rest period claims[.]” *See* Derry Decl., Ex. 1 at 8:25-28.
22 As to that “meat of” their lawsuit, of the approximately 117,800 pay periods between May 11, 2021
23 and December 29, 2023, Plaintiffs calculated *potential* meal period violations in only 13,437 pay
24 periods. *See* Hawkins Decl. ¶¶ 10, 12; *see also* Derry Decl., Ex. 1 at 8:25-9:18. This equals
25 approximately \$1.3 million for potential penalties *at the maximum* PAGA penalty of \$100 per pay
26 period. *Id.* That means, as Plaintiffs explained to the Court, the total settlement value reflects
27 approximately a 34% recovery of the calculated total exposure:
28

1 In consideration of the settlement amount and the meal of the claims
2 being around meal and rest, the recovery, . . . is equating to 34 percent
3 recovery, which is considerable and reasonable and high considering
4 the circumstances and considering defendant's own policies,
practices, and procedures for ensuring compliance with California
law.

5 *See* Derry Decl., Ex. 1 at 9:5-11.

6 This percentage recovery for the settlement is *greater* than awards of PAGA civil penalties
7 that courts have made *after trial and a finding of liability*. Of course, PAGA gives a court-wide
8 latitude to reduce the amount of civil penalties “based on the facts and circumstances of a particular
9 case” when “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
10 confiscatory.” *See* Lab. Code § 2699(h). Courts have routinely used that authority—greatly
11 discounting awards to between 10% and 75% of calculated penalties. *See, e.g., Carrington v.*
12 *Starbucks Corp.*, 30 Cal. App. 5th 504 (2018) (affirming judgment after trial, which provided for a
13 PAGA penalty of \$5 per pay period); *Fleming v. Covidien, Inc.*, No. ED CV10-01487 RGK (OPx),
14 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties more than
15 82% (from \$2,800,000 to \$500,000), because the Court found maximum penalties “unjust” because
16 the employees had suffered no injuries); *In re Taco Bell Wage & Hour Actions*, No. 1:07-cv-01314-
17 SAB, 2016 U.S. Dist. LEXIS 48557, at *40-43 (E.D. Cal. Apr. 8, 2016) (denying an award of any
PAGA penalties after trial).

18 This percentage, alone, weighs in favor of concluding settlement value is fair, reasonable,
19 and adequate.

20 **B. The Settlement Reflects A Significant Recovery Where No Violation Of**
21 **California Law Exists On Plaintiffs’ Meal And Rest Period Theories.**

22 In reality, Plaintiffs’ proffered calculation of 13,000 pay periods with a *potential* meal
23 period violation reflects a bloated valuation of potential exposure, given Family Dollar’s
24 extraordinary efforts to ensure meal and rest period compliance. Throughout the time period,
25 Family Dollar has used its proprietary state-of-the-art punch guarding timekeeping software system
26 designed to ensure duty free meal and rest breaks. This system asks associates to acknowledge and
27 confirm their decisions around meal and rest breaks multiple times during their shifts. For example:
28

- If an employee clocks out late for a meal or rest period, the system asks, at the time of that punch: “*Your [rest break/meal break] is starting late. Was this your choice?*”
- If an associate tries to clock back in from their break early, the system asks: “*You are returning early from your [rest break/meal break]. Is this your choice?*” A “yes” response to this question will prompt a message to the associate to fully complete their rest break or meal break before returning to their duties. A “no” response triggers the payment of a premium.
- At the end of an associate’s shift, the system asks: “*Did you take at least a 30 min continuous meal break without working?*” and “*Were you allowed to leave the premises for your meal break?*”

A “no” answer to any punch guarding question—which would suggest a time punch inconsistency was not the associate’s voluntary choice—triggers a corresponding premium, or a follow-up question to confirm whether a premium should be paid. Premiums are paid without investigation and at the regular rate of pay. Such premiums are compliant with California law. *See, e.g., Kirby v. Immoos Fire Prot., Inc.*, 53 Cal. 4th 1244, 1256 (2012) (holding that meal and rest break premiums are the legal remedy for a violation of Labor Code section 226.7); *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 878 (2021) (holding that meal and rest period premiums under Labor Code section 226.7 must be paid at the “regular rate of pay.”).

Family Dollar submits its punch guarding system eliminates *any* meal and rest period noncompliance or potential for liability. In *Donohue v. AMN Servs., LLC*, 11 Cal. 5th 58 (2021), the California Supreme Court held how time records that show a noncompliant meal break (how Plaintiffs calculated the 13,000 pay periods with potential violations they proffer here) raise merely a rebuttable presumption that there was a meal break violation. *Id.* at 61, 74. However, an employer may rebut that presumption by “presenting evidence that employees were compensated for noncompliant meal periods or that they had in fact been provided compliant meal periods during which they chose to work.” *Id.* at 77. The employer in *Donohue* had a dropdown menu system—very similar to Family Dollar’s punch guarding—for employees to indicate that they were not

1 provided with a compliant meal break or whether they chose to work. *Id.* at 78. The Court validated
2 such a system, but the employer could not rebut the presumed violations due to a rounding policy.

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

16 *Id.* (emphasis added).

17 There is no rounding practice at issue at Family Dollar. Thus, Family Dollar submits that,
18 were Plaintiffs forced to litigate the “meat of” their claims, Plaintiffs, the State of California, and
19 other allegedly aggrieved employees would recover nothing. The settlement value is, therefore,
20 certainly fair, reasonable, and adequate.

21 **C. The Settlement Reflects A Significant Recovery Where No Violation Of**
22 **California Law Exists As To Any Of Plaintiffs’ Other Theories.**

23 Through the Amended LWDA Notice and Proposed Consolidated Complaint, Plaintiffs
24 Jason Rodriguez and Joseph Rios allege nine additional wage and hour theories (based on varying
25 factual theories), beyond their meal and rest period allegations. Specifically, Plaintiffs allege that
26 Family Dollar failed to: (1) pay overtime and minimum wages; (2) pay wages at termination;
27 (3) pay wages during employment; (4) provide accurate wage statements; (5) reimburse business
28 expenses; (6) pay sick pay; (7) pay wages through a compliant instrument; (8) provide suitable
seating; and (9) maintain required records (the “PAGA Theories”). *See* Hawkins Decl. ¶¶ 7, 24,
Ex. 4.

As Plaintiffs appear to concede, all such theories lack support. Across the relevant time
period, Family Dollar had in place numerous policies and practices that demonstrate its compliance
in all of these areas. Specifically:

- Family Dollar has maintained, and provided to Plaintiffs through mediation (*see*

1 Hawkins Decl. ¶ 5) wage and hour policies and practices that, on their face, are
2 compliant with California law.

- 3 • Family Dollar prohibits employees from working off-the-clock. For example,
4 Family Dollar's Handbook, which must be reviewed and signed at hire, states:

5 Associates must accurately record all hours of work in the
6 Company's time keeping system. Falsification of any time
7 keeping record or misrepresentation of time worked is
improper and a violation of Company policy. Working "off-
the-clock" for any reason is a violation of Company policy.

- 8 • Family Dollar also has published a two-page "Accurate Timekeeping" document that
9 associates must also review and sign at hire. That policy again reiterates Family
10 Dollar's expectation that all time worked is recorded and paid:

11 Falsification of any timekeeping record or misrepresentation
12 of time worked is improper and a violation of Company
13 policy. Also, working "off-the-clock" for any reason is
14 another violation of Company policy. If you forget to clock
15 in or out or if you believe your time has not been recorded
accurately, you must notify a Manager immediately so the
time can be accurately entered for payment through payroll.
Only Managers may make an adjustment to a record of time
worked.

- 16 • Where Family Dollar has been made aware in select instances that employees worked
17 off-the-clock, in violation of Company policy, Family Dollar has disciplined and
18 terminated employees responsible for that conduct.⁴

19
20 ⁴ Family Dollar also instructs associates to report any manager who directs any work off-the-clock.

21 The Handbook states:

22 It is a violation of Company policy for a Manager to direct or suggest
23 that you should work off-the-clock, or to state or imply that you will
24 suffer any detrimental action because you have accurately reported
your work hours. If you have reason to believe that such a violation
of Company policy has occurred, you must immediately report this
to Human Resources.

25 The Accurate Timekeeping policy states:

26 It is a violation of Company policy for a Manager to direct or suggest
27 that an associate work off-the-clock. He or she may not state or
28 imply that there will be adverse action or adverse consequences
because an Associate has accurately reported work hours. If you
have reason to believe that such a violation of Company policy has

- With respect to Plaintiffs’ uniform reimbursement claims, throughout the relevant period, Family Dollar’s dress code has been broad and allowed associates to wear a wide range of clothes that does not qualify as a “uniform.” Specifically, Family Dollar merely requires associates to wear a solid-colored collared shirt and bottoms in a wide range of possibilities: “You also should wear pants, a skirt, capris or shorts (mid-thigh or longer) in any shade of khaki, tan, black, or blue including khaki, tan, black or blue denim.” The lack of clothing of any distinctive design or color means Family Dollar’s dress code does not qualify as a uniform. *See Statement of Basis*, for the 1980 iteration of what is now Wage Order No. 7-20221, listing a white shirt, dark pants and black shoes and belts (much more limited than Family Dollar) as clothing that is “generally usable in the occupation” and does not qualify as a uniform. DLSE Enforcement Manual § 45.5.5.
- With respect to the suitable seating claim, since 2019, Family Dollar has provided seats and stools that employees can use at the cash wrap, should they so wish.

Not only would Plaintiffs face factual (and thereby corresponding legal) deficiencies as to their other wage and hour theories, but manageability would also be a major challenge on all of them. The nature of Plaintiffs’ theories would require individualized proof sets and are not subject to “common proof.” *See, e.g., Mateo v. V.F. Corp.*, No. C 08-05313 CW, 2009 WL 3561539, at *6 (N.D. Cal. Oct. 27, 2009) (denying collective treatment of off-the-clock and overtime claims as involving individualized proof); *Ruiz v. Affinity Logistics Corp.*, No. 05CV2125JLS (CAB), 2009 WL 648973, at *7-8 (S.D. Cal. Jan. 29, 2009) (holding that inquiry into the reasonableness and necessity of the expenses required a “case-by-case analysis where common questions do not predominate over individual questions.”). The California Supreme Court’s recent decision in *Estrada v. Royalty Carpet Mills, Inc.*, 15 Cal. 5th 582 (2024), does not change this reality. There, the Court acknowledged that a plaintiff cannot proceed with broad overarching claims that cannot be proven as to each member of the allegedly aggrieved group:

occurred, you must immediately report this to Human Resources or call Associate Connection at 1-800-876-8077.

1 [A] trial court may issue substantive rulings, including those on
2 demurrer, or on motions for summary judgment or judgment
3 notwithstanding the verdict, provided for in the Code of Civil
4 Procedure to fairly and efficiently adjudicate an action in cases in
5 manner that **the plaintiff is unable to prove liability as to all or
6 most employees.**

7 *Id.* at 619-20 (emphasis added).

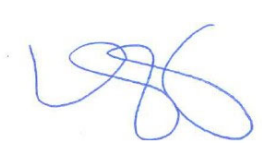
8 Thus, there is nothing in any of Plaintiffs' other theories to challenge the conclusion, as
9 discussed above, that the overall settlement value here is fair, reasonable, and adequate.

10 **III. CONCLUSION**

11 Based on the foregoing, Plaintiffs' Motion for Settlement Approval, filed August 5, 2024,
12 and oral argument that has and may occur before this Court, Family Dollar respectfully submits the
13 general value of the PAGA settlement here is fair and reasonable. Family Dollar requests approval
14 of the value of the overall settlement.

15 Dated: September 10, 2024

16 PAUL HASTINGS LLP

17 By: 

18 RYAN D. DERRY

19 Attorneys for Defendant

20 FAMILY DOLLAR, LLC (formerly FAMILY
21 DOLLAR, INC.)

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On September 10, 2024, I served the foregoing document(s) described as:

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Service of the foregoing document(s) in PDF format on the interested parties as listed on the Service List posted on onelegal.com. and listed above on September 10, 2024. I did not receive an electronic message indicating any errors in transmission.


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