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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

NICHOLAS CANTALUPO in a Representative capacity, and on behalf of other members of the general public similarly situated, Plaintiff, v. ROGUE VAN COMPANY, a California Corporation; and JAMES FILETA, an Individual; and DOES 1-10, inclusive Defendant	CASE NO. 25CU056967C **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S *UNOPPOSED* MOTION FOR PAGA SETTLEMENT APPROVAL** Date: October 1, 2026 Time: 9:30 a.m. Judge: Hon. Gregory W. Pollack Dept: C71

I. <u>SUMMARY OF MOTION</u>

This is a "Wage and Hour" representative action, under California's Private Attorneys General Act of 2004 ("PAGA"). The named Plaintiff respectfully submit the instant Points and Authorities in support of their motion for Approval of the PAGA Settlement. This Request is **<u>Unopposed</u>**. The LWDA was timely notified of this proposal, concurrent with the filing of the motion, and does **<u>not</u>** object to the allocations. (See concurrently filed Proof of Service on LWDA).

II. <u>SUMMARY OF SETTLEMENT TERMS</u>

This is a Labor Code §2698 *et seq.* "Wage and Hour" ("PAGA") action brought against ROGUE VAN COMPANY and JAMES FILETA , (Hereinafter, "RVC: or "Defendants"). As this is a "PAGA" action <u>only</u>, the Limitations Period begins on August 19, 2024 through February 11, 2026. (Yaeckel Decl., ¶3).

Following the exchange of discovery, analysis of numerous sets of time and wage data, a full day mediation before Anthony Pantoni , and extensive "arms length" negotiations, on February 11, 2026, the Parties reached a proposed settlement that includes a payment of penalties to the LWDA. (Yaeckel Decl., ¶4).

Defendant has confirmed that as of the date of this settlement, there are **44** PAGA group members and approximately **556** pay periods at issue. (Yaeckel Decl.¶5). After deduction of all "contingent costs" set forth below, each PAGA member will receive an average payment of **$133.65**. *Id*. This equates to a payment of **$10.58** per pay period to the aggrieved employees. The highest recovery is an employee who worked 40 pay periods (**$423.20**), and the lowest recovery is an employee who worked one pay period (**$10.58**). (Yaeckel Decl.¶ 7)

The Total Value of the proposed Settlement is **$30,000.00** which is broken down as follows:

* **$11,000.00** PAGA Counsel Expenses Payment
* **$2,198.22** Settlement Administrator Fees
* Sub-Total of **$16,801.78**. 65% (**$10,921.16**) shall be assigned/paid to the LWDA as penalties. The remaining 35% (**$5,880.62**) in cash will be disbursed among all employees based on work weeks employed during the PAGA period. (Yaeckel Decl., ¶7)

Further, there are **no** restrictions for any of the employees to file individual actions, as the settlement agreement only covers PAGA claims. (Yaeckel Decl., ¶8); **Exhibit 1**, ¶22).

Plaintiff's counsel authoring the instant motion is well versed in class and representative (PAGA) litigation. Based on that experience, counsel submits this settlement represents a fair and adequate payment to the LWDA and aggrieved employees. (Yaeckel Decl., ¶9-16).

Plaintiff also seeks reimbursement for reasonable litigation expenses incurred in the amount of **$11,000.00**. (Yaeckel Decl. ¶32).

Please Note: There is no request for a representative enhancement or attorneys fees. As part of the mediation, Plaintiff has separately settled his individual claims, including misclassification and retaliation, which are outside of the scope of this PAGA action, in exchange for a confidential release. (Yaeckel Decl. ¶ 35).

The parties proposed notice, to accompany the settlement checks following approval, is attached to the parties Settlement Agreement as **Exhibit 2**.

III. CONTROLLING LAW

PAGA "authorizes an employee to bring an action for civil penalties on behalf of the state against his or her employer for Labor Code violations committed against the employee and fellow employees." *Iskanian v. CLS Trans. Los Angeles* (2014) 59 Cal. 4th 348, 360.

Recently the Court of Appeal has given guidance to trial courts in reviewing a PAGA settlement:

> We therefore hold that **a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws**. (*See Williams , supra* , 3 Cal.5th at p. 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA "sought to remediate present violations and deter future ones"]; *Arias , supra* , 46 Cal.4th at p. 980, 95 Cal.Rptr.3d 588, 209 P.3d 923 [the declared purpose of PAGA was to augment state enforcement efforts to achieve maximum compliance with labor laws].) *Moniz v. Adecco USA, Inc.*, (2021) 72 Cal. App. 4th 56, 77.

Prior to *Moniz*, other Courts followed the rationale in *O'Connor v. Uber Techs.*, 201 F.Supp.3d 1110, 132-35 (N.D. Cal. 2016), which states a court is permitted to approve a PAGA settlement if the settlement is "fair and adequate in view of the purposes and policies of the statute." *Id*.

The California Supreme Court recently confirmed that, unlike in a Class Action, in a PAGA only settlement other employees do <u>not</u> have a right to notice, or to object to the settlement:

> nothing in PAGA's text, statutory scheme, or legislative history suggests the Legislature understood or intended an aggrieved employee's authority to commence and prosecute a PAGA action on the state's behalf to include the power to file objections to the settlement reached by another aggrieved employee representing the same state interest and also acting on the state's behalf. *Turrieta v. Lyft, Inc.*, (2024) 16 Cal.5th 664, 715.

As to penalties in a PAGA case, a court may award a lesser amount than the maximum civil penalty amount 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)(2); *Amaral vs. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213-1214. *See e.g.*, *Fleming v. Covidien Inc*., 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 82%).

<u>Please Note</u>: Plaintiffs' counsel personally experienced the mitigation of "PAGA" penalties before this Court in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504. In *Carrington*, following a successful trial for the Plaintiff, the Court significantly mitigated PAGA penalties ($5 per violation), due to the efforts made by the employer to comply with the law. Please See *Carrington v. Starbucks Corp.* San Diego Superior Court, Case No. 37-2014-00018637-CU-OE-CTL and published appellate opinion 30 Cal.App.5th 504.

IV. <u>DISCUSSION</u>

The parties reached the terms of their proposed settlement agreement following the exchange of extensive information and employment records. The parties submit the proposed settlement of PAGA penalties is fair, adequate, and reasonable.

A. THE NATURE AND SCOPE OF THE ALLEGED VIOLATIONS

The Complaint alleges Labor Code violations which triggered penalties under the PAGA statute (Labor Code §2698 et seq.) (See ROA #1.) Plaintiffs also allege all employees were denied compliant Meal and Rest Periods, minimum wages, overtime, accurate wage statements, reimbursements, and suffered waiting time violations. (See ROA #1, Exhibit 1: "Plaintiff's LWDA Notice" attached thereto).

Specifically, Plaintiffs allege that they - and other employees - received "short," "late," or "missing" Meal Periods, including those documented within Defendant's Time Records. (Decl.

Yaeckel, ¶28). Plaintiffs also challenged whether Defendant maintained lawful meal and rest periods. Plaintiffs alleged they- and other employees -were not properly compensated due to Defendant's failure to maintain accurate time records. (*Id.*) Finally, Plaintiffs also challenged whether Defendant maintained lawful meal and rest period policies. (*Id.*)

B. ANALYSIS OF POTENTIAL LIABILITY, ON A REPRESENTATIVE BASIS

The catalyst of this litigation concerned allegations that the aggrieved employees were denied legally compliant meal and rest periods, and were not paid for all hours worked. Investigations (including expert analysis) completed by Plaintiff's counsel revealed that Defendant's timekeeping policies and employee records were not in compliance with California law. (Decl. Yaeckel, ¶29). However, these investigations also revealed that the "rate of violation" by Defendant was significantly less than 100%. (*Id.*). On many of those occasions, it appears that Defendant did, in fact, comply with the law. (*Id.*)

1. <u>The Parameters of the Proposed PAGA Group</u>

To confirm, this settlement is meant to encompass all current and former non-exempt employees who worked in California during the "PAGA period.". (**Ex. 1**: ¶ 3).

Defendant have confirmed, and counsel has independently <u>verified</u>, that there are approximately **44** employees who worked a total of **556** pay periods at issue as of the time of this filing. (Yaeckel Decl. ¶ 8).

If the Court approves the "contingent costs" as requested in the moving papers, the total amount of PAGA penalties will be **$16,801.78**. 65% (**$10,921.16**) shall be assigned/paid to the LWDA as penalties. The remaining 35% (**$5,880.62**) will be disbursed among all employees based on pay periods worked during the PAGA period. If you divide the $5,880.62 in penalties between the 44 employees, it results in an average payout of **$133.65** per employee. (Yaeckel Decl. ¶ 6). **<u>Please Note</u>:** This is an average only. The actual payout amounts to **$10.58** per pay period to the aggrieved employees. The highest recovery is an employee who worked 40 pay periods (**$423.20**), and the lowest recovery is an employee who worked one pay period (**$10.58**). (Yaeckel Decl. ¶ 6)

2. <u>The Analysis of the Claims and Scope of Liability</u>

Prior to settlement, Plaintiff's and retained experts conducted a thorough expert analysis of the documents and data produced by Defendant. This included an analysis of all relevant written policies and ***all*** time and wage records for other putative aggrieved employees. Given the expert report Plaintiff's Counsel were able to realistically assess the value of Plaintiff's claims, and intelligently engage Defense Counsel in settlement discussions that culminated in the proposed settlement now before the Court. Plaintiff's forensic consultant calculated the estimated best case recovery would be approximately **$90.000.00-$150,000.** (Yaeckel Decl. ¶19). Moreover, as is set forth more fully below, all counsel are aware "maximum" awards in PAGA only cases are exceedingly rare. Moreover, most trial Courts (including <u>this</u> Trial Court, in the *Carrington* matter) decline to "stack" PAGA penalties. "Stacking" refers to imposing multiple penalties for one alleged "harm." *E.g.* one single late meal period could arguably violate at least four Labor Code provisions that allow for separate penalties pursuant to PAGA. (Yaeckel Decl.¶ 31).

Finally, given Defendant's internal audit following receipt of the PAGA letter, it is likely that any penalties awarded would have been reduced to no more than 30% of the maximum award. Yaeckel decl 28; See Labor Code Section 2699(h)(1).

i. Meal and Rest Period Claims

Plaintiff was able to identify hundreds of examples of "missing" or "late" Meal Periods without the provision of a Meal Period Penalty Payment. However, Defendant argued that these records do not conclusively show whether (1) Defendant actually failed to provide the Meal Period, (2) there was a voluntary waiver, (3) employees forgot to clock out, or (4) employees voluntarily chose to skip or take them late even though they were provided. (Yaeckel decl. ¶32). Additionally, Defendant argued that RVC argued it had a practice where all hourly employees working in the shop would break for lunch at the same time (11:00 a.m. after beginning work at 7:00 a.m.) So RVC argued there was evidence of a standard practice of all hourly employees breaking for a meal period at the same time each day. (*Id.*)

Plaintiff also alleged Defendants' written policies were illegal, and improperly restricted class members from leaving the premises during their Rest Periods. Defendant argued that witness testimony would demonstrate that - in practice - Defendants did not restrict its employees from "leave the premises" during Rest Periods.(Yaeckel decl. ¶22). The rest period claims would have been harder to prove on a representative basis given that rest breaks were not recorded on the time records. *Id*.

ii. Minimum Wage and Overtime Violations

Plaintiff alleges that Defendant failed to pay minimum wages to employees for all time spent under Defendant's control. This allegation is based on the following alleged facts: Defendant failed to maintain accurate Time Records to the detriment of the employees. More specifically, although Defendants would receive "to-the-minute" start and end times, Defendants would thereafter alter - deduct time from - the Time Record, prior to payment of compensation to the employees. (Yaeckel Decl. ¶23).

Plaintiff alleges that Defendant failed to pay Plaintiff and all other Aggrieved Employees all compensation, including overtime compensation, due in violation of, among other statutes, Labor Code section 510. These violations occurred due to Defendant's illegal policies, referenced above, whereby employees experienced monetary under-compensation. The systematic failure to provide proper overtime compensation is a violation of California law. Additionally, Defendant also failed to provide the actual Overtime Rate of Pay by ignoring certain compensation when calculating the Regular Rate of Pay including, but not limited to, various forms of bonus and/or incentive pay, and the value of employee benefits and employee discounts, in violation of Labor Code section 510. (*Id*).

iii. Wage Statements, Reimbursement and Other Derivative Penalties

The remaining claims are largely derivative, in that Wage Statement and Labor Code § 203 penalties would only be permissible if the above claims are proven. Plaintiff had also alleged violations for failure to reimburse business expenses pursuant to Labor Code § 2802. However, it appeared Defendant had compliant reimbursement policies and any un-reimbursed expenses would have been very minimal. (Yaeckel Decl. ¶ 24).

iv. The Arguments for Mitigation of PAGA Penalties

Plaintiff's counsel is aware of the Court's discretion to mitigate penalties pursuant to California Labor Code section 2699(e)(2). (Yaeckel Decl. ¶25). To confirm, Plaintiff's counsel experienced the mitigation of "PAGA" penalties before this Trial Court, in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504. (*Id.*) In *Carrington*, the Court significantly mitigated PAGA penalties (to $5 per violation), due to the efforts made by the employer to comply with the law. (*Id.*)

Plaintiff's counsel <u>agrees</u> that penalties *should* be mitigated where violations are minimal (or rare), or where the employer makes significant efforts to comply with the Labor Code. (Yaeckel Decl. ¶26-28).

Moreover, it was important to note that in this case, Defendant was able to present evidence that RVC performed a "PAGA Audit" under Labor Code Section 2699(h)(1) within 60 days of receiving the LWDA notice letter, which included: (1) an audit of the alleged violations, (2) dissemination of new wage and hour policies in a new employee handbook; and (3) manager training. (Yaeckel Decl. ¶28). To If this was proven up at trial this PAGA Audit would have effectively reduced PAGA Penalties to not more than 30% of the penalties sought per the statute which factored in heavily during settlement negotiations. See Labor Code Section 2699(h)(1).

Accordingly, it is the opinion of Plaintiff's counsel that the settlement is fair, adequate, and reasonable. Specifically, Plaintiff's counsel's understanding is that Defendant has reviewed its policies and practices, and made updates to attempt to ensure future compliance with California law. (Yaeckel Decl., ¶29).

3. <u>Counsel Are Well Experienced in PAGA Matters and Recommend the Settlement</u>

The Lead Trial Counsel for Plaintiff, Mr. William Sullivan, has been a California-licensed attorney for 30 years. He has approximately 29 years of experience in "class action" litigation, both as plaintiff and defense counsel. Mr. Sullivan has acted as Trial Counsel (for Plaintiff) in multiple "Wage and Hour" Class/Representative actions, including the (San Diego Superior Court) Trial which is the subject of the Published decision entitled *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504. Mr. Sullivan estimates that, throughout the course of his 30-year career, he has acted as Lead Plaintiff's counsel on "Wage and Hour" Class/Representative actions that have collected more than $300 million for employees and/or the State of California, either through judgment following trial, or via negotiated settlement. (Yaeckel Decl. ¶9).

Plaintiff's counsel, Eric K. Yaeckel, has over 14 years of experience prosecuting class and representative action claims under the California Labor Code. (Yaeckel Decl. ¶10-15). Plaintiff's counsel are the attorneys of record in a matter that was recently heard (and favorably decided) before the California Supreme Court, titled *Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58. (*Id.*) The

Donohue matter was a certified class and PAGA action. (*Id.*)

Plaintiff's counsel, Cody D. Archer, has approximately 1 year of experience prosecuting class and representative action claims under the California Labor Code. (Yaeckel Decl. ¶11).

Based on said experience, it is the opinion of all Plaintiff's counsel that this settlement represents a fair and adequate payment. (Yaeckel Decl. ¶16).

C. THE ALLOCATION OF PENALTIES, AND *LIMITED RELEASE* OF CLAIMS

While Labor Code section 2699(*l*) requires a court to "review and approve any penalties sought as part of a proposed settlement agreement," it does not provide any guidance as to what is considered an 'adequate' allocation of these penalties. However, Trial Courts have held that *where the* division of penalties was fair and adequate and in accordance with the PAGA statute, the court should approved the settlement. *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1076–77 (C.D. Cal. 2017).

After subtracting the contingent costs set forth above, the parties seek to allocate **$16,801.78** of the total settlement to the Total Value of the PAGA Fund. 65% (**$10,921.16)** shall be assigned/paid to the LWDA as penalties. The remaining 35% (**$5,880.62**) will be allocated and distributed among the current or ex-employees within the PAGA Period.

The parties contend the settlement agreement amount is fair, adequate, and reasonable. (Decl. Yaeckel, ¶29). Moreover, the PAGA settlement does not bar any employee from pursuing their own individual Labor Code claims. (Decl. Yaeckel ¶8; **Exhibit 1**: "Release of PAGA Claims" ¶22). The release only applies to the PAGA claims for penalties, based upon the allegations in Plaintiff's operative Complaint. (*Id.*)

D. REQUEST FOR ATTORNEYS' COSTS

Plaintiff also requests the Court approve the requested attorneys' costs reimbursement and plaintiff's enhancement awards for the reasons set forth below.

Plaintiff's Counsel are entitled to reimbursement of their discretionary litigation costs. Cal. Lab. Code § 2699(g)(1). Out-of-pocket discretionary expenses are compensable if they would normally be billed to a fee-paying client. *See Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1407, 1419 (1991), *overruled in part on other* *grounds in Olson v. Automobile Club of Southern Calif.*, 42 Cal. 4th 1142 (2008). Such discretionary costs may be claimed as part of an attorneys' fees motion when seeking statutory fees under the Labor Code. *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1218 n.27 (2008) (awarding costs that are necessarily incurred).

The total costs expended by Plaintiff's counsel in this matter amount to approximately $11,296.06. (Yaeckel decl ¶32). However, Plaintiff has agreed to cap that cost request at **$11,000.00** pursuant to the parties agreement. (*Id.*) The costs include, filing and service fees (including the Complaint and all other pleadings, all e-file charges, LWDA filing fees and attorney messenger fees; Mediation Fees; Expert Fees, some transportation costs (driving to and from mediation), Legal Research and Postage and Copying Costs). Because these reasonable costs were necessarily incurred during the case's pendency, these costs are reasonable and should be awarded. *See also* Cal. Civ. Pro. Code § 1033.5(c)(4) ("[i]tems not mentioned in this section and items assessed upon application may be allowed or denied in the court's discretion.")

Plaintiff requests the Court grant the request of $11,000.00 in litigation costs.

IV. CONCLUSION

The parties respectfully request that the Court approve their settlement and proposed allocation of PAGA penalties to the LWDA and the represented employees.

Dated: April 14, 2026

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