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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF CONTRA COSTA**

Michael Guillen, on behalf of themselves and  
on behalf of all persons similarly situated,

Plaintiff,

v.

Concord Automotive Sales and Service Inc.,  
and DOES 1-25.

Defendants.

Case No: C23-01333

**NOTICE OF MOTION AND MOTION  
FOR APPROVAL OF CALIFORNIA  
LABOR CODE PRIVATE ATTORNEYS  
GENERAL ACT OF 2004 ("PAGA")  
SETTLEMENT**

**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE THAT** on \_\_\_\_\_, 2023 at \_\_\_\_\_:\_\_\_\_\_ p.m.,  
or as soon thereafter as the matter may be heard, in Department \_\_\_\_\_ of the above-entitled Court,  
located at 725 Court Street, Martinez, CA 94553, Plaintiff MICHAEL GUILLEN will respectfully  
request the Court's approval of the proposed and unopposed settlement agreement of Plaintiff's  
individual and penalty claims under the Labor Code Private Attorney General Act (i.e., Labor Code  
section 2698 et seq., "PAGA").

The basis for this application is that the parties have reached and fully executed a settlement  
of the above-entitled case that disposes of the matter entirely, and one aspect of Plaintiff's claims

1 included a demand for relief under PAGA. Pursuant to Labor Code §2699(1), the settlement of  
2 PAGA claims requires court approval. Good cause exists for the Court to grant this unopposed  
3 Motion, as the proposed settlement is fair, adequate, and reasonable and in the best interests of the  
4 PAGA Class as a whole. Thus, the parties seek court approval of the PAGA aspect of the settlement  
5 so that the matter may be dismissed entirely pursuant to the settlement of the parties.

6 This application is based on this notice, the Declaration of Harris Emran and all exhibits  
7 attached thereto, the attached Memorandum of Points and Authorities, as well as all records on file  
8 with this Court and such evidence or oral argument as may be presented at the hearing.

9  
10 DATED: November 2, 2023

**EMRAN LAW**

11  
12 By: Harris Emran  
13 Harris Emran  
14 Attorney for PLAINTIFF  
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28

**TABLE OF CONTENTS**

**I. INTRODUCTION**

**II. RELEVANT BACKGROUND**

**A. Plaintiff's Contentions**

**B. Procedural History**

**C. Investigation and Settlement Discussions**

**III. SUMMARY OF SETTLEMENT AGREEMENT**

**A. The Proposed Settlement Terms**

**B. Settlement/Release of Claims**

**IV. LEGAL ANALYSIS**

**A. Plaintiff Submitted a Copy of the Settlement to the LWDA**

**B. The LWDA Did Not Investigate Plaintiff's PAGA Claims**

**C. This Settlement is Fair, Adequate, and Reasonable**

**1. Defendant's Exposure To the Claim**

**2. Basis for Discounting Penalties for Purposes of Settlement**

**D. The Requested Attorney's Fees and Costs are also Reasonable.**

**1. Legal Standard for Attorneys' Fee Awards in Representative Actions**

**2. 33.33% of the Maximum Settlement Fund and the Request Costs**

**Reimbursement Are Appropriate and Should be Awarded.**

**V. CONCLUSION**

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2           **I. INTRODUCTION**

3           On June 1, 2023, Plaintiff MICHAEL GUILLEN (“Plaintiff” or ‘GUILLEN’) brought a  
4 wage and hour action against Defendant CONCORD AUTOMOTIVE SALES AND SERVICE,  
5 INC. (“Defendant” or “CASS”), individually and as a representative action on behalf of all current  
6 and former non-exempt employees paid on an hourly, piece-rate basis (“Aggrieved Employees”).  
7 Plaintiff’s operative complaint alleges causes of action for (1) Unfair Competition, (2) Failure to  
8 Pay Minimum Wages, (3) Failure to Reimburse Business Expenses, (4) Failure to Pay Wages When  
9 Due, (5) Failure to Provide Accurate, Itemized Wage Statements, (6) Failure to Pay Overtime  
10 Compensation, (7) Failure to Provide Required Meal Periods, (8) Failure to Provide Rest Periods,  
11 (9) Recovery of Civil Penalties under the Labor Code Private Attorneys General Act. (See Emran  
12 Decl. ¶5, Ex. B)

13           Pursuant to Labor Code § 2699(1)(2), Plaintiff seeks the Court’s approval of the instantly  
14 proposed One Hundred Twenty-Five Thousand Dollars and Zero Cents (\$125,000) all-in settlement  
15 with a Fifty Thousand Six Hundred Eighty-Six Dollars and Seventy-Five Cents (\$50,686.75)  
16 allocation to PAGA reached between him and his former employer, Defendant.

17           Defendant denies all claims, denies that Plaintiff is entitled to any recovery, and asserts  
18 affirmative defenses in response to Plaintiff’s claims. Nonetheless, having resolved the matter, the  
19 Parties hereby submit their Settlement Agreement and Release (“Settlement” or “Settlement  
20 Agreement”) to the Court for its approval.

21           By way of this settlement, Plaintiff seeks to fully and finally resolve alleged violations on  
22 behalf of himself and all other Aggrieved Employees as defined in the Settlement Agreement. If  
23 approved, the proposed Settlement will resolve this matter in its entirety. See Emran Decl. ¶ 15, Ex.  
24 D. The Settlement creates an all-inclusive, non-reversionary settlement fund in the amount of One  
25 Hundred Twenty-Five Thousand Dollars and Zero Cents (\$125,000.00), which includes all  
26 Settlement Awards to Plaintiff, the PAGA Class, Plaintiff’s Counsel’s attorneys’ fees, Plaintiff’s  
27 litigation expenses and costs, Fifty Thousand Six Hundred Eighty-Six Dollars and Seventy Five  
28 Cents (\$50,686.75) allocated to penalties under the California Private Attorneys General Act

1 (“PAGA”), with Thirty-Eight Thousand Fifteen Dollars and Six Cents (\$38,015.06) (seventy-five  
2 percent) paid to the California Labor and Workforce Development Agency (“LWDA”) and Twelve  
3 Thousand Six Hundred Seventy-One Dollars and Sixty-Nine Cents (\$12,671.69) (twenty-five  
4 percent) paid to the PAGA Class, as described below, and settlement administration expenses  
5 (“Gross Settlement Amount”). See Emran Decl. Ex. D.

6 A presumption of fairness exists as the Settlement was reached through extensive, mediated  
7 arm’s-length negotiations; sufficient investigation and discovery allowed Plaintiff’s counsel to act  
8 intelligently, and Plaintiff’s counsel is experienced in similar wage-and-hour litigation.  
9 Additionally, settlement approval is appropriate as the proposed Settlement is fair, adequate, and  
10 reasonable to Plaintiff and the Aggrieved Employees. This settlement is a compromise by both  
11 parties and reflects a reasonable assessment of the risks for each, as well as the recognition that  
12 continued litigation will cause extensive and costly discovery for all parties and further litigation  
13 would cause inconvenience, distraction, disruption, delay and expense disproportionate to the  
14 potential benefits of litigation.

15 Accordingly, Plaintiff requests the Court enter an order (1) finding the Settlement is fair and  
16 reasonable in light of the facts and evidence, (2) approving the form and method of settlement check  
17 administration to the alleged aggrieved employees, (3) finding all procedural requirements for  
18 PAGA settlement have been met, (4) dismissing the action with prejudice as to the named Plaintiff  
19 and the State and all other Aggrieved Employees as approved by the Court.

## 20 **II. RELEVANT BACKGROUND**

### 21 **A. Plaintiff’s Contentions**

#### 22 **Plaintiff GUILLEN Work for Defendant CONCORD**

23 Defendant is a company organized under the laws of the State of California which operates  
24 car dealerships that also performs automotive services. Defendant employed Plaintiff between July  
25 2020 and January 2023. Plaintiff alleges that he regularly worked through meal and rest periods and  
26 performed off-the-clock work for Defendants. He also alleges that he used a personal cell phone to  
27 discharge work duties but was not reimbursed for such expense. Plaintiff was written-up for  
28 performing work off-the-clock and was terminated in January 2023.

1       **B. Procedural History**

2           On March 23, 2023, Plaintiff filed notice with the LWDA online with a copy sent by  
3 certified mail to Defendant. Plaintiff's notice provided details of the alleged violations of the  
4 California Labor Code by Defendant and seeking penalties stemming from such violations. (See  
5 Emran Decl. ¶ 3, Ex. A)

6           On June 1, 2023, Plaintiff filed his complaint in the above-entitled court seeking damages  
7 both as an individual and in a representative capacity on behalf of the State of California. (See  
8 Emran Decl. ¶ 5, Ex. B) Plaintiff's operative complaint alleges causes of action for (1) Unfair  
9 Competition, (2) Failure to Pay Minimum Wages, (3) Failure to Reimburse Business Expenses, (4)  
10 Failure to Pay Wages When Due, (5) Failure to Provide Accurate, Itemized Wage Statements, (6)  
11 Failure to Pay Overtime Compensation, (7) Failure to Provide Required Meal Periods, (8) Failure  
12 to Provide Rest Periods, (9) Recovery of Civil Penalties under the Labor Code Private Attorneys  
13 General Act. (See Emran Decl. ¶ 5, Ex. B)

14           Plaintiff contends that Defendant violated the California Labor Code. Defendant denies that  
15 they have engaged in any unlawful activity, that they have failed to comply with the law in any  
16 respect, and that they have any liability to anyone based on the claims asserted in this action. See  
17 Emran Decl. ¶ 6)

18       **C. Investigation and Settlement Discussions**

19           On July 19, 2023, the Parties stipulated to stay the case pending settlement negotiations.  
20 (See Emran Decl. ¶ 7, Ex. C). Between July 2023 and September 2023, the Parties to this action  
21 conducted a thorough investigation into the claims and defenses of each party. This exchange  
22 included (1) information bearing on the number of "aggrieved employees," their respective job  
23 duties / responsibilities, pay structure, job descriptions, and the number of pay periods during the  
24 PAGA period; (2) wage statements for Guillen; (3) personnel file for Guillen; (4) the employee  
25 handbook and other wage and hour related policies and procedures in effect during the relevant  
26 period; and (5) punch time and pay data for Plaintiff. (See Emran Decl. ¶ 8, Ex. C).

27           After multiple exchanges and meetings, On September 1, 2023, the Parties reached an  
28 agreement a settlement offer in this action and started drafting the Settlement Agreement and

1 Release. (See Emran Decl. ¶ 13). On October 24, 2023, the Parties fully executed the Settlement  
2 Agreement. (See Emran Decl. ¶14, Ex. D).

3 Counsels in this action are of opinion that Settlement for the consideration and on the terms  
4 set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of  
5 Plaintiff and other Aggrieved Employees in light of all known facts and circumstances. (See Emran  
6 Decl. ¶ 16). This includes consideration of the total number of alleged “aggrieved employees” is  
7 small, totaling only 10 employees during the PAGA period, the settlement was negotiated as part  
8 of an informed, non-collusive, arms-length negotiation following several meetings with counsel and  
9 exchange of information, the uniqueness of Plaintiff’s injuries which may have undermined this  
10 claim, the ability for alleged “aggrieved employees” to bring their own claims for non-PAGA  
11 claims, and Plaintiff’s counsel risk of obtaining full recovery of claimed PAGA penalties in light of  
12 Defendant’s disclosures, and risk of significant delay. (See Emran Decl. ¶ 16).

### 13 **III. SUMMARY OF SETTLEMENT AGREEMENT**

#### 14 **A. The Proposed Settlement Terms**

15 The Parties have agreed, upon entry of the Order approving this Settlement, Defendant will  
16 pay a Gross Settlement Amount of One Hundred Twenty-Five Thousand Dollars and Zero Cents  
17 (\$125,000.00). The Administrator will make and deduct the following payments from the Gross  
18 Settlement Amount, in the amounts specified by the Court in the Final Approval:

19 a. PAGA Settlement: To the LWDA and Aggrieved Employees: Fifty Thousand Six  
20 Hundred Eighty-Six Dollars and Seventy-Five Cents (\$50,686.75) in consideration for  
21 full and complete release of Plaintiff’s representative claims under PAGA and as defined  
22 in Section B below. Under Section 2699(i) of the California Labor Code, Plaintiff and  
23 Aggrieved Employees are entitled to recover Twelve Thousand Six Hundred Seventy-  
24 One Dollars, or Twenty-Five percent (25%) of the PAGA Settlement with the remaining  
25 Thirty-Eight Thousand Fifteen Dollars and Six Cents, or Seventy-Five percent (75%) to  
26 be paid directly to the LWDA. See, Settlement Agreement §§3,4.

27 b. To Plaintiff: Individual damages in the amount of Thirty-Two Thousand Five Hundred  
28 Dollars (\$32,500) for release of his individual claims identified in Section B below. The

1 Settlement includes a Civil Code Section 1542 waiver as to known or unknown claims  
2 relating to or arising under the Action to the full extent permitted under the law. See,  
3 Settlement Agreement §3.3.

4 c. To PAGA Counsel: A PAGA Counsel Fees Payment at the Court's discretion of less  
5 than Thirty-Three Percent (33%) which is currently estimated to be Forty-One Thousand  
6 Dollars and Zero Cents (\$41,00.00) and PAGA Counsel Litigation Expenses Payment  
7 of not more than Five Hundred Sixty-Three Dollars and Twenty-Five Cents (\$563.25).  
8 See, Settlement Agreement §3.2. Defendant does not oppose Plaintiff's counsel's  
9 requests for Court approval of these payments provided that they do not exceed these  
10 amounts. If the Court approves PAGA Counsel Fees Payment and/or a PAGA Counsel  
11 Litigation Expenses Payment in an amount less than the amounts requested, the  
12 Administrator will allocate the remainder to the Net Settlement Amount which is used  
13 to determine the amount paid to the LWDA and aggrieved employees. See, Settlement  
14 Agreement at §2.14 – 2.17. Released Parties shall have no liability to PAGA Counsel or  
15 any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel  
16 Fee Payment and/or PAGA Counsel Litigation Expenses Payment.

17 d. To the Administrator: An Administrator Expenses Payment not to exceed One Thousand  
18 Five Hundred Dollars and Zero Cents (\$1,500.00) except for a showing of good cause  
19 and as approved by the Court. To the extent the Administration Expenses are less, or the  
20 Court approves payment less than One Thousand Five Hundred Dollars and Zero Cents  
21 (\$1,500.00), the Administrator will retain the remainder in the Net Settlement Amount.

22 **B. Settlement/Release of Claims**

23 The Parties have agreed, upon entry of the Order approving this Settlement, the LWDA and  
24 any of Defendant's employees who worked between March 22, 2022, and the date on which the  
25 Court approves this Settlement Agreement, will be barred from pursuing any action for civil  
26 penalties under PAGA against the Released Parties as described in Section 2.29 of the Settlement  
27 Agreement for violations of California Labor Code included in the Released Claims as defined in  
28 Section 2.28 of the Settlement Agreement. The PAGA Settlement Amount serves as a full and

1 complete satisfaction of the PAGA claims asserted on behalf of the aggrieved employees, which is  
2 defined as all persons who are employed or have been employed by Defendant in California as an  
3 hourly non-exempt employee either paid on a piece-rate basis or whose compensation includes the  
4 payment of an hourly wage and a productivity bonus or commission between March 22, 2022 and  
5 the date of the Court's Order approving the Settlement Agreement. Nothing in this Motion, the  
6 Settlement Agreement, nor the Proposed Order will prevent any current or former employee except  
7 for Plaintiff Michael Guillen from claiming or pursuing individual claims against Defendant for  
8 violations of the California Labor Code.

9       Effective on the date when Defendant fully funds the entire Gross Settlement Amount  
10 Plaintiff will release claims against all Released Parties as follows: Plaintiff and his respective  
11 former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs,  
12 administrators, successors, and assigns generally, release and discharge Released Parties from all  
13 claims, transactions, or occurrences, including, but not limited to: all claims, debts, liabilities,  
14 demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of  
15 action of any nature under any state, federal or local law that were or could have been asserted based  
16 on the facts and allegations made in the Action, and any amendments thereto, including without  
17 limitation, California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1997.1,  
18 1198, 2802, Bus. & Prof. Code § 17200, California Industrial Commission Wage Orders, and  
19 including all claims for or related to alleged unpaid wages, overtime or double time wages,  
20 minimum wages, meal periods and meal period premiums, rest periods and rest period premiums,  
21 off-the-clock work, wage statements, payroll records and record keeping, unfair competition, unfair  
22 business practices, unlawful business practices, representative actions, aggrieved party claims,  
23 injunctive relief, declaratory relief, accounting, punitive damages, liquidated damages, penalties of  
24 any nature, interest fees, costs, as well as all other claims and allegations alleged in the Action,  
25 during Plaintiff's employment with Defendant.

#### 26       **IV. LEGAL ANALYSIS**

27       Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of  
28 other current or former employees to recover civil penalties for Labor Code violations. *Iskanian v.*

1 *CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. Seventy-five percent of any penalties  
2 recovered go to the LWDA, leaving the remaining twenty-five percent for the employees. *Id.* PAGA  
3 is intended “to augment the limited enforcement capability of [the LWDA] by empowering  
4 employees to enforce the Labor Code as representatives of the Agency.” *Id.* at 59 Cal. 4th 383.) A  
5 judgment [or Court-approved settlement] in a PAGA action binds all those, including nonparty  
6 aggrieved employees, who would be bound by a judgment in an action brought by the government.  
7 *Id.* at 381.

8 Based on the California Supreme Court's holdings in *Arias v. Superior Court* (2009) 46  
9 Cal.4th 969 and *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, there is  
10 no requirement under PAGA for Plaintiff to establish the requirements of class certification (i.e.,  
11 numerosity, typicality, commonality, and adequacy) nor is there the usual two-step preliminary and  
12 final approval process as found in class actions. Rather, a PAGA settlement merely requires a one-  
13 step review and approval by the Court.

14 The California Supreme Court has said in this context that “any negotiated resolution [must  
15 be] fair to those affected.” *Williams v. Superior Ct.* (2017) 3 Cal. 5th 531, 549, 398 P.3d 69, 81.  
16 However, it may be substantially discounted given that courts often exercise their discretion to  
17 award PAGA penalties below the statutory maximum even where a claim succeeds at trial. *Amaral*  
18 *v. Cintas Corp. No. 2* (2008) 163 Cal. App. 4th 1157, 1213, (“Section 2699, subdivision (e)(2)  
19 provides that in an action by an aggrieved employee to recover PAGA penalties, the court ‘may  
20 award a lesser amount than the maximum civil penalty amount specified by this part if, based on  
21 the facts and circumstances of the particular case, to do otherwise would result in an award that is  
22 unjust, arbitrary and oppressive, or confiscatory.’”) See also, *Lopez v. Friant & Assocs., LLC* (2017)  
23 15 Cal. App. 5th 773, 787, 224 Cal. Rptr. 3d 1, 11 (recognizing the trial court’s discretion to reduce  
24 PAGA penalties).

25 Under Labor Code § 2699 (1)(2), the Parties must obtain approval of their PAGA settlement  
26 from the Court and hereby seek the Court’s approval. Pursuant to Labor Code Section 2699(3)(2),  
27 the Court has wide discretion regarding the amount of the PAGA penalty (See also *Thurman v.*  
28 *Bayshore Transit Management* (2012) 203 Cal.App.4th 1112, 1136 [standard of review is abuse of

1 discretion].) The primary objective of a PAGA action “is to supplement enforcement actions by  
2 public agencies, which lack adequate resources to bring all such actions themselves.” *Arias v.*  
3 *Superior Court* (2009) 46 Cal.4th 969, 980-981, 986. “Restitution is not the primary object of a  
4 PAGA action, as it is in most class actions.” *Franco v. Athens Disposal Co., Inc.* (2009) 171  
5 Cal.App.4th 1277,1300 (emphasis added). Rather, a PAGA action is “fundamentally a law  
6 enforcement action designed to protect the public and penalize the employer for past illegal  
7 conduct.” *Id.* Prior to the enactment of PAGA, the California Legislature determined that it lacked  
8 adequate financing to enforce California labor laws and in order “to achieve maximum compliance  
9 with state labor laws,” it declared that it was in the public interest to allow employees, acting as  
10 private attorneys general, to recover civil penalties that otherwise would have been assessed and  
11 collected by the LWDA. *Arias*, 46 Cal.4th at 980-981.

12 Labor Code § 2699(1)(2) provides that the Superior Court shall review and approve any  
13 settlement of any civil action filed pursuant to the PAGA. Although PAGA actions bear a superficial  
14 resemblance to a type of class action, there are several factors distinguishing representative PAGA  
15 actions and class actions. First a representative action under PAGA is fundamentally a law  
16 enforcement action designed to protect the public and penalize the employer for past illegal conduct.  
17 See *Franco v. Athens Disposal Co., Inc.*, (2009) 171 Cal. App. 4th 1277, 1300. The purpose is not  
18 to collect damages on behalf of other employees or provide restitution to victims of Labor Code  
19 violations. *Id.* (“Restitution is not the primary object of a PAGA action, as it is in most class  
20 actions.”). Moreover, there is no requirement that the Court apply the same level of scrutiny in  
21 approving a PAGA settlement as it does with class actions. Indeed, the California Supreme Court  
22 has held that an employee who sues an employer under the PAGA need not satisfy class action  
23 requirements. *Arias*, 46 Cal. 4th at 974. For example, “PAGA has no notice requirements for  
24 unnamed aggrieved employees, nor may such employees opt out of a PAGA action.” *Baumann v.*  
25 *Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1122 (9th Cir. 2014).

26 **A. Plaintiff Submitted a Copy of the Settlement to the LWDA**

27 Labor Code § 2699(1)(2) requires that any proposed settlement of a PAGA action be  
28 submitted to the LWDA. Plaintiff completed this requirement by submitting a copy of the PAGA

1 Settlement and this motion to the LWDA through its online submission at the same time this was  
2 submitted to the court. (Decl. of Harris Emran ¶ 19).

3 **B. The LWDA Did Not Investigate Plaintiff's PAGA Claims**

4 The Labor Code requires that a proposed PAGA settlement be sent to the LWDA at the  
5 same time that it is submitted to the Superior Court for review and approval. Lab. Code § 2699(1)(2).  
6 However, the Labor Code does not authorize the LWDA to interfere with, obstruct, object, or  
7 otherwise impede a request for approval of a PAGA settlement. Indeed, the time for the LWDA to  
8 comment on a settlement is during the short window in which it must inform the aggrieved  
9 employee that it declines to investigate. Lab. Code § 2699.3(a)(2)(B). Once that window shuts, the  
10 aggrieved employee is deputized to act on behalf of the LWDA in a civil action.

11 The Labor Code is clear that all that is required to obtain court approval of a PAGA  
12 settlement is for the proposed settlement to be sent to the LWDA. Lab. Code § 2699(1)(2). Here, the  
13 LWDA had opportunity to investigate and obtain civil penalties by citation after Plaintiff submitted  
14 his PAGA notice to the LWDA. (Emran Decl., Ex. A). "If the [LWDA] intends to investigate the  
15 alleged violation, it shall notify the employer and the aggrieved employee or representative by  
16 certified mail of its decision within 65 calendar days of the postmark date of the notice." Lab. Code  
17 § 2699.3(a)(2)(B). "Within 120 calendar days of that decision, the [LWDA] may investigate the  
18 alleged violation and issue any appropriate citation." *Id.* All that is required now regarding LWDA  
19 involvement is for the requisite documentation to be submitted to the LWDA pursuant to Labor  
20 Code § 2699(1)(2) which Plaintiff's counsel has completed. (Emran Decl. ¶ 19.)

21 **C. This Settlement is Fair, Adequate, and Reasonable**

22 A plaintiff suing under PAGA does so as the proxy or agent of the State of California to  
23 enforce labor laws on behalf of the state's law enforcement agencies. *Iskanian v. CLS*  
24 *Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380-381. As a result of Plaintiff's  
25 Counsel's efforts, Plaintiff's PAGA action undoubtedly achieved the primary objective of a PAGA  
26 action when Plaintiff's Counsel supplemented the State of California's enforcement action by filing  
27 the PAGA complaint on the behalf of Plaintiff and the State of California and utilizing its law firm's  
28

resources to litigate the action against the Defendant in an effort to compel maximum compliance with California labor laws. See *Arias*, supra, 46 Cal.4th at 980-981.

Plaintiff conducted a thorough investigation into the facts of the Action, including by informal discovery exchange which requested information from Defendant in order to evaluate the potential damages and for respective counsel to engage in meaningful settlement discussions. Plaintiff's counsel received, among other things, the following information and evidence with which to properly evaluate both Guillen's individual claim and the PAGA claim: (1) information bearing on the number of "aggrieved employees," their respective job duties / responsibilities, pay structure, job descriptions, and the number of pay periods during the PAGA period; (2) wage statements for Guillen; (3) personnel file for Guillen; (4) the employee handbook and other wage and hour related policies and procedures in effect during the relevant period; and (5) punch time and pay data for Plaintiff. (Emran Decl. ¶ 8.) Plaintiff's counsel closely reviewed the documents and data provided by Defendants to determine the amount of potential PAGA penalties, wages owed to Plaintiff, and other remedies potentially available to Plaintiff and the aggrieved individuals based on the claims in the Action. (Emran Decl. ¶ 9.)

#### **1. Defendant's Exposure to the Claim**

As a result of such investigation, Plaintiff's Counsel learned there are a maximum of ten (10) total "aggrieved employees," including Plaintiff throughout the State of California for the period between March 22, 2022, and the settlement date ("PAGA Period") (Emran Decl. ¶ 16.) These individuals worked approximately 952 pay periods during this time, or roughly 95 pay periods per aggrieved employee (calculated by taking 952 total pay periods divided by 10 total aggrieved employees). (Emran Decl. ¶ 16.) The amount of settlement therefore equals an approximate penalty of \$53.24 per pay period. (Emran Decl. ¶ 16.)

Assuming Plaintiff prevailed in demonstrating that Defendant failed to authorize or permit Plaintiff and the Aggrieved Employees from taking their permitted meal and rest periods, CASS faced a maximum penalty exposure of approximately \$95,200 assuming the Court imposed the maximum initial violation amount of \$100 per pay period (\$100 x 952 pay periods) (Emran Decl. ¶ 17). Thus, the \$50,686.75. PAGA allocation represents approximately 53% of Defendant's

1 exposure to penalties at the maximum \$100/pay period initial violation amount. (Emran Decl. ¶ 17).  
2 The narrow scope of the release on behalf of the Aggrieved Employees also confirms the  
3 reasonableness of this settlement. As set forth in the settlement agreement at §§2.28, the Aggrieved  
4 Employees are only releasing standing to bring a representative action against Defendant for PAGA  
5 penalties on the claims alleged in the Complaint and can still pursue individual claims. (Emran  
6 Decl. ¶ 17.)

## 7 **2. Defendant's Defenses and Risk of PAGA Claim Being Dismissed**

8 Contrary to the allegations in the Complaint, Defendant provided evidence that there was  
9 not a systematic practice of labor code violations. (Emran Decl. ¶ 10). Specifically, Defendant  
10 practiced strong enforcement measures to ensure employees did not work through meal or rest  
11 periods or perform off-the-clock work. Defendant has always disputed that Plaintiff would prevail  
12 on liability, as it has contended Plaintiff's alleged violations arose from his violation of strict  
13 company policy. (Emran Decl. ¶ 10). In fact, Plaintiff received a written warning for working off  
14 the clock and working during meal periods, the basis of the allegations in his Complaint. (Emran  
15 Decl. ¶ 10). Although Plaintiff was confident that Defendant's theory conflicted with its written  
16 policies and procedures, this evidence was problematic for Plaintiff both with respect to proving  
17 liability on a representative basis for all Aggrieved Employees as well as the assessment of  
18 penalties. In light of the alleged lack of a uniform policy prohibiting employees from taking  
19 permitted meal and rest periods or encouraging employees to perform off-the-clock work,  
20 Plaintiff faced a scenario where some of the Aggrieved Employees have not suffered the same  
21 violations each pay period posing serious problems for Plaintiff with respect to liability See,  
22 *Estrada v. Royalty Carpet Mills, Inc.* (2022) 292 Cal. Rptr. 3d 1, 22-23 [confirming that when a  
23 Plaintiff in a PAGA action cannot prove Labor Code violations on behalf of all allegedly  
24 Aggrieved Employees, the Court may assess minimal penalties.]

25 The downside risks are apparent, and any judgment obtained through litigation would require  
26 not only a greater investment in attorney time and litigation costs but also the risk of serious and  
27 lengthy appeals, which Plaintiff's counsel weighed seriously when negotiating a resolution of this  
28 claim. (Emran Decl. ¶10.)

1                   **3. Basis for Discounting Penalties for Purpose of Settlement**

2           Courts have approved PAGA settlements for only a fraction of the potential PAGA civil  
3 penalties, particularly where, as here, counsel have presented compelling reasons why recovery of  
4 penalties was unlikely. (See, e.g., *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, 2016 WL  
5 5907869 at \*9 [approving class action settlement that included a PAGA set-aside of just 0.15  
6 percent of the PAGA claim’s full potential value, where “Plaintiffs face[d] a substantial risk of  
7 recovering nothing on either the class or PAGA claims”]; *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193  
8 F.Supp.3d 1030, 1037 [approving class action settlement allocating a PAGA set-aside worth a  
9 fraction of the PAGA claim’s potential value, where the defendant’s obligations were “genuinely  
10 unclear” and there was no evidence the defendant acted deliberately or negligently failed to learn  
11 about its obligations].) As set forth in the declarations of Plaintiff’s counsel, there were several  
12 factors at play in this case that potentially warranted a discount from the full amount of penalties  
13 authorized by statute for Defendant’s alleged violations of California Labor Code, and Plaintiff  
14 submits that it was prudent to consider these factors for purposes of settlement. (Emran Decl. ¶¶ 8  
15 – 10.)

16           Further, this Settlement provides more than just a nominal payment to Aggrieved  
17 Employees. As explained above, the ten (10) aggrieved employees will receive a payment of  
18 \$53.24 per pay period. (Emran Decl. ¶16.) After deducting the LWDA Payment, the Fee and  
19 Expense Award, the General Release Payment, and the Settlement Administration Costs, the  
20 Settlement Payment for each PAGA Group Member shall be the PAGA Group Member’s pro-rata  
21 share of the PAGA Group Members Payment. See, Settlement Agreement §4.4. The Settlement  
22 Administrator shall calculate the total number of Pay Periods worked by all PAGA Group  
23 Members during the PAGA Period. See, Settlement Agreement §4.4. The Settlement  
24 Administrator will then divide the PAGA Group Members Payment by the total number of Pay  
25 Periods, resulting in a per Pay Period value for each PAGA Group Member. See, Settlement  
26 Agreement §4.4. The Settlement Administrator will then take the per Pay Period value and  
27 multiply it by the number of Pay Periods worked by each PAGA Group Member. See, Settlement  
28 Agreement §4.4.

1 Approval of the Parties' Settlement Agreement is warranted because counsel for all Parties  
2 agree that the amount allocated for civil penalties under PAGA is fair and reasonable considering  
3 the total number of alleged "aggrieved employees" is small, totaling only 10 employees during the  
4 PAGA period, the settlement was negotiated as part of an informed, non-collusive, arms-length  
5 negotiation following several meetings with counsel and exchange of information, the uniqueness  
6 of Plaintiff's injuries which may have undermined this claim, the ability for alleged "aggrieved  
7 employees" to bring their own claims for non-PAGA claims, and Plaintiff's counsel risk of  
8 obtaining full recovery of claimed PAGA penalties in light of Defendant's disclosures. (Emran  
9 Decl. ¶¶ 10-17.)

10 While the recommendations of counsel proposing the settlement are not conclusive, the  
11 Court can properly take them into account, particularly where, as here, such counsel has been  
12 involved in informal discovery and negotiations for some period of time, appear to be competent,  
13 have experience with this type of litigation, and have exchanged substantial evidence with the  
14 opposing party. Here, both Parties' counsel has experience in employment litigation, specifically  
15 PAGA litigation, and conducted an extensive investigation of the factual allegations involved in  
16 this case. Each side has apprised the other, informally of their respective factual contentions, legal  
17 theories and defenses, resulting in extensive arms-length negotiations taking place among the  
18 Parties.

19 The settlement commits Defendant to pay the considerable sum of \$50,686.75 in PAGA  
20 penalties, which is large enough to punish Defendant for alleged previous violations and to deter  
21 such alleged conduct in the future and still allows Aggrieved Employees to seek recovery of any  
22 individual claims they may have.

23 **D. The Requested Attorneys' Fees and Costs are also Reasonable.**

24 **1. Legal Standard for Attorneys' Fee Awards in Representative Actions**

25 PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. Cal. Lab. Code §  
26 2699(g). The U.S. Supreme Court has recognized that "a lawyer who recovers a common fund for  
27 the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from  
28 the fund as a whole." *Boeing Co. v. Van Gemert* (U.S. 1980) 444 U.S. 472, 478. *Accord, Serrano*

1 *v. Priest [Serrano III]* (1977) 20 Cal.3d 25, 38 (trial courts have equitable power to award attorneys’  
2 fees and costs when a litigation proceeding in a representative capacity secures a substantial  
3 benefit). The purpose of the “common fund doctrine” is not only to reward effective legal advocacy  
4 but to “spread litigation costs proportionally among all of the beneficiaries” preventing unjust  
5 enrichment. *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. Both state and  
6 federal courts in California have embraced the common fund doctrine. *E.g., Roos v. Honeywell*  
7 *Internat., Inc.* (2015) 241 Cal.App.4th 1472, 1490.

8 In *Laffitte v. Robert Half Internat., Inc.*, the California Supreme Court “join[ed] the  
9 overwhelming majority of federal and state courts in holding that when class action litigation  
10 establishes a monetary fund for the benefit of the class members, and the trial court in its equitable  
11 powers awards class counsel a fee out of that fund, the court may determine the amount of a  
12 reasonable fee by choosing an appropriate percentage of the fund created.” *Laffitte v. Robert Half*  
13 *Internat., Inc.* (2016) 1 Cal. 5th 480, 503. Plaintiff submits that this guidance should equally apply  
14 to representative actions under PAGA.

15 The Supreme Court highlighted some of the many advantages of the percentage method:  
16 “relative ease of calculation, alignment of incentives between counsel and the class, a better  
17 approximation of market conditions in a contingency case, and the encouragement it provides  
18 counsel to seek an early settlement and avoid unnecessarily prolonging the litigation.” *Id.* In  
19 addition to its apparent endorsement of the percentage fee method, the *Laffitte* Court clarified that  
20 it does not “perceive an abuse of discretion in [a] court’s decision to double check the reasonableness  
21 of the percentage fee through a lodestar calculation.” *Id.* at 504. The *Laffitte* Court regards the  
22 lodestar cross-check as “a mechanism for bringing an objective measure of the work performed into  
23 the calculation of a reasonable attorney fee.” *Id.*

24 In Plaintiff’s view, *Laffitte* stands for the proposition that a trial judge may rely on his or her  
25 discretion and utilize either the percentage method, the lodestar method, or both to calculate a  
26 reasonable attorney’s fee. Furthermore, should a lodestar crosscheck be elected, the trial court does  
27 not abuse its discretion whether it chooses to “perform[] the cross-check using counsel declarations  
28 summarizing overall time spent” or opts to do a more detailed analysis of daily time sheets. *Id.* at

1 505. Indeed, “[t]he choice of a fee calculation method is generally one within the discretion of the  
2 trial court, the goal...being the award of a reasonable fee to compensate counsel for their efforts.”  
3 *Id.* at 504. *Laffitte* affirmed a fee award representing 33 and 1/3 percent of the fund. *Laffitte. Id.* at  
4 506. And this was based on a lodestar amount that required a multiplier of 2.13. *Id.* at 487. As the  
5 Court held, only when the multiplier is “extraordinarily high or low [should] the trial court []  
6 consider whether the percentage method should be adjusted so as to bring the imputed multiplier  
7 within a justifiable range.” *Id.* at 505.

8 **2. 33.33% of the Maximum Settlement Fund and the Request Costs**  
9 **Reimbursement Are Appropriate and Should be Awarded.**

10 The requested percentage fee is reasonable and should be awarded as confirmed by relevant  
11 case law and when compared with counsel’s lodestar. Plaintiff’s counsel requests just less than the  
12 standard 33.33% fee and instead requests an even Forty-One Thousand Dollars \$41,000.00. This is  
13 not an “extraordinarily high or low” multiplier, so the Court is not compelled to adjust the  
14 percentage fee request in order to get the multiplier to a “justifiable range.” *Laffitte* 1 Cal. 5th at  
15 505. Considering the guidance provided by our state’s Supreme Court, the positive result achieved  
16 by Plaintiff, and the fact that counsel undertook this matter on pure contingency, Plaintiff submits  
17 that the fee request should be granted. *Id.* Plaintiff’s counsel’s cost reimbursement request in the  
18 amount of \$563.25 is also reasonable. As set forth by declaration, costs accrued in this case were  
19 all incurred in direct prosecution of this action (See, Emran Decl. Ex. E for an itemized list). As  
20 such, the requested costs should be awarded as fair and reasonable.

21 **V. CONCLUSION**

22 Based on the foregoing, the Parties respectfully request the Court grant this motion and  
23 approve the Parties’ Settlement Agreement.

24  
25 DATED: November 2, 2023

**EMRAN LAW**

26  
27 By: Harris Emran  
28 Harris Emran  
Attorney for Plaintiff