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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

PHILLIP HEREDIA on behalf of himself, all others similarly situated, and on behalf of the general public, Plaintiffs, v. SUNBELT TOWING, INC.; WESTERN TOWING, INC.; and DOES 1-100, Defendants.	Case No. 37-2023-00023634-CU-OE-CTL [*Assigned for All Purposes to the Honorable Gregory W. Pollack; Dept. C-71*] **PLAINTIFF PHILLIP HEREDIA'S MOTION FOR APPROVAL OF PAGA SETTLEMENT** Date: February 27, 2026 Time: 9:30 a.m. Complaint Filed: September 23, 2024 Trial Date: None Set

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I. INTRODUCTION

Plaintiff Phillip Heredia ("Plaintiff") respectfully requests that the Court approve the PAGA Settlement Agreement and Limited Release ("Settlement Agreement")[1] entered into between Plaintiff and Defendant Sunbelt Towing, Inc. dba Western Towing ("Sunbelt Towing" or "Defendant") (collectively Plaintiff and Defendant are referred to as the "Parties") which resolves the claims raised against Defendant in exchange for a non-reversionary $300,000 Gross Settlement Amount.

This proposed settlement will settle the claims alleged in Plaintiff's complaint under the Private Attorney Generals Act of 2004 ("PAGA") on behalf of the California Labor and Workforce Development Agency ("LWDA"), Plaintiff, and current or former non-exempt drivers of Defendant in the State of California during the PAGA Period[2] ("PAGA Members"). The relief provided for under the Settlement Agreement is solely for the payment of penalties under the PAGA.

Under the settlement, PAGA Members are estimated to receive an average payment of approximately $339.17. If a PAGA Member worked every workweek in the PAGA Period, they would receive approximately $2,807.78. [3]

As set forth herein, the proposed settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is the product of (1) arms-length negotiations, (2) negotiations by attorneys experienced in these issues, (3) sufficient investigation which was necessary to evaluate the relative strength and value of Plaintiff's claims, and (4) a reasoned compromise based on the strength and value of the case, as well as, the risks, expense, complexity, and likely duration of further litigation.

II. BACKGROUND

Defendant operates a towing company. To operate its business, Defendant employs hourly, non-exempt tow truck drivers, such as Plaintiff.

a. Procedural History

Plaintiff sent his Notice of Labor Code Violations Pursuant to Labor Code § 2699.3 on or about

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[1] The Settlement Agreement is attached to the Declaration of David Mara, Esq. ("Mara Dec.") as Exhibit 1. Exhibit 1 herein refers to the Settlement Agreement.

[2] The PAGA Period is March 13, 2022, through the date that the Court enters an order approving the Settlement and entering Final Judgment. (Exhibit 1 at Section A, ¶ 19, page 4).

[3] $13.63 per pay period x 206 weekly pay periods = $2,807.78

March 13, 2023. (Mara Dec. at ¶ 11; *see also* Exhibit 6 attached thereto). On or about June 6, 2023, Plaintiff filed a complaint asserting claims for civil penalties under the Private Attorneys General Act of 2004 ("PAGA"). (Mara Dec. at ¶ 12).

b. Discovery and Investigation

After filing, the Parties conducted both formal and informal discovery. On March 13, 2025, Plaintiff propounded one set of special interrogatories and one set of requests for production of documents on Defendant. Defendant responded to this discovery on July 1, 2025, and produced responsive documents. Thereafter, the Parties met and conferred over Defendant's discovery responses. In total, Defendant produced over 5,000 pages of documents. These documents included policy documents that covered Plaintiff's and the PAGA Members' employment with Defendant. These documents also included Plaintiff's personnel file, Plaintiff's tow records, Plaintiff's time records, and Plaintiff's wage records. In addition, Defendant produced a sampling of time and wage records for PAGA Members. Defendant also produced emails and text messages between Defendant and PAGA Members. Defendant further produced a sampling of videos from the cameras in Defendant's tow trucks. (Mara Dec. at ¶ 13).

c. Settlement

The Parties engaged in informal settlement negotiations over the period of almost a year. Through these settlement negotiations, the Parties were ultimately able to reach a settlement in principle. Thereafter, the Parties negotiated the Settlement Agreement they now ask the Court to approve. (Mara Dec. at ¶ 14; *see also* Exhibit 1 attached thereto).

III. THE PARTIES' CONFLICTING POSITIONS

a. Meal and Rest Periods

Plaintiff contends that Defendant does not provide drivers with meal and rest periods that conform with California law. Plaintiff contends that Defendant does not provide duty and control free meal and rest periods to drivers. Plaintiff contends that drivers must always be available and ready to take a tow, including during meal and rest periods. (Mara Dec. at ¶ 17).

Defendant argues that it permits and authorizes lawful meal and rest periods. Defendant contends that its meal and rest period policies are lawful and that employees are provided with full thirty-minute meal periods and full ten-minute rest periods. Defendant further contends that employees can take meal and rest periods that are duty and control free. Defendant asserts that if the driver is on a break, they do not need to respond to dispatch calls. Defendant contends that if a dispatch call comes in, drivers do not need to respond to it until they are off of their meal or rest break. Defendant asserts that if it is time-sensitive and the driver does not respond to the call because they are on a break, the dispatcher will re-assign the call to another available driver. As such, Defendant asserts that drivers are not required to respond to dispatch calls during meal or rest breaks and can take duty and control free breaks. (Mara Dec. at ¶ 18).

b. Unpaid Wages

As just discussed, Plaintiff contends that drivers are owed wages for unpaid meal period time. Plaintiff contends that meal periods are not duty and control free because Plaintiff contends that drivers must always be available and ready to take a tow, including during meal and rest periods. (Mara Dec. at ¶ 20). Defendant disputes this and asserts that drivers are not subject to any duties or control during meal periods. As discussed above with regard to meal and rest periods, Defendant contends that drivers do not need to respond to any dispatch calls that come in until they return from their meal periods. Accordingly, Defendant asserts that drivers are not owed any additional wages for meal period time. (Mara Dec. at ¶ 21).

c. Unpaid Overtime – Regular Rate of Pay

Plaintiff contends that Defendant does not pay overtime wages to drivers at the appropriate regular rate of pay because Plaintiff asserts that Defendant does not factor in non-discretionary bonuses into the regular rate of pay. As such, Plaintiff contends that drivers are owed additional overtime wages. (Mara Dec. at ¶ 23). Defendant argues that the bonuses paid are entirely discretionary and, therefore, do not need to be included in the regular rate of pay. Thus, the Parties have a dispute about whether Defendant was required to adjust the regular rate of pay due to bonuses paid to employees. (Mara Dec. at ¶ 24).

d. Business Reimbursements

Plaintiff contends that Defendant requires employees to use their personnel cell phones for business purposes but fails to reimburse employees for this expense. (Mara Dec. at ¶ 26). Defendant asserts that it reimburses employes for all business expenses, including the use of employees' personal cell phones. (Mara Dec. at ¶ 27).

e. Wage Statements and Waiting Time Penalties

Plaintiff also pursued claims for failure to provide accurate itemized wage statements and waiting time penalty claims. These claims are derivative of Plaintiff's meal period, rest period, and unpaid wages claims. Should Plaintiff's meal period, rest period, and unpaid wages claims fail, these claims would also fail. (Mara Dec. at ¶ 28).

In addition, Defendant contends that even if Plaintiff were successful in his meal and rest period, she would have to prove Defendant "willfully" failed to pay employees the appropriate wages due upon separation of employment. "A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due. However, a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203." Cal. Code Regs. Tit. 8 § 13520. "A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based in law or fact, which would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist." *Id.* (Mara Dec. at ¶ 29).

Defendant contends that any failure to pay meal period premiums, rest period premiums, or additional wages was not willful. Defendant argues that it would not be liable for waiting time penalties because a "good faith dispute" exists over the payment of those premium wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. (Mara Dec. at ¶ 30).

Further, Defendant contends that Plaintiff would also have to prove that Defendant "knowingly and intentionally" failed to comply with the wage statement requirements under Labor Code § 226. *See Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056. Defendant maintains that it reasonably, and in good faith believes that it was providing a complete and accurate wage statement in compliance with California law. (Mara Dec. at ¶ 31).

Defendant also argues that Plaintiff's meal period, rest period, and unpaid wages claims cannot form the basis of his wage statement claim. Defendant relies on the case *Maldonado v. Epsilon*

Plastics, Inc. (2018) 22 Cal.App.5th 1308, for the position that employees do not suffer injury under California Labor Code § 226(a) so long as the wage statements correctly reflected the hours worked and the pay received even if the pay is later determined to be inaccurate. (Mara Dec. at ¶ 32).

f. Manageability

Defendant also argues that should litigation continue, it will bring a motion challenging the manageability of trial as Defendant does not believe that this case can be tried manageably and will require the testimony of every individual PAGA Member. Furthermore, while Defendant do not concede that any of its wage and hour policies are unlawful, Defendant claims that any challenges Plaintiff has posed to its policies are easily refuted by how they are implemented in practice; as a result, no PAGA Member has suffered any damages. (Mara Dec. at ¶ 33).

IV. THE PROPOSED SETTLEMENT

The Parties have agreed that this action be settled and compromised for the non-reversionary total sum of $300,000 ("Gross PAGA Settlement Amount"), which includes, subject to Court approval: (a) attorneys' fees of $100,000 (one-third of the Gross Settlement Amount) to compensate Plaintiff's Counsel for work already performed and work remaining to be performed in securing Court approval and overseeing administration of the settlement; (b) litigation costs in the amount of $5,468.92; and (c) administration fees and expenses to Simpluris in the amount of $4,953.

After all Court-approved deductions from the Gross PAGA Settlement Amount, it is estimated that the Net PAGA Settlement Amount will be $189,938.08. Of the Net PAGA Settlement Amount, $142,453.56 (75% of the Net PAGA Settlement Amount) will go to the LWDA and $47,484.52 (25% of the Net PAGA Settlement Amount) will be distributed to PAGA Members.

a. Calculation of Settlement Payments to PAGA Members

The amount of each PAGA Member's Aggrieved Employee Settlement Payment will be calculated based on the total number of weekly pay periods each PAGA Member worked as a non-exempt hourly employee in California during the PAGA Period. (Exhibit 1 at Section C, ¶ 13, pages 10-11). One hundred percent (100%) of each Aggrieved Employee Settlement Payment shall be allocated to miscellaneous income for which an IRS Form 1099-MISC will issue, if required by law. (Exhibit 1 at Section C, ¶ 14, page 11).

b. Funding and Disbursement

Defendant shall fund the settlement fifteen (15) days after the Effective Date. (Exhibit 1 at Section A, ¶ 11, page 3). Within ten (10) calendar days following the Funding Date, the Settlement Administrator shall disburse the settlement funds. (Exhibit 1 at Section C, ¶ 12, page 8).

c. Uncashed Checks

Any checks issued to PAGA Members shall remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance and then shall become void on the 181st day after issuance, *i.e.*, the Void Date. Within fourteen (14) calendar days after the Void Date, any unclaimed funds in the PAGA Settlement Fund Account as a result of the failure to cash Aggrieved Employee Settlement Payment checks prior to the Void Date shall be sent to the California Controller's Unclaimed Property Fund in the name of the PAGA Member. (Exhibit 1 at Section C, ¶ 12, page 8).

d. Released Claims

PAGA Members shall release all claims for civil penalties under PAGA arising from the same facts and/or claims alleged in the Action, or reasonably related to claims that were pled or that reasonably could have been pled under PAGA based on the facts alleged in the Action, that accrue through the date the Court enters its order approving this PAGA Settlement. (Exhibit 1 at Section A, ¶ 21, pages 4-5).

V. THE COURT SHOULD APPROVE THE SETTLEMENT

In evaluating the adequacy of the settlement amount, a court is not concerned with the amount the aggrieved employees are to receive, but rather, a court must focus on the total settlement amount in achieving PAGA's objective. Indeed, "[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or class damages." *Mendez v. Tween Brands, Inc.* (E.D. Cal. July 1, 2010) 2010 WL 2650571 *4. "Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. April 2, 2010) 2010 WL 1340777 *4. Moreover, a court must not lose sight of the fact that "[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies." *Id.*

As with any settlement, a court must be mindful in conducting its inquiry that "[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further." *See In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 12, 2011) 2011 U.S. Dist. LEXIS 103222, *24. Indeed, "the very essence of a settlement is … 'a yielding of absolutes and an abandoning of highest hopes'" [*Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 624], as "it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." *Id.* at 625.

Under *Hanlon*, a court must conclude that a settlement is "fundamentally fair, adequate, and reasonable" before it approves of the settlement. *Hanlon*, 150 F.3d at 1026. The analysis in *Hanlon* is typically used in federal district courts to evaluate proposed class action settlements. In California state courts, settlements are more typically evaluated under the standards set forth in the cases *Dunk v. Ford Motor Co.* ("*Dunk*") (1996) 48 Cal.App.4th 1794, and *Kullar v. Foot Locker Retail, Inc.* ("*Kullar*") (2008) 168 Cal.App.4th 116. Similar to *Hanlon*, *Dunk* found that in deciding whether to approve a proposed class action settlement under California Code of Civil Procedure § 382, the Court must find that a proposed settlement is "fair, adequate and reasonable." *Dunk*, 48 Cal.App.4th at 1801.

A proposed settlement is presumed fair under the following circumstances: (1) the Parties reached settlement after arms-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802. Here, as will be shown herein, all of these elements bearing on the fairness of the proposed settlement—with the exception of the percentage of objectors, which is not applicable in a PAGA action[4]—are present.

Kullar instructs that an understanding of the amount in controversy is an important factor into whether the settlement "of the class members' claims is reasonable in light of the strengths and

[4] The PAGA provides no notice or claim procedures. Therefore, objections, other than the potential objection of the LWDA, are not contemplated in PAGA actions. *See Baumann v. Chase Inv. Servs. Corp.* (2014) 747 F.3d 1117, 1122 ("Unlike *Rule 23(c)(2)*, PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action.").

weaknesses of the claims and the risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is "the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." *Id.* In weighing the strength of the plaintiff's case, *Kullar* instructs that the court is not to "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys." *Kullar*, 168 Cal.App.4th at 133.

a. The Settlement is Fair, Reasonable, and Adequate

i. The Settlement was Reached as a Result of Arm's Length Negotiations

The settlement was reached as a result of arm's-length negotiations. Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. Counsel for the Parties conducted extensive arm's length settlement negotiations until the settlement was reached.

ii. The Settlement is the Result of Thorough Investigation and Discovery

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before reaching the proposed settlement, and engaged in sufficient investigation, research and discovery to support the settlement. The significant amount of discovery, the production and analysis of hundreds of documents and thousands of lines of data, and protracted settlement negotiations through the mediations and in the discussions that followed were the substantial bases upon which the Parties' "clear view of the strengths and weaknesses of their cases" was made possible. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

iii. Counsel for Both Parties are Experienced in Similar Litigation

Both Plaintiff's Counsel and Defendant's Counsel are experienced in wage and hour employment law and class actions. Plaintiff's Counsel has prosecuted numerous wage and hour cases on behalf of employees for California Labor Code violations and thus are experienced and qualified to evaluate the claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. (Mara Dec. at ¶¶ 2-10). Defendant's Counsel practices labor and employment law and have represented numerous employers in similar types of claims. Accordingly, both Parties' Counsel are experienced in wage and hour employment law and class actions.

iv. The Proposed Settlement is a Reasonable Compromise of Claims

An understanding of the amount in controversy is an important factor into whether the settlement of the PAGA Members' "claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." *Kullar*, 168 Cal.App.4th 116, 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is "the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." *Id.*

In weighing the strength of the plaintiff's case, *Kullar* instructs that the court is not to "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys." *Kullar*, 168 Cal.App.4th at 133. Finally, *Kullar* does not require an explicit statement of the maximum amount the PAGA Members could recover if it prevailed on all its claims, provided there is a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Munoz*, 186 Cal.App.4th at 409. Put differently, "as the court does when it approves a settlement as in good faith under *Code of Civil Procedure* section 877.6, the court must at least satisfy itself that the [PAGA] settlement is within the 'ballpark' of reasonableness." *Kullar*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.

As the following subsections show, the Parties' investigation and discovery revealed a healthy discount was needed in order to reach a settlement.

1. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff's Case and the Risks and Costs of Further Litigation

There are approximately 140 PAGA Members who worked approximately 3,485 pay periods. (Exhibit 1 at Section C, ¶ 7, page 9).

Plaintiff claims that there are seven (7) potential violations under § 2699(f)(2) – failure to provide lawful meal breaks, failure to provide lawful rest breaks, failure to pay all straight time wages owed, failure to pay all overtime wages owed, failure to reimburse for business expenses, failure to provide accurate itemized wage statements, and failure to pay wages owed at the time of termination – of the Labor Code sections which give rise to PAGA penalties. (Mara Dec. at ¶ 34).

Each of Plaintiff's claims, with the exception of Plaintiff's claims waiting time penalties, occurred at least once in every pay period. Plaintiff's claims for waiting time penalties only occurred in approximately 65 pay periods. Thus, Defendant's maximum exposure under §2699(f)(2) is $2,446,000. (Mara Dec. at ¶ 36).

Defendant contends that Plaintiff would not be allowed to "stack" PAGA penalties. If the Court were to agree with this and only award one PAGA penalty per pay period, Defendant's exposure would be $348,500. (Mara Dec. at ¶ 37).

In exploring the settlement of any PAGA action, the critical fact that the Court is permitted discretion to award a "lesser amount than the maximum penalty amount" must be heavily taken into consideration. *Lab. Code.* § (e)(2). Unlike the underlying violations upon which the plaintiffs seek to impose PAGA civil penalties, there is no set amount the Court must levy on an employer Defendant it finds to have violated the underlying claims. Under "the facts and circumstances of the particular case," the Court is permitted wide discretion to slash civil penalty amounts. This discretion and how a particular court will exercise it is always an unknown variable in predicting the dollar outcome of any PAGA action when evaluating settlement. Under its wide discretion to award lesser amounts, a Court could side with Plaintiff on his claims and find that the underlying Labor Code rights were violated but decide to substantially moderate the imposition of PAGA penalties for those violations. (Mara Dec. at ¶ 38).

Based on this blind spot of how the Court would exercise its discretion in addition to the likelihood the Court would side with Plaintiff on the underlying Labor Code violations, Plaintiff necessarily had to discount the settlement value off of the full PAGA penalty amounts. As discussed earlier, Defendant argues its meal and rest policies and practices track the Labor Code and Wage Order requirements and the standards articulated in *Brinker* and *Augustus*. Likewise, Defendant argues that it pays employees for all hours worked and at paid overtime wages at the proper rate. Thus, even if Defendant were proven wrong on these fronts and ultimately found to have violated the underlying Labor Code claims, the Court could find a good faith reliance on California case law justifiably instructed Defendant's actions and thereby impose a massive reduction of PAGA penalties akin to the Courts in *Kaanaana* and *Carrington*. (Mara Dec. at ¶ 41).

Good faith settlement negotiations, after discovery and investigation, necessarily had to focus on amounts less than the potential exposure. The proposed PAGA settlement here of $300,000, which takes into account the realistic exposure, the very real impediments of succeeding on the merits, the risk of further litigation, and, even if Plaintiff succeeded on the merits, persuading against a robust discount, reflects an appropriate, balanced, and reasonable settlement value of the PAGA claims. The settlement amount fits within the "remedial purpose" of PAGA of enforcing compliance with important employee protections in the Labor Code and Wage Order.

b. The Court Should Approve the Requested Attorneys' Fees and Costs

The PAGA provides that any employee who prevails is entitled to an award of reasonable attorneys' fees and costs. Cal. Lab. Code § 2699(g)(1). The PAGA statute provides for approval of the settlement but does not specifically provide that the amount or reasonableness of attorneys' fees and costs is subject to court approval. Cal. Lab. Code §§ 2699(g)(1) and (l)(2). A reasonable interpretation of the PAGA is that the amount of attorneys' fees need only be addressed by a court when the LWDA objects because there is no need to provide absent employees' due process rights in a PAGA settlement since the aggrieved employees do not have their own substantive rights. *See Sakkab v. Luxottica Retail North America, Inc.* (9th Cir. 2015) 803 F.3d 425, 436. And, the LWDA, as the real party in interest and the primary beneficiary of the settlement, has an opportunity to review the settlement before it is approved. Cal. Lab. Code § 2699(l)(2). Unlike a class action, where the purpose of court approval is to protect absent class members, in a PAGA settlement the real party in interest, the LWDA, has the opportunity to review and consider the reasonableness of the fees and object before the court hears the approval motion. If a court considers the reasonableness of the attorneys' fees requested, it should be guided by the common fund doctrine typically applied in class action cases.

i. The Requested Attorneys' Fee and Cost Award is Within the Range of Fees Approved in Comparable Common Fund Cases

California state and federal courts have recognized that an appropriate method for determining an award of attorneys' fees is based on a percentage of the total value of benefits to class members by a settlement, also known as the "common fund" method. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (*Serrano III*); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West,* *Inc*. (9th Cir. 1977) 557 F.2d 759, 769. "Despite its primacy, the lodestar method is not necessarily utilized in common fund cases." *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 27 ["*Lealao*"]; *Dunk,* 48 Cal. App. 4th at 1808 (the percentage method calculates attorney fees as a reasonable percentage of the common fund and may be used where the amount of the settlement is a certain or easily calculable sum of money). The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent,* 557 F.2d at 769. *In Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs."

Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." The reasons for applying the common fund doctrine include: "…fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful." *Id*.

Assessing an appropriate fee based on a percentage of the fund involves taking into account "all of the circumstances of the case." There is sparse case law addressing the evaluation of reasonable attorneys' fees in employee representative or class actions as appellate cases addressing fees arise almost exclusively where awards were challenged by defendants or objectors – the only parties with standing to appeal. *Wershba,* 91 Cal.App.4th at 236. Several studies of class action fee awards have found that the median common fund fee award is approximately one-third of the total settlement fund. *See*, e.g., *Chavez v. Netflix, Inc*. (2008) 162 Cal. App. 4th 43, 66, n.11 (numerous studies have shown that "fee awards in class actions average around one-third of the recovery."); Reagan W. Silber and

Frank E. Goodrich, Common Funds and Common Problems: Fee Objections and Class Counsel's Response, 17 Rev. Litig. 525, 546 ; T. Willging, L. Hooper and R. Niemic, Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules, 90 (1996) (finding that attorneys' fees in class litigation "were generally in the traditional range of approximately one-third of the total settlement").

Here, PAGA Counsel applies for an award of attorneys' fees in the sum of $100,000 (which is one-third of the Gross PAGA Settlement Amount). The requested fee falls in the mid-range of percentage class fee awards, which commonly range from 20% to 50% of a common fund, and constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates PAGA Counsel for their efforts, as well as the result achieved for the benefit of the State of California and the PAGA Members. (Mara Dec. ¶ 42).

ii. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee

PAGA Counsel's fee request is reasonable when calculated using the lodestar method. Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977) 20 Cal. 3d 25, 48. The court then enhances this lodestar figure by a "multiplier" to account for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *Id*. at 49; *see also Ketchum v. Moses* (2001) Cal.4th 1122, 1132-36; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 834, ("[t]here is no … rule limiting the factors that may justify an exercise of judicial discretion to [adjust the] lodestar").

PAGA Counsel has worked 240 hours to date on this case and have calculated the lodestar fee on those hours at $182,600 at rates reflecting those currently earned in the marketplace. (Mara Dec. at ¶ 44; Exhibit 5, Summary of Time and Costs). All of the work and tasks performed by PAGA Counsel were reasonable and necessary to the prosecution of this case and are reflected in the result achieved.

PAGA Counsel respectfully requests a fee of $100,000, which, based on the total attorney hours expended (240) and applicable hourly rates would result in a lodestar fee of $182,600. As Class

Counsel's lodestar fee is in excess of their fee request, a multiplier on their lodestar fee is not sought herein. (Mara Dec. at ¶ 47). In fact, the requested fee results in a so-called "negative multiplier" which suggests the percentage of the fund amount is reasonable and fair. *See Chun-Hoon v. McKee Foods Corp*. (N.D. Cal. 2010) 716 F.Supp.2d 848, 854; *In re Portal Software, Inc. Securities Litigation* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 88886, 2007 WL 4171201, at *16.

iii. PAGA Counsel's Hourly Rates are Reasonable

PAGA Counsel's hourly rates are between $650 and $850 and are in line with rates typically approved in wage and hour class action and PAGA litigation and which rates have been approved by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego County Superior Courts. (Mara Dec. at ¶ 48; Exhibit 2, Westlaw Court Express's Legal Billing Report, Volume 14, Number 3, California Region for December 2012; Exhibit 3, 2014 Declaration of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC GIC834348; Exhibit 4, 2012 National Law Journal Survey of Hourly Billing Rates for Partners and Associates)).

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc* (2000) 22 Cal. 4th 1084, 1095; *Hopson v. Hanesbrands Inc*. (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900. When determining a reasonable hourly rate, courts may consider factors such as the attorney's skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.

PAGA Counsel's skill and experience support their hourly rates. Their practice is limited exclusively to litigation, focusing on the representation of employees in wage and hour class action and PAGA matters. As prominent attorneys in the field of wage and hour employment litigation, Plaintiff's counsel continually monitors the prevailing market rates charged by both defense and plaintiff law firms and set the billing rates of their attorneys and paralegals/law clerks to be consistent with the prevailing market rates in the private sector for attorneys and staff of comparable skill, qualifications and experience. Other wage and hour attorneys working as class counsel before California courts charge comparable if not higher rates.

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iv. PAGA Counsel's Total Hours are Reasonable

In determining a lodestar fee, reasonable hours include, in addition to time spent during litigation, the time spent before the action was filed, including time spent interviewing clients, investigating the facts and the law, and preparing the initial pleadings.[5] Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639 ("*Serrano IV*"). PAGA Counsel has expended a total of 240 hours on this case. The work performed by PAGA Counsel in order to achieve a settlement that will provide valuable consideration to the State of California and the PAGA Members is summarized by PAGA Counsel in the declaration submitted herewith. (Mara Dec. at ¶¶ 49, 52; *see also* Exhibit 5). All of the tasks and work performed were reasonable and necessary to the prosecution of this case.

v. Costs of Litigation

PAGA Counsel seeks reimbursement of the litigation costs and expenses of $5,468.92. These costs were all reasonable and necessary to the prosecution of this case and the results achieved, and are fair, reasonable, and unopposed by Defendant. (Mara Dec. at ¶ 54; Exhibit 5).

c. The Administration Costs are Reasonable

The Parties agreed to hire Simpluris as the Settlement Administrator. Simpluris seeks a fee of $4,953 for the services it will provide in conjunction with this settlement. Following the grant of approval, Simpluris will calculate and mail the Individual PAGA Settlement Share checks to the PAGA Members, disburse other payments as ordered by the Court, and perform such other duties as set forth in the Settlement Agreement. Simpluris' fee of $4,953 for services rendered and to be rendered is fair and reasonable and should be granted.

VI. CONCLUSION

For the reasons stated herein, the Court should grant Plaintiff's motion in its entirety.

MARA LAW FIRM, PC

Date: February 3, 2026

By: ______________________
David Mara, Esq.
Jill Vecchi, Esq.
Attorneys for Plaintiff PHILLIP HEREDIA

[5] *See New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.