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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

TONI ANDRADE, an individual, and in a representative capacity on behalf of the State of California and other Aggrieved Employees, Plaintiff, vs. MELLANO & COMPANY, a California Corporation, and DOES 1-15, Defendants.	**Case No:** 26STCV00194 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA") SETTLEMENT** *Filed concurrently with Plaintiff's Notice of Motion and Motion for Approval of PAGA Settlement; Declaration of Kaitlin Martinez, Esq In Support of Plaintiffs' Motion; [Proposed] Order Approving PAGA Settlement; [Proposed] Judgment Approving PAGA Settlement* Complaint Filed: January 5, 2026 Hearing Date: October 15, 2026 Time: 8:30 a.m. Dept: 731 Hon. Mark C. Kim Reservation: 432934239448

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Labor Code § 2699(s)(2), Plaintiff seeks the Court's approval of the proposed and unopposed PAGA Settlement for a Gross Settlement Amount of Thirty-Seven Thousand Three Hundred Fifty Dollars and Zero Cents ($37,350.00) for an all-inclusive, non-reversionary settlement of the PAGA Claim, including payment of PAGA Counsels Fees Payment, PAGA Counsel Litigation Expenses Payment, Administration Expense Payment, and PAGA Penalties for payment to the Aggrieved Employees and the State of California under the California Labor Code Private Attorneys General Act of 2004 ("PAGA") (collectively, "Settlement"). **Exhibit A** to Declaration of Kaitlin Martinez ("Martinez Decl."). By way of this Settlement, Plaintiff and Defendant (collectively the "Parties") seek to fully and finally resolve alleged violations on a representative capacity on behalf of the State of California and all other Aggrieved Employees as defined in the PAGA Settlement Agreement. Martinez Decl. ¶ 9. If approved, the proposed Settlement will resolve this matter in its entirety. Martinez Decl. ¶ 9, **Ex. A** to Martinez Decl.

Defendant denies all allegations of wrongdoing and contends it has complied at all times with applicable California labor laws. Martinez Decl. ¶ 7, 3. Nonetheless, after engaging in arm's-length negotiations following a full day mediation with Mediator Anthony F. Pantoni, Esq., the Parties have reached a resolution and now submit their PAGA Settlement Agreement to the Court for approval pursuant to Labor Code § 2699(s)(2). Martinez Decl. ¶ 7, 18.

Accordingly, the Parties respectfully request that the Court enter an Order: (1) finding the PAGA Settlement is fair and reasonable in light of the facts and evidence; (2) approving the form and method of payment to the Aggrieved Employees and the Labor and Workforce Development Agency ("LWDA"); (3) finding that all procedural requirements for approval of a PAGA settlement have been satisfied, (4) dismissing the action *with prejudice* upon full funding of the Settlement.

II. FACTS AND PROCEDURES

A. Plaintiff's Contentions

Plaintiff worked for Defendant as a non-exempt Sales Associate between December 2020 and September 12, 2025. Martinez Decl. ¶ 3. Plaintiff alleges Defendant systematically violated the

California Labor Code with respect to Plaintiff and other Aggrieved Employees by failing to provide compliant meal and rest periods, failing to pay all overtime wages for off-the-clock work, failing to pay all wages when due, failing to reimburse required business expenses, and failing to provide accurate itemized wage statements. Martinez Decl. ¶ 3. All allegations are disputed and denied by Defendant. (Id.)

B. Procedural History

On October 20, 2025, Plaintiff provided written notice to the Labor Workforce and Development Agency ("LWDA") via online filing and to Defendant via certified mailing of the provisions of Lab. Code §§ 2699 et seq. alleged to be violated, including the facts and theories supporting the alleged violations (the "PAGA Notice"). Martinez Decl. ¶ 4. The LWDA did not provide any notice of its intent to investigate the alleged violation within 65 calendar days of the postmark date of the PAGA Notice. Martinez Decl. ¶ 4.

On January 5, 2026, Plaintiff filed the above-entitled action against Defendant alleging violations of the California Labor Code, including, but not limited to: 1) Failure to Provide Rest Periods; 2) Failure to Provide Meal Periods; 3) Failure to Pay Overtime Wages; 4) Failure to Pay All Wages Due; 5) Failure to Pay Wages Upon Termination; 6) Failure to Reimburse Business Expenses; 7) Failure to Provide Accurate, Itemized Wage Statements; and 8) Violation of the Private Attorneys General Act, Labor Code §§ 2698, et seq. Martinez Decl. ¶ 5. After the filing of Plaintiff's complaint, the Parties meet and conferred on the parties' positions, agreed to an informal document exchange, and to mediate Plaintiff's claims. Martinez Decl. ¶ 6.

On July 15, 2026, the Parties participated in a full-day mediation before Anthony F. Pantoni, Esq., a well-regarded and experienced mediator of wage-and-hour and PAGA actions. Martinez Decl. ¶ 7. At the conclusion of mediation, Mr. Anthony Pantoni issued a mediator's proposal which the Parties accepted, and which was later memorialized in a PAGA Settlement Agreement. Martinez Decl. ¶ 7. Defendant denies all claims, denies liability, and asserts multiple defenses, but agreed to resolve the Action to avoid the risks and costs of continued litigation. Martinez Decl. ¶ 7. Nonetheless, having resolved the matter, the Parties hereby submit this PAGA Settlement

Agreement (“Settlement” or “Settlement Agreement”) to the Court for its approval. Martinez Decl. ¶ 7, **Ex. A** to Martinez Decl.

At the same time of submission to the Court, Plaintiff's counsel submitted a copy of the Settlement Agreement, this Motion, and all accompanying documents to the LWDA through its online submission portal in accordance with Labor Code § 2699(s)(2). Martinez Decl. ¶ 8. **Ex. B** to Martinez Decl. By way of this settlement, Plaintiff and Defendant seek to fully and finally resolve alleged PAGA violations on behalf of the State of California and all other Aggrieved Employees as defined in the Settlement Agreement. Martinez Decl. ¶ 9. The Parties' Settlement, if approved, will resolve the Action in its entirety. Martinez Decl. ¶ 9, **Ex. A** to Martinez Decl.

C. Investigation and Settlement Discussions

Between January and July 2026, Plaintiff’s Counsel conducted a thorough investigation into the claims and defenses of each party. Martinez Decl. ¶ 10. Plaintiff expended considerable time and effort advocating on behalf of herself and the alleged PAGA Aggrieved Employees, including providing all documents in her possession related to PAGA claims during her entire employment period, wage statements and handwritten notes about incidents at work, communications with Defendant and Defendant’s managers, and information relevant to the alleged Labor Code violations. Martinez Decl. ¶ 10.

In anticipation of mediation, the Parties discussed the Parties’ positions on the alleged claims and Defendants provided a 21% sampling of time and pay records for the alleged Aggrieved Employees. Martinez Decl. ¶ 11. Defendant identified one hundred and ninety-nine (199) Aggrieved Employees who worked approximately Three Thousand Seven Hundred and Eight (3,708) total pay periods. Martinez Decl. ¶ 11.

Plaintiff's Counsel retained statisticians and economists at Berger Consulting Group ("BCG") to evaluate the Aggrieved Employee payroll and time data. Martinez Decl. ¶ 12. BCG provides data analysis and damages modeling consulting services, specializing in PAGA and wage-and-hour class actions. Martinez Decl. ¶ 12. BCG's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. Martinez Decl. ¶ 12. BCG analyzed Defendant's sample time and payroll data to assist in the development of a damage model. Martinez Decl. ¶ 13. BCG's model determined an estimated civil penalty based on assumptions drawn from Plaintiff's testimony and Defendants sample which was extrapolated to the Aggrieved Employees. Martinez Decl. ¶ 13. Defendants dispute these assumptions. Martinez Decl. ¶ 13.

Plaintiff's Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a representative; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour PAGA actions as to the claims brought, the nature of the positions, and the type of employer; (4) reviewing the Aggrieved Employees' sample time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect PAGA approval; (7) evaluating Plaintiff's claims and working with Plaintiff's expert to estimate Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. Martinez Decl. ¶ 14. This investigation allowed Plaintiff's Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed on behalf of the State of California and the Aggrieved Employees. Martinez Decl. ¶ 14.

Following Plaintiff's Counsel's review and discussions at mediation, it became apparent Defendant maintained written policies regarding meal and rest periods that are consistent with the law that thoroughly explain employees' rights as to meal periods and rest breaks. Martinez Decl. ¶ 15. Defendant also provides employees with meal period brochures that explains when employees should take meal periods based on their start time. Martinez Decl. ¶ 15. Defendant also provides training to employees in English and Spanish so employees fully understand when and how to take meal periods and rest breaks. Martinez Decl. ¶ 15. Defendant's employee handbook encourages employees to notify management if they are in any way discouraged or impeded from taking their breaks. Martinez Decl. ¶ 15. Notably, during the PAGA Period, Defendant paid corresponding meal period premiums to employees who were unable to timely take meal periods in accordance with Defendant's policies. Martinez Decl. ¶ 15. Defendant additionally disclosed that due to the size of Defendants operation, many of the Aggrieved Employees did not maintain a similar position to

Plaintiff, were not working under similar constraints of a sales position, and therefore did not share similar experiences with respect to these claims. Martinez Decl. ¶ 15. The other major claim alleged by Plaintiff was unpaid overtime and resulting injuries for inaccurate wage statements, waiting time penalties. Martinez Decl. ¶ 15. However, Defendant highlighted Plaintiff's own admission that she was never discouraged from recording all time worked and was paid for all time she recorded. Martinez Decl. ¶ 15. Defendant therefore had no knowledge of any off the clock work performed by Plaintiff and paid for all hours recorded in their time keeping system. Martinez Decl. ¶ 15. Defendant additionally provided employee representations from other Sales Associates who represented they had never performed off the clock work during their employment. Martinez Decl. ¶ 15.

The Parties' Settlement Agreement is the final product of mediation and the Parties' acceptance of the mediator's proposal made by Anthony Pantoni. Martinez Decl. ¶ 16. Objectively, the Settlement terms are fair, adequate, and represent a reasonable compromise of the disputed claims given the facts of the case and the risk borne by each party. Martinez Decl. ¶ 16. The Parties represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement. Martinez Decl. ¶ 17.

III. SUMMARY OF SETTLEMENT AGREEMENT

A. The Proposed Settlement Terms

The Parties have agreed that Defendant shall pay a Gross Settlement Amount of Thirty-Seven Thousand Three Hundred Fifty Dollars and Zero Cents ($37,350.00) no later than thirty (30) days after the Court grants approval of the proposed Settlement (the "Effective Date). **Ex. A,** section 4.3 to Martinez Decl. The Gross Settlement Amount is non-reversionary and includes all payments to PAGA Counsel, the Settlement Administrator, the Labor and Workforce Development Agency ("LWDA"), and the Aggrieved Employees. **Ex. A,** sections 3.1, 3.2 to Martinez Decl. The Settlement Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts approved by the Court in its Approval Order, to determine the Net Settlement Amount available for distribution of PAGA penalties:

1) PAGA Counsel Fees Payment of not more than thirty-five percent (35.00%) of the Net Settlement Amount, which is currently estimated to be $13,072.50, and PAGA Counsel Litigation Expenses Payment currently totaling Thirteen Thousand Seven Hundred Forty-Two Dollars and Sixty-Six Cents ($13,742.66), of not more than $14,000.00 with final costs incurred to be submitted to the Settlement Administrator. **Ex. A,** section 3.2.1 to Martinez Decl.

2) Settlement Administration Expense Payment: not to exceed Three Thousand Six Hundred Fifty Dollars and Zero Cents ($3,650.00), except for a showing of good cause and as approved by the Court. **Ex. A,** section 3.2.2 to Martinez Decl.

3) PAGA Penalties: to be paid from the Net Settlement Amount (approximately $6,884.84), with 65% (approximately $4,475.14) allocated to the LWDA PAGA Payment and 35% (approximately $2,409.70) allocated to the Individual PAGA Payments. **Ex. A,** section 3.2.3 to Martinez Decl.

    i. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 35% share of PAGA Penalties by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. **Ex. A,** section 3.2.3.1 to Martinez Decl.

    ii. The Administrator must conduct an Address Search for all Aggrieved Employees whose checks are returned undelivered without a USPS forwarding address. Within 7 days of receiving a returned check, the Administrator must re-mail the check to the USPS forwarding address provided or to an address ascertained through the Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re- mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, as requested by the Aggrieved Employee before the void date. **Ex. A,** section 4.4.2 to Martinez Decl.

iii. For any PAGA Member whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the PAGA Member. **Ex. A,** section 4.4.3 to Martinez Decl.

iv. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. **Ex. A,** section 3.2.3.2 to Martinez Decl.

B. Settlement/Release of Claims

The Parties have agreed, effective upon the date when Defendant fully fund the entire Gross Settlement Amount, in exchange for the consideration set forth in the Settlement Agreement, Plaintiff, PAGA Counsel, the LWDA and the Aggrieved Employees will release claims against all Released Parties as follows:

A. Plaintiff's Release: Plaintiff releases and discharge Released Parties from all claims, transactions or occurrences that occurred during the PAGA Period, including, but not limited to: all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. **Ex. A,** section 5.1 to Martinez Decl.

B. Release by LWDA and Aggrieved Employees: All PAGA Members are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, administrators, successors and assigns, the Released Parties from all claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the facts and allegations stated in the Operative Complaint and PAGA Notice that are alleged to have occurred during the PAGA Period and the PAGA Notice. **Ex. A,** section 5.2 to Martinez Decl.

   a. Released Parties: means Defendant and each of its heirs, assigns, investors, insurers, owners, parent companies, sister companies, affiliated or related companies—including DBAs, predecessors, successors, and each past or present employee, agent, representative, officer, director, shareholders/stockholders, partner, member, manager, attorney, operators, title company, vendors, subcontractors, independent contractors, consultants, witnesses and other persons, firms or corporations now, previously or hereafter affiliated in any manner with any of the above. **Ex. A,** section 1; 1.27 to Martinez Decl.

IV. LEGAL ANALYSIS

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. PAGA is intended "to augment the limited enforcement capability of [the LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." *Id*. at 59 Cal. 4th 383. A judgment [or Court-approved settlement] in a PAGA action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. *Id*. at 381.

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

The California Supreme Court has said in this context that "any negotiated resolution [must be] fair to those affected." *Williams v. Superior Ct.* (2017) 3 Cal. 5th 531, 549. However, it may be substantially discounted given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal. App. 4th 1157, 1213, ("Section 2699, subdivision (e)(2) provides that in an action by an aggrieved employee to recover PAGA penalties, the court 'may award a lesser amount than the maximum civil penalty amount specified by this part 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.'") See also, *Lopez v. Friant & Assocs., LLC* (2017) 15 Cal. App. 5th 773, 787, (recognizing the trial court's discretion to reduce PAGA penalties).

Under Labor Code § 2699(s)(2), the Parties must obtain approval of their PAGA settlement from the Court and hereby seek the Court's approval. Pursuant to Labor Code Section 2699(e)(1), the Court has wide discretion regarding the amount of the PAGA penalty. See also *Thurman v. Bayshore Transit Management* (2012) 203 Cal.App.4th 1112, 1136 (standard of review is abuse of discretion). The primary objective of a PAGA action "is to supplement enforcement actions by public agencies, which lack adequate resources to bring all such actions themselves." *Arias v. Superior Cour*t (2009) 46 Cal.4th 969, 980-981, 986. "Restitution is not the primary object of a PAGA action, as it is in most class actions." *Franco v. Athens Disposal Co., Inc.* (2009) 171 Cal.App.4th 1277,1300 (emphasis added). Rather, a PAGA action is "fundamentally a law enforcement action designed to protect the public and penalize the employer for past illegal conduct." *Id*. Prior to the enactment of PAGA, the California Legislature determined that it lacked adequate financing to enforce California labor laws and in order "to achieve maximum compliance with state labor laws," it declared that it was in the public interest to allow employees, acting as private attorneys general, to recover civil penalties that otherwise would have been assessed and collected by the LWDA. *Arias*, 46 Cal.4th at 980-981.

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

A. The LWDA Did Not Investigate Plaintiff's PAGA Claims

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

The Labor Code is clear that all that is required to obtain court approval of a PAGA settlement is for the proposed settlement to be submitted to the LWDA. Labor Code § 2699(s)(2). Here, the LWDA had opportunity to investigate and obtain civil penalties by citation after Plaintiff submitted her PAGA notice to the LWDA. Martinez Decl. ¶ 4-5, "If the [LWDA] intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within 65 calendar days of the postmark date of the notice." Lab. Code § 2699.3(a)(2)(B). Plaintiff filed her Complaint after the LWDA declined to investigate her claims. Martinez Decl. ¶ 4-5. All that is required now regarding LWDA involvement is for the requisite documentation to be submitted to the LWDA pursuant to Labor Code § 2699(s)(2) which Plaintiff's counsel has completed. Martinez Decl. ¶ 8, **Ex. B** to Martinez Decl.

B. Plaintiffs Submitted a Copy of the Settlement to the LWDA

Labor Code § 2699(s)(2) requires that any proposed settlement of a PAGA action be submitted to the LWDA. Plaintiffs completed this requirement by submitting a copy of the PAGA Settlement, along with this Motion and all accompanying documents, to the LWDA through its online submission at the same time this was submitted to the court. Martinez Decl. ¶ 8, **Ex. B** to Martinez Decl.

C. This Settlement is Fair, Adequate, and Reasonable

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

A presumption of fairness exists as the Settlement was reached through extensive, mediated arms-length negotiations; sufficient investigation and discovery allowed Plaintiff's counsel to act intelligently, and Plaintiff's counsel is experienced in similar wage-and-hour litigation. *Dunk v. Ford Motor Company* (1996) 48 Cal. App 4th 1794, 1802. Additionally, settlement approval is appropriate as the proposed Settlement is fair, adequate, and reasonable to Plaintiff and the Aggrieved Employees. Martinez Decl. ¶ 14.

The Parties participated in a full-day mediation on July 15, 2026. Anthony F. Pantoni, Esq., a well-regarded and experienced mediator of wage-and-hour and PAGA actions, provided a useful, neutral analysis of the issues and risks to both sides. Martinez Decl. ¶ 7. (*In re Apple Computer, Inc. Derivative Litig,* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure."). The Settlement is a compromise reached after informed, non-collusive, arms-length negotiations with the assistance of an experienced mediator, assisted negotiations, and ultimately a mediator's proposal. Martinez Decl. ¶ 18. The Settlement reflects a reasonable assessment of the risks for each, as well as the recognition that continued litigation will cause extensive and costly discovery for all parties and further litigation would cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. Martinez Decl. ¶ 18.

Counsel in this action is of the opinion that Settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of Plaintiff and other Aggrieved Employees in light of all known facts and circumstances reasonably considering the nature and magnitude of the claims being settled, and the role of judicial discretion, and the various potential impediments to recovery. Martinez Decl. ¶ 19.

Plaintiff and Plaintiff's counsel investigation into the facts of the Action and discussions with defense counsel during mediation allowed the Parties to evaluate the potential damages and result in meaningful mediation with the assistance of Anthony F. Pantoni, Esq. Martinez Decl. ¶ 20.

Plaintiff's counsel performed document review of Plaintiff's personal records and communications with Defendants and Defendants managers and customers during her employment period and analyzed data and legal research including multiple exchanges with BCG to identify all claims, and researched similar cases. Martinez Decl. ¶ 21. Although no two cases are identical, this research provided Plaintiff's Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. Martinez Decl. ¶ 21. The investigation allowed

Plaintiff's Counsel 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. Martinez Decl. ¶ 21.

Both Parties' counsel has experience in employment litigation, specifically PAGA litigation, and conducted an extensive investigation of the factual allegations involved in this case. Martinez Decl. ¶ 22. Each side has apprised the other, informally of their respective factual contentions, legal theories and defenses, resulting in extensive arm's-length negotiations taking place among the Parties. Martinez Decl. ¶ 22.

Approval of the Parties' Settlement Agreement is warranted because counsel for all Parties agree that the amount allocated for civil penalties under PAGA, is fair and reasonable considering Defendant's compliant employment policies and practices during the PAGA period, Defendant's position of compliance with such policies, the informed, non-collusive, arm's-length negotiation following mediation with Anthony F. Pantoni, Esq., the uniqueness of Plaintiff's injuries which may have undermined her ability to represent the Aggrieved Employees, the ability for alleged "aggrieved employees" to bring their own claims for non-PAGA claims, and Plaintiff's counsel's risk of obtaining full recovery of claimed PAGA penalties. Martinez Decl. ¶ 23.

Continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions, which can often take years. Martinez Decl. ¶ 24. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. Martinez Decl. ¶ 24. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendant would appeal any favorable judgment. Martinez Decl. ¶ 24. As demonstrated by *Magadia*, 999 F.3d 668, the risk of an appeal and subsequent reversal is real. Martinez Decl. ¶ 24. Accordingly, the Parties respectfully request the Court approve the PAGA Settlement Agreement and this Motion.

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

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

PAGA allows a prevailing Plaintiffs to obtain attorneys' fees and costs. Cal. Lab. Code § 2699(g). The U.S. Supreme Court has recognized that "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert* (U.S. 1980) 444 U.S. 472, 478. *Accord, Serrano v. Priest [Serrano III]* (1977) 20 Cal.3d 25, 38 (holding that trial courts have equitable power to award attorneys' fees and costs when a litigation proceeding in a representative capacity secures a substantial benefit). The purpose of the "common fund doctrine" is not only to reward effective legal advocacy but to "spread litigation costs proportionally among all of the beneficiaries" preventing unjust enrichment. *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. Both state and federal courts in California have embraced the common fund doctrine. *E.g, Roos v. Honeywell Internat., Inc*. (2015) 241 Cal.App.4th 1472, 1490.

California courts routinely award attorneys' fees equaling one-third *or more* of the potential value of the common fund. *See Laffitte v. Robert Half Internat., Inc.,* 1 Cal. 5th 480 (2016) (affirming a fee award representation one-third of the common fund). In *Laffitte v. Robert Half Internat., Inc., the* California Supreme Court "join[ed] the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." *Laffitte v. Robert Half Internat., Inc.* (2016) 1 Cal. 5th 480, 503. Plaintiff submits that this guidance should equally apply to representative actions under PAGA.

In Plaintiff's view, *Lafitte* stands for the proposition that a trial judge may rely on his or her discretion and utilize either the percentage method, the lodestar method, or both to calculate a reasonable attorney's fee. *Id.* Furthermore, should a lodestar crosscheck be elected, the trial court does not abuse its discretion whether it chooses to "perform[] the cross-check using counsel declarations summarizing overall time spent" or opts to do a more detailed analysis of daily time sheets. *Id.* at 505. Indeed, "[t]he choice of a fee calculation method is generally one within the discretion of the trial court, the goal…being the award of a reasonable fee to compensate counsel for their efforts." *Id*. at 504. As the Court held in *Laffitte*, only when the multiplier is "extraordinarily high or low [should] the trial court [] consider whether the percentage method should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id.* at 505.

2. <u>35% of the Net Settlement Amount and the Request Costs Reimbursement Are Appropriate and Should be Awarded.</u>

"While the percentage method has been generally approved in common fund cases, courts have sought to ensure the percentage fee is reasonable by refining the choice of a percentage or by checking the percentage result against a lodestar- multiplier calculation." *Laffitte*, *supra*, 1 Cal.5th 480, 494-495.

Plaintiff's Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's individual and representative claims. Martinez Decl. ¶ 25. Considering the positive outcome for the Aggrieved Employees, and in light of the supporting authority, the proposed Attorneys' Fees and Expenses are fair and reasonable. Martinez Decl. ¶ 25. The requested percentage fee is reasonable and should be awarded as confirmed by relevant case law and when compared with counsel's lodestar. Martinez Decl. ¶ 25. As Part of the Settlement Agreement, the Parties agreed to an award of attorneys' fees not to exceed thirty-five percent (35%) of the Gross Settlement Agreement, or Thirteen Thousand Seventy-Two Dollars and Fifty Cents ($13,072.50). Martinez Decl. ¶ 26; **<u>Ex. A</u>** <u>section</u> 3.2.1 to Martinez Decl. Defendants additionally agreed to PAGA Counsel Litigation Expenses Payment currently, Thirteen Thousand Seven Hundred Forty-Two Dollars and Sixty-Six Cents ($13,742.66) and not to exceed Fourteen Thousand Dollars ($14,000.00) to be submitted to the Settlement Administrator. Martinez Decl. ¶ 26; **<u>Ex.</u>** A section 3.2.1.

In defining a reasonable fee, the Court should mimic the marketplace for cases involving a significant contingent risk such as this one. Martinez Decl. ¶ 27. Our legal system places unique reliance on private litigants to enforce substantive provisions of employment law through PAGA actions. Martinez Decl. ¶ 27. Therefore, attorneys providing these substantial benefits should be paid an award equal to the amount negotiated in private bargaining that takes place in the legal marketplace. Martinez Decl. ¶ 27.

There is a substantial difference between the risk assumed by attorneys being paid by the hour and attorneys working on a contingent fee basis. Martinez Decl. ¶ 28. The attorney being paid by the hour can go to the bank with his or her fee while the attorney working on a contingent basis can only log hours while working without pay towards a result that will hopefully entitle him or her to a marketplace contingent fee taking into account the risk and other factors of the undertaking. Martinez Decl. ¶ 28. Otherwise, the contingent fee attorney receives nothing. Martinez Decl. ¶ 28. In this case, PAGA Counsel subjected themselves to this contingent fee market risk in this all or nothing contingent fee case wherein the necessity and financial burden of private enforcement make the requested award appropriate. Martinez Decl. ¶ 28. The contingent fee practices of PAGA Counsel do not accommodate the investment of unnecessary time in a case. Martinez Decl. ¶ 28. This case was litigated on a contingent basis with all of the concomitant risk factors inherent in such an uncertain undertaking. Martinez Decl. ¶ 28.

A number of difficult issues, the adverse resolution of any one of which could have doomed the successful prosecution of the action, were present here. Martinez Decl. ¶ 29. Attorneys' fees in this case were not only contingent but risky, with a very real chance that PAGA Counsel would receive nothing at all for their efforts, having devoted time and advanced costs. Martinez Decl. ¶ 29. PAGA Counsel has previously invested in cases which resulted in no recovery. Martinez Decl. ¶ 29. Given the discretion of the Court, resolution was the best choice is this matter. Martinez Decl. ¶ 29.

At the time this case was brought, the result was far from certain. Martinez Decl. ¶ 30. A number of defenses asserted by Defendant presented serious threats to Plaintiff's claims and Plaintiff's ability to stand as a PAGA representative and created difficulties with complex legal issues for PAGA Counsel to overcome. Martinez Decl. ¶ 30. Defendant asserted that it's employment practices complied with all applicable Labor Laws. Martinez Decl. ¶ 30. Before and during the mediation, Defendant aggressively argued that Defendant's policies and culture afforded Plaintiff and the Aggrieved Employees an opportunity to take timely meal and rest breaks, were paid meal period premiums, and that Plaintiff chose to later allege this claim in light of her termination.

Martinez Decl. ¶ 30. Defendants additionally argued Plaintiff was paid for all recorded overtime and never encouraged to falsify time records or discouraged from recording all time therefore any off-the-clock work was not authorized by Defendant nor did Defendant have any knowledge of such work. Martinez Decl. ¶ 30. Because Plaintiff's claims were largely based on events that were not recorded, and because Defendant's policies were, on their face compliant as well as meal premiums paid during the PAGA Period, this presented a very real concern for Plaintiff and the Aggrieved Employees. Martinez Decl. ¶ 30. If successful, Defendant's defenses could eliminate or substantially reduce any recovery to Plaintiff, eliminate her ability to stand as a representative for the Aggrieved Employees and therefore eliminate any recovery for the Aggrieved Employees. Martinez Decl. ¶ 30.

PAGA Counsel was required to advance all costs in this litigation. Martinez Decl. ¶ 31. The financial burdens undertaken by PAGA Counsel in prosecution this action on behalf of the LWDA and Aggrieved Employees were very substantial. Martinez Decl. ¶ 31. To date, PAGA Counsel has advanced more than $13,742.66 in costs which could not have been recovered if this case had been lost or the court reduced the penalties to zero, which was possible given the facts. Martinez Decl. ¶ 31. These litigation expenses include the expenses reasonably incurred for filing fees, mediation fees, expert fees for analysis of Defendant's time and payroll records, postage, and litigation support vendors, all of which were necessary costs and normally billed to and paid by the client. Martinez Decl. ¶ 31. Plaintiff and PAGA Counsel undertook the risk of liability for Plaintiff's costs had this case not succeeded, as well as other potential negative financial ramifications from having come forward to sue Defendant on behalf of the Aggrieved Employees. Martinez Decl. ¶ 31. Accordingly, the contingent nature of the fee and financial burdens on PAGA Counsel support the requested award. PAGA Counsel expects additional filing fees related to the approval of this Motion. Martinez Decl. ¶ 31. PAGA Counsel's itemized expenses are attached to the Declaration of Kaitlin Martinez as **Exhibit C.**

In this case, the reasonableness of the requested attorneys' fee of 35% of the Gross Settlement Amount equaling Thirteen Thousand Seventy-Two Dollars and Fifty Cents ($13,072.50) is established by reference to PAGA Counsel's lodestar in this matter. Martinez Decl. ¶ 32. Between

January 2026 and July 2026, PAGA Counsel has worked more than 57 hours prosecuting these claims with the attorneys' hourly fee rates for attorneys between $750 per hour and $550 per hour, resulting in current attorneys' fees exceeding the requested $13.072.50. Martinez Decl. ¶ 32. Before the finalizing and filing of this Motion, PAGA Counsel's fees totaled $24,848.00, nearly double the requested fees for PAGA Counsel. Martinez Decl. ¶ 32; **Ex. D** to Martinez Decl. PAGA Counsel expects to incur additional time and costs including attending the hearing for this Motion, coordinating administration, finalizing the orders and judgment, monitoring completion of the Amended Settlement process, and any subsequent compliance hearings. Martinez Decl. ¶ 32. This additional work, particularly coordinating PAGA Administration, is likely to result in at least $5,000 to $10,000 in additional lodestar, further exceeding the requested fees. Martinez Decl. ¶ 32. The rates charged by Plaintiff's Counsel are in line with the prevailing rates of attorneys in the local legal community for similar work and, if this were a commercial matter, these are the charges that would be made and presented to the client. Martinez Decl. ¶ 32.

Plaintiff and the Aggrieved Employees are represented by competent and experienced counsel to pursue their claims. Martinez Decl. ¶ 33. Plaintiff's Counsel have extensively litigated similar labor law cases against other employers on behalf of aggrieved employees. Martinez Decl. ¶ 35. Plaintiff's Counsel must be extremely familiar and knowledgeable with wage and hour laws, litigation practices, case law, policy, statutory construction, employer practices, employee needs, employee working conditions, and more. Martinez Decl. ¶ 35. With this learned knowledge, Plaintiff's Counsel must strategize which cases to settle pre-litigation or post-litigation, which to mediate, and which cases to take to trial. Martinez Decl. ¶ 35. It is this level of experience which enabled the firms to undertake the instant matter and to successfully combat the resources of the defendant and their capable and experienced counsel. Martinez Decl. ¶ 35. Plaintiff's Counsel strongly believes in the vigorous prosecution of our cases, including this case, for the best interest of our clients, and any aggrieved employees. Martinez Decl. ¶ 35. Plaintiff's Counsel undertook this matter purely as a contingency fee case. Martinez Decl. ¶ 37. In other words, Plaintiff's Counsel will not receive any compensation unless there is a cash recovery. Martinez Decl. ¶ 37. Plaintiff is not asked or required to pay Plaintiff's Counsel any money unless there is a recovery on her behalf. Martinez Decl. ¶ 37.

The requested fee award, agreed to by the parties as part of the Settlement, should be approved. Martinez Decl. ¶ 36. The requested fee award was bargained for during arm's length adversarial bargaining by counsel for each of the parties as part of the Settlement. Martinez Decl. ¶ 36. Accordingly, Plaintiff respectfully request the Court approve Plaintiff's Counsel Fees Payment.

V. CONCLUSION

Based on the foregoing, the Parties respectfully request the Court grant this motion and approve the Parties' PAGA Settlement Agreement.

EMRAN LAW FIRM P.C.

Dated: August 11, 2026

By: Kaitlin Martinez
Harris Emran
Kaitlin Martinez
Attorneys for Plaintiff and the AGGRIEVED EMPLOYEES