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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

CLAUDIA RAMIREZ, Plaintiff, vs. SUN-MAR HEALTH CARE, INC., a California corporation; F&B HEALTH CARE, INC., a California corporation; SUN-MAR REHABILITATION SERVICES, LLC, a California limited liability company; and DOES 1 THROUGH 100, inclusive, Defendants.	Case No.: CVRI2303781 [Assigned For All Purposes To: Hon. Judge Daniel A. Ottolia, Dept. 4] **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO APPROVE PAGA SETTLEMENT** [Notice of Motion to Approve PAGA Settlement; Declaration of Arthur Sezgin, Esq. and exhibits in support thereof; and [Proposed] Order filed concurrently herewith] **Date:** August 18, 2025 **Time:** 08:30 a.m. **Reservation ID:** 310520797574

I. INTRODUCTION

Plaintiff Claudia Ramirez ("Plaintiff" or "Ramirez") and Defendant F&B Health Care, Inc. ("Defendant" or "F&B Health Care") have reached an agreement to settle the above-captioned action ("Action"), which includes a cause of action pursuant to the California Private Attorneys General Act ("PAGA").

In accordance with California *Labor Code* § 2699(l), Plaintiff now asks this Honorable Court to review and approve the settlement of the PAGA claim. The PAGA settlement is fair, reasonable, and adequate as to the Aggrieved Employees (defined below) and satisfies all statutory criteria for approval. This is only a settlement of the PAGA claim for civil penalties and is not a class settlement and **does not** release the individual wage claims, if any, of the affected employees other than Plaintiff. *See* California *Labor Code* § 2699(g)(1); *see also Iskanian v. CLS Transportation*, (2014) 59 Cal.4th 348, 381; *see also ZB, N.A. v. Superior Court*, (2019) 8 Cal.5th 175, 182 (unpaid wages are not recoverable under PAGA).

The PAGA settlement is set forth in the accompanying Settlement of PAGA Claims and Release of PAGA Claims ("Settlement Agreement"). A true and correct copy of the Settlement Agreement which sets forth the terms for the settlement of the PAGA claims is attached as **Exhibit A** to the concurrently filed Declaration of Arthur Sezgin, Esq. ("Sezgin Decl."). Capitalized terms shall have the same meaning as defined in the Settlement Agreement. The California Labor & Workforce Development Agency ("LWDA") received notice of this motion and settlement as set forth in the concurrently filed Sezgin Decl. A [Proposed] Order confirming review and approval of the PAGA settlement is submitted herewith.

II. RELEVANT FACTS

Defendant owns and operates a skilled nursing facility in Riverside, California. Plaintiff started working for Defendant beginning in or around October 2007. Her employment ended in or around April 2023 at which time she held the position of Activity Director. Plaintiff was considered an hourly, non-exempt employee throughout her employment.

Plaintiff complied with the procedures of California *Labor Code* § 2699.3 for bringing suit under the PAGA. On May 18, 2023, Plaintiff, on behalf of herself and Defendant's other California non-exempt, hourly employees (hereafter collectively the "Aggrieved Employees") gave written notice by electronic service to the LWDA and via certified mail to Defendant of her claims against Defendant. In her notice to the LWDA, Plaintiff asserted on behalf of herself and the Aggrieved Employees that Defendant violated various laws, including California *Labor Code* §§ 203, 204, 226(a), 226.3, 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 2800, 2802, 2698, 2699, and related IWC Wage Orders, including, but not limited to Wage Order No. 5, based on the various theories of liability, including, but not limited to, Defendant's alleged: (1) failure to pay minimum wage; (2) failure to pay overtime wages; (3) failure to timely pay final wages; (4) failure to provide meal and rest periods; (5) failure to reimburse business expenses; (6) failure to provide accurate itemized wage statements; and (7) unfair business practices. *Sezgin Decl.,* ¶ *7.*

Plaintiff filed this Action including a cause of action pursuant to the PAGA on July 24, 2023 in the Superior Court for the State of California, County of Riverside (Case No. CVRI2303781). *Sezgin Decl.,* ¶ *8.*

On April 26, 2024, the Parties attended a full-day mediation with experienced wage-and-hour mediator, Hon. Jeffrey K. Winikow (Ret.). Before mediation and prior to agreeing to the terms of the settlement, the Parties engaged in formal discovery regarding Defendant's policies, practices, operations, time and payroll information, and other topics. Defendant produced Plaintiff's personnel file, including time and payroll data for Plaintiff, and also produced the redacted time and payroll records for the Aggrieved Employees. Following mediation, through extensive ongoing arm's length negotiations and only after additional discovery and investigation were performed, the Parties agreed to settlement terms. *Sezgin Decl.,* ¶ *9.*

According to its records, Defendant employed approximately 441 Aggrieved Employees from May 18, 2022 through May 7, 2025, and issued paychecks for a total of approximately 11,938 pay periods worked for that same time period. *Sezgin Decl.,* ¶ *10.*

As stated above, through extensive arm's length negotiations at and following mediation, and only after discovery and investigation were performed, the Parties agreed to settlement terms. *Sezgin Decl., ¶ 11.*

The Parties conducted investigation of the facts and law both before and after the lawsuit was filed. Counsel for the Parties have further investigated the applicable law as applied to the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code violations claimed by Plaintiff. Based on their own independent investigations and evaluations, the Parties and their respective counsel are of the opinion that the settlement for the consideration and on the terms set forth in Settlement Agreement are fair, reasonable, and adequate and are in the best interests of Plaintiff, the Aggrieved Employees, and Defendant in light of all known facts and circumstances and the risks inherent in litigation. *Sezgin Decl., ¶ 12.*

The Parties further recognize that the issues presented in the PAGA claim are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the maximum potential benefits. *Sezgin Decl., ¶ 13.*

III. TERMS AND PROCEDURES OF THE SETTLEMENT

The Settlement Agreement covers any and all civil penalties claims arising from all claims that were, or reasonably could have been, alleged, based on the facts contained in the Complaint and the PAGA Notice. *Sezgin Decl., ¶ 14.*

Defendant hereby agrees to pay **$140,000.00** toward the settlement (the "Gross Settlement Amount" or "GSA") which will be distributed as follows:

1) **$46,662.00** (33 1/3% of the GSA) in **attorney's fees** to Sezgin Khousadian LLP;
2) **$11,157.70** in attorney **litigation costs and expenses** to Sezgin Khousadian LLP;
3) **$2,950.00** in **PAGA Settlement Administrator** costs to the Settlement Administrators (ILYM Group, Inc.);
4) **$79,230.30** (the "**Net Settlement Amount**" or "NSA") will be divided as follows:

i. **$59,422.73** (75% of "NSA") to the **LWDA**, which represents civil penalties payable to the LWDA under the Labor Code Private Attorneys General Act ("PAGA"), Labor Code Sections 2698 et seq.; and

ii. **$19,807.57** (25% of NSA) (the "**Aggrieved Employee Amount**") to the Aggrieved Employees which represents civil penalties payable to the Aggrieved Employees as compensation for civil penalties that are allegedly owed on the representative PAGA claim for the period from May 18, 2022 through May 7, 2025. *Sezgin Decl., ¶ 15.*

Plaintiff and each Aggrieved Employee shall receive a portion of the Aggrieved Employee Amount on a pro-rata basis by multiplying the Aggrieved Employee Amount by the ratio of (i) the number of pay periods worked by the Aggrieved Employee during the release period and (ii) the total number of pay periods worked by all Aggrieved Employees during the release period. *Sezgin Decl., ¶ 16.*

As stated above, according to Defendant's records, at the time the instant settlement was reached, there were approximately 441 Aggrieved Employees from May 18, 2022 through May 7, 2025, and issued paychecks for a total of approximately 11,938 pay periods worked for that same time period. *Sezgin Decl., ¶ 17.*

A. PAGA Settlement Administration

Administration: The Parties agree to use ILYM Group, Inc. to handle the administration of this Settlement. *Sezgin Decl., ¶ 18.*

Administration Costs And Expenses: All costs and expenses due to the Settlement Administrator in connection with its administration of the Settlement described in the Agreement, including, but not limited to, formatting and mailing the Notice of PAGA Settlement and Individual Settlement Payments, performing a National Change of Address database search to update the Aggrieved Employees' addresses prior to the mailing, performing skip-traces to locate and update Aggrieved Employees' addresses, calculating, and distributing Individual Settlement Payments, and any other tasks requested by the Parties or by the Court, among other tasks as reflected within this Agreement, will be paid through the Gross Settlement Amount. *Sezgin Decl., ¶ 19.*

Funding of the Gross Settlement Amount*:* The Settlement Administrator will provide Defendant with its bank wire instructions to establish the Qualified Settlement Fund (QSF). Within thirty (30) calendar days of the Effective Date as defined in the Agreement, Defendant shall transmit the Gross Settlement Amount to the Settlement Administrator. *Sezgin Decl., ¶ 20.*

Distribution of the Gross Settlement Amount: Within fifteen (15) calendar days of Defendant transmitting the funds to the Administrator, the Administrator will pay to the Aggrieved Employees, their Individual Settlement Payments via first-class regular U.S. Mail; to PAGA Counsel, the Court-awarded Attorney's Fees and Litigation Costs & Expenses Payment; to the LWDA, the Court-approved LWDA Payment; and to the Administrator, the Court-awarded Administration Fees and Expenses. *Sezgin Decl., ¶ 21.*

Non-Cashed Settlement Checks: Aggrieved Employees shall have one hundred eighty days (180) to cash their checks. Any funds associated with uncashed checks after one hundred eighty (180) days will be sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California *Civil Code* §§ 1500 et seq., for the benefit of those Aggrieved Employees whose checks were voided. *Sezgin Decl., ¶ 22.*

For purposes of computing taxes, one hundred percent (100%) of the Aggrieved Employee Settlement Award shall be considered to be a civil penalty and shall therefore not be subject to withholding unless otherwise required by law. The Claims Administrator shall file proof of payment. *Sezgin Decl., ¶ 23.*

Pursuant to and in compliance with California Labor Code Section 2699(1), Plaintiff is providing a copy of the Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion for settlement approval as set forth in the accompanying proof of service. *Sezgin Decl., ¶ 24.* In addition, Plaintiff will submit to the LWDA a copy of the Court's judgment and order approving the Settlement Agreement within ten (10) days after entry of judgment or order. *Sezgin Decl., ¶ 25.*

IV. RELEASED CLAIMS

Upon the approval by the Court of this Settlement Agreement, Plaintiff, the State of California, and each Aggrieved Employee shall fully release and forever discharge Defendant and the Released Parties from any and all claims, rights, demands, liabilities for violation of PAGA (California *Labor Code* §§ 2699 et seq.) that were set forth, or that could have been set forth based on the facts alleged in the Action during the PAGA Period, based on the various theories of liability, including, but not limited to, Defendant's alleged failure to: provide meal periods; provide rest periods; pay for all hours worked; pay minimum wages; pay overtime wages; provide accurate wage statements; timely pay all wages due in accordance with time periods prescribed by law; reimburse business expenses; keep accurate payroll records; and timely pay all final wages at separation of employment. *Sezgin Decl., ¶ 26.*

Notably, the released claims do not include the Aggrieved Employees' individual claims. This is only a settlement of the PAGA claims for civil penalties and is not a class settlement and does not release the individual claims, if any, of the Aggrieved Employees. This settlement does not release any claim that is not a PAGA claim. *Sezgin Decl., ¶ 27.*

In addition, the release is limited to the employees of Plaintiff's direct employer – F&B Health Care, Inc. ("F&B Health Care"). Plaintiff was not directly employed by Sun-Mar Rehabilitation Services, LLC or Sun-Mar Health Care, Inc., and Plaintiff's ability to recover PAGA penalties on behalf of the employees of those co-defendants is uncertain. *Sezgin Decl., ¶ 28.* Accordingly, although the PAGA claim against F&B Health Care will be resolved and released, the PAGA claims against Sun-Mar Rehabilitation Services, LLC and Sun-Mar Health Care, Inc. will be dismissed without prejudice. *Sezgin Decl., ¶ 29.*

V. FAIRNESS OF THE SETTLEMENT

California Labor Code Section 2699(l) declares the Court "shall review and approve any settlement of any civil [PAGA] action filed pursuant to this part." Further, the Court in *Moniz v.*

Adecco USA, Inc. stated that "the trial court must review and approve a PAGA settlement, and the Supreme Court has in dictum referred to this review as a safeguard." *Moniz v. Adecco USA, Inc.*, (2021) 72 Cal.App.5th 56, 77.

The Supreme Court has also observed that trial court approval ensures that any negotiated resolution is fair to those affected, leading the Court in *Moniz* to determine that "adoption of a standard of review for settlements that prevents fraud, collusion or unfairness, and protects the interests of the public and the LWDA in the enforcement of state labor laws is warranted." *Moniz*, 72 Cal.App.5th at 77. In other words, "[i]n review and approval of a proposed settlement under section 2699, subd. (l)(2), a trial court thus must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the state's interests, and hence the public interest." *Moniz*, 72 Cal.App.5th at 88.

Consequently, the Parties respectfully ask the Court to review and approve the proposed PAGA Settlement.

A. The PAGA Settlement Amount To Be Paid Is Fair And Reasonable

Plaintiff and her counsel believe that the PAGA Settlement amount is fair and reasonable and therefore "shall" be reviewed and approved. *Sezgin Decl.,* ¶ *30.*

California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if, based on the facts and circumstances, to do otherwise would result in an award that is "unjust, arbitrary and oppressive or confiscatory." As such, under the PAGA, courts have considerable discretion to reduce the penalty award. Notably, with that discretion, Judges have awarded extremely small sums to PAGA claimants in the past.

For example, in *Carrington v. Starbucks Corp.*, the Court of Appeal affirmed a judgment after trial which only provided for a PAGA penalty of **$5** per pay period. *Carrington v. Starbucks Corp.*, (2018) 30 Cal.App.5th 504. Further, in *Fleming v. Covidien*, a federal court reduced PAGA penalties from $2,800,000 to $500,000, **a reduction of 82.2%,** as the court found maximum penalties "unjust" because the employees had suffered no injuries. *Fleming v. Covidien*, (C.D. Cal.

2011) 2011 U.S. Dist. LEXIS 154590. Some trial courts have actually awarded no civil penalties, even when the violations are established. *See, e.g., Makabi v. Gedalia*, 2016 Cal.App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior Court) (unpublished decision); *see also In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

In the instant matter, before, during, and following mediation, Defendant argued, among other things, that it was unlikely that any Judge would award more than the actual amounts owed on the claims, let alone the full $100 or $200 per violation. *Sezgin Decl., ¶ 31.* Defendant also adamantly disputes all of Plaintiff's allegations in the operative Complaint. *Sezgin Decl., ¶ 32.* Therefore, at trial, any PAGA penalties awarded in this case could be significantly less than Plaintiff's calculation, even had Plaintiff prevailed on the PAGA claim. *Sezgin Decl., ¶ 33.*

Furthermore, Plaintiff recognizes that continued litigation presents significant risks that support a significant downward departure from Plaintiff's estimated civil penalties. In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc*., 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) (stating "Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for each period the employee worked in relation to meal or rest period violations, failure to pay minimum or overtime wages, failure to reimburse, and failure to provide accurate itemized wage statements. *Sezgin Decl., ¶ 34.*

The potential for recovery of the maximum possible civil penalties depends on circumstances that are highly unlikely and not in line with reality. It would depend on the Court stacking the maximum recoverable civil penalties for unpaid wages violations, inaccurate wage statements violations, inaccurate pay records violations, untimely wages violations, unreimbursed expenses violations, unprovided meal breaks violations, and unprovided rest breaks violations, per pay period for all 11,938 pay periods for all 441 potential Aggrieved Employees during the PAGA Period. Plaintiff's counsel is unaware of any California state court decision awarding a plaintiff and the other aggrieved employees he represents multiple civil penalties for the same pay period under different Labor Code provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to "stack" civil penalties arising under the various Labor Code statutes. Plaintiff's counsel had to substantially discount the value of these claims in the settlement negotiations for this and a variety of other reasons. At best, Plaintiff could hope to recover one penalty for each pay period (*regardless of the different Labor Code violations that potentially occurred for the same employee during the same pay periods*). *Sezgin Decl., ¶ 35.*

Additionally, Defendant maintains that Plaintiff and the Aggrieved Employees were properly compensated, and that it did not violate the Labor Code. Most importantly and relevant to this case, Defendant argued that the Supreme Court decision in *Brinker v. Super. Ct.* weakened, if not eliminated, Plaintiff's claims, on liability, value, and discretion with respect to the PAGA penalties, as to the meal and rest period claims. *Brinker v. Super. Ct.,* (2012) 53 Cal.4th 1004. A major component of the penalties alleged to have been owed by Defendant are attributed to non-compliant meal and rest breaks. Before, during, and after the mediation, Defendant aggressively argued that Defendant's policies and culture afforded the Aggrieved Employees an opportunity to take timely meal and rest breaks, and that employees like Plaintiff *chose* not to take compliant breaks. Specifically, Defendant's written policies encouraged Aggrieved Employees to take meal periods and rest breaks according to schedules compliant with the California Labor Code. Defendant argued, therefore, that under the *Brinker* decision it has no liability for the missed breaks whatsoever. Moreover, Defendant had a practice and policy of paying a meal period premium or penalty for meal periods that were not Code-compliant. *Sezgin Decl., ¶ 36.*

Defendant also argued that it adopted and strictly enforced lawful policies and afforded Plaintiff and the Aggrieved Employees adequate time to take compliant meal and rest periods.

Because Plaintiff's claims were largely based on the missed meal and rest periods, and because Defendant's written policies were indeed compliant, this presented a very real concern for Plaintiff. If successful, this defense could eliminate or substantially reduce any recovery under PAGA. Defendant asserted additional defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties. Defendant could argue that no penalties prior to the PAGA notification should be awarded because the violations were not intentional. Accordingly, Defendant disputes and denies Plaintiff's PAGA claim which is resolved by the Settlement Agreement. *Sezgin Decl., ¶ 37.*

While Plaintiff believes Defendant's defenses could be overcome, Defendant maintains these defenses have merit, which therefore presents a serious risk to recovery of penalties. Indeed, these defenses present a risk to the PAGA claim and the possibility that some or all of the PAGA penalties sought may not be awarded. As such, in view of the risks, the settlement represents a fair, adequate, and reasonable compromise amount for these claims and is in the best interest of Plaintiff and Aggrieved Employees and thus warrants approval. *See Laguna v. Coverall N. Am., Inc.*, (9th Cir. June 3, 2014) 2014 WL 2465049 at 3. *Sezgin Decl., ¶ 38.*

As set forth in the accompanying proof of service, the LWDA has been provided notice of this motion and the PAGA Settlement. *Sezgin Decl., ¶ 39.* The decision of the LWDA to accept the PAGA Settlement and not oppose the motion should be given considerable weight. This is not a situation where the Court needs to be concerned about the rights of absent employees as in a class settlement, as this PAGA-only settlement does not release the individual claims of absent employees, and the LWDA is a sophisticated government entity that is more than able to look out for its own rights. *Sezgin Decl., ¶ 40.*

Finally, Plaintiff's diligent and efficient litigation of this action resulted in the creation of an ascertainable common fund of $140,000.00 that will benefit the State of California and the Aggrieved Employees. *Sezgin Decl., ¶ 41.*

B. Information Pursuant To Riverside County Superior Court's Standing Orders

While most of the required and/or requested information has been provided above, in accordance with the County of Riverside Superior Court's standing order regarding applications to approve PAGA settlements, Plaintiff hereby proffers the following requested information in support of her motion for approval:

a. The nature of the alleged violations.

As stated above, Plaintiff has brought her PAGA claim based on Defendant's alleged: (1) failure to pay minimum wage; (2) failure to pay overtime wages; (3) failure to timely pay final wages; (4) failure to provide meal and rest periods; (5) failure to reimburse business expenses; (6) failure to provide accurate itemized wage statements; and (7) unfair business practices. As also discussed above, the crux of Plaintiff's PAGA claim rests on her allegation that Defendant did not provide Code-compliant meal and/or rest periods. *Sezgin Decl., ¶ 42.*

b. The number of alleged individual violations, including both the length of the relevant employment period and the number of employees allegedly employed during that period.

With respect to meal periods, an analysis of Defendant's time records showed that of the 36,123 shifts in the records sampling eligible for a meal period, only 3,845 (or 11.9%) reflected a potential violation – i.e., the meal was unrecorded, less than 30 minutes, or commenced after the end of the fifth hour of work. This raised concerns with Plaintiff that this relatively low violation rate could affect Plaintiff's ability to prove that meal period violations were systemic. In addition, Plaintiff is aware that Defendant also paid meal period penalties for a significant number of these potential violations. *Sezgin Decl., ¶ 43.*

c. The total amount of penalties for which the defendant is potentially liable should those allegations are proven.

Assuming a maximum violation rate would have been proven, based on the 11,938 pay periods at issue and the $100.00 per pay period maximum permitted recovery, the total amount of penalties for which Defendant would have potentially been liable for could have been in the amount of approximately $1,193,800.00. *Sezgin Decl.,* ¶ *44.*

d. The extent to which the alleged violations would be likely to be found true at trial, considering the weight of the evidence, the clarity of the applicable law, and the strength of any factual or legal defense likely to be asserted by the defendant.

Both Parties' experts calculated a relatively low violation rate with regard to meal periods that were not Code-compliant – approximately 12%. Furthermore, Defendant had a practice or policy that afforded employees meal period premiums or penalties in the event a meal period was not Code-compliant. As such, though a violation of California's meal period laws could have been found at the time of trial, the extent of the alleged violation is relatively low. *Sezgin Decl.,* ¶ *45.*

As to rest periods, given that employees are not required to clock out for rest periods, proving this claim at the time of trial would be very difficult, especially since Defendant has clear policies pertaining to employees taking rest periods. *Sezgin Decl.,* ¶ *46.*

e. The nature and extent of the discovery or other investigation undertaken by the plaintiff to estimate the likelihood of proving those allegations at trial.

As stated above, before and after mediation, and prior to agreeing to the terms of the settlement, the Parties engaged in formal discovery regarding Defendant's policies, practices, operations, time and payroll information, and other topics. Defendant produced Plaintiff's personnel file, including time and payroll data for Plaintiff, and *also* produced the redacted time and payroll records for the Aggrieved Employees. *Sezgin Decl.,* ¶ *47.*

Furthermore, both Parties retained the services of an expert analyst to calculate the potential violation rates. *Sezgin Decl.,* ¶ *48.*

f. Whether the defendant's violations were knowing and intentional within the meaning of Labor Code section 226, subdivision (e)(1).

Plaintiff was unable to secure evidence demonstrating the alleged violations were knowing and intentional. Defendant adamantly denies violations occurred and that any potential violations were knowing and intentional. In fact, given its thorough policies and practice of paying meal period premiums or penalties, Defendant has taken the position that it took all reasonable steps to ensure its employees were afforded Code-complaint meal and rest periods. *Sezgin Decl., ¶ 49.*

g. The total amount of penalties for which the defendant would be likely to be found liable at trial.

As stated above, assuming a maximum violation rate would have been proven, based on the 11,938 pay periods at issue and the $100.00 per pay period maximum permitted recovery, the total amount of penalties for which Defendant would have potentially been liable for could have been in the amount of approximately $1,193,800.00. *Sezgin Decl., ¶ 50.*

h. Any facts that tend to suggest that the imposition of the total amount of statutory penalties for which the defendant would be likely to be found liable at trial would be unjust, arbitrary and oppressive, or confiscatory.

That Defendant enforced strict policies related to its employees being afforded Code-compliant meal and rest periods, including its practice of paying meal period premiums or penalties, would strongly suggest that the imposition of the total amount of statutory penalties for which Defendant would be likely to be found liable at trial would be unjust, arbitrary and oppressive, or confiscatory. *Sezgin Decl., ¶ 51.*

i. How the amount of the agreed-upon penalties was calculated or otherwise arrived at.

An agreed-upon settlement in the amount of $140,000.00 for approximately 11,938 pay periods yields a per pay period penalty in the amount of approximately $11.73. This is essentially the violation rate of 12% crossed against the maximum recoverable PAGA civil penalty in the amount of $100.00. In other words, a potential 12% violation rate should provide approximately 12% of the permitted penalty. *Sezgin Decl., ¶ 52.*

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j. Whether the parties utilized the services of any neutral party to mediate this dispute.

As stated above, on April 26, 2024, the Parties attended a full-day mediation session with experienced wage-and-hour mediator, Hon. Jeffrey K. Winikow (Ret.). Judge Winikow assisted with the ongoing negotiations following mediation. *Sezgin Decl.,* ¶ *53.*

k. Any other factors that are material to a determination that the amount of the agreed-upon penalties is fair.

The Parties believe the proposed settlement is fair and confers a significant benefit on the Aggrieved Employees and State of California. *Sezgin Decl.,* ¶ *54.*

C. The Remaining Settlement Terms, Including The Proposed Amount Of Attorney's Fees, Costs, And Litigation Expenses, Are Fair And Reasonable

Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code Section 2699(1) does not require that a court approve any other elements of the proposed settlement. Because there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to class settlements under California Code of Civil Procedure Section 382 do not apply. Accordingly, the Court only needs to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for attorney's fees and costs are reasonable.

Plaintiff's counsel represents Plaintiff on a straight contingency basis. Plaintiff counsel's request for $46,662.00 in attorney fees and $11,157.70 in litigation costs and expenses is fair and reasonable. "Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery. *Chavez v. Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 47 fn. 11; *see also Lafitte v. Robert Half Int'l Inc.*, (2016) 1 Cal.5th 480, 503 (holding courts can use the percentage method for the calculation of attorneys' fees). This is also consistent with Plaintiff's counsel's experience in cases involving PAGA claims. This award is justified here because Plaintiff's counsel achieved a strong result for the Aggrieved Employees and the State while bearing the substantial burdens of contingency representation. Notably, the PAGA does not have any requirements for reviewing attorney's fees, and Plaintiff's position is that the payment of attorney's fees and costs in this matter is a matter of contract for a contingent representation.

While California courts have the discretion to employ, or decline to employ, a "lodestar cross-check" on a request for a percentage of the fund award, in *Laffitte v. Robert Half Intern*, *Inc.*, the California Supreme Court made clear that this cross-check is **not** required and **approved one-third** of the class action settlement fund as reasonable attorney fees as "[t]he percentage of the fund method survives in California class action cases…" *See Laffitte v. Robert Half Intern*, *Inc.*, (2016) 1 Cal.5th 480, 574 (emphasis added). As other courts have acknowledged since *Laffitte,* "California courts routinely award attorney's fees of one-third of the common fund." *See Lopez v. Mgmt. & Training Corp*., (2020) U.S. Dist. LEXIS 70029. The *Lopez* Court explained that it need not "engage in a full-blown lodestar analysis when the primary basis remains the percentage method…" The lodestar calculation is merely a "useful perspective on the reasonableness of a given percentage award." *Id.*; *see also Austin v. Foodliner, Inc.*, (2019) U.S. Dist. LEXIS 79638 (stating "trial courts also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.'" *Id.*, citing *Laffitte*.

Indeed, it is an accepted practice in a wage-and-hour class action settlement to award attorney's fees to plaintiff's counsel based on a percentage of the total settlement value agreed upon by the parties. California courts have long recognized that an appropriate method for awarding attorney's fees in class actions is to award a percentage of the common fund. *See Serrano v. Priest*, (1977) 20 Cal.3d. 25, 48-49 (holding "when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund"); *see also Wershba v. Apple Computer, Inc.*, (2001), 91 Cal.App.4th 230, 254; *see also Lealao v. Beneficial California, Inc.*, (2000) 82 Cal.App.4th 19, 26-30. *Sezgin Decl.,* ¶ *42.*

First, the requested fees are justified by the result achieved. Plaintiff's counsel negotiated a recovery of $140,000.00, and this result justifies the requested fees equal to one-third of this recovery. This percentage is within the standard contingent recovery percentage of one-third, and this percentage is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc*. *See Laffitte v. Robert Half Int'l Inc*., (2016) 1 Cal.5th 480, 504; *see also Chavez v. Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 66, fn.11; *see also In re Pacific Enter. Sec. Litig.*, (9th Cir. 1995) 47 F.3d 373, 379 (affirming 33% fee award); *see also Williams v. MGM-Pathe Communications Co.*, (9th Cir. 1997) 129 F.3d 1026, 1027 (awarding 33% of total fund amount).

At the time this case was brought, the result was far from certain. Defendant's defenses to the merits of the case created difficulties with proof and complex legal issues for counsel to overcome. Here, as thoroughly described above, a number of defenses asserted by Defendant present serious threats to the PAGA claim. Defendant asserted that its employment practices complied with all applicable Labor laws. If successful, Defendant's defenses would eliminate *any recovery* to the Aggrieved Employees and the State of California. While Plaintiff believes that these defenses could be overcome, Defendant maintains these defenses have merit which therefore presents a serious risk to recovery.

The PAGA Settlement was possible because counsel was able to persuade Defendant that there was an appreciable risk that Plaintiff would prevail on the factual and legal issues underlying liability and overcome difficulties in proof as to monetary relief. *Sezgin Decl.,* ¶ *55.*

Second, the fee award is justified by the work performed. Generally, the Ninth Circuit and California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation or obtaining good results. *See, e.g.*, *Laffitte*, 1 Cal.5th at 506 (approving one-third fee award with multiplier between 2.03 and 2.13); *see also Pellegrino v. Robert Half Int'l, Inc.*, (2010) 182 Cal.App.4th 278 (noting reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier). *Sezgin Decl.,* ¶ *56.* Indeed, the Action was filed in July 2023 and litigated for almost a two-year period before a resolution was reached. *Sezgin*

Decl., ¶ *57.*

Third, consideration of the enhancement factors justifies the enhancement of the lodestar. Courts multiply the lodestar by a factor to account for the risk of non-payment, delay in payment, the quality of work, and the novelty and difficulty of the issues involved. *See Ketchum v. Moses*, (2001) 24 Cal.4th 1122, 1132. Notably, failure to apply a risk multiplier in cases that meet these criteria is an abuse of discretion. *Stetson v. Grissom*, (9th Cir. 2016) 821 F.3d 1157, 1166.

Finally, the litigation costs and expenses expended to aid in the representation of the Aggrieved Employees are reasonable and include the following: (1) PAGA notice filing fee in the amount of $75.00; (2) complaint filing fee in the amount of $463.30; (3) service and other filing fees in the total amount of $419.40; (4) expert analysis fee in the amount of $1,200.00; and (5) mediation fees in the amount of $9,000.00. All of these costs are documented and reasonably incurred. *Sezgin Decl.,* ¶ *58.*

VI. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests for this Honorable Court to approve the PAGA Settlement as set forth in the Settlement Agreement and enter the proposed order and judgment submitted herewith.

DATED: July 24, 2025

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