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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

RAFFI GULDJIAN,	) Case No.: 30-2023-01353562-CU-OE-CJC
	)
	)
Plaintiff,	) [Assigned For All Purposes To Hon. Judge Lon F.
	) Hurwitz, Dept. CX103]
	)
vs.	)
	) MEMORANDUM OF POINTS AND
	) AUTHORITIES IN SUPPORT OF MOTION
THEODORE ROBINS, INC., a California	) TO APPROVE PAGA SETTLEMENT
corporation; and DOES 1 THROUGH 100,	)
inclusive,	)
	) <i>[Notice of Motion to Approve PAGA Settlement;</i>
	) <i>Declaration of Arthur Sezgin, Esq. and exhibits in</i>
Defendants.	) <i>support thereof; and [Proposed] Order filed</i>
	) <i>concurrently herewith]</i>
	)
	)
	)

1 **I. INTRODUCTION**

2 Plaintiff Raffi Guldjian (“Guldjian” or “Plaintiff”) and Defendant Theodore Robins, Inc.
3 (“Theodore Robins” or “Defendant”) have reached an agreement to settle the above-captioned
4 action (the “Action”), which includes a cause of action pursuant to the California Private Attorneys
5 General Act (“PAGA”).

6 In accordance with California *Labor Code* § 2699(l), Plaintiff now asks this Honorable
7 Court to review and approve the settlement of the PAGA claim. The PAGA settlement is fair,
8 reasonable, and adequate as to the Aggrieved Employees and satisfies all statutory criteria for
9 approval. This is only a settlement of the PAGA claims for civil penalties and is not a class
10 settlement and **does not** release the individual wage claims, if any, of the affected employees other
11 than Plaintiff. *See California Labor Code* § 2699(g)(1); *see also Iskanian v. CLS Transportation*,
12 (2014) 59 Cal.4th 348, 381; *see also ZB, N.A. v. Superior Court*, (2019) 8 Cal.5th 175, 182 (unpaid
13 wages are not recoverable under PAGA).

14 The PAGA settlement is set forth in the accompanying Settlement of PAGA Claims and
15 Release of PAGA Claims (“Settlement Agreement”). A true and correct copy of the Settlement
16 Agreement which sets forth the terms for the settlement of the PAGA claims is attached as Exhibit
17 A to the concurrently filed Declaration of Arthur Sezgin, Esq. (“Sezgin Decl.”). Capitalized terms
18 shall have the same meaning as defined in the Settlement Agreement. The LWDA received notice
19 of this settlement and this motion as set forth in the Sezgin Decl. A proposed order confirming
20 review and approval of the PAGA settlement is submitted herewith.

21 **II. RELEVANT FACTS**

22 Defendant owns and operates a small, single-point car dealership. Plaintiff started working
23 as a Salesman approximately thirty (30) years ago. Plaintiff complied with the procedures of
24 California *Labor Code* § 2699.3 for bringing suit under the PAGA. On June 22, 2023, Plaintiff, on
25 behalf of himself and Defendant’s other California non-exempt, hourly and commissioned-based
26 employees (hereafter collectively the “Aggrieved Employees”) gave written notice by electronic
27 service to the California Labor and Workforce Development Agency (“LWDA”) and via certified

1 mail to Defendant of his claims against Defendant. In his notice to the LWDA, Plaintiff asserted on
2 behalf of himself and the Aggrieved Employees that Defendant violated various laws, including
3 California *Labor Code* §§ 203, 204, 226(a), 226.3, 226.7, 510, 512, 558, 1174(d), 1194, 1197,
4 1197.1, 2800, 2802, 2698, 2699, and related IWC Wage Orders, including, but not limited to Wage
5 Order No. 4 and Wage Order 7, based on the various theories of liability, including, but not limited
6 to, Defendant's alleged failure to: provide meal periods; provide rest periods; pay for all hours
7 worked; pay minimum wages; pay overtime wages; provide accurate wage statements; timely pay
8 all wages due in accordance with time periods prescribed by law; reimburse business expenses;
9 keep accurate payroll records; and timely pay all final wages at separation of employment. Plaintiff
10 filed his PAGA-only lawsuit on October 2, 2023 in the Superior Court for the State of California,
11 County of Orange, Case No. 30-2023-01353562-CU-OE-CJC. *Sezgin Decl.*, ¶ 5.

12 On February 19, 2024, the Parties attended a full-day mediation session with experienced
13 wage-and-hour mediator, Gig Kyriacou, Esq. Before agreeing to the terms of the settlement, the
14 Parties engaged in formal discovery regarding Defendant's policies, practices, operations, time and
15 payroll information, and other topics. In advance of mediation, Defendant produced Plaintiff's
16 personnel file, including time and payroll data for Plaintiff, and also produced the redacted time
17 and payroll records for the Aggrieved Employees. *Sezgin Decl.*, ¶ 6.

18 According to its records, Defendant employed approximately 95 Aggrieved Employees
19 from July 29, 2022 through February 19, 2024, and issued paychecks for a total of approximately
20 2,500 pay periods worked for that same time period. *Sezgin Decl.*, ¶ 7.

21 Through extensive arm's length negotiations at the mediation and only after discovery and
22 investigation were performed, the Parties agreed to settlement terms. *Sezgin Decl.*, ¶ 8.

23 The Parties conducted investigation of the facts and law both before and after the lawsuit
24 was filed. Counsel for the Parties have further investigated the applicable law as applied to the facts
25 discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code violations claimed
26 by Plaintiff. Based on their own independent investigations and evaluations, the Parties and their
27 respective counsel are of the opinion that the settlement for the consideration and on the terms set

1 forth in Settlement Agreement are fair, reasonable, and adequate and are in the best interests of
2 Plaintiff, the Aggrieved Employees, and Defendant in light of all known facts and circumstances
3 and the risks inherent in litigation. *Sezgin Decl.*, ¶ 9.

4 The Parties further recognize that the issues presented in the PAGA claim are likely only to
5 be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will
6 cause inconvenience, distraction, disruption, delay, and expense disproportionate to the maximum
7 potential benefits. *Sezgin Decl.*, ¶ 10.

8 **III. TERMS AND PROCEDURES OF THE SETTLEMENT**

9 The Settlement Agreement covers any and all civil penalties claims arising from Plaintiff's
10 PAGA claim in the Complaint, as laid out above. For the avoidance of uncertainty, this motion and
11 release includes a release of claims under PAGA for violations of California Labor Code Sections
12 201, 202, 203, 204, 210, 216, 218, 222, 225.5, 226 et seq., 226.3, 226.7, 227.3, 233, 234, 246, 246.5,
13 432, 510, 512, 516, 551, 552, 558, 558.1, 1174, 1182.12, 1193, 1193.6, 1194, 1194.2, 1197, 1197.1,
14 1198, 1198.5, 1199, 2698 et seq., 2699, 2802, 2804, and 2810.5. *Sezgin Decl.*, ¶ 11.

15 Defendant agrees to pay \$30,000.00 toward the settlement (the "Gross Settlement Amount"
16 or "GSA") which will be distributed as follows:

- 17 1) \$9,999.00 (33 1/3% of the GSA) in attorney's fees to Sezgin Khouadian LLP;
- 18 2) \$12,481.75 in attorney litigation costs and expenses to Sezgin Khouadian LLP;
- 19 3) \$2,450.00 in PAGA Settlement Administrator costs to the Settlement Administrators
20 (ILYM Group, Inc.);
- 21 4) \$5,069.25 (the "Net Settlement Amount" or "NSA") will be divided as follows:
 - 22 i. \$3,801.94 (75% of "NSA") to the LWDA, which represents civil penalties
23 payable to the LWDA under the Labor Code Private Attorneys General Act
24 ("PAGA"), Labor Code Sections 2698 et seq.; and
 - 25 ii. \$1,267.31 (25% of NSA) (the "Aggrieved Employee Amount") to the
26 Aggrieved Employees which represents civil penalties payable to the
27 Aggrieved Employees as compensation for civil penalties that are allegedly

1 owed on the representative PAGA claim for the period from July 29, 2022
2 through February 29, 2024. *See Sezgin Decl.*, ¶ 12.

3 Plaintiff and each Aggrieved Employee shall receive a portion of the Aggrieved Employee
4 Amount on a pro-rata basis by multiplying the Aggrieved Employee Amount by the ratio of (i) the
5 number of pay periods worked by the Aggrieved Employee during the release period and (ii) the
6 total number of pay periods worked by all Aggrieved Employees during the release period. *Sezgin*
7 *Decl.*, ¶ 14.

8 As stated above, according to Defendant's records, at the time of mediation, there were
9 approximately 95 Aggrieved Employees from July 29, 2022 through February 19, 2024, and issued
10 paychecks for a total of approximately 2,500 pay periods worked for that same time period. *Sezgin*
11 *Decl.*, ¶ 15.

12 A. PAGA Settlement Administration

13 **Administration:** The Parties agree to use ILYM Group, Inc. to handle the administration of this
14 Settlement. *Sezgin Decl.*, ¶ 16.

15 **Administration Costs And Expenses:** All costs and expenses due to the Settlement Administrator
16 in connection with its administration of the Settlement described in the Agreement, including, but
17 not limited to, formatting and mailing the Notice of PAGA Settlement and Individual Settlement
18 Payments, performing a National Change of Address database search to update the Aggrieved
19 Employees' addresses prior to the mailing, performing skip-traces to locate and update Aggrieved
20 Employees' addresses, calculating, and distributing Individual Settlement Payments, and any other
21 tasks requested by the Parties or by the Court, among other tasks as reflected within this Agreement,
22 will be paid through the Gross Settlement Amount. *Sezgin Decl.*, ¶ 17.

23 **Funding of the Gross Settlement Amount:** The Settlement Administrator will provide Defendant
24 with its bank wire instructions to establish the Qualified Settlement Fund (QSF). Within ten (10)
25 calendar days of the Effective Date, Defendant shall transmit the Gross Settlement Amount to the
26 Settlement Administrator. *Sezgin Decl.*, ¶ 18.

1 ***Distribution of the Gross Settlement Amount:*** Within fifteen (15) calendar days of Defendant
2 transmitting the funds to the Administrator, the Administrator will pay to the Aggrieved Employees,
3 their Individual Settlement Payments via first-class regular U.S. Mail; to PAGA Counsel, the Court-
4 awarded Attorney's Fees and Litigation Costs & Expenses Payment; to the LWDA, the Court-
5 approved LWDA Payment; and to the Administrator, the Court-awarded Administration Fees and
6 Expenses. *Sezgin Decl.*, ¶ 19.

7 ***Non-Cashed Settlement Checks:*** Aggrieved Employees shall have one hundred eighty days (180)
8 to cash their checks. Any funds associated with uncashed checks after one hundred eighty (180)
9 days will be sent to the Controller of the State of California to be held pursuant to the Unclaimed
10 Property Law, California *Civil Code* §§ 1500 et seq., for the benefit of those Aggrieved Employees
11 whose checks were voided. *Sezgin Decl.*, ¶ 20.

12 For purposes of computing taxes, one-hundred percent (100%) of the Aggrieved Employee
13 Settlement Award shall be considered to be a civil penalty and shall therefore not be subject to
14 withholding, unless otherwise required by law. The Claims Administrator shall file proof of
15 payment. *Sezgin Decl.*, ¶ 21.

16 Assuming Plaintiff's motion is granted at the time of the initial hearing on the motion, the
17 Parties propose a date for final accounting be set on September 6, 2024, or on a date convenient for
18 the Honorable Court.

19 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
20 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant
21 motion for settlement approval as set forth in the accompanying proof of service in compliance with
22 Labor Code Section 2699(1). In addition, Plaintiff will submit to the LWDA a copy of the Court's
23 judgment and order approving the Settlement Agreement within ten (10) days after entry of
24 judgment or order. *Sezgin Decl.*, ¶ 23.

25 **IV. RELEASED CLAIMS**

26 Upon the approval by the Court of this Settlement Agreement, Plaintiff, the State of
27 California, and each Aggrieved Employee shall fully release and forever discharge Defendant and

1 the Released Parties from any and all claims, rights, demands, liabilities for violation of PAGA
2 (California *Labor Code* §§ 2699 et seq.) that were set forth, or that could have been set forth based
3 on the facts alleged in the Action during the PAGA Period, including but not limited to under
4 California *Labor Code* §§ 201, 202, 203, 204, 210, 216, 218, 222, 225.5, 226 et seq., 226.3, 226.7,
5 227.3, 233, 234, 246, 246.5, 432, 510, 512, 516, 551, 552, 558, 558.1, 1174, 1182.12, 1193, 1193.6,
6 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2698 et seq., 2699, 2802, 2804, and 2810.5, and
7 related and applicable IWC Wage Orders, based on the various theories of liability, including, but
8 not limited to, Defendant's alleged failure to: provide meal periods; provide rest periods; pay for
9 all hours worked, pay minimum wages; pay overtime wages; provide accurate wage statements;
10 timely pay all wages due in accordance with time periods prescribed by law; reimburse business
11 expenses; keep accurate payroll records; and timely pay all final wages at separation of
12 employment. *Sezgin Decl.*, ¶ 24.

13 Notably, this released claims do not include the Aggrieved Employees' individual claims.
14 This is only a settlement of the PAGA claims for civil penalties and is not a class settlement and
15 does not release the individual claims, if any, of the Aggrieved Employees. This settlement does
16 not release any claim that is not a PAGA claim. *Sezgin Decl.*, ¶ 25.

17 **V. FAIRNESS OF THE SETTLEMENT**

18 California Labor Code Section 2699(l) declares the Court "shall review and approve any
19 settlement of any civil [PAGA] action filed pursuant to this part." Further, the Court in *Moniz v.*
20 *Adecco USA, Inc.* stated that "the trial court must review and approve a PAGA settlement, and the
21 Supreme Court has in dictum referred to this review as a safeguard." *Moniz v. Adecco USA, Inc.*,
22 (2021) 72 Cal.App.5th 56, 77. The Supreme Court has also observed that trial court approval
23 ensures that any negotiated resolution is fair to those affected, leading the Court in *Moniz* to
24 determine that "adoption of a standard of review for settlements that prevents fraud, collusion or
25 unfairness, and protects the interests of the public and the LWDA in the enforcement of state labor
26 laws is warranted." *Moniz*, 72 Cal.App.5th at 77. In other words, "[i]n review and approval of a
27 proposed settlement under section 2699, subd. (l)(2), a trial court thus must scrutinize whether, in

1 resolving the action, a PAGA plaintiff has adequately represented the state’s interests, and hence
2 the public interest.” *Moniz*, 72 Cal.App.5th at 88. The proposed settlement shall be submitted to the
3 agency at the same time that it is submitted to the court.” Consequently, the Parties respectfully ask
4 the Court to review and approve the settlement of the PAGA claims and the PAGA Settlement
5 amount to be paid as part of the proposed settlement.

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

7 Plaintiff and his counsel believe that the PAGA Settlement amount is fair and reasonable and
8 therefore “shall” be reviewed and approved. *Sezgin Decl.*, ¶ 27.

9 California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the
10 maximum civil penalty if, based on the facts and circumstances, to do otherwise would result in an
11 award that is “unjust, arbitrary and oppressive or confiscatory.” Before and during the mediation,
12 Defendant argued, among other things, that it was unlikely that any Judge would award more than
13 the actual amounts owed on the claims, let alone the full \$100 or \$200 per violation. In *Carrington*
14 *v. Starbucks Corp.*, the Court of Appeal affirmed a judgment after trial which only provided for a
15 PAGA penalty of \$5 per pay period. *Carrington v. Starbucks Corp.*, (2018) 30 Cal.App.5th 504.
16 Therefore, at trial, any PAGA penalties awarded in this case could be significantly less than
17 Plaintiff’s calculation, even had Plaintiff prevailed on the PAGA claim. *Sezgin Decl.*, ¶ 28.

18 Under the PAGA, courts have considerable discretion to reduce the penalty award. In
19 *Fleming v. Covidien*, a federal court reduced PAGA penalties from \$2,800,000 to \$500,000, a
20 reduction of 82.2%, as the court found maximum penalties “unjust” because the employees had
21 suffered no injuries. *Fleming v. Covidien*, (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590. Some
22 trial courts have actually awarded no civil penalties, even when the violations are established. *See*,
23 *e.g., Makabi v. Gedalia*, 2016 Cal.App. Unpub. 1489, *5–7 (2nd Dist. Ct. of App. Mar. 6, 2016)
24 (no PAGA penalties were awarded by the Los Angeles County Superior Court) (unpublished
25 decision); *see also In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43
26 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial). *Sezgin Decl.*, ¶ 29.

Judges have awarded extremely small sums to PAGA claimants in the past. In addition, Defendant would likely make an argument under *Naranjo v. Spectrum Security Services, Inc.*, and other similar cases, that meal or rest period violations are not a predicate for civil penalties for improper wage statements and untimely final wages under Labor Code Sections 201-203, 226, 226.3, and 2699. *See Naranjo v. Spectrum Security Services, Inc.*, (2019) 40 Cal.App.5th 444. Defendant also adamantly disputes all of Plaintiff's allegations in the operative Complaint. *Sezgin Decl.*, ¶ 30.

Furthermore, Plaintiff recognizes that continued litigation presents significant risks that support a significant downward departure from Plaintiff's estimated civil penalties amount. 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. The PAGA settlement and its terms are fair, just, reasonable, adequate, and equitable to Defendant, Plaintiff, and the State, and are the product of good faith, and informed arm's length negotiations between the Parties consistent with public policy and fully comply with applicable provisions of law. *Sezgin Decl.*, ¶ 31.

Under the civil penalty formulas applicable under PAGA, Plaintiff's counsel estimated a maximum possible exposure of approximately **\$1,297,500.00** for civil penalties as follows:

VIOLATION TYPE	LABOR CODE SECTION VIOLATED/CIVIL PENALTY STATUTE	INITIAL PENALTY AMOUNT/PAY PERIOD	PAY PERIODS	CIVIL PENALTIES
Unpaid Minimum Wages	1197/1197.1	\$100	2500	\$250,000.00
Inaccurate Wage Statements	226/226.3	\$100	2500	\$250,000.00
Inaccurate Pay Records	1174/1174.5	\$500	95 aggrieved employees	\$47,500.00

Untimely Wages	201-204/210, 2699(f)(2)	\$100	2500	\$250,000.00
Unreimbursed Expenses	2802/2699(f)(2)	\$100	2500	\$250,000.00
Unprovided Meal Breaks	512/558	\$50	2500	\$250,000.00
MAXIMUM CIVIL PENALTIES				\$1,297,500.00

Thus, at the time of mediation, Plaintiff's counsel estimated Defendant's maximum liability exposure at \$1,297,500.00. 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.*, ¶ 33.

The potential for recovery of this 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 2,500 pay periods for all 95 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

1 and a variety of other reasons. At best, Plaintiff could hope to recover one penalty for each pay
2 period (regardless of the different Labor Code violations that potentially occurred for the same
3 employee, during the same pay periods). *Sezgin Decl.*, ¶ 34.

4 Additionally, Defendant maintains that Plaintiff and the Aggrieved Employees were
5 properly compensated, and that it did not violate the Labor Code. Most importantly and relevant to
6 this case, Defendant argued that the Supreme Court decision in *Brinker v. Super. Ct.* weakened, if
7 not eliminated, Plaintiff's claims, on liability, value, and discretion with respect to the PAGA
8 penalties, as to the meal and rest period claims. *Brinker v. Super. Ct.*, (2012) 53 Cal.4th 1004. A
9 major component of the penalties alleged to have been owed by Defendant are attributed to non-
10 compliant meal and rest breaks. Before and during the mediation, Defendant aggressively argued
11 that Defendant's policies and culture afforded the Aggrieved Employees an opportunity to take
12 timely meal and rest breaks, and that employees like Plaintiff *chose* not to take compliant breaks.
13 Specifically, Defendant's written policies encouraged Aggrieved Employees to take meal periods
14 and rest breaks according to schedules compliant with the California Labor Code. Defendant
15 argued, therefore, that under the *Brinker* decision it has no liability for the missed breaks
16 whatsoever. Defendant argued that it adopted and strictly enforced lawful policies and afforded
17 Plaintiff and the Aggrieved Employees adequate time to take compliant meal periods and rest
18 breaks. Because Plaintiff's claims were largely based on the missed meal and rest breaks, and
19 because Defendant's policies were indeed compliant, this presented a very real concern for Plaintiff.
20 If successful, this defense could eliminate or substantially reduce any recovery under PAGA. While
21 Plaintiff believes that this defense, and others, could be overcome, Defendant maintains these
22 defenses have merit, which therefore presents a serious risk to recovery of penalties. *Sezgin Decl.*,
23 ¶ 35.

24 Accordingly, Defendant disputes and denies Plaintiff's allegations and claims asserted in
25 the operative complaint which are resolved by the Settlement Agreement. Defendant asserted
26 additional defenses to the PAGA claim, not only as to liability but also as to the amount of the
27 penalties. Defendant could argue that no penalties prior to the PAGA notification should be awarded

1 because the violations were not intentional, and at least one court has ruled. These defenses present
2 a risk to the PAGA claim and the potential that some or all of the PAGA penalties sought may not
3 be awarded. *Sezgin Decl.*, ¶ 36.

4 Given Defendant's potential defenses to the violations at issue and the risks and costs of
5 continued litigation, Plaintiff and his attorneys believe that the PAGA Settlement is fair and
6 reasonable. The PAGA Settlement, along with the other terms of the proposed settlement, were
7 negotiated by experienced counsel at arm's length with the assistance of an experienced and
8 reputable mediator, Mr. Kyriacou. *Sezgin Decl.*, ¶ 37.

9 As set forth in the accompanying proof of service, the LWDA has been provided notice of
10 this motion and the PAGA Settlement. The decision of the LWDA to accept the PAGA Settlement
11 and not oppose the motion should be given considerable weight. This is not a situation where the
12 Court needs to be concerned about the rights of absent employees as in a class settlement, as this
13 PAGA-only settlement does not release the individual claims of absent employees, and the LWDA
14 is a sophisticated government entity that is more than able to look out for its own rights. *Sezgin*
15 *Decl.*, ¶ 38.

16 Finally, Plaintiff's diligent and efficient litigation of this action resulted in the creation of
17 an ascertainable common fund of \$30,000.00 that will benefit the State of California and the
18 Aggrieved Employees. *Sezgin Decl.*, ¶ 39.

19 **B. The Remaining Settlement Terms Are Fair And Reasonable**

20 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code
21 Section 2699(1) does not require that a court approve any other elements of the proposed settlement.
22 Because there are no class allegations for which Plaintiff seeks approval, the approval provisions
23 applicable to class settlements under California Code of Civil Procedure Section 382 do not apply.
24 Accordingly, the Court only needs to approve the settlement of the civil penalties sought in the
25 PAGA claim. Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs
26 are reasonable. *Sezgin Decl.*, ¶ 40.

1 **VI. THE PROPOSED AMOUNT FOR ATTORNEY’S FEES & LITIGATION COSTS &**
2 **EXPENSES IS FAIR, ADEQUATE, & REASONABLE**

3 Plaintiff’s counsel represents Plaintiff on a straight contingency basis. Plaintiff counsel’s
4 request for \$9,999.00 in attorney fees and \$12,481.75 in litigation costs and expenses is fair and
5 reasonable. “Empirical studies show that, regardless of whether the percentage method or the
6 lodestar method is used, fee awards in class actions average around one-third of the recovery.
7 *Chavez v. Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 47 fn. 11; *see also Laffitte v. Robert Half Int’l*
8 *Inc.*, (2016) 1 Cal.5th 480, 503 (holding courts can use the percentage method for the calculation
9 of attorneys’ fees). This is also consistent with Plaintiff’s counsel’s experience in cases involving
10 PAGA claims. This award is justified here because Plaintiff’s counsel achieved a strong result for
11 the Aggrieved Employees and the State while bearing the substantial burdens of contingency
12 representation. *Sezgin Decl.*, ¶ 41.

13 It is an accepted practice in a wage-and-hour class action settlement to award attorney’s fees
14 to plaintiff’s counsel based on a percentage of the total settlement value agreed upon by the parties.
15 California courts have long recognized that an appropriate method for awarding attorney’s fees in
16 class actions is to award a percentage of the common fund. *See Serrano v. Priest*, (1977) 20 Cal.3d.
17 25, 48-49 (holding “when a number of persons are entitled in common to a specific fund, and an
18 action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation
19 of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund”); *see also*
20 *Wershba v. Apple Computer, Inc.*, (2001), 91 Cal.App.4th 230, 254; *see also Lealao v. Beneficial*
21 *California, Inc.*, (2000) 82 Cal.App.4th 19, 26-30. *Sezgin Decl.*, ¶ 42.

22 First, the requested fees are justified by the result achieved. Plaintiff’s Counsel negotiated
23 a recovery of \$30,000.00, and this result justifies the requested fees equal to one third of this
24 recovery. This percentage is within the standard contingent recovery percentage of one-third, and
25 this percentage is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half*
26 *Int’l Inc.* *See Laffitte v. Robert Half Int’l Inc.*, (2016) 1 Cal.5th 480, 504. At the time this case was
27 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, a number of defenses asserted by Defendant present serious threats to the claims of the Plaintiff and the Aggrieved Employees. Defendant asserted that their employment practices complied with all applicable Labor laws. If successful, Defendant's defenses would eliminate *any recovery* to the Aggrieved Employees. 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.*, ¶ 43.

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.*, ¶ 44.

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. 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. *Sezgin Decl.*, ¶ 45.

Finally, based on Plaintiff's Counsel's lodestar, Plaintiff's counsel's requested fee award reflects a request for a reasonable hourly rate of \$125.00. Specifically, dividing \$9,999.00 by the number of hours spent by Plaintiff's counsel on the case (approximately 80 hours), results in an average hourly rate of \$125.00, which is reasonable and should be awarded. *Sezgin Decl.*, ¶ 46.

Finally, the litigation costs and expenses expended to aid in the representation of the Aggrieved Employees include the following: (1) PAGA notice initial filing fee of \$75.00; (2) lawsuit filing fee in the amount of \$446.75; (3) expert data analysis fee in the amount of \$1,460.00;

1 and (4) mediation fees in the amount of \$10,500.00. All of these costs are documented and
2 reasonably incurred. *Sezgin Decl.*, ¶ 49.

3 **VII. CONCLUSION**

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

7
8 Dated: June 17, 2024

SEZGIN KHOUSADIAN LLP

9 By: Arthur Sezgin
10 ARTHUR SEZGIN, ESQ.
11 Attorneys for PLAINTIFF
12 RAFFI GULDJIAN
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