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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

STAR SUM, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act; Plaintiff, vs. A TEAM SECURITY, INC., a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No. CIVSB2324318 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE PAGA SETTLEMENT** Date: December 22, 2025 Time: 8:30am Dept.: S37 Judge: Corey G. Lee

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I. INTRODUCTION

Plaintiff Star Sum ("Plaintiff") seeks approval of the PAGA Settlement Agreement ("Agreement")[1]. If approved, the Gross Settlement Amount of One Hundred Forty-Five Thousand Dollars and Zero Cents ($145,000.00) will provide valuable monetary relief for approximately 231 "Aggrieved Employees," defined as all current and former non-exempt employees who worked for A Team Security, Inc. ("Defendant") in California at any time between July 28, 2022 and April 25, 2025("PAGA Period"). Agreement at §§ I(B); I(U). This is only a settlement of the PAGA claim for civil penalties and is <u>not</u> a class settlement and does <u>not</u> release the individual wage claims, if any, of the affected employees other than Plaintiff himself. Cal. Lab. Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

After deducting any Court-approved PAGA Counsel Award, Service Award, and the Claims Administration Costs, the PAGA Payment shall be distributed, 75% to the Labor and Workforce Development Agency ("LWDA") and 25% to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement at § I(S).

An objective evaluation of the proposed settlement confirms that the relief negotiated on behalf of the Aggrieved Employees and the LWDA is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive and mediated negotiations between experienced counsel. As discussed below, the proposed Settlement satisfies all criteria for PAGA settlement approval. Accordingly, Plaintiff and PAGA Counsel respectfully request this Court grant approval of the Agreement. Declaration of Jean-Claude Lapuyade ("JCL Dec.") at ¶ 7.

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

A. <u>Plaintiff's Exhaustion of Administrative Remedies Under PAGA And Civil Action Against Defendant</u>

On July 28, 2023, Plaintiff, on behalf of himself and on behalf of other Aggrieved Employees, served Defendant and the LWDA with a Notice of Violations ("PAGA Notice")

[1] The Agreement is attached as Ex "1" to the Declaration Jean-Claude Lapuyade ("JCL Dec.") at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

memorializing claims against Defendant for alleged violations of the California Labor Code, including causes of action for failure to provide compliant meal and rest periods; failure to accurately compensate for missed meal and rest periods; failure to pay all minimum, regular, and overtime wages; failure to provide accurate itemized wage statements; failure to timely pay wages due during, and upon termination of employment, and failure to reimburse for necessary business expenses. (LWDA Case No. LWDA-CM-971541-23). JCL Dec., ¶ 8.

The 65-day "waiting period" on Plaintiff's right to file a civil action under PAGA, *see* Cal. Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiff that they intended to investigate the claims in the PAGA Notice. To date, the LWDA still has not advised Plaintiff of any intent to take action with respect to the claims in the PAGA Notice. JCL Dec., at ¶ 9.

On October 4, 2023, Plaintiff filed a representative action complaint against Defendant in San Bernardino Superior Court, Case Number CIVSB2324318 (the "Action"). The Action alleged a single cause of action against Defendant for violations of the Private Attorneys General Act at Cal. Lab. Code §§2698, *et seq*. JCL Dec., ¶ 10.

On February 18, 2025, the Parties participated in an all-day mediation presided over by Steven J. Serratore, Esq., an experienced mediator of wage and hour representative actions. In advance of the with the mediation, Defendant provided Plaintiff with sufficient information to properly evaluate Defendant's potential liability exposure. Among the data and documents Defendant produced included, but was not limited to, the total number of Aggrieved Employees, the total number of Pay Periods worked by Aggrieved Employees within the PAGA Period, employee handbooks, and time and payroll data. JCL Dec., ¶ 11.

The mediation resulted in a settlement via a mediator's proposal and was memorialized in the form of a Memorandum of Understanding ("MOU"). After reaching an agreement in the principle, the Parties drafted and negotiated a long-form settlement, which is the subject of the instant motion. The Settlement was negotiated in light of all known facts and circumstances and the uncertainty associated with litigation – including the risk of Plaintiff not being able to maintain representative claims, the difficulty of proving Plaintiff's claims in a manageable trial, the merits of Defendant's potential defenses, and the significant delay and potential appellate issues inherent to litigation – and was reached after extensive arm's length negotiations, with the assistance of Mediator Serratore. JCL Dec., at ¶ 12.

The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted by Plaintiff on behalf of himself, the LWDA, and the State of California. 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.[2] Nor does this Settlement waive Defendant's right to assert *res judicata* or other available defense to any asserted claim or lawsuit. JCL Dec., at ¶ 13.

Pursuant to 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. Additionally, 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. JCL Dec., at ¶ 14.

III. TERMS OF THE PAGA SETTLEMENT

A. <u>The Gross Settlement Amount</u>

The Agreement is subject to Court approval consistent with Labor Code § 2699(1)(2). The Agreement negotiated by the Parties provides for a Gross Settlement Amount of One Hundred Forty-Five Thousand Dollars and Zero Cents ($145,000.00) to resolve the PAGA claims. From the Gross Settlement Amount, there is a deduction of: i) a PAGA Counsel Award in the amount of Seventy-Five Thousand Seven Hundred and Fifty Dollars and Zero Cents ($75,750.00), comprised of 35% of the Gross Settlement Amount (estimated to be approximately $50,750.00) for attorneys' fees, and reimbursement of incurred litigation expenses in an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents ($25,000.00); ii) a Service Award to Plaintiff of up to Ten Thousand Dollars and Zero Cents ($10,000.00); and iii) Claims Administration Costs, which will not exceed Four Thousand Nine Hundred and Ninety Dollars and Zero Cents ($4,990.00). Agreement generally at § III(I)(8)-(10). JCL Dec., ¶ 15.

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[2] As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th 175 at 196: "Nonparty employees are bound by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties."

Once the PAGA Counsel Award, Service Award, and Claims Administration Costs are deducted from the Gross Settlement Amount, the remaining funds, estimated to be $54,260.00, comprise the PAGA Payment. The PAGA Payment shall be allocated seventy-five percent (75%) to the LWDA (the "LWDA Payment") and the remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement at § I(S). Though California Labor Code § 2699 has since been amended, this matter falls under the old 75/25 PAGA allocation.

B. Allocation of Aggrieved Employee Payment

The Aggrieved Employee Payment will be calculated by dividing the amount of the Aggrieved Employees' 25% share of PAGA Payment ($13,565.00) by the total number of Pay Periods worked by all Aggrieved Employees during the PAGA Period and then multiplying the result by each Aggrieved Employee's Pay Periods. Agreement at § III(K)(1).

At the time of the parties' settlement of this action, Defendant estimated that there were approximately 231 Aggrieved Employees who worked approximately 8,500 *weekly* Pay Periods during the PAGA Period based on company records. Agreement at § III(A)(2).[3]

C. Funding and Distribution

Provided that an order approving this Settlement is entered by the Court, Defendant shall fund the Gross Settlement Amount within sixty (60) days after approval of this Settlement. Agreement at § I(K); III(A)(3). No later than five (5) calendar days after Defendant fully funds the Gross Settlement Amount, the Settlement Administrator will mail the Aggrieved Employee Payment via First-Class U.S. Mail to the Aggrieved Employees' last known mailing address, Aggrieved Employee Payment. Agreement at § III(K)(4). Settlement checks issued to Aggrieved Employees will expire one hundred eighty (180) days from the date they are issued by the Settlement Administrator. Agreement at § III(K)(6). If the check remains uncashed by the expiration of the 180-day period, the Settlement Administrator shall cause the aggregate sum represented by those

[3] The Agreement contains an escalator clause, providing that, should the number of Pay Periods increase by more than 10% of what was represented during the PAGA Period, then, Defendant will choose to either: (1) increase the Gross Settlement Amount on a pro-rata basis according to the number of additional Pay Periods exceeding the 10% cap (e.g. if the Pay Periods exceed 8,500 by 12%, then the Gross Settlement Amount will increase by 2%) or (2) end the PAGA Period on the date in which the Pay Periods is not more than 9,350. Agreement at § III(A)(2).

uncashed checks to be sent to the State Controller's Unclaimed Property Fund in the name of the Aggrieved Employee who did not claim the funds. Agreement at § III(K)(6). The Aggrieved Employee Payments are 100% penalties and interest and shall be reported using IRS Form 1099s. Agreement at § III(K)(2).

D. <u>Release of Claims</u>

Upon the Claims Administrator's receipt of the Gross Settlement Amount, Plaintiff, the LWDA, and the State of California shall release Defendant from the Released PAGA Claims which include all PAGA claims alleged in the Operative Complaint and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period. Agreement at §§ I(X); III(B).

IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT

Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." Further, the Court in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77 stated that "the trial court must review and approve a PAGA settlement (§ 2699, subd,(l)(2)), and the Supreme Court has in dictum referred to this review as a safeguard." (Citing *Kim v. Reins International California, Inc*. (2020) 9 Cal.5th 73, 88; internal quotations omitted.) "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, supra*, 72 Cal.App.5th at 77; citing *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-1801; internal citations omitted.) 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, supra,* 72

Cal.App.5th at 88.) Consequently, the Parties respectfully ask the Court to review and approve the settlement of the PAGA claims and the PAGA Payment to be paid as part of the proposed Settlement.

A. <u>The Gross Settlement Amount is Fair and Reasonable</u>

The Gross Settlement Amount of $145,000.00 is fair and reasonable and, therefore, should be approved. Here, *without stacking* the PAGA penalties (excluding derivative penalties), Defendant's *maximum* exposure for PAGA penalties is estimated to be $455,850, and with stacking the PAGA penalties (including derivative penalties), Defendant's exposure is estimated to be $1,288,450. JCL Dec., ¶ 16. Plaintiff's consultant estimated Defendant's exposure as follows:

Claim	Penalty Amount[4]	Number of Pay Periods w/ Violation	Violation Rate	Total Penalties
Meal Period Violations Cal. Labor Code §§ 226.7 and 512	$50	396	4.8% of PAGA Pay Periods	$19,800
Rest Period Violations Cal. Labor Code §§ 226.7 and 512	$50	396	4.8% of PAGA Pay Periods	$19,800
Unlawful Deductions *Cal Labor Code §* 221,	$50	4,163	50% of PAGA Pay Periods	$208,150
Failure to Reimburse for Mandatory Business Expenses Cal. Labor Code § 2802	$100	2,081	25% of PAGA Pay Periods	$208,100
Wage Statement Violations Cal. Labor Code §§ 226 and 226.2	$100	8,326	100% of PAGA Pay Periods	$832,600

JCL Dec., ¶ 17.

i. Estimated Penalties for Meal Period Violations

Plaintiff alleges that his meal periods were interrupted and/or cut short because Defendant required Plaintiff and Aggrieved Employees to keep their radios on, their personal cell phones on, and generally remain reachable should any incident occur during their meal breaks. However, the 4.8% violation rate evidences a high degree of compliance. Using the time and payroll data provided

[4] In *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144, the court decided that "[u]ntil the employer has been notified that it is violating a Labor Code provision … the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties." Therefore, Plaintiff used only penalties for initial violations.

by Defendant, Plaintiff's expert found that only 0.1% of first meal breaks were less than 30 minutes in length and only 1.2% of shifts between five and six hours went without a first recorded meal break. JCL Dec., ¶ 18.

Defendant contends that they maintain compliant meal period policies and practices. Plaintiff estimates Defendant's exposure for this claim to be approximately $19,800. Pursuant to California Labor Code section 558(a)(1), an employer is subject to a penalty of $50 for violations of a Labor Code section regulating hours and days of work, including meal period and rest period violations. Thus, because section 558(a)(1) specifically provides for a civil penalty, Plaintiff used a $50 penalty per violation for the meal and rest break claims. This number was calculated by multiplying a 4.8% violation rate of the number of total pay periods by a violation rate of $50. JCL Dec., ¶ 19.

ii. Estimated Liability for Rest Period Violations

Plaintiff alleged that when he did take rest breaks, Plaintiff and other Aggrieved Employees were required to keep their radios on, personal cell phones on, and generally remain reachable, should any incident occur during their rest breaks. Specifically in the context of security guards, the California Supreme Court's decision in *Augustus v. ABM Security Services, Inc.*, held that "employers . . . must relinquish control over how employees spend their time" during rest periods. 2 Cal. 5th 257, 259 (2016). Moreover, Lab. Code § 226.7(c) provides that "if an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including ... an ... order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided." JCL Dec., ¶ 20.

Defendant argued that Plaintiff's rest break claim would have mainly relied on the testimony of Aggrieved Employees, making it a riskier claim. Establishing liability likely would have entailed competing testimony stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc*. (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc*. (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8

("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices."). JCL Dec., ¶ 21.

Because rest periods are not recorded, Plaintiff could not identify a violation rate. Plaintiff therefore made the reasonable assumption that rest period violations were committed at a rate similar to that of meal period violations. Therefore, Plaintiff estimates that his claim for rest period violations was worth approximately $19,800. This was calculated by multiplying a 4.8% violation rate by a penalty of $50, accounting for Defendant's defenses. The $50 penalty rate was used for the same reasons as stated above in the meal period section. a number of reasons in this instance. JCL Dec., ¶ 22.

iii. Estimated Liability for Unlawful Deductions

Plaintiff alleged that Defendant unlawfully deducted wages from Plaintiff's pay without explanations, authorization, or notice to Plaintiff, in violation of Labor Code section 221. Specifically, Plaintiff alleged that about half of the pay summaries in Plaintiff's employee file contain a uniform deduction in the amount of $12.50. Plaintiff estimated that Defendant's total exposure for this claim was approximately $208,150 in penalties. This was calculated using a 50% violation rate multiplied by a $100 penalty. JCL Dec., ¶ 23.

iv. Estimated Liability for Failure to Reimburse Business Expenses

Plaintiff alleged that Defendant required Plaintiff and the Aggrieved Employees to use their personal cell phones for Defendant's benefit. Specifically, Plaintiff and Aggrieved Employees were required to use their personal cell phones to communicate with Defendant to discuss who was on shift and to discuss security footage, among other things. Defendant maintains that employees were not required to use their own personal cell phone, as they were provided radios for communication. JCL Dec., ¶ 24.

Plaintiff estimated that Defendant's total exposure for this claim was approximately $208,100 in penalties. This was calculated using a 25% violation rate for this claim to reflect its belief that Aggrieved Employees incurred cell phone expenses approximately once per month. JCL Dec., ¶ 25.

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v. Estimated Derivative Penalties for Wage Statement Violations

Plaintiff further alleged that the Defendant's labor code violations for non-compliant meal and rest breaks and unpaid wages results in derivative liability for penalties resulting from inaccurate wage statements. Plaintiff estimated Defendants' exposure for these claims to be $832,600 for wage statement penalties. JCL Dec., ¶ 26.

B. <u>The Gross Settlement Compares Favorably to The Likely Recovery</u>

In light of the above, the Gross Settlement Amount is approximately 31.8% of Defendant's potential PAGA exposure, without stacking the penalties, and approximately 11.2% of Defendant's potential PAGA exposure, with stacking the penalties. The Gross Settlement Amount compares favorably to the likely recovery of PAGA penalties through continued litigation. Defendant's maximum exposure to PAGA penalties is not a realistic outcome of the litigation because it fails to account for the risks of continued litigation including, but not limited to, Defendant's defenses. *See*, *Zayerz v. Kiewit Infrastructure West*, 2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018). For instance, Defendant argued that it can only be assessed civil penalties for actual violations of the Labor Code. *See* Lab. Code § 2699(f)(2). In other words, to recover any civil penalties, Plaintiff would be required to prove the underlying Labor Code violations. (*Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ["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."].) To do this, Plaintiff would need to prove each Aggrieved Employee was subject to the alleged Labor Code violation, which would be difficult to do, since Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in this action. Thus, Defendant contended that Plaintiff would be required to "prove Labor Code violations with respect to each and every individual on whose behalf Plaintiff seek to recover civil penalties under PAGA."; *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009). When "determining whether the employer committed Labor Code violations with respect to each employee" is impractical, the PAGA action can be dismissed. *Wesson v. Staples the Off. Superstore,* 2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021). JCL Dec., ¶ 27.

Finally, the maximum penalty figure does not consider that Courts have complete discretion to "award a lesser amount than the maximum civil penalty amount specified [by PAGA] 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." (Cal. Lab. Code § 2699(e)(2)). In fact, Courts routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g. Carrington v. Starbucks Corp*., 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to $5 per pay period; "Although the trial court may have disagreed with Starbucks regarding the issue of liability, it clearly took the circumstances proffered by Starbucks into consideration when it imposed the penalty … only $5 per initial violation"); *Kaanaana v. Barrett Bus. Servs., Inc*., 29 Cal App 5th 778, 788 (2018), review granted on other grounds (noting that the trial court "exercised its discretion to reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average, plaintiffs were deprived of 13 percent of the 30-minute meal period"); *Fleming v. Covidien, Inc*., 2011 WL 7563047, *4 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of PAGA civil penalties for plaintiffs' section 226 claims from $2,800,000 to $500,000 because the employees suffered no injuries as a result of the erroneous wage statements and made no complaints about the errors or omissions in the wage statements, thus reducing the maximum penalty by 82%); *see also*, *Gola v. University of San Francisco*, San Francisco Superior Court Case No. CGC-18-5655018, Proposed Statement of Decision, dated July 21, 2020, Judge Curtis A. Karnow of San Francisco Complex (concluding after a full-blown bench trial that a penalty of 15% of the maximum PAGA penalties was the appropriate penalty). The gross amount obtained by PAGA Counsel is reasonable in light of Defendant's arguments.

Given Defendant's defenses to the claimed Labor Code violations at issue and the risks and costs of continued litigation, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount is fair and reasonable. This settlement was negotiated by experienced counsel at arm's length. The LWDA has been provided with notice of this motion and the PAGA settlement, and the decision of LWDA to accept the PAGA settlement and not oppose the motion should be given considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and protect its own rights. JCL Dec., ¶¶ 4, 28.

C. The Remaining Settlement Terms Are Fair and Reasonable

Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code § 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 Cal. Code Civil Proc. § 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 attorneys' fees and costs are reasonable. JCL Dec., ¶ 29.

V. THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE

PAGA Counsel seeks approval of the PAGA Counsel Award, comprised of attorneys' fees in the amount of $50,750.00 (35% of the Gross Settlement Amount) and reimbursement of litigation costs not to exceed $25,000.[5] PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court review the requested attorneys' fees, the requested fees and costs are reasonable for experience wage and hour counsel. JCL Dec., ¶ 30.

A. The Requested Attorneys' Fee is Fair and Reasonable

The requested PAGA Counsel Award of $75,750.00, comprised of $50,750.00 for attorneys' fees and reimbursement of litigation expenses of up to $25,000 is fair, reasonable, and justified by the result achieved. Agreement at § III(I)(9); JCL Dec., ¶ 31. The attorneys' fees are divided as follows: 32.5% to JCL Law Firm, APC, 32.5% to Zakay Law Group, APLC, and 35% to Lawyers for Justice, PC. Agreement at § I(R). PAGA Counsel negotiated a recovery of One Hundred Forty-Five Thousand Dollars and Zero Cents ($145,000.00), and this result justifies the requested fees equal to 35% of this recovery. 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 PAGA Counsel to overcome. Here, several defenses asserted by Defendant present serious

[5] As detailed *infra,* at the time of filing this motion, Plaintiff's Counsel incurred $19,448.36 litigating this matter. Plaintiff will provide the Court with a final amount of litigation costs at the time of hearing on this motion.

threats to the claims of Plaintiff and the Aggrieved Employees. Defendant asserted that its employment practices complied with all applicable labor laws. If successful, Defendant's factual and legal defenses would eliminate *any recovery* to the Aggrieved Employees. While Plaintiff believes that these defenses could be overcome, Defendant maintains that these defenses have merit and therefore present a serious risk to recovery. The Settlement was possible because PAGA 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. JCL Dec., ¶ 32.

Further, 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); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc*., 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp*., 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp*., No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority" range for risk multipliers).

PAGA Counsels' current combined loadstar is $108,876.50. JCL Dec. at ¶¶ 37-44; Declaration of Shani Zakay ("Zakay Dec.") at ¶¶ 3-7; Declaration of Joanna Ghosh ("JG Dec.") at ¶ 16. Thus, PAGA Counsels' fee request is equal to PAGA Counsel's loadstar with a negligible multiplier of 0.46 – well below the 2.13 multiplier approved in *Laffitte* – and well within the recognized multiplier range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte,* approved 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S.

Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte,* approved 33% fee award with cross-check lodestar multiplier of 1.7).

B. <u>PAGA Counsel is Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs.</u>

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include counsel's incurred expenses because those who benefit from their effort should share in the cost. *See Rider v. City of San Diego,* 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *see also Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded litigation costs for consultants, online legal research, copying, postage, long distance charges, travel expenses, filing fees, mediation fees and investigation fees). Prior to incurring costs for filing of this motion, PAGA Counsel collectively expended $19,448.36 prosecuting this action (JCL Law Firm, APC - $8,733.38, Zakay Law Group, APLC - $8,689.00; Lawyers for Justice, PC - $2,016.98) JCL Dec. ¶¶ 5, 45; Zakay Dec., ¶¶ 8-9; JG Dec. at ¶ 18. PAGA Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; factual and legal research charges; mediation fees; and expert costs which were all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed. JCL Dec. ¶ 46.

VI. PLAINTIFF'S SERVICE AWARD IS FAIR AND REASONABLE

Incentive payments are intended to "compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, *to recognize their willingness to act as a private attorney general*." *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (emphasis added). Courts routinely approve service awards to compensate named plaintiffs for the services they provide and the risks they incur during the litigation. *Bell v. Farmers Ins. Exch.,* 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to plaintiffs for their efforts in bringing class case). The factors courts use in determining the amount of service awards include: (1) a comparison between the service awards and the range of monetary recovery available to the class; (2) time and effort put into the litigation; (3) whether the litigation will further the public policy underlying the statutory scheme; and (4) risks of retaliation. *Clark v. American Residential Services, LLC,* 175 Cal. App. 4th 785, 804-805 (2009).

The Settlement provides for a Service Award of $10,000 for Plaintiff. The Service Award payment is fair and reasonable compensation for the Plaintiff's efforts bringing the action, assisting PAGA Counsel with the litigation and settlement, regularly conferring with PAGA Counsel on the status of his case and the strategies for prosecuting the claims, and agreeing to provide Defendant a broad general release of all claims arising out of his employment. Plaintiff willingly came forward to protect and advance the rights of the Aggrieved Employees on important legal disputes affecting California employees. By way of example, Plaintiff assumed the serious risk of liability for Defendant's costs and potentially fees if the case was unsuccessful. Nevertheless, Plaintiff knowingly and voluntarily undertook the risk to vindicate the rights of the Aggrieved Employees. JCL Dec., ¶ 47.

Plaintiff's efforts in bringing the lawsuit conferred a monetary benefit to 231 Aggrieved Employees. Accordingly, Plaintiff and PAGA Counsel respectfully request approval of the requested Service Award in the amount of $10,000.00, as agreed to in the Settlement Agreement, to Plaintiff. JCL Dec., ¶ 48.

VII. CONCLUSION

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

Dated: August 20, 2025

ZAKAY LAW GROUP, APLC

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