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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

EDGAR MENDEZ, individually and on behalf of similarly aggrieved employees, Plaintiffs, v. ABM INDUSTRIES INCORPORATED, an active Delaware Corporation; FIRST STAFFING GROUP L.L.C., an active California Limited Liability Company; ABM INDUSTRY GROUPS, LLC; an active Delaware Limited Liability Company; and DOES 1 through 25, Defendants.	Case No.: 23STCV11446 REPRESENTATIVE ACTION [*Assigned to Hon. Stuart M. Rice in Dept. SS-1*] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT, AND PAYMENT OF ATTORNEYS' FEES AND COSTS, AND ADMINISTRATION COSTS** [CONCURRENTLY SUBMITTED WITH DECLARATION OF ZORIK MOORADIAN; AND [PROPOSED] ORDER] Date: September 10, 2025 Time: 10:30 a.m. Dept.: SS-1

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PLEASE TAKE NOTICE that, pursuant to Cal. Lab. Code §2699, on September 10, 2025 at 10:30 a.m. or as soon thereafter as the matter may be heard in Department SS-1 of the above-entitled Court located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff, Edgar Mendez ("Plaintiff"), on behalf of all other similarly aggrieved employees, will and hereby does move this Court for entry of an Order:

1. Approving the settlement entered into between Plaintiff, Defendant ABM Industry Groups, LLC ("ABM"), and Defendant First Staffing Group L.L.C. ("First Staffing") (jointly, ABM and Priority, "Defendants") for representative claims under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), as reflected by the Parties' PAGA Settlement Agreement ("Settlement Agreement" or "S.A."); and

2. Approving a distribution of the Gross PAGA Settlement Amount of $315,000, in accordance with the Settlement Agreement and on account of disputed and alleged civil penalties, as follows: (a) payment of $105,000.00 in attorneys' fees to Mooradian Law, APC, ("PAGA Counsel"); (b) payment of $16,753.95 in attorneys' costs to PAGA Counsel; (c) $10,000.00 in administration costs to CPT Group, Inc. (e) payment to the Labor and Workforce Development Agency ("LWDA") totaling $119,109.93 which amount represents 65% of the total Gross PAGA Settlement Amount after attorneys' fees, attorneys' costs, and administration costs ("PAGA Penalties"); and (f) payment of $64,136.12, which amount represents 35% of the PAGA Penalties, on a pro-rata basis to all Aggrieved Employees (defined as all individuals who are or previously were employed by: (1) ABM as non-exempt employees at Dodger Stadium during the PAGA Period; and (2) First Staffing Group, LLC as non-exempt employees at Crypto.com Arena during the PAGA Period ("the time period from July 12, 2022, through December 1, 2024."))

This motion is based on this Notice, the attached Memorandum of Points and Authorities, the supporting declaration of Zorik Mooradian and the exhibits attached thereto; the [Proposed] Order Granting Plaintiff's Motion for Approval of PAGA Settlement, and Payment of Attorneys' Fees, and Costs; the Settlement Agreement; all other pleadings and

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papers on file in this action; and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: June 9, 2025

MOORADIAN LAW, APC

By: /s/Haik Hacopian
Zorik Mooradian, Esq.,
Haik Hacopian, Esq.
Attorneys for Plaintiff and PAGA Members

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Edgar Mendez ("Plaintiff") hereby seeks court approval of a settlement of a pending Private Attorneys General Act ("PAGA") claim entered into with Defendant ABM Industry Groups, LLC ("ABM") and Defendant First Staffing Group, L.L.C. ("First Staffing"). The PAGA claim was initiated by the notice letter from Plaintiff Mendez dated July 12, 2023. The scope of the settlement is limited to civil penalties, does not act as a waiver to any employee's individual claims for individual relief, and releases "any and all claims for civil penalties under Labor Code section 2699(a), whether known or unknown, that occurred during the PAGA Period that are alleged or could have been brought based on the facts, allegations, claims, causes of action and/or legal theories described in the Action as predicated on the PAGA notice submitted by Plaintiff to the LWDA..." (S.A. at p.4, §II.16). The Gross PAGA Settlement Amount of $315,000, and allocation for civil penalties therein, is fair, adequate, and reasonable and sufficient to deter further violations and encourage compliance with the law.

The Parties reached their settlement after review and analysis of the PAGA claims' predicates through formal and informal discovery, which included the deposition of Plaintiff, production of relevant policies/handbooks a sample of time and payroll records. The settlement was thereafter reached after a mediation session on October 2, 2024 with a well-respected neutral mediator, Mr. Steve Serratore.

As part of the settlement and as authorized by the PAGA statute, Plaintiff's counsel is seeking recovery of $105,000.00 in attorneys' fees, which is one-third of the Gross PAGA Settlement Amount. Moreover, this requested amount is fair, adequate, and reasonable, in light of the work performed by counsel and recovery obtained. An application of a 1.71 multiplier to counsel's lodestar of $61,400 results in the fee request. To the extent rates per the Laffey Matrix are applied, no multiplier would need to be applied. Counsel is additionally seeking $16,753.95 in costs, which were reasonable and necessary to the prosecution of this action. Plaintiff is also requesting that CPT Group, Inc. be appointed as the settlement administrator and that $10,000 be paid to CPT for services relating to distributions under the settlement which includes mailing payments to the Aggrieved Employees.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff, Defendants, and Aggrieved Employees

Defendant ABM is a facility management and services provider, and Defendant First Staffing is a staffing agency. This case and settlement cover two subgroups of employees: those directly employed by ABM at Dodger Stadium and those placed with ABM by First Staffing at Crypto.com Arena ("Crypto Arena."). Declaration of Zorik Mooradian ("ZM Decl."), ¶6.

Plaintiff Mendez was employed at Crypto Arena by First Staffing, who contracted with Defendant ABM Industries Incorporated, from December 2021 through 2022. He was thereafter employed at Dodger Stadium by ABM from April 3, 2023 through August 10, 2023. At both locations, Plaintiff was employed as an hourly non-exempt event cleaner. ZM Decl. ¶7.

There are about 1,100 Aggrieved Employees who cover 10,621 workweeks, consisting of 5,997 semi-monthly pay periods at Dodger Stadium and 4,624 weekly pay periods at Crypto Arena. If the number of pay periods ultimately exceeds 5% more than 10,621, or 11,152 pay periods, then Defendants shall increase the settlement amount on a pro-rata basis for each additional pay period in excess of 11,152 or move the end date of the PAGA Period back until the total number of pay periods is equal to or less than 11,152. (S.A., p.3, §10). ZM Decl. ¶8.

B. Plaintiff's Lawsuit, Discovery, and Mediation

1. Plaintiff Edgar Mendez's Lawsuit

On May 19, 2023, Plaintiff filed the instant lawsuit as a putative class action asserting six causes of action under the Cal. Labor Code and a seventh under the UCL. On July 12, 2023, Plaintiff communicated a PAGA notice to Defendant ABM Incorporated, Defendant First Staffing, and the LWDA. Upon submission of the PAGA Notice to the LWDA, Plaintiff Mendez's PAGA claim was assigned Case No. LWDA-CM-967912-23. Thereafter, on November 15, 2023, Plaintiff filed the First Amended Complaint ("FAC") which added a representative PAGA claim as the eighth cause of action and added ABM Industry Groups, LLC ("ABM") as a named defendant. On January 25, 2024, in light of an arbitration agreement between Plaintiff and ABM, class allegations were dismissed pursuant to stipulation of the Parties to submit individual claims to arbitration. ZM Decl. ¶9.

2. Collective Labor Code/Wage Order sections at Issue

As mentioned, Plaintiff Mendez filed a notice letter with the California Labor and Workforce Development Agency ("LWDA") on July 12, 2023 giving notice of his intent to pursue a PAGA representative action, on behalf of himself and the State of California as well as on behalf of a group of similarly situated aggrieved employees giving notice of their collective intent to seek penalties under Labor Code sections 2698 et. seq. based on alleged violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, 1197, and 1197.1 ("PAGA letter"). A true and correct copy of the noted PAGA Letter is attached as **Exhibit "1"** to the Declaration of Zorik Mooradian. ZM Decl. ¶10, Exh. 1.

3. Discovery and Mediation

This lawsuit has involved production of a sample of employee time and payroll data to Plaintiff for about 50 aggrieved employees employed directly by ABM (which covered about 1,500 pay periods for Aggrieved Employees) as well as policies relevant to asserted PAGA claims which included relevant employee handbooks. Notably, Plaintiff's deposition was taken by Defendants whereby Plaintiff elucidated upon various off-the-clock issues that affected him and other employees, issues that would not be captured by time and payroll records. The Parties have conducted investigation of the operative facts and applicable law during the litigation. The Parties have also investigated the applicable law as applied to the facts, potential defenses thereto, and damages claimed by Plaintiff on behalf of Aggrieved Employees. Subsequently, on October 2, 2024, Plaintiff and Defendants engaged in mediation before a respected mediator, Mr. Steve Serratore. During the Mediation, and with significant assistance from the mediator, the Parties agreed to a PAGA representative settlement, which was negotiated in light of all known facts and circumstances—including the difficulty of proving some of Plaintiff's underlying bases for the PAGA penalty claims, potential defenses asserted by Defendants to the PAGA penalty claims, the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues. Thereafter, the settlement was solidified between the Parties during the months that followed. Ultimately, the Settlement Agreement was entered into. ZM Decl. ¶11.

C. Essential Terms of the Settlement

The Parties' settlement allocates $315,000 for settlement of the PAGA claims with $165,000 to be funded by ABM and $145,000 to be funded by First Staffing. (S.A. at p. 5, §§ 2-3). After allocated attorneys' fees of $105,000.00 (one-third), requested costs of $16,753.95, administrative costs of $10,000, 65% of the Net Settlement Amount, or $119,109.93, will be paid as the LWDA's 65% share of PAGA penalties, and $64,136.12 will be payable to Aggrieved Employees as their 35% share of penalties[1]. The Individual PAGA Payment shall be based on the number of pay periods each Aggrieved Employee worked during the PAGA Period as a percentage of the total pay periods worked by all Aggrieved Employees during the PAGA Period. (S.A. at p. 5-6, § III.4(a)(1)). The Gross PAGA Settlement Amount is for civil penalties only and does not act as a waiver to any employee's individual claims for individual relief. Assuming participation by 1,100 Aggrieved Employees, the simple average Individual PAGA Payment calculates to $58.30 ($64,136.12 ÷ 1,100). ZM Decl. ¶12.

A true and correct copy of the PAGA Settlement Agreement ("Settlement Agreement"

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[1] Plaintiff is not seeking any enhancement award and has separately agreed to resolve his individual claims for a gross sum of $25,000.

or “S.A”), is attached as **Exhibit 2** to the Declaration of Zorik Mooradian. ZM Decl. ¶13, Exh. 2.

The Settlement contemplates inclusion of the “Notice of Settlement of PAGA Action” explanatory letter with payments to Aggrieved Employees which notifies them of the Lawsuit, Settlement, Release, and calculation of their share. A Spanish translation will be included. A true and correct copy of the letter is incorporated as **Exhibit “1”** to the Settlement Agreement. (S.A. at p. 8, §III.7(a), Exh 1).

The Settlement contemplates maximum coverage for 11,152 Pay Periods during the PAGA Period, which if increases, gives Defendants the option to (1) increase the Gross Settlement Amount on pro rata basis for each additional pay period over 11,152, or (2) end the PAGA Period when the total number of pay periods is equal to or less than 11,152. (S.A., p.3, §II.10).

The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail. Aggrieved Employees will have one hundred eighty (180) days to cash their checks. Ninety (90) days after mailing, Aggrieved Employees who have not cashed their payments by then will be sent a reminder notice. Any uncashed checks will be sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law for the benefit of those Aggrieved Employees whose checks were voided. S.A. at p. 8, §III.7(a).

The Settlement Administrator, CPT Group, will format and mail the Settlement Notice and Individual PAGA Payments, perform skip-traces, locate and update Aggrieved Employees’ addresses, calculate, and distribute Individual PAGA Payments, and perform any other required tasks.

III. THIS COURT SHOULD APPROVE THIS PAGA SETTLEMENT BECAUSE IT IS A FAIR, ADEQUATE, AND REASONABLE COMPROMISE OF HIGHLY DISPUTED CLAIMS

Labor Code section 2699(l)(2) provides that the Court shall review and approve any settlement of any civil action filed pursuant to PAGA. A PAGA settlement is different from one in a class action, however, and a PAGA settlement is not subject to the same level of scrutiny in approving an associated settlement. These distinctions include the fact that a PAGA representative action is fundamentally a law enforcement action designed to protect the public and penalize the employer for past illegal conduct. *Cunningham v. Leslie's Poolmart, Inc.* (C.D. Cal. June 25, 2013) 2013 U.S.Dist. LEXIS 90256, 16-17 [internal citation omitted].) The purpose of a PAGA action is not to collect damages on behalf of employees or provide restitution for Labor Code violations. *Id. see also Franco v. Athens Disposal Co., Inc.* (2009) 171 Cal.App.4th 1277, 1300 ("Restitution is not the primary objection of a PAGA action, as it is in most class action.") Also, PAGA does not require notice requirements for unnamed aggrieved employees nor may such employees opt out of a PAGA action. *Baumann v. Chase Ins. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122).

Civil Penalties assessed under PAGA are primarily intended to deter violations of the employment laws of the State of California. *Iskanian v. CLS Transportation Los Angeles, LLC* (2015) 59 Cal.4th 348. Whether the total settlement of a PAGA claim achieves the objectives of the statute is a factor that should strongly be considered in evaluating this instant settlement. Significantly, pursuant to Labor Code Section 2699(e)(2), in any action brought by an aggrieved employee under PAGA, a court may award a lesser amount than the maximum civil penalty amount if to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory. Courts routinely exercise this discretion. See e.g., *Parr v. Golden State Overnight* (Alameda S.Ct., 2014, RG12-618103) (93% reduction in PAGA penalties even after plaintiffs prevailed at trial); *Kileigh Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (reducing potential PAGA liability to only $5 per proven violation). As explained below, the weaknesses of the claim would potentially justify significant reduction of maximum available penalties. The terms of the settlement sufficiently act to deter Defendants from further violations alleged in the matter.

PAGA was passed because the Legislature believed it necessary "to achieve maximum compliance with state labor laws" and "to ensure an effective disincentive for employers to engage in unlawful and anticompetitive business practices." 2003 Cal. Legis. Serv. Ch. 906 § 1(a). The Legislature further found that, while self-policing efforts have had some success, "in other cases the only meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil penalties as provided in the Labor Code." *Id*. at § 1(b). Through PAGA, the Legislature thus: (1) sought to "enlist[] willing citizens in the task of private enforcement," *Iskanian*, 59 Cal.4th at 390; (2) "deputized" aggrieved employees to sue on behalf of the State to enforce state labor laws; and (3) authorized them to recover civil penalties, attorneys' fees, and costs. 2003 Cal. Legis Serv. Ch. 906 (Legislative Counsel's Digest). In bringing a PAGA action, "[t]he employee-plaintiff acts as the proxy or agent of the state labor enforcement agencies, representing the same legal right and interest as those agencies . . . ." *Id.* at 394.

As for the interests of the LWDA (in whose shoes Plaintiff stands), its top enforcement priorities are "to vigorously enforce minimum labor standards in order to ensure employers are not required or permitted to work under substandard unlawful conditions . . ." and to "protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards." Labor Code §90.5(a). Moreover, in addition to the collection of civil penalties, Labor Code § 1194.5 (which is specifically referenced in Labor Code § 90.5) authorizes the LWDA to seek injunctive relief.

A. <u>Analysis of Plaintiff's PAGA Claim</u>

1. Pre-Shift Off-the-Clock Waiting Time

Plaintiff contends that employees were required to report to work at a specific time but would only start working after an event ended. This depended on how packed an event was and other factors (e.g. overtime, extra innings, etc.) As the time when work would start could not be anticipated, Plaintiff testified that he and other employees waited anywhere from 20 minutes to one hour after the time they were required to report for work before being allowed to clock in. That he and other employees were not compensated for this pre-shift waiting time. ZM Decl. ¶15.

2. Meal and Rest Break Violations

At Dodger Stadium, Plaintiff contended that his meal breaks were usually 20 minutes long but that 30 minutes were automatically deducted from his shift. Moreover, that employees would be relieved in groups for lunch then walk to a designated break room. Plaintiff contends that getting to the break room would depend on how far an employee was when a meal break was called but that it would usually take him 8 minutes to get to the break room from his location in the stadium, that he spent 3-4 minutes resting at the break room, and then he walked 8 minutes back to pick up where he left off. As to rest breaks, Plaintiff contends that they were not provided. ABM represented that their meal and rest policies were legally compliant, that managers and employees were instructed as to proper break relief, and that they implemented the best possible practices in light of the work environment. Significantly, ABM represented that upon clocking out to end their shift, employees were prompted if they took their "full and uninterrupted meal and rest breaks today?" That to the extent a response was "no," the employee would automatically be paid two hours of premiums. Plaintiff's review of the sample data reveals that the vast majority of responses to the certification were "yes" and that premiums appear to have been in fact paid. ZM Decl. ¶16.

At Crypto Arena, Plaintiff contends that employees were told when to take meal breaks upon being signed in to start their shift and did not otherwise track their meal breaks. Although lunch was allotted for 30 minutes, Plaintiff had to walk about 10 minutes from his location to a designated break room and 10 minutes back such that his net meal break was only about 10 minutes long. As to rest breaks, they were announced for 10 or 15 minute durations but would not be called on days for which there was a "rush." Moreover, that employees could really not leave the arena on account of the time involved in exiting, entering, and security checks making meal and rest breaks technically on-duty. ZM Decl. ¶17.

3. Reporting Time Violations

Plaintiff contends that employees were overbooked for an event and that some were turned away on occasion. Plaintiff recalls being turned away on six occasions when showing up for a scheduled shift at Crypto Arena and twice at Dodger Stadium. ZM Decl. ¶18.

4. Wage Statement and Waiting Time Violations

These claims would be derivative of the above claims. For instance, to the extent wages were underpaid, final wages would not be complete in violation of Labor Code Sections 201-203 and to the extent any additional wages or break premiums are owed, the wage statements would not be accurate. ZM Decl. ¶19.

5. Potentially Available PAGA Penalties/Realistic Exposure

This settlement implicates 10,621 pay periods during the PAGA Period. Maximum penalties, assuming a violation for each and every pay period, assessed at the $100 violation rate, for each of the 10,621 pay periods results in maximum potential exposure of $1,062,100. To the extent Plaintiff is able to stack PAGA penalties, the potential maximum could be higher. ZM Decl. ¶20. Although no California appellate decision has addressed whether a plaintiff can stack penalties for different predicate violations, the California Supreme Court's decision in *ZB, N.A. v. Superior Court,* (2019) 8 Cal.5th 175, rejected an employee's attempt to recover default civil penalties in addition to civil penalties assessed with respect to unpaid wages under Cal. Labor Code Sec. 558. The Court highlighted that civil penalties "are intended 'to punish the employer' for wrongdoing, often 'without reference to the actual damage sustained ....'" (*citing Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1104). Plaintiff ultimately does not anticipate being able to stack PAGA penalties as he deems it highly likely that a court will potentially be persuaded that assessment of a single penalty per pay period per employee will be sufficient to punish past violations and deter future ones. ZM Decl. ¶20.

Furthermore, discretionary reductions are anticipated in addition to general litigation risk and delay. Notably, ABM's written policies were legally compliant. Taking the $1,062,100 sum as the maximum potential figure and applying a discretionary reduction of 80% (consistent with reported cases) results in $212,420 in available penalties. The Gross PAGA Settlement Amount of $315,000 readily captures this sum. The penalties to be distributed ($183,246.05) capture 86.3% of this sum. The Parties' settlement substantially captures these valuations, provides for significant recovery of civil penalties by the state, and is expected to deter future Labor Code violations by Defendants. Accordingly, Plaintiff's counsel believes that this PAGA settlement is fair, reasonable, and in the best interests of the Aggrieved Employees and the State of California. ZM Decl. ¶21.

IV. AN AWARD OF ATTORNEYS' FEES SHOULD BE APPROVED

California Labor Code § 2699(g) states that an employee whose action results in the payment of civil penalties "shall be entitled to an award of reasonable attorneys' fees and costs." Here, Plaintiff's counsel is seeking recovery of $105,000.00 in attorneys' fees, or one-third of the Gross PAGA Settlement Amount. The incurred fees are necessary and reasonable. Significantly, these fees are contingent in nature for counsel. ZM Decl. ¶22.

In Counsel's experience, a gross PAGA settlement of $315,000 is a fair, reasonable, and adequate settlement in light of the strength of the claim, Defendants' defenses, and the strong possibility there would be no recovery without this settlement. Even if Plaintiff was to prevail on the underlying claim, he would face the potential of significant discretionary reduction of maximum penalties by the Court. Counsel's efforts have resulted in a recovery of nearly one hundred twenty thousand dollars by the State of California. ZM Decl. ¶23.

A. <u>PAGA Counsel's Fees Should be Approved as a Percentage of the Total Common Fund Created</u>

PAGA Counsel seeks a fee award calculated as a percentage of the total value of the settlement for successful prosecution and resolution of all existing claims. Both California State and Federal Courts have recognized that an appropriate method in determining an attorney fee award may be based on the percentage on the total value of the benefits conferred by the settlement. *Serrano v. Priest* (1997) 20 Cal. 3d 25-34 [*Serrano III*]; *Boeing Company v. Van Gemert* (1980) 344 U.S. 472, 478; *Vincent v. Hughes Airwest, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. The purpose of this equitable doctrine is to avoid unjust enrichment and to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Id.* at 768. The monetary benefits will then be paid from a common fund.

The California Supreme Court endorsed a fee award as a percentage of the common fund; the Court clarified "that when an attorney fee is awarded out of a common fund preserved or recovered by means of litigation (internal citation omitted), the award is not per se unreasonable merely because it is calculated as a percentage of the common fund." *Laffitte v. Robert Half Int'l. Inc.* (2016) 1 Cal. 5th 480, 486. Also "[t]hat the recognized advantages of the percentage method…convince us that the percentage method is a valuable tool that should not be denied in our trial courts." *Id*. at 503.

The Common Fund Doctrine is predicated on the principle of preventing unjust enrichment. When a litigant's efforts create or preserves, or generates a fund from which others derive benefits, he may require the passive beneficiaries to compensate those who created the fund. Both California State and Federal Courts have embraced this Doctrine. *Serrano III*, *supra*, at 35; *Vincent*, *supra*, at 769.

Since *Serrano III*, *supra*, there has been a ground swell of support for mandating the percentage of the fund approach in common fund cases. Both State and Federal Court have found the percentage approach preferable to the Lodestar because; (1) it aligns the interest of counsel and absent parties (PAGA Counsel and the LWDA here); (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and

(3) it reduces the demand on judicial resources. *In re Activision Sec. Litig.* (N.D. Cal. 1989) 723 F Supp. at 1378-79. The Ninth Circuit now routinely uses the percentage of the common fund approach to determine the award of attorney fees. *Lealao v. Benefitcial Calif., Inc.* (2000) 82 Cal.App.4th 19, 30-31.

Collectively, PAGA counsel seeks $105,000 which is one-third (33 1/3%) of the $315,000 settlement amount. Class Counsel's request for one-third of the monetary fund recovered is well within the range customarily approved by California courts in class actions as well as with contingency contracts negotiated by Plaintiff and his counsel. "Empirical studies show that regardless of whether or not the percentage method or Lodestar method is used, fee awards in class actions average around one-third of the recovery." See e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 66, fn. 11; *In re California Indirect Purchases* (October 22, 1998) WL1031494 at *9 (*citing In re Milk Antitrust Litigation* (L.A. Sup. Ct. 1998) Civ. Case No. BC070061 (33 1/3% award); *In re Facsimile Paper Antitrust Litigation* (San Francisco Sup. Ct. 1997) Civ. Case No. BC 0070061 (33 1/3% award); *In re Liquid Carbon Dioxide Cases* (San Diego Sup. Ct. 1996) J.C.C.P. 3012 (33 1/3% award); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. November 14, 2007) WL 3492841 at *4 ("fee awards in class actions average around one-third of the recovery." (*Quoting* Newberg on Class Actions § 14.6 (4th ed. 2007).

In *Lealao*, *supra*, at 46-47, the Court indicated that in defining a "reasonable" fee in representative actions, the law should "mimic the market." The Court went on to state:

> "Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace as it will otherwise be economic for Defendant's to increase injurious behavior. *Lealao*, *supra*, 82 Cal.App.4th at 46-47, and *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal. App.4th 140, 163.

For the following reasons, awarding one-third of the gross settlement for attorney fees is fair, reasonable and appropriate.

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B. **Factors Supporting the Fee Award**

1. The Amount of the Settlement

In Counsel's experience, a PAGA settlement for $315,000 is a fair, reasonable, and adequate settlement in light of the asserted claims, Defendants' defenses, and the strong possibility that there would be no recovery without this settlement. ZM Decl., ¶5. The LWDA will be recovering a significant penalty award and PAGA Members will be receiving noteworthy payments as well. The average amount expected to be paid amongst 1,100 Aggrieved Employees is $58.30. ($64,136.12 ÷ 1,100). ZM Decl., ¶12.

2. The Named Plaintiff Signed a Retainer Agreement

Plaintiff Mendez signed a single retainer with Mooradian Law, APC. The Retainer Agreement had language providing a maximum of forty-five percent (45%) in attorneys' fees, of course, subject to court approval on class and representative issues. The Retainer Agreement also had a provision for recovery of costs in relation to the representation. ZM Decl. ¶24.

In *Lealao*, *supra*, 82 Cal.App.4th at 46-47, the court indicated that in defining a "reasonable" fee in representative actions, the law should "mimic the market." Here, as for the representation of the individual rights of Mr. Mendez, a retainer agreement for one-third of gross recovery would be consistent with the market rate, and there is no reason to believe that if counsel had signed a retainer agreement with the LWDA to prosecute claims on the LWDA's behalf, it would be any different. ZM Decl. ¶25.

In, *In re Cont'l Ill. Secs. Litig.*, Judge Posner endorsed a market-based approach to evaluating fee requests, stating that the function of judges in fee litigation "is to determine what the lawyer would receive if he were selling his services in the market rather than being paid by court order." (7th Cir. 1992) 962 F.2d 566, 568. In a law review article (Silver) entitled "A Restitutionary Theory of Attorneys' Fees in Class Actions (1991) 76 Cornell L.Rev. 656, 702-703 (it stated that the goal "is to pay attorneys on terms they would probably accept in an ex ante bargain, before the outcome of litigation is known").

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3. Defendants Do Not Object to the Attorney Fee Agreement

In almost all the class/PAGA mediations that Mr. Mooradian has attended, a one-third to 35% attorney fee percentage is generally agreed upon by the defendant and the plaintiff subject to court approval. In this matter, the Parties agreed that PAGA Counsel may request up one-third of the settlement. ZM Decl. ¶26.

Here, it is beyond any reasonable dispute that, if PAGA counsel had been able to negotiate directly with the LWDA, the LWDA would have found that a one-third fee arrangement to be eminently reasonable. ZM Decl. ¶27.

4. The Contingent Risk Factor

For PAGA Counsel, the fees in this case are entirely contingent in nature. As the 9th Circuit noted, class counsel who take a case on a contingency basis bears a "double contingency: first they must prevail on the class claims, and then they must find some way to collect what they win." *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1377. The fees received from one case are often used to finance and move forward other cases that have failed and bring in revenue for counsel. ZM Decl. ¶22.

C. <u>The Lodestar/Multiplier Cross-Check</u>

Even though class counsel is requesting fees with the percentage of the benefit approach, some courts nevertheless use a Lodestar/Multiplier cross check to confirm the fees' reasonableness. *Lealao v. Beneficial California, Inc.*, *supra*, 82 Cal.App.4th 19-45; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051. The Lodestar Analysis (Lodestar-Multiplied Method) begins with a calculation of time spent in reasonable hourly compensation of each attorney and paralegal who worked on the case and then to compensation counsel for risk, quality and result, courts commonly apply a "multiplier" to the Lodestar in awarding attorney fees.

The first step is to determine the Lodestar individually for each attorney and/or paralegal that has worked on the case and is claiming fees. The Lodestar analysis for the attorneys appears PAGA Counsel's supporting declaration, which is summarized below:

Attorney(s)	Billable Rate(s)	Hours	Lodestar	Laffey Rate	Laffey Lodestar
Zorik Mooradian ZM Decl., ¶28	$650.00	55	$35,750	$1,141.00	$62,755
Haik Hacopian *Id*.	$450.00	57	$25,650	$948.00	$54,036
Total Minimum Lodestar		145	$61,400		$116,791

In this matter, the lodestar tallies to $61,400.00 and which results in the requested $105,000.00 fee award after the application of 1.71 multiplier. To the extent current Laffey Matrix rates are applied, the lodestar will total $116,791 and exceed the requested fee award. ZM Decl., ¶29., Exh. "3" (Laffey Matrix").

D. <u>A Lodestar Multiplier of 1.71 is Reasonable</u>

"It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases." *Fischell v. Equitable Life Assur. Society of U.S.* (9th Cir. 2002) 307 F.3d 997, 1008. In the Ninth Circuit, a lodestar amount is "routinely enhanced…to reflect the risk of non-payment in common fund cases." *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1125 (awarding multiplier of 5.2 and collecting cases with cross-check multipliers ranging from 4.5 to 19.6); *Morgret v. Applus Tech., Inc.* (E.D. Cal. Jun. 1, 2015) Case No. 1:13-cv-01801-JLT, 2015 WL 3466389 at *17 (awarding multiplier of 3.9, "which is within the range typically awarded in the Ninth Circuit."); *Torchia v. W.W. Grainger, Inc.* (C.D. Cal. Dec. 29, 2014) 304 F.R.D. 256, 277 (Thurston, J.) (awarding multiplier of about 3.6).

Here, the lodestar multiplier of 1.71 is well within the range of reasonableness, as has been held by numerous courts, especially in light of the significant work performed in this case and the efficiency with which it was done.

E. <u>Attorneys Fees v. Benefits Conferred</u>

While it's generally true that the greater the attorney fees, the less funds there will be for distribution as damages, nevertheless, a balance must be achieved. In the instant matter, the LWDA and PAGA Members got a very balanced and fair settlement. Given the strengths and weaknesses of the case, they will be receiving a fair sum of money. The results and the case law support that the settlement was fair, reasonable and adequate. In light of the favorable settlement, giving more money to the LWDA and PAGA Members after an excellent settlement had been achieved punishes the attorneys without whom such a settlement would not have been attained but for the efforts of good lawyering. Punishing lawyers when they do well is potentially sending the wrong message and serves as a disincentive and unjustly enriches the LWDA and PAGA Members who will be receiving a fair and adequate amount of benefits. ZM Decl. ¶31.

V. PAYMENT OF COSTS TO COUNSEL SHOULD BE APPROVED

Counsel has incurred $16,753.95 in total costs in prosecuting this matter, which is less than the $20,000 maximum contemplated by the settlement, and is the amount that Plaintiff is requesting that the Court approve. (S.A., p. 6, §III.4(b)). All costs are necessary and reasonable. ZM Decl. ¶30.

VI. PAYMENT FOR ADMINISTATION EXPENSES SHOULD BE APPROVED

Counsel has secured a not to exceed bid from CPT Group, Inc., the Parties' selected administrator, in the amount of $10,000 in relation to dissemination of payments to the various parties as contemplated by the settlement including to all Aggrieved Employees. CPT will also be responsible for the escheatment of uncashed checks. A true and correct copy of the not to exceed quote secured from CPT is attached to the Declaration of Zorik Mooradian as **Exhibit "4"**. ZM Decl., ¶32, Exh. 4.

VII. CONCLUSION

For the reasons stated herein, this Court should grant Plaintiff's Motion in its entirety and adopt the [Proposed] Order submitted concurrently herewith.

Dated: June 9, 2025

MOORADIAN LAW, APC

By:/s/ Haik Hacopian
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