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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

DONALD LEON JOHNSON, individually and on behalf of himself and all others similarly situated, Plaintiff, v. STREMICKS HERITAGE FOODS, LLC, a Delaware limited liability company, and DOES 1-50, inclusive. Defendants.	Case No. 30-2023-01351048-CU-OE-CXC [Assigned for all purposes to The Honorable Layne H. Melzer, Dept. CX102] **PLAINTIFF DONALD JOHNSON'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT** Date: August 6, 2026 Time: 2:00 p.m. Reservation #: 74828756 Action Filed: September 25, 2023 Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 6, 2026, at 2:00 p.m., or as soon thereafter as the matter may be heard in Department CX102 of the Superior Court of the State of California, County of Orange, located at 751 West Santa Ana Blvd, Santa Ana, CA 92701, before the Honorable Layne H. Melzer, Plaintiff Donald Leon Johnson will, and hereby does, move the Court for an order approving a settlement pursuant to the Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* ("PAGA").

This unopposed motion seeks approval of a non-reversionary $200,000 settlement reached after mediation, which resolves all PAGA claims alleged in this action on behalf of non-exempt employees who worked for Defendant in California during the PAGA period. The settlement allocates:

- 75% (presently estimated to be $81,997.77) to the Labor and Workforce Development Agency,
- 25% (presently estimated to be $27,332.59) to the Aggrieved Employees, distributed pro rata based on pay periods worked,
- Attorneys' fees of up to $66,667.00, and up to $14,000.00 in litigation costs (requested $13,652.64),
- A service award of $5,000 to Plaintiff Johnson and,
- Up to $5,350 in administration costs.

This motion is based on the Memorandum of Points and Authorities, the Declarations of Plaintiff's Counsel James Hawkins, Plaintiff Donald Leon Johnson, the PAGA Settlement Agreement, the proposed Order Granting Approval of Settlement, all pleadings and papers on file, and any argument or evidence presented at the hearing**.**

Dated: April 17, 2026 **JAMES HAWKINS, APLC**

By: ______________________________

James. R. Hawkins, Esq.
Christina Lucio, Esq.

Attorneys for Plaintiff and the Aggrieved Employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Donald Leon Johnson ("Plaintiff")—individually and on behalf of other allegedly Aggrieved Employees, and acting as representative of the State of California—brought this representative action for civil penalties against his former employer, Stremicks Heritage Foods, LLC ("Stremicks" or "Defendant") (together with Plaintiff, the "Parties") under the Private Attorneys General Act of 2004, California Labor Code § 2698 et seq. ("PAGA").

A PAGA action is a type of qui tam proceeding that enables private citizens to assist the State of California in enforcing labor laws. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380–382.) In such an action, the State of California is the real party in interest. (*Id.* at 382.)

As required by statute, the State of California was timely served with a copy of the executed Settlement Agreement and this Motion for Approval. (Declaration of James Hawkins in Support of Plaintiff's Motion for Approval of PAGA Settlement ("Hawkins Decl.") ¶ 35.)

Plaintiff's operative claims are brought on behalf all persons who were directly employed by Defendant in the State of California in non-exempt positions at any time during the PAGA Period. (the "Aggrieved Employees"). (PAGA Settlement Agreement ("Settlement"), ¶ 2.) The PAGA Period is the period from July 22, 2022 through November 2, 2025. (Settlement ¶ 9.)

On September 27, 2023, Plaintiff filed his original PAGA Action seeking penalties for Defendant's alleged Labor Code violations including, (1) failure to pay minimum wages; (2) failure to accurately pay overtime wages; (3) failure to pay reporting time wages; (4) failure to provide lawful meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay wages during employment; (6) failure to timely pay wages owed upon separation from employment; (7) failure to reimburse necessary expenses; (8) knowing and intentional failure to comply with itemized wage statement provisions; (9) violation of the unfair competition law; (10) failure to keep accurate records; (11) failure to provide suitable seating; (12) violation of temperature control guidelines of the Wage Orders; and (13) failure to provide one day of rest in seven. (Hawkins Decl. ¶¶ 5-6.)

On November 23, 2023, the settlement of related case *Duenas v. Stremicks Heritage Food, LLC,* *et al.,* Case No. CVRI2202014, was finally approved by the Superior Court of California, Riverside County. The *Duenas* settlement included a release of PAGA claims but did not fully encompass all of Plaintiff's allegations, thereby Plaintiff maintained his PAGA action for Defendant's alleged (1) failure to pay reporting time wages; (2) failure to provide suitable seating; (3) violation of temperature control guidelines of the Wage Orders; and (4) failure to provide one day's rest in seven. (Hawkins Decl. ¶ 8.)

Plaintiff propounded discovery and the Parties engaged in substantial meet and confer efforts. (Hawkins Decl. ¶ 9.) Before engaging in motion practice, the Parties agreed to a good faith attempt to resolve Plaintiff's individual and PAGA claims through mediation before continuing with additional time-consuming and costly litigation. To ensure a meaningful, informed mediation effort, the Parties agreed to conduct informal discovery prior to the mediation session. (*Id.* ¶ 9.) Defendant provided Plaintiff with policy documents, collective bargaining agreements, Plaintiff's personnel file documents, leave documents, and time off requests. Plaintiff's counsel also reviewed additional documents such as time and payroll records. Defendant also provided data points for the Aggrieved Group. This exchange of information and documents was comprehensive and vital in allowing the Parties to fully and objectively assess their respective positions before and during the arms-length negotiations at mediation (*Id.* ¶ 10.) On September 3, 2025, the Parties participated in a full-day mediation with experienced wage and hour PAGA mediator Lou Marlin, Esq. With Mr. Marlin's assistance, the Parties agreed to fully and finally resolved Plaintiff's Individual and PAGA claims. (*Id.* ¶ 11.)

Plaintiff now seeks—without opposition from Defendant—the Court's approval of a $200,000 non-reversionary settlement resolving all claims alleged in this action pursuant to the PAGA. (Ex. 1, Settlement ¶ 10.) The settlement covers approximately four hundred seventy-six (476) Aggrieved Employees and approximately 25,515 PAGA Pay Periods. (*Id.* ¶ 22.) This is an excellent result given the limited number of PAGA claims at issue post-*Duenas*.

Following are the proposed deductions of:

- Attorneys' Fees up to $66,667.00 (one-third of the Gross Settlement Amount),
- Litigation costs of up to $14,000 (requested $13,652.64),
- Administration Expenses Payment up to $5,350, and

- A Service Award of $5,000 to Plaintiff for his service in pursuing the action, assisting with settlement efforts.

The balance of $109,330.36 will be allocated as PAGA Penalties in accordance with the California Labor Code ("Labor Code") § 2699(i). (*Id.* ¶¶ 10-11.) Of this amount:

- Seventy-five percent (75%), or approximately $81,997.77, will be paid to the California Labor and Workforce Development Agency ("LWDA"), and
- Twenty-five percent (25%), or $27,332.59, will be distributed to Aggrieved Employees on a pro rata basis based on the number of PAGA Pay Periods worked during the PAGA Period. (*Id.* ¶ 11.)

This settlement merits full approval because it furthers the statutory goals of PAGA:

- To deter future California Labor Code violations,
- To incentivize employer compliance with wage and hour laws,
- And to provide meaningful enforcement of California labor standards for the public benefit. (*See* Labor Code § 2698 et seq.; *Arias v. Superior Court* (2009) 46 Cal.4th 969, 980.)

Approval of the Settlement is governed by Labor Code section 2699(l)(2), which provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part." Consistent with California Supreme Court precedent, PAGA settlements are not subject to the requirements of class certification (such as numerosity, typicality, adequacy, or commonality), and there is no preliminary/final two-step process as is required in class actions. (*See Arias*, supra, at pp. 975–976; *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380–382.)

For these reasons—and those discussed in more detail below—Plaintiff respectfully requests that the Court grant approval of the PAGA Settlement as fair, reasonable, and in the public interest.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Defendant is a Delaware limited liability company doing business in the state of California. Defendant operates a facility located at 4002 Westminster Avenue, Santa Ana, CA 92703. Defendant is a beverage manufacturing company that manufactures and distributes cartoned dairy and juice beverages.

(Hawkins Decl. ¶ 3.) Plaintiff was employed by Defendant as a non-exempt, hourly employee from approximately 2012 until July 2022. Plaintiff primarily worked as a physical laborer and machine operator in dairy production at Defendant's facility in Corona, California. Plaintiff typically worked in excess of fifty hours per week, six days a week. (*Id.* ¶ 4.)

On July 21, 2023, Plaintiff submitted a letter to the LWDA providing notice that he intended to commence an action for PAGA Penalties under Cal. Labor Code § 2698 et seq. against Stremicks Heritage Foods, LLC for (1) failure to pay minimum wages; (2) failure to accurately pay overtime wages; (3) failure to pay reporting time wages; (4) failure to provide lawful meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay wages during employment; (6) failure to timely pay wages owed upon separation from employment; (7) failure to reimburse necessary expenses; (8) knowing and intentional failure to comply with itemized wage statement provisions; (9) violation of the unfair competition law; (10) failure to keep accurate records; (11) failure to provide suitable seating; (12) violation of temperature control guidelines of the Wage Orders; and (13) failure to provide one day of rest in seven. (Hawkins Decl. ¶ 5.) On the same day, Plaintiff filed a Class complaint against Defendant in the Superior Court of California, County of Orange, entitled *Donald Leon Johnson vs. Stremicks Heritage Foods, LLC,* Orange County, Case No. 30-2023-01351048-CU-OE-CXC, for labor code violations alleged in his letter to the LWDA. (*Id.*) On September 27, 2023, after sixty-five days elapsed without response from the LWDA, Plaintiff filed a Complaint in the Superior Court of California, County of Orange, commencing the case entitled *Donald Leon Johnson vs. Stremicks Heritage Foods, LLC,* Orange County, Case No. 30-2023-01351048-CU-OE-CXC, alleging a single cause of action under PAGA against Defendant for PAGA Penalties predicated upon the alleged Labor Code violations. (*Id.* ¶ 6.)

On September 29, 2023, Defendant removed Plaintiff's Class action to the United States District Court for the Central District of California and was assigned Case No. 8:23-cv-01853-KK-DFM. (*Id.* ¶ 7.) On November 23, 2023, the settlement of related case *Duenas v. Stremicks Heritage Food, LLC, et al.,* Case No. CVRI2202014, was finally approved by the Superior Court of California, Riverside County.

(*Id.* ¶ 8.) The *Duenas* settlement subsumed all claims alleged in Plaintiff's Class complaint against Defendant. On May 23, 2024, the Parties stipulated to dismissal of Plaintiff's Class complaint without prejudice. Plaintiff opted out of the *Duenas* settlement, thereby maintaining his right to pursue his individual claims, and PAGA claims not released in the *Duenas* settlement which included; (1) failure to pay reporting time wages; (2) failure to provide suitable seating; (3) violation of temperature control guidelines of the Wage Orders; and (4) failure to provide one day's rest in seven. (*Id.*)

III. THE PAGA AND ITS REQUIREMENTS

The Private Attorneys General Act of 2004 ("PAGA"), codified at Labor Code § 2698 *et seq*., provides a mechanism for Aggrieved Employees to recover civil penalties on behalf of the State of California for violations of the Labor Code committed by their employers. Before PAGA, the enforcement of such civil penalties was vested exclusively in California's labor enforcement agencies. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 980.) However, recognizing both the limited resources of enforcement agencies and the prevalence of Labor Code violations, the California Legislature determined it was in the public interest to deputize private individuals as "private attorneys general" to enforce the law. (*Id.*)

Under Labor Code § 2699(i), civil penalties recovered in a PAGA action are distributed: 75% to the LWDA for enforcement and education efforts, and 25% to the aggrieved employees.

Before bringing a PAGA action, the employee must satisfy notice and exhaustion requirements under Labor Code § 2699.3(a) by submitting written notice to both the employer and the LWDA identifying the specific Labor Code provisions allegedly violated. The LWDA may then investigate or respond; if it declines to investigate or does not act within the statutory period, the aggrieved employee may proceed. (*See* Lab. Code §§ 2699.3(a)(2), 2699(h).)

In this case, Plaintiff submitted a timely PAGA Notice Letter on July 21, 2023. The LWDA did not intervene, thereby authorizing Plaintiff to proceed with this enforcement action on behalf of the State. (Hawkins Decl. ¶¶ 5-6.) Thus, the entire recovery in this case—the $200,000 Gross Settlement Amount—is the result of enforcement efforts undertaken solely by Plaintiff and his counsel. The LWDA was provided with notice of the proposed Settlement Agreement and of this Motion, in accordance with Labor Code § 2699(l)(2). (Hawkins Decl. ¶ 60; *see also* Ex. 2, LWDA Submission Confirmation.)

PAGA also requires that any settlement of a PAGA claim brought by an aggrieved employee be approved by the Court. (*See* Lab. Code §§ 2699.3(c)(4).) In *Arias*, the California Supreme Court held that PAGA representative actions are not subject to class certification requirements, nor is notice required for other employees. (*Arias*, 46 Cal.4th at 975–76, 980–88.) The plaintiff is deemed to act as a proxy or agent of California's labor law enforcement agencies. (*Id.* at 986.) Accordingly, the Court's role is to review the terms of the PAGA settlement to ensure they are fair, reasonable, and in the public interest, that this proposed Settlement fully satisfies, as discussed below.

IV. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES

The following is a summary of the principal terms of the Settlement Agreement.

A. TERMS OF THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES

The Settlement provides that Defendant will pay a non-reversionary Gross Settlement Amount of $200,000 (the "Gross Settlement Amount"), which is inclusive of:

- Civil penalties payable to the LWDA and Aggrieved Employees,
- Attorneys' fees and costs,
- Administration Expenses Payment, and
- Service Award to Plaintiff (Ex. 1, Settlement ¶¶ 10-14)

Following deductions of up to $66,667.00 in attorneys' fees, up to $14,000 in litigation costs (requested $13,652.64), up to $5,350 in Settlement Administration Costs, and a requested $5,000 Service Award for Plaintiff, the remaining amount—approximately $109,330.36—constitutes the PAGA Penalties. (*Id*. ¶¶ 10-14)

Pursuant to Labor Code § 2699(i) and the terms of the Settlement:

- 75 percent of the PAGA Penalties ($81,997.77) will be paid to the LWDA (*Id*. ¶ 11.)
- The remaining 25 percent ($27,332.59) will be distributed to the Aggrieved Employees on a pro-rata basis based on the number of PAGA Pay Periods worked during the PAGA Period. (*Id*. ¶¶ 11, 11(b).)

This structure complies with the statutory distribution scheme and provides meaningful recovery to the State and to employees, without the possibility of reversion to Defendant. Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance will escheat to the California Controller's Office Unclaimed Property Division in the name of the Aggrieved Employees to whom the checks were issued. (*Id.* ¶ 18.).

Based on a review of its records to date, Defendant estimates there are four hundred seventy six (476) Aggrieved Employees who collectively worked 25,515 pay periods. (*Id.* ¶ 22.) If the total number of Pay Periods worked by all Aggrieved Employees exceeds this pay period estimate by more than 10% or there are more than 28,066 pay periods, then, Defendant shall increase the Gross Settlement Amount by a proportionate amount for every Pay Period in excess of 10%. For example, if the number of Pay Periods increases by 12%, Defendant shall increase the Gross Settlement Amount by 2%. (*Id.* ¶ 22.1.)

PAYMENT AND THE NOTICE

Within fourteen (14) calendar days after notice of the entry of the Order and Judgment, Defendant will provide the Settlement Administrator a complete list of the contact information and other information needed to calculate settlement payments for all Aggrieved Employees. (*Id.* ¶ 16.)

Within twenty (20) calendar days after notice of the entry of the Order and Judgment, Defendant will deposit the Gross Settlement Amount into the qualified settlement fund to be established by the Settlement Administrator. (*Id.* ¶ 17.) Within fourteen (14) calendar days of funding the Settlement, the Settlement Administrator will issue payments: (a) Aggrieved Employees; (b) the Labor and Workforce Development Agency; (c) Plaintiff; (d) Plaintiff's Counsel; and (e) itself. The Settlement Administrator will issue the appropriate tax forms for all payments issued under this Settlement. (*Id.*)

The Settlement Administrator will issue each Aggrieved Employee one check for his or her share of the PAGA Penalties Fund along with an explanatory letter. (*Id.* ¶ 18.) Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S.

Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address or Social Security number of the Aggrieved Employee involved and will then perform a single re-mailing. (*Id.*)

Checks will remain negotiable for 180 days. Those funds represented by un-cashed checks which remain outstanding 180 days after the mailing of the Settlement checks by the Settlement Administrator shall be sent to the State Controller's Office Unclaimed Property Division in the name of the Aggrieved Employee. (*Id.*)

B. SETTLEMENT ALLOCATION TO THE AGGRIEVED EMPLOYEES

As set forth in the Settlement Agreement, twenty-five percent (25%) of the PAGA Penalties—or $27,332.59—will be allocated to the Aggrieved Employees. (Settlement ¶ 11.) According to data provided by Defendant, approximately 476 Aggrieved Employees will receive an Individual PAGA Payment based on each Aggrieved Employees' proportionate share of pay periods worked during the PAGA Period (*Id*. ¶¶ 11, 11(a)-11(b).)

The PAGA Period is defined in the Settlement Agreement as the period July 22, 2022, through November 2, 2025 (*Id.* ¶ 9.)

All settlement payments to Aggrieved Employees will be treated as miscellaneous income for which an IRS form 1099 will be issued. (*Id*. ¶ 18.)

D. THE RELEASE

The California Supreme Court has held that a judgment in "a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ... is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 985–986.)

Here, the release in the Settlement Agreement is narrowly tailored and binds only the LWDA, the State of California, and the Aggrieved Employees, and only as to PAGA civil penalty claims, notably the release does not waive any Aggrieved Employee's statutory or individual claims. Upon entry of the Order and Judgment and contingent upon payment of the Gross Settlement Amount, Plaintiff and all Aggrieved

Employees will be forever barred from pursuing against Defendant any and all Settled Claims during the PAGA Period. (Settlement ¶ 19.)

The Settled Claims include:

> [A]ll claims for PAGA civil penalties that are alleged in the operative Amended Complaint in the Action, or could have reasonably been alleged in the Action or based upon the facts alleged for civil penalties under PAGA for alleged violations of Labor Code sections 551, 552, 1197, and 1198 for: (a) failure to pay reporting time wages; (b) failure to provide suitable seating; (c) violation of temperature control guidelines of the Wage Orders; and (d) failure to provide one day's rest in seven. Settled Claims shall also mean any other claims for civil penalties under PAGA that were or could have reasonably been alleged or asserted based on the underlying claims referenced above, including any civil penalties, attorneys' fees, or costs in connection to Plaintiff's claims for civil penalties under PAGA, during the PAGA Period.

(Settlement ¶ 8.)

Given these parameters, the release for Aggrieved Employees is appropriately narrow and consistent with California law governing representative PAGA actions and related to claims alleged and identified in the Plaintiff's PAGA Notice Letters. Accordingly, the Parties respectfully submit that the scope of the release is both reasonable and enforceable.

V. <u>THE SETTLEMENT IS FAIR AND REASONABLE AND WARRANTS COURT APPROVAL</u>

In 2016, the California Legislature amended PAGA to require that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part." (Lab. Code § 2699(l)(2).) The same provision requires that the proposed settlement be submitted to the LWDA at the same time it is submitted to the Court. Plaintiff has complied with this requirement. The Settlement Agreement and this Motion for Approval have been concurrently submitted to the LWDA. (Hawkins Decl. ¶ 35; ex. 2.)

Beyond procedural compliance, courts must evaluate whether a proposed PAGA settlement is fair, reasonable, and consistent with PAGA's statutory purpose—namely, to deter Labor Code violations, incentivize employer compliance, and serve the State's interest in enforcing labor standards. (See *Arias v. Superior Court (2009)* 46 Cal.4th 969, 980.) Courts have held that a PAGA settlement should be approved where it represents a genuine and informed compromise, particularly when the parties have participated in arm's-length negotiations (such as mediation), exchanged relevant data or discovery, and thoroughly evaluated liability, exposure, and litigation risks. (*See Moniz v. Adecco USA, Inc*. (2021) 72 Cal.App.5th 56, 76.)

Here, the Parties engaged in meaningful pre-settlement litigation efforts. Plaintiff drafted and propounded requests for production, requests for admission, special interrogatories and a notice of deposition. The Parties then engaged in a meet and confer process before engaging in motion practice. The Parties eventually agreed to attend mediation and focus their efforts on preparing for said mediation, while staying formal discovery and litigation. In connection with the mediation, Defendant produced policy documents, collective bargaining agreements, Plaintiff's personnel file documents, leave documents, and time off requests. Plaintiff's counsel also reviewed additional documents such as time and payroll records. Defendant also provided data points for the Aggrieved Group. This exchange of information and documents was comprehensive and vital in allowing the Parties to fully and objectively assess their respective positions before and during the arms-length negotiations at mediation (*Id.* ¶ 10.) Plaintiff's Counsel reviewed this data and conducted an exposure analysis to assess penalties and litigation risks. The Parties then participated in a full-day private mediation with experienced wage and hour mediator Lou Marlin, Esq. With Mr. Marlin's assistance, the Parties reached a good faith resolution which fully and finally resolved Plaintiff's Individual and PAGA Claims as to Plaintiff and Aggrieved Employees. (*Id.* ¶ 11.)

The resulting non-reversionary $200,000 settlement reflects a fair and reasonable compromise. It accounts for Defendant's asserted defenses as well as the challenges of proving liability and penalties, and the Court's discretion to reduce penalties under Labor Code § 2699(e)(2). Of the PAGA Penalties, $81,997.77 will be paid to the LWDA and $27,332.59 will be distributed to approximately 476 Aggrieved Employees on a pro rata basis based on approximately 25,515 PAGA Pay Periods. Given the strength of Plaintiff's claims, the risks of further litigation, and the real and meaningful recovery for both the State and employees, the proposed settlement is fair, adequate, reasonable, and in the public interest. Accordingly, the Parties respectfully request that the Court grant approval.

A. EVALUATION OF THE PAGA SETTLEMENT

Although PAGA and its legislative history do not expressly require courts to evaluate settlements against the theoretical "maximum value" of the claims, courts routinely assess whether the penalties recovered are reasonable in light of the potential exposure and litigation risks. Here, even under that framework, the penalties provided under the Settlement are fair and reasonable.

Plaintiff estimates that Defendant's maximum potential penalty exposure was approximately $2,551,500 based on approximately 25,515 PAGA Pay Periods and the statutory $100 per-pay-period penalty for a violation (25,515 x $100). (Hawkins Decl. ¶ 19.). This figure is grounded in Plaintiff's core theories alleged against Defendant—namely, Defendant failed to pay reporting time wages, failed to provide suitable seating, violated temperature control guidelines of the Wage Orders, and failed to provide one day's rest in seven. (Hawkins Decl. ¶ 21.) At all times Defendant denied that it violated any law or committed any violation. In addition to disputing the factual basis for Plaintiff's claims, Defendant argued that Plaintiff's exposure analysis was vastly overstated because Defendant alleged that Plaintiff could not prove a violation each pay period, there was no evidence of willful violations, and it argued that Defendant previously settled a prior action involving significant PAGA penalties, thus it was unlikely that a court would exercise its discretion to levy additional significant penalties. (Hawkins Decl. ¶ 22-24.)

Plaintiff based this estimate on civil penalties available under Labor Code § 2699(f)(2), which generally provides $100 for an initial violation and $200 for each subsequent violation, per Aggrieved Employee, per pay period—citing *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, Plaintiff asserted that Defendant's notice of the alleged violations through the PAGA Notice Letters justified applying at least the $100 rate for each pay period after the notices were served. However, Plaintiff acknowledges that some courts have held that the $200 "subsequent violation" rate applies only after an employer has been put on notice of a violation by a court or commission, not merely by the PAGA letter. (See, e.g., *Amalgamated Transit Union Local 1309 v. Laidlaw Transit Servs.*, 2009 U.S. Dist. LEXIS 69842, *26 (C.D. Cal.).) Defendant maintained that the higher $200 rate does not apply and that only the $100 rate is available.

The maximum amount estimate does not consider the various risks and potential defenses to the claims herein. Defendant staunchly contends it was not in violation of temperature control guidelines nor failed to provide adequate seating. The nature of both claims is binary insofar as Defendant either violated them or did not. Defendant contends it maintained its facility at a lawful temperature through air conditioning and contends that the nature of its employees' work required them to stand. Were Defendant able to successfully defend either – or both - claims, Plaintiff would be unable to recover any PAGA penalties for either alleged violation. (Hawkins Decl. ¶ 21.)

Moreover, Defendant disputes liability altogether and argues that, even if violations occurred, the Court has discretion under Labor Code § 2699(e)(2) to significantly reduce any penalties "based on the facts and circumstances of the particular case," including where an award might otherwise be "unjust, arbitrary and oppressive, or confiscatory." Defendant further asserts that any violations were unintentional, isolated, or de minimis and that any penalties should be mitigated due to the absence of "willfulness" or based on their good-faith compliance efforts. (Hawkins Decl. ¶ 23.)

While seeking relief on behalf of the Aggrieved Employees, Plaintiff also had to contend with the additional difficulty imposed on this action due to the *Duenas* Settlement. (Hawkins Decl. ¶¶ 8, 24-25.) The *Duenas* Settlement released many of the claims against Defendant during a PAGA period which overlapped with Plaintiff's own putative PAGA period. This resulted in nine of Plaintiff's original thirteen alleged labor code violations being subsumed, with Plaintiff's action continuing with the remaining four. Despite a lion's share of Plaintiff's underlying allegations being subsumed, Plaintiff still managed an impressive recovery with a small number of heavily contested alleged violations. (Id. ¶ 25.)

Taking into consideration Defendant's defenses, Plaintiff realistically estimated the value of the remaining PAGA claims at $20 per pay period or $510,300. (Hawkins Decl. ¶ 26.) Plaintiff secured a $200,000 PAGA resolution—representing approximately 8% of the total maximum exposure or 39.2% of the realistic exposure. (Id.) This is a reasonable resolution because Plaintiff achieved this result despite the *Duenas* settlement subsuming nine of the original thirteen alleged labor code violations upon which Plaintiff's PAGA action were predicated. Furthermore, the recovery was achieved considering Defendant's potential defenses and possibility of the Court reducing any awarded penalties. This result reflects a meaningful compromise following a thorough and extensive investigation, informal discovery, and private mediation. (Id. at ¶ 26.)

The agreed-upon penalty fund ensures meaningful recovery to the State and affected employees while avoiding the uncertainty and cost of further litigation. It advances the goals of PAGA and is neither unjust, arbitrary, nor excessive. Accordingly, the Settlement is a fair and reasonable resolution of the disputed claims and warrants the Court's approval. (Hawkins Decl. ¶ 27.)

B. The Requested Service Award to plaintiff is fair and reasonable

Plaintiff respectfully requests that the Court approve a $5,000 Service Award to Plaintiff in recognition of his time, effort, and commitment in prosecuting this Action on behalf of the State of California and Aggrieved Employees. The award is reasonable given Plaintiff's active role in the case, including assisting counsel in preparing pleadings and declarations, locating and producing relevant documentation, providing an account of his experiences, communicating with witnesses, participating in discovery and mediation, communicating with counsel and ensuring he was apprised of all developments, reviewing and providing policy documents, and providing input throughout the settlement negotiations. (Hawkins Decl. ¶ 57; Johnson Decl. ¶¶ 7-9.)

Courts routinely approve service or enhancement awards in PAGA-only cases to compensate plaintiffs who invest time and energy in advancing claims for the benefit of others. Such awards reflect the burden representative plaintiffs undertake and the critical role they play in enforcing the Labor Code where state resources may be limited. (See, e.g., *Gonzalez v. CoreCivic of Tennessee, LLC* (E.D. Cal. Mar. 30, 2022) 2022 WL 1050300, at *6 [approving $7,500 service award in a PAGA-only settlement].)

Here, Plaintiff came forward to initiate this enforcement action, and supported resolution of the case following extensive discovery and analysis. These efforts ultimately led to a significant, non-reversionary $200,000 PAGA settlement. As the California Supreme Court has explained, a PAGA plaintiff "represents the same legal right and interest as state labor law enforcement agencies," and acts as a proxy for the State in vindicating public rights. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986; *Iskanian v. CLS Transp.* (2014) 59 Cal.4th 348, 387.)

Considering Plaintiff's meaningful contributions to this matter and the strong result obtained on behalf of the State and Aggrieved Employees, the requested $5,000 Service Award is fair, reasonable, and appropriate. Accordingly, Plaintiff respectfully requests that the Court approve the award as part of the overall settlement.

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VI. THE REQUESTED ATTORNEYS' FEES AND LITIGATION COSTS ARE FAIR AND REASONABLE

For the effort and risk undertaken in obtaining a common fund settlement that benefits the LWDA and Aggrieved Employees, the Parties allocated $66,667.00 to Plaintiff's Counsel for reasonable attorneys' fees, which is one-third of the Gross Settlement Amount. Additionally, the Parties agreed to reimburse Plaintiff's Counsel up to $14,000 for their actual litigation costs. These fees and costs are warranted under the law and within the range of fees commonly awarded in similar cases.

A. PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER ATTORNEYS' FEES UNDER THE COMMON FUND DOCTRINE IN THIS QUI TAM ACTION

PAGA provides that a plaintiff is entitled to recover reasonable attorneys' fees, expenses, and costs under section 2699(g)(1) of the California Labor Code, which provides that, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid ...." As discussed below, in a qui tam action, reasonable attorney's fees and costs are typically awarded under the common fund doctrine where, as here, the litigation creates a common fund of money in a specific amount for the benefit of others.

"A qui tam action is one brought under a statute that allows a private person to sue as a private attorney general to recover damages or penalties, all or part of which will be paid to the government." *People ex rel. Stratham v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 491-492. "A qui tam action 'is a type of private attorney general lawsuit' (citation), in which 'the qui tam Plaintiffs stand in the shoes of the state or political subdivision (citation).'" *Id.* at 501. As the name of the PAGA statute makes clear (e.g., "Labor Code Private Attorney General Act"), a PAGA action is a qui tam action because the statute allows the employee plaintiff, acting as the proxy of the state's labor law enforcement agency, to sue his or her employer for Labor Code violations and recover civil penalties that otherwise would have been assessed and collected by the LWDA. *Iskanian*, 59 Cal.4th at 380. "A PAGA representative action is therefore a type of *qui tam* action." *Id.* at 382. Indeed, the majority of the civil penalties recovered in a PAGA action are paid to the state, with a smaller portion paid to the aggrieved employees (*e.g.*, 75% paid to the state; 25% paid to the aggrieved employees). See Labor Code § 2699(i).

As here, where a common fund is created in a qui tam action by the successful litigation of a plaintiff and his attorneys, the attorneys are entitled to recover their fees from the common fund. *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-91. In *Bank of America*, California taxpayers compelled the State Controller to enforce the Unclaimed Property Law against banks who were retaining accounts that should have been turned over to the State. Because of the success of the taxpayers' lawsuit, a common fund was created in favor of some depositors and the State of California. *Id.* When the taxpayers' attorneys sought recovery of their attorney's fees from the judgment under the common fund doctrine, the Controller opposed the request. The Court of Appeal affirmed the trial court's fee award to the taxpayers' counsel under the common fund doctrine stating:

> "Those benefiting from the recovery of the fund, in this case some depositors and eventually the People of the State of California, must bear their share of the cost of litigation. Fees for taxpayers' attorneys will be deducted from the judgment, and each claimant's share reduced proportionately. To the extent the judgment relies upon section 1021.5 for recovery of attorney fees, it must be modified to confine the award of fees to the common fund theory." *Id*. at p. 91.

In this case, the PAGA Settlement creates a common fund for the benefit of the employees and the State of California. Thus, these beneficiaries must bear their share of the costs and attorneys' fees, which fees and costs must be deducted from the settlement amount under the common fund theory. *Id*. Moreover, such fees are deducted as a percentage of the settlement amount. *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478-482; *Six (6) Mexican Workers v. Arizona Citrus Growers* (9^{th} Cir. 1990) 904 F.2d 1301, 1311; *Williams v. MGM-Pathe Communications Co.* (9^{th} Cir. 1997) 129 F.3d 1026, 1027; *Staton v. Boeing Co.*(9th Cir. 2003) 327 F.3d 938, 967.

The California Supreme Court upheld the use of the common fund theory of recovery for attorneys' fees in *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506. Under California law, the award of attorneys' fees in common fund wage and hour class action settlements is proper under the percentage method. (*See id*. at 503 ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created").) Under the percentage of the fund method, the Court's objective remains to "mimic the market" in fixing a reasonable fee. (*See Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d 361, 363 (J. Posner) ("When a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what the market will set.... The judge, in other words, is trying to mimic the market in legal services.").) *Laffitte*'s ruling is consistent with prior rulings recognizing that "when a number of persons are entitled in common to a specific fund, and an action brought by … Plaintiff for the benefit of all results in the creation or preservation of that fund, such … Plaintiff may be awarded attorneys' fees out of the fund." *Serrano III v. Priest* (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ["(A) lawyer who recovers a common fund . . . is entitled to reasonable attorneys' fees from the fund as a whole"]; *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375, 393-394 [discussing the acceptance of awarding attorneys' fees and expenses from a settlement where "litigation has conferred a substantial benefit on the members of an ascertainable class"]; see also *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26 ["(f)ee spreading occurs when a settlement or adjudication results in the establishment of a separate or so-called common fund for the benefit of the class."].)

Accordingly, the common fund doctrine allows a court to award attorneys' fees based upon a percentage of the total fund that is created for the satisfaction of beneficiaries' claims when the fund consists of a "certain or easily calculable sum of money." *Dunk v. Ford Motor, Co.* (1996) 48 Cal.App.4th 1794, 1809; *Jutkowitz v. Bourns, Inc.* (1981) 118 Cal.App.3d 102, 1,282.91 [application of the percentage of the fund recovery depended on "(t)he critical point" that "a fund was created from which attorneys' fees could be paid"]; A. Conte & H. Newberg, *Newberg on Class Actions*, § 14:6 (4th ed. 2002).

Based on the foregoing, awarding attorneys' fees of one-third of the Gross Settlement Amount is fair and warranted in light of the PAGA settlement that was reached on behalf of the State of California and Aggrieved Employees. Accordingly, awarding fees on this basis in this amount is reasonable and appropriate. (Hawkins Decl. ¶¶ 40-55.)

B. THE PERCENTAGE FEE OF THE GROSS SETTLEMENT AMOUNT IS FAIR AND REASONABLE

An award of fees from the Gross Settlement Amount under the common fund doctrine prevents unjust enrichment of those who benefit from the common fund created through the successful efforts of counsel and furthers the important goal of attracting competent counsel to handle representative actions enforcing minimum labor standards. *Laffitte*, 1 Cal.5th at 503. In affirming the use of the common fund doctrine in California, the California Supreme Court summarized the benefits of the percentage method of recovery stating: "The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation (citations)—convince us the percentage method is a valuable tool that should not be denied our trial courts." (*Id*.)

Among the factors considered in determining whether the requested fee is reasonable are: (1) the results achieved; (2) the risk of further litigation; (3) the skill required of PAGA Counsel and the quality of work performed by PAGA Counsel ; (4) the contingent nature of the fee and the financial burden carried by the Plaintiffs; and (5) awards made in similar cases. *Vizcaino v. Microsoft Corp*. (9th Cir. 2002) 290 F.3d 1043, 1048-50. All these factors support an award here of one-third of the common fund.

First, Plaintiff's Counsel achieved a superb PAGA settlement in a case that was heavily impacted by a related settlement which resulted in Plaintiff's Counsel pursuit of the Action based a small number of hotly contested issues. (Hawkins Decl. ¶¶ 9, 24-26, 54-55.)

Second, Plaintiff faced significant risks going forward with the litigation. As discussed above, Defendant raised a number of defenses and evidentiary hurdles. As such, Plaintiff faced risk in moving forward with this litigation, and, even if Plaintiff prevailed, it would have taken significant time to realize any recovery in this action.

Third, Plaintiff's Counsel are experienced representative action litigators having achieved large class and PAGA awards in the State of California (Hawkins Decl. ¶¶ 32-38.) This experience and expertise, combined with the high quality of work performed by Plaintiff's Counsel, resulted in the settlement achieved in this case.

Fourth, as discussed above and as set forth in the Declaration of James Hawkins, the request for attorneys' fees falls well within the norms accepted by state and federal courts in California in comparable wage and hour actions handled by Plaintiff's Counsel.

As such, a fee award of one-third of the Gross Settlement Amount is fair and reasonable.

C. A LODESTAR CROSS-CHECK CONFIRMS THE REASONABLENESS OF THE FEE AWARD

Despite recognized limitations of the lodestar method, California and federal courts often find it useful as a "cross-check" on the reasonableness of percentage-based attorneys' fee requests.[1] *Lealao*, *supra*, 82 Cal.App.4th at 46-47. Under this approach, the court calculates counsel's total lodestar by multiplying the hours reasonably expended by each attorney or legal staff member by their respective hourly rates. The resulting figure may then be adjusted using a multiplier based on factors such as the novelty or difficulty of the issues, the contingency risk, and the results achieved. (*See PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095–96; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Lealao*, supra, at 43.)

Here, Plaintiff's Counsel requests fees in the amount of $66,667.00, representing one-third of the Gross Settlement Amount. This fee is significantly less than Plaintiff's Counsel's actual lodestar of $174,073.00—approximately a .38 multiplier. The table below summarizes the lodestar calculation:

	Experience	**Hourly Rate**	**Total Hours**	**Lodestar**
James Hawkins	28 years	$1,050	58.7	$61,635.00
Christina Lucio	18 years	$900	69.3	$62,370.00
Mitchell Murray	13 years	$850	12.4	$10,540.00
Paul Brown	3 years	$450	72.2	$32,490.00
Paralegals		$255	27.6	$7,038.00
		TOTAL	240.2	$174,073.00

(Hawkins Decl. ¶ 42.)

The requested fee of $66,667.00 is fully supported by Plaintiff's Counsel's lodestar, which requires a fractional multiplier to reach the requested amount. The requested fee is thus reasonable and appropriate under both the percentage-of-recovery method and the lodestar cross-check.

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[1] In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and capable of manipulation. In addition, the lodestar creates inherent incentive to prolong the litigation until sufficient hours have been expended. Herr, David F., *Manual for Complex Litigation,* § 14.121 (1988); *see also In re Activision* (N.D. Cal 1989) 723 F.Supp 1373.

The hourly rates requested by Plaintiff's Counsel are consistent with rates approved by California courts for attorneys of similar skill, experience, and reputation in complex wage-and-hour matters. The starting point for determining a reasonable hourly rate is the prevailing market rate in the relevant legal community. (*See PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095; *Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 985.)

Given that Mr. Hawkins (28 years) requests $1050 per hour, Ms. Lucio requests $900 per hour (18 years), Mr. Murray requests $850 per hour (13 years), and Paul Brown requests $450 per hour (3 years), their rates fall squarely within this approved and prevailing range for experienced counsel handling complex representative employment matters in California. (Hawkins Decl. ¶¶ 51-52.) Thus, the hourly rates used in Plaintiff's lodestar calculation are well-supported by recent authority and further confirm that the requested attorneys' fees are fair, reasonable, and consistent with market standards.

D. THE REQUESTED LITIGATION COSTS ARE FAIR AND REASONABLE

Plaintiff's Counsel respectfully requests reimbursement of their actual out-of-pocket litigation expenses incurred in prosecuting this action. These costs were both reasonable and necessary to the effective representation of Plaintiff and the Aggrieved Employees. Courts routinely allow prevailing plaintiffs to recover such costs under the common fund doctrine, which applies equally to representative PAGA actions. (*See Serrano v. Priest* (1977) 20 Cal.3d 25, 35 [common fund doctrine permits recovery of fees and costs from the fund]; *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424 n.6 [litigation costs may be recovered for the same reasons supporting a fee award].)

Additionally, courts recognize that counsel is entitled to recover "those out-of-pocket expenses that would normally be charged to a fee-paying client." (*Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.) Such reimbursable expenses may include filing fees, mediation costs, court reporting, research, and related case administration expenses.

Here, the Settlement Agreement authorizes recovery of litigation costs of up to $14,000. (Settlement ¶ 14.) Plaintiff's Counsel will incur approximately $13,652.64 in the pursuit of Plaintiff's PAGA claims. (Hawkins Decl. ¶ 56.) Plaintiff's Counsel seeks reimbursement of $13,652.64 which reflects their actual and estimated costs through the anticipated hearing. (Hawkins Decl. ¶ 6, Ex. 3.) These costs are modest in relation to the size and complexity of the case and are uncontested by Defendant.

Because the requested costs are well-documented, reasonably incurred, and fall below the cap set by the Settlement, Plaintiff respectfully requests that the Court approve reimbursement in the amount of $13,652.64. The remaining balance of the Gross Settlement Amount will be directed to the PAGA Penalties Fund, benefiting the LWDA and Aggrieved Employees.

VII. SUBMISSION TO THE LWDA

As required by Labor Code § 2699(l)(2), Plaintiff has concurrently submitted the Settlement Agreement and this Motion for Approval to the California Labor and Workforce Development Agency. (Hawkins Decl. ¶ 60.) Proof of the electronic submission to the LWDA is attached as **Exhibit 2** to the Hawkins Declaration.

VIII. THE SETTLEMENT ADMINISTRATOR

Apex Class Action Administration ("Apex") has been selected to serve as the Settlement Administrator. Apex will be responsible for establishing a qualified settlement fund and issuing payments and appropriate tax forms to Aggrieved Employees, the LWDA, Plaintiff, and Plaintiff's Counsel. The Settlement Administration Costs will be paid from the Gross Settlement Amount. Based on the estimate that there are approximately 476 Aggrieved Employees, Settlement Administration Costs are estimated at $5,350. Any portion of the Settlement Administration Costs not awarded to Settlement Administrator will be added to the PAGA Penalties Fund.

For the foregoing reasons, Plaintiff respectfully requests (without opposition from Defendant) that the Court grant approval of the Parties' PAGA Settlement Agreement pursuant to Labor Code § 2699(l)(2). The Settlement is fair, adequate, and reasonable, and it advances the enforcement goals of the PAGA by providing meaningful relief to the State of California and the Aggrieved Employees.

Dated: April 17, 2026

JAMES HAWKINS, APLC

By: ______________________________

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Christina Lucio, Esq.
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