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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

CORINA POTTER, individually, on  
behalf of Aggrieved Employees, and as  
the State of California's designated  
proxy under the Private Attorneys  
General Act (PAGA) and on behalf of  
others,

Plaintiffs,

vs.

DOLLAR TREE STORES, INC., a  
Virginia corporation; and DOES 1  
through 50 inclusive

Defendants.

Case No.: 37-2023-00047808-CU-OE-CTL

**PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES ISO  
PLAINTIFFS' UNOPPOSED  
MOTION TO APPROVE PAGA  
SETTLEMENT**

Hearing Date: Aug. 30, 2024

Hearing Time: 9:30 a.m.

Judge: Hon. Marcella O.  
McLaughlin

Dept.: C-72

Comp. Filed: Nov. 2, 2023

Trial Date: TBA

**[Rutledge Declaration, Not. of Mot.,  
and [Proposed] Order filed  
concurrently herewith]**

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION.**

Plaintiffs very respectfully request this Honorable Court to approve the Private Attorneys General Act (PAGA) Settlement as set forth in the proposed order filed concurrently with this Motion pursuant to Labor Code § 2699(l). For the reasons explained below, the PAGA Settlement is fair and reasonable.

### **II. STANDARD OF REVIEW.**

Labor Code § 2699(l), provides, “[t]he superior court shall review and approve any settlement of any civil 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.”

Court review of PAGA-only settlements is significantly different from the review of class action settlements, the latter of which employs a procedural two-step process (preliminary and final approval). *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Instead, the courts normally focus on whether the PAGA settlement is fair and reasonable and consistent with the underlying remedial purpose of the PAGA. *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 75 (2021).

### **III. SUMMARY OF THE SETTLEMENT.**

Without admitting wrongdoing and pursuant to the PAGA Settlement Agreement, Defendant Dollar Tree Stores, Inc. (“Dollar Tree” or “Defendant”) agrees to pay the Gross Settlement Amount of \$600,000 in exchange for the full and final settlement and release of Plaintiffs’ Labor Code claims via the PAGA for all nonexempt employees who worked during the timeframe from April 12, 2022 to the Court’s approval of the settlement. From the gross amount, less Plaintiffs’ Counsel’s fees and costs, Plaintiff Potter’s incentive award, and Settlement Administrator’s costs, about 46,554 current and former Aggrieved Employees will receive about \$2 apiece, and the State will receive \$231,638. There is no reversion of settlement proceeds, and uncashed checks after 180 days are payable to the California State Controller’s Office-Unclaimed Property Fund, to be held in the name of the

1 Aggrieved Employee. (Rutledge Decl., **Ex. 1**, page 1:16, § 6(c)(1)-(4).)

2 **IV. PARTIES TO THE SETTLEMENT AGREEMENT.**

3 **A. The Named Plaintiff.**

4 From about June 6, 2023 to the present, Defendant employed the named Plaintiff  
5 as a cashier, a nonexempt nonunion employee in one of Defendant's many stores in  
6 California. She alleges she is an aggrieved employee within the meaning of Labor  
7 Code § 2699(c). (ROA #1; Comp., ¶¶ 16, 17.)

8 **B. The Defendant.**

9 Defendant Dollar Tree is a household name that is in the discount retail store  
10 business. Defendant runs thousands of retail stores in the U.S. and California.

11 **C. The Aggrieved Employees.**

12 The Aggrieved Employees (the Settlement Agreement refers to as "Settlement  
13 Group Members") "means all current and former hourly, nonexempt store employees  
14 of Dollar Tree in California who were paid wages at any time during the Covered  
15 Period." This group has about 46,544 people as of February 23, 2024 (the date of the  
16 data pull for mediation). The Covered Period is defined as April 12, 2022 to the date  
17 the Court approves this Settlement. Collectively, for purposes of this Motion, the  
18 named Plaintiff and Aggrieved Employees are referred to as "Plaintiffs." (Rutledge  
19 Decl., **Ex. 1**, § 1(c) and (n).)

20 **V. FACTS AND PROCEDURAL HISTORY.**

21 In July of 2023, Plaintiff hired counsel in connection with Plaintiffs' Counsel's  
22 investigation of claims asserted against Defendant's sister company, Family Dollar,  
23 Inc. Plaintiffs' Counsel sent several letters to Defendant requesting to obtain access to  
24 Plaintiff's payroll records and employee personnel files. Upon review of Plaintiff's  
25 payroll records and employee personnel file, Plaintiff and her counsel believed they  
26 had enough evidence to show that the Plaintiff and his fellow coworkers (Aggrieved  
27 Employees) are victims of, among other things, Labor Code violations committed by  
28 the Defendant.

1 On August 21, 2023, Plaintiff Potter, on behalf of herself and Aggrieved  
2 Employees (collectively, the “Plaintiffs”), via counsel, filed a notice with the LWDA.  
3 On November 2, 2023, Plaintiffs commenced this PAGA action, which seeks the  
4 recovery of PAGA penalties for the following claims: (1) Failure to Pay State  
5 Minimum/Regular Wages; (2) Failure to Pay State Overtime Wages; (3) Failure to  
6 Timely Pay Wages; (4) Meal and Rest Break Labor Code Violations; (5) Inaccurate  
7 Wage Statements; (6) Failure to Maintain Payroll Records; (7) Failure to Reimburse  
8 Business Expenses in Violation of California Labor Code § 2802; (8) Inadequate  
9 Seating; and (9) Miscellaneous claims via the PAGA. (ROA #1.)

10 On October 13, 2023, Plaintiff filed an individual arbitration demand with  
11 JAMS. This case asserted Plaintiff’s individual Labor Code and employment related  
12 claims. (Rutledge Decl., ¶ 29.)

13 On October 31, 2023, Plaintiffs filed a first amended PAGA filing with the  
14 LWDA. This filing added more facts in support of Plaintiffs’ claims. (Rutledge Decl.,  
15 ¶ 30.)

16 On December 7, 2023, Defendant filed an Answer. (ROA #9.) On December 21,  
17 2023, Defendant filed a Motion to Stay and Compel arbitration. (ROA #s 12-14.)

18 For more than seven months, the parties spent considerable time trying to bring  
19 this case to a conclusion. Shortly after the commencement of this litigation, Plaintiffs  
20 served Defendant with written discovery and warned Defendant they would move  
21 quickly in bringing this case to justice. This relatively short but heated exchange of  
22 communication between the parties involving Plaintiffs’ search for evidence, and  
23 Defendant’s objections to all pending discovery and disputes relating to the same, led  
24 to the bilateral realization that settlement discussions behooved the parties. (Rutledge  
25 Decl., ¶¶ 34, 35.)

26 In the winter of 2024, the parties began series of detailed discussions via  
27 counsel during which time counsel engaged in open and frank discussions regarding  
28 the merits of this case. The parties subsequently agreed to put an informal hold on

1 litigation to attend private mediation. (Rutledge Decl., ¶¶ 36, 37.)

2 Through the foregoing process, the parties conducted a significant investigation  
3 of the facts and law. Such discovery and investigation includes: (1) the Plaintiffs'  
4 analysis of randomly selected Aggrieved Employee payroll data Defendant provided,  
5 including size and composition of the Aggrieved Employees group, applicable  
6 employment policies of the Defendant, and payroll and time records for a significant  
7 number of current and former employees statewide, involving a large number of pages  
8 of policies and documents, electronic wage statements, and other records, (2) analysis  
9 of legal positions taken by the Defendant, (3) interviews of material witnesses,  
10 (4) calculation and analysis of potential damages and penalties based on the data  
11 produced by Defendant, and (5) research and analysis of applicable law with respect to  
12 the claims alleged and potential defenses thereto. Plaintiffs' Counsel devoted a  
13 substantial amount of his practice to evaluating the data, interviewing witnesses, and  
14 preparing for the mediation and, if unsuccessful, getting ready for trial and/or motion  
15 practice. (Rutledge Decl., ¶¶ 40-42.)

16 On March 28, 2024, Plaintiffs filed a second amended PAGA filing with the  
17 LWDA. This filing added more facts in support of Plaintiffs' existing claims and more  
18 claims and theories of liability. (Rutledge Decl., ¶ 38.)

19 On April 5, 2024, the parties appeared before the Court for a Case Management  
20 Conference (CMC). During the CMC, the parties informed the Court they intended to  
21 attend private mediation on April 8, 2024. (ROA #28.)

22 On April 8, 2024, the parties via zoom attended a full day mediation before  
23 David Rotman, Esq., a reputable private mediator. With the efforts of all parties and  
24 their counsel, and especially with the invaluable assistance from the highly capable  
25 mediator, the parties signed an MOU, and later signed a more detailed and lengthy  
26 Settlement Agreement that took months for the parties to finalize. (Rutledge Decl., ¶¶  
27 43, 44.)

28 On April 30, 2024, the case was reassigned from department 69 to this

1 department. (ROA #30.) Concurrent with these papers, after the 65-day waiting period  
2 expired on the claims raised in the PAGA filing of March 28, 2024, Plaintiffs via  
3 stipulation is seeking to file a First Amended Complaint. This will be the operative  
4 Complaint.

5 On August 5, 2024, before filing these papers, Plaintiffs' Counsel filed the  
6 Settlement Agreement and these moving papers with the LWDA. Plaintiffs have  
7 complied with all required administrative filings with the LWDA to process this  
8 settlement. (Rutledge Decl., ¶¶ 46, 47, Ex. 2.)

9 **VI. REASONS FOR SETTLEMENT.**

10 The declaration submitted by counsel explains the reasons in support of this  
11 settlement in detail. The monetary relief obtained from this Settlement Agreement is  
12 very good compared to the possible outcome if this case went to trial. (Rutledge Decl.,  
13 ¶¶ 48-93.)

14 In summary, Plaintiffs allege the evidence demonstrates that Defendant  
15 committed a wide range of Labor Code violations, most of which are highly technical,  
16 affected an extremely small number of Aggrieved Employees, and occurred over a  
17 relatively short period of time. Most of Plaintiffs' claims also concern difficult to prove  
18 "off-the-clock" claims highly dependent on often unreliable anecdotal evidence.  
19 Further complicating the case is the sheer number of Aggrieved Employees who  
20 worked in literally hundreds of retail stores throughout California, each of which was  
21 managed differently. Manageability of this case, even with the benefit of the California  
22 Supreme Court's recent case in *Estrada v. Royalty Carpet Mills*, would have been a  
23 major challenge. The evidence also demonstrates that Defendant used a robust state-of-  
24 the-art punch guarding timekeeping software system designed to ensure duty free meal  
25 and rest breaks. This software caused Defendant to automatically pay premiums for  
26 missed meal and rest breaks and/or to ask employees to acknowledge their own  
27 decisions around meal and rest breaks multiple times during their shifts resulting in  
28 few, if any, meal or rest break violations. Defendant is highly unlikely to repeat the

1 misconduct alleged in this PAGA enforcement action on a grand scale and putting an  
2 end to this case now is fair and reasonable. (Rutledge Decl., ¶¶ 48-93.)

3 Defendant asserts that Plaintiffs cannot establish any PAGA violation or  
4 exposure. Defendant contends that its applicable wage and hour policies comply with  
5 California law. Defendant argues that claims of the sort asserted by Plaintiffs tend to  
6 require individualized proof sets and are not the subject of “common proof.” *See*  
7 *e.g., Mateo v. V.F. Corp.*, No. C 08-05313 CW, 2009 WL 3561539, at \*6 (N.D.  
8 Cal. Oct. 27, 2009) (denying collective treatment of off-the-clock (OTC) and  
9 overtime claims as involving individualized proof). Defendant also contends that its  
10 state-of-the-art punch guarding timekeeping system means that Plaintiffs could not  
11 establish any meal and rest break violations under the California case law in *Donohue*  
12 *v. AMN Servs., LLC*, 11 Cal. 5th 58 (2021) (acknowledging how an employer’s drop  
13 down menu for employees to indicate reasons why they may have missed or not  
14 recorded a meal period could rebut the presumption of a meal period violation).

15 Defendant stated that it was prepared to litigate Plaintiff’s individual claims  
16 asserted through arbitration. Defendant represents that it has litigated numerous  
17 California cases to verdict, including prevailing in a California wage and hour class  
18 action. *See e.g., Guillen v. Dollar Tree Stores, Inc.*, U.S.D.C. C.D. Cal., Case No. CV  
19 15-3813-MWF (judgment entered November 15, 2017). If Defendant prevailed in  
20 defending against Plaintiffs’ claims, the State and Plaintiffs would receive no recovery.

21 A gross payout of \$600,000 to the Aggrieved Employees results in a meaningful  
22 payout to the State in the sum of \$231,638 and about \$2 per Aggrieved Employee  
23 depending on how long they worked for the Defendant. In Plaintiffs’ Counsel’s humble  
24 opinion, this settlement is “fair, adequate, and reasonable” and furthers the PAGA’s  
25 remedial purpose. (Rutledge Decl., ¶ 50); *see also Moniz, supra*, 72 Cal. App. 5th 56.

26 **VII. PLAN OF ALLOCATION.**

27 **A. The Gross Settlement Amount.**

28 From the Gross Settlement Amount, the Defendant via the Settlement

Administrator shall make the following distributions:

|                                             |                  |
|---------------------------------------------|------------------|
| <b>Gross Settlement Amount:</b>             | <b>\$600,000</b> |
| Plaintiffs' Counsel Fees & Costs (minus):   | (\$200,000)      |
| Plaintiffs' Counsel Costs (minus):          | (\$13,690)       |
| Plaintiff Potter's incentive award (minus): | (\$7,500)        |
| Est. Settlement Admin. Costs (minus):       | (\$69,959)       |
| Payment to the LWDA (minus):                | (\$231,638)      |
| Est. Net Amount to Aggrieved Employees:     | <b>\$77,213</b>  |

(Rutledge Decl., Ex. 1, ¶¶ 1.17, 4.1.)

**B. Administration of the Gross Settlement Amount.**

Within 30 days from the Effective Date, Defendant will furnish the settlement funds to the Settlement Administrator (i.e., Phoenix Settlement Administrators Inc.) per the terms of the PAGA Settlement Agreement. If any Settlement checks are returned, the Settlement Administrator will use reasonable efforts to locate the Aggrieved Employee and re-mail the Settlement Payment to the applicable Aggrieved Employee. (Rutledge Decl., Ex. 1, §§ 1(m) and 6.)

No funds will revert to Defendant from the Gross Settlement Amount.

Remaining funds from any uncashed settlement checks after 180-day expiration period shall be payable to the California State Controller's Office-Unclaimed Property Fund, to be held in the name of the Aggrieved Employee. (Rutledge Decl., Ex. 1, § 6(c)(4).)

**C. Settlement Payments to Aggrieved Employees.**

With the aim to fairly distribute the Settlement Payments to Aggrieved Employees, Plaintiffs' Counsel and Defense Counsel arrived at a formula designed to fairly determine each Aggrieved Employee's *pro rata* payment from the Distributable Amount, as allowed by PAGA, based on their length of service. The lump sum Net Settlement Payment to each member of the PAGA Group will be determined by dividing twenty-five percent (25%) of the Net Settlement Amount by the total number of pay periods worked by all members of the PAGA Group during the Covered Period and then multiplying the pay period amount by the number of pay periods worked by the Settlement Group Member. The Net Settlement Payments to the PAGA members

1 shall come out of the qualified settlement fund. (Rutledge Decl., **Ex. 1**, § 6(c)(2).)

2 All payments to the Settlement Group Members shall be characterized as civil  
3 penalties payable pursuant to the PAGA. The Settlement Administrator will report  
4 these payments to the appropriate taxing authorities and issue recipients an IRS 1099  
5 Form. (Rutledge Decl., **Ex. 1**, § 6(c)(3).)

6 **D. Plaintiffs' Counsel's Requested Fees/Costs are Reasonable.**

7 An award of reasonable attorney's fees and costs to a prevailing plaintiff in a  
8 PAGA action is authorized by statute. Labor Code § 2699(g)(1); Code of Civil  
9 Procedure § 1021.5. Plaintiffs' request here is unopposed and expressly permitted per  
10 the Settlement.

11 Here, Plaintiffs' Counsel seeks, and Defendant does not oppose, an award of  
12 \$200,000 in fees and \$13,690 in costs. The fees requested by Plaintiffs' Counsel is one  
13 third of the settlement and is well below Plaintiffs' Counsel's actual lodestar. *Ketchum*  
14 *v. Moses*, 24 Cal. 4th 1122, 49 (2001) (lodestar approach to fees is a reasonable method  
15 in assessing the reasonableness of fees); *see also Laffitte v. Robert Half International*  
16 *Inc.*, 1 Cal. 5th 480 (2016).

17 The requested fees and costs are fair compensation for undertaking complex,  
18 risky, expensive, and time-consuming litigation solely on a contingency basis. This is  
19 especially true because case law (*Ketchum/Laffitte, supra*) supports the recovery of the  
20 requested fee amount, is below Plaintiffs' Counsel's actual lodestar, is reasonable  
21 considering the PAGA action Plaintiffs' Counsel single-handedly prosecuted and the  
22 vigorous defense the Defendant exhibited throughout most of this litigation. (Rutledge  
23 Decl., ¶¶ 96-119.)

24 The work performed by Plaintiffs' Counsel is well documented in his  
25 declaration filed concurrently herewith. (Rutledge Decl., **Ex. 3** [Timesheet].) This time  
26 is summarized as follows:

| Name of Attorney    | YEAR OF BAR<br>ADMISSION | RATE    | HOURS  | LODESTAR         |
|---------------------|--------------------------|---------|--------|------------------|
| Thomas D. Rutledge, | 1995                     | \$1,057 | 303.60 | <b>\$320,905</b> |

|         |  |  |  |  |
|---------|--|--|--|--|
| Partner |  |  |  |  |
|---------|--|--|--|--|

(Rutledge Decl., ¶ 117.)

Plaintiffs' Counsel has proudly served the public as an attorney for 29 years. (Rutledge Decl., ¶¶ 3-24.) Plaintiffs' Counsel's requested fees are consistent with noted sources, such as the 2023-2024 Laffey Matrix. (*Id.*, **Ex. 4.**) Many courts have previously approved Mr. Rutledge's hourly rate, including this Court's predecessor. (*Id.*, ¶¶ 110, 111.)

The Settlement Agreement also permits Plaintiffs' Counsel to recover actual costs. Plaintiffs' Counsel incurred no less than \$13,690 in actual costs. (Rutledge Decl., **Ex. 5** ¶¶ 120-123.)

**E. The Named Plaintiffs' Incentive Award is Reasonable.**

As mentioned in the Settlement Agreement, the named Plaintiff will receive \$7,500 as an incentive award for her service and courage in filing this case. This is reasonable consideration for bravely stepping forward as a PAGA representative. (Rutledge Decl., Ex. 1 ¶ 2, ¶¶ 131-142.)

**VIII. CONCLUSION.**

For the foregoing reasons, the parties very respectfully request this Court to approve the PAGA Settlement and sign the [Proposed] Order filed herewith.

Dated: August 5, 2024

Law Office of Thomas D. Rutledge

By: Thomas D. Rutledge  
/s/Thomas D. Rutledge, Esq.  
Attorneys for the Plaintiffs

**PROOF OF SERVICE**

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, THOMAS D. RUTLEDGE, the undersigned, am employed in the County of San Diego, State of California; I am over the age of 18 and not a party to the within action; my business address is 16956 Via de Santa Fe, Suite 1847, Rancho Santa Fe, California 92091-4606.

On August 5, 2024, I served the foregoing document(s) described as:

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES ISO  
PLAINTIFFS' UNOPPOSED MOTION TO APPROVE PAGA SETTLEMENT**

on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows: **See Attached List.**

☐ (BY MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence was deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in San Diego, California.

☒ (BY E-MAIL) I am readily familiar with the business practice for collection and processing of correspondence for emailing. This correspondence was sent via email to the recipients' business email addresses identified above.

☐ (BY OVERNIGHT DELIVERY SERVICE) I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

Executed August 5, 2024, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

THOMAS D. RUTLEDGE  
/s/THOMAS D. RUTLEDGE

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