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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF BUTTE

MARK HARDIMAN, as an individual and on behalf of all others similarly situated, Plaintiff, vs. JOY SIGNAL TECHNOLOGY LLC, an Ohio limited liability company; and DOES 1 through 50, inclusive, Defendants.	Case No. 23CV03426 **PLAINTIFFS' NOTICE OF MOTION AND MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** Date: February 25, 2026 Time: 9:00 a.m. Dept.: 1 Action Filed: December 8, 2023 Trial Date: None Set

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 11, 2026, at 9:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Tamara L. Mosbarger, judge presiding, in Department 1 of the above referenced Court, located at 1775 Concord Avenue, Chico, California 95928, Plaintiffs Mark Hardiman and Sara Shaughnessy (together, "Plaintiffs") will seek an Order approving the concurrently filed Settlement Agreement and Release of PAGA Claims ("Settlement Agreement"), pursuant to the procedures set forth in Labor Code § 2698, *et seq*.

This motion will be based on this notice of motion, the attached memorandum of points and authorities, the accompanying declarations of Larry W. Lee, Max W. Gavron, Manny Starr, Brooke W. Waldrop, Plaintiff Mark Hardiman, and Plaintiff Sara Shaughnessy, upon the oral arguments of counsel (should there be any), and on the complete records and file herein.

DATED: January 26, 2026

DIVERSITY LAW GROUP, P.C.

By: ______________________________

Larry W. Lee
Max W. Gavron
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Attorneys for Plaintiff Mark Hardiman

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I. INTRODUCTION

Pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code § 2698, *et seq.*, Plaintiffs Mark Hardiman and Sara Shaughnessy (together, "Plaintiffs") hereby move the Court for an order approving the PAGA settlement as set forth in the Settlement Agreement and Release of PAGA Claims ("Settlement Agreement").[1]

The operative Complaint in this case alleges that Defendants Joy Signal Technology LLC, Meritec, and Ohio Associated Enterprises, LLC (collectively, "Defendants") (together with Plaintiffs, the "Parties") violated the PAGA by (i) failing to pay minimum, regular, and overtime wages for all hours worked, in violation of Labor Code §§ 201-204, 510, 558, 558(a)(1)(2), 1182.12, 1194, 1197, 1197.1, and 1198; (ii) failing to provide accurate itemized wage statements, in violation of Labor Code § 226(a); (iii) failing to pay all wages due and owing upon separation of employment in violation of Labor Code §§ 201, 202, 203; (iv) failing to properly record and provide legally required meal and rest periods in violation of Labor Code §§ 226.7 and 512; (v) failing to pay sick pay wages in violation of Labor Code § 246; (vi) failing to reimburse employees for required expenses in violation of Labor Code § 2802; and (vii) failing to provide suitable seating in violation of California Code of Regulations, Title 8, Section 11070(14). With respect to the afore-mentioned PAGA claims, Plaintiffs seek to recover civil penalties against Defendants on behalf of the State of California and other similarly aggrieved employees.

As will be explained in further detail below, based on the California Supreme Court's opinion in *Arias v. Superior Court* (2009) 46 Cal. 4th 969 and *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, Plaintiffs can seek appropriate civil penalties as called for under the PAGA, on behalf of the State of California and other similarly situated aggrieved employees, without seeking class certification or meeting the requirements of class certification (*i.e.*, numerosity, typicality, commonality and adequacy). As such, while the PAGA settlement reached herein is on behalf of the State of California and other aggrieved employees, the usual two-step preliminary and final approval process is not required. Rather, as called for under Labor

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[1] A true and correct copy of the Settlement Agreement is attached to the Declaration of Max W. Gavron ("Gavron Decl.") as **Exhibit A**. Unless otherwise indicated, capitalized terms used herein have the same meaning as defined in the Settlement Agreement.

Code § 2699(l), all that is required is an approval by this Court of the settlement of the PAGA claim by the Parties.

The Parties have reached such an agreement, and thus now seek this Court's approval of the settlement which provides for the payment of civil penalties under the PAGA. As demonstrated below, the proposed settlement warrants the Court's approval. Significantly, this settlement was reached after extensive investigation and exchange of formal and informal discovery, including data pertaining to the aggrieved employees, motion practice, a sample of time and payroll records of the aggrieved employees, and documents pertaining to Defendants' relevant payroll policies. The Parties also participated in a full-day mediation with Retired Judge Daniel Buckley, and the Parties were ultimately able to reach this settlement.

Pursuant to the terms of the Parties' proposed Settlement Agreement, Defendant will pay the total amount of $500,000.00 (the "Gross Settlement Amount"). This amount encompasses a payment of attorneys' fees to Plaintiffs' counsel ("PAGA Counsel") in the amount of $175,000.00, PAGA Counsel's litigation costs of up to $26,500.00,[2] a service award to each Plaintiff in the amount of $10,000.00, totaling $20,000, and settlement administration costs of up to $5,500.00. Assuming the Court grants the foregoing amounts in full, the net amount ("PAGA Payment") totals approximately $273,000.00. Pursuant to the PAGA, 75%[3] of the PAGA Payment, or $204,750.00, will be paid to the California Labor & Workforce Development Agency ("LWDA") as civil penalties ("LWDA Payment"), and 25% of the PAGA Payment, or $68,250.00, will be paid to the aggrieved employees. The aggrieved employees include "all individuals who are or previously were employed by Defendants Joy Signal Technology, LLC, Meritec, and Ohio Associated Enterprises, LLC in California and classified as a non-exempt employee at any time during the PAGA Period" ("Aggrieved Employees"). Settlement Agreement ¶ 3.

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[2] PAGA Counsel's actual litigation costs total $24,641.41, which is less than the amount allotted in the Settlement Agreement. *See* Gavron Decl. ¶ 48; Ex. C (Cost Report); Waldrop Decl. ¶ 11; Ex. 3 (Cost Report). The difference will be included in the PAGA Payment to be distributed to the LWDA and Aggrieved Employees.

[3] While the PAGA was recently amended to revise this distribution allocation between the LWDA and aggrieved employees, this case is subject to the prior version of the statute because of when the PAGA Notices were filed, thus supporting a distribution of 75% to the LWDA and 25% to the Aggrieved Employees.

The proposed settlement also has a limited and tailored release for Aggrieved Employees that does not release any of their underlying wage claims, which Defendants contend are subject to arbitration agreements with class waivers. Specifically, the Aggrieved Employees are releasing "all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaints [ ] and the PAGA Notices submitted by Plaintiffs to the LWDA [ ], which occurred during the PAGA Period, and expressly excluding all other claims, including Plaintiffs' Individual Settlements which are subject to a separate general release including but not limited to claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, and California class claims, and PAGA claims outside of the PAGA period." Settlement Agreement ¶ 25.

In light of the above, the proposed settlement constitutes an adequate, fair, and reasonable settlement on behalf of the LWDA and Aggrieved Employees and accomplishes the goals of PAGA. Thus, the Court should approve the settlement.

II. PROCEDURAL HISTORY

A. Summary of the Litigation and Settlement

1. Plaintiffs' Claims and Allegations

Plaintiffs assert claims against Defendants under the PAGA based on Defendants' failure to pay minimum, regular, and overtime wages for all hours worked; provide accurate itemized wage statements; pay all wages due and owing upon separation of employment; provide proper meal and rest periods or pay premiums in lieu thereof; pay sick pay wages at the regular rate of pay; reimburse required expenses; and provide suitable seating. Gavron Decl. ¶ 2.

With respect to Plaintiffs' claims under Labor Code §§ 201-204, 510, 558, 558(a)(1)(2), 1182.12, 1194, 1197, 1197.1, and 1198, Plaintiffs allege that employees were not paid wages for all work performed, including time spent undergoing mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to clocking in for work, as well as due to Defendants' rounding policies to the benefit of the employer and failure to incorporate non-discretionary incentive pay into the regular rate of pay. *Id*. ¶ 3. As a result, Plaintiffs alleged that employees are owed additional wages. Said wages were not timely paid to employees, or upon separation of employment, and as such waiting time penalties are owed. *Id*. ¶3

Plaintiffs also allege that Defendants failed to pay overtime wages, meal and rest break premiums, and sick pay at the regular rate of pay, incorporating all non-discretionary incentive pay into the calculation of the hourly rate. *Id*. ¶ 4.

With respect to Plaintiffs' claims under Labor Code §§ 226.7 and 512, Plaintiffs allege that due to demanding work schedules employees were unable to take timely, off-duty meal and rest breaks. Said breaks were provided late, interrupted, or missed. Employees were also prohibited from leaving the work premises during rest breaks. *Id*. ¶ 5. Moreover, as a result of Defendants' rounding policies, employee time was often recorded in such a manner to avoid paying penalties to employees. *Id*.

With respect to Plaintiffs' claims under Labor Code § 2802, Plaintiffs allege that employees were required to use their personal cell phones for work purposes but were not reimbursed for such costs. *Id*. ¶ 6.

As a result of the above, Plaintiffs allege that the wage statements provided failed to display accurate gross and net wages earned, the number of hours worked at each hourly rate, and total hours worked during the pay period. *Id*. ¶ 7.

2. Procedural History of the Key Pleadings

On or about September 6, 2023, Plaintiff Sara Shaughnessy submitted written notice under Labor Code § 2699.3 to the LWDA and Defendants. As set forth in the notice, Plaintiff Shaughnessy alleged that Defendants violated California Labor Code §§ 201, 202, 203, 204 *et seq*., 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, and 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s), based on the theories alleged above. Gavron Decl. ¶ 8.

On or about September 20, 2023, Plaintiff Mark Hardiman submitted written notice under Labor Code § 2699.3 to the LWDA and Defendants (together with the September 6, 2023 notice, the "PAGA Notices"). As set forth in the notice, Plaintiff Hardiman alleged that Defendants violated California Labor Code §§ 201-204, 226, 510, 558, 1194, 1197, 1197.1, and 1400-1403, based on the theories alleged above. Gavron Decl. ¶ 9.

On December 8, 2023, Plaintiff Hardiman filed a complaint in the Superior Court of California, County of Butte, alleging a single cause of action for Labor Code § 2698, *et seq*., predicated on underlying violations of Labor Code §§ 201-204, 226(a), 510, 558, 1194, 1197, 1197.1, and 1400-1403 (the "Action"). *Id*. ¶ 10. Defendant moved to strike certain allegations regarding Plaintiff Hardiman's claims under the PAGA premised on violation of California's WARN Act (Labor Code §§ 1400-1403). *Id.* ¶ 10. Following briefing, the Court ultimately struck those claims in Plaintiff Hardiman's complaint, and, on June 3, 2024, Plaintiff Hardiman amended his complaint to remove the Labor Code §§ 1400-1403 allegations. *Id*. ¶ 10.

On December 26, 2023, Plaintiff Shaughnessy filed a complaint in the Superior Court of California, County of Butte, alleging a single cause of action for Labor Code § 2698, *et seq*., predicated on underlying violations of Labor Code §§ 201, 202, 203, 204 *et seq*., 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, and 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s) (the "*Shaughnessy* Action"). *Id*. ¶ 11.

3. The Parties Agree to Mediation

In about February 2025, the Parties agreed to participate in mediation with the Honorable Daniel Buckley (Ret.). Gavron Decl. ¶ 12. The Parties also agreed to conduct informal discovery to facilitate effective mediation. *Id.* As part of informal discovery, Defendants provided Plaintiffs with the number of aggrieved employees, the number of pay periods at issue, sample time and payroll records, employee handbooks, and relevant payroll policies. *Id*. The data provided by Defendants allowed Plaintiffs to analyze liability and calculate Defendants' potential exposure. *Id*.

The Parties participated in mediation with Judge Buckley on August 4, 2025. *Id*. ¶ 13. During the mediation, the Parties spoke at length about the strengths and weaknesses of each side's claims and defenses and the scope of Defendants' liability. After engaging in extensive document and information exchange, the Parties were able to reach the current settlement. *Id*.

As a condition of settlement, the Parties agreed to filing a Second Amended Representative Action Complaint ("SAC") in the Action to consolidate the parties and claims of the Action and *Shaughnessy* Action. *Id*. ¶ 14. The SAC was filed on December 22, 2025, and is the operative complaint. *Id*.

III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT

The material terms of the settlement are described below and set forth in detail in the Settlement Agreement.

A. The Aggrieved Employees

The aggrieved employees affected by this settlement include "all individuals who are or previously were employed by Defendants Joy Signal Technology, LLC, Meritec, and Ohio Associated Enterprises, LLC in California and classified as a non-exempt employee at any time during the PAGA Period." Settlement Agreement ¶ 3. The PAGA Period in this matter is the period of September 6, 2022, through approval of the settlement or the Alternative End Date, whichever is sooner. *Id*. ¶ 21. "Alternative End Date" means the date that the PAGA Period will close if Defendants exercise their right to limit the PAGA Period pursuant to the Escalator Clause in the Settlement Agreement. Based upon Defendants' records, Defendants represent that there are approximately 342 Aggrieved Employees and approximately 6,424 pay periods at issue during the period of September 6, 2022, through August 4, 2025. Gavron Decl. ¶ 18; Settlement Agreement ¶ 40. Should the number of pay periods worked by Aggrieved Employees increase beyond ten percent (10%) during the period of September 6, 2022, through the date of approval of the settlement, then Defendants may elect to either: (a) increase the Gross Settlement Amount on a pro rata basis equal to the percentage increase in the number of pay periods worked by the Aggrieved Employees above 10% (e.g., if the number of pay periods increases by 11%, then the Gross Settlement Amount increases by 1%); or (b) shorten the PAGA Period so that the PAGA Period ends on the last day of the last pay period before the pay periods reach 11%, or 7,131 pay periods. Agreement ¶ 44. As of the date of this filing, Defendant has confirmed that the number of employees and/or pay periods has not changed and therefore the PAGA Period will close as of the date the court approves the settlement. Gavron Decl. ¶ 19.

B. Gross Settlement Amount and Allocation

The Settlement Agreement requires Defendants to pay the amount of Five Hundred Thousand Dollars ($500,000.00) (the "Gross Settlement Amount") for the resolution of this Action. Settlement Agreement ¶ 15. The Gross Settlement Amount includes the civil penalties pursuant to the PAGA to be paid to the LWDA and Aggrieved Employees, Plaintiffs' Service Awards, PAGA Counsel's fees and costs, and settlement administration costs. *Id*.

The balance of the Gross Settlement Amount remaining after deduction of the court-approved Plaintiffs' service awards, PAGA Counsel's fees and costs, and settlement administration costs (the "PAGA Payment"), will be available for distribution to the LWDA and Aggrieved Employees. *Id*. ¶¶ 42, 45-48. Pursuant to the PAGA, seventy-five percent (75%) of the PAGA Payment, or approximately $204,750.00, will be paid to the LWDA for PAGA penalties. *Id*. ¶ 48; Gavron Decl. ¶ 21. The remaining twenty-five percent (25%), or approximately $68,250.00, will be distributed to Aggrieved Employees as Individual PAGA Payments, based on the number of pay periods each individual Aggrieved Employee worked as an exempt employee during the PAGA Period. Settlement Agreement ¶¶ 11, 48, 49.a.

Based on the number of Aggrieved Employees, employees will be entitled to recover, on average, approximately **$199.56** each. Gavron Decl. ¶ 22. The amount each particular Aggrieved Employee will be entitled to recover may be greater or lower than this average depending on the number of pay periods he or she worked during the PAGA Period. *Id*. This is fair, as it directly allocates greater penalties to individual Aggrieved Employees who were employed longer and thus allegedly suffered greater harm. *Id*.

With respect to PAGA Counsel's attorneys' fees and costs, Defendants do not object to PAGA Counsel's request for attorneys' fees of approximately thirty-five percent (35%) of the Gross Settlement Amount, *i.e.*, One Hundred Seventy-Five Thousand Dollars ($175,000.00). Settlement Agreement ¶ 46. Although the Settlement Agreement provides for a payment of up to $26,500.00 in actual litigation costs, Plaintiffs only seek $24,641.41 of that amount. *Id*.; Gavron

Decl. ¶ 48, Ex. C.

In addition, the Settlement Agreement contemplates a service award to each Plaintiff in recognition of their efforts in prosecuting this Action as PAGA representatives on behalf of the State of California and other aggrieved employees, in the amount of up to $10,000.00 each, totaling up to $20,000. Settlement Agreement ¶ 45.

Finally, the Settlement Agreement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator for administration of this PAGA settlement. *Id.* ¶ 47. The Parties have agreed to utilize ILYM Group, Inc., a well-known third-party settlement administrator, to administer the settlement. *Id*. ¶ 29.

IV. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED

A. PAGA Overview

Prior to the enactment of PAGA, many of the penalties provided against employers for violations of certain Labor Code provisions were solely within the province of the California Department of Labor to seek, enforce, and assess. *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980. However, due to the lack of financing to California's agencies and the potential number of Labor Code violations by California employers, the California Legislature found that it was in the public interest to allow aggrieved employees to act as private attorneys general and to enforce and recover penalties on behalf of other similarly situated aggrieved employees for Labor Code violations committed by their employers. *Id*. Thus, PAGA was enacted to allow such enforcement and recovery by private individuals who have been aggrieved by their employers. Under the PAGA, 75% of any penalties recovered under PAGA by an aggrieved employee is to be paid to the state agency, the LWDA, and the remaining 25% is to be shared amongst the aggrieved employees. Cal. Lab. Code § 2699, subd. (i).

In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee must first provide written notice to the LWDA and the employer of the particular Labor Code violation(s) alleged to have been violated by the employer. *See* Cal. Labor Code § 2699.3, subd. (a)(1). Once the LWDA notifies the aggrieved employee that it does not intend to investigate the alleged violations or the time for the LWDA to investigate the violations passes, the aggrieved employee is allowed to proceed in a civil action against the employer on behalf of all other similarly aggrieved employees. *See* Cal. Lab. Code § 2699.3, subd. (a)(2)(A).

In 2009, the California Supreme Court considered the issue of whether an aggrieved employee who brings a PAGA claim needs to meet class certification requirements. *Arias*, 46 Cal. 4th at p. 976. After a substantial review of the legislative history of PAGA, the California Supreme Court held that an aggrieved employee's representative action brought on behalf of other similarly aggrieved employees against an employer for PAGA violations do not need to meet the requirements for class certification. *Id*. at pp. 975; 980-88. As held by the California Supreme Court, a plaintiff bringing suit under PAGA does so as the proxy or agent of California's labor law enforcement agencies. *Id*. at p. 986. Because an employee's PAGA action functions as a substitute for an action brought by the government itself, a judgment in the PAGA action binds all those who would be bound by a judgment in an action brought by the government. *Id*.

B. Class Action Settlement Standards Do Not Govern the Settlement Approval Process for PAGA Claims

In class action cases, the purpose of the Court's preliminary evaluation of the settlement is to determine whether it is within the "range of reasonableness," and thus whether notice to the class of the terms and conditions of the settlement, and the scheduling of a formal fairness hearing, are worthwhile. *See* Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.25, *et seq.* and § 13.64 (4th ed. 2002 and Supp. 2004) ("*Newberg*"). The "judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing." *Manual for Complex Litigation, Fourth* § 21.632 (Fed. Jud. Ctr., 4th ed. 2004). To make the preliminary fairness determination, courts may consider several relevant factors, including "the strength of the plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status through trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; [and] the experience and views of counsel…." *See Hanlon v. Chrysler Corp*. (9th Cir. 1998) 150 F.3d

1011, 1026.

By contrast, court approval of PAGA settlements is governed by section 2699(1) of the Labor Code, which provides, in relevant part: "The court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." The parties are not obligated to "satisfy class action requirements," including the standards for class action settlement approval. *Arias*, 46 Cal. 4th at pp. 980-988 (affirming lower court's holding that "plaintiff need not satisfy class action requirements" to assert a PAGA claim).

Notably, unlike the class action settlement approval process, there is also no statutory mechanism for this Court to conduct a two-step settlement approval review. Cal. Lab. Code § 2699, subd. (1). In addition, "[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim" or "contest a settlement, if any, reached between the parties." *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. Apr. 2, 2010) 2010 WL 1340777 at p. *13.

C. The Settlement is Reasonable and Effectuates PAGA's Objectives

The Court's focus in a PAGA case is not the amount that aggrieved employees will ultimately receive as a result of a settlement, but instead, on whether the total settlement amount achieves PAGA's objectives. Under PAGA, the penalties recovered are meant to supplement agency funding for education and enforcement purposes. *See* Cal. Lab. Code § 2699, subd. (i).

Here, the settlement represents an excellent recovery for the small group of Aggrieved Employees and the State, and thus the settlement certainly effectuates PAGA's purpose. The settlement accomplishes PAGA's primary objective to enforce the Labor Code. *See O'Connor v. Uber Techs, Inc*. (N.D. Cal. 2016) 2016 WL 4398271, at p. *18 (noting that deterring noncompliance with the Labor Code is one of PAGA's objectives). The settlement is also consistent with the State's public policy favoring resolution of disputes. "California law favors the settlement of disputes as our high court clarified in *Neary*[]. Settlement is efficient; it reduces costs, saves resources, and minimizes court congestion. [] The parties are best positioned to understand their interests and resolve a dispute in a mutually beneficial manner without court intervention into the settlement." *Consumer Advocacy Group, Inc. v. Kintetsu* (2006) 141 Cal.

App. 4th 46, 62-63 (citing *Neary v. Regents of Univ. of Cal*. (1992) 3 Cal. 4th 273, 277- 278).

D. The Scope of the Release is Appropriately Limited

If approved, the settlement would release the Released Parties from "all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaints [ ] and the PAGA Notices submitted by Plaintiffs to the LWDA," and nothing more. Settlement Agreement ¶ 25. The settlement would not impact any other Aggrieved Employees' ability to pursue any Labor Code claims not predicated on PAGA. Therefore, the limited scope of the release also supports approval.

Because an aggrieved employee's PAGA action is a substitute for an action brought by the government, "judgment in [a PAGA] action 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*, 46 Cal. 4th at p. 986. However, "the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." *Id.* at p. 987; *see also*, Lab. Code § 2699(g)(l) (non-party aggrieved employees retain all rights "to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part").

E. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of Litigation

Although Plaintiffs are reasonably confident that they would prevail at trial, proceeding in litigation entails significant risk on the underlying merits of Plaintiffs' theory, in addition to the still-developing law under PAGA. Gavron Decl. ¶ 36.

1. Plaintiffs' Claims are Contested

Plaintiffs assert that their representative PAGA claim is based on the allegations that Defendants failed to pay minimum, regular, and overtime wages for all hours worked; provide accurate itemized wage statements; pay all wages due and owing upon separation of employment; provide proper meal and rest periods or pay premiums in lieu thereof; pay sick pay wages at the regular rate of pay; reimburse required expenses; and provide suitable seating.

Gavron Decl. ¶ 24.

Defendants have denied violation of any applicable laws and liability for any claims asserted in the Action. Defendants have argued, among other things, that they maintained facially compliant wage and hour policies that precluded any recovery whatsoever by Plaintiffs. Gavron Decl. ¶ 25. For example, Defendant argued that because it maintained and enforced legally compliant written policies, which satisfied *Brinker*, that any failure to provide a legally compliant meal or rest period by employees was isolated and/or infrequent. *See Brinker Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012) ("On the other hand, the employer is not obligated to police meal breaks and ensure no work thereafter is performed."). In contrast, Plaintiffs argued that employees were often interrupted during their breaks and/or not permitted to take them within the time constraints provided by law. Gavron Decl. ¶ 25.

Similarly, Defendant argued that it maintained policies that required employees to report all hours worked, that it paid wages in a timely fashion, and that it paid overtime, sick pay, and vacation pay at the correct rates of pay. Defendants argued Plaintiffs would have faced a significant hurdle in overcoming these policies. Gavron Decl. ¶ 26.

With regard to Plaintiffs' sick pay theory of liability, Defendants also would have argued that, even if successful, any exposure on this claim was extremely limited given the small number of pay periods where an employee would have earned sick pay wages and also any form of non-discretionary remuneration.

With respect to claims for reimbursement, Defendants would have argued that they maintained legally compliant reimbursement policies, and that any alleged failure to reimburse business expenses was the result of either: (1) employees not requesting reimbursement and Defendant lacking actual or constructive knowledge that any reimbursable expenses; or (2) the expenses not being a necessary and reasonable business expense. *See Andersen v. United Parcel Serv., Inc.,* 2024 WL 2104496, at *11 (C.D. Cal. Apr. 11, 2024) (granting the defendant's motion for summary judgment on the plaintiff's Section 2802 claim because "[the plaintiff] did not inform [the defendant] that he had unreimbursed [mileage] expenses.").

Defendants also would have argued that they were not required to provide seating, pursuant to the applicable wage order(s), and thus Plaintiffs' claim on this theory failed, too.

Finally, Plaintiffs' derivative failure to pay final wages and wage statement claims would be subject to a good faith defense, which could potentially extinguish the possibility of these penalties altogether. *Hill v. Walmart, Inc.*, 32 F. 4th 811 (9th Cir. 2022) (upholding good faith defense because defendant reasonably believed wages were not due and owing at time of separation of employment); *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1087 (2024) (upholding good faith defense to imposition of Section 226 penalties).

Moreover, Defendants argued that even if the Court ultimately found their employment practices violative of the Labor Code, the Court has discretion under PAGA to reduce the maximum allowable PAGA penalties at its discretion. *Id*. Defendants may have sought summary judgment on this issue or proceeded to trial. Should Defendants have prevailed, the State of California and Aggrieved Employees would have been left with even less of a recovery. Even if Plaintiffs prevailed at trial, Defendants could have appealed, which would have continued litigation in this action for several years thus depriving the State and Aggrieved Employees of any recovery for the foreseeable future.

2. Recovery of Penalties After Trial

Defendants have represented that there are approximately 342 individuals who comprise the Aggrieved Employees and approximately 6,424 pay periods at issue during the period of September 6, 2022, through August 4, 2025. Gavron Decl. ¶ 32; Settlement Agreement ¶ 40. Based on the data provided by Defendants, Plaintiffs have calculated the reasonable maximum exposure for all PAGA claims to range between $642,400 if the Court were to award a $100 penalty for each pay period encompassed by the proposed settlement, or in the low seven figures if the Court were to "stack" multiple penalties for violations that occurred during the same pay period. Gavron Decl. ¶ 32. However, even if Plaintiffs were to prevail on the merits of the PAGA claim, the potential recovery is uncertain. Pursuant to Labor Code § 2699(f)(2), the Court can decline to award the full amount of PAGA penalties where "if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, as shown in the Court of Appeal's decision in

Carrington v. Starbucks Corp. (2018) 30 Cal. App. 5th 504, 517, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. Upon review, the Court of Appeal found such reduction to be proper. *Id*. at p. 539; *see O'Connor*, 2016 WL 4398271, at p. *17 (noting that even if PAGA penalties amounted to $1 billion, such award "could well be reduced, as a court may reduce the penalty when to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory").

Here, Plaintiffs maintain that there does not exist any reason for reducing PAGA penalties. However, Plaintiffs are aware that Defendants could make a compelling argument to the contrary. Even if there were a finding of liability, Defendants have argued that these violations were not intentional violations of the law and did not occur during every pay period or apply to all employees. As such, the Court may be disinclined to award full PAGA penalties. On this basis, the Court again may find there is reason to significantly reduce the PAGA penalties awarded.

The Court's assessment of the proposed settlement must take into account that any penalties awarded may be subject to substantial reduction. When this is considered, in conjunction with the history of PAGA case law and settlements, and the fact that Plaintiffs may recover nothing, the proposed settlement is patently reasonable. Settlement for this reduced value allows for the distribution of penalties in an amount which accounts for the risk of continued litigation, and Defendants' likely arguments that higher penalties would have been confiscatory. It also sufficiently deters Defendants from engaging in similar conduct in the future, which is one of the primary goals of PAGA.

The proposed settlement exceeds PAGA settlements that courts have approved in other cases, when considered as a percentage of the overall settlement value of the case. If the Court were to award $100 per pay period encompassed by the settlement, the proposed settlement amounts to approximately 78% of the potential maximum of PAGA penalties, which exceeds other PAGA settlements approved by courts — including those that provide for less than the one percent allocation to PAGA penalties. Gavron Decl. ¶ 35; *see, e.g.*, *Hopson v. Hanesbrands Inc*.

(N.D. Cal. 2009) 2009 WL 928133, p. *9 (approving total PAGA allocation that was 0.49% of $408,420.32 gross settlement; *Moore v. PetSmart, Inc.* (N.D. Cal. 2015) 2015 WL 5439000, p. *8 (approving total PAGA allocation that was 0.5% of $10,000,000 gross settlement); *Lusby v. Gamestop Inc*. (N.D. Cal. 2013) 97 F.R.D. 400, 407 (approving total PAGA allocation that was 0.67% of $750,000 gross settlement). If the Court were to stack multiple penalties per pay period, then the percentage would be lower; however, still within a reasonable range of settlement. Gavron Decl. ¶ 35.

A PAGA allocation need not represent any particular percentage of the overall settlement value in order to secure court approval, and courts routinely approve PAGA settlements representing only a tiny fraction of the overall settlement value. The proposed Gross Settlement Amount in this case exceeds the percentage of overall settlement value of the typical PAGA settlement and thus, the settlement should be approved by the Court.

F. The Attorneys' Fees and Costs are Reasonable

PAGA Counsel seek a fee award calculated at thirty-five percent (35%) of the Gross Settlement Amount for the successful prosecution and resolution of this action. PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. Cal. Lab. Code § 2699, subd. (g). Similar to awarding fees in a class action, California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees for representative actions is to use a percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254; *Serrano v. Priest* (1977) 20 Cal. 3d 25, 34 ("*Serrano III*"); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1997) 557 F.2d 759, 769. The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at p. 769.

The Common Fund doctrine is predicated on the principle of preventing unjust enrichment. When a litigant's efforts create or preserve 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*, 20 Cal. 3d at p. 35; *Vincent*, 557 F.2d at p. 769. Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." The reasons for applying the common fund doctrine include: "fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful." *Id*.

The California Supreme Court has provided guidance regarding the award of attorneys' fees in wage and hour class action settlements. Under California law, the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("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*, 160 F.3d 361, 363 (7th Cir. 1998) (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.").

Here, the fee award representing 35% of the fund clearly falls within that range and is consistent with other rulings of other courts and comprehensive surveys of class action settlements and fee awards. *See Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011) (recognizing that "courts may award attorney's fees in the 30-40%

range in wage and hour class actions that result in recovery of a common fund under $10 million"); *see also* Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn. 16 (2010) (independent studies of class action litigation nationwide conclude that fees in the range sought here are consistent with market rates).

The results delivered by PAGA Counsel also support the requested percentage of the fund. Here, Plaintiffs and their counsel secured a $500,000 settlement representing approximately 78% of the realistic exposure in this PAGA action. Accordingly, the Court should award the fees requested.

G. The Costs are Reasonable

Additionally, PAGA Counsel's cost reimbursement request in the amount of $26,641.41 is also reasonable, especially in light of the fact that the Parties agreed that PAGA Counsel may seek up to $26,500.00 as reimbursement for litigation costs under the Settlement Agreement. Gavron Decl. ¶ 48, Ex. C; Waldrop Decl. ¶ 11, Ex. 3; Settlement Agreement ¶ 46. As set forth in PAGA Counsel's declarations, the costs were all directly incurred in the prosecution of this action, including without limitation, filing fees, service of process fees, postage fees, mediation fees, expert fees, and other litigation expenses. Gavron Decl. ¶ 48; Waldrop Decl. ¶ 11 Ex. 3. As such, the requested costs are fair and reasonable, and should be awarded by the Court.

H. The Settlement Administrator's Fees Should be Approved

The Parties have agreed to pay actual costs of administration, which will not exceed $5,500.00, to the Settlement Administrator, ILYM Group, Inc., to administer this Settlement. Settlement Agreement ¶¶ 29, 47. The Parties believe that the administration fee is reasonable and should be approved. Gavron Decl. ¶ 37.

I. Plaintiffs' Service Awards Should be Approved

Courts have held that named plaintiff in class, or private attorney general actions can request a service award. *Rodriguez v. W. Publ'g Corp*. (9th Cir. 2009) 563 F.3d 948, 958-59 (explaining that service awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their **willingness to act as a private attorney general**") (emphasis added).

Here, Plaintiffs seek $10,000.00 each for the service award, which is intended to compensate Plaintiffs for the time spent on this case and for their efforts in prosecuting this case as representatives on behalf of the State of California and other aggrieved employees. In particular, Plaintiffs met with their counsel to discuss the case, had numerous telephonic discussions with their counsel regarding the case, and reviewed pleadings and documents, including the PAGA Notices, complaints, and Settlement Agreement. Declaration of Mark Hardiman ("Hardiman Decl.") ¶¶ 5-9; Declaration of Sara Shaughnessy ("Shaughnessy Decl.") ¶¶ 5-9. Additionally, by serving as PAGA representatives and filing their respective lawsuits, Plaintiffs also faced significant risk in not being able to find prospective employment and/or face retaliation from prospective employers. In this regard, future employers are less likely to hire and/or continue employment with individuals who have filed employment-related lawsuits, particularly cases of this nature. In light of Plaintiffs' efforts, the service award should be awarded to Plaintiffs for their commitment, dedication, and risks taken for this litigation.

Furthermore, the requested service award is consistent with awards approved in other common fund cases. *See Van Vranken v. Atlantic Richfield Co*. (N.D. Cal. 1995) 901 F. Supp. 294, 299-300 (incentive award of $50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig*. (S.D. Ohio 1990) 130 F.R.D. 366, 374 (two incentive awards of $55,000, and three incentive awards of $35,000); *Brotherton v. Cleveland* (S.D. Ohio 2001) 141 F. Supp. 2d 907, 913-14 (granting a $50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp*. (S.D. Ohio 1991) 137 F.R.D. 240, 251-52 ($50,000 awarded to each class representative); *Glass v. UBS Fin. Servs*., No. C-06-4068 (N.D. Cal. Jan. 27, 2007) 2007 U.S. Dist. LEXIS 8476, *51-52 (awarding $25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016 (affirming $25,000 incentive award to class representative in ERISA case).

J. Notice to the LWDA Has Been Provided

Pursuant to California Labor Code § 2699(1), on January 14, 2026, Plaintiffs uploaded the instant motion, Settlement Agreement, and proposed order to the LWDA's website. Gavron Decl. ¶ 49. In addition, Plaintiffs shall submit to the LWDA a copy of the Court's judgment and order approving the Settlement Agreement within ten (10) days after entry of judgment or order. *Id.*

V. **CONCLUSION**

Based on the above, Plaintiffs request that the Court approve the current PAGA settlement.

DATED: January 26, 2026

DIVERSITY LAW GROUP, P.C.

By: ________________________________

Larry W. Lee
Max W. Gavron
Mai Tulyathan
Attorneys for Plaintiff Mark Hardiman

PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On January 26, 2026, I served the following document(s) described as:

1. **PLAINTIFFS' NOTICE OF MOTION AND MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

2. **DECLARATION OF MAX W. GAVRON IN SUPPORT OF PLAINTIFFS' MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**

3. **DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFFS' MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**

4. **DECLARATION OF MANNY STARR IN SUPPORT OF PLAINTIFFS' MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**

5. **DECLARATION OF BROOKE WILKINSON WALDROP IN SUPPORT OF PLAINTIFFS' NOTICE OF MOTION AND MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**

6. **DECLARATION OF SARA SHAUGHNESSY IN SUPPORT OF MOTION TO APPROVE PAGA SETTLEMENT**

7. **DECLARATION OF MARK HARDIMAN IN SUPPORT OF PLAINTIFFS' MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**

8. **[PROPOSED] ORDER AND JUDGMENT**

on the interested parties in this action as follows:

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__X__ BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 26, 2026, at Los Angeles, California.

Erika Mejia