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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

THOMAS MAHIER, an individual, and on
behalf of the State of California, as a private
attorney general,

Plaintiff,

v.

THERMO ELECTRON NORTH AMERICA
LLC., a Limited Liability Company; and DOES
1 through 50, inclusive,

Case No. **23CV425825**

**NOTICE OF MOTION AND MOTION
TO APPROVE PAGA SETTLEMENT;**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO APPROVE PAGA
SETTLEMENT**

Hearing Date: April 23, 2025

Hearing Time: 1:30 p.m.

Judge: Hon. Theodore C. Zayner
Dept.: 19

Action Filed: November 15, 2023
Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 YOU ARE HEREBY NOTIFIED THAT at 1:30pm on April 23, 2025, or as soon thereafter as
3 the matter can be heard, in Department 19 of the above entitled Court located at 191 North First Street,
4 San Jose, California 95113, before the Honorable Theodore C. Zayner, Plaintiff Thomas Mahier
5 (“Plaintiff”) will and hereby does move for an order approving the settlement of the PAGA claim
6 alleged against Defendant Thermo Electron North America LLC, (“Defendant”) in accordance with
7 California Labor Code §2699(l) (2016) amended by Stats. 2024, c. 44 (A.B. 2288), § 1, eff. July 1,
8 2024.). The proposed settlement is set forth in the accompanying PAGA Settlement Agreement
9 (“Agreement”).

10 This Motion will be based on this notice, the accompanying points and authorities, the
11 Declaration of Sergio J. Puche, the Agreement, and the complete files and records in this action. The
12 Labor Workforce Development Agency has been served with this motion and the Agreement as set
13 forth in the accompanying proof of service.

14 Respectfully submitted,

15 Dated: March 27, 2025

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

17 By: /s/ Sergio J. Puche
18 Sergio J. Puche

19 Attorneys for Plaintiff
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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	6
II. RELEVANT FACTS.....	6
III. TERMS OF THE PAGA SETTLEMENT	9
IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS.....	11
V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT OF THE PAGA CLAIM.....	12
VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE.....	15
VII. THE SERVICE AWARD IS REASONABLE.....	16
VIII. CONCLUSION.....	17

TABLE OF AUTHORITIES

Page(s)

Cases:

<i>Amaro v. Anaheim Arena Mgmt., LLC,</i> 69 Cal. App. 5th 521 (2021)	16
<i>Andrews v. Plains All Am. Pipeline L.P.,</i> 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022).....	17
<i>Billinghausen v. Tractor Supply Co.,</i> 2015 306 F.R.D. 245, 267-68 (N.D. Cal. 2015).....	16
<i>Boyd v. Bank of America,</i> 2014 WL 6473804, at *11 (C.D. Cal. 2014).....	16
<i>Cardenas v. McLane Foodservice, Inc.,</i> 2011 U.S. Dist. LEXIS 13126 (C.D. Cal. 2011).....	14
<i>Carrington v. Starbucks Corp.,</i> 30 Cal.App.5th 504 (2018).....	13
<i>Chavez v. Netflix, Inc.,</i> 162 Cal.App.4th 43 (2008).....	16
<i>Fleming v. Covidien,</i> 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	13
<i>Guippone v. BH S&B Holdings LLC,</i> No. 09 Civ. 1029, 2011 U.S. Dist. LEXIS 126026 (S.D.N.Y. Oct. 28, 2011).....	17
<i>Hopkins v. Stryker Sales Corp.,</i> No. 11-CV-02786-LHK, 2013 WL 496358 (N.D. Cal. Feb. 6, 2013).....	17
<i>In re Taco Bell Wage & Hour Actions,</i> 2016 U.S. Dist. LEXIS 48557 (E.D. Cal. Apr. 6, 2016).....	14
<i>In re Toys ‘R’ Us-Del FACTA Litig.,</i> 2014 295 F.R.D.	17
<i>Iskanian v. CLS Transportation,</i> 59 Cal. 4th 348, 381 (2014).....	6
<i>Ketchum v. Moses,</i> 24 Cal.4th 1122, 1132 (2001).....	17
<i>Kim v. Reins Int’l Cal., Inc.,</i>	

1	9 Cal. 5th 73, 80 (2020)	9
2	<i>La Fleur v. Medical Management Intern, Inc.</i>	
3	No. 13-00398-VAP, 2014 WL 2967475 (C.D. Cal. June 25, 2014).....	17
4	<i>Laffitte v. Robert Half Int’l,</i>	
5	1 Cal. 5th 480, 503 (2016).....	16
6	<i>Makabi v. Gedalia,</i>	
7	2016 Cal. App. Unpub. 1489 (2nd Dist. Ct. of App. 2016).....	13
8	<i>MMM Holdings, Inc. v. Reich</i>	
9	21 Cal. App. 5th 167, 180 (2018).....	18
10	<i>Pellegrino v. Robert Half Intern., Inc.,</i>	
11	182 Cal.App.4th 278 (2010).....	16
12	<i>People ex rel. Strathmann v. Acacia Research Corp.,</i>	
13	210 Cal. App. 4th 487, 500 (2012).....	17
14	<i>Stetson v. Grissom,</i>	
15	821 F.3d 1157, 1166 (9th Cir. 2016).....	17
16	<i>Vandervort v. Balboa Capital Corp.,</i>	
17	8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014).....	16
18	<i>Wershba v. Apple Computer, Inc.,</i>	
19	91 Cal.App.4th 224, 254 (2001).....	16
20	<i>ZB, N.A. v. Superior Court,</i>	
21	8 Cal.5th 175 (2019).....	6, 10, 12

20 **Statutes:**

21	California Labor Code §2698 (2016)	7
22	California Labor Code §2699 (2016)	<i>passim</i>
23	California Labor Code §2698 (2016).....	9

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Thomas Mahier (“Plaintiff”) reached a settlement of the California Private Attorneys
4 General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in this action against Defendant
5 Thermo Electron North America LLC, (“Defendant”) (collectively, the “Parties”) which provides for
6 a “Gross PAGA Settlement Amount” payment in the amount of \$310,000.00. In accordance with
7 California Labor Code §2699(1) (2016), Plaintiff now asks this Court to review and approve the
8 settlement of Plaintiff’s PAGA claims.¹ This is only a settlement of the PAGA claims for civil
9 penalties and is not a class settlement and does not release the individual wage claims, if any, of the
10 affected employees other than the Plaintiff himself. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS*
11 *Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019)
12 (unpaid wages are not recoverable under PAGA).

13 The PAGA settlement is set forth in the accompanying PAGA Settlement Agreement
14 (“Agreement”) and the form used for the Agreement is the Los Angeles Superior Court’s model form.
15 A true and correct copy of the Agreement which sets forth the terms for the settlement of the PAGA
16 claims is attached as Exhibit #1 to the Declaration of Sergio J. Puche, filed herewith. Capitalized
17 terms shall have the same meaning as defined in the Agreement. The LWDA received notice of this
18 Settlement, and this motion as set forth in the accompanying proof of service.

19 A proposed order confirming review and approval of the PAGA settlement is submitted
20 herewith.

21 **II. RELEVANT FACTS**

22 PAGA Counsel sent the necessary correspondence to the California Labor and Workforce
23 Development Agency (“LWDA”) on September 6, 2023, on behalf of Plaintiff Thomas Mahier,
24 requesting authorization from the LWDA to seek civil penalties as provided by the Private Attorney
25 General Act of 2004 (“PAGA”) for the wage and hour violations alleged in the PAGA Notice.
26

27 ¹ Section 2699(1)(2) provides as follows: “The superior court shall review and approve any settlement
28 of any civil action pursuant to this part.” Cal. Lab. Code § 2699 (2016) (*amended by* Stats. 2024, c. 44
(A.B. 2288), § 1, eff. July 1, 2024.).

1 (Declaration of Sergio J. Puche (“Puche Decl.”), at ¶3.) The 65-day notice period for the LWDA to
2 notify of its intent to investigate expired on November 10, 2023. On November 10, 2023, Plaintiff
3 Mahier filed a Representative Action Complaint in this Court against Defendant Thermo Electron
4 North America LLC alleging a cause of action for recovery of civil penalties for Violation of the
5 PAGA [Labor Code §§ 2698, *et seq.*] and a second cause of action for Discrimination and Retaliation
6 in violation of the FEHA. (Puche Decl. at ¶3(a).)

7 Plaintiff and Defendant agreed to mediate with Tagore Subramaniam, Esq. Prior to the
8 mediation, the Parties conducted significant investigation and discovery of the facts and law.
9 Defendant produced hundreds of pages of documents relating to its policies, practices, and procedures
10 regarding paying non-exempt employees for all hours worked, overtime, meal and rest period policies,
11 payroll and operations policies, and more. Plaintiff was provided with sufficient records and data to
12 determine the number of Aggrieved Employees and the number of pay periods in the PAGA Period.
13 The Parties agree that the above-described investigation and evaluation, as well as the information
14 exchanged during the settlement negotiations, are more than sufficient to assess the merits of the
15 Parties’ positions and to compromise the issues on a fair and equitable basis. (Puche Decl., at ¶3(a).)

16 Plaintiff’s theory of PAGA liability as argued at mediation alleged that Defendant is liable for
17 miscalculating overtime and sick pay as a result of not including certain remunerations into the regular
18 rate, including: Bonus Annual (85 payments), 3607 - Commission (137 payments), 7C Commission
19 (39 payments), Bonus Sign-on (5 payments), 3636 Bonus G/U (2 payments), Bonus retention (1
20 payment), Bonus Non-Discretionary (1 payment), On call Pay (10 payments). Approximately, 9.7%
21 of pay periods have overtime and any of the additional remunerations paid. There are unpaid sick pay
22 and meal premiums due from Defendant not including the remunerations in the regular rate. 53.4% of
23 employees and 2.2% of pay periods have sick pay and bonuses paid. There were also meal period
24 violations evidenced in the records. (Puche Decl. ¶3(b).)

25 Plaintiff stated that generally field service engineers do not take timely and off duty meal
26 periods as the work assigned during the day does not allow for a mid-day lunch without incurring
27 additional overtime which was heavily discouraged by his manager. Punch records reflect a meal break
28 violation rate of 9.7% of all shifts (4,146 violations). The pay data reflects meal break premiums paid

1 for only 8 instances. The over 4,000 violations include 1,189 for late, 2,278 missed, 559 for short, and
2 370 for missed 2nd meal breaks. Additionally, Defendant failed to pay any rest break premiums during
3 the class and PAGA periods. (*Id.*)

4 On September 13, 2024, the Parties engaged in an all-day mediation session before Mediator
5 Subramaniam, a respected and experienced mediator knowledgeable of both the wage and hour laws
6 and representative claims at issue in this action. Through arms-length negotiations with the assistance
7 of the mediator, the Parties reached an agreement to settle the PAGA claims in this action which led
8 to the signing of a Memorandum of Understanding memorializing the settlement.² (Puche Decl., at
9 ¶3.)

10 The settlement was negotiated in light of all known facts and circumstances and the uncertainty
11 associated with litigation – including the risk of Plaintiff not being able to maintain representative
12 claims, the difficulty of proving Plaintiff’s claims in a manageable trial, the merits of Defendant’s
13 potential defenses, and the significant delay and potential appellate issues inherent to litigation – and
14 was reached after extensive arm’s length negotiations, with the assistance of Mediator Subramaniam.
15 (Puche Decl., at ¶¶3,6.)

17 **III. TERMS OF THE PAGA SETTLEMENT**

18 The PAGA settlement is subject to Court approval consistent with Labor Code §2699(1)(2)
19 (2016). (Agreement at ¶ 6.1). The Agreement negotiated by the Parties provides for a “Gross PAGA
20 Settlement Amount” payment in the amount of \$310,000 to resolve the Released PAGA Claims
21 (hereinafter referred to as the “PAGA Settlement”). From this PAGA Gross PAGA Settlement
22 Amount of \$310,000, there is a deduction of attorneys’ fees (“PAGA Counsel Fees Payment”) up to
23

24 ² In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle
25 Plaintiff’s individual claims for Discrimination and Retaliation pursuant to separate confidential
26 Individual Settlement Agreement (“Individual Settlement”) (Puche Decl, ¶3(d); Agreement at ¶5.2).
27 The individual claims are not at issue in this action and exist independent and apart from the PAGA
28 claims at issue before the Court. *See Kim v. Reins Int’l Cal., Inc.*, 9 Cal. 5th 73, 80 (2020) (the
“[s]ettlement of individual claims does not strip an Aggrieved Employee of standing, as the state’s
authorized representative, to pursue PAGA remedies” nor resolve the PAGA claims.). Plaintiff
additionally agreed to dismiss, without prejudice, the class claims set forth in the Class Action
Complaint.

1 \$103,333 (which is one-third of the PAGA Settlement), reimbursement of incurred costs (“PAGA
2 Counsel Litigation Expenses Payment”) in an amount not to exceed \$35,000, a service award of
3 \$10,000 (“Service Award”) and Settlement Administration Costs (“Administration Expenses
4 Payment”) not to exceed \$3,500. (Agreement at ¶¶3.2.1-3.2.4).³ After these deductions, the amount
5 remaining is the “PAGA Payment”, which is estimated to be no less than \$158,167.

6 Of the PAGA Payment amount, seventy-five percent (75%) (no less than \$118,625.25) will be
7 paid to the LWDA and the remaining twenty-five percent (25%) (no less than \$39,541.75) will be paid
8 to the Aggrieved Employees (Agreement at ¶ 3.2.3).⁴ This 75/25 allocation is required by Labor Code
9 §2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019), and the prior 75/25 split still
10 applies because this Action was filed before June 2024. *See* Cal. Lab Code § 2699 (v) (2024).

11 The Individual PAGA Payment for each Aggrieved Employee shall be based on the number of
12 pay periods each Aggrieved Employee worked during the PAGA Period as an Aggrieved Employee,
13 as a percentage of the total pay periods worked by all Aggrieved Employees during the PAGA Period.⁵
14 The PAGA Period is the time period from September 6, 2022 through November 12, 2024. (Agreement
15 at ¶1.23).

16 For mediation, Defendant represented that there are approximately 125 Aggrieved Employees
17 who worked approximately 5,500 pay periods PAGA Period through September 13, 2024. (Puche
18 Decl. ¶¶4,14(b)(c)); Agreement at ¶4.1).

20 ³ If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses
21 Payment less than the amounts requested, the Administrator will allocate the remainder of these
22 amounts to the PAGA Payment. (Agreement at ¶ 3.2.1). To the extent the Administration Expenses
23 are less, or the Court approves payment less than \$3,500, the Administrator will allocate the remainder
24 of this amount to the PAGA Payment (*Id.* at ¶ 3.2.2). In the event the Service Award is approved for
25 less than \$10,000.00 to Plaintiff, the unawarded difference will be added to the PAGA Payment for
26 distribution and not paid to Plaintiff, PAGA Counsel, or Defendant. (*Id.* at ¶3.2.4).

24 ⁴ “Aggrieved Employee” means all individuals who are or previously were employed by defendant
25 Thermo Electron North America LLC as a non-exempt employee at any time during the PAGA Period.
26 The PAGA Period is the period from September 6, 2022, to November 12, 2024. (Agreement at ¶¶1.4,
1.23).

27 ⁵ See Agreement at ¶ 3.2.3 (“The Administrator will calculate each Individual PAGA Payment by (a)
28 dividing the amount of the Aggrieved Employees’ 25% share of PAGA Payment by the total number
of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)
multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods.”)

1 Upon entry of final judgment, the Released Parties shall be entitled to a release from the
2 Aggrieved Employees for any “Released PAGA Claims”, which means all claims for PAGA penalties
3 that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative
4 Complaint, and the PAGA Notice submitted by Plaintiff to the LWDA, which occurred during the
5 PAGA Period (collectively the “Released PAGA Claims”). (Agreement at ¶5.3). The Released PAGA
6 Claims expressly excludes all other claims, including Plaintiff’s individual claims, claims for vested
7 benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment
8 insurance, disability, social security, workers’ compensation, and PAGA claims outside of the PAGA
9 period. (*Id.*)

10 Upon full funding of the Gross Settlement Amount, the State of California, LWDA and all
11 Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and
12 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released
13 Parties from all “Released PAGA Claims.” (Agreement ¶ 5.3). “Released PAGA Claims” means all
14 claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the
15 facts stated in the Operative Complaint, and the PAGA Notices submitted by Plaintiff to the LWDA,
16 which occurred during the PAGA Period, including claims under California Labor Code §§ 201, 202,
17 203, 204 et seq., 210, 218, 221, 226(a), 226.7, 227.3, 246 et seq., 510, 512, 558(a)(1)(2), 1194, 1197,
18 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B),
19 California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the
20 applicable Wage Order(s). (*Id.*) In no event shall the release of the Released PAGA Claims in the
21 Agreement release any individual claims of any individuals. (*Id.*)

22 Within fourteen (14) days after Defendant funds the Gross PAGA Settlement Amount, the
23 Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the
24 Administration Expenses Payment, the Service Award, the PAGA Counsel Fees Payment, and the
25 PAGA Counsel Expenses Payment. (Agreement at ¶4.4).⁶ The face of each check shall prominently
26

27 ⁶ Disbursement of the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses
28 Payment, the Administration Expenses Payment, and the Service Award shall not precede
disbursement of Individual PAGA Payments. (Agreement at ¶4.4).

1 state the void date, which is 180 days after the date of mailing) when the check will be voided. The
2 Administrator will cancel all checks not cashed by the void date. (*Id.* at ¶4.4.1) For any Aggrieved
3 Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the
4 Administrator shall transmit the funds represented by such checks to the State Controller Unclaimed
5 Property Fund in the name of the individual who failed to cash their check. (*Id.* at ¶4.4.3)

6 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
7 Agreement and this motion to the LWDA concurrently with the filing of the instant motion for
8 settlement approval as set forth in the accompanying proof of service in compliance with Labor Code
9 section 2699(1). In addition, Plaintiff shall submit to the LWDA a copy of the Court's judgment and
10 order approving the Agreement within ten (10) days after entry of judgment or order.

11 12 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

13 The claim before this Court on this motion is solely the representative claim under PAGA on
14 behalf of the State of California for civil penalties pursuant to the PAGA. The Parties have agreed to
15 settle this PAGA claim in its entirety after investigation and an arm's length mediation session. (Puche
16 Decl., at ¶¶2, 3.) The settlement is intended to fully and finally resolve the Released PAGA Claims
17 asserted by Plaintiff on behalf of the State of California. This is only a settlement of the PAGA claims
18 for civil penalties and is not a class settlement and does not release the individual claims, if any, of the
19 Aggrieved Employees, other than any claims under PAGA. This settlement does not release any claim
20 that is not a PAGA claim.⁷ PAGA Counsel Fees equal to one-third of the Gross PAGA Settlement
21 amount (\$103,333), and PAGA Counsel Litigation Expenses in an amount not to exceed \$35,000 will
22 also be paid to PAGA Counsel as part of the settlement in accordance with California Labor Code §
23 2699(g)(1), as set forth in the Agreement.⁸ Additionally, a Service Award in the amount of \$10,000
24 has been allocated to for payment to Plaintiff. Lastly, payment to the Administrator in an amount not
25

26 ⁷ As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th at 196: "Nonparty employees are bound
27 by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties."

28 ⁸ As set forth in the accompanying Declaration of Sergio J. Puche, PAGA Counsel incurred costs in
the current amount of \$ 26,625.01, which is less than the cost allocation in the Agreement. See
Declaration of Puche at ¶8.

1 to exceed \$3,500 to perform the administrative duties to distribute the settlement money shall also be
2 paid. (Puche Decl., at ¶4.)

3
4 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT OF**
5 **THE PAGA CLAIM**

6 Labor Code § 2699(l) requires that the Court “shall review and approve any settlement of any
7 civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the
8 agency at the same time that it is submitted to the court.” Cal. Lab. Code § 2699 (1) (2016).
9 Consequently, the Parties respectfully ask the Court to review and approve the settlement of the PAGA
10 claims and the PAGA Payment to be paid as part of the proposed settlement.

11 **A. The PAGA Settlement Amount To Be Paid Is Fair And Reasonable**

12 The Parties believe that the PAGA Settlement amount is fair and reasonable and therefore
13 "shall" be reviewed and approved. Here, the Gross PAGA Settlement Amount of \$310,000 is more
14 than other PAGA settlements as it constitutes approximately \$56 per pay period. (Declaration of
15 Puche, at ¶5.)

16 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
17 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of statutory
18 PAGA civil penalties was potentially \$550,000 based on 5,500 pay periods applicable to the
19 Aggrieved Employees during the PAGA Period.⁹ (Declaration of Puche, at ¶¶5,14(b)-(c)).
20 Importantly, however, these calculations were performed at the maximum statutory rate for the
21 penalties, when in fact, it is likely that any penalties awarded would be at a lower rate. California
22 Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the maximum civil
23 penalty if based on the facts and circumstances to do otherwise would result in an award that is "unjust,
24 arbitrary and oppressive or confiscatory."

25 _____
26 ⁹ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct. The
27 valuation of \$550,000 is the civil penalty amount without stacking. If stacking is permitted, then the
28 valuation increases with each additional penalty added to each pay period. Plaintiffs, however, is not
aware of any PAGA award which permitted stacking and in the cases cited herein, only one penalty
per pay period was assessed. In addition, the recent amendment of PAGA casts further doubt on the
availability of stacking penalties.

1 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed
2 a judgment after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at
3 trial, any PAGA penalties awarded could be significantly less than Plaintiff's calculation even where
4 Plaintiff prevailed on the PAGA claim. If the amount of \$5 per pay period from *Carrington v.*
5 *Starbucks* is used, the potential recovery of civil penalties would be only \$27,500, which is far less
6 than this settlement provides. (Declaration of Puche, at ¶¶5,14(d).)

7 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
8 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
9 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
10 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
11 civil penalties, even when Labor Code violations are established. See *Makabi v. Gedalia*, 2016 Cal.
12 App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by
13 the Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour*
14 *Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after
15 trial).

16 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of
17 the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist.
18 LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot
19 recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor
20 Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered
21 a violation for each period the employee worked in relation to meal or rest period violations, failure
22 to pay minimum wages, failure to pay overtime and sick pay wages, failure to provide accurate
23 itemized wage statements, failure to reimburse employees for required expenses, and failure to pay
24 wages when due.

25 Defendant maintains that Plaintiff and the Aggrieved Employees were properly compensated,
26 and that it did not violate the Labor Code. Accordingly, Defendant disputes and denies Plaintiff's
27 allegations and claims asserted in both the PAGA Notice and the Operative Complaint, which are
28 resolved by the Agreement. Defendant asserted additional defenses to the PAGA claim, not only as

1 to liability but also as to the amount of the penalties. Defendant could argue that no penalties prior to
2 the PAGA notification should be awarded because the violations were not intentional, and at least one
3 Court has so ruled. These defenses present a risk to the PAGA claims and the potential that some or
4 all of the PAGA penalties sought may not be awarded. (Declaration of Puche, at ¶¶6,14(g).)

5 Given Defendant's potential defenses to the violations at issue, the risks and costs of continued
6 litigation, Plaintiff and his attorneys believe that the PAGA Settlement is fair and reasonable.
7 (Declaration of Puche, at ¶¶5,6,14(g).) Defendant has similarly concluded that it is desirable that the
8 action is settled in the manner and upon the terms and conditions set forth in the Agreement in order
9 to avoid further expense, inconvenience and distraction of further legal proceedings, as well as the
10 uncertainty of litigation. Defendant has determined that it is desirable and beneficial to put to rest the
11 claims in this action and Defendant agrees that the PAGA Settlement is fair, reasonable, and adequate.

12 PAGA Counsel have significant experience litigating wage and hour claims including claims
13 for PAGA penalties, and the PAGA Settlement here is similar to or greater than similar settlements
14 that courts have approved. (Declaration of Puche, at ¶ 6.) The PAGA Settlement, along with the other
15 terms of the proposed settlement, were negotiated by experienced counsel at arm's length with the
16 assistance of a private mediator, Tagore Subramaniam, Esq. (Declaration of Puche, at ¶¶2,3,6.)

17 As set forth in the accompanying proof of service, the LWDA has been provided notice of this
18 motion and the PAGA settlement. The decision of the LWDA to accept the PAGA Settlement and
19 not oppose the motion should be given considerable weight. This is not a situation where the Court
20 needs to be concerned about the rights of absent employees as in a class settlement, as this PAGA-
21 only settlement does not release the individual claims of absent employees other than PAGA claims,
22 and the LWDA is a sophisticated government entity that is more than able to look out for its own
23 rights.

24 **B. The Remaining Settlement Terms Are Fair And Reasonable**

25 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
26 2699(1) does not require that a court approve any other elements of the proposed settlement. See Cal.
27 Lab. Code § 2699 (2016). Because there are no class allegations for which Plaintiff seeks approval,
28 the approval provisions applicable to class settlements under Cal. Code Civil Proc. §382 do not apply.

1 Accordingly, the Court only needs to approve the settlement of the civil penalties sought in the PAGA
2 claim. Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are
3 reasonable.

4
5 **VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

6 PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the amount of
7 \$103,333 representing one-third of the \$310,000 Gross PAGA Settlement Amount. PAGA does not
8 have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of
9 attorneys' fees and costs in this settlement is a matter of contract for contingent representation.
10 Nevertheless, should this Court review the requested attorneys' fees, it is clear that the requested fees
11 and costs are reasonable.

12 First, the requested fees are justified by the result achieved. PAGA Counsel negotiated a
13 recovery of \$310,000 and this result justifies the requested fees equal to one third of this recovery.
14 This percentage is within the standard contingent recovery percentage of one-third, and this percentage
15 is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th
16 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021)
17 (recognizing that “fee awards in class actions average around one-third of the recovery” regardless
18 of “whether the percentage method or the lodestar method is used.” (*quoting Chavez v. Netflix, Inc.*,
19 162 Cal.App.4th 43, 66, fn. 11 (2008))).

20 Second, the fee award is justified by the work performed and contributions to the case. As
21 detailed in the accompanying Puche Decl. at ¶ 7, the fee award is less than PAGA Counsel's current
22 lodestar of \$127,948.75, representing a “negative multiplier”, with significant additional work to be
23 performed.¹⁰

24 Generally, the Ninth Circuit and California Courts award positive multipliers between 2 to 4
25 times the lodestar to reward counsel for accepting the contingent risks of the litigation or obtaining
26 good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award with multiplier
27

28 ¹⁰ A true and correct copy of PAGA Counsel's billing records are attached as Exhibit #2 to the Declaration of Sergio J. Puche, filed herewith.

1 between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting
2 reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier); *Wershba v. Apple*
3 *Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can range from 2 to 4 or
4 higher); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding
5 one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL
6 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of
7 lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal.
8 Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority"
9 range for risk multipliers).

10 Third, consideration of the service factors justify the service of the lodestar. Courts multiply
11 the lodestar by a factor to account for the risk of non-payment, delay in payment, the quality of work,
12 and the novelty and difficulty of the issues involved. See *Ketchum v. Moses*, 24 Cal.4th 1122, 1132
13 (2001). Failure to apply a risk multiplier in cases that meet these criteria is an abuse of discretion.
14 *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016).

15 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation expenses in the
16 total amount of \$26,652.01 which is less than the \$35,000 allocation for costs in the Agreement, so the
17 difference of \$8,347.99 will be added to the PAGA Payment amount. These expenses are documented
18 in the accompanying Declaration of Puche at ¶8.

20 VII. THE SERVICE AWARD IS REASONABLE

21 In the Agreement at paragraph 1.27, "Service Award" means the service payment made to the
22 Plaintiff in order to compensate him for initiating the Action, performing work in support of the
23 Action, undertaking the risk of liability for Defendant's expenses, and for the release of individual
24 PAGA claims by the Plaintiff. Plaintiffs request from the Service Award of \$10,000, as recognition
25 for Plaintiff's efforts in securing this Settlement for the benefit of the Aggrieved Employees and the
26 LWDA. (Puche Decl. ¶15). The Agreement provides for service awards as the named Plaintiff not
27 only served as the representative for these claims, but also is justified in light of the reputational risk
28 that Plaintiff assumed by litigating claims against a former employer. See *Billinghausen v. Tractor*

1 *Supply Co.*, 306 F.R.D. 245, 267-68 (N.D. Cal. 2015) (finding “personal detriment” upon testimony
2 that future employers can easily learn that a prospective employee served as a plaintiff through the
3 internet); *see also Guippone v. BH S&B Holdings LLC*, No. 09 Civ. 1029, 2011 U.S. Dist. LEXIS
4 126026, at **4, 20 (S.D.N.Y. Oct. 28, 2011) (“[T]he fact that a plaintiff has filed a federal lawsuit is
5 searchable on the internet and may become known to prospective employers when evaluating the
6 person . . . Even where there is not a record of actual retaliation, notoriety, or personal difficulties,
7 [representative Plaintiffs] merit recognition for assuming the risk of such for the sake of absent
8 [parties].”). (Puche Decl. ¶15.)

9 Employers commonly screen employee candidates to determine whether they have ever filed
10 suit, and employee candidates who might be branded “litigious” are likely to be screened out of the
11 process. In fact, an entire industry has developed for providing employers with background
12 information on employee candidates. By bringing this action against an employer, Plaintiff has
13 assumed considerable reputational risk that may impact his ability to find employment in the future.
14 *La Fleur v. Medical Management Intern, Inc.*, No. 13-00398-VAP, 2014 WL 2967475, *8 (C.D. Cal.
15 June 25, 2014) (awarding \$15,000 to each named plaintiff in part for attesting to their fear that the
16 lawsuit will harm their future job prospects in the industry). (*Id.*)

17 Moreover, the separate settlement payment is reasonable because Plaintiffs “remained fully
18 involved and expended considerable time and energy during the course of the litigation.” *See In re*
19 *Toys ‘R’ Us-Del FACTA Litig.*, 295 F.R.D. at 471 (citation omitted). Plaintiff devoted his time and
20 effort toward assisting his attorneys with the prosecution of the claims, and assisted counsel with
21 finalizing the settlement. Service awards are regularly awarded in this amount. *See e.g. Andrews v.*
22 *Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (finding that the
23 requested service awards of \$15,000 each are appropriate). (*Id.*)

24 Lastly, because PAGA is a “type of qui tam action,” it is appropriate for the Plaintiffs to receive a
25 modest additional payment from the settlement as a “bounty” for his special effort in vindicating the State’s
26 interests by enforcing its labor laws. *See Iskanian*, 59 Cal. 4th at 382 (“A PAGA representative action is
27 therefore a type of qui tam action.”); *see also People ex rel. Strathmann v. Acacia Research Corp.*, 210 Cal.
28 App. 4th 487, 500 (2012) (“The person who brings the qui tam action, called the ‘relator,’ stands in the shoes

1 of the People of the State of California, who are deemed to be the real party in interest . . . The relator in a qui
2 tam action under section 1871.7 does not personally recover damages but, if successful, receives [a portion] of
3 the recovery as a bounty.”) (internal citations omitted). (*Id.*)

4 Such a payment incentivizes employees to step forward to enforce the Labor Code. *See MMM*
5 *Holdings, Inc. v. Reich*, 21 Cal. App. 5th 167, 180 (2018) (“The bounty advances the public purpose
6 and benefit by encouraging private qui tam actions; indeed, this prospect of reward may be the only
7 means of inducing such private parties to come forward with their information.”) (internal quotations
8 omitted). This is especially important in this context, as “the lack of government resources to enforce
9 the Labor Code led to a legislative choice to deputize and incentivize employees uniquely positioned
10 to detect and prosecute such violations through the PAGA.” *Iskanian*, 59 Cal. 4th at 390. Absent the
11 incentive payment, fewer employees would be willing to step forward, and PAGA’s primary
12 purpose—enforcement of the Labor Code—would be substantially undermined. (*Id.*)

13 14 **VIII. CONCLUSION**

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

17
18 Dated: March 27, 2025

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Sergio J. Puche

Sergio J. Puche

Attorney for Plaintiff

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