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SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA

GARRETT EHRITT, Plaintiff, *v.* BLACKPOINTE GROUP CONSTRUCTION & MANAGEMENT, INC., A CALIFORNIA CORPORATION, LAUREL J. SCHITTONE; VICTOR A. SCHITTONE; and DOES 1 through 50, inclusive, Defendants.	Case No. 2023CUWT016864 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT** Complaint Filed: November 27, 2023 Department: 40 Judge: Hon. Mark S. Borrell [Filed concurrently with Notice of Motion, Declaration of Joseph W. Rose in Support of Motion, and Proposed Order] Motion Hearing Date: October 23, 2025 Motion Hearing Time: 8:30 a.m.

TABLE OF CONTENTS

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FAIR OAKS | WESTLAKE VILLAGE | VENTURA

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Court Rules

Other Authorities

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to California Labor Code § 2699,[1] Plaintiff GARRETT EHRITT ("Plaintiff") seeks this Court's approval of the settlement of his claims asserted under the Labor Code Private Attorneys' General Act ("PAGA") with Defendants BLACKPOINTE GROUP CONSTRUCTION & MANAGEMENT, INC., a California corporation ("Blackpointe"), LAUREL J. SCHITTONE, and VICTOR A. SCHITTONE (collectively, "Defendants").

This case is governed by the PAGA as it existed before legislative amendments took effect on June 19, 2024, because Plaintiff's PAGA notice was filed with the California Labor and Workforce Development Agency ("LWDA") before that date. (§ 2699(v)(2), as amended.)

This is a common fund, non-reversionary settlement with the following key terms:

1. A non-reversionary common fund totaling Twenty-Five Thousand Dollars ($25,000);

2. Eleven Thousand Seven Hundred Thirty-Seven Dollars ($11,737) of the common settlement fund is allocated for payment to the State of California Labor and Workforce Development Agency ("LWDA") and to the "Aggrieved Employees" (*i.e.*, sixty-five (65) current and former non-exempt workers who were employed by Blackpointe on Public Works Projects in California at any time from September 15, 2022, though the date of approval of this settlement (the "PAGA Payment");

3. Seventy-Five Percent (75%) of the PAGA Payment shall be paid directly to the California Department of Industrial Relations (DIR) Accounting Unit and Twenty-Five Percent (25%) shall be distributed to approximately sixty-five (65) Aggrieved Employees in pro rata shares based on the number of pay periods each employee worked for Blackpointe from September 15, 2022, though the date of approval of this settlement;

4. The non-reversionary common fund will also include: a) Eight Thousand Two-Hundred Fifty Dollars ($8,333) allocated to Plaintiff's counsel for attorneys' fees, and One Thousand Eighty Dollars ($1,680) is allocated to Plaintiff's counsel as reimbursement for advanced litigation costs; b) administrative costs to the settlement administrator estimated not to exceed Two Thousand Seven Hundred Fifty Dollars ($2,750); and c) a proposed enhancement payment for Plaintiff of Five Hundred

[1] All subsequent statutory references are to the California Labor Code unless otherwise specified. All PAGA statutory references are to the pre-amendment version of the PAGA, which governs this case.

Dollars ($500);

5. The releases are limited to PAGA issues only.[2]

This is a fair result for this case, particularly when considering the following:

1. The PAGA claims are based primarily upon Blackpointe's alleged misclassification of employees while working on public works projects requiring payment of "prevailing wages" under sections 1771 and 1774. Public works project employers must first properly classify employees for the appropriate trade or craft based upon the scope of work for the project and the actual work performed by the workers so the proper "prevailing wage" rate according to state wage determinations can be applied and calculated. For example, under the Department of Industrial Relations ("DIR") prevailing wage determination, workers in the craft of Landscape Maintenance Laborer perform routine landscape tasks including "mowing, watering, pruning, trimming, weeding, spraying, occasional planting and replacement of plants and janitorial work" or "servicing of irrigation and sprinkler systems, repairing of equipment use in such landscape maintenance" but not more complex landscape construction, repairs, excavation, erosion control or traffic control. Plaintiff contends he and the Aggrieved Employees were misclassified as Landscape Maintenance Laborers, paid at a lower prevailing wage, but should have been classified as Laborer, paid at a higher prevailing wage. Blackpointe disputes this contention and contends Plaintiff and the Aggrieved Employees were properly classified.

2. Plaintiff also contends Blackpointe failed employ registered apprentices at the appropriate prevailing wage in at least the ratio set forth in section 1777.5 when employing Plaintiff and the Aggrieved Employees. (*Id.*, subd. (b), (d), (e), (g).) Defendant also disputes this contention.

3. A civil penalty paid by the employer for Labor Code enforcement of $25,000 is large enough to satisfy the dual statutory purposes of the PAGA of punishment and deterrence, considering Blackpointe's potential exposure, the limitation of these PAGA claims to work on public works projects, and Plaintiff's risk of continued prosecution.

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[2] Defendants separately reached a settlement with Plaintiff on his individual non-PAGA claims that do not require court approval. (Rose Decl. 15.) Plaintiff's individual claims included: 1) Retaliation in violation of Labor Code § 1102.5 et seq.; 2) Unlawful discharge in violation of Labor Code §§ 232 and 232.5; 3) Wrongful Termination in Violation of Public Policy (Tameny); 4) Violations of Prevailing Wage Laws on Public Works Projects (Lab. Code §§ 1720, et seq.); 5) Failure to Furnish Accurate Wage Statements (Lab. Code § 226); 6) Willful Failure to Timely Pay Wages When Due at Termination (Lab. Code §§ 201 – 203); 7) and Unfair Competition Law (Bus. & Prof. Code §§ 17200 et seq.). (*Id.*)

4. Plaintiff recognizes that, although he would present persuasive admissible evidence to prove the merits of his PAGA claims, had this case proceeded to trial, Blackpointe would have presented counter evidence that Blackpointe's policies and practices did not result in systematic misclassification of employees or failure to employ apprentices. Blackpointe would have argued that the trial would not be "manageable" as a PAGA action because the alleged violations were too disparate and individualized to be adjudicated in one action. Blackpointe could also have argued that the subsequent violations under PAGA only start to accrue after employers receive notice through a citation from the Labor Commissioner, which would have significantly decreased Blackpointe's exposure. (*See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209, [holding "[u]ntil the employer has been notified that it is violating a Labor Code provision…the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties."].)

5. All PAGA awards are discretionary and can be reduced by the Court under section 2699(e)(2), "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." Thus, were this matter to go to trial, any award granted would be at the discretion of the Court. Plaintiff recognizes that, although he would present persuasive grounds to avoid reducing the penalties, the Court could determine otherwise and significantly reduce the PAGA penalties.

Given these considerations, Plaintiff believes additional delays and risks of continued prosecution and trial justified settling at this point to ensure recovery for the LWDA and the aggrieved employees, and to effectuate the dual legislative purposes of the PAGA—punishment and deterrence

This motion for court approval of this settlement is unopposed.

II. LITIGATION HISTORY AND PROCEDURAL BACKGROUND

Plaintiff filed this as an individual action (counts 1 through 7), asserting claims unique to him, and a PAGA action (count 8) on November 27, 2023, for civil penalties on behalf of the state.

A. <u>PAGA notice</u>

Before instituting this civil action, Plaintiff provided legally sufficient PAGA notice to the LWDA on September 15, 2023, through its online case submission system (LWDA-CM-981960-23). The PAGA notice was immediately delivered to Defendants by Certified Mail. The LWDA did not exercise its discretion to investigate within 65 days of receiving Plaintiff's notice, thereby authorizing Plaintiff to proceed with the PAGA action in superior court on behalf of himself and the Aggrieved Employees.

Insofar as the PAGA-related claims, Plaintiff's unverified complaint alleges violations of prevailing wage laws on public works projects (§§ 1720, *et seq.*); failure to furnish accurate wage statements (§ 226); and willful failure to timely pay wages when due at termination (§§ 201 – 203).

B. Discovery and mediation

The parties attended a mediation with David Phillips, Esq. of Signature Resolution on December 9, 2024, and reached an agreement in principle to settle the PAGA claims.[3] Mr. Phillips is an experienced employment litigator and mediator having more than 25 years of representing both plaintiffs and defendants. Plaintiff attended this mediation. (Rose Decl. ¶¶ 18-20).

Between the initial filing of the action and mediation, the parties engaged in written discovery, obtained and exchanged documentary evidence including employee, wage and payroll data samples, and other relevant employment information allowing Plaintiff to analyze and estimate the magnitude of potential penalties under various theories of liability. Plaintiff's counsel also obtained publicly available information from various public agencies about public works projects worked on by Blackpointe under the California Public Records Act, and from the Center from Contract Compliance in Camarillo.[4] (Rose Decl. ¶ 16.)

The parties have finalized a long form proposed settlement of this PAGA action. (Rose Decl., Ex. 1.) A proposed letter notifying the aggrieved employees of the PAGA Settlement accompanies this motion. (Rose Decl. , Ex. 2.) Plaintiff sent the proposed settlement to the LWDA. (Rose Decl. ¶ 20.)

[3] Plaintiff also advanced and settled individual claims relating to his alleged unlawful termination from employment on or about January 9, 2023, following his inquiry to management into proper payment of prevailing wages on public works projects, his cooperation with an investigation into Blackpointe's prevailing wage payroll practices by the Center for Contract Compliance in Camarillo, California, underpayment of earned prevailing wages, with derivative Labor Code violations. Defendants have denied these allegations. These individual non-PAGA claims are unique to Plaintiff and were settled. Court approval of Plaintiff's individual settlement is not required by law, but Plaintiff discloses it here in candor to the Court.

[4] According to its website, "The Center for Contract Compliance ('CCC') works with local, state, and federal agencies to combat the underground economy. In this collaborative effort, the CCC provides information and resources to ensure law-abiding contractors can bid on a level playing field for public works contracts. [¶] The CCC focuses on issues related to prevailing wage, meal and rest periods, travel and subsistence, safety, apprenticeship, contractor licensing, and workers compensation premium fraud." (https://socalccc.org/, 9/9/2025.)

III. RELEVANT LAW UNDER PAGA

A. PAGA statutory scheme

Under PAGA, an "aggrieved employee" may bring an action for civil penalties on behalf of himself and other current or former employees. (Cal. Lab. Code § 2699(a).) A plaintiff suing under PAGA "does so as the proxy or agent of the state's labor law enforcement agencies." (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986.) A judgment in a PAGA action "binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government." (*Id.*; *Iskanian v. CLS Transp. L.A., LLC* (2014) 59 Cal.4th 348, 381.)

B. Standard of review for PAGA settlements

In a settlement of a PAGA action brought by an aggrieved employee, the court must "review and approve" the settlement. (§ 2699(1)(2).) The court approval requirement was added to PAGA as part of the amendments to the Act that were introduced as Senate Bill 1809 in February of 2004 and signed by the Governor and filed with the Secretary of State on August 11, 2004. (*See* Legislative Counsel's Digest to Senate Bill No. 1809, attached as Exhibit 3 to Rose Decl. ¶ 22.)

Senator Joseph L. Dunn, who authored both the original PAGA bill (SB 796) and the 2004 amendments (SB 1809) sent a letter addressed to the President Pro Tem of the Senate on July 29, 2004, during the consideration of the amendments in Senate Bill 1809, which was published in the Senate Daily Journal, "to clarify the intent of subdivision (l)" of what would become Labor Code § 2699 (*see* 7/29/04 Letter from Sen. Dunn to Sen. Burton, attached as Exhibit 3 to Rose Decl. ¶ 23). Senator Dunn's letter provided, "The purpose of court review of the penalties in subdivision (l) is to ensure that settlements involving penalties arising under Labor Code Section 2699 do not undercut the dual statutory purposes of punishment and deterrence, or result in unjust, arbitrary, and oppressive, or confiscatory settlements." (Rose Decl. ¶ 23, Exhibit 3.) These broad criteria give the Court wide latitude in determining whether to approve the penalties proposed as part of a PAGA settlement.

The criteria focus on the effect the penalties may have on the defendant employer rather than the LWDA or the aggrieved employees who will receive the penalties, which is different than the analysis of a class action settlement, which instead typically focuses on the amount received by the class and compares that to the reasonable range of potential outcomes in the case *(see, e.g., Kullar v,* *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130; *Munoz v. BC! Coca-Cola Bottling Co, of L.A.* (2010) 186 Cal.App.4th 399, 407).

The Labor Code does not require the two-step settlement approval process utilized in class actions (*e.g.*, preliminary approval followed by final approval). Instead, PAGA settlements are reviewed via a single motion. (*See Salazar v. Sysco Central Cal,* Inc. (E.D. Cal. Feb. 2, 2017) No. 15-cv-01758-DAD, 2017 WL 1135801, *2 [rejecting the application of class action settlement rules and procedures for PAGA settlement approval].) The LWDA has explained that when trial courts are reviewing PAGA settlements, they should consider whether "the relief provided for under the PAGA [is] genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public." (*O'Connor v. Uber Techs., Inc.* (N.D. Cal. Jul. 29, 2016) No. 13-03826-EMC, CF No. 736 at 2-3; *see also Salazar*, 2017 WL 1135801, *2 [quoting the above passage].) Accordingly, nothing in the PAGA changes the strong judicial preference in support of approving settlements. (*See e.g., Osumi v. Sutton* (2007) 151 Cal.App.4th 1355, 1357 [confirming the "[s]trong public policy in favor of the settlement of civil cases"].)

Recent state appellate cases have provided authority on the appropriate standards of review. In *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, the Court of Appeal, First District, adopted a "fair, reasonable, and adequate" standard for court approval of a PAGA settlement. "A trial court must ensure a PAGA settlement is 'fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.'" (*Id.* at 77, disapproved of on other grounds by *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664.)

In *Turrieta v Lyft, Inc.* (2021) 69 Cal.App.5th 955, the Court of Appeal, Second District, confirmed the civil penalties recovered on the state's behalf under the PAGA are intended to "remediate present violations and deter future ones, not to redress employees' injuries." (*Id.* at 972, internal quotations omitted, aff'd (2024) 16 Cal.5th 664.)

Similarly federal district courts have approved PAGA settlements "if the settlement terms (1) meet the statutory requirements set forth by PAGA, and (2) are fundamentally fair, reasonable, and adequate in view of PAGA's public policy goals." (*Rincon v. West Coast Tomato Growers, LLC* (S.D. Cal. Feb. 12, 2018) No. 13-CV-2473-JLS (KSC), 2018 WL 8281046, *62; *Gutilla v. Aerotek, Inc.,* (E.D. Cal. Mar. 22, 2017) No. 115CV00191DADBAM, 2017 WL 2729864, at *3 [same].)

C. Statutory requirements of PAGA

To bring an action under PAGA, an aggrieved employee must first provide written notice to the LWDA as well as to the employer (§ 2699.3(a)(1)). Further, as to monetary relief, a plaintiff suing under PAGA is limited to recovery of civil penalties only, rather than damages available privately through direct or class action claims. (*Gutilla v. Aerotek, Inc., supra,* 2017 WL 2729864, at *2.) Any civil penalties recovered must be distributed as follows: 75% to the LWDA, and the remaining 25% to the aggrieved employees. (§ 2699(i).) PAGA also requires that claim notices, responses, and certain court documents be filed with the LWDA via its electronic filing system such as the court complaint alleging PAGA claims, any proposed settlement of PAGA claims and any Court Order or Judgment in any PAGA case. (§ 2699(l).)

D. Purpose of PAGA

The Legislature enacted PAGA in 2003 to strengthen labor law enforcement in response to declining state resources. Its purpose is to deter unlawful employment practices by allowing aggrieved employees to act as "private attorneys general" and recover civil penalties on behalf of the State. In doing so, employees serve as proxies for labor agencies, advancing the LWDA's core mission of enforcing minimum labor standards and protecting law-abiding employers from unfair competition. (*Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal.App.4th 365, 374 (2005) [citing 2003 Cal. Legis. Serv. Ch. 906 §§ 1(b)]; *Iskanian, supra,* 59 Cal.4th at 390, 394.)

E. Fairness of PAGA settlements

A PAGA action is a quasi-law-enforcement action and therefore a PAGA settlement does not have to meet the requirements of a class action. (*Arias,* 46 Cal. 4th at 982.) Thus, a court's "fairness" review of a PAGA settlement necessarily implicates unique features that render the process distinct from approval of a class action settlement under Rule 3.769 of the California Rules of Court.

In evaluating the adequacy of the settlement amount, the Court's focus is not the dollar amounts aggrieved employees are to receive, but rather, must focus on the total settlement amount in achieving PAGA's objective because "[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or class damages." (*Mendez v. Tween Brands, Inc*. (N.D. Cal. Apr. 2, 2010) No. 2:10-cv-

00072-MCE-DAD*,* 2010 WL 2650571, *4, [citing Cal. Lab. Code § 2699(a)].) "Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." (*Ochoa-Hernandez v. CJADERS Foods, Inc.,* No. C 08-2073 MHP, 2010 WL 1340777, at *4 (N.D. Cal. Apr. 2, 2010).) "Unlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies." (*Id.*)

Consistent with the fact that unnamed employees have no property interest in a PAGA claim, "[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." (*Id.* at *5.) This renders the approval process of a PAGA settlement distinct from a class action settlement, as there is no need for the Court to employ the "two-step approval process" required under Rule 3.769 of the California Rules of Court.

Finally, unlike a class action settlement under Rule 3.769, the scope of release permitted in a PAGA settlement is limited. While judgment in a PAGA action is binding not only on the named employee Plaintiffs but also on government agencies and any aggrieved employee not a party to the proceeding, the nonparty employees would not be bound by the judgment as to remedies other than civil penalties. (*Arias, supra,* 46 Cal. 4th at 986-87.) Thus, except for the named Plaintiff, the scope of a release in a PAGA settlement is confined to the PAGA penalties alleged in the complaint and PAGA claims that were alleged pursuant to PAGA.

F. <u>California policy favoring settlements</u>

California courts have a strong policy in favor of settlement. (*Stambaugh v. Superior Court* (1976) 62 Cal.App.3d 231, 236.) To be approved, a settlement must be "fair, reasonable and adequate to all concerned." *Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012). There is an initial presumption of fairness when, as here, the settlement agreement was negotiated at arm's length by experienced counsel. (*See*, *e.g., Kullar v. Foot Locker Retail, Inc., supra,* 168 Cal.App.4th at 130; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) Where these factors exist, a court's review is generally "limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Dunk, supra*, 48 Cal.App.4th at 1801.)

"In the context of a settlement agreement, the test is not the maximum amount Plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250. "A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable." (*Id.*) Compromise is inherent and necessary in the settlement process. (*Id.*) Thus, even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suit was to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation. (*Id.*) In addition, courts review the discovery process and information received through it in assessing whether the parties sufficiently developed the claims and their supporting factual bases before reaching settlement. (*See Kullar, supra*, 168 Cal.App.4th at 129-31.) Information is sufficient where it allows the parties and the Court to form "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 801.)

IV. THE TERMS OF THE SETTLEMENT ARE FAIR, REASONABLE, AND ADEQUATE

A. <u>The settlement terms are manifestly fair, reasonable, and adequate</u>

The parties have agreed to a common fund settlement of $25,000, which is allocated as follows: 1) $8,803 directly to the DIR Accounting Unit; 2) $2,934 distributed equally to the 65 Aggrieved Employees—37 former employees, and 28 current employees—in a pro rata share based on the number of pay periods each employee worked for Blackpointe from September 15, 2022, though the date of approval of this settlement (the "PAGA Period")—to date, 2,069 pay periods; 3) $8,333 to Plaintiff's counsel for attorneys' fees; 4) $1,680 to Plaintiff's counsel as reimbursement for advanced litigation costs; 5) administration costs to Phoenix Class Action Administrators, estimated not to exceed $2,750; and 6) a proposed enhancement payment for Plaintiff of $500. The releases are limited to PAGA issues.

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Plaintiff and his counsel complied with the PAGA statutory requirements. (Rose Decl. ¶¶ 11, 22.) This settlement was negotiated at arm's length by experienced counsel with the assistance of an experienced mediator. (Rose Decl. ¶¶ 14-21, 28-31.) Plaintiff's counsel carefully evaluated the potential PAGA liability and exposure in this case, and probabilities of success. (Rose Decl. ¶¶ 14-17.)

Case law regarding approvals of PAGA settlements strongly show this settlement is fair, reasonable, and adequate. For example, in *Franco v. Ruiz Food Products, Inc.* (E.D. Cal. Nov. 27, 2012) No. 1:10-cv-02354-SKO, 2012 WL 5941801 the federal district court approved total PAGA penalty of $10,000, with the $2,500 employee portion divided between as many as 2,055 current and former employees. As another example in *Schiller v. David's Bridal, Inc*. (E.D. Cal. June 28, 2012) No. 1:10-cv-616-AWI-SKO, 2012 WL 217001, the federal district court approved total PAGA penalty of $10,000, with the $2,500 employee portion divided between as many as 3,326 individuals.

B. <u>The settlement was non-collusive reached through an arms'-length bargaining process between parties represented by experienced counsel</u>

"[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness." (*State v. Levi Strauss & Co*. (1986) 41 Cal.3d 460, 482.) Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (*Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 581 [quoting *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1117-1118.)

There can be no doubt as to the fairness of the settlement before this Court. As noted, the parties participated in a full-day mediation with David Phillips, Esq. who provided useful, neutral analysis of the issues and risks to both sides. (Rose Decl. ¶¶ 16-20.)[5] At all times, the parties' negotiations were adversarial and non-collusive. (Rose Decl. ¶ 18.) Additionally, both Blackpointe and Plaintiff were represented by experienced counsel through the negotiations. (Rose Decl. ¶¶ 1, 28-31.) (*See Kullar v. Foot Locker Retail, Inc., supra,* 168 Cal.App.4th at 129 [courts should weigh "the competency and integrity of counsel and the involvement of a neutral mediator in assuring ... that a settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct."].)

[5] *In re Apple Computer, Inc. Derivative Litig*., No. C 06-4128 JF (HRL), 2008 WL 4820784 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement).

Based on information obtained through investigation and discovery, Plaintiff's counsel was able to assess the strengths and weaknesses of the case and the benefits of settlement. (Rose Decl. ¶ 17.) As a result, Plaintiff's counsel firmly believes that the settlement represents a favorable resolution of these claims consistent with PAGA's punishment and deterrence purposes. (Rose Decl. ¶ 20.)

C. Potential manageability issues

Courts require PAGA actions to be manageable. A claim may be deemed unmanageable if proving liability depends on numerous individualized inquiries—such as each employee's daily job duties or manager's knowledge—rather than common proof. In such cases, courts have stricken or dismissed PAGA claims where adjudication would effectively require mini trials for each worker. (*See e.g., Cardenas v. McLane Foodservice, Inc.* (C.D. Cal. 2011) 796 F. Supp. 2d 1246, 1260.)

Blackpointe is expected to argue that establishing liability for Plaintiff's misclassification claims requires individualized inquiries into specific job duties performed on specific workdays at specific remote jobsites. For this, Blackpointe would argue, it will be necessary to provide individualized employee testimony. If Blackpointe's arguments are found persuasive, manageability concepts could prevent pursuit of the alleged PAGA claims here because they would supposedly require several 'mini trials' for each aggrieved employee, per job, during each pay period.

D. The outcome in litigation is highly uncertain

Trial is always uncertain. Indeed, several PAGA trials have resulted in defense verdicts. (*See e.g., Childers v. Anthony Shenouda Inc.*, Case No., BC517798 in the Los Angeles County Superior Court, Hon. Elihu Berle presiding [trial of misclassification case under PAGA resulting in a defense verdict after bench trial]; *Allen v. American Multi-Cinema Inc.*, Case No. RG-11-585502, in the Alameda County Superior Court, Hon. George C. Hernandez presiding [trial of seating claims under PAGA resulted in a defense verdict following a bench trial]. Thus, in the face of such uncertainty, settlement was advantageous to Plaintiff, the LWDA, and the Aggrieved Employees as it secured a substantial monetary recovery serving the intended enforcement purposes of the PAGA.

E. Stacking and derivative penalties

Plaintiff recognizes that there is a significant chance the Court would decline to stack penalties and exercise its discretion to reduce PAGA penalties based on the particular facts of this case. The potential exposure described here incorporates the possibility that multiple violations can be assessed for a particular pay period for a particular employee. There is a significant chance that the Court would decline to stack on derivative violations for an employer that maintains comprehensive, facially compliant policies. Even without stacking derivative violations, a given employee may present multiple PAGA violations (*e.g.*, for misclassification violations, itemized wage statements, untimely wage payments) for a particular pay period. There is a chance that the Court would decline to assess multiple violations per pay period per employee.

With respect to derivative claims, such as penalties under Labor Code section 203 as incorporated into the PAGA, defendants typically argue that no waiting-time penalties can be awarded unless the failure to pay wages is "willful," an element that Plaintiff acknowledges could be difficult to prove. (*See* 8 CCR 13520 ["[a] willful failure to pay wages within the meaning of Labor Code § 203 occurs when an employer intentionally fails to pay wages to an employee when those wages were due."]; *Smith v. Rae Venter Law Group*, 29 Cal.4th 345, 354 n.2 (2002) [holding that a good faith dispute that any wages are due will preclude an award of waiting time penalties]. Blackpointe may further argue that an employer's failure to pay wages is not willful unless it reached the standard of "gross negligence or recklessness." (*See Amaral v. Cintas* (2008) 163 Cal.App.4th 1157, 1201.)

Plaintiff also recognizes that some courts have interpreted PAGA, *i.e.*, Labor Code section 2699(f)(2), to impose the enhanced "subsequent violation penalty" or "heightened penalty" only after an employer has been notified that its conduct violates the Labor Code. (*See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; *Trang v. Turbine Engine Components Technologies Corp.* (C.D. Cal. Dec. 19, 2012) No. CV 12–07658 DDP (RZx), 2012 WL 6618854; *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc*. (S.D. Cal. Aug.10, 2009) No. 05cv1199–IEG–CAB, 2009 WL 2448430.) While many commentators contend this interpretation is erroneous, this interpretation has gained traction with some courts.

PAGA gives courts wide latitude to reduce the amount of civil penalties "based on the facts and circumstances of a particular case" when "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (§ 2699(h).) In reducing PAGA penalties, courts have considered issues including whether the employees suffered actual injury from the violations, whether

Blackpointe was aware of the violations, and the employer's willingness to fix the violation. (*Cotter v. Lyft, Inc.* (N.D. Cal. June 23, 2016) 193 F.Supp.3d 1030, 1037; *Fleming v. Covidien Inc*. (C.D. Cal. Aug. 12, 2011) No. (OPX), 2011 WL 7563047, at *4 [district court reduced PAGA penalties from $2.8M to $500,000—a reduction of $82.2%—because the court found maximum penalties "unjust" finding the employees had suffered no injuries).[6]) For instance, in the *Cotter* case, the court found that a $1 million PAGA settlement was fair and reasonable in light of the unsettled nature of the law, resulting in a $2.52 per pay period award to the aggrieved employees—there were 397,110 pay periods in a $1 million PAGA settlement, resulting in a 97.5% reduction from the maximum. In *Fleming v. Covidien, supra*, the court reduced the potential penalties by over 82%, awarding $500,000 for 28,742 pay periods at issue. Here, Blackpointe will argue the court should exercise its discretion to significantly reduce the PAGA penalties. Plaintiff had to consider that such argument may find a sympathetic ear.

F. <u>The expense, complexity and likely duration of further litigation</u>

To assess the fairness, adequacy, and reasonableness of a PAGA action settlement, the court also should consider the expense, complexity, and likely duration of further litigation. (*Dunk v. Ford Motor Co., supra,* 48 Cal.App.4th at 1801.) Here, as outlined above, the parties faced the expense and uncertainty of a hard-fought trial, and regardless of which party prevailed, the likelihood of appeal.

G. <u>The presence of a government participant</u>

As set forth above, 75% of the penalty is paid to the LWDA, and Labor Code § 2699.3(b)(4) permits the LWDA to comment on the penalties. This provides an independent check on unfair, unreasonable, inadequate, or collusive settlements that are too low. (*Id.*)

H. <u>The extent of investigation completed</u>

As detailed above, the settlement was reached only after the case was thoroughly investigated by counsel and had reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the settlement. (*In re Warner Commc'ns Sec. Litig.* (S.D.N.Y. 1985) 618 F.Supp. 735, 745.)

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[6] Some courts have awarded no PAGA penalties even when Labor Code violations were established. (*See, e.g., Makabi v. Gedalia* (2d Dist.Ct.App. 2016) Cal.App.Unpub. 1489, *5-7 [no PAGA penalties awarded by Los Angeles Superior Court]; *In re Taco Bell Wage & Hour Actions* (E.D. Cal. 2016) U.S. Dist. LEXIS 48557, *40-43 [PAGA penalties denied after trial].

V. THE AGREED UPON ATTORNEYS' FEES, COSTS AND INCENTIVE PAYMENTS ARE FAIR AND REASONABLE

For the efforts and the substantial risk undertaken by Plaintiff's counsel in obtaining a $25,000 common fund settlement for PAGA enforcement purposes that benefits the LWDA and Aggrieved Employees, the parties allocated $8,333 to Plaintiff's counsel for attorneys' fees, and $1,680 to Plaintfiff's counsel as reimbursement for advanced litigation costs. This amount equates to 33⅓% of the $25,000 common fund in attorney's fees plus $1,680 in reimbursement for litigation costs. (Rose Dec. ¶¶ 24-27.) As discussed below, these costs and fees are warranted under the law and within the range of fees commonly awarded in similar cases. (*Id.*)

A. The attorneys' fees are appropriate under the common fund doctrine

Attorneys' fees are expressly authorized in PAGA actions under section 2699(g)(1). Because these cases are a type of *qui tam* proceeding, courts routinely apply the common fund doctrine, which permits counsel to recover fees from the settlement fund created for the benefit of others. (*People ex rel. Stratham v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 491–492; *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89–91.) Both state and federal courts consistently award one-third of the common fund as attorneys' fees, recognizing that this percentage reflects market practice and compensates counsel for the risk undertaken. (*Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11.) This approach has been applied in PAGA-only settlements of varying sizes, from multimillion-dollar recoveries to more modest cases.

Here, counsel's request for $8,250—representing one-third of the $25,000 settlement fund—plus reimbursement of $1,680 in costs is squarely within this accepted range. Given the favorable recovery achieved, the risks of litigation, and the benefit conferred for enforcement and on both the LWDA and aggrieved employees, the requested fees and costs are fair and reasonable.

B. The litigation costs advanced by Plaintiff's counsel are reasonable and necessary

Plaintiff's counsel incurred more than $1,680 in litigation costs, including filing fees, service, couriers, and mediator expenses. These costs were necessary, reasonable, and proportionate to the $25,000 PAGA settlement fund obtained. (Rose Dec. ¶ 27.)

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C. <u>The requested incentive payment to Plaintiff is reasonable</u>

The use of incentive payments to lead plaintiffs in representative actions has long been approved by California courts. (*See, In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393, as modified (July 27, 2010); *see also, Bell v. Farmers Ins. Exchange,* 115 Cal.App.4th 715, 725-26 (2004), as modified on denial of reh'g (Mar. 9, 2004); *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles, supra,* 186 Cal.App.4th 399, 412. Plaintiffs are generally entitled to incentive compensation for initiating the litigation on behalf of others, taking the time to prosecute the case, and incurring financial and personal risk. *See Clark v. American Residential Services LLC, supra,* 175 Cal.App.4th 785, 803

Here Plaintiff seeks only $500. Given Plaintiff's work undertaken and the modest amount requested, the incentive payment is well within the bounds of reasonableness and should be approved.

VI. CONCLUSION

For these reasons, Plaintiff respectfully requests that the Court grant this unopposed Motion for Approval of the PAGA Settlement.

Dated: September 19, 2025

ROSE LAW, APC

By: ______________________________

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