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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

MISSAEL RODRIGUEZ in a Representative capacity only, and on behalf of other members of the general public similarly situated,

Plaintiff

v.

EUROPA AUTO IMPORTS, INC. DBA MERCEDES-BENZ OF SAN DIEGO, a California Corporation; and DOES 1-10, inclusive.

Defendants

CASE NO. : 37-2023-00054264-CU-OE-CTL

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S *UNOPPOSED* MOTION FOR APPROVAL OF PAGA SETTLEMENT

Date: August 28, 2026
Time: 9:30 a.m.
Dept.: C-72
Judge: Hon. Marcella O. McLaughlin

I. SUMMARY OF MOTION

This is a Labor Code §2698 *et seq.* "Wage and Hour" ("PAGA") action brought against numerous related "Penske" Automotive dealerships. ("Defendants" or "Penske"). As this is a "PAGA" action only, the Limitations Period begins on October 3, 2022. There are approximately **3,280** PAGA Members at issue who worked a total of **96,765** PAGA Pay Periods. (Yaeckel Decl., ¶ 3.)

Following the exchange of discovery, analysis of numerous sets of time and wage data, and two separate mediations presided over by Jill Sperber, Esq., and additional arms length negotiations, the Parties reached a proposed settlement that includes a payment of penalties to the LWDA. (Yaeckel Decl., ¶ 4.) **Please Note:** The original Complaint was only pled as to one automotive dealership. (*Id.*) However, through investigation and informal discovery, Plaintiff later alleged that numerous dealerships were owned by "Penske" Automotive Group and that there were similar policies across all the dealerships. (*Id.*) These "global" claims were the subject of the second mediation. A stipulation and proposed order to file a First Amended Complaint ("FAC") that names each Defendant dealership was recently submitted to the Court (although has not yet been processed) at the time of this filing.

On **January 26, 2026**, Plaintiff's counsel first gave notice of this hearing and the instant Settlement to the LWDA. (Yaeckel Decl., ¶ 5.)

On February 13, **2026**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal copies of this entire *ex parte* application, including the Notice, this supporting Memorandum, Declaration, and Proposed Order & Judgment. (Yaeckel Decl., ¶ 6.) To date, Plaintiff's counsel has not received any response. *(Id.*)

The Total Value of the proposed Settlement is **$500,000.00** which is broken down as follows:

- **$11,948.76** Administration Expenses
- **$28,500.00** Costs of Litigation.
- **$7,500.00** Plaintiff's Representative Enhancement
- **$166,666.67** Attorneys' Fees (1/3 of total settlement value);
- Sub-Total of **$285,384.57**. 75% (**$214,038.43**) shall be assigned/paid to the LWDA as penalties.
- The remaining 25% (**$71,346.14**) in cash will be disbursed among all employees based on pay periods employed during the PAGA period.

Given the above, the average payment to each individual employee will be approximately **$21.75**. (Yaeckel Decl., ¶ 8.) This is an average only, actual payouts will be based on the amount of pay periods worked during the PAGA period.

Further, there are no restrictions for any of the **3,280** employees to file individual actions, as the settlement agreement only covers PAGA claims alleged in Complaint. (Yaeckel Decl., ¶ 9; **Exhibit 1**: "Releases of Claims" § 5.2, p. 11.)

<u>Please Note</u>: Although this was alleged as a PAGA only claim, Defendants required Plaintiff to release all claims (e.g., a full 1542 release) as a part of the proposed settlement. (**Exhibit 1**: "Releases of Claims" § 5.1.1, p. 11.) In addition to the PAGA claims, Plaintiff possessed individual Labor Code violations based on the same set of facts underlying his PAGA claims. He also wished to assert additional individual claims related to his employment, if not for the settlement. As set forth above, the LWDA has notice of this Settlement and does **<u>not</u>** object.

Plaintiff's counsel authoring the instant motion is well versed in class and representative (PAGA) litigation. Based on that experience, counsel submits this settlement represents a fair and adequate payment to the LWDA and aggrieved employees. (Yaeckel Decl., ¶ 10-17).

Should the Court deem it necessary, a lodestar cross-check confirms the propriety of the requested attorneys fees. Given the actual fees incurred, in the amount of approximately **$185,175.00,** no lodestar multiplier is necessary. (Yaeckel Decl. ¶ 18).

The parties proposed notice, to accompany the settlement checks following approval, is attached to the declaration of Eric K. Yaeckel as **Exhibit 3**.

II. <u>CONTROLLING AUTHORITY</u>

PAGA "authorizes an employee to bring an action for civil penalties on behalf of the state against his or her employer for Labor Code violations committed against the employee and fellow employees." (*Iskanian v. CLS Trans. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 360.) "To compensate for the lack of '[a]dequate financing of essential labor law enforcement functions,' the California legislature enacted PAGA to permit aggrieved employees to act as private attorneys general to collect civil penalties for violations of the Labor Code." *(Sakkab v. Luxottica Retail N. Am., Inc.* (9th Cir. 2015) 803 F.3d 425, 430.)

Recently the Court of Appeal has given guidance to trial courts in reviewing a PAGA settlement:

> We therefore hold that **a trial court should evaluate a PAGA settlement to determine whether it 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**. (*See Williams , supra* , 3 Cal.5th at p. 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA "sought to remediate present violations and deter future ones"]; *Arias , supra* , 46 Cal.4th at p. 980, 95 Cal.Rptr.3d 588, 209 P.3d 923 [the declared purpose of PAGA was to augment state enforcement efforts to achieve maximum compliance with labor laws].)

(Moniz v. Adecco USA, Inc. (2021) 72 Cal. App. 5th 56, 77)

Prior to *Moniz*, other Courts have followed the rationale in *O'Connor v. Uber Techs., Inc.*, 201 F.Supp.3d (N.D. Cal. 2016) 1110, 132-35, which states a court is permitted to approve a PAGA settlement if the settlement is "fair and adequate in view of the purposes and policies of the statute." *(Id.*)

A court may award a lesser amount than the maximum civil penalty amount 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. (Lab. Code, § 2699(e)(2); *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213-1214. See e.g., *Fleming v. Covidien Inc*., (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *4, reducing PAGA penalties by 82%.)

The Court in *Flores v. Starwood Hotels & Resorts Worldwide, Inc.* ("*Flores*") the court was asked to approve a PAGA settlement (the "Settlement"). *(Flores v. Starwood Hotels & Resorts Worldwide, Inc.* (C.D. Cal. 2017) 253 F. Supp. 3d 1074, 1075–76.) In deciding whether the court should approve the Settlement, the court looked at the California legislature, the California Courts of Appeal, the California Supreme Court, and the California Labor & Workforce Development Agency for a definitive answer as to what precedent the court should follow in either approving or denying the settlement. (*Id.)* The court was not able to find a definitive answer. (*Id*.) As such, the court followed the rationale in *O'Connor v. Uber Techs., Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 132-35, which states a court is permitted to approve a PAGA settlement if the settlement is "fair and adequate in view of the purposes and policies of the statute." *(Id*.)

In deciding whether the settlement was "fair and adequate," the *Courts* have looked at how the parties divvied up the civil penalties under Section 2699(i) of the California Labor Code. *(Flores v. Starwood Hotels & Resorts Worldwide, Inc.* (C.D. Cal. 2017) 253 F. Supp. 3d 1074, 1076–77.) As the court felt the parties' division of penalties was fair and adequate pursuant to the statute, the court approved the settlement. (*Id*.)

III. DISCUSSION

The parties reached the terms of their proposed settlement agreement following the exchange of extensive information and employment records. The parties submit the proposed settlement of PAGA penalties is fair, adequate, and reasonable.

A. THE NATURE AND SCOPE OF THE ALLEGED VIOLATIONS

The Complaint alleges Labor Code violations which triggered penalties under the PAGA statute (Labor Code §2698 *et seq*.; See ROA #1 [Civil Complaint].) Plaintiff also alleged all employees were denied compliant Meal and Rest Periods, minimum wages, overtime, accurate wage statements, reimbursements, and suffered waiting time violations. (See ROA #1 [Civil Complaint]; Exhibit 1: "Recitals" § 2.1, p. 6.)

Specifically, Plaintiff alleges that he - and other employees - received "short," "late," or "missing" Meal Periods, including those documented within Defendants' Time Records. (Yaeckel Decl., ¶ 28.) Plaintiff also challenged whether Defendants maintained lawful meal and rest periods. Plaintiff alleged he- and other employees -were not properly compensated due to Defendant's failure to maintain accurate time records. (*Id*.) Finally, Plaintiff also challenged whether Defendants maintained lawful meal and rest period policies. (*Id*.)

B. ANALYSIS OF POTENTIAL LIABILITY, ON A REPRESENTATIVE BASIS

The catalyst of this litigation concerned allegations that Mr. Rodriguez was denied legally compliant meal and rest periods, and was not paid for all Overtime hours worked. (Yaeckel Decl., ¶ 29.) Investigations completed by counsel revealed that Defendants' timekeeping policies and employee records were not in compliance with California law. (Yaeckel Decl., ¶ 23.) However, these investigations also revealed that the "rate of violation" by Defendants was significantly less than 100%. (*Id*.). On many of those occasions, it appears that Defendants did, in fact, comply with the law. (*Id*.)

1. The Parameters of the Proposed PAGA Group

To confirm, this settlement is meant to encompass all current and former non-exempt employees who worked in California during the "PAGA period.". (**Ex. 1**: ¶ 5.)

Defendants have confirmed that there are approximately **3,280** employees who worked a total of 96,765 PAGA Pay Periods as of January 26, 2026. (**Exhibit 1**: "Aggrieved Employee Size Estimates and Escalator Clause" § 8, p. 13; Yaeckel Decl., ¶ 3.)

If the Court approves the "contingent costs" as requested in the moving papers, the total amount of PAGA penalties will be **$285,384.57**. 75% (**$214,038.43**) shall be assigned/paid to the LWDA as penalties. The remaining 25% (**$71,346.14**) will be disbursed among all employees based on pay periods worked during the PAGA period. If you divide the $71,346.14 in penalties between the 3,280 employees, it results in an average payout of **$21.75** per employee. (Yaeckel Decl., ¶ 7.) **Please Note:** This is an average only. The actual payout per employee will vary based on the total pay periods worked during the PAGA period. (**Exhibit 1:** "Monetary Terms" § 3.2.4.1, p. 8.)

2. The Analysis of the Claims and Scope of Liability

Prior to settlement, Plaintiff conducted a thorough analysis of the documents and data produced by Defendant. This included an analysis of all relevant written policies and a large sampling of time and wage records across the employee population. Plaintiffs' Counsel were able to realistically assess the value of Plaintiffs' claims, and intelligently engage Defense Counsel in settlement discussions that culminated in the proposed settlement now before the Court. Based on the above, a realistic "best case recovery" in a case of this type would be in the range of **$267,500.00** and **$950,000.00** (depending on what extent the Court mitigated the PAGA penalties). (Yaeckel Decl., ¶ 30.) Moreover, without revealing settlement protected communications, it was highly unlikely Plaintiff could ever recover anything approaching a maximum judgment. (*Id.*) However, as is set forth more fully below, experienced PAGA counsel are aware "maximum" awards in PAGA only cases are exceedingly rare. Moreover, most trial Courts (including this Superior Court, in the *Carrington* matter) decline to "stack" PAGA penalties. "Stacking" refers to imposing multiple penalties for one alleged "harm." *E.g.* one single late meal period could arguably violate at least four Labor Code provisions that allow for separate penalties pursuant to PAGA. (Yaeckel Decl., ¶ 31.)

i. Meal and Rest Period Claims

Plaintiff's forensic expert was able to identify numerous examples of "missing" or "late" Meal Periods without the provision of a Meal Period Penalty Payment. However, Defendant argued that these records do not conclusively show whether (1) Defendant actually failed to provide the Meal Period, (2) there was a voluntary waiver, (3) employees forgot to clock out, or (4) employees voluntarily chose to skip or take them late even though they were provided. (Yaeckel Decl., ¶ 32.)

Plaintiff also alleged Defendants' written policies were illegal, and improperly restricted class members from leaving the premises during their Rest Periods. Defendants argued that witness testimony would demonstrate that - in practice - Defendants did not restrict its employees from "leave the premises" during Rest Periods.(Yaeckel Decl., ¶ 33.) The rest period claims would have been harder to prove on a representative basis given that rest breaks were not recorded on the time records. (*Id.*) Based on Plaintiff's expert forensic report, the maximum value of these claims was worth as little as $0 (a defense verdict) or as much as approximately **$2,700,00.00.** (Yaeckel Decl., ¶ 34.)

ii. Minimum Wage and Overtime Violations

Plaintiff alleges that Defendant failed to pay minimum wages to employees for all time spent under Defendant's control. This allegation is based on the following alleged facts: Defendant failed to maintain accurate Time Records to the detriment of the employees. More specifically, Defendants used a "transactional transfer" system to calculate employees' regular wages, overtime, etc. and inaccurately compensated employees for relevant pay periods. Furthermore, although Defendants would receive "to-the-minute" start and end times, Defendants would thereafter alter - deduct time from - the Time Record, prior to payment of compensation to the employees. (Yaeckel Decl., ¶ 35.)

Based on Plaintiff's expert forensic report, the maximum value of these claims was worth as little as $0 (a defense verdict) or as much as approximately **$1,100,00.00.** (Yaeckel Decl., ¶ 36)

iii. Wage Statements, Reimbursement and Other Derivative Penalties

The remaining claims are largely derivative, in that Wage Statement and Labor Code § 203 penalties would only be permissible if the above claims are proven. Plaintiffs had also alleged violations for failure to reimburse business expenses pursuant to Labor Code § 2802. However, it appeared Defendant had compliant reimbursement policies and any un-reimbursed expenses would have been very minimal. (Yaeckel Decl., ¶ 37.) Based on Plaintiff's counsel's experience, it is exceedingly rare that these derivative penalties are awarded at all. However, based on Plaintiff's expert forensic report, the maximum value of these claims was worth as little as $0 (a defense verdict) or as much as approximately**$1,550,00.00.** (Yaeckel Decl., ¶ 37.)

iv. The Arguments for Mitigation of PAGA Penalties

Moreover, Plaintiff's counsel is aware of the Court's discretion to mitigate penalties pursuant to California Labor Code section 2699(e)(2). (Yaeckel Decl., ¶ 38.) To confirm, Plaintiff's counsel experienced the mitigation of "PAGA" penalties in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504. (*Id.*) In *Carrington*, Judge Bacal significantly mitigated PAGA penalties ($5 per violation), due to the efforts made by the employer to comply with the law. (*Id.*)

Plaintiff's counsel agrees with Her Honor Judge Bacal, and with the provision of the Labor Code, that penalties *should* be mitigated where violations are minimal (or rare), or where the employer makes significant efforts to comply with the Labor Code. (Yaeckel Decl., ¶ 38.)

Given the above, a full award of penalties by the Trial Court would result in a judgment of approximately $5,350,000.00 dollars. However, the total penalties were then discounted as it is highly unlikely the Court would award a maximum penalty. It is also unlikely derivative penalties would be awarded at all. (Yaeckel Decl., ¶39).

Here, for purposes of the exposure analysis, Plaintiffs ran one "realistic" model where penalties were reduced approximately 75%, and the Court declined to award derivative penalties, which would have resulted in an approximate judgment of $950,000.00. Plaintiffs also ran a less favorable model where penalties would be reduced by approximately 95%, in line with the *Carrington* decision, which would have resulted in an approximate judgment of $267,500.00. Accordingly, this is how Plaintiffs calculated the estimated scope of liability as being between **$267,500.00** and **$950,000.00**. (Yaeckel Decl., ¶40).

As the above factors exist in this case, it is the opinion of Plaintiff's counsel that the settlement is fair, adequate, and reasonable. Specifically, Plaintiff's counsel's understanding is that Defendants have agreed to make changes to its policies, and review and/or amend them to ensure compliance with California law. (Yaeckel Decl., ¶ 41.)

3. <u>Counsel Are Well Experienced in PAGA Matters and Recommend the Settlement</u>

Plaintiff's counsel, William B. Sullivan has approximately 30 years of experience in "class action" litigation, both as plaintiff and defense counsel. (Yaeckel Decl., ¶ 10-16.) Plaintiff's counsel, Eric K. Yaeckel, has over 15 years of experience prosecuting class and representative action claims under the California Labor Code. (*Id.*) Plaintiff's counsel, Eric K. Yaeckel and William B. Sullivan, are the attorneys of record in a matter that was recently heard (and favorably decided) before the California Supreme Court titled *Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58. (*Id.*) The

Donohue matter was a certified class and PAGA action. (*Id.*)

Plaintiff's counsel were lead counsel on approximately 50 employment "wage and hour" claims with class action, or representative action allegations. (Yaeckel Decl. ¶ 16-17.) Based on said experience, it is the opinion of Plaintiff's counsel that this settlement represents a fair and adequate payment. (*Id.*)

C. THE ALLOCATION OF PENALTIES, AND *LIMITED RELEASE* OF CLAIMS

While Labor Code section 2699(*l*) requires a court to "review and approve any penalties sought as part of a proposed settlement agreement," it does not provide any guidance as to what is considered an "adequate" allocation of these penalties. However, Trial Courts have held that *where the division* of penalties was fair and adequate and in accordance with the PAGA statute, the court should approved the settlement. (*Flores,* 253 F. Supp. 3d at 1076–77.)

After subtracting the contingent costs set forth above, the parties seek to allocate **$285,384.57** of the total settlement to the Total Value of the PAGA Fund. 75% **($214,038.43)** shall be assigned/paid to the LWDA as penalties. The remaining 25% **($71,346.14)** will be allocated and distributed among the current or ex-employees within the PAGA representation period. (Yaeckel Decl., ¶ 7.)

The parties contend the settlement agreement amount is fair, adequate, and reasonable. (Yaeckel Decl., ¶ 17.) Moreover, the PAGA settlement does not bar any employee from pursuing their own individual Labor Code claims. (Yaeckel Decl., ¶ 9.) The release only applies to the PAGA claims for penalties, based upon the allegations in Plaintiff's operative Complaint and PAGA Notice Letter. **(Exhibit 1**: "Releases of Claims" § 5.2, p. 11.)

<u>Please Note</u>: after this settlement was reached, Plaintiff became aware of a later filed potentially related case *Twyman v. Penske Automotive Group Inc.*, San Diego Superior Court Case No. 25CU016238C., which also alleges PAGA claims against one of the named Defendants in this matter. The parties in all cases have met and conferred and agree that this release is expressly limited to the claims at issue in *this litigation* and does not apply to any unique claims or theories at issue in the *Twyman* matter. Pursuant to the LWDA notification procedures, the LWDA was also notified of this issue. (Yaeckel decl. ¶ 51).

D. REQUEST FOR ATTORNEYS' FEES, COSTS & ENHANCEMENT AWARDS

Plaintiffs also request the Court approve the requested attorneys' fees, costs reimbursement and plaintiffs' enhancement awards for the reasons set forth below.

1. Request for Reasonable Costs of Litigation

Plaintiffs' Counsel are entitled to reimbursement of their discretionary litigation costs. Cal. Lab. Code § 2699(g)(1). Out-of-pocket discretionary expenses are compensable if they would normally be billed to a fee-paying client. (See *Beasley v. Wells Fargo Bank* (1991) 235 Cal. App. 3d 1407, 1419, overruled in part on other grounds in Olson *v. Automobile Club of Southern Calif*. (2008) 42 Cal. 4th 1142.) Such discretionary costs may be claimed as part of an attorneys' fees motion when seeking statutory fees under the Labor Code. *(*See *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal. App. 4th 1157, 1218 n.27*,* awarding costs that are necessarily incurred.)

As itemized in Plaintiffs' Counsel's declaration, Counsel advanced approximately **$28,522.43** in out-of-pocket costs to the State for, among other things, filing fees, expert fees, deposition costs and mediation fees. Given that Defendant agreed to not oppose up to **$28,500.00** in costs, Plaintiffs request the Court grant the specific request of **$28,5000** in litigation costs. (Yaeckel Decl., ¶ 27.) Because these reasonable costs were necessarily incurred during the case's pendency, these costs are reasonable and should be awarded. (See also Cal. Civ. Pro. Code § 1033.5(c)(4), "[i]tems not mentioned in this section and items assessed upon application may be allowed or denied in the court's discretion.")

2. Request for Reasonable Attorneys' Fees

For the reasons discussed in detail below, an award of attorneys' fees in the amount of one-third of the gross settlement fund is fair and reasonable, and in line with what other California courts, both state and federal, have awarded in settlements of similar litigation.

The PAGA statute provides that a plaintiff is entitled to recover reasonable attorneys' fees, expenses, and costs. Section 2699(g)(1) of the California Labor Code provides that "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." In a qui tam action, reasonable attorneys' fees and costs are typically awarded under the common fund doctrine where, as here, the litigation creates a common fund of money in a specific amount for the benefit of others. PAGA "is a type of qui tam action." (See *Iskanian*, 59 Cal. 4th at 382.) "A qui tam action 'is a type of private attorney general lawsuit' [citation omitted], in which 'the qui tam plaintiff stands in the shoes of the state or political subdivision [citation omitted].'" (*People ex rei. Stratham v. Acacia Research Corp.* (2012) 210 Cal. App. 4th 487, 501.)

Where, as here, a common fund is created in a qui tam action by the successful litigation of a plaintiff and her attorneys, the plaintiff's attorneys are entitled to recover their fees from the common fund:

> Those benefitting from the recovery of the fund, in this case some depositors and eventually the People of the State of California, must bear their share of the cost of litigation. Fees for taxpayers' attorneys will be deducted from the judgment, and each claimant's share reduced proportionately. To the extent the judgment relies upon section 1021.5 for recovery of attorney fees, it must be modified to confine the award of fees to the common fund theory. *(Bank of America v. Cory* (1985) 164 Cal. App. 3d 66, 9; authorizing common fund fees in a qui tam taxpayer suit against certain banks.)

Likewise, through the successful efforts of Plaintiffs and their attorneys, a common fund was created in the amount of **$500,000.00** for the benefit of the employees and the State of California.

The California Supreme Court recently upheld the use of the common fund theory of recovery for attorneys' fees in *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal. 5th 480, 506. In *Laffitte*, the settlement created a common fund of $19 million. The Court approved the award of attorneys' fees in the amount of one-third of the gross $19 million settlement (e.g., an award of $6.33 million) under the common fund theory. *(Id.*) By awarding counsel a percentage of the total recovery, rather than fees based on hours worked, the common fund method encourages attorneys to efficiently litigate to achieve the best results possible. (See *Laffitte,* 1 Cal. 5th at 492-494.) Indeed, "the percentage method is generally favored in common fund cases because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure. *(Id.* at 493, quoting *In re Rite Aid Corp. Securities Litig*. (3d Cir. 2005) 396 F.3d 294, 300 (internal quotations omitted).)

California state and federal courts routinely award attorneys' fees approximating **one-third** of the common fund. (See, e.g. *Laffitte*, 231 Cal. App. 4th at 871, "33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits"; *Chavez*, 162 Cal. App. 4th at 66 n.11, "Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.")

A fee award in the amount of one-third of the common fund is also reasonable because it best reflects the market rate for contingency fees. (See *Lealao v. Beneficial Cal. Inc.* (2000) 82 Cal. App. 4th 19, 47; "attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace. . . .") Fees representing one-third of the recovery reflect the rate negotiated in "typical contingency fee agreements [which] provide that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried." (*Fernandez v. Victoria Secret Stores* (C.D. Cal. July 21, 2008) LLC, No. CV 06-04149 MMM SHX, 2008 WL 8150856, at *16, citing an academic study collecting contingency fee agreements and finding that a fee award constituting 34% of the fund is reasonable on that basis.) Because the negotiated fee structure mimics the marketplace, it is reasonable and should be approved.

For all of these reasons, a common fund fee award in the amount of one-third of the total settlement (**$166,666.67**) is fair and reasonable.

3. A Lodestar Cross Check Further Confirms the Reasonableness of the Fee

Should the Court deem it necessary, lodestar cross-check confirms the propriety of the requested attorneys fees. Given the actual fees incurred, in the amount of approximately **$185,175.00**, no lodestar multiplier is necessary. (See Yaeckel Decl., ¶ 18.)

California courts and the Ninth Circuit hold that the trial court in determining whether to apply a multiplier should look at the case and its results as a whole. Historically, California courts have approved multipliers of 1.5 to 4. (See *Coalition for Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal. App. 3d 241, 251 (multiplier of 2+); *Kern Rivet Public Access Committee v. City of Bakersfield* (1985) 170 Cal. App. 3d 1205, 1228 (multiplier of 1.5); *Downey Cares v. Downey Community Development Commission* (1987) 196 Cal. App. 3d 983, 994 (multiplier of 1.5); *Sternwest Com. v. Ash* (1986) 183 Cal. App. 3d 74, 75.)

Counsel submits its fees are reasonable and in line with (or lower) than rates charged in the community by attorneys with similar experience. (See Yaeckel Decl., ¶¶ 20-26).

Moreover, the multiplier requested (to the extent the Court even deems such a lodestar cross-check necessary) is within the range of what California and federal courts often apply in Class Action cases.

Please Note: there is no authority Plaintiff is aware of requiring a lodestar analysis in a PAGA only matter, which is why Plaintiff cited to Class Action authority above. Moreover, the results obtained here, including the average net recovery per PAGA Member exceed, or are in line with, those normally observed in PAGA only settlements. (See Yaeckel Decl., ¶ 19.)

4. Request for PAGA Representative Enhancement

The named Plaintiff requests an enhancement payment of $7,500 total for his service as the PAGA representative and for recognition that he was also required to release all of their underlying Labor Code claims via a full section 1542 release. (Yaeckel Decl., ¶ 43.) There is no such restriction on the other alleged aggrieved employees. (*Id.*)

An enhancement is justified in light of the "reputational risk" that Plaintiff assumed by litigating claims against a former employer. (See *Billinghausen v. Tractor Supply Co.* (N.D. Cal. 2015) 306 F.R.D. 245, 267-68 [finding "personal detriment" upon testimony that future employers can easily learn that a prospective employee served as a plaintiff through the internet]; Yaeckel Decl., ¶ 45.)

Second, the separate settlement payment is reasonable because Plaintiff "remained fully involved and expended considerable time and energy during the course of the litigation." (See *In re Toys 'R' Us-Del FACTA Litig.*, 295 F.R.D. at 471 (citation omitted).) Plaintiff devoted their time and effort toward assisting their attorneys with the prosecution of the claims, and assisted counsel with finalizing the settlement. (Yaeckel Decl. ¶ 44)

The separate payment is also appropriate because Plaintiff otherwise "will not gain any benefit beyond that [he] would receive as an ordinary [Aggrieved Employee]." *(In re Toys "R" Us FACTA Litig.*, 295 F.R.D. at 472; *Van Vranken*, 901 F. Supp. at 299 [holding that a substantial award is appropriate where a [representative's] claim made up "only a fraction of the common fund"].

Lastly, because PAGA is a "type of qui tam action," it is appropriate for the Plaintiff to receive a modest additional payment from the settlement as a "bounty" for their special effort in vindicating the State's interests by enforcing its labor laws. (See *Iskanian*, 59 Cal. 4th at 382 ["A PAGA representative action is therefore a type of qui tam action"]; see also *People ex rel. Strathmann v. Acacia Research Corp.* (2012) 210 Cal. App. 4th 487, 500 ["The person who brings the qui tam action, called the 'relator,' stands in the shoes of the People of the State of California, who are deemed to be the real party in interest . . . The relator in a qui tam action under section 1871.7 does not personally recover damages but, if successful, receives [a portion] of the recovery as a bounty" (internal citations omitted)].

Here, by "sticking out his neck" as PAGA Representative in a publicly filed lawsuit, Plaintiff took a substantial risk that may adversely impact their ability to work in this field in the future. Any company who does a detailed background check, will be able to determine that Plaintiff asserted legal claims against their former employer. An entire industry exists that allows employers to run extensive background searches on potential employees. Companies who provide these services specifically highlight the fact that their services allows employers to weed out litigious employment candidates. (Yaeckel Decl., ¶ 46.)

Plaintiff also risked personally owing a large cost award, into the tens of thousands of dollars, had their claims been unsuccessful. (Yaeckel Decl., ¶ 47)

The enhancement also recognizes that although this involves a PAGA only settlement, Plaintiff agreed to release all claims (e.g., a full 1542 release) as a part of the proposed settlement. (Yaeckel Decl., ¶ 38; **Exhibit 1**: "Releases of Claims" § 5.1.1, p. 10.) In addition to the PAGA claims, Plaintiff possessed individual Labor Code violations that were required to be released as a result of this settlement. All other employees are subjected to a limited release of PAGA claims only.

5. <u>CAC Services Group, LLC Will Serve as the Settlement Administrator</u>

The parties have agreed to engage CAC Services Group, LLC ("CAC") as the Settlement Administrator. CAC has agreed to carry out all Administration duties for an amount not to exceed $**11,948.76**. (Yaeckel Decl., ¶ 50; **Exhibit 1**: "Settlement Administration" § 7.1, p. 12).

CAC has extensive experience acting as a Settlement Administrator and is prepared to carry out all Settlement Administration duties consistent with the parties Agreement and the Final Order of this Court. (Yaeckel Decl., ¶ 50).

E. THE LWDA WAS NOTIFIED MULTIPLE TIMES, AND DOES ***<u>NOT</u>*** OBJECT

On **January 26, 2026**, Plaintiff's counsel gave notice of the instant Settlement to the LWDA. (Yaeckel Decl., ¶ 5.) To date, Plaintiff's counsel has not received notice that the LWDA would intervene. (*Id.*)

On **February 13, 2026**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal copies of a previously filed *ex parte* application, which included this supporting Memorandum. (Yaeckel Decl., ¶ 6.) To date, Plaintiff has not received a response from the LWDA regarding the proposed settlement. If the LWDA contacts Plaintiff's counsel at any time prior to the hearing, Plaintiff's counsel will provide an updated declaration to the Court. (Yaeckel Decl., ¶ 6.)

IV. CONCLUSION

The parties respectfully request that the Court approve their proposed allocation of PAGA penalties to the LWDA and the represented employees.

Dated: February 23, 2026

SULLIVAN & YAECKEL LAW GROUP, APC

Eric Yaeckel

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Cody D. Archer
Attorneys for Plaintiff MISSAEL RODRIGUEZ in a Representative capacity only, and on behalf of other members of the general public similarly situated