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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

FRANCISCO ARROYO MORA on behalf of himself, all others similarly situated, and on behalf of the general public, Plaintiffs, v. STERLING PLUMBING, INC.; and DOES 1-100, Defendants.	Case No. 30-2024-01371468-CU-OE-CXC **SUPPLEMENTAL BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT, CONDITIONAL CERTIFICATION, APPROVAL OF CLASS NOTICE, SETTING OF FINAL APPROVAL HEARING DATE** Date: September 4, 2025 Time: 2:00 p.m. Department: CX-102 Reservation No.: 74513908

Plaintiff Francisco Arroyo Mora (hereinafter "Plaintiff") hereby submits this supplemental brief in support of his Motion for Preliminary Approval of Class and PAGA Action Settlement; Conditional Certification; Approval of Class Notice; and Setting of Final Approval Hearing Date (hereinafter referred to as the "Motion for Preliminary Approval").

I. INTRODUCTION

On June 12, 2025, the Court issued a tentative ruling on Plaintiff's Motion for Preliminary Approval and asked for supplemental briefing. As will be addressed herein, the Parties have made all of the changes requested by the Court. As such, Plaintiff respectfully requests that the Court grant his Motion for Preliminary Approval.

II. REQUESTED REVISIONS

A. Revisions To The Settlement Agreement

Based upon the Court's comments in its tentative ruling, the Parties have revised the Settlement Agreement. Attached to the Supplemental Declaration of David Mara, Esq. ("Supp. Mara Dec.") as **Exhibit 1** is the Revised Settlement Agreement, with revisions to the prior terms in redline. Attached to the Supp. Mara Dec. as **Exhibit 2** is a clean version of the Parties' Revised Settlement Agreement, with all redlines accepted, and fully executed by the Parties.

The Court's first and second points in its tentative ruling concerned the Escalator Clause in Section III, Paragraph 50(A), Page 7 of the Settlement Agreement. The Escalator Clause has been revised as follows:

- Defendant no longer has the option to shorten the Class Period. *See* Supp. Mara Dec., **Exhibits 1 and 2**, Section III, Paragraph 50(A), Page 7.
- The Escalator Clause is now based on the total number of weeks worked by Class Members during the Class Period, as opposed to pay periods. *See* Supp. Mara Dec., **Exhibits 1 and 2**, Section III, Paragraph 50(A), Page 7.

The Court's third point required that "Response Deadline for the submission of Requests for Exclusion, Objections, and Class Member Disputes must be 60 days after the mailing of the

Class Notice" in the Settlement Agreement. This change was made to the Revised Settlement Agreement in **Exhibits 1 and 2** attached to the Supp. Mara Dec., Section I, Paragraph 38, Page 5.

Additionally, as Peter Horton is no longer with Lawyers for Employee and Consumer Rights, the Settlement Agreement was further revised to substitute other attorneys from the firm: Sabrina Sanders and Colette Mahon. *See* Supp. Mara Dec., **Exhibits 1 and 2**, Section I, Paragraph 5, Page 1; signature blocks on Page 25.

B. Revisions To The Class Notice

Based upon the Court's comments in its tentative ruling, the Parties have revised the Class Notice. The Revised Class Notice in redline is attached to **Exhibit 1** of the Supp. Mara Dec. as **Exhibit 1A**. A clean version of the Parties' Revised Class Notice, with all redlines accepted, is attached to **Exhibit 2** of the Supp. Mara Dec. as **Exhibit A**.

The Court's third, fifth, and sixth points in its tentative ruling concerned the Class Notice. The Class Notice has been revised as follows:

- Sections 6, 7, and 10 were revised to clarify that the "Response Deadline for the submission of Requests for Exclusion, Objections, and Class Member Disputes" is "60 days after the mailing of the Class Notice." *See* Supp. Mara Dec., **Exhibits 1A and A**, Section 6, Pages 4-5; Section 7, Pages 5-6; Section 10, Page 7.

- Section 4 was revised to reference Lawyers for Employee and Consumer Rights as Class Counsel. *See* Supp. Mara Dec., **Exhibits 1A and A**, Section 4, Page 3. As noted previously, because Peter Horton is no longer with Lawyers for Employee and Consumer Rights, this revision references other attorneys from the firm: Sabrina Sanders and Colette Mahon.

- The chart in Section 7 was revised to read "Is there a deadline to object?" in the second row. *See* Supp. Mara Dec., **Exhibits 1A and A**, Section 7, Page 5.

C. Revisions To The Proposed Order

Based upon the Court's comments in its tentative ruling, the Parties have revised the Proposed Order. The Revised Proposed Order in redline is attached to the Supp. Mara Dec. as **Exhibit 3**. of the A clean version of the Parties' Revised Proposed Order, with all redlines accepted, is attached to the Supp. Mara Dec. as **Exhibit 4**.

The Court's seventh, eighth, ninth, and tenth points in its tentative ruling concerned the Proposed Order. The Proposed Order has been revised as follows:

- Section I, Page 1 was revised to include language that will identify the Settlement Agreement "by the ROA number of the declaration to which it is attached." *See* Supp. Mara Dec., **Exhibits 3 and 4**, Section I, Page 1. Plaintiff was informed by the clerk that it would be impossible to tell at the time of filing which ROA number the Supp. Mara Dec. would be assigned. Therefore, **Exhibits 3 and 4** do not contain this information. Upon the filing of this Supplemental Brief and the Supp. Mara Dec., Plaintiff will obtain the correct ROA number for the Supp. Mara Dec. and further revise **Exhibit 4** to reflect this number prior to separately filing the final version of the Revised Proposed Order.

- Section III, Paragraph 3, Pages 3 and 4 was revised to remove the footnotes and instead include the information contained within the footnotes within the text of the paragraph. *See* Supp. Mara Dec., **Exhibits 3 and 4**, Section III, Paragraph 3, Pages 3 and 4.

- Section III, Paragraph 9, Pages 4 and 5 was revised to include reference to Lawyers for Employee and Consumer Rights as Class Counsel. *See* Supp. Mara Dec., **Exhibits 3 and 4**, Section III, Paragraph 9, Pages 4 and 5.

- A new paragraph was added at the end of Section III on Page 6 regarding Court's continuing jurisdiction pursuant to CCP § 664.6 and CRC 3.769(h). *See* Supp. Mara

Dec., **Exhibits 3 and 4**, Section III, Paragraph 17, Page 6.

In addition, the Proposed Order was further revised to effectuate the Court's third point in the tentative regarding the 60-day Response Deadline, as well as to request a new hearing date for Final Approval based on the continuance of the previous hearing. *See* Supp. Mara Dec., **Exhibits 3 and 4**, Section IV, Pages 6-7.

III. PAGA EXPOSURE UNDER THE SETTLEMENT

The amount offered in settlement of Plaintiff's PAGA claims is fair and reasonable when balanced against the strength of Plaintiff's case on the merits and the likely PAGA recovery. As discussed in Plaintiff's motion for preliminary approval, Plaintiff alleges (and Defendant denies) that Defendant has six (6) violations – unlawful rest and meal periods, failure to pay all wages owed, inaccurate wage statements, failure to reimburse business expenses, and waiting time penalties – of the California Labor Code sections which give rise to PAGA penalties. As addressed in Plaintiff's motion for preliminary approval, Plaintiff asserts (and Defendant denies) that Defendant: (1) does not pay Class Members for the time spent driving to the first customer location and from the last customer location; (2) maintains time records for Class Members that evidence a significant amount of non-compliant meal periods; (3) fails to provide Class Members with lawful rest periods because it requires them to combine their rest periods with their meal period; and (4) does not reimburse Class Members for purchasing the tools required to perform their jobs, as well as derivative claims for (5) wage statement penalties; and (6) waiting time penalties.

As Plaintiff's PAGA claims are based on the same alleged unlawful conduct as his class claims, Plaintiff's PAGA claims are subject to the same risks on the merits as Plaintiff's class claims. If Plaintiff is ultimately unable to prevail on any one of his class claims, his recovery under the PAGA as to that violation would also fail. Therefore, *PAGA penalties can only be awarded if the factfinder agrees with Plaintiff's underlying class allegations*.

As addressed in Plaintiff's motion for preliminary approval, the maximum potential damages under Plaintiff's PAGA claim are:

Unpaid Wages – 4,685 pay periods x 1 violation x $100 = $468,500

Rest Periods – 4,685 pay periods x 1 violation x $100 = $468,500

Wage Statements – 4,685 pay periods x 1 violation x $100 = $468,500

Reimbursement – 4,685 pay periods x 1 violation x $100 = $468,500

Meal Periods – 3,410 pay periods x 1 violation x $100 = $341,000

Waiting Time Penalties – 84 pay periods x 1 violation x $100 = $8,400

Total maximum PAGA penalties: $2,223,400

Mara Dec. ¶ 2.

As discussed above and in Plaintiff's motion for preliminary approval, these PAGA penalties are all subject to the same risks as Plaintiff's class claims. These "maximum" amounts must therefore be adjusted based on these risks to begin the process of estimating their realistic value, just as was done to the class claims in Plaintiff's motion for preliminary approval:

Unpaid Wages – $468,500 x 25% chance of prevailing on this claim = $117,125

Rest Periods – $468,500 x 15% chance of prevailing on this claim = $70,275

Wage Statements – $468,500 x 15% chance of prevailing on this claim = $70,275

Reimbursement – $468,500 x 70% chance of prevailing on this claim = $327,950

Meal Periods – $341,000 x 20% chance of prevailing on this claim = $68,200

Waiting Time Penalties – $8,400 x 15% chance of prevailing on this claim = $1,260

Risk adjusted PAGA penalties: $655,085

Mara Dec. ¶ 3.

This risk adjusted exposure is further discounted by the fact that the PAGA claims being settled here completely overlap with the class claims covered under the settlement. When a proposed settlement involves overlapping class action and PAGA claims, courts should employ a "sliding scale" in determining if the proposed settlement is "fundamentally fair, reasonable, and adequate with reference to the public policies underlying the PAGA." *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1134 (N.D. Cal. 2016); *see also Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d 959, 972 (N.D. Cal. 2019) (following *O'Connor*); *McClure v. Brand Energy Serv.*, LLC, No. 2:18-cv-01726-KJM-AC, 2021 WL 2168149, at *10 (E.D. Cal. May 27, 2021) (same); *Cooks v. TNG GP*, No. 2:16-cv-01160-KJM-AC, 2020 WL 5535397, at *9–10 (E.D. Cal. Sept. 15,

2020) (same).

For example, if the settlement for class claims is held to be fair, reasonable, and adequate, the purposes of PAGA may be concurrently fulfilled. "By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of the class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA." *See O'Connor*, 201 F. Supp. 3d at 1134–35; *see also Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 ("Because the PAGA penalties sought are at least partially duplicative of penalties granted by the underlying Labor Code violations, *see*, *e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes that the potential PAGA penalties are highly uncertain.")

Additionally, the critical fact that the Court is permitted discretion to award a "lesser amount than the maximum penalty amount" cannot be ignored and must be heavily taken into consideration. *Lab. Code.* 2699 § (e)(2). Unlike the underlying violations upon which the Plaintiffs seek to impose PAGA civil penalties, there is no set amount the Court must levy on an employer Defendant it finds to have violated the underlying claims. Under "the facts and circumstances of the particular case," the Court is permitted wide discretion to slash civil penalty amounts. This discretion and how a particular court will exercise it is always an unknown variable in predicting the dollar outcome of any PAGA action when evaluating settlement. Under its wide discretion to award lesser amounts, a Court could side with Plaintiffs on their claims and find that the underlying Labor Code rights were violated but decide to substantially moderate the imposition of PAGA penalties for those violations.

Courts have used this discretion to massively discount PAGA penalties imposed where it found the defendant employer took its Labor Code obligations seriously, even if the employer fell short of complying with them. In *Thurman v. Bayshore Transit Management, Inc*. ("*Thurman*") (2012) 203 Cal. App. 4th 1112, the court determined that an award of the maximum penalty allowed may be unjust in circumstances outside of when a defendant cannot afford to pay the maximum amount. *Thurman v. Bayshore Transit Management, Inc*. (2012) 203 Cal. App. 4th 1112, 1135-1136. The *Thurman* court found that penalties may be reduced when a defendant has taken its obligations to comply with the law seriously. *Id.* In *Kaanaana v. Barrett Business Services, Inc.* (2018) 29 Cal.App.5th 778, 788 & 809, the Court of Appeals took no issue with the trial court exercising its discretion in slashing PAGA civil penalties for violations of Labor Code section 512 to 13% of the total recoverable penalties. In *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504*,* the plaintiff requested penalties in excess of $70 million, based on a $25 to $75 penalty per violation. The court reduced the award, stating that awarding the maximum penalty would be unjust, arbitrary, and oppressive based on Starbuck's good faith attempts to comply with the law. The lower court's reduced award of $150,000 was affirmed on appeal, which reflects .2% of the total recoverable penalties sought.[1]

An evaluation of claims under PAGA is therefore to be distinguished from the projected values of class claims of Labor Code and Wage Order violations, as there is no judicial discretion to award any lesser amount owed should Plaintiff prevail on the underlying class claims. Based on the blind spot of how the Court would exercise this discretion in addition to the likelihood the Court would side with Plaintiff on the underlying Labor Code violations, Plaintiff necessarily and substantially had to further discount the settlement value off of the PAGA penalty amounts. As discussed in Plaintiff's motion for preliminary approval, Defendant argues its meal and rest policies and practices are lawful. Likewise, Defendant argues that they pay employees for all time worked and reimbursed all business expenses. Thus, even if Defendant was proven wrong and ultimately found to have violated the underlying Labor Code claims, the court could find a good faith reliance on governing authorities justifiably instructed Defendant's actions and thereby impose a massive reduction of PAGA penalties akin to the Courts in *Kaanaana* and *Carrington*.

Furthermore, it should be noted that the LWDA was originally provided a copy of the

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[1] These instances of judicial discretion imposing massive reductions in recoverable penalties is to be contrasted with *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) 365 F.Supp. 3d 980, 992, where the trial court reduced the recoverable PAGA penalties by only 25%. *Bernstein*, however, only amplifies the predictive blind spot of how a court can exercise its wide-discretion to reduce full PAGA exposure.

Parties' Settlement Agreement nearly five months prior to the date of this filing. To date, the LWDA has not expressed concern about the amount allocated to Plaintiff's PAGA claims. Should preliminary approval be granted, the LWDA will also be provided with a copy of the Court's order granting preliminary approval. Therefore, the LWDA will have another opportunity to comment on the settlement prior to final approval.

Good faith settlement negotiations, after considerable discovery, investigation, and litigation, necessarily had to focus on amounts far less than that potential exposure. The proposed PAGA allocation here of $50,000, which takes into account the realistic exposure, the very real impediments of succeeding on the merits, the risk of further litigation, and, even if Plaintiff succeeded on the merits, persuading against a robust discount, reflects an appropriate, balanced, and reasonable settlement value of the PAGA claims. The $50,000 allocation representing over 7.6% of the realistic exposure of $655,085 and accounts for over 20% of the Gross Settlement Amount,[2] and fits within the "remedial purpose" of PAGA of enforcing compliance with important employee protections in the Labor Code and Wage Order.

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[2] Many courts in California have approved settlements with overlapping class and PAGA claims with far less of the overall settlement allocated to PAGA. *See McLeod v. Bank of Am., N.A.*, No. 16-CV-03294-EMC, 2018 U.S. Dist. LEXIS 195314, 2018 WL 5982863, at *4 (N.D. Cal. Nov. 14, 2018) (finding $50,000 PAGA allocation for claims estimated at $4.7 million — approximately 1.1 percent — adequate); *Ruch v. AM Retail Grp., Inc.*, No. 14-CV-05352-MEJ, 2016 U.S. Dist. LEXIS 133832, 2016 WL 5462451, at *2, 7 (N.D. Cal. Sept. 28, 2016) (settlement allocating $10,000 to PAGA penalties where potential value was over $5.2 million); *Van Kempen v. Matheson Tri-Gas, Inc.*, No. 15-CV-00660-HSG, 2017 U.S. Dist. LEXIS 137182, 2017 WL 3670787, at *10 (N.D. Cal. Aug. 25, 2017) (granting final approval of $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent); *Slavkov v. Fast Water Heater Partners I, LP* (N.D.Cal. July 25, 2017, No. 14-cv-04324-JST) 2017 U.S.Dist.LEXIS 116303, at *2 (finding that "$7,500 PAGA payment is reasonable when measured against the total overall settlement [of $345,000] and the possible weaknesses in Plaintiffs' case," or 2.2 percent); *Newell v. Ensign United States Drilling (Cal.) Inc.*, 2021 U.S. Dist. LEXIS 242703, 2021 WL 6000227, *14 (E.D. Cal. Dec. 20, 2021) (approving settlement where PAGA penalties were 4% of gross settlement amount); *Syed v. M-I, LLC*, No. 1:12-cv-01718-DADMJS, 2017 WL 714367, at *13 (E.D. Cal. Feb. 22, 2017) (approving $100,000.00 in PAGA penalties for a California class with a $3,950,000.00 GSA); *Diaz v. United Parcel Serv., Inc.*, No. 1:22-cv-00246-CDB, 2023 WL 8622325, at *9 (E.D. Cal. Dec. 13, 2023) (holding that "the amount offered in the settlement of the PAGA claims weighs in favor of granting final approval" where the PAGA penalty represented 5% of the GSA).

IV. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court grant preliminary approval of the Parties' settlement. Plaintiff respectfully submits that the proposed settlement is in the best interests of the class and class members, as it is fair, adequate, and reasonable, and one that should ultimately be granted final approval. Under the applicable class action criteria and guidelines, the proposed settlement should be preliminarily approved by the Court, the class should be conditionally certified for purposes of settlement only, and the Class Notice should be approved. Plaintiff also respectfully requests the Court set a final approval hearing date of March 5, 2026.

Dated: August 12, 2025

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