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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

YULIANNY QUERALEZ, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

NEWAGE GLENDALE, LLC, a limited liability company; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 23STCV27699

[Hon. William F. Highberger]

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEY GENERAL'S ACT OF 2004; MEMORANDUM OF POINTS AND AUTHORITIES

Date:	March 16, 2026
Time:	1:30 a.m.
Courtroom:	Dept. 10
Judge:	Hon. William F. Highberger
Action Filed:	November 9, 2023
Trial Date:	Not Set

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on March 16, 2026, at 1:30 p.m., or as soon thereafter as the matter may be heard, in Department 10 of the above-captioned Court, located at 312 N. Spring St., Los Angeles, CA 90012, Plaintiff YULIANNY QUERALEZ ("Plaintiff") will and hereby does move this Court for an order approving the PAGA SETTLEMENT AGREEMENT (the "Agreement" or "Settlement") reached with Defendant NEWAGE GLENDALE, LLC ("Defendant"), a true and correct copy of which is attached as **Exhibit 1** to the Declaration of H. Scott Leviant submitted herewith.

Specifically, Plaintiff moves for an order to:

1. grant approval of the terms of the Agreement pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq*., including the amount of the settlement; the amount of distributions to the State and Aggrieved Employees; the amounts allocated to attorney's fees and costs; and, the amount allocated to the settlement administrator; and,
2. direct disbursement of the Gross Settlement Amount pursuant to the terms of the Agreement.

This motion is based on this Notice, the following Memorandum of Points and Authorities, the Declarations of H. Scott Leviant, Plaintiff, and Jodey Lawrence of Phoenix Class Action Administration Solutions, submitted herewith, all other pleadings and papers on file in this action, and any oral argument or other matter that may be considered by the Court.

Respectfully submitted,

Dated: November 25, 2025

MOON LAW GROUP, PC

By: H. S. Leviant

Kane Moon
H. Scott Leviant
Sandy Pham

Attorneys for Plaintiff

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I. INTRODUCTION

Plaintiff YULIANNY QUERALEZ ("Plaintiff") moves the Court for approval of the Private Attorneys General Act Settlement Agreement (the "Agreement" and/or "Settlement") between Plaintiff and Defendant (collectively, the "Parties"). The Settlement resolves the Private Attorneys General Act ("PAGA") claims alleged in this Action on behalf of Plaintiff, all alleged Aggrieved Employees, and the State of California.

The PAGA claims are alleged pursuant to PAGA, which states: "[T]he...court shall review and approve any settlement of any civil action filed pursuant to this part." Lab. Code § 2699(*l*)(2). The California Supreme Court has interpreted this provision to ensure "any negotiated resolution [of a PAGA claim] is fair to those affected." *Williams v. Superior Court*, 3 Cal. 5th 531, 545 (2017). The California Supreme Court has not defined a standard by which trial courts are to review and approve proposed PAGA settlements. Nonetheless, California courts largely consider whether a proposed PAGA settlement provides "genuine and meaningful [relief] consistent with the underlying purpose of the statute" and is reasonable in light of the potential verdict value of all claims released. See *O'Connor v. Uber Technologies, Inc*., 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016); *see also* Lab. Code § 2699(*l*)(2).

After exchanging documents and data prior to mediation, Plaintiff and Defendant reached a proposed settlement that will resolve the PAGA claims pending in this action (the "Lawsuit") for the estimated **204** Aggrieved Employees who worked an estimated **4,469** Pay Periods during the PAGA Period.

Under the Agreement, Defendant shall pay a maximum sum of **$120,000.00**, referred to in the Agreement as the Gross Settlement Amount, for aggrieved employees employed in California during the designated PAGA period.

This motion is brought pursuant to Labor Code § 2699.3(b)(4). This motion and the Agreement were served on the LWDA prior to the filing of this Motion. Lab. Code § 2699(e)(2).

For the reasons below, Plaintiff requests that the Court enter an order approving the settlement.

II. SUMMARY OF THE TERMS OF THE SETTLEMENT

The full terms of the settlement are in the Agreement. The key significant terms are as follows:

(a) Aggrieved Employees: All persons who worked for Defendant in California as an hourly, non-exempt employee during the PAGA period (the period from November 16, 2022, to April 17, 2025). (Agreement, ¶¶ 1.4, 1.25.)[1]

(b) No Reversion: The Settlement is ***non-reversionary***. (Agreement, ¶ 3.1.)

(c) Gross Settlement Amount: Defendant agrees to pay the maximum sum of **$120,000.00** (hereinafter referred to as the "Gross Settlement Amount" or "GSA") for settlement of the PAGA Penalties, which shall be inclusive of Plaintiff's Counsel's attorney's fees and costs, and the settlement administrator's fees and costs. (Agreement, ¶¶ 3.1, 3.2.)

(d) Net Settlement Amount: At least **$48,731.35** will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least **$36,548.51** under the Agreement, and Aggrieved Employees will receive at least **$12,182.84**. (Agreement, ¶¶ 1.17, 3.2.4.)

(e) Plaintiff's Award: Plaintiff requests an award of $5,000.00 in recognition of the result obtained for others and the provision of a general release. (Agreement, ¶ 3.2.1.)

(f) Attorney's Fees: Plaintiff's Counsel requests an award of attorney's fees of not more than 33 and 1/3% of the GSA, which is currently estimated to be **$40,000.00**, subject to the escalator clause. (Agreement, ¶ 3.2.2.)

(g) Litigation Costs: Plaintiff's Counsel requests an award of costs, in an amount of not more than **$25,000.00**. Costs are **$21,273.63**, and Plaintiff's Counsel therefore requests **$21,273.65** for costs. (Agreement, ¶ 3.2.2.)

(h) Settlement Administration: Payment to Aggrieved Employees and administration will be accomplished through third-party settlement

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[1] Under Section 8 and paragraph 8.2 of the Agreement ("Aggrieved Employee Size Estimates and Escalator Clause"), Defendant has chosen the contractual option (Option 2, paragraph 8.2) to truncate the PAGA Period to that date on which Pay Periods during the PAGA Period do not exceed the estimated number of PAGA Periods by more than 10% (or 4,916 Pay Periods), which date Defendant estimates as April 17, 2025.

administrator, Phoenix Class Action Administration Solutions, which has agreed to perform Administrator duties for a fixed fee of **$4,995.00**. The fee is reasonable, based on all of the services offered. (Agreement, ¶ 3.2.3; Declaration of H. Scott Leviant ["Leviant Decl."], ¶ 41; Declaration of Jodey Lawrence ["Lawrence Decl."], ¶ 7, Exh. 2.)

(i) Uncashed Checks: Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the Unclaimed Property Fund. (Agreement, ¶¶ 4.2.2, 4.2.3.)

(j) PAGA Release: In exchange for the above settlement consideration, Defendant shall be entitled to a *specific* release from the LWDA and each and every Aggrieved Employee, including Plaintiff.[2] (Agreement, ¶ 5.)

(k) Notice to LWDA: The Declaration of H. Scott Leviant confirms that notice was provided to the LWDA and attached the confirmatory submission documents. (Leviant Decl., ¶ 45 and Exh. 3.)

III. STATEMENT OF FACTS

Plaintiff alleges that Defendant engaged in practices and procedures that violated the California Labor Code. (Leviant Decl., ¶ 4.) These alleged statutory violations subject Defendant to potential liability for the Private Attorneys General Act ("PAGA") penalties pursuant to Labor Code § 2698. Through this action, Plaintiff seeks to recover penalties pursuant to Labor Code § 2698, *et. seq.* (*Id.*)

Defendant operates a hotel business in California. (*Id.* at ¶ 5.) Plaintiff worked for Defendant in California during the PAGA Period. (*Id.* at ¶ 6.) Defendant contends it had lawful policies, or that it has completely cured any violations, and raises viable defenses to a substantial portion of the alleged penalty claims. (*Id.* at ¶ 7.)

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[2] This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (concluding that "with respect to the recovery of civil penalties, non-party employees as well as the government are bound by the judgment in an action brought under the act….")

IV. PROCEDURAL HISTORY

On November 5, 2023, Plaintiff's Counsel sent a letter to the LWDA on behalf of Plaintiff in compliance with California Labor Code § 2699.3. (*Id.* at ¶ 8.) More than 65 days passed since the letter was sent to the LWDA, and the LWDA did not indicate that it intended to investigate the alleged violations referenced in the letter. (*Id.* at ¶ 9.) On November 9, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for failure to pay minimum wages, failure to pay overtime compensation, failure to provide meal periods, failure to authorize and permit rest breaks, failure to indemnify necessary business expenses, failure to timely pay final wages at termination, failure to provide accurate itemized wage statements, and for unfair business practices. (*Id.* at ¶ 10.) On January 18, 2024, Plaintiff filed a First Amended Complaint alleging an additional cause of action for civil penalties under PAGA. (*Id.*) The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint"). (*Id.*) Plaintiff signed an arbitration agreement. (*Id.*) The Parties agreed to settle the matter as a PAGA action only. (*Id.*) Because Court approval of a PAGA settlement is required, this settlement is presented to this Court for review and approval. (*Id.* at ¶ 12.)

V. SETTLEMENT NEGOTIATIONS

Counsel for Plaintiff has thoroughly investigated the facts relating to the claims alleged in the operative complaint and have made a thorough study of the legal principles applicable to the claims asserted against Defendant. (*Id.* at ¶ 13.) In addition, through informal discovery, Defendant produced wage and hour policies and practices and time and payroll data for allegedly aggrieved employees. (*Id.*) Plaintiff's Counsel reviewed these records and prepared a damage analysis prior to mediation. (*Id.*) Random sampling of time and payroll data was used to control costs and deliver records quickly. (*Id.*) The margin of error calculation for the sample of the allegedly aggrieved employees in this case is as follows:

$$1.645\sqrt{\frac{0.5(1-0.5)}{204}}\sqrt{\frac{204-40}{204-1}} = \text{margin of error}^{3} = 0.1169 = 11.69\%$$

[3] The term "1.645" is derived from a standard deviation table for a 90% confidence interval, known as a "z-table." It is not affected by sample or population size. The margin of error is an "overestimate" of

(*Id.*) With a random sample of data for 204 employees, the margin of error, using the population adjustment factor, was no more than 11.69 percent.[4] (*Id.*) Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Based on their investigation and evaluation of this case, Plaintiff's Counsel has concluded that the settlement is fair, reasonable, and adequate in light of all known facts and circumstances, including the defenses asserted by Defendant, potential adverse findings regarding liability, and numerous potential appellate issues. (*Id.*)

On January 6, 2025, the Parties participated in an all-day mediation presided over by Tripper Ortman, Esq. Although the Parties did not settle at the mediation, the Parties later agreed to resolve the action. (*Id.* at ¶ 14.) The Parties memorialized the terms of the settlement in a long-form agreement. (the "Settlement" or "Agreement"). (*Id.* at ¶ 15.)

DISCUSSION

VI. THE QUI TAM NATURE OF PAGA CLAIMS

In 2003, California enacted the Private Attorneys General Act of 2004 after recognizing systemic underenforcement of many worker-protection laws and regulations. *Williams v. Superior Court*, 3 Cal. 5th 531, 545 (2017). The solution enacted by the Legislature deputized private citizens to recover civil penalties for the State, where those penalties were previously only available to law enforcement. *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009).

"Because an aggrieved employee's action under the Labor Code Private Attorneys General Act of 2004 functions as a substitute for an action brought by the government itself, a judgment in that action binds all those, including non-party aggrieved employees, who would be bound by a judgment in an

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the margin of error because the variance is presumed to be at its highest value, using 0.5(1-0.5) to represent p×q in the variance equation of (p×q)/n.

[4] The margin of error formula does not require an adjustment factor for extremely large populations. A poll of all potential voters in the United States, for example, does not require an adjustment for the population size, since the second radicand in the equation (the fraction in the second radical sign) is effectively equal to 1. This is because the square root of a fraction that is very close to 1 is even closer to 1. Consider a population of 200 million and a sample of 1,000 individuals from that population. The second radicand is the fraction of 200 million minus 1,000, all divided by 200 million minus 1. That is equal to 0.999995. The square root is 0.99999975, which is indistinguishable from 1 when talking about a margin of error percentage even to the nearest tenth of a percent. But when the population size is much smaller, the population size has a major impact on the margin of error for a given sample size.

action brought by the government." *Id.* at 986. With limited exceptions, "[o]f the civil penalties recovered, 75 percent goes to the Labor and Workforce Development Agency, leaving the remaining 25 percent for the 'aggrieved employees.'" *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 380 (2014) *certiorari denied sub nom. CLS Transportation Los Angeles v. Iskanian,* —— U.S. ——, 135 S.Ct. 1155, 190 L.Ed.2d 911 (Jan. 20, 2015). In 2024, California governor Gavin Newsom signed AB 2288/SB 92 which reformed PAGA and increased the allocation of the civil penalties to aggrieved employees. For PAGA cases filed after the reform took effect on June 19, 2024, of the civil penalties recovered in a PAGA action, 65 percent goes to the Labor and Workforce Development Agency, and 35 percent goes to the aggrieved employees. Despite this change, a PAGA claim remains predominantly a claim belonging to the State.

"The civil penalties recovered on behalf of the state under the PAGA are distinct from the statutory damages to which employees may be entitled in their individual capacities." *Iskanian*, 59 Cal. 4th at 381. Because of this distinction, and the fact that the penalties made available through PAGA fell previously within the exclusive domain of State enforcement, the California Supreme Court explained that PAGA suits are best viewed as a species of qui tam action. *Id.* at 382. ("A PAGA representative action is therefore a type of *qui tam* action.").

VII. THE STANDARDS FOR APPROVAL OF A PAGA SETTLEMENT

Prior to *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources of persuasive guidance as to how to access the reasonableness of a PAGA allocation were found in federal court decisions. In their view, a PAGA allocation, even if a small portion of the total settlement, could be reasonable if the settlement of the underlying wage and hour claims is robust and serves the deterrent purpose of the PAGA statute. *O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) ("By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA.").

Moniz then provided explicit confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with federal courts, concluded that the class action factors are appropriately considered, along with a consideration of whether the settlement furthers "PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws."

The class action settlement factors used to assess the fairness, adequacy, and reasonableness of a class action settlement are well understood. *Dunk v. Ford Motor Co*., 48 Cal. App. 4th 1794 (1996), held that "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow the court to act intelligently; (3) counsel is experienced in a similar litigation; and (4) the percentage of objectors is small."[5] *Id.* at 1801. The court should also consider the expense, complexity and likely duration of further litigation. *Dunk*, 48 Cal. App. 4th at 1801. "It is, of course, the strong public policy of this state to encourage the voluntary settlement of litigation." *Osumi v. Sutton*, 151 Cal. App. 4th 1355, 1359 (2007). Finally, these factors are not exclusive, and the court is free to balance and weigh, depending on the circumstances. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 244-45 (2001).

While class settlement factors provide some guidance as to how a Court may approach the evaluation of a PAGA settlement, there are significant differences between PAGA settlements and class action settlements that must be recognized. Unlike a class action settlement, 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 plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding," *Arias*, 46 Cal. 4th at 986, "the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." *See Id.*, at 987. Thus, the scope of a release in a PAGA settlement is confined to PAGA penalties and not related individual claims under the Labor Code.[6]

VIII. THE SETTLEMENT MEETS ALL THE CRITERIA FOR APPROVAL

Applying the class settlement fairness factors discussed above—limited to those compatible with

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[5] PAGA actions are not subject to the same claim and notice procedures as class actions.

[6] This is contrasted with the much broader release permitted in a class action context, which may be based on "any matter or fact" alleged in the complaint. *See In re Corrugated Container Antitrust Litigation*, 643 F.2d 195, 221 (5th Cir. 1981). In this matter, the Agreement will not affect the rights of Aggrieved Employees who may possess individual wage and hour claims.

the unique features of PAGA claims—the proposed settlement embodies all the key features of a settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for approval.

Plaintiff and Plaintiff's Counsel have diligently investigated the claims in this matter. (Leviant Decl. ¶ 18.) Plaintiff and Plaintiff's Counsel concluded, after taking into account the disputed factual and legal issues involved in this Action, the substantial risks attending further prosecution, including risks related to the outcome of possible summary judgment efforts, and the substantial benefits to be received pursuant to the compromise and settlement of the Action as set forth in the Settlement, that settlement on the terms agreed to are in the best interest of Plaintiff and the Aggrieved Employees and are fair and reasonable. (*Id.*) Plaintiff's Counsel brought to bear a great deal of experience with wage and hour actions in negotiating the settlement of this case. (*Id.*)

Resolution at this time will forestall the need for additional expensive and time-consuming litigation that could very well result in an outcome less satisfactory than that proposed under this settlement. (*Id*. at ¶ 19.) But, before any other consideration, Plaintiff and Plaintiff's counsel agreed to this settlement because it is objectively reasonable. (*Id.*) The potential for resolution benefits the aggrieved employees and the State of California, since they do not have to wait additional years for a similar recovery. (*Id.*) The efficiency of this litigation benefits the Court, the parties and their counsel. (*Id.*) A settled resolution now is the most realistic method for addressing the claims raised in this matter. (*Id.*)

Plaintiff's Counsel has engaged in the necessary investigation in this case that made it possible to exercise informed judgment in those aspects of the settlement process in which it was involved. (*Id*. at ¶ 20.) The Defendant in this matter produced important information, including the employee handbook as well as pay and time data for all employees. (*Id.*) That information, coupled with the other data provided, was sufficient to permit Plaintiff's Counsel to adequately evaluate the settlement. (*Id.*) Plaintiff had more than enough information upon which to evaluate a fair and reasonable settlement amount. (*Id.*)

Here, the expense, complexity and likely duration of future litigation was to some extent an unknown. (*Id.* at 21). However, what is certain is that to adequately establish the foundational violations would support any penalty award, significant time and expense would be invested. (*Id.*) To adequately establish that aggrieved employees experience the alleged violations, and at what frequency, the aggrieved employees would need to be interviewed in a systematic fashion. (*Id.*) The process would be expensive and time-consuming. (*Id.*) But doing so would have been required, since frequency of violations would need to be established before any penalties could be recovered. (*Id.*) As to claims such as meal period and rest break violations, the decisions of aggrieved employees are a major factor in assessing liability. (*Id.*) Thus, even if records show a facially non-compliant meal period, no penalty could be assessed automatically. (*Id.*) In sum, the evidence collected to date leads us to conclude that, to the extent violations occurred, a fact which Defendant disputes, the violations were ***not*** systematic and ***not*** uniform across all Defendant's employees who worked during the PAGA period. (*Id.*) With these considerations in mind, the amount of the Settlement is reasonable. (*Id.*)

A. The PAGA Penalties Provide Genuine and Meaningful Relief to the LWDA and Aggrieved Employees Consistent with the Dual-Purpose of PAGA

The PAGA Penalties, pursuant to PAGA and the terms of the Settlement Agreement, will be allocated to the LWDA and all Aggrieved Employees, with sixty-five percent (75%) allocated to the former and thirty-five percent (25%) allocated to the latter. (*Id.* at ¶ 22.)

The PAGA Penalties, which are estimated to be at least $48,731.35[7], provide genuine and meaningful relief to the LWDA and all alleged Aggrieved Employees consistent with the dual-purpose of PAGA because it both redresses the alleged Aggrieved Employees for the Labor Code violations they suffered from throughout their employment with Defendant and deters Defendant from violating the Labor Code in the future, in light of the long-term, costly process required to litigate, mediate, and ultimately settle the Action. (*Id.* at ¶ 23.) For these reasons, the PAGA Penalties amount to genuine and meaningful relief consistent with underlying purpose of PAGA. (*Id.*)

B. The PAGA Penalties Are Reasonable Pursuant to Labor Code § 2699(e)

The ultimate decision as to the amount of penalties is always up to the discretion of the Court.

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[7] The PAGA Penalties equal the Gross Settlement Amount ($120,000.00) less the PAGA Counsel Fees Payment (at least $40,000.00, subject to the escalator clause), PAGA Counsel Litigation Expenses Payment ($21,273.65), and Enhancement ($5,000.00), and Administration Expenses Payment ($4,995.00).

Labor Code § 2699(e) states: "For purposes of this part, whenever the [LWDA] has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty…[A] court may award a lesser amount than the maximum civil penalty amount specified by this part 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). This section grants the Court discretion to limit a PAGA civil penalties award where the facts or circumstances justify reduction, or where such award is unreasonable and/or excessive.

The PAGA Penalties are also reasonable in light of the potential verdict value of all claims released. (Leviant Decl., ¶ 24.) Indeed, the Settlement Agreement contains a release of all PAGA claims that arise or could arise from the facts underlying the operative Complaint and PAGA Notice, including those related to unpaid wages (such as minimum wages and overtime compensation), meal period premiums, rest break premiums, and unreimbursed business expenses. (*Id.*) These claims served as the basis for the alleged Aggrieved Employees' PAGA claims. (*Id.*)

For the PAGA Period, the number of PAGA Pay Periods at issue was estimated to be **4,469** (biweekly) for the **204** Aggrieved Employees. (*Id.* at 21). Using the most straightforward formulation of applying the "catch-all" $100 penalty specified in Labor Code § 2699(f)(2) to each PAGA Pay Period, and under a reasonable assumption that not all employees were affected, the total penalty exposure is approximately **$446,900.00**. (*Id.*) In addition, with assistance from Plaintiff's data consultant, and after a thorough review of evidence casting serious doubt on the viability of many of the theories of penalty recover, counsel separately estimated the maximum plausible potential PAGA exposure to be, on a penalty-by-penalty basis, to be approximately **$884,124.00**, which includes many overly optimistic assumptions about the ability to prove the frequency of violations for all aggrieved employees who allegedly experienced issues. (*Id.*) The settlement is approximately **14%** of that very optimistic exposure calculation, and **77%** of the risk-adjusted exposure, described below:

- <u>Failure to compensate for unpaid wages based on off-the-clock work</u> – Delays caused by the clock-in process prior to clocking in resulted in alleged off-the-clock work. Assuming 25% of employees were affected in any pay period, the maximum exposure is estimated to be as much as <u>$111, 725.00</u> (4,469 pay periods × 25% × $100 penalty). However, employee testimony about timeclock wait times suggests that only a small fraction of the aggrieved employees experienced any off-the-clock waiting time, resulting in a more realistic exposure of **$22,345.00** ($111.825.00 maximum exposure × 20% violation rate). Some very small errors in the calculation of the regular rate of pay are also included in the unpaid wage claim.

- Failure to provide meal periods – Deficient meal periods given the nature of the work resulted in the alleged non-compliant meal periods. Facial violations in the time records occurred in about 17% of pay periods, so the calculated maximum exposure is $37,986.50 (4,469 total pay periods × 17% × $50 penalty). However, given that employee choice can be a significant factor in this analysis, a more realistic exposure is **$15,194.60** ($37,986.50 maximum exposure × 40% violation rate).
- Failure to provide rest breaks – While time constraints due to the nature of the work resulted in alleged non-compliant rest breaks, Defendant's policy was arguably unlawful. Based on an allegedly unlawful policy, rest break violations arguably occurred in 100% of pay periods, a generous assumption. Aside from that, employee rest breaks are not recorded and employee choice can be a significant factor. The calculated maximum exposure is $446,900.00 (4,469 total pay periods × 100% × $100 penalty). However, due to the risk that the policy deficiencies would be deemed insufficient to impose liability, and the fact that the amount of missed rest breaks is highly dependent on Aggrieved Employee testimony, it is estimated that this claim could support, at best, a more realistic exposure of **$89,380.00** ($446,900.00 maximum exposure × 20% violation rate).
- Failure to Timely Pay Final Wages – It is estimated that the maximum exposure for this claim is $8,200.00 (82 former employees × $100 penalty). However, given the Defendant's defenses to underlying unpaid wage claims, the realistic penalty is **$820.00** ($8,200.00 maximum exposure × 10% underlying violation rate).
- Failure to Furnish Accurate Itemized Wage Statements – Assuming 25% of employees experienced a wage statement issue in any pay period, it is estimated that the maximum exposure for this claim is $279,312.50 (4,469 total pay periods × 25% × $250 penalty). However, after applying a more realistic violation rate, the risk-adjusted penalty is

$27,931.25 ($279,312.50 maximum exposure × 10% risk adjustment).

- Unreimbursed Business Expenses – Further investigation confirmed that expense reimbursements were not a significant issue affecting Aggrieved Employees.

(*See*, Leviant Decl., ¶ 21.)

Further reflected in the PAGA Penalties is the potential risks in continuing to litigate the Action, including, but not limited to, the risk of not prevailing at trial, and the risk that, even if Plaintiff prevailed, the PAGA damages would be limited due to the largely discretionary nature of PAGA civil penalties; Defendant's defenses; and the fact that the ultimate purpose of the Action is and has been to obtain genuine and meaningful relief for the LWDA and Aggrieved Employees. (*Id.* at ¶ 25).

1. The Total Amount Offered in Settlement is $120,000.00.

Under the Agreement, Defendant shall pay a maximum sum of $120,000.00. The Settlement provides a monetary benefit that falls well within "the range of an acceptable settlement" under the circumstances, which is the standard on which the instant Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and reasonable even where it only provides a fraction of what could have been obtained at trial. *See Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

2. Payment of At Least $48,731.35 in Penalties

Under the Agreement, the amount available for distribution as penalties under PAGA is at least **$48,731.35.** The amount is a significant penalty, but it is not confiscatory, nor is it, in the terms of the PAGA statute, "unjust, arbitrary, or oppressive." Labor Code § 2699(e)(2).

a) The LWDA shall receive at least $36,548.51.

As sixty-five percent (65%) of the penalties are allocated to the LWDA, the LWDA stands to receive at least $36,548.51. Further, pursuant to Labor Code § 2699.3(b)(4) the "provisions of the settlement relating to health and safety laws shall be submitted to the division at the same time that they are submitted to the court. This requirement shall be construed to authorize and permit the division to comment on the settlement provisions, and the court shall grant the division's commentary appropriate weight." The LWDA will have an opportunity to comment upon the amount to be paid to the LWDA. This provision protects against collusive settlements for less than a reasonable value of the claim.

b) Aggrieved Employees shall receive at least $12,182.84.

As twenty-five percent (25%) of the penalties are allocated to the Aggrieved Employees, the Aggrieved Employees stand to receive a total of at least $12,182.84 under the Agreement. The Court should give weight to the fact that the primary purpose of PAGA is not to provide a windfall to Aggrieved Employees; the penalties recovered under PAGA are ***not*** surrogate individual damages. Instead, the amount available to Aggrieved Employees is in addition to any damages that could be recovered via individual claims.

C. The Presence of a Government Participant

As noted above, sixty-five percent (65%) of the penalty is paid to the LWDA. Labor Code § 2699.3(b)(4) permits the LWDA to comment on the penalties. This provides an independent check on collusive settlements. The LWDA was notified of the Settlement. (Leviant Decl. ¶ 45).

D. PAGA Counsel Are Experienced and Negotiated Aggressively

The court may also consider that negotiations between the Parties were conducted at arm's length, in an adversarial manner, despite a mutual desire to resolve the case. (Leviant Decl. ¶¶ 18-20.) The court may consider the opinion of all counsel that the settlement arrived at is fair, reasonable and in the best interests of the aggrieved employees. PAGA Counsel are experienced with employment class and representative actions, as set forth more fully in the Declaration of H. Scott Leviant filed herewith.

E. Additional Factors Weigh in Favor of Approving the Terms of the Proposed Settlement, Including the Requested Fees and Costs

In addition to the factors presented above, the proposed settlement does not possess any obvious deficiencies with respect to its other terms, including the agreed-upon fees and costs.

1. Fees and Costs

Courts in the Ninth Circuit and California generally use the "percentage method" rather than the lodestar approach when awarding attorneys' fees in common fund type settlements. *See* 7 Witkin, B.E., California Procedure (2007 Supp.) §§ 255-261 at 236-241 (describing prevalence of percentage method in California); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole"); *In re Activision Sec. Litig*., 723 F. Supp. 1373, 1377-78 (N.D. Cal. 1989) (endorsing percentage method).

While this is not a class action, the custom and practice in class actions is to award approximately one-third of a fund as a fee award. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 34, 66, n.11 (2008) ("Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around ***one-third*** of the recovery.") (emphasis added). The proposed attorney fee award here is 33 and 1/3% of the Gross Settlement Amount, an amount reasonable comparable to "average" fees awarded in California state court class action cases for comparison purposes here. *Chavez*, 162 Cal. App. 4th at 66 n.11. Again, this is ***not*** a class action. It is more akin to contingent representation with an additional requirement of Court review due to the *qui tam* nature of PAGA claims. The California Supreme Court has removed any lingering doubt about the use of the percentage of the fund method to award attorneys' fees in California Courts, endorsing and encouraging that method. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).[8]

Thus, courts regard circumstances in which class counsel's work is wholly contingent, such as in class actions and other common fund type cases, as a factor weighing in favor of approving a negotiated fee award that approximates market rates. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132-33 (2001). This matter has been litigated by Plaintiff's Counsel in a manner that is reasonable, diligent, and efficient. The actual lodestar incurred by Plaintiff's Counsel to date is no less than $129,542.50, not including unbilled time and estimated future work. (Leviant Decl., ¶¶ 37-39.) Counsel for Plaintiff invested time evaluating data before the negotiations in this matter and in preparing for settlement discussions with Defendant's counsel. Those efforts led to this reasonable settlement. (*Id.*) Plaintiff's Counsel requests a fee of **$40,000.00**, as specified in the Settlement Agreement, which represents a "negative" multiplier of less than **0.31**. (Leviant Decl., ¶ 39.)

The Agreement also provides for the award of Plaintiff's litigation costs. Actual costs are no less than **$21,273.65**. Costs are capped under the Agreement at $25,000.00. Therefore, Plaintiff Counsel is

[8] The Supreme Court corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases." *Laffitte*, at 501.

requesting a cost award of **$21,273.65**. (Leviant Decl., ¶ 40).

2. Administration Fees Are Very Reasonable

Administration will be completed by Phoenix Class Action Administration Solutions for **$4,995.00**, a very reasonable amount for the services rendered. (Leviant Decl., ¶ 41; Lawrence Decl., ¶ 16.)

3. The Award to Plaintiff is Justified in Light of the Results Obtained for Others and Plaintiff's Provision of a General Release

The requested award of $5,000.00 from the GSA to Plaintiff is warranted in light of the result obtained for others and Plaintiff's provision of a general release.

IX. CONCLUSION

For the above reasons in fact and law, Plaintiff requests this court enter an order approving the settlement memorialized in the Agreement.

Respectfully submitted,

Dated: November 25, 2025

MOON LAW GROUP, PC

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