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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JOSE MORENO, on behalf of the State of
California and other aggrieved persons,

Plaintiff,

v.

WILCOX MACHINE CO., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 23STCV29281

PAGA REPRESENTATIVE ACTION

*[Assigned for all purposes to: Hon. Elihu M.
Berle, Dept. 6]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO APPROVE PAGA
SETTLEMENT**

Hearing Date

Date: January 27, 2025
Time: 9:00 a.m.
Dept.: 6

Complaint Filed: November 30, 2023
FAC Filed: April 29, 2024
Trial Date: not set

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Executive Officer/Clerk of Court,
By K. Valenzuela, Deputy Clerk

NOTICE OF MOTION AND MOTION

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on January 27, 2025 at 9:00 a.m. in Department 6 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012, the Honorable Elihu M. Berle presiding, Plaintiff Jose Moreno (“Plaintiff”) will, and hereby does, move for an order under Labor Code section 2699(1)(2) approving the PAGA Settlement Agreement (“Settlement”) entered into by Plaintiff and Defendant Wilcox Machine Co. (“Defendant”) and dismissing the class claims without prejudice pursuant to California Rules of Court, Rule 3.770.

Pursuant to Labor Code § 2699(1)(2), the settlement of Plaintiff’s PAGA claims requires the Court’s approval. The basis for this motion is that Plaintiff and Defendant reached and fully executed a Settlement of the above-entitled case, Case No. 23STCV29281, that disposes of the matter entirely and is fair, reasonable, and serves the purposes of the PAGA statute. The Settlement includes all persons who were engaged by Defendant as hourly-paid employees in California at any time from January 30, 2023 to November 5, 2024. The Settlement is fair, adequate, and reasonable, and it provides for civil penalties to be distributed to Plaintiff, other aggrieved employees, and the California Labor & Workforce Development Agency.

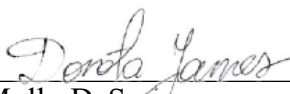
This motion is based on this Notice, the attached Memorandum of Points and Authorities, the Declaration of Molly DeSario and attached exhibits, as well as the records on file in this action and any argument the Court is presented with at the time of the hearing.

Respectfully submitted,

Dated: December 30, 2024

WILSHIRE LAW FIRM

By:


Molly DeSario
Arsiné Grigoryan
Dorota A. James

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

On November 30, 2023, Plaintiff Jose Moreno (“Plaintiff”) filed a putative wage and hour class action complaint against Defendant Wilcox Machine Co. (“Defendant”) for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify employees for expenditures; and (8) violation of California’s Unfair Competition Law, California Business and Professions Code §§ 17200, *et seq.* (Declaration of Molly DeSario [“DeSario Declaration”], ¶ 3.) On April 29, 2024, Plaintiff amended his complaint by adding a cause of action under the Private Attorneys General Act (“PAGA”) (Labor Code §§ 2699, *et seq.*) (*Id.*) On November 5, 2024, the Parties engaged in a private mediation with Hon. Joan M. Lewis (Ret.). During the mediation, Defendant advised Plaintiff that Defendant had settled and received *Pick-Up Stix* releases from 76 out of 115 putative class members. (*Id.*) Bases on that information, Plaintiff agreed to dismiss the class claims without prejudice and continue the mediation negotiations as to the PAGA claims only. (*Id.*) On December 2, 2024, Plaintiff filed a Request for Dismissal of the Class Claims in the action. (*Id.*) On December 12, 2024, the Court denied Plaintiff’s Request for Dismissal of the Class Claims and instructed Plaintiff to file a Motion for Approval of PAGA Settlement. (*Id.*) As per the terms of the Settlement Agreement, Plaintiff move to dismiss the class claims without prejudice.

On November 5, 2024, Plaintiff and Defendant engaged in vigorous, arms-length negotiations regarding the resolution of this matter. (*Id.* at ¶ 8.) After an all-day mediation presided over by Hon. Joan M. Lewis (Ret.), the Parties ultimately agreed to settle Plaintiff’s PAGA claim for \$191,000.00, which will provide significant civil penalties to the California Labor & Workforce Development Agency (“LWDA”) and other aggrieved employees. (*Id.*)

Labor Code § 2699(l)(2) provides that “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be

submitted to the [LWDA] at the same time that it is submitted to the court.” Plaintiff submitted the proposed Settlement to the LWDA on December 30, 2024, pursuant to Labor Code § 2699(1)(2). (*Id.* at ¶ 9, Ex. A.) The Parties now seek Court approval of the Settlement. For the reasons discussed in detail below, the Court should issue an order approving the Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND.

Defendant is one of the largest machine shops in Southern California specializing in the engineering, precision machining, welding and assembly of large, complex components and systems for a broad range of industries including aerospace, commercial, energy, industrial equipment, and government. (*Id.* at ¶ 4.) Plaintiff worked for Defendant from approximately September 2017 to approximately March 2021 as a Parts Driver, Office Clerk, and Porter. (*Id.*)

Plaintiff’s PAGA claim stems from Defendant’s failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages, failure to furnish accurate wage statements, failure to indemnify for necessary business expenditures, and unfair business practices. (*Id.* at ¶ 5.)

On January 30, 2024, Plaintiff provided notice to the LWDA and Defendant of the violations described above, as required by Labor Code § 2699.3(a)(1). (*Id.* at ¶ 6.) Pursuant to Labor Code § 2699.3 (a)(2)(A), the LWDA had 65 calendar days to notify Plaintiff and Defendant whether it intended to investigate the alleged violations. (*Id.*) However, the LWDA did not do so. (*Id.*)

After Plaintiff filed his complaint, the Parties engaged in extensive settlement discussions. (*Id.* at ¶ 7.) To facilitate settlement, Defendant provided Plaintiff with a sampling of timekeeping and payroll data for aggrieved employees and documents reflecting Defendant’s policies and procedures in effect during the relevant time period. (*Id.*) Thereafter, the Parties engaged in extensive discussions about the factual and legal strengths (and weaknesses) of the claims and defenses. (*Id.*) Ultimately, after an all-day mediation presided over by Hon. Joan M. Lewis (Ret.), the Parties agreed to settle the PAGA claim for \$191,000.00, which includes all persons employed by Defendant in California and classified as a non-exempt or hourly-paid

employee who worked for Defendant during the PAGA Period, and dismissing the class claims against Defendant without prejudice. (*Id.* at ¶ 9.) Additionally, during mediation, Defendant informed Plaintiff that Defendant had settled and received *Pick-Up Stix* releases for 76 out of 115 putative class members. (*Id.* at ¶ 8.) Due to the *Pick-Up Stix* releases, the Parties agreed to dismiss Plaintiff’s class claims without prejudice. (*Id.*) Dismissal of the class claims is appropriate because putative class members will not be prejudiced as a class has not been certified and notice has not been provided to putative class members in this action. (*Id.*) There are approximately 80 aggrieved employees covered by the settlement. (*Id.*) Plaintiff submitted the Settlement to the LWDA on December 30, 2024, pursuant to Labor Code § 2699(1)(2). A true and correct copy of the PAGA Settlement Agreement [“Settlement”] executed by the Parties, along with the confirmation that the Settlement was submitted to the LWDA is attached to the Declaration of Molly DeSario as **Exhibit 1**. (DeSario Decl., ¶ 9; Ex. A.) Additionally, attached as **Exhibit 2** to the Declaration of Molly DeSario is the Settlement Notice that will be sent to the PAGA Employees with payment after the Court enters a Judgement on its Order Approving the PAGA Settlement. (*Id.*; Settlement, ¶ 1.21.)

III. **ARGUMENT.**

PAGA permits an aggrieved employee to sue an employer for civil penalties associated with the employer’s alleged violations of the Labor Code. (Labor Code § 2699(a).) Under the statute, of the amount paid to settle a claim for PAGA penalties, twenty-five percent (25%) is payable to the aggrieved employees and seventy-five percent (75%) is payable to the LWDA. (Labor Code § 2699(i).)

A. **The Terms of the PAGA Settlement.**

The Settlement provides for a gross Settlement Amount of \$191,000.00 to be distributed to persons employed by Defendant in California and classified as a non-exempt or hourly-paid employee who worked for Defendant during the PAGA Period, and releases claims by the Aggrieved Employees during this period as well. (Settlement, ¶¶ 1.4, 5.2.) Of that amount, \$63,666.67 is allocated to Attorneys’ Fees, up to \$25,000.00 is allocated to litigation costs, up to \$7,500.00 is allocated to Settlement Administrator Costs, and \$10,000.00 is allocated as a

Service Award to Plaintiff. (Settlement, ¶¶ 3, 5.) The Net Settlement Amount after these deductions is \$21,208.33 and will be allocated and disbursed as follows:

Settlement Administration. Within fourteen (14) days after the Court approves the Settlement and any other LWDA requirements are satisfied, Defendant will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet, for the purposes of distributing payments to the aggrieved employees. (Settlement, ¶ 4.2.) Within fourteen (14) days of the Effective Date, Defendant shall fully fund the Settlement by transmitting the funds to the Settlement Administrator. (*Id.* at ¶ 4.3.)

Before mailing payments to the aggrieved employees, the Settlement Administrator will update contact information using the National Change of Address database. (Settlement, ¶ 4.4.1.) The Settlement Administrator will then issue the Notice and payments to the PAGA Employees, issue any required IRS forms, issue the Service Award to Plaintiff, and issue payment to the LWDA and Plaintiff’s counsel. (*Id.* at ¶ 4.4.2.) PAGA Employees will have 180 days to cash their checks, after which time a stop-payment will issue and the funds will be paid to the California Controller’s Unclaimed Property Fund in the name of the PAGA Employee. (*Id.* at ¶¶ 4.4.1, 4.4.3.)

Dismissal of Class Claims without Prejudice. Plaintiff agreed to dismiss Plaintiff’s class claims without prejudice due to Defendant’s settling all wage and hour claims for 76 out of 115 putative class members via *Chindarah v. Pick Up Stix, Inc* releases. (Settlement, ¶ 2.1.)

B. The Terms of the PAGA Settlement Are Fair and Should Be Approved.

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the “court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part.” (Labor Code § 2699(l).)

As with any settlement, the Court must be mindful in conducting its inquiry that “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further.” (*See In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 13, 2011) 2011 WL 4079226, *9.) Indeed, “the very essence of a settlement is ... ‘a yielding of absolutes and an abandoning of highest hopes,’” as “it is the very uncertainty of outcome in litigation and

1 avoidance of wasteful and expensive litigation that induce consensual settlements.” (*See*
2 *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 624-25.) As such, “the
3 settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits”
4 or “judged against a hypothetical or speculative measure of what might have been achieved by
5 the negotiators.” (*Id.*)

6 Although the operative PAGA statute does not set forth the criteria by which a PAGA
7 settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors
8 for review of a class action settlement. However, “a PAGA claim asserted on a non-class
9 representative basis...is not considered a class action but a law enforcement action, and
10 therefore does not have to meet the requirements of [a class action].” (*See Casida v. Sears*
11 *Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, *3; *Thomas v. Aetna Health of Cal.,*
12 *Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, *13; *Mendez v. Tween Brands, Inc.*, 2010 WL
13 2650571, *4 (E.D. Cal. July 1, 2010).) Based thereon, a court’s review of a PAGA settlement
14 necessarily implicates the following unique features that render the approval process distinct
15 from approval of a class action settlement under Code of Civil Procedure § 382 and California
16 Rules of Court, Rule 3.769.

17 First, in evaluating the adequacy of the settlement amount, the Court’s focus is not
18 concerned with the amount(s) that “aggrieved employees” are to receive, but rather, must focus
19 on the total settlement amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought
20 in a PAGA suit consists of civil penalties, not individual or class damages.” (*Mendez, supra*,
21 2010 WL 2650571 at *4.) “Unlike class actions, these civil penalties are not meant to
22 compensate unnamed employees because the action is fundamentally a law enforcement action.”
23 (*Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. Apr. 2, 2010) 2010 WL 1340777, *4.
24 Moreover, while “[a PAGA] action is ... designed to protect the public and penalize the
25 employer for past illegal conduct,” a reviewing Court must take into account the fact that
26 settlement of a PAGA claim – like any settlement – involves a “compromise” that stops short
27 of rendering findings of liability and damages. (*Mendez*, 2010 WL 2650571 at p. *4) As such,
28 the Court must not lose sight of the fact that “[u]nlike a class action seeking damages or

injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies.” (*See Ochoa-Hernandez*, 2010 WL 1340777 at p. *4.)

Second, consistent with the fact that unnamed employees have no property interest in a PAGA claim,¹ “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.” (*See Ochoa-Hernandez, supra*, 2010 WL 1340777 at p. *4.) This renders the approval process of a PAGA settlement distinct from a class action settlement, as there is no need for the Court to employ the “two-step approval process” required under Federal Rule of Civil Procedure 23(e) and Rule 3.769.²

Finally, unlike a class action settlement under Rule 23(e) and Rule 3.769, the scope of release permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding...the non-party 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.” (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986-87 .) Thus, with the exception of the named Plaintiff, the scope of a release in a PAGA settlement is necessarily strictly confined to the PAGA penalties alleged in the complaint, and claims that were or could have been alleged pursuant to PAGA based on the factual allegations in the Complaint. In the case at hand, as the only claims at issue are PAGA

¹ As held by the California Supreme Court, “[t]he Labor Code Private Attorneys General Act of 2004 does not create property rights or any other substantive rights” as “[i]t is simply a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies.” (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003.)

² Significantly, the “two-step” approval process of Rule 23(e) is required to facilitate “notice” to absent class members, as Rule 23(e) expressly requires notice and an opportunity for absent class members to exclude themselves or object. (*See Fed. R. Civ. P. 23(e)* (“The following procedures apply to a proposed settlement ... (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.... (4) ... the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members.... (5) Any class member may object to the proposal if it requires court approval under this subdivision”).) Cal. Rule of Court 3.769 contains similar rules for State court class actions.

claims, those will be the only claims extinguished as a result of this Settlement, with the exception of Plaintiff's much broader, general personal release against Defendant.

California courts have a strong policy in favor of settlement. (*See, e.g., Stambaugh v. Superior Court* (1976) 62 Cal.App.3d 231, 236.) Unlike individual settlements, class action settlements (and representative PAGA settlements) involve a court approval process that exists to prevent fraud, collusion, and unfairness to absent individuals. (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-79.) In the class action context, there is a presumption of fairness of a class action settlement when: (1) the settlement is reached as a result of arm's length negotiations; (2) there has been sufficient investigation and discovery; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) Before approving a class action settlement, a trial court must develop an understanding "of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 120.).

The proposed settlement meets all of these factors.

1. The Settlement Was Reached Through Arms-Length Bargaining.

The Parties reached the Settlement after an all-day mediation presided over by Hon. Joan M. Lewis (Ret.). (DeSario Decl., ¶¶ 8-9.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.* at ¶ 8.) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*)

2. The Settlement Is Based On Sufficient Investigation and Discovery.

Before the Settlement, Plaintiff's counsel conducted an investigation into the claims alleged by Plaintiff, conducted legal research, and engaged in informal discovery. Based upon the information obtained through informal discovery, Plaintiff's counsel was able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.* at ¶ 10.)

1 **3. Plaintiff's Counsel Have Extensive Experience in PAGA Actions.**

2 Highly capable and experienced counsel conducted the settlement negotiations.
3 Plaintiff's counsel are respected members of the bar with a strong record of vigorous and
4 effective advocacy for their clients, and they are experienced in handling complex wage and
5 hour class action litigation and PAGA actions. (*Id.* at ¶¶ 29-39.) Although Plaintiff and counsel
6 were prepared to litigate the claims in this action, they support the proposed Settlement as being
7 in the best interests of the State of California and the aggrieved employees. (*Id.* at ¶ 10.)

8 **4. Assessing the Amount In Controversy and the Risks of Trial.**

9 Plaintiff and his counsel remain confident of the merits of Plaintiff's claims. (*Id.* at ¶
10 11.) However, Plaintiff does acknowledge that his position includes risk and uncertainty, as
11 described in more detail below. With respect to the meal period allegation, Plaintiff alleges that
12 Defendant did not have fully compliant written meal period policies and had improper automatic
13 deductions of meal periods. (*Id.*) Although Plaintiff contends that this allegation is meritorious,
14 there is risk with this underlying claim. (*Id.*) With respect to the rest period allegation, Plaintiff
15 contends that employees, including himself, were not provided with California-compliant rest
16 periods, as employees were often cut short or otherwise interrupted or that employees would be
17 forced to skip rest breaks due to a heavy workload. (*Id.*) Again, despite Plaintiff's contention
18 that this allegation is credible, proving rest period allegations is particularly difficult because
19 rest periods do not have to be recorded and Defendant can argue that the aggrieved employees
20 chose to voluntarily forego their rest periods. (*Id.*) With respect to the unreimbursed business
21 expenses allegation, Plaintiff alleges that Defendant required him and the other aggrieved
22 employees to purchase tools and personal protective equipment, such as safety glasses and steel-
23 toed boots, without being reimbursed. (*Id.*) Defendant disputes this claim based on the fact
24 that they provided employees with all the necessary tools required for the performance of their
25 duties and as such, any additional tools purchased by employees were not truly necessary. (*Id.*)
26 Lastly, with regard to Plaintiff's wage statement claim, Defendant argues that the wage
27 statements issued to employees meet the requirement of Labor Code § 226(a). (*Id.* at ¶ 12.)
28 Defendant also maintains that any alleged wage statement violation could not be shown to be

1 “knowing and intentional,” and that Plaintiff cannot show that she or any other employee
2 “suffer[ed] injury” as a result of the alleged wage statement violations, as required by Labor
3 Code § 226(e) for the imposition of penalties. (*Id.*)

4 Additionally, Plaintiff faced a significant risk that even if the Court did award PAGA
5 penalties, the Court could drastically reduce the penalties based on the discretionary factors
6 contained in Labor Code § 2699(e)(2) (“In action by an aggrieved employee..., a court may
7 award a lesser amount than the maximum civil penalty amount specified by this part if, based
8 on the facts and circumstances of the particular case, to do otherwise would result in an award
9 that is unjust, arbitrary and oppressive, or confiscatory.”). Plaintiff believed there was a
10 legitimate risk of the Court significantly reducing penalties given the technical nature of the
11 alleged violations. (DeSario Decl., ¶ 13.)

12 Without this settlement, the Parties face preparation for trial, as well as extensive formal
13 discovery efforts and further depositions. (*Id.*) As a result, the Parties would incur considerably
14 more attorneys’ fees and costs through trial. (*Id.*) This settlement avoids those risks and the
15 accompanying expense. Thus, this factor favors settlement approval. (*Id.*)

16 As described above, the proposed Settlement provides a fair and reasonable monetary
17 recovery for the PAGA Employees and the LWDA in the face of the contested claims. Plaintiff
18 estimated Defendant’s realistic exposure for the PAGA penalties as follows:

19 PAGA Penalties for Unpaid Wages, Meal Period Violations, Rest Period Violations, and
20 Unreimbursed Business Expenses: \$140,340.00

21 Plaintiff’s expert determined that there were 4,678, pay periods during the relevant time
22 period which presented issues with regard to unpaid wages, meal period violations, rest period
23 violations, and unreimbursed business expenses. (DeSario Decl., ¶ 14.) Plaintiff acknowledges
24 that when evaluating Defendant’s potential exposure, it is likely that the Court would impose
25 only the initial \$100 violation for all PAGA violations. (*See Amaral v. Cintas Corp. No. 2*
26 (*2008*) 163 Cal.App.4th 1157, 1207 [finding that the “initial” violation rate applies until the
27 employer has been notified that it is violating a Labor Code provision].) Applying the \$100
28 “initial violation” penalty for each of these pay periods, Defendant’s potential PAGA exposure

1 is \$467,800.00 (based on 4,678 pay periods). (DeSario Decl., ¶ 14.) However, Defendant's
2 contention that the underlying allegations lacked merit led to Plaintiff discounting this
3 maximum exposure by 70% to account for the risk of not prevailing on the merits and the
4 Court's discretion in reducing penalties. (*Id.*)

5 PAGA Penalties for Wage Statement Violations: \$96,000.00

6 Plaintiff's expert determined that there were 4,678 pay periods at issue with regard to
7 the wage statement violations claim. (DeSario Decl., ¶ 15.) Because Plaintiff's wage statement
8 theory of liability is predicated on Defendant's issuance of facially deficient wage statements –
9 each of the wage statements issued would carry a potential PAGA penalty. (*Id.*) As Labor Code
10 § 226(e) specifies what penalties are recoverable for violations of § 226(a) (\$50 penalty per
11 initial violation and a \$100 penalty per subsequent violation, up to an aggregate penalty of
12 \$4,000 per employee), the PAGA penalties recoverable through this section mirror the penalties
13 available through § 226(e). (*See* Labor Code § 2699(a).) Accordingly, Defendant's maximum
14 exposure for its wage statement violations is \$320,000.00 (80 aggrieved employees x \$4,000
15 maximum penalty). (DeSario Decl., ¶ 15.)

16 However, based on Defendant's counterarguments and because the Court maintains
17 discretion to reduce these penalties, Plaintiff discounted that figure by 70% for a risk of not
18 prevailing on the merits and to account for the Court's discretion to reduce the penalties (given
19 the highly technical nature of the alleged violations). (*Id.*; *see also Fleming v. Covidien Inc.*
20 (C.D. Cal., Aug. 12, 2011, No. (OPX)) 2011 WL 7563047, at *4 [reducing PAGA penalties
21 from \$2.8 million to \$500,000]; *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
22 Cal.App.4th 1112, 1136 [affirming trial court's finding that awarding maximum PAGA
23 penalties would be unjust].)

24 Using these estimated figures, Plaintiff predicted that the realistic total potential
25 recovery for the PAGA Employees and the LWDA would be approximately \$236,340.00.
26 (DeSario Decl., ¶ 16.) The proposed Settlement of \$191,000.00 therefore represents 81% of
27 Plaintiff's reasonably forecasted total recovery. (*Id.*) "The fact that a proposed settlement may
28 only amount to a fraction of the potential recovery does not, in and of itself, mean that the

1 proposed settlement is grossly inadequate and should be disapproved.” (*Linney v. Cellular*
2 *Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 [internal quotations omitted].) In this
3 case, continued litigation would delay payment to the LWDA and the PAGA Employees as they
4 await trial and, most likely, appellate proceedings. (DeSario Decl., ¶ 16.) Furthermore, while
5 Plaintiff is confident in the merits of the case, a legitimate controversy exists as to each of the
6 predicate Labor Code violations. (*Id.*) The possibility that the Court finds no liability at the
7 PAGA bench trial is also a risk. (*Id.*) In sum, when the risks of litigation, the burdens of proof
8 necessary to establish liability, and the probability of appeal of a favorable judgment are
9 balanced against the merits of Plaintiff’s claims, it is clear that the Settlement amount is fair.
10 (*Id.*) Further, because of the proposed Settlement, the PAGA Employees will receive timely,
11 guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.*) Plaintiff also
12 recognizes that proving the amount of wages due to each employee would be an expensive,
13 time-consuming, and uncertain proposition. (*Id.*)

14 If the Court approves the terms of the Settlement, each aggrieved employees’ payment
15 will be approximately \$265.10 and approximately \$63,624.00 will go to the LWDA. (*Id.* at ¶
16 17.) In reality, some employees will likely receive more, and others may receive less depending
17 on the length of their employment with Defendant. (*Id.*)

18 **C. The PAGA Representative Service Payment Is Reasonable.**

19 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as
20 compensation “for the expense or risk they have incurred in conferring a benefit on other
21 members of the class.” (*Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186
22 Cal.App.4th 399, 412.) Courts routinely grant approval of class action settlement agreements
23 containing additional awards for the class representatives, which are “intended to compensate
24 class representatives for work done on behalf of the class, to make up for financial or
25 reputational risk undertaken in bringing the action, and, sometimes, to recognize their
26 willingness to act as a private attorney general.” (*Cellphone Fee Termination Cases* (2010) 186
27 Cal.App.4th 1380, 1393-94 [citations omitted].)

28 The Settlement provides for a Service Payment to Plaintiff in an amount not to exceed

1 \$10,000.00. (Settlement, ¶ 3.2.1.) The requested service award is intended to recognize: (1)
2 the substantial time and effort that Plaintiff has expended on behalf of the State and Aggrieved
3 Employees; (2) the risks faced by Plaintiff as a result of bringing this action; (3) the fact that
4 Plaintiff put the interests of the State of California and other aggrieved employees ahead of his
5 own; and (4) the substantial benefit conferred upon the State and the aggrieved employees as a
6 result of Plaintiff's actions. (DeSario Decl., ¶ 18.) Plaintiff has spent numerous hours
7 performing tasks for this case, including, but not limited to, the following: consulting with
8 counsel in-person and over the telephone; searching for and producing relevant documents;
9 reviewing documents produced by Defendant and settlement documents; keeping informed of
10 the developments in the case; and participating in decisions concerning the case, including
11 settlement. (*Id.* at ¶ 19.) As a result of her efforts, the LWDA and about 80 aggrieved employees
12 will receive compensation for civil penalties for underpaid wages and other wage and hour
13 violations. (*Id.*)

14 Plaintiff put himself at significant risk in pursuing this action on behalf of the State, as
15 serving as a Plaintiff in a representative action could affect his prospects for future employment.
16 (*Id.* at ¶ 20.) Plaintiff also placed himself at substantial risk because, if Defendant was to prevail
17 in this action, Plaintiff could be liable for Defendant's costs and attorneys' fees. (*Id.*)

18 In short, this action would not have been possible without the aid of Plaintiff, who put
19 his own time and effort into this litigation, sacrificed the value of his individual claims by
20 entering into a general release of all known and unknown claims, and placed himself at risk for
21 the sake of the State and the aggrieved employees. (*Id.* at ¶ 20.) Accordingly, the requested
22 Service Payment is reasonable and should be approved by the Court.

23 **D. The Requested Attorneys' Fees and Costs Are Reasonable.**

24 A prevailing party in a PAGA action is entitled to recover his attorneys' fees and costs
25 for his claims. (Cal. Lab. Code § 2699(g) ["Any employee who prevails in any action shall be
26 entitled to an award of reasonable attorney's fees and costs."].) A fee award is justified where
27 the legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P.*
28 *v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v.*

1 *Obledo* (1983) 33 Cal.3d 348, 352-53.)

2 Fee awards of roughly one-third of the settlement fund are routinely awarded in
3 California state and federal courts in class and representative PAGA actions. “[F]ee awards in
4 class actions average around one-third of the recovery.” (*Chavez v. Netflix, Inc.* (2008) 162
5 Cal.App.4th 43, 66, fn. 11 ; *see also, In re Pacific Enterprises Securities Litig.* (9th Cir. 1995)
6 47 F.3d 373, 379 [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th
7 Cir. 1997) 129 F.3d 1026, 1027 [holding that class counsel’s fee award should have been
8 calculated as one-third of the gross settlement fund]; *Chavez v. Saticoy Lemon Ass’n* (Cal.
9 Super. Ct. Ventura Cty. Aug. 10, 2015) Case No. 56-2015-00468600-CU-OE-VTA, 2015 WL
10 5561118 [approving attorneys’ fees of one-third of settlement fund in representative PAGA
11 settlement]; *Clavel v. Lupe’s Thousand Oaks Mexican Restaurant, Inc.* (Cal. Super. Ct. Ventura
12 Cty. Mar. 25, 2016) Case No. 56-2015-00467353-CU-OE-VTA, 2016 WL 1601221 [same].)

13 The fee award requested here (\$63,666.67, representing 33 1/3% of the \$191,000.00
14 gross settlement amount) is justified because Plaintiff’s counsel achieved a significant monetary
15 recovery for the aggrieved employees and the LWDA in an uncertain and risky case while
16 bearing the substantial burdens of representation on a contingency basis, and the fees requested
17 are in line with the market rates described above. Plaintiff’s counsel expended significant time
18 and resources in litigating this case, which resulted in a favorable result for the LWDA, Plaintiff,
19 and the aggrieved employees. Plaintiff’s counsel elected to bear the contingency risk of this
20 litigation for the benefit of the aggrieved employees, as well as for the State of California (who
21 elected not to take the case after receiving the PAGA notice). (DeSario Decl., ¶¶ 40-43.)

22 Critically, this settlement exceeds other PAGA awards approved by courts. (*See, e.g.,*
23 *Aguirre v. DSW, Inc.* (C.D. Cal. Nov. 29, 2012) 2012 WL 11875296, *3 [approving \$10,000
24 PAGA payment]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575,
25 *7 [“GTI agrees to allocate \$10,000 to Plaintiffs’ PAGA claims, and will pay \$7,500 to the
26 LWDA, and \$2,500 to participating Class Members on a pro-rata basis. This comports with
27 settlement approval of PAGA awards in other cases. [Citations.] Therefore, the Court will
28 approve the allocation of the Settlement to Plaintiffs’ PAGA claim.”]; *Boyd v. Bank of America*

1 *Corp.* (C.D. Cal. Nov. 18, 2014) 2014 WL 6473804, *8 [approving \$18,750 PAGA payment];
2 *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801, *14 [approving
3 \$10,000 PAGA payment]; *Chu v. Wells Fargo Investments, LLC* (N.D. Cal. Feb. 16, 2011) 2011
4 WL 672645, *1 [approving \$10,000 PAGA payment]; *cf. Nordstrom Comm’n Cases* (2010) 186
5 Cal.App.4th 576, 589 [holding that trial court did abuse its discretion in approving wage and
6 hour class action settlement that involved PAGA claims even though no settlement money was
7 allocated to the PAGA claims and paid to the LWDA].) The fact that Plaintiff’s counsel
8 achieved these results without engaging in a protracted legal battle, in the face of serious defense
9 challenges and an uncertain legal landscape, confirms the strength of the results achieved.

10 As discussed above, this case carried substantial risk as to the merits as well as the
11 potential of the Court drastically reducing penalties in the context of a contested trial or
12 summary judgment proceeding. Accordingly, it is fair and reasonable to account for these risks
13 in compensating Plaintiff’s counsel. Since undertaking this representation, Plaintiff’s counsel
14 has dedicated substantial resources to this litigation, including approximately \$18,070.89 in
15 costs, without receiving any compensation to date. (DeSario Decl., ¶¶ 22, 28.) Plaintiff’s
16 counsel conducted extensive legal research regarding the merits of Plaintiff’s claims, his ability
17 to recover penalties under the PAGA, and Defendant’s potential defenses. (*Id.* at ¶ 10.)
18 Plaintiff’s counsel expended significant additional effort in preparing formal settlement
19 documents and this Motion to Approve PAGA Settlement. (*Id.* at ¶ 19.) Given the considerable
20 potential for adverse outcomes in this case, including, but not limited to, Defendant defeating
21 Plaintiff’s claims on the merits, and/or facing a drastic reduction to potential PAGA penalties,
22 the contingent risk borne by Plaintiff’s counsel was great. The quality of Plaintiff’s counsel’s
23 work, and the efficiency and dedication with which it was performed, should be compensated.

24 Plaintiff’s counsel’s previous experience in litigating similar class and representative
25 actions also supports the reasonableness of the fee request. Plaintiff’s counsel brings extensive
26 plaintiff-side wage-and-hour class, collective, and representative action experience. (*Id.* at ¶¶
27 29-39.) They have been found to be adequate counsel in numerous cases alleging wage and
28 hour claims. (*Id.*) Practice in the narrow field of wage-and-hour litigation requires skill and

1 knowledge concerning the rapidly evolving substantive state and federal law, as well as the
2 procedural law of class and representative action litigation. Because it is reasonable to
3 compensate Plaintiff's counsel commensurate with its skill, reputation, and experience, a fee
4 award of 33 1/3% of the gross settlement amount is reasonable.

5 Plaintiff's request for reimbursement of actual litigation costs of \$18,070.89 is also fair
6 and reasonable. As the evidence submitted herewith shows, all of Plaintiff's litigation costs are
7 documented and reasonably incurred. (*See* DeSario Decl., Ex. 3 [Expense Summary].)

8 **E. Settlement Administrator Costs Are Reasonable.**

9 ,The Settlement Administrator Costs in the amount of \$7,500.00 are reasonable, given
10 the tasks to be performed by the Settlement Administrator, including, but not limited to, the
11 following duties: mailing and re-mailing (if necessary) checks to approximately 80 PAGA
12 Employees and the LWDA; establishing a Qualified Settlement Fund; preparing and submitting
13 to PAGA Employees and government entities all appropriate tax filings and forms; distributing
14 the PAGA Representative Service Payment and attorneys' fees and costs; keeping the Parties
15 timely apprised of the performance of all obligations under the Agreement; and voiding
16 uncashed or undeliverable checks to issue those funds to the California Controller's Unclaimed
17 Property Fund. (Settlement, ¶ 4.4.3.) Plaintiff respectfully requests that the Court approve the
18 requested costs.

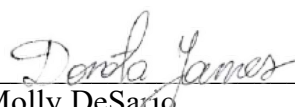
19 **IV. CONCLUSION.**

20 For the reasons set forth above, Plaintiff requests that the Court grant this motion and
21 approve the Parties' PAGA Settlement.

22 Respectfully submitted,

23 Dated: December 30, 2024

WILSHIRE LAW FIRM

24
25 By: 

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27 Attorneys for Plaintiff
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