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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

STEPHANIE DALEY, individually, and on behalf of other members of the general public similarly situated; Plaintiff, v. ACOSTA SALES AND MARKETING INC., a Delaware corporation; ACOSTA, INC., a Florida corporation; and DOES 1 through 100, inclusive; Defendants.	Case No.: 24STCV09466 Assigned for All Purposes to: Honorable Gary D. Roberts Department 73 **SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698, ET SEQ.) SETTLEMENT AGREEMENT** [Supplemental Declaration of Counsel (Douglas Han); and Proposed Order filed concurrently herewith] Hearing Date: November 14, 2025 Hearing Time: 8:30 a.m. Hearing Place: Department 73 Complaint Filed: April 15, 2024 Trial Date: January 26, 2026

Plaintiff Stephanie Daley ("Plaintiff") provides this supplemental submission in response to the Court's tentative ruling on the Motion for PAGA Approval Hearing originally scheduled for hearing on September 12, 2025. On September 11, 2025, the Court issued a tentative ruling ordering Plaintiff and Defendants Acosta Sales and Marketing Inc., Acosta Inc., and Acosta Employee Holdco, LLC ("Defendant") to make changes to the settlement documents that were submitted alongside the Motion for Preliminary Approval of Class Action Settlement.

I. <u>LEGAL STANDARD</u>

"""[N]either the California legislature, nor the California Supreme Court, nor the California Courts of Appeal, nor the [LWDA] has provided any definitive answer"' as to what the appropriate standard is for approval of a PAGA settlement."'" (*Haralson v. U.S. Aviation Services Corp.* (N.D.Cal. 2019) 383 F.Supp.3d 959, 971.) However, several district courts have opted to use the following standard: "asking whether the settlement of the PAGA claims is 'fundamentally fair, adequate, and reasonable in light of PAGA's policies and purposes.'" (*Id.* at p. 972.)

Labor Code section 2699(e)(2) grants courts the authority to reduce civil penalties where "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (Labor Code § 2699(e)(2).) The courts regularly exercise this discretion in approving PAGA settlements at significantly discounted rates from the maximum theoretical exposure, depending on the circumstances of the cases, including litigation risks and evidentiary issues. (*Viceral v. Mistras Grp., Inc.* (N.D.Cal. Oct. 11, 2016, No. 15-cv-02198-EMC) 2016 U.S.Dist. LEXIS 140759, at *29-30.) (approving allocation of only 0.15% of potential PAGA value given litigation risks); *Hamilton v. Juul Labs, Inc.* (N.D.Cal. Nov. 16, 2021, No. 20-cv-03710-EMC) 2021 U.S.Dist. LEXIS 221416, at *27-28) (recognizing that the courts may reduce penalties where maximum awards would be unjust).

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II. DIFFERENT METHODS OF CALCULATING THE PAGA PENALTIES

There is no single mode or method mandated by statute for calculating the PAGA penalties. The modes of calculation of the PAGA penalties widely vary. ((*Rodriguez v. Classic Bev. of S. Cal., LLC*, 2025 Cal. Super. LEXIS 14970, at *6, 8) (assessing stacked and unstacked calculations at maximum exposure rates and discounted estimates for each cause of action pled and estimating the stacked and non-stacked PAGA penalties based upon number of pay periods worked); (*Smith v. Brinker Int'l, Inc.* (N.D.Cal. May 5, 2010, No. C 10-0213 VRW) 2010 U.S.Dist. LEXIS 54110, *11-12) (applying $200 maximum statutory penalties to all claims without a conservative estimate, which the court noted was over-inflated); (*Vasserman v. Henry Mayo Newhall Mem. Hosp.* (C.D.Cal. 2014) 65 F. Supp. 3d 932, 973-974) (assuming 100% of PAGA penalties for all causes of action were recoverable); (*Hamilton v. Juul Labs, Inc.* (N.D.Cal. Nov. 16, 2021, No. 20-cv-03710-EMC) 2021 U.S.Dist. LEXIS 221416, at *25-29) (acknowledging that stacking of penalties as a possible method, reflecting split among courts).) Moreover, the courts have criticized the parties for failing to take more conservative approaches when calculating the PAGA penalties. (*Page v. Luxottica Retail N. Am., Inc.* (E.D.Cal. Mar. 3, 2015, No. 2:13-cv-01333-MCE-KJN) 2015 U.S.Dist. LEXIS 26624, at *16-17.)

With regards to stacking when calculating the PAGA penalties, there does not seem to be a clear consensus among the courts. There have been instances where the courts have allowed stacking in exposure estimates for purposes of assessing the amount in-controversy. (See *Hernandez v. Towne Park, Ltd.* (C.D.Cal. June 22, 2012, No. CV 12-02972 MMM (JCGx)) U.S. Dist. LEXIS 86975, fn. 77) (citing to *Schiller* and *Smith*'s affirmation of stacking penalties); (*Schiller v. David's Bridal, Inc.* (E.D.Cal. July 14, 2010, No. 1:10-cv-00616 AWI SKO) U.S.Dist LEXIS 81128, at *6); (*Smith*, *supra*, at *2-6.) Similarly, there have been instances where the courts have ruled that stacking should not be ignored when calculating the PAGA penalties. (*O'Connor v. Uber Technologies, Inc.* (N.D.Cal. June 30, 2016 No. 13-cv-03826-EMC) 2016 U.S. Dist. LEXIS 85641, at *28.) There have been instances where the courts have approved a range of estimates for the PAGA penalties – from 8% to 52% of maximum exposure with and without stacking. (*Rodriguez v. Classic Bev. of S. Cal., LLC*, 2025 Cal. Super. LEXIS 14970, at

*6-7.) There have been instances where the courts have rejected speculative, inflated calculations of the PAGA penalties as accurate or reasonable. (*Smith v. Brinker Int'l, Inc.* (N.D.Cal. May 5, 2010, No. C 10-0213 VRW) 2010 U.S.Dist. LEXIS 54110, at *11-12.) Finally, there have been instances where the courts have rejected the idea of stacking multiple penalties for the same pay period and only attributed a single penalty per type of violation. (*Snow v. UPS* (C.D.Cal. Apr. 1, 2020, No. EDCV 20-025 PSG (AFMx)) 2020 U.S.Dist. LEXIS 58317, at *9-11.)

The courts have recognized this absence of standard calculations or assumptions underlying the PAGA penalties. As a result, there are a wide range of methods to evaluate the reasonableness of a PAGA settlement based on the circumstances and evidence available. (*Haralson v. U.S. Aviation Services Corp.*, *supra*, 383 F.Supp.3d at p. 971.)

III. PLAINTIFF'S COUNSEL'S CALCULATIONS OF THE PAGA PENALTIES

Defendant estimates that there are about 1,308 Settlement Group Members who worked around 22,517 pay periods during the Settlement Period. (Supplemental Declaration of Douglas Han in Support of Motion for Approval of Private Attorneys General Act (Labor Code § 2698, et seq.) Settlement Agreement (Supp. Han Decl.), ¶ 4.)

Plaintiff's Counsel indicated that if the PAGA penalties are granted on any one of the violations alleged in the operative complaint, the total civil penalties exposure under PAGA could be approximately **$130,800** (1,308 employees x $100 penalty for initial violation) on the low end and **$784,800** (1,308 employees x $100 penalty for initial violation x 6 theories of recovery) on the high end. (Supp. Han Decl., *supra*, at ¶ 5.) If the PAGA exposure is calculated using a one hundred percent (100%) violation rate based on seventeen (17) average pay periods using the one-year statutory period, then the total penalties exposure for the eligible pay periods would be approximately **$2,223,600** ([17 average pay periods x $100 per penalty] x 1,308 Settlement Group Members). (*Id.* at ¶ 6.) Plaintiff's Counsel also considered the high-end calculations of these penalties that yielded potential penalties of **$13,341,600** ([17 average pay periods x $100 per penalty] x 1,308 Settlement Group Members x 6 theories of recovery). (*Ibid.*) Both calculations were considered at the time of mediation and settlement negotiations. (Supp. Han Decl., *supra*, at ¶¶ 5, 6.) However, the high-end calculations, assuming a one hundred percent (100%) violation rate, would still need to be discounted when considering Defendant's defenses and counterarguments in addition to the amendments made to Labor Code section 2699. (*Id.* at ¶ 6.) Thus, Plaintiff's Counsel presented more conservative estimates for purposes of supporting the Gross Settlement Amount. (*Ibid.*)

As explained above, PAGA's statutory language was unclear as to whether the PAGA penalties may be "stacked" – whether multiple civil penalties can be recovered in the same pay period for different Labor Code violations. (Supp. Han Decl., *supra*, at ¶ 7.) Assuming that the PAGA penalties could be stacked, PAGA's statutory language does not make clear what violation rates or exposure should be assumed in assessing such penalties. (*Ibid.*) As a result, Plaintiff's Counsel had to consider the unsettled state of PAGA liability prior to the statute's reform when evaluating the potential total civil penalties exposure under PAGA. (*Ibid.*) Plaintiff's Counsel also had to consider Defendant's potential counterargument, such as making remedial efforts to comply with the violations set forth in the written notice sent to the LWDA, along with the amendments made to Labor Code section 2699. (*Ibid.*)

Under a more conservative approach, Plaintiff's Counsel considered the possibility that the Court would assess only the initial violation rate. (Supp. Han Decl., *supra*, at ¶ 8.) Due to the unsettled state of the law and range of the PAGA penalties requested and awarded in the courts, Plaintiff's Counsel used the conservative approach to calculate the total civil penalties exposure under PAGA in the Motion for PAGA Approval, which was limited to the initial violation. (*Ibid.*) However, the Parties considered both the potential total civil penalties exposure under PAGA using the one hundred percent (100%) violation rate and more conservative approach. (*Id.* at ¶ 9.) Accordingly, the Gross Settlement Amount of **$1,500,000** was negotiated after considering the potential total PAGA penalties exposure under both approaches. (*Ibid.*) While the valuation for the potential total civil penalties exposure under PAGA might appear low under the conservative approach, this conservative approach was one of different possible calculations used to assess a reasonable PAGA settlement. (Supp. Han Decl., *supra*, at ¶ 9.)

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The decision to incorporate only the conservative approach in the original Motion for PAGA Approval was guided by a commitment to provide the Court with an estimate rooted in the most reliable framework given the present legal landscape. (Supp. Han Decl., *supra*, at ¶ 10.) There remains uncertainty and ongoing debate in the courts about whether the PAGA penalties may be "stacked" or whether they should be limited to a single penalty per pay period. (*Ibid.*) As a result, Plaintiff's Counsel determined that presenting a calculation rooted on a conservative approach would avoid overstating potential exposure. (*Ibid.*) However, a **$1,500,000** settlement for 22,517 pay periods results in a **$66.61** gross pay period value. (*Id.* at ¶ 11.) Based on the range of settlements that these PAGA claims typically settle for, this is an excellent result. (*Id.* at ¶ 12.)

IV. CONCLUSION

The Gross Settlement Amount that was negotiated falls within a reasonable spectrum when considering both the expansive and conservative interpretations of the PAGA penalties. Plaintiff's Counsel considered both the expansive and conservative approaches when calculating the potential total civil penalties exposure under PAGA when negotiating the PAGA settlement.

Dated: October 16, 2025

JUSTICE LAW CORPORATION

By: ______________________
Douglas Han
Attorneys for Plaintiff

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is nalonsoesteban@justicelawcorp.com

On October 16, 2025, I served the foregoing document described as

SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698, ET SEQ.) SETTLEMENT AGREEMENT

for the following case:	**Stephanie Daley v. Acosta Sales and Marketing Inc., et al.**
LWDA/Court Case No.:	**LWDA Case No.: CM-1007146-24** **Case No. 24STCV09466** **Los Angeles County Superior Court**

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION
Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE
I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 16, 2025, at Pasadena, California.

Noelia Alonso Esteban