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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA**

JUAN JOSE PINTO PEREZ, an individual, on
behalf of himself, others similarly situated, and
as a private attorney general on behalf of the
State of California,

PLAINTIFF,

v.

GOLDENWOOD TRUSS CORPORATION, a
California Corporation, and DOES 1 thru 50,
inclusive,

DEFENDANTS.

Case No.: 2024CUOE019811

[Assigned for all purposes to the Hon. Mark S.
Borrell, Dept. 40]

**NOTICE OF MOTION AND MOTION
FOR APPROVAL OF
REPRESENTATIVE PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: February 5, 2025

Time: 8:30 a.m.

Dept.: 40

Complaint Filed: January 23, 2024

FAC Filed: March 29, 2024

Trial Date: None Set

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on February 5, 2025 at 8:30 a.m. in Department 40 of the
3 above-entitled court, located at 800 South Victoria Avenue, Ventura, CA 93009, Plaintiff Juan Jose
4 Pinto Perez will and hereby does move the Court to approve the Parties' Proposed PAGA Settlement,
5 enter an order granting approval of the Settlement, and entering Judgment in favor of Plaintiff and
6 the state of California.

7 The Motion will be made on the grounds that the proposed PAGA Settlement is fair, adequate,
8 reasonable, and in the best interest of the State of California and aggrieved employees. The Motion
9 will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the
10 Declaration of David S. Winston, the Declaration of Juan Jose Pinto Perez, the Parties' Settlement
11 Agreement, and all other papers and records on file in this action, and on such oral and documentary
12 evidence as may be presented at the hearing on this Motion. Plaintiff seeks attorneys' fees of up to
13 \$33,333.33, case costs of up to \$4,000, a service award for Plaintiff of up to \$5,000, and settlement
14 administration costs of up to \$3,650.00.

15 DATED: January 9, 2025

WINSTON LAW GROUP, P.C.

17 By: 
18 DAVID S. WINSTON
19 Attorney for Plaintiff Juan Jose Pinto Perez and the
20 aggrieved employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Juan Jose Pinto Perez submits this Memorandum of Points and Authorities in support
4 of this Motion for Approval of PAGA Settlement reached between Plaintiff and Defendant
5 Goldenwood Truss Corporation (collectively “Defendant” or “Goldenwood”). Pursuant to Labor
6 Code § 2699(1)(2), the superior court is required to “review and approve any settlement of any civil
7 action filed pursuant to [PAGA].” The Proposed Settlement, which concerns pre-PAGA reform
8 claims, represents a good result for the State of California and provides for a gross penalty of \$806.45
9 affected by the alleged unlawful conduct (\$100,000 gross settlement amount / 124 aggrieved
10 employees), a gross monetary per pay period penalty of approximately \$18.04 per pay period
11 (\$100,000 gross settlement amount / 5,543 estimated PAGA pay periods), and an estimated net
12 monetary per pay period penalty of approximately \$9.84 (\$54,546.01 net settlement amount / 5,543
13 estimated PAGA pay periods). Declaration of David Winston In Support of PAGA Settlement, ¶ 20
14 (hereafter the “Winston Decl.”).

15 By this Motion, Plaintiff requests that the Court:

16 (1) Grant approval of the PAGA Settlement and Release Agreement signed by the Parties (the
17 “Settlement Agreement”). A true and correct copy of the Settlement Agreement is attached to
18 the Winston Decl., as Exhibit 2;

19 (2) Appoint ILYM as the Settlement Administrator;

20 (3) Award PAGA Representative Juan Jose Pinto Perez a Service Award in the amount of
21 \$5,000.00; and

22 (4) Approve PAGA Counsel’s Attorneys’ Fees and Costs Request.

23 Plaintiff believes that the proposed settlement of this action is fair, reasonable, adequate, and
24 in the best interests of the state of California and the aggrieved employees given the issues in this
25 action. Accordingly, Plaintiff respectfully requests that the Court grant approval of the Parties’
26 Proposed PAGA Settlement. The Proposed Settlement was provided to the LWDA as required by
27 PAGA. Winston Decl., ¶ 14, Exh. 3.

1 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

2 On January 23, 2024 Plaintiff filed and served a PAGA notice alleging that Defendant
3 violated Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 510, 558, 1174, 1174.5, 1194,
4 1197, 1197.1, and 1198. Winston Decl., ¶ 8, Exh. 1. That same day, Plaintiff filed a Class Action
5 Complaint alleging class claims based upon many of the same factual predicates as Plaintiff's PAGA
6 notice. *Id.* at ¶ 9. On March 29, 2024, after exhausting PAGA's administrative waiting period,
7 Plaintiff filed an amended complaint alleging class and PAGA claims. *Id.* The Parties also began
8 discussing procedural issues, including the arbitration agreement signed by Plaintiff and its potential
9 impact on the case as well as the possibility of mediation. *Id.* at ¶ 10. In light of the arbitration
10 agreement, Plaintiff offered to stipulate to dismiss his class claims without prejudice and to proceed
11 on an individual and PAGA basis. *Id.* The Court dismissed the class claims without prejudice on
12 October 21, 2024. *Id.*

13 The Parties agreed to mediate this case and scheduled a mediation with the Hon. Stephen
14 Sundvold. Winston Decl., ¶ 11. As part of the Mediation process, Defendant provided Plaintiff with
15 information about the number of allegedly aggrieved employees (104), the number of pay periods at
16 issue during the PAGA period (4,665), time and pay records for 99 aggrieved employees, and
17 relevant policy documents through August 29, 2024. *Id.* at ¶ 12. In advance of the Mediation, the
18 Parties also continued to engage directly about potential settlements, and ultimately reached the
19 Proposed Settlement before the scheduled mediation. Plaintiff now seeks approval of the Parties'
20 proposed Settlement as required by PAGA. *Id.* at ¶ 13.

21 Plaintiff also negotiated a separate settlement of his individual claims currently pending
22 before the Court that exist separate and apart from PAGA claims and that is being disclosed in the
23 interest of transparency. *Kim v. Reins Int'l Cal., Inc.*, 9 Cal. 5th 73, 80 (2020) (the "[s]ettlement of
24 individual claims does not strip an aggrieved employee of standing, as the state's authorized
25 representative, to pursue PAGA remedies" nor resolve the PAGA claims). Plaintiff's Counsel is not
26 receiving any attorneys' fees or cost reimbursement associated with Plaintiff's individual settlement.
27 Winston Decl., ¶80, Exh. 7; Pinto Perez Decl., ¶ 2.

1 **III. THE NATURE OF A PAGA ACTION**

2 The Private Attorney General Act (“PAGA”) (Labor Code section 2698, *et seq.*) creates a
3 means of “deputizing” citizens as private attorney generals to enforce the Labor Code on behalf of
4 the state of California. *Brown v. Ralphs Grocery Co.*, 197 Cal. App. 4th 489, 501 (2011). Through
5 PAGA, an aggrieved employee can recover civil penalties for violations of the Labor Code committed
6 against the aggrieved employee on behalf of the State of California. Lab. Code § 2699 (a) and (f).
7 Thus, in bringing a PAGA action, the aggrieved employee acts as the proxy or agent of the state labor
8 law enforcement agencies, representing the same rights and interest of the state of California who
9 remains the real party in interest. *Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty.*, 234
10 Cal. App. 4th 1109, 1119 (2015) (holding “the government is always the real party in interest” in a
11 PAGA action.).

12 Since in a PAGA action the state serves as the real party in interest, any judgment in a PAGA
13 action binds only the state of California and does not alter the rights of any of the allegedly aggrieved
14 employees except with respect to civil penalties that could be recovered by the state of California on
15 behalf of the aggrieved employees. *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*,
16 46 Cal. 4th 993, 1003 (2009); (holding that “[PAGA] does not create property rights or any other
17 substantive rights.”); *Medina v. Vander Poel*, 523 B.R. 820, 825 (E.D. Cal. 2015) (holding “PAGA
18 plaintiffs do not have property rights in their cases.”).

19 Moreover, as the Ninth Circuit, the California Supreme Court, and Appellate Courts have
20 recognized, “a PAGA suit is fundamentally different than a class action.” *Baumann v. Chase Inv.*
21 *Servs. Corp.*, 747 F.3d 1117, 1122 (9th Cir. 2014); *Kim v. Reins International California, Inc.*, 9 Cal.
22 5th 73, 81 (2020) (“A PAGA claim is legally and conceptually different from an employee's own suit
23 for damages and statutory”). Unlike in a class action, “PAGA does not make other potentially
24 aggrieved employees parties or clients of plaintiff's counsel, does not impose on a plaintiff or counsel
25 any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect
26 to the ability to represent a large class.” *Williams vs. Sup. Ct.*, 3 Cal. 5th 531, 546-547 (2017). PAGA
27 also “has no notice requirements for unnamed aggrieved employees, nor may such employees opt out
28

of a PAGA action.” *Baumann*, 747 F.3d at 1122.

IV. THE PROPOSED SETTLEMENT

The Proposed Settlement only covers the State’s claims for Labor Code violations committed against a group of aggrieved employees also referred to as PAGA Members defined as “all persons currently or formerly employed by Defendant, as a non-exempt, employee whether paid on a piece rate or hourly basis in the State of California during the Settlement Period (defined as January 23, 2023 through December 16, 2024).” Winston Decl., ¶ 13, Exh. 2 at § II(1). As of August 29, 2024 there were 104 aggrieved employees who worked 4,414 pay periods. Winston Decl., ¶¶ 12-13, Exh. 2 at § I(6). Plaintiff performed an extrapolation for the period between August 29, 2024 to the end of the PAGA period (December 16, 2024) and determined that there were an estimated total of 124 aggrieved employees who worked approximately 5,543 pay periods. Winston Decl., ¶ 15.

Notably, as discussed above, none of the workers are waiving any of their own individual rights to pursue claims against Defendant, as only the State’s claims for civil penalties were ever at issue in this action, with the exception of Plaintiff, who has signed an individual settlement agreement for his own individual claims. *See Amalgamated Transit*, 46 Cal. 4th at 1003; *Kim*, 9 Cal. 5th at 81.

The Proposed PAGA Settlement provides for Defendant to pay a non-reversionary Gross Settlement Amount of \$100,000.00 subject to the following proposed allocation and/or in the lower amounts requested as part of this approval motion:¹

Gross Settlement Amount:	\$100,000.00
Attorneys’ Fees: (1/3)	up to \$33,333.33
Case Costs:	\$3,470.66
Settlement Administration Costs:	\$3,650.00
Service Award for Plaintiff Perez:	up to \$5,000.00

¹ The proposed Settlement permits PAGA Counsel to request case costs of up to \$4,000 and settlement administration costs of up to \$5,000, but while the notice of motion and settlement agreement provide for a cost request of up to \$20,000 in case additional costs are incurred during the approval process. However, Plaintiff’s Counsel is only seeking costs incurred and/or expected to be incurred during the approval process which results in an additional \$562.04 being available to the State and aggrieved employees. In addition, the settlement administration costs are also less than originally anticipated resulting in an additional \$1,350.00 available in the Net PAGA Penalty fund that will be distributed to the state and the aggrieved employees.

Estimated Net PAGA Penalties: \$54,546.01

Winston Decl., ¶¶ 13 and 16, Exh. 2 at § III(38).

The Net PAGA Payment is the amount to be distributed to the LWDA and the aggrieved employees and consists of the Gross Settlement Amount minus Court Approved PAGA Counsel's attorneys' fees and litigation costs, the settlement administrator costs charged by third-party settlement administrator ILYM Group, and Plaintiff Perez's proposed service award. Winston Decl., ¶¶ 13 and 16-17, Exh. 2 at § III(28-29). The Net PAGA Payment Amount will be allocated pursuant to the version of Labor Code section 2699(i) that applies to this pre-PAGA reform action with 75% paid to the LWDA (\$40,909.51) and 25% paid to the aggrieved employees on a pro-rata basis (\$13,636.50). *Id.* at ¶ 17.

The portion of PAGA penalties distributed to each PAGA Aggrieved Employee shall be calculated by dividing the number of PAGA periods worked by an aggrieved employee during the covered period by the total number of pay periods worked by all aggrieved employees during the covered period (5,543)² and multiplying that amount by the 25% of the net PAGA penalties awarded to the aggrieved employees (*i.e.* \$13,636.50). Winston Decl., ¶ 18.

Based on the data provided by Defendant, the Proposed Settlement itself represents a gross PAGA penalty award of approximately \$18.04 per pay period (\$100,000.00/5,543 pay periods) and a net PAGA penalty award of approximately \$9.84 per pay period (\$54,546.01/5,543 pay periods). Winston Decl., ¶ 19. In addition, the average estimated gross settlement award per aggrieved employee is \$806.45 (\$100,000 gross settlement amount/124 aggrieved employees), the average estimated net settlement award when taking into account the proposed attorneys' fees, case expenses, Plaintiff's proposed service award, and PAGA's 75%/25% split between the state and aggrieved employees is approximately \$109.97 (\$13,636.50 Net PAGA Penalties for the aggrieved employees/124 aggrieved employees), the minimum estimated net settlement award is approximately \$2.46 ((1 pay period worked during the PAGA period/5,543 PAGA pay periods) x \$13,636.50 (the

² Defendant provided informal discovery indicating that there were approximately 4,665 pay periods as of August 29, 2024, which was the date of the most current data pull, extrapolated through December 16, 2024 there are approximately 124 aggrieved employees who worked 5,543 PAGA pay periods.

aggrieved employees’ 25% share of PAGA penalties)), and the maximum estimated net settlement award is approximately \$243.55 ((99 pay periods³ worked during the PAGA period/5,543 PAGA pay periods) x \$13,636.50 (the aggrieved employees’ 25% share of PAGA penalties)). *Id.* at ¶ 20. The proposed method of allocation, which reflects the amount of time an aggrieved employee worked during the PAGA Period relative to the other employees, is fair and reasonable. *Id.* at ¶ 21.

The Parties have also agreed to use a reputable third-party claims administrator ILYM Group, Inc. to administer the Settlement. Winston Decl., ¶ 13, Exh. 2 at §§ II(11), III(28), and IV(43).

V. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT

Although a party need not bring a motion for approval of a PAGA settlement, nor must the Court conduct a hearing on the fairness of a PAGA settlement, a court must nevertheless review and approve the PAGA settlement. Lab. Code § 2699 (l)(2).

A. The Standard the Court Should Consider When Reviewing the Settlement

The California Court of Appeal established the standard applicable to review of a PAGA settlement in *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 77 (2021). In *Adecco*, the Court of Appeal held that when reviewing a PAGA Settlement, the “court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations.” *Id.* The Court explained that while unlike in a class case “PAGA does not require the trial court to act as a fiduciary for aggrieved employees” the following “factors can be useful in evaluating the fairness of a settlement”: “the strength of the plaintiff’s case, the risk, the stage of the proceedings, and likely duration of further litigation, and the settlement amount.” *Id.* Further, the Court should also consider “whether a settlement is fair in view of PAGA’s purpose and policies.” *Id.* The proposed Settlement provides genuine and meaningful relief for the State of California and aggrieved employees.

³ This is the maximum number of weeks that an aggrieved employee could have worked for Defendant during the PAGA Period. Between January 23, 2023 through December 16, 2024, there are approximately 99 workweeks during the PAGA period. Since Defendant paid the allegedly aggrieved employees on a weekly basis, there are 99 pay periods during the PAGA period.

1 **1. The Experience and Views of Counsel and Mediator’s Involvement**
2 **Supports Approval of the Parties Agreement**

3 Although not technically a factor in a PAGA action, PAGA Counsel is experienced in wage-
4 and-hour class actions and has worked on numerous class and representative PAGA wage and hour
5 cases. Winston Decl., ¶¶ 4-6.⁴

6 Plaintiff and PAGA Counsel, operating at arm’s length weighed the strengths and risks of this
7 case, and unanimously share the view that this is a fair and reasonable settlement in light of the nature
8 of the claims, the complexities of the case, the state of the law, and the uncertainties of litigation.
9 Winston Decl., ¶ 22. Further, after factoring in the risks explained below, PAGA Counsel believes
10 that the proposed Settlement is fair and reasonable and should be approved. *Id.*

11 **2. The Strengths and Risks Associated with Plaintiff’s PAGA Claims**

12 **a. The Strength of and Risks Associated With Plaintiff’s PAGA Claim**
13 **for the Failure to Maintain Accurate Time Records**

14 Labor Code § 1174 provides that each employer shall keep “payroll records showing the hours
15 worked daily by and the wages paid to...employees employed at...establishments.” An employer
16 who fails to maintain the records proscribed by Labor Code § 1174 is subject to a civil penalty of five
17 hundred (\$500) dollars under Labor Code § 1174.5.

18 Plaintiff alleged that Defendant failed to maintain records of the time worked, failed to
19 maintain accurate records of the total hours worked by employees, and/or the non-productive time
20 worked by aggrieved employees, including but not limited to off-the-clock work. Winston Decl., ¶
21 23. Although Plaintiff was confident that he would prevail on this claim, significant risk existed that
22 the Court might not award a significant amount of PAGA penalties. *Id.* at ¶ 24. Defendant advised
23 that it intended to argue that it’s time records were accurate, and that to the extent Defendant’s time
24 records were inaccurate, any alleged inaccuracies arose from its generosity in allowing employees to
25 remain on the clock while on meal periods and to be paid for time that they did not actually worked.
26 Winston Decl., ¶ 25. Thus, Defendant argued that even assuming *arguendo* Plaintiff could establish
27 that Defendant failed to record the work periods associated with meal periods, that it was unlikely

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⁴ *Williams*, 3 Cal.5th at 546-547 (2017) (PAGA does not make other potentially aggrieved employees parties or clients of plaintiff’s counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class.”).

1 that the Court would award a significant amount of PAGA penalties.

2 Plaintiff determined the maximum value of this PAGA claim to be \$62,000 (PAGA penalties
3 assessed at the \$500.00 per employee penalty = 124 employees x \$500 per employee penalty =
4 \$62,000). Winston Decl., ¶ 26. However, for the reasons previously explained, some risk existed that
5 the Court might award a lesser amount of PAGA penalties. *Id.* As such, Plaintiff determined the risk
6 adjusted value of the PAGA penalties associated with the alleged failure to maintain accurate time
7 records to be \$29,450.00 calculated as follows: \$62,000.00 maximum potential PAGA penalty x .95
8 (95% chance that Plaintiff would prevail on the merits of this claim) x .5 (50% chance that the Court
9 would reduce the potential penalty and/or award a nominal amount of as little as a dollar per pay
10 period). *Id.*

11 **b. The Strengths and Risks Associated with Plaintiff's Rest Period**
12 **Related PAGA Claims**

13 Labor Code § 226.7 provides “an employer shall not require an employee to work during a
14 meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation,
15 standard, or order of the Industrial Welfare Commission (“IWC”). IWC Wage Order No. 16-2001
16 requires employers to authorize and permit all employees to take ten (10) minute paid duty free rest
17 periods for every major fraction of four hours worked. “[R]est periods must be separately
18 compensated in a piece-rate system.” *Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864, 872
19 (2013), *reh'g denied* (June 18, 2013), *review denied* (Aug. 28, 2013) (explaining that “rest periods
20 must be separately compensated in a piece-rate system. Rest periods are considered hours worked
21 and must be compensated.”) (*citing Armenta v. Osmose, Inc.* 135 Cal.App.4th 314, 323 (2005)).

22 Following *Bluford*, the Legislature enacted Labor Code § 226.2, which requires employers
23 who compensate employees on a piecerate basis to provide separate compensation for the non-
24 productive time associated with their rest and recovery periods at a rate that is no less than the
25 higher of: “(i) An average hourly rate determined by dividing the total compensation for the
26 workweek, exclusive of compensation for rest and recovery periods and any premium
27 compensation for overtime, by the total hours worked during the workweek, exclusive of rest and
28 recovery periods. (ii) The applicable minimum wage.” Labor Code § 226.2 also obligates employers

1 to compensate employees at least minimum wage for their other non-productive time.

2 Plaintiff alleged that Defendant violated Labor Code §§ 226.2 and 226.7, by failing to
3 provide Plaintiff and the other aggrieved employees with paid duty-free rest periods of ten (10)
4 minutes for every major fraction of four (4) hours worked. Winston Decl., ¶ 27. Specifically,
5 Plaintiff alleged that Defendant used either a pure piece rate compensation system that does not
6 provide separate compensation for rest periods, failing to pay for the non-productive time associated
7 with rest periods, and/or failing to compensate Plaintiff and the other aggrieved employees at the
8 greater of the minimum wage rate then in effect or the heightened stepped up basis required by
9 Labor Code § 226.2. *Id.* Plaintiff also alleged that at times during the applicable period Defendant
10 paid Plaintiff and the aggrieved employees a flat rate based upon the number of square feet of work
11 completed and/or other similar methods that did not include separate compensation for the non-
12 productive time associated with rest periods. *Id.* at ¶ 28. Plaintiff also alleged that Defendant failed
13 to pay and/or underpaid rest period premiums. *Id.*

14 While Plaintiff was confident that he could likely establish that Defendant failed to provide
15 him and the other 10 aggrieved employees who experienced this issue, the informal discovery
16 provided by Defendant indicated that there were only 183 pay periods where aggrieved employees
17 were paid under a pure piece rate compensation system. Winston Decl., ¶ 29. Plaintiff determined
18 the maximum value of this PAGA claim to be \$18,300 (PAGA penalties assessed at the \$100 per
19 pay period initial violation rate = 183 pay periods under a pure piece rate compensation scheme x
20 \$100 per pay period PAGA penalty = \$18,300). *Id.* at ¶ 30. Plaintiff did not anticipate that the Court
21 would make a significant modification to the piece rate based rest period related PAGA penalties
22 because of the nature of the violations and the clarity of the law with respect to the alleged violations.
23 *Id.* Nevertheless, Plaintiff determined the risk adjusted value of the PAGA penalties associated with
24 the rest period claims to be \$16,470 calculated as follows: \$18,300 maximum potential PAGA
25 penalty x .9 (90% chance that Plaintiff would prevail on the merits of this claim). *Id.*

26 **c. The Strength of and Risks Associated with Plaintiff's Minimum Wage**
27 **and Non-Rest Period Non-Productive Time Related PAGA Claims**
28 Labor Code § 1197 states the California requirement that employees must be paid at least the

1 minimum wage fixed by the Commission or by any applicable state or local law, and any payment
2 of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee
3 receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the
4 full amount of this minimum wage.” IWC Wage Order No. 16-2001 and other applicable wage
5 orders obligate employers to pay each employee minimum wages for all hours worked.

6 With respect to the aggrieved employees who were paid on a piece rate basis, Labor Code §
7 226.2 also requires employers who compensate employees on a piece-rate basis to provide separate
8 compensation for the non-productive time associated with their rest and recovery periods at a rate
9 that is no less than the higher of: “(i) An average hourly rate determined by dividing the total
10 compensation for the workweek, exclusive of compensation for rest and recovery periods and any
11 premium compensation for overtime, by the total hours worked during the workweek, exclusive of
12 rest and recovery periods. (ii) The applicable minimum wage.” Labor Code § 226.2 also obligates
13 employers to compensate employees at least minimum wage for their other non-productive time.

14 Plaintiff alleged that Defendant violated California’s minimum wage laws by failing to pay
15 Plaintiff and the subset of employees who only received piece rate compensation for the non-
16 productive time associated with rest periods, daily meetings, safety briefings, trainings, moving tools
17 and equipment, reporting progress to supervisors, discussing projects and assignments with other
18 employees, engaging in required and/or expected pre-productive time and post-productive time
19 activities. Winston Decl., ¶ 31. Plaintiff also alleged that to the extent that Defendant estimated the
20 non-productive time, such estimates were not reasonable nor a good faith error within the meaning
21 of Labor Code section 226.2. *Id.* As with the rest period claim, Plaintiff alleged that Defendant’s
22 piece rate compensation scheme failed to pay him and some of the other aggrieved employees for
23 their non-productive time since they could not earn wages while resting. Plaintiff also alleged that
24 Defendant failed to pay Plaintiff and the other aggrieved employees for off-the-clock work. *Id.*

25 While Plaintiff was confident that he could likely establish that Defendant failed to pay him
26 and the other 10 aggrieved employees who experienced the piece-rate issue all minimum wages
27 owed, the informal discovery provided by Defendant indicated that there were only 183 pay periods
28

1 where aggrieved employees were paid under a pure piece rate compensation system. Winston Decl.,
2 ¶ 32. Significant risk existed that the Court could decline to award meaningful multiple PAGA
3 penalties for the same underlying conduct and/or exercise significant discretion when awarding these
4 PAGA penalties that are largely derivative of the same factual predicate as the failure to provide
5 lawful paid-rest periods. *Id.* Plaintiff determined the maximum value of this PAGA claim to be
6 \$18,300 (PAGA penalties assessed at the \$100 per pay period initial violation rate = 183 pay periods
7 under a pure piece rate compensation scheme x \$100 = \$18,300). *Id.* With respect to the potential
8 non-piece rate off-the-clock related minimum wage claims, it was uncertain whether or not Plaintiff
9 would have prevailed on this claim due to the difficulty in establishing general off-the-clock claims.
10 *Id.* If Plaintiff established the existence of the general off-the-clock claims, then the maximum value
11 of those claims would have been \$554,300 (\$100.00 per pay period PAGA penalty x 5,543 estimated
12 PAGA pay periods). *Id.* at ¶ 33.

13 However, for the reasons explained above, Plaintiff did not believe that it was likely that he
14 would prevail on the non-piece rate compensation scheme related minimum wage claim and it was
15 unlikely that the Court would award a meaningful or non-negligible amount of PAGA penalties
16 associated with this claim because it arises from the same alleged conduct giving rise to the PAGA
17 penalties for failure to provide lawful paid rest periods. Winston Decl., ¶ 34. As such, Plaintiff
18 determined the risk adjusted value of the PAGA penalties associated with the minimum wage claims
19 to be \$27,623.50 calculated as follows: \$18,300.00 maximum potential PAGA penalty for the piece
20 rate associated minimum wage claim x .9 (90% chance that Plaintiff would prevail on the merits of
21 the piece rate related minimum wage claim) x .05 (95% chance that the Court would reduce the
22 potential penalty and/or award a nominal amount of as little as a dollar per pay period if Plaintiff
23 prevailed) + \$536,000 maximum PAGA penalties (\$554,300 total maximum potential PAGA
24 penalties - \$18,300 PAGA penalties already included for the pay periods where aggrieved employees
25 were paid on a piece rate basis) x .05 (5% chance that Plaintiff would prevail on the merits of the
26 general off-the-clock related PAGA claims). *Id.*

d. The Strength of and Risks Associated with Plaintiff's Overtime Related PAGA Claims

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

Plaintiff alleged that Defendant failed to pay Plaintiff and all aggrieved employees overtime wages when they worked more than eight (8) hours in a day and/or forty (40) hours in a week, failed to pay for off-the-clock work, and failed to include piece rate compensation and/or compensation at the higher stepped up basis for non-productive time required under Labor Code § 226.2, non-discretionary bonuses, incentive payments, and attendance bonuses when calculating and paying overtime wages. Winston Decl., ¶ 35. As a result of the practices described above, Plaintiff further alleged that Defendant often misclassified overtime hours as regular hours resulting in the underpayment of overtime wages and also failed to provide at least some aggrieved employees with any compensation for overtime hours whatsoever. *Id.*

While Plaintiff was confident that he would prevail on this claim if he could establish any of his minimum wage and/or piece rate associated claims, significant risk existed that the Court would exercise significant discretion when awarding these largely derivative PAGA penalties.⁵ Winston Decl., ¶ 36. Plaintiff determined the maximum value of this PAGA claim to be \$554,300 (\$100.00 per pay period PAGA penalty x 5,543 estimated PAGA pay periods). However, Plaintiff did not believe that the Court would award a non-negligible amount of PAGA penalties as this would have required the Court to make a 3rd or 4th award of PAGA penalties against Defendant for the same alleged violation, which seemed unlikely due to the unique factual circumstances of this case where

⁵ The overtime related PAGA are largely derivative of the minimum wage overtime related overtime claims because Plaintiff alleged that Defendant did not compensate him or the other aggrieved employees whatsoever for off-the-clock work meaning that they received neither minimum wages nor overtime wages for the alleged off-the-clock hours worked.

aggrieved employees may have been overpaid due to Defendant's practice of paying employees for at least some of the time associated with meal periods where they did not perform work and were not entitled to compensation under the Labor Code. Winston Decl., ¶ 37. Further, even if Plaintiff could establish that such amounts formed a regular and expected amount of the aggrieved employees' compensation and therefore remained compensable, it was still unlikely that the Court would have awarded a number of stacked or multiple PAGA penalties under these unique factual circumstances. Winston Decl., ¶ 37. Plaintiff determined the risk adjusted value of this claim to be \$5,543.00 calculated as follows: \$100.00 per pay period PAGA penalty x 5,543 estimated PAGA pay periods x .01 (99% chance of a significant award of stacked PAGA penalties without the court exercising its discretion to reduce the amount of PAGA penalties). *Id.*

e. The Strength of and Risks Associated with Plaintiff's Sick Pay Related PAGA Claims

Labor Code § 246 requires employer to calculate sick leave pay based upon one of the following formulas:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

Lab. Code § 246.

Plaintiff alleged that Defendant failed to include piece rate compensation, non-discretionary production bonuses, attendance bonuses, any other form of non-discretionary bonus and/or incentive payment when calculating and paying sick pay. *See Wood v. Kaiser Found. Hosps.*, 88 Cal. App. 5th 742, 759 (2023), as modified (Mar. 23, 2023). Based upon an extrapolation of an analysis of the pay records produced by Defendant, there were approximately 209 pay periods where aggrieved employees earned sick pay. Winston Decl., ¶ 38. Plaintiff determined the maximum value of this

1 PAGA claim to be \$20,900.00 (\$100.00 per pay period PAGA penalty x 209 estimated PAGA pay
2 periods with sick pay). As with the other claims, Plaintiff did not believe that the Court was likely
3 to award a significant amount of PAGA penalties because Plaintiff would already receive one or
4 more PAGA penalties based upon similar issues related to Defendant's compensation scheme.
5 Winston Decl., ¶ 39. Accordingly, Plaintiff determined the risk adjusted value of this claim to be
6 \$209.00 calculated as follows: \$100.00 per pay period PAGA penalty x 209 estimated PAGA pay
7 periods with sick pay x .01 (99% chance of a significant award of stacked PAGA penalties without
8 the court exercising its discretion to reduce the amount of PAGA penalties). *Id.*

9 **f. The Strength of and Risks Associated With the Wage Statement
10 Related PAGA Claims**

11 Labor Code § 226 (a) states, in relevant part: (a) Every employer shall, semimonthly or at the
12 time of each payment of wages, furnish each of his or her employees . . . an accurate itemized
13 statement in writing showing . . . (1) gross wages earned; (2) total hours worked;...(5) net wages
14 earned;...and (9) all applicable hourly rates in effect during the pay period and the corresponding
15 number of hours worked at each hourly rate by the employee.” There is currently a split of authority
16 regarding which PAGA penalties apply to violations of Labor Code § 226(a) that predate the June
17 27, 2024 PAGA reform. *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355 (2021) (holding
18 that such violations give rise to a 2699.3 penalty) *cf.*; *Raines v. Coastal Pacific Food Distributors,*
19 *Inc.*, 23 Cal.App.5th 667, 675 (2018) (holding that such violations give rise to a Labor Code § 226.3
20 penalty). Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section
21 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee
22 per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation
23 in a subsequent citation, for which the employer fails to provide the employee a wage deduction
24 statement or fails to keep the required in subdivision (a) of Section 226.” Unlike other provisions of
25 the Labor Code, if Labor Code § 226.3 applies to violations of Labor Code § 226(a) the Court also
26 possesses the discretion to “decide not to penalize an employer for a first violation.” Lab. Code §
27 226.3.

28 Plaintiff alleged a derivative claim based upon Defendant's alleged failure to pay minimum

wages, overtime wages, for non-productive time at the stepped up basis required by Labor Code § 226.2, underpayment of sick pay, and allegedly owed rest period premiums. Winston Decl., ¶ 40. As discussed above, Plaintiff was confident that he would prevail on the underlying claims as well as the derivative wage statement claims. *Id.* Nevertheless, real risk existed that the Court could decline to stack—meaning award multiple PAGA penalties for the same underlying conduct—and/or exercise significant discretion when awarding these derivative PAGA penalties. *Id.* Plaintiff determined the maximum value of this PAGA claim to be \$554,300 (PAGA penalties assessed at the \$100 per pay period initial violation rate under Labor Code section 2699.3 = 5,543 pay periods x \$100 = \$554,300). *Id.* at ¶ 41.

However, for the reasons previously explained, Plaintiff did not believe that the Court would award a meaningful or non-negligible amount of PAGA penalties associated with this claim because it arises from the same alleged conduct giving rise to several sets of PAGA penalties already. Winston Decl., ¶ 42. As such, Plaintiff determined the risk adjusted value of the PAGA penalties associated with the wage statement claims to be \$4,988.70 calculated as follows: \$554,300.00 maximum potential PAGA penalty x .9 (90% chance that Plaintiff would prevail on the merits of this claim) x .01 (99% chance that the Court would reduce the potential penalty and/or award a nominal amount of as little as a dollar per pay period if Plaintiff prevailed). *Id.*

g. The Strength of and Risks Associated With Plaintiff's PAGA Claims Based The Failure to Timely Pay Wages During Employment

Plaintiff also brought derivative PAGA claims for the late payment of wages during employment under Labor Code §§ 204 and 210. Winston Decl., ¶ 43. Since these claims were derivative in nature, Plaintiff first had to prevail on his other underlying PAGA claims. While Plaintiff was confident that he would prevail on this claim if he could establish any of the other PAGA claims, significant risk existed that the Court could decline to stack—meaning award multiple PAGA penalties for the same underlying conduct—and/or exercise significant discretion when awarding these derivative PAGA penalties. *Id.* at ¶ 44.

Plaintiff determined the maximum value of this PAGA claim to be \$554,300 (PAGA penalties assessed at the \$100 per pay period initial violation rate under Labor Code section 2699.3

= 5,543 pay periods x \$100 = \$554,300). Winston Decl., ¶ 45. However, for the reasons previously explained, Plaintiff did not believe that the Court would award a meaningful or non-negligible amount of PAGA penalties associated with this claim because it arises from the same alleged conduct giving rise to several sets of PAGA penalties already. *Id.* As such, Plaintiff determined the risk adjusted value of the PAGA penalties associated with the failure to timely wages during employment related PAGA claims to be \$4,988.70 calculated as follows: \$554,300.00 maximum potential PAGA penalty x .9 (90% chance that Plaintiff would prevail on the merits of this claim) x .01 (99% chance that the Court would reduce the potential penalty and/or award a nominal amount of as little as a dollar per pay period if Plaintiff prevailed). *Id.*

h. The Strength of and Risks Associated With Plaintiff's PAGA Claims Based Upon The Failure to Timely Pay Wages Upon Separation

Plaintiff brought non-derivative and derivative PAGA claims alleging that Defendant failed to timely pay the aggrieved employees upon separation within the time constraints of Labor Code § 201-203. Winston Decl., ¶ 46. The informal discovery provided by Defendant indicated that there were 28 aggrieved employees including Plaintiff whose employment ended during the PAGA period. Accordingly, there are only twenty-eight (28) potential pay periods where an employee could not timely receive their final wages and a maximum of \$2,800.00 in potential PAGA penalties. *Id.* at ¶ 47. After factoring in the risks associated with the claims and the discretionary nature of the PAGA penalties and questionable viability of stacking and the unique circumstances of this case, Plaintiff believes that this claim possessed negligible value. *Id.*

3. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

There are also always risks attendant to wage and hour cases given the evolving nature of such claims. Winston Decl., ¶ 48. Given the ever-evolving landscape of wage and hour law, there are always risks that a new case will come out that will clarify and/or potentially limit employees' claims. *Id.* For example, although generally it was well-established that employees could recover both wage statement and waiting time penalties based upon an employer's failure to provide lawful meal/rest periods, a recent appellate case held that such penalties are not recoverable before it was later overturned. *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (2019); *aff'd in*

1 part, rev'd in part and remanded 13 Cal. 5th 93, (2022). Similarly, in another recent decision, the
2 California Court of Appeal held that employers could pay employees meal/rest period premiums at
3 the employee's hourly base rate instead of at their regular rate before that decision was also
4 overturned by the California Supreme Court. *Ferra v. Loews Hollywood Hotel, LLC*, 40 Cal. App.
5 5th 1239 (2019) rev'd, 11 Cal. 5th 858 (2021).

6 While Plaintiff was confident that he would prevail on his claims based upon present law,
7 the plaintiffs in *Ferra* and *Naranjo* likely believed they would have as well, and actually did on
8 their derivative claims prior to the California Court of Appeal's recent ruling and before each matter
9 was eventually reversed by the California Supreme Court. As the California Court of Appeal
10 explained in the now overturned *Naranjo* decision, "[a]lthough wage and hour lawsuits are
11 ubiquitous in state courts, most settle before trial. Consequently, our appellate courts have not had
12 much opportunity to publish decisions addressing the derivative wage claim issue[s]." *Naranjo*, 40
13 Cal. App. 5th at 468. While Plaintiff acknowledges that the California Supreme Court reversed in
14 both cases, each nevertheless are emblematic of the inherent risk associated with litigating wage
15 and hour cases and the fact that a new appellate decision can dramatically alter the strength of the
16 employees' claims at any time. Indeed, *Naranjo* was appealed again to the California Supreme
17 Court where the Court ruled in the employer's favor. *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal.
18 5th 1056, 1064 (2024). And, PAGA itself was amended during the pendency of this Action.
19 Winston Decl., ¶ 48.

20 In addition, as with any PAGA case, significant risk exists with respect to the amount of
21 PAGA penalties that a Court may award given their discretionary nature. Under PAGA, Courts can
22 exercise their discretion to reduce the amount of penalties awarded. Winston Decl., ¶ 49. Indeed, one
23 court in San Diego awarded \$5.00 per pay period. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th
24 504 (2018) (post-trial award of \$5 per violation, or 5% of the PAGA penalty claimed in the suit)). A
25 similar methodology here would result in penalties of only \$1,405.00 (281 pay periods x \$5.00 per
26 pay period). Winston Decl., ¶ 49.

Finally, given the risks outlined above, the issues in this case were complex and the risks for Plaintiff and the aggrieved employees were substantial. Winston Decl., ¶ 50. Due to the complexity and unsettled nature of the issues in this case—including a dearth of case law regarding the valuation of the PAGA penalties at issue—it is also likely that any outcome at trial would have resulted in a lengthy and costly appeal. *Id.*

4. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement. Winston Decl., ¶ 51. Defendant denied that Plaintiff’s claims had any merit, and that Plaintiff could prevail on the PAGA claims or that California law had been violated. *Id.* While PAGA Counsel believes that stacking of PAGA penalties is permissible based upon the California Court of Appeal’s ruling in *Kaanaana v. Barrett Business Services, Inc.*, 29 Cal. App. 5th 778, 808 (2018),⁶ the *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) Court declined to award such penalties and instead limited its award only to Labor Code § 558 PAGA penalties where the plaintiff sought both Labor Code § 2699.3 and 558 PAGA penalties.⁷

a. The Proposed Settlement Falls Well Within The Range of Reasonableness

Plaintiff and PAGA Counsel did not believe that in light of the risk associated with each claim and the numerous legal issues explained in detail above that the maximum possible settlement amount was a remotely plausible outcome given Defendant’s defenses and the discretionary nature of the PAGA penalties. Winston Decl., ¶ 52. Under PAGA, Courts can exercise their discretion to reduce the amount of penalties awarded. *See e.g. Carrington*, 30 Cal. App. 5th at 529 (the trial court declined to stack PAGA penalties and the Court of Appeal affirmed the reduction of the PAGA penalties to \$5.00 per pay period).

Moreover, assuming Plaintiff established liability for these pay periods and Plaintiff achieved

⁶ *Kaanaana*, 29 Cal. App. 5th at 808 (affirming the award of PAGA penalties for violations of Labor Code § 512 where employees’ meal periods were interrupted and remanding to the trial court the amount of PAGA penalties that should be awarded based upon the minimum wage violations associated with the same interrupted meal periods.).

⁷ *Carrington*, 30 Cal. App. 5th at 508 and 529 (“Carrington sought civil penalties and unpaid wages under sections 2699, subdivision (a) and 558, subdivision (a).... Although the trial court may have disagreed with Starbucks regarding the issue of liability, it clearly took the circumstances proffered by Starbucks into consideration when it imposed the penalty, as evident from the significant reduction of the \$50 maximum penalty (per initial violation) to the penalty imposed—only \$5 per initial violation.”).

1 a result equal to *Carrington* of \$5.00 per pay period, the aggrieved employees would have recovered
2 a mere \$27,715.00 (5,543 pay periods x \$5.00 per pay period) in PAGA penalties. Winston Decl., ¶
3 53. The proposed settlement of \$100,000.00 therefore represents approximately 360.82%
4 (\$100,000.00 /\$27,715.00) of the recovery obtained in *Carrington* and the net PAGA penalties alone
5 represent approximately 196.81% (\$54,546.01/\$27,715.00) of the recovery obtained in *Carrington*.
6 *Id.* As illustrated by the comparison to *Carrington*, the results obtained by Plaintiff are favorable
7 comparable to those obtained in some PAGA cases where the aggrieved employees prevailed at trial.
8 *Id.* Given that Plaintiff achieved a better result than a case where liability was established, the
9 proposed settlement unquestionably falls within the range of reasonableness.

10 After weighing the risks associated with each of the claims in light of the factual challenges
11 as well as Defendant’s potential defenses and the discretionary nature of PAGA penalties, Plaintiff
12 determined the amount offered in settlement was fair and reasonable considering the risks and the
13 likelihood of success on the merits. Winston Decl., ¶ 54.

14 (1) The Maximum Penalties Potentially At Issue Without Taking Into
15 Account the Risks

16 A trial court should not evaluate a proposed settlement “against a hypothetical or speculative
17 measure of what might have been achieved had plaintiffs prevailed at trial.” *Munoz v. BCI Coca-Cola*
18 *Bottling Co.*, 186 Cal. App. 4th 399, 409 (2010). “The test is not the maximum amount plaintiffs might
19 have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the
20 circumstances.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001), disapproved on
21 another ground in *Hernandez v. Restoration Hardware, Inc.* 4 Cal.5th 260, 269 (2018). Nor does a
22 *Kullar* showing require parties to submit the outer reaches of maximum possible recovery without
23 taking into account various risks. *Munoz*, 186 Cal. App. 4th at 409; *Altamirano v. Shaw Industries,*
24 *Inc.*, 2015 WL 4512372, at *9 (N.D. Cal. 2015) (preliminarily approving wage and hour class action
25 settlement, stating, “[a]lthough 15% represents a modest fraction of the hypothetical maximum
26 recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval.”).

27 Nevertheless, to allow the Court to analyze the reasonableness of the Parties Proposed
28 Settlement, Plaintiff analyzed the maximum possible value of the claims at issue in this action.

Further, the Court should be aware that while one appellate court reversed and remanded a trial court's decision not to award stacked PAGA penalties—*i.e.* that a court can award more than one set of PAGA penalties per pay period—the court left open the possibility of the court awarding the same amount or no additional PAGA penalties within the exercise of its discretion. *Kaanaana*, 29 Cal. App. 5th at 808.

When taking into account the stacking of PAGA penalties and assuming a 100% violation rate on every single claim, and without taking into account any of Defendant's significant defenses or the discretionary nature of PAGA penalties, Plaintiff and PAGA Counsel determined the maximum exposure on the PAGA claims to be \$2,318,400.00 as explained in detail above. Winston Decl., ¶ 55.

Although theoretically this is the maximum potential recovery in this action if Plaintiff achieved complete and total victory based purely upon PAGA's mathematical formulas, Plaintiff and PAGA Counsel did not believe that this constituted a remotely plausible approximation of the actual expected recovery given Defendant's significant defenses to several of the claims, the significantly lower actual violation rates, the Court's ability to decline to award stacked PAGA penalties and/or exercise its discretion to reduce the amount of PAGA penalties awarded, and the nature of many of the violations. Winston Decl., ¶ 56. Rather, as discussed above, Plaintiff determined that the realistic settlement value of the PAGA claims was \$89,272.90 and that assumes that Plaintiff prevails on the claims, his PAGA penalty stacking theory, and that the Court declines to find that a higher penalty amount would not be "unjust, arbitrary, and oppressive, or confiscatory." Lab. Code § 2699(e)(2); Winston Decl., ¶ 56.

It is also important to recognize that the many courts that recognize stacking nevertheless have declined to actually award stacked PAGA penalties at trial such that the likely realistic recovery was significantly less than the maximum possible recovery. *See e.g. Carrington*, 30 Cal. App. 5th at 508 and 529.

(2) The Proposed Settlement Is Better Than The Results Obtained in
Many Class Actions

The amount recovered in this Action is also consistent with and compares favorably to the amounts awarded in other wage and hour class actions, not just PAGA actions. Under the terms of

the proposed Settlement and as discussed in more detail above, the average estimated gross settlement award per aggrieved employee is \$806.45 (\$100,000 gross settlement amount/124 aggrieved employees), the average estimated net settlement award when taking into account the proposed attorneys' fees, case expenses, Plaintiff's proposed service award, and PAGA's 75%/25% split between the state and aggrieved employees is approximately \$109.97 (\$13,636.50 Net PAGA Penalties for the aggrieved employees/124 aggrieved employees), the minimum estimated net settlement award is approximately \$2.46 ((1 pay period worked during the PAGA period/5,543 PAGA pay periods) x \$13,636.50 (the aggrieved employees' 25% share of PAGA penalties)), and the maximum estimated net settlement award is approximately \$243.55 ((99 pay periods⁸ worked during the PAGA period/5,543 PAGA pay periods) x \$13,636.50 (the aggrieved employees' 25% share of PAGA penalties)). Winston Decl., ¶ 20.

This greatly exceeds the results in other similar cases. *See e.g. Williams v. Centerplate, Inc.*, 2013 U.S. Dist. LEXIS 121307, at *4 (S.D. Cal. Aug. 26, 2013) (finally approving a wage and hour class action settlement for non-compliant meal periods, non-compliant rest periods, unpaid overtime, unreimbursed business expenses, waiting time penalties, inaccurate itemized wage statements for 9,394 class members in the gross amount of \$650,000 with a reversion to the defendant of \$128,136.86, a net settlement fund of \$239,363.14 and an average award of \$108.22 to the 2,212 class members who submitted claims and \$25.48 when including the class members who did not submit claims and therefore received nothing in exchange for the release); *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, at *4 (E.D. Cal. June 11, 2012) (approving a proposed wage and hour class action settlement for unpaid overtime wages, non-compliant meal periods, unreimbursed business expenses, inaccurate itemized wage statements of a reversionary settlement with a maximum settlement amount of \$518,245 and a potential 45% reversion on a claims-made settlement for 3,327 class members); *Altamirano v. Shaw Industries, Inc.*, 2015 WL

⁸ This is the maximum number of weeks that an aggrieved employee could have worked for Defendant during the PAGA Period. Between January 23, 2023 through December 16, 2024, there are approximately 99 workweeks during the PAGA period. Since Defendant paid the allegedly aggrieved employees on a weekly basis, there are 99 pay periods during the PAGA period.

1 4512372, at *9 (N.D. Cal. 2015) (preliminarily approving wage and hour class action settlement,
2 stating, “[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery
3 estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval.”).

4 **5. The Court Should Award PAGA Counsel Attorneys’ Fees in the Amount of**
5 **\$33,333.33**

6 In *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 503 (2016), the California Supreme
7 Court unequivocally held that when “litigation established a monetary fund for the benefit of the class
8 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
9 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
10 fund created” without considering the amount of hours expended on the case. *Id.* The court further
11 held that “[t]he recognized advantages of the percentage method – including relative ease of
12 calculation, alignment of incentives between counsel and the class, a better approximation of market
13 conditions in a contingency case, and the encouragement it provides counsel to seek an early
14 settlement *and avoid unnecessarily prolonging litigation* – convince us the percentage method is a
valuable tool that should not be denied by our trial courts.” *Id.*

15 As the California Court of Appeal recently recognized and as other California Courts have
16 consistently explained, “fee awards in class actions average around one-third of the recovery”
17 regardless of “whether the percentage method or the lodestar method is used.” *Amaro v. Anaheim*
18 *Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021) (“[F]ee awards in class actions average around
19 one-third of the recovery” regardless of “whether the percentage method or the lodestar method is
20 used.”) (*quoting Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008)); *McCrary v. Elations*
21 *Co., LLC*, No. EDCV 13-0242 JGB (SPx), 2016 U.S. Dist. LEXIS 24050, at *2 (C.D. Cal. Feb. 25,
22 2016) (“California Courts have consistently recognized “that most fee awards based on either a
23 lodestar or percentage calculation are 33%.”); *McClellan, LLC v. Chase Home Fin. LLC*, No. SACV
24 12-1331-JGB (JEMx) 2015 U.S. Dist. LEXIS 118005, at *20 (C.D. Cal. Aug. 31, 2015) (“California
25 district courts routinely award attorneys' fees in the range of 30-40% in class actions that result in the
26
27
28

recovery of a common fund under \$10 million.”).⁹

PAGA Counsel’s diligent and efficient litigation of this action resulted in the creation of an ascertainable common fund of \$100,000.00 that will substantially benefit the state of California. Consistent with numerous cases, including those identified above, PAGA Counsel seeks approval of an award of attorneys’ fees in the amount of \$33,333.33 representing 1/3 of the common fund and a slightly negative lodestar of 0.90 (\$33,333.33 attorney fee request/\$36,925.00 lodestar). Winston Decl., ¶¶ 74-75. PAGA Counsel’s request is also consistent with fee awards in other similar cases. PAGA Counsel has also provided information about the time spent on the case, which included, drafting the PAGA notice, Complaint, informal discovery requests, analyzing the informal discovery produced by Defendant, drafting the Settlement Agreement, drafting the explanatory letter for the aggrieved employees, and the Motion for Approval and related documents.

6. The Court Should Award PAGA Counsel Cost Reimbursement Award in the Amount of \$3,470.66

PAGA Counsel further request that, in addition to awarding them reasonable attorneys’ fees, the Court grant its application for reimbursement of the reasonable out-of-pocket expenses advanced and/or incurred by them in connection with the prosecution of this litigation in the amount of \$3,470.66. Winston Decl., ¶ 78. All of these costs were necessarily incurred and/or are expected to be incurred.

7. The Court Should Award Plaintiff Pinto Perez a Service Award of \$5,000.00

Plaintiff Pinto Perez expended time and effort assisting PAGA Counsel with the investigation of the claims and gathering of information including contacting PAGA Counsel for updates regarding the case, kept himself informed about the status of the settlement discussions and claims, and assisted PAGA Counsel in evaluating possible settlements. Pinto Perez Decl., ¶¶ 6-8. As of the submission

⁹ See also *Miller v. CEVA Logistics USA, Inc.*, No. 2:13-CV-01321-TLN, 2015 U.S. Dist. LEXIS 104704, at *8 (E.D. Cal. Aug. 10, 2015) (“California district courts usually award attorneys’ fees in the range of 30-40% in wage and hour class actions that result in the recovery of a common fund under \$10 million”); *Romero v. Producers Dairy Foods, Inc.*, No. 05-0484, 2007 U.S. Dist. LEXIS 86270, 2007 WL 3492841, at *4 (E.D. Cal. Nov. 14, 2007) (awarding 33% of the settlement fund in a wage-and-hour case involving allegations of unpaid wages after explaining that “fee awards in class actions average around one-third of the recovery.”); *Stuart v. RadioShack Corp.*, No. C-07-4499 EMC, 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010) (noting that a fee award of 1/3 of the settlement was “well within the range of percentages which courts have upheld as reasonable in other class action lawsuits.”); *Singer v. Becton Dickinson and Co.*, No. 08-cv-821-IEG (BLM), 2010 WL 2196104, at * 8 (S.D. Cal. June 1, 2010) (approving fee award of 33.33% of the common fund); *Boyd v. Bank of Am. Corp.*, No. SACV 13-0561-DOC (JPRx), 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014) (awarding a 33.34% fee on a \$5,800,000 settlement).

1 of this Motion, Plaintiff Pinto Perez estimates that he spent approximately 27.50 hours on this Action
2 engaging in the following activities: 20 hours researching his possible claims, searching for
3 documents, and searching for counsel, 6 hours discussing the case, claims, and proposed settlement
4 with his Counsel and his office staff, approximately 1 hour reviewing the settlement agreement, and
5 .5 hours assisting with the preparation of his declaration. *Id.* at ¶ 8.

6 In addition to the time and effort Plaintiff Pinto Perez invested in the prosecution of this
7 action, Plaintiff Pinto Perez's proposed service award also reflects the fact that neither the State of
8 California nor any of the aggrieved employees would have enjoyed any benefits if he did not initiate
9 this action. Thus, for the reasons discussed above, this Court should grant Plaintiff's requested service
10 award in the amount of \$5,000.00. The requested service award also falls well within the range of
11 incentive payments typically awarded to Class Representatives in similar class actions. *Bond v.*
12 *Ferguson Enterprises, Inc.*, No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. June 30,
13 2011) (approving \$11,250 service award to each of the two class representatives wage and hour class
14 action); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 493 (E.D. Cal. 2010) (approving
15 service awards in the amount of \$10,000 each from a \$300,000 settlement fund in a wage/hour class
16 action.

17 In the interest of transparency, Plaintiff and PAGA Counsel also wish to disclose to the Court
18 that Plaintiff and Defendant settled Plaintiff's individual claims at issue in this lawsuit in addition to
19 a general release in exchange for \$20,000. Winston Decl., ¶80, Exh. 7; Pinto Perez Decl., ¶ 2.
20 Although the issues associated with Plaintiff's individual claims were inextricably intertwined with
21 this Action since Plaintiff needed to establish that he experienced a violation of the Labor Code in
22 order to possess standing to pursue PAGA claims on behalf of the state, the individual claims existed
23 separate and apart from the PAGA claims. *Kim v. Reins Int'l Cal., Inc.*, 9 Cal. 5th 73, 80 (2020) (the
24 "[s]ettlement of individual claims does not strip an aggrieved employee of standing, as the state's
25 authorized representative, to pursue PAGA remedies" nor resolve the PAGA claims). Plaintiff
26 worked for Defendant since at least 2014 and was paid almost exclusively on a pure piece rate basis
27 meaning that he did not receive a proper rest period and/or rest period premium for at least four years.
28

1 Plaintiff's individual settlement is reasonable given that he is owed more than 4 years' worth of rest
2 period premiums for many of the days worked during the four (4) years plus the COVID-19 tolling
3 period, \$4,000 in wage statement penalties under Labor Code section 226, and 30 days of pay under
4 Labor Code section 203. PAGA Counsel is not receiving any compensation or cost reimbursement
5 associated with Plaintiff's individual claims. Winston Decl., ¶ 80, Exh. 7.

6 **VI. EXPLANATORY LETTER TO THE AGGRIEVED EMPLOYEES**

7 Although the aggrieved employees do not possess property rights in a PAGA action and this
8 action is not subject to the class action approval or notice process, the aggrieved employees will
9 receive an explanatory letter, in English and Spanish, a true and correct copy of which is attached to
10 the Declaration of David Winston as Exhibit 7. Winston Decl., ¶ 80, Exh. 7; *Arias v. Superior Court*,
11 46 Cal.4th 969 (2009) (explaining that in a PAGA action "nonparty employees...[are] not given
12 notice of the action or afforded an opportunity to be heard."); *Baumann v. Chase Inv. Servs. Corp.*,
13 747 F.3d 1117, 1122 (9th Cir. 2014) ("PAGA has no notice requirements for unnamed aggrieved
14 employees, nor may such employees opt out of a PAGA action."); *see also O'Connor v. Uber*
15 *Technologies, Inc.*, 201 F. Supp. 3d 1110, 1134 (N.D. Cal. Aug. 18, 2016), ("PAGA does not require
16 class action procedures, such as notice and opt-out rights.").

17 **VII. COMPLIANCE WITH CODE OF CIV. PROC. § 384 AND SUGGESTED TIMING**
18 **OF THE COMPLIANCE HEARING**

19 Code of Civ. Proc. § 384 requires that any funds associated with uncashed voided checks
20 issued as part of this settlement be paid "nonprofit organizations or foundations to support projects
21 that will benefit the class or similarly situated persons, or that promote the law consistent with the
22 objectives and purposes of the underlying cause of action, **to child advocacy programs**, or to
23 nonprofit organizations providing civil legal services to the indigent." (emphasis added). In
24 accordance with Code of Civ. Proc. § 384, the Parties propose to designate CASA of Ventura County
25 as the proposed *cy pres* beneficiary. Winston Decl., ¶ 13, Exh. 2 at VI(57). The *cy pres* beneficiary
26 will receive all unclaimed funds. CASA of Ventura County is a child advocacy program within the
27 meaning of Code of Civ. Proc. § 384 that provides advocates for foster children and/or children who
28 have been removed from their homes for abuse, neglect, and/or substance abuse. Neither Plaintiff,

1 Defendant, nor their Counsel have any interest and/or involvement with the governance of CASA of
2 Ventura County. Winston Decl., ¶ 81; Pinto Perez Decl., ¶ 10; Declaration of Josh Carlon In Support
3 of Designation of CASA of Ventura County As the Cy Pres Recipient, ¶ 3.

4 With respect to the timing of the Code of Civ. Proc. § 384 compliance hearing, Plaintiff
5 requests that the hearing be scheduled for late March 2026 in order to permit the Settlement
6 Administrator sufficient time to complete the distribution in accordance with the terms of the
7 Settlement. Under the terms of the Settlement, Defendant will finish funding the settlement
8 approximately six (6) months after the Court enters judgment (August 5, 2025), the settlement
9 administrator will mail out the settlement checks 15 calendar days after the funding of the settlement
10 (August 20, 2025), and the aggrieved employees' share of PAGA penalties will remain valid and
11 negotiable for 180 days (February 16, 2026). Winston Decl., ¶ 13, Exh. 2 at §§ III (28) and (39)
12 and VI(42). In order to allow the Settlement Administrator to prepare a declaration and transmit
13 any remaining funds to the *cy pres* recipient before the compliance hearing, the Parties would
14 propose conducting the Code of Civil Procedure § 384 compliance hearing in late March 2026 or
15 another date convenient for the Court thereafter except for April 1-3, 2026.

16 **VIII. CONCLUSION**

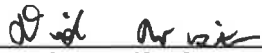
17 Plaintiff respectfully submits that the proposed Settlement is fair, adequate, and reasonable.
18 Therefore, Plaintiff respectfully requests that the Court (1) grant approval of the PAGA Settlement;
19 (2) appoint ILYM as the Settlement Administrator, direct that the explanatory Notice be sent to
20 aggrieved employees in the manner set forth in the Settlement Agreement; (3) award PAGA Counsel
21 their fees' and litigation costs; and (4) award Plaintiff Pinto Perez a service award of \$5,000.00.

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23 ///

24 DATED: January 9, 2025

WINSTON LAW GROUP, P.C.

25 By: 
26 DAVID S. WINSTON

27 Attorney for Plaintiff Juan Jose Pinto Perez and the
28 aggrieved employees