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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN – BAKERSFIELD DISTRICT

DAVID B. MURBACH, an individual, on behalf of himself and on behalf of all persons similarly situated, Plaintiff, vs. BAKERSFIELD AUTO GROUP, LLC, a California Limited Liability Company, and DOES 1 through 50, inclusive, Defendants.	Case No.: BCV-24-100168 [*Unlimited Jurisdiction*] *Assigned for all purposes to the Honorable T. Mark Smith, Dept. T-2* **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR APPROVAL OF PAGA SETTLEMENT** Hearing Date: July 2, 2025 Hearing Time: 8:30 a.m.

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I. INTRODUCTION

This settlement covers an action brought under the California Private Attorneys General Act, Cal. Labor Code §2699, et seq. ("PAGA"). The operative Complaint was filed by Plaintiff DAVID B. MURBACH, ("Plaintiff"). Plaintiff brought claims on behalf of all individuals who, during the time period of January 22, 2023 through November 25, 2024 (the "PAGA Period"), were employed and classified by BAKERSFIELD AUTO GROUP, LLC ("Defendant") as non-exempt, in California (the "Aggrieved Employees").

Plaintiff alleged that Defendant failed to pay minimum wages for all time worked, failed to provide meal and rest periods, failed to provide accurate wage statements, failed to accurately calculate overtime, double time, meal rest break and sick pay, and failed to provide wages when due. Based upon the foregoing conduct, Plaintiff contends that Defendant is liable for PAGA penalties for underlying violations of Labor Code sections 410, 1194, 1197, 1197.1, 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and 2804, and the applicable Wage Orders. Defendant denied Plaintiff's claims and any corresponding liability.

After discovery exchanges and a series of back and good faith negotiations between counsel of record, the parties agreed settle the matter for a total of ninety thousand one hundred and twenty-five dollars ($90,125.00). In accordance with California Labor Code §2699(l), Plaintiff now asks this Court to review and approve the Parties agreed upon settlement of Plaintiff's PAGA claims.[1]

The PAGA settlement is set forth in the accompanying PAGA SETTLEMENT AGREEMENT ("Settlement Agreement"). A true and correct copy of the Settlement Agreement which sets forth the terms for the settlement of the PAGA claims is attached as Exhibit #1 to

[1] Section 2699(l)(2) provides as follows: "The superior court shall review and approve any settlement of any civil action filed pursuant to this part." This is only a settlement of the PAGA claims for civil penalties, and is not a class action settlement and does not release the individual claims, if any, of the affected Aggrieved Employees. Cal. Labor Code § 2699(g)(1); Iskanian v. CLS Transportation, 59 Cal. 4th 348, 381 (2014).

the Declaration of Attorney Matthew M. Blum, filed herewith. Capitalized terms shall have the same meaning as defined in the Settlement Agreement. The LWDA has received notice of this Settlement and this motion as set forth in the accompanying Declaration of Matthew M. Blum ("Blum Dec"). A proposed order confirming review and approval of the PAGA settlement is submitted herewith.

II. RELEVANT FACTS

On January 15, 2024, Plaintiff filed his initial complaint in this action which was inclusive of only individual claims. On January 22, 2024, Plaintiff gave written notice to the Labor and Workforce Development Agency ("LWDA") of his intent to assert a claim under the Private Attorney General Act of 2004 ("PAGA") and his alleged bases for the claims. More than 65 days passed after the notice letter was sent to the LWDA, and the LWDA did not indicate that it intended to investigate the alleged violations referenced in the letter. On March 24, 2024, Plaintiff filed a first amended complaint in this action inclusive of his claims under the Private Attorney Generals Act ("PAGA"). After receiving Plaintiff's FAC, Defendant sought to compel arbitration of the individual claims based on a signed arbitration agreement. The Parties submitted a joint stipulation to this court to stay the present PAGA claims while the individual ones were being litigated in arbitration. Blum Dec., ¶ 3.

After several meet and confer efforts, the parties agreed to stay the individual arbitration, and instead move forward with attempting to negotiate a good faith global settlement. In preparation for the negotiation, the parties exchanged informal discovery in good faith. This information was incorporated into Plaintiff's damage calculation during the course of the negotiation. Blum Dec., ¶ 4.

Based upon information provided to Plaintiff's counsel by Defendant as part of the exchange of informal discovery in advance of and in support of settlement discussions, there were approximately 126 aggrieved employees who worked a total of approximately 3,605 pay periods during the PAGA Period. Defendant provided Plaintiff with all relevant employment policies, sample employee schedules and break waivers, and other relevant documentation, as well as Plaintiff's complete personnel file. The parties agreed to split costs for purposes of hiring a mediator if necessary. Blum Dec., ¶ 5.

Following the informal exchange of discovery, the Parties entered into a good faith negotiation. As negotiations progressed, it became clear to counsel that they could likely resolve the case without having to expend costs on a mediator that could otherwise be applied towards a settlement. In good faith, counsel for the parties proceeded to negotiate the settlement that is being presented to the court today. The Parties thereafter negotiated and entered into a long form settlement agreement. Accordingly, the Parties now ask the Court to formally approve the Parties' Settlement. Blum Dec., ¶ 6.

III. TERMS OF THE PAGA SETTLEMENT

The PAGA settlement is subject to Court approval consistent with Labor Code § 2699. The Settlement Agreement negotiated by the parties provides for Defendant to pay ninety thousand one hundred and twenty-five dollars ($90,125.00) as the "Gross Settlement Amount". Ex. 1 to Blum Dec., Settlement Agreement, at ¶ 3.1. This Gross Settlement Amount includes the following: (i) any payment to the LWDA; (ii) any payment to Aggrieved Employees; (iii) the payment of fees and costs to Plaintiff's counsel, as approved by the Court; and (v) all fees, costs, and expenses of administration of this Agreement. Ex. 1 to Blum Dec., Settlement Agreement, at ¶ 1.11.

The "LWDA PAGA Payment" is defined as 75% of the amount remaining from the Gross Settlement Amount after the deduction of the Settlement Administration Fee, Plaintiffs' Counsel's Fee Amount and Plaintiffs' Counsels' Cost Amount. Ex. 1 to Blum Dec., Settlement Agreement, at ¶ 1.15.

The final Net Settlement Amount means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. This net remainder is to be paid to Aggrieved Employees as Individual PAGA Payments. Ex. 1 to Blum Dec., Settlement Agreement, at ¶ 1.16. A reallocation of the settlement funds amongst PAGA claims directed by the Court shall not be a basis for either side to void the Settlement Agreement. Aggrieved Employees will be issued a Form 1099 for their share of the PAGA payments. The Individual PAGA Payment for each Aggrieved Employee shall be based on the number of payroll periods each Aggrieved Employee worked during the PAGA

Period. Ex. 1 to Blum Dec., Settlement Agreement, at ¶1.12.

The "Aggrieved Employees" are defined as "all of Defendant's current and former non-exempt employees employed in California between January 22, 2023, through November 25, 2024. Ex. 1 to Blum Dec., Settlement Agreement, at ¶ 8. Defendant has represented that there are 126 Aggrieved Employees. Ex. 1 to Blum Dec., Settlement Agreement, at ¶ 8.1. Defendant provided Plaintiff's Counsel with the number of pay periods. Defendant represented that there are approximately 3,615 pay periods as of the Parties' settlement date. Ex. 1 to Blum Dec., Settlement Agreement, at ¶ 4.1. After confirming the number of pay periods in the PAGA period if the Court grants approval of the settlement, Defendant will provide a supplemental declaration confirming the number of pay periods and Aggrieved Employees.

Notice shall be provided to the Aggrieved Employees in the following manner: No later than thirty (30) days after Effective Date[2] Defendant shall provide the Settlement Administrator with a list of Aggrieved Employees ("Aggrieved Employees List"). The Aggrieved Employees List shall state the first name and last name in separate columns for each Aggrieved Employee, the last known home address for each such Aggrieved Employee, each Aggrieved Employee's social security number, and each Aggrieved Employee's respective number of pay periods

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[2] "Effective Date" means the date upon which the following have occurred: (a) approval of the Settlement is granted by the Superior Court of California for the County of San Diego, or other court assuming jurisdiction of this matter, (b) the Court's Judgment approving the Settlement becomes Final, and (c) the date of the time for filing or noticing any appeal of the Judgment has expired. If there is an appeal of the Court's Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the California Supreme Court shall be the date the Settlement is Final. If there is an intervener, but no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment shall be the date the Settlement is Final. If there is no intervener in the Action, the date the Court enters an order approving this Settlement shall be the date the Settlement is Final. For purposes of this Agreement, "becomes final and is no longer appealable" shall mean the later of: (a) the day after the last date by which a notice of appeal to the applicable Court of Appeal of the order and judgment approving this Agreement may be timely filed and none is filed (*i.e.*, 60 days from notice of entry of judgment); (b) if an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or in a any other manner that confirms the validity of the order and judgment, the day after the last date for filing a request for further review of the order and judgment approving this Agreement passes, and no further review is requested; or (c) if an appeal is filed and the order approving this Agreement is affirmed and further review of the order is requested, the day after the review is finally resolved and the order and judgment approving this Agreement is affirmed.

employed by Defendant in California during the PAGA Period. Blum Dec. at ¶10. The PAGA Period means the period from January 22, 2023, through November 25, 2024. Ex. 1 to Blum Dec., Settlement Agreement, at ¶ 1.15.

The individual PAGA Payments are considered penalties and will not be subject to local, state or federal tax withholdings. All Aggrieved Employees who cash their settlement check may receive an IRS Form 1099 reflecting this portion of the settlement. Settlement checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) days. Thereafter, all uncashed checks shall be voided, and the funds represented thereby shall be paid to the State Controller Fund in the name of the Aggrieved Employee. Blum Dec., at ¶ 11.

The PAGA settlement releases the "Released PAGA Claims" which are any and all claims for civil penalties under PAGA, of whatever kind or nature, whether known or unknown, arising during the PAGA Period, based on the facts alleged in the operative complaint, as well as Plaintiffs' notice letters to the LWDA, and any resulting claim for attorneys' fees and costs under PAGA, which occurred during the PAGA Period. Ex. 1 to Blum Dec., Settlement Agreement, at ¶ 5; Blum Dec. at ¶ 12. The release excludes individual claims and claims outside of the PAGA Period.

Pursuant to California Labor Code Section 2699(1), Plaintiff will provide a copy of the Settlement Agreement to the LWDA concurrently with the filing of the instant motion for settlement approval as well as a declaration confirming that Plaintiff has submitted the Settlement Agreement to the LWDA in compliance with Labor Code Section 2699(1). In addition, Plaintiff shall submit to the LWDA a copy of the Court's judgment and order approving the Settlement Agreement within ten (10) days after entry of judgment or order. Blum Dec. at ¶ 13.

The amounts to be paid from the Gross PAGA Settlement Amount other than the Net PAGA Payment, subject to Court approval, are as follows: (1) Thirty thousand and eleven dollars ($30,011.00) shall be paid to Plaintiff's Counsel for payment of attorneys' fees, one thousand five hundred and forty five dollars ($1,545.00) shall be paid to Plaintiff's Counsel for litigation expenses incurred in the action as set forth in the Plaintiff's counsel's Declaration (Blum Dec., at ¶ 26), and settlement administration fees shall be distributed to the third party settlement administrator ILYM Group, Inc. in an amount not to exceed $10,000.00. Blum Dec., at ¶ 14. If any of these amounts end up being less than estimated, the remaining amounts will be added to the PAGA Fund.[3]

IV. THE PARTIES HAVE SETTLED THE PAGA CLAIM

The claim before this court is the representative claim under PAGA on behalf of the State of California for civil penalties pursuant to the PAGA. The parties have agreed to settle this PAGA claim in its entirety after informal discovery and arm's length negotiations. The settlement is intended to fully and finally resolve the PAGA claims asserted by Plaintiff on behalf of the State of California. This is only a settlement of the PAGA claims for civil penalties, and is not a class settlement and does *not* release the individual claims, if any, of the Aggrieved Employees. Attorneys' fees equal to one-third of the Settlement Sum and ligation expenses will also be paid to Plaintiff's Counsel as part of the settlement in accordance with California Labor Code § 2699(g)(1) as set forth in the Agreement.

V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT OF THE PAGA CLAIM

Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." Consequently, the parties respectfully ask the Court to review and approve the settlement of the PAGA claims and the PAGA Settlement Sum to be paid as part of the proposed settlement.

A. The Settlement Sum to Be Paid is Fair and Reasonable

The Parties believe that the Settlement Sum is fair and reasonable and therefore "shall" be reviewed and should be approved. In the case of *Price v. Uber Technologies*, Los Angeles Superior Court Case No. BC544512, where a PAGA penalty claim for misclassification of

[3] Plaintiff has entered into a separate confidential settlement agreement with Defendant in regards to the settlement of his individual claims, which provides for payment to him in exchange for a general release of all claims. Plaintiff will supply a copy of the individual settlement agreement to the Court for in-camera review upon request.

300,000 Uber drivers was approved for $7.5 million in PAGA penalties plus some changes to Uber's policies to allow drivers to drive for other companies like Lyft, California's Labor Commissioner was asked by the court to submit an amicus brief about its views of the standards to evaluate the fairness of a PAGA settlement (where the State is the real party in interest). In its amicus brief filed in response to that request, the Labor Commissioner Julie Hsu specifically stated that the main purpose of PAGA penalties in the eyes of the Labor and Workforce Development Agency is to enforce California's Labor Code and obtain Labor Code compliance. Concerning the adequacy of PAGA settlements, the Labor Commission noted that the purpose of PAGA penalties is to "promote PAGA's compliance and deterrence goals," see Amicus Curiae Brief Submitted by the State Labor Commissioner, *Price v. Uber Technologies*, Case No. BC544512 (June 16, 2017). As explained in this Brief at page 1, the Labor Commissioner believes that labor issues are "best resolved by applying principles of fairness and justice that have developed in other forms of representative actions, as well as by considering PAGA's role in helping the Labor Commissioner discharge her mandate", which is:

> *To vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions or for employers that have not secured the payment of compensation, and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards.*

Cal. Labor Code §90.5(a).

Where, as here, Labor Code compliance is obtained because an employer's policies have changed, PAGA's purpose has been fulfilled and the monetary penalty components of the Settlement become less significant or insignificant. Specifically, Defendant has adopted practices to monitor and enforce its written policies to ensure that employees receive paid rest-breaks consistent with California law. Based on the Labor Commissioner's logic such changes and assurances eliminate the issue of potential ongoing liability, and makes the Settlement before the Court for approval fair and reasonable.

The Gross Settlement Amount of $90,125.00 is fair and reasonable and, therefore, should be approved. Here, without stacking the PAGA penalties, Plaintiff estimates that Defendant's *maximum* liability exposure is estimated at approximately $360,500 in PAGA penalties (3,605) pay periods multiplied by $100 per pay period[4]). Blum Dec at ¶ 15.

California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if based on the facts and circumstances to do otherwise would result in an award that is "unjust, arbitrary and oppressive or confiscatory." During negotiations, Defendant argued, among other things, that it was unlikely that any Judge would award more than the actual amounts owed on the claims, let alone the full $100 or $200 per violation.

Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from $2,800,000 to $500,000, a reduction of 82.2%, because the court found maximum penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code violations are established. *See also In re Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (affirming an award of $0 in PAGA penalties in a wage and hour class action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for each pay period the employee worked.

The primary claims in this PAGA action are based on (1) Defendant's alleged failure to provide compliant meal and rest breaks to the Aggrieved Employees when a break was missed, short or late; (2) Failure to pay minimum wage and overtime; and (3) Failure to issue properly itemized wage statements; and (4) Failed to calculate overtime at the proper regular rate of pay.

[4] California Labor Code section 2699(f)(2) provides the default penalty for PAGA violations of $100 for initial violations and $200 for subsequent violations.

Blum Dec., at ¶ 16.

Here, a number of defenses asserted by Defendant presented serious threats to the claims of the Plaintiff and the Aggrieved Employees. Defendant asserted that the employment practices complied with all applicable Labor Laws. Most importantly and relevant to this case, Defendant argued that the Supreme Court decision in *Brinker v. Superior Court,* 53 Cal. 4th 1004 (2012), weakened, if not eliminated, Plaintiffs' claims, on liability, value, and manageability as to the meal period and rest break claims. A major component of the damages alleged to have been suffered by the Aggrieved Employees are attributed to missed meal breaks and rest breaks. During negotiations, Defendant aggressively argued that Defendant's policies and culture afforded the Aggrieved Employees an opportunity to take timely meal periods and rest breaks, and that employees like the Plaintiff *chose* not to take compliant breaks. Specifically, Defendant's written policies encouraged Aggrieved Employees to take meal periods according to schedules compliant with the California Labor Code, and included an outline of employees' rights with respect to breaks based on the length of their shift. Defendant argued, therefore, that under the *Brinker* decision it has no liability for the missed breaks whatsoever. Defendant argued that it adopted and strictly enforced lawful policies, and thus afforded Plaintiff and the Aggrieved Employees the opportunity to take compliant meal breaks. Because Plaintiff's claims were largely based on the missed meal breaks, and because Defendant's policies were, indeed, compliant, this presented a very real concern for Plaintiff and the Aggrieved Employees. If successful, this defense could eliminate or substantially reduce any recovery. While Plaintiff believes that this defense, and others, could be overcome, Defendant maintains these defenses have merit and therefore present a serious risk to recovery. Blum Dec., at ¶ 17.

Plaintiff further alleged that Defendant miscalculated the regular rate of pay for purposes of overtime, meal premiums, and redeemed sick pay because Defendant failed to include non-discretionary incentive compensation when calculating the regular rate of pay for purposes of overtime, meal premiums, and redeemed sick pay. The regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, non-discretionary bonuses and awards, shift differentials and the per-hour value of any non-hourly compensation the employee has earned. *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. For overtime work, "an employee must receive a 50 percent premium on top of his or her regular rate of pay[.]" *Id.* at 553. California law also requires meal period premiums and rest period premiums to be paid at an employee's regular rate of pay. *See Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.) Further, California Labor Code section 246(1)(1) expressly mandates that sick pay for non-exempt employees be based on either "the regular rate of pay for the workweek in which the employee uses paid sick time" or the regular rate of pay in the 90 days preceding the use of the sick leave. Blum Dec., at ¶ 18.

Conversely, Defendant denied liability and asserted it paid the correct rate of pay for purposes of overtime wages and sick pay. Defendant also argued that any other bonuses were discretionary and did not need to be included in the regular rate calculation for payment of overtime wages and sick pay. Blum Dec., at ¶ 19.

Plaintiff also alleged derivative wage statement violations based on Defendant's failure to provide meal and rest periods. Plaintiff's Counsel considered the arguable presence of various penalties and weighed the potential recoveries against probable defenses. Specifically, Defendant could also argue that that meal and rest period violations do not entitle employees like Plaintiff and the Aggrieved Employees to pursue the derivative itemized wage statement penalties. (*Naranjo v. Spectrum Security Services, Inc*. (2023) 88 Cal.App.5th 927). Plaintiff could not give the penalty claims great weight given that they depended on proving the underlying claims, which had their own risks. Blum Dec., at ¶ 20.

Defendant asserted additional defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties, reduction, and manageability. Defendant could argue that no penalties prior to the PAGA notification and/or a Court finding of liability should be awarded because the violations were not intentional, and at least some Courts have so ruled. In addition, Defendant argued that any Court would substantially reduce the PAGA penalty awards in light of decisions like *Carrington*. Blum Dec., at ¶ 21

These defenses present a significant risk to the PAGA claim and the potential that some or all of the PAGA penalties sought may not be awarded. Given Defendant's potential defenses to the alleged violations at issue, the risks and costs of continued litigation, Plaintiff and his attorneys believe that the PAGA Settlement Sum is fair and reasonable. This is particularly true given the changes that Defendant has now made to its policies as described above. Plaintiff's Counsel have significant experience litigating wage and hour claims and as experience bringing multiple PAGA claims through final approval. Here, the Gross Settlement Amount seemed appropriate given the size of the PAGA class and strength of the evidence. Blum Dec., at ¶ 22-23.

B. <u>The Remaining Settlement Terms Are Fair and Reasonable</u>

Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code § 2699(1) does not require that a court approve any other elements of the proposed settlement. Because there are no class allegations, the approval provisions applicable to class settlements under Cal. Code Civil Proc. §382 do not apply. Accordingly, the Court only needs to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable.

VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE

PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this settlement is a matter of contract for a contingent representation. Nevertheless, should this Court review the requested attorneys' fees, it is clear that the requested fees and costs are reasonable.

In *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal. 5th 480, 503 (2016), the California Supreme Court unequivocally held that when "litigation established a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created" without considering the amount of hours expended on the case. *Id.* The Court further held that "[t]he recognized advantages of the percentage method – including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement ***<u>and avoid unnecessarily prolonging litigation</u>*** –

convince us the percentage method is a valuable tool that should not be denied by our trial courts." *Id.* Consistent with *Laffitte*, the Ninth Circuit has held that PAGA and/or Class Counsel should not be penalized for achieving a timely result. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002) ("We do not mean to imply that class counsel should necessarily receive a lesser fee for settling a case quickly; in many instances, it may be a relevant circumstance that counsel achieved a timely result for class members.").

California Courts have consistently recognized "that most fee awards based on either a lodestar or percentage calculation are 33%." *McCrary v. Elations Co., LLC*, No. EDCV 13-0242 JGB (SPx), 2016 U.S. Dist. LEXIS 24050, at *2 (C.D. Cal. Feb. 25, 2016); *McClellan v. Chase Home Fin. LLC*, No. SACV 12-1331-JGB (JEMx) 2015 U.S. Dist. LEXIS 118005, at *20 (C.D.Cal. Aug. 31, 2015) (explaining that while the attorneys' fee award that approximated 32% of all sums paid under the Settlement Agreement was reasonable after citing numerous other cases finding that an award of 33% of the common fund was common in class actions)[5]

Plaintiff's Counsel's diligent and efficient litigation of this action resulted in the creation of an ascertainable common fund of $90,125.00 that will substantially benefit the state of California and the aggrieved employees. Thus, Plaintiff's Counsel obtained greater Labor Code compliance and Defendant's policies have changed, which means the primary objective of PAGA as set forth by the Labor Commissioner in the *Uber* case has been achieved. During the course of the representation, Plaintiff's counsel drafted all LWDA notice letters, the complaint, the first amended complaint, demand letters, correspondence with opposing counsel, as well as this approval motion. Blum Dec. at ¶ 25. Plaintiff's counsel also spent time interviewing the client, conducting legal research with respect to his claims, reviewing his employment records, and reviewing evidence produced by the Defendant inclusive of corporate policies, time records and sample employment data. *Ibid.* Plaintiff's counsel was also responsible for conducting all

[5] In reaching its decision in *McClellan*, the court recognized that "California district courts routinely award attorneys' fees in the range of 30-40% in class actions that result in the recovery of a common fund under $10 million." *McClellan*, No. SACV 12-1331-JGB (JEMx) 2015 U.S. Dist. LEXIS 118005, at *20 (quoting *Miller v. CEVA Logistics USA, Inc.*, No. 2:13-CV-01321-TLN, 2015 U.S. Dist. LEXIS 104704, 2015 WL 4730176, at *8 (E.D. al. Aug. 10, 2015) and citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000).

negotiations with opposing counsel. *Ibid.*

VII. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court approve the PAGA settlement as set forth in the Settlement Agreement and enter the proposed order submitted herewith.

DATED: June 4, 2025

THE LAW OFFICE OF MATT BLUM

By:____________________________
Matthew M. Blum
Attorney for Plaintiff