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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

KIMMY DAO, an individual,

Plaintiff,

vs.

PANDORA KARAOKE, INC., a California Corporation; URBAN LIFE INC., a California Corporation, TIMMY CHOY, an individual; and DOES 1 to 50 inclusive,

Defendants.

Case No.: CGC-24-611422

NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO APPROVE PAGA SETTLEMENT

Department: 206
Judge: Hon. Rochelle East
Trial Date: 09/15/2025
Complaint Filed: 01/05/2024

Hearing: April 2, 2026
Hearing Time: 9:00 A.M.
Law & Motion Department 302

Filed Herewith:
1. Notice of Motion and Motion; Memorandum of Points and Authorities
2. Declaration of Saul Acherman with Exhibits
3. [Proposed] Order

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 2, 2026 at 9:00 A.M. or soon thereafter as the matter may be heard in Department 302 of the above-entitled court, located at 400 McAllister Street, San Francisco, CA 94102, Plaintiff, KIMMY DAO, will move the court for an order approving the settlement of Plaintiff's claim pursuant to the Private Attorney General's Act, California Labor Code §§ 2698, 2699 et seq. ("PAGA").

This motion will be based upon this notice, the attached Memorandum of Points and Authorities; the Declaration of Saul Acherman and Exhibits including the Settlement Agreement; upon the records and files in this action; and upon such further evidence and argument as may be presented prior to or at the time of hearing on the motion.

DATED: March 10, 2026

Respectfully submitted,

JAFARI LAW GROUP, INC.

Saul Acherman
Attorneys for Plaintiff
KIMMY DAO

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO APPROVE PAGA SETTLEMENT

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I. <u>PRELIMINARY STATEMENT</u>

Plaintiff respectfully requests that the Court approve the proposed $75,000 settlement of the Private Attorneys General Act ("PAGA") claims asserted in this case against Defendants. The parties were intimately familiar with the strengths and weaknesses of the case before reaching a settlement, which is fair and adequate. (See *Moniz v. Adecco U.S., Inc.* (2021) 72 Cal.App.5th 56, 77). (Declaration of Saul Acherman ("Acherman Decl.") ¶ 12 – 22, 33 – 34, 37 - 46).

On December 2, 2025, Plaintiff filed an unopposed Motion to Approve the PAGA Settlement. (Acherman Decl. ¶ 6). On January 7, 2026, the Court denied the Motion and identified several concerns. (Acherman Decl. ¶ 7, **<u>Exhibit A</u>** (the "Court's Order of January 7, 2026"). Following the Court's Order, the Parties met and conferred and agreed to prepare and execute a revised PAGA Settlement Agreement that is based on a Judicial Council Model, which fully addresses the Court's concerns. (Acherman Decl. ¶ 8, **<u>Exhibit B</u>** (the "PAGA Settlement Agreement").

The concerns identified by the Court were: **(1)** information regarding Plaintiff's attorney's fees and costs was missing; **(2)** a discussion about the payments Plaintiff will receive to compensate her for her attorney's fees and costs, including sworn testimony were required; **(3)** a proper explanation of the Release was missing clearly explaining that aggrieved employees are releasing only claims for penalties provided under PAGA that could be brought by the State for a specific time period; **(4)** also missing was a meaningful discussion and analysis of the claims, Plaintiff's and aggrieved employees' potential recovery, the recovery provided by the settlement, and the circumstances that justify the difference; **(5)** an explanation, citing to the PAGA Settlement, making it clear to the Court what is to happen to unclaimed funds; **(6)** an explanation, citing to the PAGA Settlement, making it clear to the Court that the PAGA Settlement does not provide for administrator fees substantially in excess of the bid amount; and **(7)** the proposed Notice was inadequate.

Plaintiff files this renewed Motion seeking approval of the revised PAGA Settlement Agreement and submits herewith a copy of the Court's prior January 7, 2026 Order. (**Ex. A**). This Memorandum specifically address the concerns identified by the Court and explains the corrective actions taken. Accordingly, the Parties respectfully request that the Court approve the revised PAGA Settlement Agreement. (**Ex. B**).

II. SUMMARY OF EFFORTS ADDRESSING THE COURT'S CONCERNS IN THE PRIOR MOTION

Following the Court's prior order and in preparation of this renewed Motion, counsel conducted a comprehensive review of the previously submitted motion for approval and PAGA settlement agreement. (Acherman Decl. ¶ 8). During this process, it became evident that the motion papers and settlement were wholly inadequate, including errors that did not reflect the parties' intentions or agreement. (Acherman Decl. ¶ 9). Rather than attempting to amend each deficiency from the previous settlement agreement, the parties worked in good faith to prepare a new PAGA Settlement Agreement. (Acherman Decl. ¶ 10).

The new PAGA Settlement Agreement is based on the Los Angeles Superior Court Model PAGA Settlement Agreement - identified as "SCLAC CIV Rev. 1/26" (Acherman Decl. ¶ 10, 11). This agreement specifies the material terms, including the allocation of attorney's fees and costs, the scope of the PAGA release, the administration procedures, and the disposition of any unclaimed funds, which address the Court's concerns, as follows:

(1) Plaintiff's Attorney's Fees and Costs: Plaintiff's Counsel seeks, and Defendants do not oppose, attorneys' fees in the amount of $25,000.00 (one-third of the $75,000 Gross Settlement Fund) and litigation costs in the amount of $12,355.95. (PAGA Settlement 3.2.1). Section V(B)(3) - (4) of this Memorandum includes a meaningful discussion and analysis of why Plaintiff's attorney's fees and costs are reasonable, including a loadstar analysis. (See Acherman Decl. ¶ 27, 48 – 51).

(2) Payments to compensate Plaintiff's attorney's fees and costs: per above, Section V(B)(3) – (4) of this Memorandum addresses this specific issue.

(3) The Release is limited in time and scope. The Settlement Period is from February 21, 2023, to August 2, 2025. (Acherman Decl. ¶ 25; PAGA Settlement 1.23). The scope is limited to claims based on the facts contained in the Operative Complaint and PAGA Notice and does not release any non-PAGA personal claims by aggrieved employees. (Acherman Decl. ¶ 26; PAGA Settlement 5.1 – 5.2; See also Acherman Decl. ¶ 13 – 14, **Exhibit C** (Plaintiff's "PAGA Notice"), **Exhibit D** (Plaintiff's "Operative Complaint"). Section IV(B) of this Memorandum includes a discussion about the Time and Scope of the Release.

(4) Analysis of the Claims and Recovery. Section V(B)(1) of this Memorandum includes a meaningful discussion and analysis of the claims, Plaintiff's and aggrieved employees' potential recovery, the recovery provided by the settlement, and the circumstances that justify the difference. (See also, Acherman Decl. ¶ 35 – 46).

(5) Unclaimed Funds will be Tendered to the State. The Settlement Administrator will transmit unclaimed funds to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. (Acherman Decl. ¶ 28 – 30, 32; PAGA Settlement 4.3.3).

(6) Administration Costs are Fixed. The Parties have agreed to retain ILYM Group, Inc. as the third-party settlement administrator ("Settlement Administrator"), to administer this Settlement. (PAGA Settlement 7.1). The Settlement Administrator has agreed to a fixed cost of $2,000. (PAGA Settlement 3.2.2; Acherman Decl. ¶ 29 – 30; **Exhibit F** (the "ILYM Declaration")).

(7) A new proposed Notice is provided. Rather than redline the prior notice, a new Notice of PAGA Settlement, a Cover Letter to Aggrieved Employees is provided with this Motion; this was more practical because – as the Court pointed out – the prior notice was inadequate as it was inapplicable to this case. (Acherman Decl. ¶ 31, **Exhibit G** (the "Cover Letter to Aggrieved Employees").

III. FACTUAL BACKGROUND

On January 5, 2024, Plaintiff commenced this Action by filing a complaint alleging causes of action against Defendantas for failure to pay overtime, failure to pay minimum wage, failure to pay wages when due, failure to pay all wages at time of separation, failure to provide accurate itemized wage statements, failure to comply with inspection request, failure to maintain records, conversion of tips and gratuities, failure to provide meal and rest periods, retaliation, and failure to reimburse all expenses. (Acherman Decl. ¶ 12).

On February 21, 2024, Plaintiff submitted notice of alleged Labor Code violations by Defendant to the California Labor and Workforce Development Agency ("LWDA") and to Defendant pursuant to PAGA. (Acherman Decl. ¶ 13, **Ex. C –** Plaintiff's PAGA Notice). In her PAGA Notice, she alleged that Defendant violated the Labor Code and Industrial Wage Order's requirements for conversion of tips and gratuities, failure to pay straight, overtime and double time wages (including any work off-the-clock), failure to pay minimum wage, failure to pay employees all overtime wages including by failing to pay all overtime and double time at the correct regular rate of pay, failure to provide compliant meal and rest breaks, failure to pay all premium wages owed for short, late or missed meal and rest periods, failure to pay all wages owed at discharge, failure to timely pay wages within the times permissible, failure to provide complete and accurate wage statements, failure to keep complete and accurate payroll records, failure to produce pay and personnel records, failure to reimburse necessary business expenses, failure to pay sick leave wages, and retaliation and seeking civil penalties pursuant to Labor Code §§ 2698 et seq. (*Id*.).

On May 16, 2024, Plaintiff filed the First Amended Complaint, which is the Operative Complaint, alleging the same causes of action against Defendants and including her claim pursuant to PAGA. (Acherman Decl. ¶ 14; **Ex. C –** Plaintiff's Operative Complaint). Right away, the parties engaged in discovery after exchanging initial positions and information. (Acherman Decl. ¶ 15).

As early as July 27, 2024, the parties decided to attempt mediation. (Acherman Decl. ¶ 16). After that mediation failed to result in a resolution, the parties litigated the case for another year –all but concluded discovery and began preparing for trial – until ultimately agreeing to attempt formal mediation once again. (Acherman Decl. ¶ 17).

The Parties devoted substantial time and resources to developing the representative claim, including completing written discovery – multiple sets of form interrogatories to each defendant, nearly two hundred special interrogatories to Defendants alone, multiple sets of requests of admissions, and at least three sets of requests for production of documents yielding in excess of 15,0000 pages of documents from Defendants – and completed depositions including Plaintiff's former co-manager (Van Tran), depositions of each of the owners of Defendants' businesses (Jeff Ng, and Tommy Choy), and Defendants' person most knowledgeable on the policies and practices relevant to the PAGA claim at issue in this Action. (Acherman Decl. ¶ 18). Defendants also took Plaintiff's deposition. (Acherman Decl. ¶ 19). Moreover, Plaintiff's counsel interviewed several former and then-current employees. (*Id*.). Although multiple discovery disputes arose, the parties were able to resolve these disputes without the Court's intervention**.** (Acherman Decl. ¶ 20).

On August 2, 2025, the Parties participated in a private mediation session before experienced PAGA and Class action mediator David Phillips, Esq., during which they reached a settlement-in-principle. (Acherman Decl. ¶ 21). The parties agreed to settle the PAGA claim, as set forth in the PAGA Settlement Agreement; the terms of the agreement were subsequently finalized and are memorialized in the proposed new PAGA Settlement Agreement for which Plaintiff now seeks approval. (Acherman Decl. ¶ 22).

The LWDA has been served with this renewed Motion including the Settlement Agreement. (Acherman Decl. ¶ 23; **Exhibit E** (POS of Motion and PAGA Settlement to LWDA).

The Parties now seek this Court's approval of the PAGA Settlement Agreement.

IV. SUMMARY OF PAGA SETTLEMENT TERMS

As consideration for the settlement, Defendants have agreed to pay a non-reversionary Gross Settlement Amount of $75,000. (Acherman Decl. ¶ 24; PAGA Settlement 3.1). This amount includes attorney's fees and costs subject to Court approval, and a PAGA payment to the LWDA. **Table 1.1** below provides a break-down of the Total Settlement Amount, anticipated Administration costs of $2,000, and payment amount to the State and the Affected Employees:

Description	Amount
Total Settlement	$75,000.00
Administrator Fee	$2,000.00
Attorney Fees	$25,000.00
Litigation Costs	$12,355.95
Subtotal of Settlement Fund	$35,644.05
75% CA Portion	$26,733.04
25% Employee Portion	$8,911.01
Payment Per Pay Period	$67.20

Table 1.1

A. Gross Settlement Amount

The Parties have agreed to a total gross settlement amount of $75,000, fully resolving all basis for the PAGA claim, which Defendants will pay if the Court approves this PAGA Settlement Agreement. (Acherman Decl. ¶ 24; PAGA Settlement 3.1).

B. Settlement Period and Scope of Released Claims

1. The Settlement Period

The Settlement Period is from February 21, 2023, to August 2, 2025. (PAGA Settlement 1.23). February 21, 2023, is one year earlier from the date Plaintiff submitted her Notice to the LWDA. (Acherman Decl. ¶ 25). August 2, 2025, is the date the Parties successfully completed Mediation and agreed to the material terms of the PAGA Settlement. (Acherman Decl. ¶ 25).

2. Scope of the Release

The Release in the Settlement Agreement is limited to all claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the facts and allegations in the Operative Complaint that are alleged to have occurred during the PAGA Period and the PAGA Notice, including but not limited to conversion of tips and gratuities, failure to pay straight, overtime and double time wages (including any work off-the-clock), failure to pay minimum wage, failure to pay employees all overtime wages including by failing to pay all overtime and double time at the correct regular rate of pay, failure to provide compliant meal and rest breaks, failure to pay all premium wages owed for short, late or missed meal and rest periods, failure to pay all wages owed at discharge, failure to timely pay wages within the times permissible, failure to provide complete and accurate wage statements, failure to keep complete and accurate payroll records, failure to produce pay and personnel records, failure to reimburse necessary business expenses, failure to pay sick leave wages, and retaliation. (Acherman Decl. ¶ 26; PAGA Settlement 5.1, 5.2). The scope is limited to claims based on the facts contained in the Operative Complaint and PAGA Notice and does not release any non-PAGA personal claims by aggrieved employees. (PAGA Settlement 5.2).

C. Attorneys' Fees and Costs

Pursuant to the PAGA Settlement Agreement, Plaintiff seeks attorneys' fees in the amount of $25,000.00 (one-third of the $75,000 Gross Settlement Fund) and litigation costs in the amount of $ $12,355.95. (Acherman Decl. ¶ 27; PAGA Settlement 3.2.1).

D. Settlement Administrator and Administration Costs

The Settlement Administrator will be ILYM Group, Inc. (PAGA Settlement 7.1; 3.2.2). The Settlement Administrator has agreed to a fixed cost of $2,000. (Acherman Decl. ¶ 28 – 30, **Ex. F**).

E. PAGA Allocation

Pursuant to PAGA, PAGA Penalties in the amount of $35,644.05 will be paid from the Gross Settlement Amount ($75,000.00) less Court-approved attorney's fees (i.e., Plaintiff's counsel is requesting $25,000.00) and litigation costs (i.e., Plaintiff's counsel is requesting $12,355.95), with 75% ($26,733.04) allocated to the LWDA PAGA Payment and 25% ($8,911.01) allocated to the Individual PAGA Payments for Aggrieved Employees identified during the PAGA period from February 21, 2023, to August 2, 2025. (Acherman Decl. ¶ 24; PAGA Settlement 3 – 3.2.3.2).

F. Proposed Notice to Aggrieved Employees and Procedures for Unclaimed Funds

The Aggrieved Employees will receive a Notice with their checks informing them of the settlement. (Acherman Decl. ¶ 13; **Ex. G**). The Administrator will transmit unclaimed funds to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. (PAGA Settlement 4.3.3).

V. ARGUMENT

The settlement of a PAGA action requires court approval. (Former Lab. Code, § 2699, subd. (l).) When considering whether to approve a proposed PAGA settlement, the Court should evaluate the settlement "to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz*, supra, 72 Cal.App.5th at p. 77.) Though PAGA actions do not need to satisfy the requirements of a class action, the factors courts use to evaluate class action settlements—such as the strength of the plaintiff's case, the risks involved, the stage of the proceeding, and the complexity and likely duration of further litigation—"can be useful in evaluating the fairness of a PAGA settlement." (Ibid.) In this context, "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; [and] (3) counsel is experienced in similar litigation." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802 [citing *Newberg & Conte, Newberg on Class Actions* (3d ed. 1992) § 11.41, p. 11-91].) "If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that the notice be given to the class members of a formal fairness hearing." (*Manual for Complex Litigation, Second* (1985) § 30.44.) As explained below, the requisite standard is easily met in the present case. The Court, therefore, should approve the Settlement and grant this motion.

A. THE PRESUMPTION OF FAIRNESS APPLIES

As noted above, a presumption of fairness exists where (1) a *settlement is reached through arm's-length negotiation* that was (2) *adequately informed* and where there is no evidence of fraud or collusion. Such a presumption applies here. See *Dunk*, supra, 48 Cal.App.4th at p. 1802.

1. The Settlement Was Reached Through Non-Collusive Arm's-Length Negotiations

The settlement was reached through hard-fought negotiations and only after multiple attempts through formal mediation – engaging two separate experienced and respected mediators. (Acherman Decl. ¶ 14 - 21). On August 2, 2025, on their second and ultimately successful attempt at formal mediation, the parties attended their mediation in-person at the mediator's location in Century City, California, despite Plaintiff and Defendants being over 500 miles apart. (Acherman Decl. ¶ 33). The intense negotiations concluded only after a mediator's proposal by David Phillips, Esq., a renowned mediator with decades of experience mediating complex actions like this one, which was finally accepted by the parties. (Acherman Decl. ¶ 33).

Therefore, the settlement is the result of non-conclusive arm's-length negotiation. (See *Community Resources for Independent Living v. Mobility Works of Cal.*, LLC (N.D. Cal. 2020) 533 F.Supp.3d 881, 889 [informed negotiations conducted by experienced counsel over an extended period of time and overseen by neutral mediators indicate non-collusive, arm's-length negotiation]; see also Newberg & Comte, Newberg on Class Actions (3d ed. 1992), § 13:14.).

2. The Negotiations Were Fully Informed

The settlement was reached in this case after the parties had completed extensive discovery, were in the midst of trial preparations, and devoted substantial time and resources to developing the representative claim. (Acherman Decl. ¶ 34). The investigation included completing written discovery – multiple sets of form interrogatories to each defendant, nearly two hundred special interrogatories to Defendants alone, multiple sets of requests of admissions, and at least three sets of requests for production of documents yielding in excess of 15,0000 pages of documents from Defendants – and completed depositions including Plaintiff's former co-manager (Van Tran), depositions of each of the owners of Defendants' businesses (Jeff Ng, and Tommy Choy), and Defendants' person most knowledgeable on the policies and practices relevant to the PAGA claim at issue in this Action. Defendants also took Plaintiff's deposition. (Acherman Decl. ¶ 17 – 19, 34). Moreover, Plaintiff's counsel interviewed several former and then-current employees. (Acherman Decl. ¶ 19). Although multiple discovery disputes arose, the parties were able to resolve these disputes without the Court's intervention. (Acherman Decl. ¶ 20).

Prior to concluding the discovery referenced above, a first mediation was attempted through a respected mediator, Philip R. Diamond, Esq., on July 27, 2024. (Acherman Decl. ¶ 16, 33). After that mediation failed to result in a resolution, the parties litigated the case for another year – concluded the discovery and began preparing for trial – until ultimately agreeing to attempt formal mediation once again. (Acherman Decl. ¶ 17). Thus, there has been more than sufficient investigation and formal discovery "to allow counsel and the court to act intelligently." (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 [analyzing sufficiency of discovery] quoting *Dunk*, supra, 48 Cal.App.4th at p. 1802). Indeed, as the *Dunk* court noted, "a full and fair assessment of the wisdom of the proposed compromise…is nearly assured when all discovery has been completed and the case is ready for trial." (*Dunk*, supra, 48 Cal.App.4th at p. 1802).

Therefore, the negotiations were fully informed.

3. The Settlement Does Not Improperly Grant Preferential Treatment

The proportional allocation of the civil penalties in proportion to the number of pay periods worked guarantees fair and equitable treatment between the aggrieved employees. (*Hudson v. Libre Tech. Inc.* (S.D. Cal., May 13, 2020, No. 3:18-CV-1371-GPC-KSC) 2020 WL 2467060), at *9 ["the Settlement does not improperly discriminate between any segments of the Settlement Class as the Settlement Class Members are entitled to the same relief from the same formula"]; *Mejia v. Walgreen Co.* (E.D. Cal., Nov. 24, 2020, No. 2:19-CV-00218 WBS AC) 2020 WL 6887749, at *11 [no discrimination where relief is proportionately based on compensable workweeks]).

4. Plaintiff's Counsel Support the Settlement

Experienced counsel, operating at arms-length, have weighed the strengths of the case and examined all the issues and risks of litigation and endorse the proposed settlement. The view of the attorneys actively conducting the litigation "is entitled to significant weight" in deciding whether to approve the settlement. *Fisher Bros. v. Cambridge Lee Industries, Inc*. (E.D. Pa. 1985) 630 F. Supp. 482,488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, affd. 661 F. 2d 939 (9th Cir. 1981); *Boyd*, 485 F. Supp. At 617.

Counsel for the parties are experienced in employment, wage and hour, class action matters and PAGA claims; Jafari Law Group, Inc., with over 20 years of experience, is well regarded as a firm that handles employment matters (both individual, class and PAGA), and as counsel for Plaintiff, recommends approval. (Acherman Decl. ¶ 2 – 5). Such a recommendation weighs in favor of approval. (See *Dunk*, supra, 48 Cal.App.4th at p. 1802; *In re Omnivision Techs., Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1043 ["The recommendations of plaintiffs' counsel should be given a presumption of reasonableness."]).

B. <u>THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE</u>

This Court has a duty to independently determine whether a settlement is fair, reasonable and adequate. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76-77, disapproved of on other grounds by *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 66 [the "trial 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, deter future ones, and to maximize enforcement of state labor laws"]). A settlement is not required to meet a minimum dollar or percentage threshold to be deemed adequate. (See *7-Eleven Owners*, supra, 85 Cal.App.4th at p. 1150 ["The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators"] [internal citation omitted]). Rather, the adequacy of a settlement is evaluated considering litigation uncertainties. (See *Dunk*, supra, 48 Cal.App.4th at p. 1801).

1. The Settlement is Fair and Reasonable Considering the Strengths and Weaknesses of the Claims and Risks of Continued Litigation

Plaintiff estimated before the second mediation that there could be maximum theoretical penalties of $904,200.00, if all penalties were assessed at the initial rate and stacking were allowed. (Acherman Decl. ¶ 35).

Courts interpreting the meaning of a "subsequent violation" under Labor Code §§558, 1197.1, and 2699(f) and similar penalty provisions in the Labor Code that allow the award of enhanced penalties for "subsequent violations" have confirmed that a "subsequent violation" penalty does not apply unless the defendant has first been notified by the Labor Commissioner or a court that it is violating that provision of the Labor Code. See e.g. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1208 (2008) (holding that an employer cannot be penalized at the higher rate for subsequent violations unless it has received some notice that its previous underpayment was a "violation" of the law for purposes of calculating civil penalties under Labor Code sections 204 and 223 (former sections 210 and 225.5).

Here, neither a court nor the Labor Commissioner had previously notified Defendant that they were violating Labor Code (Acherman Decl. ¶ 36), meaning that civil penalties at a higher rate for subsequent violation penalties are not warranted.

Plaintiff's Maximum Theoretical Recovery (assuming 100% violation rate) is:

Description	Amount
Total Aggrieved Employees	**18**
PAGA Pay Periods	**62**
Conversion of tips and gratuities	$111,600.00
Failure to Pay All Wages Owed	$55,800.00
Failure to pay minimum wage*[1]	$111,600.00
Failure to provide compliant meal breaks	$55,800.00
Failure to provide compliant rest breaks	$55,800.00
Failure to pay all wages owed at discharge	$200.00
Failure to timely pay wages within the times permissible*	$111,600.00
Failure to provide complete and accurate wage statements*	$279,000.00
Failure to keep complete and accurate payroll records	$500
Failure to produce pay and personnel records	$500
Failure to reimburse necessary business expenses	$200
Failure to pay sick leave wages*	$111,600.00
Retaliation	$10,000.00
Maximum Theoretical Recovery	$904,200.00
Maximum Theoretical Recovery (Without Stacking*)	**$290,400.00**

[1] The asterisk (*) denotes penalties that are derivative of the Failure to Pay All Wages claim.

However, without stacking derivative claims, Plaintiff's counsel **<u>has calculated a maximum theoretical recovery of approximately $290, 400.00</u>**. (Acherman Decl. ¶ 36).

To assist the Court in determining whether the proposed settlement falls within a range that is fair, reasonable, and adequate, Plaintiff's Counsel conducted a thorough analysis of the potential value of the claims, including evaluating maximum penalties, the likelihood of proving liability, and the substantial legal and evidentiary risks that could significantly reduce or eliminate recovery:

(i) Conversion of tips and gratuities: at $100 per employee per pay period (i.e. using default PAGA penalty[2]), yields a *maximum penalty* of <u>$111,600</u>.

Plaintiff alleges that Defendants violated Labor Code section 351 by failing to distribute all gratuities and improperly retaining tips that were the sole property of employees. More specifically, Plaintiff alleged that Defendants maintained uniform tip-sharing policies requiring servers and bartenders to share gratuities with the restaurant owners and managers, despite their alleged lack of service-related duties, and that Defendants retained a percentage of tips and maintained internal records reflecting these allocations; that Defendants diverted gratuities through undisclosed policy changes, rounding practices that reduced employee distributions, delayed payments, and the reallocation of service fees, resulting in the systematic and intentional retention of employee gratuities.

Defendants vehemently deny these allegations and maintain that their tip distribution practices complied with Labor Code section 351 and applicable industry standards, and that all gratuities were lawfully tracked and distributed. Specifically, Defendant contends that its supervisors or "managers" are not "agents" within the meaning of Section 350(d)20 because they did not have authority to hire or fire employees. See also, *Grodensky (Harvey) v. Artichoke Joe's Casino*, 97 Cal.Rptr.3d 273 (2009) (holding while the floor managers had some authority over the dealers, their principal responsibility was to ensure the games ran smoothly and they did not have the authority to hire or discharge dealers and they did not supervise, direct, or control the acts of the dealers). Moreover, Defendants leaned on

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[2] Although SB 648 (effective Jan. 1, 2026) added statutory penalties for tip theft, historically, §351 did not contain an explicit civil penalty, so plaintiffs used the default penalty under PAGA when arriving at these calculation well-prior to Jan. 1, 2026.

the challenges in determining tip amounts; amount of any unrecovered gratuities would depend on individualized factual determinations regarding tip amounts, record accuracy, and participant eligibility, creating substantial factual disputes and litigation risk for both Parties.

Potential Applicable Discounts

This is a challenging claim for Plaintiff since she herself was a manager and does not dispute that Defendant's supervisors had no authority to hire or fire servers and that other than additional administrative tasks, the managers worked along with other servers and focused on customer service. (Acherman Decl. ¶ 37 – 39).

Accordingly, Plaintiff's counsel assigned a 50% discount to account for the risk of proving liability and for the avoidance of uncertainty and delay.

(ii) Failure to Pay All Wages Owed: Plaintiff alleges that this included failure to pay straight, overtime and double time wages, including any work off-the-clock. At $50 per employee per pay period (i.e. specific penalty under Labor Code Section 558 for violating Labor Code Section 510), yields *a maximum penalty* of <u>$55,800</u>.

Plaintiff alleges that Defendants would fail to pay for all hours worked, including straight time, overtime or double time, based largely on a policy of Defendants requiring employees to work past closing, but always calculating employee hours worked until closing time, rather than the time employees actually worked.

Defendants disputed this policy existed at all. Since they lacked complete time-keeping records, they introduced into evidence declarations of several then-current employees attesting that they were not forced to work after closing, or to work off the clock. Defendants produced evidence that Aggrieved Employees would – at least for a period during the relevant PAGA period – actually remain on the clock during meal breaks, which Defendants paid. (Acherman Decl. ¶ 40).

Potential Applicable Discounts

Although Defendants provided pay records, Defendants lacked complete time-keeping records. (Acherman Decl. ¶ 38). Without complete time-keeping records, proving the primary basis for failing to pay for all hours worked (i.e., based on off-the clock) was not possible without testimonial evidence, which is apparent Defendants intended to dispute at trial with declarations and their own witnesses that are themselves aggrieved employees. Accordingly, Plaintiff's counsel assigned a 50% discount to account for the risk of proving liability and for the avoidance of uncertainty and delay.

(iii) **Failure to pay minimum wage**: This claim is derivative of the failure to pay all wages due addressed above. That is, Plaintiff alleges that because Defendants are not paying all wages by virtue of forcing their employees to work off-the-clock and hence overtime, Defendants fail to pay minimum wage. For the same reasons addressed above, Defendants dispute this claim. Defendant also contends that the Court will refuse to award duplicative civil penalties for the same substantive wrongdoing (i.e., "stacking") in order to avoid a confiscatory effect.

(iv) **Failure to pay provide Meal Periods**: Plaintiff alleges that it was not possible to take meal or rest breaks without interruption because Defendants lacked enough personnel, meaning employees were forced to skip meal or rest breaks altogether, or if taken, accept interruptions in order to remain on-duty and attend to customers. At $50 per employee per pay period (i.e. specific penalty under Labor Code Section 558 for violating Labor Code Section 512), yields *a maximum penalty* of <u>$55,800</u>.

Defendants disputed this policy existed at all, asserting that Defendants provided Aggrieved Employees with opportunity to take all meal and rest breaks. Since they lacked complete time-keeping records, they produced evidence by way of declarations of then-current employees attesting that they were provided with "enough time to take meal and rest breaks", that their decision "whether to take a break [was theirs]". Defendants also provided evidence that Defendant would often buy their employees food and snacks, and that until after the filing of Plaintiff's lawsuit, employees did not clock out for meal breaks. (Acherman Decl. ¶ 38).

<u>Potential Applicable Discounts</u>

Without complete time-keeping records, proving the missed meal and rest breaks is not possible without testimonial evidence. And while Plaintiff and some of the witnesses her counsel interviewed would testify to missing meal or rest breaks altogether or being interrupted during their breaks to attend to customers, Defendants' produced sworn declarations and indicated that all of their then-current employees would testify otherwise. Accordingly, Plaintiff's counsel assigned a 90%

discount to account for the risk of proving liability and for the avoidance of uncertainty and delay.

(v) **Failure to Provide Rest Periods**: Plaintiff alleges that it was not possible to take meal or rest breaks without interruption because Defendants lacked enough personnel, meaning employees were forced to skip meal or rest breaks altogether, or if taken, accept interruptions in order to remain on-duty and attend to customers. At $50 per employee per pay period (i.e. specific penalty under Labor Code Section 558 for violating Labor Code Section 512), yields *a maximum penalty* of <u>$55,800</u>.

Defendants disputed this policy and leaned on the evidence discussed above with reference to the meal breaks.

<u>Potential Applicable Discounts</u>

This was treated in tandem with the meal break issues discussed above. Accordingly, Plaintiff's counsel assigned a 90% discount to account for the risk of proving liability and for the avoidance of uncertainty and delay.

(vi) **Failure to pay all wages owed at discharge**: at $100 per employee per pay period (i.e. using default PAGA penalty), yields a *maximum penalty* of <u>$111,600</u>. This claim is derivative of the failure to pay all wages due, as addressed above.

(vii) **Failure to timely pay wages within the times permissible**: at $100 per employee per pay period (i.e. using default PAGA penalty), yields a *maximum penalty* of <u>$111,600</u>. This claim is derivative of the failure to pay all wages due, as addressed above.

(viii) **Failure to provide complete and accurate wage statements**: at $100 per employee per pay period (i.e. using default PAGA penalty), yields a *maximum penalty* of <u>$111,600</u>. This claim is derivative of the failure to pay all wages due, as addressed above.

(ix) **Failure to keep complete and accurate payroll records**: at $100 per employee per pay period (i.e. using default PAGA penalty), yields a *maximum penalty* of <u>$111,600</u>. This claim is derivative of the failure to pay all wages due, as addressed above.

(x) **Failure to produce pay and personnel records**: at $100 per employee per pay period (i.e. using default PAGA penalty), yields a *maximum penalty* of <u>$200.00</u>. Plaintiff requested her records, which Defendants failed to timely produce. There was evidence of only one other employee during the relevant period who requested and was not provided with their records in a timely manner.

(Acherman Decl. ¶ 41). Accordingly, Plaintiff does not provide a discount.

(xi) Failure to reimburse necessary business expenses: at $100 per employee per pay period (i.e. using default PAGA penalty), yields a *maximum penalty* of $111,600. Plaintiff incurred business expenses, primarily because she regularly used her cell phone to communicate with the owners and co-manager, and to set schedules with other employees.

Defendants dispute such policy existed and pointed instead to the use of tablets inside their karaoke bar, which employees used and were supposed to use during work hours. Moreover, Defendants maintain there was no reason for employees to use their cell phones while at work, and that any use of their cell phones to schedule their shifts was because Plaintiff herself had chosen to, disputing she had to use her cell phone for the scheduling task. (Acherman Decl. ¶ 42).

Plaintiff's Counsel Assigned No Value to this Penalty

Plaintiff's counsel did not find evidence that Defendants' employees were by virtue of some policy required to use their cell phones during their working hours, which primarily required serving customers at Defendants' karaoke bar. (Acherman Decl. ¶ 42).

Accordingly, with the evidence heavily pointing to this being an individualized issue at best suffered by Plaintiff who was a manager herself, and Defendants producing evidence that they asked their employees to use an employer-provided tablet during their work inside the karaoke bar, Plaintiff's counsel assigns no value to this penalty.

(xii) Failure to pay sick leave wages: at $100 per employee per pay period (i.e. using default PAGA penalty), yields a *maximum penalty* of $111,600. This claim is derivative of the failure to pay all wages due, as addressed above.

(xiii) Retaliation: Plaintiff alleges and her counsel maintain she was retaliated against. Defendants dispute that they retaliated against Plaintiff, alleged that she wanted to leave since she had moved to southern California. Critically, the evidence uncovered through deposition testimony, written communications – in both texts and emails – support a highly individualize claim rather than a systematic, company-wide policy of retaliation towards employees. (Acherman Decl. ¶ 43).

Accordingly, Plaintiff's counsel assigns no value to this penalty.

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The table below summarizes the estimated theoretical maximum recovery, applicable discounts, and expected maximum recovery excluding derivative claims to discount stacking:

Violation	Theoretical Max.	Discounts	Expected Max. Recovery
Conversion of tips and gratuities	$111,600.00	50%	$55,800.00
Failure to Pay All Wages Owed	$55,800.00	50%	$27,900.00
Failure to provide compliant meal breaks	$55,800.00	90%	$5,580
Failure to provide compliant rest breaks	$55,800.00	90%	$5,580
Failure to pay all wages owed at discharge	$200.00	--	$200
Failure to keep records	$500	--	$500
Failure to produce records	$500	--	$500
Failure to reimburse	$111,600.00	100%	$0
Retaliation	$10,000.00	100%	$0
<u>TOTAL (excluding stacking)</u>	**--**	--	**<u>$96,060.00</u>**

2. The Settlement is Fair and Reasonable Compared to Other Cases and Given the Remedial Nature of PAGA Penalties

As explained above, Plaintiff's counsel calculated a maximum theoretical recovery of approximately $290,400.00 (without stacking derivative claims) and calculated the realistic or expected maximum recovery of the PAGA claims at $96,060.00 (Acherman Decl. ¶44 – 45). The proposed gross settlement amount of $75,000 constitutes 78.07% of the expected maximum recovery, or 25.82% of the theoretical maximum recovery. *Id.*

There are many examples of PAGA cases in which trial courts have refused to award, or have reduced, civil penalties despite the plaintiffs having prevailed on their underlying claims. For example, in *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 593 (2010), the California Court of Appeal explained that where a PAGA claim is disputed, a trial court is justified in approving a PAGA settlement that attributes as little as $0 to the recovery of PAGA penalties. Similarly, in *Makabi v. Gedalia*, No. B261005, 2016 Cal. App. Unpub Lexis 1489 (Mar. 2, 2016), although the trial court found in favor of the employee plaintiffs on their Labor Code claims, it declined to award any PAGA penalties. See also *In re Taco Bell Wage and Hour Actions*, Case No. 1:07-cv-01314-SAB, 2016 US Dist Lexis 48557 (E.D. Cal. Apr. 8, 2016) (same). In *Elderv. Schwan Food Co.*, No. B238876, 2013 Cal. App. Unpub Lexis 1472 (Feb. 27, 2013), the Court of Appeals affirmed a reduced PAGA penalty award of just $2,500. ln *Fleming v. Covidien*, *Inc.,* No. ED CVl0-01487 RGK (OPx), 2011 U.S. Dist. Lexis 154590 (C.D. Cal. Aug. 12, 2011), although plaintiff prevailed and requested $2,800,000 in PAGA penalties, the district court reduced the award to $500,000. Similarly, in *Aguirre v. Genesis Logistics*, No. SACV 12-00687-NS (ANx), 2013 U.S. Dist. Lexis 189815 (C.D. Cal. July 3, 2013), although plaintiffs prevailed and requested $1,800,000 in PAGA penalties, the district court reduced the award to $500,000.

Here, the Court should approve this PAGA settlement because the settlement eliminates uncertainty and delay and is consistent with the public policies underlying the enforcement of labor laws. Given the uncertainties regarding the extent of provable violations and civil penalties that the Court might award at trial, as well as the risks of appeal, the settlement reached is fair and reasonable. The settlement here provides approximately 25.82% of the theoretical maximum civil penalties. (Acherman Decl., ¶ 45). Based on the 1116 total pay periods in the settlement, the settlement represents $67.20 per pay period. (Acherman Decl., ¶ 46). Moreover, in light of the risks in this case and the small size of Defendants (i.e., a karaoke bar service with 18 aggrieved employees), the Settlement of $75,000.00, representing more than $67 per pay period, serves PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws without being punitive in nature ensuring Defendants can keep their doors open. (Acherman Decl., ¶ 46).

3. The Proposed Award of Attorney's Fees and Costs is Reasonable

Consistent with the Settlement, Plaintiffs' request for a fee award of $25,000.00 (which represents a third or 33.33% of the common fund and is significantly less than Plaintiffs' Counsel's combined lodestar) and a cost award based on a settlement allocation up to $75,000 is reasonable.

PAGA provides that "any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." (Former Lab. Code, § 2699, subd. (g)(1), as amended by

Stats.2016, c. 31 (S.B. 836), § 189.) Plaintiffs, who obtained a net monetary recovery on behalf of LWDA and the aggrieved employees and caused certain changes in Defendants' commission practices, have prevailed. (See Code Civ. Proc., § 1032, subd. (a)(4).); see also *Folsom v. Butte County Assn. of Gov'ts* (1982) 32 Cal.3d 668, 685 fn. 31.) An award of attorneys' fees and costs, therefore, is mandatory. (*Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 829).

California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. (*Lafitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 [citing *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 48–49].) In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*Lealao*, supra, 82 Cal.App.4th at p. 50.) Historically, attorneys' fee awards in common fund cases have ranged from 20% to 50% of the fund and multiplier adjustments to lodestar ranging from one to four are frequently awarded in common fund cases. (*Newberg on Class Actions*, supra, § 14.03.) Trial courts, of course, have discretion to choose the method for determining fees, "as long as the method chosen is applied consistently using percentage figures that accurately reflect the marketplace." (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66).

The common fund method provides both "[f]airness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses" and "encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund." (*Bank of Am. v. Cory* (1985) 164 Cal.App.3d 66, 90 [citation omitted]). Advantages of the common fund approach include "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 and avoid unnecessarily prolonging the litigation." (*Lafitte*, supra, 1 Cal. 5th at p. 503).

(i) <u>A Fee Award of 33% of the Common Fund Is Justified</u>

An attorneys' fee of 33.33% of the gross settlement amount is reasonable because it is equivalent to the market rates of negotiated contingency fees for employment litigation, which range from thirty-three percent to fifty percent. Notably, the contingency fee agreements between Plaintiff and Plaintiffs' Counsel provide a common recovery of 50%, especially when litigated through the point of preparing for trial. (Acherman Decl. ¶ 47).

(ii) <u>Lodestar Cross-Check and Negative Multiplier Confirm the Reasonableness of the Requested Fee Award</u>

In common fund cases, "trial courts have discretion to begin with a percentage approach and then to use the lodestar approach to cross-check the reasonableness of the percentage." (*Karton v. Ari Design & Constr.* (2021) 61 Cal.App.5th 734, 745.) Counsel's declaration attesting to the number of hours worked on a particular case "is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." (*Steiny & Co. v. Cal. Elec. Supply Co.* (2000) 79 Cal.App.4th 285, 293; see also *Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1324 ["It is not necessary to provide detailed billing timesheets to support an award of attorney fees under the lodestar method."].) Indeed, as the Supreme Court has recognized, "trial courts conducting lodestar cross-checks have generally not been required to closely scrutinize each claimed attorney-hour." (*Lafitte*, supra, 1 Cal. 5th at p. 505.) Instead, the cross-check provides context on whether "the fee award appropriately reflects the degree of time and effort expended by the attorneys." (*Ibid*. [citation omitted].)

In this case, a lodestar cross-check and the resulting negative multiplier confirm that the fee request is appropriate. The requested percentage-based fee is significantly less than Plaintiffs' Counsel's accrued lodestar to date. Proceeding exclusively on contingency, Plaintiffs' law firms have devoted 581.25 hours litigating this case through August 2, 2025, yielding a lodestar cross check of $148,471.25. (Acherman Decl., ¶ 48). Plaintiffs' Counsels' customary hourly rates are comparable to prevailing rates in the Irvine Area for lawyers and legal staff of similar experience, skill, and reputation. (Acherman Decl., ¶ 49). Hourly-paying clients have paid the firm's hourly rates, and other courts have approved these rates. (Acherman Decl. ¶ 49).

Accordingly, Counsel's rates are appropriate for the lodestar cross check. (See *Lafitte*, supra, 1 Cal.5th at p. 504).

The lodestar also excludes the significant hours that have been incurred by Plaintiffs' Counsel since August 2, 2025, August 2, 2025, that include meeting and conferring with opposing counsel to file the First Motion and this Motion. (Acherman Decl., ¶ 50).

4. Plaintiff's Costs are Reasonable

Defendant has agreed to pay Plaintiff's Counsel $12,355.95, as reimbursement of expenses incurred in connection with the prosecution of this litigation. Reasonable litigation expenses may be recovered by a prevailing PAGA plaintiff pursuant to California wage-and-hour law, Cal. Lab. Code §§ 558 and 2699. Plaintiff's counsel is typically entitled to reimbursement of all reasonable out-of-pocket expenses and costs in prosecution of the claims and in obtaining a settlement.

Here, Plaintiff's counsel has incurred out-of-pocket expenses totaling $12,355.95. These modest expenses include the following: (1) filing fees, court fees, and fees for service of process; (2) costs for depositions; and costs of mediations (Acherman Decl., ¶ 51). (See, e.g., *Rulli, et al. v. Nielsen Co.* (U.S.) LLC, No. 3:14-cv-01835-VC (N.D. Cal. May 21, 2015); *Murillo v. Pac. Gas & Elec. Co.*, 2010 WL 2889728, at 12 (E.D. Cal. July 21, 2010); *Levinson v. About.com Inc.*, No. 02-cv-2222, 2010 WL 4159490, at 3 (S.D.N.Y. Oct. 7, 2010)).

VI. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiff requests that this Court approve this PAGA Settlement Agreement.

DATED: March 10, 2026

Respectfully submitted,

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