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IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF TULARE

NATALIE MARIE GAMEZ ORTIZ, individually and on behalf of all others similarly situated, Plaintiff(s), v. SUPER BURGER INC; and DOES 1 through 100, Defendant(s).	Case No. VCU318854 **STIPULATION AND ORDER APPROVING PAGA SETTLEMENT** [*Filed concurrently with Declaration of Manny Starr, Declaration of Lisa Mullins of ILYM Group, and [Proposed] Order*]

Plaintiff Natalie Marie Gamez Ortiz ("Plaintiff") and Defendant Super Burger Inc ("Defendant") (Plaintiff and Defendant referred to collectively herein as the "Parties") hereby stipulate as follows:

A. WHEREAS the instant action includes a Cause of Action for PAGA penalties pursuant to Labor Code Section 2698 *et seq*.;

B. WHEREAS the Parties participated in a mediation on September 26, 2025 with experienced wage and hour mediator Thomas Feher, Esq.;

C. WHEREAS the mediation was successful and the Parties thereafter reached a global settlement of all claims; and

D. WHEREAS the Parties now desire the Court to review and approve that settlement for the PAGA cause of action pursuant to Labor Code Section 2699 Subdivision (s)(2).

IT IS HEREBY AGREED AND STIPULATED THAT:

1. The Court shall review the concurrently filed memorandum and supporting declarations in support of approval of the PAGA Settlement; and
2. Subject to Court approval of the PAGA Settlement, judgment in the above captioned case shall be entered substantially in the format of the proposed order below.

IT IS SO STIPULATED.

Date: January 8, 2026

FRONTIER LAW CENTER

/s/ Rebecca Harteker
Manny Starr
Daniel Ginzburg
Rebecca Harteker
Attorneys for Plaintiff
Natalie Marie Gamez Ortiz

Date: January 8, 2026

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/s/ Emma Doty
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Private Attorney General Act case relates to allegations Defendant Super Burger Inc ("Defendant") violated the California Labor Code with regard to meal breaks, rest breaks, failure to pay all hours worked, failure to pay all overtime correctly, waiting time, and wage statements from at least November 15, 2023. Plaintiff Natalie Marie Gamez Ortiz ("Plaintiff") worked for Defendant from approximately May 2022 to August 28, 2024.

Defendant denies all wrongdoing and/or underpayment. However, in an effort to resolve the case, the Parties engaged in informal discovery into, inter alia, the number of Aggrieved Employees and PAGA Pay Periods. The Parties conducted mediation on September 26, 2025 with experienced wage and hour mediator Thomas P. Feher, Esq. Through arm's-length discussions, the Parties reached a global settlement. Plaintiff reached a confidential settlement of her non-PAGA claims, and, in addition, the PAGA claim was settled for a Gross Settlement Amount of $20,000. Declaration of Manny Starr at ¶ 6.

Under Labor Code section 2699(s)(2), "The superior court shall review and approve any settlement of any civil action filed pursuant to this part." Plaintiff requests the Court to approve the settlement of the PAGA claims asserted in this action. Defendant does not contest this stipulation for approval.

II. PROCEDURAL HISTORY

On November 15, 2024, Plaintiff, through counsel, uploaded a notice of PAGA Violations to the Labor and Workforce Development Agency (LWDA) via its online portal and cc'd Defendant via certified mail. In her letter, Plaintiff asserted that Defendant violated Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 512, 558, and 2699. Specifically, the letter alleged that Defendant routinely prohibited its employees from taking off-duty meal and rest breaks despite shifts lasting up to and over six and a half hours. Plaintiff further alleged that, due to these violations, Defendant had failed to provide accurate and complete wage statements and failed to pay all wages due upon termination.

On March 4, 2025, Plaintiff filed a complaint alleging the above violations. In her Complaint, Plaintiff also brought a claim for violation of the Unfair Competition Law, and a claim for PAGA Penalties based on these violations. Plaintiff also brought claims under FEHA for sexual harassment and wrongful constructive termination. Defendant filed an Answer to Plaintiff's unverified complaint on June 6, 2025.

Shortly after service of the Complaint, the Parties began talking about paths to resolution. Part of those discussions included reaching a global settlement that included both Plaintiff's individual FEHA claims and representative PAGA claims in this case. The Parties engaged in informal discovery in preparation for mediation. That exchange of information included Plaintiff's employee file, Defendant's policies on meal and rest breaks, overtime pay, sexual harassment, and hostile work environments. The exchange also included a sampling of employee time sheets and pay records (with identifying information redacted), and data regarding the total number of pay periods and aggrieved employees, sorted by current and former.

Using this information, the Parties mediated with mediator Thomas P. Feher on September 26, 2025. After mediation, the parties reached a resolution of the claims, and formal settlement agreements were signed on December 3, 2025. The Settlement Agreements reached between the Parties does not constitute, is not intended to constitute, and will not be deemed to constitute, an admission of liability by Defendant as to the merits, validity, or accuracy of any of the allegations or claims made against Defendant in Plaintiff's complaint or notice to the LWDA. The PAGA settlement is governed by a separate agreement from the confidential individual settlement that was reached.

III. PAGA ACTIONS AND REQUIREMENTS

a. The PAGA Statutory Scheme

PAGA creates a means of "deputizing" citizens as private attorney generals to enforce the Labor Code on behalf of the LWDA. (*Brown v. Ralphs Grocery Co*. (2011) 197 Cal. App. 4th 489, *review den.* (Oct. 19, 2011, No. S195850), *cert. denied* 132 S.Ct. 1910 (Apr. 16, 2012).) A plaintiff may not — and Plaintiff here does not — bring a PAGA claim simply on his or her own behalf as an individual claim, but "as the proxy or agent of the state's labor law enforcement agencies." (*Id*., at 986; *see also Reyes v. Macy's, Inc*. (2011) 202 Cal. App. 4th 1119, 1123-1124; *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380.) When an aggrieved employee brings a

PAGA claim, "the government is always the real party in interest." (*Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty*. (2015) 234 Cal. App. 4th 1109, 1119; *Montano v. The Wet Seal Retail, Inc*. (2015) 232 Cal. App. 4th 1214, 1222 ("[A] PAGA action is a dispute between an employer and the State agency.").) Accordingly, a plaintiff that brings a PAGA claim represents "the same legal right and interest as state labor law enforcement agencies," in that the plaintiff seeks to recover those civil penalties that the LWDA otherwise would assess and collect. (*Arias v. Super. Ct*. (2009) 46 Cal.4th 969, 986; Labor Code § 2699(a) & (f); *Securitas, supra*, 234 Cal. App. 4th at 1119; *see also Medina v. Vander Poel* (E.D. Cal. 2015) 523 B.R. 820, 825 (holding "PAGA plaintiffs do not have property rights in their cases."), and *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003.)

Therefore, when a plaintiff brings a PAGA claim, he or she is properly viewed as a private attorney general prosecuting violations of California's labor laws on behalf of the state. An employee may commence a PAGA action by fulfilling the requirements of California Labor Code § 2699.3(a)(1), which simply states: "The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation." (Labor Code § 2699.3(a)(1).) As explained above, Plaintiff complied with the notice requirements and properly pled a PAGA claim.

b. The Court Has Discretion When Awarding the Amount of Penalties.

The Private Attorneys General Act, Labor Code § 2699 *et seq.*, provides for penalties in the amount of $100 for each violation per aggrieved employee per pay period for the initial violation and $200 for each violation per aggrieved employee per pay period for each subsequent violation. (Labor Code § 2699(f)(2).) "PAGA penalties...are mandatory, not discretionary" and must be awarded upon a showing that Defendants violated the Labor Code. (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213.) However, the Private Attorneys General Act provides the Court with discretion when it finds liability and awards these penalties as part of a judgment. Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

c. PAGA Authorizes the Payment of PAGA Counsel's Fees

The Private Attorneys General Act provides for the recovery of reasonable attorneys' fees. (Labor Code § 2699(g)(1) ("Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid…").) The monetary settlement and programmatic relief make Plaintiff a "prevailing party." (*Folsom v. Butte County Ass'n of Gov'ts* (1982) 32 Cal. 3d 668,671; *Santisas v. Goodin* (1998) 17 Cal.4th 599, 621.) Even if Labor Code § 2699(g)(1) did not authorize fees, Plaintiff would be entitled to fees as a Private Attorney General under Code of Civil Procedure § 1021.5 because Plaintiff brought this action to, and the action does, benefit the public. *Arias,* 46 Cal.4th at 985–986.

Kullar v. Foot Locker Retail, Inc., (2008) 168 Cal. App. 4th 116 states the requirement that additional information be presented to the Court in representative action settlements "to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation . . . ." *Id.* at 129. While PAGA claims are not class actions, courts often look at the same factors, where applicable, in determining whether or not PAGA claims are fair and reasonable.

IV. SETTLEMENT

Pursuant to the Settlement Agreement, Defendants will pay the Gross Settlement Amount of $20,000.00 in full and final settlement of the PAGA claim alleged in the Action.

Pending Court approval, the Gross Settlement Amount will be allocated as follows: (1) attorneys' fees in the amount of **$5,000.00** ("PAGA Counsel Fees Payment"); (2) settlement administration costs of up to **$2,800.00** to be paid to the Settlement Administrator, ILYM Group, Inc., for sending notices and for calculating settlement shares and preparing all checks and mailings ("Administration Expenses Payment") (*Id.*); and (3) PAGA Penalties in the amount of **$12,200.00**, with 65% ($7,930.00) allocated to the LWDA ("LWDA PAGA Payment") and 35% ($4,270.00) allocated to the Aggrieved Employees ("Individual PAGA Payments"). (*Id.*) The Individual PAGA Payments will be calculated based on the number of pay periods the Aggrieved Employee worked during the PAGA Period of November 15, 2023, through November 20, 2025 ("PAGA Pay Periods").

Based on its records, Defendant estimates that there are approximately 33 Aggrieved Employees who collectively worked 1,243 weekly pay periods as of November 20, 2025. If the actual number of PAGA Pay Periods in the PAGA Period increases by more than 10% (i.e., greater than 1,367.3 pay periods), then Defendant will increase the Gross Settlement Amount pro rata per additional pay period in excess of 1,367.3 pay periods.

V. ARGUMENT

Pursuant to Labor Code § 2699(*l*), the parties must obtain Court approval of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Ct*. (2009) 46 Cal.4th 969, the parties need not follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. Nonetheless, to comply with the requirements of Labor Code section 2699, the Parties submit this Stipulation for Court approval.

a. Plaintiff Thoroughly Investigated the Claims.

As stated above, prior to settlement, Defendant provided Plaintiff with Plaintiff's employee file and data regarding the Aggrieved Employees, including information about time worked and amounts paid, and information regarding Defendant's written policies. The information and data exchanged by Plaintiff and Defendant prior to and during mediation and settlement negotiations were sufficient to reliably assess the merits of the Parties' respective positions, to compromise the issues on a fair and equitable basis, and to devise a formula for distribution of civil penalties among the Aggrieved Employees that took into consideration the strength of the PAGA claims. Based on this information, Plaintiff was able to evaluate the number of individuals impacted, the number of pay periods at issue, and information regarding the likely evidentiary issues and other risks Plaintiff may have encountered.

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b. The Settlement Amount Is Reasonable in Light of the Maximum Potential PAGA Penalties.

i. Failure to Provide Compliant Rest Breaks

Labor Code section 226.7 and the Wage Orders require an employer to provide a 10-minute off-duty rest break for every 4 hours worked or major fraction thereof. Employers are required to relinquish control over their employees during their 10-minute rest breaks. *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 269 (2016). Plaintiff alleges that Defendant prohibited Plaintiff and the Aggrieved Employees from having duty-free meal and rest breaks. Specifically, Plaintiff alleges that she and the Aggrieved Employees were regularly denied compliant breaks due to systemic management failures and understaffing issues. She further alleged that when rest breaks were provided, they were frequently interrupted, preventing the plaintiff from receiving the full uninterrupted rest period required by law.

The PAGA Penalty applicable to rest break violations is found in Labor Code section 2699, which is $100 for initial violations. Plaintiff estimated the maximum liability for rest break violations was approximately (1,243 pay periods x $100) = **$124,300**.

ii. Failure to Provide Compliant Meal Periods

An employer provides compliant meal breaks when "it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so." *Brinker Restaurant Corp. v. Superior Court*, (2012) 53 Cal.4th 1004, 1040. Specifically, Plaintiff alleged that during high-volume shifts, particularly morning-to-night or extended shifts, other workers would rush breaks or skip them entirely due to operational demands. Further, when breaks were missed due to busy periods, Plaintiff alleged the company implemented an informal makeup system where missed breaks would be added to the following day's break, resulting in a maximum of 20 minutes total break time. Even when breaks were technically provided, they were frequently interrupted, with interruptions occurring four to five days per work week without any compensation or makeup time. As explained above, Plaintiff alleges Defendant did not allow Plaintiff and the Aggrieved Employees to take full, duty-free meal breaks.

The PAGA Penalty applicable to meal break violations is found in Labor Code section 558, which is $50 for initial violations and $100 for subsequent violations. Plaintiff estimated the liability for meal break violations was approximately (33 x $50 + 1,210 pay periods x $100) = **$122,650.**

iii. Wage Statement and Waiting Time Penalties.

Plaintiff's Wage Statement and Waiting Time Penalties are derivative of the meal and rest break claims. Plaintiff alleges that rest and meal break violations occurred on each and every pay period for all Aggrieved Employees within the PAGA period. Labor Code Section 2699 Subdivision (f)(2)(A)(i) specifies a civil penalty of $25 per pay period, or (1,243 pay periods x $25) = **$31,075**.[1]

Waiting Time violations under Labor Code Sections 201 and 202, and 203 are no longer recoverable under PAGA if also recovering Civil Penalties for the underlying violations, under the 2024 PAGA amendments. *See* Labor Code Section 2699 Subd. (i). However, an analysis of the liability is still relevant, because while the Aggrieved Employees may not recover both civil penalties for waiting time and for the underlying violation, nothing in the new law suggests that the Aggrieved Employees may not elect which of the two remedies (the underlying violation or the waiting time penalty) they may recover. The liability is approximately (31 former employees x ($100 per violation under Labor Code §210) is **$3,100**.[2]

iv. Maximum Liability

Given the numbers expressed above, Plaintiff estimated the maximum liability (before attorney fees and costs) as follows:

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[1] Labor Code Section 2699 Subdivision (i) specifies that an Aggrieved Employee shall not recover a penalty under 201, 202, or 203 that is neither willful nor intentional, nor a penalty under 226 that is neither knowing nor intentional, in addition to the underlying penalty. The information is still relevant to the analysis because Plaintiff could argue that the failure was willing and intentional.

[2] It is unclear whether Labor Code Section 2699 (o), which halves the civil penalty for PAGA in cases where there is a weekly pay period, applies to penalties which, like Labor Code Section 210, are *not* tethered to the number of pay periods, but a different quantifiable measure (once per employee in this case). If the purpose of Subdivision (o) is to bring employers with weekly pay periods in parity with employers who have bi-weekly or semi-monthly pay periods, giving them a discount on Section 203 violations (which are calculated based on the number of days late rather than number of pay periods), seems to defeat the purpose of the amendment.

- Rest Break Violations: **$124,300**
- Meal Period Violations: **$122,650**
- Wage Statement Penalties: **$31,075**
- Waiting Time Penalties: **$3,100**
- **TOTAL PAGA PENALTIES: $ 281,125**[3]

c. The Risks of Moving Forward with Plaintiff's PAGA Claim

To help the Court evaluate the fairness of the Settlement, below is a discussion of the risk evaluation made by Plaintiff and PAGA Counsel. Plaintiff and PAGA Counsel considered the arguments and defenses asserted by Defendant at mediation, assessed the risks of moving forward to trial and what this Court could do in awarding penalties even if Plaintiff prevailed at trial. The penalties calculated above are based on the assumption that all issues of fact and law are ruled in Plaintiff's favor for every single Aggrieved Employee for every single pay period. Further, this assumes that Defendant cannot show that they took all reasonable steps to avoid these violations, pursuant to Labor Code Section 2699 Subdivision (g). If they can, the upper limit of PAGA penalties becomes only 15% of the total above, or **$42,168.75**.

While it is obviously never a realistic assessment of a case to assume a maximum recovery, specific factors relating to the litigation in this case are as follows:

i. Meal and Rest Break Violations

One issue Plaintiff would face in proving her claims regarding break periods is that no written policy was discovered that specifically precludes Plaintiff or the Aggrieved Employees from being relieved of all duty on breaks. Thus, while Plaintiff maintains that that was the policy of Defendant, proof of that would have had to come from (likely contested) witness testimony regarding working conditions. Furthermore, meal breaks were reported as taken as required most of the time, albeit frequently short.

Furthermore, these records, while informative, are not dispositive on the issue of whether or not a compliant break was provided. Even where the records indicate less than 10 minutes were taken for a rest break or less than 30 minutes were taken for a meal period, Plaintiff would still then

[3] Not including the Section 210 Penalties.

have to prove that the short breaks were caused by Defendant's action (such as discouraging full breaks or causing Aggrieved Employees to go to break late or come back early) rather than the employee's own decision to take shorter breaks (due to reason such as a desire to get ahead of their work or convenience).

ii. Wage Statements

Under the 2024 amendments to PAGA, Aggrieved Employees can no longer recover a wage statement penalty for a claim that is derivative of an underlying Labor Code violation for which the Employee has recovered penalties under PAGA, so long as the wage statement violation was neither knowing nor intentional. Thus, Plaintiff would have to prove that Defendant knew that its employees were denied compliant rest and meal breaks and knew that the time worked and penalties earned were not reflected on the wage statement. And, of course, Plaintiff would have to prevail on the underlaying break and/or wage claims in the first instance.

iii. Waiting Time Penalties

Likewise, waiting time penalties are no longer recoverable under PAGA on derivative claims for the same underlying violations for which the Aggrieved Employee has recovered a civil penalty. As such, these penalties would only be available as an *alternative* to the underlying violation. For the 31 Aggrieved Employees who no longer work for Defendant, it is likely that the recovery for the underlying violations will exceed the waiting time penalty, based on the damages calculated above.

d. The Final Settlement Amount Reflects The Recent Changes To PAGA.

While the settlement is only about 7% of the total highest possible liability, it is approximately 48% of the maximum penalty if Defendant shows they took "all reasonable steps" pursuant to Labor Code Section 2699 subdivision (g). Defendant has facially valid written policies regarding breaks and time worked, suggesting that they could plausibly raise such a defense with a substantial chance of success. Finally, the settlement has the unusual feature of providing 75% of the settlement funds (after reduction for the claims administrator's fees) to the Aggrieved Employees and LWDA, with only 25% allocated to attorneys' fees and without any reductions for a service award or attorney costs.

e. Settlement Administration Costs are Fair and Reasonable.

ILYM Group has been selected as the Settlement Administrator in this case. ILYM Group was selected through a bidding process, and their capabilities and experience as Settlement Administrators is well documented. Declaration of Lisa Mullins at ¶ 2. Their bid to handle administration is $2,800. *Id* at 7. The administrator's costs are reasonable and should be approved.

f. Individual Settlement Did Not Materially Affect PAGA Claims

As explained above, Plaintiff accepted an individual confidential settlement to settle her own individual claims. As explained above, the PAGA settlement is fair and reasonable considering the claims brought, the status of the evidence, the number of Aggrieved Employees involved, and, importantly, the 2024 amendments to PAGA. The individual settlement was directed in large part toward Plaintiff's FEHA claims, rather than the Labor Code Violations.[4] Starr Decl. ¶ 3.

g. All Other Procedural Requirements Have Been Met

Per the Declaration of Manny Starr, the Settlement Agreement, as well as this motion and all other supporting papers, have been uploaded to the LWDA via their website. Counsel for the Parties have conducted a diligent search and reasonable inquiry, and they are not presently aware of any other filed cases that this settlement might extinguish or otherwise materially affect.

VI. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE

The Settlement fulfills the purposes of the PAGA, and is fair, adequate and reasonable.

a. The Settlement Is Presumed Fair

A representative settlement is presumed fair 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, (3) [and] counsel is experienced in similar litigation. (*See Dunk v. Ford Motor Company (1996)* 48 Cal. App. 4th 1794, 1802.) A court may also consider factors such as the strength of the plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class or representative action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and

[4] The settlement also resolved Plaintiff's individual Labor Code complaints. However, Plaintiff's damages estimation show these claims to be 20% or less of her total individual claims, with the remainder being for FEHA violations.

views of counsel, [and] the presence of a governmental participant. . .. (*See Officers of Justice v. Civil Service Com'n of City and County of San Francisco* (9th Cir. 1995) 688 F.2d 615, 624.) "This list is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties." (*Dunk, supra*, 48 Cal. App. 4th at 1801.) Moreover, the trial court has broad powers to determine whether a proposed [representative action] settlement is fair. (*See Mallick v. Superior Court* (1979) 89 Cal. App. 3d 434.) *Moniz v. Adecco USA, Inc.,* 72 Cal. App. 5th 56 (2021) expressly holds that the standard for reviewing PAGA settlements is similar to the standard for reviewing class settlements, and therefore class cases (including Dunk specifically) are instructive in this context.

b. The Settlement is the Product of Arm's Length Negotiations

The stage of the proceedings is an important factors for courts to consider in determining whether a settlement is fair, adequate and reasonable. (*See In re Warner Communications Sec. Lit.* (S.D.N.Y. 1985) 618 F.Supp. 735, 741, affd., 198 F.2d 35 (2d Cir. 1986); *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, affd., 661 F.2d 939 (9th Cir. 1981).)

The parties attended a mediation on September 26, 2025, with experienced employment law mediator Thomas Feher. All of the parties' negotiations have been non-collusive and involved disputes over payment terms. Plaintiff did not settle this case until she and her counsel conducted sufficient investigation into the claims. Further, the LWDA has had the opportunity to review and investigate the claims in the operative complaint and review the proposed Settlement Agreement and has not taken any further action in response. (Starr Decl. ¶ 23)

c. Plaintiff's Counsel is Experienced in Similar Litigation

The view of attorneys in representative litigation is "entitled to significant weight." (*Fisher Bros. v. Cambridge-Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *see also Ellis, supra*, 87 F.R.D. at 18.) Plaintiff's counsel has significant experience in complex, representative, and class action wage and hour litigation. As such, they are experienced and qualified to evaluate the claims and defenses in this case, and unequivocally support the settlement reached herein. (Starr Decl. ¶¶ 21-22).

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d. The Strength of Plaintiff's Case, The Amount Offered in Settlement, and The Risk, Expense, Complexity, and Duration of Further Litigation Favors Settlement

Where both sides face significant uncertainty, the attendant risks favor settlement. (*Hanlon v. Chrysler Comm.* (9th Cir. 1998) 150 F.3d 1011, 1026. Moreover, "[t]he expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement." (*In re Mega Financial Corp. Securities Litigation* (9th Cir. 2000) 213 F.3d 454, 458.)

e. The Settlement is Within the Range of Reasonableness

"In determining whether the proposed settlement falls within the range of reasonableness, perhaps the most important factor to consider is plaintiff's expected recovery balanced against the value of the settlement offer." (*Cotter v. Lyft* (N.D. Cal. 2016) 176 F.Supp.3d 930, 936.) First, there was a risk that, for the meal and rest break claims, a (rather expensive) survey would be required to show that breaks were late, missed, short, interrupted, or that on-duty breaks were required. Second, for the derivative penalties, since they are dependent on the success of the underlying violations and there are the enumerated risks, this is another reason bolstering the more realistic recovery. Third, because of the discretionary nature of PAGA penalties, oftentimes the penalties are discounted by approximately 75%-85% from the maximum penalty. *See, e.g., Magadia v. Wal-Mart Associates, Inc.* (N.D. Cal. May 31, 2019) 384 F.Supp.3d 1058, 1104 (penalties on wage statement claim reduced by 80%). (See also *Carrington v. Starbucks Corp*., 30 Cal. App. 5th 504 (2018). The court affirmed a 90% reduction from the maximum).

Plaintiff asserts that the $20,000 settlement is certainly within the range of reasonableness and merits approval.

VII. PLAINTIFF'S ATTORNEYS' FEES ARE FAIR AND REASONABLE

a. Fees Can Be Awarded as A Percentage of the Common Fund

When a common fund is created, attorneys who secured the fund are entitled to a percentage of the fund. (*See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 ["the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created]; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26 ["percentage fees have traditionally been allowed in . . . common fund cases"]). Plaintiff's request for 25% of the common fund is reasonable, and is fair compensation for undertaking complex litigation on a contingent basis. (*See, e.g.*, Rubinstein, Conte and Newberg, Newberg on Class Actions at § 14:6 [surveying cases and finding that 30-50% of fees awarded in cases in which the common fund is relatively small]; *see also In re Ampicillin Antitrust Litigation* (D.D.C. 1981) 526 F.Supp. 494 [court approved attorney fee award equal to 45% of the settlement fund].)

Under the common fund doctrine, "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *(Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *see also Laffitte, supra,* 1 Cal.5th at 503 ["the percentage method is a valuable tool that should not be denied our trial courts "]; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 ["one who expends attorneys' fees in winning a suit which creates a fund from which other derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs"].)

Because Plaintiff's attorneys secured a successful PAGA settlement, they are entitled to a reasonable percentage of that fund.

b. Plaintiff's Counsel Are Well-Qualified to Represent the Aggrieved Employees and their Rates Are Reasonable

Counsel for Plaintiff is experienced employment lawyers and have extensive experience in the specific subcategory of wage and hour claims. (Starr Decl. ¶¶ 21-22). Moreover, counsel for Plaintiff have hourly rates that are reasonable in the relevant market.

Further, since the beginning of this case, Plaintiff's counsel worked diligently for the aggrieved employees, both in the PAGA case and in Plaintiff's individual claims, with an eye at proving the claims on a representative basis once the individual trial was concluded.

c. Plaintiff's Counsel Worked Entirely on A Contingency Basis

Plaintiff's counsel worked on a complete contingency and advanced all expenses and costs. The contingent risk included liability issues, damage issues, and evolving changes under PAGA. According to the California Supreme Court:

A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.

(*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133, quoting Posner, Economic Analysis of Law (4th ed. 1992) pp. 534, 567.)

d. Plaintiff's Counsel Achieved A Good Result

Plaintiff's counsel believes the $20,000 PAGA settlement is a good result given the substantial risks of going to trial on this case and the discretionary nature of the penalties.

VIII. CONCLUSION

For the foregoing reasons, the Settlement in this case is fair and reasonable. Plaintiff therefore requests that this Court approve the settlement.

Date: January 8, 2026

FRONTIER LAW CENTER

/s/ Rebecca Harteker
Manny Starr
Daniel Ginzburg
Rebecca Harteker
Attorneys for Plaintiff
Natalie Marie Gamez Ortiz

Date: January 8, 2026

KLEIN, DENATALE, GOLDNER, COOPER, ROSENLIEB, & KIMBALL, LLP

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