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Attorneys for Plaintiff KIRVER VILLEGAS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

KIRVER VILLEGAS, individually, and on behalf of all others similarly situated, *Plaintiff*, vs. GENESIS LOGISTICS, INC., a California corporation; STAFFMARK INVESTMENT, LLC, a limited liability company; and DOES 1 through 10, inclusive, *Defendants*.	Case No.: 24STCV05560 [Hon. Elihu M. Berle] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004** Date: September 5, 2025 Time: 10:00 a.m. Courtroom: 6 Judge: Hon. Elihu M. Berle Action Filed: March 5, 2024 Trial Date: Not Set

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on September 5, 2025, at 10:00 a.m., or as soon thereafter as the matter may be heard, in Department 6 of the above-captioned Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff KIRVER VILLEGAS ("Plaintiff") will and hereby does move this Court for an order approving the PAGA SETTLEMENT AGREEMENT ("Agreement" or "Settlement") reached with Defendants STAFFMARK INVESTMENT, LLC and GENESIS LOGISTICS, INC. ("Defendants"), a true and correct copy of which is attached as **Exhibit 1** to the Declaration of H. Scott Leviant submitted herewith.

Specifically, Plaintiff moves for an order to:

1. grant approval of the terms of the Agreement pursuant to the Labor Code Private Attorney Generals Act of 2004, Labor Code § 2698, *et seq*., including the amount of the settlement; the amount of distributions to the State and Aggrieved Employees; the amount allocated to the Plaintiff as an enhancement; amounts allocated to attorney's fees and costs; and, the amount allocated to the settlement administrator; and,

2. direct disbursement of the Gross Settlement Amount pursuant to the terms of the Agreement.

This motion is based on this Notice, the following Memorandum of Points and Authorities, the Declarations submitted herewith, all other pleadings and papers on file in this action, and any oral argument or other matter that may be considered by the Court.

Respectfully submitted,

Dated: August 1, 2025

MOON LAW GROUP, PC

By: ______________________________

Kane Moon
H. Scott Leviant
Sandy Pham

Attorneys for Plaintiff

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I. INTRODUCTION

Plaintiff Kirver Villegas ("Plaintiff") moves the Court for approval of the PAGA SETTLEMENT AGREEMENT ("Agreement") between Plaintiff and Defendants STAFFMARK INVESTMENT, LLC and GENESIS LOGISTICS, INC. (collectively, "Defendants") (together with Plaintiff, the "Parties"). The Agreement resolves the Private Attorneys General Act ("PAGA") claims alleged in this Action on behalf of Plaintiff, all allegedly aggrieved employees, and the State of California.

The PAGA claims are alleged pursuant to PAGA, which states: "[T]he...court shall review and approve any settlement of any civil action filed pursuant to this part." Lab. Code § 2699(*l*)(2). The California Supreme Court has interpreted this provision to ensure "any negotiated resolution [of a PAGA claim] is fair to those affected." *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549. The California Supreme Court has not defined a standard by which trial courts are to review and approve proposed PAGA settlements. Nonetheless, California courts largely consider whether a proposed PAGA settlement provides "genuine and meaningful [relief] consistent with the underlying purpose of the statute" and is reasonable in light of the potential verdict value of all claims released. *See O'Connor v. Uber Technologies, Inc*., 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016); *see also* Lab. Code § 2699(*l*)(2).

After exchanging documents and data prior to mediation, Plaintiff and Defendants reached a proposed settlement that will resolve the PAGA claims pending in this action (the "Lawsuit") for approximately 415 aggrieved employees ("Aggrieved Employees"). Under the Agreement, Defendants shall pay a maximum sum of **$217,500.00**, referred to as the "Gross Settlement Amount," for Aggrieved Employees employed in California during the designated PAGA period.

This motion is brought pursuant to Labor Code § 2699.3(b)(4). This motion and the Agreement were served on the LWDA prior to the filing of this Motion. Labor Code § 2699(e)(2).

For the reasons below, Plaintiff requests that the Court enter an order approving the terms of settlement.

II. SUMMARY OF THE TERMS OF SETTLEMENT

The full terms of the settlement are in the Agreement. A summary of the terms of the Agreement is as follows:

(a) Aggrieved Employees (the aggrieved employees, as defined in the Agreement): all current and former non-exempt, hourly temporary employees employed by Defendant Staffmark and placed with Defendant Genesis in California at any time during the PAGA Period (the period March 5, 2023, to May 2, 2025). (Agreement, ¶¶ 1.4, 1.25).

(b) No Reversion: The Settlement is ***non-reversionary***, since the full Net Settlement Amount will be allocated to PAGA penalty payments. (Agreement, ¶ 3.1.)

(c) Settlement Amount: Defendants agree to pay the maximum sum of **$217,500.00** (hereinafter referred to as the "Gross Settlement Amount" or "GSA") for settlement of the Release Claims, which shall be inclusive of Administrative Costs, Attorneys' Fees and Costs, the Enhancement Award, and PAGA payment to the LWDA. (Agreement, ¶ 3.1.)

(d) PAGA penalties (referred to herein as the "PAGA Penalty Amount"): At least **$114,722.96** will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least **$86,042.22** under the Agreement, and Aggrieved Employees will receive at least **$28,680.74**. (Agreement, ¶ 3.2.4; *see also*, other requested deductions, identified herein.)

(e) Attorney's Fees: Plaintiff's Counsel requests an award of attorney's fees in the amount of **$72,500.00,** which is one-third of the GSA. (Agreement, ¶ 3.2.2; Leviant Decl., ¶ 39.)

(f) Litigation Costs: Plaintiff's Counsel seeks reimbursement of actual litigation costs, to a maximum amount of $25,000.00. The actual costs are $21,827.04, which includes a reasonable estimate of the costs of filing the motion. Therefore, **$21,827.04** is requested. (Agreement, ¶ 3.2.2; Leviant Decl., ¶ 40, and Exh. 2.)

(g) Enhancement Award: Plaintiff requests an enhancement award of $2,500. (Agreement, ¶ 3.2.1.)

(h) Settlement Administration: Payment to Aggrieved Employees and administration will be accomplished through third-party settlement administrator, Phoenix Settlement Administration, which has agreed to perform Administrator duties for a flat fee not to exceed **$5,950.00**, which is reasonable, based on all of the services offered. (Agreement, ¶ 3.2.3; Leviant Decl., ¶ 41; Declaration of Jodey Lawrence [Decl. of Lawrence], ¶ 16.)

(i) Uncashed Checks: Uncashed checks sent to the PAGA Settlement Members will be void after 180 days of issuance, and the funds will, pursuant to Unclaimed Property laws, be directed to the California State Controller's Office in the name of the PAGA Settlement Members who did not cash the check. (Agreement, ¶ 4.2.3.)

(j) Release: In exchange for the above settlement consideration, Defendants, and the "Released Parties," as defined in the Agreement, shall be entitled to a *limited* release from any and all PAGA-based claims for civil penalties that arise out of or are related to the PAGA claims set forth in the PAGA Notice.[1] (Agreement, ¶ 5.2; Leviant Decl. ¶ 42, Exh. 1.)

(k) Notice to LWDA: The Declaration of H. Scott Leviant confirms that notice was provided to the LWDA and attaches the confirmatory submission documents. (Leviant Decl., ¶ 45, Exh. 3.)

III. STATEMENT OF FACTS

Plaintiff, a former employee of STAFFMARK INVESTMENT, LLC and GENESIS LOGISTICS, INC., commenced this Lawsuit against Defendants in the Superior Court of California for the County of Los Angeles, asserting individual and alleged class action violations of various provisions of the Labor Code. (Leviant Decl., ¶ 4.) These alleged statutory violations also subject Defendants to potential liability under California's Labor Code Private Attorneys' General Act ("PAGA") for civil penalties pursuant to Labor Code § 2698, *et seq*. (*Id.*) Through this action, Plaintiff seeks to recover

[1] This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (concluding that "with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act….").

civil penalties pursuant to Labor Code § 2698, *et. seq*. (*Id*.)

Defendant GENESIS LOGISTICS, INC., is a shipping logistics provider. Defendant STAFFMARK INVESTMENT, LLC, is a staffing agency. (Leviant Decl., at ¶ 5.) Plaintiff worked for Defendants STAFFMARK INVESTMENT, LLC and GENESIS LOGISTICS, INC., in California during the PAGA Period. (*Id*. at ¶ 6.) Defendants contend they had lawful policies, including break and pay policies, in effect throughout the statutory period, and viable defenses to the alleged penalty claims. (*Id*. at ¶ 7.)

IV. PROCEDURAL HISTORY

Plaintiff's Counsel sent a letter to the California Labor and Workforce Development Agency ("LWDA") on behalf of Plaintiff in compliance with Labor Code § 2699.3. (Leviant Decl., ¶ 8.) More than 65 days passed after each letter was sent to the LWDA, and the LWDA did not indicate that it intended to investigate the alleged violations referenced in either letter. (*Id*. at ¶ 9.) Plaintiff commenced this Lawsuit against Defendants in the Superior Court of California for the County of Los Angeles on March 5, 2024, asserting causes of action based on an alleged failure to (1) pay minimum wages; (2) pay overtime wages; (3) provide meal periods; (4) authorize and permit rest periods; (5) maintain accurate records of hours worked and meal periods; (6) timely pay all wages at termination; (7) reimburse business expense reimbursements; and (8) furnish accurate itemized wage statements. Plaintiff also asserted a cause of action for unfair business practices under California's Business and Professions Code. (*Id*. at ¶ 10.) On May 9, 2024, Plaintiff filed a First Amended Complaint to include a cause of action for civil penalties under PAGA. (*Id*.)

On August 6, 2024, through the Parties' stipulation and Order of the Court, the class claims were dismissed without prejudice against Defendants and the putative class, leaving only Plaintiff's individual Labor Code claims for damages and the single cause of action under the PAGA for civil penalties as set forth in the First Amended Complaint. The First Amended Complaint, as modified by the approved dismissal of class allegations, is the operative complaint in the Action (the "Operative Complaint."). (*Id*.) The Parties agreed to settle the matter as a PAGA action. (*Id*.) Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in the Operative Complaint and deny any and all liability for civil penalties under PAGA. (*Id*. at ¶ 11). Defendants admit to no claims by virtue of their agreement to settle this matter. (*Id.*) Because Court approval of a PAGA settlement is required by this Court, the settlement is presented to this Court for review and approval. (*Id.* at ¶ 12.)

V. SETTLEMENT NEGOTIATIONS

Counsel for Plaintiff has thoroughly investigated the facts relating to the claims alleged in the operative complaint and have made a thorough study of the legal principles applicable to the claims asserted against Defendants. (Leviant Decl., ¶ 13.) Based on their investigation and evaluation of this case, Plaintiff's Counsel has concluded that the settlement is fair, reasonable, and adequate in light of all known facts and circumstances, including the defenses asserted by Defendants, potential adverse findings regarding liability, and numerous potential appellate issues. (*Id.*)

On October 7, 2024, the Parties participated in an all-day mediation presided over by a professional and neutral mediator, Tripper Ortman, of Ortman Mediation. (Leviant Decl., ¶ 14.) The Parties engaged in extensive negotiations and exchange of data, documents and information prior to and during mediation. (*Id.*) The Parties were able to reach a settlement, which led to this Agreement to settle the Action. (*Id.*)

The Parties have memorialized the terms of the settlement in a long-form agreement (the "Agreement"). (Leviant Decl., ¶ 15.)

DISCUSSION

VI. THE QUI TAM NATURE OF PAGA CLAIMS

In 2003, California enacted the Private Attorneys General Act of 2004 after recognizing systemic underenforcement of many worker-protection laws and regulations. *Williams v. Superior Court*, 3 Cal. 5th 531, 545 (2017). The solution enacted by the Legislature deputized private citizens to recover civil penalties for the State, where those penalties were previously only available to law enforcement. *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009) (emphasis added).

"***Because an aggrieved employee's action under the Labor Code Private Attorneys General Act of 2004 functions as a substitute for an action brought by the government itself***, a judgment in that action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government." *Arias*, 46 Cal. 4th at 986. With limited exceptions, "[o]f the civil penalties recovered, 75 percent goes to the Labor and Workforce Development Agency, leaving the remaining 25 percent for the 'aggrieved employees.'" *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 380 (2014) *certiorari denied sub nom. CLS Transportation Los Angeles v. Iskanian*, ––– U.S. ––––, 135 S.Ct. 1155, 190 L.Ed.2d 911 (Jan. 20, 2015). Thus, a PAGA claim is, predominantly, a claim belonging to the State.

"The civil penalties recovered on behalf of the state under the PAGA are distinct from the statutory damages to which employees may be entitled in their individual capacities." *Iskanian*, 59 Cal. 4th at 381. Because of this distinction, and the fact that the penalties made available through PAGA fell previously within the exclusive domain of State enforcement, the California Supreme Court explained that PAGA suits are best viewed as a species of qui tam action. *Iskanian*, 59 Cal. 4th at 382 ("A PAGA representative action is therefore a type of *qui tam* action.").

VII. THE STANDARDS FOR APPROVAL OF A PAGA SETTLEMENT

Prior to *Moniz v. Adecco USA, Inc*., 72 Cal. App. 5th 56 (2021), the only sources of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court decisions. In their view, a PAGA allocation, even if a small portion of the total settlement, could be reasonable if the settlement of the underlying wage and hour claims is robust and serves the deterrent purpose of the PAGA statute. *O'Connor v. Uber Technologies, Inc*., 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) ("By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA.").

Moniz then provided explicit confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with federal courts, concluded that the class action factors are appropriately considered, along with a consideration of whether the settlement furthers "PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws."

The class action settlement factors used to assess the fairness, adequacy, and reasonableness of a class action settlement are well understood. *Dunk v. Ford Motor Co*., 48 Cal. App. 4th 1794 (1996), held that "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; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."[2] *Id*. at 1801. The court should also consider the expense, complexity and likely duration of further litigation. *Dunk*, 48 Cal. App. 4th at 1801. "It is, of course, the strong public policy of this state to encourage the voluntary settlement of litigation." *Osumi v. Sutton*, 151 Cal. App. 4th 1355, 1359 (2007). Finally, these factors are not exclusive and the court is free to balance and weigh, based on circumstances. *Wershba v. Apple Computer, Inc*., 91 Cal. App. 4th 224, 244-245 (2001).

While class settlement factors provide some guidance as to how a Court may approach the evaluation of a PAGA settlement, there are significant differences between PAGA settlements and class action settlements that must be recognized. Unlike a class action settlement, the scope of release permitted in a PAGA settlement is limited. While "judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding," *Arias*, 46 Cal. 4th at 986, "the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." *See id*., at 987. Thus, the scope of a release in a PAGA settlement is confined to PAGA penalties, and not related individual claims available under the Labor Code.[3]

Applying the above standards to this settlement, the settlement meets all criteria for approval.

VIII. <u>THE SETTLEMENT MEETS ALL THE CRITERIA FOR APPROVAL</u>

Applying the class settlement fairness factors discussed above – limited to those compatible with the unique features of PAGA claims – the proposed settlement embodies all of the key features of a settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for approval.

Plaintiff and Plaintiff's counsel have diligently investigated the claims in this matter. (Leviant Decl., ¶ 18.) Plaintiff and Counsel concluded, after taking into account the disputed factual and legal

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[2] PAGA provides no notice or claim procedures as exist in class action cases.

[3] This is contrasted with the much broader release permitted in a class action context, which may be based on "any matter or fact" alleged in the complaint. *See In re Corrugated Container Antitrust Litigation*, 643 F.2d 195, 221 (5th Cir. 1981). In this matter, the Agreement will not affect the rights of Aggrieved Employees who may possess individual wage and hour claims.

issues involved in this Action, the substantial risks attending further prosecution, including risks related to the outcome of possible summary judgment efforts, and the substantial benefits to be received pursuant to the compromise and settlement of the Action as set forth in the Agreement, that settlement on the terms agreed to are in the best interest of Plaintiff and the Aggrieved Employees and are fair and reasonable. (*Id.*) Plaintiff's Counsel brought to bear a great deal of experience with wage and hour actions in negotiating the settlement of this case. (*Id.*)

Resolution at this time will forestall the need for additional expensive and time-consuming litigation that could very well result in an outcome less satisfactory than that proposed under this settlement. (Leviant Decl., ¶ 19.) But, before any other consideration, Plaintiff and Plaintiff's counsel have agreed to this settlement because it is objectively reasonable. (*Id.*) The potential for resolution benefits the Aggrieved Employees and the State of California, since they do not have to wait additional years for recovery. (*Id.*) The efficiency of this litigation benefits the Court, the parties and their counsel. (*Id.*) A settled resolution now is the most realistic method for addressing the claims raised in this matter.

Plaintiff's counsel have engaged in the necessary investigation in this case that made it possible to exercise informed judgment in those aspects of the settlement process in which we were involved. (Leviant Decl., ¶ 20.) The Defendants in this matter produced important information, pay and time data for employees. (*Id.*) That information, coupled with other data provided, including Defendants' time and pay policies, was sufficient to permit Plaintiff's counsel to adequately evaluate the settlement; Plaintiff had more than enough information upon which to evaluate its reasonableness. (*Id.*)

Here, the expense, complexity and likely duration of future litigation was to some extent an unknown. (Leviant Decl., ¶ 21.) However, what is certain is that to adequately establish the foundational violations that would support any penalty award, significant time and expense would be invested. (*Id.*) To adequately establish that Aggrieved Employees experience the alleged violations, and at what frequency, the Aggrieved Employees would need to be interviewed in a systematic fashion. (*Id.*) The process would be expensive and time-consuming. (*Id.*) But doing so would have been required, since frequency of violations would need to be established before any penalties could be recovered. (*Id.*) As to claims such as meal period and rest break violations, the decisions of Aggrieved Employees are a major factor in assessing liability. (*Id.*) Thus, even if records show a facially non-compliant meal period, no penalty could be assessed automatically. (*Id.*) In sum, the evidence collected to date leads Plaintiff to conclude that, to the extent violations occurred, a fact which Defendants vehemently dispute, the violations were ***not*** systematic and ***not*** uniform across all of the employees who worked during the PAGA period. (*Id.*) With these considerations in mind, the amount of the Settlement is reasonable. (*Id.*)

A. The PAGA Penalty Amount Provides Genuine and Meaningful Relief to the LWDA and Aggrieved Employees Consistent with the Dual-Purpose of PAGA

The amount remaining after deduction of the Administrative Costs and Attorneys' Fees and Costs (hereinafter referred to as the "PAGA Penalty Amount"), will be allocated to the LWDA and all Aggrieved Employees, pursuant to PAGA and the terms of the Agreement, as civil penalties, with seventy-five percent allocated to the former and twenty-five percent allocated to the latter. (Leviant Decl., ¶ 22.)

The PAGA Penalty Amount, which is estimated to be $114,722.96[4], provides genuine and meaningful relief to the LWDA and all allegedly aggrieved employees consistent with the dual-purpose of PAGA because it both redresses the alleged Labor Code violations Plaintiff claims occurred and deters Defendants from violating the Labor Code in the future, in light of the long-term, costly process required to litigate, mediate, and ultimately settle the Action. (Leviant Decl., at ¶ 23.) For these reasons, the PAGA Penalty Amount constitutes genuine and meaningful relief consistent with the underlying purpose of PAGA. (*Id.*)

B. The PAGA Penalty Amount Is Reasonable Pursuant to Labor Code § 2699(e)

The ultimate decision as to the amount of penalties is always up to the discretion of the Court. Labor Code § 2699(e) states: "For purposes of this part, whenever the [LWDA] has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty...[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." Lab. Code §

[4] The PAGA Penalty Amount equals the Settlement Amount ($217,500.00) less the PAGA Counsel's fee request ($72,500.00), PAGA Counsel's cost request ($21,827.04), the Administrator's fee ($5,950.00), and the requested enhancement ($2,500.00).

2699(e). This section grants the Court discretion to limit a PAGA civil penalties award where the facts or circumstances justify reduction, or where such award is unreasonable and/or excessive.

The PAGA Penalty Amount is also reasonable in light of the potential verdict value of all claims released. Indeed, the Agreement contains a release of all PAGA-based claims for civil penalties and all PAGA-based claims that arise out of or are related to the PAGA claims set forth in the Operative Complaint and PAGA Notice, including those related to unpaid wages, including minimum wages, overtime compensation, meal period premiums, rest break premiums and unreimbursed business expenses. (Leviant Decl., ¶ 24.) These claims served as the basis of the alleged aggrieved employees' PAGA claims. (*Id.*)

For the PAGA Period, the number of PAGA Pay Periods at issue is estimated to be about 9,165 total for the 415 Aggrieved Employees. (*Id.* at ¶ 21.) Using the most straightforward formulation of applying the "catch-all" $100 penalty specified in Labor Code § 2699(f)(2) to each PAGA Pay Period, the total penalty exposure is approximately $916,500.00. (*Id.*) This amount is not precise and overstates the best-case penalty recovery significantly, in light of the issues discussed below.

In addition, with assistance from Plaintiff's data consultant, and after a thorough review of evidence casting serious doubt on the viability of many of the theories of penalty recover, counsel separately estimated the plausible maximum potential PAGA exposure, on a penalty-by-penalty basis, to be approximately **$1,278,250.00**, which includes many overly optimistic assumptions about the ability to prove the frequency of violations for all aggrieved employees who allegedly experienced issues (*i.e.,* there are no risk deductions factored into this maximum exposure amount). (*Id.*) The settlement is approximately **17%** of that very optimistic exposure calculation, described below:

- <u>Failure to compensate for unpaid wages based on off-the-clock work</u>: Off-the-clock work is the most heavily disputed allegation in the case. Off-the-clock work was alleged to occur while waiting in line to clock back in from meal periods. The on-call theory presents significant risk, factually and legally. Clock-in delays do not appear to have a high likelihood of success. The plausible exposure is estimated to be $229,125.00, estimating that 25% of the workforce in a pay period had significant time clock wait time delays (9,165 total pay periods × $100 penalty). This is a high-risk theory of recovery.

- Failure to provide meal periods: Meal period violations are alleged to have occurred as part of the time clock wait time delay theory. The plausible exposure is estimated to be $229,125.00, estimating that 25% of the workforce in a pay period had significant time clock wait time delays (9,165 total pay periods × $100 penalty). This is a high-risk theory of recovery. Meal period compliance, on the face of the records, was very high.
- Failure to provide rest breaks: It was alleged that, while the written rest break policy was compliant, employees were told that they could not leave the premises. It was also alleged that third rest breaks were not provided. These contentions were heavily disputed, and, given the high rate of compliance with meal period requirements, it would be unexpected to find an employer disregarding this legal obligation while carefully complying with another. Given the absence of any record to establish missed rest breaks and the need to rely heavily on PAGA Settlement Member testimony, it is estimated that this claim could support, at best, an exposure of $91,650.00 (9,165 total pay periods × $100 penalty × 20% violation rate).
- Unreimbursed business expenses: Plaintiff alleged that employees were required to purchase their own safety vests. If true, it would still not apply to all employees. Based on an estimated scope of impact of 25% of the workforce, and based on a violation that would likely occur only once per affected employee, this results in a maximum exposure of $10,375.00 (415 total employees × 0.25 × $100 penalty). Defendants contend that business expenses were incurred, employees were reimbursed.
- Failure to timely pay final wages: It is estimated that the maximum exposure for this claim is $33,600 (336 former employees × $100 penalty).
- Failure to furnish accurate itemized wage statements: It is estimated that the maximum exposure for this claim is $684,375.00 (9,125 total pay periods × 30% impact rate × $250 penalty). This claim is based, first, on the unpaid wage claims, with an assumed increase of impacted pay periods to account for non-overlapping meal period violation pay periods, which makes it entirely derivative as to either violation. Thus the $250 penalty may not be recoverable due to the "stacking" of penalties for the same underlying theory of recovery.

(*See*, Leviant Decl., ¶ 21.)

The amount of the settlement must then be viewed in light of the potential risks in continuing to litigate, including, but not limited to, the risk of not prevailing at trial, and the risk that, even if Plaintiff prevailed, the PAGA damages would be limited due to the largely discretionary nature of PAGA civil penalties, Defendant's defenses, and the fact that the ultimate purpose of the Action is to obtain genuine and meaningful relief for the LWDA and, secondarily, the allegedly aggrieved employees. (Leviant Decl., ¶ 25.)

1. The Total Amount of the Settlement is $217,500.00

The settlement provides a monetary benefit that falls well within "the range of an acceptable settlement" under the circumstances, which is the standard on which the instant Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and reasonable even where it only provides a fraction of what could have been obtained at trial. *See Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

Under the Agreement, Defendants shall pay a maximum sum of $217,500.00. Defendants argued that numerous individualized inquiries would be needed to determine whether any PAGA violations existed, including (1) whether employees worked off-the-clock with knowledge of a supervisor or Defendants, (2) whether each individual took a particular meal period or rest break on a particular occasion, (3) whether the meal period was waived or voluntarily not taken, and (4) where the individual skipped the meal or rest period, or ***why*** it was skipped for each allegedly aggrieved employee.

2. Payment of At Least $114,722.96 in Penalties

Under the Agreement, the amount available for distribution as penalties under PAGA is at least **$114,722.96**. The amount is a significant penalty, but it is not confiscatory, nor is it, in the terms of the PAGA statute, "unjust, arbitrary, or oppressive." Labor Code § 2699(e)(2).

a) The LWDA shall receive at least $86,042.22

As 75% of the penalties are allocated to the LWDA, the LWDA stands to receive at least **$86,042.22** under the Agreement. Further, pursuant to Labor Code § 2699.3(b)(4) the "provisions of the settlement relating to health and safety laws shall be submitted to the division at the same time that they are submitted to the court. This requirement shall be construed to authorize and permit the division to comment on the settlement provisions, and the court shall grant the division's commentary appropriate weight." The LWDA will have an opportunity to comment upon the amount to be paid to the LWDA.

b) Aggrieved Employees shall receive a pro rata share of at least $28,680.74

Approximately 415 Aggrieved Employees shall receive a pro rata share of at least **$28,680.74** (25% of the penalty) under the terms of the Agreement and by operation of PAGA. The Court should give weight to the fact that the primary purpose of PAGA is not to provide a windfall to Aggrieved Employees; the penalties recovered under PAGA are ***not*** surrogate individual damages. Instead, the amount available to Aggrieved Employees is in addition to any damages that could be recovered via individual claims.

C. The Presence of a Government Participant

As set forth above, 75% of the PAGA Penalty Amount will be paid to the LWDA. In connection therewith, Labor Code § 2699.3(b)(4) permits the LWDA to comment on the penalties. This provides an independent check on settlements. The LWDA was notified of the Settlement. (Leviant Decl., ¶ 45.)

D. PAGA Counsel Are Experienced and Negotiated Aggressively

The court may also consider that negotiations between the Parties were conducted at arm's length, in an adversarial manner, despite a mutual desire to resolve the case. (Leviant Decl. ¶¶ 14, 18.) The court may consider the opinion of all counsel that the settlement arrived at is fair, reasonable and in the best interests of the Aggrieved Employees. PAGA Counsel are experienced with employment class and representative actions, as set forth more fully in the Declaration of H. Scott Leviant filed herewith.

E. Additional Factors Weigh in Favor of Approving the Terms of the Proposed Settlement, Including the Requested Fees and Costs

In addition to the factors presented above, the proposed settlement does not possess any obvious deficiencies with respect to its other terms, including the agreed-upon fees and costs.

1. Fees and Costs

Courts in the Ninth Circuit and California generally use the "percentage method" rather than the lodestar approach when awarding attorneys' fees in a common fund type settlements. *See* 7 Witkin, B.E., CALIFORNIA PROCEDURE (2007 Supp.) §§ 255-261 at 236-241 (describing prevalence of percentage method in California); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[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"); *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377-78 (N.D. Cal. 1989) (endorsing percentage method).

While this is not a class action, the custom and practice in class actions is to award approximately one-third of a fund as a fee award. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around ***one-third*** of the recovery.") (emphasis added). The proposed attorney fee award here is 33 1/3% of the Gross Settlement Amount, an amount reasonably comparable to "average" fees awarded in California state court class action cases used for comparison purposes here. *Chavez*, 162 Cal. App. 4th at 66 n. 11. Again, this is ***not*** a class action. It is more akin to contingent representation with an additional requirement of Court review due to the *qui tam* nature of PAGA claims. The California Supreme Court has removed any lingering doubt about the use of the percentage of the fund method to award attorney's fees in California Courts, endorsing and encouraging that method. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).[5]

Thus, courts regard circumstances in which class counsel's work is wholly contingent, such as in class actions and other common fund type cases, as a factor weighing in favor of approving a negotiated fee award that approximates market rates. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132-33 (2001). This matter has been litigated by Plaintiff's Counsel in a manner that is reasonable, diligent, and efficient. The actual lodestar incurred by Plaintiff's counsel to date is no less than $115,240.00, not including unbilled time and estimated future work. (Leviant Decl., ¶¶ 37-38.) Counsel for Plaintiff invested time evaluating data before the negotiations in this matter and in preparing for negotiations with Defendant's counsel. (*Id*. at ¶ 20.) Those efforts led to this reasonable settlement. (*Id*.) Plaintiff's Counsel requests a fee of **$72,500.00**, as specified in the Agreement, which represents a "negative" multiplier of 0.63. (Leviant Decl., ¶ 39.)

[5] The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases." *Laffitte*, at 501.

The Agreement also provides for the award of actual costs, capped at $25,000.00 based on Plaintiff's Counsel's actual out of pocket expenses in taking on representation in this lawsuit on a contingency basis. (Leviant Decl., ¶ 40.) Actual costs are below the capped amount, thus consistent with the Settlement, a cost award of **<u>$21,827.04</u>** is requested. (Leviant Decl., ¶ 40.)

2. Administration Fees Are Very Reasonable

Administration will be completed by Phoenix Class Action Administration for **$5,950.00**, a very reasonable amount for the services rendered. (Leviant Decl., ¶ 41; Lawrence Decl., ¶ 16.)

IX. <u>CONCLUSION</u>

For the above reasons in fact and law, Plaintiff requests this court enter an order approving the settlement memorialized in the Agreement.

Respectfully submitted,

Dated: August 1, 2025

MOON LAW GROUP, PC

By: ______________________________

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