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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SONOMA

TONI ARGO, on behalf of herself and the putative Class Members,

Plaintiff,

vs.

BEVERAGES & MORE, INC.; and DOES 1-100, inclusive,

Defendants,

Case No. 24CV03802
Assigned for all purposes to Hon. Jane Gaskell Dept. 17

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF PAGA SETTLEMENT

Complaint Filed: June 26, 2024
Trial Date: None Set.

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I. INTRODUCTION

Plaintiff Toni Argo ("Plaintiff") has reached a settlement of the claims for civil penalties under the Private Attorneys General Act ("PAGA"), Cal. Lab. Code §§ 2698, *et seq.*, against Defendant Beverages & More, Inc., ("Defendant"). In accordance with Cal. Lab. Code § 2699(l)(2), Plaintiff respectfully requests that the Court approve the Settlement.

The parties memorialized the terms of their settlement in the PAGA Settlement Agreement ("Settlement") attached as **Exhibit 1** to the Declaration of Ori Edelstein ("Edelstein Decl."), filed concurrently herewith. As set forth below, the Settlement is fair, reasonable, and adequate in view of PAGA's purposes to remediate and deter violations and maximize enforcement of the Labor Code.

II. FACTS AND ALLEGATIONS

Defendant Beverages & Mores, Inc., is a wine and spirits retailer that does business in California. Plaintiff and the Aggrieved Employees[1] are current and former hourly paid general store managers, omni store managers, and other hourly non-exempt employees who were misclassified as exempt employees of Defendants in California.

Plaintiff alleges that Defendant misclassifies Plaintiff and the approximately 238 Aggrieved Employees as exempt employees and as a result (1) failed to pay Plaintiff and Aggrieved Employees overtime wages; (2) failed to authorize and permit Plaintiff and Aggrieved Employees to take compliant meal and rest periods to which they are entitled by law, and failing to pay premium compensation for noncompliant meal periods; (3) failed to provide Plaintiff and Aggrieved Employees true and accurate itemized wage statements; and (4) failed to pay Plaintiff and Aggrieved Employees all wages owed upon separation from employment.

Based on these alleged practices, Plaintiff asserts two causes of action in the Complaint: (1) Penalties Pursuant to Cal. Lab. Code § 2699(a); and (2) Penalties Pursuant to Cal. Lab. Code § 2699(f).

Defendant denies any wrongdoing or liability with respect to the allegations in the Complaint. The parties entered into the Settlement based on their assessment of the mutual risks and costs of

[1] Unless otherwise indicated, all undefined capitalized terms used herein have the meanings ascribed to them in the Settlement.

further litigation, and the Settlement does not constitute an admission of liability or wrongdoing as to the merits of Plaintiff's claims.

III. PROCEDURAL HISTORY

After complying with all administrative requirements, Plaintiff filed this representative PAGA action against Defendant on June 26, 2024. (Edelstein Decl., ¶ 8). In this action, Plaintiff alleged two causes of action for PAGA penalties: (1) Penalties Pursuant to Cal. Lab. Code § 2699(a), based on Defendant's alleged violations related to wage statements (§ 226) and waiting time (§§ 201–203, 256); and (2) Penalties Pursuant to Cal. Lab. Code § 2699(f), based on Defendant's alleged misclassification of Aggrieved Employees, resulting in violations of overtime (§ 510) and meal/rest period requirements (§§ 226.7, 512). (Edelstein Decl., ¶ 9).

Subsequently, and pursuant to the parties' arbitration agreements, Plaintiff filed an arbitration demand to arbitrate her individual claims, including her individual PAGA claims. (Edelstein Decl., ¶ 10).

After the filing of the Complaint, the parties attended mediation in an attempt to resolve the representative PAGA claims. (Edelstein Decl., ¶ 11). On January 24, 2025, the parties participated in a private mediation session with experienced wage-and-hour mediator Steve Pearl. (*Id.* 12). Despite good-faith, arm's-length negotiations, the parties did not reach a resolution that day. (*Id.* ¶ 12). Accordingly, Plaintiff proceeded with litigation of the PAGA claims. (*Id.* ¶ 12).

Following mediation, the parties continued to engage in settlement negotiations through mediator Steve Pearl over the following months, exchanging additional information and analysis to narrow their respective positions. (*Id.* ¶ 12-13). These continued negotiations were productive, and the parties ultimately agreed on the material terms of the Settlement. (*Id.* ¶ 13). The parties then spent several weeks negotiating and finalizing the long-form Settlement Agreement, which all parties executed on or about July 20, 2026. (*Id.* ¶ 13).

The parties now seek approval of the Settlement through the instant motion, in accordance with the terms of the Settlement. As set forth below, the Settlement is fair, reasonable, and adequate.

IV. TERMS OF THE SETTLEMENT

A. Monetary Terms

The Settlement provides for a non-reversionary Gross Settlement Amount of $225,000.00. (Settlement, ¶ 1.11, 3.1). From this amount, Plaintiff's counsel seeks attorneys' fees not to exceed $78,750.00 (35% of the Gross Settlement Amount), and actual costs incurred, which are $14,102.73. (Settlement, ¶ 3.3.1; Edelstein Decl., Ex. 4). The Settlement also provides for settlement administration costs to the settlement administrator in the amount of $5,870.00, and a service award of up to $10,000 for Plaintiff for her efforts and risks undertaken on behalf of the Aggrieved Employees. (Settlement, ¶ 3.2; Declaration of Sean Hartranft ("Hartranft Decl.") ¶ 7).

The remainder of the Gross Settlement Amount after these deductions will form the PAGA Payment, which will be paid to the approximately 238 Aggrieved Employees and the Labor and Workforce Development Agency ("LWDA"). Twenty-five percent (25%) of the PAGA Payment will be paid to the Aggrieved Employees. (Settlement, ¶ 3.3.3). The Aggrieved Employee's share of the PAGA Payment shall be paid *pro rata* to all approximately 238 Aggrieved Employees based on the number of Pay Periods in which Aggrieved Employees accepted or completed an order during the Settlement Period according to Defendants' records. (*Id.* ¶ 1.13). Seventy-five percent (75%) of the PAGA Payment will be paid to the LWDA. (*Id.* ¶ 3.3.3).

The Net Settlement Amount to be distributed to the 238 Aggrieved Employees is approximately $29,069.32. The Net Settlement will be calculated as the funds remaining from the Gross Settlement Amount after deductions for attorneys' fees and costs ($78,750.00 and $14,102.73, respectively), settlement administration costs ($5,870.00), Plaintiff's service awards ($10,000.00), and the payment of 75% of the PAGA Payment to the LWDA ($87,207.95).

B. Settlement Administration and Distribution of Funds

The parties have agreed to retain Apex Class Action LLC ("Apex") as the settlement administrator. (*Id.* ¶ 7.1).

Within 15 days after the Effective Date,[2] Defendants will deliver the Aggrieved Employee data to the Administrator in the form of a Microsoft Excel spreadsheet. (Settlement, ¶ 4.2). No later

[2] "Effective Date" means the date on which the Judgment becomes final. (Settlement, ¶ 1.10).

than 14 days after the Effective Date, Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator. (*Id.* ¶ 4.3). Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks to (1) the Individual PAGA Payments; (2) the LWDA PAGA Payments; (3) the Administration Expenses Payment; (4) and the PAGA Counsel Litigation Expenses Payment. (*Id.* ¶ 4.4). Administrator shall pay the Individual PAGA Payments before the PAGA Counsel Litigation Expenses Payment. (*Id*.).

The Administrator will mail via U.S. First Class mail each Individual Settlement Payment to each Aggrieved Employee's last known address. (*Id.* ¶ 4.4.1) If any settlement check is returned as undeliverable, within 7 days of receiving the returned check, the Administrator must re-mail the check to the USPS forwarding address provided or to an address ascertained through an Address Search. (*Id*. at 4.4.2)

Individual Settlement Payments will remain valid and negotiable for 180 calendar days from the date of their issuance. (*Id.* ¶ 4.4.1). If any uncashed checks remain following this period, the uncashed funds will escheat to the State of California Unclaimed Property Fund in the name of the Aggrieved Employee whose check went uncashed. (*Id.* ¶ 4.4.3).

C. Tax Treatment

Apex will issue an IRS Form 1099 to the relevant party in connection with the Aggrieved Employees' Individual Settlement Payments, Plaintiff's Service Awards, Plaintiff's counsel's attorneys' fees and costs award, and the settlement administration costs. (*Id.*, ¶¶ 3.3.1, 3.3.3.2). Plaintiff, the Aggrieved Employees, and Plaintiff's counsel will be solely responsible for the payment of any taxes or penalties assessed on the payments issued to them in accordance with the Settlement. (*Id.* at ¶¶ 3.3.1, 3.3.3.1).

D. Releases

Upon the Effective Date, in exchange for the Individual Settlement Payments to Aggrieved Employees and the PAGA Payment to the LWDA, Plaintiffs, on behalf of the State of California and all Aggrieved Employees, (including Plaintiff) will, for the Settlement Period, be deemed to have fully and finally released and discharged BevMo (the "Released Parties"), from all claims under PAGA that are alleged in this action or that could have been alleged based on the facts alleged in the

consolidated action that arose during the Settlement Period in connection with the Aggrieved Employees' use of Defendants' platform, including but not limited to claims based on alleged violations of Cal. Lab. Code §§ 201–203, 204, 226, 226.2, 226.7, 226.8, 350–356, 510, 512, 1194, 1197, 1198, and/or 2802. (Settlement, ¶ 5.1).

V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND SHOULD BE APPROVED

A. PAGA Settlement Approval Standard

The Labor Code provides that "[t]he superior court shall review and approve any settlement of any civil action pursuant to [PAGA]." Cal. Lab. Code § 2699(l)(2). In seeking approval of a PAGA settlement, the Court's role is 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 v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. The Settlement satisfies this standard.

PAGA's purpose is to provide a mechanism to enforce the Labor Code by enlisting individual plaintiffs as private attorneys general to recover civil penalties for the State, with a share also going to the plaintiffs and other aggrieved employees. Within this framework, Plaintiff, acting as a private attorney general and proxy for the State, filed her action seeking civil penalties for Defendant's alleged violations of the Labor Code. Because the Settlement provides meaningful recovery to the Aggrieved Employees and the State and furthers the above legislative goals, Plaintiff respectfully requests that the Court approve it.

B. The Settlement Enforces PAGA's Purpose

The $225,000 Settlement in this case serves as a warning to Defendant and to employers throughout California that failing to ensure strict compliance with the California Labor Code will lead to expensive repercussions. PAGA is not a restitution statute, and a PAGA action does not seek damages. "A PAGA action is at heart a civil enforcement action filed on behalf of and for the benefit of the state." *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1124. The Court's focus in evaluating a PAGA settlement, therefore, is not the amount aggrieved employees ultimately receive as a result of a settlement, but whether the total settlement achieves PAGA's objectives, even

if it represents only a portion of Defendants' total exposure. *See* Cal. Lab. Code §§ 2699(i)–(j),(l); *Rosario v. Inter-Con Sec. Sys.* (Super. Ct. Alameda Cnty. Jan. 28, 2019) No. RG17849836, 2019 Cal. Super. LEXIS 95638, at *7.

If approved by the Court, the $225,000 Settlement will achieve PAGA's objectives by (1) holding Defendants accountable for their violations of the Labor Code; (2) deterring future violations of the Labor Code by Defendants and other employers; (3) collecting penalties from Defendants and recovering 75% of the penalties on behalf of the State of California for purposes of enforcement and education; and (4) distributing 25% of the penalties to the Aggrieved Employees pursuant to Cal. Lab. Code § 2699(i).

The Settlement will result in a substantial payment to the LWDA of approximately $87,207.95 to use for furthering its mission of protecting workers, as well as reasonable payments to the Aggrieved Employees which do not require them to release their individual claims. The Settlement provides for a Net Settlement Amount of approximately $29,039.32, to be distributed to the Aggrieved Employees. (Edelstein Decl., ¶ 15). This provides an estimated net recovery of $122.14 per Aggrieved Employee, which is within the range of recoveries provided by other PAGA settlements approved by courts in California. *See Patel v. Nike Retail Servs.* (N.D. Cal. May 8, 2019) No. 14-cv-04781-RS, 2019 U.S. Dist. LEXIS 77988 (approving settlement award amounting to an average of approximately $30 per aggrieved employee); *Cebreros v. Richy* (Super. Ct. L.A. Cnty. Jan. 28, 2022) No. 20STCV27218, 2022 Cal. Super. LEXIS 25588, at *4 (approving PAGA allocation amounting to $4.44 per aggrieved employee); *Pasno v. Hibu PNC* (Super. Ct. L.A. Cnty. May 17, 2023) No. 22STCV01361, 2023 Cal. Super. LEXIS 60325, at *5 (approving PAGA allocation amounting to $18.11 per aggrieved employee).

The Gross Settlement Amount of $225,000.00 is approximately 12.5% of Defendants' total estimated exposure of $1,800,000 for penalties for two substantive violations (unpaid overtime, and

meal period violations) and one derivative violation (wage statements) assessed for 100% of pay periods at a rate of $50.00 per pay period.[3] (Edelstein Decl., ¶ 16).

This percentage is within the range of settlements approved by courts in California. *See Haralson v U.S.* Aviation *Servs. Corp.* (N.D. Cal. 2019) 383 F.Supp.3d 959 at 972–74 (citing cases reflecting approval of settlements at 0.2% to 1.1% of verdict value of PAGA penalty); *Merante v. Am. Inst. for Foreign Study, Inc.* (N.D. Cal. Jul. 25, 2022) No. 21-cv-03234-EMC, 2022 U.S. Dist. LEXIS 131833, at *18–19 (approving PAGA allocation amounting to "between .27% and 2% of the maximum PAGA liability"); *Hamilton v. Juul Labs, Inc.* (N.D. Cal. Nov. 16, 2021) No. 20-CV-03710-EMC, 2021 U.S. Dist. LEXIS 221416, at *27 (approving settlement of PAGA claims resulting in 1.3–2.2% of the maximum value); *Perez v. CVS Health Corp.* (E.D. Cal. Jun. 11, 2021) No. 1:19-cv-00449-DAD-BAM, 2021 U.S. Dist. LEXIS 110216, at *18–19 (approving settlement representing 2.5% of the maximum potential recovery).

Considering the Settlement's achievement of PAGA's objectives, the amount provided by the Settlement is fair and reasonable. *See Viceral v. Mistras Group, Inc.* (N.D. Cal. Oct. 11, 2016) 2016 U.S. Dist. LEXIS 140759 at * 9 (approving the settlement of PAGA claims for less than 1% of their maximum value where the settlement taken as a whole vindicated employee rights and had a potentially deterrent effect on the defendant employer); *Roe v. Jose Torres L.D. Latin Club Bar, Inc.* (N.D. Cal. Aug. 27, 2020) No. 2020 U.S. Dist. LEXIS 156837, at *13 (approving settlement in part because it "changed the defendant's business practices" to protect workers).

C. The Settlement is Fair, Reasonable, and Adequate in Light of the Risks and Expense of Continued Litigation

The result achieved by the Settlement is fair and reasonable in light of the risks Plaintiff would face in proving her claims. In general, trials are inherently risky for all parties. Although Plaintiff believe that she could have succeeded in proving her claims, and that Defendants' evidence would not have been as persuasive, a trial on Plaintiff's claims would have carried a particularly high degree

[3] This estimated recovery for two substantive violations and one derivative violation is realistic given doubts regarding whether stacking of penalties is permitted (*see Smith v. Lux Retail N. Am., Inc.* (N.D. Cal. June 13, 2013) No. 13-cv-1579-WHA, 2013 U.S. Dist. LEXIS 83562, at *9) raising doubts "that we would really pile one penalty on another for a single substantive wrong") and courts' broad discretion to reduce PAGA penalties, as discussed further below. (*see infra*, § V.D).

of risk here, as all of Plaintiff's claims—substantive and derivative—hinge on whether she is an exempt or non-exempt employee. (Edelstein Decl., ¶ 17).

In order to prove any liability, Plaintiff would first need to prove that she and the Aggrieved Employees were misclassified as exempt employees. (*Id.* ¶ 18). Defendant has argued that Plaintiff and the Aggrieved Employees are properly classified as exempt store managers under California's executive exemption. Cal. Code Regs. tit. 8, § 11070(1)(A)(1); (*Id.* ¶ 18). Plaintiff would have had to show that Plaintiff and the Aggrieved Employees spent more than 50% of their working time on non-exempt duties, such as stocking shelves, operating registers, assisting customers, and performing the same tasks as hourly, non-exempt retail employees, rather than on managerial functions such as directing the work of two or more employees, hiring and firing, and exercising independent judgment and discretion. (*Id.* ¶ 19). This argument would have required proving that Aggrieved Employee's actual day-to-day duties diverged from Defendant's job descriptions and formal titles, and that any managerial authority they nominally held was not regularly and customarily exercised. (*Id.* ¶ 20). There was no guarantee that Plaintiff would have been successful on these arguments, given the risk that Defendant's evidence of Plaintiff's and the Aggrieved Employees' managerial responsibilities would be credited by the Court. (*Id.* ¶ 20). Failing to show that the executive exemption did not apply to Plaintiff and the Aggrieved Employees would have made it impossible for Plaintiff to pursue her PAGA penalties for this claim. (*Id.* ¶ 20).

In addition, among other arguments, Defendants would have likely argued that no penalties for waiting-time violations should be awarded because their failure to pay was not "willful.". *See* Cal. Lab. Code § 203; 8 Cal. Code Regs. 13520 ("A willful failure to pay wages within the meaning of Labor Code section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages were due."); *Smith v. Rae Venter Law Group* (2002) 29 Cal.4th 345, 354 n.2 (holding that a good faith dispute that any wages are due will preclude an award of waiting time penalties). Defendant may also have argued that an employer's failure to pay wages is not willful unless it reaches the standard of "gross negligence or recklessness." *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. These and other hurdles would have rendered success far from certain.

There is also the risk that, even if Plaintiff prevailed in proving that she and the Aggrieved Employees were misclassified and proving liability as to all of their claims, the Court would award penalties less than the amount of Defendant's total exposure. "A trial court's discretion to reduce PAGA penalties might be a reason to ultimately discount the value of PAGA claims, perhaps even significantly, in reaching a settlement." *Gonzales v. CoreCivic of Tenn., LLC* (E.D. Cal., Sept. 12, 2018) No. 1:16-cv-01891-DAD-JLT, 2018 U.S. Dist. LEXIS 156549, at *26. Given that Defendant's liability hinges on whether Plaintiff and the Aggrieved Employees are classified as employees, and the "uncertainty as to whether stacking is permitted," the Court could have exercised its discretion pursuant to Labor Code section 2699(e)(2) to award an amount less that the maximum civil penalty amount. *See Posephny v. AMN Healthcare Inc.* (N.D. Cal. Jul. 9, 2020) No. 18-cv-06284-KAW, 2020 U.S. Dist. LEXIS 268743, at *10. Indeed, courts exercise broad discretion when discounting PAGA civil penalties.[4]

The Settlement provides a reasonable overall sum given these and other risks faced by Plaintiff in proving her claims. *See Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504. It is well-settled that a proposed settlement is not to be measured against a hypothetical ideal result that might have been achieved. *See, e.g., 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150 (quoting *Linney v. Cellular Alaska P'ship* (9th Cir. 1998) 151 F.3d 1234, 1242 with approval: "This court has aptly held that 'it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators."). A settlement that represents only a fraction of the potential recovery is still reasonable. *See, e.g., In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not *per se* render the settlement inadequate or unfair.") (internal quotation

[4] *See Carrington,* 30 Cal.App.5th at 504 ($75 million in penalties sought, yet court awarded PAGA penalties of only $150,000 based on 30,000 violations and reduced the penalty rate to $5 per violation, equating to a 95% discount of the initial penalty rate of $100 per violation; affirmed on appeal); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112 (requested $512,000, awarded $358,588, reflecting a 25% discount; *Amaral*, 163 Cal.App.4th at 1214 (requested $500,000, awarded $258,900, reflecting a 48% discount).

marks omitted). Given the risks associated with proceeding with litigation, including Plaintiff recovering nothing due to a finding that she is an exempt employee, the Settlement is reasonable.

Further, if the Action were to go to trial, fees and costs would increase significantly. (Edelstein Decl., ¶ 21). The claims and defenses would require substantial additional preparation and discovery. (*Id*. ¶ 21). They would require the consideration, preparation, and presentation of voluminous documentary evidence and the preparation and analysis of expert reports, as well as depositions of percipient and expert witnesses, as well as the presentation of those same witnesses at trial. (*Id*. ¶ 21). In contrast to litigating this suit, resolving this case by means of the Settlement will yield a prompt, certain, and substantial recovery for the Aggrieved Employees and the State. (*Id*. ¶ 21). Such a result will benefit the parties and the court and will bring finality to nearly two years of litigation. (*Id*. ¶ 21).

Accordingly, in light of the risks and expense of continued litigation, the Settlement is fair, reasonable, and adequate.

VI. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE

For their efforts and the substantial risk they undertook in obtaining a common fund settlement to benefit the LWDA and the Aggrieved Employees, the parties allocated up to 35% of the Gross Settlement Amount to Plaintiff's counsel for reasonable attorneys' fees, plus actual litigation costs. These fees and costs are warranted under the law and within the range commonly awarded in similar cases.

PAGA provides that a plaintiff is entitled to recover reasonable attorneys' fees, expenses, and costs. Cal. Lab. Code § 2699(g)(1) provides that "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." In PAGA actions reasonable attorneys' fees and costs are typically awarded under the common fund doctrine where, as here, the litigation creates a common fund of money in a specific amount for the benefit of others.

A. The Court Should Approve Plaintiff's Counsel's Fees and Costs.

1. The Court Should Use the Percentage of the Fund Approach to Awarding Fees

The California Supreme Court in *Iskanian* held that "[a] PAGA representative action is therefore a type of qui tam action." *Iskanian v. CLS Transp. L.A., LLC* (2014) 59 Cal.4th 348, 382. A *qui tam* action allows a private person to sue to recover damages or penalties, all or part of which will be paid to the government. *People ex rel. Strathmann v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 501. A PAGA action is like a *qui tam* action because the statute allows a plaintiff, acting as the proxy of the State's labor law enforcement agency, to sue his employer for Labor Code violations and recover civil penalties that otherwise would have been assessed and collected by the LWDA. *See Iskanian*, *supra*, at 382. Indeed, a majority of the civil penalties recovered in a PAGA action are paid to the State, with a smaller portion paid to the employees. *See* Cal Lab. Code § 2699(i).

Where a common fund is created in a *qui tam* action by the successful litigation of a plaintiff, the plaintiff's attorneys are entitled to recover their fees from the common fund:

> Those benefiting from the recovery of the fund, in this case some depositors and eventually the People of the State of California, must bear their share of the cost of litigation. Fees for taxpayers' attorneys will be deducted from the judgment, and each claimant's share reduced proportionately. To the extent the judgment relies upon section 1021.5 for recovery of attorney fees, it must be modified to confine the award of fees to the common fund theory.

Bank of Am. v. Cory (1985) 164 Cal.App.3d 66, 91 (authorizing common fund fees in a *qui tam* taxpayer suit against certain banks).

Likewise, in this case, through the successful efforts of Plaintiff and her attorneys, a common fund was created in the amount of $225,000.00 for the benefit of the Aggrieved Employees and the State. Thus, these beneficiaries must bear their share of the costs and attorneys' fees, to be deducted from the Settlement Amount under the common fund theory. (*See id*.) Such fees are deducted as a percentage of the settlement amount. *See, e.g., Boeing Co. v. Van Gemert* (1980) 444 U.S. 772, 478–82; *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 967.

The California Supreme Court upheld the use of the common fund theory of recovery for attorneys' fees in *Laffitte v. Robert Half Int'l. Inc.* (2016) 1 Cal.5th 480, 506. In *Laffitte*, the

settlement created a common fund of $19,000,000.00. The Court approved attorneys' fees in the amount of one-third of the gross settlement (*i.e.*, $6,333,333.33) under the common fund theory. *Id.* By awarding counsel a percentage of the total recovery, rather than fees based on hours worked, the common fund method encourages attorneys to efficiently litigate to achieve the best results possible for the class. *See Laffitte*, *supra*, at 492–94. Indeed, the "percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'" *Id.* at 493 (quoting *In re Rite Aid Corp. Sec. Litig.* (3d Cir. 2005) 396 F.3d 294, 300).

2. The requested fee award is fair and reasonable under the relevant factors.

Among the factors considered in determining whether a requested fee percentage is reasonable are: (1) the results achieved; (2) the risk of further litigation; (3) the skill required of counsel and the quality of the work performed; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048–50. For the reasons below, all these factors support an award here of 35% of the common fund.

Here, Plaintiff's counsel's efforts resulted in a Gross Settlement Amount of $225,000.00. This is a fair and reasonable settlement and an especially favorable result in light of the number of Aggrieved Employees and the challenges Plaintiffs may have faced at trial. (Edelstein Decl., ¶ 22). This result was achieved by the work and success of Plaintiff's counsel, who negotiated the Settlement after extensive preparation. (*Id*. ¶ 22).

Second, Plaintiffs faced substantial risks going forward with this litigation, as described above. (*See supra*, § V.D).

Third, Plaintiff's counsel are experienced representative action litigators. (Edelstein Decl., ¶ 5). This experience and expertise, combined with the high quality of work performed in this case by Plaintiff's counsel, resulted in the Settlement. (*Id*. ¶ 22).

Fourth, Plaintiff's counsel have been representing Plaintiff and the State in this matter strictly on a contingency-fee basis. (Edelstein Decl., ¶ 23). Plaintiff's counsel have exposed themselves to

the risk of zero recovery after a substantial investment of time, money, and resources, and have done so since the inception of the case without any payment or compensation. (*Id*. ¶ 23).

Fifth, the request for attorneys' fees in the amount of approximately 35% of the Settlement Amount falls within the range found acceptable by state and federal courts in California in comparable wage-and-hour actions. *See, e.g., Roos v. Honeywell Int'l, Inc.*, (2015) 241 Cal. App. 4th 1472, 1489 (affirming award of 37.5% of the common fund), disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.*, (2018) 4 Cal. 5th 260, 287 ; *Martin v. Ameripride Servs., Inc.*, (S.D. Cal. June 9, 2011) No. 08cv440-MMA (JMA), 2011 U.S. Dist. LEXIS 61796, at *23 ("[C]ourts may award attorneys' fees in the 30–40% range in wage and hour … actions that result in recovery of a common fund under $10 million."); *Gomez v. H & R Gunlund Ranches*, (E.D. Cal. Nov. 22, 2011) No. CV F 10-1163 LJO MJS, 2011 U.S. Dist. LEXIS 135424, at *6, 14–16 (awarding 45% of the common fund); *Van Vranken v. Atlantic Richfield Co.*, (N.D. Cal. 1995) 901 F. Supp. 294, 297–98("Class Counsel have also cited 73 district court opinions in which fees in the range of 30–50 percent of the common fund were awarded."); *Pena v. Taylor Farms Pac., Inc.*, (E.D. Cal. Mar. 10, 2021)No. 2:13-cv-01282-KJM-AC, 2021 U.S. Dist. LEXIS 45326, at *13 (awarding fees equaling 35% of the common fund).

A 35% common fund attorneys' fee award is consistent with superior court awards in PAGA-only settlements. *See, e.g., Vorise v. 24 Hour Fitness USA, Inc.*, Contra Costa County Superior Court, Case No. C15-02051, January 4, 2019 Order (approving 33.33% fee award in a $11,000,000.00 settlement of PAGA-only claims); *Gonzales v. Healthcare Servs. Grp., Inc. et al.*, Case No. CGC-18-570988, San Francisco County Superior Court, Cheng, J., Order dated Mar. 21, 2022, ¶ 9 (approving one-third fee award); (*Garcia v. Macy's West Stores, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1516007, September 13, 2017 Order (approving 33.33% fee award in $12,500,000.00 settlement of PAGA-only claims); *Garcia v. Pep Boys Manny Moe & Jack* (Super Ct. Orange Cnty. Jul. 14, 2016) No. 30-2014-00720574-CU-0E-CJC, 2016 Cal. (approving 33.33% fee award in a $1,030,000.00 settlement of PAGA-only claims); *Brewer v. Connell Chevrolet* (Super. Ct. Orange Cnty. Jun. 15, 2017) No. 30-2016-00852123-CU-OC-CXC, 2017 Cal. Super. LEXIS 15031 (approving 33.33% fee award in a PAGA-only settlement).

For the above reasons, the requested fee award is fair and reasonable.

3. The Reasonableness of the Requested Fees are Confirmed By a Lodestar Crosscheck

A cross-check of Plaintiff's counsel's lodestar confirms that the requested fee award is a reasonable and fair payment. The Court may use an abbreviated lodestar cross-check for common fund awards if the Court considers it useful. *Laffitte*, 1 Cal.5th at 504–05. However, under *Laffitte*, this is not meant to displace the percentage analysis, but rather to act as a backstop. Indeed, the Supreme Court expressly instructed that "the lodestar calculation, when used in this manner, does not override the trial court's primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the fee award." *Id.* at 505. Critically, the Court in *Laffitte* emphasized that only where the "multiplier calculated by means of a lodestar cross-check is extraordinarily high or low" should the court "consider whether the percentage should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id.* Furthermore, in conducting a lodestar cross-check, courts are not "required to closely scrutinize each claimed attorney-hour." *Id.* An evaluation may be done by reviewing "counsel declarations summarizing overall time spent." *Id.*

The lodestar for Plaintiff's counsel in this consolidated action is approximately 214.1 hours, corresponding to $155,186.00 in fees. (Edelstein Decl., ¶ 24). The attorneys' fees requested represent approximately 50% of the lodestar, resulting in a negative multiplier. (*Id.*). Plaintiff's counsel has agreed to accept this compromise and reduction in an effort to resolve the case and obtain a fair settlement for Plaintiff, the Aggrieved Employees, and the State. (*Id.* ¶ 25).

B. The Requested Litigation Costs are Fair and Reasonable

Plaintiff's counsel also seeks to recover their expenses incurred in the prosecution of this Action, in the amount of $14,102.73. (*Id.* ¶ 26). Reasonable litigation expenses are specifically recoverable under the PAGA and are ordinarily included with an award of attorneys' fees pursuant to California wage-and-hour law. Cal. Lab. Code § 2699(g)(1); *see also, Serrano v. Priest* (1977) 20 Cal.3d 25, 35; *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424. Here, Plaintiff's counsel's expenses were reasonable, necessary to the prosecution, and of the type customarily billed

to fee-paying clients. (Edelstein Decl., ¶ 26). Accordingly, the requested attorneys' fees and costs are reasonable compensation for the significant recovery achieved and should be approved.

VII. THE REQUESTED SERVICE AWARD IS REASONABLE

Service awards "are intended to representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393–94.

Here, Plaintiff has substantially contributed her time and efforts over a period of nearly two years in pursuing claims on behalf of the Aggrieved Employees and the State, and Plaintiff's role was crucial in this case. (Edelstein Decl., ¶ 27). Plaintiff had discussions with Plaintiff's counsel, worked with Plaintiff's counsel to review facts and answer questions, assisted Plaintiff's counsel in their mediation efforts, and have generally remained apprised of the case. (*Id.* ¶ 27; Argo Decl., ¶ 4, 11).

Furthermore, Plaintiff took the significant risk of coming forward to represent the interests of her fellow employees. (Edelstein Decl., ¶ 28). Plaintiff's request for service award in the amount of $10,000.00 is reasonable considering the efforts she made and the risks she took and are well within the range of service awards approved by other courts. *See, e.g., Amaraut v. Sprint/United Mgmt. Co.* (S.D. Cal. Aug. 5, 2021) No. 19-cv-411-WQH-AHG, 2021 U.S. Dist. LEXIS 147176, at *16–22 (approving $15,000 and $10,000 service awards); *Villalpando v. Exel Direct, Inc.* (N.D. Cal. Dec. 9, 2016) No. 3:12-cv-04137-JCS, 2016 WL 7785852, at *2 (approving $15,000 service awards to each of three class representatives); *Schneider v. Catholic Healthcare W.* (Super. Ct. S.F. Cnty. Jan. 13, 2017) No. CGC-10-506243, 2017 Cal. Super. LEXIS 2077, at *2 (approving $15,000 service awards to two plaintiffs); *Sanchez v. RK Logistics Group* (Super. Ct. Alameda Cnty. Feb. 25, 2020) No. RG16826234, 2020 Cal. Super. LEXIS 49330, at *8 (approving "the service award of $10,000 [a]s reasonable); *Ducote v. HSS, Inc.*, Alameda County Superior Court, Case No. HG19036564, February 13, 2024 Order (approving $10,000 service award).

Accordingly, in light of these comparable awards and the efforts and risk undertaken by Plaintiff, the Court should approve the requested service award.

VIII. CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court grant this motion and enter an order consistent with the proposed order submitted herewith.

Dated: November 2, 2026

Respectfully submitted,

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