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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF PLACER

EDUARDO JUAREZ, an individual, and on
behalf of the State of California, as a private
attorney general,

PLAINTIFF,

v.

WRIGHT CELEBRATIONS, INC., a
California Corporation, and DOES 1 thru 50,
inclusive,

DEFENDANTS.

Case No.: S-CV-0053190

[Assigned to the Hon. Michael W. Jones, Dept.
3]

**NOTICE OF MOTION AND MOTION
FOR APPROVAL OF
REPRESENTATIVE PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: June 5, 2025

Time: 8:30 a.m.

Dept.: 3

Complaint Filed: July 11, 2024

Trial Date: None Set

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on June 5, 2025 at 8:30 a.m. in Department 3 of the above-
3 entitled court, located at 101 Maple Street, Auburn, CA 95603, Plaintiff Eduardo Juarez will and
4 hereby does move the Court to approve the Parties' Proposed PAGA Settlement, enter an order
5 granting approval of the Settlement, and entering Judgment in favor of Plaintiff and the state of
6 California.

7 The Motion will be made on the grounds that the proposed PAGA Settlement is fair, adequate,
8 reasonable, and in the best interest of the State of California and aggrieved employees. The Motion
9 will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the
10 Declaration of David S. Winston, the Declaration of Eduardo Juarez, the Parties' Settlement
11 Agreement, and all other papers and records on file in this action, and on such oral and documentary
12 evidence as may be presented at the hearing on this Motion. Plaintiff seeks attorneys' fees of up to
13 \$50,000.00, case costs of up to \$20,000, a service award for Plaintiff of up to \$7,500, and settlement
14 administration costs of up to \$8,000.00.

15 Pursuant to Local Rule 20.2.3, the court will issue a tentative ruling for this matter on the
16 court day before the hearing. The tentative ruling will be available after 12:00 noon on the court's
17 website, www.placer.courts.ca.gov. The tentative ruling shall become the final ruling on the matter
18 and no hearing will be held unless oral argument is timely requested or the tentative ruling indicates
19 otherwise. Requests for oral argument must be made by calling (916) 408-6481 no later than 4:00
20 p.m. on the court day prior to the hearing.

21 DATED: April 9, 2025

WINSTON LAW GROUP, P.C.

23 By: David Winston
24 DAVID S. WINSTON
25 Attorney for Plaintiff Eduardo Juarez and the
26 aggrieved employees
27
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Eduardo Juarez submits this Memorandum of Points and Authorities in support of
4 this Motion for Approval of PAGA Settlement reached between Plaintiff and Defendant Wright
5 Celebrations, Inc. (collectively “Defendant” or “Celebrations”). This PAGA case predates the July 1,
6 2024 PAGA Reform and therefore falls under the prior PAGA statutory scheme. Under that statutory
7 scheme pursuant to Labor Code § 2699(1)(2), the superior court is required to “review and approve
8 any settlement of any civil action filed pursuant to [PAGA].”¹ Now Labor Code § 2699(v)(2) provides
9 “[t]he amendments made to this section by the act adding this subdivision shall not apply to a civil
10 action with respect to which the notice required by subparagraph (A) of paragraph (1) of subdivision
11 (a), paragraph (1) of subdivision (b), or subparagraph (A) of paragraph (1) of subdivision (c) of
12 Section 2699.3 was filed before June 19, 2024.” Lab. Code § 2699. Since the PAGA notice in this
13 Action was filed on May 6, 2024, this Action falls within the pre-amendment PAGA statutory scheme
14 including the prior 75%/25% split of PAGA penalties.

15 The Proposed Settlement, represents a good result for the State of California and provides for
16 a gross penalty of \$857.14 per employee affected by the alleged unlawful conduct (\$150,000 gross
17 settlement amount / 175 aggrieved employees), a gross monetary per pay period penalty of
18 approximately \$42.54 per pay period (\$150,000 gross settlement amount / 3,526 estimated PAGA
19 pay periods), and an estimated net monetary per pay period penalty of approximately \$21.50
20 (\$75,807.08 net settlement amount / 3,526 estimated PAGA pay periods). Declaration of David
21 Winston In Support of PAGA Settlement, ¶ 20 (hereafter the “Winston Decl.”).

22 By this Motion, Plaintiff requests that the Court:

23 (1) Grant approval of the PAGA Settlement and Release Agreement signed by the Parties (the
24 “Settlement Agreement”). A true and correct copy of the Settlement Agreement is attached to
25 the Winston Decl., as Exhibit 2;

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27
28 ¹ Under the new PAGA statutory scheme, the Superior Court is still required to review and approve all PAGA settlements; however, the subdivision is now listed at Labor Code § 2699(s)(2).

1 (2) Appoint ILYM as the Settlement Administrator;

2 (3) Award PAGA Representative Eduardo Juarez a Service Award in the amount of
3 \$7,500.00; and

4 (4) Approve PAGA Counsel's Attorneys' Fees and Costs Request.

5 Plaintiff believes that the proposed settlement of this action is fair, reasonable, adequate, and
6 in the best interests of the state of California and the aggrieved employees given the issues in this
7 action. Accordingly, Plaintiff respectfully requests that the Court grant approval of the Parties'
8 Proposed PAGA Settlement. The Proposed Settlement was provided to the LWDA as required by
9 PAGA. Winston Decl., ¶ 15, Exh. 3.

10 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

11 On May 6, 2024, Plaintiff filed a PAGA Notice with the LWDA alleging that Defendant
12 violated Labor Code §§ 200, 201, 202, 203, 204, 206.5, 210, 226, 226.3, 226.7, 246-248, 256, 510,
13 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5. Winston Decl., ¶ 8,
14 Exh. 1. After exhausting his administrative remedies under PAGA, Plaintiff filed his individual and
15 PAGA Complaint on July 11, 2024 in Placer County Superior Court. *Id.* at ¶ 9. Shortly thereafter,
16 the Parties began discussing the possibility of Mediation and Plaintiff propounded written discovery
17 on August 21, 2024. *Id.* at ¶ 10. Prior to Defendant's discovery response deadline, the Parties agreed
18 to mediate this action, scheduled the Mediation, and continued the deadline for Defendant to provide
19 discovery responses until after the Mediation. *Id.*

20 As part of the Mediation process, Defendant provided Plaintiff with information about the
21 number of allegedly aggrieved employees (175), the number of pay periods at issue during the
22 PAGA period (3,526), time and pay records for 35 aggrieved employees, and relevant policy
23 documents. Winston Decl., ¶ 11. Plaintiff hired a third-party damages expert to analyze the time and
24 pay records produced by Defendant in advance of the Mediation in order to ascertain the violation
25 rates and the value of the claims. *Id.* at ¶ 12.

26 The Parties mediated this matter with respected mediator Jeff Owensby, Esq. on January 14,
27 2025. Winston Decl., ¶ 13. At the Mediation, Mr. Owensby helped to manage the Parties'

1 expectations and provided a useful, neutral analysis of the issues and risks to both sides. *Id.* With
2 significant assistance from the Mediator, the Parties agreed to the proposed non-reversionary,
3 checks-mailed PAGA Settlement. *Id.* at ¶ 13, Exh. 2.

4 Plaintiff also negotiated a separate settlement of his individual claims currently pending
5 before the Court that exist separate and apart from PAGA claims and that is being disclosed in the
6 interest of transparency. *Kim v. Reins Int'l Cal., Inc.*, 9 Cal. 5th 73, 80 (2020) (the “[s]ettlement of
7 individual claims does not strip an aggrieved employee of standing, as the state’s authorized
8 representative, to pursue PAGA remedies” nor resolve the PAGA claims). Plaintiff’s Counsel is not
9 receiving any attorneys’ fees or cost reimbursement associated with Plaintiff’s \$10,000 individual
10 settlement. *Juarez Decl.*, ¶ 2, Exh. 1; *Winston Decl.*, ¶¶ 13-14, Exh. 2 at IV(34).

11 **III. THE NATURE OF A PAGA ACTION**

12 The Private Attorney General Act (“PAGA”) (Labor Code section 2698, *et seq.*) creates a
13 means of “deputizing” citizens as private attorney generals to enforce the Labor Code on behalf of
14 the state of California. *Brown v. Ralphs Grocery Co.*, 197 Cal. App. 4th 489, 501 (2011). Through
15 PAGA, an aggrieved employee can recover civil penalties for violations of the Labor Code committed
16 against the aggrieved employee on behalf of the State of California. Lab. Code § 2699 (a) and (f).
17 Thus, in bringing a PAGA action, the aggrieved employee acts as the proxy or agent of the state labor
18 law enforcement agencies, representing the same rights and interest of the state of California who
19 remains the real party in interest. *Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty.*, 234
20 Cal. App. 4th 1109, 1119 (2015) (holding “the government is always the real party in interest” in a
21 PAGA action.).

22 Since in a PAGA action the state serves as the real party in interest, any judgment in a PAGA
23 action binds only the state of California and does not alter the rights of any of the allegedly aggrieved
24 employees except with respect to civil penalties that could be recovered by the state of California on
25 behalf of the aggrieved employees. *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*,
26 46 Cal. 4th 993, 1003 (2009); (holding that “[PAGA] does not create property rights or any other
27 substantive rights.”); *Medina v. Vander Poel*, 523 B.R. 820, 825 (E.D. Cal. 2015) (holding “PAGA
28

1 plaintiffs do not have property rights in their cases.”).

2 Moreover, as the Ninth Circuit, the California Supreme Court, and Appellate Courts have
3 recognized, “a PAGA suit is fundamentally different than a class action.” *Baumann v. Chase Inv.*
4 *Servs. Corp.*, 747 F.3d 1117, 1122 (9th Cir. 2014); *Kim v. Reins International California, Inc.*, 9 Cal.
5 5th 73, 81 (2020) (“A PAGA claim is legally and conceptually different from an employee's own suit
6 for damages and statutory”). Unlike in a class action, “PAGA does not make other potentially
7 aggrieved employees parties or clients of plaintiff's counsel, does not impose on a plaintiff or counsel
8 any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect
9 to the ability to represent a large class.” *Williams vs. Sup. Ct.*, 3 Cal. 5th 531, 546-547 (2017). PAGA
10 also “has no notice requirements for unnamed aggrieved employees, nor may such employees opt out
11 of a PAGA action.” *Baumann*, 747 F.3d at 1122.

12 **IV. THE PROPOSED SETTLEMENT**

13 The Proposed Settlement only covers the State’s claims for Labor Code violations committed
14 against a group of aggrieved employees also referred to as PAGA Members defined as “all non-
15 exempt employees who were employed by Wright Celebrations, Inc. in California as an employee at
16 any point from May 6, 2023 through January 14, 2025.” Winston Decl., ¶ 13, Exh. 2 at § II(1). As of
17 January 14, 2025 there were approximately 175 aggrieved employees who worked 3,526 pay periods.
18 Winston Decl., ¶¶ 11 and 13, Exh. 2 at § I(4). Notably, as discussed above, none of the workers are
19 waiving any of their own individual rights to pursue claims against Defendant, as only the State’s
20 claims for civil penalties were ever at issue in this action, with the exception of Plaintiff, who has
21 signed an individual settlement agreement for his own individual claims. *See Amalgamated Transit*,
22 46 Cal. 4th at 1003; *Kim*, 9 Cal. 5th at 81.

23 The Proposed PAGA Settlement provides for Defendant to pay a non-reversionary Gross
24 Settlement Amount of \$150,000.00 subject to the following proposed allocation and/or in the lower
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amounts requested as part of this approval motion:²

Gross Settlement Amount:	\$150,000.00
Attorneys' Fees: (1/3)	up to \$50,000.00
Case Costs:	\$11,942.92
Settlement Administration Costs:	\$4,750.00
Service Award for Plaintiff Juarez:	up to \$7,500.00

Estimated Net PAGA Penalties:	\$75,807.08
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Winston Decl., ¶¶ 13 and 16, Exh. 2 at § III(28).

The Net PAGA Payment is the amount to be distributed to the LWDA and the aggrieved employees and consists of the Gross Settlement Amount minus Court Approved PAGA Counsel's attorneys' fees and litigation costs, the settlement administrator costs charged by third-party settlement administrator ILYM Group, and Plaintiff Juarez's proposed service award. Winston Decl., ¶¶ 13 and 17, Exh. 2 at § III(28-29). The Net PAGA Payment Amount will be allocated pursuant to the version of Labor Code section 2699(i) that applies to this pre-PAGA reform action with 75% paid to the LWDA (\$56,855.31) and 25% paid to the aggrieved employees on a pro-rata basis (\$18,951.77). *Id.* at ¶ 17.³

The portion of PAGA penalties distributed to each PAGA Aggrieved Employee shall be calculated by dividing the number of PAGA periods worked by an aggrieved employee during the covered period by the total number of pay periods worked by all aggrieved employees during the covered period (3,526) and multiplying that amount by the 25% of the net PAGA penalties awarded to the aggrieved employees (*i.e.* \$18,951.77). Winston Decl., ¶¶ 13 and 18, Exh. 2 at § III(28-29).

² The proposed Settlement permits PAGA Counsel to request case costs of up to \$20,000 and settlement administration costs of up to \$8,000, but while the notice of motion and settlement agreement provide for a cost request of up to \$20,000 in case additional costs are incurred during the approval process. However, Plaintiff's Counsel is only seeking costs incurred and/or expected to be incurred during the approval process which results in an additional \$8,057.08 being available to the State and aggrieved employees. In addition, the settlement administration costs are also less than originally anticipated resulting in an additional \$3,250.00 available in the Net PAGA Penalty fund that will be distributed to the state and the aggrieved employees.

³ The allocation of PAGA penalties is governed by former Labor Code § 2699(i)'s allocation of 75% of the PAGA penalties to the LWDA and 25% to all of the aggrieved employees. The amended post-PAGA reform amended version of PAGA provides for a different allocation that is not applicable to this case.

Based on the data provided by Defendant, the Proposed Settlement itself represents a gross PAGA penalty award of approximately \$42.54 per pay period (\$150,000.00/3,526 pay periods) and a net PAGA penalty award of approximately \$21.50 per pay period (\$75,807.08/3,526 pay periods). Winston Decl., ¶ 19. In addition, the average estimated gross settlement award per aggrieved employee is \$857.14 (\$150,000 gross settlement amount/175 aggrieved employees), the average estimated net settlement award when taking into account the proposed attorneys' fees, case expenses, Plaintiff's proposed service award, and PAGA's 75%/25% split between the state and aggrieved employees is approximately \$108.30 (\$18,951.77 Net PAGA Penalties for the aggrieved employees/175 aggrieved employees), the minimum estimated net settlement award is approximately \$5.37 ((1 pay period worked during the PAGA period/3,526 PAGA pay periods) x \$18,951.77 (the aggrieved employees' 25% share of PAGA penalties)), and the maximum estimated net settlement award is approximately \$220.37 ((41 pay periods⁴ worked during the PAGA period/3,526 PAGA pay periods) x \$18,951.77 (the aggrieved employees' 25% share of PAGA penalties)). *Id.* at ¶ 20. The proposed method of allocation, which reflects the amount of time an aggrieved employee worked during the PAGA Period relative to the other employees, is fair and reasonable. *Id.* at ¶ 21.

The Parties have also agreed to use a reputable third-party claims administrator ILYM Group, Inc. to administer the Settlement. Winston Decl., ¶ 13, Exh. 2 at §§ II(11), III(28), and IV(43).

V. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT

Although a party need not bring a motion for approval of a PAGA settlement, nor must the Court conduct a hearing on the fairness of a PAGA settlement, a court must nevertheless review and approve the PAGA settlement. Lab. Code § 2699 (1)(2).

A. The Standard the Court Should Consider When Reviewing the Settlement

The California Court of Appeal established the standard applicable to review of a PAGA settlement in *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 77 (2021). In *Adecco*, the Court of Appeal held that when reviewing a PAGA Settlement, the "court should evaluate a PAGA settlement

⁴ This is the maximum number of semi-monthly pay periods that an aggrieved employee could have worked for Defendant during the PAGA Period. Between January 23, 2023 through December 16, 2024, there were approximately 20 months and 8 days, which equates to 41 pay periods during the PAGA period.

1 to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate
2 present labor law violations.” *Id.* The Court explained that while unlike in a class case “PAGA does
3 not require the trial court to act as a fiduciary for aggrieved employees” the following “factors can be
4 useful in evaluating the fairness of a settlement”: “the strength of the plaintiff’s case, the risk, the
5 stage of the proceedings, and likely duration of further litigation, and the settlement amount.” *Id.*
6 Further, the Court should also consider “whether a settlement is fair in view of PAGA’s purpose and
7 policies.” *Id.* The proposed Settlement provides genuine and meaningful relief for the State of
8 California and aggrieved employees.

9 **B. The Strength and Risks Associated with Plaintiff’s Case**

10 **1. The Experience and Views of Counsel and Mediator’s Involvement**
11 **Support Approval of the Parties Agreement**

12 Although not technically a factor in a PAGA action, PAGA Counsel is experienced in wage-
13 and-hour class actions and has worked on numerous class and representative PAGA wage and hour
14 cases. Winston Decl., ¶¶ 3-6.⁵

15 Plaintiff and PAGA Counsel, operating at arm’s length and with the assistance of the mediator
16 Jeff Owensby, weighed the strengths and risks of this case, and unanimously share the view that this
17 is a fair and reasonable settlement in light of the nature of the claims, the complexities of the case,
18 the state of the law, and the uncertainties of litigation. Winston Decl., ¶ 22. PAGA Counsel’s
19 knowledge and experience as well as a mediator’s participation in the settlement negotiation weighs
20 considerably against any inference of collusion.⁶ Further, after factoring in the risks explained below,
21 PAGA Counsel believes that the proposed Settlement is fair and reasonable and should be approved.
22 Winston Decl., ¶ 22.

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24
25 ⁵ *Williams*, 3 Cal.5th at 546-547 (2017) (“PAGA does not make other potentially aggrieved employees parties or clients
of plaintiff’s counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a
plaintiff or counsel to scrutiny with respect to the ability to represent a large class.”).

26 ⁶ *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS, 108195 (N.D. Cal. Nov.
27 5, 2008) (mediator’s participation weighs considerably against any inference of a collusive settlement); *In re Amtel Corp.*
28 *Derivative Litig.*, No. C 06-4592 JF (HRL), 2010 U.S. Dist. LEXIS 145551 (N.D. Cal. June 25, 2008) (same); *D’Amato v.*
Deutsche Bank, 236 F.3d 78, 85 (2nd Cir. 2001) (a “mediator’s involvement in pre-certification settlement negotiations
helps to ensure that the proceedings were free of collusion and undue pressure.”).

1 2. **The Strengths and Risks Associated with Plaintiff's Minimum Wage**
2 **Related PAGA Claims**

3 Labor Code § 1197 states the California requirement that employees must be paid at least the
4 minimum wage fixed by the Commission or by any applicable state or local law, and any payment of
5 less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee
6 receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the
7 full amount of this minimum wage.” IWC Wage Order Nos. 4-2001 and 7-2001 obligate employers
8 to pay each employee minimum wages for all hours worked. California’s minimum wage standards
9 apply to each hour employees worked for which they were not paid. Therefore, an employer’s failure
10 to pay for any particular hour of time worked by an employee is unlawful, even if averaging an
11 employee’s total pay over all hours worked, paid or not, results in an average hourly wage above
12 minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005). Further, California law
13 does “not allow employers to require employees to routinely work for minutes off the clock without
14 compensation” regardless of the amount of compensation they receive while on-the-clock. *Troester*
15 *v. Starbucks Corp.*, 5 Cal. 5th 829, 833-834 (2018).

16 Plaintiff alleged that Defendant failed to pay him and the other aggrieved employees for all
17 hours worked, rounded employees’ time entries, and adopted an automatic deduction policy and
18 practice whereby it automatically deducted thirty (30) minutes’ worth of aggrieved employees’ pay
19 regardless of whether or not the employee took a meal period and/or the full amount of their meal
20 period. Winston Decl., ¶ 23. Based upon the unique facts of this case, significant risk existed that the
21 Court might find that the claims were not manageable at trial and Defendant could have potentially
22 prevailed on this claim. *Id.*

23 3. **The Strengths and Risks Associated with Plaintiff's Overtime Wage**
24 **Related PAGA Claims**

25 Labor Code § 510 requires an employer to compensate an employee who works more than
26 eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
27 worked on the seventh consecutive day no less than one and one-half times the regular rate of pay
28 for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no
less than twice the regular rate of pay when an employee works more than twelve (12) hours in a

1 day or more than eight (8) hours on the seventh consecutive day of work.

2 As with the minimum wage claims, Plaintiff alleged that some of the hours that Defendant
3 failed to pay him and the other aggrieved employees for all hours worked due to Defendant's
4 rounding and auto-deduction policies qualified as overtime hours. Winston Decl., ¶ 24. As
5 previously explained, based upon the unique facts of this case, significant risk existed that the Court
6 might find that the claims were not manageable at trial and Defendant could have potentially
7 prevailed on this claim. Winston Decl., ¶ 24.

8 In addition to the off-the-clock and rounding claims, Plaintiff also alleged that Defendant
9 improperly omitted pay under the pay codes "PLA," "X," and/or "PDLCHAWD" when calculating
10 and paying overtime wages. Winston Decl., ¶ 25. As part of the informal discovery process,
11 Defendant produced a pay code summary detailing nearly 100 different pay codes used by Defendant
12 during the PAGA period. *Id.* According to the informal discovery provided by Defendants, these
13 pay codes actually corresponded to a paid lunch award and another of several pay codes used for
14 meal period premiums. *Id.* Given the number of pay codes used by Defendant during the PAGA pay
15 period, the use of multiple different pay codes for similar compensation, duplicative codes such as
16 the use of 3 different codes for premiums under Labor Code section 226.7, and the lack of normal
17 wording, Plaintiff's confusion over the pay codes was understandable. *Id.* In light of these issues, it
18 was likely that Defendant would prevail on the regular rate related overtime claims since the specific
19 pay codes used by Defendant identified by Plaintiff did not involve incentive pay, non-discretionary
20 bonuses, or other forms of compensation that would have needed to be included when calculating
21 and paying overtime. *Id.*

22 Nevertheless, Plaintiff's damage expert's analysis of the pay records produced by Defendant
23 revealed that occasionally the amount of overtime that Defendant actually paid to the aggrieved
24 employees did not match the actual hourly rates stated on the wage statements. Winston Decl., ¶ 26.
25 Plaintiff's damage expert performed an extrapolation using the sample pay records and determined
26 that this likely occurred on approximately 95 pay periods. Winston Decl., ¶ 26. As such, while
27 Plaintiff was likely to prevail on the regular rate related overtime PAGA claims, the maximum value
28

of the claim without taking into account the discretionary nature of PAGA penalties was only \$9,500.00 (95 pay periods where Defendant underpaid aggrieved employees' overtimes wages x \$100.00 potential PAGA penalty). Winston Decl., ¶ 26.

4. The Strengths and Risks Associated with Plaintiff's Meal Period Related PAGA Claims

Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Similarly, IWC Wage Order Nos. 4-2001, 7-2001, and other applicable wage orders prohibit an employer from "employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes." IWC Wage Order Nos. 4-2001, 7-2001, and other applicable wage orders further obligate employers to "pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided."

Plaintiff alleged that Defendant failed to provide timely first meal periods and failed to authorize employees who worked shifts in excess of ten (10) hours to take second meal periods. Winston Decl., ¶ 27. Plaintiff's data expert determined that Defendant's time records indicated that employees did not receive a first meal period on 3.9% of shifts, received a late meal period on 6.7% of shifts, and did not receive a second meal period on 87.7% of shifts where the aggrieved employees worked more than ten (10) hours. *Id.* at ¶ 28. Although not every aggrieved employee worked a shift in excess of ten (10) hours in every pay period, Plaintiff's data expert determined that the aggrieved employees experienced a meal period violation during approximately 82.4% of pay periods during the PAGA period. *Id.* at ¶ 29.

However, some risk still existed that the Court might decline to award a significant amount of PAGA penalties for several reasons which have been vigorously set forth by Defense Counsel during the course of this case. Winston Decl., ¶ 30. First, some evidence existed that Defendant attempted to comply with California's meal period laws and to report whether or not they received a lawful meal period at the end of every shift. *Id.* Defendant engaged a large, well-known payroll

1 company to assist with its time keeping and payroll practices. *Id.* Defendant’s ADP time clock system
2 required employees when entering their last time punch of the day to agree or disagree with the
3 statement: “I agree that I have reported all hours worked and have taken an uninterrupted meal period.
4 Note: If you need to report additional hours worked or a missed meal, contact your supervisor to
5 make necessary changes.” *Id.* At least some risk existed that the Court might find Defendant’s
6 reliance upon ADP to comply with California’s timekeeping and meal period laws as a reasonable
7 and good faith effort to comply. *Id.* Moreover, unlike many other employers, Defendant at least made
8 a daily inquiry to each employee regarding whether or not they received a meal period. *Id.*
9 Nevertheless, the Court could also conceivably decline to ascribe much value to Defendant’s policies
10 and practices because, as in *Donohue v. AMN Servs., LLC*, 11 Cal. 5th 58, 74 (2021), Defendant’s
11 timecard attestation did not ask if employees had a late first meal period, received a second meal
12 period, received a short meal period, or if the time entries associated with their meal periods were
13 rounded. Winston Decl., ¶ 30. Instead, the timecard attestation only asked the aggrieved employees
14 if their meal period was missed or interrupted. *Id.*

15 Secondly, Defendant also had meal waivers in place during portions of the PAGA period
16 which would have allowed employees to skip their first meal period if working less than six hours
17 and skip their second meal period when working less than twelve hours. Winston Decl., ¶ 31. As a
18 result, the actual violation rate may have been lower when accounting for such waivers. *Id.*

19 Thirdly, Defendant also likely would have argued that the Court should exercise significant
20 discretion when assessing PAGA penalties because it frequently paid meal period premiums to the
21 aggrieved employees when they did not receive a timely first meal period or missed their first meal
22 period. Winston Decl., ¶ 32. While an employer must pay a meal period premium when its employees
23 do not receive a proper meal period, that does not absolve the employer of liability under the pre-
24 PAGA reform statutory scheme. *Kim v. Reins International California, Inc.*, 9 Cal.5th 73, 84 (2020)
25 (“employers can pay an additional hour of wages as a remedy for failing to provide meal and rest
26 breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse
27 a section 226.7 violation.’” and the employer remains liable under PAGA for failing to provide lawful
28

meal periods) (*quoting Kirby v. Immoos Fire Protection, Inc.*, 53 Cal.4th 1244, 1256 (2012)). As such, Plaintiff was confident that he would prevail on this claim, but it was also likely that the Court would exercise at least some discretion when assessing PAGA penalties. Winston Decl., ¶ 32.

5. **The Strengths and Risks Associated with Plaintiff's Rest Period Related PAGA Claims**

Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”. Under IWC Wage Order Nos. 4-2001 and 7-2001, an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked. *See Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269 (2016) (concluding that “during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time.”). In *Augustus*, the court expressly rejected the employer’s assertion that it could provide an on-duty rest period to employees and further explained “that employers [must] relinquish any control over how employees spend their break time, and relieve their employees of all duties.” *Id.* at 273.

Plaintiff alleged that Defendant failed to provide him and the other aggrieved employees with any rest periods until 2024 and also maintained an unlawful policy articulated verbally that employees were not allowed to leave the premises during rest periods in violation of IWC Wage Orders Nos. 4-2001 and 7-2001 and Labor Code § 226.7. Winston Decl., ¶ 33; *Augustus*, 2 Cal. 5th at 269 (concluding that “during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time.”). As part of the informal discovery process, Defendant produced a Rest Breaks/M Meal Periods policy dated March 2023—which predates the PAGA period—that states with respect to rest periods:

Rest Breaks/M Meal Periods:

Employees are authorized and permitted one (1) uninterrupted, off- duty ten (10) minute break for each four (4) hours of work, or major fraction thereof. Employees working less than three and one-half (3 ½) hours are not entitled to a rest period. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages. Breaks are informal and may be taken at the Employee’s convenience, as long as their work and business needs will not be disrupted. To the extent possible, Employees should try and take their breaks near the middle of each work period.

Given that Defendant possessed a facially compliant rest period policy—even though it did not

1 address whether or not employees could leave the premises during their rest periods—and
2 California law does not require employers to maintain records of rest periods, significant risk
3 existed that Defendant would prevail on this claim.

4 **6. The Strength of and Risks Associated with Plaintiff’s PAGA Claim for**
5 **the Failure to Maintain Accurate Time Records**

6 Labor Code § 1174 provides that each employer shall keep “payroll records showing the hours
7 worked daily by and the wages paid to...employees employed at...establishments.” An employer
8 who fails to maintain the records proscribed by Labor Code § 1174 is subject to a civil penalty of five
9 hundred (\$500) dollars under Labor Code § 1174.5.

10 Plaintiff alleged that Defendant failed to maintain accurate records of the total hours worked
11 by employees, including but not limited to off-the-clock work and rounded time entries. Winston
12 Decl., ¶ 35. Although Plaintiff was confident that he would prevail on this claim, considerable risk
13 existed that the Court might not award a significant amount of PAGA penalties because of the
14 derivative nature of these PAGA penalties. *Id.* Defendant also advised that it believed it would prevail
15 on this claim because its time records were created by the employees entering their own time entries
16 and its payroll records were consistent with the hours entered by the employees. *Id.* at ¶ 36.

17 **7. The Strength of and Risks Associated with Plaintiff’s Sick Pay**
18 **Related PAGA Claims**

19 Plaintiff alleged that Defendant failed to include non-discretionary bonuses and incentive
20 payments when calculating and paying sick pay wages. *See Wood v. Kaiser Found. Hosps.*, 88 Cal.
21 App. 5th 742, 759 (2023), as modified (Mar. 23, 2023). As with the overtime related regular rate
22 claims, while Plaintiff initially believed he would prevail on this claim, the informal discovery
23 showed that Defendant would likely prevail on this claim. Winston Decl., ¶ 37.

24 **8. The Strength of and Risks Associated with the Wage Statement Related**
25 **PAGA Claims**

26 Labor Code § 226 (a) states, in relevant part: (a) Every employer shall, semimonthly or at the
27 time of each payment of wages, furnish each of his or her employees . . . an accurate itemized
28 statement in writing showing . . . (1) gross wages earned; (2) total hours worked;...(5) net wages
earned;...and (9) all applicable hourly rates in effect during the pay period and the corresponding

number of hours worked at each hourly rate by the employee.” Notably, since this Action predates the 2024 PAGA reform, it falls within the prior formula for calculating wage statement related PAGA penalties as opposed to the current more limited penalties and heightened standard of liability. Under the prior statutory PAGA scheme, there was a split of authority regarding which PAGA penalties apply to violations of Labor Code § 226(a) that predate the July 1, 2024 PAGA reform. *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355 (2021) (holding that such violations give rise to a 2699.3 penalty) *cf.*; *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (2018) (holding that such violations give rise to a Labor Code § 226.3 penalty). Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” Unlike other provisions of the Labor Code, if Labor Code § 226.3 applies to violations of Labor Code § 226(a) the Court also possesses the discretion to “decide not to penalize an employer for a first violation.” Lab. Code § 226.3.

Plaintiff alleged a derivative claim based upon Defendant’s alleged failure to pay minimum wages, overtime wages, failure to pay meal period premiums, failure to pay rest period premiums, and the underpayment of sick pay. Winston Decl., ¶ 38. As discussed above, Plaintiff was confident that he would prevail on at least some of the underlying claims as well as the derivative wage statement claims. *Id.* Nevertheless, real risk existed that the Court could decline to stack—meaning award multiple PAGA penalties for the same underlying conduct—and/or exercise significant discretion when awarding these derivative PAGA penalties. *Id.* Similarly, Defendant has also argued, and the Court may well have agreed, that they were paying based on a reasonable, good faith belief of what was owed based on the facts we have already discussed and as a result the Court would likely not have awarded penalties for these alleged violations.

9. **The Strength of and Risks Associated with Plaintiff’s PAGA Claims Based Upon The Failure to Timely Pay Wages During Employment**

Plaintiff also brought derivative PAGA claims for the late payment of wages during

1 employment under Labor Code §§ 204 and 210. Winston Decl., ¶ 39. Since these claims were
2 derivative in nature, Plaintiff first had to prevail on his other underlying PAGA claims. While Plaintiff
3 was confident that he would prevail on this claim if he could establish any of the other PAGA claims,
4 significant risk existed that the Court could decline to stack—meaning award multiple PAGA
5 penalties for the same underlying conduct—and/or exercise significant discretion when awarding
6 these derivative PAGA penalties. *Id.* Similarly, Defendant has also argued, and the Court may well
7 have agreed, that they were paying based on a reasonable, good faith belief that they had paid all
8 monies which they owed and that they had paid all monies which employees had reported were owed
9 and, as a result, the Court would likely not have awarded penalties for these alleged violations.

10 **10. The Strength of and Risks Associated with Plaintiff’s PAGA Claims**
11 **Based Upon The Failure to Timely Pay Wages Upon Separation**

12 Plaintiff also brought non-derivative and derivative PAGA claims alleging that Defendant
13 failed to timely pay the aggrieved employees upon separation within the time constraints of Labor
14 Code § 201-203. Winston Decl., ¶ 40. After factoring in the risks associated with the claims and the
15 discretionary nature of the PAGA penalties and questionable viability of stacking and the unique
16 circumstances of this case, Plaintiff believes that this claim possessed negligible value. *Id.*

17 **11. The Strength of and Risks Associated with Plaintiff’s Reimbursement**
18 **Related PAGA Claims**

19 Labor Code §2802 provides that “[a]n employer shall indemnify his or her employee for all
20 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
21 his or her duties, or of his or her obedience to the directions of the employer, even though unlawful,
22 unless the employee, at the time of obeying the directions, believed them to be unlawful.” Plaintiff
23 alleged that Defendant required Plaintiff and the other aggrieved employees to use their cell phone
24 for work purposes. Winston Decl., ¶ 41. The informal discovery produced by Defendant demonstrated
25 that Defendant offered cell phone reimbursement in the amount of \$5.00 per month as part of its
26 onboarding process. *Id.* In order to prevail on this claim, Plaintiff would need to establish that \$5.00
27 per month did not provide sufficient reimbursement for the aggrieved employees’ use of their cell
28 phone. *Id.* The primary messaging tool used by Defendant is Telegram. *Id.* at ¶ 42. Telegram
messages are a form of encrypted communication that exist in the user’s account. *Id.* Accordingly, in

1 order to prevail on this claim, Plaintiff likely would have needed to subpoena the aggrieved
2 employees or rely upon a voluntary survey that given the number of aggrieved employees may or
3 may not have received a sufficient number of responses to be reliable. *Id.* Given the considerable risk
4 associated with this claim, the sparse number of communications Plaintiff himself received,
5 Defendant's affirmative effort to provide reimbursement without requiring any proof of
6 communications meaning that some aggrieved employees received reimbursement payments without
7 having incurred expenses, and the absence of employee complaints, it is likely that either Defendant
8 would have prevailed on the claim on manageability grounds or the Court might decline to award a
9 significant amount of PAGA penalties. *Id.* at ¶ 43.

10 **C. The Risk, Expense, Complexity, and Likely Duration of Further Litigation**

11 There are also always risks attendant to wage and hour cases given the evolving nature of
12 such claims. Winston Decl., ¶ 44. Given the ever-evolving landscape of wage and hour law, there
13 are always risks that a new case will come out that will clarify and/or potentially limit employees'
14 claims. *Id.* For example, although generally it was well-established that employees could recover
15 both wage statement and waiting time penalties based upon an employer's failure to provide lawful
16 meal/rest periods, a recent appellate case held that such penalties are not recoverable before it was
17 later overturned. *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (2019); *aff'd in*
18 *part, rev'd in part and remanded* 13 Cal. 5th 93, (2022). Similarly, in another recent decision, the
19 California Court of Appeal held that employers could pay employees meal/rest period premiums at
20 the employee's hourly base rate instead of at their regular rate before that decision was also
21 overturned by the California Supreme Court. *Ferra v. Loews Hollywood Hotel, LLC*, 40 Cal. App.
22 5th 1239 (2019) rev'd, 11 Cal. 5th 858 (2021).

23 While Plaintiff was confident that he would prevail on his claims based upon present law,
24 the plaintiffs in *Ferra* and *Naranjo* likely believed they would have as well, and actually did on
25 their derivative claims prior to the California Court of Appeal's recent ruling and before each matter
26 was eventually reversed by the California Supreme Court. As the California Court of Appeal
27 explained in the now overturned *Naranjo* decision, "[a]lthough wage and hour lawsuits are
28

ubiquitous in state courts, most settle before trial. Consequently, our appellate courts have not had much opportunity to publish decisions addressing the derivative wage claim issue[s].” *Naranjo*, 40 Cal. App. 5th at 468. While Plaintiff acknowledges that the California Supreme Court reversed in both cases, each nevertheless are emblematic of the inherent risk associated with litigating wage and hour cases and the fact that a new appellate decision can dramatically alter the strength of the employees’ claims at any time. Indeed, *Naranjo* was appealed again to the California Supreme Court where the Court ruled in the employer’s favor. *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1064 (2024). And, PAGA itself was amended during the pendency of this Action. Winston Decl., ¶ 44.

In addition, as with any PAGA case, significant risk exists with respect to the amount of PAGA penalties that a Court may award given their discretionary nature. Under PAGA, Courts can exercise their discretion to reduce the amount of penalties awarded. Winston Decl., ¶ 45. Indeed, one court in San Diego awarded \$5.00 per pay period. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018) (post-trial award of \$5 per violation, or 5% of the PAGA penalty claimed in the suit)). A similar methodology here would result in penalties of only \$1,405.00 (281 pay periods x \$5.00 per pay period). Winston Decl., ¶ 45. Finally, given the risks outlined above, the issues in this case were complex and the risks for Plaintiff and the aggrieved employees were substantial. Winston Decl., ¶ 46. Due to the complexity and unsettled nature of the issues in this case—including a dearth of case law regarding the valuation of the PAGA penalties at issue—it is also likely that any outcome at trial would have resulted in a lengthy and costly appeal. *Id.*

D. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement. Winston Decl., ¶ 47. Defendant denied that Plaintiff’s claims had any merit, and that Plaintiff could prevail on the PAGA claims or that California law had been violated. *Id.* While PAGA Counsel believes that stacking of PAGA penalties is permissible based upon the California Court of Appeal’s ruling in *Kaanaana v. Barrett Business Services, Inc.*, 29 Cal. App. 5th 778, 808 (2018),⁷ the *Carrington v. Starbucks Corp.*, 30

⁷ *Kaanaana*, 29 Cal. App. 5th at 808 (affirming the award of PAGA penalties for violations of Labor Code § 512 where

1 Cal. App. 5th 504, 529 (2018) Court declined to award such penalties and instead limited its award
2 only to Labor Code § 558 PAGA penalties where the plaintiff sought both Labor Code § 2699.3 and
3 558 PAGA penalties.⁸

4 **1. The Proposed Settlement Falls Well Within The Range of**
5 **Reasonableness**

6 Plaintiff and PAGA Counsel did not believe that in light of the risk associated with each claim
7 and the numerous legal issues explained in detail above that the maximum possible amount was a
8 remotely plausible outcome given Defendant's defenses and the discretionary nature of the PAGA
9 penalties. Winston Decl., ¶ 48. Under PAGA, Courts can exercise their discretion to reduce the
10 amount of penalties awarded. *See e.g. Carrington*, 30 Cal. App. 5th at 529 (the trial court declined to
11 stack PAGA penalties and the Court of Appeal affirmed the reduction of the PAGA penalties to \$5.00
12 per pay period).

13 Moreover, assuming Plaintiff established liability for these pay periods and Plaintiff achieved
14 a result equal to *Carrington* of \$5.00 per pay period, the aggrieved employees would have recovered
15 a mere \$17,630.00 (3,526 pay periods x \$5.00 per pay period) in PAGA penalties. Winston Decl., ¶
16 49. The proposed settlement of \$150,000.00 therefore represents approximately 850.82%
17 (\$150,000.00 /\$17,630.00) of the recovery obtained in *Carrington* and the net PAGA penalties alone
18 represent approximately 429.99% (\$75,807.08/\$17,630.00) of the recovery obtained in *Carrington*.
19 *Id.* As illustrated by the comparison to *Carrington*, the results obtained by Plaintiff are favorable
20 comparable to those obtained in some PAGA cases where the aggrieved employees prevailed at trial.
21 *Id.* Given that Plaintiff achieved a better result than a case where liability was established, the
22 proposed settlement unquestionably falls within the range of reasonableness.

23 After weighing the risks associated with each of the claims in light of the factual challenges
24 as well as Defendant's potential defenses and the discretionary nature of PAGA penalties, Plaintiff

25 _____
26 employees' meal periods were interrupted and remanding to the trial court the amount of PAGA penalties that should be
27 awarded based upon the minimum wage violations associated with the same interrupted meal periods.).

28 ⁸ *Carrington*, 30 Cal. App. 5th at 508 and 529 ("Carrington sought civil penalties and unpaid wages under sections 2699,
subdivision (a) and 558, subdivision (a).... Although the trial court may have disagreed with Starbucks regarding the issue
of liability, it clearly took the circumstances proffered by Starbucks into consideration when it imposed the penalty, as
evident from the significant reduction of the \$50 maximum penalty (per initial violation) to the penalty imposed—only \$5
per initial violation.").

determined the amount offered in settlement was fair and reasonable considering the risks and the likelihood of success on the merits. Winston Decl., ¶ 50.

a. The Maximum Penalties Potentially At Issue Without Taking Into Account the Risks

A trial court should not evaluate a proposed settlement “against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409 (2010). “The test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001), disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* 4 Cal.5th 260, 269 (2018). Nor does a *Kullar* showing require parties to submit the outer reaches of maximum possible recovery without taking into account various risks. *Munoz*, 186 Cal. App. 4th at 409; *Altamirano v. Shaw Industries, Inc.*, 2015 WL 4512372, at *9 (N.D. Cal. 2015) (preliminarily approving wage and hour class action settlement, stating, “[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval.”).

Nevertheless, to allow the Court to analyze the reasonableness of the Parties Proposed Settlement, Plaintiff analyzed the maximum possible value of the claims at issue in this action. Further, the Court should be aware that while one appellate court reversed and remanded a trial court’s decision not to award stacked PAGA penalties—*i.e.* that a court can award more than one set of PAGA penalties per pay period—the court left open the possibility of the court awarding the same amount or no additional PAGA penalties within the exercise of its discretion. *Kaanaana*, 29 Cal. App. 5th at 808.

When taking into account the stacking of PAGA penalties and assuming a 100% violation rate on every single claim, and without taking into account any of Defendant’s significant defenses or the discretionary nature of PAGA penalties, Plaintiff and PAGA Counsel determined the maximum exposure on the PAGA claims to be \$2,565,400.00 calculated as follows:

Labor Code § 2699 Penalties For Alleged Minimum Wage Violations

- PAGA penalties assessed at the \$100 per pay period initial violation rate = 3,526 pay periods x \$100=\$352,600.00

Labor Code § 2699 Penalties For Alleged Overtime Violations

- PAGA penalties assessed at the \$100 per pay period initial violation rate = 3,526 pay periods x \$100=\$352,600.00

Labor Code § 2699 Penalties For Alleged Meal Period Violations

- PAGA penalties assessed at the \$100 per pay period initial violation rate = 3,526 pay periods x \$100=\$352,600.00

Labor Code § 2699 Penalties For Alleged Rest Period Violations

- PAGA penalties assessed at the \$100 per pay period initial violation rate = 3,526 pay periods x \$100=\$352,600.00

Labor Code § 2699 Penalties For Alleged Reimbursement Violations

- PAGA penalties assessed at the \$100 per pay period initial violation rate = 3,526 pay periods x \$100=\$352,600.00

Labor Code § 210 Penalties Recoverable Pursuant to PAGA for Defendant's Violations of Labor Code Section 204

- Labor Code § 210 PAGA penalties are assessed at the rate of \$100 per pay period = 3,526 pay periods x \$100=\$352,600.00

Labor Code § 2699 Penalties Recoverable Pursuant to PAGA for Defendant's Violations of Labor Code Sections 201-203

- Labor Code §§ 201-203 PAGA penalties are assessed at the rate of \$100 per pay period = 97 pay periods associated with a termination or resignation x \$100=\$9,700.00

Labor Code § 1174.5 Penalties Recoverable Pursuant to PAGA for Defendant's Violations of Labor Code section 1174

- Labor Code § 1174.5 PAGA penalties are assessed at the rate of \$500 per employee = 175 aggrieved employees x \$500=\$87,500.00

Labor Code § 226 PAGA Penalties Related to the Issuance of Itemized Wage Statements⁹

- PAGA penalties assessed at the \$100 per pay period initial violation rate = 3,526 pay periods x \$100=\$352,600.00

Winston Decl., ¶ 51.

Although theoretically this is the maximum potential recovery in this action if Plaintiff achieved complete and total victory based purely upon PAGA's mathematical formulas, Plaintiff

⁹ There is currently a split of authority regarding which PAGA penalties apply to violations of Labor Code § 226(a). *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355 (2021) (holding that such violations give rise to a 2699.3 penalty) *cf.*; *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (2018) (holding that such violations give rise to a Labor Code § 226.3 penalty). Plaintiff performed the calculations in accordance with the decision in *Gunther* as Plaintiff believes it is better reasoned.

1 and PAGA Counsel did not believe that this constituted a remotely plausible approximation of the
2 actual expected recovery given Defendant's significant defenses to several of the claims, the
3 significantly lower actual violation rates, the Court's ability to decline to award stacked PAGA
4 penalties and/or exercise its discretion to reduce the amount of PAGA penalties awarded, and the
5 nature of many of the violations. Winston Decl., ¶ 52. It is also important to recognize that the many
6 courts that recognize stacking nevertheless have declined to actually award stacked PAGA penalties
7 at trial such that the likely realistic recovery was significantly less than the maximum possible
8 recovery. *See e.g. Carrington*, 30 Cal. App. 5th at 508 and 529. Moreover, despite the considerable
9 risks associated with the claims, the Parties' Proposed Settlement offers genuine and meaningful
10 relief to the State of California and the aggrieved employees and continued litigation would not
11 have necessarily guaranteed a better outcome.

12 b. The Proposed Settlement Is Better Than The Results Obtained in Many
13 Class Actions

14 The amount recovered in this Action is also consistent with and compares favorably to the
15 amounts awarded in other wage and hour class actions, not just PAGA actions. Under the terms of
16 the proposed Settlement and as discussed in more detail above, the average estimated gross
17 settlement award per aggrieved employee is \$857.14 (\$150,000 gross settlement amount/175
18 aggrieved employees), the average estimated net settlement award when taking into account the
19 proposed attorneys' fees, case expenses, Plaintiff's proposed service award, and PAGA's 75%/25%
20 split between the state and aggrieved employees is approximately \$108.30 (\$18,951.77 Net PAGA
21 Penalties for the aggrieved employees/175 aggrieved employees), the minimum estimated net
22 settlement award is approximately \$5.37 ((1 pay period worked during the PAGA period/3,526
23 PAGA pay periods) x \$18,951.77 (the aggrieved employees' 25% share of PAGA penalties)), and
24 the maximum estimated net settlement award is approximately \$220.37 ((41 pay periods worked
25 during the PAGA period/3,526 PAGA pay periods) x \$18,951.77 (the aggrieved employees' 25%
26 share of PAGA penalties)). Winston Decl., ¶ 20.

27 This greatly exceeds the results in other similar cases. *See e.g. Williams v. Centerplate, Inc.*,
28 2013 U.S. Dist. LEXIS 121307, at *4 (S.D. Cal. Aug. 26, 2013) (finally approving a wage and hour

1 class action settlement for non-compliant meal periods, non-compliant rest periods, unpaid
2 overtime, unreimbursed business expenses, waiting time penalties, inaccurate itemized wage
3 statements for 9,394 class members in the gross amount of \$650,000 with a reversion to the
4 defendant of \$128,136.86, a net settlement fund of \$239,363.14 and an average award of \$108.22
5 to the 2,212 class members who submitted claims and \$25.48 when including the class members
6 who did not submit claims and therefore received nothing in exchange for the release); *Schiller v.*
7 *David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, at *4 (E.D. Cal. June 11, 2012) (approving a
8 proposed wage and hour class action settlement for unpaid overtime wages, non-compliant meal
9 periods, unreimbursed business expenses, inaccurate itemized wage statements of a reversionary
10 settlement with a maximum settlement amount of \$518,245 and a potential 45% reversion on a
11 claims-made settlement for 3,327 class members); *Altamirano v. Shaw Industries, Inc.*, 2015 WL
12 4512372, at *9 (N.D. Cal. 2015) (preliminarily approving wage and hour class action settlement,
13 stating, “[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery
14 estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval.”).

15 **E. The Court Should Award PAGA Counsel Attorneys’ Fees in the Amount of**
16 **\$50,000.00**

17 In *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 503 (2016), the California Supreme
18 Court unequivocally held that when “litigation established a monetary fund for the benefit of the class
19 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
20 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
21 fund created” without considering the amount of hours expended on the case. *Id.* The court further
22 held that “[t]he recognized advantages of the percentage method – including relative ease of
23 calculation, alignment of incentives between counsel and the class, a better approximation of market
24 conditions in a contingency case, and the encouragement it provides counsel to seek an early
25 settlement *and avoid unnecessarily prolonging litigation* – convince us the percentage method is a
26 valuable tool that should not be denied by our trial courts.” *Id.*

27 As the California Court of Appeal recently recognized and as other California Courts have
28 consistently explained, “fee awards in class actions average around one-third of the recovery”

1 regardless of “whether the percentage method or the lodestar method is used.” *Amaro v. Anaheim*
2 *Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021) (“[F]ee awards in class actions average around
3 one-third of the recovery” regardless of “whether the percentage method or the lodestar method is
4 used.”) (quoting *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008)); *McCrary v. Elations*
5 *Co., LLC*, No. EDCV 13-0242 JGB (SPx), 2016 U.S. Dist. LEXIS 24050, at *2 (C.D. Cal. Feb. 25,
6 2016) (California Courts have consistently recognized “that most fee awards based on either a
7 lodestar or percentage calculation are 33%.”); *McClellan, LLC v. Chase Home Fin. LLC*, No. SACV
8 12-1331-JGB (JEMx) 2015 U.S. Dist. LEXIS 118005, at *20 (C.D. Cal. Aug. 31, 2015) (“California
9 district courts routinely award attorneys' fees in the range of 30-40% in class actions that result in the
10 recovery of a common fund under \$10 million.”).¹⁰

11 PAGA Counsel’s diligent and efficient litigation of this action resulted in the creation of an
12 ascertainable common fund of \$150,000.00 that will substantially benefit the state of California.
13 Consistent with numerous cases, including those identified above, PAGA Counsel seeks approval of
14 an award of attorneys’ fees in the amount of \$50,000.00 representing 1/3 of the common fund and a
15 slightly negative lodestar of 0.86 (\$50,000.00 attorney fee request/\$58,537.50 lodestar). Winston
16 Decl., ¶¶ 53-73. PAGA Counsel’s request is also consistent with fee awards in other similar cases.
17 PAGA Counsel has also provided information about the time spent on the case, which included,
18 drafting the PAGA notice, Complaint, drafting and propounding formal discovery including requests
19 for production of documents, special interrogatories, requests for admission, and form interrogatories
20 preparing informal discovery requests, working with a data expert to analyze the informal discovery
21 produced by Defendant, drafting a mediation brief, attending mediation and negotiating the

22
23
24 ¹⁰ See also *Miller v. CEVA Logistics USA, Inc.*, No. 2:13-CV-01321-TLN, 2015 U.S. Dist. LEXIS 104704, at *8 (E.D.
25 Cal. Aug. 10, 2015) (“California district courts usually award attorneys' fees in the range of 30-40% in wage and hour
26 class actions that result in the recovery of a common fund under \$10 million”); *Romero v. Producers Dairy Foods, Inc.*,
27 No. 05-0484, 2007 U.S. Dist. LEXIS 86270, 2007 WL 3492841, at *4 (E.D. Cal. Nov. 14, 2007) (awarding 33% of the
28 settlement fund in a wage-and-hour case involving allegations of unpaid wages after explaining that “fee awards in class
actions average around one-third of the recovery.”); *Stuart v. RadioShack Corp.*, No. C-07-4499 EMC, 2010 WL 3155645
(N.D. Cal. Aug. 9, 2010) (noting that a fee award of 1/3 of the settlement was “well within the range of percentages which
courts have upheld as reasonable in other class action lawsuits.”); *Singer v. Becton Dickinson and Co.*, No. 08-cv-821-IEG
(BLM), 2010 WL 2196104, at * 8 (S.D. Cal. June 1, 2010) (approving fee award of 33.33% of the common fund); *Boyd*
v. Bank of Am. Corp., No. SACV 13-0561-DOC (JPRx), 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014)
(awarding a 33.34% fee on a \$5,800,000 settlement).

1 settlement terms, drafting the Settlement Agreement, drafting the explanatory letter for the aggrieved
2 employees, and the Motion for Approval and related documents. *Id.* at ¶¶ 70-71.

3 **F. The Court Should Award PAGA Counsel Cost Reimbursement Award in the**
4 **Amount of \$11,942.92**

5 PAGA Counsel further request that, in addition to awarding them reasonable attorneys' fees,
6 the Court grant its application for reimbursement of the reasonable out-of-pocket expenses advanced
7 and/or incurred by them in connection with the prosecution of this litigation in the amount of
8 \$11,942.92. Winston Decl., ¶ 74. All of these costs were necessarily incurred and/or are expected to
9 be incurred.

10 **G. The Court Should Award Plaintiff Juarez a Service Award of \$7,500.00**

11 Plaintiff Juarez expended time and effort assisting PAGA Counsel with the investigation of
12 the claims and gathering of information including contacting PAGA Counsel for updates regarding
13 the case, kept himself informed about the status of the settlement discussions and claims, and assisted
14 PAGA Counsel in evaluating possible settlements. Juarez Decl., ¶¶ 7-9. As of the submission of this
15 Motion, Plaintiff Juarez estimates that he spent approximately 38.5 hours on this Action engaging in
16 the following activities: 15 hours researching his possible claims, searching for documents, and
17 searching for counsel, 15 hours discussing the case, claims, and proposed settlement with his Counsel
18 and his office staff, 7 hours participating in the Mediation by phone meaning that he was available
19 during this time and available to his Counsel and communicated with his Counsel at times during this
20 period, approximately 1 hour reviewing the settlement agreement, and .5 hours assisting with the
21 preparation of his declaration. *Id.* at ¶ 9.

22 In addition to the time and effort Plaintiff Juarez invested in the prosecution of this action,
23 Plaintiff Juarez's proposed service award also reflects the fact that neither the State of California nor
24 any of the aggrieved employees would have enjoyed any benefits if he did not initiate this action.
25 Thus, for the reasons discussed above, this Court should grant Plaintiff's requested service award in
26 the amount of \$7,500.00. The requested service award also falls well within the range of incentive
27 payments typically awarded to Class Representatives in similar class actions. *Bond v. Ferguson*
28 *Enterprises, Inc.*, No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. June 30, 2011)

1 (approving \$11,250 service award to each of the two class representatives wage and hour class
2 action); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 493 (E.D. Cal. 2010) (approving
3 service awards in the amount of \$10,000 each from a \$300,000 settlement fund in a wage/hour class
4 action).

5 In the interest of transparency, Plaintiff and PAGA Counsel also wish to disclose to the Court
6 that Plaintiff and Defendant settled Plaintiff's individual claims at issue in this lawsuit. Juarez Decl.,
7 ¶ 2, Exh. 1; Winston Decl., ¶¶ 13-14, Exh. 2 at IV(34). Although the issues associated with Plaintiff's
8 individual claims were inextricably intertwined with this Action since Plaintiff needed to establish
9 that he experienced a violation of the Labor Code in order to possess standing to pursue PAGA
10 claims on behalf of the state, the individual claims existed separate and apart from the PAGA claims.
11 *Kim v. Reins Int'l Cal., Inc.*, 9 Cal. 5th 73, 80 (2020) (the "[s]ettlement of individual claims does not
12 strip an aggrieved employee of standing, as the state's authorized representative, to pursue PAGA
13 remedies" nor resolve the PAGA claims). The Parties have agreed to provide the Court a copy of
14 the Settlement Agreement, which is attached to the Declaration of Plaintiff Eduardo Juarez as
15 Exhibit 1. Juarez Decl., ¶ 2, Exh. 1. PAGA Counsel is not receiving any compensation or cost
16 reimbursement associated with Plaintiff's individual claims. Juarez Decl., ¶ 2, Exh. 1; Winston
17 Decl., ¶¶ 13-14, Exh. 2 at IV(34).

18 **VI. THE EXPLANATORY LETTER TO THE AGGRIEVED EMPLOYEES**

19 Although the aggrieved employees do not possess property rights in a PAGA action and this
20 action is not subject to the class action approval or notice process, the aggrieved employees will
21 receive an explanatory letter, in English and Spanish, a true and correct copy of which is attached to
22 the Declaration of David Winston as Exhibit 6. Winston Decl., ¶ 75, Exh. 6; *Arias v. Superior Court*,
23 46 Cal.4th 969 (2009) (explaining that in a PAGA action "nonparty employees...[are] not given
24 notice of the action or afforded an opportunity to be heard."); *Baumann v. Chase Inv. Servs. Corp.*,
25 747 F.3d 1117, 1122 (9th Cir. 2014) ("PAGA has no notice requirements for unnamed aggrieved
26 employees, nor may such employees opt out of a PAGA action."); *see also O'Connor v. Uber*
27 *Technologies, Inc.*, 201 F. Supp. 3d 1110, 1134 (N.D. Cal. Aug. 18, 2016), ("PAGA does not require
28

1 class action procedures, such as notice and opt-out rights.”).

2 **VII. THE PROPOSED ORDER GRANTING APPROVAL AND JUDGMENT**

3 Plaintiff already provided Defendant with a draft of the Proposed Order and Final Judgment.
4 Winston Decl., ¶ 76. Defendant, through its Counsel, approved the form of the Proposed Order and
5 Judgment. *Id.* As such, if the Court grants the Motion, the Parties would respectfully request that the
6 Court enter their agreed upon Proposed Order Granting Approval of PAGA Settlement and Final
7 Judgment.

8 **VIII. COMPLIANCE WITH CODE OF CIV. PROC. § 384 AND SUGGESTED TIMING**
9 **OF THE COMPLIANCE HEARING**

10 Code of Civ. Proc. § 384 requires that any funds associated with uncashed voided checks
11 issued as part of this settlement be paid “nonprofit organizations or foundations to support projects
12 that will benefit the class or similarly situated persons, or that promote the law consistent with the
13 objectives and purposes of the underlying cause of action, **to child advocacy programs**, or to
14 nonprofit organizations providing civil legal services to the indigent.” (emphasis added). In
15 accordance with Code of Civ. Proc. § 384, the Parties propose to designate Child Advocates of Placer
16 and Yuba Counties aka CASA of Placer and Yuba Counties as the proposed *cy pres* beneficiary.
17 Winston Decl., ¶ 13, Exh. 2 at VI(41). The *cy pres* beneficiary will receive all unclaimed funds. Child
18 Advocates of Placer and Yuba Counties aka CASA of Placer and Yuba Counties is a child advocacy
19 program within the meaning of Code of Civ. Proc. § 384 that provides advocates for foster children
20 and/or children who have been removed from their homes for abuse, neglect, and/or substance abuse.
21 Neither Plaintiff, Defendant, nor their Counsel have any interest and/or involvement with the
22 governance of Child Advocates of Placer and Yuba Counties aka CASA of Placer and Yuba Counties.
23 Winston Decl., ¶ 77; Juarez Decl., ¶ 12; Declaration of Kevin Cleveland In Support of Designation
24 of Child Advocates of Placer and Yuba Counties aka CASA of Placer and Yuba Counties As the Cy
25 Pres Recipient, ¶ 3.

26 With respect to the timing of the Code of Civ. Proc. § 384 compliance hearing, Plaintiff
27 requests that the hearing be scheduled for late March 2026 in order to permit the Settlement
28 Administrator sufficient time to complete the distribution in accordance with the terms of the

1 Settlement. Under the terms of the Settlement, Defendant will fund the settlement approximately
2 30 days after the entry of judgment in this Action (July 5, 2025), the settlement administrator will
3 mail out the settlement checks 50 days after the effective date (July 25, 2025), and the aggrieved
4 employees' share of PAGA penalties will remain valid and negotiable for 180 days (January 21,
5 2026). Winston Decl., ¶ 13, Exh. 2 at § VI(38-39 and 41). In order to allow the Settlement
6 Administrator to prepare a declaration and transmit any remaining funds to the *cy pres* recipient
7 before the compliance hearing, the Parties would propose conducting the Code of Civil Procedure
8 § 384 compliance hearing in March 2026 or another date convenient for the Court thereafter except
9 for April 1-3, 2026.

10 **IX. CONCLUSION**

11 Plaintiff respectfully submits that the proposed Settlement is fair, adequate, and reasonable.
12 Therefore, Plaintiff respectfully requests that the Court (1) grant approval of the PAGA Settlement;
13 (2) appoint ILYM as the Settlement Administrator, direct that the explanatory Notice be sent to
14 aggrieved employees in the manner set forth in the Settlement Agreement; (3) award PAGA Counsel
15 their fees' and litigation costs; and (4) award Plaintiff Juarez a service award of \$7,500.00.

16 DATED: April 9, 2025

WINSTON LAW GROUP, P.C.

18 By: David S. Winston
19 DAVID S. WINSTON
20 Attorney for Plaintiff Eduardo Juarez and the
21 aggrieved employees
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