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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

JESSICA CHAPDELAINE, an individual, and in her representative capacity on behalf of the State of California, and all other aggrieved employees, Plaintiff, v. GOLD CLUB – S.F., LLC, a Nevada limited liability company, S.A.W. ENTERTAINMENT LIMITED, a California corporation, and DOES 1-25, Defendants.	Case No: CGC-24-618349 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA") SETTLEMENT** Complaint Filed: September 23, 2024 *[Concurrently filed with Plaintiff's Notice of Motion for Approval of PAGA Settlement; Declaration of Harris Emran, Esq. in Support of Plaintiff's Motion for Approval of PAGA Settlement; [Proposed] Order Granting Plaintiff's Motion for Approval of PAGA Settlement; [Proposed] Judgment Granting Plaintiff's Motion for Approval of PAGA Settlement]* Date: July 18, 2025 Time: 9:00 a.m. Dept: 301 Hon. Christine Van Aken

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Labor Code § 2699(s)(2), Plaintiff seeks the Court's approval of the proposed Gross Settlement Amount of One Hundred Fifteen Thousand Dollars ($115,000.00) for all inclusive, non-reversionary settlement of the Action including the PAGA Penalties, payment to payment to Plaintiff as an aggrieved employee, PAGA Counsel, attorneys' fees, litigation costs, administration costs, and a payment to the aggrieved employees and State of California under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"). See Exhibit C to Declaration of Harris Emran ("Emran Decl."). As a result of Defendants' need to pay the Gross Settlement Amount on a payment plan, the Parties prioritize the Aggrieved Employees and the State of California's payment in the initial payment before allocating payments to the Administrator Expenses and PAGA Counsel payment. Ex. C to Emran Decl ¶ 1.10. By way of this settlement, Plaintiff seeks to fully and finally resolve alleged violations on a representative capacity on behalf of the State of California and all other Aggrieved Employees as defined in the Settlement Agreement. Emran Decl. ¶ 10. If approved, the proposed Settlement will resolve this matter in its entirety. Emran Decl. ¶ 10.

Defendants deny all claims, deny that Plaintiff is entitled to any recovery, and assert affirmative defenses in response to Plaintiff's claims. Emran Decl. ¶ 19. Nonetheless, having resolved the matter, the Parties hereby submit their PAGA Settlement Agreement ("Settlement" or "Settlement Agreement") to the Court for its approval. Emran Decl. ¶ 19.

Accordingly, the Parties requests the Court enter an order (1) finding the Settlement is fair and reasonable in light of the facts and evidence, (2) approving the form and method of settlement check administration to the alleged Aggrieved Employees, (3) finding all procedural requirements for PAGA settlement have been met, (4) dismissing the action *with prejudice* as to the named Plaintiff and the State and all other Aggrieved Employees as approved by the Court.

II. FACTS AND PROCEDURES

A. Plaintiff's Contentions

Defendants own, operate, and/or manage at least two adult-nightclubs in California featuring nude and semi-nude dancing. Emran Decl. ¶ 3. Plaintiff worked for Defendant Gold Club as a Bartender and Server between approximately August 2023 to February 2024 paid on an hourly basis and entitled to tips. Emran Decl. ¶ 3. Plaintiff then worked at Defendant S.A.W. Entertainment Limited (Hustlers Club) from approximately April 2024 to May 2024 as a dancer paid on an hourly basis and entitled to tips. Emran Decl. ¶ 3. Plaintiff contends Defendants committed numerous wage and hour violations against Plaintiff and other Aggrieved Employees. Emran Decl. ¶ 3. Specifically, Plaintiff alleged Defendants systematically violated Plaintiff's and other Aggrieved Employees' wage and hour rights by failing to compensate Plaintiff and other Aggrieved Employees for donning and doffing time, required these employees to forfeit meal and rest periods, failed to reimburse employees for personal cell phone use resulting in a failure to pay all wages when due and upon termination, and inaccurate itemized wage statements. Emran Decl. ¶ 3; Ex. B. Plaintiff additionally alleged individual claims for sexual harassment and subsequent retaliation experienced during her employment with Gold Club. Emran Decl. ¶ 3; Ex. B. The due diligence performed before filing the lawsuit included an initial intake of Plaintiff, identifying individuals who could serve as potential witnesses, interviewing such individuals, and reviewing Plaintiff's evidence and corroborating her claims. Emran Decl. ¶ 3.

B. Procedural History

On May 8, 2024, Plaintiff provided the Labor Workforce and Development Agency ("LWDA") written notice by online filing and Defendants via certified mailing of specific provisions of Lab. Code §§ 2699 et seq. alleged to be violated including the facts and theories to support the alleged violation (the "PAGA Notice"). Emran Decl. ¶ 4; Ex. A and Ex. D to Emran Decl.

On September 23, 2024, after the LWDA declined to investigate Plaintiff's alleged violations, Plaintiff brought an individual and PAGA action against Defendants Dornoch Inc. ("Defendant Gold Club"), and Defendant S.A.W. Entertainment Limited ("Defendant S.A.W.) (collectively "Defendants") alleging fourteen causes of action for (1) Failure to Provide Required Rest Periods,

(2) Failure to Provide Required Meal Periods, (3) Failure to Pay Minimum Wages, (4) Failure to Pay Overtime Compensation, (5) Failure to Reimburse Business Expenses, (6) Failure to Pay Wages When Due, (7) Failure to Pay Wages Upon Termination, (8) Tip Pool Conversion, (9) Failure to Provide Accurate, Itemized Wage Statements, (10) Hostile Work Environment – Sexual Harassment, (11) Failure to Prevent Harassment, (12) Retaliation for Opposing Practices Forbidden by FEHA, (13) Retaliation Under Cal. Lab. Code § 98.6, and (14) Recovery of Civil Penalties under the Labor Code Private Attorneys General Act. Emran Decl. ¶ 5-6; Ex. B.

In January 2025, after serving initial sets of discovery, the Parties agreed to participate in mediation with Mark Lemke, a well-regarded and experienced mediator of wage and hour and PAGA actions. Emran Decl. ¶ 7. On April 15, 2025, the Parties participated in mediation with Mr. Lemke. Emran Decl. ¶ 8. At the conclusion of mediation, Mr. Lemke sent the Parties a mediator's proposal. Emran Decl. ¶ 8. On May 16, 2025, the Parties agreed to Mr. Lemke's mediator's proposal, which was subsequently memorialized in a long form settlement agreement. Emran Decl. ¶ 8; Ex. C.

Defendants deny all claims, deny that Plaintiff is entitled to any recovery, and assert multiple affirmative defenses in response to Plaintiff's claims. Emran Decl. ¶ 8. Nonetheless, having resolved the matter, the Parties hereby submit this PAGA Settlement Agreement ("Settlement" or "Settlement Agreement") to the Court for its approval. Emran Decl. ¶ 8.

At the same time of submission to the Court, my office submitted a copy of the Settlement Agreement and this Motion to the LWDA website in accordance with Lab. Code § 2699(s)(2). Emran Decl. ¶ 9; Ex. D. By way of this settlement, Plaintiff seeks to fully and finally resolve alleged violations on in a representative compacity on behalf of the State of California and all other Aggrieved Employees as defined in the Settlement Agreement. Emran Decl. ¶ 10; See Ex. C. This Settlement, if approved, will resolve the Action in its entirety. Emran Decl. ¶ 10; See Ex. C.

C. Investigation and Settlement Discussions

Between January 2025 and April 2025, Plaintiff's Counsel conducted a thorough investigation into the claims and defenses of each party. Plaintiff expended considerable time and effort advocating on behalf of herself and the alleged PAGA Aggrieved Employees. Plaintiff contacted previous coworkers and asked individuals to serve as a witness for her and corroborate her claims, she provided all documents and evidence in her possession which included communications from Defendants during her employment regarding pay and policies. Some witnesses corroborated the claims alleged in the complaint but were unwilling to sign declarations. Emran Decl. ¶ 11.

In anticipation of mediation, the Parties met and conferred over an agreeable mediator, the data that would be exchanged, and the appropriate sample size. Emran Decl. ¶ 12. Defendants produced 100% of the Aggrieved Employee Data, which included 1) daily time records, 2) corresponding pay records, 3) Plaintiff's daily time records, 4) Plaintiff's payroll records, 5) Plaintiff's personnel file, and 6) aggrieved employee demographic information. Emran Decl. ¶ 12. Plaintiff further provided the contact information for several former employees that Plaintiff's Counsel interviewed. Emran Decl. ¶ 12.

Plaintiff's Counsel then retained the statisticians and economists at Employment Research Corporation ("ERC") to evaluate the Aggrieved Employee payroll and time data. Emran Decl. ¶ 13. ERC provides data analysis and damages modeling consulting services, specializing in PAGA and wage and hour class actions. Emran Decl. ¶ 13. ERC's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. Emran Decl. ¶ 13.

ERC analyzed Defendants' time and payroll data to assist in the development of various damages models. Emran Decl. ¶ 14. After Plaintiff's damage expert analyzed Defendant's data, ERC concluded Defendants failed to provide a timely meal period in 41.7% of pay periods if Defendants did not maintain meal waivers for the Aggrieved Employees, and in 31.4% of pay periods to employees who worked in excess of six hours. Emran Decl. ¶ 14. ERC's model calculated the civil penalties based on Plaintiff's allegations including for failure to reimburse personal cell phone use, off the clock work for donning and doffing time, and corresponding claims such as failure to pay all wages when due, upon termination, failure to provide accurate itemized wage statements and waiting time penalties. Emran Decl. ¶ 14. ERC's model additionally determined the civil penalties for failure to reimburse, failure to provide meal periods, failure to provide rest periods, waiting time penalties, and inaccurate itemized wage statements. Emran Decl.

¶ 14. Defendants maintained written policies regarding meal and rest periods that are consistent with the law. Emran Decl. ¶ 15. Defendants' employee handbook encourages employees to notify management if they are in any way discouraged or impeded from taking their breaks. Emran Decl. ¶ 15. Moreover, at mediation Defendants presented an analysis by their own statisticians and economists of the same data that concluded the data showed far fewer PAGA violations. Emran Decl. ¶ 15.

Overall, Plaintiff's Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a representative through interviews, background investigations, and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour PAGA actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Aggrieved Employees' time and payroll records; (5) analyzing Defendants' labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect PAGA approval; (7) evaluating Plaintiff's claims and estimating Defendants' liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. Emran Decl. ¶ 16. This investigation allowed Plaintiff's Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. Emran Decl. ¶ 16.

The Parties Settlement Agreement is the final product of Mediator Mark Lemke's mediator's proposal. Emran Decl. ¶ 8. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. Emran Decl. ¶ 17. The Parties represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement. Emran Decl. ¶ 18.

III. SUMMARY OF SETTLEMENT AGREEMENT

A. The Proposed Settlement Terms

Defendants will pay the Gross Settlement Amount of One Hundred Fifteen Thousand Dollars and Zero Cents ($115,000.00) over a span of eleven (11) months. Ex. C ¶ 1.10. to Emran Decl. Within thirty (30) days of the Approval Order approving the Parties' proposed PAGA

Settlement, Defendants will make an initial payment installation of Sixty-Seven Thousand Dollars and Zero Cents ($67,000.00) to the Administrator to be used for the LWDA PAGA Payment and the Individual PAGA Payment with any remaining funds used for the Administrators Expenses Payment and PAGA Counsel Litigation Expense Payment. Ex. C ¶ 1.10 to Emran Decl. Starting no sooner than 30 days after the initial PAGA payment and on the first day of each month, Defendants will pay 10 equal monthly payments of $4,363.63 to the Administrator, and a final monthly payment of $4,363.70 to be used for the remainder of 1) Administrator's Expenses Payment, 2) PAGA Counsel Litigation Expenses Payment, and 3) PAGA Counsel Fees Payment (in this order). Ex. C ¶ 1.10. to Emran Decl.

The Settlement Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval, to determine the Net Settlement Amount available for the LWDA PAGA Payment and Individual PAGA Payment:

1) To the LWDA and Aggrieved Employees: The PAGA Penalties will be calculated from the Gross Settlement Amount, after deducting the amounts for PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Administrator Expenses Payment, with 75% allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments. Currently, PAGA Penalties are estimated to be at least Fifty-Two Thousand Two Hundred Fifty Dollars and Zero Cents ($52,250.00), with seventy-five percent (75%), estimated to be at least Thirty-Nine Thousand One Hundred Eighty-Seven Dollars and Zero Cents ($39,187.50) allocated to the LWDA PAGA Payment and twenty-five percent (25%), estimated to be at least Thirteen Thousand Sixty Two Dollars and Fifty Cents ($13,062.50) allocated to the Individual PAGA Payments. Ex. C ¶ 3.2.3. to Emran Decl.

    i. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (estimated to be at least $13,062.50) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. Ex. C ¶ 3.2.3.1. to Emran Decl.

ii. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. Ex. C ¶ 3.2.3.2. to Emran Decl.

iii. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. Ex. C ¶ 4.4.1. to Emran Decl.

iv. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are retuned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose remailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date. Ex. C ¶ 4.4.2. to Emran Decl.

v. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. Ex. C ¶ 4.4.3. to Emran Decl.

2) To the Settlement Administrator: An Administrator Expenses Payment not to exceed $5,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than $5,000.00 the Administrator will retain the remainder in the Net Settlement Amount. Ex. C ¶ 3.2.2 to Emran Decl.

3) To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 35% which is currently estimated to be $40,250.00 and PAGA Counsel Litigation Expenses Payment of not more than $17,500.00. Defendants will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments. Ex. C ¶ 3.2.1 to Emran Decl.

4) The Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Expenses Payment as set forth in paragraphs 1.11, 1.14, and 1.17 of the Agreement.

The Administration Expenses Payment will be made within 30 days after payment of the Individual PAGA Payments and LWDA PAGA Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment and the Administrative Expenses Payment shall not precede disbursement of Individual PAGA Payments.

B. Settlement/Release of Claims

The Parties have agreed, effective upon the date when Defendants fully fund the entire Gross Settlement Amount, in exchange for the consideration set forth in this Agreement, Plaintiff, the LWDA and the Aggrieved Employees will release claims against all Released Parties as follows:

A. Plaintiff's Release: Plaintiff and her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to all claims that were, or reasonably could have been, alleged, based on the facts and claims alleged in the Operative Complaint and the PAGA Notice ("Plaintiff's Release") related to the PAGA claims. Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. Ex. C to Emran Decl. ¶ 5.1

a. Plaintiff's release additionally includes a California Civil Code § 1542 waiver. Ex. C to Emran Decl. ¶ 5.1.1

B. PAGA Release: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA

Period facts stated in the Operative Complaint and the PAGA Notice. Ex. C to Emran Decl. ¶ 5.2.

C. Release by PAGA Counsel: PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice. Ex. C to Emran Decl. ¶ 5.3.

IV. LEGAL ANALYSIS

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. Seventy-five percent of any penalties recovered go to the LWDA, leaving the remaining twenty-five percent for the employees. *Id.* PAGA is intended "to augment the limited enforcement capability of [the LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." *Id*. at 59 Cal. 4th 383. A judgment [or Court-approved settlement] in a PAGA action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. *Id*. at 381.

Based on the California Supreme Court's holdings in *Arias v. Superior Court* (2009) 46 Cal.4th 969 and *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, there is no requirement under PAGA for Plaintiff to establish the requirements of class certification (i.e., numerosity, typicality, commonality, and adequacy) nor is there the usual two-step preliminary and final approval process as found in class actions. Rather, a PAGA settlement merely requires a one-step review and approval by the Court. *Id*.

The California Supreme Court has said in this context that "any negotiated resolution [must be] fair to those affected." *Williams v. Superior Ct.* (2017) 3 Cal. 5th 531, 549. However, it may be substantially discounted given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal. App. 4th 1157, 1213, ("Section 2699, subdivision (e)(2) provides that in an action by an aggrieved employee to recover PAGA penalties, the court 'may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.'") See also, *Lopez v. Friant & Assocs., LLC* (2017) 15 Cal. App. 5th 773, 787, (recognizing the trial court's discretion to reduce PAGA penalties).

Under Labor Code § 2699(s)(2), the Parties must obtain approval of their PAGA settlement from the Court and hereby seek the Court's approval. Pursuant to Labor Code Section 2699(e)(1), the Court has wide discretion regarding the amount of the PAGA penalty (See also *Thurman v. Bayshore Transit Management* (2012) 203 Cal.App.4th 1112, 1136 [standard of review is abuse of discretion].) The primary objective of a PAGA action "is to supplement enforcement actions by public agencies, which lack adequate resources to bring all such actions themselves." *Arias v. Superior Cour*t (2009) 46 Cal.4th 969, 980-981, 986. "Restitution is not the primary object of a PAGA action, as it is in most class actions." *Franco v. Athens Disposal Co., Inc.* (2009) 171 Cal.App.4th 1277,1300 (emphasis added). Rather, a PAGA action is "fundamentally a law enforcement action designed to protect the public and penalize the employer for past illegal conduct." *Id*. Prior to the enactment of PAGA, the California Legislature determined that it lacked adequate financing to enforce California labor laws and in order "to achieve maximum compliance with state labor laws," it declared that it was in the public interest to allow employees, acting as private attorneys general, to recover civil penalties that otherwise would have been assessed and collected by the LWDA. *Arias*, 46 Cal.4th at 980-981.

Labor Code § 2699(s)(2) provides that the Superior Court shall review and approve any settlement of any civil action filed pursuant to the PAGA. Although PAGA actions bear a superficial resemblance to a type of class action, there are several factors distinguishing representative PAGA actions and class actions. First a representative action under PAGA is fundamentally a law enforcement action designed to protect the public and penalize the employer for past illegal conduct. See *Franco v. Athens Disposal Co., Inc*., (2009) 171 Cal. App. 4th 1277, 1300. The purpose is not to collect damages on behalf of other employees or provide restitution to victims of Labor Code violations. *Id*. ("Restitution is not the primary object of a PAGA action, as it is in most class actions."). Moreover, there is no requirement that the Court apply the same level of scrutiny in approving a PAGA settlement as it does with class actions. Indeed, the California Supreme Court has held that an employee who sues an employer under the PAGA need not satisfy class action requirements. *Arias*, 46 Cal. 4th at 974. For example, "PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action." *Baumann v. Chase Inv. Servs. Corp.,* 747 F.3d 1117, 1122 (9th Cir. 2014).

A. Plaintiff Submitted a Copy of the Settlement to the LWDA

Labor Code § 2699(s)(2) requires that any proposed settlement of a PAGA action be submitted to the LWDA. Plaintiff completed this requirement by submitting a copy of the PAGA Settlement to the LWDA through its online submission at the same time this was submitted to the court. Emran Decl. ¶ 9; Ex D to Emran Decl.

B. The LWDA Did Not Investigate Plaintiff's PAGA Claims

The Labor Code requires that a proposed PAGA settlement be sent to the LWDA at the same time that it is submitted to the Superior Court for review and approval. Lab. Code § 2699(s)(2). However, the Labor Code does not authorize the LWDA to interfere with, obstruct, object, or otherwise impede a request for approval of a PAGA settlement. Indeed, the time for the LWDA to comment on a settlement is during the short window in which it must inform the aggrieved employee that it declines to investigate. Lab. Code § 2699.3(a)(2)(B). Once that window shuts, the aggrieved employee is deputized to act on behalf of the LWDA in a civil action.

The Labor Code is clear that all that is required to obtain court approval of a PAGA settlement is for the proposed settlement to be sent to the LWDA. Lab. Code § 2699(s)(2). Here, the LWDA had opportunity to investigate and obtain civil penalties by citation after Plaintiff submitted his PAGA notice to the LWDA. Emran Decl. ¶ 4-5; Ex. A and Ex. D to Emran Decl. "If the [LWDA] intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within 65 calendar days of the postmark date of the notice." Lab. Code § 2699.3(a)(2)(B). All that is required now regarding LWDA involvement is for the requisite documentation to be submitted to the LWDA pursuant to Labor Code § 2699(s)(2) which Plaintiff's counsel has completed. Emran Decl. ¶ 9; Ex D to Emran Decl.

C. This Settlement is Fair, Adequate, and Reasonable

A plaintiff suing under PAGA does so as the proxy or agent of the State of California to enforce labor laws on behalf of the state's law enforcement agencies. *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380-381. As a result of Plaintiff's Counsel's efforts, Plaintiff's PAGA action undoubtedly achieved the primary objective of a PAGA action when Plaintiff's Counsel supplemented the State of California's enforcement action by filing the PAGA complaint on the behalf of Plaintiff and the State of California and utilizing its law firm's resources to litigate the action against the Defendants in an effort to compel maximum compliance with California labor laws. See *Arias*, supra, 46 Cal.4th at 980-981.

A presumption of fairness exists as the Settlement was reached through extensive, mediated arm's-length negotiations; sufficient investigation and discovery allowed Plaintiff's counsel to act intelligently, and Plaintiff's counsel is experienced in similar wage-and-hour litigation. *Dunk v. Ford Motor Company* (1996) 48 Cal. App 4th 1794, 1802. Additionally, settlement approval is appropriate as the proposed Settlement is fair, adequate, and reasonable to Plaintiff and the Aggrieved Employees.

The Parties participated in mediation the highly respected Mediator Mr. Mark Lemke who managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. Emran Decl. ¶ 19. (*In re Apple Computer, Inc. Derivative Litig,* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure."). The Settlement is a result of a mediator's proposal and reflects a reasonable assessment of the risks for each, as well as the recognition that continued litigation will cause extensive and costly discovery for all parties and further litigation would cause inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of litigation. Emran Decl. ¶ 19.

Counsel in this action is of opinion that Settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of

Plaintiff and other Aggrieved Employees in light of all known facts and circumstances reasonably considering the nature and magnitude of the claims being settled, and the role of judicial discretion, and the various potential impediments to recovery. Emran Decl. ¶ 20. Plaintiff conducted a thorough investigation into the facts of the Action, including by informal discovery exchange which requested information from Defendants in order to evaluate the potential damages and for respective counsel to engage in meaningful mediation with the assistance of Mr. Mark Lemke. Emran Decl. ¶¶ 11-17, 21. In addition to informal discovery, document review, interviewing multiple Aggrieved Employees, data analysis and legal research into similar cases. Although no two cases are identical, this research provided Plaintiff's Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. Emran Decl. ¶ 21. The investigation allowed Plaintiff's Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. Emran Decl. ¶ 21.

Both Parties' counsel has experience in employment litigation, specifically PAGA litigation, and conducted an extensive investigation of the factual allegations involved in this case. Emran Decl. ¶ 22. Approval of the Parties' Settlement Agreement is warranted because counsel for all Parties agree that the amount allocated for civil penalties under PAGA, currently estimated to be at least Fifty-Two Thousand Two Hundred Fifty Dollars and Zero Cents ($52,250.00), is fair and reasonable considering Defendants' compliant employment policies and practices PAGA period, the settlement was negotiated as part of an informed, non-collusive, arms-length negotiation following mediation with Mark Lemke, the uniqueness of Plaintiff's injuries which may have undermined her individual and representative claim, the ability for alleged "aggrieved employees" to bring their own claims for non-PAGA claims, the consideration of 109 aggrieved employees, and 1,954 total pay periods impacted by the Settlement, and Plaintiff's counsel risk of obtaining full recovery of claimed PAGA penalties in light of Defendants' disclosures. Emran Decl. ¶ 23. This amount is large enough to punish Defendants for alleged previous violations and to deter such alleged conduct in the future and still allows Aggrieved Employees to seek recovery of any individual claims they may have. Emran Decl. ¶ 23.

Continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Emran Decl. ¶ 24. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. Emran Decl. ¶ 24. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendant would appeal any favorable judgment. Emran Decl. ¶ 24. As demonstrated by *Magadia*, 999 F.3d 668, the risk of an appeal and subsequent reversal is real. Emran Decl. ¶ 24.

Here, both Parties' counsel has experience in employment litigation, specifically PAGA litigation, and conducted an extensive investigation of the factual allegations involved in this case. Emran Decl. ¶ 22. Each side has apprised the other, informally of their respective factual contentions, legal theories and defenses, resulting in extensive arms-length negotiations taking place among the Parties. Emran Decl. ¶ 22. Accordingly, the Parties respectfully request the Court approve the PAGA Settlement Agreement and this Motion.

D. The Requested Attorneys' Fees and Costs are also Reasonable.

1. Legal Standard for Attorneys' Fee Awards in Representative Actions

PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. Cal. Lab. Code § 2699(g). The U.S. Supreme Court has recognized that "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert* (U.S. 1980) 444 U.S. 472, 478. *Accord, Serrano v. Priest [Serrano III]* (1977) 20 Cal.3d 25, 38 (trial courts have equitable power to award attorneys' fees and costs when a litigation proceeding in a representative capacity secures a substantial benefit). The purpose of the "common fund doctrine" is not only to reward effective legal advocacy but to "spread litigation costs proportionally among all of the beneficiaries" preventing unjust enrichment. *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. Both state and federal courts in California have embraced the common fund doctrine. *E.g, Roos v. Honeywell Internat., Inc*. (2015) 241 Cal.App.4th 1472, 1490.

California courts routinely award attorneys' fees equaling one-third *or more* of the potential value of the common fund. *See Laffitte v. Robert Half Internat., Inc.,* 1 Cal. 5th 480 (2016) (affirming a fee award representation one-third of the common fund). In *Laffitte v. Robert Half Internat., Inc., the* California Supreme Court "join[ed] the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." *Laffitte v. Robert Half Internat., Inc.* (2016) 1 Cal. 5th 480, 503. Plaintiff submits that this guidance should equally apply to representative actions under PAGA.

In Plaintiff's view, *Lafitte* stands for the proposition that a trial judge may rely on his or her discretion and utilize either the percentage method, the lodestar method, or both to calculate a reasonable attorney's fee. Furthermore, should a lodestar crosscheck be elected, the trial court does not abuse its discretion whether it chooses to "perform[] the cross-check using counsel declarations summarizing overall time spent" or opts to do a more detailed analysis of daily time sheets. *Id.* at 505. Indeed, "[t]he choice of a fee calculation method is generally one within the discretion of the trial court, the goal…being the award of a reasonable fee to compensate counsel for their efforts." *Id*. at 504. *Laffitte* affirmed a fee award representing 33 and 1/3 percent of the fund. *Laffitte*. *Id.* at 506. And this was based on a lodestar amount that required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is "extraordinarily high or low [should] the trial court [] consider whether the percentage method should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id.* at 505.

2. 35% of the Net Settlement Amount and the Request Costs Reimbursement Are Appropriate and Should be Awarded.

The requested percentage fee is reasonable and should be awarded as confirmed by relevant case law and when compared with counsel's lodestar. Plaintiff's counsel requests 35% fee or Forty Thousand Two Hundred Fifty Dollars and Zero Cents ($40,250.00). This is not an "extraordinarily high or low" multiplier, so the Court is not compelled to adjust the percentage fee request in order to get the multiplier to a "justifiable range." *See Laffitte v. Robert Half Intern. Inc. (2016)* 1 Cal.5th

480, 488, 503–504. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements finding "a range of 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range"]

"While the percentage method has been generally approved in common fund cases, courts have sought to ensure the percentage fee is reasonable by refining the choice of a percentage or by checking the percentage result against a lodestar- multiplier calculation." Laffitte, *supra*, 1 Cal.5th 480, 494-495.

As part of the Settlement Agreement, the Parties agreed to an award of attorneys' fees equal to 35% of the Gross Settlement Amount, which equals Forty Thousand Two Hundred Fifty Dollars and Zero Cents ($40,250.00). Emran Decl. Ex. C ¶ 3.2.1. Defendants additionally agreed to PAGA Counsel Litigation Expenses Payment of not more than Seventeen Thousand Five Hundred Dollars and Zero Cents ($17,500.00). Emran Decl. Ex. C ¶ 3.2.1

In defining a reasonable fee, the Court should mimic the marketplace for cases involving a significant contingent risk such as this one. Emran Decl. ¶ 27. Our legal system places unique reliance on private litigants to enforce substantive provisions of employment law through PAGA actions. Emran Decl. ¶ 27. Therefore, attorneys providing these substantial benefits should be paid an award equal to the amount negotiated in private bargaining that takes place in the legal marketplace. Emran Decl. ¶ 27.

There is a substantial difference between the risk assumed by attorneys being paid by the hour and attorneys working on a contingent fee basis. Emran Decl. ¶ 28. The attorney being paid by the hour can go to the bank with his fee while the attorney working on a contingent basis can only log hours while working without pay towards a result that will hopefully entitle him to a marketplace contingent fee taking into account the risk and other factors of the undertaking. Emran Decl. ¶ 28. Otherwise, the contingent fee attorney receives nothing. Emran Decl. ¶ 28. In this case, PAGA Counsel subjected themselves to this contingent fee market risk in this all or nothing contingent fee case wherein the necessity and financial burden of private enforcement makes the requested award appropriate. Emran Decl. ¶ 28. The contingent fee practices of PAGA Counsel do not accommodate the investment of unnecessary time in a case. Emran Decl. ¶ 28. This case was litigated on a contingent basis with all of the concomitant risk factors inherent in such an uncertain undertaking. Emran Decl. ¶ 28.

A number of difficult issues, the adverse resolution of any one of which could have doomed the successful prosecution of the action, were present here. Emran Decl. ¶ 29. Attorneys' fees in this case were not only contingent but risky, with a very real chance that PAGA Counsel would receive nothing at all for their efforts, having devoted time and advanced costs. Emran Decl. ¶ 29. PAGA Counsel has previously invested in cases which resulted in no recovery. Emran Decl. ¶ 29.

At the time this case was brought, the result was far from certain. Emran Decl. ¶ 30. Defendants' practice at issue here had been in place for years. Emran Decl. ¶ 30. A number of defenses asserted by Defendants presented serious threats to Plaintiff's claims and Plaintiff's ability to stand as a PAGA representative and created difficulties with complex legal issues for PAGA Counsel to overcome. Emran Decl. ¶ 30. Defendants asserted that the employment practices complied with all applicable Labor Laws. Emran Decl. ¶ 30. The vast majority of the damages alleged to have been suffered by the Aggrieved Employees and Plaintiff are attributed to missed meal and rest breaks. Emran Decl. ¶ 30. Before and during the mediation, Defendant aggressively argued that Defendant's policies and culture afforded the Aggrieved Employees an opportunity to take timely meal and rest breaks, and that employees like the Plaintiff chose not to take compliant breaks. Emran Decl. ¶ 30. Because Plaintiff's claims were largely based on the missed breaks, and because Defendant's policies were, on their face compliant, this presented a very real concern for Plaintiff and the Aggrieved Employees. Emran Decl. ¶ 30. Defendants showed that meal periods that were not compliant, were because an employee clocked out a few minutes after the beginning of their fifth hour of work or they clocked in a few minutes shy of thirty minutes. Emran Decl. ¶ 30. Defendants argued the caselaw under PAGA grants the Court discretion to reduce or forego penalties for such "technical" violations. Emran Decl. ¶ 30. Finally, the typical ebb and flow of business in adult nightclubs means employees generally have slow periods during which they take breaks to play on their phones, go out for a smoke, or both, over the course of the shift – which

Defendants said they would provide witnesses to corroborate. Emran Decl. ¶ 30. If successful, this defense could eliminate or substantially reduce any recovery to the Aggrieved Employees. Emran Decl. ¶ 30. While Plaintiff believes that this defense, and others, could be overcome, Defendant maintain these defenses have merit and therefore present a serious risk to recovery. Emran Decl. ¶ 30. Plaintiff's second large claim argued that Defendant failed to pay its employees overtime as a result of off-the-clock work for donning and doffing time. Emran Decl. ¶ 30. However, Defendants' time records showed average hours worked was 6.08 hours per shift and the median hours worked was 6.63 hours per shift. Emran Decl. ¶ 30. As a result, Defendants' evidence demonstrated that, when Plaintiff and other Aggrieved Employees occasionally worked overtime, it was recorded on their timesheets and all employees were fully compensated for the overtime hours they worked. Emran Decl. ¶ 30. Defendant identified employees willing to uniformly testify that bartenders and servers were never required to work off the clock. Emran Decl. ¶ 30. Defendant argued that the individual experience of each employee varied with respect to the alleged claims. Emran Decl. ¶ 30.

The Settlement was possible only because PAGA Counsel was able to persuade Defendants that there was an appreciable risk that PAGA Counsel would prevail on the factual and legal issues underlying liability, demonstrate Plaintiff's injuries to collect on behalf of the Aggrieved Employees and the LWDA, and overcome difficulties in proof as to monetary relief. Emran Decl. ¶ 31. In successfully navigating these hurdles so as to convince Defendants to settle, PAGA Counsel displayed skills consistent with those that might be expected of attorneys of comparable employment and PAGA experience. Emran Decl. ¶ 31.

PAGA Counsel was required to advance all costs in this litigation. Emran Decl. ¶ 32. The financial burdens undertaken by PAGA Counsel in prosecution this action on behalf of the LWDA and Aggrieved Employees were very substantial. Emran Decl. ¶ 32. To date, PAGA Counsel has advanced more than $16,521.54 in costs which could not have been recovered if this case had been lost. Emran Decl. ¶ 32. These litigation expenses include the expenses reasonably incurred for filing fees, mediation fees, expert fees, postage, and litigation support vendors, all of which are costs normally billed to and paid by the client. Emran Decl. ¶ 32. Plaintiff and PAGA Counsel undertook the risk of liability for Defendants' costs had this case not succeeded, as well as other potential negative financial ramifications from having come forward to sue Defendants on behalf of the Aggrieved Employees. Emran Decl. ¶ 33. Accordingly, the contingent nature of the fee and financial burdens on PAGA Counsel support the requested award. Emran Decl. ¶ 33.

In this case, the reasonableness of the requested attorneys' fee of 35% of the Gross Settlement Amount equaling $40,250.00 is established by reference to PAGA Counsel's lodestar in this matter. Emran Decl. ¶ 34. The contemporaneous billing records for PAGA Counsel evidence that as of the date of this filing, Plaintiff's counsel has incurred a total of $38,972.70 in attorneys' fees with 105.32 hours reasonably worked on this matter, with additional fees and costs still to be incurred. Emran Decl. ¶ 34. The requested fee award is therefore close to PAGA Counsel's overall lodestar. Emran Decl. ¶ 34. As a result, this Court should appropriately conclude that an award which compares favorably to PAGA Counsel's overall lodestar is fair and reasonable and is justified under California law. Emran Decl. ¶ 34.

Plaintiff and the Aggrieved Employees are represented by competent and experienced counsel to pursue their claims. Emran Decl. ¶ 35. The charges are reasonable and were reasonably necessary to the conduct of the case. Emran Decl. ¶ 35. From approximately April 2024 and June 2025, PAGA Counsel has worked more than 105.32 hours prosecuting these claims with the attorneys' hourly fee rates for attorneys ranging between $450 and $550, resulting in current fees equaling $38,972.70, with additional time and costs expected including attending the hearing for this Motion, coordinating administration, finalizing the orders and judgment, monitoring completion of the settlement process, and any subsequent compliance hearings. Emran Decl. ¶ 36-38; Emran Decl. Ex. E. PAGA Counsel's additional work brings the multiplier down even lower. Emran Decl. ¶ 37. PAGA Counsel's rates are in line with the prevailing rates of attorneys in the local legal community for similar work and, if this were a commercial matter, these are the charges that would be made and presented to the client. Emran Decl. ¶ 37. These hourly rates have been approved by Court's throughout California, including those in the Superior Court of California. Emran Decl. ¶ 37; Ex. E to Emran Decl.

PAGA Counsel have extensively litigated similar labor law cases against other employers on behalf of aggrieved employees. Emran Decl. ¶ 38. PAGA Counsel must be extremely familiar and knowledgeable with wage and hour laws, litigation practices, case law, policy, statutory construction, employer practices, employee needs, employee working conditions, and more. Emran Decl. ¶ 39. With this learned knowledge, PAGA Counsel must strategize which cases to settle pre-litigation or post-litigation, which to mediate, and which cases to take to trial. Emran Decl. ¶ 39. It is this level of experience which enabled the firms to undertake the instant matter and to successfully combat the resources of the defendant and their capable and experienced counsel. Emran Decl. ¶ 39. PAGA Counsel strongly believes in the vigorous prosecution of our cases, including this case, for the best interest of our clients, and any aggrieved employees. Emran Decl. ¶ 41.

The matter was undertaken by Plaintiff's Counsel purely as a contingency fee case. Emran Decl. ¶ 41. In other words, Plaintiff's Counsel will not receive any compensation unless there is a cash recovery. Emran Decl. ¶ 41. Plaintiff was not asked or required to pay Plaintiff's Counsel any money unless there is a recovery on their behalf. Emran Decl. ¶ 41. The requested fee award, agreed to by the parties as part of the Settlement, should be approved. Emran Decl. ¶ 40. The requested fee award was bargained for during arms' length adversarial bargaining by counsel for each of the parties as part of the Settlement. Emran Decl. ¶ 40. Accordingly, Plaintiff respectfully requests the Court approve PAGA Counsel Fees Payment.

V. <u>CONCLUSION</u>

Based on the foregoing, the Parties respectfully request the Court grant this motion and approve the Parties' Settlement Agreement.

DATED: June 25, 2025

EMRAN LAW

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