**WILSHIRE LAW FIRM, PLC**
Benjamin H. Haber (SBN 315664)
benjamin.haber@wilshirelawfirm.com
Daniel J. Kramer (SBN 314625)
daniel.kramer@wilshirelawfirm.com
Chase M. Stern (SBN 290540)
chase.stern@wilshirelawfirm.com
Alan Wilcox (SBN 287476)
alan.wilcox@wilshirelawfirm.com
Conor Gomez (SBN 337395)
conor.gomez@wilshirelawfirm.com
660 S. Figueroa St., Sky Lobby
Los Angeles, California 90017
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF KERN**

GERMAN ATONDO, individually, on behalf of all others similarly situated, the State of California, and other aggrieved persons,

*Plaintiff*,

v.

LAUREL AG & WATER, LLC, a California limited liability company; LODI PUMP & IRRIGATION, LLC, a California limited liability company; LODI PUMP AND IRRIGATION, LLC, a California limited liability company; U.S. PIPE AND IRRIGATION, LLC, a California limited liability company; and DOES 1 through 10, inclusive,

*Defendants.*

Case No.: BCV-24-102996
Assigned to Honorable T. Mark Smith, Dept. T2

Complaint Filed: August 30, 2024
Trial date: Not set

**PAGA REPRESENTATIVE ACTION**

**PLAINTIFF'S NOTICE OF MOTION AND MOTION TO APPROVE PAGA SETTLEMENT**

Approval Hearing Date
Date: May 28, 2026
Time: 8:30 a.m.
Dept.: T2

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Los Angeles, CA 90017

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

**PLEASE TAKE NOTICE** that on May 28, 2026, at 8:30 a.m. in Department T2 of the Metropolitan Traffic Division, Kern County Superior Court, located at 3131 Arrow Street, Bakersfield, CA 93308, the Honorable T. Mark Smith presiding, Plaintiff German Atondo ("Plaintiff") will, and hereby does, move for an order under Labor Code section 2699(l)(2) approving the PAGA Settlement Agreement (the "Settlement" or "Settlement Agreement") and PAGA Notice Cover Letter (the "Notice") entered into by Plaintiff and Defendant Laurel Ag & Water, LLC and U.S. Pipe and Irrigation, LLC ("Defendant") to settle the above-captioned Private Attorneys General Act ("PAGA") representative action brought by Plaintiff against Defendant (the "Action"). A true and correct copy of the Settlement Agreement and Notice is attached to the Declaration of Alan Wilcox In Support of Plaintiff's Motion To Approve PAGA Settlement (the "PAGA Counsel Declaration") as **Exhibit 4**.

Pursuant to Labor Code § 2699(l)(2), the Settlement requires the Court's approval. The Settlement provides penalties to "Aggrieved Employees", defined as an hourly-paid or non-exempt employees at any time from June 20, 2023, through the Court's approval of the settlement, subject to Paragraph 8 of the Settlement (the "PAGA Period"). The Settlement is fair, adequate, and reasonable, and it provides for civil penalties to be distributed to Plaintiff, the Aggrieved Employees, and the California Labor & Workforce Development Agency ("LWDA").

This motion is based on this Notice, the attached Memorandum of Points and Authorities, the PAGA Counsel Declaration and attached exhibits, as well as the records on file in this action and any argument the Court is presented with at the time of the hearing (the "Motion").

Respectfully submitted,

Dated: April 21, 2026

WILSHIRE LAW FIRM

By: Alan Wilcox

Benjamin H. Haber
Daniel Kramer
Chase Stern
Alan Wilcox
Conor Gomez

Attorneys for Plaintiff ("PAGA Counsel")

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Los Angeles, CA 90017

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# MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION.

On or about June 20, 2024, Plaintiff submitted a letter to the California Labor and Workforce Development Agency ("LWDA") which provided notice pursuant to the Labor Code Private Attorneys General Act of 2004 (Lab. Code § 2699, et seq.) ("PAGA") of Plaintiff's allegations regarding purported violations of California law against defendants Lodi Pump & Irrigation, LLC dba Laurel AG & Water and the factual assertions supporting those allegations. (PAGA Counsel Decl., ¶ 4.) On or about September 6, 2024, Plaintiff amended his letter to the LWDA to add defendants U.S. Pipe and Irrigation, LLC and Laurel AG & Water Lodi, LLC (included in "Defendants"; Plaintiff and Defendants are referred to individually as a "Party" and collectively as the "Parties."). Plaintiff's letters to the LWDA are collectively referred to herein as the "PAGA Notice". (*Id*., Ex. 1, 2.)

On or about August 30, 2024, after exhausting the requisite pre-filing notice period pursuant to PAGA, Plaintiff filed a representative action in the Superior Court of California, County of Kern, with the above listed case number, seeking civil penalties pursuant to PAGA against Defendants for the purported violations of California law alleged in Plaintiff's PAGA Notice (the "Operative Complaint" or "PAGA Action"). (*Id*. at ¶ 5.)

On December 4, 2025, Plaintiff and Defendant engaged in vigorous, arms-length negotiations regarding the resolution of this Action. (PAGA Counsel Decl., ¶ 7.) After an all-day mediation presided over by Honorable Howard R. Broadman (Ret.), the Parties ultimately agreed to settle Plaintiff's PAGA claim for $290,000.00 (the "Gross Settlement Amount"), which will provide significant civil penalties to the California Labor & Workforce Development Agency ("LWDA") and other aggrieved employees. (*Id.* at ¶ 8.)

Labor Code § 2699 (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the [LWDA] at the same time that it is submitted to the court." Plaintiff submitted the proposed Settlement to the LWDA pursuant to Labor Code § 2699 (l)(2). (*Id.* at ¶ 9, Ex. 4.) The Parties now seek Court approval of the Settlement. For the reasons discussed in detail below, the Court should issue an order approving the Settlement.

## II. <u>FACTUAL AND PROCEDURAL BACKGROUND.</u>

This is a Private Attorneys General Act ("PAGA") (Lab. Code §§ 2699, et seq.) representative action. (PAGA Counsel Decl., ¶ 2.) Plaintiff and a person employed by Defendant Defendants Laurel Ag & Water, LLC and U.S. Pipe and Irrigation, LLC ("Defendant" and together with Plaintiff, the "Parties") in in California as an hourly-paid or non-exempt employees (each a "Aggrieved Employee") at any time from June 20, 2023, through the Court's approval of the Settlement, subject to Paragraph 8 of the Settlement (the "PAGA Period"). (*Id.*) Defendant are a private equity-backed leading California irrigation supplier. (*Id.*)

Plaintiff alleges that Defendant failed to pay for all hours worked. (*Id.* at ¶ 3.) Plaintiff further alleges that Defendant failed to: provide meal periods, authorize and permit rest periods, failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages, failure to furnish accurate wage statements, and failure to indemnify employees for expenditures. (*Id.*)

After Plaintiff filed the Operative Complaint, the Parties engaged in extensive settlement discussions and informal discovery. (PAGA Counsel Decl., ¶ 6.) Defendant produced a sample of employee timekeeping and payroll data as well as documents reflecting Defendant's policies, practices and procedures during the relevant time period. (*Id.*) Ultimately, after an all-day mediation presided over by Howard R. Broadman (Ret.)., the Parties reached the Settlement. (PAGA Counsel Decl., ¶ 7.) There are approximately 221 aggrieved employees covered by the Settlement.[1] (*Id.* at ¶ 8.) Plaintiff submitted the Settlement to the LWDA pursuant to Labor Code § 2699 (l)(2). (*Id.* at ¶ 4.) A true and correct copy of the Plaintiff's submission confirmation of the Settlement Agreement and Notice to the LWDA is attached to the PAGA Counsel Declaration as **<u>Exhibit 4</u>**. (PAGA Counsel Decl., ¶ 9, Ex. 4.)

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[1] As of December 4, 2025, there were 221 Aggrieved Employees as represented by Defendant. This number is subject to change pursuant to the escalator clause of the Settlement Agreement.

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## III. ARGUMENT.

PAGA permits an aggrieved employee to sue an employer for civil penalties associated with the employer's alleged violations of the Labor Code. (Labor Code § 2699(a).) Under the statute, of the amount paid to settle a claim for PAGA penalties, thirty-five percent (35%) is payable to the aggrieved employees and sixty-five percent (65%) is payable to the LWDA. (Labor Code § 2699 (m)).

### A. The Terms of the PAGA Settlement.

Payment Terms

The Settlement provides for Defendant to pay the Gross Settlement Amount. (Settlement, at ¶ 1.12.) If the Court approves the terms of the Settlement, the net settlement amount will be approximately $165,204.50 (the "Net Settlement Amount"). The Net Settlement is the Gross Settlement Amount *minus* the following:

a. Up to $10,000.00 enhancement award to Plaintiff (the "PAGA Representative Service Award");

b. $96,657.00 to PAGA Counsel for their attorneys' fees (the "PAGA Counsel Fees Payment");

c. $12,648.50 to PAGA Counsel for attorneys' costs (the "PAGA Counsel Litigation Expenses Payment"); and

d. $5,490.00 to the Apex Class Action Administration (the "Administrator") for their administration costs (the "Administrator Expenses Payment"). A true and correct copy of the Administrator's bid is attached to the PAGA Counsel Declaration as **Exhibit 5**. (PAGA Counsel Decl., ¶ 16.)

Further, 65% of the Net Settlement Amount, or approximately $107,382.92, will go to the LWDA and the remaining 35% of the Net Settlement Amount, or approximately $57,821.58, will be paid to the Aggrieved Employees by "(a) dividing the amount of the Aggrieved Employees' 35% share of PAGA Penalties by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes

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owed on their Individual PAGA Payment.”. (*Id.*, Settlement, ¶ 3.2.4.1.) The average Individual PAGA Payment is estimated to be approximately $261.64 ($57,821.58 / 221). (PAGA Counsel Decl., ¶ 16.)

Administration

The “Effective Date” is the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (i) the expiration of the period for filing any appeal, writ, or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed; (ii) the dismissal of any appeal, writ, or other appellate proceeding opposing the Settlement with no right to pursue further remedies or relief; or (iii) upon the expiration of any time to file a petition for rehearing and the expiration of any time to file any petition in the California Supreme Court or the Supreme Court of the United States following a final appellate opinion or order upholding the Court's final order with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court's order approving the Settlement is completely final and there is no further recourse by an appellant who seeks to contest the Settlement. (Settlement, ¶ 1.11.)

Not later than fifteen (15) days after the Court grants Approval of the Settlement, Defendant will simultaneously deliver the Aggrieved Employee Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employees' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. (Settlement, at ¶ 4.2.) Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the Effective Date. (*Id.* at ¶ 4.3.)

Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. (Settlement, at ¶ 4.4.1.) The

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Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail. (*Id.*) The face of each check shall prominently state the date (180 days after the date of mailing) when the check will be voided (the "Void Date"). (*Id.*) The Administrator will cancel all checks not cashed by the Void Date. (*Id.*) For any Aggrieved Employee who's Individual PAGA Payment check is uncashed and canceled after the Void Date, within ten (10) calendar days of the Void Date, the Administrator shall transmit the funds represented by such checks to California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. (*Id.* at ¶ 4.4.3.)

<u>Releases</u>

<u>Release by Aggrieved Employees</u>: "Upon funding of the entire Gross Settlement Amount, 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, rights, demands, liabilities and causes of action for civil penalties under the PAGA, that Aggrieved Employees have had, now have, or may have in the future against Released Parties based on any acts or omissions occurring during the PAGA Period and alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint or the PAGA Notice, including, but not limited to, any and all claims for PAGA Penalties pursuant to Wage Order 4-2001 and Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802. Aggrieved Employees have no right or ability to opt out of the portion of this Settlement releasing the Released PAGA Claims." (Settlement ¶ 5.2.)

<u>Release by Plaintiff</u>: "In exchange for a payment of Ten Thousand Dollars ($10,000), Plaintiff and his respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, dependents, administrators, devisees, legatees, executors, trustees, conservators, guardians, personal representatives, successors, and assigns, whether individual, class, representative, legal, equitable, direct or indirect, or any other type of any capacity, shall and does hereby forever generally release, discharge, and agree to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies,

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damages, causes of action, suit, rights, demands, costs, losses, transactions, occurrences, or debts or expenses (including attorney fees and costs), known or unknown, at law or in equity which he may now have or may become aware of after the signing of this Agreement, including, but not limited to: (a) arising out of or in any way connected with their employment with Defendant, including the Released Claims, (b) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint; (c) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Action, Plaintiff German Atondo's PAGA Notice, or ascertained during the Action and released under 5.2, below, and (d) any and all transactions, occurrences, or matters between the Parties occurring prior to the date this Agreement is fully executed. ("Plaintiff's Release.") Without limiting the generality of the foregoing, Plaintiff's Release shall include, but not limited to, any and all claims under: (a) the Americans with Disabilities Act; (b) Title VII of the Civil Rights Act of 1964; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981; (e) the Age Discrimination in Employment Act; (f) the Fair Labor Standards Act; (g) the Equal Pay Act; (h) the Employee Retirement Income Securities Act, as amended; (i) the Consolidated Omnibus Budget Reconciliation Act; (j) the Rehabilitation Act of 1973; (k) the Family and Medical Leave Act; (l) the Civil Rights Act of 1966; (m) the California Fair Employment and Housing Act; (n) the California Constitution; (o) the California Labor Code; (p) the California Government Code; (q) the California Civil Code; and (r) any and all other federal, state, and local statutes, ordinances, regulations, rules, and other laws, and any and all claims based on constitutional, statutory, common law, or regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of emotional distress, negligent infliction of emotional distress, or damages under any other federal, state, or local statutes, ordinances, regulations, rules, or laws. This release is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and costs. 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

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that arose at any time, or based on occurrences after signing this Agreement. 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." (Settlement ¶ 5.1.)

### B. The Terms of the PAGA Settlement Are Fair and Should Be Approved.

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the "court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." (Labor Code § 2699 (l).

As with any settlement, the Court must be mindful in conducting its inquiry that a "[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further." (*See In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 13, 2011) 2011 WL 4079226, *9.) Indeed, "the very essence of a settlement is … 'a yielding of absolutes and an abandoning of highest hopes,'" as "it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." (*See Officers for Justice v. Civil Service Com*. (9th Cir. 1982) 688 F.2d 615, 624-25.) As such, "the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits" or "judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." (*Id*.)

Although the operative PAGA statute does not set forth the criteria by which a PAGA settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a class action settlement. However, "a PAGA claim asserted on a non-class representative basis…is not considered a class action but a law enforcement action and therefore does not have to meet the requirements of [a class action]." (*See Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, *13 ; *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571, *4 (E.D. Cal. July 1, 2010).) A court's review of a PAGA settlement necessarily implicates the following unique features that render the approval process distinct from approval

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of a class action settlement under Code of Civil Procedure § 382 and California Rules of Court, Rule 3.769.

First, in evaluating the adequacy of the settlement amount, the Court's focus is not concerned with the amount(s) that "aggrieved employees" are to receive, but rather, must focus on the total settlement amount in achieving PAGA's objective. Indeed, "[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or class damages." (*Mendez, supra*, 2010 WL 2650571 at *4.) "Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." (*Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. Apr. 2, 2010) 2010 WL 1340777, *4. Moreover, while "'[a PAGA] action is … designed to protect the public and penalize the employer for past illegal conduct," a reviewing Court must take into account the fact that settlement of a PAGA claim – like any settlement – involves a "compromise" that stops short of rendering findings of liability and damages. (*Mendez*, 2010 WL 2650571 at p. *4) As such, the Court must not lose sight of the fact that "[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies." (*See Ochoa-Hernandez,* 2010 WL 1340777 at p. *4.)

Second, consistent with the fact that unnamed employees have no property interest in a PAGA claim,[2] "[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim." (*See Ochoa-Hernandez, supra,* 2010 WL 1340777 at p. *4.) This renders the approval process of a PAGA settlement distinct from a class action settlement, as there is no need for the Court to employ the "two-step approval

[2] As held by the California Supreme Court, "[t]he Labor Code Private Attorneys General Act of 2004 does not create property rights or any other substantive rights" as "[i]t is simply a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies." (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003.)

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process" required under Federal Rule of Civil Procedure 23(e) and Rule 3.769.[3]

Finally, unlike a class action settlement under Rule 23(e) and Rule 3.769, the scope of release permitted in a PAGA settlement is limited. While "judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding…the non-party employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986-87 .) Thus, with the exception of the named Plaintiff, the scope of a release in a PAGA settlement is necessarily strictly confined to the PAGA penalties alleged in the complaint, and claims that were or could have been alleged pursuant to PAGA based on the factual allegations in the complaint. In the case at hand, as the only claims at issue are PAGA claims, those will be the only claims extinguished as a result of this Settlement, with the exception of Plaintiff's much broader, general personal release against Defendant.

California courts have a strong policy in favor of settlement. (*See, e.g., Stambaugh v. Superior Court* (1976) 62 Cal.App.3d 231, 236.) Unlike individual settlements, class action settlements (and representative PAGA settlements) involve a court approval process that exists to prevent fraud, collusion, and unfairness to absent individuals. (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-79.) "Despite the fact that 'a representative action under PAGA is not a class action'[(*Kim v. Reins International California, Inc.* (2020) 9 Cal.App.5th 73, 87)], and is instead a 'type of qui tam action' [(*Iskanian v. CLS Transportation Los Angeles, LLC*, (2014) 59 Cal.App.4th 348, 382.)] a standard requiring the trial court to determine independently whether a PAGA settlement is fair and reasonable is appropriate." (*Moniz v. Adecco USA, Inc.*, (2021) 72 Cal.App.5th 56, 76 ("*Moniz*") (disapproved on other grounds by

[3] Significantly, the "two-step" approval process of Rule 23(e) is required to facilitate "notice" to absent class members, as Rule 23(e) expressly requires notice and an opportunity for absent class members to exclude themselves or object. (*See* Fed. R. Civ. P. 23(e) ("The following procedures apply to a proposed settlement … (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal…. (4) … the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members…. (5) Any class member may object to the proposal if it requires court approval under this subdivision").) Cal. Rule of Court 3.769 contains similar rules for State court class actions.



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*Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664).) The trial court must review and approve a PAGA settlement, and the California Supreme Court has observed that the trial court's approval "ensur[es] that any negotiated resolution is fair to those affected." (*See id.* (citing *Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 542-43.) When trial court approval is required for certain settlements in other qui tam actions in this state, the statutory standard is whether the settlement is "fair, adequate, and reasonable under all the circumstances." (*See Moniz*, *supra*, at 76-77.) "Because many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement." (*Id.*) Thus, when approving a PAGA settlement, the Court can analyze the fairness of a settlement under the same framework as it does for class actions.

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In the class action context, there is a presumption of fairness of a class action settlement when: (1) the settlement is reached as a result of arm's length negotiations; (2) there has been sufficient investigation and discovery; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) Before approving a class action settlement, a trial court must develop an understanding "of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 120.).

The Settlement satisfies these factors as detailed below.

**1. The Settlement Was Reached Through Arms-Length Bargaining.**

The Parties reached the Settlement after an all-day mediation presided over by Honorable Howard R. Broadman (Ret.). (PAGA Counsel Decl., at ¶ 8.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*)

**2. The Settlement Is Based On Sufficient Investigation and Discovery.**

Before the Settlement, PAGA Counsel conducted an investigation into the claims alleged by Plaintiff, conducted legal research, and engaged in informal discovery. (*Id.* at ¶ 9.) Based upon the information obtained through informal discovery, Plaintiff's counsel was able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.*)

**3. Plaintiff's Counsel Have Extensive Experience in PAGA Actions.**

Highly capable and experienced counsel conducted the settlement negotiations. Plaintiff's counsel are respected members of the bar with a strong record of vigorous and effective advocacy for their clients, and they are experienced in handling complex wage and hour class action litigation and PAGA actions. (PAGA Counsel Decl., ¶¶ 33-47.) PAGA Counsel believes this Settlement represents a fair and reasonable resolution. (*Id*. at ¶ 31.)

**4. Assessing the Amount In Controversy and the Risks of Trial.**

Plaintiff and PAGA Counsel remain confident of the merits of Plaintiff's claims. (PAGA Counsel Decl., at ¶ 10.) With respect to the meal period allegation, Plaintiff alleges that Defendant did not have fully compliant written meal period policies. (*Id.*) Although Plaintiff contends that this allegation is meritorious, there is risk with this underlying claim. (*Id.*) With respect to the rest period allegation, Plaintiff contends that employees, including himself, were not provided with California-compliant rest periods, as employees were often cut short or otherwise interrupted or that employees would be forced to skip rest breaks due to a heavy workload. (*Id.*) Again, despite Plaintiff's contention that this allegation is credible, proving rest period allegations is particularly difficult because rest periods do not have to be recorded and Defendant can argue that the aggrieved employees chose to voluntarily forego their rest periods. (*Id*.) Defendant also maintains that any alleged wage statement violation could not be shown to be "knowing and intentional," and that Plaintiff cannot show that she or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Labor Code § 226 (e) for the imposition of penalties. (*Id.* at ¶ 11.) Plaintiff recognized there is a legitimate risk of the Court significantly reducing penalties given the technical nature of the alleged violations. (*Id*. at ¶ 12.)



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Without this Settlement, the Parties face preparation for trial, as well as extensive formal discovery efforts and further depositions. (PAGA Counsel Decl., at ¶ 12.) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id*.) This Settlement avoids those risks and the accompanying expense. (*Id*.) Thus, this factor favors approval.

As described above, the proposed Settlement provides a fair and reasonable monetary recovery for the PAGA Employees and the LWDA in the face of the contested claims. Plaintiff estimated Defendant's realistic exposure for the PAGA penalties as follows:

<u>PAGA Penalties for Unpaid Wages, Meal Period Violations, Rest Period Violations, and Unreimbursed Business Expenses</u>

The Settlement Agreement provides for 8,563 pay periods during the PAGA Period which presented issues with regard to (1) unpaid wages, (2) meal period violations, (3) rest period violations, and (4) unreimbursed business expenses. (PAGA Counsel Decl., at ¶ 13.) Plaintiff acknowledges that when evaluating Defendant's potential exposure, it is likely that the Court would impose only the initial $100 violation for all PAGA violations. (*See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 [finding that the "initial" violation rate applies until the employer has been notified that it is violating a Labor Code provision].) Applying the $100 "initial violation" penalty for each of these 4 violations per pay period, Defendant's maximum potential PAGA exposure is $3,425,200 (based on 8,563 pay periods). (*Id*.) However, given the technical nature of proving each of these violations, PAGA Counsel reduced its estimate by assuming one violation per pay period, yielding 856,300.00 (based on 8,563 pay periods). PAGA Counsel, in their vast experience litigating these complex wage and hour claims, then discounted this amount by 70% given the highly contested nature of the claims, the defenses asserted by Defendant, the likelihood of success at trial, and the Court's discretion in reducing penalties, yielding a realistic maximum recovery of $256,890.00. (*Id*.; *see also Fleming v. Covidien Inc.* (C.D. Cal., Aug. 12, 2011, No. (OPX)) 2011 WL 7563047, at *4 [reducing PAGA penalties from $2.8 million to $500,000]; *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136 [affirming trial court's finding that awarding maximum PAGA penalties would be unjust].)

PAGA Counsel, with the assistance of a statistics consultant, further determined that there

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were 8,563 pay periods that presented potential wage statement violations. (PAGA Counsel Decl., at ¶ 14.) Because Plaintiff's wage statement theory of liability is predicated on Defendant's issuance of facially deficient wage statements – each of the wage statements issued would carry a potential PAGA penalty. (*Id.*) Accordingly, Defendant's maximum exposure for its wage statement violations is $845,250.00 ($50 * 221 + $100 * 8,342). (*Id.*) However, based on Defendant's counterarguments and because the Court maintains discretion to reduce these penalties, Plaintiff discounted that figure by 70% for a risk of not prevailing on the merits and to account for the Court's discretion to reduce the penalties (given the highly technical nature of the alleged violations), for a total of $253,575.00. (*Id.*) Therefore, taken together, the total realistic maximum damages for statutory and civil penalties for all claims is $510,465.00. (*Id.*)

The Gross Settlement Amount therefore represents 56.8% of Plaintiff's reasonably forecasted total recovery ($290,000.00 / $510,465.00 = 56.8%). (PAGA Counsel Decl., at ¶ 15.) "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 [internal quotations omitted].) In this Action, continued litigation would delay payment to the LWDA and the PAGA Employees as they await trial and, most likely, appellate proceedings. (*Id*. at ¶ 15.) Furthermore, while Plaintiff is confident in the merits of the case, a legitimate controversy exists as to each of the predicate Labor Code violations. (*Id.*) The possibility that the Court finds no liability at the PAGA bench trial is also a risk. (*Id.*) In sum, when the risks of litigation, the burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment are balanced against the merits of Plaintiff's claims, it is clear that the Settlement is fair. (*Id.*) Further, because of the proposed Settlement, the PAGA Employees will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.*) Plaintiff also recognizes that proving the amount of wages due to each employee would be an expensive, time-consuming, and uncertain proposition. (*Id.*)

If the Court approves the terms of the Settlement, the average Individual PAGA Payment is estimated to be approximately $261.64 ($57,821.58 / 221). (PAGA Counsel Decl., ¶ 16.)

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### C. <u>The PAGA Representative Service Payment Is Reasonable.</u>

Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186 Cal.App.4th 399, 412.) Courts also routinely grant approval of PAGA settlement agreements containing additional awards for the class representatives, which are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, **<u>to recognize their willingness to act as a private attorney general</u>**." (*Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94 [citations omitted] (emphasis added).)

The Settlement provides for a PAGA Representative Service Payment to Plaintiff in an amount not to exceed $10,000.00. (Settlement, ¶ 3.2.1.) The PAGA Representative Service Payment is intended to recognize: (1) the substantial time and effort that Plaintiff has expended on behalf of the State and Aggrieved Employees; (2) the risks faced by Plaintiff as a result of bringing this Action; (3) the fact that Plaintiff put the interests of the State of California and other Aggrieved Employees ahead of his own; and (4) the substantial benefit conferred upon the State and the Aggrieved Employees as a result of Plaintiff's actions. (PAGA Counsel Decl., ¶ 17.) Plaintiff has spent numerous hours performing tasks for this Action, including, but not limited to, the following: consulting with PAGA Counsel in-person and over the telephone; searching for and producing relevant documents; reviewing documents produced by Defendant and settlement documents; keeping informed of the developments in the Action; and participating in decisions concerning the case, including settlement. (*Id*. at ¶ 18.) As a result of his efforts, the LWDA and about 221 Aggrieved Employees will receive compensation for civil penalties for underpaid wages and other wage and hour violations. (*Id*.)

Plaintiff put himself at significant risk in pursuing this Action on behalf of the State, as serving as a Plaintiff in a representative action could affect his prospects for future employment. (*Id*. at ¶ 19.) Plaintiff also placed himself at substantial risk because, if Defendant was to prevail in this Action, Plaintiff could be liable for Defendant's costs and attorneys' fees. (*Id*.)

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In short, this Action would not have been possible without the aid of Plaintiff, who put his own time and effort into this Action, sacrificed the value of his individual claims by entering into a general release of all known and unknown claims, and placed himself at risk for the sake of the State and the aggrieved employees, and Defendant will not oppose Plaintiff's request for the full PAGA Representative Service Award. (PAGA Counsel Decl., at ¶ 20.) Accordingly, the PAGA Representative Service Award is reasonable and should be approved by the Court.

**D. <u>The Requested PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment Are Reasonable.</u>**

A prevailing party in a PAGA action is entitled to recover their attorneys' fees and costs for their claims. (Cal. Lab. Code § 2699(g) ["Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."].) A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53.)

Fee awards of roughly one-third of the settlement fund are routinely awarded in California state and federal courts in class and representative PAGA actions. "[F]ee awards in class actions average around one-third of the recovery." (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11 ; *see also*, *In re Pacific Enterprises Securities Litig.* (9th Cir. 1995) 47 F.3d 373, 379 [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 [holding that class counsel's fee award should have been calculated as one-third of the gross settlement fund]; *Chavez v. Saticoy Lemon Ass'n* (Cal. Super. Ct. Ventura Cty. Aug. 10, 2015) Case No. 56-2015-00468600-CU-OE-VTA, 2015 WL 5561118 [approving attorneys' fees of one-third of settlement fund in representative PAGA settlement]; *Clavel v. Lupe's Thousand Oaks Mexican Restaurant, Inc.* (Cal. Super. Ct. Ventura Cty. Mar. 25, 2016) Case No. 56-2015-00467353-CU-OE-VTA, 2016 WL 1601221 [same].)

The PAGA Counsel Fees Payment ($96,657.00, representing 33 1/3% of the $290,000.00 Gross Settlement Amount) is justified because PAGA Counsel achieved a significant monetary recovery for the Aggrieved Employees and the LWDA in an uncertain and risky case while



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bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rates described above. (Settlement ¶ 3.2.2) PAGA Counsel expended significant time and resources in litigating this Action, which resulted in a favorable result for the LWDA, Plaintiff, and the Aggrieved Employees. (PAGA Counsel Decl., ¶ 31.) PAGA Counsel elected to bear the contingency risk of this Action for the benefit of the Aggrieved Employees, as well as for the State of California. (PAGA Counsel Decl., ¶¶ 28-30.) The fact that PAGA Counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength of the results achieved.

As discussed above, this Action carried substantial risk as to the merits as well as the potential of the Court drastically reducing penalties in the context of a contested trial or summary judgment proceeding. Accordingly, it is fair and reasonable to account for these risks in compensating PAGA Counsel. Since undertaking this representation, Plaintiff's counsel has dedicated substantial resources to this Action, including approximately $12,648.50 in costs, without receiving any compensation to date. (PAGA Counsel Decl., ¶ 32.) PAGA Counsel conducted extensive legal research regarding the merits of Plaintiff's claims, his ability to recover penalties under the PAGA, and Defendant's potential defenses. (*Id.* at ¶ 10.) Plaintiff's counsel expended significant additional efforts in litigating and settling this Action. (*Id.* at ¶ 23.)

PAGA Counsel's lodestar is at least $102,212.50 based on over 133.1 hours of work performed thus far. (Class Counsel Decl., ¶¶ 22-23.) Accordingly, the Class Counsel Fees Award is reasonable and fair as it is based on an approximate multiplier of 0.95. This disparity is important to note because when plaintiffs seek an amount in fees that is less than what they actually billed, the requested fee amount is generally considered reasonable. (*Chun-Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F. Supp. 2d 848, 854 [finding that, if the court is asked to apply a negative multiplier, it "suggests the negotiated fee award is a reasonable and fair valuation of the services rendered to the class by Plaintiff's Counsel."].) Indeed, there is no reason for the Court to reduce PAGA Counsel's lodestar with a negative multiplier. (*Roos v. Honeywell Int'l., Inc.* (2015) 241



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Los Angeles, CA 90017

Cal. App. 4th 1472, 1495 ["a trial court acts appropriately . . .when it accepts in a common-fund case a cap on fees . . . when the application of the cap results in a lower award than would be authorized under the lodestar method."], disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

Given the considerable potential for adverse outcomes in this Action, including, but not limited to, Defendant defeating Plaintiff's claims on the merits, and/or facing a drastic reduction to potential PAGA penalties, the contingent risk borne by PAGA Counsel was great. The quality of PAGA Counsel's work, and the efficiency and dedication with which it was performed, should be compensated.

PAGA Counsel's previous experience in litigating similar class and representative actions also supports the reasonableness of the fee request. Plaintiff's counsel brings extensive plaintiff-side wage-and-hour class, collective, and representative action experience. (PAGA Counsel Decl., at ¶¶ 35-47.) They have been found to be adequate counsel in numerous cases alleging wage and hour claims. (*Id.*) Practice in the narrow field of wage-and-hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class and representative action litigation. Because it is reasonable to compensate Plaintiff's counsel commensurate with its skill, reputation, and experience, the requested PAGA Counsel Fees Payment is reasonable.

Plaintiff's request for reimbursement of actual litigation costs of $12,648.50 is also fair and reasonable. As the evidence submitted herewith shows, all of Plaintiff's litigation costs are documented and reasonably incurred. (*See* PAGA Counsel Decl., Ex. 6.)

**E. <u>Settlement Administrator Costs Are Reasonable.</u>**

The Administration Expenses Payment in the amount of $5,490.00 is reasonable, given the tasks to be performed by the Settlement Administrator, including, but not limited to, the following duties: mailing and re-mailing (if necessary) checks to approximately 221 PAGA Employees and the LWDA; establishing a qualified settlement fund; preparing and submitting to PAGA Employees and government entities all appropriate tax filings and forms; distributing the PAGA Representative Service Payment, PAGA Counsel Fees Payment, and PAGA Counsel

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Litigation Expenses Payment; keeping the Parties timely apprised of the performance of all obligations under the Agreement; and voiding uncashed or undeliverable checks to issue those funds to the California Controller's Unclaimed Property Fund. (PAGA Counsel Decl., ¶ 33; *see also* Settlement, *generally*.) Plaintiff respectfully requests that the Court approve the requested Administration Expenses Payment.

## IV. CONCLUSION.

For the reasons set forth above, Plaintiff requests that the Court grant this Motion and approve the Parties' PAGA Settlement.

Respectfully submitted,

Dated: April 21, 2026

WILSHIRE LAW FIRM

By: ______________________

Benjamin H. Haber
Daniel Kramer
Chase Stern
Alan Wilcox
Conor Gomez

Attorneys for Plaintiff

WILSHIRE LAW FIRM, PLC
660 S. Figueroa St., Sky Lobby
Los Angeles, CA 90017