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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

JUAN GARCIA, an individual, on behalf of himself and all other Aggrieved Employees Plaintiff, vs. MANN TRANS, INC; and DOES 1 – 10, inclusive, Defendants.	Case No.: BCV-24-102530 *ASSIGNED FOR ALL PURPOSES TO: Hon. Thomas S. Clark, Dept: 17* **REPRESENTATIVE ACTION** **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [*Filed Concurrently with Declaration of Michiko Vartanian; [Proposed] Order*] SAC filed: March 5, 2025 Date: October 21, 2025 Time: 8:30 AM Dept.: 17 Judge: Hon. Thomas S. Clark

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

PLEASE TAKE NOTICE that, on October 21, 2025, at 8:30 AM, or as soon thereafter as the parties may be heard, in Department 17 of the Superior Court of Kern County, 1215 Truxton Avenue, Bakersfield, California 93301, Plaintiff Juan Garcia ("Plaintiff") will and hereby does move this Court, pursuant to Labor Code section 2699(1)(2) for an entry of order and judgment approving the settlement of the Private Attorney General's Act claims against Defendant Mann Trans, Inc. ("Defendant").

The motion will be based upon this notice, the attached Memorandum of Points and Authorities, the Declaration of Michiko Vartanian, all exhibits thereto, including the fully executed settlement agreement, the PAGA Notice, the complete files and records of this case, and any other evidence or oral argument which may be considered by the Court at the time of the hearing.

DATED: September 15, 2025

LAUREL EMPLOYMENT LAW

Joshua White, Esq.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff submits this Memorandum of Points and Authorities in Support of Plaintiff's Motion for Approval of the Private Attorneys General Act of 2004 ("PAGA") Settlement between Plaintiff and Defendant, as discussed herein. Plaintiff and Defendant have documented the proposed Settlement in the PAGA Settlement Agreement ("Settlement Agreement" or "SA"), attached as **Exhibit 1** to the Declaration of Michiko Vartanian in Support of Plaintiff's Motion for Approval of PAGA Settlement ("Vartanian Decl."), filed herewith.

Pursuant to the terms of this Settlement, Defendant will pay a Gross Settlement Amount of $255,000.00[1], none of which will revert to Defendant. (Vartanian Decl., ¶ 3, SA § 3.) Subject to Court approval, from the Settlement Payment, the following shall be deducted: 1) administrative expenses not to exceed $5,000 to ILYM Group, Inc.; 2) PAGA Counsel's attorneys' fees of $84,915.00, and litigation costs not to except $5,000 (current costs are $4,250.51). The remaining sum estimated at $160,085.00 as directed by the PAGA (Labor Code § 2699(i)) with $104,055.25 (65%) paid to the Labor and Workforce Development Agency ("LWDA"), and 56,029.75 (35%) distributed proportionately to 50 non-exempt employees ("aggrieved employees") based on the number of Pay Periods each worked during the period from July 9, 2023 to the date of final approval ("PAGA Period"). (Vartanian Decl., ¶¶ 3, 5; SA ¶¶ 1.10, 1.18.)

The superior court "shall review and approve any settlement of any civil action filed pursuant to" the Private Attorneys General Act of 2004, Labor Code section 2699(1)(2). The Settlement was reached through extensive, arms-length, informed negotiations, with the help of an experienced mediator following an informal exchange of information and data. (Vartanian Decl., ¶ 9.) The result is fair, adequate, reasonable, and fulfills PAGA's purposes of enforcing California's laws which collect civil penalties on behalf of the State. Plaintiff requests the Court approve this PAGA Settlement, order it implemented according to the terms of the Agreement, and enter Final Judgment.

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[1] The Total Settlement of $285,000 includes an Individual Settlement Payment of $30,000 for Plaintiff's general release of his individual claims, not subject to Court approval and not included in the Gross Settlement Amount. (Vartanian Decl., ¶ 4, SA § 3.)

II. THE PARTIES AND AGGRIEVED EMPLOYEES

Plaintiff worked for Defendant as a driver from on or about July 18, 2023, until his constructive discharge on June 20, 2024. Aggrieved Employees means "all non-exempt employees employed by Mann Trans in California who worked for Mann Trans during the PAGA Period." (Vartanian Decl., ¶ 6; SA ¶ 1.4.) Defendant is a trucking company that provides specialized refrigerated transport and logistics solutions delivering perishable goods in key markets in the United States, including California. (*Id.*)

III. FACTUAL AND PROCEDURAL HISTORY

On July 29, 2024, Plaintiff filed his original complaint alleging various violations of the Labor Code. (Vartanian Decl., ¶ 7.) Plaintiff filed a First Amended Complaint on October 10, 2024. (*Id.*) On December 23, 2024, Plaintiff gave written notice to the Labor and Workforce Development Agency ("LWDA") and to Defendant notifying them of his intent to pursue PAGA civil penalties pursuant to Labor Code sections 2698, *et seq.*, for the same violations of the Labor Code, and Defendant filed an Answer on December 29, 2024. (*Id.*) On March 3, 2025, the Parties stipulated to allow Plaintiff to file a Second Amended Complaint adding a claim for civil penalties under PAGA, which the Court granted on March 5, 2025. (*Id.*)

Shortly thereafter, the Parties agreed to attend mediation to resolve Plaintiff's individual claims as well as the PAGA claims on behalf of all allegedly Aggrieved Employees. The Parties engaged in extensive informal discovery with Defendant providing payroll and timekeeping data for all aggrieved employees, which allowed them to prepare for a meaningful and informed session at mediation. In this way, each side would be able to understand the nature of the allegations, the scope of potential liability, and the extent of civil penalties claimed. Plaintiff's counsel reviewed and analyzed the data and calculated civil penalties owed to the aggrieved employees for the PAGA period. (Vartanian Decl., ¶ 8.)

On August 18, 2025, the Parties participated in a full-day mediation with mediator Sukhsimran Singh, which resulted in the Parties reaching a settlement in principle. Thereafter, the Parties worked together to memorialize the terms of their agreement in a fully executed Settlement Agreement. (Vartanian Decl., ¶ 9.)

IV. PAGA'S PURPOSE AND PROCEDURE

A. PAGA Actions are Brought on Behalf of the State of California

"The California legislature enacted PAGA after a 2004 budget shortfall that led to understaffing in the Labor and Workforce Development Agency ("LWDA") and insufficient resources to enforce the Labor Code. PAGA was intended to address these problems and ensure more vigorous enforcement of the labor and employment laws." (Citations omitted.) (*Tseng v. Nordstron, Inc.,* 2016 U.S. Dist. LEXIS 176790, *13-14.)

"[T]he 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…Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." (*Id.*)

"The Legislature has made clear that an action under the PAGA is an enforcement action, with the aggrieved employee acting as a private attorney general to collect penalties from employers who violate labor laws. Such an action is fundamentally a law enforcement action designed to protect the public and penalize the employer for past illegal conduct. Restitution is not the primary object of a PAGA action, as it is in most class actions. The primary purpose of PAGA is to ensure compliance with the law, restitution is not the object of a PAGA action." (*Franco v. Athens Disposal Co.* (2009) 171 Cal.App.4th 1277, 1300.)

PAGA "deputizes" citizens as private attorneys general to enforce the Labor Code on behalf of the State of California. (*Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489.) "By deputizing aggrieved employees, the California Legislature intended to create incentives for non-governmental actors to enforce the law in a growing labor market that could not be effectively controlled by public agents." (*Tseng, supra,* at *13.)

A plaintiff does not bring a PAGA claim on his or her own behalf as an individual claim, but "as the proxy or agent of the state's labor law enforcement agencies." (*Id,* at 986; *see also Reyes v. Macy's, Inc.* (2011) 202 Cal.App.4th 1119, 1123-1124; *Iskanian v. CLS Transp. Los Angeles, LLC* (2015) 59 Cal.4th 348, 380.) When an aggrieved employee brings a PAGA claim, "the government is always the real party in interest." (*Securitas Sec. Servs. USA, Inc.v. Sup. Ct. of San Diego County* (2015) 234

Cal.App.4th 1109, 1119; *Montano v. The Wet Seal Retail, Inc.* (2015) 232 Cal.App.4th 1214, 1222 ["[A] PAGA action is a dispute between an employer and the State agency."].)

A PAGA plaintiff represents "the same legal right and interest as state labor law enforcement agencies," and seeks the same civil penalties that could have been collected by the LWDA. (*Securitas, supra,* 234 Cal.App.4th at 1119; *see also Medina v. Vander Poel* (E.D. Cal. 2015) 523 B.R. 820, 825 ["PAGA plaintiffs do not have property rights in their cases."].)

B. Plaintiff Exhausted the PAGA's Administrative Prerequisite

A PAGA action is commenced by the aggrieved employee or representative giving written notice to the LWDA and the employer of the specific provisions of the Labor Code alleged to have been violated ("PAGA Notice"). (Lab. Code § 2699.3(c)(1).) The LWDA has 65 days to inform the claimaint whether it intends to investigate the violations alleged. If the LWDA does not serve notice, and the employer does not cure the defect(s), a civil action may be initiated 65 days after service of the PAGA Notice. (Lab. Code § 2699.3(c)(2).)

On December 23, 2024, Plaintiff sent written notice to the LWDA and Defendant detailing the factual allegations and legal theories on which he intended to pursue claims. A notice of a cure was not provided by Defendant, and the LWDA did not provide notice of its intent to investigate the charges. (Vartanian Decl., ¶ 7, **Exh. 2** – PAGA Notice.)

V. SUMMARY OF PROPOSED SETTLEMENT

A. Mediation

On August 18, 2025, the Parties engaged in good faith, arms-length and informed negotiations facilitated by Sukhsimran Singh of JAMS, Inc., an experienced and well-regarded wage and hour mediator. (Vartanian Decl., ¶ 8.) The Parties reached an agreement in principle that day. (*Id.*) The Parties worked diligently thereafter to negotiate the terms of the PAGA Settlement proposed for approval, a fully-executed settlement agreement was reached on September 12, 2025. (Vartanian Decl., ¶ 9, **Exh. 1** – Settlement Agreement.)

B. Monetary Relief

Pursuant to the terms of the PAGA Settlement, Defendant will pay a Total Settlement Amount of $285,000.00. The Total Settlement Amount means the total amount Defendant agrees to pay, including the Gross Settlement Amount of $255,000.00, and Plaintiff's Individual Settlement Payment Amount of $30,000.00. (Vartanian Decl., ¶ 10; SA ¶ 1.29.)

The Gross Settlement Amount of $255,000 will be used to pay the following: Individual PAGA payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment. (Vartanian Decl., ¶ 5; SA ¶ 1.10.) Of the Gross Settlement Amount, $160,085.00 will be disbursed pursuant to PAGA, i.e., $104,055.25 (65%) will be paid to the LWDA, and $56,029.75 (35%) will be paid to the Aggrieved Employees based on the number of Pay Periods each worked during the PAGA Period. (Vartanian Decl., ¶ 10; SA ¶ 3.2.4.1.) To streamline the settlement process, the parties agreed to distribute the PAGA penalties on a pro-rata basis based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period. (Vartanian Decl., ¶ 11; SA ¶ 3.2.4.1.) The Settlement Administrator will calculate the aggregate Pay Periods worked by all Aggrieved Employees to determine each Aggrieved Employees' per pay period share of the 35% allocation $56,029.75. (Vartanian Decl., ¶ 5; SA ¶ 4.1.)

Accordingly, subject to Court approval, Plaintiff proposes the $255,000 Gross Settlement Amount be distributed as follows:

1.	<u>SETTLEMENT PAYMENT</u>	$ 255.000.00
	PAGA Counsel's Fees	-$ 84,915.00
	PAGA Counsel's Litigation Costs	-$ 5,000.00
	Administration Payment	-$ 5,000.00
2.	<u>PAGA PENALTIES</u>	$ 160,085.00
	LWDA 65%	$ 104,055.25
	Aggrieved Employees 35%	$ 56,029.75

C. Scope of Release

The PAGA Settlement provides for a release of only claims alleged in the operative complaint. Specifically, the Released Claims release the following:

> All claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). 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. (SA ¶ 5.2.)

Because a PAGA action is brought on behalf of the government, a "judgment [ ] is binding not only on the named employee Plaintiffs but also on government agencies and any aggrieved employee not a party to the proceeding." (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986.) Non-party aggrieved employees are not bound by the judgment except as to civil penalties. (*Id,* at 987; see also Lab. Code § 2699(g)(1) [non-party aggrieved employees retain all rights "to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part."].)

D. Settlement Administration

Following Court approval, Defendant will provide the Administrator with the Aggrieved Employee Data (the full name of each Aggrieved Employee, the last known mailing address of each Aggrieved Employee, the social security number of each Aggrieved Employee, and the number of PAGA Pay Periods that each Aggrieved Employee worked during the PAGA Period). (SA ¶¶ 1.5, 4.2.) The Settlement Administrator will establish a settlement fund that meets the requirements of a Qualified Settlement Fund under US Treasure Regulation section 468B-1, and has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in the Settlement Agreement or otherwise. (SA § 7.)

The LWDA was provided with the Motion for Approval of PAGA Settlement and the Agreement. The LWDA raised no objection. On the same day this motion and its supporting documents are filed with the Court, they will be serviced upon Defendant and provided to the LWDA via the LWDA's website, using the appropriate intake form. (Vartanian Decl., ¶ 25.)

VI. <u>THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED</u>

A. Class Action Standards Do Not Govern Approval of PAGA Settlements

A proposed PAGA settlement must be submitted simultaneously to the Court and to the LWDA to allow comment if the Agency desires. Courts "review and approve any penalties sought" and may exercise their discretion to lower the amount of penalties awarded "'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.'" (*Ramriez v. Benito Valley Farms, LLC,* 2017 U.S. Dist. LEXIS 137272, *6-8.)

"Because state law enforcement agencies are the 'real parties in interest' for PAGA claims, the Court's task in reviewing the settlement is to ensure that the state's interest in enforcing the law is upheld.. Other than the provisions discussed above, however, the PAGA does not establish a standard for evaluating PAGA settlements." (*Id.*)

<u>In contrast to a class action settlement, the Parties are not obliged to "satisfy class action requirements" when seeking approval of a PAGA settlement.</u> (*Arias, supra,* at 980-988; *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1121 [PAGA actions are not class actions under state law].) Unlike class actions, there is no requirement in a PAGA settlement, and no mechanism, for a court to conduct a two-step settlement approval review. "Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to 'opt-out' or 'contest a settlement.'" (*Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. April 2, 2010) 2010 U.S. dist. LEXIS 32774, *13.)

There is no binding authority identifying the proper standard of review of PAGA settlements to be employed by the court. (*Tenorio v. Gallardo* (E.D. Cal. Sept. 30, 2019) 2019 U.S. Dist. LEXIS 169313, at *6.) One approach in this still-emerging area, which courts have found consistent with the LWDA's approach, is simply to "approve a settlement of PAGA claims upon a showing that the settlement terms (1) meet the statutory requirements set forth by PAGA, and (2) are fundamentally fair, reasonable, and adequate in view of PAGA's public policy goals." (*Salazar v. Sysco Cent. Cal., Inc.* (E.D. Cal. February 2, 2017) 2017 U.S. Dist. LEXIS 14971, *6.)

B. The Settlement Satisfies PAGA's Purpose and the State's Interest

"A PAGA action is at the heart of a civil enforcement action filed on behalf of and for the benefit of the state, not a claim for class relief." (*Baumann, supra,* at 1124.) The Court's focus is not the amount aggrieved employees ultimately receive because of a settlement, but on whether the total settlement achieves PAGA's objectives. Here, the proposed Settlement fulfills PAGA's purpose by (1) enforcing the law; (2) collecting penalties from an employer and recovering $160,085.00 in civil penalties, of which $104,055.25 (65% of the penalties) are on behalf of the State of California for purposes of enforcement and education; and (3) distributing $56,029.75 (35% of the penalties) to the Aggrieved Employees (Lab. Code § 2699(i).)

The Settlement also accomplishes PAGA's objective of "deterring noncompliance" with the Labor Code by protecting workers from "unlawful conditions," and protecting employers "who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards." (*O'Conner v. Uber Techs., Inc.* (2016) 201 F. Supp. 3d 1110, 1133.)

C. The Settlement is a Reasonable Compromise of PAGA Claims

The PAGA allows aggrieved employees to recover any civil penalties provided by the Labor Code that are recoverable by the LWDA. (Lab. Code § 2699(a).) "Under PAGA, a Plaintiff may bring a representative action as an aggrieved employee on behalf of themselves and other current or former employees and may seek civil penalties for Labor Code violations." (*Willner v. Manpower, Inc.,* (N.D. Cal. 2014) 35 F. Supp. 3d 1116.) When the Labor Code section violated "provides for a civil penalty to be assessed and collected by the LWDA," the PAGA allows an employee to recover that penalty. (Lab. Code § 2699(a).) When the violated section does not specifically provide a "civil penalty," an employee may recover $100 for each aggrieved employee per pay period for the initial violation and $200 for each employee per pay period for each subsequent violation. (Lab. Code § 2699(f)(2).)

Here, Plaintiff seeks penalties for alleged violations of the Labor Code set forth in the operative second amended complaint and specifically sections 201-203, 226.3, 226.8, 1174.5, 1194, 1197 and 1198, of which 65% will be paid to the LWDA and 35% will be paid to the PAGA Employees pursuant to Labor Code section 2699(i). Plaintiff is also entitled to recovery of attorneys' fees and costs pursuant to the PAGA. (Lab. Code § 2699(g)(1).)

Liability under the PAGA is triggered for each pay period Defendant allegedly failed to properly classify employees, failed to pay minimum wages, failed to provide itemized accurate wage statements, failed to maintain accurate records, and failed to timely pay final wages. Defendant need only to have violated the Labor Code at least once during a pay period to impose liability.

D. PAGA Penalties

Based on data produced, Plaintiff's counsel analyzed the data provided by Defendant, which included pay and time data for 50 employees. (Vartanian Decl., ¶ 13.) Plaintiff used the damage model based on the actual timekeeping and payroll data provided by Defendant for settlement purposes. (*Id.*)

For mediation purposes, PAGA penalties were calculated using the initial violation rate of $100 per pay period each for each claim. In evaluating the total value of the PAGA penalties, Plaintiff had to consider that the award of PAGA penalties is uncertain, because the actual award is within the Court's discretion. As such, maximum exposure was discounted for several reasons, i.e., the risk of not proving underlying violations, and the Court's authority to reduce penalties, as long as not to "zero." (*See Carrington v. Starbucks Corp.* (2018) 30 Cal.App. 5th 504, 517 [Plaintiff requested "nearly $70 million in penalties," trial court's $150,000 award upheld on appeal].) (Vartanian Decl., ¶ 14.)

The Court also has the authority to reduce or eliminate any civil penalty deemed punitive or confiscatory under the circumstances. (Lab. Code § 2699.) Under all the circumstances here, regardless of liability proven or damages awarded, it would be extremely unlikely to obtain the full amount of PAGA penalties, and perhaps no award.

As explained in detail below, allegedly Aggrieved Employees could claim a maximum PAGA penalty of $1,167,250.00. However, Defendant's potential exposure for PAGA penalties was reduced by approximately 25% to account for the risk associated with the judge's discretion to reduce penalties. Then, the amount of $875,441.00 was discounted again by 50% to account for risks associated with litigation and proving the underlying claims at trial. Accordingly, Plaintiff calculated the final realistic exposure for PAGA civil penalties as $437,721.00. (Vartanian Decl., ¶ 15.)

Considering the realistic maximum reasonable penalty of $437,721.00, a Gross Settlement amount of $255,000, with PAGA penalties of $160,085 is a fair and reasonable amount warranting approval. (*Id.*) The maximum realistic total exposure for PAGA civil penalties was calculated for each claim as described below.

1. PAGA Penalties for Willful Misclassification (Lab. Code § 226.8)

Labor Code section 226.8 prohibits employers from knowingly and voluntarily misclassifying employees as independent contractors. Defendant willfully misclassified Plaintiff and other Aggrieved

Employees as independent contractors despite exercising strict control over their job performance by setting work schedules and deliveries, tracking hours worked, and requiring daily logs to be completed. Labor Code section 226.8 provides penalties of $5,000 to $25,000 per willfully misclassified employee. Applying a conservative estimate of only 35 misclassified drivers to account for any risk-adjustment, Plaintiff calculated the conservative total estimate here at $175,000 ($5,000 x $35 = $175,000).

2. Failure to Pay Minimum Wages (Lab. Code §§ 1194, 1197, 1198)

Defendant violated minimum wage requirements by paying drivers on a per mile basis without ensuring minimum wage compliance for all hours worked. Drivers were only paid per mile for deliveries made and were not paid for hours worked that did not involve driving, such as truck inspections, loading/unloading, and fueling. Labor Code section 558 provides penalties of $50 for initial violation per pay period per employee, and $100 for subsequent violations per pay period per employee. Assuming bi-weekly pay periods over a 52-week periods gives us 26 pay periods. For the risk-adjusted 35 drivers: Initial violation (1 pay period) = $50 x 35 = $1,750, subsequent violations (25 pay periods) - $100 x 25 x 35 = $87,500. Total minimum wage penalties: $89,250.

3. Wage Statement Penalties (Lab. Code § 226.3)

Due to the unlawful misclassification and failure to pay minimum wages for all hours worked, Defendant failed to provide accurate itemized wage statements. Labor Code section 226.3 imposes additional civil penalties of $250 per employee per violation for initial citations and $1,000 per employee for subsequent violations. Initial violation: $250 x 35 drivers = $8,750. Assuming 25 subsequent pay periods: $1,000 x 25 x 35 - $875,000. Total wage statement penalties: $883,750.

4. Record Keeping Penalties (Lab. Code § 1174.5)

Labor Code section 1174.5 imposes a civil penalty of $500 for an employer's failure to maintain accurate and complete records. Defendant failed to accurately record hours worked for drivers due to their policy of not paying for all hours worked, including work time that does not generate per-mile earnings. $500 per violation. Assuming violations for each of the risk-adjusted 35 drivers: $500 x 35 = $17,500.

5. Failure to Pay All Wages Due Upon Separation (Lab. Code §§ 201-203)

California Labor Code section 203 governs the payment of wages upon termination. An employer must pay all wages due to an involuntarily terminated employee at the time of termination, or within 72 hours to an employee voluntarily terminated. If an employer willfully fails to timely pay all wages to separated employees, the wages continue at the same rate for up to 30 days. (Lab. Code § 203.) This violation is derivative and requires a plaintiff to prevail on the underlying wage claim and show the violation was "willful." Defendant denied that it willfully failed to timely pay wages to any of the allegedly Aggrieved Employee.

Initial violation rates were used based on Defendant's argument. "Courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code." (*Vieyara-Flores v. Sika Corp.* (C.D. Cal. 2019) 2019 U.S. Dist. DEXIS 98081, *13.)

Defendant failed to provide timely payment of wages upon termination. Labor Code sections 201, 202, and 203 provide for $50 initial violation per affect employee. $100 for subsequent violation per affected employee. Assuming violations affected the risk-adjusted 35 drivers: $50 x 35 - $1,750.

E. Judicial Discretion in Reducing Civil Penalties

Even though Defendant's potential exposure was initially calculated at $1,167,250.00, this was calculated assuming that Plaintiff received 100% of the maximum rate for each violation. However, Plaintiff also had to consider the fact that PAGA penalties are subject to review and reduction at the Court's discretion. Courts routinely award far less than the statutory maximum amount of penalties, even where an underlying violation of the Labor Code is found. For example, in *Fleming v. Covidien,* the court calculated the civil penalties for an employer providing 8,000 non-compliant wage statements to be $2.8 million ($100 per violation). (*Fleming v. Covidien, Inc.* (C.D. Cal. August 12, 2011) 2011 U.S. Dist. LEXIS 154590 at *3-4, vacated and remanded in part on other grounds, 546 Fed. Appx. 616 (9th Cir. 2013). Although the court found that the employer had violated Labor Code section 226, it noted that none of the employees suffered any injury because of this non-compliance (and none complained of the issues prior to filing suit). (*Id.*) Pursuant to Labor Code section 2699(e)(2), the court reduced PAGA civil penalties from $2.8 million to $500,000. (*Id.*)

In another PAGA case, Defendant's potential exposure on the alleged claims was discounted for risks which included not providing the underlying Labor Code violations, as well as the Court's authority to completely reduce penalties, as long as not to "zero." (*Thomas v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135; *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 [the penalty rate was dropped to $5.00 per pay period].)

Based on these risks, Defendant's potential exposure for PAGA penalties was reduced by approximately 25% to account for the risk associated with the judge's discretion to reduce penalties. Then Defendant's potential exposure was reduced again by 50% to account for risks associated with litigation and proving the underlying claims at trial. Accordingly, Defendant's maximum reasonable exposure for liability for civil penalties was calculated to be $437,721.00[2]. (Vartanian Decl., ¶ 15.)

This PAGA amount is within the range, or higher, than other settlements. (*See Magadia v. WalMart Assocs.,* 384 F. Supp. 3d at 1101, citing, among others, *Ceja-Corona v. CVS Pharm., Inc.* (2015 U.S. Dist LEXIS 5118 (E.D. Cal. Jan. 14, 2015) [$10,000 PAGA penalties in settlement of $900,000], recommendation adopted, 2015 U.S. Dist. LEXIS 25730 (E.D. Cal. Mar. 3, 2015), *Nen Thio v. Genji, LLC,* 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) [$10,000 PAGA penalties, $1.25m settlement] [$10,000 PAGA penalties, $2.5m settlement]; *Garcia v. Gordon Trucking, Inc.* 2012 U.S. Dist. LEXIS 160052 (E.D. Cal. Oct. 31, 2012 [$10,000 PAGA, $3.7m settlement].)

VII. THE ATTORNEYS' FEES ARE REASONABLE AND SHOULD BE AWARDED

PAGA Counsel requests $84,915.00 for their attorneys' fees (33.33% of the Gross Settlement Amount, and up to $5,000.00 in litigation costs. As of the date of the filing of this Motion and to bring this settlement to a final closure, PAGA Counsel will have incurred $66,000.00 in attorneys' fees and $4,250.00 in litigation costs. PAGA Counsel have worked 88[3] hours prosecuting this Lawsuit and

[2] Calculated as follows: $1,167,250.00*.75 (25% discount) = $875,441.00; $875,441.00*.50 (50% discount) = 437,721.00.
[3] Included in the total hours is an additional 15 hours, following the filing of this motion, which will be worked to provide supplemental information and documentation should the Court request it, interact with Defense counsel and the Administrator with respect to funding and distribution, approval of checks, transmittal documents, responding to employee inquiries, handling uncashed checks, etc.

calculate the resulting lodestar fee on those hours at 66,000.00. The hours expended were reasonable considering the complexity and duration of this litigation. (Vartanian Decl., ¶ 23.)

PAGA provides for reasonable attorneys' fees and costs, but "does not provide a specific standard for evaluating attorney's fees in connection with a settlement of PAGA claims." "Under Ninth Circuit [and California] law, the district court has discretion in common fund cases to choose either the percentage-of-the-fund or the lodestar method" to determine a reasonable attorney's fee." (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1047; *Laffitte v. Robert Half International, Inc.* (2016) 480, 503; *Ramirez, supra,* at *18.) California trial courts may use cases applying Federal Rule 23 for guidance in class issues. (*Vasquez v. Sup. Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal. 3d 126, 145-146.) "Despite its primacy, the lodestar method is not necessarily utilized in common fund cases." (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 27.)

The California Supreme Court affirmed the granting of attorneys' fees in common fund cases based on a percentage of the recovery. (*Laffitte, supra,* at 503.) A fee award based on a percentage of the common fund recovery here is proper as it spreads the attorneys' fees among all beneficiaries of the fund, aligns the incentives between Plaintiff's counsel, the State, and the aggrieved employees, is a better approximation of the market conditions in a contingency case, and encourages counsel to seek early settlement and avoid unnecessarily prolonging the litigation. (*Id.*) The Court also approved an optional lodestar cross-check. (*Id.* at 504.)

A. The Results Achieved Support the Fee Request

The most important factor to consider in granting a fee award is the success obtained. (*In re Heritage Bond Litig. V. U.S. Trust Co. of Tex., N.A.,* No. 02-ML-1475 (RCx), 2005 U.S. Dist. LEXIS 13627, at *27 (C.D. Cal. June 10, 2005) (*citing Hensley v. Eckerhart* (1983) 461 U.S. 424.) In the face of uncertainties associated with continued litigation of Plaintiff's claims, Defendant's vigorous denials and affirmative defenses, there is no question the results achieved are excellent. Counsel fulfilled the purpose of PAGA by obtaining $160,085.00 in penalties to distribute to the State, the LWDA for enforcement and education, and to the Aggrieved Employees, as well as to compensate the PAGA Counsel representing the interests of the State.

B. Attorneys' Fees of 33.33% of the Settlement Payment is a Reasonable Fee

Several studies of class action fee awards have found the median common fund fee award in approximately one-third of the total settlement fund. (See, e.g., *Chavez v. Netflix, Inc.* (2006) 162 Cal.App.4th 43, 66, n. 11 [numerous studies have shown that "fee awards in class actions average around one-third of the recovery."]; Reagan W. Silber and Frank E. Goodrich, Common Funds and Common Problems: Fee Objections and Class Counsel's Response, 17 Rev. Litig. 525, 546 (1128); T. Willging, L. Hooper and R. Niemic, Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rights, 90 (1126) [finding attorneys' fees in class litigation "were generally in the traditional range of approximately one-third of the total settlement"].)

PAGA Counsel's request for 33.33% of the common fund created falls in the lower range of fee percentage awards which commonly range from 20% to 50% of a common fund. The requested sum constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation, strictly on a contingent basis, and for the results achieved for the State, and the Aggrieved Employees, as well as Defendant's current and future employees. Numerous state and federal courts in California routinely approve fee requests equal to or more than the amount sought here. (Vartanian Decl., ¶ 24.) Some courts have found an award of 33% of the common fund represents the "benchmark" in California. (*Smith v. CRST Van Expedited, Inc.* (S.D. Cal. Jan. 14, 2013) 10-CV-1116-IEG WMC, 2013 WL 163293, *5 ["These percentages compare favorably with" the California (33%) benchmark]; *Dennis v. Kellogg Co.,* (S.D. Cal. Nov. 14, 2013) 09-CV-1786-L WMC, 2013 WL 6055326, at *7.) PAGA Counsel's fee request is in line with awards in similar cases in and demonstrates PAGA Counsel's fee request is consistent with market rates and is reasonable.

C. Although Not Required, a Lodestar Cross-Check Shows the Fee is Reasonable

PAGA Counsel seeks approval of attorneys' fees based on a percentage of the recovery, not a lodestar. While a percentage fee may be cross-checked against a lodestar increased by a risk multiplier, courts are not required to engage in this exercise, and many California courts decline to do so. (See, e.g., *Glass v. UBS Financial Services, Inc.* (N.D. Cal. Jan. 26, 2007) No. 06-4066-MMC, 2007 WL 221862 [finding "no need to conduct a lodestar cross-check [as] [c]lass counsel's prompt action in negotiating a settlement while the state of the law remained uncertain should be fully rewarded"]; *Lopez v. Youngblood*

(E.D. Cal. Sept. 2, 2011) ["A lodestar cross-check is not required in this circuit, and in a case such as this, is not a useful reference.].)

Where the cross-check is used, the "calculation need entail neither mathematical precision nor bean-counting" and is not intended to be a "full-blown lodestar inquiry." "Where the use of the lodestar method is used as a cross-check, it can be performed with a less exhaustive cataloguing and review of counsel's hours." (*Barbosa v. Cargill Meat Solutions Corp.,* (E.D. Cal. July 2, 2013) 297 F.R.D. 431, 451.)

The lodestar method is calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. (*Station,* 327 F.3d at 965.) A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience im the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095; *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900.)

PAGA Counsel have worked 88 hours prosecuting this Lawsuit and calculate the resulting lodestar fee on those hours at $66,000.00. The hours expended were reasonable considering the complexity and duration of the litigation. (Vartanian Decl., ¶ 23.)

D. PAGA Counsel's Hourly Rates are Reasonable

Counsel is entitled to hourly rates charged by attorneys of comparable experience, reputation, and ability for similar litigation. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133); *Children's Hospital and Med. Center v. Bonta* (2002) 97 Cal.App. 4th 740, 783.) When determining reasonable hourly rates, Courts may consider the attorney's skills and experience, nature of the work performed, relevant area of expertise, and customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 632.) Prior awards of counsel's rates are strong evidence of reasonableness. (*Margolin v. Regional Planning Commission* (1982) 134 Cal.App.3d 999, 1005.)

PAGA Counsel's skill and experience support their hourly rates and are in line with rates typically approved in wage and hour class action and representative action litigation in California. (Vartanian Decl., ¶ 23.)

VIII. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests the Court approve the PAGA Settlement. PAGA Counsel will provide this PAGA Approval Motion to the LWDA, as required, via its website on the date the motion is served and filed with the Court.

DATED: September 15, 2025

LAUREL EMPLOYMENT LAW

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