JAMES HAWKINS APLC
James R. Hawkins, Esq. (#192925)
Gregory Mauro, Esq. (#222239)
Michael Calvo, Esq. (#314986)
Lauren Falk, Esq. (#316893)
Ava Issary, Esq. (#342252)
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel.: (949) 387-7200
Fax: (949) 387-6676
Email: James@jameshawkinsaplc.com
Email: Greg@jameshawkinsaplc.com
Email: Michael@jameshawkinsaplc.com
Email: Lauren@jameshawkinsaplc.com
Email: Ava@jameshawkinsaplc.com

Attorneys for Plaintiff MARQUINN FOSTER,

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

MARQUINN FOSTER, on behalf of the general public as private attorney general,

Plaintiff,

v.

WENDY'S OF THE PACIFIC, INC.; and DOES 1-50, inclusive,

Defendants.

Case No.: BCV-24-103322
Assigned for all Purposes to:
The Hon. Bernard C. Barmann, Jr.
Division: 7

NOTICE OF MOTION AND MOTION TO APPROVE PAGA SETTLEMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION

Date: July 15, 2026
Time: 8:30 a.m.

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT at July 15, 2026 at 8:30 a.m. or as soon thereafter as the matter can be heard, in Division 7 of the above-entitled Court before the Honorable Bernard C. Barmann, Jr., Plaintiff Marquinn Foster, ("Plaintiff") will and hereby does move for an order approving the settlement of the PAGA claim alleged against Defendant Wendy's of the Pacific, Inc. ("Defendant") in accordance with Labor Code §2699(l). The proposed Settlement is set forth in the accompanying PAGA Representative Settlement Agreement ("Settlement", "Agreement" or "Settlement Agreement"). This PAGA Settlement resolves this action in its entirety.

This Motion will be based on this notice, the accompanying points and authorities, the Declaration of James Hawkins, the Declaration of Marquinn Foster, and the complete files and records in this action. The Labor Workforce Development Agency has been served with this motion and the Settlement Agreement as set forth in the accompanying proof of service.

Dated: June 5, 2026

Respectfully submitted,

JAMES HAWKINS APLC

By: ______________________

JAMES R. HAWKINS, ESQ.
GREGORY MAURO, ESQ.
MICHAEL CALVO, ESQ.
LAUREN FALK, ESQ.
AVA ISSARY, ESQ.

Attorneys for Plaintiff individually and on behalf of the general public as Private Attorney General

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes, Rules and Regulations

I. INTRODUCTION

Plaintiff Marquinn Foster ("Plaintiff") reached a settlement of the California Private Attorneys General Act, Cal. Labor Code §2699, et seq. ("PAGA") claim asserted in this action against Defendant Wendy's of the Pacific, Inc. ("Defendant"). The only claim in this action is the representative PAGA claim. In accordance with California Labor Code §2699(l), Plaintiff now asks this Court to review and approve the settlement of Plaintiff's PAGA claims. This is only a settlement of the PAGA claims for civil penalties, and is not a class settlement and does not release the individual claims, if any, of the affected employees other than the Plaintiff. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014).

The PAGA settlement is set forth in the accompanying Settlement Agreement ("Settlement", "Agreement" or "Settlement Agreement"). A true and correct copy of the Settlement Agreement, which sets forth the terms for the settlement of the PAGA claims, is attached as **Exhibit 1** to the Declaration of James Hawkins, filed herewith. Capitalized terms shall have the same meaning as defined in the Settlement Agreement. The LWDA was served notice of this Settlement and this motion as set forth in the accompanying proof of service. The Notice of Settlement to the PAGA Claim Employees is attached to the James Hawkins declaration as **Exhibit A**.

A Proposed Order confirming review and approval of the PAGA settlement is submitted herewith.

II. RELEVANT FACTS

On July 24, 2024, Plaintiff's Counsel sent a letter to the LWDA on behalf of Plaintiff, in compliance with California Labor Code section 2699.3. Plaintiff seeks to represent himself and all Aggrieved Employees. More than 65 days passed after the letter was sent to the LWDA, and the LWDA did not indicate that it intended to investigate the alleged violations referenced in the letter. (Hawkins Decl., at ¶ 3).

On September 30, 2024, Plaintiff filed the PAGA Representative Action in the Superior Court of California in and for the County of Kern, styled *Marquinn Foster, et al. v. Wendy's of the Pacific, Inc.,* Kern County Case No.: BCV-24-103322. The complaint alleges a singular cause of action under PAGA for Defendant's alleged violations of the California Labor Code, including Defendant's (a) failure to pay wages including overtime; (b) failure to provide meal periods for every work period exceeding more than five (5) or ten (10) hours per day and failure to pay an additional hour's of pay or accurately pay an additional hour's of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour's of pay or accurately pay an additional hour's of pay in lieu of providing a rest period; (d) failing to pay timely wages required by Labor Code § 203; (e) failing to provide accurate itemized wage statements; and (f) failing to indemnify necessary business expenses. Plaintiff seeks penalties under Labor Code 2698, et seq. on behalf of the general public as private attorney general and all other aggrieved employees. (Hawkins Decl., at ¶ 4).

Plaintiff's Counsel has conducted a thorough investigation of the facts in the Action and have diligently pursued an investigation of the PAGA claims against Defendant. The parties have engaged in a substantial investigation in connection with the Action, including an informal exchange of a large volume of information, including confidential information, regarding the claims asserted in the Action, the defenses available to Defendant, and other relevant issues. Defendant has produced, and Plaintiff's Counsel have reviewed and analyzed, relevant personnel and payroll information for Plaintiff and all Aggrieved Employees, as well as Defendant's policies and procedures as they relate to Plaintiff and the Aggrieved Employees' employment with Defendant. In conjunction with the documents, Plaintiff's counsel analyzed over 13,850 work shifts for penalty assessment purposes.

With this information, Plaintiff and Defendant agreed to mediate this action with mediator Steve Mehta, Esq., a respected and experienced wage and hour class action mediator. On March 18, 2026, the Parties participated in an all-day private mediation with Mr. Mehta. During the mediation the Parties engaged in extensive, arms-length negotiations. As a result of the Parties' efforts, the matter was fully resolved. The Parties engaged in significant efforts to obtain the facts regarding the claims asserted, including the exchange of detailed statistical data regarding weeks and pay periods worked by individuals and Plaintiff. Thereafter, the parties worked together to finalize the terms of the long form settlement agreement that is now placed before this Court for approval. (Hawkins Decl., at ¶¶ 5-6).

III. **TERMS OF THE AGREEMENT**

The Agreement negotiated by the Parties provides for Defendant to pay $728,500.00 as the Gross Settlement Amount ("GSA"). (Agreement at § I(l)). The "Net Settlement Amount" ("NSA") is the amount remaining of the GSA minus the Court-approved amounts awarded for the Attorneys Fees and Costs, Settlement Administration Fees, Enhancement Award to Plaintiff (if any), and the LWDA Payment.

The NSA is calculated as follows: (1) $254,975.00 (i.e. 35% of the GSA) shall be paid to Plaintiff's Counsel for payment of attorneys' fees; (2) Plaintiff's Counsel's litigation expenses not to exceed $23,000.00 (Plaintiff's counsel's litigation costs to date is $21,765.05) (Agreement at § IV(B)); (3) $5,000.00 Service Award Payment to the Plaintiff for Plaintiff's time and risks in prosecuting this case and Plaintiff's service to the Aggrieved Employees as well as for Plaintiff's general release of Plaintiff's Released Claims; (4) Administration costs not to exceed $12,250.00. (Agreement at § IV(B)(2,5)). The Net Settlement Amount is estimated to be $433,275.00. Any difference from these maximum amounts will be added to the Net Settlement Amount. (Hawkins Decl., ¶¶ 8-9).

The Gross Settlement Amount is subject to Court approval consistent with Labor Code § 2699. Should the Net Settlement Amount increase or decrease, the amount to be distributed shall be adjusted according to the changes made by the Court. Upon approval, the Net Settlement Amount shall be allocated 65% ($271,878.75) to the LWDA and 35% ($146,396.25) among Individual PAGA Payments (the "PAGA Settlement Member Amount"). The share of the Net Settlement Amount to be distributed to each PAGA Settlement Member is based on the number of his or her Pay Periods worked in the PAGA Period in relation to the aggregate number of Pay Periods worked by the Settlement Group during the PAGA Period. (Agreement at § V(C)(1)). The 65/35 allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019). Each PAGA Settlement Member will receive approximately $5.45

per pay period worked before deduction for fees, costs, and enhancements and approximately $182.31 to each aggrieved employee based on the 35% net settlement fund. (Hawkins Decl. ¶ 10).

The "Aggrieved Employees" means all persons employed by any Defendant in hourly or non-exempt positions in California at any time from July 24, 2023, through May 17, 2026. (Agreement at ¶¶ I(B)), (Hawkins Decl. ¶ 11).

Defendant provided Plaintiff's Counsel with information concerning the Aggrieved Employees, including statistical data concerning the weeks and pay periods worked. Defendant estimated that there are 803 Aggrieved Employees through March 18, 2026, the date of mediation, who worked approximately 26,875 pay periods during the PAGA Period. (Agreement at § X(C)(1)), (Hawkins Decl. ¶ 11)..

Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator in two payments: half 65 days after the Effective Date [1], and the second half six (6) months after the first payment. (Agreement at § V(B)).

Within fourteen (14) days after Defendant completes each of the two fundings of the Gross Settlement Amount, the Administrator will mail checks via first-class regular U.S. Mail for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, and the PAGA Counsel Litigation Expenses Payment. The Administrator shall include with the checks for all Individual PAGA Payments a cover letter agreed to by the Parties and

---

[1] Effective date means the date this Settlement is approved as provided herein and the Court's order granting Settlement Approval and entry of Final Judgment becomes final and is no longer appealable. For purposes of this Settlement, "becomes final and is no longer appealable" shall mean the later of: (a) the day after the last date by which a notice of appeal may be filed pursuant to California Rules of Court 8.406 (i.e., 61 days after entry of the Judgment); (b) if an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or in any other manner that confirms the validity of the order and judgment, the day after the last date for filing a request for further review of the order and judgment approving this Settlement passes, and no further review is requested; or (c) if an appeal is filed and the order approving this Settlement is affirmed and further review of the order is requested, the day after the review is finally resolved and the order and judgment approving this Settlement is affirmed. In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Effective Date does not occur for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their respective positions. (Agreement at § I(G)).

approved by the Court in substantially the form attached hereto as **Exhibit A**. (Agreement at § VI(C)).

The Aggrieved Employees shall have one hundred eighty days (180) to cash their checks. The Parties have agreed to selecting ILYM Group as the Settlement Administrator. (Agreement at § VI(D), § I(A)). The Administrator will cancel all checks not cashed by the void date. Any checks uncashed after the void date, will transmit to the California Controller's Unclaimed Property Fund in the name of the individual, thereby leaving no "unpaid residue". The Settlement Administrator shall be responsible for administration of all unclaimed funds, including any and all reporting requirements proscribed by California law. (Agreement at § VI(G)).

Each Aggrieved Employee will grant in favor of each Released Party, and be subject to, the settlement Release. The Release by Aggrieved Employees and by the state of California with respect to Aggrieved Employees means:

Upon the occurrence of the Effective Date and contingent on full funding of the Gross Settlement Amount by Defendant, all Aggrieved Employees and the State of California with respect to Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, past or present, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and/or the PAGA Notice including, but not limited to PAGA claims for alleged violations of Labor Code sections 201-203, 510, 226.3, 226.7, 226, 226.3, 227.3, 246, 510, 512, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Sections 11050(5)(A)-(B), and the applicable IWC Wage Orders, including Wage Order 5, and for any and all claims for civil penalties, interest, attorneys' fees, costs, and other amounts recoverable under said PAGA Action under California law, to the extent permissible, that occurred during the PAGA Period related to the facts alleged in the PAGA Action. The release does not release any non-PAGA claims of the Aggrieved Employees. (Agreement at § I).

The California Labor Workforce Development Agency ("LWDA") is being served with a copy of this Motion with the Settlement Agreement through the online process as required by

Labor Code § 2699(l). This service on the LWDA is verified in the separately filed proof of service. (Hawkins Decl., ¶ 30).

IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS

The claim before this court is the representative claim under PAGA on behalf of the State of California for civil penalties pursuant to the PAGA. The parties have agreed to settle this PAGA claim in its entirety after discovery and arm's length mediation. (Hawkins Decl., at ¶¶ 5-6). The settlement is intended to fully and finally resolve the PAGA claims asserted by Plaintiff on behalf of the State of California. This is only a settlement of the PAGA claims for civil penalties, and is not a class settlement and does not release the individual claims, if any, of the PAGA Claim Employees. Attorneys' fees equal to $254,975.00.00 and actual litigation costs in the amount not to exceed $23,000.00 will also be paid to Plaintiff's Counsel, subject to Court approval as part of the Settlement in accordance with California Labor Code § 2699(g)(1) as set forth in the Agreement. There is also payment of $12,250.00 to the Settlement Administrator ILYM Group, Inc. to perform the administrative duties to distribute the settlement money and a requested $5,000.00 Service Award to Plaintiff. (Hawkins Decl., ¶¶ 5-8).

V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT OF THE PAGA CLAIM

Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." Consequently, the parties respectfully ask the Court to review and approve the settlement of the PAGA claims and the Maximum and Net Settlement Amounts to be paid as part of the proposed settlement.

A. The PAGA Group Recovery to Be Paid Is Fair and Reasonable

The Parties believe that the PAGA Group Recovery is fair and reasonable and therefore "shall" be reviewed and approved. The Labor and Workforce Development Agency has released data on PAGA settlement amounts. The Gross Settlement Amount of $728,500.00 constitutes approximately $27.11 per pay period before deductions for fees, costs, enhancement award, and administration costs. The net average payout to each Aggrieved Employee is approximately

$182.31 with a low estimated payout of approximately $5.45, and an estimated high payment of approximately $403.03 (assuming bi-weekly pay) for someone who worked the entire PAGA Period. The Gross Settlement Amount accounts for approximately 15% to 27% of the maximum potential recovery. (Hawkins Decl. ¶14).

Since the filing of the Complaint, the Parties have exchanged extensive discovery and engaged in numerous discussions regarding the factual and legal issues surrounding this case. Throughout the litigation, and in preparation for mediation, Defendant produced voluminous pages of information and data, including policies, handbooks, time and payroll records for 15% of the Aggrieved Employees reflecting time punches at the start of employees' shifts, and at the end of the shift, and meal period punches as well as the applicable pay rates. This provided for approximately 13,850 shifts to be analyzed. Defendant also provided Plaintiff's personnel file, records regarding documents identifying the non-exempt positions and information regarding the number of employees holding these positions during the relevant time period. Defendant also provided substantial information concerning the total number of Aggrieved Employees, the total number of pay periods at issue, and the applicable hourly rates and other summary data related to the Aggrieved Employees. The Parties have conducted informed, good faith arms-length negotiations after conducting discovery and exchanging extensive evidence and information about the claims and defenses of this lawsuit and engaged in pre-mediation discussions, telephone conferences, and correspondence all aimed at settling their dispute. (Hawkins Decl., ¶ 10.).

In preparation for the mediation, Plaintiff reviewed the entirety of the discovery produced. The information had to be analyzed and processed to figure out the amount of compensation Plaintiff contends are due to the Aggrieved Employees. The evidence and information gathered and reviewed by Plaintiff's counsel provided a factual framework for a comprehensible and reliable damage model pertaining to all Aggrieved Employees. The mediation and subsequent negotiations included discussion and examination of the Aggrieved Employees and the Parties' respective positions on the legal and factual issues raised in the Complaint. This was both a thorough and exhaustive process. (Hawkins Decl., ¶¶ 10-11).

The Aggrieved Employees' recovery compares favorably to the estimated amount of PAGA penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of statutory PAGA civil penalties was potentially $2,687,500.00 to $5,964,375.00 based on approximately 26,875 PAGA pay periods multiplied by a maximum per pay period violation rate of $100.[2] (Hawkins Decl., ¶ 14). This number could increase assuming the Court would permit stacking of penalties, which could increase the potential exposure. However, this scenario is unlikely given the circumstances presented herein. The $2,687,500.00 valuation assumes one violation per pay period. This number could be less if a trier of fact determined no such violations occurred in any given pay period. These amounts are inclusive of penalties for violations of the released claims, such as Labor Code §§ 226.7, 512 226, §510/558, 201/202/203/204 for approximately 461 employees, and 131 former employees as it relates to the waiting time penalties. Importantly, however, in total, these calculations were performed at the $100 statutory rate for the penalties for the first violation, and it is likely that any penalties awarded would be at a much lower rate given the facts of this case. California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if based on the facts and circumstances to do otherwise would result in an award that is "unjust, arbitrary and oppressive or confiscatory." The maximum exposure here would be approximately $2,687,500.00 to $5,964,375.00 if the Court awarded 100% penalties for each and every pay period at $100 per pay period for each violation. Of course, these amounts would probably have been reduced given the polices in place, manageability issues, the issues of why someone missed a meal break on any occasion or worked off the clock, and the issues of payment of meal period premiums or regular rate calculation valuations, the issues of whether bonuses were incorporated into the regular rate of pay and whether the Christmas cash bonuses were given to all employees, and whether vested vacation pay was properly paid out upon employees' separation or if all employees were eligible to receive vacation pay. Given the risks involved, a reasonable Risk Value reduction would put the realistic possibility of recovery of penalties at approximately $1,343,750.00 to $2,982,187.00,

[2] Defendant further contends that that proper penalty rate for Plaintiff's claims is $50 per pay period as laid out in Labor Code § 558 which applies to alleged underpayment of wages.

taking account for a reasonable 50% chance of recovery of the high end of potential recovery. The risks include manageability issues, not prevailing on the merits, prevailing on certain claims for certain periods, reduced penalty amounts awarded by the trial Court, and reversal on appeal. (Hawkins Decl. ¶¶ 14-24).

Defendant disputes that the penalties assessed by Plaintiff and his expert would have been awarded at all. Further, it is Defendant's contention that PAGA penalties cannot be stacked, and that at most just one PAGA penalty can be awarded to an aggrieved employee in any one pay period. *See* Labor Code section 2699 (f)(2) (authorizing awardable PAGA penalties to be measure by "each "each aggrieved employee per pay period"); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *1, *4 (N.D. Cal. 2013) (rejecting a pleading that sought the "stacking of penalties"; "[f]or the single mistake of failing to include commissions in the overtime base, plaintiff has asserted *five* separate labor code violations that could lead to statutory penalties;" "is it plausible that we would really pile one penalty on another for a single substantive wrong?"; noting that "no actual holding in any judicial decision has ever blessed such stacking"). As such, and for this initial reason, Defendant contends that the maximum potential recovery in this action is significantly lower than as stated by Plaintiff. (*Id.*)

Further, Defendant argues that Plaintiff's calculation of penalties as applicable to any employee and for any pay period, is inflated for an additional reason. Defendant argues that even were liability established, one does not reach the second-tier "subsequent" penalty rate for that violation unless and until the employer is first cited for the violation, and that Defendant has never been cited. *See Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Servs., Inc.,* 2009 WL 2448430 *1, *9 (S.D. Cal. 2009) ("For the purposes of subsequent violation penalties, the issue is not whether [defendant] willfully violated the Labor Code, but rather whether a court or commissioner had notified it of any violation."); *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) ("[u]ntil the employer has been notified that it is violating a Labor Code provision (whether or not the Commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties" at a second tier); *Robinson v.*

Open Top Sightseeing San Francisco, LLC, No. 14-CV-00852-PJH, 2018 WL 895572, at *20 (N.D. Cal. Feb. 14, 2018) (applying "initial" penalty to each violation of § 226 and § 2699(f)(2) because there was no evidence showing defendant was previously notified its practice violated § 226); *Willis v. Xerox Bus. Servs., LLC*, 2013 WL 605383, at *1, *6 (E.D. Cal. 2013) ("for a plaintiff to recover for a 'subsequent violation,' an employer must have notice that it has violated the Labor Code"). As such, Defendant contends that Plaintiff's calculation are inflated not only because the "stack" penalties for a single person during a single pay period, but because the penalties Plaintiff would award in each instance are at an inapplicable (doubled) rate. (*Id.*)

Defendant further argues that Plaintiff would still face significant practical problems in any material exposure, as each violation would need to be proven as to each person and for each period for which recovery is sought.[3] As an example, for purposes of section 226, "a good faith

[3] Defendant argues that claims of this sort tend to require individualized proof sets, and are not the subject of "common proof." *See e.g., Mateo v. V.F. Corp.* 2009 WL 3561539, at *6 (N.D. Cal. Oct. 27, 2009) (denying collective treatment of off-the-clock (OTC) and overtime claims as involving individualized proof); *Lawrence v. City of Philadelphia* (E.D. Pa. 2004) WL 945139 at *1-3 (rejecting OTC claims for collective treatment; "each of the plaintiffs potentially may claim that on any given day he or she arrived early or departed outside their regularly scheduled hours and were not compensated for such. The circumstances of those individual claims potentially vary too widely to conclude that in regard to their OTC claim, the plaintiffs are similarly situated. The questions of fact will likely differ for each Plaintiff and will be unduly burdensome to both Defendants and to the Court in managing as a collective action."); *Basco v. Wal-Mart Stores, Inc.* (E.D. La. 2002) 216 F.Supp.2d 592, 603 (individual issues arise from "myriad of possibilities that could be offered to explain why any one of the plaintiffs worked OTC" and predominate; rejecting collective treatment of such claims); *Chavez v. Zaldivar*, 2012 U.S. Dist. LEXIS 40984 *1, at *23-24 (N.D. Cal. 2012) ("To determine whether staffing levels resulted in missed meal periods, the Court would need to engage in individualized questions concerning the staffing requirements at each of [defendants'] locations. Additionally, these staffing requirements would vary from day to day."); *Washington v. Joe's Crab Shack*, 271 F.R.D. 629, 641 (N.D. Cal. 2010) ("an individualized inquiry will be required to determine whether any single employee failed to take a meal break because he/she was too busy and also to determine whether a particular employee signed a waiver based on a decision not to take meal breaks. For this reason alone, common issues do not predominate with regard to the meal break claim"); *Ruiz v. Affinity Logistics Corp.*, 2009 WL 648973, *7-8 (S.D. Cal. 2009) (holding that inquiry into the reasonableness and necessity of the expenses required a "case-by-case analysis in which common questions did not predominate over individual questions."). *See also Nikmanesh v. Wal-Mart Stores, Inc.*, No. 8:15-cv-00202-AG-JCG, ECF Dkt. 200, slip op. at 4-5 (C.D. Cal. Mar. 22, 2017) (dismissing uncertified PAGA claim "as unmanageable," where court previously "pointed to other examples of individualized variables when it denied class certification for failure of common questions to 'predominate over questions affecting only individual class members'"); *Salazar v. McDonald's Corp.*, No. 14-CV-02096-RS, 2017 WL 88999, at *7-9 (N.D. Cal. Jan. 5, 2017) (striking representative PAGA claims as unmanageable

dispute presents when there is (1) uncertainty in the law; (2) representations by an authority that compliance was not required; or (3) an employer's good faith mistaken belief grounded in a good faith dispute." *Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058 (N.D. Cal. 2019). "Mere recklessness" is not a basis for liability. *Pedroza,* 2012 WL 9506073, *5. (*Id.*)

Defendant also notes that PAGA grants the Court discretion to lower any PAGA penalty otherwise due. *See* Labor Code section 2699 (e)(2). Defendants also argue that the Court could reduce any penalty potentially due where, as Defendants contend, any technical violation of law would have been inadvertent and in good faith, particularly where the law is undefined and capable of differing interpretations. Section 226, for example, is not violated where the employer acted in "good faith." *See Pedroza v. PetSmart, Inc.,* 2012 WL 9506073 (C.D. Cal. June 14, 2012) ("The good faith defense to the willfulness element of these sections [226, 203] is clearly established under California law); *Woods v. Vector Mktg. Corp.*, 2015 WL 2453202, at *3 (N.D. Cal. May 22, 2015) ("The 'good faith dispute' rule has been extended by courts to apply to California Labor Code Section 226. (*Id*).

In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a judgment after trial which only provided for a PAGA penalty of $5 per pay period. Therefore, at trial, any PAGA penalties awarded could be significantly less than Plaintiffs' calculation even where Plaintiffs prevailed on the PAGA claim. If the amount of $5 per pay period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties would be only $65,000, which is less than this settlement provides.

Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from $2,800,000 to $500,000, a reduction of 82.2%, because the court found maximum penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code violations are established. See

---

where underlying claims would require individualized determinations).

Makabi v. Gedalia, 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered all violations for each pay period the employee worked.

The claims in this PAGA action are based upon the wage and hour practices of Defendant. The settlement provides a recovery of approximately $5.45 per pay period and the PAGA Allocation of the Net Settlement to the LWDA. This provides the Aggrieved Employees money now rather than in the future to some undetermined date and undetermined amounts. (Hawkins Decl. ¶ 19).

Upon approval, approximately $271,878.75 will be sent to the State of California and approximately $146,396.25 will be allocated to the Aggrieved Employees as the "Individual PAGA Payments". This equates a payout to each Aggrieved employee of approximately $182.31 with a low of approximately $5.45 and an estimated high payment of $403.03 for someone who worked the entire PAGA Period. (*Id.*)

The claims in this action are regarding meal periods, rest periods and off the clock work during meal periods due to work interruptions, among others. Plaintiff alleges that Defendant's practices do not provide proper payment for missed meal periods, rest periods and pay for all overtime for off the clock work. Defendant contends that it had compliant meal and rest period policies in place and such policies also prohibited employees from working off the clock. (Hawkins Decl., ¶¶ 11-23).

Defendant contends that Plaintiff and the Aggrieved Employees were properly compensated, and that they did not violate the Labor Code as to any of them. Defendant asserted additional defenses to the PAGA claim as discussed above. These defenses present a risk to the PAGA claim and the potential that some or all of the PAGA penalties sought may not be awarded. (*Id.*)

Given Defendant's potential defenses to the violations at issue, the risks and costs of continued litigation, Plaintiff and her attorneys believe that the PAGA Settlement is fair and reasonable. (Hawkins Decl., ¶ 19). Plaintiff's Counsel have significant experience litigating wage and hour claims including claims for PAGA penalties, and the PAGA Group Recovery here is similar to or greater than similar settlements that courts have approved. (Hawkins Decl., ¶ 28). The Aggrieved Employees' recovery, along with the other terms of the proposed settlement, were negotiated by experienced counsel at arm's length with the assistance of a private mediator, Steven Mehta, Esq. (Hawkins Decl., at ¶ 5).

As set forth in the accompanying proof of service, the LWDA has been provided notice of this Motion and the PAGA settlement. The decision of LWDA to accept the PAGA settlement and not oppose the motion should be given considerable weight. This is not a situation where the Court needs to be concerned about the rights of absent employees as in a class settlement, as this PAGA-only settlement does not release the individual claims of absent employees, and the LWDA is a sophisticated government entity that is more than able to look out for its own rights.

B. The Remaining Settlement Terms Are Fair and Reasonable

Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code § 2699(1) does not require that a court approve any other elements of the proposed settlement. Because there are no class allegations, the approval provisions applicable to class settlements under Cal. Code Civil Proc. §382 do not apply. Accordingly, the Court only needs to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable.

VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE

PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this settlement is a matter of contract for a contingent representation. Nevertheless, should this Court review the requested attorneys' fees, it is clear that the requested fees and costs are reasonable.

First, the requested fees are justified by the result achieved. Plaintiff's Counsel negotiated a recovery of $728,500.00 and this result justifies the requested fees equal to 35% of this recovery. This percentage is well within the standard contingent recovery. Second, the fee award is justified by the work performed. (Hawkins Decl. ¶¶ 26-31).

Generally, the Ninth Circuit and California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation or obtaining good results. *See, e.g.*, *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority" range for risk multipliers). Here, a modest 1.24 multiplier totals the amount of requested fees. (Hawkins at ¶ 31).

Finally, the award of litigation expenses is based upon the actual expenses incurred by the Plaintiff's Counsel. (Hawkins at ¶ 32). Plaintiff's Counsel will be recovering litigation expenses in the total amount not to exceed $23,000.00. These expenses are documented in the billing statement attached to the Declaration of Hawkins as **Exhibit 2**.

VII. THE ENHANCEMENT AWARD TO THE PLAINTIFF IS REASONABLE

"[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785 (2009).

Approximately 803 Aggrieved Employees will share a $728,500.00 settlement fund due entirely to the effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides for a reasonable Enhancement Award of $5,000.00. The Enhancement Award is fair and reasonable compensation for Plaintiff's efforts in pursuing the action, serving as private attorneys general under PAGA, assisting counsel with the litigation and settlement, regularly conferring with counsel on the status of their case and the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. (Hawkins Decl. ¶ 27; *see* generally Declaration of Plaintiff Foster filed concurrently herewith.)

Based on the foregoing, Plaintiff respectfully request this Court approve the reasonable PAGA Enhancement Award to Plaintiff in the amount of $5,000.00.

VIII. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests this Court approve the PAGA Settlement and the Aggrieved Employees' recovery as set forth in the Agreement and enter the Proposed Order submitted herewith.

Dated: June 5, 2026

JAMES HAWKINS APLC

By: ______________________________

JAMES R. HAWKINS, ESQ.
JAMES HAWKINS, ESQ.
MICHAEL CALVO, ESQ.
LAUREN FALK, ESQ.
AVA ISSARY, ESQ.

Attorneys for Plaintiff MARQUINN FOSTER, individually and on behalf of the general public as Private Attorney General

PROOF OF SERVICE, COUNTY OF ORANGE

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On June 5, 2026, I served on the interested parties in this action the following document(s) entitled:

NOTICE OF MOTION AND MOTION TO APPROVE PAGA SETTLEMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION

DECLARATION OF JAMES HAWKINS IN SUPPORT OF MOTION TO APPROVE PAGA SETTLEMENT

DECLARATION OF PLAINTIFF MARQUINN FOSTER IN SUPPORT OF MOTION TO APPROVE PAGA SETTLEMENT, AND ENTERING JUDGMENT THEREON

[PROPOSED] ORDER APPROVING PAGA SETTLEMENT AND JUDGMENT

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Eddie@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SERVICE LIST

McCormick, Barstow, Sheppard,
Wayte & Carruth LLP
Laura A. Wolfe, #266751
laura.wolfe@mccormickbarstow.com
7647 North Fresno Street
Fresno, California 93720
Telephone: (559) 433-1300
Facsimile: (559) 433-2300
Jolene Del Rio
Jolene.delrio@mccormickbarstow.com
Stephanie Rodriguez
Stephanie.Rodriguez@mccormickbarstow.com

Attorneys for WENDY'S OF THE PACIFIC, INC.

Via LWDA Website Only
Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
http://www.dir.ca.gov/Private-Attorneys-General-Act

[XX] **STATE:** I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on June 5, 2026, at Irvine, California

Eddie Magana