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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

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

Plaintiff,

v.

ROTOLO CHEVROLET, INC., a California Corporation; and DOES 1 through 100, inclusive,

Defendant.

Case No.: CIVSB2435646
Assigned to: Hon. Michael A Sachs, Dept. S28

Complaint Filed: November 27, 2024
FAC Filed: May 1, 2025
Trial Date: Not set

PAGA REPRESENTATIVE ACTION

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

Approval Hearing Date
Date: September 16, 2026
Time: 8:30 a.m.
Dept.: S28

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

PLEASE TAKE NOTICE that on September 16, 2026 at 8:30 a.m. in Department S28 of the San Bernardino Justice Center, San Bernardino County Superior Court, located at 247| West Third Street, San Bernardino, California, 92415-0210 the Honorable Michael A Sachs presiding, Plaintiff Abraham Maldonado ("Plaintiff") will, and hereby does, move for an order under Labor Code section 2699(l)(2) approving the PAGA Settlement Agreement and Release (the "Settlement") and PAGA Notice Cover Letter (the "Notice") entered into by Plaintiff and Defendant Rotolo Chevrolet, Inc. ("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 and Notice is attached to the Declaration of Conor J.D. Gomez in Support of Plaintiff's Motion to Approve PAGA Settlement (the "PAGA Counsel Declaration") as **Exhibit 2**.

Pursuant to Labor Code § 2699(l)(2), the Settlement requires the Court's approval. The Settlement provides penalties to "Aggrieved Employees", defined as all persons within the State of California who are or were employed by Rotolo Chevrolet, Inc. as non-exempt or hourly paid employees during any portion from November 27, 2023, through November 27, 2025. (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 Declarations of Conor J.D. Gomez and Abraham Maldonado, 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: June 3, 2026

WILSHIRE LAW FIRM

By: ______________________

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

This is a PAGA representative action between Plaintiff, on behalf of the State of California and all Aggrieved Employees and Defendant. 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 Settlement to the LWDA pursuant to Labor Code § 2699 (l)(2). (PAGA Counsel Declaration, ¶ 9, Ex. 3.) A true and correct copy of the Plaintiff's submission confirmation of the Settlement and Notice to the LWDA is attached to the Declaration of Conor J.D. Gomez as **Exhibit 3**. (*Id.*)

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. FACTUAL AND PROCEDURAL BACKGROUND.

On November 27, 2024, Plaintiff filed a putative wage and hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194 and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code § 226.7); (5) failure to timely pay final wages at termination (Labor Code §§ 201-203); (6) failure to provide and maintain accurate itemized wage statements (Labor Code § 226); (7) failure to indemnify employees for expenditures (Labor Code § 2802); and (8) violation of California Business and Professions Code §§ 17200, *et seq*. (PAGA Counsel Decl., ¶ 4.)

On November 27, 2024, Plaintiff provided notice to the LWDA and Defendant of the violations described above, as required by Labor Code § 2699.3(a)(1). (PAGA Counsel Decl., ¶ 5.) A true and correct copy of the PAGA Notice and evidence of Plaintiff's submission of the PAGA Notice to the LWDA are attached to the Declaration of Conor J.D. Gomez as **Exhibit 1**. (*Id*., Ex. 1) On May 1, 2025, after exhausting the requisite pre-filing notice period pursuant to PAGA, Plaintiff filed a first amended complaint against Defendant adding a cause of action for PAGA civil penalties. (the "Operative Complaint" or "PAGA Action"). (*Id.*)

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After Plaintiff filed the Operative Complaint, the Parties engaged in extensive settlement discussions and informal discovery. (PAGA Counsel Decl., ¶ 7.) 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*.)

On June 16, 2025, the Parties engaged in an arm's-length, all-day mediation presided over by Tagore Subramaniam and ultimately agreed to settle the Action for $170,000.00 (the "Gross Settlement Amount"), which will provide significant civil penalties to the LWDA and approximately 221 Aggrieved Employees. (*Id.* at ¶¶ 8-9.)

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 ¶ 1.11.) If the Court approves the terms of the Settlement, the net settlement amount will be approximately $82,218.83 (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 "Plaintiff Enhancement Payment");

b. $56,666.67 to PAGA Counsel for their attorneys' fees (the "Plaintiff's Counsel Fees Payment");

c. $16,614.50 to PAGA Counsel for attorneys' costs (the "Plaintiff's Counsel Litigation Expenses Payment"); and

d. $4,500.00 to the Phoenix Settlement Administrators, Inc. (the "Administrator") for their administration costs (the "Administration Expenses Payment"). A true and

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correct copy of the Administrator's bid is attached to the PAGA Counsel Declaration as **<u>Exhibit 4</u>**. (PAGA Counsel Decl., ¶ 16.)

Further, 65% of the Net Settlement Amount, or approximately $53,442.24, will go to the LWDA and the remaining 35% of the Net Settlement Amount, or approximately $28,776.59, will be paid to the Aggrieved Employees as "Individual PAGA Payments". (PAGA Counsel Decl., ¶ 16.) Each Aggrieved Employee's Individual PAGA Payment will be calculated by the Administrator based on the information to be provided by Defendant. (*Id.*) If an Aggrieved Employee worked only a portion of a PAGA Pay Period during the PAGA Period, they will get credit for the whole PAGA Pay Period. (*Id.*) If an Aggrieved Employee did not work at all during an entire PAGA Pay Period, that/those PAGA Pay Period(s) will be excluded from their pro-rata share. (*Id.*) The Individual PAGA Payment to the Aggrieved Employees are in settlement of the claims for civil penalties alleged and/or sought in the Operative Complaint and the PAGA Notice and in exchange for their release of the PAGA Released Claims within the PAGA Period. (*Id.*, Settlement, ¶ 3.3.2.)

<u>Administration</u>

The "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving this Settlement and (b) the Judgment is final. The Settlement shall be final at the time of Court Approval and Entry of Judgment. (Settlement, ¶ 1.10.)

Within ten (10) court days after the Court issues its Order approving this Settlement, Defendant will deliver the Aggrieved Employee Data (as defined in the Settlement) to the Administrator in the form of a Microsoft Excel spreadsheet. (Settlement, at ¶ 4.2.) Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than ten (10) court days after the Effective Date. (Settlement, at ¶ 4.3.)

Within fourteen (14) days after Rotolo Chevrolet funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, Plaintiff Enhancement Payment, the Plaintiff's Counsel Fees Payment and the Plaintiff's Counsel Litigation Expenses Payment. (Settlement,

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at ¶ 4.4.) The checks will be sent via First Class U.S. Mail, postage prepaid. (*Id*.) The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. (*Id*.) The Administrator will cancel all checks not cashed by the void date. (*Id*.) Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database. (*Id*.)

<u>Releases</u>

<u>Release by LWDA and Aggrieved Employees</u>: "In exchange for the consideration (Net Settlement Amount) provided for by this Agreement to the LWDA and the Aggrieved Employees, upon the Effective Date and full funding of the Gross Settlement Amount, the State of California, through their proxy or agent the LWDA and the Aggrieved Employees, hereby release the Released Parties from the PAGA Released Claims during the PAGA Period only." (Settlement ¶ 5.1.2.)

<u>General Release by Plaintiff</u>: "Plaintiff, on behalf of himself and his former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors and assigns, forever releases, remises and discharges the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, expenses (including attorney's fees and costs), transactions, occurrences, known and unknown, at law or in equity, which he and/or they may now have, including, but not limited to: claims arising out of or in any way connected with Plaintiff's employment with Rotolo Chevrolet including, but, not limited to, the PAGA Released Claims, claims that were asserted in the Action or could have been asserted, and any and all transactions, occurrences or matters between the Parties occurring prior to the date this Agreement is fully executed. Without limiting the generality of the foregoing, this release includes, but is not limited to, any and all claims under the: (a) Americans With Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age Discrimination in Employment Act, as amended; (f) the Fair Labor Standards Act, as amended; (g) the Equal Pay Act; (h) the Employee Retirement Income Security Act, as amended; (i) the Consolidated Omnibus Budget Reconciliation Act; (j) the Rehabilitation Act of 1973; (k) the

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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; (r) the California Family Rights Act and (s) 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 and/or 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, wages, back pay, front pay, premiums, penalties, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and costs ("Plaintiff's General Release"). With respect to Plaintiff's General Release, Plaintiff stipulates and agrees that, upon Rotolo Chevrolet's fulfillment of its settlement payment obligations under this Agreement, Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**"

(Settlement ¶ 5.1.1.)

B. <u>The Terms of the PAGA Settlement Are Fair and Should Be Approved.</u>

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).)

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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.*)

A court's review of a PAGA settlement necessarily implicates the following unique features that render the approval process distinct from approval 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

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1340777 at p. *4.)

Second, consistent with the fact that unnamed employees have no property interest in a PAGA claim,[1] "[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 process" required under Federal Rule of Civil Procedure 23(e) and Rule 3.769.[2]

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.*

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[1] 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.)

[2] 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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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 *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.

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.).

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The Settlement satisfies these factors as detailed below.

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

As stated above, the Parties reached the Settlement based on sufficient investigation and discovery after an all-day mediation presided over by Tagore Subramaniam. (PAGA Counsel Decl., at ¶ 8.)

2. Plaintiff's Counsel Have Extensive Experience in PAGA Actions.

PAGA Counsel are respected members of the bar, and they are experienced in handling complex wage and hour class action litigation and PAGA actions as explained in more detail in the PAGA Counsel Declaration submitted with this Motion. (PAGA Counsel Decl., ¶¶ 36-41.)

3. Assessing the Amount In Controversy and the Risks of Trial.

With respect to the meal period allegation, Plaintiff alleges that Defendant did not have fully compliant written meal period policies. (PAGA Counsel Decl., at ¶ 11.) 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 contentions 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 they 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 ¶ 12.) Plaintiff recognizes there is a legitimate risk of the Court significantly reducing penalties given the technical nature of the alleged violations. (PAGA Counsel Decl., at ¶ 13.)

Without this Settlement, the Parties face preparation for trial, as well as extensive formal discovery efforts and further depositions. (PAGA Counsel Decl., at ¶ 13.) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id.*) This Settlement

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avoids those risks and the accompanying expense. (*Id.*) Thus, this factor favors approval.

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

The Settlement provides for 6,050 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 ¶ 14.) 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 $2,420,000.00 (based on 6,050 pay periods). (*Id.*) However, given the technical nature of proving each of these violations, and in light of a trial court's ability to prevent stacking of PAGA penalties, PAGA Counsel reduced its estimate by assuming one violation per pay period, yielding $605,000.00. PAGA Counsel, in their vast experience litigating these complex wage and hour claims, then discounted this amount by 50% given the highly contested nature of the claims, the defenses asserted by Defendant, and the likelihood of success at trial, yielding a realistic maximum recovery of $302,500.00. (*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].)

The Gross Settlement Amount therefore represents approximately 56% of Plaintiff's reasonably forecasted total recovery ($170,000.00 / $302,500.00 = 56%). (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 Aggrieved Employees as they await trial and, most likely,

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appellate proceedings. (*Id*. at ¶ 15.) The possibility that the Court finds no liability at the PAGA bench trial is also a risk. (*Id.*) On the other hand, the average Individual PAGA Payment is estimated to be $130.21 ($28,776.59 / 221).[3] (PAGA Counsel Decl., ¶ 16.) 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.*)

C. <u>The Plaintiff Enhancement 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 Plaintiff Enhancement Payment to Plaintiff in an amount not to exceed $10,000.00. (Settlement, ¶ 1.27.) The Plaintiff Enhancement 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 their 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

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[3] This estimated average is based on currently available aggregate information and is intended solely to provide the Court with a general approximation; actual individual payments will be calculated by the Settlement Administrator using employee-specific pay period data and may differ accordingly.

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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 their 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 their prospects for future employment, and if Defendant were to prevail in this Action, Plaintiff could be liable for Defendant's costs and attorneys' fees. (PAGA Counsel Decl., ¶ 19

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. (PAGA Counsel Decl., at ¶ 20.) Accordingly, the Plaintiff Enhancement Payment is reasonable and should be approved by the Court.

D. <u>The Requested Plaintiff's Counsel Fees Payment and Plaintiff's 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

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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 Plaintiff's Counsel Fees Payment ($56,666.67, representing one-third of the $170,000.00 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 bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rates described above. (Settlement ¶ 3.2.2.1.) 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, PAGA Counsel has dedicated substantial resources to this Action, including approximately WLF has incurred $16,739.46 in expenses, 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.) PAGA Counsel expended significant additional efforts in litigating and settling this Action. (*Id.* at ¶¶ 22-23.)

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WLF has spent approximately 88.5 hours, for a lodestar of $67,982.50 litigating this Action to bring it to resolution, not including time which will be expended monitoring the administration of the Settlement and distribution of funds to the Aggrieved Employees. (PAGA Counsel Decl., ¶¶ 22-23.) Accordingly, the Plaintiff's Counsel Fees Payment is reasonable and fair as it is based on an approximate multiplier of 0.83. 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 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 ¶¶ 34-41.) 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

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experience, the requested Plaintiff's Counsel Fees Payment is reasonable.

Plaintiff's request for reimbursement of actual litigation costs of $16,614.50 as permitted by the Settlement, while WLF has actually incurred $16,739.46, 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. 5.)

E. Administration Expenses Payment Is Reasonable.

The Administration Expenses Payment in the amount of $4,500.00 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 Aggrieved Employees and the LWDA; establishing a qualified settlement fund; preparing and submitting to Aggrieved Employees and government entities all appropriate tax filings and forms; distributing the Plaintiff Enhancement Payment, Plaintiff's Counsel Fees Payment, Plaintiff's Counsel 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 California Controller's Unclaimed Property. (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: June 3, 2026

WILSHIRE LAW FIRM

By: ______________________

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