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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

JAIME G. VENTURA RIVERA, individually, and
on behalf of all others similarly situated,

Plaintiff,

vs.

B & V ENTERPRISES, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 24STCV29987

REPRESENTATIVE ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR AN ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEY GENERAL'S ACT OF 2004;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: June 4, 2025
Time: 8:30 a.m.
Courtroom: 31
Judge: Hon. Kerry Bensinger

Reservation ID: **922225862420**

Complaint filed: November 14, 2024
Trial date: Not set

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

2 PLEASE TAKE NOTICE that on June 4, 2025, at 8:30 a.m., or as soon thereafter as the matter
3 may be heard, in Department 31 of the above-captioned Court, Stanley Mosk Courthouse, located at 111
4 North Hill Street, Los Angeles, California 90012, Plaintiff JAIME G. VENTURA RIVERA (“Plaintiff”)
5 will and hereby does move this Court for an order approving the PAGA SETTLEMENT AGREEMENT
6 (“Agreement” or “Settlement”) reached with Defendant B & V ENTERPRISES, INC. (“Defendant”), a
7 true and correct copy of which is attached as **Exhibit 1** to the Declaration of H. Scott Leviant submitted
8 herewith.

9 Specifically, Plaintiff moves for an order to:

- 10 1. grant approval of the terms of the Agreement pursuant to the Labor Code Private
11 Attorney Generals Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the
12 settlement; the amount of distributions to the State and Aggrieved Employees; the amount
13 allocated to the Plaintiff as an enhancement; amounts allocated to attorney’s fees and costs; and,
14 the amount allocated to the settlement administrator; and,
15 2. direct disbursement of the Gross Settlement Amount pursuant to the terms of the
16 Agreement.

17 This motion is based on this Notice, the following Memorandum of Points and Authorities, the
18 Declarations of H. Scott Leviant, and Jodey Lawrence of Phoenix Class Action Administration
19 Solutions, submitted herewith, all other pleadings and papers on file in this action, and any oral
20 argument or other matter that may be considered by the Court.

21 Respectfully submitted,

22 Dated: April 7, 2025

MOON LAW GROUP, PC

23 By: 
24 Kane Moon
25 H. Scott Leviant
26 Sandy Pham

27 Attorneys for Plaintiff
28

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff JAIME G. VENTURA RIVERA (“Plaintiff”) moves the Court for approval of the Private Attorneys General Act Settlement Agreement (“Settlement”) between Plaintiff and Defendant B & V ENTERPRISES, INC. (“Defendant”) (together with Plaintiff, the “Parties”). The Settlement resolves the Private Attorneys General Act (“PAGA”) claims alleged in this Action on behalf of Plaintiff, all alleged Aggrieved Employees, and the State of California.

The PAGA claims are alleged pursuant to PAGA, which states: “[T]he...court shall review and approve any settlement of any civil action filed pursuant to this part.” Lab. Code § 2699(l)(2). The California Supreme Court has interpreted this provision to ensure “any negotiated resolution [of a PAGA claim] is fair to those affected.” *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549. The California Supreme Court has not defined a standard by which trial courts are to review and approve proposed PAGA settlements. Nonetheless, California courts largely consider whether a proposed PAGA settlement provides “genuine and meaningful [relief] consistent with the underlying purpose of the statute” and is reasonable in light of the potential verdict value of all claims released. See *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016); *see also* Lab. Code § 2699(l)(2).

After exchanging documents and data prior to their settlement negotiations, Plaintiff and Defendant reached a proposed settlement that will resolve the PAGA claims pending in this action (the “Lawsuit”) for approximately **2,071** aggrieved employees. Under the Agreement, Defendant shall pay a maximum sum of **\$279,500.00**, referred to in the Agreement as the Gross Settlement Amount, for aggrieved employees employed in California during the designated PAGA period.

This motion is brought pursuant to Labor Code § 2699.3(b)(4). This motion and the Agreement were served on the LWDA prior to the filing of this Motion. Labor Code § 2699(e)(2).

For the reasons below, Plaintiff requests that the Court enter an order approving the settlement.

II. SUMMARY OF THE TERMS OF SETTLEMENT

The full terms of the settlement are in the Agreement. The key material terms are as follows:

- (a) Aggrieved Employees: All former and current non-exempt employee(s)

employed by Defendant in California period from January 1, 2024, to April 5, 2025. (Agreement, ¶¶ 1.4, 1.25.)

- (b) No Reversion: The Settlement is *non-reversionary*. (Agreement, ¶ 3.1.)
- (c) Gross Settlement Amount: Defendant agrees to pay the maximum sum of **\$279,500.00** (hereinafter referred to as the “Gross Settlement Amount” or “GSA”) for settlement of the PAGA Penalties, which shall be inclusive of Plaintiff’s Enhancement Fee, Plaintiff’s/PAGA Counsel’s attorney’s fees and costs, and the settlement administrator’s fees and costs. (Agreement, ¶¶ 3.1, 3.2.)
- (d) Net Settlement Amount: At least **\$145,955.46** will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least **\$94,871.05** under the Agreement, and Aggrieved Employees will receive at least **\$51,084.41**. (Agreement, ¶¶ 1.15, 3.2.4.)
- (e) Plaintiff’s Enhancement Fee: Payment in the amount of up to \$5,000 to the Plaintiff, Jaime G. Ventura Rivera, for initiating the Action and providing services in support of the Action. (Agreement, ¶ 1.27.)
- (f) Attorney’s Fees: Plaintiff’s Counsel requests an award of attorney’s fees of not more than 33 and 1/3 % of the GSA, which is currently estimated to be **\$93,632.50**, subject to the escalator clause. (Agreement, ¶ 3.2.2.)
- (g) Litigation Costs: Plaintiff’s Counsel requests an award of costs, in the amount of **\$22,162.04**, which is below the cap of \$25,000.00 in the Agreement. (Agreement, ¶ 3.2.2.)
- (h) Settlement Administration: Payment to Aggrieved Employees and administration will be accomplished through third-party settlement administrator, Phoenix Class Action Administration Solutions, which has agreed to perform Administrator duties for a fixed fee not to exceed **\$12,750.00**¹, which is reasonable, based on all of the services offered. (Agreement, ¶ 3.2.3; Declaration of H. Scott Leviant

¹ The Parties agreed that the settlement administration costs are not to exceed \$15,000.00. The actual costs are expected to be \$12,750.00, which is less than the maximum amount.

1 [“Leviant Decl.”], ¶ 41; Declaration of Jodey Lawrence [“Lawrence Decl.”], ¶
2 16, Exh. B.)

- 3 (i) Uncashed Checks: Funds represented by checks returned as undeliverable after a
4 re-mailing, and funds represented by checks remaining un-cashed for more than
5 180 days after issuance, will be tendered to the Unclaimed Property Fund.
6 (Agreement, ¶¶ 4.2.2, 4.2.3.)
- 7 (j) Release: In exchange for the above settlement consideration, Defendant shall be
8 entitled to a *limited* release from the LWDA and each and every Aggrieved
9 Employee, including Plaintiff.² (Agreement, ¶ 5.)
- 10 (k) Notice to LWDA: The Declaration of H. Scott Leviant confirms that notice was
11 provided to the LWDA and attaches the confirmatory submission documents.
12 (Leviant Decl., ¶ 46 and Exh. 3.)

13

14 **III. STATEMENT OF FACTS**

15 Plaintiff alleges that Defendant engaged in practices and procedures that violated the California
16 Labor Code. (Leviant Decl., ¶ 4.) These alleged statutory violations subject Defendant to potential
17 liability for the Private Attorneys General Act (“PAGA”) penalties pursuant to Labor Code § 2698.
18 Through this action, Plaintiff seeks to recover penalties pursuant to Labor Code § 2698, *et. seq.* (*Id.*)

19 Defendant operates grocery stores in Southern California. (*Id.* at ¶ 5.) Plaintiff worked for
20 Defendant in California during the PAGA Period. (*Id.* at ¶ 6.) Defendant contends it had lawful policies,
21 including break and pay policies, in effect throughout the statutory period, and viable defenses to a
22 substantial portion of the alleged penalty claims. (*Id.* at ¶ 7.)

23

24 **IV. PROCEDURAL HISTORY**

25 On or around November 9, 2024, Plaintiff’s counsel (“Plaintiff’s Counsel” or “PAGA Counsel”)

26

27

28 ² This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46
Cal. 4th 969, 986 (2009) (concluding that “with respect to the recovery of civil penalties, nonparty
employees as well as the government are bound by the judgment in an action brought under the act....”).

1 sent a letter to the LWDA on behalf of Plaintiff in compliance with California Labor Code § 2699.3. (*Id.*
2 at ¶ 8.) More than 65 days passed after the letter was sent to the LWDA, and the LWDA did not indicate
3 that it intended to investigate the alleged violations referenced in the letter. (*Id.* at ¶ 9.) On November
4 14, 2024, Plaintiff commenced this Action by filing a Complaint alleging causes of action against
5 Defendant for failure to pay minimum wages, failure to pay overtime compensation, failure to provide
6 meal periods, failure to authorize and permit rest breaks, failure to indemnify necessary business
7 expenses, failure to timely pay final wages at termination, failure to provide accurate itemized wage
8 statements, and for unfair business practices. (*Id.* at ¶ 10). On January 17, 2025, Plaintiff filed a First
9 Amended Complaint alleging an additional cause of action for civil penalties under PAGA. (*Id.*) The
10 First Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”). (*Id.*)
11 The Parties agreed to settle the matter as a PAGA action only. (*Id.*) As part of this Settlement, Plaintiff
12 shall file an application to dismiss PAGA claims and his individual claims. (*Id.*) Defendant denies the
13 allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the
14 Operative Complaint, and denies any and all liability for the causes of action alleged. (*Id.* at ¶ 11).
15 Defendant admits to no claim by virtue of its agreement to settle this matter. (*Id.*) Because Court approval of
16 a PAGA settlement is required, this settlement is presented to this Court for review and approval. (*Id.* at ¶
17 12).

18 19 **V. SETTLEMENT NEGOTIATIONS**

20 Counsel for Plaintiff has thoroughly investigated the facts relating to the claims alleged in the
21 operative complaint and have made a thorough study of the legal principles applicable to the claims
22 asserted against Defendant. (*Id.* at ¶ 13). Based on their investigation and evaluation of this case,
23 Plaintiff’s Counsel has concluded that the settlement is fair, reasonable, and adequate in light of all
24 known facts and circumstances, including the defenses asserted by Defendant, potential adverse findings
25 regarding liability, and numerous potential appellate issues. (*Id.*)

26 On February 4, 2025, the Parties participated in an all-day mediation presided over by mediator
27 Brandon McKelvey, Esq. (*Id.* at ¶ 13). The Parties were able to reach a settlement, pursuant to a
28 mediator’s proposal, which led to this Agreement to settle the Action. (*Id.*)

1 The Parties memorialized the terms of the settlement in a long-form agreement. (“Settlement”).
2 (*Id.* at 15).

3 4 **DISCUSSION**

5 **VI. THE QUI TAM NATURE OF PAGA CLAIMS**

6 In 2003, California enacted the Private Attorneys General Act of 2004 after recognizing systemic
7 underenforcement of many worker-protection laws and regulations. *Williams v. Superior Court*, 3 Cal.
8 5th 531, 545 (2017). The solution enacted by the Legislature deputized private citizens to recover civil
9 penalties for the State, where those penalties were previously only available to law enforcement. *Arias v.*
10 *Superior Court*, 46 Cal. 4th 969, 980 (2009) (emphasis added).

11 “*Because an aggrieved employee’s action under the Labor Code Private Attorneys General*
12 *Act of 2004 functions as a substitute for an action brought by the government itself*, a judgment in
13 that action binds all those, including nonparty aggrieved employees, who would be bound by a
14 judgment in an action brought by the government.” *Arias*, 46 Cal. 4th at 986. With limited
15 exceptions, “[o]f the civil penalties recovered, 75 percent goes to the Labor and Workforce
16 Development Agency, leaving the remaining 25 percent for the ‘aggrieved employees.’” *Iskanian v.*
17 *CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 380 (2014) *certiorari denied sub nom. CLS*
18 *Transportation Los Angeles v. Iskanian*, — U.S. —, 135 S.Ct. 1155, 190 L.Ed.2d 911 (Jan. 20,
19 2015). Thus, a PAGA claim is, predominantly, a claim belonging to the State.

20 “The civil penalties recovered on behalf of the state under the PAGA are distinct from the
21 statutory damages to which employees may be entitled in their individual capacities.” *Iskanian*, 59 Cal.
22 4th at 381. Because of this distinction, and the fact that the penalties made available through PAGA fell
23 previously within the exclusive domain of State enforcement, the California Supreme Court explained
24 that PAGA suits are best viewed as a species of qui tam action. *Iskanian*, 59 Cal. 4th at 382 (“A PAGA
25 representative action is therefore a type of *qui tam* action.”).

26 27 **VII. THE STANDARDS FOR APPROVAL OF A PAGA SETTLEMENT**

28 Prior to *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources of persuasive

1 guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court
2 decisions. In their view, a PAGA allocation, even if a small portion of the total settlement, could be
3 reasonable if the settlement of the underlying wage and hour claims is robust and serves the deterrent
4 purpose of the PAGA statute. *O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D.
5 Cal. 2016) (“By providing fair compensation to the class members as employees and substantial
6 monetary relief, a settlement not only vindicates the rights of class members as employees, but may have
7 a deterrent effect upon the defendant employer and other employers, an objective of PAGA.”).

8 *Moniz* then provided explicit confirmation that this was an appropriate yardstick by which to
9 measure reasonableness of a PAGA settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with
10 federal courts, concluded that the class action factors are appropriately considered, along with a
11 consideration of whether the settlement furthers “PAGA’s purposes to remediate present labor law
12 violations, deter future ones, and to maximize enforcement of state labor laws.”

13 The class action settlement factors used to assess the fairness, adequacy, and reasonableness of a
14 class action settlement are well understood. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), held
15 that “a presumption of fairness exists where: (1) the settlement is reached through arm’s-length
16 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
17 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
18 small.”³ *Id.* at 1801. The court should also consider the expense, complexity and likely duration of
19 further litigation. *Dunk*, 48 Cal. App. 4th at 1801. “It is, of course, the strong public policy of this state to
20 encourage the voluntary settlement of litigation.” *Osumi v. Sutton*, 151 Cal. App. 4th 1355, 1359 (2007).
21 Finally, these factors are not exclusive and the court is free to balance and weigh, based on
22 circumstances. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 244-245 (2001).

23 While class settlement factors provide some guidance as to how a Court may approach the
24 evaluation of a PAGA settlement, there are significant differences between PAGA settlements and class
25 action settlements that must be recognized. Unlike a class action settlement, the scope of release
26 permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is binding not only on
27

28 ³ PAGA provides no notice or claim procedures as exist in class action cases.

1 the named employee plaintiff but also on government agencies and any aggrieved employee not a party
2 to the proceeding,” *Arias*, 46 Cal. 4th at 986, “the nonparty employees, because they were not given
3 notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to
4 remedies other than civil penalties.” *See id.*, at 987. Thus, the scope of a release in a PAGA settlement is
5 confined to PAGA penalties, and not related individual claims available under the Labor Code.⁴

6 Applying the above standards to this settlement, the settlement meets all criteria for approval.
7

8 **VIII. THE SETTLEMENT MEETS ALL THE CRITERIA FOR APPROVAL**

9 Applying the class settlement fairness factors discussed above – limited to those compatible with
10 the unique features of PAGA claims – the proposed settlement embodies all of the key features of a
11 settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for approval.

12 Plaintiff and Plaintiff’s Counsel have diligently investigated the claims in this matter. (Leviant
13 Decl., ¶ 18.) Plaintiff and Plaintiff’s Counsel concluded, after taking into account the disputed factual
14 and legal issues involved in this Action, the substantial risks attending further prosecution, including
15 risks related to the outcome of possible summary judgment efforts, and the substantial benefits to be
16 received pursuant to the compromise and settlement of the Action as set forth in the Settlement, that
17 settlement on the terms agreed to are in the best interest of Plaintiff and the Aggrieved Employees and
18 are fair and reasonable. (*Id.*) Plaintiff’s Counsel brought to bear a great deal of experience with wage
19 and hour actions in negotiating the settlement of this case. (*Id.*)

20 Resolution at this time will forestall the need for additional expensive and time-consuming
21 litigation that could very well result in an outcome less satisfactory than that proposed under this
22 settlement. (*Id.* at 19). But, before any other consideration, we have agreed to this settlement because it
23 is objectively reasonable. (*Id.*) The potential for resolution benefits the aggrieved employees and the
24 State of California, since they do not have to wait additional years for a similar recovery. (*Id.*) The
25 efficiency of this litigation benefits the Court, the parties and their counsel. (*Id.*) A settled resolution
26

27 ⁴ This is contrasted with the much broader release permitted in a class action context, which may be
28 based on “any matter or fact” alleged in the complaint. *See In re Corrugated Container Antitrust*
Litigation, 643 F.2d 195, 221 (5th Cir. 1981). In this matter, the Agreement will not affect the rights of
Aggrieved Employees who may possess individual wage and hour claims.

1 now is the most realistic method for addressing the claims raised in this matter. (*Id.*)

2 Plaintiff's Counsel have engaged in the necessary investigation in this case that made it possible
3 to exercise informed judgment in those aspects of the settlement process in which we were involved. (*Id.*
4 at 20). The Defendant in this matter produced important information, including the employee handbook
5 as well as a robust production of sample pay and time data for all employees. (*Id.*) That information,
6 coupled with other data provided, was sufficient to permit Plaintiff's Counsel to adequately evaluate the
7 settlement. (*Id.*) Plaintiff had more than enough information upon which to evaluate a fair and
8 reasonable settlement amount. (*Id.*)

9 Here, the expense, complexity and likely duration of future litigation was to some extent an
10 unknown. (*Id.* at 21). However, what is certain is that to adequately establish the foundational violations
11 that would support any penalty award, significant time and expense would be invested. (*Id.*) To
12 adequately establish that aggrieved employees experience the alleged violations, and at what frequency,
13 the aggrieved employees would need to be interviewed in a systematic fashion. (*Id.*) The process would
14 be expensive and time-consuming. (*Id.*) But doing so would have been required, since frequency of
15 violations would need to be established before any penalties could be recovered. (*Id.*) As to claims such
16 as meal period and rest break violations, the decisions of aggrieved employees are a major factor in
17 assessing liability. (*Id.*) Thus, even if records show a facially non-compliant meal period, no penalty
18 could be assessed automatically. (*Id.*) In sum, the evidence collected to date leads us to conclude that, to
19 the extent violations occurred, a fact which Defendant disputes, the violations were **not** systematic and
20 **not** uniform across all of Defendant's employees who worked during the PAGA period. (*Id.*) With these
21 considerations in mind, the amount of the Settlement is reasonable. (*Id.*)

22 **A. The PAGA Penalties Provide Genuine and Meaningful Relief to the LWDA and**
23 **Aggrieved Employees Consistent with the Dual-Purpose of PAGA**

24 The PAGA Penalties, pursuant to PAGA and the terms of the Settlement Agreement, will be
25 allocated to the LWDA and all Aggrieved Employees, with sixty-five percent (65%) allocated to the
26 former and thirty-five percent (35%) allocated to the latter. (*Id.* at ¶ 22.)
27
28

1 The PAGA Penalties, which are estimated to be at least **\$145,955.46⁵**, provide genuine and
2 meaningful relief to the LWDA and all alleged Aggrieved Employees consistent with the dual-purpose
3 of PAGA because it both redresses the alleged Aggrieved Employees for the Labor Code violations they
4 suffered from throughout their employment with Defendant and deters Defendant from violating the
5 Labor Code in the future, in light of the long-term, costly process required to litigate, mediate, and
6 ultimately settle the Action. (*Id.* at ¶ 23.) For these reasons, the PAGA Penalties amount to genuine and
7 meaningful relief consistent with the underlying purpose of PAGA. (*Id.*)

8
9 **B. The PAGA Penalties Are Reasonable Pursuant To Labor Code § 2699(e)**

10 The ultimate decision as to the amount of penalties is always up to the discretion of the Court.
11 Labor Code § 2699(e) states: “For purposes of this part, whenever the [LWDA] has discretion to assess a
12 civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and
13 conditions, to assess a civil penalty...[A] court may award a lesser amount than the maximum civil
14 penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do
15 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Lab. Code §
16 2699(e). This section grants the Court discretion to limit a PAGA civil penalties award where the facts or
17 circumstances justify reduction, or where such award is unreasonable and/or excessive.

18 The PAGA Penalties are also reasonable in light of the potential verdict value of all claims
19 released. (Leviant Decl., ¶ 24.) Indeed, the Settlement Agreement contains a release of all PAGA claims
20 that arise or could arise from the facts underlying the operative Complaint and PAGA Notice, including
21 those related to unpaid wages (such as minimum wages and overtime compensation), meal period
22 premiums, rest break premiums, and unreimbursed business expenses. (*Id.*) These claims served as the
23 basis of the alleged Aggrieved Employees’ PAGA claims. (*Id.*)

24 For the PAGA Period, the number of PAGA Pay Periods at issue is estimated to be **38,429**
25 (biweekly) for the **2,071** Aggrieved Employees. (*Id.* at 21). Using the most straightforward
26

27 ⁵ The PAGA Penalties equal the Gross Settlement Amount (\$279,500.00) less the Plaintiff’s Enhancement Fee
28 (\$5,000.00), PAGA Counsel Fees Payment (at least \$93,632.50, subject to the escalator clause), PAGA Counsel
Litigation Expenses Payment (up to \$25,000.00 and currently estimated to be \$22,162.04), and Administration
Expenses Payment (up to \$15,000.00, currently estimated to be \$12,750.00).

1 formulation of applying the “catch-all” \$100 penalty specified in Labor Code § 2699(f)(2) to each PAGA
2 Pay Period, the total penalty exposure is approximately \$3,842,900.00. (*Id.*) In addition, with assistance
3 from Plaintiff’s data consultant, and after a thorough review of evidence casting serious doubt on the
4 viability of many of the theories of penalty recover, counsel separately estimated the plausible potential
5 PAGA exposure to be, on a penalty-by-penalty basis, to be approximately **\$1,992,910.00**, which includes
6 many overly optimistic assumptions about the ability to prove the frequency of violations for all
7 aggrieved employees who allegedly experienced issues. (*Id.*) The settlement is nearly 12% of that very
8 optimistic exposure calculation, described below:

- 9 • Failure to compensate for unpaid wages based on off-the-clock work and regular rate errors –
10 Delays caused by the clock-in process prior to clocking in resulted in alleged off-the-clock
11 work. The maximum exposure is estimated to be as much as \$3,842,900.00 (38,429 total pay
12 periods * \$100 penalty). However, employee interviews about timeclock wait times suggests
13 that only a small fraction of the aggrieved employees experienced any off-the-clock waiting
14 time, resulting in a more realistic exposure of **\$384,290.00** (\$3,842,900.00 maximum exposure
15 * assumed 10% violation rate).
- 16 • Failure to provide meal periods – Deficient meal periods given the nature of the work resulted
17 in the alleged non-compliant meal periods. Assuming that facial violations in time records all
18 result in a penalty, a generous assumption given that employee choice can be a significant
19 factor, the calculated maximum exposure is just \$87,600 (1,752 pay periods * \$50 penalty).
20 However, this claim is highly dependent upon Aggrieved Employee testimony, resulting in a
21 more realistic exposure of **\$43,800.00** (\$87,600.00 maximum exposure * 50% testimony-
22 supported violation rate).
- 23 • Failure to provide rest breaks – Similarly, time constraints due to the nature of the work resulted
24 in the alleged non-compliant rest breaks. Assuming that rest break violations occurred and all
25 result in a penalty, a generous assumption given that employee rest breaks are not recorded and
26 employee choice can be a significant factor, the calculated maximum exposure is
27 \$3,842,900.00 (38,428 total pay periods * \$100 penalty). However, Defendant heavily
28 disputed this theory. Given the absence of any record to establish missed rest breaks and the

highly dependent Aggrieved Employee testimony, it is estimated that this claim could support, at best, a more realistic exposure of \$384,290.00 (\$3,842,900.00 maximum exposure * 10% violation rate).

- Unreimbursed Business Expenses – Plaintiff alleged that all employees incurred work-related expenses, including purchasing and maintaining uniforms, without reimbursement. Per *employee* tied to the purchase and maintenance of uniforms, this results in a maximum exposure of \$207,100.00 (2,071 total employees * \$100 penalty). However, Defendant provided evidence that it reimbursed employees for the purchase of and maintenance of uniforms, if any. Given Defendant’s defense, it is estimated that this claim could support, at best, a more realistic exposure of \$20,710.00 (\$207,100.00 maximum exposure * 10% violation rate).
- Failure to Timely Pay Final Wages – It is estimated that the maximum exposure for this claim is \$69,500 (695 former employees * \$100 penalty), tied to the unpaid wage claims. Adjusted to match the unpaid wage claim exposure rate estimate, the realistic penalty is \$6,950.00 (\$69,500.00 maximum exposure * 10% underlying violation rate).
- Failure to Furnish Accurate Itemized Wage Statements – It is estimated that the maximum exposure for this claim is \$9,607,250 (38,428 total pay periods * \$250 penalty), tied to the unpaid wage claims. Adjusted to match the unpaid wage claim exposure rate estimate, the realistic penalty is \$960,725.00 (\$9,607,250.00 maximum exposure * 10% violation rate).

The concurrently-filed Leviant Declaration discusses claim valuation. (*See*, Leviant Decl., ¶ 21.)

Further reflected in the PAGA Penalties is the potential risks in continuing to litigate the Action, including, but not limited to, the risk of not prevailing at trial, and the risk that, even if Plaintiff prevailed, the PAGA damages would be limited due to the largely discretionary nature of PAGA civil penalties; Defendant’s defenses; and the fact that the ultimate purpose of the Action is and has been to obtain genuine and meaningful relief for the LWDA and Aggrieved Employees. (*Id.* at ¶ 25).

1. The Total Amount Offered in Settlement is \$279,500.00

The Settlement provides a monetary benefit that falls well within “the range of an acceptable settlement” under the circumstances, which is the standard on which the instant Settlement must be

1 judged. As held by the Ninth Circuit, a settlement may be fair and reasonable even where it only
2 provides a fraction of what could have been obtained at trial. *See Linney v. Cellular Alaska P'ship*, 151
3 F.3d 1234, 1242 (9th Cir. 1998).

4 Under the Agreement, Defendant shall pay a maximum sum of **\$279,500.00**. Defendant argued
5 that numerous individualized inquiries would be needed to determine liability on Plaintiff's claims,
6 including (1) whether employees worked off-the-clock with knowledge of a supervisor or Defendant,
7 incurring overtime, (2) whether each individual took a particular meal period or rest break on a particular
8 occasion, (3) whether the meal period was waived or voluntarily not taken, and (4) where the individual
9 skipped the meal or rest period, or *why* it was skipped for each of the allegedly aggrieved employees.

10 **2. Payment of At Least \$145,955.46 in Penalties**

11 Under the Agreement, the amount available for distribution as penalties under PAGA is at least
12 **\$145,955.46**. The amount is a significant penalty, but it is not confiscatory, nor is it, in the terms of the
13 PAGA statute, "unjust, arbitrary, or oppressive." Labor Code § 2699(e)(2).

14 *a) The LWDA shall receive at least \$94,871.05*

15 As sixty-five percent (65%) of the penalties are allocated to the LWDA, the LWDA stands to
16 receive at least **\$94,871.05** under the Agreement. Further, pursuant to Labor Code § 2699.3(b)(4) the
17 "provisions of the settlement relating to health and safety laws shall be submitted to the division at the
18 same time that they are submitted to the court. This requirement shall be construed to authorize and
19 permit the division to comment on the settlement provisions, and the court shall grant the division's
20 commentary appropriate weight." The LWDA will have an opportunity to comment upon the amount to
21 be paid to the LWDA. This provision protects against collusive settlements for less than a reasonable
22 value of the claim.

23 *b) Aggrieved Employees shall receive at least \$51,084.41*

24 As thirty-five percent (65%) of the penalties are allocated to the Aggrieved Employees, the
25 LWDA stands to receive a total of at least **\$51,084.41** under the Agreement. The Court should give
26 weight to the fact that the primary purpose of PAGA is not to provide a windfall to Aggrieved
27 Employees; the penalties recovered under PAGA are *not* surrogate individual damages. Instead, the
28 amount available to Aggrieved Employees is in addition to any damages that could be recovered via

1 individual claims.

2 **C. The Presence of a Government Participant**

3 As set forth above, sixty-five percent (65%) of the penalty is paid to the LWDA. In connection
4 therewith, Labor Code § 2699.3(b)(4) permits the LWDA to comment on the penalties. This provides an
5 independent check on collusive settlements. The LWDA was notified of the Settlement. (Leviant Decl.,
6 ¶ 46.)

7 **D. PAGA Counsel Are Experienced and Negotiated Aggressively**

8 The court may also consider that negotiations between the Parties were conducted at arm's
9 length, in an adversarial manner, despite a mutual desire to resolve the case. (Leviant Decl. ¶¶ 18-20.)
10 The court may consider the opinion of all counsel that the settlement arrived at is fair, reasonable and in
11 the best interests of the aggrieved employees. PAGA Counsel are experienced with employment class
12 and representative actions, as set forth more fully in the Declaration of H. Scott Leviant filed herewith.

13 **E. Additional Factors Weigh in Favor of Approving the Terms of the Proposed**
14 **Settlement, Including the Requested Fees and Costs**

15 In addition to the factors presented above, the proposed settlement does not possess any obvious
16 deficiencies with respect to its other terms, including the agreed-upon fees and costs.

17 **1. Fees and Costs**

18 Courts in the Ninth Circuit and California generally use the “percentage method” rather than the
19 lodestar approach when awarding attorneys’ fees in a common fund type settlements. *See* 7 Witkin,
20 B.E., CALIFORNIA PROCEDURE (2007 Supp.) §§ 255-261 at 236-241 (describing prevalence of percentage
21 method in California); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] litigant or a lawyer
22 who recovers a common fund for the benefit of persons other than himself or his client is entitled to a
23 reasonable attorney’s fee from the fund as a whole”); *In re Activision Sec. Litig.*, 723 F. Supp. 1373,
24 1377-78 (N.D. Cal. 1989) (endorsing percentage method).

25 While this is not a class action, the custom and practice in class actions is to award approximately
26 one-third of a fund as a fee award. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008)
27 (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used,
28 fee awards in class actions average around *one-third* of the recovery.”) (emphasis added). The proposed

1 attorney fee award here is 33 and 1/3% of the Gross Settlement Amount, an amount reasonably
2 comparable to “average” fees awarded in California state court class action cases used for comparison
3 purposes here. *Chavez*, 162 Cal. App. 4th at 66 n. 11. Again, this is **not** a class action. It is more akin to
4 contingent representation with an additional requirement of Court review due to the *qui tam* nature of
5 PAGA claims. The California Supreme Court has removed any lingering doubt about the use of the
6 percentage of the fund method to award attorney’s fees in California Courts, endorsing and encouraging
7 that method. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).⁶

8 Thus, courts regard circumstances in which class counsel’s work is wholly contingent, such as in
9 class actions and other common fund type cases, as a factor weighing in favor of approving a negotiated
10 fee award that approximates market rates. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132-33 (2001). This
11 matter has been litigated by Plaintiff’s Counsel in a manner that is reasonable, diligent, and efficient.
12 The actual lodestar incurred by Plaintiff’s Counsel to date is no less than \$110,407.50, not including
13 unbilled time and estimated future work. (Leviant Decl., ¶¶ 37-39.) Counsel for Plaintiff invested time
14 evaluating data before the negotiations in this matter and in preparing for settlement discussions with
15 Defendant’s counsel. Those efforts led to this reasonable settlement. (*Id.*) Plaintiff’s Counsel requests a
16 fee of **\$93,632.50**, as specified in the Settlement Agreement, which represents a “negative” multiplier of
17 less than 0.85. (Leviant Decl., ¶ 39.)

18 The Agreement also provides for the award of actual costs, capped at \$25,000.00 based on
19 Plaintiff’s Counsel’s actual out of pocket expenses in taking on representation in this Lawsuit on a
20 contingency basis. (Leviant Decl., ¶ 40.) Because actual costs are less than \$25,000.00, a cost award of
21 **\$22,162.04** is requested. (*Id.*)

22 **2. Administration Fees Are Very Reasonable**

23 Administration will be completed by Phoenix Class Action Administration Solutions, for
24 **\$12,750.00**, a very reasonable amount for the services rendered. (Leviant Decl., ¶ 41; Lawrence Decl., ¶
25

26
27 ⁶ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing
28 doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method
inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport
to bar its usage generally in common fund cases.” *Laffitte*, at 501.

16.)

3. Plaintiff's Enhancement Fee Is Very Reasonable

Plaintiff's enhancement fee, for **\$5,000.00**, is very reasonable amount for his substantial initiative, significant efforts, and personal risks rendered in this action. (Leviant Decl., ¶ 42; Declaration of Jaime G. Ventura Rivera ["Rivera Decl."], ¶ 13.)

IX. CONCLUSION

For the above reasons in fact and law, Plaintiff requests this court enter an order approving the settlement memorialized in the Agreement.

Respectfully submitted,

Dated: April 7, 2025

MOON LAW GROUP, PC

By: _____



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