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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS SACRAMENTO

MAHARI SMITH, an individual, in his representative capacity on behalf of the State of California, as a private attorney general, Plaintiff, vs. NORTH SACRAMENTO HEALTHCARE, LLC, d.b.a. NORTH POINTE CARE CENTER, a California limited liability company; and DOES 1-50, Inclusive, Defendants.	Case No.: 25CV002151 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE PAGA SETTLEMENT** Date: August 21, 2026 Time: 9:00 a.m. Judge: Hon. Jill H. Talley Dept: 8A

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Mahari Smith ("Plaintiff") seeks approval of the PAGA Settlement Agreement ("Agreement")[1], which if approved, would provide valuable monetary relief for approximately 429 "Aggrieved Employees," defined as all individuals who are or previously were employed by Defendant North Sacramento Healthcare, LLC *dba* North Pointe Care Center ("Defendant") in California and classified as non-exempt employees at any time during the period from January 27, 2024 through February 9, 2026 ("PAGA Period"). Agreement at §§ 1.4, 1.9, 1.21. This is only a settlement of PAGA claims for civil penalties and is not a class settlement and does not release the individual wage claims, if any, of the affected employees. Cal. Lab. Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

If approved, the Aggrieved Employees and the California Labor and Workforce Development Agency ("LWDA") will share their portion of the Gross Settlement Amount of Three Hundred Ten Thousand Dollars and Zero Cents ($310,000.00) after deducting any Court-approved PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. Agreement at § 1.12. The PAGA Penalties shall be distributed 65% to the LWDA as the LWDA PAGA Payment and 35% to the Aggrieved Employees as Individual PAGA Payments. Agreement at §§ 1.16, 1.24, 3.2.3.

An objective evaluation of the proposed settlement confirms that the relief negotiated on behalf of the Aggrieved Employees and the LWDA is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, non-collusive and mediated negotiations between experienced counsel. As discussed below, the proposed Settlement satisfies all criteria for PAGA settlement approval. Accordingly, Plaintiff and PAGA Counsel respectfully request this Court grant approval of the Agreement. Declaration of Shani O. Zakay, Esq. ("SOZ Dec.") at ¶ 14.

[1] The Agreement is attached as Ex. "1" to the Declaration of Shani O. Zakay, Esq. ("SOZ Dec.") at ¶ 2. All citations to the Agreement incorporate by this reference a citation to the SOZ Dec., ¶ 2. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Exhaustion of Administrative Remedies Under PAGA and Civil Action Against Defendant

On January 27, 2025, Plaintiff, on behalf of himself and on behalf of other Aggrieved Employees, submitted to the LWDA a Notice of Violations ("PAGA Notice") memorializing claims against Defendant for alleged violations of the California Labor Code, including causes of action for failure to provide compliant meal and rest periods; failure to accurately compensate for missed meal and rest periods; failure to provide accurate itemized wage statements; and failure to reimburse business expenses (LWDA Case No. LWDA-CM-1075795-25). SOZ Dec., ¶ 15.

The 65-day "waiting period" on Plaintiff's right to file a civil action under PAGA, *see* Cal. Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiff that it intended to investigate the claims in the PAGA Notice. To date, the LWDA still has not advised Plaintiff of any intent to take action with respect to the claims in the PAGA Notice. SOZ Dec., at ¶ 16.

On January 27, 2025, Plaintiff filed a class action complaint against Defendant in the Superior Court of California, County of Sacramento, Case Number 25CV002151 (the "Action"). Following meet and confer efforts between the Parties related to an arbitration agreement Defendant contended was valid and enforceable, Plaintiff dismissed his class and individual claims without prejudice. On April 3, 2025, Plaintiff filed a First Amended Complaint ("Operative Complaint") containing a single cause of action for violations of the Private Attorneys General Act at Cal. Lab. Code §§ 2698, et seq. SOZ Dec., at ¶ 17.

On February 9, 2026, the Parties participated in an all-day mediation presided over by Monique Ngo-Bonnici, Esq., an experienced mediator of wage and hour representative actions. The mediation concluded without a settlement. The Parties continued mediated negotiations following the mediation session and subsequently reached a settlement, which was memorialized in a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement which is the subject of the instant motion. The Settlement was negotiated in light of all known facts and circumstances and the uncertainty associated with litigation – including the risk of Plaintiff not being able to maintain representative claims, the merits of Defendant's potential defenses, and the significant delay and potential appellate issues inherent to litigation – and was reached after extensive arm's length negotiations, with the assistance of the mediator. SOZ Dec., at ¶ 18.

The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted by Plaintiff on behalf of himself, the LWDA, and 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 wage and hour claims, if any, of the Aggrieved Employees. This Settlement does not release any claim that is not a PAGA claim.[2] Nor does this Settlement waive Defendant's right to assert *res judicata* or other available defense to any asserted claim or lawsuit. SOZ Dec., at ¶ 19.

Pursuant to California Labor Code Section 2699(s), Plaintiff is providing a copy of the Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion for settlement approval as set forth in the accompanying proof of service. Additionally, Plaintiff will submit to the LWDA a copy of the Court's judgment and order approving the Settlement Agreement within ten (10) days after entry of judgment or order. SOZ Dec., at ¶¶ 6, 20.

B. PAGA Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing this action, PAGA Counsel began its pre-filing investigation into Plaintiff's complaints. PAGA Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment, including copies of Plaintiff's paystubs. PAGA Counsel subsequently determined that Plaintiff's complaints justified further inquiry. SOZ Dec., ¶ 21.

PAGA Counsel then requested Plaintiff's employee files from Defendant. In response, Defendant produced several documents, including but not limited to, copies of Plaintiff's payroll records, onboarding documents and various company policies. PAGA Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claims

[2] As explained by the Supreme Court in *ZB, N.A. v. Superior Court* 8 Cal. 5th 175 at 196 (2019): "Nonparty employees are bound by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties."

that Defendant failed to, among other things, provide compliant meal and rest periods, and failed to reimburse for all necessary business expenses. SOZ Dec., ¶ 22.

In advance of the mediation, Defendant provided Plaintiff with sufficient information to properly evaluate Defendant's potential liability exposure. The data and documents Defendant produced included, but was not limited to, the total number of Aggrieved Employees, the total number of active Aggrieved Employees and their total number of combined PAGA Pay Periods, the total number of terminated Aggrieved Employees and their total number of combined PAGA Pay Periods, time and payroll data for a 25% sample[3] of the Aggrieved Employees, and copies of Defendant's written policies. SOZ Dec., at ¶ 23. PAGA Counsel then retained the statisticians and economists at BCG to evaluate the Aggrieved Employees' payroll and time data. BCG provides data analysis and damage modeling consulting services, specializing in wage and hour class and representative actions. BCG's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. SOZ Dec., ¶ 25. Among other things, BCG determined the number of pay periods, average length of shifts and average number of shifts worked per week. BCG also estimated the number of missed, late, or truncated meal and rest periods, the amount of unreimbursed expenses, and the amount of missed meal and rest period premiums paid during the PAGA Period. SOZ Dec., ¶ 26.

Overall, PAGA Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a PAGA action representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Class's time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9)

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[3] Defendant informally produced the time and payroll data for 105 Aggrieved Employees, representing approximately 25% of the total Aggrieved Employees. This sample size corresponds to a ± 6.7 % margin of error with a 95% confidence level. The Parties did not propound formal discovery. SOZ Dec., ¶ 24.

participating in the mediation. This investigation allowed PAGA Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. SOZ Dec., ¶ 27.

PAGA Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiff's claims. Based on their investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendant, PAGA Counsel firmly believe this Agreement to be in the best interests of the Aggrieved Employees and LWDA. SOZ Dec., ¶ 28.

III. TERMS OF THE PAGA SETTLEMENT

A. The Gross Settlement Amount

The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(s)(2). The Settlement Agreement negotiated by the Parties provides for a Gross Settlement Amount of Three Hundred Ten Thousand Dollars and Zero Cents ($310,000.00) to resolve the PAGA claims. Agreement at § 3.1. From the Gross Settlement Amount, the Administrator will deduct a PAGA Counsel Fees Payment in the requested amount of One Hundred and Three Thousand, Three Hundred Thirty-Three Dollars and Thirty-Three Cents ($103,333.33), a PAGA Counsel Litigation Expenses Payment in the requested amount of Twenty Thousand Nine Hundred Sixty-Two Dollars and Seventy-Three Cents ($20,962.73), and an Administration Expenses Payment in an amount not to exceed Five Thousand Dollars and Zero Cents ($5,000.00). Agreement at §§ 3.2.1, 3.2.2. After these deductions, the remaining amount constitutes the PAGA Penalties, which shall be allocated 65% to the LWDA as the LWDA PAGA Payment and 35% to the Aggrieved Employees as Individual PAGA Payments. Agreement at §§ 1.13, 1.16, 1.24, 3.2.3. The Net Settlement Amount, defined as the Gross Settlement Amount less the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and Administration Expenses Payment, represents the Individual PAGA Payments to be distributed to Aggrieved Employees. Agreement at § 1.17.

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B. Allocation of Individual PAGA Payments

The Administrator will calculate each Individual PAGA Payment by (a) dividing the Aggrieved Employees' thirty-five (35%) share of PAGA Penalties by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Agreement at § 3.2.3.1

Defendant estimates that there were 429 Aggrieved Employees who worked 10,683 PAGA Pay Periods during the PAGA Period. Agreement at § 4.1. Plaintiff estimates that the Aggrieved Employees will share in the Individual PAGA Payments that total $63,246.38 (the Gross Settlement Amount less the PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Administration Expenses Payment, and LWDA PAGA Payment). As Defendant estimates there are 429 Aggrieved Employees, the estimated average PAGA Payment here is $63,246.38/429 = $147.43. SOZ Dec., ¶ 29.

The Parties agreed that if the actual number of PAGA Pay Periods worked during the PAGA Period exceeds the above number by more than 10%, Defendant would have the option to either: (i) increase the Gross Settlement Amount on a *pro rata* basis equal to the percentage increase in the number of PAGA Pay Periods above 10% (e.g., if the number of PAGA Pay Periods increases by 15%, then the Gross Settlement Amount will increase by 5%); or (ii) alter the PAGA Period so that it ends on the last day on which the PAGA Pay Periods do not exceed 10,683 so that the escalator is not imposed. Agreement at § 4.1.

C. Funding and Distribution

Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than sixty (60) calendar days after the Approval Order. Agreement at § 4.3. Within fourteen (14) days after Defendant fully funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments and the LWDA PAGA Payment. Agreement at § 4.4. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. Agreement at § 4.4.1.

The face of each check shall prominently state the void date, which shall be not less than one hundred eighty (180) days after the date of mailing. Agreement at § 4.4.1. If a check remains uncashed and is cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. Agreement at § 4.4.3. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment, and none of the Gross Settlement Amount will revert to Defendant. Agreement at § 3.1. The Individual PAGA Payments are 100% penalties and will be reported to Aggrieved Employees on IRS Form 1099. Agreement at § 3.2.3.2.

D. <u>Release of Claims</u>

Upon entry of final judgment and funding of the Gross Settlement Amount, the Defendant shall be entitled to a release from Plaintiff and the State of California for all PAGA claims alleged in the Operative Complaint and Plaintiff's PAGA Notice to the LWDA which occurred during the PAGA Period. Agreement at § 5.

IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT

Labor Code § 2699(s) 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." Further, the Court in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77 stated that "the trial court must review and approve a PAGA settlement (§ 2699, subd (l)(2)), and the Supreme Court has in dictum referred to this review as a safeguard." (Citing *Kim v. Reins International California, Inc*. (2020) 9 Cal.5th 73, 88; internal quotations omitted.) "The Supreme Court has also observed that trial court approval ensures that any negotiated resolution is fair to those affected," leading the Court in *Moniz* to determine that "adoption of a standard of review for settlements that prevents fraud, collusion or unfairness, and protects the interests of the public and the LWDA in the enforcement of state labor laws is warranted." (*Moniz, supra*, 72 Cal.App.5th at 77; citing *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-1801; internal citations omitted.) In other words, "[i]n review and approval of a proposed settlement under section 2699, subd. (l)(2), a trial court thus must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the state's interests, and hence the public interest." (*Moniz, supra,* 72 Cal.App.5th at 88.) Consequently, the Parties respectfully ask the Court to review and approve the settlement of the PAGA claims and the PAGA penalties to be paid as part of the proposed Settlement.

A. The Gross Settlement Amount is Fair and Reasonable

The Gross Settlement Amount of $310,000.00 is fair and reasonable and, therefore, should be approved. Here, *without stacking* the PAGA penalties, Defendant's alleged liability exposure is estimated at approximately $1,292,640.00 in PAGA penalties. Plaintiff estimated Defendant's exposure as follows:

Claim	Penalty Amount[4]	Number of PAGA Pay Periods w/ Violation	Violation Rate
Meal Period Violations Cal. Labor Code §§ 226.7 and 512	$50[5]	5,442	51% of PAGA Pay Periods
Rest Period Violations Cal. Labor Code §§ 226.7 and 512	$50	3,809	36% of PAGA Pay Periods
Business Reimbursement Violations Cal. Labor Code § 2802	$100	5,341	50% of PAGA Pay Periods
Wage Statement Violations Cal. Labor Code § 226	$100	2,671	25% of PAGA Pay Periods

[4] In *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144, the court decided that "[u]ntil the employer has been notified that it is violating a Labor Code provision … the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties." Therefore, Plaintiff used only penalties for initial violations.

[5] The $50 penalty rate was used for a number of reasons in this instance. First, Defendant argued that increased civil penalties for subsequent violations do not apply unless the Plaintiff can present evidence that the Labor Commission or a court notified the employer that it was in violation of the Labor Code. *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144 citing *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 ["Until the employer has been notified that it is violating a Labor Code provision … the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties."].) Separately, Defendant also argued that courts have considerable discretion to reduce the penalty awards under PAGA. *See*, e.g. *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (reducing the maximum PAGA penalty amount by 90%, at $5 per pay period). Accordingly, it is unlikely that Plaintiff would recover full penalty amounts even if he prevailed in establishing the underlying Labor Code violations. Pursuant to California Labor Code section 558(a)(1), an employer is subject to a penalty of $50 for violations of a Labor Code section regulating hours and days of work, including meal period and rest period violations. Thus, because section 558(a)(1) specifically provides for a civil penalty, Plaintiff used a $50 penalty per violation for the meal and rest break claims. SOZ Dec., ¶ 31.

Waiting Time Penalties Cal. Labor Code § 203	$100	188	1.7% of PAGA Pay Periods

SOZ Dec., ¶ 30.

i. Estimated Penalties for Meal Period Violations

Plaintiff alleges that Defendant failed to provide compliant meal periods. Defendant provides 24-hour care for its patients, which are referred to by Defendant as "residents". To ensure that the residents had adequate coverage, Plaintiff and the Aggrieved Employees had to wait for a supervisor to instruct them to take a meal break; they did not have any discretion as to when they took these breaks. Breaks were supposed to be scheduled into their workday, but were often missed, late, or short for various reasons. For example, if an Aggrieved Employee was providing care to a resident and the task being performed was taking longer than anticipated (the resident was being combative, the resident needed additional care, etc.), that Aggrieved Employee may take a break at a time later than that for which he/she was scheduled. This could create a domino effect on the other group of employees that were waiting on that person to come back from his or her meal break before they are able to take their own meal break. A review of the data produced by Defendant shows nearly 9,000 shifts (over 12%) over nearly 5,500 Pay Periods where the first meal break was taken after the end of the 5th hour of work. Based on the data provided by Defendant, Plaintiff estimates Defendant's alleged liability for this claim to be approximately $272,100.00. Plaintiff calculated this by multiplying the number of pay periods in which a meal period was recorded as late and for which no meal period premium was paid, by a $50 penalty (*i.e.* 5,442 PAGA Pay Periods multiplied by $50). Plaintiff did not apply any discounts to this claim, thus $272,100.00 is the maximum exposure for this claim. SOZ Dec., ¶ 32.

ii. Estimated Penalties for Rest Period Violations

Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff alleges he and the Aggrieved Employees were often unable to take rest breaks as required by law during the PAGA Period due to the nature of the work performed. While meal periods were scheduled to prioritize coverage of the residents, rest periods were not, and Aggrieved Employees frequently missed rest periods due to the demands of the job, such as residents whose care took longer than anticipated, combative residents, and understaffing. Defendant denied these allegations and also argued that Plaintiff's rest break claim would have mainly relied on the testimony of Aggrieved Employees, making it a riskier claim. Establishing liability likely would have entailed competing testimony stating either rest breaks were taken, or rest breaks were voluntarily waived. See, e.g., *Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices"). Plaintiff estimates Defendant's alleged exposure for this claim to be approximately $190,489.25. Plaintiff calculated this by assuming the same violation rates as meal periods and applying a 30% discount, taking into account Defendant's defenses listed above (*i.e.* 3,809 PAGA Pay Periods multiplied by $50). Rest periods were not recorded. If Plaintiff were to establish that all Aggrieved Employees experienced at least one rest period violation during every PAGA Pay Period they worked within the PAGA Period, the maximum exposure here would be $50 multiplied by all 10,683 pay periods, which is $534,150.00. SOZ Dec., ¶ 33.

iii. Estimated Penalties for Unreimbursed Business Expenses

Plaintiff alleged Defendant failed to reimburse Aggrieved Employees for all necessary business expenses. Specifically, Plaintiff asserts that he and other Aggrieved Employees were required to use personal cell phones in order to access a scheduling app through which they were required to request shifts. Defendant also contacted Plaintiff and the Aggrieved Employees via phone calls and texts on their personal cell phones related to picking up shifts, working overtime, and adjusting schedules. Defendant denied that any Aggrieved Employees were required to use their personal cell phones. Plaintiff estimated Defendant's alleged exposure for this claim to be $534,150.00. Plaintiff calculated this by assuming one violation per month, which is the frequency with which Plaintiff alleges Defendant should have reimbursed Aggrieved Employees for personal cell phone use. Plaintiff did not apply any discounts to this claim, thus $534,150.00 is the maximum exposure for this claim. SOZ Dec., ¶ 34.

iv. Estimated Derivative Penalties for Non-Compliant Wage Statements

Plaintiff alleges that Defendant furnished the Aggrieved Employees with wage statements that failed to comply with Labor Code Section 226(a) as a result of Defendant's failure to provide meal and rest break premiums, as detailed above. Defendant contends the Aggrieved Employees would be unable to establish any "injury" resulting from non-compliance, as required by Labor Code Section 226(e). Taking Defendant's defenses into account, Plaintiff estimated Defendant's alleged exposure for this claim to be $267,075.00. Plaintiff calculated this by assuming 25% of wage statements were non-compliant, taking into account Defendant's defenses, and using a $100/violation rate (i.e. 2,670 pay periods multiplied by $100). If Plaintiff did not apply a discount, and assuming the Court awarded penalties here despite "stacking", as this is a derivative claim, the maximum exposure would be 10,683 pay periods multiplied by $100, which totals $1,068,300. SOZ Dec., ¶ 35.

v. Estimated Derivative Penalties for Waiting Time Penalties

Lastly, Plaintiff alleges that Defendant's failure to provide compliant meal and rest periods resulted in derivative violations of California Labor Code sections 203. Defendant contends that Plaintiff will be unable to prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203 and moreover, that this is a derivative claim that would be barred by stacking, and likewise denies that the underlying violations took place. Plaintiff estimated Defendant's alleged exposure for this claim to be $18,800. Plaintiff calculated this by assuming each of the 188 separated Aggrieved Employees would have been owed waiting time penalties. Because Plaintiff did not discount this claim, $18,800 is the maximum liability for this claim. SOZ Dec., ¶ 36.

B. <u>The Gross Settlement Compares Favorably to The Likely Recovery</u>

In light of the above, the Gross Settlement Amount is approximately 24% of Defendant's potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely recovery of PAGA penalties through continued litigation. Defendant's maximum exposure to PAGA penalties is not a realistic outcome of the litigation because it fails to account for the risks of continued litigation including, but not limited to, Defendant's defenses. *See*, *Zayerz v. Kiewit Infrastructure West*, 2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018). For instance, Defendant argued that it can only be assessed civil penalties for actual violations of the Labor Code. *See* Lab. Code §

2699(f)(2). In other words, to recover any civil penalties, Plaintiff would be required to prove the underlying Labor Code violations. (*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."].) To do this, Plaintiff would need to prove each Aggrieved Employee was subject to the alleged Labor Code violation, which would be difficult to do, as Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in this action. Thus, Defendant contends that Plaintiff would be required to "prove Labor Code violations with respect to each and every individual on whose behalf Plaintiff seek to recover civil penalties under PAGA." *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009).

Finally, the maximum penalty figure does not consider that Courts have complete discretion to "award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (Cal. Lab. Code § 2699(e)(2)). In fact, Courts routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g. Carrington v. Starbucks Corp*., 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to $5 per pay period; "Although the trial court may have disagreed with Starbucks regarding the issue of liability, it clearly took the circumstances proffered by Starbucks into consideration when it imposed the penalty … only $5 per initial violation"); *Kaanaana v. Barrett Bus. Servs., Inc*., 29 Cal App 5th 778, 788 (2018), review granted on other grounds (noting that the trial court "exercised its discretion to reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average, plaintiffs were deprived of 13 percent of the 30-minute meal period"). The gross amount obtained by PAGA Counsel is reasonable in light of Defendant's arguments.

Given Defendant's defenses to the claimed Labor Code violations at issue and the risks and costs of continued litigation, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount is fair and reasonable. This settlement was negotiated by experienced counsel at arm's length. SOZ Dec., ¶ 37. The LWDA has been provided with notice of this motion and the PAGA settlement, and the decision of LWDA to accept the PAGA settlement and not oppose the motion should be given considerable weight. SOZ Dec., ¶ 6. Moreover, the LWDA is a sophisticated government entity that can assert and protect its own rights.

C. <u>The Remaining Settlement Terms Are Fair and Reasonable</u>

Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code § 2699(s) does not require that a court approve any other elements of the proposed settlement. Because there are no class allegations for which Plaintiff seeks approval, 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.

V. THE PAGA COUNSEL FEES PAYMENT IS FAIR AND REASONABLE

PAGA Counsel seeks approval of the PAGA Counsel Fees Payment of $103,333.33 and of the PAGA Counsel Litigation Expenses Payment of $20,962.73. 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, the requested fees and costs are reasonable for experienced wage and hour counsel. SOZ Dec., ¶¶ 8-12, Declaration of Jean-Claude Lapuyade ("JCL Dec."), ¶¶ 7-12, 21.

A. <u>The Requested PAGA Counsel Fees Payment is Fair and Reasonable</u>

The requested PAGA Counsel Fees Payment of $103,333.33 and PAGA Counsel Litigation Expenses Payment of $20,962.73 are fair, reasonable, and justified by the result achieved. Agreement at § 3.2.1. PAGA Counsel negotiated a recovery of Three Hundred Ten Thousand Dollars and Zero Cents ($310,000.00) and this result justifies the requested fees equal to one third of the Gross Settlement Amount. PAGA Counsel are to split the fees as follows: 50% to the JCL Law Firm, APC, 50% to the Zakay Law Group, APLC. Plaintiff has approved of this fee split in writing. SOZ Dec., ¶ 38.

This percentage is within the standard contingent recovery percentage of one-third, and this percentage is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016). At the time this case was brought, the result was far from certain.

Defendant's defenses to the merits of the case created difficulties with proof and complex legal issues for PAGA Counsel to overcome. Here, several defenses asserted by Defendant presented serious threats to the claims of Plaintiff and the Aggrieved Employees. Defendant asserted that its employment practices complied with all applicable labor laws. If successful, Defendant's factual and legal defenses would eliminate *any recovery* to the Aggrieved Employees. While Plaintiff believes that these defenses could be overcome, Defendant maintains that these defenses have merit and therefore present a serious risk to recovery. The Settlement was possible because, in PAGA Counsels' eyes, PAGA Counsel was able to persuade Defendant that there was an appreciable risk that Plaintiff would prevail on the factual and legal issues underlying liability and overcome difficulties in proof as to monetary relief. SOZ Dec., ¶ 39.

Further, the fee award is justified by the work performed. 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).

As detailed in PAGA Counsel's time and billing records submitted herewith, PAGA Counsel's current combined lodestar is $99,985.00. (Zakay Law Group: $71,730.00, JCL Law Firm, APC: $28,255.00) SOZ Dec., ¶¶ 8-10; JCL Dec., ¶¶ 7-12). Thus, PAGA Counsel's fee request is equal to PAGA Counsel's lodestar with a multiplier of 1.03 – well below the 2.13 multiplier approved in *Laffitte* – and well below the recognized multiplier range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte,* approved 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte,* approved 33% fee award with cross-check lodestar multiplier of 1.7).

B. PAGA Counsel is Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs.

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include counsel's incurred expenses because those who benefit from their effort should share in the cost. *See Rider v. City of San Diego,* 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *see also Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded litigation costs for consultants, online legal research, copying, postage, long distance charges, travel expenses, filing fees, mediation fees and investigation fees). Prior to incurring costs for filing of this motion, PAGA Counsel collectively expended $20,962.73 prosecuting this action (Zakay Law Group, APLC - $11,235.82; JCL Law Firm - $9,726.91). SOZ Dec. ¶¶ 11-12; JCL Dec. ¶ 21. PAGA Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; postage, mediation fees; and expert costs which were all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed. SOZ Dec. ¶¶ 11-12; JCL Dec. ¶ 21.

V. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests this Court approve the PAGA Settlement as set forth in the Settlement Agreement and enter the proposed order and judgment submitted herewith.

Dated: July 27, 2026

ZAKAY LAW GROUP, APLC

By: Jaclyn Joyce
Jaclyn Joyce, Esq.
Attorney for PLAINTIFF