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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

STEVE CAZARES, an individual, in his representative capacity on behalf of the State of California and fellow Aggrieved Employees, Plaintiff, v. C&M MOTORS, LLC., a limited liability corporation, d/b/a I-10 Toyota; I-10 AUTO MALL DEALERS ASSOCIATION and DOES 1-50, Inclusive, Defendants.	Case No. CVRI2401830 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE PAGA SETTLEMENT** Hearing Date: September 16, 2025 Hearing Time: 8:30 A.M. Judge: Hon. Harold W. Hopp Dept.: 1 Reservation ID: 036202263572

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Steve Cazares ("Plaintiff") seeks approval of the Stipulation of Settlement of PAGA Action and Release of PAGA Claims ("Agreement")[1], which if approved, would provide valuable monetary relief for 183 "Aggrieved Employees," defined as all current and former non-exempt hourly-paid employees and/or commission-paid employees who worked for Defendant C&M Motors, LLC dba I-10 Toyota ("Defendant") in California at any time during January 25, 2023, May 14, 2025 (the "PAGA Period"). Agreement at §§ I(B); I(U). This is only a settlement of the PAGA claim for civil penalties and is <u>not</u> a class settlement and does <u>not</u> release the individual wage claims, if any, of the affected employees other than Plaintiff himself. 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 Workforce and Development Agency ("LWDA") will share in a Gross Settlement Amount of One Hundred Ninety-Nine Thousand Dollars and Zero Cents ($199,000.00). Agreement at § I(L). After deducting a Court-approved PAGA Counsel Award, Service Award, and the Claims Administration Costs, the PAGA Payment shall be distributed, 75% to the LWDA and 25% to the Aggrieved Employees. Agreement at § I(S).

An objective evaluation of the proposed Settlement confirms that the relief negotiated on behalf of the Aggrieved Employees and the LWDA is fair and reasonable. The Settlement is a product of informed, adversarial, and 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. JCL Dec., at ¶ 8.

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[1] The Agreement is attached as Ex. "1" to the Declaration of Jean-Claude Lapuyade ("JCL Dec.") at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. 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

On January 25, 2024, Plaintiff, on behalf of himself and on behalf of other "Aggrieved Employees," served Defendant and the LWDA with a Notice of Violations ("PAGA Notice") and draft complaint memorializing claims against Defendant for alleged violations of the California Labor Code, including causes of action for unfair competition in violation of Business & Professions Code sections 17200, *et seq.*; failure to pay minimum wages in violation of Labor Code sections 1194, 1197 and 1197.1; failure to pay overtime wages in violation of Labor Code section 510; failure to provide required meal periods in violation of Labor Code sections 226.7 and 512; failure to provide required rest periods in violation of Labor Code sections 226.7 and 512; failure to provide accurate itemized wage statements in violation of Labor Code section 226; failure to provide wages when due in violation of Labor Code sections 201, 202, and 203; and failure to reimburse employees for required expenses in violation of Labor Code section 2802 (LWDA Case Number LWDA-CM-1007367-24). JCL Dec., at ¶ 9.

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 they intended to investigate the claims in the PAGA Notices. To date, the LWDA still has not advised Plaintiff of any intent to take action with respect to the claims in the respective PAGA Notices. JCL Dec., at ¶ 10.

B. Plaintiff's Civil Action Against Defendant

1. On April 2, 2024, Plaintiff filed a representative action complaint against Defendant in the Superior Court for the County of Riverside, Case Number CVRI2401830 (the "Action"). The complaint alleged a single cause of action for Violations of the Private Attorneys General Act [Labor Code §§ 2698 et seq.] Accordingly, this action proceeded on a PAGA only basis. JCL Dec., ¶ 11. On November 14, 2024, Plaintiff dismissed Defendant 1-10 Auto Mall Dealers Association after learning that they had been erroneously named. JCL Dec., ¶ 12.

On April 8, 2025, the Parties attended a full-day mediation presided over by Kevin Barnes, Esq., an experienced mediator of wage and hour representative actions. In advance of the mediation, Defendant provided Plaintiff with sufficient information to properly evaluate Defendant's liability exposure for civil penalties to the Aggrieved Employees. The data and documents Defendant produced included, but was not limited to, the total number Aggrieved Employees and pay periods, written wage and hour policies, Defendant's employee handbook, and a 50% sample of time and payroll records for the Aggrieved Employees. JCL Dec., ¶ 13

At the conclusion of the mediation, and with the assistance of the mediator, the Parties reached a settlement following both Parties acceptance of a mediator's proposal. The Parties subsequently executed a binding and enforceable Memorandum of Understanding ("MOU"). After reaching an agreement in the 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 difficulty of proving Plaintiff's claims in a manageable trial, 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. JCL Dec., at ¶ 14.

The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted by Plaintiff on behalf of the Aggrieved Employees and State of California. This is only a settlement of the PAGA claims for civil penalties and is not a class settlement and does not release the individual claims, if any, of the Aggrieved Employees other than that of Plaintiff. 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. JCL Dec., at ¶ 15.

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. JCL Dec., at ¶¶ 16.

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

III. TERMS OF THE PAGA SETTLEMENT

A. <u>The Gross Settlement Amount</u>

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" payment in the amount of One Hundred Ninety-Nine Thousand Dollars and Zero Cents ($199,000.00) to resolve the Released PAGA Claims. From the Gross Settlement Amount, there is a deduction of attorneys' fees in the amount of $66,333.33 (which is one-third of the Gross Settlement Amount), reimbursement of incurred attorneys' expenses in an amount not to exceed $30,000.00 (collectively, "PAGA Counsel Award"), a Service Award of not more than $10,000.00 to Plaintiff, and payment of Claims Administration Costs to the Claims Administrator in an amount not to exceed $3,945. Agreement at §§ III(A)(1); III(K)(9)-(10). After these deductions, the PAGA Payment remaining, which is estimated to be $88,721.67, will be used to satisfy Plaintiff's claims for civil penalties arising under PAGA asserted on behalf of the Aggrieved Employees and the LWDA. Agreement at § I(S). Of the PAGA Payment, seventy-five percent (75%) shall be paid to the LWDA and the remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees as Individual Aggrieved Employee Payments. § I(S). This allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

B. <u>Allocation of Individual Aggrieved Employee Payments</u>

The Individual Aggrieved Employee Payments to the Aggrieved Employees shall be based on the number of Pay Periods each Aggrieved Employee worked during the PAGA Period as a percentage of the total Pay Periods worked by all Aggrieved Employees during the PAGA Period. Agreement at §§ I(C), I(S), III(A)(2).

At the time of mediation, Defendant estimated that there were approximately 183 Aggrieved Employees who worked a total of approximately 6,786 Pay Periods during the PAGA Period based on company records.

C. <u>Funding and Distribution</u>

Provided that an order approving this Settlement is entered by the Court, Defendant shall fund the Gross Settlement Amount within sixty (60) days of the Effective Date (the "Funding Date"). The

Effective Date means the date upon which approval of the Settlement is granted by the Court. Agreement at § I(I)

Within fifteen (15) calendar days of the date on which the Gross Settlement Amount is funded in full by Defendant, in accordance with the terms of the Settlement Agreement the Claims Administrator will transmit the LWDA Payment to the LWDA as one lump sum payment. Agreement at § III(K)(7).

No later than five (5) calendar days after the Funding Date, the Claims Administrator will mail the Individual Aggrieved Employee Payments to the Aggrieved Employees by regular First-Class U.S. Mail. § III(K)(4). Settlement checks issued to Aggrieved Employees will expire one hundred eighty (180) days from the date they are issued by the Claims Administrator. Agreement at § III(K)(6). If the check remains uncashed by the expiration of the 180-day period, such funds will be redistributed to Aggrieved Employees who did cash their checks. Agreement at § III(K)(6). The Individual Aggrieved Employee Payments are 100% penalties and interest and shall be reported using IRS Form 1099s. Agreement § III(K)(2).

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

Upon the Claims Administrator's receipt of the Gross Settlement Amount, in exchange for the consideration set forth in this Agreement, the Plaintiff and the State of California release Defendant from the Released PAGA Claims for the PAGA Period. The Released PAGA Claims include all claims for statutory penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release any Aggrieved Employee's claim for wages or damages. Agreement at § I(Z).

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 amount to be paid as part of the proposed Settlement.

A. <u>The Gross Settlement Amount is Fair and Reasonable</u>

The Gross Settlement Amount of $199,000.00 is fair and reasonable and, therefore, should be approved. JCL Dec., ¶ 17. Here, *without stacking* the PAGA penalties, Defendant's liability exposure is estimated at approximately $1,179,035.00 in PAGA penalties. JCL Dec., ¶ 18. Plaintiff's expert consultant estimated Defendant's exposure as follows:

Claim	Penalty Amount	Number of Pay Periods w/ Violation	Violation Rate	Total Penalties
Unpaid Wages Cal. Labor Code §§ 201, 202, 203, 204, 510, 1194, 1197, 1997.1 1198 and 558	$100	2,613	40%	$261,320.00
Wage Statement Violations Cal. Labor Code § 226	$100	1,307	20%	$130,660.00
Business Reimbursement Violations Cal. Labor Code § 2802	$100	3,267	50%	$326,100.00
Rest Break Violations Cal. Labor Code § 226.7	$50	4,573	70%	$228,655.00
Meal Period Violations Cal. Labor Code §§ 226.7 and 512	$50	4,646	71.1%	$232,300.00

JCL Dec., ¶ 19.

i. Estimated Penalties for Defendant's Alleged Meal Period Violations

Plaintiff alleged that Defendant regularly violated Labor Code 512. Specifically, Plaintiff alleges that Defendant had a "rotation list" which rotated between salespersons every 45 minutes. If the time an employee was up on the rotation list overlapped with the time that employee was due to timely take their meal period, Plaintiff alleged that Defendant would require the employee to miss or delay their meal period and continue working. Further, Plaintiff alleged that even if an employee was not at or close to the top of the rotation list, their meal periods were often missed, short, late, and/or interrupted due to the Defendant's understaffing and rigorous sales requirements. Due to Defendant's understaffing, Plaintiff was often required to leave his lunch break before 30 minutes to help customers. Plaintiff estimates Defendant's exposure for this claim to be $232,300. JCL Dec., ¶ 20.

This number was calculated using rate of $50 per employee per pay period. 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. *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, Defendants 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 Plaintiffs would recover full penalty amounts even if they 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. JCL Dec., ¶ 21.

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ii. Estimated Liability for Defendant's Violation of Labor Code § 2802

Plaintiff alleged that Defendant required Plaintiff and the Aggrieved Employees to use their personal cell phones for work purposes. Specifically, Plaintiff alleges that Aggrieved Employees were expected to communicate with one another, customers and with Defendant via their personal cell phone. Defendant also required employees to put their personal cell phone numbers on their business cards. Further, Defendant required Plaintiff and Aggrieved Employees to download and use a number of applications on their personal cell phones. This included a customer information database, an application to get information on trade-in vehicles, and an application to allow Defendant to monitor employees' phone calls and phone activity. Defendant did not reimburse Plaintiff for the use of his personal cell phone until one year into his employment. Even then, he was only reimbursed $7 per month, which did not cover the cost associated with the required use of his personal cell phone and resulted in a windfall for the Defendant. Plaintiff estimated that Defendant's total exposure for this claim was approximately $326,650.00 in penalties. This was calculated by multiplying a 50% violation rate by the total number of pay periods by a violation rate of $100 per pay period. Plaintiff used a 50% violation rate for this claim to reflect its belief that Aggrieved Employees incurred cell phone expenses approximately once per month. JCL Dec., ¶ 22.

iii. Estimated Penalties for Unpaid Wages

Plaintiff alleges that Defendant failed to pay all minimum and overtime wages when he and other Aggrieved Employees worked off the clock. Specifically, Plaintiff alleged that he and other Aggrieved Employees worked through meal breaks, as discussed above, and also performed work after they clocked out. For example, Plaintiff alleges that he and other Aggrieved Employees would be required to clock out and then deliver cars to customers off-the-clock. Plaintiff estimates that Defendant's total exposure for this claim was approximately $261,320 in penalties. JCL Dec., ¶ 23.

iv. Estimated Penalties for Rest Break Violation

Plaintiff alleges that Defendant required Plaintiff to remain on premises, on-duty, and on-callduring their rest breaks. Further, Plaintiff and Aggrieved Employees were required to keep their personal cell phones on and remain reachable to help customers during their rest breaks. Thus, these breaks were not a true period of rest because Plaintiff and Aggrieved Employees were not relieved of all duty.

Defendants deny this allegation, and argued that even if this were accurate, this allegation is specific to salespersons, rather than all Aggrieved Employees. Plaintiff estimates that Defendant's total exposure for this claim was approximately $228,655.00 in penalties. This was calculated using a 70% violation rate multiplied by a $50 penalty. JCL Dec., ¶ 24.

v. Estimated Penalties for Derivative Penalties Under Labor Code 226

Plaintiff further alleged that the Defendant's labor code violations outlined above resulted in derivative liability for penalties resulting from inaccurate wage statements. Although these penalties represented one of Defendant's largest dollar amount of exposure, it is also Plaintiff's most uncertain claim. Specifically, Defendant argued that Plaintiff could not prove the "knowing or intentional" prong needed to obtain waiting time penalties under Labor Code Section 226. Taking into account Defendant's defenses, Plaintiff estimated Defendant's exposure for this claim to be $130,660 in penalties. JCL Dec., ¶ 25.

vi. The Gross Settlement Compares Favorably to The Likely Recovery

In light of the above, the Gross Settlement Amount is approximately 17% of Defendant's potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely recovery of PAGA penalties through continued litigation. JCL Dec., ¶ 26. 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. Here, Defendants argue 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. JCL Decl., ¶ 27. Thus, Defendants contended that Plaintiff would be required to "prove Labor Code violations with respect to each and every individual on whose behalf plaintiff seeks to recover civil penalties under PAGA." *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009). JCL Dec., ¶ 28.

Moreover, 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)). JCL Dec., ¶ 29. 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"); *Fleming v. Covidien, Inc*., 2011 WL 7563047, *4 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of PAGA civil penalties for plaintiffs' section 226 claims from $2,800,000 to $500,000 because the employees suffered no injuries as a result of the erroneous wage statements and made no complaints about the errors or omissions in the wage statements, thus reducing the maximum penalty by 82%); *see also*, *Gola v. University of San Francisco, 90 Cal. App. 5th 548 (2023), as modified (May 9, 2023), reh'g denied (May 15, 2023), review denied (July 12, 2023), and disapproved of by Naranjo v. Spectrum Sec. Servs., Inc.,* 15 Cal. 5th 1056, 547 P.3d 980 (2024) (concluding after a full-blown bench trial that a penalty of 15% of the maximum PAGA penalties was the appropriate penalty). The gross amount obtained by PAGA Counsel is reasonable in light of Defendant's arguments. JCL Dec., ¶ 30.

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. JCL Dec., ¶ 31. The LWDA has been provided 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. Moreover, the LWDA is a sophisticated government entity that can assert and protect its own rights. JCL Dec., ¶ 32

vii. The Remaining Settlement Terms Are Fair and Reasonable

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.

i. The PAGA Counsel Award is Fair and Reasonable

PAGA Counsel seeks approval of attorneys' fees in the amount of $66,333.33 (one-third of the Gross Settlement Amount) and attorneys' expenses not to exceed $30,000.00[3] for reimbursement of actually incurred litigation expenses. 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.

V. THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE

A. The Requested Attorneys' Fee is Fair and Reasonable

The requested attorneys' fees of $66,333.33 is fair, reasonable, and justified by the result achieved. JCL Dec., ¶ 33. PAGA Counsel negotiated a recovery of $199,000.00, and this result justifies the requested fees equal to one third of this recovery. This percentage is 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, as noted above in section IV(A), several defenses asserted by Defendant presents serious threats to the claims of Plaintiff and 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

[3] As detailed *infra,* at the time of filing this motion, PAGA Counsel incurred $12,317.58 litigating this matter.

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. JCL Dec., ¶ 34.

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).

PAGA Counsels' current combined lodestar is $74,020.00. JCL Dec., ¶¶35-41; Declaration of Shani Zakay ("Zakay Dec.") at ¶¶ 4-7. Thus, PAGA Counsels' fee request is equal to PAGA Counsel's lodestar with a <u>negative</u> multiplier of 0.9, well below the 2.13 multiplier approved in *Laffitte* – and well within 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. <u>PAGA Counsel Are Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs.</u>

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 the filing of this motion, PAGA Counsel collectively expended $12,317.58 prosecuting this action (JCL Law Firm, APC - $6,237.93, Zakay Law Group, APLC - $6,079.65). JCL Decl. ¶ 43; Zakay Dec., ¶ 8. PAGA Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; 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. JCL Dec., ¶ 44.

VI. 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: September 9, 2025

ZAKAY LAW GROUP, APLC

By: ______________________________

Jaclyn Joyce, Esq.