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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JOE MORENO, on behalf of himself, other Aggrieved Employes, and the State of California, Plaintiffs, vs. EAGLE FOODS, LLC, a California limited liability company; RAMBO, LLC, a California limited liability company; and DOES 1 through 50, Inclusive; Defendants.	Case No. 37-2021-00038129-CU-OE-CTL **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE PAGA SETTLEMENT** Date: September 19, 2025 Time: 10:30am Judge: Hon. Carolyn M. Caietti Dept: 70

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Joe Moreno ("Plaintiff") seeks approval of the PAGA Settlement Agreement ("Agreement")[1], which if approved, would provide valuable monetary relief for approximately 605 "Aggrieved Employees," defined as all employees who are or previously were employed by Eagle Foods, LLC and/or Rambo, LLC("Defendants"), except for their owner/operator in California at any time between February 21, 2021[2] through September 3, 2024[3] ("PAGA Period"). Agreement at §§ I(A); I(Q). Plaintiff and Defendants (collectively, the "Parties") seek approval of the settlement of the PAGA claim for civil penalties. This 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 a payment for PAGA Payment of approximately One Hundred Thirty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents ($136,666.67) After deducting the Court-approved Plaintiff's Enhancement Payment, Attorneys' Fees and Attorneys' Expenses, Settlement Administration Expenses, the resulting PAGA Payment shall be distributed, 75% to the LWDA and 25% to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement at §III.

An objective evaluation of the proposed settlement confirms that the relief negotiated on behalf of the Plaintiff, the Aggrieved Employees and the LWDA is fair, reasonable, and valuable. 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

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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.

[2] While Plaintiff filed his Notice of Violations with the LWDA on June 30, 2021, Eagle Foods, LLC took over ownership of the subject location in February 2021, with the first pay period of February 21, 2021. As such, the PAGA Period start date is February 21, 2021, instead of June 30, 2020. Defendants are willing to file a declaration under penalty of perjury to this effect, upon the Court's request.

[3] Pursuant to the Agreement, Defendants may elect to cut off the end of the PAGA Period in order to maintain the total number of PAGA Pay Periods at 7,880.

PAGA settlement approval. Accordingly, Plaintiff and PAGA Counsel respectfully request this Court grant approval of the Agreement. Declaration of Jean-Claude Lapuyade ("JCL Dec.") at ¶ 9.

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Exhaustion of Administrative Remedies Under PAGA And Civil Action Against Defendants

On June 30, 2021, Plaintiff, on behalf of himself and on behalf of other Aggrieved Employees, served Defendants and the LWDA with a Notice of Violations ("PAGA Notice") and draft complaint memorializing claims against Defendants 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 pay all minimum, regular, and overtime wages; failure to provide accurate itemized wage statements; failure to timely pay wages due during, and upon termination of employment; and failure to reimburse for required business expenses. (LWDA Case No. LWDA-CM-836582-21). JCL Dec., ¶ 10.

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 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. JCL Dec., at ¶ 11.

On September 3, 2021, Plaintiff filed a representative action complaint against Defendants in the Superior Court for San Diego, Case Number 37-2021-00038129-CU-OE-CTL ("Action"). The Action alleged a single cause of action against Defendants for violations of the Private Attorneys General Act at Cal. Lab. Code §§2698, *et seq*. JCL Dec., ¶ 12.

On July 15, 2022, the Court granted Defendants' motion to compel arbitration, dismissing Plaintiff's representative PAGA claims without prejudice and staying the Action pending resolution of Plaintiff's individual claims. On October 6, 2023, the Court granted Plaintiff's motion for reconsideration of the Court's order dismissing Plaintiff's representative PAGA claims, which reinstated Plaintiff's representative PAGA claims into the Action. JCL Dec., ¶ 13.

On September 3, 2024, the Parties participated in an all-day mediation presided over by Steven Mehta, Esq., an experienced mediator of wage and hour representative actions. In advance of the with the mediation, Defendants provided Plaintiff with sufficient information to properly evaluate Defendants' potential liability exposure. Among the data and documents Defendants produced included, but was not limited to, the total number of Aggrieved Employees, pay periods, employee handbooks, and dozens of documents of time and payroll data. JCL Dec., ¶ 14.

The mediation resulted in a settlement and was memorialized in the form of a 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 and establishing manageability, the difficulty of proving Plaintiff's claims in a manageable trial, the merits of Defendants' 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 Mediator Mehta. JCL Dec., at ¶ 15.

The Settlement is intended to fully and finally resolve the Released PAGA Claims, which includes Plaintiff, the LWDA, Aggrieved Employees, and the State of California. Plaintiff and Defendants (collectively, the "Parties") seek approval of only a Settlement of the PAGA claims for civil penalties. This is not a class settlement and does not release the individual claims, if any, of the Aggrieved Employees, other than Plaintiff's individual claims. Aside from the release of Plaintiff's individual claims, this Settlement does not release any claim that is not a PAGA claim.[4] Nor does this Settlement waive Defendants' right to assert *res judicata* or other available defense to any asserted claim or lawsuit. JCL Dec., at ¶ 16.

Pursuant to California Labor Code Section 2699(1), 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

[4] 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."

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 ¶ 17.

III. TERMS OF THE PAGA SETTLEMENT

A. The Gross Settlement Amount

The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(1)(2). The Settlement Agreement negotiated by the Parties provides for a Gross Settlement Amount payment in the amount of Two Hundred Fifty-Seven Thousand Five Hundred Dollars and Zero Cents ($257,500.00) to resolve the PAGA claims and Plaintiff's individual claims. From the Gross Settlement Amount, there is a requested deduction of Attorneys' Fees and Attorneys' Expenses in the amount of approximately One Hundred Five Thousand Eight Hundred Thirty-Three Dollars and Thirty-Three Cents ($105,833.33), comprised of one-third of the Gross Settlement Amount (estimated to be approximately $85,833.33), reimbursement of incurred litigation expenses in an amount not to exceed Twenty Thousand Dollars and Zero Cents ($20,000.00); Plaintiff's Enhancement Payment up to Ten Thousand Dollars and Zero Cents ($10,000.00) and Settlement Administration Expenses, which will not exceed Five Thousand Dollars and Zero Cents ($5,000.00). Agreement generally at §§ I(D), (J), (P), (U), (BB), III. After these deductions, the amount remaining is the "PAGA Payment," which is estimated to be $136,666.67. JCL Dec., ¶ 18.

The Gross Settlement Amount will be used to satisfy the Aggrieved Employee Payment, the LWDA Payment, Attorneys' Fees and Attorneys' Expenses, Plaintiff's Enhancement Payment, and the Settlement Administration Expenses. Agreement at §§ I(J), (P), (U), (BB), III(A).

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 ("PAGA Payment"). Agreement at §§ I (L), (P), III(B)(4). This 75/25 allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

B. Allocation of Aggrieved Employee Payment

The Aggrieved Employee Payment will be calculated by dividing the amount of the Aggrieved Employees' 25% share of PAGA Payment ($34,166.67) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and then multiplying the result by each

Aggrieved Employee's PAGA Pay Periods. Agreement at § VI(I). The PAGA Period is the period between February 21, 2021 through September 3, 2024. Agreement at § I(Q).

At the time of the parties' settlement of this action, Defendants estimated that there were approximately 605 Aggrieved Employees who worked approximately 7,880 pay periods during the PAGA Period based on company records. Agreement at § VI(H).

C. Funding and Distribution

Provided that an order approving this Settlement is entered by the Court, Defendants shall fund the Gross Settlement Amount within fourteen (14) days after the entry of the court order approving the settlement. Agreement at § I(G), (I). No later than fourteen (14) calendar days after Defendants fully fund the Gross Settlement Amount, the Settlement Administrator will mail the Individual Aggrieved Employee Payments via First-Class U.S. Mail to the Aggrieved Employees' last known mailing address. Agreement at § VI(L). Settlement checks issued to Aggrieved Employees will expire one hundred eighty (180) days from the date they are issued by the Settlement Administrator. Agreement at § VI(N). If the check remains uncashed by the expiration of the 180-day period, the Settlement Administrator shall cause the aggregate sum represented by those uncashed checks to be sent to the State Controller's Unclaimed Property Fund in the name of the Aggrieved Employee who did not claim the funds. Agreement at *Id*. The Aggrieved Employee Payments are 100% penalties and shall be reported using IRS Form 1099s. Agreement at § VI(J).

D. Release of Claims

Upon entry of Judgment and funding of the Gross Settlement Amount, the State of California, the Aggrieved Employees, and Plaintiff shall release the Released Parties (as defined in the Agreement) from the Released PAGA Claims which include "all PAGA claims that were alleged, or reasonably could have been alleged, in the Related Actions based on the PAGA Period and any amendments thereto and ascertained in the course of the Actions, including, any and all claims for PAGA penalties involving any alleged unpaid wages, including, but not limited to, failure to pay minimum wages; straight time compensation, overtime, double time compensation; failure to pay all minimum, regular and overtime wages at the correct rate, including the regular rate of pay failure to timely pay regular and final wages; failure to pay the proper rate of pay for overtime, meal and rest period premiums, vacation pay, and sick pay; failure to provide meal and rest periods or provide premium pay; failure to provide accurate itemized wage statements; failure to keep accurate records of wages paid and hours worked; failure to reimburse business expenses; late payment of final wages; and failure to issue accurately itemized wage statements; and failure to reimburse employees for business-related expenses and timely pay wages due during, and upon termination of employment. For the avoidance of confusion, Aggrieved Employees only release these claims for the duration of the PAGA Period. The release of claims for PAGA penalties shall bind only the named Plaintiff, the LWDA, the Aggrieved Employees, and the State of California. Agreement at §§ I(X); IV(A). In addition, Plaintiff releases Defendants and Released Parties as set forth in the Agreement, which includes a Civil Code section 1542 release. Agreement § IV(B).

IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT

Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." 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 Payment 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 $257,500.00 is fair and reasonable and, therefore, should be approved. Here, *without stacking* the PAGA penalties, Defendants' *maximum* liability exposure is estimated at approximately $788,000 in PAGA penalties (7,880 pay periods multiplied by $100 per pay period[5]). JCL Dec., ¶ 19.

Assuming the Court permitted Plaintiff to stack PAGA penalties, Plaintiff's third-party damages consultant estimated Defendants' maximum liability exposure at approximately $1,153,400. Plaintiff's consultant estimated Defendants' exposure as follows:

Claim	Penalty Amount[6]	Number of Pay Periods w/ Violation	Violation Rate	Total Penalties
Wage Statement Violations Cal. Labor Code §§ 226 and 226.2	$100	6,204	100% of PAGA Pay Periods	$620,400
Unpaid Wages Violations Cal. Labor Code §§ 201, 202, 203, 204, 246, 1194, 1197, 1997.1, 1198 and 558	$100	3,102	50% of PAGA Pay Periods	$310,200
Meal Period Violations Cal. Labor Code §§ 226.7 and 512	$50	2,228	35.9% of PAGA Pay Periods	$111,400
Rest Period Violations Cal. Labor Code §§ 226.7 and 512	$50	2,228	35.9% of PAGA Pay Periods	$111,400

JCL Dec., ¶ 20.

i. **Estimated Penalties for Defendants' Inaccurate Wage Statements**

Plaintiff's primary claim alleged that Defendants failed to furnish their employees with accurate itemized wage statements. Specifically, Plaintiff alleged that Defendants furnished wage statements to their employees that failed to provide the correct legal name and address of the employer, in violation of California Labor Code section 226(a)(8). Further, as discussed below, Plaintiff contends

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[5] California Labor Code section 2699(f)(2) provides the default penalty for PAGA violations of $100 for initial violations and $200 for subsequent violations.

[6] 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.

that he and other Aggrieved Employees are owed meal and rest period premiums. Thus, the wage statements are also inaccurate because Defendants failed to provide meal and rest periods as required by the California Labor Code, Plaintiff and other Class Members are entitled to derivative wage statement penalties. (*See Naranjo v. Spectrum Security Services* (2022) 13 Cal. 5th 93 (concluding that meal premiums are "wages" entitling employees to derivative wage statement penalties). JCL Dec., ¶ 21.

PAGA Counsel considered the arguable presence of various penalties and weighed the potential recoveries against probable defenses. Specifically, Defendants argued that it substantially complied with its obligation to provide the correct legal name and address on wage statements. Accordingly, Plaintiff estimated that Defendants' exposure for this claim was approximately $620,400. JCL Dec., ¶ 22.

ii. Estimated Liability for Unpaid Wages

Plaintiff alleged that Defendants failed to pay all minimum and overtime wages when he and other Aggrieved Employees performed work off-the-clock. Specifically, Plaintiff alleged that he and other Aggrieved Employees were required to perform per-shift off-the-clock work, including setting up the restaurant before it opened. Plaintiff further alleged that he and other Aggrieved Employees were required to perform post-shift off-the-clock work, including taking out garbage, restocking the restaurant inventory, cleaning, and helping customers. JCL Dec., ¶ 23. Defendants deny these allegations, contending that all employees are instructed not to work off-the-clock, that Defendants' timekeeping system allows employees to account for this work and, accordingly, any work performed off-the-clock was not at the direction of Defendants. Taking Defendants' defenses into consideration, Plaintiff applied a 50% discount to this claim. Applying said discount, Plaintiff estimates Defendants' exposure for this claim to be $310,200. JCL Dec., ¶ 24.

iii. Estimated Penalties for Meal Period Violations

Plaintiff also alleged that Defendants rounded meal periods, supported by data evidencing that over 39% of first meal periods were exactly 30 minutes in length. JCL Dec., ¶ 25. Based on this data, Plaintiff alleges that Defendants implemented a practice of either rounding or auto-deducting 30 minutes of fictitious meal breaks from every shift, creating a paper trail of compliance and depriving employees of their breaks and wages owed for time deducted. Defendants deny these allegations, contending that they maintain compliant meal period policies and practices, that employees are responsible for recording their own time, and that Defendants do not alter time records and no evidence of rounding or time sheet manipulation exists. In light of Defendants' defenses, Plaintiff estimated that Defendants' exposure for this claim was approximately $111,400. JCL Dec., ¶ 26.

iv. Estimated Penalties for Rest Period Violations

Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically, Plaintiff alleged that because of their rigorous work schedules, Plaintiff and Aggrieved Employees were not able to take timely and duty-free rest periods. Further, Defendants did not pay a single rest period premium during the PAGA Period. Because rest periods are not recorded, Plaintiff's expert could not identify a violation rate. Plaintiff therefore made the reasonable assumption that rest period violations were committed at a rate similar to that of meal period violations. JCL Dec., ¶ 27.

Based on an estimated violation rate which resulted in 2,228 PAGA Pay Periods containing a violation, Plaintiff contended that his claim for rest period violations was potentially worth approximately $111,400. This was calculated by multiplying the number of total pay periods with a rest period violation (2,228) by a violation rate of $50 dollars. The $50 penalty rate was used for a number of reasons in this instance. First, Defendants 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, 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 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. JCL Dec., ¶ 28.

Defendants argued that they had a legally compliant written rest period policy. Defendants 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"). JCL Dec., ¶ 29.

B. The Gross Settlement Compares Favorably To The Likely Recovery

In light of the above, the Gross Settlement Amount is approximately 22.32% of Defendants' potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely recovery of PAGA penalties through continued litigation. JCL Dec., ¶ 30.

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.*, *supra*, 30 Cal. App. 5th at 529 (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). Thus, the Gross Settlement Amount obtained by PAGA Counsel is even more than reasonable in light of Defendant's arguments. JCL Dec., ¶ 31.

Given Defendants' 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., ¶ 32.

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. Moreover, the LWDA is a sophisticated government entity that can assert and protect its own rights. JCL Dec., ¶¶ 5, 33.

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(1) 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. JCL Dec., ¶ 35.

V. THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE

PAGA Counsel seeks approval of the requested Attorneys' Fees and Attorneys' Expenses, comprised of attorneys' fees in the amount of $85,833.33 (one-third of the Gross Settlement Amount) and reimbursement of litigation costs not to exceed $20,000.[7] 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 experience wage and hour counsel. JCL Dec., ¶ 36.

A. <u>The Requested Attorneys' Fee is Fair and Reasonable</u>

The requested PAGA Counsel Award of approximately $105,833.33, comprised of $85,833.33 for attorneys' fees and reimbursement of litigation expenses of up to $20,000 is fair, reasonable, and justified by the result achieved. Agreement at §§ I(D), (J), III(B)(2); JCL Dec., ¶ 37. PAGA Counsel negotiated a recovery of Two Hundred Fifty-Seven Thousand Five Hundred Dollars and Zero Cents ($257,500.00), and this result justifies the requested fees equal to one third of this recovery. 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. Defendants' 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 Defendants present serious threats to the claims of Plaintiff and the Aggrieved Employees. Defendants asserted that its employment practices complied with all applicable labor laws. If successful, Defendants' factual and legal defenses would eliminate *any recovery* to the Aggrieved Employees. While Plaintiff believes that these defenses could be overcome, Defendants maintain 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 Defendants 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., ¶ 38.

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

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[7] As detailed *infra,* at the time of filing this motion, Plaintiff's Counsel incurred $15,809.24 in costs litigating this matter. Plaintiff will provide the Court with a final amount of litigation costs at the time of hearing on this motion.

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 Counsels' time and billing records submitted herewith, PAGA Counsels' current combined loadstar is $102,035.00. JCL Dec., ¶¶ 6, 45-51; Declaration of Shani Zakay ("Zakay Dec.") at ¶¶ 3-5. Thus, PAGA Counsels' fee request is equal to PAGA Counsel's loadstar with a negative multiplier of 0.84 – 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 is 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 filing of this motion, PAGA Counsel collectively expended $15,809.24 prosecuting this action (JCL Law Firm, APC - $8,854.76, Zakay Law Group, APLC - $6,954.48). JCL Dec. ¶¶ 7, 52; Zakay Dec., ¶¶ 6-7. PAGA Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; factual and legal research charges; 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. ¶¶ 7, 53.

VI. PLAINTIFF'S ENHANCEMENT AWARD IS FAIR AND REASONABLE

Incentive payments are intended to "compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, *to recognize their willingness to act as a private attorney general*." *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (emphasis added). Courts routinely approve service awards to compensate named plaintiffs for the services they provide and the risks they incur during the litigation. *Bell v. Farmers Ins. Exch.,* 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to plaintiffs for their efforts in bringing class case). The factors courts use in determining the amount of service awards include: (1) a comparison between the service awards and the range of monetary recovery available to the class; (2) time and effort put into the litigation; (3) whether the litigation will further the public policy underlying the statutory scheme; and (4) risks of retaliation. *Clark v. American Residential Services, LLC,* 175 Cal. App. 4th 785, 804-805 (2009).

The Settlement provides for an enhancement payment of $10,000 for Plaintiff. The Plaintiff's Enhancement Payment is fair and reasonable compensation for the Plaintiff's efforts bringing the action, assisting PAGA Counsel with the litigation and settlement, regularly conferring with PAGA Counsel on the status of his case and the strategies for prosecuting the claims and agreeing to provide Defendants a broad general release of all claims arising out of his employment. Plaintiff willingly came forward to protect and advance the rights of the Aggrieved Employees on important legal disputes affecting California employees. By way of example, Plaintiff assumed the serious risk of liability for Defendants' costs and potentially fees if the case was unsuccessful. Nevertheless, Plaintiff knowingly and voluntarily undertook the risk to vindicate the rights of the Aggrieved Employees. JCL Dec., ¶ 54.

Plaintiff's efforts in bringing the lawsuit conferred a monetary benefit to 605 Aggrieved Employees. Accordingly, Plaintiff and PAGA Counsel respectfully request the Court approve the Service Award in accordance with the Settlement Agreement. JCL Dec., ¶ 55.

VII. CONCLUSION

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

Dated: April 22, 2025

JCL LAW FIRM, APC
ZAKAY LAW GROUP, APLC

By: ______________________________
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