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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

HAMID DEGHAN, an individual, on behalf of himself, and on behalf of all persons similarly situated, Plaintiff, v. R & A ALEXANDER INVESTMENTS, LLC a California limited liability company; and DOES 1-50, Inclusive, Defendants.	Case No. 2024CUOE029973 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE PAGA SETTLEMENT** Date: October 16, 2025 Time: 8:30 a.m. Judge: Hon. Charmaine H Buehner Dept.: J4

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I. INTRODUCTION

Plaintiff Hamid Deghan ("Plaintiff") seeks approval of the PAGA Settlement Agreement (the "Agreement").[1] The proposed settlement provides significant monetary relief—totaling $130,000.00—for approximately 143 Aggrieved Employees. These individuals are defined as all current and former non-exempt employees who worked for Defendant R & A Alexander Investments, LLC ("Defendant") in California during the period between September 5, 2023, through September 2, 2025 ("PAGA Period"). (Agreement §§ 1.5, 1.23.)

Importantly, this is a settlement solely of the representative PAGA claim for civil penalties. The Agreement is not a class action settlement and does not release any individual wage-and-hour claims of the Aggrieved Employees. *See* 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) (recognizing that unpaid wages are not recoverable under PAGA).

An objective evaluation of the proposed settlement reflects a fair and reasonable resolution of the PAGA claims and serves the public interest by enforcing the Labor Code while securing meaningful penalties on behalf of the State. Accordingly, Plaintiff and PAGA Counsel respectfully request the Court's approval of the Agreement. Declaration of Sydney Castillo-Johnson ("SCJ Dec.") at ¶ 6.

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

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

On September 5, 2024, Plaintiff Hamid Deghan ("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 violations for failure to provide accurate itemized wage statements; failure to pay for all minimum, regular, and overtime wages; failure to correctly calculate the correct regular rate of pay for purposes of meal period premiums, redeemed sick pay, and

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[1] The Agreement is attached as Ex "1" to the Declaration of Sydney Castillo-Johnson ("SCJ Dec.") at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the SCJ Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

overtime pay; failure to reimburse necessary business expenses; failure to provide rest periods; failure to provided meal periods; and failure to timely pay wages due during, and upon termination of employment. (LWDA Case No. LWDA-CM-1049143-24). SCJ Dec., ¶ 7.

On September 6, 2024, Plaintiff filed a class action complaint alleging eight causes of action against Defendant for: (1) Unfair Competition (Cal. Bus. & Prof. Code § 17200 et seq.); (2) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1194, 1197, and 1197.1); (3) Failure to Pay Overtime Wages (Cal. Lab. Code §§ 510, et seq.); (4) Failure to Provide Required Meal Periods (Cal. Lab. Code §§ 226.7 & 512, and the Applicable IWC Wage Order); (5) Failure to Provide Required Rest Periods (Cal. Lab. Code §§ 226.7 & 512, and the Applicable IWC Wage Order); (6) Failure to Reimburse Employees for Required Business Expenses (Cal. Lab. Code § 2802); (7) Failure to Provide Accurate Itemized Statements (Cal. Lab. Code § 226); and (8) Failure to Provide Wages When Due (Cal. Lab. Code §§ 201, 202, and 203). SCJ Dec., ¶ 8.

On November 12, 2024, Plaintiff requested to dismiss causes of action (1)-(8) in the original complaint without prejudice. SCJ Dec., ¶ 9.

On November 13, 2024, Plaintiff Filed a First Amended Complaint (the "Operative Complaint") alleging a single cause of action for Violations of the Private Attorneys General Act ("PAGA") [Labor Code §§ 2698 *et seq*.]. SCJ Dec., at ¶ 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. SCJ Dec., at ¶ 11.

On July 2, 2025, the Parties participated in an all-day mediation presided over by Gig Kyriacou, Esq., a mediator of wage and hour representative actions. In advance of 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 of Aggrieved Employees, pay periods, employee handbooks, other pertinent wage and hour policies and more than 1.5 million unique cells of time and payroll data. SCJ Dec., ¶ 12.

The mediation resulted in a settlement and was memorialized in the form of a Memorandum of Understanding ("MOU"). After accepting the mediator's proposal, the Parties drafted and negotiated a long-form settlement which is the subject of the instant motion. The Agreement 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 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 Mediator Kyriacou. SCJ Dec., at ¶ 13.

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. 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. SCJ Dec., at ¶ 14.

Pursuant to California Labor Code Section 2699(s), Plaintiff is providing a copy of the 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 Agreement within ten (10) days after entry of judgment or order. SCJ Dec., at ¶ 15.

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 Agreement negotiated by the Parties provides for a Gross Settlement Amount payment in the amount of One Hundred Thirty Thousand Dollars and Zero Cents ($130,00.00) to resolve the Released PAGA Claims. From the Gross Settlement Amount, there is a deduction of attorneys' fees

[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."

in the amount of one third of the Gross Settlement Amount (estimated to be $43,333.33), reimbursement of incurred attorneys' expenses in an amount not to exceed $25,000.00 (collectively, "PAGA Counsel Award"), and payment of Settlement Administration Costs to the Settlement Administrator in an amount not to exceed $4,225.00). Agreement generally at § 3.2. After these deductions, the amount remaining is the "PAGA Payment," which is estimated to be $57,441.67. SCJ Dec., ¶ 16.

Of the PAGA Payment, sixty-five percent (65%) shall be paid to the LWDA and the remaining thirty-five percent (35%) shall be paid to the Aggrieved Employees ("Individual PAGA Payment"). Agreement at §§ 1.13; 1.15; 3.2.3. This 65/35 allocation is required by Labor Code § 2699(m).

B. Allocation of Individual PAGA Payment

The Individual PAGA Payment will be calculated by dividing the amount of the Aggrieved Employees' 35% share of PAGA Payment ($20,104.59) 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 § 3.2.3.1. The PAGA Period is the period between September 5, 2023, through September 2, 2025. Agreement at § 1.22.

At the time of the parties' settlement of this action, Defendant estimated that there were approximately 143 Aggrieved Employees who worked approximately 5,061 pay periods during the PAGA Period (of which 1,704 were weekly pay periods). Agreement at § 4.1.[3]

C. Funding and Distribution

Provided that an order approving this Settlement is entered by the Court, Defendant shall fund the Gross Settlement Amount within thirty (30) days after the Effective Date. Agreement at § 4.3. No later than five (5) calendar days after Defendant fully funds the Gross Settlement Amount, the Settlement Administrator will mail the Aggrieved Employee Payment via First-Class U.S. Mail to the Aggrieved Employees' last known mailing address, Aggrieved Employee Payment.

[3] The Agreement contains an escalator clause, providing that, should the number of Pay Periods increase by more than 10% of what was represented during the PAGA Period, the settlement amount will be increased by the actual percentage. Defendant may, in its sole discretion, adjust the length of the PAGA Period by moving the end date to the date that the Pay Periods reach 5,568. Agreement at § 8.

Agreement at § 4.4. 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 § 4.4.1 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 § 4.4.3. The Aggrieved Employee Payments are 100% penalties and shall be reported using IRS Form 1099s. Agreement at § 3.2.

D. Release of Claims

As of the Funding Date, all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims which include claims for PAGA penalties arising out of or related to the allegations set forth in the Operative Complaint and/or PAGA Notice that arose during the PAGA Period, including, but not limited to, claims for violations of Labor Code sections 201-204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804. The Parties enter into this Agreement with the express understanding and intention that the judgment in this matter will bind non-parties, such as all Aggrieved Employees, to the fullest extent provided by applicable law, including, without limitation, as stated in *Arias v. Superior Court* (2009) 46 Cal. 4th 969 ("Because an aggrieved employee's action under [PAGA] functions as a substitute for an action brought by the government itself, a judgment in that action binds all those, including nonparty aggrieved employees who would be bound by a judgment in an account brought by the government."). Thus, all Aggrieved Employees, and the LWDA are deemed to release, on behalf of themselves and their respective former and present representative, agent, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties listed above, as well as any related interest, fees, and costs, throughout the PAGA Period. Agreement at §§ 1.25; 5.1.

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 Payment to be paid as part of the proposed Settlement.

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A. The Gross Settlement Amount is Fair and Reasonable

The Gross Settlement Amount of $130,000.00 is fair and reasonable and, therefore, should be approved. Here, *without stacking* the PAGA penalties, Defendant's *Maximum* liability exposure is estimated at approximately $506,100 in PAGA penalties (5,061 pay periods multiplied by $100[4]). SCJ Dec., ¶ 17.

Assuming the Court permitted Plaintiff to stack PAGA penalties, Plaintiff's third-party damages consultant estimated Defendant's maximum liability exposure at approximately $1,118,800. Plaintiff's consultant estimated Defendant's exposure as follows:

Claim	Penalty Amount[5]	Number of Pay Periods w/ Violation	Violation Rate	Total Penalties
Wage Statement Violations Cal. Labor Code §§ 226 and 226.2	$100	4,209	100%	$420,900
Unpaid Wages Violations Cal. Labor Code §§ 201, 202, 203, 204, 246, 1194, 1197, 1997.1, 1198 and 558	$50	4,209	100%	$420,900
Failure to Reimburse for Mandatory Business Expenses Cal. Labor Code § 2802	$100	2,104	50%	$210,400
Rest Period Violations Cal. Labor Code §§ 226.7 and 512	$50	666	15.8%	$33,300
Meal Period Violations Cal. Labor Code §§ 226.7 and 512	$50	666	15.8%	$33,300

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

[5] 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.

SCJ Dec., ¶ 18.

i. Estimated Penalties for Defendant's Inaccurate Wage Statements

Plaintiff's primary claim alleged that Defendant failed to furnish its employees with accurate itemized wage statements. Specifically, Plaintiff alleges that Defendant issued wage statements that failed to show all applicable hourly rates in effect during the pay period and the corresponding Defendant produced a secondary document titled *"*Salesperson Calculation of Gross Wages*"* as a purported supplement to the wage statements. Plaintiff maintains this document does not satisfy Labor Code § 226(a). *See Ward v. United Airlines, Inc.,* 2022 WL 3155047, (N.D. Cal. August 7, 2022) (holding an employer cannot satisfy 226(a) by having multiple documents, where the necessary information needed to calculate the employee's pay is found on another document outside of the wage statement itself.). SCJ Dec., ¶ 19.

First, the secondary document was not provided with the wage statements but only upon request, which fails to meet the statutory requirement for contemporaneous disclosure. Second, the "Commission" line item inaccurately included both commissions and a true-up of overtime compensation based on those commissions instead of separately itemizing each amount to allow Aggrieved Employees to discern commissions, overtime pay, and the related hours. Third, the wage statements inaccurately report "total hours worked" by including meal period premiums, thereby overstating hours in violation of § 226(a). Defendant's supplemental document does not cure these deficiencies. SCJ Dec., ¶ 20.

Defendant denied liability for this claim and argued that it substantially complied with its obligation to provide the correct total of hours worked. Accordingly, Plaintiff estimated that Defendant's exposure from this claim was approximately $420,900. SCJ Dec., ¶ 21.

ii. Estimated Liability for Unpaid Wages

Plaintiff alleges that Defendant failed to include certain non-discretionary bonuses and commissions when calculating the regular rate of pay when paying overtime wages, meal period premiums, and sick pay. Specifically, Defendant paid Aggrieved Employees non-discretionary incentive compensation in the form of "Bonus" and "Commission" payments, which were not properly calculated into the regular rate of pay for purposes of overtime, meal period premiums, and redeemed sick pay. As a result of these miscalculations, Plaintiff and other Aggrieved Employees are owed wages and waiting time penalties. SCJ Dec., ¶ 22. The regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, non-discretionary bonuses and awards, shift differentials and the per-hour value of any non-hourly compensation the employee has earned. *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. For overtime work, "an employee must receive a 50 percent premium on top of his or her regular rate of pay[.]" *Id*. at 553. California law also requires meal period premiums and rest period premiums to be paid at an employee's regular rate of pay. *See Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.)

Additionally, Plaintiff asserted that Defendant required employees to assist customers, make sales, perform dealership trades, deliver cars to customers, and obtain paperwork from customers. Based on Plaintiff's testimony and PAGA Counsel's investigation, BCG estimated that Aggrieved Employees performed approximately ten (10) minutes of unpaid work each workweek. As a result, Plaintiff and Aggrieved Employees forfeited compensation, including overtime wages, for all the time they spent working under Defendant's control. SCJ Dec., ¶ 23.

Finally, Plaintiff alleged that Defendant failed to provide separate compensation for any non-selling time, such as time spent in meetings, in trainings, and during rest periods, as required by California law. See *Vaquero v. Stoneledge Furniture LLC*, 9 Cal. App. 5th 98, 103 (2017), *as modified* (Mar. 20, 2017). The California Court of Appeals in *Vaquero* made clear that employers must separately compensate employees for rest periods if an employer's compensation plan does not already include a minimum hourly wage for such time. *Id.* at 110. This is particularly important because, as the court *Vaquero* court explained, commission-based compensation plans discourage employees from taking rest breaks. *Id.* at 113. SCJ Dec., ¶ 24.

Defendant vigorously denied liability for this claim and argued that it paid its employees for all hours worked, including non-productive time. Defendant also asserted that the additional compensation identified by the expert were discretionary bonuses that did not need to be included in the regular rate calculation. Further, Defendant asserted that it had in place a written policy requiring its employees to accurately record all their time worked daily and argued that such written policies and procedures directed its employees not to work while off the clock. Thus, Plaintiff estimated Defendant's exposure for this claim was approximately $420,900. SCJ Dec., ¶ 25.

iii. Estimated Liability for Unreimbursed Business Expenses

Plaintiff alleged that Defendant required Plaintiff and other Aggrieved Employees to use their personal cellular phones to communicate with Defendant's supervisors. However, Defendant did not reimburse Plaintiff and other Aggrieved Employees for these expenses. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. (*See* Cal. Labor Code § 2802(a), providing that "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…"). SCJ Dec., ¶ 26.

Defendant argued that it instructed its employees not to use their own cellular phones for work purposes and had in place a written business expense reimbursement policy regarding the same. Further, Defendant argued that even if employees did use their cellular phones for work purposes, the number of affected employees was minimal and voluntary – not mandatory. Plaintiff's expert estimated that Defendant's exposure for this claim was approximately $210,400 in penalties. SCJ Dec.,¶27.

iv. Estimated Penalties for Meal Period Violations

Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically, Plaintiff's expert found that recorded meal periods were late, short, or missed during approximately half of all pay periods. However, offsetting paid meal premiums, Defendant's violation rate is reduced to 15.8% or 666 meal period violations. Although the violation rate is relatively low, Plaintiff notes that Defendant failed to pay meal period premiums at the correct regular rate of pay. Accordingly, Plaintiff alleges that he and other Aggrieved Employees are owed meal period premiums at the correct regular rate of pay for meal period violations that occurred during the PAGA Period. SCJ Dec., ¶ 28.

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Conversely, Defendant argued that it had a legally compliant written meal period policy and paid meal premiums during those shifts when meal period violations occurred. Further, Defendant argued that Aggrieved Employees were instructed to take timely meal periods before the end of their fifth (5th) hour of work and that those meal periods were to be at least thirty (30) minutes in length. In light of Defendant's defenses, the low shift violation rates, and the payment of premiums, Plaintiff estimated that Defendant's exposure for this claim was approximately $33,300.00. SCJ Dec., ¶ 29.

v. Estimated Penalties for Rest Period Violations

Plaintiff also alleged that Defendant 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, Defendant 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. SCJ Dec., ¶ 30.

Based on an estimated violation rate which resulted in 666 PAGA Pay Periods containing a violation, Plaintiff contended that his claim for rest period violations was potentially worth approximately $33,300. This was calculated by multiplying the number of total pay periods with a rest period violation (666) by a violation rate of $50 dollars. The $50 penalty rate was used for a number of reasons in this instance. SCJ Dec., ¶ 31.

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 she 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. SCJ Dec., ¶ 32.

Defendant argued that it had a legally compliant written rest period policy. Defendant 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"). SCJ Dec., ¶ 33.

B. The Gross Settlement Compares Favorably To The Likely Recovery

In light of the above, the Gross Settlement Amount is approximately 13% 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. Here, Defendant argues that it can only be assessed civil penalties for actual violations of the Labor Code. *See* Lab. Code § 2699, subd. (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. Thus, Defendant 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). SCJ Dec., ¶ 34.

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)). SCJ Dec., ¶ 35. 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.

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. SCJ Dec., ¶ 36. 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. SCJ Dec., ¶¶ 5, 37.

C. The Remaining Settlement Terms Are Fair and Reasonable

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. SCJ Dec., ¶ 38.

D. The PAGA Counsel Award is Fair and Reasonable

PAGA Counsel seeks approval of the PAGA Counsel Award, comprised of attorneys' fees in the amount of $43,333.33 (one-third of the Gross Settlement Amount) and reimbursement of litigation costs not to exceed $25,000.[6] 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. SCJ Dec., ¶ 39.

E. The Requested Attorneys' Fee is Fair and Reasonable

The requested PAGA Counsel Award of $68,333.33, comprised of $43,333.33 for attorneys' fees and reimbursement of litigation expenses of up to $25,000 is fair, reasonable, and justified by the result achieved. PAGA Counsel negotiated a recovery of One Hundred Thirty Thousand Dollars and Zero Cents ($130,000.00), and this result justifies the requested fees equal to one third of this

[6] As detailed *infra,* at the time of filing this motion, Plaintiff's Counsel incurred $17,739.26 litigating this matter. Plaintiff will provide the Court with a final amount of litigation costs at the time of hearing on this motion.

recovery. SCJ Dec., ¶ 40. 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 present 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. SCJ Dec., ¶ 41.

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 Counsels' time and billing records submitted herewith, PAGA Counsels' current combined loadstar is $109,665.00. SCJ Dec., ¶¶ 42-46; Declaration of Shani

Zakay ("Zakay Dec.") at ¶¶ 3-7; Declaration of Jean-Claude Lapuyade ("JCL Dec.") ¶¶ 3-8. Thus, PAGA Counsels' fee request is equal to PAGA Counsel's loadstar with a negative multiplier of .39 – 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).

F. 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 $17,739.26 prosecuting this action (JCL Law Firm, APC - $9,909.26, Zakay Law Group, APLC - $7,830.00). SCJ Dec. ¶¶ 47; Zakay Dec., ¶¶ 8-9; JCL Dec., ¶¶ 9-10. 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. SCJ Dec. ¶¶ 48.

/ / /

V. 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: October 9, 2025

JCL LAW FIRM, APC

By: Sydney Castillo-Johnson
Sydney Castillo-Johnson, Esq.
Attorney for PLAINTIFF