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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CARLOS ANDRES GONZALEZ, an individual, in his representative capacity on behalf of the State of California, as a private attorney general, Plaintiff, vs. PCH VENTURE GROUP, INC., dba JACK IN THE BOX, a California Corporation; PCH VENTURE GROUP EAST, INC., a California Corporation, DOES 1-50, Inclusive, Defendants.	Lead Case No. 24TRCV02501 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE PAGA SETTLEMENT** Date: June 9, 2026 Time: 8:30 a.m. Judge: Hon. David K. Reinert Dept: P

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Carlos Andres Gonzalez ("Plaintiff") seeks approval of the PAGA Settlement Agreement ("Agreement")[1], which if approved, would provide valuable monetary relief for approximately 174 "Aggrieved Employees," defined as all current and former non-exempt employees who are or previously were employed by Defendant PCH Venture Group, Inc. ("Defendant"), including any employees staffed with Defendant by a third party, in California at any time during the period from May 22, 2023 through February 10, 2026 ("PAGA Period"). Agreement at §§ 1.4; 1.8; 1.24. 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. Cal. Lab. Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

If approved, the Aggrieved Employees and the California Labor and Workforce Development Agency ("LWDA") will share the Gross Settlement Amount of One Hundred Two Thousand, Two Hundred Twenty Dollars and Zero Cents ($102,220.00) After deducting any Court-approved PAGA Counsel Fees Payment and Litigation Expenses Payment, the Claims Administration Costs, and the Mediation Fee, the Net PAGA Settlement Amount shall be distributed 75% to the LWDA and 25% to the Aggrieved Employees. §§ 1.17, 3.2.4.

An objective evaluation of the proposed settlement confirms that the relief negotiated on behalf of the Aggrieved Employees and the LWDA is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, 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. Declaration of Shani O. Zakay, Esq. ("SOZ Dec.") at ¶ 13.

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

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

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

On May 22, 2024, Plaintiff, on behalf of himself and on behalf of other Aggrieved Employees, submitted LWDA with a Notice of Violations ("PAGA Notice") memorializing claims against Defendant for alleged violations of the California Labor Code, including causes of action for failure to provide compliant meal and rest periods; failure to accurately compensate for missed meal and rest periods; failure to pay all minimum, regular, and overtime wages; failure to provide accurate itemized wage statements; failure to provide suitable seating, failure to reimburse business expenses, and failure to timely pay wages due during, and upon termination of employment. (LWDA Case No. LWDA-CM-1029961-24). SOZ Dec., ¶ 14.

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. SOZ Dec., at ¶ 15.

On July 29, 2024, Plaintiff filed a representative action complaint against Defendant in the Superior Court of California, County of Los Angeles, Case Number 24TRCV02501 (the "Action"). The Action alleged a single cause of action for violations of the Private Attorneys General Act at Cal. Lab. Code §§ 2698, et seq. SOZ Dec., at ¶ 16.

On July 30, 2024, Plaintiff served an amended PAGA Notice on the LWDA and Defendant naming a second entity, PCH Venture Group East, Inc. as an additional defendant and joint employer. SOZ Dec., at ¶ 17. On October 10, 2024, Plaintiff filed a First Amended Complaint ("Operative Complaint") adding PCH Venture Group East, Inc. as a defendant in the Action. SOZ Dec., at ¶ 18. Following further investigation, Plaintiff learned that PCH Venture Group East, Inc. may have been erroneously named. On June 23, 2025, Plaintiff dismissed PCH Venture Group East, Inc. without prejudice and on July 30, 2025, Plaintiff notified the LWDA of its abandonment of claims against this entity. SOZ Dec., at ¶ 19.

On November 12, 2025, the Parties participated in an all-day mediation presided over by Steven G. Mehta, 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 potential liability exposure. The data and documents Defendant produced included, but was not limited to, the total number of Aggrieved Employees, pay periods, employee handbooks, and time and payroll data for a sampling of the Aggrieved Employees. SOZ Dec., at ¶ 20.

The Parties' mediation resulted in a settlement of Plaintiff's PAGA claims after both sides accepted a mediator's proposal. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement which is the subject of the instant motion. The Settlement was negotiated in light of all known facts and circumstances and the uncertainty associated with litigation – including the risk of Plaintiff not being able to maintain representative claims 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 the mediator. SOZ Dec., at ¶ 21.

The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted by Plaintiff on behalf of himself, the LWDA, and the State of California. This is only a Settlement of the PAGA claims for civil penalties and is not a class settlement and does not release the individual wage and hour claims, if any, of the Aggrieved Employees. This Settlement does not release any claim that is not a PAGA claim.[2] Nor does this Settlement waive Defendant's right to assert *res judicata* or other available defense to any asserted claim or lawsuit. SOZ Dec., at ¶ 22.

Pursuant to California Labor Code Section 2699(s), Plaintiff is providing a copy of the Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion for settlement approval as set forth in the accompanying proof of service. Additionally, Plaintiff will submit to the LWDA a copy of the Court's judgment and order approving the Settlement Agreement within ten (10) days after entry of judgment or order. SOZ Dec., at ¶¶ 6, 23.

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

III. TERMS OF THE PAGA SETTLEMENT

A. The Gross Settlement Amount

The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(s)(2). The Settlement Agreement negotiated by the Parties provides for a Gross Settlement Amount payment in the amount of One Hundred Two Thousand Two Hundred Twenty Dollars and Zero Cents ($102,220.00) to resolve the PAGA claims. Agreement at § 1.12. From the Gross Settlement Amount, there is a deduction of a PAGA Counsel Fees Payment in the amount of approximately $30,406.67[3], a PAGA Counsel Litigation Expenses Payment in an amount not to exceed Twenty Thousand Dollars and Zero Cents ($20,000.00), a Mediation Fee of Eleven Thousand Dollars and Zero Cents ($11,000.00), and an Administration Expenses Payment in an amount not to exceed Four Thousand Two Hundred Fifty Dollars and Zero Cents ($4,250.00). Agreement at §§ 3.2.1, 3.2.2, 3.2.3. The mediation fee of $11,000.00 is excluded from the PAGA Counsel Fees Payment calculation and will be paid directly to the mediator. Agreement at § 3.2.3. After these deductions, the amount remaining is the Net Settlement Amount, which is estimated to be Thirty-Six Thousand Five Hundred Sixty-Three Dollars and Thirty-Three Cents ($36,563.33). Agreement at § 1.17.

The Gross Settlement Amount will be used to satisfy the Individual PAGA Payments, the LWDA PAGA Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses Payment, the Mediation Fee, and the Administrator's Expenses Payment. Agreement at § 1.12.

Of the Net Settlement Amount, seventy-five percent (75%) shall be paid to the LWDA and the remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement at §§ 1.13, 1.17, 3.2.4. 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 Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' twenty-five (25%) share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)

[3] This number is calculated by taking one third of the Gross Settlement Amount less the Mediator's Fee. The Gross Settlement Amount less the Mediators Fee here is $102,220.00 - $11,000.00 = $91,220.00. One third of this number is $30,406.67.

multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Agreement at § 3.2.4.1

At the time of mediation, Defendant estimated that there were 174 Aggrieved Employees who worked 5,161 Pay Periods during the PAGA Period. Agreement at § 4.1. The Parties agreed that if the actual number of Pay Periods worked during the PAGA Period exceeded the above number by more than 12.5%, Defendant would have the option to either: (i) increase the Gross Settlement Amount proportionally by the same percentage as the increase in pay periods above 12.5%; or (2) electing to shorten the PAGA Period so that the release applies only through the date on which the 5,806th PAGA Pay Period was worked by pulling back the end of the PAGA Period. Under the latter option, no additional payment is necessary. Agreement at § 9

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

Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than fifteen (15) calendar days after the Effective Date. Agreement at §§ 1.10, 1.11, 4.3. The Effective Date is defined as the date on which the Settlement Approval Order becomes final. Agreement at § 1.10. Within fourteen days (14) days after Defendant fully funds the Gross Settlement Amount, the Settlement Administrator will mail the Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, Plaintiff's mediation fee, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment. Agreement at § 4.4. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. Agreement at § 4.4.1. 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 transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. Agreement at § 4.4.3.

The Individual PAGA Payments are 100% penalties and will be reported to Aggrieved Employees on IRS Form 1099. Agreement at § 3.2.4.2.

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D. Release of Claims

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, the State of California, Aggrieved Employees, and Plaintiff, on behalf of himself and as a representative of the Aggrieved Employees, and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, shall release the Released Parties (as defined in the Agreement) from all claims for PAGA penalties that could have been sought by the LWDA for the violations that were alleged, or reasonably could have been alleged, based on the facts and allegations in the Operative Complaint that are alleged to have occurred during the PAGA Period and/or Plaintiff's PAGA Notice, including, but not limited to, failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods or to pay required meal premiums in lieu thereof, failure to provide rest periods or to pay required rest premiums in lieu thereof, failure to provide accurate itemized wage statements and unlawful deductions, failure to timely pay wages during employment, failure to timely pay wages upon separation from employment, failure to pay sick pay at the correct rate, failure to pay vacation pay, failure to reimburse business expenses, failure to provide suitable seating, and failure to maintain records and penalties pursuant to the Private Attorneys General Act of 2004, predicated upon violations of the California Labor Code sections 201, 201.3, 202, 203, 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, 2698 et seq., 2699 et seq., 2699.3, 2699.5 2802, 2804, California Code of Regulations, Title 8, Section 11070(14), and the applicable Industrial Welfare Commission Orders. Agreement at § 5.1.

In addition to the Gross Settlement Amount, Defendant has agreed to separately settle Plaintiff's individual claims set forth in his JAMS Arbitration Demand (JAMS Case No. 5220002948) pursuant to a separate Individual Settlement Agreement ("Individual Settlement Agreement"). Agreement at § 2.7. Plaintiff releases all of his individual (non-PAGA) claims via the Individual Settlement Agreement. Plaintiff will file this settlement agreement under seal for the Court to review in camera, at the Court's request. SOZ Dec., ¶ 24.

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IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT

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

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

The Gross Settlement Amount of $102,220.00 is fair and reasonable and, therefore, should be approved. Here, *without stacking* the PAGA penalties, Defendant's alleged liability exposure is estimated at approximately $441,377.50 in PAGA penalties. Plaintiff estimated Defendant's exposure as follows:

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Claim	Penalty Amount[4]	Number of Pay Periods w/ Violation	Violation Rate
Meal Period Violations Cal. Labor Code §§ 226.7 and 512	$50[5]	7	0.1% of PAGA Pay Periods
Rest Period Violations Cal. Labor Code §§ 226.7 and 512	$50	7	0.1% of PAGA Pay Periods
Unpaid Wages Violations Cal. Labor Code §§ 201, 202, 203, 204, 246, 1194, 1197, 1997.1, 1198 and 558	$100	2,381	50% of PAGA Pay Periods
Business Reimbursement Violations Cal. Labor Code § 2802	$100	2,381	50% of PAGA Pay Periods
Wage Statement Violations Cal. Labor Code § 226	$100	476	10% of PAGA Pay Periods

SOZ Dec., ¶ 25.

i. Estimated Penalties for Meal Period Violations

Plaintiff alleges that Defendant failed to provide compliant meal periods under various circumstances. Specifically, Plaintiff alleges that meal periods were often late (i.e. taken after the end of the fifth hour) due to how leanly Defendant allegedly staffed its restaurants. Defendant

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

[5] The $50 penalty rate was used for a number of reasons in this instance. First, Defendant argued that increased civil penalties for subsequent violations do not apply unless the Plaintiff can present evidence that the Labor Commission or a court notified the employer that it was in violation of the Labor Code. *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144 citing *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 ["Until the employer has been notified that it is violating a Labor Code provision … the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties."].) Separately, Defendant also argued that courts have considerable discretion to reduce the penalty awards under PAGA. *See*, e.g. *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (reducing the maximum PAGA penalty amount by 90%, at $5 per pay period). Accordingly, it is unlikely that Plaintiff would recover full penalty amounts even if he prevailed in establishing the underlying Labor Code violations. Pursuant to California Labor Code section 558(a)(1), an employer is subject to a penalty of $50 for violations of a Labor Code section regulating hours and days of work, including meal period and rest period violations. Thus, because section 558(a)(1) specifically provides for a civil penalty, Plaintiff used a $50 penalty per violation for the meal and rest break claims. SOZ Dec., ¶ 26.

denied this claim, contending that all employees have the opportunity to take a meal period prior to the end of the fifth hour, though some employees may prefer to take this break later in their shift. Defendant further contended that it maintains compliant policies and practices regarding meal periods. Defendant further contended that in nearly all instances in which a late meal period was recorded, Defendant paid a meal period premium. Based on the data provided by Defendant, Plaintiff estimates Defendant's alleged liability for this claim to be approximately $400. Plaintiff calculated this by multiplying the number of pay periods in which a meal period was recorded as late and for which no meal period premium was paid, by a $50 penalty. SOZ Dec., ¶ 27.

ii. Estimated Penalties for Unpaid Wages

Plaintiff alleges that Defendant failed to pay all wages due to Plaintiff and the Aggrieved Employees due to off-the-clock work performed by the Aggrieved Employees. Specifically, Plaintiff alleges that when arriving at work for the night shift, the door would be locked, and he would need to wait for another employee to open the door, which could take as long as five minutes, depending on how busy the restaurant was at that time. Plaintiff also alleges that he was sometimes asked to work for several hours after his shift ended, and for this time, he would be paid in cash, to avoid incurring overtime or split shift premiums. Defendant denies these allegations, notes that it maintains strict policies against working off-the-clock, and further contends that it has no knowledge of any procedure in which Aggrieved Employees were paid in cash to avoid overtime. To the extent this occurred, Defendant contends that this was isolated to Plaintiff. Taking into account Defendant's defenses, Plaintiff estimates Defendant's alleged exposure for this claim to be approximately $190,520.00. Plaintiff calculated this by assuming that approximately half of the shifts worked were night shifts and applied a 25% discount to account for locations where this may not have been standard procedure. SOZ Dec., ¶ 28.

iii. Estimated Penalties for Rest Period Violations

Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff alleges he and the Aggrieved Employees missed rest breaks anywhere from 4-7 times per week. There was no schedule in place to allow for employees to take a rest break, and Aggrieved Employees had to wait for their team leader to instruct them to take a rest break. Defendant denied these allegations and also argued that Plaintiff's rest break claim would have mainly relied on the testimony of Aggrieved Employees, making it a riskier claim. Establishing liability likely would have entailed competing testimony stating either rest breaks were taken, or rest breaks were voluntarily waived. See, e.g., *Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices"). Plaintiff estimates Defendant's alleged exposure for this claim to be approximately $400. Plaintiff calculated this by assuming the same violation rates as meal periods, and taking into account Defendant's defenses listed above. SOZ Dec., ¶ 29.

iv. Estimated Penalties for Unreimbursed Business Expenses

Plaintiff alleged Defendant failed to reimburse Aggrieved Employees for all necessary business expenses. Specifically, Plaintiff asserts that he and other Aggrieved Employees were required to use personal cell phones in order to receive and respond to work-related communications from supervisors. Defendant denied that any Aggrieved Employees were required to use their personal cell phones. Plaintiff estimated Defendant's alleged exposure for this claim to be $238,150.00. Plaintiff calculated this by assuming one violation per month, which is the frequency with which Plaintiff alleges Defendant should have reimbursed Aggrieved Employees for personal cell phone use. SOZ Dec., ¶ 30.

v. Estimated Penalties for Non-Compliant Wage Statements

Lastly, Plaintiff alleges that Defendant furnished the Aggrieved Employees with wage statements that failed to comply with Labor Code Section 226(a)(2) in instances in which Aggrieved Employees received holiday pay. In these instances, the field reflecting the total hours worked on the wage statement overcounted the total hours worked. Defendant contends that holiday pay was paid infrequently, and further, that the Aggrieved Employees would be unable to establish any "injury" resulting from non-compliance, as required by Labor Code Section 226(e). Taking Defendant's defenses into account, Plaintiff estimated Defendant's alleged exposure for this claim to be $23,815.00. Plaintiff calculated this by assuming the error occurred on approximately 10% of wage statements and discounted this by 50% to account for Defendant's defense that no injury resulted. SOZ Dec., ¶ 31.

B. The Gross Settlement Compares Favorably To The Likely Recovery

In light of the above, the Gross Settlement Amount is approximately 23% of Defendant's potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely recovery of PAGA penalties through continued litigation. Defendant's maximum exposure to PAGA penalties is not a realistic outcome of the litigation because it fails to account for the risks of continued litigation including, but not limited to, Defendant's defenses. *See*, *Zayerz v. Kiewit Infrastructure West*, 2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018). For instance, Defendant argued that it can only be assessed civil penalties for actual violations of the Labor Code. *See* Lab. Code § 2699(f)(2). In other words, to recover any civil penalties, Plaintiff would be required to prove the underlying Labor Code violations. (*Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ["Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."].) To do this, Plaintiff would need to prove each Aggrieved Employee was subject to the alleged Labor Code violation, which would be difficult to do, as Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in this action. SOZ Dec., ¶ 32.

Thus, Defendant contends that Plaintiff would be required to "prove Labor Code violations with respect to each and every individual on whose behalf Plaintiff seek to recover civil penalties under PAGA." *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009). When "determining whether the employer committed Labor Code violations with respect to each employee" is impractical, the PAGA action can be dismissed. *Wesson v. Staples the Off. Superstore,* 2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021).

Finally, the maximum penalty figure does not consider that Courts have complete discretion to "award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (Cal. Lab. Code § 2699(e)(2)). In fact, Courts routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g. Carrington v. Starbucks Corp*., 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to $5 per pay period; "Although the trial court may have disagreed with Starbucks regarding the issue of liability, it clearly took the circumstances proffered by Starbucks into consideration when it imposed the penalty … only $5 per initial violation"); *Kaanaana v. Barrett Bus. Servs., Inc*., 29 Cal App 5th 778, 788 (2018), review granted on other grounds (noting that the trial court "exercised its discretion to reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average, plaintiffs were deprived of 13 percent of the 30-minute meal period"); *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, the risks and costs of continued litigation, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount is fair and reasonable. This settlement was negotiated by experienced counsel at arm's length. SOZ Dec., ¶ 33. The LWDA has been provided with notice of this motion and the PAGA settlement, and the decision of LWDA to accept the PAGA settlement and not oppose the motion should be given considerable weight. SOZ Dec., ¶ 6. Moreover, the LWDA is a sophisticated government entity that can assert and protect its own rights.

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

Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code § 2699(s) does not require that a court approve any other elements of the proposed settlement.

Because there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the Court only needs to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable.

V. THE PAGA COUNSEL FEES PAYMENT IS FAIR AND REASONABLE

PAGA Counsel seeks approval of the PAGA Counsel Fees Payment, comprised of attorneys' fees in the amount of $30,406.67 and reimbursement of litigation costs of $18,034.87. 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. SOZ Dec., ¶¶ 7-11, Declaration of Jean-Claude Lapuyade ("JCL Dec."), ¶¶ 6-16.

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

The requested PAGA Counsel Fees Payment of $48,441.54, comprised of $30,406.67 for attorneys' fees and reimbursement of litigation expenses of $18,034.87 is fair, reasonable, and justified by the result achieved. Agreement at § 3.2.1; SOZ Dec., ¶ 34. PAGA Counsel negotiated a recovery of One Hundred Two Thousand, Two Hundred Twenty Dollars and Zero Cents ($102,220.00) and this result justifies the requested fees equal to one third of this amount, less the Mediator's Fee. This percentage is within the standard contingent recovery percentage of one-third, and this percentage is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc*., 1 Cal.5th 480, 504, (2016). At the time this case was brought, the result was far from certain. Defendant's defenses to the merits of the case created difficulties with proof and complex legal issues for PAGA Counsel to overcome. Here, several defenses asserted by Defendant presented serious threats to the claims of Plaintiff and the Aggrieved Employees. Defendant asserted that its employment practices complied with all applicable labor laws. If successful, Defendant's factual and legal defenses would eliminate *any recovery* to the Aggrieved Employees. While Plaintiff believes that these defenses could be overcome, Defendant maintains that these defenses have merit and therefore present a serious risk to recovery. The Settlement was possible because, in PAGA

Counsels' eyes, PAGA Counsel was able to persuade Defendant that there was an appreciable risk that Plaintiff would prevail on the factual and legal issues underlying liability and overcome difficulties in proof as to monetary relief. SOZ Dec., ¶ 35.

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 $68,907.50. SOZ Dec., ¶¶ 7-8; JCL Dec., ¶14). Thus, PAGA Counsels' fee request is equal to PAGA Counsel's loadstar with <u>negative</u> multiplier of 0.44 – 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 $18,034.87 prosecuting this action (Zakay Law Group, APLC - $9,664.23; JCL Law Firm - $8,370.64). SOZ Dec. ¶¶ 10-11; JCL Dec. ¶ 15. 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. SOZ Dec. ¶ 11; JCL Dec. ¶16.

VI. 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: May 13, 2026

ZAKAY LAW GROUP, APLC

By: Jaclyn Joyce

Jaclyn Joyce, Esq.
Attorney for PLAINTIFF