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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ROSANGELA TORRES, an individual, in her representative capacity on behalf of the State of California and fellow Aggrieved Employees, Plaintiff, v. COGSWELL COLLEGE LLC, a California limited liability company; and DOES 1-50, Inclusive, Defendants.	Case No. 24STCV00409 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE PAGA SETTLEMENT** Date: March 10, 2026 Time: 11:30 a.m. Judge: William F. Highberger Dept.: 10

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Rosangela Torres ("Plaintiff") seeks approval of the PAGA Settlement Agreement ("Agreement")[1]. The proposed settlement provides significant monetary relief—totaling $89,500—for approximately 58 Aggrieved Employees defined as all non-exempt employees who are or previously were employed by Defendant Cogswell College LLC ("Defendant") during the period from January 5, 2023, through December 14, 2025 ("PAGA Period"). The Aggrieved Employees includes the Plaintiff. Agreement at §§ 2, 16, III(3).

Importantly, this is only a settlement of the PAGA claim for civil penalties and is not a class settlement and does not release the individual wage claims, if any, of the affected employees other than Plaintiff herself. 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 the remainder of the PAGA Payment estimated to be Thirty-Six Thousand, Six Hundred Sixty-Six Dollars with Sixty-Seven Cents ($36,666.67). The PAGA Payment shall be distributed, 75% to the LWDA and 25% to the Aggrieved Employees ("Individual PAGA Payment"). Agreement § at III(4)(a).

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 Plaintiff's Counsel respectfully request this Court grant approval of the Agreement. Declaration of Sydney Castillo-Johnson ("SCJ Dec.") at ¶ 8.

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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.

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

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

Defendant operates a private, for-profit university in the state of California located in San Jose, Santa Clara County, where Plaintiff worked. Plaintiff was employed by Defendant worked remotely in Los Angeles County from March 2022 to May 2023. At all times during her employment, Plaintiff was classified by Defendant as a non-exempt employee and was entitled to legally mandated meal and rest periods, minimum wage and overtime compensation. Throughout her employment, Plaintiff was subject to Defendant's written policies and procedures contained in, among other documents, the "Cogswell College Employee Handbook." SCJ Dec., ¶ 9; Declaration of Rosangela Torres ("RT Dec.") at ¶¶ 7

On January 5, 2024, Plaintiff filed a Notice of Violations ("PAGA Notice") with the LWDA and served the same on Defendant. 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 ¶ 10.

On January 5, 2024, Plaintiff filed a Class Action Complaint for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §17200 *et seq*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, *et seq*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226; (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203. SCJ Dec., ¶ 11.

On March 11, 2024, Plaintiff filed a First Amended Class Action Complaint alleging an additional cause of action for violations of PAGA, alleging that Defendant violated various California Labor Code Sections, including 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, 2802, 2804, and the applicable Industrial Welfare Commission Wage Order(s), based on various theories of liability, including, but not limited to, Defendant's alleged failure to: reimburse for business expenses necessarily incurred, provide meal periods, provide rest periods, pay wages for all hours worked, including minimum and reporting time wages, and provide accurate itemized wage statements. SCJ Dec., ¶ 12.

On May 23, 2024, Plaintiff filed a Second Amended Complaint ("Operative Complaint") which dismissed the previously alleged class claims based on an arbitration agreement Plaintiff signed and asserted one cause of action under PAGA. SCJ Dec., ¶ 13.

On May 20, 2024, Plaintiff filed her Demand for Arbitration with American Arbitration Association Case No. 01-24-0005-5324. The Parties engaged in extensive litigation which included special interrogatories, requests for production, requests for admission, and depositions of Plaintiff and Defendant's Person Most Knowledgeable. SCJ Dec., ¶ 14.

The Parties agreed to attend private mediation. To facilitate settlement negotiations, Defendant agreed to informally produce documents and data points subject to the mediation privilege, including but not limited to, the Aggrieved Employees' time and payroll data, and pertinent written wage and hour policies. As discussed *infra,* Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130. SCJ Dec., ¶ 15.

On June 23, 2025, the Parties participated in mediation presided over by Brian Sinclair, Esq., a mediator of wage and hour representative actions. The Parties' mediation did not result in a settlement of Plaintiff's PAGA claims. However, the Parties continued settlement efforts and ultimately reached a settlement after both sides agreed to a Mediator's proposal. SCJ Dec., ¶ 16.

The Parties subsequently 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 related to the litigation – and was reached after extensive arm's length negotiations, with the assistance of Mediator Sinclair. SCJ Dec., at ¶ 17.

The Settlement is intended to fully and finally resolve the PAGA Released Claims asserted by Plaintiff on behalf of herself, 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 claims, if any, of the Aggrieved Employees, other than Plaintiff. This Settlement does not release any claim that is not a PAGA claim.[2] Nor does this Settlement waive Defendant's right to assert *res judicata* or other available defense to any asserted claim or lawsuit. SCJ Dec., at ¶ 18.

Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged. SCJ Dec., ¶ 19.

The Parties, Plaintiff's Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement. SCJ Dec., ¶ 20.

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. SCJ Dec., at ¶ 21.

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 Eighty-Nine Thousand Five Hundred Dollars and Zero Cents ($89,500.00) to resolve

[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."

the PAGA claims. From the Gross Settlement Amount, there is a deduction of a Attorneys' Fees and Costs in the amount of up to Forty-Nine Thousand, Eight Hundred Thirty-Three Dollars and Thirty-Three Cents ($49,833.33), comprised of one-third of the Gross Settlement Amount for the Attorneys' Fees (estimated to be approximately $29,833.33), reimbursement of the Attorneys' Costs for incurred litigation expenses in an amount not to exceed Twenty Thousand Dollars and Zero Cents ($20,000.00) and Administration Costs which will not exceed Three Thousand Dollars and Zero Cents ($3,000.00). Agreement generally at §§ III(4). After these deductions, the amount remaining is the "PAGA Payment," which is estimated to be $36,666.67. SCJ Dec., ¶ 22.

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 ("Individual PAGA Payment"). Agreement at § 4(a). 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 the Individual PAGA Payment

The Individual PAGA Payments will be calculated by dividing the amount of the Aggrieved Employees' 25% share of PAGA Payment (estimated to be $9,166.67) 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 § 4(a)(1).

At the time of the Parties' settlement of this Action, Defendant estimated that there were approximately 58 Aggrieved Employees who worked approximately 1,700 pay periods through last pay period prior to September 4, 2025, based on company records. Agreement at § III(3).[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 fifteen (15) days after the Effective Date. Agreement at § I(7). Within fifteen (15) days after Defendant fully funds the Gross Settlement Amount, the Administrator will mail all Individual PAGA Payments via First-Class U.S. Mail to the Aggrieved Employees' last

[3] The Agreement contains an escalator clause, providing that, should the actual number of Pay Periods worked during the PAGA Period exceeds the above number by more than 10% (1,870 Pay Periods), the Gross 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 1,870. Agreement at § III(3).

known mailing address. Agreement at § IV(3). Settlement checks issued to Aggrieved Employees will expire one hundred eighty (180) days from the date they are issued by the Administrator. *Id*. If the check remains uncashed by the expiration of the 180-day period, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. *Id*. The Individual PAGA Payments are 100% penalties and shall be reported using IRS Form 1099s. *Id*.

D. Release of Claims

As of the Funding Date, the State of California and the Aggrieved Employees, including Plaintiff, shall release the Released Parties (as defined in the Agreement) from the PAGA Released Claims which include all PAGA claims alleged in the Second Amended Complaint in the Action and Plaintiff's PAGA Notice, or which reasonably could have been asserted based on the facts alleged in the PAGA Notice and the Second Amended Complaint, and which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period. Agreement at § III(4)(d).

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. (s)(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. The Gross Settlement Amount is Fair and Reasonable

The Gross Settlement Amount of $89,500.00 is fair and reasonable and, therefore, should be approved. Here, *without stacking* the PAGA penalties, Defendant's liability exposure is estimated at approximately $170,000 in PAGA Penalties (1,700 pay periods multiplied by $100 per pay period). SCJ Dec., ¶ 23. Assuming the Court permitted Plaintiff to stack PAGA penalties, Plaintiff estimated Defendant's liability exposure at approximately $268,900. Plaintiff estimated Defendant's exposure as follows:

Claim	Penalty Amount[4]	Number of Pay Periods w/ Violation	Violation Rate	Total Penalties
Failure to Reimburse for Mandatory Business Expenses Cal. Labor Code § 2802	$100	1,700	100% of PAGA Pay Periods	$170,000.00
Meal Period Violations Cal. Labor Code §§ 226.7 and 512	$50[5]	595	35% of PAGA Pay Periods	$29,750.00
Rest Period Violations Cal. Labor Code §§ 226.7 and 512	$50	595	35% of PAGA Pay Periods	$29,750.00

[4] California Labor Code section 2699(f)(2) provide the default penalty for PAGA violations of $100 for initial violations and $200 for subsequent 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. SCJ Dec., ¶ 24.

Unpaid Wages Violations Cal. Labor Code §§ 201, 202, 203, 204, 246, 1194, 1197, 1997.1, 1198 and 558	$100	54	3.2% of PAGA Pay Periods	$5,400.00
Wage Statement Violations Cal. Labor Code §§ 226 and 226.2	$100	340	20% of PAGA Pay Periods	$34,000.00

SCJ Dec., ¶ 24.

i. Estimated Penalties for Unreimbursed Business Expenses

Plaintiff's primary claim alleges that Defendant required Plaintiff and other Aggrieved Employees to utilize their personal cell phones and home internet for work-related communications for remote work, including to send emails, check messages on Teams, use Zoom to communicate with management and students, and for calls to management, coworkers, students, and potential students. However, Defendant did not reimburse Plaintiff and other Aggrieved Employees for these expenses and had in place a written policy that refused to reimburse for the use of these items. 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., ¶ 25.

Defendant argued that remote work was optional and, therefore, that it was not required to reimburse expenses incurred as a result. However, Plaintiff applied for, was hired as, and performed all work in a remote position. Plaintiff estimates Defendant's exposure for this claim to be $170,000.00. SCJ Dec., ¶ 26.

ii. Estimated Penalties for Meal Period Violations

Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically, Plaintiff alleges that in 29.7% of shifts, employees' first meal period was recorded after the end of their fifth hour of work, and 63.4% of shifts between five to six hours long did not have a recorded first meal period. Plaintiff's expert further found that 14.6% of shifts had a meal period shorter than 30 minutes. Moreover, Defendant failed to pay a single meal period premium during the PAGA Period.

Defendant denies these allegations, noting that it had in place lawful meal period policies and practices. Taking into account Defendant's defenses, Plaintiff estimates Defendant's exposure for this claim to be approximately $29,750.00. SCJ Dec., ¶ 27.

iii. Estimated Penalties for Rest Period Violations

Plaintiff further alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff alleged that she and the Aggrieved Employees were unable to take rest periods, and when they did, they were short and/or interrupted. During the PAGA Period, Defendant had in place a written policy which required Aggrieved Employees to respond timely to all communications making it nearly impossible to take timely rest periods. Defendant argued that Plaintiff's rest break claim would have mainly relied on the testimony of Aggrieved Employees, making it a riskier claim, and argued that in any event the word timely is a flexible term and certainly does not mean within ten minutes. Also, 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., ¶ 28. Considering Defendant's defenses, Plaintiff estimates Defendant's exposure for this claim to be approximately $29,750.00. SCJ Dec., ¶ 29.

iv. Estimated Liability for Unpaid Wages

Plaintiff alleged that Defendant failed to pay employees for all hours worked. Specifically, Plaintiff's expert found that 3.2% of all shifts analyzed during the PAGA Period were less than two hours in length. Based on Plaintiff's expert analysis of the data provided by Defendant, there were approximately 772 unpaid reporting time hours throughout the PAGA Period. Plaintiff's expert determined that these data points indicate that there is a significant likelihood that these Aggrieved Employees were not scheduled for only two hours, and rather, reported to work and were sent home and improperly compensated, hence leading to a reporting time underpayment. SCJ Dec., ¶ 30.

Plaintiff further claims that she would be required to answer phone calls prior to clocking in and after clocking out. As a remote worker, her primary form of communication with management, supervisors, co-workers, and students were all through the phone. As such, she estimates that approximately two to three times per week she would take a phone call lasting approximately five to ten minutes each. SCJ Dec., ¶ 31.

Defendant argued that it had in place lawful written policies that prohibited employees from working off-the-clock and that the short shifts were worked by students who worked on a casual basis. Thus, Plaintiff estimated Defendant's total exposure for these combined claims to be between $5,400.00. SCJ Dec., ¶ 32.

v. <u>Estimated Liability for Derivative Wage Statement Penalties</u>

Plaintiff further alleged that the Defendant's labor code violations for non-compliant meal and rest breaks and unpaid wages result in derivative liability for waiting time penalties and penalties resulting from inaccurate wage statements. Although these penalties represent a large dollar amount of exposure, these are Plaintiff's most uncertain claims. Specifically, Defendant argued that Plaintiff could not prove "knowing or intentional" prong needed to obtain waiting time penalties under Labor Code Section 226. Taking into account Defendant's defenses, Plaintiff estimated Defendant's exposure for these claims to be $34,000.00 in penalties pursuant to Labor Code 226. SCJ Dec., ¶ 33.

B. The Gross Settlement Compares Favorably To The Likely Recovery

In light of the above, the Gross Settlement Amount is approximately 52% 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, since Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in this action. SCJ Dec., ¶ 34.

Thus, Defendant contended 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). SCJ Dec., ¶ 35.

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 total 30-minute meal periods"); *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 Plaintiff's Counsel is reasonable in light of Defendant's arguments. SCJ Dec., ¶ 36.

Given Defendant's defenses to the claimed Labor Code violations at issue and the risks and costs of continued litigation, Plaintiff and Plaintiff's Counsel believe that the Gross Settlement Amount is fair and reasonable. This settlement was negotiated by experienced counsel at arm's length. SCJ Dec., ¶ 37. The LWDA has been provided with notice of this motion and the PAGA settlement, and the decision of LWDA to accept the PAGA settlement and not oppose the motion should be given considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and protect its own rights. SCJ Dec., ¶¶ 4, 38.

C. The Remaining Settlement Terms Are Fair and Reasonable

Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code § 2699(s) does not require that a court approve any other elements of the proposed settlement. Because there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the Court only needs to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable. SCJ Dec., ¶ 39.

V. PLAINTIFF'S COUNSEL FEES AND EXPENSES PAYMENT IS FAIR AND REASONABLE

Plaintiff's Counsel seeks approval of the Attorneys' Fees and Costs, comprised of Attorneys' Fees in the amount of one-third of the Gross Settlement Amount, calculated to be $29,833.33, and reimbursement of Attorneys' Costs of $18,510.67. PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court review the requested attorneys' fees, the requested fees and costs are reasonable for experienced wage and hour counsel. SCJ Dec., ¶ 40.

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A. The Requested Attorneys' Fees and Costs are Fair and Reasonable

The requested Attorneys' Fees and Costs comprised of $29,833.33 for attorneys' fees and reimbursement of actually incurred litigation expenses of $18,510.67, is fair, reasonable, and justified by the result achieved. Agreement at § III(4)(b); SCJ Dec., ¶ 41. Plaintiff's Counsel negotiated a recovery of Eighty-Nine Thousand, Five Hundred Dollars and Zero Cents ($89,500.00), 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. Defendant's defenses to the merits of the case created difficulties with proof and complex legal issues for Plaintiff's 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 Plaintiff's Counsels' eyes, Plaintiff's 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., ¶ 42.

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 Plaintiff's Counsels' time and billing records submitted herewith, Plaintiff's Counsels' current combined loadstar is $133,880.00. SCJ Dec., ¶¶ 43-46; Declaration of Jean-Claude Lapuyade ("JCL Dec.") at ¶ 3; Declaration of Shani Zakay ("Zakay Dec.") at ¶¶ 2-5. Thus, Plaintiff's Counsels' fee request is equal to Plaintiff's Counsel's loadstar with a *negative* multiplier of .22 – 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. Plaintiff's 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, Plaintiff's Counsel collectively expended $18,510.67 prosecuting this action (JCL Law Firm, APC - $10,860.67, Zakay Law Group, APLC - $7,650.00). SCJ Dec. ¶ 47; JCL Dec. ¶ 3; Zakay Dec. ¶ 6. Plaintiff's 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; and mediation fees; which were all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed. SCJ Dec. ¶ 48.

VI. CONCLUSION

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

Dated: February 9, 2026

JCL LAW FIRM, APC

By: Sydney Castillo-Johnson

Sydney Castillo-Johnson, Esq.
Attorney for PLAINTIFF