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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

JUDY LEE, an individual, on behalf of herself, and on behalf of all persons similarly situated, Plaintiff, v. WSH MANAGEMENT, INC., a California corporation; and DOES 1-50, Inclusive, Defendants.	Case No. 24STCV10073 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE PAGA SETTLEMENT** Hearing Date: December 10, 2025 Hearing Time: 8:30 a.m. Opposition Due: November 20, 2025 Reply Due: November 26, 2025 Judge: Hon. Elaine Lu Dept.: 9

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Judy Lee (hereinafter, "Plaintiff") seeks approval of the Stipulation of Settlement of PAGA Action and Release of PAGA Claims ("Agreement")[1], which if approved, would provide valuable monetary relief for approximately 297 Aggrieved Employees, defined as all current and former non-exempt or hourly employees who worked for Defendant WSH Management, Inc. ("Defendant") and performed work in California during the period between April 22, 2023, through March 24, 2025 ("PAGA Period"). Agreement at §§ 1.4, 1.22. This is only a settlement of Plaintiff's 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 in a Gross Settlement Amount of Two Hundred Twenty-Five Thousand Dollars and Zero Cents ($225,000.00). Agreement at §§ 1.12, 3.1. After deducting any Court-approved PAGA Counsel Award, Service Award, and Settlement Administration Costs, the Net Settlement Amount shall be distributed 75% ($78,123.75) to the LWDA and 25% ($26,041.25) to the Aggrieved Employees. Agreement at §§ 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 and reasonable. The Settlement is a product of informed, adversarial, non-collusive and mediated negotiations between experienced counsel. As discussed below, the proposed Settlement satisfies all criteria for PAGA settlement approval. Accordingly, Plaintiff and PAGA Counsel respectfully request this Court grant approval of the Agreement. JCL Dec., ¶ 12.

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

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

A. <u>Plaintiff's Exhaustion of Administrative Remedies Under PAGA</u>

On April 22, 2024, Plaintiff served Defendant and the LWDA with a Notice of Violations ("PAGA Notice") memorializing claims against Defendant for alleged violations of the California Labor Code (LWDA Case Number LWDA-CM-1023765-24). JCL Dec., ¶ 13.

That same day, Plaintiff commenced this action by filing a Class Action complaint in the Los Angeles Superior Court, Case No. 24STCV10073 (the "Action") alleging eight (8) causes for action against Defendant for: (1) Unfair Competition in Violation of Bus. & Prof. Code sections 17200 et seq; (2) Failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (3) Failure to pay overtime wages in violation of California Labor Code sections 510 et seq; (4) Failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (5) Failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (6) Failure to reimburse employees for required expenses in violation of California Labor Code section 2802; (7) Failure to provide accurate itemized wage statements in violation of California Labor Code section 226; and (8) Failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203. JCL Dec., ¶ 14.

Following Plaintiff's submission of the PAGA Notice, the 65-day "waiting period" on Plaintiff's right to file a civil action under PAGA, *see* Cal. Lab. Code § 2699.3, subd. (a)(2)(A), lapsed without the LWDA notifying Plaintiff that it intended to investigate the claims in the PAGA Notice. To date, the LWDA still has not advised Plaintiff of any intent to take action with respect to the claims in the PAGA Notice. JCL Dec., ¶ 15.

B. <u>Plaintiff's Civil Actions Against Defendant</u>

On June 27, 2024, Plaintiff filed a first amended complaint ("Operative Complaint") to add a 9th cause of action for violation of the Private Attorneys General Act [Labor Code §§ 2698 *et seq*]. JCL Dec., ¶ 16.

On October 3, 2024, the Parties stipulated to dismiss Plaintiff's class claims without prejudice, submit her individual claims to arbitration, and stay the representative PAGA claims pending arbitration. JCL Dec., ¶ 17.

On October 6, 2024, Plaintiff filed an Arbitration Demand with the Judicial Arbitration and Mediation Services ("JAMS"), designated *Judy Lee v. WSH Management, Inc.*, Judicial Arbitration and Mediation Services Case No. 5220007321. JCL Dec., ¶ 18.

On March 24, 2025, the Parties participated in an all-day mediation presided over by Jason Marsili, Esq., an experienced mediator of wage and hour representative actions. In advance of the mediation, Defendant provided Plaintiff with sufficient information to properly evaluate Defendant's liability exposure for civil penalties to the Aggrieved Employees. The data and documents Defendant produced included, among other things, timekeeping records and payroll records for the Aggrieved Employees. The mediation concluded with a settlement, which was subsequently memorialized in the form of a Memorandum of Understanding. 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, the difficulty of proving Plaintiff's claims in a manageable trial, the merits of Defendant's potential defenses, and the significant delay and potential appellate issues inherent to litigation– and was reached after extensive arm's length negotiations, with the assistance of the mediator. JCL Dec., ¶ 19.

The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted by Plaintiff on behalf of the Aggrieved Employees 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. 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 defenses to any asserted claim or lawsuit. JCL Dec., ¶ 21.

Pursuant to California Labor Code Section 2699(1), 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

[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."

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. JCL Dec., ¶ 22.

III. TERMS OF THE PAGA SETTLEMENT

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

This PAGA Settlement is subject to Court approval consistent with Labor Code § 2699(1)(2). The Agreement negotiated by the Parties provides for a "Gross Settlement Amount" payment in the amount of Two Hundred Twenty-Five Thousand Dollars and Zero Cents ($225,000.00) to resolve the Released PAGA Claims. From the Gross Settlement Amount, there is a deduction of the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment consisting of attorneys' fees of not more than one-third (1/3) of the Gross Settlement Amount[3] (currently estimated to be Seventy-Five Thousand Dollars and Zero Cents ($75,000.00)) ***and*** costs and expenses supported by declaration not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00), payment of Settlement Administration Costs in an amount not to exceed Five Thousand Eight Hundred Thirty-Five Dollars and Zero Cents ($5,835.00), and a Service Award in the amount of Ten Thousand Dollars and Zero Cents ($10,000.00) or in an amount that the Court authorizes to be paid to Plaintiff, in addition to her pro rata portion of the Individual PAGA Payment, for the work Plaintiff has completed in representing the Aggrieved Employees. Agreement at § 3.2.1, 3.2.2, 3.2.3. After these deductions, the amount remaining is the Net Settlement Amount in an amount currently estimated to be One Hundred Four Thousand One Hundred Sixty-Five Dollars and Zero Cents ($104,165.00). Agreement at § 3.2.4.

Of the Net Settlement Amount, seventy-five percent (75%) shall be paid to the LWDA as the LWDA Payment, and the remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees as the Individual PAGA Payments. *Id*. This allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

B. <u>Allocation of Individual PAGA Payments</u>

The Settlement Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($26,041.25) by the total

[3] The Agreement provides for a PAGA Counsel Award consisting of attorneys' fees of not more than thirty-five percent (35%) of the Gross Settlement Amount ($78,750.00). However, Plaintiff's Counsel is requesting no more than one-third (1/3) of the Gross Settlement Amount.

number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) 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 297 Aggrieved Employees who worked 8,812 Pay Periods during the PAGA Period. Pursuant to the Agreement, if the actual number of Pay Periods worked by the Aggrieved Employees during the PAGA Period were to exceed the estimated 8,812 Pay Periods by more than 10%, the Gross Settlement Amount would increase proportionally for the number of Pay Periods over 110% of 8,812 (9,693). Agreement at § 8.

On June 18, 2025, Defendant delivered the Aggrieved Employee Data to the Settlement Administrator in the form of a Microsoft Excel spreadsheet that contains each Aggrieved Employee's full name; last known mailing address; Social Security number; and start dates and end dates of employment. Agreement at § 4.2. Using the Aggrieved Employee Data, the Settlement Administrator calculated that there were 8,827.53 PAGA Pay Periods during the PAGA Period. JCL Dec., ¶ 20.

To protect Aggrieved Employees' privacy rights, the Settlement Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data. Agreement at § 4.2.

C. Funding and Distribution

Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Settlement Administrator, including payment for all claims, payment of Settlement Administration Costs, PAGA Counsel Award, and Service Award in three installments as follows: (1) the first installment in the amount of $75,000 will be paid 30 days after entry of the Settlement Approval Order ("First Installment"); (2) the second installment in the amount of $75,000 will be paid 6 months after payment of the First Installment ("Second Installment"); and (3) the third installment in the amount of $75,000 will be paid 6 months after payment of the Second Installment ("Third Installment")[4]. Agreement at § 4.3.

Within fourteen (14) calendar days after Defendant funds the First Installment, the Administrator will mail checks for all Individual PAGA Payments and the Service Award. Within fourteen (14) calendar days after Defendant funds the Third Installment, the Administrator will mail checks for the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment. Agreement at § 4.4.

Any checks issued to Aggrieved Employees shall remain valid and negotiable for one hundred eighty (180) days from the date of their issuance. Agreement at § 4.4.1. In the event an Aggrieved Employee's check has not been cashed within one hundred eighty (180) days, all funds represented by such uncashed checks, plus any interest accrued thereon, shall be transmitted to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. Agreement at § 4.4.3.

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

Following the Court's approval of the Settlement and upon Defendant's funding of the Gross Settlement Amount, in exchange for the consideration set forth in this Agreement, Plaintiff, the LWDA, and the State of California release the Released Parties from the Released PAGA Claims for the PAGA Period. Agreement at § 5. The Released Parties are defined as Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates. Agreement at § 1.27. The Released PAGA Claims include all PAGA claims alleged in the Operative Complaint in the Action and Plaintiff's PAGA Notice to the LWDA which occurred during the PAGA Period (e.g., all claims for

[4] Defendant raised the possibility that it would be unable to satisfy a larger settlement due to its financial condition. Based on Defendant's financial condition, the Parties' mediator, Jason Marsili, Esq., proposed an installment plan to allow Defendant time to work toward accumulating the settlement funds. Accordingly, the Gross Settlement Amount accounts for the risk that Defendant would be unable to satisfy a larger settlement than the one contemplated here. Defendant's declaration outlining Defendant's financial condition and need for an installment plan is attached as Exhibit #9 to the JCL Dec. JCL Dec., ¶ 11.

failure to pay overtime wages and/or failure to pay overtime wages at the correct rate(s) of pay, failure to pay all wages and minimum wages, failure to timely pay wages during employment, failure to timely pay wages upon separation from employment, failure to provide accurate itemized statements, failure to maintain records, failure to reimburse business expenses, failure to provide meal periods or to pay required meal premiums in lieu thereof, and failure to provide rest periods or to pay required rest premiums in lieu thereof, as set forth in the Operative Complaint and PAGA Notice), 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 § 1.26.

IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT

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

A. The Gross Settlement Amount is Fair and Reasonable

The Gross Settlement Amount of $225,000.00 is fair and reasonable and, therefore, should be approved. JCL Dec., ¶ 23. Here, *without stacking* the PAGA penalties, Defendant's liability exposure is estimated at a maximum of $857,800 in PAGA penalties (8,578 pay periods multiplied by $100 per pay period). If derivative penalties are included (or "stacked"), Defendant's maximum liability exposure is estimated at approximately $1,895,600. JCL Dec., ¶ 24.

Plaintiff's expert estimated Defendant's exposure as follows:

Claim	Penalty Amount	Number of Pay Periods w/ Violation	Violation Rate	Total Penalties
Meal Period Violations Cal. Lab. Code §§ 226.7 and 512	$50	1,109	12.9%	$55,450
Rest Period Violations Cal. Lab. Code §§ 226.7 and 512	$50	1,109	12.9%	$55,450
Wage Statement Violations Cal. Lab. Code § 226	$100	8,578	100%	$857,800
Business Reimbursement Violations Cal. Lab. Code § 2802	$100	2,144	25%	$214,400
Unpaid Wages Cal. Lab. Code §§ 201, 202, 203, 1194, 1197, 1997.1, 1198 and 558	$100	7,125	83.1%	$712,500

JCL Dec., ¶ 25.

i. Estimated Liability for Unpaid Wages

Plaintiff alleges that Defendant failed to include non-discretionary incentive compensation when calculating the regular rate of pay for purposes of overtime wages, meal period premiums, and redeemed sick pay. Specifically, Defendant failed to properly incorporate non-discretionary incentive compensation in the form of "C-COMMISSION," "B-BONUS," "EC-CLUB 100 BON," and "EC-CLUB100BONUS" in the regular rate of pay calculation for purposes of calculating and paying overtime wages. JCL Dec., ¶ 26.

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.

Defendant argued, among other things, that all Aggrieved Employees were properly paid minimum and overtime compensation for all hours worked and that the additional compensation listed above is non-discretionary. Considering Defendant's defenses, Plaintiff estimates Defendant's exposure for this claim to be approximately $712,500. This number was calculated by multiplying the number of pay periods with violations by a penalty of $100. JCL Dec., ¶ 27.

ii. Estimated Penalties for Meal Period Violations

Plaintiff also alleges that Defendant failed to provide meal periods in violation of Cal. Lab. Code § 512. Specifically, Plaintiff alleges that Defendant failed to provide meal periods, provided late meal periods, and provided short meal periods. Defendant failed to pay meal period premiums in all instances in which a non-compliant meal period was recorded. Further, Plaintiff alleges that Defendant implemented a practice of auto-deducting 30 minutes for fictitious meal breaks from every shift, creating a paper trail of compliance and depriving employee of their breaks and wages owed for time deducted. Plaintiff's assertion is supported by a low violation rate. JCL Dec., ¶ 28.

Conversely, Defendant argues 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. Further, Defendant contends that employees are responsible for recording their own time, and that Defendant does not alter time records. In light of Defendant's defenses, Plaintiff estimates that Defendant's exposure for this claim is approximately $55,450. This number was calculated by multiplying the extrapolated number of pay periods identified wherein the time records reflected a meal break violation, by a penalty of $50. Pursuant to Cal. Lab. Code § 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 break claims. JCL Dec., ¶ 29.

iii. Estimated Penalties for Rest Period Violations

Plaintiff further alleges that Defendant failed to provide rest breaks. Specifically, Plaintiff alleges that she was required to notify her supervisor when she was taking a rest break and would often be discouraged from doing so. Defendant's written rest break policy also fails to inform employees that they are entitled to a rest break premium when they are unable to take a compliant rest break. Defendant argued that its rest period policy is fully compliant with California law and 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 that 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."). Because rest periods are not recorded, Plaintiff 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. Therefore, Plaintiff estimates that her claim for rest period violations was worth approximately $55,450. This was calculated by multiplying a 12.9% violation rate by a penalty of $50, accounting for Defendant's defenses. The $50 penalty rate was used for the same reasons as stated above. JCL Dec., ¶ 30.

iv. Estimated Liability for Unreimbursed Business Expenses

Plaintiff alleges that Defendant required Plaintiff and Aggrieved Employees to use their personal cell phones for Defendant's benefit. Specifically, Plaintiff alleges that she and Aggrieved Employees were required to download an application called "TimeCo." on their personal cell phones in order to record their daily time. Defendant contends that any necessary business expenses were reimbursed. JCL Dec., ¶ 31.

Plaintiff estimates Defendant's exposure for this claim to be $214,400. This number was calculated by multiplying a 25% violation rate by a penalty of $100, accounting for Defendant's defenses. Labor Code § 2802 does not specifically provide for a civil penalty amount. Thus, the $100 penalty rate was used pursuant to Labor Code § 2699(f). JCL Dec., ¶ 32.

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v. Estimated Derivative Penalties for Wage Statement Violations

Plaintiff further alleged that the Defendant's labor code violations for non-compliant meal and rest breaks and unpaid wages results in derivative liability for penalties resulting from inaccurate wage statements. Plaintiff estimates Defendant's exposure for this claim to be $857,800 for wage statement penalties. JCL Dec., ¶ 33.

B. <u>The Gross Settlement Compares Favorably to The Likely Recovery</u>

In light of the above, the Gross Settlement Amount is approximately 26.22% of Defendant's potential PAGA exposure if stacking of penalties is permitted. Without stacking, the Gross Settlement Amount is approximately 11.87%. The Gross Settlement Amount compares favorably to the likely recovery of PAGA penalties through continued litigation. JCL Dec., ¶ 34.

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 argued that it can only be assessed civil penalties for actual violations of the Labor Code. *See* Cal. 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). JCL Dec., ¶ 35.

Lastly, 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, subd. (e)(2)). JCL Dec., ¶ 36. In fact, courts routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See, e.g.*, *Carrington v. Starbucks Corp*. (2018) 30 Cal. App. 5th 504, 529 (reducing PAGA penalties to $5 per pay period; "Although the trial court may have disagreed with Starbucks regarding the issue of liability, it clearly took the circumstances proffered by Starbucks into consideration when it imposed the penalty … only $5 per initial violation"); *Kaanaana v. Barrett Bus. Servs., Inc*. (2018) 29 Cal. App. 5th 778, 788, 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*, San Francisco Superior Court Case No. CGC-18-5655018, Proposed Statement of Decision, dated July 21, 2020, Judge Curtis A. Karnow of San Francisco Complex (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. JCL Dec., ¶ 37. The LWDA has been provided notice of this motion and the PAGA Settlement, and the decision of LWDA to accept the PAGA Settlement and not oppose the motion should be given considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and protect its own rights. JCL Dec., ¶ 38.

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

Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code § 2699(1) does not require that a court approve any other elements of the proposed settlement. Because there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the Court only needs to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable.

V. THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE

PAGA Counsel seeks approval of not more than one-third (1/3) of the Gross Settlement Amount (Seventy-Five Thousand Dollars and Zero Cents ($75,000.00)) and attorneys' expenses not to exceed $30,000.00[5] for reimbursement of actually incurred litigation expenses. PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court review the requested attorneys' fees, the requested fees and costs are reasonable for experienced wage and hour counsel. JCL Dec., ¶¶ 39-52.

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

The requested attorneys' fees of $75,000.00, and reimbursement of attorneys' expenses of up to $30,000.00 is fair, reasonable, and justified by the result achieved. PAGA Counsel negotiated a recovery of $225,000.00, and this result justifies the requested fees equal to one-third (1/3) of this recovery. At the time this case was brought, the result was far from certain. Defendant's defenses to the merits of the case created difficulties with proof and complex legal issues for PAGA Counsel to overcome. Here, as noted above in section IV(A), several defenses asserted by Defendant present serious threats to the claims of Plaintiff and the Aggrieved Employees. While Plaintiff believes that these defenses could be overcome, Defendant maintains that these defenses have merit and therefore present a serious risk to recovery. The Settlement was possible because, in PAGA Counsel's 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. JCL Dec., ¶ 40.

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*

[5] As detailed *infra,* at the time of filing this motion, PAGA Counsel incurred $24,210.32 litigating this matter. PAGA Counsel anticipates an additional $250 in costs to file this motion.

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 $98,385.00. JCL Dec., ¶¶ 53-56; Declaration of Shani Zakay ("Zakay Dec.") at ¶¶ 4-5. Thus, PAGA Counsel's fee request is equal to PAGA Counsel's loadstar with a negative multiplier of 0.76 – well below the 2.13 multiplier approved in *Laffitte.* See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte,* approved 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte,* approved 33% fee award with cross-check lodestar multiplier of 1.7).

B. <u>PAGA Counsel Are Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs.</u>

Attorneys who create a common fund for the benefit of a group of individuals are entitled to payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include counsel's incurred expenses because those who benefit from their effort should share in the cost. *See Rider v. City of San Diego,* 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *see also Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded litigation costs for consultants, online legal research, copying, postage, long distance charges, travel expenses, filing fees, mediation fees and investigation fees). Prior to incurring costs for the filing of this motion, PAGA Counsel collectively expended $24,210.32 prosecuting this action and expects to expend an additional $250 in costs to file this motion, for a total of $24,460.32 (JCL Law Firm, APC - $13,731.17, including $250 in anticipated costs to file this motion; Zakay Law Group, APLC - $10,729.15). JCL Dec., ¶¶ 8, 57; Zakay Dec., ¶¶ 8-9. PAGA Counsels' out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; mediation fees; and expert costs, which were all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed. JCL Dec., ¶ 58.

VI. PLAINTIFF'S SERVICE AWARD IS FAIR AND REASONABLE

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

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

59.

Plaintiff's efforts in bringing the lawsuit conferred a monetary benefit to 297 Aggrieved Employees. Accordingly, Plaintiff and PAGA Counsel respectfully request approval of the requested Service Award in the amount of $10,000.00, as agreed to in the Settlement Agreement, to Plaintiff. JCL Dec., ¶ 60.

VII. CONCLUSION

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

Dated: October 22, 2025

JCL LAW FIRM, APC

By *Perssia Razma*
Perssia P. Razma, Esq.