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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

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| MICHAEL GORDON, as an individual and on behalf of all others similarly situated,<br><br>Plaintiff,<br><br>vs.<br><br>ENDLESS PURSUIT CORPORATION, a California corporation; and DOES 1 through 50, inclusive,<br><br>Defendants. | Case No.: 24STCV17375<br><br>[Assigned for all purposes to the Hon. Maurice A. Leiter, Department 54]<br><br>**PLAINTIFF'S NOTICE OF MOTION AND MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**<br><br>DATE: June 3, 2026<br>TIME: 9:00 a.m.<br>DEPT.: 54<br><br>**Reservation ID: 267923534821** |

**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on June 3, 2026, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Department 54 of the above-referenced Court, located at 111 N. Hill Street, Los Angeles, California 90012, Plaintiff Michael Gordon ("Plaintiff") will seek an Order approving the concurrently filed PAGA Settlement Agreement and Release ("Agreement" or "Settlement"), pursuant to the procedures set forth in Labor Code § 2698, *et seq*.

This motion will be based on this notice of motion, the attached memorandum of points and authorities, the accompanying declarations of Kristen M. Agnew, Plaintiff Michael Gordon and Jodey Lawrence (Phoenix Settlement Administrators), the records and file herein, and on such other evidence as may be presented at the hearing of the motion.

DATED: April 6, 2026

DIVERSITY LAW GROUP, P.C.

By:______________________________

Larry W. Lee
Kristen M. Agnew
Attorneys for Plaintiff and the Aggrieved Employees

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## I. INTRODUCTION

In this representative action under Private Attorneys General Act of 2004 ("PAGA"), Plaintiff Michael Gordon ("Plaintiff") seeks civil penalties arising from Defendant Endless Pursuit Corporation's ("Defendant") alleged underpayment of meal/rest period premiums, in violation of Labor Code sections 226.7 and 512. Plaintiff brings this representative action on behalf of the State of California and all aggrieved employees, rather than in his individual capacity. Plaintiff now moves the Court for an order approving the Parties' non-reversionary settlement, as set forth in the concurrently filed Settlement Agreement and Release of PAGA Claims ("Agreement" or "Settlement Agreement").[1] As explained below and in the accompanying Declaration of Kristen M. Agnew ("Agnew Declaration"), the proposed settlement is fair, adequate, and reasonable and should be approved.

The settlement was reached after meaningful litigation and investigation, including extensive motion practice and appellate briefing concerning so-called "headless" PAGA actions, formal discovery, and verified discovery responses regarding Defendant's calculation of meal and rest period premium compensation and the number of aggrieved employees. Under the Settlement Agreement, Defendant will pay a gross settlement amount of $35,000.00 ("Gross Settlement Amount"), which includes an estimated payment of approximately $15,312.47 in civil penalties to aggrieved employees and the California Labor and Workforce Development Agency ("LWDA"). The proposed release is narrowly tailored and extends only to claims for PAGA civil penalties predicated on the specific Labor Code violations alleged in the PAGA notice and operative complaint.

The proposed settlement therefore represents a fair, reasonable, and adequate compromise of disputed claims, serves the interests of the LWDA and the aggrieved employees, and furthers PAGA's statutory purpose.

## II. PROCEDURAL HISTORY

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[1] A true and correct copy of the Settlement Agreement is attached to the Declaration of Kristen M. Agnew as Exhibit 2.

### A. Pre-Litigation Investigation

Prior to initiating the Action, PAGA Counsel thoroughly investigated the factual and legal bases for the claims alleged in this lawsuit. Agnew Decl. ¶ 3. As part of that investigation, counsel reviewed Plaintiff's payroll records. *Id.* Those records showed that Plaintiff earned both non-discretionary incentive wages and meal and rest period premiums in the same workweek. *Id.* The records further showed that Defendant paid those meal and rest period premiums at Plaintiff's base hourly rate, rather than at the regular rate of pay, resulting in an underpayment. *See id.*

### B. The PAGA Notice

On June 12, 2024, Plaintiff submitted written notice to the LWDA and Defendant pursuant to Labor Code section 2699.3, alleging that Defendant engaged in a policy and practice of failing to pay meal and rest period premiums at the regular rate of pay, in violation of Labor Code sections 226.7 and 512 (the "PAGA Notice"). *See* Agnew Decl. ¶ 4, Exhibit 1. Plaintiff further alleged that these practices resulted in derivative violations of Labor Code sections 201 through 203, based on Defendant's failure to pay all wages due upon separation of employment, and Labor Code section 226, based on Defendant's failure to provide accurate wage statements, including accurate rates of pay and gross and net wages earned. *Id.*

### C. The Parties Actively Litigate the Representative PAGA Action

Plaintiff initiated this action as a class action, on July 12, 2024. *See* Agnew Decl. ¶ 5. Due to the existence of an arbitration agreement, Plaintiff thereafter abandoned his class claims. *Id*. On September 10, 2024, Plaintiff filed a First Amended Complaint ("FAC"), asserting a single cause of action for civil penalties under the Private Attorneys General Act of 2004 ("PAGA"), predicated on alleged violations of Labor Code sections 201, 202, 203, 226, 226.7, and 512. *Id.* ¶ 6. As pled in the FAC, Plaintiff brought the action "on behalf of himself and all other aggrieved employees of Defendants for penalties pursuant to the Private Attorneys General Act, Labor Code § 2698, et seq." *Id.*

Following the filing of the FAC, the Parties filed competing motions. *See* Agnew Decl. ¶ 7. On October 31, 2024, Defendant moved to compel arbitration and to stay the action pending arbitration (the "Motion to Compel Arbitration"). *Id.* On November 14, 2024, Plaintiff filed a

Motion for Leave to file a Second Amended Complaint. *Id.* In that motion, Plaintiff sought to amend the pleadings to proceed solely in a representative capacity on behalf of the State of California for all aggrieved employees. *Id.* The Court heard oral arguments on both motions and ultimately granted Plaintiff's Motion for Leave to File a Second Amended Complaint and denied Defendant's Motion to Compel Arbitration.[2] *Id.*

On December 18, 2024, Plaintiff filed the operative Second Amended Complaint ("SAC"). *See* Agnew Decl. ¶ 8. The SAC expressly states that "Plaintiff is not suing in his individual capacity; he is proceeding herein solely under PAGA, on behalf of the State of California for all aggrieved employees, including himself and other aggrieved employees." *Id.* Therefore, the only claims remaining in this litigation are the nonindividual or representative claims alleged on behalf of other aggrieved employees under PAGA. *Id.*

In March 2025, Defendant filed a Renewed Motion to Compel Arbitration and Motion for Judgment on the Pleadings. *See* Agnew Decl. ¶ 10. The court denied both motions. *Id.*

### D. The Parties Engage in Formal Discovery

Defendant served verified discovery responses concerning its non-discretionary incentive compensation plans, meal and rest period policies, the methodology used to calculate the regular rate of pay for purposes of meal and rest period premiums, and the number of pay periods where non-exempt employees earned both incentive wages and meal/rest period premiums. *See* Agnew Decl. ¶¶ 13-15. Those responses reflect that, during the approximate period of June 12, 2023 through November 25, 2025, there were 475 pay periods in which non-exempt employees earned both nondiscretionary incentive wages and meal or rest period premiums. *See id.* at ¶ 15.

In light of the limited number of pay periods at issue, the Parties agreed to engage in direct settlement negotiations. *See* Agnew Decl. ¶ 16. Based on the information provided by Defendant, PAGA Counsel conducted a full penalties analysis as to the value of the PAGA claims. *See id*.

### E. The Parties Reach a Settlement Through Arm's Length Negotiations

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[2] Defendant appealed the Court's decision to deny the motion to compel arbitration, on January 15, 2025. *See* Agnew Decl. ¶ 9. Appellate briefing is currently ongoing. The opening brief and respondent's brief have been filed, but the reply brief has not yet been filed. *See id.* ¶ 12.

After extended negotiations, the Parties reached the present settlement. *See* Agnew Decl. ¶ 17. The Parties subsequently negotiated the terms of the Settlement Agreement. *See id.* All settlement negotiations were conducted at arm's length. *See id.*

## III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT

The material terms of the Settlement are described below and set forth in detail in the concurrently filed Settlement Agreement, a true and correct copy of which is attached as Exhibit 2 to the Declaration of Kristen M. Agnew.

### A. The Aggrieved Employees

The current Action is being settled on behalf of "Aggrieved Employees," which is defined to mean "all current and former non-exempt employees of Defendants who worked in California and, at any time during the PAGA Period [June 12, 2023 through September 30, 2025], worked at least one pay period in which he or she earned both a non-discretionary incentive payment and meal and/or rest period compensation within the same pay period." *See* Settlement Agreement ("SA") §§ 1.16, 1.17. Defendant has determined that there are 95 Aggrieved Employees who collectively worked approximately 475 PAGA Pay Periods.[3] *See id*. at § 4.1.1.

### B. The Gross Settlement Amount

The Settlement Agreement requires Defendant to pay the gross amount of Thirty-Five Thousand Dollars ($35,000.00) (the "Gross Settlement Amount"). *See* SA § 1.7. Based on the number of pay periods released by the Settlement, Defendant will pay approximately $73.68 per pay period to resolve the claims in this case. *See* Agnew Decl. ¶ 21.

### C. The Allocation of the Net Settlement Amount

The balance of the Gross Settlement Amount remaining after deduction of the approved PAGA Counsel Fees, PAGA Counsel Expenses, Settlement Administration Costs, and Service Award (the "Net Settlement Amount"), will be available for distribution to the LWDA and

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[3] The term "PAGA Pay Period" means any pay period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period and also earned both a non-discretionary incentive payment and meal and/or rest period compensation in the same pay period. *See* SA § 1.15.

Aggrieved Employees. *See* SA §§ 1.10, 4.5. Assuming that the Court awards the requested PAGA Counsel Fees ($11,666.66), PAGA Counsel Expenses ($2,770.87), Settlement Administration Costs ($2,750.00), and the Service Award ($2,500.00) the Net Settlement Amount will total approximately $15,312.47. *See* Agnew Decl. ¶ 26. Sixty-five percent (65%) of the Net Settlement Amount, or approximately $9,953.11, will be paid to the LWDA for PAGA penalties ("LWDA Payment"). *See* SA § 4.5.1; Agnew Decl. ¶ 26. The remaining thirty-five percent (35%), or approximately $5,359.36, will be distributed to Aggrieved Employees on a pro rata basis based on the number of PAGA Pay Periods worked by the employee. *See* SA § 4.5.2; Agnew Decl. ¶ 26.

On raw average, Aggrieved Employees will be entitled to recover, on average, up to $56.41 each. *See* Agnew Decl. ¶ 27. However, the amount that any particular Aggrieved Employee will be entitled to recover will be greater or lower than this average depending on the number of PAGA Pay Periods worked by the employee. *See* SA § 4.5.2. This is fair, as it directly allocates greater penalties to Aggrieved Employees who have allegedly suffered greater harm. *See* Agnew Decl. ¶ 27.

**D. Attorneys' Fees, Litigation Costs and Service Award**

As part of the Settlement, Defendant does not object to a request by PAGA Counsel for an award of attorneys' fees of up to one-third (1/3) of the Gross Settlement Amount, *i.e.*, the sum of Eleven Thousand Six Hundred Sixty-Seven Dollars and Sixty-Six Cents ($11,666.66), and reimbursement for actual litigation costs in in an amount up to Four Thousand Five Hundred Dollars ($4,500.00), subject to Court approval. *See* SA § 4.3.[4] Any portion of the PAGA Counsel and/or PAGA Counsel Fees that is not approved by the Court shall become part of the Net Settlement Amount. *See id*.

Defendant also does not object to Plaintiff's request for a Service Award of up to Two Thousand Five Hundred Dollars ($2,500.00) in recognition for the work Plaintiff has done on behalf of the State of California and the Aggrieved Employees. *See* SA § 4.4. Any portion of the

[4] At the time the Parties negotiated the Settlement Agreement, PAGA Counsel did not have a final tally of the litigation costs incurred to date. As such, the Parties included a maximum amount that could be attributed to costs under the settlement. *See* Agnew Decl. ¶ 49.

Service Award that is not approved by the Court shall become part of the Net Settlement Amount. *See id*.

**E. Settlement Administration Costs**

The Settlement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator. *See* SA § 4.2. The Parties have agreed to utilize Phoenix Settlement Administrators to administer the settlement, with the Settlement Administration Costs estimated to be Two Thousand Seven Hundred Fifty Dollars ($2,750.00). *See id.* §§ 1.22, 1.23, 4.2; Declaration of Jodey Lawrence ("Admin. Decl.") ¶ 22, Exhibit B.

**F. The *Cy Pres* Recipient**

Funds from any checks that have not been cashed within 180 days of issuance do not revert and will be paid out pursuant to California Code of Civil Procedure section 384 to the cy pres recipient, Legal Aid at Work. *See* SA § 5.4. Legal Aid at Work, is a 501(c)(3) nonprofit legal services organization that provides services to working families with low incomes. *See* Agnew Decl. ¶ 29. The Parties warrant and represent that they do not have a relationship, financial or otherwise, with the *cy pres* recipient. *See id.*; SA § 5.4.

**G. The Scope of the Released Claims**

Upon the payment of the Gross Settlement Amount, all Aggrieved Employees will release Defendant and Released Parties from "all claims to recover PAGA penalties, which were alleged or which could have reasonably been alleged in the Action based on the facts and theories pleaded therein and in the PAGA Notice, for violations of California Labor Code sections 201, 202, 203, 226(a), 226.7, 512 and 2699 *et seq*. that accrued during the PAGA Period." *See* SA § 7.3. The Settlement is not intended to release and does not extend to violations of any predicate statutes other than PAGA. The Settlement also does not affect a waiver of claims by Aggrieved Employees against the Released Parties for any individual wage and hour claims.

## IV. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED

**A. PAGA Overview**

In 2004, California enacted PAGA, which allows aggrieved employees, on behalf of the LWDA and other aggrieved employees, to bring suit against their employers for alleged violations of the California labor laws and to obtain penalties that previously could only be obtained by the State. The PAGA was enacted because the Legislature determined that it was "in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations," since the State had not been able to fully or adequately enforce its labor laws. *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009); *Kim v. Reins International California, Inc*., 9 Cal. 5th 73, 81 (2020) ("The Labor Commissioner and other agencies were likewise hampered in their enforcement of civil penalties by inadequate funding and staffing constraints. [] To facilitate broader enforcement, the Legislature enacted PAGA, authorizing "aggrieved employees" to pursue civil penalties on the state's behalf"); *Ochoa- Hernandez v. Cjaders Foods, Inc*., 2010 WL 1340777, *4 (N.D. Cal. April 2, 2010) ("The act's declared purpose is to supplement enforcement actions by public agencies, which lack adequate resources to bring all such actions themselves. Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." [citations omitted].)

Labor Code section 2699(a) states that any Labor Code provision "that provides for a civil penalty to be assessed and collected by the [LWDA] may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3." An "aggrieved employee" means "any person who was employed by the alleged violator and personally suffered each of the [alleged] violations." Lab. Code § 2699(c)(1).

The California Supreme Court has explained that a plaintiff who brings a PAGA claim "represents the same legal right and interest as state labor law enforcement agencies," and brings PAGA claims "as the proxy or agent" of the State. *Arias*, 46 Cal. 4th at 986. Of the civil penalties recovered, 65 percent goes to the LWDA, and the remaining 35 percent goes to the "aggrieved employees" for collecting the penalties on behalf of the State Lab. Code § 2699(m); *Baumann v. Chase Inv. Servs. Corp*., 747 F.3d 1117, 1123 (9th Cir. 2014) (a PAGA representative's recovery is "an incentive to perform a service to the state, not restitution for wrongs done to members of the class").

### B. Class Action Settlement Standards Do Not Govern the Settlement Approval Process for PAGA Claims

In class action cases, the purpose of the Court's preliminary evaluation of the settlement is to determine whether it is within the "range of reasonableness," and thus whether notice to the class of the terms and conditions of the settlement, and the scheduling of a formal fairness hearing, are worthwhile. *See* Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.25, *et seq.* and § 13.64 (4th ed. 2002 and Supp. 2004) ("*Newberg*"). The "judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing." *Manual for Complex Litigation, Fourth* § 21.632 (Fed. Jud. Ctr., 4th ed. 2004). To make the preliminary fairness determination, courts may consider several relevant factors, including "the strength of the plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status through trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; [and] the experience and views of counsel…." *See Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1026 (9th Cir. 1998).

By contrast, court approval of PAGA settlements is governed by section 2699(s)(2) of the Labor Code, which provides that "the superior court shall review and approve any settlement of any civil action filed pursuant to this part." The parties are not obligated to "satisfy class action requirements," including the standards for class action settlement approval. *Arias*, 46 Cal. 4th at 980-988 (affirming lower court's holding that "plaintiff need not satisfy class action requirements" to assert a PAGA claim). Notably, unlike the class action settlement approval process, there is also no statutory mechanism for this Court to conduct a two-step settlement approval review. Cal. Lab. Code § 2699(s)(2). In addition, "[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim" or "contest a settlement, if any, reached between the parties." *Ochoa-Hernandez*, 2010 WL 1340777 at *13.

### C. The Settlement is Reasonable and Effectuates PAGA's Objectives

The Court's focus in a PAGA case is not the amount that aggrieved employees will ultimately receive as a result of a settlement. Instead, "a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *See Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 77 (2021) (emphasis added); *see also Kang v. Wells Fargo Bank, N.A.*, 2021 WL 5826230, at *15 (N.D. Cal., 2021) (evaluating a PAGA settlement under the standard of whether the settlement terms "are fundamentally fair, reasonable, and adequate in view of PAGA's public policy goals"). Here, the Settlement vindicates the rights of Aggrieved Employees who have experienced alleged violations of the Labor Code. Additionally, the $73.68 in penalties paid per PAGA Pay Period acts as a deterrent to other California employers. *See* Agnew Decl. ¶ 21.

The Settlement is also consistent with the State's public policy favoring resolution of disputes. "California law favors the settlement of disputes as our high court clarified in *Neary*[]. Settlement is efficient; it reduces costs, saves resources, and minimizes court congestion. [] The parties are best positioned to understand their interests and resolve a dispute in a mutually beneficial manner without court intervention into the settlement." *Consumer Advocacy Group, Inc. v. Kintetsu*, 141 Cal. App. 4th 46, 62-63 (2006) (citing *Neary v. Regents of Univ. of Cal*., 3 Cal. 4th 273, 277- 278 (1992).

**D. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of Litigation**

Though Plaintiff is reasonably confident that he would prevail at trial, proceeding in litigation entails significant risk on the underlying merits of Plaintiff's theories, in addition to the still-developing law under PAGA.

**1. Plaintiff's Claims are Contested**

Plaintiff seeks civil PAGA penalties based on Defendant's failure to incorporate non-discretionary incentive wages in the meal/rest period premiums paid pursuant to Labor Code sections 226.7 and 512. *See* Agnew Decl. ¶¶ 2-4, 30. Plaintiff's theory is that, where a meal or rest period premium was owed and paid, the premium should have been calculated using the employee's regular rate of pay, including applicable nondiscretionary incentive compensation, rather than a lower base hourly rate. *See id.* ¶ 30. Plaintiff contends that Defendant's failure to do so resulted in underpaid premium wages and, in turn, derivative PAGA penalties.

Defendant disputes both liability and the scope of any potential recovery. Defendant maintains that a good faith dispute exists as to whether any meal or rest period premiums were underpaid, and whether such premiums were even legally owed in many of the instances for which Plaintiff seeks recovery. *See* Agnew Decl. ¶ 31. According to Defendant, its policies and procedures were compliant, and the mere fact that a premium was paid on a given occasion does not establish that the premium was legally required under Labor Code section 226.7. Defendant contends that some premiums may have been paid prophylactically, administratively, or out of an abundance of caution, rather than as an admission that a legally noncompliant meal or rest period occurred. *See id.*

Relatedly, Defendant argues that Plaintiff would face substantial obstacles in proving that all paid premiums were necessarily based on legally compensable violations. *See* Agnew Decl. ¶ 32. In Defendant's view, liability cannot simply be inferred from payroll data showing the payment of a premium and the contemporaneous earning of nondiscretionary incentive wages. Rather, Defendant contends that the Court would need to determine, on an employee-by-employee and shift-by-shift basis, whether a compliant meal or rest period was actually not provided, whether the premium was in fact legally owed, and only then whether the amount paid should have incorporated incentive compensation in the regular rate calculation. Defendant relies, in part, on authority recognizing that an employer may not be liable for an inaccurate premium amount unless the premium itself was legally required in the first instance. *See Magadia v. Wal-Mart Associates, Inc.*, 324 F.R.D. 213, 222 (N.D. Cal. 2018).

Thus, Defendant's position presents a significant merits issue that would likely be heavily contested if the case were litigated through trial. In particular, Defendant contends that adjudicating the claim would require individualized evidence regarding the circumstances of allegedly missed, late, short, interrupted, or on-duty meal and rest periods, as well as the reason any premium was paid. *See* Agnew Decl. ¶ 33. That individualized inquiry, according to Defendant, would create litigation risk for Plaintiff both as to liability and as to the value of any recoverable penalties.

### 2. Recovery of Civil PAGA Penalties Is Uncertain

Even if Plaintiff were to prevail on the merits of the PAGA claim, the amount of any potential recovery would remain highly uncertain. *See* Agnew Decl. ¶ 34. Defendant contends that it made a good-faith effort to comply with the law by maintaining compliant meal and rest period policies. *See id.* Defendant further asserts that, even assuming Plaintiff could establish predicate violations, those circumstances would support a substantial reduction in any PAGA penalties awarded.

That argument presents real litigation risk. Courts have broad discretion to reduce PAGA penalties where the facts do not justify the statutory maximum. In *Thurman v. Bayshore Transit Management, Inc.*, the Court of Appeal upheld a substantial reduction in PAGA penalties where the employer was not initially on notice of the violations and took steps to come into compliance once made aware of them. 203 Cal. App. 4th 1112, 1136 (2012). The court contrasted those circumstances with cases in which full penalties may be appropriate because the employer acted with a "cavalier approach" to its obligations or with reckless disregard. *Id.* Similarly, in *Raines v. Coastal Pacific Food Distributors, Inc.*, the Court of Appeal recognized that trial courts may reduce PAGA penalties for technical or inadvertent violations, particularly where the violations caused little or no injury. 23 Cal. App. 5th 667, 681 (2018). And in *Magadia v. Wal-Mart Associates, Inc.*, although the court imposed substantial PAGA penalties, the award still reflected significant reductions from the maximum theoretical penalties sought. 2019 U.S. Dist. LEXIS 91792, at *87-*100 (N.D. Cal. 2019).

Here, Defendant maintains that any recoverable PAGA penalties would likely be substantially reduced because, even if Plaintiff could prove the underlying violations, the alleged violations were inadvertent and did not result in significant economic harm to Aggrieved Employees. *See* Agnew Decl. ¶ 34. Thus, even if Plaintiff were successful in establishing liability, Plaintiff faced a substantial risk that the Court would exercise its discretion to award far less than the maximum penalties theoretically available.

These risks support the reasonableness of the Settlement. The Settlement reflects a compromise that accounts not only for the uncertainties associated with proving liability, but also for the substantial possibility that any PAGA recovery would be reduced through the Court's exercise of discretion.

**3. The Settlement is Reasonable When Compared to the Amount of PAGA Civil Penalties At Issue**

In evaluating the fairness of a PAGA settlement, "there is no express or even baseline percentage of recovery required." *See Manzo v. McDonald's Restaurants of California, Inc.*, 2022 WL 4586236, at *6 (E.D. Cal. 2022). Trial courts routinely approve PAGA settlements representing only a tiny fraction of the potential verdict value of the claim. *See id*. (approving PAGA allocation that "is less than one percent (1%) of the verdict value" of the claim"); *Hartley v. On My Own, Inc.*, 2020 WL 5017608, * 4 (E.D. Cal. Aug. 25, 2020) (approving settlement at 3.47% of verdict value of PAGA penalty, resulting in average payment per employee of $61); *Ramirez v. Benito Valley Farms, LLC*, 2017 WL 3670794, *4 (N.D. Cal. Aug. 25, 2017) (considering early stage of litigation, defendant's weak financial condition, and injunctive relief provided by settlement, approving PAGA settlement of 4.57% of verdict value).

Here, the Gross Settlement Amount compares favorably to PAGA settlements approved in other cases, both in total dollar amount and as a percentage of the potential penalties at issue. Defendant determined that Aggrieved Employees worked approximately 475 PAGA pay periods. *See* SA § 4.1.1. Assuming Plaintiff were to prevail on the merits of the PAGA claim, application of the default penalty of $100 per pay period results in potential liability of $47,500. *See* Agnew Decl. ¶ 36. The Gross Settlement Amount of $35,000 therefore represents approximately 73.68% of that amount. *See id.* In the alternative, if the Court were to "stack" penalties by awarding additional PAGA penalties based on derivative section 226(a) violations, the maximum potential penalties could total as much as $95,000. *See id.* ¶ 37. Measured against that higher figure, the $35,000 Gross Settlement Amount still represents approximately 36.84% of the maximum theoretical penalties. *See id.*

Under either measure, the Settlement reflects a substantial recovery relative to the potential PAGA penalties at issue, particularly when compared to the much smaller percentages approved in other PAGA cases. In light of the litigation risks, the disputed legal issues, and the uncertainty of recovering the maximum penalties sought, the proposed settlement is fair, adequate, and reasonable.

**E. The Attorneys' Fees and Costs are Reasonable**

PAGA Counsel seeks an award of attorneys' fees in the amount of $11,666.66, which represents one-third of the Gross Settlement Amount, for the successful prosecution and resolution of this action. Labor Code section 2699, subdivision (k)(1), expressly provides for an award of reasonable attorneys' fees and costs in any successful action brought under PAGA.

Although this is not a class action, California courts have long recognized that the percentage-of-the-fund method is an appropriate means of assessing the reasonableness of attorneys' fees where counsel's efforts create a monetary recovery for others. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to spread litigation costs proportionally among those who benefit from the recovery, so that the burden of litigation does not fall entirely on the party who undertook it. *Vincent*, 557 F. 2d at 769.

Where a monetary fund has been created through litigation, California law directs that the fee analysis may appropriately begin with the percentage method. In *Laffitte v. Robert Half Int'l*, the California Supreme Court held that, when litigation results in a monetary fund for the benefit of others, the trial court may determine a reasonable fee by selecting an appropriate percentage of the fund created. 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created"). Under the percentage of the fund method, the Court's objective remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) ("When a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what the market will set…. The judge, in other words, is trying to mimic the market in legal services").

A one-third fee award here is consistent with the market and with authority approving similar percentages in wage-and-hour litigation. Courts have recognized that contingency fee arrangements commonly provide for counsel to recover one-third of the recovery if the matter resolves before trial, and more if the case proceeds through trial. *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856 at p. *16 n. 59 (C.D. Cal. 2008). California courts have likewise observed that empirical studies show fee awards in class and representative actions often average around one-third of the recovery. *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n. 11 (2008); *Martin v. AmeriPride Services Inc.*, 2011 U.S. Dist. LEXIS 61796, at *23 (S.D. Cal. June 9, 2011) (recognizing that courts may award fees in the 30 to 40 percent range in wage-and-hour cases producing common funds under $10 million. In *Laffitte* itself, the Supreme Court affirmed a fee award equal to 33 1/3 percent of the common fund. 1 Cal. 5th at 506.

The requested fee is particularly reasonable in light of the contingent nature of the representation and the litigation risks counsel assumed. PAGA Counsel prosecuted this matter on a wholly contingent basis, advanced the costs of litigation, and faced the possibility of recovering nothing. *See* Agnew Decl. ¶ 50. Courts have long recognized that contingent matters justify compensation above a strict hourly rate because counsel bears both the delay in payment and the risk of nonpayment. *See City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974). That reasoning applies here. Counsel undertook the risks inherent in representative wage-and-hour litigation, including motion practice, contested liability and penalty issues, and the prospect of extended proceedings against a corporate defendant, all without any guarantee of recovery.

As secondary support for the requested percentage, the Court may perform a lodestar cross-check. *Laffitte* makes clear, however, that any such cross-check does not displace the Court's primary determination of a reasonable fee under the percentage method and does not impose an absolute ceiling or floor on the award. 1 Cal. 5th at 505. Rather, a lodestar cross-check is simply a tool to ensure that the resulting multiplier is not extraordinarily high or low. *Id.* The Court also retains discretion to forgo a lodestar cross-check altogether. *Id.* at 506; *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 306-07 (3d Cir. 2005).

Here, as set forth in the Agnew Declaration, PAGA Counsel has spent over approximately 69.60 hours litigating this current action. *See* Agnew Decl. ¶ 47, Ex. 3. Indeed, PAGA Counsel has devoted substantial attorney time to all phases of the litigation, including investigating the factual and legal bases of Plaintiff's claims, opposing multiple dispositive and stay-related motions, litigating standing issues in both the trial court and on appeal, engaging in formal discovery, and preparing the instant motion and supporting settlement approval papers. *See id.* ¶¶ 3-15. This work was reasonably undertaken, directly related to the prosecution of the representative PAGA claims, and necessary to achieving the settlement now before the Court.

Based on counsel's hourly rate, counsel's lodestar is approximately $55,680, which exceeds the requested fee award. *See* Agnew Decl. ¶ 47. ***Thus, even under a lodestar cross-check, the requested fee is reasonable.*** Accordingly, the requested fee award of $11,666.66 is fair and reasonable and should be approved in full.

PAGA Counsel also seeks reimbursement of litigation costs in the amount of $2,770.87. *See* Agnew Decl. ¶ 49, Exhibit 4. Those costs were reasonably and necessarily incurred in the prosecution of this action and include items such as filing fees, the clerk's transcript on appeal, postage, and copying expenses. *See id*. Because those expenditures were directly related to the successful prosecution of this matter, the requested costs are reasonable and should likewise be approved.

**F. The Settlement Administrator's Costs Should be Approved**

The Parties have agreed to pay actual costs of administration, or Two Thousand Seven Hundred Fifty ($2,750.00), to the Settlement Administrator, Phoenix Settlement Administrators, to administer this Settlement. *See* SA §§ 1.22, 1.23, 4.2. The Parties believe that the administration fee is reasonable and should be approved.

**G. Plaintiff's Service Award Should be Approved**

Courts have held that named plaintiffs in class, or private attorney general actions can request a service award. *Rodriguez v. W. Publ'g Corp*., 563 F.3d 948, 958-59 (9th Cir. 2009) (explaining that service awards "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 **<u>willingness to act as a private attorney general</u>**") (emphasis added).

Here, Plaintiff seeks $2,500.00 as a Service Award, which is intended to compensate Plaintiff for the time spent on this case, including reviewing pleadings, the potential for hesitation from later prospective employers that might find out he brought this claim. *See* SA § 4.4; Declaration of Michael Gordon ¶¶ 7, 8. This requested enhancement is consistent with awards approved in other common fund cases. *See Van Vranken v. Atlantic Richfield Co*., 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of $50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig*., 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of $ 55,000, and three incentive awards of $35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a $50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp*., 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) ($50,000 awarded to each class representative); *Glass v. UBS Fin. Servs*., No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding $25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming $25,000 incentive award to class representative in ERISA case).

### H. Notice to the LWDA Has Been Provided

Concurrently with the filing of this Motion, Plaintiff uploaded the instant motion to the LWDA's website. *See* Agnew Decl. ¶ 51, Exhibit 5.

## V. CONCLUSION

Based on the above, Plaintiff requests the Court approve the current PAGA settlement.

DATED: April 6, 2026

DIVERSITY LAW GROUP, P.C.

By:______________________________
Larry W. Lee
Kristen M. Agnew
Attorneys for Plaintiff and the Aggrieved Employees

Journal Technologies Court Portal

# Make a Reservation

## MICHAEL GORDON vs ENDLESS PURSUIT CORPORATION

Case Number: 24STCV17375 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2024-07-12 Location: Stanley Mosk Courthouse - Department 54

## Reservation

| | |
|---|---|
| Case Name:<br>MICHAEL GORDON vs ENDLESS PURSUIT CORPORATION | Case Number:<br>24STCV17375 |
| Type:<br>Motion re: (Motion to Approval Settlement Pursuant to the PAGA) | Status:<br>RESERVED |
| Filing Party:<br>Michael Gordon (Plaintiff) | Location:<br>Stanley Mosk Courthouse - Department 54 |
| Date/Time:<br>06/03/2026 9:00 AM | Number of Motions:<br>1 |
| Reservation ID:<br>267923534821 | Confirmation Code:<br>CR-BBFN7XUPLRV9WR32X |

## Fees

| Description | Fee | Qty | Amount |
|---|---|---|---|
| Motion re: (name extension) | 0.00 | 1 | 0.00 |
| TOTAL | | | **$0.00** |

## Payment

| | |
|---|---|
| Amount:<br>$0.00 | Type:<br>NOFEE |
| Account Number:<br>n/a | Authorization:<br>n/a |
| Payment Date:<br>n/a | |

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