JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
jlapuyade@jcl-lawfirm.com
Perssia Razma (State Bar #351398)
prazma@jcl-lawfirm.com
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
shani@zakaylaw.com
Jackland K Hom (State Bar #327243)
jackland@zakaylaw.com
Jaclyn Joyce (State Bar #285124)
jaclyn@zakaylaw.com
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047

Attorneys for PLAINTIFFS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF STANISLAUS

PORSCHE BARRETT and LAELAH GROSS, individuals, on behalf of themselves, and on behalf of all other aggrieved employees, Plaintiffs, v. ARMADILLO HOLDINGS, LLC dba TEXAS ROADHOUSE, a Nevada Limited Liability Company; and Does 1 through 50, Inclusive, Defendant.	Case No. CV-22-003127 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE PAGA SETTLEMENT** Hearing Date: January 29, 2026 Hearing Time: 8:30 a.m. Judge: Hon. John D. Freeland Dept.: 23

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Porsche Barrett (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 3,284 Aggrieved Employees, defined as all non-exempt employees who worked for Defendant Armadillo Holdings LLC *dba* Texas Roadhouse ("Defendant") and performed work in California during the PAGA Period in California during the period between May 4, 2021, to December 31, 2024 ("PAGA Period"). Agreement at §§ I(B), I(U), III(A)(2). This is only a settlement of Plaintiff's PAGA claim for civil penalties and is <u>not</u> a class settlement and does <u>not</u> release the individual wage claims, if any, of the affected employees other than Plaintiff herself. Cal. Lab. Code § 2699(k)(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 One Million Five Hundred Fifty Thousand Dollars and Zero Cents ($1,550,000.00). Agreement at §§ I(L), III(A)(1). After deducting any Court-approved PAGA Counsel Award and the Claims Administration Costs, the Net Settlement Amount shall be distributed 75% to the LWDA and 25% to the Aggrieved Employees. Agreement at §§ I(C), I(N), I(S).

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., at ¶ 10.

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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. Plaintiffs' Exhaustion of Administrative Remedies Under PAGA

On May 4, 2022, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendant. JCL Dec., ¶ 4. 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(a)(2)(A), lapsed without the LWDA notifying Plaintiff that it intended to investigate the claims in the PAGA Notices. 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., at ¶¶ 11.

B. Plaintiffs' Civil Action Against Defendant

On July 11, 2022, Plaintiff filed a representative action complaint in the Stanislaus Superior Court, Case No. CV-22-003127, (the "Action") alleging a single cause of action for Violations of the Private Attorneys General Act [Labor Code §§ 2698 et seq.]. JCL Dec., ¶ 12.

On November 21, 2022, the Court granted Defendant's motion to compel arbitration of Plaintiff's individual PAGA claim and stayed the representative PAGA claims. JCL Dec., ¶ 13.

On February 12, 2024, Plaintiff filed an Arbitration Demand, *Barrett v. Armadillo Holdings LLC dba Texas Roadhouse,* Judicial Arbitration and Mediation Services (JAMS) Case No. 5130000687 (the "Arbitration"), asserting individual PAGA claims. On June 12, 2024, Plaintiff filed a First Amended Arbitration Demand to add individual wage and hour violations. JCL Dec., ¶ 14

On June 12, 2025, the Parties participated in an all-day mediation presided over by Hon. Brian Walsh, (Ret.) a retired jurist and experienced mediator of wage and hour representative actions, which led to this Settlement. 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, the total number of Aggrieved Employees and pay periods, written wage and hour policies, and a sample of time and payroll records for the Aggrieved Employees. The mediation led to 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., ¶ 15.

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 other than those of 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. JCL Dec., at ¶ 16.

Pursuant to California Labor Code Section 2699(s), Plaintiff is providing a copy of the Agreement and this motion to the LWDA concurrently with the filing of the instant motion for settlement approval as set forth in the accompanying proof of service. Additionally, Plaintiff will submit to the LWDA a copy of the Court's judgment and order approving the Agreement within ten (10) days after entry of judgment or order. JCL Dec., at ¶¶ 5, 17.

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(s)(2). The Agreement negotiated by the Parties provides for a "Gross Settlement Amount" payment in the amount of One Million Five Hundred Fifty Thousand Dollars and Zero Cents ($1,550,000.00) to resolve the Released PAGA Claims. From the Gross Settlement Amount, there is a deduction of the PAGA Counsel Award consisting of attorneys' fees of not more than one-third (1/3) of the Gross Settlement Amount (currently estimated to be Five Hundred Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents ($516,666.67) ***and*** costs and expenses supported by declaration not to

[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."

exceed Thirty Thousand Dollars and Zero Cents ($30,000.00), and payment of Claims Administration Costs in an amount not to exceed Fourteen Thousand Nine Hundred Ninety Dollars and Zero Cents ($14,990.00). Agreement at § III (8)-(9). After these deductions, the amount remaining is the Net Settlement Amount in an amount currently estimated to be Nine Hundred Eighty-Eight Thousand Three Hundred Forty-Three Dollars and Thirty Three Cents ($988,343.33).

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 Aggrieved Employee Payments. §§ I(C), I(N). This allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

B. Allocation of Aggrieved Employee Payments

The Settlement Administrator will calculate each Aggrieved Employee Payment by (a) taking the number of Pay Periods for each Aggrieved Employee and dividing it by the total number of Pay Periods for all Aggrieved Employees, resulting in a PAGA Payment Ratio for each individual; and (b) multiplying that PAGA Payment Ratio by the Aggrieved Employees' 25% share of the Net Settlement Amount. Agreement at § III(J)(1).

At the time of mediation, Defendant estimated that there were 3,284 Aggrieved Employees who worked 87,508 Pay Periods during the PAGA Period based on company records. The Parties agreed that if the actual number of Pay Periods worked by the Aggrieved Employees during the PAGA Period exceeded the estimated 87,508 Pay Periods by more than 10%, Defendant would have the option to either: (i) increase the Gross Settlement Amount by the actual percentage over 10% or (ii) end the PAGA Period on the date in which 91,883 Pay Periods are reached. Agreement at § III (A). On November 3, 2025, the Claims Administrator confirmed that it had received the Employee Data from Defendant. Using the Employee Data, the Claims Administrator confirmed the total number of Pay Periods worked by the Aggrieved Employees during the PAGA Period is 86,600. Accordingly, the actual number of Pay Periods worked during the PAGA Period does not exceed the agreed-upon number by more than 10%. JCL Dec., ¶ 18.

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C. Funding and Distribution

Defendant shall fund the Gross Settlement Amount to the Settlement Administrator no later than five (5) calendar days after the Effective Date (the "Funding Date"). The Effective Date means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. Agreement at § 1 (I).

Aggrieved Employee Payments shall be mailed by regular First-Class U.S. Mail to each Aggrieved Employee's last known mailing address within fourteen (14) calendar days after the Funding Date together with the Notice of PAGA Settlement. Agreement at § III (J)(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 § III(J)(6). 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 paid to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. *Id.*

D. Release of Claims

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 § III(B). The Released Parties are defined as Defendant, and its past, present, and future subsidiaries, parents, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, attorneys, personal representatives, executors, and shareholders (including but not limited to Texas Roadhouse, Inc.; Texas Roadhouse Holdings LLC; Texas Roadhouse Management Corp.; Texas Roadhouse Development Corporation; Ultra Steak Inc.; and Ultra Steak Affiliates, LLC and all of their related entities, officers, owners, investors, insurers, employees, etc.), including their respective pension, profit sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries. Agreement at § I(AA). The Released PAGA Claims include any claims under the California Private Attorneys General Act of 2004 contained in the operative Complaint or that could have been raised in the operative Complaint based on the allegations set forth therein, including, but not limited to, claims based on alleged violations of California Labor Code sections 201-203, 204, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 351, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and 2698, et seq., and the applicable IWC Wage Orders, 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 § I(Z).

Plaintiff entered into separate, standalone settlement agreement whereby Plaintiff agreed to a broad general release of her individuals claims, including a waiver of Civil Code 1542, in exchange for an individual settlement payment by Defendant. Agreement at § III(R). Plaintiff's general release of her individual claims is outlined in her separate agreement. Plaintiff will file this settlement agreement under seal for the Court to review in camera, at the Court's request. The Parties are unaware of any other cases, including class, individual and PAGA, that might be affected by this settlement. JCL Dec., at ¶ 19.

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.(s)(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 amount to be paid as part of the proposed Settlement.

A. The Gross Settlement Amount is Fair and Reasonable

The Gross Settlement Amount of $1,550,000.00 is fair and reasonable and, therefore, should be approved. Here, *without stacking* the PAGA penalties, Defendant's liability exposure is estimated at approximately $9,726,188.00 in PAGA penalties. Plaintiff's expert consultant estimated Defendant's exposure as follows:

Claim	Penalty Amount	Number of Pay Periods w/ Violation	Violation Rate	Total Penalties
Meal Period Violations Cal. Labor Code §§ 226.7 and 512	$50	70,006	80%	$3,500,320.00
Rest Period Violations Cal. Labor Code §§ 226.7 and 512	$50	70,006	80%	$3,500,320.00
Wage Statement Violations Cal. Labor Code § 226	$100	17,502	20%	$1,750,160.00
Business Reimbursement Violations Cal. Labor Code § 2802	$100	9,626	11%	$962,588.00
Unpaid Wages Cal. Labor Code §§ 201, 202, 203, 1194, 1197, and 1997.1	$100	128	0.15%	$12,800.00

JCL Dec., ¶ 20.

i. Estimated Penalties for Defendant's Alleged Meal Period Violations

Plaintiff alleges that Defendant failed to provide meal periods in violation of Cal. Lab. Code § 512. Specifically, Plaintiff alleges that the data provided by Defendant shows that meal breaks were late, short or missed, and no meal period premium was paid, in approximately 80% of all pay periods. Plaintiff also alleges that the short shift waivers used by Defendant were not voluntary. Class Members were selected with a prompt when clocking in asking if they would be waiving their meal period if their shift exceeded 5 hours, but was completed in 6 hours or less. If a Class Member selected "no", the screen would lock, and they were unable to continue clocking in without the assistance of a manager. JCL Dec., ¶ 21. Plaintiff's expert estimated the damages for this claim at $3,500,320.00. 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. The $50 penalty rate was used for a number of reasons in this instance. First, 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, off-the-clock work resulting in minimum wage and overtime violations, and regular rate violations. Thus, because section 558(a)(1) specifically provides for a civil penalty, Plaintiffs used a $50 penalty per violation for the meal break claims. Second, 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. *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."].) Third, 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 they prevailed in establishing the underlying Labor Code violations. For these reasons, Plaintiff utilized a $50 penalty rate. JCL Dec., ¶ 22.

ii. Estimated Penalties for Defendant's Alleged Meal Period Violations

Plaintiff further alleges that Defendant failed to provide rest breaks. Specifically, Plaintiff alleges that Class Members were unable to take rest periods, and that Defendant had no schedule in plan or plans for coverage to allow Class Members to take rest breaks. Plaintiff contends this allegation is supported by a sign posted in the kitchen alerting servers that there is "no time to stand still" and states that they can step into the break room if they need "a minute" to eat, drink, or check their phone. 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 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."). Considering Defendant's defenses, because time records do not monitor rest breaks, and assuming rest break violation occurred at a similar rate that meal break violations occurred, Plaintiff estimates Defendant's exposure for this claim to be approximately $3,500,320.00. This number was calculated by multiplying the assumed violation meal period rate by a penalty of $50. A $50 multiplier was used for the same reasons as outlined above. JCL Dec., ¶ 23.

iii. Estimated Penalties for Defendant's Unpaid Wages Violations

Plaintiff alleges that Defendant failed to pay for all hours worked. Plaintiff alleges that Defendant's tip pooling system was set up for servers to "tip out" a percentage of the total sales for that shift, rather than a percentage of the total tips. Accordingly, Plaintiff alleges that the money being tipped out to Aggrieved Employees (the bussers, hosts, bar tenders, line cooks, dishwashers and expediters) as a percentages of that shift's total sales was thus a commission, which needed to be calculated into the regular rate of pay for these employees for purposes of overtime, meal period premiums, and redeemed sick pay. JCL Dec., ¶ 24. Defendant denied that this policy equated to a commission, noted the lack of authority supporting this argument, and also argued that the number Aggrieved Employees that would be affected by this theory, even if accurate, was minimal. Taking Defendant's defenses into account, Plaintiff estimates Defendant's exposure for this claim to be approximately $12,800.00. This number was calculated by multiplying the number of affected pay periods by a penalty of $100. JCL Dec., ¶ 25.

iv. Estimated Penalties for Defendant's Violation of Labor Code §2802

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 the Zedic app on their personal cell phone or tablet in order to "check in" via the app 1-2 hours before each shift and answer a questionnaire as to whether they were experiencing covid symptoms or had been exposed to someone that was experiencing covid-like symptoms. If an employee responded to the prompts on the app's daily screening to indicate that they had experienced covid symptoms, the app would send them an automatic text message which required the employee to respond. Plaintiff estimates Defendant's exposure for this claim to be $962,588. This number was calculated by multiplying an 11% violation rate by the total number of pay periods by a penalty of $100. Plaintiff used an 11 % violation rate for this claim to reflect its belief that Aggrieved Employees incurred cell phone expenses approximately once per month, for approximately one year during the PAGA Period. Cal. Lab. Code § 2802 does not specifically provide for a civil penalty amount. Thus, the $100 penalty rate was used pursuant to Cal. Lab. Code § 2699(f). JCL Dec., ¶ 26.

B. Estimated Penalties for Defendant's Alleged Labor Code Section 226 Violations

Plaintiff alleges that Defendant's failure to pay Aggrieved Employees for all time worked and failure to pay all meal and rest period premiums results in derivative penalties under Labor Code Section 226(a). PAGA Counsel considered the arguable presence of these penalties and weighed the potential recoveries against probable defenses. Specifically, Plaintiff considered the difficultly in establishing that Aggrieved Employees suffered an "injury" because of wage statement violations, as required by Labor Code Section 226. Defendant could also argue that that meal and rest period violations do not entitle employees like Plaintiffs and the Aggrieved Employees to pursue the derivative itemized wage statement penalties. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 927). Plaintiff estimates Defendant's exposure for this claim to be $1,750,160.00. This number was calculated by applying an 80% discount, taking into account the obstacles noted above, and multiplying a 20% violation rate by the total number of pay periods by a penalty of $100. JCL Dec., ¶ 27.

C. The Gross Settlement Compares Favorably to The Likely Recover

In light of the above, the Gross Settlement Amount is approximately 16% of Defendant's potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely recovery of PAGA penalties through continued litigation. JCL Dec., ¶ 28. 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* 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. 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 Decl., ¶ 29.

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(e)(2)). JCL Dec., ¶ 30. In fact, courts routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g. Carrington v. Starbucks Corp*., 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to $5 per pay period; "Although the trial court may have disagreed with Starbucks regarding the issue of liability, it clearly took the circumstances proffered by Starbucks into consideration when it imposed the penalty … only $5 per initial violation"); *Kaanaana v. Barrett Bus. Servs., Inc*., 29 Cal. App. 5th 778, 788 (2018), review granted on other grounds (noting that the trial court "exercised its discretion to reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average, plaintiffs were deprived of 13 percent of the 30-minute meal period"); *Fleming v. Covidien, Inc*., 2011 WL 7563047, *4 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of PAGA civil penalties for plaintiffs' section 226 claims from $2,800,000 to $500,000 because the employees suffered no injuries as a result of the erroneous wage statements and made no complaints about the errors or omissions in the wage statements, thus reducing the maximum penalty by 82%); *see also*, *Gola v.*

University of San Francisco, 90 Cal. App. 5th 548 (2023), as modified (May 9, 2023), reh'g denied (May 15, 2023), review denied (July 12, 2023), and disapproved of on other grounds by Naranjo v. Spectrum Sec. Servs., Inc., 15 Cal. 5th 1056, 547 P.3d 980 (2024) (concluding after a full-blown bench trial that a penalty of 15% of the maximum PAGA penalties was the appropriate penalty). The gross amount obtained by PAGA Counsel is reasonable in light of Defendant's arguments.

Given Defendant's defenses to the claimed Labor Code violations at issue, and the risks and costs of continued litigation, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount is fair and reasonable. This Settlement was negotiated by experienced counsel at arm's length. JCL Dec., ¶ 31. The LWDA has been provided notice of this motion and the PAGA Settlement, and the decision of the 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., ¶ 32.

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

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

V. THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE

PAGA Counsel seeks approval of not more than one-third (1/3) of the Gross Settlement Amount (currently estimated to be Five Hundred Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents ($516,666.67)) and attorneys' expenses not to exceed $30,000.00[3] 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

[3] As detailed *infra,* at the time of filing this motion, PAGA Counsel incurred $14,779.67 litigating this matter, including the costs anticipated with the filing of this motion.

review the requested attorneys' fees, the requested fees and costs are reasonable for experienced wage and hour counsel. JCL Dec., ¶ 34.

A. The Requested PAGA Counsel Fees Payment is Fair and Reasonable

The requested attorneys' fees of one third of the Gross Settlement Amount, currently estimated to be $516,666.67, 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 $1,550,000.00, 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., ¶ 34.

Further, the fee award is justified by the work performed. Generally, the Ninth Circuit and California courts award multipliers between 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc*., 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp*., 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp*., No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority" range for risk multipliers).

As detailed in PAGA Counsels' time and billing records submitted herewith, PAGA Counsels' current combined loadstar is $283,965.00. JCL Dec., ¶¶ 48-51; Declaration of Shani Zakay ("Zakay Dec.") at ¶¶ 4-6. Thus, PAGA Counsel's fee request is equal to PAGA Counsel's loadstar with a reasonable multiplier of 1.8 – 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). Moreover, PAGA Counsel also spent approximately 19.3 hours for a total lodestar of $16,160.00 in connection with the arbitration opened by Plaintiff to prosecute her individual PAGA claims against Defendant. When taking this additional lodestar into account, the multiplier is further reduced to 1.7. JCL Dec., ¶ 54.

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). Including the anticipated costs anticipated with the filing of this Motion, PAGA Counsel collectively expended $14,779.67 prosecuting this action (JCL Law Firm, APC - $6,293.57; Zakay Law Group, APLC - $8,486.10.) JCL Dec. ¶¶ 7, 52-53; Zakay Dec., ¶¶ 7-8. 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., ¶¶ 9, 49.

VI. 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: November 17, 2025

ZAKAY LAW GROUP, APLC

By : ____________________
Jaclyn Joyce, Esq.