PROPOSED TENTATIVE

On November 25, 2024, plaintiff Judith Zarate Cruz, on behalf of the State and in a representative action for all aggrieved employees, filed a first amended complaint asking for civil penalties under the Private Attorneys General Act (Lab. Code,[1] § 2698, et seq.) (PAGA), against defendant Tri-Valley Vegetable Harvesting Inc. (defendant), for violations of sections 201, 202, 203, 226, 226, subdivision (a), 226.2, 226.3, 226.7, 510, 1194, 1194.2, 1198.5, 1199, and 2802. The representative action involved all "aggrieved employee" who are or have been employed as an hourly and/or piece-rate employee by defendant in California "since (1) year prior notice letter to the Labor & Workforce Development Agency ('LWDA') [October 28, 2023] and continuing to the present [through November 9, 2024]." According to the operative pleading, on October 28, 2022, plaintiff sent written notice to LWDA regarding all claims for civil penalties, which did not respond or otherwise provide notice that it intends to investigate. An amended notice was sent on September 9, 2024. Defendant filed an answer to the original complaint on March 6, 2023 (it filed no answer after the first amended pleading).[2]

On December 5, 2024, counsel for plaintiffs and the aggrieved employees filed a motion for approval of the PAGA settlement for $187,000 (gross settlement amount).[3] The settlement was consummated following "all-day mediation" on June 27, 2024, with an experienced wage and hour mediator, attorney Michael Strauss. Attached to the motion are declarations from 1) plaintiff's attorneys Liane Katzenstein Ly (which in turn includes the PAGA Settlement reached between the parties, the proposed notices to be sent to the aggrieved employees, and exhibits offered in support of the attorney's fees request, including a 2007 Billing Survey from the National Law Journal, a news articulated about $1,500 billing rates, a copy of the "Laffey Matrix," a costs ledger, and proof of submissions to the LWDA); 2) Sean Hartranft, Chief Executive Officer of Apex Class Action, LLC, a class action settlement administration company, along with a CV and billing invoice; and 3) a declaration from plaintiff. According to the declaration of attorney Liane Katzenstein Li, there are "approximately 10,058 PAGA Periods affecting approximately 400 Aggrieved Employees . . . ." (¶ 43.) Plaintiff asks the court to approve attorney's fees of $62,333.33 (.333333 of the overall settlement amount); to award litigation costs of $13,369.88; to appoint Apex Class Action as the third party administration and to award costs of up to $8,000; and to award an enhancement amount of $5,000 to plaintiff. This reduces the gross settlement amount to $97,796.69, of which 75%t or $73,347.52 would go

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1 All undesignated statutory references are to the Labor Code.

2 The parties should be aware that the Legislature recently amended the PAGA scheme, with changes applying to civil actions brought after June 19, 2024. (2024 Chapter 44 A.B. No. 2288; SB No. 92.) Under the new law, among other significant changes, the state receives 65% while the aggrieved employees receive 35% of the settlement proceeds. This civil action was filed before June 19, 2024, and thus the new provisions are inapplicable.

3 According to plaintiff, the parties "also entered into a separate confidential settlement for Plaintiff Judith Zarate Cruz's individual claims. Plaintiff has additional claims for wage and hour violations and [a] wrongful termination claim." (Motion, p.1, fn. 1.) No further information has been provided about this separate, confidential agreement.

to the state and 25% or $24,449.17 would go to the aggrieved employees. Plaintiff does not inform the court what the average payout for each aggrieved employee would be, but indicates the formula used for the special amounts as follows: "Each aggrieved employee shall receive a pro-rata portion of the remaining amount in PAGA penalties by diving the amount of the aggrieved employees 25% share of PAGA Penalties by the total number of PAGA Pay Periods during the Settlement Period during which all Aggrieved Employees were engaged as an hour and/or piece-rate employee in California for Defendant, and then multiplying the result by each aggrieved employee's respective number of pay periods they were employed in hourly and/or piece-rate positions during the Settlement Period." (Dec. of Liane Katzenstein Ly, ¶ 14.)

On January 6, 2025, attorney Liane Katzenstein Ly filed a notice "disassociating" as plaintiff's counsel; Eric Kingsley, Kelsey Szamet and Jessica Bulaon of Kingsley Szamet Employment Lawyers continue to serve a counsel of record.

The court will initially pose a preliminary concern. It will thereafter detail the legal principles that frame the nature of the court's inquiry, and then examine the merits of the present application, including the fairness of the settlement, the reasonableness of the attorney fees' and costs' requests, the appointment of and costs for the third party administrator, the fairness of the enhancement request, and the nature and quality of the notices and disbursement procedures associated with the settlement. The court will conclude with a summary of its determinations.

A) Preliminary Query

The court directs counsel to explain whether Ms. Katzenstein Ly's "dissociation" will have any impact on any aspect of today's hearing, or the administration of any future settlements disbursements. The court observes that Ms. Katzenstein's declaration was the primary evidence submitted in support, and the court is concerned that her absence today will impact the inquiry.

B) Legal Background

California's Labor Code contains a number of provisions designed to protect the health, safety, and compensation of workers, and employers who violate these statutes may be sued by employees for civil penalities, generally paid to the state. Under the PAGA, pursuant to section 2699, subdivision (a), any "aggrived employee" may pursue civil penalties on the state's behalf, with 75% going to the LWDA, leaving 25% for "aggrieved employees." (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 81.)

Because the plaintiff represents the same legal rights and interests as state labor law enforcement agencies, the California Superme Court has found that "a judgment in an

employee's action under the act binds not only that employee but also the state labor enforcement agencies." (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986.) That is, the judgment binds all those who would be bound by an action brought by the government, *including* nonparty employees. (*Ibid*.) There are two requirements for PAGA standing. The plaintiff must be an aggrieved employee, that is, someone "who was employed by the alleged violator" and against whom one or more of the alleged violations was committed. (*Id*. at p. 84; see *Shaw v. Superior Court of Contra Costa County* (2022) 78 Cal.App.5th 245, 254-255 [detailing the general background of the PAGA stautory scheme].) It appears these requirements have been satisifed.

That being said, "[former] section 2699, subdivision (l)(2) [now 2966, subdivision (s)(2)] requires the trial court to review and approve any PAGA settlement," and in so doing, the court must "ensure that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) A trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of the PAGA's purpose to remediate present labor law violations, prevent future ones, and to maximize enforcement of state labor laws. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76, disapproved on another ground in *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, 710-711; see also *Shaw v. Superior Court of Contra Costa County* (2022) 78 Cal.App.5th 245,263 [" We emphasize that in any case involving a proposed PAGA settlement, the trial court must review the settlement for fairness and 'scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the state's interests, and hence the public interest," citing *Moniz*].)[4] Because many of the factors used to evaluate class action settlements bear on a settlement's fairness – including the strength of the plaintiff's case, the risk, the state of the proceeding, the complexity and likely duration of further litigation, and the settlement amount – these factors can be useful evaluating the fairness of a PAGA settlement. (*Moniz, supra*, at p. 76.) "Given PAGA's purpose to protect the public interest, we also agree with the LWDA and federal district courts that have found it appropriate to review a PAGA settlement to ascertain whether a settlement is fair in view of PAGA's purposes and policies." (*Ibid*.) "We therefore hold that a trial court should evaluate the PAGA settlement to determine whether it is fair, reasonable and adequate in view of a PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Ibid.*)

C) Merits

Each of the enumerated categories listed above will be explored to determine whether the PAGA-only settlement is fair, reasonable, and adequate.

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[4] Plaintiff, in summarizing the relevant law, asserts as follows: "PAGA does not set forth standards for evaluating such settlements, *and the California appellate courts have not weighed in on the issue*." (Mem. Of Points and Authorities, p. 4.) This latter italicized statement is ***erroneous*** in light of *Moniz* and progeny. Counsel's failure to acknowledge this case law, and the articulated standards enunciated, is discussed later in this order.

i) LWDA's Presence/Any Objections

"The proposed settlement shall be submitted to the [LWDA] at the same time that it is submitted to the court." (§ 2699, subd. (s)(2).) Exhibit 6 to Liane Katzenstein Ly's declaration consists of an electronic copy of the submission made to the LWDA. LWDA has not appeared or otherwise objected to the proposed settlement.

ii) *Strength of Plaintiff's Case*

The PAGA provides that the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation " except for provisions in which a penalty is specifically provided. (Former § 2699, subd. (f)(2).) The civil penalty for wage statement violations is $250 for the initial violation and $1,000 for each subsequent violation. (§ 226.3.) However, a court may "award a lesser amount than the maximum civil penalty amount specified by this part 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." (§ 2699, subd. (e)(2).)

Plaintiff has identified approximately 400 aggrieved employees. According to the declaration of Liana Katzenstein Ly, plaintiff alleged an "off the clock claim, a [failure to] reimburse claim, and a wage statement claim" in each pay period – with approximately 10,058 PAGA Periods at issue. Plaintiff, assuming there was a single $100 violation during each pay period, determined that defendant's maximum exposure for each claim was $1,005,800 ($100 x. 10,058), meaning for those three claims, defendant's maximum liability was $3,017,400. Additionally, plaintiff believed that there were 1,790 shifts with rest period violations, and at $100 a violation, defendant's liability for rest periods was $179,000. Additionally, there were "also approximately 310 former employees involving waiting time penalties of $100 each (adding an additional exposure of $31,000), meaning defendant's maximum total liability exposure would be $3,227,400.

This amount, however, may be unrealistic should the action proceed to trial. Plaintiff's counsel feared the trial court could exercise its discretionary power to reduce this amount, with defendant notably urging the court to not to "stack" violations per section 2699, subdivision (e), thus reducing the amount of civil penalties. (Liane Katzenstein Ly, ¶¶ 50 to 51.) Further, defendant could advance a number of potentially meritorious arguments, as follows: 1) the aggrieved employees were properly paid and/or reimbursed in accordance with defendant's existing lawful policies, and that any alleged failure to pay was the result of inadvertence and clerical error; 2) aggrieved employees were provided with the opportunity to take meal and rest breaks in compliance with existing law; 3) no employees previously complained about alleged failure to pay wages, to provide breaks, to reimburse expenses, and to issue accurate itemized

wage statements; and 4) no employee suffered prejudice or harm or loss of actual money as result of any individual violation. While plaintiff's counsel felt that defendant failed to pay all wages and/or overtime claims, failed to provide/record rest and meal breaks, failed to reimburse for necessary business expenses, failed to issue lawful itemized wage statements, and failed to provide plaintiff with her personnel file and payroll records, all of these risk factors existed to either eliminate or substantially reduce the amount of any civil penalties imposed. Based on counsel's experience in handling wage and hour claims (detailed extensively in Ms. Lian Katzenstein Ly's declaration), and after factoring all risks into the calculus, counsel "believes that the settlement [of $187,000] is fair and reasonable . . . ."

The court finds these explanations and attestations persuasive, and thus determines that the $187,000 settlement is fair, reasonable, and adequate, based on the reassessed and ultimately discounted value of the lawsuit. The realistic reassessment of the lawsuit's value as detailed in counsel's declaration, coupled with the arms-length negotiation following mediation, supports the settlement amount. While the settlement amount is close to 6 percent of the maximum value of $3,227,400, counsel explanations, in light of the arms' length mediation, suggests this is reasonable. (*Haralson v. U.S. Aviation Services Corp.* (N.D. Cal. 2019) 383 F.Supp.3d 959, 972–973 [in this district, courts have raised concerns about settlements of less than 1% of the total value of a PAGA claim]; *Jennings v. Open Door Mktg., LLC*, No. 15-CV-04080-KAW, 2018 WL 4773057, at *9 (N.D. Cal. Oct. 3, 2018); *see also Cotter*, 176 F. Supp. 3d at 940 [finding problematic, among other things, the "seemingly arbitrary reduction of [the PAGA] penalty to a miniscule portion of the settlement amount – $ 122,250, which is less than one percent of the total"]; *cf. McLeod v. Bank of Am., N.A.*, No. 16-CV-03294-EMC, 2018 WL 5982863, at *4 (N.D. Cal. Nov. 14, 2018) [finding $50,000 PAGA allocation for claims estimated at $ 4.7 million – approximately 1.1 percent – adequate].) The court's conclusion is bolstered by counsel's experience, and the fact there was no evidence of collusion. Counsel has extensive experience in both wage and hour litigation.

iii) Is the Settlement Genuine, Meaningful, and Consistent with the Statutory Purposes of PAGA to Benefit the Public?

That being said, the court is troubled by the fact counsel in briefing fails to cite to – let alone acknowledge – more recent appellate California courts cases addressing the standard this court must apply when assessing the reasonableness of the PAGA settlement agreement. (See fn. 4, *ante*.) To recount: "Given PAGA's purpose to protect the public interest, we also agree with the LWDA and federal district courts that have found it appropriate to review a PAGA settlement to ascertain whether a settlement is fair in view of PAGA's purposes and policies. [Citations and fn. omitted.] We therefore hold that 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. . . ." (*Moniz, supra,* 72 Cal.App.5th at p. 77.) This point is reinforced by case law that observes PAGA and class actions serve different remedial purposes. A representative action under PAGA is ***not*** a class action. (*Huff v. Securitas Security Services, USA, Inc*. (2018) 23 Cal.App.5th 745, 757.) A PAGA claim is an enforcement action between the LWDA and the employer, with the PAGA plaintiff acting on behalf of the government. Although representative in nature, a PAGA claim is not simply a collection of individual claims for relief. There is no individual component to PAGA action. (*Kims v. Reins International California, Inc* (2020) 9 Cal.5th 73, 86.)

Plaintiff is directed at the hearing to address orally whether the $187,000 is fair, reasonable, and adequate, *given PAGA's purposes of remediating present labor law violations, deterring future ones, and maximizing enforcement*, under the standards enunciated by the *Moniz* court and progeny. For example, plaintiff fails to address the import of paragraphs 40 and 41 of the "PAGA Settlement Agreement," which (respectively) address confidentiality, and perhaps most notably, defendant's admission of *nonliability*. Further, the PAGA Settlement Agreement contemplates ***no*** nonmonetary relief, a factor identified by federal district courts cases as relevant in the PAGA settlement calculus. (*Manuel Perez and Macario Perez, plaintiffs, v. All AG, Inc., a California corporation; et al., Defendants. Additional Party Names: Gold Coast Farms, LLC, Means Nursery, Inc.* (E.D. Cal., July 23, 2021, No. 118CV00927 DADEPG) 2021 WL 3129602, at *3 ["in light of the substantial amount of penalties to be paid under the PAGA fund distribution, *the inclusion of non-monetary relief in the PAGA Agreement*, the lack of objection from the LWDA despite being provided timely notice of the terms of this proposed settlement, and the fact that the individual PAGA group members are not precluded from bringing actions against defendants to seek recovery, . . . the court concludes the parties PAGA agreement is [] fair, reasonable, and adequate in view of the PAGA's public policy goals"].) Finally, there is no argument made that the settlement "will deter future violations of the Labor Code . . . ." It is possible to argue that the ***aggregate*** settlement value -- $187,000 – itself appears sufficiently "robust" to ***alone*** satisfy the public benefits requirement for approval of a PAGA settlement, as there is no evidence that the PAGA civil penalties were inherently or fundamentally undervalued. And of course there has been no objection from LWDA. The point, however, is that plaintiff's counsel fails to address the relevant standard at all.

Accordingly, before the court can ultimately determine that the settlement amount is fair and reasonable, counsel will have to convince the court at the hearing that the PAGA settlement agreement satisfies the PAGA's purpose of remediating present labor code violations, deterring future ones, and maximizing enforcement of state wage and hour laws.

iv) Attorney's Fees and Costs (both Litigation Costs and Third-Party Settlement Costs)

Section 2699, subdivision (k)(1) provides in relevant part that any "employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fees . . . ." (*Attempa v. Redrazzani* (2018) 27 Cal.App.5th 809, 814, 829 [because the statute provides that a prevailing employee "shall be entitled" to recover attorney fees, such an award is a matter of right].) Further, successful PAGA plaintiffs are entitled to an award of reasonable costs. (*Id.* at p. 829; *Villacres, supra,* 189 Cal.App.4th at p. 578 ["If an employee prevails in a PAGA action, he or she is entitled to an award of reasonable attorney fees and costs."]; *Harrington v. Payroll Entertainment Services, Inc.* (2008) 160 Cal.App.4th 589, 594.) There really can be little doubt that plaintiff prevailed on the PAGA claims.

There nevertheless is little published California case law exploring the standards courts must apply in this context. What published California case law does exist provides that PAGA has its roots in the private attorney general doctrine per Code of Civil Procedure section 1021.5, which incorporates common fund principles for attorney-fee determinations. (See, e.g., *Hawkins v. City of Los Angeles* (2019) 40 Cal.App.5th 384, 397 [recognizing attorney's fees are authorized pursuant to § 2699(g)(1)), and determining fees were appropriately awarded on Code Civ. Proc. § 1021.5].) Further, the California Supreme Court has clarified, at least in the context of class action settlements, that trial courts may use a percentage method and cross-check the fee amount under the lodestar method. (*Laffite v. Robert Hale Internat. Inc.* (2016) 1 Cal.5th 480, 503, 504.) California federal district courts have looked to these discretionary standards in the PAGA context when, as here, the settlement amount involves a common fund. Regardless of which method is used, courts "have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." (*In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 94, citations omitted.)

Here, the settlement agreement creates a true common fund of $187,000, without any reversion to defendant, with net settlement proceeds going to the state and all representative class members. (*Laffite, supra,* 1 Cal.5th at p. 503.) Generally, the percentage method would be the typical way to determine the reasonableness of any attorney fee request. While the general benchmark in federal court is 25%, California allows trial courts a little more flexibility, including one-third of the settlement amount. (See, e.g., *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557, fn. 13 [empirical studies show that fee awards in class actions average around one-third of the recovery]; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11 [same].) The fee request of $62,333.33 under the percentage method is commensurate with existing practice in California.

As a cross-check, plaintiff's counsel claims that the lodestar calculation supports the percentage amount, for counsel spent 60.8 hours of attorney time to date (with an anticipated 10 hours to be performed after the present filing, for total number of 70.8 attorney hours). Four

attorneys worked on this matter to date (constituting the 60.8 hours performed), as follows: 1) Ms. Liane Katzenstein Ly, a partner, who bills at $800 an hour, who spent 25.8 hours on the matter (total – $20,600); 2) Eric Kingsley, a named partner, who bills at $1,100 an hour, who spent 11.1 hours on the matter (total $12,210); 3) Jessica Adlouni, associate attorney, who bills at $500 an hour, who spent 4.5 hours on the matter (total $2,250); and 4) Jessi Bulaon, an associate attorney, who bills at $450 an hour, who spent 19.4 hours on the matter (total - $8,730).[5] Of the total amount calculated under an unadorned lodestar calculation ($43,830), plaintiff adds a multiplier of 1.42 (given the difficult legal and factual questions presented), to calculate the ultimate lodestar amount as $62,238.6, commensurate with the percentage method.

The court has no issue with the number of attorney hours worked for purposes of the lodestar calculation cross-check. The court does not agree, however, that it is appropriate to sanction hourly billing rates of $1,100 and $800 for Mr. Kingsley and Ms. Katzenstein Ly, respectively, given the maximum hourly billing rates changed by local attorneys in this area (including Santa Barbara). The highest rates in this area range from $550 to $600. The court will therefore reduce Mr. Kingley's and Ms. Katzenstein Ly's hourly billing rates to $600 each for the lodestar calculation. With that said, the court also recognizes the need for out of area attorneys in wage and hour litigation in order to achieve successful litigation results, meaning as a practical matter that a greater multiplier should be used (rather than allowing elevated hourly billing rates). In the Ninth Circuit, for example, multipliers "ranging from one to four are frequently awarded . . . when the lodestar method is applied." (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 n. 6 [approving multiplier of 3.65].) The same is true in California courts. (*Wershba, supra,* 91 Cal.App.4th at p. 255 ["multipliers can range from 2 to 4 or even higher"]; *In re Lugo* (2008) 164 Cal.App.4th 1522, 1547 [same]; see generally *Chavez v. Netflix, Inc*. (2008) 162 Cal.app.4th 43, 66].) Recognizing the need for out of area counsels' expertise, given the contingency nature of the employment, coupled with the difficulty and complexity of the case, the court is willing to apply a multiplier of 2 (i.e., even if the court reduces the hourly rate to $600 an hour). (*Ketchum v, Moses* (2001) 24 Cal,4th 1122, 1132 [factors for a multiplier include novelty and difficulty of questions, skill displayed, extent to which the nature of the litigation precluded other employment, and the contingent nature of the fee award].) Under the new unadorned lodestar calculation, the new aggregate amount would be $33,120 (rather than $43,830). If the court applies a multiplier of 2, not. 1.42 for the reasons identified above, the amount would be $62,240. This supports the percentage method calculation.

The court finds that attorney fees of $62,333.33 are reasonable.

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[5] Plaintiff fails to describe or detail which of the four attorneys will work the additional 10 hours after the filing of the present motion. This failure is not fatal, as the lodestar calculation offered by plaintiff does not rely on these 10 hours – focusing exclusively on the 60.8 attorney hours worked to date. The court's analysis will focus on the latter number exclusively as a result.

As for costs, plaintiff's counsel asks for litigation costs of $13.869.98 (actual costs to date of $13,269.98, plus anticipated costs of $600). (The PAGA Settlement Agreement contemplates up to $16,000 in litigation costs). The costs are detailed in Exhibit 5 of the declaration of Ms. Katzenstein Ly. Generally, they appear reasonable, including filing fees, postage, and mediation costs of $5,325. The court, however, directs counsel to explain the nature of the $6,435 "research costs" listed in Exhibit 5. The reference is to "Trialworks Task Code," and an invoice to payee "Berger Consulting." The description is incomplete, and further explanations should be offered at the hearing before the court will approve. ***If*** the explanations are adequate, the court will approve the full costs of $13,869.98.

Finally, plaintiff asks the court to appoint Apex Class Action LLC as the third party administrator, and requests costs/fees of $7,990. Plaintiff has submitted the declaration of Sean Hartranft, CEO of Apex Class Action He describes Apex's qualifications and experience, describes the procedures utilized to protect aggrieved employee data, and describes the procedures that will be utilized in this matter, discussed below. He has attached Apex's curriculum vitae, and has attached to his declaration an invoice breaking down the costs, including translation costs into Spanish. The costs appear reasonable.

v) Enhancement

Plaintiff requests an incentive award of $5,000.00, which is expressly contemplated by the settlement agreement. (See Item 7 of "PAGA Settlement Agreement.) A PAGA plaintiff who prevails in or settles a case on behalf of the LWDA generally seeks an "incentive" or "service" payment that is paid from the penalties that the defendant must pay to the LWDA. These payments are non-statutory creations of the court similar to the "incentive" or "service" payments that are paid to class representatives. (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393-1395.)

While a $5,000 incentive award is not large *per se*, it is hard to assess because plaintiff's submissions do not discuss the amount in any meaningful way. For example, because the court is not told what the average payout to the aggrieved class will be, the court cannot tell what multiplier has been applied. That being said, the court observes that the net settlement amount for all aggrieved employees totals $24,449.17, which means that if the court simply divides it by 400 (the total number of aggrieved employees), the average payout would be $61.12 per employee. This means that plaintiff will receive an approximate multiplier of *81.806 over the average payout*. Case law has expressed some concern when there is a large disparity between an incentive award and the recovery of individual class members in the analogous class action context. (*Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 806, fn. 14, citing *Alberto v. GMRI, Inc*. (2008) 252 F.R.D. 652, 669 [given a proposed $5,000 incentive aware and an average $24.17 recovery (a multiple of just over 20), when there was no evidence demonstrating the quality of plaintiff's representative service; plaintiff should be prepared to

present evidence of the named plaintiff's "substantial efforts" as class representative to justify the discrepancy between the award and those of the unnamed plaintiffs"]; see also *Stanton v. Boeing Co*. (9th Cir, 2003) 327 F.3d 938, 975 [condemning a class enhancement of $30,000 when average payout was $1,000, a multiplier of 30]; compare with *Munoz* v. *BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 [noting there that class representatives would receive more than twice as much as the average payment to class members, in contrast to the multipliers of 30 and 44 in *Stanton* and *Clark*, respectively].) The multiplier here is much higher than the multiplier present in *Stanton* and *Clark.* Accordingly, the court will examine counsel's and plaintiff's declarations carefully to see whether sufficient evidence has been submitted to justify this request.

Ms. Liane Katzenstein Ky declares as follows. "The time spent by [plaintiff] includes identifying competent counsel, providing information to Plaintiff's Counsel regarding Plaintiff's relevant employment experiences, compiling documents, meeting with Plaintiff's Counsel frequently to discuss the status of the case and the theories of liability, reviewing settlement documents, and making herself available for full day of mediation. . . . The enhancements takes into consideration the time, effort, risks, and expenses incurred by Plaintiff in coming forward to ligate this matter on behalf of the Aggrieved Employees."

Plaintiff herself declares as follows: "I have spent significant time throughout this action working with Plaintiff's Counsel. Before filing this action, on January 3, 2023, I researched and identified counsel that I believed could best represent the interests of the Aggrieved Employees. I also assisted the attorney with investigations and gathering of information including discussing my work experience and the experience of others that I observed while working for [defendant] and provide all relevant employment documents in my possession. In addition, I attended a full day mediation on June 27, 2024. While at the Mediation, I actively participated in the discussions with Plaintiff's Counsel and shared my knowledge and insights in order to help the Aggrieved Employees obtain a favorable settlement. [¶]Throughout the entirety of the litigation, I have maintained regular contact with Plaintiff's Counsel and assisted in any way possible by providing information and making myself available as needed.." Finally, plaintiff "was aware that by helping initiate this lawsuit, my name would become known and it was possible that my involvement in this matter could make it more difficult for me to obtain employment in this field. Regardless, I believed it was important to proceed with this matter. . . ."

The court is aware that there have been no objections to the $5,000 enhancement. And, of course, it is also aware that the representative class is large and this case was seemingly complex. But even with this, the court is not convinced the present record contains enough to justify the $5,000 enhancement award, which (as noted) amounts to an approximate multiplier of over 81 times the average payout to the aggrieved employees. This gap is inordinate and gives the court pause. The factual recitations offered here seem as generic as the explanations condemned in *Clark*, a class action case that involved a 2 million settlement with an average recovery for class members of just over $550, with requests by each plaintiff for $25,000 enhancement, which

amounted to a multiplier of slightly over 45 times the average payout for each named plaintiff. (*Clark, supra*, at p. 805.) In that context the *Clark* court made the following observations that seem particularly apt here: "We simply cannot sanction, as within the trial court's discretion, incentive awards totaling $50,000, with nothing more than pro forma claims as to "countless hours' expended, 'potential stigma' and 'potential risk.' Significantly, ***more specificity, in the form of quantification of time and effort expended on the litigation***, ***and in form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required*** in order for the trial court to conclude that enhancement was 'necessary to induce [the named plaintiff] to participate in the suit . . . .' [Citation]." (*Clark, supra*, at pp. 806-807, emphasis added.) While there may be slightly more detail offered here than was offered in *Clark*, plaintiff or at least plaintiff's counsel needs to provide more specifics "in the form of quantification of time and effort expended on the litigation, and in form of reasoned explanation of financial or other risks incurred" by the named plaintiff. The court therefore directs counsel to provide a more detailed explanation (either from counsel or from plaintiff or both) about plaintiff's specific involvement in this lawsuit, as well as specifics about the risks she was subject to, before or at the hearing, in order to justify the $5,000 enhancement.

vi) The Nature of the Plan for Distribution to the Aggrieved Employees, and the Nature of the Release

Defendant has agreed to fund a qualified settlement account after the court approves the settlement. Further, defendant will fund the settlement in two installments, the first within 60 days following court approval, and the second following the 60 days after the first payment is made. Defendant must provide a list of all aggrieved employees within 30 days after court approval, and within 21 days after settlement amounts from defendant aggrieved employees will receive disbursement. The explanatory letter details the settlement and the check calculations; the impact of the settlement; the scope of the release, limited to the civil penalties (not individual claims); and a contact number. All are detailed in the PAGA Settlement Agreement, and all seem appropriate and reasonable.

D) Summary

- Counsel is directed to address what impact Ms. Liane Katzenstein Ly's "disassociation" has on the present inquiry, if any, as her declaration is the primary evidence offered.
- Counsel is also directed to explain at the hearing why the settlement amount of $187,000 comports with standards enunciated in *Moniz v. Adecco USA, Inc.*, (2021) 72 Cal.App.56, 76, disapproved on another ground in *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 710-711. *Moniz* held that "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." Plaintiff fails to cite or even acknowledge *Moniz* and progeny in briefing. It is evident from the settlement agreement and the notice to be sent to the aggrieved employees that defendant disavows any wrongdoing. ***How*** will this settlement "remediate present labor law violations, deter future ones," and maximize enforcement of state labor laws when defendant admits no wrongdoing?

- Counsel is directed to explain in greater detail the nature of the $6,435 "research costs" listed in Exhibit 5 attached to Ms. Liane Katzenstein Ly's declaration, associated with the request for litigation costs.
- Counsel is directed (either in supplemental declaration or orally) to provide greater detail as to why plaintiff should receive a $5,000 enhancement, which amounts approximately to over *81 times* the potential average payout to the aggrieved employees, under the standards enunciated in *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 806, and fn. 14, which seem to apply by analogy.
- ***If*** counsel's explanations are adequate, the court will find the settlement amount of $187,000 to be fair, reasonable, and adequate; award $62,333.33 in attorney's fees and up to $13,869.98 in litigation expenses; appoint Apex Class Action, LLC as the third party administrator, and award up to $7,990 in expenses; award a $5,000 incentive to plaintiff; and find all procedures to be adequate and reasonable. It will also sign the proposed order.