

PARTIES/ATTORNEYS

Plaintiff	Eric Diaz	Luke Clapp
Defendant	Porter and Howard Inc	Joshua Klein

PROPOSED TENTATIVE

On September 18, 2024, plaintiff Eric Diaz (plaintiff) filed a class action suit against defendant Porter and Howard, Inc. (dba as Toyota Santa Maria) (defendants), advancing numerous wage and hour violations (failure to pay overtime wages, failure to pay for meal- and rest-time periods, failure to pay minimum wages, failure to pay for timely final wages upon termination, failure to pay wages during employment, failure to provide accurate wage statements, and an unfair business claim per Business and Professions Code, section 17200, et al.). A first amended complaint (FAC) was filed on November 18, 2024, advancing, in addition to the above claims, a ninth cause of action for civil penalties pursuant to the Private Attorneys General Act (the PAGA). Briefly, plaintiff was employed by defendant as a “Parts Specialist” from November 1, 2022, to May 29, 2024, and all aggrieved employees are hourly paid or non-exempt workers who worked for defendant in the preceding four (4) years before the filing of the complaint. On November 7, 2025, the court signed an order submitted by plaintiff voluntarily dismissing all class allegations in the FAC without prejudice, leaving only the PAGA cause of action (the ninth).

On January 12, 2026, plaintiff filed a motion for approval of a settlement claim for all civil penalties under the PAGA (the ninth cause of action), following a full-day mediation session on June 9, 2025, as well as protracted and in-depth discussions with the mediator Monique Ngo-Bonnici thereafter, culminating in a November 4, 2025 settlement agreement. The class of aggrieved employees includes “all current and former non-exempt employees of Defendant who were employed by Defendant in California during the PAGA period” (i.e., between September 13, 2023, through June 9, 2025). Attached to the motion and memorandum of points and authorities are the following documents: 1) a “Notice of Motion and Motion for Approval of Settlement” under the PAGA, including a memorandum of points and authorities; 2) a declaration from attorney Ryan Chuman, which details his background, the procedural and factual background of the lawsuit, the terms of the settlement, his efforts in investigation and reasons for the decisions made to settle for the amounts at issue; 3) a declaration from Jodey Lawrence from third party administrator Phoenix Settlement Administrators; and 4) a declaration from named plaintiff Eric Diaz, explaining his efforts in securing the settlement.

According to the terms of the settlement, the settlement amount involves 192 aggrieved employees and a gross settlement amount of \$250,000, which is a common fund and non-

reversionary. This amount is reduced as follows: 1) \$87,500 for attorney’s fees (which amounts to 35% of the gross settlement amount); 2) litigation costs of \$18,628.40 (the settlement contemplates costs of up to \$30,000); 3) a \$4,000 payment to the third-party settlement administrator; and 4) an enhancement of \$10,000 to plaintiff Eric Davis. This leaves \$129,871.60 as the net settlement amount, of which 65% goes to the state of California (\$84,416.54), and 35% to the aggrieved employee class (\$45,455.06). The latter amount will be split between the 192 aggrieved employees on a pro-rata basis, based upon the number of pay periods worked by each employee during the PAGA period. The number of total pay periods are 5,692. Plaintiff’s counsel does not indicate in the briefing what the average payout will be for the aggrieved employees based on the total number of pay periods.

The court will summarize the legal principles that frame the nature of the court’s inquiry, and then examine the merits of the present application, exploring the fairness of the settlement, the reasonableness of any requests for attorney fees and costs, 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 conclusions.

A) Legal Background

California’s Labor Code¹ 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 penalties, generally paid to the state. Under the PAGA’s recently amended statutory scheme, effective July 1, 2024, per section 2699, subdivision (m), any “aggrieved employee” may pursue civil penalties on the state’s behalf, with 65% going to the LWDA, leaving 35% for “aggrieved employees.” (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 81; *Rose v. Hobby Lobby Stores, Inc.* (2025) 111 Cal.App.5th 162, 169 fn.2 [discussing new amendments].)

Because plaintiff represents the same legal rights and interests as state labor law enforcement agencies, the California Supreme 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

¹ All statutory references are to the Labor Code unless expressly indicated otherwise.

general background of the PAGA statutory scheme].) It appears these requirements have been satisfied.

That being said, “[former] section 2699, subdivision (l)(2) [now 2699, 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*].) Because many of the factors used to evaluate class action settlements also 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 when 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.*)

B) Merits

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

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).) According to Mr. Chuman’s declaration, paragraph 93, a copy of the fully executed settlement agreement was submitted with the California Workforce Development Agency (LWDA) online. A copy of the submission is attached to Mr. Chuman’s declaration as Exhibit 3. The LWDA has not appeared or otherwise objected to the proposed settlement.

ii) Strength of Plaintiff’s Case

The PAGA provides that the civil penalty generally 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).)

According to the briefing, and notably Mr. Chuman’s declaration, prior to mediation “Defendant provided the Plaintiff with extensive informal discovery including all applicable wage and hour policies in place during the PAGA period, a sampling of time and payroll data, and key data points regarding the number of aggrieved employees and pay periods at issue. This discovery, in conjunction with Plaintiff’s extensive prior investigation and analysis, allowed Plaintiff’s Counsel to conduct an informed assessment and analysis of Defendant’s potential exposure.” This allowed plaintiff’s counsel to determine that defendant’s maximum liability for all civil penalties was \$1,485,612 (based on 5,692 pay periods). The core allegations in the lawsuit are claims that defendant failed to pay for all time worked, including minimum and overtime wages, failed to provide compliant meal and rest periods, failed to pay wages during and upon termination of employment, and failed to provide accurate and payroll records; plaintiff argued that defendant pressured employees to miss, take late, and cut short meal periods, and did not receive complaint rest periods. This included alleged failure to pay for off-the clock work performed by aggrieved employees.

Defendant vigorously contested these claims, claiming its policies and practices at all times comported with California law; and that it complied with all meal and rest break requirements. It argued there were numerous individualized issues that made PAGA claims unmanageable, underscoring recent amendments to the PAGA scheme that afford the court discretion to limit the scope of PAGA claims and the evidence presented at trial. Plaintiff’s counsel was concerned with the substantial risks associated with penalties, some of which were derivative and could not be claimed, as well as the trial court’s discretion to lower penalties, and defendant’s claims pursuant to section 2699, subdivision (h)(1) that the penalties should be capped at 30% because it had taken reasonable steps to comply with the Labor Code. Further, according to Mr. Chuman, plaintiff’s counsel was cognizant that “protracted litigation of PAGA claims would be expensive, time-consuming, and extremely uncertain” Thus, according to plaintiff’s counsel, “while I believe Plaintiff would ultimately prevail on his PAGA claims, I reduced the valuation of the case by considering the following factors. First, taking into consideration the potential individualized issues relating to the alleged PAGA claims, and concerns regarding manageability of these claims at trial, I reduced my valuation of the case by

50%” (i.e., to \$742,806). “Second, in consideration for merits-based risk factors, including the risks associated prevailing at trial, my officer discounted Defendant’s estimated liability an additional 50%” (i.e., to \$371,403). “Finally, in consideration [of] the unique risks associated with PAGA including the potential for the Court to reduce any assessed penalties, I reduced the estimated recovery by an additional . . . 33.33%” (i.e., to approximately \$247,500). The \$250,000 settlement amount was in counsel’s opinion reasonable in light of these calculations.

The court agrees that the gross settlement amount is fair, reasonable and adequate. Counsel has detailed his extensive experience with wage and hour litigation in this context. Further, it is clear the settlement amount was reached through a rigorous mediation process with an experienced wage and hour mediator. Counsel’s reassessment, coupled with the arms-length negotiation following mediation, the volume of information obtained, and counsel’s detailed experience as outlined in her declaration, supports the reasonableness of the settlement amount. This is particularly true given the detailed explanations provided by Mr. Chuman in his declaration to support the discounted value of the lawsuit. The court likely would find the settlement amount to be reasonable, fair and adequate, even based on the maximum value, although that amount seems unrealistic, as explained by counsel in his declaration. (See, e.g., *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 finds the \$250,000 settlement amount to be fair, reasonable, and adequate.

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

Even with this said, pursuant to *Moniz v. Adecco USA, Inc. supra*, 72 Cal.App.5th 56, the court must assess the reasonableness of the PAGA settlement agreement with the following in mind: “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, emphasis added.) This point is reinforced by case law that recognizes the PAGA and class actions serve different remedial purposes. A representative action under the PAGA is **not** a class action. (*Huff v. Securitas Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 757.) The 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, the PAGA claim is not simply a collection of individual claims for relief. There is no individual component to the PAGA action. (*Kims v. Reins International California, Inc* (2020) 9 Cal.5th 73, 86.)

Plaintiff cites to *Moniz* (on page 6 of the memorandum of points and authorities), but fails to address the highlighted standard above. Plaintiff is directed to address at the hearing whether the \$250,000 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 *Moniz*. Notably, and most troubling to the court, plaintiff fails to address the import of four particular parts of the settlement agreement, which is attached to Mr. Chuman’s declaration. In Paragraph 47, the parties agreed that nothing “in the agreement is intended or will be construed as an admission by Defendant that the claims and allegations in the Action have merit or that Defendant bear any liability to Plaintiff, the State of California, or the PAGA Members on such claims or other claims. . . .” Paragraph 49 provides in relevant part that the “agreement nor its terms, nor any statements or conduct in the negotiation or drafting of it, shall be admissible, offered or used as evidence by Plaintiff, any PAGA Members, or their respective counsel in the Action or in any other proceeding as evidence of liability or wrongdoing by Defendant and/or the Released Parties . . . , including but not limited to judicial, quasi-judicial, administrative, or governmental proceeding” Paragraph 69 provides that the parties and counsel “agree that no Party or his/its counsel shall issue any press release to the news media, or communicate in any way with any news media, concerning the Settlement or the litigation.” And paragraph 70 provides that defendant “makes no admission of liability or wrongdoing by virtue of entering into this Agreement,” and nothing in the agreement “is intended or will be construed as an admission by Defendant of liability or wrongdoing.”

How is the public benefited, and how are the wage and hour laws enforced as required by *Moniz* in the future, when the settlement agreement contains these four provisions? How are wage and hour laws enforced in the future when defendant offers no admission of liability, and the settlement cannot be used as evidence of wrongdoing? Perhaps to compound the problem, nothing in the settlement agreement here contemplates any form of nonmonetary relief, a factor identified by federal district courts 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”].) While it remains true that in ascertaining the fairness of a PAGA settlement, a trial court may consider many of the same factors used to evaluate the fairness of class action settlements, “including the strength of the plaintiffs' case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount,” (*Moniz, supra*, at p. 77), plaintiff has simply ignored the highlighted standards contained in *Moniz* and progeny. Plaintiff makes no argument that the settlement “will deter future violations of the Labor Code” Of course, it is possible to argue that the **aggregate** settlement value -- \$250,000 -- is sufficiently “robust” **alone** to 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. Plaintiff’s counsel, however, cannot simply ignore these requirements. This omission is troubling and must be addressed at the hearing.

Accordingly, before the court can determine whether the settlement amount is fair, reasonable and adequate, counsel will have to address at the hearing whether the PAGA settlement agreement satisfies PAGA’s purpose of remediating present labor code violations, deterring future ones, and maximizing enforcement of state wage and hour laws, in light of paragraphs 47, 49, 69 and 70 of the settlement agreement.

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

Plaintiff asks for \$87,500 in attorney’s fees. 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 has prevailed on the PAGA claims.

There is little published California case law exploring the standards courts must apply in this context. What published California case law does exist provides that the 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 \$250,000 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. (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 \$87,500, which amounts to approximately 35% of the gross settlement amount, is commensurate with existing practice in California. As a cross-check, plaintiff’s counsel has provided a bill statement attached as Exhibit 4 to his declaration. The declaration indicating the following attorneys have worked on the action to date, involving 146.1 hours: Mr. Chuman bills at \$750 an hour, Mr. Nayebdadash bills at \$825 an hour, Mr. Clapp bills at \$750 an hour, and Mr. Tan bills at \$625 an hour, with a “blended rate” of \$650 an hour, meaning the billed rate would be \$94,965.5.

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 a “blended rate” of \$650, as the highest rates in this area (including Santa Barbara) range from \$500 to \$600. That being said, even if the court uses the reduced rate of \$500 per hour for its calculation, which amounts to \$73,050, the court recognizes a need for out-of-area attorneys in wage and hour litigation, which is necessary to achieve successful litigation results. This means the court would apply a multiplier figure to \$73,500. 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 expertise, and 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 1.2 (i.e., even if the court reduces the hourly rate to \$500 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 lodestar calculation, the new aggregate amount would be \$87,660, which supports the percentage method calculation discussed above.

Accordingly, the court appoints Protection Law Group as counsel and finds that attorney fees of \$87,500 are reasonable.

As for litigation costs, the settlement agreement contemplates litigation costs up to \$30,000, although counsel is asking for actual costs of \$18,628.40, which are explained in Exhibit 5 to Mr. Chuman's declaration. Most of the costs (\$12,941.25) are for mediator expenses. The costs appear reasonable. The court awards litigation costs of \$18,628.40 (which includes estimated future costs).

Finally, plaintiff asks the court to appoint Phoenix Class Action Settlement Administration Solutions as the third-party administrator, and requests costs/fees of up to 4,000. According to the declaration of Jodey Lawrence, Phoenix Class Action Settlement Administration Solutions has extensive experience in representative actions. In Exhibit A, attached to the declaration, there is an invoice for \$4,000 in costs. The court appoints Phoenix Class Action Administration Solutions and approves costs of \$4,000.

v) *\$10,000 Enhancement*

Plaintiff Eric Diaz is asking the court to approve an enhancement of \$10,000. Mr. Diaz has submitted a declaration attempting to explain why he is entitled to this amount. Plaintiff declares as follows: “. . . Following my employment with Defendant, I decided to seek legal advice about my experiences working for Defendant and about pursuing my grievances against them. [¶] After speaking with my attorneys, I agreed to serve as a PAGA Representative in this case.” I was aware that becoming a representative “could involve additional work searching for documents, my deposition being taken, and that I might have to take time off to participate in the Action.” He declares that he engaged in numerous conversations with his attorneys, including defendant's policies and practices, compensation, and training. In addition, “I had several follow up discussions with my attorneys throughout the case when they encountered a problem or needed additional information,” making himself “available” when information was needed. When the case settled, he “reviewed the Settlement Agreement and discussed its terms with my attorneys,” and “kept in contact with my attorneys throughout the settlement process and provided additional information when my attorneys reached out to me.” Finally, he has “spent considerable time meeting with my attorneys regarding the litigation and fulfilling my responsibilities as a PAGA representative, including gathering documents . . . , answer questions . . . , providing guidance . . . , and helping develop a strategy as to what documents and

information to obtain from Defendant. I routinely checked in with my attorneys and their staff to make sure that they had all of most current information and any additional information that I had obtained.” Finally, “I believe that I took on substantial risk [] to serve as the PAGA Representative in this matter despite being made aware that there was no certainty regarding the outcome of the case or how long the case would ultimately take.”

Attorney Chuman declares in relevant part as follows: The \$10,000 enhancement is justified “because of the extensive time Plaintiff spent and the assistance he has provided [] throughout this litigation,” for plaintiff was “intimately involved” and served as an “indispensable resource.” The amount also recognizes that his general release is “far broader” than other aggrieved employees. “Additionally, Plaintiff faces actual risks with respect to his future employment by putting himself on public record in an employment lawsuit. . . .” ,

The court is aware that no objections have been made to the enhancement amount, and that the representative class of 192 employees is large. It is also aware, based on the readjusted numbers as discussed above, that \$45,455.06 will be available to the 192 aggrieved class. Although at no point in the briefing does plaintiff’s counsel alert the court to the average payout, basic math provides a possible baseline - \$236.74 (\$45,455.06 divided by 192). The \$10,000 enhancement constitutes an approximate **multiplier of 42.24** over the average payout. In the analogous context of class action suits, courts have expressed grave concern when there is a large disparity between an incentive award and the recovery of individual class members. (*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 award and an average \$24.17 recovery (a multiple of over 200), 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 (based on an enhancement award of \$10,000) falls within the range that courts have expressed concern.

Mr. Diaz’s and Mr. Chuman’s declarations as presented do not alleviate these concerns. As noted in *Clark*, when there is such a great disparity, it would be inappropriate to give an incentive award “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 efforts expended on litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiff[], is required in order for the trial court to conclude that an enhancement was ‘necessary to induce [the named plaintiff] to participate in the suit’” (*Clark, supra*, at pp. 06-807.) The defects in the *Clark* declarations are present in

the two declarations here. The court acknowledges that Mr. Diaz's release may be broader than other aggrieved employees' release. But given the disparity at issue, Mr. Diaz and Mr. Chuman must quantify the relevant time actually spent, explain what specific risks were actually at play, and otherwise explain Mr. Diaz's involvement with more specificity rather than general exhortations.

Plaintiff's counsel is directed to address these concerns at the hearing. If counsel does not address them to the court's satisfaction, the court will lower the enhancement to \$5,000.

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

The court wants counsel to confirm at the hearing that the notice to be sent to putative aggrieved employees will be both in English and Spanish. Otherwise, the letter notice and the payment instructions to be sent to the aggrieved employees (the representative class) seem reasonable. The notice describes the nature of the case, the attorneys representing both sides, a description of how the settlement impacts the rights of the aggrieved employees, how much a person can expect to receive minus all deductions discussed above, and the representative class. The notice details the nature of any release. It describes what happens if the checks are uncashed (going to *cy près* recipient Legal Aid at Work). The court will ask counsel to confirm at the hearing that it has no interest in Legal Aid at Work as a recipient, and if there is no interest, the recipient is approved (otherwise the California State Controller is approved, pursuant to the settlement agreement). The court finds that the declaration submitted by Jodey Lawrence adequately explains the procedures to be followed by the third-party administrator in who the settlement will be disbursed. All requirements seem reasonable.

C) *Summary*

- Counsel is directed to address at the hearing whether the notice sent to the putative aggrieved employee class will be in both Spanish and English.
- Counsel is also directed to address whether it has any interest in the *cy près* recipient Legal Aid at Work. If there is no interest, the recipient is approved (if there is an interest, the recipient will be the State Controller per the settlement agreement).
- Counsel is directed to explain at the hearing why the settlement amount of \$250,000 comports with the 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, while citing to *Moniz*, fails to acknowledge this standard. Plaintiff is directed to explain at the hearing, to the court's satisfaction, how this settlement "remediate[s] present labor law

violations, deter future ones,” and maximizes enforcement of state labor laws when defendant admits no wrongdoing and the agreement is confidential, as clearly contemplated in the settlement agreement. Specifically, plaintiff should address the impact of paragraphs 47, 49, 69 and 70 in the settlement agreement under the *Moniz* calculus.

- Counsel is also directed to address why a \$10,000 enhancement is appropriate, when it amounts to a 42.24 multiplier over the supposed average payout, a very high number. Mr. Diaz’s and Mr. Chuman’s declarations are too bare boned to justify such an incentive disparity, under the authority of *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 806-807 in the analogous context of class action enhancements. Counsel should address these problems at the hearing to the court’s satisfaction. If not, the court will reduce the enhancement to \$5,000.
- ***If*** counsel’s explanations about the above matters are satisfactory, the court will 1) find the settlement amount of \$250,000 to be fair, reasonable, and adequate; 2) will appoint Protection Law Group, LLP as counsel and award \$87,500 in attorney’s fees and \$18,628.40 in litigation costs; 3) appoint Phoenix Class Action Administration Solutions as the third-party administrator, and award up to \$4,000 in costs; 4) award either \$5,000 or \$10,000 enhancement to Mr. Diaz, based on the supplemental showing made at the hearing; and 5) determine that all payment procedures are adequate and reasonable.
- Plaintiff is directed to provide a new proposed order for signature if there are any readjusted figures; otherwise, the court will sign the proposed order as filed.
- Counsel is directed to appear either in person or by Zoom at the hearing.