

1 DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
2 david@yeremianlaw.com
Roman Shkodnik (SBN 285152)
3 roman@yeremianlaw.com
535 N. Brand Blvd., Suite 705
4 Glendale, California 91203
Telephone: (818) 230-8380
5 Facsimile: (818) 230-0308

6 DAVTYAN PROFESSIONAL LAW CORPORATION
Emil Davtyan (SBN 299363)
7 emil@davtyanlaw.com
880 E. Broadway
8 Glendale, California 91205
Telephone: (818) 875-2008
9 Facsimile: (818) 722-3974

10 Attorneys for Plaintiff
ROBERT IRWIN,
11 on behalf of himself and others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ORANGE**

14 ROBERT IRWIN, on behalf of himself and
15 others similarly situated,

16 Plaintiff,

17 v.

18 DURABAG COMPANY INC., a Hawaii
Corporation; TRINET HR II, INC., a Delaware
19 Corporation; TRINET USA, INC., a Delaware
Corporation; and DOES 1 through 50,
20 inclusive

21
22 Defendants.
23

Case No. 30-2020-01145526-CU-OE-CXC

Hon. Peter Wilson

**NOTICE OF MOTION AND MOTION TO
APPROVE THE PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT AND
RELEASE UNDER CALIFORNIA LABOR
CODE §§ 2698 et seq.**

*[filed concurrently with Declaration of David
Yeremian; and [Proposed] Order]*

Date: September 9, 2021
Time: 2:30 p.m.
Dept.: CX102

1 **TO THE COURT AND DEFENDANT AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on September 9, 2021 at 2:30 p.m.in Department CX102 of
3 the above-entitled Court, located at 751 West Santa Ana Blvd Santa Ana, CA 92701, Plaintiff Robert
4 Irwin (collectively “Plaintiff” or “PAGA Representative”), on behalf of himself and all persons
5 similarly situated, will and hereby do move this Court pursuant to California Labor Code § 2698 *et*
6 *seq.* for an order approving the settlement agreement between Plaintiff and Defendant Durabag
7 Company, Inc. (“Defendant”) which will accomplish the following: approve the representative
8 action settlement embodied in the Private Attorney General Act Settlement Agreement and General
9 and Limited Release; approve PAGA Counsel’s application for attorney’s fees and litigation costs;
10 and enter judgment approving the representative action settlement and release.

11 The grounds for this Motion, as set forth in the attached memorandum of points and
12 authorities and supporting declaration, are that this is a fair and reasonable settlement that benefits
13 the PAGA aggrieved employees and was the product of informed, non-collusive negotiations by
14 parties who were represented by experienced and able counsel. *See Wershba v. Apple Computer,*
15 *Inc.*, 91 Cal. App 4th 224, 244-45 (1996); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802
16 (1996); Manual for Complex Litigation, (Second), § 30.44 (1985).

17 Defendant does not oppose this motion, or the requests made herein.

18 Plaintiff base this Motion on this Notice and the accompanying Memorandum of Points and
19 Authorities, the Declaration of David Yeremian, the complete pleadings, records and files in the
20 case, and such other further oral and documentary evidence which may be submitted at or before the
21 hearing on this Motion.

22
23 DATED: August 12, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

24
25 By



David Yeremian

Roman Shkodnik

Attorneys for Robert Irwin on behalf of himself and
26 others similarly situated
27
28

TABLE OF CONTENTS

MEMORANDUM OF POINTS AND AUTHORITIES3

I. Introduction.....3

II. Statement of the Case4

 A. Procedural History4

 B. PAGA Counsel’s Investigation5

 C. Settlement Negotiations.....5

 D. Settlement Agreement and Accompanying Documents.....6

III. Discussion.....7

 A. The Relief Obtained Through the PAGA Settlement is Genuine, Meaningful, and
Consistent with the Underlying Purpose of the Statute to Benefit the Public7

 B. The Requested Attorney Fees and Cost Award Should Be Approved.....10

 1. The Payment of Attorneys’ Fees Is Reasonable and Therefore Falls within the
Range of Approval by the Court10

 2. The Request for PAGA Counsel’s Costs Are Reasonable14

IV. CONCLUSION.....14

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Amaral v. Cintas,</i> 163 Cal. App. 4th 1157, 1207-09 (2008).....	9
<i>Bond v. Ferguson Enters.,</i> 2011 U.S. Dist. LEXIS 70390 (E.D. Cal. June 29, 2011).....	14
<i>Carrington v. Starbucks Corp.,</i> 30 Cal. App. 5th 504, 529 (2018).....	10
<i>Crowley v. Katleman,</i> 8 Cal. 4 th 666, 681-82) (1994).....	10
<i>Cunningham v. Leslie's Poolmart, Inc.</i> No. CV 13-2122 CAS (CWx), 2013 WL 3233211 (C.D. Cal. Jun. 25, 2013).....	9
<i>Dunk v. Ford Motor Co.,</i> 48 Cal. App. 4th 1794, 1802 (1996).....	2
<i>In re United Energy Corp. Solar Power Modules Tax Shelter Inv. Secs. Litig.,</i> 1989 U.S. Dist. LEXIS 19146 (C.D. Cal. Mar. 9, 1989).....	14
<i>Laffitte v. Robert Half Intern. Inc.,</i> 205 Cal.Rptr.3d 555 (2016).....	10
<i>Lealao v. Beneficial Calif., Inc.</i> 82 Cal.App.4th 19 (2000).....	11
<i>Li v. A Perfect Day Franchise, Inc.,</i> 2012 WL 2236752, *17 (N.D. Cal.2012).....	10
<i>O'Connor v. Uber Technologies, Inc.</i> (N.D. Cal. 2016) 201 F.Supp.3D 1110.....	3
<i>Sanchez v. McDonald's Corp.</i> LASC Case No. No. BC 499888 (2017).....	10
<i>Thurman v. Bayshore</i> 203 Cal. App. 4th 1112 (2012).....	10

1	<i>Vasquez v. Coast Valley Roofing, Inc.</i>	
2	266 F.R.D. 482(E.D. Cal. 2010).....	14
3	<i>Villacres v. ABM Indus., Inc.,</i>	
4	189 Cal.App.4 th 562, 577 (2010).....	9
5	<i>Villalobos v. Calandri Sunrise Farm LP.</i>	
6	(C.D. CAL., July 22, 2015, NO. CV122615PSGJEMX) 2015 12732709.....	3
7	<i>Wershba v. Apple Computer, Inc.,</i>	
8	91 Cal. App 4th 224, 244-45 (1996).....	2
9	Statutes	
10	Labor Code § 226.....	7, 9
11	Labor Code § 2698 <i>et seq.</i>	1, 3, 9
12	Labor Code § 2699 <i>et seq.</i>	6, 7, 9
13	Labor Code § 2699(a)(1)	4
14	Labor Code § 2699(e)(2)	11
15	Labor Code § 2699(f).....	9
16	Labor Code § 2699(i).....	4, 9
17	Labor Code § 2699(l).....	3
18	Labor Code § 2699.3(a)(1)	4
19	Labor Code § 2699.3(a)(2)	4
20	Labor Code § 2699.5.....	9

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

This Motion to Approve Settlement and Release of PAGA Claims (the “Motion for Approval”) is made to enforce the terms of the settlement entered into by and between Plaintiff Robert Irwin (“Plaintiff” or “PAGA Representative”), and Durabag Company, Inc. (“Defendant”). Plaintiff and Defendant shall be collectively referred to as the “Parties.” A copy of the Stipulation Regarding the Settlement of the Representative Private Attorneys General Act Action (hereinafter “Settlement” or “Stipulation”) entered into by the Parties is attached to the concurrently filed Declaration of David Yeremian as **Exhibit 2**. Plaintiff seeks, without opposition from Defendant, an order from the Court approving the Settlement under Labor Code §§ 2698 *et seq.*

The proposed Settlement will dispose of the Private Attorneys General Act (“PAGA”) claim alleged in the Action, which is predicated upon various alleged violations of the California Labor Code, stemming from Defendant’s alleged employment practices with regard to the employees of Defendant, (hereinafter “Aggrieved Employees”).

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the “court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part.” See Labor Code § 2699(l). In deciding whether to grant approval of the proposed Settlement, the primary issue to be decided is whether the Settlement is fair, adequate, and reasonable. Specifically, the issues are whether the PAGA penalties to which the Parties have agreed provide “genuine and meaningful” relief, “consistent with the underlying purpose of the statute to benefit the public” (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV122615PSGJEMX) 2015 12732709, at 5.), and whether the penalties are reasonable in light of the potential verdict value in this case (*O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135). As set forth herein, the proposed Settlement embodies all of the features of a settlement that is fair, adequate and reasonable, as it is the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage and hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the PAGA claim, and (4) it reflects a reasoned compromise based directly on

1 the relative strength and value of the PAGA claims, as well as the risks, expense, complexity and
2 likely duration of further litigation.

3 Aggrieved Employees are defined as: “all individuals who are or previously were employed by
4 Defendant in California who were classified as non-exempt during the time period February 24, 2019
5 through January 25, 2021.” In this case, there are 111 Aggrieved Employees.¹

6 The value achieved by the Settlement may be gleaned from the fact that the Gross Fund
7 Value is \$95,000.00 and that the LWDA and the Aggrieved Employees encompassed by the
8 Settlement will receive no less than \$46,710.85 under the terms of the Settlement, which, pursuant to
9 the operative statute, shall be allocated “75 percent to the Labor and Workforce Development
10 Agency. . . and 25 percent to the aggrieved employees.” See Cal. Lab. Code § 2699(i). This is a
11 significant recovery, not only because further litigation may have resulted in a net-zero recovery
12 based on the defenses asserted by Defendant, but because the amount secured by Plaintiff is
13 exponentially above other PAGA penalty awards approved as reasonable in these types of cases.

14 For these reasons, as set forth more fully herein, Plaintiff respectfully requests that this Court
15 enter the proposed Order submitted herewith.

16 **II. Statement of the Case**

17 **A. Procedural History**

18 On February 24, 2020, Plaintiff Robert Irwin filed a claim notice online with the California
19 Labor & Workforce Development Agency (“LWDA”) pursuant to Labor Code § 2699.3(a)(1),
20 giving notice of violations by Defendant and Trinet Hr II, Inc., and Trinet USA, Inc. of various
21 Labor Code violations. (See Declaration of David Yeremian (Yeremian Decl.”), filed concurrently
22 herewith, ¶ 4; Exhibit 1). The LWDA declined to investigate the violations alleged. *Id.* Pursuant to
23 Labor Code § 2699.3(a)(2), after 65 days from the mailing of the notice to the LWDA, Plaintiff had
24 a private right of action to bring the instant case. Plaintiff has also given notice of this stipulation for
25 settlement to the LWDA. (See Yeremian Decl. ¶ 42; Exhibit 7).

26 On June 29, 2020, after 65 days from the mailing of the notice to the LWDA, Plaintiff filed a

27 ¹ The release parties will include Durabag Company Inc., Trinet Hr II, Inc., Trinet, Trinet USA, Inc.
28

1 putative PAGA Complaint against Defendant and Trinet Hr II, Inc., Trinet USA, Inc. in the Superior
2 Court for the State of California, in Orange County, Case Number 30-2020-01151374-CU-OE-CJC,
3 alleging claims for (1) failure to pay minimum wages; (2) failure to pay wages and overtime; (3)
4 failure to furnish accurate itemized wage statements; (4) failure to timely pay final wages upon
5 termination or separation. (See Yeremian Decl. ¶ 5).

6 **B. PAGA Counsel's Investigation**

7 The Parties engaged in formal and informal discovery, and PAGA Counsel conducted a
8 thorough investigation of the facts and claims giving rise to the action, including the exchange of
9 documents (Defendant informally produced a sampling of time and payroll records for twenty
10 employees from February 25, 2019 through May 15, 2020, Plaintiff's personnel file and time and
11 payroll records, policies and procedures regarding wages, and overtime), meeting and conferring,
12 reviewing and analyzing pay time and records, employment handbooks, Plaintiff's personnel files,
13 and Defendant's relevant policies and other documentation. (See Yeremian Decl. at ¶¶ 6, 7).
14 Informal discovery revealed Plaintiff, as well as many other Aggrieved Employees, signed an
15 arbitration agreement during their employment with Defendant, precluding them from pursuing class
16 action claims. (See Yeremian Decl. at ¶ 8). Given the releases signed by the class members, Plaintiff
17 continued proceeding with the claims under Labor Code § 2699. (*Id.* at ¶ 9). With the discovery in
18 hand, the parties were able to engage in meaningful settlement discussions in an attempt to resolve
19 the claims remaining in the Action. *Id.*

20 **C. Settlement Negotiations**

21 On January 11, 2021, the parties mediated the matter and entered into a settlement
22 agreement. (See Yeremian Decl. at ¶ 10). The parties discussed all aspects of the case, including the
23 risks of litigation and exchanged further information. *Id.* The parties reached an agreement as
24 embodied in the Settlement, which is attached as Exhibit 2 to the Yeremian Declaration.²

25 The parties recognized that the issues presented in the Action are likely only to be resolved

26
27 ² As part of the settlement and in addition to the Gross Fund Value, Defendant has agreed to
28 separately settle Plaintiff's individual claim which is set forth in a separate Confidential Settlement
Agreement.

1 with extensive and costly pretrial and trial proceedings, and that further litigation will lead to
2 inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of
3 litigation. *Id.* The parties took into account the risk and uncertainty of the outcome inherent in any
4 litigation in reaching this agreement. *Id.*

5 **D. Settlement Agreement and Accompanying Documents**

6 The Settlement requires Defendant to pay a total settlement amount Ninety-Five Thousand
7 Dollars and Zero Cents (\$95,000.00) in exchange for a release of the Plaintiff's Representative
8 PAGA claims asserted in the PAGA Complaint. (See Yeremian Decl. at ¶ 13; Exhibit 2 at ¶ 4). From
9 the total settlement amount the following deductions shall be made, if approved by the Court:

- 10 a. Attorneys' fees in the amount of Thirty-One Thousand Six Hundred Sixty Six
11 Dollars and Sixty Five Cents (\$31,666.65) ("PAGA Counsel's Fees") and Eight
12 Thousand Six Hundred Twenty Two Dollars and Fifty Two Cents (\$8,622.50) for
13 PAGA Counsel's actual litigation expenses incurred to date ("PAGA Counsel's
14 Costs) (*see id.* Exhibit 2, at § III, 3(b))
- 15 b. Administration costs of no more than Eight Thousand Dollars and Zero Cents
16 (\$8,000.00) to be paid to the Settlement Administrator ("Administration Costs")
17 for sending notices and for calculating settlement shares and preparing all checks
18 and mailings (See Yeremian Decl. at Exhibit 2, ¶ at § III, 3(c)); and
- 19 c. Distribution of the remainder Forty Six Thousand Seven Hundred Ten Dollars
20 and Eighty Five Cents (\$46,710.85) to the LWDA and the Aggrieved Employees
21 per statute: 75% (\$35,033.14) must be paid to the Labor and Workforce
22 Development Agency per Labor Code § 2699 *et seq.* and 25% (\$11,677.71)
23 shared by the Aggrieved Employees on a pro-rata basis (See *id.*; Exhibit 2 at § III,
24 3(a).

25 From PAGA Counsel's review of the facts, strengths, and weaknesses of the case, the risks
26 and delays posed by further litigation, and PAGA Counsel's own prior litigation experience, PAGA
27 Counsel believes that the recovery for each aggrieved employee is fair and reasonable, taking into
28 consideration the amounts received in other PAGA actions, the risks inherent in litigation of this

1 genre, and the reasonable tailoring of each aggrieved employee's claim to the settlement award he or
2 she will receive. (See Yeremian Decl. at ¶ 14). Defendant, for its part, vigorously contests liability
3 and damages. (*Id.* at ¶ 8). Further, and based on the settlement negotiations, which were hard-fought
4 and conducted in good faith and at arm's length between attorneys with substantial experience
5 litigating PAGA actions, the Settlement Agreement was the product of a non-collusive settlement
6 process in which the parties were forced to make significant compromises in the interest of reaching
7 a full and complete settlement of the lawsuit. (*Id.* at ¶ 14).

8 **III. Discussion**

9 **A. The Relief Obtained Through the PAGA Settlement is Genuine, Meaningful, 10 and Consistent with the Underlying Purpose of the Statute to Benefit the Public**

11 Plaintiff alleges that Defendant violated California law and various provisions of the Labor
12 Code during the course of Plaintiff and Aggrieved Employees' employment. (See Yeremian Decl. at
13 ¶ 5). Plaintiff claim civil penalties under PAGA pursuant to Labor Code § 2699 *et seq.* (*Id.*).

14 Under Labor Code § 2699, specifically, Plaintiff alleges that the Aggrieved Employees were
15 not paid all wages they were owed, including for all work performed and for all overtime hours
16 worked. (See Yeremian Decl. at ¶ 16). Specifically, Defendant's unlawfully rounded down the hours
17 for Aggrieved Employees. (*Id.*)

18 Plaintiff also contends that Defendant failed to provide their employees with accurate,
19 itemized wage statements, in writing, as required by California Labor Code § 226(a). Section 226(a)
20 requires an employer to furnish each of his or her employees with an accurate, itemized statement in
21 writing showing the gross and net earnings, total hours worked, and the corresponding number of
22 hours worked at each hourly rate. Labor Code § 226(a). (*Id.* at 17) These statements must be
23 appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the
24 employee's wages, or, if wages are paid by cash or personal check, these statements may be given to
25 the employee separately from the payment of wages. (*Id.*) In either case the employer must give the
26 employee these statements twice a month or each time wages are paid. (*Id.*) As a direct and
27 proximate cause of Defendant's alleged violation of Labor Code § 226(a), employees allegedly
28 suffered injuries, including not being paid their wages and overtime, confusion over whether they

1 received all wages owed them, the difficulty and expense involved in reconstructing pay records, and
2 forcing them to make mathematical computations to analyze whether the wages paid in fact
3 compensated them for all hours worked. (*Id.*) Specifically, the wage statements allegedly failed to
4 accurately account for unpaid wages and overtime due to the off the clock work. (*Id.*) As a result,
5 Defendant allegedly failed to provide employees with accurate, itemized wage statements in writing,
6 as required by the Labor Code. (*Id.*)

7 By allegedly failing to pay the Plaintiff and Aggrieved Employees their minimum wages,
8 overtime wages, all discussed above, Plaintiff and formerly employed Aggrieved Employees would
9 be due all wages at the time of termination or within seventy-two (72) hours of resignation, as
10 required under Labor Code § 203. (*Id.* at 18)

11 Regarding the alleged improper rounding and time shaving, Defendant contends that
12 Aggrieved Employees were instructed to clock in before attending to any duties and to stop all work
13 after clocking out. (*Id.* at 19) Defendant further argued that any rounding policy they implemented
14 was neutral on its face and in its effect such that it would not disfavor employees over time.
15 Defendant further argued that since Plaintiff was not disadvantaged by any rounding, they lacked
16 standing to pursue such a claim. *See, e.g., Corbin v. Time Warner Entertainment-Advance/Newhouse*
17 (9th Cir. 2016) 821 F.3d 1069 (finding rounding policy that evened out over time lawful and denying
18 request for certification where plaintiff had no rounding claim). Defendant also argued that to the
19 extent there was any detriment to employees, it was *de minimis*, and therefore not compensable as a
20 matter of law. *Id.* Accordingly, Defendant contends that they paid for all reported hours worked, that
21 Aggrieved Employees were trained to record all hours worked, and that it paid proper overtime and
22 minimum wages to Employees. As a result of Defendant's arguments Plaintiff's Counsel had to
23 apply appropriate discounts in light of the facts and law as discussed above. (*Id.*)

24 The Private Attorneys General Act, Labor Code § 2699 *et seq.*, allows Plaintiff to obtain civil
25 penalties on behalf of himself and other aggrieved employees for Defendant's violation of any
26 provision of the Labor Code enumerated under Labor Code § 2699.5. (*See id.* at ¶ 19). Where civil
27 penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties
28 are recoverable, Labor Code § 2699(f) establishes civil penalties of one (\$100) for each aggrieved

1 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
2 employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(i), seventy-
3 five (75) percent of the penalties recovered must be allocated to the Labor and Workforce
4 Development Agency (LWDA), with the remaining twenty-five (25) percent allocated to the
5 affected employees. *See also Cunningham v. Leslie's Poolmart, Inc.*, No. CV 13-2122 CAS (CWx),
6 2013 WL 3233211, at *7 (C.D. Cal. Jun. 25, 2013) (“[A] PAGA plaintiff pursues civil penalties on
7 behalf of the government and receives a twenty-five percent portion of the recovered penalty as a
8 bounty.”). The limitations period as for all penalties is one year prior to the filing of the complaint.
9 However, under *Amaral v. Cintas*, 163 Cal. App. 4th 1157, 1207-09 (2008) the Court held that a
10 lower penalty amount of \$100 per violation applies in the absence of a determination that a violation
11 actually occurred.

12 Based on the foregoing facts and law, PAGA Counsel estimated Defendant’s maximum total
13 exposure on the PAGA claim at approximately \$223,400. (*See Yermian Decl.* at ¶ 21). The
14 provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not
15 limited to Labor Code §§ 201, 202, 203, 204, 210, 226, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12,
16 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699, *et seq.* (*Id.*) Specifically, the total exposure
17 on the PAGA claim was calculated by multiplying the total number of pay periods (2,234) by \$100
18 per violation. (*Id.*) Plaintiff’s calculation of the total exposure on the PAGA claim is for one PAGA
19 penalty per pay period (*i.e.*, Plaintiff did not stack the penalties in their calculation). (*Id.*) Plaintiff’s
20 claims giving rise to the penalties include the following: (1) Defendant’s alleged failure to pay
21 minimum wages and overtime due to off the clock work; (2) Defendant’s alleged failure to provide
22 accurate wage statements; and (3) Defendant’s alleged failure to timely pay all wages due and
23 certain at the time of termination or within seventy-two hours of resignation as required by Labor
24 Code §§ 201-203. (*Id.*)

25 Case law supports the notion that it is inappropriate to “stack” penalties for multiple
26 violations, particularly when those violations all stem from the same alleged “injury” *Aguirre v.*
27 *Genesis Logistics*, 2015 U.S. Dist. LEXIS 78748 (citing *Villacres v. ABM Indus., Inc.*, 189
28 Cal.App.4th 562, 577 (2010)). (“One injury gives rise to only one claim for relief... The violation of

one primary right constitutes a single cause of action.”; *Crowley v. Katleman*, 8 Cal. 4th 666, 681-82) (1994); *Li v. A Perfect Day Franchise, Inc.*, 2012 WL 2236752, *17 (N.D. Cal.2012) (“There is no authority that “would permit double recovery of essentially the same penalties.”)

Defendant asserted that if PAGA penalties were mandatory, an employer’s PAGA liability would be huge because of the possibility of collecting multiple civil penalties for a single violation, and thus such penalties would almost always dwarf the damages available under the causes of action proper. (See Yeremian Decl. at ¶ 23). However, PAGA penalties are not mandatory but permissive. Labor Code § 2699(e)(2) states that “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.” (See *Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (*substantially* reducing PAGA penalties by 30% under this provision) (emphasis added); see also *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (affirming penalty reduction of 90% for practice that resulted in meal periods occasionally starting minutes after the fifth hour of work); *Sanchez v. McDonald’s Corp.* (2017), LASC Case No. No. BC 499888 (98% reduction from \$41 million to \$775,000); *Ghrdilyan v. RJ Financial* (2012), LASC Case No. BC430633 (94% reduction from \$5.4 million to \$325,000); *Fleming v. Covidien, Inc.* (2011), USDC Case No. ED CV 10-01487-RGK (OPx) (87% reduction from \$2.8 million to \$375,000).). Defendant maintains that it would be unjust to award maximum PAGA penalties.

B. The Requested Attorney Fees and Cost Award Should Be Approved

1. The Payment of Attorneys’ Fees Is Reasonable and Therefore Falls within the Range of Approval by the Court

The California Supreme Court has recently held that “when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.” *Laffitte v. Robert Half Intern. Inc.* (2016) 205 Cal.Rptr.3d 555, 573. Indeed, courts may use the “percentage method for its primary calculation of the fee award. The choice of a fee calculation method is generally one within the

1 discretion of the trial court, the goal under either the percentage or lodestar approach being the
2 award of a reasonable fee to compensate counsel for their efforts.” *Id.*

3 Pursuant to the Settlement Agreement, the PAGA Counsel is entitled to one-third of the
4 Gross Fund Value, or Thirty-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Five Cents
5 (\$31,666.65), as attorneys’ fees for its representation of Plaintiff in this Matter. (*See* Yeremian Decl.,
6 Exhibit 2 at § III, 3(b).) PAGA Counsel respectfully requests an order approving its attorneys’ fees
7 in the amount of (\$31,666.65 pursuant to the Settlement Agreement. (*See* Yeremian Decl. at ¶ 24-
8 25).

9 In settlements where a definite monetized fund is created, it is appropriate for courts to
10 evaluate the lodestar amount as a percentage of the recovery and adjust it accordingly if the lodestar
11 differs from the range of percentage fees freely negotiated in comparable litigation. *See Lealao v.*
12 *Beneficial Calif., Inc.* (2000) 82 Cal.App.4th 19, 49-50.

13 PAGA Counsel took this case on a contingent-fee basis against a corporation represented by
14 a reputable defense firm. (*See* Yeremian Decl. at ¶ 27). When taking on contingent cases, careful
15 attention must be paid to the economics involved or one bad case can destroy years of work. *Id.*
16 Accordingly, in such cases, we anticipate that we shall, if successful, receive a fee that exceeds our
17 normal hourly rate; otherwise the risk is often too great to bear. *Id.* Even with long hours of work,
18 the number of hours in a day is limited. *Id.* Because of this, when one particular matter is handled,
19 other matters are turned away. *Id.* When firms become involved in cases like this, they must realized
20 the time commitment entailed and are forced to turn down other matters that otherwise could have
21 been handled. *Id.*

22 Contingent-fee cases present the very real risk of working hundreds if not thousands of hours
23 that may never be entirely compensated. (*See id.* at ¶ 28). Moreover, while the case is being litigated,
24 counsel must pay overhead (salaries, rent, etc.), provide for their own expenses, and in most cases
25 pay the out-of-pocket expenses incurred on the plaintiff’s behalf. *Id.* And the prospect of a court-
26 awarded fee does not greatly reduce the risk posed by these cases. *Id.* In many cases, the prospect is
27 nothing more than a potential that never materializes. *Id.* First, you must win the case to get a court-
28 awarded fee; even those cases that seem strongest at the onset can be lost and sometimes are lost. *Id.*

1 Second, there are always the pitfalls and unforeseen obstacles that arise along the way, such as
2 settlement offers that the client may accept without ensuring that we receive a reasonable fee or
3 changes in the law that substantially affect the merits of the case, or other uncertainties involving the
4 client. *Id.* Finally, there is the great risk inherent in advancing tens if not hundreds of thousands of
5 dollars in out-of-pocket expenses. *Id.* If that money were to be invested in some sort of financial
6 investment, one would expect a reasonable rate of return on that investment. *Id.* Here, however, the
7 best we can hope to recover is our money, and then only if we are substantially successful; if we are
8 not, all or part of this “investment” can be lost.

9 PAGA Counsel is well acquainted with the contingent-fee market throughout California,
10 particularly as it pertains to PAGA and class-action litigation. (*See id.* at ¶ 29). PAGA Counsel has
11 negotiated numerous contingency-fee agreements with plaintiffs, both as individuals and as
12 representatives in class-action and PAGA suits. Many of those agreements required that counsel
13 receive a fee under certain scenarios that exceeds 40% of the recovery. PAGA Counsel’s recent
14 attorneys’ fees awards in similar wage-and-hour class and PAGA actions have been 40% of the
15 recovery.

16 Attorney’s fees payable from this settlement amount to PAGA Counsel in no way
17 undermined their fiduciary duties to the state of California and the Aggrieved Employees. (*See id.* at
18 ¶ 30).

19 PAGA counsel in contingency-fee cases typically receive attorneys’ fees equal to or greater
20 than forty percent of the gross settlement amount. *See Crandall v. U-Haul* (Los Angeles County
21 Super. Ct., Case No. BC178775), the Honorable Steven Czuleger awarded a 40% attorney fee
22 request in an overtime-exemption class action; in *Bushnell v. Cremer, Inc.* (Orange County Super.
23 Ct., Case No. 657778), the Honorable Donald E. Smallwood awarded attorneys’ fees in the amount
24 of 38%; in *Abzug v. Kerkorian* CA000981 (Los Angeles County Super.Ct., November 1990), the
25 Honorable R. William Schoettler awarded a 45% fee; in *Haitz v. Meyer, et al.*, Alameda County
26 Super. Court, 8-20-1990 No. 572968-3, the court awarded a 40% fee; in *Elliott v. Clothestime*
27 (Orange County Super. Ct., Case No. 01-CC00333) the Honorable Jonathan Cannon awarded a 40%
28 fee in a wage-and-hour class action which had not yet proceeded to the class certification stage; in

1 both *Rippee v. Boston Market Corporation*, Case No.: 05 CV 1359 BTM (JMA) and *Barile v. Boston*
2 *Market Corporation*, Case No.: 05 CV 1360 BTM (JMA), the Honorable Judge Barry T. Moskowitz
3 awarded a 40% fee to plaintiffs' counsel in wage-and-hour class actions that had not proceeded to
4 the class-certification stage.(See Yeremian Decl. ¶ 31.)

5 Moreover, PAGA Counsel, in both prior wage-and-hour class action and PAGA lawsuits that
6 received final approval similar to this one, received awards of forty percent (40%) of the settlement
7 amount for attorneys' fees. The requested amount is also in line with the foregoing case authority as
8 well as the practice in most wage-and-hour class actions. (*Id.* at ¶¶ 30-32.)

9 The amount requested here will fairly compensate PAGA Counsel for their successful
10 vindication of aggrieved employee rights, taking into account the quality, nature, and extent of
11 counsel's efforts, and the fact that the amount of fees for which approval is sought is consonant with
12 legal precedent. PAGA Counsel's diligent, efficient, and creative pursuit of this matter positioned
13 Plaintiff to settle this action successfully, affording redress to the PAGA Aggrieve Employees and
14 avoiding the inevitable expense and risk attendant to protracted litigation. In sum, it was through the
15 efforts of Plaintiff and PAGA Counsel that the considerable benefits of the settlement were obtained.

16 PAGA Counsel spent adequate time on this matter. Aside from drafting the initial complaint,
17 PAGA Counsel conducted formal and informal discovery, reviewed and analyzed time and pay
18 records, employment handbooks, the Plaintiff's personnel files, relevant policies and other
19 documentation, researched the applicable law and potential defenses, constructed damage models
20 based on interpretations of California law, reviewed information provided by Defendant at the
21 mediation, engaged in meet and confer efforts with Defendant, and ultimately drafted and revised the
22 settlement agreement. (*See id.* at ¶32). PAGA Counsel conservatively estimates that it invested over
23 123 hours of attorney time in this matter. David Yeremian's billing rate is \$750.00 per hour (18
24 years out of law school and is less than the Laffey Matrix rate of \$759.00), and he spent
25 approximately 43 hours on this matter. Roman Shkodnik's billing rate is \$575.00 (9 years out of law
26 school, Laffey Matrix rate of \$672.00), and he spent 80 hours on this matter. (*See* Yeremian Decl.
27 **Exhibit 4** (David Yeremian Time and Task Summary), **Exhibit 5** (Roman Shkodnik Time and Task
28 Summary), and **Exhibit 6** (Laffey Matrix).) The lodestar for Plaintiff's counsel is \$78,250 (\$32,250

1 for David Yeremian's time on the case and \$46,000 for Roman Shkodnik's time on the case). (See
2 Yeremian Decl. at ¶ 32). The fee request of \$31,666.65 is less than the lodestar value of PAGA
3 Counsel's time further evidencing the reasonableness of the request.

4 In light of the foregoing, the fee request in an amount equal to thirty-five percent of the
5 settlement in this case is well within the bounds that have been established by the above-cited
6 authority. (See Yeremian Decl. at ¶33). **Defendant has no objection** to an award of fees in the
7 amount requested.

8 **2. The Request for PAGA Counsel's Costs Are Reasonable**

9 PAGA Counsel requests reimbursement for costs, totaling \$8,622.50. Attached to the
10 concurrently filed Declaration of David Yeremian as Exhibit 3, is PAGA his cost log, showing
11 total costs of \$8,622.50. All of these costs are and were reasonable and necessary in the prosecution
12 of the Action, for the benefit of the State and the Aggrieved Employees. (See Yeremian Decl.,
13 Exhibit 3). Moreover, the expenses for which reimbursement is sought are recoverable in common
14 fund cases. See *In re United Energy Corp. Solar Power Modules Tax Shelter Inv. Secs. Litig.*, 1989
15 U.S. Dist. LEXIS 19146, 16 (C.D. Cal. Mar. 9, 1989) ("[R]eimbursement of ... filing fees, postage,
16 telephone bills, photocopying, legal research assistance, deposition costs, witness fees, and similar
17 items... [are] appropriate for cost reimbursement in common fund cases."); *Bond v. Ferguson*
18 *Enters. Inc.*, 2011 U.S. Dist. LEXIS 70390, at 36-37 (E.D. Cal. June 29, 2011) (finding that the
19 incurred costs, including payment to court reporters for depositions, mediation costs, legal research,
20 and in-house copies of documents, are routinely reimbursed in these types of cases); *Vasquez v.*
21 *Coast Valley Roofing, Inc.*, 266 F.R.D. 482, at 493 (E.D. Cal. 2010) ("The costs billed, which
22 include ground transportation, copy and scanning costs, computer research, and expert witness fees,
23 are reasonable.").

24 Based thereon, PAGA Counsel respectfully requests that the Court approve its cost
25 reimbursement request.

26 **IV. CONCLUSION**

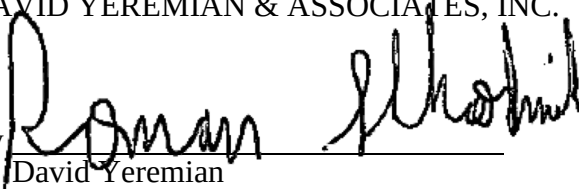
27 For the reasons set forth herein, Plaintiff respectfully request that this Court grant this
28 Motion, and issue an order approving the PAGA Settlement Agreement and Release between the

1 Parties.

2
3 DATED: August 12, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

4
5 By



6 David Yeremian

Roman Shkodnik

7 Attorneys for Robert Irwin on behalf of himself
and others similarly situated