TO THE HONORABLE COURT, TO ALL PARTIES, AND TO THEIR COUNSEL OF RECORD: NOTICE IS HEREBY GIVEN that on a date to be determined by the Court, in Department S-26 of the above-entitled court located at 247 West Third Street, San Bernardino, CA 92415, Plaintiffs MARIE BURROUGHS and HECTOR MARTINEZ ("Plaintiffs") will move for an order granting approval of the proposed settlement on the terms and conditions set forth in the Private Attorneys General Act (Labor Code § 2698, *et seq*.) ("PAGA") Settlement Agreement (the "Settlement Agreement") between Plaintiffs and Defendant MANPOWER US, INC. ("Defendant"). A copy of the PAGA Settlement Agreement is attached as **Exhibit 1** to the Declaration of Eve Howe in Support of Plaintiffs' Motion for Approval of PAGA Settlement ("Howe Dec.").

Notice to the LWDA: On July 11, 2025, Plaintiffs' Counsel filed the Settlement Agreement with the California Labor and Workforce Development ("LWDA"). (Howe Dec. **Exhibit 12**.)

The motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities in Support, Declaration of Eve Howe in Support, Declaration of Joshua H. Haffner in Support, Declaration of Marie Burroughs in Support, Declaration of Hector Martinez in Support, exhibits, all other pleadings and papers on file in this action, and any oral argument or other matter that may be considered by the Court.

DATE: July 11, 2025

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: *__/s/ _Eve Howe _________________________*
JOSEPH LAVI
VINCENT C. GRANBERRY
EVE HOWE
Attorneys for Plaintiff HECTOR MARTINEZ, on behalf of himself and current and former aggrieved employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff MARIE BURROUGHS ("Burroughs") and HECTOR MARTINEZ ("Martinez") (together, "Plaintiffs"), as representatives of the LWDA and behalf of themselves and other aggrieved employees, respectfully submit this memorandum in support of their motion for approval of the settlement of this action pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698, et seq. (hereinafter "PAGA") with Defendant MANPOWER US, INC. ("Defendant"). Plaintiffs seek entry of a proposed order and judgment granting approval of the PAGA settlement.

As consideration for this settlement, Defendant will fund a non-reversionary, common fund settlement of $875,000 (the "Gross Settlement Amount") which includes: the Attorney Fee Award, the Cost Award, Service Awards, the Administration Costs, Individual Payments, and the LWDA Payment. (Howe Dec. Ex. 1 §I.M.) If all requested amounts are approved, after deduction from the Gross Settlement Amount of the Attorney Fee Award, the Cost Award, Service Awards, and the Administration Costs, the amount to be distributed to the California Labor and Workforce Development ("LWDA") and Aggrieved Employees is equal to approximately $519,333.33.

The remaining amount of approximately $519,333.33 is for the payment of civil penalties under PAGA to the LWDA and Aggrieved Employees. This amount shall be distributed 75% to the LWDA and 25% to the Aggrieved Employees. (Howe Dec. Ex. 1 §I.P.; Lab. Code §2699(i) [civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the [LWDA] …; and 25 percent to the aggrieved employees]. Plaintiffs estimate the LWDA will receive approximately $389,500.00 ($519,333.33 X .75 to LWDA = $389,500.00). Plaintiffs estimate $129,833.33 will be distributed pro rata to the Aggrieved Employees based on the number of pay periods worked during the PAGA Period[1] ($519,333.33 X .25 = $129,833.33). (Howe Dec. Ex. 1 §III.D.3) As set forth below, Plaintiffs believe this is a fair result for the PAGA litigation.

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[1] "PAGA Period" shall refer to the time period from July 15, 2018, through the date of approval of the Settlement. (Howe Dec. Ex. 1 §I.T.)

II. SUMMARY OF LITIGATION

A. The Parties

Defendant is authorized to do business within the State of California and do business in the State of California, including but not limited to San Bernardino County. Plaintiff Burroughs worked as an hourly, non-exempt employee for Defendant from approximately April 2019 to May 2019. Plaintiff Martinez worked as an hourly, non-exempt employee for Defendant from approximately December 7, 2018 to June 11, 2019. Based on information from Defendant, there were approximately 3,375 hourly, non-exempt employees who worked for Defendant in California and who were placed at a UPS facility during the PAGA Period. (Howe Dec. ¶3.)

B. The Complaint and Allegations

On July 15, 2019, Plaintiff Burroughs submitted a letter to the LWDA to notify the LWDA pursuant to PAGA of Plaintiff's intent to seek civil penalties under PAGA for violations of the Labor Code. (Howe Dec. ¶4.)

On December 4, 2019, Plaintiff Burroughs filed her initial Complaint in this Action alleging a single cause of action for Civil Penalties Pursuant to PAGA for the following claims against Defendant: (1) failure to pay minimum wages for all hours worked; (2) failure to pay overtime wages for overtime hours worked; (3) failure to authorize or permit meal periods; (4) failure to authorize or permit rest periods; (5) failure to maintain reasonable temperatures; (6) failure to provide complete and accurate wage statements; and (7) failure to timely pay former employees all earned and unpaid wages; (the "Burroughs Action"). (Howe Dec. ¶5.)

On February 20, 2020, Plaintiff Martinez submitted a letter to the LWDA to notify the LWDA pursuant to PAGA of Plaintiff's intent to seek civil penalties under PAGA for violations of the Labor Code. (Howe Dec. ¶6.)

On May 29, 2020, Plaintiff Martinez filed his initial Complaint in this Action alleging a single cause of action for Civil Penalties Pursuant to PAGA for the following claims against Defendant: (1) failure to pay minimum wages for all hours worked; (2) failure to pay overtime wages for overtime hours worked; (3) failure to authorize or permit meal periods; (4) failure to authorize or permit rest periods; (5) failure to maintain reasonable temperatures; (6) failure to provide complete and accurate wage statements; and (7) failure to timely pay former employees all earned and unpaid wages; (the "Martinez Action"). (Howe Dec. ¶7.)

The Parties have agreed, pursuant to the Settlement Agreement, that Plaintiffs Burroughs and Martinez will file a Second Amended Complaint in the Burroughs Action, adding Plaintiff Martinez as a named Plaintiff and alleging all causes of action and theories included in the Martinez Action (the "Operative Complaint"). (Howe Dec. ¶8.)

At all times, Defendant denied the allegations and contended that: they properly paid minimum and overtime wages, they properly provided all necessary meal and rest breaks and/or paid appropriate meal and rest period premiums, they kept the workplace at an appropriate temperature at all times, they provided employees with itemized statements in compliance with the Labor Code, and that they promptly paid all wages due and owing upon separation of employment. (Howe Dec. ¶9)

C. Production Of Directly Relevant Formal and Informal Discovery and Legal Analysis By Parties' Counsel

After filing the lawsuits, the Parties engaged in significant formal and informal written discovery. The Parties engaged in extensive discussions in an attempt to reach a global settlement of Plaintiffs' PAGA claims at issue in this Action. Following mediation on September 10, 2024 with Judge Ronald M. Sabraw (Ret.), a well-respected former judge and mediator of wage and hour class actions, the Parties were able to reach a settlement in principle on September 20, 2024. In preparation for these negotiations, the Parties exchanged various documents and information that allowed both sides to evaluate the potential exposure and potential risk, as well as information about the number of pay periods and the number of individuals in the PAGA group. The Parties were able to subsequently execute a long-form settlement agreement on April 1, 2025. (Howe Dec. ¶10.)

The Parties have undertaken reasonable investigation of the facts and law during the pendency of this action. Plaintiffs' Counsel diligently conducted and pursued an investigation of the PAGA claims against Defendant, including research of the applicable law and the potential defenses and review of relevant documents. Plaintiffs obtained directly relevant data including Defendant's written policies related to the claims at issue in the Operative Complaint and Plaintiffs' personnel files. (Howe Dec. ¶11.)

Plaintiffs and Plaintiffs' Counsel have concluded—after considering the sharply disputed factual and legal issues involved on the PAGA claims, the risks attending further prosecution, and the benefits to be received pursuant to the compromise and settlement of the action as set forth in the agreement—that settlement was in the best interest of the representative Plaintiffs, the LWDA, and the aggrieved employees and is fair and reasonable and furthers the purpose of the PAGA to enforce the Labor Code. (Howe Dec. ¶12.)

III. SUMMARY OF SETTLEMENT

A. Terms Of Settlement

The Parties have agreed to settle the Lawsuit by agreement upon the terms and conditions and for the consideration set forth in the Settlement Agreement a copy of which is attached to the concurrently filed Declaration of Eve Howe as **Exhibit "1"**.

A summary of the key terms of the Settlement is as follows:

1. Aggrieved Employees: All current and former non-exempt employees who worked for Defendant in California and who were placed at a UPS facility during the period of July 15, 2018 through court approval of this settlement. (Howe Dec. Ex. 1 § I.C.)
2. Gross Settlement Amount or GSA: The total value of the Settlement is a non-reversionary Eight Hundred Seventy-Five Thousand Dollars and Zero Cents (**$875,000.00**). This is the maximum amount Defendant can be required to pay under this Settlement Agreement. The Gross Settlement Amount includes: (1) the Net Settlement Amount to be paid to Aggrieved Employees; (2) the Attorney Fee Award and Cost Award to Plaintiffs' Counsel for attorneys' fees and costs, as approved by the Court; (3) Service Award(s) to Plaintiffs (4) the Administration Costs, as approved by the Court; and (5) the LWDA Payment to the LWDA, as approved by the Court. No portion of the Gross Settlement Amount will revert to Defendant for any reason. (Howe Dec. Ex. 1 §I.M.)
3. Net Settlement Amount: the total amount of money available for payout to Aggrieved Employees, which is the GSA less the payment to the LWDA, Attorney Fee Award, Cost Award, Service Award(s) to Plaintiffs, and Administration Costs. (Howe Dec. Ex. 1 §I.Q.)

   Each Aggrieved Employee will receive a proportionate share of the NSA that is equal to (i) the number of pay periods he or she worked for Manpower and was placed at a UPS facility in California during the PAGA Period based on the Database provided by Defendant, divided by (ii) the total number of pay periods worked by all Aggrieved Employees based on the same Database, which is then multiplied by the NSA. One day worked in a given pay period will be credited as a pay period for purposes of this calculation. Therefore, the value of each Aggrieved Employee's Individual Payment ties directly to the amount of pay periods that he or she worked. Each Aggrieved Employee's gross settlement award will be apportioned as 100% penalties and be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms which the Settlement Administrator shall be responsible for issuing. (Howe Dec. Ex. 1 §§ III.C.1, III.C.2.)

4. Attorney Fee Award and Cost Award: Plaintiffs' Counsel will apply to the Court for, and Defendant agrees not to oppose, a total Attorney Fee Award not to exceed one-third (currently **$291,666.67**) of the GSA and a Cost Award not to exceed Forty Thousand Dollars and Zero Cents **$40,000.00**. The Settlement Administrator will pay the court-approved amounts for the Attorney Fee Award and Cost Award out of the GSA. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Plaintiffs' Counsel with respect to the Attorney Fee Award. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Plaintiffs' Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Aggrieved Employees. If the Escalator Provision in Paragraph III.B above is triggered, Plaintiffs' Counsel may request one-third of the increased GSA as an Attorney Fee Award. (Howe Dec. Ex. 1 §III.D.1.)

5. Service Awards: The Settlement Administrator will pay Plaintiffs the Court-approved Service Award, which is not to exceed $2,000 to each Plaintiff for a total of no more than $4,000. The Settlement Administrator shall issue an IRS Form 1099 to each Plaintiff for this Service Award. (Howe Dec. Ex. 1 §III.D.5.)

6. Administration Costs: The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed **$20,000**. This will be paid out of the GSA. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Aggrieved Employees. (Howe Dec. Ex. 1 § III.D.2.)

7. LWDA Payment: The Settlement Administrator will pay to the LWDA seventy-five percent (75%) of the GSA after deduction of the Attorney Fee Award, Cost Award, Service Award(s) to Plaintiffs, and Administration Costs, currently estimated to be **$389,500.00**.

8. Release of Claims: Upon the Effective Date, Plaintiffs, individually and as the representative acting as a proxy or agent of the LWDA, and all Aggrieved Employees shall release the Released Claims against the Released Parties as follows:

> Plaintiffs, individually and as the representatives acting as a proxy or agent of the LWDA, and all Aggrieved Employees shall release the Released Parties for all claims for penalties under the California Private Attorneys' General Act (Labor Code section 2698, *et seq*.) that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint filed in the Action and/or Plaintiffs' pre-filing letters to the LWDA on July 15, 2019, and February 20, 2020, or ascertained in the course of the Action. This includes, but is not limited to, any claim for PAGA penalties based on violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1198, 6720, and the Industrial Welfare Commission Wage Orders. The express purpose of the Agreement and the Judgment to be entered by the Court following approval of the settlement is to forever bar Plaintiffs, the Aggrieved Employees, the LWDA, and any other individual or entity acting on behalf of or purporting to act on behalf of the LWDA from asserting any of the Released Claims in any future litigation. It is the intent of the Parties that, to the greatest extent provided by law, including under the holding of *Arias v. Super. Ct*. (2009) 46 Cal. 4th 969, 986, the ability of Plaintiffs, the State of California or any Aggrieved Employee

to bring the Released PAGA Claims on behalf of the LWDA is completely and forever foreclosed. Any Party to the Agreement or intended third-party beneficiary may use the Agreement to assert that the settlement and the judgment to be entered by the Court following approval by the settlement bars any later-filed action asserting any of the Released Claims against any of the Released Parties at any time from July 15, 2018 through court approval of the settlement.

The "Released Parties" are Defendant and any of its past, present and future direct or indirect parents, subsidiaries, predecessors, successors, assigns, and affiliates, joint venturers, as well as its past, present and future owners, officers, directors, employees, associates, partners, shareholders, members, agents, attorneys, insurers, and reinsurers, and any individual or entity that could be jointly liable with Defendant including but not limited to ManpowerGroup US, Inc. and UPS Supply Chain Solutions, Inc.

The "Effective Date" is the later of: (i) the sixty-fifth (65) day after the Court enters a Judgment on its Order Approving the PAGA Settlement, provided no appeal has been initiated and no motion to vacate has been filed; or (ii) if such an appeal or motion to vacate is timely initiated, five (5) business days after final resolution of that appeal or motion (including any requests for rehearing or appeals, including petitions for certiorari), resulting in final judicial approval of the Settlement.

(Howe Dec. Ex. 1 §§ I.J, I.X, I.Y.)

B. Notice and Distribution of PAGA Funds

Within fifteen (15) business days after the Effective Date, Defendant shall deliver to the Settlement Administrator an electronic database, which will list for each Aggrieved Employee: (1) first and last name; (2) last known mailing address; (3) social security number; and (4) the total number of pay periods during which the Aggrieved Employee performed work during the PAGA Period as an Aggrieved Employee ("Database"). If any or all of this information is unavailable to Defendant, Defendant shall provide all contact information they have for said Aggrieved Employee to the Settlement Administrator. The Database shall be based on Defendant's payroll, personnel, and other business records. The Settlement Administrator will conduct a skip trace for the address of all Aggrieved Employees who are former employees of Defendant and an NCOA search on all addresses. The Settlement Administrator shall maintain the Database and all data contained within the Database as private and confidential. (Howe Dec. Ex. 1 §III.F.2.a.)

Defendant will wire the Gross Settlement Amount to the settlement administrator within thirty (30) calendar days after the Effective Date. As a condition precedent to when the 30-day period shall start to run, the Settlement Administrator must provide Defendant with valid instructions in writing for the wire transfer. (Howe Dec. Ex. 1 §III.F.2.b.)

The Settlement Administrator will disburse the GSA within fifteen (15) business days after funding, as instructed in the Settlement. The Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Aggrieved Employees; (2) the Attorney Fee Award and Cost Award to Plaintiffs' Counsel, as approved by the Court; (3) the Administration Costs, as approved by the Court; (4) Service Award to the Plaintiffs; and (5) the LWDA Payment. (Howe Dec. Ex. 1 §III.F.2.d.)

Aggrieved Employees must cash or deposit their Individual Payment checks within one hundred and eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual Payment checks returned as undeliverable and funds associated with those Individual Payment checks remaining un-cashed, shall be transmitted by the Settlement Administrator to the State of California unclaimed property fund in the name of the Aggrieved Employee. (Howe Dec. Ex. 1 §III.F.6.)

IV. ARGUMENT IN FAVOR OF APPROVAL

A. The Proposed PAGA Settlement Should Be Approved

It is well established that PAGA serves to augment the limited enforcement capability of the LWDA by empowering employees to bring actions to enforce California's labor standards. (*Iskanian v. CLS Transportation L.A., LLC* (2014) 59 Cal.4th 348, 383; accord *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969, 986 ["The act's declared purpose is to supplement enforcement actions by public agencies, which lack adequate resources to bring such actions themselves."].) In the similar context of wage and hour class actions, the Courts review settlements to determine whether the proposed settlement is within the range of reasonableness considering the strength of the claims against the proposed settlement, the risk, expense, complexity and likely duration of further litigation, the extent of discovery completed and the stage of the proceedings, and the experience and views of counsel. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) Furthermore, courts must give "proper deference to the private consensual decision of the parties" because "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

In this case, the settlement was reached through arms' length bargaining, and sufficient investigation was performed to allow counsel to act intelligently. (Howe Dec. ¶¶10-12.) As described above, the parties thoroughly investigated and evaluated the factual strengths and weaknesses of this case before reaching the proposed settlement and engaged in sufficient investigation and discovery, to support the settlement. Accordingly, the settlement came only after the case was fully investigated by counsel. This litigation, therefore, had reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

The settlement negotiations have been at all times adversarial and non-collusive in nature. Indeed, continued good faith but occasionally contentious negotiations were required over several months to ultimately reach a fully-executed settlement agreement. (Howe Dec. ¶10.) While Plaintiffs believe in the merits of the case, they also recognize the inherent risks of litigation and understands the benefit of settlement and providing funds immediately as opposed to delaying payment or risking an unfavorable decision on summary adjudication/judgment, at trial and/or the damages awarded, and/or appeal all of which have potential to eliminate any relief. *Id.*

Further, experienced counsel, operating at arms-length, have weighed the strengths of the case and examined all of the issues and risks of litigation and endorse the proposed settlement. The view of the attorneys actively conducting the litigation "is entitled to significant weight" in deciding whether to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661 F.2d 939 (9th Cir. 1981); *Boyd*, 485 F.Supp. at 617.) Counsel is experienced in similar litigation and approves the settlement. (Howe Dec. ¶¶24-29, Haffner Dec. ¶¶5-7.)

There are significant legal uncertainties associated with cases such as this as they can be factually complex and require protracted litigation to resolve. A settlement is not judged solely against what might have been recovered had plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska Partnership* (9th

Cir. 1998) 151 F. 3d 1234, 1242; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 246 & 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, "[c]ompromise is inherent and necessary in the settlement process ... even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation" (*Wershba*, 91 Cal.App.4th at 250.)

B. The Proposed Settlement Is a Reasonable Compromise of Claims

To evaluate a settlement, the trial court must receive "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) To assist the Court with determining if the proposed settlement is within a range that is fair, reasonable, and adequate, Plaintiffs' counsel analyzed the value of pleaded allegations. As stated above, the settlement was reached only after exchanging discovery prior and conducting legal analyses of both Plaintiffs' and Defendant's theories.

Based on the informal discovery produced by Defendant, during the period from July 15, 2018, through the date of approval of the settlement, Defendant employed approximately 3,375 Aggrieved Employees over the course of approximately 28,924 PAGA Pay Periods. Based on the data, the realistic exposure for the PAGA claims amounted to approximately **$1,446,200.00**, assuming that the Court assessed a maximum penalty of $50 per pay period with a proven violation as in *Amaral* (28,924 pay periods X $50 per pay period = $1,446,200.00). (Howe Dec. ¶13.)

<u>**Defendant's Defenses to Plaintiffs' Claims**</u>:

With regard to Plaintiffs' wage claims, Defendant contended that they properly paid minimum and overtime wages and properly paid Aggrieved Employees for all hours which they worked. Defendant would likely contend that Plaintiffs or Aggrieved Employees were compensated in compliance with all Federal, State, and local laws. Regarding Plaintiffs' meal and rest break claims, Defendant contended that they had proper meal and rest period policies in place, that Plaintiffs and Aggrieved Employees were informed of these policies, that Defendant provided Plaintiffs and Aggrieved Employees with uninterrupted and duty-free 30 minute meal breaks and rest breaks when required by statute, and that any failure to take required meal and rest periods was a result of the voluntary, individual actions of Plaintiffs and Aggrieved Employees. Defendant would likely further contend that they properly paid all required meal and rest break premiums due to Plaintiffs and Aggrieved Employees. Regarding Plaintiffs' workplace temperature claims, Defendant would likely contend that they maintained the workplace temperature in compliance with all Federal, State, and local laws. Regarding Plaintiffs' wage statement and waiting time claims, because they were wholly derivative of the Plaintiffs' primary claims, as explained above, they would fail for the same reasons. (Howe Dec. ¶14.)

Importantly however, a number of courts have found that the "subsequent" penalty under PAGA applies only after a court or the Labor Commissioner determines that the employer has violated the Labor Code. *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc*. (S.D. Cal. Aug. 10, 2009) 2009 WL 2448430, at *9 ("[u]nder California law, courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code"); *Bernstein v. Virgin Am., Inc*., 990 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as to "heightened civil penalties" because the defendant was not given notice by the Labor Commissioner when the "subsequent" violations occurred); *Chen v. Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal., October 2, 2014) ("Under the Labor Code, if an employer does not have notice that they are committing a violation, they are not subject to the heightened penalties."); *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx),2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) ("courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code"), citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008). When evaluating Defendant's exposure here, Plaintiffs' counsel was forced to consider this line of cases. Additionally, Defendant asserted that Plaintiffs' claims were not subject to common proof, but instead required individualized inquiries into what each employee was doing during each pay period at issue in the PAGA period. Defendant asserted that Plaintiffs re still required, however, to prove each and every instance of a PAGA violation. Defendant contended that this lack of common proof would significantly limit the number of PAGA violations that Plaintiffs could prove at trial, and as such significantly reduces the valuation of these claims. *See, e.g., Estrada v. Royalty Carpet Mills, Inc.*, 76 Cal. App. 5th 685, 713 (2022) ("in cases with individualized circumstances and vast numbers of alleged aggrieved employees, PAGA plaintiffs may have difficulty proving purported violations suffered by other employees," and therefore run the "risk being awarded a paltry sum of penalties.") (Howe Dec. ¶15.)

Applying further significant discounts for the risks associated with the action (including but not limited to, the risk that the Court exercises its discretion to lower the penalties awarded and the risk of losing at trial), this settlement for $875,000.00 is well within a reasonable range, especially considering the defenses Defendant raised regarding properly paying wages for all time worked, issuing legally compliant policies during the PAGA period and that certain types of violations potentially do not give rise to penalties pursuant to Labor Code sections 226 or 203. (Howe Dec. ¶16.)

Moreover, the proposed Settlement, even with deductions, provides a substantial sum to the Aggrieved Employees. The Settlement secured by Plaintiff here is greater than other PAGA penalty awards approved by California state courts, which often range between $7,500.00 and $15,000.00 for PAGA claims impacting hundreds or thousands of individuals, resulting in much lower PAGA penalty payments on a per capita basis. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving PAGA penalties of $5,000.00 to class of 667 members); *Cabrera v. Advantage Sale & Marketing, LLC,* Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, March 12, 2013) (approving PAGA penalties of $10,000.00 for class of approximately 3,000 members). (Howe Dec. ¶17.)

Defendant would likely argue that PAGA penalties would be limited. Defendant could argue that even if Plaintiffs prevailed, the recoverable penalties under PAGA are minimal. Indeed, as assumed above, courts considering the issue have refused to "stack" PAGA penalties. *See Carrington v. Starbucks Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving PAGA penalty reduction to $5 per pay period); *accord Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809. Moreover, Defendant would likely argue that Plaintiffs are not entitled to recover PAGA penalties at the subsequent violation rate of $100 per pay period. California's appellate courts have held that "[u]ntil the employer has been notified that it is violating a Labor Code provision (whether or not the commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware [of the violation]" and therefore, until a Court or the Commissioner issues a finding of a violation, the initial $50 violation rate applies for each pay period in which the alleged violation occurred. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc*. (S.D. Cal. Aug. 10, 2009) 2009 WL 2448430, at *9 ("[u]nder California law, courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code"). Thus, Defendant could argue that even if Plaintiffs were able to establish any violation of the Labor Code, the PAGA penalties assessed for these violations will be computed at the $50 per pay period rate, as opposed to the $100 per pay period rate at maximum, and there is a possibility that a further reduction of the penalty to $5 per pay period as approved in *Carrington* could apply given Defendant's alleged compliance with the Labor Code as discussed above. (Howe Dec. ¶18)

Plaintiffs understood Defendant's position to be, using the most recent court of appeal decision on the topic of evaluating the value of a PAGA claim (*Carrington v. Starbucks, supra*) (i.e. at $5.00 per pay period X 28,924 pay periods at issue), that it is likely Defendant's maximum exposure on the minimum and overtime wage claims could not exceed **$144,620**. Defendant could argue that this Court would use the *Carrington* valuation as a ceiling for assessing PAGA penalties on the remaining primary and derivative claims as well and that this amount (i.e., $144,620) was its true "worst case scenario" exposure for **all** claims. As such, the settlement amount of $875,000 is approximately 60.5% of the realistic exposure scenario of $1,446,200 (assuming $50 per pay period) and exceeds the "worst case scenario" exposure by over a factor of 6. (Howe Dec. ¶19.)

Finally, public policy strongly favors the settlement of litigation. *Consumer Advocacy Group v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63. Because the proposed Settlement is neither unjust nor ignores the public interest, it should be approved. (Howe Dec. ¶20.)

Practically speaking, if Plaintiffs continued litigating this matter, the Plaintiffs, LWDA, and employees potentially could have received nothing if the Court had agreed with Defendant's position especially in light of the volatility of this area of law and the aforementioned defenses. The settlement is reasonable in light of the risks involved in this case—including the prospect of a potential adverse summary adjudication ruling, defenses to the case, potential appeal, and potential costs which could be forced on our client if Plaintiffs were not successful. (Howe Dec. ¶21.)

Plaintiffs' Counsel is convinced that the proposed settlement is fair based on the negotiations and a detailed knowledge of the issues present in this action. The length and risks associated with a motion for summary adjudication, trial, and other normal perils of litigation have impacted the value of the claims and were all weighed in reaching the proposed settlement. In light of the above, the proposed Settlement is well within the range of reasonableness and should be granted approval. Plaintiffs believe that in providing employees with relief and obtaining penalties for the LWDA, this settlement furthers the purpose of PAGA to enforce compliance with the Labor Code and should be approved. (Howe Dec. ¶22.)

Accordingly, the gross PAGA penalty payment is highly reasonable in light of the risks and uncertainties associated with the PAGA claims in this case. Additionally, the length and risks associated with a motion for summary adjudication, trial, and other normal perils of litigation have impacted the value of the claims and were all weighed in reaching the proposed settlement. The Settlement commits Defendant to pay a sum large enough to punish Defendant for alleged violations and to deter such alleged conduct in the future. At the same time, in light of the alleged violations and defenses thereto, it is not so large as to be unjust, oppressive or confiscatory. Based upon the foregoing, the proposed settlement is fair, reasonable, and in the best interest of the state of California and the Aggrieved Employees and should be granted approval. (Howe Dec. ¶23.)

V. THE REQUESTED ATTORNEYS' FEES AND COSTS SHOULD BE APPROVED

Counsel seeks $291,666.67, one-third of the Gross Settlement Amount, in fees for the time spent litigating this matter and reimbursement of expenses of $40,104.65 incurred in the prosecution of this action. The request is for fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis. (Howe Dec. Ex 2, Haffner Dec. Ex. 1).

A. Plaintiffs' Attorneys' Fee Request of One-Third of the Gross Settlement Is Proper Under the Common Fund Doctrine

California state and federal courts have recognized that in actions creating a common fund benefiting others as well as a plaintiff, an appropriate method for determining an award of attorneys' fees is based on a percentage of the total value of benefits provided by the litigation. (*Laffitte v. Robert Half Int'l Inc*. (2016) 1 Cal.5th 480, 497-499, 503-506; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 577 F.2d 759, 769.) Such "fee spreading" assures that all those benefited by the litigation pay their fair share of obtaining the recovery. (*Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal.App.4th 19, 26.)

In *Laffitte v. Robert Half Int'l Inc*. (2016) 1 Cal.5th 480, a wage and hour class action wherein Counsel obtained a $19 million non-reversionary settlement on behalf of the class, the California Supreme Court approved the use of the percentage of fund or common fund method to award one-third of the settlement amount or $6,333,333.33 to Counsel for attorneys' fees. The Court stated:

> Whatever doubts may have been created by *Serrano III, supra*, 20 Cal.3d 25, [], or the Court of Appeal cases that followed, we clarify today that use of the percentage method to calculate a fee in a common fund case, where the award serves to spread the attorney fee among all the beneficiaries of the fund, does not in itself constitute an abuse of discretion. We join the overwhelming majority of federal and state courts in holding that when class action litigation established a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards 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. The recognized advantages of the percentage method - including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation [] convince us the percentage method is a valuable tool that should not be denied our trial courts.

(*Laffitte*, 1 Cal.5th at 503.) Under the "common fund" doctrine, "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." (*Boeing*, 444 U.S. at 478.) The Supreme Court explained: "The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigants' expense. Jurisdiction over the fund involved in the litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefitted by the suit." (*Id*.) Thus, the common fund doctrine ensures that each beneficiary of the settlement contributes proportionately to the payment of the attorneys' fees recovered from monetary payments that the prevailing party recovered in the lawsuit. (*Stanton v. Boeing* (9th Cir. 2003) 327 F.3d 938, 967, citing *Wininger v. SI Mgmt. L.P*. (9th Cir. 2002) 301 F.3d 1115.)

In common fund cases, the percentage approach is preferable to the lodestar because: (1) it aligns the interests of Counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Laffitte,* 1 Cal.5th at 486-487; see *Lealao,* 82 Cal.App.4th at 31 n.5 citing *In re Activision Sec. Litig.* (N.D. Cal 1989) 723 F. Supp. 1373, 1375, 1378-79.)

A fee of $291,666.67, which constitutes one-third of the gross settlement, is within the range of reasonableness. (See *Laffitte,* 1 Cal.5th at 503-504 [approving common fund method used for attorneys' request of one-third of settlement].) Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec. Litig.*, 723 F. Supp. at 1378.) Because Counsel's requested fee is reasonable and falls well within the historical range of attorney's fee awards under the common fund theory, the Court should approve the requested fees as reasonable pursuant to the common fund approach.

B. Plaintiffs' Fee Request Is Reasonable Under the Lodestar Method

In a common fund settlement "[t]he lodestar method is merely a cross-check on the reasonableness of a percentage figure." (*Vizcaino v. Microsoft* Corp. (9th Cir. 2002) 290 F.3d 1043, 1050, n.5.) In this case, consideration of Counsel's lodestar as a cross-check to the percentage figure also strongly supports the reasonableness of the requested fee award. The base amount is then adjusted in light of various factors. (*Serrano v. Priest,* 20 Cal.3d at 48.)

Counsel's total lodestar in this case as of the date of this motion is approximately **$245,000**. (Howe Dec. ¶40, Haffner Dec. ¶18.) Counsel's hourly rates are reasonable, Counsel's hours spent are reasonable, and Plaintiffs would even be entitled to a multiplier to account for the successful result in this action and to compensate Plaintiffs and their counsel for the contingent risk inherent in the litigation and for the delay in receiving fees. The breakdown of the hours worked by counsel in this matter is set forth as follows:

Attorney	**Hours**	**Hourly Rate**	**Total**
Joseph Lavi	35	$1,000	**$35,000**
Vincent Granberry	40	$750	**$30,000**
Anwar Burton	10	$675	**$6,750**
Pooja Patel	5	$675	**$3,375**
William Tran	5	$675	**$3,375**
Eve Howe	20	$675	**$13,500**
Josh H. Haffner	95	$900	**$85,500**
Trevor Weinberg	150	$450	**$67,500**
Total	**360**	N/A	**$245,000**

(Howe Dec. ¶¶34-39, Haffner Dec. ¶18.)

1. Counsel's Hourly Rates Are Reasonable

The hourly rates of the attorneys stated above are in line with rates approved for attorneys in this region with similar experience. (Howe Dec. **Exhibits 4-6** [printouts of California firms from 2014 NLJ Survey of Attorney Fees, 2008 NLJ Survey of Attorney Fees, and Laffey Matrix].) A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1095.) When determining a reasonable hourly rate, courts may consider factors such as the attorney's skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.) Class Counsel's skill and experience support their hourly rates. (Howe Dec. ¶¶24-29 [describing experience in employment law and class actions with Mr. Granberry an attorney out of law school in 2010 and in practice with Lavi & Ebrahimian, LLP since April 2014, and Mr. Lavi a founding partner and out of law school and practicing since 2000], Haffner Dec. ¶¶5-7 [describing Mr. Haffner's experience in working on class action and other representative lawsuits].) Other attorneys working in California courts charge comparable if not higher rates as indicated in the printouts of California firms' billing rates from the 2014 National Law Journal Survey showing partner rates up to $1,195 and associate rates up to $750. (Howe Dec. **Exhibit 4** [printouts from 2014 National Law Journal Survey for California firms showing a high rate for partners of $1,195 and high for associates of $725]; Howe Dec. **Exhibit 5** [2008 National Law Journal Survey showing 2008 fees of California partners with high of $980 and associate high of $570]; see, *e.g., Richard v. Ameri-Force Mgmt. Servs., Inc.*, Case No. 37-2008-00096019 (San Diego Super. Ct., August 27, 2010) [$695 to $750 an hour for partners]; *Barrera v. Gamestop Corp.*, Case No. CV 09-1399 (C.D. Cal. Nov. 29, 2010) [$700 an hour for partners]; and *Anderson v. Nextel Retail Stores, LLC*, Case No. CV 07-4480 (C.D. Cal. June 20, 2010) [$655 to $750 an hour for partners].)

Plaintiffs' Counsel's rates are also in line with the respective Laffey Matrix rates. (Howe Dec. **Exhibit 6** available at http://www.laffeymatrix.com/see.html.) California Courts have applied the Laffey Matrix with adjustments to the specific California locality where the Counsel's office is located based on "Locality Pay Tables." (*Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 695-696 [affirming fee award based on Laffey Matrix with upward 9 percent rate adjustment from D.C. area compared to San Francisco Bay Area based on Locality Pay Tables]; *In re HPL Techs., Inc., Secs. Litig.* (N.D. Cal. April 22, 2005, No. C-02-3510 VRW) 365 F.Supp.2d 912, 921-922 [using Laffey Matrix with upward adjustment of 9 percent for San Francisco based on difference between D.C. Area 's +15.98 locality pay compared to San Francisco's +26.39 percent locality pay differential from the federal courts' "Judiciary Salary Plan Pay Tables."].) Here, Plaintiffs' Counsel's offices are located in Los Angeles County. For 2025, the Locality Pay Tables (and Judiciary Salary Plan Pay Tables referred to in *In re HPL Techs., Inc.*), state a 36.47% locality payment for the Los Angeles-Long Beach, CA area, and a 33.95% locality payment for the Washington-Baltimore-Arlington area, resulting in an increase of 2.52% for Los Angeles County. (Howe Dec. **Exhibits 7-8** [2025 Locality Pay Tables for Washington-Baltimore-Arlington and Los Angeles-Long Beach, CA available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2025/general-schedule/]; (Howe Dec. **Exhibits 9-10**) [Judiciary Salary Plan Pay Tables available at http://www.uscourts.gov/careers/compensation/judiciary-salary-plan-pay-rates]; (Howe Dec. **Exhibit 11**) [2025 Locality Pay Area Definitions defining counties within Los Angeles-Long Beach, CA area available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2025/locality-pay-area-definitions/].) In applying the 2.52% locality increase for attorneys working in Los Angeles County over the Washington-Baltimore area stated in the Laffey Matrix, the 2024/2025 Laffey Matrix states the following relevant rates: $485 for attorneys 1 to 3 years out of law school, $595 for attorneys 4 to 7 years out of school, $860 for attorneys 8 to 10 years out of school, $972 for attorneys 11 to 19 years out of law school and $1,170 for attorneys 20 plus years out of law school.

2. Counsel's Total Hours Are Reasonable

In determining a lodestar, reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigating the facts and the law, and preparing the initial pleadings. (See *New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.) Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 639.)

Counsel has spent approximately a combined 360 hours on this case. (Howe Dec. ¶¶34-39, Haffner Dec. ¶18.) In summary form, counsel's many tasks included the following: pre-filing investigation, legal research, and research of Defendant and its operations; communicating with client regarding their responsibility in bringing the action, the facts of their case, their employment, their work environment, their documents and Defendant's policies and procedures; drafting pleadings and notices; drafting communications with the LWDA; reviewing Plaintiffs' files and determining liability and evaluating claim and defense strengths and weaknesses; legal research of case law and wage orders regarding applicable claims and defenses; propounding and responding to informal discovery; meeting and conferring over directly relevant informal discovery; evaluating Defendant's policies; determining case strategy; communicating with Defendant's Counsel; evaluating data provided in informal discovery; calculating PAGA damages; negotiating settlement and settlement documents; communicating with the administrator and responding to administrator's inquiries; preparing the motion for approval of PAGA and supporting documents. Combining Plaintiffs' counsels' hours and their hourly rates in this case amounts to a total of 360 hours, and calculating individual hourly contributions amounts to a total lodestar of $245,000. Counsel is seeking an $291,666.67 award of attorneys' fees in connection with this matter, which is in line with the calculated lodestar value, assuming a reasonable multiplier of 1.19. (Howe Dec. ¶40, Haffner Dec. ¶18.)

C. Counsel's Costs Request Is Reasonable

Plaintiffs' Counsel requests $40,000 in total costs in this matter. This amount is reasonable and was incurred in the litigation of this matter. (Howe Dec. ¶43, **Exhibit 2**; Haffner Dec. ¶19, **Exhibit 1**.) All costs were reasonably incurred in prosecution of the lawsuit and paid on a contingency basis. The majority of the costs were associated with the initial filing fees and mediation fees, and the remainder was reasonably incurred in prosecution of the lawsuit. (*Id.*)

VI. CONCLUSION

The PAGA settlement is fair, adequate, and reasonable. It will result in fair payment considering the risks and defenses; it is non-collusive; and it was achieved as the result of informed, extensive, and arms' length negotiations conducted by counsel for respective parties who are experienced in wage and hour representative litigation. For the foregoing reasons, the parties respectfully request that the Court grant approval of the proposed PAGA Settlement.

Date: July 11, 2025

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: _/s/ _*Eve Howe*_____________________
JOSEPH LAVI
VINCENT C. GRANBERRY
EVE HOWE
Attorneys for HECTOR MARTINEZ, on behalf of himself and other current and former aggrieved employees