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11 and on behalf of all other aggrieved employees

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SANTA CRUZ**

14 EDWIN QUIZON, on behalf of himself and
15 on behalf of all other aggrieved employees,

16 Plaintiff,

17 v.

18 CF WATSONVILLE EAST, LLC. dba
19 WATSONVILLE NURSING CENTER, a
California limited liability company; and
20 DOES 1 through 50, inclusive

21
22 Defendants.
23
24

Case No. 20CV01868

Hon. Paul Marigonda

**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 Declaration of Roman Shkodnik;
and [Proposed] Order]*

Date: January 5, 2022
Time: 8:30 a.m.
Dept.: 10

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

2 **PLEASE TAKE NOTICE** that on January 5, 2021 at 8:30 a.m. in Department 10 of the
3 above-entitled Court, located at Santa Cruz Courthouse, 701 Ocean Street, Santa Cruz CA 95060.
4 Plaintiff Edwin Quizon (collectively “Plaintiff” or “PAGA Representative”), on behalf of himself
5 and all persons similarly situated, will and hereby does move this Court pursuant to California Labor
6 Code § 2698 *et seq.* for an order approving the settlement agreement between Plaintiff and
7 Defendant CF Watsonville East, LLC. dba Watsonville Nursing Center (“Defendant”) which will
8 accomplish the following: approve the representative action settlement embodied in the Private
9 Attorney General Act Settlement Agreement; approve PAGA Counsel’s application for attorney’s
10 fees and litigation costs; and enter judgment approving the representative action settlement and
11 release.

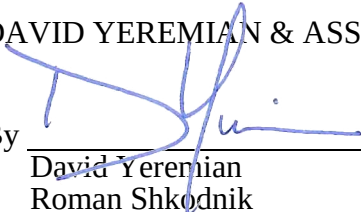
12 The grounds for this Motion, as set forth in the attached memorandum of points and
13 authorities and supporting declaration, are that this is a fair and reasonable settlement that benefits
14 the PAGA aggrieved employees and was the product of informed, non-collusive negotiations by
15 parties who were represented by experienced and able counsel. *See Wershba v. Apple Computer,*
16 *Inc.*, 91 Cal. App 4th 224, 244-45 (1996); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802
17 (1996); Manual for Complex Litigation, (Second), § 30.44 (1985).

18 Defendant does not oppose the requested relief in this Motion.

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

23
24 DATED: December 10, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

25
26 By 

David Yeremian

Roman Shkodnik

Attorneys for Edwin Quizon on behalf of himself and
27 others similarly situated
28

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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 Edwin Quizon (“Plaintiff” or “PAGA Representative”), and Defendant CF Watsonville East, LLC, dba Watsonville Nursing Center (“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 including the following Labor Code sections: 201, 202, 203, 204, 210, 221, 226, 226.7, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, AND 2699, *et seq.* and any applicable Wage Order, 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 Sunrise 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).

Additionally, in evaluating the adequacy of the settlement amount, a court is not concerned

1 with the amount the aggrieved employees are to receive, but rather, a court must focus on the total
2 settlement amount in achieving PAGA's objective. Indeed, "[t]he remedy sought in a PAGA suit
3 consists of civil penalties, not individual or class damages." *Mendez v. Tween Brands, Inc.* (E.D.
4 Cal. July 1, 2010) 2010 WL 2650571 *4. "Unlike class actions, these civil penalties are not meant to
5 compensate unnamed employees because the action is fundamentally a law enforcement action."
6 *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. April 2, 2010) 2010 WL 1340777 *4.
7 Moreover, a court must not lose sight of the fact that "[u]nlike a class action seeking damages or
8 injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to
9 recover civil penalties for the government that otherwise may not have been assessed and collected
10 by overburdened state enforcement agencies." *Id.*

11 As set forth herein, the proposed Settlement embodies all of the features of a settlement that
12 is fair, adequate and reasonable, as it is the product of (1) arms-length negotiations, (2) negotiated by
13 attorneys experienced in wage and hour issues, (3) subsequent to undertaking sufficient investigation
14 necessary to evaluate the relative strength and value of the PAGA claim, and (4) it reflects a
15 reasoned compromise based directly on the relative strength and value of the PAGA claims, as well
16 as the risks, expense, complexity and likely duration of further litigation.

17 Aggrieved Employees are defined as: all current and former hourly-paid or non-exempt
18 employees who worked for CF Watsonville East, LLC dba Watsonville Nursing Center in the State
19 of California during the PAGA Period, i.e., from July 2, 2019, through the date on which the Court
20 grants approval of the settlement. In this case, as of November 2021 there were approximately 200
21 Aggrieved Employees.

22 The value achieved by the Settlement may be gleaned from the fact that the Gross Settlement
23 Amount is \$215,000.00 and that the LWDA and the Aggrieved Employees encompassed by the
24 Settlement will receive no less than \$112,542.83 under the terms of the Settlement, which, pursuant
25 to the operative statute, shall be allocated "75 percent to the Labor and Workforce Development
26 Agency... and 25 percent to the aggrieved employees." See Cal. Lab. Code § 2699(i). This is a
27 significant recovery, not only because further litigation may have resulted in a net-zero recovery
28 based on the defenses asserted by Defendant, but because the amount secured by Plaintiff is

1 exponentially above other PAGA penalty awards approved as reasonable in these types of cases.

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

4 **II. Statement of the Case**

5 **A. Procedural History**

6 On July 2, 2020, Plaintiff Edwin Quizon filed a claim notice online with the California Labor
7 & Workforce Development Agency (the “LWDA”) pursuant to Labor Code § 2699.3(a)(1) and gave
8 notice to Defendant. (See Declaration of David Yeremian (Yeremian Decl.”), filed concurrently
9 herewith, ¶ 4; **Exhibit 1**). The LWDA declined to investigate the violations alleged. *Id.* Pursuant to
10 Labor Code § 2699.3(a)(2), after 65 days from the mailing of the notice to the LWDA, Plaintiff had
11 a private right of action to bring the instant case. Plaintiff has also given notice of this stipulation for
12 settlement to the LWDA. (See Yeremian Decl. ¶ 42; **Exhibit 5**).

13 On September 8, 2020, after 65 days from the mailing of the first notice to the LWDA,
14 Plaintiff filed a putative PAGA Complaint against Defendant in the Superior Court for the State of
15 California, in Santa Cruz County, Case Number 20CV01868, alleging claims for (1) failure to pay
16 minimum wages; (2) failure to pay wages and overtime; (3) failure to provide meal breaks; (4)
17 failure to provide rest breaks; (5) failure to furnish accurate itemized wage statements; and (6)
18 failure to timely pay final wages upon termination or separation.

19 **B. PAGA Counsel’s Investigation**

20 The Parties engaged in informal discovery, and PAGA Counsel conducted a thorough
21 investigation of the facts and claims giving rise to the action, including the exchange of documents,
22 meeting and conferring, reviewing and analyzing pay time and records, employment handbooks,
23 Plaintiff’s personnel files, and Defendant’s relevant policies and other documentation. (See
24 Yeremian Decl. at ¶¶ 6, 7). Informal discovery revealed Plaintiff, as well as many other Aggrieved
25 Employees, signed an arbitration agreement during their employment with Defendant, precluding
26 them from pursuing class action claims. (See Yeremian Decl. at ¶ 8). Given the arbitration
27 agreements signed by the class members, Plaintiff continued proceeding with the claims under Labor
28 Code § 2699. (*Id.* at ¶ 9). With the discovery in hand, the parties were able to engage in meaningful

1 settlement discussions in an attempt to resolve the claims remaining in the Action. *Id.*

2 **C. Settlement Negotiations**

3 On July 15, 2021, the parties mediated the matter and entered into a settlement agreement,
4 contingent on court approval. (See Yeremian Decl. at ¶ 10). The parties discussed all aspects of the
5 case, including the risks of further litigation, the claims, Defendant’s defenses and exchanged further
6 information. *Id.* The parties reached a tentative settlement agreement as embodied in the Settlement,
7 which is attached as **Exhibit 2** to the Yeremian Declaration.¹

8 The parties recognized that the issues presented in the Action are likely only to be resolved
9 with extensive and costly pretrial and trial proceedings, and that further litigation will lead to
10 inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of
11 litigation. *Id.* The parties took into account the risk and uncertainty of the outcome inherent in any
12 litigation in reaching this agreement. *Id.*

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

14 The Settlement requires Defendant to pay a total settlement amount of Two Hundred and
15 Fifteen Thousand Dollars and No Cents (\$215,000.00) in exchange for a release of the Plaintiff’s
16 Representative PAGA claims asserted in the operative Complaint and the LWDA letters. (See
17 Yeremian Decl. at ¶ 13; **Exhibit 2** at § I (8)). From the total settlement amount the following
18 deductions shall be made, if approved by the Court:

- 19 a. Attorneys’ fees in the amount of Eighty-Six Thousand Dollars and No Cents
20 (\$86,000.00) (“PAGA Counsel’s Fees”) and Ten Thousand and Twenty-Two
21 Dollars and Seventeen Cents (\$10,022.17) for PAGA Counsel’s actual litigation
22 expenses incurred to date (“PAGA Counsel’s Costs) (*see id.* Yeremian Decl. ¶ 13;
23 at **Exhibit 2**, at § III (5)(6));
- 24 b. Administration costs of no more than Six Thousand and Four Hundred and
25 Thirty-Five Dollars and Zero Cents (\$6,435.00) to be paid to the Settlement

26
27 ¹ As part of the settlement and in addition to the Gross Settlement Amount, Defendant has agreed to separately settle
28 Plaintiff’s individual wage and hour claims. The terms of that separate individual settlement are in a Confidential Settlement Agreement.

Administrator (“Administration Costs”) for sending notices and for calculating settlement shares and preparing all checks and mailings (*See* Yeremian Decl. ¶ 13; **Exhibit 2**, § III (6)); and

- c. Distribution of the remainder One Hundred and Twelve Thousand Five Hundred and Forty-Two Dollars and Eighty-Three Cents (\$112,542.83) to the LWDA and the Aggrieved Employees per statute: 75% (\$84,407.12) must be paid to the Labor and Workforce Development Agency per Labor Code § 2699 *et seq.* and 25% (\$28,135.71) shared by the Aggrieved Employees on a pro-rata basis (*See id.*; **Exhibit 2** at § III (3)).

From PAGA Counsel’s review of the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and PAGA Counsel’s own prior litigation experience, PAGA Counsel believes that the recovery for each aggrieved employee is fair and reasonable, taking into consideration the amounts received in other PAGA actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each aggrieved employee’s claim to the settlement award he or she will receive. (*See* Yeremian Decl. at ¶ 14). Defendant, for its part, vigorously contests liability and damages. (*Id.* at ¶ 8). Further, and based on the settlement negotiations, which were hard-fought and conducted in good faith and at arm’s length between attorneys with substantial experience litigating PAGA actions, the Settlement Agreement was the product of a non-collusive settlement process in which the parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the lawsuit. (*Id.* at ¶ 14).

III. Discussion

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

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

Under Labor Code § 2699, specifically, Plaintiff alleged that the Aggrieved Employees were not paid all wages they were owed, including for all work performed and for all overtime hours

1 worked. (See Yeremian Decl. at ¶ 16). Specifically, Defendant paid shift differentials, sick pay,
2 incentive and other bonuses to employees but failed to factor these shift differentials, sick pay, and
3 nondiscretionary bonuses into the regular rate when calculating overtime pay. On top of these
4 violations, Plaintiff alleged that Aggrieved Employees often were not allowed to take legally
5 compliant meal and rest breaks due to the demands of the job. Plaintiff alleged that to the extent they
6 were able to take a break, it was often interrupted.

7 Plaintiff also contends that Defendant failed to provide their employees with accurate,
8 itemized wage statements, in writing, as required by California Labor Code § 226(a). Section 226(a)
9 requires an employer to furnish each of his or her employees with an accurate, itemized statement in
10 writing showing the gross and net earnings, total hours worked, and the corresponding number of
11 hours worked at each hourly rate. Labor Code § 226(a). (*Id.* at 17) These statements must be
12 appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the
13 employee's wages, or, if wages are paid by cash or personal check, these statements may be given to
14 the employee separately from the payment of wages. (*Id.*) In either case the employer must give the
15 employee these statements twice a month or each time wages are paid. (*Id.*) As a direct and
16 proximate cause of Defendant's alleged violation of Labor Code § 226(a), employees allegedly
17 suffered injuries, including not being paid their wages and overtime, confusion over whether they
18 received all wages owed them, the difficulty and expense involved in reconstructing pay records, and
19 forcing them to make mathematical computations to analyze whether the wages paid in fact
20 compensated them for all hours worked. (*Id.*) Specifically, the wage statements allegedly failed to
21 accurately account for unpaid wages and overtime due to the off the clock work. (*Id.*) As a result,
22 Defendant allegedly failed to provide employees with accurate, itemized wage statements in writing,
23 as required by the Labor Code. (*Id.*)

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

28 Defendant denied and continues to deny all of the claims made by Plaintiff in this Action and

1 contends it acted at all relevant times in conformance with the law. Defendant contends Plaintiff and
2 all putative Aggrieved Employees were provided lawfully compliant meal and rest periods and that
3 any deviations were at the voluntary election of the Plaintiff and/or the putative Aggrieved
4 Employees and not at the request of Defendant or due to work; that Defendant paid all wages due, at
5 the correct hourly rate and on a timely basis; that Defendant's wage statements complied with the
6 law. As a result of Defendant's arguments Plaintiff's Counsel had to apply appropriate discounts in
7 light of the facts and law as discussed above. (*Id.*)

8 The projected value of PAGA claims is a variable value of two predictive indexes: 1) the
9 likelihood that Plaintiff will succeed in proving the underlying claims were violated, and 2) the
10 extent to which the Court will impose civil penalties permitted under PAGA. This is to be
11 distinguished from the projected values of class claims of Labor Code and Wage Order violations.
12 For instance, and relevant to the underlying claims in this action, class claims alleging California's
13 meal and rest break, minimum wage, and wage statement laws were violated, the predictive value for
14 purposes of determining whether settlement values are fair and reasonable rests only on the
15 likelihood of prevailing on the merits and the exposure related thereto, as there is no judicial
16 discretion to award lesser amounts owed for adjudged violations. It is for these reasons that, in
17 assessing and judging the reasonableness of PAGA settlements, the touchstone feature is the
18 "remedial purpose" achieved in the settlement amount, which takes into account the defendant
19 employer's "good faith" belief that it complied with the laws claimed to be violated. *See Bernstein v.*
20 *Virgin Am., Inc.* (N.D. Cal. 2019) 365 F.Supp. 3d 980, 991.

21 Based on the Court's discretion, in addition to whether or not the Court would side with
22 Plaintiffs on the underlying Labor Code violations, Plaintiff necessarily and substantially had to
23 discount the settlement value off of the full PAGA penalty amounts. As discussed earlier, Defendant
24 argues its meal and rest policies and practices were lawful. Likewise, Defendants argues it pays its
25 employees for all time worked. Thus, even if Defendant was proven wrong on these fronts and
26 ultimately found to have violated the underlying Labor Code claims, the court could find a good
27 faith reliance on *Brinker, Augustus*, and other governing authorities justifiably instructed
28 Defendant's actions and thereby impose a massive reduction of PAGA penalties akin to the Courts

1 in *Kaanaana v. Barrett Business Services, Inc.* (2018) 29 Cal.App.5th 778 and *Carrington v.*
2 *Starbucks* (2018) 30 Cal.App.5th 504.

3 The Private Attorneys General Act, Labor Code § 2699 *et seq.*, allows Plaintiff to obtain civil
4 penalties on behalf of himself and other aggrieved employees for Defendant's violation of any
5 provision of the Labor Code enumerated under Labor Code § 2699.5. (*See id.* at ¶ 19). Where civil
6 penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties
7 are recoverable, Labor Code § 2699(f) establishes civil penalties of one (\$100) for each aggrieved
8 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
9 employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(i), seventy-
10 five (75) percent of the penalties recovered must be allocated to the Labor and Workforce
11 Development Agency (LWDA), with the remaining twenty-five (25) percent allocated to the
12 affected employees. *See also Cunningham v. Leslie's Poolmart, Inc.*, No. CV 13-2122 CAS (CWx),
13 2013 WL 3233211, at *7 (C.D. Cal. Jun. 25, 2013) (“[A] PAGA plaintiff pursues civil penalties on
14 behalf of the government and receives a twenty-five percent portion of the recovered penalty as a
15 bounty.”). However, under *Amaral v. Cintas*, 163 Cal. App. 4th 1157, 1207-09 (2008) the Court held
16 that a lower penalty amount of \$100 per violation applies in the absence of a determination that a
17 violation actually occurred.

18 Based on the foregoing facts and law, PAGA Counsel estimated Defendant's maximum total
19 exposure on the PAGA claim at approximately \$430,000. (*See Yeremian Decl.* at ¶ 21). The
20 provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not
21 limited to Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 246, 510, 512, 558, 558.1, 1174,
22 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699, *et seq.* and any applicable
23 Wage Order. (*Id.*) Specifically, the total exposure on the PAGA claim was calculated by multiplying
24 the total number of pay periods (4,300) by \$100 per violation. (*Id.*) Plaintiff's calculation of the total
25 exposure on the PAGA claim is for one PAGA penalty per pay period (*i.e.*, Plaintiff did not stack the
26 penalties in their calculation). (*Id.*) Plaintiff's claims giving rise to the penalties include all of the
27 claims asserted in the Complaint, including, but not limited to the following: (1) Defendant's alleged
28 failure to pay, timely or otherwise, all wages due and owing ; (2) Defendant's alleged failure to

1 provide all the legally required unpaid, off-duty meal periods to the Aggrieved Employees; (3)
2 Defendant's alleged failure to provide all the legally required paid, off-duty rest periods; (4)
3 Defendant's alleged failure to provide accurate wage statements; (5) the alleged debit card charges
4 and (6) Defendant's alleged failure to timely pay formerly employed Aggrieved Employees all
5 wages due and certain at the time of termination or within seventy-two hours of resignation as
6 required by Labor Code §§ 201-203. (*Id.*)

7 Case law supports the notion that it is inappropriate to "stack" penalties for multiple
8 violations, particularly when those violations all stem from the same alleged "injury" *Aguirre v.*
9 *Genesis Logistics*, 2015 U.S. Dist. LEXIS 78748 (citing *Villacres v. ABM Indus., Inc.*, 189
10 Cal.App.4th 562, 577 (2010)). ("One injury gives rise to only one claim for relief... The violation of
11 one primary right constitutes a single cause of action."; *Crowley v. Katleman*, 8 Cal. 4th 666, 681-82)
12 (1994); *Li v. A Perfect Day Franchise, Inc.*, 2012 WL 2236752, *17 (N.D. Cal.2012) ("There is no
13 authority that "would permit double recovery of essentially the same penalties.")

14 PAGA penalties are not mandatory but permissive. (See Yeremian Decl. at ¶ 23). Labor Code
15 § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount
16 specified by this part if, based on the facts and circumstances of the particular case, to do otherwise
17 would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (See *Thurman v.*
18 *Bayshore* (2012) 203 Cal. App. 4th 1112 (*substantially* reducing PAGA penalties by 30% under this
19 provision) (emphasis added); *Sanchez v. McDonald's Corp.* (2017), LASC Case No. No. BC 499888
20 (98% reduction from \$41 million to \$775,000); *Ghrdilyan v. RJ Financial* (2012), LASC Case No.
21 BC430633 (94% reduction from \$5.4 million to \$325,000); *Fleming v. Covidien, Inc.* (2011), USDC
22 Case No. ED CV 10-01487-RGK (OPx) (87% reduction from \$2.8 million to \$375,000).).

23 Moreover, in *Kaanaana* , 29 Cal.App.5th 778, 788 & 809, the Court of Appeals took no issue
24 with the trial court exercising its discretion in slashing PAGA civil penalties for violations of Labor
25 Code section 512 to 13% of the total recoverable penalties. In *Carrington*, 30 Cal.App.5th 504, the
26 plaintiff requested penalties in excess of \$70 million, based on a \$25 to \$75 penalty per violation.
27 The court reduced the award, stating that awarding the maximum penalty would be unjust, arbitrary,
28 and oppressive based on Starbucks's good faith attempts to comply with the law. The lower court's

1 reduced award of \$150,000 was affirmed on appeal, which reflects .2% of the total recoverable
2 penalties sought.² Defendant maintained that it would be unjust to award maximum PAGA penalties
3 and that stacking of penalties was not appropriate.

4 **B. The Requested Attorney Fees And Cost Award Should Be Approved**

5 The PAGA provides that any employee who prevails is entitled to an award of reasonable
6 attorneys' fees and costs. Cal. Lab. Code § 2699(g)(1). The PAGA statute provides for approval of
7 the settlement but does not specifically provide that the amount or reasonableness of attorneys' fees
8 and costs is subject to court approval. Cal. Lab. Code §§ 2699(g)(1) and (l)(2). A reasonable
9 interpretation of the PAGA is that the amount of attorneys' fees need only be addressed by a court
10 when the LWDA objects because there is no need to provide absent employees' due process rights in
11 a PAGA settlement since the aggrieved employees do not have their own substantive rights. *See*
12 *Sakkab v. Luxottica Retail North America, Inc.* (9th Cir. 2015) 803 F.3d 425, 436. And, the LWDA,
13 as the real party in interest and the primary beneficiary of the settlement, has an opportunity to
14 review the settlement before it is approved. Cal. Lab. Code § 2699(l)(2). Unlike a class action, where
15 the purpose of court approval is to protect absent class members, in a PAGA settlement the real party
16 in interest, the LWDA, has the opportunity to review and consider the reasonableness of the fees and
17 object before the court hears the approval motion. If a court considers the reasonableness of the
18 attorneys' fees requested, it should be guided by the common fund doctrine typically applied in class
19 action cases.

20 **1. The Payment of Attorneys' Fees Is Reasonable and Therefore Falls**
21 **within the Range of Approval by the Court**

22 The California Supreme Court has recently held that "when class action litigation establishes
23 a monetary fund for the benefit of the class members, and the trial court in its equitable powers
24 awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee
25 by choosing an appropriate percentage of the fund created." *Laffitte v. Robert Half Intern. Inc.*

26 ² These instances of judicial discretion imposing massive reductions in recoverable penalties is to be contrasted with
27 *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) 365 F.Supp. 3d 980, 992, where the trial court reduced the recoverable
28 PAGA penalties by only 25%. *Bernstein*, however, only amplifies the predictive blind spot of how a court can exercise
its wide-discretion to reduce full PAGA exposure.

1 (2016) 205 Cal.Rptr.3d 555, 573. Indeed, courts may use the “percentage method for its primary
2 calculation of the fee award. The choice of a fee calculation method is generally one within the
3 discretion of the trial court, the goal under either the percentage or lodestar approach being the
4 award of a reasonable fee to compensate counsel for their efforts.” *Id.*

5 Pursuant to the Settlement Agreement, the PAGA Counsel is entitled to 40% of the Gross
6 Settlement Amount, or Eighty-Six Thousand Dollars and No Cents (\$86,000.00), as attorneys’ fees
7 for its representation of Plaintiff and the Aggrieved Employees in this Matter. (*See* Yeremian Decl.,
8 **Exhibit 2** at ¶ 4(a).) PAGA Counsel respectfully requests an order approving its attorneys’ fees in
9 the amount of \$86,000.00 pursuant to the Settlement Agreement. (*See* Yeremian Decl. at ¶ 24-25).

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

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

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

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

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

17 Attorney’s fees payable from this settlement amount to PAGA Counsel in no way
18 undermined their fiduciary duties to the putative class. (*See id.* at ¶ 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. Cremar, 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 ¶¶ 31-33.)

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 informal discovery, reviewed and analyzed time and pay records,
18 employment handbooks, the Plaintiff's personnel files, relevant policies and other documentation,
19 researched the applicable law and potential defenses, constructed damage models based on
20 interpretations of California law, reviewed information provided by Defendant at the mediation,
21 engaged in meet and confer efforts with Defendant, and ultimately drafted and revised the settlement
22 agreement. (*See id.* at ¶32). PAGA Counsel conservatively estimates that it invested over 160 hours
23 of attorney time in this matter. David Yeremian's billing rate is \$750.00 per hour (18 years out of
24 law school and is less than the Laffey Matrix rate of \$759.00), and he spent 52 hours on this matter.
25 Roman Shkodnik's billing rate is \$575.00 (9 years out of law school matches Laffey Matrix rate of
26 \$672.00), and he spent 108 hours on this matter. (*See* Yeremian Decl. (*See id.* at ¶32).) The lodestar
27 for Plaintiff's counsel is \$101,100 (\$39,000 for David Yeremian's time on the case and \$62,100 for
28 Roman Shkodnik's time on the case). (*See* Yeremian Decl. at ¶ 32, **Exhibits 4** and the Declaration of

1 Roman Shkodnik concurrently filed herewith, **Exhibit 1**). The fee request of \$86,000 results in a
2 multiplier of approximately 0.85 further evidencing the reasonableness of the request.

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

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

7 PAGA Counsel requests reimbursement for costs, totaling \$10,022.17. Attached to the
8 concurrently filed Declaration of David Yeremian as **Exhibit 3**, is PAGA his cost log, showing
9 total costs of \$10,022.17. All of these costs are and were reasonable and necessary in the prosecution
10 of the Action, for the benefit of the State and the Aggrieved Employees. (See Yeremian Decl.,
11 **Exhibit 3**). Moreover, the expenses for which reimbursement is sought are recoverable in common
12 fund cases. See *In re United Energy Corp. Solar Power Modules Tax Shelter Inv. Secs. Litig.*, 1989
13 U.S. Dist. LEXIS 19146, 16 (C.D. Cal. Mar. 9, 1989) (“[R]eimbursement of ... filing fees, postage,
14 telephone bills, photocopying, legal research assistance, deposition costs, witness fees, and similar
15 items... [are] appropriate for cost reimbursement in common fund cases.”); *Bond v. Ferguson*
16 *Enters. Inc.*, 2011 U.S. Dist. LEXIS 70390, at 36-37 (E.D. Cal. June 29, 2011) (finding that the
17 incurred costs, including payment to court reporters for depositions, mediation costs, legal research,
18 and in-house copies of documents, are routinely reimbursed in these types of cases); *Vasquez v.*
19 *Coast Valley Roofing, Inc.*, 266 F.R.D. 482, at 493 (E.D. Cal. 2010) (“The costs billed, which
20 include ground transportation, copy and scanning costs, computer research, and expert witness fees,
21 are reasonable.”).

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

24 **IV. CONCLUSION**

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

28 ///

1 DATED: December 10, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

2
3 By

4 David Yeremian

Roman Shkodnik

5 Attorneys for Edwin Quizon on behalf of himself
6 and others similarly situated
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