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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

CASEY GOODMAN and ANGELO
PERMISON, on behalf of themselves, all
other similarly situated and typical
individuals, and the general public,

Plaintiffs,

vs.

NORTHCENTRAL PIZZA, LLC; and DOES
1 through 50, inclusive,

Defendant(s).

Case No. 34-2021-00295266-CU-OE-GDS

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION TO APPROVE
SETTLEMENT AGREEMENT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: October 14, 2022

Time: 9:00 a.m.

Dept.: 28

Action Filed: February 16, 2021

Trial Date: None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on October 14, 2022, at 9:00 a.m., or as soon
3 thereafter as the matter may be heard, before the Honorable Lauri A. Damrell, judge presiding,
4 in Department 28 of the above referenced Court, located at 720 Ninth Street, Sacramento,
5 California 95814, Plaintiffs Casey Goodman and Angelo Permison (“Plaintiffs”) will seek an
6 Order approving the concurrently filed PAGA Settlement Agreement, pursuant to the
7 procedures set forth in Labor Code section 2698, *et seq.*

8 This motion will be based on this notice of motion, the attached memorandum of
9 points and authorities, the accompanying declaration of Joshua Buck, the records and file
10 herein, and on such other evidence as may be presented at the hearing of the motion.

11
12 Dated: July 26, 2022

THIERMAN BUCK LLP

13
14 By: /s/ Joshua D. Buck

Mark Thierman

Joshua Buck

Leah Jones

Joshua Hendrickson

17 Attorneys for Plaintiffs and Aggrieved Employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section
4 2698, *et seq.*, Plaintiffs Casey Goodman and Angelo Permison (“Plaintiffs”) hereby move the
5 Court for an order approving the non-reversionary PAGA settlement as set forth in the
6 concurrently filed PAGA Settlement Agreement (“Agreement” or “Settlement Agreement”).
7 As set forth in the operative Complaint, Plaintiffs seek PAGA penalties based on Defendant
8 Northcentral Pizza, LLC’s (“Defendant”) alleged failure to reimburse employees for all
9 business-related expenses, alleged failure to pay all wages due free and clear, alleged failure to
10 provide accurate itemized wage statements, and alleged failure to timely pay all wages upon
11 separation of employment. Specifically, Plaintiffs allege that Defendant had a policy wherein
12 Defendant’s delivery drivers were not properly reimbursed for all of the miles that they drove
13 and were not properly reimbursed for other expenses. As a result of Defendant’s failure to
14 properly reimburse its delivery drivers, Defendant did not pay all wages owed free and clear,
15 did not provide accurate itemized wage statements, and did not pay all wages that were owed
16 at the time of termination.

17 As demonstrated below and in the accompanying declaration of Joshua Buck, the
18 proposed settlement warrants the Court’s approval. This settlement was reached after
19 investigation and discovery, including Defendant’s production of relevant policy documents
20 and payroll data.

21 Pursuant to the terms of the Settlement Agreement, Defendant will pay the gross
22 amount of \$130,000.00 (the “Total Settlement Amount”), which includes a payment of
23 approximately \$51,000 in civil penalties to the California Labor and Workforce Development
24 Agency (“LWDA”). The proposed release is narrowly tailored to release only claims under
25 PAGA that were or could have been pled based on the operative Complaint—specifically,
26 Labor Code sections 201, 202, 203, 226, 510, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699.3,
27 2699.5, and 2802.

28 The proposed settlement constitutes an adequate, fair, and reasonable settlement on

1 behalf of the LWDA and Aggrieved Employees and accomplishes the goals of PAGA.

2 **II. PROCEDURAL HISTORY**

3 **A. Summary of the Litigation and Settlement**

4 On or about January 29, 2021, Plaintiffs served a letter to the LWDA and Defendant in
5 accordance with the requirements of Labor Code section 2699.3, to notify the LWDA of
6 alleged violations by Defendant of California Labor Code sections 201, 202, 203, 226(a), and
7 2802 for the following alleged failures: (1) failure to reimburse for necessary business
8 expenses in violation of Labor Code section 2802; (2) failure to pay wages free and clear in
9 violation of California law; (3) failure to provide accurate itemized wage statements in
10 violation of Labor Code section 226; and (4) failure to timely pay all wages due and owing in
11 violation of Labor Code sections 201 *et seq.* To date, the LWDA has declined to investigate
12 the alleged violations. (Declaration of Joshua Buck (“Buck Decl.”), ¶ 3.)

13 On February 16, 2021, Plaintiffs commenced this Action. Plaintiffs’ Complaint sought
14 class damages and civil penalties under the PAGA for the following alleged violations of the
15 California Labor Code: (1) failure to reimburse necessary expenses (Labor Code section
16 2802); (2) failure to pay wages free and clear (Labor Code sections 510, 1194, 1194.2, 1197,
17 1197.1, and 1198); (3) wage statement violations (Labor Code sections 226 *et seq.*); and (4)
18 failure to pay all wages due at the time of termination (Labor Code sections 201-203). *Id.*

19 After the filing of the Complaint, Defendant and Plaintiffs (collectively, the “Parties”)
20 discussed possible informal resolution of this matter. The Parties engaged in a robust meet and
21 confer effort regarding the underlying merits of the case and subsequently agreed to participate
22 in mediation. (Buck Decl. ¶¶ 6,9.)

23 In advance of the mediation, Defendant produced extensive data, including the number
24 of delivery drivers Defendant employed in California, the number of pay periods these
25 delivery drivers worked during the PAGA period, the number of separated delivery drivers
26 during the PAGA period, and extensive information about the reimbursements that these
27 delivery drivers received during the PAGA period. (Buck Decl. ¶ 8.) Defendant also produced
28 relevant policies regarding reimbursements to delivery drivers. (*Id.* at ¶ 7.) This information

1 allowed Plaintiffs to conduct a full analysis of the potential penalties available to Plaintiffs
2 based on their allegations of Labor Code violations. (*Id.* ¶ 8.)

3 On December 10, 2021, the Parties participated in private mediation with a well-
4 respected wage and hour mediator, Mark LeHocky. (Buck Decl. ¶ 9.) During the mediation, the
5 Parties spoke at length about the strengths and weaknesses of each side’s claims and defenses,
6 and the scope of Defendant’s liability. *Id.* After a full day of negotiation, the Parties were not
7 able to reach an agreement to settle Plaintiffs’ claims. However, after months of additional
8 negotiations, and after Defendant shared additional data and information, the parties were able to
9 agree on the terms of a settlement, as detailed fully in the Settlement Agreement. *Id.*

10 **III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT**

11 The material terms of the settlement are described below and set forth in detail in the
12 concurrently filed Settlement Agreement. (Buck Decl. ¶ 10, Ex. A.)

13 **A. The Aggrieved Employees**

14 The settlement covers “all current and former hourly-paid delivery drivers employed
15 by Defendant in the State of California during the Covered Period.” (the “PAGA Settlement
16 Group Members”). Settlement Agreement ¶ I.P. Based upon Defendant’s records through
17 there are an estimated _990_ PAGA Settlement Group Members who worked approximately
18 11,918 pay periods during the Covered Period. *Id.* (Buck Decl ¶ 11.)

19 **B. Settlement Sum and Allocation**

20 The Settlement Agreement requires Defendant to pay the gross amount of One
21 Hundred Thirty Thousand Dollars (\$130,000.00) (the “Total Settlement Amount”). Settlement
22 Agreement ¶ I.W. Based on the Total Settlement Amount, Defendant will pay approximately
23 \$10.91per pay period ($\$130,000 \div 25,070$ pay periods) to resolve the claims in this case. (Buck
24 Decl. ¶ 16.)

25 The balance of the PAGA Settlement Amount remaining after deduction of the
26 attorneys’ fees and costs and settlement administration costs (the “Net Settlement Amount”),
27 will be available for distribution to the LWDA and PAGA Settlement Group Members.
28 Settlement Agreement ¶ III.C. Seventy-five percent (75%) of the Net Settlement Amount, or

approximately \$51,000, will be paid to the LWDA for PAGA penalties. Settlement Agreement ¶ III.E; Buck Decl. ¶ 13. The remaining twenty-five percent (25%), or approximately \$17,000, will be distributed to PAGA Settlement Group Members. Settlement Agreement ¶ III.G; Buck Decl. ¶ 13. The amount any particular PAGA Settlement Group Member will be entitled to recover will depend on the number of pay periods during which he or she worked during the Covered Period, with some entitled to receive more and others less. Settlement Agreement ¶ III.G; Buck Decl. ¶ 17. This is fair, as it directly allocates greater penalties to individuals who have allegedly suffered greater harm. Buck Decl. ¶ 17. Any uncashed checks will escheat to the Unclaimed Property Fund administered by the California State Controller's Office in the name of the PAGA Settlement Group Member, where it will be held in trust. Settlement Agreement ¶ III.I.9.

As part of the Settlement Agreement, Defendant does not object to Plaintiffs' Counsel's request for attorneys' fees of approximately thirty-three and one-third percent (33 1/3%) of the Total Settlement Amount, *i.e.*, Forty-Five Thousand Dollars (\$45,000.00), plus up to Seven Thousand Dollars (\$7,000.00) for reimbursement of litigation costs, subject to the Court approving this Settlement.¹ Settlement Agreement ¶ III.F.

Finally, the Settlement Agreement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator. Settlement Agreement ¶ III.D. The Parties have agreed to utilize CPT Group to administer the settlement, with the administration costs estimated to be \$10,000. *Id.* ¶¶ III.D, III.H.

C. Scope of the Released Claims

In exchange for the payments described above, Plaintiff, the State of California, and PAGA Settlement Group Members will release Defendant and Released Parties from:

any and all claims based on the Private Attorneys General Act (2004), as pleaded in Plaintiff's Complaint or that could have been pleaded on the facts as alleged in the Complaint and Plaintiff's notice letters to LWDA, arising during the Covered Period, including but not limited to claims under Labor Code sections 201-203, 226, 510, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699.3,

¹ As set forth below, Plaintiff's Counsel seeks reimbursement for its anticipated actual litigation costs in the amount of \$7,000.00. (Buck Decl. ¶ 14.)

2699.5, and 2802, the Industrial Welfare Commission Wage Orders, and any resulting claim for attorneys’ fees and costs (the “Released Claims”).

Settlement Agreement ¶ III.J.1.

IV. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED

A. PAGA Overview

In 2004, California enacted PAGA, which allows aggrieved employees, on behalf of the LWDA and other aggrieved employees, to bring suit against their employers for alleged violations of the California Labor Code and to obtain penalties that previously could only be obtained by the State. PAGA was enacted because the Legislature determined that it was “in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations,” since the State had not been able to fully or adequately enforce its labor laws. *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009); *Ochoa- Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, *4 (N.D. Cal. April 2, 2010) (“The act’s declared purpose is to supplement enforcement actions by public agencies, which lack adequate resources to bring all such actions themselves. Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action.” [citations omitted]).

Labor Code section 2699(a) states that any Labor Code provision “that provides for a civil penalty to be assessed and collected by the [LWDA] may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” An “aggrieved employee” means “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.” Lab. Code § 2699(c). Prior to commencing an action, the allegedly aggrieved employee must provide notice to the LWDA and the employer setting forth the “specific provisions of [the Labor Code] alleged to have been violated, including the facts and theories to support the alleged violation.” Lab. Code § 2699.3(a)(1). If the LWDA decides not to investigate the allegations or issue a citation to the employer, the proposed representative plaintiff is entitled to commence a PAGA action

1 after 65 days. Lab. Code § 2699.3(a)(2).

2 The California Supreme Court has explained that a plaintiff who brings a PAGA claim
3 “represents the same legal right and interest as state labor law enforcement agencies,” and
4 brings PAGA claims “as the proxy or agent” of the State. *Arias*, 46 Cal. 4th at 986. Of the civil
5 penalties recovered, 75 percent goes to the LWDA, and the remaining 25 percent goes to the
6 “aggrieved employees” for collecting the penalties on behalf of the State Lab. Code § 2699(i);
7 *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (a PAGA
8 representative’s recovery is “an incentive to perform a service to the state, not restitution for
9 wrongs done to members of the class”).

10 **B. Class Action Settlement Standards Do Not Govern the Settlement Approval**
11 **Process for PAGA Claims**

12 In class action cases, the purpose of the Court’s preliminary evaluation of the
13 settlement is to determine whether it is within the “range of reasonableness,” and thus whether
14 notice to the class of the terms and conditions of the settlement, and the scheduling of a formal
15 fairness hearing, are worthwhile. *See* 4 Herbert B. Newberg, *Newberg on Class Actions* §
16 11.25, *et seq.* and § 13.64 (4th ed. 2002 and Supp. 2004) (“*Newberg*”). The “judge must make
17 a preliminary determination on the fairness, reasonableness, and adequacy of the settlement
18 terms and must direct the preparation of notice of the certification, proposed settlement, and
19 date of the final fairness hearing.” *Manual for Complex Litigation, Fourth* § 21.632 (Fed. Jud.
20 Ctr., 4th ed. 2004). To make the preliminary fairness determination, courts may consider
21 several relevant factors, including “the strength of the plaintiff’s case; the risk, expense,
22 complexity, and likely duration of further litigation; the risk of maintaining class action status
23 through trial; the amount offered in settlement; the extent of discovery completed and the stage
24 of the proceedings; [and] the experience and views of counsel...” *See Hanlon v. Chrysler*
25 *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

26 By contrast, court approval of PAGA settlements is governed by section 2699(1) of the
27 Labor Code, which provides, in relevant part: “The court shall review and approve any
28 penalties sought as part of a proposed settlement agreement pursuant to this part.” The parties

1 are not obligated to “satisfy class action requirements,” including the standards for class action
2 settlement approval. *Arias*, 46 Cal. 4th at 980-988 (affirming lower court’s holding that
3 “plaintiff need not satisfy class action requirements” to assert a PAGA claim).

4 Notably, unlike the class action settlement approval process, there is also no statutory
5 mechanism for this Court to conduct a two-step settlement approval review. Cal. Lab. Code §
6 2699(1). In addition, “[u]nnamed employees need not be given notice of the PAGA claim, nor
7 do they have the ability to opt-out of the representative PAGA claim” or “contest a settlement,
8 if any, reached between the parties.” *Ochoa-Hernandez*, 2010 WL 1340777 at*13.

9 **C. The Settlement is Reasonable and Effectuates PAGA’s Objectives**

10 The Court’s focus in approving a PAGA settlement is not the amount that aggrieved
11 employees will ultimately receive as a result of the settlement, but instead, on whether the total
12 settlement amount achieves PAGA’s objectives. Under PAGA, the penalties recovered are
13 meant to supplement agency funding for education and enforcement purposes. *See* Lab. Code
14 § 2699(i). Here, the settlement represents an extraordinary recovery for the PAGA Settlement
15 Group Members and the State, and thus the settlement certainly effectuates PAGA’s purpose.

16 The settlement is also consistent with the State’s public policy favoring resolution of
17 disputes. “California law favors the settlement of disputes as our high court clarified in
18 *Neary*[]. Settlement is efficient; it reduces costs, saves resources, and minimizes court
19 congestion. [] The parties are best positioned to understand their interests and resolve a dispute
20 in a mutually beneficial manner without court intervention into the settlement.” *Consumer*
21 *Advocacy Group, Inc. v. Kintetsu*, 141 Cal. App. 4th 46, 62-63 (2006) (citing *Neary v. Regents*
22 *of Univ. of Cal.*, 3 Cal. 4th 273, 277- 278 (1992)).

23 **D. The Scope of the Release is Appropriately Limited**

24 If approved, the settlement would release Defendant and other releasees from all
25 claims under PAGA that were or could have been pled based on the operative Complaint—
26 specifically, Labor Code sections 201, 202, 203, 226, 510, 1194, 1194.2, 1197, 1197.1, 1198,
27 2698, 2699.3, 2699.5, and 2802. The settlement would not impact any other PAGA Settlement
28 Group Members’ ability to pursue PAGA claims predicated on other Labor Code violations.

Therefore, the limited scope of the release also supports approval. Because an aggrieved employee's PAGA action is a substitute for an action brought by the government, "judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." *Arias*, 46 Cal. 4th at 986. However, "the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." *Id.* at 987; *see also*, Lab. Code § 2699(g)(l) (non-party aggrieved employees retain all rights "to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part").

Accordingly, the PAGA Settlement Group Members will be subject to only a limited release strictly confined to the penalties and other relief available under PAGA for violation of Labor Code sections 201, 202, 203, 226, 510, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699.3, 2699.5, and 2802. The release is therefore appropriately tailored.

E. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of Litigation

Though Plaintiffs are reasonably confident that they would prevail at trial, proceeding in litigation entails significant risk on the underlying merits of Plaintiffs' theories, in addition to the still-developing law under PAGA.

1. Plaintiffs' Claims are Contested

Plaintiff asserts that their representative PAGA claim is based on the allegation that Defendant failed to reimburse for all business-related expenses, pay all wages owed upon separation of employment, and provide accurate itemized wage statements. Defendant has argued that it complied with the law, had legal policies, and provided its employees with appropriate reimbursements. (Buck Decl. ¶¶ 4). Defendant, moreover, provided evidence that it had a facially compliant reimbursement policy in place during the Covered Period. *Id.* Defendant may have sought summary judgment on these issues or proceeded to trial. *Id.* Should Defendant have prevailed, the State of California and PAGA Settlement Group Members would have been left with no recovery. *Id.*

2. Recovery of Penalties After Trial

Defendant has indicated that there were approximately 11,918 pay periods through November 30, 2021, during which PAGA Settlement Group Members worked for Defendant. Therefore, pursuant to the PAGA, Plaintiffs have calculated total exposure for a violation for each pay period (as opposed to a single violation for all pay periods) to be approximately \$1,191,800.00, if based upon the initial penalty of \$100 per violation. (Buck Decl. ¶ 18.) However, even if Plaintiffs were to prevail on the merits of the PAGA claim, the potential recovery is uncertain. If the Court only awarded a maximum penalty for a single violation per aggrieved employee, the total penalties would only be approximately \$99,000.00. (Buck Decl. ¶ 19). Even then, pursuant to Labor Code § 2699(f)(2) the Court can decline to award the full amount of PAGA penalties “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.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539; *see O’Connor*, 2016 WL 4398271, at *17 (noting that even if PAGA penalties amounted to \$1 billion, such award “could well be reduced, as a court may reduce the penalty when to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory”).

Courts routinely award far less than the statutory maximum amount of civil penalties, even where an underlying violation of the Labor Code is found. Indeed, just very recently, in the matter of *Magadia v. Wal-Mart Assocs. et al.*, while the trial court imposed substantial PAGA penalties upon the defendant, such amount still represented reductions of 67% and 80% of the potential PAGA penalties at issue. 2019 U.S. Dist. Lexis 91792 at *87-*100 (N.D. Cal. May 31, 2019). Moreover, this was only after the plaintiff in *Magadia* had prevailed after trial.

Here, Plaintiffs maintain that there does not exist a reason for reducing PAGA penalties. However, Plaintiffs are aware that Defendant could make a compelling argument to

1 the contrary. (Buck Decl. ¶ 20.)

2 **3. Settlement is Reasonable When Compared to the Value of the**
3 **Underlying Labor Code Claim**

4 The Court's assessment of the proposed Settlement must take into account that any
5 penalties awarded may be subject to substantial reduction. When this is considered, in
6 conjunction with the history of PAGA settlements, and the fact that Plaintiffs may recover
7 nothing, the proposed settlement is patently reasonable. Indeed, the Total Settlement Amount
8 is approximately 10% of the maximum amount of penalties at issue, if the Court permitted an
9 award of multiple violations per pay period. (Buck Decl. ¶ 23.) If the Court were to only
10 permit a single violation penalty per pay period, the Total Settlement Amount is approximately
11 131% of the available penalties. *Id.* Settlement for this reduced value allows for the
12 distribution of penalties in an amount which accounts for the risk of continued litigation and
13 Defendant's likely arguments that higher penalties would have been confiscatory. It also
14 sufficiently deters Defendant from engaging in similar conduct in the future, which is one of
15 the primary goals of PAGA.

16 The proposed settlement exceeds PAGA settlements that courts have approved in other
17 cases, when considered as a percentage of the overall settlement value of the case. The
18 proposed settlement, in fact, far exceeds other PAGA settlements approved by courts —
19 including those that provide for less than the one percent allocation to PAGA penalties. *See,*
20 *e.g., Hopson v. Hanesbrands Inc.*, 2009 WL 928133, *9 (N.D. Cal. Apr. 3, 2009) (approving
21 total PAGA allocation that was 0.49% of \$408,420.32 gross settlement; *Moore v. PetSmart,*
22 *Inc.*, 2015 WL 5439000, *8 (N.D. Cal. Aug. 4, 2015) (approving total PAGA allocation that
23 was 0.5% of \$10,000,000 gross settlement); *Lusby v. Gamestop Inc.*, 97 F.R.D. 400, 407 (N.D.
24 Cal. 2013) (approving total PAGA allocation that was 0.67% of \$750,000 gross settlement).
25 For example, in *Cotter v. Lyft, Inc.*, the plaintiff alleged that drivers who use Lyft were
26 misclassified as independent contractors. 2016 WL 3561742 (N.D. Cal. June 23, 2016). The
27 parties settled all Labor Code and PAGA claims for \$27 million, with a PAGA allocation of
28 \$1 million – or 3.7% of the total settlement. *Id.* at *2. In granting preliminary approval to the

1 proposed settlement in *Cotter*, the court noted that the PAGA allocation “might seem low
2 when compared to the maximum PAGA penalties,” but acknowledged that it was in fact “quite
3 high compared to the typical amount apportioned to claims for PAGA penalties in wage and
4 hour settlements.” *Id.* at *5.

5 A PAGA allocation need not represent any particular percentage of the overall
6 settlement value in order to secure court approval, and courts routinely approve PAGA
7 settlements representing only a tiny fraction of the overall settlement value. Here, on the other
8 hand, the settlement proposes a payment of approximately \$51,000 in penalties to the LWDA
9 and approximately \$17,000 in penalties to the PAGA Settlement Group Members, which is an
10 outstanding result in a PAGA-only case. *See* Buck Decl. ¶ 13. The proposed settlement sum in
11 this case vastly exceeds, both in terms of the total dollar amount and as a percentage of overall
12 settlement value, the typical PAGA settlement.

13 **F. The Attorneys’ Fees are Reasonable**

14 Labor Code section 2699(g)(1) provides for the recovery of attorneys’ fees and costs in
15 any successful action brought under PAGA. Although this is not a class action, in class actions
16 California state and federal courts have recognized that an appropriate method for determining
17 an award of attorneys’ fees is based on a percentage of the total value of benefits to class
18 members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254
19 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) (“*Serrano III*”); *Boeing Co. v. Van Gemert*,
20 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir.
21 1997). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to
22 “spread litigation costs proportionally among all the beneficiaries so that the active beneficiary
23 does not bear the entire burden alone.” *Vincent*, 557 F. 2d at 769.

24 The common fund doctrine is predicated on the principle of preventing unjust
25 enrichment. When a litigant’s efforts create or preserve a fund from which others derive
26 benefits, he may require the passive beneficiaries to compensate those who created the fund.
27 Both California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at
28 35; *Vincent*, 557 F. 2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal.

1 4th 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine
2 has been applied “consistently in California when an action brought by one party creates a
3 fund in which other persons are entitled to share.” The reasons for applying the common fund
4 doctrine include: “fairness to the successful litigant, who might otherwise receive no benefit
5 because his recovery might be consumed by the expenses; correlative prevention of an unfair
6 advantage to the others who are entitled to share in the fund and who should bear their share of
7 the burden of its recovery; encouragement of the attorney for the successful litigant who will
8 be more willing to undertake and diligently prosecute proper litigation for the protection or
9 recovery of the fund if he is assured that he will be properly and directly compensated should
10 his efforts be successful.” *Id.*

11 Indeed, most recently, the California Supreme Court has also held that the award of
12 attorneys’ fees in common fund wage and hour class action settlements should start with the
13 percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the
14 overwhelming majority of federal and state courts in holding that when class action litigation
15 establishes a monetary fund for the benefit of the class members, and the trial court in its
16 equitable powers awards class counsel a fee out of that fund, the court may determine the
17 amount of a reasonable fee by choosing an appropriate percentage of the fund created.”).

18 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
19 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that
20 required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is
21 “extraordinarily high or low [should] the trial court [] consider whether the percentage method
22 should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

23 Here, as set forth in their declarations and their respective lodestars, Plaintiffs’
24 attorneys have spent at least 78.5 hours litigating this current action, which includes an
25 anticipated additional 20 hours preparing for the hearing on this motion, corresponding with
26 the Settlement Administrator and Defendant’s Counsel regarding the administration of the
27 settlement. (Buck Decl. ¶¶ 30.) Based thereon and based on each of the Plaintiffs’ attorneys’
28 hourly rates, the lodestar equates to \$69,098.00, which represents a negative multiplier (i.e.,

attorneys fees requested are less than the hourly billable rate of work invested) of .65. (Buck Decl. ¶ 30.) Thus, the requested fee amount of \$45,000.00 is fair and reasonable.

Additionally, Plaintiffs' Counsel's cost reimbursement request in the amount of \$7,000.00 is also reasonable. (Buck Decl. ¶ 14.) The costs were all directly incurred in the prosecution of this action, including filing fees, mediation fee, postage, copying, and service of process fees. *Id.* As such, the requested costs should be awarded as fair and reasonable.

G. The Settlement Administrator's Fees Should be Approved

The Parties have agreed to pay actual costs of administration, or \$10,000, to the Settlement Administrator, CPT Group, to administer this settlement. Settlement Agreement ¶¶ III.D, III.H. The Parties believe that the administration fee is reasonable and should be approved. (Buck Decl. ¶ 15.)

H. Notice to the LWDA Has Been Provided

Concurrent with the filing of this motion, Plaintiffs uploaded the instant motion to the LWDA's website. (Buck Decl. ¶ 32.)

V. CONCLUSION

Based on the above, Plaintiffs request the Court approve the current PAGA settlement.

Dated: July 26, 2022

THIERMAN BUCK LLP

By: /s/ Josuha D. Buck

Mark Thierman

Joshua Buck

Leah Jones

Joshua Hendrickson

Attorneys for Plaintiffs and Aggrieved Employees

PROOF OF SERVICE

In accordance with California Rules of the Court 2.251(c)(3) I hereby certify that I am a resident of the State of Nevada and over the age of eighteen years and not a party to the within action. On this 26th day of July 2022, I served a true and correct copy of the foregoing **PLAINTIFFS' NOTICE OF MOTION AND MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

via email to the following recipients:

Doug Leach
doug@medinamckelvey.com
Tim Nelson
tim@medinamckelvey.com

/s/ Jennifer Edison-Strekal
An Employee of Thierman Buck, LLP