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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER

13 RAFAEL RIVAS, JR., on behalf of other
14 similarly aggrieved employees,

15 Plaintiffs,

16 v.

17 PIPE RESTORATION, INC. DBA ACE
18 DURAFLO PIPE RESTORATION, an
19 active California Corporation; and DOES
20 1 through 10,

21 Defendants.

Case No.: 30-2021-01189254-CU-OE-CXC

REPRESENTATIVE ACTION

*[Assigned to Hon. William D. Claster
in Dept. CX-104]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PAGA SETTLEMENT, AND PAYMENT
OF ATTORNEYS' FEES, COSTS, AND
ENHANCEMENT AWARD**

[FILED CONCURRENTLY WITH
DECLARATION OF ZORIK
MOORADIAN; DECLARATION OF HAIK
HACOPIAN; AND [PROPOSED] ORDER]

Date: June 17, 2022

Time: 9:00 a.m.

Dept.: CX-104

Reservation Number: 73767131

1 **PLEASE TAKE NOTICE** that, pursuant to Cal. Lab. Code §2699, on June 17, 2022
2 at 9:00 a.m. or as soon thereafter as the matter may be heard in Department CX-104 of the
3 above-entitled Court located at 751 West Santa Ana Boulevard, Santa Ana, California 92701,
4 Plaintiff, Rafael Rivas, Jr., ("Plaintiff"), on behalf of similarly-aggrieved employees, will and
5 hereby does move this Court for entry of an Order:

6 1. Approving the settlement entered into between Plaintiff and Defendant Pipe
7 Restoration, Inc. dba Ace Duraflo Pipe Restoration ("Defendant") for representative claims
8 under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), as encompassed by
9 the Parties' Stipulation and Agreement for PAGA Representative Action Settlement
10 ("Settlement Agreement") and;

11 2. Approving a distribution of the Gross Settlement Amount of \$215,000, in
12 accordance with the Settlement Agreement and on account of disputed and alleged civil
13 penalties, as follows: (a) payment of \$71,666.67, or one-third of the Gross Settlement Amount,
14 in attorneys' fees to Mooradian Law, APC; (b) payment of \$9,650.48 in litigation costs to
15 Mooradian Law, APC; (c) payment of \$4,500 to CPT Group for settlement administration; (d)
16 payment of an incentive award to Plaintiff for \$3,000.00; (e) payment to the Labor and
17 Workforce Development Agency ("LWDA") totaling \$94,704.64, which amount represents
18 75% of the total Gross Settlement Amount after attorneys' fees, litigation costs, incentive
19 award, and administration costs; and (e) payment of \$31,568.21, which amount represents
20 25% of the total Gross Settlement Amount after attorneys' fees, incentive award, and costs,
21 on a pro-rata basis to all Aggrieved Employees (defined as "all current and former employees
22 employed by Defendant as a California non-exempt, hourly paid employee (including
23 Plaintiff) during the PAGA Period from March 15, 2020 through the date the Court approves
24 the Parties' settlement.").

25 This motion is based on this Notice, the attached Memorandum of Points and
26 Authorities, the supporting declarations of Zorik Mooradian and Haik Hacopian, and the
27 exhibits attached thereto; the [Proposed] Order Granting Plaintiff's Motion for Approval of
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1 PAGA Settlement, and Payment of Attorneys' Fees and Costs; the Settlement Agreement; all
2 other pleadings and papers on file in this action; and on any further oral or documentary
3 evidence or argument presented at the time of hearing.

4
5 Dated: May 23, 2022

MOORADIAN LAW, APC

6
7 By: /s/Haik Hacopian

8 Zorik Mooradian, Esq.,
9 Haik Hacopian, Esq.,
10 Attorneys for Plaintiff Rafael Rivas, Jr.,
11 individually and on behalf of other
12 aggrieved employees,
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Rafael Rivas, Jr. hereby seeks court approval of a settlement of a pending
4 PAGA claim as covered by Plaintiff's notice letters dated March 15, 2021, March 18, 2021,
5 and January 7, 2022, and as set forth in the operative First Amended Complaint in this action.
6 The scope of the settlement is limited to civil penalties and does not act as a waiver to any
7 employee's individual claims for individual relief.

8 The \$215,000 Gross Settlement Amount, and corresponding allocation for civil
9 penalties therein, is more than fair, adequate, and reasonable and constitutes a significant
10 recovery for what is almost a completely defensible PAGA claim, and is sufficient enough to
11 deter violations and encourage compliance.

12 The Parties reached their settlement after review and analysis of the PAGA claim's
13 predicates involving informal discovery. The settlement was thereafter reached after a
14 mediation session with a well-respected neutral mediator with significant wage and hour
15 experience, Lynn S. Frank.

16 As part of the Gross Settlement Amount and as authorized by the PAGA statute,
17 Plaintiff's counsel is seeking recovery of \$71,666.67 in attorneys' fees, or one-third of the
18 common fund, and which reflects a fair 1.37 multiplier on the \$52,129.50 lodestar incurred
19 by counsel. Moreover, this requested amount is fair, adequate, and reasonable, in light of the
20 work performed by counsel and recovery obtained. Counsel is additionally seeking \$9,560.48
21 in costs, which were reasonable and necessary to the prosecution of this action.

22 This settlement ultimately results in an excellent PAGA civil penalty recovery by the
23 LWDA totaling \$94,704.64 for violations affecting an estimated 60 employees and a
24 corresponding average penalty recovery by each employee in excess of \$500.

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1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 **A. Information Relating to the Parties**

3 Defendant is a specialty plumbing contractor that primarily provides plumbing
4 restoration and repair services that are billed as more affordable and less intrusive alternative
5 to pipe removal and installation. Defendant services residential as well as commercial
6 properties and operates out of its headquarters located in 3122 W Alpine Street in Santa Ana.
7 Declaration of Zorik Mooradian (hereinafter “ZM Decl.”) ¶6.

8 Defendant’s services typically entail travel by different teams of employees to the
9 various job sites on a daily basis. Defendant services locations in Orange, Los Angeles,
10 Ventura, and San Diego counties. Employees also travelled to job sites in their personal
11 vehicles. At the Santa Ana depot each day, the company vehicles would be prepared before
12 travel to job sites, including the loading of tools and necessary supplies. Electronic time clocks
13 were accessed by employees in the company vehicles. ZM Decl., ¶7.

14 Based on the records produced by Defendant, it employed 47 employees during the
15 March 15, 2020 through October 22, 2021 time period who worked 977 pay periods.
16 Defendant has produced time punch records, Plaintiff’s personnel file and payroll records
17 inclusive of itemized wage statements, examples of employee expense reimbursements,
18 examples of written employee counseling for not taking meal periods in compliance with
19 Defendant’s written policy, a memorandum to employees regarding the importance of taking
20 meal periods in compliance with Defendant’s policy, and relevant portions of their operative
21 employee handbook including, but not limited to, expense reimbursement, meal period, and
22 rest break policies. ZM Decl. ¶8.

23 **B. Plaintiff’s Lawsuit, Discovery, and Mediation**

24 Plaintiff filed the instant lawsuit as a putative wage and hour class action against
25 Defendant on March 15, 2021. On that date as well, Plaintiff communicated a PAGA notice
26 to Defendant and thereafter to the LWDA. Upon submission to the LWDA, Plaintiff’s PAGA
27 claim was assigned Case No. LWDA-CM-826101-21. The notice was supplemented on
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1 March 8, 2021. ZM Decl. ¶9.

2 On November 23, 2021, the Parties engaged in mediation before an esteemed mediator
3 with significant employment law experience, Lynn S. Frank, and agreed to settlement of
4 PAGA claims against Defendant on that date. The settlement also contemplated dismissal of
5 class allegations and amendment of the PAGA claim. Ultimately, a long-form written
6 settlement agreement was entered into. ZM Decl. ¶10.

7 On January 7, 2022, Plaintiff communicated the second supplement to his initial
8 PAGA notice. True and correct copies of Plaintiff's PAGA Notices are attached as **Exhibit 1**
9 to the Declaration of Zorik Mooradian. ZM Decl. ¶12, Ex. 1.

10 On April 6, 2022, pursuant to a stipulation and order granting Plaintiff leave to do so
11 and in furtherance of the settlement, Plaintiff filed the operative First Amended Complaint
12 adding a cause of action for civil penalties under PAGA and dismissing class allegations,
13 which was communicated to the LWDA after filing as required. ZM Decl. ¶13.

14 This lawsuit has involved production of relevant documents and employee data.
15 Specifically, Defendant produced complete electronic time punch records for aggrieved
16 employees from which 8,609 daily shifts were gleaned. Defendant also produced relevant
17 excerpts of its employee handbook bearing upon the various issues covered by the PAGA
18 claim. In addition, Defendant provided responses to informal discovery requests which
19 included information relating to rounding and compensation practices as related to employee
20 travel, the number of pay periods implicated (977), and number of aggrieved employees (47)
21 during the PAGA limitations period spanning from March 15, 2020 through October 22, 2021.
22 Notably, Plaintiff learned that although Defendant maintained time rounding that overpaid
23 employees in excess of approximately 38 hours during the March 15, 2020 to February 28,
24 2021 time period, Defendant nevertheless ceased rounding of employee hours as of March 1,
25 2021, ostensibly as a consequence of Plaintiff's communicated intent to pursue claims.
26 Further, Plaintiff's complete personnel file was produced which included Plaintiff's earnings
27 statements which Defendant indicated were representative of the earnings statements for all
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1 aggrieved employees. This information was sufficient for assessment of both liability and
2 potential damages available to aggrieved employees as to Plaintiff's asserted claims. All
3 documents have been reviewed and assessed by Plaintiff in conjunction with investigation of
4 the operative facts and applicable law. Further, Plaintiff is unaware of any other pending
5 actions that overlap with this lawsuit or settlement. ZM Decl. ¶14.

6 **C. Essential Terms of the Settlement**

7 The Parties' settlement allocates \$215,000 for settlement of the Released PAGA
8 Claims. After allocated attorneys' fees of \$71,666.67, requested costs of \$9,650.48, \$4,500
9 for settlement administration expenses, and \$3,000 for an incentive award, 75% of the net, or
10 \$94,704.64 will be paid as the LWDA's 75% share of PAGA penalties, and \$31,568.21 will
11 be payable to Aggrieved Employees¹. The amount payable to Aggrieved Employees will be
12 allocated on a pro-rata basis determined by the number of pay periods each such Aggrieved
13 Employee worked for Defendant during the PAGA Period from March 15, 2020 through the
14 date of approval, and which is expected to result in an average employee payment in excess
15 of \$500. The Gross Settlement Amount is for civil penalties only and does not include any
16 individual relief under Labor Code Section 558(a)(2-3). The Settlement Agreement does not
17 act as a waiver to any employee's individual claims for individual relief. A true and correct
18 copy of the Stipulation and Agreement for PAGA Representative Action Settlement
19 ("Settlement Agreement") is attached as **Exhibit 2** to the Declaration of Zorik Mooradian.
20 ZM Decl. ¶15, Exh. 2.

21 The Settlement Agreement contemplates inclusion of an explanatory letter with
22 payments to Aggrieved Employees which notifies them of the lawsuit, settlement, release, and
23 payment of their share. Ex. B to Settlement Agreement.

24 All checks to Aggrieved Employees will be sent by the Administrator, CPT Group, to
25 each Aggrieved Employee's last known address and shall remain valid and negotiable for 180

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27 ¹ In addition to the \$215,000 Gross Settlement Amount, the Parties' have separately settled Plaintiff Rivas Jr.'s
28 individual claims for \$45,000. ZM Decl. ¶11.

1 days from the date of their issuance. If any checks are not cashed within 180 days of mailing,
2 those residual funds shall be paid to the LWDA. S.A. at pg. 10, ¶45(a).

3 **D. Release**

4 In exchange for the consideration recited in this Settlement Agreement, including the
5 PAGA Payment, Plaintiff, as the representative for the State of California and all Aggrieved
6 Employees, and on behalf of their current, former, and future heirs, executors, administrators,
7 attorneys, agents, and assigns forever completely release and discharge the Released Parties of
8 any and all Released Claims. The Aggrieved Employees and the State of California are deemed
9 by operation of the Final Order and Judgment to have agreed not to sue or otherwise make a
10 claim against any of the Released Parties for any Released Claims. S.A. at pgs. 6-7, ¶34(a).

11 “Released Claims” means all known and unknown claims for relief under PAGA that
12 arose during the PAGA Period that were or reasonably could have been asserted against
13 Defendant and the other Released Parties on behalf of the Aggrieved Employees based on or
14 arising from the facts or claims alleged in the Action and the PAGA notices submitted to the
15 LWDA on Plaintiff’s behalf. Without limiting the generality of the foregoing, and in addition
16 to the foregoing, the release includes all civil penalties recoverable under PAGA for (i)
17 Defendant’s alleged failure to pay for all hours worked, failure to pay the minimum wage for
18 all hours worked, failure to pay all overtime wages, failure to pay all overtime and other wages
19 based on the proper regular rate of pay, failure to pay reporting time pay, failure to provide
20 rest breaks or an additional hour of pay at the regular rate of pay, failure to provide meal
21 periods or an additional hour of pay at the regular rate of pay, failure to maintain accurate
22 employment records, failure to issue accurate wage statements, failure to timely pay wages
23 owed during employment and upon termination, failure to provide paid sick leave, failure to
24 properly accrue and pay accrued vacation at the time of separation, and failure to reimburse
25 business expenses; (ii) violations of, or civil penalties recoverable under, California Labor
26 Code sections §§ 201, 202, 203, 204, 221, 226, 226.7, 227.3, 246, 247.5, 248.5, 510, 512, 558,
27 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 2802, 2699; (iii) violations of the applicable Wage
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1 Order 16, including paragraphs 3, 4, 5, 7, 11, 12, and 20 of the applicable IWC Wage Order;
2 and (iv) attorneys' fees, costs of litigation, and interest. S.A. at pgs. 3-4, ¶20.

3 "Released Parties" means Pipe Restoration, Inc. d/b/a Ace Duraflo Pipe Restoration
4 and each of its officers, directors, agents, insurers, employees, members, board members,
5 partners, owners, shareholders, attorneys or representatives and all of their predecessors,
6 successors, assigns, and any individual or entity that could be jointly liable with Defendant.
7 S.A. at pg. 4, ¶21.

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9 **III. THIS COURT SHOULD APPROVE THIS PAGA SETTLEMENT**
10 **BECAUSE IT IS A FAIR, ADEQUATE, AND REASONABLE**
11 **COMPROMISE OF HIGHLY DISPUTED CLAIMS**

12 Labor Code section 2699(1)(2) provides that the Court shall review and approve any
13 settlement of any civil action filed pursuant to PAGA, much like in a class action settlement.
14 There are, however, several factors distinguishing representative PAGA actions from class
15 action, and thus a PAGA settlement should not be subject to the same level of scrutiny in
16 approving an associated settlement. These distinctions include the fact that a PAGA
17 representative action is fundamentally a law enforcement action designed to protect the public
18 and penalize the employer for past illegal conduct. *Cunningham v. Leslie's Poolmart, Inc.*
19 (C.D. Cal. June 25, 2013) 2013 U.S. Dist. LEXIS 90256, 16-17 [internal citation omitted].)
20 The purpose of a PAGA action is not to collect damages on behalf of employees or provide
21 restitution to victims of Labor Code violation. *Id. See also Franco v. Athens Disposal Co.,*
22 *Inc.* (2009) 171 Cal.App.4th 1277, 1300 ("Restitution is not the primary objection of a PAGA
23 action, as it is in most class action.") Additionally, PAGA does not require the same notice
24 requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA
25 action. *Baumann v. Chase Ins. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122.

26 Civil Penalties assessed under PAGA are primarily intended to deter violations of the
27 employment laws of the State of California. *Iskanian v. CLS Transportation Los Angeles, LLC*
28 (2015) 59 Cal.4th 348. Whether the total settlement of a PAGA claim achieves the objectives

1 of the statute is a factor that should strongly be considered in evaluating this instant settlement.
2 Significantly, pursuant to Labor Code Section 2699(e)(2), in any action brought by an
3 aggrieved employee under PAGA, a court may award a lesser amount than the maximum civil
4 penalty amount if to do otherwise would result in an award that is unjust, arbitrary and
5 oppressive, or confiscatory. As explained below, the weaknesses of the claim would
6 potentially justify significant reduction of maximum available penalties. The terms of the
7 settlement sufficiently act to deter Defendant from further violations alleged in the matter.

8 PAGA was passed because the Legislature believed it necessary “to achieve maximum
9 compliance with state labor laws” and “to ensure an effective disincentive for employers to
10 engage in unlawful and anticompetitive business practices.” 2003 Cal. Legis. Serv. Ch. 906 §
11 1(a). The Legislature further found that, while self-policing efforts have had some success,
12 “in other cases the only meaningful deterrent to unlawful conduct is the vigorous assessment
13 and collection of civil penalties as provided in the Labor Code.” *Id.* at § 1(b). Through PAGA,
14 the Legislature thus: (1) sought to “enlist[] willing citizens in the task of private enforcement,”
15 *Iskanian*, 59 Cal.4th at 390; (2) “deputized” aggrieved employees to sue on behalf of the State
16 to enforce state labor laws; and (3) authorized them to recover civil penalties, attorneys’ fees,
17 and costs. 2003 Cal. Legis Serv. Ch. 906 (Legislative Counsel’s Digest). In bringing a PAGA
18 action, “[t]he employee-plaintiff acts as the proxy or agent of the state labor enforcement
19 agencies, representing the same legal right and interest as those agencies” *Iskanian*, 59
20 Cal.4th at 394.

21 As for the interests of the LWDA (in whose shoes Plaintiff stands), its top enforcement
22 priorities are “to vigorously enforce minimum labor standards in order to ensure employers
23 are not required or permitted to work under substandard unlawful conditions” and to
24 “protect employers who comply with the law from those who attempt to gain a competitive
25 advantage at the expense of their workers by failing to comply with minimum labor
26 standards.” Labor Code § 90.5(a). Moreover, in addition to the collection of civil penalties,
27 Labor Code § 1194.5 (which is specifically referenced in Labor Code § 90.5) authorizes the
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1 LWDA to seek injunctive relief.

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3 **A. Analysis of Plaintiff's PAGA Claim**

4 1. Unpaid Wages Including for Travel Time

5 Defendant maintained a policy of only paying the drivers of company vehicles.
6 Employees not assigned as driver were required to clock in when work began at the jobsite.
7 The claim was initially predicated on Defendant maintaining a requirement that employees
8 travel to work sites in company vehicles and that such time should be compensated and that
9 employees performed some off-the-clock work in preparing the vehicles when they arrived at
10 the depot to hitch their ride. It became apparent, however, that Defendant maintained no such
11 requirement and employees were free to travel to work sites in their own vehicles. Employees
12 also had the option of commuting to the company's depot in Santa Ana and hitch a ride to the
13 job site but they were not expected to perform any work until arriving at the job site, unless
14 they were specifically assigned to preparation duties at the depot. Moreover, to the extent any
15 employee hitching a ride ended up driving, they would be paid for that time. The situation is
16 akin to an employer providing optional bus transportation and would not fall under the
17 California Supreme Court's decision in *Morillion v. Royal Packing Co.*, where employers
18 must pay for "compulsory travel time"—time employees spend traveling on and waiting for
19 transportation required by an employer. (2000) 22 Cal.4th 575. ZM Decl. ¶16.

20 2. Meal and Rest Break Violations

21 Plaintiff's theory for meal and rest break violations was based around the
22 circumstances of Defendant's business model's failure to accommodate compliant breaks.
23 Namely, that Defendant's offer of prompt plumbing remediation services imposed time
24 demands on employees. The nature of the work restricted ability to stop work due to the time
25 delays in turning on/engaging or disengaging the compressor machine used to maintain air
26 pressure flow in the piping for safety purposes. While the compressor machine was on, the
27 employees were restricted from taking timely breaks. Defendant, however, maintained that
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1 each job was sufficiently staffed to permit the taking of timely and proper meal and rest breaks
2 by each employee and that any breaks not taken were purely due to employee choice. Also,
3 that the forepersons at job sites were trained to properly relieve employees for their breaks
4 including knowing when to properly wind down a project to permit commencement of meal
5 breaks before the fifth hour. Defendant also maintained a compliant written meal and rest
6 break policy in its handbook that allowed for off-duty meal breaks, allowed second meal
7 breaks and their waiver, and included a chart for the proper frequency and timing of breaks
8 relative to hours worked. In addition, Defendant distributed additional documents to its
9 employees reminding them of Defendant's meal period policy and issued written counseling
10 to its employees to the extent its employees failed to adhere to Defendant's compliant meal
11 period policy. Ultimately, it would be difficult to conclusively establish whether any particular
12 missed meal break was due to an employee's choice to forego a break, a missed punch, or
13 employer coercion affecting potential triability of the claim. ZM Decl. ¶17.

14 3. Reporting Time Claims

15 Plaintiff claimed that on occasion, an employee would report to work for a scheduled
16 job, including travelling directly to a job site, only to be told that a job was cancelled or that
17 they were not needed. As to those instances, Defendant failed to provide reporting time pay
18 at an employee's regular rate for at least half of their usual or scheduled day's work. Defendant
19 represented that although job cancellations did occur, it promptly and sufficiently notified
20 employees to avoid them arriving at a cancelled job's site. Arguing as well, Defendant held
21 that to the extent any job was cancelled, employees would be routed to other projects to
22 complete their day or work at the company depot. Defendant claimed that a situation where
23 an employee arrived at work to be turned away would be extremely rare considering the
24 safeguards it had in place. Further, the absence of records reflecting a reporting time situation
25 makes it difficult to evaluate this claim as no time clock event would be logged. ZM Decl.
26 ¶18.

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1 4. Unpaid Vacation and Sick Pay

2 Defendant maintained a sick time policy that accrued sick time immediately upon hire
3 up to 6 days a year. Plaintiff claimed that Defendant engaged in the practice of exhausting an
4 employee's available vacation balance before an available sick leave balance to the extent an
5 employee was out sick. That practice reduced the availability of accrued vacation pay which
6 would be available to an employee upon separation. Defendant maintained that it did not
7 engage in such a practice and always exhausted a sick leave balance to the extent it was made
8 aware that an employee was out sick and that employees may opt to use accrued vacation only
9 to the extent sick time was exhausted. ZM Decl. ¶19.

10 5. Failure to Reimburse Employee Expenses

11 Plaintiff claimed that Defendant should reimburse the mileage employees incurred for
12 driving directly to job sites in their personal vehicles. As Defendant did not require this and
13 the driving would be a regular commute, no mileage reimbursement would thus be owed. To
14 the extent reimbursable mileage was incurred by employees, Defendant contends it properly
15 reimbursed its employees and provided example documents of employee reimbursements. ZM
16 Decl. ¶20. Plaintiff also claimed that Defendant failed to reimburse employees to the extent
17 they used their own tools. Defendant countered that it never required employees provide their
18 own tools or equipment and that all items necessary for a particular job were made available
19 to employees and were available in the company vehicles at the job sites. To the extent that
20 any additional equipment was necessary midstream, Defendant would promptly deliver such
21 equipment to the job site. ZM Decl. ¶21.

22 6. Itemized Wage Statements

23 The wage statements issued to employees were facially compliant with the
24 requirements of Labor Code Section 226. This claim is therefore derivative of unpaid wage,
25 meal, and rest break violations. It has been held that Section 226 penalties cannot be premised
26 on meal or rest break violations. Naranjo v. Spectrum Sec. Servs. (2019) 40 Cal.App.5th 444
27 (review granted) ("we hold that section 226.7 actions do not entitle employees to pursue
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1 derivative penalties in sections 203 and 226”). As such, Plaintiff does not expect recovery
2 around any wage statement violation. ZM Decl. ¶22.

3 7. Recovery in Light of Maximum Available Penalties

4 The 47 aggrieved employees employed from March 15, 2020 through October 22,
5 2021, worked 977 pay periods. The potentially available maximum penalties will vary
6 depending on the methodology employed including whether violations may be stacked.
7 Assuming at least one violation across all of the workweeks stacked across six different claims
8 and assessment of a \$100 initial penalty for the 47 pay periods preceding the initial March 15,
9 2020 PAGA notice and a \$200 subsequent penalty for the remaining 930 pay periods results
10 in maximum available penalties \$3,432,600. In light of the strong defenses and the high
11 likelihood of a large discretionary reduction to the extent any penalties are assessed, Plaintiff
12 values the PAGA claim at 10% of the maximum penalty amount, or \$343,260. Significantly,
13 that given this particular employer, a small penalty award would likely be a sufficient deterrent
14 to further violations. Based on the foregoing, a \$215,000 settlement represents more than a
15 50% recovery based on the realistic value of Plaintiff’s PAGA claims against this Defendant,
16 which is an excellent result. Net payment to the LWDA for its share 75% of penalties
17 calculates to \$94,704.64 which is considerable and the remaining 25% allocation to employees
18 results in an average recovery exceeding \$500. ZM Decl. ¶23.

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20 **IV. AN AWARD OF ATTORNEYS’ FEES SHOULD BE APPROVED**

21 California Labor Code § 2699(g) states that an employee whose action results in the
22 payment of civil penalties “shall be entitled to an award of reasonable attorneys’ fees and
23 costs.” Here, Plaintiff’s counsel is seeking recovery of \$71,666.67 in attorneys’ fees, which is
24 one-third of the \$215,000 common fund recovery. This amount reflects a modest 1.37
25 multiplier on the lodestar incurred by two attorneys of Mooradian Law, APC which totals
26 \$52,129.50. The incurred fees are necessary and reasonable. Significantly, these fees are
27 contingent in nature for counsel and are less than the 40% retainer agreement agreed to by
28 Plaintiff Rivas. ZM Decl. ¶24.

1 In Counsel's experience, a gross PAGA settlement of \$215,000 is more than fair,
2 reasonable, and adequate settlement in light of the strength of the claim, Defendant's defenses,
3 and the strong possibility there would be no recovery without this settlement. Even if Plaintiff
4 were to prevail on the underlying claim, he would face the potential of discretionary reduction
5 of maximum penalties by the Court and reported cases reflect reductions in the 75 to 85%
6 range. This case represents an excellent recovery of \$94,704.64 in penalties by the LWDA for
7 claims affecting less than 60 employees and around 1,000 pay periods. Moreover, employees
8 are expected to collect, on average, over \$500 each, which is consistent with a potential class
9 recovery for the asserted claims. ZM Decl. ¶25.

10 **A. Counsel's Fees Should be Approved as a Percentage of the Gross Settlement**

11 **Amount**

12 Counsel seeks a fee award calculated as a percentage of the total value of the settlement
13 for successful prosecution and resolution of all existing claims. Both California State and
14 Federal Courts have recognized that an appropriate method in determining an attorney fee
15 award may be based on the percentage on the total value of the benefits received from the
16 settlement. *Serrano v. Priest* (1997) 20 Cal. 3d 25-34 [*Serrano III*]; *Boeing Company v. Van*
17 *Gemert* (1980) 344 U.S. 472, 478; *Vincent v. Hughes Airwest, Inc.* (9th Cir. 1977) 557 F.2d
18 759, 769. The purpose of this equitable doctrine is to avoid unjust enrichment and to "spread
19 litigation costs proportionately among all the beneficiaries so that the active beneficiary does
20 not bear the entire burden alone." *Id.* at 768.

21 The California Supreme Court endorsed a fee award as a percentage of the common
22 fund; the Court clarified "that when an attorney fee is awarded out of a common fund
23 preserved or recovered by means of litigation (internal citation omitted), the award is not per
24 se unreasonable merely because it is calculated as a percentage of the common fund." *Laffitte*
25 *v. Robert Half Int'l. Inc.* (2016) 1 Cal. 5th 480, 486. Also "[t]hat the recognized advantages
26 of the percentage method...convince us that the percentage method is a valuable tool that
27 should not be denied in our trial courts." *Id.* at 503.

28 The Common Fund Doctrine is predicated on the principle of preventing unjust
enrichment. When a litigant's efforts create or preserves, or generates a fund from which

1 others derive benefits, he may require the passive beneficiaries to compensate those who
2 created the fund. Both California State and Federal Courts have embraced this Doctrine.
3 *Serrano III, supra*, at 35; *Vincent, supra*, at 769.

4 Both State and Federal Court have found the percentage approach preferable to the
5 Lodestar because; (1) it aligns the interest of class counsel and absent class members; (2) it
6 encourages efficient resolution of the litigation by providing an incentive for early, yet
7 reasonable, settlement; and (3) it reduces the demand on judicial resources. *In re Activision*
8 *Sec. Litig.* (N.D. Cal. 1989) 723 F Supp. At 1378-79. The Ninth Circuit now routinely uses
9 the percentage of the common fund approach to determine the award of attorney fees. *Lealao*
10 *v. Beneficial Calif., Inc.* (2000) 82 Cal.App.4th 19, 30-31.

11 Counsel's request for 33.33% of the monetary fund recovered is California's standard
12 benchmark and well within the range customarily approved by California courts in
13 comparable class actions. "Empirical studies show that regardless of whether or not the
14 percentage method or Lodestar method is used, fee awards in class actions average around
15 one-third of the recovery." See e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 66, fn. 11;
16 *In re California Indirect Purchases* (October 22, 1998) WL1031494 at *9 (citing *In re Milk*
17 *Antitrust Litigation* (L.A. Sup. Ct. 1998) Civ. Case No. BC070061 (33 1/3% award); *In re*
18 *Facsimile Paper Antitrust Litigation* (San Francisco Sup. Ct. 1997) Civ. Case No. BC
19 0070061 (33 1/3% award); *In re Liquid Carbon Dioxide Cases* (San Diego Sup. Ct. 1996)
20 J.C.C.P. 3012 (33 1/3% award); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. November
21 14, 2007) WL 3492841 at *4 ("fee awards in class actions average around one-third of the
22 recovery." (Quoting Newberg on Class Actions § 14.6 (4th ed. 2007).

22 **B. The Lodestar/Multiplier Cross-Check**

23 The Lodestar Analysis (Lodestar-Multiplied Method) begins with a calculation of time
24 spent in reasonable hourly compensation of each attorney and paralegal who worked on the
25 case and then to compensation counsel for risk, quality and result, courts commonly apply a
26 "multiplier" to the Lodestar in awarding attorney fees.

27 The first step is to determine the Lodestar individually for each attorney and/or
28 paralegal that has worked on the case and is claiming fees. The Lodestar analysis for each

attorney appears in their own Declaration(s) and fee and cost ledger attachments, as summarized below:

Attorney	Billable Rate	Hours	Lodestar
Zorik Mooradian ZM Decl. ¶26.	\$650.00	45	\$29,250.00
ZM anticipated	\$650.00	5	\$3,250.00
Haik Hacopian HH Decl. ¶5, Exh. 1.	\$415.00	47.3	\$19,629.50
Total Lodestar			\$52,129.50

In this matter, the total lodestar, as of filing of this motion, was \$52,129.50. A modest multiplier of 1.37 on this lodestar results in the \$71,666.67 requested fee award, which is more than fair and adequate in light of the excellent recovery afforded to the LWDA and employees as a result of this settlement.

Significantly, counsel's rates are less than the rates reflected in the Laffey Matrix, which is routinely used as a reference by courts. (<http://www.laffeymatrix.com/see.html>). Per the Matrix, to the extent Mr. Mooradian's hourly rate is adjusted to \$919, for attorneys 20+ years out of law school, and Mr. Hacopian's hourly rate to \$764, for attorneys 11-19 years out of law school, the lodestar tallies to \$82,087.50, which exceeds the fee request.²

1. A Lodestar Multiplier of 1.37 is Extremely Reasonable

²

Attorney	Laffey Billable Rate	Hours	Lodestar
Zorik Mooradian	\$919.00	45	\$41,355.00
ZM anticipated	\$919.00	5	\$4,595.00
Haik Hacopian	\$764.00	47.3	\$36,137.20
Total Laffey Lodestar			\$82,087.20

1 “It is an established practice in the private legal market to reward attorneys for taking
2 the risk of non-payment by paying them a premium over their normal hourly rates for winning
3 contingency cases.” *Fischell v. Equitable Life Assur. Society of U.S.* (9th Cir. 2002) 307 F.3d
4 997, 1008. A lodestar amount is “routinely enhanced...to reflect the risk of non-payment in
5 common fund cases.” *In re Washington Pub. Power Supply Sys. Sec. Litig.* (9th Cir. 1994) 19
6 F.3d 1291, 1300; *see also, e.g., Vizcaino v. Microsoft Corp.* (9th Cir. 1994) 290 F.3d 1043, at
7 n.6 (finding multipliers ranging from 1.0 to 4.0 are frequently awarded in common fund cases,
8 with slightly over half of the cases surveyed awarding positive multipliers in the 1.5 to 3.0
9 range); *Garner v. State Farm Mut. Auto. Ins. Co.*, Case No. CV 08 1365 CW, 2010 WL
10 1687829 at *2 (N.D. Cal. Apr. 22, 2010) (“Class Counsel effectively seek a multiplier of less
11 than 2. This is well within the range of multipliers applied in common fund cases... ”); *Craft*
12 *v. County of San Bernardino* (C.D. Cal. 2008) 624 F. Supp. 2d 1113, 1125 (awarding
13 multiplier of 5.2 and collecting cases with cross-check multipliers ranging from 4.5 to 19.6);
14 *Morgret v. Applus Tech., Inc.* (E.D. Cal. Jun. 1, 2015) Case No. 1:13-cv-01801-JLT, 2015
15 WL 3466389 at *17 (awarding multiplier of 3.9, “which is within the range typically awarded
16 in the Ninth Circuit.”); *Torchia v. W.W. Grainger, Inc.* (C.D. Cal. Dec. 29, 2014) 304 F.R.D.
17 256, 277 (Thurston, J.) (awarding multiplier of about 3.6).

18 Here, the lodestar multiplier of approximately 1.37 is well within the range of
19 reasonableness, as has been held by numerous courts, especially in light of the work performed
20 in this case, the results obtained, and the efficiency with which it was done.

21 **V. PAYMENT OF COSTS TO COUNSEL SHOULD BE APPROVED**

22 Class Counsel has incurred \$9,560.48 in total costs which remains less than the
23 \$12,000 maximum contemplated per the Settlement Agreement and is the amount that
24 Plaintiff is requesting the Court approve. S.A. ¶33(b). All costs are necessary and reasonable.
25 ZM Decl. ¶27 (\$9,179.00); HH Decl. ¶5, Exh. 1 (\$381.48).

1 **VI. CONCLUSION**

2 For the reasons stated herein, this Court should grant Plaintiff's Motion in its entirety
3 and approve the requested allocations and payments herein.

4
5 Dated: May 23, 2022

MOORADIAN LAW, APC

6
7 By: /s/Haik Hacopian
8 Zorik Mooradian, Esq.,
9 Haik Hacopian, Esq.,
10 Attorneys for Plaintiff Rafael Rivas, Jr.,
11 individually and on behalf of other aggrieved
12 employees
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