

KINGSLEY SZAMET & LY
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleylawyers.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleylawyers.com
JESSICA BULAON, Esq. (SBN 340749)
jessi@kingsleylawyers.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

Attorneys for Plaintiff and the aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

CRISTINA GUZMAN, an individual, on
behalf of herself and others similarly situated,

PLAINTIFF,

v.

RANDSTAD US, LLC; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

Case No. 21CV380800

[Case Assigned for All Purposes to Hon.
Theodore C. Zayner in Dept. 19]

**NOTICE OF MOTION AND MOTION
FOR APPROVAL OF
REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

*[Filed concurrently with Motion for Approval
of Attorney's Fees, Declarations of Kelsey M.
Szamet, Lisa Mullins of ILYM Group, Inc, and
Plaintiff Cristina Guzman in Support of
Plaintiff's Motion for Approval of
Representative Action Settlement; [Proposed]
Order, and Judgment]*

Date: September 18, 2024

Time: 1:30 PM

Dept.: 19

Complaint Filed: April 28, 2021

Trial Date: None Set

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

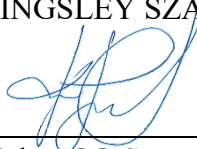
2 **PLEASE TAKE NOTICE** that on September 18, 2024 at 1:30 PM in Department 19 of
3 the above-entitled court, Plaintiff CRISTINA GUZMAN will move the Court for an Order
4 Granting Approval of Representative Action Settlement.

5 The Motion will be made on the grounds that the proposed Settlement is fair, adequate,
6 reasonable, and in the best interest of Plaintiff, all aggrieved employees, and the Parties.

7 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
8 and Authorities, the Declaration of Kelsey M. Szamet, the PAGA Settlement Agreement (Exhibit
9 “1” to the concurrently filed Szamet Declaration), all other papers and records on file in this action,
10 and on such oral and documentary evidence as may be presented at the hearing on this Motion.

11
12 DATED: June 12, 2024

KINGSLEY SZAMET & LY

13
14 By: 

Kelsey M. Szamet

Attorneys for Plaintiff CRISTINA GUZMAN and
all aggrieved employees

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND OF THE CASE AND RELEVANT PROCEDURAL HISTORY	2
A.	Litigation Overview and Procedural History	2
B.	The Discovery Process and Mediation	3
III.	PAGA ACTIONS AND THE REQUIREMENTS	3
A.	The PAGA Statutory Scheme	3
B.	The Court Has Discretion When Awarding the Amount of Penalties	4
C.	There is a Strong Risk the Higher \$200 Civil Penalty Triggered for “Subsequent” Violations Will Not Apply	5
D.	Standards for Settlement Approval	5
IV.	THE SETTLEMENT	6
V.	ARGUMENT	6
A.	The Court Should Approve the Agreement	7
B.	The Risks of Moving Forward with Plaintiff’s PAGA Claim	7
1.	The Risks Associated with the Wages/Overtime Claim	8
2.	The Risks Associated with the Meal Period Claim	11
3.	The Risks Associated with the Waiting Time Penalties Claim	13
C.	A Court May Exercise its Discretion to Reduce the Maximum Civil Penalty Awarded for Technical Violations of the Labor Code	14
D.	Based on the Risks Above and the Analysis of the Maximum Penalties Available, Plaintiff Believes this Settlement is Fair and Reasonable	16
VI.	THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS	16

VII.	ENHANCEMENT TO PLAINTIFF	17
VIII.	CONCLUSION	18

TABLE OF AUTHORITIES

Federal Cases

<i>Fleming v. Covidien, Inc.</i> , (C.D. Cal., Aug. 12, 2011, No (OPX)), 2011 WL 7563047	14, 15
<i>Amey v. Cinemark USA Inc.</i> , No. 13-CV-05669-WHO, 2015 WL 2251504 (N.D. Cal. May 13, 2015)	10
<i>Brewer v. Gen. Nutrition Corp.</i> , No. 11-CV-3587 YGR, 2014 WL 5877695 (N.D. Cal. Nov. 12, 2014)	11
<i>Gibbs v. TWC Administration, LLC</i> , (S.D. Cal., Jan. 3, 2020, No. 17CV01513DMSAGS) 2020 WL 42768	8
<i>McKenzie v. Federal Exp. Corp.</i> , supra, 765 F.Supp.2d	4
<i>Medina v. Vander Poel</i> , (E.D. Cal. 2015) 523 B.R. 820	4
<i>Moreno v. Autozone, Inc.</i> , (N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007 WL 1650942	14
<i>O'Connor v. Uber Techs., Inc.</i> , (N.D. Cal. 2016) 201 F. Supp. 3d 1110	5
<i>Pryor v. Aerotek Scientific, LLC</i> , 278 F.R.D. 516 (C.D. Cal. 2011)	11
<i>Rodriguez v. West Publishing Corp.</i> , (9th Cir. 2009) 563 F.3d 948	17
<i>Staton v. Boeing Co.</i> , (9th Cir.2003) 327 F.3d 938	17
<i>Willner v. Manpower Inc.</i> , (N.D. Cal. 2014) supra. 35 F. Supp. 3d	4

State Cases

<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal.App.4th 1157 (2008)	4, 5, 14
<i>Arias v. Superior Court</i> , (2009) supra, 46 Cal.4th	4, 5, 7

1	<u>Barnhill v. Robert Saunders & Co.,</u>	
2	(1981) 125 Cal.App.3d 1	13
3	<u>Benton v. Telecom Network Specialists, Inc.,</u>	
4	(2013) 220 Cal.App.4th 701	12
5	<u>Bradley v. Networkers International LLC,</u>	
6	(2012) 211 Cal.App.4th 1129	12
7	<u>Brinker Restaurant Corp. v. Sup. Court,</u>	
8	(2012) 53 Cal. 4 th 1004	10, 11, 12
9	<u>Brown v. Ralphs Grocery Co.,</u>	
10	(2011) 197 Cal.App.4th 489	3
11	<u>Carrington v. Starbucks Corp.,</u>	
12	(2018) 30 Cal. App. 5th 504	15, 16
13	<u>Clark v. American Residential Services LLC,</u>	
14	(2009) 175 Cal.App.4th 785	17
15	<u>Diaz v. Grill Concepts Services, Inc.,</u>	
16	(2018) 23 Cal.App.5th 859	14
17	<u>Faulkinbury v. Boyd & Associates, Inc.,</u>	
18	(2013) 216 Cal.App.4th 220	12
19	<u>Frlekin v. Apple Inc.,</u>	
20	(2020) 8 Cal.5th 1038	8
21	<u>Iskanian v. CLS Transp. Los Angeles, LLC,</u>	
22	(2012) 59 Cal. 4th 348	3
23	<u>Mamika v. Barca,</u>	
24	(1998) 68 Cal.App.4th 487	13
25	<u>Montano v. The Wet Seal Retail, Inc.,</u>	
26	232 Cal.App.4th 1214 (2015)	3
27	<u>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,</u>	
28	(2010) 186 Cal.App.4th 399	17
	<u>Reyes v. Macy's, Inc.,</u>	
	202 Cal.App.4th 1119(2011)	3
	<u>Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty.,</u>	
	234 Cal.App.4th 1109 (2015)	3, 4

Troester v. Starbucks Corp.,

(2018) 5 Cal.5th 829 8, 9

State Statutes

Labor Code § 201..... 2

Labor Code § 202,..... 2

Labor Code § 203..... 2, 13

Labor Code § 210 5

Labor Code § 225.5..... 5

Labor Code § 226.3..... 7

Labor Code § 226.7..... 2, 12

Labor Code § 510..... 2

Labor Code, § 510, subd. (a)..... 9

Labor Code § 512..... 2, 11, 12

Labor Code § 1194..... 2

Labor Code § 1199..... 2

Labor Code § 2699..... 1, 2, 5, 7

Labor Code § 2699 (a) 4

Labor Code § 2699(e)(1) 7

Labor Code § 2699(e)(2) 4, 7, 14, 15

Labor Code § 2699(f)(2)..... 4, 5, 15

Labor Code § 2699(i)..... 1, 4

Labor Code § 2699(l)..... 7

Labor Code § 2699(l)(2) 5

Labor Code § 2699(1)(2) 1

Labor Code § 2699.3 (a)(1) 4

State Rules

California Rule of Court (CRC) 3.770(a)	2
---	---

State Regulations

Title 8 Cal. Code of Regs., § 11080(2)(G)	8
---	---

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff CRISTINA GUZMAN (“Plaintiff”) submits this Memorandum of Points and
4 Authorities in support of Motion for Approval of Representative Action Settlement. Plaintiff and
5 Defendant RANDSTAD US, LLC (“Defendant”) (collectively, the “Parties”) have reached a
6 proposed settlement documented in the PAGA Settlement Agreement (“Agreement”), attached to
7 the concurrently-filed declaration of Kelsey M. Szamet.¹

8 This is a Settlement under the Private Attorneys General Act of 2004, Labor Code §2699,
9 et seq. (“PAGA”). The Gross Settlement Amount is \$140,000.00. After deduction of litigation
10 expenses, litigation enhancement to Plaintiff, and settlement administration costs as discussed in
11 the Agreement, the remaining amount to be divided between the Labor and Workforce
12 Development Agency (“LWDA”) and the aggrieved employees as required by Labor Code section
13 2699(i) is \$113,902.86, with \$85,427.15 (or 75%) going to the LWDA and \$28,475.71 (or 25%)
14 distributed to the aggrieved employees.² The Parties agreed that Plaintiff will seek attorneys’ fees
15 and costs separate from the Gross Settlement Amount, concurrently filed with this Motion. (See
16 Plaintiff’s Notice of Motion and Motion for Attorneys’ Fees.)

17 Plaintiff requests that the Court “review and approve any settlement of any civil action
18 filed pursuant to this part” (*See* Lab. Code § 2699(1)(2).) If the Court deems the Settlement fair
19 and acceptable, Plaintiff requests that the Court: (1) enter an order approving the Settlement and
20 ordering the Parties to carry the terms of the Settlement Agreement into effect; and (2) and enter a
21 Final Judgement thereon.³

22 ///

23
24
25 ¹ The Parties also entered into a separate confidential settlement for Plaintiff CRISTINA GUZMAN’s individual
claims. Plaintiff had additional, individual claims for wage and hour violations that were in active arbitration and
separately discussed and settled at mediation.

26 ² Pursuant to PAGA, civil penalties recovered by aggrieved employees shall be distributed 75 percent to the
Labor and Workforce Development Agency (“LWDA”) and 25 percent to the aggrieved employee(s). Lab.
27 Code § 2699(i).

28 ³ Plaintiff’s Motion for Approval of Representative Action Settlement will be concurrently uploaded to the
LWDA’s website on the date this Motion is filed. Proof of submission of Plaintiff’s Motion for Approval of
Representative Action Settlement, all related documents, and copy of the email from the LWDA confirming
receipt can be provided to the Court upon request. (Szamet Decl. ¶118.)

II. BACKGROUND OF THE CASE AND RELEVANT PROCEDURAL HISTORY

A. Litigation Overview and Procedural History

On April 28, 2021, Plaintiff commenced this Action by filing a Class Action Complaint alleging causes of action for 1) failure to pay wages and/or overtime under Labor Code §§ 510, 1194, and 1199; 2) failure to provide meal breaks pursuant to Labor Code §§ 226.7 and 512; and 3) penalties pursuant to Labor Code § 203. (Declaration of Kelsey M. Szamet ¶5) (“Szamet Decl.”) On April 28, 2021, Plaintiff sent a notice letter, pursuant to Labor Code section 2699 (“PAGA”), to the Labor Workforce Development Agency (“LWDA”) regarding her intent to seek civil penalties for the same Labor Code violations above. (Szamet Decl. ¶6.) Plaintiff did not receive any response from the LWDA to her formal written notice. (Szamet Decl. ¶7.)

On July 2, 2021, Plaintiff filed a First Amended Complaint alleging an additional cause of action against Defendant for penalties under Labor Code § 2699 et seq., (PAGA) for Defendant’s alleged violation of Labor Code §§ 201, 202, 203, 226.7, 510, 512, 1194, and 1199. (Szamet Decl. ¶8.) The First Amended Complaint is the operative complaint in the Action. (*Id.*) Plaintiff’s Complaint defined the aggrieved employees as: “All persons who are employed or have been employed as an hourly employee by RANDSTAD US, LLC, in the State of California who were assigned to work at Advoque since one (1) year prior to the date of this letter and continuing to the present.” (Szamet Decl. ¶9.)

In light of an existing arbitration agreement, Plaintiff dismissed her class allegations pursuant to California Rule of Court (CRC) 3.770(a), and the Order dismissing the class allegations without prejudice was signed on December 14, 2021. (Szamet Decl. ¶10.) Additionally, Plaintiff filed a dismissal of her individual allegations without prejudice to proceed with the representative PAGA claim only. (Szamet Decl. ¶11.) The Court issued an Order dismissing the individual allegations without prejudice on January 14, 2022. (Szamet Decl. ¶12.)

The Parties agreed to arbitrate Plaintiff’s individual PAGA claim pursuant to the arbitration agreement, and filed a stipulation to stay Plaintiff’s non-individual PAGA claims in Santa Clara County Superior Court. (Szamet Decl. ¶13.) Plaintiff submitted her individual claims to arbitration on December 22, 2022. (Szamet Decl. ¶14.)

1 B. The Discovery Process and Mediation

2 The Parties engaged in formal and informal pre-mediation discovery. Prior to mediation,
3 Plaintiff obtained, through formal discovery, Plaintiff’s personnel records and extensive time and
4 pay data relevant to both Plaintiff and the aggrieved employees. (Szamet Decl. ¶15.) Plaintiff was
5 also deposed on October 24, 2023. (Szamet Decl. ¶16; Declaration of Cristina Guzman, ¶ 4.)

6 On January 9, 2024, the Parties participated in an all-day mediation presided over by
7 mediator Brandon McKelvey, Esq. which led to an Agreement to settle the action. (Szamet Decl.
8 ¶17.) Thereafter, the Parties engaged in good faith, arms-length negotiations concerning possible
9 resolution of the claims asserted in the Litigation. (Szamet Decl. ¶18) The Parties were able to
10 reach a tentative settlement subject to finalization of a formal PAGA Settlement Agreement and
11 the approval of the Court. (*Id.*)

12 Although Defendant denies that it violated any pertinent law, it recognized the risks and
13 attendant costs of litigation, and the Parties were able to reach a tentative settlement subject to
14 finalization of a formal PAGA Settlement Agreement and the approval of the Court. (Szamet Decl.
15 ¶19.) The Parties negotiated the terms and conditions of the Agreement and now present the
16 agreed-upon Settlement to the Court for Approval. (*Id.*)

17 **III. PAGA ACTIONS AND THE REQUIREMENTS**

18 A. The PAGA Statutory Scheme

19 PAGA creates a means of “deputizing” citizens as private attorney generals to enforce the
20 Labor Code on behalf of the LWDA. *Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489,
21 501, review den. (Oct. 19, 2011, No. S195850), *cert. denied* (Apr. 16, 2012) 132 S.Ct. 1910. A
22 plaintiff may not — and Plaintiff here does not — bring a PAGA claim simply on his or her own
23 behalf as an individual claim, but “as the proxy or agent of the state’s labor law enforcement
24 agencies.” *Id.*, at 986; *see also Reyes v. Macy’s, Inc.* 202 Cal.App.4th 1119, 1123-1124(2011);
25 *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 380).

26 When an aggrieved employee brings a PAGA claim, “the government is always the real
27 party in interest.” *Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty.*, 234 Cal.App.4th
28 1109, 1119 (2015); *Montano v. The Wet Seal Retail, Inc.* 232 Cal.App.4th 1214, 1222 (2015) (“[A]

1 PAGA action is a dispute between an employer and the State agency.”). Accordingly, a plaintiff
2 that brings a PAGA claim represents “the same legal right and interest as state labor law
3 enforcement agencies,” in that the plaintiff is seeking to recover those civil penalties that otherwise
4 would have been assessed and collected by the LWDA. *Arias, supra*, 46 Cal.4th at 986; Lab. Code
5 § 2699 (a) & (f); *Securitas, supra*, 234 Cal.App.4th at 1119; *see also Medina v. Vander Poel* (E.D.
6 Cal. 2015) 523 B.R. 820, 825 (holding “PAGA plaintiffs do not have property rights in their
7 cases.”). This is borne out by the fact that the LWDA receives 75 percent of any civil penalties
8 recovered; thus, recoveries are principally for the state and only secondarily for aggrieved
9 employees. Lab. Code § 2699 (i). Therefore, when a plaintiff brings a PAGA claim, he or she is
10 properly conceived of as a private attorney general prosecuting violations of California’s labor
11 laws on behalf of the state.

12 An employee may commence a PAGA action by fulfilling the requirements of Cal. Lab.
13 Code § 2699.3 (a)(1), which simply states:

14 “The aggrieved employee or representative shall give written notice by
15 certified mail to the Labor and Workforce Development Agency and the
16 employer of the specific provisions of this code alleged to have been
violated, including the facts and theories to support the alleged violation.”

17 Lab. Code § 2699.3 (a)(1)

18 As explained above, Plaintiff has complied with the notice requirements and has properly
19 pled a PAGA cause of action. (Ex. 1, ¶ 2.2.)

20 B. The Court Has Discretion When Awarding the Amount of Penalties

21 PAGA provides for penalties in the amount of one hundred dollars (\$100) for each
22 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
23 each aggrieved employee per pay period for each subsequent violation. Lab. Code §2699(f)(2).
24 “PAGA penalties...are mandatory, not discretionary” and must be awarded upon a showing that
25 Defendant violated the Labor Code.⁴ *Amaral v. Cintas Corp. No. 2* 163 Cal.App.4th 1157, 1213
26 (2008). However, PAGA provides the Court with discretion when it awards these penalties. Labor
27

28 ⁴ See also *Willner v. Manpower Inc., supra*. 35 F. Supp. 3d at 1136; *McKenzie v. Federal Exp. Corp., supra*, 765 F.Supp.2d at 1232.

1 Code §2699(e)(2) states that “a court *may* award a lesser amount than the maximum civil penalty
2 amount specified by this part if, based on the facts and circumstances of the particular case, to do
3 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
4 (emphasis added). Here, as Defendant denies that it violated any law or that it engaged in any
5 knowing or intentional conduct giving rise to liability and expressly denies that any employees
6 suffered harm, it would certainly argue that if the Court were to find that any liability existed, the
7 Court should exercise its discretion to significantly reduce any civil penalty.

8 C. There is a Strong Risk the Higher \$200 Civil Penalty Triggered for “Subsequent”
9 Violations Will Not Apply

10 Plaintiff believes there is a strong risk that the Court will not award the \$200 civil penalty
11 triggered for “subsequent” violations. Labor Code section 2699(f)(2). If this case were to proceed
12 to trial, Plaintiff would argue that a “subsequent” violation simply means that Defendant violated
13 section 226(a) more than once for a given employee. Plaintiff is not aware of any case law that
14 interprets “subsequent” in the context of section 2699. However, Defendant is likely to rely on
15 *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008) because it rejected a purely temporal
16 understanding of the term “subsequent” and interpreted its use in Labor Code sections 210 and
17 225.5 to require that “the employer has been notified that it is violated a Labor Code provision”
18 before higher penalties are triggered. *Id.* at 1209. Defendant presumably will take the position that
19 it has not been notified that it actually violated any provisions of the Labor Code until the Labor
20 Commissioner has issued a formal citation or this Court made a finding that a violation existed.

21 D. Standards for Settlement Approval

22 When approving a settlement of a PAGA action, the statute simply requires the Court to
23 “review and approve any settlement of any civil action filed pursuant to this part.” (Lab. Code §
24 2699(l)(2).) PAGA does not set forth standards for evaluating such settlements, and the California
25 appellate courts have not weighed in on the issue. However, trial courts have approved PAGA
26 settlements where the penalties are “genuine and meaningful” and “consistent with the underlying
27 purpose” of the statute. (See *O'Connor v. Uber Techs., Inc.* (N.D. Cal. 2016) 201 F. Supp. 3d
28 1110, 1113.) Additionally, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, class

action procedural rules do not apply in PAGA cases, including the two-step preliminary and final approval process. Rather, the approval process consists of one step where the court decides if the settlement should go into effect.

IV. THE SETTLEMENT

Defendant will pay the total sum of \$140,000.00 in full and final settlement of the PAGA claims alleged. (Szamet Decl. ¶20., Exhibit 1, ¶3.1.) Per the Agreement, the amount is allocated as follows:

Gross Settlement Amount	\$140,000.00
PAGA Counsel Litigation Expenses Payment	\$12,247.14 ⁵
Administrator Expenses Payment	\$8,850.00
Enhancement Payment	\$5,000.00
PAGA Penalties	\$113,902.86 (\$85,427.15 to the LWDA; \$28,475.71 to Aggrieved Employees)

(Szamet Decl. ¶21., Exhibit 1, ¶3.)

Each aggrieved employee shall receive a pro-rata portion of the remaining amount in PAGA penalties based on dividing the total number of pay periods worked by each PAGA Member in the PAGA Period by the total number of pay periods worked by all PAGA Members in the PAGA Period, multiplied by the 25% of the Net Settlement Amount allocated to PAGA Members. (Szamet Decl. ¶23., Exhibit 1, ¶3.2.4.1.)

For settlement purposes, the Aggrieved Employees are defined as: all persons who are employed or have been employed as an hourly employee by RANDSTAD US, LLC in the State of California who were assigned to work at Advoque during the Release Period” (“Aggrieved Employees”). (Szamet Decl. ¶24., Exhibit 1, ¶1.4.) The “Release Period” or “PAGA Period” means the period from April 28, 2020, to March 17, 2024. (Szamet Decl. ¶25., Exhibit 1, ¶1.20.)

V. ARGUMENT

⁵ The Agreement provided for counsel to receive cost reimbursement up to \$13,000.00. However, counsel’s final costs come to \$12,247.14, which includes the anticipated future cost associated with filing the instant Motion. (Szamet Decl. ¶22, Ex. 5) The extra \$752.86 will remain in the net settlement fund, causing the net amount for distribution to the LWDA and Aggrieved Employees to be slightly higher than the \$113,150.00 contemplated in the settlement agreement. (See Szamet Decl., Ex. 1, ¶3.2.1)

1 A. The Court Should Approve the Agreement

2 The Parties recognize that in accordance with Labor Code §2699(l), Court approval is
3 required in the event of a settlement of a PAGA action on a representative basis. However, as
4 explained in *Arias v. Superior Court* 46 Cal.4th 969 (2009), the Parties are not obligated to follow
5 the class action procedural rules in PAGA cases and therefore need not obtain approval of the
6 PAGA settlement through a motion for primary or final approval. Nonetheless, in order to comply
7 with the requirements of Labor Code §2699, the Parties submit the instant Motion and the
8 Agreement (Exhibit “1” to the Szamet Declaration) for Court approval.

9 B. The Risks of Moving Forward with Plaintiff’s PAGA Claim

10 To help the Court evaluate the fairness of the Settlement, a discussion of the risk evaluation
11 and discount taken follows. (Szamet Decl. ¶26.) Plaintiff believed that Defendant may
12 persuasively argue that the Court should exercise its discretion under PAGA to significantly reduce
13 or altogether waive any penalties under PAGA. (Szamet Decl. ¶27.) Pursuant to Labor Code
14 §226.3, the Labor Commissioner has the discretion to “decide not to penalize an employer for a
15 first violation when that violation was due to a clerical error or inadvertent mistake.” (Szamet Decl.
16 ¶28.) And in accordance with PAGA, the court in a PAGA action has the same discretion “to
17 assess a civil penalty” that the Labor Commissioner would have, as well as complete discretion to
18 “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on
19 the facts and circumstances of the particular case, to do otherwise would result in an award that is
20 unjust, arbitrary and oppressive, or confiscatory.” (Labor Code § 2699(e)(1) and (e)(2)). (Szamet
21 Decl. ¶29.)

22 Plaintiff anticipated that, at trial, Defendant could make a potentially persuasive argument that
23 Defendant: (1) the Aggrieved Employees were properly paid pursuant to Defendant’s lawful policies
24 and practices, and that any alleged failure to compensate the Aggrieved Employees was the result of
25 inadvertence and clerical error; (2) the Aggrieved Employees were provided with the opportunity to
26 take meal breaks in compliance with California law; (3) until this Action was filed, no employees had
27 complained about any alleged failure to pay wages or provide meal breaks; (4) none of Defendant’s
28 employees suffered any harm from or actual damage as a result of the conduct that forms the basis

1 for Plaintiff's allegations. (Szamet Decl. ¶30.) All of which, Defendant would argue, should mitigate
2 in favor of significantly reducing or waiving any PAGA penalties. (*Id.*) While Plaintiff disagrees that
3 this analysis is legally correct or persuasive, she had to consider the foregoing facts and arguments
4 and how they might impact any judgment ultimately awarded to Aggrieved Employees if the Court
5 were persuaded by them. (Szamet Decl. ¶31.)

6 Another significant risk to recovery is that Plaintiff understands that Advoque is no longer in
7 business. (Szamet Decl. ¶32.) While Plaintiff ultimately contends that Defendant Randstad is liable
8 as a joint employer, the complexities of indemnification issues in the staffing context is another real
9 risk that Plaintiff had to consider. (Szamet Decl. ¶33.) Further, Defendant argued at mediation that
10 Advoque is no longer in business so any potential liability was cutoff as of the date that operations
11 ceased. *Id.* Third and finally, Plaintiff had to acknowledge that it would be more difficult for her and
12 her counsel to secure witness statements and testimony from former coworkers at an entity that is no
13 longer operating. *Id.*

14 **1. The Risks Associated with the Wages/Overtime Claim**

15 “California employees are entitled to compensation for all hours worked, which means “the
16 time during which an employee is subject to the control of an employer, and includes all the time
17 the employee is suffered or permitted to work, whether or not required to do so.” (Title 8 Cal. Code
18 of Regs., § 11080(2)(G); *See Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 845, as modified
19 on denial of reh'g (Aug. 29, 2018).) Time is compensable if an employee is “*subject to the control*
20 *of an employer*” even if not working, or if an employee “*is suffered or permitted to work*” even if
21 not “under the employer’s control, provided the employer has or should have knowledge of the
22 employee’s work.” (*Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038, 1046, reh'g denied (May 13,
23 2020) (citations omitted.) An employer controls an employee if the employer directs an employee
24 and the employee is unable to use their time how they wish. (*Id.* at p. 1047.) Other factors courts
25 may consider include whether the activity is required, “the location of the activity, the degree of
26 the employer’s control, whether the activity primarily benefits the employee or employer, and
27 whether the activity is enforced through disciplinary measures.” (*Id.* at p. 1056; *Cf. Gibbs v. TWC*
28 *Administration, LLC* (S.D. Cal., Jan. 3, 2020, No. 17CV01513DMSAGS) 2020 WL 42768, at *9

1 (denying Defendant’s motion for summary judgment when plaintiff-employees conducted off-the-
2 clock pre-shift activity in preparation to start work right when they clocked in).)

3 In *Troester*, employees spent four to ten minutes completing tasks to close up the store,
4 such as setting the alarm and locking the door. (*Troester*, 5 Cal.5th 829 at p. 843.) The Court held
5 that California law prohibits employers from requiring employees to work off the clock, even for
6 minutes, without compensation. (*Id.* at p. 848.) The Court explained:

7 An employer that requires its employees to work minutes off the clock on a regular
8 basis or as a regular feature of the job may not evade the obligation to compensate
9 the employee for that time by invoking the de minimis doctrine. As the facts here
10 demonstrate, a few extra minutes of work each day can add up. . . . What Starbucks
calls “de minimis” is not de minimis at all to many ordinary people who work for
hourly wages.

11 (*Id.* at p. 847.)

12 Additionally, California workers are statutorily entitled to overtime compensation, unless
13 they are properly classified as falling within one of the narrow exemption categories. Under
14 California law, “[a]ny work in excess of eight hours in one workday and any work in excess of 40
15 hours in any one workweek...shall be compensated at the rate of no less than one and one-half
16 times the regular rate of pay for an employee.” (Lab. Code, § 510, subd. (a).) Furthermore, “[a]ny
17 work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
18 regular rate of pay for an employee.” (Lab. Code, § 510, subd. (a).)

19 Here, Plaintiff alleges that she and all Aggrieved Employees were forced to perform pre-
20 and post-shift work on a regular and consistent basis without receiving compensation for such
21 work, thereby depriving them of all of the wages owed to them. (Szamet Decl. ¶34.) Specifically,
22 Plaintiff and the Aggrieved Employees alleged they were routinely required to undergo
23 temperature and security checks when entering the Milpitas Advoque facility, and another security
24 check when leaving the facility. *Id.* Plaintiff and the Aggrieved Employees alleged they were also
25 required to undergo temperature checks when entering the Fremont and Santa Clara Advoque
26 facilities. *Id.* The alleged time spent performing these temperature and security checks were not
27 recorded due to Defendant’s timekeeping procedures. *Id.* As such, Plaintiff alleges that she and
28 the Aggrieved Employees were not compensated at the applicable rate of pay for all hours worked.

1 Additionally, Plaintiff alleges that Defendant failed to accurately record her hours worked
2 and meal periods. (Szamet Decl. ¶35.) Defendant allegedly had a policy of rounding the time for
3 meal periods taken by Plaintiff and all Aggrieved Employees depriving them of all of the wages
4 owed to them. *Id.* For the time periods or facilities when Plaintiff was required to handwrite her
5 hours on a sign-in sheet or when supervisors kept track of her hours worked and meal periods,
6 Plaintiff contends that all of her time was rounded. *Id.* Plaintiff believes this is true for all
7 handwritten time records and thus affected other Aggrieved Employees. *Id.* Thus, Plaintiff
8 contends that Defendant's common rounding policy consisted in the rounding of time for Plaintiff
9 and all members of the Aggrieved Employees instead of paying the employees for the actual hours
10 they worked. *Id.* As a result, Plaintiff contends that she and all aggrieved employees were forced
11 to work on a regular and consistent basis without receiving compensation for all hours worked at
12 the proper rate and Defendant is liable for penalties under PAGA. *Id.* Defendant disputes this
13 claim and argues that all employees were paid for all hours worked. *Id.*

14 First, Defendant vehemently denied this claim and argued that its labor policies prohibit
15 off-the-clock work, all meal periods were provided and employees were not working off the clock
16 during meal periods, and that any covid temperature checks would have been performed on the
17 clock and to the extent they were not it was due to unique and limited circumstances, and that any
18 inquiry into such circumstances would have made adjudication of the PAGA claim unmanageable.
19 (Szamet Decl. ¶36.) Second, Defendant argued that Plaintiff's theory of liability would be
20 extremely difficult to prove on a representative because the time records will show compliant meal
21 periods. (Szamet Decl. ¶37.) Defendant argued that this case would devolve into a series of mini-
22 trials wherein each allegedly aggrieved employee would have to testify as to whether he or she
23 worked any time off the clock including being clocked out, but actually working through his/her
24 meal periods. (Szamet Decl. ¶38.) Of course, Defendant argued that this would make it very
25 difficult to offer any proof on a representative basis. (Szamet Decl. ¶39.) *See Brinker*, 53 Cal. 4th
26 at 1051-52 (holding that in the absence of a uniform, companywide policy, proof of liability is
27 individual); *Amey v. Cinemark USA Inc.*, No. 13-CV-05669-WHO, 2015 WL 2251504, at *12
28 (N.D. Cal. May 13, 2015) (denying certification of off-the-clock claim because plaintiffs' work

requirements depended on the manager); *Brewer v. Gen. Nutrition Corp.*, No. 11-CV-3587 YGR, 2014 WL 5877695, at *12 (N.D. Cal. Nov. 12, 2014) (denying certification based on policy requiring employees to finish closing duties within 30 minutes, because the court would still be left with numerous individual issues); *Pryor v. Aerotek Scientific, LLC*, 278 F.R.D. 516, 532-33 (C.D. Cal. 2011) (denying certification of off-the-clock claim). Third, Defendant argued that because it is a temporary staffing agency, establishing claims on a representative basis would be difficult because of the nature of the temporary staffing business – short term contracts with different facilities, different supervisors, different timekeeping policies and procedures, different meal and rest policies and procedures, and different COVID protocols at different facilities. *Id.*

Plaintiff acknowledges that this can be a highly difficult type of claim to prove on a representative because there are no time records to substantiate or evaluate an “off the clock” claim. (Szamet Decl. ¶40.) Instead, Defendant would argue that if there was any such issue of working off the clock for temperature checks and/or during meal periods, it would necessitate speaking to each and every allegedly aggrieved employee about his/her experiences day to day and whether any off the clock time was ever worked and if so, why it was worked. (Szamet Decl. ¶41.) This type of inquiry, Defendant would argue, makes its very difficult to establish liability based on common proof. (Szamet Decl. ¶42.) Based on Defendant’s responses and contentions, Plaintiff acknowledges that there is acute risk as to this claim and believed it was appropriate to discount this claim for settlement purposes. (Szamet Decl. ¶43.)

2. The Risks Associated with the Meal Period Claim

Under California Labor Code section 512 and IWC Wage Order No. 1, no employer shall employ any person for a work period of more than five hours without providing a meal period of not less than thirty minutes. The first meal period must be permitted to commence no later than after five hours of work, or the start of the sixth hour of work (5.0 hours on the clock). (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049.) The second meal period must be permitted to commence no later than after ten hours of work, or the start of the eleventh hour of work (10.0 hours on the clock). (*Ibid.*) The California Supreme Court succinctly described Section 512’s mandate: “Employers must afford employees uninterrupted half-hour periods in which they

1 are relieved of any duty or employer control and are free to come and go as they please.” (*Brinker*
2 *Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037.)

3 It is well settled that if an employer fails to maintain a uniform policy that authorizes and
4 permits the meal periods or rest breaks called for under the law (as specified in the applicable
5 Wage Order), “it has violated the wage order and is liable.” (See *Brinker*, 53 Cal.4th at p. 1033.)
6 Following *Brinker*, California courts have confirmed that liability for meal and rest period
7 violations arises when an employer adopts a uniform policy that fails to comply with the Labor
8 Code. (See *Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 235, [“In
9 *Faulkinbury I*, we concluded that even if [defendant]’s on-duty meal break policy was unlawful,
10 [defendant] would be liable only when it actually failed to provide a required off-duty meal break.
11 *Brinker* leads us now to conclude [defendant] would be liable upon a determination that
12 [defendant]’s uniform on-duty meal break policy was unlawful.” (emphasis added)]; accord
13 *Bradley v. Networkers International LLC* (2012) 211 Cal.App.4th 1129; *Benton v. Telecom*
14 *Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 725–726 [finding that the employer would
15 become liable upon a showing that it failed to maintain a policy authorizing required breaks, which
16 does not require an individual technician to provide he or she actually missed breaks as a result of
17 the employer’s policies. Rather, “the Wage Order . . . imposes an affirmative obligation on every
18 employer to authorize and provide legally-required meal and rest breaks; if it fails to do so, it has
19 violated the law and is liable.”].)

20 Furthermore, Labor Code §§ 226.7 and 512 require an employer to pay an additional hour
21 of compensation for each meal period the employer fails to provide. Employees are entitled to a
22 first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within
23 the first five (5) hours of the shift. Plaintiff alleges that Defendant failed to maintain a policy
24 informing Plaintiff and the aggrieved employees of these rights.

25 Here, Plaintiff alleges that Defendant regularly failed to provide on-time, lawful meal
26 periods to Plaintiff and the Aggrieved Employees, failed to pay meal premiums for such violations,
27 and maintained an unlawful meal rounding policy wherein it rounded time for an employee’s meal
28 break, regardless of whether a lawful meal period was actually provided under California law.

(Szamet Decl. ¶44.) Thus, Plaintiff alleges that Defendant is liable to Plaintiff for these Labor Code violations and owes penalties to all Aggrieved Employees. *Id.*

Again, Defendant disputes this claim and argues that it maintained a valid written meal policy at all times and all employees were provided with the opportunity to take compliant meal periods. (Szamet Decl. ¶45.) Defendant also argues that because it is a temporary staffing agency, establishing claims on a representative basis would be extremely difficult because of the nature of the temporary staffing business – short term contracts with different facilities, different supervisors, different timekeeping policies and procedures at each facility, different meal and rest practices, and different COVID protocols at different facilities. (Szamet Decl. ¶46.) Moreover, Plaintiff was confident that Defendant would attempt to gather testimonial evidence from Aggrieved Employees indicating that the records were accurate and either they took compliant meal breaks as reflected in the records or validly waived the meal period or were paid a meal period premium in lieu thereof. (Szamet Decl. ¶ 47.) Plaintiff must acknowledge that the nature of staffing agency placements poses risks for the aggrieved employees beyond the normal risk associated with trying to establish meal period violations. (Szamet Decl. ¶48.) Taken together, Plaintiff believed there was significant risk as to establishing liability on the meal period allegations. (Szamet Decl. ¶49.) Considering this risk, Plaintiff did not place much value on the missed meal period claim and believes it is fair and reasonable to discount the underlying meal period claim for settlement purposes. (Szamet Decl. ¶ 50.)

3. The Risks Associated with the Waiting Time Penalties Claim

Under Labor Code section 203, if an employer fails to provide wages at the time of an employee's termination or within seventy-two (72) hours of resignation, then the employee's wages shall continue as a penalty for up to thirty (30) days. (Labor Code § 203.) Section 203 reflects a public policy that favors the full and prompt payment of earned wages. (See, e.g., *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

Here, Plaintiff and numerous Aggrieved Employees are no longer employed by Defendant. Plaintiff alleges that Defendant failed to pay all wages owed and due upon their termination and/or

1 resignation. (Szamet Decl. ¶51.) Plaintiff also alleges that Defendant’s actions were willful, as
2 they have intentionally failed or refused to perform an act which was required to be done. (See
3 *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) “The failure to pay is willful
4 if the employer ‘knows what [it] is doing [and] intends to do what [it] is doing’, and does not also
5 require proof that the employer acted with “a deliberate evil purpose to defraud work[ers] of wages
6 which the employer knows to be due.” (*Diaz v. Grill Concepts Services, Inc.* (2018) 23
7 Cal.App.5th 859, 868.)

8 However, Plaintiff factored in the risk of establishing that any violation was “willful” and
9 the fact that this claim is derivative. (Szamet Decl. ¶52.) Defendant argued that if there was any
10 late penalty it was not willful and that if Plaintiff was unable to prove the off the clock or meal
11 period claims, the waiting time penalty claim would also fail. (Szamet Decl. ¶53.) Because of the
12 derivative nature of this claim, the risks flow from the discussion above and Plaintiff will not repeat
13 them here. (Szamet Decl. ¶54.)

14 In light of all these significant risks and given that PAGA gives the Court broad discretion to
15 reduce any penalties ultimately awarded, PAGA Counsel determined that the Gross Settlement
16 Amount of \$140,000.00 was fair and reasonable. (Szamet Decl. ¶55, Exhibit 1, ¶3.1.)

17 C. A Court May Exercise its Discretion to Reduce the Maximum Civil Penalty
18 Awarded for Technical Violations of the Labor Code

19 “PAGA penalties...are mandatory, not discretionary” and must be awarded upon a
20 showing that Defendant violated the Labor Code. *Amaral v. Cintas Corp. No. 2* 163 Cal. App 4th
21 1157, 1213 (2008); *Moreno v. Autozone, Inc.* (N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007
22 WL 1650942, at *3.

23 However, PAGA does provide the Court with discretion when it awards these penalties.
24 Labor Code section 2699(e)(2) states that “a court may award a lesser amount than the maximum
25 civil penalty amount specified by this part if, based on the facts and circumstances of the particular
26 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
27 confiscatory.”

28 In *Fleming v. Covidien Inc.* (C.D. Cal., Aug. 12, 2011, No (OPX)), 2011 WL 7563047, the

1 Court exercised its discretion to reduce the PAGA penalty amount. There, the plaintiff brought a
2 PAGA claim for violations of section 226(a) based on the following issues: (a) the statements did
3 not show either an employee identification number or the last four digits of the social security
4 number of the employee; (b) the statements did not show the beginning date of the pay period for
5 which the employee was paid; (c) the statements identified Covidien as the employee's employer.
6 (*Id.* At *2). There were approximately 28,000 wage statements at issue. (*Id.* at *3). The *Fleming*
7 court calculated the maximum potential civil penalty exposure at \$2.8 million (\$100 per wage
8 statement). (*Ibid*; see also Labor Code § 2699(f)(2)). After a bench trial, the Court elected to
9 exercise its discretion to reduce the civil penalty per wage statement to \$18 per wage statements,
10 reflecting 18% of the potential exposure. (*Id.* at *4). The Court reasoned:

11 Here, the aggrieved employees suffered no injury due to the erroneous wage
12 statements, and made no complaint of the errors or omissions contained
13 therein prior to filing suit. Also, Defendants were not aware that the wage
14 statements violated the law and took prompt steps to correct all violations
15 once notified. Given these circumstances, the Court finds a \$2.8 million
16 penalty unjust according to § 2699(e)(2). Accordingly, in its discretion, the
17 Court reduces the penalty to \$500,000.

18 *Id.* at *4. A court exercising its discretion to significantly reduce the civil penalty awarded under
19 PAGA is not a rare occurrence. See e.g., *Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th
20 504, 529 (awarding 10% of maximum civil penalty for meal break claims in light of Starbucks's
21 "good faith attempts" to comply and because the violations were minimal).

22 Here, as explained above, Plaintiff anticipated that, at trial, Defendant would argue that:
23 (1) employees were properly paid in accordance with Defendant's lawful policies and practices,
24 and that any alleged failure to compensate the PAGA Members was the result of inadvertence and
25 clerical error; (2) employees were actually provided with the opportunity to take meal breaks in
26 compliance with California law; and (3) until this Action was filed, no employees had complained
27 about any of the alleged Labor Code violations. (Szamet Decl. ¶56.) All of which, Defendant
28 would argue, should militate in favor of significantly reducing any civil penalty. *Id.*

After engaging in pertinent informal discovery in this Action, Plaintiff's counsel determined
that a settlement of \$140,000.00 is reasonable given the above risks.

1 D. Based on the Risks Above and the Analysis of the Maximum Penalties Available,
2 Plaintiff Believes this Settlement is Fair and Reasonable

3 Plaintiff assessed that the maximum potential exposure for the PAGA claims for the
4 Aggrieved Employees is \$635,900 (6,359 pay periods at issue multiplied by \$100 a pay period).
5 (Szamet Decl. ¶57; Ex. 1, ¶4.1.) If the Court were to “stack” pay periods for each of the three
6 distinct underlying Labor Code violations alleged, the full value could balloon up to \$1,907,700.00
7 (\$635,900 x 3 violations).

8 In light of the immense judicial discretion available, Plaintiff believes the Settlement is
9 reasonable. Indeed, if this Court were to ultimately award \$18 per pay period as the trial court did
10 in *Fleming v. Covidien Inc., supra*, the present Settlement is in fact superior at \$22 per pay period
11 (for comparison the \$18/pay period in *Fleming* would be \$114,462 here as 6,359 pay periods x
12 \$18 = \$114,462). (Szamet Decl. ¶58.) Were the Court to award 10% of maximum civil penalty as
13 occurred in *Carrington, supra*, 30 Cal. App. 5th 504, the result here would be \$63,590. (Szamet
14 Decl. ¶59.)

15 Because this Settlement is well-within the range of other judicial penalty awards if not
16 noticeably higher, Plaintiff believes this Settlement for \$140,000.00 is a very fair and reasonable
17 settlement. (Szamet Decl. ¶60.)

18 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF**
19 **COSTS**

20 From the Gross Settlement Amount, PAGA Counsel further request reimbursement of the
21 reasonable out-of-pocket expenses advanced and/or incurred by them in connection with this
22 litigation, in the amount of \$12,247.14. (Szamet Decl. ¶107.) To date, PAGA Counsel has incurred
23 \$11,647.14 in costs. (Szamet Decl. ¶108.) PAGA Counsel anticipates incurring an additional
24 \$600.00 in costs to file and serve this motion, but the Settlement provides for a reimbursement of
25 litigation costs of up to \$13,000.00. (Szamet Decl. ¶109, Exhibit 1, ¶3.2.1.) As such, counsel is
26 requesting a cost reimbursement of \$12,247.14, accounting for the anticipated costs associated
27 with filing the instant Motion. (Szamet Decl. ¶110.)

28 All of the requested costs are reasonable in amount and were necessarily incurred by PAGA

Counsel in prosecuting this litigation. (Szamet Decl. ¶111.); Exhibit 5 [Cost Report].) Expenses in this matter to date include costs for filing fees, research, mediation, and additional costs for the prosecution of this case evidenced in the costs spreadsheet attached to the Declaration of Kelsey M. Szamet. All of these costs have been incurred in the course of this litigation, and all costs advanced have already been paid by PAGA Counsel, with the exception of the anticipated cost of filing the present motion. (Szamet Decl. ¶112.)

Accordingly, the requested reimbursement of the reasonable out-of-pocket expenses advanced and/or incurred is appropriate and justified as part of the overall settlement and the Court should approve the request for reimbursement in the amount of \$12,247.14. (Szamet Decl. ¶113.)

VII. ENHANCEMENT TO PLAINTIFF

The Settlement calls for an enhancement payment of \$5,000.00 to the named Plaintiff, to be paid from the Gross Settlement Amount. (Szamet Decl. ¶114; Ex. 1 at ¶3.2.2.) Incentive awards “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and sometimes, to recognize their willingness to act as a private attorney general.” (*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59. “[I]t is established that named plaintiffs are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 (citing *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 805-806; *Staton v. Boeing Co.* (9th Cir.2003) 327 F.3d 938, 977)).

Here, the enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in coming forward to litigate this matter on behalf of the Aggrieved Employees. The time spent by Cristina Guzman includes identifying competent counsel, providing information to PAGA Counsel regarding Plaintiff’s relevant employment experiences, compiling documents, meeting with PAGA Counsel frequently to discuss the status of the case and the theories of liability, reviewing settlement documents, and making herself available for a full day of deposition and mediation. (Szamet Decl. ¶115; Guzman Decl. ¶4.)

PAGA Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl.

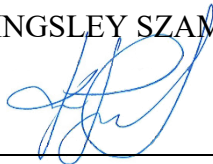
¶116.) The enhancement takes into consideration the time, effort, risks, and expense incurred by Plaintiff in coming forward to litigate this matter on behalf of the Aggrieved Employees. (Szamet Decl. ¶117.) Accordingly, Plaintiff should be awarded the agreed-upon enhancement of \$5,000.00.

VIII. CONCLUSION

Plaintiff and Plaintiff's Counsel submit that the proposed Settlement as documented in the Agreement is fair, adequate, reasonable, and in the best interest of the Parties and the State of California. Plaintiff respectfully requests that the Court approve the Settlement and Order that the Settlement is carried out according to the terms of the Agreement.

DATED: June 12, 2024

KINGSLEY SZAMET & LY

By: 

Kelsey M. Szamet
Attorneys for Plaintiff CRISTINA GUZMAN and
all aggrieved employees

(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On June 21, 2024, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR APPROVAL OF REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Elizabeth J. MacGregor
emacgregor@seyfarth.com
SEYFARTH SHAW LLP
560 Mission Street, 31st Floor
San Francisco, California 94105

Daniel C. Whang
dwhang@seyfarth.com
SEYFARTH SHAW LLP
2029 Century Park East, Suite 3500
Los Angeles, California 90067

SEYFARTH SHAW LLP
Jeffrey A. Nordlander
jnordlander@seyfarth.com
400 Capitol Mall, Ste 2350
Sacramento, CA 95814-4428

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] (BY ELECTRONIC MAIL TRANSMISSION): I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the above email address(es).

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 21, 2024, at Woodland Hills, California.



Michelle Tanzer