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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

MARIA TABAREZ, on behalf of the State
of California, as a private attorney general,

Plaintiff,

v.

ALTA HOSPITALS SYSTEM, LLC, a
California Limited Liability Company;
DOES 1-50, Inclusive,

Defendants.

Case No. 21SMCV01379

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
PAGA SETTLEMENT**

Date: December 18, 2024

Time: 8:30 a.m.

Reservation ID: 878949144033

Judge: Hon. Michael E. Whitaker

Dept: 207

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Maria Tabarez (“Plaintiff”) seeks approval of the PAGA Settlement Agreement
4 (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 176
5 PAGA employees (referred hereinafter as “Aggrieved Employees,”) defined as all current and
6 former non-exempt employees who performed work for Alta Hospitals System, LLC (“Defendant
7 Alta”) in California during the period from May 7, 2020, to August 18, 2024 (“PAGA Period”).
8 Agreement at §§ 1.26. This is only a settlement of the PAGA claim for civil penalties and is not a
9 class settlement and does not release the individual wage claims, if any, of the affected employees
10 other than Plaintiff herself. Cal. Lab. Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal.
11 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not
12 recoverable under PAGA).

13 If approved, the Aggrieved Employees and the California Labor Workforce and
14 Development Agency (“LWDA”) will share the PAGA Penalties of Two Hundred Thousand Two
15 Hundred Twenty-Six Dollars and Fifteen Cents (\$200,226.15). The PAGA Penalties shall be
16 distributed, 75% to the LWDA and 25% to the Aggrieved Employees. Declaration of Jean-Claude
17 Lapuyade (“JCL Dec.”) at ¶ 9.

18 An objective evaluation of the proposed settlement confirms that the relief negotiated on
19 behalf of the Aggrieved Employees and the LWDA is fair, reasonable, and valuable. The Settlement
20 is a product of informed, adversarial, and non-collusive and mediated negotiations between
21 experienced counsel. As discussed below, the proposed Settlement satisfies all criteria for PAGA
22 settlement approval. Accordingly, Plaintiff and PAGA Counsel respectfully request this Court
23 grant approval of the Agreement. Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 10.

24
25
26 ///

27 _____
28 ¹ The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to
the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise,
capitalized terms used herein have the same meaning as those defined by the Agreement.

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Exhaustion of Administrative Remedies Under PAGA And Civil Action Against Defendant

On May 7, 2021, Plaintiff, on behalf of herself and on behalf of other Aggrieved Employees, served Defendant and the LWDA with a Notice of Violations ("PAGA Notice") and draft complaint memorializing claims against Defendant for alleged violations of the California Labor Code, including causes of action for failure to provide compliant meal and rest periods; failure to accurately compensate for missed meal and rest periods; failure to pay all minimum, regular, and overtime wages; failure to provide accurate itemized wage statements; and failure to timely pay wages due during, and upon termination of employment. (LWDA Case No. LWDA-CM-831669-21). JCL Dec., ¶ 11.

On August 16, 2021, Plaintiff filed a class action complaint against Defendant in the Superior Court for Los Angeles County, Case Number 21STCV30149. The complaint alleged eight causes of action for (1) Unfair Competition; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Required Meal Periods; (5) Failure to Provide Required Rest Periods; (6) Failure to Provide Accurate Itemized Wage Statements; and (7) Failure to Reimburse Employees for Required Expenses; and (8) Failure to Provided Wages When Due. JCL Dec., ¶ 12.

The 65-day "waiting period" on Plaintiff's right to file a civil action under PAGA, *see* Cal. Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiff that they intended to investigate the claims in the PAGA Notice. To date, the LWDA still has not advised Plaintiff of any intent to take action with respect to the claims in the PAGA Notice. JCL Dec., at ¶ 13.

On August 16, 2021, Plaintiff filed a separate representative complaint against Defendant in the Superior Court for Los Angeles, Case Number 21SMCV01379 (the "Action"). The complaint alleged one cause of action for civil penalties under the Private Attorney Generals Act ("PAGA"). JCL Dec., at ¶ 14.

Plaintiff's counsel subsequently learned of the existence of an arbitration agreement by and between Plaintiff and Defendant that purportedly barred Plaintiff's proposed class action claims. On or about July 29, 2022, the Parties stipulated to dismiss the class claims and have Plaintiff's

1 individual claims proceed to Arbitration. Accordingly, Plaintiff dismissed her class claims against
2 Defendant without prejudice and her individual claims were ordered to arbitration. On September
3 16, 2022, Plaintiff filed her Arbitration with the Judicial Arbitration and Mediation Services.
4 Thereafter the Parties agreed to stay the Arbitration and proceed to Mediation. JCL Dec., ¶ 15.

5 On May 8, 2024, the Parties participated in an all-day mediation presided over by Lisa
6 Klerman, Esq., an experienced mediator of wage and hour representative actions. In advance of the
7 the mediation, Defendant provided Plaintiff with sufficient information to properly evaluate
8 Defendant's potential liability exposure. Among the data and documents Defendant produced
9 included, but was not limited to, the total number of Aggrieved Employees, pay periods, 30%
10 sampling of timekeeping and payroll records, amount paid in premiums, Plaintiff's personnel file,
11 employee handbooks, and policies and information including but not limited to: New Hire Pre-
12 Boarding Guide, Prospect Medical Holdings, Inc.'s Corporate Compliance Program, Plaintiff's
13 acknowledgements of policies, Meal Period Waiver, Prospect Medical Holdings Code of Conduct,
14 Driving Policy, Position Summary-Administrative Assistant, Administrative Assistant Job
15 description, Facilities Development Coordinator Job Description, Travel and Business Expense
16 Reimbursement Policy (Eff. 10/03/2019), Information on Non-Discretionary Bonus Compensation,
17 and attestation data. JCL Dec., ¶ 16.

18 Mediation concluded without a settlement. However, in the interest of resolving this matter,
19 the Parties continued settlement negotiations. After arms-length negotiations and bargaining, the
20 Parties accepted a Mediator's proposal, which was memorialized in the form of a Memorandum of
21 Understanding ("MOU"). After reaching an agreement in principle, the Parties drafted and
22 negotiated a long-form settlement which is the subject of the instant motion. The Settlement was
23 negotiated in light of all known facts and circumstances and the uncertainty associated with litigation
24 – including the risk of Plaintiff not being able to maintain representative claims and establishing
25 manageability, the difficulty of proving Plaintiff's claims in a manageable trial, the merits of
26 Defendant's potential defenses, and the significant delay and potential appellate issues inherent to
27 litigation. JCL Dec., at ¶ 17.

28 The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted

1 by Plaintiff on behalf of herself, the LWDA, and the State of California. This is only a Settlement of
2 the PAGA claims for civil penalties and is not a class settlement and does not release the individual
3 claims, if any, of the Aggrieved Employees. This Settlement does not release any claim that is not a
4 PAGA claim.² While the consideration for settlement of Plaintiff's individual claims will be
5 deducted from the Gross Settlement Amount for the Parties' convenience, settlement of Plaintiff's
6 individual claims is set forth in Plaintiff's Individual Settlement Agreement. Nor does this
7 Settlement waive Defendant's right to assert *res judicata* or other available defense to any asserted
8 claim or lawsuit. JCL Dec., at ¶ 18.

9 On July 19, 2024, Plaintiff filed an amended PAGA notice with the LWDA, pursuant to the
10 terms of the settlement, to include facts and allegations for violations of California Labor Code
11 Sections 201-204 *et seq.*, 210, 221, 226, 226.3, 226.7, 245-249, 351, 510, 512, 551-552, 558, 1174,
12 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2800, 2802, California Code of Regulations, Title 8,
13 Sections 11040 & 11050, Subdivisions 5(A)-(B) (Reporting Time Pay) & 14 (Failure to Provide
14 Seating), Violation of Related Provisions of Applicable Industrial Welfare Commission Wage
15 Order(s), and Pursuant to California Labor Code Section 2699.5. JCL Dec., at ¶ 19.

16 Thereafter, pursuant to the terms of the settlement, on October 7, 2024, Plaintiff filed a First
17 Amended Complaint to include all facts and allegations included in Plaintiff's Amended PAGA
18 Notice. JCL Dec., at ¶ 20.

19 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
20 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant
21 motion for settlement approval as set forth in the accompanying proof of service. Additionally,
22 Plaintiff will submit to the LWDA a copy of the Court's judgment and order approving the
23 Settlement Agreement within ten (10) days after entry of judgment or order. JCL Dec., at ¶ 21.

24 **III. TERMS OF THE PAGA SETTLEMENT**

25 **A. The Gross Settlement Amount**

26 The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(1)(2).
27

28 ² As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th 175 at 196: "Nonparty employees are bound by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties."

1 The Settlement Agreement negotiated by the Parties provides for a Gross Settlement Amount
2 payment in the amount of Three Hundred Fifty-Five Thousand Dollars and Zero Cents
3 (\$355,000.00) to resolve the PAGA claims. From the Gross Settlement Amount, there is a deduction
4 of a PAGA Counsel Award in the amount of One Hundred Forty- Thousand Eight Hundred Eight
5 Dollars and Eighty-Five Cents (\$140,808.85), comprised of one-third of the Gross Settlement
6 Amount (estimated to be approximately One Hundred Eighteen Thousand Three Hundred Thirty-
7 Three Dollars and Thirty Three Cents (\$118,333.33)), reimbursement of incurred litigation expenses
8 in the amount of Twenty-Two Thousand Four Hundred Seventy-Five Dollars and Fifty-Two Cents.
9 (\$22,475.52), Plaintiff's Individual Settlement Payment of Ten Thousand Dollars and Zero Cents
10 (\$10,000.00), and Administration Expenses Payment in the amount of Three Thousand Nine
11 Hundred Sixty-Five Dollars and Zero Cents (\$3,965.00). Agreement generally at § 3.2. After these
12 deductions, the amount remaining is the "PAGA Penalties," which is estimated to be Two Hundred
13 Thousand Two Hundred Twenty-Six Dollars and fifteen Cents (\$200,226.15). JCL Dec., ¶22.

14 The Gross Settlement Amount will be used to satisfy the Individual PAGA Payments, the
15 LWDA PAGA Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses
16 Payment, the Administrator's Expenses Payment, and Plaintiff's Individual Settlement Agreement.
17 Agreement at § 1.10.

18 Of the PAGA Penalties Payment, seventy-five percent (75%) shall be paid to the LWDA and
19 the remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees. Agreement at §
20 3.2.4. This 75/25 allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior*
21 *Court*, 8 Cal.5th 175 (2019).

22 **B. Allocation of Aggrieved Employee Payment**

23 The Individual PAGA Payments will be calculated by dividing the amount of the Aggrieved
24 Employees' 25% share of PAGA Penalties (\$50,056.54) by the total number of PAGA Pay Periods
25 worked by all Aggrieved Employees during the PAGA Period and then multiplying the result by
26 each Aggrieved Employee's PAGA Pay Periods. Agreement at § 3.2.4.1 The PAGA Period is the
27 period between May 7, 2020, and August 18, 2024. Agreement at § 1.26.

28 At the time of the parties' settlement of this Action, Defendant estimated that there were

1 approximately 176 Aggrieved Employees who worked approximately 10,200 pay periods during the
2 PAGA Period based on company records. Agreement at §§ 4.1 and 8.1.³

3 **C. Funding and Distribution**

4 Provided that an order approving this Settlement is entered by the Court, Defendant shall
5 fund the Gross Settlement Amount within fifteen (15) calendar days after the Effective Date.
6 Agreement at § 1.9. Within fifteen (15) days after Defendant fully funds the Gross Settlement
7 Amount, the Settlement Administrator will mail the Individual PAGA Payments via First-Class U.S.
8 Mail to the Aggrieved Employees' last known mailing address. Agreement at § 4.4. Settlement
9 checks issued to Aggrieved Employees will expire one hundred eighty (180) days from the date they
10 are issued by the Settlement Administrator. Agreement at § 4.4.1. If the check remains uncashed by
11 the expiration of the 180-day period, the Settlement Administrator shall transmit the funds
12 represented by such checks to the CASA LAW in the name of the Aggrieved Employee. Agreement
13 at § 4.4.3. The Aggrieved Employee Payments are 100% penalties and shall be reported using IRS
14 Form 1099s. Agreement at § 3.2.1.

15 **D. Release of Claims**

16 Upon entry of Judgment and funding of the Gross Settlement Amount, the State of
17 California, the Aggrieved Employees, and Plaintiff shall release the Released Parties (as defined in
18 the Agreement) from the Released PAGA Claims which include all PAGA claims that were alleged,
19 or could have reasonably been alleged against Defendant based upon the facts and circumstances
20 identified in the PAGA Notice, in the Complaint in the PAGA Action, and in the First Amended
21 Complaint filed in the Action on behalf of the PAGA Employees, which arose during the PAGA
22 Period. Without limiting the foregoing, and in addition to the foregoing, the release includes all civil
23 penalties under California Labor Code Section 2699 *et seq.*, for alleged failure to pay overtime and
24

25 ³ The Agreement contains an escalator clause, providing that, should the number of Pay Periods increase by more than
26 10% of what was represented during the PAGA Period, Defendant will have the choice of (a) paying a proportional
27 increase in the Gross Settlement for each additional pay period over 11,220; or (b) modifying the end date of the PAGA
28 Period to the date when the PAGA Pay Periods increased to above 10% of the 10,200 figure. For example, if the total
Pay Periods through August 18, 2024, is 11,322 (i.e., 11% higher than 10,200), Defendant will have the following
options: (a) increase the Gross Settlement Amount by 1% (\$3,550.00), in which case the PAGA Period would end on,
and include, August 18, 2024; or (b) not increase the Gross Settlement Amount and end the PAGA Period on whatever
date will result in PAGA Employee pay periods of 11,220 or less. Agreement at § 8.

1 minimum wages; failure to provide meal periods and rest breaks; failure to timely pay wages upon
2 termination; failure to pay wages timely during employment; unlawful deductions; failure to provide
3 accurate wage statements; failure to pay sick pay at the regular rate of pay; unpaid business expenses
4 (including, but not limited to, use of personal cell phones and personal vehicles, supplies and
5 COVID-related expenses); failure to pay reporting time pay; failure to provide suitable seating;
6 failure to allow timely inspection of personnel file; failure to provide a day of rest; and failure to
7 maintain time and payroll records, pursuant to the corresponding alleged violations of California
8 Labor Code sections 201-204, 210, 221, 226, 226.3, 226.7, 351, 245-249, 351, 510, 512, 551-552,
9 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2800, 2802, and the applicable IWC Wage
10 Orders. Agreement at § 1.31.

11 **IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT**

12 Labor Code § 2699(l) requires that the Court “shall review and approve any settlement of any
13 civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the
14 agency at the same time that it is submitted to the court.” Further, the Court in *Moniz v. Adecco*
15 *USA, Inc.* (2021) 72 Cal.App.5th 56, 77 stated that “the trial court must review and approve a PAGA
16 settlement (§ 2699, subd.(l)(2)), and the Supreme Court has in dictum referred to this review as a
17 safeguard.” (Citing *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 88; internal
18 quotations omitted.) “The Supreme Court has also observed that trial court approval ensures that
19 any negotiated resolution is fair to those affected,” leading the Court in *Moniz* to determine that
20 “adoption of a standard of review for settlements that prevents fraud, collusion or unfairness, and
21 protects the interests of the public and the LWDA in the enforcement of state labor laws is
22 warranted.” (*Moniz, supra*, 72 Cal.App.5th at 77; citing *Williams v. Superior Court* (2017) 3 Cal.5th
23 531, 549; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-1801; internal citations
24 omitted.) In other words, “[i]n review and approval of a proposed settlement under section 2699,
25 subd. (l)(2), a trial court thus must scrutinize whether, in resolving the action, a PAGA plaintiff has
26 adequately represented the state’s interests, and hence the public interest.” (*Moniz, supra*, 72
27 Cal.App.5th at 88.) Consequently, the Parties respectfully ask the Court to review and approve the
28

1 settlement of the PAGA claims and the PAGA Penalties to be paid as part of the proposed
2 Settlement.

3 **A. The Gross Settlement Amount is Fair and Reasonable**

4 The Gross Settlement Amount of Three Hundred Fifty-Five Thousand Dollars and Zero
5 Cents (\$355,000.00) is fair and reasonable and, therefore, should be approved. Here, Defendant's
6 *maximum* liability exposure for PAGA penalties is estimated at approximately \$3,409,550. JCL
7 Dec., ¶ 23. Plaintiff's consultant estimated Defendant's exposure as follows:

8 Claim	9 Penalty Amount ⁴	10 Number of Pay Periods / Violations	11 Violation Rate	12 Total Penalties
13 <i>Unpaid Wages Violations</i> Cal. Labor Code §§ 14 510, 558, 1194, 1197	\$50	10,163	100% of PAGA Pay Periods	\$508,150
15 <i>Unpaid Overtime (Regular Rate)</i> Cal. Labor Code § 510	\$100	516	5.1% of PAGA Pay Periods	\$51,600
16 <i>Meal Period Violations</i> Cal. Labor Code §§ 17 226.7 and 512	\$50	6,105	60.1% of PAGA Pay Periods	\$305,250
18 <i>Rest Period Violations</i> Cal. Labor Code §§ 226.7 and 19 512	\$50	10,103	99.4% of PAGA Pay Periods	\$505,150
20 <i>Wage Statement Violations</i> Cal. Labor Code § 226	\$100	10,163	100% of PAGA Pay Periods	\$1,016,300
21 <i>Waiting Time Penalties</i> Cal. Labor Code § 201, 202, 203	\$100	68	100% of PAGA Pay Periods	\$6,800
22 <i>Reimbursement Penalties</i> Cal. Labor Code § 2802	\$100	10,163	100% of PAGA Pay Periods	\$1,016,300

23 JCL Dec., ¶ 23-39.

24 **i. Estimated Liability for Unpaid Wages**

25 Plaintiff alleges that Defendant failed to pay all wages due to Plaintiff and the Aggrieved
26 Employees under two separate theories. First, Plaintiff alleges she and other Aggrieved Employees
27 worked off-the-clock to undergo mandatory pre-shift COVID-19 screenings. Additionally, Plaintiff
28 and Aggrieved Employees were required to send and receive work-related communications on the

⁴ In *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144, the court decided that “[u]ntil the employer has been notified that it is violating a Labor Code provision ... the employer cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.” Therefore, Plaintiff used only penalties for initial violations.

1 weekends, after hours, and while scheduled to be off pursuant to PTO requests. Plaintiff also alleges
2 that Defendant had a practice of rounding and manipulating timesheets. As a result of these
3 miscalculations, Plaintiff and other Aggrieved Employees were underpaid their regular and overtime
4 wages during their employment with Defendant. JCL Dec., ¶ 25. Defendant denies any practice of
5 failing to pay employees for work performed off-the-clock. To the extent any employee was not
6 recording his or her time spent preparing reports, Defendant contends that they were not instructed to
7 do so, nor was Defendant aware that any work was being performed off-the-clock. Plaintiff estimates
8 Defendant's exposure for this claim to be approximately \$508,150.00. JCL Dec., ¶ 26.

9 **ii. Estimated Penalties for Regular Rate Violations**

10 Plaintiff alleged that Defendant failed to include non-discretionary incentive compensation
11 when calculating the regular rate of pay for purposes of overtime wages and premiums. Specifically,
12 Plaintiff's expert found certain non-discretionary bonuses and additional remuneration identified as
13 "Bonus Non Disc, CA Work Retent Pay, Evening 2nd Shift Diff, Holiday Hours Diff, Night 3rd Shift
14 Diff.," that were not properly included in the regular rate of pay calculation for purposes of
15 calculating and paying overtime wages and premiums. The regular rate of pay, which can change
16 from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other
17 things, non-discretionary bonuses and awards, shift differentials and the per-hour value of any non-
18 hourly compensation the employee has earned. *Alvarado v. Dart Container Corp. of California*
19 (2018) 4 Cal.5th 542, 552-554. For overtime work, "an employee must receive a 50 percent
20 premium on top of his or her regular rate of pay[.]" *Id.* at 553. There can be no dispute over what the
21 law requires in calculating overtime wages: 1.5 times RROP, not less. (*emphasis added*) *Bowen v.*
22 *Target Corporation*, United States District Court, C.D. California, 2021 WL 4860689. When
23 calculating overtime, Defendant paid the overtime as follows: paid one hour at the base rate and .5 at
24 the regular rate of pay. Pursuant to the explicit language of the statute, Defendant was to pay
25 overtime at 1.5 times the regular rate of pay, not .5. This resulted in the underpayment of overtime.
26 JCL Dec., ¶ 27.

27 Further, California law requires meal period premiums and rest period premiums to be paid
28 at an employee's regular rate of pay. See *Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal.5th

1 858.). When Defendants paid meal and/or rest premiums in response to non-compliant meal periods,
2 those premiums were not paid at the employees' regular rate of pay. Defendant denied liability and
3 asserted it paid the correct rate of pay for purposes of overtime wages and premiums. Defendant also
4 argued that these bonuses were discretionary and did not need to be included in the regular rate
5 calculation for payment of overtime wages and premiums. Plaintiff's expert estimated that
6 Defendant's exposure for this claim was approximately \$51,600. JCL Dec., ¶ 28.

7 **iii. Estimated Penalties for Meal Period Violations**

8 Plaintiff also alleges that Defendant regularly violated the law by (a) failing to provide meal
9 periods, (b) providing late meal periods, (c) providing short meal periods, and/or (d) interrupting
10 employees during their meal periods. Due to the press of business and the nature of Defendant's
11 business, Plaintiff and Aggrieved Employees were required to work through and/or take late, short or
12 interrupted meal periods in order to meet business demands. Defendant denies these allegations, and
13 argued they implemented meal break waivers and employees were required to attest to receiving
14 compliant meal and rest breaks. However, Plaintiff argues that Defendant's second meal break
15 waiver was invalid as it failed to tell employees they could not waive the second meal when they
16 worked over 12 hours. Additionally, with respect to the attestations, Plaintiff and Aggrieved
17 Employees had no choice but to "agree" if they wanted to get paid. Plaintiff estimates Defendant's
18 exposure for this claim to be approximately \$305,250.00. JCL Dec., ¶ 29.

19 **iv. Estimated Penalties for Rest Period Violations**

20 Similarly to meal breaks, Plaintiff also alleged that Defendant failed to provide compliant
21 rest periods. Specifically, Plaintiff alleged that she and the Aggrieved Employees were unable to
22 take rest breaks due to the press of business. Plaintiff and the Aggrieved Employees were to
23 remain "on-call" and available by telephone and/or email. The nature of Defendant's business
24 alone calls for immediate attention to business/patient needs by employees. This resulted in
25 employees failing to take a rest break. Defendant denied these allegations, arguing that to the
26 extent any employee failed to take a rest break, it was done at the employee's sole discretion, and
27 further, that Defendant maintain legally compliant rest period policies. Defendant also argued that
28 Plaintiff's rest break claim would have mainly relied on the testimony of Aggrieved Employees,

1 making it a riskier claim. Establishing liability likely would have entailed competing testimony
2 stating either rest breaks were taken, or rest breaks were voluntarily waived. See, e.g., *Ordonez v.*
3 *Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 (“Because of the competing
4 testimony before the Court, plaintiff’s evidence that defendant may have an illegal, written rest
5 break policy is insufficient for this Court to find that common issues predominate.”); *Villa v.*
6 *United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed,
7 Plaintiff’s own evidence confirms that the written policy does not generate uniform practices”).
8 Considering Defendant’s defenses, Plaintiff estimates Defendant’s exposure for this claim to be
9 approximately \$505,150.00. JCL Dec., ¶ 30.

10 **v. Estimated Penalties for Wage Statement Violations and Waiting Time**
11 **Penalties**

12 Plaintiff further alleged that Defendant’s labor code violations for non-compliant meal and
13 rest breaks, failure to pay minimum, regular or overtime wages resulting from Defendant’s failure
14 to pay for all hours worked, miscalculating the regular rate of pay for purposes of overtime and
15 premiums, results in derivative liability for waiting time penalties and penalties resulting from
16 inaccurate wage statements. Although these penalties represented Defendant’s largest dollar amount
17 of exposure, these are Plaintiff’s most uncertain claims. Specifically, Defendant argued that
18 Plaintiff could not prove the “willful” prong needed to obtain waiting time penalties under Labor
19 Code Section 203 or the “knowing or intentional” prong needed to obtain waiting time penalties
20 under Labor Code Section 226. Defendant further argued that it substantially complied with its
21 obligation to provide the correct total of hours worked. Taking into account Defendant’s defenses,
22 Plaintiff estimated Defendant’s exposure for these claims to be \$1,023,100.00, comprised of
23 \$6,800.00 for waiting time penalties pursuant to Labor Code Section 203 and \$1,016,300.00 for
24 penalties under Labor Code 226. JCL Dec., ¶ 31.

25 **vi. Estimated Penalties for Unreimbursed Business Expenses**

26 Plaintiff alleged that Defendant required Plaintiff and other Aggrieved Employees to use
27 their personal cell phones, vehicles, home internet, and personal hotspot to perform necessary work-
28 related tasks. However, Defendant did not reimburse Plaintiff and other Aggrieved Employees for

1 these expenses. California employers who require employees to incur personal business expenses for
2 work purposes must reimburse the employee for the cost incurred. (*See* Cal. Labor Code § 2802(a),
3 providing that “an employer shall indemnify his or her employee for all necessary expenditures or
4 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his
5 or her obedience to the directions of the employer...”). Plaintiff’s expert estimated that Defendant’s
6 exposure for this claim was approximately \$1,016,300.00 in penalties. JCL Dec., ¶ 32.

7 **B. The Gross Settlement Compares Favorably to The Likely Recovery**

8 In light of the above, the Gross Settlement Amount is approximately 10.4% of Defendant’s
9 potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely recovery
10 of PAGA penalties through continued litigation. Defendant’s maximum exposure to PAGA penalties
11 is not a realistic outcome of the litigation because it fails to account for the risks of continued
12 litigation including, but not limited to, Defendant’s defenses. *See, Zayerz v. Kiewit Infrastructure*
13 *West*, 2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018). For instance, Defendant
14 argued that it can only be assessed civil penalties for actual violations of the Labor Code. *See* Lab.
15 Code § 2699(f)(2). In other words, to recover any civil penalties, Plaintiff would be required to
16 prove the underlying Labor Code violations. (*Cardenas v. McLane Foodservice, Inc.*, 2011 U.S.
17 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) [“Given the statutory language [of PAGA], a plaintiff
18 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the
19 Labor Code by the defendant.”].) To do this, Plaintiff would need to prove each Aggrieved
20 Employee was subject to the alleged Labor Code violation, which would be difficult to do, since
21 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in this
22 action. JCL Dec., ¶ 33.

23 Thus, Defendant contended that Plaintiff would be required to “prove Labor Code violations
24 with respect to each and every individual on whose behalf Plaintiff seek to recover civil penalties
25 under PAGA.” *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar. 2,
26 2009). When determining whether the employer committed Labor Code violations with respect to
27 each employee is impractical, the PAGA action may be more difficult to prove. *Estrada v. Royalty*
28 *Carpet Mills, Inc.*, 15 Cal. 5th 582, 608, 619 (2024)(“We also emphasize that our holding that trial

1 courts lack inherent authority to strike a PAGA claim on manageability grounds does not preclude
2 trial courts from limiting the types of evidence a plaintiff may present....”). JCL Dec., ¶ 34.

3 Finally, the maximum penalty figure does not consider that Courts have complete discretion
4 to “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on
5 the facts and circumstances of the particular case, to do otherwise would result in an award that is
6 unjust, arbitrary and oppressive, or confiscatory.” (Cal. Lab. Code § 2699(e)(2)). In fact, Courts
7 routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g. Carrington v.*
8 *Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to \$5 per pay period;
9 “Although the trial court may have disagreed with Starbucks regarding the issue of liability, it
10 clearly took the circumstances proffered by Starbucks into consideration when it imposed the
11 penalty ... only \$5 per initial violation”); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal App 5th 778,
12 788 (2018), review granted on other grounds (noting that the trial court “exercised its discretion to
13 reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average,
14 plaintiffs were deprived of 13 percent of the 30-minute meal period”); *Fleming v. Covidien, Inc.*,
15 2011 WL 7563047, *4 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of
16 PAGA civil penalties for plaintiffs’ section 226 claims from \$2,800,000 to \$500,000 because the
17 employees suffered no injuries as a result of the erroneous wage statements and made no complaints
18 about the errors or omissions in the wage statements, thus reducing the maximum penalty by 82%);
19 *see also, Gola v. University of San Francisco*, 90 Cal. App. 5th 548 (2023), *as modified* (May 9,
20 2023), *reh’g denied* (May 15, 2023), *review denied* (July 12, 2023), *and disapproved of by Naranjo*
21 *v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 547 P.3d 980 (2024) (concluding after a full-blown
22 bench trial that a penalty of 15% of the maximum PAGA penalties was the appropriate penalty). The
23 gross amount obtained by PAGA Counsel is reasonable in light of Defendant’s arguments. JCL
24 Dec., ¶ 35.

25 Given Defendant’s defenses to the claimed Labor Code violations at issue, and the risks and
26 costs of continued litigation, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount
27 is fair and reasonable. This settlement was negotiated by experienced counsel at arm's length. JCL
28 Dec., ¶ 36-50; Zakay Dec. ¶1-9; De Blouw Dec. ¶1-6. The LWDA has been provided with notice of

1 this motion and the PAGA settlement, and the decision of the LWDA to accept the PAGA settlement
2 and not oppose the motion should be given considerable weight. Moreover, the LWDA is a
3 sophisticated government entity that can assert and protect its own rights. JCL Dec., ¶¶ 4, 37.

4 **C. The Remaining Settlement Terms Are Fair and Reasonable**

5 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
6 2699(1) does not require that a court approve any other elements of the proposed settlement.
7 Because there are no class allegations for which Plaintiff seeks approval, the approval provisions
8 applicable to class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the
9 Court only needs to approve the settlement of the civil penalties sought in the PAGA claim.
10 Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable.
11 JCL Dec., ¶ 38.

12 **V. THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE**

13 PAGA Counsel seeks approval of the PAGA Counsel Award, comprised of attorneys' fees in
14 the amount of One Hundred Eighteen Thousand Three Hundred Thirty-Three Dollars and Thirty
15 Three Cents (\$118,333.33) (one-third of the Gross Settlement Amount) and reimbursement of
16 litigation costs not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00).⁵ PAGA does
17 not have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment
18 of attorneys' fees and costs in this Settlement is a matter of contract for a contingent representation.
19 Nevertheless, should this Court review the requested attorneys' fees, the requested fees and costs are
20 reasonable for experience wage and hour counsel. JCL Dec., ¶ 39.

21 **A. The Requested Attorneys' Fee is Fair and Reasonable**

22 The requested PAGA Counsel Award of One Hundred Forty Thousand Eight Hundred Eight
23 Dollars and Eighty-Five Cents (\$140,808.85), comprised of One Hundred Eighteen Thousand Three
24 Hundred Thirty-Three Dollars and Thirty-Three Cents (\$118,333.33) for attorneys' fees and
25 reimbursement of litigation expenses of Twenty-Two Thousand Four Hundred Seventy-Five dollars
26 and Fifty-Two Cents (\$22,475.52) is fair, reasonable, and justified by the result achieved. Agreement
27

28 ⁵ As detailed *infra*, at the time of filing this motion, Plaintiff's Counsel incurred \$22,475.52 litigating this matter. Plaintiff will provide the Court with a final amount of litigation costs at the time of hearing on this motion.

1 at § 3.2.2; JCL Dec., ¶ 40-54. PAGA Counsel negotiated a recovery of Three Hundred Fifty-Five
2 Thousand Dollars and Zero Cents (\$355,000.00), and this result justifies the requested fees equal to
3 one third of this recovery. This percentage is within the standard contingent recovery percentage of
4 one-third, and this percentage is what was expressly approved by the Supreme Court in *Laffitte v.*
5 *Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016). At the time this case was brought, the result was
6 far from certain. Defendant's defenses to the merits of the case created difficulties with proof and
7 complex legal issues for PAGA Counsel to overcome. Here, several defenses asserted by Defendant
8 present serious threats to the claims of Plaintiff and the Aggrieved Employees. Defendant asserted
9 that its employment practices complied with all applicable labor laws. If successful, Defendant's
10 factual and legal defenses would eliminate *any recovery* to the Aggrieved Employees. While
11 Plaintiff believes that these defenses could be overcome, Defendant maintains that these defenses
12 have merit and therefore present a serious risk to recovery. The Settlement was possible because, in
13 PAGA Counsels' eyes, PAGA Counsel was able to persuade Defendant that there was an
14 appreciable risk that Plaintiff would prevail on the factual and legal issues underlying liability and
15 overcome difficulties in proof as to monetary relief. JCL Dec., ¶ 41.

16 Further, the fee award is justified by the work performed. Generally, the Ninth Circuit and
17 California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for
18 accepting the contingent risks of the litigation or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th
19 at 506 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert*
20 *Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often
21 applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
22 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*,
23 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier
24 of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-
25 third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-
26 02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented
27 a multiplier of 2.76 as falling within the "majority" range for risk multipliers).
28

As detailed in PAGA Counsels' time and billing records submitted herewith, PAGA Counsels' current combined loadstar is \$153,535.75. JCL Dec., ¶¶ 6, 42-54; Declaration of Shani Zakay ("Zakay Dec.") at ¶¶ 3-9; Declaration of Nicholas De Blouw ("De Blouw Dec.") at ¶ 3. Thus, PAGA Counsels' fee request is equal to PAGA Counsel's loadstar with a negative multiplier (Fees requested, \$118,333.33 vs. Fees incurred, \$153,535.75) – well below the 2.13 multiplier approved in *Laffitte* – and well below the recognized multiplier range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7).

B. PAGA Counsel is Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs.

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include counsel's incurred expenses because those who benefit from their effort should share in the cost. See *Rider v. City of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. See *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); see also *Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded litigation costs for consultants, online legal research, copying, postage, long distance charges, travel expenses, filing fees, mediation fees and investigation fees). Prior to incurring costs for the filing of this motion, PAGA Counsel collectively expended \$22,475.52 prosecuting this action (JCL Law Firm, APC - \$9,052.03, Zakay Law Group, APLC - \$8,770.19, Blumenthal Nordrehaug Bhowmik De Blow, LLP - \$4,653.30). JCL Dec. ¶¶ 6, 43 and 55; Zakay Dec. ¶ 8; De Blouw Dec. ¶ 3. PAGA Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; factual and legal research charges; mediation fees; and expert costs which were all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed. JCL Dec. ¶¶ 7, 55-56.

1 **VI. CONCLUSION**

2 Based on the foregoing, Plaintiff respectfully requests this Court approve the PAGA
3 Settlement as set forth in the Settlement Agreement and enter the proposed order and judgment
4 submitted herewith.

5
6 Dated: November 21, 2024

JCL LAW FIRM, APC

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8 By: 
9 Jean-Claude Lapuyade, Esq.
10 Attorney for Plaintiff
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