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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

Coordination Proceeding
Special Title (Rule 3.550)

Judicial Counsel Coordination Proceeding
No.: 5224 Honorable Melissa McCormick

**REBORN CABINETS WAGE AND HOUR
CASES**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION TO APPROVE
PAGA SETTLEMENT**

Including Actions:

William Mosing v. Reborn Cabinets, Inc.

Superior Court of California, County of
Alameda No. 21CV001749

Salvador Lozano v. Reborn Cabinets, Inc.

Superior Court of California, County of
Orange No. 30-2021-01191829

Salvador Lozano v. Reborn Cabinets, Inc.

Superior Court of California, County of
Orange No. 30-2021-01223149

William Mosing, et al. v. Reborn Cabinets, Inc.

Superior Court of California, County of
Orange No. 30-2021-01231360

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Salvador Lozano, William Mosing, and Dominique Cadilli ("Plaintiffs") seek
4 approval of the PAGA Settlement Agreement and Release ("Agreement")¹, which if approved,
5 would provide valuable monetary relief for approximately 1326 "Aggrieved Employees," defined
6 as all current and former hourly-paid or non-exempt employees who worked for Reborn Cabinets,
7 Inc. ("Defendant") in the State of California during the PAGA Period. The PAGA Period is the
8 period from July 21, 2020 and April 20, 2023. Agreement at § 3(a)(5). This is only a settlement of
9 the PAGA claim for civil penalties and is not a class settlement and does not release the individual
10 wage claims, if any, of the affected employees other than Plaintiffs themselves. Cal. Lab. Code §
11 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior*
12 *Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

13 If approved, the Aggrieved Employees and the California Labor Workforce and
14 Development Agency ("LWDA") will share a payment of Seven Hundred Ninety-Five Thousand
15 Dollars and Zero Cents (\$795,000.00). Agreement at § 3(a). After deducting any Court-approved
16 PAGA Counsel Award, Service Award, and the Claims Administration Costs, the PAGA Payment
17 shall be distributed, 75% to the LWDA and 25% to the Aggrieved Employees ("Aggrieved
18 Employee Payment"). Agreement at § 3(a)(5).

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

25
26 ///

27 _____
28 ¹ The Agreement is attached as Ex "1" to the Declaration of Vartan Madoyan ("VM Dec.") at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the VM 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. Plaintiffs' Exhaustion of Administrative Remedies Under PAGA And Civil Actions Against Defendant

On July 21, 2021 and September 8, 2021, respectively, Lawyers for Justice, PC submitted a letter on behalf of Plaintiff Salvador Loranzo, and a letter on behalf of Plaintiffs William Mosing and Dominique Cadilli, to the LWDA and Defendant, to notify the LWDA and Defendant, pursuant to the PAGA of Plaintiffs' intent to seek civil penalties under PAGA for Defendant's alleged violations of California Labor Code. Agreement at § 1(b). Plaintiff Loranzo alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Order, including inter alia, Wage Orders 1-2001, 4-2001, 7-2001, 16-2001 thereby initiating LWDA Case Number LWDA-CM-838810-21 ("Lozano's PAGA Notice"). Agreement at § 1(b)(i). Plaintiff William Mosing alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551,552,558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Wage Orders, including inter alia, Wage Orders 4-2001 and 7-2001 thereby initiating LWDA Case Number LWDA-CM- 843906-21 ("Mosing's PAGA Notice"). Agreement at § 1(b)(ii). Plaintiff Cadilli alleged violations of California Labor Code sections 201,202,203,204, 226(a), 226.7, 510, 512(a), 551,552,558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Wage Orders, including inter alia, Wage Order 4-2001 and 7-2001 thereby initiating LWDA Case Number LWDA-CM-843904-21 ("Cadilli's PAGA Notice"). Agreement at § 1(b)(ii).

On September 24, 2021, Plaintiff Lozano filed his Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, et seq. ("Lozano's PAGA Complaint"), commencing a representative action under PAGA against Defendant, entitled *Salvador Lozano v. Reborn Cabinets, Inc.*, Orange Superior Court Case No. 30- 2021-01223149-CU-OE-CXC. Plaintiff Lozano's PAGA Complaint asserts a single cause of action for civil penalties under PAGA, for violations of multiple provisions of the California Labor Code and applicable Industrial Welfare Commission. Agreement at § 1(c). On March 25, 2021, Plaintiff Lozano filed a Class

1 Action Complaint for damages, alleging ten (10) putative class causes of action. The case is entitled
2 *Salvador Lozano v. Reborn Cabinets, Inc.*, Orange County Superior Court Case No. 30-2021-
3 01191829-CU-OE-CXC ("Lozano's Class Action Complaint"). Agreement at § 1(d). On November
4 12, 2021, Plaintiffs Mosing and Cadilli filed their Complaint for Enforcement Under the Private
5 Attorneys General Act, California Labor Code § 2698, et seq. ("Mosing's and Cadilli's PAGA
6 Complaint"), commencing a representative action under PAGA against Defendant, entitled *William*
7 *Mosing, Dominique Cadilli v. Reborn Cabinets, Inc.*, Orange Superior Court Case No. 30-2021-
8 01231360-CU-OE-CXC. Agreement at § 1(e). Plaintiffs William Mosing and Dominique Cadilli's
9 PAGA Complaint asserts a single cause of action for civil penalties under PAGA, for violations of
10 multiple provisions of the California Labor Code and applicable Industrial Welfare Commission.
11 Lozano's, Mosing's, and Cadilli's PAGA Complaints are collectively referred to as the "PAGA
12 Complaints." Agreement at § 1(e).

13 On November 4, 2021, Plaintiff Mosing filed a Class Action Complaint for Damages,
14 alleging ten (10) putative class causes of action. The case is entitled *William Mosing v. Reborn*
15 *Cabinets, Inc.*, Alameda County Superior Court Case No. 21CV001749 ("Mosing's Class Action
16 Complaint"). Lozano's and Mosing's Class Action Complaints are collectively referred to as the
17 "Class Action Complaints." Agreement at § 1(f).

18 On February 20, 2023, the Parties participated in an all-day mediation presided over by Jeff
19 Krivis, who was an experienced and well-respected mediator of wage and hour representative
20 actions. In advance of the mediation, Defendant provided Plaintiffs with sufficient information to
21 properly evaluate Defendant's potential liability exposure. Among the data and documents
22 Defendant produced included but was not limited to time and payroll data and relevant written
23 policies. VM Dec., ¶ 11.

24 The mediation resulted in a settlement and was memorialized in the form of a Memorandum
25 of Understanding ("MOU"). After reaching an agreement in the principle, the Parties drafted and
26 negotiated a long-form settlement which is the subject of the instant motion. The Settlement was
27 negotiated in light of all known facts and circumstances and the uncertainty associated with litigation
28 – including the risk of Plaintiffs not being able to maintain representative claims, the difficulty of

1 proving Plaintiffs’ claims in a manageable trial, the merits of Defendant’s potential defenses, and the
2 significant delay and potential appellate issues inherent to litigation – and was reached after
3 extensive arm’s length negotiations, with the assistance of Mediator Krivis. VM Dec., at ¶ 12.

4 The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted
5 by Plaintiffs on behalf of themselves, the LWDA, and the State of California. Following the
6 Settlement funding by Defendant, in accordance with the Settlement Agreement, Plaintiffs will
7 dismiss the Class Action Complaints without prejudice. Agreement at § 8(d). This is only a
8 Settlement of the PAGA claims for civil penalties and is not a class settlement and does not release
9 the individual claims, if any, of the Aggrieved Employees. This Settlement does not release any
10 claim that is not a PAGA claim.² Nor does this Settlement waive Defendant’s right to assert *res*
11 *judicata* or other available defense to any asserted claim or lawsuit. VM Dec., at ¶ 13.

12 Pursuant to California Labor Code Section 2699(s), Plaintiffs are providing a copy of the
13 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant
14 motion for settlement approval as set forth in the accompanying proof of service. Additionally,
15 Plaintiffs will submit to the LWDA a copy of the Court’s judgment and order approving the
16 Settlement Agreement within ten (10) days after entry of judgment or order. VM Dec., at ¶ 14.

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

18 **A. The Gross Settlement Amount**

19 The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(s)(2).
20 The Settlement Agreement negotiated by the Parties provides for a Gross Settlement Amount
21 payment in the amount of Seven Hundred Ninety-Five Thousand Dollars and Zero Cents
22 (\$795,000.00) to resolve the PAGA claims. From the Gross Settlement Amount, there is a deduction
23 of a PAGA Counsel Award in the amount of Two Hundred Ninety-Eight Thousand, Two Hundred
24 Fifty Dollars and Zero Cents (\$298,250.00), comprised of 35% of the Gross Settlement Amount
25 (estimated to be approximately \$278,250.00) and reimbursement of incurred litigation expenses in
26 an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00). There is also a
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 deduction of a General Release Fee to Plaintiffs of up to Ten Thousand Dollars and Zero Cents
2 (\$10,000.00) per Plaintiff; and a deduction for the Settlement Administration Costs which will not
3 exceed Seven Thousand Three Hundred Ninety-Five Dollars and Zero Cents (\$7,395.00).
4 Agreement at § 3(a). After these deductions, the amount remaining is the “PAGA Payment,” which
5 is estimated to be \$459,355.00. VM Dec., ¶ 15.

6 The Gross Settlement Amount will be used to satisfy the Aggrieved Employee’s Portion, the
7 LWDA PAGA Payment, PAGA Counsel Award, Service Award, and the Settlement Administration
8 Costs. Agreement at § 3(a)(1)-(5).

9 Of the PAGA Payment, seventy-five percent (75%) shall be paid to the LWDA and the
10 remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees (“Employee’s
11 Portion”). Agreement at §3(a)(5). This 75/25 allocation³ is required by Labor Code § 2699 as
12 explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

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

14 The Aggrieved Employee Payment will be calculated as follows: for each Aggrieved
15 Employee, the Settlement Administrator will divide the number of Pay Periods he or she
16 individually worked in the PAGA Period by the total aggregate number of Pay Periods worked by all
17 Aggrieved Employees in the PAGA Period, and then multiply this amount by the Employees’
18 Portion to arrive at each Aggrieved Employee’s Individual Settlement Share. Agreement at § 7(b).
19 Defendant estimates that there are approximately 1326 Aggrieved Employees who worked
20 approximately 24,756 pay periods during the PAGA Period based on company records. Agreement
21 at § 3(b)⁴; VM Dec., ¶ 16.

22 **C. Funding and Distribution**

23 Provided that an order approving this Settlement is entered by the Court, Defendant shall
24 fund the Gross Settlement Amount within thirty (30) calendar days after the entry of the court order
25

26 ³ The current version of Labor Code Section 2699(m) provides for a 65/35 split, however this applies only to actions that
27 were filed on or after June 19, 2024. As the PAGA Actions at issue here were filed before this date, the 75/25 split
28 applies.

⁴ The Agreement contains an escalator clause, providing that, should the number of Pay Periods increase by more than
10% above 24,047, the Gross Settlement Amount will be increased proportionally by the pay periods worked in excess
of 26,452 Compensable Pay Periods multiplied by the pay period value. Agreement at § 3(b).

1 approving the settlement. Agreement at § 7(a). Defendant shall also provide the Settlement
2 Administrator with a list of all Aggrieved Employees and their contact information (“Aggrieved
3 Employee List”) within 30 calendar days after the Court’s order granting approval of the Settlement.
4 Agreement at §7(c)(1). No later than 14 days after the Settlement Administrator receives the
5 Aggrieved Employee List and Gross Settlement Amount, the Settlement Administrator will mail the
6 agreed-upon cover letter and Aggrieved Employee Payment via First-Class U.S. Mail to the
7 Aggrieved Employees’ last known mailing address. Agreement at §7(c)(1). Settlement checks
8 issued to Aggrieved Employees will expire one hundred eighty (180) days from the date they are
9 issued by the Settlement Administrator. Agreement at § 7(c)(4). For checks that remain uncashed by
10 the expiration of the 180-day period, the Settlement Administrator shall transmit the funds associated
11 with these checks to the State Controller's Office Unclaimed Property Division in the name of the
12 Aggrieved Employee(s) at issue and in the amount of his or her respective Individual Settlement
13 Share(s). Agreement at § 7(c)(4). The Aggrieved Employee Payments are 100% penalties and shall
14 be reported using IRS Form 1099s. Agreement at § 7(b)(1).

15 **D. Release of Claims**

16 Upon the date the Court has entered an order approving the Settlement Agreement and full
17 funding of the Gross Settlement Amount, the State of California, the Aggrieved Employees, and
18 Plaintiffs shall release the Released Parties (as defined in the Agreement) from the Released PAGA
19 Claims which include any and all claims for civil penalties under California Labor Code section
20 2698, et seq. that were alleged in Plaintiffs' LWDA Notices and in their Operative Complaints, or
21 which could have been alleged in said LWDA Notices and Operative Complaints based on the
22 factual allegations therein, arising during the PAGA Period. Agreement at § 8(a).

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

24 Labor Code § 2699(s) requires that the Court “shall review and approve any settlement of
25 any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the
26 agency at the same time that it is submitted to the court.” Further, the Court in *Moniz v. Adecco*
27 *USA, Inc.* (2021) 72 Cal.App.5th 56, 77 stated that “the trial court must review and approve a PAGA
28 settlement (§ 2699, subd.(1)(2)), and the Supreme Court has in dictum referred to this review as a

1 safeguard.” (Citing *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 88; internal
2 quotations omitted.) “The Supreme Court has also observed that trial court approval ensures that
3 any negotiated resolution is fair to those affected,” leading the Court in *Moniz* to determine that
4 “adoption of a standard of review for settlements that prevents fraud, collusion or unfairness, and
5 protects the interests of the public and the LWDA in the enforcement of state labor laws is
6 warranted.” (*Moniz, supra*, 72 Cal.App.5th at 77; citing *Williams v. Superior Court* (2017) 3 Cal.5th
7 531, 549; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-1801; internal citations
8 omitted.) In other words, “[i]n review and approval of a proposed settlement under section 2699,
9 subd. (l)(2), a trial court thus must scrutinize whether, in resolving the action, a PAGA plaintiff has
10 adequately represented the state’s interests, and hence the public interest.” (*Moniz, supra*, 72
11 Cal.App.5th at 88.) Consequently, the Parties respectfully ask the Court to review and approve the
12 settlement of the PAGA claims and the PAGA Payment to be paid as part of the proposed
13 Settlement.

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

15 The Gross Settlement Amount of \$795,000.00 is fair and reasonable and, therefore, should be
16 approved. To assist the Court in its review and consideration of the settlement reached in the above-
17 captioned matter, a discussion of the potential and realistic value of the PAGA claim, is provided
18 below. VM Dec., ¶ 17.

19 Plaintiffs alleges that Defendant has violated the California Labor Code and Industrial
20 Welfare Commission Wage Orders, and thereby has engaged in conduct giving rise to civil penalties
21 recoverable under PAGA, by, *inter alia*, failing to properly pay all wages due, failing to provide
22 compliant meal and rest periods and associated premiums, failing to timely pay wages during
23 employment, failing to timely pay wages upon termination of employment, failing to provide
24 compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse
25 necessary business expenses. Specifically, Plaintiff contends that Defendant required Plaintiff and
26 aggrieved employees to perform work duties off-the-clock after clocking-out of their scheduled
27 shifts and during meal periods, and to remain on premises during rest periods and perform work.
28 Further, Plaintiff contends that Defendant failed to correctly calculate the regular rate of pay for

1 purposes of paying overtime wages and meal and rest premiums, improperly deducted meal period
2 time, and implemented an improper rounding procedure. Based on Plaintiff's Counsel's
3 investigation, the key issues for the off-the-clock claims is that aggrieved employees spent hours
4 after work finishing projects that needed to be done within the three-day time period (weekly), and
5 spent minutes on phone calls and text messages (daily). Based on plaintiff's Counsel's investigation,
6 the key issues for the meal and rest break claims is that aggrieved employees were required to stay
7 on premises for meal and rest breaks and experienced missed, late, short, and interrupted meal and
8 rest breaks due to having to perform job responsibilities and tasks. Aggrieved employees were not
9 given rest breaks and it was impractical to leave the premises for meal breaks. As a result, Plaintiff
10 contends that Defendant did not pay Plaintiff and aggrieved employees all compensation due to
11 them, that meal and rest periods were non-compliant, and that Defendant failed to properly pay
12 premiums for all non-compliant meal and rest periods. Additionally, Plaintiff alleges that Defendant
13 intentionally and willfully failed to pay Plaintiff and aggrieved employees all wages due to them
14 while they were employed by Defendant, within the time period permissible under California law,
15 thereby triggering waiting-time penalties under California Labor Code section 203. Plaintiff
16 contends that, based on the violations described herein, the wage statements provided by Defendant
17 and the payroll records kept by Defendant were inaccurate. Plaintiff contends that Defendant failed
18 to reimburse Plaintiff and the other aggrieved employees for necessary business expenses for use of
19 personal cell phones, mileage within a specified radius, and purchase and maintenance of screws,
20 cleaning devices, and hangers for work purposes. VM Dec., ¶ 18.

21 Plaintiff's Counsel considered Defendant's arguments, e.g., that the employer's practices,
22 policies, and procedures complied with the law, employees signed meal waivers and/or were subject
23 to arbitration agreements, that Defendant correctly paid regular and overtime wages for all hours
24 worked, that no waiting-time penalties were due because waiting-time penalties only arise from
25 "willful" failure to pay wages due, that Plaintiff and aggrieved employees suffered no actual injury
26 from the alleged wage statement violations and that this alleged violation and the alleged
27 recordkeeping violation are entirely derivative of the other alleged California Labor Code violations,
28 and that Defendant has a practice and procedure for reimbursing employees for necessary business-

1 related expenses and did not require employees to undertake expenses that were not reimbursed.
2 Plaintiff's Counsel conducted a preliminary meal analysis, and it was observed that about 36% of
3 shifts analyzed were eligible for a meal period but did not record a timely and complete meal.
4 Plaintiff's Counsel considered that it could be determined that individual liability issues predominate
5 (e.g., due to purported variation in shifts, departments, locations, job duties, and other circumstances
6 which could raise individualized questions of fact) and could pose challenges to manageability and
7 the merits of the PAGA claim. VM Dec., ¶ 19.

8 Plaintiff's Counsel considered information obtained through investigations and from
9 Plaintiff, Defendant, and other sources, and created violation and penalties valuations and models
10 prior to reaching the Settlement. Based thereon, Plaintiff's Counsel calculated the potential value of
11 the PAGA claim. However, the potential value of the PAGA claim assumed an exposure based on
12 Plaintiff having proven all elements of the claim and entitlement to civil penalties, despite risks
13 associated with demonstrating manageability, and establishing liability and any underlying
14 California Labor Code violations, and significant additional costs that would have to be incurred in
15 order to establish liability and obtain civil penalties. VM Dec., ¶ 20. While Plaintiff's Counsel
16 disagreed with Defendant's arguments and factual contentions, Plaintiff recognized the
17 circumstances and realities of the case, applicable case law and regulations, the costs and expenses
18 of further litigation, and risks to recovery, and applied appropriate discounts for them. Plaintiff's
19 Counsel calculated the potential and realistic value of the PAGA claim as follows: VM Dec., ¶ 21.

20 a. Failure to Pay Overtime Wages: The potential value of civil penalties was estimated
21 to be \$2,409,347.00 (1326 initial violations x \$50 + 23,430.46 subsequent violations x \$100). A
22 discount of 80% was applied to account for the risks associated with Defendant's arbitration
23 agreements and demonstrating manageability (bringing the value of civil penalties closer to
24 \$481,869.40), a discount of 60% was applied to account for the risks associated with succeeding on
25 the merits and establishing liability (bringing the value of civil penalties closer to \$192,747.76), and
26 a discount of 60% was applied to account for the risks associated with the Court exercising its
27 discretion to reduce and/or assess lower penalties and obtaining a recovery (bringing the value of
28 civil penalties closer to \$77,099.10). VM Dec., ¶ 21(a).

1 b. Failure to Pay Minimum Wages: The potential value of civil penalties was estimated
2 to be \$5,990,216.00 (1326 initial violations x \$100 + 23,430.46 subsequent violations x \$250). A
3 discount of 80% was applied to account for the risks associated with Defendant's arbitration
4 agreements and demonstrating manageability (bringing the value of civil penalties closer to
5 \$1,198,043.20), a discount of 75% was applied to account for the risks associated with succeeding
6 on the merits and establishing liability (bringing the value of civil penalties closer to \$299,510.80),
7 and a discount of 70% was applied to account for the risks associated with the Court exercising its
8 discretion to reduce and/or assess lower penalties and obtaining a recovery (bringing the value of
9 civil penalties closer to \$89,853.24). VM Dec., ¶ 21(b).

10 c. Failure to Provide Compliant Meal Periods and Associated Premiums: The potential
11 value of civil penalties was estimated to be \$2,409,347.00 (1326 initial violations x \$50 + 23,430.46
12 subsequent violations x \$100). A discount of 80% was applied to account for the risks associated
13 with Defendant's arbitration agreements and demonstrating manageability (bringing the value of
14 civil penalties closer to \$481,869.40), a discount of 75% was applied to account for the risks
15 associated with succeeding on the merits and establishing liability (bringing the value of civil
16 penalties closer to \$120,467.35), and a discount of 70% was applied to account for the risks
17 associated with the Court exercising its discretion to reduce and/or assess lower penalties and
18 obtaining a recovery (bringing the value of civil penalties closer to \$36,140.21). VM Dec., ¶ 21(c).

19 d. Failure to Provide Compliant Rest Periods and Associated Premiums: The potential
20 value of civil penalties was estimated to be \$2,409,347.00 (1326 initial violations x \$50 + 23,430.46
21 subsequent violations x \$100). A discount of 80% was applied to account for the risks associated
22 Defendant's arbitration agreements and demonstrating manageability (bringing the value of civil
23 penalties closer to \$481,869.40), a discount of 60% was applied to account for the risks associated
24 with succeeding on the merits and establishing liability (bringing the value of civil penalties closer to
25 \$192,747.76), and a discount of 60% was applied to account for the risks associated with the Court
26 exercising its discretion to reduce and/or assess lower penalties and obtaining a recovery (bringing
27 the value of civil penalties closer to \$77,099.10). VM Dec., ¶ 21(d).

28 ///

1 e. Failure to Timely Pay Wages During Employment and Upon Termination: Plaintiff
2 alleged that, as a result of the above-discussed alleged conduct, Defendant failed to pay Plaintiff and
3 the Aggrieved Employees all wages due to them while they were employed by Defendant, within the
4 time period permissible under California law. These wages included, but were not limited to,
5 minimum, regular, and overtime wages and meal and rest break premium wages. However,
6 arguably, violations of this provision of the California Labor Code overlap with and are already
7 pursued as part of the allegations for the failure to pay wages and provide meal and rest periods and
8 associated premiums (which are already discussed herein)—this aspect may cause a court to exercise
9 discretion to not assess separate penalties or to assess significantly reduced penalties. (Cal. Lab.
10 Code § 2699(e)(1)-(2).) Plaintiff also alleged that Defendant failed to pay Plaintiff and the other
11 Aggrieved Employees all wages due to them upon termination, within the time period permissible
12 under California Labor Code sections 201 and 202. For example, Plaintiff alleged that he and other
13 Aggrieved Employees are entitled to unpaid wages arising from, inter alia, unpaid wages and the
14 failure to properly compensate them for all hours worked, as well as, meal and rest period premiums.
15 The potential value of civil penalties for failure to timely pay wages upon termination of
16 employment was estimated to be \$89,500.00 (895 violations x \$100 civil penalties). A discount of
17 80% was applied to account for the risks associated with Defendant’s arbitration agreements and
18 demonstrating manageability (bringing the value of civil penalties closer to \$17,900.00), a discount
19 of 60% was applied to account for the risks associated with succeeding on the merits and
20 establishing liability (bringing the value of civil penalties closer to \$7,160.00), and a discount of
21 60% was applied to account for the risks associated with the Court exercising its discretion to reduce
22 and/or assess lower penalties and obtaining a recovery (bringing the value of civil penalties closer to
23 \$2,864.00). VM Dec., ¶ 21(e).

24 f. Failure to Provide Compliant Wage Statements: The potential value of civil penalties
25 was estimated to be \$5,990,216.00 (1326 initial violations x \$100 + 23,430.46 subsequent violations
26 x \$250). A discount of 80% was applied to account for the risks associated with Defendant’s
27 arbitration agreements and demonstrating manageability (bringing the value of civil penalties closer
28 to \$1,198,043.20), a discount of 75% was applied to account for the risks associated with succeeding

on the merits and establishing liability (bringing the value of civil penalties closer to \$299,510.80), and a discount of 75% was applied to account for the risks associated with the Court exercising its discretion to reduce and/or assess lower penalties and obtaining a recovery (bringing the value of civil penalties closer to \$74,877.70). VM Dec., ¶ 21(f).

g. Failure to Maintain Payroll Records: The potential value of civil penalties was estimated to be \$663,000.00 (1326 aggrieved employees x \$500). A discount of 80% was applied to account for the risks associated with Defendant's arbitration agreements and demonstrating manageability (bringing the value of civil penalties closer to \$132,600.00), a discount of 75% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of civil penalties closer to \$33,150.00), and a discount of 75% was applied to account for the risks associated with the Court exercising its discretion to reduce and/or assess lower penalties and obtaining a recovery (bringing the value of civil penalties closer to \$8,287.50). VM Dec., ¶ 21(g).

h. Failure to Reimburse Necessary Business Expenses: The potential value of civil penalties was estimated to be \$4,818,693.00 (1326 initial violations x \$100 + 23,430.46 subsequent violations x \$200). A discount of 80% was applied to account for the risks associated with Defendant's arbitration agreements and demonstrating manageability (bringing the value of civil penalties closer to \$963,738.60), a discount of 60% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of civil penalties closer to \$385,495.44), and a discount of 65% was applied to account for the risks associated with the Court exercising its discretion to reduce and/or assess lower penalties and obtaining a recovery (bringing the value of civil penalties closer to \$134,923.40). VM Dec., ¶ 21(h).

Alternate Valuations (Per Capita Basis): The manner in which civil penalties could be assessed involved some uncertainty, for example, the Court could exercise its discretion to assess penalties on a per-pay-period basis or, assess penalties on a per-person (i.e. per capita) basis, or some other methodology that still factors in the statutorily-denominated dollar amounts of civil penalties at the outset. If civil penalties were assessed on a per capita basis, for example, in the amount of \$1,950 (statutory penalties per person) for each of the 1,326 allegedly aggrieved employees, this

1 would yield potential civil penalties in the amount of \$2,585,700.00, and discounting that amount of
2 civil penalties by 80% for risks associated with Defendant's arbitration agreements , succeeding on
3 the merits and establishing liability, establishing the extent of damages, and the possibility of the
4 Court exercising its discretion to reduce and/or assess lower penalties, and obtaining a recovery,
5 brings the risk-adjusted value of civil penalties closer to \$517,140.00. VM Dec., ¶ 22.

6 Alternate Valuations (Unstacked Basis): Another more conservative method of evaluating
7 PAGA claims is to calculate PAGA exposure on an unstacked basis. *Merante v. American Institute*
8 *for Foreign Study, Inc.* (N.D. Cal. 2022) 2022 WL 2918896, *6. Under this method, the default
9 PAGA civil penalty of \$100 per pay period is applied to each pay period (i.e., 24,756 pay periods x
10 \$100 civil penalties), resulting in unstacked civil penalties exposure of \$2,475,600.00, and
11 discounting that amount of civil penalties by 80% (for the same reasons noted above), brings the
12 risk-adjusted value of civil penalties closer to \$495,129.00. VM Dec., ¶ 23.

13 The foregoing discussion confirms that the amount of the Settlement is adequate in light of
14 the legal basis, facts, evidence, and circumstances in connection with Plaintiffs' allegations and the
15 PAGA claim. The conclusion to be drawn from the foregoing analysis is that neither liability nor the
16 ability to adjudicate and/or recover civil penalties on a representative basis is clear-cut, which is why
17 the Parties elected to settle this matter. Plaintiffs' Counsel considered the defenses asserted,
18 information and evidence obtained, and circumstances in this case, which posed risks to
19 representative adjudication and monetary recovery. Plaintiffs' Counsel also considered the fact that,
20 by law, the Court has the discretion to reduce and/or assess lower penalties, that it was not clear that
21 heightened penalties would apply, and that stacking and/or cumulative penalties may not be allowed

22 **B. The Gross Settlement Compares Favorably To The Likely Recovery**

23 The Gross Settlement Amount compares favorably to the likely recovery of PAGA penalties
24 through continued litigation. Defendant's maximum exposure to PAGA penalties is not a realistic
25 outcome of the litigation because it fails to account for the risks of continued litigation including, but
26 not limited to, Defendant's defenses. *See,*. Defendant also argued that it can only be assessed civil
27 penalties for actual violations of the Labor Code. See Lab. Code § 2699(f)(2). In other words, to
28 recover any civil penalties, Plaintiffs would be required to prove the underlying Labor Code

1 violations. (*Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal.
2 2011) [“Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals
3 whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant.”].) To do
4 this, Plaintiffs would need to prove each Aggrieved Employee was subject to the alleged Labor Code
5 violation, which would be difficult to do for the reasons outlined above). VM Dec., ¶ 25.

6 Moreover, Plaintiffs acknowledge that Courts have complete discretion to “award a lesser
7 amount than the maximum civil penalty amount specified [by PAGA] if, based on the facts and
8 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary
9 and oppressive, or confiscatory.” (Cal. Lab. Code § 2699(e)(2)). In fact, Courts routinely exercise
10 their authority to reduce PAGA penalties by 85% to 95%. See e.g. *Carrington v. Starbucks Corp.*, 30
11 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to \$5 per pay period; “Although the trial
12 court may have disagreed with Starbucks regarding the issue of liability, it clearly took the
13 circumstances proffered by Starbucks into consideration when it imposed the penalty ... only \$5 per
14 initial violation”); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal App 5th 778, 788 (2018), review
15 granted on other grounds (noting that the trial court “exercised its discretion to reduce the [PAGA]
16 penalties to 13 percent of the full amount [requested, because] [o]n average, plaintiffs were deprived
17 of 13 percent of the 30-minute meal period”); *Fleming v. Covidien, Inc.*, 2011 WL 7563047, *4
18 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of PAGA civil penalties for
19 plaintiffs’ section 226 claims from \$2,800,000 to \$500,000 because the employees suffered no
20 injuries as a result of the erroneous wage statements and made no complaints about the errors or
21 omissions in the wage statements, thus reducing the maximum penalty by 82%); see also, *Gola v.*
22 *University of San Francisco*, 90 Cal. App. 5th 548 (2023), *as modified* (May 9, 2023), *reh’g denied*
23 (May 15, 2023), *review denied* (July 12, 2023), *and disapproved of by Naranjo v. Spectrum Sec.*
24 *Servs., Inc.*, 15 Cal. 5th 1056, 547 P.3d 980 (2024) (concluding after a full-blown bench trial that a
25 penalty of 15% of the maximum PAGA penalties was the appropriate penalty). The gross amount
26 obtained by PAGA Counsel is reasonable in light of Defendant’s arguments. VM Dec., ¶ 26.

27 Given Defendant’s defenses to the claimed Labor Code violations at issue and the risks and
28 costs of continued litigation, Plaintiffs and PAGA Counsel believe that the Gross Settlement Amount

1 is fair and reasonable. This settlement was negotiated by experienced counsel at arm's length. VM
2 Dec., ¶ 27. The LWDA has been provided with notice of this motion and the PAGA settlement, and
3 the decision of LWDA to accept the PAGA settlement and not oppose the motion should be given
4 considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and
5 protect its own rights. VM Dec., ¶¶ 7, 28.

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

7 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
8 2699(s) does not require that a court approve any other elements of the proposed settlement.
9 Because there are no class allegations for which Plaintiffs seek approval, the approval provisions
10 applicable to class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the
11 Court only needs to approve the settlement of the civil penalties sought in the PAGA claim.
12 Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable.
13 VM Dec., ¶ 29.

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

15 PAGA Counsel seeks approval of the PAGA Counsel Award, comprised of attorneys' fees in
16 the amount of \$278,250.00 (35% of the Gross Settlement Amount) and reimbursement of litigation
17 costs not to exceed \$20,000.⁵ PAGA does not have any requirements for reviewing attorneys' fees,
18 and Plaintiffs' position is that the payment of attorneys' fees and costs in this Settlement is a matter
19 of contract for a contingent representation. Nevertheless, should this Court review the requested
20 attorneys' fees, the requested fees and costs are reasonable for experience wage and hour counsel.
21 VM Dec., ¶¶ 30; 32-35.

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

23 The requested PAGA Counsel Award of \$298,250, comprised of \$278,250 for attorneys' fees
24 and reimbursement of litigation expenses of up to \$20,000 is fair, reasonable, and justified by the
25 result achieved. PAGA Counsel negotiated a recovery of Seven Hundred Ninety-Five Thousand
26 Dollars and Zero Cents (\$795,000.00), and this result justifies the requested fees equal to 35% of this
27

28 ⁵ As detailed *infra*, at the time of filing this motion, Plaintiffs' Counsel incurred \$18,198.51 litigating this matter. Plaintiffs will provide the Court with a final amount of litigation costs at the time of hearing on this motion.

1 recovery. This percentage is within the standard contingent recovery percentage. At the time this
2 case was brought, the result was far from certain. Defendant's defenses to the merits of the case
3 created difficulties with proof and complex legal issues for PAGA Counsel to overcome. Here,
4 several defenses asserted by Defendant present serious threats to the claims of Plaintiffs and the
5 Aggrieved Employees. If successful, Defendant's factual and legal defenses would eliminate any
6 recovery to the Aggrieved Employees. While Plaintiffs believe that these defenses could be
7 overcome, Defendant maintains that these defenses have merit and therefore present a serious risk to
8 recovery. The Settlement was possible because, in PAGA Counsels' eyes, PAGA Counsel was able
9 to persuade Defendant that there was an appreciable risk that Plaintiffs would prevail on the factual
10 and legal issues underlying liability and overcome difficulties in proof as to monetary relief. VM
11 Dec., ¶ 31.

12 Further, the fee award is justified by the work performed. Generally, the Ninth Circuit and
13 California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for
14 accepting the contingent risks of the litigation or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th
15 at 506 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert*
16 *Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often
17 applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
18 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*,
19 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier
20 of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-
21 third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-
22 02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented
23 a multiplier of 2.76 as falling within the "majority" range for risk multipliers). As detailed in PAGA
24 Counsels' time and billing records submitted herewith, PAGA Counsels' current combined lodestar
25 is \$337,500. VM Decl. ¶¶ 36-41; JCL Dec., ¶¶ 6; Declaration of Shani Zakay ("Zakay Dec.") at ¶¶
26 3-5. Thus, PAGA Counsels' fee request is equal to PAGA Counsel's lodestar with a negligible
27 multiplier of 0.82 – well below the 2.13 multiplier approved in *Laffitte* – and well within the
28 recognized multiplier range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S.

1 Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check
2 lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist.
3 LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check
4 lodestar multiplier of 1.7).

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

7 Attorneys who create a common fund for the benefit of a class are entitled to payment from
8 the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include
9 counsel's incurred expenses because those who benefit from their effort should share in the cost.
10 *See Rider v. City of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in
11 deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to
12 paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *see also*
13 *Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded
14 litigation costs for consultants, online legal research, copying, postage, long distance charges, travel
15 expenses, filing fees, mediation fees and investigation fees). Prior to incurring costs for filing of this
16 motion, PAGA Counsel collectively expended \$18,283.86 prosecuting this action (Lawyers for
17 Justice, P.C. - \$18,198.51; JCL Law Firm, APC - \$55.24, Zakay Law Group, APLC - \$30.11). VM
18 Dec. ¶¶ 8, 42; Zakay Dec., ¶¶ 6-7; JCL Dec. ¶ 7. PAGA Counsel's out-of-pocket expenses are the
19 types of expenses normally charged to paying clients including the following: filing fees; copying;
20 postage; factual and legal research charges; mediation fees; and expert costs which were all
21 incurred during, and were necessary for the successful prosecution of, the litigation and, therefore,
22 should be reimbursed. VM Dec. ¶ 43.

23 **VI. PLAINTIFFS' SERVICE AWARD IS FAIR AND REASONABLE**

24 Incentive payments are intended to "compensate class representatives for work done on
25 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
26 and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v.*
27 *West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (emphasis added). Courts routinely
28 approve service awards to compensate named plaintiffs for the services they provide and the risks

1 they incur during the litigation. *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004)
2 (upholding “service payments” to plaintiffs for their efforts in bringing class case). The factors
3 courts use in determining the amount of service awards include: (1) a comparison between the
4 service awards and the range of monetary recovery available to the class; (2) time and effort put into
5 the litigation; (3) whether the litigation will further the public policy underlying the statutory
6 scheme; and (4) risks of retaliation. *Clark v. American Residential Services, LLC*, 175 Cal. App. 4th
7 785, 804-805 (2009).

8 The Settlement provides for a General Release Fee of \$10,000 for each of the three Plaintiffs.
9 This payment is fair and reasonable compensation for the Plaintiffs’ efforts bringing the action,
10 assisting PAGA Counsel with the litigation and settlement, regularly conferring with PAGA Counsel
11 on the status of their case and the strategies for prosecuting the claims, and for agreeing to provide
12 Defendant a broad general release of all claims arising out of their employment. Plaintiffs willingly
13 came forward to protect and advance the rights of the Aggrieved Employees on important legal
14 disputes affecting California employees. By way of example, Plaintiffs assumed the serious risk of
15 liability for Defendant’s costs and potentially fees if the case was unsuccessful. Nevertheless,
16 Plaintiffs knowingly and voluntarily undertook the risk to vindicate the rights of the Aggrieved
17 Employees. VM Dec., ¶ 44.

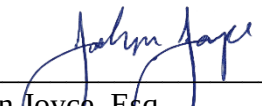
18 Plaintiffs’ efforts in bringing the lawsuit conferred a monetary benefit to over 1,300 other
19 Aggrieved Employees. Accordingly, Plaintiffs and PAGA Counsel respectfully request the Court
20 approve the General Release Fee of \$10,000 per Plaintiff in accordance with the Settlement
21 Agreement. VM Dec., ¶ 45.

22 **VII. CONCLUSION**

23 Based on the foregoing, Plaintiffs respectfully request this Court approve the PAGA
24 Settlement as set forth in the Settlement Agreement and enter the proposed order and judgment
25 submitted herewith.

26 Dated: May 12, 2025

ZAKAY LAW GROUP, APLC

27 By: 
28 Jaclyn Joyce, Esq.
Attorney for Plaintiffs