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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

KANDICE NEWLEN, an individual, on behalf
of herself and others similarly situated

PLAINTIFF,

v.

RLH FIRE PROTECTION, INC.; and DOES 1
thru 50, inclusive,

DEFENDANTS.

Case No. BCV-21-102503-DRZ

[Case Assigned for All Purposes to Hon.
David Zulfa in Dept. J]

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

*[Filed concurrently with Declarations of Liane
Katzenstein Ly, Sean Hartranft of Apex Class
Action Administration, and Plaintiff Kandice
Newlen in Support of Plaintiff's Motion for
Approval of Representative Action Settlement;
[Proposed] Order, and Judgment]*

Date: July 19, 2024

Time: 8:30 a.m.

Dept.: J

Complaint Filed: October 25, 2021

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on July 19, 2024 at 8:30 a.m. in Department J of the above-
3 entitled court, Plaintiff KANDICE NEWLEN will move the Court for an Order Granting Approval
4 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 Liane Katzenstein Ly, the PAGA Settlement Agreement
9 (Exhibit "1" to the concurrently filed Ly Declaration), all other papers and records on file in this
10 action, and on such oral and documentary evidence as may be presented at the hearing on this
11 Motion.

12
13 DATED: June 25, 2024

KINGSLEY SZAMET & LY

14 By: _____

15 Liane Katzenstein Ly
16 Attorneys for Plaintiff KANDICE NEWLEN and all
17 aggrieved employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Kandice Newlen (“Plaintiff”) submits this Memorandum of Points and Authorities
4 in support of Motion for Approval of Representative Action Settlement. Plaintiff and Defendant
5 RLH FIRE PROTECTION, INC. (“Defendant”) (collectively, the “Parties”) have reached a
6 proposed settlement documented in the PAGA Settlement Agreement (“Settlement” or
7 “Agreement”), attached to the concurrently-filed declaration of Liane Katzenstein Ly.

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 attorney’s
10 fees and litigation expenses, litigation enhancement to Plaintiff, and settlement administration
11 costs as discussed in the Agreement, the remaining amount to be divided between the Labor and
12 Workforce Development Agency (“LWDA”) and the aggrieved employees as required by Labor
13 Code section 2699(i) is \$74,838.00, with \$56,128.50 (or 75%) going to the LWDA and
14 \$18,709.50 (or 25%) distributed to the aggrieved employees.¹

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

20 **II. BACKGROUND OF THE CASE AND RELEVANT PROCEDURAL HISTORY**

21 A. Litigation Overview and Procedural History

22 Defendant RLH Fire Protection, Inc. (hereafter referred to as “Defendant”) is a fire
23 protection and security company that operates across California.³ Plaintiff worked for Defendant
24 as a non-exempt employee. Plaintiff worked for Defendant as an Accounts Receivable, earning

25 ¹ Pursuant to PAGA, civil penalties recovered by aggrieved employees shall be distributed 75 percent to the
26 Labor and Workforce Development Agency (“LWDA”) and 25 percent to the aggrieved employee(s). Lab.
Code § 2699(i).

27 ² Plaintiff’s Motion for Approval of Representative Action Settlement will be concurrently uploaded to the
28 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. (Ly Decl. ¶5.)

³ <https://www.rlhfp.com/>

wages on an hourly basis. (Declaration of Liane Katzenstein Ly ¶6) (“Ly Decl.”)

On October 25, 2021, in compliance with Labor Code § 2699.3(a)(1), Plaintiff gave written notice by online filing to the LWDA, setting forth the facts and theories of the violations alleged against Defendant, paid the filing fee, and received an e-filing confirmation. (Ly Decl. ¶7.) Plaintiff also mailed notice to Defendant by certified mailing, return receipt requested, to the address listed on the California’s Secretary of State’s website as the entity address for Defendant. (*Id.*)

On October 25, 2021, Plaintiff also filed a Class Action Complaint seeking recovery for: (1) failure to provide rest breaks pursuant to Labor Code section 226.7; (2) failure to issue accurate itemized wage statements pursuant to Labor Code section 226(a); (3) penalties under Labor Code section 203; and (4) violation of Business & Professions Code section 17200. (Ly Decl. ¶8.)

On January 3, 2022, Plaintiff filed a First Amended Class and Representative Action Complaint adding an additional cause of action for penalties pursuant to Labor Code § 2699, et seq., the Private Attorneys General Act (“PAGA”) based on the underlying Labor Code violations already pled. (Ly Decl. ¶9.)

In accordance with the settlement, Plaintiff has filed an amended PAGA notice letter with the LWDA and served Defendant her amended notice on January 17, 2024. (Ly Decl. ¶10.) As no letter evidencing the LWDA’s intention to investigate was received by PAGA Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil action as though the LWDA had not chosen to investigate pursuant to Labor Code §2699.3(a)(2)(A). Accordingly, Plaintiff filed a Second Amended Representative Action Complaint on June 10, 2024, alleging the following PAGA violations: (1) failing to pay minimum or regular wages for all hours worked pursuant to Lab. Code sections 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198; (2) failing to pay overtime wages pursuant to Lab. Code sections 510, 1194, and 1198; (3) failing to provide compliant meal periods or premium pay in lieu thereof pursuant to Lab. Code sections 226.7, 512, and 1198; (4) failing to provide compliant rest periods or premium pay in lieu thereof pursuant to Lab. Code sections 226.7 and 1198; (5) failing to provide and maintain accurate payroll records pursuant to Lab. Code sections 226(a)/(f)/(h), 226.3, 1174(d); and (6) failing to timely pay wages

1 due pursuant to Lab. Code sections 201-204, and 210. (Hereafter, the “Action.”) (Ly Decl. ¶11.)

2 B. The Discovery Process and Mediation

3 The Parties focused their efforts on resolving this Action through early mediation. As such,
4 the Parties engaged in informal discovery to understand the nature of the allegations and the scope of
5 potential liability. (Ly Decl. ¶12.) Specifically, Defendant informally produced a sampling of time
6 and pay data for mediation purposes. (*Id.*) PAGA Counsel also learned that Plaintiff, as part of her
7 employment with Defendant, executed a valid and binding arbitration agreement. (Ly Decl. ¶13.)

8 Through the exchange of information and attendant discussions between the Parties, Plaintiff
9 learned that the number of Aggrieved Employees is no more than 425 (including Plaintiff) and there
10 is a maximum of 28,200 PAGA Pay Periods at issue. (Ly Decl. ¶14; Ex. 1, ¶4.) Plaintiff asserts that
11 the maximum potential exposure for the PAGA claims for Aggrieved Employees is \$2,820,000.00
12 (28,200 PAGA Pay Periods at issue × \$100 = 2,820,000). (*Id.*⁴)

13 On December 6, 2023, the Parties participated in a private mediation with mediator Russ
14 J. Wunderli, Esq. (Ly Decl. ¶15). After several rounds of ongoing discussions and negotiation
15 aided by Mr. Wunderli, Esq., this tentative settlement was reached. Shortly thereafter, the Parties
16 formalized the PAGA Settlement Agreement.

17 The Parties engaged in good faith, arms-length negotiations with Defendant concerning
18 possible resolution of the claims asserted in the Action. (Ly Decl. ¶16) The Parties were able to
19 reach a tentative settlement subject to finalization of a formal PAGA Settlement Agreement and
20 the approval of the Court. (*Id.*) The Parties negotiated the terms and conditions of the Settlement
21 and now present the agreed-upon Settlement to the Court for Approval. (Ly Decl. ¶17)

22 Although Defendant denies that it violated any pertinent law, it recognized the risks and
23 attendant costs of litigation, and the Parties were able to reach a tentative settlement subject to
24 finalization of a formal PAGA Settlement Agreement and the approval of the Court. (Ly Decl.
25 ¶18.) The Parties negotiated the terms and conditions of the Agreement and now present the
26 agreed-upon Settlement to the Court for Approval. (*Id.*)

27 ///

28 ⁴ With stacking this number could be as high as \$28,000,000.00, but the analysis in this motion is based on a single stacked violation.

III. PAGA ACTIONS AND THE REQUIREMENTS

A. The PAGA Statutory Scheme

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

When an aggrieved employee brings a PAGA claim, “the government is always the real party in interest.” *Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty.*, 234 Cal.App.4th 1109, 1119 (2015); *Montano v. The Wet Seal Retail, Inc.* 232 Cal.App.4th 1214, 1222 (2015) (“[A] PAGA action is a dispute between an employer and the State agency.”). Accordingly, a plaintiff that brings a PAGA claim represents “the same legal right and interest as state labor law enforcement agencies,” in that the plaintiff is seeking to recover those civil penalties that otherwise would have been assessed and collected by the LWDA. *Arias, supra*, 46 Cal.4th at 986; Lab. Code § 2699 (a) & (f); *Securitas, supra*, 234 Cal.App.4th at 1119; *see also Medina v. Vander Poel* (E.D. Cal. 2015) 523 B.R. 820, 825 (holding “PAGA plaintiffs do not have property rights in their cases.”). This is borne out by the fact that the LWDA receives 75 percent of any civil penalties recovered; thus, recoveries are principally for the state and only secondarily for aggrieved employees. Lab. Code § 2699 (i). Therefore, when a plaintiff brings a PAGA claim, he or she is properly conceived of as a private attorney general prosecuting violations of California’s labor laws on behalf of the state.

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

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

1 Lab. Code § 2699.3 (a)(1)

2 As explained above, Plaintiff has complied with the notice requirements and has properly
3 pled a PAGA cause of action. (Ex. 1, ¶¶2.1-2.2.)

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

5 PAGA provides for penalties in the amount of one hundred dollars (\$100) for each
6 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
7 each aggrieved employee per pay period for each subsequent violation. Lab. Code § 2699(f)(2).

8 “PAGA penalties...are mandatory, not discretionary” and must be awarded upon a showing
9 that Defendant violated the Labor Code.⁵ *Amaral v. Cintas Corp. No. 2 163 Cal. App. 4th 1157,*
10 *1213 (2008); Moreno v. Autozone, Inc. (N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007 WL*
11 *1650942, at *3.*

12 However, PAGA does provide the Court with discretion when it awards these penalties.
13 Labor Code §2699(e)(2) states that “a court may award a lesser amount than the maximum civil
14 penalty amount specified by this part if, based on the facts and circumstances of the particular case,
15 to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
16 Here, Defendant denies that it violated any law or that it engaged in any knowing or intentional
17 conduct giving rise to liability, and expressly deny that any employees suffered harm.

18 C. Standards for Settlement Approval

19 When approving a settlement of a PAGA action, the statute simply requires the Court to
20 “review and approve any settlement of any civil action filed pursuant to this part.” (Lab. Code §
21 *2699(l)(2).*) PAGA does not set forth standards for evaluating such settlements, and the California
22 appellate courts have not weighed in on the issue. However, trial courts have approved PAGA
23 settlements where the penalties are “genuine and meaningful” and “consistent with the underlying
24 purpose” of the statute. (See *O’Connor v. Uber Techs., Inc. (N.D. Cal. 2016) 201 F. Supp. 3d*
25 *1110, 1113.*) Additionally, as explained in *Arias v. Superior Court (2009) 46 Cal.4th 969*, class
26 action procedural rules do not apply in PAGA cases, including the two-step preliminary and final
27 approval process. Rather, the approval process consists of one step where the court decides if the

28 ⁵ 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.

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. (Ly Decl. ¶19., Exhibit 1, ¶3.1.) Per the Agreement, the amount is allocated as follows:

Gross Settlement Amount:	\$140,000.00
PAGA Counsel Fees Payment:	\$46,662.00
PAGA Counsel Litigation Expenses Payment:	\$8,500.00 ⁶
Administrator Expenses Payment:	\$5,000.00
Named Plaintiff Enhancement:	\$5000.00
PAGA Penalties:	\$74,838.00 <i>(\$56,128.50 to the LWDA; \$18,709.50 to be distributed to the Aggrieved Employees)</i>

(Ly Decl. ¶20., Exhibit 1, ¶3.)

Each aggrieved employee shall receive a pro-rata portion of the remaining amount in PAGA penalties based by dividing the amount of the aggrieved employees' 25% share of PAGA Penalties by the total number of PAGA Pay Periods worked by all aggrieved employees during the Covered Period⁷, and then multiplying the result by each aggrieved employee's PAGA Pay Periods. (Ly Decl. ¶23, Exhibit 1, ¶3.2.4.1.)

For settlement purposes, the Aggrieved Employees are defined as: "all non-exempt employees who are employed or have been employed by RLH FIRE PROTECTION, INC., in the State of California who worked one or more pay periods during the Covered Period" ("Aggrieved Employee"). (Ly Decl. ¶25., Ex. 1, ¶1.4.)

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⁶ The Agreement provided for PAGA Counsel to receive cost reimbursement up to \$8,500.00. (Ly Decl., Ex. 1, ¶3.2.1) However, counsel's costs come to \$7,061.96 (\$6,902.26 [actual costs] + \$159.70 [future costs].) (Ly Decl. ¶21) The extra \$1,438.04 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 \$74,838.00 contemplated in the Agreement. (Ly Decl. ¶22.) Specifically, \$76,276.04 shall be allocated to the PAGA Penalties, with \$57,207.03 (75%) going to the LWDA and \$19,069.01 (25%) going to the Aggrieved Employees. (*Id.*)

⁷ The Covered Period means the period from October 25, 2020 to February 5, 2024, or the date of final approval, whichever comes first. ("Covered Period" or "Release Period".) (Ly Decl. ¶24, Exhibit 1, ¶1.20)

1 **V. ARGUMENT**

2 A. The Court Should Approve the Agreement

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

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

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

22 PAGA Counsel anticipated that, at trial, Counsel for Defendant could make a potentially
23 persuasive argument that Defendant: (1) the Aggrieved Employees were properly and timely paid in
24 accordance with Defendant’s lawful policies and practices, and that any alleged failure to compensate
25 the Aggrieved Employees was the result of inadvertence and clerical error; (2) the Aggrieved
26 Employees were provided with the opportunity to take meal and rest breaks in compliance with
27 California law; (3) until this Action was filed, no employees had compliance about any alleged failure
28 to pay wages, pay wages timely, provide meal and/or rest breaks, and maintain accurate payroll

records; (4) none of Defendant’s employees suffered any harm from or actual damage as a result of the conduct that forms the basis for Plaintiff’s allegations. (Ly Decl. ¶30.) All of which, Counsel for Defendant would argue, should mitigate in factor of significantly reducing or waiving any PAGA penalties. (*Id.*) While Plaintiff disagrees that this analysis is legal correct or persuasive, PAGA Counsel had to consider the foregoing facts and arguments and how they might impact any judgment ultimately awarded to Aggrieved Employees if the Court were persuaded by them. (Ly Decl. ¶31.)

1. The Risks Associated with the Minimum Wages/Overtime Claim

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

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

An employer that requires its employees to work minutes off the clock on a regular basis or as a regular feature of the job may not evade the obligation to compensate

1 the employee for that time by invoking the de minimis doctrine. As the facts here
2 demonstrate, a few extra minutes of work each day can add up. . . . What Starbucks
3 calls “de minimis” is not de minimis at all to many ordinary people who work for
4 hourly wages.

5 (Id. at p. 847.)

6 At all times material hereto, “hours worked” included “the time during which an employee
7 is subject to the control of an employer and includes all the time the employee is suffered or
8 permitted to work, whether or not required to do so.” Plaintiff alleges that Plaintiff and all
9 aggrieved employees were not paid minimum wage for each hour worked or part thereof during
10 which they were required to perform acts at the direction and for the benefit of Defendant. (Ly
11 Decl. ¶32.)

12 As alleged by Plaintiff, by their policy of requiring Plaintiff and the Aggrieved Employees
13 to work without being paid all wages at their appropriate regular rate of pay and to work in excess
14 of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them
15 at the rate of one-half (1 ½) their regular rate of pay, Defendant willfully violated the provisions
16 of Labor Code §§ 510, 1194, 1194.2, and 1199, as well as its own written policies. Plaintiff
17 contends that Defendant has had a consistent policy of failing to pay wages and/or overtime to
18 Plaintiff and all aggrieved employees due to work being performed off the clock. Plaintiff
19 maintains that she and the aggrieved employees were not paid at the proper overtime rate for each
20 and every hour worked at the direction and benefit of Defendant. Defendant therefore owes
21 penalties under PAGA. Defendant disputes that all employees were paid for all hours worked.
22 Plaintiff alleges that the time worked off the clock was sporadic and minimal. As such, the value
23 of this claim is not very high.

24 **2. The Risks Associated with the Meal Period Claim**

25 California law requires employers to provide employees a duty-free, uninterrupted thirty
26 (30) minute meal period when an employee works more than five (5) hours in a workday, and it
27 must be provided within the first five (5) hours the employee works. Lab. Code 512; IWC Wage
28 Order 16-2001, §11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30)
minute meal period when an employee works more than (10) hours in a workday, and it must be

1 provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under
2 the following circumstances: (1) if an employee’s total work period in a day is over five (5) hours
3 but no more than six (6) hours, the required meal period may be waived by mutual consent of the
4 employer and employee, and (2) if an employee’s total work period in a day is over ten (10) hours
5 but no more than twelve (12) hours, the required second meal period may be waived by mutual
6 consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

7 Under this rule, “[e]mployers must afford employees uninterrupted half-hour periods in
8 which they are relieved of any duty or employer control and are free to come and go as they
9 please.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037.) In order for a meal
10 period to qualify as a lawful break under California law, an employer must (1) relieve its
11 employees of all duty; (2) relinquish control over their activities; (3) permit them a reasonable
12 opportunity to take an uninterrupted 30-minute break; and (4) not impede or discourage them from
13 doing so. (*Id.* at p. 1040.)

14 Here, Plaintiff and the Aggrieved Employees consistently worked shifts over five (5) hours.
15 (Ly Decl. ¶33.) Defendant maintained a written policy for meal and rest periods but Plaintiff
16 alleged Defendant violated its own policies. (Ly Decl. ¶34.) Plaintiff alleges that she missed meal
17 periods sporadically due to her work load. (*Id.*)

18 Additionally, Plaintiff alleged that Defendant has had a consistent policy of failing to pay
19 Plaintiff and the Aggrieved Employees one (1) hour of pay at the employees’ regular rate of
20 compensation for each workday that the compliant meal period was not provided. (Ly Decl. ¶35.)
21 On July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set
22 forth the formula for calculating the one extra hour of bonus pay that employees are owed if an
23 employer fails to provide a compliant meal period or rest break. (*Id.*) Specifically, the Court held
24 that those bonus payments must include the hourly value of any nondiscretionary earnings (such
25 as a nondiscretionary bonuses, commissions, etc.), and cannot simply be paid at an employee’s
26 base hourly rate. (*Id.*) Here, Plaintiff alleged that when meal periods are provided, Defendant has
27 had a consistent policy of paying meal period premiums at the base rate and not the appropriate
28 blended rate in violation of Labor Code §§ 226.7 and 512. (Ly Decl. ¶36.) Thus, Defendant failed

1 to provide lawful meal periods and pay meal premiums out at the proper rate. Defendant therefore
2 owes penalties.

3 Defendant argued that the employees did receive their meal periods and presented evidence
4 that other employees would testify to that fact. (Ly Decl. ¶37.) Additionally, Defendant maintained
5 valid meal and rest period policies. (Ly Decl. ¶38.) This presented a risk on the meal period claim
6 that Plaintiff considered when evaluating this settlement. (Ly Decl. ¶39.)

7 **3. The Risks Associated with the Rest Period Claim**

8 Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour
9 of compensation for each workday the employer fails to provide a rest period according to law.
10 Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked, or
11 major fraction thereof. (Cal. Code Regs., tit. 8, § 11160, subd. 12(A).)

12 Employers must authorize and permit a net ten-minute paid rest period for every four hours,
13 or major fraction thereof, of work for its employees. If an employer does not, then the employer
14 must pay the employee one hour of pay at the employee's regular rate of pay for each workday
15 that the rest period is not provided. (Cal. Code Regs., tit. 8, § 11160, subd. 12(B).)

16 Here, Plaintiff alleged that Defendant failed to maintain a lawful procedure of providing
17 rest breaks to Plaintiff and the Aggrieved Employees. (Ly Decl. ¶40.) Plaintiff also alleged that
18 Defendant failed to provide Plaintiff and the Aggrieved Employees with uninterrupted rest breaks
19 of not less than ten (10) minutes as required by the Labor Code during the relevant time period
20 and did not ensure it occurred within the first 3.5 hours of an employee's shift. (Ly Decl. ¶41.)

21 Plaintiff also alleged that Defendant also did not pay rest break premiums even after it
22 began providing some rest breaks. (Ly Decl. ¶42.) Further, Plaintiff and the Aggrieved Employees
23 were not compensated with one (1) hour of wages for each compliant rest period as required by
24 Labor Code § 226.7. (Ly Decl. ¶43.)

25 Defendant again raised the defense that employees received their rest breaks and presented
26 evidence that employees would testify as such. (Ly Decl. ¶44.) Given that the rest period policy
27 was accurate, Plaintiff considered this a viable risk. (Ly Decl. ¶45.)

28 ///

1 **4. The Risks Associated with the Timely Wage Claim**

2 “Section 204 imposes an obligation of timely payment of wages upon California employers
3 and provides rules for scheduling wage payments. Specifically, for most employees, section 204
4 requires payment of wages twice during a calendar month, and an employer is subject to penalties
5 for violating section 204.” *See's Candy Shops, Inc. v. Superior Court*, 210 Cal.App.4th 889, 904
6 (2012) (citing to Labor Code §§ 204(a); 210). Labor Code § 204(a) provides:

7 All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or
8 204.2, earned by any person in any employment are due and payable twice
9 during each calendar month, on days designated in advance by the employer
10 as the regular paydays. Labor performed between the 1st and 15th days,
11 inclusive, of any calendar month shall be paid for between the 16th and the
26th day of the month during which the labor was performed, and labor
performed between the 16th and the last day, inclusive, of any calendar
month, shall be paid for between the 1st and 10th day of the following
month.

12 Labor Code § 204(d) provides:

13 The requirements of this section shall be deemed satisfied by the payment
14 of wages for weekly, biweekly, or semimonthly payroll if the wages are
15 paid not more than seven calendar days following the close of the payroll
period (emphasis added).

16 Here, Plaintiff asserts that Defendant’s payroll practices are defective in that they fail to
17 timely pay Plaintiff’s wages in accordance with California law. (Ly Decl. ¶46.) Thus, Plaintiff
18 maintains that Defendant is liable for each wage statement issued. (Ly Decl. ¶47.)

19 **5. The Risks Associated with the Wage Statement Claim**

20 California Labor Code §226(a) requires Defendant to provide its employees with an
21 accurate, itemized written wage statement that shows, in relevant part, total hours worked by the
22 employee, their name and address of the legal entity that is the employer, and all applicable hourly
23 rates and the corresponding number of hours worked. Specifically, Labor Code §226(a) requires
24 employers to furnish accurate itemized wage statements in writing that show total hours worked
25 by the employee and all applicable hourly rates in effect during the pay period and the
26 corresponding number of hours worked at each hourly rate by the employee. (Labor Code §§
27 226(a)(2) and (9) respectively.)

28 Here, Defendant furnishes Plaintiff and the Aggrieved Employees with itemized wage

1 statements that do not accurately show total hours worked. (Ly Decl. ¶48.) Plaintiff alleged that
2 Defendant furnishes Plaintiff and the Aggrieved Employees with itemized wage statements that
3 do not accurately show all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate because Plaintiff and the Aggrieved
5 Employees performed work while off the clock. (Ly Decl. ¶49.) The work performed off the clock
6 was not recorded and thus was not reflected in the Aggrieved Employees' wages and wage
7 statements. (*Id.*)

8 Further, Plaintiff alleged that she and the Aggrieved Employees are issued wage statements
9 that do not include accurate meal and rest premiums as a result of the claims alleged above. (Ly
10 Decl. ¶50.) Defendant's failure to provide accurate itemized wages statements according to Labor
11 Code § 226(a) was all done on a regular and consistent basis. Thus, Defendant owes the Aggrieved
12 Employees penalties under PAGA for failing to provide accurate and itemized wage statements.

13 As this is a derivative claim, the same risks present for the above claims were present for
14 this claim. (Ly Decl. ¶51.)

15 **6. The Risks Associated with the Waiting Time Penalties Claim**

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

22 Here, Plaintiff and numerous Aggrieved Employees are no longer employed by Defendant.
23 Defendant failed to pay all wages owed and due upon their termination and/or resignation. (Ly
24 Decl. ¶52.) Defendant's actions were willful, as they have intentionally failed or refused to
25 perform an act which was required to be done. (See *Amaral v. Cintas Corp. No. 2* (2008) 163
26 Cal.App.4th 1157, 1201.) "The failure to pay is willful if the employer 'knows what [it] is doing
27 [and] intends to do what [it] is doing', and does not also require proof that the employer acted with
28 "a deliberate evil purpose to defraud work[ers] of wages which the employer knows to be due."

1 (*Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859, 868.)

2 Plaintiff factored in the risk of establishing that any violation was “willful” and the fact
3 that this claim is derivative. (Ly Decl. ¶53.)

4 In light of all these significant risks and given that PAGA gives the Court broad discretion to
5 reduce any penalties ultimately awarded, PAGA Counsel determined that the Gross Settlement
6 Amount of \$140,000.00 was fair and reasonable. (Ly Decl. ¶54, Ex. 1, ¶¶1.11 and 3.)

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

9 “PAGA penalties...are mandatory, not discretionary” and must be awarded upon a
10 showing that Defendant violated the Labor Code. *Amaral v. Cintas Corp.* No. 2 163 Cal. App 4th
11 1157, 1213 (2008); *Moreno v. Autozone, Inc.* (N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007
12 WL 1650942, at *3.

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

18 In *Fleming v. Covidien Inc.* (C.D. Cal., Aug. 12, 2011, No (OPX)), 2011 WL 7563047, the
19 Court exercised its discretion to reduce the PAGA penalty amount. There, the plaintiff brought a
20 PAGA claim for violations of section 226(a) based on the following issues: (a) the statements did
21 not show either an employee identification number or the last four digits of the social security
22 number of the employee; (b) the statements did not show the beginning date of the pay period for
23 which the employee was paid; (c) the statements identified Covidien as the employee’s employer.
24 (*Id.* At *2). There were approximately 28,000 wage statements at issue. (*Id.* at *3). The *Fleming*
25 court calculated the maximum potential civil penalty exposure at \$2.8 million (\$100 per wage
26 statement). (*Ibid*; see also Labor Code § 2699(f)(2)). After a bench trial, the Court elected to
27 exercise its discretion to reduce the civil penalty per wage statement to \$18 per wage statements,
28 reflecting 18% of the potential exposure. (*Id.* at *4). The Court reasoned:

Here, the aggrieved employees suffered no injury due to the erroneous wage

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

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

Here, as explained above, Plaintiff's counsel anticipated that, at trial, Counsel for Defendant would argue that: (1) the Aggrieved Employees were properly and timely paid in accordance with Defendant's lawful policies and practices, and that any alleged failure to compensate the Aggrieved Employees was the result of inadvertence and clerical error; (2) the Aggrieved Employees were provided with the opportunity to take meal and rest breaks in compliance with California law; (3) until this Action was filed, no employees had compliance about any alleged failure to pay wages, pay wages timely, provide meal and/or rest breaks, and maintain accurate payroll records; (4) none of Defendant's employees suffered any harm from or actual damage as a result of the conduct that forms the basis for Plaintiff's allegations. All of which, Counsel for Defendant would argue, should mitigate in favor of significantly reducing the civil penalty.

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.

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

Based on these figures, the maximum potential exposure for the PAGA claims for the Aggrieved Employees is \$2,820,000.00 (28,200 pay periods at issue multiplied by \$100 a pay period). If the Court stacks pay periods, the full value could balloon up to over \$28,000,000.00, but in light of the immense discretion available, Plaintiff believes the Settlement is reasonable. Given that this Settlement is for \$140,000.00, Plaintiff believes this is a very fair and reasonable

1 settlement.

2 **VI. THE REQUEST FOR ATTORNEYS' FEES AND COSTS**

3 As detailed fully in the Settlement, the settlement provides for Defendant to create a Gross
4 Settlement Amount of \$140,000.00. (Ly Decl. ¶59; Ex. 1 at ¶3.) From that fund, Plaintiff requests
5 an award of attorneys' fees for PAGA Counsel in the amount of \$46,662.00, or 33.33% of the
6 Gross Settlement Amount, and \$7,061.96 in reimbursement for litigation costs. (*Id.*; Ex. 1 at
7 ¶3.2.1.)

8 A. Plaintiff's Counsel are Entitled to a Fee from the Common Fund

9 On August 11, 2016, the California Supreme Court decided *Laffitte v. Robert Half*
10 *International*, which addressed the correct methodology for awarding fees in a class action
11 settlement. (*Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 205 Cal.Rptr.3d 555, 573.) The *Laffitte*
12 Court approved awarding fees as a percentage of the settlement fund in cases like the present one,
13 where a settlement results in the creation of a common fund on behalf of a class:

14 We join the overwhelming majority of federal and state courts in
15 holding that when class action litigation establishes a monetary fund
16 for the benefit of the class members, and the trial court in its
17 equitable powers awards Class Counsel a fee out of that fund, the
court may determine the amount of a reasonable fee by choosing an
appropriate percentage of the fund created.

18 (*Id.* at 573.) The Court then set out several reasons why the percentage-of-the-fund method is
19 preferred over the alternative lodestar-multiplier approach in California courts:

20 The recognized advantages of the percentage method—including relative ease of
21 calculation, alignment of incentives between counsel and the class, a better
22 approximation of market conditions in a contingency case, and the encouragement
23 it provides counsel to seek an early settlement and avoid unnecessarily prolonging
the litigation [citations]—convince us the percentage method is a valuable tool that
should not be denied our trial courts.

24 (*Id.* at 573.)

25 An award of 33.33% of the common fund is appropriate here under the “substantial benefit”
26 theory. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1810; *Wershba v. Apple Computer,*
27 *Inc.* (2001) 91 Cal.App.4th 224, 254.) That theory permits a litigant who has sued in a
28 representative capacity to recover fees when the litigant's efforts have created a substantial, actual,

1 and concrete benefit for members of an ascertainable class and the court’s jurisdiction over the
2 subject matter makes possible an award which spreads the cost proportionately among the
3 members of the benefitted class. (*See Ciani v. San Diego Trust & Sav. Bank* (1994) 25 Cal.App.4th
4 563, 578.)

5 This doctrine rests on the understanding that attorneys should normally be paid by their
6 clients, and that unless attorneys’ fees are paid out of the common fund, those who benefitted from
7 the fund would be unjustly enriched. (*Woodland Hills Residents Assn., Inc. v. City Council* (1979)
8 23 Cal.3d 917, 943; *Save El Toro Ass’n v. Days* (1979) 98 Cal.App.3d 544, 548-49.) To prevent
9 this unfair result, courts exercise their inherent equitable powers to assess attorneys’ fees against
10 the entire fund, thereby spreading the cost of those fees among all those who benefitted. (*Serrano*
11 *III*, 20 Cal.3d at p. 35.) “A court, in the exercise of its equitable discretion, may decree that those
12 receiving the benefit should contribute to the costs of its production.” (*Save El Toro Assn., supra*,
13 98 Cal.App.3d at 548.) As this approach “better approximates the workings of the marketplace
14 than the lodestar approach,” there is “a greater judicial willingness to evaluate a fee award as a
15 percentage of the recovery” in common fund cases. (*Lealao v. Beneficial Calif., Inc.* (2000) 82
16 Cal.App.4th 19, 31, 48.)

17 B. The Attorneys’ Fees Request Are Well Within the Range of Fees in Comparable
18 Cases

19 Courts historically award fees in the twenty-to-fifty percent range, depending on the
20 circumstances of the case. As stated in Newberg:

21 No general rule can be articulated on what is a reasonable percentage
22 of a common fund. Usually 50% of the fund is the upper limit on a
23 reasonable fee award from a common fund in order to assure that
24 the fees do not consume a disproportionate part of the recovery
obtained for the Class, although somewhat larger percentages are
not unprecedented.

25 (Newberg on Class Actions, 3rd Ed., 1992, § 14.03; and see *Chavez v. Netflix, Inc.* (2008) 162
26 Cal.App.4th 43, 66, fn 11 [“Empirical studies show that, regardless whether the percentage method
27 or the lodestar method is used, fee awards in class actions average around one-third of the
28 recovery.”].) Thus, PAGA Counsel’s requested fee of 33.33% is not only well within the range of

1 reasonably, but lower than the average fee award of 35% and is fair compensation for
2 undertaking this complex, risky, expensive, and time-consuming litigation on a contingent basis.

3 C. PAGA Counsel's Fee Request is Reasonable Under a Lodestar Crosscheck

4 Courts may “cross-check” the results of the common fund method against the lodestar
5 method. (*See In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.) The lodestar is
6 calculated by multiplying the reasonable hours expended by a reasonable hourly rate. (*Serrano v.*
7 *Priest*, 20 Cal.3d 25, 48-49 (1977) (“*Serrano III*”).) Those rates reflect “the general local hourly
8 rate for a fee-bearing case” and do “not include any compensation for contingent risk,
9 extraordinary skill, or any other factors.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138.) The
10 court may then enhance the lodestar with a multiplier. (*Wershba, supra*, 91 Cal.App.4th at 254;
11 *Serrano III, supra*, 20 Cal.3d at 49.)

12 i. Requested Multiplier

13 The purpose of using the lodestar/multiplier method is to mirror the legal marketplace.
14 Counsel will not handle cases for straight hourly fees payable only if they win; therefore, an
15 enhancement is often awarded so that the fee received is commensurate with what attorneys could
16 expect to be compensated for services in similar circumstances. (*See Tulare Valley Audubon Soc.,*
17 *Inc. v. County of Tulare* (1984) 155 Cal.App.3d 738, 755 [an award must be large enough “to
18 entice competent counsel to undertake difficult public interest cases”].) No specific findings
19 reflecting the court’s calculations are required. (*Wershba, supra*, 91 Cal.App.4th at 254; *Rebney,*
20 *supra*, 232 Cal.App.3d at p. 1349.) “The record need only show that the attorney fees were awarded
21 according to the ‘lodestar’ or ‘touchstone’ approach.” (*Ibid.*)

22 Here, a lodestar cross-check confirms that the percentage requested is reasonable. (Ly Decl.
23 ¶¶68.) PAGA Counsel have an aggregate lodestar in the amount of \$42,085.00 which represents
24 47.20 hours of attorney work on this litigation from its inception through the date of this filing of
25 Plaintiff’s instant Motion. (Ly Decl. ¶¶69.) Additionally, PAGA Counsel estimates that PAGA
26 Counsel will incur ten future hours. With future hours, the lodestar is \$50,085.00. (*Id.*) As such,
27 PAGA Counsel is not asking for a lodestar multiplier. (Ly Decl. ¶¶70.)

28 ///

VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS

In addition to their request for fees, PAGA Counsel further request reimbursement of the reasonable out-of-pocket expenses advanced and/or incurred by them in connection with this litigation, in the amount of \$7,061.96. (Ly Decl. ¶89.) To date, PAGA Counsel has incurred \$6,902.26 in costs. (Ly Decl. ¶90.) PAGA Counsel anticipates incurring an additional \$159.70 in costs to file and serve this motion. (Ly Decl. ¶91.) As such, counsel is requesting a cost reimbursement of \$7,061.96. (Ly Decl. ¶92.)

All of the requested costs are reasonable in amount and were necessarily incurred by PAGA Counsel in prosecuting this litigation. (Ly Decl. ¶93.); 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 Liane Katzenstein Ly. 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. (Ly Decl. ¶94.)

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 \$7,061.96. (Ly Decl. ¶95.)

VIII. 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. (Ly Decl. ¶96; 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

1 Cal.App.4th 785, 805-806; *Staton v. Boeing Co.* (9th Cir.2003) 327 F.3d 938, 977)).

2 Here, the enhancement takes into consideration the time, effort, and expense incurred by
3 Plaintiff in coming forward to litigate this matter on behalf of the Aggrieved Employees. The time
4 spent by Kandice Newlen includes identifying competent counsel, providing information to PAGA
5 Counsel regarding Plaintiff's relevant employment experiences, compiling documents, meeting
6 with PAGA Counsel frequently to discuss the status of the case and the theories of liability,
7 reviewing settlement documents, and making herself available for a full day of mediation. (Ly
8 Decl. ¶97.)

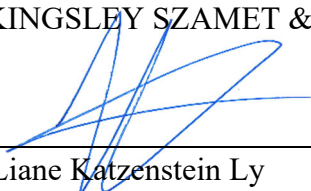
9 PAGA Counsel considers this to be a fair and reasonable enhancement. (Ly Decl. ¶98.)
10 The enhancement takes into consideration the time, effort, risks, and expense incurred by Plaintiff
11 in coming forward to litigate this matter on behalf of the Aggrieved Employees. (Ly Decl. ¶99.)
12 Accordingly, Plaintiff should be awarded the agreed-upon enhancement of \$5,000.00.

13 **IX. CONCLUSION**

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

18
19 DATED: June 25, 2024

KINGSLEY SZAMET & LY

20
21 By: 

22 Liane Katzenstein Ly
23 Attorneys for Plaintiff KANDICE NEWLEN and all
24 aggrieved employees
25
26
27
28

(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 25, 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:

Ian B. Wieland

ian@sw2law.com

Charles P. Hamamjian

charles@sw2law.com

David G. Litman

david@sw2law.com

Tristan Matthews

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5260 N. Palm Ave. Ste. 400

Fresno, CA 93704

ABRAMSON LABOR GROUP

William Zev Abramson

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11846 Ventura Blvd., Suite 100

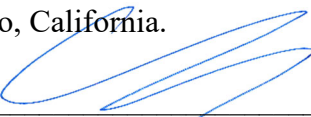
Studio City, CA 91604

[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 25, 2024, at Encino, California.



Michelle Tanzer