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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF YOLO**

JUNE STAHR, individually, and on behalf of  
other aggrieved employees pursuant to the  
California Private Attorneys General Act;

Plaintiff,

vs.

CUBESMART, a Maryland corporation; and  
DOES 1 through 100, inclusive,

Defendants.

Case No. CV2021-2142

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

Hearing Date: January 28, 2025

Hearing Time: 9:00 AM

Judge: Hon. Samuel T. McAdam  
Dept.: 14

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff June Stahr (“Plaintiff”) seeks approval of the PAGA Settlement Agreement  
4 (“Agreement”)<sup>1</sup>, which if approved, would provide valuable monetary relief for 421 PAGA  
5 Employees, defined as all current and former non-exempt hourly-paid employees who worked for  
6 Defendant Cubesmart (“Defendant”) in California during the period between October 1, 2020,  
7 through September 3, 2024 (“PAGA Period”). Agreement at §§ 1.23 and 4.1. This is only a settlement  
8 of the PAGA claim for civil penalties and is not a class settlement and does not release the individual  
9 wage claims, if any, of the affected employees other than Plaintiff’s herself. Cal. Lab. Code §  
10 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*,  
11 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

12 If approved, the PAGA Employees and the California Labor Workforce and Development  
13 Agency (“LWDA”) will share in a Gross Settlement Amount of Five Hundred Eighty-Five Thousand  
14 Dollars and Zero Cents (\$585,000.00). Agreement at § 3.1. After deducting any Court-approved  
15 PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration  
16 Expenses Payment, the Net Settlement Amount, which shall be allocated as payment of PAGA  
17 Penalties, shall be distributed, 75% to the LWDA and 25% to the PAGA Employees. Agreement at  
18 §§ 1.17; 1.29.

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

25  
26 ///

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

## **II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Plaintiff's Exhaustion of Administrative Remedies Under PAGA**

On October 1, 2021, Plaintiff served Defendant and the LWDA with a Notice of Violations (“PAGA Notice”) and draft complaint memorializing claims against Defendant for alleged violations of the California Labor Code, including 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 IWC Wage Orders including inter alia, Wage Orders 4-2001, 5-200 I, and 9-2001. (LWDA Case Number LWDA-CM-847034-21). JCL Dec., at ¶ 4.

Following Plaintiff's submission of the PAGA Notice, the 65-day “waiting period” on Plaintiff's right to file a civil action under PAGA, *see* Cal. Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiff that it intended to investigate the claims in the PAGA Notice. To date, the LWDA still has not advised Plaintiff of any intent to take action with respect to the claims in the PAGA Notice. JCL Dec., at ¶ 12.

### **B. Plaintiff's Civil Action Against Defendant**

On December 6, 2021, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of Yolo, Case No. CV2021-2142, alleging a single cause of action for Violations of the Private Attorneys General Act (Labor Code §2698) (“the Action”). JCL Dec., ¶ 13.

On September 9, 2022, Defendant filed a Motion to Compel Arbitration of Plaintiff's Individual PAGA Claims. On October 7, 2022, the Court ruled that Defendant met its burden of showing that Plaintiff electronically signed the arbitration agreement in question, but that all issues regarding the validity, enforceability, and scope of the arbitration agreement were subject to determination by an arbitrator. On May 25, 2023, Plaintiff filed a demand for arbitration with JAMS against Defendant, JAMS case reference number 5220003356 (the “JAMS Arbitration”). On October 6, 2023, Defendant filed a motion regarding the enforceability of the arbitration agreement in the JAMS Arbitration. Plaintiff opposed this motion. Before the arbitrator issued a decision on the enforceability of the arbitration agreement, the Parties agreed to mediate the Action and the JAMS Action. JCL Dec., ¶ 14.

1 On September 3, 2024, the Parties attended a full-day mediation with experienced wage and  
2 hour class and PAGA action mediator, Steven Serratore, Esq. In advance of the mediation, Defendant  
3 provided Plaintiff with sufficient information to properly evaluate Defendant’s liability exposure for  
4 civil penalties to the PAGA Employees. The data and documents Defendant produced included,  
5 among other things, the total number PAGA Employees and pay periods, written wage and hour  
6 policies, employee handbooks, and a 40% sample of time and payroll records for the PAGA  
7 Employees. JCL Dec., ¶ 15.

8 The mediation concluded without a settlement. However, Mr. Serratore presented a mediator’s  
9 proposal, which was accepted by the Parties and later memorialized in a Memorandum of  
10 Understanding executed by the Parties (“MOU”). After reaching an agreement in principle, the Parties  
11 drafted and negotiated a long-form Settlement which is the subject of the instant motion. The  
12 Settlement was negotiated in light of all known facts and circumstances and the uncertainty associated  
13 with litigation – including the risk of Plaintiff not being able to maintain representative claims, the  
14 difficulty of proving Plaintiff’s claims in a manageable trial, the merits of Defendant’s potential  
15 defenses, and the significant delay and potential appellate issues inherent to litigation – and was  
16 reached after extensive arm’s length negotiations, with the assistance of the mediator. JCL Dec., at ¶  
17 16.

18 The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted by  
19 Plaintiff on behalf of the PAGA Employees and State of California. This is only a settlement of the  
20 PAGA claims for civil penalties and is not a class settlement and does not release the individual claims,  
21 if any, of the PAGA Employees other than those of Plaintiff. This Settlement does not release any  
22 claim that is not a PAGA claim.<sup>2</sup> Nor does this Settlement waive Defendant’s right to assert *res*  
23 *judicata* or other available defense to any asserted claim or lawsuit. JCL Dec., at ¶ 17.

24 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the  
25 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion  
26 for settlement approval as set forth in the accompanying proof of service. Additionally, Plaintiff will  
27

28 <sup>2</sup> 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 submit to the LWDA a copy of the Court’s judgment and order approving the Agreement within ten  
2 (10) days after entry of judgment or order. JCL Dec., at ¶¶ 6, 18.

### 3 **III. TERMS OF THE PAGA SETTLEMENT**

#### 4 **A. The Gross Settlement Amount**

5 The PAGA Settlement is subject to Court approval consistent with Labor Code § 2699(1)(2).  
6 The Settlement Agreement negotiated by the Parties provides for a “Gross Settlement Amount”  
7 payment in the amount of Five Hundred Eighty-Five Thousand Dollars and Zero Cents (\$585,000.00)  
8 to resolve the Released PAGA claims. From the Gross Settlement Amount, there is a deduction of  
9 PAGA Counsel Fees Payment of not more than thirty-five percent (35%) of the Gross Settlement  
10 Amount, which is currently estimated to be Two Hundred and Four Thousand Seven Hundred and  
11 Fifty Dollars and Zero Cents (\$204,750.00) and PAGA Counsel Litigation Expenses Payment of not  
12 more than Thirty Five Thousand Dollars and Zero Cents (\$35,000.00), and payment of Administration  
13 Expenses Payment in an amount not to exceed Five Thousand Eight Hundred Eighty-Five Dollars  
14 and Zero Cents (\$5,885.00). Agreement at § 3.2. After these deductions, the amount remaining is the  
15 Net Settlement Amount in an amount currently estimated to be Three Hundred Thirty-Nine Thousand  
16 Three Hundred Sixty-Five Dollars and Zero Cents (\$339,365.00), which shall be allocated as payment  
17 of PAGA Penalties. Agreement at §§ 1.17; 3.2.3.

18 Of the Net Settlement Amount seventy-five percent (75%) shall be paid to the LWDA as the  
19 LWDA PAGA Payment and the remaining twenty-five percent (25%) shall be paid to the PAGA  
20 Employees as Individual PAGA Payments. § 3.2.3. This allocation is required by Labor Code § 2699  
21 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

#### 22 **B. Allocation of Individual PAGA Employee Payments**

23 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount  
24 of the PAGA Employees’ 25% share of PAGA Penalties by the total number of Pay Periods worked  
25 by all PAGA Employees during the PAGA Period and (b) multiplying the result by each PAGA  
26 Employee’s Pay Periods. Agreement at § 3.2.3.1.

27 At the time of mediation, Defendant estimated that there were 421 PAGA Employees who  
28 worked 17,400 Pay Periods during the PAGA Period based on company records. In the event that the

1 number of pay periods exceeds 17,400, Defendant, at its sole discretion, shall either agree (1) that the  
2 PAGA Period end date will be advanced to the date on which 17,400 pay periods are accrued or (2)  
3 should the number of pay periods increase by more than 10% of 17,400, the Gross Settlement Amount  
4 will increase proportionally for the number of pay periods over 110% of 17,400. For example, if the  
5 total pay periods in the PAGA Period are 115% of 17,400, the Gross Settlement Amount shall increase  
6 by 5%. Agreement at § 8.

7 **C. Funding and Distribution**

8 Defendant shall fund the Gross Settlement Amount to the Administrator within sixty (60)  
9 calendar days after the Effective Date (the Funding Date). The Effective Date means the later of (i)  
10 the 61st day after entry of the Approval Order and Judgment, if no appeal, review, or writ has been  
11 filed; or (ii) if an appeal, review, or writ is sought from the Approval Order and Judgment, the day  
12 after the Approval Order and Judgment is affirmed or the appeal, review, or writ is dismissed or denied,  
13 and the Approval Order and Judgment is no longer subject to further judicial review. Agreement at  
14 §§ 1.8; 1.9.

15 Within fifteen (15) days of the Effective Date, Defendant will deliver the PAGA Employee  
16 Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect PAGA Employees'  
17 privacy rights, the Administrator must maintain the PAGA Employee Data in confidence, use the  
18 PAGA Employee Data only for purposes of this Settlement and for no other purpose, and restrict  
19 access to the PAGA Employee Data to Administrator employees who need access to the PAGA  
20 Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to  
21 immediately notify PAGA Counsel if it discovers that the PAGA Employee Data omitted employee  
22 identifying information and to provide corrected or updated PAGA Employee Data as soon as  
23 reasonably feasible. Without any extension of the deadline by which Defendant must send the PAGA  
24 Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts,  
25 in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted PAGA  
26 Employee Data. Agreement at § 4.2.

27 Within fourteen (14) days after the Funding Date, the Administrator will mail checks for all  
28 Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the

1 PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment. Disbursement  
2 of the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment shall not  
3 precede disbursement of Individual PAGA Payments. Agreement at § 4.4.

4 The Administrator will issue checks for the Individual PAGA Payments and send them to the  
5 PAGA Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently  
6 state the date (not less than 180 days after the date of mailing) when the check will be voided (the  
7 “Void Date”). The Administrator will cancel all checks not cashed by the Void Date. Before mailing  
8 any checks, the Settlement Administrator must update the recipients’ mailing addresses using the  
9 National Change of Address Database. For any PAGA Employee whose Individual PAGA Payment  
10 check is uncashed and cancelled after the Void Date, the Administrator shall transmit the funds  
11 represented by such checks to the Community Law Project in accordance with CCP § 384 and subject to  
12 Court approval. Agreement at §§ 4.41; 4.42.

13 **D. Release of Claims**

14 Effective on the date when Defendant fully funds the entire Gross Settlement Amount, in  
15 exchange for the consideration set forth in this Agreement, Plaintiff, the LWDA and the State of  
16 California release the Released Parties from the Released PAGA Claims for the PAGA Period. The  
17 Released Parties are defined as Defendant and each of its former and present directors, officers,  
18 shareholders, owners, investors, members, partners, managers, employees, attorneys, representatives,  
19 agents, insurers, predecessors, successors, assigns, parent companies, holding companies, subsidiaries,  
20 and affiliates, and any individual or entity which could be jointly liable with Defendant. The Released  
21 PAGA Claims include all PAGA claims alleged in the operative complaint in the Action and Plaintiff’s  
22 PAGA notice to the LWDA which occurred during the PAGA Period for alleged violations of the  
23 California Labor Code and applicable Wage Orders, and expressly excludes all other claims, including  
24 claims for vested benefits, wrongful termination, unemployment insurance, disability, social security,  
25 workers’ compensation, and PAGA claims outside of the PAGA Period. Agreement at 1.31; 1.32.

26 Plaintiff has entered into a separate, standalone settlement agreement whereby Plaintiff agreed  
27 to release the claims alleged in the JAMS Arbitration in exchange for an individual settlement payment  
28 by Defendant. Plaintiff’s release of claims is outlined in the separate agreement. Plaintiff will file this

1 settlement agreement under seal for the Court to review in camera, at the Court’s request. The Parties  
2 are unaware of any other cases, including class, individual and PAGA, that might be affected by this  
3 settlement. JCL Dec., at ¶ 19.

#### 4 **IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT**

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

##### 22 **A. The Gross Settlement Amount is Fair and Reasonable**

23 The Gross Settlement Amount of \$585,000.00 is fair and reasonable and, therefore, should be  
24 approved. JCL Dec., ¶ 20. Here, *without stacking* the PAGA penalties, Defendants’ liability exposure  
25 is estimated at approximately \$2,664,400 in PAGA penalties. JCL Dec., ¶ 21. Plaintiff’s expert  
26 consultant estimated Defendant’s exposure as follows:

27

28

| Claim                         | Penalty Amount | Number of Pay Periods w/ Violation | Violation Rate | Total Penalties |
|-------------------------------|----------------|------------------------------------|----------------|-----------------|
| <i>Meal Period Violations</i> | \$50           | 556                                | 3.2%           | \$27,800        |

|                                                                                                             |       |        |      |           |
|-------------------------------------------------------------------------------------------------------------|-------|--------|------|-----------|
| Cal. Labor Code §§<br>226.7 and 512                                                                         |       |        |      |           |
| <b>Rest Period Violations</b><br>Cal. Labor Code §§<br>226.7 and 512                                        | \$50  | 556    | 3.2% | \$27,800  |
| <b>Wage Statement Violations</b><br>Cal. Labor Code § 226(a)                                                | \$50  | 17,392 | 100% | \$869,600 |
| <b>Business Reimbursement Violations</b><br>Cal. Labor Code § 2802                                          | \$100 | 8,696  | 50%  | \$869,600 |
| <b>Unpaid Wages</b><br>Cal. Labor Code §§<br>201, 202, 203, 204, 510,<br>1194, 1197, 1997.1 1198<br>and 558 | \$50  | 17,392 | 100% | \$869,600 |

JCL Dec., ¶ 21.

#### i. Estimated Penalties for Defendant's Alleged Meal Period Violations

Plaintiff alleges that Defendant failed to provide meal periods in violation of Cal. Lab. Code § 512. Specifically, Plaintiff alleges that as a result of Defendant's understaffing, Plaintiff and other PAGA Employees were often required to work while clocked out during what was supposed to be their off-duty meal periods. Plaintiff alleges that her meal breaks were often cut short or interrupted to assist Defendant's customers. Plaintiff's expert estimated the damages for this claim at \$27,800.00. This number was calculated by multiplying the extrapolated number of pay periods identified wherein the time records reflected a meal break violation, by a penalty of \$50. The \$50 penalty rate was used for a number of reasons in this instance. First, Pursuant to Cal. Lab. Code § 558(a)(1), an employer is subject to a penalty of \$50 for violations of a Labor Code section regulating hours and days of work, including meal period and rest period violations, off-the-clock work resulting in minimum wage and overtime violations, and regular rate violations. Thus, because section 558(a)(1) specifically provides for a civil penalty, Plaintiff used a \$50 penalty per violation for the meal break claims. Second, Defendant argued that increased civil penalties for subsequent violations do not apply unless the plaintiff can present evidence that the Labor Commission or a court notified the employer that it was in violation of the Labor Code. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 ["Until the employer has been notified that it is violating a Labor Code provision ... the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject

1 to penalties.”].) Third, Defendant also argued that courts have considerable discretion to reduce the  
2 penalty awards under PAGA. *See, e.g. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504  
3 (reducing the maximum PAGA penalty amount by 90%, at \$5 per pay period). Accordingly, it is  
4 unlikely that Plaintiff would recover full penalty amounts even if she prevailed in establishing the  
5 underlying Labor Code violations. For these reasons, Plaintiff utilized a \$50 penalty rate. JCL Dec.,  
6 ¶ 22.

## 7 **ii. Estimated Penalties for Defendant’s Alleged Rest Period Violations**

8 Plaintiff further alleges that Defendant failed to provide rest breaks. Specifically, Plaintiff  
9 alleges that as a result of Defendant’s understaffing, Plaintiff and other PAGA Employees were often  
10 required to work during what was supposed to be their off-duty rest periods. Plaintiff alleges that their  
11 rest breaks were often cut short or interrupted in order to assist Defendant’s customers. Defendant  
12 argued that its rest period policy is fully compliant with California law and that Plaintiff’s rest break  
13 claim would have mainly relied on the testimony of PAGA Employees, making it a riskier claim.  
14 Establishing liability likely would have entailed competing testimony stating either rest breaks were  
15 taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan.  
16 17, 2013) 2013 WL 210223, at \*11 (“Because of the competing testimony before the Court, plaintiff’s  
17 evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to  
18 find that common issues predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov.  
19 13, 2012) 2012 WL 5503550, at \*8 (“Indeed, Plaintiff’s own evidence confirms that the written policy  
20 does not generate uniform practices.”). Considering Defendant’s defenses, because time records do  
21 not monitor rest breaks, and assuming rest break violation occurred at a similar rate that meal break  
22 violation occurred, Plaintiff estimates Defendant’s exposure for this claim to be approximately  
23 \$27,800.00. This number was calculated by multiplying the assumed violation rate by a penalty of  
24 \$50. A \$50 multiplier was used for the same reasons as outlined above. JCL Dec., ¶ 23.

## 25 **iii. Estimated Penalties for Defendant’s Alleged Labor Code Section 226** 26 **Violations**

27 Plaintiff alleges that the wage statements furnished by Defendant to the PAGA Employees  
28 were facially non-compliant with Cal. Lab. Code § 226(a)(2). Specifically, Plaintiff alleges that

1 Defendant included sick time, holiday hours, and vacation hours into the computation of total hours  
2 worked for purposes of Cal. Lab. Code § 226(a)(2), notwithstanding the fact that sick time, holiday  
3 hours, and vacation hours are not considered hours worked. Plaintiff estimates Defendant's exposure  
4 for this claim to be \$869,600. This number was calculated by multiplying the total number of pay  
5 periods by a penalty of \$50. The \$50 penalty rate was used for the same reasons as stated above. JCL  
6 Dec., ¶ 24.

7 **iv. Estimated Liability for Defendant's Violation of Labor Code §2802**

8 Plaintiff alleged that Defendant required Plaintiff and PAGA Employees to use their personal  
9 cell phones and personal vehicles for Defendant's benefit. Specifically, Plaintiff alleged that she and  
10 PAGA Employees were required to use their personal cell phones to receive and respond to work-  
11 related communications with supervisors, managers and coworkers. Further, Plaintiff and PAGA  
12 Employees were required to use their personal vehicles to transfer equipment. Defendant contends that  
13 Plaintiff and PAGA Employees were reimbursed for the use of their personal cell phones and personal  
14 vehicles. Plaintiff estimates Defendant's exposure for this claim to be \$869,600. This number was  
15 calculated by multiplying a 50% violation rate by the total number of pay periods by a penalty of \$100.  
16 Plaintiff used a 50% violation rate for this claim to reflect its belief that Aggrieved Employees incurred  
17 cell phone and vehicle expenses approximately once per month Cal. Lab. Code § 2802 does not  
18 specifically provide for a civil penalty amount. Thus, the \$100 penalty rate was used pursuant to Cal.  
19 Lab. Code § 2699(f). JCL Dec., ¶ 25.

20 **v. Estimated Penalties for Unpaid Wages**

21 Plaintiff alleges that Defendant failed to pay for all hours worked. First, Plaintiff alleges that  
22 she and other PAGA Employees were required to work while off-the-clock but were not compensated  
23 for this time. Specifically, Plaintiff alleged that she and other PAGA Employees were required to  
24 conduct daily walks of the property to ensure there was no one on property grounds and ensure all  
25 storage units were locked while off-the-clock. Plaintiff and other PAGA Employees were not  
26 compensated for this time spent working while off-the-clock. JCL Dec., ¶ 26.

27 Second, Plaintiff alleges that Defendant failed to include non-discretionary incentive  
28 compensation when calculating the regular rate of pay for purposes of overtime wages, meal period

1 premiums, and redeemed sick pay. Specifically, Plaintiff's expert found additional compensation  
2 identified as "Awards" "Spotlight" "Store Challenge" "Store Sign On" "Teammate Ref" "Disp.  
3 Bonus" "3PM Owner Bonus" "All Star Bonus" "DM Bonus" and "Other Bonus" that were not  
4 properly included in the regular rate of pay calculation for purposes of calculating and paying overtime  
5 wages, meal period premiums, and sick pay. JCL Dec., ¶ 27.

6 Defendant argued, among other things, that all Aggrieved Employees were properly paid  
7 minimum and overtime compensation for all hours worked, that Aggrieved Employees were instructed  
8 not to work off-the-clock, and that not all of the additional compensation listed above is non-  
9 discretionary. Plaintiff's expert estimated the damages for this claim of unpaid wages, based on  
10 uncompensated off-the-clock work and regular rate of pay violations, at \$869,600. This number was  
11 calculated by multiplying the number of pay periods with violations by a penalty of \$50. The \$50  
12 penalty rate was used for the same reasons as stated above. JCL Dec., ¶ 28.

### 13 **B. The Gross Settlement Compares Favorably to The Likely Recover**

14 In light of the above, the Gross Settlement Amount is approximately 22% of Defendant's  
15 potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely recovery  
16 of PAGA penalties through continued litigation. JCL Dec., ¶ 29.

17 Defendant's maximum exposure to PAGA penalties is not a realistic outcome of the litigation  
18 because it fails to account for the risks of continued litigation including, but not limited to, Defendant's  
19 defenses. Here, Defendant argued that it can only be assessed civil penalties for actual violations of  
20 the Labor Code. *See* Lab. Code § 2699(f)(2). In other words, to recover any civil penalties, Plaintiff  
21 would be required to prove the underlying Labor Code violations. (*Cardenas v. McLane Foodservice,*  
22 *Inc.*, 2011 U.S. Dist. LEXIS 13126, \*10 (C.D. Cal. 2011) ["Given the statutory language [of PAGA],  
23 a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a  
24 violation of the Labor Code by the defendant."].) To do this, Plaintiff would need to prove each  
25 Aggrieved Employee was subject to the alleged Labor Code violation. JCL Decl., ¶ 30. Thus,  
26 Defendant contended that Plaintiff would be required to "prove Labor Code violations with respect to  
27  
28

1 each and every individual on whose behalf plaintiff seeks to recover civil penalties under PAGA.”  
2 *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, \*4 (N.D. Cal. Mar. 2, 2009).

3 Lastly, the maximum penalty figure does not consider that Courts have complete discretion to  
4 “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the  
5 facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,  
6 arbitrary and oppressive, or confiscatory.” (Cal. Lab. Code § 2699(e)(2)). JCL Dec., ¶ 31. In fact,  
7 Courts routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g.*  
8 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to \$5 per  
9 pay period; “Although the trial court may have disagreed with Starbucks regarding the issue of  
10 liability, it clearly took the circumstances proffered by Starbucks into consideration when it imposed  
11 the penalty ... only \$5 per initial violation”); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal App 5th  
12 778, 788 (2018), review granted on other grounds (noting that the trial court “exercised its discretion  
13 to reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average,  
14 plaintiffs were deprived of 13 percent of the 30-minute meal period”); *Fleming v. Covidien, Inc.*, 2011  
15 WL 7563047, \*4 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of PAGA  
16 civil penalties for plaintiffs’ section 226 claims from \$2,800,000 to \$500,000 because the employees  
17 suffered no injuries as a result of the erroneous wage statements and made no complaints about the  
18 errors or omissions in the wage statements, thus reducing the maximum penalty by 82%); *see also*,  
19 *Gola v. University of San Francisco*, San Francisco Superior Court Case No. CGC-18-5655018,  
20 Proposed Statement of Decision, dated July 21, 2020, Judge Curtis A. Karnow of San Francisco  
21 Complex (concluding after a full-blown bench trial that a penalty of 15% of the maximum PAGA  
22 penalties was the appropriate penalty). The gross amount obtained by PAGA Counsel is reasonable  
23 in light of Defendant’s arguments.

24 Given Defendant’s defenses to the claimed Labor Code violations at issue, and the risks and  
25 costs of continued litigation, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount  
26 is fair and reasonable. This settlement was negotiated by experienced counsel at arm's length. JCL  
27 Dec., ¶ 32. The LWDA has been provided notice of this motion and the PAGA settlement, and the  
28 decision of LWDA to accept the PAGA settlement and not oppose the motion should be given

1 considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and  
2 protect its own rights. JCL Dec., ¶ 33.

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

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

10 **i. The PAGA Counsel Fees Payment and PAGA Counsel Litigation**

11 **Expenses Payment are Fair and Reasonable**

12 PAGA Counsel seeks approval of not more than thirty-five percent (35%) of the Gross  
13 Settlement Amount, which is currently estimated to be \$204,750.00 and attorneys' expenses not to  
14 exceed \$35,000.00<sup>3</sup> for reimbursement of actually incurred litigation expenses. PAGA does not have  
15 any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of  
16 attorneys' fees and costs in this Settlement is a matter of contract for a contingent representation.  
17 Nevertheless, should this Court review the requested attorneys' fees, the requested fees and costs are  
18 reasonable for experienced wage and hour counsel. JCL Dec., ¶¶ 34-48.

19 **V. THE PAGA COUNSEL FEES PAYMENT AND PAGA COUNSEL**  
20 **LITIGATION EXPENSES PAYMENT ARE FAIR AND REASONABLE**

21 **A. The Requested PAGA Counsel Fees Payment is Fair and Reasonable**

22 The requested attorneys' fees of \$204,750.00 and reimbursement of attorneys' expenses of up  
23 to \$35,000.00 is fair, reasonable, and justified by the result achieved. PAGA Counsel negotiated a  
24 recovery of \$585,000.00, and this result justifies the requested fees equal to 35% of this recovery. At  
25 the time this case was brought, the result was far from certain. Defendant's defenses to the merits of  
26 the case created difficulties with proof and complex legal issues for PAGA Counsel to overcome.  
27 Here, as noted above in section IV(A), several defenses asserted by Defendant presents serious threats  
28

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<sup>3</sup> As detailed *infra*, at the time of filing this motion, PAGA Counsel incurred \$20,642.76 litigating this matter.

1 to the claims of Plaintiff and the PAGA Employees. While Plaintiff believes that these defenses could  
2 be overcome, Defendant maintains that these defenses have merit and therefore present a serious risk  
3 to recovery. The Settlement was possible because, in PAGA Counsels' eyes, PAGA Counsel was able  
4 to persuade Defendant that there was an appreciable risk that Plaintiff would prevail on the factual and  
5 legal issues underlying liability and overcome difficulties in proof as to monetary relief. JCL Dec., ¶  
6 ¶ 35.

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

19 As detailed in PAGA Counsels' time and billing records submitted herewith, PAGA Counsels'  
20 current combined loadstar is \$168,676.17. JCL Dec., ¶52; Declaration of Shani Zakay ("Zakay Dec.")  
21 at ¶¶ 4-6; Declaration of Tara Zabehi ("Zabehi Dec.") at ¶ 8. Thus, PAGA Counsels' fee request is  
22 equal to PAGA Counsel's loadstar with a reasonable multiplier of 1.21 – well below the 2.13 multiplier  
23 approved in *Laffitte*. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D.  
24 Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar multiplier of 2.26);  
25 *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017)  
26 (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7).

27 **B. PAGA Counsel Are Entitled to Reimbursement of Actual and Reasonably**  
28 **Incurred Litigation Costs.**

1 Attorneys who create a common fund for the benefit of a group of individuals are entitled to  
2 payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense  
3 awards include counsel's incurred expenses because those who benefit from their effort should share  
4 in the cost. *See Rider v. City of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate  
5 analysis in deciding if costs are compensable is whether the costs are of the type typically billed by  
6 attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir.  
7 1994); *see also Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court  
8 awarded litigation costs for consultants, online legal research, copying, postage, long distance  
9 charges, travel expenses, filing fees, mediation fees and investigation fees). Prior to incurring costs  
10 for the filing of this motion, PAGA Counsel collectively expended \$20,642.76 prosecuting this action  
11 (JCL Law Firm, APC - \$9,896.74; Zakay Law Group, APLC - \$9,828.62; Lawyers for Justice, PC- ).  
12 JCL Dec. ¶¶ 7, 54-55; Zakay Dec., ¶¶ 7-8; Zabehi Dec., ¶ 6. PAGA Counsels' out-of-pocket expenses  
13 are the types of expenses normally charged to paying clients including the following: filing fees;  
14 copying; postage; factual and legal research charges; mediation fees; and expert costs, which were  
15 all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore,  
16 should be reimbursed. JCL Dec., ¶¶ 7, 55.

## 17 V. CONCLUSION

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

21 Dated: January 6, 2025

**JCL LAW FIRM, APC**

22 By:   
23 Jean-Claude Lapuyade, Esq.