

1 JOHN A. LOFTON, ESQ. (222259)
2 Aiman-Smith & Marcy, P.C.
3 7677 Oakport Street, Suite 1150
4 Oakland, CA 94621
5 Telephone: 510-817-2728
6 Email: jal@asmlawyers.com

7 Attorneys for Plaintiffs Noel Van Wagner
8 and Veronica Andrade

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**
12 **UNLIMITED JURISDICTION**

13 NOEL VAN WAGNER, an individual; and
14 VERONICA ANDRADE, an individual,

15 Plaintiffs,

16 v.

17 WESTLAKE PROPERTIES, INC.; and DOES
18 1-25, inclusive,

19 Defendants.

Case No. 22STCV16191

Reservation ID: 478700464671

Assigned for all purposes to Hon. Teresa A.
Beaudet, Dept. 50

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR APPROVAL OF
SETTLEMENT OF LABOR CODE §2698,
et seq. PRIVATE ATTORNEYS GENERAL
ACT (“PAGA”) CLAIMS**

Date: January 2, 2025
Time: 10:00 a.m.
Dept.: 50

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1 **MEMORANDUM**

2 Plaintiffs Noel Van Wagner and Veronica Andrade respectfully submits the following
3 Memorandum of Points and Authorities in Support of Plaintiff's Motion for Approval of
4 Settlement of Labor Code Section 2698, *et seq.*, Private Attorneys General Act ("PAGA") Claims:

5 **I. INTRODUCTION**

6 This PAGA action involves a number of underlying claims arising from Defendant's
7 alleged Labor Code violations, including failure to pay wages correctly, meal and rest period
8 violations, record keeping violations, failure to provide accurate wage statements, and
9 reimbursement violations, as well as individual claims arising from those same Labor Code
10 violations. Plaintiffs contend that Defendant failed to accurately record all hours worked by their
11 employees, and thereby failed to capture all hours worked, leading to underpayment of wages and
12 inaccurate wage statements. Plaintiffs also allege that Defendant's scheduling policies prevented
13 employees from receiving timely and uninterrupted meal and rest periods, and that Defendant
14 required employees to use their personal mobile phones without reimbursement. Plaintiffs allege
15 that these purported violations violate several provisions of the California Labor Code and subject
16 Defendant to penalties under PAGA, as well as costs and attorney's fees. In addition to PAGA
17 penalties, Plaintiffs also sought individual damages for the violations above, as well as unlawful
18 retaliation as to Plaintiff Van Wagner.

19 Defendant generally denied the allegations, contending that all employees were paid
20 appropriately and maintains that at all relevant times it complied with all applicable laws.
21 Moreover, Defendant contended that Plaintiffs' claims were barred by the prior settlement in the
22 matter of Claudia Castillo, et al. v. Westlake Properties, Inc., et al., Los Angeles Superior Court
23 Case No. 21STCV00666, which purported to settle and release all PAGA claims against
24 Defendant.

25 The Parties reached a settlement resolving all claims at issue in this case. By this motion,
26 Plaintiffs request that the Court grant approval of the Settlement reached between the parties. The
27 Settlement Agreement has been submitted concurrently with motion this as attachment A to the
28

1 Declaration of John A. Lofton. A copy of the Settlement Agreement and this Motion was also
2 served on the Labor Workforce and Development Agency (“LWDA”) on July 24, 2024. See
3 Declaration of John A. Lofton (“Lofton Decl.”), ¶ 8. Unless otherwise indicated, all capitalized
4 terms used herein shall have the meanings set forth in the Settlement Agreement.

5 Pursuant to the Settlement and subject to Court approval, Defendant will pay a non-
6 reversionary Gross Settlement Amount of \$97,500.00. All settlement payments will be made from
7 the Gross Settlement Amount, including attorneys’ fees and costs, Representative Enhancement
8 Fees, Settlement Administration Costs, payment to the LWDA, Covered Employee payments, and
9 payments associated with the Settlement. From the Gross Settlement Amount, Plaintiffs’ Counsel
10 requests approval of attorney’s fees equal to one-third of the Gross Settlement, or \$32,500.00, and
11 reimbursement of costs incurred to prosecute this case, not to exceed \$9,000.00 (currently,
12 Plaintiffs’ out-of-pocket costs are \$8,823.78). Plaintiffs further request the Court to approve
13 Atticus Administration, LLC as the settlement administrator, with costs for administration not to
14 exceed \$3,000.00. Atticus Administration has provided an initial quote in the amount of
15 \$2,575.00. See Lofton Decl., ¶ 26. Plaintiffs request that the Court award PAGA Representative
16 Incentive Fees in the amount of \$2,500.00 to each Plaintiff, in consideration of Plaintiffs’ efforts
17 herein, including initiating and pursuing this lawsuit. After deducting these amounts from the
18 Gross Settlement Amount, at least \$48,000.00 will be distributed pursuant to PAGA.

20 As required by PAGA, 75% of the approximately \$48,000.00 Net Settlement Amount, or
21 \$36,000.00, shall be paid to the LWDA. See Labor Code §2699(i). The remaining 25%, or
22 approximately \$12,000.00, shall be distributed among the Covered Employees. Defendant
23 employed approximately 75 Covered Employees at their spa who worked during the Covered
24 Period, from February 2, 2021 through the date the Court approves the Settlement.

25 Individual settlement payments to Covered Employee will be calculated based on the
26 number of weeks worked by each Covered Employee during the Covered Period. Each Covered
27 Employee will receive a pro rata share of the Covered Employees’ Settlement Proceeds based on
28 the number of workweeks each worked during the Covered Period as compared to the total

workweeks of the Covered Period. This formula will result in Covered Employees receiving several dollars per workweek during the Covered Period.

Per Defendant's records, Covered Employees worked a total of approximately 2,491 pay periods from February 2, 2021 through May 3, 2024, which translates to approximately 4,982 workweeks. The Covered Employees Share of the \$12,000.00 will be divided by the total number of workweeks (4,982) for a per-pay period amount of approximately \$2.41 per workweek (or \$4.82 per pay period), which will be multiplied by the number of workweeks each Covered Employee worked in the Covered Period to determine the amount he or she will receive. For example, a Covered Employee who worked 40 workweeks during the Covered Period would receive \$96.40 (40 x \$2.41). See Lofton Decl., Exhibit B. If all Covered Employees had worked the same number of workweeks, the average recovery per Covered Employee would be approximately \$160.00.

The Covered Employees will be mailed their checks directly by the Settlement Administrator. Covered Employees will have 120 days to cash their checks. If any funds remain after the expiration date of the check cashing period, any residual funds will be distributed to the DIR Unclaimed Property Fund.

The Settlement was the product of arm's-length negotiations by experienced counsel on both sides. On May 3, 2024, the Parties participated in a mediation conducted by Stephen McAvoy. In advance of the mediation, Defendant provided Plaintiffs' Counsel with information sufficient to allow Plaintiffs' counsel to analyze the case, including, but not limited to, hundreds of documents and data regarding the claims in the case. During the mediation, each side, represented by its respective counsel, recognized the substantial risk of an adverse result in the case, the potential impact of the Castillo case and the costs involved litigating that impact, and the Court's substantial discretion in modifying the dollar amount of any award. It was with this understanding that the parties agreed to resolve the claims presented as set forth in the Settlement Agreement. This Settlement is a fair and reasonable resolution on behalf of the LWDA and for the Covered Employees.

1 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

2 Plaintiffs submitted their notices of Labor Code violations to the LWDA on February 2,
3 2022 and February 25, 2022. Plaintiffs filed their Complaint in Los Angeles County Superior
4 Court on May 13, 2022.

5 As set forth in the Complaint, Plaintiffs allege that Defendant violated Labor Code §§ 201,
6 202, 204, 226, 226.7, 510, 512, 558, 1194, 2802, and IWC Wage Order No. 2-2001 (8 C.C.R.
7 §11020). With respect to Plaintiffs and the Covered Employees, who have been injured as a result
8 of these violations, they allege that they are entitled to civil penalties pursuant to Labor Code
9 §§203, 210, 226, 226.3, 226.7, 558, 1198.5, 2699(a), and 2699(f), and to recover costs and
10 attorney's fees pursuant to California law, including Labor Code § 2699(g)(1).

11 **A. Factual Allegations and Legal Analysis of Claims in the First Amended**
12 **Complaint**

13 Defendant operates a resort and spa in Westlake Village, California, employing
14 approximately seventy-five employees in the spa during the Covered PAGA Period of February 2,
15 2021 through the date the Court approves the Settlement. Ms. Van Wagner was employed by
16 Defendant as a massage therapist from approximately January 2020 to January 2022. Ms.
17 Andrade was employed as a massage therapist from approximately January 2020 to April 2022.

18 Plaintiffs alleged that throughout their employment, due to Defendant's scheduling
19 practices, limited staffing, and other factors, they and other employees were denied timely and
20 uninterrupted meal and rest periods and that they were often required to work during their breaks,
21 whether they were clocked in or not.

22 Plaintiffs also alleged that they and other employees were required to install a third party
23 app on their personal phones, and use it to verify their time worked and to access their wage
24 records, without compensation either for the use of their own devices or for the time spent on such
25 usage, leading to unpaid wages, inaccurate records, and inaccurate wage statements.

26 Defendant denied all allegations, and do not admit any liability under the Settlement
27 Agreement.
28

1 **B. Mediation and Settlement**

2 On May 3, 2024, the Parties participated in a mediation conducted by Stephen McAvoy.
3 See id., ¶ 6. In advance of the mediation, Defendant provided Plaintiffs’ Counsel with documents
4 and data regarding the claims in the case. See id., ¶ 4. The Parties reached a settlement at
5 mediation, and over the course of the next two months, they negotiated the language of a formal
6 settlement agreement. See id.

7 **III. THE PROPOSED SETTLEMENT**

8 The proposed Settlement is for a non-reversionary Gross Settlement Amount of
9 \$97,500.00. Per the PAGA, 75% of the Net Settlement Amount shall be paid to the LWDA.
10 Labor Code §2699(i). The remaining 25% of the Net Settlement Amount will be distributed by a
11 direct mailing of checks by the Settlement Administrator to the Aggrieved Employees.

12 **A. Settlement Payout**

13 Subject to the terms and conditions of the Settlement Agreement, the Gross Settlement
14 Amount that Defendants are obligated to pay in connection with the Settlement is \$97,500.00.
15 This amount will cover (as approved by the Court) (i) all PAGA Settlement Shares paid to
16 Covered Employees; (ii) the Plaintiffs’ Counsel fees and costs; (iii) the Plaintiffs’ incentive
17 awards; (iv) the LWDA payment; and (v) the Settlement Administrator’s fees and expenses. The
18 Gross Settlement Amount is non-reversionary.

19 **B. Calculation and Distribution of Settlement Payments**

20 Per the PAGA, 75% of the approximately \$48,000.00 Net Settlement Amount, or
21 approximately \$36,000.00, shall be paid to the LWDA. See Labor Code §2699(i). The remaining
22 25%, or approximately \$12,000.00, shall be distributed among the Covered Employees.
23 Defendants identified 75 Aggrieved Employees who worked at the spa during the Covered Period,
24 from February 2, 2021 through settlement. Per Defendant’s records, Covered Employees worked
25 a total of approximately 2,491 pay periods from February 2, 2021 through May 3, 2024, which
26 translates to approximately 4,982 workweeks. The Covered Employees Share of the \$12,000.00
27 will be divided by the total number of workweeks (4,982) for a per-pay period amount of
28

1 approximately \$2.41 per workweek (or \$4.82 per pay period), which will be multiplied by the
2 number of workweeks each Covered Employee worked in the Covered Period to determine the
3 amount he or she will receive. For example, a Covered Employee who worked 40 workweeks
4 during the Covered Period would receive \$96.40 (40 x \$2.41). See Lofton Decl., Exhibit B. If all
5 Covered Employees had worked the same number of workweeks, the average recovery per
6 Covered Employee would be approximately \$160.00.

7 Each Covered Employee's Share shall be allocated as one hundred percent (100%)
8 penalties, from which there will be no payroll tax withholdings and for which an IRS Form 1099
9 will be issued by the Settlement Administrator, as needed.

10 The timing of payment is as follows: Within fifteen days after the Effective Date, as
11 defined in the Settlement Agreement, Defendant shall transfer to the Settlement Administrator the
12 entire Gross Settlement Amount of \$97,500.

13 Upon receipt of the Gross Settlement Amount, the Settlement Administrator shall release
14 the Court-approved PAGA Representative Incentive Fee Payment to Plaintiffs and the Court-
15 approved Plaintiffs' Counsel Attorney's Fees and Litigation Costs Payment to Plaintiffs' Counsel,
16 and the LWDA Payment to the LWDA, and pay itself its court-approved reasonable fees and
17 expenses.

18 Within ten calendar days after receipt of the Gross Settlement Amount, the Settlement
19 Administrator will confirm names and addresses for the Covered Employees and mail checks for
20 payment to the Covered Employees. Covered Employees will have 120 days to cash their checks.
21 After the last outstanding check becomes invalid, the Settlement Administrator will transfer any
22 amount remaining to the California DIR Unclaimed Property Fund.

23 **C. PAGA Notice and Release of Claims**

24 Within fifteen calendar days after the Effective Date, Defendant will provide the
25 Settlement Administrator a list setting forth the names, last known addresses, Social Security
26 number, and number of workweeks worked by each Covered Employee during the Covered
27 Period.
28

1 Within ten calendar days after receipt of the Gross Settlement Amount, the Settlement
2 Administrator shall mail via U.S. First Class mail each Cover Employee's settlement check to
3 their last known address with directions to the Postmaster to forward the payment checks and
4 return all undeliverable payment checks to the Settlement Administrator. A letter approved by the
5 Parties explaining this Settlement will be included in the mailing of each Covered Employee's
6 individual settlement check.

7 **D. Incentive Award to PAGA Representative**

8 Plaintiffs request that the Court award each of them an Incentive Award in the amount of
9 \$2,500.00, in consideration of Plaintiffs efforts herein, which include initiating and pursuing this
10 lawsuit, assisting in formal discovery and participating in the all-day mediation of the matter,
11 undertaking the risk of liability for attorney's fees and expenses in the event they were
12 unsuccessful in the prosecution of this lawsuit, having their names forever part of a public record
13 of them suing their employer, and agreeing to a general release as part of the Settlement. The
14 Settlement Administrator will pay the PAGA Representative Incentive Awards approved by the
15 Court of up to \$2,500.00 each out of the Gross Settlement Amount.

16 Awarding an incentive to a PAGA representative follows the same principle that applies in
17 the class action context. "[T]he rationale for making enhancement or incentive awards to named
18 plaintiffs is that they should be compensated for the expense or risk they have incurred in
19 conferring a benefit on other members of the class. An incentive award is appropriate if it is
20 necessary to induce an individual to participate in the suit." Cellphone Termination Fee Cases,
21 186 Cal.App.4th 1380, 1395 (2010) (quoting Clark v. Am. Residential Servs. LLC, 175
22 Cal.App.4th 785, 804-806 (2009)). An award of \$2,500 falls well below the average enhancement
23 award according to one study. See, Theodore Eisenberg & Geoffrey P. Miller, INCENTIVE
24 AWARDS TO CLASS ACTION PLAINTIFFS: AN EMPIRICAL STUDY (2006) 53 UCLA L. Rev. 1303,
25 1308 (concluding the average award per class representative was \$15,992).

26 An incentive award in a PAGA case is especially important where the Plaintiffs have filed
27 suit on behalf of the LWDA and, are thus, providing a vital service for the State. As a result of
28

1 Plaintiffs' efforts, the LWDA will receive approximately \$36,000.00.

2 Ms. Van Wagner and Ms. Andrade spent a significant amount of time helping Counsel
3 with the prosecution of this action and performing the following tasks: (1) meeting with and
4 communicating with their attorneys on numerous occasions; (2) detailing their experiences and
5 producing copies of documents; (3) contacting witnesses; (4) assisting in preparing the PAGA
6 claim notices and complaint; (5) reviewing the mediation documents prepared; (6) reviewing the
7 terms of and signing the Settlement Agreement; and (7) assisting in the preparation of this motion.
8 See, Lofton Decl. ¶ 15.

9 In light of the work that Plaintiffs performed on behalf of the LWDA and Covered
10 Employees, the requested PAGA Representative Incentive Awards of \$2,500.00 each are
11 reasonable and appropriate.

12 **E. Settlement Administrator Costs**

13 The Settlement Administrator will pay out of the Gross Settlement Amount to itself its
14 reasonable fees and expenses, not to exceed \$3,000.00, after such payment has been approved by
15 the Court. Atticus Administration has submitted a quote for its costs for administration at
16 \$2,575.00. See Lofton Decl., ¶ 28, Exhibit D. Atticus Administration is a well-known and
17 respected Settlement Administrator. Plaintiffs' Counsel has used Atticus Administration in other
18 matters, and knows its rates to be fair and competitive. See id. Plaintiffs request that Atticus
19 Administration be approved as Settlement Administrator by the Court.
20

21 **F. Attorneys' Fees and Litigation Costs**

22 In considering the overall fairness of the Settlement, the Court may look to the
23 reasonableness of the Attorneys' Fees and Costs allocated in the Settlement Agreement.
24 Plaintiffs' Counsel's litigation costs were all reasonable and necessary expenses in litigating and
25 resolving this action. A copy of the itemized list of out-of-pocket costs, in the amount of
26 \$8,823.78 is attached to the Declaration of John A. Lofton as Exhibit C.

27 Plaintiffs also seek one-third of the Gross Settlement Amount, or \$32,500.00, in attorney's
28 fees. For the purposes of a lodestar cross-check, Plaintiff's Counsel has spent over 110 hours

1 working on this matter, at an hourly rate of \$825, for a total of more than \$90,750.00. See id., ¶
2 24. A large portion of this work involved motions to consolidate and intervene in the Castillo case
3 in order to preserve Plaintiffs PAGA claims in light of a settlement that purported to release them.
4 Although the Castillo court ultimately denied the motions, it noted that: “Nor would this
5 settlement preclude the intervenors from bringing two PAGA claims in Case Number
6 22STCV16181 that were not addressed by the instant case.” Thus Plaintiffs’ Counsel was
7 successful in salvaging Plaintiffs’ PAGA claims in order to achieve this settlement. See id.
8 The \$32,500.00 requested reflects approximately one-third of the actual work performed by
9 Plaintiffs’ Counsel.

10 The attorneys’ fees sought will compensate Plaintiffs’ Counsel for work performed in
11 recovering a significant benefit for the LWDA and Covered Employees. In reviewing attorneys’
12 fees in the class action context, one court explained: “The fee was negotiated at arm’s-length with
13 sophisticated defendants by the attorneys who were intimately familiar with the case, the risks, the
14 amount and value of their time, and the nature of the result obtained for the class.” In Re First
15 Capital Holdings Corp. Fin. Prods. Securities Litig. 1992 U.S. Dist. LEXIS 14337, at *4 (C.D.
16 Cal. June 10, 1992) (awarding attorney’s fees of \$8 million).

17 Courts have long recognized the “common fund” or “common benefit” doctrine, under
18 which attorneys who create a common fund or benefit for a group of persons may be awarded their
19 fees and costs to be paid out of the fund. See Laffitte v. Robert Half Internat. Inc., 1 Cal.5th 480,
20 504 (2016); See also, Serrano v. Priest (“Serrano III”), 20 Cal.3d 25, 34 (1977); Glendale City
21 Employees’ Assoc. v. City of Glendale, 15 Cal.3d 328, 341, fn. 19 (1975); In re Consumer Privacy
22 Cases, 175 Cal.App.4th 545, 557 (2009); In re Sumitomo Copper Litig., 74 F.Supp.2d 393, 396-
23 398 (S.D.N.Y. 1999) (describing the overwhelming weight of federal authority in favor of the
24 percentage fee method); Mills v. Electric Auto-Lite Co., 396 U.S. 375, 391-392 (1970) (United
25 States Supreme Court endorsing the common fund approach to class actions.)

26 The California Practice Guide: Civil Trials and Evidence (The Rutter Group) at §7.172.3
27 explains the common fund doctrine as follows:
28

1 Where the lawsuit results in the recovery of a fund or property benefiting others as
2 well as plaintiff (*e.g.*, a class action), the court has inherent equitable power to order
3 plaintiff's attorney fees paid out of the common fund or property [citations]. Such
4 fee spreading assures that all of those benefited by the litigation pay their fair share
5 of obtaining the recovery.

6 Numerous appellate courts have similarly endorsed the "percentage fee" method for determining
7 reasonable attorney's fees in common benefit cases.¹

8 In the Laffitte decision, the California Supreme Court held that, "when class action
9 litigation establishes a monetary recovery fund for the benefit of the class members, and the trial
10 court in its equitable powers awards class counsel a fee out of that fund, the court may determine
11 the amount of a reasonable fee by choosing an appropriate percentage of the fund created."
12 Laffitte, supra, 1 Cal.5th at 503. The California Supreme Court also noted that the percentage of
13 the fund method "more accurately reflects the results achieved" than the lodestar method, serves
14 as a "better approximation of market conditions in a contingency case," and encourages "counsel
15 to seek an early settlement and avoid unnecessarily prolonging the litigation." Id. at 503-504.

16 Courts have recognized that a one-third fee is appropriate in common fund cases. See, e.g.,
17 Chavez v. Netflix, Inc., 162 Cal.App.4th 43, 66, fn.11 (2008) ("Empirical studies show that,
18 regardless of whether the percentage method or the lodestar method is used, fee awards in class
19 actions average around one-third of the total recovery.")

20 The attorney's fees requested here are in line with other fee awards in California wage and
21 hour cases. For example, in Smiles v. Walgreens Co., Alameda Superior Court Case Number
22 RG17862495, Judge Seligman awarded attorney's fees of 35% of the \$15,000,000 settlement in a

23
24 ¹ See, e.g., Knoff v. City and County of San Francisco, 1 Cal.App.3d 184, 203-204 (1969) (court
25 upheld a "contingent percentage" award of attorneys' fees in a representative action as the proper
26 exercise of the court's equitable powers); Rider v. County of San Diego, 11 Cal.App.4th 1410,
27 1423 (1992) (attorneys' fees and expenses properly awarded from common benefit composed of
28 illegally imposed sales and use tax); Bank of America v. Cory, 164 Cal.App.3d 66, 89-92 (1985)
(fees awarded from common benefit created by action compelling state to claim dormant bank
accounts); Parker v. Los Angeles, 44 Cal.App.3d 556, 567-568 (1974) (court upheld fee award
equal to one-third of the damages to owners of residential property in an inverse condemnation
action.)

1 PAGA case, plus costs; in Pearce v. Linens ‘N Things. Inc., Orange County Superior Court Case
2 No. 00CC04830, Judge McDonald awarded attorney’s fees equal to 33 1/3% of the settlement
3 fund, plus costs; in Albrecht v. Rite Aid Corp., San Diego Superior Court Case No. 729129, Judge
4 Haden awarded attorney’s fees equal to 35% of the settlement fund, plus costs; in Crandall v. U-
5 Haul International, L.A. Superior Court Case No. BC 178775, Judge Czuleger awarded plaintiffs’
6 counsel attorney’s fees equal to 40% of the settlement fund; in Graubard v. Goodyear Tire Rubber
7 Company, LA Superior Court Case No. BC 230520, Judge Mohr awarded attorney’s fees equal to
8 32.1% of the settlement fund, plus costs. These cases illustrate that California courts recognize
9 that a one-third fee is appropriate in a wage and hour common fund case.

10 Given the results achieved under the circumstances of this litigation, the requested fee
11 award is reasonable – and only a fraction of the fees actually incurred by Plaintiffs’ Counsel. As
12 discussed in In re Sumitomo Copper Litigation, *supra*, 74 F.Supp.2d at 396:

13 No one expects a lawyer whose compensation is contingent on the success of his
14 services to charge, when successful, as little as he would charge a client who in
15 advance of the litigation has agreed to pay for his services, regardless of success.
16 Nor, particularly in complicated cases producing large recoveries, is it just to make
a fee depend solely on the reasonable amount of time expended.

17 In that vein, this Court should consider the contingent nature of this case, the uncertainty of
18 the outcome, the quality of the counsel, and the preclusion from other employment.

19 1. The Contingent Nature

20 From the outset of the case to the present, prosecution of this action has involved
21 significant financial risk for Plaintiffs’ Counsel. Plaintiffs’ Counsel undertook this matter solely
22 on a contingent basis, with no guarantee of recovery. Plaintiffs’ Counsel have placed their own
23 resources at risk to prosecute this action with no guarantee of success. See, Lofton Decl., ¶¶ 18-
24 19. If Defendants prevailed on any one of the affirmative defenses raised, or if the Castillo case
25 was held to bar the PAGA claims in this case, ***it could substantially reduce, if not wholly defeat,***
26 ***recovery.*** See id. Despite such challenges, Plaintiffs’ Counsel was able to secure a settlement
27 resolving the PAGA claims on behalf of Plaintiffs, Covered Employees, and the LWDA. See id.
28

1 **2. The Experience, Reputation, and Ability of Counsel, and the Skill**
2 **Displayed in Litigation**

3 Plaintiffs' Counsel has substantial experience in complex and representative action
4 litigation, including many wage and hour cases. See Lofton Decl., ¶ 17.

5 The quality of opposing counsel is also important to evaluating the quality of the work
6 done by Plaintiffs' Counsel. Here, Kyle Maland of Lewis Brisbois Bisgaard & Smith LLP, an
7 experienced employment litigator, represented Defendants. Plaintiffs' Counsel also had to
8 contend with Daniel Jett of Freeman Mathis & Gary, LLP and the Law Offices of Ramin R.
9 Younessi in connection with the Castillo matter. Thus, the complexity and potential duration of
10 the case, and that in the face of experienced and resourceful opposition, weigh in favor of
11 awarding the requested attorney's fees. See id. ¶ 20.

12 **3. The Results Achieved**

13 The results achieved by the Settlement support Plaintiffs' Counsel's request for attorney's
14 fees. As noted, the Settlement will result in payment of \$36,000.00 to the LWDA and \$12,000.00
15 to Covered Employees. This is a significant sum of money in light of the fact that the entire case
16 could have been lost under the Castillo settlement.

17 Finally, the efficiency with which this litigation was conducted and resolved should be
18 rewarded. See Lofton Decl., ¶ 22. Plaintiffs and Defendant moved promptly from the initial filing
19 in May 2022 to arbitration of Plaintiffs' individual claims, intervention in the Castillo case, and
20 final settlement in July 2024. The parties were able to minimize use of the Court's resources and
21 avoid significant motion practice (other than in the Castillo case). The LWDA and Covered
22 Employees will directly benefit from the prompt and fair resolution of their claims. They will be
23 receiving a significant award in a short period of time as opposed to waiting years to recover some
24 undetermined amount if they succeeded at trial, which is an uncertainty in itself. See id.

25 **4. Preclusion of Other Employment**

26 As California law recognizes, Plaintiffs' Counsel's commitment to this litigation should
27 not be assessed in a vacuum. See, Serrano, supra, 20 Cal.3d at 49. A relevant factor in
28 determining attorney's fees is whether the litigation required Plaintiffs' Counsel to forego other

1 employment. See id. Additional work was available that Plaintiffs' Counsel had to forgo to
2 devote the time necessary to pursue this litigation. See Lofton Decl. ¶ 23.

3 Accordingly, attorney's fees in the amount of \$32,500.00, which is one-third of the Gross
4 Settlement Amount is fair and reasonable under the circumstances, and under California
5 precedent, along with \$8,823.78 in litigation costs.

6 **IV. THE STANDARD FOR APPROVAL OF PAGA SETTLEMENTS.**

7 Labor Code §2699(1)(2) provides: "[t]he superior court shall review and approve any
8 settlement of any civil action filed pursuant to this part." However, because PAGA claims are not
9 class actions, the usual rules or various findings required by Rule 23 or CCP §382 do not apply.
10 See, e.g., Navarro v. Ordaz Cultured Marble & Onyx, Inc. 2015 U.S. Dist. LEXIS 21374, at *2
11 (N.D. Cal. Feb. 23, 2015). There is no requirement to provide notice to the Covered Employees,
12 the Covered Employees do not have the right to object to or opt out of the Settlement, and there is
13 no need for separate preliminary and final hearings. See Amalgamated Transit Union, Local 1756
14 v. Superior Court, 46 Cal.4th 993, 1003 (2009); Urbino v. Orkin Services of California 726 F.3d
15 1118, 1122-23 (9th Cir. 2013).

16 The requirements for a settlement under the PAGA are that the settling parties are to
17 submit the proposed settlement to the LWDA at the same time it is filed with the Court, and then,
18 if the settlement is approved, to submit the judgment to the LWDA within 10 days after entry. See
19 Labor Code §2699(1)(3). PAGA does not set forth any standards for evaluating a settlement. Id.

20 The only potential objector is the LWDA itself, whose comments, if any, will be submitted
21 to the Court in advance of the approval hearing. The PAGA does not give absent employees any
22 substantive right to bring their own PAGA claim. See Sakkab v. Luxottica Retail North
23 American, Inc., 803 F.3d 425, 436 (9th Cir. 2015). Rather, "[a]n employee bringing a PAGA
24 action does so 'as the proxy or agent of the state's labor law enforcement agencies,' who are the
25 real parties in interest ... However, by obtaining such penalties, the employee-plaintiff does not
26 vindicate absent employees' claims, for the PAGA does not give absent employees any
27 substantive right to bring their 'own' PAGA claims." (internal citations omitted). Id. at 435-436.
28 Therefore, the "bulk of any recovery goes to the LWDA, not to the aggrieved employees ... A

1 PAGA action is at heart a civil enforcement action filed on behalf of and for the benefit of the
2 state, not a claim for class relief.” Baumann v. Chase Investment Servs. Corp., 747 F.3d 1117,
3 1123-24 (9th Cir. 2014).

4 Although the PAGA does not provide instruction on how courts are to evaluate a
5 settlement under the Act, California law provides some general guidance concerning judicial
6 approval of any settlement. First, California courts recognize a strong public policy in favor of
7 settlements. See Kaufman v. Goldman, 195 Cal.App.4th 734, 735 (2011) (“We note there is well-
8 established policy in the law to discourage litigation and favor settlement. Pretrial settlements are
9 highly favored because they diminish the expense of litigation.”) Here, the Settlement not only
10 avoids the complexities and legal uncertainties discussed above, but also the delay, expense, and
11 drain on judicial resources that would result from a lengthy trial. Second, in all circumstances, the
12 decision to approve or reject a settlement is committed to the trial court’s sound discretion. See
13 Wershba v. Apple Computer, Inc., 91 Cal.App.4th 224, 234-235 (2001). This basic principle
14 coincides with the discretion the Legislature specifically afforded courts under sections 2699(e)(1)
15 and (2) of the PAGA, granting to the courts the same discretion as that held by the LWDA in
16 assessing civil penalties and specifically authorizing courts the ability to award lesser amounts
17 than the maximum civil penalties set forth in section 2699. Third, although the court possesses
18 discretion in approving a PAGA settlement, it seems logical that the court’s role “must be limited
19 to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud
20 or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as
21 a whole, is fair, reasonable and adequate to all concerned.” In re Microsoft I-V Cases, 135
22 Cal.App.4th 706, 723 (2006) (quoting Officers for Justice v. Civil Service Com., 688 F.2d 615,
23 625 (9th Cir. 1982)). Here, the parties agreed that settlement, on the terms set forth in the
24 Settlement Agreement, is fair, reasonable, and adequate to the LWDA and Covered Employees.

25 **V. THE PAGA SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE.**

26 The Settlement was reached only after arm’s-length and good faith negotiations. See
27 Lofton Decl., ¶ 9. Prior to mediation, the parties engaged in a significant exchange of data,
28 including wage records, time sheets, and scheduling records. See id. Counsel and the parties

1 attended a full-day mediation on May 3, 2024. Both parties provided detailed mediation briefs
2 and Plaintiffs' counsel prepared an extensive analysis of the potential exposure. See id. The risks
3 of continued litigation had to be considered and a compromise of the claims was settled upon.

4 Based on Plaintiff's analysis, the potential penalties available under PAGA made
5 Defendant's likely maximum exposure in the range of \$450,000 - \$950,000. However, the
6 potential preclusive effect of the Castillo settlement created a serious risk of no recovery for
7 Plaintiffs.

8 PAGA carries a maximum penalty of \$100 per pay period for initial violations and \$200
9 for subsequent violations. Many courts "stack" violations so that the per-pay-period penalty is
10 combined into one number that is applied to the total of pay periods, regardless of the variety of
11 violations. Here, there were approximately 2,491 pay periods during the Covered Period. See id.
12 At \$100 per each of the 2,491 pay periods, the maximum exposure at trial could be \$249,100.00.

13 However, there was a substantial question of fact as to whether the Covered Employees
14 were in fact denied meal and rest periods to the extent claimed, and whether and to what extent it
15 could be proved. Moreover, the PAGA grants trial courts discretion to reduce the amount of civil
16 penalties to be imposed. See Labor Code §2699(e)(2); See also, Bernstein v. Virgin Am., Inc.,
17 365 F.Supp.3d 980, 985, 992 (N.D.Cal. 2019) (judgment reducing PAGA penalties from
18 \$33,300,000 to \$24,981,150).

19 Here, the Gross Settlement Amount results in an award of \$4.82 per pay period, and an
20 average of \$160.00 per employee. This compromised amount compares favorably to other PAGA
21 settlements and court awards. For example, in Garrett v. Bank of America, Alameda Superior
22 Court Case Number RG13699027, involving almost one million pay periods, the Alameda
23 Superior Court, on October 28, 2016, approved a \$15 million PAGA settlement, which would be a
24 penalty of \$15 per pay period.

25 In Carrington v. Starbucks Corp., 30 Cal.App.5th 504 (2018), the trial Court reduced the
26 PAGA penalty amount to only \$5 per pay period. In Carrington, the plaintiff requested penalties
27 in excess of \$70 million, which was based on a \$25 to \$75 penalty per violation. The trial court
28 instead awarded a \$5 penalty per pay period and stated this reduction was warranted because

1 imposing the maximum penalty would be unjust, arbitrary, and oppressive based on Starbucks's
2 "good faith attempts" to comply with meal period obligations and because the court found the
3 violations were minimal. Similarly, here, Defendant argued that it had a good faith belief that it
4 was complying with the law and providing appropriate meal and rest periods. Plaintiffs have
5 strong arguments against these defenses, but even if Defendant was held liable for the PAGA
6 violations, it was highly possible that this Court would give deference to their "good faith attempt
7 to comply with the law" argument and reduce the penalty amount.

8 Other courts have also reduced PAGA civil penalties, often dramatically. For example, in
9 Thurman v. Bayshore Transit Mgmt., Inc., 203 Cal.App.4th 1112, 1136 (2012), the Court of
10 Appeal affirmed the trial court's reduction of PAGA civil penalties by 30 percent, finding that
11 awarding the full penalties would have been "unjust" because the "evidence showed...defendants
12 took their obligations...seriously and attempted to comply with the law," and that the defendants'
13 financial condition "rendered them unable to pay penalties from ongoing revenues." Similarly, in
14 Fleming v. Covidien, Inc. 2011 U.S. Dist. LEXIS 154590, at *8-9 (C.D.Cal. Aug. 12, 2011), the
15 court reduced PAGA civil penalties for wage statement violations from \$2,800,000 to \$500,000.
16 Accordingly, while courts cannot deny PAGA civil penalties outright if liability is found, they can
17 and do reduce the awarded penalties based on such considerations as the egregiousness of the
18 violations, the employer's efforts at compliance, and the employer's ability to pay.

19 Finally, the fact that the total amount potentially available, assuming a full recovery on all
20 claims is greater than the value of a settlement, this does not militate against approval of this
21 Settlement. As the court in Shames v. Hertz Corp., 2012 U.S. Dist. LEXIS 158577, at *6
22 (N.D.Cal. Nov. 5, 2012) (citing Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.), 213 F.3d
23 454 (2000) (court approved a settlement constituting one-sixth of the potential recovery) held:
24 "While settlement amounts that are close to the plaintiff's estimate of damages provide strong
25 support for approval of the settlement, settlement offers that constitute only a fraction of the
26 potential recovery do not preclude a court from finding the settlement offer is fair."

27 Here, the Settlement reflects a compromise of the maximum likely potential exposure, but
28 a reasonable return per pay period. See Lofton Decl., ¶ 11. This result is excellent, especially

1 given Defendants’ defenses and the high risks associated with Castillo settlement, as well as the
2 Court’s discretion to discount any penalty awarded down to the proverbial peppercorn.

3 **VI. CONCLUSION**

4 Because the Settlement is fair, reasonable, and adequate, Plaintiff respectfully requests that
5 the Court grant approval of all terms of the Settlement, as set forth in the Settlement Agreement,
6 attached to Lofton Decl., Exhibit B.

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9 DATED: July 30, 2024

AIMAN-SMITH & MARCY, P.C.

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12 _____
13 John A. Lofton, Esq.
14 Attorney for Plaintiffs Noel Van Wagner and
15 Veronica Andrade
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