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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHIDINMA OLISAEMEKA, individually, and
on behalf of other members of the general public
similarly situated,

Plaintiff,

v.

LYNWOOD HEALTHCARE CENTER, an
unknown business entity; LYNWOOD POST
ACUTE CARE CENTER, an unknown business
entity; AG LYNWOOD, LLC, a California
limited liability company; and DOES 1 through
100, inclusive,

Defendants.

Lead Case No. 22STCV13175

Consolidated Case No. 22CMCV00121

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

Date: February 26, 2025

Time: 10:00am

Moving Papers Due by: January 27, 2025

Opposition Due by: February 6, 2025

Reply Papers Due by: February 13, 2025

Judge: Hon. Elaine Lu

Dept: 9

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Chidinma Olisaemeka (“Plaintiff”) seeks approval of the PAGA Settlement
4 Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for
5 approximately 341 “Aggrieved Employees,” defined as all current and former non-exempt
6 employees who worked for Lynwood Healthcare Center, Lynwood Post Acute Care Center or AG
7 Lynwood LLC (“Defendants”) and performed work in California during the period from March 4,
8 2021, to July 7, 2024 (“PAGA Period”). Agreement at §§ 1.4; 1.23; 4.1. This is only a settlement
9 of the PAGA claim for civil penalties and is not a class settlement and does not release the
10 individual wage claims, if any, of the affected employees other than Plaintiff himself. Cal. Lab.
11 Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v.*
12 *Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

13 If approved, the Aggrieved Employees and the California Labor Workforce and
14 Development Agency (“LWDA”) will share the PAGA Penalties of Ninety One Thousand, One
15 Hundred Sixty Six Dollars and Sixty Seven Cents (\$91,166.67). The PAGA Penalties shall be
16 distributed, 75% to the LWDA and 25% to the Aggrieved Employees (“Aggrieved Employee
17 Payment”). § Agreement at 3.2.4.

18 An objective evaluation of the proposed settlement confirms that the relief negotiated on
19 behalf of the Aggrieved Employees and the LWDA is fair, reasonable, and valuable. The Settlement
20 is a product of informed, adversarial, and non-collusive and mediated negotiations between
21 experienced counsel. As discussed below, the proposed Settlement satisfies all criteria for PAGA
22 settlement approval. Accordingly, Plaintiff and PAGA Counsel respectfully request this Court
23 grant approval of the Agreement. Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 9.

24 ///

25 ///

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

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

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

On March 4 2022, Plaintiff, on behalf of herself and on behalf of other Aggrieved Employees, served Defendants and the LWDA with a Notice of Violations ("PAGA Notice") memorializing claims against Defendants for alleged violations of the California Labor Code, including causes of action for failure to provide compliant meal and rest periods; failure to accurately compensate for missed meal and rest periods; failure to pay all minimum, regular, and overtime wages; failure to provide accurate itemized wage statements; and failure to timely pay wages due during, and upon termination of employment. (LWDA Case No. LWDA-CM-871682-22). JCL Dec., ¶ 10.

The 65-day "waiting period" on Plaintiff's right to file a civil action under PAGA, *see* Cal. Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiff that they intended to investigate the claims in the PAGA Notice. To date, the LWDA still has not advised Plaintiff of any intent to take action with respect to the claims in the PAGA Notice. JCL Dec., at ¶ 11.

On April 20, 2022, Plaintiff filed a class action complaint against Defendants in the Superior Court for Los Angeles, Case Number 22STCV13175 (the "Class Action"). The complaint alleged ten causes of action for (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and .1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (10) Violation of California Business & Professions Code §§ 17200, et seq. JCL Dec., ¶ 12.

1 On May 9, 2022, Plaintiff filed a separate complaint in Los Angeles County Superior Court
2 on behalf of herself and other aggrieved employees alleging a single cause of action for civil
3 penalties under the Private Attorney Generals Act (“PAGA”). JCL Dec., at ¶ 13.

4 On December 14, 2023, the Parties participated in an all-day mediation presided over by
5 Brandon McKelvey, an experienced mediator of wage and hour representative actions. In advance
6 of the with the mediation, Defendants provided Plaintiff with sufficient information to properly
7 evaluate Defendants’ potential liability exposure. Among the data and documents Defendants
8 produced included, but was not limited to, the total number of Aggrieved Employees, pay periods,
9 employee handbooks, and time and payroll data. JCL Dec., ¶ 14.

10 Defendants have produced an arbitration agreement which purportedly bars Plaintiff’s class
11 action claims. Accordingly, Plaintiff has filed a request for dismissal of the class claims. This
12 request was granted on January 11, 2023. This The settlement reached between the Parties does not
13 release any class claims. JCL Dec., at ¶ 15. Defendants have also notified Plaintiff that there is no
14 entity known as “Lynwood Healthcare Center” and accordingly, Plaintiff intends on dismissing this
15 entity from the Action. JCL Dec., at ¶ 3.

16 The Parties’ mediation resulted in a settlement of Plaintiff’s PAGA claims and was
17 memorialized in the form of a Memorandum of Understanding (“MOU”). After reaching an
18 agreement in the principle, the Parties drafted and negotiated a long-form settlement which is the
19 subject of the instant motion. The Settlement was negotiated in light of all known facts and
20 circumstances and the uncertainty associated with litigation – including the risk of Plaintiff not being
21 able to maintain representative claims and establishing manageability, the difficulty of proving
22 Plaintiff’s claims in a manageable trial, the merits of Defendants’ potential defenses, and the
23 significant delay and potential appellate issues inherent to litigation – and was reached after
24 extensive arm’s length negotiations, with the assistance of the mediator. JCL Dec., at ¶ 16.

25 The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted
26 by Plaintiff on behalf of herself, the LWDA, and the State of California. This is only a Settlement of
27 the PAGA claims for civil penalties and is not a class settlement and does not release the individual
28 claims, if any, of the Aggrieved Employees. This Settlement does not release any claim that is not a

1 PAGA claim.² Nor does this Settlement waive Defendants’ right to assert *res judicata* or other
2 available defense to any asserted claim or lawsuit. JCL Dec., at ¶ 17.

3 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
4 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant
5 motion for settlement approval as set forth in the accompanying proof of service. Additionally,
6 Plaintiff will submit to the LWDA a copy of the Court’s judgment and order approving the
7 Settlement Agreement within ten (10) days after entry of judgment or order. JCL Dec., at ¶ 18.

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

9 **A. The Gross Settlement Amount**

10 The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(1)(2).
11 The Settlement Agreement negotiated by the Parties provides for a Gross Settlement Amount
12 payment in the amount of Two Hundred Five Thousand Dollars and Zero Cents (\$205,000.00) to
13 resolve the PAGA claims. From the Gross Settlement Amount, there is a deduction of a PAGA
14 Counsel Award in the amount of Ninety Eight Thousand Three Hundred Thirty Three Dollars and
15 Thirty Three Cents (\$98,333.33) (comprised of one-third of the Gross Settlement Amount (estimated
16 to be approximately \$68,333.33) and reimbursement of incurred litigation expenses in an amount not
17 to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00)), the Claims Administration Costs
18 which will not exceed Five Thousand Five Hundred Dollars and Zero Cents (\$5,500.00), and a
19 service award in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00). Agreement
20 generally at §§ 3.1; 3.2.1; 3.2.2. After these deductions, the amount remaining is the “PAGA
21 Penalties,” which is estimated to be \$91,166.67. Agreement at § 3.2.4; JCL Dec., at ¶ 19.

22 The Gross Settlement Amount will be used to satisfy the Individual PAGA Payments, the
23 LWDA PAGA Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses
24 Payment, and the Administrator’s Expenses Payment. Agreement at § 1.12.

25 Of the PAGA Penalties Payment, seventy-five percent (75%) shall be paid to the LWDA and
26 the remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees (“Aggrieved
27

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

Employee Payment”). Agreement at §§ 1.17, 3.2.4. This 75/25 allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

B. Allocation of Aggrieved Employee Payment

The Individual PAGA Payments will be calculated by dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$22,791.67) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and then multiplying the result by each Aggrieved Employee’s PAGA Pay Periods. Agreement at § 3.2.4.1 The PAGA Period is the period between March 4, 2021, to July 7, 2024. Agreement at § 1.23.

At the time of the parties’ settlement of this Action, Defendants estimated that there were approximately 341 Aggrieved Employees who worked approximately 7,000 pay periods during the PAGA Period based on company records. Agreement at § 8.³

C. Funding and Distribution

Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than thirty (30) calendar days after the Effective Date. The Effective Date is defined as the date by when the Court enters a Judgment on its Order Approving the PAGA Settlement. Agreement at §§ 1.10; 4.3. Within fifteen days (15) days after Defendants fully funds the Gross Settlement Amount, the Settlement Administrator will mail the Individual PAGA Payments via First-Class U.S. Mail. Agreement at § 4.4. Settlement checks issued to Aggrieved Employees will expire one hundred eighty (180) days from the date they are issued by the Settlement Administrator. Agreement at § 4.4.1. If the check remains uncashed by the expiration of the 180-day period, the Settlement Administrator shall transmit the funds represented by such checks to the Community Law Project in accordance with CCP § 384 and subject to Court approval. Agreement at § 4.4.3.

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³ The Agreement contains an escalator clause, providing that, should the number of Pay Periods increase by more than 12.5% of what was represented during the PAGA Period, the Gross Settlement Amount will increase proportionally for the number of Pay Periods over 12.5% of 7,000. For example, if the total Pay Periods in the PAGA Period are 13% above 7,000, the Gross Settlement Amount shall increase by 0.5%. Agreement at § 8.

1 **D. Release of Claims**

2 Effective on the date when Defendants fully fund the entire Gross Settlement Amount, the
3 State of California, the Aggrieved Employees, and Plaintiff shall release the Released Parties (as
4 defined in the Agreement) from the Released PAGA Claims which include all PAGA claims that
5 were alleged or could have reasonably been alleged against Defendants based upon the facts and
6 circumstances identified in Plaintiff's original PAGA Notice on March 4, 2022, and in the Operative
7 Complaint filed in the PAGA Action on behalf of the PAGA Employees, which arose during the
8 PAGA Period. Agreement at § 1.27.

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

10 Labor Code § 2699(l) requires that the Court “shall review and approve any settlement of any
11 civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the
12 agency at the same time that it is submitted to the court.” Further, the Court in *Moniz v. Adecco*
13 *USA, Inc.* (2021) 72 Cal.App.5th 56, 77 stated that “the trial court must review and approve a PAGA
14 settlement (§ 2699, subd.(1)(2)), and the Supreme Court has in dictum referred to this review as a
15 safeguard.” (Citing *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 88; internal
16 quotations omitted.) “The Supreme Court has also observed that trial court approval ensures that
17 any negotiated resolution is fair to those affected,” leading the Court in *Moniz* to determine that
18 “adoption of a standard of review for settlements that prevents fraud, collusion or unfairness, and
19 protects the interests of the public and the LWDA in the enforcement of state labor laws is
20 warranted.” (*Moniz, supra*, 72 Cal.App.5th at 77; citing *bs v. Superior Court* (2017) 3 Cal.5th 531,
21 549; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-1801; internal citations omitted.)
22 In other words, “[i]n review and approval of a proposed settlement under section 2699, subd. (1)(2), a
23 trial court thus must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately
24 represented the state's interests, and hence the public interest.” (*Moniz, supra*, 72 Cal.App.5th at 88.)
25 Consequently, the Parties respectfully ask the Court to review and approve the settlement of the
26 PAGA claims and the PAGA Penalties to be paid as part of the proposed Settlement.
27
28

A. The Gross Settlement Amount is Fair and Reasonable

The Gross Settlement Amount of \$205,000.00 is fair and reasonable and, therefore, should be approved. Here, *without stacking* the PAGA penalties, Defendants' liability exposure is estimated at approximately \$1,248,600 in PAGA Penalties. JCL Dec., ¶ 20. Plaintiff's consultant estimated Defendants' exposure as follows:

Claim	Penalty Amount⁴	Number of Pay Periods w/ Violation	Violation Rate	Total Penalties
<i>Meal Period Violations</i> Cal. Labor Code §§ 226.7 and 512	\$50 ⁵	2,505	29% of PAGA Pay Periods	\$125,250
<i>Rest Period Violations</i> Cal. Labor Code §§ 226.7 and 512	\$50	2,505	29% of PAGA Pay Periods	\$125,250
<i>Unpaid Wages Violations</i> Cal. Labor Code §§ 201, 202, 203, 204, 246, 1194, 1197, 1997.1, 1198 and 558	\$100	6,419	75% of PAGA Pay Periods	\$641,925
<i>Business Reimbursement Violations</i> Cal. Labor Code § 2802	\$100	2,139	25% of PAGA Pay Periods	\$213,975
<i>Regular Rate of Pay</i>	\$100	1,422	16% of PAGA Pay Periods	\$142,200

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

⁵ The \$50 penalty rate was used for a number of reasons in this instance. First, Defendants 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. *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144 citing *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 to penalties.”].) Separately, Defendants also argued that courts have considerable discretion to reduce the penalty awards under PAGA. See, e.g. *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (reducing the maximum PAGA penalty amount by 90%, at \$5 per pay period). Accordingly, it is unlikely that Plaintiff would recover full penalty amounts even if he prevailed in establishing the underlying Labor Code violations. Pursuant to California Labor Code section 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. Thus, because section 558(a)(1) specifically provides for a civil penalty, Plaintiff used a \$50 penalty per violation for the meal and rest break claims. JCL Dec., ¶ 28.

1 JCL Dec., ¶ 21.

2 **i. Estimated Penalties for Unpaid Wages**

3 Plaintiff alleges that Defendants failed to pay all wages due to Plaintiff and the Aggrieved
4 Employees under three separate theories. First, Plaintiff alleges she and other Aggrieved Employees
5 worked off-the-clock pre-shift to undergo mandatory Covid screenings, and second, that due to
6 understaffing, Plaintiff and the Aggrieve Employees were instructed to clock out for meal periods to
7 create a paper trail evidencing a compliant meal period but continued working through this period,
8 off-the-clock. Plaintiff further alleges that she and other Aggrieved Employees were instructed not to
9 clock in before 7:00 a.m., but were required to ensure that patient were picked by the ambulance,
10 which would occur prior to 7:00 a.m. Third, Plaintiff alleges that she and other Aggrieved
11 Employees worked pursuant to an invalid alternative workweek schedule, and were accordingly
12 denied proper overtime and double time wages. Plaintiff estimates Defendants' exposure for this
13 claim to be approximately \$641,925. JCL Dec., ¶ 22.

14 **ii. Estimated Penalties for Defendants' Alleged Miscalculation of Regular**
15 **Rate of Pay**

16 Plaintiff alleges that Defendants failed to include non-discretionary bonuses and shift
17 differentials when calculating the regular rate of pay for purposes of overtime, redeemed sick pay,
18 and meal period premiums. Specifically, Plaintiff's expert found six forms of non-discretionary
19 compensation listed on wage statements as BNS EXTRA SHFT, BONUS, GIFT, REFERRAL
20 BONUS, SHIFT DIFF, SIGN ON BONUS, and WRK RETENTION that were not properly
21 included in the regular rate of pay calculation for purposes of calculating and paying overtime, sick
22 pay, or meal period premiums. Defendants deny that all of the bonuses raised by Plaintiff can be
23 properly categorized as non-discretionary and accordingly, did not need to be calculated into the
24 regular rate of pay. Plaintiff estimated that Defendants' total exposure for this claim was
25 approximately \$142,200 in penalties. JCL Dec., ¶ 23.

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

27 Plaintiff also alleges that Defendants failed to provide compliant meal periods pursuant to
28 two separate theories. First, Plaintiff's expert found that recorded meal periods were late, short, or

missed during approximately 29% of pay periods. Accordingly, Plaintiff alleges that she and other Aggrieved Employees are owed meal period premiums for meal period violations that occurred during the PAGA Period. Second, Plaintiff alleges that other meal periods that appear compliant on paper are synthetic, contending that, as noted above, employees were directed by Defendants to clock out before the sixth hour of work but work through their meal periods if necessary. JCL Dec., ¶ 24. Defendants deny these allegations, noting that it paid meal period premiums, and its policy and practice of paying meal period premiums is incongruous with a contention that it fabricated compliant meal periods. Taking into account Defendants' defenses, Plaintiff estimates Defendants' exposure for this claim to be approximately \$125,250. JCL Dec., ¶ 25.

iv. Estimated Penalties for Rest Period Violations

Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically, Plaintiff alleges that due to patient demands and understaffing, employees were not able to take rest breaks. Defendants denied these allegations and also argued that Plaintiff's rest break claim would have mainly relied on the testimony of Aggrieved Employees, making it a riskier claim. Establishing liability likely would have entailed competing testimony stating either rest breaks were taken, or rest breaks were voluntarily waived. See, e.g., *Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices"). Taking into account Defendants' defenses, Plaintiff estimates Defendants' exposure for this claim to be approximately \$125,250. JCL Dec., ¶ 26.

v. Estimated Penalties for Unreimbursed Business Expenses

Plaintiff alleged Defendants failed to reimburse Class Members for all necessary business expenses. Specifically, Plaintiff asserts that he and other Class Members were required to use personal cell phones in order to receive and respond to work-related communications from supervisors. Plaintiff also alleges that she and other Aggrieved Employees used their personal

1 vehicles for work purposes but were no reimbursed for milage. These instances included when
2 additional supplies needed to be purchased, and when patients would miss an ambulance and an
3 Aggrieved Employee would be required to drive the patient in their personal vehicles to their
4 appointment. Plaintiff estimated Defendants’ exposure for this claim to be \$213,975. JCL Dec., ¶
5 27.

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

7 In light of the above, the Gross Settlement Amount is approximately 16.4% of Defendants’
8 potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely recovery
9 of PAGA penalties through continued litigation. Defendants’ maximum exposure to PAGA penalties
10 is not a realistic outcome of the litigation because it fails to account for the risks of continued
11 litigation including, but not limited to, Defendants’ defenses. *See, Zayerz v. Kiewit Infrastructure*
12 *West*, 2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018). For instance, Defendants
13 argued that it can only be assessed civil penalties for actual violations of the Labor Code. *See Lab.*
14 *Code § 2699(f)(2)*. In other words, to recover any civil penalties, Plaintiff would be required to
15 prove the underlying Labor Code violations. (*Cardenas v. McLane Foodservice, Inc.*, 2011 U.S.
16 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) [“Given the statutory language [of PAGA], a plaintiff
17 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the
18 Labor Code by the defendant.”].) To do this, Plaintiff would need to prove each Aggrieved
19 Employee was subject to the alleged Labor Code violation, which would be difficult to do, as
20 Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in this
21 action. JCL Dec., ¶ 28.

22 Thus, Defendants contended that Plaintiff would be required to “prove Labor Code violations
23 with respect to each and every individual on whose behalf Plaintiff seek to recover civil penalties
24 under PAGA.” *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar. 2,
25 2009). When “determining whether the employer committed Labor Code violations with respect to
26 each employee” is impractical, the PAGA action can be dismissed. *Wesson v. Staples the Off.*
27 *Superstore*, 2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021). JCL Dec., ¶ 29.

28 Finally, the maximum penalty figure does not consider that Courts have complete discretion

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

22 Given Defendants’ defenses to the claimed Labor Code violations at issue, the risks and costs
23 of continued litigation, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount is fair
24 and reasonable. This settlement was negotiated by experienced counsel at arm's length. JCL Dec., ¶
25 31. The LWDA has been provided with notice of this motion and the PAGA settlement, and the
26 decision of LWDA to accept the PAGA settlement and not oppose the motion should be given
27 considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and
28 protect its own rights. JCL Dec., ¶¶ 5, 32.

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

2 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
3 2699(1) does not require that a court approve any other elements of the proposed settlement.
4 Because there are no class allegations for which Plaintiff seeks approval, the approval provisions
5 applicable to class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the
6 Court only needs to approve the settlement of the civil penalties sought in the PAGA claim.
7 Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable.
8 JCL Dec., ¶ 33.

9 **D. Plaintiff's Settlement of Her Individual Claims Alleged Against Defendants**

10 On or around March 31, 2023, Plaintiff submitted a demand for arbitration with Judicial
11 Arbitration and Mediation Services ("JAMS") alleging eleven causes of action against Defendants
12 including unfair competition, failure to pay minimum wages, failure to pay overtime wages, failure
13 to provide required meal periods, failure to provide required rest periods, failure to reimburse for
14 required expenses, failure to provide accurate itemized wage statement, failure to provide wages
15 when due, failure to timely pay wages during employment, failure to keep requisite records, and an
16 individual PAGA claim (JAMS Case No. 5220002948). Separate from the PAGA settlement,
17 Plaintiff entered into an individual settlement with Defendants in which she granted Defendants a
18 broad release of all claims, including the claims outlined in her demand for arbitration. Plaintiff will
19 file this settlement agreement under seal for the Court to review in camera, at the Court's request.
20 JCL Dec., ¶ 34.

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

22 PAGA Counsel seeks approval of the PAGA Counsel Award, comprised of attorneys' fees in
23 the amount of \$68,333.33 (one-third of the Gross Settlement Amount) and reimbursement of
24 litigation costs not to exceed \$30,000.⁶ PAGA does not have any requirements for reviewing
25 attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this
26 Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court
27

28 ⁶ As detailed *infra*, at the time of filing this motion, Plaintiff's Counsel incurred \$20,203.90 litigating this matter. Plaintiff will provide the Court with a final amount of litigation costs at the time of hearing on this motion.

1 review the requested attorneys' fees, the requested fees and costs are reasonable for experience wage
2 and hour counsel. JCL Dec., ¶ 35.

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

4 The requested PAGA Counsel Award of \$98,333.33, comprised of \$68,333.33 for attorneys'
5 fees and reimbursement of litigation expenses of up to \$30,000 is fair, reasonable, and justified by
6 the result achieved. Agreement at § 3.2.2; JCL Dec., ¶ 36. PAGA Counsel negotiated a recovery of
7 Two Hundred Five Thousand Dollars and Zero Cents (\$205,000.00), and this result justifies the
8 requested fees equal to one third of this recovery. This percentage is within the standard contingent
9 recovery percentage of one-third, and this percentage is what was expressly approved by the
10 Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016). At the time this case
11 was brought, the result was far from certain. Defendants' defenses to the merits of the case created
12 difficulties with proof and complex legal issues for PAGA Counsel to overcome. Here, several
13 defenses asserted by Defendants present serious threats to the claims of Plaintiff and the Aggrieved
14 Employees. Defendants asserted that its employment practices complied with all applicable labor
15 laws. If successful, Defendants' factual and legal defenses would eliminate *any recovery* to the
16 Aggrieved Employees. While Plaintiff believes that these defenses could be overcome, Defendants
17 maintain that these defenses have merit and therefore present a serious risk to recovery. The
18 Settlement was possible because, in PAGA Counsels' eyes, PAGA Counsel was able to persuade
19 Defendants that there was an appreciable risk that Plaintiff would prevail on the factual and legal
20 issues underlying liability and overcome difficulties in proof as to monetary relief. JCL Dec., ¶ 37.

21 Further, the fee award is justified by the work performed. Generally, the Ninth Circuit and
22 California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for
23 accepting the contingent risks of the litigation or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th
24 at 506 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert*
25 *Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often
26 applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
27 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*,
28 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier

1 of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-
2 third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-
3 02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented
4 a multiplier of 2.76 as falling within the "majority" range for risk multipliers).

5 As detailed in PAGA Counsels' time and billing records submitted herewith, PAGA
6 Counsels' current combined loadstar is \$174,917.50. JCL Dec., ¶¶ 6, 44-48; Declaration of Shani
7 Zakay ("Zakay Dec.") at ¶¶ 2-5; Declaration of Tara Zabehi ("Zabehi Dec.") at ¶¶ 7-9). Thus,
8 PAGA Counsels' fee request is equal to PAGA Counsel's loadstar with negative multiplier of 0.39
9 – well below the 2.13 multiplier approved in *Laffitte* – and well within the recognized multiplier
10 range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202
11 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar multiplier
12 of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D.
13 Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7).

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

16 Attorneys who create a common fund for the benefit of a class are entitled to payment from
17 the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include
18 counsel's incurred expenses because those who benefit from their effort should share in the cost.
19 See *Rider v. City of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in
20 deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to
21 paying clients in the marketplace. See *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); see also
22 *Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded
23 litigation costs for consultants, online legal research, copying, postage, long distance charges, travel
24 expenses, filing fees, mediation fees and investigation fees). Prior to incurring costs for filing of this
25 motion, PAGA Counsel collectively expended \$20,203.90 prosecuting this action (JCL Law Firm,
26 APC - \$7,887.35, Zakay Law Group, APLC - \$8,045.20; Lawyers for Justice, P.C. - \$4,271.35).
27 JCL Dec. ¶¶ 7, 48; Zakay Dec. ¶ 6; Zabehi Dec. ¶ 6. PAGA Counsel's out-of-pocket expenses are
28 the types of expenses normally charged to paying clients including the following: filing fees;

1 copying; postage; factual and legal research charges; mediation fees; and expert costs which were
2 all incurred during, and were necessary for the successful prosecution of, the litigation and,
3 therefore, should be reimbursed. JCL Dec. ¶¶ 7, 49.

4 **C. PLAINTIFF’S SERVICE AWARD IS FAIR AND REASONABLE**

5 Incentive payments are intended to “compensate class representatives for work done on
6 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
7 and, sometimes, *to recognize their willingness to act as a private attorney general.*” *Rodriguez v.*
8 *West Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (emphasis added). Courts routinely
9 approve service awards to compensate named plaintiffs for the services they provide and the risks
10 they incur during the litigation. *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004)
11 (upholding “service payments” to plaintiffs for their efforts in bringing class case). The factors
12 courts use in determining the amount of service awards include: (1) a comparison between the
13 service awards and the range of monetary recovery available to the class; (2) time and effort put into
14 the litigation; (3) whether the litigation will further the public policy underlying the statutory
15 scheme; and (4) risks of retaliation. *Clark v. American Residential Services, LLC*, 175 Cal. App. 4th
16 785, 804-805 (2009).

17 The Settlement provides for a Service Award of \$10,000 for Plaintiff. The Service Award
18 payment is fair and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting
19 PAGA Counsel with the litigation and settlement, regularly conferring with PAGA Counsel on the
20 status of her case and the strategies for prosecuting the claims and agreeing to provide Defendant a
21 broad general release of all claims arising out of her employment. Plaintiff willingly came forward
22 to protect and advance the rights of the Aggrieved Employees on important legal disputes affecting
23 California employees. By way of example, Plaintiff assumed the serious risk of liability for
24 Defendant’s costs and potentially fees if the case was unsuccessful. Nevertheless, Plaintiff
25 knowingly and voluntarily undertook the risk to vindicate the rights of the Aggrieved Employees.
26 JCL Dec., ¶ 50.

27 Plaintiff’s efforts in bringing the lawsuit conferred a monetary benefit to 341 Aggrieved
28 Employees. Accordingly, Plaintiff and PAGA Counsel respectfully request the Court approve the

1 Service Award in accordance with the Settlement Agreement. Plaintiff and PAGA Counsel also
2 respectfully request approval of the requested Service Award in the amount of \$10,000.00 to
3 Plaintiff. JCL Dec., ¶ 51.

4 **VI. CONCLUSION**

5 Based on the foregoing, Plaintiff respectfully request this Court approve the PAGA
6 Settlement as set forth in the Settlement Agreement and enter the proposed order and judgment
7 submitted herewith.

8
9 Dated: January 7, 2025

JCL LAW FIRM, APC

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11 By: 
12 Jean-Claude Lapuyade, Esq.
13 Attorney for Plaintiff
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