

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Rachel N. Newman (State Bar #350826)
Jennifer Gerstenzang (State Bar #279810)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
shani@zakaylaw.com
jackland@zakaylaw.com
rachel@zakaylaw.com
jenny@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
jlapuyade@jcl-lawfirm.com

Attorneys for Plaintiffs

(Additional Counsel listed on next page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

LY HAI, on behalf of himself, those similarly
situated, and/or aggrieved California-based
nonexempt employees,

Plaintiff,

vs.

SUNROAD HS AUTO, INC., AND DOES 1
THROUGH 100, INCLUSIVE,

Defendant.

Case No: 37-2022-00025788-CU-OE-CTL

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

Date: March 28, 2025

Time: 9:10 a.m.

Judge: Hon. Judy S. Bae

Dept: C-62

BLACKSTONE LAW, APC

Barbara Duvan-Clarke (State Bar #259268)

Annabel Blanchard (State Bar #258135)

8383 Wilshire Boulevard, Suite 745

Beverly Hills, CA 90211

Telephone: (310) 622-4278

Facsimile: (855) 786-6356

bdc@blackstonepc.com

ablanchard@blackstonepc.com

Attorneys for Plaintiff LY HAI

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PERTINENT FACTUAL AND PROCEDURAL BACKGROUND	2
A.	Plaintiff's Exhaustion of Administrative Remedies Under PAGA and Civil Action Against Defendant	2
III.	TERMS OF THE PAGA SETTLEMENT	5
A.	The Gross Settlement Amount	5
B.	Allocation of Aggrieved Employee Payments	6
C.	Funding and Distribution	6
D.	Release of Claims	7
IV.	THE COURT SHOULD APPROVE THE PAGA SETTLEMENT	8
A.	The Gross Settlement Amount is Fair and Reasonable	8
i.	Estimated Liability for Unpaid Wages	10
ii.	Estimated Liability for Miscalculation of Regular Rate of Pay for Purposes of Overtime, Meal Premiums, and Redeemed Sick Pay	10
iii.	Estimated Penalties for Meal Period Violations	11
iv.	Estimated Penalties for Rest Period Violations	12
v.	Estimated Penalties for Unreimbursed Business Expenses	13

1	vi. Estimated Derivative Penalties for Wage Statement Violations	13
2		
3	B. The Gross Settlement Compares Favorably to The Likely Recovery	14
4		
5	C. The Remaining Settlement Terms Are Fair and Reasonable	15
6	V. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE	16
7		
8	A. The Requested Attorneys' Fee is Fair and Reasonable	16
9		
10	B. PAGA Counsel are Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs	18
11		
12	VI. CONCLUSION	19

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TABLE OF AUTHORITIES

CASES

1		
2	<i>Alvarado v. Dart Container Corp. of California</i>	
3	(2018) 4 Cal.5th 542, 552-554.....	11
4	<i>Amaral v. Cintas Corp. No. 2</i>	
5	(2008) 163 Cal.App.4th 1157, 1209	9, 12
6	<i>Bell v. Farmers Ins. Exch.,</i>	
7	115 Cal.App.4th 715, 726 (2004)	18
8	<i>Bernstein v. Virgin America, Inc.</i>	
9	(2021) 3 F.4th 1127, 1144	9, 12
10	<i>Boyd v. Bank of America,</i>	
11	2014 WL 6473804, at *11 (C.D. Cal. 2014).....	17
12	<i>Cardenas v. McLane Foodservice, Inc.,</i>	
13	2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	14
14	<i>Carrington v. Starbucks Corp.</i>	
15	(2018) 30 Cal.App.5th 504	9, 14
16	<i>Clark v. American Residential Services, LLC,</i>	
17	Cal. App. 4th 785, 804-805 (2009).....	19
18	<i>Dunk v. Ford Motor Co.</i>	
19	(1996) 48 Cal.App.4th 1794, 1800-1801.....	8
20	<i>Emmons v. Quest Diagnostics Clinical Labs., Inc.,</i>	
21	2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017).....	17
22	<i>Fleming v. Covidien, Inc.,</i>	
23	2011 WL 7563047, *4 (C.D. Cal. 2011)	15
24	<i>Gola v. University of San Francisco,</i>	
25	San Francisco Superior Court Case No. CGC-18-5655018.....	15
26	<i>Harris v. Marhoefer,</i>	
27	24 F.3d 16, 19 (9th Cir. 1994).....	18
28	<i>Hartless,</i>	
	273 F.R.D. at 645-46	18
	<i>Hibbs-Rines v. Seagate Technologies,</i>	
	2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009).....	14
	<i>Hopkins v. Stryker Sales Corp.,</i>	
	No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013).....	17
	<i>Iskanian v. CLS Transportation,</i>	
	59 Cal. 4th 348, 381 (2014).....	1
	<i>Kaanaana v. Barrett Bus. Servs., Inc.,</i>	
	29 Cal App 5th 778, 788 (2018).....	15
	<i>Kim v. Reins International California, Inc.</i>	
	(2020) 9 Cal.5th 73, 88;.....	8
	<i>Laffitte v. Robert Half Int'l Inc.,</i>	
	1 Cal.5th 480, 504, 506 (2016).....	16-17
	<i>Moniz v. Adecco USA, Inc. (2021)</i>	
	72 Cal.App.5th 56, 77, 88.....	8
	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
	(2022) 13 Cal. 5th 93.....	15
	<i>Ordonez v. Radio Shack, Inc.</i>	
	(C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11.....	12
	///	

1	<i>Pellegrino v. Robert Half Intern., Inc.</i> ,	
	182 Cal.App.4th 278 (2010).....	17
2	<i>Rider v. City of San Diego</i> ,	
	11 Cal. App. 4th 1410, 1423 n.6 (1992).....	18
3	<i>Rodriguez v. West Publ'g Corp.</i> ,	
	563 F.3d 948, 958-59 (9th Cir. 2009).....	18
4	<i>Taylor v. FedEx Freight, Inc.</i> ,	
	2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016)	1
5	<i>Vandervort v. Balboa Capital Corp.</i> ,	
	8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014).....	17
6	<i>Villa v. United Site Servs. of California, Inc.</i>	
	(N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8	13
7	<i>Wesson v. Staples the Off. Superstore</i> ,	
	2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021)	14
8	<i>Wershba v. Apple Computer, Inc.</i> ,	
	91 Cal.App.4th 224, 254 (2001)	17
9	<i>Williams v. Superior Court</i>	
	(2017) 3 Cal.5th 531, 549.....	8
10	<i>Zayerz v. Kiewit Infrastructure West</i> ,	
	2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018).....	14
11	<i>ZB, N.A. v. Superior Court</i> ,	
	8 Cal. 5th 175, 182 (2019).....	1, 5

RULES, CODES, AND STATUTES

14	<i>Cal. Lab. Code</i> § 201 et seq.....	7, 9
15	<i>Cal. Lab. Code</i> § 202.....	7, 9
16	<i>Cal. Lab. Code</i> § 203.....	7, 9
	<i>Cal. Lab. Code</i> § 204.....	7, 9
17	<i>Cal. Lab. Code</i> § 210.....	7
	<i>Cal. Lab. Code</i> § 218 et seq.....	7
18	<i>Cal. Lab. Code</i> § 226 et seq.....	7, 9, 13, 15
	<i>Cal. Lab. Code</i> § 227.3.....	7
19	<i>Cal. Lab. Code</i> § 233.....	7
	<i>Cal. Lab. Code</i> § 246.....	7, 9, 11
20	<i>Cal. Lab. Code</i> § 248.7.....	7
	<i>Cal. Lab. Code</i> § 256.....	7
21	<i>Cal. Lab. Code</i> § 382.....	16
22	<i>Cal. Lab. Code</i> § 558 et seq.....	9
	<i>Cal. Lab. Code</i> § 510.....	7
23	<i>Cal. Lab. Code</i> § 512.....	5, 9
	<i>Cal. Lab. Code</i> § 556.....	7
24	<i>Cal. Lab. Code</i> § 1174 et seq.....	7
25	<i>Cal. Lab. Code</i> § 1194.....	7, 9
	<i>Cal. Lab. Code</i> § 1197 et seq.....	7, 9
26	<i>Cal. Lab. Code</i> § 1198.....	7, 9
	<i>Cal. Lab. Code</i> § 1199.....	7
27	<i>Cal. Lab. Code</i> § 2698 et seq.....	3, 7
	<i>Cal. Lab. Code</i> § 2699 et seq.....	1, 3, 5-6, 8, 14-15
28	<i>Cal. Lab. Code</i> § 2802.....	7, 10, 13

<i>Cal. Lab. Code</i> § 2804.....	7
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Ly Hai, Tyler Wayne Sneed, Mohammad Tahbaz, Shawn Farden, Jorge Aguirre, Roman Mayne, and Christianna Yousif (collectively referred to as “Plaintiffs”) seek approval of the PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 1,268 “Aggrieved Employees,” defined as all current and former non-exempt employees employed by Defendants Sunroad Auto, LLC, Sunroad HS Auto, Inc., Sunroad CV Auto, Inc., Sunroad MV Auto, Inc., and Sunroad EC Auto, LLC f.k.a. Sunroad BCV Auto, Inc. (collectively referred to as “Defendants”), either directly or as a joint employer, and who worked in California during the PAGA Period.² Agreement at §§ 1.26; 1.23; 1.24. This is only a settlement of the PAGA claim for civil penalties and is not a class settlement and does not release the individual wage claims, if any, of the affected employees other than Plaintiff herself. Cal. Lab. Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

If approved, the Aggrieved Employees and the California Labor Workforce and Development Agency (“LWDA”) will share the Gross Settlement Amount of Four Hundred Eighty Thousand Dollars and Zero Cents (\$480,000.00). § Agreement at 1.11.

An objective evaluation of the proposed settlement confirms that the relief negotiated on behalf of the Aggrieved Employees and the LWDA is fair, reasonable, and valuable. The

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.

² The PAGA Period, as defined in the Agreement is defined as: one year prior to each of the respective PAGA Letters, which varies depending on the dealership at issue and the date of the respective PAGA letter:

- Sunroad Auto LLC – December 20, 2020, to the PAGA Period End Date
- Sunroad HS Auto, Inc. – April 25, 2021, to the PAGA Period End Date
- Sunroad CV Auto, Inc. – April 18, 2022, to the PAGA Period End Date
- Sunroad MV Auto, Inc. – July 7, 2022, to the PAGA Period End Date
- Sunroad EC Auto, LLC (formerly known as Sunroad BCV Auto, Inc.) – February 6, 2023 to the PAGA Period End Date

The PAGA Period End Date is defined as: May 10, 2024, or when the total aggregate of PAGA Periods increase 10% above 39,283 (i.e. 43,211), whichever occurs sooner.

Settlement is a product of informed, adversarial, and non-collusive negotiations between experienced counsel. As discussed below, the proposed Settlement satisfies all criteria for PAGA settlement approval. Accordingly, Plaintiffs and PAGA Counsel respectfully request this Court grant approval of the Agreement. Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 11.

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff’s Exhaustion of Administrative Remedies Under PAGA And Civil Action Against Defendants

On December 22, 2021, Plaintiff Tyler Wayne Sneed, on behalf of himself and on behalf of other Aggrieved Employees, served Defendants Sunroad Auto LLC, Sunroad CV Auto, LLC, and the LWDA with a Notice of Violations (“Plaintiff Sneed’s PAGA Notice”) outlining claims against Defendants for alleged violations of the California Labor Code, including claims 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 correctly calculate the regular rate of pay, failure to maintain true and accurate records, failure to reimburse business expenses, failure to provide accurate itemized wage statements; and failure to timely pay wages due during, and upon termination of employment. JCL Dec., ¶ 12.

On April 25, 2022, Plaintiff Ly Hai provided written notice to Defendant Sunroad HS Auto, Inc. and the LWDA of the Labor Code violations alleged to have been committed by Sunroad HS Auto, Inc. (“Hai PAGA Letter”). JCL Dec., ¶ 13.

On September 22, 2022, Plaintiff Mohammad Tahbaz provided written notice to Defendants and the LWDA of the Labor Code violations alleged to have been committed by Sunroad HS Auto, Inc. (“Tahbaz PAGA Letter”) (LWDA Case No. LWDA-CM-909488-22). JCL Dec., ¶ 14.

On April 18, 2023, Plaintiffs Tyler Wayne Sneed and Jorge Aguirre provided a supplementary written notice to Defendants and to the LWDA of the Labor Code violations alleged to have been committed by Defendants (“Aguirre PAGA Letter”) (LWDA Case No. LWDA-CM-858919-21). JCL Dec., ¶ 15.

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1 On June 27, 2023, Plaintiff Shawn Farden provided written notice to Defendants and to the
2 LWDA of the Labor Code violations alleged to have been committed by Defendants (“Farden
3 PAGA Letter”) (LWDA Case No. LWDA-CM-964812-23). JCL Dec., ¶ 16.

4 On July 7, 2023, Plaintiff Roman Mayne provided written notice to Defendants and to the
5 LWDA of the Labor Code violations alleged to have been committed by Defendants (“Mayne
6 PAGA Letter”) (LWDA Case No. LWDA-CM-966814-23). JCL Dec., ¶ 17.

7 On October 15, 2024, Plaintiffs Shawn Farden and Christianna Yousif provided
8 supplementary written notice to Defendants and to the LWDA of the Labor Code violations alleged
9 to have been committed by Defendants (“Yousif PAGA Letter”) (LWDA Case No. LWDA-CM-
10 1056438-24). JCL Dec., ¶ 18.

11 The 65-day “waiting period” on Plaintiffs’ right to file a civil action under PAGA, *see* Cal.
12 Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiffs that it intended to
13 investigate the claims in the PAGA Notices. To date, the LWDA still has not advised Plaintiffs of
14 any intent to take action with respect to the claims in the PAGA Notices. JCL Dec., ¶ 19.

15 On February 28, 2022, Plaintiff Tyler Wayne Sneed filed a representative action complaint
16 against Defendants in the Superior Court for San Diego, Case Number 37-2022-00007661-CU-OE-
17 CTL. The complaint alleged a single cause of action for violation of the Private Attorneys General
18 Act § 2698, *et seq* (“PAGA”). JCL Dec., at ¶ 20.

19 On June 30, 2022, Plaintiff Ly Hai filed a class and representative action complaint against
20 Defendants in the Superior Court for San Diego, Case Number 37-2022-00025788-CU-OE-CTL,
21 alleging six causes of action for (1) Failure to Provide Meal Periods; (2) Failure to Authorize or
22 Permit Rest Periods; (3) Failure to Timely Pay Final Wages; (4) Failure to Provide Itemized Wage
23 Statements; (5) Unfair Competition Law; and (6) Civil Penalties Pursuant to PAGA. JCL Dec., at ¶
24 21.

25 On November 22, 2022, Plaintiff Ly Hai dismissed his individual and class claims without
26 prejudice, moving forward with a single cause of action for violations of PAGA. JCL Dec., at ¶ 22.

27 On October 17, 2024, Plaintiff Ly Hai filed a First Amended Complaint, adding all
28 Plaintiffs and Defendants to the Hai Matter. JCL Dec., at ¶ 23.

1 On January 21, 2025, Plaintiff Ly Hai filed a joint Stipulation to File a Second Amended
2 Complaint to correct an error on one of the named Defendants. On the same date, Plaintiff Ly Hai
3 filed a Joint Stipulation to Approve PAGA Settlement and Release Agreement. However, the Court
4 rejected the stipulations and requested that the Parties file a noticed motion, instead of a joint
5 stipulation. Plaintiffs re-filed the joint Stipulation to File a Second Amended Complaint on March
6 5, 2025. JCL Dec., at ¶ 24.

7 Defendants provided Plaintiffs with sufficient information to properly evaluate Defendants’
8 potential liability exposure. Among the data and documents Defendants produced included, but was
9 not limited to, a 20% sample of the Aggrieved Employees time and payroll data and more than
10 1,000 pages of wage and hour policy material. Defendant also disclosed the total number of
11 Aggrieved Employees and aggregate number pay periods worked by the Aggrieved Employees
12 during the PAGA Period. In sum Plaintiffs’ counsel analyzed more than 300,000 unique cells of
13 time and payroll data and more than 1,000 pages of policy material concerning the Aggrieved
14 Employees. JCL Dec., at ¶ 25.

15 On February 5, 2024, the Parties participated in an all-day mediation with Chris Barnes,
16 Esq., an experienced mediator of wage and hour class and representative actions. Though the
17 mediation did not conclude in a settlement, the Parties continued to engage in arms-length informal
18 settlement discussions, and ultimately agreed on a settlement that was memorialized in the form of
19 a Memorandum of Understanding (“MOU”). The Parties subsequently drafted and negotiated a
20 long-form settlement which is the subject of the instant motion. The Settlement was negotiated in
21 light of all known facts and circumstances and the uncertainty associated with litigation – including
22 the risk of Plaintiff not being able to maintain representative claims and establishing manageability,
23 the difficulty of proving Plaintiff’s claims in a manageable trial, the merits of Defendants’ potential
24 defenses, and the significant delay and potential appellate issues inherent to litigation – and was
25 reached after extensive arm’s length negotiations. JCL Dec., ¶ 26.

26 The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted
27 by Plaintiffs on behalf of themselves, the LWDA, and the State of California. This is only a
28 Settlement of the PAGA claims for civil penalties and is not a class settlement and does not release

1 the individual claims, if any, of the Aggrieved Employees. This Settlement does not release any
2 claim that is not a PAGA claim.³ JCL Dec., at ¶ 27.

3 Pursuant to California Labor Code Section 2699(1), Plaintiffs are providing copies 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 Plaintiffs 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 ¶ 28.

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 Four Hundred Eighty Thousand Dollars and Zero Cents (\$480,000.00) to
13 resolve the PAGA claims. The Gross Settlement Amount will be used to pay Individual PAGA
14 Payments, the LWDA PAGA Payment, Plaintiffs' Attorneys Fees and Costs, PAGA Representative
15 Service Payments, and the Administrator's Expenses. This Gross Settlement Amount is an all-in
16 amount without any reversion to Defendants, with no claim forms required. Agreement at §§ 1.11
17 and 4.1. JCL Dec., at ¶ 29.

18 The PAGA Penalties Amount, is the amount remaining from Gross Settlement Amount after
19 the deduction of Attorneys' Fees and Costs, the PAGA Representative Service Payments and the
20 Administration Expenses. Agreement at § 1.22. The PAGA Penalties Amount will be allocated the
21 25% to the Aggrieved Employees ("PAGA Employees' Share") and 75% to the LWDA ("LWDA
22 PAGA Payment"). Agreement at §§ 1.15, 1.18 and 1.21. The PAGA Penalties Amount is currently
23 estimated to be Two Hundred Twenty-Six Thousand Dollars and Zero Cents (\$226,000).⁴

24 This 75/25 allocation is required by Labor Code § 2699(i) as explained by *ZB, N.A. v.*
25

26 ³ As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th 175 at 196: "Nonparty employees are bound by the
27 judgment in an action under the PAGA, but only with respect to recovery of civil penalties."

28 ⁴ The PAGA Penalties Amount is the Gross Settlement Amount (\$480,000) minus Attorneys' Fees (\$168,000),
Attorneys' Costs (\$25,000), PAGA Representative Service Payments in the amount of \$7,500 to each Plaintiff (\$52,500
total), and the Administrator Expenses Payment (\$8,500).

1 *Superior Court*, 8 Cal.5th 175 (2019).⁵

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

3 The Individual PAGA Payments, which is each Aggrieved Employees *pro rata* share of the
4 PAGA Employees' Share, will be based on the number of pay periods worked by each Aggrieved
5 Employee during the PAGA Period. The Administrator will calculate each Individual PAGA
6 Payment by (a) dividing the Aggrieved Employees' Share (25% of the PAGA Penalties Amount")
7 by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA
8 Period. The resulting pay period value will then be multiplied by the number of PAGA Pay Periods
9 worked by each Aggrieved Employee to calculate their Individual PAGA Payment. Agreement at
10 §§ 1.12 and 5.3.

11 At the time the parties reached the settlement, Defendants estimated that there were
12 approximately 1,268 Aggrieved Employees who worked approximately 39,283 pay periods during
13 the PAGA Period based on company records. Agreement at § 10.⁶

14 **C. Funding and Distribution**

15 Provided that an order approving this Settlement is entered by the Court, Defendants shall
16 fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than
17 twenty-eight (28) calendar days after the Effective Date. Agreement at § 5.3 Within fifteen (15)
18 days after Defendants fully fund the Gross Settlement Amount, the Settlement Administrator will
19 mail the Individual PAGA Payments via First-Class U.S. Mail to the Aggrieved Employees' last
20 known mailing address. Agreement at § 5.2. Settlement checks issued to Aggrieved Employees
21 will expire one hundred eighty (180) days from the date they are issued by the Settlement
22 Administrator. Agreement at § 5.4. If the check remains uncashed by the expiration of the 180-day
23 period, the Settlement Administrator shall transmit the funds represented by such checks to the
24

25 ⁵ This allocation is proper because the PAGA Notices were served prior to the amendment of Labor Code § 2699(i).

26 ⁶ The Agreement contains an escalator clause, providing that, should the number of Pay Periods increase by more than
27 10% of 39,283, Defendants have the option to either: 1) pay a pro-rata amount over the Gross Settlement Amount to
28 address any additional pay periods above the 10% threshold and settle those additional PAGA Pay Periods. (For
example, if the actual number of PAGA Pay Periods is 11% higher than 39,283, the Gross Settlement Amount will be
increased by 1%), or 2) alternatively, Defendants will have the option to end the PAGA Period on the date when PAGA
Pay Periods do not exceed the 10% threshold. Agreement at § 10.

1 California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee whose
2 check remains uncashed. Agreement at § 5.4. The Aggrieved Employee Payments are 100%
3 penalties and shall be reported using IRS Form 1099s. Agreement at § 4.2(c)(i).

4 **D. Release of Claims**

5 Upon entry of Judgment and funding of the Gross Settlement Amount, the State of
6 California, the LWDA, the Aggrieved Employees, and Plaintiffs shall release the Released Parties
7 (as defined in the Agreement) from the Released PAGA Claims, which include the claims for civil
8 penalties resulting from the Labor Code violations alleged, or that could have been alleged, against
9 Defendants arising out of the facts, circumstances, and primary rights in the Operative Complaint.
10 The Parties further agree the settlement of this Action shall be binding on Plaintiffs, the Aggrieved
11 Employees, the LWDA, the State of California, Defendants, and the Released Parties. Because of
12 this release, the Aggrieved Employees cannot sue under, or recover in any other action brought
13 under PAGA, California Labor Code sections 2698 *et seq.*, for any violations of the Released
14 Claims that took place during the PAGA Period. This includes PAGA claims that occurred during
15 the PAGA Period for: (1) failure to pay all minimum or other wages (including commission and
16 piece-rate wages; (2) failure to pay all overtime and double time wages; (3) meal period violations
17 and claims for meal period premium pay; (4) rest period violations and claims for rest period
18 premium pay; (5) failure to properly pay paid sick leave/paid time off; (6) failure to pay all wages
19 during employment and upon termination; (7) failure to furnish accurate itemized wage statements;
20 (8) failure to maintain accurate payroll records; and (9) failure to reimburse business expenses, all
21 in violation of Labor Code sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3,
22 226.7, 227.3, 233, 246 through 248.7, 256, 510, 512, 556, 1174(d), 1174.5, 1194, 1197, 1197.1,
23 1197.14, 1198, 1199, 2802, and 2804. The Parties agree there is no statutory right for any
24 Aggrieved Employee to object, opt out or otherwise exclude himself or herself from the Settlement.
25 The Parties further agree there is no right or opportunity for any Aggrieved Employee to appeal the
26 approval of the PAGA settlement by the Court. This Agreement shall not be subject to collateral
27 attack by any Aggrieved Employee. The release of claims for PAGA penalties shall bind the
28 Aggrieved Employees, the LWDA, and the State of California. Agreement at § 6.2.

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

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

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

21 The Gross Settlement Amount of \$480,000.00 is fair and reasonable and, therefore, should
22 be approved. Here, without including derivative penalties, Defendants’ liability exposure is
23 estimated at approximately \$2,950,950 in PAGA Penalties. JCL Dec., ¶ 30. If derivative penalties
24 are included (or “stacked”), Defendants’ maximum liability exposure is estimated at approximately
25 \$5,997,350. Plaintiffs estimated Defendants’ exposure as follows:

26
27 ///

28 ///

Claim	Penalty Amount⁷	Number of Pay Periods w/ Alleged Violation	Alleged Violation Rate	Total Penalties
<i>Meal Period Violations</i> Cal. Labor Code §§ 226.7, 512 and 558	\$50 ⁸	11,443	37.6% of PAGA Pay Periods	\$572,150
<i>Rest Period Violations</i> Cal. Labor Code §§ 226.7, 512 and 558	\$50	11,443	37.6% of PAGA Pay Periods	\$572,150
<i>Unpaid Wages Violations</i> Cal. Labor Code §§ 201, 202, 203, 204, 246, 1194, 1197, 1997.1, 1198 and 558	\$50	7,616	25% of PAGA Pay Periods	\$380,800
<i>Wage Statement Violations</i> Cal. Labor Code §§ 226 and 226.2	\$100	30,464	100% of PAGA Pay Periods	\$3,046,400
<i>Miscalculated Regular Rate of Pay for Purposes of Overtime, Meal Premiums, and Redeemed Sick Pay</i> Cal. Labor Code §§ 246, 201, 202, 203, 204	\$50	13,285	43.6% of PAGA Pay Periods	\$664,250

⁷ 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.

⁸ The \$50 penalty rate was used for several reasons in this instance. First, 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, Plaintiffs used a \$50 penalty per violation for the meal and rest break claim. Second, Defendants argued that increased civil penalties for subsequent violations do not apply unless the Plaintiffs 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 Plaintiffs would recover full penalty amounts even if they prevailed in establishing the underlying Labor Code violations.

<i>Failure to Reimburse for Mandatory Business Expenses</i> Cal. Labor Code § 2802	\$100	7,616	25% of PAGA Pay Periods	\$761,600
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JCL Dec., ¶ 31.

i. Estimated Liability for Unpaid Wages

Plaintiffs alleges that Defendants failed to pay all wages due to Plaintiff and the Aggrieved Employees. First, Plaintiffs allege that Defendants’ compensation system failed to separately compensate commission-based for all non-productive time. Specifically, Plaintiffs allege that, some employees were paid an hourly wage only when their commission were not sufficient to meet minimum wage requirements. Additionally, Plaintiffs and other Aggrieved Employees allege that Defendants regularly required them to work off-the-clock. Specifically, Plaintiffs allege that they regularly worked through meal breaks and performed work before and/or after they clocked out. Defendants argue that Plaintiffs and Aggrieved Employees were paid for all of their time worked. Further, Defendants argue that they never required Plaintiffs or other Aggrieved Employees to work off-the-clock, and their policies prohibit such off-the-clock work. Considering Defendants’ defenses, Plaintiffs estimate Defendants’ exposure for this claim to be approximately \$380,800.

JCL Dec., ¶ 32.

ii. Estimated Liability for Miscalculation of Regular Rate of Pay for Purposes of Overtime, Meal Premiums, and Redeemed Sick Pay

Plaintiffs alleged that Defendants miscalculated the regular rate of pay for purposes of calculating overtime, meal premiums, and redeemed sick pay because Defendants failed to include non-discretionary incentive compensation when calculating the rates for these pay categories. Specifically, Plaintiffs’ expert found additional compensation identified as “P-SPIFF,” “B-BONUS,” “C-COMMISSION,” and “I-RETRO BONUS,” among others. Plaintiffs contend that these forms of additional compensation paid to sales associates were not properly included in the regular rate of pay calculation for purposes of calculating and paying overtime, meal premiums, and sick pay. The regular rate of pay, which can change from pay period to pay period, includes adjustments to the

1 straight time rate, reflecting, among other things, non-discretionary bonuses and awards, shift
2 differentials and the per-hour value of any non-hourly compensation the employee has earned.
3 *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. For overtime work,
4 “an employee must receive a 50 percent premium on top of his or her regular rate of pay[.]” *Id.* at
5 553. Further, California Labor Code section 246(1)(1) expressly mandates that sick pay for non-
6 exempt employees be based on either “the regular rate of pay for the workweek in which the
7 employee uses paid sick time” or the regular rate of pay in the 90 days preceding the use of the sick
8 leave. Conversely, Defendants denied liability and asserted they paid the correct rate of pay for
9 purposes of overtime wages, meal period premiums, and sick pay. Defendants also argued that
10 certain bonuses were discretionary and did not need to be included in the regular rate calculation for
11 payment of overtime wages, meal period premiums, and sick pay, and that certain employees were
12 exempt from overtime based on the inside sales exemption. Lastly, Defendants argue that this claim
13 did not affect all Aggrieved Employees. JCL Dec., ¶ 33.

14 Plaintiffs estimated that Defendants’ exposure for this claim was approximately \$664,250.
15 This number was calculated by multiplying the number of pay periods with a violation of overtime,
16 meal period premium, and/or sick pay regular rate calculations by a violation rate of \$50 per pay
17 period. JCL Dec., ¶ 34.

18 **iii. Estimated Penalties for Meal Break Violations**

19 Plaintiffs also alleged that Defendants’ time records reflected non-compliant meal periods.
20 Specifically, Plaintiff alleges that Defendants regularly violated the law by failing to provide meal
21 periods, providing late meal periods, providing short meal periods, and/or requiring employees to
22 work through their meal periods. JCL Dec., ¶ 35. A review of Defendants’ time records evidenced
23 very modest meal period violation on 10.6% of all eligible shifts. However, this violation rate
24 equated to a meal period violation in 37.6% of all pay periods. JCL Dec. ¶36.

25 Conversely, Defendants asserted that it maintained facially compliant meal period policies
26 and practices throughout the PAGA Period, and that any non-compliant meal break was the result
27 of voluntary waiver of the same by the employee. Thus, Defendants argued that there was no
28 potential liability for Plaintiffs’ alleged meal period violations. Further, Defendants’ payroll records

1 evidenced 11,447 meal period penalty premiums pay to the Aggrieved Employees during the
2 PAGA Period. JCL Dec., ¶ 37

3 Plaintiffs estimated the penalties for this claim at \$572,150. This number was calculated by
4 multiplying the number of total pay periods where there was a meal period violation by a violation
5 rate of \$50. The \$50 penalty rate was used for the same reasons as stated above. JCL Dec., ¶ 38.

6 **iv. Estimated Penalties for Rest Period Violations**

7 Plaintiffs also alleged that Defendants failed to provide compliant rest periods. Specifically,
8 Plaintiffs alleged that because of their rigorous work schedules, Plaintiffs and Aggrieved
9 Employees were not able to take timely and duty-free rest periods. JCL Dec., ¶ 39. Because rest
10 periods are not recorded, Plaintiffs could not identify a violation rate. Plaintiffs therefore made the
11 reasonable assumption that rest period violations were committed at a rate similar to that of meal
12 period violations. JCL Dec., ¶ 40. Based on an estimated 37.6% of PAGA Pay Periods containing a
13 violation, Plaintiffs contended that their claim for rest period violations was potentially worth
14 approximately \$572,150. This was calculated by multiplying the number of total pay periods with a
15 rest period violation by a violation rate of \$50 dollars. The \$50 penalty rate was used for a number
16 of reasons in this instance. First, Defendants argued that increased civil penalties for subsequent
17 violations do not apply unless the Plaintiffs can present evidence that the Labor Commission or a
18 court notified the employer that it was in violation of the Labor Code. *Bernstein v. Virgin America,*
19 *Inc.* (2021) 3 F.4th 1127, 1144 citing *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157,
20 1209 [“Until the employer has been notified that it is violating a Labor Code provision ... the
21 employer cannot be presumed to be aware that its continuing underpayment of employees is a
22 ‘violation’ subject to penalties.”].) JCL Dec., ¶ 41.

23 Defendants argued that Plaintiffs’ rest break claim would have mainly relied on the
24 testimony of Aggrieved Employees, making it a riskier claim. Establishing liability likely would
25 have entailed competing testimony stating either rest breaks were taken, or rest breaks were
26 voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL
27 210223, at *11 (“Because of the competing testimony before the Court, plaintiff’s evidence that
28 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.”). JCL Dec., ¶ 42.

v. Estimated Penalties for Unreimbursed Business Expenses

Plaintiffs alleged that Defendants required Plaintiffs and other sales associates to use their personal cellular phones to communicate with fellow employees and to receive work-related calls, emails, and text messages. However, Plaintiffs contend Defendants did not reimburse Plaintiffs and other sales associates for these expenses. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. (See Cal. Labor Code § 2802(a), providing that “an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...”). Defendants denied any liability for this claim. Defendants argued that any cell phone use was not mandatory. Defendants further argue that they provided a stipend for cell phone / data use for employees who needed to use their cell phone for work. JCL Dec., ¶ 43.

Plaintiffs estimated that Defendants’ exposure for this claim was approximately \$761,600 in penalties. This was calculated by multiplying the total number of pay periods by a violation rate of \$100 per pay period. JCL Dec., ¶ 44.

vi. Estimated Derivative Penalties for Wage Statement Violations

Plaintiffs alleged that Defendants failed to provide accurate itemized wage statements that include all items required by Labor Code § 226(a)(1-9). Specifically, Plaintiffs allege that Defendants violated Labor Code sections 226(a)(2) and 226(a)(9) by failing to list the total hours worked by the employee and the applicable hourly rates in effect during the pay period. Additionally, as a result of the failure to pay employees for all time worked, and failure to pay for all premiums owed, the wage statements issued by Defendants do not indicate the correct number of hours worked, the amount of gross wages earned, or net wages earned during each pay period. Plaintiffs’ expert estimated that Defendant could be liable for \$3,046,400 in *derivative* PAGA penalties as a result of wage statement violations. JCL Dec., ¶ 45.

1 **B. The Gross Settlement Compares Favorably to The Likely Recovery**

2 Considering the above, the Gross Settlement Amount is approximately 8% of Defendants’
3 potential PAGA exposure if stacking of penalties is permitted. Without stacking, the Gross
4 Settlement Amount is approximately 16.26%. The Gross Settlement Amount compares favorably
5 to the likely recovery of PAGA penalties through continued litigation. Defendants’ maximum
6 exposure to PAGA penalties is not a realistic outcome of the litigation because it fails to account for
7 the risks of continued litigation including, but not limited to, Defendants’ defenses. *See, Zayerz v.*
8 *Kiewit Infrastructure West*, 2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018). For
9 instance, Defendants argued that it can only be assessed civil penalties for actual violations of the
10 Labor Code. *See* Lab. Code § 2699(f)(2). In other words, to recover any civil penalties, Plaintiffs
11 would be required to prove the underlying Labor Code violations. (*Cardenas v. McLane*
12 *Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) [“Given the statutory
13 language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not
14 proven suffered a violation of the Labor Code by the defendant.”].) To do this, Plaintiffs would
15 need to prove each Aggrieved Employee was subject to the alleged Labor Code violation, which
16 would be difficult to do, since Defendants deny any liability or wrongdoing of any kind associated
17 with the claims alleged in this action. JCL Dec., ¶ 46.

18 Thus, Defendants contended that Plaintiffs would be required to “prove Labor Code
19 violations with respect to each and every individual on whose behalf Plaintiff seek to recover civil
20 penalties under PAGA.” *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal.
21 Mar. 2, 2009). When “determining whether the employer committed Labor Code violations with
22 respect to each employee” is impractical, the PAGA action can be dismissed. *Wesson v. Staples the*
23 *Off. Superstore*, 2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021). JCL Dec., ¶ 47.

24 Finally, the maximum penalty figure does not consider that Courts have complete discretion
25 to “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based
26 on the facts and circumstances of the particular case, to do otherwise would result in an award that
27 is unjust, arbitrary and oppressive, or confiscatory.” (Cal. Lab. Code § 2699(e)(2)). In fact, Courts
28 routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g. Carrington v.*

1 *Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to \$5 per pay period;
2 “Although the trial court may have disagreed with Starbucks regarding the issue of liability, it
3 clearly took the circumstances proffered by Starbucks into consideration when it imposed the
4 penalty ... only \$5 per initial violation”); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal App 5th
5 778, 788 (2018), review granted on other grounds (noting that the trial court “exercised its
6 discretion to reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n
7 average, plaintiffs were deprived of 13 percent of the 30-minute meal period”); *Fleming v.*
8 *Covidien, Inc.*, 2011 WL 7563047, *4 (C.D. Cal. 2011) (exercising discretion to reduce the
9 maximum amount of PAGA civil penalties for plaintiffs’ section 226 claims from \$2,800,000 to
10 \$500,000 because the employees suffered no injuries as a result of the erroneous wage statements
11 and made no complaints about the errors or omissions in the wage statements, thus reducing the
12 maximum penalty by 82%); *see also, Gola v. University of San Francisco*, 90 Cal. App. 5th 548
13 (2023), *as modified* (May 9, 2023), *reh’g denied* (May 15, 2023), *review denied* (July 12, 2023), *and*
14 *disapproved of by Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 547 P.3d 980 (2024)
15 (concluding after a full-blown bench trial that a penalty of 15% of the maximum PAGA penalties
16 was the appropriate penalty). The gross amount obtained by PAGA Counsel is reasonable in light of
17 Defendants’ arguments. JCL Dec., ¶ 48.

18 Given Defendants’ defenses to the claimed Labor Code violations at issue, the risks and
19 costs of continued litigation, Plaintiffs and PAGA Counsel believe that the Gross Settlement
20 Amount is fair and reasonable. This settlement was negotiated by experienced counsel at arm's
21 length. JCL Dec., ¶ 49. The LWDA has been provided with notice of this motion and the PAGA
22 settlement, and the decision of LWDA to accept the PAGA settlement and not oppose the motion
23 should be given considerable weight. Moreover, the LWDA is a sophisticated government entity
24 that can assert and protect its own rights. JCL Dec., ¶¶ 7, 50.

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

26 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code
27 § 2699(1) does not require that a court approve any other elements of the proposed settlement.
28 Because there are no class allegations for which Plaintiffs seek approval, the approval provisions

1 applicable to class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the
2 Court only needs to approve the settlement of the civil penalties sought in the PAGA claim.
3 Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable.
4 JCL Dec., ¶ 51.

5 **V. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE FAIR AND**
6 **REASONABLE**

7 PAGA Counsel seek approval of the Attorneys' Fees and Costs, comprised of attorneys'
8 fees in the amount of \$168,000 (35% of the Gross Settlement Amount) and reimbursement of
9 litigation costs not to exceed \$25,000.⁹ PAGA does not have any requirements for reviewing
10 attorneys' fees, and Plaintiffs' position is that the payment of attorneys' fees and costs in this
11 Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court
12 review the requested attorneys' fees, the requested fees and costs are reasonable for experience
13 wage and hour counsel. JCL Dec., ¶ 52.

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

15 The requested Attorneys' Fees and Costs of \$193,000, comprised of \$168,000 for attorneys'
16 fees and reimbursement of litigation expenses of up to \$25,000 is fair, reasonable, and justified by
17 the result achieved. Agreement at § 4.2(a); JCL Dec., ¶ 53. PAGA Counsel negotiated a recovery
18 of Four Hundred Eighty Thousand Dollars and Zero Cents (\$480,000.00), and this result justifies
19 the requested fees equal to one third of this recovery. This percentage is within the standard
20 contingent recovery percentage of one-third, and this percentage is what was expressly approved by
21 the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016). At the time this
22 case was brought, the result was far from certain. Defendants' defenses to the merits of the case
23 created difficulties with proof and complex legal issues for PAGA Counsel to overcome. Here,
24 several defenses asserted by Defendants present serious threats to the claims of Plaintiffs and the
25 Aggrieved Employees. Defendants asserted that their employment practices complied with all
26 applicable labor laws. If successful, Defendants' factual and legal defenses would eliminate *any*

27
28 ⁹ As detailed *infra*, at the time of filing this motion, Plaintiffs' Counsel incurred \$20,309.99 litigating this matter. Plaintiffs will provide the Court with a final amount of litigation costs at the time of hearing on this motion.

1 recovery to the Aggrieved Employees. While Plaintiffs believe that these defenses could be
2 overcome, Defendants maintain that these defenses have merit and therefore present a serious risk
3 to recovery. The Settlement was possible because PAGA Counsel was able to persuade Defendants
4 that there was an appreciable risk that Plaintiffs would prevail on the factual and legal issues
5 underlying liability and overcome difficulties in proof as to monetary relief. JCL Dec., ¶ 54.

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

19 As detailed in PAGA Counsels' time and billing records submitted herewith, PAGA
20 Counsels' current combined loadstar is \$212,919. JCL Dec., ¶¶ 8, 55-64; Declaration of Shani
21 Zakay ("Zakay Dec.") at ¶¶ 2-5; Declaration of Jonathan M. Genish ("JMG Dec.") at ¶ 19. Thus,
22 PAGA Counsels' fee request is equal to PAGA Counsel's loadstar with a negative multiplier of
23 0.78 – well below the 2.13 multiplier approved in *Laffitte* – and well within the recognized
24 multiplier range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS
25 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar
26 multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS
27 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar
28 multiplier of 1.7).

1 **B. PAGA Counsel are Entitled to Reimbursement of Actual and Reasonably**
2 **Incurred Litigation Costs.**

3 Attorneys who create a common fund for the benefit of a class are entitled to payment from
4 the fund of reasonable litigation expenses and costs. Common fund fee and expense awards
5 include counsel's incurred expenses because those who benefit from their effort should share in the
6 cost. *See Rider v. City of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate
7 analysis in deciding if costs are compensable is whether the costs are of the type typically billed by
8 attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir.
9 1994); *see also Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court
10 awarded litigation costs for consultants, online legal research, copying, postage, long distance
11 charges, travel expenses, filing fees, mediation fees and investigation fees). Prior to incurring costs
12 for filing of this motion, PAGA Counsel collectively expended \$20,309.99 prosecuting this action
13 (JCL Law Firm, APC - \$10,211.22, Zakay Law Group, APLC - \$7,761.57, Blackstone Law, APC -
14 \$2,337.20. JCL Dec. ¶¶ 9, 65; Zakay Dec. ¶ 6-7. JMG Dec. ¶ 16. PAGA Counsel's out-of-pocket
15 expenses are the types of expenses normally charged to paying clients including the following:
16 filing fees; copying; postage; factual and legal research charges; mediation fees; and expert costs
17 which were all incurred during, and were necessary for the successful prosecution of, the litigation
18 and, therefore, should be reimbursed. JCL Dec. ¶¶ 9, 66.

19 **VI. PLAINTIFFS' ENHANCEMENT AWARDS ARE FAIR AND REASONABLE**

20 Incentive payments are intended to "compensate class representatives for work done on
21 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
22 and, sometimes, *to recognize their willingness to act as a private attorney general.*" *Rodriguez v.*
23 *West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (emphasis added). Courts routinely
24 approve service awards to compensate named plaintiffs for the services they provide and the risks
25 they incur during the litigation. *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004)
26 (upholding "service payments" to plaintiffs for their efforts in bringing class case). The factors
27 courts use in determining the amount of service awards include: (1) a comparison between the
28 service awards and the range of monetary recovery available to the class; (2) time and effort put

1 into the litigation; (3) whether the litigation will further the public policy underlying the statutory
2 scheme; and (4) risks of retaliation. *Clark v. American Residential Services, LLC*, 175 Cal. App. 4th
3 785, 804-805 (2009).

4 The Settlement provides for a Representative Service Payment of \$7,500 for each Plaintiff.
5 The Service Award payment is fair and reasonable compensation for the Plaintiffs' efforts bringing
6 the action, assisting PAGA Counsel with the litigation and settlement, regularly conferring with
7 PAGA Counsel on the status of their case and the strategies for prosecuting the claims and agreeing
8 to provide Defendants a broad general release of all claims arising out of their employment.
9 Plaintiffs willingly came forward to protect and advance the rights of the Aggrieved Employees on
10 important legal disputes affecting California employees. By way of example, Plaintiffs assumed the
11 serious risk of liability for Defendants' costs and potentially fees if the case was unsuccessful.
12 Nevertheless, Plaintiffs knowingly and voluntarily undertook the risk to vindicate the rights of the
13 Aggrieved Employees. JCL Dec., ¶ 67.

14 Plaintiffs' efforts in bringing the lawsuit conferred a monetary benefit to 1,268 Aggrieved
15 Employees. Accordingly, Plaintiffs and PAGA Counsel respectfully request the Court approve the
16 Representative Service Payment in accordance with the Settlement Agreement. JCL Dec., ¶ 68.

17 VII. CONCLUSION

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

21
22 Dated: March 6, 2025

JCL LAW FIRM, APC

23
24 By: 
25 Jean-Claude Lapuyade, Esq.
26 Attorney for Plaintiffs
27
28