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on behalf of himself and on behalf of all other
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FRANCISCO MORALES, on behalf of
himself and on behalf of all other aggrieved
employees,

Plaintiff,

v.

MOC PRODUCTS COMPANY, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. 22STCV17634

Hon. Carolyn B. Kuhl

**NOTICE OF MOTION AND MOTION TO
APPROVE THE PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT AND
RELEASE UNDER CALIFORNIA LABOR
CODE §§ 2698 *et seq.***

*[filed concurrently with Declaration of David
Yeremian; Declaration of Roman Shkodnik;
Declaration of Raul Perez; [Proposed] Order;
and [Proposed] Judgment*

Date: February 13, 2025

Time: 10:30 a.m.

Dept.: SS12

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on behalf of himself and on behalf of all other
9 aggrieved employees

1 **TO THE COURT AND DEFENDANT AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on February 13, 2025 at 10:30 a.m. in Department 12 of the
3 above-entitled Court, located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA
4 90012, Plaintiff Francisco Morales (“Plaintiff” or “PAGA Representative”), on behalf of himself and
5 all persons similarly situated, will and hereby does move this Court pursuant to California Labor
6 Code § 2698 *et seq.* for an order approving the settlement agreement between Plaintiff and
7 Defendant MOC Products Company, Inc. (“Defendant”) which will accomplish the following:
8 approve the representative action settlement embodied in the Private Attorney General Act
9 Settlement Agreement; approve PAGA Counsel’s application for attorney’s fees and litigation costs;
10 and enter judgment approving the representative action settlement and release.

11 The grounds for this Motion, as set forth in the attached memorandum of points and
12 authorities and supporting declarations, are that this is a fair and reasonable settlement that benefits
13 the PAGA aggrieved employees and was the product of informed, non-collusive negotiations by
14 parties who were represented by experienced and able counsel. *See Wershba v. Apple Computer,*
15 *Inc.*, 91 Cal. App 4th 224, 244-45 (1996); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802
16 (1996); Manual for Complex Litigation, (Second), § 30.44 (1985).

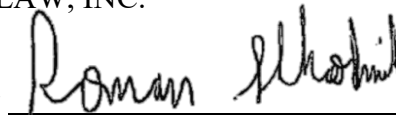
17 Defendant does not oppose the requested relief in this Motion.

18 Plaintiff bases this Motion on this Notice and the accompanying Memorandum of Points and
19 Authorities, the Declarations of David Yeremian, Raul Perez, and Roman Shkodnik, the complete
20 pleadings, records and files in the case, and such other further oral and documentary evidence which
21 may be submitted at or before the hearing on this Motion.

22
23 DATED: December 2, 2024

D.LAW, INC.

24
25 By



Roman Shkodnik

26 Attorneys for Francisco Morales on behalf of himself
27 and others similarly situated
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction**

3 This Motion to Approve Settlement and Release of PAGA Claims (the “Motion for
4 Approval”) is made to enforce the terms of the settlement entered into by Plaintiff Francisco Morales
5 (“Plaintiff” or “PAGA Representative”), and Defendant MOC Products Company, Inc.
6 (“Defendant”). Plaintiff and Defendant shall be collectively referred to as the “Parties.” A copy of
7 the Private Attorney General Act Settlement Agreement (hereinafter “Settlement” or “Stipulation”)
8 entered into by the Parties is attached to the concurrently filed Declaration of Roman Shkodnik as
9 **Exhibit 2.** Plaintiff seeks, without opposition from Defendant, an order from the Court approving
10 the Settlement under Labor Code §§ 2698 *et seq.*¹

11 The proposed Settlement will settle the Private Attorneys General Act (“PAGA”) claim
12 alleged in the Action, which is predicated upon various alleged violations of the California Labor
13 Code, including the following Labor Code sections: 201, 202, 203, 204, 210, 218.5, 226, 226.3,
14 226.4, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199,
15 2698, 2699, *et seq.*, 2751, 2802, and 2810.5, stemming from Defendant’s alleged employment
16 practices with regard to the employees of Defendant (hereinafter “Aggrieved Employees”).

17 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
18 statute, which states that the “court shall review and approve any penalties sought as part of a
19 proposed settlement agreement pursuant to this part.” *See* Labor Code § 2699(s)(2). In deciding
20 whether to grant approval of the proposed Settlement, the primary issue to be decided is whether the
21 Settlement is fair, adequate, and reasonable. Similar, to its review of class action settlements, the
22 Court must “determine independently whether a PAGA settlement is fair and reasonable,” to protect
23 “the interests of the public and the LWDA in the enforcement of state labor laws.” *Moniz v. Adecco*,
24 72 72 Cal.App.5th 56, 77. Specifically, the issues are whether the PAGA penalties to which the
25 Parties have agreed provide “genuine and meaningful” relief, “consistent with the underlying
26 purpose of the statute to benefit the public” (*Villalobos v. Calandri Sunrise Farm LP* (C.D. Cal., July

27 _____
28 ¹ Plaintiff’s counsel are not aware any class or other representative action in any other court that asserts claims similar to those alleged in the action being settled. (See Shkodnik Decl. ¶ 44)

22, 2015, No. CV122615PSGJEMX) 2015 12732709, at 5.), and whether the penalties are reasonable in light of the potential verdict value in this case (*O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135).

Additionally, in evaluating the adequacy of the settlement amount, a court is not concerned with the amount the aggrieved employees are to receive, but rather, a court must focus on the total settlement amount in achieving PAGA's objective. Indeed, "[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or class damages." *Mendez v. Tween Brands, Inc.* (E.D. Cal. July 1, 2010) 2010 WL 2650571 *4. "Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. April 2, 2010) 2010 WL 1340777 *4. Moreover, a court must not lose sight of the fact that "[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies." *Id.*

As set forth herein, the proposed Settlement embodies all of the features of a settlement that is fair, adequate and reasonable, as it is the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage and hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the PAGA claim, and (4) it reflects a reasoned compromise based directly on the relative strength and value of the PAGA claims, as well as the risks, expense, complexity and likely duration of further litigation.

Aggrieved Employees are defined as: any current or former employee who was employed by Defendant as a non-exempt hourly employee during the PAGA Period from May 22, 2021 to December 4, 2024. In this case, there are approximately 130 Aggrieved Employees.

The value achieved by the Settlement may be gleaned from the fact that the Gross Fund Value is \$170,000.00 and that the LWDA and the Aggrieved Employees encompassed by the Settlement will receive no less than \$87,583.33 under the terms of the Settlement, which, pursuant to the operative statute, shall be allocated "75 percent to the Labor and Workforce Development Agency... and 25 percent to the aggrieved employees." *See* Cal. Lab. Code § 2699(i). This is a

1 significant recovery, not only because further litigation may have resulted in a net-zero recovery
2 based on the defenses asserted by Defendant, but because the amount secured by Plaintiff is
3 exponentially above other PAGA penalty awards approved as reasonable in these types of cases.

4 For these reasons, as set forth more fully herein, Plaintiff respectfully requests that this Court
5 enter the proposed Order submitted herewith.

6 **II. Statement of the Case**

7 **A. Procedural History**

8 On May 27, 2022, Plaintiff Francisco Morales filed a claim notice online with the California
9 Labor & Workforce Development Agency (the “LWDA”) pursuant to Labor Code § 2699.3(a)(1)
10 and gave notice to Defendant. *See Exhibit 1.* The LWDA Letter alleged that Defendant failed to pay
11 minimum wages, failed to pay wages and overtime, failed to provide meal and rest breaks, failed to
12 reimburse business expenses, failed to provide accurate wage statements, failed to provide itemized
13 wage statements, and failed to pay all wages due upon termination. The LWDA did not respond to
14 the LWDA letter and did not notify Plaintiff or Defendant that it intended to investigate Plaintiff’s
15 allegations. On May 27, 2022, Plaintiff Francisco Morales also filed a Class Action Complaint for:
16 (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code §
17 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest-Break Liability Under Labor
18 Code § 226.7; (5) Reimbursement of Necessary Expenditures Under Labor Code § 2802; (6)
19 Violation of Labor Code § 226(a); (7) Failure to Keep Required Payroll Records Under Labor Code
20 §§ 1174 and 1174.5; (8) Penalties Pursuant to Labor Code § 203; and (9) Violation of Business &
21 Professions Code § 17200, *et seq.*

22 On August 8, 2022, after 65 days from the mailing of the first notice to the LWDA, Plaintiff
23 filed a First Amended Complaint against Defendant adding a tenth cause of cause of action under the
24 Labor Code Private Attorneys General Act (“PAGA”) under Labor Code § 2699 *et seq.* On October
25 31, 2022, Defendant filed its Motion to Compel Arbitration based on an arbitration agreement with a
26 class action waiver signed by Plaintiff during his employment with Defendant. On November 29,
27 2022, the Court issued its tentative ruling granting Defendant’s motion, compelling Plaintiff’s
28 individual claims to arbitration and staying the representative PAGA action.

1 **B. PAGA Counsel’s Investigation**

2 The Parties engaged in informal discovery, and PAGA Counsel conducted a thorough
3 investigation of the facts and claims giving rise to the action, including the exchange of documents,
4 meeting and conferring, reviewing and analyzing pay time and records, employment handbooks,
5 Plaintiff’s personnel files, and Defendant’s relevant policies including meal and rest break policies,
6 uniform and personal protective equipment policies, and employee reimbursement policies. (*See*
7 *Shkodnik Decl.* at ¶ 9). Informal discovery revealed Plaintiff, as well as many other Aggrieved
8 Employees, signed an arbitration agreement during their employment with Defendant, precluding
9 them from pursuing class action claims. (*See Shkodnik Decl.* at ¶ 10). Given the arbitration
10 agreements signed by the class members, Plaintiff continued proceeding with the claims under Labor
11 Code § 2699. (*Id.* at ¶ 7). With the discovery in hand, the parties were able to engage in meaningful
12 settlement discussions in an attempt to resolve the claims remaining in the Action. *Id.*

13 **C. Settlement Negotiations**

14 On August 30, 2024, the Parties mediated the matter with Louis Marlin, Esq. and after
15 additional lengthy direct negotiations entered into a settlement agreement, contingent on court
16 approval. (*See Shkodnik Decl.* at ¶ 12). The Parties discussed all aspects of the case, including the
17 risks of further litigation, the claims, Defendant’s defenses and exchanged further information. *Id.*
18 The Parties reached a tentative settlement agreement as embodied in the Settlement, which is
19 attached as **Exhibit 2** to the Shkodnik Declaration.²

20 The Parties recognized that the issues presented in the Action are likely only to be resolved
21 with extensive and costly pretrial and trial proceedings, and that further litigation will lead to
22 inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of
23 litigation. *Id.* The Parties took into account the risk and uncertainty of the outcome inherent in any
24 litigation in reaching this agreement. *Id.*

25 **D. Settlement Agreement and Accompanying Documents**

26 The Settlement requires Defendant to pay a total settlement amount of One Hundred Seventy

27 _____
28 ² As part of the settlement and in addition to the Gross Settlement Amount, Defendant has agreed to separately settle Plaintiff’s individual wage and hour claims.

1 Thousand Dollars and Zero Cents (\$170,000.00) in exchange for a release of the Plaintiff's
2 Representative PAGA claims asserted in the operative Complaint and the LWDA letter. (*See*
3 Shkodnik Decl. at ¶ 15; **Exhibit 2** at § 1.11). From the total settlement amount the following
4 deductions shall be made, if approved by the Court:

- 5 a. Attorneys' fees in the amount of Fifty-Six Thousand Six Hundred Sixty-Six
6 Dollars and Sixty-Seven Cents (\$56,666.67) ("PAGA Counsel's Fees") and
7 Twenty-One Thousand Ninety-Nine Dollars and Eighty-Four Cents (\$21,099.84)
8 for PAGA Counsel's litigation expenses incurred to date ("PAGA Counsel's
9 Costs") (*See* Shkodnik Decl. ¶ 15; at **Exhibit 2**, at § 3.2.1);
- 10 b. Administration costs of no more than Three Thousand and Two Hundred and
11 Fifty Dollars and Zero Cents (\$3,250.00) to be paid to the Settlement
12 Administrator ("Administration Costs") for sending notices and for calculating
13 settlement shares and preparing all checks and mailings (*See* Shkodnik Decl. ¶ 15;
14 **Exhibit 2**, § 3.2.2); and
- 15 c. Distribution of the remainder Eighty-Eight Thousand Nine Hundred and Eighty-
16 Three Dollars and Forty-Nine Cents (\$88,983.49) to the LWDA and the
17 Aggrieved Employees per statute: 75% (\$66,737.61) must be paid to the Labor
18 and Workforce Development Agency per Labor Code § 2699 *et seq.* and 25%
19 (\$22,245.88) shared by the Aggrieved Employees on a pro-rata basis (*See id.*;
20 **Exhibit 2** at § 3.2.3).

21 From PAGA Counsel's review of the facts, strengths, and weaknesses of the case, the risks
22 and delays posed by further litigation, and PAGA Counsel's own prior litigation experience, PAGA
23 Counsel believes that the recovery for each aggrieved employee is fair and reasonable, taking into
24 consideration the amounts received in other PAGA actions, the risks inherent in litigation of this
25 genre, and the reasonable tailoring of each aggrieved employee's claim to the settlement award he or
26 she will receive. (*See* Shkodnik Decl. at ¶ 16). Defendant, for its part, vigorously contests liability
27 and damages. (*Id.* at ¶¶ 10, 22). Further, and based on the settlement negotiations, which were hard-
28 fought and conducted in good faith and at arm's length between attorneys with substantial

1 experience litigating PAGA actions, the Settlement Agreement was the product of a non-collusive
2 settlement process in which the parties were forced to make significant compromises in the interest
3 of reaching a full and complete settlement of the lawsuit. (*Id.* at ¶ 16).

4 **III. Discussion**

5 **A. The Relief Obtained Through the PAGA Settlement is Genuine, Meaningful,** 6 **and Consistent with the Underlying Purpose of the Statute to Benefit the Public**

7 Plaintiff alleges that Defendant violated California law and various provisions of the Labor
8 Code during the course of Plaintiff and Aggrieved Employees' employment. (*See* Shkodnik Decl. at
9 ¶¶ 4-6). Plaintiff claims civil penalties under PAGA pursuant to Labor Code § 2699 *et seq.* (*See*
10 Shkodnik Decl. at ¶ 6).

11 Under Labor Code § 2699, specifically, Plaintiff alleged that the Aggrieved Employees were
12 not paid all wages they were owed, including for all work performed and for all overtime hours
13 worked. (*See* Shkodnik Decl. at ¶ 18). Specifically, Plaintiff alleged Aggrieved Employees were not
14 paid for the time they had to spend waiting in line and undergoing COVID 19 health and
15 temperature screenings before entering the warehouse and clocking in and the time spent going to
16 clinics for physical exams. Plaintiff also alleged that Aggrieved Employees performed other work
17 pre-shift including closing oil tanks and turning on lights and post-shift work including turning off
18 valves and pipes, closing doors, finishing reports, and speaking to supervisors.

19 Moreover, Plaintiff alleged that Aggrieved Employees were interrupted with work related
20 tasks while on meal periods, such as cleaning up spills, advising on what tasks needed to be done,
21 and requesting containers and labels for products. When meal periods were interrupted, Plaintiff
22 alleged that Aggrieved Employees were prevented from clocking back in because the timekeeping
23 system locked them out for thirty minutes. Plaintiff also alleged that Aggrieved Employees were not
24 provided a second meal period when working shifts over 10 hours.

25 Plaintiff also alleged Aggrieved Employees were unable to take rest breaks.

26 Additionally, Defendant did not provide Aggrieved Employees with suitable seating.

27 Moreover, Plaintiff alleges that Defendant failed to reimburse Plaintiff and Aggrieved
28 Employees for cellular usage, cost of vehicle maintenance, mileage, fuel, steel toed boots, and

1 replacement safety glasses, safety shoes, and facial masks, which were necessary in executing their
2 duties under Defendant's employ, and used in the course of performing their job duties for
3 Defendant. (*See* Shkodnik Decl. at ¶¶ 18-19).

4 Plaintiff also contends that Defendant failed to provide their employees with accurate,
5 itemized wage statements, in writing, as required by California Labor Code § 226(a). Section 226(a)
6 requires an employer to furnish each of his or her employees with an accurate, itemized statement in
7 writing showing the gross and net earnings, total hours worked, and the corresponding number of
8 hours worked at each hourly rate. Labor Code § 226(a). (*Id.* at 20) These statements must be
9 appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the
10 employee's wages, or, if wages are paid by cash or personal check, these statements may be given to
11 the employee separately from the payment of wages. (*Id.*) In either case the employer must give the
12 employee these statements twice a month or each time wages are paid. (*Id.*) As a direct and
13 proximate cause of Defendant's alleged violation of Labor Code § 226(a), employees allegedly
14 suffered injuries, including not being paid their wages and overtime, confusion over whether they
15 received all wages owed them, the difficulty and expense involved in reconstructing pay records, and
16 forcing them to make mathematical computations to analyze whether the wages paid in fact
17 compensated them for all hours worked. (*Id.*) Specifically, the wage statements allegedly failed to
18 accurately account for unpaid wages and overtime due to the off the clock work, and premium pay
19 for deficiently provided meal and rest breaks. (*Id.*) As a result, Defendant allegedly failed to provide
20 employees with accurate, itemized wage statements in writing, as required by the Labor Code. (*Id.*)

21 By allegedly failing to pay the Plaintiff and Aggrieved Employees their minimum wages,
22 overtime wages, all discussed above, Plaintiff and formerly employed Aggrieved Employees would
23 be due all wages at the time of termination or within seventy-two (72) hours of resignation, as
24 required under Labor Code § 203. (*Id.* at 21)

25 Defendant denied and continues to deny all of the claims made by Plaintiff in this Action and
26 contends it acted at all relevant times in conformance with the law. Defendant contends Plaintiff and
27 all putative Aggrieved Employees were provided lawfully compliant meal periods and that the
28 production lines in the warehouse would shut down while Aggrieved Employees would go to the

1 cafeteria during meal periods and were not asked to perform work or return to the production floor
2 until the end of the meal period; that the alleged off-the-clock was not required by Defendant; that
3 Defendant paid all wages due on a timely basis; that Defendant that Defendant's wage statements
4 complied with the law; and that neither Plaintiff nor any putative Aggrieved Employee incurred
5 reasonable business related expenses for which they were not reimbursed as they were provided
6 personal protective equipment and were not required to purchase steel toed boots. As a result of
7 Defendant's arguments Plaintiff's Counsel had to apply appropriate discounts in light of the facts
8 and law as discussed above. (*Id.* at 22)

9 The projected value of PAGA claims is a variable value of two predictive indexes: 1) the
10 likelihood that Plaintiff will succeed in proving the underlying claims were violated, and 2) the
11 amount of penalties the Court will likely assess for those violations. It is for these reasons that, in
12 assessing and judging the reasonableness of PAGA settlements, the touchstone feature is the
13 "remedial purpose" achieved in the settlement amount, which takes into account the defendant
14 employer's "good faith" belief that it complied with the laws claimed to be violated. *See Bernstein v.*
15 *Virgin Am., Inc.* (N.D. Cal. 2019) 365 F.Supp. 3d 980, 991.

16 Based on the Court's discretion, in addition to whether or not the Court would side with
17 Plaintiff on the underlying Labor Code violations, Plaintiff necessarily and substantially had to
18 discount the settlement value off of the full PAGA penalty amounts. As discussed earlier, Defendant
19 argues its meal and rest policies and practices were lawful. Likewise, Defendants argues it pays its
20 employees for all time worked. Further, Defendant argues it maintains a uniform policy and practice
21 of reimbursing employees for business expenses. Thus, even if Defendant was proven wrong on
22 these fronts and ultimately found to have violated the underlying Labor Code claims, the court could
23 find a good faith reliance on *Brinker, Augustus*, and other governing authorities justifiably instructed
24 Defendant's actions and thereby impose a massive reduction of PAGA penalties akin to the Courts
25 in *Kaanaana v. Barrett Business Services, Inc.* (2018) 29 Cal.App.5th 778 and *Carrington v.*
26 *Starbucks* (2018) 30 Cal.App.5th 504.

27 The Private Attorneys General Act, Labor Code § 2699 *et seq.*, allows Plaintiff to obtain civil
28 penalties on behalf of himself and other aggrieved employees for Defendant's violation of any

1 provision of the Labor Code enumerated under Labor Code § 2699.5. (*See* Shkodnik Decl. at ¶ 23).
2 Where civil penalties are provided in the statute, those civil penalties are recoverable; where no civil
3 penalties are recoverable, Labor Code § 2699(f) establishes civil penalties of one (\$100) for each
4 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
5 aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(i),
6 seventy-five (75) percent of the penalties recovered must be allocated to the Labor and Workforce
7 Development Agency (LWDA), with the remaining twenty-five (25) percent allocated to the
8 affected employees. *See also Cunningham v. Leslie's Poolmart, Inc.*, No. CV 13-2122 CAS (CWx),
9 2013 WL 3233211, at *7 (C.D. Cal. Jun. 25, 2013) (“[A] PAGA plaintiff pursues civil penalties on
10 behalf of the government and receives a twenty-five percent portion of the recovered penalty as a
11 bounty.”). However, under *Amaral v. Cintas*, 163 Cal. App. 4th 1157, 1207-09 (2008) the Court held
12 that a lower penalty amount of \$100 per violation applies in the absence of a determination that a
13 violation actually occurred.

14 Based on the foregoing facts and law, PAGA Counsel estimated Defendant’s maximum total
15 exposure on the PAGA claim at approximately \$745,800.00. (*See* Shkodnik Decl. at ¶ 24). The
16 provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not
17 limited to Labor Code §§ 201, 202, 203, 204, 210, 218.5, 226, 226.3, 226.7, 510, 512, 558, 558.1,
18 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, 2751, 2802, and 2810.5.
19 (*Id.*) Specifically, the total exposure on the PAGA claim was calculated by multiplying the total
20 number of pay periods (7,458) by \$100 per violation. (*Id.*)

21 Plaintiff’s calculation of the total exposure on the PAGA claim is for one PAGA penalty per
22 pay period (*i.e.*, Plaintiff did not stack the penalties in their calculation). (*Id.*) Plaintiff’s claims
23 giving rise to the penalties include all of the claims asserted in the Complaint, including, but not
24 limited to the following: (1) failure to pay minimum wages; (2) failure to pay wages and overtime
25 under Labor Code § 510; (3) meal-period liability under Labor Code § 226.7; (4) rest-break liability
26 under Labor Code § 226.7; (5) failure to reimburse necessary expenditures under Labor Code §
27 2802; (6) violation of Labor Code § 226(a); (7) failure to keep required payroll records under Labor
28 Code §§ 1174 and 1174.5; and (8) penalties pursuant to Labor Code § 203. (*Id.*)

1 Case law supports the notion that it is inappropriate to “stack” penalties for multiple
2 violations, particularly when those violations all stem from the same alleged “injury” *Aguirre v.*
3 *Genesis Logistics*, 2015 U.S. Dist. LEXIS 78748 (citing *Villacres v. ABM Indus., Inc.*, 189
4 Cal.App.4th 562, 577 (2010)). (“One injury gives rise to only one claim for relief...The violation of
5 one primary right constitutes a single cause of action.”; *Crowley v. Katleman*, 8 Cal. 4th 666, 681-82)
6 (1994); *Li v. A Perfect Day Franchise, Inc.*, 2012 WL 2236752, *17 (N.D. Cal.2012) (“There is no
7 authority that “would permit double recovery of essentially the same penalties.”)

8 Labor Code § 2699(e)(2) states that “a court may award a lesser amount than the maximum
9 civil penalty amount specified by this part if, based on the facts and circumstances of the particular
10 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
11 confiscatory.” (See *Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (*substantially* reducing
12 PAGA penalties by 30% under this provision) (emphasis added); *Sanchez v. McDonald’s Corp.*
13 (2017), LASC Case No. No. BC 499888 (98% reduction from \$41 million to \$775,000); *Ghrdilyan*
14 *v. RJ Financial* (2012), LASC Case No. BC430633 (94% reduction from \$5.4 million to \$325,000);
15 *Fleming v. Covidien, Inc.* (2011), USDC Case No. ED CV 10-01487-RGK (OPx) (87% reduction
16 from \$2.8 million to \$375,000).

17 Moreover, in *Kaanaana*, 29 Cal.App.5th 778, 788 & 809, the Court of Appeals took no issue
18 with the trial court exercising its discretion in slashing PAGA civil penalties for violations of Labor
19 Code section 512 to 13% of the total recoverable penalties. In *Carrington*, 30 Cal.App.5th 504, the
20 plaintiff requested penalties in excess of \$70 million, based on a \$25 to \$75 penalty per violation.
21 The court reduced the award, stating that awarding the maximum penalty would be unjust, arbitrary,
22 and oppressive based on Starbucks’s good faith attempts to comply with the law. The lower court’s
23 reduced award of \$150,000 was affirmed on appeal, which reflects .2% of the total recoverable
24 penalties sought.³ Defendant maintained that it would be unjust to award maximum PAGA penalties
25 and that stacking of penalties was not appropriate.

26
27 ³ These instances of judicial discretion imposing massive reductions in recoverable penalties is to be contrasted with
28 *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) 365 F.Supp. 3d 980, 992, where the trial court reduced the recoverable
PAGA penalties by only 25%. *Bernstein*, however, only amplifies the predictive blind spot of how a court can exercise
its wide-discretion to reduce full PAGA exposure.

1 **B. The Requested Attorney Fees And Cost Award Should Be Approved**

2 **1. The Requested Attorneys' Fees in the Amount of One-Third of the Gross**
3 **Settlement Amount Are Fair and Reasonable**

4 Pursuant to the Settlement Agreement, the PAGA Counsel is entitled to one-third of the
5 Gross Fund Value, or Fifty-Six Thousand Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents
6 (\$56,666.67), as attorneys' fees for their representation of Plaintiff and the Aggrieved Employees in
7 this Matter. (*See* Shkodnik Decl. at ¶ 27, **Exhibit 2** at § 3.2.1.). PAGA Counsel respectfully requests
8 an order approving its attorneys' fees in the amount of \$56,666.67 pursuant to the Settlement
9 Agreement. (*See* Shkodnik Decl. at ¶¶ 27-28).

10 In settlements where a definite monetized fund is created, it is appropriate for courts to
11 evaluate the lodestar amount as a percentage of the recovery and adjust it accordingly if the lodestar
12 differs from the range of percentage fees freely negotiated in comparable litigation. *See Laffitte v.*
13 *Robert Half Intern. Inc.* (2016) 205 Cal.Rptr.3d 555, 573; *Lealao v. Beneficial Calif., Inc.* (2000) 82
14 Cal.App.4th 19, 49-50.

15 PAGA Counsel took this case on a contingent-fee basis against a corporation represented by
16 a reputable defense firm. (*See* Shkodnik Decl. at ¶ 30). When taking on contingent cases, careful
17 attention must be paid to the economics involved, as defeat on the merits can destroy years of work.
18 *Id.* Accordingly, in such cases, we anticipate that we shall, if successful, receive a fee that exceeds
19 our normal hourly rate; otherwise the risk is often too great to bear. *Id.* Even with long hours of
20 work, the number of hours in a day is limited. *Id.* Because of this, when one particular matter is
21 handled, other matters are turned away. *Id.* When firms become involved in cases like this, they must
22 realize the time commitment entailed and are forced to turn down other matters that otherwise could
23 have been handled. *Id.*

24 Contingent-fee cases present the very real risk of working hundreds if not thousands of hours
25 that may never be entirely compensated. (*See id.* at ¶ 31). Moreover, while the case is being litigated,
26 counsel must pay overhead (salaries, rent, etc.), provide for their own expenses, and in most cases
27 pay the out-of-pocket expenses incurred on the plaintiff's behalf. *Id.* And the prospect of a court-
28 awarded fee does not greatly reduce the risk posed by these cases. *Id.* In many cases, the prospect is

1 nothing more than a potential that never materializes. *Id.* First, you must win the case to get a court-
2 awarded fee; even those cases that seem strongest at the onset can be lost and sometimes are lost. *Id.*
3 Second, there is the great risk inherent in advancing tens if not hundreds of thousands of dollars in
4 out-of-pocket expenses. *Id.* If that money were to be invested in some sort of financial investment,
5 one would expect a reasonable rate of return on that investment. *Id.* Here, however, the best we can
6 hope to recover is our money, and then only if we are substantially successful; if we are not, all or
7 part of this “investment” can be lost.

8 PAGA Counsel’s recent attorneys’ fees awards in similar wage-and-hour class and PAGA
9 actions have been one-third of the recovery. The amount requested here will fairly compensate
10 PAGA Counsel for their successful vindication of aggrieved employee rights, taking into account the
11 quality, nature, and extent of counsel’s efforts, and the fact that the amount of fees for which
12 approval is sought is consonant with legal precedent. PAGA Counsel’s diligent, efficient, and
13 creative pursuit of this matter positioned Plaintiff to settle this action successfully, affording redress
14 to the PAGA Aggrieved Employees and avoiding the inevitable expense and risk attendant to
15 protracted litigation. In sum, it was through the efforts of Plaintiff and PAGA Counsel that the
16 considerable benefits of the settlement were obtained.

17 PAGA Counsel spent adequate time on this matter. Aside from drafting the initial complaint,
18 PAGA Counsel conducted informal discovery, reviewed and analyzed time and pay records,
19 employment handbooks, the Plaintiff’s personnel files, researched the applicable law and potential
20 defenses, constructed damage models based on interpretations of California law, reviewed
21 information provided by Defendant at the mediation, engaged in meet and confer efforts with
22 Defendant, and ultimately drafted and revised the settlement agreement. (*See id.* at ¶ 35). PAGA
23 Counsel conservatively estimates that it invested over 190.8 hours of attorney time in this matter.
24 David Yeremian’s current billing rate is \$850 per hour (23 years out of law school and is less than
25 the Laffey Matrix rate of \$1,141.00), and he spent approximately 22 hours on this matter with a
26 lodestar amount of \$18,700. Roman Shkodnik’s current billing rate is \$650.00 (12 years out of law
27 school, Laffey Matrix rate of \$948.00), and he spent approximately 70 hours on this matter with a
28 lodestar amount of \$45,500. PAGA Counsel with Capstone Law APC spent approximately 98.8

1 hours on this matter with a lodestar amount of \$56,240. (See Declaration of Raul Perez at ¶16). The
2 lodestar for Plaintiff's counsel is \$120,440 (\$18,700 for David Yeremian's time on the case, \$45,500
3 for Roman Shkodnik's time on the case, and \$56,240 for Capstone Law APC's time on the case).
4 (See Shkodnik Decl. at ¶ 35, Declaration of Raul Perez at ¶16, and the Declaration of Roman
5 Shkodnik concurrently filed herewith). The fee request of \$56,666.67 results in a multiplier of
6 approximately 0.47 further evidencing the reasonableness of the request.

7 In light of the foregoing, the fee request in an amount equal to thirty-five percent of the
8 settlement in this case is well within the bounds that have been established by the above-cited
9 authority. (See Shkodnik Decl. at ¶ 35). Defendant has no objection to an award of fees in the
10 amount requested.

11 **2. The Request for PAGA Counsel's Costs Are Reasonable**

12 PAGA Counsel requests reimbursement for costs, totaling \$21,099.84. Attached to the
13 concurrently filed Declaration of Roman Shkodnik as **Exhibit 3**, is his PAGA cost log, showing
14 total costs of \$20,128.43. In the concurrently filed Declaration of Raul Perez, is his PAGA cost log,
15 showing total costs of \$971.41. (See Declaration of Raul Perez at ¶ 20). All of these costs are and
16 were reasonable and necessary in the prosecution of the Action, for the benefit of the State and the
17 Aggrieved Employees. (See Shkodnik Decl., **Exhibit 3**). Moreover, the expenses for which
18 reimbursement is sought are recoverable in common fund cases. See *In re United Energy Corp.*
19 *Solar Power Modules Tax Shelter Inv. Secs. Litig.*, 1989 U.S. Dist. LEXIS 19146, 16 (C.D. Cal.
20 Mar. 9, 1989) ("[R]eimbursement of ... filing fees, postage, telephone bills, photocopying, legal
21 research assistance, deposition costs, witness fees, and similar items... [are] appropriate for cost
22 reimbursement in common fund cases."); *Bond v. Ferguson Enters. Inc.*, 2011 U.S. Dist. LEXIS
23 70390, at 36-37 (E.D. Cal. June 29, 2011) (finding that the incurred costs, including payment to
24 court reporters for depositions, mediation costs, legal research, and in-house copies of documents,
25 are routinely reimbursed in these types of cases); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D.
26 482, at 493 (E.D. Cal. 2010) ("The costs billed, which include ground transportation, copy and
27 scanning costs, computer research, and expert witness fees, are reasonable.").

28 Based thereon, PAGA Counsel respectfully requests that the Court approve its cost

1 reimbursement request.

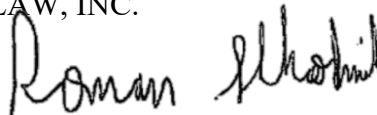
2 **IV. CONCLUSION**

3 For the reasons set forth herein, Plaintiff respectfully request that this Court grant this
4 Motion, and issue an order approving the PAGA Settlement Agreement and Release between the
5 Parties.

6
7 DATED: December 2, 2024

D.LAW, INC.

8
9 By



Roman Shkodnik
Attorneys for Francisco Morales on behalf of
himself and others similarly situated