JAMES HAWKINS APLC
James R. Hawkins (#192925)
Gregory Mauro (#222239)
Michael Calvo (#314986)
Lauren Falk (#316893)
Ava Issary (#342252)
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel.: (949) 387-7200
Fax: (949) 387-6676
Email: James@jameshawkinsaplc.com
Email: Greg@jameshawkinsaplc.com
Email: Michael@jameshawkinsaplc.com
Email: Lauren@jameshawkinsaplc.com
Email: Ava@jameshawkinsaplc.com

Attorneys for Plaintiff ERMELINDA FIGUEROA,

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

ERMELINDA FIGUEROA, on behalf of the general public as private attorney general,

Plaintiff,

v.

BECKMAN COULTER, INC., a Delaware Corporation; KELLY SERVICES GLOBAL, LLC, a Michigan Limited Liability Company; and DOES 1-50, inclusive,

Defendants.

Case No. 34-2022-00323923
Assigned for all purposes to
Hon. Lauri A. Damrell, Dept. 8B

NOTICE OF MOTION AND MOTION TO APPROVE PAGA SETTLEMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION

Date: August 21, 2026
Time: 9:00 AM
Dept.: 8B

RESERVATION NUMBER: A-323923-001.

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT at August 21, 2026 at 9:00 a.m. or as soon thereafter as the matter can be heard, in Department 8B of the above-entitled Court before the Honorable Lauri A. Damrell, Plaintiff ERMELINDA FIGUEROA, ("Plaintiff") will and hereby does move for an order approving the settlement of the PAGA claim alleged against Defendants BECKMAN COULTER, INC., a Delaware Corporation and KELLY SERVICES GLOBAL, LLC, a Michigan Limited Liability Company ("Defendants") in accordance with Labor Code §2699(l). The proposed Settlement is set forth in the accompanying PAGA Representative Settlement Agreement ("Settlement", "Agreement" or "Settlement Agreement"). This PAGA Settlement resolves this action in its entirety.

This Motion will be based on this notice, the accompanying points and authorities, the Declaration of James Hawkins, the Declaration of the Plaintiff, and the complete files and records in this action. The Labor Workforce Development Agency has been served with this motion and the Settlement Agreement as set forth in the accompanying proof of service.

Dated: May 26, 2026

Respectfully submitted,

JAMES HAWKINS APLC

By: ______________________________

JAMES R. HAWKINS
GREGORY MAURO
MICHAEL CALVO
LAUREN FALK
AVA ISSARY

Attorneys for Plaintiff ERMELINDA FIGUEROA individually and on behalf of the general public as Private Attorney General

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes, Rules and Regulations

I. INTRODUCTION

Plaintiff ERMELINDA FIGUEROA ("Plaintiff") reached a settlement of the California Private Attorneys General Act, Cal. Labor Code §2699, et seq. ("PAGA") claim asserted in this action against Defendants Alamitos Ridge Healthcare, LLC ("Defendants"). The only claim in this action is the representative PAGA claim. In accordance with California Labor Code §2699(l), Plaintiff now asks this Court to review and approve the settlement of Plaintiff's PAGA claims. This is only a settlement of the PAGA claims for civil penalties, and is not a class settlement and does not release the individual claims, if any, of the affected employees other than the Plaintiff. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014).

The PAGA settlement is set forth in the accompanying Joint Stipulation of Settlement And Release of PAGA Action ("Settlement", "Agreement" or "Settlement Agreement"). A true and correct copy of the Settlement Agreement, which sets forth the terms for the settlement of the PAGA claims, is attached as **Exhibit 1** to the Declaration of James Hawkins, filed herewith. Capitalized terms shall have the same meaning as defined in the Settlement Agreement. The LWDA was served notice of this Settlement and this motion as set forth in the accompanying proof of service. The Notice of Settlement to the PAGA Claim Employees ('Settlement Letter") is attached to the Settlement Agreement as **Exhibit A**.

A Proposed Order confirming review and approval of the PAGA settlement is submitted herewith.

II. RELEVANT FACTS

On May 16, 2022, Plaintiff's Counsel sent a letter to the LWDA on behalf of Plaintiff, in compliance with California Labor Code section 2699.3. Plaintiff seeks to represent herself and all PAGA Members. More than 65 days passed after the letter was sent to the LWDA, and the LWDA did not indicate that it intended to investigate the alleged violations referenced in the letter. (Hawkins Decl., at ¶ 3).

On July 21, 2022, Plaintiff filed the PAGA Representative Action in the Superior Court of California in and for the County of Sacramento, styled *ERMELINDA FIGUEROA on behalf of the general public as private attorney general v. BECKMAN COULTER, INC., a Delaware*

Corporation; KELLY SERVICES GLOBAL, LLC, a Michigan Limited Liability Company; and DOES 1-50, inclusive, Case No. 34-2022-00323923. The complaint alleges a singular cause of action under PAGA for Defendants' alleged violations of the California Labor Code, including Defendants' (a) failure to pay minimum and overtime wages, (b) failure to provide meal periods, (c) failure to provide rest periods, (d) failure to pay all wages earned and owed upon separation from Defendants' employ, (e) failure to provide accurate itemized wage statements, (f) failure to reimburse necessary business expenses, and (g) failure to issue payment of wages in the form of a Labor Code-compliant instrument. Plaintiff seeks penalties under Labor Code 2698, et seq. on behalf of the general public as private attorney general and all other aggrieved employees. (Hawkins Decl., at ¶ 4).

Plaintiff's Counsel has conducted a thorough investigation of the facts in the Action and have diligently pursued an investigation of the PAGA claims against Defendants. The parties have engaged in a substantial investigation in connection with the Action, including an informal exchange of a large volume of information, including confidential information, regarding the claims asserted in the Action, the defenses available to Defendants, and other relevant issues. Defendants have produced, and Plaintiff's Counsel have reviewed and analyzed, relevant personnel and payroll information for Plaintiff and all PAGA Members, as well as Defendants' policies and procedures as they relate to Plaintiff and the PAGA Members' employment with Defendants. In conjunction with the documents, Plaintiff's counsel analyzed over approximately 24,610 work shifts for penalty assessment purposes.

With this information, Plaintiff and Defendants agreed to mediate this action with mediator Daniel J. Turner, Esq., a respected and experienced wage and hour PAGA and class action mediator. On November 4, 2025, the Parties participated in an all-day private mediation with Mr. Turner. During the mediation the Parties engaged in extensive, arms-length negotiations. As a result of the Parties' efforts, the matter was fully resolved. The Parties engaged in significant efforts to obtain the facts regarding the claims asserted, including the exchange of detailed statistical data regarding weeks and pay periods worked by individuals and

Plaintiff. Thereafter, the parties worked together to finalize the terms of the long form settlement agreement that is now placed before this Court for approval. (Hawkins Decl., at ¶¶ 5-9).

III. TERMS OF THE AGREEMENT

The Agreement negotiated by the Parties provides for Defendants to pay $150,000.00 as the Gross Settlement Amount ("GSA"). (Agreement at § 1.10). The "Net Settlement Amount" ("NSA") is the amount remaining of the GSA minus the Court-approved amounts awarded for the Attorneys Fees and Costs, Settlement Administration Fees, Enhancement Award to Plaintiff (if any), and the LWDA Payment.

The NSA is calculated as follows: (1) $52,500.00 (i.e. 35% of the GSA) shall be paid to Plaintiff's Counsel for payment of attorneys' fees; (2) Plaintiff's Counsel's litigation expenses not to exceed $20,000.00 (Plaintiff's counsel's litigation costs to date is $11,781.42) (Amendment to Settlement Agreement); (3) $10,000.00 Enhancement Award (individual settlement) to the Plaintiff for Plaintiff's time and risks in prosecuting this case and Plaintiff's service to the PAGA Members as well as for Plaintiff's general release of Plaintiff's Released Claims; (4) Administration costs not to exceed $3,750.00. (Agreement at § 1.26). The Net Settlement Amount is estimated to be **$71,968.58**. (Hawkins Decl. ¶¶ 5-9). Any difference from these maximum amounts will be added to the Net Settlement Amount. (Hawkins Decl., ¶ 9).

The Gross Settlement Amount is subject to Court approval consistent with Labor Code § 2699. Should the Net Settlement Amount increase or decrease, the amount to be distributed shall be adjusted according to the changes made by the Court. Upon approval, the Net Settlement Amount shall be allocated 75% ($53,976.43) to the LWDA and 25% ($17,992.15) among PAGA Members (the "Individual Settlement Payment"). The share of the Net Settlement Amount to be distributed to each PAGA Member is based on the number of his or her Pay Periods worked in the PAGA Period in relation to the aggregate number of Pay Periods worked by the Settlement Group during the PAGA Period. (Agreement at § 1.11). Each PAGA Member will receive approximately $3.59 per pay period worked before deduction for fees, costs, and enhancement and approximately $141.67 to each PAGA Member based on the 35% net settlement fund. (Hawkins Decl. ¶ 10).

The "PAGA Members" means "All individuals employed by Defendants as non-exempt employees in California during the PAGA Period." The "PAGA Period" or "Settlement Period" or "Release Period" means the period from May 16, 2021 through February 17, 2026 (60 days after the Parties accepted the mediator's proposal on December 19, 2025). (Hawkins Decl. ¶ 11).

Defendants represented that PAGA Members consisted of approximately 127 PAGA Members who worked approximately 5,000[1] pay periods during the PAGA Period. (*Id*).

The Settlement Administrator will provide Defendants with its bank wire instructions to establish the Qualified Settlement Fund (QSF). Within thirty (30) days of the Effective Date, Defendants shall transmit the Gross Settlement Amount to the Settlement Administrator.[2] (Agreement at § 7.1).

Within 30 calendar days of the Effective Date, the Administrator will pay to Settlement Group Members, their Individual Settlement Payments via first-class regular U.S. Mail; to PAGA Counsel, the Court-awarded Attorneys' Fees and Expenses; to the LWDA, the Court-approved LWDA Payment; Enhancement Award to Plaintiff (if any); and to the Administrator, the Court-awarded Administration Fees and Expenses. (Agreement at § 7.2).

The PAGA Members shall have one hundred eighty days (180) to cash their checks. The Parties have agreed to selecting ILYM Group, Inc. as the Settlement Administrator. The

---

[1] The GSA is based on Kelly Services' representation that the PAGA Employees worked approximately 5,000 pay periods as of the date of the mediation. In the event the number of pay periods worked by the PAGA Employees in the PAGA Period increase by more than 10%, Defendants shall have the option of either: (i) increasing the GSA on a pro-rata basis equal to the percentage increase in the number of pay periods worked by the PAGA Employees above 10% (for example, if the number of pay periods increases by 11%, the GSA will increase by 1%), or (ii) shorten the release period to an earlier date at which only 5,000 pay periods plus an additional 10% are covered by the PAGA Period. See Settlement Agreement § 5.7.

[2] "Effective Date" shall mean the date on which the terms of settlement embodied in this Agreement along with all associated releases become effective, which occur only after all of the following events have first occurred: (i) this Settlement has been executed by all Parties and their respective counsel; (ii) the date of final affirmance of the Judgment on an appeal of the Judgment, the expiration of the time for, or the denial of, a petition to review the Judgment, or if review is granted, the date of final affirmance of the Judgment following review pursuant to that grant, (iii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding to review the Judgment, provided that the Judgment is affirmed and/or not reversed in any part, (iv) the final resolution (or withdrawal) of any filed appeal in a way that affirms the Final Approval Order and Judgment in a form substantially identical to the form of the Final Approval Order entered by the Court, and the time to petition for review with respect to any appellate decision affirming the Final Approval Order has expired; or (v) if no appeal is filed, the sixty-sixth (66th) day after the Court enters final approval of the Settlement and enters Judgment approving this Agreement. (Agreement at § 1.8).

Administrator will cancel all checks not cashed by the void date. Any checks uncashed after 180 will be void and sent to the State of California State Controller's Office in the PAGA Member's name. The Settlement Administrator shall be responsible for administration of all unclaimed funds, including any and all reporting requirements proscribed by California law. (Agreement at §7.3-7.5).

Each PAGA Member will grant in favor of each Released Party, and be subject to, the settlement Release. The Release by PAGA Members and by the state of California with respect to PAGA Members means:

Upon the occurrence of the Effective Date and contingent on full funding of the Gross Settlement Amount by Defendants, all PAGA Members and the State of California with respect to PAGA Members are deemed to release, on behalf of themselves and their respective former and officers, directors, executives, partners, managers, owners, shareholders, members, employees, agents, attorneys, any of its former and present parent corporations, sister corporations, subsidiaries, successors, predecessors, insurers, assigns, affiliates, and their officers, directors, managers, owners, executives, partners, employees, shareholders, agents, attorneys, and any other successors, assigns, or legal representatives, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and/or the PAGA Notice including, but not limited to alleged violations of California Labor Code sections, including 201-203, 212-213, 226, 510, 558, 226.3, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, 2698 et seq., and the applicable IWC Wage Order for the PAGA Period. (Agreement at § 1.23).

The California Labor Workforce Development Agency ("LWDA") is being served with a copy of this Motion with the Settlement Agreement through the online process as required by Labor Code § 2699(l). (Hawkins Decl., ¶ 31).

IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS

The claim before this court is the representative claim under PAGA on behalf of the State of California for civil penalties pursuant to the PAGA. The parties have agreed to settle this PAGA claim in its entirety after discovery and arm's length mediation. (Hawkins Decl., at ¶¶ 5-

7). The settlement is intended to fully and finally resolve the PAGA claims asserted by Plaintiff on behalf of the State of California. This is only a settlement of the PAGA claims for civil penalties, and is not a class settlement and does not release the individual claims, if any, of the PAGA Claim Employees. Attorneys' fees equal to $52,500.00 and actual litigation costs in the amount not to exceed $20,000.00 will also be paid to Plaintiff's Counsel, subject to Court approval as part of the Settlement in accordance with California Labor Code § 2699(g)(1) as set forth in the Agreement. There is also payment of $3,750.00 to the Settlement Administrator to perform the administrative duties to distribute the settlement money and a $10,000.00 Enhancement Award to Plaintiff. (Hawkins Decl., ¶¶ 7-11.)

V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT OF THE PAGA CLAIM

Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." Consequently, the parties respectfully ask the Court to review and approve the settlement of the PAGA claims and the Maximum and Net Settlement Amounts to be paid as part of the proposed settlement.

A. The PAGA Group Recovery to Be Paid Is Fair and Reasonable

The Parties believe that the PAGA Group Recovery is fair and reasonable and therefore "shall" be reviewed and approved. The Labor and Workforce Development Agency has released data on PAGA settlement amounts. The Gross Settlement Amount of $150,000.00 constitutes approximately $3.59 per pay period *before* deductions for fees, costs, enhancement award, and administration costs. The net average payout to each PAGA Member is approximately $141.67 with a low estimated payout of approximately $3.59, and an estimated high payment of $446.00 for someone who worked the entire PAGA Period. The Gross Settlement Amount accounts for approximately 23% of the maximum potential recovery. (Hawkins Decl. ¶15).

Since the filing of the Complaint, the Parties have exchanged extensive discovery and engaged in numerous discussions regarding the factual and legal issues surrounding this case. Throughout the litigation, Defendants produced voluminous pages of information and data, including policies, handbooks, time and payroll records for 15% of the PAGA Members, reflecting time punches at the start of employees' shifts, and at the end of the shift, and meal period punches as well as the applicable pay rates. This provided for approximately 24,610 shifts to be analyzed. Defendants also provided Plaintiff's personnel file, records regarding documents identifying the non-exempt positions and information regarding the number of employees holding these positions during the relevant time period. Defendants also provided substantial information concerning the total number of PAGA Members, the total number of pay periods at issue, and the applicable hourly rates and other summary data related to the PAGA Members. The Parties have conducted informed, good faith arms-length negotiations after conducting discovery and exchanging extensive evidence and information about the claims and defenses of this lawsuit and engaged in pre-mediation discussions, telephone conferences, and correspondences all aimed at settling their dispute. (Hawkins Decl., ¶ 12).

In preparation for the mediation, Plaintiff reviewed the entirety of the discovery produced. The information had to be analyzed and processed to figure out the amount of compensation Plaintiff contends are due to the PAGA Members. The evidence and information gathered and reviewed by Plaintiff's counsel provided a factual framework for a comprehensible and reliable damage model pertaining to all PAGA Members. The mediation and subsequent negotiations included discussion and examination of the PAGA Members and the Parties' respective positions on the legal and factual issues raised in the Complaint. This was both a thorough and exhaustive process. (Hawkins Decl., ¶ 13).

The PAGA Members' recovery compares favorably to the estimated amount of PAGA penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of statutory PAGA civil penalties was potentially $1,252,655.00 based on approximately 4,922 PAGA pay periods multiplied by a maximum per pay period violation rate of $100.[3] (Hawkins Decl., ¶ 14). This number could increase assuming the Court would permit stacking of penalties, which could increase the potential exposure. However, this scenario is unlikely given the

[3] Defendants further contends that that proper penalty rate for Plaintiff's claims is $50 per pay period as laid out in Labor Code § 558 which applies to alleged underpayment of wages.

circumstances presented herein. The $1,252,655.00 valuation assumes one violation per pay period. This number could be less if a trier of fact determined no such violations occurred in any given pay period. These amounts are inclusive of penalties for violations of the released claims, such as Labor Code §§ 226.7, 512 226, §510/558, 201/202/203/204 for approximately 203 employees. Importantly, however, in total, these calculations were performed at the $100 statutory rate for the penalties for the first violation, and it is likely that any penalties awarded would be at a much lower rate given the facts of this case. California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if based on the facts and circumstances to do otherwise would result in an award that is "unjust, arbitrary and oppressive or confiscatory." The maximum exposure here would be approximately $$331,500.00-$687,000.00 if the Court awarded 100% penalties for each and every pay period at $100 per pay period for each violation. Of course, these amounts would probably have been reduced given the polices in place, manageability issues, the issues of why someone missed a meal break on any occasion or worked off the clock, and the issues of payment of meal period premiums or regular rate calculation valuations, and whether these practices did not create any control issues at all. Even assuming a 50% likelihood of success at trial, the practical recovery would be further reduced by statutory discretion, proof risks, and overlapping penalty concerns, resulting in a realistic recovery range of approximately $100,000 to $115,000. The risks include manageability issues, not prevailing on the merits, prevailing on certain claims for certain periods, reduced penalty amounts awarded by the trial Court, and reversal on appeal. (Hawkins Decl. ¶¶ 12-24).

Defendants dispute that the penalties assessed by Plaintiff and her expert would have been awarded at all. Further, it is Defendants' contention that PAGA penalties cannot be stacked, and that at most just one PAGA penalty can be awarded to an aggrieved employee in any one pay period. *See* Labor Code section 2699 (f)(2) (authorizing awardable PAGA penalties to be measure by "each "each aggrieved employee per pay period"); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *1, *4 (N.D. Cal. 2013) (rejecting a pleading that sought the "stacking of penalties"; "[f]or the single mistake of failing to include commissions in the overtime base, plaintiff has asserted *five* separate labor code violations that could lead to statutory penalties;" "is it plausible that we would really pile one penalty on another for a single substantive wrong?"; noting that "no actual holding in any judicial decision has ever blessed such stacking"). As such, and for this initial reason, Defendants contends that the maximum potential recovery in this action is significantly lower than as stated by Plaintiff. (*Id.*)

Further, Defendants argues that Plaintiff's calculation of penalties as applicable to any employee and for any pay period, is inflated for an additional reason. Defendants argue that even were liability established, one does not reach the second-tier "subsequent" penalty rate for that violation unless and until the employer is first cited for the violation, and that Defendants has never been cited. *See Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Servs., Inc.,* 2009 WL 2448430 *1, *9 (S.D. Cal. 2009) ("For the purposes of subsequent violation penalties, the issue is not whether [Defendants] willfully violated the Labor Code, but rather whether a court or commissioner had notified it of any violation."); *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) ("[u]ntil the employer has been notified that it is violating a Labor Code provision (whether or not the Commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties" at a second tier); *Robinson v. Open Top Sightseeing San Francisco, LLC*, No. 14-CV-00852-PJH, 2018 WL 895572, at *20 (N.D. Cal. Feb. 14, 2018) (applying "initial" penalty to each violation of § 226 and § 2699(f)(2) because there was no evidence showing Defendants was previously notified its practice violated § 226); *Willis v. Xerox Bus. Servs., LLC*, 2013 WL 605383, at *1, *6 (E.D. Cal. 2013) ("for a plaintiff to recover for a 'subsequent violation,' an employer must have notice that it has violated the Labor Code"). As such, Defendants contends that Plaintiff's calculation are inflated not only because the "stack" penalties for a single person during a single pay period, but because the penalties Plaintiff would award in each instance are at an inapplicable (doubled) rate. (*Id.*)

Defendants further argue that Plaintiff would still face significant practical problems in any material exposure, as each violation would need to be proven as to each person and for each period for which recovery is sought.[4] As an example, for purposes of section 226, "a good faith dispute presents when there is (1) uncertainty in the law; (2) representations by an authority that compliance was not required; or (3) an employer's good faith mistaken belief grounded in a good faith dispute." *Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058 (N.D. Cal. 2019). "Mere recklessness" is not a basis for liability. *Pedroza,* 2012 WL 9506073, *5. (*Id.*)

Defendants also notes that PAGA grants the Court discretion to lower any PAGA penalty otherwise due. *See* Labor Code section 2699 (e)(2). Defendants also argues that the Court could reduce any penalty potentially due where, as Defendants contends, any technical violation of law would have been inadvertent and in good faith, particularly where the law is undefined and capable of differing interpretations. Section 226, for example, is not violated where the employer

---

[4] Defendants argues that claims of this sort tend to require individualized proof sets, and are not the subject of "common proof." *See e.g., Mateo v. V.F. Corp.* 2009 WL 3561539, at *6 (N.D. Cal. Oct. 27, 2009) (denying collective treatment of off-the-clock (OTC) and overtime claims as involving individualized proof); *Lawrence v. City of Philadelphia* (E.D. Pa. 2004) WL 945139 at *1-3 (rejecting OTC claims for collective treatment; "each of the plaintiffs potentially may claim that on any given day he or she arrived early or departed outside their regularly scheduled hours and were not compensated for such. The circumstances of those individual claims potentially vary too widely to conclude that in regard to their OTC claim, the plaintiffs are similarly situated. The questions of fact will likely differ for each Plaintiff and will be unduly burdensome to both Defendants and to the Court in managing as a collective action."); *Basco v. Wal-Mart Stores, Inc.* (E.D. La. 2002) 216 F.Supp.2d 592, 603 (individual issues arise from "myriad of possibilities that could be offered to explain why any one of the plaintiffs worked OTC" and predominate; rejecting collective treatment of such claims); *Chavez v. Zaldivar*, 2012 U.S. Dist. LEXIS 40984 *1, at *23-24 (N.D. Cal. 2012) ("To determine whether staffing levels resulted in missed meal periods, the Court would need to engage in individualized questions concerning the staffing requirements at each of [Defendants'] locations. Additionally, these staffing requirements would vary from day to day."); *Washington v. Joe's Crab Shack*, 271 F.R.D. 629, 641 (N.D. Cal. 2010) ("an individualized inquiry will be required to determine whether any single employee failed to take a meal break because he/she was too busy and also to determine whether a particular employee signed a waiver based on a decision not to take meal breaks. For this reason alone, common issues do not predominate with regard to the meal break claim"); *Ruiz v. Affinity Logistics Corp*., 2009 WL 648973, *7-8 (S.D. Cal. 2009) (holding that inquiry into the reasonableness and necessity of the expenses required a "case-by-case analysis in which common questions did not predominate over individual questions."). *See also Nikmanesh v. Wal-Mart Stores, Inc.*, No. 8:15-cv-00202-AG-JCG, ECF Dkt. 200, slip op. at 4-5 (C.D. Cal. Mar. 22, 2017) (dismissing uncertified PAGA claim "as unmanageable," where court previously "pointed to other examples of individualized variables when it denied class certification for failure of common questions to 'predominate over questions affecting only individual class members'"); *Salazar v. McDonald's Corp.*, No. 14-CV-02096-RS, 2017 WL 88999, at *7-9 (N.D. Cal. Jan. 5, 2017) (striking representative PAGA claims as unmanageable where underlying claims would require individualized determinations).

acted in “good faith.” *See Pedroza v. PetSmart, Inc.,* 2012 WL 9506073 (C.D. Cal. June 14, 2012) (“The good faith defense to the willfulness element of these sections [226, 203] is clearly established under California law); *Woods v. Vector Mktg. Corp.*, 2015 WL 2453202, at *3 (N.D. Cal. May 22, 2015) (“The ‘good faith dispute’ rule has been extended by courts to apply to California Labor Code Section 226. (*Id*).

In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a judgment after trial which only provided for a PAGA penalty of $5 per pay period. Therefore, at trial, any PAGA penalties awarded could be significantly less than Plaintiff’s calculation even where Plaintiff prevailed on the PAGA claim. If the amount of $5 per pay period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties would be only $65,000, which is less than this settlement provides.

Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from $2,800,000 to $500,000, a reduction of 82.2%, because the court found maximum penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code violations are established. See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the Defendants."). Here, Plaintiff would need to prove that each PAGA Member suffered all violations for each pay period the employee worked.

The claims in this PAGA action are based upon the wage and hour practices of Defendants. The settlement provides a recovery of approximately $3.59 per pay period after deductions and the PAGA Allocation of the Net Settlement to the LWDA. This provides the PAGA Members money now rather than in the future to some undetermined date and undetermined amounts. (Hawkins Decl. ¶ 20).

Upon approval, approximately $53,976.43 will be sent to the State of California and approximately $17,992.15 will be allocated to the PAGA Members as the "Individual PAGA Payments". This equates a payout to each PAGA Member of approximately $141.67 on average with a low of approximately $3.59 and an estimated high payment of $446.00 for someone who worked the entire PAGA Period. (*Id.*)

The claims in this action are regarding meal periods, rest periods, overtime work, and off the clock work during pre-shift activities, among others. Plaintiff alleges that Defendants' practices do not provide proper payment for missed meal periods, rest periods and pay for all overtime work performed nor overtime for off the clock work. Defendants contends that it had compliant meal and rest period policies in place and such policies also prohibited employees from working off the clock. (Hawkins Decl., ¶¶ 11-25).

Defendants contends that Plaintiff and the PAGA Members were properly compensated, and that they did not violate the Labor Code as to any of them. Defendants asserted additional defenses to the PAGA claim as discussed above. These defenses present a risk to the PAGA claim and the potential that some or all of the PAGA penalties sought may not be awarded. (*Id.*)

Given Defendants' potential defenses to the violations at issue, the risks and costs of continued litigation, Plaintiff and his attorneys believe that the PAGA Settlement is fair and reasonable. (Hawkins Decl., ¶ 23). Plaintiff's Counsel have significant experience litigating wage and hour claims including claims for PAGA penalties, and the PAGA Group Recovery here is similar to or greater than similar settlements that courts have approved. (Hawkins Decl., ¶ 26). The PAGA Members' recovery, along with the other terms of the proposed settlement, were negotiated by experienced counsel at arm's length with the assistance of a private mediator, Daniel J. Turner, Esq. (Hawkins Decl., at ¶ 5).

As set forth in the accompanying proof of service, the LWDA has been provided notice of this Motion and the PAGA settlement. The decision of LWDA to accept the PAGA settlement and not oppose the motion should be given considerable weight. This is not a situation where the Court needs to be concerned about the rights of absent employees as in a class settlement, as this PAGA-only settlement does not release the individual claims of absent employees, and the LWDA is a sophisticated government entity that is more than able to look out for its own rights.

B. The Remaining Settlement Terms Are Fair and Reasonable

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

VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE

PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this settlement is a matter of contract for a contingent representation. Nevertheless, should this Court review the requested attorneys' fees, it is clear that the requested fees and costs are reasonable.

First, the requested fees are justified by the result achieved. Plaintiff's Counsel negotiated a recovery of $150,000.00 and this result justifies the requested fees equal to 35% of this recovery. This percentage is within the standard contingent recovery. Second, the fee award is justified by the work performed. (Hawkins Decl. ¶¶ 28-30).

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

America, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority" range for risk multipliers). Here, the fees are reasonable in light of the Gross Settlement Amount and work performed. (Hawkins at ¶ 29).

Finally, the award of litigation expenses is based upon the actual expenses incurred by the Plaintiff's Counsel. (Hawkins at ¶¶ 29-31). Plaintiff's Counsel will be recovering litigation expenses in the total amount not to exceed $20,000.00. These expenses are documented in the billing statement attached to the Hawkins Declaration as **Exhibit 2**.

VII. THE ENHANCEMENT TO THE PLAINTIFF IS REASONABLE

"[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785 (2009).

Approximately 127 PAGA Members will share a $150,000.00 settlement fund (prior to deductions) due entirely to the effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides for a reasonable Enhancement Payment of $10,000.00. The Enhancement Payment is fair and reasonable compensation for Plaintiff's efforts in pursuing the action, serving as private attorneys general under PAGA, assisting counsel with the litigation and settlement, regularly conferring with counsel on the status of their case and the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. (Hawkins Decl. ¶ 27; *see* generally Declaration of Plaintiff Figueroa filed concurrently herewith.)

Based on the foregoing, Plaintiff respectfully request this Court approve the reasonable PAGA Enhancement Award to Plaintiff in the amount of $10,000.00.

VIII. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests this Court approve the PAGA Settlement and the PAGA Members' recovery as set forth in the Agreement and enter the Proposed Order submitted herewith.

Dated: May 26, 2026

JAMES HAWKINS APLC

By: ______________________________
JAMES R. HAWKINS
JAMES HAWKINS
MICHAEL CALVO
LAUREN FALK
AVA ISSARY

Attorneys for Plaintiff ERMELINDA FIGUEROA, individually and on behalf of the general public as Private Attorney General

PROOF OF SERVICE, COUNTY OF ORANGE

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On May 26, 2026, I served on the interested parties in this action the following document(s) entitled:

NOTICE OF MOTION AND MOTION TO APPROVE PAGA SETTLEMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION

[PROPOSED] ORDER APPROVING PAGA SETTLEMENT AND JUDGMENT

DECLARATION OF JAMES HAWKINS IN SUPPORT OF MOTION TO APPROVE PAGA SETTLEMENT

DECLARATION OF ERMELINDA FIGUEROA IN SUPPORT OF MOTION TO APPROVE PAGA SETTLEMENT, AND ENTERING JUDGMENT THEREON

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Eddie@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SERVICE LIST

(See Service List Attached)

[XX] **STATE:** I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on May 26, 2026, at Irvine, California

Eddie Magana

Timothy M. Rusche, Esq.
TRusche@mcguirewoods.com
Peter Choi
PChoi@ mcguirewoods.com
MCGUIRE WOODS
Attorneys for Defendant
BECKMAN COULTER, INC.

DUANE MORRIS LLP
Sarah A. Gilbert
Shireen Y. Wetmore
Eisha Perry
750 B Street, suite 2900
San Diego, California 92101-4681
sywetmore@duanemorris.com
sagilbert@duanemorris.com
eperry@duanemorris.com

DUANE MORRIS LLP
Gerald L. Maatman, Jr.
gmaatman@duanemorris.com
190 South LaSalle Street, Suite 3700
Chicago, Illinois 60603
Telephone: (312) 499-6700
Facsimile: (312) 279-6780
Attorneys for Defendant
KELLY SERVICES GLOBAL, LLC

Via LWDA Website Only
Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
http://www.dir.ca.gov/Private-Attorneys-General-Act