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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

JERRYAL CULLER, an individual, on
behalf of himself and others similarly
situated,

PLAINTIFF,

v.

PLUMMERS, INC. DBA DANIA
FURNITURE; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

Case No. C22-01296

[Case Assigned for All Purposes to Hon. Charles
S. Treat in Dept. 12]

**NOTICE OF MOTION AND MOTION
FOR APPROVAL OF REPRESENTATIVE
ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

*[Filed concurrently with Declarations of Kelsey
M. Szamet, Jodey Lawrence, and Plaintiff
Jerryal Culler in Support of Plaintiff's Motion
for Approval of Representative Action
Settlement; [Proposed] Order, and Judgment]*

Date: TBD

Time: TBD

Dept.: 12

Complaint Filed: June 22, 2022

Trial Date: None Set

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

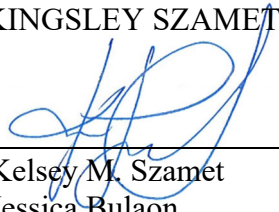
2 **PLEASE TAKE NOTICE** that on a date and time to be determined by the Court in
3 Department 12 of the above-entitled court, Plaintiff JERRYAL CULLER will move the Court for
4 an Order Granting Approval of Representative Action Settlement.

5 The Motion will be made on the grounds that the proposed Settlement is fair, adequate,
6 reasonable, and in the best interest of Plaintiff, all PAGA Employees, and the Parties.

7 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
8 and Authorities, the Declaration of Kelsey M. Szamet, the PAGA Settlement Agreement (Exhibit
9 “1” to the concurrently filed Ly Declaration), all other papers and records on file in this action,
10 and on such oral and documentary evidence as may be presented at the hearing on this Motion.

11
12 DATED: September 4, 2024

KINGSLEY SZAMET & LY

13
14 By: 

Kelsey M. Szamet

Jessica Bulaon

Attorneys for Plaintiff and all aggrieved employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jerryal Culler (“Plaintiff”) submits this Memorandum of Points and Authorities in
4 support of Motion for Approval of Representative Action Settlement. Plaintiff and Defendant
5 PLUMMERS, INC. DBA DANIA FURNITURE (“Defendant”) (collectively, the “Parties”) have
6 reached a proposed settlement documented in the PAGA Settlement Agreement (“Settlement” or
7 “Agreement”), attached to the concurrently-filed declaration of Kelsey M. Szamet.¹

8 This is a Settlement under the Private Attorneys General Act of 2004, Labor Code §2699,
9 et seq. (“PAGA”). The Maximum Settlement Amount² is \$105,000.00. After deduction of
10 attorney’s fees and litigation expenses, litigation enhancement to Plaintiff, and settlement
11 administration costs as discussed in the Agreement, the remaining amount to be divided between
12 the Labor and Workforce Development Agency (“LWDA”) and the PAGA Employees as required
13 by Labor Code section 2699(i) is \$45,231.84, with \$33,923.88 (or 75%) going to the LWDA and
14 \$11,307.96 (or 25%) distributed to the PAGA Employees.³

15 Plaintiff requests that the Court “review and approve any settlement of any civil action
16 filed pursuant to this part” (*See* Lab. Code § 2699(1)(2).) If the Court deems the Settlement fair
17 and acceptable, Plaintiff requests that the Court: (1) enter an order approving the Settlement and
18 ordering the Parties to carry the terms of the Settlement Agreement; and (2) enter a Judgment
19 thereon enforcing the terms of the Agreement, dismissing the Action in its entirety such that all
20 claims in the First Amended Complaint are dismissed with prejudice as to Plaintiff, all PAGA
21 claims in the First Amended Complaint are dismissed with prejudice as to the PAGA Employees
22 and all class claims in the First Amended Complaint are dismissed without prejudice as to the
23 putative class members, and retaining jurisdiction to ensure compliance with the Court’s Order
24

25
26 ¹ The Parties also entered into a separate confidential settlement for Plaintiff Jerryal Culler’s individual claims.
27 Plaintiff had additional claims for disability discrimination, failure to accommodate, and relation in violation of
FEHA and Labor Code section 1102.5 that were resolved and subject to a full release of all Plaintiff’s individual
claims, excluding PAGA.

28 ² Except as otherwise set forth in this Motion, the capitalized terms in this Motion are defined in the Agreement.

³ Pursuant to PAGA, civil penalties recovered by aggrieved employees shall be distributed 75 percent to the
Labor and Workforce Development Agency (“LWDA”) and 25 percent to the aggrieved employee(s). Lab.
Code § 2699(i).

1 approving the Settlement consistent with the Agreement.⁴

2 **II. BACKGROUND OF THE CASE AND RELEVANT PROCEDURAL HISTORY**

3 A. Litigation Overview and Procedural History

4 Plaintiff initially filed a putative Class Action Complaint on June 22, 2022, against
5 Defendant in the Contra Costa Superior Court, Case No. MSC22-01296 entitled *JERRYAL*
6 *CULLER, an individual, on behalf of himself and others similarly situated, PLAINTIFF v.*
7 *PLUMMERS, INC. DBA DANIA FURNITURE; and DOES 1 thru 50, inclusive, DEFENDANTS.,*
8 alleging that Defendant: (1) failed to provide meal breaks; (2) failed to provide rest breaks; (3)
9 failed to reimburse expenses; (4) failed to issue accurate itemized wage statements; (5) is liable
10 for penalties under Labor Code section § 203; and (6) violated Business & Professions Code
11 section § 17200. On the same day, Plaintiff filed a PAGA Claim Notice to the LWDA, in
12 compliance with Labor Code § 2699.3(a)(1). (Declaration of Kelsey M. Szamet ¶6) (“Szamet
13 Decl.”).)

14 Because no response was received by Plaintiff within 65 calendar days from the LWDA
15 evidencing its intention to investigate Plaintiff’s allegations, Plaintiff filed a First Amended
16 Complaint on August 30, 2022, adding an additional cause of action for penalties pursuant to Labor
17 Code §2699, et seq. (hereafter, “PAGA”) seeking penalties based on the claims alleged in
18 Plaintiff’s original Complaint. (Hereafter, the “Action”). (Szamet Decl. ¶7.)

19 On November 28, 2022, Defendant filed a Motion to Compel Arbitration which the court
20 granted, while staying the representative PAGA claim. (Szamet Decl. ¶8.) On March 2, 2023,
21 Plaintiff submitted his wage and hour/individual PAGA claims to arbitration, and added
22 individual claims for retaliation, disability discrimination, failure to accommodate disability, and
23 wrongful termination. (Szamet Decl. ¶9.)

24 B. The Discovery Process and Mediation

25 Plaintiff’s individual arbitration was heavily litigated. (Szamet Decl. ¶10.) The arbitration
26 hearing was set for June 2024. (Szamet Decl. ¶11.) In arbitration, the Parties engaged in extensive
27

28 ⁴ Plaintiff’s Motion for Approval of Representative Action Settlement will be concurrently uploaded to the
LWDA’s website on the date this Motion is filed. Proof of submission of Plaintiff’s Motion for Approval of
Representative Action Settlement, all related documents, and copy of the email from the LWDA confirming
receipt can be provided to the Court upon request. (Szamet Decl. ¶5.)

1 formal discovery and law and motion work. (*Id.*) Both Parties served discovery requests and
2 produced hundreds of pages of documents. (*Id.*) Plaintiff’s deposition was taken on February 23,
3 2024. (*Id.*) Thereafter, with the arbitration hearing approaching, the Parties agreed to mediate both
4 the individual and PAGA matters. (Szamet Decl. ¶12.)

5 Prior to mediation, Defendant formally and informally produced Plaintiff’s personnel file and
6 time and pay data for the PAGA Employees. (Szamet Decl. ¶13.) Through the exchange of
7 information and attendant discussions between the Parties, Plaintiff learned that as of the mediation
8 date on April 4, 2024, there were an estimated 35 PAGA Employees who worked approximately 710
9 PAGA Pay Periods during the PAGA Period. (*Id.*; Ex. 1, ¶9.)

10 On April 4, 2024, the Parties attended an all-day mediation with experienced mediator Lisa
11 Klerman. (Szamet Decl. ¶14.) At mediation, and on the eve of Plaintiff’s arbitration hearing, the
12 Parties reached an agreement in principle which contemplates a resolution on an individual and
13 representative action basis. (*Id.*) The Parties engaged in good faith, arms-length negotiations and were
14 able to reach a tentative settlement in the individual and PAGA actions, with the aid of an experienced
15 mediator, subject to finalization of a formal PAGA Settlement Agreement and the approval of the
16 Court. (*Id.*)

17 Although Defendant denies that it violated any pertinent law, it recognized the risks and
18 attendant costs of litigation, and the Parties were able to reach a tentative settlement subject to
19 finalization of a formal PAGA Settlement Agreement and the approval of the Court. (Szamet Decl.
20 ¶15.) The Parties negotiated the terms and conditions of the Agreement and now present the
21 agreed-upon Settlement to the Court for Approval. (*Id.*)

22 **III. PAGA ACTIONS AND THE REQUIREMENTS**

23 **A. The PAGA Statutory Scheme**

24 PAGA creates a means of “deputizing” citizens as private attorney generals to enforce the
25 Labor Code on behalf of the LWDA. *Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489,
26 501, review den. (Oct. 19, 2011, No. S195850), *cert. denied* (Apr. 16, 2012) 132 S.Ct. 1910. A
27 plaintiff may not — and Plaintiff here does not — bring a PAGA claim simply on his or her own
28 behalf as an individual claim, but “as the proxy or agent of the state’s labor law enforcement

1 agencies.” *Id.*, at 986; *see also Reyes v. Macy’s, Inc.* 202 Cal.App.4th 1119, 1123-1124(2011);
2 *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 380).

3 When an aggrieved employee brings a PAGA claim, “the government is always the real
4 party in interest.” *Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty.*, 234 Cal.App.4th
5 1109, 1119 (2015); *Montano v. The Wet Seal Retail, Inc.* 232 Cal.App.4th 1214, 1222 (2015) (“[A]
6 PAGA action is a dispute between an employer and the State agency.”). Accordingly, a plaintiff
7 that brings a PAGA claim represents “the same legal right and interest as state labor law
8 enforcement agencies,” in that the plaintiff is seeking to recover those civil penalties that otherwise
9 would have been assessed and collected by the LWDA. *Arias, supra*, 46 Cal.4th at 986; Lab. Code
10 § 2699 (a) & (f); *Securitas, supra*, 234 Cal.App.4th at 1119; *see also Medina v. Vander Poel* (E.D.
11 Cal. 2015) 523 B.R. 820, 825 (holding “PAGA plaintiffs do not have property rights in their
12 cases.”). This is borne out by the fact that the LWDA receives 75 percent of any civil penalties
13 recovered; thus, recoveries are principally for the state and only secondarily for aggrieved
14 employees. Lab. Code § 2699 (i). Therefore, when a plaintiff brings a PAGA claim, he or she is
15 properly conceived of as a private attorney general prosecuting violations of California’s labor
16 laws on behalf of the state.

17 An employee may commence a PAGA action by fulfilling the requirements of Cal. Lab.
18 Code § 2699.3 (a)(1), which simply states:

19 “The aggrieved employee or representative shall give written notice by
20 certified mail to the Labor and Workforce Development Agency and the
21 employer of the specific provisions of this code alleged to have been
violated, including the facts and theories to support the alleged violation.”

22 Lab. Code § 2699.3 (a)(1)

23 As explained above, Plaintiff has complied with the notice requirements and has properly
24 pled a PAGA cause of action.

25 B. The Court Has Discretion When Awarding the Amount of Penalties

26 PAGA provides for penalties in the amount of one hundred dollars (\$100) for each
27 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
28 each aggrieved employee per pay period for each subsequent violation. Lab. Code § 2699(f)(2).

“PAGA penalties...are mandatory, not discretionary” and must be awarded upon a showing that Defendant violated the Labor Code.⁵ *Amaral v. Cintas Corp.* No. 2 163 Cal. App. 4th 1157, 1213 (2008); *Moreno v. Autozone, Inc.* (N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007 WL 1650942, at *3.

However, PAGA does provide the Court with discretion when it awards these penalties. Labor Code §2699(e)(2) states that “a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Here, Defendant denies that it violated any law or that it engaged in any knowing or intentional conduct giving rise to liability, and expressly deny that any employees suffered harm.

C. Standards for Settlement Approval

When approving a settlement of a PAGA action, the statute simply requires the Court to “review and approve any settlement of any civil action filed pursuant to this part.” (Lab. Code § 2699(l)(2).) PAGA does not set forth standards for evaluating such settlements, and the California appellate courts have not weighed in on the issue. However, trial courts have approved PAGA settlements where the penalties are “genuine and meaningful” and “consistent with the underlying purpose” of the statute. (See *O’Connor v. Uber Techs., Inc.* (N.D. Cal. 2016) 201 F. Supp. 3d 1110, 1113.) Additionally, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, class action procedural rules do not apply in PAGA cases, including the two-step preliminary and final approval process. Rather, the approval process consists of one step where the court decides if the settlement should go into effect.

IV. THE SETTLEMENT

Under the Agreement, Defendant will pay the Maximum Settlement Amount of \$105,000.00 in full and final settlement of the PAGA claims alleged. (Szamet Decl. ¶16, Exhibit 1, ¶3.) Per the Agreement, the amount is allocated as follows:

Maximum Settlement Amount:	\$105,000.00	
PAGA Counsel Fees Payment:	\$35,000.00	

⁵ See also *Willner v. Manpower Inc.*, *supra*. 35 F. Supp. 3d at 1136; *McKenzie v. Federal Exp. Corp.*, *supra*, 765 F.Supp.2d at 1232.

PAGA Counsel Litigation Expenses Payment:	\$20,000.00 ⁶	
Administrator Expenses Payment:	\$2,500.00	
Named Plaintiff Enhancement Award:	\$5,000.00	
Net Settlement Amount:	\$42,500.00 <i>(\$31,875.00 to the LWDA; \$10,625.00 to distribute as Individual PAGA Payments to the PAGA Employees)</i>	

(Szamet Decl. ¶17; *Id.*)

Under the Agreement, 75% of the Net Settlement Amount shall be provided to the LWDA as its LWDA PAGA Payment, and each PAGA Employee shall receive a pro-rata portion of the remaining amount in the Net Settlement Amount as his/her Individual PAGA Payment by dividing the amount of the PAGA Employees' 25% share of Net Settlement Amount by the total number of PAGA Pay Periods worked by all PAGA Employees during the PAGA Period⁷, and then multiplying the result by each PAGA Employee's PAGA Pay Periods. (Szamet Decl. ¶18, Ex. 1, ¶3.2.4.1.)

For settlement purposes, the PAGA Employees are defined as: "a current or former employee of Defendant who worked at least one pay period as a non-exempt driver position in California at any time during the PAGA Period" ("PAGA Employee"). (Szamet Decl. ¶21, Ex. 1, ¶1.4.)

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⁶ The Agreement provided for counsel to receive cost reimbursement up to \$20,000.00. However, counsel's final costs come to \$16,944.06. The extra \$3,055.94 will remain in the Net Settlement Amount, causing the Net Settlement Amount for distribution to the LWDA and the PAGA Employees to be slightly higher than the \$42,500.00 contemplated in the Agreement. Specifically, \$45,555.94 will be allocated as the Net Settlement Amount, with 75% (\$34,166.96) to the LWDA as its LWDA PAGA Payment and 25% (\$11,388.99) to the PAGA Employees as their Individual PAGA Payments.

⁷ The PAGA Period means the period from June 22, 2021 through and including May 25, 2024. (Szamet Decl. ¶19, Ex 1, ¶1.21) As set forth in the Agreement, based on its records, Defendant estimates that, as of the mediation date, there are 35 PAGA Employees who worked 710 PAGA Pay Periods during the PAGA Period. Per the Agreement, if the aggregate number of PAGA Pay Periods during the PAGA Period exceeds 781 (110% of the estimated PAGA Pay Periods), then the Maximum Settlement Amount shall be adjusted upwards proportionately by the same number of percentage points above 10% by which the number of PAGA Pay Periods exceeds 10%. However, Defendant, at its option, may shorten the PAGA Period end date such that the aggregate number of PAGA Pay Periods worked by the PAGA Employees as drivers in California during the PAGA Period is no more than 781 PAGA Pay Periods and avoid having to increase the Maximum Settlement Amount. (Szamet Decl. ¶20, Ex. 1, ¶9.)

1 **V. ARGUMENT**

2 A. The Court Should Approve the Agreement

3 The Parties recognize that in accordance with Labor Code §2699(l), Court approval is
4 required in the event of a settlement of a PAGA action on a representative basis. However, as
5 explained in *Arias v. Superior Court* 46 Cal.4th 969 (2009), the Parties are not obligated to follow
6 the class action procedural rules in PAGA cases and therefore need not obtain approval of the
7 PAGA settlement through a motion for primary or final approval. Nonetheless, in order to comply
8 with the requirements of Labor Code §2699, the Parties submit the instant Motion and the
9 Agreement (Exhibit “1” to the Ly Declaration) for Court approval.

10 B. The Risks of Moving Forward with Plaintiff’s PAGA Claim

11 To help the Court evaluate the fairness of the Settlement, a discussion of the risk evaluation
12 and discount taken follows. (Szamet Decl. ¶22.) Plaintiff believed that Defendant may
13 persuasively argue that the Court should exercise its discretion under PAGA to significantly reduce
14 or altogether waive any penalties under PAGA. (Szamet Decl. ¶23.) Pursuant to Labor Code
15 §226.3, the Labor Commissioner has the discretion to “decide not to penalize an employer for a
16 first violation when that violation was due to a clerical error or inadvertent mistake.” (Szamet Decl.
17 ¶24.) And in accordance with PAGA, the court in a PAGA action has the same discretion “to
18 assess a civil penalty” that the Labor Commissioner would have, as well as complete discretion to
19 “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on
20 the facts and circumstances of the particular case, to do otherwise would result in an award that is
21 unjust, arbitrary and oppressive, or confiscatory.” (Labor Code § 2699(e)(1) and (e)(2)). (Szamet
22 Decl. ¶25.)

23 PAGA Counsel anticipated that, at trial, Counsel for Defendant could make a potentially
24 persuasive argument that: (1) the PAGA Employees were properly reimbursed in accordance with
25 Defendant’s lawful policies and practices, and that any alleged failure to compensate the PAGA
26 Employees was the result of inadvertence and clerical error; (2) the PAGA Employees had
27 opportunities to take their meal and rest breaks in accordance with Defendant’s lawful policies and
28 practices; (3) the PAGA Employees were issued compliant itemized wage statements; (4) PAGA

1 Employees were timely paid all of their wages at the time of separation (to the extent their
2 employment ended); (5) until this Action was filed, no employees had complaints about any alleged
3 failure to reimburse expenses, provide meal and rest breaks, and issue accurate itemized wage
4 statements; and, (6) none of Defendant’s employees suffered any harm from or actual damage as a
5 result of the conduct that forms the basis for Plaintiff’s allegations. (Szamet Decl. ¶26.) All of which,
6 Counsel for Defendant would argue, should mitigate in factor of significantly reducing or waiving
7 any PAGA penalties. (*Id.*)

8 While Plaintiff disagrees that this analysis is legal correct or persuasive, PAGA Counsel had
9 to consider the foregoing facts and arguments and how they might impact any judgment ultimately
10 awarded to PAGA Employees if the Court were persuaded by them. (Szamet Decl. ¶27.)

11 **1. The Risks Associated with the Meal Period Claim**

12 Under California Labor Code section 512 and IWC Wage Order No. 7, no employer shall
13 employ any person for a work period of more than five hours without providing a meal period of
14 not less than thirty minutes. The first meal period must be permitted to commence no later than
15 after five hours of work, or the start of the sixth hour of work (5.0 hours on the clock). (*Brinker*
16 *Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049.) The second meal period must be
17 permitted to commence no later than after ten hours of work, or the start of the eleventh hour of
18 work (10.0 hours on the clock). (*Ibid.*) The California Supreme Court succinctly described Section
19 512’s mandate: “Employers must afford employees uninterrupted half-hour periods in which they
20 are relieved of any duty or employer control and are free to come and go as they please.” (*Brinker*
21 *Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037.)

22 Here, Plaintiff alleges that Defendant failed to maintain a policy informing Plaintiff and
23 the PAGA Employees of these rights. (Szamet Decl. ¶28.) Further, Plaintiff maintains that Plaintiff
24 and the PAGA Employees were regularly denied lawful meal periods while they were on the road
25 performing deliveries. (*Id.*) Plaintiff contends that each and every manually entered meal punch
26 between 1:00-1:30 p.m. is actually Defendant’s attempt to avoid paying a meal premium. (*Id.*)
27 Moreover, because the delivery schedule did not provide enough time for meals, rest breaks were
28 also not scheduled and therefore not provided. (*Id.*)

1 Defendant produced Plaintiff's drivers logs which contain detailed information of his
2 activities while he was performing deliveries. (Szamet Decl. ¶29.) Plaintiff argued that these
3 drivers' logs show that there were no opportunities for Plaintiff to take an on-time, off-duty meal
4 period of 30 minutes, and that the activity in the drivers' logs show Plaintiff and his co-drivers
5 were either driving or performing a delivery during the time they were supposed to be taking a
6 meal period. (*Id.*)

7 Defendant also produced Plaintiff's timecard data. (Szamet Decl. ¶30.) This data shows
8 that the system automatically marks late or missed meals, as well as other timecard notes manually
9 entered by payroll or management. (*Id.*) Plaintiff maintains that this data shows the system
10 recorded multiple short and missed meals, none of which resulted in meal premiums paid. (*Id.*)
11 Thus, Plaintiff alleges that Defendant failed to provide all lawful meal periods and failed to pay
12 meal premiums as a result thereof. (*Id.*)

13 However, Defendant vehemently disputes this claim. (Szamet Decl. ¶31.) Defendant
14 argued that it maintained a valid written meal period policy at all times and that the PAGA
15 Employees were provided with legally compliant meal periods. (*Id.*) Defendant argued that any
16 noncompliant meals recorded were voluntary, and that the manual entries indicating a compliant
17 30-minute meal period were entered because Plaintiff submitted a time edit request for such. (*Id.*)
18 Defendant also argued that Plaintiff's theory of liability would be extremely difficult to prove on
19 a representative basis because the PAGA Employees' timecard records would show largely
20 complaint meal periods, so Defendant would argue that it would be entitled to inquire of each
21 PAGA Employee, on each day whether or not they were provided with compliant meal periods, or
22 whether the noncompliant meal was of their own volition. (*Id.*) Accordingly, Defendant would
23 also have argued that it has no obligation to "guarantee" or "ensure" that meal periods are taken
24 by all employees at all times. (*Brinker, supra*, 53 Cal. 4th at 1040 [employers are "not obligated
25 to police meal breaks and ensure no work thereafter is performed"])). Rather, an employer satisfies
26 (as Defendant would argue) its obligation to provide meal periods if "it relieves its employees of
27 all duty, relinquishes control over their activities and permits them a reasonable opportunity to
28 take an uninterrupted 30-minute break, and does not impede or discourage them from doing so."

1 (*Id.*)

2 Plaintiff was confident that Defendant would attempt to gather testimonial evidence from
3 PAGA Employees indicating that the records were accurate (namely the manual entries showing
4 a complaint meal period) and either they took compliant meal breaks as reflected in the records or
5 were paid a meal period premium in lieu thereof. (Szamet Decl. ¶32.) Though Plaintiff does not
6 believe this was the case, Plaintiff must acknowledge it poses risks at trial. (*Id.*) There is risk as
7 to both sides as to what declarations and depositions of PAGA Employees might reveal. (*Id.*)
8 Indeed, Plaintiff had to consider that Defendant could secure several declarations from PAGA
9 Employees that all compliant breaks were “provided”, but that they may have chosen to take late
10 breaks or forego breaks on occasion, which would explain why the timecard records show
11 noncompliant meals but no meal premiums paid. (*Id.*)

12 Taken together, Plaintiff acknowledged there was risk as to establishing liability on the
13 meal period claim on a representative basis. (Szamet Decl. ¶33.) Considering these risks, Plaintiff
14 believes it is fair and reasonable. (Szamet Decl. ¶34.)

15 **2. The Risks Associated with the Rest Period Claim**

16 Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked,
17 or major fraction thereof. (Cal. Code Regs., tit. 8, § 11040, subd. 12(A).) Labor Code section
18 226.7, subdivision (c), requires an employer to pay an additional hour of compensation for each
19 workday the employer fails to provide a rest period according to law.

20 Here, Plaintiff’s rest period claim arises from an allegedly common course of conduct
21 wherein Defendant failed to provide employees with the opportunity to take 10-minute rest breaks
22 in compliance with California law because the nature of the job was so hectic. (Szamet Decl. ¶35.)
23 These alleged violations were due to heavy workload and short staffing by Defendant. (*Id.*) The
24 California Supreme Court has held: “Employees are entitled to 10 minutes’ rest for shifts from
25 three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10
26 hours, 30 minutes for shifts of more than 10 hours up to 14 hours and so on.” (*Brinker, supra*, 53
27 Cal.4th at 1029.)

28 In its defense, Defendant argued that Plaintiff’s rest period claim cannot readily be proven

as to all PAGA Employees because California law does not require employees to record rest periods. (Szamet Decl. ¶36.) Absent a shift-by-shift, break-by-break, employee-by-employee inquiry, Defendant would have argued that there was simply no way to know (1) whether a break was taken on any given day; and (2) if not, why not. (*Id.*) For each instance where an employee contends that he did not take a 10-minute rest period by the end of the fourth hour of work, the trier of fact would still have to determine why that particular employee had less than their full allotment of rest time. (*Id.*) Defendant accordingly would have argued that rest break claims are inherently individualized in nature because employers only need to “authorize and permit” breaks; they need not ensure that rest breaks are taken. (*Id.*; *Brinker, supra*, 53 Cal. 4th at 1004.) To succeed, “[a]n employee must show that the employer prevented the employee from taking breaks; mere proof of knowledge that the employee was forgoing breaks is insufficient.”

As such, Plaintiff had to acknowledge that it could potentially be easy for Defendant to defeat this claim if it was able to gather testimonial evidence from aggrieved employees indicating that they were provided the opportunity to take all required rest breaks each day. (Szamet Decl. ¶37.) Though Plaintiff does not believe this was the case, Plaintiff must acknowledge it poses serious risks as to establishing liability. (*Id.*) Just as with meal periods, there is risk as to both sides as to what declarations and depositions of PAGA Employees might reveal. (Szamet Decl. ¶38.)

Thus, Plaintiff believes it is fair and reasonable. (Szamet Decl. ¶39.)

3. The Risks Associated with the Reimbursement Claim

Labor Code section 2802 provides that an employer must “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” (Lab. Code, § 2802, subd. (a).)

Here, Plaintiff alleges Defendant failed to reimburse Plaintiff and the PAGA Employees the cost of using their personal cell phones for business-related purposes. (Szamet Decl. ¶40.) Plaintiff alleges that Defendant required employees to be available by personal cell phone while working, and this was necessary to perform their job duties. (*Id.*) Plaintiff contends that he used his phone to complete electronic driver logs through an app, including taking photos of the customers’ furniture. (*Id.*) The same app also showed Plaintiff which deliveries he was assigned

1 to for the day and what route to take. (*Id.*) He also used his cell phone to contact customers to
2 schedule delivery windows and coordinate with dispatch. ((*Id.*) Both dispatch and management
3 also contacted Plaintiff on his cell phone throughout his employment. (*Id.*) Plaintiff maintains that
4 these cell phones were not provided by Defendant, and Defendant failed to reimburse Plaintiff and
5 the PAGA Employees for the costs associated with using these personal cell phones. (*Id.*)

6 The main risk here is the factual dispute at hand. (Szamet Decl. ¶41.) Defendant contends
7 that it does not require PAGA Employees to use personal cellphones and that it provides work
8 tablets that are readily available. (*Id.*) Thus, Defendant argued that there was no need for any driver
9 to use personal cellphones. (*Id.*)

10 Plaintiff anticipated that Defendant would argue primarily that it provided all necessary
11 tools, but to the extent it did not, any exposure was limited to a very small group of the PAGA
12 Employees who may have chosen to use their personal cellphones for work-related purposes out
13 of convenience. (Szamet Decl. ¶42.) If Defendant were able to establish such, there could be no
14 recovery at all for this claim. (*Id.*)

15 Based on these risks, Plaintiff determined that the settlement reached was fair and
16 reasonable. (*Id.*)

17 **4. The Risks Associated with the Wage Statement Claims**

18 California Labor Code §226(a) requires Defendant to provide its employees with an
19 accurate, itemized written wage statement that shows, in relevant part, total hours worked by the
20 employee, their name and address of the legal entity that is the employer, and all applicable hourly
21 rates and the corresponding number of hours worked. Specifically, Labor Code §226(a) requires
22 employers to furnish accurate itemized wage statements in writing that show total hours worked
23 by the employee and all applicable hourly rates in effect during the pay period and the
24 corresponding number of hours worked at each hourly rate by the employee. (Labor Code §§
25 226(a)(2) and (9) respectively.)

26 Plaintiff alleges that Defendant failed to provide them and the PAGA Employees with
27 complete and accurate wage statements which failed to show, among other things, the correct gross
28 and net wages earned. (Szamet Decl. ¶43.) Plaintiff and the PAGA Employees were paid on an

1 hourly basis, and thus, this claim is derivative of Plaintiff's meal and rest claims. (*Id.*) As such,
2 Plaintiff contends the wage statements should have reflected all applicable hourly rates during the
3 pay period and the total hours worked, and the applicable pay period in which the wages were
4 earned pursuant to California Labor Code Section 226(a). (*Id.*) Plaintiff also contends that the wage
5 statements Defendant provided to Plaintiff and the PAGA Employees allegedly failed to
6 accurately identify such information, because the wage statements did not properly list all
7 meal/rest premiums owed. (*Id.*)

8 Again the risks flow from the underlying meal/rest claims, but the main risk taken into
9 account is that wage statement claims are vulnerable to an argument that Plaintiff and the PAGA
10 Employees did not suffer any harm. (Szamet Decl. ¶44.) Defendants commonly argue that,
11 without more, wage statement claims are nothing but technical violations for which a court should
12 award a dramatically reduced civil penalty, if anything at all. (*Id.*)

13 **5. The Risks Associated with the Waiting Time Penalties Claim**

14 Under Labor Code section 203, if an employer fails to provide wages at the time of an
15 employee's termination or within seventy-two (72) hours of resignation, then the employee's
16 wages shall continue as a penalty for up to thirty (30) days. (Labor Code § 203.) Section 203
17 reflects a public policy that favors the full and prompt payment of earned wages. (See, e.g.,
18 *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68
19 Cal.App.4th 487, 492.)

20 Here, Plaintiff and numerous PAGA Employees are no longer employed by Defendant,
21 and Plaintiff alleges that Defendant failed to pay all wages owed and due upon their termination
22 and/or resignation. (Szamet Decl. ¶45.) Plaintiff contends that Defendant failed to properly pay
23 all premiums due for noncompliant meal/rest periods. (*Id.*) The risk analysis for the section 203
24 claim flows from the risk analysis for the underlying meal/rest claims discussed above as
25 derivative waiting-time penalties are only as strong as the underlying predicate claims and are
26 subject to good faith defenses. (*Id.*) If Defendant could prove, as it contends, that PAGA
27 Employees were properly paid for any meal/rest periods actually owed, there would be no recovery
28

1 of wages and no waiting time penalties that flow therefrom.⁸ (*Id.*)

2 The other significant risk that Plaintiff analyzed, however, is that to establish liability for
3 waiting time penalties, Plaintiff would have to establish not only that the underlying violations
4 occurred, but also that Defendant's conduct was "willful." (Labor Code § 203; Szamet Decl. ¶46.)
5 If Defendant could establish that any alleged failure was the result of mistake or oversight and not
6 "willful", then it is possible that Plaintiff would not be able to recover penalties for this claim. (*Id.*)
7 Because of this risk, Plaintiff determined that the settlement reached was fair and reasonable. (*Id.*)

8 C. A Court May Exercise its Discretion to Reduce the Maximum Civil Penalty
9 Awarded for Technical Violations of the Labor Code

10 "PAGA penalties...are mandatory, not discretionary" and must be awarded upon a
11 showing that Defendant violated the Labor Code. *Amaral v. Cintas Corp.* No. 2 163 Cal. App 4th
12 1157, 1213 (2008); *Moreno v. Autozone, Inc.* (N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007
13 WL 1650942, at *3. However, PAGA does provide the Court with discretion when it awards these
14 penalties. Labor Code section 2699(e)(2) states that "a court may award a lesser amount than the
15 maximum civil penalty amount specified by this part if, based on the facts and circumstances of
16 the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
17 or confiscatory."

18 In *Fleming v. Covidien Inc.* (C.D. Cal., Aug. 12, 2011, No (OPX)), 2011 WL 7563047, the
19 Court exercised its discretion to reduce the PAGA penalty amount. There, the plaintiff brought a
20 PAGA claim for violations of section 226(a) based on the following issues: (a) the statements did
21 not show either an employee identification number or the last four digits of the social security
22 number of the employee; (b) the statements did not show the beginning date of the pay period for
23 which the employee was paid; (c) the statements identified Covidien as the employee's employer.
24 (*Id.* At *2). There were approximately 28,000 wage statements at issue. (*Id.* at *3). The *Fleming*
25 court calculated the maximum potential civil penalty exposure at \$2.8 million (\$100 per wage
26 statement). (*Ibid*; see also Labor Code § 2699(f)(2)). After a bench trial, the Court elected to
27 exercise its discretion to reduce the civil penalty per wage statement to \$18 per wage statements,

28 ⁸ Plaintiff also alleged that Defendant owes waiting time penalties by not paying former alleged employees all wages owed and all premium payments for non-compliant meal or rest periods, Labor Code § 226.7

1 reflecting 18% of the potential exposure. (*Id.* at *4). The Court reasoned:

2 Here, the aggrieved employees suffered no injury due to the erroneous wage
3 statements, and made no complaint of the errors or omissions contained
4 therein prior to filing suit. Also, Defendants were not aware that the wage
5 statements violated the law and took prompt steps to correct all violations
6 once notified. Given these circumstances, the Court finds a \$2.8 million
penalty unjust according to § 2699(e)(2). Accordingly, in its discretion, the
Court reduces the penalty to \$500,000.

7 *Id.* at *4. A court exercising its discretion to significantly reduce the civil penalty awarded under
8 PAGA is not a rare occurrence. *See e.g., Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th
9 504, 529 (awarding 10% of maximum civil penalty for meal break claims in light of Starbucks’s
10 “good faith attempts” to comply and because the violations were minimal).

11 Here, as explained above, Plaintiff’s counsel anticipated that, at trial, Counsel for
12 Defendant would argue that: (1) the PAGA Employees were properly reimbursed in accordance
13 with Defendant’s lawful policies and practices, and that any alleged failure to compensate the
14 PAGA Employees was the result of inadvertence and clerical error; (2) the PAGA Employees had
15 opportunities to take their meal and rest breaks in accordance with Defendant’s lawful policies and
16 practices; (3) until this Action was filed, no employees had complaints about any alleged failure
17 to reimburse expenses, provide meal and rest breaks, and issue accurate itemized wage statements;
18 and, (4) none of Defendant’s employees suffered any harm from or actual damage as a result of
19 the conduct that forms the basis for Plaintiff’s allegations. All of which, Counsel for Defendant
20 would argue, should mitigate in favor of significantly reducing the civil penalty.

21 After engaging in pertinent informal discovery in this Action, Plaintiff’s counsel determined
22 that a settlement of \$105,000.00 is fair and reasonable given the above risks.

23 D. Based on the Risks Above and the Analysis of the Maximum Penalties Available,
24 Plaintiff Believes this Settlement is Fair and Reasonable

25 Based on these figures, the maximum potential exposure for the PAGA claims for the
26 PAGA Employees is \$71,000.00 (710 pay periods at issue multiplied by \$100 a pay period)
27 without the “stacking” of penalties. (Szamet Decl. ¶47.) While there is no authority available on
28 this issue, a court could conceivably “stack” per pay periods violations, and the full potential value

could increase to over \$355,000 (\$71,000 x 5 distinct Labor Code claims alleged), but in light of the immense discretion available, Plaintiff believes the Settlement is reasonable. (*Id.*)

First, Plaintiff acknowledges that several violations, such as the meal or rest violations, could be very difficult to prove on a representative basis. (Szamet Decl. ¶48.) Second, a court exercising its discretion to significantly reduce the civil penalty awarded under PAGA is not a rare occurrence. (See e.g., *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [awarding only 10% of maximum civil penalty for meal break claims in light of Starbucks’s “good faith attempts” to comply and because the violations were minimal]; see also *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 681 [noting that a court should consider whether a violation was inadvertent when assessing penalties].)⁹ If the Court found that Defendant made good-faith attempts to comply, that violations were minimal, or that the violations were inadvertent, the amount of PAGA penalties awarded could significantly be reduced. (Szamet Decl. ¶49.)

Given that this Settlement is for \$105,000, Plaintiff believes this is an exceptional settlement.

VI. THE REQUEST FOR ATTORNEYS’ FEES AND COSTS

As detailed fully in the Agreement, the settlement provides for Defendant to create a Maximum Settlement Amount of \$105,000.00. (Szamet Decl. ¶54; Ex. 1 at ¶3.) From that fund, Plaintiff requests an award of PAGA Counsel Fees Payment for PAGA Counsel in the amount of \$35,000.00, or 33.33% of the Maximum Settlement Amount, and \$16,944.06 in PAGA Counsel Litigation Expenses Payment. (*Ibid.*)

A. Plaintiff’s Counsel are Entitled to a Fee from the Common Fund

On August 11, 2016, the California Supreme Court decided *Laffitte v. Robert Half International*, which addressed the correct methodology for awarding fees in a class action settlement. (*Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 205 Cal.Rptr.3d 555, 573.) The *Laffitte* Court approved awarding fees as a percentage of the settlement fund in cases like the present one,

⁹ On May 11, 2016, following a bench trial, Los Angeles Superior Court Judge John Wiley reduced PAGA penalties from \$409,950 to \$53,294 after finding the maximum statutory penalty amount to be unjust, arbitrary, oppressive, and/or confiscatory. (*Kaanaana et al. v. Barrett Business Serv.s Inc., et al.*, L.A. Super. Ct., Case No. BC 496090.))

1 where a settlement results in the creation of a common fund on behalf of a class:

2 We join the overwhelming majority of federal and state courts in
3 holding that when class action litigation establishes a monetary fund
4 for the benefit of the class members, and the trial court in its
5 equitable powers awards Class Counsel a fee out of that fund, the
court may determine the amount of a reasonable fee by choosing an
appropriate percentage of the fund created.

6 (*Id.* at 573.) The Court then set out several reasons why the percentage-of-the-fund method is
7 preferred over the alternative lodestar-multiplier approach in California courts:

8 The recognized advantages of the percentage method—including relative ease of
9 calculation, alignment of incentives between counsel and the class, a better
approximation of market conditions in a contingency case, and the encouragement
10 it provides counsel to seek an early settlement and avoid unnecessarily prolonging
the litigation [citations]—convince us the percentage method is a valuable tool that
11 should not be denied our trial courts.

12 (*Id.* at 573.)

13 An award of 33.33% of the common fund is appropriate here under the “substantial benefit”
14 theory. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1810; *Wershba v. Apple Computer,*
15 *Inc.* (2001) 91 Cal.App.4th 224, 254.) That theory permits a litigant who has sued in a
16 representative capacity to recover fees when the litigant’s efforts have created a substantial, actual,
17 and concrete benefit for members of an ascertainable class and the court’s jurisdiction over the
18 subject matter makes possible an award which spreads the cost proportionately among the
19 members of the benefitted class. (*See Ciani v. San Diego Trust & Sav. Bank* (1994) 25 Cal.App.4th
20 563, 578.)

21 This doctrine rests on the understanding that attorneys should normally be paid by their
22 clients, and that unless attorneys’ fees are paid out of the common fund, those who benefitted from
23 the fund would be unjustly enriched. (*Woodland Hills Residents Assn., Inc. v. City Council* (1979)
24 23 Cal.3d 917, 943; *Save El Toro Ass’n v. Days* (1979) 98 Cal.App.3d 544, 548-49.) To prevent
25 this unfair result, courts exercise their inherent equitable powers to assess attorneys’ fees against
26 the entire fund, thereby spreading the cost of those fees among all those who benefitted. (*Serrano*
27 *III*, 20 Cal.3d at p. 35.) “A court, in the exercise of its equitable discretion, may decree that those
28 receiving the benefit should contribute to the costs of its production.” (*Save El Toro Assn., supra*,

98 Cal.App.3d at 548.) As this approach “better approximates the workings of the marketplace than the lodestar approach,” there is “a greater judicial willingness to evaluate a fee award as a percentage of the recovery” in common fund cases. (*Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal.App.4th 19, 31, 48.)

B. The Attorneys’ Fees Request Are Well Within the Range of Fees in Comparable Cases

Courts historically award fees in the twenty-to-fifty percent range, depending on the circumstances of the case. As stated in Newberg:

No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the Class, although somewhat larger percentages are not unprecedented.

(Newberg on Class Actions, 3rd Ed., 1992, § 14.03; and see *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn 11 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].) Thus, PAGA Counsel’s requested fee of 33.33% is not only well within the range of reasonableness, but lower than the average fee award of 35% and is fair compensation for undertaking this complex, risky, expensive, and time-consuming litigation on a contingent basis.

C. PAGA Counsel’s Fee Request is Reasonable Under a Lodestar Crosscheck

Courts may “cross-check” the results of the common fund method against the lodestar method. (See *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.) The lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. (*Serrano v. Priest*, 20 Cal.3d 25, 48-49 (1977) (“*Serrano III*”).) Those rates reflect “the general local hourly rate for a fee-bearing case” and do “not include any compensation for contingent risk, extraordinary skill, or any other factors.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138.) The court may then enhance the lodestar with a multiplier. (*Wershba, supra*, 91 Cal.App.4th at 254; *Serrano III, supra*, 20 Cal.3d at 49.)

///

i. No Multiplier is Requested

The purpose of using the lodestar/multiplier method is to mirror the legal marketplace. Counsel will not handle cases for straight hourly fees payable only if they win; therefore, an enhancement is often awarded so that the fee received is commensurate with what attorneys could expect to be compensated for services in similar circumstances. (*See Tulare Valley Audubon Soc., Inc. v. County of Tulare* (1984) 155 Cal.App.3d 738, 755 [an award must be large enough “to entice competent counsel to undertake difficult public interest cases”].) No specific findings reflecting the court’s calculations are required. (*Wershba, supra*, 91 Cal.App.4th at 254; *Rebney, supra*, 232 Cal.App.3d at p. 1349.) “The record need only show that the attorney fees were awarded according to the ‘lodestar’ or ‘touchstone’ approach.” (*Ibid.*)

Here, a lodestar cross-check confirms that the percentage requested is reasonable. (Szamet Decl. ¶55.) PAGA Counsel have an aggregate lodestar in the amount of \$137,573.00 which represents 235.74 hours of attorney work on this litigation from its inception through the date of this filing of Plaintiff’s instant Motion. (*Id.*)

As such, PAGA Counsel has billed more hours than they are requesting. (Szamet Decl. ¶56.)

VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS

In addition to their request for fees, PAGA Counsel further request a PAGA Counsel Litigation Expenses Payment as reimbursement of the reasonable out-of-pocket expenses advanced and/or incurred by them in connection with this litigation, in the amount of \$16,748.66. (Szamet Decl. ¶93.) To date, PAGA Counsel has incurred \$16,748.66 in costs. (Szamet Decl. ¶94.) PAGA Counsel anticipates incurring an additional \$195.40 in costs to file and serve this motion. (Szamet Decl. ¶95.) As such, counsel is requesting a PAGA Counsel Litigation Expenses Payment of \$16,944.06. (Szamet Decl. ¶96.)

All of the requested costs are reasonable in amount and were necessarily incurred by PAGA Counsel in prosecuting this litigation. (Szamet Decl. ¶97.); Exhibit 5 [Cost Report].) Expenses in this matter to date include costs for filing fees, research, mediation, and additional costs for the

prosecution of this case evidenced in the costs spreadsheet attached to the Declaration of Kelsey M. Szamet. All of these costs have been incurred in the course of this litigation, and all costs advanced have already been paid by PAGA Counsel, with the exception of the anticipated cost of filing the present motion. (Szamet Decl. ¶98.)

Accordingly, the requested reimbursement of the reasonable out-of-pocket expenses advanced and/or incurred is appropriate and justified as part of the overall settlement and the Court should approve the request for a PAGA Counsel Litigation Expenses Payment in the amount of \$16,944.06. (Szamet Decl. ¶99.)

VIII. ENHANCEMENT TO PLAINTIFF

The Settlement calls for an Enhancement Award of \$5,000.00 to the named Plaintiff, to be paid from the Maximum Settlement Amount. (Szamet Decl. ¶100; Ex. 1 at ¶3.2.2.) Incentive awards “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and sometimes, to recognize their willingness to act as a private attorney general.” (*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59. “[I]t is established that named plaintiffs are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 (citing *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 805-806; *Staton v. Boeing Co.* (9th Cir.2003) 327 F.3d 938, 977)).

Here, the enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in coming forward to litigate this matter on behalf of the PAGA Employees. (Szamet Decl. ¶101.) The time spent by Jerryal Culler includes identifying competent counsel, providing information to PAGA Counsel regarding Plaintiff’s relevant employment experiences, compiling documents, meeting with PAGA Counsel frequently to discuss the status of the case and the theories of liability, discussing and preparing discovery responses with PAGA Counsel, preparing with PAGA Counsel for and attending his deposition, reviewing settlement documents, and making himself attending a full day of mediation. (Szamet Decl. ¶102.)

PAGA Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl.

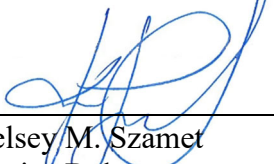
¶103.) The enhancement takes into consideration the time, effort, risks, and expense incurred by Plaintiff in coming forward to litigate this matter on behalf of the PAGA Employees. (Szamet Decl. ¶104.) Accordingly, Plaintiff should be awarded the agreed-upon Enhancement Award of \$5,000.00.

IX. CONCLUSION

Plaintiff and Plaintiff's Counsel submit that the proposed Settlement as documented in the Agreement is fair, adequate, reasonable, and in the best interest of the Parties and the State of California. Plaintiff respectfully requests that the Court approve the Settlement and Order that the Settlement is carried out according to the terms of the Agreement.

DATED: September 4, 2024

KINGSLEY SZAMET & LY

By: 

Kelsey M. Szamet

Jessica Bulaon

Attorneys for Plaintiff and all aggrieved employees

(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On September 4, 2024, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR APPROVAL OF REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

LITTLER MENDELSON

Lisa Lin Garcia

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Emily Mertes

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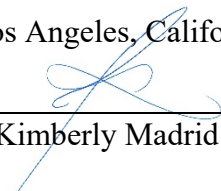
Studio City, CA 91604

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] (BY ELECTRONIC MAIL TRANSMISSION): I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the above email address(es).

[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 September 4, 2024, at Los Angeles, California.



Kimberly Madrid