

**KINGSLEY SZAMET
EMPLOYMENT LAWYERS**
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleylawyers.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleylawyers.com
JESSICA BULAON, Esq., (SBN 340749)
jessi@kingsleylawyers.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

Attorneys for Plaintiff and the proposed class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ALEJANDRO GARNICA-VEGA, an
individual, on behalf of himself and others
similarly situated

PLAINTIFF,

v.

BAPKO METAL, INC.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

Case No. 30-2025-01464229-CU-OE-CXC

[Case Assigned for All Purposes to Hon.
David A. Hoffer in Dept. CX-103]

**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, Jonathan Paul of Xpand
Legal Consulting, LLC, and Plaintiff Alejandro
Garnica-Vega in Support of Plaintiff's Motion
for Approval of Representative Action
Settlement; [Proposed] Order, and Judgment]*

Date: November 30, 2026

Time: 1:30 P.M.

Dept.: CX-103

Reservation ID: 74959400

Complaint Filed: March 3, 2025

Trial Date: None Set

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

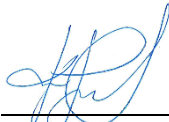
2 **PLEASE TAKE NOTICE** that on November 30, 2026 at 1:30 P.M. in Department CX-
3 103 of the above-entitled court, Plaintiff ALEJANDRO GARNICA-VEGA will move the Court
4 for an Order Granting Approval of Representative Action Settlement.

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 aggrieved 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 Szamet 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 18, 2026

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

13
14 By: 

15 Kelsey M. Szamet
16 Attorneys for Plaintiff ALEJANDRO GARNICA-
17 VEGA and the proposed class
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND OF THE CASE AND RELEVANT PROCEDURAL HISTORY	1
A.	Litigation Overview and Procedural History	1
B.	Defendant’s Arbitration Agreement	2
C.	The Discovery Process.....	3
III.	PAGA ACTIONS AND THE REQUIREMENTS	3
A.	The PAGA Statutory Scheme	3
B.	The Court Has Discretion When Awarding the Amount of Penalties	4
C.	Standards for Settlement Approval	5
IV.	THE SETTLEMENT	5
V.	ARGUMENT	6
A.	The Court Should Approve the Agreement	6
B.	The Risks of Moving Forward with Plaintiff’s PAGA Claim	6
1.	The Risks Associated with the Wages/Overtime Claim	7
2.	The Risks Associated with the Meal Period Claim	10
3.	The Risks Associated with the Rest Period Claim.....	12
4.	The Risks Associated with the Wage Statement Claims	13
5.	The Risks Associated with the Waiting Time Penalties Claim	15
C.	A Court May Exercise its Discretion to Reduce the Maximum Civil Penalty Awarded for Technical Violations of the Labor Code.....	16
D.	There is a Strong Risk the Heightened \$200 Civil Penalty Will Not Apply	17
E.	Based on the Risks Above and the Analysis of the Maximum Penalties Available, Plaintiff Believes this Settlement is Fair and Reasonable	18
VI.	THE REQUEST FOR ATTORNEYS’ FEES AND COSTS	20
A.	Plaintiff’s Counsel are Entitled to a Fee from the Common Fund	20

1	B.	The Attorneys’ Fees Request Are Well Within the Range of Fees in Comparable	
2		Cases	21
3	C.	PAGA Counsel’s Fee Request is Reasonable Under a Lodestar Crosscheck.....	22
4	1.	Requested Multiplier.....	22
5	VII.	THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF	
6		COSTS	24
7	VIII.	ENHANCEMENT TO PLAINTIFF	24
8	IX.	CONCLUSION.....	25

TABLE OF AUTHORITIES

Federal Cases

Fleming v. Covidien Inc.,

(C.D. Cal., Aug. 12, 2011, No (OPX) 2011 WL 7563047 23, 24

Gibbs v. TWC Administration, LLC,

(S.D. Cal., Jan. 3, 2020, No. 17CV01513DMSAGS) 2020 WL 42768..... 13

McKenzie v. Federal Exp. Corp,

supra, 765 F.Supp.2d 7

Medina v. Vander Poel,

(E.D. Cal. 2015) 523 B.R. 820..... 6

Moreno v. Autozone, Inc.,

(N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007 WL 1650942 7, 23

O'Connor v. Uber Techs., Inc.,

(N.D. Cal. 2016) 201 F. Supp. 3d 1110 8

Rodriguez v. West Publishing Corp.,

(9th Cir. 2009) 563 F.3d 948 32

Staton v. Boeing Co.,

(9th Cir.2003) 327 F.3d 938 32

Willner v. Manpower Inc.,

supra. 35 F. Supp. 3d 7

State Cases

Amaral v. Cintas Corp. No. 2,

163 Cal. App. 4th 1157 (2008) 7, 22, 23, 25

Arias v. Superior Court,

supra, 46 Cal.4th 6, 9, 10

Barnhill v. Robert Saunders & Co.,

(1981) 125 Cal.App.3d 1 22

1	<u>Beasley v. Wells Fargo Bank,</u>	
2	(1991) 235 Cal.App.3d 1407	30
3	<u>Benton v. Telecom Network Specialists, Inc.,</u>	
4	(2013) 220 Cal.App.4th 701	18
5	<u>Bradley v. Networkers International, LLC,</u>	
6	(2012) 211 Cal.App.4th 1129	17
7	<u>Brinker Rest. Corp. v. Superior Court,</u>	
8	(2012) 53 Cal.4th 1004	16, 17, 19, 20
9	<u>Brown v. Ralphs Grocery Co.,</u>	
10	(2011) 197 Cal.App.4th 489	4, 5
11	<u>Carrington v. Starbucks Corp.,</u>	
12	(2018) 30 Cal. App. 5th 504	24
13	<u>Chavez v. Netflix, Inc.,</u>	
14	(2008) 162 Cal.App.4th 43, fn 11	29
15	<u>Ciani v. San Diego Trust & Savings Bank,</u>	
16	(1994) 25 Cal.App.4th 563	28
17	<u>Clark v. American Residential Services LLC,</u>	
18	(2009) 175 Cal.App.4th 785	32
19	<u>Coalition for L.A. County Planning v. Board of Supervisors,</u>	
20	(1997) 76 Cal.App.3d 24	30
21	<u>Consumer Privacy Cases,</u>	
22	(2009) 175 Cal.App.4th 545	29
23	<u>Diaz v. Grill Concepts Services, Inc.,</u>	
24	(2018) 23 Cal.App.5th 859	22
25	<u>Dunk v. Ford Motor Co.,</u>	
26	(1996) 48 Cal.App.4th 1794	28

1	<u>El Toro Ass’n v. Days,</u>	
2	(1979) 98 Cal.App.3d 544	28
3	<u>Faulkinbury v. Boyd & Associates, Inc.,</u>	
4	(2013) 216 Cal.App.4th 220	17
5	<u>Frlekin v. Apple Inc.,</u>	
6	(2020) 8 Cal.5th 1038	12
7	<u>Iskanian v. CLS Transportation Los Angeles, LLC,</u>	
8	59 Cal. 4th 348	5
9	<u>Ketchum v. Moses,</u>	
10	(2001) 24 Cal.4th 1122	29
11	<u>Laffitte v. Robert Half International Inc.,</u>	
12	(Cal. 2016) 205 Cal.Rptr.3d 555	27, 28
13	<u>Lealao v. Beneficial California, Inc.,</u>	
14	(2000) 82 Cal.App.4th 19	28
15	<u>Mamika v. Barca,</u>	
16	(1998) 68 Cal.App.4th 487	22
17	<u>Montano v. The Wet Seal Retail, Inc.,</u>	
18	232 Cal.App.4th 1214 (2015)	5
19	<u>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,</u>	
20	(2010) 186 Cal.App.4th 399	32
21	<u>Murphy v. Kenneth Cole Productions, Inc.,</u>	
22	(2007) 40 Cal.4th 1094	19
23	<u>Naranjo v. Spectrum Security Services, Inc.,</u>	
24	(2024) 15 Cal.5th 1056	21, 22
25	<u>Radar v. Thrasher,</u>	
26	(1962) 57 Cal.2d 244	30

1	<u>Rebney v. Wells Fargo Bank,</u>	
2	supra, 232 Cal.App.3d.	30
3	<u>Reyes v. Macy's, Inc.,</u>	
4	202 Cal.App.4th 1119(2011)	5
5	<u>San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino,</u>	
6	(1984) 155 Cal.App.3d 738	29, 30
7	<u>Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty.,</u>	
8	234 Cal.App.4th 1109 (2015)	5, 6
9	<u>Serrano v. Priest III,</u>	
10	(1977) 20 Cal.3d	28, 29
11	<u>Troester v. Starbucks Corp.,</u>	
12	(2018) 5 Cal.5th 829	12, 13, 14
13	<u>Wershba v. Apple Computer, Inc.,</u>	
14	(2001) 91 Cal.App.4th 224	28, 29, 30
15	<u>Woodland Hills Residents Assn., Inc. v. City Council,</u>	
16	(1979) 23 Cal.3d 917	28
17	<u>State Statutes</u>	
18	Business & Professions Code §17200	2
19	Civil Code § 3294	25
20	Labor Code § 201.....	26
21	Labor Code § 202.....	26
22	Labor Code § 203.....	2, 22, 26
23	Labor Code § 226.....	26
24	Labor Code § 226(a)	2, 20, 21, 23
25	Labor Code § 226(a)(2)	21
26	Labor Code § 226(a)(9)	21
27	Labor Code § 226(e)	21
28		

1	Labor Code § 226.2.....	2
2	Labor Code § 226.3.....	10
3	Labor Code § 226.7.....	2, 18, 20
4	Labor Code § 226.7(c)	19
5	Labor Code § 510.....	2, 14, 15
6	Labor Code § 510(a)	14
7	Labor Code § 512.....	2, 16, 18, 20
8	Labor Code § 1194.....	2, 14, 15
9	Labor Code § 1194.2.....	14, 15
10	Labor Code § 1199.....	2, 14, 15
11	Labor Code § 2699.....	1, 2, 3, 10
12	Labor Code § 2699(a)	6
13	Labor Code § 2699(e)(1)	11
14	Labor Code § 2699(e)(2)	8, 11, 23, 24, 27
15	Labor Code § 2699(f).....	6
16	Labor Code § 2699(f)(2)	7, 23
17	Labor Code § 2699(f)(2)(A)	25, 26
18	Labor Code § 2699(f)(2)(A)(i).....	26
19	Labor Code § 2699(f)(2)(B).....	24
20	Labor Code § 2699(f)(2)(B)(i).....	25
21	Labor Code § 2699(f)(2)(B)(ii).....	25
22	Labor Code § 2699(i).....	1, 6, 27
23	Labor Code § 2699(l).....	10
24	Labor Code § 2699(l)(2)	1, 8
25	Labor Code § 2699(v).....	25
26	Labor Code § 2699(o).....	4, 26
27	Labor Code § 2699.3(a)(1)	6, 7
28		

1	Labor Code § 2699.6.....	3
2	<u>State Regulations</u>	
3	Cal. Code Regs., tit. 8, § 11010(12)(A)	19, 20
4	Cal. Code of Regs., tit. 8, § 11080(2)(G).....	12
5	<u>Other Authorities</u>	
6	AB 2288	25

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

8 This is a Settlement under the Private Attorneys General Act of 2004, Labor Code §2699,
9 et seq. (“PAGA”). The Gross Settlement Amount is \$175,000.00. After deduction of attorney’s
10 fees and litigation expenses, litigation enhancement to Plaintiff, and settlement administration
11 costs as discussed in the Agreement, the remaining amount to be divided between the Labor and
12 Workforce Development Agency (“LWDA”) and the aggrieved employees as required by Labor
13 Code section 2699(i) is \$65,022.35, with (or 75%) going to the LWDA and \$21,674.12 (or 25%)
14 distributed to the aggrieved employees.¹

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) and enter a Final
19 Judgement thereon.²

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

21 A. Litigation Overview and Procedural History

22 On March 3, 2025, Plaintiff filed a wage and hour class action lawsuit, alleging eight causes
23 of action, including: (1) failure to pay wages and/or overtime under Labor Code sections 226.2,
24 510, 1194, and 1199; (2) failure to provide meal breaks pursuant to Labor Code sections 226.7 and
25

26 ¹ Pursuant to PAGA, civil penalties recovered by aggrieved employees shall be distributed 75 percent to the
27 Labor and Workforce Development Agency (“LWDA”) and 25 percent to the aggrieved employee(s). Lab.
Code § 2699(i).

28 ² 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. ¶126.)

512; (3) failure to provide rest breaks pursuant to Labor Code section 226.7; (4) failure to issue accurate itemized wage statements pursuant to Labor Code section 226(a); (5) penalties under Labor Code section 203; and (6) violation of Business & Professions Code section 17200. Also on March 3, 2025, Plaintiff sent a notice letter, pursuant to Labor Code section 2699 (“PAGA”), to the Labor Workforce Development Agency (“LWDA”) regarding their intent to seek civil penalties for the same Labor Code violations above, under Labor Code section 2699, et seq. (Declaration of Kelsey M. Szamet ¶5.) (“Szamet Decl.”)

Plaintiff brought the Class Action on behalf of a Proposed Class defined as: “All persons who are employed or have been employed as an hourly employee by BAPKO METAL, INC., in the State of California since four (4) years prior to the filing of this action to the present” (“Proposed Class”). (Szamet Decl. ¶6.)

On May 15, 2025, Plaintiff filed a First Amended Class and Representative Action Complaint adding an additional cause of action for penalties pursuant to Labor Code § 2699, et seq., the Private Attorneys General Act (“PAGA”) based on the underlying Labor Code violations already pled. (Hereafter, the “Action”). (Szamet Decl. ¶7.)

B. Defendant’s Arbitration Agreement

During early and meet and confer efforts, Defendant set forth its position that this should be a PAGA only matter on behalf of non-union employees. (Szamet Decl. ¶8.) First, there is an arbitration agreement that Defendant asserts all current employees have signed that contains a class arbitration waiver. (Szamet Decl. ¶9.) Second, Defendant contends that the union-represented employees are covered by a CBA with a class action waiver and the agreement also exempts them from PAGA due to the exemption in the Ironworkers Agreement (CBA) entered into pursuant to Labor Code section 2699.6. (Szamet Decl. ¶10.)

For purposes of the PAGA claim, a total of 189 non-union employees worked during the PAGA period from March 1, 2024, to December 15, 2025, comprising 8,068 pay periods. Pursuant to Labor Code section 2699(o), Defendant contends that any civil penalties recovered under PAGA are required to be reduced by one-half because the employees' regular pay period is weekly. (Szamet Decl. ¶11.) For purposes of mediation, Defendant provided a sampling of time and pay

records for 25% of the non-union PAGA members. (Szamet Decl. ¶12.)

C. The Discovery Process

The Parties have not engaged in formal discovery, instead focusing their efforts on resolving this case through early mediation. (Szamet Decl. ¶13.)

Although Defendant denies that it violated any pertinent law, it recognized the risks and attendant costs of litigation, and the Parties were able to reach a tentative settlement subject to finalization of a formal PAGA Settlement Agreement and the approval of the Court. (Szamet Decl. ¶14.) The Parties negotiated the terms and conditions of the Agreement and now present the agreed-upon Settlement to the Court for Approval. (*Id.*)

III. PAGA ACTIONS AND THE REQUIREMENTS

A. The PAGA Statutory Scheme

PAGA creates a means of “deputizing” citizens as private attorney generals to enforce the Labor Code on behalf of the LWDA. *Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489, 501, review den. (Oct. 19, 2011, No. S195850), *cert. denied* (Apr. 16, 2012) 132 S.Ct. 1910. A plaintiff may not — and Plaintiff here does not — bring a PAGA claim simply on his or her own behalf as an individual claim, but “as the proxy or agent of the state’s labor law enforcement agencies.” *Id.*, at 986; *see also Reyes v. Macy’s, Inc.* 202 Cal.App.4th 1119, 1123-1124(2011); *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 380).

When an aggrieved employee brings a PAGA claim, “the government is always the real party in interest.” *Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty.*, 234 Cal.App.4th 1109, 1119 (2015); *Montano v. The Wet Seal Retail, Inc.* 232 Cal.App.4th 1214, 1222 (2015) (“[A] PAGA action is a dispute between an employer and the State agency.”). Accordingly, a plaintiff that brings a PAGA claim represents “the same legal right and interest as state labor law enforcement agencies,” in that the plaintiff is seeking to recover those civil penalties that otherwise would have been assessed and collected by the LWDA. *Arias, supra*, 46 Cal.4th at 986; Lab. Code § 2699 (a) & (f); *Securitas, supra*, 234 Cal.App.4th at 1119; *see also Medina v. Vander Poel* (E.D. Cal. 2015) 523 B.R. 820, 825 (holding “PAGA plaintiffs do not have property rights in their cases.”). This is borne out by the fact that the LWDA receives 75 percent of any civil penalties

1 recovered; thus, recoveries are principally for the state and only secondarily for aggrieved
2 employees. Lab. Code § 2699 (i). Therefore, when a plaintiff brings a PAGA claim, he or she is
3 properly conceived of as a private attorney general prosecuting violations of California’s labor
4 laws on behalf of the state.

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

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

10 Lab. Code § 2699.3 (a)(1)

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

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

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

17 “PAGA penalties...are mandatory, not discretionary” and must be awarded upon a showing
18 that Defendant violated the Labor Code.³ *Amaral v. Cintas Corp. No. 2* 163 Cal. App. 4th 1157,
19 1213 (2008); *Moreno v. Autozone, Inc.* (N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007 WL
20 1650942, at *3.

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

27 ///

28 ³ 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.

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

Defendant will pay the total sum of \$175,000.00 in full and final settlement of the PAGA claims alleged. (Szamet Decl. ¶15., Exhibit 1, ¶3.) Per the Agreement, the amount is allocated as follows:

Gross Settlement Amount:	\$175,000.00
PAGA Counsel Fees Payment:	\$61,250.00
PAGA Counsel Litigation Expenses Payment:	\$18,553.53 ⁴
Administrator Expenses Payment:	\$3,500.00
Named Plaintiff Enhancement:	\$5,000.00
PAGA Penalties:	\$86,696.47 (\$65,022.35 to the LWDA; \$21,674.12 to remain in the Net Settlement Amount)

(Szamet Decl. ¶16, Exhibit 1, ¶3.)

Each aggrieved employee shall receive a pro-rata portion of the remaining amount in PAGA penalties based by dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties

⁴ The Agreement provided for counsel to receive cost reimbursement up to \$22,000. However, counsel’s final costs come to \$17,953.53, plus an additional \$600 in anticipated filing costs, for a total cost request of \$18,553.53. (Szamet Decl., Ex. 1) The extra \$3,446.47 will remain in the net settlement fund, causing the net amount for distribution to the LWDA and Aggrieved Employees to be slightly higher than the \$83,250.00 contemplated in the settlement agreement. (Szamet Decl., *Id.*)

1 (\$21,674.12) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during
2 the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods.
3 (Szamet Decl. ¶17.)

4 For settlement purposes, the Aggrieved Employees or PAGA Members are defined as: "all
5 current and former non-union non-exempt employees who were employed by Defendant from
6 March 2024 through December 15, 2025 (the 'PAGA Period') ("Aggrieved Employee" or "PAGA
7 Member"). (Szamet Decl. ¶18, Exhibit 1, ¶1.4.)

8 **V. ARGUMENT**

9 **A. The Court Should Approve the Agreement**

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

17 **B. The Risks of Moving Forward with Plaintiff's PAGA Claim**

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

Decl. ¶22.)

PAGA Counsel anticipated that, at trial, Counsel for Defendant could make a potentially persuasive argument that Defendant that (1) the Aggrieved Employees were properly paid and/or reimbursed in accordance with Defendant’s lawful policies and practices, and that any alleged failure to compensate the Aggrieved Employees was the result of inadvertence and clerical error; (2) the Aggrieved Employees were provided with the opportunity to take meal and rest breaks in compliance with California law; (3) until this Action was filed, no employees had complained about any alleged failure to pay wages, provide meal and/or rest breaks, reimburse expenses, issue accurate itemized wage statements; (4) none of Defendant’s employees suffered any harm from or actual damage as a result of the conduct that forms the basis for Plaintiff’s allegations. (Szamet Decl. ¶23.) All of which Counsel for Defendant would argue, should mitigate in factor of significantly reducing or waiving any PAGA penalties. (*Id.*) While Plaintiff disagrees that this analysis is legally correct or persuasive, PAGA Counsel had to consider the foregoing facts and arguments and how they might impact any judgment ultimately awarded to Aggrieved Employees if the Court were persuaded by them. (Szamet Decl. ¶24.)

1. The Risks Associated with the Wages/Overtime Claim

“California employees are entitled to compensation for all hours worked, which means “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” (Title 8 Cal. Code of Regs., § 11080(2)(G); *See Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 845, as modified on denial of reh’g (Aug. 29, 2018).) Time is compensable if an employee is “*subject to the control* of an employer” even if not working, or if an employee “*is suffered or permitted to work*” even if not “under the employer’s control, provided the employer has or should have knowledge of the employee’s work.” (*Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038, 1046, reh’g denied (May 13, 2020) (citations omitted.) An employer controls an employee if the employer directs an employee and the employee is unable to use their time how they wish. (*Id.* at p. 1047.) Other factors courts may consider include whether the activity is required, “the location of the activity, the degree of the employer’s control, whether the activity primarily benefits the employee or employer, and

whether the activity is enforced through disciplinary measures.” (*Id.* at p. 1056; *Cf. Gibbs v. TWC Administration, LLC* (S.D. Cal., Jan. 3, 2020, No. 17CV01513DMSAGS) 2020 WL 42768, at *9 (denying Defendant’s motion for summary judgment when plaintiff-employees conducted off-the-clock pre-shift activity in preparation to start work right when they clocked in).)

In *Troester*, employees spent four to ten minutes completing tasks to close up the store, such as setting the alarm and locking the door. (*Troester*, 5 Cal.5th 829 at p. 843.) The Court held that California law prohibits employers from requiring employees to work off the clock, even for minutes, without compensation. (*Id.* at p. 848.) The Court explained:

An employer that requires its employees to work minutes off the clock on a regular basis or as a regular feature of the job may not evade the obligation to compensate the employee for that time by invoking the de minimis doctrine. As the facts here demonstrate, a few extra minutes of work each day can add up. . . . What Starbucks calls “de minimis” is not de minimis at all to many ordinary people who work for hourly wages.

(*Id.* at p. 847.)

Additionally, California workers are statutorily entitled to overtime compensation unless properly classified within one of the narrow exemption categories. Under California law, “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek...shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” (Lab. Code, § 510, subd. (a).) Furthermore, “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.” (*Id.*) Labor Code §§ 510, 1194, 1194.2, and 1199 require an employer to pay its employees the legal minimum wage and the legal overtime compensation owed.

Here, Plaintiff alleged that he and the Aggrieved Employees were not properly compensated for all hours worked because they were required to routinely work more than eight (8) hours in one day or forty (40) hours in one week. (Szamet Decl. ¶25.) Plaintiff alleged that Defendant maintained an unlawful policy of auto-deducting for meal periods that resulted in the unlawful withholding of wages and/or overtime. (Szamet Decl. ¶26.) Plaintiff alleged that Defendant auto-deducted meal breaks from Plaintiff and the Aggrieved Employees’ paychecks even when Plaintiff and the Aggrieved Employees did not receive their meal breaks. (Szamet Decl.

¶27.) Plaintiff further alleged that Defendant failed to pay Plaintiff and the Proposed Class for the thirty minutes of time it automatically deducted each shift, regardless of whether the lawful meal period was actually provided. (Szamet Decl. ¶28.)

Plaintiff contends that the underlying timekeeping data reflects a further complication for this claim: Defendant's payroll practices changed materially over the relevant period, moving from an auto-deduct meal-period policy, to a period in which employees were apparently paid for the entirety of each recorded shift with no deduction at all, to a later period in which meal periods are affirmatively punched. (Szamet Decl. ¶29.) PAGA Counsel's expert applied an assumption of ten minutes of unpaid off-the-clock work per shift to approximate the impact of the auto-deduct practice, but because that figure is an assumption rather than a directly-observed number of unpaid minutes, and because a substantial portion of the data shows no deduction of any kind, Defendant would argue that a uniform per-shift assumption cannot fairly be applied across the entire PAGA Period. (Szamet Decl. ¶30.)

Plaintiff contends that by its policy of requiring Plaintiff and the Aggrieved Employees to work without being paid all wages at their appropriate regular rate of pay and to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one-half (1 ½) their regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194, 1194.2, and 1199, as well as its own written policies. (Szamet Decl. ¶31.) Plaintiff contends that Defendant therefore owes penalties under PAGA. (Szamet Decl. ¶32.)

However, Defendant would likely argue that any shortfall in compensation was the result of inadvertence and clerical error rather than a deliberate policy, and that Plaintiff and the Aggrieved Employees were properly paid in accordance with Defendant's lawful policies and practices. (Szamet Decl. ¶33.) Plaintiff must also acknowledge that the timekeeping data itself complicates a uniform theory of liability across the relevant time period: for a substantial portion of that period, the data shows Defendant paid Plaintiff and the Aggrieved Employees for the entirety of each recorded shift with no meal-period deduction at all, which could support an argument that no uniform unpaid wages claim is viable during the relevant time period. (Szamet

Decl. ¶34.) While Plaintiff disagrees that these anticipated defenses are factually or legally persuasive, Plaintiff had to acknowledge that both Defendant's likely position and the mixed nature of the underlying data present substantial risks that Plaintiff considered when evaluating this Settlement.

2. The Risks Associated with the Meal Period Claim

Under California Labor Code section 512 and IWC Wage Order No. 1, no employer shall employ any person for a work period of more than five hours without providing a meal period of not less than thirty minutes.

The first meal period must be permitted to commence no later than after five hours of work, or the start of the sixth hour of work (5.0 hours on the clock). (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049.) The second meal period must be permitted to commence no later than after ten hours of work, or the start of the eleventh hour of work (10.0 hours on the clock). (*Ibid.*) The California Supreme Court succinctly described Section 512's mandate: "Employers must afford employees uninterrupted half-hour periods in which they are relieved of any duty or employer control and are free to come and go as they please." (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037.)

It is well settled that if an employer fails to maintain a uniform policy that authorizes and permits the meal periods called for under the law, "it has violated the wage order and is liable." (See *Brinker*, 53 Cal.4th at p. 1033.) Following *Brinker*, California courts have confirmed that liability for meal period violations arises when an employer adopts a uniform policy that fails to comply with the Labor Code, without requiring proof that each individual employee was in fact denied a break as a result of that policy. (See *Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 235; *Bradley v. Networkers International, LLC* (2012) 211 Cal.App.4th 1129; *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 725–726.) Plaintiff contends Defendant's auto-deduct meal-period policy is itself such a uniform unlawful policy, giving rise to liability independent of proof of any individual instance of denial.

Here, Plaintiff alleges that he and the Aggrieved Employees consistently worked shifts over five (5) hours and ten (10) hours and Defendant failed to provide Plaintiff and the Proposed Class with proper meal periods of not less than thirty (30) minutes as required by the Labor Code

1 during the relevant time period. (Szamet Decl. ¶35.) Plaintiff maintains that Defendant maintained
2 a written policy for meal and rest periods but violated its own policies. (Szamet Decl. ¶36.)
3 Specifically, Plaintiff alleged that he and the Aggrieved Employees rarely received compliant meal
4 breaks and that Defendant maintained a policy of automatically deducting thirty minutes for a meal
5 period each shift without determining whether a meal period was actually provided, was timely,
6 or lasted a full thirty minutes. (Szamet Decl. ¶37.) Additionally, Plaintiff alleged that Defendant
7 has had a consistent policy of failing to pay Plaintiff and the Aggrieved Employees one (1) hour
8 of pay at the employees' regular rate of compensation for each workday that the compliant meal
9 period was not provided. (Szamet Decl. ¶38.) On July 15, 2021, in *Ferra v. Loews Hollywood*
10 *Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour
11 of bonus pay that employees are owed if an employer fails to provide a compliant meal period or
12 rest break. (*Id.*) Specifically, the Court held that those bonus payments must include the hourly
13 value of any nondiscretionary earnings (such as a nondiscretionary bonus, commissions, etc.) and
14 cannot simply be paid at an employee's base hourly rate. (*Id.*) Here, when meal periods are
15 provided, Defendant has had a consistent policy of paying meal period premiums at the base rate
16 and not the appropriate blended rate in violation of Labor Code §§ 226.7 and 512. (Szamet Decl.
17 ¶39.) Thus, Defendant failed to provide lawful meal periods and pay meal premiums out at the
18 proper rate. Defendant therefore owes penalties.

19 Defendant argued that the employees did receive their meal periods and argued that other
20 employees would testify to that fact. (Szamet Decl. ¶40.) Additionally, Defendant maintained valid
21 written meal and rest period policies. (Szamet Decl. ¶41.) This presented a risk on the meal period
22 claim that Plaintiff considered when evaluating this settlement. (Szamet Decl. ¶42.)

23 Plaintiff must also acknowledge a further risk specific to the more recent portion of the
24 class period: once Defendant began affirmatively recording meal periods in 2025, approximately
25 42% of recorded first meal breaks were exactly thirty minutes in length. (Szamet Decl. ¶43.)
26 Defendant would argue that this pattern reflects accurately-recorded, compliant meal periods,
27 consistent with Brinker's holding that an employer need only provide a reasonable opportunity to
28 take an uninterrupted thirty-minute meal period and need not police whether an employee's break

1 in fact lasted the full thirty minutes. (*Brinker*, 53 Cal.4th at pp. 1040–1041.) While Plaintiff would
2 argue this pattern suggests that the breaks may have been automatically inserted instead of being
3 genuine thirty-minute breaks, Plaintiff had to weigh the risk that a factfinder would determine that
4 Defendant’s records showed strong meal period compliance as of 2025. (Szamet Decl. ¶44.)

5 **3. The Risks Associated with the Rest Period Claim**

6 Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour
7 of compensation for each workday the employer fails to provide a rest period according to law.
8 Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked, or
9 major fraction thereof. (Cal. Code Regs., tit. 8, § 11010, subd. 12(A).)

10 The California Supreme Court has held that employees are entitled to ten (10) minutes of
11 rest for shifts from three and one-half to six hours in length, twenty (20) minutes for shifts of more
12 than six hours up to ten hours, thirty (30) minutes for shifts of more than ten hours up to fourteen
13 hours, and so on. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1029.) In an
14 eight-hour workday, the denial of two paid rest breaks effectively requires an employee to perform
15 twenty minutes of uncompensated work. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40
16 Cal.4th 1094, 1104.)

17 The Court has also clarified what steps an employer must take to make rest breaks available
18 to its employees:

19 An employer is required to authorize and permit the amount of rest break time
20 called for under the wage order for its industry. If it does not — if, for example, it
21 adopts a uniform policy authorizing and permitting only one rest break for
22 employees working a seven-hour shift when two are required — it has violated the
wage order and is liable. No issue of waiver ever arises for a rest break that was
required by law but never authorized; if a break is not authorized, an employee has
no opportunity to decline to take it.

23 (*Brinker Rest. Corp. v. Superior Court*, supra, 53 Cal.4th at p. 1033 (emphasis added).)

24 Employers must authorize and permit a net ten-minute paid rest period for every four hours,
25 or major fraction thereof, of work for its employees. If an employer does not, then the employer
26 must pay the employee one hour of pay at the employee’s regular rate of pay for each workday
27 that the rest period is not provided. (Cal. Code Regs., tit. 8, § 11010, subd. 12(A).) Here, Plaintiff
28 alleged that Defendant failed to provide Plaintiff and the Aggrieved Employees with uninterrupted

1 rest breaks of not less than ten (10) minutes as required by the Labor Code during the relevant time
2 period and did not ensure it occurred within the first 3.5 hours of an employee's shift. (Szamet
3 Decl. ¶45.) Further, Plaintiff alleged that he and the Aggrieved Employees were not compensated
4 with one (1) hour of wages for each compliant rest period as required by Labor Code §226.7.
5 (Szamet Decl. ¶46.)

6 Defendant again raised the defense that employees received their rest breaks and presented
7 evidence that employees would testify as such. (Szamet Decl. ¶47.) Given that the rest period
8 policy was accurate, Plaintiff considered this a viable risk. (Szamet Decl. ¶48.)

9 Plaintiff must also acknowledge that the rest period claim carries proof risks independent
10 of Defendant's stated position. (Szamet Decl. ¶49.) Employers are not required to record rest
11 periods, so no documentary evidence exists on either side; consistent with this, PAGA Counsel's
12 expert had no rest-break time records to draw on and instead assumed a 100% violation rate for all
13 shifts of at least 3.5 hours, based on the complete absence of rest-break data in Defendant's records.
14 (Szamet Decl. ¶50.) Defendant would likely argue that the absence of records cuts both ways, and
15 that a 100% assumption is unsupported without some further showing that rest breaks were
16 uniformly denied rather than voluntarily forgone. (Szamet Decl. ¶51.) Absent documentary proof
17 beyond Defendant's own written "as much as practicable" policy, Plaintiff had to acknowledge
18 the risk that a court could discount the 100% assumption significantly. (Szamet Decl. ¶52.)

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

20 California Labor Code §226(a) requires Defendant to provide its employees with an
21 accurate, itemized written wage statement that shows, in relevant part, total hours worked by the
22 employee, their name and address of the legal entity that is the employer, and all applicable hourly
23 rates and the corresponding number of hours worked. Specifically, Labor Code §226(a) requires
24 employers to furnish accurate itemized wage statements in writing that show total hours worked
25 by the employee and all applicable hourly rates in effect during the pay period and the
26 corresponding number of hours worked at each hourly rate by the employee. (Labor Code §§
27 226(a)(2) and (9) respectively.)
28

1 Here, Plaintiff contends that Defendant furnishes Plaintiff and the Aggrieved Employees
2 with itemized wage statements that do not accurately show all applicable hourly rates in effect
3 during the pay period and the corresponding number of hours worked at each hourly rate because
4 Plaintiff and the Aggrieved Employees performed work while off the clock. (Szamet Decl. ¶53.)
5 The work performed off the clock was not recorded and thus was not reflected in the Aggrieved
6 Employees' wages and wage statements. (*Id.*) Further, Plaintiff alleged that he and the Aggrieved
7 Employees are issued wage statements that do not include accurate meal and rest premiums as a
8 result of the claims alleged above. (Szamet Decl. ¶54.) Plaintiff alleged Defendant's failure to
9 provide accurate itemized wages statements according to Labor Code § 226(a) was all done on a
10 regular and consistent basis. Thus, Defendant owes the Aggrieved Employees penalties under
11 PAGA for failing to provide accurate and itemized wage statements.

12 Plaintiff contends that the Aggrieved Employees suffered injury within the meaning of
13 Labor Code § 226(e) because the inaccuracies in their wage statements, including the failure to
14 reflect unrecorded off-the-clock time and unpaid meal and rest premiums, meant Aggrieved
15 Employees could not readily determine from the face of their wage statements whether they were
16 properly compensated. (Szamet Decl. ¶55.)

17 This claim is substantially derivative of, and carries the same proof risks as, the wage, meal,
18 and rest period claims discussed above. (Szamet Decl. ¶56.) It also faces an independent defense:
19 statutory penalties under section 226(e) require a "knowing and intentional" violation, and an
20 employer's objectively reasonable, good faith belief that its wage statements complied with the
21 law defeats the penalty claim outright. (*Naranjo v. Spectrum Security Services, Inc.* (2024) 15
22 Cal.5th 1056, 1062–1063.) Defendant maintained that its wage statements accurately reflected the
23 hours and rates it recorded, and would argue that any inaccuracy traceable to the disputed off-the-
24 clock and meal-premium claims reflects, at most, a good faith dispute over what was owed rather
25 than a knowing and intentional violation. (Szamet Decl. ¶57.) Plaintiff had to weigh these defenses
26 in valuing this claim for settlement.

27 As this is a derivative claim, the same risks present for the above claims were present for
28 this claim. (Szamet Decl. ¶58.)

5. The Risks Associated with the Waiting Time Penalties Claim

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

Here, Plaintiff and numerous Aggrieved Employees are no longer employed by Defendant. Defendant failed to pay all wages owed and due upon their termination and/or resignation. (Szamet Decl. ¶59.) Defendant's actions were willful, as they have intentionally failed or refused to perform an act which was required to be done. (See *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) "The failure to pay is willful if the employer 'knows what [it] is doing [and] intends to do what [it] is doing', and does not also require proof that the employer acted with "a deliberate evil purpose to defraud work[ers] of wages which the employer knows to be due.'" (*Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859, 868.)

Although willfulness does not require a deliberate evil purpose, only that the employer knows what it is doing and intends to do it (*Diaz*, supra, 23 Cal.App.5th at 868), a good faith dispute that any wages were due precludes a finding of willfulness. (*Amaral*, supra, 163 Cal.App.4th at 1201–1204; *Naranjo*, supra, 15 Cal.5th at pp. 1062–1063.) Defendant would point to its position that any shortfall resulted from inadvertence and clerical error rather than a deliberate refusal to pay, and to its maintained written meal and rest period policies, as evidence of a good faith dispute rather than a willful violation. (Szamet Decl. ¶60.) There is accordingly a substantial risk that the trier of fact would find no willfulness and award no waiting time penalties even if unpaid wages were established. Plaintiff also factored in the risk that this claim is derivative of the underlying wage, meal, and rest period claims discussed above.

Plaintiff factored in the risk of establishing that any violation was "willful" and the fact that this claim is derivative. (Szamet Decl. ¶61.)

In light of all these significant risks and given that PAGA gives the Court broad discretion to

1 reduce any penalties ultimately awarded, PAGA Counsel determined that the Gross Settlement
2 Amount of \$175,000.00 was fair and reasonable. (Szamet Decl. ¶62.)

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

5 “PAGA penalties...are mandatory, not discretionary” and must be awarded upon a
6 showing that Defendant violated the Labor Code. *Amaral v. Cintas Corp.* No. 2 163 Cal. App 4th
7 1157, 1213 (2008); *Moreno v. Autozone, Inc.* (N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007
8 WL 1650942, at *3.

9 However, PAGA does provide the Court with discretion when it awards these penalties.
10 Labor Code section 2699(e)(2) states that “a court may award a lesser amount than the maximum
11 civil penalty amount specified by this part if, based on the facts and circumstances of the particular
12 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
13 confiscatory.”

14 In *Fleming v. Covidien Inc.* (C.D. Cal., Aug. 12, 2011, No (OPX)), 2011 WL 7563047, the
15 Court exercised its discretion to reduce the PAGA penalty amount. There, the plaintiff brought a
16 PAGA claim for violations of section 226(a) based on the following issues: (a) the statements did
17 not show either an employee identification number or the last four digits of the social security
18 number of the employee; (b) the statements did not show the beginning date of the pay period for
19 which the employee was paid; (c) the statements identified Covidien as the employee’s employer.
20 (*Id.* At *2). There were approximately 28,000 wage statements at issue. *Id.* at *3). The *Fleming*
21 court calculated the maximum potential civil penalty exposure at \$2.8 million (\$100 per wage
22 statement). *Ibid*; see also Labor Code § 2699(f)(2)). After a bench trial, the Court elected to
23 exercise its discretion to reduce the civil penalty per wage statement to \$18 per wage statements,
24 reflecting 18% of the potential exposure. *Id.* at *4). The Court reasoned:

25 Here, the aggrieved employees suffered no injury due to the erroneous wage
26 statements, and made no complaint of the errors or omissions contained
27 therein prior to filing suit. Also, Defendants were not aware that the wage
28 statements violated the law and took prompt steps to correct all violations
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.

1 Id. at *4. A court exercising its discretion to significantly reduce the civil penalty awarded under
2 PAGA is not a rare occurrence. *See e.g., Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th
3 504, 529 (awarding 10% of maximum civil penalty for meal break claims in light of Starbuck's
4 "good faith attempts" to comply and because the violations were minimal).
5

6 Here, as explained above, Plaintiff's counsel anticipated that, at trial, Counsel for
7 Defendant would argue that: (1) the Aggrieved Employees were properly paid and/or reimbursed
8 in accordance with Defendant's lawful policies and practices, and that any alleged failure to
9 compensate the Aggrieved Employees was the result of inadvertence and clerical error; (2) the
10 Aggrieved Employees were provided with the opportunity to take meal and rest breaks in
11 compliance with California law; (3) until this Action was filed, no employees had complained
12 about any alleged failure to pay wages, provide meal and/or rest breaks, reimburse expenses, issue
13 accurate itemized wage statements; (4) none of Defendant's employees suffered any harm from or
14 actual damage as a result of the conduct that forms the basis for Plaintiff's allegations. All of
15 which, Counsel for Defendant would argue, should mitigate in favor of significantly reducing the
16 civil penalty.

17 After engaging in pertinent informal discovery in this Action, Plaintiff's counsel determined
18 that a settlement of \$175,000.00 is reasonable given the above risks.

19 D. There is a Strong Risk the Heightened \$200 Civil Penalty Will Not Apply

20 The \$200 subsequent violation penalty under the reformed California Private Attorneys'
21 General Act (PAGA) applies only when specific prior findings or malicious conduct are proven.
22 Plaintiff believes there is a strong risk that the Court would not award the heightened \$200 civil
23 penalty available under Labor Code section 2699(f)(2)(B). Because Plaintiff's PAGA notice was
24 submitted on March 3, 2025, this action is governed by the amendments to PAGA enacted in 2024
25 (AB 2288), which apply to civil actions based on notices filed on or after June 19, 2024. Lab. Code
26 § 2699(v). Those amendments eliminated the former "initial"/"subsequent" violation dichotomy
27 and replaced it with a materially more demanding standard: the \$200-per-pay-period penalty is
28 now available only if (i) "[w]ithin the five years preceding the alleged violation, the agency or any
court issued a finding or determination to the employer that its policy or practice giving rise to the

violation was unlawful," or (ii) "[t]he court determines that the employer's conduct giving rise to the violation was malicious, fraudulent, or oppressive." Lab. Code § 2699(f)(2)(B)(i)–(ii).

Plaintiff is not aware of any finding or determination by the Labor and Workforce Development Agency, the Labor Commissioner, or any court within the preceding five years that Defendant's wage statement policy or practice was unlawful. Absent such a finding, Plaintiff could obtain the \$200 penalty only by proving at trial that Defendant's conduct was "malicious, fraudulent, or oppressive" — language that echoes the punitive damages standard of Civil Code section 3294 and that Plaintiff anticipates courts will construe as a similarly high bar. Plaintiff would face substantial difficulty making that showing as even under the pre-reform statute, courts declined to award heightened penalties absent notice to the employer that its conduct violated the Labor Code. *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) (heightened penalties under sections 210 and 225.5 unavailable "[u]ntil the employer has been notified that it is violating a Labor Code provision"). The 2024 amendments codify an even stricter rule.

Accordingly, there is a strong risk that any penalties recovered at trial would be limited to the default \$100 per pay period under section 2699(f)(2)(A) — or less.

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

PAGA Counsel retained a wage-and-hour data expert, Berger Consulting Group, to analyze Defendant's records, consisting of 177 timekeeping files and 6,102 paycheck stubs covering 200 Aggrieved Employees. The expert analyzed 44,776 shifts and 9,340 weekly pay periods across the PAGA Period, extrapolating from the data produced (March 4, 2024 through November 26, 2025) to the full PAGA Period of March 1, 2024 through December 15, 2025. (Szamet Decl. ¶63.) Because Defendant pays its employees weekly, the 9,340 weekly pay periods yield 4,670 PAGA pay periods after application of Labor Code section 2699(o), which reduces penalties by one-half where the regular pay period is weekly rather than biweekly or semimonthly. (Szamet Decl. ¶64.)

Applying the default \$100 penalty rate under Labor Code section 2699(f)(2)(A) to each violation category, the expert calculated the following maximum exposures: \$467,000.00 for unpaid off-the-clock wages (4,670 pay periods); \$467,000.00 for wage statements (4,670 pay

periods); \$466,800.00 for rest breaks (4,668 pay periods, assuming a 100% violation rate); \$344,400.00 for meal breaks (3,444 pay periods with a net violation after offsetting premiums paid); \$69,700.00 for regular-rate overtime (697 pay periods); \$10,400.00 for waiting time penalties (104 former employees); \$7,400.00 for regular-rate sick pay (74 pay periods); and \$2,200.00 for regular-rate meal premiums (22 pay periods). (Szamet Decl. ¶65.) Exposure on the largest single theory is thus approximately \$467,000.00, and if the Court were to stack penalties across every category, the theoretical maximum exposure would be approximately \$1,834,900.00. (Szamet Decl. ¶66.)

That theoretical maximum is subject to substantial reduction at every step. First, several of the expert's assumptions are litigation maximums that Defendant would vigorously contest: the rest break figure assumes a 100% violation rate for every qualifying shift, the off-the-clock and wage statement figures assume a violation in every pay period, and Defendant would argue the meal break data reflects recording practices rather than actual violations particularly for 2025, when recorded first meal breaks rose sharply. (Szamet Decl. ¶67.) Second, as discussed above, there is a strong risk the Court would not award anything above the \$100 default rate, and Defendant would argue for the reduced tiers, including the \$25-per-pay-period cap for wage statement violations where employees could promptly and easily determine the accurate information from the wage statements alone. Lab. Code § 2699(f)(2)(A)(i). (Szamet Decl. ¶68.) Third, the amended statute substantially limits stacking: an aggrieved employee may not collect a civil penalty for waiting time violations under sections 201 through 203, or for a non-knowing and non-intentional violation of section 226, in addition to the penalty collected for the underlying unpaid wage violation, and the Court may in any event reduce penalties where the same conduct resulted in multiple violations. Lab. Code § 2699(i). Application of section 2699(i) alone could eliminate the derivative waiting time (\$10,400.00) and wage statement (\$467,000.00) exposure — over a quarter of the stacked total. (Szamet Decl. ¶69.) Fourth, the Court retains broad discretion to award less than the maximum where the maximum would be "unjust, arbitrary and oppressive, or confiscatory." Lab. Code § 2699(e)(2). (Szamet Decl. ¶70.) And these merits-stage reductions come on top of the threshold arbitration and CBA risks discussed above, which could substantially

1 narrow the scope of the action before the merits are ever reached.

2 Measured against this exposure, the Settlement's PAGA payment of \$86,696.47 represents
3 approximately 18.6% of the maximum single-theory exposure of \$467,000.00 and approximately
4 4.7% of the theoretical fully stacked maximum of \$1,834,900.00 — a maximum that itself assumes
5 a 100% rest break violation rate, no reduction to the lower penalty tiers, full stacking of derivative
6 claims notwithstanding section 2699(i), and no exercise of the Court's discretion under section
7 2699(e)(2). Given these risks, Plaintiff believes the total Settlement of \$175,000.00, including the
8 PAGA payment of \$86,696.47, is fair, reasonable, and in the best interests of the State and the
9 Aggrieved Employees. (Szamet Decl. ¶71.)

10 **VI. THE REQUEST FOR ATTORNEYS' FEES AND COSTS**

11 As detailed fully in the Settlement, the settlement provides for Defendant to create a Gross
12 Settlement Amount of \$175,000.00. (Szamet Decl. ¶76; Ex. 1 at ¶¶3.1.) From that fund, Plaintiff
13 requests an award of attorneys' fees for PAGA Counsel in the amount of \$61,250.00, or 35% of
14 the Gross Settlement Amount, and \$18,553.53 in reimbursement for litigation costs. (*Id.*)

15 **A. Plaintiff's Counsel are Entitled to a Fee from the Common Fund**

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

21 We join the overwhelming majority of federal and state courts in
22 holding that when class action litigation establishes a monetary fund
23 for the benefit of the class members, and the trial court in its
24 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.

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

27 The recognized advantages of the percentage method—including relative
28 ease of calculation, alignment of incentives between counsel and the class,
a better approximation of market conditions in a contingency case, and the
encouragement 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 should not be denied our trial courts.

Id. at 573.)

An award of 35% of the common fund is appropriate here under the “substantial benefit” theory. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1810; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254.) That theory permits a litigant who has sued in a representative capacity to recover fees when the litigant’s efforts have created a substantial, actual, and concrete benefit for members of an ascertainable class and the court’s jurisdiction over the subject matter makes possible an award which spreads the cost proportionately among the members of the benefitted class. (*See Ciani v. San Diego Trust & Sav. Bank* (1994) 25 Cal.App.4th 563, 578.)

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

1. **Requested Multiplier**

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 *San Bernardino Valley Audubon Soc., Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 755; *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.*)

1 Here, a lodestar cross-check confirms that the percentage requested is reasonable. (Szamet
2 Decl. ¶85.) PAGA Counsel has an aggregate lodestar in the amount of \$47,116.00 which
3 represents 49.20 hours of attorney work on this litigation from its inception through the date of
4 this filing of Plaintiff's instant Motion, and 10-15 future hours. (*Id.*) As such, PAGA Counsel is
5 asking for a lodestar multiplier of 1.30. (Szamet Decl. ¶87.) Typically, the lodestar is merely the
6 starting point of the calculation of a reasonable fee, and courts often multiply the lodestar by a
7 factor to account for the risk of non-payment, delay in payment, the quality of work, and the
8 novelty and difficulty of the issues involved. (*See Radar v. Thrasher*, (1962) 57 Cal.2d 244, 253;
9 *Beasley v. Wells Fargo Bank*, (1991) 235 Cal.App.3d 1407, 1419; *Coal. for L.A. County Planning*
10 *v. Bd. of Supervisors*, (1997) 76 Cal.App.3d 24 1, 251.)

11 This case dealt with difficult legal and factual questions. (Szamet Decl. ¶88.) Significantly,
12 the risk attendant to the underlying claims in this matter was great considering Defendant's
13 defenses as discussed in detail above. (*Ibid.*) Were this case to proceed, Defendant would have a
14 strong incentive to litigate tenaciously. (*Ibid.*) There are genuine issues in dispute. (*Ibid.*)
15 Furthermore, PAGA Counsel was able to obtain close to the full value for this case. (Szamet Decl.
16 ¶89.)

17 As discussed above, PAGA Counsel are skilled wage and hour practitioners with decades
18 of experience who diligently prepared and litigated this matter. (Szamet Decl. ¶90.) To achieve
19 the ultimate result in this case, PAGA counsel's firm had to incur substantial risk and expense and
20 was precluded from taking other fee generating employment for 40 hours of attorney time.
21 (Szamet Decl. ¶91.) This matter had been handled purely on a contingency fee basis and the firm
22 has advanced many thousands of dollars in costs while deferring all payment of fees, with no
23 guarantee that any of the fees incurred or costs advanced would ever be recovered, and diverting
24 significant firm resources to prosecution of this matter. (Szamet Decl. ¶92.) PAGA Counsel
25 believe this is an exceptional result that has been well received by the Aggrieved Employees.
26 (Szamet Decl. ¶93.)

27 ///

28 ///

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

In addition to their request for fees, PAGA Counsel further request reimbursement of the reasonable out-of-pocket expenses advanced and/or incurred by them in connection with this litigation, in the amount of \$18,553.53. (Szamet Decl. ¶115.) To date, PAGA Counsel has incurred \$17,953.53 in costs. (Szamet Decl. ¶116.) PAGA Counsel anticipates incurring an additional \$600.00 in costs to file and serve this motion, but the Settlement provides for a reimbursement of litigation costs of up to \$22,000.00. (Szamet Decl. ¶117.) As such, counsel is requesting a cost reimbursement of \$18,553.53. (Szamet Decl. ¶118.)

All of the requested costs are reasonable in amount and were necessarily incurred by PAGA Counsel in prosecuting this litigation. (Szamet Decl. ¶119.); 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. ¶120.)

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 reimbursement in the amount of \$18,553.53. (Szamet Decl. ¶121.)

VIII. ENHANCEMENT TO PLAINTIFF

The Settlement calls for an enhancement payment of \$5,000.00 to the named Plaintiff, to be paid from the Gross Settlement Amount. (Szamet Decl. ¶122; 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*

1 *Angeles* (2010) 186 Cal.App.4th 399, 412 (citing *Clark v. American Residential Services LLC*
2 (2009) 175 Cal.App.4th 785, 805-806; *Staton v. Boeing Co.* (9th Cir.2003) 327 F.3d 938, 977)).

3 Here, the enhancement takes into consideration the time, effort, and expense incurred by
4 Plaintiff in coming forward to litigate this matter on behalf of the Aggrieved Employees. The time
5 spent by Alejandro Garnica-Vega includes identifying competent counsel, providing information
6 to PAGA Counsel regarding Plaintiff's relevant employment experiences, compiling documents,
7 meeting with PAGA Counsel frequently to discuss the status of the case and the theories of
8 liability, reviewing settlement documents, and making himself available for a full day of
9 mediation. (Szamet Decl. ¶123.)

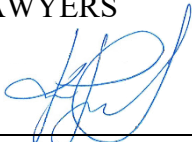
10 PAGA Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl.
11 ¶124.) The enhancement takes into consideration the time, effort, risks, and expense incurred by
12 Plaintiff in coming forward to litigate this matter on behalf of the Aggrieved Employees. (Szamet
13 Decl. ¶125.) Accordingly, Plaintiff should be awarded the agreed-upon enhancement of \$5,000.00.

14 **IX. CONCLUSION**

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

19
20 DATED: September 18, 2026

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

21
22 By: 

23 Kelsey M. Szamet
24 Attorneys for Plaintiff ALEJANDRO GARNICA-
25 VEGA and the proposed class
26
27
28

(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 18, 2026, 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:

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

A Professional Law Corporation

Ronald W. Novotny

Rnovotny@aalrr.com

Steve Araiza

Steve.araiza@aalrr.com

Shawn M. Cress

SCress@aalrr.com

12800 Center Court Drive South, Suite 300

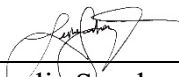
Cerritos, California 90703-9364

[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.govfa.net/432>) 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 18, 2026, at Encino, California.



Leslie Sanchez