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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MICHAEL MAYS, on behalf of himself and as an "aggrieved employee" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

MARIPOSA DETOX CENTER LLC, a California limited liability company; PHASE TWO ATC LLC, a California limited liability company; MARIPOSA DETOX CENTER II LLC, a California limited liability company; and DOES 1–50, inclusive,

Defendant(s).

MORIS ORELLANA, an individual, on behalf of himself, all other aggrieved employees, and the general public,

Plaintiff,

vs.

MAGNIFIED HEALTH SYSTEMS WEST LLC; a Delaware limited liability company; MARIPOSA DETOX CENTER LLC, a California limited liability company MARIPOSA DETOX

CASE NO. 22STCV30341
[*Assigned for all purposes to the Hon. Timothy Patrick Dillon, Dept.15*]

UNLIMITED JURISDICTION

NOTICE OF UNOPPOSED MOTION AND MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004, AWARDING ATTORNEYS' FEES, COSTS, AND REIMBURSEMENT OF SETTLEMENT ADMINISTRATION EXPENSES; MEMORANDUM OF POINTS AND AUTHORITIES

[Concurrently Filed with Declarations of Michael H. Boyamian, David G. Spivak, and Walter L. Haines]

Hearing:
Date: December 15, 2025
Time: 10:00 a.m.
Dept.: 15

Complaint Filed: July 31, 2023

CENTER II LLC, a California limited liability company; PHASE TWO ATC LLC, a California limited liability company; and DOES 1 through 100, inclusive,

Defendants

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Attorneys for Plaintiffs MORIS ORELLANA, MICHAEL MAYS, Other Aggrieved Employees, and the General Public

PLEASE TAKE NOTICE THAT on December 15, 2025 at 10:00 a.m., or as soon thereafter as the matter may be heard, in Department 15 of the above-entitled Court, located at the Spring Street Court House 312 N. Spring Street, Los Angeles, California 90012, Plaintiffs Moris Orellana and Michael Mays will and hereby move unopposed for an Order: (1) granting approval, pursuant to California Labor Code § 2698 *et seq.*, subpart l, of the proposed settlement of claims brought pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) set forth in the Parties' Private Attorneys General Act (Labor Code § 2698 *et seq*.) Settlement Agreement (the "Agreement") and which provides for a Gross Settlement Amount payment of $235,000.00, except as provided in Paragraph 8 of the Agreement; (2) appointing a Settlement Administrator and the amount the Administrator will be paid from the Gross Settlement Amount $3,500.00 to reimburse its reasonable fees and expenses; (3) directing disbursement of the Gross Settlement Amount pursuant to the terms of the Settlement Agreement; (4) directing payment of an Aggrieved Employees Counsel Fee Payment not to exceed 35% of the Gross Settlement Amount (i.e., $82,250.00) and an Aggrieved Employees Counsel Litigation Expenses Payment of $19,280.68[1] from the Gross Settlement Amount; and (5) dismissing this action with prejudice.

This motion will be based on this Notice, the supporting memorandum of points and authorities, the Parties' Agreement, the Declarations of Michael H. Boyamian, Esq., David G. Spivak, Esq., and Walter L. Haines, Esq., the documents and records on file in this matter, and such additional arguments, authorities, and evidence and other matters as may be presented by the Parties hereafter.

DATED: October 17, 2025 Respectfully submitted,

BOYAMIAN LAW, INC.
THE SPIVAK LAW FIRM
UNITED EMPLOYEES LAW GROUP

By:______________________________
Michael H. Boyamian
Attorneys for Plaintiffs MORIS ORELLANA, MICHAEL MAYS, Other Aggrieved Employees, and the General Public

[1] The Agreement authorizes reimbursement of up to $27,500.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Moris Orellana and Michael Mays ("Plaintiffs") seek approval of the PAGA Settlement Agreement ("Agreement")[2], which if approved, would provide valuable monetary relief for the State of California and 96 "Aggrieved Employees," defined as all non-exempt hourly paid employees of Defendants Magnified Health Systems West, LLC, Mariposa Detox Center LLC, Phase Two ATC LLC, and Mariposa Detox Center II LLC, (collectively referred to as "Defendants" or "Magnified Health Systems") employed in California during the period between September 16, 2021 to the date of court approval ("PAGA Period"). Agreement at §1.3. This is only a settlement of Plaintiffs' PAGA claims for civil penalties and is <u>not</u> a class settlement and does <u>not</u> release the individual wage claims, if any, of the affected employees other than Plaintiffs themselves. Cal. Lab. Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

If approved, the Aggrieved Employees and the California Labor Workforce and Development Agency ("LWDA") will share in a Gross Settlement Amount of Two Hundred and Thirty-Five Thousand Dollars and Zero Cents ($235,000.00), except as provided in Paragraph 8 of the Agreement. Agreement at § 3.1. After deducting any Court-approved Aggrieved Employees Counsel Fee Payment, Aggrieved Employees Counsel Litigation Expenses Payment and the Administration Expenses Payment, the Net Settlement Amount shall be distributed, 75% to the LWDA and 25% to the Aggrieved Employees. Agreement at § 1.28.

An objective evaluation of the proposed settlement confirms that the relief negotiated on behalf of the Aggrieved Employees and the LWDA is fair and reasonable. The Settlement is a product of informed, adversarial, and non-collusive and mediated negotiations between experienced counsel. As discussed below, the proposed Settlement satisfies all criteria for PAGA settlement approval.

[2] The Agreement is attached as Ex "A" to the Declaration of Michael H. Boyamian ("MHB Decl.") at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the MHB Decl., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

Accordingly, Plaintiffs and Aggrieved Employees Counsel respectfully request this Court grant approval of the Agreement. MHB Decl., at ¶ 19.

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiffs' Exhaustion of Administrative Remedies Under PAGA And Civil Action Against Defendants

On September 16, 2022, Plaintiff Michael Mays filed a Notice of Violations with the Labor and Workforce Development Agency ("LWDA") (the "PAGA Notice") and served the same on Defendants Mariposa Detox Center LLC, Phase Two ATC LLC, and Mariposa Detox Center II LLC. On September 16, 2022, Plaintiff Michael Mays filed a Class Action Complaint against Defendants Mariposa Detox Center LLC, Phase Two ATC LLC, and Mariposa Detox Center II LLC in the Superior Court of the State of California, County of Los Angeles Case No. 22STCV30341 ("Mays Action") consisting of causes of action for Failure to Pay All Wages Earned for All Hours Worked, Failure to Provide Rest Breaks, Failure to Provide Meal Periods, Failure to Indemnify, Wage Statement Penalties, Waiting Time Penalties, and Unfair Competition. Plaintiff Mays filed a First Amended Complaint on February 2, 2023, to include claims pursuant to the Private Attorneys General Act ("PAGA"). MHB Decl., at ¶ 9; DGS Decl. ¶ 5.

On May 23, 2023, Plaintiff Moris Orellana filed a PAGA Notice with the LWDA and served the same on Defendants. On December 6, 2022, Plaintiff Orellana filed a Class Action Complaint consisting of causes of actions for Failure to Pay Compensation for All Hours Worked, Failure to Pay Overtime Compensation, Failure to Pay Minimum Wage, Failure to Provide Meal and Rest Periods, Failure to Furnish Accurate Wage and Hour Statements, and Failure to Pay All Wages Due. On July 31, 2023, Plaintiff Orellana filed a PAGA Complaint against Defendants Magnified Health Systems West, LLC, Mariposa Detox Center LLC, Mariposa Detox Center II LLC and Phase Two ATC, LLC, in the Superior Court of the State of California, County of Los Angeles, Case No. 23STCV18036 alleging PAGA representative action claims for civil penalties ("Orellana Action"). MHB Decl., at ¶ 11.

The 65-day "waiting period" on Plaintiffs' rights to file a civil action under PAGA, *see* Cal. Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiffs that it intended to investigate the claims in the respective PAGA Notices. To date, the LWDA still has not advised Plaintiffs of any intent to take action with respect to the claims in the PAGA Notices. MHB Decl., at ¶ 15. Upon learning of each other's actions, Plaintiffs and their counsel in both the Mays Action and the Orellana Action agreed to team up and oppose the defendant employers collectively. *Id*.

B. <u>Plaintiffs' Civil Action Against Defendants</u>

On March 11, 2024, the Parties attended a full-day mediation with experienced wage and hour class and PAGA action mediator the Hon. Zaven V. Sinanian (Ret.). In advance of the mediation, Defendants provided Plaintiffs with sufficient information to properly evaluate Defendants' liability exposure for civil penalties to the Aggrieved Employees. Among the data and documents Defendants produced included, but was not limited to, the total number Aggrieved Employees, pay periods, written wage and hour policies, employee handbooks, and a twenty percent (20%) sample of time and payroll records for the Aggrieved Employees. MHB Decl., ¶ 16; DGS Decl. ¶ 8.

A few weeks after the conclusion of the mediation, and with the assistance of the Mediator, the Parties reached a settlement in principle. The Parties subsequently executed a binding and enforceable Memorandum of Understanding ("MOU"). After reaching an agreement in the principle, the Parties drafted and negotiated a long-form settlement, which is the subject of the instant motion. The Agreement was negotiated in light of all known facts and circumstances and the uncertainty associated with litigation – including the risk of Plaintiffs not being able to maintain representative claims and establishing manageability, the difficulty of proving Plaintiffs' claims in a manageable trial, the merits of Defendants' potential defenses, and the significant delay and potential appellate issues inherent to litigation – and was reached after extensive arm's length negotiations, with the assistance of the Mediator. MHB Decl., at ¶ 17; DGS Decl. ¶ 8. Furthermore, the Parties filed a stipulation, which is still pending, to consolidate the *Orellana* Action and the *Mays* Action for settlement purposes under Case No. 22STCV30341. MHB Decl., at ¶ 17.

The Agreement is intended to fully and finally resolve the Released PAGA Claims asserted by Plaintiffs on behalf of the Aggrieved Employees and State of California. The Agreement is only a Settlement of the PAGA claims for civil penalties and is not a class settlement and does not release the individual claims, if any, of the Aggrieved Employees. This Agreement does not release any claim that is not a PAGA claim.[3] Nor does this Agreement waive Defendants' right to assert *res judicata* or other available defenses to any asserted claim or lawsuit. MHB Decl., at ¶ 18.

Pursuant to California Labor Code Section 2699(1), Plaintiffs are providing a copy of the Agreement and this motion to the LWDA concurrently with the filing of the instant motion for settlement approval as set forth in the accompanying proof of service. Additionally, Plaintiffs will submit to the LWDA a copy of the Court's judgment and order approving the Agreement within ten (10) days after entry of judgment or order. MHB Decl., at ¶ 20.

III. TERMS OF THE PAGA SETTLEMENT

A. <u>The Gross Settlement Amount</u>

The PAGA settlement Agreement is subject to Court approval consistent with Labor Code § 2699(1)(2). The Agreement negotiated by the Parties provides for a "Gross Settlement Amount" payment in the amount of Two Hundred and Thirty-Five Thousand Dollars and Zero Cents ($235,000.00), except as provided in Paragraph 8 of the Agreement, to resolve the PAGA claims. This is a non-reversionary settlement and no amount will revert back to Defendants. From the Gross Settlement Amount, there is a deduction of an Aggrieved Employees Counsel Fee Payment not to exceed 35% of the Gross Settlement Amount (i.e., $82,250.00), reimbursement of incurred Aggrieved Employees Counsel Litigation Expenses Payment in an amount not to exceed $27,500.00[4], and payment of an Administration Expenses Payment to the Administrator in an amount not to exceed $12,500.00[5]. Agreement at §§ 3.1-3.4.

Of the "Net Settlement Amount," seventy-five percent (75%) shall be paid to the LWDA and the remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees as Individual PAGA Payments. Agreement at § 3.5. This allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

B. <u>Allocation of Individual PAGA Payments</u>

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

[4] The costs of Plaintiffs' counsel to date are $19,280.68. *See* MHB Decl. ¶ 54, Exh. C; Spivak Decl., ¶ 38; Haines Decl., ¶ 11.

[5] The actual Administrator expenses are $3,500.00.

The Individual PAGA Payments to the Aggrieved Employees shall be based on the number of PAGA Pay Periods each Aggrieved Employee worked during the PAGA Period as a percentage of the total PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period. Agreement at § 3.6.

At the time of mediation, Defendants estimated that there were approximately 96 Aggrieved Employees who worked approximately 1,200 PAGA Pay Periods during the PAGA Period based on company records. Agreement at § 4.1.

C. Funding and Distribution

Provided that an order approving this Agreement is entered by the Court, Defendants shall fund the Gross Settlement Amount by transmitting to the Administrator (5) consecutive monthly equal installment payments of $47,000.00 each commencing no later than 30 days after the Effective Date or March 1, 2025, whichever is later. Agreement at § 4.3. The Administrator shall make payments from the Gross Settlement Amount within 14 days after Defendants have transmitted the Gross Settlement Amount in full. The Administrator will issue checks for all Individual PAGA Payments and Plaintiffs' representative service awards, the Administration Expenses Payment, Aggrieved Employees Counsel Fee Payment, and Aggrieved Employees Counsel Litigation Expenses Payment. Agreement at § 4.4.

The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database. Agreement at § 4.5.

The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without a USPS forwarding address. Agreement at § 4.6. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. *Id*. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. *Id*. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, as requested by the Aggrieved Employee prior to the void date. *Id*. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and canceled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. Agreement at § 4.7. The Individual PAGA Payments shall be reported using IRS Form 1099s. Agreement § 3.3.

D. <u>Release of Claims</u>

Plaintiffs do not release the claims for wages or damages of any Aggrieved Employee. Agreement at § 5.1. Plaintiffs release all claims for civil penalties under PAGA stated in Plaintiff Mays' pre-filing letter and Plaintiff Orellana's pre-filing letter to the LWDA and those based solely upon the facts alleged in Plaintiffs' pre-filing letters to the LWDA. *Id*. Plaintiffs release all claims for civil penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff Mays' and/or Plaintiff Orellana's pre-filing letters to the LWDA; Plaintiffs do not release the claims for wages or damages of any Aggrieved Employee. *Id*. Aggrieved Employees Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice. Agreement at § 5.2.

E. <u>Escalator Clause</u>

Based on its records, as of the date of the March 11, 2024 mediation, Defendants estimate there are 96 Aggrieved Employees who worked a total 1,200 PAGA Pay Periods from September 16, 2022 through the date of Court approval. If, as of the date the Court approves the Agreement, the Aggrieved Employee PAGA Pay Periods increase by more than 10%, the Gross Settlement Amount, including the Aggrieved Employees Counsel Fee Payment, will increase proportionally based on according to the number of additional PAGA Pay Periods or Aggrieved Employees, whichever results in a higher increase in the Gross Settlement Amount. This will include a pro rata increase in the Aggrieved Employees Counsel Fee Payment. Agreement at § 8.0.

IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT

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

////

A. <u>The Gross Settlement Amount is Fair and Reasonable</u>

The Gross Settlement Amount—which is $235,000.00, except as provided by Paragraph 8 of the Agreement—is fair and reasonable and, therefore, should be approved. MHB Decl., ¶ 21. Here, *with stacking* the PAGA penalties, Defendants' liability exposure is estimated at approximately $2,067,150.00 in PAGA penalties. *Id*. Conversely, as Defendants have never been cited for the wage and hour violations before, and given surrounding case law criticizing the imposition of stacking penalties, Defendants' liability exposure, *without stacking*, is estimated to be between $60,000 ($50 x 1,200 pay periods) and $120,000 ($100 x 1,200 pay periods). With the assistance of Plaintiffs' retained expert, Plaintiffs estimated Defendants' maximum potential exposure as follows, as well as the reasonable risk-adjusted amounts for penalties on the various claims and theories advanced by Plaintiffs:

i. Estimated Penalties for Meal & Rest Period Violations

Plaintiffs alleged meal and rest break violations. Based on timekeeping records and information gained from discovery, Plaintiffs alleged that the Aggrieved Employees were subjected to meal and rest break violations during approximately 1,200 pay periods. Therefore, the maximum theoretical value for the meal and rest break claims is $240,000 collectively (1,200 pay period x $100 x 2 [1 meal break, 1 rest break]). MHB Decl., ¶ 22.

To start, through discovery and Aggrieved Employees Counsel's investigation, Aggrieved Employees including Plaintiffs had signed an invalid on-duty meal break agreement or meal break waiver. Plaintiffs' analysis of the sample of Defendants' timekeeping data revealed that, of the 305 pay periods analyzed, approximately 168 of the pay periods or 55% had unique violations of no meal period recorded, the meal period was after the fifth hour, the meal period was less than 30 minutes, or the second meal period was missed on a shift greater than 10 hours. MHB Decl., ¶ 23.

Plaintiffs further contended that Defendants' managers are then directed to alter and manipulate the payroll processing by automatically deducting 30-minutes of time to give the false impression that Aggrieved Employees, including Mr. Orellana and Mr. Mays, took an uninterrupted, duty-free meal period every day of work for exactly thirty minutes when in fact, nothing could be further from the truth. From the sample of time and pay records to Aggrieved Employees Counsel, approximately 88% of the meal breaks were perfectly, whole round numbers of 30-minute breaks without any deviation. Plaintiffs contended that this is highly suggestive of a practice of inserting idealized meal breaks when, in reality, no meal break occurred, was short, or late. Plaintiffs' position, therefore, was that Defendants knowingly or intentionally misreported the meal breaks of Aggrieved Employees, including Mr. Orellana and Mr. Mays, in violation of Labor Code §§ 1174(d) and 226.7. MHB Decl., ¶ 24.

Further, Defendants do not have any policy on meal periods for shifts lasting beyond the tenth hour. Additionally, the entirety of the meal period is not completely uninterrupted and duty-free as Aggrieved Employees, including Mr. Orellana and Mr. Mays, would continue to finish work rendering the actual meal period short of the required thirty-minutes or interrupted. Plaintiffs and Aggrieved

Employees had to receive Defendants' permission to leave the work premises and were subject to a host of restrictions on the premises that prevent them from taking duty free meal or rest periods unless they leave the premises. Defendants mandated continuous coverage at their facilities during meal and rest periods, focusing on speculative risks at the expense of their employees' Labor Code rights, even while tolerating those same risks at other times during employees' shifts. Further, Defendants prioritized relatively unimportant concerns like routine phone calls over Plaintiffs' and the Aggrieved Employees' right to duty-free meal periods and rest periods. MHB Decl., ¶ 25.

Plaintiffs further contended that Defendants' written, on-duty meal period policy is invalid because the nature of the work Defendants expected the employees to perform did not prevent them from receiving thirty-minute off-duty meal periods. Weighing all of the "nature of the work" factors demonstrates as much. Defendants could have increased staffing to permit off-duty meal periods, or adopted an alternative workweek schedule all without compromising patient care or work demands. MHB Decl., ¶ 26.

These claims face many risks that make it unrealistic to only look at the maximum potential value. First, contrary to Plaintiffs' contentions, Defendants argued that they maintained paper compliant policies on meal and rest periods during the relevant PAGA Period. In turn, Defendants contend that they maintained compliant rest and meal breaks and that all employees were instructed to and had the opportunity to take their rest and meal breaks. Defendants argued that Plaintiffs' claims were based solely on "individualized issues" since no official corporate policy, procedure or practice deprived Plaintiffs and Aggrieved Employees of meal and rest periods. Defendants additionally countered that employees had ample latitude regarding whether, when, and how they took their breaks. Defendants thus asserted that any meal and rest break claims were inherently unmanageable on a representative basis given that a fact-finder would have to determine for each Aggrieved Employee whether a break was missed, and why a break was noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to Defendants. Establishing liability likely would have entailed competing testimony stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc*. (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices."). MHB Decl., ¶ 27.

Separately, Defendants also argued that courts have considerable discretion to reduce the penalty awards under PAGA. *See, e.g. Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504 ("*Carrington*") (reducing the maximum PAGA penalty amount by 90%, at $5 per pay period). In *Carrington*, the California Court of Appeal upheld San Diego Superior Court Judge Katherine Bacal's heavily discounted award of only $5 per pay period. In that case, during the penalty phase of trial in Carrington, the plaintiff requested PAGA penalties in the amount of approximately $70 million. *Carrington*, Cal.App.5th at 528. The trial court instead awarded only $150,000 of the maximum (the equivalent of $5 per pay period) and stated that this reduction was warranted because imposing the maximum penalty would be "unjust, arbitrary, and oppressive" based on Starbucks' "good faith attempts" to comply with meal period obligations and because the court found the violations were minimal. *Id*. at 517. The Court of Appeal affirmed the lower court's reduced award of a $150,000 penalty under PAGA. *Id*. at 529. If the amount of $5 per pay period from *Carrington v. Starbucks* were used, the potential recovery of civil penalties would only be $6,000, which is less than this settlement provides.

After careful consideration of Defendants' time and payroll records, Plaintiffs reasonably believed that there was a 20% risk of defeat on these claims. And, even if these claims succeeded, Plaintiffs believe that the Court would reduce any penalties by 30% given Defendants have never been "repeat" offenders so to speak in the wage and hour class/representative action arena and that the imposition of a maximum penalty would be "unjust, arbitrary, and oppressive." As such, Plaintiffs believe that the meal and rest break claims have a reasonable trial estimate of $134,400. MHB Decl., ¶ 28.

ii. Estimated Penalties for Unpaid Minimum and Overtime Wage Claims

For the unpaid minimum wage claims, Plaintiffs argued that Defendants had in place two primary practices or procedures giving rise to the failure to pay for all hours worked. First, Plaintiffs alleged that Defendants utilized an illegal rounding feature for purposes of processing payroll which resulted in the widespread underpayment of wages. Plaintiffs alleged that these violations occurred in nearly 54% of the pay periods at issue. Second, Plaintiffs additionally argued that Defendants engaged in an unlawful act of "shaving time" by deducting time from the hours worked by employees to eliminate or minimize the occurrence of overtime and payment of wages. As such, there was a maximum theoretical value of $419,800, i.e., 1st pay period x [Initial: $100[6] + $50[7]] + 1,199 pay periods x [Subsequent Penalty: $100 + $250] for the minimum and overtime wage claims. MHB Decl., ¶ 29. Defendants contend that employees were properly paid for all hours worked.

Plaintiffs were again mindful of the wide discretion given to trial courts in assessing the civil penalties associated with such violations. *See Carrington, supra*. Based on these defenses, as well as a review of Defendants' policies and practices, Plaintiffs estimated that there was a 30% risk of defeat on the minimum wage claims. However, unlike the claims where Plaintiffs anticipated a substantial discretionary reduction of the penalties, Plaintiffs believe that any PAGA penalties for unpaid wages would only receive a slight reduction by this Court (10%) given that the claim, if true, caused harm to the Aggrieved Employees through the deprivation of earned wages – and this reduction would occur mainly because the violations, if any occurred, during the pandemic era where much of any work environment was struggling to combat the new age pressures and realities caused by the novel coronavirus. Therefore, Plaintiffs believe that the reasonable trial estimate for the unpaid minimum wage claims is $264,474.00. MHB Decl., ¶ 30.

iii. Estimated Penalties for Failure to Reimburse Necessary Expenditures

Relatedly, since Plaintiffs and other Aggrieved Employees were required to use personal cell phones – a necessary expenditure as described above that should have been borne by Defendants – they are entitled to civil penalties for incurring these expenses in connection with their work. An employer must indemnify its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties. Cal. Lab. Code § 2802. Defendants denied any liability for this claim. Defendants further argued that on the rare occasions where Aggrieved Employees did incur business expenses, there was a process to request reimbursement. Plaintiffs likewise assessed a

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[6] Per Labor Code § 1197, $100 initial penalty, $250 subsequent penalty for minimum wages claim under LC § 1197.

[7] Per Labor Code § 558, $50 initial penalty, $100 subsequent penalty for overtime claims under LC § 510.

maximum figure of $239,900 but when considering Defendants' defenses and the Court's assessment of liability and penalties, for the same reasons articulated above, Plaintiffs concluded that the risk-adjusted amount of penalties for Plaintiffs' §2802 claim would equate to $59,975.00. MHB Decl., ¶ 31.

iv. Estimated Penalties for Inaccurate Wage Statements

Plaintiffs further argued that Defendants failed to provide accurate itemized wage statements to the Aggrieved Employees. Based on information learned from both formal and informal discovery, the maximum theoretical value of this claim was $1,199,250. MHB Decl., ¶ 32. Defendants contend that they did not fail to provide accurate itemized wage statements to the Aggrieved Employees.

However, this maximum figure ignores the many risks and defenses of this wage statement claim. After a thorough analysis of this claim and the corresponding defenses, Plaintiffs estimate that there was a 30% risk of defeat on the merits. Plaintiffs also believe that the Court would reduce the assessed penalty amount by 70% because a higher assessment would be "unjust, arbitrary and oppressive, or confiscatory" in light of "the facts and circumstances of [this] particular case" (Labor Code § 2699(h)); namely, Defendants contended that it would be "unjust" to impose significant penalties for the alleged wage statement violations because the Aggrieved Employees did not suffer any injury in relation to these claims. *See Fleming v. Covidien* (C.D. Cal. 2011) No. ED CV 10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 (approximate 82.14% reduction of PAGA penalties on Labor Code § 226 claim); *Aguirre v. Genesis Logistics* (C.D. Cal 2013) No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 (applying approximate 73% reduction on PAGA penalties for Labor Code § 226 claims). MHB Decl., ¶ 33.

Furthermore, while a PAGA claim for violation of Labor Code § 226 does not require a showing of knowledge or willfulness (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773), Defendants contended that it would be "unjust" to impose significant penalties for the alleged wage statement violations because the Aggrieved Employees did not suffer any injury in relation to these claims. As such, Plaintiffs believe that the wage statement claim has a reasonable trial estimate of $251,842.50. MHB Decl., ¶ 34.

v. Estimated Waiting Time Penalties

Plaintiffs also raised claims for failure to timely pay wages under the theory that Defendants' failure to timely pay wages on separation of employment under Labor Code §§ 201 – 203. Plaintiffs premised this claim directly on Defendants' practice of failing to pay Plaintiffs and Aggrieved Employees for all hours worked "off-the-clock" and failure to pay premium wages for meal and rest break violations. Thus, the claim was entirely derivative and duplicative of penalties for unpaid wages. And because Plaintiffs believe that they could not stack penalties in this manner, Plaintiffs further believe that the only potential recovery (if any) for failure to timely pay wage claims was under Labor Code § 201 – 203. For the Labor Code §§ 201 – 203 claims, Plaintiffs calculated the maximum penalty as $239,900.00, which is the $100 initial penalty plus the $200 subsequent penalty multiplied by 1,199 pay periods for the 96 former Aggrieved Employees that allegedly did not receive all wages owed upon separation of employment. Because Plaintiffs believe that these individuals were subjected to the unpaid wage claims discussed above, these derivative claims rise and fall based on the same defenses and risks. Thus, the reasonable trial value of these derivative claims is $50,379.00, which is a 79% reduction based on the outlined defenses and risks. MHB Decl., ¶¶ 35-36. Defendants deny that the Aggrieved Employees were not paid for all wages due and therefore disputed these derivative claims.

B. <u>The Gross Settlement Amount Compares Favorably To The Likely Recovery</u>

In light of the above, the Gross Settlement Amount is approximately 11% of Defendants' potential PAGA maximum exposure and if the Court accepts Plaintiffs' risk-adjusted trial estimates as articulated above, the Gross Settlement Amount is approximately 31% of the $761,070.50 calculated exposure [Unpaid Wages ($264,474.00) + Meal & Rest Breaks ($134,400.00) + Reimbursement Claim ($59,975) + Inaccurate Wage Statements ($251,842.50) + Waiting Time Penalties ($50,379.00)]. The Gross Settlement Amount compares favorably to the likely recovery of PAGA penalties through continued litigation. This is especially true if the Court were to disallow the stacking feature and calculate Defendants' total exposure by plainly applying a set dollar amount on the total number of pay periods. MHB Decl., ¶ 37.

Defendants' maximum exposure to PAGA penalties is not a realistic outcome of the litigation because it fails to account for the multiple risks of continued litigation including, but not limited to, Defendants' defenses. *See*, *Zayerz v. Kiewit Infrastructure West*, 2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018). For instance, Defendants argued that they can only be assessed civil penalties for actual violations of the Labor Code. *See* Lab. Code § 2699(f)(2). In other words, to recover any civil penalties, Plaintiffs would be required to prove the underlying Labor Code violations. (*Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ["Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."].) To do this, Plaintiffs would need to prove each Aggrieved Employee was subject to the alleged Labor Code violation, which would be difficult to do, since Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in this action. MHB Decl., ¶ 38.

Finally, the maximum penalty figure does not consider that courts have complete discretion to "award a lesser amount than the maximum civil penalty amount specified [by PAGA] 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." (Cal. Lab. Code § 2699(e)(2)). In fact, Courts routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g. Carrington v. Starbucks Corp*., 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to $5 per pay period; "Although the trial court may have disagreed with Starbucks regarding the issue of liability, it clearly took the circumstances proffered by Starbucks into consideration when it imposed the penalty … only $5 per initial violation"); *Kaanaana v. Barrett Bus. Servs., Inc*., 29 Cal App 5th 778, 788 (2018), review granted on other grounds (noting that the trial court "exercised its discretion to reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average, plaintiffs were deprived of 13 percent of the 30-minute meal period"); *Fleming v. Covidien, Inc*., 2011 WL 7563047, *4 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of PAGA civil penalties for plaintiffs' section 226 claims from $2,800,000 to $500,000 because the employees suffered no injuries as a result of the erroneous wage statements and made no complaints about the errors or omissions in the wage statements, thus reducing the maximum penalty by 82%); *see also*, *Gola v. University of San Francisco*, San Francisco Superior Court Case No. CGC-18-5655018, Proposed Statement of Decision, dated July 21, 2020, Judge Curtis A. Karnow of San Francisco Complex (concluding after a full-blown bench trial that a penalty of 15% of the maximum PAGA penalties was the appropriate penalty). MHB Decl., ¶ 39. The gross amount obtained by Aggrieved Employees Counsel is reasonable in light Defendants' arguments. Further, the adverse decision in *Wesson* poses a very significant, and even fatal, risk to Plaintiffs' case. MHB Decl., ¶ 40.

Defendants' substantial compliance could also operate to prevent the imposition of PAGA penalties. A corollary of PAGA being an enforcement action is that "substantial compliance with statutory directives will suffice if the purpose of the statute is thereby satisfied." *Downtown Palo Alto v. City Council*, 180 Cal.App.3d 384, 395 (1986) (emphasis supplied); *see also Hernandez v. BCI Coca-Cola Bottling Co*., 2012 WL 12272348, at *8 (C.D. Cal. Apr. 12, 2012), aff'd, 554 F. App'x 661 (9th Cir. 2014) (granting defendant's motion for summary judgment based on defendant's "substantial compliance" with Labor Code section 226). In this regard, "[t]he paramount consideration is the objective of the statute." *Id*. "Where there is compliance as to all matters of substance[,] technical deviations are not to be given the stature of noncompliance." *Cal-Air Conditioning v. Auburn Union School Dist.*, 21 Cal.App.4th 655, 668 (1993) (emphasis supplied). "Unless the intent of a statute can only be served by demanding strict compliance with its terms, substantial compliance is the governing test." *County of Tulare v. Campbell*, 50 Cal. App. 4th 847, 853 (1996) (emphasis supplied).

Given Defendants' defenses to the claimed Labor Code violations at issue, and the risks and costs of continued litigation, Plaintiffs and Aggrieved Employees Counsel believe that the Gross Settlement Amount is fair and reasonable. This settlement was negotiated by experienced counsel at arm's length. MHB Decl., ¶¶ 2-5, 42. The LWDA has been provided notice of this motion and the PAGA settlement, and the decision of LWDA to accept the PAGA settlement and not oppose the motion should be given considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and protect its own rights. MHB Decl., ¶ 43.

C. <u>The Remaining Settlement Terms Are Fair and Reasonable</u>

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

V. THE ATTORNEYS' FEES AND EXPENSES ARE FAIR AND REASONABLE

Aggrieved Employees Counsel seek approval of an Aggrieved Employee Counsel Fee Payment not to exceed 35% of the Gross Settlement Amount (i.e., $82,250.00) and an Aggrieved Employees Counsel Litigation Expenses Payment not to exceed $27,500.00[8] for reimbursement of actually incurred litigation expenses. Agreement at § 3.3. PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiffs' position is that the payment of attorneys' fees and costs in this Agreement is a matter of contract for a contingent representation. Nevertheless, should this Court review the requested attorneys' fees, the requested fees and costs are reasonable for experienced wage and hour counsel.

A. <u>The Requested Attorneys' Fee is Fair and Reasonable</u>

The requested Aggrieved Employees Counsel Fee Payment not to exceed 35% of the Gross Settlement Amount (i.e., $82,250.00) and reimbursement of an Aggrieved Employees Counsel Litigation Expenses Payment not to exceed $27,500.00 are fair, reasonable, and justified by the result achieved. Agreement at §1.6; MHB Decl., ¶ 44. Aggrieved Employees Counsel negotiated a recovery of $235,000.00, and this result justifies the requested fees equal to 35% of this recovery. This percentage is within the standard range of contingent recovery percentages. *See, e.g., Laffitte v. Robert Half Int'l Inc.*, (2016) 1 Cal.5th 480, 504 (award of 1/3 of the common fund); *In re Pacific Enterprises* (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of the common fund); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of settlement fund). At the time this case was brought, the result was far from certain. Defendants' defenses to the merits of the case created difficulties with proof and

[8] As detailed *infra,* at the time of filing this motion, Aggrieved Employees Counsel incurred $19,280.68 litigating this matter. Plaintiffs will provide the Court with a final amount of litigation costs at the time of hearing on this motion.

complex legal issues for Aggrieved Employees Counsel to overcome. Here, several defenses asserted by Defendants present serious threats to the claims of Plaintiffs and the Aggrieved Employees. MHB Decl., ¶ 45. Defendants asserted that their employment practices complied with all applicable labor laws. If successful, Defendants' factual and legal defenses would eliminate *any recovery* to the Aggrieved Employees. While Plaintiffs believe that these defenses could be overcome, Defendants maintain that these defenses have merit and therefore present a serious risk to recovery. The settlement was possible because, in Aggrieved Employees Counsel's eyes, Aggrieved Employees Counsel were able to persuade Defendants that there was an appreciable risk that Plaintiffs would prevail on the factual and legal issues underlying liability and overcome difficulties in proof as to monetary relief. MHB Decl., ¶ 46.

i. The Fee Amount Allocated By The Settlement Agreement Is Within the Zone of Reasonableness Under the "Percentage of the Fund" Method

The amount of fees requested by Aggrieved Employees Counsel – 35% of the Gross Settlement Amount – is reasonable based on standards applicable to the "percentage of the fund" method. "When assessing whether the percentage requested is reasonable, courts look to factors such as: (a) the results achieved; (b) the risk of litigation; (c) the skill required, (d) the quality of work; (e) the contingent nature of the fee and the financial burden; and (f) the awards made in similar cases." *See Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010).

First, the results achieved by Aggrieved Employees Counsel are commendable, as Defendants have agreed to pay $235,000.00 under the Settlement. (MHB Decl., ¶ 21.) This is a reasonable recovery as the settlement of PAGA claims impacting much higher numbers of individuals have been approved as reasonable. (*Id.*)

Second, such results were achieved in the face of significant risks. As explained above, Defendants maintained serious defenses to Plaintiffs' PAGA claims, and if this case were litigated through to trial, funds that could have benefited Aggrieved Employees would continue to be exhausted litigating this matter. (MHB Decl., ¶¶ 18-43.)

Third, notwithstanding this risk of loss, Aggrieved Employees Counsel undertook representation of the instant PAGA claims for the benefit of the State of California on a contingency basis. (MHB Decl. at ¶ 47.) This not only required Aggrieved Employees Counsel to personally assume the risk of nonpayment in securing the very substantial financial benefit the State of California stands to receive, but constitutes a "loan" on Aggrieved Employees Counsel's services – both of which are factors warranting fee enhancement under applicable California Supreme Court authority:

> One of the most common fee enhancers ... is for contingency risk. We reaffirmed the propriety of a contingency risk enhancement in *Ketchum*: "The economic rationale for fee enhancement in contingency cases has been explained as follows: 'A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.' (Posner, Economic Analysis of Law (4th ed. 1992) pp. 534, 567.) 'A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.'"

Graham v. DaimlerChrysler Corp. (2004) 34 Cal. 4th 553, 579-580.

Finally, the percentage requested by Aggrieved Employees Counsel falls within a typical range, particularly in light of the relatively modest settlement size. *Martin*, *supra*, 2011 U.S. Dist. LEXIS 61796, 23 ("[C]ourts may award attorney's fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under $10 million." *See also Crandall v. U-Haul International, Inc.*, LASC Case No. BC178775 (awarding attorneys' fees of 40% of a common fund).

Attorneys' fee awards in the amount sought here are well-established by California law and practice. Accordingly, Aggrieved Employees Counsel's fee request is fair and reasonable and is consistent with the awards in California and the Ninth Circuit. It is also reasonable given the history of this action and the results obtained. (MHB Decl. ¶ 48.)

ii. The Lodestar Approach Demonstrates that Aggrieved Employees Counsel's Attorneys' Fee Request is Fair, Reasonable and Justified Under the Facts of this Case.

The fee award is justified by the work performed. A cross-check of Aggrieved Employees Counsel's lodestar confirms that the fee request here is reasonable. While Aggrieved Employees Counsel make this application on a percentage of the common fund basis, using the lodestar cross-check further demonstrates that the requested fee is reasonable and should be awarded.

> A lodestar cross-check...provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee. If a comparison between the percentage and lodestar calculations produces an imputed multiplier far outside the normal range, indicating that the percentage fee will reward counsel for their services at an extraordinary rate even accounting for the factors customarily used to enhance a lodestar fee, the trial court will have reason to reexamine its choice of a percentage.

Laffitte, *supra*, 1 Cal.5th at p. 504. The Court must first begin with the lodestar figure, which is calculated by multiplying the number of hours reasonably expended by the reasonable hourly rate of compensation to determine the reasonableness of a fee award. *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322, citing *Serrano III*, *supra*, 20 Cal.3d at p. 48. Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigating the facts and law, and preparing the initial pleadings. *See New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.) In assessing the reasonableness of counsel's fee request, courts consider "relevant factors such as ... [the level of skill necessary, time limitations [imposed by the client or other limitations], the amount to be obtained in the litigation, the attorney's reputation, and the undesirability of the case." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1139.

The Court may then enhance the lodestar by a multiplier to account for (1) the results obtained; (2) the risks presented by the case; (3) the extent to which the litigation precluded other employment by the attorneys; (4) the experience, reputation, and ability of the attorneys and the skill they displayed in dealing with the difficult issues in the case; and (5) the delay in awarding fees. *Laffitte*, *supra*, 1 Cal.5th at p. 489; *Graham*, *supra*, 34 Cal.4th at p. 582 [the results obtained factor can properly be used to enhance a lodestar calculation where an exceptional effort produced an exceptional benefit].) In cases such as this, which creates a common fund for the benefit of a group of individuals, courts have routinely applied an upward multiplier to the lodestar where the percentage of the settlement amount is reasonable. Multipliers typically range from 2 to 4 but can sometimes be higher. *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512.

Here, the lodestar approach supports the conclusion that the fee award sought by Aggrieved Employees Counsel is fair and reasonable. This is because Aggrieved Employees Counsel's lodestar for the work performed on behalf of the Aggrieved Employees amounts to $185,267.75 and is thus well over the requested amount of fees. In other words, Aggrieved Employees Counsel are requesting an award of 35% of the Gross Settlement Amount (i.e., $82,250.00) – which would effectively be employing a negative multiplier of approximately 0.44 on their lodestar.[9]

Aggrieved Employees Counsel's lodestar to date is as follows:

Firm	**Hours**	**Pre-Multiplier Loadstar**
Boyamian Law, Inc.	83 hours	$66,400.00
The Spivak Law Firm	279.75 hours	$89,650.25
United Employees Law Group	40.30 hours	$29,217.50

Total: $185,267.75

See MHB Decl., ¶¶ 50; Spivak Decl. ¶¶ 6-11, Exhibit B.

A multiplier would be fully warranted in the present case though it is not necessary here. Aggrieved Employees Counsel assumed representation in this case on a purely contingency basis. (MHB Decl., ¶¶ 44-47.) Collectively, Aggrieved Employees Counsel's total lodestar is **$185,267.75**which exceeds the requested fee amount of 35% of the Gross Settlement Amount (which is currently estimated to be $82,250.00). Aggrieved Employees Counsel have received no compensation for time or expenses invested in this case thus far and would have received no compensation whatsoever if the case had been unsuccessful. In assuming representation in this case on a contingent basis, Aggrieved Employees Counsel necessarily assumed significant risks. Throughout the course of this suit, Defendants have contested liability, the scope and amount of the claimed damages, and the propriety of manageability. While Plaintiffs and their attorneys believe that they should ultimately prevail on the merits in this litigation, resolution of these issues through motion practice, at trial and/or on appeal present a risk at each juncture that the State of California and Aggrieved Employees would not recover. (MHB Decl., ¶¶ 18-43.)

For these reasons, the requested fee is eminently reasonable, as it is well above the collective lodestar in light of nearly two and a half years of hard work and time spent litigating, the skill and

[9] Utilizing a multiplier in the class and/or representative context is appropriate. *See, e.g., Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1051 & n.6 (affirming lodestar multiplier of 3.65 in light of complexity and risk of case and surveying 34 class common fund settlements to find that 83% of multipliers were in the 1x- to 4x-range); *Elliott v. Rolling Frito-Lay Sales, LP*, 2014 WL 2761316, at *9-10 (1.73 multiplier in class wage & hour settlement); *Fernandez v. Victoria's Secret Stores, LLC*, 2008 WL 8150856, at *16 (C.D. Cal. 2008) (approving 1.82 multiplier) but is not warranted since Plaintiffs' lodestar exceeds the requested amount of fees.

experience of Aggrieved Employees Counsel, the preclusion of counsel from pursuing other employment, and the obstacles and risks faced and overcome in achieving this settlement.

iii. The Requested Attorney's Fees Were Calculated Using The Common Fund Doctrine And Are In Line With Leading Treatises On Awards Calculated Using The Common Fund Doctrine

The Common Fund Doctrine is also applicable in the context of Representative Action Settlements. The common fund doctrine provides that, when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, the plaintiff or plaintiffs may be awarded attorney's fees and costs out of the fund. (*See Progressive West Ins. Co. v. Superior Court* (2005) 135 Cal.App.4th 263, 273; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.) The common fund doctrine is therefore applicable in the context of representative action settlements, as representative action settlements produce a specific fund to which a number of persons are entitled in common and are the product of an action brought by a plaintiff or plaintiffs for the benefit of a group. (*See Petrovic v. Amoco Oil Co*. (8th Cir. 1999) 200 F.3d 1140, 1153.)

The Common Fund Doctrine is also favorable in the context of Representative Action Settlements. In *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." (*Id*. at p. 110.) In fact, California Courts now routinely use the common fund doctrine to determine the award of attorneys' fees in class and representative actions. (*See, e.g., In re Pacific Enterprises Securities City and County of San Francisco Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79 [approving attorney's fees of 33 1/3%].)

California Courts utilize the common fund doctrine because it helps to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc*. (9th Cir. 1977) 557 F.2d 759, 769.) More specifically, the common fund doctrine seeks to offset those who "expend attorneys' fees in winning a suit which creates a fund from which others derive benefits" by requiring "those passive beneficiaries to bear a fair share of the litigation costs." (*Quinn v. State of California* (1995) 15 Cal.3d 162, 167.) Other reasons California Courts do so include: "…fairness to the successful litigant, who might otherwise receive no benefit because her recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; and encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly…compensated should her efforts be successful." (*Id.*)

California courts also utilize the common fund doctrine in light of the fact that several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, as the lodestar approach usually involves wading through voluminous and often indecipherable time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp.1373: "This court is compelled to ask, 'Is this process necessary?' Under a cost-benefit analysis, the answer would be a resounding, 'No!' Not only do the *Lindy* and *Kerr-Johnson* analyses consume an undue amount of court time with little resulting advantage to anyone, but in fact, it may be to the detriment of the Class Members."

In contrast to the loadstar approach, the common fund doctrine aligns with the interests of Aggrieved Employees Counsel; encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and reduces the demands on judicial resources—thus making it preferable to the lodestar approach. *Id*. at pp. 1378-79.

The requested attorney's fees are in line with leading treatises on awards calculated using the Common Fund Doctrine. The requested Aggrieved Employee Counsel Fee Payment is in line with leading treatises, which concur that "[n]o 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." (*See Conte & Newberg, Newberg on Class Actions* (3rd Ed.) § 14.03.) Thus, attorneys' fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. *Id.*; *see also Van Vranken v. Atlantic Richfield*

Company (N.D. Cal. 1995) 901 F.Supp. 294 [stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million].)

In this case, the requested Aggrieved Employee Counsel Fee Payment equals 35% of the Gross Settlement Amount, which is in line with prevailing guidelines established in California case law and academic literature and consistent with prior awards in California. *See Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].)

a. The Requested Attorneys' Fees Comport With The Fee-Shifting Provision Set Out Under Labor Code Sections 2698, *Et Seq.*

Here, the PAGA claim arose under Labor Code sections 2698, *et seq.* Labor Code sections 2698, *et seq.* provide that "any employee who prevails in any action [thereunder] shall be entitled to an award of reasonable attorneys' fees and [litigation] costs. (Cal. Lab. Code § 2699(g).) This fee-shifting provision reflects the understanding that Aggrieved Employees Counsel must accept significant risks of substantial expenses and consumption of time, energy, and other resources in litigating a PAGA claim, and thus, that it is reasonable for Aggrieved Employees Counsel to recover reasonable attorneys' fees and costs if successful in litigating a PAGA claim.

In this case, the prosecution of the action involved significant financial risk for Aggrieved Employees Counsel, as they undertook this matter solely on a contingency basis, with no guarantee of recovery. (MHB Decl., ¶ 47.) The Aggrieved Employee Counsel Fee Payment therefore comports with the fee-shifting provision set out under Labor Code sections 2698, *et seq.*

b. The Requested Attorneys' Fees Reflect Aggrieved Employees Counsel's Significant Experience, Reputation, and Ability In Representative Action Settlements

The experience, reputation, and ability of Aggrieved Employees Counsel supports the requested Aggrieved Employee Counsel Fee Payment. Aggrieved Employees Counsel have significant and specific experience in pursuing, as well as litigating, class and representative actions on behalf of employees. (MHB Decl., ¶¶ 2-6.) Moreover, Aggrieved Employees Counsel have been involved as lead or co-counsel in a multitude of class and representative actions resulting in beneficial results to Class and PAGA Members in California. (*Id.*) This experience has familiarized Aggrieved Employees Counsel with this rapidly evolving area of law. In particular, it has familiarized Aggrieved Employees Counsel with the state and federal, and substantive and procedural, law of wage and hour litigation such that Aggrieved Employees Counsel possess significant expertise in this narrow field. Because attorneys' fees are awarded with regard to and commensurate with the experience, reputation, and skill of Aggrieved Employees Counsel, Aggrieved Employees Counsel's requested fee award is supported here.

B. <u>Aggrieved Employees Counsel Are Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs.</u>

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include counsel's incurred expenses because those who benefit from their effort should share in the cost. *See Rider v. City of San Diego,* 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *see also Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded litigation costs for consultants, online legal research, copying, postage, long distance charges, travel expenses, filing fees, mediation fees and investigation fees). Aggrieved Employees Counsel have expended $19,280.68 ($12,660.48 for the Spivak Law Firm + $1,445.85 for United Employees Law Group + $5,174.35 for Boyamian Law, Inc.) prosecuting this action. MHB Decl. ¶ 54, Exh. C; Spivak Decl., ¶ 38; Haines Decl., ¶ 11. Aggrieved Employees Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; factual and legal research charges; mediation fees; and expert costs which were all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed. *Id.*

VII. CONCLUSION

As shown herein, the PAGA Settlement Agreement is fair, adequate, and reasonable, as it represents a reasoned compromise obtained through arms-length negotiations. For all the reasons set forth above, Plaintiffs respectfully requests that this Court, as set forth in the Proposed Order Approving Settlement, do the following:

1. Grant approval of the Agreement, pursuant to California Labor Code § 2699, subpart l;

2. Appoint Simpluris as the Settlement Administrator and approve payment of $3,500.00 from the Gross Settlement Amount;

3. Direct disbursement of the Gross Settlement Amount pursuant to the terms of the Agreement;

4. Approve the award of attorneys' fees to Aggrieved Employees Counsel in the amount not to exceed 35% of the Gross Settlement Amount (i.e., $82,250.00), payment of which shall come from the Gross Settlement Amount;

5. Approve the reimbursement of costs to Aggrieved Employees Counsel in the amount of $19,280.68 which shall come from the Gross Settlement Amount; and

6. Dismiss this action with prejudice.

DATED: October 17, 2025 Respectfully submitted,

BOYAMIAN LAW, INC.
THE SPIVAK LAW FIRM
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By:______________________________

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