

POTTER HANDY LLP
Mark D. Potter (SBN 166317)
mark@potterhandy.com
James M. Treglio (SBN 228077)
jimt@potterhandy.com
100 Pine St., Ste 1250
San Francisco, CA 94111
(858) 375-7385
Fax: (888) 422-5191

DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Kristen M. Agnew (State Bar No. 247656)
kagnew@diversitylaw.com
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
(213) 488-6555
(213) 488-6554 facsimile

Attorneys for Plaintiffs and the Aggrieved Employees
*** Additional Counsel on Next Page

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

SAFAA AL AZZAWI, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

C-STORE SERVICES, INC., a California
corporation; and DOES 1 to 100, inclusive

Defendants.

Case No.: CIVSB2228712

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION TO APPROVE SETTLEMENT
AGREEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: July 7, 2025
Time: 9:00 a.m.
Dept.: S36

Complaint Filed: December 21, 2022
Trial Date: None

1 **ADDITIONAL COUNSEL**

2 **BIBIYAN LAW GROUP, P.C.**

3 David D. Bibiyan (State Bar No. 287811)

4 david@tomorrowlaw.com

5 Vedang J. Patel (State Bar No. 328647)

6 vedang@tomorrowlaw.com

7 1460 Westwood Boulevard

8 Los Angeles, California 90024

9 Telephone: (310) 438-5555

10 Facsimile: (310) 300-1705

11 **JAMES HAWKINS APLC**

12 James R. Hawkins, Esq. (State Bar No.192925)

13 James@jameshawkinsaplc.com

14 Gregory Mauro, Esq. (State Bar No.222239)

15 Greg@jameshawkinsaplc.com

16 Michael Calvo, Esq. (State Bar No.314986)

17 Michael@jameshawkinsaplc.com

18 Lauren Falk, Esq. (State Bar No.316893)

19 Lauren@jameshawkinsaplc.com

20 Ava Issary, Esq. (State Bar No.342252)

21 Ava@jameshawkinsaplc.com

22 9880 Research Drive, Suite 200

23 Irvine, CA 92618

24 Tel.: (949) 387-7200

25 Fax: (949) 387-6676

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

2 **PLEASE TAKE NOTICE** that on July 7, 2025, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard, in Department S36 of the above-referenced Court located at 247 West 3rd
4 Street, San Bernardino, CA 92415-0210, Plaintiffs Safaa Al Azzawi, Justin Johnson, Teresa
5 Bustos, and Ruben Rosas (collectively, "Plaintiffs") will seek an Order approving the
6 concurrently filed Joint Stipulation of Settlement and Release under the Private Attorneys
7 General Act ("Agreement" or "Settlement"), pursuant to the procedures set forth in Labor Code
8 § 2698, *et seq.*

9 This motion will be based on this notice of motion, the attached memorandum of points
10 and authorities, the accompanying declarations of Kristen M. Agnew, James M. Treglio, David
11 D. Bibiyan, James Hawkins, Plaintiff Justin Johnson, Plaintiff Safaa Al Azzawi, Plaintiff Teresa
12 Bustos, Plaintiff Ruben Rosas and Jodey Lawrence (Phoenix Settlement Administrators), the
13 records and file herein, and on such other evidence as may be presented at the hearing of the
14 motion.

15
16 DATED: May 16, 2025

DIVERSITY LAW GROUP, P.C.

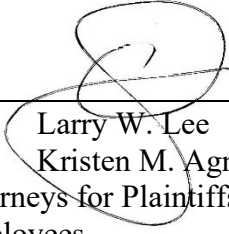
17
18 By: 
19 Larry W. Lee
20 Kristen M. Agnew
21 Attorneys for Plaintiffs and the Aggrieved
22 Employees
23
24
25
26
27
28

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	10
II. PROCEDURAL HISTORY.....	11
A. The <i>Johnson</i> Action.	11
1. The <i>Johnson</i> PAGA Notice and Complaint.....	11
2. Summary of Discovery in the <i>Johnson</i> Action.	11
B. The <i>Al Azzawi</i> Action	12
C. The <i>Bustos</i> Action	12
D. The <i>Rosas</i> Action.....	13
E. The Parties Participate in a Global Mediation.....	13
F. The Operative Complaint.....	14
III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT.....	14
A. The PAGA Members	14
B. The Gross Settlement Amount.....	14
C. The Allocation of the Net Settlement Amount	15
D. Attorneys' Fees, Litigation Costs and Service Award.....	15
E. Settlement Administration Costs.....	16
F. The <i>Cy Pres</i> Recipient.....	16
G. The Scope of the Released Claims	17
IV. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED	17
A. PAGA Overview.....	17
B. Class Action Settlement Standards Do Not Govern the Settlement Approval Process for PAGA Claims	19
C. The Settlement is Reasonable and Effectuates PAGA's Objectives.....	20
D. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of Litigation.....	20
1. Plaintiffs' Claims are Contested	21
a. Unpaid Minimum and Overtime Wages.....	21
b. On-Duty Meal and Rest Periods.....	22
c. Derivative Wage Statement Violations	24
d. Failure to Pay Sick Pay at the Regular Rate of Pay.	24
e. Failure to Reimburse Business Expenses.....	24

1	2.	Recovery of Civil PAGA Penalties Is Uncertain	25
2	3.	The Settlement Is Reasonable When Compared to the Realistic Amount of PAGA	
3		Civil Penalties At Issue	26
4	E.	The Attorneys' Fees and Costs Are Reasonable and Should Be Approved	27
5	1.	The Labor Code Permits the Award of Fees and Costs.	27
6	2.	Plaintiffs Seek the Award of Attorneys' Fees Under the Common Fund Doctrine.	
7			27
8	3.	The Litigation Costs Are Reasonable and Should Be Approved.....	29
9	F.	The Settlement Administrator's Costs Should be Approved.....	30
10	G.	Plaintiffs' Request for a Service Award Should be Approved.	30
11	H.	Notice to the LWDA Has Been Provided.....	31
12	V.	CONCLUSION	31

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>Apple Computer, Inc. v. Superior Court</i> , 126 Cal. App. 4th 1253, 1269-70 (2005)	28
<i>Arias v. Superior Court</i> , 46 Cal. 4th 969, 980 (2009)	17, 18, 19
<i>Augustus v. ABM Sec. Servs., Inc.</i> , 2 Cal. 5th 257, 269 (2016)	22
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal. 4th 1004 (2012)	21
<i>Consumer Advocacy Group, Inc. v. Kintetsu</i> , 141 Cal. App. 4th 46, 62-63 (2006)	20
<i>Frlekin v. Apple, Inc.</i> , 8 Cal. 5th 1038, 1046 (2020)	21
<i>Huerta v. CSI Electrical Contractors</i> , 15 Cal.5th 908 (2024)	21
<i>Kim v. Reins International California, Inc.</i> , 9 Cal.5th 73, 81 (2020)	17
<i>Laffitte v. Robert Half Int'l Inc.</i> , 1 Cal. 5th 480, 503 (2016)	28
<i>Lubin v. The Wackenhut Corp.</i> , 5 Cal. App. 5th 926, 932 (2016)	22
<i>Maldonado v. Epsilon Plastics, Inc.</i> , 22 Cal. App. 5th 1308 (2018)	24
<i>Marias P. v. Riles</i> , 43 Cal.3d 1281, 1290-1291 (1987)	27
<i>Moniz v. Adecco USA, Inc.</i> , 72 Cal.App.5th 56, 77 (2021)	20
<i>Morillion v. Royal Packing Co.</i> , 22 Cal.4th 575, 582 (2000)	21
<i>Naranjo v. Spectrum Security Services, Inc.</i> 15 Cal.5th 1056, 1087 (2024)	24
<i>Neary v. Regents of Univ. of Cal.</i> , 3 Cal. 4th 273, 277- 278 (1992)	20
<i>Ochoa- Hernandez v. Cjaders Foods, Inc.</i> , 2010 WL 1340777, *4 (N.D. Cal. April 2, 2010)....	18
<i>Raines v. Coastal Pac. Food Distributors, Inc.</i> , 23 Cal. App. 5th 667, 681 (2018)	25
<i>see Cochran v. Schwan's Home Service, Inc.</i> , 228 Cal.App.4th 1137, 1144 (2014)	24
<i>Serrano III v. Priest</i> , 20 Cal.3d 25, 34 (1977)	28
<i>Serrano v. Priest</i> , 20 Cal. 3d 25, 34 (1977)	28
<i>Serrano v. Unruh</i> , 32 Cal.3d 621, 624 (1982)	27
<i>Thurman v. Bayshore Transit Management, Inc.</i> 203 Cal. App. 4th 1112, 1136 (2012)	25
<i>Turrieta v. Lyft, Inc.</i> , 16 Cal.5th 664, 709 (2024)	20
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224, 254 (2001)	28
<u><i>Williams v. Superior Court</i>, 3 Cal.5th 531, 549 (2017)</u>	20

Federal Cases

<i>Abdullah v. U.S. Security Associates, Inc.</i> , 731 F.3d 952, 958–959 (9th Cir. 2013).....	22
<i>Baumann v. Chase Inv. Servs. Corp.</i> , 747 F.3d 1117, 1123 (9th Cir. 2014)	18
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472, 478 (1980).....	28
<i>Brotherton v. Cleveland</i> , 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001)	30
<i>Cook v. Niedert</i> , 142 F.3d 1004, 1016 (7th Cir. 1998)	31
<i>Enter. Energy Corp. v. Columbia Gas Transmission Corp.</i> , 137 F.R.D. 240, 251-52 (S.D. Ohio 1991).....	31
<i>Glass v. UBS Fin. Servs.</i> , No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007).....	31
<i>Hartley v. On My Own, Inc.</i> , 2020 WL 5017608, * 4 (E.D. Cal. Aug. 25, 2020)	26
<i>In re Dun & Bradstreet Credit Servs. Customer Litig.</i> , 130 F.R.D. 366, 374 (S.D. Ohio 1990) .	30
<i>Kang v. Wells Fargo Bank, N.A.</i> , 2021 WL 5826230, at *15 (N.D. Cal., 2021).....	20
<i>Magadia v. Wal-Mart Assocs. et al.</i> 2019 U.S. Dist. Lexis 91792 at *87-*100.....	25
<i>Manzo v. McDonald's Restaurants of California, Inc.</i> , 2022 WL 4586236, at *6 (E.D. Cal., 2022)	26
<i>Ochoa-Hernandez v. Cjaders Foods, Inc.</i> , 2010 WL 1340777, at *13 (N.D.Cal. Apr. 2, 2010) .	19
<i>Otsuka v. Polo Ralph Lauren Corp.</i> , 251 F.R.D. 439, 442, 447 (N.D. Cal. 2008).....	23
<i>Ramirez v. Benito Valley Farms, LLC</i> , 2017 WL 3670794, *4 (N.D. Cal. Aug. 25, 2017)	26
<i>Rodriguez v. W. Publ’g Corp.</i> , 563 F.3d 948, 958-59 (9th Cir. 2009)	30
<i>See Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011, 1026 (9th Cir. 1998).....	19
<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F. Supp. 294, 299-300 (N.D. Cal. 1995)	30
<i>Vincent v. Hughes Air West, Inc.</i> , 557 F. 2d 759, 769 (9th Cir. 1997)	28
<i>Vizcaino v. Microsoft Corp</i> , 290 F.3d 1043, 1048-49 (9th Cir. 2002).....	29

Statutes

Business and Professions Code section 17200, <i>et seq.</i>	12
Code of Civil Procedure section 384	16
Labor Code § 2699(c)	18
Labor Code § 2699.3(a)(2)	18

1	Labor Code § 2699.3(a)(l)	18
2	Labor Code section 1102.5	12, 13, 14 ,17
3	Labor Code section 1174	12, 13, 14 ,17
4	Labor Code section 1174.5	12, 13, 14 ,17
5	Labor Code section 1194	12, 13, 14 ,17
6	Labor Code section 1194.2	12, 13, 14 ,17
7	Labor Code section 1197	12, 13, 14 ,17
8	Labor Code section 1197.1	12, 13, 14 ,17
9	Labor Code section 1197.5	12, 13, 14 ,17
10	Labor Code section 1198	12, 13, 14 ,17
11	Labor Code section 1198.5	12, 13, 14 ,17
12	Labor Code section 1199	12, 13, 14 ,17
13	Labor Code section 200	12, 13, 14 ,17
14	Labor Code section 201	passim
15	Labor Code section 202	passim
16	Labor Code section 203	passim
17	Labor Code section 204	12, 13, 14 ,17
18	Labor Code section 210	12, 13, 14 ,17
19	Labor Code section 212	11, 14, 17
20	Labor Code section 213	11, 14, 17
21	Labor Code section 226	passim
22	Labor Code section 226.2	passim
23	Labor Code section 226.3	passim
24	Labor Code section 226.7	passim
25	Labor Code section 227.3	12, 13, 14, 17
26	Labor Code section 232	12, 13, 14, 17
27	Labor Code section 232.5	12, 13, 14, 17
28	Labor Code section 246, et seq.	12, 13, 14, 17

1	Labor Code section 2699	12
2	Labor Code section 2699(a).....	18
3	Labor Code section 2699(g)(1).....	27
4	Labor Code section 2699, <i>et seq.</i>	12
5	Labor Code section 2802	passim
6	Labor Code section 2810.5	12, 14, 17
7	Labor Code section 432	12, 13, 14, 17
8	Labor Code section 510	12, 13, 14, 17
9	Labor Code section 512	passim
10	Labor Code section 558	12, 13, 14, 17
11	Labor Code section 96	12, 13, 14, 17
12	Labor Code section 98.6	12, 13, 14, 17
13	Labor Code sections 201-203	12, 13, 14, 17
14	Other Authorities	
15	Alba Conte & Herbert B. Newberg, <i>4 Newberg on Class Actions</i> § 11.25, <i>et seq.</i> and § 13.64 (4th	
16	ed. 2002 and Supp. 2004)	19
17	IWC Wage Order 9-2001 § 2(G)	21
18	<i>Manual for Complex Litigation, Fourth</i> § 21.632 (Fed. Jud. Ctr., 4th ed. 2004)	19

1 **I. INTRODUCTION**

2 This is a representative Private Attorneys General Act (“PAGA”) action brought by
3 Plaintiffs Safaa Al Azzawi, Justin Johnson, Teresa Bustos, and Ruben Rosas (collectively,
4 “Plaintiffs”) against Defendants C-Store Services, Inc., Stations Service, Inc., Hassan & Sons, Inc.,
5 H&S Energy Products, LLC f/k/a Colonial Energy, LLC, and H&S Energy, LLC (collectively
6 “Defendants”). Plaintiffs allege that Defendants failed to: (i) pay for all hours worked, including
7 minimum and overtime wages; (ii) failed to provide timely, off-duty meal and rest breaks and/or
8 pay premiums for missed or late meal and rest breaks; (iii) failed to pay all earned wages when
9 due and upon separation of employment; (iv) failed to reimburse for work-related expenses; (v)
10 and failed to provide accurate wage statements and keep accurate records; and (vi) failed to pay
11 sick pay wages at the regular rate of pay. Based on these claims, Plaintiffs seek civil PAGA
12 penalties on behalf of themselves, aggrieved employees and the State of California. Defendants
13 deny each, every, and all allegations of the Operative Complaint and contend that their wage and
14 hour practices comply with the Labor Code.

15 With the assistance of a private mediator, Plaintiffs and Defendants (collectively, the
16 “Parties”) have reached a proposed settlement, the terms of which are reflected in the Joint
17 Stipulation of Settlement and Release under the Private Attorneys General Act (“Agreement” or
18 “Settlement Agreement”).¹ The Settlement Agreement calls for Defendants to pay the gross
19 settlement amount of \$1,500,000.00 (“Gross Settlement Amount”). This is a non-reversionary
20 settlement, and no portion of the Gross Settlement Amount shall revert to Defendants.

21 Prior to the settlement of this Action, the Parties thoroughly investigated the facts relating
22 to the claims alleged in the Operative Complaint against Defendants. Defendants produced
23 meal/rest break and reimbursement policies, sample employee payroll and time records, as well as
24 data points related to the number of aggrieved employees, and number of pay periods at issue
25

26
27 ¹ A true and correct copy of the Settlement Agreement is attached to the Declaration of Kristen
28 M. Agnew (“Agnew Decl.”) as Exhibit 1.

1 during the PAGA Period.

2 The Parties and their respective counsel are of the opinion that the settlement for the
3 consideration and on the terms outlined in the Settlement Agreement is fair, reasonable and
4 adequate, in light of all known circumstances and the expenses and risks inherent in litigation.
5 Therefore, the Parties respectfully request that the Court grant this Motion to Approve the PAGA
6 Settlement Agreement.

7 **II. PROCEDURAL HISTORY**

8 **A. The *Johnson* Action.**

9 **1. The *Johnson* PAGA Notice and Complaint.**

10 On October 3, 2022, Plaintiff Justin Johnson (“Plaintiff Johnson”) filed a notice with the
11 California Labor & Workforce Development Agency (“LWDA”) alleging that Defendant C-Store
12 Services, Inc. (“Defendant C-Store”) violated Labor Code sections 201, 202, 203, 212, 213, 226,
13 226.7, and 512. *See* Declaration of Kristen M. Agnew (“Agnew Decl.”) ¶¶ 3-4, Exhibit 2. Shortly
14 thereafter, on December 19, 2022, Plaintiff Johnson filed a representative action complaint against
15 Defendant C-Store for violation of California Labor Code section 2698, *et seq.* in the matter of
16 *Justin Johnson v. C-Store Services, Inc.*, Superior Court of California, County of Sacramento Case
17 No. 34-2022-00331605 (“*Johnson* Action”). *See id.* at ¶ 6. As set forth in the *Johnson* Complaint,
18 Plaintiff Johnson seeks civil penalties predicated on the Labor Code violations alleged in his
19 PAGA notice. *See id.*

20 **2. Summary of Discovery in the *Johnson* Action.**

21 Plaintiff Johnson and Defendant C-Store extensively met and conferred regarding the
22 factual basis and merits of his alleged Labor Code violations. Agnew Decl. ¶ 8. Additionally,
23 Plaintiff Johnson propounded written discovery. *See id.* at ¶ 9. The discovery required Defendant
24 C-Store to provide documents and information relevant its payroll practices and procedures,
25 including those pertaining to its meal and rest period policies, on-duty meal period agreement, and
26 the identities of aggrieved employees. *See id.* Defendant C-Store served verified responses to the
27 discovery. *See id.*

1 **B. The *Al Azzawi* Action**

2 On October 12, 2022, Plaintiff Safaa Al Azzawi (“Plaintiff Al Azzawi”) filed a notice with
3 the LWDA alleging that Defendant C-Store violated Labor Code sections 201, 202, 203, 204, 210,
4 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, and 1199. *See* Declaration of James M.
5 Treglio (“Treglio Decl.”) ¶ 3.

6 On December 21, 2022, Plaintiff Al Azzawi filed a class and representative action
7 complaint against Defendant for violation of California Labor Code section 2698, *et seq.* (the “*Al*
8 *Azzawi* Complaint”) in the matter of *Safaa Al Azzawi v. C-Store Services, Inc.*, Superior Court of
9 California, County of San Bernardino Case No. CIVSB2228712 (“*Al Azzawi* Action”). *See* Treglio
10 Decl. ¶ 4. As set forth in the *Al Azzawi* Complaint, Al Azzawi seeks damages and penalties for
11 Defendant’s alleged (1) violation of Labor Code sections 1194, 1194.2, and 1198; (2) violation of
12 Labor Code section 226.7; (3) violation of Labor Code sections 226.7 and 512; (4) violation of
13 Labor Code section 204; (5) violation of Labor Code sections 226 and 226.2; (6) violation of Labor
14 Code sections 201-203; (7) violation of Labor Code sections 510, 1194, 1194.2 and 1198; (8)
15 violation of Labor Code section 2699, *et seq.*; and (9) violation of Business and Professions Code
16 section 17200, *et seq.* *See id.*

17 **C. The *Bustos* Action**

18 On December 15, 2022, Plaintiff Teresa Bustos (“Bustos”) filed a notice with the LWDA
19 alleging that Defendants violated Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
20 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
21 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5. *See* Declaration of David D. Bibiyan (“Bibiyan
22 Decl.”) ¶ 3, Exhibit 1.

23 On March 30, 2023, Plaintiff Bustos filed a representative action complaint against
24 Defendants for violation of California Labor Code section 2698, *et seq.* (the “*Bustos* Complaint”)
25 in the matter of *Teresa Bustos v. Stations Service, Inc. et. al.*, Superior Court of California, County
26 of Orange Case No. 30-2023-01316183-CU-OE-CXC (“*Bustos* Action”). *See* Bibiyan Decl. ¶ 4.
27 As set forth in the *Bustos* Complaint, Bustos seeks civil penalties predicated on Defendants’
28

1 alleged violation of Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7,
2 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1,
3 1197.5, 1198.5, 2699, 2802, and 2810.5.

4 **D. The *Rosas* Action.**

5 On February 23, 2024, Plaintiff Ruben Rosas (“Rosas”) filed a notice with the LWDA
6 alleging that Defendant C-Store Services and Hassan & Sons, Inc. violated Labor Code sections
7 201, 202, 203, 226, 246, 226.3, 226.7 and 2802. *See* Declaration of James Hawkins (“Hawkins
8 Decl.”) ¶ 2, Exhibit 1.

9 On April 30, 2024, Plaintiff Rosas filed a representative action complaint against C-Store
10 Services, Inc. and Hassan & Sons, Inc. for violation of California Labor Code section 2698, *et seq.*
11 (the “*Rosas* Complaint”) in the matter of *Ruben Rosas v. C-Store Services, Inc. et. al.*, Superior
12 Court of California, County of Placer Case No. S-CV-0052712. *See* Hawkins Decl. ¶ 3. As set
13 forth in the *Rosas* Complaint, Rosas seeks civil penalties predicated on defendants C-Store
14 Services, Inc. and Hassan & Sons, Inc. alleged violations of Labor Code sections 201, 202, 203,
15 226, 246, 226.3, 226.7 and 2802. *See id.*

16 **E. The Parties Participate in a Global Mediation.**

17 Given the shared defendants and related claims at issue, the parties to the *Johnson* Action,
18 *Al Azzawi* Action, *Bustos* Action and *Rosas* Action agreed to participate in a global mediation. *See*
19 Agnew Decl. ¶ 11. In advance of the mediation, Defendants produced meal and rest break policies,
20 reimbursement policies, sample employee payroll and time records, as well as data points related
21 to the number of aggrieved employees, and number of pay periods at issue during the timeframe
22 of October 3, 2021, through December 10, 2024. *See id.* at ¶ 12. With the assistance of an expert
23 witness, PAGA Counsel conducted a full penalties analysis. *See id.*

24 On December 9, 2024, the Parties engaged in mediation with Christopher M. Barnes, an
25 experienced wage and hour class action mediator. *See* Agnew Decl. ¶ 13. After the exchange of
26 further information and extended negotiations following mediation, the Parties reached the present
27
28

1 settlement. *See id.* The Parties subsequently negotiated the terms of Settlement Agreement. *See id.*
2 The mediation and all settlement negotiations were conducted at arms' length. *See id.* at ¶ 14.

3 **F. The Operative Complaint**

4 As a condition of settlement, the Parties agreed to stipulate to the filing of a First Amended
5 Representative Action Complaint ("Operative Complaint") in this Action, for the purpose of: (1)
6 including all claims and allegations alleged in the *Johnson* Action, *Rosas* Action, and *Bustos*
7 Action, pursuant to the PAGA; (2) adding Plaintiff Johnson, Plaintiff Bustos, and Plaintiff Rosas
8 as additional named plaintiffs; and (3) excluding the class claims alleged in the *Al Azzawi*
9 Complaint. *See* Agnew Decl. ¶ 15. On May 12, 2025, Plaintiffs filed the Operative Complaint. *See*
10 *id.* at ¶ 16. The Operative Complaint alleges representative PAGA claims predicated on
11 Defendants' alleged violations of Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 204.1,
12 205, 205.5, 210, 212, 213, 216, 218, 218.6, 226, 226.2, 226.3, 226.7, 227.3, 232, 232.5, 246, *et*
13 *seq.*, 432, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198,
14 1198.5, 1199, 2699, 2802, and 2810.5. *See* FAC ¶ 32.

15 **III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT**

16 The material terms of the Settlement are described below and set forth in detail in the
17 concurrently filed Settlement Agreement, a true and correct copy of which is attached as **Exhibit**
18 **1** to the Declaration of Kristen M. Agnew.

19 **A. The PAGA Members**

20 The current Action is being settled on behalf of "PAGA Members," which is defined to
21 mean "all current and former California non-exempt employees who worked for Defendants at any
22 time from October 3, 2021, through January 24, 2025 ("PAGA Period")." *See* Settlement
23 Agreement ("SA") §§ B-12, B-14. Defendants have determined that there are approximately 5,262
24 PAGA Members who collectively worked approximately 118,354 pay periods during the
25 timeframe of October 3, 2021, through December 10, 2024. *See id.* at § C-4; Agnew Decl. ¶ 17.

26 **B. The Gross Settlement Amount**

27 The Settlement Agreement requires Defendants to pay the gross amount of One Million
28

Five Hundred Thousand Dollars (\$1,500,000.00) (the “Gross Settlement Amount”). *See* SA § B-7. Based on the number of pay periods released by the Settlement, Defendants will pay approximately \$12.67 per pay period to resolve the claims in this case. *See* Agnew Decl. ¶ 18.

C. The Allocation of the Net Settlement Amount

The balance of the Gross Settlement Amount remaining after deduction of the approved Service Awards to Plaintiffs, Attorneys’ Fees and Costs, and Settlement Administration Costs is the Net Settlement Amount. *See* SA § B-10. The Net Settlement will be available for distribution to the LWDA and PAGA Members. *See id.* at § C-6. Assuming that the Court awards the requested attorneys’ fees (\$500,000.00), actual litigation costs (\$31,625.87), Settlement Administration Costs (\$21,000.00), and the Service Awards (\$40,000.00), the Net Settlement Amount will total approximately \$907,374.13. *See* Agnew Decl. ¶ 24. Seventy-five percent (75%) of the Net Settlement Amount, or approximately \$680,530.60, will be paid to the LWDA for PAGA penalties (“LWDA Payment”). *See* SA § C-6; Agnew Decl. ¶ 24. The remaining twenty-five percent (25%), or approximately \$226,843.53, will be distributed to PAGA Members on a pro rata basis based on the number of pay periods in which employees worked during the PAGA Period. *See* SA § C-7; Agnew Decl. ¶ 24.

On raw average, PAGA Members will be entitled to recover, on average, up to \$43.10 each. *See* Agnew Decl. ¶ 25. However, the amount that any particular PAGA Member will be entitled to recover will be greater or lower than this average depending on the number of pay period in which the individual worked during the PAGA Period. *See* SA § C-7. This is fair, as it directly allocates greater penalties to PAGA Members who have allegedly suffered greater harm. *See* Agnew Decl. ¶ 25.

D. Attorneys’ Fees, Litigation Costs and Service Award

As part of the Settlement, Defendants do not object to a request by PAGA Counsel for an award of Attorneys’ Fees of up to one-third (1/3) of the Gross Settlement Amount, *i.e.*, the sum of Five Hundred Thousand Dollars (\$500,000.00), and reimbursement for actual litigation costs in an amount up to Fifty Thousand Dollars (\$50,000.00) (“Attorneys’ Fees and Costs”), subject to Court

1 approval. *See* SA § C-11.² Any portion of the Attorneys' Fees and Costs that is not approved by
2 the Court shall become part of the Net Settlement Amount. *See id.*

3 Defendants also do not object to Plaintiffs' request for Service Awards in the amount of
4 Ten Thousand Dollars (\$10,000.00) each (collectively, \$40,000.00) in recognition for the work
5 Plaintiffs have done on behalf of the State of California and the PAGA Members. *See* SA § C-10.
6 Any portion of the Service Awards that is not approved by the Court shall become part of the Net
7 Settlement Amount. *See id.*

8 **E. Settlement Administration Costs**

9 The Settlement provides for the payment of the fees and expenses reasonably incurred by
10 the Settlement Administrator. *See* SA § C-12. The Parties have agreed to utilize Phoenix
11 Settlement Administrators to administer the settlement, with the Settlement Administration Costs
12 estimated to be Twenty-One Thousand Dollars (\$21,000.00). *See id.* at §§ B-22; C-21; Declaration
13 of Jodey Lawrence ("Admin. Decl.") ¶ 16, Exhibit B. Any portion of the Settlement
14 Administration Costs that is not approved by the Court shall become part of the Net Settlement
15 Amount. *See id.* at § C-21.

16 **F. The *Cy Pres* Recipient.**

17 Any uncashed checks will be paid out pursuant to California Code of Civil Procedure
18 section 384 to the *cy pres* recipient, Legal Aid at Work. *See* SA § D-5. Legal Aid at Work, is a
19 501(c)(3) nonprofit legal services organization that provides services to working families with
20 low-incomes. The Parties warrant and represent that they do not have a relationship, financial or
21 otherwise, with the *cy pres* recipient. *See* Agnew Decl. ¶ 26; Hawkins Decl. ¶ 13; Treglio Decl. ¶
22 12.

23 //

24 _____

25 ² At the time the Parties negotiated the Settlement Agreement, PAGA Counsel did not have a
26 final tally of the litigation costs incurred to date. As such, the Parties included a maximum
27 amount that could be attributed to costs under the settlement. PAGA Counsel requests
28 reimbursement of \$31,625.87 for litigation related expenses. *See* Agnew Decl. ¶ 53, Exhibit 3;
Hawkins Decl. ¶ 11, Exhibit 2; Treglio Decl. ¶¶ 21, 22; Bibiyan Decl. ¶¶ 19, 20.

1 **G. The Scope of the Released Claims**

2 Upon the payment of the Gross Settlement Amount, Plaintiffs and all PAGA Members will
3 release Defendants and Released Parties from the Released PAGA Claims. *See* SA § E-1. As
4 defined in the Agreement, the term “Released PAGA Claims” means:

5 All claims alleged in the Operative Complaint and for penalties
6 under the California Private Attorneys’ General Act, including costs
7 and attorneys’ fees related thereto, predicated upon the claims and
8 theories set forth in the Operative Complaint, and included but not
9 limited to violation of Labor Code sections 96, 98.6, 200, 201, 202,
10 203, 204, 204.1, 205, 205.5, 210, 212, 213, 216, 218, 218.6, 226,
11 226.2, 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512,
12 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,
13 1197.5, 1198, 1198.5, 1199, 2699, 2802, and 2810.5, that accrued
14 during the PAGA Period.

15 *See id.* at § B-18. The Settlement is not intended to release does not extend to violations of any
16 predicate statutes other than PAGA. The Settlement also does not affect a waiver of claims by
17 PAGA Members against the Released Parties for any individual wage and hour claims. *See* Agnew
18 Decl. ¶ 22.

19 **IV. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED**

20 **A. PAGA Overview**

21 In 2004, California enacted PAGA, which allows aggrieved employees, on behalf of the
22 LWDA and other aggrieved employees, to bring suit against their employers for alleged violations
23 of the California labor laws and to obtain penalties that previously could only be obtained by the
24 State. The PAGA was enacted because the Legislature determined that it was “in the public interest
25 to allow Aggrieved Employees, acting as private attorneys general, to recover civil penalties for
26 Labor Code violations,” since the State had not been able to fully or adequately enforce its labor
27 laws. *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009); *Kim v. Reins International California,*
28 *Inc.*, 9 Cal.5th 73, 81 (2020)(“The Labor Commissioner and other agencies were likewise
hampered in their enforcement of civil penalties by inadequate funding and staffing constraints. []
To facilitate broader enforcement, the Legislature enacted PAGA, authorizing “aggrieved
employees” to pursue civil penalties on the state's behalf”); *Ochoa- Hernandez v. Cjaders Foods,*

1 *Inc.*, 2010 WL 1340777, *4 (N.D. Cal. April 2, 2010) (“The act’s declared purpose is to
2 supplement enforcement actions by public agencies, which lack adequate resources to bring all
3 such actions themselves. Unlike class actions, these civil penalties are not meant to compensate
4 unnamed employees because the action is fundamentally a law enforcement action.” [citations
5 omitted].)

6 Labor Code section 2699(a) states that any Labor Code provision “that provides for a civil
7 penalty to be assessed and collected by the [LWDA] may, as an alternative, be recovered through
8 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
9 or former employees pursuant to the procedures specified in Section 2699.3.” An “aggrieved
10 employee” means “any person who was employed by the alleged violator and against whom one
11 or more of the alleged violations was committed.” Lab. Code § 2699(c). Prior to commencing an
12 action, the allegedly aggrieved employee must provide notice to the LWDA and the employer
13 setting forth the “specific provisions of [the Labor Code] alleged to have been violated, including
14 the facts and theories to support the alleged violation.” Lab. Code § 2699.3(a)(1). If the LWDA
15 decides not to investigate the allegations or issue a citation to the employer, the proposed
16 representative plaintiff is entitled to commence a PAGA action after 65 days. Lab. Code §
17 2699.3(a)(2).

18 The California Supreme Court has explained that a plaintiff who brings a PAGA claim
19 “represents the same legal right and interest as state labor law enforcement agencies,” and brings
20 PAGA claims “as the proxy or agent” of the State. *Arias*, 46 Cal. 4th at 986. Of the civil penalties
21 recovered, 75 percent goes to the LWDA, and the remaining 25 percent goes to the “aggrieved
22 employees” for collecting the penalties on behalf of the State Lab. Code § 2699(i); *Baumann v.*
23 *Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (a PAGA representative’s recovery
24 is “an incentive to perform a service to the state, not restitution for wrongs done to members of the
25 class”).

26 //

27 //

1 **B. Class Action Settlement Standards Do Not Govern the Settlement Approval**
2 **Process for PAGA Claims**

3 In class action cases, the purpose of the Court’s preliminary evaluation of the settlement is
4 to determine whether it is within the “range of reasonableness,” and thus whether notice to the
5 class of the terms and conditions of the settlement, and the scheduling of a formal fairness hearing,
6 are worthwhile. *See* Alba Conte & Herbert B. Newberg, 4 *Newberg on Class Actions* § 11.25, *et*
7 *seq.* and § 13.64 (4th ed. 2002 and Supp. 2004) (“*Newberg*”). The “judge must make a preliminary
8 determination on the fairness, reasonableness, and adequacy of the settlement terms and must
9 direct the preparation of notice of the certification, proposed settlement, and date of the final
10 fairness hearing.” *Manual for Complex Litigation, Fourth* § 21.632 (Fed. Jud. Ctr., 4th ed. 2004).
11 To make the preliminary fairness determination, courts may consider several relevant factors,
12 including “the strength of the plaintiff’s case; the risk, expense, complexity, and likely duration of
13 further litigation; the risk of maintaining class action status through trial; the amount offered in
14 settlement; the extent of discovery completed and the stage of the proceedings; [and] the
15 experience and views of counsel....” *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.
16 1998).

17 By contrast, court approval of PAGA settlements is governed by section 2699(1) of the
18 Labor Code, which provides, in relevant part: “The court shall review and approve any penalties
19 sought as part of a proposed settlement agreement pursuant to this part.” The parties are not
20 obligated to “satisfy class action requirements,” including the standards for class action settlement
21 approval. *Arias*, 46 Cal. 4th at 980-988 (affirming lower court’s holding that “plaintiff need not
22 satisfy class action requirements” to assert a PAGA claim). Notably, unlike the class action
23 settlement approval process, there is also no statutory mechanism for this Court to conduct a two-
24 step settlement approval review. Cal. Lab. Code § 2699(i). In addition, “[u]nnamed employees
25 need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the
26 representative PAGA claim” or “contest a settlement, if any, reached between the parties.” *Ochoa-*
27 *Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *13 (N.D.Cal. Apr. 2, 2010).

1 **C. The Settlement is Reasonable and Effectuates PAGA’s Objectives**

2 The Court’s focus in a PAGA case is not the amount that aggrieved employees will
3 ultimately receive as a result of a settlement. Instead, “a trial court should evaluate a PAGA
4 settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes
5 to remediate present labor law violations, deter future ones, and to maximize enforcement of state
6 labor laws.” *See Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021), disapproved on other
7 grounds by *Turrieta v. Lyft, Inc.*, 16 Cal.5th 664, 709 (2024); *see also Williams v. Superior Court*,
8 3 Cal.5th 531, 549 (2017)(“PAGA settlements are subject to trial court review and approval,
9 ensuring that any negotiated resolution is fair to those affected”); *Kang v. Wells Fargo Bank, N.A.*,
10 2021 WL 5826230, at *15 (N.D. Cal., 2021) (evaluating a PAGA settlement under the standard of
11 whether the settlement terms “are fundamentally fair, reasonable, and adequate in view of PAGA’s
12 public policy goals”). Here, the Settlement vindicates the rights of PAGA Members who have
13 experienced alleged violations of the Labor Code. Additionally, the seven-figure Gross Settlement
14 Amount acts as a deterrent to other California employers.

15 The Settlement is also consistent with the State’s public policy favoring resolution of
16 disputes. “California law favors the settlement of disputes as our high court clarified in *Neary*[].
17 Settlement is efficient; it reduces costs, saves resources, and minimizes court congestion. [] The
18 parties are best positioned to understand their interests and resolve a dispute in a mutually
19 beneficial manner without court intervention into the settlement.” *Consumer Advocacy Group, Inc.*
20 *v. Kintetsu*, 141 Cal. App. 4th 46, 62-63 (2006) (citing *Neary v. Regents of Univ. of Cal.*, 3 Cal.
21 4th 273, 277- 278 (1992).

22 **D. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of**
23 **Litigation**

24 Though Plaintiffs are reasonably confident that they would prevail at trial, proceeding in
25 litigation entails significant risk on the underlying merits of Plaintiffs’ theories, in addition to the
26 still-developing law under PAGA.

27 //

1 **1. Plaintiffs’ Claims are Contested**

2 **a. Unpaid Minimum and Overtime Wages**

3 California law obligates Defendants to compensate employees for all hours worked.
4 “Hours worked” is defined in the relevant IWC Order as “the time during which an employee is
5 subject to the control of an employer, and includes all the time the employee is suffered or
6 permitted to work, whether or not required to do so.” IWC Wage Order 9-2001 § 2(G). As the
7 California Supreme Court held in *Morillion v. Royal Packing Co.*, an employee must be paid
8 whenever he or she is “subject to the control of an employer.” 22 Cal.4th 575, 582 (2000); *Frlekin*
9 *v. Apple, Inc.*, 8 Cal. 5th 1038, 1046 (2020) (“An employee who is *subject to the control* of an
10 employer does not have to be working during that time to be compensated under the applicable
11 wage order”); *Huerta v. CSI Electrical Contractors*, 15 Cal.5th 908 (2024).

12 Here, Plaintiffs seek civil PAGA penalties based on Defendants’ alleged policies and
13 practices that result in PAGA Members working off-the-clock. *See* Agnew Decl. ¶ 32. Plaintiffs
14 allege that PAGA Members remained on-call after hours, attended company meetings off the
15 clock, and were required to complete pre-shift tasks before clocking in and post-shift tasks after
16 clocking out, such as answering calls from dispatch and others. *See* FAC ¶ 18. Plaintiffs maintain
17 that these practices are inconsistent with California law and regulatory scheme, as they result in
18 unpaid wages.

19 Defendants, however, argue that the off-the-clock claims are not suitable to be adjudicated
20 on a representative basis because their policies and training materials required accurate recording
21 of time and prohibited off-the-clock work. *See* Agnew Decl. ¶ 33. Defendants’ written policies
22 strictly prohibit non-exempt employees from working off the clock for any reason. *See id.* Citing
23 to *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012) and its progeny,
24 Defendants argue that their liability is contingent on proof that Defendants knew or should have
25 known that off-the-clock work was occurring. In the absence of a uniform policy that requires off-
26 the-clock work, Defendants argue that Plaintiffs will not be able to establish the requisite
27 knowledge through common proof. *See* Agnew Decl. ¶ 33.

1 **b. On-Duty Meal and Rest Periods.**

2 Labor Code section 512 requires employers to provide employees with a thirty (30) minute
3 uninterrupted and duty-free meal period within the first five hours of work. “An on-duty meal period
4 is permitted only when the nature of the work prevents an employee from being relieved of all duty
5 and the parties agree in writing to an on-duty paid meal break.” *See Lubin v. The Wackenhut Corp.*,
6 5 Cal. App. 5th 926, 932 (2016). Generally, the DLSE and courts have “found that the nature of the
7 work exception applies: ‘(1) where the work has some particular external force that requires the
8 employee to be on duty at all times, and (2) where the employee is the sole employee of a particular
9 employer.’” *See id.* at 945; *Abdullah v. U.S. Security Associates, Inc.*, 731 F.3d 952, 958–959 (9th
10 Cir. 2013) (“[I]t is the employer’s obligation to determine whether the nature of the work prevents
11 an employee from being relieved *before* requiring an employee to take an on-duty meal period.”

12 Plaintiffs seek civil PAGA penalties predicated on Defendants’ alleged policy and practice
13 of requiring aggrieved employees to take on-duty meal periods. *See* Agnew Decl. ¶ 34; FAC ¶ 19.
14 Plaintiffs contend that, pursuant to Defendants’ written meal period policy, an employee who is
15 required to take an on-duty meal period does not clock out for lunch and must remain on the
16 premises for the duration of their meal period. *See id.* Although PAGA Members who take an on-
17 duty meal period sign an on-duty meal period agreements, Plaintiffs maintain that Defendants
18 cannot satisfy the nature of the work exception. *See id.*

19 Relatedly, Plaintiffs also seek civil PAGA penalties based on Defendants’ purported
20 policies that result in PAGA Members working during rest periods. *See* Agnew Decl. ¶ 37; FAC ¶
21 20. Plaintiffs allege that PAGA Members assigned to work a solo shift were required to remain
22 on-duty during their rest periods, as they could not leave the store unattended. *See* Agnew Decl. ¶
23 37. Courts have repeatedly held that employers may not impose any limits on rest breaks, such as
24 dictating what the employee can do during breaks, nor may they discourage or impede breaks. *See*
25 *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 269 (2016) (an employer cannot “satisfy its
26 obligation to relieve employees from duties and employer control during rest periods when the
27 employer [] requires its employees to remain on call”); *Dilts v. Penske Logistics, LLC*, 267 F.R.D.

1 625, (S.D. Cal. 2010) (holding that class certification of rest and meal period claims was warranted
2 where the plaintiffs were required to use Nextel pagers during breaks and stay in communication
3 and breaks were not permitted until all work was finished); *Otsuka v. Polo Ralph Lauren Corp.*,
4 251 F.R.D. 439, 442, 447 (N.D. Cal. 2008).

5 Defendants maintain that they complied with the law, had lawful and compliant practices,
6 and provided PAGA Members with duty-free meal/rest periods. *See* Agnew Decl. ¶¶ 35, 36, 38,
7 39. In this respect, Defendants argue that the nature of the work exception permits on-duty meal
8 periods. *See id.* at ¶ 35. Due to the unique nature of the work performed by gas station attendants,
9 including solo shifts, continuous customer service needs, and the obligation to monitor fueling
10 operations and ensure safety on the premises, it is often not feasible to relieve employees of all
11 duties during their meal periods. *See id.* Defendants further maintain that most shifts are staffed
12 by two or more employees, which permits employees to take staggered off-duty breaks. *See id.* at
13 ¶ 36. For these employees, Defendants argue that their only obligation was to make meal/rest
14 periods available to employees – not to police them. *See Brinker Rest. Corp.*, 53 Cal. 4th at 1040
15 (“On the other hand, the employer is not obligated to police meal breaks and ensure no work
16 thereafter is performed”). Defendants’ time records also reflect that the vast majority of employees
17 receive compliant meal periods. Taking into account employees who have signed on-duty meal
18 period agreements, the violation rate is 3.2%. *See* Agnew Decl. ¶ 36. The violation rate for
19 employees who are not subject to an on-duty meal period agreement is slightly higher, at 7.2%.
20 *See id.*

21 Defendants also dispute that any employees are required to take on-duty rest periods. *See*
22 Agnew Decl. ¶ 38. Consistent with its written policies, employees who work a solo shift are
23 directed to close the store for rest breaks and hang a sign advising customers of their breaks. *See*
24 *id.* This permits employees to leave the store during their rest periods. *See id.* Ultimately, as argued
25 by Defendants, an adjudication of the alleged meal/rest period violations would require
26 individualized assessments as to the circumstances of each missed, delayed or interrupted break.
27 *See id.* at ¶ 39. Relatedly, Defendants also argue that, even if Plaintiffs were able to establish that
28

1 some employees experienced a rest period violation, such a claim would not be manageable. *See*
2 *id.*

3 **c. Derivative Wage Statement Violations**

4 Plaintiffs seek civil PAGA penalties based on Defendants’ violations of Labor Code
5 section 226(a). *See* Agnew Decl. ¶ 40; FAC ¶ 21. As a result of the alleged underpayment and/or
6 non-payment of wages to PAGA Members, Plaintiffs contend that the wage statements omit
7 information required by Labor Code 226, including all applicable hourly rates and the total hours
8 worked. *See* Agnew Decl. ¶ 40; FAC ¶ 21. As argued by Defendants, the derivative wage statement
9 violation is vulnerable to a motion for summary judgment based on the weaknesses of the
10 underlying primary claims. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308 (2018)
11 (finding that the employees did not suffer a violation under 226(a) where their wage statement
12 cause of action was derived from an underlying wage and hour violation for overtime). Defendants
13 further maintain that this claim is subject to the “good faith” defense articulated in *Naranjo v.*
14 *Spectrum Security Services, Inc.* 15 Cal.5th 1056, 1087 (2024) (employer’s failure to include meal
15 and rest period premium pay on the wage statements was not “knowing and intentional” because
16 it had a good faith belief that it was not in violation of Labor Code section 226).

17 **d. Failure to Pay Sick Pay at the Regular Rate of Pay.**

18 Plaintiffs seek civil PAGA penalties based on Defendants’ alleged failure to pay sick pay
19 wages at the regular rate of pay. *See* Agnew Decl. ¶ 41; FAC ¶27. This alleged violation impacted
20 a relatively small sub-set of PAGA Members in 1,644 pay periods. *See* Agnew Decl. ¶41.

21 **e. Failure to Reimburse Business Expenses**

22 Plaintiffs allege that Defendants regularly and consistently violated Labor Code section
23 2802 by failing to reimburse employees for expenses incurred in the performance of their duties,
24 including expenses associated with the use of personal phones for mandatory work-related phone
25 calls and driving personal vehicles. *See* Agnew Decl. ¶ 41; FAC ¶ 25; *see Cochran v. Schwan's*
26 *Home Service, Inc.*, 228 Cal.App.4th 1137, 1144 (2014) (“If an employee is required to make
27 work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of
28

1 section 2802”). Defendants deny Plaintiffs’ allegations. According to Defendants, employees were
2 not required to use a personal cell phone, as phones were made available to communicate during
3 the workday. *See* Agnew Decl. ¶ 41. Thus, according to Defendants, the decision to use a cell
4 phone for business purposes is a personal decision and not one required by company policy. *See*
5 *id.*

6 **2. Recovery of Civil PAGA Penalties Is Uncertain**

7 Even if Plaintiffs were to prevail on the merits of the PAGA claim, the potential recovery
8 is uncertain. Defendants contend that the Company made a good faith effort to comply with the
9 law. As argued by Defendants, in deciding whether to award the maximum penalty amount, courts
10 may focus on whether the employer made a good faith effort to follow the law. For example, in
11 *Thurman v. Bayshore Transit Management, Inc.*, the Court of Appeal upheld the trial court’s
12 significant reduction of PAGA penalties by 30% because the employer was not initially on notice
13 that it was in violation of the law and because it would have been unfair to award penalties where
14 the employer was unaware of the violations. 203 Cal. App. 4th 1112, 1136 (2012). When the
15 employer made aware of the violations, it timely took steps to come into compliance. *Id.* By
16 contrast, the imposition of full penalties was justified when an employer took a “cavalier approach
17 to fulfilling its contractual and statutory obligations” and demonstrated “reckless disregard.” *Id.*
18 Furthermore, as the California Court of Appeal has affirmed, trial courts are well within their
19 discretion to reduce PAGA penalties “for technical violations that cause no injury,” especially
20 where the “violation was inadvertent.” *Raines v. Coastal Pac. Food Distributors, Inc.*, 23 Cal.
21 App. 5th 667, 681 (2018). Similarly, in the matter of *Magadia v. Wal-Mart Assocs. et al.*, while
22 the trial court imposed substantial PAGA penalties upon the defendant, such amount still
23 represented reductions of 67% and 80% of the potential PAGA penalties at issue. 2019 U.S. Dist.
24 Lexis 91792 at *87-*100.

25 In this case, Defendants asserted that a substantial reduction in potential PAGA penalties
26 was warranted because: (1) even assuming that Plaintiffs could establish the predicate violations,
27 the alleged violations were inadvertent; (2) a good faith dispute exists as to whether the nature of
28

1 the work prevents PAGA Members to take off-duty meal periods; (3) the time and payroll records
2 establish that the majority of PAGA Members receive compliant meal periods; and (4) Defendants
3 have taken steps to provide off-duty rest periods to PAGA Members prior to the submission of the
4 PAGA Notice. *See* Agnew Decl. ¶ 30. Thus, Defendants contend that no PAGA penalties were
5 needed to punish or deter Defendants for their inadvertent behavior, much less to deter it from
6 committing any future violations that were completely foreclosed by its new payroll practices. *See*
7 *id.*

8 **3. The Settlement Is Reasonable When Compared to the Realistic**
9 **Amount of PAGA Civil Penalties At Issue**

10 In evaluating the fairness of a PAGA settlement, “there is no express or even baseline
11 percentage of recovery required.” *See Manzo v. McDonald's Restaurants of California, Inc.*, 2022
12 WL 4586236, at *6 (E.D. Cal., 2022). Trial courts routinely approve PAGA settlements
13 representing only a tiny fraction of the potential verdict value of the claim. *See id.* (approving
14 PAGA allocation that “is less than one percent (1%) of the verdict value” of the claim”); *Hartley*
15 *v. On My Own, Inc.*, 2020 WL 5017608, * 4 (E.D. Cal. Aug. 25, 2020) (approving settlement at
16 3.47% of verdict value of PAGA penalty, resulting in average payment per employee of \$61);
17 *Ramirez v. Benito Valley Farms, LLC*, 2017 WL 3670794, *4 (N.D. Cal. Aug. 25, 2017)
18 (considering early stage of litigation, defendant's weak financial condition, and injunctive relief
19 provided by settlement, approving PAGA settlement of 4.57% of verdict value).

20 Here, the Gross Settlement Amount exceeds both in terms of the total dollar amount and
21 as a percentage of overall settlement value, the typical PAGA settlement. Defendants have
22 determined that PAGA Members worked approximately 118,354 pay periods during the timeframe
23 of October 3, 2021, through December 10, 2024. *See id.* at § C-4. Assuming that Plaintiffs were to
24 prevail on the merits of the PAGA claim, applying the standard penalty of \$100 per pay period
25 yields \$11,835,400 in potential liability. *See* Agnew Decl. ¶ 27. Thus, without stacking, the Gross
26 Settlement Amount is approximately 12.67% of the maximum amount of penalties at issue.

27 //

1 **E. The Attorneys’ Fees and Costs Are Reasonable and Should Be Approved**

2 **1. The Labor Code Permits the Award of Fees and Costs.**

3 Labor Code section 2699(g)(1) provides for the recovery of attorneys’ fees and costs in
4 any successful action brought under PAGA. Here, as a component of the Settlement, Plaintiffs also
5 seek approval of an award of attorneys’ fees to PAGA Counsel in the amount of \$500,000 and
6 litigation costs of \$31,625.87. *See* Agnew Decl. ¶¶ 19, 53; Hawkins Decl. ¶ 11; Treglio Decl. ¶¶
7 21, 22; Bibiyan Decl. ¶¶ 20, 21. These amounts will be paid from the Gross Settlement Amount as
8 provided by the Settlement Agreement. Defendants do not oppose these deductions.

9 An attorneys’ fee award is justified where the legal action has produced its benefits by way
10 of voluntary settlement. *See Marias P. v. Riles*, 43 Cal.3d 1281, 1290-1291 (1987). California law
11 provides that when a party is entitled to statutory fees, it must be compensated for all time
12 reasonably spent seeking to accomplish the desired litigation result. *See Serrano v. Unruh*, 32
13 Cal.3d 621, 624 (1982). As shown below, California state courts award attorneys’ fees in class
14 action based on either the “lodestar-multiplier” method or the “common fund” method. Here, under
15 the common fund method, Plaintiffs’ request for attorneys’ fees in the amount of one-third of the
16 Gross Settlement Amount is reasonable and appropriate.

17 **2. Plaintiffs Seek the Award of Attorneys’ Fees Under the Common Fund**
18 **Doctrine.**

19 Under the “common fund” doctrine, Plaintiffs’ request for attorneys’ fees in the amount of
20 one-third of the Gross Settlement Amount is reasonable, justified and appropriate, because (1) it
21 is within the range routinely awarded as attorneys’ fees in similar cases; (2) it is supported by the
22 high quality of PAGA Counsel’s work on this case and the results obtained for the PAGA Members
23 and the State of California; and (3) it is supported by the fact that this case was handled on a
24 contingency basis and was undertaken despite various risks and expenses.

25 Attorneys’ fees and litigation expenses may properly be awarded based on California’s
26 “common fund” doctrine. “The common fund doctrine, like [Code of Civil Procedure] section
27 1021.5 itself, is an exception to the American rule which provides that parties to a lawsuit must
28

ordinarily pay their own attorney fees. Under both exceptions, class counsel is entitled to the same thing: reasonable attorney fees.” *Apple Computer, Inc. v. Superior Court*, 126 Cal. App. 4th 1253, 1269-70 (2005).

The California Supreme Court approved use of the common fund method of awarding attorneys’ fees in class actions and approved a fee award at 1/3 of the settlement amount obtained for the class, the same percentage fee award as the attorneys’ fees requested in this case. *See Laffitte v. Robert Half Int’l Inc.*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its 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”).³ The Court noted that trial courts have the discretion to award fees as a percentage of the common fund, without the necessity to conduct a lodestar cross-check. *Id.* at 505 (“...[Courts] ... retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.”). The California Supreme Court’s decision was consistent with its prior rulings recognizing that “when a number of persons are entitled in common to a specific fund, and an action brought by ... plaintiffs for the benefit of all results in the creation or preservation of that fund, such ... plaintiffs may be awarded attorneys’ fees out of the fund.” *Serrano III v. Priest*, 20 Cal.3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] lawyer who recovers a common fund . . . is entitled to reasonable attorneys’ fees from the fund as a whole”).

The negotiated and unopposed attorneys’ fee should also be approved because it is within

³ Although this is not a class action, in class actions California state and federal courts have recognized that an appropriate method for determining award of attorneys’ fees is based on a percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) (“*Serrano III*”); *Vincent v. Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to “spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent*, 557 F. 2d at 769.

1 the approved range of appropriate awards of attorneys' fees in similar wage/hour class action cases
2 in California. PAGA Counsel have been involved in a number of wage and hour representative
3 and class actions, and California state and federal courts have routinely approved payments of
4 attorneys' fees amounting to 1/3 or more of the settlement fund.

5 In addition to the fact that a benefit was created with a common fund, the fairness of the
6 requested fee award of one-third of that common fund is supported by the high quality of work
7 performed by PAGA Counsel and the good result obtained for the PAGA Members. *See* Agnew
8 Decl. ¶¶ 2-14; Hawkins Decl. ¶ 9; Treglio Decl. ¶ 8, 14, 18. PAGA Counsel diligently, efficiently,
9 and creatively pursued this case and promptly reached a successful settlement for the benefit of
10 the PAGA Members and the State of California.

11 An additional factor militating in favor of the granting of the requested fee award is the
12 fact that this case was both legally and financially risky for PAGA Counsel. *See Vizcaino v.*
13 *Microsoft Corp*, 290 F.3d 1043, 1048-49 (9th Cir. 2002). Specifically, there was the prospect of
14 enormous cost inherent in PAGA litigation, as well as a battle with a corporation represented by a
15 well-respected law firm. In light of Defendants' legal and factual arguments, the ultimate success
16 of either party's arguments was uncertain. Taking all the arguments and defenses into account, the
17 settlement amount reflects the realistic and fair value of the class claims at issue. It is further
18 consistent with similar settlements that have been finally approved by various Courts. If Plaintiffs
19 had lost this case, PAGA Counsel would have recovered nothing, and would have lost its out-of-
20 pocket costs. *See* Agnew Decl. ¶ 52; Treglio Decl. ¶ 15; Bibiyan Decl. ¶¶ 20, 21.

21 As such, the requested fee award is fair and reasonable, and should be awarded in its
22 entirety. PAGA Counsel risked not only a great deal of time, but also a great deal of expense to
23 ensure the successful litigation of this action on behalf of all PAGA Members. For such reasons,
24 PAGA Counsel's request for attorneys' fees in the amount of \$500,000.00 is fair and reasonable.

25 **3. The Litigation Costs Are Reasonable and Should Be Approved.**

26 Additionally, PAGA Counsel's cost reimbursement request in the amount of \$31,625.87 is
27 also reasonable. *See* Agnew Decl. ¶ 53, Exhibit 3; Hawkins Decl. ¶ 11, Exhibit 2; Treglio Decl. ¶¶
28

21, 22; Bibiyan Decl. ¶¶ 20, 21. The costs were all directly incurred in the prosecution of this action, including filing fees, mediation costs, postage and copying. *See* Agnew Decl. ¶ 53, Exhibit 3; Hawkins Decl. ¶ 11, Exhibit 2; Treglio Decl. ¶¶ 21, 22; Bibiyan Decl. ¶¶ 20, 21. As such, the requested costs should be awarded as fair and reasonable.

F. The Settlement Administrator’s Costs Should be Approved

The Parties have agreed to pay actual costs of administration, or Twenty-One Thousand Dollars (\$21,000.00), to the Settlement Administrator, Phoenix Settlement Administrators, to administer this Settlement. *See* SA §§ B-22; C-21; Admin Decl. ¶ 16, Exhibit B. The Parties believe that the administration fee is reasonable and should be approved.

G. Plaintiffs’ Request for a Service Award Should be Approved.

Courts have held that named plaintiffs in class, or private attorney general actions can request a service award. *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (explaining that service 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”) (emphasis added).

Here, Plaintiffs each seek a Service Award in the amount of \$10,000.00 (collectively, \$40,000.00), which is intended to compensate Plaintiffs for the time spent on this case, including reviewing pleadings, making themselves available for mediation and the potential for hesitation from later prospective employers that might find out they brought this Action. *See* SA § C-10; *See* Declaration of Justin Johnson (“Johnson Decl.”) ¶¶ 4, 5, 7; Declaration of Safaa Al Azzawi (“Al Azzawi Decl.”) ¶ 3; Declaration of Ruben Rosas (“Rosas Decl.”) ¶ 3. This requested enhancement is consistent with awards approved in other common fund cases. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy*

1 *Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000
2 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist.
3 LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA
4 overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming
5 \$25,000 Incentive award to class representative in ERISA case).

6 **H. Notice to the LWDA Has Been Provided**

7 Concurrent with the filing of this Motion, Plaintiffs uploaded the instant motion to the
8 LWDA's website. *See* Agnew Decl. ¶ 54, Exhibit 4; Hawkins Decl. ¶ 14; Treglio Decl. ¶ 17;
9 Bibiyan Decl. ¶ 19.

10 **V. CONCLUSION**

11 Based on the above, Plaintiffs request the Court approve the current PAGA settlement.

12
13 DATED: May 16, 2025

DIVERSITY LAW GROUP, P.C.

14
15 By: _____

Larry W. Lee

Kristen M. Agnew

16
17 Attorneys for Plaintiffs and the Aggrieved
18 Employees
19
20
21
22
23
24
25
26
27
28