

Tyler D. Kring, Bar No. 325588
tkring@kringandchung.com
Jeffrey T. Green, Bar No. 330065
jgreen@kringandchung.com
KRING & CHUNG, LLP
38 Corporate Park
Irvine, CA 92606-5105
Telephone: (949) 261-7700
Facsimile: (949) 261-8800

Attorneys for Plaintiff
NOEL LATORRE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
SAN MATEO COUNTY**

NOEL LATORRE, on behalf of all aggrieved
employees,

Plaintiffs,

v.

PATRIOT GROUP GLOBAL, INC., a New
Hampshire corporation, and DOES 1-25,
inclusive,

Defendants.

) Case No. 23-CIV-05561

) Date: July 19, 2024

) Time: 2:00 PM

) Dept: 24

) Judge: Hon. Jeffrey R. Finigan

) **PLAINTIFF'S NOTICE OF MOTION
AND UNOPPOSED MOTION FOR
APPROVAL OF PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

) [Declarations of Tyler D. Kring, Noel
Latorre, Amanda Myette, and Exhibits In
Support of Motion filed concurrently
herewith]

) Action Filed: November 21, 2023

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT on July 19, 2024 at 2:00 PM or as soon as this
matter may be heard in Department 24 of the above-entitled Court before the Honorable Judge
Jeffrey R. Finigan, Plaintiff Noel Latorre ("Plaintiff") will apply for an order approving the
California Labor Code Private Attorneys General Act of 2004 ("PAGA") settlement in accordance
with Labor Code section 2699(l). The proposed settlement is set forth in the accompanying
Stipulation of PAGA Settlement ("Stipulation" or "Settlement").

///

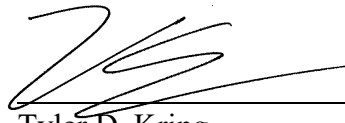


1 This motion will be based on this notice of motion and motion; the accompanying points
2 and authorities; the Declarations of counsel for Plaintiff, Tyler D. Kring, Esq.; the Declaration of
3 Plaintiff; the Declaration of Settlement Administrator Rust Consulting, Inc.'s Amanda Myette; the
4 Stipulation between the parties; and the complete files and records in this action. All parties have
5 approved the Stipulation and have met and conferred regarding the motion; therefore, this motion is
6 not opposed by Defendant. The Labor and Workforce Development Agency has been served with
7 this motion and the Settlement Agreement as set forth in the accompanying Declaration of Tyler D.
8 Kring, Esq. As this Motion is unopposed, the Parties respectfully request relief from the page limit
9 requirement set by California Rules of Court, Rule 3.1113(d).

10 Dated: June 21, 2024

KRING & CHUNG, LLP

11
12 By:



13 Tyler D. Kring
14 Jeffrey T. Green
15 Attorneys for Plaintiff
16 NOEL LATORRE
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff, Noel Latorre, filed this action for penalties under the Private Attorneys General
4 Act of 2004, Labor Code section 2698, *et seq.* (“PAGA”), against Defendant, Patriot Group Global,
5 Inc. (“Defendant”), for causing violations of the Labor Code and the applicable Industrial Welfare
6 Commission (IWC) Wage Order(s). The relief sought included penalties and statutory attorneys’
7 fees and costs.

8 Plaintiff, on behalf of himself and the State of California, has achieved an excellent result in
9 this litigation, embodied in the PAGA Settlement Agreement. The proposed settlement, reached
10 following a day-long mediation with an experienced wage and hour mediator, Steve Pearl, provides
11 for payment of some \$525,000.00 to the Labor and Workforce Development Agency (“LWDA”)
12 and aggrieved employees for civil penalties. The prosecution and settlement of this action furthers
13 the purposes of the California Labor Code enforcement in that it has obtained payments for the
14 LWDA and Aggrieved Employees, and deterred Defendant from continuing their questioned
15 practice.

16 The settlement is also fair, reasonable, and adequate to all concerned. Altogether, this
17 settlement meets the various standards for approval required by subdivision (l) of Labor Code
18 section 2699. This motion for approval of the PAGA settlement should be granted.

19 **II. PROCEDURAL STATUS AND EXHAUSTION REQUIREMENTS MET**

20 On January 16, 2023, Plaintiff, on behalf of himself and on behalf of all aggrieved
21 employees, served Defendant and the LWDA with a Notice of Violations (“PAGA Notice”)
22 memorializing claims against Defendant for alleged violations of the Labor Code. Plaintiff and
23 Defendant thereafter entered into a tolling agreement through the date of the filing on the
24 Complaint in this matter on November 21, 2023. As such, the PAGA Period in this case dates back
25 to January 16, 2022, and runs through the present.

26 **III. NO OTHER ACTIONS PENDING AGAINST DEFENDANT**

27 Prior to the filing of this action and through the present, Plaintiff is not aware of any other
28 pending actions related to alleged representative PAGA actions against Defendant. In particular,



1 prior to the filing of this action and through the present, inquiries have been made online through
2 the LWDA's website relating to any PAGA notices, the San Mateo County Superior Court, and
3 San Francisco Superior Court websites which confirmed no other actions were pending against
4 Defendant. Declaration of Tyler D. Kring ("Kring Decl."), ¶ 2.

5 **IV. PROPOSED PAGA SETTLEMENT**

6 When a PAGA claim is settled, the relief provided for under the PAGA must be genuine
7 and meaningful, consistent with the underlying purpose of the statute to benefit the public. See,
8 *O'Connor v. Uber Techs., Inc.*, 201 F. Supp.3d 1110, 1133 (N.D. Cal. 2016) (citing response from
9 the LWDA).

10 As of the date of the Parties' mediation on December 13, 2023, there were approximately
11 229 PAGA aggrieved employees who worked approximately 13,100 pay periods. These numbers
12 will be higher as the PAGA period will range from January 16, 2022 through the date of Court
13 approval of the settlement and Defendant's counsel intends to include an updated number in
14 Defendant's Notice of Non-Opposition to this Motion. Kring Decl., ¶ 4.

15 The settlement with Defendant for the consideration and on the terms set forth in the PAGA
16 Settlement Agreement is fair, reasonable, adequate and is in the best interest of the LWDA and
17 PAGA Employees. The proposed Settlement provides for a non-reversionary Gross Settlement
18 Amount of \$525,000.00. Kring Decl., ¶ 7, Exh. 1, 5:3-7. After deducting Settlement
19 Administration Costs (\$6,949.00), the requested Attorneys' Fees and Costs, and a Representative
20 Enhancement Payment, and assuming the Court approves these payments in full, there will be a
21 Net Settlement Amount of \$298,051.00 distributable to the LWDA and the aggrieved employees.
22 Kring Decl., ¶¶ 7, 14-16, 18; Exh. 1, p. 5, l. 12-16; and Declaration of Rust Consulting ("Rust
23 Decl."), ¶ 17.

24 The Net Penalty Amount will then be allocated pursuant to Labor Code section 2699(i) as
25 follows: 75 percent shall be paid to the LWDA, which is estimated to total \$223,538.25 and the
26 remaining 25 percent, which is estimated to total \$74,512.75, shall be paid the PAGA Aggrieved
27 Employees on a pro-rata basis based on their respective Eligible Pay Periods during the Covered
28 Period. Kring Decl., ¶ 7, Exh. 1, p. 7-8, l. 27-3.



A breakdown of the Gross Settlement Amount is particularly described by this chart:

Gross Settlement	\$525,000.00
Attorney's Fees	\$210,000.00
Litigation Costs	\$15,456.08
Enhancement Payment	\$10,000.00
Rust Consulting Administration Costs	\$6,949.00
Net Settlement Amount	\$298,051.00

Plaintiff's counsel request attorney's fees in the amount of \$210,000.00 and costs in the amount of \$15,456.08 pursuant to Labor Code section 2699(g)(1). Kring Decl., ¶ 7, 14-15, Exh. 1, p. 8, l. 4-25. As set forth below, the fees sought under the common fund are cross-checked by the lodestar and are reasonable based upon the results achieved. Kring Decl., ¶¶ 8-14, 17-19.

Upon entry of Judgment and funding of the Gross Settlement Amount, Plaintiff, all of the Aggrieved Employees, the State of California, and the LWDA (the "Releasing Parties") will be forever barred from pursuing, against Defendant and the Released Parties, any claim arising during the period from January 16, 2022, to the date of settlement approval and associated entry of the Judgment, for relief of any kind under PAGA based on any claims that were or could have been asserted under PAGA based on the facts alleged in the Lawsuit or the LWDA Letter, and shall specifically include, without limitation, all claims for PAGA penalties based on any of the following alleged underlying violations of the California Labor Code or Industrial Wage Orders:

(1) failure to pay regular, overtime, or premium wages, including without limitation claims for regular, sick, vacation, or premium wages and any claims relating to calculation of overtime due for employees with multiple regular rates during a particular pay period; (2) failure to compensate Aggrieved Employees for all hours worked; (3) failure to pay the appropriate regular rate of pay; (4) failure to comply with payroll or wage record-keeping documentation or wage statement itemization requirements, including without limitation alleged failure to disclose COVID-19 Supplemental Paid Sick Leave hours; (5) failure to provide sufficient meal and/or rest periods or pay premiums in lieu thereof; (6) failure to timely pay wages due at termination or otherwise; (7)



1 failure to furnish accurate or compliant wage statements; (8) failure to reimburse business or other
2 expenses and costs, including without limitation cell phone expenses; (9) violation of Labor Code
3 section 203 by refusal to pay wages due and payable and/or denial of the validity of claims to
4 wages due, including without limitation by reason of (allegedly) willfully, knowingly and
5 intentionally failing to pay wages due and falsely representing that wages were properly denied;
6 (10) failure to keep “accurate and complete” payroll records showing, among other things, the
7 hours worked daily by all non-exempt employees; and (11) failure to pay wages on a weekly basis,
8 in violation of Labor Code section 201.3. The Released Claims also include, but are not limited to,
9 all PAGA claims based on alleged violations of California Labor Code sections 201, 201.3, 202,
10 203, 204, 207, 210, 216, 218.6, 223, 225.5, 226, 226.3, 226.7, 227.3, 246, 247, 248.2, 256, 510,
11 512, 558, 1102.8, 1174, 1174.5, 1175, 1182.12, 1183, 1187, 1194, 1194.2, 1197, 1197.1, 1198,
12 2441, 2699, and 2802, 3550, 6328, 6404.5.

13 The Released Claims also include all PAGA claims of which the Releasing Parties are not
14 aware of or suspect to exist in their favor at the time of execution, and Plaintiff, on behalf of
15 himself and the other Releasing Parties, expressly waives the protections of Civil Code section
16 1542. The Court of Appeal has held that releases like the one here, which do not apply to
17 individual, non-PAGA wage and hour claims, are permissible. *See, e.g., Moniz v. Adecco USA,*
18 *Inc.* (2021) 72 Cal. App. 5th 56, 82–86 (concluding a trial court did not err by approving a
19 settlement of known and unknown PAGA claims that included a waiver under Section 1542). The
20 Released Claims exclude any and all individual wage and hour claims, as well as any claims under
21 the Fair Employment and Housing Act, the California Family Rights Act, discrimination,
22 retaliation, harassment, wrongful termination in violation of public policy, intentional infliction of
23 emotional distress, and related claims.

24 **V. INVESTIGATION/EXCHANGE OF INFORMATION PRIOR TO THE**
25 **SETTLEMENT**

26 Before participating in the mediation session and reaching the decision to settle this matter,
27 Plaintiff’s counsel conducted a thorough investigation into the facts of the action. This involved a
28 comprehensive pre-filing investigation and conducting extensive informal discovery in furtherance



1 of the mediation. Kring Decl., ¶ 3. Among other things, Defendant produced relevant policy
2 documents, wage statements for Aggrieved Employees consisting of voluminous pages and data of
3 time and payroll records of the Aggrieved Employees, and other pertinent documents. Kring Decl.,
4 ¶ 3.

5 Plaintiff retained an expert who evaluated the time and payroll records to conduct an
6 exposure analysis based on Plaintiff's claims and theories of liability. Among other things, this
7 involved professional but hard-fought negotiations with Defendant's counsel to obtain all of the
8 time and payroll records for Aggrieved Employees. Kring Decl., ¶ 3. Plaintiff and his counsel
9 were well apprised of the salient factual and legal issues and had sufficient information to evaluate,
10 *inter alia*, the strengths and weakness of the case, the risks of continued litigation, and Defendant's
11 potential exposure if Plaintiff was to prevail at trial. Kring Decl., ¶¶ 3, 8-13.

12 **VI. RISK OF CONTINUED LITIGATION AND UNCERTAINTY**

13 The proposed PAGA settlement and payments provide meaningful relief to the State of
14 California and Aggrieved Employees, in light of all known facts and circumstances, including the
15 risk of significant delay, uncertainty associated with litigation, various defenses asserted by
16 Defendant, and potential appellate issues. Kring Decl., ¶¶ 8-13.

17 First, continued litigation would be expensive, involving a trial and possible appeals, and
18 would substantially delay and reduce any recovery. In contrast, the State of California and
19 Aggrieved Employees will greatly benefit from the Settlement by receiving timely relief and
20 avoiding the risk of an unfavorable judgment. Kring Decl., ¶¶ 8-13, 18-19.

21 Second, a legitimate controversy exists as to each of the alleged violations of the Labor
22 Code upon which Plaintiff's PAGA claim is predicated. Kring Decl., ¶¶ 9, 11, 19. These
23 considerations include the following violations Plaintiff's PAGA claim is primarily based upon:

24 ***Minimum Wage and Overtime Wage Violations***

25 Plaintiff faces obstacles with the alleged unpaid wages violations which were predicated on
26 off the clock work and Defendant's alleged rounding policies. The time and payroll records show
27 that Defendant rounded employee time. Under California law, rounding policies that are
28 implemented in a one-sided manner in favor of the employer are unlawful. *See's Candy Shops*,



1 *Inc. v. Superior Court* (2012) 210 Cal.App.4th 889. Defendant implemented a rounding policy and
2 practice that systematically rounded the time worked by non-exempt employees. Nonetheless,
3 Plaintiff faces challenges relating to this alleged violation due to Defendant's expected argument
4 that such policies are neutral and do not result in the net underpayment of wages and for the
5 reasons set forth below relating to meal and rest periods.

6 ***Meal and Rest Period Violations***

7 Plaintiff would face challenges in proving his meal and rest period violations in light of
8 Defendant's facially compliant written meal break policy and would face challenges in proving his
9 rest break claim since Defendant did not (and was not legally obligated to) keep records of when
10 rest breaks were taken. Defendant also had a written rest period policy and Defendant did not (and
11 was not legally obligated to) keep records of when rest breaks were taken. Moreover, Plaintiff
12 could encounter difficulties provide why PAGA Employees missed meal and rest breaks as under
13 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, an employer need only
14 authorize and permit employees to take such breaks.

15 Based on the time records produced by Defendant, Plaintiff's expert determined that based
16 on the limited sampling of 1,117 shifts analyzed, approximately 968 included a meal period
17 violation, or 86.7%. Plaintiff's expert determined the violations based on a review of the actual
18 punch ins/outs of Plaintiff and a sampling of other aggrieved employees. Plaintiff therefore
19 estimated the damages for his meal period claim at \$649,950.00, calculated by multiplying the
20 approximate number of pay periods where there was a meal period violation by a violation rate of
21 \$50. Kring Decl., ¶ 8.

22 Conversely, Defendant argued that they maintained compliant meal and rest period policies
23 and practices throughout the PAGA Period. Thus, Defendant argued that there was no potential
24 liability for Plaintiff's alleged meal and rest period violations. Kring Decl., ¶¶ 8-9.

25 ***Wage Statement Violations***

26 Plaintiff's wage statement violation likewise faces uncertainty and is also a derivative
27 violation. Wage statements must correctly list: "all applicable hourly rates in effect during the pay
28 period and the corresponding number of hours worked at each hourly rate by the employee..."



1 See, Labor Code § 226(a)(9). Moreover, pursuant to *Johnson v. Estension Logistics, LLC* (C.D.
2 Cal. March 30, 2022) 2020 U.S. Dist. LEXIS 105614, where an employer fails to include the total
3 number of hours worked in the wage statements due to off the clock work, this supports a claim
4 under Labor Code section 226. *Id.* at 16-17. Defendant’s wage statements violate Labor Code
5 section 226(a)(9) by failing to accurately list all hours worked and earned wages by Plaintiff and the
6 other aggrieved employees based on Defendant’s time keeping policies and illegal rounding policy.
7 See, *Rojas-Cifuentes v. Superior Court* (2020) 58 Cal.App.5th 1051-1059. There were a number of
8 wage statements issued by Defendant which failed to list the accurate hours worked and wages
9 earned by Plaintiff based on Defendant’s time record keeping policies and unlawful rounding.
10 Section 7 of the applicable Industrial Welfare Commission (“IWC”) Wage Order expressly requires
11 employer to maintain, *inter alia*, accurate wage statement and “[t]ime records showing when the
12 employee begins and ends each work period. Meal periods, split shift intervals and total daily
13 hours worked shall also be records.” See also, *Franco v. Athens Disposal Co.* (2009) 171
14 Cal.App.4th 1277, 1299 (“By law, an employer must maintain time records showing an employee’s
15 (1) ‘total daily hours worked’ and (2) meal periods, unless ‘operations ceases’ during meals”).
16 Labor Code section 1174(d) requires the same. Finally, Defendant’s wage statements do not
17 include premium payments for noncompliant meal and rest periods. See, *Naranjo v. Spectrum*
18 *Security Services, Inc.* (2022) 13 Cal.5th 93, 102. Plaintiff estimated the damages for this claim at
19 \$1,299,900. This number was calculated by multiplying the number of total pay periods where
20 there was an alleged wage statement violation by a violation rate of \$100. Kring Decl., ¶ 8.

21 Defendant denied liability for this claim and argued that they substantially complied with
22 their obligation to provide accurate itemized wage statements to employees. Further, Defendant
23 argued that even if it sometimes failed to furnish accurate wage statements, there was no
24 manageable way to try Plaintiff’s wage statement claims, because such claims would require
25 individualized review of multiple wage statements for each allegedly Aggrieved Employee. Kring
26 Decl., ¶¶ 8-9.

27 For Plaintiff’s PAGA claim to have any value, Plaintiff would have to be able to prove a
28 violation on the merits, exposing Plaintiff’s PAGA claim to the same risks identified above. Put



1 differently, for instance, if Plaintiff was to fail on his meal and rest period claims, so too would
2 Plaintiff fail on the underlying PAGA claim. *See, e.g., Elliot v. Spherion Pacific Work, LLC*, 572
3 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) (“Plaintiff’s claim under the Private Attorneys General
4 Act is wholly dependent upon his other claims since if all of Plaintiff’s other claims fail as a matter
5 of law, so does his PAGA claim.”).

6 Additionally, it is highly unlikely that Plaintiff would be able to recover the maximum
7 PAGA penalties of \$100 per pay period. PAGA penalties “are mandatory, not discretionary.” *See,*
8 *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504 and *Amaral v. Cintas Corp. No. 2* (2008) 163
9 Cal.App.4th 1157. Even if Plaintiff was to prevail at trial and recover PAGA penalties, they would
10 likely be reduced substantially. For example, it would be challenging to provide Defendant
11 willfully committed violations of the Labor Code, likely rendering an imposition of substantial
12 PAGA penalties unjust, arbitrary and oppressive or confiscatory. *See Amaral*, 163 Cal.App.4th at
13 1213-14. In addition, the Court has the discretion to substantially reduce PAGA penalties pursuant
14 to Labor Code section 2699(e)(2). Indeed, courts routinely reduce PAGA penalties by a substantial
15 percentage. *See, e.g., Cotter v. Lyft, Inc.*, 192 F.Supp.3d 1030 (N.D. Cal. 2016) (the court found
16 that a “significant” reduction in the amount of civil penalties was “appropriate” in part because the
17 employer did not “deliberately evad[e] a clear obligation to provide legally required pay and
18 benefits to employee...”).

19 After establishing liability, Plaintiff recognizes that proving actual penalties owed and due
20 to potentially all of the aggrieved employees would be an expensive, time-consuming, and
21 uncertain proposition. In order to prove liability and damages, Plaintiff would need to, *inter alia*,
22 obtain the contact information of PAGA aggrieved employees and obtain declaration from them, at
23 significant expense. Obtaining the cooperation of current employees would also be difficult, given
24 their likely reluctance to aid in the prosecution of a lawsuit against their current employer. Kring
25 Decl., ¶ 11.

26 Based on the foregoing, the Settlement Amount is fair and reasonable. In light of Plaintiff’s
27 evaluation of maximum penalties recoverable at trial, when balanced against the risk of continued
28 litigation, and the fact that this Settlement was negotiated at arm’s-length through the assistance of



1 a well-respected mediator by experienced counsel, as set forth above, Plaintiff's counsel believes
2 that the Settlement provides meaningful relief to the State of California, LWDA, and aggrieved
3 employees and is in all respects fair, reasonable, and adequate. Kring Decl., ¶¶ 4, 8-15, 17-19.

4 **VII. THE PROPOSED PAGA SETTLEMENT IS "GENUINE AND MEANINGFUL"**
5 **AND "CONSISTENT WITH THE UNDERLYING PURPOSE" OF PAGA**

6 The State's labor law enforcement agencies – the LWDA and its constituent departments
7 and divisions – are authorized to assess and collect civil penalties for specified violations of the
8 Labor Code committed by an employer. With a stated goal of improving enforcement of existing
9 Labor Code obligations, the Legislature adopted PAGA, permitting, as an alternative, an aggrieved
10 employee to initiate a private civil action.

11 A PAGA settlement must be fair, reasonable, and adequate in view of PAGA's purposes to
12 remediate present labor law violations, deter future ones, and to maximize enforcement of state
13 labor laws. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56. When a PAGA claim is settled,
14 the relief provided for under the PAGA must be genuine and meaningful, consistent with the
15 underlying purpose of the statute to benefit the public. *O'Connor v. Uber Techs., Inc.*, 201
16 F.Supp.3d 1110, 1133 (2016) (citing response from the LWDA).

17 **A. The Settlement Provide Genuine and Meaningful Relief Consistent with**
18 **PAGA's Purposes.**

19 The settlement is fair and reasonable in light of analogous class action settlements that have
20 been approved by other courts where a far lower percentage of the potential maximum exposure is
21 recovered. See., e.g., *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, *8 (N.D. Cal. Apr. 3, 2009)
22 ("The settlement...represents less than two percent of that amount," but "may be
23 justifiable...given...significant defenses that increase the risks of litigation."); *In re Toys R Us-*
24 *Del., Inc. – Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453-54
25 (C.D. Cal. 2014) (granting final approval of a settlement providing for payment reflecting 3% of
26 possible recovery); *Reed v. 1-800 Contacts, Inc.*, 2014 WL 29011, *6 (S.D. Cal. Jan 2, 2014)
27 (granting final approval where settlement represented 1.7% of possible recovery); *In re LDK Solar*
28 *sec. Litig.*, 2010 WL 3001384, *2 (N.D. Cal. July 29, 2010) (granting final approval where



1 settlement was 5% of estimated damages); *Custom LED, LLC v. eBay, Inc.*, 2014 WL 2916871, at
2 *4 (N.D. Cal. 2014) (“[C]ourts have held that a recovery of only 3% of the maximum potential
3 recovery is fair and reasonable when the plaintiffs face a real possibility of recovering nothing
4 absent the settlement.”).

5 The above authorities are illustrative here, particularly given the trial court’s broad
6 authority under PAGA to reduce penalties. *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th
7 745, 759 (2018) (recognizing that court has “broad discretion” under PAGA to reduce maximum
8 penalty); *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (affirming trial court’s
9 90% reduction of maximum penalty); *Kaanaana v. Barrett Business Servs., Inc.*, 29 Cal. App. 5th
10 778, 788 (2018) (87% reduction); *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1214
11 (2008) (68% reduction).

12 In light of Plaintiff’s evaluation of maximum penalties recoverable at trial, when balanced
13 against the risk of continued litigation, and the fact that this Settlement was negotiated at arm’s-
14 length through the assistance of a well-respected mediator by experienced counsel, as set forth
15 above, Plaintiff’s counsel believes that the Settlement provides meaningful relief to the State of
16 California and aggrieved employees and is in all respects fair, reasonable, and adequate. As a
17 result. Plaintiff’s counsel likewise believes the PAGA settlement is consistent with the purposes of
18 PAGA they would not have otherwise obtained. Kring Decl., ¶¶ 4, 8-15, 17-19.

19 **B. The Settlement is Presumptively Fair.**

20 A class action settlement, analogous to a PAGA settlement, is presumed to be fair if: “(1) it
21 is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow
22 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
23 percentage of objectors is small.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52. As
24 explained below and above, each of these factors demonstrate that this Settlement is presumptively
25 fair.

26 First, the Parties participated in a mediation session with Steve Pearl, Esq., a highly
27 experienced wage and hour class action and PAGA mediator. Mr. Pearl oversaw the entire
28 settlement negotiations process, during which many legal and factual issues were discussed and



1 resolved between the Parties. The Settlement was the product of extensive, hard-fought and arm's-
2 length adversarial negotiations. Kring Decl., ¶ 4; and see also *Clark v. American Residential*
3 *Services LLC* (2009) 175 Cal.App.4th 785, 800. ("The court undoubtedly should give considerable
4 weight to the competency and integrity of counsel and the involvement of a neutral mediator in
5 assuring itself that a settlement agreement represents an arm's-length transaction entered without
6 self-dealing or other potential misconduct.").

7 Second, counsel engaged in (i) significant legal and factual investigation; (ii) extensive
8 informal discovery; and (iii) reviewed and analyzed numerous pages of data and documents, before
9 agreeing to settle this matter. Kring Decl., ¶ 3. Among other things, this involved professional but
10 hard-fought negotiations with Defendant's counsel to obtain the time and payroll records. Kring
11 Decl., ¶¶ 3-4. Plaintiff also conducted extensive legal research and analysis, summarized in a
12 detailed mediation brief which set forth Plaintiff's theories of liability and exposure analysis.
13 Kring Decl., ¶¶ 3-4. Thus, Plaintiff was able to act intelligently and effectively in negotiating the
14 proposed Settlement.

15 Third, the settlement negotiations were conducted by capable and experienced counsel.
16 Counsel for Plaintiff is highly experienced in PAGA and complex wage and hour litigation. Kring
17 Decl., ¶ 13.

18 Fourth, there has been no opposition to the settlement by the LWDA. The LWDA was
19 provided with the original PAGA Notice, the operative Complaint, and has been provided with the
20 settlement agreement and notice of the proposed PAGA settlement hearing and has not intervened.
21 Kring Decl., ¶ 2.

22 **C. The Remaining Settlement Terms Are Fair and Reasonable.**

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



are reasonable. Kring Decl., ¶¶ 14-15.

VIII. THE COURT SHOULD APPROVE COUNSEL’S REQUEST FOR AN AWARD OF REASONABLE ATTORNEYS’ FEES AND COSTS

The requested Attorneys’ Fees of \$210,000.000 and reimbursement of Attorneys’ Costs of up to \$15,456.08 is fair, reasonable, and justified by the result achieved. Kring Decl., ¶¶ 14-15. PAGA Counsel negotiated a recovery of \$525,000, and this result justifies the requested fees equal to 40% of this recovery. This percentage is within the standard contingent recovery percentage. At the time this case was brought, the result was far from certain. Defendant’s defenses to the merits of the case created difficulties with proof and complex legal issues for PAGA Counsel to overcome. Here, several defenses asserted by Defendant present serious threats to the claims of Plaintiff and the Aggrieved Employees. Defendant asserted that its employment practices complied with all applicable labor laws. If successful, Defendant’s factual and legal defenses would eliminate *any recovery* to the Aggrieved Employees. While Plaintiff believes that these defenses could be overcome, Defendant maintains that these defenses have merit and therefore present a serious risk to recovery. The Settlement was possible because, in PAGA Counsel’s eyes, PAGA Counsel was able to persuade Defendant that there was an appreciable risk that Plaintiff would prevail on the factual and legal issues underlying liability and overcome difficulties in proof as to monetary relief. Kring Decl., ¶¶ 9-12, 14, 17-19.

Further, the fee award is justified by the work performed. Generally, the Ninth Circuit and California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation or obtaining good results. See, e.g., *Laffitte v. Robert Half Intern., Inc.*, (2016) 1 Cal. 5th at 506 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, (2010) 182 Cal.App.4th 278 (noting reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, (2001) 91 Cal.App.4th 224, 254 (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a



2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority" range for risk multipliers).

As detailed in PAGA Counsel's time and billing records and with an additional approximately 20 hours expected, PAGA Counsel's current and up to date combined loadstar is \$66,055.00. Kring Decl., ¶ 14. Thus, PAGA Counsel's fee request is equal to PAGA Counsel's loadstar with a multiplier of 3.1 – well within the recognized multiplier range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7). Further, PAGA Counsel's lodestar multiplier/enhancement is justified due to PAGA Counsel's true worth as solely a Plaintiff wage and hour attorney and superior representation to achieve a substantial and positive outcome for Plaintiff, aggrieved employees, and the State of California; PAGA Counsel's delay in receiving fees while the case is being litigated and the nature of contingent representation; and PAGA Counsel's preclusion of other employment due to the potential for lengthy and costly litigation of a representative PAGA case. Kring Decl., ¶¶ 13-14.

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*, (1992) 11 Cal. App. 4th 1410, 1423 n.6. 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 v. Clorox Co.*, 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). Prior to and including incurring costs for filing this motion, PAGA Counsel has expended \$15,456.08 prosecuting this action. Kring Decl., ¶ 15. PAGA Counsel's out-of-pocket expenses are the types



1 of expenses normally charged to paying clients including the following: filing fees; copying;
2 postage; factual and legal research charges; mediation fees; and expert costs which were all
3 incurred during, and were necessary for the successful prosecution of, the litigation and, therefore,
4 should be reimbursed. Kring Decl., ¶ 15.

5 **IX. THE COURT SHOULD APPROVE THE REQUESTED REPRESENTATIVE**
6 **ENHANCEMENT PAYMENT**

7 Incentive payments are intended to “compensate class representatives for work done on
8 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
9 and, sometimes, *to recognize their willingness to act as a private attorney general.*” *Rodriguez v.*
10 *West Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (emphasis added). Courts routinely
11 approve service awards to compensate named plaintiffs for the services they provide and the risks
12 they incur during the litigation. *Bell v. Farmers Ins. Exch.*, (2004) 115 Cal.App.4th 715, 726
13 (upholding “service payments” to plaintiffs for their efforts in bringing class case). The factors
14 courts use in determining the amount of service awards include: (1) a comparison between the
15 service awards and the range of monetary recovery available to the class; (2) time and effort put
16 into the litigation; (3) whether the litigation will further the public policy underlying the statutory
17 scheme; and (4) risks of retaliation. *Clark v. American Residential Services, LLC*, (2009) 175 Cal.
18 App. 4th 785, 804-805.

19 The Settlement provides for a Plaintiff’s Enhancement Award of \$10,000. Plaintiff’s
20 Enhancement Award is fair and reasonable compensation for the Plaintiff’s efforts bringing the
21 action, assisting PAGA Counsel with the litigation and settlement, regularly conferring with PAGA
22 Counsel on the status of his case and the strategies for prosecuting the claims and agreeing to
23 provide Defendant a broad release of all claims arising out of their employment. Plaintiff willingly
24 came forward to protect and advance the rights of the Aggrieved Employees on important legal
25 disputes affecting California employees. By way of example, Plaintiff assumed the serious risk of
26 liability for Defendant’s costs and potentially fees if the case was unsuccessful. Nevertheless,
27 Plaintiff knowingly and voluntarily undertook the risk to vindicate the rights of the Aggrieved
28 Employees. Kring Decl., ¶¶ 9-14, 18; Declaration of Noel Latorre (“Latorre Decl.”), ¶¶ 3-5.



1 Plaintiff's efforts in bringing the lawsuit conferred a monetary benefit to approximately 229
2 Aggrieved Employees. Accordingly, Plaintiff and PAGA Counsel respectfully request the Court
3 approve Plaintiff's Enhancement Awards in accordance with the Settlement Agreement. Kring
4 Decl., ¶ 18.

5 **X. CONCLUSION**

6 For the foregoing reasons, Plaintiff respectfully requests that the Court grant approval of the
7 PAGA settlement, approve Plaintiff's request for an award for attorneys' fees and costs,
8 representative enhancement payment, payment to the LWDA, payment of settlement administration
9 costs, and disbursement of individual settlement payments to the aggrieved employees.

10 Dated: June 21, 2024

KRING & CHUNG, LLP

11
12 By: _____

Tyler D. Kring
Jeffrey T. Green
Attorneys for Plaintiff
NOEL LATORRE



1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I, the undersigned, am employed in the County of Orange, State of California. I am over
4 the age of eighteen (18) years and not a party to the within action. My business address is 38
Corporate Park, Irvine, CA 92606-5105. My business e-mail address is
mbennett@kringandchung.com.

5 On June 21, 2024, I served true copies of the foregoing document(s) described as
6 **PLAINTIFF'S NOTICE OF MOTION AND UNOPPOSED MOTION FOR APPROVAL OF**
7 **PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN**
8 **SUPPORT THEREOF** on the interested parties in this action, addressed as follows:

8 **SEE ATTACHED SERVICE LIST**

9 ☒ BY E-MAIL: By transmitting a true copy of the foregoing document(s) to the e-mail
10 addresses set forth on the attached mailing list.

11 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

12 Executed on June 21, 2024, at Irvine, California.

13 
14 _____

15 MICHELLE BENNETT
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NOEL LATORRE V. PATRIOT GLOBAL GROUP, INC.

K&C CLIENT: **Noel Latorre**
CLIENT NO.: **9300.0347**

SERVICE LIST

Counsel of Record	Phone/Fax Nos.	Party(ies) Represented
Joseph D. Lee Andrew Delaplane MUNGER, TOLLES & OLSON LLP 350 South Grand Avenue, 50th Floor Los Angeles, California 90071	T: (213) 683-9100 F: (213) 687-3701 joseph.lee@mto.com Andrew.Delaplane@mto.com	Patriot Group Global, Inc.
Michael D. Thomas Jordan Wysocki JACKSON LEWIS P.C. 200 Spectrum Center Drive, Suite 500 Irvine, California 92618	T: (949) 885-1360 F: (949) 885-1380 michael.thomas@jacksonlewis.com Jordan.wysocki@jacksonlewis.com	Patriot Group Global, Inc.

Via Electronic Submission
Attn.: PAGA Administrator
Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

