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7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **SAN MATEO COUNTY**
10

11 NOEL LATORRE, on behalf of all aggrieved
employees,

12 Plaintiff,

13 v.

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

16 Defendants.
17

) Case No. 23-CIV-05561

) Date: March 7, 2025

) Time: 9:00 AM

) Dept: 24

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

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

) Judge: Hon. Jeffrey R. Finigan

) Dept: 24

) Action Filed: November 21, 2023

23 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

24 YOU ARE HEREBY NOTIFIED THAT on March 7, 2025 at 9:00 AM or as soon as this
25 matter may be heard in Department 24 of the above-entitled Court before the Honorable Judge
26 Jeffrey R. Finigan, Plaintiff Noel Latorre ("Plaintiff") will apply for an order approving the
27 California Labor Code Private Attorneys General Act of 2004 ("PAGA") settlement in accordance
28 with Labor Code section 2699(l). The proposed settlement is set forth in the accompanying



1 Stipulation of PAGA Settlement (“Stipulation” or “Settlement”). This Amended Motion addresses
2 the points set forth in the Court’s July 18, 2024 Tentative Ruling, denying without prejudice
3 Plaintiff’s previously-filed motion for approval of PAGA settlement.

4 This motion will be based on this notice of motion and motion; the accompanying points
5 and authorities; the Supplemental Declaration of Tyler D. Kring, Declaration of Jeffrey T. Green,
6 and Declaration of Settlement Administrator Rust Consulting, Inc.’s Amanda Myette filed
7 herewith; the Declaration of Plaintiff, filed on June 21, 2024; the Stipulation of Settlement between
8 the parties; and the complete files and records in this action. All parties have approved the
9 Stipulation and have met and conferred regarding the motion; therefore, this motion is not opposed
10 by Defendant. The Labor and Workforce Development Agency has been served with this motion
11 and the Settlement Agreement as set forth in the accompanying Supplemental Declaration of Tyler
12 D. Kring, Esq. As this Motion is unopposed, the Parties respectfully request relief from the page
13 limit requirement set by California Rules of Court, Rule 3.1113(d).

14 Dated: October 28, 2024

KRING & CHUNG, LLP

15
16 By: _____

17 Tyler D. Kring
18 Jeffrey T. Green
19 Attorneys for Plaintiff
20 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”),¹ against Defendant, Patriot Group
5 Global, Inc. (“Defendant”), for causing violations of the Labor Code and the applicable Industrial
6 Welfare Commission (IWC) Wage Order(s). The relief sought included penalties and statutory
7 attorneys’ 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 begins on
25 January 16, 2022. Defendant estimated that there were 13,100 pay periods from January 16,
26

27 ¹ On June 27, 2024, the California Legislature approved two PAGA bills that amended PAGA,
28 Senate Bill 92 and Assembly Bill 2288, and on July 1, 2024, the Governor Gavin Newsom signed
both bills into law. Because these bills apply only to PAGA complaints filed after June 19, 2024,
all PAGA citations are to the version of the Act prior to the recent amendments.



1 through December 1, 2023. Based on Defendant's data kept in the ordinary course of business,
2 Defendant estimated that on June 14, 2024, the number of PAGA Pay Periods exceeded 14,410 Pay
3 Periods, thereby triggering the escalator provision. Defendant exercised its option under the above
4 paragraph to adjust the end date for the Covered Period, such that the PAGA Period shall run from
5 January 16, 2022 through June 14, 2024.

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

7 Prior to the filing of this action and through the present, Plaintiff is not aware of any other
8 pending actions related to alleged representative PAGA actions against Defendant. In particular,
9 prior to the filing of this action and through the present, inquiries have been made online through
10 the LWDA's website relating to any PAGA notices, the San Mateo County Superior Court, and
11 San Francisco Superior Court websites which confirmed no other actions were pending against
12 Defendant. Supplemental Declaration of Tyler D. Kring ("Kring Decl."), ¶ 2.

13 **IV. PROPOSED PAGA SETTLEMENT**

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

18 As of the date of the Parties' mediation on December 13, 2023, there were approximately
19 229 PAGA aggrieved employees who worked approximately 13,100 pay periods.² On June 14,
20 2024, the number of pay periods exceeded 14,410 pay periods. As such, the escalator provision has
21 been triggered and the Parties have exercised their option to adjust the end date of the PAGA
22 Period so that pay periods do not exceed 14,410. Therefore, the PAGA Period shall run from
23 January 16, 2022 through June 14, 2024. Kring Decl., ¶ 4.

24 The settlement with Defendant for the consideration and on the terms set forth in the PAGA
25 Settlement Agreement is fair, reasonable, adequate and is in the best interest of the LWDA and
26 _____

27 ² The Court's July 18, 2024 Tentative Ruling cited a discrepancy in the Kring Declaration, which at
28 one point incorrectly referred to 119 rather than 229 Aggrieved Employees. The correct number is
229; the figure 119 was a typographical error which has been corrected in the Supplemental Kring
Declaration (see *id.*, ¶ 4.)



PAGA Employees. The proposed Settlement provides for a non-reversionary Gross Settlement Amount of \$525,000.00. Kring Decl., ¶ 7, Exh. 1, 5:3-7. After deducting Settlement Administration Costs (\$6,949.00), the requested Attorneys' Fees (\$174,982.50), Litigation Costs (\$15,728.47), and a Representative Enhancement Payment (\$10,000), and assuming the Court approves these payments in full, there will be a Net Settlement Amount of \$317,340.03 distributable to the LWDA and the aggrieved employees. Kring Decl., ¶¶ 7, 14-16, 18; Exh. 1, p. 5, l. 12-16; and Declaration of Rust Consulting ("Rust Decl."), ¶¶ 17-18.

The Net Penalty Amount will then be allocated pursuant to Labor Code section 2699(i) as follows: 75 percent shall be paid to the LWDA, which is estimated to total \$238,005.02 and the remaining 25 percent, which is estimated to total \$79,335.01, shall be paid the PAGA Aggrieved Employees on a pro-rata basis based on their respective Eligible Pay Periods during the Covered Period. Kring Decl., ¶ 7, Exh. 1, p. 7-8, l. 27-3.

Checks for PAGA Aggrieved Employees will be valid for one-hundred twenty days from the date of issuance. After that date, the check will be null and void and cancelled, and the funds from the canceled check will be tendered to Children's Advocacy Institute, the parties' *cy pres* recipient selection, pursuant to Code of Civil Procedure section 384. Kring Decl., ¶ 7. Covered employees who do not cash their checks will remain subject to the judgement and release of PAGA claims.

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

Gross Settlement	\$525,000.00
Attorney's Fees	\$174,982.50
Litigation Costs	\$15,728.47
Enhancement Payment	\$10,000.00
Rust Consulting Administration Costs	\$6,949.00
Net Settlement Amount	\$317,340.03

Plaintiff's counsel request attorney's fees in the amount of \$174,982.50 and costs in the amount of \$15,728.47 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 through June 14, 2024, 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) failure to furnish accurate or compliant wage statements; (8) failure to reimburse business or other expenses and costs, including without limitation cell phone expenses; (9) violation of Labor Code section 203 by refusal to pay wages due and payable and/or denial of the validity of claims to wages due, including without limitation by reason of (allegedly) willfully, knowingly and intentionally failing to pay wages due and falsely representing that wages were properly denied; (10) failure to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by all non-exempt employees; and (11) failure to pay wages on a weekly basis, in violation of Labor Code section 201.3. The Released Claims also include, but are not limited to, all PAGA claims based on alleged violations of California Labor Code sections 201, 201.3, 202, 203, 204, 207, 210, 216, 218.6, 223, 225.5, 226, 226.3, 226.7, 227.3, 246, 247, 248.2, 256, 510, 512, 558, 1102.8, 1174, 1174.5, 1175, 1182.12, 1183, 1187, 1194, 1194.2, 1197,



1 1197.1, 1198, 2441, 2699, and 2802, 3550, 6328, 6404.5.

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

13 **V. INVESTIGATION/EXCHANGE OF INFORMATION PRIOR TO THE**
14 **SETTLEMENT**

15 Before participating in the mediation session and reaching the decision to settle this matter,
16 Plaintiff's counsel conducted a thorough investigation into the facts of the action. This involved a
17 comprehensive pre-filing investigation and conducting extensive informal discovery in furtherance
18 of the mediation. Kring Decl., ¶ 3. Among other things, Defendant produced relevant policy
19 documents, wage statements for Aggrieved Employees consisting of voluminous pages and data of
20 time and payroll records of the Aggrieved Employees, and other pertinent documents. Kring Decl.,
21 ¶ 3.

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



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

2 The proposed PAGA settlement and payments provide meaningful relief to the State of
3 California and Aggrieved Employees, in light of all known facts and circumstances, including the
4 risk of significant delay, uncertainty associated with litigation, various defenses asserted by
5 Defendant, deterrent effect and remedial measures taken by Defendant, and potential appellate
6 issues. Kring Decl., ¶¶ 8-13.

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

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

14 ***Minimum Wage and Overtime Wage Violations***

15 Plaintiff alleges unpaid wage violations based on the following: off the clock work resulting
16 from required cell phone monitoring and usage at all times; off the clock work during meal periods;
17 and Defendant's rounding policies.

18 Plaintiff faces obstacles with the alleged unpaid wages violations which were predicated on
19 off the clock work and Defendant's alleged rounding policies. The time and payroll records show
20 that Defendant rounded employee time. Under California law, rounding policies that are
21 implemented in a one-sided manner in favor of the employer are unlawful. *See's Candy Shops,*
22 *Inc. v. Superior Court* (2012) 210 Cal.App.4th 889. Nonetheless, Plaintiff faces challenges relating
23 to this alleged violation due to Defendant's expected argument that such policies are neutral and do
24 not result in the net underpayment of wages. Plaintiff also faced challenges with respect to the
25 other off-the-clock allegations. Defendant pointed to compliant written policies entitling
26 employees to take meal and rest breaks as allowed by California law, and Defendant also denied
27 that employees were required to monitor personal devices while not on duty. Defendant also
28 contended that it would not have been possible to litigate such claims on a representative basis,



1 given that they would depend on individualized proof.

2 Plaintiff estimated the total maximum exposure for this violation was approximately
3 **\$1,441,000**, based on a PAGA penalty of \$100 per pay period for each of the 14,441 PAGA Pay
4 Periods at issue. See Labor Code section 1197.1(a)(1). Only initial penalty rates were used in
5 calculating potential penalties because until “notified that it is violating a Labor Code provision...
6 the employer cannot be presumed to be aware that its continuing underpayment of employees is a
7 ‘violation’ subject to penalties.” *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal. App. 4th 1157,
8 1209. Due to the risks discussed above, PAGA Counsel thought that they had a 50% probability of
9 prevailing at the time of trial on this violation. **As such, the real exposure for this violation was**
10 **approximately \$720,500 based on the risks, prior to considering the risk of a discretionary**
11 **reduction in the PAGA penalties (including to avoid “stacking” or duplicative penalties).**
12 Kring Decl., ¶ 8.

13 ***Meal and Rest Period Violations***

14 Plaintiff alleges Defendant failed to permit and provide the opportunity to take
15 uninterrupted and off-duty meal and rest periods. Plaintiff further alleges that Plaintiff and all
16 security guards were required to keep their cell phone monitored and respond accordingly during
17 any such meal and/or rest periods. As a result, Plaintiff was frequently interrupted and was rarely,
18 if ever, able to take an uninterrupted and duty-free meal and/or rest period. Plaintiff alleges that he
19 and aggrieved employees were rarely provided meal and/or rest premiums in lieu of Defendant’s
20 non-compliant meal and rest periods.

21 Plaintiff would face challenges in proving his meal and rest period violations in light of
22 Defendant’s facially compliant written meal and rest break policies. Plaintiff would also face
23 challenges in proving his rest break claim since Defendant did not (and was not legally obligated
24 to) keep records of when rest breaks were taken. Moreover, Plaintiff could encounter difficulties
25 establishing why PAGA Employees missed meal and rest breaks because under *Brinker Restaurant*
26 *Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, an employer need only authorize and permit
27 employees to take such breaks.

28 ///



1 Based on the time records produced by Defendant, Plaintiff's expert determined that based
2 on a sampling of 1,117 shifts analyzed, approximately 968 included a meal period violation, or
3 86.7%. Plaintiff's expert determined the violations based on a review of the actual punch ins/outs
4 of Plaintiff and a sampling of other aggrieved employees. Labor Code section 558 prescribes a \$50
5 civil penalty per employee per pay period for any "initial violation," and a \$100 civil penalty per
6 employee per pay period for each "subsequent violation." Using the initial \$50 initial violation rate
7 for the reasons set forth above, and assuming (based on the high violation rate) that there was at
8 least one meal period violation for each employee in each PAGA Pay Period, yields potential
9 exposure **for Plaintiff's meal period claim of \$720,500.00.** Kring Decl., ¶ 8. Because Labor
10 Code section 558 also provides the penalty rate for rest period violations, and assuming one
11 violation per employee per pay period, **Plaintiff also estimated the potential exposure for his**
12 **rest period claim at \$720,500.00.**

13 Conversely, Defendant argued that they maintained compliant meal and rest period policies
14 and practices throughout the PAGA Period. Thus, Defendant argued that there was no potential
15 liability for Plaintiff's alleged meal and rest period violations. Kring Decl., ¶¶ 8-9. Defendant also
16 argued that the meal and rest period claim was not manageable on a representative basis, given that
17 highly individualized proof would be necessary. Taking into account Defendant's defenses,
18 Plaintiff estimated a 50% chance of prevailing on this claim, resulting in a valuation of
19 \$720,500.00, prior to assessing the risk that a Court would exercise its discretion to reduce any
20 PAGA penalty.

21 ***Accurate Itemized Wage Statements, Maintaining Accurate Records, and COVID-19***
22 ***Supplemental Paid Sick Leave Violations***

23 Plaintiff alleges that Defendant failed to maintain accurate records of, and its wage
24 statements failed to show, proper gross and/or net wages earned, total hours worked, and/or all
25 applicable hourly rates in effect during the pay period and the corresponding number of hours
26 worked at each respective hourly rate. Plaintiff also alleged that Defendant's wage statements
27 failed to list how many 2022 COVID-19 Supplemental Paid Sick Leave ("SPSL") hours Plaintiff
28 had used.



1 Plaintiff's wage statement claim likewise faces uncertainty and is also primarily a derivative
2 claim. Wage statements must correctly list: "all applicable hourly rates in effect during the pay
3 period and the corresponding number of hours worked at each hourly rate by the employee..."
4 See, Labor Code section 226(a)(9). Moreover, pursuant to *Johnson v. Estension Logistics, LLC*
5 (C.D. Cal. March 30, 2022) 2020 U.S. Dist. LEXIS 105614, where an employer fails to include the
6 total number of hours worked in the wage statements due to off the clock work, this supports a
7 claim under Labor Code section 226. *Id.* at 16-17. Plaintiff alleged that Defendant's wage
8 statements violate Labor Code section 226(a)(9) as a result of Defendant's unlawful rounding
9 practice, which (Plaintiff claimed) resulted in failing to accurately list all hours worked and earned
10 wages by Plaintiff and the other aggrieved employees. See, *Rojas-Cifuentes v. Superior Court*
11 (2020) 58 Cal.App.5th 1051-1059. Section 7 of the applicable Industrial Welfare Commission
12 ("IWC") Wage Order expressly requires employer to maintain, *inter alia*, accurate wage statement
13 and "[t]ime records showing when the employee begins and ends each work period. Meal periods,
14 split shift intervals and total daily hours worked shall also be records." See also, *Franco v. Athens*
15 *Disposal Co.* (2009) 171 Cal.App.4th 1277, 1299 ("By law, an employer must maintain time
16 records showing an employee's (1) 'total daily hours worked' and (2) meal periods, unless
17 'operations ceases' during meals"). Labor Code section 1174(d) requires the same. Finally,
18 Defendant's wage statements do not include premium payments for noncompliant meal and rest
19 periods. See, *Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93, 102.

20 **Plaintiff estimated the exposure for this claim at \$1,441,000**, which once again was
21 calculated by multiplying the total number of pay periods by the \$100 PAGA penalty for "initial
22 violations." Kring Decl., ¶ 8; see *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 355
23 [providing that the default civil penalty rates in Labor Code section 2699 apply to wage statement
24 violations]

25 Defendant denied liability for this claim and argued that it substantially complied with its
26 obligation to provide accurate itemized wage statements to employees. Further, Defendant argued
27 that even if it sometimes failed to furnish accurate wage statements, there was no manageable way
28 to try Plaintiff's wage statement claims, because such claims would require individualized review



1 of multiple wage statements for each allegedly Aggrieved Employee. Kring Decl., ¶¶ 8-9.
2 Defendant also argued that the Court would significantly discount any wage statement penalties,
3 given the technical nature of the violation and the fact that this claim is largely derivative of other
4 claims (and hence would result in a “double penalty”). Taking all these factors into account,
5 Plaintiff values this claim at \$288,200, which is 20 percent of the total exposure.

6 ***Failure to Pay All Wages Due and Payable at Termination Violations***

7 Plaintiff contends as a derivative violation that Defendant failed to pay all wages due upon
8 separation of employment based on the underlying failure to pay all wages violation. Labor Code
9 section 203 provides that if an employer willfully fails to pay, without abatement or reduction, per
10 Labor Code section 201, 201.5, 202 and 205.5, any wages of an employee who is discharged or
11 who quits, the wages of the employee shall continue at the same rate, for up to 30 days from the
12 due date thereof, until paid or until an action therefore is commenced.

13 The applicable civil penalty for violations of Labor Code section 203 is specifically
14 provided for by Labor Code section 256: “The Labor Commissioner shall impose a civil penalty in
15 an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.” Based on
16 data provided by Defendant, **Plaintiff estimated the total PAGA exposure for this derivative**
17 **claim to be \$820,562.40**, which is calculated by multiplying the average daily rate of \$337.68 by
18 30 days by 81 former employees included in the population of Aggrieved Employees. See,
19 *Mamika v. Barca* (1998) 68 Cal.App.4th 487. Defendant argued that since this is a PAGA suit, the
20 appropriate penalty is \$100 times 81 employees for a single pay period (namely, the single pay
21 period at or near termination, during which all wages due upon termination were allegedly not
22 paid). If that argument were to prevail, the PAGA penalties would be only \$81,000. Further, this
23 violation must be a “willful” violation in order to prevail, which is a difficult fact to establish at
24 trial. Likewise, this is a derivative penalty and does not correspond to a loss in employees’ wages,
25 and courts rarely grant the full amount of the penalty. For these reasons, **Plaintiff assigned a**
26 **value of \$164,112.48 to this claim, based on 20% of \$820,562.40.** Kring Decl., ¶ 8.

27 ///

28 ///



1 ***Factors Affecting the Valuation of Plaintiff's PAGA Claims as a Whole***

2 Based on the foregoing analysis, Plaintiff calculated a maximum exposure under PAGA of
3 \$5,143,562.40, and a total claims valuation of \$1,893,312.48. Kring Decl., ¶ 11. These figures,
4 summarized in the following table, are prior to any possible exercise of discretion to reduce PAGA
5 penalties, including to avoid duplicative penalties or "stacking."

6

Claim	Max. Exposure	Valuation
7 Min. Wage, Overtime	\$1,441,000	\$720,500
8 Meal and Rest Period Violations	\$1,441,000	\$720,500
9 Wage Statements, Records	\$1,441,000	\$288,200
10 Waiting Time Penalties	\$820,562.40	\$164,112.48
11 Totals	\$5,143,562.40	\$1,893,312.48

12

13 Various factors confirm the fairness of the \$525,000 settlement, which is some 28% of the
14 case valuation. Kring Decl., ¶ 11. First, for Plaintiff's PAGA claim to have any value, Plaintiff
15 would have to be able to prove a violation on the merits, exposing Plaintiff's PAGA claim to the
16 same risks identified above. Put differently, for instance, if Plaintiff was to fail on his meal and
17 rest period claims, so too would Plaintiff fail on the underlying PAGA claim. *See, e.g., Elliot v.*
18 *Spherion Pacific Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) ("Plaintiff's claim
19 under the Private Attorneys General Act is wholly dependent upon his other claims since if all of
20 Plaintiff's other claims fail as a matter of law, so does his PAGA claim.").

21 Additionally, it is highly unlikely that Plaintiff would be able to recover the maximum
22 PAGA penalties of \$100 per pay period. Even if Plaintiff was to prevail at trial and recover PAGA
23 penalties, they would likely be reduced substantially. For example, it would be challenging to
24 provide Defendant willfully committed violations of the Labor Code, likely rendering an
25 imposition of substantial PAGA penalties unjust, arbitrary and oppressive or confiscatory. *See*
26 *Amaral*, 163 Cal.App.4th at 1213-14. In addition, the Court has the discretion to substantially
27 reduce PAGA penalties pursuant to Labor Code section 2699(e)(2). Indeed, courts routinely
28 reduce PAGA penalties by a substantial percentage. *See, e.g., Cotter v. Lyft, Inc.*, 192 F.Supp.3d



1 1030 (N.D. Cal. 2016) (the court found that a “significant” reduction in the amount of civil
2 penalties was “appropriate” in part because the employer did not “deliberately evad[e] a clear
3 obligation to provide legally required pay and benefits to employee...”).

4 After establishing liability, Plaintiff recognizes that proving actual penalties owed and due
5 to potentially all of the aggrieved employees would be an expensive, time-consuming, and
6 uncertain proposition. In order to prove liability and damages, Plaintiff would need to, *inter alia*,
7 obtain the contact information of PAGA aggrieved employees and obtain declarations or take
8 depositions from some of them, at significant expense. Obtaining the cooperation of current
9 employees would also be difficult, given their likely reluctance to aid in the prosecution of a
10 lawsuit against their current employer. Kring Decl., ¶ 10.

11 Based on the foregoing, Plaintiff and his counsel concluded that the Settlement Amount of
12 \$525,000 is fair and reasonable. Kring Decl., ¶ 19. That amount represents roughly one-third of
13 the estimated case valuation above (an appropriate discount given the risks just discussed). Kring
14 Decl., ¶ 11. Just as important, the \$525,000 settlement reflects a recovery of \$36.43 per pay period,
15 which is well within the range that courts have approved, and indeed significantly above the per-
16 pay-period rate in numerous settlements that have received court approval. See *Glass v. UBS Fin.*
17 *Servs., Inc.*, No. C-06-4068 MMC, 2007 WL 221862, at *4 (N.D. Cal. Jan. 26, 2007), *aff'd*, 331 F.
18 App'x 452 (9th Cir. 2009). In *Glass v. UBS Financial Services*, the court approved a settlement of
19 unpaid overtime wages where the settlement amount only constituted approximately 25% to 35%
20 of the estimated actual damages to the class. *Id.* at *4; See also *Singer v. Becton Dickinson & Co.*,
21 No. 08-CV-821-IEG(BLM), 2009 WL 4809646, at *7 (S.D. Cal. Dec. 9, 2009) (referring to *Glass*
22 in preliminary approving settlement fund which constitutes 28.84% of the claimed actual losses);
23 outside the wage and hour context, see also *In re Cendant Corp. Litig.*, 264 F.3d 201, 241 (9th Cir.
24 2001) (affirming settlement representing 36% of potential actual damage recovery); *Nichols v.*
25 *Smithkline Beecham Corp.*, No. 006222, 2005 WL 950616, at *16 (E.D. Pa. April 22, 2005)
26 (approving settlement that represented between 9.3% and 13.9% of the claimed actual damages); *In*
27 *re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 258 (D. Del. 2002) (finding settlement
28 amount representing 33% of maximum possible damage recovery was well within a reasonable



range when compared with recovery percentages in other class action settlements). Simply put, “the fact that a proposed settlement may only amount to a fraction of the potential recovery does not mean that [it] should be disapproved.” *7-Eleven Owner for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1150 (2000), citing *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

In light of Plaintiff’s evaluation of maximum penalties recoverable at trial, when balanced against the risk of continued litigation, and the fact that this Settlement was negotiated at arm’s-length through the assistance of a well-respected mediator by experienced counsel, as set forth above, Plaintiff’s counsel believes that the Settlement provides meaningful relief to the State of California, LWDA, and aggrieved employees and is in all respects fair, reasonable, and adequate. Kring Decl., ¶¶ 4, 8-15, 17-19.³

VII. THE PROPOSED PAGA SETTLEMENT IS “GENUINE AND MEANINGFUL” AND “CONSISTENT WITH THE UNDERLYING PURPOSE” OF PAGA

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

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

A. The Settlement Provide Genuine and Meaningful Relief Consistent with PAGA’s Purposes.

³ In addition to PAGA claims, Plaintiff also alleged violations of the UCL. However, the UCL violation is derivative of the other violations and is thus unlikely to result in additional penalties.



1 The settlement is fair and reasonable in light of analogous PAGA and class action
2 settlements that have been approved by other courts where a far lower percentage of the potential
3 maximum exposure is recovered. See, e.g., *Decker v. AllStates Consulting Services, LLC*, 2020
4 WL 7769842, *3 (E.D. Cal. Dec. 30, 2020) (42% of verdict value of PAGA penalty, resulting in
5 average payment per employee of \$188); *Hartley v. On My Own, Inc.*, 2020 WL 5017608, *4 (E.D.
6 Cal. Aug. 25, 2020) (approving settlement at 3.47% of verdict value of PAGA penalty, resulting in
7 average payment per employee of \$61); see *Haralson*, 383 F. Supp. 3d at 972-74 (citing cases
8 reflecting approval of settlements at 0.2% to 1.1% of verdict value of PAGA penalty); *Hopson v.*
9 *Hanesbrands Inc.*, 2009 WL 928133, *8 (N.D. Cal. Apr. 3, 2009). The settlement...represents less
10 than two percent of that amount,” but “may be justifiable...given...significant defenses that
11 increase the risks of litigation.”); *In re Toys R Us-Del., Inc. – Fair & Accurate Credit Transactions*
12 *Act (FACTA) Litig.*, 295 F.R.D. 438, 453-54 (C.D. Cal. 2014) (granting final approval of a
13 settlement providing for payment reflecting 3% of possible recovery); *Reed v. 1-800 Contacts, Inc.*,
14 2014 WL 29011, *6 (S.D. Cal. Jan 2, 2014) (granting final approval where settlement represented
15 1.7% of possible recovery); *In re LDK Solar sec. Litig.*, 2010 WL 3001384, *2 (N.D. Cal. July 29,
16 2010) (granting final approval where settlement was 5% of estimated damages); *Custom LED, LLC*
17 *v. eBay, Inc.*, 2014 WL 2916871, at *4 (N.D. Cal. 2014) (“[C]ourts have held that a recovery of
18 only 3% of the maximum potential recovery is fair and reasonable when the plaintiffs face a real
19 possibility of recovering nothing absent the settlement.”).

20 The above authorities are illustrative here, particularly given the trial court’s broad
21 authority under PAGA to reduce penalties. *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th
22 745, 759 (2018) (recognizing that court has “broad discretion” under PAGA to reduce maximum
23 penalty); *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (affirming trial court’s
24 90% reduction of maximum penalty); *Kaanaana v. Barrett Business Servs., Inc.*, 29 Cal. App. 5th
25 778, 788 (2018) (87% reduction); *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1214
26 (2008) (68% reduction). As explained, Defendant has identified defenses to each of Plaintiff’s
27 claims and has represented that it would present evidence of compliant policies and practices to the
28



1 Court. Under these circumstances, there is a substantial likelihood that the Court would exercise its
2 discretion to reduce any PAGA penalty award in this case.

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

10 **B. The Settlement Will Have A Deterrent Effect on Future Violations.**

11 The settlement also serves the public interest by deterring future violations by Defendant,
12 without being "unjust, arbitrary, oppressive, or confiscatory." Labor Code section 2699(e)(2).
13 While the \$525,000 amount is a modest one compared to other PAGA settlements involving larger
14 companies, that amount is a very significant one for a company of Patriot's size (fewer than 200
15 California hourly employees). The per-pay-period amount (\$36.43), as noted, is well above
16 amounts that have been approved in other cases, confirming that this Settlement is both in the
17 public interest and that it will provide a strong incentive to Patriot to adopt remedial measures to
18 mitigate the risk of future PAGA claims. And indeed, at the mediation, counsel for Patriot
19 strenuously argued that substantial remedial measures had already been taken following the
20 company's acquisition, in June 2022, by GardaWorld, such that any PAGA penalties would be cut
21 off or substantially reduced following the acquisition. Kring Decl., ¶ 12. The Settlement is
22 presumptively fair.

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



1 First, the Parties participated in a mediation session with Steve Pearl, Esq., a highly
2 experienced wage and hour class action and PAGA mediator. Mr. Pearl oversaw the entire
3 settlement negotiations process, during which many legal and factual issues were discussed and
4 resolved between the Parties. The Settlement was the product of extensive, hard-fought and arm's-
5 length adversarial negotiations. Kring Decl., ¶ 4; and see also *Clark v. American Residential*
6 *Services LLC* (2009) 175 Cal.App.4th 785, 800. ("The court undoubtedly should give considerable
7 weight to the competency and integrity of counsel and the involvement of a neutral mediator in
8 assuring itself that a settlement agreement represents an arm's-length transaction entered without
9 self-dealing or other potential misconduct.").

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

18 Third, the settlement negotiations were conducted by capable and experienced counsel.
19 Counsel for Plaintiff is highly experienced in PAGA and complex wage and hour litigation. Kring
20 Decl., ¶ 13; Green Decl., ¶¶ 3-6.

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

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

26 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code
27 section 2699(1) does not require that a court approve any other elements of the proposed
28 settlement. Because there are no class allegations for which Plaintiff seeks approval, the approval



provisions applicable to class settlements under Code Civil Procedure section 382 do not apply. Accordingly, the Court only needs to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable. Kring Decl., ¶¶ 14-15.

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

Labor Code section 2699 (g)(1) allows for an award of reasonable attorneys' fees and costs to a prevailing plaintiff in an action under the PAGA. The requested Attorneys' Fees of 33.33% of the Gross Settlement Amount (\$174,982.50) and reimbursement of Attorneys' Costs of up to \$15,728.47 is fair, reasonable, and justified by the result achieved. Kring Decl., ¶¶ 14-15.

A. PAGA Counsel's Requested Attorneys' Fees Are Reasonable under the Common Fund Theory

The request for attorneys' fees as a percentage of the Gross Settlement Amount is supported by the "common fund theory." See *Laffitte*, 1 Cal.5th at 503 ("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 of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created."). The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. In *Quinn v. State of California* (1975) 15 Cal.3d 162, the California Supreme Court Stated: "[O]ne who expends attorneys' fees in winning a suit which created a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." *Id.* at 167. Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share."

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1 Moreover, several courts have expressed frustration with the alternative “lodestar” approach
2 for deciding fees, which usually involves wading through voluminous and often time records. *See*,
3 *e.g.*, *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375. The
4 percentage approach is preferable to the lodestar because: (1) it provides predictability to class
5 counsel and class members; (2) encourages efficient resolution of the litigation by providing an
6 incentive for early, yet reasonable, settlement; and (3) reduces the demands on judicial records. *Id.*
7 at 1378-79. Attorney’s fee applications in California class actions based upon a percentage of a
8 common fund no have substantial support by the Ninth Circuit Court of Appeals. *See, e.g., Paul,*
9 *Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886 F.2d 268; *In Re Washington Pub. Power*
10 *Supply Sys. Sec. Lit.* (9th Cir. 1994) 19 F.3d 1291.

11 Most recently, in a detailed analysis regarding the award of attorneys’ fees, the California
12 Supreme court approved the trial court’s award of attorneys’ fees under the common fund theory
13 where the is an actual common fund established (i.e., there is no claims process and no money shall
14 revert back to the defendant). *See Laffitte*, 1 Cal.5th at 503. Here, the Gross Settlement Amount is
15 \$525,000, which represents a true common fund, as there is no claims process and no money under
16 the Settlement will revert to Defendant. *See Williams v. MGM-Path Communication Co.* (9th Cir.
17 1997) 129 F.3d 1026, 1027 (The percentage is properly based upon the gross settlement, rather than
18 on the amount of claims made).

19 PAGA Counsel negotiated a recovery of \$525,000, and this result justifies the requested
20 fees equal to thirty-three and one third percent (33.33%) of this recovery. This percentage is within
21 the standard contingent recovery percentage. Historically, courts have awarded percentage fees in
22 the range of 20% to 50%, depending on the circumstances of the case. *See Newberg on Class*
23 *Actions*, 4th Ed. 202 § 14:6. Newberg notes that achievement of a substantial recovery with
24 modest hours expended should not be penalized, but should be rewarded for consideration of time
25 saved by superior services performed. *Id.* Furthermore, state and federal courts in California have
26 long recognized that a percentage of recovery for attorneys’ fees in properly awarded on the basis
27 of the total value. *See, e.g., Boeing v. Ven Gemert* (1980) 444 U.S. 472, 480-481; *In re Consumer*
28 *Privacy Cases* (2009) 175 Cal.App.4th 545, 558 n.13 (“Empirical studies show that, regardless



1 whether the percentage method or the lodestar method is used, fee awards in class actions average
2 around *one-third* of the recovery.”) (emphasis added).

3 Additionally, at the time this case was brought, the result was far from certain. Defendant’s
4 defenses to the merits of the case created difficulties with proof and complex legal issues for
5 PAGA Counsel to overcome. Here, several defenses asserted by Defendant present serious threats
6 to the claims of Plaintiff and the Aggrieved Employees. Defendant asserted that its employment
7 practices complied with all applicable labor laws. If successful, Defendant’s factual and legal
8 defenses would eliminate *any recovery* to the Aggrieved Employees. While Plaintiff believes that
9 these defenses could be overcome, Defendant maintains that these defenses have merit and
10 therefore present a serious risk to recovery. The Settlement was possible because, in PAGA
11 Counsel’s eyes, PAGA Counsel was able to persuade Defendant that there was an appreciable risk
12 that Plaintiff would prevail on the factual and legal issues underlying liability and overcome
13 difficulties in proof as to monetary relief. Kring Decl., ¶¶ 9-12, 14, 17-19.

14 **B. PAGA Counsel’s Requested Attorneys’ Fees Are Reasonable under the**
15 **Lodestar Method**

16 Although the Court should analyze this fee request under the common fund theory,
17 Plaintiff’s fee application is also clearly reasonable based on PAGA Counsel’s lodestar. See, Kring
18 Decl., ¶ 14. Under the lodestar method, the Court considers a compilation of the time spent and a
19 reasonable hourly compensation of each attorney to evaluate the reasonableness of the fee
20 requested. See *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 622.

21 Generally, the Ninth Circuit and California Courts award multipliers between 2 to 4 times
22 the lodestar to reward counsel for accepting the contingent risks of the litigation or obtaining good
23 results. See, e.g., *Laffitte v. Robert Half Intern., Inc.*, (2016) 1 Cal. 5th at 506 (approving one-third
24 fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, (2010)
25 182 Cal.App.4th 278 (noting reasonable multipliers of 2.0 to 4.0 are often applied and affirming
26 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, (2001) 91 Cal.App.4th 224, 254 (noting that
27 multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d
28 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier of lodestar);



1 *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund,
2 which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK,
3 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier
4 of 2.76 as falling within the "majority" range for risk multipliers).

5 As detailed in PAGA Counsel's time and billing records and with an additional
6 approximately 20 hours expected, PAGA Counsel's current and up to date combined loadstar is
7 \$76,560.00. Kring Decl., ¶ 14. Thus, PAGA Counsel's fee request is equal to PAGA Counsel's
8 loadstar with a multiplier of 2.28 – well within the recognized multiplier range between 2 and 4.
9 See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following
10 *Laffitte*, approved 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest*
11 *Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following
12 *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7). Further, PAGA
13 Counsel's lodestar multiplier is justified due to PAGA Counsel's true worth as solely a Plaintiff
14 wage and hour attorney and superior representation to achieve a substantial and positive outcome
15 for Plaintiff, aggrieved employees, and the State of California; PAGA Counsel's delay in receiving
16 fees while the case is being litigated and the nature of contingent representation; and PAGA
17 Counsel's preclusion of other employment due to the potential for lengthy and costly litigation of a
18 representative PAGA case. Additionally, this case has unique risks and difficulties beyond those of
19 a routine PAGA action, as there was a significant risk that Plaintiff would not prevail on certain
20 claims, including multiple derivative claims, and/or civil penalties would be significantly reduced
21 or eliminated due to Defendant's arguments, defenses, and remedial actions taken in light of
22 Plaintiff's claims, as discussed in detail above. Kring Decl., ¶¶ 13-14.

23 **1. PAGA Counsel's Hours and Rate Are Reasonable**

24 In determining whether the number of hours expended on the litigation was reasonable, the
25 court must determine that "the time spent was reasonably necessary and that counsel made 'a good
26 faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise
27 unnecessary.'" *Jordan v. Multnomah County* (9th Cir. 1987) 815 F.2d 1258, 1263 n.8. The court
28 "should defer to the winning lawyer's professional judgment as to how much time he was required



1 to spend on the case.” *Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112 (noting
2 that “[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope of
3 inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee.”).

4 The reasonable hourly rate is that prevailing in the community for similar work. *PLCM*
5 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095. “[I]n assessing a reasonable hourly rate, the
6 trial court is allowed to consider the attorneys’ skill as reflected in the quality of work, as well as
7 the attorneys’ reputation and status.” *MBNA American Bank, N.A. v. Gorman* (2006) 147
8 Cal.App.4th 1, 3. The trial court may also “find hourly rates reasonable based on evidence of other
9 courts approving similar rates. *Parkinson v. Hyundai Motor America* (C.D. Cal. 2010) 796
10 F.Supp.2d 1160, 1172.

11 Hourly rates set forth in the *Laffey* Matrix provide further support for counsel’s requested
12 hourly rate. The *Laffey* Matrix is an attorneys’ fee matrix developed in *Laffey v. Nw. Airlines, Inc.*
13 (D.D.C. 1983) 572 F.Supp. 354, 371 which relies on the Legal Services Index of the Bureau Labor
14 Statistics to provide national legal rates adjusted for inflation, rather than local and generalized cost
15 data. While the *Laffey* Matrix provides market rates for attorneys working in the Washington D.C.
16 and Baltimore areas, Federal courts in the Ninth Circuit have found that hourly rates determined
17 using the *Laffey* Matrix, “are reasonable and commensurate with those charges by attorneys with
18 similar experience in the market.” See, e.g., *Kumar v. Salov N. Am. Corp.*, No. 14-CV-2411-YGR,
19 2017 WL 2902898, at *7 (N.D. Cal. July 7, 2017). Utilizing the *Laffey* Matrix, PAGA Counsel’s
20 hourly rate would be \$581.00 per hour. See, LSI *Laffey* Matrix at
21 <http://www.laffeymatrix.com/see.html>.

22 PAGA Counsel’s sole practice is dedicated to employment law, primarily wage and hour.
23 Given the skill and experience of PAGA Counsel and the positive result achieved for the aggrieved
24 employees in this case, among other reasons discussed above, the hourly rate of \$550.00 for PAGA
25 Counsel is reasonable. See, Kring Decl., ¶ 14; Green Decl., ¶¶ 3-6.

26 **C. PAGA Counsel’s Costs Are Reasonable**

27 Attorneys who create a common fund for the benefit of a class are entitled to payment from
28 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 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 \$15,728.47 prosecuting this action. Kring Decl., ¶ 15. PAGA Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; factual and legal research charges; mediation fees; and expert costs which were all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed. Kring Decl., ¶ 15.

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

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

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1 The Settlement provides for a Plaintiff's Enhancement Award of \$10,000. Plaintiff's
2 Enhancement Award is fair and reasonable compensation for the Plaintiff's efforts bringing the
3 action, assisting PAGA Counsel with the litigation and settlement, regularly conferring with PAGA
4 Counsel on the status of his case and the strategies for prosecuting the claims and agreeing to
5 provide Defendant a broad release of all claims arising out of their employment. Plaintiff willingly
6 came forward to protect and advance the rights of the Aggrieved Employees on important legal
7 disputes affecting California employees. By way of example, Plaintiff assumed the serious risk of
8 liability for Defendant's costs and potentially fees if the case was unsuccessful. Nevertheless,
9 Plaintiff knowingly and voluntarily undertook the risk to vindicate the rights of the Aggrieved
10 Employees. Kring Decl., ¶¶ 4, 9-14, 18; Declaration of Noel Latorre ("Latorre Decl."), ¶¶ 3-5.

11 Plaintiff's efforts in bringing the lawsuit conferred a monetary benefit to the Aggrieved
12 Employees. Moreover, assuming approximately 229 aggrieved employees (as of December 13,
13 2023) , the estimated average net recovery for each Aggrieved Employee for this period is \$346.44.
14 This outcome indicated a favorable monetary benefit to the Aggrieved Employees and would not
15 have occurred unless Plaintiff brought this action on behalf of the Aggrieved Employees. *Decker*
16 *v. AllStates Consulting Services, LLC*, 2020 WL 7769842, *3 (E.D. Cal. Dec. 30, 2020) (42% of
17 verdict value of PAGA penalty, resulting in average payment per employee of \$188); *Hartley v. On*
18 *My Own, Inc.*, 2020 WL 5017608, *4 (E.D. Cal. Aug. 25, 2020) (approving settlement at 3.47% of
19 verdict value of PAGA penalty, resulting in average payment per employee of \$61). Accordingly,
20 Plaintiff and PAGA Counsel respectfully request the Court approve Plaintiff's Enhancement
21 Awards in accordance with the Settlement Agreement. Kring Decl., ¶ 18.

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1 **X. CONCLUSION**

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

6 Dated: October 28, 2024

KRING & CHUNG, LLP

7
8 By: _____

Tyler D. Krings
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
6 On October 29, 2024, I served true copies of the foregoing document(s) described as
PLAINTIFF'S AMENDED NOTICE OF MOTION AND UNOPPOSED MOTION FOR
7 **APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND**
8 **AUTHORITIES IN SUPORT THEREOF** on the interested parties in this action, addressed as
follows:

9 **SEE ATTACHED SERVICE LIST**

10 ☒ BY E-MAIL: By transmitting a true copy of the foregoing document(s) to the e-mail
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
12 foregoing is true and correct.

13 Executed on October 29, 2024, at Irvine, California.

14 
15 MICHELLE BENNETT



NOEL LATORRE V. PATRIOT GLOBAL GROUP, INC.

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

SERVICE LIST

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